



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-17-CRM-0482

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

- versus -

Present:

**AVELINO J. GUNGOB, SR.,
ROSALINA S. MAGLASANG,
LECELIE J. PLACIBE,**

Jol

**EVANGELINE M. PUAO,
CARLITO H. MAGLASANG,
FLORISA F. BAGASBAS,**

Jol

**MARILOU H. HERRERA,
SIEGFRIED G. CATALUÑA, and
MARILYN M. CASTILLO.**

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

Accused.

Promulgated:

February 16, 2024

X-----*Guerra*-----X

DECISION

LAGOS, J.:

Jol

Accused Avelino J. Gungob, Sr., then Mayor of the Municipality of Consolacion, Cebu, along with accused Rosalina S. Maglasang, Lecelie J. Placibe, Evangeline M. Pua, Carlito H. Maglasang, Florisa F. Bagasbas, Marilou H. Herrera, Siegfried G. Cataluña, also former officers of the same municipality, and accused private individual Marilyn M. Castillo, are charged with violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, in the Information¹ dated 13 January 2017, the accusatory portion of which reads:

¹ Records, Volume I, pp. 1-4

[Handwritten signature]

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fol “That on 27 June 2005, or sometime prior or subsequent thereto, in Consolacion, Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused AVELINO J. GUNGOB, SR., a public officer, being then the Municipal Mayor, ROSALINA S. MAGLASANG, a public officer, being then the Municipal Treasurer, LECELIE J. PLACIBE, a public officer, being then the Municipal Accountant, *fol* EVANGELINE M. PUAO, a public officer, being then the Municipal Agriculturist, CARLITO M. MAGLASANG, a public officer, being then the Municipal Engineer and a Member of the Bids and Awards Committee, FLORISA F. BAGASBAS, a public officer, being then the Municipal Social Welfare and Development Officer and Member of the Bids and Awards Committee, MARILOU M. HERRERA, a public officer, being then the Municipal Assessor and Member of the Bids and Awards Committee, and SIEGFRIED G. CATALUNA, a public officer, being then a Member of the Bids and Awards Committee, all of the Municipality of Consolacion, Cebu, in such capacity and committing the crime in relation to their office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused MARILYN M. CASTILLO, a private individual and with address at Consolacion, Cebu, with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally procure 166 bottles of liquid fertilizer at a price of 1,500 Philippine pesos per bottle from accused MARILYN M. CASTILLO, owner of MM Castillo General Merchandise, and pay for such procurement the total amount of 249,000 pesos, despite the fact that the fertilizer purchase was overpriced by 733% since the purchase price should have been 180 pesos per bottle only as found by the Commission on Audit, thus causing undue injury to the government in the amount of 219,120 pesos or the amount disallowed by the Commission on Audit, or giving unwarranted benefit, advantage or preference to MARILYN M. CASTILLO.

CONTRARY TO LAW.”

On 20 March 2017, the Court ordered the issuance of warrants of arrest against all the accused² and issued a Hold Departure Order against them.³

For their provisional liberty, accused Maglasang (Rosalina), Herrera, Bagasbas, Maglasang (Carlito), Puaol,⁴ Gungob,⁵ Cataluña,⁶ and Castillo⁷

² *Ibid.*, p. 140.

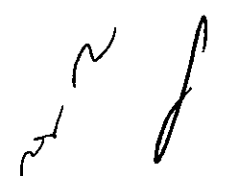
³ *Id.*, pp. 136-137.

⁴ On 23 March 2017 (*Id.*, p. 169; p. 176; p. 183; p. 191; p. 198).

⁵ On 6 April 2017 (*Id.*, p. 224).

⁶ On 11 May 2017 (*Id.*, p. 278).

⁷ On 17 April 2018 (Records, Volume II, p. 338).



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posted their respective cash bail bonds in the amount of Thirty Thousand Pesos (P30,000.00) each.

Upon their arraignment, accused Maglasang (Rosalina), Herrera, Bagasbas, Maglasang (Carlito), Puao,⁸ Gungob,⁹ Cataluña,¹⁰ and Castillo¹¹ all pleaded not guilty to the charge against them.

A Motion to Dismiss based on alleged violation of their right to speedy disposition of cases, dated 10 May 2017, was filed by accused Maglasang (Rosalina), Herrera, Bagasbas, Maglasang (Carlito), and Puao,¹² joined by accused Cataluña¹³ [all six accused shall hereinafter referred to as "MAGLASANG, et al."]¹⁴ and was also adopted by accused Gungob.¹⁴ The Court denied the motion in the Resolution dated 05 September 2017¹⁵ as well as the Motion for Reconsideration filed thereafter.¹⁶

As to accused Placibe, she posted bail on 27 December 2018¹⁷ but did not appear during the scheduled arraignment, for which she was ordered to explain.¹⁸ After failing to do so and to appear in court as ordered, her cash bail bond was cancelled and confiscated and the Court ordered the issuance of a warrant of arrest against her.¹⁹

Pre-trial was terminated and the Pre-Trial Order was issued on 21 September 2018, where the identity of the accused and the jurisdiction of the Court were admitted, among other matters.²⁰ Thereafter, trial ensued.

Antecedents

The case stems from the Complaint-Affidavit²¹ dated 8 May 2014, filed before the Office of the Ombudsman (OMB) against herein accused for the purchase of 166 bottles of liquid organic fertilizer in the total amount of Php249,000.00. The complaint, supported by documents from the Commission on Audit (COA) Region VII, such as the Audit Observation

⁸ On 17 April 2017 (Records, Volume I, pp. 244-245).

⁹ On 9 May 2017 (*Id.*, p. 269).

¹⁰ On 13 June 2017 (Records, Volume II, p. 184).

¹¹ On 4 May 2018 (*Id.*, p. 366)

¹² Records, Volume I, pp. 284-308

¹³ Records, Volume II, p. 185.

¹⁴ *Id.*, pp. 201-203

¹⁵ *Id.*, pp. 240-246.

¹⁶ *Id.*, pp. 240-246

¹⁷ Records, Volume III, p. 23

¹⁸ *Id.*, p. 32.

¹⁹ *Id.*, p. 83.

²⁰ Records, Volume II, pp. 439-448

²¹ Records, Volume I, pp. 18-36

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Memorandum (AOM) dated 8 December 2005 and Inspection Report dated 1 December 2005, disclose that the purchase of Ferty-King Fertilizer from MM Castillo Gen. Merchandise was excessive by Php219,120.00, or 733% of the canvassed price of liquid fertilizers at Php180.00 per liter. This was followed by the issuance of a Notice of Disallowance (ND) on 4 July 2005.

In his counter-affidavit,²² Gungob stated that his responsibility for the purchase of the fertilizer is only for the approval of the payment thereof which is a ministerial duty, based on his reliance on the certifications and recommendations made by his subordinate municipal officers. He also claimed that, upon the issuance of the relevant AOM and ND, he ordered the BAC members to demand the return of the excess amount from MM Castillo Gen. Merchandise, otherwise, said officers must reimburse the municipality.

Accused Maglasang (Carlito), Maglasang (Rosalina), Bagasbas, Herrera, and Puao stated in their counter-affidavit²³ that Mayor Gungob instructed Puao, Municipal Agriculturist, to prepare the documents needed for the receipt of a Php500,000.00 grant for fertilizer from Department of Agriculture (DA) Regional Office VII; that Municipal Treasurer, R. Maglasang certified that funds were available due to the municipality's receipt of Php250,000.00 as first tranche from the DA, and; that the Bids and Awards Committee (BAC) conducted public bidding for which a Single Calculated and Responsive Bid was entered in favor of the single responsive bid of MM Castillo General Merchandise for the supply of the fertilizers.

The OMB, in its Resolution²⁴ dated 3 October 2016, found probable cause to charge herein accused with violation of Section 3(e) of R.A. No. 3019. Thereafter, the corresponding Information was filed on 13 January 2017 against herein accused, docketed as SB-17-CRM-0482.

Prosecution Evidence

The prosecution's first witnesses, **Lita C. Lamparas**, is a State Auditor of the COA Region VII in Cebu City. She stated in her Judicial Affidavit (JA)²⁵ that she was the Audit Team Leader who reviewed the AOM, prepared the Annual Audit Report of the Municipality of Consolacion, and transmitted the Notice of Disallowance to the municipality, all relevant documents to this case, which she identified. During her *direct examination* in court,²⁶ Lamparas confirmed the veracity of the statements in her JA except for question No. 3,

²² Dated 29 December 2014 (*Ibid.*, pp. 48-56)

²³ Dated 29 December 2014 (*Id.*, pp. 128-132)

²⁴ Records, Vol. I, pp. 37-45

²⁵ Dated 23 January 2019 (Records, Vol. III, pp. 55-76)

²⁶ TSN dated 30 January 2019

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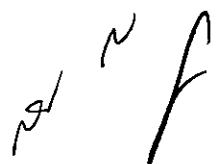
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which she clarified by stating that the correct date of the AOM should be 8 December 2005, and that the correct attachment is the AOM dated 8 December 2005 marked as "Exhibit E."

During her *cross-examination*, first with defense counsel Atty. Juanito R. Lim, Jr. (for accused Gungob), the witness confirmed that it was one of her team members, Romuelda Lagunay, who prepared the AOM marked as Exhibit "E." Lamparas also affirmed that the basis of the Annual Report, marked as Exhibit "A" is the AOM and the Inspection Report. She then explained that despite the fact that the basis of their AOM was an unauthorized Inspection Report, she still signed the said AOM because the report in question is one from the agency (Acceptance and Inspection Report of the Municipality of Consolacion, Cebu). However, the witness confirmed that the Inspection Report was not signed by the authorized signatories. The witness maintained that the disbursement voucher, Allotment and Obligation Slip (ALOBS), Acceptance and Inspection Report and the BID documents were the supporting instruments she reviewed when she approved the AOM 2005-01. As to the Notice of Disallowance, she stated that one of the audit team members personally transmitted copies thereof to the accused.

In the *cross-examination* by defense counsel Atty. Diana A. Velasco (for accused Maglasang et al.), Lamparas confirmed that she requested the prosecution to amend or modify her Judicial Affidavit, but also stated she did not prepare any modified, supplemental, or amended Judicial Affidavit. She reiterated that the Inspection Report, disbursement voucher and its supporting documents were the basis in conducting a review of AOM 2005-01, but the said documents are not part of her Judicial Affidavit. She also affirmed that she was the only one who reviewed the AOM, and that this document came from the audit team. As regards the inspection report, Lamparas confirmed that she did not require the inspector to present canvass sheets or price quotations in relation to the canvass of fertilizers. She admitted that she merely relied on the statements mentioned in the Inspection Report without confirming whether these statements were true and correct. She affirmed that she did not require the inspector to submit proof that the two suppliers, Pacifica Agrivet and Farmer's Trade, had sufficient stocks available to meet the requirements of the municipality, as well as contract terms. Likewise, she did not require the canvass of other kinds of fertilizer. Additionally, Lamparas stated that accused R. Maglasang, Pua, C. Maglasang, Bagasbas, Cataluña and Marilou did not receive a copy of the subject AOM. She also admitted not having personal knowledge as to the receipt by the said accused of the Notice of Disallowance, only that they affixed their signatures in the receiving copy, indicating receipt by them. The witness said that she is familiar with the signature of R. Maglasang.



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In the *cross-examination* by defense counsel Atty. Eugene Rodriguez (for accused Castillo), Lamparas confirmed that there is no signature indicating receipt by MM Castillo General Merchandise of the Notice of Disallowance, which was sent through registered mail. Lamparas maintained that she reviewed the subject AOM before answering the questions in her Judicial Affidavit, and before signing it, but explained that she missed reviewing the dates due to typographical error.

In the *re-direct examination*, Lamparas clarified that she is aware of R. Maglasang's receipt of the AOM. She stated that the same accused was not able to file her comment on the AOM.

The second witness, **Engr. Nilo Confessor**, is a Technical Audit Specialist of the COA Regional Office 7 in Cebu City. In his Judicial Affidavit,²⁷ he stated that he prepared the Inspection Report relative to the purchase of the subject fertilizer, which he identified. During his presentation in court, he confirmed the veracity of the statements in his JA, which was adopted as his *direct testimony*.²⁸

During the *cross-examination* by Atty. Lim, Confessor explained that he conducted the inspection through the written request of Unit Auditor Lita Lamparas assigned at the Municipality of Consolacion, Cebu. The witness confirmed that he personally conducted the canvassing with Pacifica Agrivet Supply and Farmers Trade (both accredited by the Fertilizer and Pesticide Authority or FPA) for fertilizer brand Algaper LPF Plus one (1) liter, and attached this canvass together with the Inspection Report. But Confessor explained that he did not attach the canvass made before Pacifica Agrivet Supply and Farmers Trade, nor did he canvass other fertilizer brands. He also clarified that the brand is not available in the market during that time. The witness stated that he made a locator's slip for doing the canvassing in Cebu City which serves as proof that he tried to do a canvass for the brand Ferty-King, the fertilizer subject of this case. He also stated that through conversations with the suppliers Pacifica Agrivet Supply and Farmers Trade, he concluded that they have enough supply of Algaper LPF Plus fertilizer. Confessor asserted that Algaper LPF Plus and Ferty-King fertilizer have almost the same macronutrient composition, with Algaper LPF Plus being the superior brand based on the laboratory test conducted by the Bureau of Soils. He maintained that the specification on the label of Ferty-King fertilizer is the one they used on Table No. 3 of the Inspection Report, and the same thing goes for Algaper fertilizer where it is also found on its label. The witness cannot answer if indeed excessive amount of nitrogen is disastrous to plants (in relation to Algaper's components). Confessor stated that he does not have the names of the point persons he interviewed in the stores of Pacifica Agrivet

²⁷ Dated 9 January 2019 (Records, Vol. III, pp. 33-43)

²⁸ TSN dated 30 January 2019

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Supply and Farmers Trade but their names and signatures were in the signed notations from them. The witness does not know if both Pacific Agrivet Supply and Farmers Trade provide logistical services for bulk orders, where Algaper LPF Plus and Ferty-King fertilizer are produced, and how long is Algaper LPF Plus available in the market.

In the *cross-examination* of Confessor by Atty. Velasco, the witness apologized for the clerical error in his Judicial Affidavit where the year indicated therein was 2018 but he signed the same on 9 January 2019. He then confirmed his findings and observations in his Inspection Report that the delivery of Ferty-King was in good order and condition. He also affirmed that the said fertilizer was of good quality, in accordance with the specification. Confessor clarified that their issue only was the reasonableness of its price. He maintained that he merely relied on the information given by Pacifica Agrivet Supply and Farmers Trade, and that he checked with the fertilizer prices of other suppliers in the area but they did not give a quotation, and he no longer included this information in his Inspection Report. Confessor did not know at that time if both Pacifica Agrivet Supply and Farmers Trade participated in the subject public bidding, and that he did not know that it was only MM Castillo who participated therein. The witness stated that he is not familiar with COA Memorandum No. 97-012 dated 31 March 1997 or the guidelines to support audit findings of overpricing. He then affirmed that his Inspection Report has no attached canvass sheet or price quotation, and that the said report does not show if indeed Pacifica Agrivet Supply and Farmers Trade had sufficient fertilizer stocks available at that time to be supplied to the Municipality of Consolacion, Cebu. Confessor also affirmed that his Inspection Report does not mention contract terms of Pacifica Agrivet Supply and Farmers Trade with respect to their possible distribution or sale of fertilizer to the subject municipality. The witness confirmed that the qualitative examination result (of Bureau of Soils) is not appended to his Inspection Report. He further stated that there was a quantitative examination conducted on Algaper but was not indicated in his report. Confessor then mentioned that the test results of the Bureau of Soils is relevant but he did not retain a copy; instead, a copy of said test results was submitted to the Auditor.

In the *cross-examination* by Atty. Rodriguez, Confessor admitted that he was not personally present when the Bureau of Soils conducted its tests nor does he know the type of tests conducted. He also confirmed that he did not reflect in his Inspection Report that Algaper LPF Plus or a sample thereof was submitted to the Bureau of Soils. The witness then affirmed that the basis of his comparison of Ferty-King fertilizer and Algaper LPF Plus was the macronutrient composition, and that he does not know the environmental impact of Ferty-King fertilizer as compared to the environmental impact of Algaper LPF Plus because he did not consider it in his comparison. He

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likewise affirmed that he did not consider the effectiveness of Ferty-King as a fertilizer as against Algaper.

The third witness, **Romuela Omboy Lagunay**, is a State Auditor of the COA Region VII and was an Audit Team Member of witness Lamparas in 2005. In her Judicial Affidavit,²⁹ she stated that she prepared the Audit Observation Memorandum relative to the purchase of the subject fertilizer, which she identified, along with the Annual Audit Report earlier identified by Lamparas and the subject Disbursement Voucher which she examined. She also claimed therein that she suggested to the Audit Team Leader the inspection of the procured fertilizers by the COA Technical Inspector. During her presentation in court, she confirmed the veracity of the statements in her JA, which served as her *direct testimony*.³⁰

In the *cross-examination* by defense counsel Atty. Velasco, the witness confirmed that she was the person who prepared the Audit Observation Memorandum (AOM) dated 8 December 2005. She testified that her name is not indicated in the said AOM but her signature is included. Lagunay also confirmed that the AOM and the Annual Audit Report were based on the Inspection Report prepared by Engr. Nilo Confessor. She mentioned that other than the abovementioned report, she used supporting papers such as Official Receipts of MM Castillo as her basis for the AOM. Moreover, Lagunay affirmed that she based her observation mainly on the Inspection Report and that she had no participation in the preparation thereof. The witness maintained that she is familiar with the rules, guidelines and circulars of the COA on the audit on matters relating to overpricing. She also explained that although there was a canvass sheet, such document was not attached to the Inspection Report. Lagunay also confirmed that she did not request from Engr. Confessor that the canvass sheet and the price quotation be attached to the Inspection Report, and that she relied only on his report. She then affirmed that there is no information in the Inspection Report which relates to possible contract terms of Pacifica Agrivet and Farmers Trade. She further clarified that since Engr. Confessor was the person who issued the Inspection Report, she assumed that he was responsible to determine if there was enough supply. Lagunay maintained that a copy of the AOM was served upon Rosalina Maglasang at her office in the Municipality of Consolacion, as evidenced by the latter's signature. Lagunay testified that there was a reply to the AOM coming from accused R. Maglasang, but she said this information is not reflected in the witness' Judicial Affidavit. She also affirmed that the same AOM was not served and received by accused Herrera, Bagasbas, Carlito Maglasang, Puaao, and Cataluña. Lagunay further stated that the Inspection and Acceptance Report is required as an important supporting document

²⁹ Dated 11 March 2019 (Records, Vol. III, pp. 107-127)

³⁰ TSN dated 3 April 2019

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before payment of the transaction, but that there was no compliance on the part of the abovementioned accused.

In the *cross-examination* by defense counsel Atty. Lim, Lagunay affirmed that there is no way for a third person such as accused Gungob to identify that it was her who prepared the AOM in question. She then clarified that the subject AOM was received by the Accounting Office but since it is addressed to the Municipal Mayor, it has been submitted to the latter's office. She further explained that she did not bother to ask as to the other attachments of the Inspection Report because as a team member, the preparation of the AOM is still subject to review and approval of the Team Leader, Lamparas. The witness narrated that she requested an inspection because she had no idea with regard to price reasonableness and the exact specification of the fertilizer procured. Lagunay stated that she also needed to examine other supporting documents such as the Disbursement Voucher and the Official Receipt. The witness also explained that it was their usual procedure to examine the Inspection Report and the result of the Price Reasonableness Evaluation of the engineer. She stated that the help she extended was in the preparation of the Draft Audit Report, even though her signature was not on the said document since it only requires the signature of the Audit Team Leader.

In the *cross-examination* done by defense counsel Atty. Rodriguez, Lagunay confirmed that there was a written document showing that it was Auditor Lamparas who instructed Engr. Confessor to conduct the technical inspection. She also admitted that she has no personal knowledge that Engr. Confessor actually conducted the canvassing of the fertilizers. The witness also answered that it was not the name MM Castillo that prompted her to request for an inspection, and that she has no reasons whatsoever to say that MM Castillo was a reason for conducting an inspection.

As to the witness **Roy Lope Ursal**, Regional Legal and Adjudication Director of the COA Region VII during the time material to this case, the parties stipulated as to the existence and due execution of the Notice of Disallowance No. 2005-002-100, which Ursal personally issued.³¹

As to the witness **Alejandro Porlas Borden**, former Graft Investigation Officer of the Field Investigation Office of the OMB-Visayas, the parties agreed to stipulate that, among others, he will testify that the following documents were used as the basis for the complaint-affidavit: (1) Audit Report dated 2 May 2014; (2) Notice of Disallowance No. 2005-002-100; (3) AOM No. 2005-01-2005; (4) Inspection Report dated 1 December 2005 of the COA Technical Services Office; and (5) the Disbursement Voucher No. 401-0506-

³¹ Order dated 13 August 2019 (Records, Vol. III, p. 328)

109, subject to counter-stipulation that he does not have personal knowledge as to the authenticity and due execution of the foregoing documents.³²

The prosecution’s formal offer of evidence³³ consists of the following:

Exhibits	Description
“A” “A-1” “A-2”	Original Copy of the Annual Audit Report of Consolacion, Cebu for the Year Ended December 31, 2005 consisting of forty (40) pages, with annexes.
“B” “B-1”	Certified True Copy of the Inspection Report dated December 1, 2005 consisting of four (4) pages.
“E” “E-1” “E-2”	Certified True Copy from Original of the Audit Observation Memorandum (AOM) No. 2005-01, dated December 8, 2005 issued by Lita C. Lamparas, State Auditor III, Audit Team Leader 8, consisting of three (3) pages.
“F” “F-1”	Certified True Copy of the Notice of Disallowance No. 2005-002-100 (2005) L2-06-18-020, dated July 4, 2006 consisting of two (2) pages.
“G”	Certified True Copy of Disbursement Voucher No. 401-0506109, dated June 27, 2005 with attachments.
Additional Exhibit³⁴	
“I to I-12” “I-a to I-b” “I-1-a” “I-4-a” “I-8-a” “I-12-a”	Original Copy of the Complaint-Affidavit submitted by defense witness Praxedes Cuyos and fourteen (14) other complainants in OMB-V-A-06-0352-F filed with the Office of the Ombudsman for the Visayas regarding the purchase of 166 bottles of liquid organic fertilizer, consisting of thirteen (13) pages.

After the accused filed their comment/opposition,³⁵ the Court admitted all the evidence formally offered by the prosecution.³⁶

³² Order dated 23 October 2019 (Records, Vol. III, pp. 419-421)
³³ Records Vol. IV, pp. 210-287
³⁴ Records, Vol. V, pp. 503-518
³⁵ Records, Vol. IV, pp. 407-411; 202-209
³⁶ Resolution dated 9 March 2022, *Id.*, pp. 300-305

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Later in the trial, during the presentation of defense witness Praxedes Cuyos, the prosecution sub-marked several of the witness's documents and afterwards formally offered the same. Court resolved to admit the prosecution's additional evidence.³⁷

Thereafter, accused Gungob,³⁸ Maglasang et al,³⁹ and Castillo⁴⁰ filed their respective Motions for Leave of Court to File Demurrer to Evidence, which the Court denied.⁴¹

Defense Evidence

The first witness presented by the defense was accused **Avelino J. Gungob, Sr.**, former mayor of Consolacion, Cebu. In his Judicial Affidavit, he maintained that he relied on the recommendations of the BAC and certifications of other municipal officers in authorizing the payment of the subject fertilizers. He identified documents previously presented by the prosecution and his Counter-Affidavit submitted before the OMB. This served as his *direct testimony*, which his co-accused also adopted during his presentation in court.⁴² The prosecution agreed to stipulate as to genuineness and due execution of the attachments in his JA.

On *cross-examination*, the prosecution was able to confirm that the accused indeed signed the Disbursement Voucher; that he relied on the recommendations of the BAC members; that he did not ask the signatories (co-accused) regarding the documents presented to him along with the Disbursement Voucher; that he did not personally determine the truthfulness of the Certifications in the Disbursement Voucher and signed the document upon seeing the signatures of the of the other signatories; that he did not examine the quality of the liquid fertilizers delivered; that as the final approving authority, he was obligated to ascertain the truthfulness of the presentations made by the BAC, the Accountant, the Treasurer, and Agriculturist and had the power to intervene at any stage of the bidding process but chose not to; that he received the Notice of Disallowance and the Audit Observation Memoranda from COA. The prosecution also showed that based on the accused Gungob's Counter Affidavit submitted to the Ombudsman, the accused was fully aware of the Audit Observation Memorandum and the Notice of Disallowance which COA issued and also order that the BAC members demand the reimbursement of the amount paid

³⁷ *Id.*, pp. 249-252

³⁸ Records, Vol. IV, pp. 343-347

³⁹ *Id.*, pp. 354-357

⁴⁰ *Id.*, pp. 360-377

⁴¹ *Resolution* dated 22 April 2022, *Id.*, pp. 481-486

⁴² TSN dated 23 June 2022

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to MM Castillo Gen. Merchandise and that should MM Castillo Gen. Merchandise fail to return the amount, the persons responsible for the release of funds would be made to pay; that accused called the attention of the Municipal Officers responsible for the irregularity in the release of the funds and that they demand reimbursement from MM Castillo Gen. Merchandise otherwise they will have to pay the Municipality back; that he was not remiss on his duties of reminding the responsible officers to demand reimbursement; and that as far as he knew, no payment was ever made.

On *re-direct examination*, the defense tried to show that the accused relied on the BAC members because he trusted them because they were respected individuals in their town; that he did not inquire about MM Castillo Gen. Merchandise because it was the BAC members who knew the proceedings; that as the Mayor, his job was only ministerial; that he instructed the members of the BAC to get the reimbursement from MM Castillo Gen. Merchandise; that his only participation the whole process was being the Mayor; and that before signing the Disbursement Voucher the other officers should have certified the same.

The next witness was **Evangeline M. Puao**, former Municipal Agriculturist of Consolacion, Cebu. In her Judicial Affidavit,⁴³ she maintained that Mayor Gungob instructed her to prepare the required documents for the financial grant from the DA Region VII, and detailed what transpired before, during, and after the procurement of the subject fertilizer. Her JA was adopted as her *direct testimony*.⁴⁴

During the prosecution's *cross-examination*, she confirmed that the project proposal was prepared by the witness upon the instruction of Mayor Gungob; that the program of works and the purchase request was also prepared by the witness because there was already a release of funds from the Department of Agriculture; that she was specifically instructed by Mayor Gungob to indicate in the program of work that the price estimate for the liquid fertilizer be One Thousand Five Hundred Pesos (Php1,500.00) per bottle; that in her mind said price was too expensive; that she has worked for the Department of Agriculture as an agriculturist and was even appointed as Municipal Agriculture Officer in their area and was the President of the Municipal Agriculture Officers in Region 7; that she was the recipient of awards making her capable of providing assistance and support in all things agriculture; that when she mentioned the price was too expensive to the Mayor, she was instructed to just comply with his instructions.

When witness Puao was questioned by Atty. Lim (for accused Gungob) if she was a member of the BAC, witness said she was a part of the end users

⁴³ Dated 29 June 2022 (Records, Vol. IV, pp. 124-154)

⁴⁴ TSN dated 12 July 2022

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or the implementing office. Atty. Lim, showed that the witness was the department head; that she could not recall if someone was with them when she expressed her concern about the price with the Mayor; that the aggregate amount of the budget was Five Hundred Thousand Pesos; that the 500,000 pesos came in tranches; that the second tranche of 250,000 did not arrive because the first tranche was subject to liquidation and the submission of documents; that for this particular project/item, there was only one bidder.

In a *clarificatory question*, the Court asked the witness what her basis was for telling the Mayor that the price was too expensive, the witness answered “because some other utilities are commercial and synthetic it is lower than the price, but since the Mayor said that it is an organic fertilizer and it is not locally available, so, I just followed his instruction”. Further asked if she thought the price of 1000 was expensive and her reply was “yes”.

The next witness was **Rosalina Sanchez Maglasang**, former Municipal Treasurer. In her Judicial Affidavit⁴⁵ she relayed about the receipt of the check from DA Region VII as first tranche for the fertilizer grant and her corresponding issuance of official receipt and, subsequently, her certification as to availability of cash. Her JA was adopted by all parties as her *direct testimony* except for Question 21, which she was not competent to answer.⁴⁶

On *cross-examination* by the Prosecution, witness was asked to clarify her answer to Question 20, about the COA post audit. The witness said that at the time she certified the availability of the funds, there was no COA findings of any irregularities or overpricing because the allegation only came out after the COA post audit.

Another witness was **Marilou H. Herrera**, Municipal Assessor. In her Judicial Affidavit⁴⁷ she provided details regarding the public bidding and other procedures relative to the procurement of the subject fertilizer. Her JA was adopted as her *direct testimony*, subject to cross examination of Atty. Lim and Atty. Rodriquez.⁴⁸

During the prosecution’s *cross-examination*, it was confirmed that she started working for the LGU of Consolacion, Cebu in July 1, 1992, that she was appointed Municipal Assessor of Consolacion, Cebu in January 2004, that she was assigned as BAC Chairman in 2005; that the procurement of the liquid fertilizer was single calculated, lowest calculated; that the procurement was done through a public bidding and that the Secretariat of the Sanggunian

⁴⁵ Dated 29 June 2022 (Records, Vol. IV, pp. 101-109)

⁴⁶ TSN dated 12 July 2022

⁴⁷ Dated 29 June 2022 (Records, Vol. IV, pp. 110-123)

⁴⁸ TSN dated 12 July 2022

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issued a certificate that the Mayor was not authorized to enter into a negotiated purchase with MM Castillo.

On the *cross-examination* of Atty. Lim, witness was asked if the BAC was an independent body as far as the bidding process was concerned and the witness answered in the affirmative. Witness was asked that during her stay as Chairman of the BAC, did she ever receive any information that there might have been overpricing and irregularities and she received any demand, Ms. Herrera replied “not all, Sir”. Atty Lim tried to show that aside from signing and submitting to the BAC the approved program of work, the Mayor had no participation in the bidding process.

Atty. Velasco on *re-direct examination* asked the witness who awards the project to the bidder or bidders to which Ms. Herrera said that it was Mayor Gungob as Head of the Procuring Entity approves and issues the Notice of Awards, the Notice to Proceed, and other documents. Asked why the BAC could not do it, she said that the BAC was only a recommendatory body. Asked who approves the recommendation of the BAC, the witness answered that within 10 days the Mayor approves does whatever with the recommendation.

On *re-cross-examination*, it was shown that the BAC was the one who approved or recommended the award to Mayor Gungob.

The next witness was **Dahlia L. Dela Fuente**, a former BAC Clerk who, in her Judicial Affidavit,⁴⁹ relayed about the BAC Logbook in relation to the public bidding in question. Her JA was adopted as her *direct testimony*. During the witness’ *cross-examination*, the witness admitted that she does not have personal knowledge of the alleged overpricing of the fertilizers and confirmed that there was no mention of overpricing in her JA. She asserted that her duties were not limited to the logbook as her line of work includes release of bid forms and preparation of purchase orders.⁵⁰

The next witness was **Loida B. Baguion**, former Agricultural Technologist at the Consolacion Municipal Agriculture Office. The prosecution objected to her presentation on the ground of irrelevance and immateriality, as she would be testifying on the distribution of the fertilizers and not the alleged overpricing. The witness was excused with the stipulation that the fertilizers were distributed and that she had no knowledge of the overpricing.⁵¹

⁴⁹ Dated 22 August 2022 (Records, Vol. IV, p. 267-274)

⁵⁰ TSN date 22 September 2022

⁵¹ Order dated 22 September 2022

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Another witness was **Praxedes J. Cuyos**, a resident of Consolacion, Cebu and among the complainants before OMB-Visayas against former mayor Gungob in relation to, among others, the procurement of the 166 bottles of liquid organic fertilizers. In her Judicial Affidavit,⁵² she made clear that she, together with other residents, initiated the complaint only against Gungob, without intending to implead other municipal officers *i.e.*, Maglasang, et al. and identified the Affidavit she executed containing statements favorable to the latter accused. Her JA was adopted as her *direct testimony*, except for Questions 8 and 10 and the respective answers for being irrelevant.⁵³

Due to the lack of interpreter, the cross-examination of Atty. Lim was not concluded, and later on, the parties agreed that the oral testimony of Cuyos shall remain on record as against the prosecution, without prejudice to accused Gungob who was not given the opportunity to cross examine the witness.⁵⁴

The last witness was accused private individual **Marilyn Castillo**, proprietor of MM Castillo Gen. Merchandise, which supplied the 166 bottles of fertilizer under question. In her Judicial Affidavit,⁵⁵ Castillo explained the circumstances surrounding her business, including the supply of the subject fertilizers, and identified documents pertaining to her and MM Castillo Gen. Merchandise such as certificates from the Department of Agriculture and Department of Budget and Management. The defense adopted her JA as her *direct testimony*.⁵⁶

During the prosecution's *cross-examination*, it was shown that there were no supporting documents that the witness was already licensed to operate her business in June 2005; that from her Judicial Affidavit and attachments, she was not an exclusive distributor of the liquid fertilizers in Region 7; that she is no longer supplying Good Earth Organic Fertilizer and is now in the construction industry; that the indicated address for her business, No. 8G Doña Pacita St., Villa Beatriz Subdivision, Old Balara, Quezon City, is no longer used as her warehouse; that despite her claim that she had permits to operate such address as warehouse, she did not provide any documents to support this; that despite her claims of being authorized to participate in the bidding and securing the contract, she did not attach or show any evidence to that effect; that she was not a licensed operator for the business of supplying Good Earth Organic Fertilizer; that she did not have an office in Cebu; that despite her claim of submitting a price quotation, she did not attach it to her Judicial Affidavit.

⁵² Records, Vol. V, pp. 302-312

⁵³ TSN 29 November 2022

⁵⁴ Order dated 28 February 2023 (Records, Vol. V, p.447)

⁵⁵ Records, Vol. V, pp. 456-468

⁵⁶ TSN 23 May 2023

On *re-direct examination* of Atty. Angelo Raphael Del Mundo, the witness was asked why she did not attach certificates related to the incident and to confirm whether she already had a license from the Department of Agriculture as an area distributor of the fertilizers and that the Doña Pacita address was certified as a warehouse. The witness said that when she transferred from that address to Santras Building Capitol Plaza, she was not able to get all the papers and documents because of the volume. The witness was asked about her eligibility to place bids for the transaction; if she was certified even prior to 2006 and if her DBM eligibility prior to 2006 was also lost. The witness replied that she renewed her eligibility with DBM and that she gave the certificates to Atty. Del Mundo.

On *re-cross examination* by the prosecution, the witness was asked if all the documents attached were the only documents she had, Castillo said that she had the complete documents but she could no longer remember because in 2005 she transferred from the Doña Pacita address to the Santras building and that she has switched from the fertilizer business to construction. The witness was asked if she exerted any effort to get the additional documents since they were coming from government offices and the witness said that the documents she has are the only ones she was able to obtain.

In a *clarificatory question* from the Court, she was asked if it was the only transaction she had with the Municipality of Consolacion, the witness answered that she had transactions in Cebu, Leyte, and Mindoro. Asked further if it were for the same liquid fertilizer and if it was of the same price, she answered affirmatively. Asked if she had any proof, the witness answered that she did not at the moment, and continued “*na dismiss na [y]ung sa Leyte.*” The Court said it was not being asked, but questioned why another case was filed against her and replied that it was only with Leyte which is already finished.

The defense formally offered their evidence as follows:

For Gungob:⁵⁷

Exhibits	Description
“1-Gungob”	Ombudsman “Resolution” dated 3 October 2016.
“2-Gungob” and “2-a-Gungob”	“Counter-Affidavit” of accused dated 29 December 2014 and accused’s signature.
“3-Gungob”	COA Letter dated 19 August 2013 (re: Result of the Fact-Finding Investigation on the purchase of

⁵⁷ Records, Vol. VI, pp. 5-113

	166 Bottles of Liquid Organic Fertilizer Amounting to Php237,229.03, consisting of 4 pages.
"4-Gungob"	COA "Notice of Disallowance" dated 4 July 2006.
"5-Gungob" and "5-a-Gungob"	"Audit Observation Memorandum" dated 8 December 2005.
"6-Gungob"	COA "Inspection Report" dated 1 December 2005.
"7-Gungob" and "7-a-Gungob"	"Disbursement Voucher" and accused's signature.

For Maglasang et al.⁵⁸

Exhibits	Description
"1-Maglasang, et al."	Respondents Rosalina S. Maglasang, Evangeline M. Pua, Carlito H. Maglasang, Florisa F. Bagasbas, Marilou H. Herrera's Counter-Affidavit in OMB-V-C-14-0485 and MON-V-A-14-0342, consisting of 8 pages, inclusive of annexes.
"2-Maglasang, et al."	Official Receipt No. 7892827 issued in the name of the Department of Agriculture (DA) Region VII, Cebu City, in the amount of Php250,000.00.
"3-Maglasang, et al."	Affidavit of Praxedes Cuyos dated 10 June 2016.
"4-Maglasang, et al."	Affidavit of Dahlia L. Dela Fuente dated 10 June 2016.
"5-Maglasang, et al."	Joint Affidavit of Loida Baguion and Margaret Rose O. Congson dated 10 June 2016.
"6-Maglasang, et al."	Certified true copy of the specific page in the logbook of the Bids and Awards Committee

⁵⁸ *Id.*, pp. 147-169

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	(BAC) – Consolacion, pertaining to the. June 23, 2005 bidding.
“7-Maglasang, et al.” And “7-A-Maglasang, et al.”	Certification from the Office of the Sangguniang Bayan of the Municipality of Consolacion to the effect that based on available records on file, no Resolution was passed in the year 2005, specifically authorizing the former Mayor, Avelino J. Gungob, Sr., to enter into a Negotiated Purchase with MM Castillo General Merchandise in connection with the purchase of liquid fertilizers on or about 27 June 2005; Official Receipt No. 14639172 dated 31 March 2017 amounting to Php115.00.
“8-Maglasang, et al.” and “9-Maglasang, et al.”	List of Candidates for Farmers Scientist Training Program Graduation and the corresponding Attendance Sheets.

For Castillo:⁵⁹

Exhibits	Description
“1-Castillo” “1-a-Castillo” and “1-b-Castillo”	Certificate of Eligibility issued by the Department of Budget and Management.
“2-Castillo”	Certificate issued by the Fertilizer and Pesticide Authority of the Department of Agriculture.
“3-Castillo”	Certificate issued by the Fertilizer and Pesticide Authority of the Department of Agriculture.
“4-Castillo”	Certificate of Eligibility issued by the Department of Agriculture.
“5-Castillo”	Certificate issued by Good Earth Technologies, Inc.

⁵⁹ Records, Vol. V, pp. 487-498

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After the prosecution submitted its comment/opposition,⁶⁰ the Court, in the Resolution⁶¹ dated 27 June 2023, admitted all the foregoing exhibits of the accused.

Upon filing by the prosecution,⁶² Gungob,⁶³ Maglasang, et al.,⁶⁴ and Castillo⁶⁵ of their respective Memoranda, the case was submitted for decision.

ISSUE

Whether the accused are guilty of violation of Section 3(e) of R.A. No. 3019 premised, mainly, on the allegation of overpricing.

DISCUSSION / RULING

In every criminal action, the prosecution must prove beyond reasonable doubt all the elements of the crime charged, as well as the complicity of the accused.⁶⁶ “The consistent teaching in our jurisprudence is that evidence adduced must be closely examined under the lens of judicial scrutiny and that conviction must flow only from the moral certainty that guilt has been established beyond reasonable doubt.”⁶⁷ The Court is tasked to resolve whether the quantum of evidence needed to convict the accused beyond reasonable doubt has been satisfied.

Accused are being charged with violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides:

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

[x x x]

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits,

⁶⁰ Records, Vol. VI, pp. 117-169

⁶¹ *Id.*, pp. 177-181

⁶² *Id.*, pp. 298-341

⁶³ *Id.*, pp. 410-440

⁶⁴ *Id.*, pp. 490-507

⁶⁵ *Id.*, pp. 273-295

⁶⁶ *People v. Maraorao*, G.R. No. 174369, June 20, 2012.

⁶⁷ *Suba v. Sandiganbayan*, G.R. No. 235418, March 03, 2021.

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advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”

The essential elements for violation of Section 3(e) of R.A. No. 3019 are as follows: (1) that the accused is a public officer discharging administrative, judicial or official functions (or a private individual acting in conspiracy with such public officers); (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the action of the accused caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.⁶⁸

There is no doubt as to the presence of the *first element*. The following accused admitted to being public officers of the local government of Consolacion, Cebu during the time material to the commission of the alleged violation, to wit: accused Gungob as Municipal Mayor; Maglasang (Rosalina) as the Municipal Treasurer; Puao as the Municipal Agriculturist; Maglasang (Carlito) as the Municipal Engineer and a Member of the Bids and Awards Committee; Bagasbas as the Municipal Social Welfare and Development Officer and BAC member; Herrera as the Municipal Assessor and BAC member; and Cataluña, a Member of the BAC. They are being charged in this case for acts performed in the discharge of their functions in relation to the subject procurement of liquid organic fertilizer.

These public officers are alleged in the Information to have conspired with accused private individual Castillo, hence, the latter may be charged and convicted under R.A. No. 3019 together with the accused public officers.⁶⁹

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

We deem it appropriate to deal first with the *third element* as central in the resolution of this case is the determination of whether there was overpricing in the procurement of the subject goods, which closely relates to and crucial in proving the allegations of undue injury to the government and unwarranted benefit to the accused private individual.

⁶⁸ *Fuentes v. People*, G.R. No. 186421, April 17, 2017; *Cambe v. Ombudsman*, G.R. Nos. 212014-15, December 6, 2016; *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015.

⁶⁹ See *Garcia-Diaz v. Sandiganbayan*, G.R. No. 193236, September 17, 2018.

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Under the *third element*, a violation of Sec. 3(e) of R.A. No. 3019 may be committed by public officials in the performance of their functions either (1) by causing undue injury to any party, including the government, or (2) by giving any private party any unwarranted benefit, advantage, or preference.⁷⁰ The present Information alleges both.

In the first mode, the term “undue injury” has been described as having a meaning akin to that civil law concept of “actual damage.” In *Llorente v. Sandiganbayan*:⁷¹

“[x x x] Unlike in actions for torts, undue injury in Sec. 3[e] cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.”

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

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

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

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

⁷⁰ *People v. Naciongayo*, G.R. 243897, June 08, 2020

⁷¹ G.R. No. 122166, March 11, 1998

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Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

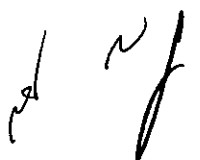
Furthermore, **damages must not only be capable of proof, but must be actually proven with a reasonable degree of certainty.** They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included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

An accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. “The loss or damage need not be proven with actual certainty, but there must be some reasonable basis by which the court can measure it. Aside from this, the loss or damage must be substantial. It must be more than necessary, excessive, improper or illegal.”⁷²

Here, the accused are charged of causing undue injury to the government due to the alleged overpricing in the procurement of liquid organic fertilizers. The prosecution’s case is built on the findings of the Commission on Audit, primarily the Audit Observation Memorandum No. 2005-01 and Inspection Report dated 1 December 2005 and the testimony of COA officials who identified these documents during trial. The finding of overpricing in the AOM, issued by the Audit Team Leader, Lita C. Lamparas, was based on the Inspection Report submitted by Technical Audit Specialist Engr. Confessor, who assessed the subject Ferty-King fertilizer and conducted the canvass of liquid fertilizers in the locality for comparison. The Inspection Report yield, among others, that the average price of liquid fertilizer is Php180.00 per bottle/liter, based on the Algaper LPF Plus brand supplied by two stores, Pacifica Agrivet Supply and Farmers Trade. Thus, Ferty-King, which is at Php1,500.00 per liter/bottle 733% excessive compared to average. The same Inspection Report and AOM became the basis for the Notice of Disallowance subsequently issued.

The defense, however, claims that the canvass conducted cannot be relied upon to substantiate the allegation of overpricing since it involved a different brand of fertilizer (Algaper LPF-Plus) from two suppliers who did not participate in the bidding conducted by the Municipality of Consolacion and whose sufficiency of stock and contract terms, in relation to the requirements of the LGU, were not determined by Engr. Confessor.

⁷² *Cabrera v. People*, G.R. No. 191611-14, July 29, 2019, citing *Abubakar v. People*, G.R. Nos. 202408, 202409 & 202412, June 27, 2018



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In support of these claims, the defense cited the case of *Caunan v. People*,⁷³ which involved a graft and corruption case based on alleged finding of overpricing, to wit:

Notably, however, and this the petitioners have consistently pointed out, the evidence of the prosecution did not include a signed price quotation from the *walis tingting* suppliers of Parañaque City. In fact, even the *walis tingting* furnished the audit team by petitioners and the other accused was different from the *walis tingting* actually utilized by the Parañaque City street sweepers at the time of ocular inspection by the audit team. At the barest minimum, the evidence presented by the prosecution, in order to substantiate the allegation of overpricing, should have been identical to the *walis tingting* purchased in 1996-1998. Only then could it be concluded that the *walis tingting* purchases were disadvantageous to the government because only then could a determination have been made to show that the disadvantage was so manifest and gross as to make a public official liable under Section 3(g) of R.A. No. 3019. (Underscoring supplied)

Nonetheless, the present charge is for a violation of Section 3(e) of R.A. No. 3019, and not for a violation of Section 3(g). Thus, the issue of overpricing in this case is not to establish that the purchase was disadvantageous to the government in the context of Section 3(g), much less that the disadvantage was manifest and gross. Rather, the matter of overpricing is in the framework of Section 3(e), particularly in relation to its second and third elements.

Further, the defense claims that the prosecution evidence offered to prove the alleged overpricing were not sufficient and do not conform with established rules and jurisprudence; that the COA officials involved in the investigation of the subject procurement failed to meet the standards set by COA itself in determining whether overpricing exists.

This pertains to *COA Memorandum No. 97-102 dated 31 March 1997*, which was issued in recognition to cases decided by the Supreme Court on the subject matter, which addressed issues of lack of due process and evidence to support of COA's disallowances on the ground of overpricing.⁷⁴ This COA issuance requires that copies of the documents establishing the audit findings

⁷³ G.R. Nos. 181999 & 182001-04, 2 September 2009

⁷⁴ *Versosa, Jr. v. Carague*, G.R. No. 157838, February 07, 2012, citing *Arriola v. COA*, G.R. No. 90364, September 30, 1991 and *National Center for Mental Health Management v. COA*, G.R. No. 160211, August 28, 2006

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of overpricing should be made available to the management of the audited agency in the interest of fairness, transparency and due process.⁷⁵

The pertinent portion of COA Memorandum No. 97-102 are as follows:

“3.1 When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in reference price lists referred to in par. 2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial audit finding to a reliable degree of certainty.

3.2 To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa[r]. 2.1 above have to be supported with canvass sheets and/or price quotations indicating:

- a) the identities/names of the suppliers or sellers;
- b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency;
- c) the specifications of the items which should match those involved in the finding of over-pricing; and
- d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

The COA Audit Team found the purchase of 166 bottles of liquid organic fertilizer in total amount of Php249,000.00 to be excessive by Php219,120.00 or 733% compared to average price of similar liquid fertilizer in the locality. The Inspection Report from the canvass conducted, however, did not contain a signed price quotation from respondent fertilizer suppliers and/or canvass sheets pursuant to the above COA Memorandum. This fact of omission was admitted by prosecution witness Engr. Confessor, to wit:

“ATTY. LIM

Do you have a signed quotation from Pacifica Agrivet right now?

ENGR. CONFESSOR **No, Sir.**

Q: **Do you have a signed quotation from Farmers Trade?**

A: **No, Sir.**

Q: **None?**

⁷⁵ Henson v. Commission on Audit, G.R. No. 230185, July 07, 2020

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A: None.

Q: Can you provide us any proof or any written affidavit showing that you indeed personally conducted the said canvass at the time?

A: No, Sir. The canvass itself has a signature by the store owner or the representative salesman.

Q: And you do not have that right now?

A: None, Sir.

CLARIFICATORY QUESTION BY THE COURT:

ASSOC. JUSTICE LAGOS:

Q: You did not attached it to your Inspection Report?

A: I attached the canvass, Sir, together with the inspection report when we submitted the inspection report to the auditor.

Q: Who is Lamparas?

A: I think Miss Lamparas, Your Honor.

[x x x]

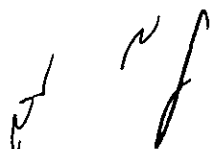
ATTY. LIM: **But please go over your Judicial Affidavit, Sir, can you confirm whether or not those quotations are attached to your Judicial Affidavit?**

A: With regard to what, Sir?

Q: With regard to the canvass made before Pacifica and Farmers Trade?

A: **Not attached in the Judicial Affidavit, Sir.**

Q: Not attached?



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A: Yes, Sir.”⁷⁶

This lapse in observing the guidelines set by COA Memorandum No. 97-102 was confirmed by the testimony of Romuelda O. Lagunay, a member of the audit team who prepared AOM No. 2005-01, thus:

“ATTY. VELASCO:

[x x x]

Q: Madam Witness, you stated in your Judicial Affidavit that you started working with the Commission on Audit since 1988?

A: Yes, ma’am.

[x x x]

Q: Given the length of your service with the Commission on Audit at the time that you prepared this Audit Observation Memorandum, Madam Witness, is it safe to say that you were then already familiar with the rules and regulations pertaining to the conduct of audit investigation on overpricing?

A: Yes, I am.

Q: Such that you were already then familiar with rules, guideline, as well as circulars of the Commission on Audit on the conduct of audit on matters relating to overpricing?

A: Yes, ma’am.

Q: **In other words, Madam Witness, is it safe to say that, at that time you were also already familiar with Commission on Audit Memorandum Circular No. 97-012 dated May 31 of 1997, otherwise**

⁷⁶ TSN dated 30 January 2019, pp. 95-96



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known as Guidelines to Support Findings of Overpricing?

A: Yes, ma'am.

Q: You were familiar?

A: Yes, ma'am.

Q: Given, Madam Witness, that at that time you were already familiar with the guidelines on the conduct of audit on matters relating to overpricing, will you confirm and agree that in this Inspection Report, upon which you based your Audit Observation Memorandum as well as the Annual Report for [2005], is it not supported by the canvass sheets and price quotations which were supposedly the output of the inspection or canvass that was conducted by Mr. Nilo Confessor?

[x x x]

A: It is supported, ma'am.

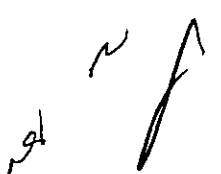
Q: Do you have a copy of the canvass sheet, alleged canvass sheet or price quotation, Madam Witness?

A: It was Mr. Confessor who did the canvass, ma'am.

Q: **But will you confirm to this Honorable Court that this Inspection Report as submitted by Mr. Nilo Confessor through the prosecution and, which you earlier identified, is not supported by any such alleged canvass sheet or price quotation?**

A: **There was a canvass sheet, ma'am.**

Q: **But will you confirm to this Honorable Court that it was not appended to this Inspection Report?**



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A: **Yes, it is not appended.**

[x x x]

Q: Would you know the reason why there was no such alleged canvass sheet or price quotation that is appended to the Inspection Report when you said you were the ones who audited the Inspection Report?

A: I do not know why Mr. Confessor did not attach the canvass sheet, ma'am.

Q: **Did you not request from Mr. Confessor the canvass sheet as well as the price quotation, Madam Witness?**

A: **I did not.**⁷⁷ (Emphasis supplied)

Clearly, there was oversight on the part of COA in not securing or attaching a signed price quotation and/or canvass sheet to the inspection report, pursuant to COA Memorandum No. 97-102. COA was not able to firm up its initial finding of overpricing to a reliable degree of certainty.

Nonetheless, non-compliance with COA Memorandum No. 97-102 on this matter is not fatal. Such relevant price quotations and/or canvass sheets can be secured and presented by the prosecution during the trial in order to support the allegation of overpricing beyond reasonable doubt for purposes of establishing the offense under Section 3(e) of R.A. No. 3019.

However, the prosecution failed to do so. Not having such canvass sheets and/or price quotations incorporated in the documentary evidence presented by the prosecution, the allegation of overpricing cannot be upheld. While the purchase amount in this case was indeed highly suspicious, the prosecution was not able to prove beyond reasonable doubt that there was overpricing in the context of Section 3(e) of R.A. No. 3019.

In *Arriola v. Commission on Audit*,⁷⁸ which is among the cases that became the basis for the issuance of COA Memorandum No. 97-102, the Supreme Court ruled that price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified

⁷⁷ TSN dated 3 April 2019, pp. 16-20

⁷⁸ G.R. No. 90364, September 30, 1991

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suppliers, valid bases for outright disallowance of agency disbursements for governments projects. Further:

“A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

... As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like'...

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.”

The failure to secure or attached a signed price quotation and/or canvass sheet to the Inspection Report rendered it inconclusive and cannot be entirely relied upon to substantiate the allegation of overpricing. It also weakens the probative weight of other documentary evidence which, in part, were issued on the basis of said report. Ultimately, it impedes the prosecution from establishing the existence of undue injury to the government.

The third element demands that the injury be proven beyond reasonable doubt. The damaged alleged to have been suffered by the government must be demonstrable and quantifiable. In other words, for a successful prosecution of violation of Section 3(e) of R.A. 3019, it is required that the fact of undue injury to the government must be specified, quantified, and proven beyond reasonable doubt.⁷⁹ The evidence of the prosecution, particularly the Inspection Report, fell short in establishing the fact of overpricing which could have allowed the Court to determine and measure the actual damage suffered by the government. Thus, the allegation of overpricing was not proved, to the point of moral certainty, to have amounted to undue injury to the government.

⁷⁹ *Roque v. Sandiganbayan*, G.R. No. 231530-33, June 16, 2021.

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As to second mode under the third element of Sec. 3(e) of R.A. 3019, the concept of unwarranted benefit, advantage, or preference given to any private party was explained in *Villarosa v. People*,⁸⁰ as follows:

For one to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another." (Underscoring supplied)

Additionally, in the Court explained in *Martel v. People*⁸¹ that in cases of violation of Section 3(e) of R.A. 3019 by giving any private party any unwarranted benefit, advantage or preference, it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules, and regulations, such as the procurement laws. The benefits must have been given by the accused public officer to the private party with corrupt intent, dishonest design, or some unethical interest, to be consistent with the spirit of R.A. 3019 which centers on the concept of graft and corruption.

Presently, the alleged unwarranted benefit given to accused Castillo is premised, still, on the allegation of overpricing in the purchase of liquid organic fertilizers from MM Castillo General Merchandise. However, as discussed above, the fact of overpricing was not conclusively established by the prosecution, hence, there is nothing to support the claim that accused Castillo derived unjustified gain or excessive profit from its transaction with the local government. Neither was there any proof of irregularity that attended the procurement of said fertilizers, or demonstration of corrupt intent or dishonest design from accused public officers. Thus, the presumption that the BAC and the municipal officers of Consolacion, Cebu have regularly performed their official duties⁸² can be appreciated in their favor. It cannot then lead to a conclusion that the amount disbursed to Castillo's business entity was unauthorized or without justification, or that she was given advantage or preference during the procurement process.

Thus, the existence of the third element was not duly established by the prosecution. This notwithstanding, we proceed with a brief discussion of the second element.

⁸⁰ G.R. Nos. 233155-63, June 23, 2020.

⁸¹ G.R. No. 224720-23, February 2, 2021.

⁸² Sec. 3(m), Rule 131, Rules of Court

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The *second element* refers to the three modes of committing the crime under Sec. 3(e) of R.A. No. 3019, *i.e.*, manifest partiality, evident bad faith, or gross inexcusable negligence. In *Uriarte vs. People*⁸³ these modalities were defined in this wise:

“Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. There is “**manifest partiality**” when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. “**Evident bad faith**” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. “**Gross inexcusable negligence**” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.” (*Underscoring supplied; citations omitted*)

Further, the law considers the gravity of the bad faith, partiality, or negligent act or omission as a mode to commit the violation of Sec. 3(e) of RA No. 3019. “Bad faith or partiality, on the one hand, and negligence, on the other hand, *per se* are not enough for one to be held criminally liable under the law; that the bad faith or partiality is evident or manifest, or, that the negligent act or omission is gross and inexcusable must be shown.”⁸⁴ Thus, the prosecution must show not only the acts or omissions of the accused amounting to partiality, bad faith, or negligence, but to further demonstrate their gravity so as to characterize them as manifest, evident, or gross and inexcusable, respectively, in order to satisfy the requirements of the second element.

Under the present Information, the accused allegedly committed the crime through all three modes under the second element by procuring the allegedly overpriced fertilizer.

To prove this, the prosecution offered evidence consisting almost exclusively of COA documents and testimonies from the agency’s personnel. These pieces of evidence, however, mainly relate to the COA’s initial findings of overpricing, and no other proof was adduced to establish facts and

⁸³ G.R. No. 169251, December 20, 2006.

⁸⁴ *Jaca v. People*, G.R. No. 166967, January 28, 2013

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circumstances upon which the presence of the second element may be inferred, such as documents and testimonies pointing to any irregularity in the procurement process. The prosecution evidence is particularly lacking with regard to specific or overt acts of the accused, hence, bereft of any concrete basis to show the existence of partiality, bad faith, or negligence, or to demonstrate the gravity thereof to the satisfaction of the requirements under Section 3(e) of R.A. No. 3019.

Certainly, the prosecution focused solely on the allegation of overpricing, which, as already discussed, was not sufficiently proved, and therefore, cannot serve as basis for establishing any of the modes of commission under the second element. The other remaining evidence, such as the disbursement voucher and the Complaint-Affidavit of Praxedes Cuyos, et al., do not provide anything that may prove the same. The prosecution, thus, failed to show that there was a clear, notorious, or plain inclination or predilection to favor accused Castillo, amounting to manifest partiality. As to evident bad faith, which partakes of the nature of fraud,⁸⁵ there was no proof or even an attempt to demonstrate a patently fraudulent and dishonest purpose, or some perverse motive or ill will on the part of accused public officers. At the very least, negligence could have been considered had the allegation of overpricing was upheld. Still, the prosecution will be required to show that the neglect or disregard of duty is willful and intentional in order for a violation to exist. In cases involving public officials, gross inexcusable negligence is present only when breach of duty is flagrant and devious.⁸⁶

The Court is not unaware of some discrepancies on the part of the defense, such as the non-production of relevant procurement documents to support some of the defenses raised by the accused, or Gungob's claim that negotiated procurement was used in purchasing the goods, or that his duty relative to this procurement is ministerial in nature. However, it is the prosecutor's burden to prove its allegations by sufficient and convincing evidence. For it to draw inference of manifest partiality, evident bad faith, or gross inexcusable negligence solely on the basis of the alleged overpricing would be too conjectural and presumptive.

Clearly, no evidence pertaining to overt or specific or acts or omissions on the part of the accused, independent of the allegation of overpricing, were alleged, much less proved, from which the criminal culpability may be drawn. Thus, the prosecution likewise failed to discharge its burden of satisfying the requirements of the second element of Sec. 3(e) of R.A. No. 3019.

⁸⁵ *Fuentes v. People*, G.R. No. 186421, April 17, 2017

⁸⁶ *Sistoza v. Desierto*, G.R. No 144784, September 3, 2002

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Considering the non-concurrence of all the elements of Sec. 3(e) of R.A. 3019, hence the failure to prove the crime charged, the Court shall no longer delve into a discussion as to the existence of conspiracy.

In criminal cases, the prosecution has the *onus probandi* of establishing the guilt of the accused. *Ei incumbit probation non qui negat* - he who asserts, not he who denies, must prove. The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that of the defense.⁸⁷ It is the constitutional presumption of innocence that lays such burden upon the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.⁸⁸

In sum, while the price of Php1,500.00 per liter of liquid fertilizer may seem excessive, the prosecution was not able to prove by adequate and satisfactory evidence, particularly through pertinent documents from the COA, that they were indeed overpriced as determined in accordance with established rules and jurisprudence. This insufficiency or weakness in the evidence offered by the prosecution was fatal to its cause and far outweighed some of the discrepancies in the accused's own evidence. Consequently, the alleged undue injury suffered by the government or the unwarranted benefit given to accused Castillo through manifest partiality, evident bad faith, or gross inexcusable negligence on the part of accused public officers were not proven. The prosecution, thus, failed to establish beyond reasonable doubt the concurrence of all the elements of Section 3(e) of R.A. No. 3019 in this case.

WHEREFORE, premises considered, the Court finds accused Avelino J. Gungob, Sr., Rosalina S. Maglasang, Evangeline M. Puao, Carlito H. *Cal* Maglasang, Florisa F. Bagasbas, Marilou H. Herrera, Siegfried G. Cataluña, and Marilyn M. Castillo, **NOT GUILTY** of the offense charged in Criminal Case No. SB-17-CRM-0482 for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Hold Departure Orders issued against the foregoing accused are **LIFTED** and the bail bond posted for their provisional liberty are hereby **RELEASED** in their favor, subject to the usual accounting and auditing procedures.

Considering that accused Lecelie J. Placibe jumped bail and remains at-large, let an **ALIAS WARRANT OF ARREST** be issued against her and this

⁸⁷ *Macayan, Jr. v. People* G.R. No. 175842, March 18, 2015.

⁸⁸ *People v. Lumikid*, G.R. No. 242695, June 23, 2020.

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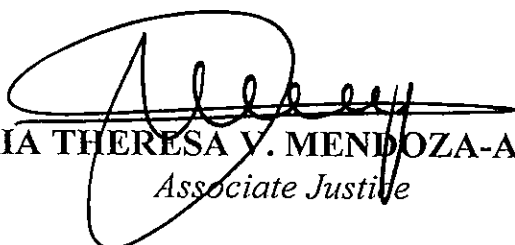
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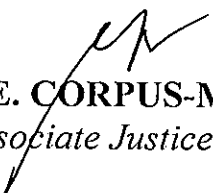
case is ordered **ARCHIVED** insofar as she is concerned, subject to reinstatement of the same once she has been under the custody of the law.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

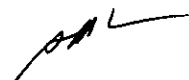
WE CONCUR:


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

ATTESTATION

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


RAFAEL R. LAGOS
Associate Justice
Chairperson

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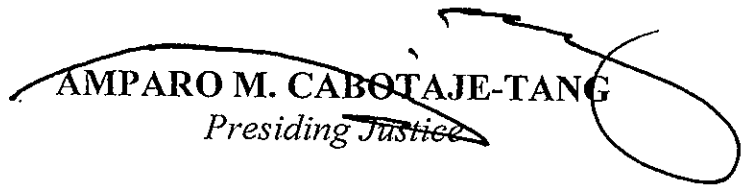
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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

