



Republic of the Philippines  
SANDIGANBAYAN  
Quezon City

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**THIRD DIVISION**

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

-versus-

**Crim. Case No.**  
**SB-17-CRM-0979**  
*For Violation of Sec 3 (e) RA*  
*No. 3019*


**ARNOLD B. ABALOS and**  
**VIRGINIA UY,**  
*Accused.*

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*Present:*

CABOTAJE-TANG, P.J.  
*Chairperson*  
MORENO, R. B. J. and  
FERNANDEZ, B.R., J.

*Promulgated:*

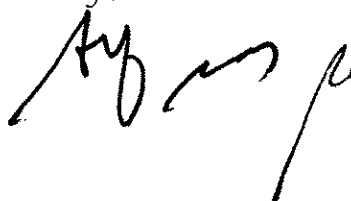
JUNE 7, 2022 

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**RESOLUTION**

**FERNANDEZ B. R., J.:**

Before this Court are the following: (1) the Motion for Partial Reconsideration/New Trial dated November 8, 2021 filed by accused-movant Arnold Abalos and (2) the Motion for Partial Reconsideration dated November 15, 2021 filed by accused-movant Virginia Acayen Uy.



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It must be recalled that in the assailed Decision promulgated on October 22, 2021, both accused-movants Abalos and Uy were convicted of violation of Section 3 (e) of Republic Act No. 3019, amended, for failing to remit the taxes due from the Municipality of San Sebastian (San Sebastian) for the years 2008 to 2009 to the Bureau of Internal Revenue (BIR) amounting to P1,272,831.63.

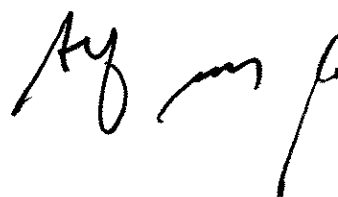
Let us take the Motions *in seriatim*.

In his Motion for Partial Reconsideration/New Trial dated November 8, 2021, accused-movant Abalos claims that this Court committed a reversible error when it concluded that all the elements for a violation of Section 3 (e) of R. A. No. 3019 are present. He also maintains that the prosecution failed to prove that he, as the former Mayor of San Sebastian, received a demand letter from the BIR and that the Municipal Treasurer and the Municipal Accountant were in charge of paying the taxes due, citing the cases of *Arias vs Sandiganbayan* and *Jaca vs. People*.

He further alleges that, at the time material to the instant case, he was unable to function as Mayor because of a pending administrative case against him and that the failure of San Sebastian, which acts through its officers, constitutes negligence only – which is a breach of duty to perform an obligation - and not gross excusable negligence for which he was convicted of.

On his prayer for a new trial on the ground of a newly discovered evidence, accused-movant Abalos reiterates that during his term as Mayor of San Sebastian, he never received any notice from the BIR for the payment of any tax due for the years 2008 and 2009. However, when he was re-elected in 2019, he was informed by his Municipal Finance Team that there were documents left unacted by the previous administration of Mayor Gaviola.

These unacted documents included the taxes due for the years 2008 and 2009 and the BIR notice relative to the same. This prompted accused-movant Abalos to immediately apply for a tax amnesty. After the approval of the tax amnesty, payment in the total amount of P2,346,030.72 was subsequently made on January 31, 2020.



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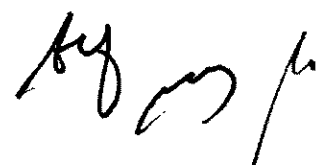
To prove this alleged payment, accused-movant Abalos attached to his Motion the following documents: (1) Acceptance Payment Form Tax Amnesty On Delinquencies dated January 13, 2020 (Annex "D"); (2) BIR Form No. 2524 (Revenue Official Receipt) dated January 31, 2020 (Annex "D-1"); (3) Revenue Official Receipt dated January 31, 2020 (Annex "D-1"); and, (4); BIR Form No. 2118-DA (Tax Amnesty Return on Delinquencies) dated October 01, 2019 and received on January 31, 2020 (Annexes "D-2" and "D-2A"). He claims that these documents were made available only after he had testified.

For her part, accused-movant Uy, in her own Motion for Partial Reconsideration dated November 15, 2021, asserts that, while accused-movant Abalos admitted the tax liabilities of San Sebastian, no such admission was made by her. She insists that her failure to pay taxes was not wilful and deliberate. She adds that it was never established that the Municipal Mayor or the Municipal Accountant issued disbursement vouchers for the payment of tax liabilities. It was also not established that accused-movant Uy failed to cause the disbursement of funds despite the absence of said vouchers.

Accused-movant Uy further asserts that photocopies are grossly insufficient to prove her guilt beyond reasonable doubt. Prosecution's exhibits "Q" (*Preliminary Collection Letter dated 22 August 2018 signed by Atty. Edgar R. Quejada, OIC-Asst. Regional Director*) and "Q-1" (*Letter dated 18 June 2014 addressed to the Municipal Mayor, Municipal Government San Sebastian, Samar pertaining to the Detailed Computation of Tax Liabilities in the amount of PhP1,3334,168.58 (sic) for taxable year 2009 consisting of three (3) pages*), although admitted, deserve little probative value and are inadmissible. She further alleges that these exhibits were never marked during the pre-trial.

When given time (Minutes, November 8, 2021), the prosecution filed its Consolidated Opposition dated November 30, 2021.

The prosecution maintains that accused-movant Abalos admitted that he was the Mayor of San Sebastian and that, whether ministerial or not, his duties included overseeing and supervising the operations of San Sebastian as well as the timely remittance of tax liabilities to the BIR. It emphasizes



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that, under the prevailing circumstances, accused-movants Abalos and Uy could have paid the taxes due under protest to avoid incurring penalties and interests which constituted damage or injury to San Sebastian. Instead, both accused-movants Abalos and Uy consistently claim that they could not remit any payment because they “did not have all the details”.

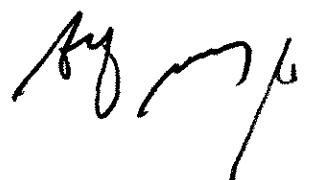
In contrast, the prosecution cited Escobar, *et al.* vs People, principally ruling that the Arias doctrine allows exceptions.

The prosecution further notes that accused-movants Abalos and Uy were fully aware of the demand to pay and the obligation to do so for the years 2008 and 2009. A photocopy of the BIR Demand Letter dated November 17, 2020 was with the Revenue District No. 87 at the time relevant to the case because the original was supposedly sent to San Sebastian for compliance. Furthermore, accused-movant Abalos testified that meetings were held and inquiries were made for the purpose of discussing how to pay the tax liabilities, indicating that the accused-movants knew of the demand and were aware of their obligation to pay the taxes due.

With respect to accused-movant Uy, the prosecution maintains that she is an accountable officer. She already admitted during trial that her duty as the Municipal Treasurer was to take charge of the disbursements of all local government funds. It also emphasized that payment under protest should have been availed of.

The prosecution also submits that its Exhibits “Q” (*Preliminary Collection Letter dated 22 August 2018 signed by Atty. Edgar R. Quejada, OIC-Asst. Regional Director*) and “Q-1” (*Letter dated 18 June 2014 addressed to the Municipal Mayor, Municipal Government San Sebastian, Samar pertaining to the Detailed Computation of Tax Liabilities in the amount of PhP1,3334,168.58 (sic) for taxable year 2009 consisting of three (3) pages*) have probative value to prove the facts stated therein and that the same were already admitted by this Court. It further stresses that accused-movants Abalos and Uy did not refute the categorical statements made by prosecution witness Odevillas, particularly as to the documents received by accused-movant Abalos and eventually turned over for safekeeping.

Relative to the prayer for a new trial grounded on a newly discovered evidence, the prosecution argues that in order for



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a particular evidence to be considered “newly-discovered” it is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it. It particularly cited *Custodio vs. Sandiganbayan*, where it was ruled that newly discovered evidence has two aspects: a temporal one - when was the evidence discovered, and a predictive one - when should or could it have been discovered. It is to the latter that the requirement of due diligence has relevance.

The prosecution further alleges that the documents labeled by accused-movant Abalos as newly-discovered evidence are at best belated efforts in an attempt to cure a consummated infraction. Although he claims that he was not the Mayor from 2013 to 2018, as he was only reelected in 2019, the fact remains that he was the incumbent Mayor at the time the unremitted tax liabilities were incurred and should have been promptly remitted.

We now rule.

Initially, much of the grounds posed by both accused-movants Abalos and Uy, in their respective Motions, are not new matters which will prompt this Court to either amend, alter, revise or even reverse its earlier findings. The issues raised have already been discussed thoroughly in the assailed Decision dated October 22, 2021.

On this score alone, a denial of the dual Motions would be sufficient.

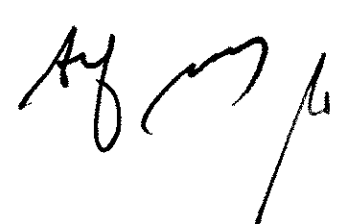
However, focus will have to be made on the issue of a new trial on the ground of a newly discovered evidence specifically raised by accused-movant Abalos.

We remember Section 2, Rule 121 of the Revised Rules on Criminal Procedure, to wit - -

*Sec. 2. Grounds for a new trial.* — The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

**(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and**



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**which if introduced and admitted would probably change the judgment.** (*bold ours*).

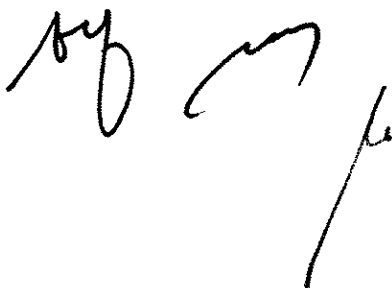
In order for a newly-discovered evidence to be admissible in evidence, the following requisites must be present: (1) that the evidence was discovered after trial; (2) that the evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative or impeaching; and, (4) that the evidence is of such weight that, if admitted, would probably change the judgment.

It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during the trial but nonetheless failed to secure it (*Ramos vs. Rosell*, G.R. No. 241363, September 16, 2020).

The foregoing standards, also known as the "Berry Rule", traced their origins from a 1851 case of *Berry vs. State of Georgia*, where the Supreme Court of Georgia held - -

Applications for new trial on account of newly discovered evidence, are not favored by the Courts. . . . Upon the following points there seems to be a pretty general concurrence of authority, *viz*; that it is incumbent on a party who asks for a new trial, on the ground of newly discovered evidence, to satisfy the Court, 1st. That the evidence has come to his knowledge since the trial. 2d. That it was not owing to the want of due diligence that it did not come sooner. 3d. That it is so material that it would produce a different verdict, if the new trial were granted. 4th. That it is not cumulative only — *viz*; speaking to facts, in relation to which there was evidence on the trial. 5th. That the affidavit of the witness himself should be produced, or its absence accounted for. And 6th, a new trial will not be granted, if the only object of the testimony is to impeach the character or credit of a witness.

These same guidelines have since been followed by our courts in determining the propriety of motions for new trial based on a newly discovered evidence. It should be emphasized that the applicant for new trial has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial (*Dinglasan, Jr. vs. Court of Appeals*, G.R. No. 145420, September 19, 2006).

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We note that the allegation that these documents sought to be admitted as newly-discovered were allegedly made available only after accused-movant Abalos testified.

This Court further observes that payment was based on a Preliminary Collection Letter dated August 22, 2018 (Annex "A") and a Certificate of Tax Delinquencies from the Bureau of Internal Revenue issued on January 2020, (Annex "C"), both attached in his Motion of accused-movant Abalos.

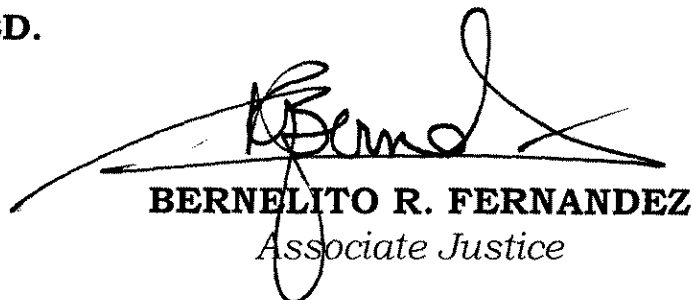
Clearly, when payment was made, all the elements constituting the violation of Section 3 (e) of RA 3019 were already committed. The belated payment of accused-movant Abalos will not change the judgment of the Court.

It is noteworthy to remember that during the time that accused-movant Abalos testified in Court, he categorically admitted that he did not pay the tax liabilities of San Sebastian. Neither was there any effort on his part or on the part of San Sebastian to pay the tax liability during the time material to this case. The efforts, if there be any, came too late and at the eleventh-hour. The government already suffered undue damage and injury by the non-payment.

In sum, this Court finds that the documents submitted do not qualify as newly-discovered evidence to justify the holding of a new trial or even to affect in any way, the assailed Decision of October 22, 2021.

**WHEREFORE**, premises considered, the Motion for Partial Reconsideration/New Trial dated November 8, 2021 filed by accused-movant Arnold Abalos and the Motion for Partial Reconsideration dated November 15, 2021 filed by accused-movant Virginia Acayen Uy are both **DENIED** for lack of merit.

**SO ORDERED.**

  
**BERNELITO R. FERNANDEZ**  
*Associate Justice*



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We concur:

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

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**RONALD B. MORENO**  
*Associate Justice*

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