



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

SB-17-CRM-0463

**For: Violation of Sec. 3(e) of R.A.
No. 3019 (Anti-Graft and Corrupt
Practices Act)**

JERRY P. PASIGIAN,

Accused.

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PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

SB-17-CRM-0464

**For: Malversation of Public Funds
or Property (Article 217 of the
Revised Penal Code)**

JERRY P. PASIGIAN,

Accused.

Present:

**Lagos, J., Chairperson,
Mendoza-Arcega and
Corpus-Mañalac, JJ.**

Promulgated:

December 06, 2018 *Jal*

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DECISION

CORPUS - MAÑALAC, J.:

Accused **JERRY PASIGIAN** y **PELAYO**, the incumbent mayor of Alfonso Castañeda, Nueva Vizcaya, stands indicted for [1] Violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act and [2] Malversation of Public Funds or Property under Article 217 of the Revised Penal Code, in separate Charge Sheets filed by the Office of Special Prosecutor, Office of the Ombudsman on February 28, 2017, respectively docketed as Criminal Case Nos. SB-17-CRM-0463 and SB-17-CRM-0464, which read as follows:

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Criminal Case No. SB-17-CRM-0463

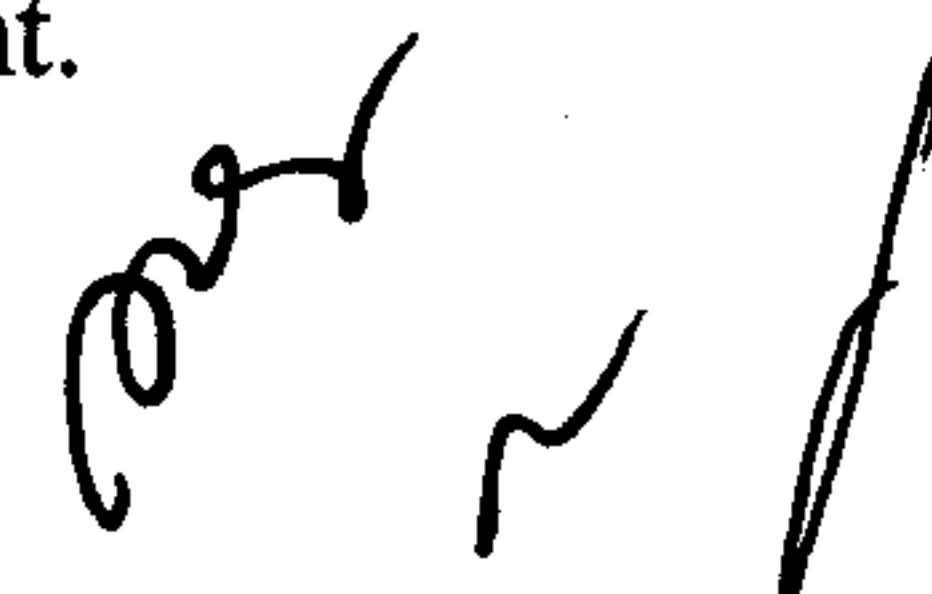
That in April 2009, or sometime prior or subsequent thereto, in the Municipality of Alfonso Castañeda, Province of Nueva Vizcaya, and within the jurisdiction of this Honorable Court, accused **JERRY P. PASIGIAN**, a public officer, being then the Municipal Mayor of Alfonso Castañeda, Nueva Vizcaya, committing the crime charged in relation to his duties and taking advantage of his official position, acting with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to one Gilbert S. Arellano (Arellano) by awarding a contract for the purchase of one unit of 2003 Nissan Patrol with Plate No. PCJ777, in the amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND PESOS (Php1,350,000.00), without public bidding, and causing the disbursement, release or payment of public funds in the aforesaid amount, notwithstanding the absence of the conditions which justifies resort to alternative mode of procurement, in violation of the Government Procurement Law and other pertinent government rules and regulations, and despite several irregularities and instances of fraud attending the transaction, thereby giving unwarranted benefits, advantage or preference to Arellano, to the damage and prejudice of the government.

CONTRARY TO LAW.

Criminal Case Nos. SB-17-CRM-0464

That in April 2009, or sometime prior or subsequent thereto, in the Municipality of Alfonso Castañeda, Province of Nueva Vizcaya, and within the jurisdiction of this Honorable Court, accused **JERRY P. PASIGIAN**, a public officer, being then the Municipal Mayor of Alfonso Castañeda, Nueva Vizcaya, who is accountable for public funds or properties received, entrusted or under his control or custody by reason of the duties of his office, committing the offense charged in relation to office and taking advantage of his official position, did then and there willfully, unlawfully and feloniously misappropriate, malverse, take away, or through his consent, abandonment or neglect, permit other persons to misappropriate, malverse or take away, for his own personal benefit or for the benefit of others, public property purchased by the barangay, consisting of one (1) unit of 2003 Nissan Patrol with Plate No. PCJ777, valued at ONE MILLION THREE HUNDRED FIFTY THOUSAND PESOS (Php1,350,000.00), by failing and/or refusing to produce, return or turn-over to the municipality said Nissan Patrol vehicle which was registered in the name of accused Pasigian instead of the municipality, immediately after the expiration of his term on June 30, 2013, and satisfactorily explain its incurrence thereof, despite demand, in violation of existing laws or government auditing and accounting rules and regulations, to the damage and prejudice of the government.

CONTRARY TO LAW



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The Antecedents of the Cases

After perusing the *Informations* and assessing the *Resolution* of the Office of the Ombudsman and the pieces of evidence attached thereto, this Court found sufficient cause to hold the accused for trial.¹ Accordingly, on March 7, 2018, separate Arrest Warrants and respective Hold Departure Orders were issued against the accused.

To secure his temporary liberty, the accused posted bond on March 14, 2018² whose arraignment was therefore scheduled on March 28, 2017. A day prior thereto, he filed a Motion to Quash³ on the ground that the facts charged do not constitute an offense, to which the prosecution filed its Comment/Opposition.⁴ The motion was denied in the Order dated April 10, 2017.⁵

Accordingly, on April 26, 2017, the accused was arraigned and pleaded NOT GUILTY to the charges.⁶

On July 20, 2017, the prosecution filed a Motion to Suspend the Accused *Pendente Lite*,⁷ which was granted in the *Resolution* promulgated on September 4, 2017.⁸

Meanwhile, the Pre-Trial Conference ensued which was terminated on July 20, 2017,⁹ whereby the Minutes of Preliminary Conference held on June 15, 2017¹⁰ was adopted. A Pre-Trial Order was issued on July 20, 2017¹¹ where it was stipulated that at the time material to these cases, (1) the accused was the Mayor of the Municipality of Alfonso Castañeda, Nueva Vizcaya; (2) Myrna Mangabat Pasigian is the wife of the accused; and that (3) the private complainant, then incumbent Mayor, Dr. Annie C. Bawayan, was a rival of the accused for mayoralty position in Alfonso Castañeda, Nueva Vizcaya.

At this juncture, the accused filed a Motion to Dismiss¹² for alleged violation of his right to speedy disposition of his case. The prosecution opposed.¹³ In the *Resolution* promulgated on October 10, 2017,¹⁴ the said motion was denied. Trial on the merits, thus, accordingly proceeded.

¹ Record, Vol. 1, p. 51

² Id., p. 64

³ Id., pp. 68-73

⁴ Id., p. 74

⁵ Id., pp. 86-89

⁶ Id., p. 96

⁷ Id., p. 125

⁸ Id., p. 287

⁹ Id., p. 130;

¹⁰ Id., p. 107

¹¹ Id., pp. 131-142

¹² Id., p. 148

¹³ Id., p. 180

¹⁴ Id., p. 320

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The Evidence for the Prosecution

The prosecution presented as evidence the testimonies of the following as witnesses, *viz*:

Dr. Annie C. Bawayan,¹⁵ then incumbent Mayor of Alfonso Castañeda, Nueva Vizcaya, testified that when she assumed office as the new Municipal Mayor of the said municipality sometime in July 2013, she issued a Memorandum¹⁶ for inspection and return of all government vehicles of the municipality for status and accounting purposes, which she reiterated in her Letter to the General Services Office dated July 4, 2013.¹⁷ A white 2003 Nissan Patrol with Plate No. PCJ777 was not accounted for. It was found that the said vehicle was issued to the accused as then Mayor who requested for the purchase of the said vehicle through Purchase Request No. 111-0904-060¹⁸ and procured using municipal funds. The vehicle was accepted by the accused who signed the Inspection and Acceptance Report.¹⁹ It was learned that the vehicle was in Benguet in the custody of Ben Polig to whom the vehicle was sold by the accused, so she wrote the latter a Letter²⁰ for the return of the vehicle. She brought the matter to the NBI for investigation where she executed an Affidavit-Complaint.²¹ She also filed an Affidavit Complaint before the Office of the Ombudsman.²² The said vehicle was not returned by the accused at the end of his term as Mayor of the municipality on June 30, 2013 but only on June 23, 2014 after repeated demands.

Ms. Abigail Valentin Wakat,²³ Municipal Accountant of Alfonso Castañeda, Nueva Vizcaya, testified based on the record that a Purchase Request²⁴ was made by then Mayor of the municipality, the accused herein, in relation to the subject vehicle. While normally the request would be forwarded to the Bids and Awards Committee, no bidding was conducted in this case but a Purchase Order²⁵ was prepared and signed by the accused. She identified the Allotment and Obligation Slip (ALOBs), the Disbursement Voucher²⁶ and Check No. 20946894²⁷ dated April 8, 2009 with Gilbert Arellano as payee, all signed by the accused. That based on the ALOBs, the appropriation allotment for the vehicle was from the Mayor's Office, while based on the check number issued, it can be exclusively identified as coming

¹⁵ Judicial Affidavit, Record, Vol. 1, p. 239

¹⁶ Exhibit "AA"

¹⁷ Exhibit "BB"

¹⁸ Exhibit "C"

¹⁹ Exhibit "I"

²⁰ Exhibit "L"

²¹ Exhibit "U-3"

²² Exhibit "W"

²³ Judicial Affidavit, Record, Vol. 1, p. 376

²⁴ Exhibit "C"

²⁵ Exhibit "D"

²⁶ Exhibit "E"

²⁷ Exhibit "G"

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from the DBP Special Education Fund of the municipality that can be verified from the Check Disbursement Journal. She confirmed that the check was negotiated.

Mr. Dandy Cada-o,²⁸ Municipal General Services Head of Alfonso Castañeda, Nueva Vizcaya, testified that the vehicle was one of those subject to retrieval per inventory conducted upon the instruction of the new Mayor, Annie Bayawan. In various letters,²⁹ he asked the accused to surrender the vehicle to no avail. On his way to his hometown in Tublay, Benguet, he saw the vehicle parked in the premises of Mr. Ben Polig whom he wrote a letter³⁰ regarding the vehicle. Sometime in February 2014, he met Mr. Polig in Benguet who told him to research with the LTO on the details of the vehicle. He then got a copy from the LTO of MV Identification³¹ for the Nissan Patrol with Plate No. PCJ 777. He wrote the accused another letter dated March 24, 2014³² who responded in a letter dated March 24, 2014.³³ The vehicle was eventually returned on June 23, 2014, a year after the accused's term as Mayor ended.

Mr. Agustin Bataclao,³⁴ NBI Special Investigator with office at Bayombong, Nueva Vizcaya, confirmed that his office received a Complaint³⁵ from Annie Bayawan, then Mayor of Alfonso, Castaneda, against the accused on alleged irregularity of the procurement of the subject vehicle, and which vehicle was also missing. Based on the documents he gathered, the interviews he conducted with the complainant, Mr. Polig, Mr. Mailig and Mr. Pumaras, as well as a conference with the accused, he found that government funds were used to purchase the subject vehicle without public bidding as no bidding documents were presented. The vehicle was registered in accused's name, who also sold the vehicle. Hence, the NBI filed a complaint with the Ombudsman covered by the transmittal letter dated October 2, 2013 respectively marked as Exhibits "U" and "U-21." He also prepared a Final Report he identified as Exhibit "V."

Mr. Rodrigo S. Cayton, Jr.,³⁶ Municipal Treasurer of Alfonso Castañeda, identified the Special Education Fund Check Book from where Check No. 20946894 in the amount of One Million Two Hundred Sixty Nine Thousand Peso (Php1,269,000.00) with Gilbert Arellano as payee was issued. When confronted with the Allotment and Obligation Slip, however, he clarified that per document the funds were sourced from the Maintenance and Operating Expenses under the Office of the Mayor and not from the Special Education Fund.

²⁸ Judicial Affidavit, Record, Vol. 1, p. 387

²⁹ Exhibits "GG", "HH" and "JJ"

³⁰ Exhibit "II"

³¹ Exhibit "EE"

³² Exhibit "J"

³³ Exhibit "K"

³⁴ Judicial Affidavit, Record, Vol. 1, p. 368

³⁵ Exhibit "U-3"

³⁶ Judicial Affidavit, Record, Vol. 1, p. 431

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Mr. Gilbert S. Arellano,³⁷ a member of the Sangguniang Bayan of Rizal, Nueva Ecija, testified that he was the previous owner of the subject vehicle which was registered in his name under OR No. 906768181 dated July 29, 2010³⁸ and CR No. 704-8080-4 dated January 13, 2009³⁹ prior to its purchase by the accused. That he offered the vehicle for sale to the accused who instructed him to deliver the vehicle in Bayombong, Nueva Vizcaya on April 8, 2009, where he met with the accused. He signed the Deed of Sale,⁴⁰ Purchase Order,⁴¹ and Disbursement Voucher.⁴² He received Php1,269,000.00 as payment in the form of check net of the taxes withheld.

Ms. Karen Gay Dulay Ballutay,⁴³ Admin Aide IV of the Land Transportation Office (LTO), Bayombong District, Nueva Vizcaya, testified that per LTO records, the subject vehicle was previously registered under the name of Gilbert Arellano. Upon request of the accused the subject vehicle's registration was transferred in his name. The accused paid for the issuance of the Motor Vehicle Clearance Certificate, among other documents, necessary for the said transfer. He identified various documents marked as Exhibits "M" to "T" pertaining to the subject vehicle that are on file with the LTO. As of August 12, 2010 the subject vehicle was registered in the name of the accused.

Ms. Loreto Marites Briosos Lilagan,⁴⁴ Development Bank of the Philippines (DBP), Branch Head of Solano, Nueva Vizcaya, testified that per records of the Development Bank of the Philippines, Check No. 20946894 dated April 8, 2009 in the amount of One Million Two Hundred Sixty Nine Thousand Peso (Php1,269,000.00) payable to Gilbert S. Arellano⁴⁵ was issued out of the Current Account No. 0525-004753-030 maintained by the Municipality of Alfonso Castañeda. On April 8, 2009, the said check was debited from the said account shown in the Statement of Account.⁴⁶

Mr. Ben Polig,⁴⁷ a farmer from Tublay, Benguet, testified that on December 1, 2012 the accused and his wife, Myrna, came to his house for help to repair the 2003 Nissan Patrol with Plate No. PCJ 777. It bogged down near his residence when the accused and his wife were on their way to Baguio City. Despite efforts, however, the vehicle was not fixed so the accused just offered to sell it to him for Php500,000.00. But since he had no money at that time, he made a partial payment of Php250,000.00 which the accused's wife received and who signed an

³⁷ Judicial Affidavit, Record, Vol 1, p. 419

³⁸ Exhibit "N"

³⁹ Exhibit "M"

⁴⁰ Exhibit "H"

⁴¹ Exhibit "D"

⁴² Exhibit "E"

⁴³ Judicial Affidavit, Record, Vol. 1, p. 458

⁴⁴ Judicial Affidavit, Record, Vol. 1, p. 454

⁴⁵ Exhibit "G"

⁴⁶ Exhibit "CC"

⁴⁷ Judicial Affidavit, Record, Vol. I, p. 267

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Acknowledgement Receipt.⁴⁸ He also gave the accused another Php50,000.00 on another date through a certain Nestor Bayeng. He knew the vehicle was private since it bore a green plate and he saw the OR/CR in the name of the accused. No Deed of Sale was executed, however, because in 2014 the accused redeemed the vehicle who repaid him in kind with the accused's L-200 Pick-up.

Mr. Christopher Polig,⁴⁹ also a farmer, son of Mr. Ben Polig, testified that together with Nestor Bayeng, he went to the house of the accused in Nueva Vizcaya in December 2012 as instructed by his father to deliver the cash amount of Php250,000.00 to the accused as partial payment for the subject vehicle. The accused was not there so they gave the amount to his wife, who signed an Acknowledgment Receipt he identified as Exhibit "Y."

Mr. Nestor Bayeng,⁵⁰ a contractor of a project with Alfonso, Castaneda, Nueva Vizcaya, testified he was requested by Ben Polig together with the latter's son to go to the accused's residence and check the registration papers of the subject vehicle which was sold to him by the accused. He confirmed the payment of Php250,000.00 to the accused's wife, whom he saw sign the Acknowledgment Receipt, as well as another Php50,000.00 he previously gave her.

On February 8, 2018, the prosecution filed its *Formal Offer of Evidence*⁵¹ consisting of Exhibits "A" to "A-1", "C" to CC, GG to KK, with sub-markings, which the Court resolved to admit, taking into consideration the objections of the accused in Exhibits "J", "L", "U", "W", "Y", "Z", "AA", "CC", "GG", "HH", "II", "KK".⁵²

Evidence for the Accused

The defense presented the **accused** who testified⁵³ that he was the Municipal Mayor of Alfonso Castañeda, Nueva Vizcaya from 2007 to 2013 and from 2016 to present. He stated that the allegations in the subject *Informations* were not true because in his belief, and upon the advice of Atty. Leslie Costales, Assistant Provincial Legal Officer, the subject purchase of the vehicle was legal. Said lawyer advised him that because of imminent threat upon his life, *Direct Contracting* can be used to purchase the vehicle pursuant to Section 50 of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act. The purchase was made because starting January of 2009, he was receiving death threats from unknown persons and from alleged members of the New People's Army (NPA). A Threat Assessment⁵⁴ dated

⁴⁸ Exhibit "Y"

⁴⁹ Judicial Affidavit, Record, Vol. 1, p. 276

⁵⁰ Judicial Affidavit, Record, vol. 1, p. 261

⁵¹ Record, Vol. 1, pp. 473-487

⁵² Id., p. 494

⁵³ Judicial Affidavit, Record, Vol. 2, p. 15

⁵⁴ Exhibit "6"

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April 8, 2009 was issued by SPO2 Rey G. Gonzales and approved by Police Chief Inspector Nicasio R. Mendoza.

It was timely that when he was having his private car washed in an establishment of Gilbert Arellano in Rizal, Nueva Ecija, the latter approached him to sell the subject vehicle. He was advised by the Local Finance Committee that there were available funds particularly the Capital Outlay of the Mayor's Office (Program Appropriation and Obligation by Object for the Office of the Municipal Mayor – BP Form No. 3).⁵⁵ The accused chose to buy the vehicle because based on the prevailing market value, the price of a second hand vehicle was reasonable. He chose a four-wheel drive vehicle because he had to travel to mountainous portions of the municipality in the exercise of his functions.

He denied having a hand in the registration of the vehicle in his name which he entrusted to the employees of the Municipal General Services Office, so that he was surprise to learn that it was registered in his name upon receiving the complaint. He had no intention to appropriate to himself the subject vehicle because he caused it to be included in the Official List of Properties of the municipality.

He was not able to return the subject vehicle right after his term as Mayor ended in June 2013 because in one of his travels in November 2012, the engine bogged down along Tublay, Benguet. He and his wife who was then with him were constrained to leave the vehicle at a garage owned by Mr. Ben Polig from whom he tried to borrow money for the repair of the vehicle. Mr. Polig did not agree unless he would have a document for him to acquire the vehicle. The accused, however, did not agree and left without surrendering the keys to Mr. Polig. The vehicle stayed in Mr. Polig's garage because the accused had fund problems having the vehicle repaired.

Thereafter, the accused received a demand letter dated July 4, 2013⁵⁶ from Mr. Cada-o of the General Services Division to return the vehicles in his possession. He accordingly returned the Nissan Navarra, Nissan Urban State and Nissan Safari but not the subject vehicle which was still under repair and not serviceable. He received another demand letter dated March 20, 2014⁵⁷ where he put the notation "*Please give me ample time to check the list of records for retrieval.*" Further, he wrote an explanation⁵⁸ to the GSO asking for time until he eventually returned the said vehicle to the LGU shown in the Property Return Slip⁵⁹ as he was able to repair the vehicle after raising money for it.

⁵⁵ Exhibit "7"
⁵⁶ Exhibit "GG"
⁵⁷ Exhibit "J"
⁵⁸ Exhibit "8"
⁵⁹ Exhibit "5"

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The accused likewise presented the stipulated testimonies of (1) **Mr. Nicasio R. Mendoza**,⁶⁰ a retired police officer who approved the Threat Assessment Report dated April 8, 2009 marked as Exhibit “6”; (2) **Ms. Lilia M. Marcelo**, Municipal Human Resource Management Officer (MHRMO) of Alfonso Castañeda, Nueva Vizcaya, as regards the fact that that **Mr. Enrico C. Cruz**⁶¹ was the OIC Municipal Services Division from March 3, 2009 to November 15, 2009.⁶² Mr. Cruz allegedly was the one who registered the subject vehicle in the name of the accused but he was not presented since he was diagnosed with Brief Reactive Psychosis by (3) **Dr. Rea Sylvia M. Candido**, a government physician at the Municipal Health Office of Alfonso Castañeda, Nueva Vizcaya.⁶³

On August 9, 2018, the accused submitted his *Formal Offer of Evidence*⁶⁴ consisting of Exhibits “3” to “11”, with sub-markings, which the Court resolved to admit, over the objections of the prosecution particularly Exhibits “6”, “6-A”, “7”, “8”, and “8-A”.⁶⁵

The parties were given a period of fifteen (15) days from August 15, 2018 within which to file their respective memoranda. The prosecution submitted its Memorandum on September 6, 2018,⁶⁶ whereas after several extensions of time, the accused eventually submitted his Memorandum on October 12, 2018. Promulgation of Judgment was set on November 9, 2018.⁶⁷

Issues

The issues in these cases as agreed upon during the Pre-Trial Conference are as follows, *viz*:

1. Whether RA 9184 was violated by the accused in the procurement by the municipality of a 2003 Nissan Patrol with Plate No. PCJ 777;
2. Whether or not the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence in the purchase of the said vehicle;
3. Whether or not the accused gave unwarranted benefits, advantage or preference to Gilbert Arellano in the questioned transaction;
4. Whether the accused had custody or control of the subject vehicle by reason of his office;
5. Whether the accused was accountable for the said vehicle;
6. whether the accused appropriated, took or misappropriated the Nissan Patrol unto himself or others to the prejudice of the Municipality of Alfonso, Castañeda.

⁶⁰ TSN, May 31, 2018, pp. 3-15

⁶¹ Order dated July 25, 2018, Records, Vol. 2, p. 69

⁶² Exhibit “11”, Records, Vol. 2, p. 61

⁶³ Exhibit “10”, Records, Vol. 2, p. 60

⁶⁴ Records, Vol. 2, pp. 73-77

⁶⁵ Minutes of the Proceedings held on August 15, 2018, Records, Vol. 2, p. 85

⁶⁶ Records, Vol. 2, pp. 90-114

⁶⁷ Id.

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Findings and Ruling of the Court

The first three (3) issues abovementioned shall be discussed in relation to **Criminal Case No. SB-16-CRM-0463** for violation of RA 3019, Section 3(e), which law provides:

Section 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.

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The following are the essential elements of violation of Sec. 3(e) of RA 3019:⁶⁸

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

The **first element** is clearly extant in this case, accused being the Municipal Mayor and was discharging his official and administrative function as such during the time material to these cases. There is no need to belabor the discussion on this point since the evidence, testimonial and documentary, overwhelmingly establishes this point unrebutted by a contrary evidence.

The **second element** is likewise present. The Supreme Court in *Fonacier, et al vs. Sandiganbayan*⁶⁹ explained the meaning of “manifest partiality, evident bad faith or inexcusable negligence” in the commission of the offense, to wit:

⁶⁸ Silverina Consigna v. People, G.R. No. 175750-51, April 2, 2014 citing Cabrera v. Sandiganbayan, 484 Phil. 350, 360 (2004), citing Jacinto v. Sandiganbayan, 387 Phil. 872, 881 (2000).

⁶⁹ 238 SCRA 655 (1994)

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“**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 but willfully and intentionally with a conscious indifference 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.” These definitions prove all too well that the three modes are distinct and different from one another. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3€ should suffice to warrant conviction.

Here, the purchase of the subject vehicle was attended by an apparent violation of the Procurement Law, notably *Section 10, Article IV of RA 9184*, which states that “*xxx All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.*” The purchase of the vehicle sans the required public bidding is highly irregular. Having signed and approved the Purchase Request, Purchase Order, Disbursement Voucher, Check No. 20946894 and the Inspection and Acceptance Report, notwithstanding the glaring absence of public bidding is suggestive of accused’s bad faith in pursuing the transaction, more so as the Purchase Request/Purchase Order specified outright the details of the vehicle to be purchased, to wit:

Nissan Patrol
Plate No. PCJ 777
Engine No. ZD30-100892A
Chassis No. TWSSLFFY61-Y11261
Fuel- Diesel
Series-Patrol
Body Type: WAGON, Model-20

The specification of the brand name plate number, engine number and *chassis* number is categorically a violation of *Section 18 of RA 9184*, which states:

Section 18. Reference to Brand Names – Specifications for the procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

True, as alleged by the accused, “*direct contracting*,” is an alternative mode of procurement allowed by the Procurement Law, which is otherwise known as Single Source Procurement. It refers to a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations. To avail of the same validly, however, *Section 50, Article XVI* requires the following conditions, viz:

Section 50. Direct Contracting. - Direct Contracting may be resorted to only in any of the following conditions:

- a. Procurement of Goods of propriety nature, which can be obtained only from the propriety source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same items;
- b. When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions his contract; or,
- c. Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

xxx

The record is bereft of any showing that the purchase of the subject vehicle fell under any of the foregoing conditions. On the contrary, accused's **bad faith** can be deduced not only from its purchase without bidding but from the fact that the vehicle was registered in his name after its purchase shown in the Deed of Sale between Gilbert Arellano as "*vendor*" and himself as "*vendee*" and accused signed said deed as such. His assertion that he had no hand in its registration as it was Mr. Enrico Cruz of the GSO who worked on it is incredible. Evidence negates such claim since it was himself who paid the fees for the transfer of the vehicle's registration in his name. Even assuming so as he claims, he nonetheless came to know later that the vehicle was under his name but admittedly he did nothing to correct the same.⁷⁰ Worse, evidence shows that the accused later attempted to sell the vehicle to Mr. Ben Polig who initially paid him Php250,000.00. In fact, when the accused was pressed for the surrender of the vehicle to the municipality, he was able to return the vehicle after retrieving the same from Mr. Polig with whom he exchanged his L-200 Pick-up. He cannot, therefore, claim to have clean hands in his dealings with the subject vehicle when glaringly it was otherwise.

In *Cabahug vs. People*,⁷¹ the Supreme Court ruled that bad faith alone is not sufficient to make an officer liable. Such bad faith must be evident. It contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes."⁷² Unmistakably, this yardstick of "bad faith" is satisfied from the circumstances of this case.

Accused tries to justify that it was upon the advice of Atty. Costales, the Provincial Legal Officer, that direct contracting was resorted to, considering the "death threats" he was then receiving. He takes refuge in *Section 53(b) of RA 9184* referring to a Negotiated Procurement, *viz*:

⁷⁰ TSN, Pasigian, April 25, 2018, pp. 27-28

⁷¹ 376 SCRA 113 (2002)

⁷² Uriarte v. People, 540 Phil. 477, 494 (2006), citing Air France v. Carrascoso, 124 Phil. 722, 737 (1966)

b. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

However, the “imminent danger to life” contemplated by RA 9184 to justify a negotiated procurement does not cover the alleged “death threats” personal to the accused, which rather additionally requires the predicate situation of a “state of calamity” to justify the availing of a negotiated procurement. There was no calamity to speak of, or any other situation in the municipality where immediate action for the purchase of the vehicle was necessary.

While he claims that he is not an “expert” in Procurement Law, as Municipal Mayor of the town, he is required to have knowledge thereof, or at least should have exerted an effort to understand his responsibilities thereunder before proceeding to purchase the subject vehicle sans any public bidding. Accused cannot feign ignorance of RA 9184 which he should have known in the first place as reasonably demanded by his position. His ignorance thereof rather showed gross negligence on his part in the performance of his official duty as local chief executive. In *Albert vs. Sandiganbayan*,⁷³ 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.⁷⁴

Evident is accused’s partiality towards Gilbert Arellano, the owner of the vehicle purchased, since it was only him who could possibly supply the vehicle intended to be purchased to the exclusion of other prospective bidders who may have offered an equivalent item at terms more advantageous to the municipality. In the same case of *People vs. Atienza, et al.*,⁷⁵ it was held that there is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another, which is the situation in this case.

As regards the **third element**, the Court explained in *Cabrera v. Sandiganbayan*⁷⁶ that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either mode or under both. In this case, petitioner was charged of violating Sec. 3(e) of R.A. No. 3019 under both instances. The unwarranted benefit to Gilbert Arellano is manifested by the fact that he was the favored vendor in the

⁷³ G.R. No. 171671, June 18, 2012, citing *Uriarte v. People*, G.R. No. 169251, December 20, 2006, 511 SCRA 471, 486, citing *Santos v. People*, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194, *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386, and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254, 259

⁷⁴ *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290.

⁷⁵ *Supra* note 73

⁷⁶ *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004)

transaction which did not go through public bidding. The damage and prejudice to the municipality is measured by the amount of municipal funds used in the purchase thereof as the same was spent for a transaction without bidding that deprived the municipality of the opportunity to procure an alternative item at better terms.

Basic is the principle in criminal law, that, the evidence presented must be sufficient to prove the *corpus delicti* – the body or substance of the crime and in its primary sense refers to the fact that a crime has been actually committed.⁷⁷ The *corpus delicti* and the culpability of the accused in this case has been proven beyond reasonable doubt. Pursuant to Section 9 of RA 3019, the imposable penalty shall be imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years with perpetual disqualification from public office.

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Accused is charged of willfully, unlawfully, feloniously and with abuse of confidence, taking, appropriating or converting to his own personal use, public funds or property for which he was accountable. The alleged acts constitute *Malversation* punishable under Article 217 of the Revised Penal Code, which reads:

Art. 217. Malversation of public funds or property. - Presumption of malversation.—Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property xxx

The essential elements of this crime are:⁷⁸

- (a) The offender is a public officer;
- (b) He had the custody or control of funds or property by reason of the duties of his office;
- (c) That those funds or property were public funds or property for which he was accountable; and
- (c) He appropriated, took, or misappropriated, or through abandonment or negligence, permitted another person to take such public funds or property.

Again, the **first element** is present in this case as it was stipulated that the accused was Mayor of Alfonso Castañeda during the time material to this case This fact being admitted need no further proof. The rule that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not

⁷⁷ People vs. Rentoria, G.R. No. 175333, September 21, 2007 [533 SCRA 708]

⁷⁸ Luis B. Reyes, The Revised Penal Code Annotated, 2001, pp. 394

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require proof, and the admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.⁷⁹

This brings the Court to the determination of the **second element**. The evidence showed the 2003 Nissan Patrol with Plate No. PCJ777 was issued to the accused. Not only did he sign the Inspection and Acceptance Report⁸⁰ for the delivered vehicle, but there is overwhelming evidence that from the time of its purchase and delivery, it was him who took custody of the vehicle in his official capacity as Mayor of the municipality. He, thus, became accountable therefor until its return and turn over to the municipality a year after his term ended in 2013. Section 375 of the Local Government Code of 1991 provides:

Section 375. Primary and Secondary Accountability for Government Property-

- (a) Each head of department or office of a province, city or municipality or barangay shall be primarily accountable for all government property assigned or issued to his department or office. The person or persons entrusted with the possession or custody of government property under the accountability of any head of department or office shall be immediately accountable to such officer.

Similarly, PD 1445 or the State Audit Code of the Philippines under Section 102 thereof lays down the primary responsibility of the head of any agency of the government, the accused in this case, for all government funds and property pertaining to his agency.

The **third element** is also availing. The subject vehicle undeniably is a government property that was purchased using municipal funds. This is sustained by the disbursement voucher signed by the accused himself and the check payment debited from the municipality's account in favor of Gilbert Arellano, the owner of the vehicle purchased.

Finally, the **fourth element** is likewise satisfied. Appropriating public funds or property includes every attempt to dispose of the same without right.⁸¹ Here, the vehicle was irregularly registered in accused's name, which he tried to sell to Mr. Polig, as in fact, he benefitted from such disposition by receiving some partial payments from such sale. He gained from it financially. It does not matter if later he was able to turn over to the municipality the custody of the vehicle, as the fact of misappropriation has already been committed. Jurisprudence is replete enunciating that the return of misappropriated property does exempt the accused from criminal liability.⁸²

⁷⁹ Capangpangan vs. People, G.R. No. 150251, November 23, 2007 [583 SCRA 279]; Section 4, Rule 129, Revised Rules of Court

⁸⁰ Exhibit "I"

⁸¹ Id., Note 77, p. 400

⁸² Zenon R. Perez v. People, G.R. No. 164763, February 12, 2008

