



Republic of the Philippines  
Sandiganbayan  
Quezon City

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**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

- versus -

**SB-16-CRM-0072**  
**For: Violation of Sec. 3(e)**  
**RA 3019, as amended**

**AVELINO JUDILLA GUNGOB, SR.,**  
Accused.

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**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

- versus -

**SB-16-CRM-0073**  
**For: Article 286, Revised Penal**  
**Code (Grave Coercion)**

**AVELINO JUDILLA GUNGOB, SR.,**  
Accused.

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

**Promulgated: February 15, 2019 *Jed***

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**DECISION**

***CORPUS - MAÑALAC, J.:***

Accused **AVELINO JUDILLA GUNGOB, SR.**, former Municipal Mayor of Consolacion, Cebu, stands indicted for [1] Violation of Section 3(e) of Republic Act No. 3019; and [2] Grave Coercion under Article 286 of the Revised Penal Code, in separate Charge Sheets filed by the Office of the Ombudsman on February 16, 2016, which read, *viz*:

**Criminal Case Nos. SB-17-CRM-0072**  
**[Violation of RA 3019, Section 3 (e)]**

That on 26 August 2009 or sometime prior or subsequent thereto in the Municipality of Consolacion, Cebu and within the jurisdiction of this Honorable Court; accused **AVELINO JUDILLA**

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**GUNGOB, SR.** being then the Municipal Mayor (SG 27); while in the performance of his administrative and official functions; acting with manifest partiality, evident bad faith or gross inexcusable negligence; did then and there willfully, unlawfully, and criminally enter the properties of: (a) Spouses Jose and Lourdes Bihag, denominated as Lot Nos. 3426 and 3428; and (b) Nelia Alvarez denominated as Lot No. 3513; all located in Barangay Danlag, Consolacion, Cebu; and dumped earth materials onto their private lands which were planted with corn and ready for harvest, notwithstanding that Branch 28 of the Regional Trial Court, Mandaue City already dismissed the Expropriation case filed by the Municipality of Consolacion; and thus, said actions of the accused were without any legal authority and in violation of the Constitutional rights to property of the above-named landowners; thereby causing them undue injury to the extent of the assessed value of their lands and crops ready for harvest, in the aggregate amount of more or less **TWENTY-THREE THOUSAND EIGHT HUNDRED SIXTY PHILIPPINE PESOS (P23,860.00)**.

CONTRARY TO LAW.

**Criminal Case Nos. SB-17-CRM-0073**

**[Violation of Article 286 of the Revised Penal Code]**

That on 26 August 2009 or sometime prior or subsequent thereto, in the Municipality of Consolacion, Cebu, Philippines and within the jurisdiction of this Honorable Court; accused **AVELINO JUDILLA GUNGOB, SR.**, a public officer, being the Mayor of the Municipality of Consolacion, Cebu, in such capacity and committing the offense in relation to office, by means of violence and intimidation, without any authority of law, with deliberate intent did then and there willfully, unlawfully, and feloniously enter the properties of: a) Spouses Jose and Lourdes Bihag, denominated as Lot Nos. 3428 and 3426; b) Teresa Alegado, denominated as Cad. Lot No. 5; c) Susana Cantago, denominated as Lot No. 3738; and d) Nelia Alvarez denominated as Cad Lot No. 3513; all located in Barangay Danlag, Consolacion, Cebu; confiscate their farm tools; threaten to imprison them if they refuse to stop tilling their lands; and dump earth materials onto their lands which were planted with corm and ready for harvest, notwithstanding that the Regional Trial Court Branch 28 of the Regional Trial Court, Mandaue City already dismissed the Expropriation case filed by the Municipality of Consolacion; thereby preventing the said landowners from tilling their lands and harvesting their products, and depriving them of the lawful possession and enjoyment of their property against their will; and said actions of accused was in violation of the Constitutional rights to property of the above-named landowners.

CONTRARY TO LAW.



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### Antecedents

These cases sprung from the implementation of the Mountain Highway Project passed by the Sangguniang Bayan (SB) of Consolacion, Cebu per Resolution No. 195 Series of 2004.<sup>1</sup> The project aimed to open and link more farm to market roads in the different barangays, i.e. Cansaga, Tilhaong, Danlag, Garing, Panas and Lanipga. Accused, being then the Municipal Mayor, was authorized to spearhead the project. The Sangguniang Bayan passed Resolution Nos. 103<sup>2</sup> and 112<sup>3</sup> on May 5 and 12, 2006, respectively, granting the accused, full authority to initiate expropriation and acquisition proceedings of the land areas affected by the project. Three (3) expropriation cases were filed by the municipality, to wit: [1] MDE-163, RTC Branch 28, Mandaue City filed on October 2, 2006;<sup>4</sup> [2] MDE-188, RTC Branch 55, Mandaue City;<sup>5</sup> and [3] MDE-191, RTC Branch 55, Mandaue City filed on November 25, 2009.<sup>6</sup> Meanwhile, the municipality applied and was granted Environmental Compliance Certificate (ECC) No. 07 06 09-24 201 208 dated September 25, 2006 by the Department of Environment and Natural Resources (DENR).<sup>7</sup>

The implementation of the project resulted to adverse reactions from the private complainants in these cases, viz: [1] Spouses Jose and Lourdes Bihag, [2] Allary P. Alegado representing his mother, Teresa Alegado, [3] Susana Cantago and [4] Nelia Alvarez Cano-og. They executed a Joint Affidavit Complaint<sup>8</sup> before the Office of the Ombudsman on September 11, 2009 relative to an incident which allegedly took place on August 26, 2009 at the municipality of Consolacion when the accused and his men allegedly entered their private properties with force, threat and with excessive use of authority, confiscated their tools, that caused damage to them and their properties. This eventually led to the filing of the instant charges for violation of RA 3019, Section 3 (e) and Article 286 of the Revised Penal Code (Grave Coercion) against the accused.

Two (2) separate Hold Departure Orders<sup>9</sup> were issued against the accused on February 22, 2016 with a finding of sufficient cause to hold the accused for trial. Meanwhile, to secure his temporary liberty, the accused posted cash bail bonds<sup>10</sup> on March 16, 2016.

<sup>1</sup> Exhibits "J-6" to "J-7"; Exhibit "1"

<sup>2</sup> Exhibits "J-11" to "J-12"; Exhibit "3";

<sup>3</sup> Exhibits "J-8" to "J-10"; Exhibit "2"

<sup>4</sup> Exhibits "L" to "L-173"

<sup>5</sup> Exhibits "M-83" to "M-116"; Exhibit "15"

<sup>6</sup> Exhibit "M-2" to "M-146"

<sup>7</sup> Exhibits "J-14" to "J-16"

<sup>8</sup> Exhibits "B" to "B-4"

<sup>9</sup> Records, Vol. 1, p. 137 (SB-16-CRM-0072); p. 138 (SB-16-CRM-0073)

<sup>10</sup> Id., p. 168

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The accused was arraigned on April 26, 2017. He pleaded NOT GUILTY to the charges.<sup>11</sup>

Thereafter, a Pre-Trial Conference<sup>12</sup> ensued and was terminated on September 1, 2016. Consequently, a Pre-Trial Order<sup>13</sup> was issued, where it was stipulated that at the time material to these cases, [1] the accused was the Mayor of the Municipality of Consolacion, Cebu and that [2] the expropriation case docketed as MDE-191 which was dismissed without prejudice was refiled at the RTC Branch 55 of Mandaue City on November 25, 2009.

Trial on the merits then proceeded.

### Prosecution Evidence

The prosecution presented as evidence the testimonies of the following as witnesses, viz: (1) Allary P. Alegado; (2) Danilo A. Capangpangan; (3) Jose B. Bihag; (4) Nelia Alvarez Cano-og; (5) Lourdes Dayday; (6) Emilio Rosal Mangubat; (7) William P. Cuñado; (7) SPO4 Rosalinda Sardan, and (8) Edwin T. Alin, as well as the stipulated testimonies contained in the Judicial Affidavits of (9) Atty. Carmela Araullo-Antiporta, (10) Elvie O. Luyao; and (11) Ms. Belinda Miraflores.

**Mr. Allary P. Alegado**, the son of Teresa Alegado<sup>14</sup> testified<sup>15</sup> that he represented his mother in the complaint<sup>16</sup> filed against the accused with the Office of the Ombudsman on September 11, 2009. That on August 27, 2009 around 9 o'clock in the morning, one of their farm workers came to their house in Barangay Danlag, Consolacion, Cebu and informed him that a substantial portion of his family's farm located in Barangay Danlag<sup>17</sup> then planted with corn was already filled with lime soil and other filling materials in connection with the Mountain Highway Project spearheaded by the accused. At that time his parents were in Manila, and upon the advice of his mother whom he called up, he reported to ABS-CBN media outfit to somehow curb the accused from using force or violence in taking their property. Accused was allegedly persistent in pursuing the project despite the dismissal of the expropriation case of affected lands filed with the Regional Trial Court, Branch 28, Mandaue City docketed as MDE-163.

At around 10 o'clock of the same day, he saw their farm lot filled with lime soil and excavated materials. His grandfather's workers were putting up a barrier made of *kawayan* with notice "*no trespassing*." He noticed that other lots nearby,

<sup>11</sup> Id., p. 194

<sup>12</sup> Id., pp. 236-244

<sup>13</sup> Records, Vol. 1, pp. 236-244

<sup>14</sup> Teresa Alegado was elected as municipal mayor of Consolacion, Cebu in 2010 and is serving as the incumbent mayor of the said municipality. Prior to that, she served as vice mayor of the same town from 2001 to 2004

<sup>15</sup> Judicial Affidavit, Records, Vol. 1, pp.282-361

<sup>16</sup> Exhibits "B" to "B-4" – Joint Affidavit Complaint dated September 11, 2009 executed by Jose Bihag, Lourdes Bihag, Allary Alegado representing Teresa Alegado, Romeo Canoog, Susana Cantago and Nelia Alvarez

<sup>17</sup> Exhibit "Q" –Tax Declaration No. GR-12-18

particularly the land owned by Jose Bihag were also filled with lime soil. In a while, the accused arrived together with Vida Comiso, Jaime Punes, Ondo Capao, PO3 Joerahme A. Espinosa, PO3 Sherwin Leyson and a number of uniformed traffic enforcers and personnel. The accused told him to remove the barrier they were constructing, which he initially refused to do. The accused insisted and threatened to put them to jail if they do otherwise. Accused's men removed the barrier upon his instruction, who also commanded his men to confiscate their farming tools. Photographs<sup>18</sup> were taken on the continued operations of the road project affecting their farms without consent from the landowners, which destroyed the latter's crops. The incident was reported to the police<sup>19</sup> and a complaint<sup>20</sup> was filed with the Office of the Ombudsman-Visayas which issued a *Resolution* dated December 9, 2013 finding probable cause against the accused for Grave Coercion and Violation of Republic Act 3019. The accused was also found guilty of Grave Misconduct.<sup>21</sup>

**Engr. Danilo A. Capangpangan**, Local Risk Reduction Management III – MENRO Designate of the Local Disaster Risk Reduction Management Office of the Consolacion, Cebu, testified<sup>22</sup> that at the time material to these cases, he was a Project Development Officer I under the Municipal Planning Office of the Local Government Unit in-charge of planning, estimating of projects implemented, including safekeeping of selected project plans of the municipality. The Mountain Highway Project was about nine (9) kilometers diversion road traversing the different mountain barangays of Consolacion and adjacent barangay of San Roque, Liloan towards the low land area of Consolacion. There was an existing 15-kilometer road being utilized at the time of project implementation in 2006 but was yet to be completed. That some affected lot owners were not compensated because of lack of funds from the municipality although several lot owners donated a portion of their property affected by the project.

**Mr. Jose B. Bihag**, a resident of Barangay Danlag, testified<sup>23</sup> that his property was among those affected by the road project implemented by the accused. As a consequence, his property was filled with lime soil that destroyed the crops planted thereat. That the accused went to his farm on August 26, 2009 and while he was digging a hole to put up a post and barrier with “no trespassing” sign, the accused forcefully took the iron bar from him and turned it over to the policeman. The accused likewise told him to stop tilling his land and threatened to imprison him if he would not stop. However, when asked to quantify the damage caused to his property, he could not exactly say so as it would just be minimal if it was to be based on its assessed value. Because of what happened, he

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<sup>18</sup> Exhibits “H” to “H-44”

<sup>19</sup> Exhibit “F” – Police Report; Exhibit “R” and “R-1” – Logbook entry

<sup>20</sup> Exhibits “B” to “B-4” – Joint Affidavit Complaint dated September 11, 2009 executed by Jose Bihag, Lourdes Bihag, Allary Alegado, Romeo Canoog, Susana Cantago and Nelia Alvarez

<sup>21</sup> Records, Vol. 1, p. 5-19; Judicial Affidavit of Allary Alegado, Records, Vol. 1, p. 291;

<sup>22</sup> Judicial Affidavit, Records, Vol. 1, pp. 362-368

<sup>23</sup> Judicial Affidavit, Records, Vol. 2, pp. 400-404

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asked for the assistance<sup>24</sup> of the Office of the Ombudsman-Visayas where he, together with other land owners, filed a complaint<sup>25</sup> against the accused for entering their private properties without authority, confiscating their farm tools, damaging their crops and employing threats of imprisonment if they refuse to comply. He likewise reported the incident to the police station and to the barangay, evidenced by the Police Report<sup>26</sup> and Barangay Blotter.<sup>27</sup>

**Ms. Nelia Alvarez Cano-og**, a resident of Barangay Danlag, corroborated<sup>28</sup> the testimonies of Jose Bihag and Allery Alegado relative to the filing of the complaint<sup>29</sup> against the accused with the Office of the Ombudsman. She also stated that the expropriation case docketed as MDE-163 filed with the Regional Trial Court Branch 28, Mandaue City was dismissed per Order dated January 21, 2009.<sup>30</sup>

**Ms. Lourdes Dayday**, a 77-year old resident of Liloan, Cebu, testified<sup>31</sup> that she executed an Affidavit of Witness<sup>32</sup> in support to the Joint Affidavit Complaint<sup>33</sup> filed with the Office of the Ombudsman against the accused where she averred that on August 26, 2009, she personally witnessed the accused and his armed men enter into the private properties of Spouses Bihag, Teresa Alegado, Susana Cantago and Nelia Alvarez Cano-og without authority to pursue the project that caused severe damage and injury to the said individuals and their properties. She was also threatened by the accused not to enter her property located at Lot No. 3583 Barangay Danlag, Consolacion, Cebu.

**Mr. Emilio Rosal Mangubat**, Secretary to the Sanggunian of Consolacion, Cebu since May 10, 1994, testified<sup>34</sup> that in such capacity, he certified true copies of the following documents: [1] Resolution No. 195 series of 2004 dated December 17, 2004;<sup>35</sup> [2] Resolution No. 112 series of 2006 dated May 12, 2006;<sup>36</sup> [3] Resolution No. 103 series of 2006 dated May 5, 2006;<sup>37</sup> [4] Minutes of the regular sessions of the Sangguniang Bayan of Consolacion dated December 17, 2004,<sup>38</sup> May 5, 2006<sup>39</sup> and May 12, 2006.

**Mr. William P. Cuñado**, Regional Director of Environmental Management Bureau Region 7 and former Chief, Environmental Impact

<sup>24</sup> Exhibit "A" to "A-5"— Request for Assistance/Grievance Form dated September 8, 2009

<sup>25</sup> Supra Note 16

<sup>26</sup> Supra Notes 23 & 24

<sup>27</sup> Exhibit "G" – Barangay Blotter dated August 26, 2009

<sup>28</sup> Judicial Affidavit, Records, Vol. 2, pp. 400-404

<sup>29</sup> Supra Note 16

<sup>30</sup> Supra Note 23

<sup>31</sup> Judicial Affidavit, Records, Vol. 2, pp. 400-404

<sup>32</sup> Exhibit "I" to "I-1"

<sup>33</sup> Supra Note 16

<sup>34</sup> Judicial Affidavit, Records, Vol. 3, pp. 21-

<sup>35</sup> Exhibits "J-6" to "J-7"

<sup>36</sup> Exhibits "J-8" to "J-10"

<sup>37</sup> Exhibits "J-11" to "J-12"

<sup>38</sup> Exhibits "P-14" to "P-26"

<sup>39</sup> Exhibits "P-7" to "P-13"

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Assessment Division of the same Bureau from May 16, 2000 to April 24, 2013, testified<sup>40</sup> that sometime in 2006 the local government of Consolacion, represented by the accused, applied for Environmental Compliance Certificate (ECC) for its road opening project at various barangays, including Danlag. Initially, said application was denied after the Technical Committee ascertained that some necessary documents were lacking. However, on September 25, 2006, he recommended the issuance of ECC No. No. 07 06 09-24 201 208<sup>41</sup> after compliance to requirements, site inspection and verification, which was approved by the Regional Director. That an ECC is not a permit, but a set of required conditions to mitigate the environmental impact of a project. These conditions include the provision of proper compensation to owners of affected property prior to construction, the monitoring of compliance to ECC conditions at all stages of implementation, and that any environmental change/hazard shall immediately be addressed. The accused, as representative of the municipality, was informed of these conditions during the signing of his *conforme* in the ECC issued to the municipality of Consolacion.

**SPO4 Rosalinda Sardan**, Chief Clerk/Admin-Police Non-Commission Officer (PNCO) of the Philippine National Police assigned at the Police Station, Consolacion, Cebu, stated<sup>42</sup> that in such capacity, she issued two (2) certifications<sup>43</sup> dated November 14, 2016 pertinent to the entries<sup>44</sup> of the police blotter on the incident reported on August 27, 2009 by Jose Bihag and Allary Alegado relative to the acts of the accused. **Mr. Edwin T. Alin**,<sup>45</sup> Barangay Captain of Danlag, Consolacion, Cebu from 2007 to 2013, stated that in such capacity he issued a certified photocopy<sup>46</sup> of the barangay blotter dated August 26, 2009 regarding the complaint of Spouses Jose and Lourdes Bihag against the accused.

**Atty. Carmela Araullo-Antiporta**, Clerk of Court of the Regional Trial Court, Mandaue City, stated<sup>47</sup> that she issued a Certification<sup>48</sup> dated September 2, 2009 that “based on the Civil Index Files available and verified xxx, there is no new case for expropriation filed by *The Municipality of Consolacion* before this office against any person or entity.”

**Ms. Elvie O. Luyao**, Officer-in-Charge, RTC Branch 55, Mandaue City, stated<sup>49</sup> that she issued certified copies of the following documents:<sup>50</sup>  
[1] Complaint for Expropriation dated September 16, 2009 with its attachments in

<sup>40</sup> Judicial Affidavit, Records, Vol. 3, pp. 21-31

<sup>41</sup> Exhibits “J-14” to “J-16”

<sup>42</sup> Judicial Affidavit, Records, Vol. 2, pp. 390-399

<sup>43</sup> Exhibits “R” to “R-1” – Police Reports dated August 27, 2009 at 1500H and 1530H, respectively

<sup>44</sup> Exhibits “R-2” and “R-3” – Police blotter pages 459 and 460; entries dated August 27, 2009

<sup>45</sup> Judicial Affidavit, Records, Vol. 2, pp. 400-404

<sup>46</sup> Exhibit “G” – Certified photocopy of the Blotter dated August 26, 2009; Exhibit “G-1” – signature of the witness

<sup>47</sup> Judicial Affidavit, Records, Vol. 2, pp. 17-22

<sup>48</sup> Exhibit “D”- Certification dated September 2, 2009; Exhibits “D-1” and “D-2” - signatures

<sup>49</sup> Judicial Affidavit, Records, Vol. 2, pp. 23-374

<sup>50</sup> Exhibits “M” to “M-146”

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MDE-191; [2] Answer of Spouses Carlo Villamor and Annabelle Tan Villamor in MDE-191; [3] Answer of Spouses Jose Bihag and Lourdes Capangpangan, Spouses Victor Jr. and Milagros Maglasang, Lucena V. Watkins represented by Victor Jr. and Milagros Maglasang, Lourdes Dayday, Romeo Canoog and Bibiano Bihag, Jr. with its Annexes in MDE-191; [4] Order date June 18, 2012 for MDE-191; [5] Complaint for Expropriation in MDE-188 dated June 24, 2009 and its Annexes; [6] Answer of Elenito and Salome Palang, Matilde Herrera, Ernesto Lumapas, Jr., Dante Lumapas, Sps. Alfonso Alegado and Consorcia Hayag Alegado and Rosalia Pitogo and its Annexes for MDE-188; and [7] Order dated June 18, 2012 for MDE-188.

**Ms. Belinda Miraflores**, Officer-in-Charge/Legal Researcher of the Regional Trial Court, Mandaue City from February 23, 2016 to August 31, 2016, stated<sup>51</sup> that in such capacity, she issued certified copies of various documents, viz: [1] Order dated January 21, 2009;<sup>52</sup> [2] Order dated January 26, 2009;<sup>53</sup> [3] Order dated January 27, 2009;<sup>54</sup> [4] Motion to Withdraw Motion for Reconsideration filed by the Municipality of Consolacion;<sup>55</sup> [5] Order dated August 4, 2009;<sup>56</sup> [6] Notice of Order dated August 14, 2009;<sup>57</sup> and [7] Complaint for Expropriation docketed as MDE-163 filed by Municipality of Consolacion, Cebu dated September 11, 2006 signed by the accused.<sup>58</sup>

The prosecution and the defense agreed to stipulate on the intended testimonies of Atty. Antiporta, Elvie Luyao and Belinda Miraflores, hence, their open court testimonies were dispensed with. The fact of [1] the dismissal without prejudice of the expropriation case docketed as MDE-163 filed before the Regional Trial Court Branch 55 of Mandaue City, and [2] the re-filing of the same which was later on dismissed, as well as the fact that [3] it already attained finality, were further stipulated.<sup>59</sup>

On November 29, 2017, the prosecution filed its *Formal Offer of Evidence*. Accordingly, the defense filed its comment thereto on January 1, 2018. Thereafter, the Court resolved to admit Exhibits "A" to "A-4", "B" to "B-4", "C" to "C-9", "C-10", "C-11", "C-12" to "C-13", "C-15", "D" to "F", "G" to "G-1", "H" to "H-44" "I" to "I-1", "J-6" to "J-16", "K" to "K-3", "L" to "L-173", "M-2" to "M-71", "M-82" "M-83" to "M-116", "M-117" to "M-145", "M-146", "N" and "N-1", "P-7" to "P-13", "P-14" to "P-26", "Q", "R", "R-1" to "R-4" taking into consideration the objections of the accused in Exhibits A" to "A-4", "B" to "B-4", "C-12" to C-13", "C-15", "D", "E" to "F", "H" to "H-44", "I" to "I-1",

<sup>51</sup> Judicial Affidavit, Records, Vol. 2, pp. 179-374

<sup>52</sup> Exhibit "C" to "C-9"

<sup>53</sup> Exhibit "C-10"

<sup>54</sup> Exhibit "C-11"

<sup>55</sup> Exhibits "C-12" to "C-13"

<sup>56</sup> Exhibit "C-14"

<sup>57</sup> Exhibit "C-15"

<sup>58</sup> Exhibit "L" to "L-173"

<sup>59</sup> Records, Vol. 2, pp. 375, 377



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"P-7" to "P-13", "P-14" to "P-26" and noting that Exhibits "M-72" to "M-81 are the same as Exhibits "C" to "C-9" and that Exhibits "J" to "J-5", "M" to "M-1", "O", "P" to "P-6" were not offered due to admission, lack of relevance and/or for being duplicitious.

Consequently, on January 29, 2018, the accused filed a *Motion for Leave of Court to File Demurrer to Evidence*<sup>60</sup> which was denied in a *Resolution* dated February 27, 2018.

### **Evidence for the Accused**

To dispute the prosecution's version of facts, the defense presented as witnesses, the following, *viz*: (1) the accused; (2) Mr. Leonardo G. Capao, Jr.; (3) Mr. Nicarter J. Yray; and (4) SPO3 Sherwin Sadili Leyson.

The **accused** testified<sup>61</sup> that he served as mayor of Consolacion for three (3) consecutive terms, i.e. from 2001 to 2010. He came to know of these cases when a complaint was filed against him before the Office of the Ombudsman which sprung from the "Mountain Highway Project." It was a road network project envisioned to interconnect different barangays of the municipality of Consolacion especially those in the mountain area. It is also known as the "Road Opening Project." The project started in 2004 when the then Sangguniang Bayan of Consolacion approved SB Resolution No. 195<sup>62</sup> on December 17, 2004, authorizing him to undertake the said project. Most of the constituents were glad except for a few whose properties were affected. Thereafter, the Sangguniang Bayan passed Resolution Nos. 103<sup>63</sup> and 112,<sup>64</sup> Series of 2006 for the purpose of initiating expropriation proceedings. The municipality also applied for a corresponding ECC which was approved by the DENR-Region 7 which issued ECC No. No. 07 06 09-24 201 208 dated September 25, 2006.<sup>65</sup> Accordingly, an expropriation proceeding was instituted in Court but was later on dismissed without prejudice to the re-filing thereof. Thus, the same was re-filed sometime in October 2009.

During the implementation of the project, the accused received information that some people were obstructing the on-going construction thereof by putting up fences along the path where the project was supposed to pass. When he learned about it, he immediately went to the site on August 26, 2009. That contrary to the allegations in the criminal complaints, he only saw and spoke with Jose Bihag and the son of Teresa Alegado, Allary Alegado. He did not employ violence, intimidation and threat but merely instructed Jose Bihag and some of his men to

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<sup>60</sup> Records, Vol. 4, pp. 42-44

<sup>61</sup> Judicial Affidavit, Records, Vol. 4, pp. 117-161

<sup>62</sup> Exhibit "1"

<sup>63</sup> Exhibit "3" – SB Resolution No. 103 dated May 5, 2006

<sup>64</sup> Exhibit "2" – SB Resolution No. 112 dated May 12, 2006

<sup>65</sup> Exhibit "4"; Exhibits "J-14" to "J-16"

X-----X  
stop obstructing the construction of a legitimate government project. Police officers were present at the time he spoke to them.

What prompted him to speak to them were the following reasons: [1] The Sangguniang Bayan legally authorized the construction of the "Mountain Highway Project"; [2] One of the conditions set forth under the issued ECC is to ensure efficiency at all stages of the project implementation; [3] The Office of the Governor initially issued a gratuitous permit for the project; [4] As the Mayor of the municipality at that time, he was constrained to talk to all stakeholders to stop any obstruction that might affect the construction. That Under paragraph 2, page 1 of ECC No. No. 07 06 09-24 201 208 Pre-construction/Construction Phase Guidelines, close monitoring should be undertaken to ensure efficiency at all stages of the project implementation and to immediately address any environmental change/hazard at any stage. Thus, if obstructions to the on-going road project were not removed, the ECC might be revoked.

Before he went to the site, he first called the PNP to ask for assistance. He thought that if there were any untoward incidents at the site, police officers should be present to prevent it. As a result, PNP sent some police officers to maintain the peace and order but at that time, they never interfered in his discussion with the landowners. He pleaded with Jose Bihag not to construct any obstruction along the path of the project but the latter told him that he did not want his property to be involved in the mess between him and the current mayor, Teresa Alegado. According to Jose Bihag, it was Teresa Alegado who told him to put up a difficult stance on the project. In response, he told the latter not to worry because the project is legitimate to benefit the people of Consolacion. Allegedly, it was a cordial discussion among peers and that they parted in good terms. That after discussing with Jose Bihag, he instructed the project workers to proceed with the work and put a distance of a few meters away from the properties to avoid any problem with the Bihags and the Alegados. Immediately thereafter, he returned to the municipal hall to continue with his work. He likewise instructed one of his staff members to monitor the site.

Moments later, his staff informed him that Allary Alegado and his men were blocking the path where the project was to pass. As such, he immediately returned to the site where Allary Alegado approached him and kissed his hand ("mano") as a show of respect for the elderly. Allary Alegado told him that the road project passed by their property to which they were not amenable. However, he replied that the project was meters away from Alegado's land and told him further to instruct his men to stop erecting obstructions. Allary called up his mother, Teresa Alegado, and handed the cellular phone to him to whom he said "*Mare, mag-usap na lang tayo sa Munisipyo.*" Allegedly, everything seemed peaceful, the barricades and other obstructions were removed by Alegado's men, hence, the project continued. Before he left, he reiterated his instruction to proceed with the work and to put a distance of a few meters from the properties if

X-----X  
only to avoid any problem with Teresa Alegado. Accused further testified that as then “father” of the town, he was determined to proceed with the road project because he was certain that it will greatly benefit the constituents. In fact the said project is now being used by the residents of the municipality.

**Mr. Leonardo G. Capao, Jr.**, backhoe operator, stated<sup>66</sup> that on August 26, 2009 he did not remove, destroy, or break any fence from the Alegado property. That on the following day he was at the Monteverde Homes where he and his co-workers were scraping the land and loading earth materials to the dump trucks to be used as filling materials for the Mountain Highway Project. After the trucks were loaded, the filling materials were brought to the project site just near the Alegado property. He saw some people putting up a bamboo fence around the Alegado property but did not mind them and just continued working. At that time, the accused was just nearby and did not enter the Alegado property. The project was supposed to pass through the Alegado property but since the said property was surrounded by a bamboo fence, they skipped the Alegado property upon orders of the accused and rather started working on the part of the road right after the said property. They did not finish the said project during the term of the accused. The road is now complete because after his term, Allary Alegado’s mother, Teresa, became the municipal mayor of Consolacion, who finished the road project.

**Mr. Nicarter J. Yray**, backhoe operator, corroborated<sup>67</sup> the testimony of Mr. Capao, Jr., that nothing unusual happened on August 26, 2009 while they were working on the project. On August 27, 2009, he and his co-workers were spreading filling materials from the dump trucks near the Alegado property and there was no commotion in the area contrary to what was alleged in the complaint. He only saw some men, presumably the workers of the Alegado, who were putting up a bamboo fence around the Alegado property. That the accused talked to the Alegado workers who resumed fencing the property after the accused left. He and his co-workers stopped spreading the filling materials when they reached the Alegado property as the same was surrounded by a fence. At the accused’s order, they moved to the property after the Alegado’s by passing through the stream adjacent to the Alegado property. The road project was not finished during the term of the accused, and it was during the term of Teresa Alegado as Municipal Mayor that the road project was completed.

**SPO3 Sherwin Sadili Leyson** testified<sup>68</sup> that at the time material to these cases, he was a Police Officer 3 assigned at the Consolacion Police Station and detailed as member of its alert team. On August 26, 2009, he went to the project site of the Mountain Highway Project in Barangay Tilhaong upon the request of herein accused, as then Municipal Mayor, to maintain peace and order and to

<sup>66</sup> Judicial Affidavit, Records, Vol. 4, pp. 71-78

<sup>67</sup> Judicial Affidavit, Records, Vol. 4, pp. 79-86

<sup>68</sup> Judicial Affidavit, Records, Vol. 4, pp. 162-168

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secure the area based on reports that a number of persons were attempting to block and delay the on-going construction of the said project. When he arrived at the site, he saw Jose Bihag with about ten (10) persons who were carrying bamboo poles and digging tools intending to block the road construction. The accused spoke with Jose Bihag who told them to pack up and the latter immediately left with their tools. The said incident was entered in the blotter.<sup>69</sup>

On October 1, 2018, accused filed his Formal Offer of Evidence consisting of Exhibits "1" to "17" inclusive of sub-markings which were admitted, taking into consideration the objections to Exhibits "1" to "14", "16" and "17".

On December 17 and 19, 2018, the prosecution and the accused filed their respective Memoranda. Thereafter, the cases were deemed submitted for decision.

### **Issues**

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

- I. Whether the accused is guilty of Violation of Section 3(e) of Republic Act No. 3019, as amended, in Crim. Case No. SB-16-CRM-0072.
- II. Whether the accused is guilty of Grave Coercion, defined and penalized under Article 286 of the Revised Penal Code, in Crim. Case No. SB-16-CRM-0073.

### **Ruling**

#### **On the alleged violation of Section 3 (e) of RA 3019**

The accused is charged with violation of Section 3 paragraph (e) of RA 3019, which provides, *viz*:

SEC. 3. xxx

(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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<sup>69</sup> Exhibit "16" – Certification dated April 15, 2010

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For one to be successfully prosecuted under the aforesaid law, the following elements must be proven:<sup>70</sup>

- a. The accused must be a public officer discharging administrative, judicial or official functions;
- b. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- c. His action caused undue injury to any party, including the government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions.

The **first element** is undisputed in this case in view of the admission<sup>71</sup> of the accused during the Pre-Trial conference that he was the Municipal Mayor of Consolacion, discharging his official and administrative functions at the time material to these cases.

What is left for consideration is the determination of the presence of the **second** and **third** elements of the said offense. The Supreme Court in *Fonacier, et. al. v. Sandiganbayan*<sup>72</sup> interpreted the meaning of “manifest partiality, evident bad faith or inexcusable negligence” in the commission of the offense, to wit:

The second element enumerates the different modes by which means the offense penalized in Section 3(e) may be committed. “**Partiality**” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.”<sup>68</sup> “**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 each other. Proof of the existence of *any* of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

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Here, the presence of the **second element** is wanting.

A review of Jose Bihag’s and Nelia Alvarez Cano-og’s testimonies raise dispute as to the veracity of the alleged incident that took place on August 26, 2009.

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<sup>70</sup> 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), Velasco v. Sandiganbayan, 452 SCRA593 (2005)

<sup>71</sup> Records, Vol. 1, Pre-Trial Order dated September 1, 2018, pp. 241

<sup>72</sup> 238 SCRA 655 (1994)

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In the Joint Affidavit Complaint executed before the Ombudsman dated September 11, 2006,<sup>73</sup> they alleged they were on their lands when “the accused arrived with six (6) other persons, and two (2) policemen (Espinosa and Leyson)” and “violently confiscated our tools, shouting vindictive at us and threatening to put us into prison if we do not stop tilling our properties.” However, on cross-examination, Jose Bihag revealed otherwise, to quote:<sup>74</sup>

Atty. Lim, Jr.

Q: You were there during the incident on August 26, 2009, right?

A: No, sir.

Prosec. Laguting:

Your Honors, the question is vague.

Atty. Lim, Jr:

Already answered, Your Honors.

Prosec. Laguting:

May we know what incident is [sic] referring on August 26, 2009?

Atty. Lim, Jr:

These dates are clearly stated in the Information, Your Honors, and it was already answered by the witness that he was not present on August 26, 2009. May I proceed, Your Honors please.

Chairperson:

Okay, proceed. You can just re-direct him.

Prosec. Laguting:

Yes, Your Honors?

Atty. Lim, Jr:

Q: Since you were not present on August 26, 2009, who told you that allegedly Mayor Gungob went to your land?

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A: When I arrived at my property that was when I saw Mayor Gungob.

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Chairperson:

Re-direct?

Prosec. Laguting:

No re-direct, Your Honors?

Likewise, in her testimony Nelia Alvarez Cano-og negated being present at the incident on August 26, 2009, viz:<sup>75</sup>

Q: Were you present at that time of the incident on August 26, 2009?

A: No, I was not there, sir.

Worth noting as well is the testimony of Lourdes Dayday. Per her *Affidavit of Witness* attached to her Judicial Affidavit,<sup>76</sup> she stated that on August 26, 2009 the accused arrived with his men at their lands “violently confiscated our tools,

<sup>73</sup> TSN, June 27, 2017, p. 26 (Mr. Bihag); pp. 55-56 (Ms. Nelia Alvarez Cano-og)

<sup>74</sup> Id., pp. 32-34; pp. 51-52

<sup>75</sup> Id., pp. 53-68

<sup>76</sup> Id., p. 75

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shouting vindictive at us and threatening to put us into prison if we do not stop tilling our properties.” However, during the cross-examination, Ms. Dayday testified as follows:<sup>77</sup>

- Q: Where were you sometime on August 26, 2009?  
A: I was at my farmland and it was at that time that it was bulldozed, sir.
- Xxx
- Q: In your Affidavit, Ms. Dayday, dated September 11, 2009, you said that Mayor Gungob was unauthorized to proceed with the Mountain Highway Project, why did you say so?  
A: I already forgot, sir.  
Q: If you recall, how many were you in your farmland at the time of the incident?  
A: It was only me at that time and even at that time that it was bulldozed it was only me and I was crying, sir.  
Q: You never saw Mayor Gungob at that time, right?  
A: No, I haven’t seen him, sir.  
Q: And you also never saw Jose Bihag?  
A: No, because his farm is far from mine, sir.  
Q: And, of course, you also did not see the other personalities involved in the alleged incident?  
A: No, I haven’t seen them because their farmland and mine is far, sir.

During the re-direct examination, she testified:<sup>78</sup>

- Q: In this Affidavit you said that you personally witnessed the incidents on August 26, 2009 when Mayor Avelino Gungob, Sr. continued and refused to stop the holing (sic) and dumping of tilling (sic) materials on the private properties, do you confirm this?  
A: It might be, ma’am.  
Q: You also said here that former Mayor Avelino Gungob damaged the land of your neighbor, do you confirm this?  
A: I do not know the others all I know is my own farmland, ma’am.  
Q: Aside from your own farmland, whose farmlands have you seen which were damaged?  
Atty. Lim, Jr:  
Already answered, Your Honors.  
Chairperson:  
Okay, sustained.

On the other hand, Allary Alegado was silent if he went to the project site on August 26, 2006, the date of the incident subject of the instant charges. What he testified to pertained to an event which allegedly took place on August 27, 2006. The apparent inconsistencies in the testimonies of these material witnesses create reasonable doubt as to the truthfulness of their allegations, more so in light of the testimonies of accused’s witnesses, Leonardo Capao, Jr. and

<sup>77</sup> Id., pp. 77-80

<sup>78</sup> Id., p. 87

