



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE**  
**PHILIPPINES,**

Plaintiff,

SB-18-CRM-0123

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

-versus-

**VALDEMAR**  
**CHIONG,**

**MENDIOLA**

Accused.

PRESENT:

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

Promulgated:

*December 4, 2018*

X-----X

**DECISION**

**MIRANDA, J.:**

In an Information dated November 28, 2017, accused Valdemar Mendiola Chiong (Chiong) was charged with violation of Section 3 (e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, as follows:

“That on or about 7 April 2014, or sometime prior or subsequent thereto, in the City of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused VALDEMAR MENDIOLA CHIONG, a high-ranking public officer, being then the City Mayor of Naga, in such capacity, while in the performance of his administrative and/or official functions and committing the crime in relation to office, taking advantage of his official position, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give Petronas Energy Philippines, Inc. (Petronas) unwarranted benefit, advantage or preference by issuing or causing the issuance of Mayor’s Permit No. RO1-484-2014 dated 7 April 2014, in favor of Petronas despite its lack of the pre-requisite Fire Safety

*[Handwritten signatures]*

Decision  
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Inspection Certification from the Bureau of Fire Protection, to the detriment and prejudice of public interest.

CONTRARY TO LAW.”<sup>1</sup>

On February 19, 2018, the Court issued a warrant of arrest against Chiong.<sup>2</sup>

On February 20, 2018, the Court approved Chiong’s application for bail.<sup>3</sup>

On April 26, 2018, Chiong was arraigned and entered a plea of “not guilty”.<sup>4</sup>

On May 21, 2018, Chiong filed a Motion to Dismiss stating that private complainant Darwin G. Sarraga (Sarraga) executed an undated Affidavit of Desistance.<sup>5</sup> It was denied by the Court on June 27, 2018.<sup>6</sup>

On August 20, 2018, the Court issued the Pre-trial Order of even date.<sup>7</sup> The following facts were stipulated and admitted by both parties:<sup>8</sup>

- 1) Chiong is the accused in the Information. He was the Mayor of Naga City, Cebu from 2007-2016;
- 2) Chiong approved and signed Conditional Mayor’s Permit No. R01-484-2014 dated April 7, 2014. The said permit was issued to Petronas Energy Philippines, Inc. (Petronas) by the Office of the City Mayor of Naga City, Cebu;
- 3) Petronas is a business organization with office located at Barangay Langtad, Naga City, Cebu; and
- 4) the Bureau of Fire Protection (BFP), Naga City, Cebu issued Petronas the following: a) Fire Safety Evaluation Clearance (FSEC) dated June 27, 2012; b) Fire Safety Inspection Certificate (FSIC) for Temporary Business Permit dated October 21, 2013; c) FSIC for Business Permit dated November 4, 2013; and d) FSIC for Occupancy Permit dated November 4, 2013.

Thereafter, trial ensued.

<sup>1</sup> Information dated November 28, 2017, Records, vol. 1, p. 1-3.

<sup>2</sup> Minutes of the Proceedings dated February 19, 2018, Records, vol. 1, p. 66.

<sup>3</sup> Minutes of the Proceedings dated February 20, 2018, Records, vol. 1, p. 72.

<sup>4</sup> Order dated April 26, 2018, Records, vol. 1, p. 96-A; Certificate of Arraignment dated April 26, 2018, Records, vol. 1, p. 96.

<sup>5</sup> Motion to Dismiss dated May 21, 2018, Records, vol. 1, p. 105-109.

<sup>6</sup> Resolution dated June 27, 2018, Records, vol. 1, pp. 135-138.

<sup>7</sup> Pre-trial Order dated August 20, 2018, Records, vol. 1, pp. 235-241.

<sup>8</sup> *Id.*

## **EVIDENCE FOR THE PROSECUTION**

### **FO1 Armand James T. Serencio (Serencio)**


Serencio has been the Chief Administrative-Non-Commissioned Officer of the City of Naga Fire Station, BFP since March 2016. He executed a Judicial Affidavit dated July 31, 2018.<sup>9</sup> His testimony was dispensed with after the parties stipulated that he issued file copies of the following documents issued by the City of Naga Fire Station to Petronas: a) FSIC dated October 21, 2013 for Temporary Business Permit; b) FSIC dated November 4, 2013 for Business Permit; and c) FSIC dated November 4, 2013 for Occupancy Permit. He also issued two (2) undated Certifications relative to the application and issuance of FSIC and FSEC by the City of Naga Fire Station to Petronas.<sup>10</sup>

### **Minnie C. Abangan (Abangan)**

Abangan executed a Judicial Affidavit dated August 3, 2018.<sup>11</sup> Her testimony was dispensed with after the parties stipulated that she has been the Designated Officer of the Business Permit and Licensing Office (BPLO) of Naga City, Cebu since 2008. She issued certified true copies of the 2013 Mayor's Permit No. N09-0235-2013,<sup>12</sup> 2014 Conditional Mayor's Permit No. R01-484-2014,<sup>13</sup> and the Application Forms for Business Permit of Petronas for the years 2013 and 2014.<sup>14</sup>

### **Anna Maria B. Gabilan (Gabilan)**

Gabilan has been the City Treasurer of Naga City, Cebu since November 2006. She executed a Judicial Affidavit dated August 3, 2018.<sup>15</sup> Her testimony was dispensed with after the parties stipulated that she issued a Certification dated July 13, 2018 stating that a Business/Mayor's Permit was issued to Petronas. She also identified her signature in the 2013 and 2014 City of Naga Application Forms for Business Permit of Petronas.<sup>16</sup>

<sup>9</sup> Records, vol. 1, pp. 192-198.

<sup>10</sup> Order dated September 13, 2018, Records, vol. 1, pp. 234A-234B.

<sup>11</sup> Records, vol. 1, pp. 206-212.

<sup>12</sup> Exhibits "E",

<sup>13</sup> Exhibits "H",

<sup>14</sup> Order dated September 19, 2018, Records, vol. 1, pp. 244A-244C.

<sup>15</sup> Records, vol. 1, pp. 220-225.

<sup>16</sup> Order dated September 19, 2018, Records, vol. 1, pp. 244A-244C.

**Ma. Fe Lourdes M. Lladones (Lladones)**

Lladones executed a Judicial Affidavit dated September 21, 2018.<sup>17</sup> Her testimony was dispensed with after the parties stipulated that she has been the Chief of the Records Section of the Department of Interior and Local Government (DILG) since September 27, 2013. She issued certified true copies of DILG Memorandum Circular No. 2011-05 dated January 4, 2011, DILG Memorandum Circular No. 2011-15 dated January 31, 2011, and DILG/DTI/DICT<sup>18</sup> Joint Memorandum Circular No. 01, Series of 2016 dated August 30, 2016. The foregoing were issuances relative to FSIC and processing of business permits by local government units.<sup>19</sup>

On October 29, 2018, the Prosecution formally offered the following exhibits in evidence:<sup>20</sup>

<b>Exhibit</b>	<b>Description</b>
"A"	photocopy of Affidavit of Complaint dated August 20, 2014 of Darwin Sarraga
"A-1"	name and signature of Darwin Sarraga on page 3 of the Affidavit of Complaint
"A-2"	photocopy of letter dated August 20, 2014 of Atty. Julius Ceasar S. Entise to the Deputy Ombudsman for the Visayas
"E"	certified true copy of Mayor's Permit No. N09-0235-2013 issued to Petronas Energy Philippines, Inc.
"E-1"	name and signature of Mayor Valdemar M. Chiong
"E-1-a"	note stating that: "Lacking: SSS, Philhealth, Pag-ibig, Fire Safety Inspection Certificate, BIR, Annual Inspection"
"E-2"	certified true copy of application for business permit dated September 2, 2013 of Petronas Energy Philippines, Inc.
"H"	certified true copy of Conditional Mayor's Permit No. R01-484-2014 of Petronas Energy Philippines, Inc.
"H-1"	name and signature of Mayor Valdemar M. Chiong
"H-1-a"	note stating that: "Lacking: Fire Safety Inspection Certificate"

<sup>17</sup> Records, vol. 1, pp. 259-264.

<sup>18</sup> Department of Trade and Industry (DTI), Department of Information and Communications Technology (DICT).

<sup>19</sup> Order dated October 10, 2018, Records, vol. 1, pp. 297A-297B.

<sup>20</sup> Prosecution's Formal Offer of Evidence dated October 23, 2018, Records, vol. 1, pp. 310-314.

“H-2”	certified true copy of application for business permit dated January 14, 2014 of Petronas Energy Philippines, Inc.
“M”	certified true copy of DILG Memorandum Circular No. 2011-05 dated January 4, 2011
“N”	certified true copy of DILG Memorandum Circular No. 2011-15 dated January 31, 2011

The Court admitted all the exhibits offered by the Prosecution.<sup>21</sup>

On November 21, 2018, Chiong sought leave of court to file a demurrer to evidence.<sup>22</sup> On November 23, 2018, the Prosecution filed its Comment/Opposition to the motion for leave of court filed by Chiong.<sup>23</sup> On December 13, 2018, the Court denied Chiong’s motion for leave.<sup>24</sup> Thereafter, the Defense presented its evidence.

### EVIDENCE FOR THE DEFENSE

#### Arthur S. Villamor (Villamor)

In his Judicial Affidavit dated January 8, 2019,<sup>25</sup> Villamor testified that he has been the City Administrator of Naga City, Cebu since December 2007. He testified that:

- 1) As City Administrator, he recommends to the City Council and advises the mayor on matters regarding the management and administration of the city;<sup>26</sup>
- 2) he is knowledgeable about the process of the issuance of Mayor’s Permits at the Naga City Hall;<sup>27</sup>
- 3) a Conditional Mayor’s Permit is valid only for 90 days from its issuance. It may be revoked any time even before its expiration date. A regular Mayor’s Permit, on the other hand, expires on the last day of the year of its issuance. It may also be revoked any time if there is a violation pertaining to its issuance;<sup>28</sup>



<sup>21</sup> Minutes of the Proceedings dated November 7, 2018, Records, vol. 1, p. 340..

<sup>22</sup> Records, vol. 1, pp. 350-352.

<sup>23</sup> Records, vol. 1, pp. 353-356.

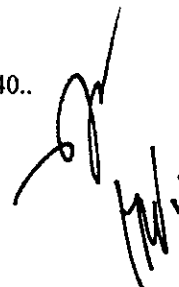
<sup>24</sup> Resolution dated December 13, 2018, Records, vol. 1, pp. 375-377.

<sup>25</sup> Records, vol. 1, pp. 385-391.

<sup>26</sup> *Id.*, pp. 386-387.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*




- 4) his basis for issuing a Conditional Mayor's Permit were DILG and DTI Joint Memorandum Circular No. 01, series of 2010 and DILG Circular 2011-05;<sup>29</sup>
- 5) under the DILG and DTI Joint Memorandum Circular No. 01, series of 2010, an LGU was permitted to issue a conditional business permit. The required inspection for compliance with all the requirements may be conducted within a year after its issuance;<sup>30</sup>
- 6) under DILG Circular 2011-05, the City Fire Marshall is required to submit to the local chief executive a written report of all non-compliant establishments with a corresponding recommendation to revoke existing business permits;<sup>31</sup>
- 7) under DILG and DTI Joint Memorandum Circular No. 01, Series of 2016, the BFP is also required to submit to the LGU a negative list of establishments that are not compliant with fire safety standards. Petronas was not included in the negative list submitted by the BFP to the City of Naga;<sup>32</sup>
- 8) the issuance of a Conditional Mayor's Permit is an executive decision exercise taking into consideration the periods required in several laws and circulars, like the Anti Red Tape Act;<sup>33</sup> and
- 9) the local government of Naga City, Cebu did not receive any notice from the City Fire Marshall that Petronas was non-compliant with any fire safety standards;<sup>34</sup>

**Carmel Lito V. Dionela (Dionela)**

The parties stipulated that Dionela can identify his Judicial Affidavit executed on February 8, 2019,<sup>35</sup> that he is the incumbent Fire Marshall of Naga City, Cebu, and that he issued a Certification dated March 6, 2018.<sup>36</sup> He testified that:

- 1) His office had photocopies of the following documents issued to Petronas: (a) FSIC for Temporary Business Permit dated October



<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, p. 389.

<sup>32</sup> *Id.*, p. 389-390.

<sup>33</sup> TSN dated January 16, 2019, pp. 13-17.

<sup>34</sup> *Id.*

<sup>35</sup> Records, vol. 1, pp. 420-426.

<sup>36</sup> Order dated February 18, 2019, Records, vol. 1, p. 473-A.

21, 2013; (b) FSIC for Business Permit dated November 4, 2013; and (c) FSIC for Occupancy Permit dated November 4, 2013;<sup>37</sup>

- 2) an FSEC is issued to an applicant if, after evaluation, the construction of the intended building, structure, or facility is compliant with the Fire Code and other related laws;<sup>38</sup>
- 3) his position does not include the duty of safekeeping records of the BFP, Naga City;<sup>39</sup> and
- 4) he did not personally search for the photocopied documents he identified in his Judicial Affidavit, which were neither authenticated nor certified.<sup>40</sup>

### Joel R. Abarquez

Abarquez was assigned as the Acting City Fire Marshall of Naga City, Cebu from October to November 2013.<sup>41</sup> He testified that:

- 1) During his incumbency as City Fire Marshall of Naga City, he issued the following to Petronas after a thorough fire safety inspection of Petronas' plant in Brgy. Langtad, Naga City, Cebu: a) FSIC for Temporary Business Permit dated October 21, 2013; b) FSIC for Business Permit dated November 4, 2013; and c) FSIC for Occupancy Permit dated November 4, 2013.<sup>42</sup> The BFP also issued an FSEC dated June 27, 2012 to Petronas;<sup>43</sup>
- 2) the FSIC for business and occupancy permits is issued after conducting the necessary fire safety inspection of the applicant. It must be ascertained that the establishment is compliant with the Fire Code of the Philippines. The FSIC is valid for one year from date of issue as provided in the BFP Guidelines dated September 24, 2012;<sup>44</sup>
- 3) the FSIC for Business Permit dated November 4, 2013 issued to Petronas was valid until November 4, 2014;<sup>45</sup>



<sup>37</sup> Judicial Affidavit of Carmel Lito V. Dionela, Records, vol. 1, p. 422.

<sup>38</sup> *Id.*

<sup>39</sup> TSN dated February 18, 2019, p. 19.

<sup>40</sup> *Id.*, pp. 18-19.

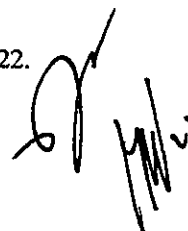
<sup>41</sup> Judicial Affidavit of Joel R. Abarquez, Records, vol. 1, p. 453.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, p. 454.

<sup>44</sup> Guidelines in the processing of fire safety inspection certificate (FSIC) during renewal of business permits specifically in areas where one-stop-shop is being implemented dated September 24, 2012; *Id.*, p. 455.

<sup>45</sup> Judicial Affidavit of Joel R. Abarquez, Records, vol. 1, p. 455.



- 4) there is no law, guideline, or circular allowing the issuance of a conditional FSIC.<sup>46</sup> The FSIC is released only to the applicant or any of its authorized representative;<sup>47</sup>
- 5) in the processing of business permits with the LGU, the role of the BFP ends after the release of the FSIC;<sup>48</sup> and
- 6) he issued the conditional FSIC dated October 21, 2013 to Petronas to gain more time to further scrutinize the features of its facility. Petronas' facility is equipped with advanced safety features and he wanted to make sure that these features were functional before issuing the final FSIC for business permit on November 4, 2013.<sup>49</sup>

### **William M. Cabibil (Cabibil)**

Cabibil is the Senior Manager, Plant Operations and Engineering of Petronas. He has the duty of keeping records and documents issued by the government in connection with the operation and safety of Petronas' facilities. He testified that:<sup>50</sup>

- 1) He has custody of the following documents issued to Petronas: a) original FSEC dated June 27, 2012; b) original FSIC for Business Permit dated November 4, 2013; c) original FSIC for Occupancy Permit dated November 4, 2013; and d) certified true copy of FSIC for Temporary Business Permit dated October 21, 2013;<sup>51</sup>
- 2) he submitted the original FSIC for Temporary Business Permit dated October 21, 2013 to Mr. Carlos P. Corpuz, the former President of Petronas. The said document was used as evidence in a separate complaint filed by Pryce Gases, Inc. before the Office of the President;<sup>52</sup>
- 3) Conditional Mayor's Permit No. R01-484-2014 dated April 7, 2014 issued to Petronas had a notation stating "lacking Fire Safety Inspection Certificate".<sup>53</sup> He did not correct such notation despite the FSIC dated November 4, 2013 issued by the BFP;<sup>54</sup>

<sup>46</sup> TSN dated February 19, 2019, p. 20.

<sup>47</sup> *Id.*, p. 22.

<sup>48</sup> *Id.*, pp. 22-24.

<sup>49</sup> *Id.*, p. 29.

<sup>50</sup> Judicial Affidavit of William M. Cabibil, Records, vol. 1, p. 487.

<sup>51</sup> *Id.*, p. 488.

<sup>52</sup> *Id.*, p. 489.

<sup>53</sup> TSN dated March 13, 2019, p. 27.

<sup>54</sup> *Id.*

The image shows several handwritten signatures and initials. At the top is a signature that appears to be 'W. Cabibil'. Below it are two more signatures, one of which is more stylized and includes initials.



- 4) when Petronas was processing its business permit renewal in January 2014, he was not aware that the FSIC dated November 4, 2013 was valid for a year;<sup>55</sup>
- 5) the BFP did not find any violation by Petronas of the Fire Code when Mayor's Permit No. R01-484-2014 dated April 7, 2014 was issued;<sup>56</sup> and
- 6) Petronas will not be able to operate its plant in Langtad, Naga City, Cebu without the Conditional Mayor's Permit No. R01-484-2014 dated April 7, 2014, which was never revoked.<sup>57</sup>

### **Ana Joy P. Parungao (Parungao)**

Parungao is a Senior Fire Officer I (SFO1) of the BFP and was previously assigned as an Investigator at the BFP Region 7, Office of Internal Affairs Services.<sup>58</sup> She testified that:

- 1) As an Investigator, she investigated complaints filed with the Office of the Regional Director;<sup>59</sup>
- 2) she prepared and issued the Investigation Report dated November 26, 2013 involving the LPG plant of Petronas in Naga City, Cebu. The investigation pertains to a complaint filed by a concerned citizen and Pryce Gases against Petronas;<sup>60</sup> and
- 3) in the course of her investigation, she did not find any violation by Petronas of the Fire Code.<sup>61</sup>

### **Valdemar M. Chiong (Chiong)**

Chiong testified that:

- 1) He was the Mayor of Naga City, Cebu from 2007-2016. As mayor, one of his duties was to issue licenses or permits to businesses that intended to operate within Naga City;<sup>62</sup>
- 2) his basis for issuing Conditional Mayor's Permit No. R01-484-2014 was Section 4.2 of Joint Memorandum Circular No. 01,

<sup>55</sup> *Id.*, p. 34.

<sup>56</sup> *Id.*, p. 35.

<sup>57</sup> *Id.*, pp. 37-38.

<sup>58</sup> Judicial Affidavit of Ana Joy P. Parungao dated March 25, 2019, Records, vol. 2, p. 10.

<sup>59</sup> *Id.*, pp. 10-11.

<sup>60</sup> *Id.*, p. 11.

<sup>61</sup> *Id.*, p. 12.

<sup>62</sup> Judicial Affidavit of Valdemar M. Chiong dated May 22, 2019, Records, vol. 2, pp. 84-85.

Series of 2010 issued by the DILG and DTI in 2010 which impliedly allowed the issuance of conditional business permits for renewal even if the required FSIC was lacking;<sup>63</sup>

- 3) when the conditional business permit of Petronas was issued on April 7, 2014, the Office of the City Mayor had not received any written or verbal notice from the BFP that Petronas violated the Fire Code. The BFP did not submit to his office a recommendation to deny the issuance of a business permit to Petronas. In Memorandum Circular No. 2011-05 dated January 4, 2011 issued by the DILG, all Fire Marshalls of cities and municipalities were obliged to submit a list of non-compliant establishments to the local chief executive, and recommend the issuance of business permits or revocation of existing ones;<sup>64</sup>
- 4) when Petronas applied for the renewal of its business permit in January 2014, the City of Naga had been implementing the Business One Stop Shop System (BOSSS) for business permit applications every January. BOSSS is a system where all concerned divisions of the city government and other agencies, including the BFP, are stationed in one area within the premises of the city hall to fast-track the processing of business permit applications;<sup>65</sup>
- 5) he did not immediately sign the application for renewal of business permit of Petronas because it lacked a 2014 FSIC. He inquired with Acting City Fire Marshall **Vilma N. Abarquez**<sup>66</sup> and was told that BFP was hesitant to issue an FSIC due to a pending complaint by Pryce Gases against Petronas. The City Fire Marshall, however, advised him that they did not find any violation by Petronas in connection with the complaint;<sup>67</sup>
- 6) despite information from Acting City Fire Marshall Vilma N. Abarquez that Petronas did not commit any violation, he consulted the City Legal Officer on the propriety of issuing a Conditional Mayor's Permit. The City Legal Officer discussed with him DILG and DTI Joint Memorandum Circular No. 01, series of 2010 dated August 6, 2010 and advised him that he may use it as basis for issuing a Conditional Mayor's Permit;<sup>68</sup>

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<sup>63</sup> *Id.*, pp. 85-86.

<sup>64</sup> *Id.*, pp. 86-87.

<sup>65</sup> *Id.*, p. 90.

<sup>66</sup> Vilma N. Abarquez is different from Joel R. Abarquez. Joel R. Abarquez was the Acting City Fire Marshall of Naga City, Cebu from October to November 2013 who issued to Petronas the FSIC for Business Permit dated November 4, 2013.

<sup>67</sup> Judicial Affidavit of Valdemar M. Chiong dated May 22, 2019, Records, vol. 2, p. 90.

<sup>68</sup> *Id.*, p. 91.

- 7) after discussing with the City Legal Officer, he again asked Acting City Fire Marshall Vilma N. Abarquez if they have issued an FSIC to Petronas. He was told that the complaint of Pryce Gases had not yet been resolved and that they did not find any violation when the BFP Regional Office reinvestigated and reinspected Petronas in connection with the complaint of Pryce Gases;<sup>69</sup>
- 8) he issued a Conditional Mayor's Permit to Petronas on April 7, 2014 after studying the circulars issued by the DILG and DTI, and after consulting other lawyers;<sup>70</sup>
- 9) Petronas stopped its operations from January 2014 until the issuance of its Conditional Mayor's Permit on April 7, 2014;<sup>71</sup>
- 10) Private complainant, Sarraga, is the Vice President of Pryce Gases. Pryce Gases is engaged in the LPG business and is a competitor of Petronas;<sup>72</sup>
- 11) Sarraga executed an undated Affidavit of Desistance stating that he discovered the existence of an FSIC dated November 4, 2013 issued to Petronas and he had already lost interest in pursuing this case;<sup>73</sup> and
- 12) the Office of the Ombudsman found him administratively liable for grave misconduct and gross neglect of duty. The Court of Appeals reversed the same in a Decision dated July 5, 2019.<sup>74</sup>

On October 2, 2019, Chiong formally offered the following exhibits in evidence:<sup>75</sup>

Exhibit	Description
"1"	photocopy of FSEC dated June 27, 2012 issued by the BFP Naga City to Petronas
"2"	photocopy of FSIC for Temporary Business Permit dated October 21, 2013 issued by the BFP Naga City to Petronas and signed by Acting City Fire Marshall Joel Abarquez

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*, p. 91-92.

<sup>71</sup> *Id.*, p. 92.

<sup>72</sup> *Id.*, p. 93.

<sup>73</sup> *Id.*

<sup>74</sup> Supplemental Judicial Affidavit of Valdemar M. Chiong dated July 26, 2019, Records, vol. 2, pp. 215-216.

<sup>75</sup> Accused's Formal Offer of Exhibits, Records, vol. 2, pp. 249-256,

"3"	photocopy of FSIC for Business Permit dated November 4, 2013 issued by the BFP Naga City to Petronas and signed by Acting City Fire Marshall Joel Abarquez
"4"	photocopy of FSIC for Occupancy Permit dated November 4, 2013 issued by the BFP Naga City to Petronas and signed by Acting City Fire Marshall Joel Abarquez
"5"	photocopy of Affidavit dated August 9, 2017 executed by Joel Abarquez
"6"	photocopy of Certification dated March 6, 2018 issued by City Fire Marshall Carmel Lito V. Dionela of BFP Naga City
"7"	photocopy of Counter-Affidavit dated January 8, 2016 of Valdemar M. Chiong with Annexes
"8"	photocopy of verified Position Paper dated February 12, 2016 of Chiong and Villamor
"9"	photocopy of Investigation Report dated November 26, 2013 prepared by Investigator FOII Parungao addressed to and approved by BFP Regional Director Ma. Luisa Hadjula with Annexes
"11"	photocopy of undated Certification prepared by FO1 Armand James Serencio and noted by SFO4 Jocylene Escomo of BFP Naga City
"12"	original copy of Subpoena dated August 14, 2018 issued by Assistant Special Prosecutor I Anna Marie Mendoza of the Office of the Ombudsman to CINSP Joel Abarquez and CISNP Vilma Abarquez
"13"	certified true copy of the Joint Manifestation and Motion to Resolve dated June 19, 2018 filed by Pryce Gases and Petronas with the Office of the President
"14"	photocopy of the Decision dated July 5, 2019 of the Court of Appeals, Cebu relative to the administrative case against Chiong
"15"	photocopy of the Resolution dated October 2, 2018 issued by the Court of Appeals, Cebu relative to the administrative case against Chiong
"16"	certified true copy of Joint Memorandum Circular No. 01, Series of 2010 dated August 6, 2010 issued by the DILG and DTI
"17"	certified true copy of Memorandum Circular No. 2011-05 dated January 4, 2011 issued by the DILG
"18"	certified true copy of Joint Memorandum Circular No. 01, Series of 2016 dated August 30, 2016 issued by the DILG, DTI, and DICT

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The Court admitted all the Exhibits offered by Chiong.<sup>76</sup>

On December 11, 2019, the Prosecution filed its Memorandum dated December 6, 2019.<sup>77</sup>

On December 12, 2019, Chiong filed his Memorandum dated December 9, 2019.<sup>78</sup>

### The Court's 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 that **the Prosecution failed to prove beyond reasonable doubt** the guilt of Chiong for violation of Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act.

Section 3 (e) of R.A. No. 3019 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, 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

<sup>76</sup> In the Minutes of the Proceedings dated October 21, 2019, Records, vol. 2, p. 427-A.

<sup>77</sup> Memorandum dated December 6, 2019, Records, vol. 2, pp. 435-448.

<sup>78</sup> Memorandum dated December 9, 2019, Records, vol. 2, pp. 451-488.

party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>79</sup>

**The first element of the crime is present. Chiong was a public officer discharging official and administrative functions at the time of the alleged crime.**

As borne by the records of this case, and as specifically stipulated by the parties per Pre-Trial Order dated August 20, 2018,<sup>80</sup> Chiong was the Mayor of Naga City, Cebu at the time material to this case. He was a public officer discharging administrative and official functions when he issued Conditional Mayor's Permit No. RO1-484-2014 dated April 7, 2014.

**The second element of the crime is absent. There was no evident bad faith, manifest partiality, or gross inexcusable negligence on the part of Chiong when he issued Conditional Mayor's Permit No. RO1-484-2014.**

The Information dated November 28, 2017 charged Chiong with evident bad faith, manifest partiality and/or gross inexcusable negligence for issuing Conditional Mayor's Permit No. RO1-484-2014 dated April 7, 2014 to Petronas without an FSIC from the BFP. The Prosecution claims that by said issuance, Chiong gave Petronas unwarranted benefit, advantage, or preference to the detriment and prejudice of public interest.

The Prosecution claims that Chiong allegedly violated Section 5(g) of R.A. No. 9514 or the Fire Code of the Philippines of 2008, which provides:

“                                xxx                                xxx                                xxx  
 No occupancy permit, business or permit to operate shall be issued without securing a Fire Safety Inspection Certificate from the Chief, BFP or his/her duly authorized representative.”

The evidence presented, however, shows that an FSIC for business permit was issued by the BFP, Naga City, Cebu to Petronas on November 4, 2013.<sup>81</sup> The said FSIC was valid for a period of one year from issuance, or until November 4, 2014. There is therefore no basis for the Prosecution's claim that Petronas had no valid FSIC when Conditional Mayor's Permit No. RO1-484-2014 was issued by the accused on April 7, 2014.

<sup>79</sup> *Fuentes v. People*, G.R. No. 186421, April 17, 2017; *Consigna v. People*, G.R. No. 175750-51, April 2, 2014; and *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004; and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989.

<sup>80</sup> Pre-trial Order dated August 20, 2018, Records, vol. 1, pp. 235-241.

<sup>81</sup> Exhibit "3" of Chiong.

Chiong was able to present Petronas' FSIC for business permit dated November 4, 2013<sup>82</sup> signed by BFP Acting City Fire Marshall Joel R. Abarquez. The FSIC was issued after Joel R. Abarquez conducted a thorough fire safety inspection of Petronas' plant in Brgy. Langtad, Naga City, Cebu.<sup>83</sup> Prosecution witness FO1 Serencio also issued a Certification that said FSIC is on file at the BFP Naga City Fire Station.<sup>84</sup> Petronas' Senior Manager Cabibil likewise brought the original copy of said FSIC when he testified.<sup>85</sup> Moreover, both parties stipulated during pre-trial that the BFP issued the said FSIC to Petronas.<sup>86</sup>

Again, defense witness Acting City Fire Marshall Joel R. Abarquez testified that an FSIC is valid for one year from date of issuance pursuant to Section 3.2 of BFP Memorandum dated September 24, 2012 which provides:

Section 3.2. All Fire Safety Inspection Certificate (FSIC) for business or permit to operate shall have a validity of 365 days or 1 year from the date of its issuance unless revoked/cancelled for justifiable cause in accordance to Rule 13 of the Implementing Rules and Regulations of R.A. 9154.

Hence, the FSIC issued to Petronas was valid until November 4, 2014. Petronas, therefore, had a valid FSIC issued by the BFP when Chiong issued Conditional Mayor's Permit No. RO1-484-2014 dated April 7, 2014.

*The BFP's failure to furnish the City of Naga a copy of Petronas' FSIC cannot be visited upon Chiong*

The BFP is primarily responsible for the implementation of the Fire Code of the Philippines. This includes the conduct of yearly inspections of establishments for the purpose of issuing an FSIC.<sup>87</sup> As established by the evidence on record, Chiong coordinated with the BFP, Naga City on the lacking FSIC in Petronas' application for renewal of business permit on January 14, 2014.<sup>88</sup> Unfortunately, the FSIC dated November 4, 2013 was not furnished to Chiong when he inquired with the then Acting City Fire Marshall Vilma N. Abarquez, despite a photocopy of the same being on file at the City of Naga Fire Station.<sup>89</sup> It will be noted that the said FSIC was issued by Acting City Fire Marshall Joel Abarquez, who served in such capacity from October

<sup>82</sup> Exhibit "2" for Chiong.

<sup>83</sup> Judicial Affidavit of Joel R. Abarquez, Records, vol. 1, pp. 385-391.

<sup>84</sup> Order dated September 13, 2018, Records, vol. 1, pp. 234A-234B.

<sup>85</sup> TSN dated March 13, 2019, p. 12.

<sup>86</sup> Pre-trial Order dated August 20, 2018, Records, vol. 1, pp. 235-241.

<sup>87</sup> Section 5(g) of R.A. No. 9514

<sup>88</sup> Annex 5 of the Defense's Exhibit "7" is a letter dated February 13, 2014 by Acting City Fire Marshall Vilma N. Abarquez in response to Chiong's query dated February 11, 2014. It states that the BFP did not issue an FSIC because of the pendency of an appeal by Pryce Gases, Inc. against Petronas before the Office of the Fire Chief, National Headquarters.

<sup>89</sup> Judicial Affidavit of FO1 Armand James T. Serencio dated July 31, 2018, Records, vol. 1, p. 95; Judicial Affidavit of Fire Marshall Carmel Lito V. Dionela dated February 8, 2019, Records, vol. 1, p. 422.

to November 2013,<sup>90</sup> and not by Acting City Fire Marshall Vilma N, Abarquez with whom Chiong coordinated in 2014. Chiong was not even advised by Vilma N. Abarquez that said FSIC was still valid when Petronas applied for the renewal of its business permit. The BFP's twin failure in this regard cannot be blamed on Chiong who eventually issued the Conditional Mayor's Permit

An FSIC is released only to the applicant or any of its authorized representative.<sup>91</sup> The application form for business permit renewal requires the FSIC to be attached by the applicant.<sup>92</sup> Petronas failed to attach its FSIC dated November 4, 2013 to its application for renewal of business permit, despite the same being in its custody.<sup>93</sup> Hence, the notation "Lacking: Fire Safety Inspection Certificate" in the Conditional Mayor's Permit No. RO1-484-2014.<sup>94</sup> What is important here, however, is that Petronas really had a valid FSIC when it applied for the renewal of its business permit. Defense witness Cabibil testified that when Petronas was processing its renewal for business permit in January 2014, he was not aware that the said FSIC was valid for a year.<sup>95</sup>

The Prosecution disputes the existence of Petronas' FSIC dated November 4, 2013 because the same was not produced during the preliminary investigation. The Prosecution theorizes that if said document is to truly absolve Chiong, he should have presented it when he filed his Counter-Affidavit and Position Paper before the Office of the Ombudsman.

The Court does not agree with the Prosecution. Preliminary investigation is not a part of judicial proceedings. Evidence not presented during preliminary investigation may still be presented and admitted in court.

In *People v. Jakosalem*,<sup>96</sup> the Supreme Court said:

"A preliminary investigation is not a trial or any part thereof and has no purpose except that of determining whether or not the defendant should be released or held for trial before a competent court. **It is not a part of the judicial proceedings for the determination of accused-appellant's guilt.** The two are independent of each other. Once the information against the accused is filed in court, the investigating officer loses control over the case and the adjudication of the case is shifted to the trial judge.

More importantly, the evidence evaluated during the preliminary investigation consisted merely of the affidavits

<sup>90</sup> Judicial Affidavit of Joel R. Abarquez, Records, vol. 1, p. 453.

<sup>91</sup> TSN dated February 19, 2019, p. 20.

<sup>92</sup> Exhibit "H-2" for the Prosecution.

<sup>93</sup> Judicial Affidavit of William M. Cabibil, Records, vol. 1, p. 487.

<sup>94</sup> Exhibit "H" and "H-1-a" for the Prosecution.

<sup>95</sup> TSN dated March 13, 2019, p. 34.

<sup>96</sup> G.R. No. 130506, February 28, 2002.



of the complainant and counter-affidavits of the respondents. At that time, the eyewitness has not yet appeared to testify. It was only after the information against accused-appellant was filed in court that the testimony of the sole eye witness was presented.”

The evidence presented during preliminary investigation are separate from those that may be admitted during trial in the court. This, however, does not bar Chiong from presenting the FSIC dated November 4, 2013 in evidence during the full-blown trial on the merits before the Court. Again, Chiong should not be faulted if Petronas failed to attach the FSIC in its application for renewal of business permit and if the BFP failed to inform him that an FSIC was duly issued to Petronas even after inquiring with Acting City Fire Marshall Vilma N. Abarquez.<sup>97</sup>

More importantly, the parties during Pre-trial stipulated that FSIC for Business Permit dated November 4, 2013 was issued by the BFP to Petronas.<sup>98</sup> During the proceedings of this case, the FSIC dated November 4, 2013 was duly offered and admitted by the Court. The Defense also presented witness Acting City Fire Marshall Joel Abarquez, who personally issued the said FSIC, and witness Cabibil, who brought to court an original copy of the contested FSIC. For these reasons, the Prosecution’s claim that the said FSIC does not exist because it was not presented during the preliminary investigation is untenable.

Chiong needed to act on the application for renewal of business permit of Petronas within 5-10 days.

The power of a city mayor to issue business permits is vested under Section 455(b)(3)(iv) of R.A. No. 7160 or the Local Government Code:

“Section 455. Chief Executive; Powers, Duties and Compensation.

xxx

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

xxx

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-

<sup>97</sup> Annex 5 of the Defense’s Exhibit “7”.

<sup>98</sup> Pre-trial Order dated August 20, 2018, Records, vol. 1, pp. 235-241.

industrial development and countryside growth and progress and, relative thereto, shall:

xxx

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance”

Chiong and the Local Government of Naga are mandated to act on applications for renewal of business permits within the periods prescribed under R.A. No. 9485 or the Anti-Red Tape Act of 2007. Pursuant to said law, the DTI and DILG issued Joint Memorandum Circular No. 01, Series of 2010 dated August 6, 2010 which provides:

“4.3 Standard Processing Time. Consistent with ARTA, all cities and municipalities are enjoined to comply with the prescribed time for processing of business registrations, as shown below:

- (1) Processing of new business permits, which is classified as a complex transaction following the ARTA classification, shall not take more than 10 days for the release of the permit. However, LGUs are enjoined to strive for 5 days or less which is the average processing days in LGUs with streamlined BPLS; and
- (2) **Processing of business renewals, which is classified as a simple transaction, shall not take more than 5 days for the release of the permit. However, LGUs are enjoined to strive for one day or less processing, which is the average processing time in LGUs with streamlined BPLS. [Emphasis Supplied]**

Conditional Mayor’s Permit No. RO1-484-2014 dated April 7, 2014 was issued almost three months from Petronas’ application for a business permit on January 14, 2014 way beyond the period provided by DTI and DILG issued Joint Memorandum Circular No. 01, Series of 2010.<sup>99</sup> In the interim, Petronas was forced to stop its operations as it could not operate without a valid business permit from the City of Naga for the year 2014.<sup>100</sup> Taking into consideration a possible liability for violation of the Anti-Red Tape Act of 2007 should he continue to withhold the renewal of Petronas’ business permit, Chiong issued a Conditional Mayor’s Permit.<sup>101</sup>

<sup>99</sup> Exhibit “H-2” for the Prosecution.

<sup>100</sup> TSN dated March 13, 2019, pp. 37-38; Judicial Affidavit of Valdemar M. Chiong dated May 22, 2019, Records, vol. 2, p. 92.

<sup>101</sup> Judicial Affidavit of Valdemar M. Chiong dated May 22, 2019, Records, vol. 2, pp. 83-96.

From the foregoing, it is then clear that the Prosecution failed to prove that Chiong acted with evident bad faith, manifest partiality, and/or gross inexcusable negligence when he issued the said conditional permit.

**The third element of the crime is absent. The Prosecution failed to prove beyond reasonable doubt that Chiong gave unwarranted benefit, advantage, or preference to Petronas when he issued Conditional Mayor's Permit No. RO1-484-2014.**

The Prosecution contends that Chiong gave unwarranted benefit, advantage, or preference to Petronas when he issued Conditional Mayor's Permit No. RO1-484-2014 to Petronas even without a valid FSIC.

The Prosecution errs.

In *Sison v. People*,<sup>102</sup> the Supreme Court defined unwarranted benefits, advantage, or preference as follows:

“The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.”

The Court finds that the Prosecution failed to prove beyond reasonable doubt that Chiong gave Petronas unwarranted benefit, advantage, or preference when he issued Conditional Mayor's Permit No. RO1-484-2014. As earlier stated, Petronas had a valid FSIC when Chiong gave it a Conditional Mayor's Permit. Chiong testified that the basis for his issuance of the same was Joint Memorandum Circular No. 01, Series of 2010 dated August 6, 2010 issued by the DILG and DTI,<sup>103</sup> the pertinent provision of which states:

Joint Memorandum Circular No. 01 Series of 2010

“4.2.2 Compliance with the above standard steps will require the following:

- (1) Inspections usually undertaken for compliance with zoning and environment ordinances, building and fire safety, health and sanitation regulations undertaken during the construction stage shall not be conducted again by the LGU as part of the requirements for business registration. Instead, inspections to check compliance with all the requirement standards will be

<sup>102</sup> *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

<sup>103</sup> Guidelines in implementing the standards in processing business permits and licenses in all cities and municipalities

undertaken within the year after the issuance of the business permit.”

The DILG also issued Memorandum Circular No. 2011-05 dated January 4, 2011<sup>104</sup> which required the BFP to give local chief executives a written report informing them of establishments that were not compliant with the Fire Code with a recommendation not to issue permits, as follows:

“3. In addition to the ‘Notice To Comply/Notice to Correct Violations’ issued to the erring occupancies, the City/Municipal Fire Marshall shall then issue a written report notifying the Local Chief Executive wherein all the names of non-compliant establishments are listed, and **expressly stating therein a recommendation not to issue any of the following permits, or revoke existing ones, when applicable – Business or Mayor’s Permit, Permit to Operate, Occupancy Permit, PHILHEALTH Accreditation for Hospitals, DOH License to Operate, and other licenses being issued by the local government unit (LGU).** The written notice to the LGU shall be submitted within the first seven (7) calendar days following the last month of the quarter when inspection is conducted. [Emphasis supplied]

Although issued two years after the act in question was committed by Chiong, the requirement for the BFP to provide local chief executives with said notification and recommendation is further bolstered by Joint Memorandum Circular No. 01, Series of 2016 dated August 30, 2016 issued by the DILG, DTI, and DICT which states:

**“6.2.1 Streamlining Procedures for Securing Fire Safety Inspection Certificates.** The amended Fire Code of 2008 stipulates that a Fire Safety Inspection Certificate (FSIC) must be secured by business applicants as a prerequisite for the issuance of the Business Permit To harmonize with ARTA requiring speedy and transparent business processes, the following procedures shall be adopted as part of the reforms intended to make business permitting more efficient:

xxx

**6.2.1.2. For renewal of business permits, the requirement for the presentation of FSIC to the city/municipality is with the BFP, either thru the copy of the FSIC or the negative list. If the BFP does not provide the city/municipality with the FSIC or does not inform them thru the negative list, it means that the business establishments has a valid FSIC and therefore, the basis for renewing the business permit.”** [Emphasis supplied]

<sup>104</sup> Intensifying fire safety enforcement in the Bureau of Fire Protection and institutionalizing standard processes in the conduct of inspection and defining accountabilities of concerned BFP personnel in the inspection and issuance of Fire Safety Inspection Certificate

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The Prosecution failed to present any evidence proving that the BFP submitted to the local government of Naga City, Cebu a report and recommendation relative to Fire Code violations of Petronas or the non-issuance of an FSIC to it. Without the report and recommendation from the BFP, as required by DTI and DILG Joint Memorandum Circular No. 01, Series of 2010, there was nothing to prevent Chiong from issuing a conditional business permit to Petronas. In fact, under the circumstances, Chiong could have issued a regular business permit and not merely a conditional one. Clearly, Chiong did not give Petronas any unwarranted benefits, advantage, or preference.

**WHEREFORE**, for failure of the Prosecution to prove the guilt of the accused beyond reasonable doubt for the crime of violation of Section 3 (e) of R.A. No. 3019, accused **VALDEMAR MENDIOLA CHIONG** is **ACQUITTED** of the charge against him.


No civil liability may be adjudged against the accused as the act or omission from which the civil liability might arise did not exist.

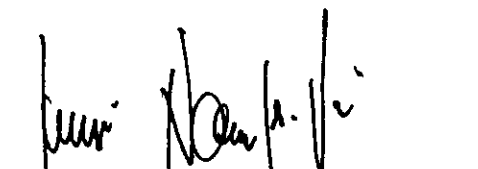
Let the hold departure order issued against the accused by reason of this case be lifted and set aside, and his bond released, subject to the usual accounting and auditing procedures.

**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. GABOTAJE-TANG**  
*Presiding Justice*



