



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

CRIMINAL CASES NOS. SB-16-CRM-1061 to 1067 – PEOPLE OF THE PHILIPPINES, plaintiff, versus GREGORIO M. CAMILING, ET AL., accused.

Promulgated:

April 8, 2022 *JL*

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SEPARATE CONCURRING OPINION

CABOTAJE-TANG, PJ:

I respectfully submit my separate concurring opinion for reasons hereinafter discussed.

THE CASES

These cases stemmed from [1] an *Information* charging accused Gregorio M. Camiling (Camiling), Severino P. Estrella (Estrella), Cesar Guzman Santos (C. Santos), Jessie Mario B. Dosado (Dosado), Barmel B. Zumel (Zumel), George P. Cabreros (Cabreros), Cyrano Aglugub Austria (Austria), Editha B. Santos (E. Santos) and Rolando Minel (Minel) with a violation of Section 3 (e) of Republic Act (R.A) No. 3019; and [2] six (6) *Informations* charging the same accused with the crime of falsification of public documents under Article 171, paragraph 4 of the Revised Penal Code.

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

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 willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Dantes Executive Menswear (Dantes) in that Dantes was the 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 (P5,103,000.00) 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 P1,000,000.00, 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 *Advises 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 P5,103,000.00

CONTRARY TO LAW.¹

On the other hand, the *Information* in Criminal Case No. SB-16-CRM-1062 for falsification of public documents under Article 171, paragraph 4 of the Revised Penal Code, reads:

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

¹ p. 2-3, Vol. VII, Record

accused, all of 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 related to the procurement of Combat Clothing and Individual Equipment (CCIE) items of the PA, did then and there willfully, 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 the 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.²

The *Informations* in Criminal Cases Nos. SB-16-CRM-1063 to 1067 which also charge the accused with the crime of falsification of public documents under Article 171, paragraph 4 of the Revised Penal Code, are similarly worded as SB-16-CRM-1062 except for the following details:

Case No.	Procurement Directive 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 Support Group band

² pp. 1-3, Vol. I, Record (SB-16-CRM-1062)

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.

I. The elements of the crimes charged.

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Jurisprudence teaches that the following elements must be proven by the prosecution evidence beyond reasonable doubt for the accused to be held liable for a violation of Section 3 (e) of R.A. No. 3019, thus:

1. The offender is a public officer;
2. The act was done in the discharge of the public officer's official, administrative or judicial functions;
3. The act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and,
4. The public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage, or preference.³

The elements of the crime of falsification of public documents punishable under paragraph 4, Article 171 of the Revised Penal Code, on the other hand, are the following:

1. The offender is public officer;
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³ Villarosa v. People, G.R. No. 233155-63, June 23, 2020

5. There is a legal obligation for him/her to narrate the truth; and,
6. Such untruthful statements are not contained in an affidavit or statement required by law to be sworn in.⁴

II. The prosecution evidence show that there was splitting of contracts in these cases.

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To begin with, Commission on Audit (COA) Circular No. 76-41 dated July 30, 1976, which prohibits splitting of requisitions, purchase orders, vouchers in government procurement defines "*splitting*," in its literal sense, means dividing or breaking up into separate parts or portions, or an act resulting in a fissure, rupture, breach. Within the sphere of government procurement, splitting is associated with requisitions, purchase orders, deliveries, and payment. According to the said circular, "*splitting*" may be in the form of **[1] Splitting of requisitions which consists in the non-consolidation of requisitions for one or more items needed at about the same time by the requisitioner; [2] Splitting of purchase orders which 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 the different requisitions; and, [3] Splitting of payments which consists in making two or more payments for one or more items involving one purchase order.** These forms of splitting are resorted to in order to avoid inspection of deliveries; action, review, or approval by higher authorities; or public bidding.⁵

In its *Resolution* promulgated on August 7, 2018, **Re: Contracts with Artes International, Inc.,**⁶ the Supreme Court *en banc* also defined "*splitting of contracts*" as 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

⁴ *Respicio v. People*, 650 SCRA 573 (2011)

⁵ See also *Preagido and Bolotaulo v. Sandiganbayan*, 476 SCRA 143 (2005)

⁶ AM No. 12-6-18-SC

Court *en banc* also defined “splitting of contracts” as 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. Therein, the Supreme Court held that the following elements constitute the act of splitting of contract on procurement projects, 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 small quantities and amounts, or the implementation thereof is broken into sub-contracts or artificial phases; and,
3. That the splitting of contract falls under any of the following or similar purposes, namely:
 - a. evading the conduct of competitive public bidding;
 - 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.

Applying the above-mentioned standards to these cases, I respectfully submit that there was splitting of contracts in the procurement of the subject CCIE items.

Here, the items procured from Dantes which were covered by six (6) different contracts subject of these cases were [1] one hundred eighty five (185) sets of “Gala with Green Pants,” [2] five hundred forty (540) sets of “Pershing Cap,” [3] one hundred and sixty five (165) sets of “Gala with Green Pants,” [4] five hundred forty (540) sets of “White Pants;” [5] five hundred forty (540) sets of “Line Yard,” [6] five hundred forty (540) sets of “Buttons;” [7] five hundred forty (540) sets of “Belts and Buckles,” and, [8] one hundred ninety (190) sets of “Gala and Green Pants.

Notably, the procurement of five hundred forty (540) sets of “Gala with Green Pants” was split into three (3) separate

Requisition and Issue Slips,⁸ Certificates of Purchase Thru Shopping,⁹ Requests for Quotation,¹⁰ Certificates of Reasonableness of Price,¹¹ Abstract of Canvass & Recommendation of Award,¹² Purchase Orders,¹³ Advice of Sub-Allotments,¹⁴ Allotment and Obligation Slips,¹⁵ Notices to Proceed¹⁶ **were issued on or about the same time.** All the subject contracts were awarded to a single bidder – Dantes Executive Menswear.¹⁷ Moreover, Dantes posted its performance bonds for all the said contracts on May 5, 2003,¹⁸ and all the subject CCIE items were delivered on the same day or on June 20, 2003.¹⁹

I agree with the *ponencia* that, generally, all government procurements should go through competitive public bidding. Alternative modes of procurement, *i.e.*, *shopping*, although not prohibited by Republic Act No. 9184, may be resorted in any of the following instances:

- a. When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed Fifty Thousand Pesos (P50,000.00)²⁰ 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):²¹ Provided, however, That the procurement does not result in the splitting of contracts: Provided, further, That at least three (3) price quotations from *bona fide* suppliers shall be obtained.

In these cases, it is undisputed that there was no competitive public bidding conducted and the accused resorted to an alternative mode of procurement for the purchase of the

⁸ Exhibits B-8, C-8, D-8, E-9, F-8, G-8

⁹ Exhibits B-10, C-11, D-11, E-11, F-11, G-10

¹⁰ Exhibits B-11, C-12, D-12, E-12, F-11, G-11

¹¹ Exhibits B-15, C-14, D-16, E-16, F-15, G-15

¹² Exhibits B-14, C-16, D-15, E-15, F-14, G-14

¹³ Exhibits B-3, C-3, D-3, E-3, F-3, G-3

¹⁴ Exhibits B-1, C-1, D-1, E-1, F-1, G-1

¹⁵ Exhibits B-18, C-18, D-19, E-19, F-18, G-18

¹⁶ Exhibits B-16, C-15, D-17, E-17, F-16, G-16

¹⁷ Notices of Award (Exhibits

¹⁸ Exhibits B-17; C-17; D-18; E-18; F-17; G-16

¹⁹ Exhibits B-6; C-6; D-6; E-6; F-6; G-6

²⁰ The threshold amount has been amended. See Part C (1) (a), Annex H of the 2016 Revised Implementing Rules and Regulations of R.A. No. 9184.

²¹ *Id*

contracts: Provided, further, That at least three (3) price quotations from *bona fide* suppliers shall be obtained.

In these cases, it is undisputed that there was no competitive public bidding conducted and the accused resorted to an alternative mode of procurement for the purchase of the subject CCIE items. However, it must be pointed out that the above-mentioned COA Circular 76-41 notified **all** Heads of Departments, Chiefs of Bureaus and Offices; Managing Heads of Government-Owned or Controlled Corporations, Self-Governing Boards, Commissions and Agencies; Provincial Governors; City Mayors; Provincial, City and Municipal Treasurers; Chief Accountants; Department, Bureau, Corporate, Provincial and City Auditors; and Others Concerned on the prohibition of splitting of requisitions, purchase orders, vouchers, etc. Also, R.A. No. 9184 expressly penalizes the splitting of contracts which exceeds procedural purchase limits and competitive public bidding.²²

Here, the six (6) Certificates of Purchase Through Shopping²³ reveals that accused Dosado indicated therein that the purchase through *shopping* of the subject items were "*badly needed*" by the Philippine Army and "*that there is no more material time to procure the items through normal procurement procedures.*" Nevertheless, the accused have may offered any concrete explanation and/or specified the circumstances surrounding the purported necessity of the immediate procurement of the subject CCIE items.

Taken altogether, the above-mentioned circumstances lead to the inescapable conclusion that the purchase of the subject CCIE items amounted to the splitting of the contracts which was inpatient violation of existing laws, rules and regulations on government procurement.

**III. A common design is
the essence of
conspiracy.**

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²² Section 65 (c)

²³ Exhibits B-10, C-11, D-11, E-11, F-11, G-10

On the allegation of conspiracy, the Decision identified the roles of the accused in the subject procurement *vis-à-vis* the allegations in the *Informations* in these cases.

To recall, the *Information* in Criminal Case No. SB-16-CRM-1061 charges the accused with having conspired with one another by unlawfully giving unwarranted benefit, preference, or advantage to Dantes by [1] splitting into six (6) Procurement Directives (PD) and Purchase Orders (PO) the procurement of certain CCIE items that actually make up a complete set of uniforms for five hundred forty (540) soldiers and [2] charging the said PDs and POs against nonexistent funds as the Advises of Sub-Allotment (ASA) pertaining to fund procurement were issued at a later date.

On the other hand, the *Informations* charging the accused with the crime of falsification of public documents allege that the accused, conspiring and confederating with one another, taking advantage of their official functions, unlawfully made untruthful statements in the PDs by making it appear that the funds for the purchase of the subject CCIE items were already available by indicating therein that the said funds were chargeable to the subject ASAs.

For easy reference, below is a tabulation of the documents to which the accused affixed their signatures in the performance of their official functions in relation to these cases:

LT. GEN. Gregorio M. Camiling, Commanding General, Philippine Army (PA)	Purchase Order, Disbursement Voucher
BGEN. Severino P. Estrella, Commanding Officer, Army Support Command (ASCOM)	Requisition and Issue Slip, Disbursement Voucher
COL. Cesar G. Santos, Member, Bids and Awards Committee, ASCOM	Abstract of Canvass & Recommendation of Award
COL. Barmel B. Zumel, Member, Bids and Awards Committee, ASCOM	Abstract of Canvass & Recommendation of Award
CAPT. George P. Cabrerros, Member, Bids and Awards Committee, ASCOM	Abstract of Canvass & Recommendation of Award
LT. COL. Jessie Mario B. Dosado, Secretary, BAC	Requisition and Issue Slip, Abstract of Canvass & Recommendation of Award, Certificate of Reasonableness of

	Price, Certificate of Purchase Thru Shopping, Notice to Proceed
COL. Cyrano A. Austria, Assistant Chief of Staff for Logistics	Procurement Directive
Editha B. Santos, Head of Accounting Unit	Disbursement Voucher
Rolando F. Minel, Chief Accountant	Purchase Order, Allotment & Obligation Slip.

Admittedly, the signatures of all the accused do not appear on all the documents mentioned in the *Informations* in these cases. It must be underscored, however, that jurisprudence teaches that the essence of conspiracy is the common design among the accused, such that the conspirators may act separately or together in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts, but only by looking at it as a whole – acts done to give effect to conspiracy may be, in fact, wholly innocent acts.²⁴

In other words, in order for a person to be held as a co-conspirator, it is not required that he/she participate in every detail of the execution of the crime; nor does he/she need to take part in every act thereof.²⁵ In ***People v. Jesalva***²⁶ the Supreme Court, citing the case of ***People v. Dollendo and Medice***,²⁷ ruled, *viz*:

To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act . . . ***Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.***²⁸

²⁴ *Yongco and Lanojan v. People*, 731 SCRA 544 (2014), *Aquino v. Paiste*, 555 SCRA 255 (2008)

²⁵ *People v. Jesalva*, 827 SCRA 501 (2017)

²⁶ *People v. Jesalva*, 827 SCRA 501 (2017)

²⁷ 663 SCRA 334 (2012)

²⁸ Emphasis Supplied; See also *People v. De Jesus*, 429 SCRA 384 (2004)

Also, in the case of *Lagoc v. Malaga*,²⁹ the Supreme Court held:

We find in this case clear and convincing evidence that petitioners colluded in the rigging of the bidding process to favor IBC, the winning bidder. Petitioners signed the Abstract of Bids and approved the award to IBC of the contract for the materials and equipment needed for the skywalk projects despite the absence of an Invitation to Bid duly published in accordance with the IRR of PD 1594. **They cannot simply feign ignorance of such non-compliance with a basic requirement because as Chairman (Sales) and Member (Lagoc) of the BAC, they are responsible for the conduct of pre-qualification, or eligibility screening, bidding, evaluation of bids, post qualification, and recommending award of contract. As such, it is their duty to ensure that the rules and regulations for the conduct of bidding for government projects are faithfully observed. They may thus be held liable for collective acts and omissions as when they affixed their signatures in official documents as BAC Chairman/Members, and recommended approval of the bids, in effect certifying to compliance with the aforesaid rules.**³⁰

Moreover, in *Field Investigation Office v. Plano*,³¹ the Supreme Court held that the affixing of signatures by committee members are not ceremonial acts but proof of authenticity and marks of regularity, to wit:

Respondent's signing of Resolution No. IAC-09-045, stating that the two LPOHs [Light Police Operational Helicopters] conformed to the NAPOLCOM specifications despite the lack of available data on endurance and were not air-conditioned, is a distortion of truth in a matter connected with the performance of his duties.

The IAC [Inspection and Acceptance Committee] Resolution was the final act for the acceptance of these helicopters for the use of the PNP, and which was the basis for the PNP to pay the price of brand new helicopters for the delivered second-hand items to MAPTRA, which caused serious damage and grave prejudice to the government. In issuing the

²⁹ 729 SCRA 421 (2014)

³⁰ Emphasis supplied

³¹ 845 SCRA 167 (2017)

said Resolution which contained untruthful statements, respondent is indeed guilty of act of serious dishonesty in the exercise of his public functions. **Indeed, the affixing of signatures by the committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity.**³² Likewise, respondent's act tarnished the image and integrity of the PNP when it purchased second-hand helicopters for the price of brand new ones.


In this case, the six (6) Certificates of Purchase Through Shopping³³ issued on February 25³⁴ and 26,³⁵ 2003, indicated that there is **"no splitting of PO in this procurement."** Plainly, it is hard to believe that the accused were unaware that the purchase of the subject CCIE items were split into six (6) contracts because the documents supporting the purchase were all prepared by them on or about the same time.

It is the undersigned's respectful view that, taken altogether, their actions exhibit their common design, which paved the way for the splitting of contracts that is expressly prohibited by the aforementioned laws and rules. The respective acts of each of the accused should not be taken in isolation from the acts ascribed to their co-accused.

**IV. The evidence submitted
by the prosecution lacks
evidentiary weight.**

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Jurisprudence teaches that the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.³⁶



³² Footnote omitted; Emphasis supplied

³³ Exhibits B-10, C-11, D-11, E-11, F-10, G-10

³⁴ Exhibit B-10

³⁵ Exhibit C-11, D-11, E-11, F-10, G-10

³⁶ *Magsino v. Magsino*, 893 SCRA 118 (2019)

Section 3, Rule 130 of the 2019 Amendments to the 1989 Revised Rules on Evidence (2019 Amendments) provides that 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 (The Original Document Rule), except:

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

Section 19, Rule 132 further provides that for purposes of presenting documents as evidence in courts, they are classified as either public or private. While documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated,³⁷ Section 24, Rule 132 also states that the written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, when admissible for any purpose, may be evidenced by [1] an official publication thereof; or [2] **a copy attested by the officer having legal custody of the record, or his/her deputy**, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody, provided further, that a document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved.

Moreover, Section 8, Rule 130 states that when the original of a document is in the custody of a public officer or is recorded in a public office, ***its contents may be proved by a certified copy issued by the public officer in custody thereof.***

Here, the records show that the Procurement Directives, Requisition and Issue Slips, Requests for Quotation, Abstract of Canvass and Recommendation of Award, Certificate of Reasonableness of Price, Certificate of Purchase Through Shopping, Purchase Orders, Advice of Sub-Allotment, Performance Bond, Notice to Proceed, Sales Invoice of Dantes Executive Menswear, Inspection Report, Inspection & Acceptance Report, Disbursement Voucher, and the Official

³⁷ Section 23, Rule 132, 2019 Revised Rules on Evidence

Receipts of Dantes Executive Menswear were stamped "**CERTIFIED XEROX COPY FROM THE ORIGINAL.**" On the other hand, the Allotment and Obligation Slips contained a handwritten notation which reads "**CERTIFIED COPY FROM THE ORIGINAL,**"³⁸ while the Delivery Receipts of Dantes Executive Menswear were stamped "**CERTIFIED XEROX COPY FROM THE XEROX COPY.**" The said certifications were signed by a certain Oscar Eblahan, State Auditor III. Notably, the records reveal that Eblahan never testified in Court. Thus, it was never established that Eblahan was the proper officer having legal custody over the said documents.

Instead, the prosecution presented Mercedes Tamayo, State Auditor II, Commission on Audit-Philippine Army (COA-PA). In relation to her testimony, the parties stipulated, among other things, that she was assigned as State Auditor of the COA-PA on August 29, 2018, and part of her duties was to act as the records custodian.³⁹ However, it was established that **State Auditor Tamayo did not certify the subject documents. Neither did she have any participation in the preparation of the same nor had any personal knowledge of the actual transmittal or receipt by the COA of the said documents.**⁴⁰

To be sure, the Original Document Rule, 2019 Revised Rules on Evidence maintains its preference for the presentation of the original document when the subject of inquiry are the contents thereof, subject only to the exceptions mentioned under Section 3, Rule 130. However, for these exceptions to apply, the Rules clearly state that the offeror must first establish certain conditions, i.e., *the attestation of the public officer having legal custody of the record*, before he/she may introduce secondary evidence. To be sure, the prosecution failed to comply with this requirement.

For the reasons above discussed, the undersigned agrees with the *ponencia* that the subject documents presented by the prosecution bear no evidentiary value.

Furthermore, the unreliability of the photocopied documents presented by the prosecution is further highlighted by the fact that there were erasures on the pertinent dates reflected thereon.

³⁸ Exhibits B-18; C-18; D-19; E-19; F-18; G-18A

³⁹ pp. 239-240, Vol. IV, Record

⁴⁰ p. 35, TSN, January 16, 2019

As aptly noted by the *ponencia*, during the presentation of Tamayo, the parties stipulated that ***there were erasure marks on the said exhibits where a date was stamped; and the marked documents do not reflect the erasures that appear to have been made on the photocopied documents.***⁴¹ These stipulations are material when read together with the testimony of accused Austria, to wit:

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?

ACCUSED AUSTRIA

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

...

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 the MSPC with the stamp of the date in April in the ASA, Your Honors.⁴²

Plainly, the above-mentioned erasures found in the photocopies of the subject Procurement Directives cast serious doubts on the exact dates when the said documents were

⁴¹ pp. 239-240, Vol. IV, Record

⁴² pp. 24-27, TSN, February 12, 2020

issued. These dates assume importance because the *Informations* in these cases [for violation of Section 3 (e) of R.A. No. 3019 and falsification of public document] allege that the accused charged the said Procurement Directives (purportedly issued on February 2003) against a supposedly nonexistent fund, or before the Advises of Sub-Allotments were issued on April 3, 2003. Indeed, jurisprudence instructs that if there exists even an iota of doubt, the courts are under a long-standing legal injunction to resolve the doubt in favor of the accused.⁴³

In sum, I maintain that the above-mentioned documents submitted by the prosecution show that the collective acts of the accused resulted in the splitting of contracts in the procurement of the subject CCIE items. However, the prosecution's failure to comply with the essential requirements set by the 2019 Revised Rules on Evidence on the introduction of secondary evidence and the unreliability of the pieces of evidence it presented inevitably results in their exclusion pursuant to the rules. Thus, these documents cannot be accorded any probative value.⁴⁴

Jurisprudence provides that the cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent.⁴⁵ Section 2, Rule 133 of the 2019 Amendments provides that conviction in criminal cases demands that the prosecution prove an accused's guilt beyond reasonable doubt. Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty.⁴⁶ The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense.⁴⁷ Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.⁴⁸ Here, the prosecution failed to discharge the said burden. Thus, prescinding from the aforesaid disquisitions, I vote to **ACQUIT** the accused.


AMPARO M. CABOTAJE-TANG

Presiding Justice

Chairperson, Third Division

⁴³ *People v. Serabo*, G.R. No. 244171, January 6, 2020

⁴⁴ *Young Builders Corporation v. Benson Industries, Inc.*, 904 SCRA 485 (2019)

⁴⁵ *People v. Luna*, 860 SCRA 1 (2018)

⁴⁶ *People v. Sumillip*, 919 SCRA 181 (2019)

⁴⁷ *Id*

⁴⁸ *Id*