



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-19-A/R-0006
Plaintiff-Appellee,

*For: Violation of Section 3(b) of R.A. No.
3019, as amended*


Present

- versus -

EMMANUEL DE VELA
y CARILLO,
Accused-Appellant.

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

Promulgated:

December 7, 2019 

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DECISION

FERNANDEZ, SJ, J.

This is an appeal¹ from the *Decision* dated May 24, 2019,² in *Criminal Case No. 15-312913*, of the Regional Trial Court (RTC), Branch 21, City of Manila, which found accused-appellant Emmanuel De Vela y Carillo guilty of violation of Section 3(b) of Republic Act No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*, as amended, when, as Barangay Captain, he demanded, requested and received his percentage or share in the amount of ₱70,000.00 from FRCGE Trading as a precondition for the release of payment, in connection with the latter's complete delivery of duly inspected and verified various supplies and materials to Barangay 404, Zone 41, District IV, City of Manila.

¹ Accused-appellant De Vela did not attach to his Appellant's Brief the RTC's *Order* dated November 8, 2019, which denied his *Motion for Reconsideration* dated June 27, 2019 of the said Court's *Decision*. Rollo, pp. 129-162. See also Records, pp. 357-376, and pp. 400-401.

² Records, pp. 342-356.

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RELEVANT ANTECEDENTS

On February 13, 2015, an Information for violation of Section 3(b) of Republic Act (R.A.) No. 3019, as amended, was filed against accused-appellant De Vela. The Information, docketed as Criminal Case No. 15- 312913, reads:

That sometime in December, 2011, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused EMMANUEL DE VELA y CARILLO, a low-ranking public official, being the Barangay Chairman of Barangay 404, Zone 41, District IV, Manila, and while in the performance of his official functions, committing the crime in relation to his office, and taking advantage of his official function, did then and there willfully, unlawfully, and criminally, with intent of personal gain, requested and/or received ₱70,000.00 from FRCGE Trading, as an advance share, percentage or commission, in connection, in consideration and exchange for a contract to provide Barangay 404, Zone 41, District IV, Manila, various supplies and materials[,] a transaction wherein they (sic) as public officer he has to intervene in his official capacity.³

During his arraignment on March 18, 2015, accused-appellant, assisted by *counsel de oficio* Public Defender Atty. Christian Cabrera, entered his plea of *Not Guilty*.⁴

During pre-trial, the parties stipulated on the following:

- a. The identity of the accused;
- b. The RTC has jurisdiction to try and decide the case;
- c. The accused was the Barangay Captain of Brgy. 404, Zone 41, District IV, City of Manila in the years 2011 and 2013;
- d. The *Affidavit of Desistance* which has been denied by the Office of the Ombudsman was particularly described in its ruling dated December 3, 2014, p. 8; and,
- e. Gina M. Cabilan was an employee of FRCGE Trading.⁵

During trial, the prosecution presented the following witnesses:

- a. Franco G.C. Espiritu, the proprietor of FRCGE Trading;⁶ and,



³ Information dated December 3, 2014; Records, pp. 1-2.

⁴ Order dated March 18, 2015, Records, p. 82; Certificate of Arraignment, Records, p. 80.

⁵ Pre-Trial Order dated July 23, 2015, p. 1; Records, pp. 99-103.

⁶ Transcript of Stenographic Notes (TSNs) dated September 24, 2015 and November 11, 2015, *Complaint-Affidavit (with Prayer for Preventive Suspension)* dated January 22, 2013, Records, pp. 12-26, *Reply-Affidavit* dated March 18, 2013, Records, pp. 32-35.

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- b. Gina M. Cabilan, former Barangay Liaison Officer of FRCGE Trading.⁷

In its *Order* dated August 31, 2016,⁸ the RTC admitted the following documentary evidence for the prosecution, inclusive of sub-markings:

Exhibit	Description
A	Complaint-Affidavit of Franco G.C. Espiritu ⁹
B and series	Purchase Orders No. 2011-404-10, 2011-404-13 and 2011-404-14 ¹⁰
C and series	Acceptance & Inspection Reports No. 2011-404-10 dated July 26, 2011, 2011-404-13 dated July 26, 2011, and 2011-404-14 dated December 15, 2011 ¹¹
D and series	Cash Vouchers dated December 3, 2011 and December 20, 2011 ¹²
E and series	Disbursement Vouchers dated December 16, 2011, December 29, 2011 and January 26, 2012 ¹³
F	Reply-Affidavit of Franco G.C. Espiritu ¹⁴
G	Affidavit of Gina M. Cabilan ¹⁵
H and series	Bulk of Acknowledgment Receipts, Cash Vouchers and BDO Check No. 0040991 showing receipt of money by P/B Emmanuel De Vela ¹⁶
I	Business Permit of FRCGE Trading indicating Franco Espiritu as owner ¹⁷
J	Official Receipt for payment of processing of Business Permit of FRCGE Trading ¹⁸
K	Certification from DTI indicating Franco Espiritu as the owner of FRCGE Trading ¹⁹
L and series	Judicial Affidavit of Gina B. Cabilan ²⁰

⁷ TSNs dated February 18, 2016 and April 28, 2016, *Affidavit* dated 20 June 2013, Records, pp. 36-53, and *Judicial Affidavit* dated January 22, 2016, Records, p. 136-152.

⁸ Records, p. 180.

⁹ Records, pp. 12-15.

¹⁰ Records, pp. 16-18.

¹¹ Records, pp. 19-21.

¹² Records, pp. 25, 170-171.

¹³ Records, pp. 22-24.

¹⁴ Records, pp. 32-35.

¹⁵ Records, p. 36.

¹⁶ Records, pp. 37-53 and 173-176.

¹⁷ Records, p. 113.

¹⁸ Records, p. 114.

¹⁹ Records, p. 115.

²⁰ Records, pp. 136-141.

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In its *Order* dated September 8, 2016,²¹ the RTC granted accused-appellant De Vela's *Motion for Leave to File Demurrer to Evidence*.²² In its *Order* dated January 6, 2017,²³ the RTC denied accused-appellant De Vela's *Demurrer to Evidence*.²⁴



Thereafter, the defense presented the following witnesses:

- a. Accused Emmanuel De Vela;²⁵ and,
- b. Alan Garcia.²⁶

In its *Order* dated February 27, 2019,²⁷ the RTC admitted the following documentary evidence for the defense, inclusive of sub-markings:

Exhibit	Description
1 and series	Counter-Affidavit of Emmanuel De Vela ²⁸
2 and series	Sinumpaang Salaysay ni Arkie Rosales ²⁹
3	Warning dated May 24, 2012 issued by the Manila Barangay Bureau, Office of the Mayor, City of Manila ³⁰
6-30	Bulk of Vouchers presented by the prosecution ³¹

In its *Decision* dated May 24, 2019,³² the RTC found accused-appellant De Vela guilty beyond reasonable doubt of violation of Section 3(b) of R.A. No. 3019, as amended, and sentenced him to an indeterminate penalty of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum with the accessory penalty of perpetual disqualification from public office. The dispositive portion of the *Decision* reads:

²¹ Records, p. 184.
²² Records, pp. 181-182.
²³ Records, pp. 200-204.
²⁴ Records, pp. 185-194.
²⁵ TSNs dated November 23, 2017 and February 7, 2018, *Judicial Affidavit* dated November 21, 2017, Records, pp. 246-255 and *Counter-Affidavit* dated March 4, 2013, Records, pp. 26-27.
²⁶ TSNs dated September 27, 2018 and December 7, 2018, *Judicial Affidavit* dated September 21, 2018, Records, pp. 297-315.
²⁷ Records, p. 338.
²⁸ Records, pp. 26-27.
²⁹ Records, p. 28.
³⁰ Records, p. 29.
³¹ Records, pp. 38-52.
³² Records, pp. 342-356.

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WHEREFORE, accused **EMMANUEL DE VELA y CARILLO** is hereby found guilty beyond reasonable doubt of violation of Section 3(b) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, in Criminal Case No. 15-312913 and accused is hereby sentenced to an indeterminate penalty of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum, with the accessory penalty of perpetual disqualification from public service.

In its *Order* dated November 8, 2019,³³ the RTC denied accused-appellant De Vela's *Motion for Reconsideration*.³⁴

Hence, this appeal.³⁵

On September 12, 2022, accused-appellant De Vela himself filed his *Appellant's Brief* dated September 11, 2022.³⁶

In its *Appellee's Brief*,³⁷ the prosecution submitted the following counter-arguments:

The evidence adduced by the prosecution convincingly established the presence of all the elements of the violation of Section 3(b) of RA 3019 in this case, hence, the RTC correctly found accused-appellant De Vela guilty beyond reasonable doubt of the said crime.³⁸

The conviction of accused-appellant De Vela of violation of Section 3(b), RA 3019 on 24 May 2019 after his acquittal of violation of Section 7(d) of RA 6713 on 01 June 2018 did not violate his right against double jeopardy.³⁹

Finding that the *Appellant's Brief* was signed by accused-appellant De Vela himself despite the records being bereft of any withdrawal of appearance from his counsel of record nor that he requested for a *counsel de oficio*, and absent any showing that accused-appellant De Vela is qualified to practice law, this Court directed his counsels of record, Atty. Brian de Peralta or Atty. Marty Franz Torralba, to file the *Appellant's Brief* for accused-appellant De Vela.⁴⁰

³³ Records, pp. 400-401.

³⁴ Dated June 7, 2019 and filed on even date; Records, pp. 357-376.

³⁵ Notice of Appeal dated December 6, 2019 and filed on even date; Records, pp. 402-404.

³⁶ Rollo, pp. 49-79.

³⁷ Dated November 4, 2022 filed on November 18, 2022. Rollo, pp. 88-110.

³⁸ Appellee's Brief, p. 13.

³⁹ Appellee's Brief, p. 19.

⁴⁰ *Minutes of the Proceedings* held last November 22, 2022, Rollo, pp. 111-A to 111-C.

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On January 31, 2023, Atty. John Patrick Paredes, as counsel for accused-appellant De Vela, filed the *Appellant's Brief* of even date.⁴¹

In his *Appellant's Brief*, accused-appellant De Vela, through counsel, assigned the following errors to the RTC's Decision:

Whether or not the guilt beyond reasonable doubt of the accused-appellant was established by the evidence of the prosecution[.]

Whether or not the Honorable Presiding Judge of the Regional Trial Court of Manila, Branch 21[,] gravely erred in convicting the accused appellant[.]

Whether or not double jeopardy attaches with acquittal of the accused-appellant with the Decision of the [Metropolitan Trial Court] (MeTC) Manila, Branch 11 on June 1, 2018.⁴²

In its *Resolution* dated February 6, 2023, this Court admitted the *Appellant's Brief* dated January 31, 2023 filed by the counsel of accused-appellant De Vela, and the *Appellant's Brief* dated September 11, 2022 signed by accused-appellant De Vela himself was expunged from the records of the instant case.⁴³

On February 14, 2023, the prosecution submitted its *Manifestation with Motion to Adopt the Plaintiff-Appellee's Brief* dated February 13, 2023, moving to adopt its *Appellee's Brief* dated November 4, 2022 as its brief to address the grounds of appeal and the arguments raised in the *Appellant's Brief* filed on January 31, 2023.⁴⁴

In its *Resolution* dated February 22, 2023, this Court granted the *Manifestation with Motion to Adopt the Plaintiff-Appellee's Brief* dated February 13, 2023 filed by the prosecution, and admitted the *Appellee's Brief* dated November 4, 2022.⁴⁵

In its *Resolution* dated August 16, 2023, this Court directed the parties to file their respective memorandum expounding on the issue of whether the defense of double jeopardy can be appreciated in the

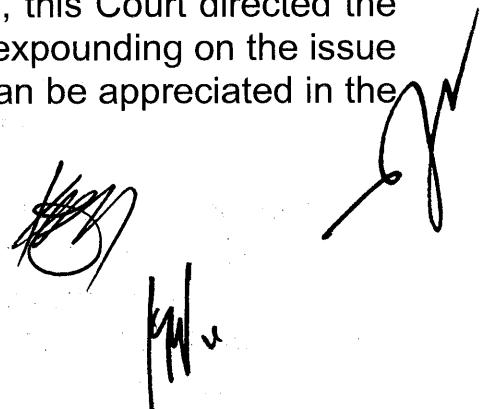
⁴¹ Rollo, pp. 129-162.

⁴² Appellant's Brief dated January 31, 2023, p. 3.

⁴³ Rollo, p.162-A.

⁴⁴ Rollo, pp. 165-167.

⁴⁵ Rollo, p. 173-A.



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present appeal in favor of accused-appellant De Vela.⁴⁶ Also, since the records of the case show that the copy of the *Decision* dated June 1, 2018 of Branch 11, MeTC of the City of Manila in the criminal case docketed as Criminal Case No. 47992-CR (“MeTC Decision”) attached to accused-appellant De Vela’s *Appellant’s Brief* is a mere photocopy and has not been properly identified, and considering the materiality of the said *MeTC Decision* in accused-appellant De Vela’s defense of double jeopardy, this Court additionally directed the prosecution to include in its *Memorandum* a manifestation on whether it is willing to stipulate on the authenticity of the *MeTC Decision*.⁴⁷

On September 8, 2023, accused-appellant De Vela filed his *Memorandum* dated September 6, 2023,⁴⁸ where he discussed:

- (i) His right against double jeopardy has been violated because the elements of the two (2) crimes charged against him appears to be one and the same albeit culled from two (2) different special laws. He argued that while Section 7(d) of R.A. 6713 and Section 3(b) of R.A. No. 3019 are differently phrased, it can be deduced that both prohibit the same acts of soliciting, requesting and accepting bribes from any government transaction wherein their office is involved, and stated that the elements of both crimes are the same;⁴⁹ and
- (ii) The testimony of witness Allan Garcia admitting that he falsified the signatures of accused-appellant De Vela in the vouchers was material evidence that created reasonable doubt as to his liability.⁵⁰

On September 6, 2023, the prosecution filed its *Motion for Extension of Time to File Memorandum* dated September 5, 2023 requesting for an additional thirty (30) days from September 7, 2023, or until October 7, 2023, within which to file its *Memorandum*.⁵¹

On October 9, 2023, the prosecution filed its *Memorandum* dated October 3, 2023, where it stipulated that it has no objection to the authenticity of the *MeTC Decision* since the Office of the Special

⁴⁶ Rollo, p. 192.

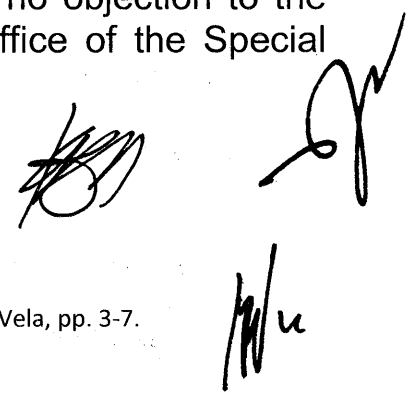
⁴⁷ *Ibid.*

⁴⁸ Rollo, pp. 205-213.

⁴⁹ Memorandum dated September 6, 2023 filed by accused-appellant De Vela, pp. 3-7.

⁵⁰ *Id.* at pp. 7-8.

⁵¹ Rollo, pp. 199-201.



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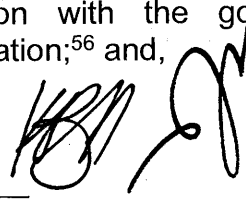
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Prosecutor was able to obtain a copy of the same from the Clerk of Court of the said MeTC.⁵²

In the same *Memorandum*, the prosecution submits that accused-appellant De Vela's conviction in the RTC for violation of Section 3(b) of R.A. No. 3019, as amended, did not violate his right against double jeopardy despite the prior *MeTC Decision* acquitting him of violation of Section 7(d) of R.A. No. 6713, involving the same transactions, due to variance in the elements of the two (2) offenses.⁵³ More particularly, the prosecution argued as follows:

- (i) There was no valid indictment in the case before the MeTC since the case therein should have been dismissed, and accused-appellant De Vela should have been tried under the statute which carries a higher penalty, *i.e.*, the case before the RTC for violation of Section 3(b) of R.A. 3019, as amended, pursuant to Section 11 of R.A. 6713;⁵⁴
- (ii) Even assuming that there was a valid indictment and the case in the MeTC was duly terminated, such acquittal does not bar the prosecution and eventual conviction for violation of Section 3(b) of R.A. No. 3019 by the RTC because although the charges against accused-appellant De Vela stemmed from the same transactions, such act gave rise to two separate and distinct offenses with varying elements.⁵⁵

The charge against accused-appellant De Vela in the MeTC, which involved a violation of Section 7(d) of R.A. No. 6713, is broader in scope and application than that of violation of Section 3(b) of R.A. No. 3019, as amended. Section 7(d) of R.A. No. 6713 covers the act of soliciting or accepting anything of monetary value in the course of the accused's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office. On the other hand, the act contemplated under Section 3(b) of R.A. No. 3019, as amended, covers requesting or receiving commissions or percentage in connection only with a contract or transaction with the government involving monetary consideration;⁵⁶ and,



⁵² Memorandum dated October 3, 2023 submitted by the prosecution, p. 3.

⁵³ *Id.* at p. 11.

⁵⁴ *Id.* at pp. 6-9.

⁵⁵ *Id.* at pp. 9-13.

⁵⁶ *Id.* at p. 11.



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- (iii) Also, both R.A. 6713 and R.A. 3019, as amended specifically provide for simultaneous or successive indictment and prosecution for different offenses emanating from the same act.⁵⁷

Following the filing of their respective *Memorandum* by accused-appellant De Vela and the prosecution, this Court, in the *Resolution* dated October 9, 2023, resubmitted the instant case for decision.

This Court's Ruling

The appeal is partly meritorious. The RTC committed no reversible error in its *Decision* dated May 24, 2019 insofar as it found that the prosecution has sufficiently established accused-appellant De Vela's guilt beyond reasonable doubt of violation of Section 3(b) of R.A. 3019, as amended.

However, considering that accused-appellant De Vela has already been acquitted by Branch 11, MeTC, City of Manila in its *Decision* dated June 11, 2018 in Criminal Case No. 479992-CR for the charge under Section 7(d) of R.A. 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, covering the same transactions, he can no longer be convicted by the RTC for violation of Section 3(b) of R.A. 3019, as amended, pursuant to the Constitutional proscription against double jeopardy, and in consonance with the recent pronouncements of the Supreme Court in *People of the Philippines vs. Hernando B. Perez*⁵⁸ and *People of the Philippines vs. Henry M. Gelacio*.⁵⁹

Procedural defects in accused-appellant De Vela's appeal

At the outset, we address the procedural issues in the instant appeal, namely:

- (i) Accused-appellant De Vela's failure to attach a certified true copy of the *Decision* dated May 24, 2019, which is the subject *Decision* appealed from in the instant case, in his Appellee's Brief;

⁵⁷ *Id.* at pp. 9-13.

⁵⁸ G.R. No. 198303, May 3, 2021.

⁵⁹ G.R. Nos. 250951 and 250958, August 10, 2022.

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- (ii) Accused-appellant De Vela's failure to include a certified true copy of the *Order* dated November 8, 2019, issued by the RTC denying his Motion for Reconsideration of the *Decision* dated May 24, 2019; and,
- (iii) Accused-appellant De Vela's attachment of a certified photocopy of the *Decision* dated June 1, 2018 promulgated by Branch 11, MeTC, City of Manila in the case docketed as Criminal Case No. 479992-CR in his expunged *Appellant's Brief* dated September 11, 2022.

Part III, Rule XI, Section 1 of the *Revised Internal Rules of the Sandiganbayan*⁶⁰ states:

Section 1. Ordinary Appeal. - Appeal to the Sandiganbayan from a decision rendered by a Regional Trial Court in the exercise of its original jurisdiction shall be by ordinary appeal under Rules 41 and 44 of the 1997 Rules of Civil Procedure or Rules 122 and 124 of the Rules of Criminal Procedure as amended, as the case may be.

On the other hand, Section 7, Rule 124 of the *Revised Rules of Criminal Procedure* requires that a certified true copy of the decision or final order appealed from shall be appended to the brief of the appellant.

Accused-appellant De Vela only attached a photocopy of the *Decision* dated May 24, 2019 of the RTC in his *Appellant's Brief* dated January 31, 2023.⁶¹ Moreover, accused-appellant De Vela likewise never raised nor attached the RTC's *Order* dated November 8, 2019,⁶² which denied his *Motion for Reconsideration*.⁶³

Settled is the rule that while an appeal is a remedy available to a litigant seeking to reverse or modify a judgment on the merits of his case, it is merely a statutory privilege, and as such, litigants must strictly abide by the rules in order to facilitate the adjudication of cases.⁶⁴ The Supreme Court further expounds:⁶⁵

Procedural rules may be relaxed for the most persuasive of reasons so as to relieve a litigant of an injustice not commensurate

⁶⁰ 2018 Revised Internal Rules of the Sandiganbayan, A.M. No. 13-5-05-SB, Part III, Rule XI, §2 (October 9, 2018).

⁶¹ Rollo, pp. 146-160.

⁶² Records, pp. 400-401.

⁶³ Dated June 7, 2019 and filed on even date; Records, pp. 357-376.

⁶⁴ *Alonso Singson Cortal, et. al. vs. Inaki A. Larrazabal Enterprises, et, al.*, G.R. No. 199107, August 30, 2017.

⁶⁵ *Id.*

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with the degree of his thoughtlessness in not complying with the procedure prescribed. This Court has noted that a strict application of the rules should not amount to straight-jacketing the administration of justice and that the principles of justice and equity must not be sacrificed for a stern application of the rules of procedure.

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In *Barnes v. Padilla*, this Court relaxed the 15-day period to perfect an appeal to serve substantial justice; and identified situations justifying a liberal application of procedural rules:

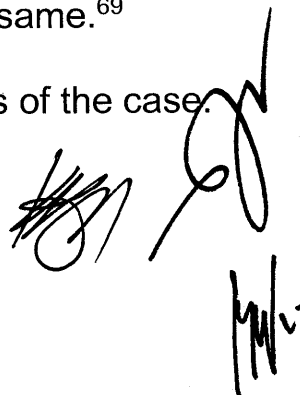
[T]his Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.

Considering that the instant case involves matters of life, liberty, honor or property, *i.e.*, deprivation of liberty and perpetual disqualification from public service, this Court finds that this squarely falls under those situations which warrant the relaxation of procedural rules to serve substantial justice.

Anent the issue of attaching a mere photocopy of the *MeTC Decision* dated June 1, 2018 in the *Appellant's Brief* dated January 31, 2023,⁶⁶ we note that a certified photocopy of the *Decision* of the MeTC dated June 1, 2023 certified for Branch Clerk of Court III Ma. Luisa T. Arugay⁶⁷ was attached to the copy of the expunged *Appellant's Brief* dated September 11, 2022.⁶⁸

We rule that there is no more issue as to the authenticity and existence of the *MeTC Decision* since the prosecution has already stipulated in its *Memorandum* dated October 3, 2023 that they have no objection to the authenticity of the same.⁶⁹

We now move on to the merits of the case.



⁶⁶ Rollo, pp. 138-145.

⁶⁷ Rollo, pp. 55-62.

⁶⁸ Rollo, pp. 49-81, 162-A.

⁶⁹ Memorandum dated October 3, 2023 filed by the prosecution, p. 3.

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Accused-appellant De Vela was charged with violation of Section 3(b) of R.A. No. 3019, otherwise known as the *Anti- Graft and Corrupt Practices Act*, as amended, which provides:

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

xxx

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

xxx

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

The elements of violation of Section 3(b), R.A. No. 3019, as amended, are as follows:

- 1) the offender is a public officer;
- 2) who requested or received a gift, a present, a share, a percentage, or benefit;
- 3) on behalf of the offender or any other person;
- 4) in connection with a contract or transaction with the government; and,
- 5) in which the public officer, in an official capacity under the law, has the right to intervene.⁷⁰

⁷⁰ Sideño vs. People of the Philippines, G.R. No. 235640, September 3, 2020.

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We agree with the conclusion of the RTC that all the elements of the crime of violation of Section 3(b) of R.A. No. 3019, as amended, are present in the instant case.

The presence of the first, fourth and fifth elements is not disputed.

The offender is a public officer.

A public officer is defined under Section 2(b) of R.A. No. 3019, as amended, as “elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government.” On the other hand, Section 2(a) of the same law defines government as the “national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.”

As Barangay Captain during the time material to the instant case, accused-appellant De Vela was an elective official⁷¹ of Barangay 404, Zone 41, District IV of the local government⁷² of the City of Manila.

During pre-trial, the parties stipulated that accused-appellant De Vela was the Barangay Captain of Barangay 404, Zone 41, District IV of the City of Manila in the years 2011 and 2013.⁷³

Clearly, accused-appellant De Vela was a public officer during the time material to this case.

Accused-appellant De Vela requested and received a gift, a present, a share, a percentage, or benefit for his own behalf.



⁷¹ An Act Providing for a Local Government Code of 1991, Republic Act No. 7610 §39(e) (1991).

⁷² R.A. No. 7610, §384- 385.

⁷³ Records, p. 99.

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In *Peligrino vs. People of the Philippines*,⁷⁴ the Supreme Court declared:

xxx Section 3(b) of RA 3019 penalizes three distinct acts -- (1) demanding or requesting; (2) receiving; or (3) demanding, requesting *and* receiving -- any gift, present, share, percentage, or benefit for oneself or for any other person, in connection with any contract or transaction between the government and any other party, wherein a public officer in an official capacity has to intervene under the law. These modes of committing the offense are distinct and different from each other. Proof of the existence of *any* of them suffices to warrant conviction. The lack of demand is immaterial. After all, Section 3 (b) of RA 3019 uses the word *or* between *requesting* and *receiving*.

The evidence presented by the prosecution established that accused-appellant De Vela himself requested, demanded and received the amount of ₱70,000.00 as his share, percentage or commission before signing *Disbursement Vouchers No. (i) 2011-12-84* dated December 16, 2011 amounting to ₱99,000.00; (ii) *2011-12-97* dated December 29, 2011 amounting to ₱99,500.00; and (iii) *2012-01-03* dated January 26, 2012⁷⁵ for the release of payment to FRCGE Trading.

The prosecution presented its first witness, Mr. Franco Espiritu,⁷⁶ the owner of FRCGE Trading. He testified that FRCGE supplied various supplies and materials to Barangay 404, Zone 41, City of Manila, after winning the bid conducted by the said barangay, as evidenced by *Purchase Orders No. 2011-404-10, 2011-404-13 and 2011-404-14*. FRCGE Trading's delivery was deemed complete, duly accepted and verified by the barangay as seen in *Acceptance and Inspection Reports No. 2011-404-10, 2011-404-13 and 2011-404-14*. In his repeated attempts to collect payment for the same, Mr. Espiritu testified that he went to accused-appellant De Vela, who was then the Barangay Chairman, to have the corresponding *Disbursement Vouchers* signed. Accused-appellant De Vela, in turn, demanded and received a total of ₱70,000.00 as his share, percentage or commission from the projects. Mr. Espiritu stated:

Court:

When?



⁷⁴ *Peligrino vs. People of the Philippines*, G.R. No. 136266, August 13, 2001.

⁷⁵ Records, pp. 22-24.

⁷⁶ TSNs dated September 24, 2015 and November 11, 2015, *Complaint-Affidavit (with Prayer for Preventive Suspension)* dated January 22, 2013, Records, pp. 12-26, *Reply-Affidavit* dated March 18, 2013, Records, pp. 32-35.

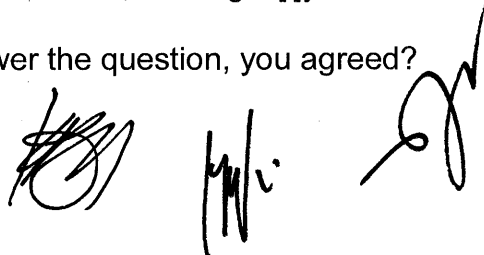
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- A: By December, because the collection is supposed to be in July, but it was released in December, at the time when I gave him his percentage.
- Court: You stated earlier that he asked from you on December 3?
- A: 2011, binigay ko yung pera.
- Court: Okay, he asked commission from you on December 3, 2011?
- A: Yes, your [H]onor.
- Court: At that very moment, you gave him the commission?
- A: He asked for it a long time ago but I only gave it to him on December 3.
- Court: When was the first time that he asked you for commission for the transaction?
- A: In November 2011. Your [H]onor.
- Court: November 2011, when was the second time?
- A: Yun ang first time kaya lang, binuo ko na yun, ang first payment ko na binigay P20,000.00 [on] December 3, ang second payment na P50,000.00 is December 20, 2011 din.
- Court : Is it correct to say that in November, 2011, he already asked you the P70,000.00 commission?
- A: Yes, your [H]onor.
- Court: And what did you say to him?
- A: Sabi ko mag-iipon lang ako ng pera, bibigyan kita.
- Court: So you agreed to give him the commission?
- A: Humingi siya sa akin, humingi s[i]ya.
- Court: Please answer the question, you agreed?



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A: Yes, para lang ibigay niya sa akin yung papel.
Court: So you voluntarily gave him the commission?
A: Hiningi niya sa akin.
Court: Answer the question, yes?
A: He asked for it, so I voluntarily gave it to him.

xxx

Court: Did you personally tender the P70,000.00 to the accused?
A: Yes, your [H]onor, twice in my office.
Court: Office of whom?
A: My office, your [H]onor.
Court: Where is your office?
A: Almeda St., Ermita, Manila⁷⁷

xxx

Atty. Amores:

Q: Mr. Witness, kindly go over these [sic] cash vouchers again and tell us, there is a signature above the printed name Emman [D]e Vela, can you tell us whose signatures are those?
A: That is his signature. (pirma n[i]ya ho [i]yan)
Q: How did you know that that is his signature?
A: That is the same signature when he is signing other documents.
Court: Aside from that?
A: He was the one who signed that in front of me, your [H]onor.⁷⁸

⁷⁷ TSN, September 24, 2015, pp. 11-14.

⁷⁸ *Id.* at p. 16.

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xxx

Atty. Amores:

Q: Mr. Witness, why did you give P70,000.00 to the accused?

A: He asked for it in order to sign the disbursement voucher.⁷⁹

xxx

Court: Mr. Witness, during the period that you were collecting payment from the accused, did he inform you that he will not sign the voucher and the check unless you will give him the commission of P70,00.00?

A: Yes, your [H]onor.

Court: Who stated the amount of P70,000.00, were you the one or the accused that demanded that amount?

A: The accused, chairman De Vela[,] your [H]onor.⁸⁰

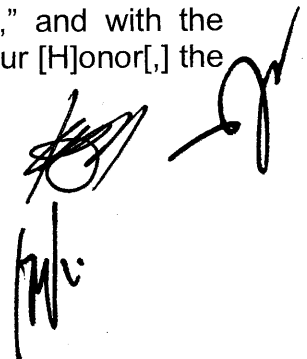
The second witness for the prosecution, Gina M. Cabilan, positively testified that accused-appellant De Vela requested and received ₱70,000.00. She stated:

[Atty. De Peralta]

Q: In your judicial affidavit Ms. Witness[,] you made mention [sic] of Question [N]o. 7, the question was, "*you also mentioned that safekeeping and filing of, [Q]uestion [N]o. 14, your [H]onor, "[w]hy do you know that Emmanuel De Vela received his commission from [his] share from [the] completed barangay projects which were awarded and fulfilled by FRCGE Trading [sic], and she said, "I saw him receive [sic] some certain amount while in our office and also ma'am I saw him receive the amount of P50,000.00 and P20,000.00 on December 3, 2011 and December 20, 2011," and with the manifestation of counsel [sic] your [H]onor[,] the*

⁷⁹ *Id.* at p. 17.

⁸⁰ *Id.* at p. 19.



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cash voucher dated December 3, 2011 was previously marked as Exh. "D" and the cash voucher dated December 20, 2011 was previously marked as Exh. "D-1[.]" your [H]onor.

Court: What was the question?

Q: Who prepared these cash vouchers[,] Ms. Witness?

xxx

Q: Who prepared those?
(Exhibits "D" and "D-1")

A: This was written by my companion, Allan Garcia.

xxx

Court: Why do you know of the documents if you are not the one who prepared them?

A: Because we went to the house of Chairman De Vela, that is where he wrote this document, your [H]onor.

Court: And where were you at the time Allan Garcia wrote the entries in Exhibit "D" and "D-1"?

A: I was with him, we were at the house of Chairman [D]e Vela[,] your [H]onor.

Atty. De Peralta :Simultaneous with the preparation of vouchers[,] you gave the money to accused De Vela?

A: Yes, sir.

Q: So the money was received in the house of Chairman De Vela?

A: Yes, sir.⁸¹

xxx



⁸¹ TSN, April 28, 2016, pp. 14-16.

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Atty. Amores: Madam Witness, in your answer in [Q]uestion [N]o. 14, you said that you answered in tagalog, "*Nakita ko po na tumanggap s[i]ya ng pera at nakita ko rin po mismo na tumanggap siya ng nagkakahalaga na P50,000.00 at P20,000.00 noong December 3, 2011 at December 11, 2011,*" [M]adam witness, what is...(int)

Court: Do you confirm that statement in your judicial affidavit, you show it to her? You confirm that statement in your judicial affidavit?

A: Yes, your [H]onor, kasi hindi lang naman po kasi ito yung tinatanggap n[i]ya sa amin. Sa isang project.

Court: Particularly the transaction subject of this case, is that correct that the amount of P50,000.00 was received in your office? Tungkol sa transaction na nakasampa ngayon, tama ba yang sinasabi mo d[i]yan?

A: Yes, your [H]onor.

Court: Alright, you stated earlier when you identified Exhibits "D" and "D-1" that the amount of P50,000.00 and P20,000.00 was received by the accused in his house sometime in December 2011, you maintain that also?

A: No, your [H]onor. (hindi po)

Court: No, which is now correct [sic]?

A: Medyo na-rattle po kasi ako, hindi po tama yung pagkakasabi ko po kanina[.]

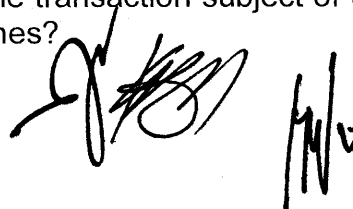
Atty. Amores: Precisely[,] [M]adam witness, how many times have you seen Emmanuel [D]e Vela receive [sic] his percentage?

xxx

Atty. Amores: Emmanuel [D]e Vela received his commission?

A: Several times, ma'am.

Court: Particularly the transaction subject of this case, how many times?



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A: Twice your [H]onor.

Court: And are you pertaining to the amount P50,000.00 and P20,000.00?

A: Yes, your [H]onor.

Court: Okay, now which is the correct answer, you tendered [sic] the amount, or were you the one who tendered the amount to the accused?

A: Yes[,] your [H]onor.

Court: Or were you present when that amount was tendered?

A: Yes, your [H]onor.

Court: Where did you tender that amount of P50,000.00 and P20,000.00 as evidenced by Exhibit "D" and "D-1" to the accused, in your office, inside his house or in the barangay hall or wherever?

A: Sa office po.

Court: In your office, so you are now changing your answer during the cross examination that you tendered and you saw Allan Garcia writing the details in Exhibit "D" and "D-1" in the house of Emmanuel De Vela?

A: Yes, your [H]onor. I just got confused your [H]onor.⁸²

xxx

Court: When did you give the amount of P20,000.00?

A: December 20, 2011, your [H]onor.

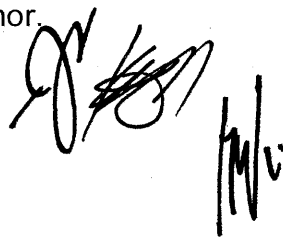
Court: The P20,000.00? December 20, 2011?

A: Yes, your [H]onor.

Court: And that is evidenced by cash vouchers?

A: Yes, your [H]onor.

⁸² *Id.* pp. 17-19.



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Court: Okay, go over this cash voucher marked as Exhibit "D" and "D-1", which of the cash voucher[s] is proof that you gave the amount of P20,000.00 on December 20, 2011?

A: (Witness pointed to cash voucher marked as Exh. "D-1" dated December 20, 2011)

Court: Okay, you identified Exhibit "D-1", cash voucher dated December 20, 2011, but the amount stated herein is P50,000.00, why is that?

A: Your [H]onor[,] mali po.

Court: Which is correct?

A: (Witness pointed to Exhibit "D" cash voucher dated December 3, 2011 in the amount of P20,000.00)

Court: Where did you give that amount P20,000.00 on December 3, 2011 and who were present?

A: In our office also, your [H]onor.

Court: Who were present?

A: Nandun din po si Mr. Franco at saka si Allan Garcia.

Court: And to whom did you give that P20,000.00?

A: It was handed to Chairman [D]e Vela. (Kay Chairman [D]e Vela po)

Court: Next, when did you give the amount of P50,000.00 to the accused?

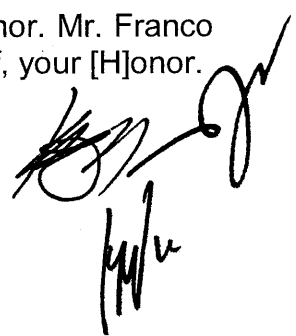
A: December 20, 2011.

Court: Where did you give it?

A: Also in our office[,] your [H]onor.

Court: And who were present?

A: Also the three of us[,] your [H]onor. Mr. Franco Espiritu, Allan Garcia and myself, your [H]onor.



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Court: You stated earlier that when you g[a]ve the amount of P50,000.00, Mr. Franco is not present, which is now correct?

A: Hindi, ano po, ang ibig kong sabihin po, andun po s[i]ya sa office pero hindi po s[i]ya nakaharap sa amin [*sic*]. (What I mean your [H]onor was that, he was also in the office, but he was not fronting us.)

Court: What about when you gave the amount of P20,000.00 as evidenced by Exh. "D", where is Mr. Franco at the time that you gave that money to the accused?

A: He was also there your [H]onor, but he was far from us.

Court: Okay, you stated earlier, that the voucher was given to you simultaneous to the giving of money to accused [D]e Vela, when was that?

A: December 3, 2011 your [H]onor, simultaneously given the voucher and money. [*sic*]⁸³

xxx

Atty. De Peralta: So Mr. Franco Espiritu was not in the office or was not in front when you handed the money to the accused Mr. Witness?

Court: You're pertaining to what date? December 3 or..

Atty. De Peralta: Both dates[,] your [H]onor, because that was the statement, your [H]onor.

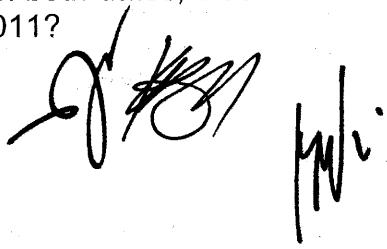
A: Nasa likod po siya, kasi kumakain po s[i]ya eh. (He was at the back because he was eating at that time)

Court: He was within the same room?

A: The same room, pero meron po kasi s[i]yang pinaka- ano, pantry kainan po. (We are in the same room but Mr. Franco is in the pantry.)

Court: On both dates, December 3 and December 20, 2011?

⁸³ *Id.* at pp. 22-24.



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A: No, your [H]onor, yung December 3 lumabas po s[i]ya para manigarilyo pero dun din po sa office na yun [sic]. (In December 3, he was there but he went outside to smoke and on December 20, he was also there, we were in the same room but he was in the pantry, your [H]onor.)

Atty. De Peralta

Q: Did the accused sign the vouchers in your presence Mr. Witness?

A: Yes, sir.

Q: So it was you who gave the vouchers to the accused to sign it?

A: Yes, sir.

Court

Q: You are pertaining to Exhibits "D" and "D-1"?

Atty. De Peralta

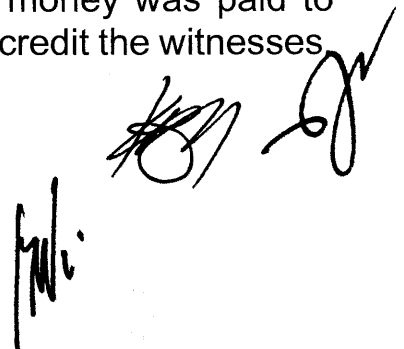
Q: Yes, both vouchers, and Mr. Franco Espiritu was not around when you had the accused [sign] those vouchers, am I correct Ms. Witness?

A: Yes, sir.⁸⁴

The RTC correctly gave credence to the testimonies of the prosecution's witnesses who positively declared that accused-appellant De Vela requested, demanded and received the amount of ₱70,000.00 as his percentage, share or commission in the transaction of FRCGE Trading with Barangay 404, Zone 41, District IV, City of Manila.

Any minor discrepancy in the statements of the witness, *i.e.*, as to who handed to accused-appellant De Vela his ₱70,000.00 share, percentage or commission, the date when accused-appellant De Vela first demanded the money, the place where the money was paid to accused-appellant De Vela, do not necessarily discredit the witnesses.

⁸⁴ *Id.* at pp. 24-25.



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and may even be considered badges of truth and increase the probative value of their testimonies.⁸⁵

As his defense, accused-appellant De Vela, during his testimony, raised the following:

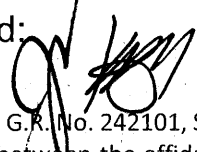
a) The Cash Voucher dated December 3, 2011 in the amount of ₱20,000.00 and Cash Voucher dated December 20, 2011 in the amount of ₱50,000.00 were fabricated and his signature therein was falsified.⁸⁶ Accused-appellant De Vela presented a copy of his passport and driver's license to prove his real signature;⁸⁷

b) He denied going to the office of Mr. Espiritu on December 3 and 20, 2011 to receive his supposed share, percentage or commission amounting to ₱50,000.00 and ₱20,000.00, respectively;⁸⁸

c) The amount of ₱70,000.00 given to him was actually payment for the loan extended by Mr. Espiritu to one Arkie Rosales, with accused-appellant De Vela acting as guarantor since he was the one who introduced the said parties to each other. As guarantor, accused-appellant De Vela said that Mr. Espiritu made him sign two (2) blank vouchers, and not the vouchers being presented by the prosecution;⁸⁹ and,

d) While not raised in his judicial affidavit, during his testimony, accused-appellant De Vela said that it was Allan Garcia who falsified his signature in the subject cash vouchers, which led the former to file a Complaint-Affidavit against Allan Garcia docketed as XV-07-IMV-13M-05433, before the Office of the City Prosecutor of the City of Manila.⁹⁰

The defense also presented their second witness, Allan Garcia, who testified that he had someone in Recto fabricate the signature of accused-appellant De Vela in the *Cash Vouchers* dated December 3 and 20, 2011. He stated:


⁸⁵ XXX vs. People of the Philippines, G.R. No. 242101, September 16, 2019. In this case, the Supreme Court held: "Moreover, discrepancies between the affidavit of a witness and her testimony in court do not necessarily discredit her because it is a matter of judicial experience that [affidavits], being taken ex parte are almost always incomplete and often inaccurate. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than indicia of falsehood and they often bolster the probative value of the testimony."


⁸⁶ TSN, February 7, 2018, pp. 17, 20.

⁸⁷ TSN, April 18, 2018, pp. 3-7.

⁸⁸ See Judicial Affidavit of accused-appellant De Vela, Records, p. 250. TSN, February 7, 2018, p. 19.

⁸⁹ See Judicial Affidavit of accused-appellant De Vela, Records, p. 249. TSN, February 7, 2018, pp. 3-4.

⁹⁰ *Id.* at p. 20. TSN, April 18, 2018, p. 2.



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Q: So you admit Mr. Witness that the signatures appearing above the name Emman De Vela and another Emman De Vela in the cash vouchers dated December 3, 2011 and December 20, 2011 are your signatures?

A: Yes, ma'am. Gawa-gawa ko lang yan, ma'am.

Q: So when you say Emman De Vela, you are referring to the same person who is the accused in this case Emmanuel De Vela?

A: I do not know the distinction of Emman as to Emmanuel, ma'am.

Q: So you mean to tell us Mr. Witness that Emman De Vela is not the same as Emmanuel De Vela?

A: I do not know, ma'am. I cannot recall it anymore, ma'am.

Q: But you admit these are your handwritings, Mr. Witness?

A: Yes, ma'am. It's my handwriting, ma'am.⁹¹

xxx

Atty. Molina-Amores

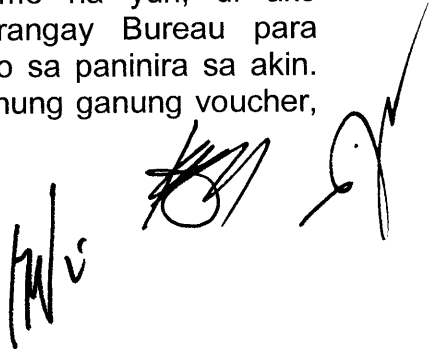
Q: So in other words Mr. Witness, what you are telling us is that you entrusted Gina with the documents you forged? Is that correct?

A: I do not know that the vouchers came in her possession and I asked her why she used that vouchers against this person, ma'am.

Q: O[kay], as far as you are concerned, who forged those vouchers?

A: Gawa-gawa ko lang po [i]yon kung бага sa sama po kasi ng loob ko dahil nawalan po ng hanapbuhay nun, dahil wala akong mapagbalingan nung time na yun, di ako makabalik dun sa Barangay Bureau para makapag project dahil po sa paninira sa akin. Nung gumawa po [a]ko nung ganung voucher,

⁹¹ TSN, September 27, 2018, p. 5.



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para lang, akala ko po kasi na siya po talaga yung gumawa, pero napag isip-isip ko na hindi po pala siya ano at yung tao na po na nakapag sabi sa akin na talaga[ng] kapwa ko din [na] contractor ang na[n]ira sa akin. Kasi nung time po na yun nagsara po kasi yung ano ko, ang laki po talaga ng naging problema ko nawalan na po kasi ako ng hanapbuhay e.⁹²

xxx

Court:

Q: Mr. Witness [is] it correct to say that the cash voucher marked as Exhibit "D" and "D-1" adopted as Exhibits "32" and "33" for the defense, Mr. Witness, you identified these cash vouchers earlier[,] correct?

A: Yung iba po.

Q: Wait, let's go one by one. Exhibit "D"[,] this cash voucher which was allegedly taken from you by Gina M. Cabilan, was there a name ["]P/B Emman De Vela["]?

A: Yes, your [H]onor.

Q: Does it also have an entry in particular[,] [sic] which states that the undersigned received and acknowledged the amount of Twenty Thousand Pesos (P20,000.00) as share for my barangay project? Just answer yes or no.

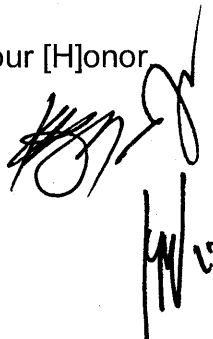
A: Yes, your [H]onor.

Q: And there's already a name therein name ["]P/B Emman De Vela["] with signature?

A: Yes, your [H]onor.

Q: O[kay], and whose handwritings are reflected in the cash voucher marked as Exhibit "D" and Exhibit "32"?

A: That's mine, your [H]onor



⁹² *Id.* at pp. 6-7.

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Q: And whose signature is affixed above the name name ["P/B Emman De Vela"]?

A: Pinagawa ko lang po [i]yan your [H]onor, kumbaga gawa-gawa lang your [H]onor, pinakopya lang.

xxx

Q: What is the name of that person who made it appear [sic] that P/B Emman De Vela affixed his signature?

A: Pinagawa ko lang po sa Recto.

Q: Do you know Mr. Witness that the accused admitted that that is his signature?

A: I don't know[,] your [H]onor.

xxx

Q: O[kay], what is your proof that the entries therein are your handwritings? Do you have [a] handwriting expert report to prove that those entries therein are made by you?

A: None[,] your [H]onor.⁹³

As found by the RTC, while identified by accused-appellant De Vela during his testimony and marked as evidence, the defense did not include the following documents in its *Formal Offer of Evidence*: i) accused-appellant De Vela's passport to show his signature;⁹⁴ ii) accused-appellant De Vela's Driver's license to show his signature;⁹⁵ c) a copy of the *Complaint-Affidavit* docketed as XV-07-IMV-13M-05433, which accused-appellant De Vela filed against Mr. Garcia;⁹⁶ and d) *Acknowledgment Receipt* amounting to ₱50,000.00 dated July 4, 2012.⁹⁷

Under Section 35, Rule 132 of the *Revised Rules on Evidence*, these cannot be considered by the RTC because they were not

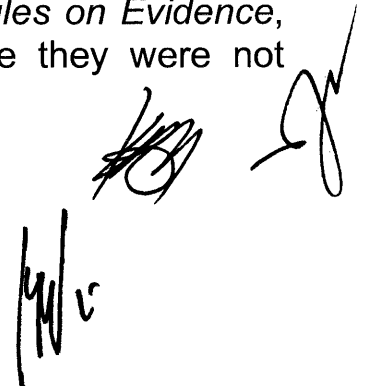
⁹³ *Id.* at pp. 9-10.

⁹⁴ TSN, April 18, 2018, p. 3.

⁹⁵ *Id.*

⁹⁶ *Id.* At p. 2.

⁹⁷ Records, pp. 249-250.



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formally offered. This Court likewise cannot consider these documents.

Also, apart from witness Allan Garcia's claim that he forged the handwriting appearing in the subject cash vouchers, and had the signature of one P/B Emman De Vela forged in Recto, the defense failed to present any handwriting expert witness or report to prove the genuineness or falsity of the handwriting and signature appearing in the said cash vouchers.

In any case, we reiterate that the witnesses for the prosecution positively testified that accused-appellant De Vela requested, demanded and received the amount of ₱70,000.00 as his percentage, share or commission in the Barangay's transaction with FRCGE Trading.

Aside from accused-appellant De Vela's claim through his testimony that the ₱70,000.00 was the proceeds of the loan of one Arkie Rosales from Mr. Espiritu, for which he acted as guarantor, no other evidence was presented to prove the existence of the said loan. Notably, while the *Sinumpaang Salaysay* of Arkie Rosales was formally offered and admitted by the RTC, Arkie Rosales himself did not testify. In any case, the RTC correctly found that the determination of whether Arkie Rosales had already fully settled his supposed loan is *immaterial* for purposes of violation of Section 3(b) of R.A. No. 3019.⁹⁸

After evaluating the records of the case, we agree with the findings of the RTC that the prosecution has sufficiently established by documentary evidence and through the positive testimonies of Mr. Espiritu and Ms. Cabilan that accused-appellant De Vela had indeed requested, demanded and received from them, as owner and representative of FRCGE Trading, respectively, the total amount of ₱70,000.00 representing accused-appellant De Vela's share, percentage or commission in FRCGE Trading's transaction with Barangay 404, Zone 41, District IV, City of Manila.

Lastly, well-settled is the doctrine that the findings of the trial court, having had the unique opportunity to observe the witnesses and their

⁹⁸ In its *Order* dated February 27, 2019, the RTC did not admit the defense's Exhibits "4" and its sub-marking "4-a" and "5", which pertain to the BDO Deposit Slip dated December 12, 2012 and the Acknowledgment Receipt amounting to ₱50,000.00 for being mere photocopies.

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demeanor first-hand, are generally accorded weight and respect, and at times even finality. The Supreme Court in ***People of the Philippines vs. Bryan Ganaba y Nam-ay***,⁹⁹ explained:

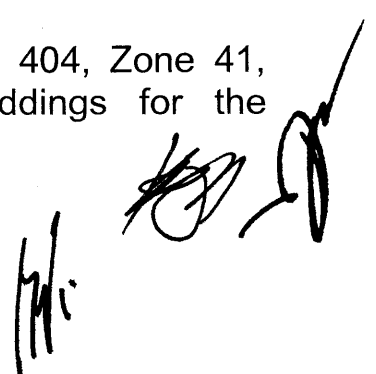
The Court has amply elucidated on the reason for according weight to the findings of the trial court, viz:

It is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."

Accused-appellant De Vela's demand, request, and receipt of a gift, a present, a share, a percentage, or benefit was made in connection with a contract or transaction with Barangay 404, Zone 41, District IV, City of Manila

The records of the case show that Barangay 404, Zone 41, District IV, City of Manila conducted public biddings for the

⁹⁹ G.R. No. 219240, April 4, 2018.



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procurement of various supplies and materials, for which FRCGE Trading won, and was awarded the said bids.

This is evidenced by *Purchase Orders No. 2011-404-10, 2011-404-13 and 2011-404-14*,¹⁰⁰ which showed that on three (3) separate transactions, FRCGE Trading was required to deliver various supplies and materials amounting to ₱99,000.00, ₱99,500.00 and ₱154,300.00, respectively.

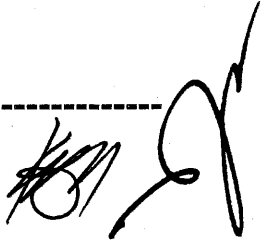
The supplies and materials listed in *Purchase Orders No. 2011-404-10 and 2011-404-13* were delivered on July 26, 2011, as shown by *Acceptance & Inspection Reports No. 2011-404-10 and 2011-404-13*.¹⁰¹ While the delivery covered by *Purchase Order No. 2011-404-14* was made on December 15, 2011, as shown by *Acceptance & Inspection Report No. 2011-404-14*.¹⁰²

Later on, Barangay 404, Zone 41, District IV, City of Manila, paid for these materials as shown by *Disbursement Vouchers* dated December 16, 2011, December 29, 2011 and January 26, 2012, in the amounts of ₱99,000.00, ₱99,500.00 and ₱154,300.00, respectively.¹⁰³

Moreover, as shown in his *Judicial Affidavit* dated November 21, 2017, accused-appellant De Vela himself does not dispute such transactions.¹⁰⁴

Thus, the fourth element for violation of Section 3(b) of R.A. No. 3019, as amended, is present in this case.

Accused-appellant De Vela, as Barangay Captain during the time material to this case, had the right to intervene in the subject transactions in his official capacity.


¹⁰⁰ Records, pp. 16-18.

¹⁰¹ Records, pp. 19-20.

¹⁰² Records, pp. 21.

¹⁰³ Records, pp. 22-24.

¹⁰⁴ Records, pp. 247-248. TSN, February 7, 2018, pp. 2-3.



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The parties have stipulated that accused-appellant De Vela was the Barangay Captain of Brgy. 404, Zone 41, District IV, City of Manila in 2011, the time material to this case.¹⁰⁵

As Barangay Captain or *Punong Barangay*, some of accused-appellant De Vela's functions under Section 389, Chapter 3, Title One, Book III of the *Local Government Code of 1991* include: (i) negotiating, entering and signing contracts for and in behalf of the Barangay, upon authorization of the Sangguniang Barangay;¹⁰⁶ and (ii) approving vouchers relating to the disbursement of Barangay funds.¹⁰⁷

Therefore, accused-appellant De Vela clearly had the right to intervene, *i.e.*, to sign contracts for and on behalf of the Barangay and to sign the disbursement vouchers for the release of payment to FRCGE Trading for the latter's delivery of supplies and materials to Brgy. 404, Zone 41, District IV, City of Manila, in his official capacity as then Barangay Captain. The fifth and final element for violation of Section 3(b) of R.A. No. 3019, as amended, is present in this case.

From the foregoing, we agree with the findings of the RTC that accused-appellant De Vela is guilty beyond reasonable doubt of violation of Section 3(b) of R.A. No. 3019, as amended, with the presence of all the elements having been sufficiently established in the proceedings before the trial court.

Notably, the Information in RTC alleged that accused-appellant De Vela, while being Barangay Chairman, "requested and/or received ₱70,000.00 from FRCGE Trading, as an advance share, percentage or commission, in connection, in consideration and [in] exchange for a contract to provide Barangay 404, Zone 41, District IV, Manila, various supplies and materials[,] a transaction wherein they [*sic*] as public officer he has to intervene in his official capacity."¹⁰⁸ Thus, it appears that the Information in the RTC alleged that the request and/or receipt of ₱70,000.00 was made in consideration of the grant or award of contracts to FRCGE Trading, for the latter to provide various supplies and materials.

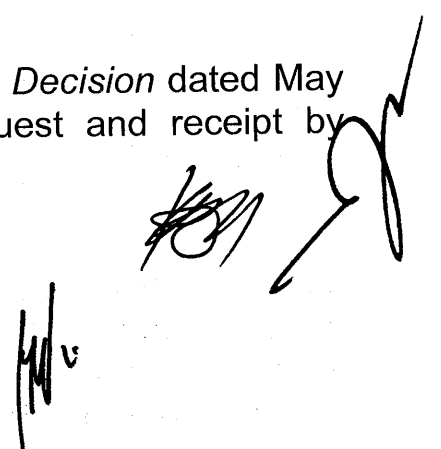
On the other hand, after trial, the RTC in its *Decision* dated May 24, 2019, found, among others, that the request and receipt by

¹⁰⁵ Records, p. 99.

¹⁰⁶ R.A. No. 7610, Book III, Title I, Chapter 3, §389(b)(b).

¹⁰⁷ R.A. No. 7610, Book III, Title I, Chapter 3, §389(b)(h).

¹⁰⁸ Records, p. 1.



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accused-appellant De Vela of the amount of ₱70,000.00 from FRCGE Trading as his share, percentage or commission, was made *after* FRCGE Trading won the bid and completely delivered the various supplies and materials.¹⁰⁹ More particularly, it was made by accused-appellant De Vela when FRCGE Trading was collecting payment of the Barangay's outstanding obligation pursuant to FRCGE Trading's delivery of duly inspected and accepted supplies and materials¹¹⁰ per *Acceptance & Inspection Reports No. 2011-404-10* and *2011-404-13* both dated July 26, 2011, and *2011-404-14* dated December 15, 2011.¹¹¹ The RTC held:

It was uncontroverted that accused Emmanuel De Vela y Carillo is the Barangay Chairman of Barangay 404, Zone 41, District IV, Manila in December, 2011, the time material to this case. In his official capacity as Barangay Chairman, it is ministerial for him to approve and affix his signature on Disbursement Voucher Nos. 2011-12-84, 2011-12-97, and 2012-01-03 and corresponding check for payment of delivered, duly inspected and accepted supplies and materials to the Barangay by FRCGE Trading after winning the bidding process and duly awarded the subject barangay projects by the Barangay Bids and Awards Committee. Since the case involved the collection by FRCGE Trading of the Barangay's outstanding obligation to the former, the right of herein accused to intervene in his official capacity is undisputed.¹¹²

Therefore, as regards the timing of and consideration for the request, demand and receipt of accused-appellant De Vela's share, percentage or commission, the fact proved during trial in the RTC is different from the fact alleged in the Information.

Significantly, that the request for and/or receipt of the percentage or commission amounting to ₱70,000.00 was made in consideration for the grant of award of contract by Barangay 404, Zone 41, District IV, Manila to FRCGE Trading, as alleged in the Information, is not one of the elements for violation of Section 3(b) of R.A. No. 3019, as amended.

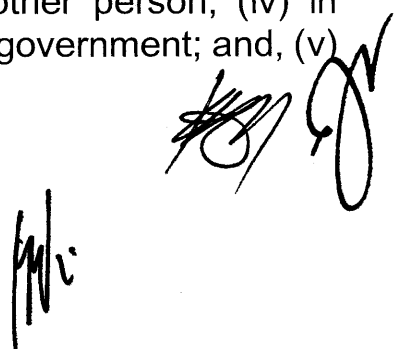
To recall, the elements for violation of Section 3(b) of R.A. No. 3019, as amended, are: (i) the offender is a public officer; (ii) who requested or received a gift, a present, a share, a percentage, or benefit; (iii) on behalf of the offender or any other person; (iv) in connection with a contract or transaction with the government; and, (v)

¹⁰⁹ Rollo, p. 26. Records, p. 352.

¹¹⁰ *Ibid.*

¹¹¹ Records, pp. 19-21.

¹¹² Rollo, p. 26. Records, p. 352.



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in which the public officer, in an official capacity under the law, has the right to intervene.¹¹³ Otherwise stated, the mere act of requesting or receiving a gift, present, share, percentage or benefit in relation to a transaction in which the public officer has the right to intervene, suffices. The specific “prestation” is not an element.

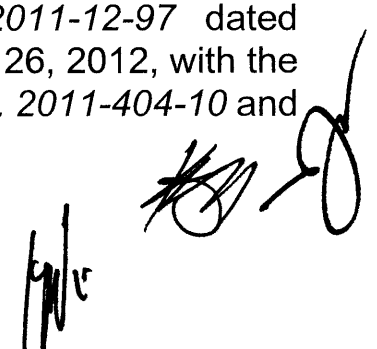
Hence, the variance in the fact proved during trial in the RTC and the facts alleged in the Information is **immaterial**.

It has been established during trial in the RTC that the requests for and receipt of the ₱70,000.00 were in relation to the transactions subject of *Disbursement Vouchers No. 2011-12-84* dated December 16, 2011, *2011-12-97* dated December 29, 2011 and *2012-01-03* dated January 26, 2012, with the corresponding *Acceptance & Inspection Reports No. 2011-404-10* and *2011-404-13* both dated July 26, 2011, and *2011-404-14* dated December 15, 2011, respectively. Hence, the allegations in the Information in the RTC are sufficient and did not deprive accused-appellant De Vela of his constitutional right to be informed of the nature and causes of the accusation against him.

Considering the pronouncements of the Supreme Court in *People vs. Perez* and *People vs. Gelacio*, accused-appellant De Vela may no longer be convicted under Section 3(b) of R.A. No. 3019, as amended, since jeopardy has attached in this case.

Notwithstanding the findings of the RTC, accused-appellant De Vela may no longer be convicted under Section 3(b) of R.A. No. 3019, as amended, since he had already been previously tried and acquitted by the MeTC for the charge of violation of Section 7(d) of R.A. No. 6713 involving the same transactions as covered by *Disbursement Vouchers No. 2011-12-84* dated December 16, 2011, *2011-12-97* dated December 29, 2011 and *2012-01-03* dated January 26, 2012, with the corresponding *Acceptance & Inspection Reports No. 2011-404-10* and

¹¹³ Sideño vs. People of the Philippines, G.R. No. 235640, September 3, 2020.



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2011-404-13 both dated July 26, 2011, and 2011-404-14 dated December 15, 2011, respectively.¹¹⁴

In his *Motion for Reconsideration* in the RTC¹¹⁵ and *Appellant's Brief*,¹¹⁶ accused-appellant De Vela raised the issue of double jeopardy since the Ombudsman also filed a case against him before the MeTC involving the same acts, *i.e.*, the request, demand and receipt by accused-appellant De Vela of his share, percentage or commission before signing the corresponding *Disbursement Vouchers* which would allow FRCGE Trading, in exchange for a contract to provide various supplies and materials to Brgy. 404, Zone 41, District IV, City of Manila, to collect payment for its delivery of the said items, this time for violation of Section 7(d) of RA 6713, for which he had already been acquitted by the MeTC in 2018.¹¹⁷ The accusatory portion of the Information in the MeTC provides:

That sometime in December 2011, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Emmanuel De Vela, a low-ranking public official, being the Barangay Chairman of Barangay 404, Zone 41, District IV, Manila, and while in the course of his official duties, committing the crime in relation to his office, and taking advantage of his official position, did then and there willfully [*sic*], unlawfully, and criminally, with intent of personal gain, solicited and/or accepted ₱70,000.00 from FRCGE [T]rading, as an advance, share, percentage or commission in connection, in consideration and [in] exchange for a contract to provide Barangay 404, Zone 41, District IV, Manila, various supplies and materials, a transaction wherein they [*sic*] as public officer he has to intervene in his official capacity.

Contrary To Law.¹¹⁸

In its *Decision* dated June 1, 2018, the MeTC acquitted accused-appellant De Vela. The dispositive portion states:

In view of the foregoing, accused Emmanuel De Vela is ACQUITTED of the crime charged on the ground that the prosecution absolutely failed to prove his guilt.¹¹⁹

¹¹⁴ See *MeTC Decision* dated June 1, 2018, p. 1.

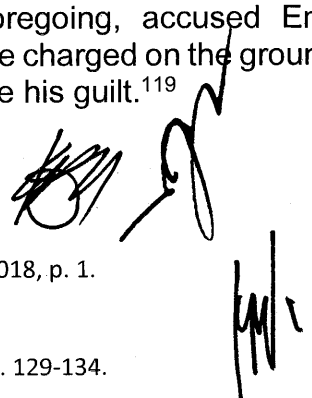
¹¹⁵ Records, pp. 358-376.

¹¹⁶ Rollo, pp. 129-162.

¹¹⁷ Appellant's Brief, pp. 1-6. Rollo, pp. 129-134.

¹¹⁸ Rollo, p. 138.

¹¹⁹ Rollo, p. 145.



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In its *Appellee's Brief*, the prosecution argued that the conviction of accused-appellant De Vela in the RTC did not violate his right against double jeopardy since a person may be charged simultaneously or successively for violation of Section 3(b) of R.A. No. 3019, as amended, and the *Revised Penal Code*,¹²⁰ or any existing law, such as the crime committed in violation of Section 7(d) of R.A. No. 6713.¹²¹

The prosecution posited that there is a variance between the elements of the two offences charged. More particularly, Section 7(d) of R.A. No. 6713 is broader in scope and application in that it covers the act of soliciting or accepting anything of monetary value in the course of the accused's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office, while a violation of Section 3(b) of R.A. No. 3019, as amended, is limited to the act of requesting, demanding, and/or receiving a commission or percentage in connection only with a contract or transaction with the government involving monetary consideration.¹²²

Lastly, the prosecution argued that assuming that the case before the MeTC is identical to the one filed before the RTC, double jeopardy still did not attach because there was no valid indictment in the case before the MeTC. It cited *People vs. Gelacio*¹²³ in positing that if the violation under R.A. No. 6713 is punishable by a higher penalty under another law, such as R.A. No. 3019, as amended, the offender shall be prosecuted under the latter statute. Thus, when accused-appellant De Vela was charged before the MeTC, there was no valid indictment, and no double jeopardy attached as a result thereof.¹²⁴

The prosecution's asseverations are misplaced.

Essentially, the prosecution anchors their arguments on the following: (i) Section 3 of R.A. No. 3019, as amended, allows for successive or simultaneous filing of charges for acts or omissions of public officers both penalized by R.A. 3019 and other laws; (ii) there is a variance in the elements of violation of Section 3(b) of R.A. No. 3019, as amended and Section 7(d) of R.A. No. 6713; and (iii)

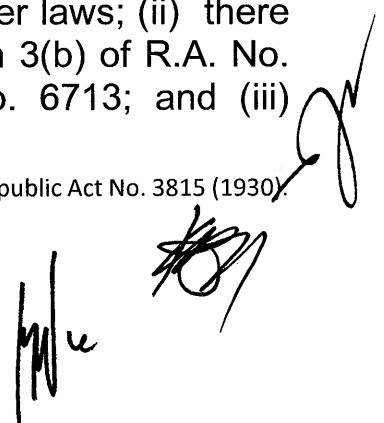
¹²⁰ An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Republic Act No. 3815 (1930).

¹²¹ Appellee's Brief, pp. 19-21.

¹²² *Id.* at p. 20.

¹²³ G.R. Nos. 250951 and 250958, August 10, 2022.

¹²⁴ Appellee's Brief, pp. 20-21.



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assuming the case in the MeTC is identical to the one filed before the RTC, there was no valid indictment in the MeTC because the case should have been filed with the RTC since a violation of Section 3(b) of R.A. No. 3019, as amended, carries a higher penalty than that of the charge in the MeTC.¹²⁵

In ***Cudia vs. Court of Appeals***,¹²⁶ the Supreme Court discussed that “[i]n order to successfully invoke the defense of double jeopardy, the following requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or a frustration thereof.”

In the same case, the Supreme Court further explained:

In determining when the first jeopardy may be said to have attached, it is necessary to prove the existence of the following:

- (a) Court of competent jurisdiction
- (b) Valid complaint or information
- (c) Arraignment
- (d) Valid plea
- (e) The defendant was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused.

The test, therefore, is whether all the requisites in order for first jeopardy to attach in the MeTC case, are present. We answer in the affirmative.

***First jeopardy has attached
prior to the second jeopardy***

The MeTC is a court of competent
jurisdiction

¹²⁵ Under **Section 9 of R.A. No. 3019**, as amended, the penalty for violation of Section 3 of the said law shall be “imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.” On the other hand, **Section 11 of R.A. No. 6713** provides that any violation Section 7 of the said law “shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.”

¹²⁶ G.R. No. 110315, January 16, 1998.

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Since the Information in the case before the MeTC alleged the commission of acts that violate Section 3(b) of R.A. No. 6713 committed in the City of Manila,¹²⁷ the MeTC of Manila is a court of competent jurisdiction. Paragraph 2, Section 32 of Batas Pambansa Blg. 129¹²⁸ provides that Metropolitan Trial Courts “have exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof[.]” Since the penalty for violation of Section 7(d) of R.A. No. 6713 consists of a fine or imprisonment not exceeding five (5) years,¹²⁹ the said case falls under the jurisdiction of the MeTC.

The Information is valid, sufficient
in form and substance

Regarding the validity of the Information filed before the MeTC, we find that it is sufficient in form and substance to sustain a conviction. Section 6, Rule 110 of the *Revised Rules of Criminal Procedure* provides:

Section 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

Here, it is clear that the Information before the MeTC satisfies the requisites under Section 6, Rule 110 of the *Revised Rules of Criminal Procedure*, and used ordinary and concise language that enabled

¹²⁷ In *Isip vs. People of the Philippines*, G.R. No. 170298, June 26 2007, the Supreme Court held: “It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court.”

¹²⁸ An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes [THE JUDICIARY REORGANIZATION ACT OF 1980], Batas Pambansa Blg. 129, ¶2, §32 (1980),

¹²⁹ Section 11, R.A. No. 6713.

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accused-appellant De Vela to be sufficiently appraised as to the nature of the offense being charged against him,¹³⁰ viz:

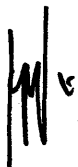
Requisites	Allegation in the Information in the MeTC ¹³¹
1. The name of the accused is stated	Accused-appellant Emmanuel De Vela was named in the Information
2. The designation of the offense given by statute	The wording of the allegations in the Information in the MeTC appear to charge the accused with a violation of Section 7(d) of R.A. No. 6713
3. The acts or omissions constituting the offense are stated	"[A]ccused Emmanuel De Vela, a low-ranking public official, being the Barangay Chairman of Barangay 404, Zone 41, District IV, Manila, and while in the course of his official duties, committing the crime in relation to his office, and taking advantage of his official position, did then and there willfully [sic], unlawfully, and criminally, with intent of personal gain, solicited and/or accepted ₱70,000.00 from FRCGE [T]rading, as an advance, share, percentage or commission in connection, in consideration and [in] exchange for a contract to provide Barangay 404, Zone 41, District IV, Manila, various supplies and materials, a transaction wherein they [sic] as public officer he has to intervene in his official capacity."
4. The name of the offended party is stated	FRCGE Trading is the offended party named in the Information
5. The approximate date of the commission of the offense is stated	Sometime in December 2011

¹³⁰ 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, §9; Omar Villarba vs. Court of Appeals and People, G.R. No. 227777, June 15, 2020.

¹³¹ As stated in the *MeTC Decision* (Rollo, p. 138), the accusatory portion of the Information in the MeTC states:

"That sometime in December 2011, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Emmanuel De Vela, a low-ranking public official, being the Barangay Chairman of Barangay 404, Zone 41, District IV, Manila, and while in the course of his official duties, committing the crime in relation to his office, and taking advantage of his official position, did then and there willfully [sic], unlawfully, and criminally, with intent of personal gain, solicited and/or accepted ₱70,000.00 from FRCGE [T]rading, as an advance, share, percentage or commission in connection, in consideration and exchange for a contract to provide Barangay 404, Zone 41, District IV, Manila, various supplies and materials, a transaction wherein they (sic) as public officer he has to intervene in his official capacity.

Contrary To Law."



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Requisites	Allegation in the Information in the MeTC ¹³¹
6. The place where the offense was committed is stated	In the City of Manila, Philippines

In its *Memorandum* dated October 3, 2023, the prosecution cited *Gil A. Valera vs. People of the Philippines*¹³² and *People vs. Gelacio*¹³³ in arguing that there was no valid indictment in the MeTC since the case pending therein for violation of Section 7(d) of R.A. No. 6713 should have been dismissed, pursuant to Section 11 of R.A. No. 6713. It further argued that trial on the merits should not have proceeded, and that, therefore, there is no first jeopardy to speak of.¹³⁴

We disagree with the contention of the prosecution. In *Valera, Gelacio, and People of the Philippines vs. Hernando B. Perez*,¹³⁵ which was cited in *Valera*, the two different charges against the respective accused therein were still pending, and thus the applicable tribunal, in the cited cases, the Sandiganbayan, would have had the opportunity to apply Section 11, R.A. No. 6713 in dismissing the charge with the lower penalty. In the instant case, the *MeTC Decision* acquitting accused-appellant De Vela was already promulgated on June 1, 2018, while the *RTC Decision* subject of this appeal was promulgated almost a year later, on May 24, 2019.

While the proper course of action would have been for the MeTC to dismiss the case before it, pursuant to Section 11 of R.A. No. 6713, upon being informed of the pending case before the RTC involving the same set of facts, this could no longer be done in light of the finality of the *MeTC Decision*. Notably, nowhere in *Gelacio* did the Supreme Court make any pronouncement that the existence of a charge that carries with it a higher penalty renders nugatory the Information for violation of a law which carries a lower penalty.

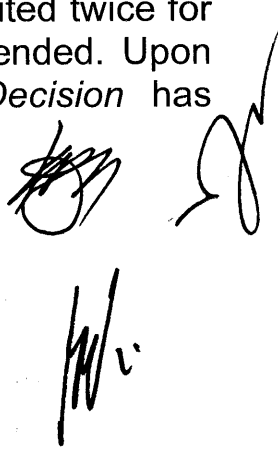
Following the express pronouncement of the Supreme Court in *Gelacio*, accused-appellant De Vela may not be prosecuted twice for violation of R.A. No. 6713 and R.A. No. 3019, as amended. Upon accused-appellant De Vela's acquittal, the *MeTC Decision* has

¹³² G.R. No. 209099-100, July 25, 2022.

¹³³ G.R. No. 250951 and 250958, August 10, 2022.

¹³⁴ Memorandum dated October 23, 2023 filed by the prosecution, p. 9. Rollo, p. 222.

¹³⁵ G.R. No. 198303, May 3, 2021.



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become immediately final, unappealable, and immediately executory upon its promulgation.¹³⁶

Accused appellant De Vela was arraigned, and while the records are bereft as to whether a plea was made, this was never raised by accused-appellant De Vela

Lastly, the records of the case show that accused-appellant De Vela was arraigned on April 14, 2015.¹³⁷ Notably, only a copy of the *MeTC Decision* is made part of the records in this case, and it does not contain any statement as to whether a valid plea was made. Under Section 1(b), Rule 116 of the *Revised Rules of Criminal Procedure*, “failure to enter of record the arraignment and plea shall not affect the validity of the proceedings.” Moreover, the validity of the plea was never raised by accused-appellant De Vela, and therefore, absent any reason in the records to raise doubt, the presumption of regularity in the performance of the official duties of the MeTC stands.¹³⁸

Accused-appellant was acquitted in the case before the MeTC

The MeTC rendered its *Decision* dated June 11, 2018, which acquitted accused-appellant De Vela of the charge of violation of Section 7(d) of R.A. No. 6713.

The first jeopardy has validly attached.

The first jeopardy was validly terminated

As discussed above, the case in the MeTC was validly terminated when the MeTC rendered its *Decision* dated June 1, 2018 acquitting accused-appellant of the charge of violation of Section 7(d) of R.A. No. 6713. A judgment of acquittal is immediately final, unappealable, and immediately executory upon its promulgation.¹³⁹

¹³⁶ People of the Philippines vs. Lino Alejandro Y Pimentel, G.R. No. 223099, January 11, 2018.

¹³⁷ Rollo, p. 138.

¹³⁸ People of the Philippines vs. Reyes, G.R. No. 199271, October 19, 2016.

¹³⁹ People of the Philippines vs. Lino Alejandro Y Pimentel, G.R. No. 223099, January 11, 2018.

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*The case pending in the RTC is
for the same criminal act and
intent*

Section 21, Article III of the 1987 Philippine Constitution states:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Generally, in the Philippine setting, a person may be charged and convicted for two or more offenses involving the same act, as long as there is a variance between the elements of the two (2) or more offenses charged.¹⁴⁰ However, Section 11 of R.A. No. 6713 expressly provides for the prosecution of crimes only under the statute which imposes a heavier penalty.

The language of Section 11, R.A. No. 6713 is clear. It states that “[i]f the violation is punishable by a heavier penalty under another law, [the offender] shall be prosecuted under the latter statute.” Otherwise stated, R.A. No. 6713 expressly proscribes two or more prosecutions for violations of this law and other laws with similar provisions.

Such proscription is applied by the Supreme Court in its more recent pronouncements, more particularly, in ***People of the Philippines vs. Hernando B. Perez***¹⁴¹ and ***People vs. Gelacio***.¹⁴²

In *Perez*, which was promulgated in 2021, the Supreme Court denied the *Petition for Review on Certiorari* filed by the Office of the Special Prosecutor of the Ombudsman, and found that the Sandiganbayan correctly applied Section 11, R.A. No. 6713 when it dismissed the Information against Perez for violation of Section 8, R.A. No. 6713 since there was another pending case for the same act, also before the Sandiganbayan, but the charge is falsification under the *Revised Penal Code*.

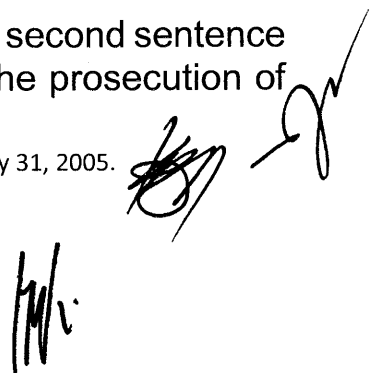
The Supreme Court further held in *Perez* that the second sentence of Section 11, R.A. No. 6713,¹⁴³ which “prescribes the prosecution of

¹⁴⁰ Andres S. Suero vs. People of the Philippines, et. al., G.R. No. 156408, January 31, 2005.

¹⁴¹ G.R. No. 198303, May 3, 2021.

¹⁴² G.R. Nos. 250951 and 250958, August 10, 2022.

¹⁴³ Section 11(a) of R.A. No. 6713 states:



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an accused under the statute imposing a heavier penalty not only pertains to the administrative liability under the first sentence but also to the criminal liability in the third sentence.”¹⁴⁴

Such interpretation of Section 11, R.A. No. 6713 is further reiterated by the Supreme Court in *Gelacio*, which was promulgated in 2022. The Court explained:

However, it must be pointed out that Sec. 11(a) of R.A. No. 6713 provides that if the violation under R.A. No. 6713 is punishable by a heavier penalty under another law, then the offender shall be prosecuted under the said statute. xxx

xxx

Verily, the statutory provision clearly states that if the violation of R.A. No. 6713 is punishable by a heavier penalty under another law, the offender shall be prosecuted under the latter statute. The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory, hence, the obligatory language of Sec. 11(a) of R.A. No. 6713 should have been observed and followed by the Sandiganbayan.

The Senate deliberations on Senate Bill No. 139, which eventually became R.A. No. 6713, show that the lawmakers intended to proscribe two or more prosecutions for violations of R.A. No. 6713 and of the other laws with similar provisions, to *wit*:

SENATOR GONZALES - Mr. President, some of the acts or omissions which are punishable under this bill are somehow covered already by the provisions of the Anti-Graft and Corrupt Practices Act and also the Revised Penal Code.

Is it my understanding then that a conviction or acquittal, and in a prosecution for violation of any of this provision would constitute a bar to another prosecution for the same offense punishable under the Anti-Graft and Corrupt Practices or the Revised Penal Code?

SENATOR SAGUISAG. I believe that this is a fair statement of my own personal opinion. (Emphases supplied)

"Section 11. Penalties. - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office."

¹⁴⁴ G.R. No. 198303, May 3, 2021.

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Thus, it is clear from the Senate deliberations that the lawmakers agreed that an accused may not be prosecuted twice for violation of R.A. No. 6713 and other laws, especially if the violation of other laws imposes a higher penalty, as in this case. Consequently, Sec. 11(a) of R.A. No. 6713 reflects that if the violation under R.A. No. 6713 is punishable by a heavier penalty under another law, the offender shall be prosecuted under the latter statute.

In this case, the Sandiganbayan should not have allowed accused appellant to be prosecuted for both Sec. 3(e) of R.A. No. 3019 and Sec. 7(d) of R.A. No. 6713 in view of the mandatory import of Sec. 11(a) of R.A. No. 6713. The Court notes that accused-appellant was charged under two separate Informations - one for Sec. 3(e) of R.A. No. 3019 and one for Sec. 7(d) of R.A. No. 6713 - which allege substantially the same facts and are identical to the other.

Article 8 of the *New Civil Code*¹⁴⁵ provides that “[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines. In ***Benjamin G. Ting vs. Carmen Velez-Ting***,¹⁴⁶ the Supreme Court explained that the interpretation of laws by Courts constitutes a part of the law as of the date the statute is enacted. Concomitantly, Article 22 of the *Revised Penal Code* provides that as a general rule, penal laws shall have a retroactive effect insofar as they favor the accused.¹⁴⁷

The *Gelacio* case interpreted the mandatory import of Section 11 of R.A. No. 6713, and declared that an accused cannot be charged and prosecuted twice for violation of R.A. No. 6713 and other laws. It likewise stated that in case where a violation of R.A. No. 6713 is also punishable by a heavier penalty under another law, the offender shall be prosecuted under the latter statute. It must be observed that the *Gelacio* case was decided by the Supreme Court in 2022, *after* the promulgation of the *RTC Decision* in Criminal Case No. 15-312913 on May 24, 2019, and the *MeTC Decision* in Criminal Case No. 47992-CR on June 1, 2018.

This pronouncement by the Supreme Court is favorable to accused-appellant De Vela, and considering that such interpretation

¹⁴⁵ An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 8 (1949).

¹⁴⁶ G.R. No. 166562, March 31, 2009.

¹⁴⁷ It states: “**Article 22. Retroactive effect of penal laws.** - Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.”

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forms part of R.A. No. 6713, this may be retroactively applied in his favor, absent any showing that he is not entitled thereto.

In this case, the allegations in the respective Information in both the MeTC and RTC stem from the same set of criminal acts impelled by the same intent, *i.e.* accused-appellant De Vela's demand, request and receipt of his percentage or share in the amount of ₱70,000.00 from FRCGE Trading as a precondition for the release of payment, in connection with the latter's complete delivery of duly inspected and verified various supplies and materials to Barangay 404, Zone 41, District IV, City of Manila covered by (i) *Disbursement Vouchers No. 2011-12-84* dated December 16, 2011, *2011-12-97* dated December 29, 2011 and *2012-01-03* dated January 26, 2012;¹⁴⁸ (ii) *Purchase Orders No. 2011-404-10, 2011-404-13 and 2011-404-14*;¹⁴⁹ and (iii) *Acceptance & Inspection Reports No. 2011-404-10 and 2011-404-13* both dated July 26, 2011, and *2011-404-14* dated December 15, 2011¹⁵⁰ Notably, the fact that the separate charges for violation of Section 7(d) of R.A. No. 6713 and Section 3(b) of R.A. No. 3019, as amended, stemmed from the same transactions is admitted by the prosecution¹⁵¹ and accused-appellant De Vela.¹⁵²

From the foregoing, there is no question that all the requisites for double jeopardy to attach are present in this case.

Notably, as compared to the penalty meted for violation of Section 7(b) of R.A. No. 6713,¹⁵³ the penalty imposed for violation of Section 3(b) of R.A. No. 3019,¹⁵⁴ as amended, is higher. Therefore, following

¹⁴⁸ Records, pp. 22-24.

¹⁴⁹ Records, pp. 16-18.

¹⁵⁰ Records, pp. 19-21.

¹⁵¹ Memorandum dated October 3, 2023 filed by the prosecution, p. 11.

¹⁵² Memorandum dated September 6, 2023 filed by accused-appellant De Vela, p. 6.

¹⁵³ Section 11(a) of R.A. No. 6713 provides:

"Section 11. Penalties. – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office." (Emphasis and underscoring supplied)

¹⁵⁴ Section 9 of R.A. No. 3019, as amended, provides:

Section 9. Penalties for violations. (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any

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the pronouncement in *Gelacio*, accused-appellant De Vela should have been prosecuted for the crime which carries a higher penalty, R.A. No. 3019, as amended.

However, what differentiates the instant case to the factual circumstance attendant in *Gelacio* is the fact that here, the MeTC case for violation of R.A. No. 6713, and for which accused-appellant De Vela has already been acquitted in 2018, has already attained finality. In *Gelacio*, both cases for violation of R.A. No. 3019, as amended and R.A. 6713 were jointly tried by the Sandiganbayan and specifically, the Decision was the subject of the appeal before the Supreme Court.

Having been validly acquitted in the MeTC case, accused-appellant De Vela may no longer be tried for the same act, coming from the same intent, this time before the RTC for violation of R.A. No. 3019, as amended, even if the latter should have been the case that proceeded since it imposes a higher penalty. As discussed above, the first jeopardy has already attached in the MeTC Decision. Absent any showing of the presence any of the exceptions, *i.e.*, that the MeTC acted with grave abuse of discretion, or that there was mistrial, such order of acquittal is final and unappealable on the ground of double jeopardy.¹⁵⁵

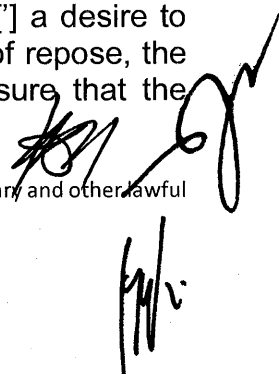
As a final note, accused-appellant De Vela, having been given a *not guilty* verdict for the crime of violation of Section 7(d) of R.A. No. 6713 by the MeTC, is entitled to the right of repose as a direct consequence of the finality of his acquittal.¹⁵⁶ In *Villareal vs. Aliga*, the Supreme Court eloquently explains the finality-of-acquittal doctrine as thus:

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "[p]art of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction.[]" The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "[r]epose,[]" a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the

prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income. xxx"

¹⁵⁵ *Castro vs. People of the Philippines*, G.R. No. 180832, July 23, 2008.

¹⁵⁶ *Dennis T. Villareal vs. Consueolo C. Aliga*, G.R. No. 166995, January 13, 2014.



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innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

xxx

People v. Court of Appeals (Fifteenth Div.) also stated:

x x x The finality-of-acquittal doctrine has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty. In *People v. Velasco*, we stressed that an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal x x x.

WHEREFORE, judgment is hereby rendered as follows:

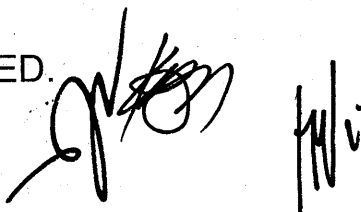
- a) Let the certified photocopy of the *Decision* dated June 1, 2018 of the Metropolitan Trial Court in Cities, Branch 11, City of Manila, attached to the copy of the expunged *Appellant's Brief* dated September 11, 2022 be reinstated and made part of the records of this case;
- b) The appeal of accused-appellant De Vela is **GRANTED**. The **Decision** dated May 24, 2019 of the Regional Trial Court, Branch 21, in the City of Manila, finding him guilty of *violation of Section 3(b) of the Anti- Graft and Corrupt Practices Act* is **REVERSED**, and Criminal Case No. 15-312913 is **DISMISSED** on the ground of double jeopardy; and
- c) The **Order** dated November 8, 2019 denying accused-appellant De Vela's *Motion for Reconsideration of the Decision dated May 24, 2019* is **REVERSED** on the ground of double jeopardy.

Let the cash bond posted by accused-appellant De Vela before the Regional Trial Court, Branch 21, City of Manila, in the amount of ₱30,000.00 for his provisional liberty under Official Receipt No. 3329672 dated March 17, 2015 be released to him or his duly authorized representative, subject to the usual accounting and auditing procedure.

Further, the *Hold Departure Order* issued against accused-appellant De Vela by reason of this case is hereby **LIFTED** and **SET ASIDE**.

Furnish a copy of this *Decision* to the Bureau of Immigration.

SO ORDERED.



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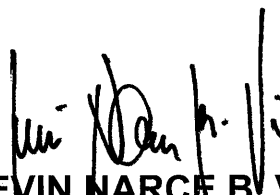
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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

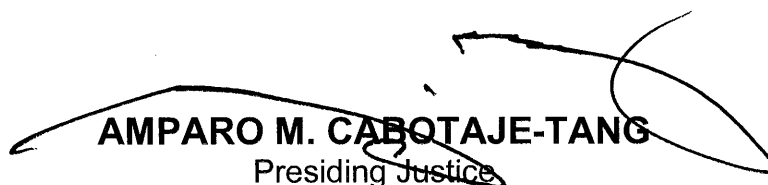
ATTESTATION

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


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice