



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB-19-CRM-0153

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

CONCEPTION ONG LIM^(†)¹,
DIONISIO DAJALOS BALITE,
JOSE ECHAVA VELOSO, FELIX
REALISTA UY, AMALIA REYES
TIROL, ESTER CORAZON
JAMISOLA GALBREATH,
GODOFREDA OLAVIDES
TIROL, MA. FE CAMACHO-
LEJOS^(†)², BRIGIDO ZAPANTA
IMBOY^(†)³, FRANCES BOBBITH
DEL ROSARIO CAJES-AUZA,
HANDEL TUMULAK
LAGUNAY, EDWIN TUTOR
VALLEJOS, ABRAHAM DORIA
CLARIN, GRETA AYA-AY
MENDE, LAURA
SARAMOSING-BOLOYOS, and
FELIX MASCARIÑAS
MEJORADA,

Accused.

Present:

Gomez-Estoesta, J., *Chairperson*,
Trespeses, J., and
Hidalgo, J.

Promulgated:

October 27, 2023 *YR*

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DECISION

HIDALGO, J.:

This is a case for violation of Section 3 (e) of Republic Act (R.A.) No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, filed by the prosecution against herein accused, namely Concepcion Ong Lim ("Lim"), Dionisio Dajalos Balite ("Balite"), Jose Echavia Veloso ("Veloso"),

¹ Records, Vol. 4, pp. 382-386, 402-403

² Records, Vol. 7, p. 450

³ Records, Vol. 3, pp. 472-474

[Handwritten marks]

Felix Realista Uy ("Uy"), Amalia Reyes Tirol ("A. Tirol"), Ester Corazon Jamisola Galbreath ("Galbreath"), Godofreda Olavides Tirol ("G. Tirol"), sMa. Fe Camacho-Lejos ("Lejos"), Brigido Zapanta Imboy ("Imboy"), Frances Bobbith Del Rosario Cajes-Auza ("Auza"), Handel Tumulak Lagunay ("Lagunay"), Edwin Tutor Vallejos ("Vallejos"), Abraham Doria Clarin ("Clarín"), Greta Aya-ay Mende ("Mende"), Laura Saramosing-Boloyos ("Boloyos"), and Felix Mascariñas Mejorada ("Mejorada").

FACTS OF THE CASE

Sometime in March 2006, the Provincial Government of Bohol ("Province") advertised under Project Reference No. 301 an Invitation to Apply for Eligibility and to Bid⁴ for the procurement of one (1) unit of Hydraulic Excavator ("Backhoe") with Breaker,⁵ with an approved budget of Nine Million, Four Hundred Ninety-Three Thousand, Four Hundred Sixty-Nine Pesos (**Php9,493,469.00**).⁶ In response to the said advertisement, Monark Equipment ("Monark") and Civic Merchandising, Inc. ("CMI") applied for eligibility.⁷ Subsequently, both Monark and CMI were found and declared by the Bids and Awards Committee ("BAC") to be eligible to participate in the bidding for the aforementioned project.⁸ However, only CMI purchased bid documents, and submitted a proposal⁹ before the deadline of submission of bid on April 4, 2006.¹⁰

Under its Bid Submission Sheet,¹¹ CMI offered to supply and deliver the hydraulic excavator with hydraulic rock breaker for the total amount of One Hundred Eighty-Three Thousand, Eight Hundred Dollars (**USD183,800.00**). Per Abstract of Bid as Read,¹² this amount is equivalent to Nine Million, Four Hundred Ten Thousand, Five Hundred Sixty Pesos (**Php9,410,560.00**). It was also written in the same abstract of bids that the delivery schedule would be ninety (90) days upon receipt of the L/C (Letter of Credit).¹³

On April 25, 2006, the BAC issued Resolution No. 652,¹⁴ series of 2006, proclaiming CMI as the Single Calculated/Rated and Responsive Bid for the delivery of the one (1) unit of hydraulic excavator (backhoe) with breaker under Project Reference No. 301, and recommending for approval CMI's proposed bid.

⁴ Records, Vol. 1, p. 227 (See Exhibit 7-Lagunay, et al.)

⁵ Records, Vol. 1, p. 231 (See Exhibit D, Exhibit 1-Ong Lim, et al., Exhibit 5-Auza, Exhibit 9-Lagunay, et al.)

⁶ Records, Vol. 1, pp. 224-227 (See Exhibit 7-Lagunay, et al.)

⁷ Records, Vol. 1, p. 231 (See Exhibit D, Exhibit 1-Ong Lim, et al., Exhibit 5-Auza, Exhibit 9-Lagunay, et al.)

⁸ Records, Vol. 1, p. 228 (See Exhibit 8-Lagunay, et al.)

⁹ Records, Vol. 1, pp. 245-246 (See Exhibit C, Exhibit 19-Auza)

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Records, Vol. 1, p. 230

¹³ *Ibid.*

¹⁴ Records, Vol. 1, pp. 245-246 (See Exhibit C, Exhibit 19-Auza)

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On May 5, 2006, then Governor of Bohol, Erico B. Aumentado (“Governor Aumentado”), issued a Notice of Award¹⁵ in favor of CMI pursuant to the BAC’s recommendation in Resolution No. 652, series of 2006.

On May 8, 2006, CMI sent Proforma Invoice No. PF05-06¹⁶ to the Province of Bohol, stating among others that the terms of payment for the hydraulic excavator (backhoe) with breaker valued at **USD183,800.00**, shall be by confirmed and irrevocable Cash Letter of Credit at sight in favor of its principal abroad, Sydex Limited, the Letter of Credit to be advised thru the Hongkong & Shanghai Banking Corp. Thereafter, delivery of the said equipment shall be in sixty (60) days upon receipt of the Letter of Credit.

On May 23, 2006, Governor Aumentado sent a Letter¹⁷ to then Vice Governor Julius Caesar F. Herrera (“Vice Governor Herrera”), requesting the *Sangguniang Panlalawigan* to pass a resolution authorizing him to open a Letter of Credit with the Philippine National Bank (“PNB”), Cebu branch, in the amount of **Php9,410,560.00**, Philippine currency or its equivalent amount in the country of origin, for the purchase through importation of one (1) brand new hydraulic excavator (backhoe), with breaker for the Road Development Program of the Province, to sign all documents appertaining thereto, and to further authorize the PNB to debit all charges incidental to the opening and negotiation of the Letter of Credit against the standing account of the province with the said bank.

On July 10, 2006, the *Sangguniang Panlalawigan*, passed Resolution No. 2006-387,¹⁸ in accordance with Governor Aumentado’s request.

On July 12, 2006, the amount of Nine Million, Seven Hundred Twenty-Three Thousand, Nine Hundred Ninety-Eight Pesos and Fifteen Centavos (**Php9,723,998.15**) was debited from the account of the Provincial Government of Bohol under Current Account No. 485-861333-2 maintained with PNB Tagbilaran Branch for the opening of a Letter of Credit in the PNB Cebu Branch for the purchase of one (1) brand new hydraulic excavator (backhoe) with breaker, pursuant to the letter of credit opening application¹⁹ signed by Governor Aumentado.²⁰ The total amount of **Php9,723,998.15** consisted of the following charges²¹:

1. Cost of the equipment USD183,800.00 at Php52.50 or Php9,645,500
2. Letter of Credit opening charges Php39,498.15

¹⁵ Records, Vol. 1, p. 232 (See Exhibit F, Exhibit 2-Ong Lim, et al., Exhibit 6-Auza, Exhibit 10-Lagunay, et al.)

¹⁶ Records, Vol. 1, p. 248 (See Exhibit G, Exhibit 20-Auza)

¹⁷ Records, Vol. 1, p. 455 (See Exhibit 3-Ong Lim, Exhibit 7-Auza)

¹⁸ Records, Vol. 1, pp. 233-235 (See Exhibit H, Exhibit 4-Ong Lim, Exhibit 1-Balite, Exhibit 1-Auza, Exhibit 6-Lagunay, et al.)

¹⁹ Records, Vol. 1, p. 241 (See Exhibit M, Exhibit 16-Auza)

²⁰ Records, Vol. 1, p. 241 (See Exhibit I, Exhibit 17-Auza, Exhibit 11-Lagunay, et al.)

²¹ *Ibid.*

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3. Negotiation Charges (subject to the actual peso exchange on the date of the negotiation) Php35,000.00

On July 17, 2006, CMI deposited the amount of Two Hundred Thirty-Eight Thousand, Nine Hundred Forty Pesos (**Php238,940.00**)²² to the same current account of the province to cover the difference in exchange rate at the time of the bidding and at the time the letter of credit was opened or confirmed by PNB.²³

On July 29, 2006, Sydex Limited shipped one (1) brand new hydraulic excavator (backhoe) with breaker from Kwangyang, Korea to Manila, Philippines.²⁴ Then, on September 11, 2006, the said equipment was delivered to the Province of Bohol.²⁵

Thereafter, the Field Investigation Office ("FIO") of the Office of the Ombudsman filed a complaint dated October 14, 2014, against the herein accused.²⁶ On November 6, 2014, the Ombudsman per Resolution dated November 24, 2015, found probable cause, charging them with violation of Section 3 (e) of R.A. No. 3019.²⁷ On December 17, 2017, an Information was filed, indicting them of the said crime.²⁸ This initial Information was found to be fatally defective, and thus, was dismissed in a court's Resolution dated April 5, 2018,²⁹ following several motions to quash filed by the herein accused on the ground that the facts charged do not constitute an offense.³⁰ Nonetheless, the case was refiled on September 10, 2019, under the present Information dated July 30, 2019 quoted hereunder:

That from April 4, 2006 to July 12, 2006, or sometime prior or subsequent thereto, in Tagbilaran City, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, accused **CONCEPCION ONG LIM, DIONISIO DAJALOS BALITE, JOSE ECHAVIA VELOSO, FELIX REALISTA UY, AMALIA REYES TIROL, ESTER CORAZON JAMISOLA GALBREATH, GODOFREDA OLAVIDES TIROL, MA. FE CAMACHO-LEJOS, BRIGIDO ZAPANTA IMBOY, and FRANCES BOBBITH DEL ROSARIO CAJES-AUZA**, all high ranking public officers being members of the *Sangguniang Panlalawigan*, **HANDEL TUMULAK LAGUNAY**, Provincial Legal Officer/ Bids and Awards Committee (BAC) Chairperson, **EDWIN TUTOR VALLEJOS**, Provincial General Services Officer/BAC Vice-Chairperson, **GRETA AYA-AY MENDE**, Assistant Provincial Engineer/BAC Member, **LAURA SARAMOSING-BOLOYOS**, Supply Officer IV/BAC Member, **ABRAHAM DORIA CLARIN**, Head Provincial Motorpool/BAC Member and **FELIX MASCARIÑAS MEJORADA**, Supervising Administrative Officer/BAC Member, all of the Provincial Government of

²² *Ibid.*

²³ Records, Vol. 1, pp. 242-244 (See Exhibit N, Exhibit 18-Auza)

²⁴ Records, Vol. 1, p. 250 (See Exhibit O, Exhibit 21-Auza)

²⁵ Records, Vol. 1, pp. 236-238 (See Exhibit J, Exhibit 12-Auza)

²⁶ Records, Vol. 1, pp. 12-13

²⁷ Records, Vol. 1, p. 15

²⁸ *Ibid.*

²⁹ Records, Vol. 1, pp. 12-28

³⁰ Records, Vol. 1, pp. 29-30

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Bohol, while in the performance of their administrative and/or official functions and committing the crime in relation to office, acting with evident bad faith, manifest partiality or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally give Civic Merchandising, Inc (CMI) unwarranted benefits, advantage or preference and cause undue injury to the government in the amount of Seventy-Four Thousand Four Hundred Ninety-Eight Pesos and Fifteen Centavos (Php74,498.15) through the following acts:

- 1.) On April 25, 2006, herein accused Lagunay, Vallejos, Clarin, Mende, Boloyos and Mejorada passed and approved BAC Resolution No. 625, declaring CMI as the Single Calculated/ Rated and Responsive Bid for the delivery of one (1) unit Hydraulic Excavator (Backhoe) with Breaker, despite the fact that, at the time when the bidding documents were opened on 04 April 2006, CMI's bidding documents clearly indicated in the Delivery and Completion of Schedule, *a delivery schedule of not later than 120 days after receipt* of a Letter of Credit (LOC) as the mode of payment, and knowing fully well that the use of a Letter of Credit as a mode of payment was expressly prohibited under Section 42.5 of the Implementing Rules and Regulations-Part A of Republic Act No. 9184 (Government Procurement Reform Act), as implemented by Memorandum Order No. 119, Series of 2003;
- 2.) On July 10, 2006, accused Lim, Balite, Veloso, Uy, Amalia Tirol, Galbreath, Godofreda Tirol, Lejos, Imboy and Auza passed and approved Resolution No. 2006-387, authorizing:
 - a) The then provincial governor to open the LOC with the Philippine National Bank (PNB) in the amount of Nine Million Four Hundred Ten Thousand Five Hundred Sixty Pesos (Php9,410,560.00) for the purchase of the above-described Backhoe with Breaker from CMI;
 - b) The PNB to debit all charges incidental to the opening and negotiation of the LOC, in the total amount of Php74,498.15;
 - c) In passing Resolution No. 2006-387, accused Lim, Balite, Veloso, Uy, Amalia Tirol, Galbreath, Godofreda Tirol, Lejos, Imboy and Auza enabled CMI to receive payment on the LOC on July 12, 2006, even before CMI delivered the Backhoe with Breaker to the Province of Bohol on September 11, 2006, and caused the Province of Bohol to shoulder all charges incidental to the opening and negotiation of the LOC in the total amount of Php74,498.15, both in violation of Section 42.5 of the Implementing Rules and Regulations-Part A of Republic Act No. 9184 (Government Procurement Reform Act), as further amended by Memorandum Order No. 213, thereby resulting in undue injury to government in the aforesaid amount of Php74,498.15.

CONTRARY TO LAW

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PROCEEDINGS IN COURT

On September 18, 2019, a Hold Departure Order (“HDO”) was issued against all accused.³¹ After the finding of probable cause, Warrants of Arrest were likewise issued against them.³²

From September 25, 26, 27, 30 until October 2, and 3, 2019, accused Vallejos,³³ Clarin,³⁴ Mejorada,³⁵ Balite,³⁶ Lagunay,³⁷ Uy,³⁸ Auza,³⁹ Veloso,⁴⁰ Mende,⁴¹ Boloyos,⁴² Lim,⁴³ G. Tirol,⁴⁴ Galbreath,⁴⁵ A. Tirol,⁴⁶ and Lejos,⁴⁷ posted their respective bail bonds in the amount of Thirty-Thousand Pesos (Php30,000.00),⁴⁸ and as a result, the Warrants of Arrest issued against them were set aside.⁴⁹

On January 31, 2020, accused Vallejos, Clarin, Mejorada, Balite, Lagunay, Uy, Auza, Veloso, Mende, Boloyos, G. Tirol, Galbreath, A. Tirol, and Lejos were arraigned, and they pleaded **NOT GUILTY** to the offense charged.⁵⁰

On January 27, 2020, accused Lagunay, Vallejos, Clarin, Mende, Boloyos, and Mejorada (Lagunay, et al.,) filed their pre-trial brief.⁵¹ Accused Auza initially filed her Pre-trial Brief on February 12, 2020,⁵² and then, an Amended Pre-trial Brief on February 20, 2020.⁵³ This was followed by the Prosecution’s Pre-trial Brief filed on February 24, 2020.⁵⁴ Then, accused Balite submitted his Pre-trial Brief on June 10, 2020.⁵⁵ While, accused Lim, A. Tirol, Galbreath, G. Tirol, Lejos, Veloso, and Uy (Veloso, et al.) filed their Pre-trial Brief on June 26, 2020.⁵⁶ Verily, after the submission of the Pre-trial Brief, several preliminary conferences were held to give way for the parties’

³¹ Records, Vol. 2, pp. 7-8

³² Records, Vol. 2, pp. 9, 11-12

³³ Records, Vol. 2., p. 319

³⁴ Records, Vol. 2, p. 370

³⁵ Records, Vol. 2, p. 382

³⁶ Records, Vol. 2, p. 236

³⁷ Records, Vol. 2, p. 346

³⁸ Records, Vol. 2, p. 248

³⁹ Records, Vol. 2, p. 307

⁴⁰ Records, Vol. 2, p. 224

⁴¹ Records, Vol. 2, p. 333

⁴² Records, Vol. 2, p. 358

⁴³ Records, Vol. 2, p. 210

⁴⁴ Records, Vol. 2, p. 273

⁴⁵ Records, Vol. 2, p. 285

⁴⁶ Records, Vol. 2, p. 260

⁴⁷ Records, Vol. 2, p. 295

⁴⁸ Records, Vol. 2, pp. 396-397

⁴⁹ Records, Vol. 2, pp. 396-399

⁵⁰ Records, Vol. 3, pp. 445-471, 472-474

⁵¹ Records, Vol. 3, pp. 374-378

⁵² Records, Vol. 3, pp. 503-507

⁵³ Records, Vol. 3, pp. 525-529

⁵⁴ Records, Vol. 4, pp. 7-12

⁵⁵ Records, Vol. 4, pp. 24-35

⁵⁶ Records, Vol. 4, pp. 127-132

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proposed stipulations as well as the markings of their exhibits.⁵⁷ The preliminary conference was finally terminated on April 14, 2021.⁵⁸

On June 25, 2021, Pre-trial conference was held and terminated subject to the submission of the parties' signed Joint Stipulation of Facts and Issues ("JSFI").⁵⁹ Then, the Pre-trial Order which embodied the parties' JSFI was issued on October 8, 2021.⁶⁰

In the interim, accused Lim⁶¹, Imboy⁶², and Lejos⁶³ died; thus, the case against them was dismissed.⁶⁴

Thereafter, trial ensued.

ISSUES

In the pre-trial order,⁶⁵ the parties raised the following issues:

A. For the Prosecution:

1. Whether or not accused committed a violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, by causing the procurement of backhoe with breaker with the use of letter of credit without complying the requirements of its use provided by law.

B. For Accused Veloso, Uy, A. Tirol, Galbreath, G. Tirol, and Lejos ("Veloso, et al."):

1. Whether or not the new twin requirements imposed by Section 42.5 of the IRR of R. A. No. 9184, as further amended by Memorandum Order No. 213, can be applied retroactively;
2. Whether or not accused through passage of SP Resolution No. 2006-387 authorized payment to CMI prior to the delivery of backhoe with breaker to the Province of Bohol on 11 September 2006;
3. Whether or not accused through passage of SP Resolution No. 2006-387 caused "undue injury" to the government;
4. Whether or not accused, in approving SP Resolution No. 2006-387, gave unwarranted benefits, advantage or preference to any private party not impleaded in this case;

⁵⁷ Records, Vol. 4, pp. 147-148, 156-157, 171-172, 183-185, 194-195, 206-208, 250-251, 277-278

⁵⁸ Records, Vol. 4, p. 280

⁵⁹ Records, Vol. 4, pp. 318-320, 359-380, 413-438, 443-468, 470-502, 503-528

⁶⁰ Records, Vol. 5, pp. 180-195

⁶¹ Records, Vol. 3, pp. 477, 479

⁶² Records, Vol. 3, pp. 472-474, 478-479

⁶³ Records, Vol. 7, p. 450, Vol. 8, pp. 82-83

⁶⁴ Records, Vol. 4, pp. 402-403

⁶⁵ Records, Vol. 5, pp. 191-192

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5. Whether or not accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence in passing SP Resolution No. 2006-387.
- C. For Accused Lagunay, Vallejos, Clarin, Mende, Boloyos, and Mejorada (“Lagunay, et al.”):
1. Whether or not accused committed a violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, by causing the procurement of the backhoe with breaker with the use of letter of credit without complying the requirements of its use provided by law;
 2. Whether or not the Bids and Awards Committee awarded the procurement to Civic Merchandising, Inc. specifically to be paid through a letter of credit.

EVIDENCE FOR THE PROSECUTION

The prosecution presented both testimonial and documentary evidence to support the material allegations in the Information filed.

TESTIMONIAL EVIDENCE

The prosecution presented Marie Beth S. Almero,⁶⁶ Aileen E. Maqueda,⁶⁷ Jeremia Amolat Lagunda,⁶⁸ and Edmar D. Rodela⁶⁹ as witnesses, and their respective testimonies are summarized as follows:

MARIE BETH S. ALMERO

In her Judicial Affidavit,⁷⁰ she said that she is currently a Graft Investigation and Prosecution Officer III (“GIPO III”) at the Field Investigation Office (“FIO”) of the Office of the Ombudsman since 2016. She was a GIPO I in 2014, and as such, her duties and functions included the fact-finding investigations and case build-up of complaints assigned by her Bureau Director. She also supervised and monitored a team of investigators and reviewed their reports; and drafted corresponding complaint/s, executed, and filed the same to which she would be designated as the nominal complainant for the FIO. Likewise, she drafted pleadings such as reply and position paper, and testified as a witness on cases investigated and/or supervised for review.

In 2014, she filed a complaint against the members of the *Sangguniang Panlalawigan* of Bohol and the members of the BAC. The complaint dated October 14, 2014, was based on the fact-finding investigation of the herein

⁶⁶ Records, Vol. 5, p. 217

⁶⁷ Records, Vol. 5, p. 392

⁶⁸ Records, Vol. 6, p. 24

⁶⁹ Records, Vol. 6, p. 87

⁷⁰ Judicial Affidavit Records Vol. I, pp. 2-11

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accused's violation of Section 42.5 of the Implementing Rules and Regulations ("IRR") of R.A. No. 9184 in connection with the procurement of one (1) unit of hydraulic excavator (backhoe) with breaker in CY 2006 by the Provincial Government of Bohol. The investigation showed that the BAC declared CMI as the single calculated/rated and responsive bid despite the existence of a provision in its submitted bid that violated Section 42.5 of the IRR of R.A. No. 9184. On the other hand, the *Sangguniang Panlalawigan* passed and approved Resolution No. 2006-387 authorizing the Provincial Governor to open a Letter of Credit ("LC") before delivery of the equipment, and to debit all charges incidental to the opening and negotiation thereof on the account of the provincial government which also violated Section 42.5 of the IRR of R.A. No. 9184. The failure to observe this relevant provision of law facilitated the incurrence of additional expenses against the Government in the amount of Php74,498.15.

She enumerated and identified the following documents as the basis of her findings:

1. Bid Submission Sheet (**Exhibit "C"** and **"E"**)
2. Pro forma Invoice No. PF05-06 (**Exhibit "G"**)
3. *Sangguniang Panlalawigan* Resolution No. 2006-387 (**Exhibit "H"**)
4. Certification dated August 16, 2006 (**Exhibit "I"**)
5. Delivery Receipt No. 8751 (**Exhibit "J"**)
6. Letter dated March 16, 2012 (**Exhibit "L"**)
7. Application and Agreement for Irrevocable Letters of Credit (**Exhibit "M"**)
8. Letter from the Vice President of Civic Merchandising Inc. (**Exhibit "N"**)
9. Invoice: 106-0037 (**Exhibit "O"**)
10. Bill of Lading (DOONSAN sea and air) (**Exhibit "P"**)

These documents showed that the purchase of one (1) unit hydraulic excavator (backhoe) with breaker was paid through a letter of credit, and that all charges in relation to the opening of the letter of credit was made at the expense of the provincial government of Bohol. The same also supported the conclusion that the payment of the hydraulic excavator with breaker was made and consummated before it was delivered to the said province. These irregularities constituted a violation of Section 3 (e) and (g) of R.A. No. 3019.

The actions of the herein accused amounted to gross inexcusable negligence because they gave unwarranted benefits to CMI after the latter was awarded the contract even though its bid was in violation of relevant laws. The subsequent payment of additional expenses/charges incidental to the opening of the letter of credit by the provincial government pursuant to the resolution passed by the *Sangguniang Panlalawigan* members caused undue loss to the Government in the amount of Php74,498.15.

Furthermore, the terms and conditions of the contract with CMI, for the purchase of the hydraulic excavator (backhoe) with breakers, were grossly and manifestly disadvantageous to the government because of the following: (1)

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the term of payment was by confirmed and irrevocable Letter of Credit at sight in favor of the supplier's principal abroad; (2) the delivery shall be made 60 days upon receipt of the Letter of Credit; and (3) all expenses relative to the opening of the Letter of Credit shall be borne by the province of Bohol which was beneficial to CMI and in violation of R.A. Nos. 9184 and 7160 and P.D. No. 1445.

She said that the members of the *Sangguniang Panlalawigan* who were responsible for passing the resolution that allowed the opening of the letter of credit at the expense of the provincial government, and the members of the BAC who did not comply with the two requirements provided by law in the use of letter of credit, should be held accountable for these violations.

During cross-examination,⁷¹ she maintained that based on the Complaint Affidavit, there was a violation of Section 42.5 of the IRR of R. A. No. 9184 as amended by Memorandum Order No. 213, which stated that the procuring entities may issue a letter of credit subject to the compliance that no payment on the letter of credit shall be made until delivery and acceptance of goods as certified by the procuring entity, and then, the cost of the opening of the letter of credit shall be for the account of the local or foreign supplier. The said provision was violated when then Governor was authorized to open a letter of credit even before the delivery of the equipment, as well as allowing the cost of the letter of credit to be charged on the account of the provincial government of Bohol.

Referring to the last part of the prosecution's **Exhibit "H"**, she alleged that the *Sangguniang Panlalawigan* authorized then Governor Aumentado to open a letter of credit with the PNB, Cebu Branch, in the amount of Php9,410,560.00, equivalent to the purchase price of the subject equipment, which was already tantamount to the payment thereof prior to its delivery because the letter of credit was the mode of payment.

She confirmed that the results in the fact-finding investigation were based on the documents attached as annexes to the Complaint Affidavit. She said that ten (10) documents were made available to them at the time of the fact-finding investigation. After gathering these documents, she reviewed the same and made her conclusions, then she prepared the complaint.

One of the documents she examined was *Sangguniang Panlalawigan* Resolution No. 2006-387 (**Exhibit "H"**). As a graft investigator for more than 15 years, she has examined more than a few resolutions of several *Sangguniang Panlalawigans*. She was aware that the votes of those who passed the resolution were recorded, but their signatures were not included in the resolution. Only their attendance was shown in the document. She did not know that there is a separate voting sheet reflecting the votes of the *Sangguniang Panlalawigan* members. She said that based on their

⁷¹ TSN dated October 13, 2021, pp. 23-63

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appreciation of the *Sangguniang Panlalawigan* Resolution, they presumed that all those who were present signified their approval, in the absence of any remarks to the contrary.

AILEEN E. MAQUEDA

In her Judicial Affidavit,⁷² she said that she started working with the Office of the Ombudsman in 2008. She is currently the Administrative Officer at the FIO. As such, her duties and responsibilities included: (1) the receipt, maintenance, and safe keeping of documents for the FIO; (2) certification of copies of documents as required, including those to be attached in complaints or as requested; (3) compliance with subpoenas to appear, testify, and if necessary, present the required documents; and (4) perform other duties that maybe assigned to her by her superior.

She received a subpoena from the Office of the Special Prosecutor to testify in court to identify the following documents, which she marked as certified true copy on file, to wit:

1. Bid Submission Sheet marked as Exhibit "C" and "E" which are annex PP-1 to PP-3 in the complaint.
2. Proforma Invoice No. PF05-06 marked as Exhibit "G".
3. *Sangguniang Panlalawigan* Resolution No. 2006-387 marked as Exhibit "H".
4. Certification dated August 16, 2006 marked as Exhibit "T".
5. Delivery Receipt No. 8751 marked as Exhibit "J".
6. Letter dated March 16, 2012 marked as Exhibit "L".
7. Application and Agreement for Irrevocable Letters of Credit marked as Exhibit "M".
8. Letter from Vice President of Civic Merchandising, Inc., marked as Exhibit "N".
9. Invoice: I06-0037 marked as Exhibit "O".
10. Bill of Lading (DOONSAN sea and air) marked as Exhibit "P".

After she identified her signature in these documents, she claimed that her certification thereon was based on the documents she kept/stored in their office.

On cross-examination,⁷³ she said that she got the documents from the FIO which conducted the fact-finding investigation. She claimed that the documents were certified true copy from the agency.

She could not remember if she received the documents personally though other people under her supervision would have received these documents.

⁷² Judicial Affidavit Records Vol. I, pp. 113-117

⁷³ TSN dated November 24, 2021, pp. 22-31

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JEREMIA AMOLAT LAGUNDA

She is the OIC Supervising Auditor of the Local Government Sector A Bohol 1, Tagbilaran City, Bohol. Her testimony was excluded due to irrelevancy.⁷⁴

EDMAR D. RODELA

He is the Audit Team Leader of Team R701 LGSA Bohol 1 of the Commission on Audit Region 7. His testimony was dispensed with after the parties stipulated on the issuance of the certification of non-availability of documents, which was a certification appended to the Judicial Affidavit of Auditor Rodela.⁷⁵

After the testimony of these witnesses, the Prosecution offered⁷⁶ the following:

DOCUMENTARY EVIDENCE

EXHIBITS	DESCRIPTION
"A"	Complaint dated 14 October 2014
"C"	Bids Submission Sheet dated 4 April 2006
"D"	Bids and Awards Committee (BAC) Resolution No. 652 (Province of Bohol)
"E"	Delivery and Completion Schedule
"F"	Notice of Award dated 5 May 2006 (Province of Bohol)
"G"	CMI Proforma Invoice No. PF05-06
"H"	<i>Sangguniang Panlalawigan</i> (Bohol) Resolution No. 2006-387
"I"	PNB Certification dated 16 August 2006
"J"	Delivery Receipt No. 8751 (Backhoe)
"K"	Delivery Receipt No. 8755 (Hydraulic Breaker)
"L"	Letter by Panfilo K. Funtalan dated 16 March 2012
"M"	Application and Agreement for Irrevocable Letters of Credit No. 0365-S06-00004
"N"	Letter from CMI through its VP-Visayas Operation dated 9 May 2012
"O"	Syndex Invoice No. 106-0037
"P"	Doonsan sea and air Bill of Lading

⁷⁴ TSN dated May 23, 2022, p. 27
⁷⁵ TSN dated August 17, 2022, p. 30
⁷⁶ Records, Vol. 6, pp. 114-123

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"R"	Notice of Disallowance
"S"	Audit Observation Report

In a Resolution⁷⁷ dated December 9, 2022, the court resolved to admit Exhibits "A", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", and "P", the existence, due execution, and authenticity of which have been stipulated upon by the parties, with some qualifications by accused Lagunay, et al., which did not affect their admissibility. Exhibits "R" and "S" were likewise admitted as public documents, therefore self-authenticating. The attachments for Exhibit "I" were not submitted/found in the records; thus, these were excluded.

Accused Auza⁷⁸ and Lagunay, et al.⁷⁹ moved for reconsideration of the admission of Exhibits "R" and "S". But the court denied their respective motions, restating the doctrine of public documents as self-authenticating exhibits, and emphasizing that the admissibility of these documents is not equivalent to evidentiary weight as the relevance thereof will still be determined in the final disposition of the case.⁸⁰

After the prosecution rested its case, all accused filed their respective motions for leave to file demurrer to evidence,⁸¹ but the motions were denied for lack of merit.⁸² Only accused Balite filed a Motion for Reconsideration; however, the court denied his motion in a Resolution dated February 27, 2023.⁸³

EVIDENCE FOR THE DEFENSE

The defense also presented both testimonial and documentary evidence.

TESTIMONIAL EVIDENCE

For the defense, accused Veloso, Uy, A. Tirol, Galbreath, G. Tirol presented their co-accused Uy as their witness. While accused Balite's witness was the Secretary of the *Sangguniang Panlalawigan*, Bonifacio M. Quirog, Jr. On the other hand, accused Lagunay was the witness for himself and his co-accused Vallejos, Clarin, Mende, Boloyos, and Mejorada. Then, accused Auza took the witness stand herself. The respective testimonies of these witnesses are summarized as follows:

⁷⁷ Records, Vol. 6, pp. 231-233
⁷⁸ Records, Vol. 6, pp. 258-261
⁷⁹ Records, Vol. 6, pp. 279-282
⁸⁰ Records, Vol. 6, pp. 315-318
⁸¹ Records, Vol. 6, pp. 268-277, 296-304, 338-347, 368-377
⁸² Records, Vol. 6, pp. 326-331, 437-442
⁸³ Records, Vol. 6, pp. 455-459

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FELIX R. UY - presently a *Sangguniang Panlalawigan* member of Baclayon Bohol.

One of the accused.

In his Judicial Affidavit ("JA"),⁸⁴ he said he was a member of the *Sangguniang Panlalawigan* ("SP") of the province of Bohol at the time of the questioned procurement of the backhoe with breaker in 2006.

He alleged that the procurement was approved by the BAC. After the approval, then Governor Aumentado issued a Notice of Award (**Exhibit "2-Lim, et al.,"/Exhibit "F"**) to the winning bidder. Subsequently, the SP passed a resolution after receiving the Governor's letter (**Exhibit "3-Lim, et al."**) asking for authority to open a letter of credit.

He averred that in one of their sessions, the *Sangguniang Panlalawigan* acted on the request of the Governor. They passed Resolution No. 2006-387 (**Exhibit "4-Lim, et al.,"/Exhibit "H"**), after the BAC's careful and judicious verification, and upon the Governor's guaranty that the winning bidder and the procurement were compliant with the legal, technical, and financial requirement of the law.

The resolution authorized the Governor to open a Letter of Credit with the PNB, Cebu branch in the amount of Nine Million Four Hundred Ten Thousand Five Hundred Sixty Pesos (**Php9,410,560.00**) or an amount equal to the currency of the country of origin, for the purchase through importation of the new hydraulic excavator (backhoe) with breaker for the road development program of the province, and to sign documents pertaining thereto. The PNB was also authorized to debit all charges incidental to the opening and negotiation of the letter of credit against the standing account of the province with the bank.

He said that his only participation was the passing of the Resolution but as a *Sangguniang Panlalawigan* member, he had no direct or indirect participation in the bidding process. He alleged that there was no way for him to favor any party related to the bidding because he did not have any contact with the BAC members and any of the bidders of the said procurement.

He was implicated in the present case because the prosecution claimed that the members of the *Sangguniang Panlalawigan* conspired with the winning bidder and the BAC members. The Information alleged that in passing Resolution No. 2006-387, the SP members enabled CMI to receive payment on the Letter of Credit even before delivery of the backhoe with

⁸⁴ Judicial Affidavit Records Vol. I, pp. 257-265

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breaker to the Province of Bohol and caused the latter to shoulder all charges incidental to the opening and negotiation of the letter of credit.

He denied the allegations, asserting that the resolution did not authorize payment before delivery. Although, the resolution allowed the PNB to debit all charges incidental to the opening and negotiation of the letter of credit, the procurement process happened before the prohibition made under Memorandum Order No. 213 on May 27, 2006. He noted that BAC Resolution No. 652 (**Exhibit "1-Lim, et al."/Exhibit "D"**), declaring CMI as the winning bidder, was issued on April 25, 2006, while the Notice of Award was given on May 5, 2006. Thus, it necessarily follows that the procurement took place months before the passage of the resolution.

He argued that under Section 42, as amended by Memorandum Order No. 213, "...the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and shall be so stated in the bidding documents." If the procurement process happened before the effectivity of the said memorandum, the requirement for the charging of the cost of opening of the letter of credit could not have been specified in the bidding documents. If it was not in the bidding documents, they could not be faulted on the matter. He averred that they were being held accountable for a non-existing prohibition, considering that said prohibition took effect only after the award. He added that even if the said memorandum was already in effect, there was no violation because they only authorized the debiting and not the payment before delivery.

Moreover, he confirmed that the members of the *Sangguniang Panlalawigan* acted on the request of the Governor when they passed Resolution No. 2006-387 on July 10, 2006. He said that they signed the voting sheet to reflect their votes after the resolution was passed.⁸⁵

On cross examination,⁸⁶ he stated that he was a member of the *Sangguniang Panlalawigan* in July 2006. He did not know much about the procurement proceeding but he knew that the BAC approved the procurement. After the approval, then Governor Aumentado issued a Notice of Award to the winning bidder. Thereafter, the *Sangguniang Panlalawigan* members, through then Vice Governor Herrera, received a letter from the Governor asking for authority to open a Letter of Credit, and they passed a resolution on that matter.

He did not see the Governor's letter, and there was no opportunity to examine the same; they were just informed that they will be passing the resolution. He alleged that whenever the Governor needed something, they act on it, and they approve it most of the time. He is aware that under the rules of procedure, he can vote against the passing of the resolution, but he still

⁸⁵ TSN dated April 25, 2023, pp. 21-22

⁸⁶ TSN dated April 25, 2023, pp. 23-30

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voted for the passage thereof, giving the Governor the authority to open the Letter of Credit, and allowing the PNB to automatically deduct the incidental and negotiation expenses relevant to the procurement.

He also added that co-sponsoring a resolution is equivalent to supporting the resolution. A co-sponsor is also considered a co-author of the resolution. He co-sponsored the Resolution marked as **Exhibit "4"** which was attached to his JA.

When questioned by the court,⁸⁷ he reiterated that he did not see the Governor's letter request and its attachments. He maintained that in all cases, if there is a request from the Governor, they just vote for it. This is the procedure that he followed since he was the President of the Philippine Councilors' League, and allied with the Governor. They do not scrutinize the request of the Governor.

He came to know about the purchase of the backhoe from CMI only at the time of the passage of the resolution because he is not privy to such transaction. He insisted that prior to the Governor's letter request, he did not know that there is a forthcoming purchase of the backhoe because they were not given any copy of the attachments of what will be taken up during their session.

He did not know if they were authorized to allow the PNB to debit all charges incidental to the opening and negotiation of the letter of credit but that is what was stated in the resolution they passed. He presumed that there is an available money for this. He confessed that they just authorized the PNB without further thinking on the basis.

Regarding the opening of the letter of credit, he presumed that the Governor was given the authority to do so, but he was not sure if it was permitted or not. He said that they never discussed the transactions the Governor took at that time.

He said that he did not see the bidding documents. He learned after the fact that Memorandum Order No. 213 provided that the payment through letter of credit must be stated in the bidding documents. But the questioned procurement started before the passage of M.O. No. 213. Then, after the present case was filed, he still did not try to go over or look for the bidding documents. As an SP member, he did not take part in the bidding process of the hydraulic excavator, which explains why he did not see the bidding documents.

He said that he did not scrutinize the Governor's request because he relied on the presumption of regularity of performance of duty of officials.

⁸⁷ TSN dated April 25, 2023, pp. 30-38

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He explained the procedure on purchases; allegedly, the purchase goes through the provincial legal office before it reaches the Governor. He noted that the latter was also a lawyer who has been a Governor and a Congressman for several times. With the presumption of regularity of the performance of their official duty, he believed that they know what they were doing.

Lastly, he divulged that they did not get the opinion of the provincial legal officer, even after they passed the resolution.

BONIFACIO M. QUIROG, JR. – presently the Secretary of the *Sangguniang Panlalawigan* of the Province of Bohol.

In his Judicial Affidavit,⁸⁸ he said that he is currently the Secretary of the *Sangguniang Panlalawigan* of Bohol (“SP-Bohol”). Under Rule 3.2 of the Internal Rules of Procedure of the SP-Bohol (**Exhibit “3-Balite”**), his duties and responsibilities as such are as follows: (a) attend sessions of the SP-Bohol and keep an accurate records of the its proceedings; (b) call roll of members, read calendar of business and minutes of the proceeding session as well as proposed ordinances and resolutions, messages, communication, memorials, petitions, and other documents required by the SP-Bohol or ordered by the SP-Bohol or the Presiding Officer; (c) record ordinances or resolutions passed by the SP-Bohol with the dates of passage and publication of the same; (d) keep in proper file all other records and documents of the SP-Bohol; and (e) such other duties as the SP-Bohol or the Presiding Officer may direct.

On July 10, 2006, the SP-Bohol conducted a regular session. He knows this because he was present during that session, and he kept a record of the Journal of the Proceedings of the Regular Session (**Exhibit “2-Balite”**) held on said date.

Under Rule 11 of the Internal Rules of Procedure, the Vice Governor of Bohol is the Presiding Officer of the SP-Bohol’s session. However, as stated in page 1 of the Journal of the Proceeding of the Regular Session held on July 10, 2006, Senior Board Member Balite became the Presiding Officer because then Vice Governor Herrera was on official business. He said that *Sangguniang Panlalawigan* Resolution No. 2006-387 (**Exhibit “1-Balite”**) was among the resolutions passed during that session, and such resolution was approved by the affirmative votes of the *Sangguniang Panlalawigan*. As the Presiding Officer, Balite did not make any affirmative vote for the approval of the said resolution. Rule 1.8 of the Internal Rules of Procedure of the SP-Bohol states that the Presiding Officer only votes to break a tie; since there was no tie during the voting for such resolution, Balite as the Presiding Officer was not allowed to vote thereon. To support his claim, he said that Balite’s

⁸⁸ Judicial Affidavit Records Vol. I, pp. 329-339

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signature does not appear in the affirmative column of the Voting Sheet (**Exhibit “1-A-Balite”**) attached to *Sangguniang Panlalawigan* No. 2006-387.

He identified Balite’s signature in the attestation portion of the Voting Sheet, asserting that he is familiar with the said signature because as Secretary of SP-Bohol, he saw and acted on numerous documents bearing the same signature. He explained that Balite’s signature found in the attestation portion of the Voting Sheet was not an affirmative vote; it only attested to the fact that *Sangguniang Panlalawigan* Resolution No. 2006-387 was passed by the affirmative vote of the SP-Bohol.

He said that Balite was indicated as a co-sponsor for *Sangguniang Panlalawigan* Resolution No. 2007-387 because under Rule 4.14 of the Internal Rules of Procedure of the SP-Bohol, the Presiding Officer is automatically a co-sponsor of all measures passed during the session. He said that Balite’s co-sponsorship of the said resolution has no effect on the affirmative voting thereon. He also claimed that Balite did not solicit votes for the approval of *Sangguniang Panlalawigan* Resolution No. 2006-387 nor did he mention the same during his time on the floor as seen on page 2 of the Journal of the Proceedings of their session.

He claimed that he is familiar with the voting sheet prepared by their staff.⁸⁹ The voting sheets indicated how a *Sangguniang Panlalawigan* member voted for a particular resolution.⁹⁰

He was present during the *Sangguniang Panlalawigan*’s session on July 10, 2006, and SP Resolution No. 2006-387 was among the resolutions passed that day. The journal of the proceeding showed that the *Sangguniang Panlalawigan* also passed Resolution Nos. 2006-383, 384, 385, and 386, all of which have their respective voting sheets.

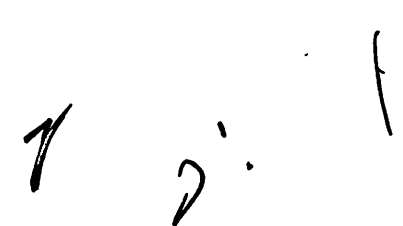
On cross examination,⁹¹ he said that the voting sheet comes after the session because they still had to finalize its wordings. At that time, they were given a week to prepare the voting sheet.

He said that the settlement of the conflict between the journal of the proceedings and the voting sheet would depend on the situation. He claimed that there were instances where some of the *Sangguniang Panlalawigan* members, who voted in favor or against an action during the session as reflected in the journal of proceedings, would later refuse to sign the voting sheet. This usually happens when they are voting on crucial issues.

⁸⁹ TSN dated April 25, 2023, pp. 54-62

⁹⁰ *Ibid.*

⁹¹ TSN dated April 25, 2023, pp. 78-95



When asked by the court, he revealed that the *Sangguniang Panlalawigan* members can refuse to sign the voting sheets.

He confessed that he was there when *Sangguniang Panlalawigan* Resolution No. 2006-387 was passed. Accused Lim moved for the approval thereof, and since there was no objection from any of the *Sangguniang Panlalawigan* members who were present, the said resolution was approved. Thereafter, the *Sangguniang Panlalawigan* members who were present placed their signatures parallel to their names in the voting sheet.

As per journal of the proceeding, Hon. Eufrazio M. Mascariñas (“Mascariñas”), Hon. Vice Governor Herrera, and Hon. Cariso T. Camacho (“Camacho”) were absent that day.

When confronted with **Exhibit 1-A-Balite**, he said that there is no signature appearing parallel to the name of accused Balite,

He explained that based on their Internal Rules of Procedure, accused Balite as the Presiding Officer becomes an automatic co-sponsor of all approved measures during the session.

On re-direct examination,⁹² he said that the Presiding Officer was the one who asked the *Sangguniang Panlalawigan* members if they had any objection on the resolution to be passed. The Presiding Officer cannot make any objection because under the Internal Rules and in line with the universal practice of parliamentary procedure, the Presiding Officer is supposed to be neutral. The question of whether there is an objection or not is addressed to the *Sangguniang Panlalawigan* members who were present during the deliberations and the casting of votes.

Upon inquiry from the court,⁹³ he discussed that under Rule 4.14, the Presiding Officer cannot cast a vote, and is automatically the co-author or sponsor of any measure passed during the session. He explained the history of the rule, stating that such provision was placed to reflect the accomplishment of the Presiding Officer in their yearly legislature report.

He confirmed that the signatures found in the journal of the proceedings were the signatures of those present during the session.

He said that accused Balite, as the most senior *Sangguniang Panlalawigan* member, became the Presiding Officer in the absence of Vice Governor Herrera, who was away on official business. He did not know what official business the latter attended, he only relied on the transcription found in the journal of the proceedings indicating that the Vice Governor was not present. It was customary during session that at the time of the roll call, the

⁹² TSN dated April 25, 2023, pp. 95-100

⁹³ TSN dated April 25, 2023, pp. 101-111

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Presiding Officer would be the one to state that a *Sangguniang Panlalawigan* member was absent, on leave, or on official business.

He said that the words “attested to” found in the journal of the proceedings is a confirmation of what happened since the journal is a faithful reproduction of what transpired at the session. The journal indicates who among the members are present or absent.

He added that accused Balite, as the Presiding Officer, did not partake in the proceedings except that he presided over the sessions. This is based on the rules and on parliamentary procedure that the Presiding Officer always takes a neutral stand in the discussion and does not vote unless there is a tie. He maintained that the prohibition on the Presiding Officer in making a vote is a practice of parliamentary procedure, and because of this the Presiding Officer is only allowed to vote to break a tie.

He alleged that accused Balite did not even bring up *Sangguniang Panlalawigan* Resolution No. 2006-387 during the session. He said that such measure stemmed from a Committee Report, so it was the committee which presented this on the floor.

As to the voting sheet, he claimed that it is signed during the week, though at times what happens is that those who already registered their votes during the session would refuse to sign the voting sheet. This became a problem because they were supposed to reflect what happened during the session. As a remedy, they bring the matter to the attention of the Vice Governor for him to call the attention of the members who refuse to sign. So, as between the voting sheet and the journal of the proceedings, the journal gives a more credible account of what happens during a session.

He said that they have four or five stenographers who each have a part in recording the exchanges made during the sessions, and they weave the recording in the journal of the proceedings. They also have an audio recording of the sessions but only for the purpose of helping the stenographers. There is no video recording of the sessions.

FRANCES BOBBITH D. CAJES-AUZA

One of the accused.

In her Judicial Affidavit,⁹⁴ she confirmed that she was the President of the *Sangguniang Kabataan* (“SK”) Federation, and an *ex-officio* member of the *Sangguniang Panlalawigan* of the Province of Bohol from 2002 to 2007.

⁹⁴ Judicial Affidavit Records Vol. I, pp. 403-411

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She was present at the Regular Session of the *Sangguniang Panlalawigan* of Bohol on July 10, 2006, but only during the opening of the session and until the calling of the roll of the members. After the roll call, she excused herself from attending the session to fulfill her school's duty requirement. She said that she did not participate in the discussion, voting, and passing of *Sangguniang Panlalawigan* Resolution No. 2006-387 as well as the other resolutions passed by the *Sangguniang Panlalawigan* on said date. She explained that she left the session before the *Sangguniang Panlalawigan* started deliberating and voting for the said resolution, because as a 3rd year nursing student she had to go and complete her OB-GYN ward duty requirement at the Governor Celestino Gallares Memorial Hospital (GCGMH).

To support her claim, she identified all voting sheets of the resolutions passed by the SP during the July 10, 2006 session and pointed out that her signature was not found on any of these voting sheets. She also presented the entries in her Related Learning Experience (RLE) Clearance and Clinical Experience Record Book, signed by her clinic instructors or supervisors in charge, to prove that she was on duty at the OB GYN ward on July 10, 2006. In addition, she submitted her Transcript of Records from Holy Name University to show that she was a nursing student in the said school from 2003 to 2008.

On cross examination,⁹⁵ she said that she left after the roll was called at around 10:40 am. She did not indicate her leave on any portion of the journal for the *Sangguniang Panlalawigan* Resolution.

She learned about the case involving the *Sangguniang Panlalawigan* when she received the complaint after she got the file from the Sandiganbayan in 2020.

She has seen and read the journal for *Sangguniang Panlalawigan* Resolution No. 2006-387 since she was given a copy thereof in 2020 when she was compiling her evidence.

She did not ask the *Sangguniang Panlalawigan* Secretariat to make a correction on the journal to indicate that she left before the *Sangguniang Panlalawigan* members voted for the said resolution.

She explained why she left instead of just indicating that she was absent during the session. She said that their Vice Governor at that time was very strict with attendance. She cannot be absent for three (3) consecutive days. Back then, she had been absent for two (2) weeks when she was assigned to do her duty in Tacloban, so she could no longer be absent from the session. She shared that it even came to a point where their Vice Governor even

⁹⁵ TSN dated April 25, 2023, pp. 130-134

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instructed the Philippine National Police (“PNP”) for her arrest if she did not appear at the session.

Upon inquiry from the court,⁹⁶ she explained why her signature appeared in the Journal of the Proceedings for *Sangguniang Panlalawigan* Resolution 2006-387 but not in the Voting Sheet. She said that under their Rules of Procedure, all the *Sangguniang Panlalawigan* members who were present are required to sign the Journal of the Proceedings. So, she had to sign the journal because she was there during the roll call. She claimed that she signed the same for attendance purposes, so she can be considered as present at that time. To her mind, her signature in the journal is a mere confirmation of her attendance but not an indication of her vote. It is the voting sheet that should indicate her actual vote.

She arrived at the session hall around 9:30 am on July 10, 2006, and then she left after the roll call. As the SK Chairperson, she was an *ex-officio* member of the *Sangguniang Panlalawigan*, and a public officer. She admitted that she went on clinic duty while on government time, alleging that she asked the permission of her colleagues. Her term as SK Chairperson was supposed to end by 2005 but the term was extended. For this reason, she had to plan her schedule, as she likewise cannot skip her clinic duty because the CIs in the duty ward are also very strict with attendance. If she is late for duty for fifteen (15) minutes, she had to replace that with one (1) day of duty, and one (1) day of absence would have to be replaced with three (3) days of duty. Consequently, she would be absent from her clinic duty to attend the session, and on other days she would not attend the session to be present for her clinic duty. She cannot always be absent for her clinic duty as she would not be able to finish her studies.

She said that there was no written authority allowing her to go on clinic duty while working as an SP member, especially if there is a session.

She did not participate or vote on all resolutions passed on July 10, 2006, because she left after the roll call. She did not ask the Secretary to put in the journal that she was already leaving, and that she will not participate in any of the proceedings.

She agreed that she was technically present when the session was called on July 10, 2006, because her name was indicated as one of those present when the resolution was adopted. However, she did not vote because she was not there during the discussion, and she did not know the contents of the discussion and neither did she have a copy of what was discussed.

She signed the journal of the proceedings a week after the session. She was shown the papers for the voting sheet but she did not affix her signature

⁹⁶ TSN dated April 25, 2023, pp. 135-143

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because she did not know what was discussed. At that time, she also did not know if she should vote “no” or abstain since she was not physically present at the session so she chose not to affix her signature.

HANDEL T. LAGUNAY – the Provincial Legal Officer

One of the accused.

In his Judicial Affidavit,⁹⁷ he said that he was the Chairperson of the BAC in 2006. He is one of the accused in the instant case, and his co-accused were the members of the *Sangguniang Panlalawigan* (“SP”) of the Province of Bohol and his fellow BAC members back in 2006. He denied their liability regarding the said province’s purchase of the backhoe with breaker paid through a Letter of Credit in violation of R.A. No. 9184 and its Implementing Rules and Regulation. He alleged that as BAC members their participation was limited to the bidding process. He said that they did not know that the SP authorized the Governor to open a Letter of Credit, and they did not take part when the SP passed the resolution for the opening of such letter of credit and how its opening will be paid. To support this contention, he cited the pertinent portions of BAC Resolution No. 652. He averred that the BAC members never participated in the SP’s deliberation, neither did they discuss with any SP members about paying the backhoe through an LC.

He insisted that the BAC did not conspire with the Governor or the SP members, claiming that from the time the Invitation to Apply for Eligibility and to Bid was published on March 5 to 19, 2006, up to the time they issued BAC Resolution No. 652 on April 25, 2006, they never considered purchasing the backhoe through a letter of credit. Moreover, the Governor’s request for the SP to issue a resolution happened on May 23, 2006. This was after their work as BAC was done. By this time, R.A. No. 9184 was already amended by Memorandum Order 213, allowing payment through LC. He added that the passage of the SP’s resolution was not dependent on their BAC resolution since at that time R.A. No. 9184 was already amended, and this could be the SP’s basis for passing their resolution.

He disagreed with the allegations that the actions of the BAC caused undue injury to the government. He admitted that the amount of Php74,498.15 was debited from the account of the Provincial Government of Bohol as LC opening and negotiation charges but CMI deposited the amount of Php238,940.00 to the said province’s account after five (5) days. He cited paragraph 11 of the prosecution’s Complaint (Exhibit “A”) to support his claim. He argued that the government did not sustain any damage because the amount spent to open and negotiate for the LC was immediately replenished by CMI.

⁹⁷ Judicial Affidavit Records Vol. I, pp. 292-301

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He said that he did not see during the bidding in 2006 the "DELIVERY AND COMPLETION SCHEDULE," (Exhibit "E") which indicated that the delivery schedule would be not later than 120 days after receipt of the letter of credit. He claimed that this document was most likely not considered by the BAC because it was unsigned. As far as the BAC is concerned, the payment would be through the usual form as required under existing laws at the time and not through an LC.

He said that CMI and Monark Equipment Corporation ("Monark") were the two (2) bidders interested at the public bidding of the backhoe with breaker. In BAC Resolution No. 652, CMI was declared as the "single calculated and responsive bid" because only CMI submitted a bid, and Monark did not.

Thereafter, he identified all the exhibits attached to his Judicial Affidavit.

On cross examination,⁹⁸ he testified that there were three (3) sets of documents submitted to them for consideration, and these were the legal, technical, and financial documents of the bidder. The legal documents normally consist of the Articles of Incorporation of the supplier or a DTI Registration, Mayor's Permit, and SEC Registration. The technical documents state the specifications of the equipment that will be supplied. He agreed that as the procuring entity, they compare the technical documents of the supplier with their set of technical requirements to check if these requirements were met. The financial documents indicate the amount or the price of the equipment to be supplied, it does not state the mode of payment or how the supplier will be paid. He said that in scrutinizing the financial documents, the BAC looks at the approved budget for the contract and see to it that the price offered by the bidder does not go above the said approved budget. He alleged that they followed the normal payment at that time, then they processed the voucher, the equipment was inspected, and then it was released after its acceptance, seeing to it that everything was in order. He maintained that he did not see that the Letter of Credit was the mode of payment while they were discussing the set of financial documents.

He reiterated that he and his fellow BAC members only participated in the bidding process, and that they had no prior knowledge of the SP's resolution, authorizing then Governor Aumentado to open a Letter of Credit, and the manner it would be paid.

When questioned by the court,⁹⁹ he only knew of the questioned transaction as being paid through a Letter of Credit during his stint as the BAC Chairperson. The other transactions of the province which were paid through

⁹⁸ Judicial Affidavit Records Vol. I, pp. 22-27

⁹⁹ TSN dated April 26, 2023, pp. 27-36

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a letter of credit happened in 2009 when he was no longer the BAC Chairperson or member.

He said that he looked at the mode of payment in the context of how the government would pay the supplier. He agreed that when a supplier places a bid, the latter is manifesting that it is legally, technically, and financially qualified. He said that when they reviewed CMI's bid, they found it to be financially capable to deliver or supply the equipment. They were not consulted about the opening of the Letter of Credit, and that he learned about it after SP Resolution No. 2006-387 came out.

He told the court about the amount of Php238,940.00 allegedly deposited by CMI to the provincial government's account, stating that he learned about it when he read it in the complaint of the FIO. He said that the complaint mentioned about a certification which alleged that a certain amount was debited from the province's account with the PNB. However, he did not have a copy of such certification. He only relied on the verified and sworn complaint of the FIO. He also quoted the March 16 Letter of Mr. Panfilo Futulan, Jr. from the PNB, but the said letter did not talk about the alleged remittance or payment made by CMI.

He agreed that only the amounts of Php39,498.15 and Php35,000.00 or around Php75,000.00 were paid in advance by the province to cover the cost of the issuance of the Letter of Credit. To reconcile the discrepancy between the total cost spent for the issuance of the Letter of Credit and the amount remitted to the province's account, he said that the amount of Php238,940.00 which was allegedly deposited covered not only the total cost of Php75,000.00 for the letter of credit, but also included all the other expenses debited from the province's account.

He said that at the time they issued BAC Resolution No. 652, he did not know about Memorandum Order No. 213 which amended R.A. No. 9184, allowing procurement through a letter of credit under certain conditions. He said that they did not check if this mode of payment was permitted because when the bid was submitted, there was no mention of a letter of credit at that time.

Only when he was indicted for the present case did he examine the law and found out that a Letter of Credit may be issued to foreign suppliers provided that the payment shall be done after the delivery of the supply and no government funds will be used in opening the same. He said that when he was a member of the BAC, he had no personal knowledge whether government funds were used to open the letter of credit because at the time they adopted their resolution, there was no mention of a letter of credit and how it would be paid.

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DOCUMENTARY EVIDENCE

After the testimonies of the above-named defense witnesses, the herein accused orally offered their respective evidence.¹⁰⁰ Subject to the court's appreciation of their probative value, all the evidence offered by the accused were admitted¹⁰¹ as follows:

For Accused Veloso, et al.

EXHIBITS	DESCRIPTION
"1-Ong Lim, et al."	BAC Resolution 652 (Prosecution's Exhibit "D")
"2-Ong Lim et al."	Notice of Award (Prosecution's "F")
"3-Ong Lim et al."	Letter dated May 23, 2006 of Gov. Aumentado
"4-Ong Lim et al."	Sangguniang Panlalawigan Resolution No. 2006-387 (Prosecution's Exhibit "H")

For Accused Balite

EXHIBITS	DESCRIPTION
"1-Balite" & "1-A Balite"	Sangguniang Panlalawigan Resolution No. 2006-387 and Voting Sheet
"2-Balite"	Journal of Proceedings
"3-Balite"	Internal Rules of Procedure of the Sangguniang Panlalawigan

For Accused Auza

EXHIBITS	DESCRIPTION
"1-Auza"	Sangguniang Panlalawigan Resolution No. 2006-387
"2-Auza", "3-Auza", "4-Auza", "5-Auza" & "6-Auza"	Voting Sheets of the different Resolutions passed during the July 10, 2006 deliberations
"7-Auza"	Clinical Area Appearance
"8-Auza"	Daily Ward Record Assignment
"9-Auza"	Official Transcript of Records

For Accused Lagunay, et al.

EXHIBITS	DESCRIPTION
"1-Lagunay, et al." to "1-C-Lagunay, et al."	201 File of Handel Lagunay
"2-Lagunay, et al.", "2-A-Lagunay, et al." to "2-B-Lagunay, et al."	201 File of Edwin Vallejos
"3-Lagunay, et al.", "3-	201 File of Felix Mejorada

¹⁰⁰ Records, Vol. 7, pp. 85-92, 117-120

¹⁰¹ *Id.*

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A-Lagunay, et al.” to “3-E-Lagunay, et al.”	
“4-Lagunay, et al.”, “4-A-Lagunay, et al.” to “4-C-Lagunay, et al.”	201 File of Laura Boloys
“5-Lagunay, et al.”, “5-A-Lagunay, et al.” to “5-B-Lagunay, et al.”	201 File of Abraham Clarin
“6-Lagunay, et al.”, “6-A-Lagunay, et al. to “6-C-Lagunay, et al.”	201 File of Greta Mende
“7-Lagunay, et al.”	Invitation to Apply for Eligibility and to Bid
“8-Lagunay, et al.”	BAC Resolution No. 001-BP Series of 2006
“9-Lagunay, et al.” with sub-marking “9-A-Lagunay, et al.”	BAC Resolution No. 652 dated April 25, 2006
“10-Lagunay, et al.”	Notice of Award
“11-Lagunay, et al.”	Certification dated August 16, 2006 issued by PNB Bank Officer Panfilo Futalan, Jr.

On April 23, 2023, the prosecution was directed to manifest its intention to file rebuttal evidence.¹⁰² On June 22, 2023, the prosecution filed a motion with proposed stipulation,¹⁰³ on which accused Auza, Balite, and Veloso, et al. filed their respective comments.¹⁰⁴ On July 4, 2023, during the presentation of the prosecution’s rebuttal evidence,¹⁰⁵ the court noted the Manifestation¹⁰⁶ of rebuttal witness, Bonifacio M. Quirog, Jr. (“Quirog”), requesting to be discharged from his testimony since his physician did not allow him to fly for health reasons.¹⁰⁷ The testimony of rebuttal witness Quirog was later dispensed¹⁰⁸ with after the parties agreed on the following proposed stipulations:

1. That the supposed witness is the current *Sangguniang Panlalawigan* Secretary of the province of Bohol;
2. That, as such, he has official custody of the records of the *Sangguniang Panlalawigan*;
3. That he issued certified true copies of the Journals dated June 26, 2006 and July 6, 2006 along with its voting sheets for Resolution Nos. 2006-350, 2006-351, 2006-354, 2006-356, and 2006-357; and
4. That the said Journals and voting sheets were lifted from the official records of the *Sangguniang Panlalawigan* of Bohol.¹⁰⁹

On July 10, 2023, the prosecution formally offered¹¹⁰ the following documentary exhibits on rebuttal:

¹⁰² Records, Vol. 7, pp. 117-120
¹⁰³ Records, Vol. 7, pp. 211-214
¹⁰⁴ Records, Vol. 7, pp. 291-293, 298-304, 307-311
¹⁰⁵ Records, Vol. 7, p. 347
¹⁰⁶ Records, Vol. 7, p. 339
¹⁰⁷ Records, Vol. 7, p. 340
¹⁰⁸ Records, Vol. 7, p. 347
¹⁰⁹ *Ibid.*
¹¹⁰ Records, Vol. 7, pp. 364-369

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EXHIBITS	DESCRIPTION
“B-Rebuttal” to “B-11-Rebuttal”	Journal of Proceedings of the Regular Session of the <i>Sangguniang Panlalawigan</i> of Bohol held on 26 June 2006 at the Senator Benigno S. Aquino, Jr. Session Hall, New Capitol Complex, Tagbilaran City
“B-13-Rebuttal”	Voting Sheet Resolution No. 2006-350 dated 26 June 2006
“B-14-Rebuttal”	Voting Sheet Resolution No. 2006-351 dated 26 June 2006
“B-15-Rebuttal”	Voting Sheet Resolution No. 2006-354 dated 26 June 2006
“B-16-Rebuttal”	Voting Sheet Resolution No. 2006-356 dated 26 June 2006
“B-17-Rebuttal” to “B 36- Rebuttal”	Journal of Proceedings of the Regular Session of the <i>Sangguniang Panlalawigan</i> of Bohol held on 06 July 2006 at the Senator Benigno S. Aquino, Jr. Session Hall, New Capitol Complex, Tagbilaran City
“B 37-Rebuttal”	Voting Sheet Resolution No. 2006-357 dated 6 July 2006

In a Resolution¹¹¹ dated July 21, 2023, the court admitted Exhibits “B-Rebuttal” to “B 37-Rebuttal” considering that the authenticity, due execution, and genuineness of these exhibits have been stipulated upon by the parties.

Since none of the herein accused intended to file sur-rebuttal evidence,¹¹² the court directed the parties to file their respective memoranda.¹¹³

RULING OF THE COURT

The spirit that animates R. A. No. 3019 is corruption.¹¹⁴ As such, the mere participation by public officers in an imperfect procurement process does not automatically serve as a basis for their criminal indictment for violation of Section 3 (e) of R. A. No. 3019.¹¹⁵ In the instant case, it behooves the court to meticulously examine the established facts through the lens of the elements of Section 3 (e) of R. A. No. 3019, as the court cannot simply rely on the findings of violations of the applicable procurement laws, rules, and regulations in determining the guilt of the accused.¹¹⁶ It is in this wise that this case will be decided.

¹¹¹ Records, Vol. 7, pp. 472-474
¹¹² Records, Vol. 7, pp. 486-487, 490-491, 493-497
¹¹³ Records, Vol. 7, pp. 555-574, Vol. 8, pp. 23-44, 52-75, 94-109, 207-258
¹¹⁴ Richard T. Martel, Allan C. Putong, Abel A. Guiñares, Victoria G. Mier, and Edgar C. Gan, vs. People of the Philippines (G. R. Nos. 224720-23, February 2, 2021)
¹¹⁵ Corazon C. Reyes vs. The Office of the Deputy Ombudsman for Luzon and Field Investigation Office II, represented by Atty. Vic T. Escalante (G. R. No. 230704, March 15, 2023)
¹¹⁶ *Id.* Footnote 114

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The accused are charged with Violation of Section 3 (e) of R. A. No. 3019, which states:

Sec. 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.

Succinctly, the Information provides that the accused supposedly violated the above provision of law by conspiring to commit certain irregularities in connection with the Provincial Government of Bohol's procurement of one (1) unit, brand new hydraulic excavator ("backhoe") with breaker.

For a violation of the above provision to prosper, the following elements must concur:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. The accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
3. The action of the accused caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.¹¹⁷

Furthermore, emerging jurisprudence clarifies that when a criminal case for violation of Section 3 (e) of R. A. No. 3019 is anchored on an alleged irregularity in procurement committed by public officers, such violation of procurement laws, rules and regulations does not *ipso facto* give rise to a violation of the said anti-graft and corruption law.¹¹⁸ Otherwise stated, for there to be a violation under Section 3 (e) of R. A. No. 3019 based on a breach of applicable procurement law, one cannot solely rely on the mere fact that a violation of procurement law has been committed.¹¹⁹ It must be shown that (1) the violation of procurement law caused undue injury to any party or gave any private party unwarranted benefits, advantage, or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable

¹¹⁷ *Id.* Footnote 114

¹¹⁸ *Id.* Footnote 114

¹¹⁹ Felipe P. Sabaldan, Jr., vs. Office of the Ombudsman for Mindanao and Christopher E. Lozada (G. R. No. 238014, June 15, 2020)

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negligence.¹²⁰ By the very language used under Section 3 (e) of R. A. No. 3019, which defines “corrupt practices of public officers,”¹²¹ it becomes crucial for the elements of manifest partiality, evident bad faith, or gross inexcusable negligence, and the giving of unwarranted benefit, advantage, or preference to another, to go hand in hand with a showing that the accused was moved by corrupt motives.¹²² This is so because R. A. No. 3019 was crafted as an anti-graft and corruption measure.¹²³ The crux of the acts punishable under R. A. No. 3019 is corruption.¹²⁴ Therefore, the liability of the accused for violation of Section 3 (e) of R. A. No. 3019 must be determined through the lens of the anti-graft and corruption law and not the procurement law.¹²⁵ In line with this, it is imperative that the court will examine the respective liabilities of the accused using the above principles as benchmark.

At the outset, the court notes that the first element of the crime is undisputed, upon stipulation of the parties that in 2006, all accused are public officers, being then members of the *Sangguniang Panlalawigan*, and the Bids and Awards Committee of the Provincial Government of Bohol.¹²⁶

The BAC

The BAC members, composed of accused Lagunay, Vallejos, Clarin, Mende, Boloyos, and Mejorada (“Lagunay, et al.”) are faulted for allegedly acting with evident bad faith, manifest partiality or gross inexcusable negligence for passing and approving BAC Resolution No. 652, declaring CMI as the winning bidder even though its bid documents required the use of a letter of credit as a mode of payment in violation of Section 42.5 of the IRR of R. A. No. 9184.

“Evident bad faith”, as understood under the law, partakes the nature of fraud.¹²⁷ It does not simply connote bad judgment or negligence but of having

¹²⁰ *Id.* Footnote 119

¹²¹ Section 3 (e) of R. A. No. 3019, states:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(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.

¹²² Lynna G. Chung vs. Office of the Ombudsman and Office of the Ombudsman-Field Investigation Office (G. R. No. 239871, March 18, 2021)

¹²³ Librado M. Cabrera and Fe M. Cabrera vs. People of the Philippines (G. R. Nos. 191611-14, April 6, 2020)

¹²⁴ *Id.*

¹²⁵ *Id.* Footnote 114

¹²⁶ Records, Vol. 5, p. 180 (*See* Pre-trial Order dated October 8, 2021)

¹²⁷ Eufrocina N. Macairan vs. People of the Philippines (G. R. No. 215104, March 18, 2021)

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a palpably and patently fraudulent and dishonest purpose to do moral obliquity or a conscious wrongdoing for some perverse motive or ill will.¹²⁸ It contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose.¹²⁹ On the other hand, there is manifest partiality when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another.¹³⁰ While “gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.¹³¹

In this case, after a judicious scrutiny of the attendant circumstances, the court finds no evidence to show that accused Lagunay, et al. acted with evident bad faith or manifest partiality in the performance of their duty as BAC. At the very least, the court observes that the said accused as BAC members attempted to follow procedure by conducting a public bidding for the procurement of the backhoe with breaker. As seen in the records, the procurement of the said equipment stemmed from an Invitation to Apply for Eligibility and to Bid,¹³² which the provincial government through the BAC advertised sometime in March 2006. After such advertisement was posted, Monark and CMI applied for eligibility,¹³³ and were declared by the BAC as eligible to participate in the bidding.¹³⁴ It just so happened that only CMI purchased the bid documents and submitted a proposal¹³⁵ before the deadline of submission of bid on April 4, 2006.¹³⁶ This conscious effort on the part of the BAC to at least follow procedure negates the appearance of fraud in the conduct of the bidding process. In a similar way, there is no manifest partiality as it was not illustrated that CMI was hand-picked for the procurement of the equipment, rather the award of the contract to the latter was a product of a public bidding conducted by the province through the BAC.

If at all, the irregularity in the bidding process occurred after the opening of the bid on April 4, 2006, whereby it was written in the Abstract of Bids as Read that the delivery schedule of the equipment would be “ninety (90) days upon receipt of the L/C” (Letter of Credit).¹³⁷ Here, the records show that accused Lagunay, et al., as BAC members had notice of this requirement since all of them signed the said abstract of bids.¹³⁸ The fault lies in the fact that at the time of the procurement, Section 42.5 of the IRR of R.

¹²⁸ *Id.* Footnote 127

¹²⁹ *Id.* Footnote 127

¹³⁰ *Id.* Footnote 127

¹³¹ *Id.* Footnote 122

¹³² Records, Vol. 1, p. 227 (See Exhibit 7-Lagunay, et al.)

¹³³ Records, Vol. 1, p. 231 (See Exhibit D, Exhibit 1-Ong Lim, et al., Exhibit 5-Auza, Exhibit 9-Lagunay, et al.)

¹³⁴ Records, Vol. 1, p. 228 (See Exhibit 8-Lagunay, et al.)

¹³⁵ Records, Vol. 1, pp. 245-246 (See Exhibit C, Exhibit 19-Auza)

¹³⁶ Records, Vol. 1, pp. 245-246 (See Exhibit C, Exhibit 19-Auza)

¹³⁷ Records, Vol. 1, pp. 229-230

¹³⁸ Records, Vol. 1, pp. 229-230

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A. No. 9184, prohibits the issuance of a letter of credit in connection to any procurement. Specifically, Section 42.5 of the IRR of R. A. No. 9184, provides:

Section 42. 5 No procuring entity shall be allowed to issue a letter of credit in favor of a Philippine entity or to any of the latter's foreign manufacturers or suppliers, with respect to any procurement.

It appears that despite said notice that a letter of credit is required, the BAC pushed through in recommending the award of the contract to CMI.¹³⁹ Undeniably, while there might be negligence on the part of accused Lagunay, et al., as BAC members for doing so, to the mind of the court this does not translate to gross inexcusable negligence per se. Jurisprudence defines negligence as the failure to observe that degree of care, precaution, and vigilance which the circumstances justly demand, by reason of which another person suffers injury.¹⁴⁰ While gross inexcusable is negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.¹⁴¹ As held in jurisprudence, a public officer is guilty of gross inexcusable negligence when there is a breach of duty that is committed flagrantly, palpably, and with willful indifference.¹⁴² Otherwise stated, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence.¹⁴³ In this case, although accused Lagunay, et al., failed to exercise the vigilance required by the functions they perform as BAC members, such breach of duty was not committed flagrantly, palpably, and with willful indifference for it to be considered as gross inexcusable negligence under Section 3 (e) of R. A. No. 3019.

Allegedly, such negligence on the part of the BAC paved the way for CMI to receive unwarranted benefit. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason.¹⁴⁴ Apparently, the award of contract to CMI is clearly unjustified and unauthorized because it is absolutely prohibited under Section 42.5 of the IRR of R. A. No. 9184, for the provincial government as the procuring entity to issue a letter of credit in favor of CMI and its foreign supplier in connection with the procurement of the backhoe with breaker. In addition, the provincial government allegedly suffered undue injury because of the BAC's negligence. Jurisprudence teaches that the term undue injury in the context of Section 3 (e) of R. A. No. 3019, has a meaning akin to the civil

¹³⁹ Records, Vol. 1, pp. 245-246 (See Exhibit C, Exhibit 19-Auza)

¹⁴⁰ *Globe Automotive Technologies of Davao, Inc. represented by Rodolfo A. Hao vs. Myrna B. Legaspina* (G. R. No. 247261, September 2, 2019)

¹⁴¹ *Id.* Footnote 122

¹⁴² *Id.* Footnote 114

¹⁴³ *Id.* Footnote 114

¹⁴⁴ *Id.* Footnote 127

law concept of actual damage.¹⁴⁵ The word “undue” means more than necessary, not proper or illegal.¹⁴⁶ While “injury” refers to any wrong or damage done to another, either in his person, rights, reputation or property; that is, the invasion of any legally protected interest of another.¹⁴⁷ Furthermore, undue injury cannot be presumed even after a wrong or violation of a right has been established, it has to be specified, quantified and proven with moral certainty.¹⁴⁸ In this case, the provincial government, pursuant to the other terms and conditions of the LC under CMI’s Proforma Invoice No. PF05-06,¹⁴⁹ is obliged to pay all the expenses related to the acquisition of the letter of credit. In fact, the record shows that the amount of Php39,498.15 as LC Opening Charges and the amount of Php35,000.00 as Negotiation Charges or the total amount of Php74,498.15 was debited from the current account of the provincial government per LC opening application signed by Governor Aumentado.¹⁵⁰ Significantly, CMI never reimbursed this amount paid by the provincial government as admitted by its VP of Operations for Visayas, who stated that the amount of Php238,950.00, which CMI deposited to the current account of the province only covers the difference in exchange rate of the bid offer at the time of bidding and at the time of the opening of the LC.¹⁵¹ Obviously, the provincial government paid for more than what is necessary as it was constrained to pay the incidental charges related to the letter of credit on top of the bid price of the procured backhoe with breaker.

Be that as it may, the court finds that the act committed by the BAC members cannot be considered to be coupled with gross negligence as this was not accompanied by some benefit, material or otherwise neither was it done for a dishonest and fraudulent purpose in disregard of public trust.¹⁵² It should be stressed that graft entails the acquisition of gain in dishonest ways.¹⁵³ In this case, other than allowing the use of a letter of credit for the procurement of the backhoe with breaker, there is no other evidence to show that the BAC benefited from the said procurement. To be fair, the record shows that the procured backhoe with breaker was not overpriced, it was delivered in good condition, and was put to use by the provincial government in its development projects.¹⁵⁴ As enshrined in jurisprudence,¹⁵⁵ it is not enough that unwarranted benefit was extended to another or that there was damage to the government as a result of the violation of procurement law, as it is necessary that the acts constituting the elements of a violation of R. A. No. 3019 must be effected with a corrupt motive, a dishonest design or some

¹⁴⁵ *Id.* Footnote 127

¹⁴⁶ *Id.* Footnote 127

¹⁴⁷ *Id.* Footnote 127

¹⁴⁸ *Id.* Footnote 127

¹⁴⁹ Exhibit “G”

¹⁵⁰ Exhibit “I”

¹⁵¹ Exhibit “N”

¹⁵² *Id.* Footnote 123

¹⁵³ *Id.* Footnote 127

¹⁵⁴ Records, Vol. 1, p. 224-227, 238, Exhibit “J”, Exhibit “K”

¹⁵⁵ *Id.* Footnote 127

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unethical interest – which to the mind of the court, are clearly wanting in this case.

The Sangguniang Panlalawigan

Meanwhile, accused Balite, Auza, Veloso, Uy, A. Tirol, Galbreath, and G. Tirol (“Veloso, et al.”), members of the *Sangguniang Panlalawigan*, are being held liable for passing Resolution No. 2006-387, authorizing then Governor Aumentado to open a letter of credit for the purchase of the backhoe with breaker from CMI, and for allowing the PNB to debit the amount of Php74,498.00, as incidental charges related to the availment of said letter of credit from the province’s current account. In effect, said accused allegedly permitted CMI to receive payment on the letter of credit prior to the delivery of the backhoe with breaker, and caused the province to shoulder the amount of incidental charges related to the letter of credit, in violation of Section 42.5 of the IRR of R. A. No. 9184 as further amended by Memorandum Order No. 213.

In this case, the court discovered that the situation became complicated when Section 42.5 of the IRR of R. A. No. 9184 was amended by Memorandum Order No. 213 on May 27, 2006, before the *Sanggunian Panlalawigan* issued Resolution No. 2006-387 on July 10, 2006. Under the amended provision, the issuance of a letter of credit is now allowed, subject to the following conditions:

1. No payment on the letter of credit shall be made until delivery and acceptance of the goods as certified by the procuring entity in accordance with the delivery schedule provided for in the contract; and
2. The cost for the opening of letter of credit shall be for the account of the local or foreign supplier and shall be so stated in the bidding documents.

Here, the *Sangguniang Panlalawigan* appears to be negligent since the resolution they issued contradicted the above conditions. As the records show none of them even bothered to scrutinize the validity of the request for authority to open a letter of credit made by their Governor.¹⁵⁶ In fact, they blindly adhered to the latter’s request to issue a resolution for such authority.¹⁵⁷

However, it is worth stressing that at the time Governor Aumentado requested for the authority to open the letter of credit from the *Sangguniang Panlalawigan* on May 23, 2006, the province had already issued the notice of award in favor of CMI on May 5, 2006. Moreover, the province had signified its “conforme” on May 8, 2006, on CMI’s Proforma Invoice No. PF05-06,¹⁵⁸ the terms and conditions of which stated, among others, that all expenses

¹⁵⁶ TSN dated April 25, 2023, pp. 24-25, 31-38

¹⁵⁷ *Id.*

¹⁵⁸ Exhibit “G”

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related to the opening of the letter of credit are for the buyer's account. In effect, the province is now obliged to open a letter of credit in connection with its purchase of the backhoe with breaker. Concomitantly, the *Sangguniang Panlalawigan*'s resolution allowing the opening of the letter of credit at that time is a necessary step for the province to comply with its obligation following the award of contract to CMI. Under these circumstances, the court finds that the action taken by the *Sangguniang Panlalawigan* is not tainted with evident bad faith, manifest partiality, or even gross inexcusable negligence.

The court also observes that the *Sangguniang Panlalawigan* did not have any notice that there was an irregularity in the bidding process as they are not privy to the bid documents used by the BAC which conducted the procurement.¹⁵⁹ Even the letter¹⁶⁰ sent by Governor Aumentado did not hint that the procurement was flawed. Truth be told, the Governor's letter guaranteed that the BAC had judiciously and carefully reviewed CMI's qualification before he acted favorably on the BAC's recommendation to award the contract to CMI. Here, the *Sangguniang Panlalawigan* alleged that they believed in good faith that everything was in order since they were not aware of any oversight that would have alerted them to further review the Governor's request for authority to open a letter of credit on the province's behalf.¹⁶¹ Significantly, jurisprudence describes good faith as a state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious. Therefore, absent any showing that the *Sangguniang Panlalawigan* issued their resolution with malice, the court will presume that they did so in good faith.¹⁶²

In a similar way, the lack of participation on the part of accused Balite and accused Auza in the passage of the said resolution negates their infraction. As viewed from the records, accused Balite being the presiding officer when the resolution was passed is not allowed to vote thereon pursuant to Rule 1.8 of the Internal Rules of Procedure of the *Sangguniang Panlalawigan* of Bohol,¹⁶³ which states:

The Presiding Officer shall vote only to break a tie. Every member present at a session must vote on every question unless he/she declares himself (herself) to have direct personal or pecuniary interest therein or is completely ignorant of the issues involved.

¹⁵⁹ TSN dated April 25, 2023, pp. 24-25, 31-38

¹⁶⁰ Exhibit 7-Auza, Exhibit 3-Ong Lim, Exhibit A-Rebuttal

¹⁶¹ TSN dated April 25, 2023, pp. 24-25, 31-38

¹⁶² Subic Bay Metropolitan Authority, et al. vs. Commission of Audit (G. R. No. 230566, January 22, 2019)

¹⁶³ Exhibit "3-Balite"

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Decision

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In the absence of a concrete proof that the signature appearing in the voting sheet parallel to the name of Balite to be his, there is no justification for the court to conclude that that he casted a vote for the passage of the said resolution.

On the other hand, accused Auza, although allegedly present at the session per record of attendance in the Journal of Proceedings,¹⁶⁴ did not vote affirmatively on the said resolution as evidence from the lack of her signature in the voting sheet¹⁶⁵ – the voting sheet being the document showing how each member voted on the said resolution.¹⁶⁶

There is also no evidence that CMI was granted unwarranted benefits as it was allegedly allowed to receive payment on the letter of credit prior to delivery of the backhoe with breaker to the province. The point of contention on the issue of whether CMI indeed received such payment lies in the appreciation of what a letter of credit is. Notably, the nature and use of a letter of credit was discussed in the case of **Panacan Lumber Co., et al. vs. Solidbank Corp. (now Metropolitan Bank & Trust Company)**,¹⁶⁷ in this wise:

“A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with the sales of goods to satisfy the seemingly irreconcilable interest of sellers, who refuse to part with their goods before they are paid, and buyers, who want to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the letter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the sellers get paid only if they deliver the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank.” (*Underline ours*)

¹⁶⁴ Exhibit “2-Balite”

¹⁶⁵ Exhibit “1-A-Balite”

¹⁶⁶ TSN dated April 25, 2023, pp. 54-62

¹⁶⁷ G. R. No. 226272, September 16, 2020

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Clearly, the opening of a letter of credit does not automatically translate that payment is already made. Therefore, it does not follow that CMI was already paid using government funds when the letter of credit was opened pursuant to the authority given by the *Sangguniang Panlalawigan*. Simply put, CMI did not automatically receive the payment for the procured backhoe with breaker when the amount of the purchase price was debited from the provincial government's current account at the time the letter of credit was opened on July 12, 2006. Learning from the explanation in the case of *Panacan Lumber Co., et al. vs. Solidbank Corp. (now Metropolitan Bank & Trust Company)*,¹⁶⁸ CMI needs to present certain documents before it can get payment from the issuing bank.¹⁶⁹ True enough, a reading of the letter of credit opened on behalf of the province actually requires the presentation of the bill of lading, the commercial invoice, the insurance policy, the packing list, and the beneficiary certificate as a condition for payment.¹⁷⁰ Here, the court also noticed the absence of any documents to show when CMI was actually compensated for the backhoe with breaker. Thus, the argument that CMI was favored because it was paid before delivery of the equipment on September 11, 2006, could not be relied upon.

There is, however, a resulting injury when the *Sangguniang Panlalawigan* allowed the PNB to debit the current account of the province for the incidental charges of the letter of credit. Nevertheless, jurisprudence teaches us that mistakes committed by public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.¹⁷¹ In this case, the action of the *Sangguniang Panlalawigan* cannot be characterized as gross inexcusable negligence. "Gross inexcusable negligence" is present when there is negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.¹⁷² Here, it is beyond question that the *Sangguniang Panlalawigan* only authorized the payment of such added expense as it is a necessary consequence of the province's obligation which it is duty-bound to fulfill.

From the foregoing observations, the court does not believe that the *Sangguniang Panlalawigan*'s actuation was motivated by some evil scheme to profit or a corrupt intent to extend any favor to CMI. As the records disclose, the *Sangguniang Panlalawigan* members acted in good faith in passing the resolution as they had no notice of any irregularity during the bidding process. Moreover, the request for authority to open the letter of credit, and the debiting of the incidental charges for the acquisition thereof from the current account of the provincial government were necessary for the

¹⁶⁸ *Id.*

¹⁶⁹ Exhibit "M"

¹⁷⁰ Exhibit "M"

¹⁷¹ *Id.* Footnote 159

¹⁷² *Id.* Footnote 122

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latter to comply with its obligation to CMI as the winning bidder, following the public bidding conducted for the procurement of the backhoe with breaker. As jurisprudence states, it is simply absurd to criminally punish every official who violates procurement laws.¹⁷³ For a violation of the procurement law to give rise to a violation of Section 3 (e) of R. A. 3019, the alleged irregular or anomalous act or conduct must not only be intimately connected with the discharge of the official function of the accused.¹⁷⁴ It must also be accompanied by some benefit, material or otherwise, and it must have been deliberately committed for a dishonest and fraudulent purpose and in disregard of public trust,¹⁷⁵ which was not established in this case.

The Allegation of Conspiracy

As regard the existence of conspiracy, the prosecution argues that the evidence presented clearly points to the concerted action of the BAC and the *Sangguniang Panlalawigan*, to allow the use of the LC to extend unwarranted benefit to CMI to the detriment of the government in the amount of Php74,498.00.

A careful review of the evidence however reveals that **conspiracy was not proven.**

A conspiracy exists when two to more persons come to an agreement concerning the commission of a felony and decided to commit it.¹⁷⁶ While direct proof is not necessary to establish conspiracy, it is vital for the prosecution to show, at the very least, with the same degree of proof required to establish the crime – proof beyond reasonable doubt – that all participants performed overt acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.¹⁷⁷ Jurisprudence also declares that conspiracy is not the product of negligence but of intentionality on the part of the cohorts.¹⁷⁸ Here, the court sees no clear connection that exists to prove a unity of action and purpose between and among the accused to perpetrate the offense charged. In fact, there is no showing that the members of the BAC and the *Sangguniang Panlalawigan* rigged the procurement of the backhoe with breaker for the benefit of CMI just so the latter can get paid on the letter of credit before delivering the said equipment to the province. To reiterate, the opening of a letter of credit is not tantamount to payment. Therefore, CMI was not automatically paid when the province's account was debited at the time of issuance of the letter of credit since it is only upon compliance with the conditions set forth therein will the bank release payment thereon. Although the actions of the BAC and the *Sangguniang Panlalawigan* caused the provincial government to shoulder the incidental

¹⁷³ *Id.* Footnote 123

¹⁷⁴ *Id.* Footnote 123

¹⁷⁵ *Id.* Footnote 123

¹⁷⁶ *Id.* Footnote 127

¹⁷⁷ *Id.* Footnote 127

¹⁷⁸ *Id.* Footnote 127

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charges relative to the opening of the letter of credit, it was not done purposely to commit the crime, considering that such incidental charges are obligation incurred by the province after the holding of a public bidding, wherein CMI was declared as the winning bidder. This established fact belies the allegation that the herein accused, acting in conspiracy, were spurred by a corrupt motive or a deliberate intent to do wrong or cause damage to the provincial government.

All told, it is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion.¹⁷⁹ What is required of it is to justify the conviction of the accused with moral certainty.¹⁸⁰ This springs from the presumption of innocence which every and all accused should enjoy in his or their favor – a basic constitutional principle that imposes upon the prosecution the burden of proving that the accused is guilty of the offense charged by proof beyond reasonable doubt.¹⁸¹ For this reason, the conviction must rest on no less than hard evidence showing that the accused, with moral certainty, is guilty of the crime charged.¹⁸² When such high standard is not met, the court is left without discretion and is duty bound to render a judgment of acquittal.¹⁸³ Here, while the prosecution was able to demonstrate how the pertinent procurement laws had not been strictly followed, it nonetheless failed to prove beyond reasonable doubt the elements for violation of Section 3 (e) of R. A. No. 3019 for which the accused were charged. Otherwise stated, while violations of Section 42.5 of the IRR of R. A. No. 9184 and its amendment were shown in great details there was a concomitant failure on the part of the prosecution to show that accused acted with ill motive as contemplated under Section 3 (e) of R. A. No. 9184. Hence, while a violation of R. A. No. 9184 is clear, it is short of convicting the accused with violation of R. A. No. 3019. Therefore, the court is constrained to rule in favor of the accused and thus, should free them from the charge filed against them.

This is not to say that the court condones the procurement irregularity committed by the herein accused.¹⁸⁴ Stated differently, the acquittal of the herein accused is not meant to allow a wrongdoing to go unpunished.¹⁸⁵ But it needs to be understood that while holding public officers accountable is a laudable objective, the same must be achieved within the bounds of law.¹⁸⁶

¹⁷⁹ *People of the Philippines vs. Fabian Urzais y Lanurias, Alex Bautista, and Ricky Bautista* (G. R. No. 207662, April 13, 2016)

¹⁸⁰ *Id.*

¹⁸¹ *Antonio M. Suba vs. Sandiganbayan First Division and People of the Philippines* (G. R. No. 235418, March 3, 2021)

¹⁸² *Id.* Footnote 177

¹⁸³ *Id.* Footnote 177

¹⁸⁴ *Id.* Footnote 114

¹⁸⁵ *Id.* Footnote 114

¹⁸⁶ *Id.* Footnote 114

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WHEREFORE, premises considered, accused **DIONISIO DAJALOS BALITE, JOSE ECHAVIA VELOSO, FELIX REALISTA UY, AMALIA REYES TIROL, ESTER CORAZON JAMISOLA GALBREATH, GODOFREDA OLAVIDES TIROL, FRANCES BOBBITH DEL ROSARIO CAJES-AUZA, HANDEL TUMULAK LAGUNAY, EDWIN TUTOR VALLEJOS, ABRAHAM DORIA CLARIN, GRETA AYA-AY MENDE, LAURA SARAMOSING-BOLOYOS, AND FELIX MASCARIÑAS MEJORADA** are ordered **ACQUITTED** for violation of Section 3 (e) of R. A. No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, for failure of the prosecution to prove their guilt beyond reasonable doubt.


Accordingly, the Hold Departure Orders issued against them are hereby **LIFTED** and **SET ASIDE**, and the bail bonds posted for their provisional liberty are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:

With separate Concurring Opinion.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


ZALDY V. TRESPESES
Associate Justice

Decision


People vs. Concepcion Ong Lim, et al.

SB-19-CRM-0153

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ATTESTATION

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


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

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REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

**PEOPLE OF THE SB-19-CRM-0153
PHILIPPINES,**

Plaintiff,

- versus -

**CONCEPTION ONG LIM^(†),
DIONISIO DAJALOS BALITE,
et al.,**

Accused.

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CONCURRING OPINION

GOMEZ-ESTOESTA, J.:

This separate opinion only attempts to highlight a few details discussed during our deliberation which I thought are material enough to be disclosed at this point.

The verdict of the court pronounced an acquittal for all 7 former members of the *Sangguniang Panlalawigan* of the Province of Bohol and 6 officials of the same province who were former members of the Bids and Awards Committee (BAC), despite the charge, as alleged in the *Information*, that:

- 1.) On April 25, 2006, herein accused Lagunay, Vallejos, Clarin, Mende, Boloys and Meiorada passed and approved BAC Resolution No. 625, declaring CMI as the Single Calculated/ Rated and Responsive Bid for the delivery of one (1) unit Hydraulic Excavator (Backhoe) with Breaker, despite the fact that, at the time when the bidding documents were opened on 04 April 2006, CMI's bidding documents clearly indicated in the Delivery and Completion of Schedule, a *delivery schedule of not later than 120 days after receipt* of a Letter of Credit (LOC) as the mode of payment, and knowing fully well that

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the use of a Letter of Credit as a mode of payment was expressly prohibited under Section 42.5 of the Implementing Rules and Regulations-Part A of Republic Act No. 9184 (Government Procurement Reform Act), as implemented by Memorandum Order No. 119, Series of 2003;

- 2.) On July 10, 2006, accused Lim, Balite, Veloso, Uy, Amalia Tirol, Galbreath, Godofreda Tirol, Lejos, Imboy and Auza passed and approved Resolution No. 2006-387, authorizing:
 - a) The then [P]rovincial [G]overnor to open the LOC with the Philippine National Bank (PNB) in the amount of Nine Million Four Hundred Ten Thousand Five Hundred Sixty Pesos (Php9,410,560.00) for the purchase of the above-described Backhoe with Breaker from CMI;
 - b) The PNB to debit all charges incidental to the opening and negotiation of the LOC, in the total amount of Php74,498.15;
 - c) In passing Resolution No. 2006-387, accused Lim, Balite, Veloso, Uy, Amalia Tirol, Galbreath, Godofreda Tirol, Lejos, Imboy and Auza enabled CMI to receive payment on the LOC on July 12, 2006, even before CMI delivered the Backhoe with Breaker to the Province of Bohol on September 11, 2006, and caused the Province of Bohol to shoulder all charges incidental to the opening and negotiation of the LOC in the total amount of Php74,498.15, both in violation of Section 42.5 of the Implementing Rules and Regulations-Part A of Republic Act No. 9184 (Government Procurement Reform Act), as further amended by Memorandum Order No. 213, thereby resulting in undue injury to government in the aforesaid amount of Php74,498.15.

Three separate acts, deemed as criminal in nature, are the subject of the *Information*:

First criminal act. This points to the procurement process itself where BAC members Lagunay, Vallejos, Clarin, Mende, Saramosing-Boloyos, and Mejorada entertained a lone bidder, Civic Merchandising, Inc. (CMI), whose Bid Submission Sheet¹ dated **April 4, 2006** offered the Supply and Delivery of one (1) Hydraulic Excavator with Hydraulic Rock Breaker at a total price of US Dollars 183,800.00² upon receipt of a letter of credit, as specified in its Delivery and Completion Schedule³, to wit:

The delivery period shall start as of:
Upon receipt of Letter of Credit

¹ Exhibit "C".

² Per Abstract of Bids Proposal dated April 4, 2006, the bid price was Php9,410,560.00. This was not offered as documentary exhibit. This can only be found in the FIO Complaint marked as Exhibit "A-9".

³ Exhibit "E".

During this time, it is conceded that the following provisions of law were existing:

1. P.D. 1445 effective on June 11, 1978 where Section 88 (1) thereof provides:

Section 88. *Prohibition against advance payment on government contracts.*

1. Except with the prior approval of the President (Prime Minister) **the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor.** No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted. [emphasis supplied]

2. R.A. 7160 effective on January 1, 1992 where Section 338 thereof provides:

SECTION 338. Prohibitions Against Advance Payments. – **No money shall be paid on account of any contract under which no services have been rendered or goods delivered.** [emphasis supplied]

3. R.A. 9184 effective January 10, 2003 in which its IRR-Part A provides, thus:

42.5. **No procuring entity shall be allowed to issue a letter of credit in favor of a Philippine entity or to any of the latter's foreign manufacturers or suppliers, with respect to any procurement.** [emphasis supplied]

Yet, despite such prohibition on the issuance of a letter of credit by a procuring entity, the BAC members issued BAC Resolution No. 652 dated April 25, 2006⁴ declaring CMI as the single calculated/rated and responsive bid to the delivery of one (1) unit of Hydraulic Excavator (Backhoe) with Breaker. A Notice of Award⁵ was subsequently issued by the Provincial Governor as head of the procuring entity. Eventually, Pro-forma Invoice No. PF05-06⁶ issued by CMI only confirmed that the delivery of the Backhoe was:

DELIVERY: Sixty (60) days upon receipt of Letter of Credit, ex-works
Delivered to Tagbilaran City

⁴ Exhibit "D"; Exhibit "1-Ong Lim" and "1-Lagunay".

⁵ Exhibit "F".

⁶ Exhibit "G".

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It is significant, however, the prohibition on the issuance of a letter of credit was lifted only a month later after BAC Resolution No. 652 was issued, with the promulgation of Memorandum Order No. 213, series of 2006, effective on **May 8, 2006**. Section 42.5 of IRR-A was thus amended:

SECTION 1. Sections 42.5, 54.2 (b) (d), and 61.1 of the IRR-A of RA 9184 are hereby amended as follows:

Section 42. Contract Implementation and Termination

Procuring entities may issue a letter of credit in favor of a local or foreign supplier; *Provided, that,* no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract; ***Provided further, that,*** the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and shall be so stated in the bidding documents.

The effect of this amendment on the action of the BAC members is clear and should only inure to the benefit of the accused. It effectively decriminalized the prior prohibition on the issuance of a letter of credit by the procuring entity. At the time the criminal action was instituted, it can no longer be said that the issuance of a letter of credit was a prohibited act. As enunciated in *Mapa, Jr. v. Sandiganbayan*⁷,

x x x. Our regard for the rights of an accused dictates this result. Thus, we have consistently held that laws that decriminalize an act or a grant of amnesty may be given retroactive effect. They constitute a bar against the further prosecution of their beneficiaries' regardless of the appearance of their guilt. x x x.

Should a retroactive effect be given to Memorandum Order No. 213, no criminal liability can be ascribed to the BAC members on this point. Clearly, a procuring entity can now issue a letter of credit in favor of a supplier. This remains effective to the present day.

The *other* criminal act of allowing payment before delivery no longer fell within BAC's responsibility since this was already outside the scope of their functions as BAC members. The functions of the BAC under Section 12 of R.A. 9184 are specifically delineated, thus:

Section 12. Functions of the BAC.- shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: **Provided, That** in the event the Head of the Procuring shall disapprove

⁷ G.R. No. 100295, April 26, 1994, 301 PHIL 794-818.

such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

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The payment stage, after the award is contracted, is not attributable to the BAC members. If at all, this should appear from the issuance of the Disbursement Voucher but which was not presented as prosecution evidence at this instance.

In the same way, by the time the members of the *Sangguniang Panlalawigan* issued SP Resolution No. 2006-387 dated July 10, 2006⁸, no criminal act can be imputed to them insofar as they authorized the Provincial Governor to open a letter of credit with PNB.

Second criminal act. This is where the travails of the members of the *Sangguniang Panlalawigan* began. The Information charged the members of the *Sangguniang Panlalawigan* with the following acts:

2) on July 10, 2006, accused Lim, Balite, Veloso, Uy, Amalia Tirol, Galbreath, Godofreda Tirol, Lejos, Imboy and Auza passed and approved Resolution No. 2006-387, authorizing:

a) the then [P]rovincial [G]overnor to open the LOC with the Philippine National Bank (PNB) in the amount of Nine Million Four Hundred Ten Thousand Five Hundred Sixty Pesos (Php9,410,560.00) for the purchase of the above-described Backhoe with Breaker from CMI;

b) the PNB to debit all charges incidental to the opening and negotiation of the LOC, in the total amount of Php74,498.15;

c) in passing Resolution No. 2006-387, accused Lim, Balite, Veloso, Uy, Amalia Tirol, Galbreath, Godofreda Tirol, Lejos, Imboy and Auza enabled CMI to receive payment on the LOC on July 12, 2006, even before CMI delivered the Backhoe with Breaker to the Province of Bohol on September 11, 2006, and caused the Province of Bohol to shoulder all charges incidental to the opening and negotiation of the LOC in the total amount of Php74,498.15, both in violation of Section 42.5 of the Implementing Rules and Regulations-Part A of Republic Act No. 9184 (Government Procurement Reform Act), as further amended by Memorandum Order No. 213, thereby resulting in undue injury to government in the aforesaid amount of Php74,498.15.

⁸ Exhibit "H".

Focus is first made on allowing payment before the delivery of the equipment. Payment before delivery clearly goes against the grain of the amended Section 42 of the IRR-A, stating:

Section 42. Contract Implementation and Termination

Procuring entities may issue a letter of credit in favor of a local or foreign supplier; *Provided, that, no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract; Provided further, that, the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and shall be so stated in the bidding documents.* [emphasis supplied]

A gaping loophole in this charge, however, is found to exist. Haplessly, not a single one of the documentary evidence offered by the prosecution⁹ pointed to proof on payment. Neither did any of its testimonial evidence. Proof on payment was thus never proven; hence, the accusation that payment was made before delivery can never be appreciated.

Any reference to payment can only be seen from the following documentary exhibits of the prosecution, but without necessarily presenting themselves as proof of payment:

Exhibit Marking	Description				
"G"	CMI Proforma Invoice No. PF05-06 which provided: PAYMENT TERMS: By confirmed and irrevocable Cash Letter of Credit at sight in favor of our principal abroad¹⁰				
"I"	PNB Certification dated 16 August 2006 which read: TO WHOM IT MAY CONCERN: THIS IS TO CERTIFY that the amount of P9,723,998.15 was debited from the account of the Provincial Government of Bohol under current account number 485-861333-2 maintained with PNB Tagbilaran Branch last July 12, 2006 for the opening of a Letter of Credit (LC) in PNB Cebu Branch for the purchase of one (1) unit brand new Volvo Hydraulic Excavator (Backhoe) with Breaker, per LC opening application signed by Governor Enrico B. Aumentado on file.¹¹ The amount consist[s] of the following charges: <table><tr><td>1. Cost of the equipment (US\$183,800.00@P52.50)</td><td>P9,649,500.00</td></tr><tr><td>2. LC opening charges</td><td>39,498.15</td></tr></table>	1. Cost of the equipment (US\$183,800.00@P52.50)	P9,649,500.00	2. LC opening charges	39,498.15
1. Cost of the equipment (US\$183,800.00@P52.50)	P9,649,500.00				
2. LC opening charges	39,498.15				

⁹ Vide: *Formal Offer of Documentary Exhibits*; Records, Volume 6, pp. 114-198.

¹⁰ Emphasis supplied.

¹¹ Emphasis supplied.

	3. Negotiation charges (subject to the actual peso exchange rate on date of negotiation)	<u>35,000.00</u>
	Total	P9,723,998.15

Despite the stipulation made on their existence, due execution, and authenticity, the debility resonant in Exhibits “G” and “I” is immediately apparent.¹²

First. Pro-form Invoice No. PF05-06 (Exhibit “G”) or the PNB Certification dated August 16, 2006 (Exhibit “I”) are not direct proof to show payment. The invoice only provided that payment is through a Letter of Credit. Interestingly, the letter of credit in itself was never presented as evidence. This is perhaps attributable to the testimony provided by prosecution witness Atty. Edmar Dinoy Rodela of the Commission on Audit – Team R7-01, LGS-A Bohol 1, COA Regional Office VII, who stated that the letter of credit is not available pertaining to a transaction for the year 2013 and years back for having been “*destroyed and/or in disarray because of an earthquake that hit Bohol sometime in October 2013.*”¹³

On the other, the PNB Certification may have stated that the amount of “*P9,723,998.15 was debited from the account of the Provincial Government of Bohol under current account number 485-861333-2 x x x*” but this cannot likewise be taken as proof of payment. No predicate evidence was shown to prove that current account number 485-861333-2 belonged to the Provincial Government of Bohol. Neither was the debited account introduced as evidence through a bank statement to that effect. In Exhibit “L” or the letter of PNB Assistant Manager Panfilo K. Futralan, Jr., it was shown that the presentation of such payment or debited account is no longer feasible since “*the Bank has a give (5)-year retention policy on documents relative to terminated transactions, the prospects of finding the requested documents are quite dim.*”

Without direct proof on payment, the allegation in the *Information* that payment was made before delivery was thus not proven.

Second. An argument may be made that the letter of credit in itself is proof of payment. While the letter of credit was never presented as documentary evidence, neither any one of the accused denied the issuance of the same by PNB, the issuing bank.

While it may be taken as a fact that a letter of credit was issued, the facts are still missing on how and when payment was made through such letter

¹² Pre-Trial Order dated October 8, 2021.
¹³ Q&A6, Judicial Affidavit of Edmar Dinoy Rodela.

of credit. One needs to understand the nature of a letter of credit before one assumes it to be synonymous with payment.

The nature of a letter of credit was explained in detail in *The Hongkong & Shanghai Banking Corp., Limited v. National Steel Corp.*¹⁴


A letter of credit is a commercial instrument developed to address the unique needs of certain commercial transactions. It is recognized in our jurisdiction and is sanctioned under Article 567 of the Code of Commerce and in numerous jurisprudence defining a letter of credit, the principles relating to it, and the obligations of parties arising from it.

In *Bank of America, NT & SA v. Court of Appeals*, this Court defined a letter of credit as "...a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying." *Through a letter of credit, a buyer obtains the credit of a third party, usually a bank, to provide assurance of payment.* This, in turn, convinces a seller to part with his or her goods even before he or she is paid, as he or she is insured by the third party that he or she will be paid as soon as he or she presents the documents agreed upon.

A letter of credit generally arises out of a separate contract requiring the assurance of payment of a third party. **In a transaction involving a letter of credit, there are usually three transactions and three parties.** The first transaction, which constitutes the underlying transaction in a letter of credit, is a contract of sale between the buyer and the seller. The contract may require that the buyer obtain a letter of credit from a third party acceptable to the seller. The obligations of the parties under this contract are governed by our law on sales.

The second transaction is the issuance of a letter of credit between the buyer and the issuing bank. The buyer requests the issuing bank to issue a letter of credit naming the seller as the beneficiary. **In this transaction, the issuing bank undertakes to pay the seller upon presentation of the documents identified in the letter of credit.** The buyer, on the other hand, obliges himself or herself to reimburse the issuing bank for the payment made. In addition, this transaction may also include a fee for the issuing bank's services. This transaction constitutes an obligation on the part of the issuing bank to perform a service in consideration of the buyer's payment. The obligations of the parties and their remedies in cases of breach are governed by the letter of credit itself and by our general law on obligations, as our civil law finds suppletory application in commercial documents.

¹⁴ G.R. No. 183486, February 24, 2016, 781 PHIL 551-583.



The **third transaction** takes place between the seller and the issuing bank. The issuing bank issues the letter of credit for the benefit of the seller. The seller may agree to ship the goods to the buyer even before actual payment provided that the issuing bank informs him or her that a letter of credit has been issued for his or her benefit. This means that the seller can draw drafts from the issuing bank upon presentation of certain documents identified in the letter of credit. The relationship between the issuing bank and the seller is not strictly contractual since there is no privity of contract nor meeting of the minds between them. It also does not constitute a stipulation *pour autrui* in favor of the seller since the issuing bank must honor the drafts drawn against the letter of credit regardless of any defect in the underlying contract. Neither can it be considered as an assignment by the buyer to the seller-beneficiary as the buyer himself cannot draw on the letter. **From its inception, only the seller can demand payment under the letter of credit.** It is also not a contract of suretyship or guaranty since it involves primary liability in the event of default. Nevertheless, while the relationship between the seller-beneficiary and the issuing bank is not strictly contractual, **strict payment under the terms of a letter of credit is an enforceable right.** This enforceable right finds two legal underpinnings. First, letters of credit, as will be further explained, are governed by recognized international norms which dictate strict compliance with its terms. Second, the issuing bank has an existing agreement with the buyer to pay the seller upon proper presentation of documents. Thus, as the law on obligations applies even in commercial documents, the issuing bank has a duty to the buyer to honor in good faith its obligation under their agreement. As will be seen in the succeeding discussion, this transaction is also governed by international customs which this Court has recognized in this jurisdiction.

In simpler terms, the various transactions that give rise to a letter of credit proceed as follows: Once the seller ships the goods, he or she obtains the documents required under the letter of credit. **He or she shall then present these documents to the issuing bank which must then pay the amount identified under the letter of credit after it ascertains that the documents are complete.** The issuing bank then holds on to these documents which the buyer needs in order to claim the goods shipped. The buyer reimburses the issuing bank for its payment at which point the issuing bank releases the documents to the buyer. The buyer is then able to present these documents in order to claim the goods. At this point, all the transactions are completed. The seller received payment for his or her performance of his obligation to deliver the goods. The issuing bank is reimbursed for the payment it made to the seller. The buyer received the goods purchased.

[emphasis and underscoring supplied]

If this ratiocination is to be jibed with the facts of the case, it will appear that only the **first transaction** was proven at this instance, or the fact that, after a successful bid, a letter of credit was required by the supplier (CMI) to be obtained by the buyer (Provincial Government) before a delivery be made. This was shown from Exhibit "C" (Bid Submission Sheet) and Exhibit "E"

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(Delivery and Completion Schedule). The **second transaction** (issuance of a letter of credit between the buyer and the issuing bank) and the **third transaction** (the issuing bank issues the letter of credit for the benefit of the seller for the latter to demand payment) were missing pieces. This looming gap cannot certainly arrive at the conclusion that payment was made.

Insofar as the matter of payment through a letter of credit is concerned, the *ponencia* discussed:

Clearly, the opening of a letter of credit does not automatically translate that payment is already made. Therefore, it does not follow that CMI was already paid using government funds when the letter of credit was opened pursuant to the authority given by the *Sangguniang Panlalawigan*. Simply put, CMI did not automatically receive the payment for the procured backhoe with breaker when the amount of the purchase price was debited from the provincial government's current account at the time the letter of credit was opened on July 12, 2006. Learning from the explanation in the case of *Panacan Lumber Co., et al. vs. Solidbank Corp. (now Metropolitan Bank & Trust Company)*, CMI **needs to present certain documents before it can get payment from the issuing bank. True enough, a reading of the letter of credit opened on behalf of the province actually requires the presentation of the bill of lading, the commercial invoice, the insurance policy, the packing list, and the beneficiary certificate as a condition for payment.** Here, the court also noticed the absence of any documents to show when CMI was actually compensated for the backhoe with breaker. Thus, the argument that CMI was favored because it was paid before delivery of the equipment on September 11, 2006, could not be relied upon.¹⁵ [emphasis supplied]

The *ponencia* very well underscored the **third transaction** for payment to ensue, but which, as perceptively observed, was not proven in this case. Evidently, therefore, even if the issuance of a letter of credit became as assumed fact despite the absence of the presentation of the letter of credit itself, the issuance thereof is not equivalent to payment.

The Information charged the members of the *Sangguniang Panlalawigan* for having issued a resolution which authorized the negotiation and opening of a letter of credit which in the end, supposedly allowed payment before delivery of the equipment. The crime cannot be measured from the resolution on its own, without the supporting facts to prove that what was authorized to be done was indeed done. Otherwise, the prosecution of the case only thrived from a mere accusation without establishing proof.

Third criminal act. With the opening of the letter of credit, although no evidence of this document was presented, it appeared that the Province of Bohol was made to shoulder all charges incidental to the opening and

¹⁵ At page 37.

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negotiation of the LOC in the total amount of ₱74,498.15, both in violation of Section 42.5 of the Implementing Rules and Regulations-Part A of Republic Act No. 9184 (Government Procurement Reform Act), as further amended by Memorandum Order No. 213, thereby resulting in undue injury to government in the aforesaid amount of ₱74,498.15.

Again, the penultimate question is, was there proof presented that the incidental charge of ₱74,498.15 was debited to the account of the Provincial Government or was this simply assumed as a fact? This still remains prosecution's burden to prove.

A meticulous examination of the evidence offered by the prosecution does not again point to evidence to specifically show that the amount of ₱74,498.15 was debited to the account of the Provincial Government. Verily, an authority by the *Sangguniang Panlalawigan* for the Philippine National Bank to debit such amount against the standing account of the Province is *not* the same as the actual debit made on the account itself.

While the prosecution positively claims that its Exhibits "A", "C", "D", "E", "F", "G", "H", "I" to "I-2", "J", "K", "L", "M", "N", "O", "P", "S" and "R" have proven all the elements of the charge,¹⁶ especially when most of these documentary exhibits were stipulated by the accused as to their existence, due execution, and authenticity,¹⁷ inevitably resulting in their admission as evidence,¹⁸ it is the test of whether they can be given probative value that fails.

Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. The prosecution's pieces of documentary evidence may have hurdled the requirement of admissibility, but failed when tested in the crucible of probative worth.¹⁹

Neither any of the documentary exhibits showed: (i) payment; (ii) evidence of the letter of credit in itself; and (iii) debit of the incidental charges to the account of the Provincial Government. Ostensibly, the prosecution of the charge proceeded from an assumption of the existence of these facts, gauged from the documentary exhibits already admitted as evidence, but whose probative value did not prove the fact in issue. The main thrust of the charges alleged in the *Information* visibly lost traction at this point.

Meantime, most of the defense evidence from the *Sangguniang Panlalawigan* members pointed to reasons how and why *Sangguniang*

¹⁶ See Prosecution's *Memorandum*.

¹⁷ Except for Exhibits "S" and "R"; Pre-Trial Order dated October 8, 2021.

¹⁸ Resolution dated December 9, 2022; Records, Volume 6, pp. 231-237.

¹⁹ *Buencamino v. Sandiganbayan*, G.R. Nos. 216745-46, November 10, 2020.

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Panlalawigan Resolution No. 2006-387²⁰ was passed,²¹ or why some of the *Sangguniang Panlalawigan* members could not be perceived to have participated in its passing, as seen from the Voting Sheet.²² The BAC members, on the other hand, were firm in their stance that the bidding process did not even consider a delivery schedule with the issuance of a letter of credit.²³

This only placates the seeming void in prosecution's evidence. Accused Felix Uy may have alluded to the political motivation in the passing of *Sangguniang Panlalawigan* Resolution No. 2006-387 but his testimony did not even touch on the actual payment or the actual debit of the incidental charges to the account of the Province. As a matter of fact, it was his testimony that he did not even know of such facts.²⁴ This was the same for BAC member Atty. Handel T. Lagunay who denied having considered Exhibit "E" or the Delivery and Completion Schedule during the bidding process itself.²⁵

The defense evidence, taken as whole, did not categorically refute the opening and negotiation of a letter of credit, the payment of the equipment before delivery, and the debit of the incidental charges to the account of the Provincial Government. Mainly, the defense relied on denial either as to their participation to such purported criminal acts or on personal knowledge per se.

As in all criminal actions, however, it is the prosecution upon whose burden was laden the task of establishing proof beyond reasonable doubt. Criminal conviction must come from the strength of the prosecution's evidence.²⁶ Any perceived weakness in the defense laid out by the defense, as pointed out in prosecution's *Memorandum*, can never be taken against them.

Given the dearth in the probative worth of prosecution's evidence, a meticulous examination of the existence of the elements of the offense charged is now unavailing, when the facts in issue themselves have not been proven.

To note, the landmark case of *Martel v. People*²⁷ have changed the landscape in the appreciation of Violation of Section 3(e) of R.A. 3019. *Martel* enunciated that:

²⁰ Exhibit "H".

²¹ See the Judicial Affidavit of Felix Uy and the Judicial Affidavit of Bonifacio M. Quirog, Jr.

²² See Judicial Affidavit of Frances Bobbith D. Cajés-Auza.

²³ See Judicial Affidavit of Atty. Handel T. Lagunay.

²⁴ Q&A 14 – 18, Judicial Affidavit of Felix Uy.

²⁵ Q&A 7, Judicial Affidavit of Atty. Handel T. Lagunay.

²⁶ *Cruz v. Sandiganbayan*, G.R. No. 119239. May 9, 2000; *Dans v. People*, G.R. No. 127073, January 29, 1998.

²⁷ G.R. No. 224720-23, February 2, 2021.

x x x . From the foregoing discussion, it is evident that there were irregularities in the procurement of the subject vehicles, in violation of the applicable procurement laws. Be that as it may, it should be emphasized that petitioners were charged and convicted for violating Section 3(e) of R.A. 3019. As recently held in *Sabaldan, Jr. v. Ombudsman*:

More importantly, it must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3 (e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3 (e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3 (e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence. (Emphasis supplied)

A general charge of violation of the procurement law can no longer stand on its own. This was what the instant case has been. To sustain liability under Section 3 (e) of R.A. 3019, it must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence. As adverted to, an assessment of the elements of the offense charged cannot even begin, when the missing evidence to prove them in the first place never took off.

It is for these reasons that I concurred in arriving at a judgment of acquittal.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice