



REPUBLIC OF THE PHILIPPINES,  
**SANDIGANBAYAN**  
Quezon City

**Third Division**

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

Crim. Case Nos.  
**SB-16-CRM-1061**  
*For: Violation of Sec. 3(e)  
of R.A. No. 3019, as  
amended*

**SB-16-CRM-1062 to 1067**  
*For: Falsification of  
Public Documents under  
Article 171, par.4 of the  
Revised Penal Code*

-versus-

**LT. GEN. GREGORIO MICLAT  
CAMILING, JR., BGEN. SEVERINO  
P. ESTRELLA, COL. CESAR  
GUZMAN SANTOS, COL. JESSIE  
MARIO B. DOSADO, COL. BARMEL  
B. ZUMEL, CAPT. GEORGE P.  
CABREROS, COL. CYRANO  
AGLUGUB AUSTRIA, ATTY.  
EDITHA B. SANTOS and  
ROLANDO MINEL,**

*Accused.*

*Present:*  
Cabotaje-Tang, A.M., PJ  
Chairperson  
Fernandez, B.R., J and  
Moreno, R.B., J.

PROMULGATED:

April 8, 2022 *JP*

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**DECISION**

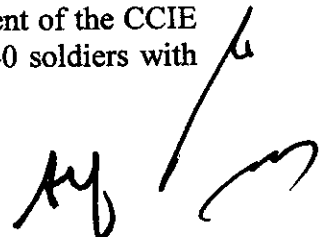
***Moreno, J.:***

Accused Lt. Gen. Gregorio M. Camiling, Jr., Brig. Gen. Severino P. Estrella, Col. Cesar Guzman Santos, Col. Jessie Mario B. Dosado, Col. Barmel B. Zumel, Capt. George P. Cabrereros, Col. Cyrano Aglugub Austria, Atty. Editha B. Santos and Rolando Minel are charged before this Court with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended (1 count) and Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code (6 counts), respectively.

The *Information* in SB-16-CRM-1061 for violation of Section 3(e) of R.A. No. 3019, as amended, reads as follows:

X X X X

That in February 2003 or thereabout, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers of the Philippine Army (PA), Armed Forces of the Philippines (AFP), namely, **LT. GEN. GREGORIO M. CAMILING, JR.**, then Commanding General, **BGEN. SEVERINO P. ESTRELLA**, then Commanding Officer of the Army Support Command (ASCOM), **COL. CESAR G. SANTOS**, **CAPT. GEORGE P. CABREROS**, **LT. COL. BARMEL B. ZUMEL**, then members of the Bids and Awards Committee (BAC) ASCOM, **LT. COL. JESSIE MARIO B. DOSADO**, then BAC Secretary, **COL. CYRANO A. AUSTRIA**, then Assistant Chief of Staff for Logistics, **EDITHA B. SANTOS**, then Head of the Accounting Unit and **ROLANDO F. MINEL**, then Chief Accountant, while in the performance of their official functions and committing the offense in relation to office, conspiring and confederating with one another, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Dantes Executive Menswear (Dantes) in that Dantes was made the sole supplier of various Combat Clothing and Individual Equipment (CCIE) items of the PA amounting to Five Million One Hundred Three Thousand Pesos (₱5, 103,000.00) without the benefit of public bidding by: (i) splitting into six (6) separate *Procurement Directives* (PD) and *Purchase Orders* (PO) the procurement of the CCIE items that actually make a complete set of uniform for 540 soldiers with



each PO amounting to less than ₱1,000,000.00, resorting instead to shopping as an alternative method of procurement without legal basis and authority from superior officer/s, in violation of existing laws and regulations, and (ii) charging said PDs and POs issued in February 2003 against inexistent fund, as the *Advices of Sub-Allotment* (ASA) pertaining to fund procurements were issued only on April 3, 2003, to the injury and damage of the government in the amount of ₱5, 103,000.00.

CONTRARY TO LAW.<sup>1</sup>




The *Information* in SB-16-CRM-1062 for Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, as amended, reads as follows:

X X X X

That on February 11, 2003 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers of the Philippine Army (PA), Armed Forces of the Philippines (AFP), namely, **LT. GEN. GREGORIO M. CAMILING, JR.**, then Commanding General, **BGEN. SEVERINO P. ESTRELLA**, then Commanding Officer of the Army Support Command (ASCOM), **COL. CESAR G. SANTOS**, **CAPT. GEORGE P. CABREROS**, **LT. COL. BARMEL B. ZUMEL**, then members of the Bids and Awards Committee (BAC) ASCOM, **LT. COL. JESSIE MARIO B. DOSADO**, then BAC Secretary, **COL. CYRANO A. AUSTRIA**, then Assistant Chief of Staff for Logistics, **EDITHA B. SANTOS**, then Head of the Accounting Unit and **ROLANDO F. MINEL**, then Chief Accountant, conspiring and confederating with one another, taking advantage of and committing the offense in relation to their respective positions, in that the acts committed relate to the procurement of Combat Clothing and Individual Equipment (CCIE) items of the PA, did then and there wilfully, unlawfully and feloniously make an untruthful statement in Procurement Directive (PD) No. 2003-04-0081 dated February 11, 2003, a public document by making it appear that funds for the Green Pants for use of the Security and Escort Battalion (SEB) band of the PA were already available by indicating in said PD that the funds was chargeable to Advise of Sub-Allotment (ASA) No. 156 when in truth and in fact, as accused are fully aware and bound to disclose truthfully, ASA No. 156 was inexistent since it was issued only on April 3, 2003, to the damage and prejudice of the government.

CONTRARY TO LAW.

The accusatory portions of the Informations in SB-16-CRM-1062 to 1067 are all similarly worded, except for the dates, Procurement Directive Numbers, the Advices of Sub-Allotment numbers, and the procured items, as follows:

  
  
  
<sup>1</sup> Record, vol VII, pp. 2-3.

Case No.	Procurement Directive (PD) No.	Procurement Directive Date	Advise of Sub-Allotment No.	Items Procured
SB-16-CRM-1062	2003-04-0081	February 11, 2003	156	185 sets of Gala with Green Pants for use of the Security and Escort Battalion band
SB-16-CRM-1063	2003-04-0082	February 12, 2003	157	540 Pershing Caps for use of the Headquarters and Headquarters Support Group band
SB-16-CRM-1064	2003-04-0083	February 13, 2003	158	165 sets of Gala with Green Pants for use of the PA band
SB-16-CRM-1065	2003-04-0084	February 14, 2003	159	540 pieces of White Pants and 540 pieces of Line Yard for use of the Security and Escort Battalion band
SB-16-CRM-1066	2003-04-0085	February 17, 2003	160	540 sets of buttons and 540 pieces of belts and buckles for the use of the PA band
SB-16-CRM-1067	2003-04-0086	February 17, 2003	161	190 sets of Gala with Green Pants for the use of the Headquarters and Headquarters Support Group band of the PA

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The Court issued Hold Departure Orders<sup>2</sup> against all the accused per our Resolutions dated November 10, 2016.

Atty. Editha Santos filed a *Motion for Judicial Determination of Probable Cause*;<sup>3</sup> while Rolando Minel filed a *Motion to Quash*.<sup>4</sup>

In the Court's Resolution<sup>5</sup> of March 20, 2017, we found the existence of probable cause against all the accused; and issued a warrant of arrest against accused Camiling, Jr. and Estrella. In this Resolution, we pointed out that the issuance of warrants of arrest against accused Zumel, Cabreros, Austria, Dosado, Santos, Minel and Atty. Santos had been rendered moot because they already posted bail. Accordingly, the Court set the arraignment of all the accused.


The records showed that accused Dosado filed an *Omnibus Motion (Motion for Re-Judicial Determination of Probable Cause and Motion to Quash/Dismiss)*; <sup>6</sup> while accused Cabreros and Zumel filed an *Urgent Consolidated Motion to Quash Informations with Motion to Defer Arraignment*.<sup>7</sup>

Meanwhile, Atty. Santos filed a *Motion for Reconsideration*<sup>8</sup> to assail the Court's March 20, 2017 Resolution. The Court denied this motion per our August 4, 2017 Resolution.<sup>9</sup>

In the Court's Resolution<sup>10</sup> dated May 25, 2017, we denied Minel's *Motion to Quash* for lack of merit.

Accused Cesar Santos and Atty. Editha Santos filed their respective motions to quash on May 29, 2017 and June 20, 2017, respectively.

In the Court's Resolution<sup>11</sup> dated September 22, 2017, we denied Dosado's *Omnibus Motion (Motion for Re-Judicial Determination of Probable Cause and Motion to Quash/Dismiss)*; <sup>12</sup> Cabreros and Zumel's *Urgent Consolidated Motion to Quash Informations with Motion to Defer Arraignment*; and the respective motions to quash by Atty. Santos and Cesar Santos.

  
2 Record, vol. 1, pp.303-304.

3 Record, vol. I, pp. 316-335

4 Id. at 340-348.

5 Id. at 651-681.

6 Record, vol. II, pp. 54-62.

7 Id. at 63-75.



8 Id. at 76-84.

9 Id. at 551-566

10 Id. at 173-190.

11 Id. at 614-640.

12 Record, vol. II, pp. 54-62.



Atty. Santos, Cesar Santos, Cabreros and Zumel moved to reconsider this resolution. The Court denied the motions of Atty. Santos and Cesar Santos in our November 20, 2017 resolution; and the Joint Motion for Reconsideration of Cabreros and Zumel via our December 4, 2017 Resolution.

All the accused pleaded "*Not Guilty*" to the offenses charged upon their respective arraignment.

At the pre-trial conference that ensued, the parties made the following stipulation of facts:

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**I.**

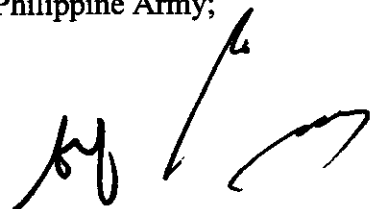
**PLEA BARGAINING**

The parties did not enter into any plea bargaining agreement.

**II.**

**STIPULATIONS OF FACT**

1. That all the accused admit their identities and that whenever they are referred to orally or in writing, they admit that they are the same persons being referred to in relation to these cases;
2. That during the period material to the cases as alleged in the Information/s, accused admit their being public officers and their respective positions and or designations as follows;
  - a. LT. GEN. GREGORIO M. CAMILING, JR. was then the Commanding General, Philippine Army (CG, PA);
  - b. BGEN. SEVERINO P. ESTRELLA was then the Commanding General Army Support Command, Philippine Army (CG, ASCOM, PA);
  - c. COL. CESAR GUZMAN SANTOS was then the Chairman of the Bids, Negotiations and Acceptance Committee (BNAC), ASCOM, Philippine Army;
  - d. CAPT. GEORGE PAGSOLINGAN CABREROS was then one of the members of the Bids, Negotiations and Acceptance Committee (BNAC), ASCOM, Philippine Army;
  - e. LT. COL. BARMEL B. ZUMEL was then one of the members of the Bids, Negotiations and Acceptance Committee (BNAC), ASCOM, Philippine Army;
  - f. LT. COL. JESSIE MARIO BORJA DOSADO was then the Secretary of the Bids, Negotiations and Acceptance Committee (BNAC), ASCOM, Philippine Army;
  - g. COL. CYRANO AGLUGUB AUSTRIA was then the Assistant Chief of Staff for Logistics, Philippine Army;

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- h. EDITHA BARROGA SANTOS was then the Assistant Chief Accountant, Philippine Army; and
  - i. ROLANDO DELA FUENTE MINEL was then the Chief Accountant, Philippine Army;
3. The contents of Procurement Directive NR TOS (CCIE) 2003-04-0081, 2003-04-0082, 2003-04-0084, 2003-04-0085, 2003-04-0086 were all typewritten, except for the dates which were stamped on the document.

x x x x<sup>13</sup>

### **EVIDENCE FOR THE PROSECUTION**

The prosecution presented Major Gerald M. Regis, Mercedes A. Tamayo and Atty. Leonor Boado in the trial on the merits that followed.

The testimony of **Major Gerald M. Regis**, as culled from his Judicial Affidavit,<sup>14</sup> is as follows: that he is the Acting Assistant Chief of Staff for Logistics (G4) since September 2018; that he monitors the processes with regard to the Philippine Army procurements; that he keeps pertinent records in relation to such procurements; that the Office of the Special Prosecutor, through a subpoena addressed to then Commanding General Lt. Gen. Macairog S. Alberto, requested for the original copies of the Procurement Directives (PDs) and Advices of Sub-Allotment (ASAs) involved in these cases; that he asked his personnel to look for the original PDs and ASAs after the subpoena had been endorsed to him, but the said documents could not be found in the 'remaining files' in his office; that the Office of the Army Judge Advocate invited the ASCOM and the Accounting Office for a meeting to inquire on the whereabouts of the original documents, but the same could no longer be found.<sup>15</sup>

On cross-examination, Maj. Regis stated that the Procurement Directives and Advice of Sub-Allotments never came into his possession or custody. He recalled that his search of documents subject of the subpoena yielded a 'negative result' because the ASCOM Headquarters had been razed by fire in December 2012. According to Maj. Regis, he only assumed that the documents subject of the subpoena were in the ASCOM Headquarters.<sup>16</sup>

<sup>13</sup> Record, vol. IV, pp. 32-33.

<sup>14</sup> Record, vol. IV, pp. 134-143.

<sup>15</sup> *Id.*

<sup>16</sup> TSN, January 16, 2019, pp. 14-15.

On further questioning by the Court, Maj. Regis stated that he was unsure if he conducted any inventory of the documents that were on file with ASCOM before it had been razed by fire.<sup>17</sup>

The next witness for the prosecution was **Mercedes Tamayo**. The parties stipulated that: Tamayo is a State Auditor II assigned at the Commission on Audit-Philippine Army since August 29, 2018; part of her duties consisted of acting as records custodian of the Commission on Audit-Philippine Army; Exhibits “B”, “C”, “D”, “E”, “F” and “G” “ which are procurement directives, are certified photocopies from photocopies on file with the Commission on Audit (COA), and that there were erasure marks on the said exhibits where a date was stamped; the marked documents do not reflect the erasures that appear to have been made on the photocopied documents; and Exhibits “B-1” to “G-1,” inclusive, which are Advice of Sub-allotments, are likewise faithful reproductions of photocopies on file with the COA; that Exhibits ‘B-2” to “B-18”, “C-2” to “C-18”, “D-2” to “D-19”, “E-2” to “E-19”, “F-2” to “F-18”, “G-2” to “G-18,” inclusive, are all certified photocopies of original copies on file with the COA; and, that Exhibit “H” is a faithful reproduction of a photocopy on file with the COA.<sup>18</sup>

The parties further stipulated that Tamayo did not have any participation in the preparation of the documents; did not have any knowledge as regards the transactions that occurred prior to her appointment as record custodian; and had no personal knowledge of the actual transmittal or receipt by the COA of the said documents.<sup>19</sup>

When **Atty. Leonor D. Boado** was called to the witness stand, the parties stipulated, among others, that from 2008 to 2013, she was the Director of the Fraud Audit Investigation Office of the COA, and that she issued a 9<sup>th</sup> Endorsement dated August 21, 2010.<sup>20</sup>

On direct-examination, Atty. Boado explained that the Director of the National Government Sector Cluster 3 made an observation via an 8<sup>th</sup> Endorsement dated March 9, 2007 that there had been splitting on the purchase orders.<sup>21</sup> She added that there could be an indication of ‘splitting,’ if the dates, the source of the requisition, the supplier and the purchase order were all the same,<sup>22</sup>

Atty. Boado testified further that she sustained the finding of splitting even if there had been a canvass from suppliers because of the following circumstances: the total amount of ₱5 million had been broken into several

<sup>17</sup> *Id.* at 18.

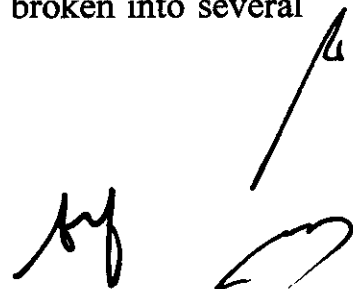
<sup>18</sup> See Order dated January 16, 2019; record, vol. IV. pp. 239-240.

<sup>19</sup> TSN, January 16, 2019, p. 35.

<sup>20</sup> *Id.* at 40-41

<sup>21</sup> *Id.* at 42.

<sup>22</sup> *Id.* at 43.

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amounts; the rates of the canvass and the winning bidder was the same; and there was only one source of requisition. She also stated that the requirements of shopping had not been complied with since the amounts were more than ₱50,000.00 and ₱250,000.00, respectively, and that the parade was not an unforeseen event. Atty. Boado emphasized that public bidding was important in order to get the best price available, and in order to avoid corrupt practices.<sup>23</sup>

On cross-examination, Atty. Boado maintained that R.A. No. 9184 was already the applicable law in 2003. She maintained that the ₱5 million had been split into several amounts; and that the actual purchase orders were for smaller amounts.<sup>24</sup>

On additional cross, Atty. Boado stated that she had no proof that there were other suppliers that offered a better price in 2003. She reiterated that splitting is prohibited;<sup>25</sup> and that she was not aware that some of the CCIE purchased did not belong “to only one whole uniform for a certain group of the Army.”<sup>26</sup> Atty. Boado reiterated that the Philippine Army was not exempt from the coverage of R.A. No. 9184.<sup>27</sup>

On re-direct, Atty. Boado testified that the fact that there were several end-users had no bearing on the finding of splitting if there was only one requisitioning office, and if the total amount is broken into smaller amounts so that alternative modes of procurement could be resorted to.<sup>28</sup>

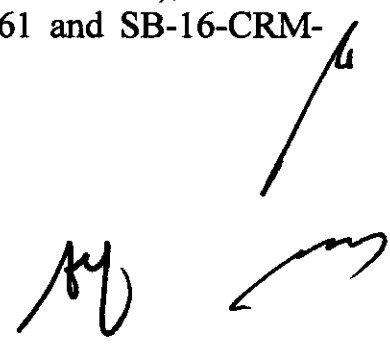
During re-cross examination, Atty. Boado stated that she did not consider the peculiarities with regard to the procurement process in the Philippine Army in finding that there had been splitting.<sup>29</sup>

On further questioning by the Court, Atty. Boado clarified that in ‘splitting’, there is an intention to evade public bidding or to favor a particular supplier. She added that ‘breaking-up’ can be allowed in cases of emergency.<sup>30</sup>

The prosecution filed its Formal Offer of Evidence on February 21, 2019, consisting of the following: Exhibits “B” to “B-18” (common exhibits in SB-16-CRM-1061 and SB-16-CRM-1062); Exhibits “C” to “C-18” (common exhibits in SB-16-CRM-1061 and SB-16-CRM-1063); Exhibits “D” to “D-19” (common exhibits in SB-16-CRM-1061 and SB-16-CRM-

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<sup>23</sup> *Id.* at 45-46.  
<sup>24</sup> *Id.* at 52.  
<sup>25</sup> *Id.* at 55-56.  
<sup>26</sup> *Id.* at 59.  
<sup>27</sup> *Id.* at 62.  
<sup>28</sup> *Id.* at 64.  
<sup>29</sup> *Id.* at 66.  
<sup>30</sup> *Id.* at 70-71.

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1064); Exhibits “E” to “E-19” (common exhibits in SB-16-CRM-1061 and SB-16-CRM-1065); Exhibits “F” to “F-18” (common exhibits in SB-16-CRM-1061 and SB-16-CRM-1066); Exhibits “G” to “G-18” (common exhibits in SB-16-CRM-1061 and SB-16-CRM-1067); and Exhibits “H”, “J”, and “K” (for all the cases).<sup>31</sup> All the accused filed their respective comments, objections and/or opposition to this formal offer. The Court admitted the prosecution’s exhibits on March 29, 2019.

Col. Austria, Col. Santos, Lt. Gen. Camiling, Brig. Gen. Estrella, Dosado and Atty. Santos filed their respective *Motion for Leave to File Demurrer to Evidence*, but the Court denied these motions for lack of merit in a Resolution dated June 3, 2019.

Capt. Cabreros and Col. Zumel also filed a *Motion for Leave of Court to File Joint Consolidated Demurrer to Evidence*, but the Court denied this motion in our June 14, 2019 Resolution.

Atty. Santos, Capt. Cabreros and Col. Zumel moved to reconsider the denial of their motion for leave to file demurrer to evidence, but the Court denied their motions in our August 30, 2019 Resolution.

### **DEFENSE EVIDENCE**

Evidence for the defense consisted of the testimonies of General Gregorio M. Camiling, Jr., Brig. Gen. Severino P. Estrella, Gen. Cesar Guzman Santos, Rolando Minel, Col. Jessie Mario B. Dosado, Col. Barmel B. Zumel, Lt. Col. George P. Cabreros, Major General Cyrano A. Austria, Atty. Editha B. Santos, Lieutenant General Arthur I. Tabaquero and Major General Josue S. Gaverza, Jr.

**Lt. Gen. (ret.) Gregorio Miclat Camiling, Jr.**, per his Judicial Affidavit,<sup>32</sup> stated that he was the Commanding General of the Philippine Army (CG, PA) from November 14, 2002 to November 15, 2003. He narrated that as CG, he approved the purchase orders and payments of the Combat Clothing and Individual Equipment (CCIE) in 203, but maintained that he had no direct participation in the procurement process: he did not also interfere in the choice of the ‘winner’, and did not issue any directive to split the purchase orders. According to Lt. Gen. Camiling, Jr., his approval was only ministerial in nature, and in order to facilitate the delivery of the CCIE items.

Lt. Gen. Camiling, Jr. added that when he retired from the military service in 2003, he was able to secure clearances from various government agencies, including the Office of the Ombudsman.

<sup>31</sup> Record, vol. IV, pp. 666-668.

<sup>32</sup> Dated July 5, 2018; record, vol. III, pp. 695-699.



On cross-examination, Lt. Gen. Camiling, Jr. he stated that he approved the purchase orders and the payment of the six (6) subject transactions, as shown by his signature in the six disbursement vouchers. According to him, he directed the issuance of new uniforms to the members of the Security and Escort Battalion after he observed in March 2003 that the gala uniforms had already faded.<sup>33</sup>

Lt. Gen. Camiling, Jr. further testified that he saw the documents attached to the disbursement vouchers before he signed them. He claimed that the approval of the transactions was ministerial in nature because his staff did the 'essential' and 'appropriate' actions. Lt. Gen. Camiling, Jr. added that payments would not have been released without his signature.<sup>34</sup>

**Brigadier General (ret.) Severino P. Estrella's** testimony, culled from his Judicial Affidavit,<sup>35</sup> were as follows: he was the Commanding General, Army Support Command (CG, ASCOM, PA) of the Philippine Army from August 23, 2001 to May 16, 2003; he had no direct participation in the procurement of the subject CCIE in 2003, and did not interfere in the choice of the 'winner'. According to Brig. Gen. Estrella, he did not issue any directive to split the purchase orders.

Brig. Gen. Estrella stated that his recommending approval on the purchase of the CCIE was only ministerial in nature, and made in order to facilitate the delivery of the CCIE items. He likewise added that he was able to secure clearances the Office of the Ombudsman and other government agencies when he retired from the AFP in 2004.<sup>36</sup>

Brig. Gen. Estrella denied that he conspired with the other accused in making untruthful statements in the subject PDs since the preparation of these documents was not a function of the ASCOM. He also claimed that he did not participate in the preparation of the canvasses and purchase orders, as evidenced by his name and signature not appearing in the said POs. Brig. Gen. Estrella likewise denied that he participated in choosing shopping as the mode of procurement.<sup>37</sup>

Brig. Gen. Estrella maintained that he had no participation in the preparation of the PDs, ASAs and POs, as well as in the awarding of the supply contract to Dantes Executive Menswear. He stated that while his act of signing the Disbursement Vouchers did not automatically make him a

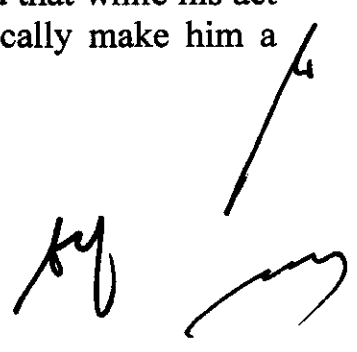
<sup>33</sup> TSN, September 23, 2019, pp. 9-10.

<sup>34</sup> *Id.* at 11-12.

<sup>35</sup> Dated July 5, 2018, record, vol. III, pp. 700-704.

<sup>36</sup> *Id.*

<sup>37</sup> See Judicial Affidavit dated July 2, 2019, record, vol. V, pp. 322-324.

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conspirator in the absence of evidence that he participated in the alleged anomalies during procurement.<sup>38</sup>

Brig. Gen. Estrella also testified that the prosecution's evidence did not mention any anomaly in the post-procurement stage. He claimed that his act of signing in the DVs was ministerial. Brig. Gen. Estrella added that the AFP Manual of Procurement directed him to endorse the DVs to the Commanding General; and this Manual embodied 'complete staff action.' According to him, all the documents for his signature had been checked by his staff, and that there was no report of any anomaly in the procurement at the time he signed the subject DVs.<sup>39</sup>

On cross-examination, Brig. Gen. Estrella admitted signing the subject six disbursement vouchers, signifying the expenses as necessary, lawful and incurred under his direct supervision. He likewise admitted signing the supporting documents attached to the disbursement vouchers such as the Requisition and Issue Slips. Brig. Gen. Estrella added that while the CCIE items have different end-users, there was just one requisition office. He clarified that he did not examine all the supporting documents, as the same was the job of his staff.<sup>40</sup>

On questioning from the Court, Brig. Gen. Estrella stated that he completely relied on his subordinates. He reiterated that he approves a document if there was no report of any anomaly.<sup>41</sup>

On additional questioning, Brig. Gen. Estrella conceded that he did not inquire from his legal officer on the legality of the documents he was signing. He explained that he considered the disbursement vouchers to be regular since it had already been pre-audited. Brig. Gen. Estrella maintained that he had no authority to overrule the recommendation of those signatories outside his unit.

In his Judicial Affidavit,<sup>42</sup> **Gen. Cesar Guzman Santos**<sup>43</sup> stated that he was the Logistics Group Commander of the Philippine Army, Army Service Command (ASCOM) and Chairman of the Bids Negotiations and Acceptance Committee (BNAC) in 2003. He explained that the bidding process started with the submission of a unit request for procurement: in the case of combat uniforms, the Assistant Chief of Staff for Personnel (G1), as program director, will be the one to prepare the disposition form which will then be sent to the Operations (G3). This disposition form will be forwarded to the Philippine Army Comptroller (G6) who, in turn, will determine fund

<sup>38</sup> *Id.* at 325.

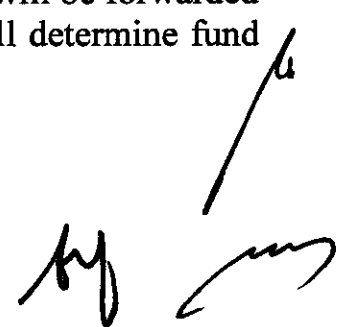
<sup>39</sup> *Id.* at 326-331.

<sup>40</sup> TSN, October 7, 2019, pp. 13-19.

<sup>41</sup> *Id.* At 20-25.

<sup>42</sup> Dated September 2, 2019; record, vol. V, pp. 502-507.

<sup>43</sup> Now Col. Cesar G. Santos.



availability. After the Comptroller concurs in the disposition form, the document will be forwarded to the Chief of Staff of the Philippine Army, the Vice-Commander and to the Commanding General, for their respective approvals. This disposition form will then be returned to G1, and then to G6 for the preparation of the Advice of Sub-Allotment (ASA). Upon receipt of the ASA, the Logistics (G4) will prepare the Procurement Directive (PD) which will then be transmitted to the ASCOM which, in turn, will issue requests or invitations for quotations from different suppliers. Once the quotations have been opened and evaluated, an Abstract of Canvass and Recommendation of Award will be prepared and then transmitted to the BNAC.<sup>44</sup>

Gen. Santos explained that the BNAC determines whether the abstract was correct and the price offered is the lowest and best complying offer, before recommending "the award of the procurement for the approval of the Commander, Army Support Comrad [sic]."<sup>45</sup> He added that the Abstract of Canvass and Recommendation of Award will then be transmitted to the Commanding General for his approval. Gen. Santos added that once approved, a Purchase Order (PO) will be issued and transmitted to the chosen supplier. After the delivery of the goods, a technical inspection will be conducted, and then a disbursement voucher will be prepared for the payment to the supplier.

Gen. Santos claimed that he had no role in the preparation of the PDs or ASAs: when the PD reaches ASCOM, he presumed that the originating units (that is, G1, G6 and G4) performed their functions properly. He also maintained that he and the BNAC did not have any role in the determination of the goods to be procured or the amount to be allocated for each procurement. Gen. Santos denied the allegation that the PDs and POs were charged against an inexistent fund. According to Gen. Santos, the procurement had been carried out through shopping because this was within the authority of the Commanding General to approve pursuant to DND Department Order No. 47 dated April 30, 1996.

During his cross-examination, Gen. Santos confirmed that he was the Chairperson of the BNAC in 2003. He testified that the procurement had been carried out through the mode of shopping, and that this had the approval of Commanding General Camiling, Jr.<sup>46</sup>

Gen. Santos claimed that the BNAC did not recommend the mode of procurement, as the same had already been pre-determined by the end-user. He narrated that the after the Procurement Directive is prepared, it is transmitted to the ASCOM which then issues the requests or invitations for

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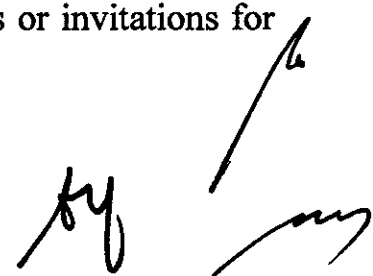
*Id.*

<sup>45</sup>

Dated September 2, 2019; record, vol. V, pp. 502-507.

<sup>46</sup>

TSN, October 8, 2019, p. 7.



quotations from different suppliers. Gen. Santos added that an Abstract of Canvass will be prepared after the quotations have been submitted. He further stated that he checked the PDs and the ASAs when he examined the Abstract of Canvass. Gen. Santos added that the BNAC or its members could not recommend resorting to a public bidding as shopping had already been recommended.<sup>47</sup>

On re-direct, Gen. Santos testified that the ASA did not accompany the PD when the latter was transmitted to the ASCOM. He clarified that the PDs received by the BNAC merely stated the items to be procured, the end-user and the ASA number: the ASA itself was not attached to these PDs.<sup>48</sup>

On additional queries from this Court, Gen. Santos stated that the Comptroller (G6) determines the availability of funds. He explained that the Disposition Form emanated from G1 (Program Director), and then goes to the G3 before it reaches the G6 for certification of availability of funds.<sup>49</sup>

On further questioning, Gen. Santos confirmed that the amount involved in the present case was ₱5 million, which exceeded the ceiling for resort to shopping under R.A. No. 9184. He added that the BNAC will undertake the canvassing in cases of shopping. According to him, the end-user, through the Project Procurement Management Plan (PPMP), recommended the mode of procurement.<sup>50</sup>

In his Judicial Affidavit,<sup>51</sup> **Rolando F. Minel** testified that: he was the Chief Accountant of the Philippine Army until his retirement in June 30, 2003; his office – Accounting Service (G6) – received six (6) Purchase Orders on May 6, 2003 for the purchase of several items for the use of different units of the Philippine Army; attached to each POs were the corresponding ASAs, Allotment and Obligation Slips (ALOBS), Certificates of Purchase thru Shopping, Abstracts of Canvass and Recommendation Award, Letter Request for Price Quotations, and Certificates of Reasonableness of Price; he signed the POs and ALOBS on May 7 and 8, 2003, and thus certified as to the availability of funds for the procurements, as well as the correctness and validity of the obligations; he certified as to the correctness of the obligations because the amounts stated in the ASAs matched with the amounts/values stated in the corresponding POs, Certificates of Chargeability and ALOBS; he certified the validity of the obligations because each of the released ASA's purposes were the same in the corresponding PO and ALOBS, and that they had been obligated /used for the purpose they were released for; he found that the requirements for shopping had been complied with, i.e., procurement did not exceed ₱1

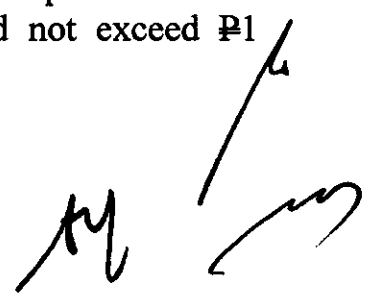
<sup>47</sup> *Id.* at 8-19.

<sup>48</sup> *Id.* at 20-26.

<sup>49</sup> *Id.* at 28-30.

<sup>50</sup> *Id.* at 33-38.

<sup>51</sup> Dated October 17, 2019; record, vol. v, pp. 685-698.

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million; canvass had been made; and there had been price quotations from at least three (3) suppliers; he certified as to the availability of funds since a Certificate of Chargeability signed by then Comptroller Capt. Benitez (ASCOM) had been stamped at the back of each PO signifying that funds for each procurement had already been committed, as well as the ALOBS processed by the Budget Unit of ASCOM; and, he maintained that funds were already available when the POs and other documents were received by his office on May 6, 2003.<sup>52</sup>

On cross-examination, Minel confirmed that he determined the obligations in the subject cases to be correct and valid; and that all the requirements for shopping were present. He also stated that the Advice for Sub-Allotments, Purchase Orders and Allotment and Obligation Slips (ALOB) passed through his office, albeit he was unable to examine the Procurement Directives.<sup>53</sup>

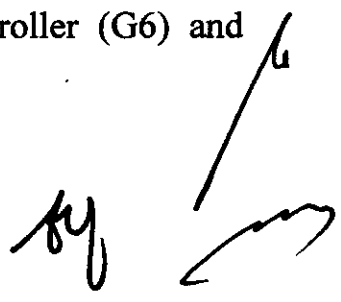
Minel also explained that Gen. Camiling was authorized to approve the transaction if it does not exceed ₱1.4 million. He explained that while the requisition office was the Philippine Army, the items were intended for different end-users. Minel explained that the ALOBS came from the Budget Office of the Philippine Army, i.e., the G6 Service. He stated added that the certifies as to the availability of funds after the purchase orders are submitted to him; and added that it was not his function to notify the BAC of the availability of funds. Minel testified further that the PDs were attached to the documents forwarded to his office.<sup>54</sup>

Minel claimed that it was the function of the BAC to choose the mode of procurement, although its decision was merely recommendatory under Section 35.1 of Executive Order No. 40, series of 2001.<sup>55</sup>

**Col. Jessie Mario B. Dosado's** testimony, per his Judicial Affidavit,<sup>56</sup> consisted of the following: that he was the secretary of the BNAC in 2003; that all procurement activities starts with a procurement planning of all end users wherein the latter formulates their respective Project Procurement Management Plans (PPMP) that are consolidated into an Annual Procurement Management Plant (APMP); that after the APMP has been approved by the Head of the Procuring Entity (HOPE), that is the Commanding General of the Philippine Army (CG, PA), the Program Director will prepare a Summary Disposition Form for very procurement of goods as enumerated in the PPMP for the approval of the HOPE with the concurrence of the Assistant Chief of Staff for Comptroller (G6) and

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<sup>52</sup> *Id.*  
<sup>53</sup> TSN, October 29, 2019, pp. 7-10.  
<sup>54</sup> *Id.* at 12-17.  
<sup>55</sup> *Id.* at 18-24.  
<sup>56</sup> Dated October 30, 2019, record, vol. 5, not paginated.



Assistant Chief of Staff for Logistics (G4); that after the PPMPs had been approved by the CG, PA, it will be forwarded to the G4 for the preparation of the PDs, and then to the G6 for the preparation of the ASAs, including the numbering thereof; that after the PD is transmitted to the ASCOM, the latter's Procurement Office – based on the limit of authority of the CG – will issue requests for quotations from prequalified bidders; that the CG, PA was authorized to approve contracts of not more than ₱1.4 million per Department order No. 47; that the quotations submitted to the Secretariat in the present case were consolidated and summarized in the Abstract of Canvass and Recommendation of Award (ACRA); that after the BNAC convened and evaluated the quotations, the Procurement Office prepared the procurement orders for approval of the CG, PA; that he had no participation in the preparation of the PDs and the ASAs in the subject cases; that there was no falsification even if the ASAs were dated after the PDs because “the procurements were already separately funded in accordance with the approved PPMP” and that the “numbering of the ASAs were done or already assigned ahead of its actual (paper or hard copy) issuance;”<sup>57</sup> that the number of the ASA had already been indicated in the PDs upon its submission to the ASCOM; and that there was no splitting since all the PDs have separate budget allocations in accordance with the approved PMPPs of the end-users; and that there was no injury to the government because the supplies were all delivered and the government got the lowest price for the supplies.<sup>58</sup>

During cross-examination, Col. Dosado testified that after the end-users submitted the Project Procurement Management Plans, it will be consolidated as an Annual Procurement Management Plan that will need the approval of the Head of Procuring Entity. He added that there could be a possibility that the PPMP would be changed or modified. Col. Dosado confirmed that the PDs will set into motion the procurement of the items.<sup>59</sup>

Col. Dosado further testified that the PDs itself did not state the mode of procurement. He added that while the end-users stated the mode of procurement in the PPMP, the BNAC may override the suggestion of the end-users. Col. Dosado stated that the BNAC could have conducted public bidding for the procurement of the subject items.<sup>60</sup>

Col. Dosado stated that the date of issuance of the PD was placed in the upper right corner, while the PD number is written on the left side. According to him, it was required that the PDs will reach his office to commence or initiate procurement. Col. Dosado claimed that the PDs were forwarded to his office sometime in February 2003. He added that the

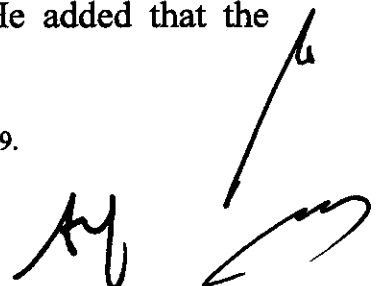
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<sup>57</sup> Page 4 of the Judicial Affidavit of accused Dosado dated October 30, 2019.

<sup>58</sup> *Id.*

<sup>59</sup> TSN, November 5, 2019, pp. 6-7.

<sup>60</sup> *Id.* at 8-19.

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Procurement Office of the ASCOM is called the Material and Service and Procurement Center (MSPC).<sup>61</sup>

Col. Dosado additionally testified that the ASA did not accompany the PDs when the latter was sent to his office, although the ASA Number was indicated in the PD. He added that while the BNAC could have recommended public bidding, they followed what had been indicated on the PPMP.<sup>62</sup> According to him, it was the Commanding General who approves the PPMP.

On questioning from the Court, Col. Dosado confirmed that the end-users had already been determined prior to the procurement process. He also explained that in 'complete staff work,' the documents had already been prepared and all that is left for the heads of offices was to affix their respective signatures.<sup>63</sup>

**Col. Barmel B. Zumel** testified<sup>64</sup> that as a member of the BNAC in 2003, he evaluated the quotations transmitted to the committee by the various suppliers. As BNAC member, he also signed the Abstract of Canvass and Recommendation of Award (ACRA), which was a list of the names of the suppliers/manufacturers and the prices offered by each for the supplies. Col. Zumel stated that BNAC's recommendation was based on the lowest fair offer and best complying price for the items to be procured among the accredited suppliers/manufacturers. He recalled that the BNAC evaluated gala uniforms for the SEB; pershing caps for the HHSG; gala uniform for the PA band; line yards for the SEB; buttons, belts and buckles for the PA band; and gala uniforms for the HHSG.

Col. Zumel recalled that the BNAC convened due to the Procurement Directives furnished to the Committee. According to him, the BNAC found nothing wrong with the PDs considering the same were issued by Logistics Division (G4) of the Philippine Army, and that they Committee had every right to rely on 'completed staff action'. He further explained that the BNAC do not decide on the method of procurement, as this was determined by the requesting unit or the end-user. Col. Zumel reiterated that the BNAC members had no participation in the procurement process other than the canvass/evaluation of quotations and the execution of the ACRA.

During his cross-examination, Col. Zumel recalled that he signed the Abstract of Canvass after the request for quotations had been submitted, and after the deliberations by the Committee. Col. Zumel testified that the Secretariat informed the BNAC to have a conference regarding the procurement directives that had been issued by 'higher headquarters.'

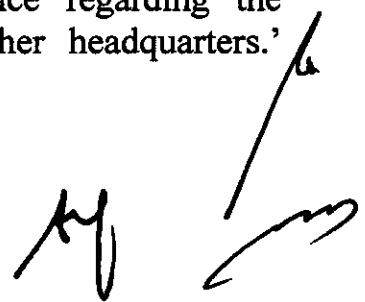
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<sup>61</sup> *Id* at 19-23.

<sup>62</sup> *Id* at 26-27.

<sup>63</sup> *Id.* at 32-36.

<sup>64</sup> Per his Judicial Affidavit dated October 28, 2019.



According to him, the Secretariat did not give them a copy of the said PDs. Col. Zumel added that although the mode of procurement was not indicated in these PDs, but the said mode had been indicated in the PPMP.<sup>65</sup>

Col. Zumel stated that the BNAC can override or change the mode of procurement in the PPMP “if it will not fit the procurement process.”<sup>66</sup> He confirmed that Philippine Army was procuring entity for all the uniforms, although the users were the different units of the PA. He maintained that the subject items could not have been procured through public bidding because each procurement had different funds.<sup>67</sup>

Col. Zumel stated that while he saw a copy of the PDs, he was not able to scrutinize it; and that he only saw it at a distance.<sup>68</sup> Col. Zumel also stated that the PDs will come first before the conduct of canvass. He also confirmed that since the request for quotations were all dated February 2003, the PDs will have dates prior to the date of the said quotations.<sup>69</sup>

Col. Zumel testified that procurement in the PA is made on a unit level basis, and not on a “Philippine Army wide basis,”<sup>70</sup> and that the procurement will be dependent on the needs of a particular unit.

On re-direct, Col. Zumel stated that the BNAC did not override the mode of procurement stated in the PPMP because he believed that shopping was applicable considering that there were separate fundings, and that the items will be used by different units. According to him, the Committee members based their actions on Executive Order No. 40, series of 2001.<sup>71</sup>

During his re-cross, Col. Zumel opined that public bidding could not have been resorted to.<sup>72</sup>

On additional questioning from this Court, Col. Zumel stated that the mode of procurement was prepared by the end-users, as stated in the PPMP. He explained that the PDs were issued by the G4. Col. Zumel added that as a military officer, he was not supposed to break the chain of command; and that he heavily relied on ‘completed staff action.’ He explained that since the PDs had already been approved, the BNAC cannot anymore interfere.<sup>73</sup>

Col. Zumel likewise testified that the BNAC could override the mode of procurement requested by the end-user if it finds the same to be improper.

<sup>65</sup> TSN, November 27, 2019, pp. 8; 16-19.

<sup>66</sup> *Id.* at 20.

<sup>67</sup> *Id.* at 22.

<sup>68</sup> *Id.* at 24.

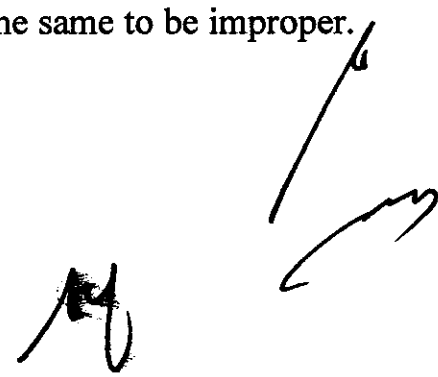
<sup>69</sup> *Id.* at 32.

<sup>70</sup> *Id.* at 35.

<sup>71</sup> *Id.* at 38-39.

<sup>72</sup> *Id.* at 39-40.

<sup>73</sup> *Id.* at 42-47.

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He also confirmed that under EO 40, public bidding was the preferred method of procurement, and that the alternative mode of shopping requires certain conditions before it could be resorted to.<sup>74</sup>

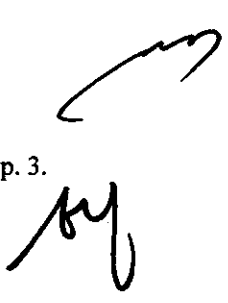
**Lt. Col. George P. Cabreros** stated in his Judicial Affidavit<sup>75</sup> that he became part of the Army Support Command (ASCOM) in 2002. He recalled that sometime in 2003, he was informed as a member of the BNAC that there were six Procurement Directives from the Assistant Chief of Staff for Logistics (G4), Philippine Army (PA) relating to the procurement of Combat Clothing and Individual Equipment: gala uniforms for SEB, PA; pershing caps for HHSG, PA; gala uniform for PA band; line yards for SEB, PA; buttons, belts and buckles for PA band; and gala uniforms for HHSG, PA. Lt. Col. Cabreros stated that the budget for each PD was less than ₱1 million.

Lt. Col. Cabreros narrated that the members of the BNAC convened after they had been informed of the issuance of the PDs by Col. Cyrano Austria. He explained that the BNAC made sure that the suppliers/manufacturers were accredited by the PA; and then chose the three suppliers which were “responsive and offered the lowest price.”<sup>76</sup> He claimed that the method of procurement was determined by the unit or end-user, and not decided upon by the BNAC. Cabreros stated that his functions as a member of the BNAC were limited to: evaluating the quotations submitted to the BNAC; signing the Abstracts of Canvass and Recommendation of Award which listed the names of the suppliers/manufacturers opposite the prices offered by each; and recommending the award to the supplier/manufacturer with the ‘lowest fair and best complying price offered.’<sup>77</sup>

Lt. Col. Cabreros further testified that when the BNAC received the PDs, they saw nothing on the face of the said PDs which would have raised any doubt on their part to question or suspect its validity. He explained that he relied upon the ‘completed staff action’ performed by officers and staff members way above his pay grade. Col. Cabreros expounded that when nothing irregular appeared on the face of the PDs when transmitted to the BNAC, it was incumbent upon the latter “to lawfully assume that the PDs were issued in good order and may legally be complied with.”<sup>78</sup>

Lt. Col. Cabreros also recalled that the Abstracts of Canvass were transmitted to the procurement office for the preparation of orders after he signed them.<sup>79</sup>

<sup>74</sup> *Id.* at 48-50.  
<sup>75</sup> Dated October 28, 2019.  
<sup>76</sup> Judicial Affidavit of Col. Cabreros, p. 3.  
<sup>77</sup> *Id.*  
<sup>78</sup> *Id.* at p. 4.  
<sup>79</sup> *Id.*



During his cross-examination, Lt. Col. Cabreros claimed that he did not see the PDs before the BNAC convened. He confirmed that the BNAC did not have any discretion on the method of procurement; as well as in the conduct of the canvass. Cabreros maintained that the BNAC may not change or modify the mode of procurement since the PPMP had already been approved by the Head of the Procurement Agency. According to him, the BNAC based its decision on the PPMPs given to them by 'higher headquarters.' He added that the canvass could only be conducted after the issuance of the PD. Lt. Col. Cabreros added that the dates of the issuances of the PDs were stamped on the face of the said documents. He further testified that he assumed that 'complete staff work' had been done when he saw the ASA number of the PDs.<sup>80</sup>

Lt. Col. Cabreros also explained that the PPMPs and the APMPs had been prepared a year prior to the actual year of their implementation, or in 2002. He recalled that the originals of the PDs had been forwarded to the BNAC. According to him, there was nothing in the PDs which would have raised any doubt on its validity. He added that the budget for each procurement had been indicated in the PPMP. Lt. Col. Cabreros likewise stated that the ASAs were not attached to the PDs when the latter were received by his office.<sup>81</sup>

Lt. Col. Cabreros reiterated that he based the date of issuance of the PDs on the date indicated on the upper right side of the said document.<sup>82</sup>

On additional queries from the Court, Lt. Col. Cabreros reiterated that the BNAC based its decision on the approved PPMP given to them; and that the BNAC could not do anything because the mode of procurement had been approved by the HOPE. He also confirmed that even before the enactment of R.A. No. 9184, the general rule was that public bidding should be resorted to. Lt. Col. Cabreros further added that he did not see any alteration on the PDs; and that he accepted it at 'face value.'<sup>83</sup>

**Atty. Editha B. Santos**, per her Amended Judicial Affidavit,<sup>84</sup> testified that she had no participation in the selection and mode of procurement; preparation and issuance of the procurement directives that transpired on February 2003; preparation of and issuance of the purchase orders that transpired on May 2003; canvassing of bids and recommendation of the award to Dantes Executive Menswear; and in serving of the notices of

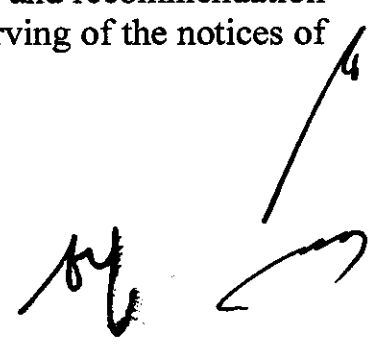
<sup>80</sup> TSN, November 26, 2019, pp. 11-27.

<sup>81</sup> *Id.* at 29-35.

<sup>82</sup> *Id.* at 38.

<sup>83</sup> *Id.* at 39-44.

<sup>84</sup> Record, vol. VII, pp. 192-211.



awards, purchase orders and notice to proceed. She also denied making any untruthful statement in each of the Procurement Directives.

Atty. Santos stated that she was being implicated due to her acts of signing the subject six (6) Disbursement Vouchers (DV) in her capacity as the Chief Accountant of the Philippine Army. She explained that it was her duty to certify the DVs as to the availability of funds as the then Acting/Chief Accountant. Atty. Santos stated that she became the Acting Chief Accountant when Rolando Minel retired on July 1, 2003: she was promoted as Chief Accountant on September 3, 2003.

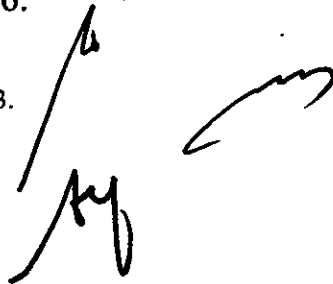
Atty. Santos testified that after the 6 DVs and their supporting documents were submitted to the Accounting Office on various dates from July to September 2003, different sections performed completed staff work. She added that after the DVs had been forwarded to her, she reviewed it and their supporting documents, before signing 'Box B' of the 6 disbursement vouchers upon having been satisfied of the completeness of the documents as well as the availability of cash. Atty. Santos likewise added that the Procurement Directives and Advise of Sub-Allotments were not part of the attachment to the DVs, but part of the attachments of the Purchase Orders.

Atty. Santos added that the 6 DVs were subjected to pre-Audit after she signed them. She also emphasized that her name had not been included in COA Notice of Disallowance No. 10-001-101-(03) dated October 12, 2010. According to Atty. Santos, the BNAC ASCOM had no authority to conduct public bidding in 2003: it was only in 2006 when the Commanding General of the Philippine Army was granted authority to approve public bidding via Department of National Defense DO 12, series 2016. She also pointed out that the Ombudsman decision dismissing her from the service had been reversed by the Court of Appeals in 2018.

During the continuation of her direct examination, Atty. Santos testified that after her signature on the DVs, the same were subjected to a pre-audit before the issuance of checks by the Finance Center, PA. She added that the vouchers will then be returned to the Accounting Office for purposes of recording of the payment. According to Atty. Santos, she learned of the Notice of Disallowance when she received the documents from the Office of the Ombudsman. She clarified that her name was not included in the said notice.<sup>85</sup>

Atty. Santos maintained that she had no participation in the selection of the mode of procurement. She also stated that the Commanding General had authority to approve transactions not exceeding ₱1.4 million, per DND DO No. 47 dated April 13, 1996.<sup>86</sup>

<sup>85</sup> TSN, February 10, 2021, pp. 11-13.  
<sup>86</sup> *Id.* at 14-18.

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During her cross-examination, Atty. Santos affirmed that she signed 'Box B' of the subject 6 Disbursement Vouchers in her capacity as head of the Accounting Unit. She claimed that she reviewed the documents that have been previously reviewed by her staff. Atty. Santos stated that in signing the DVs, she is certifying that the supporting documents were complete and proper, and that cash was available. She confirmed that payments for the items will not be processed without her signature on the DVs.<sup>87</sup>

Atty. Santos also clarified that the Advice of Sub-Allotments were not part of the DVs; the PDs and the ASAs were also not supporting documents to the purchase orders. She recalled that the Philippine Army had no Bids and Awards Committee (BAC) in 2003, but only Bids and Negotiation Award Committee (BNAC). She added that her review was ministerial. According to Atty. Santos, she was certifying as to the completeness of the documents, and stressed that there was already an approved contract approved by the proper authority; there was funding and delivery; and there was inspection and acceptance. She reiterated that her role was for payment only. Atty. Santos additionally stated that she found nothing irregular in the fact that the Purchase Orders had almost the same dates, and with the same supplier.<sup>88</sup>

During her re-direct examination, Atty. Santos maintained that the BNAC was different from the BAC. She reiterated that her participation was only with matters concerning the availability of cash, and not in the availability of funds. Atty. Santos explained that the ASA coming from the G6 is issued to the ASCOM since the latter was responsible for the procurement of the CCIE. She added that the ASCOM conducts the canvass and the negotiation; issues the Notice of Award; and prepared the Purchase Orders. Atty. Santos claimed that her participation was just in the payment of the purchase after there had been delivery already, acceptance and inspection, as well as availability of cash.<sup>89</sup>

Atty. Santos further testified that she did not consider the preparation and signing of the Disbursement Vouchers to be a part of the procurement process, since the contract had already been approved, items delivered and inspected. She added that it was ministerial on her part to affix her signature on the said DVs because there was already available cash per the DBM.<sup>90</sup>

On further queries from the Court, Atty. Santos stated that DND DO No. 47 did not do away with public bidding. She confirmed that while she was not yet the Chief Accountant when the subject transactions were

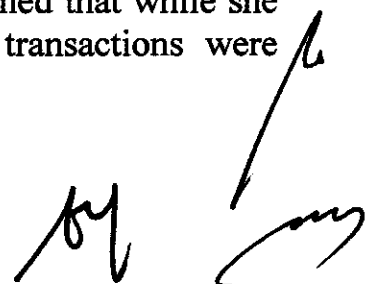
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<sup>87</sup> *Id.* at 26-30.

<sup>88</sup> *Id.* at 33-40; 45.

<sup>89</sup> *Id.* at 46-52.

<sup>90</sup> *Id.* at 52-54.

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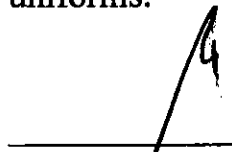
approved, she came into the picture when there was a need to process the documents for purposes of payment.<sup>91</sup>

Atty. Santos further explained that a purchase order should include, among others, a Certificate of Availability of Funds, Notice of Award, Canvass, Abstract of Canvass, and Certificate of Reasonableness of Price. She reiterated that as Chief Accountant, she was concerned about the funding, and not the completeness of the documents attached to the PO. She stressed that the POs subject of the present cases did not pass through her because she was not yet the Chief Accountant at that time.<sup>92</sup>

Atty. Santos additionally testified that she determines the completeness of documents as regards the disbursement vouchers. She added that the documents attached to the PO should also be attached to the DVs. Atty. Santos clarified that as Chief Accountant, she reviews the approved PO or contact, and checks if there has been delivery, inspection and acceptance. She added that she has the discretion not to sign if the said processes are lacking, or if there was no cash available. Atty. Santos likewise stated that the DV will be returned to the unit that prepared it if she did not sign it.<sup>93</sup>

**Maj. Gen. (ret.) Cyrano A. Austria**<sup>94</sup> testified that he was the Assistant Chief of Staff for Logistics (G4) during the period January to June 2003. He stated that as Assistant Chief of Staff for Logistics, he was responsible for the issuance of Procurement Directives (PDs). Maj. Gen. Austria explained that the preparation of PDs starts when his office (G4) receives a Disposition Form (DF) from the Program Director (G1) who requests for the issuance of a PD, citing the approval of the Commanding General in the Summary Disposition Form (SDF) earlier prepared by the said Program Director. According to him, the SDF serves as the basis of the Troop and Organizational Branch of G4 to prepare the individual PD for each requesting unit.<sup>95</sup>

Maj. Gen. Austria further testified that the G1 prepares a SDF upon receipt and verification of the request of the end-user. He explained that the SDF is a form used by the HPA staff to seek approval from the Commanding General, "thru channel," and that this SDF contains the list and quantity of uniforms with cost estimate, as well as the recommendation on the release of fund to ASCOM, PA to support the procurement of the said uniforms.

  
91 *Id.* at 55-70.

92 *Id.* at 71-74.

93 *Id.* at 75-80.

94 See Judicial Affidavit dated February 5, 2020, record, vol. VI, pp. 351-377.

95 *Id.*



Maj. Gen. Austria added further that his office receives copy of the ASA from the G6. He also clarified that the SDF does not pass through his office. He expounded that the G6, upon receipt of the SDF, prepare and issues the ASA to the Commanding Officer, ASCOM. The G6 also furnishes a copy of the ASA to G1 and to G4.<sup>96</sup>

Maj. Gen. Austria recalled that he issued six (6) PDs sometime in April 2003, albeit he does not know the whereabouts of original of these PDs. He explained that he issued the PDs since his office received the DFs with attached copies of the SDF duly approved by the Commanding General, PA, and ASAs. Maj. Gen. Austria also stated that he does not know where the original copies of the ASA are. He maintained that it would have been impossible for him to have issued the PDs in February 2003 because the DFs and ASAs were only forwarded to him in April 2003.<sup>97</sup>

Maj. Gen. Austria explained that once he has signed and issued the PDs, his office records it in a logbook and transmits them to the ASCOM. Thereafter, the Material and Services Procurement Center (MSPC) would stamp each PD indicating the date of its receipt. Once the PDs are received by the ASCOM, the G4 has nothing else to do.<sup>98</sup>

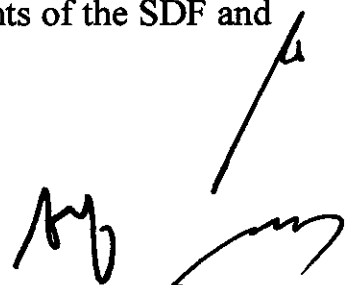
Maj. Gen. Austria also testified that when the photocopies of the PDs already contained erasures and alterations when he saw it during the proceedings before the Ombudsman. According to him, some portions of the PDs had been erased using a correction fluid; and new dates (February 2003, instead of April 2003) were stamped over the dates of issuance.<sup>99</sup>

Maj. Gen. Austria recalled that when he saw the charge sheet sometime in 2012 or 2013, he immediately requested for the 2003 logbook from the G4, but the same could no longer be found. He requested computer printouts of the PDs issued in February 2003 and April 2003, and submitted these documents to support of his counter-affidavit. He added that his instruction in the PDs was to implement the appropriate mode of procurement, and that the implementation of the same was the responsibility of the Program Administrator, that is, the ASCOM.<sup>100</sup>

During his cross-examination, Maj. Gen. Austria confirmed that he served as Assistant Chief of Staff for Logistics (G4) from 2001 to 2003. He stated that his office was responsible for issuing the Procurement Directives, and that before the issuance of the PDs, it was necessary that his office receives the Summary Disposition Form and the ASA. Maj. Gen. Austria stated that the PDs that he issued were based on the contents of the SDF and

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<sup>96</sup> *Id.*  
<sup>97</sup> *Id.*  
<sup>98</sup> *Id.*  
<sup>99</sup> *Id.*  
<sup>100</sup> *Id.*

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the ASA. He also recalled that the Program Director of the G1 at that time was Lt. Gen. Arthur Tabaquero, while Maj. Gen. Josue Cabersa was the Comptroller.<sup>101</sup>

Maj. Gen. Austria clarified that it was the Branch Chief of the Troop Organizational Support that actually prepares the PDs that is presented to him for signature. He added that he could not recall if he was able to peruse all the SDFs, but nonetheless signed the PDs because the Chief of the TOS presented it to him. Maj. Gen. Austria affirmed that the PDs did not mention the mode of procurement. He explained that as he signs each PD, the Chief of the TOS will stamp the date, and such date will be reflected in their logbook. Maj. Gen. Austria maintained that his office issued the PDs in April 2003.<sup>102</sup>

Maj. Gen. Austria testified that the Program Director should have the PD in order to start the implementation of the procurement. He added that after signing the PD, it will no longer be returned to his office. According to Maj. Gen. Austria, Gen. Camiling, Jr. had no participation in the preparation of the PDs, but it was his authority that is used in the issuance of the PD considering that the SDF had been duly approved by him.<sup>103</sup>

On questioning from the Court, Maj. Gen. Austria maintained that it was impossible for him to have issued the PDs in February 2003 because the DFs and the ASAs were only forwarded to him in April 2003. He added that the COA copy of the PDs bore correction fluid indicating that the date of his actual issuance of these PDs had been erased. Maj. Gen. Austria likewise stated that the ASA number had already been reflected in the PDs when he signed it. He admitted that he did not retain a receiving copy when he furnished ASCOM with the PDs, and that the person who received just signs on a logbook. He intimated that since this logbook can no longer be found, he requested for computer printouts of PDs issued in February and April, but admitted that these copies had not been certified.<sup>104</sup>

Maj. Gen. Austria further testified that he no longer verified the contents of the ASA and the request of the Program Director; and did not verify from the Comptroller as regards the accuracy of the entries in the ASA. He admitted that his office merely copies the entries in the request from the Program Director, as well as the ASA. Maj. Gen. Austria added that he cannot 'alter documents' since the Program Director (G1) already presented to him an approved SDF indicating the individual request of the different offices and also the ASA. He confirmed that he merely included in the PDs what had been indicated in the request.<sup>105</sup>

<sup>101</sup> TSN, February 12, 2020, pp. 12-14.

<sup>102</sup> *Id.* at 15-17.

<sup>103</sup> *Id.* at 18-19.

<sup>104</sup> *Id.* at 20-32.

<sup>105</sup> *Id.* at 34-39.

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**Lt. Gen. (ret.) Arthur I. Tabaquero**, as witness for Maj. Gen. Austria, testified via his Judicial Affidavit,<sup>106</sup> that during the period of January 2003 to June 2003, he was the Assistant Chief of Staff for Personnel (G1) of the Philippine Army. He stated that among his responsibilities were the planning and programming of the uniform requirement of the army: he was also the Program Director for Personnel Fund (known as '01 fund') which was used to support the procurement of the army's uniform requirements.

Lt. Gen. Tabaquero explained the release of the '01 fund' as follows: the end-user submits its request for uniforms to OG1, PA, which contains the list and quantity of uniforms as well as the cost estimate; the OG1 prepares a Summary Disposition Form (SDF) which contains, among others, the recommendation on the release of funds to ASCOM to support the procurement; the G6 signs the SDF and endorses it to the Chief of Staff, PA who, in turn endorses it to the Vice Chief, PA for approval and signature of the Commanding General, PA; the SDF goes back to the originating office (that is, OG1) once signed by the CG, PA which prepares a Disposition Form (DF) attaching therein a copy of the approved SDF for the OG6, PA for the release of funds; upon receipt of the DF, the OG6, PA prepares and issues the Advice of Sub-Allotment (ASA) to the Commanding Officer, ASCOM, PA to support the procurement of uniforms of the end-user; the OG6, PA furnishes a copy of the ASA to OG1, PA upon the release of the ASA to ASCOM; upon receipt of the ASA from OG6, the OG1 prepares a DF requesting the issuance of a Procurement Directive to OG4, attaching therein a copy of the approved SDF (with list and quantity of uniforms) and the ASA; the ASCOM, as the Program Administrator, implements the procurement of uniforms of the end-user upon receipt of the PD and ASA.

Lt. Gen. Tabaquero added that he affixes his signature on the first concurring line of the SDF before he endorses it to other concerned HPA staff.

On cross-examination, Lt. Gen. Tabaquero stated that he served as Assistant Chief of Staff for Personnel from 2002-2005. He confirmed that the OG6 prepares the ASA upon receipt of the disposition form from OG1. Lt. Gen. Tabaquero also testified that the OG1 would only prepare the request for the issuance of the PD after receipt of the ASA; and that the OG4 will not prepare the PDs without this request. He added that the request from OG1 would include the ASA and summary disposition.<sup>107</sup>

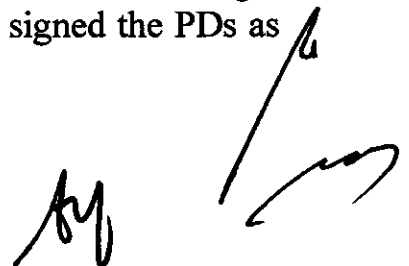
Lt. Gen. Tabaquero further explained that the ASA stated the budget and the items that will be procured, and that Col. Austria signed the PDs as

<sup>106</sup>

Record, vol. VI, pp. 58-65.

<sup>107</sup>

TSN, January 20, 2020, pp. 9-13.



head of the OG4. He also clarified that after its issuance, the PDs will no longer go to the OG1, but will be sent to the ASCOM as program administrator for implementation.<sup>108</sup> He clarified that the request addressed to the G4 was in the form of a disposition form. He clarified that there were two disposition forms during the process: first, the disposition form for the approval of the Commanding General; and second, the disposition form addressed to the G4 for procurement.<sup>109</sup>

Lt. Gen. Tabaquero stated that before the Summary Disposition Form reaches the Commanding General, it goes through separate offices, and all that there is to do when the said SDF reached the CG is for him to approve the same and/or concur with the approval of the other offices.<sup>110</sup>

On further questioning, Lt. Gen. Tabaquero confirmed that the procurement process starts with his office; and that if there was an approval of the CG, PA, his office will construe the same as approved. He maintained that only the approved SDF will be returned to his office, and that his office will not know what happened to the documents in connection with the approved SDF unless the end-users will complain.<sup>111</sup>

**Maj. Gen. (ret.) Josue S. Gaverza, Jr.**'s testimony, as culled from his Judicial Affidavit,<sup>112</sup> consisted of the following: that he was the Assistant Chief of Staff for Comptrollership (G6) of the Philippine Army from January 2003 to June 2003; his office was primarily responsible for the preparation and release of funds (i.e., ASA) to the army units, including the ASCOM; the said funds are released to the ASCOM only after the approval of the CG, PA on the SDF and on the Disposition Form initiated by the principal staff or program director.

Maj. Gen. Gaverza, Jr. explained that the process of release of funds to ASCOM was initiated by the principal staff or program director who requests for the release of funds. Upon receipt of the SDF, the OG6 reviews and validates if the requested funds are within the approved program. If the requested funds are within the approved program, the G6 concurs to the release of funds and then signs on the concurring line of the SDF, before endorsing it to the Chief of Staff, PA who, in turn, endorses it to the Vice Chief, PA for approval and signature of the Commanding General, PA. Once the SDF is approved by the CGPA, the SDF goes back to the originating principal staff who then prepares a Disposition Form with attached approved SDF for the OG6, PA for the release of funds. Upon receipt of the DF, the OG6 prepares and issues the ASA to the Commanding

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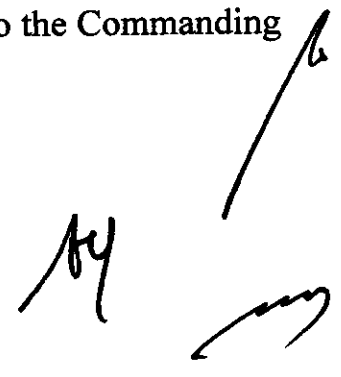
<sup>108</sup> *Id.* at 14-16.

<sup>109</sup> *Id.* at 20-22.

<sup>110</sup> *Id.* at 22-24.

<sup>111</sup> *Id.* at 26-36

<sup>112</sup> Record, vo. VI, pp. 109-114.

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Officer, ASCOM. The OG6, PA furnishes a copy of the ASA to OG1 and OG4 upon release of the ASA to ASCOM, PA.

Accused Austria, Minel and Atty. Santos, offered the following documentary exhibits: Exhibits “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12” and “13” (Austria); Exhibits “1”, “2”, “2-a”, “2-b”, “4”, “5-a”, “5-b”, “7”, “8”, “8-a”, “8-b” and “10”, “11”, “11-a”, “11-b”, “213”, “14”, “14-a”, “14-b”, “16”, “17-a”, “17-b”, “19”, “20”, “21”, “22”, “23”, “24” (Minel); Exhibits “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12” and “13” (Austria); and Exhibits “1” to “26”, with sub-markings (Atty. Santos).

The prosecution submitted its *Consolidated Comment on the Formal Offer of Evidence* on March 27, 2021. On June 30, 2021, the Court admitted the above Exhibits.

### **THE ISSUES:**

The issue for the Court’s consideration is whether the accused are criminally liable for violation of Section 3(e) of Republic Act No. 3019 in SB-16-CRM-1061; and for falsification of public documents under Article 171 of the Revised Penal Code in SB-16-CRM-1062 to 1067.

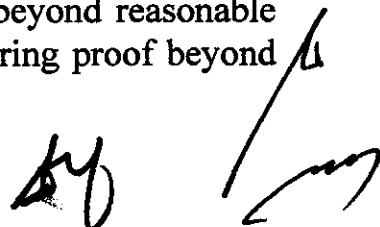
### **OUR RULING:**

After due consideration, the Court finds that the prosecution failed to prove the guilt of Lt. Gen. Gregorio M. Camiling, Jr., Brig. Gen. Severino P. Estrella, Col. Cesar Guzman Santos, Col. Jessie Mario B. Dosado, Col. Barmel B. Zumel, Capt. George P. Cabrerros, Cyrano A. Austria, Atty. Editha Santos and Rolando Minel of the offenses charged beyond reasonable doubt. Accordingly, the Court *acquits* all the accused in these consolidated cases.

#### **I. Criminal Case No. SB-16-CRM-1061 for violation of Section 3(e) of Republic Act No. 3019**

##### ***A. The charge and its elements***

The settled rule is that conviction in criminal actions demands proof beyond reasonable doubt. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Indeed, the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. Requiring proof beyond



reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be presumed innocent until the contrary is proved. Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.<sup>113</sup>

All the accused had been charged in Criminal Case Nos. SB-16-CRM-1061 with violation of Section 3(e) of R.A. 3019, as amended, which reads:

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

X X X

e. Causing 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 licenses or permits or other concessions.

A violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>114</sup>

The first element of the offense charged is undisputed, as it had been stipulated during pre-trial that “during the period material to the cases as alleged in the Information/s, accused admit their being public officers and their respective positions and or designations x x x.”<sup>115</sup>

The second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. “Manifest partiality”, “evident bad faith”, or “gross inexcusable negligence” are not separate offenses and proof of the existence of any of these three (3) in connection with the prohibited acts is enough to convict.<sup>116</sup>

<sup>113</sup> See *Villarosa v. People*, G.R. No. 233155-63, June 23, 2020.

<sup>114</sup> See *Danilo O. Garcia and Joven SD. Brizuela v. Sandiganbayan*, G.R. No. 197264, March 26, 2014.

<sup>115</sup> Record, vol. IV, pp. 32-33.

<sup>116</sup> See *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

The Supreme Court explained these terms in *Uriarte v. People*<sup>117</sup> in the following manner:

There is "**manifest partiality**" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

With regard to the third element, the Supreme Court defined "unwarranted" as lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.<sup>118</sup>

Injury, on the other hand, has been construed to mean as "any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another." It must be more than necessary or are excessive, improper or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty. Undue injury cannot be presumed even after a wrong or a violation of a right has been established.<sup>119</sup>

Corollarily, proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible.<sup>120</sup>

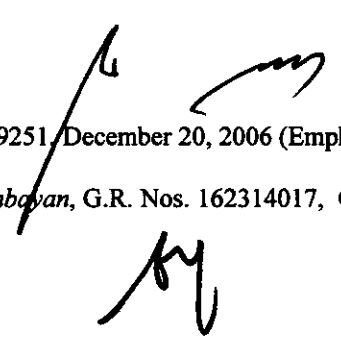
#### ***B. The respective participations of the accused***

<sup>117</sup> *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006 (Emphasis in the original).

<sup>118</sup> See *Librado M. Cabrera, et al. v. The Honorable Sandiganbayan*, G.R. Nos. 162314017, October 25, 2004.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

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To recall, the Information alleged that the accused, acting with evident bad faith, manifest partiality or gross inexcusable negligence, conspired in giving unwarranted benefit, advantage or preference to Dantes Executive Menswear in making it the sole supplier of various Combat Clothing and Individual Equipment (CCIE) items of the Philippine Army amounting to ₱5,103,000.00 without the benefit of public bidding by:

- (1) splitting into six (6) separate Procurement Directives (PD) and Purchase Orders (PO) the procurement of the CCIE items that actually make a complete set of uniform for 540 soldiers with each PO amounting to less than ₱1,000,000.00, resorting instead to shopping as an alternative method of procurement without legal basis and authority from superior officer/s, in violation of existing laws and regulations, and
- (2) (ii) charging said PDs and POs issued in February 2003 against inexistent fund, as the Advises of Sub-Allotment pertaining to fund procurements were issued only on April 3, 2003.

The prevailing law on government procurement is R.A. 9184 or the Government Procurement Reform Act. This law was signed by the President on January 10, 2003. Section 78 thereof provided for the effectivity of the law after fifteen (15) days following its publication. Considering that the Act was published in Malaya on January 11, 2003, R.A. 9184 became effective only on January 26, 2003.<sup>121</sup>

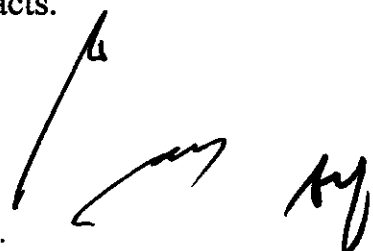
As a rule, all government procurements should go through competitive bidding.<sup>122</sup> Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.<sup>123</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> See *Bongon v. Brutas*, G.R. No.229894, and 230314, September 7, 2020.

<sup>123</sup> See *Subic Bay Metropolitan Authority, et al. v. Commission on Audit*, G.R. No. 230566, January 22, 2019.

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Alternative methods of procurement, however, are allowed under R.A. No. 9184, which would enable dispensing with the requirement of open, public and competitive bidding, but only in highly exceptional cases and under the conditions set forth in Article XVI thereof. Accordingly, the procuring entity may be allowed to resort to the following alternative methods or procurement: (1) limited source bidding; (2) direct contracting; (3) repeat order; (4) shopping; and (5) negotiated procurement."

In the present case, it was never disputed that there was no public bidding conducted; and that the alternative method of shopping had been resorted to in order to procure the subject CCIE items.

Shopping is a method of procurement whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualification. It may be resorted to in the following instances:

*(a) When there is an unforeseen contingency requiring immediate purchase: Provide however, That the amount shall not exceed Fifty thousand pesos (P50, 000.00); or*

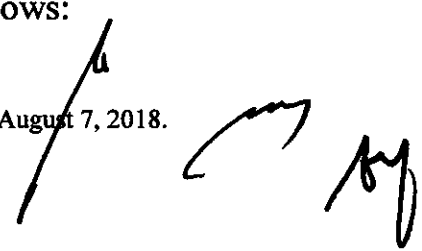
*(b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding Two Hundred fifty thousand pesos (P250, 000.00): Provided, however, That the Procurement does not result in Splitting of Contracts: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.<sup>124</sup>*

Corollarily, splitting of contracts means the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making them fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding.<sup>125</sup>

In *Re: Contracts with Artes International, Inc.*, the Supreme Court expounded on the nature of splitting of contracts as follows:

<sup>124</sup> Supra at note 122 .

<sup>125</sup> *Re: Contracts with Artes International, Inc.*, A.M. No. 12-6-18-SC, August 7, 2018.





x x x x

COA Circular No. 76-41, dated July 30, 1976, is instructive on the matter of splitting of contracts, to wit:

Forms of Splitting:

- 1) Splitting of Requisitions consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner.
- 2) Splitting of Purchase Orders consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by different requisitioners; and
- 3) Splitting of Payments consists in making two or more payments for one or more items involving one purchase order.

The above-enumerated forms of splitting are usually resorted to in the following cases:

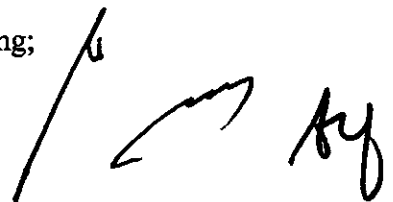
- 1) Splitting of requisitions and purchase orders to avoid inspection of deliveries;
- 2) Splitting of requisitions and purchase orders to avoid action, review or approval by higher authorities; and
- 3) Splitting of requisitions to avoid public bidding.

The foregoing enumeration of the forms of splitting is merely illustrative and by no means exhaustive. But in whatever form splitting has been resorted to, the idea is to do away with and circumvent control measures promulgated by the government. It is immaterial whether or not loss or damage has been sustained by, or caused to, the government.

x x x x

The following elements constitute the act of splitting of contracts or procurement project, to wit:

1. That there is a government contract or procurement project;
2. That the requisitions, purchase orders, vouchers, and the like of the project are broken up into smaller quantities and amounts, or the implementation thereof is broken into subcontracts or artificial phases; and
3. That the splitting of the contract falls under any of the following or similar purposes, namely:
  - a. evading the conduct of a competitive bidding;

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- b. circumventing the control measures provided in the circulars and other laws and regulations; or
- c. making the contract or project fall below the threshold for shopping or small value procurement.

Considering that the Information alleged conspiracy among the accused, there is a need to identify the roles of the accused in the procurement of the subject CCIE vis-à-vis the allegations in the Information.

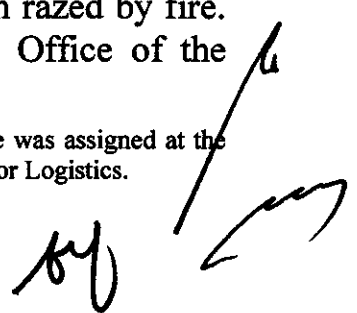
*Lt. Gen. Camiling, Jr.*

The Information for violation of Section 3(e) of R.A. 3019, as amended, mentioned three (3) documents as basis for the liability of the nine (9) accused in SB-16-CRM-1061, namely the Procurement Directives (PDs), the Advice of Sub-Allotments (ASAs), and the Purchase Orders (POs). It bears pointing out, however, that the original of the PDs and ASAs were not presented in Court. The parties, in fact, stipulated, *inter alia*, that Exhibits “B”, “C”, “D”, “E”, “F” and “G” are faithful reproductions of the photocopies on file with the Commission on Audit; and are certified photocopies from photocopies on file with the COA; and that that Exhibits “B-1” to “G-1,” (Advice of Sub-Allotments), are faithful reproductions of photocopies on file with the COA.

Notably, the prosecution failed to prove the due execution of the PDs and ASAs, as well as its subsequent loss. It bears recalling that the prosecution’s witness, Major Regis, stated that his office was unable to locate the original Procurement Directives and Advices of Sub-Allotments requested by the Office of the Special Prosecutor; and that the ASCOM Headquarters had been razed by fire in December 2012. We note in this regard that Maj. Regis was only designated as Acting Assistant Chief of Staff for Logistics of the ASCOM on September 2018.<sup>126</sup>

Significantly, Maj. Regis testified that the Procurement Directives and Advice of Sub-Allotments never came into his possession or custody; that he only assumed that the documents subject of the subpoena were in the ASCOM Headquarters; he was unsure if he conducted any inventory of the documents that were on file with ASCOM before it had been razed by fire. Even in the *Certification* that he issued (addressed to the Office of the

<sup>126</sup> Per his Judicial Affidavit dated January 8, 2019, Maj. Regis testified that he was assigned at the Research and Development Division prior to his designation as Acting Chief of Staff for Logistics.

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Ombudsman), Maj. Regis could not be certain if the requested documents was included in those documents that had been burned during the fire.

At any rate, even assuming that the PDs or ASA were admissible in evidence, **Camiling was never a signatory to either these subject PDs or ASAs.**

Nonetheless, the presented evidence disclosed that Gen. Camiling, Jr. signed the Disbursement Vouchers (DVs) and Purchase Orders (POs) subject of these consolidated cases.

*Brig. Gen. Estrella*

We point out that Brig. Gen. Estrella was not a signatory to any of the documents mentioned in the Information, that is, the Procurement Directives, the Purchase Orders, and the Advice of Sub-Allotments. To be sure, it was Col. Custodio Salosagcol, the then Acting Commanding Officer of ASCOM, who signed the subject six POs (Exh. "B-3" to Exh. "G-3"). Notably, Col. Salosagcol was not even an accused in these consolidated cases.

Estrella's signature, however, appeared in the Disbursement Vouchers, as well as in the Requisition and Issue Slips. We point out that Estrella was the approving authority in these Requisition and Issue Slips: he approved the request of Lt. Col. Dosado of the CCIE item indicated therein.

*BNAC Chairperson Santos; BNAC Secretary Dosado; and BNAC members Zumel and Cabreros*

The signatures of Col. Santos, Dosado, Zumel and Cabreros did not appear in the Procurement Directives, Purchase Order, or Advice of Sub-Allotments. In the Abstract of Canvass and Recommendation of Award, however, Col. Santos signed as 'CHAIRMAN, BAC'; Lt. Col. Dosado signed as 'SECRETARY, BAC'; while Zumel and Cabreros both signed as 'MEMBER, BAC.'



*Minel*

There is no dispute that Minel, as Chief Accountant, did not sign the PDs and ASAs involved in these cases. Nonetheless, his signature appeared in the six (6) Purchase Orders and in the Allotment and Obligation Slips where he certified as to the correctness and validity of obligations and availability of fund.

*Atty. Santos and Col. Austria*

The records showed that Atty. Santos was a signatory to the Disbursement Vouchers, while Col. Austria's signature appeared on the Procurement Directives.

***C. The evidentiary weight of the documentary exhibits***

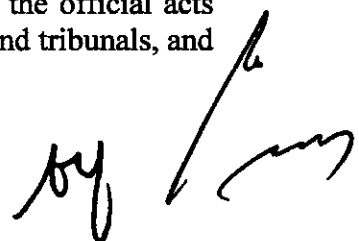
We emphasize that the Purchase Orders signed by Camiling, Jr. and Minel; the Certificates of Purchase Thru Shopping, Certificate of Reasonableness of Price and Notices to Proceed signed by Dosado; the Requisition and Issue Slips signed by Dosado and Estrella; and the Abstract of Canvass and Recommendation of Award signed by Cabreros, Dosado, Zumel and Santos had all been stamped 'CERTIFIED XEROX COPY FROM THE ORIGINAL'. The Allotment and Obligation Slips, on the other hand, were stamped 'Certified Copy From the Original'.

The 2019 Revised Rules on Evidence provides for the manner by which documentary evidence are to be presented based on its nature and classification. For purposes of presenting these as evidence before courts, documents are classified as either public or private. Rule 132, Section 19 of the Rules of Court provides:

SEC. 19. Classes of Documents. - For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and

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public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledge before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

Under this enumeration, the Purchase Orders, Certificates of Purchase Thru Shopping, Certificate of Reasonableness of Price, Notice to Proceed, Requisition and Issue Slips and the Abstract of Canvass and Recommendation of Award are public documents. We note in this regard that the requirement of authentication of documentary evidence only pertains to private documents and does not apply to public documents, these being admissible without further proof of their due execution or genuineness. Two reasons may be advanced in support of this rule, namely: said documents have been executed in the proper registry and are presumed to be valid and genuine until the contrary is shown by clear and convincing proof; and, second, because public documents are authenticated by the official signature and seals which they bear and of which seals, courts may take judicial notice.<sup>127</sup>

As the Supreme Court explained in *Republic v. Gimenez*:<sup>128</sup>

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, *is self-authenticating and requires no further authentication in order to be presented as evidence in court.*<sup>129</sup>

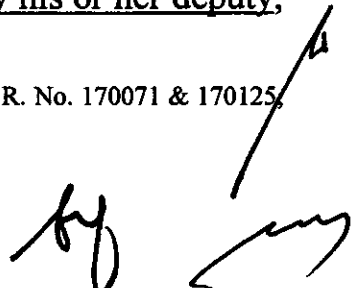
Following Section 24, Rule 132 of the Revised Rules on Evidence,<sup>130</sup> proof of official record may be evidenced by, among others, a copy attested by the officer having the legal custody of the record, or by his or her deputy,

<sup>127</sup> See *Heirs of Jose Marcial K. Ochoa v. G&S Transport Corporation*, G.R. No. 170071 & 170125, July 16, 2012.

<sup>128</sup> G.R. No. 174673, January 11, 2016.

<sup>129</sup> *Id.* (citations omitted).

<sup>130</sup> A.M. No. 19-08-15-SC.

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and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

Simply put, the record of public document need not be actually presented in court so long as the officer having its legal custody attests that the secondary evidence presented before the court is a true copy of the original under his or her custody. Verily, in order for the Court to give probative value to secondary evidence, it is imperative for the prosecution to present a certified copy of the document coupled by an attestation of an officer having legal custody of the subject document, or by his or her deputy.

The need to establish the custody of the original public document is in line with Section 3, Rule 130 of the Revised Rules on Evidence which enumerates the exception to the Original Document Rule, viz:

Section 3. Original document must be produced; exceptions. –  
When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself, except in the following cases:

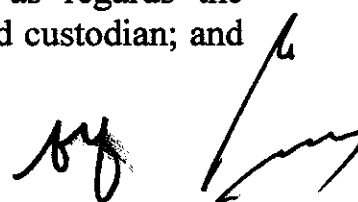
X X X X

(d) When the original is a public record in the custody of a public officer or is recorded in a public office;

X X X X

Verily, in order for the Court to give probative value to secondary evidence such as a certified true copy, the prosecution must establish that it falls under one of the exceptions laid down by Section 3.

The Purchase Orders, Certificates of Purchase Thru Shopping, Certificate of Reasonableness of Price, Notice to Proceed, Requisition and Issue Slips, Abstract of Canvass and Recommendation of Award, and the Allotment and Obligation Slips were all certified by State Auditor III Oscar Eblahan, the records custodian of these documents. It bears noting, however, that State Auditor Eblahan never testified in court. While the prosecution presented Auditor Tamayo, she was not the one who certified the subject documents, having been assigned to the COA-PA only in August 2018. Notably, Tamayo did not have any participation in the preparation of the documents; she also did not have any knowledge as regards the transactions that occurred prior to her appointment as record custodian; and

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had no personal knowledge of the actual transmittal or receipt by the COA of the said documents. As such, no evidentiary value can be given to these documents.

Col. Austria's conviction, on the other hand, rests on the PDs that bore his signature. Considering that the prosecution was not able to justify its resort to the introduction of secondary evidence, the certified photocopy of the photocopy of the PDs are held to be inadmissible in evidence.

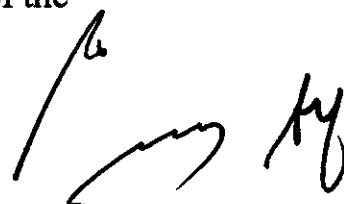
Under the Original Document Rule, when the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself.

This revised version of the rule is similar to the previous recital of the rule under Section 3, Rule 130 of the recently amended 1989 Rules on Evidence: "When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x."<sup>131</sup>

While the Original Document Rule is not absolute and in fact provides for the exceptions on when secondary evidence may be submitted, the Rules on Evidence, as amended, unmistakably maintain their preference for the presentation of the original as they only allow the introduction of secondary evidence upon a showing by the proponent that it is no longer reasonable to require the original under the circumstances. Under the Rules, secondary evidence may only be introduced:

- (a) When the original is lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;

<sup>131</sup> See *Dela Cruz v. People*, G.R. No. 236807 & 236810, January 12, 2021.



- (d) When the original is a public record in the custody of a public officer or is recorded in a public office; and
- (e) When the original is not [closely related] to a controlling issue.<sup>132</sup>

In the present case, the prosecution miserably failed to prove the due execution of the PDs and ASAs, as well as its subsequent loss. Maj. Regis testified during his cross-examination that the Procurement Directives and Advice of Sub-Allotments *never came into his possession or custody*; and that he only *assumed* that the documents subject of the subpoena were in the ASCOM Headquarters. He was also unsure if he conducted any inventory of the documents that were on file with ASCOM before it had been razed by fire.

That Austria claimed that he did not issue the PDs in February 2003 (or before the issuance of the ASAs) all the more makes the ‘certified photocopy of the photocopy’ of the said PDs unreliable. The following exchanges during trial highlighted the importance of the presentation of the original PDs, thus:

JUSTICE MORENO:

Q: x x x x I though you said that before you issued a PD, there must be an ASA. Now you have issued PD when you have issued the same on February 11, 2003 when the ASA is dated April 3, 2003?

MAJ. GEN. CYRANO AUSTRIA:

A: Our position Your Honors is that I did not issue the PD in February. I am maintaining that I issued the PD in April but it was erased in the marked exhibit of COA.

x x x x

Q: It was dated? I am showing to you the original. This appears to be original or photocopy?

PROSECUTOR CALALANG:

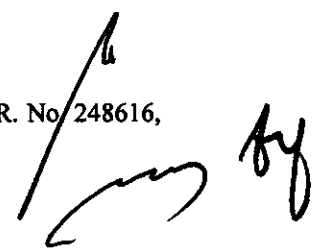
It’s a photocopy on file with the COA, Your Honors.

JUSTICE MORENO:

Q: On file with the COA. Okay just for the record.

Sir, could you take a look at the date? It’s a stamp, correct?

<sup>132</sup> See Concurring Opinion of Associate Justice Caguioa in *Maglasang v. People*, G.R. No. 248616, January 12, 2021.

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MAJ. GEN. AUSTRIA:

A: Yes, Your Honors, there is a stamp of correction fluid.

X X X X

Q: Would it be apparent to you that a date has been indicated prior to the correction fluid?

A: Yes, Your Honors.

Q: There is also a correction fluid below and there appears to be a stamp. Could you tell us if you know what could have been there?

A: Yes, Your Honors. The stamp below my signature Your Honors is the stamp of Material Support Procurement Branch. This MSPC office is the one that receives the PD which we forwarded to them, Your Honors.

Q: So this stamp here where there is correction fluid could have shown the date when this was received?

A: Yes, Your Honors, because I refer also to the ASA which was received by MSPC with the stamp of the date in April in the ASA, Your Honors.

Q: So will you agree with me – I am just guessing, by looking at the document. The date where the correction fluid was placed appears to be 21 April 2003?

A: Yes, Your Honors. I agree with that.

Q: This will be true to all other PDs, referring to the date, Mr. witness?

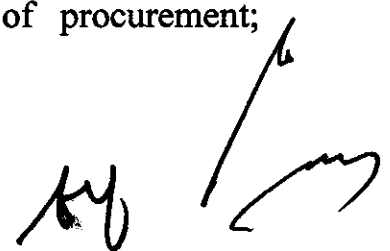
A: Yes maybe not necessarily the same 21 April, Your Honors because as we receive the communication and request and we dispatch it that is the date that we stamp on the PD, Your Honors.

Q: But you are sure that this was issued after April 3, 2003?

A: Yes, Your Honors.<sup>133</sup>

On the liability of Atty. Santos, the presented evidence showed that she was not a signatory to any of the documents stated in the Information, that is, the Procurement Directives, Purchase Orders and Advices of Sub-Allotments. The POs, in fact, had been signed by her predecessor, Minel. This was not at all unexpected as Atty. Santos became the Acting Chief Accountant when Rolando Minel retired only on July 1, 2003, before being promoted as Chief Accountant on September 3, 2003. She thus had no direct or indirect participation in the selection and mode of procurement;

<sup>133</sup> TSN, February 12, 2020, 24-27.

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preparation and issuance of the procurement directives that transpired on February 2003; preparation of and issuance of the purchase orders that transpired on May 2003; canvassing of bids and recommendation of the award to Dantes Executive Menswear; and serving of the notices of awards, purchase orders and notice to proceed. Notably, Atty. Santos was not even included in the Notice of Disallowance (ND) No. 10-001-101-(03) dated October 10, 2012.

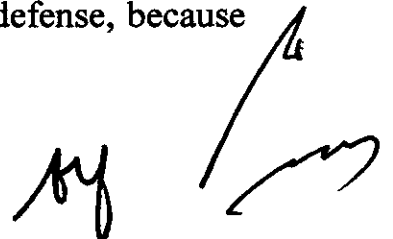
As earlier stated, the signature of Atty. Santos appeared on the Disbursement Vouchers, together with the respective signatures of Camiling, Jr. and Estrella.

The ordinary meaning of "voucher" is a document which shows that services have been performed or expenses incurred. It covers any acquittance or receipt discharging the person or evidencing payment by him. When used in connection with disbursement of money, it implies some instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment.<sup>134</sup> It bears pointing out, however, that the DVs were certified photocopies from the original, and the person who certified them had not been presented in court.

We additionally emphasize that the signing of the DVs by Camiling, Estrella and Atty. Santos had not been alleged at all in the Information. To reiterate, the Information in SB-16-CRM-1061 merely alleged that the accused conspired in: splitting into six separate Procurement Directives (PD) and Purchase Orders (PO) the procurement of the CCIE items; and charging said PDs and POs issued in February 2003 against inexistent fund. The indictment did not allege anything as regards the preparation, issuance and/or signing of the DVs by Camiling, Estrella and Atty. Santos. We note that splitting may take the form of either splitting of purchase orders, requisitions or payment, or a combination of any of these three forms. The acts constitution splitting, however, must be stated in the Information.

The constitutional right to be informed of the nature and cause of the accusation against an accused further requires a sufficient complaint or information. It is deeply rooted in one's constitutional rights to due process and the presumption of innocence. Due process dictates that an accused be fully informed of the reason and basis for their indictment. This would allow an accused to properly form a theory and to prepare their defense, because

<sup>134</sup> See *Atienza v. Villarosa*, G.R. No. 161081, May 10, 2005.

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they are presumed to have no independent knowledge of the facts constituting the offense they have purportedly committed.<sup>135</sup>

To be sure, Atty. Santos' act of signing 'Box B' of the DVs was a certification on her part that that there was cash available, and that the supporting documents were complete and proper.

Atty. Santos explained during trial the certification on the availability of cash, as follows:

X X X X

PROSECUTOR CALALANG::

Q: And you likewise made sure whether there was available funds for the procurement, correct?

ATTY. EDITHA SANTOS:

A: Yes, ma'am; available funds and available cash.

X X X X

CHAIRPERSON:

Q: Excuse me. Don't these two go together when there are available funds, does it not necessary follow that there is available cash?

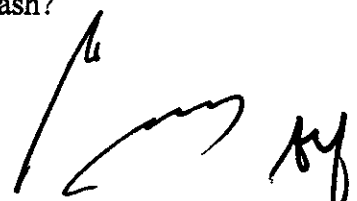
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A: The available funds refer to the notice of the Advice of Allotment. The Advice of Allotment is the authority of the agency to incur obligation, to enter into contract of contracted services for the delivery of supplies and these services. The Notice of Cash is the allocation coming from DBM to pay those obligations earlier incurred so in the Disbursement Voucher what the Chief Accountant certify is the availability of cash because the availability of funds have been certified earlier during the purchase order and the Purchase Order is just a supporting document to the Disbursement Voucher. (28-29)

X X X X

ATTY. SANTOS:

Q: Can you explain, Madam witness, why is there a distinction between availability of funds and availability of cash?

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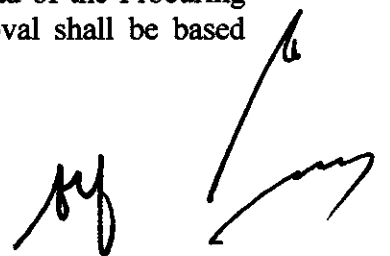
- A: The Certification of Availability of Funds there are two aspects on this matter. One is the Certificate of Availability of Funds coming from the Budget Officer of ASCOM. The Certificate of Availability of Funds is based for purposes of canvass, pre-procurement, this Certificate of Availability of Funds from the Budget Officer can be based on the program, the budget, approved budget of the unit, or it can be from an issued Advice of Sub-Allotment. In short, the Certificate of Availability of Funds comes from the Budget Officer of ASCOM in this case. And the Certificate of Availability of Cash comes from the Notice of Cash Allocation that was issued by the Department of Budget and Management purposely for the payment of those obligations or those contracts that were incurred based on the ASA issued by the G6, by the Comptroller of the Philippine Army. So there are two issuances coming from the DBM. The Advice of Sub-Allotment wherein that was the basis for the issuance of the ASA and the Notice of Cash Allocation that is the basis of the Certificate of Available Cash during the payment.<sup>136</sup>

These matters could have been proven by the PDs in relation to the ASAs, but these PDs and ASAs are inadmissible in evidence. The POs, on the other hand, had not been attested by the officer having legal custody thereof, and thus could not be given probative value. Notably, these POS did not even pass through Atty. Santos for her signature because she was not yet the Chief Accountant at that time: she came into the picture when there was a need to process the documents for purposes of payment.

***D. Violations of applicable procurement laws vis-à-vis conviction for R.A. No. 3019, as amended***

Under R.A. No. 9184, the BAC shall ensure that the procuring entity abides by the standards set forth by the procurement law. In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement. Section 12 of RA 9184 reads:

SECTION 12. Functions of the BAC. - The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based

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only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.<sup>137</sup>

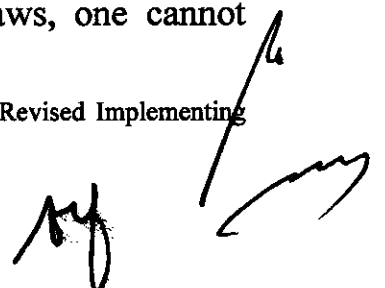
Under this section, it is clear that the BAC does not exercise purely ministerial duties. Among its functions under Section 12 include determining the eligibility of prospective bidders, conducting evaluation of bids, recommending award of contracts, as well as **recommending the use of alternative methods of procurement in proper cases**. Additionally, the BAC shall be responsible for ensuring that the procuring entity abides by the standards set forth in R.A. No. 9184 and its IRR. As such, even if the end-users already stated or suggested their preferred mode of procurement, it is the BAC (in this case the BNAC) which ultimately makes the corresponding recommendations to the head of the procuring entity. Verily, the BNAC was not bound by the recommendations of the end-users, and may reject the latter's recommended or preferred mode of procurement.

We likewise point out that the subject Purchase Orders indicated the mode of procurement, i.e., shopping. As such, the signatories therein should have been more meticulous in ensuring that the requisites for this alternative mode have been complied with. To the Court's mind, the doctrine of 'completed staff work' does not preclude a review by the signing official on the regularity of the documents and/or its attachments.

In any event, *a finding of violations of the applicable procurement laws does automatically lead to a conviction violation of Section 3 (e) of R.A. No. 3019*. For there to be a violation under Section 3 (e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot

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<sup>137</sup> The functions of the BAC are echoed in Sections 12.1 and 12.2 of the Revised Implementing Rules and Regulations (RIRR), and even in the earlier IRR, of RA 9184.

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solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.<sup>138</sup> The prosecution failed to establish these elements. Indeed, the acts constituting the elements of a violation of R.A. No. 3019 must be effected with *corrupt intent, a dishonest design, or some unethetical interest* - which are clearly wanting in the instant case.<sup>139</sup> Considering that R.A. No. 3019 was crafted as an anti-graft and corruption measure, we additionally note that there was no showing that the accused in these consolidated cases profited from the purchase of the CCIE items.

The Supreme Court's pronouncement in *Martel, et al. v. People*<sup>140</sup> on this point is particularly instructive, thus:

While the Constitution exacts a higher standard of accountability with respect to public officers, as indeed public office is a public trust, the constitutional right of presumption of innocence in criminal prosecutions is likewise enjoyed by public officers who stand accused. Therefore, in order to justify conviction, their guilt must be proven beyond reasonable doubt, as with any other person who stands accused.

In criminal cases involving Section 3(e) of Republic Act No. (R.A.) 3019, or the Anti-Graft and Corrupt Practices Act, in relation to alleged irregularities in procurement committed by public officers, findings of violations of procurement laws, rules, and regulations, *on their own*, do not automatically lead to the conviction of the public officer under the said special penal law. *It must be established beyond reasonable doubt that the essential elements of Section 3(e) of R.A. 3019 are present.*

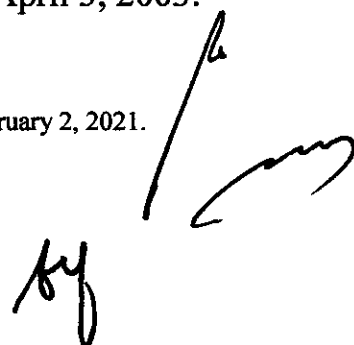
## **II. SB-16-CRM-1062 to 1067 (falsification of public document under Article 171 of the Revised Penal Code)**

To recall, the six (6) Information in these cases charged all the accused of conspiring in making an untruthful statement in the Procurement Directives by making it appear that funds for certain CCIE for the use of a particular unit were already available by indicating in said PDs that the funds was chargeable to Advise of Sub-Allotment when the said ASA was inexistent since it was issued only on April 3, 2003.

<sup>138</sup> See *Martel v. People*, G.R. Nos. 224720-23; and 224765-68, February 2, 2021.

<sup>139</sup> See *Macairan v. People*, G.R. No. 215104, March 18, 2021.

<sup>140</sup> *Id.* (Italics in the original).

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Article 171, paragraph 4 of the Revised Penal Code, as amended, provides:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. **Making untruthful statements in a narration of facts;**

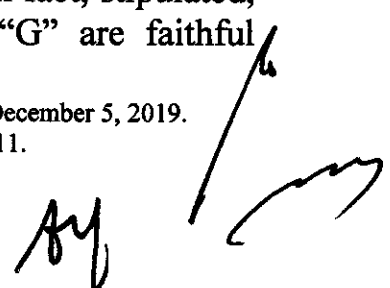
x x x x [Emphasis supplied]

The elements of falsification in the above provision are as follows: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by him are absolutely false.<sup>141</sup>

In addition to the afore-cited elements, it must also be proven that the public officer or employee had taken advantage of his official position in making the falsification. In falsification of public document, the offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies. Likewise, in falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.<sup>142</sup>

Per the Information, the documents alleged to have been falsified in the present case, are the six (6) Procurement Directives vis-à-vis the Advice of Sub-Allotments. Notably, it had not been disputed that the original of the PDs and ASAs were not presented in Court. The parties, in fact, stipulated, *inter alia*, that Exhibits "B", "C", "D", "E", "F" and "G" are faithful

<sup>141</sup> See *Office of the Ombudsman v. Santidad*, G.R. No. 207154 and 222046, December 5, 2019.  
<sup>142</sup> See *Galeos v. People*, G.R. No. 174730-37 and 174845-52, February 9, 2011.



reproductions of the photocopies on file with the Commission on Audit; and are certified photocopies from photocopies on file with the COA; and that that Exhibits “B-1” to “G-1,” which are Advice of Sub-allotments, are faithful reproductions of photocopies on file with the COA.<sup>143</sup>

An examination of Exhibits “B” to “G” indeed showed that it had been stamped as either “CERTIFIED XEROX COPY FROM THE XEROX” or “CERTIFIED XEROX COPY FROM THE XEROX COPY.” Similarly, the Advice of Sub-Allotment (Exhibits “B-1” to “G-1,”) were also stamped as either “CERTIFIED XEROX COPY FROM XEROX”, or “CERTIFIED XEROX COPY FROM THE XEROX,” or “CERTIFIED XEROX COPY FROM THE XEROX COPY.”

Under the Best Evidence Rule, which is now called the Original Document Rule under the 2019 Revised Rules on Evidence (A.M. No. 19-08-15-SC), when the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is be admissible other than the original document itself, except in the following cases:

(a) When the original is lost or destroyed, or cannot be reproduced in court, without bad faith on the part of the offeror. x x x<sup>144</sup>

Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its nonproduction in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed.<sup>145</sup> The correct order of proof is as follows: existence, execution, loss, and contents.<sup>146</sup>

In the present case, the prosecution failed to prove the due execution of the PDs and ASAs, as well as its subsequent loss.

To be sure, Maj. Regis merely stated that his office was unable to locate the original Procurement Directives and Advices of Sub-Allotments requested by the Office of the Special Prosecutor; and that the ASCOM Headquarters had been razed by fire in December 2012. We point out in this regard that he was only designated as Acting Assistant Chief of Staff for Logistics of the ASCOM on September 2018.<sup>147</sup>

<sup>143</sup> See Order of this Court dated January 16, 2019; record, vol. IV, pp. 239-240.  
<sup>144</sup> Section 3.

<sup>145</sup> See *De Leon v. The Manufacturers Life Insurance Company*, G.R. No. 243733, January 12, 2021.

<sup>146</sup> See *Valencerina v. People*, G.R. No. 206162, December 10, 2014.

<sup>147</sup> Per his Judicial Affidavit dated January 8, 2019, Maj. Regis testified that he was assigned at the Research and Development Division prior to his designation as Acting Chief of Staff for Logistics.



Significantly, Maj. Regis testified during his cross-examination that the Procurement Directives and Advice of Sub-Allotments **never came into his possession or custody**; and that **he only assumed that the documents subject of the subpoena were in the ASCOM Headquarters**, thus:

X X X X

ATTY. ROBERTO MENDOZA:

Q: Now, Major Regis, the documents referred to in the Subpoena dated 12 November 2018, referring to the procurement directives and advice of sub-allotments. These documents were never turned over to you for your custody?

MAJOR REGIS:

A: I cannot answer that sir because I am only four months in my position as Acting Chief of Staff.

Q: Precisely, you were only appointed as Acting Chief of Staff for Logistics on September 2018?

A: Yes, sir.

Q: So, upon appointment these documents referred to in the Subpoena, they never came into your possession or custody.

A: Yes, sir.

Q: Yes, they never?

A: Yes, sir, they never.

Q: Alright, now, so also in you Judicial Affidavit you mentioned that your search for the documents subject of the Subpoena, you gave negative result because sometime in December 2012, the Headquarters of ASCOM was razed by fire and some documents had been destroyed, is that your testimony?

A: Yes, sir.

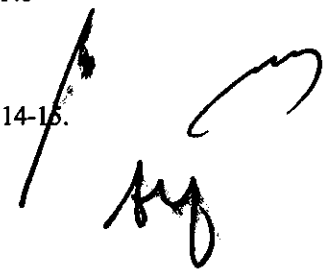
Q: But you only assumed that the documents subject of the Subpoena were in fact in the Headquarters of ASCOM?

A: Yes, sir.

Q: You cannot state for a fact that at the time of the fire the objects, [sic] the documents subject of the subpoena were inside the Headquarters of ASCOM?

A: Yes, sir.<sup>148</sup>

<sup>148</sup> TSN, January 16, 2019, pp. 14-15.



In addition, Maj. Regis stated that he was unsure if he conducted any inventory of the documents that were on file with ASCOM before it had been razed by fire.

X X X X

ATTY. JOEDITH SANTOS

Q: You stated in your Judicial Affidavit that there was a fire that occurred in ASCOM in 2012, what was your source of telling or stating that in your affidavit of that fire that occurred in 2012?

MAJ. REGIS:

A: Based ma'am on the spot report I read, ma'am.

X X X X

PJ AMPARO M. CABOTAJE-TANG

Q: x x x By the way, the Court will ask you this question, Maj. Regis, did you have any inventory of the documents that were on file with the ASCOM before it was razed by fire and inventory of what were razed by fire after that fire occurred?

A: Your Honors, we do not, I have no idea if there was an inventory before and after Your Honors.<sup>149</sup>

The testimony of Maj. Regis clearly did not establish that the original of the subject documents had either been lost or destroyed. His testimony did not even create a reasonable probability of the loss or destruction of the letter. Maj. Regis' testimony is therefore insufficient to justify the introduction of secondary evidence.

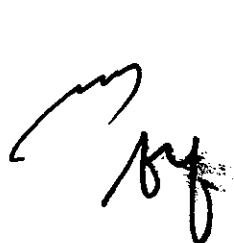
Moreover, in his Certification dated November 26, 2018 addressed o the Office of the Ombudsman, Maj. Regis was *not certain* whether the documents requested by the Office of the Ombudsman were among those razed by fire. To directly quote the relevant potion of this Certification:

X X X X

After thorough search, this Office does not have on its file any of the original copies of the above-mentioned documents. Further, please be informed that sometime on December 30, 2012, Headquarters ASCOM was razed by fire and the required documents **might** have been among those burned.<sup>150</sup>

149  
150

Id. at 17-18.  
See Exhibit "K" (Emphasis ours).



Another prosecution witness, State Auditor **Mercedes Tamayo**, had only been assigned as records custodian at the COA in 2018. As stipulated, “she did not have any participation in the preparation of the documents neither of any knowledge as to the transactions that occurred, prior to her appointment as records custodian.”<sup>151</sup> It had not also been disputed that Tamayo had “no personal knowledge of the actual transmittal or receipt of the Office of the COA”<sup>152</sup> of the subject documents.

Prescinding from the foregoing exchanges during trial, it could be reasonably concluded that while there may have been a fire that razed the ASCOM Headquarters in December 2012, it had not been shown that the six subject PDs and ASAs were inside this building, and that these documents alluded to by Maj. Regis were destroyed by the said fire.

That the parties claimed that the erasures (‘snopake’) on the date of the PDs which can be seen on the COA photocopy had not been clearly reflected in the PDs offered in evidence in the present cases all the more highlighted the unreliability of the secondary evidence presented in these consolidated cases. It has been held that **where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved.**<sup>153</sup>

It bears highlighting that only accused Col. Austria was a signatory to the six Procurement Directives subject of these cases. This was not all surprising since Maj. Gen. Austria himself admitted that he was responsible for the issuance of these Procurement Directives as Assistant Chief of Staff for Logistics. We also note that only Col. Gaverza, Jr.’s signature appears on the Advice of Sub-Allotments, although he was not even an accused in these consolidated cases. Corollarily, we see no basis from the records of these cases to uphold the charge that the accused conspired with each other to falsify the subject PDs.

Although a conspiracy may be deduced from the mode and manner by which the offense was perpetrated, it must, like the crime itself, be proven beyond reasonable doubt. Mere knowledge, acquiescence or approval is not enough without a showing that the participation was intentional and with a view of furthering a common criminal design or purpose. The Supreme Court’s pronouncement on this point in *Macairan v. People*<sup>154</sup> is instructive, thus:

w x x x [w]hile direct proof is not necessary to establish conspiracy, it is vital for the prosecution to show, at the very least, with the same degree of proof required to establish the crime - proof

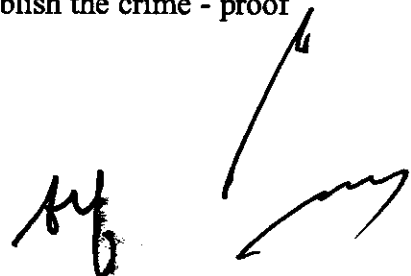
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<sup>151</sup> *Id.* at 35.

<sup>152</sup> *Id.*

<sup>153</sup> See *Lee v. People*, G.R. No. 159288, October 19, 2004.

<sup>154</sup> G.R. No. 215104, March 18, 2021.

Handwritten signature and a checkmark.

beyond reasonable doubt, that all participants performed overt acts with such closeness and coordination as to indicate a common purpose or design to commit the felony. The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy. The Court further emphasizes that the community of design to commit an offense must be a conscious one. Mere knowledge, acquiescence, or agreement to cooperate, mere presence at the scene of the crime at the time of its commission, and mere companionship, are insufficient to constitute one as part to a conspiracy.

In any event, the totality of the presented testimonial and documentary pieces of evidence failed to establish the elements of Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, as amended. Indeed, the Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, the presumption of innocence must be favored, and exoneration granted as a matter of right.

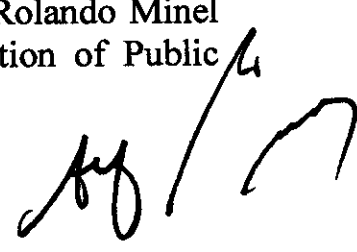
**WHEREFORE**, in light of all the foregoing, judgment is hereby rendered as follows:

I. In **SB-16-CRM-1061**:

Accused Lt. Gen. Gregorio M. Camiling, Jr., Brig. Gen. Severino P. Estrella, Col. Cesar Guzman Santos, Col. Jessie Mario B. Dosado, Col. Barmel B. Zumel, Capt. George P. Cabreros and Rolando Minel, Col. Cyrano Aglugub Austria and Atty. Editha B. Santos are **ACQUITTED** for failure of the prosecution to prove their guilt for violation of Section 3(e) of R.A. No. 3019, as amended, beyond reasonable doubt.

II. In **SB-16-CRM-1062 to SB-16-CRM-1067**:

Accused Lt. Gen. Gregorio M. Camiling, Jr., Brig. Gen. Severino P. Estrella, Col. Cesar Guzman Santos, Col. Jessie Mario B. Dosado, Col. Barmel B. Zumel, Capt. George P. Cabreros, Col. Cyrano Aglugub Austria, Atty. Editha B. Santos and Rolando Minel are **ACQUITTED** on all six (6) counts of Falsification of Public

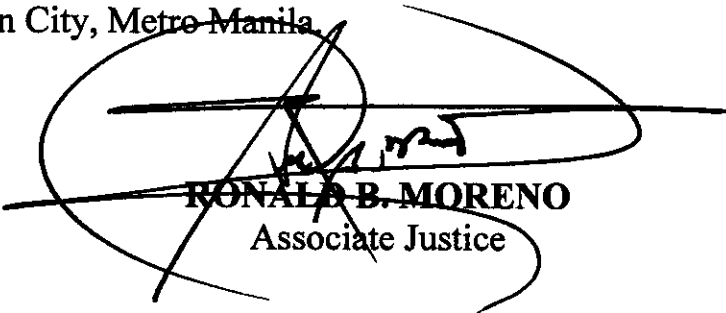
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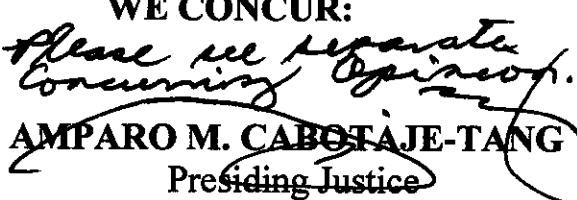
Documents under Article 171, paragraph 4 of the Revised Penal Code, for the prosecution’s failure to prove their guilt beyond reasonable doubt.

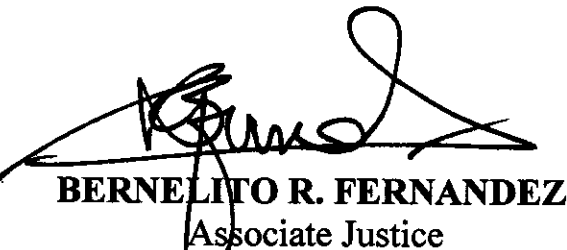
Consequently, the Hold Departure Order issued against all the accused are **LIFTED** and the bail bond posted for their provisional liberty are hereby **RELEASED** in their favor, subject to the usual accounting and auditing procedures..

**SO ORDERED.**

Quezon City, Metro Manila

  
**RONALD B. MORENO**  
Associate Justice

**WE CONCUR:**  
*Please see separate  
Concurring Opinion.*  
  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

  
**BERNELITO R. FERNANDEZ**  
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.

  
**AMPARO M. CABOTAJE-TANG**  
Chairperson, 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.

  
**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice*

