



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

Sixth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ALTAGRACIA R. VILLAFLORES,
PANFILO O. GO,
LAMBERTO RAINIER L. FRANCO,
MANUEL M. GABISAN,
EPIFANIA Q. NERVES,
LILIA M. SABANDO,
EDWIN F. FALLER, and
ROGELIO V. YAN,
ALL OF THE MUNICIPALITY OF
HILONGOS, PROVINCE OF LEYTE
Accused.

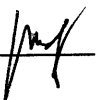
CRIM. CASE NO. 27478

For: Violation of Section 3(e) of
Republic Act No. 3019, as amended

P R E S E N T :

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

Promulgated:

January 24, 2023 

X- -X

DECISION

VIVERO, J.:

CHARGES

Accused **ALTAGRACIA R. VILLAFLORES** ("accused Villaflores"), **PANFILO O. GO** ("accused Go"), **LAMBERTO RAINIER L. FRANCO** ("accused Franco"), **MANUEL M. GABISAN** ("accused Gabisan"), **EPIFANIA Q. NERVES** ("accused Nerves"), **LILIA M. SABANDO** ("accused Sabando"), **EDWIN F. FALLER** ("accused Faller"), and **ROGELIO V. YAN** ("accused Yan"), are charged by the Office of the Ombudsman with violation of Section 3(e) of Republic Act No. 3019, as amended otherwise known as the Anti-Graft and Corrupt Practices Act. The accusatory portion of the *Information* reads—



CRIM CASE NO. 27478¹

That on or about the 15th day of June 1999, and for sometime subsequent thereto, at the Municipality of Hilongos, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **ALTAGRACIA R. VILLAFLORES, PANFILO O. GO, LAMBERTO RAINIER L. FRANCO,² MANUEL M. GABISAN, EPIFANIA Q. NERVES, LILIA M. SABANDO, EDWIN F. FALLER and ROGELIO V. YAN**, public officers being the Mayor, Vice Mayor, and members of the Sangguniang Bayan of the Municipality of Hilongos, Leyte, respectively in such capacity and committing the offense in relation to office, conniving and confederating together mutually helping with each other, with deliberate intent, with evident bad faith and manifest partiality, did then and there willfully, unlawfully, feloniously refuse to recognize the appointment of Trinidad C. Cabardo, as member of the *Sangguniang Bayan* of Hilongos, Leyte, *vice SB* member Teogenes Caing, who resigned, which appointment was issued by Governor Remedios L. Petilla, and Trinidad C. Cabardo was certified as member of good standing by Atty. Agnes Denavadera, National Secretariat Executive Director of Lakas-NUCD-UMDP, likewise indorsed to the position by Carmen Cari, the District Chairman of Lakas-NUCD-UMDP, and moreover nominated by then Vice President Gloria Macapagal Arroyo, the National Chairman of Lakas-NUCD-UMDP and consequently does not allow said appointee to sit and participate in its sessions as member, without any legal and valid ground, thus accused in the course of the performance of their official functions had caused damage and injury to Ms. Trinidad C. Cabardo by depriving her of said position and the salaries and allowances due her to the position of *Sangguniang Bayan* member in the amount of more or less P 600,000.00³ and interest of public service.

CONTRARY TO LAW.

THE ANTECEDENT FACTS

By reason of the filing of the instant case, under date of 20 February 2002, a Hold Departure Order was issued against all eight (8) accused barring them from leaving the country except upon approval of the Court.⁴ Thereafter, upon a finding of probable cause, the Court issued Warrants of Arrest against them on 30 May 2002. They voluntarily surrendered⁵ and posted cash bonds for their provisional

¹ *Rollo*, Volume 1, pp. 1-3.

² *Rollo*, Volume 1, pp. 60-61. Based on the Accused Personal Information Sheet signed by the accused, his name was spelled as Lambert Rainier **Flanco**.

³ *Rollo*, Volume 2, p. 2.

⁴ *Rollo*, Volume 1, p. 32.

⁵ *Rollo*, Volume 1, p. 71.

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liberty as evidenced by Official Receipts Number 1662862,⁶ 1662866,⁷ 1662865,⁸ 5545745,⁹ 15516438,¹⁰ 1662861,¹¹ 1662860,¹² and 13594174.¹³

Accused Go, Flanco, Yan,¹⁴ Nerves¹⁵ and Villaflor¹⁶ filed their Motions for Reinvestigation alleging among others that they were denied their respective rights to preliminary investigation, due process and speedy disposition of their cases. In view of the prosecution's conformity, the Court granted the accused's aforesaid Motions for Reinvestigation.¹⁷

Meanwhile, accused Sabando and Faller filed their Omnibus Motion for Suspension of Arraignment, Reinvestigation and Transfer of Venue.¹⁸

Accused Villaflor and Nerves, also filed their Motion to Quash¹⁹ based on the following grounds: 1) the officer who filed the Information has no authority to file the same; 2) the Information is fatally defective, null and void as there was no valid preliminary investigation conducted by the Office of the Ombudsman; 3) their right to due process and right to be informed of the nature and cause of accusations against them were violated; and 4) for lack of jurisdiction over their person.

Thereafter, the Office of the Special Prosecutor denied accuseds' Motions for Reinvestigation and affirmed its earlier finding of probable cause against all of them and consequently maintained the Information it earlier caused to be filed.²⁰ Similarly, the Motion for Reconsideration filed by accused Go, Flanco, and Yan was denied since the same was filed without leave of court from the *Sandiganbayan*, and the issues raised therein were mere rehash of the arguments already raised in their earlier Motion for Reinvestigation.²¹

Upon arraignment, with the assistance of their counsel, accused Go, Flanco, Gabisan, Sabando, Faller and Yan pleaded not guilty. Accused Villaflor and Nerves, however, moved for the postponement of their arraignment due to the pendency of their Motion to Quash.²² Curiously, records reveal that said motion was withdrawn by Atty. Carlos Astorga who appeared by way of special appearance for all the accused on 26 July 2002.²³

Subsequently, all of the accused except accused Villaflor filed an Urgent Omnibus Motion to: 1) set aside arraignment of accused Go, Flanco, Yan, Gabisan,

⁶ *Rollo*, Volume 1, p. 46.

⁷ *Rollo*, Volume 1, p. 50.

⁸ *Rollo*, Volume 1, p. 54.

⁹ *Rollo*, Volume 1, p. 58.

¹⁰ *Rollo*, Volume 1, p. 62.

¹¹ *Rollo*, Volume 1, p. 66.

¹² *Rollo*, Volume 1, p. 70.

¹³ *Rollo*, Volume 1, p. 150.

¹⁴ *Rollo*, Volume 1, pp. 85-98.

¹⁵ *Rollo*, Volume 1, pp. 239-252.

¹⁶ *Rollo*, Volume 1, pp. 254-265.

¹⁷ *Rollo*, Volume 1, pp. 222-223.

¹⁸ *Rollo*, Volume 1, pp. 117-121.

¹⁹ *Rollo*, Volume 1, pp. 123-130.

²⁰ *Rollo*, Volume 2, pp. 7-14.

²¹ *Rollo*, Volume 2, pp. 61-62.

²² *Rollo*, Volume 2, pp. 71-72.

²³ *Rollo*, Volume 2, p. 111.

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Sabando and Faller; and 2) to suspend proceedings on the ground of a prejudicial question and to strike off the records private prosecutor's Motion for Preventive Suspension.²⁴

On 10 March 2005, the Court denied the aforementioned Urgent Omnibus Motion insofar as it seeks to: 1) Set Aside Arraignment of Accused Go, Flanco, Yan, Sabando, Gabisan, and Faller and 2) to Strike Off the Records Private Prosecutor's Motion for Preventive Suspension of Said Accused, but partially granted the aforesaid motion insofar as it seeks to suspend the proceedings on the ground of prejudicial question. The Court ordered that the proceedings be suspended until after judgment shall have been rendered in Civil Case No. 357 for Mandamus with Prayer for Issuance of Mandatory Injunction with Damages pending with the Regional Trial Court of Hilongos, Leyte, Branch 18.²⁵

The Supplemental Motion to Quash Amended Information filed by accused Villafior was also denied by the Court.²⁶

On 4 April 2005, the prosecution filed their Motion for Reconsideration from the Court's Resolution dated 10 March 2005 insofar as it ordered the suspension of the proceedings due to the existence of a prejudicial question. They argued that the mandamus case has been mooted by the expiration of the term of office sought by private complainant on 30 June 2001. Instead, they prayed that the Mandamus case be consolidated with the present case.²⁷

Said motion was later denied by the Court ruling that the consolidation of the mandamus case with the present case is not legally feasible since the Court has no jurisdiction over the mandamus case.²⁸

After judgment on the mandamus case has been rendered, public prosecutors filed an Omnibus Motion before the Court and moved to: 1) lift the order for suspension of the proceedings in this case; and 2) set the arraignment of accused Villafior and Nerves since judgment has been rendered in the cases for Mandamus and Indirect Contempt based on the compromise agreement entered into by the parties. The prosecution also moved that the Motion for Suspension of accused Go, Flanco, Gabisan, Sabando, Faller and Yan be resolved.²⁹

As for the accused, they filed their Omnibus Motion for Determination of Probable Cause and/or Motion to Dismiss, claiming that private complainant did not suffer any injury due to accused's actions and that the civil cases have been dismissed.³⁰ Said motion was denied by the Court for lack of merit.³¹

Upon being arraigned, accused Villafior and Nerves, assisted by their counsel, pleaded not guilty to the offense for which they stand charged.³²

²⁴ *Rollo*, Volume 2, pp. 120-A-133.

²⁵ *Rollo*, Volume 2, pp. 367-370.

²⁶ *Rollo*, Volume 2, pp. 371-376.

²⁷ *Rollo*, Volume 2, pp. 384-389.

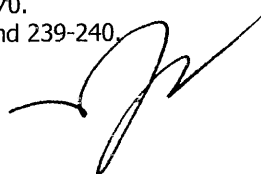
²⁸ *Rollo*, Volume 3, pp. 61-66.

²⁹ *Rollo*, Volume 3, pp. 87-91.

³⁰ *Rollo*, Volume 3, pp. 137-138.

³¹ *Rollo*, Volume 3, pp. 263-270.

³² *Rollo*, Volume 3, pp. 216 and 239-240.



Following this, the Court denied accused's Omnibus Motion for Determination of Probable Cause and/or Motion to Dismiss dated 14 March 2008 for lack of merit. The Court, on the other hand, granted the following motions of the prosecution: 1) Omnibus Motion dated 6 December 2007 praying for the lifting of the order suspending the proceedings in this case; and 2) Motion to suspend *pendente lite* accused Gabisan as vice-mayor and accused Faller as Barangay Captain of Lamak, Hilongos and ABC President, for a period of ninety (90) days from receipt of the Resolution. Only accused Gabisan and Faller were preventively suspended considering that the other accused no longer hold any elective or appointive position in the Municipality of Hilongos, Leyte.³³

Moreover, the Court ruled that the decision rendered in Civil Case No. 357 does not constitute a ground to dismiss the instant criminal case as the same was decided based on a compromise agreement. Notably, the RTC did not make any findings as to the validity or invalidity of the appointment of private complainant. Said decision therefore has not obliterated the basis of the present indictment, which is the alleged refusal of the accused to recognize the appointment of the private complainant as a member of the *Sangguniang Bayan*.³⁴

During the preliminary conference,³⁵ the parties stipulated on the following issues to be resolved:

For the prosecution:

- 1) Whether or not the appointment of Trinidad Cabardo (Ms. Cabardo) was legitimate and valid;
- 2) Whether or not Ms. Cabardo was denied by all the accused of her right to sit and serve as *Sangguniang Bayan* member during the period alleged in the *Information*;
- 3) Whether or not Ms. Cabardo suffered damage and injury for being deprived of her salaries and benefits as *Sangguniang Bayan* member; and
- 4) Whether or not the Municipality of Hilongos, Leyte was damaged and prejudiced by reason of it being deprived of the services of Ms. Cabardo's appointment as *Sangguniang Bayan* member.

For accused Go, *et al.*:

- 1) Whether or not the accused committed a violation of the Anti-graft and Corrupt Practices Action Section 3 (e), in not recognizing the appointment of Trinidad Cabardo.

The parties, however, failed to stipulate on the facts that would control the proceedings of this case.³⁶

Thereafter, trial on the merits ensued, with the prosecution presenting Jose Dagohoy Villaflores and Rebecca Flores as its witnesses.

³³ *Rollo*, Volume 3, pp. 216 and 239-240.

³⁴ *Rollo*, Volume 3, pp. 263-270.

³⁵ *Rollo*, Volume 3, pp. 344, 353, 359, and 376-376-J.

³⁶ *Rollo*, Volume 3, pp. 376-376-J.

EVIDENCE FOR THE PROSECUTION

1) **Jose Dagohoy Villaflores (Mr. Villaflores)**, former Secretary of the *Sangguniang Bayan* of Hilongos, Leyte.³⁷

Mr. Villaflores was the *Sangguniang Bayan* Secretary from 1992 until March 2016.³⁸ His duties and responsibilities include attending all sessions of the *Sangguniang Bayan* and recording its proceedings, and certifying resolutions, ordinances and Certificates of Attendance.³⁹

He recalled that during the 1998 elections, Dr. Teogenes Caing (Dr. Caing) was elected as one of the *Sangguniang Bayan* members of Hilongos, Leyte. However, sometime in April 1999, Dr. Caing resigned to assume the position of Rural Health Officer with the Department of Health. As a result, the rules on filling up vacancies was invoked by some applicants. Accordingly, Governor Remedios L. Petilla (Governor Petilla) of the Province of Leyte appointed Ms. Cabardo to replace Dr. Caing.⁴⁰

Mr. Villaflores affirmed that he issued a Certification dated 15 July 1999 stating among others that on 8 June 1999, Ms. Cabardo submitted her appointment papers and other pertinent documents as the new *Sangguniang Bayan* member of their municipality. In order to assume and discharge her duties and functions as a member of said legislative body, Ms. Cabardo attended the 22nd regular session of the *Sanggunian* held on 15 June 1999. However, the incumbent *Sangguniang Bayan* members did not recognize her appointment as a new member of the legislative body but merely as a visitor thereat. For this reason, Ms. Cabardo was not able to discharge her duties and functions as a *Sangguniang Bayan* member because her appointment as such was not recognized.⁴¹

During the 15 June 1999 session, the *Sangguniang Bayan* members were also informed by the Presiding Officer – accused Go, that he received a letter from the former Representative of the 5th district of Leyte Eriberto Loreto (Representative Loreto) claiming that he was still the District Chairperson of Lakas-NUCD and that he did not recommend Ms. Cabardo to be Dr. Caing's replacement.⁴²

Mr. Villaflores went on to state that Ms. Cabardo attended the succeeding *Sangguniang Bayan* sessions even after her appointment was questioned. Upon motion of Ms. Rebecca Flores (Ms. Flores), Ms. Cabardo was recognized merely as a visitor and her name was reflected as such in the minutes of the session until the Presiding Officer ruled that Ms. Cabardo's name as a visitor should be stricken out in the minutes given that their Internal Rules state that only those who were recognized and were able to speak during the session should be reflected in the minutes as visitors while the rest of the attendees should be considered as guests

³⁷ TSN dated 15 September 2015, p. 4.

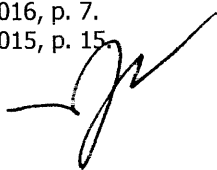
³⁸ TSN dated 20 September 2016, p. 17.

³⁹ TSN dated 15 September 2015, p. 6.

⁴⁰ TSN dated 15 September 2015, pp. 6-7.

⁴¹ TSN dated 20 September 2016, p. 7.

⁴² TSN dated 15 September 2015, p. 15.



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or observers. Nonetheless, Ms. Cabardo was not barred from attending the session should she opt to do so.⁴³

He also testified that Ms. Cabardo filed with the RTC of Hilongos, Leyte a Mandamus case questioning the actions of the *Sangguniang Bayan* of Hilongos in not recognizing her as one of its member.⁴⁴

Mr. Villaflores further stated that several *Sangguniang Bayan* members manifested that they were not questioning the appointment made by Governor Petilla but only the propriety of Ms. Cabardo's indorsement considering that she is allegedly not a Lakas member but a member of the Liberal during the last elections. As such she cannot be a member in good standing of the Lakas Party.⁴⁵ As for him, witness Villaflores stressed that there was nothing wrong in the appointment or in the process of appointment of Ms. Cabardo.⁴⁶

He also testified that there was a letter from Governor Petilla, in response to the letter of former Representative Loreto, wherein she stated that the person who indorsed Ms. Cabardo is the new District Chairperson of the Lakas Party, Carmen Cari. Governor Petilla also stated in her aforestated letter that as the Provincial Governor, she is the only authorized government official clothed with power to appoint the replacement of the subject *Sangguniang Bayan* member.⁴⁷

Villaflores confirmed that the *Sangguniang Bayan* members approved Resolution No. 99-98 directing the Municipal Treasurer not to grant Ms. Cabardo her salary until such time that the latter is recognized by the body in open session as a member.⁴⁸

Mr. Villaflores recounted that the reasons of the *Sangguniang Bayan* in not recognizing Ms. Cabardo's appointment can be summed up by the latter's lack of endorsement from the local Lakas Party and the propriety of her Certificate in Good Standing. Despite that, no protest was made against the appointment made by Governor Petilla. In fact, the *Sanggunian* recognized the Governor's authority and did not question her wisdom in appointing Ms. Cabardo. Rather, it was only the endorsement that was being questioned.⁴⁹

During the deliberations of the *Sangguniang Bayan* on Ms. Cabardo's appointment, one of the members pointed out that questions on the endorsements of Ms. Cabardo should be addressed to the one who issued the appointment. What is important is that Ms. Cabardo has the appointment.⁵⁰

In the course of his testimony, Villaflores identified the following documents: Certification signed by Atty. Agnes Devanadera (Exhibit A); Certificate of Nomination signed by Secretary General Gloria Macapagal Arroyo (Exhibit B); Endorsement signed by District Chairperson Carmen L. Cari (Exhibit C); Endorsement of Provincial Governor and Provincial Chairperson of Lakas in

⁴³ TSN dated 19 September 2016, pp. 10-11; TSN dated 20 September 2016, p. 32.

⁴⁴ TSN dated 20 September 2016, p. 18.

⁴⁵ TSN dated 20 September 2016, pp. 25-27.

⁴⁶ TSN dated 20 September 2016, p. 29.

⁴⁷ TSN dated 20 September 2016, pp. 28-29.

⁴⁸ TSN dated 18 October 2016, pp. 16-17.

⁴⁹ TSN dated 18 October 2016, pp. 23-24.

⁵⁰ TSN dated 18 October 2016, p. 24.

favor of Ms. Cabardo (Exhibit D); and Appointment signed by Governor Petilla (Exhibit E).⁵¹

He also admitted that he certified as xerox copy the following documents: Certification dated 15 July 1999 issued by Jose Villaflores (Exhibit O); Minutes of the 23rd Regular Session (Exhibit P); Resolution 99-98 (Exhibit H);⁵² and Minutes of the 1st Special Session dated 29 June 1999 (Exhibit I).⁵³

2. Rebecca Flores (Ms. Flores), former *Sangguniang Bayan* member of Hilongos, Leyte.

She confirmed Mr. Villaflores' testimony that Ms. Cabardo attended the *Sangguniang Bayan* session on 15 June 1999 as a visitor and brought with her, her appointment papers and other credentials.⁵⁴ In that session, Ms. Cabardo furnished the original copies of her appointment and other documents to accused Go while only photocopies were given to her.⁵⁵

On cross-examination, she affirmed that that she has no personal knowledge on how the documents presented by Ms. Cabardo were prepared nor executed.⁵⁶

During her testimony, she identified the following documents: Certification issued by Atty. Agnes Devanadera (Exhibit A); Certificate of Nomination issued by Gloria Macapagal Arroyo as Secretary General of Lakas (Exhibit B); Indorsement by Lakas-NUCD District Chairperson Carmen A. Cari endorsing Ms. Cabardo (Exhibit C); Indorsement by Governor Petilla as Provincial Chairperson of Lakas endorsing Ms. Cabardo (Exhibit D); Appointment signed by Governor Petilla appointing Ms. Cabardo as *Sangguniang Bayan* member effective 7 June 1999 (Exhibit E); and *Panunumpa sa Katungkulan* by Gng. Trinidad C. Cabardo na *itinalaga sa katungkulan bilang Sangguniang Bayan member ng Hilongos, Leyte* (Exhibit F).⁵⁷

On 8 September 2017, the prosecution offered the following exhibits⁵⁸ in evidence:

EXHIBIT	DESCRIPTION
"A"	Original Copy of the Certificate of Good Standing issued to Ms. Cabardo dated 21 May 1999 signed by Atty. Agnes V. S.T. Devanadera, Lakas Party National Secretariat Executive Director
"B"	Certificate of Nomination for the appointment of Ms. Cabardo as a member of the <i>Sangguniang Bayan</i> of Hilongos, Leyte dated 21 May 1999 signed by Gloria Macapagal-Arroyo, Lakas Party Secretary General
"C"	Endorsement letter of Carmen L. Cari for the appointment of Ms. Cabardo as <i>Sangguniang Bayan</i> member of Hilongos, Leyte <i>vice</i> Teogenes Caing dated 6 May 1999

⁵¹ TSN dated 15 September 2015, pp. 10-13.

⁵² TSN dated 15 September 2015, pp. 16-20.

⁵³ TSN dated 20 May 2016, p. 9.

⁵⁴ TSN dated 26 April 2017, p. 28.

⁵⁵ TSN dated 26 April 2017, pp. 29-31.

⁵⁶ TSN dated 26 April 2017, p. 38.

⁵⁷ TSN dated 26 April 2017, pp. 31-35.

⁵⁸ *Rollo*, Volume 4, pp. 252-259.



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"D"	Endorsement letter of Governor Remedios L. Petilla for the appointment of Ms. Trinidad C. Cabardo as <i>Sangguniang Bayan</i> member of Hilongos, Leyte vice Teogenes Caing dated 6 May 1999
"E"	Appointment of Ms. Trinidad C. Cabardo as member of the <i>Sangguniang Bayan</i> of the Municipality of Hilongos, Leyte effective 7 June 1999 dated 7 June 1999 signed by Governor Remedios L. Petilla
"F"	Copy of the <i>Panunumpa sa Katungkulan</i> of Trinidad C. Cabardo dated 7 June 1999
"G"	Certified True Xerox Copy from the original of the letter of <i>Sangguniang Bayan</i> Secretary Jose D. Villaflores to Vice Mayor Go dated 14 June 1999
"H"	Certified Xerox Copy from Original of <i>Sangguniang Bayan</i> Resolution No. 99-98 dated 22 June 1999 signed by Vice Mayor Go, <i>Sangguniang Bayan</i> Secretary Villaflores and Mayor Villaflor
"I" to "I-1 to I-4"	Certified Xerox Copy from Original of the Minutes of the First Special Session of the <i>Sangguniang Bayan</i> of the Municipality of Hilongos, Leyte dated 29 June 1999
"J"	Copy of Order for Civil Case No. H-357, <i>Trinidad Cabardo vs Altagracia Villaflor, et al.</i> dated 24 February 2000
"K"	Copy of Sheriff's Report for Civil Case No. H-357, <i>Trinidad Cabardo vs Altagracia Villaflor, et al. vs The Sangguniang Panlalawigan of Leyte, et al.</i> dated 25 May 2001
"L"	Copy of the Decision for O.P. Case No. 00-K-9299, <i>Altagracia Villaflor, et al. vs The Sangguniang Panlalawigan of Leyte, et al.</i> dated 25 May 2001
"O"	Certified Xerox Copy from the Original of the Certification that Trinidad C. Cabardo has not discharged her duties and functions as member of the legislative body signed by <i>Sangguniang Bayan</i> Secretary Jose D. Villaflores dated 15 July 1999
"P"	Copy of the Minutes of the Twenty-Third Regular Session of the <i>Sangguniang Bayan</i> of the Municipality of Hilongos, Leyte dated 22 June 1999
"CC"	Original copy of the Affidavit of Trinidad Cabardo executed on 19 January 2001

On 27 September 2017, all accused except accused Gabisan filed their Manifestation and Motion and Comment/Objection *Ad Cautelam* to the Prosecution's Formal Offer of Evidence.⁵⁹ On a later date, accused Gabisan filed his Comments and Objections to the Prosecution's Formal Offer of Evidence with Motion to Impose Appropriate Sanction upon the Prosecution.⁶⁰

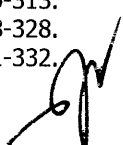
The Court, on 23 October 2017, resolved the prosecution's Formal Offer of Evidence⁶¹ as follows:

"This resolves the following: (1) Formal Offer of Evidence of the Prosecution filed on September 8, 2017; (2) Manifestation and

⁵⁹ *Rollo*, Volume 4, pp. 310-313.

⁶⁰ *Rollo*, Volume 4, pp. 318-328.

⁶¹ *Rollo*, Volume 4, pp. 331-332.



Motion and Comment/Objection *Ad Cautelam* to Prosecution's Formal Offer of Evidence filed by all accused, except accused Manuel Gabisan on September 28, 2017; and (3) Comment and Objections to the Prosecution's Formal Offer of Evidence with Motion to Impose Appropriate Sanction Upon the Prosecution filed by the accused Gabisan on October 20, 2017.

After due consideration of the above incident, the Court resolves as follows:

To ADMIT the following exhibits offered by the prosecution as its evidence: Exhs. "A", "B", "C", "D", "E", "F" and "I", and as part of the testimonies of the witnesses who testified thereon, over the objection of all the accused, considering that the Court shall take into account the admissibility and relevance thereof in evaluation of the evidence in the decision of the case on the merits.

To ADMIT the following exhibits offered by the prosecution, to wit: Exhs. "G", "H", "O", "P", the same having been likewise admitted by all the accused, except accused Gabisan, considering that the Court shall take into account the admissibility and relevance thereof in evaluation of the evidence in the decision of the case on the merits;

To DENY THE ADMISSION AND EXCLUDE the following exhibits offered by the prosecution, to wit: Exhs. "J", "K", "L" and "CC", the existence and due execution of which have not been established by the prosecution, nor testified to and identified by prosecution witnesses.

xxx

xxx"

All of the accused filed their Motions for Leave to File Demurrer to Evidence alleging that the prosecution's evidence is insufficient to establish their guilt.⁶² However, the aforesaid Motions were denied by the Court in its Resolution dated 15 March 2018.⁶³

Meanwhile, the prosecution filed its Motion for Reconsideration praying that the Court reconsiders its Order denying admission of prosecution's Exhibits "J", "K", "L" and requested the Court to admit the same or take judicial notice of their existence as part of the evidence for the Court to consider.⁶⁴ The same was denied without prejudice to the prosecution's right to tender excluded evidence.⁶⁵

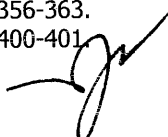
In the meantime, the Court granted the prosecution's *Ex-Parte* Motion and ordered the *suspension pendente lite* of accused Manuel Gabisan as Vice Mayor of Hilongos, Leyte and Edwin Faller as Brgy. Captain of Brgy. Lamak, Hilongos, Leyte

⁶² *Rollo*, Volume 4, pp. 339-344 and 345-350.

⁶³ *Rollo*, Volume 4, pp. 421-422.

⁶⁴ *Rollo*, Volume 4, pp. 356-363.

⁶⁵ *Rollo*, Volume 4, pp. 400-401.



and from any other public positions for a period of ninety (90) days from the receipt of the Court's Resolution.⁶⁶

EVIDENCE FOR THE DEFENSE

During trial, the defense presented accused Flanco, Gabisan and Faller as its witnesses:

1. **Lamberto Rainer L. Flanco (accused Flanco)**, former *Sangguniang Bayan* member of Hilongos, Leyte.

Accused Flanco testified that sometime in June 1999, he and the other *Sangguniang Bayan* members held in abeyance the appointment of Ms. Cabardo as one of its member because there was confusion brought about by the latter's appointment.⁶⁷ There was confusion because they were not informed that the former Representative, Atty. Loreto, has been replaced by Representative Carmen Cari as the new Lakas Party District Chairperson for the 5th district of Leyte. That is why, when Ms. Cabardo submitted her appointment papers to them, with the endorsement of Representative Cari as the new party District Chairperson, they deemed it wise to consult Atty. Loreto on the matter. They consulted Atty. Loreto on account of their belief that he is still their District Chairperson.⁶⁸

After their consultation, Atty. Loreto wrote to accused Go, who was the Vice Mayor at that time, protesting the appointment of Ms. Cabardo. Thereafter, Atty. Loreto, as the District Chairperson, brought the matter to the attention of the Lakas NUCD-UMDP's National Secretariat.⁶⁹ However, the higher officials of the Lakas Party, including Governor Petilla and the National Office, did not make known their position to the concerned *Sangguniang Bayan* members to resolve the issue nor were they instructed to allow Ms. Cabardo to take Dr. Caing's seat in the *Sangguniang Bayan*.⁷⁰

Further, he claimed that there was improper haste in the appointment of Ms. Cabardo. According to him, they were not consulted prior to her appointment even though they were the incumbent Lakas Party members in their locality and were holding the majority seats in the *Sangguniang Bayan* of Hilongos.⁷¹ Nevertheless, accused Flanco affirmed that Governor Petilla, as the Provincial Governor, has the authority to appoint Dr. Caing's replacement in the *Sangguniang Bayan*.⁷²

In addition, accused Flanco recalled that a *Writ of Preliminary Mandatory Injunction* was served to the *Sangguniang Bayan* members by virtue of the mandamus case filed by Ms. Cabardo ordering them to allow Ms. Cabardo to perform her functions as a *Sangguniang Bayan* member. The Writ was then referred to one of the committees in the *Sanggunian* but the same was eventually set-aside due to the number of cases filed by Ms. Cabardo against them.⁷³

⁶⁶ *Rollo*, Volume 4, pp. 402-403.

⁶⁷ *Rollo*, Volume 5, pp. 64-65.

⁶⁸ TSN dated 26 September 2018, pp. 6-10.

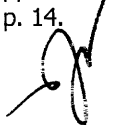
⁶⁹ TSN dated 26 September 2018, pp. 10-12.

⁷⁰ TSN dated 26 September 2018, pp. 37-39.

⁷¹ *Rollo*, Volume 5, pp. 66-67.

⁷² TSN dated 25 September 2018, pp. 11-12.

⁷³ TSN dated 25 September 2018, p. 14.



Consequently, Ms. Cabardo filed a case for indirect contempt against them for their refusal to obey the orders of the court to allow her to take her seat in the *Sangguniang Bayan*.⁷⁴

He also admitted that none of them filed a case in court questioning the appointment made by Governor Petilla in favor of Ms. Cabardo until the supposed end of term of office of Dr. Caing in 2001.⁷⁵

He identified the following: Certified List of Candidates in the 1998 elections (Exhibit 4); Ms. Cabardo's Certificate of Candidacy (Exhibit 6); Duplicate Original of the Certificate Canvass of Votes and Proclamation of the Winning Candidates (Exhibit 5); Affidavit of Desistance executed by Ms. Cabardo (Exhibit 2); Judicial Affidavit (Exhibit 7); Letter of Atty. Eriberto V. Loreto (Exhibit 8); and Affidavit of Undertaking (Exhibit 9).

2. Manuel M. Gabisan (accused Gabisan), Vice Mayor of Hilongos, Leyte.⁷⁶

Accused Gabisan corroborated the testimony of accused Flanco⁷⁷ with the only difference that when Carmen L. Cari made the endorsement of Ms. Cabardo, she was not yet a Representative of the 5th district of Leyte but merely the former Mayor of Baybay City, Leyte.⁷⁸

He also testified that during the 22nd Regular Session on 15 June 1999, he requested Ms. Cabardo to furnish them with Ms. Cari's designation or appointment papers as the new Lakas-NUCD's 5th District Chairperson *vice* Atty. Loreto. However, Ms. Cabardo failed to submit the same.⁷⁹

Like accused Flanco, he acknowledged Governor Petilla's prerogative to appoint a new member of the *Sangguniang Bayan* to replace the vacancy created by Dr. Caing. He affirmed that nobody questioned the authority and validity of the appointing powers of Governor Petilla in appointing Ms. Cabardo.⁸⁰

He further stated that despite having no proof that Atty. Loreto is still their District Chairperson, he still considered him as such because whenever their party has problems, they would always consult Atty. Loreto.⁸¹ Moreover, he admitted that he gave more importance to Atty. Loreto over and above Governor Petilla despite the former's term as representative having ended in 1998.⁸²

When recalled to the witness stand, accused Gabisan cleared that he and his co-accused filed a case against Governor Petilla questioning the validity of the appointment of Ms. Cabardo. He secured a Certification from RTC Branch 8 in Tacloban City signed by Aurorita Zeta Bangoy regarding Special Civil Action No. 2000-09-119 entitled "*Hon. Altagracia Villafior and the Sangguniang Bayan of Hilongos, Leyte versus Sangguniang Panlalawigan of Leyte and Trinidad Cabardo.*"

⁷⁴ TSN dated 26 September 2018, pp. 31-32.

⁷⁵ TSN dated 26 September 2018, pp. 35-36.

⁷⁶ *Rollo*, Volume 5, p. 130.

⁷⁷ *Rollo*, Volume 5, pp. 130-137.

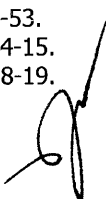
⁷⁸ TSN dated 9 January 2019, p. 23.

⁷⁹ TSN dated 9 January 2019, pp. 45-46.

⁸⁰ TSN dated 9 January 2019, pp. 52-53.

⁸¹ TSN dated 16 January 2019, pp. 14-15.

⁸² TSN dated 16 January 2019, pp. 18-19.



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The Certification provides that the records of the above-entitled case were among those lost/destroyed during the onslaught of Yolanda last 8 November 2013, but available records revealed that the case was dismissed during the time of Presiding Judge Hon. Salvador Y. Apurillo.⁸³

He identified the following documents: Certified List of Candidates in the 1998 local elections (Exhibit 4); Ms. Cabardo's Certificate of Candidacy (Exhibit 6); Duplicate Original of the Certificate Canvass of Votes and Proclamation of the Winning Candidates (Exhibit 5); Joint Counter Affidavit (Exhibit 1); Letter of Atty. Eriberto Loreto dated 14 June 1999 (Exhibit 8); Minutes of the 22nd Regular Session of the *Sangguniang Bayan* of the Municipality of Hilongos dated 15 June 1999 (Exhibit 9); Minutes of the 23rd Regular Session of the *Sangguniang Bayan* of the Municipality of Hilongos dated 22 June 1999 (Exhibit 10); Affidavit of Desistance (Exhibit 2); Affidavit of Undertaking (Exhibit 11); Compromise Agreement in Civil Case H-357 and H-377 (Exhibit 12); Certification from RTC Branch 8 in Tacloban City signed by Aurorita Zeta Bangoy regarding Special Civil Action No. 2000-09-119 (Exhibit 14); and Official Receipt (Exhibit 15);

3. **Edwin Faller (accused Faller)**, member of the *Sangguniang Bayan* of Hilongos, Leyte.⁸⁴

Accused Faller corroborated the testimonies of accused Flanco and Gabisan.⁸⁵ He also stressed that accused Villaflor, who was the Mayor of Hilongos, Leyte during the time material to this case, was not involved in the resolution or consideration of the issues regarding Ms. Cabardo's appointment.⁸⁶

During the 1998 local elections, both Ms. Cari And Ms. Cabardo ran under the Liberal Party, the former as Representative of the 5th district of Leyte while the latter as *Sangguniang Bayan* member.⁸⁷ In 1998, Atty. Loreto was the incumbent Representative until he was succeeded by his daughter Representative Nene Loreto-Go in the same year.⁸⁸

He enlightened the Court on how Ms. Cabardo was appointed. First, Ms. Cari, acting as the Lakas Party District Chairperson, endorsed Ms. Cabardo to the Lakas-NUCD's National Secretariat in the Central Office in Manila. Then the National Secretariat directed Governor Petilla to appoint Ms. Cabardo as Dr. Caing's replacement.⁸⁹

Accused Faller went on to state that from the time Ms. Cabardo first appeared before the *Sangguniang Bayan* until the supposed end of term of Dr. Caing in 2001, she was not allowed to sit as a member of the *Sanggunian*. Instead, she was considered merely as a visitor because of her failure to comply with their request to submit Ms. Cari's appointment papers as the new Lakas Party District Chairperson.⁹⁰ The request was prompted by their belief that the District

⁸³ TSN dated 6 March 2019, pp. 9-11.

⁸⁴ *Rollo*, Volume 5, p. 187.

⁸⁵ *Rollo*, Volume 5, pp. 186-192.

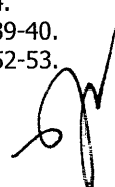
⁸⁶ *Rollo*, Volume 5, p. 188.

⁸⁷ TSN dated 24 September 2019, pp. 82-83.

⁸⁸ TSN dated 24 September 2019, p. 84.

⁸⁹ TSN dated 24 September 2019, pp. 39-40.

⁹⁰ TSN dated 24 September 2019, pp. 52-53.



Chairperson’s endorsement is one of the basic requirements before Ms. Cabardo could sit as one of the *Sangguniang Bayan* members.⁹¹

He also maintained that the appointment made by Governor Petilla and the nomination made by the Lakas Party national office are authentic. Nevertheless, Ms. Cabardo is not qualified for the position because she is not a member in good standing of their party.⁹² He believes that Governor Petilla should not have appointed Ms. Cabardo because the latter is not worthy for an appointment being a former Liberal Party member.

Further, he informed the Court that there was a conflict between Atty. Loreto and Governor Petilla to control the political power in their district. He affirmed that Atty. Loreto had no role in the *Sangguniang Bayan’s* decision to defer the confirmation of Ms. Cabardo.⁹³

He clarified that the alleged follow-ups made by them to the Lakas Party national office regarding Ms. Cabardo’s appointment were all coursed through Atty. Loreto. In fact, they did not directly communicate with the party’s national office in order to resolve the matter.⁹⁴

He identified the Joint Counter Affidavit executed on March 2001; Letter of Atty. Loreto (Exhibit 8); and Decision dated 31 July 2007 rendered by Branch 18 RTC of Hilongos Leyte (Exhibit 3).

On 24 October 2019, accused Go, Flanco, Nerves and Yan filed their Formal Offer of Evidence:⁹⁵

EXHIBIT	DESCRIPTION
"1"	Certified True Copy of the Joint Counter-Affidavit of all accused except Mayor Altagracia Villafior
"2"	Affidavit of Desistance of Trinidad Cabardo dated 3 April 2007
"3"	Certified True Copy of the Decision of RTC Hilongos, Leyte, Branch 18 dated 31 July 2007
"4"	Certified True Copy of Comelec’s List of Candidates for the Hilongos, Leyte 11 May 1998 election
"5"	Duplicate Original of the Certificate of Canvass of Votes and Proclamation of the Winning Candidates of the Municipal Offices of Hilongos, Leyte
"6"	Certificate of Candidacy of Trinidad Cabardo during the 11 May 1998 election
"7"	Judicial Affidavit of Lamberto Rainier L. Flanco
"8"	Letter of Atty. Eriberto V. Loreto dated 14 June 1999
"9"	Affidavit of Undertaking of all accused executed on 7 April 2007
"10"	Minutes of the 22 nd Regular Session of the <i>Sangguniang Bayan</i> of Hilongos, Leyte held on 15 June 1999

⁹¹ TSN dated 24 September 2019, pp. 15-16.
⁹² TSN dated 24 September 2019, pp. 40-41 and 97-98.
⁹³ TSN dated 24 September 2019, p. 87.
⁹⁴ TSN dated 24 September 2019, p. 93.
⁹⁵ *Rollo*, Volume 5, pp. 217-228.



Accused Gabisan, on the other hand, filed his Formal Offer of Documentary Exhibits as follows:⁹⁶

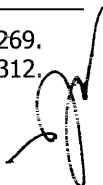
EXHIBIT	DESCRIPTION
"1"	Joint Counter-Affidavit of all accused except Mayor Altagracia Villafior
"2"	Affidavit of Desistance of Trinidad Cabardo dated 3 April 2007
"3"	Decision of the RTC Hilongos, Leyte, Branch 18 in Civil Case No. H-357 for Mandamus and Civil Case No. H-377 for Indirect Contempt
"4"	Certified True Copy of COMELEC's List of Candidates for the Hilongos, Leyte 11 May 1998 election
"5" "5-A"	Certificate of Canvass of Votes and Proclamation of Winning Candidates for Municipal Offices during the 11 May 1998 election Certification issued by Maria Juphie A. Cervantes, Election Officer III, dated 21 October 2019
"6"	Certificate of Candidacy of Trinidad Cabardo during the 11 May 1998 election
"8"	Letter of Atty. Eriberto V. Loreto dated 14 June 1999
"9"	Minutes of the 22 nd Regular Session of the <i>Sangguniang Bayan</i> of Hilongos, Leyte held on 15 June 1999
"10"	Minutes of the 23 rd Regular Session of the <i>Sangguniang Bayan</i> of Hilongos, Leyte held on 22 June 1999
"11"	Affidavit of Undertaking of all accused executed on 7 April 2007
"12"	Compromise Agreement executed by Private Complainant and all accused in Civil Case No. H-357 and Civil Case No. H-377
"13"	Official Receipt No. 5024434C dated 11 January 2019
"14"	Certification issued by Aurorita Zeta Bangoy, legal researcher II, O.I.C. Branch Clerk of Court of the RTC Branch 8, Tacloban City in the case entitled <i>Villafior and Sanggunian Bayan of Hilongos, Leyte v. Sanggunian Panlalawigan of Leyte and Trinidad Cabardo</i> in Special Civil Action No. 2000-09-119 for Prohibition with Prayer for TRO
"15"	Official Receipt No. 5109178 dated 22 February 2019

As for Accused Faller, he filed his Motion to Admit Formal Offer of Evidence with Profuse Apologies separately:⁹⁷

EXHIBIT	DESCRIPTION
"1"	Joint Counter-Affidavit of all accused except Mayor Altagracia Villafior
"2"	Affidavit of Desistance of Trinidad Cabardo dated 3 April 2007
"3"	Decision of the RTC Hilongos, Leyte, Branch 18 in Civil Case No. H-357 for Mandamus and Civil Case No. H-377 for Indirect Contempt

⁹⁶ *Rollo*, Volume 5, pp. 257-269.

⁹⁷ *Rollo*, Volume 5, pp. 303-312.



"4"	Certified True Copy of Comelec's List of Candidates for the Hilongos, Leyte 11 May 1998 election
"5"	Certificate of Canvass of Votes and Proclamation of Winning Candidates for Municipal Offices during the 11 May 1998 election
"6"	Certificate of Candidacy of Trinidad Cabardo during the 11 May 1998 election
"7"	Affidavit of Undertaking of all accused executed on 7 April 2007
"8"	Letter of Atty. Eriberto V. Loreto dated 14 June 1999
"12"	Compromise Agreement executed by Private Complainant and all accused in Civil Case No. H-357 and Civil Case No. H-377
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"15"	Official Receipt No. 5109178 dated 22 February 2019

Thereafter, the prosecution filed their Consolidated Comment / Objection to the Formal Offer of Evidence on 26 December 2019.⁹⁸

On 10 January 2020, the Court resolved accused's Formal Offer of Evidence⁹⁹ as follows:

"To ADMIT the following exhibits offered by accused Gabisan, to wit: Exhibits "1", "2", "3", "4", "5", "6", "8", "9", and "10", over the objection of the Prosecution to the purposes for which they are offered, considering that the objection of the Prosecution refer more to the probative value than their admissibility;

To ADMIT the following exhibits offered by accused Gabisan, to wit: Exhibits "5-A", "11", "11-A", "12", "13", "14", and "15", there being no comment / objection by the Prosecution;

To GRANT the marking of the following offered by accused Gabisan, to wit: Exhibit "5-A", there being no comment/objection thereto by the Prosecution, but to let the provisional marking REMAIN on his Exhibit "5";

To ADMIT the following exhibits offered by accused Go, et al., to wit: Exhibits "1", "2", "3", "4", "5", "6", "8", "9", and "10" over the objection of the Prosecution to the purposes for which they are offered, considering that the objection of the Prosecution refer more to the probative value than their admissibility;

⁹⁸ *Rollo*, Volume 5, pp. 329-343.

⁹⁹ *Rollo*, Volume 5, pp. 344-346.

To note that Exhibit "7" offered by accused Go, et al. which pertains to the Judicial Affidavit of accused Flanco has already been offered as his direct testimony; and

To ADMIT the following the exhibits offered by accused Faller, to wit: Exhibits "1", "2", "3", "4", "5", "6", "7", and "8", over the objection of the Prosecution to the purposes for which they are offered, considering that the objection of the Prosecution refer more to the probative value than their admissibility;"

The prosecution filed its Formal Offer of Rebuttal Evidence, as follows:¹⁰⁰

EXHIBIT	DESCRIPTION
"DD- Rebuttal"	Certified True Copy of the Writ of Preliminary Injunction issued by RTC of Hilongos, Leyte, Branch 18 in Civil Case H-357

In addition, the prosecution filed its Manifestation and Formal Offer of Rebuttal Evidence and offered Exhibits "DD", "J", "K", and "L" in evidence on rebuttal.¹⁰¹ On 1 December 2021, the Court admitted Exhibit DD but denied Exhibits "J", "K", and "L".¹⁰²

Accused Villaflor and Sabando did not file their respective Formal Offer of Evidence despite receipt of the Minute Resolution of the Court dated 17 December 2020, therefore, accused Villaflor and Sabando were deemed to have waived their right to file their respective Formal Offer of Evidence and were deemed to have rested their case with no documentary evidence offered.¹⁰³

RULING:

The settled rule is that convictions in criminal actions demand proof beyond reasonable doubt. This rule places upon the prosecution the burden of establishing the guilt of an accused beyond reasonable doubt, relying on the strength of its own evidence, and not banking on the weakness of the defense of the accused. Indeed, the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." Undoubtedly, it is the aforesaid constitutional presumption of innocence that lays such burden upon the prosecution.¹⁰⁴

Based on the parties' stipulations and submissions, the issue to be resolved in this case boils down to whether or not all of the accused are guilty of having violated Section 3(e) of R.A. 3019, by refusing to recognize Ms. Cabardo's appointment as member of the *Sangguniang Bayan* of Hilongos, Leyte and consequently depriving her of the perquisites attached to said position, including

¹⁰⁰ *Rollo*, Volume 5, pp. 373-377.

¹⁰¹ *Rollo*, Volume 5, pp. 399-402.

¹⁰² *Rollo*, Volume 5, pp. 373-377 and 421-423.

¹⁰³ *Rollo*, Volume 5, p. 389.

¹⁰⁴ *Villarosa v. People*, G.R. Nos. 233155-63, 23 June 2020.

the salaries and allowances due her as a *Sangguniang Bayan* member in the amount of more or less P 600,000.00.

In *Cabrera, et al. v. The Honorable Sandiganbayan*,¹⁰⁵ the Supreme Court held that in order to hold a person liable under Section 3(e) of R.A. 3019, the following elements must concur:

- (1) The accused must be a public officer discharging administrative, judicial, or official functions;
- (2) He must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and
- (3) 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.

Except as to accused Villaflor, the prosecution sufficiently proved the existence of all the essential elements of the crime.

First Element

The first element was duly established in this case. As borne by the records, all eight accused were public officers. Accused Villaflor was the Municipal Mayor while accused Go, Flanco, Gabisan, Nerves, Sabando, Faller and Yan were all members of the *Sangguniang Bayan* of Hilongos, Leyte at the time of the alleged commission of the crime. It was likewise proven beyond reasonable doubt that accused's alleged refusal to recognize the appointment of Ms. Cabardo was done in the discharge of their official functions.

The question now lies on the existence of the second and third elements.

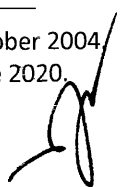
Second Element

Under the second element, the crime may be committed through manifest partiality, evident bad faith or gross inexcusable negligence. In the case of *Villarosa v. People*,¹⁰⁶ the Supreme Court held:

"[S]ection 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive

¹⁰⁵ G.R. Nos. 162314-17, 25 October 2004

¹⁰⁶ G.R. Nos. 233155-63, 23 June 2020.



design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected."

In *Martel, et al., v. People*,¹⁰⁷ the Supreme Court extensively discussed the nature of evident bad faith and gross inexcusable negligence:

'The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. It is not enough that the accused violated a provision of law or that the provision of law violated is clear, unmistakable and elementary. To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.

As explained in *Sistoza*, "mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest."

To stress anew, evident bad faith "contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes." It connotes "a **manifest deliberate intent on the part of the accused to do wrong or to cause damage**. It contemplates a breach of sworn duty through some perverse motive or ill will."

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was "spurred by any corrupt motive." Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."

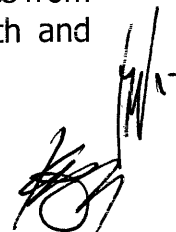
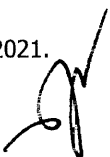
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The commission of Section 3(e) of R.A. 3019 through **gross inexcusable negligence requires more than simple negligence**. The negligence committed must be both gross and inexcusable, characterized by the want of even slight care, wherein the accused was consciously indifferent as to the compliance with his or her duty as a public officer. More than committing a breach of a legal duty, it is necessary that in committing the said breach, the public officer was inattentive, thoughtless, and careless.

It must be stressed that gross inexcusable negligence varies from evident bad faith and manifest partiality. Evident bad faith and

¹⁰⁷ G.R. Nos. 224720-23, 02 February 2021.



manifest partiality are acts committed through *dolo*, while gross inexcusable negligence is committed by means of culpa.

Felonies committed by means of *dolo* or deceit are those performed with deliberate intent. On the other hand, felonies committed by means of culpa are those performed with imprudence, negligence, lack of foresight, or lack of skill. In intentional felonies, the act or omission of the offender is malicious. However, in culpable felonies, the act or omission of the offender need not be malicious. The wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

Gross inexcusable negligence under Section 3(e) of R.A. 3019, a culpable felony, does not require fraudulent intent or ill-will. A public officer is guilty of gross inexcusable negligence when there is a breach of duty that is committed flagrantly, palpably, and with willful indifference. Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under Section 3(e) regardless of whether such breach of duty was done with malicious intent.

xxx

xxx(Emphasis Supplied)

Meanwhile, in explaining manifest partiality, the Supreme held:

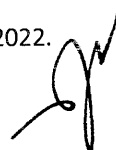
"There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are. [M]anifest partiality is in the nature of *dolo*. Hence, it must be proven that the offender had malicious and deliberate intent to bestow unwarranted partiality in favor of another."¹⁰⁸

All of the accused contend that they did not act with manifest partiality, evident bad faith, nor gross negligence when they refused to recognize the appointment of Ms. Cabardo and ordered the withholding of her salary. They insist that they acted under a well-founded belief that such appointment was flawed and not in accordance with law.

In their Memorandum, accused Go, Flanco, Nerves and Yan argued as follows:

"First, the Local Government Code requires that whoever the Governor shall appoint as new member by reason of a permanent vacancy in the *Sangguniang Bayan* must come from the same political party under which the previous *Sangguniang Bayan* member who permanently vacated his or her seat belonged to. As proven by Cabardo's Certificate of Candidacy during the May 11, 1998 election, she ran under the Liberal Party while the person she was replacing, Teogenes Caing, ran under the Lakas NUCD-UMDP Party. Not only

¹⁰⁸ *People v. Gelacio*, G.R. Nos. 250951 and 250958, 10 August 2022.



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that, Cabardo campaigned hard against all accused for being members of the Lakas NUCD-UMDP Party. All accused were only informed of Cabardo's membership in Lakas NUCD-UMDP around the time of her appointment on June 7, 1999.

Second, the appointment papers of Cabardo were doubtful. One of the documents she presented was a Certificate of Good Standing by Agnes Devanadera. However, Cabardo only became a member less than a year prior to her appointment or on 25 September 1998 without any of the accused having been informed of such membership, nor have Cabardo participated in any of the Lakas NUCD-UMDP Party's activities since her membership.

Third, a day before the 22nd session of the *Sangguniang Bayan*, accused Go received a letter from then District Chairman Eriberto V. Loreto saying that he is protesting Cabardo's appointment because he is still the District Chairman for Lakas NUCD-UMDP Party and he has not yet endorsed Cabardo's appointment.

Fourth, having received Loreto's letter, they believed that he was still District Chairman. However, one of Cabardo's appointment papers was an Endorsement from Carmen Cari claiming to be the new District Chairman of the Lakas NUCD-UMDP Party. What made it more suspicious was the fact that even Carmen Cari ran as a member of the Liberal Party during the 1998 local elections. Thus, accused Gabisan requested Cabardo to furnish the body with proof of the appointment of Carmen Cari as new District Chairman, to which she [Cabardo] agreed. Still, Cabardo never gave such requested proof to any of the accused.

Fifth, as admitted in open court by Mr. Jose D. Villaflores, the prosecution's own witness, original copies supporting her appointment were not submitted by complainant Trinidad Cabardo to the *Sangguniang Bayan* xxx"¹⁰⁹

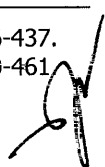
Accused Gabisan further claimed that there were valid and reasonable grounds to doubt the validity of Ms. Cabardo's documents. According to him, the *Sangguniang Bayan* doubted Cabardo's claim that she was validly appointed considering that she ran under the Liberal Party during the 1998 elections, while, Dr. Caing ran under the Lakas NUCD-UMDP Party.¹¹⁰ Considering that Ms. Cabardo and Dr. Caing belonged to different political parties during the 1998 national elections, under the law, the former cannot be appointed as the latter's replacement.

The Court is not convinced.

The records show that when Dr. Caing resigned from his position as *Sangguniang Bayan* member, a permanent vacancy in said legislative body occurred. Accordingly, Governor Petilla of the Province of Leyte appointed Ms.

¹⁰⁹ *Rollo*, Volume 5, pp. 436-437.

¹¹⁰ *Rollo*, Volume 5, pp. 460-461.



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Cabardo pursuant to the Rules on Vacancies in the *Sanggunian* under Section 45 of R.A. 7160. Yet, inspite of the appointment signed by Governor Petilla, the other incumbent members of the *Sanggunian* refused to recognize Ms. Cabardo as a member. Aside from the appointment papers, Ms. Cabardo presented to the *Sangguniang Bayan* the following documents: (i) endorsements of Ms. Carmen Cari as District Chairperson and Governor Petilla as the incumbent Governor and Lakas Party member; (ii) Certificate of Good Standing issued by Lakas Party Executive Director Atty. Agnes Devanadera; and (iii) Certificate of Nomination signed by Lakas Party Secretary General Gloria Macapagal-Arroyo who concurrently held the position of Vice President of the Philippines at that time. All the foregoing credentials notwithstanding, the members of the *Sanggunian Bayan* were unconvinced and remained adamant.

The pertinent provisions of R.A. No. 7160 otherwise known as the Local Government Code of the Philippines provides:

"SECTION 45. Permanent Vacancies in the *Sanggunian*. – (a) Permanent vacancies in the *sanggunian* where automatic succession provided above do not apply shall be filled by appointment in the following manner:

(1) The President, through the Executive Secretary, in the case of the *sangguniang panlalawigan* and the *sangguniang panlungsod* of highly urbanized cities and independent component cities;

(2) The **governor**, in the case of the *sangguniang panlungsod* of component cities and the ***sangguniang bayan***;

(3) The city or municipal mayor, in the case of *sangguniang barangay*, upon recommendation of the *sangguniang barangay* concerned.

(b) Except for the *sangguniang barangay*, only the nominee of the political party under which the *sanggunian* member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the *sanggunian* shall be appointed in the manner hereinabove provided. The appointee shall come from the **same political party** as that of the *sanggunian* member who caused the vacancy and shall serve the unexpired term of the vacant office. In the appointment herein mentioned, **a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions *sine qua non***, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefor.

xxx

xxx (Emphasis supplied)"

Consistent thereto, Article 83, Rule XIV of the Implementing Rules and Regulations of R.A. 7160 states:



“(c) Permanent vacancies in the *sanggunian* –

(1) Permanent vacancies not covered by automatic succession - Permanent vacancies in the *sanggunian* where automatic successions do not apply shall be filled by appointment in the following manner:

- i. By the President, through the Executive Secretary, in the case of the *sangguniang panlalawigan*, the *sangguniang panlungsod* of highly urbanized cities and independent component cities, and the *sangguniang bayan* of municipalities within MMA and other metropolitan political subdivisions as may be created by law;
- ii. By the **governor**, in the case of the *sangguniang panlungsod* of component cities and the ***sangguniang bayan***;
- iii. By the city or municipal mayor, in the case of *sangguniang barangay*, upon recommendation of the *sangguniang barangay* concerned.

(2) Eligible appointee –

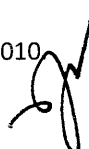
- i. Except for the *sangguniang barangay*, only the nominee of the political party under which the *sanggunian* member concerned has been elected and whose elevation to the position next higher in rank created the last vacancy in the *sanggunian* shall be appointed in the manner provided in this Article. The appointee shall come from the **same political party** as that of the *sanggunian* member who caused the vacancy and shall serve the unexpired term of the vacant office.
- ii. For appointments made in accordance with the immediately preceding subparagraph (i), the appointing authority shall see to it that **a certificate of membership of the appointee and nomination from the highest official of the political party concerned are conditions sine qua non**, and any appointment without such certification and nomination shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefor.

xxx

xxx (Emphasis Supplied)”

Based on the foregoing, it is clear that the law provides for certain conditions for the rule of succession contemplated thereunder to apply: First, the appointee shall come from the same political party as that of the *Sanggunian* member who caused the last vacancy; and Second, the appointee must have a nomination and a Certificate of Membership from the highest official of the political party concerned.¹¹¹

¹¹¹ *Damasen v. Tumamao*, G.R. No. 173165, 17 February 2010



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Records show that Ms. Cabardo complied with the above two (2) conditions. The Certificate of Good Standing, signed by then Vice President Arroyo, shows that she was a member of the Lakas Party – the same political party as that of Dr. Caing who caused the last vacancy in the *Sanggunian*. Moreover, Ms. Cabardo was likewise armed with a Certificate of Nomination signed by Executive Director Atty. Devanadera.

Notwithstanding said documents, the *Sangguniang Bayan* members still refused to recognize Ms. Cabardo's appointment. In fact, when Ms. Cabardo attended the *Sangguniang Bayan* session on 15 June 1999, she was merely recognized as a visitor.¹¹² More, the *Sanggunian* passed Resolution No. 99-98 directing the Municipal Treasurer of Hilongos, Leyte not to grant Ms. Cabardo her salary as a *Sangguniang Bayan* member until such time that Ms. Cabardo is recognized and accepted by said legislative body in open session as one of its members.¹¹³

On top of that, the *Sanggunian* passed Resolution No. 99-102 declaring the position vacated by Dr. Caing vacant or not to be filled-up.¹¹⁴

These acts of the accused prompted Ms. Cabardo to file a mandamus case against all of them wherein a Writ of Preliminary Injunction was issued by the Regional Trial Court in Hilongos, Leyte, Branch 18, ordering the accused to allow Ms. Cabardo to perform her functions as a *Sangguniang Bayan* member. Again, notwithstanding the issuance of said Writ, the accused refused to recognize her appointment.

Accused Flanco even admitted during his cross-examination that they did not act upon the Writ of Preliminary Mandatory Injunction served to them, viz:

"Q: In your judicial affidavit, in question Answer 30, do you remember that?

A: Yes, sir.

Q: In fact, it was filed with the Branch 18 of Hilongos, Leyte. Do you remember that?

A: Yes, sir.

Q: Do you remember the judge?

A: Yes, sir.

Q: If I show you, in the course of that action, do you remember if a writ of injunction was issued by the Judge?

xxx

xxx

¹¹² Exhibit "10" Go, *et al.*, pp. 4-5; and Exhibit "9" Gabisan.

¹¹³ Exhibit "10" Gabisan p. 8.

¹¹⁴ Exhibit "I-3".

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A: Yes, sir.

Q: And it was served to you by the Branch Sheriff?

xxx

xxx

A: I remember, sir.

Q: You remember, yes. You were served?

A: By the, I think by the Sheriff.

Q: Now, can you tell the Honorable Court, did you follow the Order contained in that writ?

A: I remember that time, because a *Sanggunian Bayan, hindi lang isa ang kwan*, as a whole, *i-pending tapos inano namin sa committee. Parang sandali*, referred it to the committee.

Q: Now Mr. witness, you said you referred this to whom?

A: One of the members of the committee.

Q: Compose of whom?

A: I cannot remember, sir.

Q: Now, your term of office is from 1998 to 2001?

A: Yes, sir.

xxx

xxx

Q: Now, until 2001, did you have occasion to follow the orders of this writ?

ATTY AVILAR:

The question is vague, Your Honors.

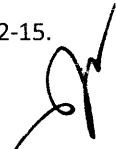
PROSECUTOR DAYCO:

Q: Until 2001, do you refuse to follow this writ?

A: As far as I remember, we referred it to the committee then *parang natandaan ko ang daming kaso*, your Honors *na pinafile ni Mrs. Cabardo parang itong writ na-set aside.*¹¹⁵

Clearly, the members of the *Sanggunian* deliberately ignored the Court's express directive as contained in the subject writ to allow Ms. Cabardo to perform

¹¹⁵ TSN dated 25 September 2018, pp. 12-15.



her functions as a *Sangguniang Bayan* member. Despite having been served with the writ, the *Sangguniang bayan* members did not comply therewith.

Accused's actions, taken together, show that their refusal is hinged heavily on Ms. Cabardo's previous political affiliation. In fact, accused Faller admitted that he believes that Ms. Cabardo is not qualified for the position simply because she is a former Liberal Party member and thus cannot be a member in good standing of the Lakas Party. Verily, aside from accused's gratuitous allegations, no other evidence was presented to show valid and justifiable grounds for their refusal to recognize the appointment.

As politicians, the accused cannot feign ignorance that in our country's current political setting, the practice of turncoatism is not uncommon. Politicians jump to the more dominant party right before and after the elections. It appears that such practice had been the norm. As was seen in past elections, several politicians unabashedly abandon their old political parties, and affiliated themselves with the party of the President who won the most recent election.

In the past, such practice was not only frowned upon, it was expressly declared as unconstitutional. Under Section 10, Article XII(C) of the 1973 Constitution, candidates for elections cannot easily change their political party affiliation, *viz*:

"No elective public officer may change his political affiliation during his term of office, and no candidate for any elective office may change his political party affiliation within six months immediately preceding or following an election, unless otherwise provided by law."

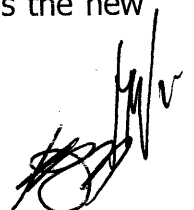
In addition, *Batas Pambansa Blg. 52*¹¹⁶ declared the above prohibition as special disqualification for the election of local officials.

Unfortunately, the framers of the 1987 Constitution deemed it wise to do away with that same prohibition mentioned above and accordingly, statutes were amended to allow political turncoatism. The Court is thus surprised with the uncharacteristic disbelief of the accused when they were informed that Ms. Cabardo, who ran as a Liberal was now among their ranks.

It is well settled that the discretion of accepting members to a political party is a right and a privilege of the party itself, a purely internal matter, which this Court cannot look into, let alone pass judgment on. The same rule applies to the issuance of Certificates of Nomination and Good Standing which the party itself is in the best position to determine. It is not the province of this Court to decide whether Ms. Cabardo should or should not have been endorsed by their local party nor can the Court decide on whether she is a member in good standing. These matters, being internal in nature, are left to the party's discretion which the Court shall not disturb.

Another defense advanced by the accused is the endorsement of the local party. They questioned the endorsement made by Ms. Carmen Cari, as the new

¹¹⁶ An Act Governing the Election of Local Government Official.



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District Chairperson, in favor of Ms. Cabardo. It bears stressing that such endorsement is not even a condition before the rule on succession in the *Sanggunian Bayan* may come into play as provided in Section 45(b) of R.A. 7160.

As mentioned above, the rule of succession under Section 45(b) of R.A. 7160 and Article 83, Rule XIV of its IRR shall apply provided the following conditions are met: first, the appointee is a member of the same political party as that of the *Sanggunian* member who caused the last vacancy; and second, the appointee must have a nomination and a Certificate of Membership. Thus, the questioned endorsement of Ms. Cari is not a mandatory requirement before the rule of succession applies. Even without such endorsement, Ms. Cabardo may nonetheless sit in the *Sanggunian* as Dr. Caing's replacement having conformed with the conditions set in Section 45(b) of R.A. 7160.

Based on the foregoing, it cannot be said that accused's actions were merely products of bad judgment. Indeed, accused's actions could well nigh be seen as characteristic of evident bad faith. In passing Resolution Nos. 99-98 and 99-102 and ignoring the Writ of Preliminary Injunction, there was manifest and deliberate intent on the part of the accused to cause damage. They were spurred by ill and corrupt motive in refusing to recognize Ms. Cabardo's appointment.

Third Element

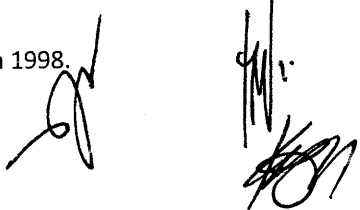
In order to hold a person liable under Section 3(e) of R.A. 3019 there must be a showing that the public officer caused undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a 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.¹¹⁷

Here, the defense argued that no undue injury was caused to the private party – Ms. Cabardo, as shown on her Affidavit of Desistance. In said Affidavit, Ms. Cabardo claimed that she never suffered any injury, material or otherwise nor irreparable injury, *viz*:

- "3. After due deliberation, I have come to realize that all the above mentioned cases were lodged and initiated by me by reason of my misappreciation of facts;
4. I know for a fact that there was no basis at all for my filing of the abovementioned cases;
5. I honestly believe and know for a fact, that I have never suffered any injury, material or otherwise nor irreparable damage whatsoever as a result of the filing of said cases; xxx"

¹¹⁷ *Llorente v. Sandiganbayan*, G.R. No. 122166, 11 March 1998.



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In contrast, the prosecution claims that the accused caused damage and injury to Ms. Cabardo in the amount of more or less PhP 600,000 and interest of public service, *viz:*

"[T]hus accused in the course of the performance of their official functions had caused damage and injury to Ms. Trinidad C. Cabardo by depriving her of said position and the salaries and allowances due her to the position of *Sangguniang Bayan* member in the amount of more or less P 600,000.00¹¹⁸ and interest of public service."

We agree with the prosecution.

It is settled that affidavits of desistance are not reliable and deserves only scant attention. In *People v. Lamsen*,¹¹⁹ the Supreme Court ruled:

"Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed. The unreliable character of the affidavit of recantation executed by a complaining witness is also shown by the incredulity of the fact that after going through the burdensome process of reporting to and/or having the accused arrested by the law enforcers, executing a criminal complaint-affidavit against the accused, attending trial and testifying against the accused, the said complaining witness would later on declare that all the foregoing is actually a farce and the truth is now what he says it to be in his affidavit of recantation. And in situations, like the instant case, where testimony is recanted by an affidavit subsequently executed by the recanting witness, we are properly guided by the well-settled rules that an affidavit is hearsay unless the affiant is presented on the witness stand and that affidavits taken *ex-parte* are generally considered inferior to the testimony given in open court."

Consistent with the foregoing, Ms. Cabardo's affidavit of desistance should be looked upon with disfavor. Such affidavits are unreliable. It is incredible that she was impelled to file three cases against all of the accused, i.e. mandamus case, indirect contempt, and violation of R.A. 3019, by her misapprehension of facts. Her belated recantation fails to cast doubt as to the truth and veracity of the

¹¹⁸ *Rollo*, Volume 2, p. 2.

¹¹⁹ G.R. No. 198338, 13 November 2013.



testimonies and records as a whole. Said affidavit should be seen as nothing but a last-minute attempt to protect the accused.

On the contrary, the testimonies of the prosecution witnesses as well as the minutes of the *Sangguniang Bayan* sessions show that Ms. Cabardo was deprived of the salaries and benefits of a *Sangguniang Bayan* member. As a result of accused's refusal to recognize her appointment, she was unjustifiably prevented from performing the functions of a *Sangguniang Bayan* member and was deprived of her chance to serve her constituents and advance her party's platforms.

**Except for accused Villafior,
all of the accused's acts show
that they were unified in
refusing to recognize Ms.
Cabardo's appointment and
depriving her of the position
and salaries due her.**

Based on records, the acts of accused Go, Flanco, Gabisan, Nerves, Sabando, Faller, and Yan do not only show evident bad faith, but taken together, also prove that there was conspiracy in refusing to recognize Ms. Cabardo's appointment as a *Sangguniang Bayan* member.

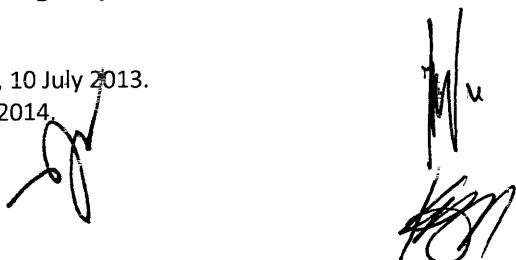
A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven. Direct proof is not essential to show conspiracy. It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them.¹²⁰

Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of all. The foregoing rule is anchored on the sound principle that when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone. Although it is axiomatic that no one is liable for acts other than his own, when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy.¹²¹

As discussed earlier, the actions of accused Go, Flanco, Gabisan, Nerves, Sabando, Faller, and Tan show a community of purpose, that is to deprive Ms. Cabardo of her position as a *Sangguniang Bayan* member. They were all unified in

¹²⁰ *Bacasmas v. Sandiganbayan*, G.R. No. 189343, 10 July 2013.

¹²¹ *People v. Go*, G.R. No. 205561, 24 September 2014.



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willfully refusing to recognize her appointment despite submitting her appointment papers and other pertinent documents. This common purpose was pursued by passing Resolution No. 99-98 which mandated the Municipal Treasurer of Hilongos, Leyte not to grant Ms. Cabardo her salary as a *Sangguniang Bayan* member. On top of that, all of them except accused Gabisan passed Resolution No. 99-102 declaring the position vacated by Dr. Caing vacant or not to be filled-up. As a result, Ms. Cabardo cannot be substituted in the position vacated by Dr. Caing even after complying with the conditions set forth under the law. Not only that, above-mentioned accused were united in ignoring the Writ of Preliminary Injunction issued by the RTC of Hilongos, Leyte, Branch 18.

The totality of the acts of the accused, taken together, indubitably point to a concerted action and conspiracy on the part of accused *Sangguniang Bayan* members to not recognize Ms. Cabardo's appointment.

The prosecution failed to prove accused Villaflor's participation in the crime charged.

There is no gainsaying that accused Villaflor, as the municipal mayor of Hilongos, Leyte is the chief executive officer of the municipality, who exercises purely executive functions.

The *Sangguniang Bayan*, on the other hand, is the legislative body of the municipality. As such, it is responsible for enacting ordinances and resolutions for the welfare of their constituents. The Office of the Mayor and the *Sanggunian* are separate offices with distinct functions. The pertinent provisions of R.A. 7160 are provided below for easy reference:

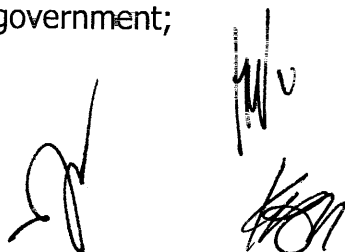
**"ARTICLE I
The Municipal Mayor**

SECTION 444. The Chief Executive: Powers, Duties, Functions and Compensation. – (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

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

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

(i) Determine the guidelines of municipal policies and be responsible to the *sangguniang bayan* for the program of government;



(ii) Direct the formulation of the municipal development plan, with the assistance of the municipal development council, and upon approval thereof by the *sangguniang bayan*, implement the same;

(iii) At the opening of the regular session of the *sangguniang bayan* for every calendar year and, as may be deemed necessary, present the program of government and propose policies and projects for the consideration of the *sangguniang bayan* as the general welfare of the inhabitants and the needs of the municipal government may require;

(iv) Initiate and propose legislative measures to the *sangguniang bayan* and, from time to time as the situation may require, provide such information and data needed or requested by said *sanggunian* in the performance of its legislative functions;

XXX XXX XXX

(vi) Upon authorization by the *sangguniang bayan*, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;

XXX XXX XXX

(2) Enforce all laws and ordinances relative to the governance of the municipality and the exercise of its corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the municipality xxx.

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

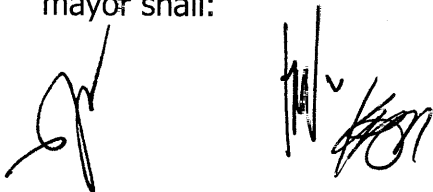
XXX XXX XXX

(ii) Prepare and submit to the *sanggunian* for approval the executive and supplemental budgets of the municipality for the ensuing calendar year in the manner provided for under Title Five, Book II of this Code;

XXX XXX XXX

ARTICLE II
The Vice Mayor

SECTION 445. Powers, Duties and Compensation. – (a) The vice-mayor shall:



(1) Be the **presiding officer** of the *sangguniang bayan* and sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the *sangguniang bayan*;

XXX

XXX

XXX

ARTICLE III
The *Sangguniang Bayan*

SECTION 446. **Composition.** – (a) The *sangguniang bayan*, the legislative body of the municipality, shall be composed of the municipal vice mayor as the presiding officer, the regular *sanggunian* members, the president of the municipal chapter of the *liga* ng mga barangay, the president of the *pambayang pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members.

(b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women; and as shall be determined by the *sanggunian* concerned within ninety (90) days prior to the holding of local elections, one (1) from the agricultural or industrial workers, and one (1) from other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

XXX

XXX

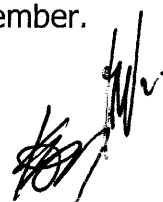
XXX

SECTION 447. Powers, Duties, Functions and Compensation. – (a) The *sangguniang bayan*, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government xxx. (Emphasis Supplied)”

Undoubtedly, the Office of the Mayor and the Office of the *Sangguniang Bayan* are separate, distinct and independent departments of the municipality. Their respective powers, functions and responsibilities are well defined under R.A. 7160. Under Section 446 of said law, it is the *Sangguniang Bayan*, as the legislative arm of the municipality, which enacts ordinances and resolutions, and not the mayor. Accordingly, the approval of Resolution Nos. 99-98 and 99-102 is the result of the *Sanggunian* members’ actions.

Based on the minutes of the *Sanggunian’s* sessions wherein the subject resolutions were passed, accused Villafior did not participate during the deliberation and resolution of Ms. Cabardo’s appointment as its new member.



In sum, the prosecution failed to proffer sufficient evidence to prove that accused Villafior acted in conspiracy with the other accused. Moreover, accused Faller testified that accused Villafior was not involved in the resolution or consideration of the issues regarding Ms. Cabardo’s appointment.

WHEREFORE, in light of the foregoing, judgment is hereby rendered finding:

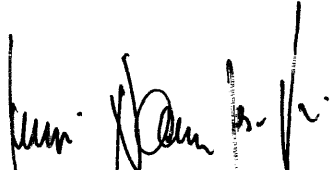
1. Accused **ALTAGRACIA R. VILLAFIOR** NOT GUILTY as the evidence of the prosecution failed to sufficiently establish all the elements of the crime charged and for failure of the prosecution to overcome the presumption of innocence in favor of the aforementioned accused.

Accordingly, the Hold Departure Order issued by the Court against accused **VILLAFIOR** is hereby **LIFTED** and **SET ASIDE**, and the bail bond she posted is **RELEASED**, subject to the usual accounting and auditing procedures.

2. Accused **PANFILO O. GO, LAMBERTO RAINIER L. FLANCO, MANUEL M. GABISAN, EPIFANIA Q. NERVES, LILIA M. SABANDO, EDWIN F. FALLER**, and **ROGELIO V. YAN** GUILTY beyond reasonable doubt for violation of Section 3(e) of Republic Act No. 3019 and are each sentenced to suffer the indeterminate penalty of imprisonment of **SIX (6) YEARS AND ONE (1) MONTH**, as minimum, to **TEN (10) YEARS**, as maximum, with **PERPETUAL DISQUALIFICATION** to hold public office.

Accordingly, accused **GO, FLANCO, GABISAN, NERVES, SABANDO, FALLER**, and **YAN** shall lose all retirement or gratuity benefits under any law as mentioned in Section 13 of R.A. No. 3019.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice

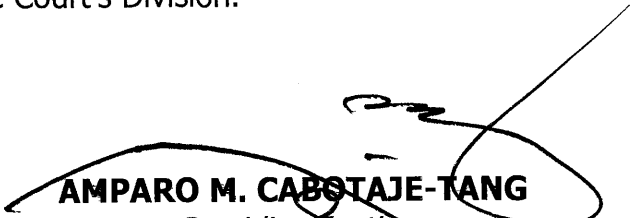
ATTESTATION

I attest that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


SARAH JANE T. FERNANDEZ
Chairperson, 6th Division

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABSTAJE-TANG
Presiding Justice

