



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,	OF THE	Criminal Cases Nos. 27208, 27210, 27212, 27214, 27216, 27217, 27218, 27219, 27223, 27224, 27225, 27226, 27227 & 27228
	Plaintiff,	
-versus -		
LUCENA DIAZ DEMAALA,		<i>For: Violation of Section 3(h) of Republic Act (R. A.) No. 3019, as amended</i>
Accused.		

Present:

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B., J. and
FERNANDEZ, S.J.¹, J.

Promulgated:

JUNE 22, 2018 

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AMENDED DECISION

CABOTAJE-TANG, P.J.:

On December 15, 2017, the Court promulgated its Decision in these cases convicting accused of violation of Section 3(h) of R. A. No. 3019, the dispositive portion of which reads:

¹ J. Sarah Jane T. Fernandez is a signatory to the assailed Decision.

WHEREFORE, the Court finds accused LUCENA DIAZ DEMAALA **GUILTY** beyond reasonable doubt of violation of Section 3 (h) of Republic Act No. 3019, as amended, in Criminal Cases Nos. 27208, 27210, 27212, 27214, 27216, 27217, 27218, 27219, 27223, 27224, 27225, 27226, 27227 and 27228. Accordingly, she is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, for each count, with perpetual disqualification from public office.

SO ORDERED.

Thereafter, the accused filed the following motions:

1. *Motion for Reconsideration (Re: Decision promulgated on 15 December 2017) dated January 3, 2018;*² and
2. *Supplement (To the Motion for Reconsideration) dated January 8, 2018.*³

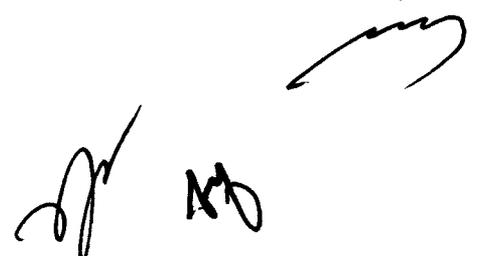
THE ACCUSED'S MOTION FOR RECONSIDERATION

Accused Demaala seeks a reconsideration of the Court's Decision promulgated on December 15, 2017, convicting her of violation of Section 3(h) of R. A. No. 3019, as amended, on fourteen (14) counts. She argues that the prosecution failed to prove that she had pecuniary interest in the transaction subject of these cases; that a mother-daughter relationship *per se* does not automatically translate to having a direct or indirect financial interest in the contracts. Thus, she concludes that the fact that she is the mother of Arlene Cabando, the alleged owner of ADB Trading and Services, does not mean that she has pecuniary interest in the said business entity.

She also argues that contrary to the Court's ruling, **Republic vs. Tuvera** is not applicable to her cases. Instead,

² pp. 404-410, Vol. 5, Record

³ pp. 393-398, Vol. 5, Record



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she cites *Republic vs. Felicidad B. Zurbano* to support her motion for reconsideration, where the Second Division of this Court issued a Resolution dated February 21, 2017, granting Zurbano's motion for reconsideration of the decision convicting her of violation of Section 3(h) of R. A. No. 3019.⁴

The accused also takes issue with the Court's declaration that she failed to present countervailing evidence to the prosecution's evidence and that she did not even testify in Court. According to her, the defense may not even present evidence if the prosecution failed to discharge its burden of proving the accused's guilt beyond reasonable doubt.⁵

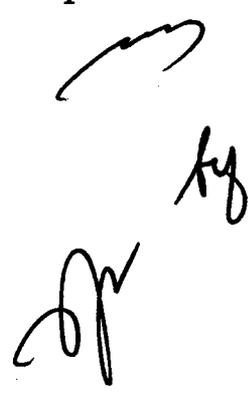
In her supplement to the subject motion for reconsideration, the accused argues that her relationship with the owner of the ADB Trading and Services could lead to two (2) possibilities. First, that she may have a financial or pecuniary interest in the transactions subject of these cases. Second, that she has none thereby creating a reasonable doubt as to her guilt. Applying the equipoise rule, she contends that the constitutional presumption of innocence should tilt the scale in her favor. She also argues that the mere fact that the owner of the ADB Trading and Services is her daughter is not the kind of interest, direct or indirect, that the law and jurisprudence requires to hold a public officer liable for violation of Section 3(h) of R.A. No. 3019. In support thereof, she cites several cases decided by the other Divisions of this Court. She claims that in the said cases, the different Divisions of this Court were consistent in ruling that what is contemplated in Section 3(h) of the Anti-Graft law is the actual intervention in the transaction in which one has a financial or pecuniary interest in order that the liability may attach. Allegedly, there is no reason for this Division not to apply the same ruling.⁶ She asserts that her only participation in these cases was signing the disbursement vouchers, which was done only after all the supplies and materials had been purchased and delivered.⁷ Moreover, as a mayor, she is not required to

⁴ at pp. 2-4, Motion for Reconsideration; pp. 405-407, Vol. 5, Record

⁵ at pp. 5-6, Motion for Reconsideration; pp. 408-409, Vol. 5, Record

⁶ at pp. 1-4; Supplement; pp. 393-396, Vol. 3, Record

⁷ at p. 2; Supplement; p. 394, Vol. 3, Record

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examine every single detail of the transaction following the doctrine in **Arias vs. Sandiganbayan**.⁸

The accused-movant further argues that the prosecution failed to prove the presence of the following circumstances: that she approved the purchase of the supplies and materials from the ABD Trading and Services; that she is connected with the ADB Trading and Services; how her intervention led to her acquisition of any financial interest or benefit; that she derived profit and benefit from the transactions subject of these cases; and, that the Municipality of Narra suffered damages.⁹

THE OPPOSITION OF THE PROSECUTION

In its consolidated comment/opposition, the prosecution claims that the evidence clearly shows that ADB Trading and Services is owned by the accused's daughter and that the fourteen (14) disbursement vouchers payable to ADB Trading and Services were approved by her. It cites **Tuvera**, where the Supreme Court held that *delicadeza* is not merely a stentorian term evincing a bygone ethic but is a legal principle embodied by certain provisions of R. A. No. 3019. It argues that damage on the part of the government and proof of actual receipt of any financial benefits from the questioned transactions are not elements of violation of Section 3(h) of R.A. No. 3019. Further, it advances the following arguments in insisting that the accused had an indirect pecuniary interest in the transactions subject of these cases:¹⁰

It is also erroneous to conclude that the only participation of Accused-Movant was the mere signing of DVs. It must be noted, as a general rule, before a procurement of any goods, supplies or services may be made by any government agency, the purchase request and purchase order must be in accord with the Annual

⁸ 180 SCRA 309 (1989)

⁹ at pp. 2-4; pp. 394-396, Vol. 3, Record

¹⁰ at p. 8; p. 464, Vol. 3, Record



Procurement Plan (APP) and must be approved by the Head of the Procuring Agency (HOPE). It is also of common knowledge that without the requisite approval of the Head of the Procuring Entity on the purchase request and purchase order, no procurement may be made. Accused-Movant's actual intervention in the subject transactions on her official capacity is undeniable. Accused-movant knew beforehand that the supplier of office supplies, materials and Risograph printing forms being procured by the municipality is no other than the ADB Trading and Services, a business entity owned by her own daughter. It follows that any proceeds made in favor of ADB Trading, normally redound to the benefit of its owner.

The prosecution further argues that the *Arias doctrine* does not apply to these cases because the issue of direct or indirect pecuniary interest in any business, contract or transaction in which a public officer intervenes or takes part was not an issue in **Arias**.¹¹

THE COURT'S RULING

After a painstaking re-examination of the records of these cases and the relevant jurisprudence, and an assiduous evaluation of the parties' arguments, the Court resolves to grant the accused's motion for reconsideration.

Every criminal conviction requires the prosecution to prove two (2) things: [1] the fact of the crime, that the presence of all the elements of the crime with which the accused stands charged, and [2] the fact that the accused is the perpetrator of the crime.¹²

¹¹ at p. 9; p. 465, Vol. 3, Record

¹² *Arriola vs. People*, 791 SCRA 478 (2016)

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In these cases, the accused is charged with violation of Section 3(h) of R. A. No. 3019. Under settled jurisprudence, the following elements need to be proven in order to constitute a violation of Section 3 (h) of RA No. 3019:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.¹³

The Court maintains its findings that the prosecution had proven beyond reasonable doubt the presence of the first and second elements of the offense charged. However, after a second hard look at the facts of the case *vis-à-vis* the relevant jurisprudence, the Court finds that the accused's act of approving the disbursement vouchers for the payment of the supplies and materials delivered by the ADB Trading & Services in her official capacity as mayor of the Municipality of Narra, Palawan cannot be considered "actual intervention" as contemplated under Section 3(h) of R. A. No. 3019.

What is contemplated in Section 3(h) of the Anti-Graft Law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach. For the law aims to prevent dominant use of influence, authority and power.¹⁴

In **Caballero vs. Sandiganbayan**,¹⁵ the Supreme Court granted the petition for certiorari filed by therein petitioners assailing the Sandiganbayan's resolution denying their motion to quash based on the ground that the facts charged do not constitute violation of Section 3(h) of R. A. No. 3019. In declaring that therein petitioner Caballero did not unlawfully

¹³ **Caballero vs. Sandiganbayan**, 534 SCRA 30 (2007)

¹⁴ **Caballero vs. Sandiganbayan**, *ibid.* citing **Trieste, Sr. vs. Sandiganbayan**, 145 SCRA 508 (1996)

¹⁵ *supra*



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intervene in his official capacity in connection with the awards to his wife, the High Court explained:

In a nutshell, the procedure for the procurement of government supplies and materials can be summarized as follows: the end-user agency or department draws a purchase request for the supplies and materials; an invitation to bid is announced; the bidding and award to the lowest bidder will be conducted by the Committee on Awards; purchase order will then be executed in favor of the winning bidder; the supplies and materials will be delivered to the end-user agency or department; inspection of the delivered supplies will be made by the requisitioning officer; and DVs will be executed for payment of the supplies and materials.

As can be gleaned from the records, Mayor Caballero had nary any participation from the drawing of the purchase request to the awarding of the contracts to the lowest bidder by the Awards Committee. Quite the contrary, the records reveal that after learning that his wife's business entities were among those invited to bid, Mayor Caballero inhibited himself in all the proceedings of the Committee on Awards even if he is, by law, the chairman thereof. It can thus be concluded that the decision by the Awards Committee on who will be the winning bidder was made through its members' own determination and volition and without any intervention on the part of the mayor.

To our mind, such act of the mayor in inhibiting himself from taking part in the Committee's proceedings clearly shows that he had never intended to influence or pressure the members of the Committee on Awards to favor his wife's bid. When the Committee eventually awarded the contracts to Theresa Caballero, it was only because the Committee found her bid to be the lowest and the most advantageous to the government, and not because she is the mayor's wife or because the mayor had a pecuniary interest in it. True enough, GP's Catering Services even offered its building space free of charge for use by the participants in the seminar-workshop. Indeed, the advantage to the government was

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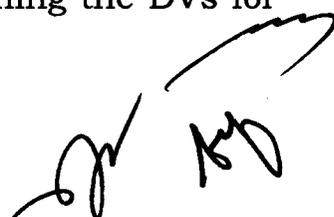
two-fold: one, for the lowest price quotation for the supply of meals; and the other, for the free use of the building space as convention hall for the entire duration of the seminar-workshop. With such advantage to the government, it is only logical and appropriate for Mayor Caballero to approve the awards. Even then, his approval of the awards in favor of his wife's business establishments came after the decision had already been reached by the Committee on Awards, thus he cannot be said to have influenced the same. It is, therefore, safe to say that the mayor did not intervene in the transactions as the contracts therefor were awarded by the Committee without his participation.

Worth citing is the case of Trieste, Sr. v. Sandiganbayan where the Court clarified the kind of intervention that would constitute a violation of Section 3 (h) of RA No. 3019:

What is contemplated in Section 3(h) of the Anti-Graft Law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach. For the law aims to prevent dominant use of influence, authority and power. (Emphasis supplied.)

The undisputed facts of the case negate any showing that Mayor Caballero had, in his capacity as mayor, used his influence, power and authority in the award of the two (2) contracts to his wife's business entities. He did not ask nor did he demand the members of the Committee on Awards to award the respective contracts for the supply of meals and materials to GP's Food Catering Services and Genty General Merchandise.

Too, while Mayor Caballero signed the DVs, he did it only after all the purchases had already been made, delivered and paid for by the municipal treasurer. In fine, the mayor's participation was limited to signing the said vouchers long after the Committee on Awards had decided to award the contracts to the business establishments of his wife, and long after the transactions had been completed. To stress, the only participation of Mayor Caballero in the transactions in question was the mechanical act of signing the DVs for



accounting and record purposes. As this Court declared in Trieste:

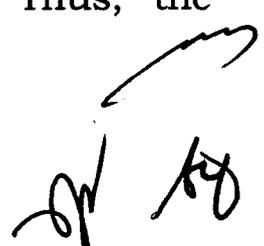
Inasmuch as Treasurer Vega signed and paid the vouchers after the materials were delivered, petitioner's (municipal mayor) signature on the vouchers after payment is not, we submit, the kind of intervention contemplated under Section 3(h) of the Anti-Graft Law.

To be sure, Mayor Caballero's participation in the whole transaction was certainly not the actual and direct participation that would render him liable under Section 3 (h) of the Anti-Graft Law. The third element of the offense, i.e., he intervenes or takes part in his official capacity in connection with his interest in a business, is thus wanting herein.

Likewise, the supporting documents, such as the purchase request, sales invoices and the DVs, were all in order as the signatures of the municipal officials appearing thereon were regular and consistent with the regular course of business. Records show that Municipal Accountant Nerita Cuento prepared the DVs only after determining that the same had been properly audited and there were adequate available funds for the purpose.

Similar to **Caballero**, the prosecution did not present evidence of any irregularity in the conduct of the bidding which resulted in the award of the transactions to ADB Trading & Services in these cases. Neither was there any evidence to show that the accused influenced the Bids and Awards Committee (BAC) to award the contracts to ADB Trading & Services. The Abstract of Bids shows that ADB Trading & Services offered the lowest bid.¹⁶ Thus, the

¹⁶ Exhibits A-5 and I-5



accused's act of approving the disbursement vouchers alone cannot be considered an "actual intervention" contemplated under Section 3(h) of R. A. No. 3019.

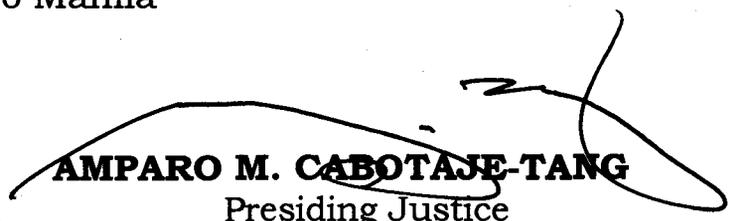
In any criminal prosecution, it is necessary that every essential ingredient of the crime charged must be proved beyond reasonable doubt in order to overcome the constitutional right of the accused to be presumed innocent.¹⁷ In these cases, the prosecution failed to prove the presence of the actual intervention of the accused in her official capacity as mayor in the purchase of office supplies and materials and Risograph prining from ADB Trading & Services where she has an indirect pecuniary interest. Perforce, the accused's constitutional right of presumption of innocence until the contrary is proved has not been overcome; hence, she is entitled to an acquittal¹⁸ for the charge of violation of Section 3(h) of R. A. No. 3019.

WHEREFORE, the Court **GRANTS** the *Motion for Reconsideration* dated January 3, 2018 and the *Supplement (To the Motion for Reconsideration)* dated January 8, 2018, filed by accused Lucena Diaz Demaala. The questioned Decision promulgated on December 15, 2017 is REVERSED and SET ASIDE and a new one is entered ACQUITTING accused Lucena Diaz Demaala of violation of Section 3(h) of Republic Act No. 3019 on fourteen (14) counts.

The cash bond posted by said accused is hereby cancelled and ordered returned to her, subject to the usual accounting and auditing rules and regulations. The Hold Departure Order dated April 9, 2002 is likewise ordered lifted.

SO ORDERED.

Quezon City, Metro Manila

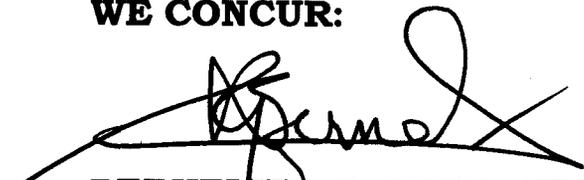

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

¹⁷ *People vs. De Castro*, 413 SCRA 171 (2003)

¹⁸ *People vs. Wagas*, 705 SCRA 17 (2013)



WE CONCUR:



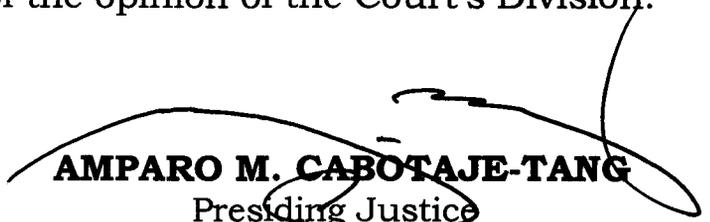
BERNELITO R. FERNANDEZ
Associate Justice



SARAH JANE T. FERNANDEZ
Associate Justice

A T T E S T A T I O N

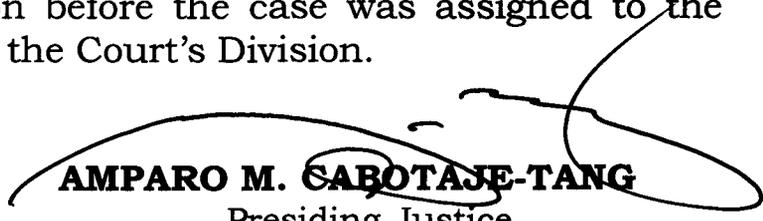
I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby 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