Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CHARITA MONTAÑO CHAN,
Accused.

SB-19-CRM-0157
For: Violation of Section 3 (e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), in relation to Section 4 of P.D. No. 1802 (Creating the Gamefowl Commission) and Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte).

Present:

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

Promulgated:
November 29, 2022

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RESOLUTION

Moreno, J.:

For resolution are the following:

1. *"Motion for Reconsideration"* filed by accused Chan, through counsel, which was received by the Court through registered mail on October 20, 2022;[1] and

2. *"Opposition" (Re: Motion for Reconsideration of the Decision dated September 30, 2022)"* filed by the prosecution on October 25, 2022.[2]

Motion for Reconsideration of Accused Chan

In her *Motion for Reconsideration*, accused Chan seeks reconsideration of the Court's *Decision* promulgated on September 30, 2022, based on the following grounds: (a) that the conviction of the accused in the present case puts her in double jeopardy by reason of a prior acquittal involving a similar case; (b) that the non-appearance of the witnesses for the prosecution violates the right of the accused to confront the witnesses against her; (c) that the prosecution failed to prove that the accused was notified or personally served of the Resolutions issued by the Sangguniang Bayan of Babatngon, Leyte; (d) that the Mayor's Permit dated August 28, 2009, shows in its face, that the same was subject to the provisions of R.A. No. 7610 and other pertinent laws, thus in itself, self-limiting; (e) that the Mayor's Permit is renewable yearly, thus, the complaint has become moot and academic by the non-use and expiration thereof; (f) that the prosecution failed to present actual damage to the government or to the private complainant, James Engle; and (g) that the prosecution failed to prove that the elements of the crimes charged are present.

For the first ground, accused Chan claims that in the prior Criminal Case No. SB-16-CRM-0511 filed before the Sandiganbayan Fifth (5th) Division, she was charged with the violation of Section 3(j) of R.A. No. 3019, as amended, involving the same private complainant and involving the issuance of a Mayor's Permit to Nicolas Alde in 2012, to wit:

> "That on or about the year 2012, or for sometime prior or subsequent thereto, in the Municipality of Babatngon, Province of Leyte, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being the Mayor of the Municipality of Babatngon, Province of Leyte, committing the offense in relation to office, with deliberate intent did then and there, willfully, unlawfully and criminally approve and grant a Mayor's Permit for the operation of the Babatngon Gallera, a cockpit, in favor of the owner thereof, Nicomedes Alde, knowing fully well that said Nicomedes Alde is not legally entitled to such permit, being a government official who at the time is a member of the Sangguniang Bayan of Babatngon and President of the Liga ng mga Barangay therefore prohibited under Section 89(2) of the Local Government Code (Republic Act No. 7160) from holding such interest in 'a cockpit licensed by the said local government unit, to the detriment of public service.

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1 Record, Vol. II, pp. 299-348.
2 Record, Vol. II, pp. 279-291.

CONTRARY TO LAW."[3]

In its *Decision* promulgated on February 20, 2018, the Sandiganbayan Fifth (5th) Division acquitted accused Chan in Criminal Case No. SB-16-CRM-0511, viz:

> "WHEREFORE, premises considered, this Court finds the accused Charita M. Chan GUILTY beyond reasonable doubt of violation of Section 3(j) of Republic Act No. 3019, as charged in SB-16-CRM-0512 and is hereby sentenced to suffer the indeterminate penalty of imprisonment from Six (6) years and One (1) month, as minimum, to Seven (7) years, as maximum, and perpetually disqualified to hold public office. However, the accused Charita M. Chan is ACQUITTED of the same charge for violation of Republic Act No. 3019, Section 3(j) in SB-16-CRM-0511, for insufficiency of evidence.
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> SO ORDERED."[4]

Acting on the *Motion for Reconsideration* filed by the prosecution, the Sandiganbayan Fifth (5th) Division denied the same through its *Resolution*[5] dated March 23, 2018. According to accused Chan, her acquittal in Criminal Case No. SB-16-CRM-0511, constitutes a bar to the prosecution in the case at bar considering that they involve the same set of facts, the same parties, and causes of action.

Anent the second ground, accused Chan contends that the non-appearance of the witnesses for the prosecution violates her right to confront the witnesses against her. According to her, the prosecution decided not to present its witnesses, including private complainant James Engle. Accused Chan reiterated her position that the sworn statement of James Engle is not admissible because the latter never took the witness stand.

For the third ground, accused Chan argues that the prosecution failed to provide evidence that she received or was furnished with copies of the Sangguniang Bayan Resolutions. Alleging that she was just on her initial term at the time of the issuance of the subject Mayor's Permit on August 28, 2009, accused Chan cannot be expected to know all the laws or ordinances by heart. Moreover, considering that the prosecution admitted and stipulated that the Sangguniang Bayan Resolutions do not bear accused Chan's signature, it cannot be presumed that she received or was furnished with copies thereof.

Discussing the fourth and fifth grounds, accused Chan claims that the subject Mayor's Permit is self-limiting and therefore the complaint has become moot and academic upon its expiration, non-use, and violation of the

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3 Record, Vol. II, pp. 313-314.
4 Record, Vol. II, pp. 315-330.
5 Record, Vol. II, pp. 331-336.

provisions of R.A. No. 7610 and other pertinent laws. Furthermore, accused Chan allegedly relied on the other departments and offices of the local government unit when she approved the subject Mayor's Permit.

Lastly, accused Chan alleges that the prosecution failed to prove that the elements of the crime charged are present. According to her, there is no concrete and actual proof of abuse of authority in issuing the subject Mayor's Permit considering that no witness appeared to prove and testify the same. On the contrary, accused Chan allegedly practiced caution by making it appear on the face of the subject Mayor's Permit that the same was self-limiting and subject to the provisions of R.A. No. 7160 and other pertinent laws and regulations.

Opposition of the Prosecution

In its Opposition, the Prosecution submits that the Court correctly ruled that accused Chan is guilty of violating Section 3(e) of R.A. No. 3019, as amended, in relation to Section 4 of P.D. No. 1802 (Creating the Gamefowl Commission) and Section 6(h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte). The Prosecution based its position on the following grounds: (1) the conviction of accused Chan did not put her in double jeopardy; (2) accused Chan's assertion that she was denied her constitutional right to confront the witnesses face to face, is bereft of merit; (3) the prosecution was able to prove that the elements of the crime as charged are present.

For the first ground, the prosecution opines that accused Chan cannot raise the defense of double jeopardy considering that the requisites to raise such a defense are not present. According to the prosecution, the information in Criminal Case No. SB-16-CRM-0511 charges accused Chan of an offense that is different from the information in the present case considering that the criminal cases pertain to a different set of facts and different violations of law.

Anent the second ground, the prosecution asserts that accused Chan was not denied her constitutional right to confront the witnesses face to face as the constitutional provision is not applicable. The prosecution reiterates that it is no longer necessary to present its witnesses since the parties had already entered into stipulations.

Lastly, the prosecution argues that all the elements of the violation of Section 3(e) of R.A. No. 3019, as amended, are present in the instant case. The prosecution submitted that its evidence, as well as the stipulations entered into by the parties, sufficiently established all the elements of the crime as charged.

RULING OF THE COURT

After due consideration, the Court denies the *Motion for Reconsideration* filed by accused Chan. Here, the Court finds that the instant motion is unmeritorious both in the procedural and substantive aspects.

I. Timeliness of the Motion for Reconsideration.

In her *Motion for Reconsideration,* accused Chan alleges that she received a copy of the *Decision* on October 4, 2022, hence, she has up to October 19, 2022, within which to file a Motion for Reconsideration in accordance with the Revised Internal Rules of the Sandiganbayan. On the other hand, the records disclose that the assailed *Decision* was promulgated by the Court on September 30, 2022.

Section 1, Rule X of the 2018 Revised Internal Rules of the Sandiganbayan prescribes the period to file a motion for reconsideration. Under the said provision, "a motion for new trial or reconsideration of a decision or final order shall be filed within fifteen (15) calendar days from promulgation of the judgment or from notice of final order or judgment." Here, we are confronted with the proper interpretation of Section 1, Rule X of the 2018 Revised Internal Rules of the Sandiganbayan.

The case of *Neplum, Inc. vs. Evelyn Orbeso*[6] sheds some light on this procedural matter. Although the issue pertained to the period when a private offended party may appeal the civil aspect of a judgment acquitting the accused on reasonable doubt, the interpretation of the phrase "from the promulgation of the judgment or from notice of final order" was likewise discussed, to wit:

> We clarify. Had it been the accused who appealed, we could have easily ruled that the reckoning period for filing an appeal be counted from the promulgation of the judgment. In *People v. Tamani,* the Court was confronted with the question of when to count the period within which the accused must appeal the criminal conviction. Answered the Court:
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> > "The assumption that the fifteen-day period should be counted from February 25, 1963, when a copy of the decision was allegedly served on appellant's counsel by registered mail is not well-taken. The word 'promulgation' in section 6 should be construed as referring to 'judgment', while the word 'notice' should be construed as referring to 'order'."
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> The interpretation in that case was very clear. The period for appeal was to be counted from the date of promulgation of the decision. Text writers are in agreement with this interpretation.

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[6] G.R. No. 141986, July 11, 2002.

In an earlier case, this Court explained the same interpretation in this wise:

> "It may, therefore, be stated that one who desires to appeal in a criminal case must file a notice to that effect within fifteen days from the date the decision is announced or promulgated to the defendant. And this can be done by the court either by announcing the judgment in open court as was done in this case, or by promulgating the judgment in the manner set forth in [S]ection 6, Rule 116 of the Rules of Court." [Citations omitted.]

Having laid down the Supreme Court interpretation of the reckoning period vis-à-vis the phrase "from the promulgation of the judgment or from notice of final order", it is clear that accused Chan's Motion for Reconsideration was filed out of time.

The records show that accused Chan and her counsel were present during the promulgation of the assailed *Decision* on September 30, 2022. This fact was properly recorded in the *Order*[7] of the Court on the same date, which states as follows:

> "In today's scheduled promulgation of judgment, Prosecution Blesilda Ouano appeared for the plaintiff, Atty. Abigail Azcarraga-Portugal appeared for accused Charita Montaño Chan. The said accused likewise appeared in Court.
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> The Court NOTES the manifestation of the counsel for the accused that she will be filing a Motion for Reconsideration of the promulgated decision."

Moreover, accused Chan and her counsel even signed the *Minutes*[8] of the session on September 30, 2022. Having been present during the promulgation, accused Chan was in effect actually notified of the assailed *Decision*, and from that time already had knowledge of the need to file the necessary remedies without delay. In other words, the fifteen days period to file the *Motion for Reconsideration* should be counted from September 30, 2022, and not October 4, 2022. As such, accused Chan had only up to October 17, 2022,[9] within which to file her *Motion for Reconsideration* of the assailed *Decision*.

It bears to stress that the right to file a motion for reconsideration, just like the right to appeal, is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise. [10]

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7 Record, Vol. II, p. 257.
8 Record, Vol. II, pp. 260-261.
9 October 15, 2022 falls on a Saturday.
10 *Ramon Oro vs. Judge Gerardo Diaz, et al.*, GR No. 140974, July 11, 2001

Jurisprudence dictates that procedural rules are essential in the administration of justice. The Supreme Court has already settled that procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantial rights through the orderly and speedy administration of justice. The rules are not intended to hamper litigants or complicate litigation but, indeed, to provide for a system under which suitors may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.[11]

Be that as it may, the Supreme Court, in some cases, relaxed the application of procedural rules for the greater interest of substantial justice. It must be pointed out, however, that "resort to a liberal application, or suspension of the application of procedural rules remains the exception to the well-settled principle that rules must be complied with for the orderly administration of justice."[12] Such can only be upheld "in proper cases and under justifiable causes and circumstances."[13]

Here, even if we are to brush aside the technicalities and go into the substance of the issues raised by accused Chan in her *Motion for Reconsideration*, the Court finds no justification to deviate from an otherwise stringent rule.

II. Substantive Matters.

A. The conviction of accused Chan in the instant case did not put her in double jeopardy on account of the prior acquittal in Criminal Case No. SB-16-CRM-0511.

A comparison of the crimes charged in the present information and that in Criminal Case No. SB-16-CRM-0511 belies accused Chan's claim that her conviction in the present case put her in double jeopardy for the "same or identical offense".

The rule on double jeopardy is embodied under Article III, Section 1(2) of the Constitution which provides that "no person shall be twice put in jeopardy of punishment for the same offense." The concept of the rule against double jeopardy was succinctly laid down by the Supreme Court in the early case of *Conrado Melo v. People of the Philippines, et al.,*[14] as follows:

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11 *Nicanor T. Santos vs. Court of Appeals*, et. al, G.R. No. 92862, July 4, 1991.
12 *Building Care Corporation, et al., vs. Investigation Agency, et al.*, G.R. No. 198357, December 10, 2012.
13 *Romulo Marohomsalic vs. Reynaldo Cole*, G.R. No. 169918, February 27, 2008.
14 G.R. No. L-3580, March 22, 1950.

"...[t]he rule of "double jeopardy" had a settled meaning in this jurisdiction at the time our Constitution was promulgated. It meant that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense. This principle is founded upon the law of reason, justice and conscience. It is embodied in the maxim of the civil law *non bis in idem*, in the common law of England, and undoubtedly in every system of jurisprudence, and instead of having specific origin it simply always existed. It found expression in the Spanish law and in the Constitution of the United States and is now embodied in our own Constitution as one of the fundamental rights of the citizens.

It must be noticed that the protection of the Constitutional inhibition is against a second jeopardy for the same offense, the only exception being, as stated in the same Constitution, that "if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." The phrase same offense, under the general rule, has always been construed to mean not only that the second offense charged is exactly the same as the one alleged in the first information, but also that the two offenses are identical. There is identity between the two offenses when the evidence to support a conviction for one offense would be sufficient to warrant a conviction for the other. This so-called "same-evidence test" which was found to be vague and deficient, was restated by the Rules of Court in a clearer and more accurate form. Under said Rules there is identity between two offenses not only when the second offense is exactly the same as the first, but also when the second offense is an attempt to commit the first or a frustration thereof, or when it necessarily includes or is necessarily included in the offense charged in the first information. (Rule 113, sec. 9; U.S. v. Lim Suco, 11 Phil., 484; U.S. v. Ledesma, 29 Phil., 431; People v. Martinez, 55 Phil., 6.) In this connection, an offense may be said to necessarily include another when some of the essential ingredients of the former as alleged in the information constitute the latter. And vice-versa, an offense may be said to be necessarily included in another when all the ingredients of the former constitute a part of the elements constituting the latter (Rule 116, sec. 5.) In other words, one who has been charged with an offense cannot be again charged with the same or identical offense though the latter be lesser or greater than the former. "As the Government cannot begin with the highest, and then go down step by step, bringing the man into jeopardy for every dereliction included therein, neither can it begin with the lowest and ascend to the highest with precisely the same result." (People v. Cox, 107 Mich., 435, quoted with approval in U.S. v. Lim Suco, 11 Phil., 484; see also U.S. v. Ledesma, 29 Phil., 431 and People v. Martinez, 55 Phil., 6, 10.)

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This is the meaning of "double jeopardy" as intended by our Constitution for it was the one prevailing in the jurisdiction at the time the Constitution was promulgated, and no other meaning could have been intended by our Rules of Court."

Simply put, there is double jeopardy when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first.[15]

In order to determine if accused Chan was put on double jeopardy, there is a need to discuss whether the prosecution under the instant case is for the same offense charged in Criminal Case No. SB-16-CRM-0511. As instructed by the High Court, the constitutional right against double jeopardy protects from a second prosecution for the same offense, not for a different one.[16]

To reiterate the Supreme Court in *Melo v. People*, the phrase "same offense," under the general rule, has always been construed to mean not only that the second offense charged is exactly the same as the one alleged in the first information, but also that the two offenses are identical. There is identity between the two offenses when the evidence to support a conviction for one offense would be sufficient to warrant a conviction for the other.[17]

Applying the foregoing, the Court finds that the offense charged in the instant case is neither similar nor identical to the offense charged in Criminal Case No. SB-16-CRM-0511. *First*, the instant case pertains to the violation of Section 3(e) of R.A. No. 3019, as amended, while Criminal Case No. SB-16-CRM-0511 charged accused Chan with violation of Section 3(j) of the same law. Under R.A. No. 3019, as amended, Section 3(e) punishes two (2) acts – (a) causing undue injury to any party or the government or (b) giving any private party any unwarranted benefits, advantage or preference. On the other hand, Section 3(j) of the anti-graft law punishes the act of knowingly approving or granting any license, permit, privilege, or benefit in favor of any person not qualified for or not legally entitled thereto.

Second, the two informations are based on two different factual antecedents which took place at two different times and pertaining to two different Mayor's Permits. While the court notes that the information in the present case and that in Criminal Case No. SB-16-CRM-0511 involves the same parties, they are still not identical considering that the Mayor's Permit issued pertains to different dates. To note, the instant case involves the Mayor's Permit issued by accused Chan on August 28, 2009, on the other hand, Criminal Case No. SB-16-CRM-0511 involves the Mayor's Permit issued in 2012.

Moreover, accused Chan emphasized the phrase "or for some time prior or subsequent thereto" in order to prove the identity of the acts complained of. Such is an erroneous and illogical interpretation of the phrase. It must be noted

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15 *Ssgt. Jose M. Pacoy v. Hon. Afable Cajugal*, G.R. No. 157472, September 28, 2007.
16 *Andres Suero v. People of the Philippines, et al.*, G.R. No. 156408, January 31, 2005.
17 *Melo v. People, Supra.*

the accused Chan in her *Motion for Reconsideration* already admitted that the Mayor's Permit is issued on a yearly basis. Hence, the act of issuance in the year 2009 is different from the act of issuance of the Mayor's Permit in the year 2012, even if they involve the same parties.

Based on the foregoing, the conviction of accused Chan in the instant case did not put her in double jeopardy on account of the prior acquittal in Criminal Case No. SB-16-CRM-0511.

B. The non-appearance of the witness for the prosecution did not violate the constitutional right of the accused to confront the witnesses against her.

The right of the accused to confront the witness or otherwise known as the right of confrontation is one of the fundamental rights of an accused as enshrined in Article III, Section 14 of the 1987 Constitution. This constitutional right is listed as one of the rights of an accused during the trial under Rule 15, Section 1 of the Revised Rules of Criminal Procedure.

The Supreme Court, in the case of *Harry Go, et al., vs. People of the Philippines, et al.*,[18] had the occasion to discuss the two-fold purpose of the constitutional right of the accused to confrontation, *viz*: (1) to afford the accused an opportunity to test the testimony of witnesses by cross-examination, and (2) to allow the judge to observe the deportment of witnesses.

As expounded by the Supreme Court, the right of confrontation is intended "to secure the accused in the right to be tried as far as facts provable by witnesses as meet him face to face at the trial who give their testimony in his presence, and give to the accused an opportunity of cross-examination," it is properly viewed as a guarantee against the use of unreliable testimony in criminal trials.[19]

In addition, the Court explained in *People of the Philippines v. Alberto Seneris,*[20] that the constitutional requirement "ensures that the witness will give his testimony under oath, thus deterring lying by the threat of perjury charge; it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and it enables the court to observe the demeanor of the witness and assess his credibility."

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18 G.R. No. 185527, July 18, 2012.
19 *Id.*
20 G.R. No. L-48883, August 6, 1980.

Corollary thereto, the Supreme Court in the case of *Kim Liong v. People of the Philippines*,[21] held that the denial of the right to confrontation "will render the testimony of the witness incomplete and inadmissible in evidence."

Based on the foregoing jurisprudence, it was erroneous for accused Chan to invoke the constitutional right of confrontation when, in fact, no witness was presented by the prosecution.

Here, the prosecution formally offered as evidence the documentary exhibits which were duly stipulated upon and admitted by the parties. The Joint Stipulation made by the parties served as a waiver of the right to present evidence on the facts and the documents freely admitted by them. In other words, there could have been no impairment of accused Chan's right to confrontation. As such, these documentary exhibits were properly admitted and given probative value by the Court.[22]

C. The prosecution proved with moral certainty all the elements of the crime charged.

The other grounds raised by accused Chan in her Motion for Reconsideration all pertain to substantial issues which the Court has already resolved in its assailed *Decision*. Be that as it may, the Court finds it proper to reiterate its findings in order to finally settle the issues raised by accused Chan in the present motion.

1. The mere denial of accused Chan that she was not notified or that she was not personally served with the subject resolutions deserves scant consideration.

Again, the Court is faced with the reiteration of accused Chan's previous defense that she did not receive the subject resolutions. This issue has already been settled by the Court in its *Decision*, to wit:

> Accused Chan cannot also deny liability by repetitively declaring that she did not receive S.B. Resolution No. 2412-08 and S.B. Resolution No. 2522-09. Under both Resolutions, the Sangguniang Bayan resolved to forward them to accused Chan for her guidance and appropriate action. Under Section 19, Rule 132 of the Revised Rules on Evidence, the said Resolutions are considered as written official acts of the Sangguniang Bayan of Babatngon, Leyte, a local legislative body. Corollary thereto, these resolutions are *prima facie* evidence of the facts stated therein pursuant to Section 23, Rule 132 of the Revised Rules on Evidence. Moreover, accused Chan admitted that the Office of the Secretary of the Sangguniang Bayan, which keeps all the Resolutions and Ordinance of Babatngon, Leyte, is only five (5) meters away from her office. Hence, S.B.

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21 G.R. No. 200630, June 4, 2018.

22 *Sixto Bayas, et al. vs. Sandiganbayan, et al.*, G.R. Nos. 143689-91, November 12, 2002.

> Resolution No. 2412-08 and S.B. Resolution No. 2522-09 are readily accessible to accused Chan if she only chose to do so.
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> Lastly, as the then Mayor of Babatngon, Leyte, it is incumbent for accused Chan to know or be informed of the existing ordinances and resolutions on the grant of license for cockpit operation within her municipality. Accused Chan ought to implement the law to the letter and she should have been the first to follow the law and see to it that it was followed by the constituency.[23]

It is the hornbook doctrine that "denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility."[24] Here, the Court finds accused Chan's defense as implausible considering the circumstances present at the time material to the case, particularly the position of the accused as the Municipal Mayor, the presumption accorded to the face of the Sangguniang Bayan Resolution, as well as the distance between the office of accused Chan and that of the Sangguniang Bayan secretary.

2. *The fact that the subject Mayor's Permit was self-limiting did not render the present case moot and academic.*

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief to which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[25]

Here, the case was not rendered moot and academic by the mere fact that the subject Mayor's Permit is self-limiting or that its validity is subject to pertinent laws. The resolution of the crime under Section 3(e) of R.A. No. 3019, as amended, is not dependent entirely on whether the Mayor's Pemit was valid, but more on proving the fact of causing undue injury to the government with evident bad faith, manifest partiality, and/or gross negligence by appropriating public funds for personal use or advantage. It is sufficient that such a fact has been established, as the prosecution did in this case.

3. *The prosecution was able to present sufficient evidence that proves, with moral certainty, all the elements of violation of Section 3(e) of R.A. No. 3019, as amended.*

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23 *Decision*, p. 28.
24 *People of the Philippines vs. Jose Descartin, Jr.*, G.R. No. 215195, June 7, 2017.
25 *Peñafrancia Sugar Mill, Inc. vs. Sugar Regulatory Administration*, G.R. No. 208660, March 05, 2014.

Contrary to the assertion made by accused Chan, the prosecution was able to present sufficient evidence proving her guilt beyond reasonable doubt.

A violation under Section 3(e) of R.A. No. 3019, as amended requires that: (1) the accused is a public officer discharging administrative, judicial, or official functions; (2) the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[26]

While the prosecution was not able to present testimonial evidence or actual proof that accused Chan committed the violation as charged, the Court finds that reliance on circumstantial evidence to prove her guilt.

Circumstantial evidence indirectly proves a fact in issue. In Our jurisdiction, circumstantial evidence could establish the commission of the crime and the identity of its perpetrator. The utilization of circumstantial evidence to support a conviction is a recognition of the instances when direct evidence is not available due to the clandestine nature of the crime or the perpetrator's desire to conceal it.[27]

Under the 2019 Amendments to the 1989 Revised Rules on Evidence, the following requisites must be shown to sustain a conviction based on circumstantial evidence, to wit: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Also, the circumstances being considered must be consistent with the hypothesis that the accused is the author of the crime.[28] Guided by the foregoing, the Court is convinced that accused Chan's guilt beyond reasonable doubt was established.

The first element is present considering that the parties stipulated in the *Pre-trial Order* that accused Chan was the Municipal Mayor of Babatngon, Leyte at the time pertinent and material to the case.

As for the second element, the Court reiterates its previous ruling that the prosecution was able to prove that accused Chan acted with bad faith when she issued the subject Mayor's Permit. The court agrees that the prosecution did not present any witness to testify as to the existence of manifest partiality and evident bad faith on the part of accused. Be that as it may, the circumstantial evidence consisting of the admitted Sangguniang Bayan

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26 *Danilo Garcia, et al., v. Sandiganbayan and People*, G.R. No. 197204, March 26, 2014.
27 *Cesar Alpay vs. People of the Philippines*, G.R. Nos. 240402-20, June 28, 2021.
28 *Id.*

Resolutions and the testimony of accused Chan herself leads this Court to conclude that the second element of the crime charged is present. The pertinent portion of the *Decision* is hereby reproduced:

> "Despite the lack of a Sangguniang Bayan Resolution authorizing the grant of the franchise to Alde and the subsequent call of the Sangguniang Bayan to revoke the said franchise for violation of existing law and ordinance, Accused Chan still proceeded with the issuance of the Mayor's Business Permit No. 03-30-2009 to Alde. As the municipal mayor, Accused Chan is duty-bound to recall and revoke the subject Mayor's Business Permit pursuant to S.B. Resolution No. 2412-08 and S.B. Resolution No. 2522-09.
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> It is worth mentioning that accused Chan mainly anchored her defense on good faith. First, she alleged that when she issued the subject Mayor's Business Permit, she was only acting in good faith based on the alleged "continued authority" given by the Sangguniang Bayan to the then Mayor Fabi. According to accused Chan, she relied on the assurance made to her by the other concerned departments and offices regarding sufficient compliance with the requirements when she signed and approved the subject Mayor's Business Permit. Second, accused Chan alleged that the private complainant Engle only instituted the present case against her because of resentment. According to her, private complainant Engle only filed the case against her because he was not able to recover the investment, he gave to Alde for the operation of the Babatngon Gallera. To prove her allegation, accused Chan offered the testimony of witness Marcelina, who also offered her Affidavit of Desistance. Third, according to accused Chan, she issued the subject Mayor's Business Permit for taxation purposes only and not for the grant of license. Lastly, accused Chan alleged that she did not receive S.B. Resolution No. 2412-08 and S.B. Resolution No. 2522-09, as her signature does not appear on the said documents.
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> The Court cannot ascribe to the defenses made by the accused. Here, there are circumstances that should have moved accused Chan to further inquire as to the correctness and completeness of Alde's Application for Mayor's Business Permit. To reiterate, what was attached to the application is the S.B. Resolution No. 2253-07, which does not expressly authorize accused Chan to issue the Mayor's Business Permit for the year 2009. In addition, thereto, if only accused Chan examined the attached Resolution, she should have known that Alde was previously allowed to operate the Babatngon Gallera only within the premises of Barangay District I and not in Barangay District III.
>
> Besides, the good faith defense of accused Chan was effectively negated by her judicial admission during the cross-examination of her failure to coordinate with the Sangguniang Bayan regarding the existence of relevant resolutions concerning the grant of license to Alde and her failure to exercise the required diligence in reviewing the attached requirements to the application for a business permit."[29]

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[29] *Decision*, pp. 24-25.

Anent the last element, the prosecution has sufficiently established that accused Chan gave unwarranted benefit, advantage, or preference to Mr. Alde. Contrary to the position raised by accused Chan, damage or injury to the government is not required in order for the last element to exist. As discussed by the Court in its decision:

> "As to the third element, there are two (2) ways by which Section 3(e) of R.A. No. 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction."[30]

In finding that accused Chan committed the first mode, the Court ruled that the prosecution has sufficiently established that she gave unwarranted benefits and advantages to Alde when she issued the subject Mayor's Permit. The pertinent portion of the *Decision* is hereby restated:

> "The Information charged accused Chan with giving unwarranted benefit, advantage, or preference to Alde. Under the second mode, damage is not required. 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. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.
>
> The Court finds that the prosecution has successfully proved that accused Chan gave unwarranted benefits and advantages to Alde. Based on the evidence on record, accused Chan used her official function as the Mayor of Babatngon, Leyte to issue the subject Mayor's Business Permit to Alde without the prior authority from the Sangguniang Bayan and despite the lack of the documentary requirements as enumerated under Ordinance No. 191. Accused Chan offered no satisfactory justification for her failure to observe the relevant laws, ordinances, and resolutions when she issued the subject Mayor's Business Permit to Alde. By reason of accused Chan's act, Alde was given the authority to operate the Babatngon Gallera without the required Sangguniang Bayan Resolution and without complying with the requirements under Ordinance No. 191."[31]

To reiterate, accused Chan entered into a stipulation of fact admitting the existence of SB Resolution No. 2253-07, SB Resolution No. 2412-08, SB Resolution No. 2522-09, SB Resolution No. 1511-02, and the fact that she issued Mayor's Business Permit No. 03-30-2009 dated August 28, 2009. With

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30 *Decision*, p. 29.
31 *Id.*

the admission of the foregoing documentary exhibits, the prosecution has already established all the elements of the crime as charged in the information.

All told, the Court finds no cogent or compelling reason to warrant a reconsideration of its *Decision*.

WHEREFORE, in light of all the foregoing, the *Motion for Reconsideration* filed by accused **CHARITA MONTAÑO CHAN ("Chan")** is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, Philippines.

RONALD B. MORENO
Associate Justice

WE CONCUR:

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

BERNELITO R. FERNANDEZ
Associate Justice