

Republic of the Philippines  
Sandiganbayan  
Quezon City

**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**      **SB-19-CRM-0149 to 0152**  
*Plaintiff,*  
**-versus-**

**MARIA JOSEFINA M. DELA**  
**CRUZ,**  
*Accused.*

**Present:**

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

**Promulgated:**

September 12, 2023

X ----- X  
*Suzette L. Giron*

**RESOLUTION**

**CORPUS-MAÑALAC, J.:**

Before this Court are: (1) accused Maria Josefina M. Dela Cruz's *DEMURRER TO EVIDENCE*<sup>1</sup> dated July 27, 2023, and (2) the prosecution's *COMMENT/OPPOSITION (Re: Demurrer to Evidence dated 27 July 2023)*<sup>2</sup> dated August 2, 2023.

**ANTECEDENTS**

Accused Maria Josefina M. Dela Cruz served as postmaster general of the Philippine Postal Corporation (PhilPost). In 2016, the Field Investigation Office of the Office of the Ombudsman filed a complaint against the accused, together with other PhilPost officials and employees. The allegations concerned the temporary appointments of one Esther Cabigao as Director III on September 1, 2011 and, thereafter, as Department Manager III on November 29, 2013, which the accused allegedly made when she was still the PhilPost postmaster general. According to the complaint, the accused committed unlawful appointment under Article 244 of the Revised Penal Code (RPC) and, in conspiracy with Cabigao and other PhilPost officials and employees, violated Section 3(e) of Republic Act No. 3019<sup>3</sup>

<sup>1</sup> Records, Vol. 4, pp. 281-339.

<sup>2</sup> Id. at 343-355.

<sup>3</sup> Otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

(the anti-graft law) when she appointed Cabigao despite knowledge of the appointee's lack of some qualifications prescribed by pertinent CSC memorandum circulars. The respondents therein, including the accused here, filed their respective counter-affidavits. The Office of the Ombudsman found probable cause to charge the accused with unlawful appointment and violation of Section 3(e) of the anti-graft law for each of the two appointments but dismissed the charges against the other respondents due to absence of evidence of conspiracy. Following the probable cause finding, the Office of the Ombudsman filed four *Informations* with the Court. For each of the two questioned appointments, the accused was indicted for violation of Section 3(e) of the anti-graft law and unlawful appointment under Article 244 of the RPC. The *Informations*,<sup>4</sup> which were amended, read:

**SB-19-CRM-0149**  
**For violation of Section 3(e) of R.A. No. 3019**  
**or the Anti-Graft and Corrupt Practices Act**

That on September 1, 2011 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officer **MARIA JOSEFINA MENDOZA DELA CRUZ**, then Postmaster General of the Philippine Postal [C]orporation (PHILPOST), while in the performance of her administrative and/or official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give ESTHER V. CABIGAO (Cabigao) unwarranted benefit, advantage or preference by appointing Cabigao instead of a qualified applicant to the position of Director III, PHILPOST, knowing fully well that Cabigao did not possess the required education, training and experience qualifications for the said position as prescribed by **Civil Service Commission (CSC) Memorandum Circular (MC) No. 13 dated 04 May 2011, and CSC Resolution 11-00472 dated 08 April 2011 as mandated by CSC MC No. 40 (series of 1998).**

**SB-19-CRM-0150**  
**For unlawful Appointment under Article 244**  
**of the Revised Penal Code**

That on September 1, 2011 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officer **MARIA JOSEFINA MENDOZA DELA CRUZ**, then Postmaster General of the Philippine Postal Corporation (PHILPOST), while in the performance of her administrative and/or official functions, did then and there willfully, unlawfully and feloniously appoint ESTHER VISPERAS CABIGAO (Cabigao), to the position of Director III, PHILPOST, knowing fully well at the time of the appointment that Cabigao was not qualified for the said position, as she did not possess the education requirement of Master's Degree, training requirement of 120 hours managerial training, and 5 years supervisory experience for the said position, as prescribed by **Civil Service Commission (CSC) Memorandum Circular (MC) No. 13**

<sup>4</sup> Records, Vol. 2, pp. 177-188.

dated 04 May 2011, and CSC Resolution 11-00472 dated 08 April 2011 as mandated by CSC MC No. 40 (series of 1998).

**SB-19-CRM-0151**  
**For violation of Section 3(e) of R.A. No. 3019**  
**or the Anti-Graft and Corrupt Practices Act**

That on November 29, 2013 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officer **MARIA JOSEFINA MENDOZA DELA CRUZ**, then Postmaster General of the Philippine Postal [C]orporation (PHILPOST), while in the performance of her administrative and/or official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give **ESTHER V. CABIGAO** (Cabigao) unwarranted benefit, advantage or preference by appointing Cabigao instead of a qualified applicant to the position of Department Manager III, PHILPOST, knowing fully well that Cabigao did not possess the required qualification of a Master's Degree, among other things, for the said position as prescribed by **Civil Service Commission (CSC) Memorandum Circular (MC) No. 13 dated 04 May 2011, and CSC Resolution 11-00472 dated 08 April 2011 as mandated by CSC MC No. 40 (series of 1998).**

**SB-19-CRM-0152**  
**For unlawful Appointment under Article 244**  
**of the Revised Penal Code**

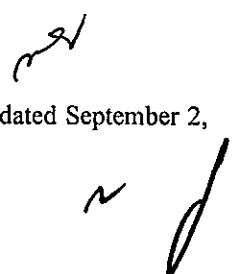
That on November 29, 2013 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused public officer **MARIA JOSEFINA MENDOZA DELA CRUZ**, then Postmaster General of the Philippine Postal Corporation (PHILPOST), while in the performance of her administrative and/or official functions, did then and there willfully, unlawfully and feloniously appoint **ESTHER VISPERAS CABIGAO** (Cabigao), to the position of Department Manager III, PHILPOST, knowing fully well at the time of the appointment that Cabigao was not qualified for the said position, as she did not possess the education requirement of Master's Degree, for the said position as prescribed by **Civil Service Commission (CSC) Memorandum Circular (MC) No. 13 dated 04 May 2011, and CSC Resolution 11-00472 dated 08 April 2011 as mandated by CSC MC No. 40 (series of 1998).**

**PROCEEDINGS BEFORE THE COURT**

On August 28, 2019, the Court issued a hold departure order against the accused.<sup>5</sup> On September 4, 2019, after the prosecution had complied with the order of the Court to file a certification pursuant to Rule XIII, Section 1, 2018 Revised Internal Rules of the Sandiganbayan,<sup>6</sup> the Court

<sup>5</sup> Records, Vol. 2, p. 11.

<sup>6</sup> Id. at 10, 14-19, and 21 (*Minutes* dated August 27, 2019, Prosecution's *Compliance* dated September 2, 2019, *Minutes* dated September 4, 2019).



ordered the issuance of a warrant of arrest against the accused.<sup>7</sup> On the next day, the accused posted cash bail bonds for her provisional liberty.<sup>8</sup> On November 8, 2019, the accused was arraigned and had pleaded not guilty to all four charges.<sup>9</sup>

Thereafter, preliminary conference and pre-trial conference ensued and was completed. At pre-trial, the parties stipulated: (1) that the accused was a public officer who held the position Postmaster General of the PhilPost at the time material to these cases; (2) that the accused appointed Cabigao as Director III on September 1, 2011 in connection with SB-19-CRM-0149 and 0150; (3) that the accused appointed Cabigao as Department Manager III on November 29, 2013 in connection with SB-19-CRM-0151 and 0152; (4) the authenticity and due execution of Exhibit B-6, Cabigao's *Oath of Office* as Director III in connection with SB-19-CRM-0149 and 0150; (5) the authenticity and due execution of Exhibit B-4, Cabigao's appointment as Department Manager III; (6) the authenticity and due execution of the following: Exhibits "P-13", "B-4", "N", "B-7", "B-8", and "W"; (7) the existence of Exhibit "Y"; (8) that Susan Moralde, PhilPost Human Resource Management IV, issued the certified true copy of the documents bearing her signature in the exhibits marked by both parties.<sup>10</sup>

Thereafter, the trial began.

### The Evidence for the Prosecution

The prosecution presented the following witnesses: (1) **Atty. Katherine Limare-Delmoro**,<sup>11</sup> Director III and Cluster Head of the Policies and Systems Evaluation Division, CSC-NRC in 2014; (2) **Liza Alvaro Perido**,<sup>12</sup> State Auditor IV and OIC – COA Supervising Auditor for the PhilPost; (3) **Maricar T. Aquino**,<sup>13</sup> Assistant Regional Director, CSC-NCR; and (4) **Henry B. Peliño**,<sup>14</sup> Chief Personnel Specialist of the Policies and Systems Evaluation Division, CSC-NCR in 2012.

**Atty. Katherine Limare-Delmoro**<sup>15</sup> testified through her *Judicial Affidavit*,<sup>16</sup> which served as her direct testimony. She averred that she was a Director III and Cluster Head of the Policies and Systems Evaluation Division of the CSC-NRC in 2014. That division, according to her, reviews appointments issued by government agencies in the National Capital Region to positions classified as salary grade 26. Moreover, she stated that one of

<sup>7</sup> Records, Vol. 2, p. 21.

<sup>8</sup> Id. at 22-29; no bail required in the unlawful appointment charges, SB-19-CRM-0150 and SB-19-CRM-0152 (see Id. at 21).

<sup>9</sup> Id. at 195 (Certificate of Arraignment).

<sup>10</sup> Records, Vol. 3, pp. 330-345 (Pre-trial Order dated November 25, 2022).

<sup>11</sup> Id. at 396 (Order dated January 31, 2023).

<sup>12</sup> Id. at 446-447 (Order dated February 21, 2023).

<sup>13</sup> Id. at 531 (Order dated March 15, 2023).

<sup>14</sup> Records, Vol. 4, p. 15 (Order dated April 18, 2023).

<sup>15</sup> Records, Vol. 3, p. 396 (Order dated January 31, 2023).

<sup>16</sup> Id. at 365-375.

her functions was “to attest appointments reviewed by the said office,”<sup>17</sup> that is, to validate or invalidate appointments.<sup>18</sup> She identified the *Letter*<sup>19</sup> dated May 26, 2014 (Exhibits “N” to “N-3”), addressed to the accused, and she also acknowledged her signature on the last page thereon. That letter, she affirmed, invalidated Cabigao’s appointment as PhilPost Department Manager III on the ground that the appointee did not possess the education required for the position. She also identified *KSS Porma Bilang 33*<sup>20</sup> covering the appointment of Cabigao as Department Manager III on November 29, 2023 (Exhibits “B-4” to “B-5”) and confirmed that it was stamped “INVALIDATED” and she acknowledged her signature thereon.

On cross-examination, Atty. Limare-Delmoro stated that when she reviewed the *KSS Porma Blg. 33*, the “Sertipikasyon” part thereof already bore the signature of one Atty. Lee P. Vicalal, Chairperson, Personnel Selection Board-CO.<sup>21</sup> When asked, she explained that the invalidation of Cabigao’s appointment was based on the review of the appointee’s qualifications as shown in the appointee’s personal data sheet.<sup>22</sup> She clarified that the records of proceedings of the PhilPost Personnel Selection Board were in the custody of the PhilPost and that those documents were not forwarded to the Commission.<sup>23</sup> She further stated that the handwritten notation under the heading “Mga Notasyon” was written, not by her, but by a processor.<sup>24</sup> However, she related that she could not name the processor who wrote the notation because she did not have at the time (she testified) the service record, a document attached to the appointment upon processing wherein the processor writes his/her initials.<sup>25</sup>

On redirect examination, Atty. Limare-Delmoro reiterated that the notation “*lacks education pursuant to CSC MC #13, S. 2011*” was written by a processor who was under her supervision and written after a thorough review of the records attached to the appointment.<sup>26</sup> She further asserted that she reviewed the documents attached to the appointment and determined that the appointee lacked the required education for the position of Department Manager III.<sup>27</sup>

On re-cross examination, Atty. Limare-Delmoro reiterated that the appointee lacked the required education vis-à-vis the requirements of the CSC MC No. 13, Series of 2011.<sup>28</sup>

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<sup>17</sup> Records, Vol. 3, p. 366.

<sup>18</sup> Id.

<sup>19</sup> Exhibit “N” to “N-3”.

<sup>20</sup> Exhibit “B-4”.

<sup>21</sup> Transcript of Stenographic Notes (TSN) dated January 31, 2023, p. 12.

<sup>22</sup> TSN dated January 31, 2023, p. 13.

<sup>23</sup> Id.

<sup>24</sup> TSN dated January 31, 2023, p. 14.

<sup>25</sup> Id.

<sup>26</sup> TSN dated January 31, 2023, p. 16.

<sup>27</sup> Id.

<sup>28</sup> TSN dated January 31, 2023, p. 17.

Handwritten initials 'NJ' and a signature.

The open court testimony of **Liza Alvaro Perido**,<sup>29</sup> State Auditor IV and OIC – COA Supervising Auditor for the PhilPost since 2020, was dispensed with in light of the stipulations of the parties at trial to the effect that: (1) the witness could identify her *Judicial Affidavit*<sup>30</sup> and the attachments thereto; (2) she brought with her the originals of the documents attached to her judicial affidavit; (3) her boss, Milagros B. Sonido, OIC Director IV of the COA Corporate Government Audit Sector, Cluster 3-Public Utilities, asked her to bring to court the documents that the prosecution requested; and (4) the witness had no participation in the preparation of the *Notices of Disqualification* and *Notice of Finality of Decision*.

Similarly, the open court testimony of **Maricar T. Aquino**,<sup>31</sup> Assistant Regional Director, CSC-NCR since January 7, 2019, was dispensed with in view of the stipulations of the parties to the effect that: (1) the witness could produce the original/certified true copies of Cabigao's invalidated appointments and other related documents included in her judicial affidavit marked as Exhibits "R-5" to "R-5-a", "R-6" to "R-7", "Z" to "Z-1", "Z-2", "Y" to "Y-1", "Y-2" to "Y-4", "B-4" to "B-5", "N" to "N-3", "L" to "L-4", and "L-5" to "L-10"; (2) those documents emanated from the CSC-NCR, except Exhibits "L" to "L-10-a", which came from the CSC Central Office; (3) if called to testify, the witness would state that "there is no [m]otion for [r]econsideration or [a]ppeal filed relative to Cabigao's invalidated appointment as Department Manager III; and (4) the witness had no participation in the preparation of the documents.<sup>32</sup>

**Henry B. Peliño**<sup>33</sup> testified through his *Judicial Affidavit*,<sup>34</sup> which served as his direct testimony. He asserted that he was the chief personnel specialist of the Policies and Systems Evaluation Division, CSC-NCR, from March 31, 2009 to January 20, 2015.<sup>35</sup> And, in that capacity, he evaluated and reviewed Cabigao's temporary appointments in the PhilPost.<sup>36</sup> He identified the *Memorandum*<sup>37</sup> dated January 3, 2012 (Exhibits "R-6" to "R-7") in which, he confirmed, he recommended the invalidation of Cabigao's temporary appointment as PhilPost Director III on September 1, 2011.<sup>38</sup> The reason for such recommendation was, according to him, the appointee did "not meet the education, experience and training requirements for the position."<sup>39</sup> He identified his signature affixed above his name on the last page of the memorandum.<sup>40</sup> Moreover, he identified another *Memorandum*

<sup>29</sup> Records, Vol. 3, pp. 446-447 (Order dated February 21, 2023); see also TSN dated February 21, 2023.

<sup>30</sup> Id. at 416-442.

<sup>31</sup> Id. at 531 (Order dated March 15, 2023); see also TSN dated March 15, 2023.

<sup>32</sup> TSN dated March 15, 2023, pp. 7-8.

<sup>33</sup> Records, Vol. 4, p. 15 (Order dated April 18, 2023).

<sup>34</sup> Id. at 4-12.

<sup>35</sup> Id. at 5.

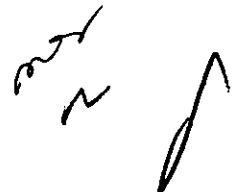
<sup>36</sup> Id. at 5.

<sup>37</sup> Exhibits "R-6" to "R-7".

<sup>38</sup> Records, Vol. 4, p. 6.

<sup>39</sup> Id. at 6; emphasis and internal quotations omitted.

<sup>40</sup> Id.



dated October 2, 2012 (Exhibit “Z-2”), addressed to Atty. Myrna Macatangay,<sup>41</sup> in which he recommended the invalidation of Cabigao’s temporary appointment as Director III on September 1, 2012.<sup>42</sup> The reason for his recommendation to invalidate Cabigao’s appointment was the appointee’s failure to meet the requirements for the position.<sup>43</sup> He further testified that he signed the memorandum on the last page thereof.<sup>44</sup>

On cross-examination, Peliño stated that among his duties as chief personnel specialist was to evaluate appointments to positions classified as salary grade 26 forwarded from the CSC Field Office to the CSC Policies Systems Evaluation Division, and review the appointment and the attachments thereto, and then submit recommendation to the Regional Director.<sup>45</sup> When processing an appointment, he explained, the usual documents reviewed are CSC Form 33 (*KSS Porma Blg. 33*) and its attachments, which include the appointee’s personal data sheet, job description, and sometimes copy of the publication.<sup>46</sup> He reiterated that he recommended the invalidation of Cabigao’s appointment because the latter failed to meet several qualifications for the position, particularly on education, experience, and training.<sup>47</sup> He confirmed that an appointment remains valid and may be renewed unless invalidated by the Commission.<sup>48</sup>

On re-direct examination, Peliño stated that Cabigao’s appointment paper dated September 1, 2011 and September 1, 2012 (marked as Exhibits “R” and “Z”, respectively) were invalidated.<sup>49</sup>

After completing the presentation of its evidence, the prosecution formally offered the following exhibits:<sup>50</sup>

EXHIBITS	DESCRIPTION	PURPOSE
“B-4” to “B-5”	KSS Porma Blg. 33, Appointment Letter of Esther V. Cabigao (Department Manager III) signed by accused Dela Cruz on 29 Nov. 2013	To prove that the Civil Service Commission (CSC) INVALIDATED the appointment of Esther V. Cabigao as Department Manager III (SG-26) on the grounds that she “lacks education pursuant to CSC-MC No. 13, S. 2011” and “no publication”.
“L to L-4”	CSC Decision No. 120715 promulgated on 16 October 2012	To prove that the CSC Commissioners DISMISSED the <i>Appeal</i> of accused Josefina Dela Cruz and AFFIRMED

<sup>41</sup> Records, Vol. 4, p. 6.

<sup>42</sup> Id. at 6-7.

<sup>43</sup> Id. at 7.

<sup>44</sup> Id. at 7.

<sup>45</sup> TSN dated April 18, 2023, p. 11.

<sup>46</sup> TSN dated April 18, 2023, p. 12.

<sup>47</sup> TSN dated April 18, 2023, pp. 11-12.

<sup>48</sup> TSN dated April 18, 2023, p. 16.

<sup>49</sup> TSN dated April 18, 2023, pp. 18-20.

<sup>50</sup> Records, Vol. 4, pp. 68-76; lifted from the prosecution’s *Formal Offer of Evidence* dated May 25, 2023; rearranged for presentation purposes; comments on markings and identification omitted.

		<p>the disapproval of the appointment of Esther Cabigao as Director III.</p> <p>On page 3 thereof, the CSC ruled that <i>“she (Cabigao) failed to meet the education, experience and training requirements.”</i></p> <p><b>Accused Dela Cruz acquired knowledge of Cabigao’s lack of education, experience, and training requirements for the position of Director III.</b></p>
<p>“L-5” to          “L-10-a”</p>	<p>CSC Resolution No. 1300986 promulgated on 17 May 2013</p>	<p>To prove that the CSC DENIED the Motion for Reconsideration of accused Josefina Dela Cruz and AFFIRMED the disapproval of the appointment of Esther Cabigao as Director III.</p> <p>On page 5 thereof, the CSC reiterated that Cabigao <i>“failed to meet the education, experience and training requirements.”</i></p> <p><b>Accused Dela Cruz acquired knowledge, for the second time, that Cabigao lacks education, experience and training requirements for the position of Director III.</b></p>
<p>“N to N-3”</p>	<p>Letter of Atty. Katherine Limare-Delmoro, Director IV, addressed to <u>Ma. Josefina M. Dela Cruz</u> dated 26 May 2014 stating that temporary appointment of Esther V. Cabigao as <i>Department Manager III</i> is Invalidated.</p>	<p>To prove the findings of Atty. Limare-Delmoro that “the deficiency of Cabigao is in terms of education.”</p> <p><b>Accused Dela Cruz once again acquired knowledge of Cabigao’s lack of educational requirement for the position.</b></p>
<p>“P-13”</p>	<p>Appointment of Esther V. Cabigao dated 01 September 2011</p>	<p>N.B.  <i>Exhibit “P-13” is the same as Exhibit “R-5”, the former without the signature of Atty. Myrna V. Macatangay. Same purpose as the latter.</i></p>
<p>“Q to Q-2”</p>	<p>Notice of Disallowance dated November 5, 2013</p>	<p>To prove that the salary of Esther Cabigao for the period September 15, 2011 as DIRECTOR III in the amount of P17,315.75 was disallowed by the Commission of Audit (COA) based on the following grounds – <i>“Non-submission of documents: Oath of office + Certificate of Assumption +</i></p>



		<i>Proof that appointment was submitted to CSC".</i>
"R to R-1"	Notice of Finality of Decision (NFD) dated September 15, 2015	To prove that the disallowance of Esther Cabigao's salary (Re: September 15, 2011, Director III, P17,315.75) has become final and executory <i>"there being no appeal filed within the reglementary period."</i>
"R-5"	Invalidated Appointment Letter of Esther V. Cabigao (Director III) dated 01 Sept. 2011 signed by Atty. Mryna V. Macatangay, Director IV, on January 09, 2012	To prove that the CSC invalidated the appointment of Esther V. Cabigao as Director III on the ground that she has <i>"no authority to sign certification of publication and no signature of PSB Chairman"</i>
"R-6"	CSC-NCR Memorandum for Atty. Myrna V. Macatangay, Dir. IV Re: Temporary (Transfer) Appointment of Esther V. Cabigao as Director III at the PhilPost dated January 3, 2012	To prove that witness Henry B. Peliño recommended the invalidation of Esther Cabigao's temporary (transfer) appointment as Director III on the ground that <i>"she does not meet the education, experience and training requirements for the position."</i>
"S to S-3"	Notice of Disallowance dated September 18, 2015	To prove that the salary of Esther Cabigao for the periods July 1 – Dec. 31, 2012 and May 1 – Dec. 31, 2013, as Department Manager III in the total amount of P622,276.50 was disallowed by the COA on the grounds, among others, that <i>"does not meet the education, experience and training requirements pursuant to CSC MC No. 13, S. 2011"</i> ; <i>"Deficient in education, experience and training"</i> ; and <i>"lacks education pursuant to CSC MC No. 13, S. 2011"</i> .  Accused was notified of the ND thru a certain Lai Rigor on September 18, 2015.
"T to T-2"	Notice of Disallowance dated September 14, 2015	To prove that the salary of Esther Cabigao for the period Jan. 1 – Dec. 31, 2014, as Department Manager III in the total amount of P659,342.00 was disallowed by the COA on the grounds, among others, that she <i>"does not meet the education, experience and training requirements pursuant to CSC MC No. 13, S. 2011"</i> ; <i>"Deficient in education, experience and training"</i> ; and <i>"lacks education</i>

		<i>pursuant to CSC MC No. 13, S. 2011</i> ".
"U to U-2"	Notice of Disallowance (ND) NO. CO-2015-002 (2015) dated September 9, 2015	To prove that the salary of Esther Cabigao for the period Jan. 1 – July 31, 2015, as Department Manager III in the total amount of P380,005.00 was disallowed by COA " <i>due to invalidation by the CSC of her appointments</i> ".
"Y"	Invalidated Appointment Letter of Esther V. Cabigao as Department Manager III dated December 28, 2012 signed by Atty. Katherine C. Limare-Delmoro, Director III, on July 11, 2013.	To prove that CSC invalidated the appointment of Esther Cabigao as Department Manager III, on the ground " <i>Violation of Sec. 2(b), Rule 111 of CSC MC No. 40 s. 1998 [deficient in education, experience and training and not eligibility (sic)]</i> "
"Y-2"	Letter of Atty. Katherine Limare-Delmoro, Director III addressed to Ma. Josefina M. Dela Cruz dated 11 July 2013 stating that temporary (re-appointment) appointment of Esther V. Cabigao as Department Manager III is "Invalidated"	To prove that CSC-NCR found that " <i>Cabigao is deficient in the required education, experience, and training</i> " for the position as Department Manager III.  <b>Accused Dela Cruz once again acquired knowledge of the fact that her appointee, Esther V. Cabigao, lacks legal requirements for the position.</b>
"Z" to "Z-1"	Invalidated Appointment Letter of Esther V. Cabigao as Director III dated 01 Sept. 2012 signed by Atty. Myrna V. Macatangay, Director IV.	<i>N.B. Exhibit "Z"- "Z-1" is the same as Exhibit "R-5", the former without the notation only. Same purpose as the latter.</i>
"Z-2"	CSC-NCR Memorandum for Atty. Myrna V. Macatangay, Dir. IV Re: Temporary Appointment of Esther V. Cabigao as Director III at the PhilPost dated October 2, 2012.	To prove that Henry B. Pelíño recommended the invalidation of Esther Cabigao's temporary (renewal) appointment as Director III on the ground that " <i>she does not meet the education, experience and training requirements of the said position.</i> "

Thereafter, the accused filed her opposition to the prosecution's formal offer.<sup>51</sup> On June 5, 2023, the Court resolved to admit into evidence the following: Exhibits "B-4" to "B-5", "L to L-4", "L-5" to "L-10-a", "N to N-3", "P-13", "Q to Q-2", "R to R-1", "R-5", "R-6", "R-13", "S to S-3", "T to T-2", "U to U-2", "Y", "Y-2", "Z" to "Z-1", and "Z-2".<sup>52</sup>

<sup>51</sup> Id. at 90-98 (Accused Dela Cruz's *Comment to Plaintiff's Formal Offer of Exhibits* dated June 2, 2023).

<sup>52</sup> Records, Vol. 3, pp. 102-103 (Minutes of the proceedings held on June 5, 2023); see also the prosecution's *Formal Offer of Evidence* dated May 25, 2023; Records, Vol. 3, pp. 68-76.

On June 13, 2023, the accused filed a *Motion for Leave (a) to File Demurrer to Evidence and (b) to Admit this Demurrer*.<sup>53</sup> The prosecution, on the other hand, filed its *Comment/Opposition (Re: Motion for Leave to File Demurrer to Evidence dated 13 June 2023)*.<sup>54</sup> On June 21, 2023, the accused filed a *Reply with Motion for Leave to Admit*.<sup>55</sup> Then, on June 30, 2023, the prosecution filed the *Manifestation (Re: Reply with Motion to Admit dated 19 June 2023)*.<sup>56</sup> By a *Resolution*<sup>57</sup> of July 18, 2023, the Court granted leave and allowed the accused to file a demurrer to evidence within ten days from notice and gave the prosecution a similar period to oppose. Following that resolution, the accused filed a demurrer to evidence on July 28, 2023,<sup>58</sup> challenging the sufficiency of the prosecution's evidence. For its part, the prosecution filed an opposition on August 2, 2023.<sup>59</sup> Hence, this incident.

### ISSUE

The issue presented is whether the prosecution adduced enough evidence to sustain a conviction in each of the four charges.

### RULING

The Court partly grants the demurrer to evidence. The totality of the prosecution's evidence is insufficient to warrant judgments of conviction in both SB-19-CRM-0149 to SB-19-CRM-0150. But in SB-19-CRM-0151 and SB-19-CRM-0152 sufficient evidence exists to establish *prima facie* cases of guilt; accordingly, the trial for those cases should proceed and, consistent with due process and the rules, allow the accused to present countervailing evidence.

Rule 119, Section 23 of the Revised Rules of Criminal Procedure authorizes an accused to challenge, after the prosecution rests its case, the sufficiency of the prosecution's evidence through a remedy called "demurrer to evidence." Essentially, a demurrer urges the court to "ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt."<sup>60</sup> "Sufficient evidence," according to *People v. Go*,<sup>61</sup> refers to "such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances."<sup>62</sup> "To be considered sufficient," *Go* further stated, "the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation ... by the accused."<sup>63</sup> If the court finds that

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<sup>53</sup> Records, Vol. 4, pp. 159-204.

<sup>54</sup> Id. at 218-228.

<sup>55</sup> Id. at 231-238.

<sup>56</sup> Id. at 257-259.

<sup>57</sup> Id. at 264-273.

<sup>58</sup> Id. at 281-339.

<sup>59</sup> Id. at 343-355.

<sup>60</sup> *Gutib v. Court of Appeals*, G.R. No. 131209 (Resolution), August 13, 1999.

<sup>61</sup> G.R. No. 191015, August 6, 2014.

<sup>62</sup> Id.

<sup>63</sup> Id.

competent evidence exists, the demurrer shall be denied and, if the demurrer was filed with leave of court as in here, the accused shall be allowed to present evidence; otherwise, the demurrer shall be granted and the criminal case dismissed.<sup>64</sup>

The accused filed a demurrer to evidence with leave of court here, challenging the sufficiency of evidence in all four charges. Those charges relate, as stated earlier, to the two appointments that the accused made when she was still postmaster general of the PhilPost. The subject appointments refer specifically to the temporary appointments of a certain Cabigao: first, as Director III on September 1, 2011, and then, as Department Manager III on November 29, 2013. For each of the two appointments, the accused was charged with one count of unlawful appointment under Article 244 of the RPC and another count of violation of Section 3(e) of the anti-graft law. According to the indictments, the accused proceeded with the appointments despite “knowing fully well” at the time of appointment that the appointee lacked some of the qualifications prescribed by certain CSC memorandum circulars. The two counts of unlawful appointment were docketed as SB-19-CRM-0150 and SB-19-CRM-0152, and the two counts of violation of Section 3(e) of the anti-graft law as SB-19-CRM-0149 and SB-19-CRM-0151.

For orderly discussion, the Court shall first take up the challenge to the evidence in both unlawful appointment charges and then the challenge in both violation of Section 3(e) of the anti-graft law charges.

**Challenge to the Sufficiency of Evidence in the Two  
Unlawful Appointment Charges  
SB-19-CRM-0150 and 0152**

Two of the charges against the accused are, as already mentioned, for unlawful appointment under Article 244 of the RPC, which states:

Article 244. Unlawful appointments. – Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos.

That provision bars any public officer from making an unlawful appointment, that is, “knowingly” nominating or appointing to a public office a person who lacks legal qualifications. To successfully prosecute an accused for unlawful appointment, the prosecution must sufficiently establish that: (1) the offender is a public officer; (2) the offender nominates or appoints a person to a public office; (3) the nominee or appointee lacks the legal qualifications required for the office; and—as relevant here—(4)

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<sup>64</sup> See *Bowden v. Bowden*, G.R. No. 228739, July 17, 2019.

the offender knows that the nominee or appointee lacks the qualifications at the time of the nomination or appointment.<sup>65</sup>

In these cases, the presence of the first three elements is not contested. Rather, the dispute between the parties concerns the sufficiency of evidence respecting the 4<sup>th</sup> element. The accused submits that what the prosecution had proven in SB-19-CRM-0150 was actually her “lack of knowledge” of the deficiencies in Cabigao’s qualifications for the position of Director III at the time of the appointment.<sup>66</sup> As to SB-19-CRM-0152, the accused contends that the prosecution’s exhibits do not show that she knew that the appointee lacked the education prescribed by pertinent CSC memorandum circulars for the position of Department Manager III.<sup>67</sup> The prosecution, on the other hand, counters that “upon the filing of Cabigao’s PDS for her application, [the] accused ... knew that [the] appointee did not have the legal qualifications at the time she made the appointment.”<sup>68</sup> Relying on *Galero v. Court of Appeals and Ombudsman*,<sup>69</sup> the prosecution further argues that the accused “is presumed to have knowledge of the commission of any irregularity or offense, when the irregularities or illegal acts have been repeatedly or regularly committed within [her] official area of jurisdiction.” It also points out that the “letters, decisions and resolutions of the CSC, as well as the notices of disallowance of the COA are addressed to the accused;”<sup>70</sup> thus, the prosecution concluded, the accused “was clearly clued up to the status not only of her actions but also the disqualifications of Cabigao.”<sup>71</sup>

Regarding SB-19-CRM-0150, the Court finds the evidence insufficient to conclude that the accused was aware of the deficiencies in the appointee’s qualifications for the position of Director III at the time of the appointment. Of the exhibits formally offered and admitted into evidence, Exhibits “L” to “L-4” and “L-5” to “L-10-a” were offered for the purpose, among others, of proving that the accused knew that the appointee was deficient in qualifications for the position of Director III.<sup>72</sup> Exhibits “L” to “L-4” refer to *CSC Decision No. 120715*<sup>73</sup> dated **October 16, 2012** affirming the CSC-NCR’s invalidation of Cabigao’s September 1, 2011 appointment as Director III. Exhibits “L-5” to “L-10-a” refer to the CSC resolution dated **May 17, 2013** that dismissed accused’s motion for reconsideration of the CSC decision. Those exhibits taken together establish that the accused acquired knowledge of the appointee’s lack of qualifications prescribed for the position of Director III. But that knowledge fell short of

<sup>65</sup> See *Anacta, Jr. v. Sandiganbayan (Fifth Division)*, G.R. No. 219352, November 14, 2018.

<sup>66</sup> Records, Vol. 4, p. 312.

<sup>67</sup> Id. at 315.

<sup>68</sup> Id. at 350.

<sup>69</sup> G.R. No. 151121, July 21, 2008.

<sup>70</sup> Records, Vol. 4, p. 350.

<sup>71</sup> Id. at 350.

<sup>72</sup> Id. at 24-25 (Prosecution’s Formal Offer of Evidence, pp. 2-3) and at 25 (Prosecution’s Formal Offer of Evidence, p. 3).

<sup>73</sup> Exhibits “L” to “L-4”.

what the law requires to trigger a conviction for unlawful appointment. A further requirement is that the lack-of-qualifications knowledge must have been acquired **at the time of the appointment**. Here, the CSC decision surfaced only on October 16, 2012, and the CSC resolution on May 17, 2013. Apparently, both exhibits came into existence way after the questioned appointment occurred on September 1, 2011. It is therefore self-evident that those after-the-fact exhibits could not have informed the accused of the deficiencies in the appointee's qualifications for Director III **at the time of the appointment**. *CSC Decision No. 120715*<sup>74</sup> even suggests that Cabigao passed the screening of the PhilPost Personnel Selection Board.

As to SB-19-CRM-0152, however, the same exhibits referred to above demonstrate that the accused knew that the appointee did not possess the education required for the position of Department Manager III at the time of the appointment. The CSC decision dated October 16, 2012, and the CSC resolution dated May 17, 2013, prove that the accused became aware of Cabigao's credentials. Since that knowledge came ahead of the questioned November 29, 2013 appointment, then the inescapable conclusion is that the accused already knew that Cabigao did not have the education required for the position at the time of the appointment. That the accused ought to have been very circumspect in appointing Cabigao anew considering the prior invalidated appointment strengthens that conclusion. Therefore, contrary to the challenge, enough evidence exists proving the 4<sup>th</sup> element of unlawful appointment in this case.

The prosecution argues that "upon the filing of Cabigao's PDS for her application, [the] accused ... knew that [the] appointee did not have the legal qualifications at the time she made the appointment."<sup>75</sup> But that assertion has no proof. There is no evidence showing that a PDS was submitted to the accused. In fact, the prosecution's formal offer of evidence did not include a PDS. Sustaining that argument would therefore result in a conclusion based on conjecture, which is unacceptable as basis of conviction.<sup>76</sup>

Relying on *Galero v. Court of Appeals and Ombudsman*,<sup>77</sup> the prosecution next argues that the accused "is presumed to have knowledge of the commission of any irregularity or offense, when the irregularities or illegal acts have been repeatedly or regularly committed within [her] official area of jurisdiction." Such reliance is misplaced. At the outset it bears to point out that what the prosecution quoted was the Office of the Ombudsman's reasoning in the case, which the Court of Appeals affirmed. But that portion was reproduced in the *Galero* decision to simply show the Ombudsman and the CA's basis in finding the petitioner therein administratively liable. Moreover, *Galero* was decided in the context of superior-subordinate relationship. The petitioner was administratively

<sup>74</sup> Exhibits "L" to "L-4".

<sup>75</sup> Records, Vol. 4, p. 350.

<sup>76</sup> *People v. Sujetado y Esmellarin*, G.R. No. 103967, April 7, 1993.

<sup>77</sup> G.R. No. 151121, July 21, 2008.

charged in connection with the irregular conduct of his subordinate, a security guard whose daily time records (DTRs) showed that he was reporting at two offices at the same time and who had been receiving salaries corresponding the times indicated in his DTRs. The irregular acts spanned for seven months. Affirming the Office of the Ombudsman, the Court of Appeals found the petitioner administratively liable for dishonesty, falsification of official document, and causing undue injury to the government, and imposed the penalty of dismissal from service, forfeiture of all benefits, and perpetual disqualification to hold public office. The appellate court reasoned that the petitioner, being the immediate supervisor of the security guard, was presumed to have knowledge of the subordinate's irregular conduct. On appeal, the Supreme Court found the petitioner liable for simple misconduct only and consequently lowered the penalty to suspension for one month and one day. In so ruling, the Supreme Court stated that the appellate court's basis was only the supposed "presumed collusion," but there was no evidence of conspiracy which must be established as an independent fact. Rather than his supposed knowledge of his subordinate's irregular acts, the Supreme Court held the petitioner administratively liable because of his failure, as a supervisor, to monitor his subordinate and implement "measures to make sure that the government was not defrauded," and to verify the truthfulness of the entries in his subordinate's DTRs. The presumption being invoked, therefore, could hardly be said to have been enunciated in *Galero*. In any case, there is no superior-subordinate relationship involved here; the charges concern acts attributed to the accused herself and not to her subordinate.

The prosecution insists that the accused knew of Cabigao's lack of qualifications for the positions of Director III and Department Manager III because the "letters, decisions and resolutions of the CSC, as well as the notices of disallowance of the COA are addressed to the accused."<sup>78</sup> This argument fails on three levels: First, that a particular document was addressed to a person does not necessarily mean that it was sent to and received by the addressee. Second, many of the exhibits came into existence only after the appointment in question. As such, they could not establish the knowledge that the law demands—one that is possessed at the time of, and not after, the appointment. Finally, most of the prosecution's exhibits were offered not for the purpose of proving that the accused had knowledge of deficiencies in Cabigao's qualifications, but for something else unrelated to the 4<sup>th</sup> element of unlawful appointment.

In sum, the Court holds that the pieces of the prosecution's evidence failed to establish the 4<sup>th</sup> element of unlawful appointment in SB-19-CRM-0150. The contrary is however true in SB-19-CRM-0152, wherein the 4<sup>th</sup> element was duly proved.

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<sup>78</sup> Records, Vol. 4, p. 350.



**Challenge to the Sufficiency of Evidence in the Two  
Violation of Section 3(e) of the Anti-Graft Law Charges  
SB-19-CRM-0149 and 0151**

Section 3(e) of the anti-graft law characterizes as corrupt practice and declares as unlawful the act of any public officer of “[c]ausing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of” “official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.” That provision reads:

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

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of [the public officer’s] official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

To hold an accused criminally liable under Section 3(e) of the anti-graft law, three things must be proven true: (1) The accused must be a public officer discharging administrative, judicial, or official functions; (2) the accused must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and (3) that the action of the accused caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>79</sup>

In these cases, there is no dispute regarding the 1<sup>st</sup> element. The contention in both SB-19-CRM-0149 and SB-19-CRM-0151 rests on the sufficiency of evidence respecting the 2<sup>nd</sup> and 3<sup>rd</sup> elements of violation of Section 3(e) of the anti-graft law. In her demurrer to evidence, in both cases, regarding the 2<sup>nd</sup> element of Section 3(e) violation, the accused enumerated the prosecution’s exhibits that were formally offered and admitted into evidence. Essentially, the accused argues that some of the prosecution’s exhibits do not prove that she had knowledge of the appointee’s qualifications or the lack thereof because they were made after the pertinent questioned appointments. She also insists that some of the prosecution’s exhibits are irrelevant. Moreover, she argues that she made the appointment

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<sup>79</sup> *Consigna v. People*, G.R. Nos. 175750-51, April 2, 2014.



relying on the screening and findings of qualification made by the PhilPost Personnel Selection Board. As to the 3<sup>rd</sup> element of the crime, on the strength of *Posadas v. Sandiganbayan*,<sup>80</sup> the accused argues that the prosecution “failed to prove unwarranted benefit, advantage and preference since the salaries received by the [appointee] ... were all received in consideration of services rendered.” The prosecution, the accused further argues, did not offer any evidence or proof to show that other applicants were interested in the position to which the appointee was appointed.<sup>81</sup>

The prosecution responds that manifest partiality and evident bad faith are apparent from the acts of the accused of repeatedly making the appointments despite the CSC informing the accused several times that the appointee was not qualified for the positions of either Director III or Department Manager III.<sup>82</sup> Moreover, the prosecution asserts that “the acts of the accused all tend toward the accomplishment of the same felonious object, i.e., to give unwarranted benefit, advantage or preference thru the injudicious appointment of ... Cabigao.”<sup>83</sup>

*The prosecution failed to establish manifest partiality, evident bad faith, or gross inexcusable negligence in SB-19-CRM-0149. However, there is sufficient evidence to hold the contrary in SB-19-CRM-0151.*

To sustain a conviction under Section 3(e) of the anti-graft law, it is essential for the prosecution to establish the second element, that is, that the accused acted with *manifest partiality, evident bad faith, or gross inexcusable negligence*.<sup>84</sup> These are the modes by which the violation may be committed. They can be alternatively alleged and proof of just one will suffice to support a conviction.<sup>85</sup> *Araullo v. Office of the Ombudsman*<sup>86</sup> explained these terms as follows:

There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. ... [It] contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with

<sup>80</sup> G.R. Nos. 168951 and 16900, November 27, 2013.

<sup>81</sup> Records, Vol. 4, 306-309.

<sup>82</sup> Id. at 345-346.

<sup>83</sup> Id. at 346.

<sup>84</sup> See *Jaca v. People*, G.R. Nos. 166967, 166974 & 167167, January 28, 2013.

<sup>85</sup> Id.

<sup>86</sup> G.R. No. 194157, July 30, 2014, citing *People v. Atienza*, G.R. No. 171671, June 18, 2012.

conscious indifference to consequences insofar as other persons may be affected.

In *Martel v. People*,<sup>87</sup> it was held that “violation of procurement laws does not *ipso facto* give rise to violation of [the anti-graft law].” According to *Martel*, “it is through the lens of the anti-graft and corruption law, and not the procurement laws, that the guilt of the accused for violation of Section 3 (e) of [the anti-graft law] must be determined.” To establish evident bad faith, *Martel* held, the accused must have “consciously and intentionally did so in order to commit fraud, to purposely commit a crime, or to gain profit for themselves so as to amount to fraud.” And for there to be manifest partiality, it must be “proven beyond reasonable doubt that the subject procurements were pursued purposely and intently by petitioners to fraudulently benefit themselves and the said car dealers.” While *Martel* is a case of violation of Section 3(e) of the anti-graft law in relation to violation of procurement law, the Court holds that such ruling applies in these cases. As such, the culpability of the accused under the anti-graft law must be determined “through the lens of the anti-graft and corruption law,” and not the CSC memorandum circulars allegedly violated.

In SB-19-CRM-0149, of which the subject is the September 1, 2011 appointment of Cabigao as Director III, the Court finds insufficient evidence to rule that the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence. Undoubtedly, Cabigao’s September 1, 2011 appointment as Director III had been invalidated because she lacked the education, training, and experience required for that position. However, the appointment of an unqualified person *per se* is not enough to conclude that the accused violated Section 3(e) of the anti-graft law. It must be further shown that the act was committed with manifest partiality, evident bad faith, or gross inexcusable negligence. As discussed above, there is insufficient evidence to show that the accused knew that the appointee was not qualified for the position of Director III at the time of the appointment. Such fact negates the idea of manifest partiality, evident bad faith, or gross inexcusable negligence.

Moreover, *CSC Decision No. 120715*<sup>88</sup> suggests that Cabigao was appointed after she passed the screening conducted by the PhilPost Personnel Selection Board, *viz*:

The Commission, notes, (sic) however that the PhilPost has submitted the “Minutes of Deliberation, Special PhilPost Personnel Selection Board for Executive/Managerial Positions” dated August 26, 2011 wherein the agenda is the deliberation of the then vacant Director III position at the Human Resource Management Department. In the said meeting, it appears that two (2) applicants were considered, namely, Cabigao and Rosemarie N. Tubal. The said minutes reads, in part, as follows:

<sup>87</sup> G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

<sup>88</sup> Exhibits “L” to “L-4”.

*“Both contenders were evaluated and interviewed by the Board. However, it is the preference and strong recommendation of the Postmaster General and CEO to appoint Ms. Cabigao to Head the HRM Department as the position requires full trust and confidence of the head of the agency.”*

In this regard, **the minutes of the PhilPost PSB is sufficient proof that Cabigao passed the PSB screening** and in compliance with the requirements of Section 1 (h); Rule III, Revised Omnibus Rules on Appointments and Other Personnel Actions. (Italicization in the original; emphasis supplied)

That the PhilPost Personnel Selection Board screened and passed Cabigao provided a color of regularity that the appointee was qualified for the position. At that time, therefore, it was reasonable for the accused to appoint Cabigao. The foregoing circumstances put in doubt any supposed “dishonest purpose,” “plain inclination” to favor one party over another, or “want of even the slightest care x x x with conscious indifference to consequences,” which should otherwise characterize the act of appointing Cabigao to warrant a conviction for violation of the anti-graft law in SB-19-CRM-0149.

In SB-19-CRM-0151, the Court holds that the prosecution had sufficiently shown that the accused acted with evident bad faith or gross inexcusable negligence in appointing Cabigao as Department Manager III on November 29, 2013. As discussed above, given the invalidation of Cabigao’s prior appointment because of deficiency in qualifications, the accused ought to have known that the appointee was not qualified to be appointed as Department Manager III at the time of the appointment. Indeed, she was expected to act with heightened caution. But she did not. Instead, she chose to turn a blind eye and appointed Cabigao, disregarding the fact that the appointee lacked the education prescribed for the position. Therefore, the act of the accused was done with evident bad faith, or at least, with gross and inexcusable negligence.

*The pieces of evidence show that the accused gave unwarranted benefits, advantage, or preference to a private party in SB-19-CRM-0151 but not in SB-19-CRM-0149*

A conviction under Section 3(e) of the anti-graft law requires that the accused (1) caused undue injury to any party, including the government or (2) gave any private party any unwarranted benefit, advantage or preference.<sup>89</sup> It is settled that neither mode constitutes a distinct offense; as such, an accused may be charged under either or both.<sup>90</sup> In these cases, the indictments charge the accused of giving unwarranted benefits, advantage,

<sup>89</sup> *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010.

<sup>90</sup> *Id.*; citing *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993; and *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004.

or preference to a private party. In *Cabrera v. People*,<sup>91</sup> the words “unwarranted,” “advantage” and “preference” were defined as follows:

“[U]nwarranted” 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. (Citation omitted)

Elucidating on the concept of benefits, advantage, or preference in the context of the anti-graft law, *Renales v. People*,<sup>92</sup> citing *Martel*, held that “it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules, and regulations, such as the procurement laws. The benefits must have been given by the accused public officer to the private party with corrupt intent, dishonest design, or some unethical interest, to be consistent with the spirit of [the anti-graft law] which centers on the concept of graft and corruption.” Moreover, in *Posadas v. Sandiganbayan*,<sup>93</sup> it was held that there was no unwarranted benefit absent proof that the recipient of the honoraria failed to discharge the responsibilities attached to the questioned appointment.

Here, in SB-19-CRM-0149, as discussed above, the accused made the questioned appointment after the PhilPost Personnel Selection Board screened and passed the appointee.<sup>94</sup> In other words, it was reasonable for the accused to appoint Cabigao as Director III at that time. Moreover, as in *Posadas*, there is no evidence to show that Cabigao did not perform her duties as Director III. Accordingly, the evidence fails to show that the accused gave Cabigao benefit, advantage, or preference “with corrupt intent, dishonest design, or some unethical interest.” Put differently, the prosecution’s evidence does not establish beyond reasonable doubt the 3<sup>rd</sup> element of violation of Section 3(e) of the anti-graft law.

Contrarily, in SB-19-CRM-0151, the evidence for the prosecution reveals that the accused gave unwarranted benefit or advantage to Cabigao. The accused appointed Cabigao as Department Manager III despite knowledge of the appointee’s lack of the education required for the position. By so doing, she put an unqualified appointee to a position for which that appointee was ill-suited, without adequate support. Cabigao was clearly placed in a “more favorable or improved position or condition.”

In sum, insofar as the charges for violation of Section 3(e) of the anti-graft law are concerned, the Court holds that pieces of evidence are

<sup>91</sup> G.R. Nos. 191611-14, July 29, 2019.

<sup>92</sup> G.R. Nos. 231530-33 & 231603-08, June 16, 2021.

<sup>93</sup> G.R. Nos. 168951 & 169000 (Resolution), November 27, 2013.

<sup>94</sup> Exhibits “L” to “L-4” (*CSC Decision No. 120715* dated October 16, 2012) and Exhibits “B-4” to “B-5” (KSS Porma Blg. 33 covering the appointment of Cabigao as Department Manager III on November 29, 2013).

insufficient to hold the accused criminally liable in SB-19-CRM-0149. Contrarily, the Court finds sufficient evidence establishing a *prima facie* case of guilt in SB-19-CRM-0151.

**WHEREFORE**, premises considered, Maria Josefina M. Dela Cruz's *Demurrer to Evidence*<sup>95</sup> dated July 27, 2023, is **PARTLY GRANTED**.

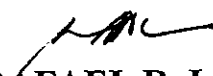
The charges in SB-19-CRM-0149 and SB-19-CRM-0150 are **DISMISSED** for insufficient evidence. The cash bail bond posted in connection with SB-19-CRM-0149 is ordered **RELEASED**, subject to the usual accounting and auditing procedures.

But for the remaining cases, SB-19-CRM-0151 and SB-19-CRM-0152, the trial shall proceed with the initial presentation of defense evidence.

**SO ORDERED.**

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

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<sup>95</sup> Records, Vol. 4, pp. 281-339.

### ATTESTATION

I attest that the conclusions in the above resolution had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

  
**RAFAEL R. LAGOS**  
Chairperson

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above resolution had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CAROTAJE-TANG**  
Presiding Justice

