



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No.
SB-17-CRM-0471

*For: violation of Sec. 3 (e)
of RA No. 3019, as
amended*

**BENJAMIN DE GUIA TAYABAS;
DOMINGO BELARMINO NUÑEZ;
ANGELITA GUTIERREZ SOLIS;
VIRGINIA NAVA SANTOS;
JOSE MARTINEZ ROY III;
ELOISA MANALASTAS MACALINAO;
ALFREDO CAJAYON FERRER, JR.;
CECILIA LUNA CALMA;
ANGELES CONTRERAS RAMOS;
LAWRENCE PANGANIBAN
VILLANUEVA;
FELIX FERNANDEZ ASPIRAS;
ALBERT SANTOS DELA CRUZ; and
JUSTINA AVENDAÑO BONTUYAN,**
Accused.

X-----X

Present:

CABOTAJE-TANG, A.M.
P.J./Chairperson
FERNANDEZ, B.R.,J.
MORENO, R. B., J.

Promulgated:

JULY 28, 2023

X-----X

by
[Signature]

DECISION

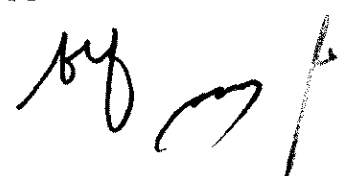
FERNANDEZ, B. R., J.

Stand charged before this Court are accused Benjamin de Guia Tayabas; Domingo Belarmino Nuñez; Angelita Gutierrez Solis; Virginia Nava Santos; Jose Martinez Roy III; Eloisa Manalastas Macalinao; Alfredo Cajayon Ferrer, Jr.; Cecilia Luna Calma; Angeles Contreras Ramos; Lawrence Panganiban Villanueva; Felix Fernandez Aspiras; Albert Santos de la Cruz; and Justina Avendaño Bontuyan for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

The accusatory portion of the Information dated August 3, 2016, reads - -

Crim. Case No. SB-17-CRM-1386

That on June 6, 2006 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officials and employees of the Pamantasan ng Lungsod ng Maynila, namely: **BENJAMIN G. TAYABAS**, then University President; **DOMINGO B. NUÑEZ**, then Dean, Emeritus College/Professor IV; **ANGELITA G. SOLIS**, then Vice President for Finance and Planning and a Member of the Bids and Awards Committee (BAC); **VIRGINIA N. SANTOS**, University/College Vice President III and BAC Chairperson; **JOSE M. ROY III**, Professor III/Acting University President; **ELOISA M. MACALINAO**, Professor III and a BAC Member; **ALFREDO C. FERRER, JR.**, Supply Officer V and a BAC Member; **CECILIA L. CALMA**, Budget Officer V; **ANGELES C. RAMOS**, Financial Management Officer II/Acting Chief, Accounting Office; **LAWRENCE P. VILLANUEVA**, Professor II/Officer-In-Charge, Office of the University Legal Counsel; **FELIX F. ASPIRAS**, Professor VI and a BAC Member; **ALBERT S. DELA CRUZ**, Assistant Professor II and a BAC Member; and **JUSTINA A. BONTUYAN**, Board Secretary VI and a BAC Member, while in the performance of their official duties and taking advantage of their official positions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, and conspiring and confederating with each other, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Hyundai Quezon Avenue, Inc. when they caused the procurement from the said supplier



X-----X

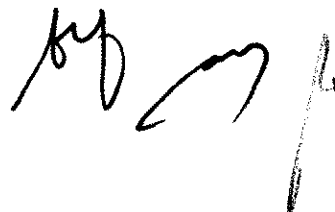
of one unit Hyundai Starex GRX CRDi 10-Str. in the amount of ONE MILLION ONE HUNDRED FOURTEEN THOUSAND, FOUR HUNDRED NINETY-TWO PESOS and 57/100 (Php1,114,492.57) without conducting a public bidding as required under Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, thereby depriving the Pamantasan ng Lungsod ng Maynila of the opportunity to obtain the most advantageous offer, to its damage and prejudice.

CONTRARY TO LAW.

Meanwhile, the following pleadings were respectively filed by the accused concerned - - (1) accused Jose M. Roy - undated Manifestation, with Comment/Opposition by the accused dated April 24, 2017; (2) accused Benjamin G. Tayabas - Omnibus Motion: To Suspend Further Proceedings and Judicial Determination of Probable Cause with Entry of Appearance dated March 27, 2017, with the prosecution's Comment/Opposition dated May 10, 2017; (3) accused Angelita G. Solis, Eloisa M. Macalinao, Felix F. Aspiras, Cecilia L. Calma, Angeles C. Ramos and Albert C. de la Cruz - Motion to Quash Information and To Dismiss the Case dated April 3, 2017, with Comment/Opposition by the prosecution dated May 15, 2017; (4) accused Jose M. Roy III - Motion to Quash dated April 18, 2017, with prosecution's Comment/Opposition dated May 22, 2017; (5) accused Lawrence P. Villanueva - Motion to Quash Information dated May 3, 2017, with prosecution's Comment/Opposition dated May 23, 2017.

The Court resolved to dismiss for lack of merit the respective Motions of the respective accused, and notes without action the undated Manifestation of accused Roy (Resolution, October 2, 2017).

Thereafter, Motions for Reconsideration were respectively filed by - - (1) accused Lawrence P. Villanueva dated December 11, 2017, with the Comment/Opposition of the prosecution dated January 5, 2018; (2) accused Jose M. Roy dated October 30, 2017, with the Comment/Opposition of the prosecution dated November 6, 2017; and, (3) accused Angelita G. Solis, Eloisa M. Macalinao, Felix F. Aspiras, Albert S. Dela Cruz, Cecilia L. Calma and Angeles C. Ramos dated October 14, 2017, with the Comment/Opposition of the prosecution dated October 26, 2017.

A handwritten signature in black ink, appearing to be a stylized 'M' followed by a flourish and a vertical line.

This Court subsequently resolved to deny all the foregoing Motions (Minutes, January 23, 2018).

Likewise, accused Alfredo C. Ferrer, Jr. filed a Motion to Quash Criminal Information dated June 14, 2017. After the prosecution filed its Comment/Opposition dated July 3, 2017, the Court resolved to deny the said Motion for lack of merit (Resolution, August 16, 2017).

When arraigned, accused Benjamin de Guia Tayabas, Angelita Gutierrez Solis, Virginia Nava Santos, Eloisa Manalastas Macalinao, Alfredo Cajayon Ferrer, Jr., Cecilia Luna Calma, Angeles Contreras Ramos, Lawrence Panganiban Villanueva, Felix Fernandez Aspiras and Albert Santos Dela Cruz (Order, March 20, 2018); accused Jose Martinez Roy III (Order, June 8, 2018); and accused Domingo Belarmino Nuñez (Order, July 6, 2018), all assisted by their respective counsels, individually and separately pleaded not guilty to the charge.

During pre-trial, the parties agreed to stipulate on the following (Pre-Trial Order, November 19, 2018) - -

STIPULATIONS OF FACT

PROSECUTION and Accused TAYABAS

1. Whenever referred to orally or in writing by this Honorable Court and the prosecution and/or its witnesses, accused Benjamin G. Tayabas admits that he is the same person being referred to in this case.

2. On 18 January 2006, accused Domingo B. Nuñez, Dean of Emeritus College, requested the purchase of one vehicle for use of the Open University Distance Learning Program with the following specifications:

Vehicle, 10-seater, equipped with D4BH 2476 cc diesel engine turbo intercooler; maximum power 145 PS @ 2,500 rpm; GVW 2512 kg; 5-speed manual transmission; power/tilt steering, windows, side mirrors; glass antenna; door locks; premium stereo with 6-speakers; dual aircon/heater; driver side airbag; keyless entry with alarm; automatic lights; digital odometer; 2-tone paint with side garnish; rear spoiler with break light; back-up warning sensor; rear wiper/washer; rotating seat (2nd row) with arm rests; ABS with 4-wheel disc brakes; 205 wide tires with aluminum 15" wheels.

Dimensions of:	Exterior:	Interior:
Overall length	4695 mm	2835 mm
Overall width	1820 mm	1605 mm
Overall height	1685 mm	1240 mm



3. Such request did not specify any vehicle brand or the method of procurement.

4. Such request was approved by accused Benjamin G. Tayabas.

5. Disbursement Voucher No. 06-6-1359 dated 05 June 2006 and the corresponding Land Bank of the Philippines Check No. 890045 dated 06 June 2006 were signed by accused Tayabas.

PROSECUTION and Accused NUÑEZ

6. At the time material to this case, accused Domingo B. Nuñez is a public officer, being then the Dean of the PLM.

PROSECUTION and Accused SOLIS, MACALINAO, CALMA, RAMOS, ASPIRAS and DELA CRUZ

7. At the time material to this case, the following accused are public officers being then officials and/or employees of the Pamantasan ng Lungsod ng Maynila (PLM), *to wit*:

ANGELITA G. SOLIZ - University Vice President for Finance and Planning/Officer-in-Charge (OIC), Office of the Treasurer and Member of the Bids and Awards Committee (BAC)

ELOISA M. MACALINAO - Professor III and BAC Member

CECILIA L. CALMA - Budget Officer V

ANGELES C. RAMOS - Financial Management Officer III/Acting Chief, Accounting Office

FELIX F. ASPIRAS - Professor VI and BAC Member

ALBERT S. DELA CRUZ - Assistant Professor II and BAC Member

8. Whenever referred to orally or in writing by this Honorable Court and the prosecution and/or its witnesses, the afore mentioned accused admit that they are the same persons being referred to in this case.

9. DV No. 06-6-1359 dated 05 June 2006 and the corresponding LBP Check No. 890045 dated 06 June 2006 were signed by accused Tayabas.

10. The PLM Property Office purchased the subject vehicle from Hyundai-Quezon Avenue and not from Hyundai-Otis as indicated in the BAC Resolution No. 09-G-06

PROSECUTION and Accused SANTOS

11. At the time material to this case, accused Virginia N. Santos is a public officer, being then the University Vice President for Academic Affairs and BAC-Chairperson of the PLM.



x-----x

12. Whenever referred to orally or in writing by this Honorable Court and the prosecution and/or its witnesses, accused Santos admits that she is the same person being referred to in this case.

13. The PLM-Bids and Awards Committee (PLM-BAC) conducted special meetings on March 29, 2006, April 10, 2006 and May 10, 2006.

14. COA issued a notice of suspension on the disbursement of funds for the purchase of the subject vehicle.

15. The PLM Property Office purchased the subject vehicle from Hyundai-Quezon Avenue.

16. Hyundai-Otis submitted a price quotation for a Hyundai Starex GRX 2.5 CRDi M/T in the amount of Php1,168,000.00 with a cash discount of Php30,000.00 as thanksgiving promo.

PROSECUTION and Accused ROY III

17. At the time material to this case, accused Jose M. Roy III was then the Acting University President of the PLM.

18. He was designated as Acting University President on 24 February 2006.

PROSECUTION and Accused FERRER, JR.

19. At the time material to this case, accused Alfredo C. Ferrer, Jr. is a public officer, being then the Chief of the Property Officer/Supply Officer V and BAC Member of the PLM.

20. Whenever referred to orally or in writing by this Honorable Court and the prosecution and/or its witnesses, accused Ferrer, Jr. admits that he is the same person being referred to in this case.

21. On January 18, 2006, Dr. Domingo Nuñez wrote a letter to the University President, Dr. Benjamin G. Tayabas, to purchase a 10-seater-vehicle intended to be used by the Emeritus College for the PLM Open University and Distance Learning Program in numerous activities lined up in the College.

22. The request was approved by the University President on January 19, 2006.

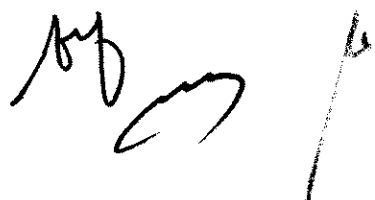
23. The PLM-BAC conducted special meetings on March 29, 2006, April 10, 2006, and May 10, 2006.

24. COA issued a notice of suspension on the disbursement of funds for the purchase of the subject vehicle.

25. The PLM Property Office purchased the subject vehicle from Hyundai-Quezon Avenue.

26. Toyota submitted a price quotation for a Hiace GL Grandia 2.5 Dsl M/T in the amount of Php1,345,000.00.

27. Hyundai-Quezon Avenue submitted a price quotation for a Hyundai Starex GRX CRDi 10-Str. (Facelifted) in the amount of Php1,168,000.00.

Handwritten signature and initials in black ink, located at the bottom right of the page.

28. Nissan Manila submitted a price quotation for a Nissan Urvan Estate Two Tone in the amount of Php1,528,000.00.

29. Union Motor/Mitsubishi Motors-Paco submitted a price quotation for a 2005 L-300 Versa Van in the amount of Php756,000.00.

30. Hyundai-Otis submitted a price quotation for a Hyundai Starex GRX 2.5 CRDi M/T in the amount of Php1,168,000.00 with a cash discount of Php30,000.00 as thanksgiving promo.

PROSECUTION and Accused Villanueva

31. COA issued a notice of suspension on the disbursement of funds for the purchase of the subject vehicle.

Trial on the merits ensued.

The first prosecution witness was **Eden B. Bunayog**. He testified that she is a State Auditor III of the Commission on Audit (COA) *Pamantasan ng Lungsod ng Maynila* (PLM) from July 2017 up to the present; that she is responsible for the safekeeping of documents in the custody of COA-PLM including documents marked as Exhs. "O" to "V to V-6", "W" to "CC" and "FF"; and, that she will identify the said exhibits.

On cross-examination conducted by accused Solis, Ramos, Macalinao, Aspiras, Calma and de la Cruz, witness Bunayog testified that all the documents she identified were executed in 2006, except for the Notice of Suspension No. 2010-006-101-06 (Exh. "BB") dated March 29, 2010, issued by the COA. However, she has no personal knowledge on the execution and issuance of the documents and that these were kept in a locked filing cabinet inside their office.

When cross-examined by accused Roy, witness Bunayog confirmed that the original of the same Notice of Suspension No. 2010-006-101-06 (Exh. "BB") contained an annotation at the bottom portion indicating "*with compliance*".

On cross-examination conducted by accused Tayabas and accused Villanueva, witness Bunayog admitted that she was the team leader of the COA-PLM for four (4) years and a member thereof prior. She explained that prior to a notice of disallowance, an audit observation memorandum is issued.

When cross-examined by accused Ferrer, Jr. and accused Santos, witness Bunayog confirmed that the

Handwritten signature and initials in the bottom right corner of the page.

documents she brought were listed in the *subpoena* issued by the Office of the Ombudsman.

The next prosecution witness was **Joseliza Lonzame**. She testified that she is a Sales Manager of Hyundai, Quezon Avenue, Inc. from 1998 up to the present, principally tasked, among others, to prepare price quotations of vehicles sold by Hyundai Quezon Avenue. She recalled preparing a written price quotation (Exh. "V-1") for a facelifted 2006 Hyundai Starex GRX-CRDi ten-seater, addressed to Atty. Alfredo Ferrer of the *Pamantasan ng Lungsod ng Maynila* (PLM) sometime in 2006, sent through fax.

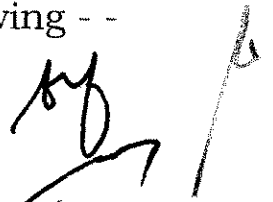
On cross-examination conducted by accused Ferrer, Jr., Santos, Tayabas, Villanueva and Nuñez, witness Lonzame testified that she prepared the price quotation upon the request of accused Ferrer, Jr. through telephone. She added that Hyundai has a standard pricing. However, she has not met accused Ferrer, Jr. and that the original copy of the said price quotation could have been lost due to a fire that gutted their office.

When cross-examined by accused Solis, Ramos, Macalinao, Aspiras, Calma and de la Cruz, witness Lonzame confirmed that the rotating seat feature can only be found in the automatic transmission models of the Hyundai Starex.

On cross-examination conducted by accused Roy, witness Lonzame confirmed that the vehicle model purchased by PLM from her branch was the same model mentioned in the said price quotation.

Thereafter, the prosecution called on **Don Comia**. His testimony was dispensed with after the parties agreed to stipulate on the following, namely - - (1) that if presented, witness Comia will testify that he was the Senior Sales Manager of Union Motors Corporation, Paco Manila in 2006; (2) that, as Senior Sales Manager, his duties and functions consisted of the following: monitoring sales, supervising her subordinates and responding to request for price quotation; and, (3) that, on March 10, 2006, he prepared and submitted a price quotation to the PLM for a 2005 Versa Van with a unit price of P760,000, which has features different from the one subject of this case and without rotating seats (Order, January 16, 2019).

The next prosecution witness was **Esperanza Pagulayan-Sy**. She substantially testified on the following - -

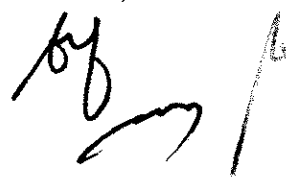


(1) that, in 2006, she was the Sales Manager of Hyundai Commonwealth; (2) as, such Sales Manager, her duties and responsibilities included responding to request for price quotations of vehicles being sold by Hyundai Commonwealth; (3) that in response to the request of the *Pamantasan ng Lungsod ng Maynila*, she prepared and issued the written price quotation dated March 3, 2006 for a facelifted 2006 Hyundai Starex GRX CRDi 10-seater; (4) that this price quotation (Exh. "V-2") was addressed to accused Atty. Alfredo Ferrer of the *Pamantasan ng Lungsod ng Maynila* and sent through fax machine; (5) that she can identify the same price quotation; and, (6) that the original of the price quotation no longer exists because their office only retains copies of price quotations for a period of one (1) year.

On cross-examination by accused Roy III, witness Pagulayan-Sy added that she prepared the price quotation (Exh. "V-2") upon the request of accused Atty. Ferrer and that she never met or knew anyone from PLM at that time. She further stated that there is a common or uniform pricelist for all Hyundai dealership which came from the distributor of Hyundai.

The last prosecution witness was **June Abigael Mariano**.

She testified through her sworn Judicial Affidavit dated January 21, 2019, substantially stating, as follows - - that she is an Associate Graft Investigation Officer II (AGIO II) of the Field Investigation Office, Office of the Ombudsman from 2010, and was an AGIO since 2005; that her important duties and responsibilities include evaluating criminal and/or administrative complaints, conducting fact-finding investigation, examine documents pertinent thereto, preparing investigative plans, conduct interviews, administer oaths, prepare draft complaints, testify in court as witness, and other functions as may be assigned; that, in connection with this case, she read the case folder and letter-complaint and gathered relevant evidence; that she thereafter recommended the filing of criminal and administrative charges and the appropriate complaint; that among the documents (Exhs. "A-1" to "A-79") she gathered were the disbursement voucher and its supporting documents, check, price quotations of different car dealers, minutes and resolutions of the special meetings of the PLM-BAC Bids and Awards and the employment records of the concerned officials/employees of the PLM; that no public bidding was conducted for the procurement of the subject Hyundai Starex;



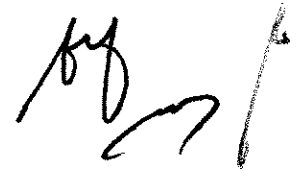
x-----x

that the subject vehicle was purchased from Hyundai Quezon Avenue through direct contracting; that the Letter Request (Exh. "A-57") dated January 18, 2006 and Purchase Request (Exh. "A-60") dated February 17, 2006 show that the specifications of the preferred vehicle are exactly the same as the Hyundai Starex; that even the budget utilization slip (Exh. "A-58") dated February 20, 2006, earmarked funds equivalent to the cash price of a Hyundai Starex; that four (4) Hyundai dealers submitted quotations for a Hyundai Starex for the same price of P1,168,000.00; that the PLM-BAC recommended that the subject vehicle be purchase from Hyundai Otis; that the subject vehicle was instead purchased from Hyundai Quezon Avenue as shown in the Disbursement Voucher (Exh. "A-55") dated June 5, 2006, the Check (Exh "A-56") dated June 6, 2006, and the Purchase Order (Exh. "A-60"); that neither Hyundai Otis nor Hyundai Quezon Avenue are exclusive distributors of the subject vehicle; that she prepared the Complaint (Exh. "A") dated May 25, 2012, which was later approved and signed by her superior, Luisito S. Suarez; and, that Complaint does not bear her name and signature because this is a practice in the FIO.

On cross-examination conducted by accused Villanueva, witness Mariano confirmed changing the word "*requested*" to "*directed*" in par. 6.1 of the Endorsement (Exh. "A-61"). She added that accused Villanueva was included as an accused because he was also included in the Notice of Suspension dated May 10, 2006 (Exh. "BB") by the Commission on Audit. Witness Mariano also admitted that the exhibits submitted did not show that accused Villanueva signed the PLM-BAC Resolution recommending direct contracting as a method of procurement, and other documents related to payment for the supplier and the delivery of the subject vehicle.

When cross-examined by accused Tayabas, witness Mariano confirmed that accused Tayabas was not a signatory to the PLM-BAC Resolution No. 09-G-06 dated May 10, 2006 (Exh. "AA"), recommending direct contracting as a method of procurement for the subject vehicle.

On cross-examination conducted by accused Ferrer, Jr., witness Mariano testified that she received an anonymous letter-complaint sometime in 2008-2010 on the purchase of the subject vehicle, and, upon receipt of the Certification (Exh. "A-78") dated October 28, 2010 from COA on the audit of the purchase transaction, she started drafting the fact-finding investigation report and complaint. She further stated that



X-----X

the Letter-Request (Exh. "Q") dated January 18, 2006, and Purchase Request (Exh. "A-60") dated February 17, 2006 from the end-user were violations of the procurement law because of tailor-fitting or branding.

When cross-examined by accused Roy, witness Marinao added that she did not verify the claim of accused Ferrer, Jr. in his Letter (Exh. "A-59") that only Hyundai vehicles have the rotating seat feature. Neither did she inquire from COA on the status of the Notice of Suspension (Exh. "A-76"). However, she confirmed that there was no notice of disallowance issued by the COA with regard the subject transaction.

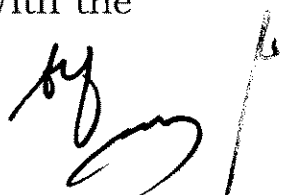
On re-direct examination, witness Mariano explained that there was tailor-fitting because the description in the Purchase Request (Exhibit "A-60") was identical to the canvass submitted by Hyundai Quezon Ave. (Exh. "A-64"). She further testified that while no brand name was indicated in the same Purchase Request, the PLM-BAC already discussed it during their meeting and the documents themselves specifically described the subject vehicle as a Hyundai Starex.

On re-cross examination, witness Mariano said that Sec. 18 of R. A. 9184 does not mention tailor-fitting and that she never encountered any document from the head of the procuring entity approving or rejecting the PLM-BAC Resolution.

When queried by the Court, witness Mariano testified that, based on the Minutes of the PLM-BAC meeting, no effort was made to verify whether only Hyundai offers a rotating seat in its unit. There was also no certification or documents to the effect that only Hyundai is the exclusive distributor with a rotating seat feature in its vehicle unit. Furthermore, the same PLM-BAC minutes show that the purchase of the subject vehicle will be made from Hyundai Otis, instead, the Purchase Order (Exh. "A-77") shows that it was purchased from Hyundai Quezon Ave.

In the interim, although all the accused, through their respective counsels, filed a Motion to require the prosecution to produce the Letter Complaint dated April 4, 2019, the same was denied by this Court (Resolution, July 8, 2019) after the prosecution filed its Opposition dated May 9, 2019 and May 23, 2019, respectively.

Thereafter, the prosecution filed its Formal Offer of Documentary Evidence dated September 27, 2019. With the



Comments/Oppositions/Objections, respectively filed by accused Solis, Macalinao, Aspiras, Calma, Ramos and de la Cruz dated October 28, 2019; accused Santos dated October 25, 2019; accused Roy III dated October 18, 2019; accused Tayabas and Villanueva dated October 30, 2019; and accused Ferrer, Jr. dated November 18, 2019; this Court ruled to admit Exhibits "A", "A-1" to "A-5", "A-6" to "A-9", "A-10" to "A-14", "A-15" to "A-19", "A-20" to "A-23", "A-24" to "A-27", "A-28" to "A-30", "A-31" to "A-35", "A-36" to "A-39", "A-40" to "A-43", "A-44" to "A-47", "A-48" to "A-50", "A-51" to "A-54", "A-55" to "A-79", "B" to "B-3", "C" to "C-3", "D" to "D-4", "E" to "E-3", "F" to "F-3", "G" to "G-3", "H" to "H-2", "I" to "I-4", "J" to "J-3", "K" to "K-3", "L" to "L-3", "N" to "N-3", "O" to "V", "V-1" to "V-6", "W" to "Z", "AA", "BB", "BB-1", "CC", "DD" "EE" and "FF" (Minutes, November 27, 2019).

Subsequently, the prosecution rested its case.

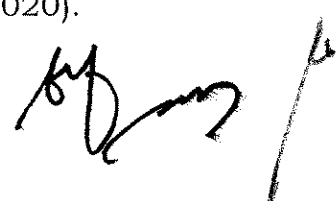
In the interim, several Motions for leave to file demurrer to the evidence were respectively filed by accused Solis, Macalinao, Aspiras, Calma, Ramos and de la Cruz dated December 11, 2019 (with Opposition of the prosecution dated December 13, 2019); by accused Roy III dated December 16, 2019 (with Opposition of the prosecution dated December 20, 2019); and, by accused Ferrer, Jr. dated January 17, 2020 (with Opposition of the prosecution dated January 20, 2020).

These were all respectively denied by this Court (Minutes, December 18, 2019; Minutes, January 18, 2020; and, Minutes, January 24, 2020).

Trial on the merits resumed.

The first defense witness for accused Ferrer, Jr. was **Laura D. Carlos**. She testified on direct examination through her sworn Judicial Affidavit dated February 27, 2020.

Initially, the parties agreed to the following stipulations, namely: (1) That she was a former secretary of the Bids and Awards Committee (BAC) of the *Pamantasan ng Lungsod ng Maynila* (PLM) in 2006; (2) As to her primary duties and responsibilities as a former Bids and Awards Committee Secretary; and, (3) That she will be able to identify the Minutes of the BAC dated March 29, 2006 (Exh. "10"); April 10, 2006 (Exh. "10-B") and May 10, 2006 attached to her Judicial Affidavit, her sworn Judicial Affidavit itself and the signatures above the typewritten name, Laura D. Carlos and the documents attached thereto (Order, March 4, 2020).



Witness Carlos remembers attending BAC meetings regarding the purchase of a vehicle for the use of the Emeritus College under the Open University Distance Learning Program (OUDLP) of PLM. She added that she records the BAC proceedings and take notes thereof. These are then transcribed and presented to the BAC for its approval.

When cross-examined by the prosecution, witness Carlos admits that she did not have a copy of the memorandum indicating the composition of the BAC in 2006. She further stated that she did not participate in the preparation of the said memorandum and that she is not the one who selected the members of the BAC.

On cross-examination conducted by accused Solis, Macalinao, Calma, Ramos, Aspiras, de la Cruz and Roy III, witness Carlos testified that there is a permanent BAC in the PLM and that the BAC held three (3) meetings on the transaction involving the purchase of the subject vehicle.

When queried by the Court, witness Carlos explained that Emeritus College is one of the branches of PLM located in the same campus. She also admitted, as shown in the Minutes of the BAC Meeting (Exhs. "10", "10-B", and "10-D"), that the BAC, during its first meeting, already contemplated of resorting to an alternative mode of procurement and even asked the end-user to justify the resort to direct contracting for the purchase of the subject vehicle. The same Minutes also indicated that quotations for the subject vehicle were already requested prior to the end-user's finalizing its request.

The next defense witness was accused **Alfredo C. Ferrer, Jr.**, who testified on direct examination through his sworn Judicial Affidavit dated January 12, 2021.

He testified that he was employed by PLM on January 25, 1979 and was assigned to the Property Office as its Chief and a member of the PLM-BAC. He retired on August 1, 2008.

Witness-accused Ferrer, Jr. remembers receiving, sometime in January 2006, an approved Letter Request (Exh. "1") from accused Nuñez, the then Dean of Emeritus College, for the purchase of the subject vehicle. The same approved Letter Request contained a notation "OK" dated January 19, 2006 with the signature of accused Tayabas, the then University President and Chancellor-Open University Distance Learning Program (OUDLP) of PLM.



X-----X

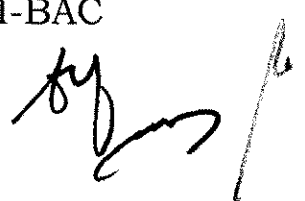
He further explained that OUDLP is a unit of PLM involved in offering off-campus programs by requiring its faculty members to go to the students to deliver quality education. He also expounded on the establishment of Emeritus College and its educational role.

Witness-accused Ferrer, Jr. testified that the approved Letter Request (Exh. "1") indicated the specifications of the subject vehicle, based on the needs of the office of accused Nuñez, including a 2nd row rotating seat with arm rest. He alleged that he had no participation or exerted influence in the determination of the specifications. Neither does the Property Office have any power or authority to alter, modify or change specifications provided by the end-user or even participated in the approval of the same.

He added that, upon receipt of the said Letter Request, he, as a standard procedure, forwarded the same to Noli Discaya, the canvasser of the Property Office, for the conduct of a canvass/inquiry on the price and availability of the subject vehicle requested. Quotations (Exhs. "4", "5", "5-a", "5-b", "6", "7", and "8") were then submitted by Discaya indicating that the subject vehicle was only available from Hyundai authorized dealers.

Thereafter, witness-accused Ferrer, Jr. prepared a Letter (Exh. "2") dated February 13, 2006, addressed to accused Tayabas, the then PLM President, recommending that the purchase of the subject vehicle be made in accordance with R.A. 9184. The same Letter was then sent to accused Villanueva, the then University Legal Counsel, who prepared his 1st Endorsement (Exh. "3") dated February 17, 2006. This was forwarded to the University President, through the Chairman of the PLM-BAC, recommending favorable action and approval and for the PLM-BAC to evaluate the applicability of the alternative method of procurement under R.A. 9184.

He further testified that the PLM-BAC, composed of accused Santos, as Chairman, and accused Solis, Bontuyan, Ferrer, Jr., Aspiras, Macalinao and de la Cruz as members, with the PLM-COA as observer, convened on March 29, 2006. The PLM-BAC discussed the request of accused Nuñez and requested witness-accused Ferrer, Jr. to undertake a further canvass on the requested subject vehicle. In the same meeting, accused Aspiras suggested that the PLM-BAC focus on the evaluation/assessment of the mode of procurement, rather than on the urgency of the purchase. The PLM-BAC



also requested the end-user to submit a strongly worded justification on the need to purchase the subject vehicle with rotating seats. However, the PLM-BAC did not reach an agreement on the mode of procurement to be used. These proceedings were duly recorded in the Minutes of Special Meeting (Exh. "10").

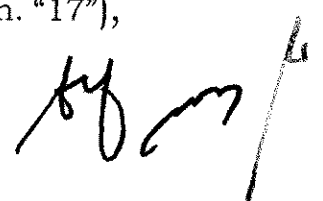
Witness-accused Ferrer, Jr. added that the quotations secured by canvasser Discaya were presented during the PLM-BAC meeting in April 10, 2006. During this meeting, the Letter (Exh. "13") dated April 5, 2006, of accused Nuñez, the then Dean of Emeritus College, justifying the request for the purchase the subject vehicle and the quotations was discussed. It was then suggested by accused Solis, as indicated in the Letter of the end-user, that the PLM-BAC resort to direct contracting as the mode of procurement. Witness-accused Ferrer, Jr. also cited the urgency of the request as noted in the same Letter (Exh. "13") dated April 5, 2006. The proceedings were duly recorded in the Minutes of the Meeting (Exh. "10-B").

On May 10, 2006, the PLM-BAC convened anew to evaluate the quotations submitted by the different Hyundai dealers. Considering that these dealers submitted similar price quotations, the PLM-BAC decided to purchase the subject vehicle from Hyundai Otis, as cash discounts and additional accessories were included in the offer. The proceedings were also recorded in the Minutes of the Meeting (Exh. "10-C").

Subsequently, PLM-BAC Resolution No. 09-G-06 (Exh. "14") was prepared and signed by the members on May 10, 2006. Later, approved on May 17, 2006 by Atty. Jose M. Roy, III, the then Acting President and Dean of the College of Law of PLM.

After PLM-BAC Res. No. 09-G-06 was received by the Property Office, canvasser Discaya was informed by Hyundai Otis that its Thanksgiving promo discount ended on May 15, 2006, per its Certification (Exh. "9"), prompting him to inquire from the other branches.

Thereafter, Hyundai Quezon Ave. informed Discaya that Hyundai Quezon Ave. was willing to extend the said promo. Hence, a Purchase Order (Exh. "15") was prepared in the name of Hyundai Quezon Ave. The Hyundai Starex was then delivered on May 23, 2006, as shown on the Hyundai Quezon Ave. Inc. Invoice No. 1388 (Exh. "16") and Inspection (Exh. "17"),

A handwritten signature in black ink, appearing to be 'J. M. Roy', is located at the bottom right of the page.

X -----X

in accordance with the specifications. The subject vehicle was eventually turned over to the end-user, accused Nuñez, per Acknowledgement Receipt (Exh. "18").

Witness-accused Ferrer, Jr. further testified that, sometime in 2010, he learned about a Notice of Suspension (Exh. "BB") issued by the PLM-COA. Later, a Notice of Settlement of Suspension/Disallowance/Charge (NSSDC) (Exh. "11") dated November 23, 2015 was issued by Mario G. Lipana, Supervising Auditor, PLM-COA.

He likewise refuted all the allegations against him and stated that while procuring entities can make technical specifications in their bid documents more detailed, however, as rule, specifications for the procurement of goods shall be based in relevant characteristics and/or performance requirements. He added that reference to brand names, including tailor fitting, is not allowed. Nevertheless, when it is necessary to maintain the performance, functionality and useful life of the equipment, reference to brand names relative to the existing fleet or equipment is allowed.

When cross-examined by the prosecution, witness-accused Ferrer, Jr. testified that he noticed the specification of rotating seats (2nd row) with arm rests; that he recommended to accused Tayabas that the subject vehicle be purchased from authorized Hyundai dealers in accordance with R. A. No. 9184; that he is aware that procurement activities in the government should be undertaken by the BAC; that he believed that consultations with the office of the University Legal Counsel is required in procurement activities; that there was an initial canvass, upon receipt of the Letter-Request (Exh. "1") of accused Nuñez; that, after the BAC meeting, there was a further canvass on the subject vehicle to be procured; that there was a budget earmarked for the procurement of the subject vehicle; that the budget matched the price of the Hyundai Starex as shown in the canvass conducted by the Property Office; that there was no public bidding conducted on the procurement of the subject vehicle but a direct contracting; that the BAC did not conduct a market survey on cost to upgrade from a regular seat to rotating seat; that there was no certificate of exclusive distributorship that would show Hyundai Otis as the exclusive distributor; and, that he made a judgment call in preparing the purchase order for Hyundai Quezon Ave. instead of Hyundai Otis as recommended by the BAC.

A handwritten signature in black ink, appearing to be "Ferrer, Jr.", is located at the bottom right of the page.

On cross-examination conducted by accused Tayabas, witness-accused Ferrer, Jr. admitted that the Letter-Request (Exh. "1") dated January 18, 2006 was, at that time, considered as an acceptable way of requesting for a property; that the said Letter-Request did not contain any brand name of a vehicle or provide a mode of its acquisition; and, that Purchase Order No. 06-05141 (Exh. "15") dated May 18, 2006 was approved by Acting University President, Jose M. Roy III.

When cross-examined by accused Villanueva, witness-accused Ferrer, Jr. added that not all procurements undertaken by the PLM was submitted to the office of the Legal Counsel; that accused Villanueva was not consulted by the BAC during the latter's special meetings on the procurement of the subject vehicle; and, that he asked Noli Discaya to do the canvass or inquiry through telephone to find out whether the specification of rotating seat is available and at what price.

On cross-examination conducted by accused Santos, Solis, Aspiras, Ramos, Calma and de la Cruz, witness-accused Ferrer, Jr. testified that when a BAC member affixes his/her signature on the minutes of the meeting, it is presumed that he/she agreed to the same. However, he added that from the Minutes of the Meeting (Exhs. "10"; "10-B" and "10-C") the individual votes of the members of the BAC were not indicated.

During his re-direct examination, witness-accused Ferrer, Jr. clarified that the price indicated in the Purchase Order (Exh. "15") was selected from the quotations submitted by the different dealers; that his recommendation passed through other offices; and, that, although the price of the subject vehicle was the same, he chose Hyundai Quezon Ave. instead of Hyundai Otis because the latter no longer offered a Thanksgiving promo, per Certification (Exh. "9").

On re-cross examination conducted by the prosecution, witness-accused Ferrer, Jr. confirmed that there was no BAC resolution recommending the purchase of the subject vehicle from Hyundai Quezon Ave.

Upon the re-cross examination conducted by accused Santos, Solis, Aspiras, Ramos, Calma and de la Cruz, witness-accused Ferrer, Jr. further stated that no voting was conducted and that the BAC members manifested their approval by approving the minutes of the previous meeting,

A handwritten signature in black ink, appearing to be 'Jy' followed by a stylized flourish.

however, their individual votes were not reflected on the minutes.

On re-cross examination conducted by accused Tayabas, witness-accused Ferrer, Jr. confirmed that he was the only lawyer-member of the BAC and that accused Tayabas was not present in any of the BAC meeting.

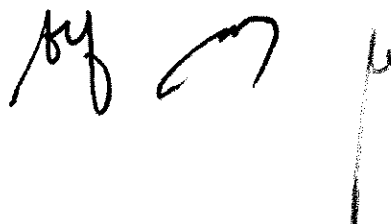
When queried by the Court, witness-accused Ferrer, Jr. added that the discount given by Hyundai Quezon Ave. was by way of a free TV monitor with DVD/VCD player. He also admitted that no certification was issued by the other Hyundai branches on their Thanksgiving promo and that he merely relied on the quotations.

Witness-accused Ferrer, Jr. further testified that he first knew of the Letter-Request (Exh. "1") dated January 18, 2006 of accused Nuñez sometime in the third week of January. And as their standard procedure, he asked Noli Discaya to conduct a canvass. He further admitted that branding is not allowed under R. A. No. 9184, but this admits exceptions.

He also stated that, prior to the March 29, 2006 BAC meetings, the Property Office already sought quotations from the other car dealership. This is why, in a special meeting, it was suggested that direct contracting be resorted to in the procurement of the subject vehicle. Hence, with the strongly worded justification (Exh. "13") dated April 5, 2006, presented to the BAC, the suggestion was pursued.

In the meantime, accused Roy III filed a Motion to Order Dismissal, Lift Travel Restrictions and to Release or Return Bail and Travel Bonds dated December 23, 2020. With the prosecution's Manifestation with Comment dated January 6, 2021 and the Manifestation with Compliance dated February 7, 2021, this Court resolved the same in the following manner (Minutes, February 9, 2021) - -

As disclosed in its Resolution dated December 15, 2020, the Court received, among other, a copy of the Supreme Court Second Division's Decision promulgated on March 4, 2020, in G.R. No. 225718, entitled "*Jose M. Roy, III versus The Honorable Ombudsman, Conchita Carpio Morales and Field Investigation Office, Office of the Ombudsman as represented by Luisito S. Suarez*", which dismissed this case with respect to petitioner-accused Jose M. Roy, III.

Handwritten signature and initials in black ink, appearing to be 'Jy' followed by a stylized flourish and a vertical line.

X-----X

Considering the manifestation of the prosecution that no motion for reconsideration relative to the above-mentioned decision was filed or appeared in the docket section and records office of the Office of the Solicitor General (OSG) and the Supreme Court, respectively, the motion to order the dismissal, lift travel restrictions and to release or return bail and travel bonds of accused Jose M. Roy III, is GRANTED.

Accordingly, the Court hereby ORDERS:

That the case be DISMISSED with respect to accused Jose M. Roy, III, pursuant to the Supreme Court Second Division's Decision promulgated on March 4, 2020, in G.R. No. 225718, entitled "*Jose M. Roy, III versus The Honorable Ombudsman, Conchita Carpio Morales and Field Investigation Office, Office of the Ombudsman as represented by Luisito S. Suarez*";

That the Hold Departure Order (HDO) dated March 10, 2017 be LIFTED and SET ASIDE, in regard to accused Jose M. Roy, III only;

That the cash bail and travel bonds posted by the said accused be RELEASED and RETURNED to him, subject to the usual accounting and auditing procedures; and

That the Bureau of Immigration and Deportation (BID) be FURNISHED with a copy of this resolution, for its information and guidance.

SO ORDERED.

Trial continued.

The next defense witness was accused **Lawrence P. Villanueva**, who testified on direct examination through his sworn Judicial Affidavit dated February 8, 2021.

He essentially testified that he was the Vice Dean of PLM Law Center and OIC Chief Legal Counsel of PLM at the time of the procurement of the subject vehicle; that his duty was to provide legal advisory services to the University President but did not include recommending the appropriate method of procurement; that the PLM procurement stakeholders are the University President as the Head of Procuring Entity (HoPE), the end-user representative, accused Nuñez of the OUDLP, who made the purchase request, the PLM-BAC and the PLM finance cluster consisting of the Budget and Accounting Offices, among others; that he can identify Purchase Request (PR) No. 101-2006-02-025 (Exh. "1-Villanueva") dated February

Handwritten signature and initials in the bottom right corner of the page.

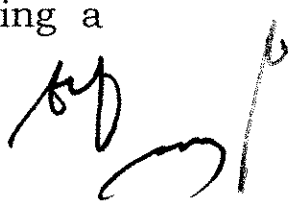
x-----x

17, 2006, showing that accused Nuñez, the PLM OUDLP, was the requesting party; that the OIC Treasurer certified as to the cash availability; that the request was approved by the University President; that there was no brand name specified; that the PR did not recommend direct contracting as the suggested method of procurement; that on February 17, 2006, the same PR (Exh. "1-Villanueva") also dated February 17, 2006 and its supporting documents were forwarded to his Office by accused Ferrer, Jr. who was then the Chief of the Property Office; that he personally explained to accused Ferrer, Jr. that he had no power and authority to recommend to the University President the use of an alternative method of procurement because only the BAC can do so; that he then issued 1st Endorsement letter (Exh. "2-Villanueva") dated February 17, 2006, addressed to the University President through the Chairman of the PLM-BAC; that, after the change of leadership in PLM, he was no longer included/invited in any BAC activity; and, that accused Tayabas was removed in February 2006 and replaced by Atty. Jose Roy III.

On cross-examination conducted by the prosecution, witness-accused Villanueva said that the only documents forwarded to him were the Letter-Request of accused Nuñez (Exh. "1") dated January 18, 2006; the Purchase Request (Exh. "A-60") dated February 17, 2006; and the Letter of accused Ferrer, Jr. (Exh. "A-59") dated February 13, 2006. He admitted that the Purchase Request was the main basis for his Endorsement Letter (Exh. "A-61") dated February 17, 2006 and that he found nothing suspicious since the description of the vehicle is the standard technical specification. He added that his Endorsement (Exh. "U") was sought because the procurement contemplated of other modes other than public bidding.

Witness-accused Villanueva, however, reiterated that he never recommended any alternative method of procurement because this is the function of the BAC. He also confirmed that several days after he issued his Endorsement (Exh. "U"), accused Tayabas was removed as the PLM president, hence, the latter no longer approved the method of procurement.

On cross-examination conducted by accused Ferrer, Jr., witness-accused Villanueva testified that, as OIC University Legal Counsel, he acts only on matters referred to him for action, comment or recommendations. In issuing his Endorsement, he relied on the Purchase Request (Exh. "A-60") dated February 17, 2006, given to him by accused Ferrer, Jr. Witness-accused Villanueva further stated that during a



meeting with accused Ferrer, Jr. and through his Letter (Exh. "S") dated January 18, 2006, it was impressed upon him (witness-accused Villanueva) that he (accused Ferrer, Jr.) wanted to purchase the vehicle from Hyundai. Witness-accused Villanueva reiterated that only the PLM-BAC can recommend an alternative mode of procurement, hence, his Endorsement (Exh. "U") included a request for the PLM-BAC to determine the appropriate mode.

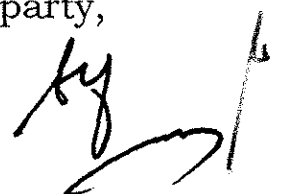
Upon a re-direct examination, witness-accused Villanueva admitted that had not accused Tayabas been removed as University President, the latter would not have approved the alternative mode of procurement without his (witness-accused Villanueva) recommendation.

When queried by the Court, witness-accused Villanueva testified that he was initially informed by accused Ferrer, Jr. that the University would purchase the subject vehicle and that a canvass was conducted with the subject vehicle to be purchased from Hyundai. Shortly thereafter, accused Tayabas was removed as University President and he (witness-accused Villanueva) was no longer invited to attend PLM-BAC meetings. He only learned of what happened to the subject transaction only after this case was filed.

The next defense witness was accused **Benjamin de Guia Tayabas**, who testified on direct examination through his sworn Judicial Affidavit dated February 15, 2021.

He narrated the reasons for being implicated in this case, to wit - - (1) for approving the Letter Request (Exh. "1-Tayabas") for the urgent need of the vehicle submitted by accused Nuñez on January 18, 2006; (2) for approving Purchase Request No. 101-2006-02-025 (Exh. "3-Tayabas") dated February 17, 2006; (3) for signing Box B of the Disbursement Voucher (Exhs. "A-55" and "Q"); (4) For approving the Check (Exhs. "A-56" and "P"); and, (5) for being the approving officer under Section 2 of P.D. 1445.

Witness-accused Tayabas further explained each allegations, as follows - - (1) He merely wrote a marginal note "OK" to the Letter Request of accused Nuñez after briefly browsing over it and found it without any red flag, such as a specific brand name or deviations from public bidding; (2) He merely signed the Purchase Request, as the head of the procuring entity (HOPE), whose signature was required before the procurement process commence. He signed the same after he saw the signatures of accused Nuñez, the requesting party,



and the treasurer, who certified to the availability of funds to proceed with the purchase; and, (3) By signing the Disbursement Voucher and approving the Check, witness-accused Tayabas stated that, as University President and HoPE, this was made in good faith and with due diligence.

He further emphasized that, after he was relieved as University President, the PLM-BAC decided to procure the subject vehicle, as shown in the Minutes of the PLM-BAC meetings (Exhs. "5" to "7"), the subsequent PLM-BAC Resolution (Exh. "8-Tayabas") and the price quotations (Exhs. "4" to "4-f-Tayabas").

When cross-examined by the prosecution, witness-accused Tayabas confirmed that there were no attachments to the Letter Request (Exh. "1") dated January 18, 2006 of accused Nuñez and the Purchase Request (Exh. "A-60") dated February 17, 2006. He also reiterated that, when he was no longer the University President and Head of the Procuring Entity (HoPE), the PLM-BAC recommended direct contracting. However, when he was reinstated, he was the one who signed the Disbursement Voucher (Exh. "O") and the Check (Exh. "P") for the subject vehicle, relying on the prior signatures of the concerned officials.

The next defense witness was accused **Cecilia L. Calma**. She testified on direct examination through her sworn Judicial Affidavit dated March 8, 2021.

Witness-accused Calma testified that she was the Acting Budget Officer of PLM in 2006, overseeing the process of collating the budget proposals from the various PLM offices, finalizing the Budget Plan for the year for submission to the University President and securing the approval of the PLM Board of Regents; that she was aware of the written Letter Request (Exh. "1-Calma") dated January 18, 2006 of accused Nuñez for the purchase of a van to be used by the OUDLP; that the same Letter Request was approved by accused Tayabas, the then PLM president, as shown by his marginal note "OK" with the date "1-19-2006" and signature (Exh. "1-A-Calma"); that the same Letter Request indicated a description of the vehicle to be purchased, not the brand name; that she identified Purchase Request No. 101-206-02-025 (Exh. "2-Calma") dated February 17, 2006, with an entry - ALOBS No. 101-2006-02-045 - and a February 20, 2006 date; that on the lower portion of the same Purchase Request, three signatures appear, namely: accused Nuñez, the end-user, accused Solis, as vice-president for treasury, certifying to the cash



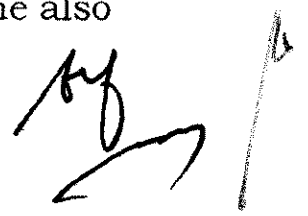
availability and accused Tayabas, who approved the Purchase Request; that she can also identify the Budget Utilization Slip (Exh. "3-A-Calma") she prepared and certified as - *Budget available and funds earmarked and obligated for the purpose indicated above*; that the description and price of the vehicle appearing on the said document were copied from the Purchase Request; that her basis in certifying the said Budget Utilization Slip was her being the budget officer who knew and had access to the approved budget plan of PLM for 2006; that Resolution No. 2847 showed that the PLM Board of Regents approved and adopted the budget plan on December 7, 2005; that an item in the budget plan referred to an allocation for the purchase of a vehicle, as shown in an excerpt (Exhs. "4-Calma" and "5-Calma") of the Minutes of the special meeting of the Board of Regents held on December 7, 2005; that there is also an item in the list of capital outlay as - *Motor Vehicle 241 - P1,500,000* (Exhibit "3-B-Calma") - which was also used as basis for her certification; and, that she also used as basis, the COA Certification (Exh. "6-Calma") which reads, as follows - *This is to certify that based on the records of this office, the Pamantasan ng Lungsod ng Maynila allocated funds for the purchase of motor vehicles in the University Budget Proposal for CY 2006.*

On cross-examination conducted by the prosecution, witness-accused Calma confirmed that she signed Box B of the Budget Utilization Slip (Exh. "10"), certifying to the availability of the funds earmarked and obligated for the purpose. She reiterated that the budget and the schedule attached thereto was the procurement plan approved by the Board of Regents.

When cross-examined by accused Ferrer, Jr., witness-accused Calma confirmed that the Purchase Request (Exh. "2") dated February 17, 2006, was approved by accused Tayabas, the then PLM President, after the Allotment and Obligation Slip (ALOPS) indicated on the same Purchase Request was approved on February 20, 2006 together with the signature of accused Solis as to the availability of funds.

On re-direct examination, witness-accused Calma confirmed that the Notice of Suspension (Exh. "BB") was already lifted by the COA.

When queried by the Court, witness-accused Calma clarified that the budget proposal was reviewed by the PLM president and the vice-president for finance and planning. Thereafter, the Budget Office submits the final form. She also


A handwritten signature in black ink, appearing to be 'My' followed by a stylized flourish.

explained that an allotment and obligation slip (ALOBS) is the same as a budget utilization slip, both signifying that PLM has a budget for the items to be purchased.

Witness-accused Calma further testified that she only learned of the circumstances surrounding the subject procurement when this case was filed before the Office of the Ombudsman. She also stated that her only participation in the subject procurement is her signing the budget utilization slip.

The next defense witness was **Angeles C. Ramos**, who testified on direct examination through his sworn Judicial Affidavit dated March 16, 2021.

He substantially testified that he was the Acting Chief of the PLM Accounting Office in 2006; that when the Disbursement Voucher No. 06-6-1359 (Exh. "1-Ramos") dated June 5, 2006, prepared by the Property Office, was brought to his office, he found the documents required to process the payment to the supplier of the vehicle purchased to be complete and proper; that these documents are as follows – (a) the Letter Request (Exh. "2-Ramos") of accused Nuñez to accused Tayabas dated January 18, 2006, requesting for the purchase of a 10-seater van to be used by OUDLP, with the marginal note "OK" and the signature of accused Tayabas inscribed on January 19, 2006, (b) Purchase Request No. 101-2006-02-26 (Exh. "3-Ramos"), (c) Budget Utilization Slip No. 101-2006-02-245 (Exh. "4-Ramos") dated February 20, 2006, (d) PLM-BAC Resolution No. 0-8-G-06 dated May 10, 2006 (Exh. "5-Ramos") with the approval of the then Acting PLM President, Jose Roy III dated May 17, 2006 and (e) Purchase Order No. 06-05-141 (Exh. "6-Ramos") dated May 18, 2006; that aside from these documents, he also checked the following – (a) Minutes of the three special meetings of the PLM-BAC (Exhs. "7, "8" and "9-Ramos") respectively held on March 29, 2006, April 10, 2006 and May 10, 2006. (b) Price Quotations (Exhs. "11" to "17-Ramos") from the different car dealers, (c) Acceptance and Inspection Report No. 06-231 (Exh. "19-Ramos") dated June 1, 2006 with the conforme of accused Tayabas and (d) the Acknowledgment Receipt for Equipment No. 05-010 (Exh. "20-Ramos") dated May 23, 2006 signed by accused Ferrer, Chief of the Property Office; that he can identify the Notice of Suspension (Exh. "21-Ramos") issued by the COA dated March 29, 2010, indicating that the subject purchase was covered by DV No. 06-6-1359; and that the suspension was lifted through a COA Notice of Settlement of Suspension (Exh. "23-Ramos") issued on November 23, 2015.

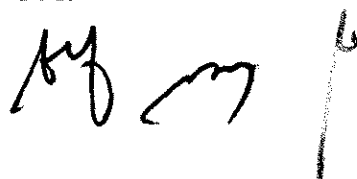


On cross examination conducted by the prosecution, witness-accused Ramos stated that there was no certificate of exclusive distributorship in favor of Hyundai Otis as well as a certificate that no sub-dealers selling at lower prices and no suitable substitute are available, attached to the Disbursement Voucher No. 06-6-1359 (Exh. "1-Ramos") dated June 5, 2006. Neither was there a PLM Board of Regents resolution attached to the same although the PLM University is the representative of the Board of Regents. He added that Purchase Order No. 06-05141 (Exhs. "6-Ramos"; Exh. "15") dated May 18, 2006 indicated Hyundai Quezon Ave. Inc. as the supplier and the mode of procurement is canvass, which are different from the PLM-BAC Resolution No. 09-G-06 (Exh. "5-Ramos") dated May 10, 2006.

In the interim, this Court granted the Motion dated June 3, 2021 of accused Santos waiving the presentation of witnesses in her behalf and adopting instead the testimonies of her co-accused dated June 3, 2021 (Minutes, July 22, 2021).

The next defense witness was accused **Felix F. Aspiras**.

Testifying on direct examination through his sworn Judicial Affidavit dated June 1, 2021, he substantially states - - that he was a member of the faculty of PLM and a member of the PLM-BAC in 2006; that he confirmed much of the testimonies of the other accused, particularly those who are members of the PLM-BAC, as to the actions they took during the three special meetings to consider the Letter Request of accused Nuñez; that the PLM-BAC focused mainly on the urgent need for the vehicle, the preferred specifications and the best promotional offers of some dealers; that he can identify the three Minutes of the Meeting (Exhs. "5", "6" and "7-Aspiras") dated March 29, 2006, April 10, 2006, and May 10, 2006, respectively, and the Justification (Exh. "8-Aspiras") dated April 5, 2006, signed by accused Nuñez, providing information on the immediate need for the requested vehicle and the reasons for a vehicle with rotating seat; that Hyundai qualifies as an exclusive dealer within the contemplation of the law because no other manufacturer or dealer can supply the type of vehicle that responds to the needs of the end-user; that, based on the quotations submitted, no other dealer offered a price lower than what Hyundai offered; and, that, though the COA issued a Notice of Suspension (Exh. "9-Aspiras") dated May 29, 2010, against the subject transaction, the PLM management was able to explain (Exh. "10-Aspiras") the same, and a subsequent Notice of Settlement (Exhibit "11-Aspiras") was issued by the COA.



X-----X

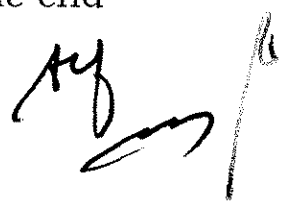
When cross-examined by the prosecution, witness-accused Aspiras substantially reiterated his direct testimony and admitted that the PLM-BAC did not consider the specifications on the units of Hyundai, but focused more on the justification given by the end-user and the requirements of R. A. No. 9184. He further testified that, regardless of any endorsement from the Office of the Legal Counsel of PLM, it is still the duty of the PLM-BAC to determine the proper method of procurement to be used and confirms that there was no separate BAC resolution for the purchase of the subject vehicle from Hyundai Quezon Ave.

On cross-examination conducted by accused Villanueva, witness-accused Aspiras confirmed that it is the function of the BAC to conduct pre-procurement conference, pre-bid conference, issue supplemental bid bulletin pertaining to the project, recommend the award of the contract the winning bidder, and recommend to the HoPE the appropriate alternative mode of procurement. He stated that the Endorsement (Exh. "U") dated February 17, 2006 of accused Villanueva was forwarded to accused Tayabas and that, during the first special meeting of the PLM-BAC on March 29, 2006, accused Villanueva, as the then OIC legal counsel of PLM, was neither invited thereto nor was informed of what transpired in the said meeting. He further stated that the Minutes (Exh. "W") of the March 29, 2006 special meeting did not reflect the statement of accused Villanueva requesting the PLM-BAC to determine the applicability of the mode of procurement.

He added that accused Villanueva was likewise not invited during the two other special meetings of the PLM-BAC and that it was the secretary of the PLM-BAC who furnished them the price quotations for the subject vehicle. He further confirmed that the PLM-BAC recommended direct contracting as the mode of procurement under Section 50 (c) of R. A. No. 9184.

On re-direct examination, witness-accused Aspiras explained that accused Villanueva was not invited to the special PLM-BAC special meetings because it was an independent body and his presence may be construed to be dictating on them.

When queried by the Court, witness-accused Aspiras admitted that, were in not for the Endorsement (Exh. "U") of accused Villanueva, a PLM-BAC special meeting would not have been called of the BAC and that the request of the end-



user will go to the PLM-BAC secretariat for a scheduled bidding process. However, he confirmed that the same Endorsement requested the PLM-BAC to evaluate the possible applicability of the alternative modes of procurement.

The last defense witness was accused **Albert de la Cruz** himself. He testified on direct examination through his sworn Judicial Affidavit dated June 18, 2021.

He essentially states - - that he was a faculty member of PLM and member of the PLM-BAC in 2006; that he attended the PLM-BAC special meetings held on March 29, 2006, April 10, 2006, and May 10, 2006 to take up the Letter Request (Exh. "6-Solis, *et al.*") dated January 18, 2006, of accused Nuñez, Dean of Emeritus College, for the purchase of a vehicle, approved by accused Tayabas, the then University President, on January 19, 2006; that they also discussed the Letter (Exh. "7-Solis, *et al.*") dated February 13, 2006 of accused Ferrer, Jr., the Chief of Property Office and the 1st Endorsement (Exh. "9-Solis, *et al.*") dated February 17, 2006 of PLM Legal Counsel, accused Villanueva, the PLM Legal Counsel; that during their second meeting, the PLM-BAC evaluated the applicability of the alternative mode of procurement and reviewed the price quotations from the various dealers of motor vehicles; that he identified the Justification (Exh. "13-Solis, *et al.*") dated April 5, 2006, which stressed the urgency of the request and the need for the rotating seat features; and, that during its third meeting, the PLM-BAC agreed to recommend the use of the alternative mode of procurement based on the provision of R. A. No. 9184, specifically Section 5 (c) thereof.

When cross-examined by the prosecution, witness-accused dela Cruz substantially reiterated his direct testimony. He added that Hyundai qualifies as an exclusive distributor or dealer, based on the quotations and compliance with the requirements of the end-user, thus necessitating the resort to direct contracting.

On cross-examination conducted by accused Villanueva, witness-accused de la Cruz confirmed that the mode of procurement was not emphasized in the Letter Request (Exh. "1") dated January 18, 2006 of accused Nuñez and that the endorsement of accused Villanueva dated February 17, 2006, addressed to accused Tayabas, through the PLM-BAC Chair, was for the conduct of an evaluation to determine the applicability of an alternative method of procurement. He also stated that he did not personally

Handwritten signature and initials in the bottom right corner of the page.

consult accused Villanueva before he signed the PLM-BAC Resolution (Exh. "AA").

When cross-examined by accused Tayabas, witness-accused de la Cruz confirmed discussing the Letter (Exhibit "3") dated February 13, 2006 of accused Ferrer, Jr. during the PLM-BAC meeting and that the PLM-BAC Resolution recommending direct contracting was approved by the then Acting President, Jose M. Roy, III.

On cross-examination conducted by accused Ferrer, Jr., witness-accused dela Cruz further reiterated that the Letter Request (Exh. "Q") dated January 18, 2006 of accused Nuñez, addressed to accused Tayabas, was forwarded to the Property Office and that no reference was made in the Letter (Exh. "S") of accused Ferrer, Jr., stating that the PLM- BAC should proceed with direct contracting. He further confirmed the actions of the Property Office but no longer participated in the process that after the recommendation was made by the PLM-BAC.

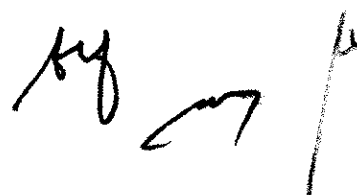
When queried by the Court, witness-accused de la Cruz testified that the Endorsement Letter (Exh. "U") dated February 17, 2006 of accused Villanueva was merely a request for the possibility of resorting to an alternative mode of procurement and that the function of the PLM-BAC was to satisfy the requirements of the end-user as approved by the HoPE.

Thereafter, the accused separately filed their respective Formal Offers of Exhibits, as follows: accused Ferrer, Jr. dated July 5, 2021 with a Compliance dated May 16, 2022 and an amendment dated May 13, 2022; accused Tayabas dated July 5, 2021 with an amendment dated May 25, 2022; accused Villanueva dated July 5, 2021 with an amendment dated May 25, 2022; and accused Solis, Macalinao, Aspiras, de la Cruz, Calma, and Ramos dated July 6, 2021 with a Compliance dated May 17, 2022.

After the prosecution filed its Amended Consolidated Comment and/or Opposition dated July 17, 2022, this Court ruled in the following manner (Minutes, October 13, 2022), to wit

1) For Accused Alfredo Ferrer:

Exhibits "1", "1-a", "2", "3", "4", "5", "5-a", "5-b", "6", "7", "8", "9", "10", "10-a", "10-b", "10-c" (marked as "10-D"), "13", "13-a", "14", "14-a to 14-f", and "15".



x-----x

- 2) For Accused Solis, Macalinao, Aspiras, Dela Cruz, Calma and Ramos:

Exhibits "1-Solis, et. al.", "1-A-Solis, et. al.", "5-A-Solis, et. al.", "22-Solis, et. al.", "26-a-Solis, et. al.", "30-Solis, et. al.", "30-A-Solis, et. al.", "32-Solis, et. al.", "33-Solis, et. al.", "34-Solis, et. al.", "35-Solis, et. al.", "35-a-Solis, et. al.", and "36-Solis, et. al."

Exhibits "1-Ramos", "2-Ramos", "3-Ramos", "4-Ramos", "5-Ramos", "6-Ramos", "7-Ramos", "8-Ramos", "9-Ramos", "10-Ramos", "11-Ramos", "12-Ramos", "13-Ramos", "14-Ramos", "15-Ramos", "16-Ramos", "17-Ramos", "18-Ramos", "19-Ramos", and "19-a-Ramos".

- 3) For Accused Benjamin Tayabas:

Exhibits "1-Tayabas", "2-Tayabas", "3-Tayabas", "4-Tayabas", "4-a-Tayabas", "4-b-Tayabas", "4-c-Tayabas", "4-d-Tayabas", "4-e-Tayabas", "4-f-Tayabas", "5-Tayabas", "6-Tayabas", "7-Tayabas", "8-Tayabas", and "9-Tayabas".

- 4) For Accused Lawrence P. Villanueva

Exhibits "1", "2", "3", "4", "5", "5-A", "6", "6-A", "7", "7-B", "8" and "8-A".

The following exhibits, however, are excluded:

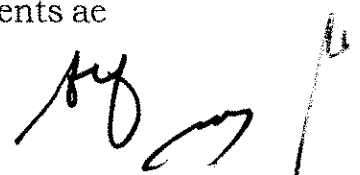
- 1) For Accused Ferrer:

Exhibits "11" is excluded for lack of proper identification; Exhibit "12" is not marked as exhibit for accused Ferrer and the same is not a documentary evidence as it refers to a judicial affidavit; Exhibit "16" for being a mere photocopy; Exhibit "17" is excluded for not having been marked as exhibit for accused Ferrer although the document is the same as the prosecution's Exhibit "FF" and Exhibit "18" is also excluded for not having been marked as exhibit for accused Ferrer.

- 2) For Accused Solis, et. al.

Exhibits "6-Solis, et. al.", "6-a-Solis, et. al.", "7-Solis, et. al.", "8-Solis, et. al.", "9-Solis, et. al.", "10-Solis, et. al.", "11-Solis, et. al.", "12-Solis, et. al.", "13-Solis, et. al.", "14-Solis, et. al.", "20-Solis, et. al.", "21-Solis, et. al.", "21-a-Solis, et. al.", "23-Solis, et. al.", "23-a-Solis, et. al.", "24-Solis, et. al." and "26-Solis, et. al." are excluded considering that they are not marked as exhibits for accused Solis, et. al.

Exhibits "1-Calma", "1-a-Calma", "2-Calma", "3-Calma", "3-a-Calma", and "3-b-Calma", are excluded considering that the said documents are not marked as exhibits for accused Calma although the said documents are



x-----x

the same as the prosecution's Exhibits "Q (A-57)", "T (A-60) and "R (A-58)".

Exhibits "4-Calma", "5-Calma", "5-a-Calma", "6-Calma" are also excluded considering that they have not been marked as exhibits for accused Calma.

Exhibits "21-Ramos", "22-Ramos", "22-a-Ramos", and "23-Ramos" are excluded for not being marked as exhibits for accused Ramos.

Exhibit "1-Aspiras" is excluded for not having been marked as exhibit for accused Aspiras; Exhibit "2-Aspiras", "2-a-Aspiras", "3-Aspiras", "4-Aspiras", "5-Aspiras", "6-Aspiras", "7-Aspiras", and "8-Aspiras" are excluded for not having been marked as exhibits for accused Aspiras although the said documents are the same as prosecution's Exhibits "A-57", "A-59", "A-6", "A-71", "A-72", "A-74" and "A-73".

Exhibits "9-Aspiras", "10-Aspiras" and "11-Aspiras" are excluded for being mere photocopies.

Exhibits "12-Aspiras", "13-Aspiras" and "13-a-Aspiras", "14-Aspiras", "15-Aspiras" and "15-a-Aspiras", are excluded considering that they are not marked as exhibits for accused Aspiras.

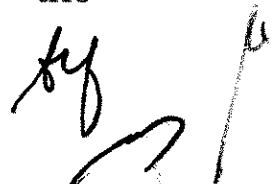
Exhibits "1-Dela Cruz", "1-a-Dela Cruz", "2-Dela Cruz", "3-Dela Cruz", and "4-Dela Cruz", are excluded considering that they are not marked as exhibits for accused Dela Cruz although the said documents are the same as the prosecution's Exhibits "A-61", "A-57", "A-59" and "A-73".

We now rule.

Originally, this case was raffled to the Fourth (4th) Division. However, the same was transferred to the Third (3rd) Division in exchange for the case of People vs. Benigno Simeon C. Aquino, III (SB-17-CRM-2144 and 2145), pursuant to the Court's Order dated December 1, 2017 (Minutes, Third Division, March 13, 2018).

The factual milieu of the case, as culled from the records, is as follows - -

On January 18, 2006, accused Domingo B. Nuñez, Dean of Emeritus College, sent a Letter Request (Exh. "Q") dated January 18, 2006, addressed to accused Benjamin G. Tayabas, the University President of the *Pamantasan ng Lungsod ng Maynila* (PLM), for the purchase of a vehicle to be used by the entire PLM-Open University Distance Learning Program (OUDLP). In the same Letter Request, the



specifications of the vehicle were enumerated with the note on the urgency of the purchase. The same Letter Request bears the marginal note of accused Tayabas "OK. 1-19-2006" with his signature.

By February 13, 2006, accused Alfredo C. Ferrer, Jr., the Chief of the PLM Property Office, sent a Letter (Exh. "S") dated February 13, 2006, addressed to accused Tayabas, through channels, in connection with the approved request for the purchase of vehicle for PLM-OUDDL, stating, among others, that based on the specifications submitted by the end-user and upon inquiries made from the various authorized dealers of different make, only Hyundai Starex meets the specifications, particularly on the rotating seat features and its dimensions.

Thereafter or on February 17, 2006, accused Lawrence P. Villanueva, the OIC Legal Counsel of PLM, issued a 1st Endorsement (Exh. "U"), recommending favorable action and approval of the Letter Request (Exh. "Q") dated January 18, 2006, of accused Nuñez. He also requested the PLM-Bids and Awards Committee (BAC) to conduct an evaluation on the applicability of the alternative mode of procurement under R.A. 9184.

The Purchase Request (Exh. "A-60") dated February 17, 2006, was subsequently issued by the PLM-OUDDL, through accused Nuñez, its Dean Emeritus College.

During the time material to the case, the PLM-BAC members were as follows: accused Virginia N. Santos, Chairman; and accused Angelita G. Solis, Justina A. Bontuyan, Alfredo C. Ferrer, Jr., Felix F. Aspiras, Eloisa M. Macalinao, and Albert S. de la Cruz, as members.

In its first special meeting (Exh. "W") on March 29, 2006, the PLM-BAC discussed the Letter Request (Exh. "Q") dated January 18, 2006 of accused Nuñez for the purchase of the subject vehicle by the Emeritus College. It also noted the Letter (Exh. "S") dated February 13, 2006, of accused Ferrer, Jr., and the subsequent 1st Endorsement (Exh. "U") dated February 17, 2006 of accused Villanueva. The PLM-BAC members then discussed the evaluation/assessment on the mode of procurement that the PLM-BAC should apply and requested the end-user for a strongly worded justification of its need to purchase the subject vehicle with the rotating seat feature.

The block contains three handwritten marks. From left to right: a stylized signature that appears to be 'fy', a signature that appears to be 'm', and a vertical line with a small hook at the top, possibly representing the number '4' or a signature.

In compliance with the request of the PLM-BAC, accused Nuñez, on April 5, 2006, submitted a Letter of Justification (Exh. "Y") on even date, stating the urgency for the purchase the subject vehicle since the next school year will officially commence in June 2006. He added that the vehicle will be used for trips to the various learning centers for the BCHS and MCHS programs (from Ilocos to Bicol regions) to conduct orientation/marketing sessions and to service the guests of the PLM-OUCLP in connection with marketing and/or linkages. In addition, the unique rotating seats of the vehicle will allow meetings and discussions to be conducted while travelling.

On April 10, 2006, the PLM-BAC convened (Exh. "Y") for the second time to discuss the Letter of Justification (Exh. "Y") dated April 5, 2006, of accused Nuñez, and reviewed the additional quotations from other Hyundai dealers. The PLM-BAC found that only Hyundai Starex satisfies the required specifications and suggests that direct contracting be used for the procurement.

Thereafter, the PLM-BAC convened (Exhibit "Z") anew on May 10, 2006, to evaluate the price quotations of the different Hyundai dealers. From this meeting the PLM-BAC issued Resolution No. 09-G-06 (Exh. "AA") dated May 10, 2006, recommending the direct contracting method as allowed in Sec. 50 of R.A. 9184 and that only Hyundai Starex fully satisfies the required specifications.

Consequently, the Disbursement Voucher No. 06-6-1359 (Exh. "O") dated June 5, 2006 and Check No. 890045 (Exh. "P") dated June 6, 2006, in the total amount of P1,114,492.57, were prepared.

Meantime, a Notice of Suspension (Exh. "BB") dated March 29, 2010, was issued by the Commission on Audit (COA) relative to the purchase of the subject vehicle. However, a Notice of Settlement of Suspension/Disallowance/Charge (NSSDC) (Exh. "33-Solis, *et al.*") dated November 23, 2015 was subsequently issued by the COA, finding the subject transaction to be in order and that the said suspension was settled.

However, on May 25, 2012, criminal and administrative complaints were filed by the Field Investigation Bureau of the Office of the Ombudsman, alleging among others that the accused gave preference to the Hyundai Starex van, evading

Handwritten signature and initials in the bottom right corner of the page.

not only competitive public bidding but also its requisite procedures.

Hence, the charges.

All the accused are charged with violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

Section 3 (e) of Republic Act No. 3019 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

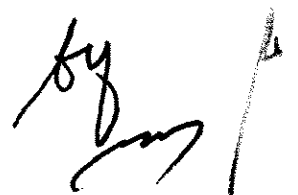
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

From the aforementioned provision, the three (3) elements necessary to find the accused criminally liable are -
- (1) that the accused must be a public officer discharging administrative, judicial or official functions; (2) that the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and, (3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions (Consigna vs. People, G.R. No. 175750-51, April 2, 2014).

The first element is present.

As stipulated by the parties themselves, all the accused are public officers, at the time material to this case, discharging administrative or official functions, as follows - -
accused Benjamin D. Tayabas, University President of the *Pamantasan ng Lungsod ng Maynila* (PLM); accused Domingo B. Nuñez, Dean Emeritus College of PLM; accused Angelita G. Solis, University Vice-President for Finance and



x-----x

Planning/Officer-in-Charge (OIC), Office of the Treasurer; accused Eloisa M. Macalinao, Professor III; accused Cecilia L. Calma, Budget Officer V; accused Angeles C. Ramos, Financial Management Officer III/Acting Chief, Accounting Office; accused Felix F. Aspiras, Professor VI; accused Albert S. de la Cruz, Assistant Professor II; accused Virginia N. Santos, University Vice-President for Academic Affairs; accused Alfredo C. Ferrer, Jr., Chief of the Property Office/Supply Officer V (Pre-Trial Order, November 19, 2018). This included accused Lawrence P. Panganiban, Professor II and Vice Dean of the Graduate School of Law on concurrent capacity as University Legal Counsel, based on his Service Record (Exh. "14-Villanueva") and revised Judicial Affidavit dated February 8, 2021.

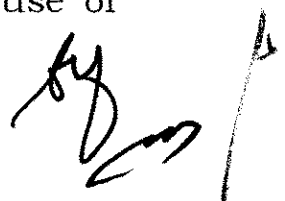
As to the second element, this crime can be committed in three (3) ways, namely - - through manifest partiality, evident bad faith, or gross inexcusable negligence. Proof of any of these three (3) in connection with the prohibited acts mentioned in Section 3 (e) of R. A. No. 3019, is enough to convict the accused.

In *Plameras vs. People* (G.R. No. 187268, September 4, 2013), the Supreme Court had the occasion to define these terms as follows - -

X x x. There is "manifest partiality" when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of 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 wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

Guided by the foregoing and after a judicious review of the documentary and testimonial evidence presented, this Court finds that the prosecution failed to establish the second element of the offense charged.

First, while the general rule in the procurement of goods for all government agencies is through a competitive public bidding, this rule, however, admits exceptions. The use of



alternative modes of procurement are allowed whenever justified by the conditions of the law, to promote economy and efficiency.

Herein, the *Pamantasan ng Lungsod ng Maynila*-Bids and Awards Committee (PLM-BAC) members recommended to resort to the alternative mode of direct contracting in purchasing the subject vehicle to be used by the PLM-Open University Distance Learning Program (OUDLP), after finding that the specifications provided by the end-user, Emeritus College, can only be supplied by one vehicle manufacturer, Hyundai, specifically its Starex GRX CRDi Model.

The pertinent specifications stated in the Letter-Request (Exh. "Q") dated January 18, 2006, of accused Nuñez, Dean of Emeritus College, finds illuminating - -

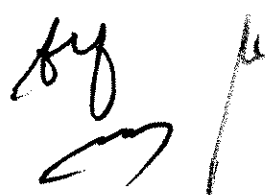
Vehicle, 10-seater, equipped with D4BH 2476 cc diesel engine turbo intercooler; maximum power 145 PS @ 2,500 rpm; GVW 2512 kg; 5-speed manual transmission; power/tilt steering, windows, side mirrors; glass antenna; door locks; premium stereo with 6-speakers; dual aircon/heater; driver side airbag; keyless entry with alarm; automatic lights; digital odometer; 2-tone paint with side garnish; rear spoiler with brake light; back-up warning sensor; rear wiper/washer; rotating seat (2nd row) with arm rests; ABS with 4-wheel disc brakes; 205 wide tires with aluminum 15" wheels.

Dimensions of:	Exterior:	Interior:
Overall length	4695 mm	2835 mm
Overall width	1820 mm	1605 mm
Overall height	1685 mm	1240 mm

As gleaned from the above-quoted specifications, there is a specific preference by the end-user (Emeritus College) for a 2nd row rotating seat with arm rests.

This was clearly emphasized in the Letter Justification (Exh. "Y") dated April 5, 2006, to wit - - *The vehicle will be used for trips to the various learning centers for the BCHS and MCHS programs (from Ilocos to Bicol regions) in order to conduct orientation/marketing sessions and to service any guests of the PLM-OUDLP in connection with marketing and/or linkages. In addition, the unique rotating seats of the vehicle will allow meetings and discussions to be conducted while on transit.*

Verily, upon verification made by the PLM Property Office from the different car manufacturers in the Philippines, only Hyundai can provide a vehicle with the rotating seat



feature. Thus, in such case, direct contracting may be resorted to as allowed in Section 53 (c) of R.A. 9184, to wit - -

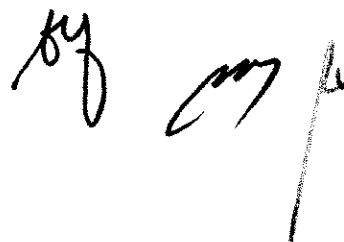
(c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

This Court notes the efforts of the PLM Property Office in initially requesting for quotations (Exhs. "A-62" to "A-68") from the different car manufacturers in Metro Manila with the features and specifications preferred by the end-user. However, it turns out that only Hyundai, with its Starex GRX CRDi model, can provide the specific requirement of a rotating seat.

Furthermore, the PLM-BAC sought the best available price from the licensed distributor/branches of Hyundai, namely: Hyundai Otis (Exh. "V-6"), Hyundai Quezon Ave. (Exh. "V-1") and Hyundai Commonwealth (Exh. "V-2"). Although these branches submitted similar price quotations, the PLM-BAC initially chose Hyundai Otis because of its discount and promo offerings, particularly its Thanksgiving promo. Unfortunately, this promotional discount of Hyundai Otis ended on May 15, 2006, as shown in its Certification (Exh. "22-Solis, *et al.*"), immediately prior to the PLM-BAC approving (Exh. "AA") the purchase on May 17, 2006.

Nevertheless, the PLM-BAC, through the PLM Property Office and after inquiries from the other Hyundai branches, eventually decided to purchase the subject vehicle from the Hyundai Quezon Ave. branch, with the same specifications and a promotional discount including a TV/DVD Monitor + DVD/VCD/MP3 player (Exh. "26-A-Solis, *et al.*"), which can be utilized for their meetings on the road.

Additionally, this Court did not give substantive weight to the Notice of Suspension (Exh. "BB-1") dated March 29, 2010, issued by the COA relative to the subject transaction, because this was subsequently lifted after COA, through Supervising Auditor, Mario G. Lipana, issued a Notice of Settlement of Suspension/Disallowance/Charge (NSDDC) (Exh. "33-Solis, *et al.*") on November 23, 2015, stating, among others, that - - *In view of the submission of documents by the concerned officials which we have evaluated and found in order, above suspension is hereby settled.*

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'by' followed by a stylized mark, and there are additional initials or a mark to the right.

In sum, this Court does not find the foregoing acts of the accused to come close to manifest partiality, evident bad faith or gross inexcusable negligence.

On the third element - *the action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions* - this Court also found that the prosecution failed to establish the same.

Firstly, the specifications laid out in the Letter Request (Exh. "Q") dated January 18, 2006 of accused Nuñez, Dean Emeritus College, for the purchase of the subject vehicle neither contained a specific brand name reference nor was it tailor fitted to refer to a particular brand.

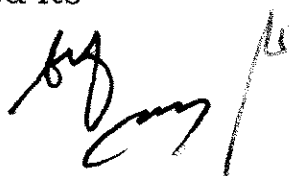
It is noted that during its initial meeting on March 29, 2006 (Exh. "W"), the PLM-BAC, through accused Aspiras, a member thereof, suggested that they just focus on the evaluation and assessment of the applicable mode of procurement. He even requested from the end-user a strongly worded justification for the need to purchase the vehicle, particularly with a rotating seat feature.

As a rule, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements (NPM No. 126-2017, December 29, 2017).

Here, We find the preferred specification of a rotating 2nd row seats with armrests to be valid and relevant to the circumstances. It was sufficiently explained that the subject vehicle will be utilized for the distance learning program of the Emeritus College and that the specific rotating seats feature preferred by the end-user can be very useful in conducting meetings and discussions while in transit.

Secondly, based on the quotations submitted by the different car manufacturers, the price of the Hyundai Starex is actually reasonable considering the preferred specifications of the end-user and the rotating seats feature available only in the said vehicle.

As a comparison, Toyota Otis offered its Hiace GL Grandia 2.5 Dsl M/T for P1,345,000.00 with only reclining rear seats (Exh. "A-66"); Nissan Manila offered its Urvan Estate two-tone for P1,528,000.00, less P65,000.00 with only reclining seats (Exh. "A-67"); and, Mitsubishi Manila offered its

A handwritten signature in black ink, appearing to be 'J. Cruz', is located in the bottom right corner of the page.

x-----x

2005 L-300 Versa Van Std for P760,000.00, less P10,000.00 (Exh. "A-68"). The 2006 Hyundai Starex GRX CRDi 10-Str. (facelifted) is priced at P1,168,000.00 with the 2nd row rotating seats and arm rests feature.

It was also noted that all the branches of Hyundai dealership have identical prices for their Hyundai Starex. Clearly, no unwarranted benefit, advantage or preference was given to Hyundai Quezon Ave. Rather, the PLM-BAC simply obtained the most advantageous price and terms consistent with the preferred specifications of the end-user.

Lastly, the prosecution failed to present evidence that the *Pamantasan ng Lungsod ng Maynila* suffered damage or was prejudiced when it procured the subject vehicle.

As earlier cited, the Notice of Suspension (Exh. "A-76") dated March 29, 2010, was heavily relied upon by the Field Investigation Bureau of the Office of the Ombudsman in crafting its Investigation Report and Complaint. Nevertheless, the subject transaction was eventually considered settled when COA itself issued its Notice of Settlement of Suspension/Disallowance/Charge (NSDC) (Exh. "33-Solis, *et al.*") dated November 23, 2015.

This Court also noted, as shown in the Acceptance and Inspection Report (Exh. "FF") dated May 18, 2006, that the subject 2006 Hyundai Starex GRX CRDi 10-Seater (facelifted), was delivered in accordance with the preferred specifications, in time for the opening of the 2006 school year in June, where it will be fully utilized by the Emeritus College for its trips to various learning centers in the Ilocos and Bicol regions.

At the risk of being repetitive, this Court echoes the Supreme Court pronouncements that to establish a *prima facie* case for violation of Section 3 (e) of R.A. 3019, the prosecution must show not only the defects in the procurement procedure but also the alleged evident bad faith, gross inexcusable negligence, or manifest partiality on the part of the accused. Absent a well-grounded and reasonable belief that the accused perpetrated the procurement irregularities in the *criminal manner* that he is accused of, then there is not even a basis for declaring the existence of probable cause, more so a finding of guilt for any violation of Section 3 (e) of R. A. No. 3019. The prosecution should not expect the Court to do its bounden duty of proving each element of the crime charged - or to come to its rescue when

it miserably fails to discharge this onus (*Richard T. Martel vs. People*, G.R. No. 224720-23, February 2, 2021).

Although the prosecution may have shown how procurement laws had not been strictly followed, it nonetheless failed to prove beyond reasonable doubt the elements for a violation of Section 3 (e) of R. A. No. 3019. Evident bad faith and manifest partiality are absent, owing to the prosecution's failure to prove fraudulent and malicious intent on the part of the petitioners. Gross inexcusable negligence was likewise not proven as the prosecution was not able to show that petitioners acted with want of even slight care and conscious indifference as to the compliance with their duties (*Martel vs. People, ibid.*).

WHEREFORE, premises considered, accused Benjamin D. Tayabas; accused Domingo B. Nuñez; accused Angelita G. Solis; accused Virginia N. Santos; accused Eloisa M. Macalinao; accused Alfredo C. Ferrer, Jr.; accused Cecilia L. Calma; accused Angeles C. Ramos; accused Lawrence P. Villanueva; accused Felix F. Aspiras; and accused Albert S. de la Cruz, are hereby **ACQUITTED** of the crime charged, for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Hold Departure Orders issued against the said accused are hereby ordered **RECALLED** and **SET ASIDE**. Their respective cash bonds are likewise ordered **RELEASED** subject to the usual accounting and auditing procedures.

Send a copy of this Decision to the Bureau of Immigration for its appropriate action.

Considering that accused Justina A. Bontuyan remains at-large despite an outstanding warrant for her arrest, let the instant case be sent to **ARCHIVES** subject to its revival upon her arrest or voluntary surrender.

In the meantime, let an *alias* warrant of arrest be **ISSUED** against accused Bontuyan.

SO ORDERED.


BERNELITO R. FERNANDEZ
Associate Justice

We concur:

AMPARO M. CABOTAJE-TANG

Presiding Justice/Chairperson

RONALD B. MORENO

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.

AMPARO M. CABOTAJE-TANG

*Chairperson, Third Division
Presiding Justice*

CERTIFICATION

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

AMPARO M. CABOTAJE-TANG

Presiding Justice

by