



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**FIFTH (5<sup>th</sup>) DIVISION**

**PEOPLE OF THE Criminal Case No. SB-18-  
PHILIPPINES, CRM-0407**  
*Plaintiff,*

*-versus-*

For: Violation of Section 3(e) of  
R.A. 3019, as amended

**CARLOS SOMBLINGO  
SALAZAR AND RICARDO S.  
KHAN, JR.,**

*Accused.*

*Present:*

**Lagos, J.,** Chairperson,  
**Mendoza-Arcega, J.,** and  
**Corpus-Mañalac, J.**

Promulgated:

June 24, 2022

*Gregory J. Lagos*

X-----X

**DECISION**

**LAGOS, J.:**

Accused Carlos Somblingo Salazar (Salazar), Ricardo S. Khan, Jr. (Khan) and Greg Tupaz, Jr. (Tupaz) are charged with violation of Section 3(e) of R.A. 3019, as amended<sup>1</sup>, the accusatory portion of the Information reads:

*"That sometime between 17 April to 11 May 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused namely, CARLOS SOMBLINGO SALAZAR, a public officer, then being the Administrator of the National Irrigation Administration (NIA), committing the offense in relation to his office and taking advantage thereof, acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, conspiring and confederating with RICARDO S. KHAN, JR. and GREG TUPAZ, JR., Vice President for Engineering and authorized representative,*

<sup>1</sup> Anti-Graft and Corrupt Practices Act.

*M/Lagos*

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*respectively, of A.M. Oreta & Co. Inc. (A.M. Oreta), a corporation duly organized and existing under the laws of the Philippines, did then and there, wilfully, unlawfully and criminally, give unwarranted benefits, advantage and preference to A.M. Oreta by issuing a Notice of Award on 17 April 2009 to A.M. Oreta, executing a Contract of Agreement on 08 May 2009 with A.M. Oreta, and issuing a Notice to Proceed on 11 May 2009 to A.M. Oreta in connection with the construction of the Libmanan-Cabusao Diversion Dam (Project), despite the absence of the prior approval to implement the Project from the National Economic Development Authority-Investment Coordination Committee, as otherwise required under Executive Order No. 230 and Revised ICC Guidelines and Procedures, thereby allowing A.M. Oreta to collect an advance payment from the NIA amounting to PhP98,546,864.06, thereby directly causing undue injury to the NIA in the aforesaid amount.*

*CONTRARY TO LAW.”<sup>2</sup>*

### **ANTECEDENT FACTS**

In 2008, the National Irrigation Administration (NIA) published an Invitation to Apply for Eligibility and to Bid for the construction of Libmanan-Cabusao Diversion Dam (Project), a priority project of then President Gloria Macapagal-Arroyo, with an approved budget of seven hundred twelve million, three hundred sixty-five thousand and six hundred seven pesos (PhP712,365,607.00). When said project was presented by William P. Ragodon (Ragodon), Regional Irrigation Manager, to the Regional Development Council (RDC) No. 5 for its indorsement, RDC Chairman Joey S. Salceda (Salceda) emphasized that the Project should pass through the National Economic Development Authority-Investment Coordination Committee (NEDA-ICC) for its approval and should have an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR).<sup>3</sup>

On 13 October 2008, the NIA conducted a public bidding, with A.M. Oreta & Co., Inc. (A.M. Oreta) submitting the Lowest Calculated and Responsive Bid of seven hundred million seven hundred seventy-seven thousand and seven hundred pesos (PhP700,777,700.00). Consequently, on 24 November 2008, the NIA-BAC resolved to award the contract to A.M.

<sup>2</sup> Information dated 27 February 2018, Records, Volume I, page 1.

<sup>3</sup> Ombudsman Resolution dated 06 February 2017, Records, Volume I, page 6-24.

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Oreta. On 09 February 2009, the RDC resolved to indorse the Project to the NEDA-ICC for approval.<sup>4</sup>

On 08 May 2009, the NIA, represented by accused Salazar, being its Administrator, then, entered into a Contract of Agreement with A.M. Oreta, represented by accused Khan, for the Project's construction. Thus, on 11 May 2009, accused Salazar issued a Notice to Proceed to A.M. Oreta.<sup>5</sup>

On 14 May 2009, A.M. Oreta requested for an advance payment of fifteen percent (15%) in the amount of one hundred five million, one hundred sixteen thousand and six hundred fifty-five pesos (PhP105,116,655.00) as mobilization fund.<sup>6</sup>

On 28 May 2009, the NIA issued a check to A.M. Oreta, which the latter received, amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03), representing the partial payment of the above mobilization fund. On 08 September 2009, the NIA issued another check to A.M. Oreta, which the latter received, amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03), representing the balance of the fifteen percent (15%) advance payment net of withholding taxes.<sup>7</sup>

When required by the Commission on Audit (COA) to submit the necessary documents to support the release of the fifteen percent (15%) advance payment to A.M. Oreta, the NIA merely said that the construction of the Libmanan-Cabusao Diversion Dam is a priority project of then President Macapagal-Arroyo and due to time constraints, the NIA proceeded with the procurement pending approval of the NEDA-ICC and the issuance of the Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM).<sup>8</sup>

In the RDC meeting held on 18 November 2009, Ragodon informed the council that the Project construction had already commenced, subject to compliance with the ECC requirements and approval by the NEDA-ICC. In the same meeting, Environmental Management Bureau (EMB) Director for Region 5, Gilbert Gonzales (Gonzales), also informed the RDC that on 20 April 2009, the EMB already issued an ECC for the Project, but the NIA did not allow it to look into the status of the Project to determine compliance

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

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with the ECC conditions. Resultantly, a RDC Task Force was created to review the ECC compliance of the Project.<sup>9</sup>

After its review, the RDC Task Force recommended that the Project be stopped until the ECC conditions were complied with the findings and recommendations of the RDC Task Force was approved by the RDC and were furnished to accused Salazar.<sup>10</sup>

On 14 December 2009, accused Salazar issued a Notice of Suspension of the Project due to the strong opposition of the residents in the towns of Sipocot and Lupi, Camarines Sur.<sup>11</sup>

In his letter dated 18 January 2010 to accused Salazar, Rolando G. Tungpalan (Tungpalan), the NEDA Deputy Director General and Chair of the ICC Technical Board (TB), noted that the Project commenced without the ICC and NEDA Board approval and submitted for accused Salazar's appropriate action the Project Evaluation Report prepared by NEDA Regional Office (NRO) No. 5.<sup>12</sup>

On 17 October 2011, Ragodon, through a letter to RDC Chairman Salceda, informed that a Reassessment Study Report had been prepared to address the issues and concerns of NRO No. 5 and the RDC Task Force and, therefore, sought anew his indorsement of the Project for the NEDA-ICC's approval.<sup>13</sup>

On 04 November 2011, Regional Director Romeo C. Escandor (Escandor) of NRO No. 5 told Ragodon that the RDC did not indorse the Project for the NEDA ICC's approval because the RDC Infrastructure Development Committee recommended the use of the electric pump system, rather than the gravity dam system.<sup>14</sup>

Accordingly, Robert C. Suguitan, NIA Acting Deputy Administrator for Engineering and Operations, proposed the termination of the contract with A.M. Oreta. Thus on 13 June 2012, NIA Board Resolution No. 7751-12, series of 2012, was issued, approving the termination of the contract for the Project.<sup>15</sup>

Since the suspension until the termination of the Project, COA has been communicating with the NIA for the recovery of the fifteen percent

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

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(15%) mobilization fund it paid to A.M. Oreta. However, the NIA had failed to recover advance payment because A.M. Oreta claimed that the cost of works prior to the suspension or termination of the contract already amounted to two hundred fifty million, two hundred fifty-five thousand and four hundred eighty-six pesos and sixty-five centavos (PhP250,255,486.65) such that the NIA still supposedly owed said contractor one hundred forty-five million, one hundred thirty-eight thousand and eight hundred thirty-one pesos and fifty centavos (PhP145,138,831.50).<sup>16</sup>

For commencing the Project and entering into contract with A.M. Oreta without the required NEDA-ICC's approval, MYOA from DBM, as well as compliance with the ECC conditions, this case for violation of Section 3(e) of R.A. 3019, as amended, was filed against accused Salazar, Khan and Tupaz.

On 25 June 2018, the Court found probable cause to issue a warrant of arrest against accused Salazar, Khan and Tupaz, thus, a warrant of arrest was issued.<sup>17</sup> On the same date, the Court issued a Hold Departure Order (HDO) against all accused.<sup>18</sup>

On 03 July 2018, accused Khan and Tupaz personally appeared and posted cash bail bond of thirty thousand pesos (PhP30,000.00) each for their provisional liberty.<sup>19</sup>

On 20 July 2018, accused Khan and Tupaz, assisted by their counsel, Atty. Eldridge Marvin B. Acheron, entered a plea of not guilty to the charge in the Information.<sup>20</sup>

On 02 August 2018, accused Salazar posted cash bail bond of thirty thousand pesos (PhP30,000.00) at Regional Trial Court-Branch 6 of Prosperidad, Agusan del Sur, for his provisional liberty.<sup>21</sup> On 16 October 2018, accused Salazar, assisted by their counsel, Atty. Nelbert T. Poculan, entered a plea of not guilty to the charge in the Information.<sup>22</sup>

Preliminary conferences were conducted thereafter.

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<sup>16</sup> Id.

<sup>17</sup> Minute Resolution dated 25 June 2018, Records, Volume I, page 331.

<sup>18</sup> Ibid, pages 329-330.

<sup>19</sup> Order dated 03 July 2018, Records, Volume I, page 350.

<sup>20</sup> Order dated 20 July 2018, Records, Volume I, page 372.

<sup>21</sup> Order dated 02 August 2018, Records, Volume I, page 446.

<sup>22</sup> Order dated 16 October 2018, Records, Volume I, page 187

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On 24 August 2018, the Court issued a Pre-trial Order (as regards accused Ricardo S. Khan, Jr. and Gregorio Tupaz, Jr.).<sup>23</sup> The parties stipulated on the following facts:<sup>24</sup>

1. That accused Khan and accused Tupaz are the same persons named in the Information;
2. That Libmanan-Cabusao Diversion Dam Project has an approved budget of seven hundred twelve million, three hundred sixty-five thousand and six hundred seven pesos (PhP712,365,607.00);
3. That it was A.M. Oreta which submitted the Lowest Calculated and Responsive Bid in the total amount of seven hundred million, seven hundred seventy-seven thousand and seven hundred pesos (PhP700,777,700.00) for the construction of the Libmanan-Cabusao Diversion Dam Project;
4. That NIA-BAC resolved to award the Libmanan-Cabusao Diversion Dam Project to A.M. Oreta;
5. That on 08 May 2009, the NIA, represented by accused Salazar, being its Administrator then, entered into a Contract of Agreement for the construction of the Libmanan-Cabusao Diversion Dam Project with A.M. Oreta, represented by accused Khan, its Vice President for Engineering;
6. That the Dam Project was implemented despite the absence of prior approval to implement the Project from the NEDA-ICC;
7. That on 11 May 2009, accused Salazar issued a Notice to Proceed to A.M. Oreta;
8. That on 14 May 2009, A.M. Oreta requested for an advance payment of fifteen percent (15%) as mobilization fund. The fifteen percent (15%) amounts to one hundred five million, one hundred sixteen thousand and six hundred fifty-five pesos (PhP105,116,655.00);

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<sup>23</sup> Pre-Trial Order dated 24 August 2018, Vol. 1, pages 407-425.

<sup>24</sup> Id.

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9. That on 28 May 2009, the NIA issued a check to A.M. Oreta, which the latter received amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03) representing the partial payment of the above-mentioned mobilization fund;
10. That accused Tupaz, authorized representative of A.M. Oreta, signed Official Receipt No. 17013 dated 01 June 2009, for the first payment of fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
11. That on 08 September 2009, the NIA issued another check to A.M. Oreta, signed by Official Receipt No. 17053 dated 08 September 2009, for the second payment of fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
12. That accused Tupaz, authorized representative of A.M. Oreta, signed Official Receipt No. 17053 dated 08 September 2009, for the second payment of fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
13. The jurisdiction of the Honorable Court;
14. The existence of the Libmanan-Cabusao Dam Project situated in Sipocot, Camarines Sur, and that the same was started but not completed;
15. That A.M. Oreta was awarded the Project as the Lowest Calculated and Responsive Bid; and
16. That NIA issued a Notice to Proceed.

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In the said Pre-Trial Order, the following issues<sup>25</sup> were raised:

- (1) Whether Section 3 (e) of Republic Act 3019 was violated when accused proceeded with the construction of Libmanan-Cabusao Diversion Dam Project without prior approval to implement the said project from the NEDA-ICC; and
- (2) Whether there is a conspiracy between accused Salazar, accused Khan and accused Tupaz.

On 02 October 2018, the Court received the Prosecution's Motion to Drop the Charge against Accused Tupaz,<sup>26</sup> which was thereafter granted in a Resolution dated 15 October 2018, dropping accused Tupaz from the Information and dismissing the case against him.<sup>27</sup>

On 07 November 2018, the Court issued a Pre-trial Order (as regards accused Carlos S. Salazar).<sup>28</sup> The parties stipulated on the following facts:<sup>29</sup>

1. That at the time material to the instant case, as alleged in the Information, accused Salazar was a public officer being then the Administrator of the NIA;
2. That at the time material to the instant case, as alleged in the Information, accused Khan and accused Tupaz, were the Vice President for Engineering and authorized representative, respectively, of A.M. Oreta, a corporation duly organized and existing under the laws of the Philippines;
3. That the Libmanan-Cabusao Diversion Dam was constructed in Brgy. Malaguico, Sipocot, Camarines Sur, as a priority project of then President Macapagal-Arroyo and while the irrigation exists, it was started, but not completed;
4. That it was A.M. Oreta which submitted the Lowest Calculated and Responsive Bid in the total amount of seven hundred million, seven hundred seventy-seven thousand and seven hundred pesos (PhP700,777,700.00)

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<sup>25</sup> *Id.*

<sup>26</sup> Motion to Drop the Charge Against Accused Tupaz, Records, Vol. 2, pages 129-132.

<sup>27</sup> Resolution dated 15 October 2018, Records, Vol. 2, pages 180-182.

<sup>28</sup> Pre-Trial Order dated 07 November 2018, Records, Vol. 2, pages 204-222.

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



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for the construction of the foregoing Libmanan-Cabusao Diversion Dam Project;

5. That NIA-BAC resolved to award the Libmanan-Cabusao Diversion Dam Project to A.M. Oreta;
6. That on 08 May 2009, the NIA represented by accused Salazar, being its Administrator, entered into a Contract of Agreement with A.M. Oreta, represented by its Vice President for Engineering, accused Khan, for the construction of Libmanan-Cabusao Diversion Dam Project;
7. That pursuant to Revised ICC Guidelines and Procedures dated 04 March 2005, issued by NEDA, all Major Capital Projects consisting of at least five hundred million pesos (PhP500,000,000.00), regardless of the source of financing, must be reviewed, evaluated and approved by the ICC, and confirmed by the NEDA Board prior to its implementation, with qualification that as per said Revised ICC Guidelines and Procedures, the approval of the ICC is not a pre-condition for the issuance of the Notice of Award, in view of the requirements enumerated under paragraph III of the Guidelines/Scope of the ICC Review/Decision;
8. That the Dam Project was implemented despite the absence of the prior approval to implement the Project from the NEDA-ICC; with qualification that as per said Revised ICC Guidelines and Procedures, the approval of the ICC is not a pre-condition for the issuance of the Notice of Award, in view of the requirements enumerated under paragraph III of the Guidelines/Scope of the ICC Review/Decision;
9. That on 11 May 2009, accused Salazar issued a Notice to Proceed to A.M. Oreta;
10. That on 14 May 2009, A.M. Oreta requested for an advance payment of fifteen percent (15%) mobilization fund. The fifteen percent (15%) advance payment amounts to one hundred five million, one hundred sixteen thousand and six hundred fifty-five pesos (PhP105,116,655.00), with qualification that the same

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was accompanied with a Surety Bond callable on demand under the Procurement Laws;

11. That on 28 May 2009, the NIA issued a check to A.M. Oreta, which the latter received, amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03) representing the partial payment of the above-mentioned mobilization fund;
12. That accused Tupaz, authorized representative of A.M. Oreta, signed by Official Receipt No. 17013 dated 01 June 2009, for the first payment of fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
13. That on 08 September 2009, the NIA issued another check to A.M. Oreta amounting to PhP49,273,432.03 which the latter received. Said check represented the remaining balance of the fifteen percent (15%) of advance payment, net of withholding taxes;
14. That accused Tupaz, authorized representative of A.M. Oreta, signed Official Receipt No. 17053 dated 08 September 2009, for the second payment of fifteen percent (15%) of advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
15. That RDC Task Force was created to review ECC compliance of the project;
16. That RDC Task Force recommended that the project must be stopped until the ECC conditions were complied with;
17. That on 14 December 2009, the Libmanan-Cabusao Dam Project had been suspended by accused Salazar;
18. That a Reassessment Study Report had been prepared, Mr. Ragodon, in a letter to RDC Chairman Salaceda, sought for a new indorsement of the Project for NEDA-ICC's approval, with qualification that there was a prior

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indorsement of Chairman Salceda for the NEDA-ICC's approval;

19. That A.M. Oreta, through its representatives, accused Khan and accused Tupaz, accepted the Notice of Award, executed the Contract of Agreement, and the Notice to Proceed, and thereafter collected the advance payments despite the absence of the prior approval to implement the Dam Project from the NEDA-ICC;
20. That the Revised ICC Guidelines and Procedures dated 04 March 2005 issued by the NEDA was revised on 16 November 2005, increasing the minimum amount of the project from five hundred million (PhP500,000,000.00) to one billion pesos (PhP1,000,000,000.00), with counter stipulation that it is not applicable in the instant case because the transaction transpired when the threshold amount was then five hundred million pesos (PhP500,000,000.00);
21. That the Revised ICC Guidelines and Procedures, after revision, was again amended on 27 June 2016, through a Memorandum of Secretary Carlos Dominguez of the Department of Finance thereby raising the minimum project amount to two billion and five hundred million pesos (PhP2,500,000,000.00), subject to the ICC approval, with counter-stipulation that it is not applicable in the instant case because the transaction transpire when the threshold amount then was five hundred million pesos (PhP500,000,000.00); and
22. That on 04 February 2009, the RDC headed by Chairman Salceda endorsed the project to the NEDA-ICC for its approval.

In the Pre-Trial Order, the following issues<sup>30</sup> were raised:

- (1) Whether Section 3 (e) of Republic Act 3019 was violated when accused Salazar proceeded with the construction of Libmanan-Cabusao Diversion Dam Project without prior approval to implement the said project from the NEDA ICC;

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<sup>30</sup> Id.

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- (2) Whether the amendment of Executive Order No. 230 raising the amount for the review and/or approval of the ICC to one billion pesos (PhP1,000,000,000.00) must be given a retroactive effect because it is more favourable to the accused; and
- (3) Whether the prior approval of the ICC is a pre-condition to the award and/or to the issuance of a Notice to Proceed for the implementation of the project.

Thereafter, trial ensued. The Prosecution and the Defense presented their respective witnesses and documentary evidence and rested their case.

**EVIDENCE FOR THE PROSECUTION**

Through their Judicial Affidavits, the following witnesses testified against the accused.

**MILAGROS C. NOPRE<sup>31</sup>**

Nopre is a Supervising Engineer A, Engineering Department, Construction and Management Division of NIA. She was the Head of the Bids and Awards Committee (BAC) from 2015 to 2016. She continued to be a member of the BAC until sometime in 2017. As Head of the BAC, her duties and responsibilities included safekeeping of documents and records submitted to or originating from the BAC.

In her Judicial-Affidavit, she identified the Request for the issuance of Multi-Year Obligational Authority (MYOA) / Letter dated 20 March 2009 from accused Salazar addressed to Secretary Rolando G. Andaya of the Department of Budget and Management including the annexes;<sup>32</sup>

On cross-examination, she testified that:

1. She does not know if accused Khan or the company A.M. Oreta was notified of the Request for the issuance of Multi-Year Obligational Authority (MYOA) / Letter dated 20 March 2009; and

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<sup>31</sup> Judicial Affidavit of Milagros C. Nopre dated 07 January 2019, Records, Vol 2, page 248.

<sup>32</sup> Exhibits "R" to "R-3"

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2. She does not know whether the said request for the issuance of the Multi-Year Obligational Authority (MYOA) was issued by the Department of Budget and Management (DBM).

**RHODY MAE SERRANO<sup>33</sup>**

Serrano is an Engineer A at the Engineering Department, particularly the Contracts Administration Section of NIA. As Engineer A of the NIA, she assists in the evaluation of monthly progress billing, contract price escalation and other monetary claims of all on-going civil works contracts. She also assists in the evaluation of variation order, negotiated contract firm up quantities and costs, contract time extensions. She also performs other related functions that may be assigned to her by superiors from time to time.

In connection with a subpoena *duces tecum* from the Office of the Ombudsman, she was asked to submit the original copies of the following documents which she also identified:

1. Invitation to Apply for Eligibility and to Bid for the Construction of Libmanan Cabusao Diversion Dam and Appurtenant Structures;
2. Copy of the feasibility study of the Libmanan Cabusao Dam project, approved annual procurement plan, detailed engineering, and a letter dated 24 August 2009 from the NIA Administrator Carlo S. Salazar addressed to the COA Supervising Auditor.<sup>34</sup>

On cross-examination, she testified that she does not know if accused Khan or the company A.M. Oreta was notified of the letter.

**WILLIAM P. RAGODON<sup>35</sup>**

Ragodon is currently the Regional Manager of NIA MIMOROPA. When accused Salazar was the NIA Administrator, he was the Regional Manager of NIA Region V. In his Judicial Affidavit, he identified a Memorandum dated 26 August 2008.<sup>36</sup>

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<sup>33</sup> Judicial Affidavit of Rhody Mae Serrano dated 10 October 2018, Records, Vol 2, page 244-245.

<sup>34</sup> Exhibit "L"

<sup>35</sup> Judicial Affidavit of William P. Ragodon dated 03 August 2018, Records, Vol 2, page 12.

<sup>36</sup> Exhibit "Q"

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He also testified that:

1. Libmanan-Cabusao Dam is a priority project of then President Macapagal-Arroyo which calls for the construction of a ten (10)-meter high dam, 7.71 diversion canals and rehabilitation of four thousand (4,000) hectares of land in the Municipality of Libmanan, Camarines Sur, to tap the water from the watershed areas and divert the flow from Lupi to Libmanan for the benefit of the farmers in the area. He was tasked to present the proposal for the said project during the Regional Development Council Meeting (RDC 5) held on 07 May 2008 in Legazpi City, Albay;
2. RDC is a planning body that prioritizes all proposed government infrastructure projects for the region for funding and implementation;
3. During the RDC meeting, RDC Chairman Joey Salceda, regional directors of various government agencies and representatives of local LGUs, were present;
4. During the said meeting, he was able to present the proposal for the Libmanan-Cabusao Dam Project;
5. The project cost in the amount of seven hundred million, seven hundred seventy-seven thousand and seven hundred pesos (PhP700,777,700.00) intended for the construction of a ten (10)-meter high dam, 7.71 diversion canals and rehabilitation of four thousand (4,000) hectares of land. According to him, RDC Chair Joey Salceda mentioned that while the project was a priority of President Arroyo, it needed to undergo the usual approval process such as obtaining an environmental compliance (ECC) and securing the Investment Coordination Committee's (ICC) approval;
6. As proof that he presented the proposal for the Libmanan-Cabusao Dam Project, he identified copy of the Minutes of the RD meeting;<sup>37</sup>
7. ICC refers to the Investment Coordination Committee which reviews and approves projects endorsed to them by various government agencies;
8. He remembers that Chariman Salceda said that since the Libmanan-Cabusao Dam Project cost more than five hundred million pesos (PhP500,000,000.00), it would have to pass through the ICC for approval;

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<sup>37</sup> Exhibit "Z"

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9. He agrees with Chairman Salceda because the ICC Guidelines and Procedures which requires that programs/projects with total cost of five hundred million pesos (PhP500,000,000.00) million and above needs approval from the ICC;
10. He identified ICC Guidelines and Procedures<sup>38</sup> and mentioned that the said requirement is found in Number 1, Item III, Scope of ICC Reviews and Decisions under subheading "ICC Review/Decisions cover" found on page 4 thereof;
11. NIA Central filed an application for ICC approval, however, he does not know what happened to the said application;
12. The BAC bid out the project, and A.M. Oreta & Co., Inc. emerged as the winning bidder;
13. NIA issued Resolution No. 7549-08, series of 2008 approving the BAC Resolution No. CD-01-2008, which recommended the award of contract for the construction of the Libmanan-Cabusao Dam Project to A.M. Oreta & Co., Inc. in the amount of seven hundred million, seven hundred seventy-seven thousand and seven hundred pesos (PhP700,777,700.00). Thereafter, a Contract of Agreement was executed between accused Salazar and accused Khan for A.M. Oreta. A Notice to Proceed was letter issued by NIA through accused Salazar;
14. He identified NIA Resolution No. 7549-08<sup>39</sup>, the BAC Resolution,<sup>40</sup> Contract of Agreement<sup>41</sup> and Notice to Proceed<sup>42</sup>;
15. He is familiar with accused Salazar's signature because he received numerous office orders, memoranda and other correspondence from him while he was still NIA Region 5 Manager;
16. A.M. Oreta mobilized equipments, constructed constructor's office and other facilities and performed other preparatory works for the actual construction. Moreover, construction materials like reinforcing steel bars were delivered;

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<sup>38</sup> Exhibit "U"

<sup>39</sup> Exhibit "B"

<sup>40</sup> Exhibit "X2"

<sup>41</sup> Exhibit "X2"

<sup>42</sup> Exhibit "F3"

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17. He identified a document dated 20 July 2009 and its attachments (Memorandum regarding mobilization of equipment by A.M. Oreta, A.M. Oreta's notification status of the equipment mobilization<sup>43</sup>);
18. Libmanan-Cabusao Dam Project had started but was not finished because RDC recommended for the cessation of the construction due to the fear of flooding that would affect the residents along the riverbanks near the dam site. The project was stopped because there were issues and concerns raised as to the threat to lives and properties due to the absence of flood control infrastructure in the areas;
19. He was still the NIA Regional Manager when Resolution No. 7752-12, Series of 2012, dated 23 June 2012, approving the proposed termination of Contract Works under Contract No. NIA-R5-LCDPN-C-1, Construction of Diversion Dam and Appurtenant Structures for the Libmanan-Cabusao Dam Project, was issued<sup>44</sup>;

On cross-examination<sup>45</sup>, he testified that:

1. He was involved in the Libmanan-Cabusao Dam Project from the very beginning until its construction before he was assigned to other region which is Region IV-A;
2. He forwarded the request for ICC approval to the top management presided by accused Salazar and his Deputy Administrators and Assistant and Department Managers;
3. He did not know what happened to the ICC approval because he was already transferred to another office; and
4. He asked the top management about this matter many times, but to no avail.

**ROLANDO G. TUNGPALAN<sup>46</sup>**

Tungpalan is currently the Deputy Director General for Investment Programming of NEDA with the rank of Undersecretary. He is also the ex-officio Chair of the ICC-Technical Board. He testified that:

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<sup>43</sup> Exhibit "V<sup>4</sup>" to "V<sup>4-3</sup>"

<sup>44</sup> Exhibit "X<sup>3</sup>"

<sup>45</sup> Transcript of Stenographic Notes dated 12 September 2018, page 12.

<sup>46</sup> Judicial Affidavit of Rolando G. Tungpalan dated 07 August 2018, Records, Vol 2, pages 96-99.

*~ for*



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1. He has been the Deputy Director General for Investment Programming of NEDA since 2007;
2. As Chair of the ICC Technical Board, he presides over the inter-agency technical board meetings consisting of undersecretaries from member agencies including Department of Finance, Department of Budget and Management, Department of Energy, Department of Agriculture, among others. He signs letters conveying the decisions of the technical board;
3. ICC is an inter-agency committee of the NEDA Board;
4. Major capital projects are projects having a total cost of at least P2.5 Billion as of June 2017. The threshold amount is updated from time to time as approved by the NEDA Board;
5. Back in the year 2010, the threshold amount for major capital projects is P500 million;
6. He identified a document dated 18 January 2010<sup>47</sup> which was issued by his office;
7. Based on the presentation of the NEDA Regional Office during the ICC meeting on 03 January 2010, the project by the NIA involves the construction of an irrigation system with diversion dam costing about 1.9 billion in Bicol;
8. During the ICC Technical Board Meeting, the NEDA Regional Office reported that based on their site visit, the project was already ongoing. On the basis of the NEDA Regional Office Report, the ICC Technical Board took note that the said project proceeded without ICC and NEDA Board approval;
9. Under the ICC rules, prior to the implementation of the project, ICC approval must be secured. In this case, no such approval was ever obtained prior to the project implementation;
10. The project cost fell within the ICC project threshold amount of five hundred million pesos (PhP500,000,000.00) as provided in the ICC Guidelines and Procedures existing at that time;
11. He identified document denominated as ICC Guidelines and Procedures dated 04 March 2005<sup>48</sup> which show that programs/projects

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<sup>47</sup> Exhibit "T3"

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with total cost of five hundred million pesos (PhP500,000,000.00) and above need approval from the ICC, Number 1, Item III, Scope of ICC Reviews and Decisions under subheading “ICC Review/Decisions cover” found on page 4 thereof.

On cross-examination<sup>49</sup>, he testified that:

1. ICC did not go to the extent of looking at the RDC resolution because at that time it was presented to NEDA Regional Office, which is the Appraising Staff for this project, it already reported that the project was ongoing;
2. The protocol of ICC is prior to implementation, they render an evaluation and deliberation on the merits of the project but when the project is ongoing, the ICC simply takes note that it is ongoing, and therefore, does not approve or disapprove the project;
3. It was a full stop notation, it was not within ICC’s governance to ask why they proceeded;
4. When asked why NEDA-ICC raised the threshold amount for government projects, witness answered that given the inflation over the years, they found it realistic to reflect current costs otherwise they will get all projects having to pass through ICC. Thus, they were very selective with what constitutes a major capital project; and
5. The project was presented to ICC at that time the project threshold cost was five hundred million pesos (PhP500,000,000.00), so the threshold shall apply.

**ANNIE LAREZA RECABO<sup>50</sup>**

Recabo is the Officer In-Charge, Supervising Auditor, Audit Group B, NIA, Central Office, Cluster 5, Corporate Government Sector.

In connection with a subpoena *duces tecum* which she received on 20 February 2019 from the Office of the Ombudsman, she was asked to submit the original copies of the following documents which she also identified:

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<sup>48</sup> Exhibit “U”

<sup>49</sup> Transcript of Stenographic Notes dated 07 November 2018, page 8.

<sup>50</sup> Judicial Affidavit of Annie Lareza Recabo dated 31 August 2018, Records, Vol 2, pages 55-61.



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- a. Letter of Roberto Rabulan, COA Supervising Auditor, dated 23 April 2010, addressed to the NIA Acting Administrator, re: Status on the Libmanan- Cabusao Dam and Appurtenant Structures;
- b. Audit Query for the recovery of the balance of the advances representing the difference between the works accomplished/delivered against the fifteen percent (15%) advance payment of NIA;
- c. Audit Observation Memorandum No. 11-36 dated 19 September 2011, subject: review of advance payments made to A.M. Oreta for the fifteen percent (15%) Mobilization Fund for the construction of Libmanan- Cabusao Dam Project;
- d. Recommendation in Audit Observation Memorandum No. 11-36 dated 19 September 2011;
- e. Audit Observation Memorandum No. 2012-15, subject: Inspection and evaluation on the status of the inventory stock and implementation of the suspended project Libmanan- Cabusao Diversion Dam and Appurtenant Structures;
- f. Recommendation in Audit Observation Memorandum No. 2012-15 dated 01 April 2012;
- g. Audit Observation Memorandum No. 101-2013-045 dated 31 May 2013, re: reiteration of the request of COA to conduct physical inventory to be witnessed by COA representatives;
- h. Official Receipt No. 17013 dated 01 June 2009, issued by A.M. Oreta & Co., Inc., as proof of receipt of forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03) paid by NIA as first installment of the 15% advance payment;
- i. Check No. 0473134, dated 28 May 2009 in the amount of forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03), payable to A.M. Oreta & Co., Inc. as first installment of the fifteen percent (15%) advance payment;
- j. Disbursement Voucher No. 03051546 prepared by NIA as first installment of fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);

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- k. Contract of Agreement dated 08 May 2009 between the NIA, represented by accused Salazar and A.M. Oreta & Co., Inc. for the Construction of Diversion Dam and Appurtenant Structures for the Libmanan- Cabusao Dam and Rehabilitation Project;
- l. Local Conditions and Supplemental information;
- m. Letter of A.M. Oreta & Co. Inc., dated 14 May 2009 through its representative Ricardo S. Khan, Jr. addressed to NIA, requesting for the release of the fifteen percent (15%) downpayment;
- n. Letter of accused Salazar dated 11 May 2009 addressed to A.M. Oreta & Co. Inc., subject: Notice to Proceed with the execution of the "Libmanan-Cabusao Dam Project";
- o. Official Receipt No. 17053 dated 04 September 2009, issued by A.M. Oreta & Co., Inc., as proof of receipt of forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03) paid by NIA as second and last installment of the fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
- p. Check No. 0473525, dated 04 September 2009, in the amount of Php49,273,432.03 payable to A.M. Oreta & Co., Inc. as second and last installment of the fifteen percent (15%) advance payment;
- q. Disbursement Voucher No. 09072145 dated 24 July 2009 prepared by NIA as second and last payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03);
- r. Letter of accused Salazar dated 14 December 2009 addressed to the Regional Irrigation Manager, re: Notice of Suspension for Contract No. NIA-R5-LCDPN-C-1.

Further, she testified that:

- 1. She became the Officer In-Charge, Supervising Auditor, Audit Group B, NIA in December 2017;
- 2. As Officer In-Charge, Supervising Auditor, Audit Group B, she supervises the conduct of audit of three COA Audit Teams within

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NIA Central Office. She reviews and issues audit observation memoranda, notices of charge, notices of disallowance and notices of suspension, jointly with the COA Audit Team Leader concerned. She consolidates the audit observations, recommendations, audit rejoinders of the NIA Central Office and those included in the Management Letters submitted by the Regional Audit Teams of the NIA Regional Field Offices. She also prepares and reviews the Annual Audit Report of the NIA among others;

3. Only a portion of the said amount equivalent to an advance payment of fifteen percent (15%) of the total contract cost or in the total gross amount of one hundred five million, one hundred sixteen thousand and one hundred fifteen pesos (PhP105,116,115.00) was paid;
4. The Procurement Law and the Guidelines, Rules and Regulations for Government Infrastructure Contracts provide advance payment equivalent to not exceeding fifteen percent (15%) of the total contract cost, as mobilization fee. Only the advance payment of fifteen percent (15%) was paid because the implementation of the project was suspended indefinitely pursuant to a Notice of Suspension issued by NIA;
5. The project was suspended indefinitely because the residents of Sipocot and Lupi towns of Camarines Sur strongly opposed the implementation of the project. On the basis of such opposition, NIA wanted to re-evaluate and rethink of possible alternative scheme of implementation of the project as stated in the accused Salazar's letter dated 14 December 2009; and
6. As indicated in the disbursement vouchers prepared and checks issued by NIA as well as the Official Receipts issued by A.M. Oreta & Co., Inc., acknowledging payments thereof, the total amount paid to A.M. Oreta & Co. Inc. was ninety-eight million, five hundere forty-six thousand, eight hundred sixty-four pesos and six centavos (PhP98,546,864.06) net of withholding taxes.

On cross<sup>51</sup>, she testified that:

1. The documents she submitted are based on record of the COA in the NIA and she has no personal knowledge on what transpired in these documents; and

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<sup>51</sup> Transcript of Stenographic Notes dated 15 January 2018, pages 11-13.

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2. She was not aware of any measure undertaken by NIA in order to fund the project because she was not yet the Auditor at that time.

**DOCUMENTARY EXHIBITS**

The Prosecution then proceeded to offer the following documentary evidence. The Court admitted the following Exhibits:

EXHIBIT	DESCRIPTION
A to A-2	Personal Data Sheet of accused Salazar
B	Panunumpa sa Katungkulan of accused Salazar
C	Appointment Paper of accused Salazar as Administrator of NIA
D	Service Record of accused Salazar
E	Invitation to Apply for Eligibility and to Bid
F	Letter of William P. Ragodon, dated 24 March 2008, addressed to Secretary of Department of Agriculture Arthur C. Yap, submitting briefing material on the proposed Libmanan-Cabusao Dam Project
G	Excerpt from the Minutes of the Regional Development Council Meeting Held on 04 February 2009 at Legazpi City (Resolution No. 7, series of 2009 Re: Endorsing the Libmanan-Cabusao Dam Project
H	Memorandum for accused Salazar, Subject: PGMA Visits at Labo, Camarines Norte, Libmanan, Camariness Sur and Iriga City
I to I-11	Memorandum from Presidential Management Staff (PMS) Sec. Cerge M. Remonde, dated 13 May 2008, Re: Presentation of Libmanan-Cabusao Irrigation Dam Project to the Regional Development Council
J to J-1	Memorandum for government agency heads from PMS Sec. Cerge M. Remonde, dated 06 October 2008, Subject: Request for Updates on Presidential Directives Issued During the Briefing on the BRBWMP in Iriga City
K to K-3	Executive Order No. 359, Creating the Bicol River Basin Project Management Office and Defining its Scope of Authority
L to L-3	Invitation to Apply for Eligibility and to Bid for the Construction of Libmanan-Cabusao Dam and Appurtenant Structures (Contract No. NIA-R5-LCDPN-1)
M to M-3	Minutes of the Opening of Eligibility Documents for the Construction of Libmanan-Cabusao Diversion Dam and Appurtenant Structures Under the Libmanan-Cabusao Dam Project (Invitation for Bids No. NIA. Reg. 5-LCDPN-C-1, dated 16 September 2008)
N to N-3	Minutes of the Pre-Bidding Conference for the Construction of Libmanan-Cabusao Diversion Dam and Appurtenant Structures under the Libmanan-Cabusao Dam Project (Invitation for Bids No. NIA. Reg. 5-LCDPN-C-1, dated 30 September 2008)
O to O-3	Minutes of the Opening of Bids for the Construction Libmanan-Cabusao Diversion Dam and Appurtenant Structures under the Libmanan-Cabusao Dam Project (Invitation for Bids No. NIA. Reg. 5-LCDPN-C-1, dated 13 October 2008)
P to P-3	Board of Directors Resolution No. CD-01-2008 recommending award of contract for construction of Libmanan-Cabusao Dam Project
Q	Memorandum dated 26 August 2008, designating William P. Ragodon

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	as the Provincial Member of the Bids and Awards Committee-A (BAC-A) for the construction of Libmanan-Cabusao Dam Project
<b>R to R-3</b>	Letter of accused Salazar, dated 20 March 2009, requesting for the issuance of Multi-Year Obligation Authority (MYOA) for the Libmanan-Cabusao Dam and Dam Project
<b>S to S-3</b>	Circular 01-2009 dated 20 January 2009, Subject: Guidelines Clarifying the Procurement Activities which may be Undertaken Without an Issued Allotment
<b>T to T-6</b>	Circular Letter No. 2004-12, dated 27 October 2004, Subject: Guidelines to Implement Section 22 of the General Provisions of the FY 2009 General Appropriations Act (GAA) under R.A. 9206, as re-enacted
<b>U to U-5</b>	ICC Guidelines and Procedures
<b>V to V-9</b>	Letter of Alexander A. Reuyan, dated 16 April 2010, addressed to Joaquin C. Lagonera, Secretary of Department of Budget and Management, re: NIA Budget Strategy for CY 2008-2013
<b>W to W-2</b>	Executive Order No. 718 dated 08 April 2008, entitled: Authorizing the Phased Implementation of the Rationalization Plan of the National Irrigation Administration and the Availment of the Separation Incentive Package Under Executive Order No. 366
<b>X to X-1</b>	Letter of Rolando G. Andaya, Jr., Secretary of Department of Budget and Management, dated 08 April 2008, addressed to NIA Administrator Marcelino V. Tugaoen, re: Approval of the Rationalization Plan of NIA
<b>Y to Y-8</b>	Statement of Duties and Responsibilities, Various Level of Organization Hierarchy of the National Irrigation Administration
<b>Z</b>	Schedule of Public Scoping (07 October 2008)
<b>A<sup>2</sup></b>	Libmanan-Cabusao Dam Project, Technical Scoping dated 27 October 2008
<b>B<sup>2</sup> to B<sup>2</sup>-4</b>	Technical Working Group Meeting dated 12 May 2009 (Highlights of the Meeting)
<b>C<sup>2</sup> to C<sup>2</sup>-4</b>	Minutes of the Regular Meeting of Libmanan-Cabusao Dam Project held on 14 July 2009 at Kamalig in Genova, Cabusao, Camarines Sur
<b>D<sup>2</sup></b>	Letter of Tomasito B. Monzon to Engr. William P. Ragodon, re: Meeting on the Libmanan-Cabusao Dam Project held on 19 August 2009
<b>E<sup>2</sup></b>	Letter of Atty. Romeo C. Escandor, dated 16 November 2009, addressed to Carlos S. Salazar, Administrator of National Irrigation Administration, Re: Supplemental Project Evaluation on the Libmanan-Cabusao Dam Project
<b>F<sup>2</sup> to F<sup>2</sup>-3</b>	Supplemental Project Evaluation, Report on the Libmanan-Cabusao Dam Project, dated 06 November 2009
<b>G<sup>2</sup></b>	Letter dated 27 April 2010, addressed to Atty. Romeo C. Escandor re: NIA's Reply to Supplementary Project Evaluation Report
<b>H<sup>2</sup> to H<sup>2</sup>-6</b>	Reply to Supplemental Project Evaluation Report on the Libmanan-Cabusao Dam Project
<b>I<sup>2</sup> to I<sup>2</sup>-1</b>	Highlights of Meeting held on 18 November 2009
<b>J<sup>2</sup> to J<sup>2</sup>-5</b>	Proposed Budget for Land Acquisition and Resettlement Program, dated 19 September 2009
<b>K<sup>2</sup> to K<sup>2</sup>-5</b>	Consultation Meeting on Libmanan-Cabusao Dam Project, dated 14 October 2011

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<b>L<sup>2</sup></b>	Letter of Jose L. Atienza, Jr. addressed to accused Salazar, re: Grant of ECC application for Libmanan-Cabusao Dam Project
<b>M<sup>2</sup></b>	Environmental Compliance Certificate (Issued under P.D. No. 1586)
<b>N<sup>2</sup> to N<sup>2</sup>-4</b>	Statement of Accountability of accused Salazar to comply with all conditions contained in the ECC
<b>O<sup>2</sup> to O<sup>2</sup>-1</b>	Project Assessment Planning Tool
<b>P<sup>2</sup></b>	Letter of William P. Ragodon, dated 11 May 2009, addressed to accused Salazar, re: Schedule of Post ECC Activities of Libmanan-Cabusao Dam Project
<b>Q<sup>2</sup> to Q<sup>2</sup>-1</b>	Highlights of meeting held on 18 November 2009
<b>R<sup>2</sup></b>	Letter of William P. Ragodon, dated 11 May 2009, addressed to accused Salazar, re: Schedule of Post ECC Activities of Libmanan-Cabusao Dam Project
<b>S<sup>2</sup> to S<sup>2</sup>-5</b>	Schedule of Activities to Comply with ECC Stipulations
<b>T<sup>2</sup> to T<sup>2</sup>-18</b>	Memorandum dated 05 January 2010 re: Report on ECC Compliance of Libmanan-Cabusao Dam Project
<b>U<sup>2</sup> to U<sup>2</sup>-4</b>	Excerpt from the Minutes of the Sangguniang Bayan during its regular session held on 28 October 2009
<b>V<sup>2</sup> to V<sup>2</sup>-5</b>	Letter dated 18 January 2010 of William Ragodon and accused Salazar, re: NIA's response on the findings that NIA failed to comply substantially with the conditions stipulated in the ECC
<b>W<sup>2</sup></b>	Letter of William Ragodon dated 16 November addressed to Richardo S. Khan, advising to secure an ECC from DENR for the batching plant
<b>X<sup>2</sup> to X<sup>2</sup>-2</b>	BAC Resolution No. CD-01-2008 declaring A.M. Oreta & Co., Inc. as the bidder with the Lowest Calculated Responsive Bid and to recommend the award of the contract for the construction of Libmanan-Cabusao Dam Project
<b>Y<sup>2</sup> to Y<sup>2</sup>-15</b>	Executive Summary and Feasibility Study Report on Libmanan-Cabusao Dam Project, dated March 2009, consisting of 16 pages
<b>Z<sup>2</sup> to Z<sup>2</sup>-16</b>	Minutes of the Full Council Meeting of the Regional Developmental Council (RDC) held on 07 May 2008 at NEDA Conference Hall, Arimbay, Legazpi City, where the RDC Chair Salceda said that even though the Libmanan-Cabusao Dam Project is a priority of PGMA, it has to pass through the Investment Coordination Committee (ICC) since the cost of the project is above Php500 Million.
<b>A<sup>3</sup> to A<sup>3</sup>-1</b>	Letter for the NIA Board of Directors, submitting for approval of the Board BAC Resolution No. CD-01-2008 recommending award of contract for the construction of Libmanan-Cabusao Dam Project in the total contract amount of Php700,777,7000.00
<b>B<sup>3</sup></b>	Board of Directors Resolution No. 7549-08, Series of 2008, approving BAC Resolution No. CD-01-2008 recommending award of contract for the construction of Libmanan-Cabusao Dam Project to A.M. Oreta & Co. Inc. in the total contract amount of Php700,777,7000.00
<b>C<sup>3</sup> to C<sup>3</sup>-2</b>	Minutes of the 3 <sup>rd</sup> Special Board Meeting for the CY 2008, approving the request to award the construction of Libmanan-Cabusao Dam Project to A.M. Oreta
<b>D<sup>3</sup></b>	Excerpt from the Minutes of the Regional Developmental Council Meeting held on 04 February 2009 at Legazpi City, endorsing the Libmanan-Cabusao Dam Project to the NEDA-ICC for approval.
<b>E<sup>3</sup> to E<sup>3</sup>-4</b>	Contract of Agreement dated 08 May 2009 between the National



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	Irrigation Administration, represented by NIA Administrator accused Salazar and A.M. Oreta and Co. Inc., for the construction of the Libmanan- Cabusao Dam Project
<b>F<sup>3</sup></b>	Letter of accused Salazar dated 11 May 2009, addressed to A.M. Oreta, subject: Notice to Proceed with the execution of the Libmanan- Cabusao Dam Project
<b>G<sup>3</sup></b>	Letter of A.M. Oreta, through its representative Ricardo S. Khan, addressed to NIA, requesting for the release of 15% advance payment
<b>H<sup>3</sup></b>	Disbursement Voucher issued by NIA as first instalment of 15% Advance Payment amounting to Php49,273,432.03 paid by NIA as partial payment to the 15% advance payment.
<b>I<sup>3</sup></b>	Official Receipt dated 01 June 2009, issued by A.M. Oreta, as proof of receipt of Php49,273,432.03
<b>J<sup>3</sup></b>	Disbursement Voucher issued as second and full payment of the 15% advance payment amounting to Php49,273,432.03
<b>K<sup>3</sup></b>	Official Receipt dated 08 September 2009, issued by A.M. Oreta, as proof of receipt of Php49,273,432.03 paid by NIA as second and last payment of the 15% advance payment.
<b>L<sup>3</sup></b>	Letter of accused Salazar dated 24 August 2009, subject: Documentary requirements for disbursement voucher regarding the full payment of the 15% advance payment
<b>M<sup>3</sup> to M<sup>3</sup>-20</b>	Minutes of the Full Council Meeting of the Regional Development Council held on 18 November 2009 at NEDA Conference Hall, Arimbay, Legazpi City
<b>N<sup>3</sup></b>	Letter of DENR Secretary Jose Atienza, dated 20 April 2009, addressed to accused Salazar, granting the Environmental Compliance Certificate (ECC) application for the Libmanan- Cabusao Dam Project
<b>O<sup>3</sup> to O<sup>3</sup>-10</b>	Task Force Final Report on Libmanan- Cabusao Dam Project
<b>P<sup>3</sup></b>	Letter of NIA Administrator accused Salazar dated 14 December 2009 addressed to the Regional Irrigation Manager, re: indefinite suspension of the implementation of the Libmanan- Cabusao Dam Project
<b>Q<sup>3</sup></b>	Letter of NIA Administrator accused Salazar dated 14 December 2009 addressed to the Regional Irrigation Manager, re: indefinite suspension of the implementation of the Libmanan- Cabusao Dam Project
<b>R<sup>3</sup></b>	Excerpt from the Minutes of the Regional Development Council Meeting held on 24 February 2010 at Legazpi City, approving the report of the RDC Task Force to stop the Letter of NIA Administrator accused Salazar dated 14 December 2009 addressed to the Regional Irrigation Manager, re: indefinite suspension of the implementation of the Libmanan- Cabusao Dam construction until all the ECC requirements are complied with
<b>S<sup>3</sup></b>	Letter of RDC Chairman Joey Sarte Salceda, addressed to accused Salazar, re: RDC Resolution approving the report of the RDC Task Force to stop the Libmanan- Cabusao Dam Project
<b>T<sup>3</sup></b>	Letter of Rolando G. Tungpalan, Deputy Director General and Chair, ICC-Technical Board, dated 18 January 2010, addressed to NIA Administrator accused Salazar, subject: The Investment Coordination Committee-Technical Board (ICC-TB) noted that the Libmanan- Cabusao Dam Project commenced without ICC and NEDA approval

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<b>U<sup>3</sup></b>	Letter of Regional Manager William P. Ragodon dated 17 October 2011, addressed to Gov. Joey Sarte Salceda, Chairman, Regional Development Council, subject: The National Irrigation Administration is seeking the Regional Development Council's endorsement for the Libmanan- Cabusao Dam and Rehabilitation Project
<b>V<sup>3</sup> to V<sup>3</sup>-11</b>	Letter of Atty. Romeo C. Escandor dated 04 November 2011, addressed to Regional Manager William Ragodon, subject: The Libmanan- Cabusao Dam Project was not recommended for RDC endorsement to the ICC
<b>W<sup>3</sup> to W<sup>3</sup>-1</b>	Letter of Robert C. Suguitan, Acting Deputy Administrator, Engineering and Operations, addressed to the NIA Board of Directors, re: recommending the approval of the proposed termination of contract for the construction of Diversion Dam and Appurtenant Structures for the Libmanan- Cabusao Dam and Rehabilitation Project
<b>X<sup>3</sup></b>	Resolution dated No. 7752-12, Series of 2012, dated 13 June 2012, approving the proposed termination of Contract Works under Contract No. NIA-R5-LCDPN-C-1, Construction of Diversion Dam and Appurtenant Structures for the Libmanan- Cabusao Dam Project
<b>Y<sup>3</sup> to Y<sup>3</sup>-3</b>	Letter of Roberto Rabulan, COA Supervising Auditor, dated 23 April 2010, addressed to the NIA Acting Administrator, re: Status on the Libmanan- Cabusao Dam and Appurtenant Structures
<b>Z<sup>3</sup> to Z<sup>3</sup>-1</b>	Audit Query for the recovery of the balance of the advances representing the difference between the works accomplished/delivered against the 15% advance payment of NIA.
<b>A<sup>4</sup></b>	Audit Observation Memorandum No. 11-36 dated 19 September 2011, subject: review of advance payments made to A.M. Oreta for the 15% Mobilization Fund for the construction of Libmanan-Cabusao Dam Project
<b>A<sup>4</sup>-1 to A<sup>4</sup>-2</b>	Recommendation in Audit Observation Memorandum No. 11-36 dated 19 September 2011
<b>B<sup>4</sup></b>	Audit Observation Memorandum No. 2012-15, subject: Inspection and evaluation on the status of the inventory stock and implementation of the suspended project Libmanan- Cabusao Diversion Dam and Appurtenant Structures
<b>B<sup>4</sup>-1 to B<sup>4</sup>-2</b>	Recommendation in Audit Observation Memorandum No. 2012-15 dated 1- April 2012
<b>B<sup>4</sup>-3 to B<sup>4</sup>-4</b>	TSG Evaluation Report
<b>C<sup>4</sup> to C<sup>4</sup>-3</b>	Audit Observation Memorandum No. 101-2013-045 dated 31 May 2013, re: reiteration of the request of COA to conduct physical inventory to be witnessed by COA representatives
<b>D<sup>4</sup> to D<sup>4</sup>-5</b>	Settlement of claims of A.M. Oreta & Co., Inc.
<b>E<sup>4</sup></b>	Letter of Modesto G. Membreve dated 11 February 2014, addressed to Ricardo S. Khan, re: Evaluated Financial Obligation of the approved termination of the Libmanan-Cabusao Dam Project
<b>F<sup>4</sup> to F<sup>4</sup>-6</b>	Letter of A.M. Oreta, through its representative Ricardo S. Khan, dated February 2014, addressed to NIA, re: request for reconsideration of NIA's evaluation as to A.M. Oreta's total amount of claim
<b>G<sup>4</sup> to G<sup>4</sup>-5</b>	ICC Guidelines and Procedures
<b>H<sup>4</sup></b>	Report on the status of the implementation of the Contract No. NIA-R5-LCDPN-C-1, Construction of Libmanan-Cabusao Dam and

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	Appurtenant Structures as of 31 May 2010.
<b>I<sup>4</sup> to I<sup>4</sup>-I</b>	Inventory report of materials and equipment at project site of the Construction of Libmanan-Cabusao Dam Project
<b>J<sup>4</sup></b>	Letter of accused Salazar requesting for the issuance of Multi-Year Obligational Authority (MYOA)
<b>K<sup>4</sup></b>	2 <sup>nd</sup> Indorsement dated 21 February 2012 of William P. Ragodon to Acting Deputy Administrator, submitting pertinent documents for ECC amendment
<b>L<sup>4</sup></b>	Letter of Engr. Albert A. Perfecto, dated 12 September 2012, addressed to William P. Ragodon, requesting final listing of affected families
<b>M<sup>4</sup></b>	First indorsement dated 08 January 2012, indorsing to the NIA Regional Irrigation Manager, for appropriate action, the letter of DENR IEAMD Chief Cesar Siador, Jr. requiring the submission of Environmental Performance Report and Management Plan for Libmanan-Cabusao Dam Project
<b>N<sup>4</sup></b>	Reassessment Study Report dated July 2011 (RESERVED)
<b>O<sup>4</sup> to O<sup>4</sup>-8</b>	Masterlist of Project Affected Persons, Land and Improvements
<b>P<sup>4</sup> to P<sup>4</sup>-15</b>	Materials Inventory for Libmanan-Cabusao Dam Project
<b>Q<sup>4</sup> to Q<sup>4</sup>-2</b>	Statement of Work Accomplishment
<b>R<sup>4</sup> to R<sup>4</sup>-1</b>	Letters of DENR Engr. Nestor Cortes submitting the Progress Billing for the Construction of Libmanan-Cabusao Dam Project
<b>R<sup>4</sup>-2</b>	Letters of A.M. Oreta to NIA Engr. Nestor Cortes, re: Progress Billing as 14 December 2009
<b>S<sup>4</sup> to S<sup>4</sup>-2</b>	Memorandum dated 13 March 2015, subject: Demobilization and Turn-over re: Contract for the construction of Libmanan-Cabusao Dam Project
<b>S<sup>4</sup>-3</b>	1 <sup>st</sup> Indorsement re: report of the Demobilization and Turn-over Committee
<b>T<sup>4</sup></b>	Certification issued by Regional Manager William Ragodon, certifying that "A.M. Oreta has mobilized the required initial equipment requirements"
<b>U<sup>4</sup></b>	Letters re: Demobilization of equipment and materials and turn-over of materials as a result of the termination of the Libmanan-Cabusao Dam Project
<b>V<sup>4</sup> to V<sup>4</sup>-3</b>	Letters re: Equipment Mobilization
<b>W<sup>4</sup> to W<sup>4</sup>-1</b>	Checks issued by NIA to A.M. Oreta for the 15% advance payment-RESERVED
<b>X<sup>4</sup></b>	Local Condition mentioned in the Contract of Agreement-RESERVED

**EVIDENCE FOR THE DEFENSE**

The following defense witnesses, except for Sharilyn A. Bluza, testified through their Judicial Affidavits.

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### JOSE L. PARAGAS III<sup>52</sup>

Paragas III is the Assistant Vice President for Horizontal Projects of A.M. Oreta. He was one of those who provided cost estimates for the Libmanan-Cabusao Dam Project. He also participated in the estimation of their Mutual Termination Claims before NIA, after the suspension of the said project. He testified that:

1. The 15% advance payment made by NIA to A.M. Oreta was fully utilized for the mobilization of the project, delivery of materials and equipment on site, construction of temporary facilities, construction of an access road and cofferdam and temporary bridges, among others. Proof thereof is *Memorandum* with attached Inventory Report dated 21 September 2010.<sup>53</sup>
2. Thereafter, A.M. Oreta sent several letters to NIA following up the status of the suspension order and requesting an early resolution of the same to minimize expenses to the company. Witness claimed that the NIA's (NIA Administrator's) continued indecision on the early resolution on the project was immensely unfair and prejudicial to A.M. Oreta and the government.<sup>54</sup> In response, NIA informed A.M. Oreta<sup>55</sup> that it worked intensely (during the period of suspension) on the necessary documents needed by the Regional Development Council Region 5 to secure their favorable endorsement to NEDA-ICC. However, no consensus was achieved regarding the NEDA-ICC endorsement. Eventually, NIA offered A.M. Oreta an option to engage in a mutual termination contract.
3. On 26 June 2012, NIA sent a letter<sup>56</sup> informing A.M. Oreta that NIA's top management decided to proceed with the mutual termination of the contract and the same was approved through a Board Resolution (dated 13 June 2012).<sup>57</sup> A.M. Oreta sent a letter<sup>58</sup> submitting its Mutual Termination Claim in the total amount of two hundred fifty million two hundred sixty-six thousand three hundred thirty eight pesos and ninety-five centavos (Php250,266,338.95) which was based on contract conditions, invoice receipts, actual payrolls and other supporting documents to justify and substantiate the work accomplishment, materials purchased and various actual expenses while the project was suspended.

<sup>52</sup> Records, Vol. 3, pp. 588-600 (Judicial Affidavit of Jose L. Paragas III)

<sup>53</sup> Exhibits "103" and "103-1" (also, "103-a" khan)

<sup>54</sup> Exhibit "104"

<sup>55</sup> Exhibit "105"

<sup>56</sup> Exhibit "106"

<sup>57</sup> Exhibit "107"

<sup>58</sup> Exhibit "108"

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4. On 20 February 2013, NIA's technical group together with some representatives from A.M. Oreta conducted an inspection and/or inventory on the actual materials delivered and accomplishment to date. There were discussions about A.M. Oreta's claim and NIA's inventory due to conflicting amounts of the materials.<sup>59</sup> A.M. Oreta sent another letter maintaining its position on the amount of their claim.<sup>60</sup> However, NIA's evaluation yielded the amount of one hundred eighty million four hundred twenty-eight thousand five hundred thirty-five pesos and sixty-six centavos (Php118,428,535.66)<sup>61</sup> which A.M. Oreta totally disagreed.<sup>62</sup>
5. A.M. Oreta sent follow-up several letters to NIA for the re-evaluation of their claims.<sup>63</sup> A.M. Oreta received a response from NIA informing the company of the ongoing re-evaluation of the submitted claims and to coordinate with NIA Region 5 its intention to vacate the project site and transfer responsibility to NIA in securing and protecting the materials on site which were paid and accepted by the agency.<sup>64</sup> Up to this date, A.M. Oreta has not received communications or instructions from NIA about the re-evaluation of the claim.

Upon cross-examination,<sup>65</sup> the witness testified that:

1. Witness is Vice President of A.M. Oreta for horizontal projects since 1992 up to present. His main functions are to prepare bid proposals for government projects of A.M. Oreta, conduct site inspection and attend pre-bid conferences, and when awarded the project, he is involved with the operation.
2. Witness is in charge of public biddings for government projects in the event A.M. Oreta participates. He was the one responsible for submitting the bid for this particular project. However, despite being in-charge, another authorized representative of the company signed on the bid form. In this particular project, A.M. Oreta authorized Khan, Jr. as signatory.
3. Witness is aware that NIA paid fifteen percent (15%) advance payment of One Hundred Five Million, One Hundred Sixteen Thousand and Six Hundred Fifty-Five Thousand Pesos

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<sup>59</sup> Exhibit "109"

<sup>60</sup> Exhibit "110"

<sup>61</sup> Exhibit "111"

<sup>62</sup> Exhibit "112"

<sup>63</sup> Exhibits "113" to "117"

<sup>64</sup> Exhibit "118"

<sup>65</sup> TSN, dated 11 February 2020.

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(PhP105,116,655.00) or a net amount of Ninety-Eight Million, Five Hundred Forty-Six Thousand and Eight Hundred Eighty-Four Pesos (PhP98,546,884.00) but he does not know that NIA is claiming the fifteen percent (15%) it paid to A.M. Oreta. Witness claims that the fifteen percent (15%) advance payment has been utilized based on the 21 September 2010 *Memorandum* and Inventory Report of the materials on site. The computation therein is a joint computation between NIA and A.M. Oreta and was signed by NIA including COA. It appears that there is a disparity between the figures presented by A.M. Oreta and by NIA; however, the matter is still pending and nothing has been finalized yet.

On re-direct examination, the witness testified that:<sup>66</sup>

1. NIA offered a mutual termination of the contract after A.M. Oreta followed up on the project's status since it was suspended. In NIA's letter, the agency said that they have difficulty in securing the ICC for Regional Development so they offered a mutual termination of the contract.
2. After agreeing to a mutual termination of the contract of the dam project, A.M. Oreta submitted its financial claim amounting to two hundred fifty million, two hundred sixty-six thousand, three hundred thirty-eight pesos and twenty-five centavos (PhP250,266,338.25) but NIA only agreed to the amount of one hundred eighteen million, four hundred twenty-eight thousand, five hundred thirty-five pesos and sixty-six centavos (PhP118,428,535.66). Up to date, the claim is still under evaluation so the matter has yet to be settled.

## **RICARDO S. KHAN, JR<sup>67</sup>**

Khan, one of the accused in this case, is the Vice President for Engineering for A.M. Oreta. He represented the construction company in the contract signing with the NIA for the Libmanan-Cabusao Dam Project. He testified that:

1. He was just a mere signatory to the contract between NIA and A.M. Oreta. He merely represented the interest of the company as its Vice President for Engineering. Second, A.M. Oreta participated in the bidding for the project in good faith and won the public bidding as the lowest calculated and responsive bid under existing laws and

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

<sup>67</sup> Records, Vol. 2, pp. 533-541 (Supplemental Judicial Affidavit of Ricardo Khan, Jr.)

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- regulations for government infrastructure projects. Finally, A.M. Oreta's request and receipt of the fifteen percent (15%) downpayment necessary to mobilize its resources to commence the project and is legal and allowed, as reflected in the contract. This practice is also in accordance with existing laws and regulations regarding government infrastructure projects.
2. Aside from overseeing all of A.M. Oreta's current projects on the technical/engineering aspects, witness is also in charge of the public biddings where the company participates. He also signs the contracts for such projects merely as A.M. Oreta's representative and never in a personal capacity.
  3. When asked about the project, witness said that as far as he knows, the Libmanan-Cabusao Dam Project of the NIA is situated in Sipocot, Camarines Sur and was a priority project by then President Gloria Macapagal Arroyo. The said project is in support of the objectives of the Irrigation Sector of the Bicol Medium Term Regional Development in increasing the productivity of agricultural lands and the income of farmers through sustained irrigation development.
  4. Witness came to know about the bidding for the project through word of mouth and the public invitation to bid for the project. In deciding to participate in the bidding, witness claimed that they have a team that conducted due diligence, and assessed whether it would be a project they should engage in. After its assessment, conduct of due diligence, and recommendation, witness made his own recommendations to management to proceed with the bidding.
  5. A.M. Oreta participated in this bidding since they always looked for projects to sustain their business. They were declared the lowest bidder and was eventually awarded the contract.
  6. The company assumed that NIA was properly and legally authorized to undertake this project and that it has secured all the necessary clearances and permits to bid out the project. Otherwise, it would not have even invited prospective bidders for offers/bids on the same.
  7. Based from the witness's experience, it is "highly irregular for any government agency to proceed with a public bidding without first securing all requirements".<sup>68</sup> After the contract is awarded, the government agency shall issue a Notice to Proceed. In this case, NIA issued A.M. Oreta a Notice to Proceed dated 11 May 2009. The

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<sup>68</sup> Records, Vol. II, p. 536.

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issuance of a Notice to Proceed is a warranty to the winning bidder that there are no more legal impediments for the execution of the contract, and to begin said execution immediately.

8. Since they were to proceed with the project, A.M. Oreta requested for the fifteen percent (15%) advance payment as mobilization fund which NIA approved. The agency made partial payment of forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03) of the requested one hundred five million, one hundred sixteen thousand and six hundred fifty-five pesos (PhP105,116,655.00) or the fifteen percent (15%) advance payment on 28 May 2009. On 08 September 2009, NIA paid the remaining balance of the fifteen percent (15%) advance payment amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03).
9. To obtain the fifteen percent (15%) downpayment, A.M. Oreta also put up a bond, specifically Surety Bond No. 47274 and O.R. No. 12115, issued by Intra Strara Insurance Corp., in the sum of one hundred five million one hundred sixteen thousand six hundred fifty-five pesos (PhP105,116,655.00) to guarantee the advance payment by the procuring entity, that was callable in demand and co-terminus with the final acceptance with the project. Witness claimed that the request for advance payment was done in accordance with existing laws and rules regarding advance payments for infrastructure projects.
10. When asked about how A.M. Oreta communicated with the BAC members for the project during the bidding process, witness said that they did not directly communicate with the BAC members during the bid process, as it would violate the no-contact policy while bidding was in progress. If ever, communication was only through official correspondences.
11. Regarding the Prosecution's allegation that the project was anomalous for failure to secure clearance from the ICC, witness said that he and his company were not aware of such defect in the project clearances and assumed that there was no problem with the project since it underwent the process of public bidding. They were also not privy to the internal communications of NIA and COA regarding the issue.



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He further testified on the witness stand that:<sup>69</sup>

12. As Vice President for Engineering for A.M. Oreta, his duty is that for vertical project. He is the chief estimator, the one deriving the unit costing, preparing the required equipment and necessary overhead and the preliminaries and assisting the submission of bid, but for the government project, there is a separate team handling the estimate and the preparation of bids. Witness is also one of the signatories for checks issued by A.M. Oreta and also one of the approving body for approval for the request of materials for both for government and private projects.
13. Witness insists that he has nothing to do with this particular project. He had no participation in the submission. For horizontal or government projects, there is a separate team handling the decision whether to bid or not. He claimed that the Libmanan-Cabusao Dam project is considered as a horizontal project.

On cross-examination,<sup>70</sup> he testified that:

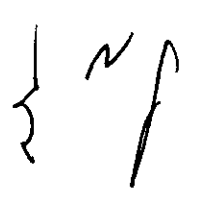
1. Witness was in charge of the private project, private bidding, and not public biddings. He claimed that his only participation in the case was signing the contract. There is a separate team doing the preparation of the estimates and submission.
2. A.M. Oreta is required to comply with the terms and conditions of all phases of the contract which is before, during, and after the bidding. The company has a team that conducts due diligence and assessment, and makes the recommendation to the management whenever the company should engage in a particular project. The team conducting the due diligence and assessment is the one that made the recommendation to participate in the public bidding. Thus, it is required to know the technical and financial requirements of the project.
3. However, the witness asserted he is not familiar with the bidding process because there is a separate team who handles the preparation (for these projects).<sup>71</sup> He is not aware if A.M. Oreta asked any questions during the pre-bid conference from the NIA. He is also not aware that there are certain conditions like an ICC requirement for the construction of the project. He again insisted that he is not in charge

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<sup>69</sup> TSN, dated 17 October 2019.

<sup>70</sup> TSN, dated 17 October 2019.

<sup>71</sup> TSN, dated 17 October 2019, p. 18



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of the public bidding so he is not aware of such requirement.<sup>72</sup> While he is aware of the need to submit a performance surety bond, he is not aware the particular requirements in government projects such as an ICC.

4. Witness claims that as a contractor, it is not their duty to ask NIA about this (NEDA Authority) because once it is in the public bidding, they believe that all is in order. He just assumed that NIA was properly authorized to undertake the project that is why A.M. Oreta did not ask anything about the financial component of the project of the contract, including the NEDA authority. So they assumed that there was no problem with the project.<sup>73</sup>

## CARLOS SOMBLINGO SALAZAR<sup>74</sup>

Salazar, one of the accused in this case, was the National Irrigation Administrator (NIA) Administrator at the time the alleged offense was committed until he suffered a stroke in 2010. He also represented NIA in its dealings concerning the Libmanan-Cabusao Dam Project. He testified that:

1. The Libmanan-Cabusao Dam Project (Irrigation) is situated in Sipocot, Camarines Sur. It was a priority project of then President Gloria M. Arroyo. It is supportive of the objectives of the Irrigation Sector of the Bicol MTRDP in increasing the productivity of agricultural lands and the income of farmers through sustained irrigation development;
2. According to him, the former President gave specific instructions to fast track the project, through the Memorandum of then Secretary Cerge M. Remonde, particularly, "to shorten the bidding process of the project, in particular, to hold the pre-bid conference next week (8-12 September 2008)";
3. He and his subordinates followed President Arroyo's specific instructions, however it was understood that they have to follow the rules and regulations set up by R.A. 9184. Thus:
  - a) Said project was published in a newspaper through an Invitation to Apply for Eligibility and to Bid for Contract No. NIA-R5-LCDPN-C-1 for the Construction of Libmanan-Cabusao Diversion Dam amounting to seven hundred twelve

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<sup>72</sup> *Id.*, p. 19

<sup>73</sup> *Id.*, p. 21-23

<sup>74</sup> Records, Vol. 2, pp. 243-256. (Judicial Affidavit of Carlos Salazar)

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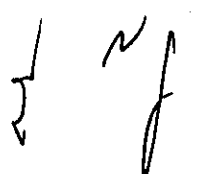
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million three hundred sixty-five thousand six hundred seven pesos (PhP712,365,607.00);

- b) On 13 October 2008, NIA conducted a pre-bidding which was awarded to A.M. Oreta & Co. Inc. for offering the Lowest Calculated and Responsive Bid of seven hundred million, seven hundred seventy-seven thousand and seven hundred pesos (PhP700,777,700.00) upon the recommendation of the Bids and Awards Committee (BAC), and concurred by the NIA Board;
  - c) On 04 February 2009, the Regional Development Council headed by Hon. Joey S. Salceda, Chairman, endorsed said project to the NEDA-ICC for approval;
  - d) On 08 May 2009, seven (7) months after the award, a Contract of Agreement for the project was entered into by and between the NIA, represented by the witness in his capacity as NIA Administrator, and A.M. Oreta & Co., Inc, represented by Ricardo S. Khan, Vice President for Engineering; and
  - e) On 11 May 2009, the witness issued a Notice to Proceed.
- 4. The following were the members of the BAC: Alexander A. Reuyan (Chairman), Teodoro A. Velasco (Member), and Antonio A. Galvez (Member). However, they are not included in this case.
  - 5. After the Notice to Proceed was issued, A.M. Oreta requested for the fifteen percent (15%) advance payment as mobilization fund on 14 May 2009. Thereafter, on 28 May 2009, NIA issued a check amounting to Php49,273,432.03 as partial advance payment representing the first tranche of the fifteen percent (15%) mobilization fee and such was acknowledged by the contractor.
  - 6. On September 2009, NIA issued another check amounting to forty-nine million, two hundred seventy-three thousand, four hundred thirty-two pesos and three centavos (PhP49,273,432.03) representing the balance of the fifteen percent (15%) advance payment, which the contractor received and issued a corresponding receipt.
  - 7. The Environmental Compliance Certificate (ECC) was issued by the Environment Management Bureau Region 5 on 20 April 2009. However, the Task Force submitted its Final Report recommending that the construction must be stopped and reconsidered until ECC conditions have been complied with by NIA.



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8. On 14 December 2009, the witness, after conferring with his subordinates, issued a Notice of Suspension on the implementation of the contract due to the strong opposition of the residents from the towns of Sipocot and Lupi, Camarines Sur and findings of the Institute for Environmental Conservation and Research of the Ateneo de Naga during its investigation on the project on 06 November 2009.
9. On 10 January 2010, he suffered a near fatal stroke. He applied for leave of absence until his term expired and he retired. He claimed that he had no more participation in the subsequent events from 10 January 2010 since he was no longer able to report back to work.
10. Witness claimed that they also took into consideration the interest of then President in fast tracking the project and the time to conduct the pre-bidding conference. According to the witness, PGMA's "special interest to the project, for me, constituted compulsion and irresistible force and with utmost due respect, led me to act and my co-respondents do what we did, for fear that we would incur her ire which would adversely affect our career in the government which we nurtured for years. I acted without freedom."<sup>75</sup>
11. With respect to the payment of the fifteen (15%) advance payment, witness claimed that such was in accordance with the Implementing Rules and Regulations of R.A. No. 9184. The contractor put up a Surety Bond No. 47274 and O.R. No. 125115 in the sum of one hundred five million one hundred sixteen thousand six hundred fifty-five pesos (PhP150,116,655.00) to guarantee the advance payment of the procuring entity. The bond is callable on demand and shall be co-terminus with the final acceptance of the said project. He further claimed that there was no misuse of funds because contrary to the claim that the government suffered damage, in view of the payment of the fifteen percent (15%) mobilization fund, no injuries was suffered since they can run after the surety bond put up by the contractor.
12. Witness strongly denied the allegation that he conspired with the contractor in giving unwarranted benefits through inexcusable negligence by conducting the bidding and awarding of the contract to the latter absent the NEDA-ICC approval for the project in violation of R.A. No. 3019, section 3(e) because it was done in good faith and in accordance with R.A. No. 9184. He again claimed that he was "really pressured" to fast track the project and that there was direct and express orders coming from the President herself.<sup>76</sup>

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<sup>75</sup> Records, Vol. 3, p. 250

<sup>76</sup> *Id.*, p. 252.

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13. Witness claimed that he did everything in his capacity as NIA Administrator. He said, "I signed the documents as part of my ministerial duties, and upon recommendation of my subordinates, I signed the contract after it passed the Bids and Awards Committee and upon recommendation of my subordinates. There was the recommendation by the BAC to award the contract to A.M. Oreta Construction and Co. Inc., so I signed the contract. There was the recommendation that I sign the checks representing the fifteen percent (15%) advance payment, and so I signed it because I am the authorized signatory to it, there was the recommendation that the contractor may proceed with the contract so I signed the Notice to Proceed. As the head of the agency, I have to sign the ECC Statement of Accountability. So was the decision to suspend the contract I have to sign because there was a finding to suspend it. Citing *Arias v. Sandiganbayan*,<sup>77</sup> accused further said that he had to "rely to a reasonable extent on my subordinates and on the good faith of those who prepare bids; purchase supplies, or enter into negotiations."<sup>78</sup>

14. Accused argued that based on the provisions of Executive Order No. 230 and Revised ICC Guidelines and Procedures the ceiling of Major Capital Projects has been raised to one billion pesos (Php1,000,000,000.00). Since such increase is favorable to him, it can be retroactively applied in the year 2009 so approval thereof for the dam project was no longer necessary and failure to comply therewith does not make him liable for violation of R.A. 3019, section 3(e).

Upon cross-examination,<sup>79</sup> Salazar testified that:

1. Witness as NIA Administrator was also the Head of the Procuring Entity (H.O.P.E.). He had the power to approve and disapprove the budget for a contract. As H.O.P.E. and upon recommendation of the Bids and Awards Committee, he also had the power to award a contract or disapprove BAC's recommendation. In this case, the contract for the construction of the Libmanan-Cabusao Dam Project was awarded to A.M. Oreta. The NIA Administrator as H.O.P.E. also had the power to enter into contracts or refuse to do so for valid reasons. The Administrator's functions is not ministerial however, witness asserted that he had to consider whatever BAC recommended.
2. The Libmanan-Cabusao project is a priority project because the irrigation is needed by the people there. There was an instruction to

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<sup>77</sup> 180 SCRA 309

<sup>78</sup> Records, Vol. 3, p. 252

<sup>79</sup> TSN, dated 02 March 2022.

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fast track the project which was conveyed through a Memorandum dated 06 October 2008 by Cerge Remonde. In adherence thereto, witness gave an oral instruction to his subordinates, including the BAC, to shorten the bidding process by cutting some of the steps that are not really needed. He relied on his Deputy Administrator and the BAC members and discussed this with them. He claimed that he did not interfere with BAC's function.

3. When asked about what particular acts President Arroyo did to push through with the project, witness said that there were several instructions through Cerge Remonde, through the NEDA, Mr. Tumpalan, and they were the ones who went to his office and sometimes they asked him to go to their offices, and he would answer questions relative to the project's implementation. He added that because of his hectic schedule, he would pass the question to the BAC for the latter to study and act on.
4. The witness feared that he would incur President Arroyo's ire which would adversely affect his career in the government if he did not do what she wanted him to do. He said that he approved the BAC's recommendation after thorough deliberation including that of Cerge Remonde and the NEDA (represented by Mr. Tumpalan), so it's a concerted effort. He also signed the Contract of Agreement and issued the Notice to Proceed to A.M. Oreta. He did all of the actions relative to the project's implementation but he could not remember whether there was already approval from NEDA-ICC.<sup>80</sup>
5. The witness admitted that he did not receive any threat that he would lose his job if he did not fast track the project. He was not subjected to any force by reason of the project. The only communication he received was the Memorandum from Cerge Remonde.
6. The Memorandum was addressed to several offices, i.e. The Presidential Assistant for Bicol and Project Manager, Bicol River Basin and Watershed Management Project, the Secretaries of the DENR, DPWH, DA, DBM, the PMS, and to the NIA Administrator. It directed the various heads of agencies to give updates on the project undertaken by the Agencies. Thus, it was not only the witness or NIA that was directed to give an update or fast track the project.
7. The Prosecution asked why the witness said that the President's special interest constituted compulsion and irresistible force that led him to do what he did, despite his admission earlier that there was no

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<sup>80</sup> TSN, dated 02 March 2022, p. 51.

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force, compulsion or threat against him by reason of the project. The witness answered that it was because no less than the President, through Cerge Remonde gave the instruction, as evidenced by the communication (Memorandum). For him, it was not a threat or compulsion but it was an instruction which he cannot just ignore.

8. The witness knew that the NEDA-ICC approval was required for the project because it is part of the normal operating procedure that should be observed. He claimed that NIA made follow-ups on the status of the said approval and that “everything was complied [*sic*], however, he cannot recall anymore if there was actually an approval from NEDA-ICC.”<sup>81</sup>
9. The witness still could not remember if the project was already approved by NEDA-ICC by the time the Contract of Agreement was signed between NIA and A.M. Oreta, which was 7 months after the project was awarded to the company.
10. When asked about the pressure the fast track the project and there was “direct and express orders” coming from the President herself, witness answered that the only proof was the attached letter of Cerge Remonde.
11. Witness cannot remember anymore that the threshold amount for government projects that needed approval from NEDA-ICC was five hundred million pesos (PhP500,000,000.00). He also could not recall anymore that the contract for the construction of the Libmanan-Cabusao Dam project was over seven hundred million pesos (PhP700,000,000.00).
12. In 2015, the threshold amount for projects that needed NEDA-ICC approval was increased to one billion pesos. Witness then claimed that since the threshold amount increased to one billion and the contract was only 700 million at that time, the approval of NEDA-ICC is no longer required. His reasoning was, he considered the Revised ICC Guidelines and Procedures as a penal law and thus should be given retroactive effect. When asked whether the witness knows the guidelines is not a penal law, he answered in the affirmative.

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<sup>81</sup> TSN, dated 02 March 2022, pp. 65-67.

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**SHARILYN A. BLUZA<sup>82</sup>**

Sharilyn A. Bluza directly testified in court, since she had no Judicial Affidavit. She was the Acting Accounting Division Manager of the National Irrigation Administration. She testified to prove that there was no damage to the government caused by this project or by accused Khan. She also testified on the documents she brought with her pertaining to the financial records of the BAC Resolution No. CD-01-2008, which is the subject of this case, and other matters in the course of the proceedings. For this, the Court sent her a subpoena to produce the financial records in relation to BAC Resolution No. CD-01-2008. There were three (3) records available in her division namely, the journals, index of payment, and report of checks issued, however, there were no summary of payments.

Atty. Aceron, counsel for accused Khan, stated that the documents the witness said she possessed were not the documents he needs and said that most likely, those might be coming from another department. The Prosecution did not conduct cross-examination anymore.

The defense then proceeded to offer the following documentary evidence. The Court admitted<sup>83</sup> the following Exhibits:

**FOR ACCUSED KHAN:**

EXHIBIT	DESCRIPTION
9, 17, 18 to 18-c, 21 to 21-e and 26	Various documents showing Pre-Bid and Bidding Documents related to the project subject of this case
16	ICC guidelines
50	BAC Resolution No. CD-01-2008 declaring A.M. Oreta & Co., Inc as the bidder with the lowest calculated responsive bid
54	NIA Board of Directors Resolution No. 7549-08, series of 2008
59	Letter of AMO requesting for advance payment
60, 61, 62, and 63	Disbursement Vouchers and Official Receipts for advance payment
103 and 103-a	Memorandum dated 21 September 2010 and Inventory Report
104	Letter of A.M. Oreta to NIA dated 26 October 2011
105	Letter of NIA to A.M. Oreta dated 17 November 2011
106	Letter of NIA to A.M. Oreta dated 26 June 2012
107	NIA's Board Resolution dated 13 June 2012
108	Letter of A.M. Oreta to NIA dated 04 September 2012
109	Minutes of Meeting dated 20 February 2013
110	Letter of A.M. Oreta to NIA dated 08 March 2013
111	Letter of NIA to A.M. Oreta dated 11 February 2014

<sup>82</sup> TSN, dated 18 November 2021

<sup>83</sup> Records, Vol. 3, pp. 362-364 (Court's *Resolution* dated 11 February 2022) and Minutes of Session held on 02 March 2022.



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112	Letter of A.M. Oreta to NIA dated 26 February 2014
113	Letter of A.M. Oreta to NIA dated 12 May 2014
114	Letter of A.M. Oreta to NIA dated 13 June 2014
115	Letter of A.M. Oreta to NIA dated 04 August 2014
116	Letter of A.M. Oreta to NIA dated 10 September 2014
117	Letter of A.M. Oreta to NIA dated 16 December 2014
118	Letter of NIA to A.M. Oreta dated 22 January 2015

**FOR ACCUSED SALAZAR:**

Exhibit	Description
1-Salazar	Memorandum dated 10/6/2008
2-Salazar	Medical Certificate

**DISCUSSION / RULING**

The Anti-graft and Corrupt Practices Act is a special penal law enacted to curb rampant corruption and to protect the sanctity of public office from unscrupulous public officials, who by taking advantage of their positions, inflict damage or injury not only to the public but to the government itself.

Accused Salazar, former Administrator of the NIA, and accused Khan, Vice President for Engineering of A.M. Oreta, are charged with violation of Section 3(e) of R.A. 3019, as amended, thus:

Section 3 (e) of the Anti-Graft and Corrupt Practices Act or R.A. 3019 states:

Section 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:

XXX XXX

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, 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.

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The elements of violation of Section 3(e) of R.A. 3019<sup>84</sup> are the following:

- (a) that the accused must be a public officer discharging administrative, judicial, or official functions **(or a private individual acting in conspiracy with such public officers<sup>85</sup>)**;
- (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and,
- (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

**Prosecution was not able to prove beyond reasonable doubt that accused Khan conspired with his co-accused to commit acts alleged in the *Information*.**

Violations of Section 3(e) of R.A. 3019 generally involve public officers in the performance of their official duties. However, for a private individual to be indicted for this offense it should be alleged that said individual acted in conspiracy with a public officer.

In *People v. Go*<sup>86</sup> is instructive on the matter as it exhaustively discussed a private person's involvement in a case for violation of R.A. No. 3019, to wit:

At the outset, it bears to reiterate the settled rule that **private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019**, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto. (*Emphasis and underscoring supplied*)

In the case at bar, accused Khan, a private individual, was alleged to have acted in conspiracy with accused Salazar, a public officer, such that accused Khan and Salazar conspired and confederated with each other to give unwarranted benefits, advantage, and preference to A.M. Oreta, by issuing a Notice of Award to A.M. Oreta, executing a Contract of Agreement with A.M. Oreta, and issuing a Notice to Proceed to A.M. Oreta in connection with the construction of the Libmanan-Cabusao Diversion

<sup>84</sup> Roberto P. Fuentes v. People of the Philippines, G.R. No. 186421, April 17, 2017.

<sup>85</sup> *Emphasis and underscoring supplied.*

<sup>86</sup> People of the Philippines v. Henry T. Go, G.R. No. 168539, March 25, 2014.

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Dam (Project) despite the absence of any prior approval to implement the Project from the National Economic Development Authority-Investment Coordination Committee, thereby allowing A.M. Oreta to collect an advance payment from the NIA amounting to ninety-eight million, five hundred forty-six thousand, eight hundred sixty-four pesos and six centavos (PhP98,546,864.06), thereby directly causing undue injury to the NIA in the aforesaid amount.

A perusal of the evidence presented shows that the Prosecution was not able to prove beyond reasonable doubt that accused Khan committed the offense charged in the *Information* and thus, he cannot be held liable for violation of R.A. 3019, Section 3(e). The Prosecution was not able to sufficiently establish that accused Khan conspired with accused Salazar to obtain any unwarranted benefit in favor of A.M. Oreta and/or cause undue injury to the government. It must be emphasized that the prosecution must establish conspiracy beyond reasonable doubt.<sup>87</sup> As such, the Prosecution should have presented evidence to prove specific facts or acts covering accused Khan's participation in the alleged conspiracy. Based on the documents and testimony offered in Court, accused Khan's only participation as A.M. Oreta's Vice President, was to serve as the company's representative in the dam project by signing the contract agreement, receiving the Notice to Proceed, and requesting for the fifteen percent (15%) advance payment. Not being a lawyer, he did not know that NEDA-ICC approval of the project was a condition precedent for its implementation. Accused Khan was only in-charge for vertical projects as other employees of A.M. Oreta took care of horizontal projects. He had no contact with NIA officials and employees as he did not participate in the public bidding of the project. Likewise, securing such approval was not the obligation of A.M. Oreta as it was NIA that had to secure the same. The prosecution was also not able to rebut accused Khan's defense that his participation in the dam project was merely to represent A.M. Oreta and to act as signatory to in the contract signing. As testified by defense witness Jose L. Paragas III, it was him (Paragas) who was in charge for horizontal projects and public bidding, to wit:

Cross-examination conducted by Prosecutor Jedd B. Boco<sup>88</sup>

Q: The construction of the project subject of this case which is the Libmanan-Cabusao Diversion Dam, this is considered a horizontal project?

A: Yes, Sir.

<sup>87</sup> People of the Philippines v. Roberto Esperanze Jesalva alias "Robert Santos", G.R. No. 227306, June 19, 2017.

<sup>88</sup> TSN, dated 11 February 2020, pp. 8-10.

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Q: Please tell this Honorable Court your functions as VP for horizontal projects?

A: My main functions are to prepare bid proposals for government projects of A.M. Oreta, conduct site inspection and attend pre-bid conferences and when we are awarded the project, I am still involved in the operation, Sir.

Q: As, as VP for horizontal projects, you are in-charged of public biddings for governmental projects?

A: Yes, Sir.

Q: Wherein Oreta participates?

A: Yes, Sir.

Q: Since you were in-charged of public biddings, it makes sense that you are responsible for submitting the bid for this particular project?

A: Yes, Sir.

Q: In fact, since you are in-charged of public biddings, you are in-charged of signing the bid form also for this project?

A: It is our authorized representative who signs for this bid, Sir.

Q: Unless an authorized?

A: Because one of the attachments of the bidding documents is the Authority of Signing Official. So, we have someone who is authorized to sign.

Q: So, in this particular project sir, who submitted the bid, was it you?

A: Yes, Sir.

The second element of the offense was also not proven by the Prosecution. Accused Khan only entered into the picture when the project was awarded to A.M. Oreta as the highest bidder and since someone had to represent the company, he was designated by A.M. Oreta to sign the contract. There is no evidence on record which showed how accused Khan acted with evident bad faith or inexcusable negligence, either in signing the Contract Agreement or in requesting for the fifteen percent (15%) advance payment. There was no direct contact between him and the BAC members as communications were done through official correspondence. Also, the request for the fifteen percent (15%) advance payment was supported by clause 38.1 and 38.2 of the General Conditions of the Contract and

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requirement for its release was satisfied since A.M. Oreta posted a surety bond in compliance thereof.

Although accused Khan could have inquired and checked whether the requirements for fully implementing the dam project had already been complied with before signing the contract, so that he could be fully aware under what terms and conditions he was binding the company, any failure on this matter was not the proximate cause for the alleged undue injury, as contemplated in R.A. 3019. Thus, it cannot be concluded that his actions, as merely an authorized signatory of A.M. Oreta of the documents executed with NIA, can be used as basis for holding him liable for the offense charged. Thus, it cannot be concluded that accused Khan's actions caused undue injury to the government.

*The Prosecution has established beyond doubt that accused Salazar is guilty of violation of R.A. 3019, Section 3(e).*

*First element: Accused Salazar was the Administrator of NIA at the time material to this case and his acts were done in the discharge of his official duties.*

As borne by evidence and as stipulated by the parties in the Pre-Trial Order dated 07 November 2018,<sup>89</sup> accused Salazar was the Administrator of NIA discharging administrative and official functions at the time material to this case. He represented NIA when he signed the Contract of Agreement with A.M. Oreta. He was, therefore, a public officer discharging official functions.

*Second element: Accused Salazar acted with gross inexcusable negligence when he issued a Notice to Proceed despite the absence of the required NEDA-ICC approval.*

Section 3(e) of R.A. 3019, although a special penal law, may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross

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<sup>89</sup> Pre-Trial Order dated 07 November 2018, Records, Vol. 2, pages 204-222.

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inexcusable negligence.<sup>90</sup> In the old case of *U.S. v. Maleza*, the Supreme Court explained why acts, as a consequence of *culpa*, are punished by law:

A man must use common sense, and exercise due reflection in all his acts, it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise his own person, rights and property, and those of his fellow-beings, would ever be exposed to all manner of danger and injury (*The Revised Penal Code: Book Two*, 38 citing *U.S. v. Maleza* 14 Phil. 468, 470).

In *Uriarte v. People*,<sup>91</sup> the High Court expounded on what constitutes gross inexcusable negligence, to wit:

xxx    xxx

“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.<sup>92</sup> (*Emphasis and underscoring supplied*)

As will be discussed below, this Court finds that accused Salazar acted with gross inexcusable negligence when he signed the contract and issued the Notice to Proceed for the implementation of the project, absent the required NEDA-ICC approval.

As testified by prosecution’s witness, NEDA Undersecretary Tungpalan,<sup>93</sup> all national government agencies and government corporations are bound by the ICC guidelines and procedures, thus:

J MAÑALAC:

And who are bound by the ICC Guidelines and Procedures?

WITNESS:

All the national government agencies and government corporations are bound by these procedures, Your Honor.

<sup>90</sup> *Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006.

<sup>91</sup> G.R. No. 169251, 20 December 2006.

<sup>92</sup> *Id.*

<sup>93</sup> TSN, dated 07 November 2018, pp. 18-19.

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J MAÑALAC:

Which include NIA?

WITNESS:

That's right, Your Honor.

J MAÑALAC:

Okay, thank you.

The *2005 Revised ICC Guidelines and Procedure*,<sup>94</sup> provided a threshold amount (PhP500 Million) for government projects or programs which will be subject to NEDA-ICC's evaluation with respect to technical, financial, economic, social, environmental, institutional development, feasibility/viability, etc. Such evaluation and approval is required as a pre-condition before a project can proceed. Below are the pertinent provisions of the Guidelines and Procedure:

**ICC Secretariat**

The NEDA Secretariat serves as the Secretariat of the ICC. The ICC Secretariat provides technical staff support to the Technical Board and Cabinet Committee, in coordination with other government agencies. The ICC Secretariat performs the following functions:

- a. Undertake the evaluation of all program/project documents submitted to the ICC with respect to technical, financial, economic, social, environmental, institutional development, feasibility/viability as well as policy aspects, and come up with comments/recommendations for consideration by the ICC;
- b. Review the overall sectoral and spatial context of a specific program/project including the relative priority accorded to the program/project by the proponent;

xxx      xxx

**III. Scope of ICC Review/Decisions**

In general, ICC review and approval is undertaken for programs/projects requiring ICC clearance and/or NEDA Board approval as pre-conditions for:

xxx      xxx

- d. programming forward budgetary obligation requirements; and,

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<sup>94</sup> Revised as of 04 March 2005 based in the 04 August 2004 updates approved by the ICC-Technical Board and Cabinet Committee.

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- e. processing any other expenditure decisions the NEDA Board and its Committees may require the ICC to act on.

In certain cases, as may be defined under these guidelines or by the ICC, programs/projects reviewed by the ICC Secretariat may be submitted to the ICC to note for its information (i.e. ICC notation)

**ICC review/decisions cover:**

1. **Programs/projects<sup>95</sup> of national line agencies with total cost of PhP 500 million and above, regardless of financing**

xxx xxx

The NEDA/ICC is an inter-agency Committee created under E.O. 230. DENR, DBM and DILG, OP and DOF are represented in NEDA-ICC. While the scope of ICC Review does not explicitly state that NEDA-ICC approval is required before a Notice of Award or Notice to Proceed can be issued by a government agency, it can be concluded that NEDA-ICC's approval is necessary before any project implementation because budgetary obligation requirements must be first reviewed and technical, economic, social and environmental concerns must be first evaluated. In the case at bar, no such evaluation was completed and thus, environmental and local opposition issues arose, thus, requiring the project's suspension and termination.

It is important that government agencies adhere to the ICC guidelines and procedure when implementing large-scale government projects because those are set in place as a safeguard to avoid wasting public (or private) funds and to maximize utilization thereof.

The *Memorandum* dated 06 October 2008, directed the immediate implementation of the Libmanan Dam Project. The NIA and Presidential Assistant for Bicol were instructed to shorten the bidding process, particularly, to hold the pre-bid conference on a specific week, viz:

3. Following are directives issued by the President:

xxx xxx

- 3.2 For the Immediate Implementation of the Libmanan Dam Project, the President instructed the PA for Bicol and NIA

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<sup>95</sup> The following is footnoted accordingly in the ICC guidelines: *Detailed engineering (D/E) studies are considered part of project implementation and require prior ICC approval for funding and project start. Corollary to this, D/E studies require completed feasibility study (FS). Evaluation of the proposal is done on the entire project rather than on the D/E investment alone.*



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to shorten the bidding process for the project, in particular, to hold the pre-bid conference next week (8-12 September 2008)

Nowhere was it stated in this memorandum that the requirements provided for by existing laws, rules and regulations, such as the NEDA-ICC approval, for the bidding or the implementation of the project can be bypassed or dispensed with. In fact, with respect to the Libmanan Dam Project, the President's instruction was only "to shorten the bidding process" and hold the pre-bid conference "next week". No instruction to shortcut the process by dispensing required approvals was mentioned.

Accused Salazar was fully aware that a NEDA-ICC approval was required for the project to proceed that is why NIA made several follow ups for the said approval. Salazar testified<sup>96</sup> that:

PROSECUTOR BOCO:

Q: Do you know why the NEDA-ICC approval was required for this project?

A: Yes, yes.

Q: Why?

A: Because that is based on the norms that should be observed. So, I have to follow what is stated in the normal operating procedure. I have to comply.

Q: Okay, thank you, Sir.

Did the National Irrigation Administration follow-up the status of the approval with the NEDA-ICC?

ATTY. POCULAN:

Did the NIA follow-up the approval of the...,

Kindly repeat, Pañero?

PROSECUTOR BOCO:

Q: Okay. Did the National Irrigation Administration follow-up the status of the project approval with the NEDA-ICC?

ATTY. POCULAN:

Did you follow up the approval with NEDA?

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<sup>96</sup> TSN, dated 02 March 2022, pp. 64-69.

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THE WITNESS:

A: Yes, yes, yes.

PROSECUTOR BOCO:

Q: And what was the result of this follow-up, Sir?

A: That's why after series of follow-up and instruction from the higher ups, so everything was complied so the project started.

Q: Everything was complied?

A: Yeah, yeah, as mandated.

Q: Okay. Did you obtain, eventually obtained the NEDA-ICC approval for the project? You said everything was complied?

A: I think because if I remember right, we have series of discussion about that but because of the instruction of the President, being followed-up by Cerge Remonde and the NEDA, we based our moved, based on that.

Q: Based on what, Sir?

THE PRESIDING JUSTICE (AJ ARCEGA):

Q: Mr. Salazar, was there a NEDA approval? NEDA-ICC approval?

A: I cannot recall. I cannot recall but what is..., what I can remember that many are making follow-up about this project, PMS number one and the NEDA. They always visit our office and discussed this and I have also to... (*inaudible*) my (BAC) Bids and Awards Committee...

THE PRESIDING JUSTICE (AJ ARCEGA):

Q: So, you're not aware of the approval from NEDA-ICC? You're not aware?

A: I am not aware.

THE PRESIDING JUSTICE (AJ ARCEGA):

Okay, sige po.

THE WITNESS:

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Sorry

THE PRESIDING JUSTICE (AJ ARCEGA):

It's alright, Sir. Prosecutor Boco?

PROSECUTOR BOCO:

Yes po.

Q: On May 8, 2009, Sir, seven (7) months after the award, a Contract of Agreement was signed between NIA and A.M. Oreta. You were the signatory on the part of NIA and Mr. Khan was the signatory on the part of A.M. Oreta.

PROSECUTOR BOCO:

My question is: Do you remember at this point if the NEDA-ICC approval was already obtained?

ATTY. POCULAN:

Kindly repeat, Pañero? Kindly repeat.

PROSECUTOR BOCO:

Okay.

THE PRESIDING JUSTICE (AJ ARCEGA):

The question only was: When you signed the Agreement with Mr. Khan as the representative of A.M. Oreta, can you remember if there is already a NEDA-ICC approval?

THE WITNESS:

A: Yeah. As I told you a while ago that regarding the approval of NEDA, series of action *[sic]* done before but I cannot remember what happened but because of my BAC and in coordination with the PMS and NEDA, we based on that, our action.

THE PRESIDING JUSTICE (AJ ARCEGA):

Prosecutor Boco?

PROSECUTOR BOCO:

Okay. Thank you, Your Honors.

So, I have other questions actually and it all delves on whether NEDA-ICC already approved the project. So I guess, the answer

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would still be the same. He doesn't know, Your Honor. So, I would just forego.

Prosecution witness Ragodon testified that he forwarded a request for NEDA-ICC approval to NIA top management which included accused Salazar.<sup>97</sup>

Furthermore, in the Minutes of the Full Council Meeting of the RDC 5 held on 07 May 2008<sup>98</sup>, it was very clear that NEDA-ICC approval was required even though the dam project is a priority project of the President:

“RDC Chair Salceda said that even though the project is a priority of the President, it has to undergo the usual approval process. He further said that the project can be discussed in the special meeting of the Infrastructure Development Committee (IDC) in the following week. Director Escandor requested a copy of the feasibility study (FS) for the secretary's review. Mr. Ragodon's promised to submit the FS on May 9 (Friday).

The RDC Chair also queried whether the proponent has secured an environment compliance certificate (ECC) from DENR. Mr. Ragodon replied that they have yet applied [*sic*] for an ECC. The RDC Chair further reminded the proponent that the project would have to pass through the Investment Coordination Committee (ICC) since the cost of the project is above PhP500 Million.” (*Emphasis and underscoring supplied*)

Despite all of these, accused Salazar still gave the go signal by signing the contract and issuing the Notice to Proceed with the project notwithstanding the absence of the NEDA-ICC approval. Even assuming he could not remember or was not aware anymore of the events that transpired, the documentary evidence offered in court **do not** contain any approval or endorsement from NEDA-ICC relating to the Libmanan-Cabusao Diversion Dam Project. Yet, accused Salazar issued a Notice to Proceed for the execution of the project on 11 May 2009 which co-accused Khan received on 14 May 2009.

On 18 January 2010, accused Salazar was once again reminded of the absence of the NEDA-ICC approval when Tungpalan sent him a letter<sup>99</sup> that the “ICC-TB noted that project implementation commenced *sans* ICC and NEDA Board Approval” and to bring to NIA's urgent attention the project evaluation report results of NEDA Regional Office V. He was also directed that the agency should coordinate with Department of Agriculture, Department of Finance-Corporate Affairs Group, Regional Development

<sup>97</sup> TSN, dated 12 September 2018, pp. 13-16.

<sup>98</sup> Exhibits “Z<sup>2</sup>” to “Z<sup>2</sup>-16”

<sup>99</sup> Exhibit “T<sup>3</sup>”

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Council V, and with other oversight government agencies as necessary for recommendations on the project.

The issuance of the said Notice to Proceed with the project's implementation despite the absence of the NEDA-ICC approval constituted gross inexcusable negligence on accused Salazar's part. He did not exercise the slightest care when the situation required him to first secure NEDA-ICC clearance, as such he was indifferent to the consequences which arose. If accused Salazar only exercised prudence by ensuring that the NEDA-ICC approval for the Dam project was obtained before issuing a Notice to Proceed then the outcome of the events could have been different. Without the NEDA-ICC approval, the project should not have been started or even implemented, and the government should not have suffered losses on a project which in the end was only terminated. If NEDA-ICC approval was first secured, NIA could have been confident that complaints on environmental impact and other local issues were avoided. The unnecessary rush to implement, however, resulted to this project's suspension and subsequent termination. Haste, indeed, makes waste.

Notably, it is a well-settled principle that an existing law is read into and forms part of a valid contract, as if expressly referred to or incorporated therein, without need for the parties expressly making reference to it unless it is clearly excluded therefrom in those cases where such exclusion is allowed.<sup>100</sup> What the law requires enters into and forms part of every contract.<sup>101</sup>

Administrative acts and executive issuances, etc. like Executive Order No. 230<sup>102</sup> and the Revised ICC Guidelines and Procedures dated 04 March 2005 partake of the nature of laws which are deemed written into contracts between the parties. To be valid, a government contract must be in accordance with and not repugnant to applicable laws or statutes.

In the case of accused Salazar, the public trust reposed upon him by virtue of his public office as head of NIA demanded the he observe relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds.<sup>103</sup> Public funds, after all, are the property of

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<sup>100</sup> Philippine Economic Zone Authority (PEZA) v. Green Asia Construction & Development Corporation, G.R. No. 188866, October 19, 2011, *citing* National Steel Corporation v. RTC of Lanao del Norte, G.R. No. 127004, March 11, 1999, *see also* Maritime Co. vs. REPACOM, 40 SCRA 70, Liberation Steamship Company Inc. vs. CIR, 23 SCRA 1105; *Lakas ng Manggagawa Makabayan v. Abiera*, 36 SCRA 437.

<sup>101</sup> *Central Bank v. Cloribel*, G.R. No. L-2697, April 11, 1972, 44 SCRA 318.

<sup>102</sup> Executive Order No. 230, July 22, 1987 entitled "Reorganizing the National Economic Development Authority". The Investment Coordination Committee was created under Section 6 of Executive Order No. 230.

<sup>103</sup> *Concurring and Dissenting Opinion of J. Brion in Technical Education and Skills Development Authority (TESDA) vs. COA*, 729 Phil 60, 87 (2014)

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the people and must be used prudently at all times with a view to prevent dissipation and waste.<sup>104</sup>

**Third element: Accused Salazar's gross inexcusable negligence caused undue injury to the Government**

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

In the case of *Alvarez v. People*,<sup>105</sup> the Supreme Court explained the concept of undue injury:

"The injury that Section 3(e) of Republic Act No. 3019 contemplates is actual damage as the term is understood under the Civil Code.

In *Llorente, Jr. v. Sandiganbayan*, the Court made this concept of undue injury very clear, saying:

Unlike in actions for torts, **undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of right has been established.** Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith, or gross inexcusable negligence constitutes the very act punished under this section. Thus, **it is required that the undue injury be specified, quantified, and proven to the point of moral certainty.**

In jurisprudence, "**undue injury**" is consistently interpreted as "actual damage." Undue has been defined as "more than necessary, not proper, or illegal;" and injury as "any wrong or damage done to another, either in his person, rights, reputation or property; that is, the invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

In turn, actual or compensatory damages of a person is defined by Art. 2199, Civil Code, as "such pecuniary loss suffered by him as he has duly proved." XXX

<sup>104</sup> Yap v. COA, G.R. No. 158562, April 23, 2010, 633 Phil 174, 188 (2010)

<sup>105</sup> G.R. No. 192591, July 30 2012.

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Fundamental in the law on damages is that one injured by a breach of contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. Actual pecuniary compensation is awarded as a general rule, except where the circumstances warrant the allowance of other kinds of damages. Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Furthermore, damages must not only be capable of proof, but must actually be proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury." (*Emphasis and underscoring supplied*)

The Libmanan-Cabusao Diversion Dam Project was eventually suspended and terminated. On 17 November 2011 A.M. Oreta received a letter from NIA Administrator Antonio S. Nangel after the company asked for updates regarding the project's status, thus:

Please be informed that at the time the contract was suspended, we intensely worked on the necessary documents needed by the Regional Development Council (RDC) of Region 5 to secure their favorable endorsement to National Economic Development Authority – Investment Coordinating Committee (NEDA-ICC). One of these is the updated Feasibility Study (FS) of the project which was submitted by NIA to NEDA Regional Office 5 last September 7, 2011. The additional economic analysis was submitted last October 17, 2011. On November 9, 2011, we received the letter dated November 4, 2011 of Atty. Romeo C. Escandor, Regional Director, NEDA 5, informing us that on their October 27, 2011 meeting, no consensus was achieved on the presented NEDA Regional Office (NRO) project evaluation report to RDC's Infrastructure Development Committee (IDC). We also received copy of the said project evaluation report. Contrary to NIA's submitted supplemental report, the IDC still recommended the electric pump system rather than gravity system.

xxx    xxx

NIA is making its full effort to refute the assessment of IDC in order to prove that the project is technically and economically feasible. At present, NIA uphold the suspension of the said contract. However, of almost two years time elapse in coordinating and working out on the requirements of RDC Region V, we have yet to get their endorsement to NEDA-ICC. Hence, as provided in Article 16, General Conditions of the Contract, we are giving the contractor its option to engage into a Mutual Termination of the Contract. (*Emphasis and underscoring supplied*)

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As seen from the letter, there were other requirements and/or documents needed to be submitted before securing NEDA-ICC's approval for the dam project and it appears that such were not secured at the time when accused Salazar was still the NIA Administrator. After issuing the Notice to Proceed with the project implementation, A.M. Oreta, pursuant to the contract, asked for the fifteen percent (15%) advance payment, which was amounted to ninety eight million five hundred forty-six thousand eight hundred sixty-four pesos and six centavos (PhP98,546,864.06),<sup>106</sup> to begin the construction. At this point, accused Salazar disbursed two (2) checks in favor of A.M. Oreta, each in the amount of forty-nine million two hundred seventy-three thousand four hundred thirty-two pesos and three centavos (PhP49,273,432.03), representing the fifteen percent (15%) advance payment even if the dam project still had no approval from NEDA-ICC. A.M. Oreta in turn, already spent the amount to buy and deploy the materials to be used and proceeded with the construction so by the time the project had to be suspended until its termination, the fifteen percent (15%) advance payment was already utilized. If at the outset, accused Salazar first ensured NEDA-ICC's approval for the project before issuing a Notice to Proceed with its implementation, the government would not have wasted the grand amount of ninety eight million five hundred forty-six thousand eight hundred sixty-four pesos and six centavos (PhP98,546,864.06). While it is true that A.M. Oreta posted a callable on demand performance bond in the amount of PhP105,116,655.00 to answer or guarantee the 15% advance payment, accused Salazar presented no evidence that NIA had proceeded against such bond to recover the advance payment.

From the foregoing discussion, accused Salazar's intent is immaterial since R.A. No. 3019 is a special penal law. The operative act of issuing a Notice to Proceed with the project despite the absence of the approval from NEDA-ICC, despite knowing that such approval was required, constituted gross inexcusable negligence which caused undue injury to the government in the amount of ninety eight million five hundred forty-six thousand eight hundred sixty-four pesos and six centavos (PhP98,546,864.06).

Accused Salazar cannot excuse himself from liability by claiming that a higher authority employed irresistible force or threat or intimidation was employed upon his person to fast track the project implementation. His claim that the *Memorandum* (dated 06 October 2008) constituted irresistible force and as something that he cannot just ignore since it was an order from the President, is clearly unfounded. Again, the President just instructed NIA to shorten the bidding process; no more, no less.

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<sup>106</sup> net amount



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He likewise cannot excuse himself from responsibility by saying that he just agreed with and depended on the recommendation of his subordinates. In *Lihaylihay v. People*,<sup>107</sup> the Supreme Court clarified that the ruling in *Arias v. Sandiganbayan* cannot be applied to exculpate the accused in view of the peculiar circumstances of the case which should have prompted them to exercise a higher degree of circumspection, and consequently, go beyond what their subordinates had prepared, to wit:

As held in the recent case of *Bacasmás v. Sandiganbayan*, when there are reasons for the heads of offices to further examine the documents in question, they cannot seek refuge by invoking the Arias doctrine:

Petitioners cannot hide behind our declaration in *Arias v. Sandiganbayan* charge just because they did not personally examine every single detail before they, as the final approving authorities, affixed their signatures to certain documents. The Court explained in that case that conspiracy was not adequately proven, contrary to the case at bar in which petitioners' unity of purpose and unity in the execution of an unlawful objective were sufficiently established. Also, unlike in *Arias*, where there were no reasons for the heads of offices to further examine each voucher in detail, petitioners herein, by virtue of the duty given to them by law as well as by rules and regulations, had the responsibility to examine each voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.

The powers and duties of the NIA Administrator can be found in R.A. No. 3601 or *An Act Granting the National Irrigation Administration*,<sup>108</sup> to wit:

Section 7. *Managing Head.* The **management of the NIA shall be vested in the Irrigation Administrator.**

Section 8. *Powers and duties of the Irrigation Administrator.* The Irrigation Administrator shall have the following powers and duties:

(a) **To direct and manage the affairs and business of the NIA, on behalf of the Board of Directors and subject to its control and supervision;**

(b) To sit in all meetings of the Board and participate in its deliberations, but without the right to vote;

<sup>107</sup> G.R. No. 191219, July 31, 2013.

<sup>108</sup> Sections 7 and 8 of R.A. No. 3601 or *An Act Granting the National Irrigation Administration*, Approved on 22 June 1963

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(c) To submit within sixty days after the close of each fiscal year an annual report, through the Board of Directors to the President of the Philippines;

(d) With the approval of the Board, to appoint and fix the number of such subordinate personnel as may be necessary for the proper discharge of the duties and functions of the NIA, and, with the approval of the Board, to remove, suspend, or otherwise discipline, for cause, any subordinate employee of the NIA; and

(e) To perform such other duties as may be assigned to him by the Board from time to time. (*Emphasis and underscoring supplied*)

As such, it cannot be said that accused Salazar's function as NIA Administrator is largely ministerial. As someone who had to manage the affairs and businesses of the agency, it is incumbent upon him to exercise a high degree of diligence, responsibility and discretion, in ensuring that NIA's ventures are in order.

Finally, accused Salazar argued that prior approval from NEDA-ICC to implement a project is no longer applicable because the threshold amount had been raised to one billion pesos (PhP1,000,000,000.00) and above on 16 November 2015. According to him, Article 22 of the Revised Penal Code on the retroactive effect of penal laws should be applicable in this case and be favorably applied to him. Thus, by retroactively applying the one billion pesos threshold (PhP1,000,000,000.00) to 2009, the project no longer requires a NEDA-ICC and its failure to comply does not make him liable for violation of R.A. No. 3019, Section 3(e).

Accused Salazar's defense was contradicted by witness Tungpalan's testimony during cross-examination<sup>109</sup> that the threshold amount at the time the project is presented to the ICC applies to said project and that a project that needed a prior ICC approval could have been exempted from it in the event of a threshold increase if said project has not been implemented:

ATTY. POCULAN:

Q: So we can say, Mr. Witness, that if this project was undertaken during or at that time that the amendment of the ICC was made in 2015, this would not have been covered by this revised guidelines?

A: Only if the project was not implemented, regardless of budget cost threshold if the project had started prior to ICC approval then the ICC simply note it, sir.

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<sup>109</sup> TSN, dated 07 November 2018, pp. 10-11.

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Q: What I mean to say is that, because this project was below 1 Billion so that in the year 2015 this project would not have needed the approval of the ICC?

A: The project was presented to ICC at that time the project threshold cost was 500 Million. So we believe that applies, sir.

Q: But, if it was in the year 2015 or thereafter, this will not apply?

A: When the threshold was increased to 2.5 Billion and the project was 500 Million and the project did not yet start, then that would be exempted from ICC, if it did not start, sir.

When the Libmanan-Cabusao Diversion Dam Project was presented to NEDA-ICC, the ICC guidelines and procedure provided for a 500 Million pesos threshold. The dam project had an approved budget of Php712,365,607.00 so it follows that it needed evaluation by the NEDA-ICC before its execution. But since NIA went ahead with its implementation despite the absence of the needed approval, the project is still exempt from the ICC approval notwithstanding that the threshold amount increased to one Billion pesos in 2015.

To note, Article 22 of the Revised Penal Code provides that “penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony...”. Accused Salazar is prosecuted for violation of R.A. No. 3019, section 3(e), **not** for disobeying NEDA-ICC guidelines and procedure. The NEDA-ICC guidelines and procedure are issuances by the executive department, and by no means statutes with penal sanctions hence, Article 22 of the Revised Penal Code is not applicable in this case. Thus, accused Salazar’s argument has no leg to stand on.

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.<sup>110</sup> The constitutional mandate of innocence prevails, unless the prosecution succeeds in proving by satisfactory evidence the guilt beyond reasonable doubt of the accused.<sup>111</sup> The totality of facts and evidence on record convinces the Court that the Prosecution was able to prove the guilt of accused Salazar beyond reasonable doubt for the violation of R.A. No. 3019, Section 3(e), as amended, as charged in *Information*. On the other hand, the Prosecution was not able to overcome the presumption of innocence afforded to accused Khan, since it failed to prove beyond reasonable doubt that the latter violated R.A. 3019, section 3(e), as amended, and thus cannot be convicted of the offense alleged in the *Information*.

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<sup>110</sup> PHIL. CONST. art III, §14(2).

<sup>111</sup> Reynaldo Baylon y Ramos v. People of the Philippines, G.R. No. 168627, July 2, 2010.

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**WHEREFORE**, premises considered, the Court renders judgment, as follows:


1. Carlos Somblingo Salazar is **GUILTY BEYOND REASONABLE DOUBT** for violation of Section 3(e) of Republic Act No. 3019, as amended.

Accordingly, the Court imposes an indeterminate penalty of **SIX (6) YEARS AND ONE (1) MONTH, as minimum, to EIGHT (8) YEARS, as maximum**, with perpetual disqualification to hold public office. As civil liability, he is ordered to indemnify the NIA the amount of ninety-eight million five hundred forty-six thousand eight hundred eighty-four pesos (Php98,546,884.00).


2. Ricardo S. Khan, Jr. is **NOT GUILTY** of the charge in the *Information* for failure of the Prosecution to prove his guilt beyond reasonable doubt. There being no act or omission on which civil liability may arise, no such liability may be adjudged against him.


Let the bail bond secured by accused Khan, Jr. for this case be released subject to the usual accounting and auditing procedures. The Hold Departure Order issued against him is ordered lifted and set aside.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

WE CONCUR:

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

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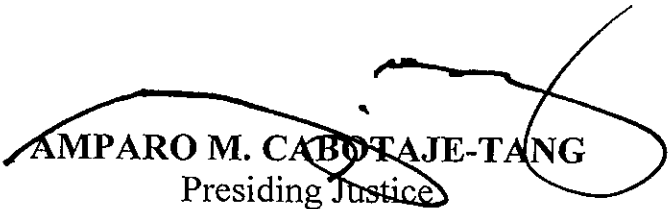
**ATTESTATION**

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 Decision.

  
**RAFAEL R. LAGOS**  
Chairperson

**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

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