



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-15-CRM-0128

For: Violation of Section 3 (e) of
R. A. No. 3019

-versus-

OSCAR ABUNDO y DOMINGUEZ,

Accused,

PRESENT:

FERNANDEZ, SJ, *J. Chairperson*
MIRANDA, &
VIVERO, JJ.

Promulgated:

FEB 13 2019 *[Signature]*

X-----X

RESOLUTION

MIRANDA, J.:

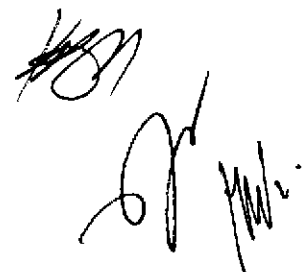
This resolves the: 1) Demurrer to Evidence (with leave of court) dated October 3, 2018 filed by accused Oscar D. Abundo (Abundo); and 2) Comment/Opposition dated October 18, 2018 filed by the Prosecution.

In his demurrer to evidence, Abundo claims that the Prosecution failed to adduce sufficient evidence to convict him of the crime of violation of Section 3 (e) of R.A. No. 3019. In particular, he alleges that: 1) the Prosecution failed to show any manifest partiality, evident bad faith, or gross

[Signatures]

inexcusable negligence in the payment of the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak; 2) the Prosecution failed to show any injury or damage suffered by or caused to the government or to any other party by the said payment; 2) the Prosecution failed to show that he gave unwarranted benefits to the heirs of Mohamad Bin Abdurasak; 3) the heirs of Mohamad Bin Abdurasak are entitled to the said payment; 4) the Department of Budget and Management (DBM) should be blamed for the discrepancy or defect in SARO No. BMB-A-01-04392; 5) he affixed his signature in the documents pertaining to the said payment in good faith and in the performance of his ministerial function; 6) his constitutional right to equal protection of the laws was violated when the other personalities involved in the said payment were not included in this case; 7) his constitutional right to a speedy disposition of the case was violated when it took the Office of the Ombudsman 7 years and 2 months to finish the fact-finding investigation and preliminary investigation of this case.

In its comment/opposition, the Prosecution, through the Office of the Special Prosecutor (OSP), maintains that it was able to adduce sufficient evidence to prove the elements of violation of Section 3 (e) of R.A. No. 3019. In particular, the Prosecution alleges that: 1) there is overwhelming evidence, both documentary and testimonial, to show that Abundo acted with manifest partiality and evident bad faith when he facilitated and caused the payment of the second installment to the heirs of Mohamad Bin Abdurasak in their right-of-way claim for the construction of General Santos City-Bukidnon road despite a defect in SARO No. BMB-A-01-04392; 2) the signatures of Abundo in the documents pertaining to the said payment were not made in good faith as he had full knowledge of the details of the project and the defect in SARO No. BMB-A-01-04392; 3) damage and injury were caused to government because public funds were disbursed for a project not strictly in accord with SARO No. BMB-A-01-04392; 4) the second installment was premature giving the heirs of Mohamad Bin Abdurasak unwarranted benefits; 5) the error committed by the DBM in the designation of the project in SARO No. BMB-A-01-04392 does not exonerate Abundo from criminal liability; 5) the non-inclusion of the other persons in the prosecution of this case rests within the sound discretion of the prosecutor and does not violate the constitutional right of the accused to the equal protection of the laws; 6) the issue on the alleged inordinate delay had already been resolved with finality by the Court in its Resolution dated November 29, 2017; and 7) the issue on violations of the right to the equal protection of the laws and the right of the accused to a speedy disposition of the case are not proper subjects of a demurrer to evidence.

A handwritten signature in black ink, appearing to be a stylized name, possibly 'Oscar D. Abundo', written in a cursive script.

FACTUAL ANTECEDENTS

Accused Abundo was charged with violation of Section 3 (e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, in an Information dated November 11, 2014, as follows:

On 5 January 2001, or thereabout, in General Santos City and within this Honorable Court's jurisdiction, accused OSCAR D. ABUNDO, a high-ranking public officer, being the Director III of the Legal Services, Department of Public Works and Highways, Manila, while in the performance of his official functions, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously facilitate and cause the payment of TWENTY-FOUR MILLION TWO HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED FIFTY-EIGHT PESOS and 34/100 centavos (Php24,299,458.34) for Lot 41 (TCT. No. T-89456) and Lot 43 (TCT No. T-89456), both located in Barrio Makar, General Santos City, in favor of private persons, heirs of MOHAMAD BIN ABDURASAK, despite a defect in the Department of Budget and Management's Special Allotment Release Order (SARO) No. A-01-04392, which referred to the Davao-Bukidnon Road instead of the General Santos-Koronadal Road, the subject of the payment. thereby giving unwarranted benefits to the said heirs of Mohamad Bin Abdurasak and causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.

On June 23, 2015, the Court issued a Hold Departure Order against Abundo.¹ On July 10, 2015, he appeared before this Court to post cash bail bond for his provisional liberty.² On August 17, 2015, the Court set the date of his arraignment.³ On October 13, 2015, Abundo filed a Verified Motion to Quash and Alter Date of Arraignment dated October 12, 2015 claiming that there is no probable cause to charge him with violation of Section 3 (e) of R.A. No. 3019.⁴ On January 22, 2016, the Court denied his verified motion to quash.⁵ On February 19, 2016, he sought a reconsideration of the order denying his verified motion to quash and alter date of arraignment.⁶ On June 3, 2016, the Court denied his verified motion for reconsideration.⁷ He was

¹ Minutes of the Proceedings dated June 23, 2015, Records, Vol. 1, p. 212.

² Order dated July 10, 2015, Records, Vol. 1, p. 266.

³ Records, Vol. 1, p. 271.

⁴ *Id.*, pp. 277-290.

⁵ Resolution dated January 22, 2016, Records, Vol. 1, pp. 333-336.

⁶ Verified Motion for Reconsideration dated February 18, 2016, Records, Vol. 1, pp. 346-359.

⁷ Resolution dated January 22, 2016, Records, Vol. 1, pp. 401-406.

arraigned on August 31, 2016 with the assistance of counsel *de parte*.⁸ He entered a plea of “not guilty” to the offense charged.⁹

On June 19, 2017, Abundo filed a Motion to Dismiss with Leave of Court dated June 16, 2017 claiming that his constitutional right for a speedy disposition of the case was violated.¹⁰

On October 9, 2017, the Court issued its pre-trial order.¹¹

In the joint stipulation of facts of the parties as contained in the Pre-trial Order dated October 9, 2017, Abundo, through counsel, admitted that: 1) he was Director III of Legal Services of the Department of Public Works and Highways (DPWH), Manila on January 5, 2001; 2) Chief of Staff Lorenzo Sulaik (Sulaik)¹² of then DPWH Secretary Simeon Datumanong (Datumanong) brought to the attention of Abundo that the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) was mistakenly released by the DBM to DPWH-Region XI for the construction of Davao-Bukidnon road; 3) in the Memorandum dated January 22, 2002, Abundo requested DPWH Chief Accountant Teresita De Vera (De Vera)¹³ to issue a certificate of availability of funds in the said amount as payment for the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak; 4) in the Memorandum dated January 17, 2002, Abundo requested Director Emily Tanquintic (Tanquintic)¹⁴ of the Comptrollership and Financial Management Services (CFMS) to retain the same amount for the same purpose; and 5) in Disbursement Voucher (DV) No. 101-02-02-02190 dated February 13, 2002, Abundo certified that the said payment was necessary, lawful, and was incurred under his direct supervision.¹⁵

The Prosecution, on the other hand, admitted that: 1) Abundo was not a signatory to the Deed of Sale dated August 9, 2001 entered into by the DPWH and the heirs of Mohamad Bin Abdurasak; 2) the source of fund for the General Santos City-Koronadal road was the re-enacted budget of 2001 under R.A. No. 8760 or the General Appropriations Act of 2000; 3) the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four

⁸ Order dated August 31, 2016, Record, Vol. 1, pp. 420-421.

⁹ *Id.*

¹⁰ Records, Vol.1, pp. 493-511.

¹¹ Pre-trial Order dated October 9, 2017, Records, Vol. 2, pp. 9-17.

¹² Chief of Staff Sulaik was listed as one of the witnesses of Abundo, per Pre-Trial Order dated October 9, 2017.

¹³ DPWH Chief Accountant De Vera was listed as one of the witnesses of Abundo, per Pre-Trial Order dated October 9, 2017.

¹⁴ The name and signature of Director Tanquintic of CFMS appeared in the Certificate of Availability of Fund (Exhibit “J”).

¹⁵ *Id.*, pp.9-10.

Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) was paid to and received by Jovina Tama Mohamad, attorney-in-fact of the heirs of Mohamad Bin Abdurasak; and 4) the Resolution dated October 24, 2014 of the Office of the Ombudsman stated that the heirs of Mohamad Bin Abdurasak are the owners of Lots 41 and 43.¹⁶

On November 29, 2017, the Court denied Abundo's motion to dismiss.¹⁷ Thereafter, trial ensued.

EVIDENCE OF THE PROSECUTION

The Prosecution presented nine (9) witnesses. Their testimonies are summarized as follows:

Ermelinda M. Rola (Rola)

Rola is State Auditor II of the Commission on Audit (COA). The parties stipulated that she issued a certified true copy of the original of the following documents in her custody:

- 1) Exhibit "A" – Audit Observation Memorandum (AOM) No. NGS-VIII-A-03-022 dated October 10, 2003;
- 2) Exhibit "B" – 1st Tracer dated December 10, 2003 of COA State Auditor V Adelina L. Ancajas (Ancajas) addressed to then DPWH Secretary Datumanong;
- 3) Exhibit "C" – Letter dated January 19, 2004 of COA State Auditor V Ancajas to the Director of Legal and Adjudication Office of COA;
- 4) Exhibit "K" – Journal Entry Voucher of check disbursement in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34);
- 5) Exhibit "L" – D.V. No. 101-02-02-02190 dated February 13, 2002; and
- 6) Exhibit "M" – Landbank of the Philippines Check No. 0000390790 dated February 20, 2002 in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) issued to Jovina Tama Mohamad Abdurasak.¹⁸

¹⁶ *Id.*

¹⁷ Resolution dated November 29, 2017, Records, Vol. 2, pp. 88-102.

¹⁸ Order dated February 15, 2018, Records, Vol. 2, p. 120.

Brenda P. Degala (Degala)

Degala testified that: 1) she is State Auditor IV of the COA and currently assigned as the Audit Team Leader of DPWH-1, Foreign Assisted Project Fund, Fund 102;¹⁹ 2) on January 9, 2003, she was part of the audit team that conducted the special audit in the right-of-way claim for the construction of the General Santos City-Koronadal road;²⁰ 3) after examining and validating the disbursement vouchers and supporting documents, their audit team found that the payment of the second installment was illegal because of the discrepancy between the project specified (Davao City-Bukidnon road) and the actual project (General Santos City-Koronadal road) as indicated in SARO No. BMB-A-01-04392;²¹ 4) the said discrepancy was raised by DPWH-Region XI Regional Director Juanito P. Abergas (Abergas) in his letter dated December 14, 2001 to then DPWH Secretary Datumanong thru Abundo as Director III of Legal Services;²² 5) DPWH did not request the correction of the said discrepancy by the DBM before paying the vendors of the property subject of the right-of-way claim;²³ 6) their audit team prepared AOM No. NGS-VIII-A-03-022 dated October 10, 2003 detailing their observations and recommendations on the audit of the said right-of-way claim;²⁴ 7) their audit team served a copy of the AOM twice upon the DPWH-Office of the Secretary but the latter did not comment on the same;²⁵ 8) their audit team served a copy of the AOM upon the Legal and Adjudication Board of COA for review and resolution;²⁶ and 9) the Legal and Adjudication Board of COA issued Notice of Disallowance No. 2004-046 dated March 18, 2004 on the payment of the said second installment to the heirs of Mohamad Bin Abdurasak.²⁷

On cross-examination, Degala admitted that: 1) although SARO No. BMB-A-01-04392 referred to a different project, the name of the payee "Jovita Tama Mohamad" was correctly indicated therein;²⁸ 2) payment of the second installment for the construction of General Santos City-Koronadal road was paid to the heirs of Mohamad Bin Abdurasak as evidenced by the Journal Entry Voucher and Landbank Check No. 0000390790;²⁹ and 3) the reason for the issuance by the COA Legal and Adjudication Board of the Notice of Disallowance No. 2004-046 dated March 18, 2004 was not the defect in SARO No. BMB-A-01-04392 but because of the legal encumbrances on the subject property in favor of the government.³⁰

¹⁹ Judicial Affidavit of Brenda P. Degala dated November 16, 2017, Records, Vol. 2, p. 40.

²⁰ *Id.*, pp. 41-42.

²¹ *Id.*, p. 44-45.

²² *Id.*, pp. 45-46.

²³ *Id.*, p. 46.

²⁴ *Id.*

²⁵ *Id.*, pp. 47-48.

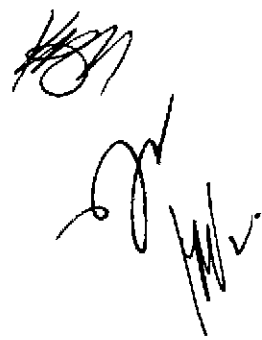
²⁶ *Id.*, p. 49.

²⁷ *Id.*, pp. 49-50.

²⁸ TSN dated March 14, 2018, p. 25.

²⁹ *Id.*, pp. 25-26.

³⁰ *Id.*, pp. 32-34.



On re-direct examination, Degala emphasized that the entry in the Journal Entry Voucher pertained to SARO No. BMB-A-01-04392 for the payment of the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak;³¹

However, on re-cross-examination, Degala clarified that the project affected by the entry in the Journal Entry Voucher pertained to the right-of-way claim in the construction of the General Santos City-Koronadal road, and did not mention the Davao City-Bukidnon road.³²

To additional questions propounded by the Court, Degala answered that: 1) DBM did not correct the alleged defect in SARO No. BMB-A-01-04392;³³ and 2) the only defect that the audit team found in their post-audit investigation was the discrepancy between the project specified in the allotment received (Davao City-Bukidnon road) and the actual project affected by the right-of-way claim (General Santos City-Koronadal road) in SARO No. BMB-A-01-04392.³⁴

While Degala was on the stand, the Prosecution and Defense agreed to stipulate on the due execution and authenticity of the following documents being common exhibits of both parties:

- 1) Exhibit "D" – Deed of Absolute Sale dated August 9, 2001 between the DPWH, represented by District Engineer Tito M. Valdez (Valdez), and the heirs of Mohamad Bin Abdurasak, represented by their attorney-in-fact, Jovina Tama Mohamad;
- 2) Exhibits "F" & "F1" – SARO BMB-A-01-04392 issued by the DBM on October 26, 2001, and its Annex "K" as the List of Right-of-Way Claims for Region XI;
- 3) Exhibit "I" – Allotment and Obligation Slip (ALOBS) No. 02-02-011 (101) RBH-E dated February 12, 2002;
- 4) Exhibit "J" – Certificate of Availability of Funds Series No. 101-02-02-018 dated February 12, 2002;
- 5) Exhibit "M" – Landbank of the Philippines Check No. 0000390790 dated February 20, 2002 in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) issued to Jovina Tama Mohamad Abdurasak;
- 6) Exhibit "L" – D.V. No. 101-02-02-02190 dated February 13, 2002;

³¹ TSN dated April 10, 2018, pp. 6-7.

³² *Id.*, pp. 9-10.

³³ *Id.*, p. 21.

³⁴ *Id.*, p. 26.



- 7) Exhibit "P" – handwritten letter dated December 21, 2001 of Chief of Staff Sulaik to Abundo;
- 8) Exhibit "S" – Memorandum dated January 22, 2002 issued by Abundo to DPWH Chief Accountant De Vera; and
- 9) Exhibit "K" – Journal Entry Voucher of check disbursement in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34).³⁵

Joan A. Macalangcom (Macalangcom)³⁶

The parties stipulated that: 1) she is Administrative Officer III/Records Officer of the DPWH-South Cotabato Second District Engineering Office; 2) she is the custodian of all the records in their office; 3) in her official capacity, she issued a certified true copy of the photocopies of the Memorandum dated January 24, 2001³⁷ and Memorandum dated March 8, 2001³⁸; and 4) she can no longer find a copy of the Memorandum dated January 3, 2001³⁹ in the records of their office despite diligent search.⁴⁰

To additional questions propounded by the Court, Macalangcom answered that: 1) she can only authenticate Memorandum dated January 24, 2001 and Memorandum dated March 8, 2001 as certified true copies of its photocopies, not of its originals;⁴¹ and 2) all documents pertaining to the General Santos Engineering District in her possession are mere photocopies.⁴²

Marichu A. Palafox (Palafox)⁴³

Palafox testified that: 1) she is Director of the Finance Service of the DPWH;⁴⁴ 2) as Director of the Finance Service, she is the over-all custodian of all the records in their office, and the person authorized to certify documents in her custody;⁴⁵ and 3) in her official capacity, she issued the Certification dated April 17, 2018⁴⁶ stating that the original copies of SAA No. 2176⁴⁷ and SAA No. 2266⁴⁸ cannot be found in the DPWH Central Office as these were already forwarded to the DPWH-Regional Office XI in Davao

³⁵ *Id.*, pp. 14-17.

³⁶ Exhibit "DD" (Subpoena *Duces Tecum* and *Ad Testificandum* dated April 12, 2018).

³⁷ Exhibit "U".

³⁸ Exhibit "V".

³⁹ Exhibit "T".

⁴⁰ TSN dated April 26, 2018, pp 5-7.

⁴¹ *Id.*, pp. 16-17.

⁴² *Id.* pp. 21-23.

⁴³ Exhibit "BB" (Subpoena *Duces Tecum* and *Ad Testificandum* dated April 10, 2018).

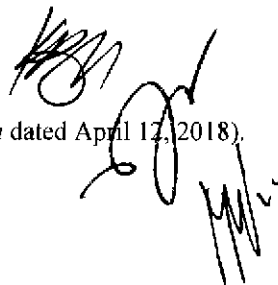
⁴⁴ TSN dated April 23, 2018, Records, Vol. 2, p. 165.

⁴⁵ *Id.*, pp. 165-166.

⁴⁶ Exhibit "CC".

⁴⁷ Exhibit "G".

⁴⁸ Exhibit "H".



City, and that the Memorandum dated January 17, 2002⁴⁹ is no longer available due to lapse of time.⁵⁰

On cross-examination, Palafox explained that the original copies of Sub-Allotment Advice (SAA) No. 2176⁵¹ and SAA No. 2266⁵² are not found in their records because the said originals are forwarded to the Regional Office following office standard operating procedure.⁵³

Rolando Boñe (Boñe)

The parties stipulated that: 1) he is Chief Administrative Officer of the Records Division of the DPWH;⁵⁴ and 2) in his official capacity, he issued the Certification dated April 16, 2018⁵⁵ stating that their office has no available record, original or otherwise, of the letter dated December 14, 2001 of Regional Director Abergas to then DPWH Secretary Datumanong⁵⁶ and Aide Memoire dated January 16, 2002 of Abundo to DPWH Secretary Datumanong⁵⁷ despite diligent search.⁵⁸

Junelyn A. Pagunsan (Pagunsan)

Pagunsan is an Associate Graft Investigation Officer (AGIO) III in the Office of the Ombudsman. On direct examination, she testified that: 1) in July 2006, she held the position of AGIO I in the Office of the Ombudsman;⁵⁹ 2) as AGIO I, she was tasked to investigate criminal and administrative complaints filed before their office;⁶⁰ 3) in her official capacity, she conducted an investigation on the alleged irregularities in the right-of-way claim for the construction of the General Santos City-Koronadal road;⁶¹ 4) in her investigation, she found that Abundo facilitated the release of payment of the second installment to the claimants in the said right-of-way claim despite a discrepancy between the project specified in SARO No. BMB-A-01-04392 and the location of the actual project;⁶² and 5) she prepared the Investigation Report dated April 14, 2008⁶³ and Complaint Affidavit dated April 15, 2008⁶⁴ for the filing of a complaint before the Preliminary Investigation,

⁴⁹ Exhibit "R".

⁵⁰ TSN dated April 23, 2018, pp. 165-166, *Supra*.

⁵¹ Exhibit "G".

⁵² Exhibit "H".

⁵³ TSN dated April 30, 2018, Records, Vol. 2, pp. 8-9.

⁵⁴ Judicial Affidavit of Rolando Boñe dated April 18, 2018, Records, Vol. 2, p. 152.

⁵⁵ Exhibit "AA".

⁵⁶ Exhibit "O".

⁵⁷ Exhibit "Q".

⁵⁸ *Id.*, p. 154.

⁵⁹ Judicial Affidavit of Junelyn A. Pagunsan dated May 4, 2018, Records, Vol. 2, p. 189.

⁶⁰ *Id.*, pp. 188-189.

⁶¹ *Id.*, pp. 189-190.

⁶² *Id.*, p. 193.

⁶³ Exhibit "FF".

⁶⁴ Exhibit "W".

Administrative Adjudication and Monitoring Office of the Office of the Ombudsman.⁶⁵

Pagunsan identified the following documents as the same documents that she examined in the course of her investigation:

- 1) Exhibit "A" – AOM No. NGS-VIII-A-03-022 dated October 10, 2003;
- 2) Exhibit "B" – 1st Tracer dated December 10, 2003 of COA State Auditor V Ancajas addressed to the DPWH Secretary;
- 3) Exhibit "C" – Letter dated January 19, 2004 of COA State Auditor V Ancajas to the Director of Legal and Adjudication Office of COA;
- 4) Exhibit "L" – DV No. 101-02-02-02190 dated February 13, 2002;
- 5) Exhibit "D" – Deed of Absolute Sale dated August 9, 2001 between the DPWH, represented by District Engineer Valdez, and the heirs of Mohamad Bin Abdurasak, represented by their attorney-in-fact, Jovina Tama Mohamad;
- 6) Exhibits "E" & "E1" – SARO No. BMB-A-00-0533 issued by the DBM on June 16, 2000, and its Annex "A" as the List of Road Right-of-Way Claims under CY 2000, Region XI;
- 7) Exhibits "F & F1" – SARO BMB-A-01-04392 issued by the DBM on October 26, 2001, and its Annex "K" as the List of Right-of-Way Claims for Region XI;
- 8) Exhibit "G" – SAA No. 2176 dated November 22, 2001;
- 9) Exhibit "H" – SAA No. 2266 dated February 2, 2002;
- 10) Exhibit "I" – ALOBS No. 02-02-011 (101) RBH-E dated February 12, 2002;
- 11) Exhibit "J" – Certificate of Availability of Funds Series No. 101-02-02-018 dated February 12, 2002;
- 12) Exhibit "K" – Journal Entry Voucher of check disbursement in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34).⁶⁶
- 13) Exhibit "L" – DV No. 101-02-02-02190 dated February 13, 2002;
- 14) Exhibit "M" – Landbank of the Philippines Check No. 0000390790 dated February 20, 2002 in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) in the name of Jovina Tama Mohamad Abdurasak;
- 15) Exhibit "O" – letter dated December 14, 2001 of Regional Director Abergas to then DPWH Secretary Datumanong;

⁶⁵ *Id.*, pp. 194-198.

⁶⁶ *Id.*, pp. 14-17.



- 16) Exhibit "P" – handwritten letter dated December 21, 2001 of Chief of Staff Sulaik to Abundo;
- 17) Exhibit "Q" – Aide Memoire dated January 16, 2002 of Abundo to Secretary Datumanong;
- 18) Exhibit "R" – Memorandum dated January 17, 2002 of Abundo to Director Tanquintic of CFMS; and
- 19) Exhibit "S" – Memorandum dated January 22, 2002 of Abundo to DPWH Chief Accountant De Vera;

On cross-examination, Pagunsan emphasized that she only investigated the payment of the second installment in the right-of-way claim for the construction of the General Santos City-Koronadal road, and not the Davao City-Bukidnon road or the claimant in the Davao City-Bukidnon road.⁶⁷

Rachel M. Abendanio (Abendanio)

Abendanio testified that: 1) she is Director II of the Records Management Services, General Services Office, Administration Sector of the COA;⁶⁸ 2) she is in-charge of the safekeeping of all records and documents in their office and the person authorized to certify documents in her custody;⁶⁹ and 3) in her official capacity, she issued a certified true copy of the photocopies of SAA No. 2176,⁷⁰ SAA No. 2266,⁷¹ letter dated December 14, 2001 of Regional Director Abergas to then DPWH Secretary Datumanong,⁷² Aide Memoire dated January 16, 2002 of Abundo to Secretary Datumanong⁷³ and Memorandum dated January 17, 2002⁷⁴ from their file.

Teofanes D. Bernardino (Bernardino)

Bernardino testified that: 1) she is Chief of the Records Management Section of DPWH-Region XI;⁷⁵ 2) she is in-charge of the safekeeping of all records and documents in their office and the person authorized to certify documents in her custody;⁷⁶ 3) in her official capacity, she issued a certified true copy of the duplicate originals of the letter dated December 14, 2001 of Regional Director Abergas to then DPWH Secretary Datumanong⁷⁷ and Memorandum dated January 24, 2001⁷⁸; and 4) she issued a certified true copy of the photocopy of the Memorandum dated January 3, 2001⁷⁹ and the



⁶⁷ *Id.*, pp. 23-24.

⁶⁸ Judicial Affidavit of Rachel M. Abendanio dated May 16, 2018, Records, Vol. 2, p. 268.

⁶⁹ *Id.*, p. 269.

⁷⁰ Exhibit "G".

⁷¹ Exhibit "H".

⁷² Exhibit "O".

⁷³ Exhibit "Q".

⁷⁴ Exhibit "R".

⁷⁵ Judicial Affidavit of Teofanes D. Bernardino dated June 5, 2018, Records, Vol. 2, pp. 285-286.

⁷⁶ *Id.*, p. 286.

⁷⁷ Exhibit "O".

⁷⁸ Exhibit "U".

⁷⁹ Exhibit "T".

Certification dated June 4, 2018⁸⁰ stating that she can no longer find the original copy of the same.⁸¹

Melinda M. Cabe (Cabe)

The parties stipulated that: 1) she is Chief of the Finance Division of the DPWH-Region XI;⁸² 2) she is the custodian of all the financial records in their office;⁸³ and 3) she issued a certified true copy of the original of SAA No. 2176,⁸⁴ SAA No. 2266,⁸⁵ from their file.⁸⁶

Thereafter, the Prosecution offered the following documentary exhibits⁸⁷ which were admitted by the Court.⁸⁸

Exhibit	Description
A	AOM No. NGS-VIII-A-03-022 dated October 10, 2003
A-1	Sub-heading "Allotment released specified different project" and item nos. 9 to 12 appearing on page 3
B	1 st Tracer dated December 10, 2003 of COA State Auditor V Ancajas to then DPWH Secretary Datumanong
C	letter dated January 19, 2004 of COA State Auditor V Ancajas to the Director of Legal and Adjudication Office of COA
D	Deed of Absolute Sale dated August 9, 2001 between the DPWH, represented by District Engineer Valdez and the heirs of Mohamad Bin Abdurasak, represented by their attorney-in-fact, Jovina Tama Mohamad
E	SARO No. BMB-A-00-0533 issued by the DBM on June 16, 2000
E-1	Annex "A" as the List of Road Right-of-Way Claims under CY 2000, Region XI
F	SARO BMB-A-01-04392 issued by the DBM on October 26, 2001
F-1	Annex "K" as the List of Right-of-Way Claims for Region XI
F-1-a	Item No. 4 or the right-of-way claim of Mohamad Bin Abdurasak
F-2	Typewritten note "The allotments herein authorized shall be used solely for the purpose indicated and disbursements therefrom shall be made in accordance with existing budgeting, accounting, and auditing rules and regulations".
G	SAA No. 2176 dated November 22, 2001

⁸⁰ Exhibit "JJ".

⁸¹ Judicial Affidavit of Teofanes D. Bernardino dated June 5, 2018, Records, Vol. 2, pp. 289-290, *Supra*.

⁸² Judicial Affidavit of Melinda M. Cabe dated June 5, 2018, Records, Vol. 2, pp. 300-301.

⁸³ *Id.* p. 301.

⁸⁴ Exhibit "G".

⁸⁵ Exhibit "H".

⁸⁶ *Id.* pp. 301-304.

⁸⁷ Plaintiff's Formal Offer of Evidence with Motion for Permanent Markings of Provisionally Marked Exhibits dated June 29, 2018, Records, Vol. 2, pp. 320-422.

⁸⁸ Minutes of the Proceedings dated August 10, 2018, Records, Vol. 2, pp.446-447.

H	SAA No. 2266 dated February 2, 2002
H-1	Stamped mark "certified xerox copy" with signature of Cabe
I	ALOBS No. 02-02-011 (101) RBH-E dated February 12, 2002
J	Certificate of Availability of Funds Series No. 101-02-02-018 dated February 12, 2002
K	Journal Entry Voucher of check disbursement in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34)
L	DV No. 101-02-02-02190 dated February 13, 2002
M	Landbank of the Philippines Check No. 0000390790 dated February 20, 2002 in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) in the name of Jovina Tama Mohamad
O	letter dated December 14, 2001 of Regional Director Abergas to then-DPWH Secretary Datumanong thru Abundo as Director III of the Legal Services
O-1	Stamped mark "certified copy on file, COA" with signature of Abendanio
P	handwritten letter dated December 21, 2001 of Chief of Staff Sulaik to Abundo
Q	Aide Memoire dated January 16, 2002 of Abundo to Secretary Datumanong
Q-1	Stamped mark "certified copy on file, COA" with signature of Abendanio
R	Memorandum dated January 17, 2002 of Abundo to Director Tanquintic of the CFMS
R-1	Stamped mark "certified copy on file, COA" with signature of Abendanio
S	Memorandum dated January 22, 2002 of Abundo to DPWH Chief Accountant De Vera
T	Memorandum dated January 3, 2001 issued by Abundo to Regional Director Abergas
U	Memorandum dated January 24, 2001 issued by Regional Director Abergas to District Engineer Valdez
U-1	Stamped mark "DPWH South Cotabato II DEO Certified True Copy" with signature of Macalangcom
V	Memorandum dated March 8, 2001 issued by Abundo to District Engineer Valdez
V-1	Stamped mark "DPWH South Cotabato II DEO Certified True Copy" with signature of Macalangcom
W	Complaint dated April 15, 2008 by the Field Investigation Office (FIO), Office of the Ombudsman, filed against Abundo

Handwritten signatures and initials, including what appears to be 'AB' and 'ML'.

W-1	Signature of Atty. Catherine G. Pascua
X	Service Record of Abundo
Y	Appointment Letter dated February 1, 1999 of Abundo
Z	Oath of Office dated February 24, 1999 of Abundo
AA	Certification dated April 16, 2018 issued by Boñe
AA-1	Signature of Boñe
BB	Subpoena <i>Duces Tecum</i> and <i>Ad Testificandum</i> dated April 10, 2018 issued by the Office of Special Prosecutor (OSP) to Palafox
CC	Certification dated April 17, 2018 issued by Palafox
CC-1	Signature of Palafox
DD	Subpoena <i>Duces Tecum</i> and <i>Ad Testificandum</i> dated April 12, 2018 issued by the OSP to Macalangcom
EE	Certification dated April 24, 2018 issued by Macalangcom
EE-1	Signature of Macalangcom
FF	Investigation Report dated April 14, 2008 of AGIO III Pagunsan
FF-1	Signature of AGIO III Pagunsan
FF-2	Signature of Atty. Liwayway Sumagaysay-Rondina
FF-3	Signature of Atty. Joselito P. Fangon
FF-4	Signature of Atty. Mark E. Jalandoni
GG ⁸⁹	Memorandum dated January 24, 2001 issued by Regional Director Abergas to District Engineer Valdez
GG-1	Stamped mark "certified machine copy from duplicate copy on file" with signature of Bernardino
HH ⁹⁰	Memorandum dated January 3, 2001 issued by Abundo to Regional Director Abergas
HH-1	Stamped mark "certified machine copy from machine copy on file" with signature of Bernardino
II ⁹¹	letter dated December 14, 2001 of Regional Director Abergas to then DPWH Secretary Datumanong thru Abundo as Director III of the Legal Services
	Stamped mark "certified machine copy from duplicate copy on file" with signature of Bernardino
JJ	Certification dated June 4, 2018 issued by Bernardino
JJ-1	Signature of Bernardino

⁸⁹ Same as Exhibit "U" except that it is a certified machine copy of the duplicate original.

⁹⁰ Same as Exhibit "T" except that it is a certified machine copy of the machine copy on file.

⁹¹ Same as Exhibit "O" except that it is a certified machine copy of the duplicate original.

DISCUSSION AND RULING

The Prosecution adduced sufficient evidence to prove the elements of violation of Section 3 (e) of R.A. No. 3019.

In *People v. Jose C. Go, et al.*,⁹² the Supreme Court defined a demurrer to evidence as an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.⁹³

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances.⁹⁴ To be considered sufficient therefore, the evidence must prove: 1) the commission of the crime, and 2) the precise degree of participation therein by the accused.⁹⁵ Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt.⁹⁶

The Court **DENIES** the demurrer to evidence.

Abundo was charged with violation of section 3 (e) of R.A. No. 3019, which provides:

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

x x x

(e) causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality,

⁹² G.R. No. 191015, August 6, 2014.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*; Citations omitted.



evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

The elements of this crime are:

1. accused must be a public officer discharging administrative, judicial, or official functions;
2. accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
3. accused caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.⁹⁷

Abundo was a public officer discharging administrative and official functions when the payment of the second installment was made to the heirs of Mohamad Bin Abdurasak.

As borne by the records of the case, and as specifically stipulated by the parties per the Pre-Trial Order dated October 9, 2017, Abundo, being Director III of Legal Services of the DPWH at the time of the commission of the alleged offense, was a public officer within the meaning of the term as defined above.

The Prosecution adduced sufficient evidence to prove that Abundo acted with "manifest partiality" and "evident bad faith" in facilitating and causing the payment of the second installment to the heirs of Mohamad Bin Abdurasak.

A violation of Section 3 (e) of R.A. No. 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith, or gross inexcusable negligence. It bears stressing that the law does not punish partiality, bad faith or negligence *per se*. These should meet the gravity required by law. This element is present when it is shown that bad faith or partiality is evident or manifest, or, that the negligent act or omission is gross and inexcusable.⁹⁸ Proof

⁹⁷ *Uriarte v. People*, G.R. No. 169251, December 20, 2006, citing *Artis v. People*, G.R. No. 161877, March 23, 2006, *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 26, 2004, and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989.

⁹⁸ *Jaca v. People*, G.R. Nos. 166967, 166974 and 167167, January 28, 2013.

of any of these three in connection with the prohibited acts mentioned in the said provision is therefore enough to convict the accused.⁹⁹

In this case, the Information against Abundo states in part—

x x x with **manifest partiality** and **evident bad faith**, did then and there willfully, unlawfully and feloniously **facilitate and cause the payment of TWENTY-FOUR MILLION TWO HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED FIFTY-EIGHT PESOS and 34/100 pesos (Php24,299,458.34)** for Lot 41 (TCT. No. T-89456) and Lot 43 (TCT No. T-89456), both located in Barrio Makar, General Santos City, **in favor of private persons, heirs of MOHAMAD BIN ABDURASAK, despite a defect in the Department of Budget and Management's Special Allotment Release Order (SARO) No. A-01-04392**, which referred to the Davao-Bukidnon Road instead of the General Santos-Koronadal Road, **the subject of the payment, thereby giving unwarranted benefits to the said heirs of Mohamad Bin Abdurasak and causing undue injury to the government in the aforesaid amount.**¹⁰⁰

The Prosecution claims that manifest partiality and evident bad faith were present when Abundo facilitated and caused the payment of the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak despite knowledge of the discrepancy in SARO No. BMB-A-01-04392 between the project specified (Davao-Bukidnon road) and the actual project (General Santos City-Koronadal road).

In *Fonacier v. Sandiganbayan*¹⁰¹, the Supreme Court described “partiality” as synonymous to “bias”. Partiality excites a disposition to see and report matters as they are wished for rather than as they are.¹⁰² It becomes manifest when partiality is attended by a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.¹⁰³

“Bad faith”, on the other hand, imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will.¹⁰⁴ It partakes of the nature of fraud, and does not simply connote bad judgment or negligence.¹⁰⁵ It becomes evident when there is a manifest or deliberate intent to do wrong or cause damage on the part of the accused.¹⁰⁶

⁹⁹ *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994.

¹⁰⁰ Emphasis supplied.

¹⁰¹ G.R. No. L-50961, December 5, 1994.

¹⁰² *Id.*

¹⁰³ *Albert v. Sandiganbayan*, G.R. 164015, February 26, 2009.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Marcelo v. Philippines*, G.R. No. 69983, May 14, 1990.

Applying the foregoing, it is clear that that the evidence adduced by the Prosecution is sufficient to prove that Abundo acted with manifest partiality and evident bad faith in facilitating and causing the payment of the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak despite knowledge of the defect in SARO No. BMB-A-01-04392.

The evidence of the Prosecution sufficiently showed that Abundo favored the heirs of Mohamad Bin Abdurasak over the other right-of-way claimants and/or creditors of the Government.

The heirs of Mohamad Bin Abdurasak were not the only claimants in the right-of-way acquisitions of the DPWH in the entire country. As a matter of fact, the list of the right-of-way claims for Region XI¹⁰⁷ (attachment to SARO No. BMB-A-01-04392) enumerated three (3) other right-of-way claimants in their region alone. Like the heirs of Mohamad Bin Abdurasak, there are always other right-of-way claimants and/or creditors of the Government from the various regions in the country seeking the immediate and complete payment of government obligations. Simply put, there were other persons similarly situated with the heirs of Mohamad Bin Abdurasak. And yet, Abundo prioritized payment to them despite full knowledge of the defect in SARO No. BMB-A-01-04392.

The evidence of the Prosecution sufficiently showed that Abundo was motivated by evident bad faith in facilitating and causing the payment of the second installment to the heirs of Mohamad Bin Abdurasak.

The documents presented, offered by, and admitted in evidence by the Prosecution showed that Abundo knew of and participated in the right-of-way acquisition by the government of the property used for the construction of General Santos City-Koronadal road from the execution of the deed of sale until its payment. It was Abundo who requested the preparation of its deed of sale,¹⁰⁸ prepared and submitted the initial draft of the said deed of sale,¹⁰⁹ proposed the payment scheme on the said sale,¹¹⁰ requested the payment of the second installment to the heirs of Mohamad Bin Abdurasak¹¹¹, and certified the necessity and lawfulness of the said payment.¹¹²

¹⁰⁷ Exhibit "F-I".

¹⁰⁸ Exhibits "T", "HH", "U" "GG"

¹⁰⁹ Exhibit "V".

¹¹⁰ Exhibit "Q".

¹¹¹ Exhibits "I" and "J".

¹¹² Exhibit "L".

The Prosecution presented copies of SAA No. 2176¹¹³ and SARO No. BMB-A-01-04392¹¹⁴ showing the patent error in the project specified (Davao-Bukidnon road) and the actual project (General Santos City-Koronadal road) subject of the claim of the heirs of Mohamad Bin Abdurasak. These documents indicate that DBM authorized the release of the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) as partial payment for the right-of-way acquisition in the Davao-Bukidnon road, and not for the General Santos City-Koronadal road. A typewritten note in SARO No. BMB-A-01-04392 even stated that *"The allotments herein authorized shall be used solely for the purpose indicated and disbursements therefrom shall be made in accordance with existing budgeting, accounting, and auditing rules and regulations"*.

In the letter dated December 14, 2001¹¹⁵, Regional Director Abergas brought to the attention of Abundo, as Director III of DPWH Legal Services, the defect in SAA No. 2176 and SARO No. BMB-A-01-04392. In the same letter, Regional Director Abergas returned the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34). In his handwritten letter dated December 21, 2001, Chief of Staff Sulaik reiterated to Abundo the mistake in the designation of the project supposedly covered by SARO No. BMB-A-01-04392 in his handwritten letter dated December 21, 2001.

Notwithstanding his knowledge of the error in SARO No. BMB-A-01-04392, the evidence of the Prosecution did not show that Abundo returned or even attempted to return the said SARO to the DBM for correction.

Abundo issued Memorandum dated January 17, 2002¹¹⁶ to Director Tanquintic of CFMS to retain the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) and Memorandum dated January 22, 2002¹¹⁷ to DPWH Chief Accountant De Vera to issue a certificate of availability of funds in the same amount for the payment of the second installment to the heirs of Mohamad Bin Abdurasak. Nevertheless, Abundo cannot be faulted for doing so because the only mistake in SARO No. BMB-A-01-04392 was the designation of the project, and not the amount of the payment and name of the payee. Also, the issuance of a certificate of availability of funds and the retention of money in the said amount were not made by his office. Whether or not he issued memoranda to this effect, the issuance of said certificate and the retention of money for the project were within the discretion of DPWH Chief Accountant De Vera and Director Tanquintic of CFMS.

¹¹³ Exhibit "G".

¹¹⁴ Exhibit "F".

¹¹⁵ Exhibit "O".

¹¹⁶ Exhibit "R".

¹¹⁷ Exhibit "S".

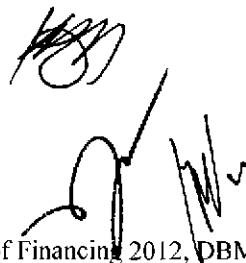


Abundo cannot, however, escape liability because he requested that the partial payment be made in the right-of-way claim of the heirs of Mohamad Bin Abdurasak in ALOBS No. 02-02-011 (101) RBH-E dated February 12, 2002,¹¹⁸ and thereafter, certified that the said payment was lawful, necessary, and incurred under his direct supervision in DV No. 101-02-02-02190 dated February 13, 2002.¹¹⁹ It is clear that said payment is not lawful for being violative of SARO No. BMB-A-01-04392. Abundo therefore committed these acts despite full knowledge that the said payment was authorized for a different project. These acts constitute evident bad faith on his part.

Section 4 (1) of the Presidential Decree 114 expressly mandates that “no money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific authority.” SARO, on the other hand, is defined as “a specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated.”¹²⁰

As Director III of DPWH Legal Services, Abundo was expected to know and follow the strict provisions of the law and the specific authority given to their agency for the proper disbursement of public funds. In this case, the provisions of the General Appropriations Act of 2000¹²¹ and SARO No. BMB-A-01-04392 should have been followed by the DPWH in paying the right-of-way claim of the heirs of Mohamad Bin Abdurasak. As earlier stated, there was no evidence that Abundo returned or requested the return of SARO No. BMB-A-01-04392 to the DBM for appropriate correction in the designation of the project. In clear violation of the said SARO, records sufficiently showed that Abundo knowingly and intentionally requested the payment of the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak and even certified that the payment was lawful, necessary, and incurred under his direct supervision. His claim of good faith must necessarily fail.

The Court sees no reason to discuss the presence of the element of gross inexcusable negligence as the same was not even alleged in the information and proved by the evidence presented by the Prosecution. In criminal prosecutions, it is fundamental that every element constituting the offense must be specifically alleged in the information and thereafter proved by proof beyond reasonable doubt before an accused can be convicted of the crime charged.¹²²



¹¹⁸ Exhibit “I”.

¹¹⁹ Exhibit “M”.

¹²⁰ Glossary of Terms, Budget of Expenditures and Sources of Financing 2012, DBM.

¹²¹ R.A. 8760, as re-enacted.

¹²² *Quimbel v. People*, G.R. No. 214497, April 18, 2017.

The Prosecution adduced sufficient evidence to prove that the government suffered undue injury in the amount equivalent to the second installment paid to the heirs of Mohamad Bin Abdurasak

The Supreme Court held in *Cabrera v. Sandiganbayan*¹²³ that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference.

In *Bautista v. Sandiganbayan*, the Supreme Court explained:¹²⁴

Indeed, Sec. 3, par. (e). RA 3019, as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the government, *or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.* The use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3, par. (e), or as aptly held in *Santiago*, as two (2) different modes of committing the offense. This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under *either* mode or under *both*.¹²⁵

Undue injury in the commission of the crime requires proof of actual injury and damage. In *Llorente v. Sandiganbayan*,¹²⁶ the Supreme Court clarified:

Unlike in actions for torts, *undue injury* in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of a crime. In fact, the causing of undue injury or the giving of any unwarranted advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

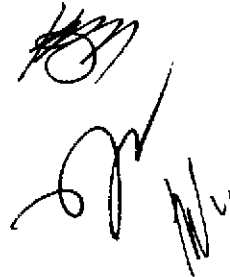
Undue injury is consistently interpreted as actual damage. *Undue* has been defined as more than necessary, not proper, or illegal; and *injury* as any wrong or damage done to another, either in his person, rights, reputation or property, or that is, the invasion of any legally protected interest of

¹²³ G.R. Nos. 162314-17, October 25, 2004.

¹²⁴ G.R. No. 136082, May 12, 2000.

¹²⁵ Italics supplied.

¹²⁶ G.R. No. 122166, March 11, 1998.



another. Actual damage, in the context of these definitions, is akin to that in civil law.¹²⁷

Therefore, undue injury caused to any party, including the government, under Section 3(e) of Republic Act No. 3019, could only mean actual injury or damage which must be established by evidence.¹²⁸

The evidence of the Prosecution sufficiently showed that undue injury in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight Pesos and 34/100 Centavos (Php24,299,458.34) was caused to the government by Abundo's act of requesting that the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak be paid and in certifying that the said payment was lawful, necessary, and incurred under his direct supervision as evidenced by ALOBS No. 02-02-011 and DV No. 101-02-02-02190, respectively. Landbank of the Philippines Check No. 0000390790 in the amount of Twenty-Four Million Two Hundred Ninety-Nine Thousand Four Hundred Fifty-Eight and 34/100 (Php24,299,458.34) was paid by the Government to Jovina Tama Mohamad, attorney-in-fact of the heirs of Mohamad Bin Abdurasak. Said payment was thereafter recorded in the Journal Entry Voucher. The pertinent portion of the testimony of Degala is hereunder quoted:

Q: Now, when you say that the name of the payee was correctly stated, you are referring to the payee Jovina Tama Mohamad, is it not Madam witness?

A: Yes, sir.

Q: And this Jovina Tama Mohamad is the attorney-in-fact of the vendors of that property identified as Lot Nos. 41 and 43 affected by the General Santos-Koronadal road, is it not?

A: Yes, sir.

Q: Okay. In other words, **the second partial payment went to the owners of that property which was subject of the Deed of Absolute Sale previously marked in evidence as Exhibit 1 for the Defense and Exhibit D for the Prosecution, is it not?**

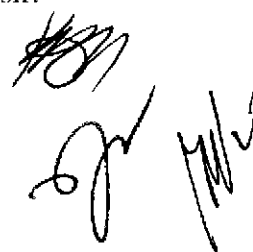
A: Yes, sir.

Q: In fact, one of the documents that you examined was the Journal Entry Voucher which was previously marked in evidence as Exhibit 8. Will you go over this Journal Entry Voucher and tell us what relation has this document to the project in General Santos-Koronadal road?

A: This **Journal Entry Voucher was prepared by the Accounting Office of the DPWH to record the payment made for the second partial payment, sir.**

¹²⁷ Italics supplied.

¹²⁸ *Pecho v. Sandiganbayan*, G.R. No. 111399, September 27, 1996.



Q: And for what project, Madam witness?

A: As stated, the General Santos-Koronadal road, sir.

Q: And in fact, the **Landbank Check Number 0000390790 dated February 20, 2002 was issued in the name of Jovina Tama Mohamad, is it not?**

A: **Yes, Sir.**¹²⁹

Based on the records, Abundo signed ALOBS No. 02-02-011 requesting the release of funds for the payment of the second installment to the heirs of Mohamad Bin Abdurasak. As authorized officer, he signed DV No. 101-02-02-02190 certifying the lawfulness, necessity of the said payment and that it was incurred under his direct supervision. Again, he committed these acts knowing fully well the error in the designation of the project in SARO No. BMB-A-01-04392.

Sufficient evidence exists to prove that payment of the second installment was made to the heirs of Mohamad Bin Abdurasak in spite of the clear defect in SARO No. BMB-A-01-04392 which authorized the release of funds for Davao-Bukidnon road and not the General Santos City-Koronadal road. For lack of specific authority to pay the said claimants, the government suffered damage and injury equivalent to the amount of the second installment.

The Prosecution adduced sufficient evidence to prove that Abundo gave unwarranted benefits, advantage or preference to the heirs of Mohamad Bin Abdurasak.

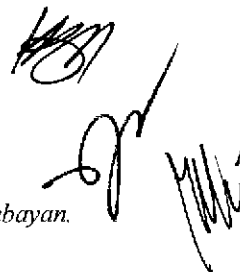
In *Rivera v. People*¹³⁰, the Supreme Court defined the following terms: "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason; "advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action; and "preference" signifies priority or higher evaluation or desirability; choice or estimation above another. The term "private party" or "private person" may be used to refer to persons other than those holding public office.¹³¹

The evidence of the Prosecution sufficiently proved that Abundo gave unwarranted benefit to the heirs of Mohamad Bin Abdurasak by requesting the payment of the second installment to them and certifying its lawfulness and necessity despite the clear defect in the specific authority granted in SARO No. BMB-A-01-04392.

¹²⁹ Emphasis supplied.

¹³⁰ G.R. Nos. 156577, 156587 & 156749, December 3, 2014.

¹³¹ Black's Law Dictionary, p. 1196 cited in *Bautista v. Sandiganbayan*.



As discussed earlier, the payment of the second installment in the right-of-way claim of the heirs of Mohamad Bin Abdurasak is not supported by SARO No. BMB-A-01-04392 because it referred to payment for the Davao-Bukidnon road, and not the General Santos City-Koronadal road. To reiterate, records of this case reveal that Abundo knew of this defect as it was raised to him by Regional Director Abergas and Chief of Staff Sulaik in their respective letters. In fact, as early as the pre-trial, he admitted knowing the mistake in the designation of the project in SARO No. BMB-A-01-04392. And yet, he did not request the correction of the said SARO from the DBM. He then requested the payment of the second installment and certified its lawfulness and necessity in clear violation of the law and the specific authority granted in SARO No. BMB-A-01-04392.

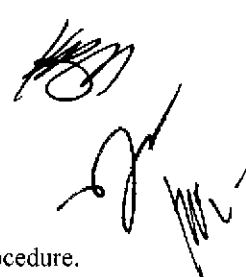
The alleged violations of the right to the equal protection of the laws and the right of Abundo to a speedy disposition of the case are not proper subjects of a demurrer to evidence.

Abundo claimed that the filing of this criminal charge against him alone, without impleading those who actually prepared the documents relative to the payment of the second installment for the subject right-of-way claim, is indicative of “selective justice”, which violated his constitutional right to the equal protection of the laws. He also assailed the inordinate delay in the preliminary investigation conducted by the Office of the Ombudsman, which violated his right to a speedy disposition of the case.

Abundo’s assertions are misplaced.

A demurrer to evidence is anchored solely on the ground of insufficiency of the evidence of the Prosecution.¹³² The alleged violations of the right to the equal protection of the laws and the right of an accused to a speedy disposition of the case do not challenge the sufficiency of the evidence of the Prosecution. Therefore, these grounds should not be raised and determined in a demurrer to evidence.

At any rate, the issue on whether or not inordinate delay attended the conduct of the fact-finding investigation and preliminary investigation by the Office of the Ombudsman has already been resolved by the Court in its Resolution dated November 29, 2018. In the said resolution, the Court denied with finality his claim of violation of the right to a speedy disposition of the case.



¹³² Section 23, Rule 119 of the Revised Rules of Criminal Procedure.

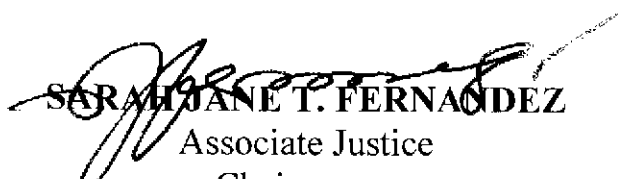
WHEREFORE, considering the sufficiency of the evidence presented by the Prosecution, the Demurrer to Evidence dated October 3, 2018 of accused Oscar D. Abundo is **DENIED**. This is without prejudice to his right to adduce evidence in his defense as the instant demurrer to evidence was filed with leave of court.¹³³

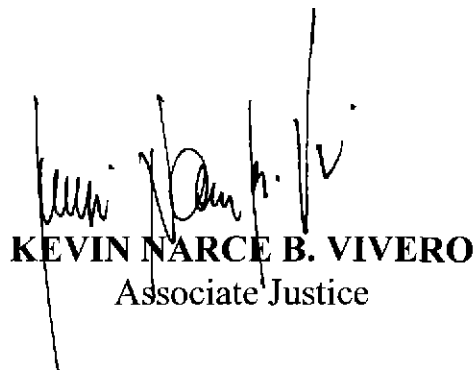
The settings for the initial presentation of Defense evidence shall proceed on March 4-5, 2019 as scheduled.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

¹³³ Minutes of the Proceedings dated September 17, 2018, Records, Vol. 2, p. 458.