



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City  
**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

Criminal Case Nos.  
**SB-16-CRM-1096**  
*For: Violation of Section 3(e)  
of Republic Act No. 3019,  
as amended*

-versus-

**SB-16-CRM-1097**  
*For: Violation of Section 3(j)  
of Republic Act No. 3019,  
as amended*

**FAUSTINO A. SILANG,  
LUZVIMINDA B. CUADRA,  
VENERANDO R. REA,  
REX L. ABADILLA,  
MARFEO D. JACELA,  
ABELARDO P. ABRIGO,  
MACARIO J. REYES,  
ROMEO F. CAYANAN,**  
*Accused.*

Present:  
**Cabotaje-Tang, A.M., P.J.,**  
*Chairperson*  
**Fernandez, B.R., J. and**  
**Moreno, R.B., J.**

PROMULGATED:

SEPTEMBER 29, 2020

X

**RESOLUTION**

**Moreno, J.:**

For resolution are the *Motion for Reconsideration*<sup>1</sup> filed by accused Faustino A. Silang, Rex L. Abadilla, Abelardo P. Abrigo and Macario J. Reyes and the separate *Motion for Reconsideration*<sup>2</sup> filed by accused Venerando R. Rea, assailing the *Decision*<sup>3</sup> dated February 14, 2020 which found them guilty

<sup>1</sup> Record, Vol. IV, pp. 268-280.

<sup>2</sup> *Id.* at 282-291.

<sup>3</sup> *Id.* at 326-331.

RESOLUTION

Criminal Case No. SB-16-CRM-1096-97

People v. Silang, et al.

beyond reasonable doubt of violating Sections 3(e) and 3(j) of Republic Act (R.A.) No. 3019, as amended.

In their Motion, accused Silang, Abadilla, Abrigo and Reyes essentially argue that not all the elements for committing the said offenses are present in this case. According to them, the second element of Section 3(e) of R.A. No. 3019 is not present as there is no evident bad faith. They allege that the provisions of Section 481 of the LGC, supported by COA Circular No. 98-002, should only refer to the hiring of private lawyers for a fee or with legal compensation from public funds and not to *pro bono* cases like this case. The present case does not involve any public fund for them to be considered to have acted with evident bad faith. They emphasize that the Audit Observation Memorandum issued by the COA refers only to the prohibition of hiring private lawyers for a fee and not to *pro bono* services. Thus, the engagement of Atty. Salvacion's *pro bono* services was within the parameters of the law and does not amount to evident bad faith.

They further argue that they did not give any unwarranted benefit or favor to another considering that the services provided by Atty. Salvacion were done *pro bono* and that no damage or undue injury against any party or the government was ever shown or proven. Hence, the absence of the third element.


In addition, they allege that the acquittal of Cuadra shows that there was no conspiracy among the accused due to the fact that they belonged to the same political party and this was the contention of the prosecution in relation to the passage of Resolution No. 13-87. Other than the fact that the accused belonged to the same political party at the time of the passage of Resolution No. 13-87, the prosecution offered no evidence to prove that there was conspiracy among the accused to pass and approve the said Resolution.

For his part, accused Rea argues that there is no direct evidence on record showing that he was motivated by Mayor Silang or Atty. Salvacion to act favorably in the passage of Resolution No. 13-87. Hence, there is absence of manifest partiality or evident bad faith in his actions. He adds that there is also no showing of gross inexcusable negligence on his part. It may be true that he knew of the prohibition under COA Circular 98-002, however, to his understanding, the prohibition was issued because a portion of the local government's funds

was previously utilized for payment to a private lawyer despite the fact that he was a private practitioner. Even the exceptions mentioned in the said COA Circular pertain to the utilization for payment for the services of a private lawyer or firm. Meanwhile, the request submitted to the *Sanggunian* involved *pro bono* service of a lawyer who happened to be familiar with the three (3) cases of the city government of Tayabas. Since COA Circular 98-002 prohibited utilization of funds for a private lawyer, accused Rea could not be said to have committed negligence in thinking that Atty. Salvacion could handle the cases *pro bono*. Furthermore, there was no direct evidence showing that accused Rea or the *Sanggunian* as a whole was privy to Mayor Silang's alleged unwarranted preference to place Atty. Salvacion as counsel for the local government in the three (3) cases mentioned in his request letter.

Accused Rea also contends that there is no showing that Atty. Salvacion received a substantial benefit by representing the subject cases. On the contrary, he handled those cases without compensation. Furthermore, the local government suffered no injury. It could even be said that it gained something as it was represented *pro bono*.

As for Criminal Case No. SB-16-CRM-1097, accused Rea argues that he relied in good faith on Mayor Silang's contention that the Provincial Legal Officer and the Provincial Prosecutor could not act on the matter. He adds that the prosecution presented no positive and conclusive evidence that the accused councilors conspired by themselves or with Mayor Silang to vote for the passage of Resolution No. 13-87. Aside from the fact that the subject resolution was passed regardless of the objections of the prosecution witness, nothing could directly state that the accused were in concert in achieving a certain goal.

The prosecution, in its *Consolidated Opposition*,<sup>4</sup> maintains that it has established all the elements of violation of Sections 3(e) and 3(j) of R.A. No. 3019. It asserts that it has more than sufficiently overcome its burden of proving its case against all the accused and that the accused-movants utterly failed to discharge their duty to overcome the *prima facie* case established by the prosecution against them. In essence, their defense was hinged only on the fact that they are not liable for the offenses charged because the services of Atty. Salvacion were *pro bono*. Hence, no damage was caused to the City of 

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<sup>4</sup> Record, Vol. IV, pp. 326-331.

RESOLUTION

Criminal Case No. SB-16-CRM-1096-97

People v. Silang, et al.

Tayabas considering that no public funds were disbursed and nothing more.

The prosecution also maintains that it has established conspiracy as alleged in the information. It counters that accused-movants failed to substantiate their claim that the acquittal of Cuadra shows that there was no conspiracy among them. According to the prosecution, nothing in the records shows that the prosecution attributed their political affiliation in the conspiratorial act. The prosecution asserts that it has duly established through documentary and testimonial evidence that the accused acted in concert to achieve a common objective of authorizing Atty. Salvacion to continue as counsel of record for the City of Tayabas despite the prohibition on hiring a private counsel to represent a city government. The act of accused Silang in initiating a letter-request coupled with the approval of Resolution No. 13-87 by accused Rea, Abadilla, Jacela, Abrigo, Cuadra, and Reyes accomplished the violation for which they were charged in these cases.

**THE COURT'S RULING**

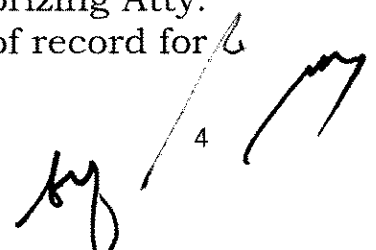
After due consideration, we **deny** the motions for lack of merit.

This Court has already examined the entirety of both prosecution and defense evidence and is not persuaded by accused-movants' arguments in their motions.

***The elements of violation of Sections 3(e) and 3(j) of R.A. No. 3019, as amended, had been duly proven***

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

All these elements are present in this case. Notwithstanding the prohibition on hiring a private lawyer to represent the city, accused Silang, as Mayor, requested the *Sangguniang Panlungsod* to pass a resolution authorizing Atty. Salvacion, a private lawyer, to continue as counsel of record for

4 

RESOLUTION

Criminal Case No. SB-16-CRM-1096-97

People v. Silang, et al.

Tayabas City in its three (3) pending cases. On the other hand, accused Rea, Abadilla, Jacela, Abrigo, and Reyes, as Councilors, still passed and approved Resolution No. 13-87, authorizing Atty. Salvacion to continue as counsel of record for Tayabas City in those cases despite the opposition and reminder of the other *Sanggunian* members of the prohibition.

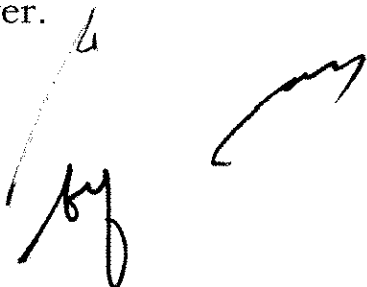
In their respective motions, the accused-movants claim that the element of evident bad faith is not present. This Court finds otherwise. In the assailed Decision, this Court held that:

As early as August 21, 2008, COA issued Audit Observation Memorandum to accused Silang as Mayor of Tayabas, advising him to stop employing a private lawyer to render legal services for the city government of Tayabas and to appoint a legal officer as mandated by Section 481 of the LGC. Despite knowledge of the Audit Observation Memorandum, on July 29, 2013, accused Silang requested the *Sangguniang Panlungsod* to pass a resolution authorizing Atty. Salvacion, a private lawyer, to continue as counsel of record for Tayabas City in certain cases.

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Likewise, accused *Sanggunian* members Rea, Abadilla, Jacela, Abrigo, and Reyes cannot feign ignorance of the clear mandate enunciated in Section 481 of the LGC. As can be gleaned from the Minutes of the *Sangguniang Panlungsod* session held on August 5, 2013, Councilor Abesamis pointed out that the appointment of a Legal Officer is mandatory for provincial and city government and that they should always be cautious in engaging the services of a private lawyer. He also emphasized the cases resulting from the previous appointments of Atty. Salvacion. On the other hand, Councilor Caagbay mentioned that the appointment of a Legal Officer is clearly mandatory under the LGC. Notwithstanding the objections raised by the other *Sanggunian* members, accused Rea, Abadilla, Jacela, Abrigo, and Reyes still voted for the passage and approval of Resolution No. 13-87, which authorized Atty. Salvacion to continue as counsel of record for Tayabas City in its three (3) pending cases.

From the foregoing, the accused-movants cannot claim the absence of evident bad faith as records reveal that they were well aware and fully conscious of the prohibition against the hiring of the services of a private lawyer. Yet, they still authorized the engagement of the services of Atty. Salvacion, who is a private lawyer.



RESOLUTION

Criminal Case No. SB-16-CRM-1096-97

People v. Silang, et al.

It is also the submission of the accused-movants that the provisions of Section 481 of the LGC, supported by COA Circular No. 98-002, should only refer to the hiring of private lawyers for a fee or with legal compensation from public funds and not to *pro bono* cases like this case. The Court is not persuaded.

Section 481 of the LGC is clear and categorical. For city governments, the appointment of a legal officer shall be mandatory. COA Circular No. 98-002 clarified and sustained the provisions of Section 481 of the LGC. Even without the issuance of the said circular, the mandate of the law that city governments must not be represented by private lawyers remains. The mandatory nature of the provision should not be circumvented by engaging the services of a private lawyer in a *pro bono* arrangement.

The application of the clear mandate of Section 481 of the LGC is based not only on the principle that the government should not be burdened with expenses of hiring a private lawyer but also on the fact that the interests of the government would be best protected if a government lawyer handles its litigations.<sup>5</sup>

Furthermore, their argument that they did not give any unwarranted benefit or favor to Atty. Salvacion considering that he handled the cases *pro bono* and that no damage or undue injury against any party or the government was proved is bereft of merit. As already discussed in the assailed Decision, there are two ways by which Section 3(e) of R.A. No. 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.<sup>6</sup>

In Criminal Case No. SB-16-CRM-1096, the Information charged the accused under the second mode. In such case, damage is not required. It suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.

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<sup>5</sup> *Alinsug v. RTC*, G.R. No. 108232, August 23, 1993; *Ramos v. Court of Appeals*, G.R. No. 53766, October 30, 1981

<sup>6</sup> *Ampil v. Ombudsman*, G.R. No. 192685, July 31, 2013

RESOLUTION

Criminal Case No. SB-16-CRM-1096-97

People v. Silang, et al.

Records establish that accused Silang gave unwarranted preference to Atty. Salvacion by requesting the *Sangguniang Panlungsod* to represent Tayabas City in its pending cases notwithstanding the issuance of COA Audit Observation Memorandum and the mandatory provision of the LGC. As for accused Rea, Abadilla, Jacela, Abrigo, and Reyes, by approving and passing Resolution No. 13-87, they allowed Atty. Salvacion to be the counsel of Tayabas City despite the prohibition against engaging the services of private lawyers to represent the city.

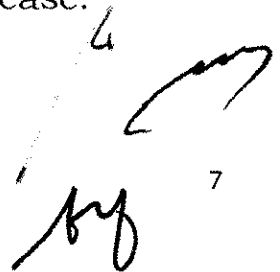
On the other hand, to be liable under Section 3(j) of R.A. No. 3019, accused must have knowingly approved or granted any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or benefit.

In this case, accused-movants were well aware of the mandatory provision of Section 481 of the LGC. By requesting the *Sangguniang Panlungsod* to engage the services of Atty. Salvacion who is a private lawyer, accused Silang granted privilege to a person not qualified by the LGC to represent Tayabas City. The same is true for accused Rea, Abadilla, Jacela, Abrigo, and Reyes who willfully approved Resolution No. 13-87 despite the objections of the other councilors during the deliberations on the said Resolution. Their acts show that they knowingly approved or granted privilege in favor of Atty. Salvacion.

On the issue of conspiracy, the Court maintains that the accused-movants conspired with one another and displayed evident bad faith in giving unwarranted preference to as well as granting privilege in favor of Atty. Salvacion when they allowed and consented him to represent the city government of Tayabas in its pending cases.

The Court notes in this regard that conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. To prove the existence of a conspiracy, it is not necessary to show that the accused actually met and agreed to commit a crime. The essence of conspiracy is the unity of action and purpose. What is determinative is proof establishing that the accused were animated by one and the same purpose, as in this case.

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Accused Silang, in his capacity as Mayor of Tayabas City, requested the *Sangguniang Panlungsod* for the passage of a resolution authorizing the engagement of the legal services of Atty. Salvacion, in defiance of COA Audit Observation Memorandum and the mandate of Section 481 of the LGC. Despite knowing the prohibition against employing a private lawyer, accused Rea, Abadilla, Jacela, Abrigo, and Reyes voted for and facilitated the passage of Resolution No. 13-87. Their act was indispensable in consummating the offenses charged herein. In fine, it can be concluded that the individual acts of the accused, taken collectively, demonstrate a common design which altogether satisfactorily prove the existence of conspiracy among them.

We likewise find unmeritorious the contention that the acquittal of Cuadra shows that there was no conspiracy among them. Cuadra was acquitted because the prosecution failed to show that she had any participation in approving and passing Resolution No. 13-87. As previously stated by this Court in the presently assailed decision, she merely signed the same as presiding officer of the *Sangguniang Panlungsod* and attested to what transpired during the deliberations. The criminal design still exists despite Cuadra's acquittal, because accused-movants were involved in authorizing the engagement of a private lawyer to represent the City of Tayabas.

**WHEREFORE**, in light of all the foregoing, the *Motions for Reconsideration* filed by accused Faustino A. Silang, Rex L. Abadilla, Abelardo P. Abrigo and Macario J. Reyes and Venerando R. Rea are **DENIED** for lack of merit.

**SO ORDERED.**

Quezon City, Metro Manila, Philippines.



**RONALD B. MORENO**  
Associate Justice

WE CONCUR:



**AMPARO M. CABOTAJE-TANG**  
Presiding Justice, Chairperson



**BERNELITO R. FERNANDEZ**  
Associate Justice