Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

DATU UMBRA BAYAM DILANGALEN, AL HADJ, RAHIMA ABPI ALI, and KABIBA ABDUL MAEL,
Accused.

SB-18-CRM-0396
For: Violation of Section 3(e) of R.A. No. 3019, as amended

Present:

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

Promulgated:

November 29, 2022

x - x

RESOLUTION

CORPUS-MAÑALAC, *J.*:

Before this Court are the separate motions for reconsideration filed by the accused in this case, through their respective counsels, seeking a reconsideration of the Decision[1] dated September 9, 2022 which found them guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019,[2] as amended, *viz.*:

1. *Motion for Reconsideration*[3] dated September 16, 2022 of accused Datu Umbra B. Dilangalen, Al Hadj (Dilangalen), filed on even date;[4] and

2. *Motion for Reconsideration*[5] dated September 22, 2022 of accused Rahima A. Ali (Ali) and Kabiba A. Mael (Mael) filed on even date.

In his motion, Dilangalen raises the following grounds:

---

[1] Records, Vol. 3, pp. 51-74.
[2] *Anti-Graft and Corrupt Practices Act.*
[3] Records, Vol. 3, pp. 92-113, 175-196. Received by the Court via electronic mail and registered mail on September 19, 2022 and September 30, 2022, respectively.
[4] *Id.* at 112 (Filed via registered mail on September 16, 2022).
[5] *Id.* at 147-151.

> THERE IS INSUFFICIENT EVIDENCE TO PROVE BEYOND REASONABLE DOUBT THAT ACCUSED DILANGALEN ACTED WITH EVIDENT BAD FAITH OR WITH GROSS INEXCUSABLE NEGLIGENCE.
>
> THERE IS INSUFFICIENT EVIDENCE TO PROVE BEYOND REASONABLE DOUBT THAT FFJJ [CONSTRUCTION] RECEIVED UNWARRANTED BENEFIT OR THAT ACCUSED DILANGALEN GAVE FFJJ [CONSTRUCTION] ANY UNWARRANTED BENEFIT.
>
> NOT ALL ACTS OF VIOLATIONS OF RA NO. 9184 OR THE GOVERNMENT PROCUREMENT REFORM ACT IS [*sic*] A VIOLATION OF SECTION 3(e) OF RA NO. 3019.[6]

For their part, Ali and Mael argue in their joint motion for reconsideration that:

> NOT ALL THE ELEMENTS OF SEC. 3(e) [OF] R.A. NO. 3019 WERE PRESENT IN THIS CASE.[7]

On September 30, 2022, the prosecution filed its *Consolidated Opposition*[8] dated September 29, 2022, praying for the denial of the separate motions for lack of merit on several grounds, *viz.*: (*a*) the prosecution has proven beyond reasonable doubt that "Dilangalen acted with gross inexcusable negligence when he signed the Disbursement Voucher and Check and caused the payment of the full contract price in December 2011 way before the completion of the project," together with Ali and Mael, without supporting documents (Certificate of Completion, Inspection Report and Certificate of Acceptance) and despite the stipulation in the Contract of Agreement limiting the contractor "to claim partial payment equivalent to fifteen (15%) of the contract price" as Mobilization Fund; (*b*) the prosecution has proven beyond reasonable doubt that "FFJJ [Construction] received unwarranted benefit or advantage" as a result of the payment of the full contract price prior to the completion of the project; (*c*) the conviction for violation of Section 3(e) of R.A. No. 3019 did not rely solely on the violation of R.A. No. 9184; and (*d*) no amount of good faith may be appreciated from the circumstances present in this case that may justify the release by the accused of the full payment of the project "prior to its completion, more so before the start of construction."

Prior to that, on September 27, 2022, Dilangalen filed a *Supplement to Motion for Reconsideration*[9] of even date, averring that:

> INORDINATE DELAY WAS EVIDENT IN THE BELATED ACTION BY THE FIELD INVESTIGATION UNIT (FIU), OFFICE OF THE DEPUTY OMBUDSMAN FOR MINDANAO, DAVAO CITY ON THE COMPLAINT FILED BY HEREIN PRIVATE COMPLAINANT, TO THE CLEAR PREJUDICE OF THE ACCUSED.

---

[6] *Id.* at 92-93, 175-176 (Capitalization in the original).
[7] *Id.* at 148 (Capitalization in the original).
[8] *Id.* at 199-208.
[9] *Id.* at 119-141.

> THE INFORMATION VIOLATES ACCUSED'S RIGHT TO BE INFORMED OF THE CAUSE OF THE ACCUSATION, AND THUS THERE CAN BE NO CONVICTION UNDER THE INFORMATION AS WORDED SINCE THERE WAS NO DAMAGE OR PREJUDICE TO THE STATE.
>
> THERE WERE NO UNWARRANTED BENEFITS OR ADVANTAGES IN FAVOR OF FFJJ CONSTRUCTION WHEN ACCUSED CAUSED THE PAYMENT OF THE FULL CONTRACT PRICE PRIOR TO THE COMPLETION OF THE PROJECT SINCE THE CONTRACT WAS COMPLETED ONLY THREE (3) MONTHS AFTER THE FUNDS WERE RELEASED.
>
> EVEN ASSUMING THAT THERE WERE UNWARRANTED BENEFITS IN FAVOR OF FFJJ CONSTRUCTION, WHICH IS NOT THE CASE HERE, THE SAME WAS NOT MADE THROUGH EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE ON THE PART OF ACCUSED.
>
> HEREIN ACCUSED ONLY RELIED ON THE RECOMMENDATIONS OF THE OTHER ACCUSED. THUS, THE *ARIAS* DOCTRINE SHOULD BE APPLIED IN HIS FAVOR.[10]

On October 7, 2022, Ali and Mael filed a joint *Supplement to the Motion for Reconsideration*[11] dated October 3, 2022, urging the Court to adopt the rationale of the *Sandiganbayan* Fourth Division in its Decision dated September 23, 2022 in the case of *People v. Reyes, et al.* (SB-18-CRM-0530). Therein, all of the accused were acquitted of the charge of violation of Section 3(e) of R.A. No. 3019 for "causing the payment or approving, facilitating, preparing, processing and releasing the payment in the amount of PhP6,650,000.00 for the purchase of the 5000-square meter lot owned by the Reyes children, months prior to the execution of the Deed of Portion Sale conveying the property to the municipality."

On October 24, 2022, the prosecution filed its *Consolidated Comment/Opposition*[12] of even date, alleging that the respective supplements of the accused were filed out of time and without leave of court.

Prior thereto, on October 21, 2022, Dilangalen filed a *Reply to Consolidated Opposition*[13] dated October 20, 2022, arguing that the prosecution failed to prove the allegations in the Information, that the prosecution failed to prove that he acted in gross inexcusable negligence, that he enjoys the presumption of good faith, and that there was inordinate delay in the proceedings before the Office of the Ombudsman in violation of his right to speedy disposition of cases.

In a *Manifestation*[14] dated October 27, 2022, Dilangalen avers that his supplement, being a mere addendum to his motion, was therefore also timely filed as it only serves to bolster or adds something to said motion.

---

[10] *Id.* at 120-121 (Capitalization supplied).
[11] *Id.* at 222-223B.
[12] *Id.* at 324-327.
[13] *Id.* at 265-285.
[14] Unpaginated.

RULING

The separate motions for reconsideration are denied.

The facts and the evidence

The facts as culled from the records and supported by evidence are stated hereunder.

On October 4, 2011, the Municipality of Northern Kabuntalan, Maguindanao, represented by Dilangalen, the Municipal Mayor, entered into a Memorandum of Agreement[15] (MOA) with the Bureau of Soils and Water Management (BSWM) and the Department of Agriculture, Regional Field Unit (DA-RFU) ARMM for the "rehabilitation/construction" of the Small Water Impounding Project (SWIP) in Barangay Damatog, Northern Kabuntalan. The MOA provided that, *inter alia*, the BSWM shall transfer to the Municipality the project cost of PhP5,000,000.00, the DA-RFU shall provide the necessary technical assistance, and the Municipality shall implement the project. In an undated Letter of Undertaking[16] notarized on October 4, 2011, Dilangalen conveyed to then Agriculture Secretary Proceso J. Alcala the Municipality's "intention to undertake the construction/rehabilitation of Barangay Damatog SWIP Project," and expressed **"our commitment to carry out the project with due diligence and in compliance to** [*sic*] **the approved plans, specifications, the governing procurement law as prescribed by the implementing rules and regulations of the RA 9184.**" The letter was "executed to guarantee the faithful performance and satisfactory completion and acceptance of the project in accordance with the [x x x] requirement" cited therein,

On November 23, 2011, a public bidding was conducted. On November 24, 2011, the Municipality's Bids and Awards Committee (BAC), with the approval of Dilangalen, awarded the project to FFJJ Construction and Supply (FFJJ Construction) for the amount of PhP5,000,000.00.[17] On November 28, 2011, Mael, the Municipal Treasurer and also a BAC member, issued an official receipt for the amount of PhP5,000,000.00 received by the Municipality from BSWM.[18]

On November 29, 2011, the Municipality, represented by Dilangalen, and the FFJJ Construction, represented by its Proprietor and General Manager, Osmeña L. Palanggalan, entered into a Contract of Agreement[19] for the "Construction/Rehabilitation/Maintenance" of the project in the total amount of PhP5,000,000.00, with stipulations that read:

---

[15] Exh. "B" to "B-6".
[16] Exh. "C".
[17] Exh. "K".
[18] Exh. "E" to "G".
[19] Exh. "M" to "M-4".

> NOW THEREFORE, for and in consideration of the total amount of FIVE MILLION PESOS & 00/100, Philippine Currency, of which the Party of the First Part [Municipality] agreed to pay the Contractor/Party of the Second Part [FFJJ Construction] of the above-mentioned project for its services [*sic*] **to the following terms and conditions.**
>
> x x x x
>
> 3. That the Contractor upon receipt of approved contract shall post a five (5%) percent of contract price in the form of cash or manager's check to guarantee the completion of the project as programmed;
>
> 4. **That the Contractor maybe** [*sic*] **allowed to claim partial payment equivalent to fifteen (15%) percent of the contract price representing Mobilization Fund of the contractor**[.] (Emphasis supplied)

On the same day, November 29, 2011, Dilangalen issued a Notice to Commence[20] to Mr. Palanggalan, informing the latter that, *inter alia,* "[y]our firm shall coordinate with the Municipal Engineer Office of [*sic*] the purpose of liaison, Approval of Report and to expedite the progress of works stipulated in the contract."

Thereafter, Dilangalen ordered Mael, the Municipal Treasurer, and Ali, the Municipal Accountant, "to prepare the appropriate documents" to pay the FFJJ Construction in full even *without* the required supporting documents for the project and *before* the project was constructed and completed, thus:

> 8. Q [Atty. Castro] – Who ordered you to prepare the appropriate documents for the payment of the firm FFJJ Construction?
>
> A [Mael] – It was former Mayor Dilangalen, Sir.
>
> 9. Q [Atty. Castro] – Did you not find unusual that even before the project was constructed and completed the Municipality already paid the corresponding full price to the FFJJ Construction?
>
> A [Mael] – We the Municipal Accountant Ali and I followed the instruction of our former Municipal Mayor to prepare the documents for the corresponding payment to the FFJJ Construction, Sir, we had to follow the order of our Superior, Sir.[21]
>
> x x x x
>
> 8. Q [Atty. Castro] – Who ordered you to prepare the appropriate documents for the payment of the firm FFJJ Construction?

[20] Exh. "N" to "N-3".
[21] Records, Vol. 2, pp. 402-403 (Judicial Affidavit of Kabiba A. Mael dated March 16, 2022, pp. 2-3).

A [Ali] – It was former Mayor Dilangalen, Sir.

9. Q [Atty. Castro] – Did you not find unusual that even before the project was constructed and completed the Municipality already paid the corresponding full price to the FFJJ Construction?

A [Ali] – We the Municipal Treasurer Mael and I followed the instruction of our former Municipal Mayor to prepare the documents for the corresponding payment to the FFJJ Construction, Sir, we had to follow the order of our Superior, Sir.[22]

x x x x

Q [Prosecutor] – And in your [Ali] Affidavit, you stated that right after the execution of the agreement between former Mayor Dilangalen and FFJJ Construction, full payment was already paid by the municipality. This payment is covered by a voucher, is that correct?

A [Ali] – Yes, Ma'am.

Q [Prosecutor] – **This voucher is for the first and final payment of the construction of the Small Water Impounding Project in the amount of 5 million pesos?**

A [Ali] – **Yes**, Ma'am.

Q [Prosecutor] – And in this voucher **you certified that the supporting documents are complete**, is that correct?

A [Ali] – **Yes**, Sir [*sic*].

Q [Prosecutor] – **But at the time that you certified this voucher there was no certificate of completion yet**, is that correct?

A [Ali] – **Yes**, Ma'am.

Q [Prosecutor] – **And there was also no Inspection Report and or** [*sic*] **Acceptance of the Project by the Municipality**, is that correct?

A [Ali] – **Yes**, Sir [*sic*].

Q [Prosecutor] – **And in your Affidavit you stated that you only followed the instructions of Mayor Dilangalen**, is that correct?

A [Ali] – **Yes**, Ma'am.[23] (Emphasis supplied)

---

[22] *Id.* at pp. 428-429 (Judicial Affidavit of Rahima A. Ali dated March 25, 2022, pp. 2-3).
[23] TSN dated March 30, 2022, pp. 18-19 (Cross-examination of Rahima A. Ali).

Two days after the execution of the Contract of Agreement and the Notice to Commence, a Check[24] dated December 1, 2011 for PhP5,000,000.00 was issued by the Municipality in favor of the FFJJ Construction and Mr. Palanggalan, under a Disbursement Voucher[25] for the said amount as "First and Final payment of the Construction of Small Water Impounding Project (SWIP) located at Barangay Damatog, Northern Kabuntalan, Maguindanao **as per pertinent papers hereto attached**."

The Disbursement Voucher was signed by (*1*) Ali, as Municipal Accountant, certifying that "Allotment obligated for the purpose as indicated above" and "Supporting documents complete;" (*2*) Mael, as Municipal Treasurer, certifying that "Fund available;" (*3*) Dilangalen, as Municipal Mayor, approving it for payment; and (*4*) a signature above "FFJJ CONSTRUCTION/OSMEÑA L. PALANGGALAN" and below "Received Payment." Mael, as Municipal Treasurer, signed the check.

The pertinent documents for the construction of the project, showing their material dates, all *subsequent* to the full payment made on December 1, 2011, are (*1*) **Contractor's Statement of Work Accomplished**[26] for the "**Period December 4, 2011 – March 12, 2012**," prepared by Teng Ungkakay, Municipal Engineer, checked and verified by Basser Macarimbang, Municipal Planning and Development Coordinator (MPDC), and approved by Dilangalen; (*2*) **Statement of Time Elapsed and Work Accomplished**[27] dated **March 12, 2012** covering the period "**December 4, 2011 to March 12, 2012**," certified by Municipal Engineer Ungkakay; (*3*) **Final Inspection Report**[28] dated **March 12, 2012**, stating that the project was started on "**December 4, 2011**" and completed on "**March 12, 201[2]**,"[29] that "[t]he project is 100% completed," and that "**final payment is hereby recommended**," prepared and submitted by Municipal Engineer Ungkakay and MPDC Macarimbang and noted by Oding E. Cosain, State Auditor II; (*4*) **Certificate of Completion**[30] dated **March 14, 2012** signed by Municipal Engineer Ungkakay; and (*5*) **Certificate of Acceptance**[31] dated **September 14, 2012** signed by Dilangalen.

During cross-examination, prosecution witness Mr. Palanggalan of FFJJ Construction affirmed that he received the one-time payment of PhP5,000,000.00 *without* asking to be paid in full immediately, and testified how he "obtained [x x x] undue advantage, benefit or preference by having been paid in advance in the amount of Five Million Pesos," thus:

---

[24] Exh. "O".
[25] Exh. "O-1".
[26] Exh. "P".
[27] Exh. "Q".
[28] Exh. "R".
[29] The Final Inspection Report erroneously put the year of completion as "2011" instead of "2012."
[30] Exh. "S".
[31] Exh. "T".

ATTY. ADIL [counsel for Dilangalen]

Q **Engr. Palanggalan, you said that you received the payment, one-time payment of Five Million Pesos, correct?**

A **That is correct, sir.**

Q And that was through a check or a voucher?

A That is correct, sir.

Q Anyway, was there any agreement between you and the local government of Northern Kabuntalan, Maguindanao when payment should be made?

A Yes, there is a contract, sir.

x x x x

Q [x x x]. **But did you ask for one-time payment or did you not?**

A **I did not, sir.**

Q **But did you ask to be paid in full immediately?**

A **It just came and I received the payment, sir.**

x x x x

ATTY. CASTRO [counsel for Ali and Mael]

x x x x

Q **Mr. Palanggalan, did you in any way obtained [*sic*] any undue advantage, benefit or preference by having been paid in advance in the amount of Five Million Pesos?**

A **Yes because we have finished the project immediately. The project was completed very early, sir.**

Q **In what way did you benefit by completing the project?**

A **We paid the materials, equipment, laborers and the fuel, sir.**

Q **You mean you used that money to cover the expenditures of this project?**

A **Yes, sir.**[32] (Emphasis supplied)

The presence of all the elements of Section 3(e) of R.A. No. 3019

In the recent case of *Tio v. People*,[33] the Supreme Court found that both the mayor (Tio) and the municipal accountant (Cadiz) therein "**acted with gross inexcusable negligence**" in causing the partial payment of PhP2,500,000.00 "despite the incomplete supporting documents, giving unwarranted benefit, advantage or preference" in favor of the supplier,

[32] TSN dated September 10, 2019, pp. 7-9.
[33] G.R. No. 230132, 19 January 2021.

separate from the finding that the mayor (Tio) "**acted with manifest partiality**" in awarding the project "in the absence of public bidding, which gave unwarranted benefit, advantage or preference" to the supplier, thus:

> The acts imputed against Tio are: (1) awarding the contract for the concreting project to Double A without public bidding, **and** (2) **causing the partial payment of P2,500,000.00 to Double A despite the absence [or] lack of supporting documents.**
>
> x x x x
>
> When Tio awarded the contract to Double A without public bidding, **he acted with manifest partiality. He failed to justify his reason for selecting Double A** to supply the construction materials, and to rent the construction equipment, to the Municipality. These showed Tio's clear bias over Double A.
>
> x x x x
>
> **There was gross inexcusable negligence on Tio's part when he approved the Disbursement Voucher despite the lack of supporting documents.** Through this, he showed his indifference as to the repercussions of his act because it was done with disregard to the requirements under the law. Being the local chief executive and having administrative control of the local funds, it is his duty to ensure that public funds are disbursed only after having complied with the law.
>
> In fine, **Tio acted with** manifest partiality and **gross inexcusable negligence.**
>
> x x x x
>
> Mayor Tio approved the Disbursement Voucher and caused the payment of P2,500,000.00 to Double A despite the incompleteness of the voucher and the supporting documents.
>
> x x x x
>
> **There was also an absence of the attachment of supporting documents to the Disbursement Voucher. Audit Reyes** [x x x] **testified** [x x x] **that the necessary attachments** [*e.g.*, acceptance or inspection report] **to a Disbursement Voucher were absent**[.]
>
> x x x x
>
> **Even if there was a delivery of the construction materials, and the road concreting project was finished, it was not shown that there was a delivery of construction materials prior to the approval of the Disbursement Voucher.**
>
> x x x x
>
> [The prosecution] **was able to establish Cadiz's participation in the release of the P2,500,000.00 to Double A.**
>
> **When Cadiz signed Box A of the Disbursement Voucher, she certified that the supporting documents were complete**[.] [x x x].
>
> x x x x

> [x x x]. **Since there was no proof that she made any objection as to her signing the voucher, there is a presumption that she voluntarily signed the voucher. When she made the certification, she participated in the unlawful disbursement of public funds.**
>
> The Court emphasized in *Jaca v. People* the role of a local accountant in ensuring that local funds are properly accounted for[.]
>
> x x x x
>
> **In this case, Cadiz should not have signed the Disbursement Voucher, in the absence or lack of supporting documents. By doing so, there was unlawful disbursement. As a result, there was failure on the part of Cadiz to perform her duty as Municipal Accountant, which is to ensure that public funds are disbursed only after the requirements of law are complied with. She was remiss of her duty as Municipal Accountant, constitutes [*sic*] gross inexcusable negligence.**
>
> x x x x
>
> Here, when Tio awarded the contract to Double A without public bidding, and **when he and Cadiz caused the payment of P2,500,000.00 to Double A despite the incomplete documents**, they gave Double A unwarranted benefits, advantage and preference.
>
> In fine, Tio acted with manifest partiality in awarding the road concreting project to Double A, in the absence of public bidding, which gave unwarranted benefit, advantage or preference to Double A. **Both Tio and Cadiz acted with gross inexcusable negligence in causing the payment of P2,500,000.00 to Double A despite the incomplete supporting documents, giving unwarranted benefit, advantage or preference in favor of Double A.**[34] (Emphasis supplied)

In *Martel v. People*,[35] the Supreme Court is clear the "gross inexcusable negligence" under Section 3(e) of R.A. No. 3019 is "characterized by the want of even slight care, wherein the accused was consciously indifferent as to the compliance with his or her duty as a public officer" and it "does not require fraudulent intent or ill-will" or a public officer is guilty thereof "when there is *breach of duty* that is committed flagrantly, palpably, and with willful indifference," regardless of whether the breach of duty was done with malicious intent:

> The commission of Section 3(e) of R.A. 3019 through gross inexcusable negligence requires more than simple negligence. The negligence committed must be both *gross* and *inexcusable*, **characterized by the want of even slight care**, wherein **the accused was consciously indifferent as to the compliance with his or her duty as a public officer**. More than committing a breach of a legal duty, it is necessary that in committing the said breach, **the public officer was inattentive, thoughtless, and careless**.
>
> x x x x

[34] *Id.* at 9-10, 20-24.
[35] G.R. Nos. 224720-23, 2 February 2021.

> **[I]n culpable felonies, the act or omission of the offender *need not be malicious*.** The wrongful act results from imprudence, negligence, lack of foresight or lack of skill.
>
> **Gross inexcusable negligence under Section 3(e) of R.A. 3019**, a culpable felony, **does not require fraudulent intent or ill-will.** A public officer is guilty of gross inexcusable negligence when there is a *breach of duty* that is committed *flagrantly*, *palpably*, and with *willful indifference*. Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under Section 3(e) **regardless of whether such breach of duty was done with malicious intent.**[36] (Emphasis supplied)

In *Martel*, the Supreme Court ruled that the accused public officers did *not* commit gross inexcusable negligence in resorting to direct purchase, instead of conducting a public bidding, because **the accused, as BAC members, actually conducted a study, albeit limited, which constituted the basis for their actions**, even though "**it is arguable that a more thorough study would have led** [the accused] **to conclude that direct purchase was not proper**," thus:

> Petitioners' averments are well-taken. **The records show that petitioners**, as BAC members, **did conduct a study**, albeit limited and not reduced to writing. Moreover, as earlier discussed, they no longer considered public bidding based on their past experiences and the belief that direct purchase was availing. While it is arguable that a more thorough study would have led petitioners to conclude that direct purchase was not proper for the subject procurements, their actions **cannot** be characterized as *without even slight care and conscious indifference as to the compliance with their duties* so as to make them liable for gross inexcusable negligence. Hence, they cannot be held liable for violation of Section 3(e) of R.A. 3019 on this account. (Emphasis supplied)

In the present case, unlike in *Martel*, all of the three accused—Dilangalen, Ali and Mael—had *no basis* whatsoever that would have *justified* their action in causing the full payment of the PhP5,000,000.00 contract price to the FFJJ Construction on December 1, 2011 *without* the required supporting documents for the project and *prior* to the start of the construction on December 4, 2011.

For his part, Dilangalen claims that he did so "because there was already a contract with FFJJ [Construction] and the funds was already received by the LGU so I thought that I should pay the contract price," to wit:

> [ATTY. ADIL, counsel for Dilangalen]
>
> 20) Q Based on the complaint filed against you, you caused the full payment of the contract price to the contractor even before the commencement or beginning of the construction, why did you?

---

[36] *Id.* at 27-28.

> A When the check and the voucher was [*sic*] sent to my office for my signature attorney I signed it because there was already a contract with FFJJ and the funds was already received by the LGU so I thought that I should pay the contract price.[37]

The execution of the contract and the availability of the funds *cannot be considered a basis at all* that would have justified their action, because the contract itself, which Dilangalen himself had signed as the Municipality's representative, explicitly limits to 15% of the contract price the partial payment that the contractor may claim as Mobilization Fund, under Item 4 of the terms and conditions therein.

Had the contract stipulated instead that the contractor may claim 100% of the contract price even prior to the commencement of the project, *albeit such a stipulation would have been contrary* to Items 4 and 5 on the rules on limited advance payment and progress billing under Annex "E"[38] of the Revised Implementing Rules and Regulations[39] of R.A. No. 9184, an argument may be made that, at least, it would have constituted an actual basis, *albeit erroneously*, for the alleged belief that causing the immediate full payment even *without* the required supporting documents for the project is allowed.

---

[37] Records, Vol. 2, pp. 346-347 (Judicial Affidavit of Datu Umbra B. Dilangalen dated October 18, 2021, 2022, pp. 4-5).

[38] Contract Implementation Guidelines for the Procurement of Infrastructure Projects.

4. ADVANCE PAYMENT

4.1. The procuring entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

4.2. The advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.

4.3. The advance payment shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.

4.4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

5. PROGRESS PAYMENT

5.1. Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.

5.2. The procuring entity's representative/project engineer shall check the contractor's monthly SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

5.3. The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

a) Cumulative value of the work previously certified and paid for.
b) Portion of the advance payment to be recouped for the month.
c) Retention money in accordance with the condition of contract.
d) Amount to cover third party liabilities.
e) Amount to cover uncorrected discovered defects in the works.

[39] Effective September 2, 2009.

But that is not the case here. Thus, other than an alleged belief that is completely unsupported, there was no actual basis at all, *not even an erroneous one*, on which to justify the action in causing the full payment of the contract price *without* the required supporting documents for the project and *prior* to the start of the construction.

Dilangalen cannot avail of the *Arias* doctrine which provides that "all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations."[40] In the present case, the *Arias* doctrine is clearly inapplicable because, in the first place, it was Dilangalen himself who ordered his subordinates to prepare the documents to pay the FFJJ Construction in full, as disclosed by both his co-accused Ali and Mael during their direct-examination.

The defense of both Ali and Mael that they merely followed the order of Dilangalen is likewise unavailing. A person is justified in performing an act in obedience to an order issued by a superior if such order is for some lawful purpose and the means used by the subordinate to carry out said order is lawful.[41] However, Dilangalen's order is not for some lawful purpose and the means used by Ali and Mael to carry out said order is not lawful. The voucher lacked the required supporting documents for the project, for such documents had not yet existed at the time, but despite this glaring fact, the voucher reflected in the explanation portion the clause "as per pertinent papers hereto attached," and both Ali and Mael affixed their signature thereon.

There was no proof that Ali and Mael made any objection as to their signing the voucher, and Mael as to her signing the check. Thus, there is a presumption that both of them voluntarily signed the voucher and the check, as the case may be. When they affixed their signature despite the clear absence of the required supporting documents for the project, they participated in the unlawful disbursement of public funds.[42] Indeed, without their participation, the check for PhP5,000,000.00 would not have been released and disbursed.

Apropos is Section 342 of the Local Government Code of 1991:[43]

> Sec. 342. *Liability for Acts Done Upon Direction of Superior Officer, or Upon Participation of Other Department Heads or Officers of Equivalent Rank.* – **Unless he registers his objection in writing, the local treasurer, accountant**, budget officer, or other accountable officer **shall not be relieved of liability** for illegal or improper use or application or deposit of government funds or property **by reason of his having acted**

[40] *Typoco, Jr. v. People*, G.R. No. 221857, 16 August 2017.
[41] See *People v. Tulin*, G.R. No. 111709, 30 August 2001.
[42] See *Tio v. People*, supra note 33.
[43] R.A. No. 7160.

> **upon the direction of a superior officer, elective or appointive, or upon participation of other department heads or officers of equivalent rank.** The superior officer directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. (Emphasis supplied)

The Court is not unaware that a violation of procurement laws does not *ipso facto* give rise to a violation of R.A. No. 3019.[44] However, the present case is not solely a violation of Items 4 and 5 on the rules on limited advance payment and progress billing under Annex "E" of the Revised Implementing Rules and Regulations of R.A. No. 9184. Rather, beyond that, this is a case of causing the full payment of the contract price to the contractor (*1*) *unilaterally* and *without* an actual basis whatsoever, not even an erroneous one; (*2*) *without* the required supporting documents for the project; (*3*) made *prior* to the commencement of the construction; (*4*) *contrary* to Item 4 of the terms and conditions of the Contract of Agreement which explicitly limits to 15% of the contract price the partial payment that the contractor may claim as Mobilization Fund; and (*5*) *without* due regard to their respective duties and responsibilities as municipal mayor, municipal accountant and municipal treasurer under Sections 101(1) and 102(1) of the Government Auditing Code of the Philippines[45] and Sections 338,[46] 340,[47] 444(b)(3)(viii),[48] 470(d)(2)[49] and 474(b)(5)[50] of the Local Government Code of 1991, as the case may be.

---

[44] See *Martel v. People*, supra note 35.

[45] P.D. No. 1445. Sec. 101. *Accountable officers*; [x x x]. 1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.

x x x x

Sec. 102. *Primary and secondary responsibility.* 1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

[46] Sec. 338. *Prohibitions Against Advance Payments.* – No money shall be paid on account of any contract under which no services have been rendered or goods delivered.

[47] Sec. 340. *Persons Accountable for Local Government Funds.* – Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

[48] Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensation. – [x x x] (b) [x x x] (3) [x x x] (viii) Provide efficient and effective property and supply management in the municipality; and protect the funds, credits, rights and other properties of the municipality[.]

[49] Sec. 470. Appointment, Qualifications, Powers, and Duties. – [x x x] (d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

x x x x

(2) Take custody and exercise proper management of the funds of the local government unit concerned[.]

[50] Sec. 474. Qualifications, Powers and Duties. – [x x x] (b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x

(5) Review supporting documents before preparation of vouchers to determine completeness of requirements[.]

Dilangalen's claims in his *Supplement* that he "was only elected as Mayor in 2010,"[51] that "the lack of knowledge and experience on the part of [a]ccused was a factor in the premature release of the project amount and belies any dishonest intent when he signed the Disbursement Voucher and Check in favor of FFJJ Construction,"[52] and that "[b]eing a newly elected mayor, [a]ccused was not properly apprised of the rules regarding the proper disbursement of funds"[53] all appear to be a misrepresentation. In *Fermin v. Comelec*,[54] the Supreme Court narrated that Dilangalen emerged as the victor with 1,849 votes over Fermin's 1,640 for mayor of Northern Kabuntalan in the May 2007 elections.

While the prosecution was not able to establish that the questioned action was attended with fraudulent or malicious intent or ill-will, the evidence proved that such action, under the circumstances enumerated above, can be characterized as having been committed, not as a mere mistake, but *without even slight care* and *with conscious indifference as to the compliance with their duties* as public officers. Indeed, the breach of their duties was committed *flagrantly*, *palpably* and with *willful indifference*, or in a blatant and extremely careless manner, that warrants the finding that all of the accused acted with gross inexcusable negligence.

As for the last element, *Libunao v. People*[55] reiterates:

> The third element requires that the act constituting the offense must consist of ***either*** (1) causing undue injury to any party, including the government, *or* (2) **giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.** [x x x] As for the latter act, **it suffices that the accused has given unjustified favor or benefit to another** [x x x]. **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. (Emphasis supplied, italics in the original)

The Information in this case charges the *second mode*, that is, giving the FFJJ Construction "unwarranted benefit, advantage or preference by releasing, causing the release, and/or giving the full payment for the Small Water Impounding Project in favor of the latter, despite the fact that the project was not yet completed, to the damage and prejudice of the government."

---

[51] Records, Vol. 3, p. 130.
[52] *Id.* at 130-131.
[53] *Id.* at 134.
[54] G.R. No. 179695, 18 December 2008.
[55] G.R. Nos. 214336-37, 15 February 2022.

In *Ampil v. Office of the Ombudsman*,[56] reiterated in *People v. Sandiganbayan and Recio*,[57] damage is not required under the *second mode* or that it is not a necessary element for a violation of Section 3(e) of R.A. No. 3019 under the *second mode*.

To repeat, as admitted to by Mr. Palanggalan of FFJJ Construction during cross-examination, he benefited from the immediate full payment which was used "to cover the expenditures" of the project by paying for "the materials, equipment, laborers and the fuel," to wit:

> ATTY. CASTRO [counsel for Ali and Mael]
>
> x x x x
>
> Q **Mr. Palanggalan, did you in any way obtained [*sic*] any undue advantage, benefit or preference by having been paid in advance in the amount of Five Million Pesos?**
>
> A **Yes because we have finished the project immediately. The project was completed very early, sir.**
>
> Q **In what way did you benefit by completing the project?**
>
> A **We paid the materials, equipment, laborers and the fuel, sir.**
>
> Q **You mean you used that money to cover the expenditures of this project?**
>
> A **Yes, sir.**[58] (Emphasis supplied)

Undeniably, in causing the full payment of the contract price under the circumstances enumerated above, the accused public officers gave the FFJJ Construction unwarranted benefit and advantage. As already explained, such action lacked adequate or official support and was unjustified, unauthorized or without justification or adequate reason, placing the contractor in a more favorable or improved position or condition and benefiting from such payment by having already the full amount available to it for use, as it, in fact, did use the same, even prior to the commencement of the project, without the need to use its own funds and without the risk of any loss.

That FFJJ Construction had funds of its own to cover the expenditures of the project[59] is immaterial, for the fact remains that the contractor had obtained unwarranted benefit and advantage as a result of the receipt of the full payment of the contract price.

That the project was eventually completed is of no moment. Had it not been completed, an undue injury would have been actually caused to the

---

[56] G.R. No. 192685, 31 July 2013.
[57] G.R. No. 240621, 24 July 2019.
[58] TSN dated September 10, 2019, pp. 8-9.
[59] *Id.* at 9-10.

government, under the *first mode* of the third element, albeit it is not alleged in the Information, apart from a finding under the *second mode* for giving the FFJJ Construction unwarranted benefit and advantage. To reiterate, damage is not required or it is not a necessary element for a violation of Section 3(e) of R.A. No. 3019 under the *second mode*. Thus, the lack of damage in view of the completion of the project is not significant in this case.

In *Tio v. People*,[60] the Supreme Court ruled that no undue injury had been caused to the government or to any party because the defense proved that the road concreting project was completed. Nevertheless, as quoted above, the Supreme Court held that, *inter alia*, both the mayor (Tio) and the municipal accountant (Cadiz) "acted with gross inexcusable negligence in causing the payment of P2,500,000.00 to Double A despite the incomplete documents, giving unwarranted benefit, advantage or preference in favor of Double A."

The accused public officers urge the Court to adopt the rationale of the *Sandiganbayan* Fourth Division in its Decision dated September 23, 2022 in the case of *People v. Reyes, et al.* (SB-18-CRM-0530), acquitting all of the accused therein of the charge of violation of Section 3(e) of R.A. No. 3019 for "causing the payment or approving, facilitating, preparing, processing and releasing the payment in the amount of PhP6,650,000.00 for the purchase of the 5000-square meter lot owned by the Reyes children, months prior to the execution of the Deed of Portion Sale conveying the property to the municipality."

A cursory reading of the said Decision reveals that the *Sandiganbayan* Fourth Division, in fact, found the accused public officers therein to have acted with gross inexcusable negligence, thus:

> The Court is convinced that accused Reyes, Cabiscuelas, and Fruelda committed gross inexcusable negligence by disbursing the amount of Php6,650,000.00 despite the absence of a duly executed deed of conveyance in favor of the Municipality of Malvar.
>
> x x x x
>
> In fine, accused Reyes, Cabiscuelas, and Fruelda committed gross inexcusable negligence and failed to faithfully perform their duty of ensuring that claims against government funds shall be supported with complete documentation. [x x x].[61]

Nevertheless, the *Sandiganbayan* Fourth Division acquitted them of the charge only because the prosecution, *unlike in the present case*, failed to prove the presence of the third element for a violation of Section 3(e) of R.A. No. 3019.

---

[60] *Supra* note 33 at 24.
[61] Decision dated September 23, 2022, pp. 22, 27.

In fine, the Court affirms that the accused public officers are guilty of violation of Section 3(e) of R.A. No. 3019 because the elements thereof are present in this case. In particular, they acted with gross inexcusable negligence in causing the full payment of the contract price in the amount of PhP5,000,000.00 to the FFJJ Construction, *under the circumstances enumerated above*,[62] giving unwarranted benefit and advantage in favor of the FFJJ Construction.

The previous denial of the claim of alleged inordinate delay

The Court notes that apart from the respective motions for reconsideration of the accused public officers, Dilangalen's *Supplement* was timely filed on September 27, 2022 while Ali and Mael's joint *Supplement* was filed out of time on October 7, 2022. The prosecution filed a *Consolidated Comment/Opposition* to both supplements on October 24, 2022.

All of the accused, through their respective counsels, received a copy of the assailed Decision on September 9, 2022 during the promulgation of judgment. Thus, they had fifteen (15) days within which to file a motion for reconsideration.[63] The fifteenth day fell on September 24, 2022, Saturday. However, on September 25, 2022, a work suspension in the *Sandiganbayan* was declared for the supposed next business day, September 26, 2022, Monday, due to typhoon *Karding*.[64] Thus, the next business day following September 24, 2022 was on September 27, 2022, Tuesday, on which Dilangalen filed his *Supplement*.

In his *Supplement*, Dilangalen raises the issue of alleged inordinate delay before the Office of the Ombudsman, in violation of his right to speedy disposition of cases. However, the Court had already resolved this issue four years ago in Resolution[65] dated September 24, 2018, denying the separate motions of all the accused:

---

[62] See page 14, as follows:

The Court is not unaware that a violation of procurement laws does not *ipso facto* give rise to a violation of R.A. No. 3019. However, the present case is not solely a violation of Items 4 and 5 on the rules on limited advance payment and progress billing under Annex "E" of the Revised Implementing Rules and Regulations of R.A. No. 9184. Rather, beyond that, this is a case of causing the full payment of the contract price to the contractor (*1*) *unilaterally* and *without* an actual basis whatsoever, not even an erroneous one; (*2*) *without* the required supporting documents for the project; (*3*) made *prior* to the commencement of the construction; (*4*) *contrary* to Item 4 of the terms and conditions of the Contract of Agreement which explicitly limits to 15% of the contract price the partial payment that the contractor may claim as Mobilization Fund; and (*5*) *without* due regard to their respective duties and responsibilities as municipal mayor, municipal accountant and municipal treasurer under Sections 101(1) and 102(1) of the Government Auditing Code of the Philippines and Sections 338, 340, 444(b)(3)(viii), 470(d)(2) and 474(b)(5) of the Local Government Code of 1991, as the case may be.

[63] Rule X, Sec. 1 of the 2018 Revised Internal Rules of the Sandiganbayan.

[64] Supreme Court Memorandum Order No. 144-2022 dated September 25, 2022 and Sandiganbayan Memorandum dated September 25, 2022.

[65] Records, Vol. 1, pp. 191-197.

> This resolves the following: (1) [a]ccused Ali and Mael's *I. Motion to Nullify the Information II. Motion to Dismiss the Case for Lack of Jurisdiction*; and (2) accused Dilangalen's *Manifestation to Adopt Motion to Quash Information and to Dismiss with Arguments and Motion to Withdraw Motion for Leave to Travel Abroad.* [x x x.]
>
> Accused Ali and Mael argue that the Information in this case should be nullified and quashed due to the inordinate delay in the resolution of the preliminary investigation of this case, which violated their right to due process of law and speedy disposition of their case. They continue that with the nullity of the Information, this Court cannot acquire jurisdiction over the case. [x x x].
>
> x x x x
>
> They claim a total delay period of five (5) years and 11 months, counted from 10 January 2013 up to 12 November 2018.
>
> x x x x
>
> Accused Dilangalen adopts the motion of his co-accused. He relies on essentially the same timeline presented by accused Ali and Mael.
>
> x x x x
>
> **WHEREFORE**, the accused's motions to dismiss and motions to quash are **DENIED** for lack of merit. [x x x].[66] (Emphasis, italics and capitalization in the original)

The Court would have opted not to belabor this issue any further if not for the mathematical misrepresentations alleged in Dilangalen's *Supplement*, to wit, quoting *verbatim*:

> In the present case, the assailed act purportedly committed by herein Accused occurred back on **1 December 2011**, [x x x]. Notably, [the] Statement of Work Accomplished [x x x] indicated that the SWIP was for the period of 4 December 2011 to **12 March 2012**.
>
> x x x x
>
> Despite the completion of the project, private complainant herein filed a complaint against the Accused **more than two (2) years after or only on 10 January 2013 before the FIU for the assailed act**. Worse, the same was acted upon by the FIU only on **21 October 2016**, when the private complainant herein through the FIU finally filed their Affidavit-Complaint dated 19 October 2016 with the Office of the Ombudsman.
>
> Clearly, **it took almost [six] (6) years from the time the assailed act transpired to formalize a complaint against the Accused** before the Office of the Ombudsman. [x x x].
>
> Upon the filing of the complaint by the FIU, the Ombudsman found probable cause against the Accused and rendered its Resolution dated **14 November 2017** [x x x].

---

[66] *Id.* at 191-192, 197.

> Furthermore, it bears emphasis that **the delay between the assailed act and the Assailed Decision spanned for a period of at least eleven (11) years**, [x x x]. Again, [x x x], **the assailed Decision was rendered almost a decade after the completion of the SWIP and when the assailed act transpired.**[67] (Emphasis and underscoring supplied)

The Court is perplexed how such periods of "more than two (2) years," "almost [six] (6) years," "at least eleven (11) years," and "almost a decade" were arrived at, considering the elementary nature of the arithmetic involved here, *viz.*:

(*1*) From December 1, 2011 to January 10, 2013, a period of only more than one (1) year and one (1) month, not "more than two (2) years;"

(*2*) From December 1, 2011 to October 21, 2016, a period of almost four (4) years and 11 months, not "almost [six] (6) years;" and

(*3*) From December 1, 2011 to November 14, 2017, a period of almost six (6) years, not "at least eleven (11) years" or "almost a decade." Even from December 1, 2011 to May 28, 2018, the date of filing of the Information, there was only a period of almost six (6) years and six (6) months, not "at least eleven (11) years" or "almost a decade."

In the landmark case of *Cagang v. Sandiganbayan*,[68] the Supreme Court has already abandoned the prior rulings that *fact-finding investigations* are included in the period for determination of inordinate delay. It pronounced that a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation:

> Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*, [723 Phil. 444 (2013)], the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.
>
> x x x x
>
> The ruling in *People v. Sandiganbayan, Fifth Division* that fact--finding investigations are included in the period for determination of inordinate delay is ABANDONED. (Capitalization in the original)

---

[67] Records, Vol. 3, pp. 122-123.
[68] G.R. Nos. 206438 and 206458, 31 July 2018.

Thus, the period of fact-finding investigation conducted by the FIU from January 10, 2013 until October 21, 2016 is not counted in the period for determination of inordinate delay. The relevant period commenced only on October 21, 2016, the filing of the formal complaint. Therefrom, the Resolution dated November 14, 2017 finding probable cause was approved by the Ombudsman on December 20, 2017, a reasonable period of one (1) year and two (2) months. Thereafter, the Order dated February 15, 2018 denying the motions for reconsideration was approved by the Ombudsman on March 23, 2018, and the Information was filed with the *Sandiganbayan* on May 28, 2018. From the filing of the formal complaint (October 21, 2016) to the filing of the Information (May 28, 2018), there was a total period of only more than one (1) year and seven (7) months.

The Court deems this total period reasonable for the conduct of preliminary investigation until the consequent filing of the Information. Thus, the Court's previous finding on this issue is affirmed.

No violation of the accused's right to be informed of the nature and cause of the accusation

In his *Supplement*, Dilangalen argues that the assailed Decision for conviction violates the constitutional right to be informed of the nature and cause of the accusation against the accused, in this manner:

> *The Decision violates the Accused's constitutional right under Section 14(2), Article III of the 1987 Philippine Constitution.*
>
> x x x x
>
> Here, the Information dated 14 November 2017 filed by the Ombudsman reads as follows –
>
> x x x x
>
> Based on the above Information, the accused are being charged of giving unwarranted benefit, advantage or preference to FFJJ Construction by releasing, causing the release, and/or giving the full payment for the Small Water Impounding Project in favor of the latter, despite the fact that the project was not yet completed[,] **to the damage and prejudice of the government.**
>
> **Hence, it must be proven that the act of the Accused giving unwarranted benefit, advantage, or preference to FFJJ Construction was "to the damage and prejudice of the government."**
>
> x x x x
>
> However, the prosecution failed to prove that there was damage and prejudice to the government. Indeed, nothing has been presented by

> the prosecution to show that the acts of the accused of giving unwarranted benefit, advantage, or preference to FFJJ caused damage and prejudice to the government as alleged in the Information.
>
> On the contrary, the prosecution admitted that FFJJ Construction was able to complete the SWIP within the period provided in the Contract; thus, the act of the Accused of prematurely releasing the full amount of the contract did not result to any damage and prejudice to the government[.]
>
> x x x x
>
> Accordingly, the Accused must be acquitted of the crime as charged in the Information [x x x],
>
> x x x x
>
> and to convict the Accused on a mere portion of the Information violates their constitutional right to due process and to be informed of the nature and cause of the accusation against them guaranteed under Section 14(2) of Article III of the 1987 Constitution, as explained in *Villarba v. Court of Appeals*, [x x x].[69] (Emphasis supplied)

The Court observes that Dilangalen's *Supplement* may well have been confused regarding the import of the constitutional right to be informed of the nature and cause of the accusation against the accused. *Villarba v. Court of Appeals*,[70] which was cited in the *Supplement*, is instructive:

> [T]he information need not reproduce the law verbatim in alleging the acts or omissions that constitute the offense. If its language is understood, the constitutional right to be informed of the nature and cause of the accusation against the accused stands unviolated.
>
> x x x x
>
> Petitioner's constitutional right to be informed of the nature and cause of the accusation against him is upheld as long as the crime, as described, is reasonably adequate to apprise him of the offense charged. This mandate does not require a verbatim reiteration of the law. The use of derivatives, synonyms, and allegations of basic facts constituting the crime will suffice.

The constitutional right, therefore, proscribes the act of *not informing* the accused of the nature and cause of the accusation against him or her. It is *not* applicable against (*1*) the act of *informing* the accused in the information beyond what the elements for the offense charged require, and (*2*) the act of *informing* the accused in the information but convicting him or her of the offense charged despite a finding of lack of proof of an allegation in the information, whether such an allegation is an element or not of the offense charged. In the latter two instances, the constitutional right stands unviolated, simply because the accused is informed of such nature and accusation.

---

[69] Records, Vol. 3, pp. 126-129.
[70] G.R. No. 227777, 15 June 2020.

Dilangalen's arguments in his *Supplement* appear to put all the three instances above under the umbrella of a violation of the said constitutional right. However, where an allegation beyond what the elements for the offense charged require is included, such an allegation would be a mere superfluity in the information or a meaningless surplusage therein. Moreover, where the accused is convicted of the offense charged despite a finding of lack of proof of an allegation in the information, the conviction is erroneous if such an allegation is an element of the offense charged, not because of a violation of the said constitutional right but for the reason that an element is absent. If such an allegation is not an element of the offense charged, the conviction is proper if all the elements of the offense charged are proved, as recited in the information, for the reason that such an allegation would be a mere superfluity in the information or a meaningless surplusage therein.

Dilangalen harps on the clause "to the damage and prejudice of the government" in the Information, which, as he alleged, was not proven by the prosecution. Does that mean, however, that no conviction can be had under the Information for violation of Section 3(e) of R.A. No. 3019 under the *second mode*? Does the inclusion of such clause in the Information require the prosecution to prove the same in order to secure a conviction under the *second mode*? Does convicting the accused under the *second mode*, *sans* proof of damage or prejudice to the government, violate the constitutional right to be informed of the nature and cause of the accusation against him or her? The answers to these questions are all in the negative.

In the first place, the assailed Decision is very clear that "although the Information alleges damage and prejudice to the government, it is clear from the records that the prosecution intended not to charge the accused under the first punishable act—causing undue injury to the government or any private party"[71] and that, "[a]t any rate, the records do not support a finding of undue injury or damage to the government."[72]

As early as in *Cabrera v. Sandiganbayan*[73] (2004), the Supreme Court "has categorized any perceived inconsistencies spawned by the rulings [x x x] in *Mendoza-Arce* and other cases and those in *Jacinto*, *Santiago*, *Evangelista*, *Quibal* and *Bautista*," clarifying that the giving of unwarranted benefits, advantage or preference is not a mode of causing undue injury to any party, whether the government or private party:

> There are two (2) ways by which a public official violates Section 3(e) of Rep. Act No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; **or** (b) by giving any private party any unwarranted benefit, advantage or preference.

---

[71] Records, Vol. 3, p. 71.
[72] *Id.*
[73] G.R. Nos. 162314-17, 25 October 2004.

> The accused may be charged under either mode or under both. In *Quibal v. Sandiganbayan*, the Court held that the use of the disjunctive term **or** connotes that either act qualifies as a violation of Sec. 3(e) of Rep. Act No. 3019. (Emphasis and underscoring in original)

To repeat, in *Ampil v. Office of the Ombudsman*,[74] reiterated in *People v. Sandiganbayan and Recio*,[75] damage is not required or that it is not a necessary element for a violation of Section 3(e) of R.A. No. 3019 under the *second mode*. Again, the lack of damage in view of the completion of the project is not significant in this case.

The Information in the present case charges only the *second mode*, as already discussed. Thus, the clause "to the damage and prejudice of the government" therein is, for all intents and purposes, a mere superfluity or a meaningless surplusage.

Clearly, convicting the accused public officers in this case for a violation of Section 3(e) of R.A. No. 3019 under the *second mode* does not violate the constitutional right to be informed of the nature and cause of the accusation against them, for the simple reason that they have been informed of the nature and cause of the accusation against under the said *second mode* (*e.g.*, their arraignment).

The penalty

Pursuant to *Philippine National Bank v. Tejano, Jr.*[76] that the forfeiture of benefits under Section 13 of R.A. No. 3019 is "not intended to be an automatic or self-operative provision" and that "in order for the convicted public officer or employee to lose his retirement or gratuity benefits, the judgment should still expressly state so," the penalty is modified to include the forfeiture of their retirement or gratuity benefits under any law, and in the event that the accused public officers have already received such benefits, they shall be liable to restitute the same to the government:

> Section 13. *Suspension and loss of benefits.* – [x x x]. **Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law**, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.
>
> **In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government.** (Emphasis supplied)

---

[74] *Supra* note 56.
[75] *Supra* note 57.
[76] G.R. No. 189712, 27 November 2018 (Resolution).

In sum, the separate motions for reconsideration and Dilangalen's *Supplement* are denied for lack of merit, while Ali and Mael's joint *Supplement* is merely noted for being filed out of time.

WHEREFORE, the *Motion for Reconsideration* dated September 16, 2022 and *Supplement* dated September 27, 2022 of accused Datu Umbra B. Dilangalen, Al Hadj and the joint *Motion for Reconsideration* dated September 22, 2022 of accused Rahima A. Ali and Kabiba A. Mael are **DENIED** for lack of merit.

The joint *Supplement* dated October 3, 2022 of accused Rahima A. Ali and Kabiba A. Mael is **NOTED** for being filed out of time.

The Decision dated September 9, 2022 is **AFFIRMED**, insofar as it found all of the accused **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, for having acted with gross inexcusable negligence, giving unwarranted benefit and advantage in favor of the FFJJ Construction, as discussed. The penalty is modified such that each of the accused is hereby sentenced to the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to seven (7) years, as maximum, with perpetual disqualification from public office, and pursuant to Section 13 of R.A. No. 3019, with forfeiture of their retirement or gratuity benefits under any law, and that in the event that they have already received such benefits, they shall be liable to restitute the same to the government.

No civil liability is adjudged against the accused, for lack of damage or undue injury to the government.

SO ORDERED.

MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:

RAFAEL R. LAGOS
Associate Justice
Chairperson

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice