

JUNE 7, 2019

Marissa P. Duran
Atty. ANNA MARIE D. CRESPILO
EXECUTIVE CLERK OF COURT III
SECOND DIVISION

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Cases Nos. 24479 to 24489

For: Violation of Section 3(e) of
R.A. No. 3019

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

SULPICIO P. LEGASPI, MOISES R.
PERALTA, REBECCA GOMEZ,
JORGE MONTILLA, MARISSA L.
DURAN, LOURDES PLAZA,
MARIETTA FUENTES, OFELIA S.
POLIQUIT, BRENDA REGNER,
RHODORA B. LACSON, MIGUEL S.
ALIPIO, SAMSON Z. CABALLES,
OSCAR GERONA, PELAGIO V.
SORONGON, JR., and ROSELMA G.
CANTOS,

Accused.

Promulgated:

June 7, 2019 ant

X-----X

DECISION

HERRERA, JR., J.:

This resolves eleven (11) cases of *Violation of Section 3, paragraph (e) of Republic Act (R.A.) No. 3019*, also known as the *Anti-Graft And Corrupt Practices Act*, involving the following accused: 1) Sulpicio P. Legaspi; 2) Moises R. Peralta; 3) Rebecca L. Gomez; 4) Jorge Montilla; 5) Marissa Duran; 6) Lourdes R. Plaza; 7) Marietta C. Fuentes; 8) Ofelia S. Poliquit; 9) Brenda Regnar; 10) Rhodora Lacson; 11) Miguel S.

[Signature]

[Signature]

Alipio; 12) Samson Z. Caballes; 13) Oscar Gerona; 14) Pelagio V. Sorongon, Jr.; and 15) Roselma G. Cantos.

The first ten (10) accused mentioned above – 1) Legaspi; 2) Peralta; 3) Gomez; 4) Montilla; 5) Duran; 6) Plaza; 7) Fuentes; 8) Poliquit; 9) Regnar; and 10) Lacson – are all jointly charged in all the eleven cases - Criminal Cases Nos. 24479 to 24489. The following are jointly charged with them, to wit:

- a) Accused Alipio, only in Criminal Cases Nos. 24479, 24480, 24482, 24483, 24485 and 24489;
- b) Accused Caballes, only in Criminal Cases Nos. 24480, 24483, 24484, 24486 and 24488;
- c) Accused Gerona, only in Criminal Cases Nos. 24481, 24487 and 24489;
- d) Accused Sorongon, only in Criminal Cases Nos. 24483, 24486 and 24488; and
- e) Accused Cantos, only in Criminal Case No. 24486.

The charge in eight (8) of the cases, namely: Criminal Cases Nos. 24479, 24480, 24482, 24483, 24484, 24485, 24486 and 24488, are under eight (8) separate *Informations* all dated January 29, 1998. On the other hand, the charge in three (3) of the cases – Criminal Cases Nos. 24481, 24487 and 24489 – are under three (3) separate *Amended Informations* all dated September 13, 2007.

The accusatory portion of the *Information*¹ in Criminal Case No. 24479 reads:

“That on or about January 07, 1991 or sometime prior or subsequent thereto, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused-public officers, with salary grades below grade 27, except accused Legaspi with salary grade 27 and is therefore a high-ranking officer, while in the discharge of

¹ Record, Vol. 1, pp. 1 and 2

wehr

M

their official functions, in conspiracy with one another and with Miguel S. Alipio, General Manager of Ethnol Generics, Kalookan City, through manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause undue injury to the government by approving the payment as the approving authority, on the part of accused Legaspi; certifying that the expenses were necessary, lawful, and incurred under his direct supervision, on the part of accused Peralta; irregularly awarding the contract as members of the Committee on Bids and Awards (CBA), on the part of accused Montilla, Duran, Plaza, Gomez and Fuentes; insufficiently and irregularly reviewing the documents from the CBA and recommending the approval of the transaction as members of the Technical Committee, on the part of accused Poliquit, Regner and Lacson; and conniving with the aforementioned public officials and delivering items without the required product or drug registration, on the part of accused Alipio; in the purchase of 1,000 bottles of coldflu tablets for a total consideration of P112,000.00, under Disbursement Voucher No. Aie-90-12-3315 dated January 07, 1991; despite the fact the product lacked the required product or drug registration which guarantees the safety and efficacy of the product, the contract of which was directly awarded to Ethnol Generics, in violation of DOH Memorandum Circular No. 08, Series of 1987; thereby giving unwarranted benefits, advantage or preference to Ethnol Generics and causing undue injury to the government.

CONTRARY TO LAW."

Except as to the date of commission of the offense, the items purchased and consideration thereof, and the Disbursement Voucher (DV) No., the allegations in the accusatory portion of the *Information*² in Criminal Case No. 24485 are the same as that in Criminal Case No. 24479 quoted above. In Criminal Case No. 24485, the date of commission of the offense is "on or about November 26, 1990 or sometime prior or subsequent thereto"; the items purchased are "1,070 bottles of coldflu tablets for a total consideration of P119,840.00", and under DV No. Aie-90-11-2842 dated November 26, 1990.

The accusatory portion of the *Information*³ in Criminal Case No. 24480 reads:

² Record of Crim. Case No. 24485, pp. 1 and 2

³ Record of Crim. Case No. 24480, pp. 1 to 3

ufr

M

"That on or about January 08, 1991 or sometime prior or subsequent thereto, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused-public officers, with salary grades below grade 27, except accused Legaspi with salary grade 27 and is therefore a high-ranking officer, while in the discharge of their official functions, in conspiracy with one another and with Miguel S. Alipio, General Manager of Ethnol Generics, Kalookan City, through manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause undue injury to the government by approving the payment as approving authority, on the part of accused Legaspi; certifying that the expenses were necessary, lawful, and incurred under his direct supervision and that in case of contracts or purchases of goods or services, the prices were reasonable and not in excess of the current rates in the locality, on the part of accused Peralta; conducting an irregular and insufficient price test, on the part of accused Gomez; recommending approval in the purchase order as supply officer, on the part of accused Caballes; preparing a flawed price schedule and irregularly awarding the contract as members of the Committee on Bids and Awards (CBA), on the part of accused Montilla, Duran, Plaza, Gomez and Fuentes; insufficiently and irregularly reviewing the documents from the CBA and recommending the approval of the transaction as members of the Technical Committee, on the part of accused Poliquit, Regner and Lacson; and conniving with the aforementioned public officials and delivering items without the required product or drug registration, on the part of accused Alipio; in the purchase of 2,000 bottles of multivitamins with Lysine 60 ml. syrup, at P30.00 per bottle, under Disbursement Voucher No. CSP-90-12-3322, dated January 8, 1991, in the amount of P60,000.00; which turned out to be overpriced in the total amount of P47,200.00, as based on the March 27, 1990 price schedule, the multivitamin costs only P6.40 per bottle; despite the fact that the product lacked the required product or drug registration which guarantees the safety and efficacy of the product; the contract of which was directly awarded to Ethnol Generics, in violation of DOH Memorandum Circular No. 08, Series of 1987; thereby giving unwarranted benefits, advantage or preference to Ethnol Generics and causing undue injury to the government in the total amount of P47,200.00.

CONTRARY TO LAW."

Except with respect to the date of commission of the offense, the items purchased, DV Nos., and amount of overprice and injury to the government, the allegations in the accusatory portion of the

Informations⁴ in Criminal Cases Nos. 24482 and 24484 are the same as that of Criminal Case No. 24480 quoted above.

In Criminal Case No. 24482, the date of commission is "on or about April 03, 1991 or sometime prior or subsequent thereto"; the items purchased are also 2000 bottles of multivitamins with lysine 60 ml. syrup; the DV No. is Aie-91-04-029 dated April 03, 1991 in the amount of P60,000.00; and the amount of overprice as well as injury to the government is also P47,200.00.

In Criminal Case No. 24484, the date of commission of the offense is "on or about November 02, 1990 or sometime prior or subsequent thereto"; the items purchased are 2,880 bottles of multivitamins with lysine 60 ml. syrup at P30.00 per bottle and 2,000 bottles of benzyl benzoate 25% 120 ml.; the DV No. is Aie-90-11-2619 dated November 02, 1990, in the amount of P86,400.00; and the amount of overprice as well as injury to the government is P67,968.00.

The accusatory portion of the **Amended Information**⁵ in Criminal Case No. 24481 reads:

"That on or about February 04, 1991 or sometime prior or subsequent thereto, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused-public officers, with salary grades below grade 27, except accused Legaspi with salary grade 27 and is therefore a high-ranking officer, while in the discharge of their official functions, in conspiracy with one another and with Oscar Gerona, Proprietor of Thenard Medical Systems, Davao City, through manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause undue injury to the government by approving the transaction as approving authority, on the part of accused Legaspi; certifying that the expenses were necessary, lawful, and incurred under his direct supervision, on the part of accused Peralta; irregularly awarding the contract as members of the Committee on Bids and Awards (CBA), on the part of accused Montilla, Duran, Plaza, Gomez and Fuentes; insufficiently and

⁴ Record of Crim. Case No. 24482, pp. 1 to 3

Record of Crim. Case No. 24484, pp. 1 to 3

⁵ Record of Crim. Case No. 24481, pp. 1 and 2

uf

M

irregularly reviewing the documents from the CBA and recommending approval of the transaction as members of the Technical Committee, on the part of accused Poliquit, Regner and Lacson; and conniving with the aforementioned public officials and delivering items without the required product or drug registration, on the part of accused Gerona; in the purchase of 1,941 bottles of Ferrous Sulfate, under Disbursement Voucher No. A7i-91-01-111 dated February 04, 1991; which was awarded to Thenard Medical Systems despite the fact that Compact Pharmaceuticals was the winning bidder and despite the fact that the product lacked the required product or drug registration which guarantees the safety and efficacy of the product; thereby giving unwarranted benefits, advantage or preference to Thenard Medical Systems and causing undue injury to the government and to Compact Pharmaceuticals.

CONTRARY TO LAW."

Except for the date of commission of the offense, quantity of the items purchased and DV, the allegations in the accusatory portion of the **Amended Informations**⁶ in Criminal Cases Nos. 24487 and 24489 are the same as in Criminal Case No. 24481 quoted above.

In Criminal Case No. 24487, the date of commission of the offense is "on or about December 27, 1990 or sometime prior or subsequent thereto", the items purchased are 982 bottles of ferrous sulfate; and the DV No. is A7i(6)-90-12-3194 dated December 27, 1990.

In Criminal Case No. 24489, the date of commission of the offense is also "on or about December 27, 1990 or sometime prior or subsequent thereto"; the items purchased are 589 bottles of ferrous sulfate; and the DV No. is A7i(2)-90-12-3195 dated December 27, 1990.

The accusatory portion of the **Information**⁷ in Criminal Case No. 24483 reads:

"That on or about October 15, 1990 or sometime prior or subsequent thereto, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, abovenamed

⁶ Record of Crim. Case No. 24487, pp. 1 and 2

Record of Crim. Case No. 24489, pp. 1 and 2

⁷ Record of Crim. Case No. 24483, pp. 1 to 3

Calpr

M

accused-public officers, with salary grades below grade 27, except accused Legaspi with salary grade 27 and is therefore a high-ranking officer, while in the discharge of their official functions, in conspiracy with one another and with Pelagio V. Sorongon, Jr., owner/proprietor of J.V. Sorongon Enterprises, Davao City, through manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause undue injury to the government by approving the payment as approving authority, on the part of accused Legaspi; certifying that the expenses were necessary, lawful, and incurred under his direct supervision and that in case of contracts or purchases of goods or services, the prices were reasonable and not in excess of the current rates in the locality, on the part of accused Peralta; conducting an irregular and insufficient price test, on the part of accused Gomez; recommending approval of the purchase order as supply officer and anomalously substituting the word "set" to "tube" without authority, on the part of accused Caballes; preparing a flawed price schedule and irregularly awarding the contract to J. V. Sorongon Enterprises despite glaring irregularities, as members of the Committee on Bids and Awards (CBA), on the part of accused Montilla, Duran, Plaza, Gomez and Fuentes; insufficiently and irregularly reviewing or evaluating the documents pertaining to the transaction and recommending approval of the transaction, as members of the Technical Committee, on the part of accused Poliquit, Regner and Lacson; and conniving with the aforementioned public officials on the part of accused Sorongon; in the purchase of 700 packs cotton pledget buds sterile, 600 tubes amalgam filling, and 500 tubes sulfur ointment, under Disbursement Voucher No. Aie 9010-2294 dated 15 October 1990, in the amount of P390,500.00; which turned out to be overpriced in the total amount of P244,310.00; the contract of which was awarded to J. V. Sorongon Enterprises, despite the fact that, with respect to the cotton pledget buds, J.V. Sorongon Enterprises was not the lowest bidder at P70.00 per pack, the lowest being P25.00 per pack, with the item being sold in the market at P11.50 per pack or P12.50 per pack adding the 10% allowable price variance; and despite the fact that, with respect to the amalgam filling, J.V. Sorongon Enterprises was not a participant in the bidding conducted for the purpose, since nowhere in the abstract of bids did J.V. Sorongon Enterprises appear as one of the three lowest bidders, its price being P13.00 per piece whereas the lowest bid was P9.50 per piece, the same item being sold for P5.50 inclusive of the 10% allowable price variance per separate canvass with the same J.V. Sorongon Enterprises; and despite the fact that, with respect to the sulfur ointment, J.V. Sorongon Enterprises quoted P59.00 for the item which per canvass costs only P10.67 inclusive of the 10% allowable price variance; thereby giving unwarranted benefits, advantage or preference to J.V. Sorongon Enterprises and

Wpr

M

causing undue injury to the government in the total amount of P244,310.00.

Except as regards the date of commission of the offense, the items purchased, the DV No., date and amount thereof, and the amount of overprice and injury to the government, the allegations in the accusatory portion of the *Information*⁸ in Criminal Case No. 24488 is the same as those in Criminal Case No. 24483 quoted above.

In Criminal Case No. 24488, the date of commission of the offense is "on or about December 28, 1990 or sometime prior or subsequent thereto"; the items purchased are 600 tubes amalgam filling; the DV No. is Aie-90-12-3246 dated December 28, 1990 in the amount of P312,000.00.

The accusatory portion of the *Information*⁹ in Criminal Case No. 24486 reads:

"That on or about December 03, 1990 or sometime prior or subsequent thereto, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused-public officers, with salary grades below grade 27, except accused Legaspi with salary grade 27 and is therefore a high-ranking officer, while in the discharge of their official functions, in conspiracy with one another and with Pelagio V. Sorongon, Jr., owner/proprietor of J.V. Sorongon Enterprises, Davao City, through manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, cause undue injury to the government by approving the payment as approving authority, on the part of accused Legaspi; certifying that the expenses were necessary, lawful, and incurred under his direct supervision and that in case of contracts or purchases of goods or services, the prices were reasonable and not in excess of the current rates in the locality, on the part of accused Peralta; conducting an irregular and insufficient price test, on the part of accused Cantos; recommending approval of the purchase order as supply officer, on the part of accused Caballes; preparing a flawed price schedule and irregularly awarding the contract to J.V. Sorongon Enterprises despite glaring irregularities, as members of the Committee on Bids and Awards (CBA), on the part of accused Montilla, Duran, Plaza, Gomez and Fuentes; insufficiently and irregularly

⁸ Record of Crim. Case No. 24488, pp. 1 to 3
⁹ Record of Crim. Case No. 24486, pp. 1 to 3

uefr

M

reviewing or evaluating the documents pertaining to the transaction and recommending approval of the transaction, as members of the Technical Committee, on the part of accused Poliquit, Regner and Lacson; and conniving with the aforementioned public officials and delivering items without the required product or drug registration, on the part of accused Sorongon; in the purchase of 84 kilos of Sodium Fluoride powder at P2,960 per kilo under Disbursement Voucher No. Aie-90-11-2864, dated December 03, 1990, in the amount of P248,640.00; the contract of which was awarded to J.V. Sorongon Enterprises; using the price schedule of the Department of Health Regional Office No. XII, Cotabato City, without sufficient basis, no effort being exerted to determine the prevailing price of the item in Davao City; which transaction turned out to be overpriced in the total amount of P188,580.00, as a separate canvass revealed that the lowest quoted price in Davao City was only P715.00 per kilo inclusive of the 10% allowable price variance; which transaction was consummated despite the fact that the item purchased lacked the required product registration which guarantees the safety and efficacy of the item; thereby giving unwarranted benefits, advantage or preference to J.V. Sorongon Enterprises and causing undue injury to the government in the total amount of P188,580.00.

CONTRARY TO LAW."

Except for accused Montilla and Gerona who remain at-large, thirteen (13) of the accused posted bail for their provisional liberty. Assisted by counsel, the said thirteen (13) accused, who pleaded not guilty when arraigned on the dates indicated below, are as follows:

Name of Accused	Date of Arraignment
1. Accused Legaspi	January 27, 2005 ¹⁰
2. Accused Peralta	January 27, 2005 ¹¹
3. Accused Gomez	January 27, 2005 ¹²
4. Accused Duran	January 27, 2005 ¹³
5. Accused Plaza	January 27, 2005 ¹⁴
6. Accused Fuentes	January 27, 2005 ¹⁵
7. Accused Poliquit	May 23, 2005 ¹⁶

¹⁰ Record, Vol. 3, pp. 1107

¹¹ Id, p. 1104

¹² Id, p. 1106

¹³ Id, p. 1109

¹⁴ Id, p. 1103

¹⁵ Id, p. 1108

Handwritten signature

Handwritten signature

8. Accused Regner	May 23, 2005 ¹⁷
9. Accused Lacson	May 23, 2005 ¹⁸
10. Accused Alipio	January 27, 2005 ¹⁹
11. Accused Caballes	May 23, 2005 ²⁰
12. Accused Sorongon	January 27, 2005 ²¹
13. Accused Cantos	May 23, 2005 ²²

The cases were set for pre-trial which was terminated on August 14, 2006.²³ Trial thereafter ensued.

On February 12, 2013, the plaintiff filed its *Prosecution's Formal Offer of Evidence*²⁴ dated February 8, 2013. This was resolved in a *Resolution*²⁵ dated May 5, 2013.

On August 24, 2015, a *Formal Offer Of Evidence with Motion to Admit*²⁶ dated August 7, 2015 was filed by accused Sorongon, Jr., through counsel. On the same date, a *Manifestation And Motion (Re: Accused Sorongon's Adoption of co-accused Roselma Cantos' Testimony in Criminal Case No. 24486) with Motion for Leave to Admit*²⁷ likewise dated August 7, 2015 was filed by accused Sorongon, through counsel.

In a *Resolution*²⁸ dated September 21, 2015, the Court ruled, as follows:

"1) to require accused Pelagio Sorongon, Jr. to submit the originals of Exhibits 8 & 9, as well as the documents marked by the Court as Exhibits 10, 11 & 12;

¹⁶ Id, p. 1287

¹⁷ Id, p. 1288

¹⁸ Id, p. 1289

¹⁹ Id, p. 1110

²⁰ Id, p. 1290

²¹ Id, p. 1105

²² Id, p. 1291

²³ see Order dated Aug. 14, 2016; Id, pp. 1591 and 1611

²⁴ Record, Vol. 7, pp. 3033 to 3102

²⁵ Record, Vol. 8, p. 3761

²⁶ Record, Vol. 10, p. 4512

²⁷ Id, p. 4512

²⁸ Id, p. 4593

mpf

M

2) to note the Manifestation and Motion (Re: Adoption of Roselma Cantos' Testimony in Crim. Case No. 24486) with Motion for Leave to Admit."

On March 29, 2016, a **Formal Offer Of Exhibits**²⁹ dated March 11, 2016 was filed by accused Poliquit and Regnar. In a **Resolution** dated May 6, 2016, the Court resolved to admit Exhibits "1" , "2" and "3" of accused Poliquit and Regnar.

On November 15, 2016, a **Formal Offer Of Evidence Of Accused Samson Caballes**³⁰ dated November 24, 2016 was filed by accused Caballes, through counsel,

On November 29, 2016, a **Formal Offer Of Evidence (For Accused Marissa Duran And Rebecca Gomez)**³¹ dated November 10, 2016 was filed by accused Duran and Gomez, through counsel.

Also on November 29, 2016, a **Formal Offer Of Exhibits Of Accused Cantos**³² dated November 17, 2016 was filed by accused Cantos, through counsel.

On December 2, 2016, a **Formal Offer Of Evidence With Motion For Permanent Marking (For Accused Miguel S. Alipio)**³³ dated November 10, 2016 was filed by accused Alipio, through counsel.

In a **Resolution**³⁴ dated April 11, 2017, the Court ruled, as follows:

"1) To admit Exhibits 1, 2, 3, 4, 5 and 6, as well the submarking therein, of accused Samson Z. Caballes;

2) To admit Exhibits 1, 2, 2-C-1, 2-C-2, 2-C-3 and 2-D-1, 3, 4, 4-A-1, 4-C-1 and 4-C-2, 5, 5-A, 5-B and 5-C, 10, 17, 18, 19, 20, 22 and 24 of accused Marissa Duran and Rebecca Gomez;

²⁹ Id, p. 4693

³⁰ Id, p. 4867

³¹ Record, Vol. 10, p. 4893

³² Record, Vol. 11, pp. 4893 to 4963

³³ Id, pp. 4997 to 5024

³⁴ Id, pp. 5080 to 5081

ucpr

M

3) To admit Exhibits 1, 1-A and 1-A-1, 2 and 2-A, 3, 4, 5, 5-A, 5-B and 5-C, 6, 7 and 7-A, 9 and 9-A, 10 and 10-A, 11, 12, 12-A-1, 12-A-2, 12-A-3 and 12-A-4, 13, 14, 14-A, 14-B, 14-C and 14-D of accused Roselma G. Cantos;

-and-

4) To admit Exhibits 1, 1-A, 1-B and 1-C, 2, 2-A, 2-B, 2-C and 2-D, 3, 3-A and 3-B, 4, 4-A, 4-B, 4-C and 4-D, 5 and 6, 6-A to 6-E (of accused Alipio)."

To prove the charges, the prosecution presented as witness one Noemi P. Wong, State Auditor IV of the Commission on Audit (COA). The prosecution dispensed with the testimony of Carmelita Peñaño, Records Officer of the Department of Health, Center for Health Division, Davao Region, after a stipulation with the accused, represented by counsels, to wit:

"As such, Ms. Carmelita Peñaño would have testified that she was the Records Officer who certified the following documents to be the true copy of the original, namely:

1. Department of Health Regional Health Office No. 11 Regional Order No. 534, Series of 1998 dated November 11, 1988 marked as Exhibit "F".
2. Department of Health Regional Health Office No. 11 Regional Order No. 168, Series of 1989 marked as Exhibit "D";
3. The Ministry of Health Administrative Order No. 28, Series of 1987 marked as Exhibit "L"

The witness would likewise have testified that as part of her duties, she certified the documents presented as true copies of the originals which are on file with the Department of Health."³⁵

The prosecution also submitted as evidence documents marked Exhibits "A" to "Z", inclusive, as well as the submarkings, "AA", "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", "RR", "SS", "TT", "UU", "VV", "WW", "XX", "YY" and "ZZ", including their submarkings.

³⁵ Record, Vol. 7, pp. 2950 to 2951

wfr

MA

On the other hand, the following accused testified in their defense, namely: 1) Alipio; 2) Gomez; 3) Duran; 4) Cantos; 5) Poliquit; 6) Caballes; and 7) Sorongan.


The testimony of accused Lacson was the subject of stipulation, as indicated in the **Order**³⁶ dated October 14, 2014 which reads:

"With respect to the testimony of accused Dra. Rhodora B. Lacson who is next to be presented, Atty. Caesar S. Europa and Prosecutor Reza M. Casila-Derayunan stipulated on the following matters: (1) that out of the eleven (11) Criminal Cases, it is only in Criminal Case No. 24483, which specifically involves the purchase of Sulfur Ointments, that Dra. Rhodora B. Lacson was involved, being the Chairman of Technical Committee on Drugs and Medicines at that time; (2) that in the designation of who were the members of the Technical Committee at that time, Regional Order No. 534, series of 1988 Exhibit "F", which designated certain personnel as Chairman/Members of the Technical Committee effective November 11, 1988 and wherein Dra. Lacson was designated as the Chairman, did not contain specific instructions about what their job was in that designation; (3) that the signature of Dra. Rhodora B. Lacson does not appear anywhere on the Disbursement Voucher, which is Exhibit "AA" of the prosecution, involving Criminal Case No. 24483, and the supporting documents such as Purchase Order No. 331, which was marked as Exhibit "KK-4", Sales Invoice No. 685, which was marked as Exhibit "KK-5", Certificate of Acceptance dated October 15, 1990, which was marked as Exhibit "KK-8", and the duplicate copy of the check dated October 15, 1990 pertaining to the transaction which was marked as Exhibit "KK-7"; (4) that there was a lone bidder during the transaction involving Criminal Case No. 24483 as appearing on Exhibit "M", Item No. 604, page 9; (5) that Dra. Rhodora B. Lacson held her post as the Chairperson of the Technical Committee on Drugs and Medicines from 1988 to 1992."

The documentary exhibits submitted for the defense are those mentioned in the **Resolution**³⁷ dated April 11, 2017.

³⁶ Record, Vol. 9, pp. 4272 to 4273

³⁷ Record, Vol. 11, pp. 5080 to 5081



SUMMARY OF THE TESTIMONY OF PROSECUTION WITNESS NOEMI P. WONG

Noemi P. Wong testified that she has been a COA auditor since August 1978. During the dates relative to these cases, she was State Auditor III assigned at the Department of Health (DOH), Region XI. As State Auditor, she conducted comprehensive audit on the financial accounts and operations of the Department of Health and cash examinations on the accountable officers and evaluate the internal control system of the agency. She recalls having conducted year round audit examination relative to the accounts and operations of the DOH Region XI for the Calendar Year 1990. With her as team members were Ms. Miguela Aguirre and Ms. Wilda Guera. They conducted the audit pursuant to Section 2, paragraph 1, Article 19 of the Philippine Constitution and the pertinent provisions of Presidential Decree (P.D.) 1445, also known as the State Auditing Code.

In conducting the audit, they followed the audit procedure outlined in the Financial Audit Manual and State Audit Manual. For the procurement of drugs and medicines, the first step was to go over the report of checks issued and the general ledger and look for large amount of expenditure. Then they secure the original copies of the disbursement voucher (DV) together with the supporting documents and ascertained whether these vouchers were complete, regular, legal and properly approved by authorized officials. For the procurement, they determined whether the appropriate procurement procedures were followed, as required under Administrative Order No. 28 and other pertinent and applicable laws. Specifically, for transactions through public bidding and other modes of procurement, they checked whether the suppliers or the bidders who participated are bonafide suppliers, and have the license to operate and sell drugs and medicines. What they conducted is a regular audit for the period January to December 1990. They prepared an audit report.

In the examination of documents and DVs, they observed some purchases of drugs and medicines and other supplies worth P2,409,088.84 were irregular, uneconomical and in violation of Administrative Order No. 28 of the DOH, the procurement law and Republic Act (R.A.) No. 3019:

The DVs are as follows:

- 1) DV No. - 90-12-3315 (Exh. "GG") dated December 28, 1990 and paid on January 7, 1991 under Check No. 664086-1, for Criminal Case No. 24479;
- 2) DV No. Csp-90-12-3322 (Exh. "HH") dated December 28, 1990, for Criminal Case No. 24480;

Handwritten signature

Handwritten signature

- 3) DV No. A7i-91-01-111 (Exh. "II") which is undated but paid on February 4, 1991 under Check No. 865746-A, for Criminal Case No. 24481;
- 4) DV No. A71 2-91-04-029 (Exh. "JJ") dated December 28, 1990 and paid on April 23, 1991 under Check no. 902174, for Criminal Case No. 24482;
- 5) DV No. Aie-90-10-2294 (Exh. "KK") dated October 15, 1990 paid under Check No. 56027, for Criminal Case No. 24483;
- 6) DV No. Aie-90-11-2619 (Exh. "OO") dated November 12, 1990 paid on November 13, 1990 under Check No. 560267, for Criminal Case No. 24484;
- 7) DV No. Aie-90-11-2842 (Exh. "PP") dated November 26, 1990 paid on November 26, 1990 under Check No. 560277, for Criminal Case No. 24485;
- 8) DV No. Aie-90-11-2864 (Exh. "QQ") dated November 23, 1990 paid on December 3, 1990 under Check No. 560279, for Criminal Case No. 24486;
- 9) DV No. A7i(6)-90-12-3194 (Exh. "RR") dated December 21, 1990 paid on December 27, 1990 under Check No. 863031-A, for Criminal Case No. 24487;
- 10) DV No. Aie-90-12-3246 (Exh. "SS") dated December 26, 1990 paid on December 26, 1990 under Check No. 652721, for Criminal Case No. 24488;
- 11) DV No. A7i(2)-90-12-3195 (Exh. "TT") dated December 21, 1990 paid on December 21, 1990 under Check No. 8630321, for Criminal Case No. 24489.

The transactions under the DVs were done in violation of Administrative Order No. 28 (Exh. "L") which refers to the Regional Bulk Procurement Bidding of the DOH where the one quarter needs of Integrated Provincial Health Offices, the Regional Hospital Medical Centers, and the District Hospitals are consolidated and classified into drugs and medicines, medical, surgical and laboratory supplies.

In Criminal Cases Nos. 24479 and 24485, the purchases were done without the required public bidding. This was because the items purchased were not included among the items bidded as indicated in the Abstract of Bids for Drug and Medicines (Exh. "M") for the period April to June 1990. They were also not included in the price schedules which already constituted an award. The Abstract of Bids was the tabulated results of the bids opened in public during the conduct of public bidding where all the bids of suppliers who participated in the bidding were tabulated in front of

Conf

M

the public. The initial after the words: "When Bid was opened" and after the word "Chairman" is that of Dr. George Montilla, the Chairman of the BAC (Exh. "M-1").

She identified the Price Schedule for Drugs and Medicines dated March 27, 1990 (Exh. "N") and the signatures there of accused Montilla (Exh. "N-1"), accused Duran (Exh. "N-2"), Fe Aranguis (Exh. "N-3"), accused Legaspi (Exh. "N-4") and accused Cantos (Exh. "N-5").

Another irregularity in Criminal Cases Nos. 24479 and 24485 is that the drug registration of the cold flu tablets purchased had already expired. The drug registration was issued by the Bureau of Food and Drugs (BFAD) and it guarantees the efficacy of the medicine. Proof of registration is the Certificate of Drug Registration of cold flu tablet D.R. - X787-88-1 and Memorandum Extension dated October 17, 1989 issued by BFAD (Exh. "Q" and "R"). Per Certification dated January 16, 1992 (Exh. "U") issued by Thelma Sason, Food and Drug Regulation Officer II, DOH Region XI, the Certificate of Drug Registration is a vital document that should be attached to the voucher before payment is made because it guarantees the efficacy and safety of the drug which will protect the public.

In connection with Criminal Case No. 24479, DV No. Aie-90-12-3315 (Exh. "GG") bears the signature of accused Legaspi (Exh. "GG-1"), Regional Director; accused Peralta (Exh. "GG-2"), Administrative Officer V; and accused Caballes (Exh. "GG-3"), as Supply Officer III. The supporting documents are: Requisition and Issue Voucher (RIV) No. 442 dated December 19, 1990 (Exh. "GG-4"); Purchase Order (PO) No. 496 dated December 20, 1990 (Exh. "GG-5"); Official Sales Invoice No. 1405 (Exh. "GG-6") dated December 27, 1990, Inspection Report (Exh. "GG-7") with handwritten notation of the ICU Inspector (Exh. "GG-7-a"), and Certificate of Acceptance dated December 27, 1990 (Exh. "GG-8").

There is also Check No. 664086-1 (Exh. "GG-9") dated January 1, 1991 in the amount of P100,000 paid to Ethnol Generics and/or Joselito Gregorio by DOH Regional Office XI and Official Receipt No. 1328 (Exh. "GG-10") issued by Ethnol Generics showing full payment by DOH Region XI.

In connection with Criminal Case No. 24485, the witness identified DV No. Aie-90-11-842 (Exh. "PP") bearing the signature of accused Legaspi (Exh. "PP-1"), accused Peralta (Exh. "PP-2") and accused Caballes (Exh. "PP-3"). She also identified the supporting documents: RIV No. 398 dated November 30, 1990 (Exh. "PP-5") for 1,070 boxes of paracetamol. Purchase Order (P.O.) No. 486 dated November 14, 1990 (Exh. "PP-5") issued by Ethnol Generics to RHUXI for delivery of 1,070 boxes of cold flu tablets (Exh. "PP-2"); Inspection Report dated November 26, 1990 (Exh. "PP-7"); and Certificate of Acceptance dated November 26, 1990 (Exh. "PP-8"). She said she also found out that the purchases were made without public bidding. The irregularities found in DV No. Aie-90-11-2842 and its supporting documents are the same.

mp

M

The transactions under DV No. Aie-90-12-3315 (Exh. "GG") dated December 28, 1990 in Criminal Case No. 24479 and DV No. Aie-90-11-2842 (Exh. "PP") dated November 26, 1990 (Exh. "PP") in Criminal Case No. 24485 were made through direct purchase, not public bidding, which is irregular because of non-compliance with two (2) conditions under DOH Circular No. 8. First is that it should be sold by exclusive distributor and manufacturer. Second is that the item purchased, phynelpropranolamine paracetamol, had similar items in the market sold at a lower price.

In connection with Criminal Case No. 24480, the witness identified DV No. CSP-90-12-3322 (Exh. "HH") with the signature of the following: Accused Legaspi (Exh. "HH-1"), accused Caballes (Exh. "HH-2") and accused Peralta (Exh. "HH-3"). She also identified the supporting documents (Exhs. "HH-4" to "HH-10").

In connection with Criminal Case No. 24482, the witness identified DV No. Aie-91-04-29 (Exh. "JJ") and its supporting documents (Exhs. "JJ-1" to "JJ-10"). She also identified the signatures of accused Legaspi, Caballes and Peralta.

According to the witness, the DVs in Criminal Cases Nos. 24480 and 24482 cover the purchase of 2,000 bottles of multi-vitamins with lysine with brand name Ethromin syrup. The purchase was done without the benefit of public bidding in violation of DOH Circular No. 08. Also, the item multi-vitamin with lysine was not among the items bidded as shown in the Abstract of Bids for Drugs and Medicines for the period April to June 1990 (Exh. "M"). The Price Schedule for Drugs and Medicines dated March 27, 1990 (Exh. "N") was also identified by the witness. Furthermore, Ethrol Generics is not one of the suppliers who participated in the bidding conducted for drugs and medicines for the period April to June 1990.

She further declared that the items purchased have expired drug registration, as shown in the Certificate of Drug Registration dated March 18, 1988 (Exh. "S") and Memorandum of Extension dated November 21, 1989 (Exh. "T"). There should be no payment unless there is valid Certificate of Drug Registration because that guarantees the safety and efficacy of the drug purchased for the protection of the public. The purchase was also contrary to the Price Schedule for Drugs and Medicine dated March 27, 1990 (Exh. "N-6"). The Price Schedule included only the item multi-vitamin without lysine with the lowest price P6.40 per bottle. What was purchased is multi-vitamins with lysine for the price of P30.00 per bottle.

In connection with Criminal Case No. 24484, the witness identified DV No. Aie-90-11-2619 (Exh. "OO") and its supporting documents. She likewise identified the signature of accused Legaspi (Exh. "OO-1"), accused Peralta (Exh. "OO-2") and one Teresita Custodio above the typewritten name of accused Caballes (Exh. "OO-3"). The items purchased were 2,880 bottles of multi-vitamin with lysine, monohydrochloride syrup with brand name Ethomin Syrup, and 2,000 bottles of Benzyl Benzoate. These were purchased without the benefit of public bidding.

mf *M*

The items multi-vitamin with lysine and Benzyl Benzoate were not among the items bidded as shown in the Abstract of Bids of Drugs and Medicines for the period April to June 1990, and in the Price Schedule for Drugs and Medicines dated March 27, 1990. The mode of procurement was direct purchase which was irregular because it did not comply with the second requirement provided under DOH Circular No. 8. Only multi-vitamin, without lysine, is included in the Price Schedule and the price is only P6.00 per bottle, but what was purchased was at P30.00 per bottle.

In connection with Criminal Case No. 24483, the witness identified DV No. Aie-90-10-2294 (Exh. "KK") and the signature of the following: Accused Caballes (Exh. "KK-1"); accused Peralta (Exh. "KK-2") and accused Legaspi (Exh. "KK-3"). She also identified the supporting documents, to wit: PO No. 331 (Exh. "KK-4") bearing the signature of accused Caballes (Exh. "KK-4-a"); Official Receipt (OR) dated October 15, 1990 (Exh. "KK-5") issued by J.V. Sorongan Enterprises; Check No. 560267 (Exh. "KK-7"); Sales Invoice No. 685 (Exh. "KK-8"); and Certificate of Acceptance (Exh. "KK-6") signed by accused Caballes (Exh. "KK-6-a").

DV No. Aie-90-10-2294 (Exh. "KK") covered the purchase of three (3) items, namely: 1) 700 packs of cotton pledget buds at P70.00 per pack; 2) 600 tubes of amalgam filling at P13.00 per piece; and 3) 500 tubes of sulfur ointment 15 grams at P59.00 per piece.

There were three (3) irregularities in the purchase of the 700 packs of cotton pledget. First is that J.V. Sorongan Enterprises, to whom it was awarded, was not the lowest bidder; Second is that it was overpriced; and Third is that it did not have the required product registration. It was awarded to J.V. Sorongan Enterprises as shown in the Price Schedule for Medical Supplies of the DOH Region XI, under item No. 61, page 19, and it bears the signatures of accused Montilla, accused Duran, accused Plaza, accused Mercado, accused Fuentes and accused Gomez (Exhs. "P", "P-1" to "P-7").

As shown in the Abstract of Bids for Medical Supplies dated March 27, 1990 for the period April to June 1990 (Exh. "O"), the lowest voted price for the cotton pledget is P25.00 quoted by 99 Commercial. The Abstract of Bids was signed by Montilla, Duran and Gomez (Exhs. "O-1" to "O-3").

They scouted several establishments to determine the availability and price of cotton pledget buds purchased from J.V. Sorongan Enterprises. They distributed Recanvass Sheets to the following: 1) 5M Drug; 2) Allied Drug Company, Inc.; 3) Amesco Drug; and 4) Farmacia Sta. Ana (Exhs. "V", "W", "X" and "Y"). The quoted price for the cotton pledget buds as appearing in the Recanvass Sheets is P12.70 per pack.

She also requested one Falcis Supermarket to quote a price of cotton pledget buds on a Requisition Slip dated February 11, 1991 (Exh. "MM"). She bought exactly the same item there as shown in the Tape

wp

W

Receipt dated February 11, 1991 (Exh. "NN"). There was an overprice of P57.35 per pack in the 700 cotton pledget buds purchased from J.V. Enterprises at P70.00 per pack. The cotton pledget buds also did not have the required product registration, as per Certification of Food and Drug Registration Officer Thelma A. Sazon (Exh. "U").

There were five (5) irregularities in the purchase of amalgam filling under DV Aie-90-10-22-94 (Exh. "KK"), namely: 1) J.V. Sorongan Enterprises was not among the three (3) lowest bidders; 2) It was overpriced by P7.50 per piece; 3) Technical Committee recommended the award to J.V. Sorongan Enterprises despite vagueness of specification; 4) Accused Caballes changed or altered the unit description of the item from "set" to "tube"; and 5) the amalgam filling quoted by J.V. Sorongan Enterprises lacked the required product registration.

The Abstract of Bids for Medical Supplies for the period April to June 1990, item No. 9, page 1 (Exh. "O-5") indicates that the three (3) lowest bidders were Lamgar Marketing, Zuellig and Cebu Medical Supply.

Accused Caballes made the alteration of the word "set" to "tube" in PO No. 331 dated October 3, 1990 (Exh. "KK-4"). The second item there is "tube" (Exh. "KK-4-c") which is different from item No. 9 on page 19 of the Price Schedule (Exh. "T-4"). The item amalgam filling also lacked the required product registration.

The third item purchased under DV Aie-90-10-2294 (Exh. "KK") is sulfur ointment. There were two (2) irregularities here, namely: 1) sulfur ointment did not have any specification other than its generic name and yet it was awarded to J.V. Sorongan Enterprises; 2) It was overpriced by P48.33 per tube, so that for the 500 tubes purchased from J.V. Sorongan Enterprises, the government incurred additional cost in the total amount of P24,165.00. The overpricing is shown in the Recanvass Sheets (Exhs. "X" to "X-3", "Y" to "Y-3").

In connection with Criminal Case No. 24486, the witness identified DV Aie-90-11-2864 (Exh. "QQ") and its supporting documents, as well as the signatures of the following: 1) Accused Caballes as Supply Officer III; 2) Accused Peralta, Administrative Officer III; 3) Accused Legaspi, Regional Director. The RIV (Exh. "QQ-4") contains the signatures of Caballes and Legaspi (Exhs. "QQ-4-a" and "QQ-4-b"). Another supporting document is PO No. 30 bearing the signatures of accused Montilla and accused Legaspi. Another one is the Certificate of Acceptance (Exh. "QQ-10") signed by accused Caballes.

She found four (4) irregularities in the transaction covered by DV No. Aie-90-11-2864 (Exh. "QQ"), as follows: 1) There was no public bidding for the item purchased; 2) The price of sodium fluoride powder was based on the price schedule for Region 12 and not Region 11; 3) It was overpriced by P2,245 per kilo resulting to the government incurring an additional cost of P180,500 for 84 kilos; and 4) sodium fluoride powder lacked the required product registration.

mf

M

There was no public bidding and the mode was direct purchase. It was irregular because two (2) conditions) for direct purchase were not met, namely: 1) The supplier is the exclusive manufacturer or distributor of the product in the Philippines and there is no sub-dealer selling the product at a lower price; and 2) there is no suitable substitute for the product available at a lower price. Her proof on this are the Abstract of Bids for the period April to June 1990 (Exh. "O") and the Price Schedules for Medical Supplies as of March 27, 1990 (Exh. "P").

For the overpricing, her team conducted a reconvaass of the prevailing market price of sodium fluoride powder. They distributed reconvaass sheets and one, Better Equipment Supply, quoted the price of P650 per kilo (Exh. "QQ-11") as against the price of the purchase at P2,245 per kilo. Also, the supporting document attached to the DV was the Price Schedule of Medical and Hospital Supplies of Region XII (Exh. "QQ-10"), not Region XI. And lastly, it lack the required product registration.

In connection with Criminal Case No. 24488, the witness identified DV No. Aie-90-12-3246 (Exh. "SS") as well as its supporting documents (Exhs. "SS-1" to "SS-10"). She also identified the signature of the following: 1) Accused Caballes as Supply Officer; 2) Accused Peralta, as Administrative Officer V; 3) Fe Aranuez; 4) Accused Legaspi, as Regional Director. The witness also identified the 1) RIV dated December 17, 1990 signed by accused Peralta and accused Legaspi; 2) Price List dated December 18, 1990 and PO 488 (Exh. "SS-5") signed by accused Caballes and accused Legaspi; and 3) the Report dated December 26, 1990 (Exh. "SS-7") signed by accused Caballes as Supply Officer III.

She found six (6) irregularities in the transactions covered by DV Aie-90-12-3246 (Exh. "SS"), namely: 1) The supplier J.V. Sorongan Enterprises was not one of the three (3) lowest bidders; 2) J.V. Sorongan Enterprises did not post the required performance bond; 3) The item purchased, amalgam filling, was overpriced; 4) The unit description of amalgam filling as appearing in the Abstract of Bids and Price Schedules is vague; 5) The description of amalgam filling was altered from "set" to "tube" by Supply Officer Caballes; and 6) The item amalgam filling lacked the required product registration.

On the first irregularity, the Abstract of Bids for Medical and Hospital Supplies of Region 11, particularly page 1, item 9 shows that the three (3) lowest bidders for amalgam filling were the following: 1) Lamgar Marketing which quoted P380.00 per set; 2) Salome quoted P390.00 per set; and 3) Cebu Medical Supply which quoted P495.00 per set. However, the contract was awarded to J.V. Sorongan Enterprises as indicated in the Price Schedule for Medical and Hospital Supplies for the Period April to June 1990 dated March 27, 1990. Second, no performance bond was posted which is 10% of the total value of the winning bid. It is required within five (5) days from the acceptance of the Notice of Award, pursuant to Section 15 of R.A. 9184. Third, the overprice was discovered because they first got a Sample Receipt (Exh. "SS-11") dated March 5, 1991 of

wfp

M

amalgam filling from Supply Officer Caballes and his team thereafter conducted a re-canvass by distributing re-canvass sheets. One of them was given to Better Equipment and Stardent Commercial. The unit description of amalgam filling was vague as observed by her when she reviewed the Abstract of Bids and the Price Schedule. Fourth, the unit description of amalgam filling was altered from "set" to "tube" by Supply Officer Caballes in the Purchase Order 488 (Exhs. "SS" and "SS-5-c"). Fifth, the item purchased lacked the required product registration.

Still on the overprice, the re-canvass show that the lowest price was P5.00 per piece of amalgam filling. The items purchased from J.V. Sorongan Enterprises was P13.00 per piece so there was an overprice of P7.50 per piece. Since 600 tubes were purchased with 40 pieces per tube, a total of 24,000 pieces were purchased overpriced at P7.50 per piece. The government incurred an additional expense of P180,000.00.

In connection with Criminal Case No. 24481, the witness identified DV No. ATi-91-01-111 (Exh. "II") as well as its supporting documents, and the signature of the following: 1) Accused Caballes, as Supply Officer III; 2) Accused Peralta as Administrative Officer V; and 3) Accused Legaspi as Regional Director. She also identified the following: 1) RIV (Exh. "II-4") and the signature of accused Peralta as Requisition Officer and accused Legaspi as Regional Director; 2) PO No. 497 (Exh. "II-5") and the signature there of accused Caballes and accused Legaspi; 3) The Inspection Report (Exh. "II-7"); 4) Certificate of Acceptance (Exh. "II-8") with the signature of accused Caballes; and 5) Check No. 865746-A bearing the signature of accused Legaspi who approved the check in payment of the items delivered by Thenard Medical Systems.

She discovered two (2) irregularities in the transaction covered by DV No. ATi-91-01-111, namely: 1) The purchase of 1,941 bottles of ferrous sulfate 500 mg. capsules containing 100 capsules per bottle at the price of P254.57 per bottle was done without the benefit of public bidding; and 2) Thenard Medical Systems misrepresented itself as having been authorized by winning bidder Compact Pharmaceuticals to solicit and negotiate on its behalf the sale and delivery of 500 mg. ferrous sulfate.

The purchase was made without the required public bidding because Thenard Medical System is not one of those who participated in the bidding for ferrous sulfate 500 mg. as shown in the Abstract of Bids for Drugs and Medicine for the period April to June 1990 of DOH Region XI, particularly item No. 554, page 12 (Exhs. "M-1" and "M-2"). The lowest bidder is Compact Pharmaceuticals Corporation who offered the price of P254.57 for 100 capsules per bottle of ferrous sulfate.

The Price Schedule for Drugs and Medicines dated March 27, 1990, page 6, item No. 554 (Exh. "N-9"), shows that Thenard Medical System was not one of the winning bidders. The mode of purchase was direct purchase which is irregular because two (2) conditions were not met, namely: 1) The supplier is the exclusive distributor or manufacturer of the

car

M

product in the Philippines and there was no sub-dealer selling the product at a lower price; and 2) There is no available suitable substitute for the product at a lower price.

Thenard Medical System misrepresented itself as having been authorized by Compact Pharmaceuticals to solicit and negotiate for the delivery and sale of ferrous sulfate. Thenard Medical System presented a letter dated December 11, 1990 (Exh. "CC") signed by Compact's Marketing Manager Apolinario B. Yabis, addressed to Regional Health Office XI. She came to know that it was a misrepresentation in three (3) instances:

First, she found a Certification dated April 20, 1990 (Exh. "DD") issued by Mr. Yabis stating that Compact Pharmaceuticals is the sole manufacturer and distributor of their products, and guaranteeing that all products needed in DOH Region XI will be manufactured in full and delivered in accordance with the Contract under Qualification of Supplies.

Second, she sent a letter to Compact Pharmaceuticals inquiring on the veracity of the authorization given to Thenard Medical System. She received a reply (Exh. "EE") dated February 6, 1991 denying such authority granted to Thenard.

Third, there was a letter dated February 6, 1991 (Exh. "FF") sent by Compact Pharmaceuticals to Thenard Medical System informing the latter that it does not have any record of authority granted to Thenard.

In connection with Criminal Case No. 24487, she identified DV No. A7i(6)-90-12-3194 (Exh. "RR") and its supporting documents (Exhs. "RR-1" to "RR-10"), and the signature of the following: 1) Accused Caballes as Supply Officer III; 2) Accused Peralta as Administrative Officer V; 3) Accused Legaspi as Regional Director. She also identified the following: 1) The RIV (Exh. "RR-4") with the signature of accused Peralta and accused Legaspi; 2) PO No. 492 dated December 19, 1990 (Exh. "RR-5") with the signature of accused Caballes and accused Legaspi; 3) Inspection Report (Exh. "RR-7"); 4) Certificate of Acceptance (Exh. "RR-8") dated December 26, 1990 with the signature of accused Caballes; and 5) Check No. 863031-A dated December 27, 1990 (Exh. "RR-9").

In connection with Criminal Case No. 24489, the witness identified DV No. A7i(2)-90-12-3195 (Exh. "TT") and its supporting documents (Exhs. "TT-1" to "TT-10"). She also identified the signature of the following: 1) Accused Caballes (Exh. "TT-3") as Supply Officer III; 2) Accused Peralta (Exh. "TT-2") as Administrative Officer V; 3) Accused Legaspi (Exh. "TT-1") as Regional Director. She also identified the following: 1) RIV dated December 17, 1990 (Exh. "TT-4") and the signature there of accused Peralta and accused Legaspi; 2) PO No. 491 dated December 19, 1990 (Exh. "TT-5") and the signature of accused Caballes and accused Legaspi; 3) Certificate of Acceptance dated December 26, 1990 (Exh. "TT-7") and the signature of accused Caballes; 4) Inspection Report dated December 21, 1990 (Exh. "TT-8").

wpr

M

In the course of her examination of DV No. A7i(6)-90-12-3194 (Exh. "RR") and DV No. A7i(2)-90-12-3195 (Exh. "TT"), she found four (4) irregularities:

First, the purchase of 1,571 bottles of ferrous sulfate 500 mg capsule with 100 capsules per bottle at the price of P254.57 per bottle was done without the benefit of public bidding in Violation of DOH Circular No. 28, Series of 1987.

Second, Thenard Medical System, the supplier, misrepresented itself as having been authorized by winning bidder Compact Pharmaceuticals to solicit and negotiate the sale and delivery of ferrous sulfate.

Third, Thenard Medical Systems did not deliver ferrous sulfate in accordance with the specification in POs Nos. 491, 492, but accused Caballes issued a Certificate of Acceptance dated December 26, 1990 attesting that the item delivered was in accordance with the specification in the PO. She came to know about this when she personally inspected the items delivered as part of the post audit process. She found out that what was delivered was 250 mg of ferrous sulfate manufactured by two (2) different manufacturers, IAE Pharmaceuticals and Jan Pan Philippines. She thus made the notations in PO No. 492 (Exhs. "RR-5" and "RR-5-b") and in PO No. 491 (Exhs. "TT" and "TT-5-c").

Fourth, the 250 mg ferrous sulfate delivered by Thenard Medical Systems were manufactured by two (2) different companies, the IAE Pharmaceutical and Jan Pan Philippines International, both of which did not have the required drug or product registration.

After finding out about the irregularities in the transactions covered by the DVs (Exhs. "GG", "HH", "II", "JJ", "KK", "OO", "PP", "QQ", "RR", "SS" and "TT"), they disallowed the purchases pertaining to said transactions. The post audit action was stamped or placed on the face of the DVs (Exhs. "GG-4", "HH-4", "II-4", "JJ-4", "KK-4", "OO-4", "PP-4", "QQ-4", "RR-4", "SS-4" and "TT-4"). They conducted an exit conference with accused Legaspi as Regional Director together with his key officials on February 13, 1991. They discussed the findings and recommendations. Comments and justifications were submitted and these were incorporated in the Annual Audit Report of the DOH Region XI for the Calendar Year 1990 which was attached to a Memorandum dated February 23, 1991 addressed to the Chairman of the Commission on Audit (Exhs. "A" and "A-1"). After submitting the report, she executed an Affidavit dated September 25, 1991 (Exhs. "G" and "G-1"). The Report and the Affidavit were submitted by her superiors to the Office of the Ombudsman for investigation.³⁸

³⁸ TSN of October 11 and 12, 2006; March 6 and 7, 2007; September 3 and 4, 2007; March 24, 2008; June 10 and 11, 2008; February 17 and 18, 2009; July 20 and 21, 2009; March 1 and 2, 2010; November 17, 2010; March 30, 2011; May 11 and 12, 2011; September 6, 2011; November 28, 2011

up

M

SUMMARY OF THE TESTIMONIES FOR THE DEFENSE

MIGUEL S. ALIPIO testified that he is the owner and General Manager of Ethnol Generics which is a single proprietorship. Its main office is in Grace Park, Caloocan City. It has major operations in Luzon, but they also have operations in Visayas and Mindanao. In Davao, their distributor is Joselito Gregorio. They provided Mr. Gregorio with a company profile which consists of Mayor's Permit, license to operate from BFAD, DTI and the certificate from the BIR. The distributor is not under the payroll of Ethnol Generics. Mr. Gregorio is given a certain percentage or commission based on sales. The arrangement is that the distributor gives the Purchase Order (P.O.) and they turn over the goods to the distributor who handles the delivery.

In Criminal Cases Nos. 24479, 24480, 24482, 24484 and 24485, the transactions were in Davao which was the responsibility of Mr. Gregorio who handled all the transactions regardless of the terms and conditions and Ethnol Generics was not involved. The DVs were in the name of Ethnol Generics but they just provided the distributor with the company profile.

In connection with the transactions, it was Mr. Gregorio who received the checks for the payment of the amounts in the DVs. He does not know how the checks were encashed. When Mr. Gregorio gave him the PO, his concern was just to deliver the goods. He does not know the process of payment and was just told that the checks were already prepared. The five (5) Official Receipts issued came from Ethnol Generics which he gave to Mr. Gregorio who wrote the amount there. He does not know what happened to the receipts after he gave them to Mr. Gregorio. He did not connive with any of the other accused and he does not know them. He has been to the DOH Regional Office XI in Davao City once, but the intention was not to meet with the officials there. The checks issued by DOH were given to Mr. Gregorio who endorsed them to him.

As to the multi-vitamins with lysine which is the product subject of Criminal Cases Nos. 24480, 24482 and 24484, he was sure there was no overprice. There is no comparison between multi-vitamins with lysine and without lysine. There is a difference in the active ingredients.

There is no overprice in their cold flu tablets. He is sure that they have product registration and drug registration. There is a difference between expiration of the registration and expiration of the medicine. Ethnol Generics has three (3) kinds of license from BFAD – 1) drug distributor; 2) drug trader; and 3) drug manufacturer. As drug distributor, it has its own product line exclusively manufactured by Ethnol. Nobody can sell the product except Ethnol. They are the exclusive distributor of multivitamins with lysine, benzyl benzoate and cold flu tablets.

afp *m*

The witness further testified that in 1991, they sold Ethnomin Syrup, a multivitamin with lysine, in Davao for P36.65 per bottle, as shown in a P.O. dated December 10, 1991 (Exhs. "1-A", "1-B" and "1-C", Alipio). At present (2014) its unit price is P94.50 per bottle. The current price of Benzyl Benzoate is P75.00 per bottle. The current price of coldflu tablet is P475 per box of 100. In 1990 or 1991, it was P149.00 per box. They have drug and product registrations for their products (Exhs. "2", "2-A", "2-C" and "2-D", Alipio; also "3", "3-A" and "3-B", Alipio; Exh. "4", "4-A", "4-B", "4-C" and "4-D", Alipio).

In connection with Criminal Case No. 24484, the Sales Invoice (Exh. "OO-6") and OR (Exh. "OO-12") were those of Ethnol Generics. The check (Exh. "OO-11") was addressed to Ethnol Generics under the name "Miguel San Diego Alipio". He went to Davao City and, together with Mr. Gregorio, picked up the check from the cashier and encashed it. He gave Mr. Gregorio his 10% commission. In the four (4) succeeding transactions, he already gave Mr. Gregorio authority to get the checks.

In Criminal Case No. 24480, it was Mr. Gregorio who got the check (Exh. "HH-9") payable to Ethnol Generics and issued OR No. 1329 (Exh. "HH-10") of Ethnol Generics. The same thing happened with respect to the transactions in Criminal Cases Nos. 24479, 24482 and 24485.

On cross-examination, witness clarified that Ethnol Generics is not a drug manufacturer but a drug trader which has its own product line. Mr. Gregorio used their official receipts and sales invoices with his permission. He is not familiar if Mr. Gregorio has a license to distribute drugs or medicines. The license was issued to Ethnol and that is what is being used by Mr. Gregorio.

Upon being recalled to stand, the witness testified that he was not able to secure the original copies of the certificates of product registration for Ethnomin Syrup (Exhs. "1", "2-a" to "2-c"), benzyl benzoate (Exhs. "3", "3-a" and "3-b") and cold flu tablet (Exhs. "4", "4-a" to "4-c"). The original were surrendered with BFAD. He tried to secure certified copies by sending a letter to BFAD (Exhs. "5" and "5-a"). BFAD gave a reply (Exh. "C") stating that the documents requested cannot be released anymore having already been disposed.³⁹

REBECCA L. GOMEZ testified she was a Clerk at the Department of Health in 1990 whose function is to receive and release papers. She was also designated member of the Internal Control Unit (ICU) which had five (5) members, including a Chairman who was Roselma Cantos. She was not a member of the Bids and Awards Committee (BAC). The ICU is given assignments by the DOH Director. The ICU conducted price testing if asked by the Director in cases of shopping and emergency purchase. They did not do price testing in public bidding. They have no role in bulk bidding

³⁹ TSN of June 5, 2014; September 13, 2016

upr

M

but is instructed by the Director to attend. She signed the Abstracts of Bids (Exh. "O") as a witness to prove there was really a bidding. The Price Schedule (Exh. "P") was also signed by her (Exh. "B-4"). It was the Director who requested her to sign. It is the BAC that prepared the Abstract of Bids and Price Schedule. The Technical Committee reviewed if the item bid is correct. The BAC and the Committee on Education evaluated the bids submitted by bidders. The ICU was created by the late Director Mercado. The Supply Section prepared the DVs and POs. The one in charge of looking at the sufficiency of the attachments to the DV is the Supply Section and Accounting Section. The Supply Section also receives the items, stocks or drugs supplied to the office. The Inspection Committee chaired by Alex Nava was in charge of inspecting items delivered.

The signature (Exh. "OO-3") in the DV (Exh. "OO") in Criminal Case 24484 involving the purchase of multivitamins with lysine from Ethnol Generics is her initial. She affixed it to show that there was a bidding conducted. She has no participation in the preparation, execution and signing of the Requisition and Issuance Voucher (RIV), PO, Sales Invoice, Inspection Report, Acceptance Report, Check and OR attached to the DV in Criminal Case No. 24484 because its a direct purchase and she is not required by the ICU to participate in the price verification. She has no involvement in the direct purchase.

In Criminal Case No. 24480 involving the purchase of multi-vitamins with lysine from Ethnol Generics, she has no participation in the DV (Exh. "HH"), the RIV (Exh. "HH-4"), Purchase Order (Exh. "HH-5"), Sales Invoice (Exh. "HH-6"), Inspection Report (Exh. "HH-7"), Certificate of Acceptance (Exh. "HH-8"), Check (Exh. "HH-9") and OR (Exh. "HH-10") because its a direct purchase. Her signature or initial is not in any of the documents.

In Criminal Case No. 24482 involving the purchase of multi-vitamins with lysine from Ethnol Generics, she has no participation in the DV (Exh. "JJ") and supporting documents (Exhs. "JJ-4" to "JJ-10") also because its a direct purchase. She has no signature or initial in any of the documents.

In Criminal Case No. 24485 involving the purchase of cold flu tablets from Ethnol Generics, she has no participation in the DV (Exh. "PP") and the supporting documents (Exhs. "PP-4" to "PP-10"). She does not have any signature or initial in any of the documents.

In Criminal Case No. 24479 involving the purchase of cold flu tablets from Ethnol Generics, she has no participation in the DV (Exh. "GG") and supporting documents (Exhs. "GG-4" to "GG-10") because it was a direct purchase. She has no signature or initial in any of them.

In Criminal Case No. 24481 involving the purchase of ferrous sulfate from Thenard Medical Systems, she has no participation in the DV (Exh. "II") and the supporting documents (Exhs. "II-4" and "II-10") because its a direct purchase. She has no signature or initial there.

In Criminal Case No. 24487 involving the purchase of ferrous sulfate from Thenard Medical Systems, she has no participation in the Disbursement Voucher (Exh. "RR") and supporting documents (Exhs. "RR-4" to "RR-10") also because its a direct purchase. She has no signature or initials there.

In Criminal Case No. 24489 involving the purchase of ferrous sulfate from Thenard Medical Systems, she has no participation in the DV (Exh. "TT") and supporting documents (Exhs. "TT-4" to "TT-10") because it is a repeat order and direct purchase. She has no signature or initial there.

In Criminal Case No. 24483 involving the purchase of cotton pledgets, amalgam filling and sulfur ointment from J.V. Sorongan Enterprises, she has no participation in the DV (Exh. "KK") and supporting documents (Exhs. "KK-4" to "KK-8"). She was not involved because its a public bidding and she did not sign any of the documents.

In Criminal Case No. 24488 involving the purchase of amagam filling from J.V. Sorongan Enterprises, she has no involvement and participation in the DV (Exh. "SS") and supporting documents (Exhs. "SS-4" to "SS-10") because its a public bidding.

In Criminal Case No. 24486 involving the purchase of sodium chloride from J.V. Sorongan Enterprises, she has no participation in DV (Exh. "QQ") and its supporting documents (Exhs. "QQ-4" to "QQ-10") because it was the result of a public bidding from other regions. She has no signature or initial there.⁴⁰

MARISSA L. DURAN testified that at the time of the procurements conducted by DOH Region XI in 1990, she was the Budget Officer and a member of the Bids and Awards Committee (BAC). She was appointed through an Administrative Order (Exh. "A") issued by the Regional Director which also created the Internal Control Unit (ICU) or the Property Inspection Unit. George Montilla was then the Chairman and Felix Duian, Rogelio de Castro, Lourdez Plaza and Fe Arambes were members of the BAC. The ICU is not part of the BAC. It is the one that inspected the items delivered as indicated in the Purchase Order (PO) appearing in the Price Schedule. Administrative Order No. 28, Series of 1987 (Exh. "L") contains the guidelines that governed bulk procurement.

Under the procurement process, the BAC first gathers the supply list of the end users under Region XI. Then the requisitioning officer prepares the RIV which is approved by the head of office and these are submitted to the Technical Committees for evaluation. There is a supply list for the period April to June 1990 (Exh. "5", Duran, Plaza and Gomez). Then they make a publication of the bidding to be conducted and of the pre-bidding conference. The pre-bidding conference is attended by all interested

⁴⁰ TSN of June 4, 2014

upr

M

suppliers, the COA representative and a representative of the ICU. After the pre-bidding conference, the interested suppliers will drop their bids in a box. During the actual bidding, the ones present are the interested suppliers, COA representative, a representative of the ICU as well as members of the BAC and Evaluation Committee. The bidding is held under the direct hand of the BAC.

Actually present and functioning at that time were two (2) committees – 1) Technical Evaluation Committee on Drugs chaired by Ofelia Poliquit, and 2) Technical Committee on Medical Supplies chaired by Rhodora Lacson. The Technical Committees were created to assist the BAC in the preparation of the Price Schedule. The Technical Committees evaluate requests of end users and recommend the proper technical specifications for the items to be requisitioned.

Upon opening of the bid envelopes, the BAC will tabulate the bids and mark them 1, 2 and 3, representing the lowest, second lowest and third lowest bids. The tabulation is referred to the proper Technical Committee which may be that for drugs and medicines, or for medical supplies. They will examine the documents if complete and the price. These include product registration and accreditation certificates of the supplier. After the evaluation, the Technical Committee will then submit its recommendation to the BAC. The BAC will then prepare the Price Schedule which will contain the items bid, the winning suppliers/winning bid to be signed by the BAC members, as recommendatory and by the Regional Director for approval. It is also signed by the ICU representative to attest that she was present during the bidding. The Price Schedule is not an award. It is for the Regional Director to approve.

In connection with Criminal Case No. 24479 involving the purchase of 1000 bottles of cold flu tablets from Ethnol Generics covered by a DV (Exh. "GG"), the BAC had no participation and has no knowledge because it was not subjected to bulk bidding.

In connection with Criminal Case No. 24485 involving the purchase of 1,070 bottles of cold flu tablets covered by a DV (Exh. "PP"), the BAC had no participation because it was a negotiated purchase.

In connection with Criminal Case No. 24480 involving the purchase of 2,000 bottles of multi-vitamins with lysine covered by a DV (Exh. "HH"), the BAC had no participation because it was not the subject of bidding but negotiated purchase. The item multi-vitamin without lysine, or purely multi-vitamin, which was in the Price Schedule, was subjected to public bidding and they declared the lowest bidder. Resort to a negotiated purchase, as a mode of acquisition, is upon the discretion of the Regional Director.

In connection with Criminal Case No. 24482 involving the purchase of 2,000 bottles of multi-vitamins with lysine, the DV (Exh. "JJ") is a repeat order and done through negotiated purchase so the BAC had no participation.

afp

M

In connection with Criminal Case No. 24484 involving the purchase of 2,880 bottles of multi-vitamins with lysine and 2,000 bottles of benzoate covered by a DV (Exh. "OO"), the BAC had no participation because it was negotiated purchase directly from Ethnol Generics decided by the Regional Director.

In connection with Criminal Cases Nos. 24481, 24482 and 24489, covered by DVs (Exh. "II", "RR" and "TT", respectively), involving the purchase of bottles of ferrous sulfate, the BAC considered Thenard Pharmaceuticals as the lowest and winning bidder, as appearing in the Price Schedule. As BAC member, she does not know why the contract was awarded to Compact Pharmaceuticals. It was the Regional Director who made the award.

The purchase in Criminal Case No. 24481 covered by the DV (Exh. "II") was through negotiated purchase resorted to by the Regional Director because the Price Schedule was not used. The purchases in Criminal Cases Nos. 24487 and 24489, covered by the DVs (Exhs. "RR" and "TT"), were the same as in Criminal Case No. 24481. The BAC had no participation.

In connection with Criminal Case No. 24486 involving the purchase of sodium fluoride from J.B. Sorongan Enterprise covered by a DV (Exh. "QQ"), the procurement was based on a Price Schedule of DOH Region 12 – Cotabato City, not Region 11. It was not part of the Price Schedule they prepared.

In connection with Criminal Case No. 24487 involving the purchase of the 700 packs of cotton pledget, 600 tubes of amalgam filling and 500 tubes of sulfur ointment from J.B. Sorongan Enterprises, it was the Technical Committee who made the evaluation that led to the award although it was not the lowest bidder.

As to the purchase of the 600 tubes of amalgam filling, it was described as "set" by the BAC and Technical Committee in the Price Schedule. It was also described as "set" in the Abstract of Bids but she does not know who changed it to "tubes". She found out about it only when she saw the PO.

As to the alleged overprice in the purchase of the cotton buds, there was a difference in the price of cotton buds for cleaning ones ear and cotton buds pledged as a dental supply.

In connection with Criminal Case No. 24488 involving the purchase of 500 tubes of amalgam filling covered by a DV (Exh. "SS"), it was a repeat order.

With respect to the purchase of multi-vitamins with lysine and benzyl benzoate covered by the DV marked Exhibit "OO", the purchase of benzyl benzoate was not subjected to public bidding.

In connection with Criminal Cases Nos. 24481, 24487 and 24488, the contracts involved the purchase of ferrous sulfate awarded to Thenard Medical Supplies, but as far as the BAC is concerned, the lowest bidder for the item ferrous sulfate 500 milligrams was Compact Pharmaceuticals. This is indicated in the Price Schedule. It was management prerogative to award it to Thenard.

On cross-examination, witness testified that the BAC had the discretion to adopt or not adopt the recommendation of the Technical Committees. It is after receipt of the recommendation of the Technical Committees that the BAC will prepare the Price Schedule, signed by its members, to be approved by Regional Director. The Price Schedule constitutes an award once signed by the Regional Director. Before the actual conduct of the bidding, the suppliers are already asked to submit the drug registration and product registration. This is done during the pre-qualification. Under Administrative Order No. 28, the BAC is required to check if the bid item is accompanied with an authenticated copy of the drug registration certificate. That is the policy.⁴¹


ROSELMA G. CANTOS testified that she started her employment with the Department of Health (DOH) Region XI in 1986 as Accounting Clerk. She was promoted to Management Analyst and is currently Training Specialist. She has never been charged except in this case. In 2005 up to present, she was designated member of the Integrity and Development Committee, and also of the Grievance Committee. She is still a member of these committees up to the present. A case was filed against her for violation of R.A. 3019, Criminal Case No. 24486. The basis of the charge is that she was not able to discover that their equipment is a basis of re-cavass by Noemi Wong and that is why there is a price difference of the item sodium fluoride. Ms. Wong directed her to execute an explanation.

During the investigation, she received a copy of the Affidavit (Exh. "1", Cantos) of Ms. Wong and other documents attached to it. She executed the Sworn Letter Explanation dated April 19, 1991 (Exh. "3", Cantos) addressed to the Regional Director. The charge of Ms. Wong is that she should have conducted a price test and could have discovered that sodium fluoride is being sold at P6.50 for a price difference of P2,300 per kilo.

She is not a canvasser. She was Chairman of the ICU whose function is to conduct price test and it is only in case of doubt that the Regional Director requires them to do a random check.

She went to the address of Better Equipment at Clavera St. but what she found is a Clinic of Dr. Charlie Go photographs of which were taken

⁴¹ TSN of October 13 and 14, 2014



by her friend (Exhs. "12" and "12-A"). There was no signage of Better Equipment there and that is why she did not anymore inquire from the people. The photographs have no date.

The basis of Ms. Wong that there was overpricing was the quotation from Better Equipment and which was included in the Audit Report. After that, she conducted her own verification about Better Equipment. That was already post audit.

On cross-examination, the witness testified that at the time of the transaction covered by Criminal Case No. 24486, she was head of the ICU whose task was to check the reasonable price quoted by suppliers. In doing that, they do a telephone canvass to check if the price by legitimate suppliers is that same as that reflected in PO. It is done before payment is made. She made verification of the price per kilo of fluoride powder with three suppliers – Amespo, Gonzales and New Victory – before the PO (Exh. "KK") was approved by the Regional Director. She informed the Regional Director of the result of the price test. The price quotation of Amespo Drug is undated, that of New Victory is dated October 31, 1990 and that of Gonzales Dental Supply is October 31, 1990. The PO (Exh. "KK") is dated October 30, 1990.

The purchase of sodium powder under Exhibit "QQ" was made by DOH Region XI for end users of Region XI. The price quoted in the transaction is from a public bidding in Region XII. It was the Regional Director who decided on that using his discretion.⁴²

OFELIA S. POLIQUIT testified that she retired from the government service in 2004. In 1990, she was connected with Department of Health, Regional Office XI as Medical Specialist. She was a member of the Technical Committee on Medical Supplies chaired by Dr. Dolores Castillo as per Regional Order No. 534 S. 1988 (Exhibit "1"). On December 29, 1991, Regional Director Sulpicio Legaspi issued Regional Order No. 848 S. 1991 (Exhibit "2") reconstituting the committee and appointing her as the chairperson effective January 1, 1992. The Technical Committee for Medical and Dental Supplies is tasked to review whether the medical and dental supplies to be purchased were duly registered with the Bureau of Food and Drugs (BFAD). She and accused Regner have no participation in the Eleven (11) cases in Court for the following reasons:

"a.) Dr. Dolores Castillo was the Chairman of the Technical Committee for Medical and Dental Supplies in 1988/1989, 1990 and 1991 when the transactions and payments were made (Exhibit "1").

b.) She was appointed Chairman of the Medical and Dental Supplies on January 1, 1992 (Exhibit "2").

⁴² TSN of October 13, 2014

c.) Criminal Cases Nos. 24479, 24480, 24481, 24482, 24484, 24485, 24487 and 24489 involved the acquisition of Drugs and Medicines. The Committee responsible is the Technical Committee for Drugs and Medicine under Dr. Rhodora Lacson to which she was not a member.

d.) Criminal Case No. 22283 – the Technical Committee on Medical and Dental Supplies was then headed by Dr. Dolores Castillo and merely evaluated what has been requisitioned.

e.) Criminal Case No. 24486 refers to acquisition made by Management based on the price schedule of Region XII. No bidding was conducted. She was not a member nor a participant in the process of ordering, approving and paying of the items.

f.) Criminal Case No. 24488 refers to repeat order of which the Technical Committee does not have any participation.

Prosecution witness Ong did not include her in the Audit Report. Her name and that of accused Regner never appeared in the DVs. All the eleven (11) transactions passed thru Chief Accountant Maria T. Canamay who was never impleaded in the cases. The transactions in the eleven (11) cases happened before she was appointed Chairman of the Technical Committee for Medical and Dental Supplies effective January 1, 1992. She was never a party to the transactions. When prosecution witness Wong testified, Ms. Wong declared that she and accused Regner have no participation whatsoever in the acquisition of medicines and drugs.

On cross-examination, accused Poliquit testified that she and accused Regner were members of the DOH Region XI Technical Committee for Medical and Dental Supplies in 1988. She was a member of the Committee until December 31, 1991 and was designated Chairman on January 1, 1992. It was the Committee's responsibility to review whether the medical and dental supplies to be purchased were registered with the BFAD as provided for in Administrative Order No. 28 (exhibit "L") and its attached guidelines for Regional Bulk Procurement. Their responsibility was to receive the abstract of bids for consolidated items and the review if there were product registration. The product must be rejected if there is no product registration. For bidded items in Region XI, they have to go over the list of supply requirements item by item to make sure that the technical specifications are complete and clear. That is the committee's expertise. After the conduct of actual bidding and the result is obtained, the committee will evaluate the specifications of the items quoted as against the request of the endorser.

In connection with the purchase of amalgam filling in Criminal Cases 24483 and 24488, the Abstract of Bids (Exhibit "O") contains the specification "set". It should be a combination at the right proportion of metallic alloy and mercury and it is a set. That is the specification indicated by the Technical Committee. Upon delivery of the items, the Technical Committee has no participation anymore.⁴³

SAMSON Z. CABALLES testified that he became Supply Officer III of the DOH Regional Office XI in Davao City on April 1, 1988. Among his duties is to act as custodian and be accountable for safekeeping and maintain a record of supplies, materials and equipments, and make inventories. He issues memorandum receipt, prepares monthly consumption report of supplies and medicines. He also receives items delivered to the Supply Office and prepares request for inspection. Request for procurement is done by the Program Manager and he has no participation there.

To facilitate procurement, the documents needed is RIV signed by the Program Manager and approved by the Regional Director. Together with this are the approved bidding documents, the documents of the prices which will be sent to the supply section with a note from the Regional Director (please issue Purchase Order). After preparing a Purchase Order (PO), the Supply Officer signs the recommendation portion and sends it to the Administrative Office for further processing. The PO is approved by the Regional Director who sends it back to the Supply Office already funded and price checked. The DV is thereafter prepared after the inspection of the delivered items. He receives the bidding award from the Office of the Regional Director for the issuance of the PO. The PO is prepared upon orders of the Regional Director.

He has no participation in the preparation of the RIV. The Supply Section prepares the PO upon receipt of the pre-bidding result and upon orders of the Regional Director. In the PO, he signs the recommending approval upon order of the Regional Director.

It is the Supply Office that prepares the DV. He signs the receipt portion of the DV and sends it to the Administrative Office. In 1990, there were procurements made by the DOH Region XI. The Bids and Awards Committee (BAC) was chaired by Dr. Montilla. The Internal Control Unit (ICU) was chaired by Roselma Cantos. The Property Inspection Unit (PIU) was chaired by Mr. Alex Daba.

In the procurement process in 1990, the Supply Office prepared the PO upon instruction of the Regional Director. As supply officer, he received the deliveries and stored them before release to the end users. He was not part of the leading committees, the Internal Control Unit and the Inspection Unit. In 1990, the modes of procurement were public bidding, repeat order

⁴³ Judicial Affidavit dated October 10, 2014 on pp. 4252-4257 of Record, Vol. 9; TSN of October 16, 2014

upr

M

x-----x

and negotiated purchase. The bidding is under the direct control of the BAC, and involved are the ICU, the PIU and a representative of the Commission on Audit (COA). The Program Manager of IPU and the ICU are the ones who evaluate whether the items matched the documents available. The items procured are received by the Supply Office.

In connection with Criminal Case No. 24480 involving the purchase of multi-vitamins with lysine, the mode of procurement decided by the Regional Director was repeat order. He received the items delivered. He signed the PO. He signed the PO based on the approved RIV (Exhibit "HH-4") with the price schedule forwarded to his office. The requisitioning officer indicated in the RIV was accused Peralta as Administrative Officer V. It was approved by accused Legaspi as Regional Director.

In Criminal Case No. 24482, also involving the purchase of multi-vitamins with lysine, the mode of procurement decided by the Regional Director was repeat order. He signed the PO based on the approved RIV (Exhibit "JJ-4"). The requisitioning officer was accused Peralta and the approval was by accused Legaspi as Regional Director.

In Criminal Case No. 24483, where the word "set" was substituted with "tube", the mode of procurement was public bidding. He signed the PO prepared by Mr. MacArthur Clapano based on the approved RIV. He has no participation in the preparation of the Abstract of Bids and the price schedule. There is no difference in the unit of measure of the item purchased described as "set" to "tube". That should not be considered irregular and anomalous. He changed the word "set" to "tube" in the PO to make it conform with the RIV approved by the Regional Director. He did not gain anything when he did that and there was no prejudice to the government. There is no difference from "set" to "tube" because the contents are the same.

In Criminal Case No. 24484, the mode of procurement was exclusive distributor decided by the Regional Director. He signed the PO based on the approved RIV (Exhibit "OO-4") together with the price schedule forwarded to his office. The requisitioning officer was accused Peralta and the approval was by accused Legaspi as Regional Director.

In Criminal Case No. 24486, he cannot remember the mode of purchase. He does not know who prepared the PO which was signed by Dr. Montilla.

In Criminal Case No. 24481, where the word "set" was again changed to "tube", he signed the PO based on the RIV (Exhibit "SS-4") together with the price schedule. The requisitioning officer was accused Peralta as Administrative Officer V and the approval was by accused Legaspi as Regional Director.

In Criminal Case No. 24488, where the word "set" was also changed to "tube", there is no difference between "set" and "tube". He signed the PO. He did not gain anything from the transaction.

mp *MA*

On cross-examination, accused Caballes testified that when the transactions under Criminal Cases Nos. 24479 and 24488 were made, he was Supply Officer III of DOH Region XI for more or less two (2) years. The issuance of the PO, where he signed "recommending approval", is part of the procurement process. His basis for signing the PO is the approved RIV and approved price list. The price schedule does not mean there is a public bidding because there are other modes of procurement. He has nothing to do with the preparation of the price list.

The purchased item in Criminal Cases Nos. 24480 (Exhibit "HH"), 24484 (Exhibit "OO") and 24482 (Exhibit "JJ") is multi-vitamin with lysine. Lysine is not found in the RIV. In the PO, it is multi-vitamin with lysine. When he received the RIV, it is already filled up as to the item to be purchased and with the attached price list. Then he prepared the PO.⁴⁴

PELAGIO SORONGAN, JR. testified that he is the proprietor of J.V. Sorongon Enterprises. He participated in the public bidding at the DOH Regional Office XI in Davao City on March 27, 1990 for the supply of cotton pledget buds, amalgam filling and sulfur ointment. He won the bidding. He was issued a purchase order (PO) for the items awarded to him. He immediately delivered to the Regional Office XI all the items within the specified period of time stated in the PO. After delivery, he was paid in time. There was transparency in the awarding, issuance of PO, delivery of goods and payments. There was no complaint from the end users of Regional Office XI that the items delivered did not conform with their needs, of inferior quality or caused harm to the patients who used those items. The Property Inspection Unit of Region XI accepted the deliveries he made. As far as he knows, he was the lowest bidder for the cotton pledget buds and for the sulfur ointment. The declaration by Auditor Wong that there was an overprice is highly questionable. He participated and won the bidding for the supply of amalgam filling. The claim of Auditor Wong that Lamgar Marketing was the lowest bidder of amalgam filling was in bad faith. Her inquiry from Lamgar Marketing was done one (1) year after the bidding. She relied on the letter of Lamgar Marketing as a disgruntled losing bidder. There was nothing vague in the specification of the amalgam filling, cotton pledget buds and sulfur ointment. Proof of this is the price schedule (Exhibit 7-D Sorongon) of medical, dental and laboratories Supplies of Regional Office XI. The amalgam filling canvass from Better Equipment presented by Auditor Wong has no value because Better Equipment does not exist.

On cross-examination, accused Sorongon testified that his business J.V. Sorongon Enterprises was based in Davao City. He is familiar with the rules and regulations on public bidding. The bidder's bond may be either in cash, certified check or surety bond from GSIS. If it is certified check, it must be deposited with the cashier or disbursing officer of DOH Region XI who will acknowledge it with an official receipt. A bid not accompanied with a bidder's

⁴⁴ Judicial Affidavit dated October 14, 2014 on pp. 4216-4231 of Record, Vol 9; TSN October 16, 2014.

bond shall be rejected. Performance bond is different and is posted after an award is made. It should be posted before a PO can be issued. Product registration is required if available.⁴⁵

FINDINGS AND CONCLUSION

These eleven (11) cases pertain to alleged irregularities in the procurement of medicines and drugs as well as supplies by the Department of Health. (DOH) Regional Office XI during the year 1990. The following accused were holding different positions at the DOH Regional Office XI at that time, namely: 1) Sulpicio Legaspi, Regional Director; 2) Moises Peralta, Administrative Officer V; 3) Samson Z. Caballes, Supply Officer III; 4) Jorge Montilla, Medical Specialist III; 5) Marissa Duran, Budget Officer II; 6) Lourdes Plaza, Food and Drug Regulatory Officer III; 7) Rebecca Gomez, Clerk I; 8) Marietta Fuentes, Director III; 9) Ofelia Poliquit, Medical Specialist II; 10) Brenda Regnar, Dentist III; 11) Rhodora Lacson, Medical Specialist II; and 12) Roselma Cantos, Management and Audit Analyst II. Accused Pelagio Sorongan Jr. and Miguel Alipio were suppliers of medicines as well as dental and medical supplies.

The prosecution relies heavily on the testimony of its lone witness, Noemi P. Wong, a COA Auditor assigned at the DOH Regional Office XI and who conducted an audit on the financial accounts and operations of DOH Regional Office XI, for which she submitted an Annual Audit Report (Exh. "A") and executed an Affidavit (Exh. "G") dated September 5, 1991.

The alleged irregularities consisted mainly of the following: 1) Award of purchase to supplier who is not the lowest bidder during the public bidding; 2) Lack of public bidding; 3) Resort to direct purchase or negotiated purchase without the conditions for alternative mode of procurement having been met; 4) Overpricing; 5) Lack of required drug or product registration of the item purchased or expired drug registration; and 6) The items purchased were not included in the items for bidding as well as on the price schedules;

⁴⁵ Judicial Affidavit dated January 3, 2015, Record, Vol. 9, pp. 4313-4329; TSN of July 6 and 7, 2015

The question now is whether the accused in these cases may be convicted of *Violation of Section 3(e) of R.A. 3019*, as charged in the *Informations* filed.

Section 3(e) of R.A. 3019 reads:

"Sec. 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:

xxx.

(e) Causing undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official 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."

The elements ⁴⁶ of *Violation of Section 3(e) of R.A. 3019* are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

In criminal cases, the rule is that the accused is presumed innocent and the burden is on the prosecution to establish his guilt of the crime charged by proof beyond a reasonable doubt. Every element of the crime

⁴⁶ Jacinto v. Sandiganbayan, 178 SCRA 254, 259

wp

M

charged must be proved with this requisite quantum of proof. Proof beyond a reasonable doubt requires moral certainty, or that degree of proof which produces conviction in an unprejudiced mind. It is such certainty that satisfies the judgment and conscience of a reasonable mind that the accused is guilty of the crime charged. Conviction must rest on the strength of the prosecution evidence and not on the weakness of the defense.⁴⁷

There is no dispute that the first element of **Violation of Section 3(e) of R.A. 3019** is present in these cases because the following accused, as earlier pointed out, were public officers holding the positions earlier mentioned at the DOH Regional Office XI during the material dates cited in the **Informations**; 1) Legaspi, 2) Peralta, 3) Caballes, 4) Montilla, 5) Duran, 6) Plaza, 7) Gomez, 8) Fuentes, 9) Poliquit, 10) Regner, 11) Lacson, 12) Cantos. Accused Montilla, Duran, Plaza, Gomez and Fuentes were also members of the Bids and Awards Committee (BAC). They were all public officers performing administrative and official functions. On the other hand, accused Sorongan, Jr. and Alipio are private individuals who purportedly acted in conspiracy with the aforementioned public officers.

The remaining questions to be resolved pertain to the second and third elements, to wit:

1) Whether the aforementioned accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 2) Whether their actions caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of their functions.

Anent the second element, the Supreme Court, in **Fonacier, et al. v. Sandiganbayan, et al.**,⁴⁸ explained the meaning of manifest partiality, evident bad faith and gross inexcusable negligence:

⁴⁷ see Section 14(2), Article III, 1987 Constitution; Section 2, Rule 133, Revised Rules of Court; *Palacios v. People*, 582 SCRA 173; *People v. Tolentino*, 166 SCRA 467

⁴⁸ 238 SCRA 655

"The [second] element enumerates the different modes by which means the offense penalized in Section 3(e) may be committed. "**Partiality**" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "**Bad faith**" does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "**Gross negligence** has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

With respect to the third element of undue injury, the same pertains to actual damage to another that is substantial and not merely negligible. It means illegal wrong or damage done to another. In *Llorente v. Sandiganbayan*,⁴⁹ the Supreme Court explained:

"...Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. *Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.*"

A) Criminal Cases Nos. 24479 and 24485

The Court will first deal with Criminal Cases Nos. 24479 and 24485 both involving the purchase of coldflu tablets from Ethnol Generics of Kalookan City whose General Manager is accused Alipio.

⁴⁹ 350 Phils 820

wpr

M

In Criminal Case No. 24479, it is alleged that 1,000 bottles of coldflu tablets were purchased for a total consideration of P112,000 under DV No. Aie-90-12-3315 (Exh. "GG") dated January 7, 1991.



In Criminal Case No. 24485, 1,070 bottles were allegedly purchased for a total consideration of P119,840 under DV No. Aie-90-11-2842 (Exh. "PP") dated November 26, 1990.

Essentially, the two (2) separate *Informations* in the aforementioned cases uniformly allege that the accused are liable for **Violation of Section 3(e) of R.A. 3019**, because they conspired in allowing the items to be delivered "despite the fact that the product lacked the required product or drugs registration which guarantees the safety and efficacy of the product xxx thereby giving unwarranted benefits, advantage or preference to Ethnol Generics and causing undue injury to the government."

Per DVs, the coldflu tablets in question were purchased from Ethnol Generics in November 26, 1990 and January 7, 1991. Prosecution witness Wong actually declared that the product registration of the coldflu tablets purchased from Ethnol Generics had already expired at that time. To prove this, she identified the *Certificate of Registration* issued by BFAD dated March 28, 1988 (Exh. "Q") with an expiry date of March 28, 1989, and the *Memorandum of Extension* dated October 17, 1989 (Exh. "R"), also issued by BFAD, with an expiry date of October 17, 1990.⁵⁰

Accused Alipio, as General Manager of Ethnol Generics, insisted that they had certificates of product registration for coldflu tablets covering the period 1990 to 1991 but copies of which could no longer be located because of the length of time that has elapsed. They officially requested for certified true copies from BFAD, but BFAD responded with a letter dated May 18, 2016 informing them that records for the period 1990-1991

⁵⁰ TSN of October 11, 2006, pp. 33-39



have already been disposed.⁵¹ The letter (Exh. "6", Alipio), insofar as pertinent, reads:

"Please be informed that the requested documents are no longer available as records from 1990 to 2005 of this division and that of the Information, Communication and Technology Management Division from 1988 to 2005 have already been disposed as certified by the National Archives of the Philippines. Attached is a copy of the said certificate for your reference.

For your information and guidance."



As it is, the lone irregularity pointed to by prosecution witness Ong that the coldflu tablets purchased by DOH Region XI in 1990 to 1991 lacked product registration is inconclusive. The point is that the purchases were approved by accused Legaspi, the Regional Director. There is no showing that said accused, as well as his co-accused, acted with manifest partiality, evident bad faith or gross excusable negligence. Also, there is no scintilla of proof that DOH Region XI suffered injury or damage. Not a single end-user or actual user of the coldflu tablets ever complained of any injury or damage.

**B) Criminal Cases Nos. 24480,
24482 and 24484**

The Court will now deal with Criminal Cases Nos. 24480, 24482 and 24484 which also involved purchases of products from Ethnol Generics of Kalookan City.

Criminal Case No. 24480 involving DV No. CSP-90-12-23322 (Exh. "HH") dated January 8, 1991 and Criminal Case No. 24482 involving DV No. Aie-91-04-029 (Exh. "JJ") dated April 3, 1991 pertain to separate purchases of 2,000 bottles of multivitamins with lysine 60 ml. syrup allegedly overpriced and lacked the required product or drug registration. The two (2) separate *Informations* charging the accused with *Violation of*

⁵¹ TSN of June 5, 2014, pp. 20-22, 33-38; TSN of September 13, 2016, pp. 6-14



Section 3(e) of R.A. 3019 uniformly allege that they conspired "in the purchase of 2,000 bottles of multivitamins with lysine 60ml. syrup at P30.00 per bottle xxx in the amount of P60,000.00, which turned out to be overpriced in the total amount of P47,200.00 as based on the March 27, 1990 price schedule, the multivitamin costs only P6.40 per bottle; despite the fact that the product lacked the required product or drug registration which guarantees the safety and efficacy of the product; the contract of which was directly awarded for Ethnol Generics, in violation of *DOH Memorandum Circular No. 08, Series of 1987*, thereby giving unwarranted benefits, advantage or preference to Ethnol Generics and causing undue injury to the government in the total amount of P47,200.00."

On the other hand, Criminal Case No. 24484 involving DV No. Aie-90-11-2619 (Exh. "OO") dated November 2, 1990 pertains to the purchase of 2,880 bottles of multivitamins with lysine 60 ml. syrup at P30.00 per bottle, and therefore overpriced, and also 2,000 bottles of benzyl benzoate 25% 120 ml. Both products allegedly lacked the required product or drug registration. The *Information*, insofar as pertinent, thus seeks to hold the accused liable for *Violation of Section 3(e) of R.A. 3019* because they allegedly conspired "in the purchase of 2,880 bottles of multivitamins with Lysine 60 ml. syrup, at P30.00 per bottle and 2,000 bottles of Benzyl Benzoate 25% 120 ml., under Disbursement Voucher No. Aie-90-11-2619, dated November 02, 1990, in the amount of P86,400.00; which turned out to be overpriced in the total amount of P67,968.00, as based on the March 27, 1990 price schedule, the multivitamin costs only P6.40 per bottle; despite the fact that both products lacked the required product of drug registration which guarantees the safety and efficacy of the product; the contract of which was directly awarded to Ethnol Generics, in violation of *DOH Memorandum Circular No. 08, Series of 1987*; thereby giving unwarranted benefits, advantage or preference to Ethnol Generics and causing undue injury to the government in the total amount of P67,968.00."

ufp

M

In connection with the two (2) separate purchases of 2,000 bottles of multivitamins with lysine 60 ml. syrup at P30.00 per bottle from Ethnol Generics, prosecution witness Ong testified that said purchases were done without the benefit of public bidding. This is so because the evidence show that, indeed, the items actually bid were multivitamins only at P6.40 per bottle, and not multivitamins with lysine, as shown in the **Abstract of Bids for Drugs and Medicines** for the period April to June 1990 (Exh. "M") as well as in the **Price Schedule for Drugs and Medicines** dated March 27, 1990 (Exh. "N"). In short, actual bidding was conducted for multivitamins, but Ethnol Generics, to whom the contract for the purchase of multivitamins with lysine was awarded, did not even participate in the bidding.

Even accused Gomez and Duran, Clerk and Budget Officer, respectively, of DOH Regional Office XI, both declared that what was bid was multivitamins only and not multivitamins with lysine. The award of the contract to, and the eventual purchase of the items from, Ethnol Generics was a direct or negotiated purchase approved by accused Legaspi as Regional Director, not of the bidding conducted by the BAC.⁵² There is no explanation, whatsoever, as to the reason why direct or negotiated purchase, an alternative mode of procurement was resorted to despite a public bidding that was already conducted.

At the very least, the Court finds that there was gross inexcusable negligence, if not evident bad faith, in resorting to the two (2) separate direct/negotiated purchases of 2,000 bottles of multivitamins with lysine 60 ml. syrup from Ethnol Generics. This resulted in injury to the government, particularly DOH Regional Office XI, which had to pay P47,000 more for each of the two (2) purchases made, or the total amount of P94,000.00.

The Court finds the following accused guilty beyond reasonable doubt of the offenses charged: 1) Accused Legaspi, for approving the

⁵² TSN of June 4, 2014, p. 17; TSN of October 13, 2014, p. 27

wp

M

direct/negotiated purchases made, and also for signing the DVs (Exhs. "HH"; "HH-1" "JJ" and "JJ-1") and approving payments of the amounts to Ethnol Generics; (2) Accused Peralta, also for signing (Exhs. "HH-2" and "JJ-2") the DVs and authorizing the purchases of the items and payments to Ethnol Generics, certifying that the expenses are necessary, lawful and incurred under his direct supervision; and 3) Accused Caballes for signing the DVs and receiving the items. In fact, accused Legaspi, Peralta and Caballes were the ones who signed the RIVs (Exhs. "HH-4" and "JJ-4") where they themselves requisitioned for multivitamins and not multivitamins with lysine.

The Court finds the evidence insufficient to hold the other accused liable. There is no proof, whatsoever, that they connived or conspired with accused Legaspi, Peralta and Caballes in the unauthorized and illegal purchases in question. The same is true with accused Alipio. It appears that Ethnol Generics merely delivered the items purchased from it and received the payments.

Essentially the same circumstances obtained in Criminal Case No. 24482 pertaining to the purchase of 2,880 bottles of multivitamins with lysine 60 ml. syrup at P30.00 per bottle and 2,000 bottles of benzyl benzoate 25% ml. Multivitamins, not multivitamins with lysine, were the items bidded priced at P6.40 per bottle. The 2,880 bottles of multivitamins with lysine 60 ml. syrup and benzyl benzoate 255 ml. were instead directly purchased from Ethnol Generics. This was also admitted by accused Gomez and Duran.⁵³ Accused Duran even declared that accused Legaspi, as Regional Director, directly negotiated the purchase from Ethnol Generics.⁵⁴ No explanation was given as to why direct/negotiated purchase was resorted to despite a public bidding earlier conducted.

As it is, the Court finds guilty beyond reasonable doubt of the offense charged: 1) Accused Legaspi, for approving the direct or

⁵³ TSN of June 4, 2014, pp. 18-19; TSN of October 13, 2014, p. 26

⁵⁴ *Id.*

w/p

M

negotiated purchase, for signing the DV (Exhs. "OO") and approving the payment made to Ethnol Generics; 2) Accused Peralta, for signing (Exh. "OO-2") the DV and authorizing the payment, even certifying that the expenses are lawful and necessary; and 3) Accused Caballes for signing the DV and accepting the items purchased. They were also the ones who issued and signed the RIV (Exh. "OO-4"). There was undue injury to the government in the amount of P47,200.00 resulting from the difference in price between multivitamins and multi-vitamins with lysine.

Again, however, the Court finds the evidence insufficient to hold the other accused liable for the offense charged.

C) Criminal Cases Nos. 24481, 24487 and 24489

The Court will now tackle Criminal Cases Nos. 24481, 24487 and 24489 all pertaining to the purchase by DOH Region XI of bottles of ferrous sulfate from Thenard Medical Systems of Davao City, whose proprietor is accused Oscar Gerona, in such quantities, as follows:

Criminal Case No.	Quantity/Items Purchased	Disbursement Voucher (DV)	Date
24481	1,941 bottles of ferrous sulfate	DV No. A7i-91-10-111 (Exh. "II")	Feb. 4, 1991
24487	982 bottles of ferrous sulfate	DV No. A7i(6)90-12-3194 (Exh. "RR")	Dec. 27, 1990
24489	589 bottles of ferrous sulfate	DV No. A7i(2)90-12-3195 (Exh. "TT")	Dec. 27, 1990

The **Amended Informations** uniformly allege that the accused public officials and private individual, referring to accused Gerona, conspired with one another in committing a **Violation of Section 3(e) of R.A. 3019**, because the purchases of the ferrous sulfate "was awarded to Thenard Medical Systems despite the fact that Compact Pharmaceuticals was the winning bidder and despite the fact that the

upr

M

product lacked the required product or drug registration which guarantees the safety and efficacy of the product; thereby giving unwarranted benefits, advantage or preference to Thenard Medical Systems and causing undue injury to the government and to Compact Pharmaceuticals.”

After a careful study of the evidence adduced by the prosecution, the Court finds a clear violation of *Section 3(e) of R.A. 3019*.

As testified on by prosecution witness Ong, the winning bidder for ferrous sulfate was Compact Pharmaceuticals. Thenard Medical Systems was not even one of the bidders in the public bidding conducted for ferrous sulfate, as shown in the *Price Schedules For Supply of Drugs and Medicines* for DOH Regional Office XI for 1990 (Exh. “N”).⁵⁵ Disregarding the result of the bidding, the mode of procurement resorted to was direct purchase from Thenard Medical Systems, as approved by the accused Legaspi as Regional Director. This was even affirmed by accused Gomez herself.⁵⁶

Upon the other hand, Thenard Medical Systems misrepresented itself to DOH Regional Office XI as having been authorized by Compact Pharmaceuticals to solicit and negotiate sales of ferrous sulfate. DOH Regional Office XI received a letter dated December 11, 1990 (Exh. “CC”) under the letterhead of Compact Pharmaceuticals, reading:

“Sir/Madam:

This is to authorize THENARD MEDICAL SYSTEM, Davao City to solicit and negotiate sales on, the following products based on our currently valid and effective bid awards within Regional Health Office No. XI:

1. Ferrous Sulfate 500 mg Capsule, 100's/bottle – P254.575/bottle
2. Furosemide 20 mg Tablet 100's/bottle – P114.87/bottle

⁵⁵ TSN of March 24, 2008, pp. 14-17, 24-31

⁵⁶ TSN of June 4, 2014, pp. 20-23

upr

M

This authorization is issued for any and all purposes/s. that may serve best the interests of above named party.

Very truly yours,

APOLINARIO B. YABIS
Marketing Manager"

Record shows that as early as April 20, 1990, Compact, etc. already sent a letter (Exh. "DD") to DOH Regional Office XI certifying that it is the manufacturer and sole distributor of all its products in DOH Region XI. The letter carried the signature of its Marketing Manager and Assistant Marketing Manager, and bears its corporate seal.

In a letter (Exh. "EE") dated February 6, 1991, Compact, etc. wrote another letter to prosecution witness Ong in her capacity as Auditor of DOH Region XI and its reads:

"Dear Madam:

Thank you for your letter of January 30, 1991 regarding your purchase of FERROUS SULFATE CAPSULES allegedly through the representation of THENARD MEDICAL SYSTEM.

We regret to inform you that subject supplier has not been authorized by this Company to be our distributor or representative for the above or any other product manufactured by us.

The alleged authority signed by our Mr. Yabis does not contain our counter-signature nor the official corporate seal and is, therefore, not valid.

Furthermore, we have no record of delivery to the same party nor to our authorized distributor, Ms. Carmen Buenafe, purporting to establish valid shipment of the subject product. She has in fact questioned the transaction.

We trust that we have made our position clear regarding this matter. We reiterate our thanks for bringing the matter to our attention which has prompted us to look into this apparent misrepresentation.

Very truly yours,

LIDO E. RIVAMONTE
Assistant General Manager

af

W

CC: Ms. C. Buenafe
Marketing"

Very clearly, misrepresentation was resorted to in order to justify the awards to Thenard Medical System in lieu of the winning bidder.

The Court finds guilty beyond reasonable doubt of the offenses charged the following: 1) Accused Legaspi, as Regional Director who approved the awards and payments to Thenard Medical System and signed the corresponding DVs; 2) Accused Peralta, who, as Administrative Officer V, also signed the DVs authorizing the payments of the aforementioned purchases of ferrous sulfate; and 3) Accused Caballes, also for signing the DVs and accepting the items delivered. They were also the ones who issued and signed the RIVs (Exhs. "II-4", "RR-4" and "TT-4"). It is evident that they acted in conspiracy with Thenard Medical Systems whose proprietor, accused Gerona, has since remained at large.

Clearly, accused Legaspi, Peralta and Caballes acted with manifest partiality and evident bad faith in giving unwarranted benefit to Thenard Medical Systems.

For insufficiency of evidence, however, the Court finds no basis to hold the other accused liable.

**D) Criminal Cases Nos. 24483,
24486 and 24488**

Criminal Cases Nos. 24483, 24486 and 24488 pertain to purchases of products from J.V. Sorongan Enterprises whose owner/proprietor is accused Sorongan, Jr.

The Court will focus first on Criminal Cases Nos. 24483 and 24488.

uf
M

x-----x

In Criminal Case No. 24483, which pertains to the purchase of cotton pledget buds, amalgam filling and sulphur ointment under DV No. Aie 9010-2294 (Exh. "KK"), the *Information* essentially alleges that the accused are liable for *Violation of Section 3(e) of R.A. 3019* because they conspired "in the purchase of 700 packs cotton pledget buds sterile, 600 tubes amalgam filling, and 500 tubes sulfur ointment, under Disbursement Voucher No. Aie 9010-2294 dated 15 October 1990, in the amount of P390,500.00; which turned out to be overpriced in the total amount of P244,310.00; the contract of which was awarded to J.V. Sorongon Enterprises, despite the fact that, with respect to the cotton pledget buds, J.V. Sorongon Enterprises was not the lowest bidder at P70.00 per pack, the lowest being P25.00 per pack, with the item being sold in the market at P11.50 per pack or P12.50 per pack adding the 10% allowable price variance; and despite the fact that, with respect to the amalgam filling, J.V. Sorongon Enterprises was not a participant in the bidding conducted for the purpose, since nowhere in the abstract of bids did J.V. Sorongon Enterprises appear as one of the three lowest bidders, its price being P13.00 per piece whereas the lowest bid was P9.50 per piece, the same item being sold for P5.50 inclusive of the 10% allowable price variance per separate canvass with the same J.V. Sorongon Enterprises; and despite the fact that, with respect to the sulfur ointment, J.V. Sorongon Enterprises quoted P59.00 for the item which per canvass costs only P10.67 inclusive of the 10% allowable price variance; thereby giving unwarranted benefits, advantage or preference to J.V. Sorongon Enterprises and causing undue injury to the government in the total amount of P244,310.00."

In Criminal Case No. 24488, which pertains to the purchase of amalgam filling under DV No. Aie-90-12-3246 (Exh. "SS"), the *Information* alleges that the accused are liable for *Section 3(e) of R.A. 3019*, because they conspired "in the purchase of 600 tubes amalgam filling under Disbursement Voucher No. Aie 90-12-3246, dated December 28, 1990, in the amount of P312,000.00; which turned out to be overpriced in

up

MM

the total amount of P180,000.00; the contract of which was awarded to J.V. Sorongon Enterprises, despite the fact that J.V. Sorongon Enterprises was not a participant in the bidding conducted for the purpose, since nowhere in the abstract of bids did J.V. Sorongon Enterprises appear as one of the three lowest bidders, its price being P13.00 per piece whereas the lowest bid was P9.50 per piece, the same item being sold for P5.50 inclusive of the 10% allowable price variance per separate canvass with the same J.V. Sorongon Enterprises; thereby giving unwarranted benefits, advantage or preference to J.V. Sorongon Enterprises and causing undue injury to the government in the total amount of P180,000.00.”

In the aforementioned cases, public biddings were conducted, but J.V. Sorongon Enterprises, to whom the contracts were awarded, was allegedly not one of the lowest bidders. Also, the products were overpriced causing undue injury to the government, as follows:

a) In Criminal Case No. 24483 : 1) The 700 packs of cotton pledget buds was purchased from J.V. Sorongon Enterprises at P70.00 per pack but the lowest bid is P25.00 per pack; 2) 600 tubes of amalgam filling was purchased from J.V. Sorongon Enterprises for P13.00 per piece but the lowest bid is P9.50 per piece; and 3) the 500 tubes of sulfur ointment was purchased from J.V. Sorongon Enterprises at P59.00 but per canvass costs only P10.67. It is claimed that there was a total overprice of P244,310.00.

b) In Criminal Case No. 24488, the 600 tubes of amalgam filling was sold at P13.00 per piece whereas the lowest bid was P9.50 per piece, resulting in an overprice of P180,000.

The Court has carefully analyzed the evidence on record, *pro and contra*, and finds no sufficient basis to conclude that there were violations of *Section 3(e) of R.A. 3019*.

up

M

To begin with, accused Duran, a member of BAC, testified that upon opening the bid envelopes, the BAC will tabulate the bids and mark them 1, 2 and 3, representing the lowest, second lowest and third lowest bids. The tabulation is then referred to the proper Technical Committee, which maybe for drugs or medical supplies. The Committee will evaluate the bid and determine if the required documents are complete. The evaluation will be submitted to the BAC. The Price Schedule will then be prepared to be signed by the members of the BAC for approval of the Regional Director. The Price Schedule constitutes an award once signed by the Regional Director.⁵⁷ This procedure was never rebutted by the prosecution.

Prosecution witness Wong testified that the purchases were awarded to J.V. Sorongan Enterprises although it was not one of the lowest bidders. There is no dispute, however, that the eventual award to J.V. Sorongan Enterprises as one of the bidders was approved by accused Legaspi who had the discretion to do so. This is reflected in *Administrative Order (A.O.) No. 28, Series of 1987* (Exh. "L"), which provided for the *Adoption of the System of Regional Bulk Procurement*. While it states that the lowest quoted price will be used and will prevail, the same *A.O.* provides, among others, that:

"These are to be used as guidelines only and the Regional Health Directors are authorized to modify the same as they see fit to suit the specific conditions and situations in their particular regions."

On the alleged overpricing, prosecution witness Wong testified that the following bidders quoted, as follows: 1) Lamgar Marketing P380.00 per set; 2) Salome P390 per set; and 3) Cebu Medical Supply P495 per set.⁵⁸ However, the purchases of amalgam filling from J.V. Sorongan, as alleged in the *Informations* in Criminal Cases Nos. 24483 and 24484, was at P13.00 per piece. The prosecution did not offer any clear explanation as to the relation between the purchase "per set" and purchase "per piece".

⁵⁷ TSN of October 13, 2014, pp. 18-23

⁵⁸ TSN of September 3, 2007, pp. 26-27

up

M

On the cotton pledget buds, prosecution witness Wong declared that the item was sold by J.V. Sorongan Enterprises at P70.00 per pack, although one Falcis Supermarket quoted only P12.70 per pack.⁵⁹ However, accused Duran explained that there is a difference in prices between cotton pledget buds used to clean the ears and one for dental purposes.⁶⁰ There was no explicit clarification on what cotton pledget buds were actually purchased.

Finally, with respect to the sulfur ointment, the *Information* alleges that while "J.V. Sorongan Enterprises quoted P59.00 for item" it was only P10.67 per canvass. For this, the prosecution presented as evidence two (2) undated letters signed by Noemi Wong asking for quotations for a number of items, one of which is sulfur ointment. There are handwritten figures representing amounts (Exhs. "X-3" and "Y-3") entered in the documents but no indication as to who provided said figures. These alleged proof of canvass or recanvass are therefore unclear and inconclusive.

E) Criminal Case No. 24486

Finally, in Criminal Case No. 24486, the *Information* essentially alleges that the accused are liable for *Violation of Section 3(e) of R.A. 3019*, because they conspired "in the purchase of 84 kilos of Sodium Fluoride powder at P2,960 per kilo under Disbursement Voucher No. Aie-90-11-2864, dated December 03, 1990, in the amount of P248,640.00; the contract of which was awarded to J.V. Sorongan Enterprises; using the price schedule of the Department of Health Regional Office No. XII, Cotabato City, without sufficient basis, no effort being exerted to determine the prevailing price of the item in Davao City; which transaction turned out to be overpriced in the total amount of P188,580.00, as a separate canvass revealed that the lowest quoted price in Davao City was only P715.00 per kilo inclusive

⁵⁹ TSN of March 6, 2007, pp. 27-28

⁶⁰ TSN of October 13, 2014, pp. 37-39

up

M

of the 10% allowable price variance; which transaction was consummated despite the fact that the item purchased lacked the required product registration which guarantees the safety and efficacy of the item; thereby giving unwarranted benefits, advantage or preference to J.V. Sorongan Enterprises and causing undue injury to the government in the total amount of P188,580.00.”

Here, the prosecution evidence is undisputed in that the purchase of 84 kilos of sodium fluoride powder at P2,960 per kilo in the amount of P248,640.00 was awarded to J.V. Sorongan Enterprises without the benefit of public bidding. Prosecution witness Ong testified that mode of procurement was direct purchase even if the conditions therefore were not met, and the price was merely based on the price for Region XII and not Region XI.⁶¹ She declared that in their recanvass, the quoted price given by one supplier, Better Equipment Supply, is P650 per kilo (Exh. “QQ-11”) of sodium fluoride, compared to the P2,960 per kilo paid for the 84 kilos purchased for a total price of P248,640.00, showing a overprice of P188,580.00.⁶² No explanation was given whatsoever why direct purchase was resorted to.

Both accused Gomez and Duran admitted that no public bidding was conduct and the procurement was based on the Price Schedule of DOH Region 12.⁶³

Hence, the transaction showed evident bad faith, if not gross inexcusable negligence, that caused undue injury to DOH Regional Office XI in the amount of P188,580.00, and gave unwarranted benefit to J.V. Sorongan Enterprises.

The Court finds guilty beyond reasonable doubt of the offense charged the following: 1) Accused Legaspi, for approving the direct purchase, signing the DV (Exh. “QQ” and “QQ-4) and thereby approving

⁶¹ TSN of March 7, 2007, pp. 20, 27 and 28

⁶² Id, pp. 24-26

⁶³ TSN of October 13, 2014, p. 31; TSN of June 4, 2014, pp. 24-25

wp

M

the payment to J.V. Sorongan Enterprises; 2) Accused Peralta, for signing (Exh. "QQ-2") the DV and thus authorizing the purchase of the items and payment to J.V. Sorongan; and 3) Accused Caballes, for likewise signing the DV and receiving the products knowing that no public bidding was conducted as required by law. In fact, the RIV (Exh. "QQ-4") was also co-signed by accused Legaspi, Peralta and Caballes.

The Court, however, finds that the evidence is insufficient to hold the other accused liable. The same is true with accused Sorongan. It appears that J.V. Sorongan Enterprises merely delivered the items purchased from it and received the payment made.

WHEREFORE, premises considered, the Court renders judgment in these cases, as follows:

A) In Criminal Cases Nos. 24479 and 24485, the following accused are hereby acquitted for insufficiency of evidence to prove the offenses charged: 1) Sulpicio P. Legaspi; 2) Moises Peralta; 3) Rebecca Gomez; 4) Marissa L. Duran; 5) Marietta Fuentes; 6) Ofelia S. Poliquit; 7) Brenda Regnar; 8) Rhodora Lacson; and 9) Miguel S. Alipio.

Let these cases be archived with respect to accused Jorge Montilla, to be revived upon his arrest or voluntary surrender.

B) In Criminal Cases Nos. 24480, 24482 and 24484, the Court finds accused Sulpicio P. Legaspi, Moises Peralta and Samson Z. Caballes guilty beyond reasonable doubt of *Violation of Section 3(e) of Republic Act (R.A.) No. 3019*, or the *Anti-Graft and Corrupt Practices Act*, as charged in the three (3) separate *Informations* all dated January 29, 1998. Pursuant to the *Indeterminate Sentence Law*, the said accused are each sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, in each of the three (3) criminal cases. The three (3) accused are also held solidarily liable to pay the government the total amount of P162,568.00.

For insufficiency of evidence, the following accused are acquitted: 1) Rebecca Gomez; 2) Marissa L. Duran; 3) Marietta Fuentes; 4) Ofelia S. Poliquit; 5) Brenda Regnar; 6) Rhodora Lacson, and 7) Miguel S. Alipio.

Let the cases be archived with respect to accused Jorge Montilla, to be revived upon his arrest or voluntary surrender.

C) In Criminal Cases Nos. 24481, 24487 and 24489, the Court finds accused Sulpicio P. Legaspi, Moises Peralta and Samson Z. Caballes guilty beyond reasonable doubt of *Violation of Section 3(e) of Republic Act (R.A.) No. 3019*, or the *Anti-Graft and Corrupt Practices Act*, as charged in the three (3) separate *Amended Informations* all dated September 13, 2017, Pursuant to the *Indeterminate Sentence Law*, the said accused are each sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to eight (8) years, as maximum. No civil liability is adjudged.

For insufficiency of evidence, the following accused are acquitted: 1) Rebecca Gomez; 2) Marissa L. Duran; 3) Marietta Fuentes; 4) Ofelia S. Poliquit; 5) Brenda Regnar; and 6) Rhodora Lacson.

Let the cases be archived with respect to accused Jorge Montilla and Oscar Gerona, to be revived upon their arrest or voluntary surrender.

D) In Criminal Cases Nos. 24483 and 24488, all the accused except Jorge Montilla, are acquitted for insufficiency of evidence to prove their guilt of the offenses charged beyond a reasonable.

Let the cases be archived with respect to accused Jorge Montilla, to be revived upon his arrest or voluntary surrender;

E) In Criminal Case No. 24486, the Court finds accused Sulpicio P. Legaspi, Moises R. Peralta and Samzon Z. Caballes guilty beyond a

wp

M


reasonable doubt of *Violation of Section 3(e) of Republic Act (R.A.) No. 3019*, or the *Anti-Graft And Corrupt Practices Act*, as charged in the *Information* dated January 29, 1998. Pursuant to the *Indeterminate Sentence Law*, the said accused are sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to eight (8) years, as maximum. No civil liability is adjudged.

For insufficiency of evidence, the following accused are acquitted: 1) Rebecca Gomez; 2) Roselma G. Cantos; 3) Marissa L. Duran; 4) Marietta Fuentes; 5) Ofelia S. Poliquit; 6) Brenda Regnar; 7) Rhodora Lacson; and 8) Pelagio V. Sorongan, Jr.

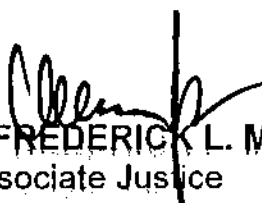
Let the case be archived with respect to accused Jorge Montilla, to be revived upon his arrest or voluntary surrender.


Finally, as regards accused Lourdes Plaza who was found suffering from a mental disease, let the *Resolution*⁶⁴ dated June 14, 2015 suspending the proceedings remain until further orders from this Court.

SO ORDERED.


OSCAR O. HERRERA, JR.
Chairperson
Associate Justice

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

⁶⁴ see Record, Vol. 10, pp. 4473-4477

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CAROTAJE-TANG
Presiding Justice

