



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0002**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

Present

- versus -

ALLAN P. DAMAS

Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
MUSNGI,* J.

Promulgated:

June 12, 2018

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DECISION

FERNANDEZ, SJ, J.

Accused Allan P. Damas, then Municipal Mayor of Kumalarang, Zamboanga del Sur, is charged with violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019) for allegedly recommending Nellie Poliran Toledo, his relative within the fourth civil degree of consanguinity, for the position of Municipal Treasurer, and certifying that Toledo was not his relative within the fourth civil degree of affinity or consanguinity, in violation of Section 79 of Republic Act No. 7160 (R.A. No. 7160).¹

The accusatory portion of the Information reads:

In July 2006, or thereabout, in Kumalarang, Zamboanga del Sur, Philippines, and within this Honorable Court's Jurisdiction, accused ALLAN P. DAMAS, a public officer being then the Municipal Mayor of Kumalarang, Zamboanga del Sur, while in the performance

* In view of the vacancy in the Sixth Division (Per Administrative Order No. 057-2018 dated January 29, 2018)

¹ Local Government Code of 1991

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of his official functions, with evident bad faith and manifest partiality, did then and there willfully, unlawfully, and criminally give unwarranted benefit or advantage to his relative within the fourth civil degree of consanguinity, Nellie Poliran Toledo, by recommending said Toledo to the position of Municipal Treasurer and certifying that Toledo was not his relative within the fourth civil degree of affinity or consanguinity, which recommendation led to Toledo's appointment as Municipal Treasurer, in violation of Sec. 79 of Republic Act No. 7160 (Local Government Code) which prohibits the appointment in the career service of the local government, of any person related within the fourth civil degree of consanguinity or affinity of the appointing or recommending authority.

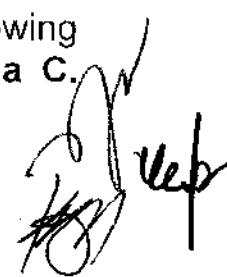
CONTRARY TO LAW.

When the accused was arraigned on August 8, 2016, he entered his plea of Not Guilty.²

During the pre-trial,³ the parties stipulated that at the time material to the case, the accused was a public officer, then being the Municipal Mayor of Kumalarang, Zamboanga del Sur.⁴ They also agreed that the issues to be resolved are as follows:

1. Whether or not accused Allan Poliran Damas acted with evident bad faith and manifest partiality and thereby giving unwarranted benefit or advantage to his relative within the fourth civil degree of consanguinity, Ms. Nellie Poliran Toledo, by recommending the latter to the position of Municipal Treasurer and certifying that she was not the former's relative within the fourth civil degree of affinity or consanguinity in violation of Section 79 of Republic Act No. 7160; and
2. Whether all the elements for a violation of Section 3(e) of Republic Act 3019 are present.⁵

Trial ensued and the prosecution presented the following witnesses: **Corazon S. Cedeño**,⁶ **Rosalia B. Naranjo**,⁷ **Editha C.**



² Record, Vol. 1, pp. 223-225

³ *Pre-trial Order* dated January 31, 2017; Record, Vol. 1, pp. 261-A to 261-I

⁴ Record, Vol. 1, p. 261-A (*Pre-trial Order* dated January 31, 2017, p. 1)

⁵ Record, Vol. 1, pp. 261-A and 261-B (*Pre trial Order* dated January 31, 2017, pp. 1-2)

⁶ TSNs, April 4, 2017 and May 10, 2017; *Judicial Affidavit* dated March 9, 2017 (Record, Vol. 1, pp. 274-279)

⁷ TSN, May 10, 2017; *Judicial Affidavit* dated March 8, 2017 (Record, Vol. 1, pp. 295-302)

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Censon,⁸ Sir Ryan Anthony D. Amad,⁹ Donita Rose A. Parantar,¹⁰ Marjorie L. Paulin,¹¹ and Aida D. Micarandayo.¹²

In her *Judicial Affidavit* dated March 9, 2017, **Corazon S. Cedeño** declared:

1. She resided in Barangay Bogayo, Kumalarang, Zamboanga del Sur from 1985 to 2012.¹³
2. As a resident of the Municipality of Kumalarang, Zamboanga del Sur, she knows former Municipal Mayor Allan P. Damas (the accused) and former Municipal Treasurer Nellie Toledo (Toledo).¹⁴
3. The accused and Toledo are first-degree cousins, the mother of the accused and Toledo's father being brother and sister.¹⁵
4. She knows that the accused and Toledo are cousins because her husband is the second-degree cousin of the accused. Toledo was also her neighbor in Barangay Bogayo before she (witness Cedeño) got married and moved to Poblacion Kumalarang.¹⁶
5. That the accused and Toledo are cousins is of public knowledge. On one occasion, she heard the accused and Toledo introduce themselves as cousins.¹⁷
6. Simeon Poliran, Toledo's father, campaigned for the accused, and introduced the latter as "*Kinakusgan kong pag umankon*," in Tagalog, meaning *Pinakamalakas kung pamangkin*.¹⁸
7. She and a certain Castro Gabasan Donio executed the *Joint Affidavit By Two Disinterested Persons* dated February 19, 2010 (Exhibit "G").¹⁹
8. She affirms everything she stated in said affidavit, except for paragraph 4, where she mistakenly stated that she was not

⁸ TSN, June 13, 2017; *Judicial Affidavit* dated March 15, 2017 (Record, Vol. 1, pp. 282-292)

⁹ TSN, June 14, 2017; *Judicial Affidavit* dated June 9, 2017 (Record, Vol. 1, pp. 381-405)

¹⁰ TSN, August 29, 2017; *Judicial Affidavit* dated July 13, 2017 (Record, Vol. 1, pp. 420-429)

¹¹ TSN, August 29, 2017; *Judicial Affidavit* dated July 13, 2017 (Record, Vol. 1, pp. 448-454)

¹² TSN, September 26, 2017; *Judicial Affidavit* dated June 28, 2017 (Record, Vol. 1, pp. 433-444)

¹³ *Judicial Affidavit* dated March 9, 2017, p. 2

¹⁴ *Ibid.*

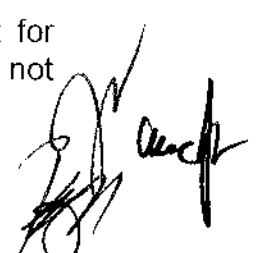
¹⁵ *Ibid.*

¹⁶ *Judicial Affidavit* dated March 9, 2017, p. 3

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*



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related to the accused. In truth, she is a relative of the accused because he is a second-degree cousin of her husband.²⁰

She further testified:

1. She has no official document showing that the accused and Toledo are first cousins.²¹
2. Paragraph 4 pertains to the statement of the other person who signed the affidavit.²²

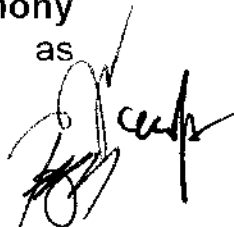
In her *Judicial Affidavit* dated March 8, 2017, **Rosalia B. Naranjo**, Administrative Officer V at the Bureau of Local Government Finance (BLGF), identified the following documents:

1. Certification dated July 14, 2006 issued by Allan P. Damas (Exhibit "A")
2. Appointment letter dated January 30, 2007 of Nellie P. Toledo (Exhibit "B")

In her *Judicial Affidavit* dated March 15, 2017, **Editha C. Censon**, Senior Human Resource Specialist at the Civil Service Commission National Capital Region-BSP Field Office, identified the following documents:

1. Appointment letter dated January 30, 2007 of Nellie P. Toledo (Exhibits "H")
2. Memorandum dated January 18, 2007 of Ms. Armi M. Advincula (Exhibit "H-1")
3. Letter dated September 13, 2006 of Allan P. Damas (Exhibit "H-5")
4. Undated letter of Allan P. Damas (Exhibit "H-6")
5. Certification dated July 14, 2006 issued by Allan P. Damas (Exhibit "H-11")

In his *Judicial Affidavit* dated June 9, 2017, **Sir Ryan Anthony D. Amad**, Statistical Analyst, currently designated as



²⁰ *Judicial Affidavit* dated March 9, 2017, p. 4

²¹ TSN, May 10, 2017, p. 8

²² TSN, May 10, 2017, p. 10

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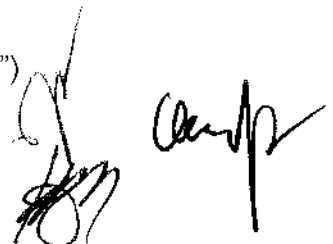
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Prosecutor/Investigator of the Legal Service of the Philippine Statistics Authority (PSA), identified the following documents:

1. Letter dated September 27, 2016 of Editha R. Orcilla (Exhibit "F-3")
2. Letter dated September 8, 2016 of Anna Leah Y. Tiongson-Mendoza (Exhibit "F-4")
3. Certificate of Live Birth of Allan Damas (Exhibit "F-5")
4. Letter dated November 14, 2016 of Editha R. Orcilla (Exhibit "F-13")
5. Letter dated November 8, 2016 of Anna Leah Y. Tiongson-Mendoza (Exhibit "F-14")
6. Certificate of Live Birth of Nellie Aranton Poliran (Exhibit "F-15")
7. Letter dated November 2, 2016 of Editha R. Orcilla (Exhibit "F-16")
8. Letter dated October 7, 2016 of Anna Leah Y. Tiongson-Mendoza (Exhibit "F-17")
9. Marriage Contract of Simeon Poliran and Paulina Aranton (Exhibit "F-18")
10. Marriage Contract of Vicente Damas and Agatona Poliran (Exhibit "F-19")
11. Letter dated December 9, 2016 of Editha R. Orcilla (Exhibit "F-20")
12. Letter dated November 24, 2016 of Anna Leah Y. Tiongson-Mendoza (Exhibit "F-21")
13. Certificate of Live Birth of Simeon Cedenio Poliran (Exhibit "F-22")

In her *Judicial Affidavit* dated July 13, 2017, **Donita Rose A. Parantar**, Administrative Officer IV/Human Resource Management Officer II of the Municipal Government of Kumalarang, Zamboanga del Sur, identified the following documents:

1. Service Record of Damas Allan Poliran (Exhibit "C")
2. Service Record of Toledo Nellie Poliran (Exhibit "D-1")



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In her *Judicial Affidavit* dated July 13, 2017, **Marjorie L. Paulin**, Municipal Civil Registrar of Kumalarang, Zamboanga del Sur, identified the following documents:

1. Letter dated September 13, 2016 of Marjorie L. Paulin (Exhibit "F")
2. Certification dated September 13, 2016 issued by Marjorie L. Paulin (Exhibit "F-1")

In her *Judicial Affidavit* dated June 28, 2017 and her direct examination on September 26, 2017, **Aida D. Micarandayo**, Municipal Civil Registrar of Plaridel, Misamis Occidental, identified the following documents:

1. Certification dated October 3, 2016 issued by Aida D. Micarandayo (Exhibits "F-7")
2. Letter dated November 28, 2016 of Aida D. Micarandayo (Exhibit "F-9")
3. Certification dated November 25, 2016 issued by Aida D. Micarandayo (Exhibit "F-10")
4. Certificate of Live Birth of Simeon Cedenio Poliran (Exhibit "F-11")
5. Certification dated November 25, 2016 issued by Aida D. Micarandayo (Exhibit "F-12")

The following exhibits offered by the prosecution were admitted²³ in evidence:

Exhibit	Document
A	Certification dated July 14, 2006 issued by Allan P. Damas
B	Appointment letter dated January 30, 2007 of Nellie P. Toledo
C	Service Record of Damas Allan Poliran
D-1	Service Record of Toledo Nellie Poliran
F	Letter dated September 13, 2016 of Marjorie L. Paulin
F-1	Certification dated September 13, 2016 issued by Marjorie L. Paulin
F-3	Letter dated September 27, 2016 of Editha R. Orcilla
F-4	Letter dated September 8, 2016 of Anna Leah Y. Tiongson-Mendoza
F-5	Certificate of Live Birth of Allan Damas
F-7	Certification dated October 3, 2016 issued by Aida D. Micarandayo

²³ Record, Vol. 1, pp. 491-492 (Resolution dated November 3, 2017)

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F-9	Letter dated November 28, 2016 of Aida D. Micarandayo
F-10	Certification dated November 25, 2016 issued by Aida D. Micarandayo
F-11	Certificate of Live Birth of Simeon Cedenio Poliran
F-12	Certification dated November 25, 2016 issued by Aida D. Micarandayo
F-13	Letter dated November 14, 2016 of Editha R. Orcilla
F-14	Letter dated November 8, 2016 of Anna Leah Y. Tiongson-Mendoza
F-15	Certificate of Live Birth of Nellie Aranton Poliran
F-16	Letter dated November 2, 2016 of Editha R. Orcilla
F-17	Letter dated October 7, 2016 of Anna Leah Y. Tiongson-Mendoza
F-18	Marriage Contract of Simeon Poliran and Paulina Aranton
F-19	Marriage Contract of Vicente Damas and Agatona Poliran
F-20	Letter dated December 9, 2016 of Editha R. Orcilla
F-21	Letter dated November 24, 2016 of Anna Leah Y. Tiongson-Mendoza
F-22	Certificate of Live Birth of Simeon Cedenio Poliran
G	<i>Joint Affidavit By Two Disinterested Persons</i> dated February 19, 2010 of Corazon Sildora Cedeño and Castro Gabasan Donio
H	Appointment letter dated January 30, 2007 of Nellie P. Toledo
H-1	Memorandum dated January 18, 2007 of Ms. Armi M. Advincula
H-5	Letter dated September 13, 2006 of Allan P. Damas
H-6	Undated letter of Allan P. Damas
H-11	Certification dated July 14, 2006 issued by Allan P. Damas

The accused filed his *Motion for Leave of Court to File Demurrer to Evidence*.²⁴ This Court, however, denied said Motion in the Resolution dated January 3, 2018.²⁵ In his *Compliance*,²⁶ the accused manifested that he was no longer filing his demurrer to evidence. Thereafter, in his *Omnibus Motion (to withdraw earlier manifestation, to reconsider resolution and to defer presentation of defense evidence)*,²⁷ he withdrew said manifestation, and in the hearing set on January 22, 2018,²⁸ submitted his *Demurrer to the Prosecution's Evidence*²⁹ without leave of Court.

In his *Demurrer to the Prosecution's Evidence*, the accused prays that the Information against him be dismissed and he be acquitted of the crime charged. He contends:

²⁴ Dated November 15, 2017; Record, Vol. 1, pp. 496-498

²⁵ Record, Vol. 1, p. 520

²⁶ Dated January 16, 2018; Record, Vol. 2, pp. 4-5

²⁷ Dated January 18, 2018; Record, Vol. 2, pp. 6-7

²⁸ Order dated January 22, 2018; Record, Vol. 2, p. 10

²⁹ Dated November 14, 2017; Record, Vol. 1, pp. 499-508

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1. The prosecution proved the first element of violation of Sec. 3(e) of R.A. No. 3019 but it failed to prove the rest of the elements of said offense.
2. Assuming that the purported recommendation letter is valid and duly executed, nothing in said letter shows manifest partiality or unwarranted benefits in favor of any one person on his part.
3. In said letter, he recommended three (3) persons for the post of Municipal Treasurer – Toledo and two (2) other persons. Had the recommendation been intended to favor Toledo alone, the endorsement would have contained her name exclusively. Thus, no unwarranted benefits or preference were granted in favor of Toledo.
4. Furthermore, in the same letter, it is stated that the end view is to have a regular Municipal Treasurer, and not to give accommodation to any particular person.
5. Toledo had been an employee of the municipality since year 2000. She was previously designated as Officer-in-Charge of the Municipal Budget Office, and occupied said position for three (3) years prior to being appointed as Municipal Treasurer.
6. That Toledo, at present, holds the position of Municipal Budget Officer shows that she is competent and qualified for the position of head of a municipal department.
7. It was not shown that the alleged recommendation in favor of Toledo, as well as her subsequent appointment as Municipal Treasurer, caused undue injury to the government, or to any party.
8. The prosecution failed to prove that he and Toledo are related within the fourth civil degree of consanguinity.
9. The best evidence of their relationship are birth certificates showing that they have a common ancestor. Although the prosecution presented several birth certificates, no direct link between him and Toledo was shown.
10. Toledo's purported birth certificate is not even legible.
11. The other documents also do not prove said relationship. The names therein are inconsistent, making it impossible to find common ancestors.
12. Penal laws are strictly construed against the State and liberally against the accused.



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In its *Comment/Opposition (To Accused Damas' Demurrer to Evidence)*,³⁰ the prosecution counters:

1. The accused signed and issued the Certification dated July 14, 2006 stating that he is not related to Nellie Poliran Toledo within the fourth civil degree of affinity or consanguinity. This certification appears to be false since the accused and Toledo are first-degree cousins, their mother and father, respectively, being siblings.
2. Corazon Sidora Cedeño, whose husband is a second-degree cousin of the accused and Toledo, stated in the *Joint Affidavit By Two Disinterested Persons* that the fact that the accused and Toledo are cousins is of public knowledge. This is corroborated by the various public documents showing the kinship of the accused and Toledo.
3. Although the entries in the copy of Toledo's birth certificate are not so legible, said document is just one of the documents pertaining to the facts of Toledo's birth. It adduced other evidence proving the same facts.
4. That the accused and Toledo have common ancestors is clear from the other documents adduced as evidence.
5. The accused' act of signing and issuing the Certification disowning his relation to Toledo partakes the nature of fraud, designed to conceal said relationship. This falls within the purview of evident bad faith, as defined in *Fonacier v. Sandiganbayan*.³¹
6. The accused, being the recommending authority under Sec. 470 of Republic Act No. 7160 (R.A. No. 7160), cannot feign ignorance as to the importance of the Certification he signed and issued. Such document is vital, in view of the prohibition under Sec. 79 of the same law. Without said certification, Toledo's appointment could not have been processed by the BLGF and Civil Service Commission (CSC).
7. Aside from being an act of evident bad faith, the signing and issuance of said Certification is also an act of giving manifest partiality towards Toledo. Without the Certification, Toledo was disqualified from the position of Municipal Treasurer, in view of the prohibition under Sec. 79 of R.A. No. 7160.

³⁰ Dated January 25, 2018; Record, Vol. 2, pp. 11-19

³¹ G.R. No. L-50691, December 5, 1994



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- 8. It is unnecessary to prove undue injury. The allegation in the Information is that the accused gave unwarranted benefit, advantage or preference to Toledo.
- 9. Had the accused not issued the subject Certification, Toledo, who was disqualified, would not have been considered for the position.

THE COURT'S RULING

Sec. 23, Rule 119 of the Rules of Court provides for the filing of a demurrer to evidence. To wit:

Sec. 23. Demurrer to evidence. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

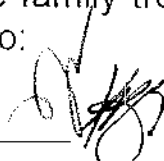
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(underscoring supplied)

Here, the accused filed his demurrer to evidence without leave of court, this Court having previously denied his motion for leave of court to file demurrer to evidence. Thus, he is deemed to have waived his right to present evidence and the instant case will be decided on the basis of the evidence adduced by the prosecution.

FINDINGS OF FACT

The documents³² adduced as evidence by the prosecution show that Nellie Toledo and the accused are first cousins or relatives within the fourth civil degree of consanguinity. For convenience, hereunder is a diagram of the family tree originating from Abraham Poliran and Gaudencia Cedenio:



³² Exhibits F-1, F-5, F-7, F-11, F-12, F-18, F-19 and F-22



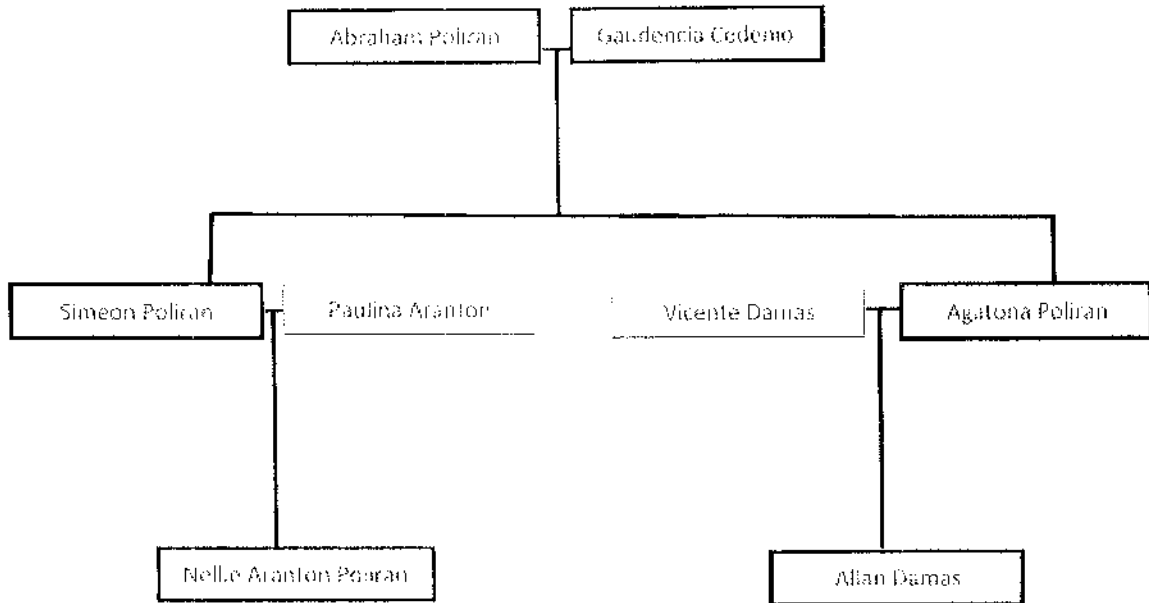
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Nellie P. Toledo, whose maiden name is Nellie A. Poliran,³³ is the daughter of Simeon Poliran, married³⁴ to Paulina Aranton. The accused,³⁵ on the other hand, is the son of Vicente Damas, married³⁶ to Agatona Poliran. Simeon Poliran³⁷ and Agatona Poliran³⁸ are siblings, their parents being Abraham Poliran and Gaudencia Cedenio.

Although there are discrepancies as to the spellings of some names,³⁹ as well as the year of the marriage of Simeon Poliran and Paulina Aranton, the names and relationships are similar enough that the following may be reasonably inferred:

³³ In Exhibit F-1, her father is indicated as "Semeon Poliran" and her mother as "Paulina Arganton."

³⁴ The date of their marriage is indicated as "February 20, 1963" in Exhibit F-1 and "February 20, 1962" in Exhibit F-18.

³⁵ In Exhibit F-5 and F-7, his father is indicated as "Vicente Damas" and his mother as "Agatona Poliran."

³⁶ The date of their marriage is indicated as "June 27, 1964" in both Exhibits F-5 and F-19

³⁷ His father is indicated as "Abraham Poliran" in Exhibits F-11, F-12, F-18 and F-22; His mother is indicated as "Gaudencia Himpuroa Cedenio" in Exhibits F-11 and F-22, as "Gaudencia H. Cedenio" in Exhibit F-12, and "Gaudencia Dedenio in Exhibit F-18.

³⁸ Her father is indicated as "Abraham Poleran" in Exhibit F-10, and as "Abraham Poliran" in Exhibit F-19; Her mother is indicated as "Gaudencia Cedenio" in both Exhibits F-10 and F-19

³⁹ The name of Simeon Poliran is indicated as "Semeon Poliran" in Exhibit F-1, as "Simeon Cedenio Poliran" in Exhibits F-11 and F-22, as "Simeon C. Poliran" in Exhibit F-12, and as "Simeon Poliran" in Exhibit F-18; The name of Agatona Poliran is indicated as "Agatona Poleran" in Exhibit F-10, and as "Agatona Poliran" in Exhibits F-5, F-7 and F-19; The name of Abraham Poliran is indicated as "Abraham Poleran" in Exhibit F-10, and as "Abraham Poliran" in Exhibits F-11, F-12, F-22, F-18 and F-19; The name of Gaudencia Cedenio is indicated as "Gaudencia Cedenio" in Exhibit F-10 and F-19, as "Gaudencia Himpuroa Cedenio" in Exhibits F-11 and F-22, as "Gaudencia H. Cedenio" in Exhibit F-12, and as "Gaudencia Dedenio" in Exhibit F-18; Paulina Aranton is indicated as "Paulina Arganton" in Exhibits F-1 and F-15, and as "Paulina Aranton" in Exhibit F-18.

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1. Semeon Poliran, who was married to Paulina Arganton on February 20, 1963,⁴⁰ is one and the same person as Simeon Poliran, who was married to Paulina Aranton on February 20, 1962.⁴¹
2. Agatona Poleran, the child of Abraham Poleran and Gaudencia Cedenio,⁴² is one and the same person as Agatona Poliran, the child of Abraham Poliran and Gaudencia Cedenio.⁴³

In an undated letter⁴⁴ addressed to Maria Presentacion R. Montesa, Executive Director of the Bureau of Local Government Finance (BLGF), the accused endorsed three (3) applicants for the position of Municipal Treasurer of the Local Government of Kumalarang, Zamboanga del Sur, namely (1) Nellie P. Toledo (Toledo), (2) Claude S. Genetiano and (3) Elvie D. Unabia.

Accused Damas, as recommending authority, signed and issued the Certification dated July 14, 2006⁴⁵ stating:

THIS IS TO CERTIFY that **MS. NELLIE P. TOLEDO** is not related to the undersigned recommending authority within the fourth civil degree of affinity or consanguinity.

This certification is being in compliance [sic] with BLGF Memorandum Order No. 01-97 upon request of the above-named recommendee in support of her promotion as Municipal Treasurer of the Local Government of Kumalarang, Zamboanga del Sur.

x x x

Subsequently, Ma. Presentacion R. Montesa, Executive Director of the BLGF, appointed Nellie P. Toledo as Municipal Treasurer on January 30, 2007.⁴⁶



⁴⁰ Exhibit F-1

⁴¹ Exhibit F-19

⁴² Exhibit F-10

⁴³ Exhibit F-19

⁴⁴ Exhibit H-6

⁴⁵ Exhibits A/H-11

⁴⁶ Exhibits B/H

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DISCUSSION

Sec. 3(e) of R.A. No. 3019 reads:

Sec. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of violation of Sec. 3(e) of R.A. No. 3019 are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. Such action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his or her functions.⁴⁷

First element

Without doubt, the first element is present. During the pre-trial, the parties stipulated that at the time material to the case, the accused was the Municipal Mayor of Kumalarang, Zamboanga del Sur.⁴⁸ His acts of recommending applicants for the position of Municipal Treasurer and issuing the subject Certification were performed in the discharge of his official functions.⁴⁹

⁴⁷ *Coloma v. Sandiganbayan*, G.R. No. 205561, September 24, 2014

⁴⁸ Record, Vol. 1, p. 261-A (*Pre-trial Order* dated January 31, 2017, p. 1)

⁴⁹ R.A. No. 7160, **Sec. 470. Appointment, Qualifications, Powers, and Duties.** – (a) The treasurer shall be appointed by the Secretary of Finance from a list of at least three (3) ranking, eligible recommendees of the



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Second element

The Information alleges that the accused, with evident bad faith and manifest partiality, recommended Toledo, his relative within the fourth civil degree of consanguinity, for the position of Municipal Treasurer, and certified that the latter was not his relative within the fourth civil degree of affinity or consanguinity. The Court finds that the prosecution convincingly proved this allegation.



Witness Corazon S. Cedeño,⁵⁰ in her *Judicial Affidavit*, declared that she was a resident of the Municipality of Kumalarang from 1985 to 2012,⁵¹ and that her husband is a second-degree cousin of the accused.⁵² She knew that the accused and Toledo are cousins because aside from hearing the accused and Toledo introduce themselves as cousins, such fact was of public knowledge. Moreover, Simeon Poliran, Toledo's father, campaigned for the accused, referring to the latter as his nephew.⁵³

Witness Cedeño's declarations are corroborated by various documents⁵⁴ adduced as evidence by the prosecution. As discussed earlier, these documents, taken together, show that the accused and Toledo are first cousins -- relatives within the fourth civil degree of consanguinity.

Sec. 79 of R.A. No. 7160 prohibits the appointment of a person related within the fourth civil degree of consanguinity and affinity to the appointing or recommending authority. The provision reads:

Sec. 79. Limitation on Appointments. – No person shall be appointed in the career service of the local government if he is related within the fourth civil degree of consanguinity or affinity to the appointing or recommending authority.

Sec. 470 (a) of the same law provides that the Municipal Treasurer is appointed from a list of at least three (3) ranking, eligible recommendees of the Municipal Mayor. *Viz.:*

_____ 
governor or mayor, as the case may be, subject to civil service law, rules and regulations. (underscoring supplied) 

⁵⁰ The Court notes that the last name of witness Cedeño, whose husband is a second-degree cousin of the accused, is not spelled as "Cedenio."

⁵¹ *Judicial Affidavit* dated March 9, 2017, p.2

⁵² *Judicial Affidavit* dated March 9, 2017, p.3

⁵³ *Ibid.*

⁵⁴ Exhibits F-1, F-5, F-7, F-10, F-11, F-12, F-15, F 18, F 19 and F-22

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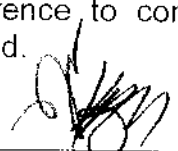
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Sec. 470. Appointment, Qualifications, Powers, and Duties. – (a) The treasurer shall be appointed by the Secretary of Finance from a list of at least three (3) ranking, eligible recommendees of the governor or mayor, as the case may be, subject to civil service law, rules and regulations.⁵⁵

It is clear that the Municipal Mayor is the recommending authority for the position of Municipal Treasurer. Thus, under Sec. 79, Toledo, being the first cousin of the accused – a relative within the fourth civil degree of consanguinity – was disqualified from being appointed to the position of Municipal Treasurer.

The second element of violation of Sec. 3(e) of R.A. No. 3019 provides for the three (3) modes by which the offense is committed. In *Albert v. Sandiganbayan*,⁵⁶ citing *Uriarte v. People*,⁵⁷ the three modes, *i.e.* manifest partiality, evident bad faith, or gross inexcusable negligence, were defined as follows:

The second element provides the different modes by which the crime may be committed, that is, through “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence.” In *Uriarte v. People*, this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.



⁵⁵ *Local Treasury Operations Manual* dated October 1, 2007. **Section 11. Delegation by the Secretary of Finance of the Appointing Authority to the BLGF Executive Director.** – The Secretary of Finance delegated to the Bureau of Local Government Finance (BLGF) Executive Director the appointing authority over Provincial, City and Municipal Treasurers and their Assistants, except City and Municipal Treasurers of Metro Manila and their Assistants. (DOF Personnel Order No. 305-2000 dated October 27, 2000)

⁵⁶ G.R. No. 164015, February 26, 2009

⁵⁷ G.R. No. 169251, December 20, 2006



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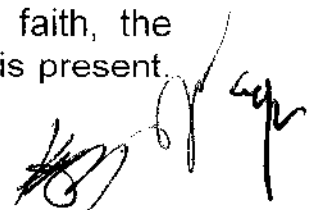
Despite being disqualified from the position of Municipal Treasurer, Toledo was eventually appointed to the position by reason of the acts of the accused. Such acts can be characterized as having been performed with evident bad faith.

The accused' acts of recommending Toledo and issuing the subject Certification *per se* cannot be said to be attended with evident bad faith or manifest partiality had it been convincingly shown that at the time he performed such acts, he was completely unaware that he and Toledo were relatives within the fourth civil degree of consanguinity. However, in the case at bar, it appears that the fact that the accused and Toledo are cousins is of public knowledge in the Municipality of Kumalarang. Thus, the accused could not have been unaware of such fact.

The issuance of the subject Certificate was required, precisely, because of the prohibition under Sec. 79 of R.A. No. 7160, which covers not only the relatives of the appointing authority, but also those of the recommending authority. By signing and issuing the subject Certificate, the accused, who could not have been unaware that Toledo is a relative within the fourth civil degree of consanguinity, in effect, made it appear that Toledo was not disqualified by her relation to him. This squarely falls within the definition of evident bad faith which "connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will."

The accused contends that there could have been no manifest partiality on his part because he recommended three (3) persons to the position of Municipal Treasurer, and not Toledo alone. While the Court does not find manifest partiality, implying bias, on the part of the accused, his contention is nonetheless untenable. The accused could not have recommended Toledo alone because Sec. 470 of R.A. No. 7160 provides that the treasurer shall be appointed from a list of **at least three (3)** ranking, eligible recommendees. If the list of recommendees submitted to the BLGF Executive Director – to whom the Secretary of Finance delegated the authority to appoint the Municipal Treasurer – does not contain at least three (3) persons, said list will be returned and the Executive Director will ask for another list containing at least three (3) qualified recommendees.

Although the prosecution only proved evident bad faith, the second element of violation of Sec. 3(e) of R.A. No. 3019 is present.



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Proof of any of the three modes, *i.e.*, manifest partiality, evident bad faith or gross inexcusable negligence, is enough to convict.⁵⁸

Third element

The third element is present when the act of the accused, done with manifest partiality, evident bad faith or gross inexcusable negligence, caused undue injury to any party, including the Government, or the giving of any unwarranted benefit, advantage or preference to any private party. In *Bugayao v. Karon*,⁵⁹ "undue injury" was defined as thus:

Undue means more than necessary; not proper; or illegal while injury denotes any wrong or damage done to another, either in his person, rights, reputation, or property. In the context of these definitions, jurisprudence has interpreted "undue injury" to mean actual damage, similar to that in civil law. x x x

On the other hand, phrase "unwarranted benefit, advantage or preference" was explained in *Rivera v. People*⁶⁰ as follows:

x x x. 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.

The accused may be charged under either mode or both. The presence of one is sufficient for conviction.⁶¹ Here, the accused is charged under "giving unwarranted benefit, advantage or preference." Hence, damage is not required.⁶²

The prosecution proved beyond reasonable doubt that the accused, through his acts done with evident bad faith, gave unwarranted benefit, advantage or preference to Toledo by paving the way for her appointment to the position of Municipal Treasurer, despite being disqualified due to being the accused' relative within the fourth civil degree of consanguinity.

⁵⁸ *Supra*. Note 47

⁵⁹ G.R. No. 162938, December 27, 2007

⁶⁰ G.R. Nos. 156577, 156587 and 156749, December 3, 2014

⁶¹ *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010

⁶² *Ibid*.

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As previously discussed, the accused recommended Toledo for the position of Municipal Treasurer of Kumalarang, and signed and issued a certification that Toledo is not related to him, as recommending authority, within the fourth civil degree of consanguinity or affinity. Without such recommendation and certification, Toledo would not have been considered, much less appointed, for the position, in view of the prohibition under Sec. 79 of R.A. No. 7160.

That Toledo was a public officer does not remove her from the term "private party," which includes a private person or a public officer acting in a private capacity to protect his or her personal interest.⁶³

CONCLUSION

The prosecution proved beyond reasonable doubt all the elements of violation of Sec. 3(e) of R.A. No. 3019.

WHEREFORE, accused Allan P. Damas is found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e) of R.A. No. 3019, and is accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from holding public office.

SO ORDERED.


SARAH JANE T. FERNANDEZ

Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA

Associate Justice


MICHAEL FREDERICK L. MUSNGI

Associate Justice

⁶³ *Ambil v. Sandiganbayan*, G.R. Nos. 175457 and 175482, July 6, 2011

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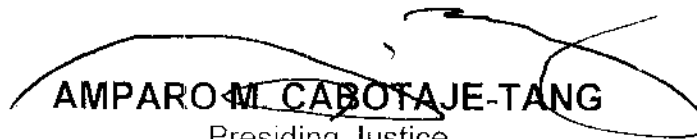
ATTESTATION

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.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

CERTIFICATION

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

