

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FIFTH (5th) DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO.
SB-17-CRM-0197¹

FOR: Violation of Sec. 3(e)
of R.A. No. 3019

- versus -

Present:

LAGOS, J., *Chairperson*
MENDOZA-ARCEGA, J.
CORPUS-MAÑALAC, J.

GENITO B. GUARDO,
Accused.

Promulgated:

March 17, 2023
Suzel U. Giron

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DECISION

LAGOS, J.:

Accused GENITO BARADILLO GUARDO, then Mayor of the Municipality of Cantilan, Surigao del Sur, is charged with Violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, in the Information² dated June 28, 2016, the accusatory portion of which reads:

“That sometime in 2010 to 2013, or sometime prior or subsequent thereto, in the municipality of Cantilan, Surigao del Sur, and within the jurisdiction of this Honorable Court, above-named accused, **GENITO GUARDO y BARADILLO**, a high-ranking public official, being the Municipal Mayor of Cantilan, Surigao del Sur, while in the performance of his official functions, taking advantage of his position, did then and there, willfully, unlawfully and criminally, with evident bad faith, manifest partiality or gross

¹ SB-17-CRM-0197 (accused Genito B. Guardo) and SB-17-CRM-0196 (accused Tomasa L. Guardo) were filed on February 8, 2017. During the pendency of these cases, the Court, in its Resolution dated October 18, 2022, DISMISSED the case against Tomasa L. Guardo (SB-17-CRM-0196) in view of her death as evidenced by her Certificate of Death (Records, Vol. II, pp. 449-453)

² Records (SB-17-CRM-0197), pp. 1-2

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inexcusable negligence, cause undue injury to the government in the amount equivalent to the expenses incurred by the Local Government of Cantilan, Surigao del Sur, for the unfinished construction of a Mini Hydro Power Plant at Sipangpang, Cantilan, Surigao del Sur, such as publication of the Invitation to Bid for purchase of compactor for the project, 15% mobilization cost, consultancy fees and financial expenses incurred for the accumulated bank interest charges, among others, when he failed to continuously follow up and compel the contractor to complete the project despite the lapse of the period for the completion of the project, including the approved extensions of time.

CONTRARY TO LAW”

The Court issued a Hold Departure Order on February 13, 2017³ and a Warrant of Arrest on February 27, 2017.⁴ On March 8, 2017, the accused personally appeared in Court and posted cash bail bond in the amount of Thirty Thousand Pesos (₱30,000.00).⁵

Upon arraignment on May 23, 2017, the accused pleaded “not guilty” to the charge against him.⁶

Following the termination of the Preliminary Conference⁷ held on various dates, the Court issued the Pre-Trial Order⁸ dated November 29, 2018, which did not contain any joint stipulation or admission from the parties. Thereafter, trial ensued.

Antecedents

The former mayor of the Municipality of Cantilan, Surigao del Sur, Tomasa L. Guardo, was authorized by virtue of Sangguniang Bayan Resolution No. 93-2008, dated July 29, 2008, to contract a loan with the Land Bank of Philippines (Landbank) in the amount of ₱60,000,000.00 for the construction of a Mini Hydro Power Plant in Sipangpang, Cabangahan, Cantilan, Surigao del Sur. In line with the project, the local government entered into a Subsidiary Loan Agreement with the Landbank, dated October 3, 2008, for the amount ₱39,100,000.00 payable in fifty-two monthly installments, using the LGU’s Internal Revenue Allotment as collateral.⁹

³ *Ibid.*, p. 3

⁴ Records (SB-17-CRM-0196), Vol. I, p. 131

⁵ *Id.*, p. 139

⁶ *Id.*, p. 190

⁷ *Id.*, p. 329

⁸ *Id.*, pp. 346-352

⁹ OMB Resolution, Annex B (Records, Vol. I, pp. 35-51)

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Mayor Tomasa L. Guardo issued a Notice of Award, dated February 16, 2009, to JMT Construction as the winning bidder for the construction of "Dam, Penstock & Power House for Sipangpang Falls Mini Hydro Power Project." The contract between the LGU and JMT Construction was entered into on July 13, 2009, with a target completion date of on or before September 2010.

After the May 2010 regular elections, the term of Mayor Tomasa L. Guardo officially ended on June 29, 2010. On June 30, 2010, Genito B. Guardo assumed office as Mayor of Cantilan, Surigao del Sur.

Emmanuel E. Plaza, Sangguniang Bayan (SB) member of Cantilan, Surigao del Sur, filed a complaint¹⁰ dated June 24, 2011 before the Office of the Ombudsman (OMB) against former Mayor Tomasa L. Guardo, incumbent Mayor Genito B. Guardo, and other individuals involved in various aspects related to the project, for violation of R.A. No. 3019, R.A. No. 6713, Malversation of Public Funds or Property under Article 217 of the Revised Penal Code, and Falsification under Article 171 of the same Code.

As to public respondents Tomasa L. Guardo and Genito B. Guardo, the complainant alleged that the project remains unfinished, and the materials were uninstalled and left to deteriorate. He also claimed that members of the Sangguniang Bayan expressed apprehension to the loan because the site of the project is a disputed land between the municipalities of Cantilan and Carrascal, Surigao del Sur. Further, no Environmental Compliance Certificate was secured even if the site is within an environmentally critical area.

In the course of the proceedings before the OMB, it was shown that per 2011 Value for Money Audit report, the project "was not completed within the target date, which is January 2011, and it was only 45% completed with a project cost of P21.6 million as of December 31, 2011."¹¹ Thereafter, in January 2014, the project completion was still at 89.33%, and that "no further civil works were conducted since that date up to the present" as stated in the report of Cheryl Cantalejo-Dime of the Commission on Audit (COA), based on the Statement of Work Accomplishment Report No. 3 submitted by the LGU. She added that a "Program for Disposal of Sipangpang Falls Mini Hydro Power Project with Time Schedule" was prepared by the LGU, and they were already in the fourth stage of the program.¹²

¹⁰ Records, Vol. I, pp. 20-31

¹¹ Exhibit "EE-17" to "EE-19"

¹² Ex. "EE-5" to "EE-7"

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The OMB found that the non-completion of the project has put government resources to waste thereby causing undue injury to the government. There was no showing that former Mayor Tomasa L. Guardo and then incumbent Mayor Genito B. Guardo exerted efforts to complete the project, and that such inaction or laxity amounted to gross inexcusable negligence. The OMB thus found probable cause to indict said respondents for violation of Section 3(e) of R.A. No. 3019.

Thereafter, Informations for violation of Section 3(e) of R.A. No. 3019 were separately filed on February 8, 2017 against Tomasa L. Guardo, docketed as SB-17-CRM-0196,¹³ and Genito B. Guardo, docketed as SB-17-CRM-0197.

Prosecution Evidence

The prosecution's case was built on the testimony of and the documents identified by the following witnesses: 1) Cheryl Cantalejo-Dime, Audit Team Leader of the COA, who conducted an investigation on the status of the project; 2) Erma Arreza-Cuareron, SB member of Cantilan, Surigao del Sur from for the terms 2004, 2007, 2010, and 2015; 3) Arturo M. Sunga, SB member for the terms 2004 and 2007; 4) Marilyn R. Plaza, SB member for the term 2016; 5) Gemma V. Rivas, representative of Landbank-Tagum City, and; 6) Joey M. Tan, proprietor of the contractor, JMT Construction.


As to State Auditor Cantalejo-Dime, the defense agreed to stipulate that she can identify all the documents accompanying the result of the verification of the status of the project which she conducted in 2015, including the Notice of Award to JMT Construction, Notice to Proceed, Contract Agreement, among others.¹⁴ During **cross-examination** she was asked regarding the planned disposal of the project and stated that "as of today, project was disposed since 2016 to a private company." Further **clarificatory questions** from the Court confirmed that the whole project was sold to a private firm, and as far as the witness knows, the value of the unfinished project was recomputed, but she does have an idea as to the cost.¹⁵

Witnesses Erma Cuareron and Arturo Sunga, both members of the Sangguniang Bayan of Cantilan, Surigao del Sur at the time material to this case, were presented for the purpose of identifying several documents attached to their respective Judicial Affidavits, consisting of a letter

¹³ Records, Vol. 1, pp. 1-2

¹⁴ Exhibit "EE" and series

¹⁵ Transcript of Stenographic Notes (TSN) dated April 4, 2019



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addressed to Landbank¹⁶ and minutes of Sangguniang Bayan Regular Sessions,¹⁷ all pertaining to the loan secured from Landbank, and an SB resolution expressing apprehension by the legislative body of the project implementation,¹⁸ all executed, conducted or adopted during the term of Mayor Tomasa Guardo. Both claimed to have knowledge on matters pertaining to the approval of the loan for the project, being incumbent SB members at the time. On **cross-examination**, both witnesses, however, admitted having no personal knowledge as to its implementation. They also conceded that all the SB resolutions they identified were issued before the term of accused Genito B. Guardo, and that they are not aware of any adverse findings from the Commission on Audit with regard to the project implementation.¹⁹

The presentation of witnesses SB member Marilyn Plaza²⁰ and Landbank representative Gemma Rivas²¹ was dispensed with, subject to the stipulation by the parties that they can identify several documentary evidence, as follows: as to Plaza, excerpts from the minutes of two (2) SB regular sessions pertaining to the conversion of the construction project into a service contract and the transfer of all project permits to the new contractor, Paragon Pegasus Solutions, Inc.,²² and; as to Rivas, the Certification²³ issued by Landbank-Tagum City that the loan obligation of the Municipality of Cantilan has been paid in full as of November 29, 2016.

The presentation of witness Joey Tan was likewise dispensed with, but the parties agreed to stipulate that: (1) he is the sole proprietor of JMT Construction; (2) the construction project was awarded by the LGU to JMT Construction on July 13, 2009; (3) the contract was terminated at 89.33% completion, and was sold to another private entity, and; (4) Tan agreed with the termination and received contract price for the percentage of completion of work. The prosecution accepted the counter-stipulation offered by the defense that Tan no longer has in his possession documents pertaining to the project and that Mayor Tomasa Guardo was the signatory to all contracts relative to the project.²⁴

The prosecution's formal offer of evidence²⁵ consists of the following:

¹⁶ Ex. "H"

¹⁷ Ex. "K" and "A-1"

¹⁸ Ex. "G"

¹⁹ TSN dated January 29, 2020, pp. 8-9 and 12-13

²⁰ TSN dated August 6, 2019

²¹ TSN dated January 29, 2020

²² Ex. "FF" and "GG"

²³ Ex. "HH"

²⁴ Order dated March 9, 2021

²⁵ Records Vol. II, pp. 110-159

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| Exhibits | Description |
|-----------------------|--|
| “EE” | Letter of Cheryl Cantalejo-Dime dated 10 May 2015 addressed to Marco Anacleto P. Buena, OIC, Evaluation and Investigation Bureau – B, Office of the Ombudsman. |
| “EE-1” | Alias subpoena duces tecum addressed to Cheryl Cantalejo-Dime dated 20 April 2015. |
| “EE-2” | Letter addressed to Cheryl Cantalejo-Dime dated 17 February 2015 from Marco Anacleto P. Buena. |
| “EE-3” | Notice of Award to Joey M. Tan dated 16 February 2009. |
| “EE-4” | Notice to Proceed dated 20 July 2009. |
| “EE-5” to “EE-7” | Result of the Verification Relative to the Status of the Construction of IMW Hydro Power Plant in the Municipality of Cantilan, Surigao del Sur prepared by Cheryl Cantalejo-Dime. |
| “EE-8” to “EE-16” | Contract Agreement for the Sipangpang Falls Mini Hydro Power Project notarized on 17 July 2009. |
| “EE-17” to “EE-19” | Value for Money Audit. |
| “EE-20” to “EE-22” | Statement of Work Accomplishment Report No. 3 as of January 2014. |
| “EE-23” | Program for Disposal of Sipangpang Falls Mini Hydro Power Project with Time Schedule. |
| “EE-24” | Technical Evaluation Report for Consulting Services. |
| “EE-25” | Consultancy Contract Cost Comparison Sheet. |
| “H” | Letter to the President of the Land Bank of the Philippines dated 6 December 2006. |
| “K” | Excerpt from the Minutes and Proceedings of the 124 th Regular Session of the Sangguniang Bayan of Cantilan, Surigao del Sur held on 20 March 2007. |
| “FF” | Excerpt from the Minutes and Proceedings of the 1 st Special Session of the 14 th Sangguniang Bayan |

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| | of Cantilan, Surigao del Sur held on 19 October 2016. |
| “GG” | Excerpt from the Minutes and Proceedings of the 31 st Regular Session of the 14 th Sangguniang Bayan of Cantilan, Surigao del Sur held on 06 March 2017. |
| “HH” | Certification from the Land Bank of the Philippines dated 19 January 2017 at Tagum City. |
| “A-1” | Excerpt from the Minutes and Proceedings of the 49 th Regular Session of the Sangguniang Bayan of Cantilan, Surigao del Sur held on 29 July 2008. |
| “G” | Resolution No. 22-2007 of the 14 th Sangguniang Bayan of Cantilan, Surigao del Sur adopted 13 February 2007. |
| “II” | Scanned copy of the notarized letter of Joey M. Tan dated 11 March 2020. |

The Court admitted all the evidence formally offered by the prosecution.²⁶

Thereafter, accused Genito B. Guardo filed a Motion for Leave of Court to File Demurrer to Evidence,²⁷ which the Court denied due to the accused’s failure to specifically state the grounds upon which the demurrer is based, pursuant to Section 23 of Rule 119 of the Rules of Court.²⁸

Defense Evidence

The defense tried to present the accused, Genito B. Guardo, as its witness but to no avail. The prosecution, however, agreed to stipulate on the following documents: 1) Certification from the Municipal Treasurer that Paragon Pegasus Solutions, Inc. paid its obligations under the Sipangpang Mini Hydro Project Contract Agreement; and 2) Certification from Paragon that they are the winning bidder for the sale of the project.²⁹ The

²⁶ *Id.*, pp. 173-179

²⁷ *Id.*, pp. 185-187

²⁸ *Resolution* dated October 29, 2021 (Records, Vol. II, pp. 208-216)

²⁹ Ex. “8” and “10”

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prosecution refused to stipulate on the Affidavit of Desistance³⁰ executed by private complainant Emmanuel Plaza for being a mere photocopy.³¹

The presentation of Joey M. Tan was dispensed with, but the defense offered to stipulate on the three (3) Requests for Time Extension submitted by Tan to Mayor Tomasa Guardo, dated January 10, 2010, April 3, 2010, and June 9, 2010, respectively.³² The prosecution agreed to stipulate as to the first two letters, except as to the respective weather charts attached thereto for not being marked during the Pre-Trial. As to the third letter, the prosecution was only willing to stipulate on its existence but offered a counter-stipulation that this letter bears no approval from Mayor Tomasa Guardo, unlike the first two.³³

The defense formally offered the following as its evidence:³⁴

| Exhibits | Description |
|-----------------|---|
| 1 | Counter-Affidavit of accused Genito B. Guardo. |
| 2 | Special Power of Attorney of Tomasa L. Guardo. |
| 3 | Memorandum of Agreement between the Municipality of Cantilan and UPP Associates Corporation Incorporated. |
| 4 | Affidavit of Desistance of Emmanuel E. Plaza. |
| 5 and series | Letter dated 10 January 2010 from Joey M. Tan of JMT Construction. |
| 6 and series | Letter dated 03 April 2010 from Joey M. Tan of JMT Construction. |
| 7 and series | Letter dated 09 June 2010 from Joey M. Tan of JMT Construction. |
| 8 | Certification of the Office of the Municipal Treasurer of Cantilan, Surigao del Sur. |
| 9 and 9-a | Letter dated 13 February 2012 executed by Genito B. Guardo. |

³⁰ Ex. "4"

³¹ TSN dated March 31, 2022

³² Ex. "5" "6," and "7"

³³ Order dated August 31, 2022

³⁴ Records, Vol. II, pp. 315-443

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| 9-b and 9-c | Statement of Work Accomplishment Report No. 1 as of 12 September 2010. |
| 9-d, 9-3 and 9-f | Letter dated 18 October 2013 by Genito B. Guardo addressed to Roland A. Rey, Regional Director of the Commission on Audit. |
| 9-g and 9-h | Audit Observation Memorandum No. 2011-01-001 dated 12 January 2012. |
| 9-i | Letter dated 04 July 2013 of Roland A. Rey, Director IV of the Commission on Audit, addressed to the Municipal Mayor of the Municipality of Cantilan, Surigao del Sur. |
| 9-j and 9-k | Privatization and Management Office Privatization Process Flow. |
| 9-l | Letter dated 25 July 2013 of Genito B. Guardo addressed to Karen G. Singson, Chief Privatization Officer, Privatization and Management Office. |
| 9-m and 9-n | Reply to the Key Findings of the World Bank Team During the January 5, 2013 Field Visit to Cantilan, Surigao del Sur. |
| 10 | Certification dated 28 May 2019 by President of Paragon Pegasus Solutions Phils, Inc. |
| 11 | Certificate of Death of Tomasa L. Guardo |
| 12 | Certificate of Death of Emmanuel E. Plaza |

Additionally, the accused asked for the marking and admission of the Certificates of Death of Tomasa L. Guardo and Emmanuel E. Plaza as Exhibits 11 and 12.

In the Resolution³⁵ dated 18 October 2022, the Court admitted Exhibits 5 and series, 6 and series, 7 and series, 8, and 10. Exhibits 11 and 12 were also marked and admitted. The other exhibits for the defense were denied as they were not identified or authenticated by their signatories, nor presented during the trial for identification of any witness.

³⁵ Records, Vol. II, pp. 449-453

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In the same resolution, Criminal Case No. SB-17-CRM-0196 against accused Tomasa L. Guardo was dismissed in view of her death, as evidenced by her Certificate of Death.³⁶

Thereafter, the cases were submitted for decision.

ISSUE

Whether accused Genito B. Guardo is guilty of violation of Section 3(e) of R.A. No. 3019 by causing undue injury to the government through gross inexcusable negligence.

DISCUSSION / RULING

In criminal cases, the prosecution has the *onus probandi* of establishing the guilt of the accused. *Ei incumbit probatio non qui negat* - he who asserts, not he who denies, must prove. The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that of the defense.³⁷ The Court is tasked to resolve whether the quantum of evidence needed to convict the accused beyond reasonable doubt has been satisfied.

Accused Genito B. Guardo is charged with violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, which 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]

(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 of offices or government corporations charged with the grant of licenses or permits or other concessions.”

³⁶ *Id.*, pp. 440-441

³⁷ *Macayan, Jr. v. People* G.R. No. 175842, March 18, 2015.

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The essential elements for violation of Section 3(e) of R.A. No. 3019 are as follows: (1) that the accused is a public officer discharging administrative, judicial or official functions (or a private individual acting in conspiracy with such public officers); (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the action of the accused 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 or her functions.³⁸

There is no doubt as to the presence of the *first element*. Accused Genito Guardo, during the time material to the commission of the alleged violation, is a public officer discharging his official functions, him being the Municipal Mayor of Cantilan, Surigao del Sur from 2010 to 2016.

The issue lies on whether the second and third elements of the offense were established by the prosecution.

The *second element* refers to the three modes by which a violation of Sec. 3(e) of R.A. No. 3019 may be committed. In *Uriarte vs. People of the Philippines*³⁹ these modalities were defined in this wise:

“Section 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. 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.” (*Underscoring supplied; citations omitted*)

Furthermore, *Jaca vs. People of the Philippines, et al.*⁴⁰ stressed the importance of demonstrating the **gravity** of the alleged partiality, bad faith, or negligence so as to satisfy the requirement of the second element, to wit:

³⁸ *Fuentes v. People*, G.R. No. 186421, April 17, 2017; *Cambe v. Ombudsman*, G.R. Nos. 212014-15, December 6, 2016; *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015.

³⁹ G.R. No. 169251, December 20, 2006.

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“Notably, a violation of Section 3(e) of R.A. No. 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. Unlike in the commission of ordinary felonies however, the law requires that the intent or negligence, which must attend the commission of the prohibited acts under Section 3(e) of [R.A.] No. 3019, should meet the gravity required by law. Thus, in construing these phrases, the Court observed that bad faith or partiality, on the one hand, and negligence, on the other hand, per se are not enough for one to be held criminally liable under the law; that the bad faith or partiality is evident or manifest, or, that the negligent act or omission is gross and inexcusable must be shown.

[x x x]

Considering the countless scenarios that may fall under the provisions of Section 3 of [R.A.] No. 3019, particularly paragraph e, and the avowed purpose of the law to repress certain acts of public officers constituting graft or corrupt practices or leading thereto, the law considers the gravity of the bad faith (or partiality) or negligent act or omission as a mode to commit the violation of Section 3(e) of [R.A.] No. 3019. In requiring the negligence to be both gross and inexcusable, the law demands the neglect or disregard of duty to be willful and intentional in order for a violation to exist, although it may fall short of the required degree of bad faith, which must be evident, or of partiality, which must be manifest” (*Emphasis and underscoring supplied; citations omitted*)

Based on the foregoing, it was essential for the prosecution to show not only the acts or omissions of the accused which amounted to partiality, bad faith, or negligence, but more importantly, to establish their gravity so as to characterize them as manifest, evident, or gross and inexcusable, respectively.

In the Information filed against the accused, he allegedly committed the crime through manifest partiality, evident bad faith, or gross inexcusable negligence. An examination of the records, however, would confirm that manifest partiality is not present as this case does not involve anything relating to favoring a party over another. Likewise, nothing in the prosecution’s allegations or evidence tend to establish any fraudulent design, dishonest purpose, or ulterior motive of self-interest or ill will on the part of the accused that would constitute evident bad faith. Rather, as held by the Office of the Ombudsman in finding probable cause against the accused, the

⁴⁰ G.R. No. 166967, January 28, 2013

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latter's inaction and laxity in not exerting efforts to complete the project amounted to *gross inexcusable negligence* resulting to injury to the government.⁴¹

To prove the allegation of gross inexcusable negligence, the prosecution offered in evidence the documents that were identified in court by State Auditor Cheryl Cantalejo-Dime, who conducted an initial investigation on the status of the project in question in 2015. In her report entitled "Result of the Verification Relative to the Status of the Construction of IMW Hydro Power Plant in the Municipality of Cantilan, Surigao del Sur"⁴² she stated that the project was supposed to be completed on or before September 2010, or fourteen (14) months from July 20, 2009, the date of receipt by the contractor of the Notice to Proceed, pursuant to the Contract Agreement.⁴³ However, per Value for Money (VFM) Audit conducted in 2011, during the term of the accused as mayor, the project "was only 45% completed with a project cost of P21.6 million as of December 31, 2011." Per Cantalejo-Dime's own findings, based on the Statement of Work Accomplishment (SWA) Report No. 3 submitted by the project management team as of January 2014, the project "was still 89.33% completed and no further civil works were conducted since that date up to present."

Additionally, Cantalejo-Dime's report states that a program for the disposal of the project was prepared by the municipality and "as of to date they are on their 4th stage of the program." She confirmed this during her cross-examination and upon clarification by the Court, and stated that the whole project was already sold to a private company in 2016.⁴⁴

To justify the delay, the defense offered as evidence several Requests for Time Extension submitted by the contractor during the time of Tomasa L. Guardo, citing "unworkable days," "rainy weather," and "unworkable ground condition brought by heavy rains" as reasons.⁴⁵

Delay, thus, attended the construction of the dam, which was begun during the term of Tomasa L. Guardo as mayor and remained unfinished during the term of herein accused, Genito B. Guardo. The question, however, is whether the delay can be attributed to accused's alleged inaction or laxity that would amount to gross inexcusable negligence.

We find this to be in the negative.

⁴¹ OMB Resolution, p. 7 (Records, Vol. I, p. 10)

⁴² Ex. "EE-5" to "EE-7"

⁴³ Ex. "EE-8" to "EE-16"

⁴⁴ *Supra*, note 15

⁴⁵ *Supra*, note 32

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The report of Cantalejo-Dime, while able to attest to the delay and non-completion of the project during the term of the accused as mayor, does not prove with certainty the alleged inaction or lack of exerted efforts imputed against the accused. On the contrary, despite the delay, it showed that the project continued and progressed during his time, from 45% in 2011 to 89% in 2014. At the very least, the allegation of laxity may hold water since the pace of the construction was undeniably slow. This, however, does not entirely establish gross inexcusable negligence on the part of the accused. Nothing in the report nor in other evidence submitted by the prosecution is there mention of specific acts or omissions by the accused amounting to negligence, much less to prove the gravity thereof. Even prosecution witnesses presented did not testify specifically on this point: Arturo Sunga and Erma Cuarteron, who were incumbent SB members at the time, admitted that they do not have personal knowledge as to the implementation of the project, and that their testimonies pertain only to the SB Resolutions concerning the approval of the loan for the project, which were issued during the term of Tomasa L. Guardo.⁴⁶

Indeed, an examination of the evidence would show that a greater part thereof bears more relevance to the earlier dismissed case against Tomasa L. Guardo,⁴⁷ such as the various SB Resolutions issued, minutes of SB sessions, procurement documents, and requests for time extensions. Moreover, the award of the construction project to the contractor and the execution of the contract agreement were done during her term. In other words, the pieces of evidence offered to prove the existence of negligence, or to demonstrate the gravity thereof so as to be considered gross and inexcusable, tended to prove the negligence of Tomasa L. Guardo but were wanting insofar as accused Genito B. Guardo is concerned. For the prosecution to draw inference of gross inexcusable negligence solely on the basis of the existence of delay would be too conjectural and presumptive to establish personal culpability of accused, Genito B. Guardo.

It was the prosecutor's burden to establish that accused failed to exert efforts to continuously follow-up and compel the contractor to finish the project. The prosecution must prove the existence of factual circumstances that point to specific negligent acts or omissions that could demonstrate utter lack of care on the part of the accused, or reckless disregard of his duties. Failing to do so, the allegations of inaction or laxity on the part of the accused was not substantiated. It is well settled, however, that allegations do not amount to proof.

“In requiring the negligence to be both gross and inexcusable, the law demands the neglect or disregard of duty to be willful and intentional in

⁴⁶ *Supra*, note 19

⁴⁷ Crim. Case No. SB-17-CRM-0196

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order for a violation to exist, although it may fall short of the required degree of bad faith, which must be evident, or of partiality, which must be manifest.”⁴⁸ Further, in *Sistoza v. Desierto*:⁴⁹

“[G]ross inexcusable negligence does not signify mere omission of duties nor plainly the exercise of less than the standard degree of prudence. Rather, it 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. It entails the omission of care that even inattentive and thoughtless men never fail to take on their own property, and **in cases involving public officials, it takes place only when breach of duty is flagrant and devious.**”
(*Emphasis and underscoring supplied; citations omitted*)

In the present case, no specific negligent acts or omissions was alleged, much less proved, from which willful and intentional disregard of duty, or flagrant and devious breach thereof, may be inferred. The prosecution, thus, failed to discharge its burden of satisfying the requirements of the second element of Sec. 3(e) of R.A. No. 3019.

Notwithstanding the finding that not all of the elements of Section 3(e) are present, in view of the insufficiency of prosecution evidence to prove gross inexcusable negligence, we proceed with the discussion of the third element.

Under the *third element*, there are two ways by which public officials violate Sec. 3(e) of R.A. No. 3019 in the performance of their 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.⁵⁰ Here, the accused is charged with causing undue injury to the government.

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. Aside from this, the loss or damage must be substantial. It must be more than necessary, excessive, improper or illegal.”⁵¹

⁴⁸ *Jaca v. People*, *supra*.

⁴⁹ G.R. No 144784, September 3, 2002

⁵⁰ *People v. Naciongayo*, G.R. 243897, June 08, 2020

⁵¹ *Cabrera v. People*, G.R. No. 191611-14, July 29, 2019, citing *Abubakar v. People*, G.R. Nos. 202408, 202409 & 202412, June 27, 2018

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In *Llorente v. Sandiganbayan*,⁵² the concept of undue injury was thoroughly explained in this wise:

“[x x x] 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.**”

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

In turn, actual or compensatory damages is defined by Article 2199 of the Civil Code as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

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

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

⁵² G.R. No. 122166, March 11, 1998

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Here, the accused is charged of causing undue injury to the government premised on the non-completion of the construction project. According to the OMB, this “has put government resources to waste” since expenses were already incurred “for the publication of the Invitation to Bid for the purchase of compactor for the project, 15% mobilization cost, consultancy fees, including financial expenses incurred for the accumulated bank interest charges in the amount of ₱1,501,113.25, and its monthly payrolls for security services, coupled with the operational adversities or delays in the implementation of the project.”⁵³

Indeed, the construction remained unfinished during the term of the accused as mayor. However, the municipal government opted for the disposal of the project and was subsequently sold to another private firm in 2016. It was not completely abandoned. Thus, expenses such as publication of invitation to bid and consultancy fees, and the payment of the 15% mobilization cost did not go to waste. As to the claim of expenses incurred due to the delay in the implementation of the project, namely, the monthly payrolls for security services and those related to “operational adversities,” these were not quantified nor substantiated through any supporting evidence. The prosecution failed to offer evidence that could have enabled the Court to determine the liability of the accused insofar as these expenses are concerned, if any.

With regard to the accumulated bank interest charges, in the amount of ₱1,501,113.25 computed as of December 31, 2011, this pertains to the subsidiary loan with Landbank in the amount of ₱39,100,000.00, executed during the tenure of Mayor Tomasa L. Guardo. The terms thereof state that the interest payment, which shall be charged from the municipality’s Internal Revenue Allotment, shall start at the end of the first quarter reckoned from the date of initial loan release.⁵⁴ This means that the delay in the implementation of the project has nothing to do with the interest payments. Also, the records do not disclose the date when the initial loan was released, hence, it cannot be determined whether the protracted implementation of the project might have resulted in a delay or extension of the period to pay the loan, leading to unnecessary payment of additional interest charges. Even assuming that such eventuality attended this case, the prosecution still has the burden of showing that it amounted to a loss or damage that is substantial; that it was “more than necessary, excessive, improper, or illegal.” We cannot, however, delve in speculations. It is worth to note that the entire loan obligation of the Municipality of Cantilan with the Landbank has been fully settled in November 2016.⁵⁵

⁵³ *Supra*, note 41

⁵⁴ OMB Resolution, Annex B, p. 2-3 (Records, Vol. I, p. 36-37)

⁵⁵ Ex. “HH”; TSN dated January 29, 2020

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Additionally, since the allegation of undue injury is premised on the non-completion of the project, consideration should be given to the subsequent conversion and eventual sale thereof. The fact that another private firm, Paragon Pegasus Solutions, Inc., continued the construction and already paid its obligation under the contract⁵⁶ implies that the project was not at all abandoned. This negates the assumption that the payment of bank charges, among other related expenses, amounted to wastage of government resources. Furthermore, the prosecution did not endeavor to demonstrate that the municipality still suffered losses despite the sale of the project.

Thus, the Court holds the view that all of the foregoing expenses were not proved, to the point of moral certainty, to have amounted to undue injury to the government.

The third element demands that the injury be proven with moral certainty. In other words, for a successful prosecution of violation of Section 3(e) of R.A. 3019, it is required that the fact of undue injury to the government must be specified, quantified, and proven beyond reasonable doubt.⁵⁷ The prosecution failed to submit sufficient proof which could have allowed the Court to determine and measure the actual damage suffered by the government and which could specifically be attributed to the accused. Thus, the degree of proof required in establishing the existence of undue injury in accordance with jurisprudence was not satisfied.

In sum, the fact that delay attended the implementation of the project, which persisted during the successive mayoralty terms of Tomasa L. Guardo and herein accused Genito B. Guardo, means that the government may have suffered some damage, and that the accused, to some extent, may have been responsible. However, it was incumbent upon the prosecution to prove that the alleged undue injury, which must be quantifiable and demonstrable, resulted from the alleged negligent acts or omissions of the accused, which in turn, must be gross and inexcusable. In every criminal action, the prosecution must prove beyond reasonable doubt all the elements of the crime charged, as well as the complicity of the accused.⁵⁸ Regrettably, the prosecution fell short in producing adequate and satisfactory evidence to establish the concurrence of the elements of Section 3(e) of R.A. No. 3019 and the precise culpability of the accused.

“The consistent teaching in our jurisprudence is that evidence adduced must be closely examined under the lens of judicial scrutiny and that conviction must flow only from the moral certainty that guilt has been

⁵⁶ Ex. “8”

⁵⁷ *Roque v. Sandiganbayan*, G.R. No. 231530-33, June 16, 2021.

⁵⁸ *People v. Maraorao*, G.R. No. 174369, June 20, 2012.

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established beyond reasonable doubt.”⁵⁹ With the failure of the prosecution to discharge its burden of proving that the accused, who under the Constitution is presumed innocent, is guilty beyond reasonable doubt of the offense charged, the Court is duty bound to render a judgment of acquittal.

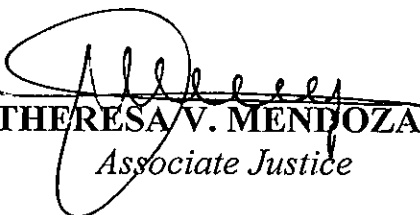
WHEREFORE, premises considered, the Court finds accused Genito B. Guardo **NOT GUILTY** of the offense charged in Criminal Case No. SB-17-CRM-0197 for failure of the prosecution to prove his guilt beyond reasonable doubt. There being no act or omission on which civil liability may arise, no such liability may be adjudged against him.

Consequently, the Hold Departure Order issued against accused Genito B. Guardo is **LIFTED** and the bail bond posted for his provisional liberty is hereby **RELEASED** in his favor, subject to the usual accounting and auditing procedures.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

⁵⁹ *Suba v. Sandiganbayan*, G.R. No. 235418, March 03, 2021.

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ATTESTATION

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


RAFAEL R. LAGOS
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been 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

