

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Special Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-09-CR M-0006

For: Violation of Republic Act 3019
Section 3(e) as amended

-versus-

Present:

Herrera, Jr., J. Chairperson

Musngi, J.

Quiroz, J.

Arcega, J. &

Fernandez, J.

Ignacio M. Taruc,
Accused.

Promulgated:

May 2, 2017

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RESOLUTION

HERRERA, JR., J:

For resolution of the Court is a ***Motion For Reconsideration***¹ dated July 26, 2016, filed by accused Ignacio M. Taruc (Accused Taruc for short), through counsel, seeking reconsideration of the ***Decision***² promulgated on July 19, 2016, finding him guilty of ***Violation of Section 3(e) of Republic Act (R.A.) No. 3019***, as charged in the ***Information***³ dated June 23, 2008.

The plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed an ***Opposition (Re: Accused Ignacio M. Taruc's Motion For Reconsideration [Re: Resolution dated 19 July 2016] dated 26 July 2016)***⁴ dated September 9, 2016, praying that the ***Motion For Reconsideration, etc.*** of accused Taruc be denied, to which said accused, through counsel, filed a ***Reply To Opposition***⁵ dated September 22, 2016.

¹ Record, Vol. 2, pp. 541-549

² Id, pp. 516-535

³ Record, Vol. 1, pp. 1 and 2.

⁴ Record, Vol. 2, pp. 558-564

⁵ Id, pp. 565-567

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Accused Taruc, in his ***Motion For Reconsideration***, contends that the "Decision is not supported by the evidence on record and is contrary to law and the jurisprudence applicable to the matter in controversy." Essentially, he argues that:

"THERE IS NO COMPETENT EVIDENCE ON RECORD THAT THE ACCUSED THEN AS THE MUNICIPAL MAYOR CAUSED THE DELAY IN THE PAYMENT OF THE SALARIES OF COMPLAINANTS WHO WERE EMPLOYED IN THE OFFICE OF THE VICE MAYOR."⁶

After a careful study, the Court finds that the arguments invoked in the ***Motion For Reconsideration*** is a rehash of those previously raised by the accused and already considered when the Court rendered the ***Decision*** of July 19, 2016.

To begin with, the accusatory portion of the ***Information*** dated June 23, 2008 reads:

"That on or about October 1, 2007 or sometime prior or subsequent thereto, in the Municipality of Buguey, Province of Cagayan, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being the Municipal Mayor of Buguey, Cagayan, while in the performance of his official functions, committing the offense in relation to his office, taking advantage of his official position, and acting with manifest partiality and evident bad faith, did then and there willfully, unlawfully and criminally cause undue injury to MELCHOR TABARREJO, QUIRINO AYONAYON, JR., DELIA NUEVO, NUELYN PAGAY and LILIBETH USIGAN, all employees of the Office of the Vice Mayor/Sangguniang Bayan of Buguey, Cagayan by preventing the issuance of a check intended for the payment of salaries of the latter amounting to a total of thirty two thousand pesos (Php32,000.00), without justifiable reason or authority of law, thus, causing undue injury to the aforementioned employees in the afore-stated amount.

CONTRARY TO LAW."

In the ***Decision*** promulgated on July 19, 2016, the Court made the following findings and conclusion, *inter alia*:

⁶ Id, p. 541

Clarif *by* *M*

"For conviction under Section 3(e) of R.A. 3019, the following elements must concur:

1. *That the offender is a public officer;*
2. *That the act was done in the discharge of the public officer's official, administrative or judicial functions;*
3. *That the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence;*
4. *That his actions caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of functions."*

It is stipulated that accused is a public officer, being then the incumbent mayor Buguey, Cagayan, when he refused to sign the check for the salaries of the complainants. The first two elements of the crime are thus met.

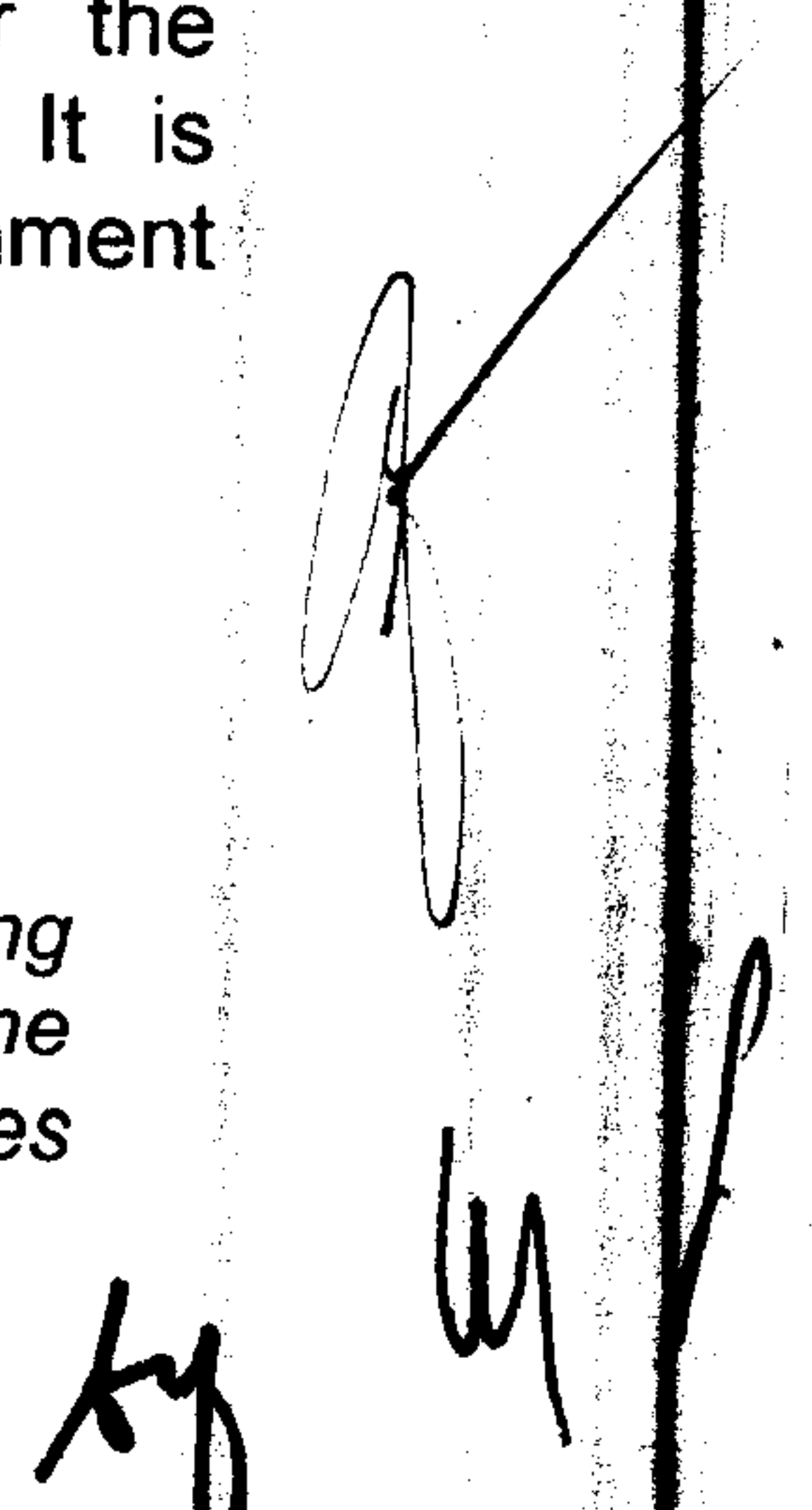
With respect to the third element, the prosecution alleges that accused showed manifest partiality and evident bad faith by his "unauthorized/unjustified withholding of the salaries of the complainants." To this, the sole defense of the accused is his claim that it is the Vice-Mayor who is duty-bound to sign the checks for complainants. According to the accused, the matter of determining the rightful signatories of the checks has been settled when the Regional Trial Court of Aparri decided the action for Mandamus filed by the Vice-Mayor against the Municipal Budget Officer and the Municipal Treasurer. The 23 January 2008 Decision identified the Vice-Mayor as the official "empowered and authorized to sign warrants to defray the expenditures of the Sangguniang Bayan" pursuant to Section 445 of the Local Government Code.

This Court finds it necessary to delve further into the facts that preceded this present controversy in order to support its conclusions. There is no question that for expenditures of the Sangguniang Bayan, it is the Vice-Mayor who wields the power of signing vouchers and checks to defray the funds that have been appropriated for the Sanggunian. There is no shortage of law on this. It is explicitly stated under Section 445 of the Local Government Code:

"Section 445. Powers, Duties and Compensation. –

(a) The vice-mayor shall:

(1) Be the presiding officer of the sangguniang bayan and sign all warrants drawn on the municipal treasury for all expenditures



appropriated for the operation of the
sangguniang bayan;

xxx;"

and repeated in the Local Government Code's Implementing
Rules and Regulations:

*ARTICLE 91. Powers, Duties, and Functions of the
Municipal Vice Mayor. – The municipal vice mayor shall:*

*(a) Be the presiding officer of the sangguniang
bayan and sign all warrants drawn on the
municipal treasury for all expenditures
appropriated for the operation of the
sangguniang bayan."*

xxx.

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The law intentionally designated different heads in approving expenditures to guarantee the independence of the Sangguniang Bayan in the exercise of its legislative function vis-à-vis the discharge by the Mayor of his executive functions. In this case, there is no dispute as to what fund the salaries of herein complainants should be drawn from. Being appointees of the Vice-Mayor and serving under the Sangguniang Bayan, their salaries should have been drawn from the fund appropriated for the Sanggunian. Following the above-mentioned laws, it is the signature of the Vice-Mayor that should have been sought by the parties. And yet after the preparation of the check, the Municipal Treasurer did not present it to the Vice-Mayor for signature, but brought it instead to the Mayor. When the Mayor refused to sign the check, the Municipal Treasurer cancelled the same.

The baffling actions taken by the Municipal Treasurer in this case can only be explained by the acknowledged political tension at that time between the Mayor and the Vice-Mayor, and the findings of fact by the Regional Trial Court of Aparri, Cagayan, summarized in the aforementioned Decision of 23 January 2008:

"On August 28, 2007, the Sangguniang Bayan of Buguey, Cagayan passed SB Resolution No. 015-2007-7-A entitled, 'A Resolution Granting Authority to the Land Bank of the Philippines, Aparri Branch, To Automatically Debit Legislative Appropriations From the LGU's Internal Revenue Allotment (IRA) and Credit the Same to the Existing Separate Account of the Legislative Department.' However, the Municipal Mayor called SB Resolution No. 015-2007-7-A ultra [v]ires and invoked the power of the local chief executive to exercise general supervision and control over all executive officials and employees of the Municipality. He also invoked his Executive Order 2007-5 (Executive Order Requiring All Executive Officials and Employees to Seek Permission to the Local Chief

Executive Before Appearing/Attending to the Session of the Sangguniang Bayan of Buguey, Cagayan). For this reason, the Municipal Budget Officer informed [Vice Mayor Antiporda] that she could not furnish the Land Bank of the Philippines, Aparri Branch, as to the amount of appropriations for the legislative department.

“On September 20, 2007, the petitioner inquired in writing from the Municipal Treasurer if she had deposited the corresponding share of the legislative body’s appropriation from the local income of the Municipality but the treasurer orally relayed her refusal to deposit the share of the Sangguniang Bayan derived from the local income to its separate account. As a consequence thereof, the Sangguniang Bayan’s account with the Land Bank of the Philippines, Aparri Branch, had no sufficient fund to pay the salaries of employees assigned at the office of the Sangguniang Bayan and to defray the expenses for the operation of the said office.”

From the foregoing, while it appears that the Sanggunian already passed the necessary appropriation for its operating expenses, its release is being blocked by the Mayor, first by calling *ultra vires* the automatic debit of the legislative’s fund from the general fund, and second, by disallowing the Municipal Budget Officer and the Municipal Treasurer from complying with the requests of the Sanggunian to transfer the fund to the separate bank account of the legislative. As a result, the Sanggunian is left high and dry with an almost empty bank account, forcing all expenses, including herein complainant’s salaries, to be sourced from the general fund of the municipality. It appears that the municipal treasurer saw the futility of preparing a check to be drawn from the legislative account, and consequently have the check signed by the Vice-Mayor, when the account is already dormant and has insufficient balance.

Since the salaries are now to be taken from the general fund, the signature of the Mayor, not the Vice-Mayor, is required for the issuance of the necessary check. This was emphasized in the content of the letter of the Municipal Treasurer to the complainants:

*“For your information, the undersigned prepare[d] the [check] last August 28, 2007 intended for the payment of your wages for July to August 31, 2007 for [the] signature of the Mayor but he returned [it] disapproved. **Please be advised that all disbursement[s] in the General Fund should be approved by the Mayor.***

“The mere fact that the Account of the Legislative is still dormant and the remaining balance is not enough to pay your wages, I cannot issue a check to that effect because it will be treated as “NSF” (No Sufficient Fund) by the bank.” (Emphasis supplied)

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Thus, while it may be true that under the law, the mayor is not the one authorized by law to sign the check for the complainants' salaries, it could not be denied that *under these specific circumstances*, it was only through Mayor Taruc's signature that the check could be issued and their salaries paid. Indeed, the Municipal Treasurer could not have put it plainer when she told complainants that "[t]he only person who can solve your problem is the Municipal Mayor, why not go personally to him."

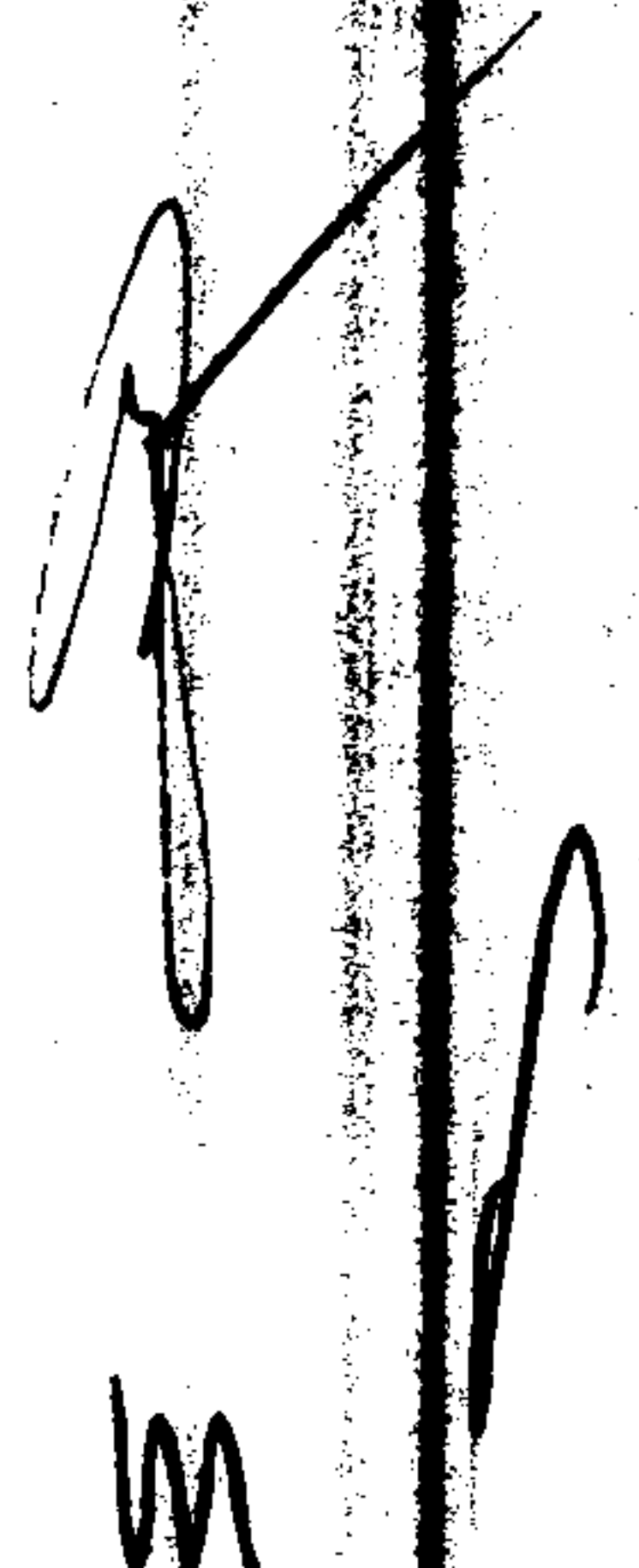
Evident bad faith, as characterized by the High Court in *Luspo v. People of the Philippines*, involves "not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Accused demonstrated his perverse motive or ill will to complainants, known appointees of his political rival, by his refusal to sign the check. First, he made it appear that his refusal to sign is grounded on the allegations that complainants did not actually report for work. As stated in his Counter-Affidavit, the contents of which he confirmed and affirmed during his cross-examination.

"xxx. This is not the issue involved in my refusal to allow the payment of these non complying employees, the reason being that they have not shown that they have rendered services for the period they claim to they are entitled to be paid."

xxx.
xxx.

Second, when the Regional Trial Court rendered its Decision re-affirming the Vice-Mayor as the rightful party to sign warrants for the Sanggunian's expenditures, accused immediately grabbed this as a most convenient defense to justify his refusal to sign the check in 2007. Such legal maneuvering cannot be countenanced. Accused should not be permitted to use a defense of law only when it suits him, while ignoring the same when it does not work in his favor.

The established and irrefutable facts of this case show that complainants are entitled to receive their salaries as they have valid appointments as employees of the Sangguniang Bayan. They rendered services for the months of July and August 2007, as shown by their respective Daily Time Record and employee logbook. The necessary disbursement voucher, payroll, and check have been prepared to allow complainants to receive their salaries. There exists no justifiable reason why their salaries should not be paid. So while the law is specific that the Vice-Mayor should be the signatory to disbursement vouchers for the expenditures of the legislative, it must be called to mind that accused Mayor Taruc, by blocking the flow of funds to the legislative, rendered it impossible for Vice-Mayor Antiporda to pay the salaries of the complainants. Basic dictates of



fairness, justice, and righteousness demand that the Mayor should have signed the subject check.

The fourth element Sec. 3(e) of R.A. 3019 requires that the actions of the accused cause undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

This injury was shown by the uncontested testimony of the complainants that their failure to receive their salaries compelled them to incur loans from relatives, neighbors and friends. Even Vice-Mayor Antiporda corroborated this by admitting that complainants borrowed money from him as well."⁷

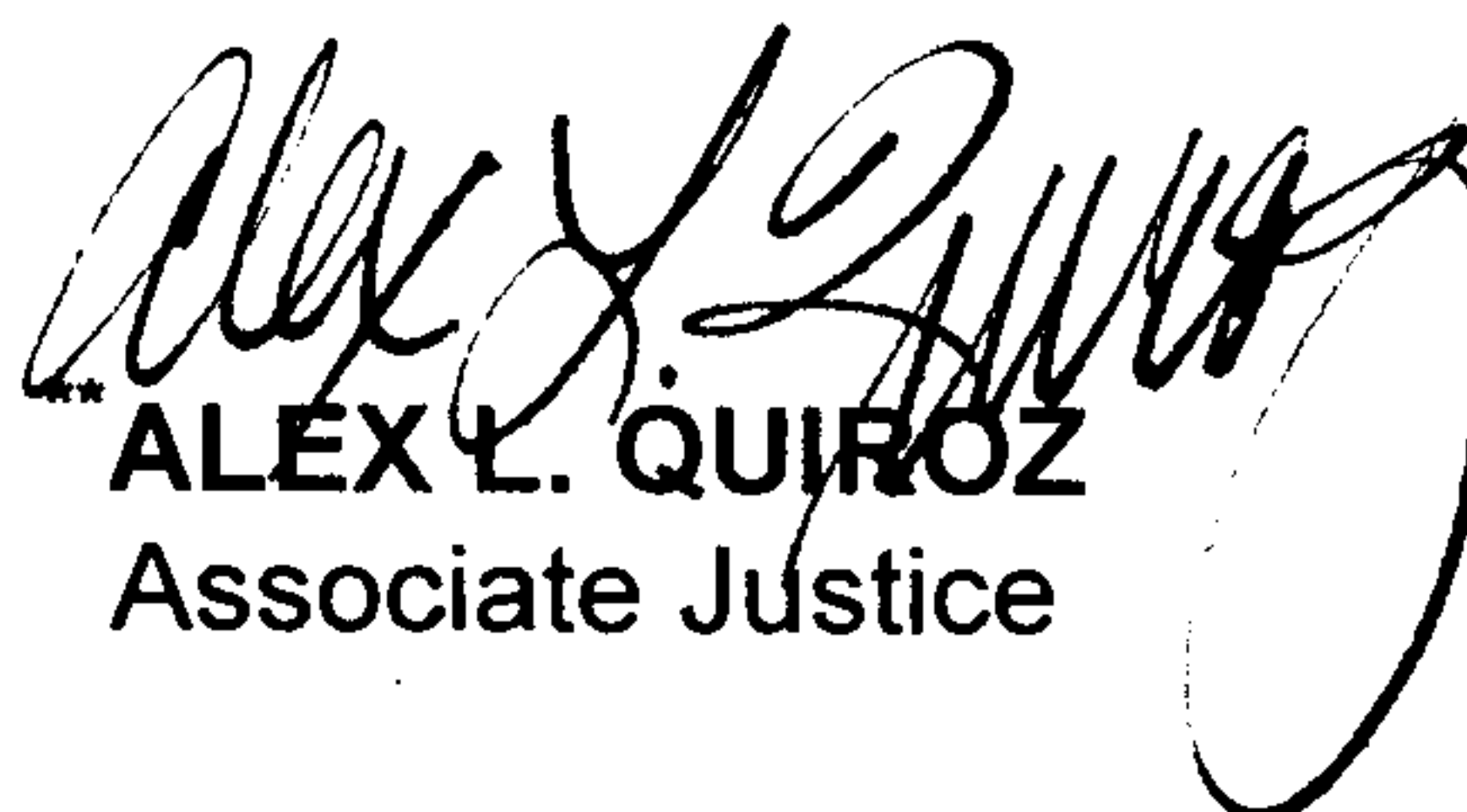
The aforequoted findings and conclusion sufficiently address the issues raised in the *Motion For Reconsideration* of accused Taruc. There is no new and substantial argument invoked to warrant a reconsideration of the *Decision* in question. The Court therefore rules that the said findings and conclusion stand.

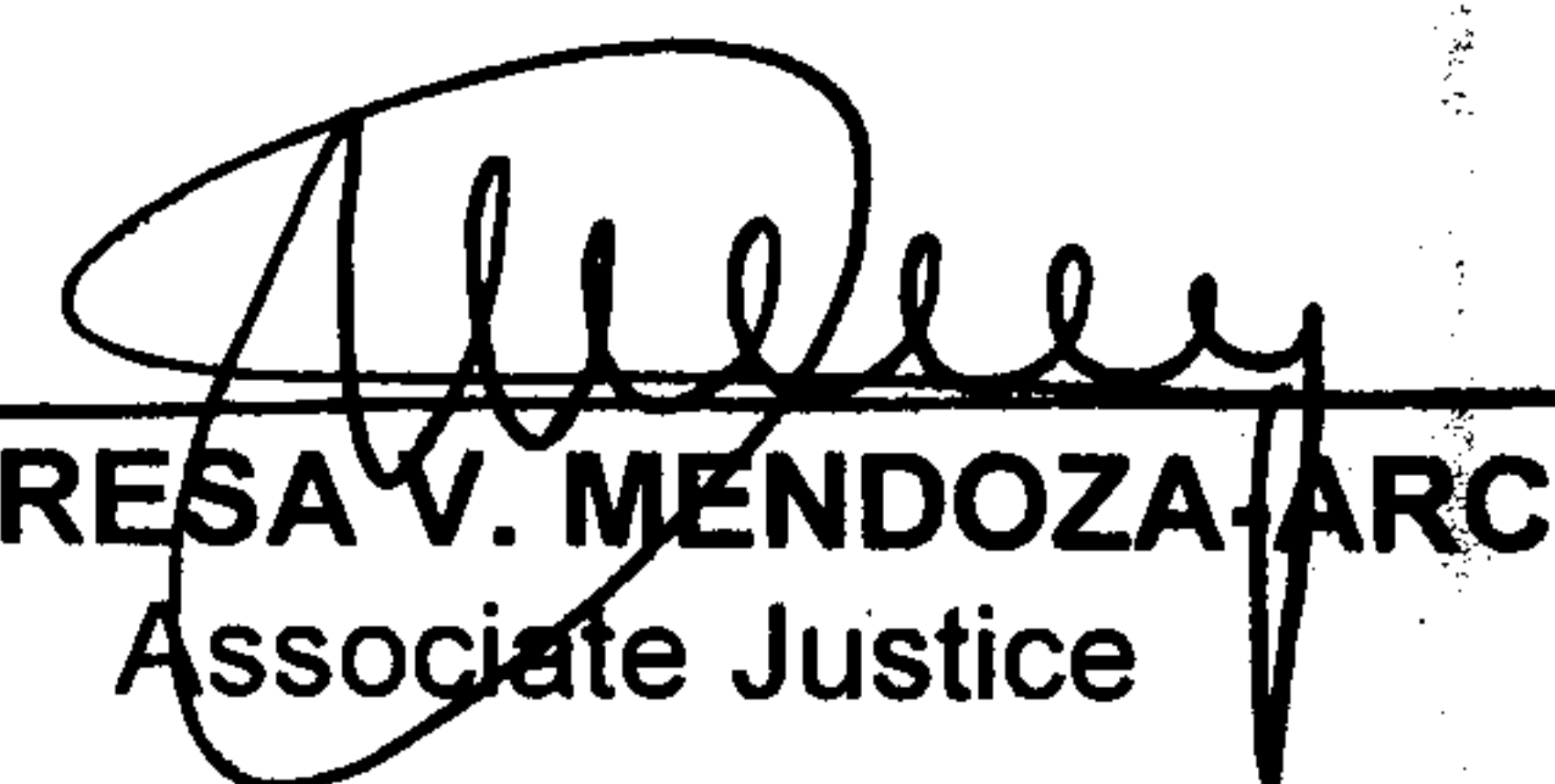
WHEREFORE, premises considered, the *Motion For Reconsideration* dated July 26, 2016, filed by accused Ignacio M. Taruc, through counsel, is hereby denied.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson/Associate Justice

We concur:


ALEX L. QUIROZ
Associate Justice


MA. THERESA V. MENDOZA ARCEGA
Associate Justice

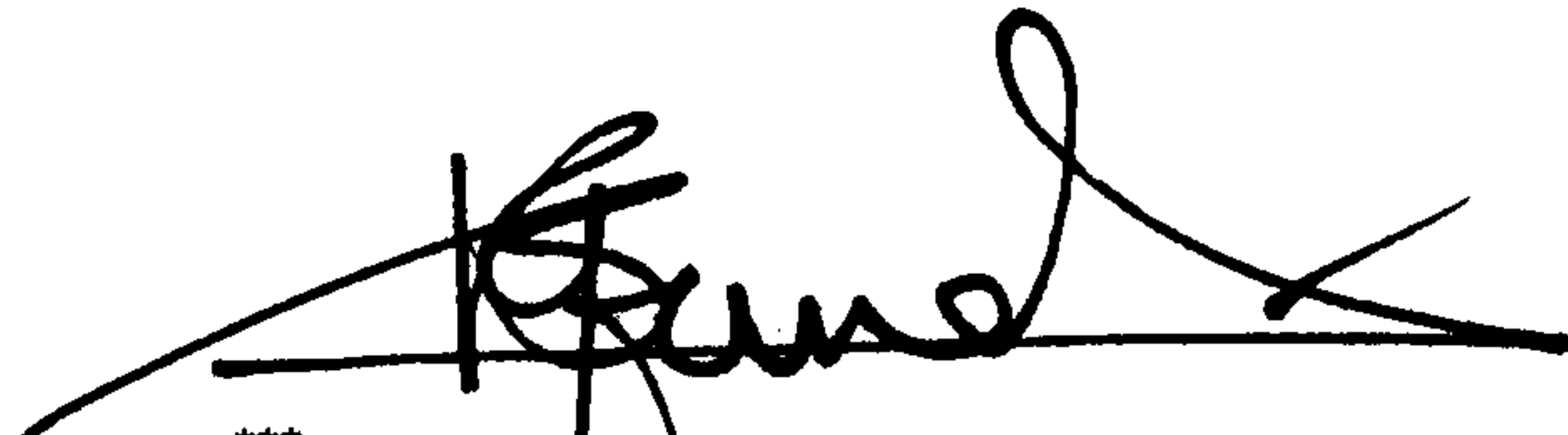
⁷ Id, pp. 526-533

* As *ponente* pursuant to Rule IX, Section 2 of the Revised Internal Rules of the Sandiganbayan, being the only remaining member of the Second Division that rendered the Decision promulgated on July 19, 2016

** Per En Banc meeting of April 3, 2017

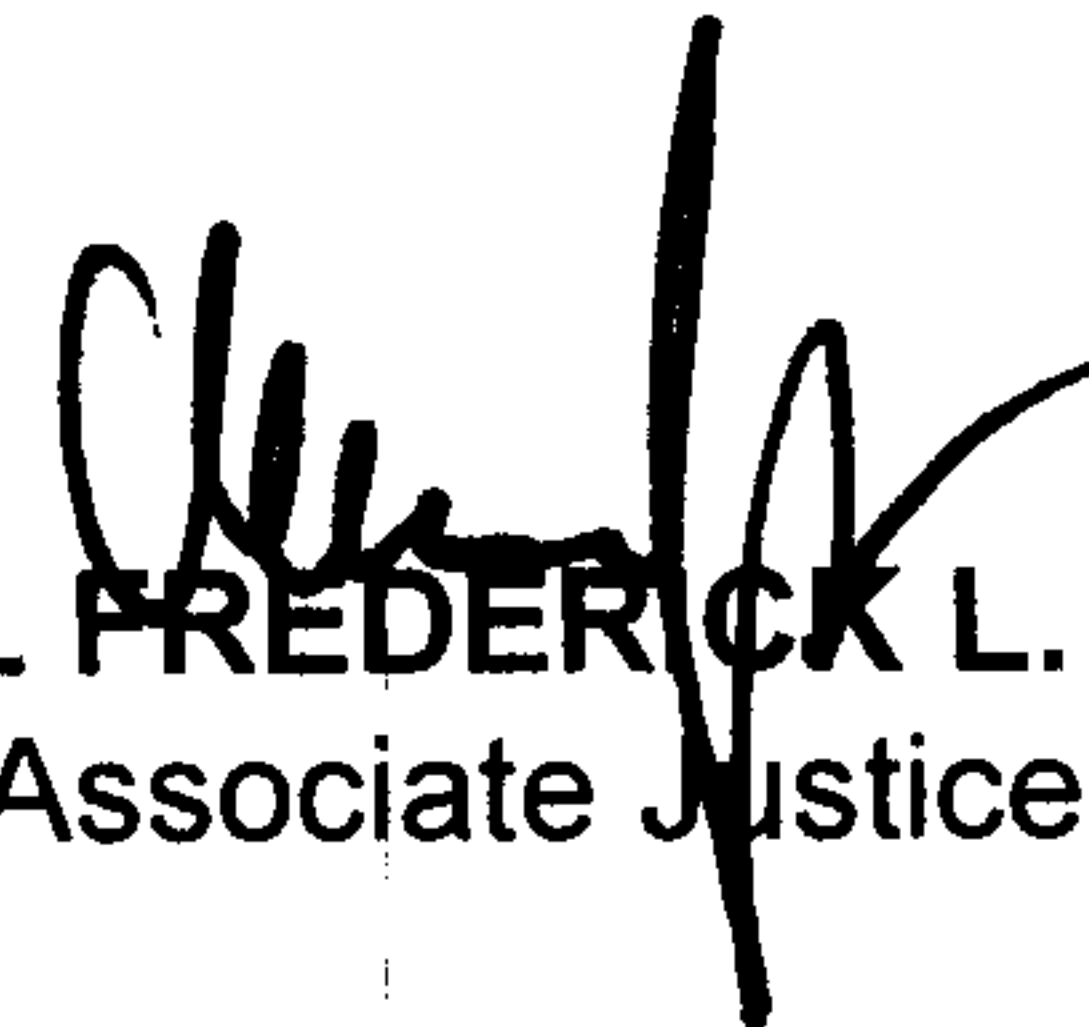
*** Per Administrative Order No. 1-C-2017 dated March 6, 2017





*****BERNELITO R. FERNANDEZ**
Associate Justice

I dissent:



MICHAEL FREDERICK L. MUSNGI
Associate Justice

DISSENTING OPINION

MUSNGI, J.:

Respectfully, I dissent.

A violation of Section 3(e) of Republic Act (R.A.) No. 3019 has the following essential elements:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and**
- (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.¹

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

The accused refused to sign the subject checks.

Any evidence is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand.² Since Municipal Treasurer Imelda G. Umoso never testified as a witness, her alleged statements that the accused refused to sign the subject checks shall be inadmissible for being hearsay. Nevertheless, even without those statements, it is beyond dispute that the accused refused to sign the checks.

Rule 129, Section 4 of the Revised Rules on Evidence provides: "An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."³

In the case at bar, the accused affirmed during cross-examination⁴ that in the Counter-Affidavit⁵ he filed before the Office of the Ombudsman, he made the following statements:

¹ Sison v. People of the Philippines, G.R. Nos. 170339 & 170398-403, 09 March 2010.

² Bayani v. People of the Philippines, G.R. No. 155619, 14 August 2007.

³ REVISED RULES ON EVIDENCE, Rule 129, Sec. 4.

⁴ TSN dated 16 June 2014.

⁵ Dated 08 January 2008.



5. I therefore insisted on my decision to disapprove the payment of the salaries of these casual employees...

6. It is not true, as charged in the complaint, that I challenged the authority of the Vice Mayor as head of the Sangguniang Bayan in extending their appointments. This is not the issue involved in my refusal to allow the payment of these non-complying employees, the reason being that they have not shown that they have rendered services for the period they claim to they are entitled to be paid.⁶

The foregoing declarations of the accused amount to an admission that he refused to sign the checks, as those were made by a party in the course of the proceedings in the same case. Moreover, he did not even allege that the admission was made through palpable mistake or that no such admission was made.

The Supreme Court has explained the consequences of a judicial admission: "A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy."⁷

Consequently, the accused should not be allowed to deny the fact that he refused to sign the checks.

The accused's refusal to sign the subject checks was not done with manifest partiality, evident bad faith or gross inexcusable negligence.

In *Albert v. Sandiganbayan*,⁸ the Supreme Court has discussed the scope of "manifest partiality," "evident bad faith," and "gross inexcusable negligence." Thus:

There is 'manifest partiality' when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. 'Evident bad faith' connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. 'Evident bad faith' contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. 'Gross inexcusable negligence' refers

⁶ TSN dated 16 June 2014, p. 13 (emphasis supplied).

⁷ *Alfelor v. Halasan*, G.R. No. 165987, 31 March 2006.

⁸ G.R. No. 164015, 26 February 2009.



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.⁹

Without a doubt, the complainants rendered services during the period subject of the present case, as substantiated by the Disbursement Voucher,¹⁰ General Fund Payroll,¹¹ Daily Time Record,¹² and logbooks.¹³ However, the real issue is **“whether or not the accused, at the time of the presentation of the checks for his signature, received any kind of proof that the complainants rendered services for the period covered by the same.”**

The answer is in the negative. There is no allegation or evidence whatsoever that the accused, at the time of presentation of the checks for his signature, had knowledge that the complainants rendered services for the Office of the Vice Mayor. The Disbursement Voucher,¹⁴ General Fund Payroll,¹⁵ Daily Time Record,¹⁶ and logbooks¹⁷ were not presented to the accused.

Any reference to the statements of the Municipal Treasurer is hearsay, as the latter did not testify in court. Assuming *arguendo* that the declarations of the Municipal Treasurer are admissible, they do not prove that the accused knew that the complainants rendered services during the subject period.

It is noteworthy that the complainants were employees of the Office of the Vice-Mayor. The accused, as Mayor, had no personal knowledge that the complainants had in fact rendered services to the municipality. When the accused received the checks for his signature, it was reasonable for him to ask for proof that the complainants rendered services during the subject period.

Hence, the refusal of the accused to sign the subject checks due to lack of knowledge that the complainants indeed rendered services to the municipality did not amount to manifest partiality, evident bad faith or gross inexcusable negligence.

⁹ *Id.*

¹⁰ Exhibit F.

¹¹ Exhibits G, G-1, G-2, and G-3.

¹² Exhibit J.

¹³ Exhibits K and L.

¹⁴ Exhibit F.

¹⁵ Exhibits G, G-1, G-2, and G-3.

¹⁶ Exhibit J.

¹⁷ Exhibits K and L.

Criminal Case No. SB -09-CRM-0006

People vs. Taruc

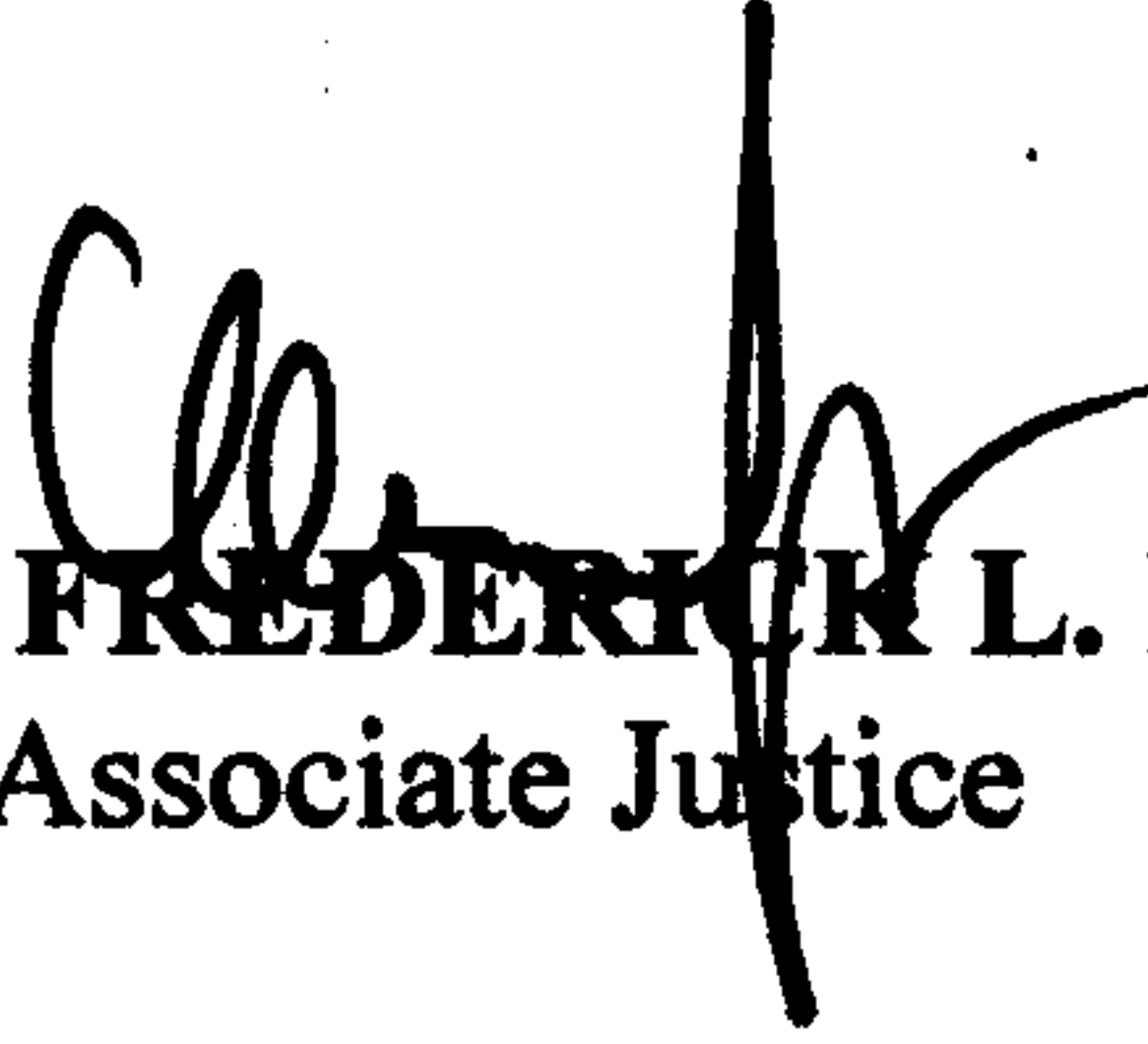
DISSENTING OPINION

Page 4 of 4

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Therefore, the prosecution failed to prove the existence of the third element for violation of Section 3(e) of R.A. No. 3019.

ACCORDINGLY, I vote to **GRANT** the *Motion for Reconsideration*.



MICHAEL FREDERICK L. MUSNGI
Associate Justice