



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on March 8, 2024.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA — Chairperson

Justice ZALDY V. TRESPESES — Member

Justice GEORGINA D. HIDALGO — Member

The following resolution was adopted:

SB-23-CRM-0044 – People v. Herbert Constantine M. Bautista, et al.

This resolves the following:

A. 1. Accused Aldrin C. Cuña's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated February 12, 2024;

2. Prosecution's "OPPOSITION [TO THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE DATED 13 FEBRUARY 2024 OF ACCUSED ALDRIN CHIN CUÑA]" dated February 19, 2024;

B. 1. Accused Herbert Constantine M. Bautista's "MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE" dated February 13, 2024

2. Prosecution's "OPPOSITION [TO THE MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE DATED 13 FEBRUARY 2024 OF ACCUSED HERBERT CONSTANTINE MACLANG BAUTISTA]" dated February 19, 2024;

C. 1. Prosecution's "MOTION TO EXPUNGE [COMMENT/OPPOSITION DATED 13 FEBRUARY 2024 AND MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE DATED 13 FEBRUARY 2024 OF ACCUSED HERBERT CONSTANTINE MACLANG BAUTISTA]" dated February 19, 2024;

2. Accused Herbert Constantine M. Bautista's "OPPOSITION [RE: MOTION TO EXPUNGE DATED 19 FEBRUARY 2024]" dated February 26, 2024; and

3. Prosecution's "MOTION TO ADMIT REPLY [TO THE OPPOSITION DATED 26 FEBRUARY 2024]" dated February 27, 2024.

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GOMEZ-ESTOESTA, J.:

The following motions, along with the respective oppositions thereto, shall be discussed *in seriatim*:

- (i) *Motion for Leave to File Demurrer to Evidence* filed by accused Aldrin C. Cuña (**accused Cuña**);
- (ii) *Motion for Leave to File Demurrer to Evidence* filed by accused Herbert Constantine M. Bautista (**accused Bautista**);
- (iii) *Motion to Expunge* submitted by the prosecution; and
- (iv) *Motion to Admit Reply* filed by the prosecution.

The key contentions of each of the parties are summed below:

**MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE
BY ACCUSED CUÑA**

Intending to demur to the evidence, accused Cuña adduces that the prosecution failed to establish the elements of the crime of *Violation of Section 3 (e) of Republic Act No. 3019 (R.A. 3019)* by proof beyond reasonable doubt. In support thereof, accused Cuña alleges that:

- a. prosecution witnesses confirmed existing ordinances¹ that supported the Quezon City Government's procurement of the Online Occupational Permitting and Tracking System (hereinafter, "**the Project**");
- b. Ma. Margarita T. Santos, Head of the Business Permits and Licensing Department (**BPLD**) of Quezon City, admitted that the Project was operational and eventually launched;
- c. the prosecution had stipulated on the delivery by the supplier of the Project;
- d. Paul Rene S. Padilla, Head of the Information Technology Development Department of Quezon City, established the existence of the software for the Project, though with flaws and issues;
- e. Atty. Noel Emmanuel C. Gascon, Head of the Internal Audit Service of Quezon City, admitted that his investigation was limited to reading

¹ Accused Cuña specifically referred to Ordinance Nos. SP 2772, s. 2018 and 2827, s. 2019.

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documents without interviewing any of the city officers and supplier of the Project.

Accused Cuña thus prayed for the court's permission to file a demurrer to evidence.

PROSECUTION'S OPPOSITION

The prosecution countered that accused Cuña's *Motion* did not hurdle the "test of sufficiency" (this should be specificity) under Section 23, Rule 119 of the *Revised Rules on Criminal Procedure*.² He only proffered blanket statements without clearly identifying the actual weakness of the prosecution's case. It cited the vintage case of *Lizarraga Hermanos v. F.M. Yap Tico*³ stating that a demurrer should specify, for the benefit of the plaintiff and the court as well, the very weakness which the demurrant believes he sees in the complaint and that to attain this objective, the demurrer should be clear, specific, definite, and certain as to the precise weakness of the complaint. The prosecution thus prayed for the denial of accused Cuña's Motion for Leave to File Demurrer to Evidence.

MOTION FOR LEAVE TO FILE DEMURRER TO EVIDENCE BY ACCUSED BAUTISTA

For Bautista, a contention is made that the prosecution evidence was not only insufficient to prove the elements of *Violation of Section 3 (e) of R.A. 3019*, but the evidence also negates the existence of the elements thereof.

*On the existence of the elements of
the offense charged.*

Accused Bautista asseverates that the element of manifest partiality is itself negated by the regularity of the bidding process with the issuance by the Bids and Awards Committee (BAC) for the Project of BAC-Goods Resolution No. 19-PB-294 dated May 28, 2019.⁴ Even assuming that the bidding was attended by irregularities, these cannot be attributed to accused Bautista because, by virtue of his position as then Mayor of Quezon City, he

² The cited provision read:

SEC. 23. Demurrer to evidence. – xxx

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case.

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³ G.R. No. L-6791, March 27, 1913, 24 Phil. 504.

⁴ Exhibit "B."

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was not a BAC member. Since there were no irregularities in the implementation of the Project,⁵ accused Bautista could rely on the findings by his subordinates pursuant to the Arias Doctrine.⁶ There were no peculiar circumstances which could have prompted accused Bautista to exercise a higher degree of circumspection or go beyond what his subordinates had prepared. The fact that the members of the BAC were not impleaded in the instant case only sealed the regularity of the bidding and procurement process undertaken for the Project. On the other hand, the Arias doctrine, as applied to accused Bautista, will readily efface the element of gross inexcusable negligence.

On the element of evident bad faith, accused Bautista asserts that the absence of a specific appropriation ordinance did not make a case of evident bad faith. Rather, the circumstances could amount to a mistaken belief on his part, which was not fraudulent or dishonest. Mistaken belief cannot be equated to bad faith. At any rate, the prosecution has proven that there was an available appropriation for the Project.

On the element of undue injury, accused Bautista harps that prosecution's own evidence refuted the existence of undue injury when it showed that the Project was delivered, accepted, and utilized by the Quezon City Government, despite some glitches and modifications. If the Project was not ultimately used, it was not due to its non-operability, but the choice of the subsequent administration not to use the same. Besides, there were remedies available to the Quezon City Government which it could have availed of against Geodata Solutions, Inc. ("Geodata") by claiming liquidated damages under Sections 6, 7, and 10 in the Supply and Delivery Agreement,⁷ or by claiming under the Performance Bond,⁸ but which it never made.

On the delivery of the Project.

⁵ Accused Bautista cited the following documents in support of his stance:

- a. Purchase Request No. 055755 dated March 29, 2019 (Exhibit "A")
- b. Public bidding held on April 29, 2019. (Exhibit "B")
- c. Notice of Award was issued (Exhibit "C")
- d. Geodata submitted a Performance Bond (Exhibits "D" and "D-1")
- e. Execution of a Supply and Delivery Agreement (Exhibit "E")
- f. Obligation Request No. 04601 dated June 7, 2019 was released as per standard procedure (Exhibit "F")
- g. Geodata issued Delivery Receipt Nos. 201906017 to 2019070 indicating delivery of an online occupational permit application
- h. BPLD issued a Certificate of Acceptance (Exhibit "H")
- i. Training was conducted for the Project (Exhibits "J" and "BB")
- j. A product demonstration was held (Exhibit "V")
- k. Information Technology Inspection Report (Exhibit "K")
- l. General Services Department Inspection Report No. eph-19-06-44 dated June 26, 2019 (Exhibit "L")

⁶ Referring to *Arias v. Sandiganbayan*, G.R. No. 81563, December 19, 1989.

⁷ Exhibits "E" to "E-5."

⁸ Exhibits "D" to "D-1."

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Documents prepared by concerned personnel and officials prove that the Project was delivered and accepted, as follows: (i) the Information Technology Equipment Inspection Report Form;⁹ and (ii) the General Services Department Inspection Report¹⁰ which listed the specifications of the units delivered in accordance with the Supply and Delivery Agreement.¹¹ Accused Bautista claims that the prosecution itself stipulated during the November 8, 2023 hearing that there was delivery of the Project. The delivery was admitted by the following witnesses:¹²

1. Ramon Jesus Katigbak who testified that tangible products were delivered by Geodata;
2. Rosario Cuering Batul who confirmed that the computer and server were delivered;
3. Atty. Noel Emmanuel Gascon who confirmed the above-stated fact in open court during the hearing held on January 24, 2024;
4. Margarita Santos who likewise confirmed the same during the hearing held on January 23, 2024 and in her Judicial Affidavit;
5. Paul Rene Salafranca Padilla who also confirmed the same during the hearing held on January 24, 2024, further testifying that his team saw the hardware and the server.
6. Alberto Brosoto, Jr. who confirmed delivery of the application in his Judicial Affidavit and in open court.

Accused Bautista thus concludes that the full delivery of the equipment needed for the Project to become operational and functional did not cause undue injury to the government.

On the existence of appropriation for the Project.

On the charge that there was no appropriation for the Project, accused Bautista pointed to existing appropriations for the Project, specifically:

- a. Ordinance No. 2827, s. 2019,¹³ passed by the Sangguniang Panlungsod which contained appropriations for Information

⁹ Exhibit "K."

¹⁰ Exhibit "L."

¹¹ Exhibit "E."

¹² Motion for Leave to File Demurrer to Evidence of accused Bautista, pp. 16-17.

¹³ Not an offered exhibit for the Prosecution.

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Technology and Computer Software under which category the Project obviously belonged. Hence, being specific, a separate approval by the City Council was not necessary;

- b. Ordinance No. 2772, s. 2018¹⁴ which was the funding source for the Project, particularly under the item Information and Communication Technology Equipment with Account Code 1-07-05-030 and Computer Software with Account Code 1-09-01-020. This was what City Budget Officer Marian C. Orayani certified to as the available appropriation;
- c. the Project was part of the 2019 Annual Procurement Plan;
- d. Disbursement Voucher No. 9074¹⁵ contained a certification that the supporting documents were complete and that funds were available, among others;
- e. Testimony of Atty. Thomas S. Alferos III himself stating that there was an appropriation for the Project having admitted the following: (i) there was a supplemental appropriation for the Project; (ii) a project can push through even without ratification; and (iii) he has no knowledge of the Project; hence, any Certification issued by him cannot be relied upon;
- f. The Obligation Request¹⁶ which reflected the account codes for Information and Technology (1-07-05-030) sourced from the appropriation of PHP 680,000,000.00¹⁷ and Computer Software (1-09-01-020) sourced from an augmentation¹⁸ of the budget; and
- g. Atty. Noel Emmanuel Gascon himself admitted that there was no irregularity in the process of disbursement¹⁹ and also confirmed the appropriation.²⁰

On conspiracy.

Accused Bautista also claims that no conspiracy transpired between himself and his City Administrator. In fact, the documents pertaining to the Project were prepared by different officials of the Quezon City Government. Neither was there any connivance in the signing and approval of the

¹⁴ Exhibit "DD-6" to "DD-7."

¹⁵ Exhibit "M."

¹⁶ Exhibit "F."

¹⁷ TSN dated November 9, 2023, pp. 62-63.

¹⁸ Id., pp. 58-60; Q&A 13 of the Judicial Affidavit of Ms. Marian C. Orayani.

¹⁹ TSN dated September 19, 2023, p. 77.

²⁰ TSN dated January 24, 2024, p. 110.

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supporting documents. Mere signature or approval appearing on a voucher, check, or warrant is not enough to sustain a finding of conspiracy. Proof, not mere conjectures or assumptions, should be proffered to indicate that the accused had taken part in a conspiracy.²¹

Accused Bautista further highlighted that in its Order dated December 27, 2022, the Office of the Ombudsman had dismissed the case against Garry C. Domingo, then Head of the BPLD, who had signed the Certificate of Acceptance and Delivery Receipt.

Finally, accused Bautista did not obtain any personal gain, money, or favor from the Project.

Accused Bautista thus prayed that he be granted leave to file a demurrer to evidence.

PROSECUTION'S OPPOSITION

The prosecution countered that accused Bautista's arguments were essentially a rehash of the same contentions he had already raised, and which have been passed upon by the court, in his *Urgent Omnibus Motion [To: (A) Quash the Information; and (B) Dismiss the Case with Prejudice]* dated March 24, 2023. Since the *Revised Rules on Criminal Procedure* require that a motion for leave to file demurrer to evidence must specifically state its grounds,²² accused Bautista's arguments, as re-pleaded, failed to hurdle the test of specificity as required by the Rules.

The prosecution emphasized that the Project was not completely delivered at the time of its payment. In fact, no online occupation permitting system, or software application, was fully functional at the end of June 2019; yet, both accused Bautista and Cuña enabled payment for the Project despite such circumstance.

There was no approved budget for the Project. Witness Marian C. Orayani, Head of the Budget Department of Quezon City, testified that her office was forced to augment the budget to suit the Project and to fund payment thereof.

The prosecution further countered that direct proof is not essential to prove the existence of a conspiracy. Both accused actively participated to

²¹ Citing *Sabiniano v. Court of Appeals*, G.R. No. 76490, October 6, 1995.

²² The cited provision reads:

SEC. 23. Demurrer to evidence. – xxx

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case.

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ensure the immediate release of public funds to Geodata despite incomplete delivery of the Project and the lack of an appropriation ordinance.

Moreover, what was delivered by Geodata was an application full of glitches that was inoperable and could not be launched online. As proof that the Quezon City Government suffered damages, additional funds had to be spent for the complete overhaul of the unusable software application which transformed it into an entirely new, useable software application. Specifically, witness Paul Rene S. Padilla, Head of the Information Technology Development Department of Quezon City, testified that his department and another contractor took an additional three years to patch the inoperable software application delivered by Geodata.

The prosecution thus prayed for the denial of accused Bautista's *Motion*.

MOTION TO EXPUNGE OF THE PROSECUTION

In its Motion to Expunge, the prosecution assailed the following pleadings filed by accused Bautista: (1) the *Comment/Opposition [to the Prosecution's Motion to Accurately Reflect dated 05 February 2023 (sic)]* dated February 13, 2024; and (2) the *Motion for Leave to File Demurrer to Evidence* dated February 13, 2024.

The prosecution underscored that its stipulation during the hearing on November 8, 2023 was that a software application had been delivered and that the same was inoperable and there were glitches. It emphasized that this stipulation was accepted by accused Bautista's counsel, without qualification.²³ It was thus misleading for accused Bautista to mangle the tenor of such stipulation in his *Comment/Opposition* when the stipulation did not simply involve "delivery" without qualification.

The prosecution further pointed out the following misrepresentations in accused Bautista's *Motion for Leave to File Demurrer to Evidence*:

- 1) the existence of an appropriation ordinance for the Project, which contrasts with the testimonies of witnesses Atty. John Thomas Alferos III and Marian Orayani.
- 2) that there was delivery of the Project, which conflicts with the statements of witnesses Santos and Padilla on the non-delivery of the software or application for the online occupational permitting system;

²³ TSN dated November 8, 2023, p. 88, 90.

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- 3) that a procurement can push through without “ratification,” when witness Alferos did not make such statement during the November 8, 2023 hearing.

Additionally, the prosecution argued that accused Bautista’s *Motion for Leave to file Demurrer to Evidence* contained arguments which were copy-pasted or rehashed from his *Urgent Omnibus Motion [to: (A) Quash the Information; and (B) Dismiss the Case with Prejudice]* dated March 24, 2023.

Finally, the prosecution contended that Atty. Daverick Angelito E. Pacumio, counsel of accused Bautista, is the lone signatory in the *Comment/Opposition* and the *Motion for Leave*. In other words, no supervising lawyer co-signed said pleadings which is a violation under Section 11, Canon III (Fidelity) of the *Code of Professional Responsibility and Accountability (CPRA)*.²⁴

The prosecution thus prayed for the court to expunge accused Bautista’s *Comment/Opposition* and his *Motion for Leave to File Demurrer to Evidence*.

ACCUSED BAUTISTA’S OPPOSITION

Accused Bautista defended that, in the first place, nothing in the *CPRA*, nor the Rules, treats as defective a pleading unsigned by a supervising lawyer. Accused Bautista argued that the prosecution itself had violated the *CPRA* in several of its submissions that no supervising prosecutor had signed the same. Secondly, the prosecution’s *Motion* has become moot because its allegations had already been noted by the court in its Resolution dated February 16, 2024. Thirdly, accused Bautista contended that he did not proffer any misrepresentation because, as reflected in the transcript of stenographic notes of the hearing on November 8, 2023, the stipulation was confined only to the fact of delivery.²⁵ Several of the prosecution’s witnesses testified that there was delivery of the hardware and the software of the Project. Finally, accused Bautista countered that his arguments in his *Omnibus Motion to Quash* pertains to the sufficiency of the information, which is a different subject matter from the sufficiency of the evidence presented by the prosecution. He thus prayed for the denial of the prosecution’s *Motion to Expunge*.

MOTION TO ADMIT REPLY OF THE PROSECUTION

In its reply to the opposition filed by accused Bautista, the prosecution reiterated that accused Bautista’s counsel unqualifiedly accepted the

²⁴ SECTION 11. *Responsibility of a supervisory lawyer over a supervised lawyer.* — A supervisory lawyer shall co-sign a pleading or other submission to any court, tribunal, or other government agency with a supervised lawyer. x x x.

²⁵ TSN dated November 8, 2023, pp. 96-102.

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stipulation that the delivered application was inoperable and had glitches. The prosecution clarified that its arguments in its *Motion* were not an attack on Atty. Pacumio, it had only intended to underscore the superior standard to which lawyers must always adhere. The prosecution noted that the pleading submitted by accused Bautista's counsel now has an additional signatory that only affirms the prosecution's stance. However, belated compliance by counsel for accused Bautista could not cure mistakes already committed. The prosecution thus prayed that its *Reply* be admitted and that accused Bautista's *Comment/Opposition* and his *Motion for Leave to File Demurrer to Evidence* be expunged.

THE COURT'S RULING

ACCUSED CUÑA'S MOTION DID NOT SPECIFICALLY STATE GROUNDS TO BE ALLOWED TO DEMUR TO THE EVIDENCE.

The power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court.²⁶ The purpose is to determine whether the accused, in filing their demurrer, is merely stalling the proceedings.²⁷ Section 23, Rule 119 of the *Revised Rules of Criminal Procedure* governs the filing of a motion for leave to file demurrer to evidence:

SECTION 23. *Demurrer to Evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt. (Emphasis supplied)

Due to accused Cuña's general statement of the grounds relied upon, the court cannot grant his *Motion for Leave*. His three-page *Motion* simply stated his own conclusions, without any elaboration, as to how the same

²⁶ *Sillona v. Sandiganbayan (Third Division)*, G.R. No. 243770 (Notice), January 28, 2019.

²⁷ *Bernardo v. Court of Appeals*, G.R. No. 119010, September 5, 1997.

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obtain. It will be purely guesswork on the part of this court to bridge the grounds with the supposed non-existence of the elements of the offense charged and then derive a conclusion on the insufficiency of the evidence. The *Motion* of accused Cuña fell short of the specificity requirement under Section 23, Rule 119 of the *Revised Rules of Criminal Procedure*; necessarily, the court will be hard pressed to allow it to demur to the evidence.

DESPITE ACCUSED BAUTISTA'S ARGUMENT TO THE CONTRARY, THE PROSECUTION PRESENTED SUFFICIENT EVIDENCE AGAINST THE ACCUSED FOR VIOLATION OF SECTION 3 (E) OF REPUBLIC ACT NO. 3019.

The court is faced with 36 documentary exhibits as identified and presented by 27 prosecution witnesses, which should wield whether sufficient proof has been presented to sustain the allegations in the Information. While the prosecution persists that there is sufficient evidence, accused Bautista boats across the other side, claiming that the evidence not only fail to establish but, in fact, negate the existence of the elements of the offense charged.

This is not the time, however, for the court to weigh in the probative value of each evidence and determine which party's postulation is in accord with the evidence and obtain a conclusion therefrom. The relevant issue at this stage is only to determine whether there is sufficient evidence to sustain the offense charged, to be gauged only from the vantage point of the prosecution.

The function of a demurrer to evidence.

A demurrer to evidence is a party's objection that the evidence which their adversary produced is insufficient to make out a case or sustain the issue.²⁸ Simply put, a demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence.²⁹ Jurisprudence expounds on the task of the trial court in resolving the sufficiency of the evidence, viz:³⁰

The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. **Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the**

²⁸ Vide: *People v. Sandiganbayan (Fifth Division)*, G.R. No. 214297 (Notice), January 12, 2021.

²⁹ *Valencia v. Sandiganbayan*, G.R. No. 165996, October 17, 2005.

³⁰ *People v. Sandiganbayan (Fifth Division)*, G.R. No. 214297 (Notice), January 12, 2021.

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judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused. (Emphasis supplied)

The evidence presented.

In this case, the prosecution evidence spelled out the following material events in Quezon City’s procurement of a web-based application system for the online processing of occupational permits, otherwise known as the Project:

Timeline of Key Events		
Date	Event	Prosecution Exhibit
November 19, 2018	Ordinance No. SP-2772, s. 2018 – Approval of Annual Budget of QC Government for the C.Y. 2019, including items for “Information and Communication Technology Equipment” under Account Code 1-07-05-030 (Machinery and Equipment – Capital Outlay) and “Computer Software” (Intangible Assets) under Account Code 1-09-01-020	DD-6 to DD-7 DD-25 DD-26
	Attached thereto is the Summary of Budget Estimates and Approved Appropriations of the Office of the City Mayor with items “Information and Communication Technology Equipment” under Account Code 1-07-05-030 (Machinery and Equipment – Capital Outlay) and “Computer Software” (Intangible Assets) under Account Code 1-09-01-020	DD-35 DD-36
March 12, 2019 (stamp-marked)	Project Procurement Management Plan of the Office of the City Mayor for the Online Occupational Permitting and Tracking System	Q
March 29, 2019	Purchase Request No. 055755 – for the Online Occupational Permit System with accused Cuna as Requesting Party and approved by accused Bautista	A
(undated)	Terms of Reference for the Project	CC and series
May 28, 2019	BAC Resolution No. 19-PB-294, s. 2019 – recommending award of the Project to Geodata	B
May 30, 2019	Notice of Award in favor of Geodata	C
June 7, 2019	Obligation Request No. 04601 to fund payment for the Project in the total amount of PHP 34,995,000.00 certified by accused Cuna under Box A	F

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June 13, 2019	Delivery Receipt No. 201906017 dated June 13, 2019 for "Online Occupational Permit Application" (one Lot) and "HP Server DL360 Gen9" (one Lot)	G to G-2
June 25, 2019	Delivery Receipt No. 201906020 dated June 25, 2019 for Online Occupational Permit Application Manuals/Quick Guides (one Lot), etc.	G-3
June 25, 2019	Certificate of Acceptance issued by City Government Dept. Head III Garry C. Domingo stating that he has accepted the delivery of ONLINE OCCUPATIONAL PERMITTING AND TRACKING SYSTEM and OTHERS purchased from GEODATA SOLUTIONS, INC.	H
June 26, 2019	Inspection of delivered items by the Information Technology Development Department of Quezon City per IT Equipment Inspection Report Form with a notation " <i>Application (Item #1) Not Included</i> "	K
June 26, 2019	Inspection of delivered items by the General Services Department of Quezon City	L
June 28, 2019	Issuance of Disbursement Voucher No. 9074 for ₱32,107,912.50 approved for payment by City Mayor Herbet N. Bautista	M
July 1, 2019	Receipt issued by Geodata for ₱32,107,912.50	O

The main thrust of the Information was that a Violation of Section 3 (e) of *R.A. 3019* occurred when accused Bautista entered into a contract with Geodata for the "Procurement of Online Occupational Permitting and Tracking System and Others" and facilitated the release of the full payment of PHP 32,107,912.50 to Geodata despite: (i) the absence of a specific appropriation ordinance enacted by the Sangguniang Panlungsod for the purpose ; and (ii) without complete delivery of the Project having been made. The same Violation was hurled against accused Cuña for having signed the Purchase Request and in Box A of the Obligation Request, thereby certifying that the charge to the appropriation was lawful and under his direct supervision, to the damage and prejudice of the government.

On the allegation that the Supply and Delivery Agreement was entered into despite the absence of an

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*appropriation ordinance for the
Project.*

The following evidence, as presented by the prosecution, allegedly points to a lack of appropriation ordinance at the time the Supply and Delivery Agreement was entered into, viz:

- i. the Certification dated June 2, 2023 issued by Atty. Alferos, City Secretary (Exhibit "W");
- ii. the Letter dated September 18, 2019 which was also issued by Atty. Alferos (Exhibit "P");
- iii. the testimonies of witnesses Ms. Marian Orayani, Head of the Budget Department, and Atty. John Thomas III Sualog Alferos, City Council Secretary;
- iv. the 2019 General Fund Budget, Section 21 (Exhibit "DD-223"); and
- v. the Obligation Request dated June 7, 2019 (Exhibit "F").

As a rule, public funds may not be disbursed absent an appropriation of law or other specific statutory authority.³¹

In a local government unit such as the Local Government of Quezon City, the one who holds the purse is the Sangguniang Panlungsod pertinent to its powers, duties, and functions under the Local Government Code, to wit:

ARTICLE 92. *Local Legislative Bodies.* — Local legislative power shall be exercised by the following legislative bodies of the LGUs:

- (a) Sangguniang panlalawigan for the province;
- (b) Sangguniang panlungsod for the city;
- (c) Sangguniang bayan for the municipality; and
- (d) Sangguniang barangay for the barangay.

³¹ The following provision of the Philippines Constitution sets the basic rule for the use of government funds: "Art. VI, Sec. 29. No money shall be paid by the Treasury except in pursuance of an appropriation made by law." The aforementioned provision of the Constitution also establishes the need for all government entities to undergo the budgeting process to secure funds for use in carrying out their mandated functions, programs and activities (Sourced from Basic Concepts in Budgeting published by the DBM accessed at <https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B1.pdf>)

Also, Section 4 of PD 1445 which states:

Section 4. *Fundamental principles.* Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

1. No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority.

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ARTICLE 99. *Powers, Duties, and Functions of the Sangguniang Panlungsod.* — (a) The sangguniang panlungsod, as the legislative body of the city, **shall enact ordinances**, approve resolutions and **appropriate funds** for the general welfare of the city and its inhabitants pursuant to Sec. 16 of the Code and in the proper exercise of the corporate powers of the city as provided in Rule IX of these Rules, and shall:

- (1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and relative thereto, shall:

X X X

- (2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the city as provided in Sec. 18 of the Code, with particular attention to agro-industrial development and citywide growth and progress, and relative thereto, shall:

(i) **Approve the annual and supplemental budgets of the city government and appropriate funds for specific programs, projects, services and activities of the city**, or for other purposes not contrary to law, in order to promote the general welfare of the city and its inhabitants;
X X X. (Emphasis supplied)

The evidence would show, however, that an appropriation ordinance already exists for the Project.

For government units, the Annual Procurement Plan (APP) is the backbone of procurement activities. *R.A. 9184* is clear that no procurement shall be undertaken unless it is in accordance with the approved APP.³² In the preparation of indicative APPs for the succeeding calendar year, end-users submit their respective Project Procurement Management Plans (PPMPs), which include the type and objective of contract to be employed, the extent/size of contract scopes/packages, and the estimated budget for the general components thereof, among others.³³

The online occupational permitting system was conceptualized via the PPMP³⁴ stamp marked March 12, 2019 of the Office of the City Mayor, which has an estimated cost of ₱38,357,500.00. The PPMP was carried over in the APP for the calendar year 2019, as reflected in the attachments to Ordinance No. SP-2772, s. 2018. Specifically, the ordinance allocated funds for “Information and Communication Technology Equipment” and “Computer Software,” to wit:

³² The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 [2016 IRR OF R.A. 9184], as amended, Sec. 7.2.

³³ 2016 IRR OF R.A. 9184, Sec. 7.3.2.

³⁴ Exhibit “Q.”

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Statement of Fund Allocation by Sector for Budget Year 2019, listed as “Information and Communication Technology Equipment” under Account Code 1-07-05-030 (Machinery and Equipment – Capital Outlay) and “Computer Software” (Intangible Assets) under Account Code 1-09-01-020:³⁵

Machinery and Equipment	1-07-04-990			1,000,000.00	1,000,000.00
Office Equipment				189,623,410.00	189,623,410.00
Information and Communication Technology Equipment	1-07-05-020	14,718,553.00	2,586,155.00	535,781.00	17,840,489.00
Machinery	1-07-05-030	433,726,342.00	50,187,494.00	4,297,096.00	488,210,932.00
Communication Equipment	1-07-05-010	500,000.00			
Other Property, Plant and Equipment	1-07-99-990	70,918,484.00	4,117,240.00	3,878,890.00	78,914,614.00
Intangible Assets					
Computer Software	1-09-01-020	304,385,264.00	1,762,120.00	842,650.00	306,990,034.00

Summary of Budget Estimates and Approved Appropriations of the Office of the City Mayor with items “Information and Communication Technology Equipment” under Account Code 1-07-05-030 (Machinery and Equipment – Capital Outlay) and “Computer Software” (Intangible Assets) under Account Code 1-09-01-020:³⁶

II. CAPITAL OUTLAY					
A. PROPERTY, PLANT AND EQUIPMENT		P	1,984,713,954.00	P	1,981,479,299.00
Machinery and Equipment		P	1,984,713,954.00	P	1,981,479,299.00
Machinery					
Office Equipment		1-07-05-010	500,000.00		
Information and Communication Technology Equipment		1-07-05-020	5,213,440.00		
Communication Equipment		1-07-05-030	382,202,677.00		13,000.00
		1-07-05-070			
Other Property, Plant and Equipment		1-07-07-020	200,000.00		
Intangible Assets					
Computer Software		1-09-01-020	300,000,000.00		(2,500,000.00)

Based on the Project’s Terms of Reference,³⁷ its four main components are comprised of:

- (1) an online-capable application that will facilitate the online processing of occupational permits;

³⁵ Exhibits “DD-25” and “DD-26.”
³⁶ Exhibit “DD-35.”
³⁷ Exhibit “CC” and series.

Handwritten signature and date: 7.2.19

- (2) a server (application and database);
- (3) a data cabinet; and
- (4) an uninterruptible power supply for the server.

Because these components were categorized as ICT equipment and computer software, which items were already approved for funding by the City Council, it is evident that Ordinance No. SP-2772 was the budget source for the procurement of the Project. In other words, there was no need for a separate approval by the Sangguniang Panlungsod for the procurement of the Project to commence because its basis already lies in an existing appropriation ordinance. Since there was no need to ratify an existing funded procurement activity, this would explain Atty. Alferos's statement in his Certification³⁸ and Letter³⁹ that no record exists of any measure issued by the City Council ratifying the source of the Project.⁴⁰

While the prosecution made issue of the supposed anomaly in the augmentation of the Project's funding, which was testified on by witness Orayani, such augmentation appears to be regular. With an appropriation ordinance supporting the procurement of the Project, the augmentation of a project's funding is not entirely prohibited.⁴¹ It may even be said that the augmentation was done out of necessity because the PPMP outlining the main components of the Project did not explicitly specify the item "computer software,"⁴² when the software/application for the online permitting system was a critical feature of the intended system.

The inevitable conclusion, therefore, is that Ordinance No. SP-2772, s. 2018 provided the source of funding for Quezon City's procurement of its online occupational permitting system, both hardware and software components.

The question that pervades now is whether the Information can survive considering that the allegation on lack of appropriation was not proven.

The answer thereto is in the affirmative.

The crux of the Information is a Violation of Section 3 (e) of *R.A. 3019*. The root of the offense is the act of causing undue injury to any party, or giving any private party any unwarranted benefits, advantage or preference in the discharge of official functions through manifest partiality, evident bad faith or gross inexcusable negligence.⁴³ The allegation of a lack of appropriation is a

³⁸ Exhibit "W."

³⁹ Exhibit "P."

⁴⁰ Exhibit "W."

⁴¹ Section 21 of the 2019 Budget General Provisions (Exhibit "DD-223").

⁴² Exhibit "Q."

⁴³ *Vide: Cabrera v. Sandiganbayan (Fourth Division)*, G.R. Nos. 162314-17, October 25, 2004.

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particularity that does *not* go into the root of the offense charged. The accused still have to deal with the fact of payment—namely, the acts of accused Bautista in approving full payment to Geodata and accused Cuña in certifying the same—when **complete delivery** is purportedly yet to be made.

On whether “complete delivery” was made, however, this is addressed to the adjudicative function of this court, which determination cannot be made at this point in time without assessing the defense that can be posited by the defense. The matter of “complete delivery” is, indeed, beset by the factual aberration present in the case, as seen from the perspective either from the prosecution or defense, as follows:

On the allegation that there was no complete delivery for the Project.

Subsequently, the prosecution red flagged incomplete delivery of the Project in June 2019, as shown by the:

- a. Terms of Reference (**TOR**) which contains the itemized list of deliverables comprising specific hardware, a software/application, and required training relative to the Project (Exhibit “CC” and series) — under the duration clause of the TOR, the implementation of the Project was for a period of six months from the issuance of notice to proceed or contract;
- b. IT Equipment Inspection Report Form dated June 26, 2019 (Exhibit “K”), on which appears a notation, “**APPLICATION (ITEM #1) NOT INCLUDED[.]**”
- c. Certification dated June 14, 2021 by Ramon Africa, an official of the Business Permits and Licensing Division (Exhibit “T”); and
- d. testimonies of witnesses: (i) Gabriel Agno, an official of the Information and Technology Development Department of Quezon City, (ii) Paul Padilla, Head of said Department, and (iii) Ramon Africa.

Despite the pieces of evidence allegedly pointing to an incomplete delivery in June 2019, the prosecution avers that payment in the same month was nonetheless released and facilitated by accused Bautista to Geodata through the issuance of Disbursement Voucher No. 9074 dated June 28, 2019 (Exhibit “M”) in the amount of ₱32,107,912.50, and a receipt issued by Geodata dated July 1, 2019 (Exhibit “O”). Payment may have been made after both accused were no longer in public office but it appears from

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Disbursement Voucher No. 9074⁴⁴ that the Project was approved for payment by accused Bautista on June 28, 2019.

Delivery and payment for any government contract are controlled by Section 88 of *Presidential Decree 1445*, otherwise known as the *Government Auditing Code of the Philippines*, which provides:

Section 88. Prohibition against advance payment on government contracts.

1. Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

Jurisprudence has it that “[f]or an advance payment to be lawful, the materials or supplies should have been delivered in accordance with the contract and should have been duly inspected and accepted.”⁴⁵

Whether such order for payment proceeded from a “complete delivery” of the Project, prosecution evidence apparently satisfies.

Sufficiency of evidence is inevitably found against both accused for Violation of Section 3 (e) of *R.A. 3019*. The matrix below shows the elements of the offense charged and the corresponding evidence, among others:

Violation of Section 3 (e) of <i>R.A. 3019</i> Criminal Case No. SB-23-CRM-0044		
Name of Accused	Elements	Prosecution Evidence
Herbert Constantine M. Bautista	1. The accused must be a public officer discharging administrative, judicial or official functions;	Stipulated by the parties as per Pre-Trial Order dated September 19, 2023 ⁴⁶

⁴⁴ Exhibit “M”.
⁴⁵ *Abubakar v. People*, G.R. Nos. 202408, 202409 & 202412, June 27, 2018.
⁴⁶ Records, Vol. 4, p. 212.

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<p>Aldrin C. Cuña</p>	<p>2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and</p> <p>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 or her functions.</p>	<p>1. On the procurement aspect of the Project that began with the issuance of the Purchase Request and ended with the Notice of Award:</p> <p>Exhibits "A," "B," "C," "D," "E", "F", "M", "N", "O", "Q", "R" and series, "CC" and series, and "FF,"</p> <p>Judicial Affidavits of Marian C. Orayani and Rosario Batul</p> <p>2. On delivery and acceptance of the Project:</p> <p>Exhibits, "G" to "G-3," "H", "I", "K," "L" and series, "V", "FF", "BB" and series</p> <p>Judicial Affidavits of Frederick Dimaano, Alberto Brosoto, Jr., Mercedes Tarrobal, Ramon Jesus K. Africa, Irene S. Lapuz, Christina L. Alzona, Sunshine Celendon Delos Santos, Marcela D. Eliran, Raymond N. Fetil, Gabriel Fernando Y. Agno, John Elfrimen T. Landong, Rachel C. Escolano, and Gary C. Lopeña, among others.</p> <p>3. On the aspect of payment to Geodata:</p> <p>Exhibits "M," "N," "O," and "GG"</p> <p>4. On allegations that the Project was not functional and not operational:</p> <p>Exhibits "J", "K", "T," "CC" and series, and "II" to "II-8"</p>
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		Judicial Affidavits of Joon Crsna M. Mejia, Ramon Africa, Alberto Brosoto, Jr., Rosario Batul, Ma. Margarita Santos, Gabriel Agno, Paul Rene Padilla, and Jennylyn L. Dela Rosa, among others.
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At this instance, however, accused Bautista presents arguments that pass on the probative value of the evidence presented by the prosecution to gain the conclusion that evidence was insufficient to establish the elements of the offense charged. Such arguments are beyond the scope of a demurrer. Verily, “the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits[.]”⁴⁷

At this stage, the claims and defenses of the accused vis-à-vis the evidence presented by the prosecution, are not yet weighed in. They are best left until the presentation of defense evidence where both accused shall have the opportunity to refute the evidence presented against them, at least on the charge of “incomplete delivery.” The resolution of a motion for leave to demur to the evidence, after all, is hinged not on the claims and defenses of the accused, but on the sufficiency of the prosecution evidence.

The accused should only present their respective proof, claims, and defenses in refutation of the prosecution evidence.

ON THE MOTION TO EXPUNGE OF THE PROSECUTION.

It appears that the prosecution expended considerable effort in flagging accused Bautista’s copied and pasted arguments that he apparently lifted from his past pleadings. Regardless of the rehashed nature of said contentions, however, the court simply takes note of the same. While it is true that the same assertions are made, it is in the determination whether they supported the end goal of the affirmative relief to which accused’s arguments are hinged on, is what should be more controlling. The court cannot uncannily discard a recycled stance on the pretense that it has already been cliched, deliberated, and passed upon when the end goal of the affirmative relief, as alluded to, is different.

How accused Bautista’s strategy served his cause is already moot at this

⁴⁷ Singian, Jr. v. Sandiganbayan, G.R. Nos. 195011-19, September 30, 2013.

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point.

On the issue of the alleged ethics violations, the court refers to Section 11, Canon III on Fidelity of the *CPRA* which provides, “[a] supervisory lawyer shall co-sign a pleading or other submission to any court, tribunal, or other government agency with a supervised lawyer.” The use of the word “*shall*” leaves no room for interpretation that compliance therewith is **mandatory**.

As pointed out by counsel for accused Bautista and the prosecution, respectively, several pleadings and/or submissions by both parties were *not* co-signed by any supervisory lawyer. At this instance, since the duty of supervisory lawyers to co-sign pleadings is mandatory, it becomes necessary to remind the respective counsels of the parties to strictly observe the *CPRA* provision in future submissions of documents before the court. To stress, “[a]s a guardian of the rule of law, every lawyer . . . as a member of the legal profession, is bound by its ethical standards in both private and professional matters[.]”⁴⁸

Anent the parties’ divergent interpretations of the statements and stipulations which occurred during the November 8, 2023 hearing, the court again notes the same. At this juncture, all exchanges during said hearing are borne by the records and will be subject to the appreciation of the court at the proper time.

WHEREFORE, the court resolves to:

1. **DENY** the (a) *Motion for Leave to File Demurrer to Evidence* of accused Aldrin C. Cuña and the (b) *Motion for Leave to File Demurrer to Evidence* of accused Herbert Constantine M. Bautista;
2. **NOTE** the statements, exchanges, and stipulations made during the November 8, 2023 hearing as it devolves on the ultimate and relevant issue of “complete delivery”;
3. **REMAND** the prosecution and all counsels for the accused to comply with the obligation or duty of supervisory lawyers to co-sign with supervised lawyers a pleading or other submission to any court, as mandated by Section 11, Canon III of the *Code of Professional Responsibility and Accountability*; and for this purpose,
4. **DENY** the prosecution’s (a) *Motion to Expunge [Comment/Opposition dated 13 February 2024 and Motion for Leave to File Demurrer to Evidence dated 13 February 2024 of Accused Herbert Constantine*

⁴⁸ Preamble, Code of Professional Responsibility and Accountability, A.M. No. 22-09-01-SC dated April 11, 2023.

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Maclang Bautista] dated February 19, 2024; and

5. **DENY** prosecution's *Motion to Admit Reply [to the Opposition dated 26 February 2024]* dated February 27, 2024, being a prohibited pleading under the 2018 Revised Internal Rules of the Sandiganbayan.

The tentative setting for the presentation of defense evidence is set on **March 20, 2024 at 8:30 in the morning** at the Fourth/Seventh Division courtroom.

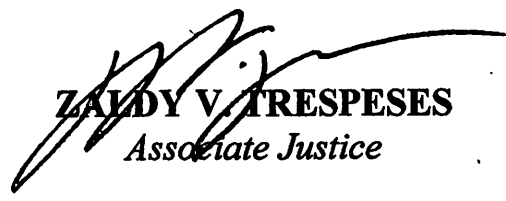
SO ORDERED.



MA. THERESA DOLORES C. GOMEZ-ESTOESTA

*Chairperson
Associate Justice*

WE CONCUR:



ZALDY V. TRESPESES

Associate Justice



GEORGINA D. HIDALGO

Associate Justice