



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,
-versus-

**HERMELO BELGIRA LATOJA and
MIGUEL DRACULAN ESCOBAR,**
Accused.

X-----X

SB-12-CRM-0108
For: Violation of Section 3(h)
of Republic Act No. 3019 or
the Anti-Graft and Corrupt
Practices Act

PEOPLE OF THE PHILIPPINES,
Plaintiff,
-versus-

**MIGUEL DRACULAN ESCOBAR,
HERMELO BELGIRA LATOJA,
TERESA C. ALVARADO, WAHID L.
DIAMA, SITTIEHAWA B.
MAROHOMSALIC, CESAR M.
CAGANG, VIVENCIA S.
TELESFORO,**

Accused.

SB-12-CRM-0109
For: Violation of Section 3(e)
of Republic Act No. 3019 or
the Anti-Graft and Corrupt
Practices Act

LAGOS, J., *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

March 22, 2024

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DECISION

CORPUS-MAÑALAC, J.:

This concerns Teresa C. Alvarado (also known as “Teresa Cuñado Alvarado-Tamura” or “Teresa Alvarado Tamura”),¹ a computer operator for

¹ “Tamura” is appended to the name of the accused in several court papers and filings. *See* Records, Vol. 12, p. 121 (Alvarado married a Japanese after the filing of the cases in court). *See also* TSN, Alvarado, July 14, 2023, pp. 4-5 (Alvarado’s defense counsel asked the Court that the *Information* reflect “Alvarado”

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the provincial government of the Province of Sarangani in 2003. In 2012, she was indicted, together with six other officials/employees of the province, for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act² (antigrift law), related to an alleged irregular purchase of preschool textbooks. Although two cases were filed, docketed as SB-12-CRM-0108 & 0109, Alvarado stands charged only in SB-12-CRM-0109. Because Alvarado was at large, the trial for both cases proceeded but only as regards her co-accused. Two of them (namely, Hermelo B. Latoja and Cesar M. Cagang) died while the cases were being heard. On March 17, 2023, this Court promulgated a decision acquitting four other accused (namely, Miguel D. Escobar, Wahid L. Diama, Sittiehawa B. Marohomsalic, and Vivencia S. Telesforo), thereby disposing of SB-12-CRM-0108 completely and leaving Alvarado the only remaining accused in SB-12-CRM-0109. Since Alvarado was still at large, her case was archived. More than three months later, however, she personally appeared before the Court, prompting revival of her case. A trial followed, and eventually, her case was submitted for decision. The Court now decides whether Alvarado is criminally liable for violation of Section 3(e) of the antigrift law.

Antecedents

The Commission on Audit (COA) issued an Annual Audit Report on the Province of Sarangani for the year ended December 31, 2003 (Audit Report). In the Audit Report, the COA noted irregularities in the procurement of preschool textbooks and recommended that an investigation committee be created to further investigate the matter. A special audit team was created as a result. It audited the questioned procurement and determined that: (1) the procurement violated COA Circular No. 92-386 because it did not undergo public bidding; and (2) Latoja, who was then the provincial social welfare and development officer of the Province of Sarangani, had conflict of interest because he requisitioned the preschool textbooks and, at the same time, signed the disbursement voucher and received the payment as the supplier's representative. The special audit team then recommended filing administrative and criminal charges against Latoja.

Following the COA's audit, the Complaints Unit of the Office of the Deputy Ombudsman for Mindanao charged certain officials and employees of the Province of Sarangani in relation to the alleged anomalous purchase of preschool textbooks by the province from the Institute for Youth Volunteers Service and Early Childhood Development, Inc. (IYVSECDI). The Office of the Overall Deputy Ombudsman recommended dismissing the complaint, but the Office of the Ombudsman found probable cause to file charges. As a result, two *Informations*, docketed as SB-12-CRM-0108 & 0109, were filed with the Court.

as the middle name of the accused and "Tamura" as her last name. The accused explained that she used and retained "Tamura" as her family name).

² Republic Act No. 3019.



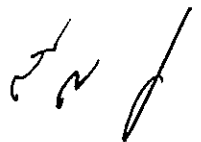
Relevant here is the amended *Information*³ in SB-12-CRM-0109 where in Alvarado stands charged with violation of Section 3(e) of the antigraft law. The charge reads:

That in or about the month of June 2003 or sometime prior or subsequent thereto, in the Province of Sarangani, Philippines and within the jurisdiction of this Honorable Court, accused MIGUEL D. ESCOBAR, a high ranking public officer, being then the Provincial Governor, together with accused HERMELO B. LATOJA, Provincial Social Welfare and Development Officer, and TERESA C. ALVARADO, WAHID DIAMA, SITTIEHAWA B. MAROHOMSAIC, CESAR M. CAGANG, and VIVENCIA S. TELESFORO, all members of the Committee on Awards, of the said province, confederating together and helping one another, while in the performance of their official functions, thus committing the offense in relation to their office, acting with evident bad faith or gross inexcusable negligence or manifest partiality did then and there willfully, unlawfully and feloniously give the Institute for Youth Volunteers Service and Early Childhood Development Inc. (IYV[S]ECDI) unwarranted benefits, advantage or preference, by awarding to the latter the contract for the **purchase** of 15,000 pieces of *ABC My Practice Book II*, without any public bidding, for distribution to the preschool children of Sarangani Province, notwithstanding the lack of any urgency or necessity in purchasing the textbooks and that two years after the **purchase**, some of the textbooks were yet to be delivered to the individual beneficiaries, and that accused Escobar still approved Disbursement Voucher No. 100-03-0701275 in the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) to pay for the irregular purchase, to the damage and prejudice of the government and in violation of the Anti-Graft and Corrupt Practices Act.

CONTRARY TO LAW.

The two cases were originally raffled to and initially handled by the Court's First Division; however, the First Division voluntarily inhibited itself from hearing them. Consequently, the cases were re-raffled and found their way to this Division's docket. A joint trial was held for all accused—except for Alvarado, who was then at large—and the cases against them were eventually terminated, leaving Alvarado the sole remaining accused still to be tried and adjudged. A few months later, Alvarado submitted herself to the Court's jurisdiction. Accordingly, her case was reinstated, heard, and then submitted for decision.

³ Records, Vol. 3, p. 16 (Order dated February 14, 2013, directing amendment of the *Information* to reflect the maternal surname of Latoja as "Belgira"), at 478 (Order dated November 18, 2013, directing the amendment of the *Information* to reflect the maternal surnames of Telesforo as "Sasam" and of Cagang as "Matas". See also Records, Vol. 4, pp. 159-164 (Resolution dated August 26, 2014, granting the motion of the prosecution to admit amended *Information* in SB-12-CRM-0109, asking to delete the words "emergency" in "emergency purchase"). See also Records, Vol. 5, p. 42 (Order dated February 4, 2016, directing formal amendment of the *Information* to reflect the maternal surnames of Marohomsalic as "Binusman" and Diama as "Lindongan". TSN, Alvarado, July 14, 2023, pp. 4-5 (The prosecution asked that the *Information* reflect Alvarado's current middle name and last name, which are "Alvarado" and "Tamura," respectively).



Proceedings before the First Division

On April 20, 2012, the Court perused the records and found probable cause to issue warrants of arrest against the accused.⁴ Thereafter, a Hold Departure Order⁵ and Warrants of Arrest⁶ were issued.

On different dates, Escobar, Latoja, Telesforo, Marohomsalic, and Diama each posted cash bonds in either or both cases.⁷

After protracted pre-arraignment incidents, occasioned by the parties' numerous court filings, the accused were arraigned and had pleaded *not guilty* to the charges.⁸

On November 15, 2013, the prosecution moved to amend the *Information* in SB-12-CRM-0109 by deleting the phrase "emergency purchase" and replacing it with "direct purchase."⁹ Latoja opposed that motion, arguing that substantial amendment is prohibited because he had been already arraigned.¹⁰ Escobar joined Latoja's opposition.¹¹ Finding the opposition meritorious, the Court denied motion.¹²

On May 27, 2014, the prosecution moved anew to amend the *Information* in SB-12-CRM-0109.¹³ This time the amendment sought to delete "emergency" before "purchase" in two instances that the word was used in the *Information*.¹⁴ Latoja opposed the motion.¹⁵ On August 26, 2014,

⁴ Records, Vol. 1, p. 299 (Minute Resolution dated April 20, 2012, finding probable cause for the issuance of a warrant of arrest).

⁵ *Id.* at 300-301.

⁶ *Id.* at 304-305.

⁷ *Id.* at 462-465 (Orders dated June 4, 2012 of Presiding Judge Andres N. Lorenzo, Jr., Branch 23, Regional Trial Court, General Santos City). *See also* Records, Vol. 2, pp. 18-19 (Stipulations both dated June 4, 2012 respecting the bail bond of Marohomsalic and Diama). *See also* Records, Vol. 3, p. 298-A (Amended Order dated April 16, 2013 confirming that Marohomsalic and Diama had posted bail bond in SB-12-CRM-0109), p. 298-B (Transmittal Letter from the Regional Trial Court, General Santos City). Records, Vol. 3, pp. 41-48 (Escobar's Manifestation dated February 26, 2013, informing the Court of their posting of cash bond with Branch 23, Regional Trial Court, General Santos City). *See also* Records, Vol. 3, p. 57-A (Minutes dated March 25, 2013).

⁸ Records, Vol. 3, p. 15 (Latoja's Certificate of Arraignment dated February 14, 2013), p. 16 (Order dated February 14, 2013), pp. 293-294 (Order dated April 15, 2013; the Court entered a plea of not guilty for Escobar), p. 477-A (Telesforo's Certificate of Arraignment), p. 477-B (Cagang's Certificate of Arraignment), p. 478 (Order dated November 18, 2012). Records, Vol. 4, p. 447 (Cagang's Certificate of Arraignment dated October 1, 2015), p. 448 (Telesforo's Certificate of Arraignment dated October 1, 2015). *See also id.* at 449 (Order dated October 1, 2015). Records, Vol. 5, p. 40 (Marohomsalic's Certificate of Arraignment dated February 4, 2016), p. 41 (Diama's Certificate of Arraignment dated February 4, 2016). *See also id.* at 42 (Order dated February 4, 2016).

⁹ Records, Vol. 3, pp. 461-466 (Prosecution's Motion to Admit Amended *Information* with attached copy of the amended *Information*).

¹⁰ Records, Vol. 4, pp. 42-45 (Latoja's Comment/Opposition to Amended *Information* dated February 23, 2014).

¹¹ *Id.* at 47-40 (Escobar's Manifestation dated March 3, 2014).

¹² *Id.* at 65-70 (Resolution dated April 2, 2014).

¹³ *Id.* at 118-123 (Prosecution's Motion to Admit Amended *Information* dated May 26, 2014).

¹⁴ *Id.*

¹⁵ *Id.* at 137-140 (Latoja's Comment/Opposition to Admission of Amended *Information* dated July 10, 2014).

the Court granted the prosecution's motion, holding that the amendment sought was merely formal.¹⁶

On November 22, 2016, Escobar, Cagang, and Telesforo urged the Court to order that the cases be re-raffled.¹⁷ Acting thereon, the Court denied the motion.¹⁸

In the intervening period, preliminary and pre-trial conferences were held.¹⁹ Thereafter, the Court issued a pre-trial order.²⁰

On May 2, 2017, Escobar, Cagang, and Telesforo asked the First Division to inhibit itself from hearing the cases.²¹ It was opposed by the prosecution.²² On July 18, 2017, the Court denied the motion to inhibit.²³ Subsequently, the accused moved for a reconsideration.²⁴ On September 4, 2017, although believing that it could handle the cases with utmost impartiality, the First Division nevertheless voluntarily inhibited from further hearing the cases to avoid suspicion of bias, and to maintain and preserve the parties' trust and faith in the Court.²⁵

In view of the First Division's voluntary inhibition, the cases were re-raffled and found their way into this Division's docket on September 29, 2017.²⁶

**Proceedings before this Division
with Respect to Alvarado's Co-accused**

On February 2, 2018, Escobar urged the Court to return the cases to the Office of the Clerk of Court for re-affle, noting that two justices of the then-Fifth Division were former members of the First Division that initially handled the cases.²⁷ The prosecution objected.²⁸ On March 15, 2018, the Court denied the motion for lack of merit.²⁹

¹⁶ *Id.* at 159-164 (Resolution dated August 26, 2014).

¹⁷ Records, Vol. 6, pp. 12-18 (Escobar, Cagang, and Telesforo's Manifestation and Motion dated November 18, 2016).

¹⁸ *Id.* at 27 (Minutes dated December 7, 2016).

¹⁹ Records, Vol. 5, p. 7 (Order dated December 3, 2015), p. 80 (Order dated May 5, 2016), p. 95 (Order dated June 30, 2016), p. 423 (Order dated August 4, 2016).

²⁰ Records, Vol. 6, pp. 121-150.

²¹ *Id.* at 87-92 (Escobar, Cagang, and Telesforo's Manifestation with Motion for Inhibition and Motion to Cancel Scheduled Hearings dated April 30, 2017).

²² *Id.* at 104-107 (Prosecution's Comment/Opposition to Accused's Manifestation with Motion for Inhibition and Motion to Cancel Scheduled Hearings dated May 17, 2017).

²³ *Id.* at 169-172.

²⁴ *Id.* at 178-185 (Escobar, Cagang, and Telesforo's Motion for Reconsideration with Motion to Cancel Scheduled Hearings dated August 14, 2017).

²⁵ *Id.* at 189 (Minutes dated September 4, 2017).

²⁶ *Id.* at 207 (Minutes dated October 25, 2017).

²⁷ *Id.* at 377-390 (Escobar's Motion for Inhibition and Cancellation of Scheduled Clarificatory Hearing dated February 28, 2018).

²⁸ *Id.* at 395-402 (Prosecution's Compliance/Manifestation with Comment/Objection dated February 23, 2018).

²⁹ Records, Vol. 7, pp. 215-221 (Resolution dated March 15, 2018).

The prosecution presented its witnesses, namely: (1) Rinah A. Garrido³⁰ and (2) Edel B. Carag.³¹

Meanwhile, on May 11, 2018, the Court dismissed the case against Cagang in view of his death, pursuant to Article 89 of the Revised Penal Code (RPC).³²

On July 3, 2018, the prosecution formally offered its exhibits.³³ Over Marohomsalic, Diama, Escobar, and Telesforo's opposition,³⁴ the Court admitted into evidence the following prosecution exhibits: Exhibits "A", "B", "B-1", "C", "D", "E", "F", "N", "O to O-3", "R to R-3", "T to T-10", "V", "Z", "BB", "DD", "EE", "FF", "GG", "HH", "JJ", "KK", "LL", "OO", "QQ", "RR", "TT to TT-1", "UU", "WW", "XX", "YY", "BBB", "DDD", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", and "KKK". The Court, however, denied the admission into evidence of Exhibit "AA" and noted that the following exhibits were not offered: Exhibits "G", "H", "I", "J", "K", "L", "M", "P", "S", "U", "W", "X", "Y", "CC", "II", "MM", "NN", "PP", "SS", "VV", "ZZ", "AAA", and "CCC".³⁵ Thereafter, the prosecution was deemed to have rested its case.³⁶

On March 20, 2019, the Court dismissed the cases against Latoja in view of his death, pursuant to Article 89 of the RPC.³⁷

The presentation of defense evidence followed.³⁸

Thereafter, the accused formally offered their respective exhibits.³⁹ The prosecution objected thereto.⁴⁰ By a Resolution⁴¹ of November 3, 2022, the Court resolved to admit the exhibits offered by Marohomsalic and Diama: Exhibits "1", "2", "3", "4", "5", "6", "7", and "8". Likewise, the Court admitted into evidence the exhibits of Escobar: Exhibits "2", "2-a", "3", "3-a", "4", "4-a", "4-b", "5", "5-a" to "5-d", "6", "7", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "26", "27", "28", "36", "37", "37-a", "38", and "39". Having resolved the formal offer

³⁰ Records, Vol. 7, p. 229 (Minutes dated March 21, 2018), p. 231 (Order dated March 21, 2018).

³¹ *Id.* at 429 (Minutes dated June 20, 2018), at 431 (Order dated June 20, 2018).

³² *Id.* at 285 (Minutes dated May 11, 2018), at 281-282 (Certificate of Death of Cesar Matas Cagang).

³³ Records, Vol. 8, pp. 6-216 (Prosecution's Formal Offer of Documentary Exhibits dated June 29, 2018).

³⁴ *Id.* at 233-252 (Marohomsalic and Diama's Comment/Objections dated July 8, 2018), at 264-267 (Escobar and Telesforo's Comment to the Formal Offer of Evidence of the Prosecution dated August 5, 2018).

³⁵ *Id.* at 273-275 (Minutes dated August 8, 2018).

³⁶ *Id.*

³⁷ *Id.* at 514 (Minutes dated March 20, 2019).

³⁸ Records, Vol. 9, 630 (Order dated May 23, 2019, Perla Maglinte). *See also* Records, Vol. 11, p. 68 (Order dated July 7, 2022), p. 142 (Order dated September 13, 2022).

³⁹ Records, Vol. 11, p. 142 (Order dated September 13, 2022), pp. 143-204 (Marohomsalic and Diama's Formal Offer of Evidence dated September 13, 2022), pp. 257-353 (Escobar's Formal Offer of Evidence dated October 13, 2022).

⁴⁰ *Id.* at 205-209 (Prosecution's Comment/Opposition to Marohomsalic and Diama's Formal Offer of Evidence), at 226-231 (Escobar Comment to Marohomsalic and Diama's Formal Offer of Evidence), at 240-241 (Telesforo's Comment to Marohomsalic and Diama's Formal Offer of Evidence), at 356-363 (Prosecution's Comment to Escobar's Formal Offer of Evidence dated October 26, 2022).

⁴¹ *Id.* at 390-394 (Minutes Resolution dated November 3, 2022).

of exhibits, the Court deemed the accused to have rested their respective cases.

Thereafter, the parties submitted their respective memoranda.⁴²

On March 17, 2023, the Court rendered a decision in these cases. Because Alvarado was at large and in view of the deaths of Cagang and Latoja, the Court limited its ruling to the other accused—Escobar, Marohomsalic, Telesforo, and Diana. Alvarado’s case was archived. In pertinent parts, the Court’s March 17, 2023 Decision⁴³ held that:

WHEREFORE, judgment is rendered as follows:

....

2. In SB-12-CRM-0109, accused **MIGUEL DRACULAN ESCOBAR, WAHID L. DIAMA, SITTIEHAWA B. MAROHOMSALIC**, and **VIVENCIA S. TELESFORO** are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. The cash bond posted in this case by each accused is hereby ordered **RELEASED**, subject to the usual accounting and auditing procedures. The Hold Departure Order issued against them in connection with this case is ordered **LIFTED**.

No civil liability is adjudged against the accused for failure of the prosecution to prove damage or injury to the government.

Let the case against **TERESA C. ALVARADO**, who is at large, be **ARCHIVED**.

SO ORDERED.

Proceedings before this Division
with respect to Alvarado

On June 29, 2023, Alvarado personally appeared before the Court and posted a cash bond for her provisional liberty.⁴⁴ Accordingly, her case was revived, and the warrant for her arrest was recalled.⁴⁵

During the July 14, 2023 arraignment, Alvarado waived reading the charge against her and pleaded *not guilty*.⁴⁶ In the same hearing, the prosecution manifested that it would adopt the evidence it presented against Alvarado’s co-accused.⁴⁷ For its part, the defense stated that it would “not

⁴² *Id.* at 368-388, 400-417 (Prosecution’s Memorandum dated November 17, 2022), at 453-466 (Marohomsalic and Diana’s Memorandum dated November 18, 2022), at 500-527 (Escobar’s Memorandum dated December 5, 2022).

⁴³ *Id.* at 575-618 (Decision promulgated on March 17, 2023). (Emphasis in the original)

⁴⁴ Records, Vol. 12, pp. 9-14 (Bond documents), p. 15 (Order dated June 29, 2023).

⁴⁵ *Id.* at 21.

⁴⁶ *Id.* at 32 (Waiver of Reading of Information), at 33 (Certificate of Arraignment), at 36 (Order dated July 14, 2023).

⁴⁷ TSN, preliminary conference, July 14, 2023, p. 8.



be conducting cross-examination” of the prosecution’s witnesses.⁴⁸ As such, the Court deemed no need to recall the prosecution’s witnesses.⁴⁹

Thereafter, the parties met for preliminary conference and pre-trial.⁵⁰ At the pre-trial, the parties stipulated as follows:

1. Alvarado was a public officer at the time material to this case.
2. She attended the meeting of the Committee on Awards on June 19, 2003, as the representative of Mariter S. Sayson of the Provincial General Services Office.⁵¹

At the pre-trial hearing, the prosecution reiterated that it would “adopt the evidence already presented in Court with respect to the other accused.”⁵² In view thereof, the Court ordered that the trial proceed directly with the presentation of Alvarado’s evidence.⁵³

The defense presented the accused herself, Alvarado, as its sole witness.

Thereafter, the defense formally offered Alvarado’s exhibits: Exhibits “1”, “2”, “3”, “4”, “4-a”, “5”, “6”, “7”, “8”, “9”, and “10”.⁵⁴ Over the prosecution’s opposition,⁵⁵ the Court admitted into evidence those exhibits.⁵⁶

On January 16, 2024, Alvarado informed the Court about her counsel’s serious medical condition, manifested that she would adopt the memoranda of the other accused, and moved that the Court’s earlier decision in these cases be marked and admitted into evidence as Exhibit “11”.⁵⁷ Acting thereon, the Court granted the motion to mark and admit into evidence the Court’s earlier decision, and noted the information regarding the medical condition of Alvarado’s counsel, as well as her manifestation that she would adopt the memoranda submitted by her co-accused.⁵⁸

Having considered Alvarado’s manifestation and motion and given that the prosecution manifested that it would not file a memorandum, the Court considered the case submitted for decision.⁵⁹

⁴⁸ TSN, preliminary conference, July 14, 2023, p. 8.

⁴⁹ TSN, preliminary conference, July 14, 2023, p. 8.

⁵⁰ Records, Vol. 12, p. 43 (Minutes dated August 11, 2023), at 77 (Order dated September 15, 2023).

⁵¹ *Id.* at 78-82 (Pre-trial Order), at 93 (“Saison” is written as “Sayson” in Alvarado’s judicial affidavit).

⁵² *Id.* at 77 (Order dated September 15, 2023).

⁵³ Records, Vol. 12, p. 77 (Order dated September 15, 2023).

⁵⁴ *Id.* at 144-156, 159-170, 176-202 (Alvarado’s counsel made 3 separate Offers of Evidence, the last being an amended Offer of Evidence).

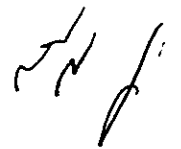
⁵⁵ *Id.* at 171-173.

⁵⁶ *Id.* at 204-206 (Minutes of the Meeting where the Court ruled on Alvarado’s offer of evidence).

⁵⁷ *Id.* at 214-216 (Alvarado’s Manifestation and Motion for Marking of Decision Earlier Rendered with Respect to the Other Accused as Additional Exhibit).

⁵⁸ *Id.* at 218 (Resolution on Alvarado’s manifestation and motion for marking of decision earlier rendered with respect to the other accused).

⁵⁹ Records, Vol. 12, p. 218 (Resolution on Alvarado’s manifestation and motion for marking of decision earlier rendered with respect to the other accused).



Evidence for the Prosecution

The prosecution adopted “the evidence already presented in Court with respect to the other accused.”⁶⁰ The pieces of evidence the prosecution presented at the trial of Alvarado’s co-accused are stated in the Court’s March 17, 2023 Decision⁶¹ and reproduced hereunder:

The prosecution presented two witnesses, namely: (1) COA State Auditor **Rinah A. Garrido**, a member of the special audit team that further examined the Province of Sarangani’s 2003 procurement of preschool textbooks; and (2) Director **Edel B. Carag**, Bureau of Learning Resources (BLR), Department of Education.

Rinah A. Garrido testified on her Judicial Affidavit⁶² dated December 12, 2017. She averred that she was a COA State Auditor I and member of the audit team assigned to audit the City Government of General Santos from September 10, 2002 to December 9, 2003, the Provincial Government of Sarangani from December 10, 2003 to October 24, 2004, and again to the City Government of General Santos from October 25, 2004 to April 20, 2006.⁶³

She recalled that the audit team conducted a special audit of the Province of Sarangani’s procurement of preschool textbooks.⁶⁴ It was prompted, according to her, by the COA’s recommendation to further investigate the irregularities noted in the procurement of 15,000 copies of *ABC My Practice Book (Book I)* and 15,000 copies of *ABC My Practice Book (Book II)*.⁶⁵ She related that the special audit disclosed that accused Latoja requisitioned the preschool textbooks and, at the same time, signed the pertinent disbursement voucher as the supplier’s representative; and that the Committee on Awards recommended direct purchase of the preschool textbooks allegedly due to urgency but no such urgency existed.⁶⁶

She identified: (1) the Legal and Adjudication Office Order No. 2005-072 dated July 20, 2005 (Exhibit “A”) and the signature thereon of then-Assistant Commissioner Raquel R. Ramirez-Habitan; (2) the 2003 Annual Audit Report for the Province of Sarangani (Exhibit “KKK”); (3) the Audit Observation Memorandum (AOM) No. 2003-11 dated October 24, 2003 (Exhibit “F”) and the signature thereon of Helen M. Cailing, the audit team leader; (4) accused Latoja’s Letter dated December 29, 2003 responding to the COA AOM (Exhibit E); (5) the endorsements of Atty. Mamutuk and Director Zosa (Exhibits “III” and “JJJ”, respectively).⁶⁷

Moreover, she stated that the audit team held an initial conference to plan and discuss the special audit.⁶⁸ After the initial conference, she claimed, the audit team sent a Letter (Exhibits “DDD”) to the audit team leader of the Province of Sarangani, Salvador Fito, to secure copies of documents that the

⁶⁰ *Id.* at 77 (Order dated September 15, 2023).

⁶¹ Records, Vol. 11, pp. 575-618.

⁶² Records, Vol. 7, pp. 9-211 (Garrido’s Judicial Affidavit dated December 12, 2017).

⁶³ *Id.* at 10.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 11.

⁶⁷ *Id.* at 11-13.

⁶⁸ *Id.* at 13.

Provincial Government of Sarangani had submitted to the COA in connection with the purchase of preschool textbooks.⁶⁹ (She identified the Letter as well as the signature thereon of COA State Auditor II Movinia U. Linghon).⁷⁰ She said that after receiving the documents, the audit team invited the concerned persons and agencies to a conference.⁷¹ She identified the letters that were sent to William Moraca (Exhibit “EEE”), to then-Sarangani Governor Dominguez (Exhibit “FFF”), to Salvador Fito (Exhibit “GGG”), Lerma Wabinga, MSWDO of Alabel, Province of Sarangani (Exhibit “HHH”).⁷² The conference was held on September 7, 2005.⁷³ The audit team, she related, obtained certifications (Exhibits “R to R-3” and “O to O-3”) from various MSWDOs on the quantity, distribution, and inventory of books.⁷⁴

She recalled that the audit team inspected the preschool textbooks, interviewed officials and employees concerned with procurement of the preschool textbooks, examined disbursement vouchers and supporting papers, analyzed evidence gathered, and prepared a special report containing the audit findings.⁷⁵

According to her, the audit team found that the procurement of the preschool textbooks violated COA Circular No. 92-386 because it did not undergo public bidding.⁷⁶ She testified that the purchase of *ABC My Practice Book (Book I)* was supported only by accused Latoja’s *Certification* (Exhibit “C”), which was approved by accused Escobar.⁷⁷ The certification, she stated, provides that the preschool textbooks were urgently needed for distribution on November 28, 2002, during the visit of then-President Gloria Macapagal Arroyo (PGMA), and that the procurement be made through emergency purchase for lack of enough time to conduct public bidding.⁷⁸ (She identified the *Certification* as well as accused Latoja’s signature thereon.)⁷⁹

As regards the procurement of *ABC My Practice Book (Book II)*, she attested that it was supported by the *Minutes of the Meeting* dated June 19, 2003 of the Committee on Awards (Exhibit “KK”) and *Resolution No. 04, s. 2003* (Exhibit “LL”) recommending the direct purchase from the authorized official publisher and sole distributor of the preschool textbooks due to urgency.⁸⁰ (She identified the *Minutes of the Meeting* dated June 19, 2003 and *Resolution No. 04, s. 2003*.)⁸¹ She asserted that the members of the Committee on Awards who approved the resolution were accused Cagang (Provincial Treasurer), accused Marohomsalic (PADO Representative), accused Telesforo (PACCO Representative), accused Diama (PBO Representative), and accused Alvarado (PGSO Representative).⁸² Furthermore, she said that the resolution was unanimously passed and it was attested by accused Cagang and approved by accused Escobar.⁸³

⁶⁹ *Id.*
⁷⁰ *Id.*
⁷¹ *Id.* at 13-14.
⁷² *Id.*
⁷³ *Id.*
⁷⁴ *Id.* at 15.
⁷⁵ *Id.*
⁷⁶ *Id.*
⁷⁷ *Id.*
⁷⁸ *Id.*
⁷⁹ *Id.* at 16-17.
⁸⁰ *Id.*
⁸¹ *Id.*
⁸² *Id.* at 17.
⁸³ *Id.*



Moreover, she testified that the procurement of the subject preschool textbooks was not urgent because *ABC My Practice Book (Book I)* were delivered and inspected only on January 22, 2003 (Exhibits “HH”) and *ABC My Practice Book (Book II)*, on July 10, 2003 (Exhibit “WW”).⁸⁴ The preschool textbooks, she added, were distributed to various MSWDOs only in June 2003, July 2003, August 2003, September 2003, and June 2005, as per *Invoice Receipts* (Exhibits “T to T-10” and “V”).⁸⁵ (She identified the *Inspection and Acceptance Reports* and *Invoice Receipts*.)⁸⁶

She further testified that the books (those transferred by accused Latoja to the MSWDOs) did not tally with the total number of books purchased.⁸⁷ According to her, the total number of *ABC My Practice Book (Book I)* distributed was only 14,320 which is short of the 15,000 books purchased; while the total number of *ABC My Practice Book (Book II)* distributed was 17,624, which is over the total number of books purchased.⁸⁸ According to her, these findings cast doubt on the veracity of the *Invoice Receipts* submitted.⁸⁹ Additionally, she testified that the books were distributed in June 2003 at the earliest and in June 2005 at the latest.⁹⁰ She noted that some of the books purchased were not yet distributed at the time the special audit was conducted and some of them were already infested with termites.⁹¹

According to her, although the *Purchase Orders* (Exhibits “Z” and “OO”) for both purchases indicate direct purchase as the mode of procurement, the first procurement was made through emergency purchase and the second procurement, through direct purchase.⁹² (She identified the *Purchase Order* dated December 11, 2002 for *ABC My Practice Book (Book I)* and *Purchase Order* dated July 2, 2003 for *ABC My Practice Book (Book II)*.)⁹³

When asked about the requirements of emergency purchases, she stated:

The requirements for emergency purchase per COA Circular 92-386 and RA 7160 are as follows:

1. The need for supplies *should be exceptionally urgent or absolutely indispensable AND only to prevent danger to, or loss of life or property;*
2. The authority to decide and award is vested in the Local Chief Executive upon the recommendation of the General Services Officer;
3. There must be a canvass of a least three (3) suppliers in the locality;
4. Deliveries must be made within 10 days and supplies procured must be utilized or availed of within 15 days from date of delivery;

⁸⁴ *Id.* at 17-18.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 18.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

5. A certification of the provincial or city general services or the municipal or barangay treasurer, as the case may be, to the effect that the price paid or contracted for was the lowest at the time of procurement;
6. The Head of Requisitioning Department must submit a Report of Utilization upon the expiration of 15 days within which to deliver the goods.⁹⁴

According to her, these requirements were not complied with in relation to the procurement of *ABC My Practice Book (Book I)*.⁹⁵

She also stated that “[i]n direct purchase, the manufacturer should be able to show proof or certificate that [it] is an exclusive manufacturer or dealer of specific supplies duly attested by the local principal, and that there are no sub-dealers selling at lower prices. Further, the requisitioning officer should submit a certification (approved by the agency head) that there are no suitable substitute[s] of substantially the same quality available for the supplies/materials/equipment which are exclusively manufactured or distributed. (Sec. 443 of GAAM).”⁹⁶

Additionally, she averred that the purchase of *ABC My Practice Book (Book II)* was not valid.⁹⁷ The preschool textbooks, according to her, were not so highly technical items that no other publisher could have produced it.⁹⁸ Hence, she stated, a canvass or survey should have been conducted within the locality to determine availability of similar products prior to the commencement of the procurement process.⁹⁹ The survey, she stated, would have confirmed the exclusivity or non-exclusivity of the source of supply.¹⁰⁰ Moreover, she pointed out that the supplier in this case was based in Cavite.¹⁰¹

According to her, the Local Chief Executive is the one who decides whether to resort to emergency purchase.¹⁰² Furthermore, she stated that the GSO of the Province of Sarangani made no recommendation with respect to the purchase of *ABC My Practice Book (Book I)*.¹⁰³

She further testified that in both procurement transactions, emergency purchase and direct purchase were not justified.¹⁰⁴ She noted that the title of the preschool textbooks and the supplier had been already specified in the *Project Design* (Exhibit “D”), which accused Escobar recommended for approval to then-Sarangani Representative Chiongbian.¹⁰⁵ She added that the title of the preschool textbooks had been also specified in the *Purchase Request*.¹⁰⁶ (She identified the *Project Design*.)¹⁰⁷

⁹⁴ *Id.*
⁹⁵ *Id.*
⁹⁶ *Id.*
⁹⁷ *Id.* at 20.
⁹⁸ *Id.*
⁹⁹ *Id.*
¹⁰⁰ *Id.*
¹⁰¹ *Id.*
¹⁰² *Id.*
¹⁰³ *Id.*
¹⁰⁴ *Id.*
¹⁰⁵ *Id.*
¹⁰⁶ *Id.*
¹⁰⁷ *Id.* at 20-21.



Moreover, she attested that the audit team determined that accused Latoja requested for the purchase of the preschool textbooks and, at the same time, acted as the supplier's attorney-in-fact as shown by his signature on the space reserved for the payee on *Disbursement Voucher No. 101-2003-02-1379* (for the procurement of *ABC My Practice Book (Book I)*).¹⁰⁸ These facts, she asserts, establish that "[accused] Latoja, while being a public officer, [had] ... private financial interest in the business of Gamad."¹⁰⁹

(She identified the *Purchase Requests* (Exhibits "BB" and "QQ"), *Checks* (Exhibits "FF" and "TT") that were issued as payment to IYVSECDI and Gamad,¹¹⁰ and *Disbursement Vouchers* (Exhibits "DD" and "BBB") pertinent to the two procurement transactions.)¹¹¹

She related that accused Latoja claimed that Gamad requested him to receive the *Check* (as payment for the 15,000 copies of *ABC My Practice Book (Book I)*) upon being told that the payment was ready for release and then issued a *Special Power of Attorney* (SPA; Exhibit "EE") for that purpose.¹¹² She pointed out, however, that Gamad's SPA was executed on January 10, 2003, while the *Check* was prepared on February 10, 2003. According to her, this means that prior to the preparation of the *Check*, accused Latoja had been already authorized by Gamad.¹¹³ (She identified the Gamad's SPA naming Latoja as his agent.)¹¹⁴

She averred that Gamad is the author and distributor of the preschool textbooks and accused Latoja's colleague being the Provincial Social Welfare and Development Officer of Cavite and then-President of the PSWDO of the Philippines in 2002.¹¹⁵ (She identified the cover pages of *ABC My Practice Book (Book I)* and *ABC My Practice Book (Book II)* (Exhibits "JJ" and "XX", respectively).¹¹⁶

Furthermore, she testified that accused Latoja signed/approved *Sales Invoice No. 3712* (for the sale of *ABC My Practice Set Book II*; Exhibit "RR") for and in behalf of Gamad.¹¹⁷ She explained that accused Latoja's signature appears above the name "Rufino Gamad", under the phrase "Approved by". (She identified *Sales Invoice No. 3712*.)

After the special audit, she averred, the audit team transmitted the audit report to the Officer in Charge, Office of the Regional Legal and Adjudication Office, COA Region XII, Cotabato City, who in turn transmitted the audit report to the Office of the Ombudsman for Mindanao, Davao City, for their information and appropriate action.¹¹⁸ (She identified the *Affidavit* (Exhibit "N") that she executed in relation to the audit investigation she conducted.)¹¹⁹

¹⁰⁸ *Id.* at 21.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 21-22.

¹¹² *Id.* at 22.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 23.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

When cross-examined by accused Latoja's counsel, she said that it was not illegal for the agency to resort to direct purchase; however, she averred, the use of direct purchase in procuring 15,000 copies of *ABC My Practice Book (Book II)* was not justified because no prior canvass was conducted. She further stated that the document supporting the *Disbursement Voucher* (for the procurement of *ABC My Practice Book (Book II)*) was only a certificate of sole distributorship of IYVSECDI. According to her, although IYVSECDI or Gamad was the author and sole distributor of the *ABC My Practice Book (Books I and II)*, the agency should have conducted a survey to determine whether suitable substitutes were available in the market because the preschool textbooks bought were not technical and could be produced by other publishers.¹²⁰

She further stated on cross-examination that accused Latoja received the *Check* for the 15,000 copies of *ABC My Practice Book (Book II)*, but it was Gamad who encashed it. In addition, she said that accused Latoja's brother-in-law, Mallorca, received the *Check* for the 15,000 copies of *ABC My Practice Book (Book II)*. According to her, Mallorca admitted that he received a fee for acting as Gamad's agent; however, she admitted that she was not the one who interviewed Mallorca.¹²¹

Edel B. Carag, Director at the Bureau of Learning Resources (BLR), Department of Education, identified her Judicial Affidavit¹²² dated March 1, 2018. She stated that the BLR provides learning resources to learners in public schools, specifically those in kindergarten to senior high school.¹²³

She testified that she received a letter from the Office of the Ombudsman requesting her to verify whether *ABC My Practice Book (Book I) and (Book II)* are included in the list of authorized/recommended preschool textbooks.¹²⁴ Acting on the request, she said that she asked her two division chiefs to verify whether the said preschool textbooks were included in the List of Approved Supplementary and Reference Materials for S.Y. 1999-2000.¹²⁵ After going through various DECS issuances (e.g., DECS Order 88, series of 1999, DECS Order 13, series of 2000, DECS Order 6, series of 2001, DepEd Order 112, series of 2009), she related, they determined that the preschool textbooks were not among those listed as approved supplementary and reference materials.¹²⁶ Thereafter, she averred, she caused the preparation of a *Letter-Reply* dated February 8, 2018, reviewed, signed, and then sent it to the Office of the Ombudsman.¹²⁷ She identified the *Letter-Reply*.¹²⁸

When cross-examined by accused Latoja's counsel, she stated that she was designated as officer-in-charge only in 2015.¹²⁹ Prior thereto, she attested that she was not yet connected with the BLR.¹³⁰ Moreover, she admitted that she did not know anything about the matter with respect to the preschool textbooks.¹³¹

¹²⁰ *Id.* 16-19.

¹²¹ *Id.* at 19-23.

¹²² Records, Vol. 7, pp. 323-416.

¹²³ *Id.* at 324.

¹²⁴ *Id.* at 324-325.

¹²⁵ *Id.* at 325.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ TSN, Edel B. Carag, June 20, 2018, p. 10.

¹³⁰ *Id.*

¹³¹ *Id.*



Evidence for Alvarado

Alvarado testified through her judicial affidavit, which served as her direct testimony.¹³² She stated that she became a Computer Operator II, Province of Sarangani, on May 16, 2000.¹³³ She admitted that she attended the Committee on Awards meeting on June 19, 2003¹³⁴ but clarified that she did so only to represent her superior, Mariter S. Sayson, who asked her to attend the said meeting.¹³⁵ According to her, she told Sayson after the meeting about the committee's decision to purchase books.¹³⁶ She stated that she did not know the proprietor of the books and denied having received any amount related to the purchase.¹³⁷ Moreover, she averred that she did not receive any subpoena from the Office of the Ombudsman ordering her to answer the charge. According to her, she left the Philippines for Japan on December 4, 2003, and she resigned from her work at the Province of Sarangani.¹³⁸ She testified that she was in Japan from 2003 to 2020, during which she married a Japanese.¹³⁹ She claimed that she learned about her case in March 2023 from her sister, when she was in Italy.¹⁴⁰ (She submitted her service records and passport. She also confirmed that the documents attached to her affidavits are faithful reproduction of the original copies.)¹⁴¹

On cross-examination, Alvarado reaffirmed that she left the Philippines for Japan in 2003 but returned in 2010 because her father was brought to an intensive care unit.¹⁴² In the same year, she further stated, she flew back to Japan.¹⁴³ She went to Italy in 2020, she claimed, and stayed there until she returned to the Philippines in March 2023.¹⁴⁴ She denied receiving a subpoena from the Office of the Ombudsman with respect to her case.¹⁴⁵ According to her, she learned about her case from her sister in March 2023, after the promulgation of the decision as to her co-accused.¹⁴⁶

Answering additional cross-examination questions, Alvarado confirmed that one of her functions as a computer operator was to do "other related tasks that may be assigned [to her] from time to time."¹⁴⁷ She agreed with the prosecutor that when she performed other duties, she was also performing official functions.¹⁴⁸ She stated that she attended the Committee on Awards meeting on June 19, 2003, on the direction of Mariter S.

¹³² Records, Vol. 12, pp. 93-108 (Alvarado's Judicial Affidavit).

¹³³ *Id.* at 94-A.

¹³⁴ *Id.*

¹³⁵ *Id.* at 95.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 96.

¹⁴¹ *Id.*

¹⁴² TSN, Alvarado, November 14, 2023, pp. 20-30.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ TSN, Alvarado, November 14, 2023, pp. 31-33.

¹⁴⁸ *Id.*



Sayson,¹⁴⁹ her superior at the Provincial Government Service Office of the Province of Sarangani.¹⁵⁰ According to her, she sat down and listened to, but did not participate, in the discussion.¹⁵¹ After the meeting, she informed Sayson about the committee's decision to purchase books for the Provincial Social Welfare and Development Office, which was then headed by Latoja.¹⁵²

Responding to a clarificatory question from the Court, Alvarado asserted that she did not sign any document related to the award of the contract for the procurement of preschool textbooks.¹⁵³

Issue

Whether Alvarado is guilty under Section 3(e) of the antigraft law related to the Province of Sarangani's purchase of preschool textbooks in 2003.

Ruling

The Court finds Alvarado not guilty. Her circumstances are not so different from those of her other co-accused who were acquitted. If the body of evidence—presented against those accused and adopted here without more—was not enough to sustain a conviction, it should also not be enough to convict Alvarado under the same charge.

Alvarado is charged with violation of Section 3(e) of the antigraft law, as a conspirator, related to an alleged anomalous procurement of 15,000 copies of *ABC My Practice Book (Book II)* by the Province of Sarangani. The questioned procurement was made through direct purchase, instead of public bidding, and authorized by the province's Committee on Awards at a meeting that Alvarado attended as the representative of the Provincial General Services Office. Section 3(e) of the antigraft law states:

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:

....

(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

¹⁴⁹ Written as "Maricar Singcoy Sayson" per TSN, Alvarado, November 14, 2023, p. 32.

¹⁵⁰ TSN, Alvarado, November 14, 2023, pp. 31-33.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

corporations charged with the grant of licenses or permits or other concessions.

The elements of Section 3(e) violation are: (1) the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (2) the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) the action of the accused caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of functions.¹⁵⁴

The prosecution evidence established the first element but *not* the second and third elements.

Alvarado was a public officer discharging administrative or official function

The **first element** was sufficiently established. As stipulated by the parties, Alvarado was an employee of the Province of Sarangani at the time material to this case.¹⁵⁵ She was charged related to her alleged involvement in passing the resolution that authorized procurement of preschool textbooks through direct purchase. She attended that meeting as the representative of the Provincial General Services Office, a duty she acknowledged was connected to her official functions.¹⁵⁶

The prosecution failed to prove that Alvarado acted with manifest partiality, evident bad faith, or gross inexcusable negligence

The **second element** provides for the three modalities—*manifest partiality, evident bad faith, or gross inexcusable negligence*—of committing the felonious act.¹⁵⁷ These modes can be alternatively alleged and proof of just one is sufficient to support a conviction.¹⁵⁸ *Araullo v. Office of the Ombudsman*¹⁵⁹ defines these terms as follows:

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. . . . [It] contemplates a state of mind affirmatively operating with furtive design or with some motive of

¹⁵⁴ *Fuentes v. People*, G.R. No. G.R. No. 186421, 17 April 2017.

¹⁵⁵ Records, Vol. 12, pp. 78-82 (Pre-Trial Order).

¹⁵⁶ *Id.*

¹⁵⁷ *Jaca v. People*, G.R. Nos. 166967, 166974 & 167167, January 28, 2013.

¹⁵⁸ *Id.*

¹⁵⁹ G.R. No. 194157, July 30, 2014, citing *People v. Atienza*, G.R. No. 171671, June 18, 2012.

x-----x

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.

This case centers on the procurement by the Province of Sarangani of 15,000 copies of *ABC My Practice Book (Book II)* from IYVSECDI in 2003. The subject preschool textbooks were procured through direct purchase, instead of public bidding. Resolution No. 04, s. 2003¹⁶⁰ of the Committee on Awards of the Province of Sarangani states that:

It is hereby resolved by the Committee on Awards to recommend for the procurement of the various books for the preschool children of Sarangani Province be made thru *direct purchase* [from the] authorized official publisher and sole distributor due to its urgency on motion of Ms. Marohomsali[c], the PADO Representative and seconded by Mr. Wahid [Diana], the PBO Representative. (Emphasis supplied)

The Government Procurement Reform Act¹⁶¹ (GPRA) took effect on January 26, 2003;¹⁶² however, the rules implementing it became effective only on October 8, 2003.¹⁶³ The timing difference between the GPRA and its implementing rules created questions on the GPRA’s application. On this matter, the Government Procurement Policy Board (GPPB) in its Non-Policy Opinion No. 018-2003¹⁶⁴ opined that “[the GPRA] cannot be applied in its totality without its [implementing rules],” to wit:

Although [Republic Act No. (R.A. No.)] 9184 has already been signed by her Excellency President Gloria Macapagal Arroyo on January 10, 2003 and became effective on January 26, 2003, **the said legislative enactment cannot be applied in its totality without its [Implementing Rules and Regulations]** Hence, even if there are self-executing provisions in R.A. [No.] 9184, the same cannot be fully implemented unless and until the IRR therefor has been finally approved by the President and published for dissemination. (Emphasis supplied)

Under the transitory clause of the GPRA’s implementing rules, in all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the GPRA, the provisions of Executive Order No. 40 and its implementing rules, Presidential Decree No. 1594 and its implementing rules, *Republic Act No. 7160, or the Local Government Code of 1991 (LGC), and its implementing rules*, or other applicable laws as the

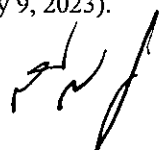
¹⁶⁰ Exhibit “LL”.

¹⁶¹ Republic Act No. 9184.

¹⁶² *Martel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021 (The prevailing law on government procurement is R.A. 9184 or the Government Procurement Reform Act. This law was signed by the President on January 10, 2003. Section 78 thereof provided for the effectivity of the law after fifteen (15) days following its publication. Considering that the Act was published in Malaya on January 11, 2003, **R.A. 9184 became effective only on January 26, 2003**).

¹⁶³ GPPB Non-Policy Matter No. 025-2003, available at https://www.gppb.gov.ph/GPPBTSO_Non-Policy/209 (last accessed on February 9, 2023).

¹⁶⁴ Available at https://www.gppb.gov.ph/GPPBTSO_Non-Policy/204 (last accessed on February 9, 2023).



case may be, shall govern.¹⁶⁵ Relevantly, “[p]ursuant to Section 383 of the LGC, the implementing rules and regulations of the LGC provisions on the supply and property management of LGUs were issued by the COA through COA Circular No. 92-386.”¹⁶⁶

The questioned procurement occurred after the GPRA took effect on January 26, 2003, but before the GPRA’s implementing rules became effective on October 8, 2003. Verily, the Purchase Request¹⁶⁷ and the Sales Invoice¹⁶⁸ were issued on June 19, 2003, and July 8, 2003, respectively. Following the afore-quoted GPPB opinion and the transitory clause of the GPRA’s implementing rules, the LGC provisions on the supply and property management of LGUs and their implementing rules (as embodied in COA Circular No. 92-386) apply in this case. In any event, whether under the GPRA or the LGC, the general rule on procurement is the same: All supplies must be procured through public bidding. Likewise, whether under the GPRA or the LGC, direct purchase/contracting is an admitted exception to the public bidding rule.

Under COA Circular No. 92-386, public bidding is the primary mode of procurement,¹⁶⁹ but alternative modes of procurement, such as direct purchase, may be used under certain circumstances. Rule 10 of COA Circular No. 92-386 contains provisions on direct purchase, to wit:

SEC. 102. *When Direct Purchase from Duly Licensed Manufacturing may be Made.*—Procurement of supplies or property of Philippine manufacturer or origin may be made directly from duly licensed manufacturers; *Provided*, That the manufacturer is able to present proof showing that it is a duly licensed manufacturer of the desired product and there is no dealer or distributor offering the same items at lower prices.

SEC. 103. *Canvass of Prices in Procurement from Duly Licensed Manufacturer.*—In case there are two (2) or more known manufacturers of the required supplies or property, canvass of prices should be made of the known manufacturers within the locality to obtain the most advantageous prices.

SEC. 104. *Authority to Decide and Award in Procurement from Duly Licensed Manufacturer.*—The award for the procurement of supplies or property from duly licensed manufacturers shall be made by the Committee on Awards in accordance with the procedure prescribed in these rules and regulations.

Here, the purpose of the procurement was “[t]o augment the [Early Childhood Care and Development Program] for the total development of the children . . . [in] Sarangani Province.”¹⁷⁰ The preschool textbooks “will be

¹⁶⁵ Emphasis supplied.

¹⁶⁶ *Mariel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

¹⁶⁷ Exhibit “QQ”.

¹⁶⁸ Exhibit “RR”.

¹⁶⁹ Sec. 27. *Public Bidding as the Primary Mode of Procurement.*—Except as otherwise provided herein, acquisition of supplies and property by local government units shall be through competitive public bidding.

¹⁷⁰ Exhibit “D”, subsection “III. OBJECTIVES”.

used during the activity period of children to support their daily lessons and develop the required/appropriate skills expected for their age.”¹⁷¹ In light of that purpose, there should have been a prior canvass to determine whether suitable substitutes were available in the market and to ascertain the exclusivity of the supply source. “Suitable substitute” refers to that kind of article which would serve substantially the same purpose or produce substantially the same results as the brand, type, or make of the article originally desired or requisitioned.¹⁷² Nothing in the records hints that a prior canvass was conducted.

Nevertheless, there is still a need to determine whether the prosecution sufficiently established the elements of violation of Section 3(e) of the antigraft law. The reason is, as ruled in *Martel v. People*,¹⁷³ “a violation of the procurement laws does not *ipso facto* lead to a violation of [the antigraft law].”

The 2022 case of *Cabrera v. People*¹⁷⁴ lays down the prevailing jurisprudence regarding the second element of violation of Section 3(e) of the antigraft law in relation to violation of procurement law and rules. In that case, the Supreme Court reiterated its ruling in *Martel* that “**in order to successfully prosecute the accused under Section 3 (e) of [the antigraft law] based on a violation of procurement laws, the prosecution cannot solely rely on the fact that a violation of procurement laws has been committed,**”¹⁷⁵ to wit:

Notably, anent the second element, prevailing case law elucidates that “to constitute evident bad faith or manifest partiality, it must be proven that the accused acted with malicious motive or fraudulent intent. **It is not enough that the accused violated a law, committed mistakes or was negligent in his duties. There must be a clear showing that the accused was spurred by a corrupt motive or a deliberate intent to do wrong or cause damage.** Thus, as the Court explained about 20 years ago in *Sistoza v. Desierto*, *mere bad faith or partiality per se is not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest.*”

More pertinent to the matter of procurement, the Court, in the recent case of *Martel v. People (Martel)*, had the occasion to emphasize that “**in order to successfully prosecute the accused under Section 3 (e) of R.A. 3019 based on a violation of procurement laws, the prosecution cannot solely rely on the fact that a violation of procurement laws has been committed.**” Stressing that the peculiar spirit animating RA 3019 is the **prevention of graft and corruption**, the Court, in *Martel*, thus explained that the prosecution must prove beyond reasonable doubt that the *subject procurement was motivated by a corrupt intent* to favor another or to unduly receive any pecuniary benefit. It added that “[i]t is simply absurd to

¹⁷¹ Exhibit “D”, subsection “IV. BRIEF DESCRIPTION”.

¹⁷² COA Circular No. 92-386, Section 4.

¹⁷³ G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

¹⁷⁴ G.R. Nos. 191611-14, April 6, 2022 [Resolution].

¹⁷⁵ *Id.* (Emphasis and underscoring in the original)

criminally punish every minute mistake that incidentally caused a benefit to private parties even when these acts were not done with corrupt intent," viz.:

Violations of R.A. 3019 must be grounded on graft and corruption

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At this juncture, the Court emphasizes the spirit that animates R.A. 3019. As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under R.A. 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in dishonest ways.

In the instant case, petitioners' act of pursuing the subject procurements was motivated not by any corrupt intent to favor one car dealer over another or to unduly receive any pecuniary benefit. Based on the evidence on record, petitioners' actuations were simply based on their honest belief that direct procurement was legally permissible. **There was no showing that graft and corruption actually transpired.** x x x

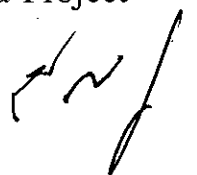
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To reiterate, petitioners believed in good faith that direct purchase as the mode of procurement was justified under Section 371 of the LGC. Moreover, the procurement documents were transmitted to the Provincial Auditor of the COA prior to the procurement precisely to give the COA a chance to say if such procurement was not allowed. It was only when the COA did not give any adverse comment that the purchase proceeded. **These circumstances strengthen the conclusion that petitioners were not animated by any corrupt motive.**

Indeed, while public office is a public trust, the Court is called upon to refrain from interpreting the laws to effectively be a disincentive to individuals in joining the public service. **It is simply absurd to criminally punish every minute mistake that incidentally caused a benefit to private parties even when these acts were not done with corrupt intent.**

Thus, an acquittal for a charge of violation of Section 3 (e) of RA 3019 is warranted when the accused's non-compliance with the procurement law and rules "was motivated not by any evil scheme to profit, but by [an] honest, albeit mistaken, belief that the alternative mode of direct contracting was warranted." (Emphasis and underscoring in the original)

Here, the evidence is insufficient to establish that Alvarado was "motivated by a corrupt intent to favor another or to unduly receive any pecuniary benefit." The records show that sometime in 2002 the Provincial Social Welfare and Development Office (PSWDO) came up with a Project



Design ¹⁷⁶ aimed at providing additional early childhood care and development support to preschoolers of the Province of Sarangani by providing them with preschool textbooks. (It was prepared by Marilyn B. Ballocanag, reviewed by Raquel S. Panal, noted by Latoja, recommended for approval by Escobar, and approved by then-Sarangani Representative Chiongbian.) For reasons not disclosed in the records, the Project Design already specified the titles of the books that would be, and in fact, purchased and distributed, namely: *ABC My Practice Book (Book I)* and—the object of this case—*ABC My Practice Book (Book II)*.

On June 19, 2003, Latoja requested for the purchase of 15,000 copies of *ABC My Practice Book (Book II)*.¹⁷⁷ On the same day, acting on Latoja's request, the Committee on Awards of the Province of Sarangani passed Resolution No. 04, s. 2003¹⁷⁸ recommending direct purchase. Thereafter, 15,000 copies of that book were ordered from IYVSECDI.¹⁷⁹ The order was then delivered to, inspected, and accepted by the Province of Sarangani.¹⁸⁰

Alvarado was charged because she allegedly participated, as the representative of the Provincial General Services Office, at the meeting in which the resolution to procure through direct purchase the subject preschool textbooks was adopted. The documents from where Alvarado's involvement could be drawn are: (1) the Minutes of the Meeting dated June 19, 2003, of the Committee on Awards, Exhibit "KK"; and (2) the Resolution No. 04, s. 2003, Exhibit "LL". But those documents do not specifically indicate Alvarado's exact participation at the meeting; they do not even contain her signature.

Moreover, it seems that the decision was based on the PSWDO's recommendation, which for reasons not disclosed in the records, already specified the titles of the preschool textbooks to be bought and distributed to the province's preschoolers. Under the LGC, the provincial social welfare and development officer shall, among others, "[i]nitiate and support youth welfare programs that will enhance the role of the youth in nation-building."¹⁸¹ When the PSWDO came up with the Project Design and specified therein the specific textbooks that would be bought, a certain degree of expectation was created that it took necessary steps to ascertain that the recommended materials had been screened and found the most appropriate for its intended purpose.

The foregoing facts and circumstances do not establish beyond a reasonable doubt partiality that is manifest, bad faith that is evident, and negligence that is both gross and inexcusable.

¹⁷⁶ Exhibit "D".

¹⁷⁷ Exhibit "QQ" (Purchase Request).

¹⁷⁸ Exhibit LL.

¹⁷⁹ Exhibit "OO" (Purchase Order).

¹⁸⁰ Exhibit "RR" (Sales Invoice No. 3712); Exhibit "WW" (Acceptance and Inspection Report).

¹⁸¹ Republic Act No. 7160 or the Local Government Code of 1991, Article XIII, Section 483 (b)(3).

Undue injury or damage to the Province of Sarangani and/or unwarranted benefit, advantage, or preference given to IYVSECDI were not sufficiently established

The **third element** provides how Section 3(e) of the antitrust law may be violated: (1) by causing undue injury to any party, including the government; or (2) by giving any private party any unwarranted benefit, advantage, or preference.¹⁸² An accused may be charged under either or both.¹⁸³ These two separate punishable acts were explained in *Cabrera v. People*:¹⁸⁴

The first punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be “some reasonable basis by which the court can measure it.” Aside from this, the loss or damage must be substantial. It must be “more than necessary, excessive, improper or illegal.”

The second punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or quantum of damage is not thus essential. It is sufficient that the accused has given “unjustified favor or benefit to another.”

Under the amended *Information*, the prosecution alleges that the accused both caused damage or prejudice to the government and gave unwarranted benefit, advantage, or preference to IYVSECDI.

As to the first punishable act, the prosecution argues that the accused “caused undue injury to the Province of Sarangani in the amount of P1,500,000,” the amount paid by the Province of Sarangani for 15,000 copies of *ABC My Practice Book (Book II)*.¹⁸⁵ A review of the records, however, shows otherwise.

The Acceptance and Inspection Report,¹⁸⁶ which the prosecution does not assail, shows that 15,000 copies of *ABC My Practice Book (Book II)* were completely delivered, accepted, and inspected by the Province of Sarangani. This conclusion is bolstered by the fact that the Special Audit/Investigation of Selected Transactions of the Provincial Government of Sarangani Relative to the Purchase of Preschool Textbooks Report¹⁸⁷ is silent as to ghost delivery or under delivery. What the COA questioned is

¹⁸² *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010.

¹⁸³ *Id.*, citing *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, and *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004.

¹⁸⁴ G.R. Nos. 191611-14, July 29, 2019.

¹⁸⁵ Records, Vol. 11, p. 416 (Prosecution’s Memorandum, p. 17). See also the material allegations in the amended *Information*.

¹⁸⁶ Exhibit “WW”.

¹⁸⁷ Exhibit “B”.

not the completeness of the number of books delivered to the Province of Sarangani but the veracity of the Invoice Receipts evidencing the transfer of the preschool textbooks from the PSWDO to the various MSWDOs. Prosecution witness Garrido testified:¹⁸⁸

A: Based on the signed and submitted invoices, we found out that the total distributed books (those transferred by Mr. Latoja to MSWDOs) did not tally with the total number of books purchased. . . . [T]he total number of My Practice Book II distributed was 17,624, which is over the total number of books purchased. These cast doubt on the veracity of the invoice receipts.

Irregularity in the distribution of preschool textbooks is not a proper subject of this case. What is relevant here is, at least based on the documents presented, the preschool textbooks were delivered and there was no finding of overpricing. Hence, it could not be said that the Province of Sarangani was unduly injured or damaged because of the questioned procurement.

As to the second punishable act, the Court finds that there is insufficiency of evidence to establish that Alvarado gave unwarranted benefit, advantage, or preference to IYVSECDI.

In *Villarosa v. People*,¹⁸⁹ it was held that “[f]or one to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative, or judicial functions. 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.”

Here, the Project Design, which specified the titles of the preschool textbooks bought, was prepared by the PSWDO. And the records do not show that Alvarado had a hand in preparing it and/or in identifying the specific preschool textbooks for the project. Moreover, the prosecution evidence also fails to establish that there were other suitable substitutes for *ABC My Practice Book (Book II)*.

Jurisprudence holds “that evidence adduced must be closely examined under the lens of judicial scrutiny and that conviction must flow only from the moral certainty that guilt has been established beyond reasonable doubt.”¹⁹⁰ Here, the Court finds that the prosecution failed to establish the guilt of Alvarado under Section 3(e) of the antigrift law beyond a reasonable doubt.

¹⁸⁸ Records, Vol. 7, p. 18 (Garrido’s Judicial Affidavit dated December 12, 2017).

¹⁸⁹ G.R. Nos. 233155-63, June 23, 2020; citations omitted.

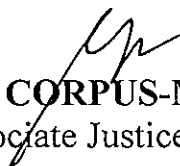
¹⁹⁰ *Suba v. Sandiganbayan First Division*, G.R. No. 235418, March 3, 2021. (Citation omitted)

WHEREFORE, premises considered, **TERESA C. ALVARADO**¹⁹¹ is found **NOT GUILTY** in SB-12-CRM-0109 of violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, based on reasonable doubt.

The cash bond that she posted is ordered **RELEASED**, subject to usual accounting and auditing procedures. The Hold Departure Order issued against her is also ordered **LIFTED**.

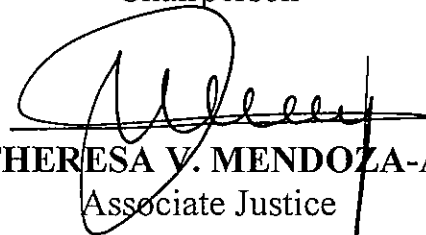
No civil liability is adjudged against Alvarado for lack of sufficient basis.

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹⁹¹ Also known as “Teresa Cuiñado Alvarado-Tamura” or “Teresa Alvarado Tamura”. *See supra* note 1.

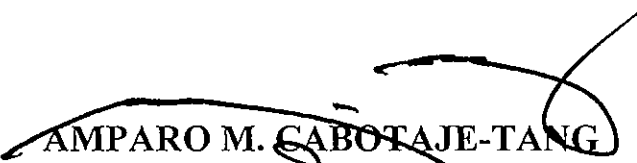
ATTESTATION

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


RAFAEL R. LAGOS
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been 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

