



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0406

Plaintiff,

For: Violation of Sec. 3(b) of R.A.
No. 3019

- versus -

Present:

LUIS RAYMUND F.
VILLAFUERTE, JR.,
LETICIA D. ALIORDE,
RICHARD F. RIVERA,

Quiroz, J. _____

Pahimna, J. _____

Jacinto, J. _____

BERNADETTE G. CARLOS, and Promulgated:
GERARDO N. VILLAFUERTE,

Accused.

FEB 03 2021

X-----X

RESOLUTION

JACINTO, J.:

This resolves the *Demurrer to Evidence*¹ filed with prior leave of Court² by accused-movants **BERNADETTE G. CARLOS** and **GERARDO N. VILLAFUERTE**.

ANTECEDENTS

Accused-movants are charged together with other officials of the Province of Camarines Sur with violation of Sec. 3(e) of Republic Act (R.A.) No. 3019,³ said to have been committed as follows:⁴

That during the period July 2008 up to December 2009, or sometime prior or subsequent thereto, at the Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **LUIS RAYMUND FAVIS VILLAFUERTE, JR.**, **LETICIA DE LEON ALIORDE**, both high-ranking public officers, being then the Governor, Provincial Accountant, respectively, of the Province of Camarines Sur, Executive Assistant V **RICHARD FOOSHEE RIVERA**, Rural Health

¹ Dated 18 August 2020. Records, Vol. VII, pp. 5-67.

² 1 July 2020 Resolution, Records, Vol. VI, pp. 160-163.

³ THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, as amended.

⁴ Information dated 3 January 2018; emphasis in the original.

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Physician **BERNADETTE GALAN CARLOS**, and Medical Officer III **GERARDO NOLASCO VILLAFUERTE**, also of the same province, while in the performance of their respective official functions and committing the crime in relation to office, taking advantage of their official positions, acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally give Tigon Security Investigation and General Services, Inc. (Tigon Security) unwarranted benefits, advantage and preference when accused Luis Raymund F. Villafuerte, in his capacity as Head of Procuring Agency, entered into security service contracts with Tigon Security and thereafter approved the disbursement vouchers for the payment of its services after accused Leticia D.L. Aliorde certified in the disbursement vouchers that the supporting documents for the payments of the security services were complete and accused Richard F. Rivera, Bernadette G. Carlos and Gerardo N. Villafuerte, as head of their respective offices, certified in the obligation requests that the supporting documents for the payments of security services were valid, proper and legal despite the lack of public biddings in the procurement of the security services of Tigon Security, in violation of the provisions of Republic Act No. 9184 (The Government Procurement Act), to the damage and prejudice of the government.

CONTRARY TO LAW.

Accused-movants initially filed a *Motion to Dismiss [With Prayer to Hold in Abeyance the Issuance of a Warrant of Arrest]*⁵ but the same was denied in a Resolution dated 29 August 2018.⁶ In the same Resolution, the Court found probable cause for the issuance of a warrant of arrest against them.

Accused-movants posted their respective cash bonds on 15 October 2018 and were subsequently arraigned on 27 November 2018. They both entered "Not Guilty" pleas.⁷

On 21 June 2019, in the midst of the pre-trial proceedings, the parties filed a *Joint Motion for Leave to File and Admit Attached Joint Stipulations and Narration of Facts and Issues*.⁸ The same was admitted on 21 June 2019⁹ and the following stipulations were thereafter incorporated in the Pre-Trial Order:¹⁰

⁵ Records, Vol. IV, pp. 4-112.

⁶ Records, Vol. III, pp. 380-387; the prosecution filed its Comment/Proposition dated 16 July 2018, id., pp. 280-287; the prosecution filed its Comment/Proposition dated 16 July 2018, id., pp. 280-287.

⁷ Order dated 27 November 2018, id., p. 486.

⁸ Dated 20 June 2019; Records, Vol. IV, pp. 458-563.

⁹ Records, Vol. V, p. 5.

¹⁰ Pre-Trial Order dated 24 June 2019, id., pp. 7-89.

I. JOINT NARRATION OF FACTS

In July 2008 to December 2009, the Provincial Government of Camarines Sur (the "*Provincial Government*") engaged the security services of Tigon Security Investigation and General Services, Inc. ("*Tigon Security*") in the total amount of PhP6,312,354.78 without undergoing public bidding. Prior to the said transactions, the service of Tigon Security was already engaged by the Provincial Government since 1993.

On 18 May 2010, the Commission on Audit ("COA") issued an Audit Observation Memorandum ("AOM") on the security services rendered by Tigon Security. The COA averred that the security services were engaged without public bidding contrary to the provisions of R.A. No. 9184, thereby raising doubts on the propriety and economy of the transactions. The Provincial Government was ordered to file its comment, and the Province replied through its Reply-Letter dated 23 June 2010 wherein it stated that (a) Tigon Security had been engaged since 1993, (b) Tigon Security's performance of its services had been satisfactory, and (c) the engagement of Tigon Security was advantageous to the Province since the rate of Tigon Security at PhP9,604.29 per guard was lower than the rate set by the Philippine Association of Detective and Protective Agency Operators ("PADPAO") at PhP11,440.00 per guard.

Prior to this AOM, from the time that the Provincial Government started its practice of procuring security service from Tigon Security in 1993, there is nothing on record that will show that any audit observation memorandum, notice of suspension or notice of disallowance was ever issued by the COA in relation to the same.

On 18 October 2011, the COA suspended in audit the amount of PhP 6,312,354.78. Thereafter, on 9 November 2012, a Notice of Disallowance ("ND") was issued and ordered the persons liable to settle the amount stated. On 31 March 2014, a Notice of Finality of Decision was issued stating that the ND has become final and executory and ordered the enforcement of the ND.

In the interim, accused Villafuerte, Jr. questioned the said ND in a Petition for Certiorari and Prohibition with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction dated 15 October 2014. The (sic) RTC Pili enjoined the implementation of the subject ND by issuing a Temporary Restraining Order and a Writ of Preliminary Injunction, restraining the enforcement thereof. This was assailed by the COA in a Petition for Certiorari and Prohibition (with Opposition to the Application for TRO and/or Preliminary Injunction) dated 10 July 2015 filed with the Supreme Court entitled, *Commission on Audit, et al. vs. Hon. Erwin Virgilio R. Ferrer, et al.*, docketed as G.R. No. 218870 and pending before the Supreme Court *En Banc*.

On 23 July 2015, the Field Investigation Office of the Office of the Ombudsman filed a Complaint against the herein accused, for violation of Sec. 3 (e) of Republic Act 3019 in relation to R.A. 9184. The Complaint alleged that the Provincial Government gave unwarranted benefits to

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Tigon Security when it procured security services from the said security agency without the benefit of public bidding thereby causing damage and prejudice to the government.

Before the Ombudsman, accused Villafuerte, Jr. countered that (a) the procurement of security services from Tigon Security was made in good faith, and following an established practice, considering that the latter was the security agency since 1993, before the term of accused Villafuerte, Jr., and had provided satisfactory services to the Provincial Government; (b) the COA had never raised any issues regarding the services until it issued a ND in May 2010; (c) the case is prematurely filed as it is based on conclusions of the COA which are still undergoing judicial review; (d) the facts and circumstances of the instant case satisfy an alternative mode of procurement; (e) the institution of the case is obviously politically motivated, meant to harass and discredit accused Villafuerte, Jr; and (f) accused Villafuerte, Jr. relied on other accountable officers in signing the said documents. Finally, accused Villafuerte, Jr. argued that after it received the AOM, the Provincial Government complied immediately by engaging in a public bidding.

II. STIPULATED FACTS

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5. That **BERNADETTE GALAN CARLOS** is the same accused charged in **SB-18-CRM-0406**, who held the position of Rural Health Physician of the Provincial Government of Camarines Sur during the time material (sic) allegations in the **Information for Violation of Section 3 (e)**; and that whenever referred to, orally or in writing, by this Honorable Court, the prosecution and its witnesses, said accused would admit that she is the same person who is being referred to in the information for criminal case number SB-18-CRM-0406.
6. That **GERARDO NOLASCO VILLAFUERTE** is the same accused charged in **SB-18-CRM-0406**, who held the position of **Medical Officer III** of the Provincial Government of Camarines Sur during the time material (sic) allegations in the **Information for Violation of Section 3 (e)**; and that whenever referred to, orally or in writing, by this Honorable Court, the prosecution and its witnesses, said accused would admit that he is the same person who is being referred to in the information for criminal case number SB-18-CRM-0406.
7. The Provincial Government had been procuring security services from Tigon Security without public bidding since 1993. Accused Villafuerte, Jr. and the Provincial Government merely continued an established practice of the Provincial Government of engaging the services of Tigon Security, which had not been flagged as irregular or illegal by the COA before.
8. The existence and due existence of the following documents:
 - a. Contract of Security Services between the Provincial Government and Tigon Security for the period 17 June 2008 and one (1) year thereafter (GOTA Beach Resort);

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- b. Contract of Security Services between the Provincial Government and Tigon Security for the period 1 March 2008 and one (1) year thereafter (Villa del Rey Cabana/Hotel);
 - c. Contract of Security Services between the Provincial Government and Tigon Security for the period 11 July 2008 and one (1) year thereafter (CWC Complex/Boat Lake);
 - d. Contract of Security Services between the Provincial Government and Tigon Security for the period 1 January 2008 and one (1) year thereafter (Provincial Health Office);
 - e. Audit Observation Memorandum No. 2010-0020 (2009) issued by Atty. Eleanor V. Echano;
 - f. Notice of Suspension No. 2011-100-0027 (2009) issued by Atty. Eleanor V. Echano;
 - g. Notice of Disallowance No. 2012-100-026 (09); and
 - h. Notice of Finality of Decision No. 2014-003.
9. The procuring entity in the instant case is the Provincial Government.
10. The Provincial Health Office is an end-user or implementing unit of Provincial Government.
11. The Provincial Tourism Office is an end-user or implementing unit of the Provincial Government.
12. The Camarines Sur Water Complex is an end-user or implementing unit of the Provincial Government.

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Proceeding to trial, the prosecution presented the testimonies of three (3) witnesses: (i) **Jose Romano H. Francisco**, Associate Graft Investigation Officer (AGIO) III, Field Investigation Office I, Office of the Ombudsman (OMB);¹¹ (ii) **Atty. Janis Ian B. Regaspi-Cleofe**, Provincial Legal Officer of Camarines Sur;¹² and (iii) **Atty. Eleanor V. Echano**, State Auditor IV, Team Leader of the Commission on Audit (COA) team assigned to Camarines Sur.¹³

¹¹ The witness' direct testimony was offered through his Judicial Affidavit dated 19 June 2019 (Records, Vol. IV, pp. 447-457), which was adopted on 24 June 2019, when he testified in open court.

¹² The witness' direct testimony was offered through her Judicial Affidavit dated 24 July 2019 (Records, Vol. V, pp. 123-128), which was adopted on 29 July 2019, when she testified in open court.

¹³ The witness' direct testimony was offered through her Judicial Affidavit dated 13 August 2019 (Records, Vol. V, pp. 273-288), which was adopted on 11 September 2019, when she testified in open court. See also TSN, 14 October 2019.

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Its evidence, both testimonial and documentary, establish, among others, the following in so far as accused-movants are concerned:

1. As Governor of Camarines Sur, accused Villafuerte, Jr. signed four Contracts of Security Service with Tigon Security Investigation and General Services, Inc., (Tigon Security) to provide security services for each of the following locations:

Exh.	Location	Covered Period
A	GOTA Beach Resort	17 June 2008 and one year thereafter
A-1	Villa del Rey Cabana/Hotel	1 March 2008 and one year thereafter
A-2	CWC Complex/Boat Lake	11 July 2008 and one year thereafter
A-3	Provincial Health Office	1 January 2008 and one year thereafter

2. In all four contracts, the services of Tigon Security were procured without the benefit of public bidding.
3. The Bids and Awards Committee (BAC) of the Province has no record pertaining to the procurement of services from Tigon Security (Exh. "F").
4. Accused Carlos and Gerardo Villafuerte held the positions of Rural Health Physician and Medical Officer III, respectively, of the Provincial Government of Camarines Sur for the same period and were, at one time, officers-in-charge of the said office.
5. In 2009, a COA Audit Team headed by Atty. Eleanor V. Echano, State Auditor IV, conducted a regular audit of the operations, financial transactions, and utilization of funds of the Province covering the years 2008 to 2009. Among the team's findings were that the Province procured the services of Tigon Security without conducting public bidding and that Tigon Security was paid the amount of PhP 6,312,354.78 for its services. The COA Team's findings were formalized in Audit Observation Memorandum (AOM) No. 2010-0020 (2009) dated 18 May 2010 (Exh. "B").
6. The COA then issued a Notice of Suspension (Exh. "C") and later a Notice of Disallowance (Exh. "D") to the concerned provincial officials, including accused Villafuerte, Jr. The Notice of Disallowance became final on 31 March 2014 per Notice of Finality of Decision (NFD) No. 2014-003 (Exh. "E").

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The prosecution thereafter filed its *Formal Offer of Evidence* on 26 November 2019.¹⁴ In a Resolution dated 2 January 2020,¹⁵ the Court admitted all of the prosecution's evidence over accused-movants' objections.¹⁶

On 20 January 2020, accused-movants filed a *Motion for Leave to File Demurrer to Evidence*,¹⁷ which was granted by the Court over the prosecution's opposition,¹⁸ in its 1 July 2020 Resolution.¹⁹

Hence, this demurrer to evidence.

ACCUSED-MOVANTS' DEMURRER

Accused-movants argue, among others, that the prosecution failed to prove their guilt beyond reasonable doubt. In particular, they claim that there is no evidence to prove that they conspired with their co-accused to commit the offense charged.

They point out that the evidence against accused-movant Villafuerte is Obligation Request (ObR) No. 100-11-2009 (Exh. "MMM-4") and, as against accused-movant Carlos, ObR Nos. 100-01-2008-12-09999 (Exh. "G-4") and 100-01-2009-02-00796 (Exh. "II-4"). Said ObRs, however, covered only the following periods: (i) 01 to 30 December 2008; (ii) 01 to 31 January 2009; and (iii) 01 March to 15 June 2009, respectively, while the security contract subject of this case covered the entire 2008 to 2009 period. Hence, accused-movants point out that their participation is not significant enough to amount to, or contribute to, a conspiracy.

Secondly, when they signed the ObRs, they merely attested, among others, that the "supporting documents" were "valid, proper and legal" and the prosecution failed to prove that the bidding documents were among those that had to be attached to an ObR.

Third, the prosecution failed to prove the elements of Sec. 3(e) of R.A. No. 3019, particularly, that any unwarranted benefit, advantage, or preference was given to Tigon Security; that any party suffered undue

¹⁴ Dated 25 November 2019, Records, Vol. V, pp. 465-543.

¹⁵ *Id.*, p. 642.

¹⁶ *Opposition* dated 13 December 2019 filed by accused Alionde, Rivera, Carlos, and Villafuerte, *id.*, pp. 590-607.

¹⁷ Records, Vol. VI, pp.54-89.

¹⁸ *Consolidated Comment/Opposition* dated 3 February 2020, *id.*, pp. 105-112.

¹⁹ *Supra* at Note 2.

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injury; and that they acted with manifest partiality, evident bad faith, or gross inexcusable negligence when they signed the ObRs in question.

Fourth, they argue that the prosecution failed to prove the existence of conspiracy among the accused. The fact that their alleged participation is limited to their act of signing three out of several documents submitted in evidence is not enough to prove their involvement in procuring the services of Tigon Security without the benefit of public bidding.

Finally, they also invoke their right to the speedy disposition of their case, pointing out that it took the OMB more than seven years to file the case before the Court.

In its *Comment/Opposition*,²⁰ the prosecution maintains that it was able to prove all the elements of the offense charged, and therefore the guilt of accused-movants beyond reasonable doubt.

The prosecution argues that even if accused-movants' respective signatures only appear in three out of the hundreds of procurement documents referred to, the same were part of a series of transactions disallowed by the COA in relation to the procurement of Tigon Security's services and were particularly referred to as among the deficient documents in Notice of Disallowance No. 2012-100-026 (Exh. "D"). Said ObRs were necessary in the processing and eventual release of funds in favor of Tigon Security, and their signatures thereon means that they certified the correctness of the transactions despite the lack of public bidding.

The prosecution claims that the evidence establishes that accused Luis Raymund Villafuerte, Jr. procured the services of Tigon Security without first conducting a public bidding. On the part of accused-movants, as the heads of the Provincial Health Office at one time or another – and, as such, one of the end-users to the contracts for security services - they certified that the supporting documents for the payment of security services rendered were valid, proper, and legal, even if they were not. Their acts show evident bad faith, contrary to their claim of good faith in the performance of their functions.

²⁰ *Comment/Opposition (To the Demurrer to Evidence Filed by Accused Bernadette G. Carlos and Gerardo N. Villafuerte)* dated 13 November 2020, Records, Vol. VII, pp. 208-227. In a *Manifestation* dated 7 December 2020, the OSP sought to explain that their *Comment/Opposition*, which was allegedly earlier filed, bore a different docket number, hence, their *Comment/Opposition* dated 13 November 2020 was submitted on 09 December 2020, together with the *Manifestation*.

The prosecution further argues that accused-movants' claim that they acted in good faith in relying on the practice of their predecessors shows that, at the very least, they exhibited gross inexcusable negligence, and that there was a clear inclination and conscious intent to merely choose Tigon Security rather than undergo public bidding. In any case, accused-movant's allegations of good faith are matters of defense that are better threshed out during trial.

As to the presence of conspiracy, the prosecution claims that by signing the ObRs, accused-movants performed indispensable acts which then allowed Tigon Security to be paid for its services.

Accused-movants filed a *Reply*²¹ (with *Motion to Admit Attached Reply*) via electronic mail sent on 19 December 2020 expounding on their earlier arguments. The same is admitted in the interest of justice.

RULING

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence, as provided under Sec. 23, Rule 119 of the Rules on Criminal Procedure.²² It is derived from the presumption of innocence in favor of the accused, which corollarily places upon the prosecution the sole burden of proving every element of the offense charged. If the prosecution fails to do so, the Court must rule in favor of the accused even without him or her presenting evidence in his or her defense.²³

Sec. 3(e) of R.A. No. 3019 provides:

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

xxx xxx xxx

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

²¹ Dated 18 December 2020. Filed via electronic mail and attached to accused-movants' *Motion to Admit Attached Reply*.

²² See also *Singian, Jr. v. Sandiganbayan*, G.R. Nos. 195011-19, 30 September 2013.

²³ *De Guzman y Aguilar v. People*, G.R. No. 240475, 24 July 2019.

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and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are as follows: (i) the accused is a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (ii) he/she acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) his/her action caused any undue injury to any party, including the Government, or he/she gave any private party unwarranted benefits, advantage, or preference in the discharge of his/her functions.²⁴

For purposes of the present demurrer, the Court need not discuss whether unwarranted benefits, advantage, or preference was given to Tigon Security when its services were procured without public bidding, and whether the same was attended by evident bad faith, manifest partiality, or gross inexcusable negligence. The Information clearly alleges that such act – entering into contract with Tigon Security – pertained to accused Luis Raymond F. Villafuerte, Jr. alone. The act or acts attributed to accused-movants, on the other hand, are limited to the signing of three ObRs identified as Exhibits “MMM-4,” “G-4,” and “II-4.” Accused-movants are being linked to accused Villafuerte’s act only by reason of conspiracy. Thus, the Court must first determine whether the prosecution’s evidence is enough to establish such conspiracy.

The Court rules in the negative.

Conspiracy cannot be presumed and must be proven with the same quantum of evidence as that of the elements of the crime charged;²⁵ hence, the prosecution’s mere allegation thereof cannot suffice. In this connection, the mere presence of a public official’s signature in documents related to an unlawful transaction is not enough to establish the presence of conspiracy; that is, unless it is shown that he/she had prior knowledge of the illegality thereof.²⁶

In this case, it is important to note that there is no evidence to show that accused-movants had any part in the procurement process or that they exercised any discretion relating to the selection of Tigon Security. Their acts - signing the ObRs - were part of the disbursement process only, and therefore came after the contract was entered into by the Provincial

²⁴ *People v. Naciongayo*, G.R. No. 243897, 8 June 2020.

²⁵ See *Roy III v. Carpio Morales, et al.*, G.R. No. 225718, 4 March 2020; *Joson III v. COA*, G.R. No. 223762, 7 November 2017; *Pareño v. Sandiganbayan*, G.R. Nos. 107119-20, 17 April 1996; and *Magcusi v. Sandiganbayan*, G.R. No. 101545, 3 January 1995.

²⁶ *Id.*

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Government and Tigon Security. There is also no evidence to show that accused-movants had any knowledge of the fact that the services of Tigon Security were procured without public bidding or that they ought to know such fact, in the first place.

That being said, accused-movants' culpability must be determined on the basis of their individual acts, as alleged in the Information and as established by the prosecution's evidence. Insofar as the charge against them is concerned, the prosecution's evidence establish the following relevant facts:

- (i) The contract with Tigon Security for the Provincial Health Office was unilaterally entered into by accused Luis Raymund Villafuerte, Jr. The contract covered the period between 01 January 2008 to 01 January 2009;
- (ii) Services were rendered by Tigon Security in the Provincial Health Office pursuant to the said contract within the said contract period;
- (iii) Accused-movants' participation was limited to the disbursement process, particularly to the signing of the following:

Exh.	OBR No.	Signatory	Period Covered
MMM-4	100-11-2009-06-4922	Gerardo Villafuerte	01 March to 15 June 2009
G-4	100-01-2008-12-09999	Bernadette Carlos	01 December to 30 December 2008
II-4	100-01-2009-02-00796		01 January to 31 January 2009

- (iv) The ObRs signed by accused were accompanied by Bills of Services rendered.²⁷
- (v) Only ObR No. 100-01-2008-12-09999, which was signed by accused Carlos, was executed within the period of the security contract; and
- (vi) Accused-movants had no other participation in the procurement and disbursement processes.

²⁷ Exhs. "G-3," "G-3-A," "II-3," "III-3-A," "MMM-3-A," and "MMM-3-C" to "MMM-3-F".

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First Element - that the accused are public officers discharging administrative, judicial, or official functions:

There is no issue as to the public position held by accused Carlos and Gerardo Villafuerte at the time relevant to the charge, and of their act of signing ObRs in their respective capacities as Officers-in-Charge of the Provincial Health Office.

Second and Third Elements - that they acted with manifest partiality, evident bad faith, or inexcusable negligence, which led to the conferment of unwarranted benefit, advantage, or preference, or caused undue injury to any party, including the Government:

As adverted to earlier, it was only accused Luis Raymund Villafuerte, Jr. who dealt with Tigon Security for the contracts for security services. Such fact was stipulated upon by the parties and the prosecution's evidence tends to show that neither the Province's BAC nor any other office was otherwise involved in the transaction. Accused-movants' lack of direct participation in the selection and procurement process prevents the Court from finding the presence of the second and third elements.

In *Re: Consultancy Services of Helen P. Macasaet*,²⁸ the Supreme Court clarified that the obligation to pay in an ObR has already been incurred, and, the Head of a Budget unit merely certifies the availability of the allotment thereto; this differs from a Certification issued by a Chief Accountant, which must be attached to a contract and therefore precedes the same:

In an Obligation Request, the Head of the Requesting Office or his authorized representative certifies on the necessity and legality of the charges to the budget under his supervision, and the validity, propriety and legality of the supporting documents.⁸⁹ In the same Obligation Request, the Head of the Budget Unit or his authorized representative certifies on the availability of allotment obligated for the purpose as indicated therein. In particular, COA Circular No. 003-06⁹⁰ provides:

2.2

The Head of the Budget Unit shall certify the availability of allotment and obligations incurred in the [Obligation Request] or budget and utilization in the [Budget Utilization Request].

²⁸ A.M. No. 17-12-02-SC, 16 July 2019.

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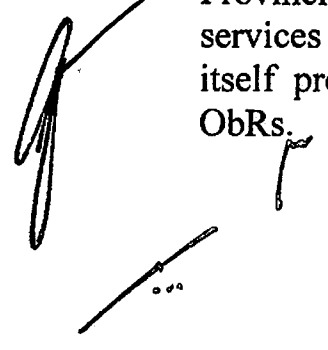
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Thus, it is clear that the obligation indicated in the Obligation Request has already been incurred, and that the Head of the Budget Unit simply certifies as to the availability of the allotment obligated for such purpose. This Obligation Request is prepared in three copies and distributed as follows - the original is attached to the Disbursement Voucher, the duplicate is given to the Budget Unit, and the triplicate is given to the Accounting Unit. **This differs from a CAF which is signed by the Chief Accountant and is required to be attached to the contract entered into by the government before any obligation chargeable against any authorized allotment is incurred or authorized.** The obligation becomes chargeable upon perfection of the contract, and that takes place upon the signing of the contract by the parties.

On the other hand, a Disbursement Voucher contains the certification by the Head of Accounting Unit or his authorized representative on the availability of cash, subject to Advice to Debit Accounts, on the completeness of the supporting documents.⁹¹ It also contains the approval by the Head of the Agency or his authorized representative on the payment covered by the Disbursement Voucher. Finally, the same Disbursement Voucher contains the acknowledgment by the claimant or his duly authorized representative for the receipt of the check or cash, and the date of such receipt. **Simply put, the Disbursement Voucher merely records the mode of payment made to the payee indicated therein, and certifies that the cash for such disbursement is available and that the supporting documents for such disbursement are complete.**

It is clear, therefore, that the Obligation Requests and the Disbursement Vouchers are not the certification required by law to be secured before an obligation is incurred by the government, which certification shows that funds have been appropriated by law and that such funds are available therefor. Obligation Request, Budget Utilization Request, and Disbursement Voucher are mere forms prescribed by the Commission on Audit, to be used in recording obligations incurred, budget utilization, and disbursements. (emphases in the original; citations omitted)

The Court finds no merit in the prosecution's proposition that the ObRs signed by accused-movants tie them up to the conspiracy, or that the same contributed to the conferment of unwarranted benefit, advantage or preference to Tigon Security. The ObRs, by themselves, did not give rise to a contractual obligation with Tigon Security. Rather, the request for payment of services is based on the contract that was already subsisting with the latter. Hence, what was requested to be obligated in the funds of the Provincial Health Office through the said documents was the payment for services already rendered pursuant thereto. In this regard, the prosecution itself presented the Bills of Services rendered that were attached to the ObRs.



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As for the correctness of having made the payments to Tigon Security, the prosecution does not dispute the fact that security services were in fact rendered, or that the exact amount disbursed as a result thereof coincided with the agreement between the Province and Tigon Security. It likewise does not deny that the security contract was subsisting and was yet unquestioned at the said juncture. Finally, the ObRs operated as mere requests for the obligation of the said amounts rather than approval for disbursement. In this light, and absent any direct evidence of any knowledge of irregularities in the procurement process itself, accused-movants' request for payment for actual services rendered cannot translate to evident bad faith, manifest partiality, or gross inexcusable negligence.

In sum, the prosecution failed to submit sufficient evidence to show that accused-movants either directly, or in conspiracy with their co-accused, exercised manifest partiality, evident bad faith, or gross inexcusable negligence in the engagement of Tigon Security's services without the benefit of public bidding. It likewise failed to show how any of their acts resulted in damage to the Government, or the conferment of unwarranted benefit in favor of the said private company.

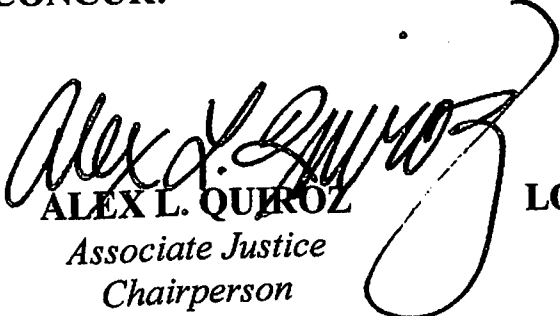
WHEREFORE, based on the foregoing, the *Demurrer to Evidence* dated 18 August 2020 filed by accused **BERNADETTE G. CARLOS** and **GERARDO N. VILLAFUERTE** is hereby **GRANTED**. The Information dated 3 January 2018 in **SB-18-CRM-0406** is dismissed as against them.

The respective cash bonds posted by the said accused for their provisional liberty is hereby ordered **RELEASED** and the Hold Departure Order issued against them in this case is ordered **RECALLED**.

SO ORDERED.


BAYANI H. JACINTO
Associate Justice

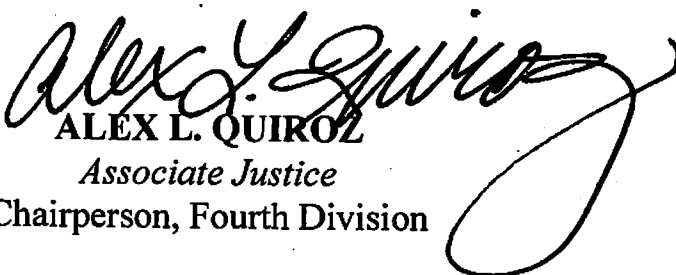
WE CONCUR:


ALEX L. QUIROZ
Associate Justice
Chairperson


LORIFEL LACAP PAHIMNA
Associate Justice


ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation with the Justices of the Court's Division.


ALEX L. QUIROZ
Associate Justice
Chairperson, Fourth Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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