



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,

Plaintiff-Appellee,

Crim. Case Nos. SB-22-A/R-0012

FOR: Violation of Section 3(e),

R.A. No. 3019, as amended

— versus —

Present:

LAGOS, J., Chairperson

MENDOZA-ARCEGA, and

CORPUS-MAÑALAC, JJ.

JOVITO M. TUPAZ,

Accused-Appellant.

Promulgated:

February 17, 2023 *[Signature]*

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DECISION

LAGOS, J.:

This is an appeal from the *Decision*¹ dated April 11, 2022 of the Regional Trial Court (RTC) of Tacloban City, 8th Judicial Region, Branch 34, in Criminal Case No. 2002-02-11, finding accused-appellant Jovito M. Tupaz guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 (R.A. 3019), as amended, or the Anti-Graft and Corrupt Practices Act, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered finding accused Jovito Tupaz, guilty beyond reasonable doubt

¹ Records, pp. 436-444

[Handwritten marks]

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of Violation of Sec. 3(e) of RA 3019, As Amended, otherwise known as the 'Anti-Graft and Corrupt Practices Act.' Accordingly, he is hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to eight (8) years and six (6) months, as maximum, with perpetual disqualification from public office. Moreover, said accused and (*sic*) is ordered to pay private complainant Lutgarda Arceo the sum of P100,000.00 as temperate damages, with legal interest of six percent (6%) *per annum* from finality of this Decision until fully paid.

“SO ORDERED.”

This appeal stemmed from the complaint for violation of Section 3(a), (b), (e) and (f), R.A. 3019 and/or Direct Bribery or Corruption of Public Officials filed on November 12, 1999 by private complainants Lutgarda Tupaz-Arceo, Jesusa (Rhea) Tupaz and others² before the Office of the Ombudsman-Visayas (OMB-Visayas) against respondents, then Barangay Captain Jovito M. Tupaz, Barangay Secretary Alexander R. Cagara, and others³ of Barangay M.H. Del Pilar, Dulag, Leyte in connection with the alleged unlawful demolition of their houses in said barangay by virtue of a writ of demolition issued by Barangay Captain Jovito M. Tupaz. On November 29, 2001, the Deputy Ombudsman for Visayas, after due investigation, found probable cause against respondents Tupaz and Cagara for violation of Section 3(e) of RA 3019, as amended, recommending the filing of Information against them.⁴

PROCEEDINGS IN THE TRIAL COURT

On February 26, 2002, Jovito M. Tupaz and Alexander R. Cagara⁵ were charged by the Office of the Ombudsman (Visayas) before the Regional Trial Court, 8th Judicial Region, Branch 34, Tacloban City with violation of Section 3(e) of R.A. 3019, as amended, docketed as Criminal Case No. 2002-02-11, in an Information the accusatory portion of which reads, as follows:

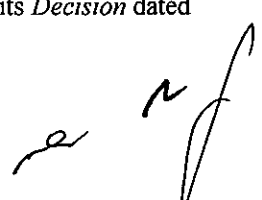
“That on or about the 10th day of June, 1999, and for sometime subsequent thereto, at Barangay M.H. Del Pilar, Municipality of Dulag, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused JOVITO M. TUPAZ and ALEXANDER R. CAGARA, Barangay Chairman and Barangay

² The other complainants are: Conchita de Paz, Marilyn Teston, Alicia Palijaro

³ The other respondents are: Julieta Teston, Eduardo Cantilang, Terry Elbin, Editha Elbin, Florencia Legaspi, Ma. Luz Legapi, Cresencio Magos, Eleuterio Magos, Miguelito Magos, Joel Rempillo, Ronaldo Cantilang, Willy Cagara and Eustaquio Arpon.

⁴ Resolution of the Office of the Ombudsman (Visayas), Records, pp. 6-15.

⁵ Pending trial before the RTC, Branch 34, Tacloban City, accused Alexander Cagara died on December 27, 2021 of Hypostatic Pneumonia as shown by the Certificate of Death issued by Dr. Allan B. Alvarez, Municipal Health Officer, Dulag, Leyte (see Records, p. 430). The trial court declared in its *Decision* dated April 11, 2022 that his criminal liability if any, has been extinguished.



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Secretary, respectively, of Barangay M.H. Del Pilar, Dulag, Leyte, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with manifest partiality and gross inexcusable negligence, did then and there cause Rhea Tupaz, Marilyn Teston, Alicia Palijaro and Domingo De Paz, occupants of a land subject of a conflict between Lutgarda T. Arceo and Florencia Legaspi and Ma. Luz Legaspi, located at M.H. Del Pilar, Dulag, Leyte, during a mediation conference, to sign an agreement known as "Affidavit/Panumduman" promising to vacate said land within three (3) months from the date of signing, which agreement was based on the premise that the said land was owned by the Legaspis, and through such inducement, above-named occupants signed the same, which agreement later on was made the basis of a demolition of the houses of said occupants, when in truth and in fact, at the time of the signing of the said affidavit, it could not yet be determined if said persons were really occupying the area owned by the Legaspis there being no survey yet, taking into consideration the fact that the Legaspis only owned a 1/5 portion of the entire lot, thus accused in the course of the performance of their official functions had given unwarranted benefits to the Legaspis to the damage and prejudice of Rhea Tupaz, Marilyn Teston, Alicia Palijaro, Domingo De Paz and others.

"CONTRARY TO LAW

"Cebu City (for Tacloban City), Philippines

"November 29, 2001"

On March 15, 2002, the trial court, after an examination of the affidavit-complaints of the witnesses and the Resolution of the Graft Investigation Officer duly approved by the Deputy Ombudsman for Visayas, found probable cause against both accused Tupaz and Cagara, and thereafter, issued an *Order of Arrest* of the accused and fixed the bail bond at Thirty Thousand Pesos (Php 30,000.00) each.⁶

On July 9, 2002, accused Tupaz and Cagara voluntarily appeared and surrendered before the trial court. After posting the Php 30,000.00 cash bail bond, they were ordered released from the custody of the law.⁷

The arraignment was thereafter scheduled on October 10, 2002, but was reset to February 12, 2003 at 9:00 o'clock in the morning for failure of the counsel of the accused and the prosecutor to appear. Both accused Tupaz and Cagara were, however, present during the scheduled arraignment.⁸

At the arraignment on May 22, 2003, after the February 12, 2003 schedule was reset, accused Tupaz and Cagara, assisted by their counsel, pleaded not guilty.⁹

⁶ Records, pp. 74-75

⁷ Id, p. 87

⁸ Id., p. 91

⁹ Id., p.94

On February 18, 2004, the trial court, after the conduct of pre-trial proceedings, issued a *Pre-trial Order*,¹⁰ the pertinent portions on the stipulation of the parties read as follows:

"The following proposals from the prosecution were admitted by the defense:

"1. Jurisdiction of the Court over the nature of the criminal action and over the person of the accused;

"2. Identity of both accused as the same persons who were charged for Viol. of Sec. 3(e) of R.A. 3019, and the same persons who pleaded "not guilty" when arraigned;

"3. That there was an Administrative Case filed against both accused by the Ombudsman Visayas, but the same has already been terminated and decided;

"4. That Antonio Abarrientos has five children namely: Carmen, Catalina, Juan, Enastacio (*sic*) and Carlos;

"5. That the land where demolition occurred has 3,840 sq.ms., more or less;

"6. That Florencia Legaspi and her neice(*sic*) Ma. Luz Legaspi re-purchased their share of the said property from Lutgarda Arceo on June 17, 1999 (*sic*); and

"That both accused Brgy. Officials, Jovito Tupaz being the Brgy. Captain and Alexander Cagara being the Brgy. Secretary of Brgy. M.H. del Pilar, Dulag, Leyte as of the alleged commission of the offense(*sic*)."

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"The following proposals from the defense were admitted by the prosecution:

"1. That there was a Complaint for Ejectment filed by Florencia Legaspi and Ma. Luz Legaspi against Alicia Palejaro, Rhea Tupaz, Domingo de Paz, Daniel Teston and Candilaria Miano before the Office of the accused Jovito Tupaz as Brgy. Captain of Brgy. M.H. del Pilar, Dulag, Leyte;

"2. That on June 10, 1999, a confrontation between the complainants Legaspi and the above-named respondents took place;

"3. That as a result of the said proceeding an amicable settlement was made by the parties whereby all the respondents agreed to vacate the premises and removed their respective houses within a period of 3 months from the execution of the said agreement; and

"4. That despite the lapse of the agreement, respondents failed to comply with the agreement, and for that reason, the Legaspis filed a motion for execution before the Office of the Brgy. Captain now accused Jovito Tupaz and a hearing for this purpose took place on September 14, 1999;

x x x

x x x

x x x

¹⁰ Records, p. 102



Trial ensued thereafter where the prosecution presented Lutgarda Tupaz Arceo and Alicia Palejaro, respectively, to prove its case. The testimony of other prosecution witness, Marilyn Teston, who failed to appear on July 1, 2019 despite notice, was deemed waived by the trial court.¹¹ The testimony of the other prosecution witness, Agaton Abarrientos, who despite notice was not present on November 25, 2019 hearing, was dispensed with upon motion of the prosecution.¹²

EVIDENCE FOR THE PROSECUTION

The testimonies of private complainants Lutgarda T. Arceo and Alicia Palejaro presented by the prosecution are as follows:

LUTGARDA T. ARCEO

Prosecution witness Lutgarda Tupaz-Arceo, 58 years old, married, Agricultural Technologist and a resident of Brgy. Balocawe, Abuyog, Leyte, testified on direct examination on September 22, 2004, February 13, 2007, July 3, 2008, September 9, 2009, and May 25, 2011 which is summarized as follows:

She testified that on or about 8:00 o'clock in the evening of September 30, 1999 while at her residence in Abuyog, Leyte, her niece, Jesusa Tupaz, nicknamed "Rhea", informed her that her house in Brgy. M.H. del Pilar, Dulag, Leyte was set to be demolished the next day.¹³ On October 1, 1999, she went to her house in Brgy. M.H. del Pilar, where she saw Brgy. Chairman Jovito Tupaz ("accused Tupaz") and the Brgy. Secretary, Alexander Cagara ("accused Cagara") in the vicinity, along with a certain Terry Elbin, Editha Elbin, three (3) police officers, and the 18 demolition workers who were tasked to demolish the four (4) structures in the area.¹⁴

At the site, she told the Brgy. officials that 1/3 portion of the said lot belongs to her through purchase from its owner(s), and as proof of her claim, she showed them a "*Deed of Sale with Right of Repurchase of Three(3) Ideal Shares*," dated October 30, 1997 (Exh. "B").¹⁵ She added that only 1/5 portion of the said lot was redeemed from her by Florencia Legaspi and Maria Luz Legaspi showing them a "*Deed of Release of Sale with Right of Repurchase of a Portion of a Parcel of Land*," dated June 7, 1999 (Exh. C").¹⁶ She pointed out that accused Tupaz was a witness to the

¹¹ Order dated July 1, 2019, Records, p. 343

¹² Order, dated November 25, 2019, Records, p. 346

¹³ TSN, September 22, 2004, Records, p. 233

¹⁴ TSN, Id., p. 241, 248

¹⁵ TSN, Id., p. 236

¹⁶ TSN, Id., pp. 236-237; see Exhibit "C", Records, p. 24

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execution of said document as evidenced by his signature thereon (Exh. "C-1").¹⁷

Reacting to the claim of Lutgarda Arceo, accused Tupaz just told her: *"Iday, this is according to law, we have a Court Order. Where were you? You have been sleeping all along."*¹⁸ In response, she then warned accused Tupaz that she will sue him before the Ombudsman if they proceeded with the demolition. Accused Tupaz retorted back that he will also sue her for harassment.

Prompted by accused Tupaz's allusion to a court order, she sought to verify from Judge Galapon of the Municipal Trial Court of Dulag, Leyte but he was not available at that time.¹⁹ Because of the urgency to stop the demolition, she then sought assistance from the Office of Dulag Mayor Siaque and the DILG, both of which offices exercise supervision over the barangays, but all efforts were in vain²⁰. She went to the Chief of Police of Dulag, Antonio Bacar,²¹ who, however, advised her to return to the site and take steps to prevent the demolition because they will be in trouble if they meddle.²²

Going back to the site, she saw that the demolition of her house's dining area was ongoing supervised by accused Tupaz who, at the same time, was instructing the sequence of structures to be demolished.²³ Accused Cagara, on the other hand, was supervising the demolition of her house's roof top. She intimated that her house was worth Php 250,000.00. It was made of concrete materials, galvanized iron roofing and "yakal" wood. The kitchen and sink were fitted with tiles.²⁴

While the demolition was ongoing, she could only beg and cry out of dismay, telling accused Tupaz: *"Please don't do that because this is not a pig pen."*²⁵ The demolition was completed before 12 o'clock noon. Four (4) houses were demolished belonging to Alicia Palijaro, Conchita de Paz, Myrna Miano and her house. She thereafter reported to the PNP Station (Police) to blotter the incident of demolition.²⁶ She presented to the court four (4) photos²⁷ of the demolished structures (Exh. "D" series).

On cross-examination, Lutgarda said that it was in 1982, after she contracted her second marriage, that she left their ancestral house in Brgy.

¹⁷ TSN, Id., p.238

¹⁸ TSN, September 22, 2004, Records, p. 241,248

¹⁹ TSN, Id., p. 239

²⁰ TSN, Id., p. 239-240

²¹ TSN, September 9, 2009, Records, p.288

²² TSN, September 22, 2004, Records, p. 240, September 9, 2009, Records, pp. 286-292.

²³ TSN, February 13, 2004, Id., pp. 248-249

²⁴ TSN, Id., p. 249

²⁵ TSN, Id., p. 249

²⁶ TSN, Id., p. 251

²⁷ Records, pp.26-27

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M. H. del Pilar to reside at Brgy. Balocawe, Abuyog, Leyte. She added that their ancestral house was built sometime 1967 on the lot conveyed to her mother, Mariquita Tupaz, on June 29, 1967 by way of "*Sale with Right of Repurchase*" on the representations of one Florencia Legaspi that she owned the whole lot.

She came to know later that the said lot is not solely owned by Florencia Legaspi when the other heirs (grandchildren) of Antonio Abarientos, namely: Erlinda Radam, Alberto Ramos and Agaton Abarientos came to tell her parents during the construction of the house that they are co-owners of the said lot which remained undivided yet among the five (5) heirs of Antonio Abarientos.²⁸ Despite the dispute among the heirs, her mother proceeded to build their house because of the agreement that her mother will just buy the property from them.²⁹ She said that subsequently, or sometime on October 1994, Florencia Legaspi executed a "*Sale with Right of Repurchase*" of the 1/5 portion of the lot in favor of Lutgarda Arceo and her husband, Bernardo Arceo.³⁰ Three (3) years after, or on August 30, 1997, the three (3) other heirs, Agaton Abarientos, Alberto Ramos and Erlinda Radam executed a "*Deed of Sale with Right of Repurchase of Three (3) Ideal Shares*" in favor of Lutgarda Arceo married to Bernardo Arceo.³¹ She acknowledged that she executed on June 7, 1999 a "*Deed of Release of Sale with Right of Repurchase*" of a portion of the lot consisting of more or less 1/5 of the whole lot in favor of Florencia and Maria Luz Legaspi.³²

Lutgarda Arceo confirmed that she filed a criminal charge against accused Tupaz because he gave undue advantage to another person at her expense. She explained that Editha Elbin, a first cousin of the Barangay Captain, was bent on buying the property.³³ Upon clarificatory questions from the court, she added that the house was demolished because of the personal interest of the Barangay Captain Tupaz to favor Editha Elbin who intended to buy the property, the latter being her first cousin because both of their mothers are sisters.³⁴ She confirmed that 1/5 portion of the property was redeemed by Florencia Legaspi in the amount of Php 20,000.00³⁵ and the 4/5 portion remained to be mortgaged with her.³⁶

On re-direct examination, Lutgarda Arceo confirmed that the 1/5 portion was redeemed by Florencia Legaspi on June 7, 1999 which was later purchased by said Editha Elbin.³⁷ She reiterated that she was present during the demolition of her house on October 1, 1999 after she was informed by

²⁸ TSN, July 3, 2008, Records, pp. 267-268

²⁹ TSN, Id., p. 267

³⁰ TSN, Id., Exhibit "3"-Defense, Records, p. 278

³¹ TSN, July 3, 2008, Records, p. 267; Exhibit "C"-Prosecution/Exhibit "4"-Defense, Records, p. 286

³² TSN, September 9, 2009, Records, p.284; TSN, May 25, 2011, Records, p. 307

³³ TSN, Id., pp. 294-296

³⁴ TSN, Id., p. 295-296

³⁵ TSN, May 25, 2011, Records, p. 303

³⁶ TSN, Id., pp. 309, 312

³⁷ TSN, Id., p.316-318

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her niece in the evening of September 30, 1999 about the demolition. She saw Editha Elbin who was taking video of her during the demolition.³⁸ When she asked accused Tupaz by what authority her house is being demolished, he replied that *"this is what the law is, where have you been, you have been sleeping all along."*³⁹

During the re-cross examination, Lutgarda Arceo explained, upon additional questions from the trial court, that Barangay Captain Tupaz would favor Editha C. Elbin in so far as demolition is concerned because the former and the latter are first cousins, as their mothers are siblings. Teofila Magos-Cantilang, mother of Editha C. Elbin, and Lilia Magos-Tupaz, are sisters.⁴⁰ She confirmed that the time of the demolition, the 1/5 portion was not yet sold to Editha C. Elbin.⁴¹

ALICIA PALEJARO

The testimony on May 6, 2015 of the prosecution's second witness, Alicia Palejaro, 46 years old, married, housewife and a resident of San Jose, Dulag, Leyte, is summarized, as follows:

She testified that she was a former resident of Brgy. M.H. del Pilar. She said that she, along with Marilyn Teston and Dominador de Paz, was summoned to appear on June 10, 1999 at their barangay hall. During the meeting presided by Brgy. Captain Jovito Tupaz they were informed that the owner of the land occupied by their houses wanted them to vacate the property. Accused Alexander Cagara and a certain Yoling Teston were also present during the meeting.⁴²

It was only on June 10, 1999 that she came to know about the dispute over the land occupied by their respective houses when one Florencia Legaspi introduced herself as the grandchild of the owner of the land, Antonio Abarrientos, who was dead already.⁴³ She only knew then that Florencia Legaspi was the grandchild of Antonio Abarrientos and she was not aware of any other of his grandchildren. She added that she resided at said barangay until her house built on said land was demolished on October 1, 1999 upon orders of Brgy. Captain Tupaz.⁴⁴

When told that Florencia Legaspi wanted her and other occupants to vacate the property, they asked for some time because they were not aware before that she was the owner.⁴⁵ She confirmed that when they failed in

³⁸ TSN, May 25, 2011, Records, p. 319

³⁹ TSN, Id., p. 319

⁴⁰ TSN, Id., p. 320

⁴¹ TSN, Id., p. 323

⁴² TSN, May 6, 2015, Records, pp. 327-332

⁴³ TSN, Id., pp. 329-330

⁴⁴ TSN, Id., p. 328

⁴⁵ TSN, Id., p. 334

their promise to vacate, the demolition was ordered by the Brgy. Captain Tupaz. The writ of demolition prepared by the barangay captain was handed to them on the day of the demolition on October 1, 1999.⁴⁶ She said Brgy. Captain Tupaz and Alexander Cagara were the officials supervising the demolition.⁴⁷

Alicia Palejaro however pointed out that no agreement was reached during the meeting on June 10, 1999 that if they will not vacate, their houses will be demolished as she was not aware nor did she anticipate that failure on their part to vacate the premises will cause the demolition of their houses.⁴⁸

No cross-examination was conducted by the defense counsel.

The prosecution thereafter filed its *Formal Offer of Documentary Evidence* on November 27, 2019⁴⁹ which were admitted by the trial court on October 20, 2020.⁵⁰

<i>Exhibits</i>	<i>Description</i>
"A"	Copy of the Decision in OMB-VIS-ADM-99-0984
"B"	Copy of the Deed of Sale with Right of Repurchase of the Three(3) Ideal Shares dated August 30,1997
"C"	Copy of the Deed of Release of Sale with Right of Repurchase of a Portion of a Parcel of Land dated June 7, 1999
"D" and series	Pictures of the structures which were demolished on the land covered by Tax Dec. No. 58 located at Brgy. M.H. del Pilar, Dulag, Leyte
"E" and series	Resolution in OMB-VIS-CRIM-99-1130

EVIDENCE FOR THE DEFENSE

The defense, on the other hand, presented both accused Brgy. Captain Jovito M. Tupaz and Brgy. Secretary Alexander Cagara to refute the criminal charge imputed to them.

JOVITO M. TUPAZ

The direct testimony on January 7, 2021 of the defense’s first witness, accused Jovito M. Tupaz, 57 years old, single, Brgy. Captain of Brgy. M.H. del Pilar, Dulag, Leyte and a sari-sari store owner, is summarized, as follows:

⁴⁶ TSN, May 6, 2015, Records, pp. 336-337
⁴⁷ TSN, Id., p. 335
⁴⁸ TSN, Id., p. 338
⁴⁹ Records, pp. 348-351
⁵⁰ Id., p. 362

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The witness, accused Jovito M. Tupaz, testified that during the time material in this case, or on June 10, 1999, he was the Brgy. Captain of M.H. del Pilar, Dulag, Leyte serving on his second term of office. He recalled that a complaint for ejectment was filed at his office by Florencia Legaspi and Ma. Luz Legaspi against Daniel Teston, Alicia Palejaro, Domingo Paz, among others. He knew both contending parties as they are residents of Brgy M.H. del Pilar. He thereafter summoned them to appear before him to confront the complainants.⁵¹

During the conference on June 10, 1999, an amicable settlement was reached between the parties where respondents agreed to vacate the subject property after they were given an allowance of three (3) months. The agreement was documented in an *Affidavit/Panumduman* prepared by him and the barangay secretary, Alexander Cagara, which according to him, was voluntarily signed by four (4) respondents.⁵² He identified the said document (Exh. "1")⁵³ and his signature thereon.

After the lapse of three (3) months, the respondents failed to vacate the property as agreed upon. A total of three (3) confrontations between the contending parties ensued thereafter, and upon failure of respondents to vacate the property, he issued a writ of demolition (Exh. "2")⁵⁴ on September 30, 1999 addressed to Brgy. Secretary Cagara for execution because he has to act on the complaint within the period of six (6) months.⁵⁵ The same was implemented by him and Brgy. Secretary Cagara, but he cannot recall the exact date of the demolition.⁵⁶ Three (3) police officers, barangay tanods and the occupants of said houses were present during the demolition.⁵⁷

During his cross-examination, accused Tupaz declared that in relation to the complaint for ejectment, he examined the legal documents submitted to him by Florencia T. Legaspi and Ma. Luz Legaspi to prove their rights over the land before having respondents-occupants sign the document captioned "*Panumduman*" and the issuance of the writ of demolition. However, when asked to go over the document on page 22 of the case records pointing to the sale of the parcel of land by way of "*Sale with Right of Repurchase*" signed by them (Florencia and Ma. Luz Legaspi) sometime in October 1994, he replied that he did not see nor read said document. It was not mentioned during the confrontation. He admitted that he was not aware of said document which speaks of the sale with right of repurchase of

⁵¹ TSN, January 7, 2021 Records, pp.3-5

⁵² TSN, Id., pp. 419-420

⁵³ Exhibit "1", Records, p. 25

⁵⁴ Exhibit "2", Id., p. 33

⁵⁵ TSN, January 7, 2021, Records, p. 423

⁵⁶ TSN, Id., p. 422

⁵⁷ TSN, Id., p. 423

1/5 portion only of the total area of the land involved in the case. To his understanding, the dispute involved the entire land.⁵⁸

On re-direct by the defense, accused Tupaz added that the condition laid down in the "*Affidavit/Panumduman*" that respondents will vacate the land occupied by their respective houses came from respondents.⁵⁹

On re-cross examination, accused Tupaz admitted that the specific area of the lot to be vacated by respondents was not mentioned in the said "*Affidavit/Panumduman*" executed by the parties. He confirmed that there was no description in the said document of specific lot or specific parcel of land to be vacated.⁶⁰

ALEXANDER R. CAGARA

The testimony on March 25, 2021 of defense's second witness, accused Alexander R. Cagara, 75 years old, married, jobless and resident of Brgy. M.H. del Pilar, Dulag, Leyte, is summarized as follows:

Accused Cagara confirmed that Florencia Legaspi and Ma. Luz Legaspi sought assistance from Brgy. M.H. del Pilar around June 1999 to eject the occupants from their property located in said barangay.⁶¹ He knew both Florencia and Ma. Luz Legaspi as owners of the said property occupied by the houses of Rhea Tupaz Gallaron, Daniel Teston, Candelaria Miano, Perfecto de Jesus, Alicia Palejaro and Domingo de Paz, all of them residents of the barangay. During confrontation on June 10, 1999, the parties executed an agreement captioned "*Affidavit/Panumduman*" that the occupants will vacate the property on September 28, 1999.⁶² He identified the said document (Exh. "1") and the signatures of only four (4) occupants (Tupaz, Teston, Palejaro and de Paz) as well as that of Brgy. Captain Jovito Tupaz and that of Florencia and Ma. Luz Legaspi appearing below the signature of the Brgay. Captain.⁶³ He also acknowledged his *Counter-Affidavit* dated January 26, 2000 executed in the Anti-graft and Corrupt Practices complaint against him before the Ombudsman.⁶⁴

When the occupants did not vacate the property, a second confrontation was held but the occupants did not comply with the agreement.⁶⁵ As a consequence, the five (5) houses of the occupants were demolished which, according to him, was without resistance⁶⁶ from them in the presence of Brgy Captain Tupaz, Alexander Cagara, a Brgy. Peace

⁵⁸ TSN, January 7, 2021, Records, pp. 424-425

⁵⁹ TSN, Id., pp. 426-427

⁶⁰ TSN, Id., p. 427

⁶¹ TSN, March 25, 2021, Records, p. 388

⁶² TSN, Id., p. 391

⁶³ TSN, Id., pp. 389-391

⁶⁴ TSN, Id., pp. 394-396

⁶⁵ TSN, Id., p. 388

⁶⁶ TSN, Id., p. 394

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Officer, Brgy. Kagawad Eduardo Cantilang, including the three (3) police officers who were requested by the owners, Florencia and Ma. Luz Legaspi.⁶⁷

On cross-examination, he testified that spouses Editha Elbin and Terry Elbin mentioned in his *Counter-Affidavit* in the complaint against them before the Ombudsman, purchased the subject land owned by the Florencia and Ma. Luz Legaspi. He confirmed that accused Brgy. Captain Tupaz is a relative of Editha Elbin. The spouses Elbin were not present during the barangay conference of the contending parties on June 10, 1999 but he cannot remember if they were present during the demolition on October 1, 1999. When the "*Affidavit/Panumduman*" was signed by the parties, he did not personally see the parties affixed their respective signatures nor proof of their signatures but was merely told by Brgy. Captain Tupaz that they executed the document on June 10, 1999.

He added that the owners themselves specifically identified the portion of the land where the houses are to be demolished. The aggrieved occupants, on the other hand, did not react as they just followed the instructions of the owners. However, before implementing the writ of demolition, he confirmed that he does not have any knowledge of the total area of the land nor of its boundaries. He also confirmed that the land was not sub-divided yet.⁶⁸ He knew that prior to the mortgage of the land to the parents of Lutgarda T. Arceo, it was a vacant land. He also knew that the said land was already redeemed but he has no knowledge that only 1/5 portion of the land was actually the area covered by the demolition.⁶⁹

On re-direct by the defense, witness confirmed that the said land was mortgaged to Mariquita Tupaz, mother of Lutgarda T. Arceo, but did not know the date it was mortgaged. Although he acknowledged that it was redeemed in the amount of Php 25,000.00, he did not know the date it was redeemed. He did not know also if the redemption was made before the ejectment case was filed before the barangay. He confirmed that the said land was purchased by spouses Elbin but he was not aware when it was purchased. However, he could only surmise that the purchase was made after the demolition because a house was built thereon by the spouses Elbin.⁷⁰

On re-cross examination by the prosecution, he confirmed that the portion of the land purchased by spouses Elbin is located in the land where the demolition was conducted, but he has no knowledge whether Florencia Legaspi owns the whole lot. He was also not aware that only 1/5 portion of the land belongs to Florencia Legaspi. What he knew was that the said land

⁶⁷ TSN, March 25, 2021, Records, p. 392

⁶⁸ TSN, Id., pp. 399-400

⁶⁹ TSN, Id., p.400

⁷⁰ TSN, Id., pp. 401-402

was mortgaged by Florencia Legaspi to the family of Lutgarda Arceo and her mother, Mariquita Tupaz.⁷¹

On November 17, 2021, the counsel for the accused manifested that the defense will be closing its evidence, and thereafter, formally offered its exhibits which were admitted by the trial court in an *Order*⁷² of even date. Noting that the comments of the prosecution have to do more with their weight and/or sufficiency, the same were noted by the trial court.

<i>Exhibits</i>	<i>Description</i>
"1"	Affidavit / Panumduman
"2"	Writ of Demolition

Earlier, on August 1, 2017, or during the pendency of this case, accused-appellant Jovito M. Tupaz filed a *Motion to Withdraw Bond* stating that he was charged of violation of Section 5⁷³ and 11⁷⁴ of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", attaching thereto a copy of the *Certificate of Detention* issued by the Provincial Warden, Leyte Provincial Jail, certifying that he was charged before the RTC, Branch 34, Tacloban City, docketed, as R-TAC-16-00256-CR and R-TAC-16- 00257-CR, and had been detained on March 2, 2016 up to present (the time of the filing of the said motion). Thus, he claimed that the Php 30,000.00 bail bond posted no longer serves its purpose. The motion was granted in an *Order*⁷⁵ dated August 4, 2017 and the bail bond was cancelled and released by the trial court.

When the dangerous drugs cases against him were dismissed on a demurrer to evidence, accused-appellant Tupaz filed on January 15, 2021 a *Motion to Post Bail* pursuant to Administrative Circular No. 38-2020, "*Reduced Bail and Recognizance as Modes for Releasing Indigent Persons Deprived of Liberty During the Period of Public Health Emergency*" which was granted by the trial court in an *Order*⁷⁶ dated January 19, 2021 to a reduced amount of Twenty-Thousand Pesos (Php 20,000.00).

Accused-appellant Tupaz posted the Php 20,000.00 cash bail bond on January 27, 2021 and was, accordingly released from the custody of Leyte Provincial Jail (LPJ), Kauswagan, Palo, Leyte pursuant to an *Order*,⁷⁷ dated November 27, 2021.

⁷¹ TSN, March 25, 2021, Record, pp. 402-403

⁷² Records, p. 411

⁷³ Section 5, RA 9165 provides for the crime and penalty for the "*Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursor and Essential Chemicals*".

⁷⁴ Section 11, RA 9165 provides for the crime and penalty for the "Possession of Dangerous Drugs"

⁷⁵ Records, p.218

⁷⁶ Id., p. 368

⁷⁷ Id., p. 379

Meanwhile, in the case of accused Alexander Cagara, on January 12, 2022, counsel for the defense filed a *Motion to Cancel and Release Bail Bond*,⁷⁸ stating that accused Alexander R. Cagara died on December 27, 2021 in Dulag, Leyte due to hypostatic pneumonia.⁷⁹ In view of his death, defense counsel prayed that the cash bail bond posted in the amount of Thirty Thousand Pesos (PhP30,000.00) on July 9, 2002 be cancelled and released to his surviving spouse, Perla Abiga Cagara.

In an *Order*⁸⁰ dated February 2, 2022, the trial court, acting on the manifestation of the prosecution that it will no longer present its rebuttal evidence, declared that the case is now submitted for decision. Finding the motion of the defense with respect to accused Cagara to be meritorious considering that his death extinguishes his criminal liability, the cash bail bond was cancelled and released to his surviving spouse, Perla Abiga upon presentation of proof of her identity.

On May 4, 2022, the trial court promulgated its *Decision*, dated April 11, 2022, as quoted at the threshold of this Court's Decision, finding accused Jovito M. Tupaz guilty beyond reasonable doubt of violation of Section 3(e) of R.A. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act", and sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to eight (8) years and six (6) months, as maximum, with perpetual disqualification from public office. Moreover, said accused is ordered to pay private complainant Lutgarda Arceo the sum of P100,000.00 as temperate damages, with legal interest of six percent (6%) *per annum* from finality of this Decision until fully paid.

As to the criminal charge against accused Cagara, the trial court made a pronouncements in the body of the *Decision*, thus:

"Meanwhile, co-accused Cagara died on December 27, 2021, as shown by a Certificate of Death issued by Dr. Allan B. Alvarez, Municipal Health Officer, Dulag, Leyte, Hence, his criminal liability, if any, has been extinguished."

APPEAL PROCEEDINGS

On May 17, 2022, accused Jovito M. Tupaz, through the Public Attorney's Office (PAO), filed a *Notice of Appeal*⁸¹ from the *Decision* promulgated on May 4, 2022, a copy of which was received by him during the promulgation.

⁷⁸ Records, pp. 428-431

⁷⁹ Id., p. 430

⁸⁰ Id., p. 434

⁸¹ Id., p. 454

On May 26, 2022, the accused's *Notice of Appeal* was given due course, the same having been filed within the reglementary period.⁸² Consequently, the trial court ordered the transmittal of the entire records to the Honorable Sandiganbayan, Quezon City, for appeal proceedings within the period provided by the Rules, by proper endorsement. The entire records of the case was received by the Sandiganbayan by mail on August 31, 2022.

On September 13, 2022, notices were served to the parties by this Court's Fifth Division Clerk of Court to file their respective *Briefs* thirty (30) days from receipt of the appellant or his counsel in the case of the appellant, and thirty days (30) from receipt of the *Appellant's Brief* in the case of the appellee, respectively.⁸³

On October 13, 2022, the *Accused-Appellant Brief*⁸⁴ was received by this Court. In the *Minute Resolution of this Court (Fifth Division)* dated November 21, 2022, the People of the Philippines, represented by the OMB-Office of the Special Prosecutor (OSP) was given a non-extendible period of twenty (20) days from November 11, 2022, or until December 1, 2022, within which to file the *Appellee's Brief*, and thereafter, the case shall be submitted for decision.

On December 1, 2022, the OMB-OSP posted by mail its *Plaintiff-Appellee's Brief*⁸⁵ which was received by the Sandiganbayan on December 9, 2022. Thereafter case was submitted for decision on January 9, 2023.

ACCUSED-APPELLANT'S BRIEF

Seeking to reverse and set aside the Decision dated April 11, 2022 of the RTC of Tacloban City, Branch 34, accused-appellant Tupaz (*accused-appellant*) assigned the following errors in his *Appellant's Brief* filed via email and received by the Court on October 13, 2022, as follows:

Assignment of Errors

I

The court *a quo* committed reversible error in convicting the accused-appellant of violation of Section 3(e), Republic Act No. 3019 by finding evident bad faith which was not alleged in the Information.

II

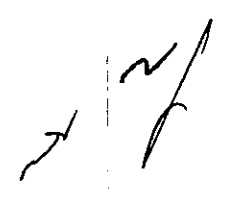
The court *a quo* committed reversible error in convicting the accused-appellant of violation of Section 3(e), of Republic Act No.

⁸² Records, p. 456

⁸³ Records, SB-22A/R-0012, pp.32-35

⁸⁴ Id., pp. 112-129

⁸⁵ Id., pp. 140-156



3019 despite the insufficiency of evidence of the Prosecution to prove the guilt of the accused beyond reasonable doubt.

Accused-appellant imputes error on the trial court's judgment of conviction against him when the same was based on its findings of *evident bad faith* on his part which mode of violation of Section 3(e) of R.A. 3019 which was not alleged in the Information. In the Information, he was allegedly charged of violation of Section 3(e) of RA 3019 with *manifest partiality* and *gross inexcusable negligence*. Convicting him outside the scope of the Information, according to accused-appellant, violated his constitutional right to be informed of the nature and cause of accusation against him, citing the case of *Villarosa vs. People*.⁸⁶

Accused-appellant argues that the trial court's conclusion of the presence of evident bad faith proceeded from a wrong premise, and its indicators are not sufficient to say that he acted with *manifest partiality* and *gross inexcusable negligence* because: (1) the validity of the *Affidavit/Panumduman* was never an issue during the trial as no proof was presented that the consent was invalidly made, and its lack of specificity of the lot to be vacated does not *ipso facto* make the same invalid; (2) the non-compliance of the parties of their agreement does not mean they are repudiating the same as no repudiation was filed before the *lupon* chairman pursuant to Section 418 of the R.A. 7160; (3) accused-appellant did not know of the *Deed of Sale with Right of Repurchase* between Florencia Legaspi and Lutgarda Arceo executed in October 1994 as he was neither a signatory nor a witness to said agreement. Thus, in ordering the demolition of their houses, he was merely acting in the performance of his duty.

Accused-appellant asserts that he cannot be also considered acting with *manifest partiality* because he had given the occupants opportunity to present their side in the series of conferences that he called. He further contends that the prosecution failed to prove undue injury to the Rhea Tupaz, Marilyn Teston, Alicia Palejaro, Domingo de Paz and others mentioned in the *Information* as aggrieved parties as a result of the alleged unwarranted benefits given to the Florencia and Ma. Luz Legaspi (*Legaspis*) He claims that although Lutgarda Arceo alleged that she suffered undue injury when her house was demolished, she was not among the aggrieved parties stated in the Information; as such, the same violated his constitutional right to be informed of the nature and cause of accusation against him.

Thus, it was error for the trial court to convict him of violation of Section 3(e) of R.A. 3019 despite the insufficiency of evidence of the prosecution to prove the guilt of the accused beyond reasonable doubt.

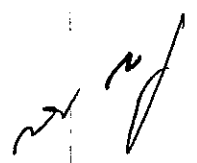
PLAINTIFF-APPELLEE'S BRIEF

The Office of the Special Prosecutor (OSP) asserts in its *Plaintiff-Appellee's Brief* that the trial court did not err in convicting accused-appellant of violation of Section 3(e) of R.A. 3019 since all the elements of the crime charged were established by the prosecution beyond reasonable doubt against him.⁸⁷

The OSP adverts to the trial court's finding that accused-appellant's act of ordering the demolition was done with *evident bad faith*, quoting pertinent portion thereof which, in essence, pointed out that accused-appellant cannot feign ignorance over the fact that only 1/5 portion of the subject lot belonged to the Legaspis, yet he proceeded to order the demolition of all the houses erected thereon despite the plea of Lutgarda Arceo at the demolition site showing him the documents of sale to her by three (3) of the heirs of Antonio Abarrientos of the ¾ portion of the subject land and the document of repurchase by the Legaspis of the 1/5 portion of the said land. The reasons cited by trial court, as summarized from the quoted portions, are as follows: (1) accused-appellant's active participation during the mediation where he examined the documents presented by the Legaspis before letting them sign the *Affidavit/Panumduman*; (2) notwithstanding said examination, he admitted that there was no specific reference to the lot to be vacated in the said agreement; (3) his lack of knowledge of the "*Sale with Right of Repurchase*" of unsegregated portion of land executed on October 1994 where the 1/5 interest in the subject land was sold by the Legaspis to Lutgarda Arceo is flatly belied by the fact that he stood as a witness to a subsequent document denominated as "*Deed of Release of Sale with Right of Repurchase of a Portion of a Parcel of Land*" dated June 7, 1999 where the said 1/5 interest was repurchased by the Legaspis from Lutgarda Arceo; and (4) the writ of demolition he issued specifically refers to "a portion of land belonging to the plaintiffs (Legaspis) located at Brgy. M.H.Del Pilar, Dulag, Leyte.

On the trial court's disquisition on the findings contained in the assailed *Decision* on the presence of *evident bad faith*, the OSP debunks accused-appellant's argument that his constitutional right to be informed of the nature and cause of accusation against him was violated because the element of *evident bad faith* was not alleged in the Information. This argument, the OSP asserts, must fail because accused-appellant's acts, duly established by evidence, can also be characterized as constituting *manifest partiality* or *gross inexcusable negligence*- both of which were duly alleged

⁸⁷ The elements of violation of Section 3(e) of R.A. 3019 are as follows: (1) that the accused must be a public officer discharging administrative, judicial or official functions; (2) that the act was done with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the public officer caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions (see *Cabrera vs. Sandiganbayan*, 484 Phil 350(2004))



in the Information. In advancing this theory, it cites jurisprudence that an appeal throws the entire case open for review.⁸⁸

Manifest partiality and *gross inexcusable negligence* were established during the trial, according to the OSP, by the acts of accused-appellant who, after requiring the occupants of the houses to a confrontation with the Legaspis, made them sign the "Affidavit/Panumduman," and after three (3) months, ordered the demolition of their houses to unduly favor the Legaspis, as well as the Elbin spouses who later turned out, or after the demolition, to be the buyer of their 1/5 portion of the land. The undertaking under the amicable agreement was for them to leave or vacate the premises. Nowhere was it stated that they consented to the demolition of the structures. Instead of ordering the occupants to vacate the premises, he ordered the demolition of their structures, accused-appellant exceeded his authority.

Despite the fact that accused-appellant very well knew of Lutgarda Arceo's remaining interest in the subject property as he stood and signed as a witness to the "*Deed of Release of Sale with Right of Repurchase of a Portion of a Parcel of Land*" wherein only 1/5 portion of the subject property was redeemed by the Legaspis from Lutgarda Arceo, accused-appellant still proceeded to order the demolition. In fact, Lutgarda Arceo was never notified of the ejectment proceedings before the barangay that led to the demolition of her house. She was only notified by her niece, Rhea, on September 30, 1999, or the night before the demolition, as the copy of the writ of demolition was received in the afternoon of September 30, 1999. Accused-appellant's disregard of the pleas of Lutgarda to stop the demolition despite presentation of legal documents to establish her rights constitutes *manifest partiality* or, at least, *gross inexcusable negligence*.

As to the *third element*, accused-appellant's act of ordering the demolition of the houses without justifiable reason caused undue injury to the occupants thereof, namely: Rhea Tupaz, Marilyn Teston, Alicia Palejaro, Domingo Dela Paz, and others. Private complainant Lutgarda Arceo, who at the time of the demolition, still had 4/5 interest on the subject property and had a house built thereon occupied by her niece Rhea Tupaz, likewise suffered injury.

The demolition likewise gave *unwarranted benefit, advantage and preference* to the Legaspis who despite the fact that she (Florence) redeemed only 1/5 portion of the land which, as established during the trial, was still undivided or her share cannot be ascertained yet, she was able to sell her undivided 1/5 portion to spouses Terry and Editha Elbin for a profit. As a consequence, accused-appellant's series of acts gave unwarranted benefit to his relatives, the Elbin spouses, who after the illegal demolition,

bought the subject lot from Florencia Legaspi and subsequently constructed a house thereon.

DISCUSSION AND RULING

The appeal is without merit.

Section 3(e) of R.A. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act” as amended, provides:

“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:

X X X X X X

“(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees or offices or government corporations charged with the grant of licenses or permits or other concessions.”

To be found guilty of violation of Section 3(e) of R.A. 3019, as amended, the essential elements of this crime which have been enumerated in several cases⁸⁹ decided by the Supreme Court must concur, are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. That his action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The case of *Cabrera vs. Sandiganbayan*⁹⁰ explained that there are two (2) ways by which a public official violates Section 3(e) of R.A. 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. Although

⁸⁹ Fuentes vs. People, G.R. No. 186421, April 17, 2017, *Consigna vs. People*, G.R. No.175750-51, April 2, 2014; Santos v. People, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386; and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254, 259.

⁹⁰ G.R. Nos. 162314-17, October 25, 2004

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neither mode constitutes a distinct offense,⁹¹ an accused may be charged under either mode or both. The use of disjunctive term “or” connotes that the two modes need not be present at the same time. The presence of one would suffice for conviction.⁹²

In short, the delictual act of the accused may give rise or cause either an undue injury to any party, including the government; or the giving to any private party unwarranted benefits, advantage or preference, or both undue injury and unwarranted benefits, advantage or preference.

In *Uriarte vs. People*,⁹³ the Supreme Court explained that Section 3(e) of R.A. 3019, as amended, 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*. The phrases “manifest partiality,” “evident bad faith,” and “gross inexcusable negligence”, as held in *Bautista vs. Sandiganbayan*,⁹⁴ merely describe the different modes by which the offense penalized in Section 3(e) of R.A. 3019, as amended, could be committed, and the use of all these phrases in the same Information do not mean that the indictment charged three (3) distinct offenses. Proof of any of these three (3) modes in connection with the prohibited acts mentioned in Section 3(e) of R.A. 3019 is enough to convict.⁹⁵

A careful review of the *Information* in the instant case reveals that accused-appellant Tupaz and Cagara (now deceased) were charged under Section 3(e) of R.A. 3019, as amended, for giving unwarranted benefits to Florencia Legaspi and her niece, Ma. Luz Legaspi (Legaspis) through *manifest partiality* and *gross inexcusable negligence* when he, as Barangay Captain and, by law⁹⁶, the Chairman of the *Lupong Tagamapayapa*, and his co-accused Barangay Secretary Cagara then, induced the occupants of the 3,840 sq. meter land during the mediation proceedings in an ejectment case pursuant to Section 410⁹⁷ of R.A. 7160 (Local Government Code) to sign an agreement known as “*Affidavit/Panumduman*” to vacate the subject land

⁹¹ Santiago vs. Garchitorena, G.R. No. 109266, December 2, 1993

⁹² Quibal vs. Sandiganbayan, G.R. No. 109991, May 22, 1995

⁹³ G.R. No. 169251, December 20, 2006, 540 Phil.477, 493, citing Santos vs. People, 520 Phil 58, 68 (2006); Cabrera vs. Sandiganbayan, G.R. Nos. 162314-17, October 25, 2000

⁹⁴ G.R. No. 136082 : May 12, 2000

⁹⁵ Sison vs. People, G.R. Nos. 170339, 170398-4032, March 9, 2010, 614 SCRA 670, 679

⁹⁶ Section 399, RA 7160 (Local Government Code of 1991) provides:

“SEC. 399, *Lupong Tagapamayapa*. –(a) There is hereby created in each barangay a *lupong tagamapayapa*, hereinafter referred to as the *lupon*, composed of the punong barangay as chairman and ten (10) to twenty (20) members. The *lupon* shall be constituted every three (3) years in the manner provided herein.”

⁹⁷ Section 410, RA 7160 provides:

“SEC. 410. Procedure for Amicable Settlement. – (a) xxx

(b) Mediation by lupon chairman- Upon receipt of the complaint, the lupon chairman shall within, the next working day, summon the respondent(s), with notice to the complainant(s) for them and their witnesses to appear before him for a mediation of their conflicting interests. If he fails in his mediation effort within fifteen (15) days from the first meeting of the parties before him, he shall henceforth set a date for the constitution of the pangkat in accordance with the provisions of this Chapter.

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within three (3) months from signing. Allegedly, the Legaspis represented to Lutgarda Arceo that they owned the land when, in truth and in fact, it could not yet be determined if said persons were really occupying the area owned by them, there being no survey yet and considering that the Legaspis owned only a 1/5 portion of the entire land. In the course of time, for failure to vacate the premises of the subject land within three (3)- month period, accused-appellant ordered the demolition of the houses of the occupants pursuant to his writ of demolition, thereby giving unwarranted benefit to the Legaspis to the damage and prejudice of the occupants of the houses.

First Element

The presence of the first element is not disputed in the instant case. Accused-appellant was the Barangay Captain of Barangay M.H. del Pilar, Dulag, Leyte at the time of the commission of the alleged offense in 1999 and the acts complained of were done in the discharge of his official functions.

Second and Third Elements

As stated in the *Information*, accused-appellant was charged under Section 3(e) of R.A. 3019, as amended, for giving unwarranted benefits to Florencia Legaspi and her niece, Ma. Luz Legaspi (Legaspis, for short) through *manifest partiality* and *gross inexcusable negligence* resulting to the damage and prejudice of Jesusa "Rhea" Tupaz, Marilyn Teston, Alicia Palijaro, Domingo De Paz and others.

In his appeal, accused-appellant assails the judgment of conviction rendered by the trial court against him on the ground that he was convicted of violation of Section 3(e) of R.A. 3019 for giving unwarranted benefits to the Legaspis through *evident bad faith*, a mode of committing the delictual act under Section 3(e) of RA 3019 that was not alleged in the *Information* in violation of his constitutional right to be informed of the nature and cause of accusation against him.

Accused-appellant invokes the pronouncements of the Supreme Court in *Villarosa vs. People*,⁹⁸ that an accused cannot be convicted based on a modality that was not alleged in the *Information*, as in his case, where *evident bad faith* was not expressly alleged in the *Information*. Accused Villarosa, a Municipal Mayor of San Jose del Monte, Occidental Mindoro was charged and, after trial, convicted by the Sandiganbayan with violation of Section 3(e) of R.A. 3019 through *evident bad faith* in connection with his issuance of extraction permits to various quarry operators which, under the Section 138 of the Local Government Code of 1991 (RA 7160), falls within the authority and jurisdiction of the Provincial Governor. However, on a petition for review on certiorari under Rule 45 of the Rules of Court,

⁹⁸ G.R. No. 233155-63, June 23, 2020

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Villarosa was acquitted by the Supreme Court on the ground that there is no sufficient evidence to prove that he is guilty of *evident bad faith*. The Supreme Court ruled, *by majority vote of 9 votes, three (3) dissenting, one (1) on leave*, that prosecution was unable to present sufficient evidence to prove that in issuing the questioned extraction permits, petitioner (Villarosa) was moved by a clear, notorious, or plain indication or predilection to favor one side or person rather than another or of a palpably and patently fraudulent and dishonest purpose operating with furtive design to do moral obliquity of conscious wrongdoing.

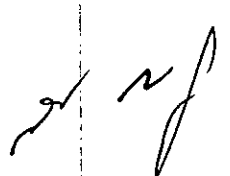
A dissenting view was expressed in *Villarosa* case that the accused Mayor could still be convicted for violation of Section 3(e) of RA 3019 because his actions may be considered to fall under the rubric of *gross inexcusable negligence*. It was pointed out that such conviction would be justified even if the Information against the accused do not contain any allegation of *gross inexcusable negligence* following the case of *Sistoza vs. Desierto*, 437 Phil. 117 (2002).

The Supreme Court, speaking thru Chief Justice Peralta discredited the said dissenting view as plain error, thus:

“To adopt the dissent's view, therefore, would inevitably sanction a violation of petitioner's due process rights, particularly of his right to be informed of the nature and cause of the accusation against him. Convicting petitioner of violation of Section 3(e) of RA 3019 on the basis of gross inexcusable negligence, when he was but charged of committing the violation by means of evident bad faith only, would be highly unfair as it effectively deprives the petitioner of the opportunity to defend himself against a novel accusation. This outcome simply cannot be countenanced.”

The doctrine laid down *Villarosa vs. People* is not squarely applicable in the instant case insofar as accused-appellant's constitutional right to be informed of the nature and cause of the accusation against him. It must noted that in *Villarosa*, the accused was convicted by the Sandiganbayan of violation of Section 3(e) of RA 3019 through “evident bad faith” which modality of committing the said violation was alleged in the Information, but upon review by the Supreme Court, he was acquitted of the crime charged because there is no sufficient evidence that he is guilty of evident bad faith; however, it was ruled that he cannot be convicted of violation of Section 3(e) of RA 3019 on the basis of “gross inexcusable negligence” which was not alleged or stated in the Information as it would violate his constitutional right to be informed of the nature and cause of accusation against him.

As distinguished from instant case, accused-appellant was convicted by the trial court of violation of Section 3(e) of RA 3019 through “evident bad faith” which modality of commission of the crime was not specifically alleged in the Information, but nevertheless shown by the trial court's



pronouncements in its decision. The difference of the case of *Tupaz* from *Villarosa* case lies on the fact that in accused-appellant's case, although "evident bad faith", as a modality of committing the violation of Section 3(e) of R.A. 3019 was noticeably not specifically alleged in the Information, accused-appellant herein was nevertheless charged with violation of Section 3(e) of R.A. 3019 through "manifest partiality" and "gross inexcusable negligence" in the Information.

In *Villarosa*, on the other hand, "evident bad faith" was categorically alleged in the Information as the only modality Villarosa was charged of committing the violation of Section 3(e) of RA 3019, but the Supreme Court ruled that the prosecution was unable to present sufficient evidence to prove that there was evident bad faith when he issued the questioned extraction permits to various quarry operators.

Here, the absence of allegations of "evident bad faith" in the Information charging accused-appellant herein with violation of Section 3(e) of RA 3019 does not preclude a conviction for violation of Section 3(e) of RA 3019 through the modality of "manifest partiality" or "gross inexcusable negligence", both of which are clearly alleged in the Information, if the pieces of evidence presented and proved by the prosecution during trial of the case so warrant.

This leads us then to resolve the issue, on the bases of the allegations in the Information, the facts and the evidence borne out of the records of the case, both testimonial and documentary, whether or not evidence of *manifest partiality* and *gross inexcusable negligence* are present in the instant case charging accused-appellant of violation of Section 3(e) of RA 3019 through the modalities as alleged in the Information.

It has been held in a long line of cases⁹⁹ that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether assigned or unassigned. The appeal confers upon the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

In *Manero vs. Court of Appeals*,¹⁰⁰ the Supreme Court, citing the case of *Tagoranao vs. Court of Appeals*,¹⁰¹ stated that the basic nature of the appeal in a criminal case remains to be a trial *de novo* and to the appellate

⁹⁹ Encinares y Ballon vs. People, G.R. No. 252267, January 11, 2021; People vs. Rivera y Suarez, G.R. No. 252886, March 15, 2021; Casilac v. People, G.R. No. 238436, February 17, 2020; People v. De Guzman, G.R. No. 234190, October 1, 2018; Miguel vs. People, 814 Phil. 1073, 1081 (2017); Ramos vs. People, G.R. No. 218466, January 23, 2017; People vs. Montinola, G.R. No. 178061, January 31, 2008; People vs. De la Torre, G.R. No. 176637, October 6, 2008.

¹⁰⁰ G.R. No. L-49824, February 20, 1981

¹⁰¹ G.R. No. L-32218, February 11, 1971

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court is reserved with the power to review the whole record and take into account any error it may perceive in the consideration of the whole record, regardless of the appellant's assignment of errors. The need to examine the whole body of evidence adduced in the trial is based on a reason as basic as the constitutional presumption of innocence in favor of the accused.

Guided by the jurisprudence that an appeal in criminal cases opens the entire case for review, case law also tells us that the use of all the phrases, i.e. *evident bad faith*, *manifest partiality*, *gross inexcusable negligence*, in the same Information does not mean that the indictment charged three (3) distinct offenses. Each is actually distinct from the others. Proof of any of these three (3) modes in connection with the prohibited acts mentioned in Section 3(e) of R.A. 3019 is enough to convict.¹⁰²

It must be stressed in this regard that *evident bad faith* and *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. Felonies committed by means of *culpa* are those performed with imprudence, negligence, lack of foresight, or lack of skill.¹⁰³ In intentional felonies, the act or omission is malicious. However, in culpable felonies, the act or omission of the offended need not be malicious. The wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

Stated simply, a violation of Section 3(e) of RA 3019 through *evident bad faith* and *manifest partiality* must be characterized by malice or criminal intent or *dolus malus*. Malice or criminal intent being a state of mind which is the common element between the two modalities of committing violation of Section 3(e) of RA 3019, there is really no reason to distinguish between *evident bad faith* and *manifest partiality*. *Manifest partiality* cannot simply mean an open or clear inclination to favor another, because as humans we are faultlessly fan of some than others, which without malice would be unjust to punish criminally.¹⁰⁴ The task of the prosecution in order to establish *evident bad faith* and *manifest partiality* as modalities of committing the violation of Section 3(e) of RA 3019, is to prove beyond reasonable doubt, in both instances, that the bad faith is *evident* and the partiality is *manifest*.¹⁰⁵ In both instances, malicious intent or *dolus malus* must be established by the prosecution.

Notably, when the Information charged accused-appellant with violation of Section 3(e) of R.A. 3019 through *manifest partiality* and *gross inexcusable negligence*, alleging therein the attendant facts and

¹⁰² Sison vs. People, G.R. Nos. 170339, 170398-4032, March 9, 2010, 614 SCRA 670, 679

¹⁰³ Article 3, Act No. 3815, as amended, otherwise known as the Revised Penal Code (RPC)

¹⁰⁴ See concurring opinion of Justice Mendoza-Javier, Martel, et. al. vs. People, G.R. No. 224720-23 and G.R. No. 224765-68, February 2, 2021

¹⁰⁵ Constantino vs. Sandiganbayan, G.R. No. 140656 and 154482, September 13, 2007

circumstances descriptive of malicious intent or *dolus malus* characterizing “manifest partiality”, and likewise evokes lack of slightest care in the discharge of official functions characterizing “gross inexcusable negligence”, accused-appellant cannot argue that his right to be informed of the nature and cause of the accusation against him guaranteed under Article III, Section 14(2) of the Constitution was violated on the ground that he was deprived of the opportunity to defend himself against the accusation against him as alleged in the Information. He had all the opportunity, as what transpired during the trial of his case, to defend himself of the accusation against him as expressly alleged in the Information considering that deliberate intent or malice (*dolus malus*) being the common element of both *evident bad faith* and *manifest partiality*.

In *People vs. Atienza*¹⁰⁶, the Supreme Court defined the phrases *manifest partiality*, *evident bad faith* and *gross inexcusable negligence*, as follows:

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

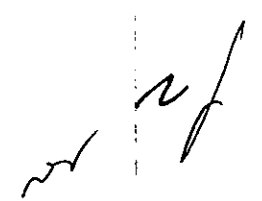
Partiality is synonymous to “bias”. Partiality excites a disposition to see and report matter as they are wished for rather than as they are. It becomes manifest when partiality is attended by a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.

Aside from discrediting the trial court’s findings of evident bad faith in ordering the demolition of the houses of Lutgarda Arceo, et. al., accused-appellant contends that he cannot be considered to have acted with *manifest partiality* and *gross inexcusable negligence* because he had given the occupants of the houses in the disputed land the opportunity to present their side in the series of conferences that he called.

The Court is not convinced.

Accused-appellant during the time material in this case, or on June 10, 1999, was the Brgy. Captain of M.H. del Pilar, Dulag, Leyte serving on his second term of the three (3)-year term of office of the barangay captain. In the span of five (5) years, more or less, of his first and second term of

¹⁰⁶ G.R. No. 171671, June 18, 2012



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office, he knew the residents of his barangay, as he testified in court, including the residents-occupants in the disputed land of Antonio Abarrientos.¹⁰⁷

As Barangay Captain, he was the chairman of the *Lupong Tagapamayapa* tasked to bring together the parties residing in the same city or municipality for amicable settlement of all disputes,¹⁰⁸ except those mentioned in Section 408 of R.A. 7160. It must be noted that the Barangay Captain is not a judge but a mediator between the contending parties to reach an amicable settlement. In case of failure in his mediation effort within 15 days from the first meeting of the parties before him, he shall set a date for the constitution of the *Pangkat ng Tagapagsundo*¹⁰⁹ composed of three (3) members for conciliation proceedings, thus:

“SEC. 410. *Procedure for Amicable Settlement.* (a) x x x

(b) Mediation by *lupon* chairman.-Upon receipt of the complaint, the *lupon* chairman shall within, next working day, summon the respondent(s), with notice to the complainants for them and their witnesses to appear before him for mediation of their conflicting interests. If he fails in his mediation effort within the fifteen (15) days from the first meeting of the parties before him, he shall forthwith set a date for the constitution of the *pangkat* in accordance the provisions of this Chapter.”

Accused-appellant, acting on the complaint for ejectment filed on June 8, 1999 by Florencia Legaspi and Ma. Luz Legaspi (“Legaspis”) based on the “*Deed of Release of Sale with Right to Repurchase of a Portion of a Parcel of Land*”¹¹⁰ executed on June 7, 1999, or the day before the filing of the complaint, summoned the respondent-occupants in the disputed land, namely: Alicia Palijaro, Conchita de Paz, Marilyn Teston, Candelaria Miano and Jesusa “Rhea” Tupaz for “confrontation”, more properly referred to as mediation,¹¹¹ on June 10, 1999. Despite his knowledge, as he himself testified in court that he knew the residents of his barangay,¹¹² he did not bother at all to give notice of the summons to Lutgarda Arceo who has an interest in the undivided portions of the disputed land of Antonio Abarrientos where her ancestral house was occupied then by her niece, Jesusa “Rhea” Tupaz.

It was not disputed by accused-appellant that during the mediation on June 10, 1999, he admitted that he actively participated during the said proceedings, examined the documents presented by the Legaspis alleged to be the bases of their complaint for ejectment later identified as “*Deed of Release of Sale with Right of Repurchase of a Portion of a Parcel of Land,*”

¹⁰⁷ TSN, January 7, 2021 Records, pp.3-5

¹⁰⁸ Section 399, Chapter 7, Book III of R.A. 7160 (Local Government Code of 1991)

¹⁰⁹ Section 404, RA 7160

¹¹⁰ Exhibit “C”, Records, p 24

¹¹¹ Sections 410, Book III, R.A. 7160 (The Local Government Code of 1991)

¹¹² TSN, January 7, 2021, pp.3-5

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dated June 7, 1997 (Exhibit "C"). Surprisingly, however, accused-appellant claimed ignorance of the fact that Lutgarda Arceo still owned the remaining interests in the land subject matter of the case because only 1/5 portion of the undivided 3,840 sq. meter land was redeemed or repurchased by the Legaspis from Lutgarda Arceo on June 7, 1999. The said 1/5 portion was bought by Lutgarda Arceo from Florencia Legaspi sometime in October 1994 by way of "*Sale with Right of Repurchase*". In fact, as shown by the "*Deed of Release of Sale with Right of Repurchase of a Portion of a Parcel of Land*", accused-appellant signed as a witness when the same was executed in his presence on June 7, 1999.

As a witness to the said "*Deed of Release of Sale with Right to Repurchase of a Portion of a Parcel Land*" whose signature was neither disputed nor denied, he knew fully well that only 1/5 portion of the entire 3,840 sq. meter-undivided land of Antonio Abarrientos may be rightfully claimed by the Legaspis. The document was executed on June 7, 1999, or the day before the complaint was filed on June 8, 1999 at his barangay office. Since the disputed land is still undivided among the heirs, prudence dictates that he should have summoned in the mediation the other heirs of Antonio Abarrientos¹¹³ and the other parties who have an interest thereon to determine which exact portion could be rightfully claimed by the Legaspis and which portion belonged to Lutgarda Arceo - an indispensable party without whom the dispute cannot be finally determined since the remaining portion of the land was mortgaged to her by way of sale with right of repurchase by the three (3) other heirs¹¹⁴ of Antonio Abarrientos on August 30, 1997.

Taking advantage of the absence of Lutgarda Arceo and the lack of knowledge by the other occupants about the transactions affecting the disputed land undoubtedly reveals accused-appellant's plain inclination or predilection to favor the interests of the Legaspis who intended to sell the land to Editha C. Elbin, a first cousin of accused-appellant, when he induced the occupants to sign the purported amicable settlement.¹¹⁵ At the very least, he should have summoned the other heirs of Antonio Abarrientos. Evidently, he did not; otherwise, it could have stalled and undermined the intention of his first cousin, Editha C. Elbin, to buy the land from the Legaspis. The witness for the defense, Alexander Cagara, confirmed during his cross-examination that accused-appellant is a relative of Editha Elbin. During his re-direct examination, he also confirmed that the spouses Elbin purchased the subject land sometime after the demolition on October 1, 1999 because they built a house thereon thereafter.¹¹⁶

¹¹³ Antonio Abarrientos has five children namely: Carmen, Catalina, Juan, Enastacia and Carlos. Carmen is represented by Agaton Abarrientos; Catalina by Alberto Ramos; Juan by Erlinda Radam; Enastacia by Florencia Legaspi; Carlos (representative heir not found in the records) .

¹¹⁴ Agaton Abarrientos, Alberto Ramos and Erlinda Radam

¹¹⁵ TSN, September 9, 2009, Records, pp. 294-296; May 25, 2011, Records, pp. 316-319.

¹¹⁶ TSN, March 25, 2021, Records, p. 392

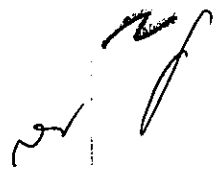
Instead, accused-appellant proceeded with undue haste in inducing the respondents-occupants to sign the purported amicable agreement on the same day they were summoned on the representations of the Legaspis that they owned the whole property. In the course of events, due to the lack of notice of the summons to Lutgarda Arceo, she was unjustly deprived of her right to avail of the legal remedies to protect her interests in the undivided portions of the land under the law, including in particular, her right to repudiate the amicable agreement under Section 418 of the RA 7160 on the ground of fraud.

The undue haste with which accused-appellant induced the occupants to sign the agreement clearly show, as evidenced by his testimony during cross-examination, that he did not read nor browse the legal document which mentions the *"RELEASE of a portion of a parcel of land consisting of more or less One[sic] (1/5) of the whole lot the subject of a Deed of Sale with the Right of Right of Repurchase"*. The *"Deed of Release of Sale with the Right of Repurchase of a Portion of a Parcel of Land"* (Exhibit "C"), as the caption explicitly describes, speaks of "1/5 of the whole lot" and a *"Deed of Sale with the Right of Right of Repurchase"*. However, when asked to go over the document on page 22 of the case records pointing to the sale of the parcel of land on October 1994 by way of *"Deed of Sale with Right of Repurchase"* between the Legaspis, as vendor, and Lutgarda Arceo, as vendee, he said that he was not aware of said document which speaks of the sale with right of repurchase of 1/5 portion only of the total area of the land involved in the case. To his understanding, the dispute involved the entire land.¹¹⁷

Accused-appellant cannot feign ignorance of the fact that only 1/5 portion of the entire undivided land was released to the Legaspis by Lutgarda Arceo under the *"Deed of Release of Sale with the Right of Repurchase of a Portion of a Parcel of Land"* (Exhibit "C") considering that, as discussed earlier, he stood and signed as a witness in the execution of said document of conveyance. Common sense dictates that since 1/5 portion of the entire undivided land was released to them, the Legaspis have no right to the remaining portions of the entire land. Malicious intent was evident and clearly manifest from his acts when he proceeded to order the demolition of all the houses built on the said land despite the plea of Lutgarda Arceo before the start of the demolition that ¾ portion of the entire undivided land was sold to her by Agaton Abarientos, Alberto Ramos and Erlinda Radam-- the other three (3) heirs of Antonio Abarrientos--on August 30, 1997, showing to him the *"Deed of Sale with Right of Repurchase of Three (3) Ideal Shares"* (Exhibit "B").

The inclination or predilection of accused-appellant to favor the interests of Legaspis was clearly manifested not only at the level of

¹¹⁷ TSN, January 7, 2021, Id., pp. 424-425



mediation proceedings before him, as discussed above, but likewise during the execution stage of his demolition order on October 1, 1999. Accused-appellant, with malicious intent, misled Lutgarda Arceo by telling her: *"Iday, this is according to law, we have a Court Order. Where were you? You have been sleeping all along"*¹¹⁸. Lutgarda Arceo, an indispensable party who has an interest on the undivided portions of the three (3) heirs of Antonio Abarrientos over the 3,840 sq. meter land, was not notified at all and summoned to appear during the mediation on June 10, 1999, yet accused-appellant as chairman of the *Lupon* had the audacity to misled her that the demolition was supported by a court order when actually there was none. All accused-appellant had was a writ demolition he signed on September 30, 1999 which was served on the occupants on the day of the demolition on October 1, 1999 depriving her of the opportunity to repudiate the purported amicable agreement under Section 418 of RA 7160 or avail of other remedies under the law.

Lutgarda Arceo had to verify from the MTC of Dulag, Leyte the allusion of accused-appellant to a court order authorizing the demolition order, only to be told that the presiding judge was unavailable at that time. She even went to the extent of seeking assistance from Mayor Siague of Dulag, Leyte, the DILG and the Dulag, Leyte Chief of Police Antonio Bacar, but all were in vain. She was not only denied of due process but was likewise unjustly denied likewise of her family dwelling, the same being the ancestral home built by her mother Mariquita Tupaz sometime in 1967 on the representations of Florencia Legspi that she owned the whole lot. Together with the houses of Marilyn Teston, Alicia Palejaro and Domingo de Paz, it was destroyed and demolished by accused-appellant for the benefit of the Legaspis notwithstanding the fact that there was no determination yet if their houses are actually situated in the 1/5 portion of the 3,840 sq. meter land repurchased by the Legaspis. There was still uncertainty of the exact location where the said 1/5 portion of the Legaspis since there was no survey yet. Prudence dictates that accused-appellant should have exercised extra caution in demolishing their houses which served as their respective family dwellings.

By delineating the portion claimed by the Legaspis, it is only then that accused-appellant could determine which of the occupants should vacate the premises belonging to the Legaspis. This is not what happened in the instant case. By not serving notice to the other heirs and Lutgarda Arceo as indispensable parties, there is thus a clear manifestation of partiality or bias in favor of the interests of the Legaspis, and demonstrably as a public officer, an obvious indication of gross inexcusable negligence as a mediator under the barangay justice system provided under R.A. 7160. In acting with undue haste in having the occupants signed the purported amicable settlement, accused-appellant thus improvidently ordered the demolition of

their respective family dwellings with conscious indifference to consequences insofar as other persons may be affected, instead of only in the 1/5 portion claimed by the Legaspis. As a consequence, damage is caused to the occupants whose stay or occupation of the unaffected portions is with the consent of Lutgarda Arceo who bought the undivided portions owned by Alberto Ramos, Erlinda Radam and Agaton Abarrientos with right of repurchase.

Gross inexcusable negligence under Section 3(e) of RA 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.¹¹⁹ A public officer who seriously breaches his or her duty in a blatant and extremely careless manner with conscious indifference to consequences insofar as other persons may be affected, is guilty of gross inexcusable negligence under Section 3(e) of R.A. 3019 regardless of whether such breach of duty was done with malicious intent. In *Sanchez vs. People*,¹²⁰ a public officer's failure to appreciate the extent of his or her basic power is gross negligence amounting to gross bad faith and manifest partiality. In the companion cases of *Ambil vs. Sandiganbayan*, and *Apelado, Sr. vs. People*¹²¹ a local chief executive's disregard of the extent of his power to act on a particular matter that resulted in a benefit or advantage to a third party betrays his unmistakable bias and the evident bad faith that attended his actions.

As adverted earlier, as to the *third element*, there are two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions: (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 of Section 3(e) of R.A. 3019. In other words, the presence of one would suffice for conviction.¹²²

Under the first punishable act under Section 3(e) of RA 3019, an accused is said to have caused *undue injury* to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty, but there must be some reasonable basis by which the court can measure it. The loss or damage must be substantial.¹²³

¹¹⁹ Sistoza vs. Desierto, G.R. No. 144784, September 3, 2002

¹²⁰ G.R. No. 187340, August 14, 2013, 716 Phil. 397 (2013)

¹²¹ G.R. No. 175457 and G.R. No. 175482, July 6, 2011

¹²² Tiongco vs. People, G.R. Nos. 218709-10, November 14, 2018

¹²³ Abubakar vs. People, G. R. No. 202408, 27 June 2018

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In *Pecho vs. Sandiganbayan*,¹²⁴ the word “undue” means “more than necessary, not proper, or illegal” and “injury” means “any wrong or damage done to another, either in his person, rights, reputation or property; the invasion of any legally protected interest of another”. In the context of these definitions, jurisprudence has interpreted *undue injury* to mean actual damage similar to that in civil law, which must be established by evidence.¹²⁵

The second punishable act under Section 3(e) of Republic Act No. 3019 is the giving of *unwarranted benefits, advantage, or preference* to a private party. This does not require actual damage as it is sufficient that the accused has given “unjustified favor or benefit to another.”¹²⁶ To be found guilty under the second punishable act, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial function.¹²⁷

In *Rivera vs. People*,¹²⁸ the Supreme Court defined the following terms: “*unwarranted*” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason; “*advantage*” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action; and “*preference*” signifies priority or higher evaluation or desirability; choice or estimation above another.

Given the definitions or meanings descriptive of the terms used under the third element of violation of Section 3(e) of RA 3019 laid down in our jurisprudence, the prosecution has clearly established by sufficient evidence, both testimonial and documentary, the *unwarranted benefits, advantage or preference* given during the mediation to the Legaspis by accused-appellant who, without notice of the summons to private complainant Lutgarda Arceo, an indispensable party in the dispute as well as the other heirs of Antonio Abarrientos, induced with undue haste the occupants of the houses to agree and sign the amicable settlement (*Affidavit/Panumduman*) on the mere representations of the Legaspis that they owned the entire 3,840 sq. meter land when, as evidenced by Exhibit “C”, she can only rightfully claim 1/5 portion of the undivided land. Because of the *manifest partiality* displayed by accused-appellant in favor of the Legaspis coupled by his *gross inexcusable negligence* in the performance of his official function as chairman of the *Lupon*, he set in motion the events which led to demolition of the houses of the occupants on October 1, 1999 which, by the nature of the act itself, resulted to damage to property or injury of the rights of private complainants in the criminal case as they were

¹²⁴ G.R. No. 111399, November 14, 1994

¹²⁵ *Guadines vs. Sandiganbayan and People*, G.R. No. 164891, June 6, 2011

¹²⁶ *Abubakar vs. People*, *supra*, at Note 121

¹²⁷ *Sison vs. People*, G.R. No. 170339, 170398-403, March 9, 2010

¹²⁸ G.R Nos. 15677, 156587 & 156749, December 3, 2014

deprived of their dwelling or means of abode. Section 10, Article XIII of the 1987 Constitution provides:

“SEC. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.”

As a result of the unjustified demolition of their houses, Lutgarda Arceo sustained pecuniary loss or damage which she claimed during her testimony together with photographs¹²⁹ presented during the trial that her ancestral house is worth Php 250,000.00. She said that it was made of concrete materials, including the flooring while its wooden parts were made of “yakal” wood. The kitchen and sink were fitted with tiles while the roofing with galvanized iron.¹³⁰ Although definite proof of the amount of pecuniary loss cannot be presented as the photographs produced as evidence were deemed insufficient, the Court agrees with the trial court’s award of temperate damages¹³¹ under Article 2242 of the Civil Code.¹³² Considering that other than her testimony in court, no competent evidence was presented to substantiate her claim on the monetary value of her ancestral house, the Court finds the reduced amount of Php 100,000 as temperate or moderate damages just and reasonable under the circumstances of the case.

All things considered, i.e. the facts, circumstances, applicable laws and jurisprudence on the issue raised in the instant case, the Court finds that the prosecution has proven and established beyond reasonable doubt that accused-appellant committed the violation of Section 3(e) of RA 3019 by giving unwarranted benefit to the Legaspis through manifest partiality and gross inexcusable negligence which resulted to damage and prejudice of private complainants in Criminal Case No. 2002-02-101 filed before the RTC of Tacloban City.

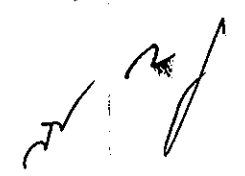
WHEREFORE, in view of the foregoing, the appeal is **DENIED** for lack of merit. The decision of the Regional Trial Court, Branch 34, 8th Judicial Region, Tacloban City finding accused JOVITO M. TUPAZ guilty beyond reasonable doubt of violation of Section 3(e) of R.A. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act,” and sentencing him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to eight (8) years and six (6) months, as maximum, with perpetual disqualification from public office is hereby **AFFIRMED**.

¹²⁹ Exhibit “D” and series

¹³⁰ TSN, February 13, 2004, Records ,p. 249


¹³¹ Fuentes v. People , G.R. No. 186421, April 17, 2017, citing Araneta vs. Bank of America, G.R. L-25414, July 30, 1971

¹³² Article 2224 of the Civil Code of the Philippines provides: “ Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.”




Moreover, accused-appellant Tupaz is ordered to pay private complainant Lutgarda T. Arceo the sum of Php100,000.00 as temperate damages, with legal interest of six percent (6%) *per annum* from finality of this Decision until fully paid.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice


WE CONCUR:


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


**MARYANN E.
CORPUS-MAÑALAC**
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.


RAFAEL R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is 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