



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-16-CRM-0051

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

-versus-

**MELCHOR MORADOS
QUEMADO SR.,**

Accused,

PRESENT:

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

Promulgated:

October 23, 2020 *[Signature]*

X-----X

DECISION

MIRANDA, J.:

May a municipality legally rent an office space in a hotel owned by the brother of the Municipal Mayor without public bidding? This is the issue surrounding the rental of Hayward Travelodge as office space by the Municipality of Sta. Fe, Leyte.

[Signature]
[Signature]

In an Information dated December 22, 2015, accused **Melchor Morados Quemado, Sr.** (Quemado) was charged with violation of Section 3 (e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, as follows:


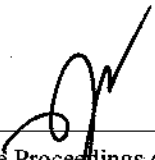

That on or about December 29, 2005 or sometime prior to or subsequent thereto, in the Municipality of Sta. Fe, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the said accused MELCHOR M. QUEMADO, SR, a high-ranking public officer, being then the Municipal Mayor of Sta. Fe, Leyte, in such capacity and taking advantage of his official position, committing the offense in relation to his office, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause the rental of an office space at the Hayward Travelodge owned by his brother, Anastacio M. Quemado, for the preparation of feasibility study on the proposed Infrastructure for the Rural Productivity Enhancement Sector (INFRES) Project of the municipality, at the cost of SIXTEEN THOUSAND PESOS (Php16,000.00), without public bidding and despite the availability of an office space in the municipality, and that Hayward Travelodge had no business permit at the time of the transaction and is more or less 21 kilometers from the Municipality of Sta. Fe, Leyte, thereby giving unwarranted benefits, advantage, and preference to Anastacio M. Quemado and/or Hayward Travelodge and causing undue injury to the Government in the aforementioned amount.

CONTRARY TO LAW.

On February 9, 2016, the Court found probable cause against Quemado and approved the cash bond that he posted for his provisional liberty.¹

On March 9, 2016, Quemado was arraigned with the assistance of counsel *de parte*.² He entered a plea of "not guilty" to the offense charged.³

On April 8, 2016, Quemado sought the dismissal of the case on the ground of violation of his right to a speedy disposition of the case.⁴ The Court denied his motion to dismiss on April 11, 2016.⁵ On April 15, 2016, Quemado

¹ Minutes of the Proceedings dated February 9, 2016, Records, Vol. 1, p. 54.

² Order dated May 9, 2016, Records, Vol. 1, p. 63.

³ *Id.*

⁴ Motion to Dismiss dated April 8, 2016, Records, Vol. 1, pp. 64-66.

⁵ Minutes of the Proceedings dated April 11, 2016, Records, Vol. 1, pp. 70-71.

sought a reconsideration of the Court's denial of his motion to dismiss.⁶ The Court denied his motion for reconsideration on June 13, 2016.⁷

On September 14, 2016, the Prosecution sought the suspension *pendente lite* of Quemado.⁸ On November 28, 2016, the Court suspended Quemado for ninety days.⁹ On December 2, 2016, Quemado sought a reconsideration of the resolution suspending him *pendente lite*.¹⁰ The Court denied the motion for reconsideration on January 17, 2017.¹¹

On February 21, 2018, the Court issued the Pre-Trial Order.¹² In the joint stipulation of facts of the parties as contained in the Pre-trial Order, Quemado, through counsel, admitted that: 1) he was the Mayor of the Municipality of Sta. Fe, Leyte at the time material to the case; and 2) the Court has jurisdiction over his person.

Trial, thereafter, ensued.

EVIDENCE OF THE PROSECUTION

Alfred Yann G. Oguis (Oguis)¹³

After Oguis identified his Judicial Affidavit dated February 12, 2018,¹⁴ the parties stipulated that:¹⁵ 1) he is presently the Head of the Regional Office No. 8 and Officer-in-Charge (OIC) of the Fact-Finding Investigation Bureau of the Office of the Ombudsman; 2) in 2013, he prepared the Final Evaluation Report dated February 25, 2013 based on the letter-complaint dated September 25, 2006 of Sangguniang Bayan members Froilan D. Parado (Parado), Ricardo D. Fajardo (Fajardo), Nilda S. Collado (Collado), Angelina P. Enage (Enage), and Francisco F. Esmero (Esmero); and 3) he recommended that the said letter-complaint be referred to the proper office for preliminary investigation.

On cross-examination, Oguis testified that: 1) he conducted a fact-finding investigation on the allegations in the letter-complaint dated September 25, 2006 received by the Office of the Ombudsman;¹⁶ 2) the Office of the


⁶ Motion for Reconsideration dated April 13, 2016, Records, Vol. 1, pp. 76-78.

⁷ Resolution dated June 13, 2016, Records, Vol. 1, pp. 93-95.

⁸ Motion to Suspend Accused *Pendente Lite* dated September 14, 2016, Records, Vol. 1, pp. 165-167.

⁹ Resolution dated November 28, 2016, Records, Vol. 1, pp. 208-213.

¹⁰ Motion for Reconsideration dated December 1, 2016, Records, Vol. 1, pp. 246-247.

¹¹ Resolution dated January 17, 2017, Records, Vol. 1, pp. 269-271.

¹² Pre-trial Order dated October 9, 2017, Records, Vol. 2, pp. 9-17.

¹³ Order dated January 22, 2018, Records, Vol. 2, pp. 6-A to 6-B.

¹⁴ Judicial Affidavit of Alfred Yann G. Oguis dated February 12, 2018 (including the annexes), Records, Vol. 1, pp. 413-441.

¹⁵ Order dated February 22, 2018, Records, Vol. 1, p. 454-A.

¹⁶ TSN dated February 22, 2018, pp. 13-14.

Ombudsman took 7 years to finish the fact-finding investigation;¹⁷ and 3) he received the records of the case only in 2012.¹⁸

Bella P. Castillo (Castillo)

Her testimony was dispensed with after the parties stipulated that she is currently a State Auditor IV of the Commission on Audit (COA) and she issued a certified true copy of the original of the following documents:

- 1) undated Purchase Request for the rental of an office space for the projects of Infrastructure for the Rural Productivity Enhancement Sector (INFRES);
- 2) undated Acceptance and Inspection Report;
- 3) Obligation Slip No. 2005-12-1043 dated December 29, 2005;
- 4) undated Disbursement Voucher;
- 5) check no. 00182-1018-00 dated December 29, 2005;
- 6) Hayward Travelodge Official Receipt No. 1187 dated December 29, 2005; and
- 7) Certification dated December 29, 2005.¹⁹

Corina C. Cinco-Cadavis (Cinco-Cadavis)

Her testimony was dispensed with after the parties stipulated that: 1) she is presently Officer-in-Charge (OIC) of the Permits and Licenses Division of the Office of the City Mayor, Tacloban City; 2) she issued the Certification dated September 14, 2006 stating that Hayward Travelodge did not have a business permit from 2005 to 2006; and 3) the Certification dated September 14, 2006 was authentic and duly executed.²⁰

Enage and Collado

The Prosecution intended to present Enage and Collado. Their testimonies were, however, dispensed with after the parties stipulated: 1) that Enage was a member of the Sangguniang Bayan of Sta. Fe, Leyte from 2001 to 2010; 2) that Collado was also member of the Sangguniang Bayan of Sta. Fe, Leyte from 2004 to 2013; 3) that Quemado approved the rental of an office space at Hayward Travelodge owned by his brother, Anastacio Quemado, for the preparation of a feasibility study for INFRES projects of the Municipality of Sta. Fe, Leyte at the rate of Php16,000.00 despite the availability of office spaces in the municipal hall; 4) that Enage requested Cinco-Cadavis for the issuance of Certification dated September 14, 2006

¹⁷ *Id.*, p. 16.

¹⁸ *Id.*, p. 17.

¹⁹ Order dated March 8, 2018, Records, Vol. 1, p. 491A.

²⁰ Order dated March 12, 2018, Records, Vol. 2, pp. 6-7.

stating that Hayward Travelodge did not have a business permit at the time material to this case; 5) on the authenticity, due execution, and existence of the letter-complaint February 25, 2013 executed by Enage and Collado stating that there was no canvass of bids in the subject rental of office space; 6) on the authenticity, due execution, and existence of Hayward Travelodge Official Receipt No. 1187 dated December 29, 2005; and 7) on the existence of the following public records:

- a) undated Purchase Request for the rental of an office space for INFRES projects;
- b) undated Acceptance and Inspection Report;
- c) Obligation Slip No. 2005-12-1043 dated December 29, 2005;
- d) undated Disbursement Voucher;
- e) check No. 00182-1018-00 dated December 29, 2005;
- f) Certification dated December 29, 2005; and
- g) Certification dated September 14, 2006.²¹

The Prosecution wanted to present **Godofredo A. Roca** (Roca) but he was unavailable. The parties, however, stipulated that: 1) Roca wrote and sent a notarized letter dated April 6, 2018 to Prosecutor Ian M. Mateo; and 2) the notarized letter dated April 6, 2018 was authentic and duly executed, and all the matters stated therein were true and correct.²²

The Prosecution offered the following documentary exhibits²³ which were admitted by the Court:²⁴

Exhibit	Description
A	certified copy of the undated Purchase Request
A-1	signature of Quemado at the lower left portion
A-2	signature of Quemado at the lower right portion
B	certified copy of the undated Acceptance and Inspection Report
B-1	signature of Roca at the lower left portion
B-2	signature of Fe P. Maningo, Inspection Officer, at the lower right portion
C	certified copy of Obligation Slip No. 2005-12-1043 dated December 29, 2005
C-1	signature of Quemado at the lower left portion
C-2	signature of Mario P. Jamora, Municipal Budget Officer, at the lower right portion

²¹ Order dated March 13, 2018, Records, Vol. 2, p. 10.

²² Order dated April 12, 2018, Records, Vol. 2, p. 21.

²³ Formal Offer of Evidence dated May 11, 2018, Records, Vol. 2, pp. 35-57.

²⁴ Minutes of the Proceedings dated June 13, 2018, Records, Vol. 2, pp. 75A-75B.

D	certified copy of the undated Disbursement Voucher
D-1	signature of Erlinda P. Negradas, Municipal Accountant-designate, at the lower left portion
D-2	signature of Quemado at the lower right portion
D-3	signature of Quemado at the lower left portion
E	certified copy of Check No. 00182-1018-00 dated December 29, 2005
E-1	signature of Visitacion R. Murano, Municipal Treasurer
E-2	signature of Quemado
F	certified copy of Hayward Travelodge Official Receipt No. 1187 dated December 29, 2005
G	certified copy of Certification dated December 29, 2005
G-1	signature of Quemado
H	original copy of Certification dated September 14, 2006
H-1	signature of Cinco-Cadavis
I	original copy of letter-complaint dated September 25, 2006
I-9	signature of Parado
I-10	signature of Fajardo
I-11	signature of Collado
I-12	signature of Enage
I-13	signature of Esmero
J	original copy of Final Evaluation Report dated February 25, 2013
J-1	signature of Oguis
S	original copy of notarized letter dated April 6, 2018

On July 6, 2018, Quemado sought leave of court to file a demurrer to evidence.²⁵ The Court denied the motion for leave to file demurrer to evidence on August 1, 2018.²⁶

EVIDENCE OF THE DEFENSE

Quemado²⁷

Quemado denied all the allegations in the Information dated December 22, 2015. In particular, he alleged that: 1) the Municipality of Sta. Fe, Leyte needed to conduct a feasibility study as a requirement to avail of the proposed INFRES projects of the Department of Agriculture (DA);²⁸ 2) since the municipality lacked funds to pay for a consultant to conduct the required

²⁵ Motion for Leave to File Demurrer to Evidence dated July 5, 2018, Records, Vol. 2, pp. 82-83.

²⁶ Resolution dated August 1, 2018, Records, Vol. 2, pp. 105-106.

²⁷ Judicial Affidavit of Melchor M. Quemado, Sr. dated October 27, 2018, Records, Vol. 2, pp. 142-149.

²⁸ *Id.*, p. 145.

feasibility study, he directed Engr. Zosimo Lodo, Jr. (Lodo) to supervise and conduct the same;²⁹ 3) Engr. Lodo advised him to seek the assistance of a technical working group (TWG) composed of people with expertise on the subject matter of the supposed feasibility study;³⁰ 4) Acting upon Engr. Lodo's advice, Quemado created a TWG whose members offered their services for free;³¹ 5) the feasibility study was to be conducted at the Engineering Office of the Municipal Hall but the TWG members found it difficult to travel to and from Sta. Fe, Leyte;³² 6) Quemado deemed it necessary to rent an office space near Tacloban City because the TWG members were residents and employees of the said city;³³ 7) Hayward Travelodge was located near the workplaces of the TWG members;³⁴ 8) the feasibility study was completed after two months;³⁵ 9) because of the completion of the said feasibility study, the Municipality of Sta. Fe, Leyte was granted by INFRES Twenty-Seven Million Pesos (Php27,000,000.00) for road construction and concreting³⁶ and 10) the Municipality of Sta. Fe, Leyte benefitted from the said INFRES projects.³⁷

On cross-examination, Quemado said that: 1) he served as Municipal Mayor of Sta. Fe, Leyte for three consecutive terms from 2004 to 2013;³⁸ 2) during his term, he was able to approve a number of public biddings conducted by the municipality in the procurement of its supplies, goods and services;³⁹ 3) he knew that public biddings are required by R.A. No. 9184 in procurements by the municipality;⁴⁰ 4) he was, however, not acquainted with government policies on procurement during his first term as Municipal Mayor;⁴¹ 5) he created the TWG with six members who worked on the feasibility study based on the advice of Engr. Lodo;⁴² and 6) he recommended the rental of the office space in the hotel owned by his brother, Anastacio Quemado⁴³

In response to questions asked by the Court, Quemado admitted that he approved the use of municipal funds to pay the rental fee of Hayward Travelodge for the office space used by the TWG in the conduct of the feasibility study.



²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*, p. 145-146.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ TSN dated November 8, 2018, p. 9.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*, p. 10.

⁴² *Id.*, pp. 10-12.

⁴³ *Id.*, p. 13.

Lodo

His testimony was dispensed with after the parties stipulated that: 1) he can identify his Affidavit dated May 5, 2017; 2) when presented in Court, he can affirm and confirm the truthfulness of the statements contained in his Affidavit dated May 5, 2017; 3) the statements in his Affidavit dated May 5, 2017 will corroborate the testimony of Quemado; and 4) the Affidavit dated May 5, 2017 forms part of Lodo's testimony.⁴⁴

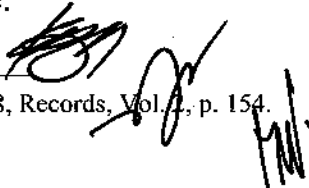
In the Affidavit dated May 5, 2017,⁴⁵ Lodo alleged that: 1) he was the Municipal Engineer of Sta. Fe, Leyte at the time material to this case; 2) he was initially instructed by Quemado to conduct the required feasibility study for the INFRES project of the DA; 3) as he lacked the technical expertise, he proposed that Quemado create a TWG to conduct the said feasibility study; 4) Quemado acceded to his proposal and immediately created the said TWG; 5) it was necessary for the municipality to rent an office space in Tacloban City for TWG members to avoid the hassle of travelling to and from Sta. Fe, Leyte; and 6) he helped TWG members in the collection of data and information for the feasibility study.

On November 8, 2018, the Defense offered a photocopy of the Affidavit dated May 5, 2017 as its sole documentary exhibit.⁴⁶ It was admitted by the Court on the same date.⁴⁷

DISCUSSION AND RULING

After a thorough review of the documentary and testimonial evidence on record, as well as the stipulations between the Prosecution and the Defense, the Court finds accused Quemado **GUILTY** of the crime of violation of Section 3 (e) of R.A. No. 3019. The Prosecution's evidence proved that Quemado acted with evident bad faith and manifest partiality in renting an office space at Hayward Travelodge for the Municipality of Sta. Fe, Leyte without the required public bidding. The Prosecution likewise proved that Quemado gave unwarranted benefits, advantage and preference to Anastacio Quemado.

Every criminal conviction requires the Prosecution to prove two things: 1) the fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged; and 2) the fact that the accused is the perpetrator of the crime.⁴⁸


⁴⁴ Order dated November 8, 2018, Records, Vol. 4, p. 154.

⁴⁵ Exhibit "1".

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *People v. Urzais, et al.*, G.R. No. 207662, April 13, 2016.

The burden of proof is on the Prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence.⁴⁹ The court, in ascertaining the guilt of the accused, must, after having marshalled the facts and circumstances, reach a moral certainty as to the guilt of the accused.⁵⁰ Moral certainty is that degree of proof which produces conviction in an unprejudiced mind.⁵¹ Otherwise, where there is reasonable doubt, the accused must be acquitted.⁵²

Here, Quemado was charged with Violation of Section 3 (e) of R.A. No. 3019 for causing the rental of office space in a hotel owned by his brother without the required public bidding despite the availability of office space in the municipal hall. Said provision of the law states:

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, 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.⁵³

⁴⁹ Section 1, Rule 131, in relation to Section 2, Rule 133 of the Rules of Court; Section 2 (a), Rule 115 of the Rules of Court; Section 14 (2), Article III of the 1987 Philippine Constitution.

⁵⁰ *Caunan v. Sandiganbayan*, G.R. Nos. 182001-01, *Marquez v. Sandiganbayan*, G.R. Nos. 182020-04, September 2, 2009.

⁵¹ *Magsuci v. Sandiganbayan*, G.R. No. 101545, January 3, 1995.

⁵² *Supra*, *Caunan v. Sandiganbayan & Marquez v. Sandiganbayan*.

⁵³ *Uriarte v. People*, G.R. No. 169251, December 20, 2006, citing *Santos v. People*, G.R. No. 161877, March 23, 2006.

First element: Quemado acted within his official and administrative functions in the rental of Hayward Travelodge.

As borne by the records of this case, and as specifically stipulated by the parties per the Pre-Trial Order dated February 21, 2018, Quemado was the Municipal Mayor of Sta. Fe, Leyte from 2004 to 2013. The rental of an office space at Hayward Travelodge was made in the discharge of his official and administrative functions as Municipal Mayor.

Second element: There was evident bad faith and manifest partiality on the part of Quemado in causing the rental of an office space in Hayward Travelodge

A Violation of Section 3 (e) of R.A. No. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence.⁵⁴ Proof of any of these three in connection with the prohibited acts mentioned in the said provision is therefore enough to convict the accused.⁵⁵

On “evident bad faith”

“Bad faith” imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill will.⁵⁶ It partakes of the nature of fraud, and does not simply connote bad judgment or negligence.⁵⁷ Bad faith becomes evident when there is a manifest or deliberate intent to do wrong or cause damage on the part of the accused.⁵⁸

It is undisputed that the rental of an office space at Hayward Travelodge for the Municipality of Sta. Fe, Leyte was made without public bidding in violation of R.A. No. 9184.⁵⁹ This was admitted by Roca, then Property Officer, in his notarized letter dated April 6, 2018.⁶⁰ The truthfulness of the contents of the said notarized letter was admitted by the Defense on April 12, 2018.⁶¹ In the letter-complaint dated February 25, 2013, Enage and Collado, then Sangguniang Bayan members, alleged that a canvass of bids was not

⁵⁴ *Uriarte v. Sandiganbayan*, G.R. No. 169251, December 20, 2006.

⁵⁵ *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Marcelo v. Philippines*, G.R. No. 69983, May 14, 1990.

⁵⁹ Section 10, Article IV of R.A. No. 9184.

⁶⁰ Exhibit “S”.

⁶¹ *Supra*, Order dated April 12, 2018.

conducted in the rental of office space at Hayward Travelodge.⁶² The letter-complaint dated February 25, 2013 was admitted by the Defense together with its authenticity, due execution, and existence.⁶³

Quemado himself did not deny the lack of public bidding in the rental of Hayward Travelodge. He also failed to allege and much less prove that the said rental was made through any of the alternative modes of procurement, or that the procedure thereof was faithfully complied with. Quemado admitted that the conduct of public bidding is a basic requirement in all government procurements, *to wit*:

Cross-examination of Quemado by Prosecutor Mateo:

Q: How long have you served as the Municipal Mayor of Sta. Fe, Leyte?

A: For three (3) consecutive terms, sir.

Q: What year, sir?

A: From 2004 to 2007 and from 2007 to 2010, and from 2010 to 2013, sir.

Q: **Okay. And, in your experience as the Municipal Mayor, am I correct to say that there have been several biddings conducted by the Municipality of Sta. Fe during your term as mayor?**

A: **Yes Sir. That is the basic requirement of the Procurement Act 9184.**⁶⁴

Bad faith clearly attended the rental of office space at Hayward Travelodge for the Municipality of Sta. Fe, Leyte because Quemado signed and approved the documents related thereto **despite knowledge** that a public bidding is required in all government procurements. As Municipal Mayor and Head of Procuring Entity, Quemado's participation was indispensable considering that the rental of Hayward Travelodge and payment thereto could not have been made without his signature and approval.

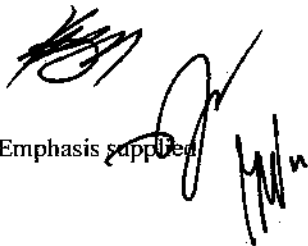
Quemado's bad faith becomes **evident** because Hayward Travelodge is owned by his brother, Anastacio. Quemado likewise admitted in court that he was the one who recommended the rental of Hayward Travelodge to be used as office space by the municipality.⁶⁵

⁶² Exhibit "I".

⁶³ *Supra*, Order dated March 13, 2018.

⁶⁴ TSN dated November 8, 2018, p. 9; Emphasis supplied.

⁶⁵ *Id.*, p. 13



Q: And later on, they were transferred to the hotel of your brother in Tacloban City.

A: Yes, sir.

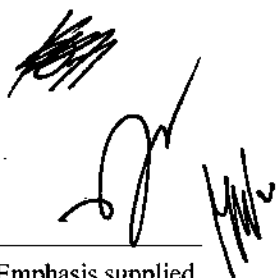
Q: And again sir, **it was you who recommended that this people will use the hotel of your brother to conduct the feasibility study?**

A: **Yes, sir.**⁶⁶

To facilitate the rental of his brother's hotel by the municipality, Quemado requested the rental of an office space for INFRES projects⁶⁷ and at the same time, approved the said request in the undated Purchase Request.⁶⁸ He also sought the allotment of Php16,000.00 as payment for renting an office space at Hayward Travelodge in Obligation Slip No. 2005-12-1043 dated December 29, 2005.⁶⁹ In the same document, he certified that all charges to the appropriation and allotment were necessary, lawful, and incurred under his direct supervision.⁷⁰

Finally, Quemado approved the payment of Php16,000.00 to Hayward Travelodge in an undated Disbursement Voucher.⁷¹ Surprisingly, in his authority as Municipal Mayor,⁷² Quemado thereafter issued himself⁷³ check No. 00182-1018-00 dated December 29, 2005 for the said amount as payment for the rent. Quemado attested to the receipt of the said amount in the undated Disbursement Voucher.⁷⁴

In his belated attempt to justify the payment made by the municipality to Hayward Travelodge, Quemado issued Certification dated December 29, 2005 stating that Hayward Travelodge had the cheapest rate for office space in Tacloban City. The said certification was, however, dated and issued only on the date of the issuance of the check.⁷⁵ Quemado issued the said certification despite the lack of business permit of Hayward Travelodge from 2005 to 2006.⁷⁶



⁶⁶ *Id.*, pp. 12-13; Emphasis supplied.

⁶⁷ Exhibit "A-1".

⁶⁸ Exhibit "A-2".

⁶⁹ Exhibit "C".

⁷⁰ Exhibit "C-1".

⁷¹ Exhibit "D-2".

⁷² Exhibit "E-2".

⁷³ Exhibit "E".

⁷⁴ Exhibit "D-3".

⁷⁵ Exhibit "G".

⁷⁶ Exhibit "H".

On “manifest partiality”

“Partiality” is synonymous to “bias”.⁷⁷ Partiality excites a disposition to see and report matters as they are wished for rather than as they are.⁷⁸ 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.⁷⁹

Section 47 of IRR-A of R.A. No. 9184 automatically disqualifies a prospective bidder from participating in the procurement contracts when he or she is related up to the third civil degree of consanguinity or affinity with the head of the procuring entity.⁸⁰ The same disqualification is also embodied in Section 520⁸¹ of R.A. No. 7160⁸² which prohibits any public official or employee in the provincial, city, or municipal government, or their relatives within the fourth civil degree of consanguinity or affinity, to enter into or have any pecuniary interest in any contract for the construction, acquisition, operation or maintenance of any project awarded pursuant to the provisions of Title Four in Book II hereof, or for the procurement of any supplies, materials, or equipment of any kind to be used in the said project.⁸³ Similarly, Section 3 (c) of R.A. No. 6713⁸⁴ provides that, “public officials and employees shall not dispense or extend undue favors on account of their office to their relatives within the fourth civil degree⁸⁵ of consanguinity or affinity”.⁸⁶

The purpose of these provisions is to avoid the imminent evil of the government project being tailored to favor the interest of a pre-determined bidder or the danger of allowing room for collusion or influence peddling to advance the bid of a particular bidder.⁸⁷ The disclosure of relationship as mandated by Section 47 of IRR-A of R.A. No. 9184 bars any bidder related to the HoPE or any of the procuring entity’s officers or employees having direct access to any substantial information relative to the bidding from participating in the bidding process.⁸⁸

⁷⁷ *Fonacier v. Sandiganbayan*, G.R. No. L-50961, December 5, 1994.

⁷⁸ *Id.*

⁷⁹ *Albert v. Sandiganbayan*, G.R. 164015, February 26, 2009.

⁸⁰ Emphasis supplied.

⁸¹ Also found in Article 402 of the IRR of R.A. No. 7160.

⁸² The Local Government Code of 1991.

⁸³ Emphasis supplied.

⁸⁴ The Code of Conduct and Ethical Standards for Public Officials and Employees.

⁸⁵ See Section 3 (k) of R.A. No. 6713.

⁸⁶ Emphasis supplied.

⁸⁷ Non-Policy Opinion No. 012-2005 dated October 12, 2015 of the Government Procurement Policy Board.

⁸⁸ RULE XV – DISCLOSURE OF RELATIONS

Section 47. Disclosure of Relations

47.1 All bids shall be accompanied by a sworn affidavit of the bidder that he or she is not related to the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR.

For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the

The rental by the Municipality of Sta. Fe, Leyte of office space at Hayward Travelodge was clearly attended by manifest partiality in favor of Quemado's brother in violation of Section 47 of IRR-A of R.A. No. 9184, Section 520 of R.A. No. 7160, and Section 3 (c) of R.A. No. 6713. As earlier discussed, Quemado personally recommended,⁸⁹ requested,⁹⁰ and approved⁹¹ the use of an office space at Hayward Travelodge by the municipality despite its lack of business permit and availability of office space at the municipal hall.

Quemado likewise certified that Hayward Travelodge had the cheapest rental fee in Tacloban City.⁹² Hayward Travelodge never had to offer a bid to be awarded the contract. No public bidding was held because the selection of Hayward Travelodge was already pre-determined by Quemado's certification that it had the cheapest rate in Tacloban City. Prospective bidders were not given the opportunity to offer their bids to provide the needed office space at cheaper rate and terms most advantageous to the Municipality of Sta. Fe, Leyte. The office space at Hayward Travelodge was the only option from the very beginning. Quemado's personal selection of his brother's hotel sufficiently constitutes the essential element of **manifest partiality** under R.A. No. 3019.

On Quemado's defense

Quemado claims that he recommended, requested and approved the rental of Hayward Travelodge only for the convenience of the TWG members who were residents and employees of Tacloban City and who were rendering their services to the municipality for free. Quemado also posits that he was not conversant with the procurement law during his first term in office.

Said reasons **cannot**, however, excuse non-compliance with the clear provisions of R.A. No. 9184 and its IRR. The convenience of the TWG members could have been easily addressed without violating the law. The municipality could have arranged for comfortable transportation of the TWG

Procuring Entity notwithstanding the act of such persons inhibiting themselves from the procurement process. On the part of the bidder, this provision shall apply to the following persons:

- a) If the bidder is an individual or a sole proprietorship, to the bidder himself;
- b) If the bidder is a partnership, to all its officers and members;
- c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders;
- d) If the bidder is a cooperative, to all its officers, directors, and controlling shareholders or members; and
- e) If the bidder is a joint venture, the provisions of items (a), (b), (c), or (d) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

⁸⁹ TSN dated November 8, 2018, p. 13.

⁹⁰ Exhibit "A-1".

⁹¹ Exhibit "A-2".

⁹² Exhibit "G-1".

members in going to and from Sta. Fe, Leyte or a possible accommodation at the available spaces of the municipal hall during the conduct of the feasibility.

Again, Quemado's claim that he was not conversant with procurement law at that time is unavailing. He admitted knowing that a public bidding is required in all government procurements.⁹³ Said knowledge is sufficient to hold him liable for non-compliance with R.A. No. 9184 and its IRR.

Third element: Quemado gave unwarranted benefits, advantage or preference to Hayward Travelodge. There was, however, no evidence to prove that the injury suffered by the Municipality of Sta. Fe, Leyte was "undue".

There are two ways by which a public official violates Section 3 (e) of R.A. No. 3019 in the performance of his functions: 1) by causing undue injury to any party, including the Government; or 2) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3 (e) of R.A. No. 3019.⁹⁴

On "undue injury"

The Prosecution claims that the Municipality of Sta. Fe, Leyte suffered undue injury in the amount of the rent paid to Hayward Travelodge. The Prosecution argues that the disbursement of municipal funds was improper because of the lack of public bidding in the said rental. For his part, Quemado asserts that the completion of the feasibility study benefitted the municipality because it paved way for the approval and implementation of INFRES projects in Sta. Fe, Leyte.

The term "undue" is 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 another.⁹⁵ Undue injury has always been interpreted as "actual damage".⁹⁶ A finding of "undue injury" cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture, or guesswork.⁹⁷

⁹³ TSN dated November 8, 2018, p. 9.

⁹⁴ *Braza v. Sandiganbayan*, G.R. No. 195032, February 20, 2013.

⁹⁵ *Llorente v. Sandiganbayan*, G.R. No. 122166, March 11, 1998.

⁹⁶ *Id.*

⁹⁷ Tolentino, *The Civil Code*, Vol. V, 1992 ed., pp. 633-634 cited in *Llorente v. Sandiganbayan*.

The Court agrees that the Municipality of Sta. Fe, Leyte suffered injury in the amount of rent paid to Hayward Travelodge without public bidding. The said injury cannot, however, be considered “undue” because of evidence that Hayward Travelodge was actually used by the TWG members in their conduct of the feasibility study and the benefit derived from the approval and implementation of INFRES projects.

In his Judicial Affidavit dated October 27, 2018, Quemado said:

Q: After completion and satisfaction of all other requirements by the INFRES, what did the municipality get from it?

A: **We were able to get a funding of around P27 million pesos for road opening distributed within the various areas in the municipality through DBP. We were also able to get a second tranche for road concreting.**

Q: Do you have anything else to add?

A: **In spite of absence of funds, we were able to complete the feasibility study and comply with the requirements of the INFRES projects thereby making it eligible for grants.** It is with this that the municipality benefited more than what is alleged to have been suffered.⁹⁸

On “unwarranted benefits, advantage and preference”

In the prosecution of cases involving the violation of Section 3 (e) of R.A. No. 3019, “unwarranted” has been defined as 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.⁹⁹

To reiterate, it was Quemado who recommended,¹⁰⁰ requested,¹⁰¹ and approved¹⁰² the rental of Hayward Travelodge by the Municipality of Sta. Fe,

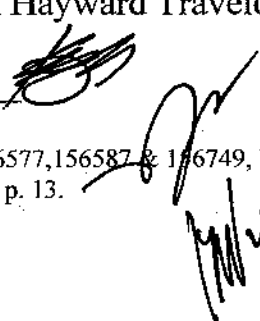
⁹⁸ p. 146; Emphasis supplied.

⁹⁹ *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014.

¹⁰⁰ TSN dated November 8, 2018, p. 13.

¹⁰¹ Exhibit “A-1”.

¹⁰² Exhibit “A-2”.



Leyte without the required public bidding.¹⁰³ Hayward Travelodge at that time did not have a business permit from Tacloban City.¹⁰⁴ Quemado later issued a check payable to himself for the payment of the rent.¹⁰⁵ He also certified that Hayward Travelodge had the cheapest rent in Tacloban City.¹⁰⁶ These acts were committed by Quemado despite knowledge that the conduct of a public bidding is required in all government procurements¹⁰⁷ and that there was available space in the municipal building for the supposed conduct of a feasibility study.¹⁰⁸ As a result, Anastacio Quemado, his brother and owner of Hayward Travelodge received unwarranted benefits, advantage and preference over other prospective lessors that may have offered a more advantageous term and rental rate for the municipality.

CONCLUSION

Public biddings are held for the protection of the public and to give it the best possible advantages by means of open competition among the bidders.¹⁰⁹ Strict observance of the rules, regulations, and guideline in the bidding process is the only safeguard to a fair, honest, and competitive public bidding.¹¹⁰ Public officials and employees involved in the procurement of government supplies must always ensure that the provisions of R.A. No. 9184 and its IRR are faithfully complied with.

In this case, the Court is convinced that Quemado acted with evident bad faith and manifest partiality in the rental of office space at Hayward Travelodge without public bidding. The Prosecution presented sufficient evidence to prove that the said rental gave unwarranted benefits, advantage and preference to Anastacio Quemado, accused Quemado's brother and owner of Hayward Travelodge. There is, however, insufficient evidence to prove that the said rental caused undue injury to the Municipal Government of Sta. Fe, Leyte.

The penalty for violation of Section 3(e) of R.A. No. 3019 is imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office.¹¹¹ Under the Indeterminate Sentence Law, if the offense is punished by special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.¹¹²

¹⁰³ Exhibit "S" and "I".

¹⁰⁴ Exhibit "H".

¹⁰⁵ Exhibit "E", "E-2" and "D-3".

¹⁰⁶ Exhibit "G-1".

¹⁰⁷ TSN dated November 8, 2018, p. 13.

¹⁰⁸ Judicial Affidavit dated October 27, 2018 of Melchor M. Quemado, Sr., p. 145.

¹⁰⁹ *De Guzman v. The Office of the Ombudsman, et al.*, G.R. No. 229256, November 22, 2017.


¹¹⁰ *Id.*

¹¹¹ Section 9, R.A. No. 3019.


¹¹² Section 1, Indeterminate Sentence Law.

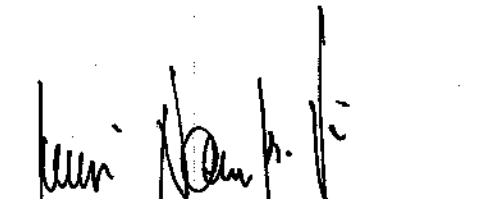
WHEREFORE, accused **MELCHOR MORADOS QUEMADO SR.**, is found **GUILTY** beyond reasonable doubt of Violation of Section 3 (e) of R.A. No. 3019, and is accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one month, as minimum, to eight (8) years, as maximum, and the accessory penalty of perpetual disqualification from holding public office.

SO ORDERED.


KARL B. MIRANDA
Associate Justice


WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
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.


SARAH JANE T. FERNANDEZ
Chairperson, Sixth Division

CERTIFICATION

Pursuant to Article VII, Section 13 of the Constitution, and the Division Chairperson'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.


AMPARO M. CABALAJIE-TANG
Presiding Justice



