

Republic of the Philippines
Sandiganbayan
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES

Plaintiff,

Criminal Case No. 25691

For: Violation of Sec.
3(e) of R.A. 3019

- versus -

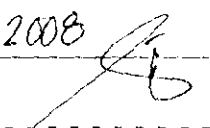
Dr. CALIXTO A. ZALDIVAR, Jr.,
Director, Lung Center of the Philippines,
Quezon City,

Accused.

Present:

Villaruz, Jr. *J. Chairman*
De la Cruz &
Geraldez, *JJ.*

Promulgated:

May 19, 2008 

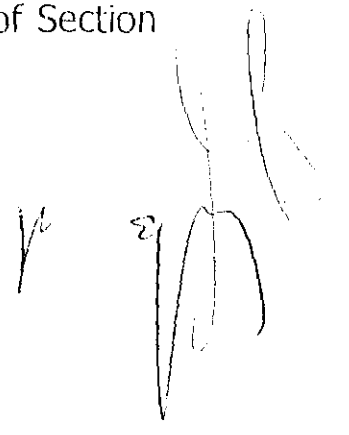
x ----- x

DECISION

GERALDEZ, J:

Accused CALIXTO A. ZALDIVAR, Jr., Director of the Lung Center of the Philippines (LCP) was charged with violation of Section 3(e) of R.A. 3019 under the following Information¹:

¹ Records, Vol. I, pp. 1 - 2.

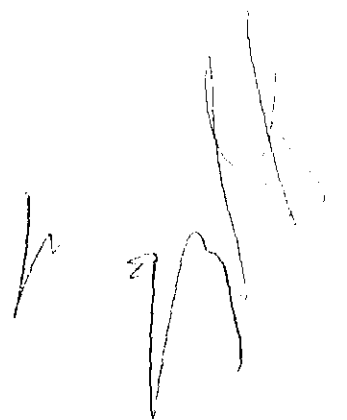


"That on or about the period from February 1997 to May 16, 1998 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused high ranking public officer DR. CALIXTO A. ZALDIVAR, being then the Director and Chief of the Lung Center of the Philippines, a Government hospital located along Quezon Avenue, and committing the offense herein charged in relation to his official and administrative function as such and acting with gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to the nineteen (19) patients who died and perished in that hospital during a fire that broke out therein on May 16, 1998 which spread rapidly and remained unabated before rescue could arrive by failing to provide fire fighting and protection devices/equipment and other fire safety concerns which respondent as head of the agency was duty-bound to install in the hospital's premises and to fully comply with for the protection of the occupants and patients confined therein pursuant to the provisions of P.D. 1185, otherwise known as the Fire Code of the Philippines; but which respondent failed to perform despite due notice thereof, to the damage and prejudice of the above-said nineteen (19) patients and their families and public interest.

CONTRARY TO LAW."

On August 7, 2003, the accused, assisted by his counsel Atty. Antonio R. Bautista, was arraigned and entered a plea of "Not Guilty".²

² Records, Vol. I, p. 338.



EVIDENCE FOR THE PROSECUTION

The prosecution presented the testimonies of the following witnesses:

I. Consolacion M. Balderosa, Chief, Human Resource Development Division, LCP, testified³:

That from May 16, 1986 to August 31, 1999, accused Zaldivar, Jr., being the highest officer, was in-charge of the over-all operation of the LCP including the maintenance of its physical structure and equipment, and was authorized to transfer funds from one budget item to another.

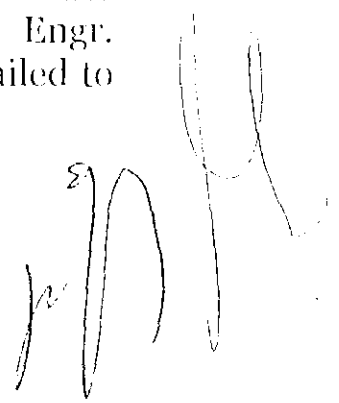
II. Angeline A. Rojas, Chief, Budget and Accounting Division, LCP, testified⁴:

That in the preparation of the annual budget estimate for the LCP, the different department heads prepared and submitted their respective estimate of income and expenditure to the Budget and Accounting Division; that the different department reports were consolidated and transmitted to the accused for his evaluation and approval; and, that after the approval, the budget estimate was forwarded to the Department of Budget and Management for its final approval.

That in 1997, the DBM approved the LCP's budget estimate of P15,279,000.00; and, that in the said budget estimate there was no budget allocation for the purchase of fire safety and fire fighting equipment since Engr. Cesario Yangat, General Services Division head, failed to include it in the GSD budget estimate.

³ TSN dated February 17, 2004.

⁴ TSN dated October 13, 2004.

A handwritten signature in black ink, consisting of stylized, overlapping loops and vertical strokes, located in the bottom right corner of the page.

III. Josefina B. Laccay, Secretary I, LCP, testified⁵:

That in 1997, she was assigned as Clerk in the Office of accused Zaldivar, Jr.; that she was tasked to prepare the minutes of the meetings of the Finance and Executive Committee; and, that in one of the minutes marked as an exhibit she noted that fifteen fire extinguishers were purchased.

IV. Teodoro S. Gaela, Fire Safety Inspector, Quezon City Fire Department, testified⁶:

That on February 10, 1997, he conducted a fire safety inspection at the LCP where he discovered that there were no nozzles in some of the fire hoses, no fire hoses inside the hose cabinets, rooms without smoke and heat detectors, few fire extinguishers and no emergency lights along the hallways and no exit signs and fire sprinkler system.

V. Jose S. Nagpacan, Fireman and Arson Investigator, Bureau of Fire Protection, Quezon City, testified⁷:

That at about 2:20 in the morning of May 16, 1998, the LCP was gutted by fire; that investigation showed that the fire was due to "*electrical ignition as a result of constant grounding*⁸"; and that twenty seven persons died as a result of the fire.

VI. Ma. Cristina B. Freyra, Medico-Legal Officer, Crime Laboratory, NPD, testified⁹:

That at about 7:00 in the evening of May 17, 1998, assisted by a doctor and two technicians, she conducted the autopsy on the cadavers of the fourteen victims of the fire which gutted the LCP; that during the autopsy she noted the presence of carbon deposits on the larynx, trachea and bronchi of the cadavers; and, that she concluded that the cause of death of the fourteen fire victims was "*asphyxia by inhalation of irrespirable gasses*".

⁵ TSN dated February 7 and 8, 2005.

⁶ TSN dated April 22 and July 13, 2004.

⁷ TSN dated February 8 and 9, 2005.

⁸ Exhibit "AA", Final Investigation Report.

⁹ TSN dated October 26, 2006.

VII. Delia M. Timbal, Resident of San Jose, Mandaluyong, testified¹⁰:

That at about 2:30 in the morning of May 16, 1998, she was with her brother Raul S. Mandatu who was confined at the LCP; that she heard an explosion and after which fire ensued; that her brother died in the fire; that her brother was financially supporting their family; and that her mother suffered a stroke by reason of his death.

VIII. Rodela V. Garcia, Resident of Novaliches, Quezon City, testified¹¹:

That her husband Jose Garcia was then confined at the LCP at the time of the fire; that he died; that he was the breadwinner of the family; that she was left with the responsibility of financially supporting their children; and, that she suffered sleepless nights.

IX. Vivian Garcia, daughter of Jose Garcia, corroborated Rodela V. Garcia's testimony¹².

The prosecution formally offered its documentary evidence marked as Exhibits "A", "B", "G" to "Z", and "AA" to "VV", with its sub-markings, which consisted of, among others, certification, certified true copy of the minutes of the Finance Committee, Death Certificates and Medico-Legal reports.¹³ The Court admitted all these exhibits on December 12, 2006.¹⁴

¹⁰ TSN dated May 24, 2005.

¹¹ TSN dated May 23, 2005.

¹² TSN dated March 15, 2006.

¹³ Records, Vol. II, 69-146.

¹⁴ Ibid, p. 154.

EVIDENCE FOR THE DEFENSE

The defense presented the testimonies of the following witnesses:

I. Calixto A. Zaldivar, Jr., Director of the LCP from 1986 to 1999, testified¹⁵:

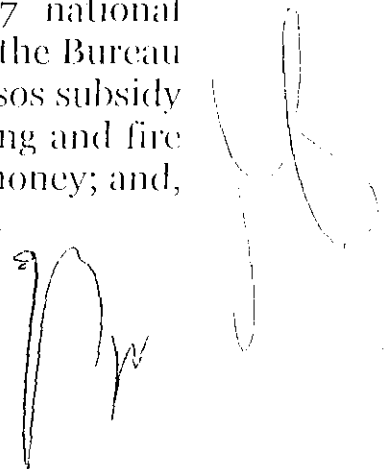
That Engineer Cesario M. Yangat, General Service Division head, was responsible for the maintenance of the fire safety devices and equipment at the LCP; that in the February 25, 1997 Finance Committee Meeting, Engineer Yangat presented only the need for sprinklers and fire extinguishers; that the Committee approved the purchase of five fire extinguishers but not the sprinklers as these were expensive and beyond budget; that prior to the May 16, 1998 fire incident, there were no available funds allotted for the installation of the sprinkler system or for the acquisition of additional fire safety equipment; and, that in the estimates made by the LCP architect, installation of sprinkler system would have cost about one hundred fifty million pesos.

II. Albilio C. Cano, Manager, Administrative and Ancillary Department, LCP, testified¹⁶:

That in 1997, the total operating budget of LCP was P250,864,300; that the budget came from income from hospital operation or the so-called corporate fund and the national government subsidy; that the 1997 national subsidy was released on a quarterly basis; that the Bureau of Treasury withheld the twenty one million pesos subsidy which caused budget problems; that fire fighting and fire prevention and safety equipment cost a lot of money; and, that there were no funds allocated for the same.

¹⁵ TSN dated September 24 and 25, 2007.

¹⁶ TSN dated June 7, 2007.

A large, stylized handwritten signature in black ink, appearing to be 'N. J.' or similar, located in the bottom right corner of the page.

III. Cesario M. Yangat, Chief, General Services Division, LCP, testified¹⁷:



That it was his duty to submit the recommendation for the purchase of fire safety and fire fighting equipment to the Director or to the Accounting Division; that the personnel who had supervised and monitored the fire safety equipment were under his control; and, that the fire safety measures he had undertaken were all in substantial compliance with the requirements of the law.

On October 4, 2007, the defense formally offered its documentary evidence marked as Exhibits "1" to "19" and "21" to "28", with its sub-markings, which consisted of, among others, letters, opinion, reports, requisition to purchase forms and sales invoice.¹⁸ The Court admitted Exhibits "1", "2", "4" to "6", "8" to "12", "16", "25" and "26". The rest of the exhibits were not admitted for being mere photocopies.¹⁹

REBUTTAL EVIDENCE

On rebuttal the prosecution presented the same **Cesario M. Yangat** who testified²⁰:

That contrary to the testimony of accused Zaldivar, Jr., he presented the whole After Mission Report of Fire Inspector Teodoro S. Gaeta to the Finance Committee meeting on February 25, 1997.



¹⁷ TSN dated April 16, 2007.

¹⁸ Records, Vol. II, pp. 257-302.

¹⁹ Ibid, p. 320.

²⁰ TSN dated January 17, 2008.

DISCUSSIONS

Accused Zaldivar, Jr. was charged with violation of Sec. 3 (e) of R.A No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of license or permits or other concessions.

To fall within the context of the afore-quoted provision of law, the following elements must be clearly established, to wit:

- I. The accused must be a public officer discharging administrative, judicial or official functions;
- II. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and,
- III. That his action 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.²¹

I

The first element of the offense was undisputed. The parties stipulated during pre-trial that accused Zaldivar, Jr. being then the Director of the LCP, was a public officer at the time alleged in the information²².

²¹ Cabrera, et al. vs. Sanligan-Bryan, et al., G.R. No. 162314-17, October 25, 2004.

²² Records, Vol. I, pp. 400-406.

II

Anent the second element, the issue to be resolved is whether the failure of the accused to provide fire safety and fire fighting equipment in the LCP's premises was tantamount to gross and inexcusable negligence.

In ***Mendoza-Arce vs. Ombudsman (Visayas)***²³, the Honorable Supreme Court defined the term "gross negligence" as follows:

"xxx, which is negligence characterized by want of even slight care, or acting or omitting to act in a situation where there is a duty to act willfully and intentionally, with a conscious indifference to consequences as far as other persons are concerned." (italics supplied)




Prosecution's testimonial and documentary evidence failed to establish that accused acted with gross and inexcusable negligence. Simple negligence was not even established.

The defense on the contrary had sufficiently proved the following exculpatory defenses:

A. *No Budget Allocation for the purchase of Fire Safety and Fire Fighting Equipment*

General Services Division Chief Engr. Yangat, who was duty bound to recommend to the Director the need to purchase fire safety and fire fighting equipment, failed to include the same in his Division's 1997 budget estimate. Thus, there was no allocation for the fire safety and fire fighting equipment in the 1997 operating budget of LCP. Chief Budget and Accounting Division Angeline A. Rojas affirmed this. Therefore, acquiring fire safety and fire fighting equipment was out of the question.

²³ G.R. No. 149148, April 5, 2002.



Furthermore, this non-inclusion could not be blamed on accused Zaldivar, Jr. As Director, he cannot be expected to know what must and must not be included in the budget estimates of the entire LCP. As to the fire safety and fire fighting equipment, he had to rely on the recommendation of his subordinate - Engineer Yangat. As stated in **Arias vs. Sandiganbayan**:²⁴ "all heads of offices have to rely to a reasonable extent on their subordinates."

B. LCP was operating under budgetary constraint

It had been established that LCP's total operating budget for 1997 amounted only to **P250,864,300**.²⁵

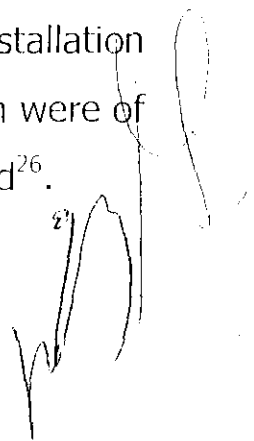
In the Gaela After Mission Report, there were eight requirements raised, and one of which was the installation of sprinkler system. Accused Zaldivar, Jr. testified that prior to the fire, the LCP architect estimated that the installation of fire sprinkler system alone would cost about **P150 million**, or more than half of the total operating budget of LCP for 1997.

Admittedly, accused Zaldivar, Jr. had authority to transfer one budget item to another. However, should he allocate **P150 million** of the LCP's total operating budget of **P250,864,300** for the installation of fire sprinkler system, the other needs of the hospital which were of equal, if not greater importance would definitely be hampered²⁶.

²⁴ G.R. Nos. 81553 & 82512 [December 19, 1989]

²⁵ Per testimony of Albilio C. Cano.

²⁶ TSN, dated June 7, 2007, p. 28



*C. The withholding of the
P21,000,000.00 budget of
the LCP by the Bureau of the
Treasury caused LCP
problems*

Albilio C. Cano testified that the Bureau of Treasury withheld P21,000,000.00 of their national government subsidy. This added to the budgetary problems of the LCP. All possible means for its release were made. They even sought the intervention of the Department of Budget and Management and the Department of Finance, among others²⁷.

*D. Substantial Compliance to
the Requirements of the
Gaela After Mission Report*

Despite the above-said budgetary problems LCP had encountered, evidence showed that the LCP management undertook measures to still substantially comply with the Gaela After Mission Report requirements by purchasing additional fire extinguishers.

III

Considering that the second element was not present, this Court deemed it unnecessary to further discuss the third element.

Finally, the Court sympathizes with the untoward incident that befell the nineteen patients and their relatives as regards the fire that razed LCP in 1997. But this Court cannot, after evaluating all the pieces of evidence, put the blame on accused Zaldivar, Jr. who, as aforesaid, did not act with gross inexcusable negligence.

²⁷ TSN, dated June 7, 2007, p. 16.



WHEREFORE, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, accused **Dr. CALIXTO A. ZALDIVAR, Jr.** is hereby ordered **ACQUITTED** of the offense charged.

The bail bond posted by the accused is hereby ordered **CANCELLED** and **RETURNED** to him, subject to the usual accounting rules and regulations.

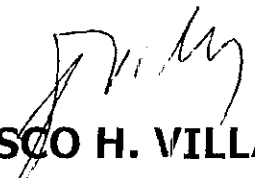
The Hold Departure Order issued against the accused is hereby **LIFTED** and **SET ASIDE**. Accordingly, let the Commissioner of the Bureau of Immigration and Deportation be notified.

SO ORDERED.

Quezon City, Philippines.


NORBERTO Y. GERALDEZ
Associate Justice

WE CONCUR:


FRANCISCO H. VILLARUZ, Jr.
Associate Justice
Chairman


EFREN N. DE LA CRUZ
Associate Justice

ATTESTATION

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



FRANCISCO H. VILLARUZ, JR.
Chairman, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Presiding Justice

