



REPUBLIC OF THE PHILIPPINES

Sandiganbayan  
Quezon City

CERTIFIED PHOTOCOPY

*Maria Lourdes M. Lobiano-Alviola*  
ATTY. MARIA LOURDES M. LOBIANO-ALVIOLA  
Executive Clerk of Court II  
OCC Fourth Division, Sandiganbayan

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

SB-06-CRM-0457 to 0458

- versus -

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

MILAGROSA TEE TAN,  
ROLANDO BOLASTIG MONTEJO,  
DAMIANO ZERDA CONDE,  
ROMEO CHAN REALES,  
MAXIMO DACUNDAY SISON, JR.,  
AURELIO AQUINO BARDAJE, JR.,  
NUMERIANO CUNA LEGASPI,  
JOHN JOES and JANE DOES, and  
REYNALDO ANGELES YABUT,

*Accused.*

X-----X

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

SB-06-CRM-0459 to 0464

- versus -

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

MILAGROSA TEE TAN,  
ROLANDO BOLASTIG MONTEJO,  
DAMIANO ZERDA CONDE,  
ROMEO CHAN REALES,  
MAXIMO DACUNDAY SISON, JR.,  
AURELIO AQUINO BARDAJE, JR.,  
NUMERIANO CUNA LEGASPI, and  
JOHN JOES and JANE DOES,

Present:

Quiroz, J., *Chairperson*  
Cruz, J.  
Jacinto, J.

Promulgated:

*Accused.*

*1 MARCH 2019*

X-----X

DECISION

JACINTO, J:

These cases were prompted by a complaint for Plunder<sup>1</sup> filed before the Office of the Ombudsman (OMB) by the Isog Han Samar Movement,

<sup>1</sup> Republic Act (R.A.) No. 7080.

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represented by Fr. Noel Labendia of the Diocese of Calbayog, Catbalogan, Samar, against officials of the provincial government of Western Samar and certain private individuals. The Complaint was primarily based on the audit investigation conducted by the Legal and Adjudication Office of the Commission on Audit (COA) on the following purchases of the Province from 1 January 2001 to April 2003:<sup>2</sup>

Items Purchased	Amount (in PhP)
Cement	32.30 million
Medicine	14.20 million
Assorted Goods	14.10 million
T-shirts/ caps	11.70 million
Grant of Financial Assistance / Aid in Crisis Situation (AICS)	8.10 million
Electric fans charged against the Special Education Fund	1.60 million

In a Reviewer's Resolution dated 22 August 2006,<sup>3</sup> the OMB resolved to charge the following with eight counts of Violation of Sec. 3(c) of R.A. No. 3019 for the procurement of electric fans, medicine, and assorted goods:

Milagrosa Tee Tan	Provincial Governor
Rolando B. Montejo	Provincial Administrative Officer
Damiano Z. Conde	Provincial Treasurer
Romeo C. Reales	Provincial Accountant
Maximo D. Sison, Jr.	Provincial Budget Officer
Aurelio A. Bardaje, Jr.	General Services Officer
Numeriano C. Legaspi	Records Officer and Inspector, General Services Office (GSO)
	all of the Province of Western Samar
Reynaldo A. Yabut <sup>4</sup>	Private individual

The *Informations*<sup>5</sup> read as follows:

Criminal Case No. SB-06-CRM-0457

That during the period from November 13, 2002 to November 20, 2002, and sometime prior or subsequent thereto, in the Province of Western Samar, Philippines and within the jurisdiction of this Honorable Court, accused public officers, namely: **MILAGROSA TEE TAN**, a high ranking public officer with Salary Grade 30, being the Provincial

<sup>2</sup> OMB Reviewer's Resolution, p. 6; Records, Vol. I, p. 10.

<sup>3</sup> *Id.*, pp. 5-40.

<sup>4</sup> Only for SB-06-CRM-0457 and 0458.

<sup>5</sup> All dated 17 September 2003.



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Governor of Western Samar; **ROLANDO B. MONTEJO**, the Provincial Administrative Officer; **DAMIANO Z. CONDE**, the Provincial Treasurer; **ROMEO C. REALES**, the Provincial Accountant; **MAXIMO D. SISON**, the Provincial Budget Officer; **AURELIO A. BARDAJE, JR.**, the General Services Officer; **NUMERIANO C. LEGASPI**, GSO Record Officer and Inspector, and **JOHN DOES** and **JANE DOES**, all of the aforesaid Province, acting as such and/or as members of the Western Samar Provincial Committee on Bids and Awards, while in the performance of their official position, and through manifest partiality, evident bad faith or gross inexcusable negligence, in conspiracy and connivance with each other and with private supplier **REYNALDO YABUT**, owner of Raechel Shoopet's (sic) Plaza,<sup>6</sup> with business address at San Bartolome, Catbalogan, Samar did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits, advantage or preference to Raechel Shoopet's (sic) Plaza, by directly awarding/contracting to, and procuring from the said private supplier one hundred seventy-six units of electric fans at a total value of Two Hundred Forty-Four Thousand Six Hundred Forty (P244,640.00), Philippine currency, without conducting a public bidding as required by law, and by virtue of said award made in favor of Raechel Shoopet's (sic) Plaza, the amount of Two Hundred Forty-Four Thousand Six Hundred Forty (P244,640.00), Philippine currency, was actually paid to said private supplier under Disbursement Voucher No. 221200211065, to the damage and prejudice of the government and/or to the benefit of the said supplier, in the aforesaid amount.

CONTRARY TO LAW.

Criminal Case No. SB-06-CRM-0458

That during the period from December 9, 2002 to December 20, 2002, and sometime prior or subsequent thereto, in the Province of Western Samar, Philippines and within the jurisdiction of this Honorable Court, accused public officers, namely: **MILAGROSA TEE TAN**, a high ranking public officer with Salary Grade 30, being the Provincial Governor of Western Samar; **ROLANDO B. MONTEJO**, the Provincial Administrative Officer; **DAMIANO Z. CONDE**, the Provincial Treasurer; **ROMEO C. REALES**, the Provincial Accountant; **MAXIMO D. SISON**, the Provincial Budget Officer; **AURELIO A. BARDAJE, JR.**, the General Services Officer; **NUMERIANO C. LEGASPI**, GSO Record Officer and Inspector, and **JOHN DOES** and **JANE DOES**, all of the aforesaid Province, acting as such and/or as members of the Western Samar Provincial Committee on Bids and Awards, while in the performance of their official position, and through manifest partiality, evident bad faith or gross inexcusable negligence, in conspiracy and connivance with each other and with private supplier **REYNALDO YABUT**, owner of Raechel Shoopet's (sic) Plaza, with business address at San Bartolome, Catbalogan, Samar did then and there willfully, unlawfully and criminally cause undue injury to the government and/or

<sup>6</sup> Should have been indicated as "Raechel Shoppers Plaza."



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give unwarranted benefits, advantage or preference to Racchel Shoopers's (sic) Plaza, by directly awarding/contracting to, and procuring from the said private supplier one thousand (1000) units of electric fans at a total value of One Million Three Hundred Ninety Thousand (P1,390,000.00), Philippine currency, without conducting a public bidding as required by law, and by virtue of said award made in favor of Racchel Shoopers's (sic) Plaza, the amount of One Million Three Hundred Ninety Thousand (P1,390,000.00), Philippine currency, was actually paid to said private supplier under Disbursement Voucher No. 221200212083, to the damage and prejudice of the government and/or to the benefit of the said supplier, in the aforesaid amount.

CONTRARY TO LAW.

Criminal Case No. SB-06-CRM-0459

That during the period from December 9, 2002 to December 20, 2002, and sometime prior or subsequent thereto, in the Province of Western Samar, Philippines and within the jurisdiction of this Honorable Court, accused public officers, namely: **MILAGROSA TEE TAN**, a high ranking public officer with Salary Grade 30, being the Provincial Governor of Western Samar; **ROLANDO B. MONTEJO**, the Provincial Administrative Officer; **DAMIANO Z. CONDE**, the Provincial Treasurer; **ROMEO C. REALES**, the Provincial Accountant; **MAXIMO D. SISON**, the Provincial Budget Officer; **AURELIO A. BARDAJE, JR.**, the General Services Officer; and **NUMERIANO C. LEGASPI**, GSO Record Officer and Inspector, all of the aforesaid Province, acting as such and/or as members of the Western Samar Provincial Committee on Bids and Awards, while in the performance of their official position, and through manifest partiality, evident bad faith or gross inexcusable negligence, in conspiracy and connivance with each other and with **JOHN DOES** and **JANE DOES**, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits, advantage or preference to Wilmar's Mini Mart, owned by Marilou C. Ty, by directly awarding/contracting to, and procuring from the said private supplier assorted goods at a value of Three Million Six Hundred Eighty Thousand Five Hundred Fifty-Eight and Forty Centavos (P3,680,558.40), Philippine currency, without conducting a public bidding as required by law, and by virtue of said award made in favor of Wilmar's Mini Mart, the amount of Three Million Six Hundred Eighty Thousand Five Hundred Fifty-Eight and Forty Centavos (P3,680,558.40), Philippine currency, was actually paid to said private supplier under Disbursement Voucher No. 10120020764, to the damage and prejudice of the government and/or to the benefit of the said supplier, in the aforesaid amount.

CONTRARY TO LAW.

The *Informations* in SB-06-CRM-0460 to 0464 are similarly worded with that in SB-06-CRM-0459, except as to the amount involved, the items

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procured, the suppliers, and the Disbursement Vouchers (D.V.), as indicated below:

SB-06-CRM-	Date	Items	Amount (PhP)	Procured from	Disbursement Voucher (D.V.)
0460	14 Dec 2001 to 15 Jan. 2002	Assorted medicine	1,689,790.00	Medic-Aid Distributors, Inc. rep by Alex Sotto	1012002010193
0461	14 Dec 2001 to 05 Jan. 2002	Assorted medicine	2,258,815.00	Rilem Pharma, owned by Richard L. Maquiona	1012002010194
0462	19 Dec 2001 to 6 Mar. 2002	Assorted goods	1,952,900.00	Wilmar's Mini Mart, owned by Marilou C. Ty	1012002031203
0463	19 Dec 2001 to 6 Mar. 2002		2,243,700.00		1012002031202
0464	20 Dec 2001 to 7 Jan. 2002		2,737,344.00		1012002020763

On 13 September 2006 accused Tan, Montejo, and Reales filed an *Urgent Ex Parte Motion for Leave to File a Motion for Reconsideration with prayer to: (a) Defer Raffle of the Case; (b) Suspend Proceedings; and (c) Provisionally Dismiss the Information.*<sup>7</sup>

On 15 September 2006, the Court issued a Hold Departure Order<sup>8</sup> against all accused, and, on 18 September 2006, directed the prosecution to present proof that the accused were given the opportunity to file a motion for reconsideration before the OMB. In the meantime, the Court held in abeyance the judicial determination of probable cause and the issuance of warrants of arrest against them.<sup>9</sup>

In a *Resolution* dated 17 October 2006,<sup>10</sup> the Court directed the OMB to resolve all pending motions for reconsideration/reinvestigation filed by the accused within 45 days from notice.

On 16 January 2007, the prosecution filed a *Manifestation and Motion for Leave to Amend and to Admit Amended Information*,<sup>11</sup> informing the Court that the OMB already denied the motions for reconsideration of accused Tan, Montejo, Reales, Conde, and Yabut. At the same time, the

<sup>7</sup> Dated 12 September 2006, Records, Vol. I, pp. 407-409.

<sup>8</sup> *Id.*, p. 410.

<sup>9</sup> *Resolution* dated 18 September 2006, *id.*, pp. 411-412.

<sup>10</sup> *Id.*, pp. 505-514.

<sup>11</sup> Records, Vol. II, pp. 9-62. A copy of the OMB Resolution dated 27 November 2006 was attached to said Manifestation and Motion.



prosecution manifested that the OMB granted immunity to accused Bardaje, Jr. and Legaspi, and prayed that the amended Informations - which excluded Bardaje, Jr. and Legaspi as accused - be admitted.

On 27 February 2007, the Court noted the prosecution's *Compliance* relating to the motions for reconsideration before the OMB, denied the motion for leave to admit the amended Informations, and, after review of the records, found probable cause to issue warrants of arrest against the accused.<sup>12</sup>

The prosecution filed a *Motion for Partial Reconsideration* dated 1 March 2007<sup>13</sup> with respect to the denial of its motion to admit amended Informations and, on 5 March 2007, it filed a *Manifestation* attaching thereto copies of the Immunity Agreements between the OMB and accused Bardaje, Jr. and Legaspi. The Court merely NOTED the said Immunity Agreements per *Resolution* dated 6 March 2007.<sup>14</sup>

Accused Tan,<sup>15</sup> Sison,<sup>16</sup> and Conde,<sup>17</sup> on the other hand, filed motions for reconsideration of the Court's finding of probable cause. All these motions were denied by the Court in separate resolutions: the prosecution's motion was denied in a *Resolution* dated 24 May 2007,<sup>18</sup> while accused Tan, Sison, and Conde's motions were denied in a *Resolution* dated 22 May 2007.<sup>19</sup>

Accused Reales,<sup>20</sup> Conde,<sup>21</sup> Yabut,<sup>22</sup> Tan,<sup>23</sup> and Sison<sup>24</sup> thereafter filed separate Motions to Quash, but the same were denied in the Court's 9 August 2007 *Resolution*. Their motions for reconsideration were likewise denied in the Court's 1 October 2007 *Resolution*.<sup>25</sup>

<sup>12</sup> *Resolution* dated 27 February 2007, *id.*, pp. 355-359.

<sup>13</sup> *Id.*, pp. 369-379.

<sup>14</sup> *Id.*, p. 436.

<sup>15</sup> *Id.*, pp. 380-396.

<sup>16</sup> *Id.*, pp. 397-414.

<sup>17</sup> *Id.*, pp. 484-498.

<sup>18</sup> *Records*, Vol. III, pp. 213-220.

<sup>19</sup> *Id.*, pp. 200-201.

<sup>20</sup> *Motion to Quash* dated 27 March 2007, *Records*, Vol. II, pp. 10-32.

<sup>21</sup> *Motion to Quash* dated 2 May 2007, *id.*, pp. 152-171.

<sup>22</sup> *Motion to Quash* dated 18 April 2007, *id.*, pp. 172-186.

<sup>23</sup> *Motion to Quash* dated 29 May 2007, *id.*, pp. 254-323.

<sup>24</sup> *Motion to Quash* dated 2 May 2007, *id.*, pp. 367-372.

<sup>25</sup> *Records*, Vol. III, pp. 547-554.

Accused were then arraigned on the following dates:

Accused	Date of Arraignment
Milagrosa Tee Tan	21 November 2007
Rolando B. Montejo	6 November 2007
Damiano Z. Conde	6 November 2007
Romeo C. Reales	6 November 2007
Maximo D. Sison, Jr.	6 November 2007
Aurelio A. Bardaje, Jr.	6 November 2007
Numeriano C. Legaspi	12 July 2007
Reynaldo A. Yabut	6 November 2007

Only accused Reales and Legaspi entered “Not Guilty” pleas, while the rest of the accused refused to enter pleas, for which reason, the Court entered “Not Guilty” pleas in their behalf.

On 29 April 2008, the prosecution filed a *Motion to Discharge Accused Aurelio A. Bardaje, Jr. and Numeriano Legaspi as State Witness* (Motion to Discharge).<sup>26</sup> However, since the counsel for accused Tan and Reales were not furnished with copies thereof, the Court ordered the prosecution to re-file the same.<sup>27</sup> The prosecution accordingly re-filed its motion on 10 June 2008,<sup>28</sup> and was given the opportunity to present evidence in support thereof. The testimonies of the prosecution’s witnesses, which were later adopted as part of its evidence in chief, will be summarized later.

In the meantime, and upon motion by the prosecution, the Court ordered the suspension *pendente lite* of accused Tan, Montejo, Reales, Sison, and Legaspi in its 11 July 2008 *Resolution*.<sup>29</sup>

On 20 July 2009, after presenting five witnesses, the prosecution rested its case insofar as its Motion to Discharge was concerned, and filed its *Formal Offer of Exhibits (Re: Motion to Discharge Accused Bardaje & Legaspi as State Witnesses)* dated 4 August 2009.<sup>30</sup>

<sup>26</sup> Records, Vol. V, pp. 82-88.

<sup>27</sup> *Resolution* dated 27 May 2008, *id.*, pp. 247-248.

<sup>28</sup> *Id.*, pp. 275-280.

<sup>29</sup> *Id.*, pp. 357-368.

<sup>30</sup> Dated 4 August 2009, Records, Vol. VII, pp. 5-49.



Thereafter, accused Tan,<sup>31</sup> Reales,<sup>32</sup> Montejo,<sup>33</sup> Conde,<sup>34</sup> and Bardaje<sup>35</sup> filed their respective memoranda, while the prosecution submitted its *Memorandum* dated 29 January 2010<sup>36</sup> on 5 February 2010.<sup>37</sup>

In its 9 July 2010 *Resolution*, the Court admitted Exhibits "A" to "Z," "AA" to "BB," "JJ" to "ZZ," "AAA" to "ZZZ," "AAAA" to "EEEE," "GGGG" to "YYYY," "A<sup>5</sup>" to "Z<sup>5</sup>," "A<sup>6</sup>" to "K<sup>6</sup>," "V<sup>7</sup>" to "Z<sup>7</sup>," "A<sup>8</sup>" to "N<sup>8</sup>," "X<sup>8</sup>" to "Y<sup>8</sup>," "E<sup>9</sup>," "F<sup>9</sup>," "H<sup>9</sup>" to "I<sup>9</sup>," and ordered the re-marking of Exhibits "F<sup>1</sup>-1," "X<sup>1</sup>-1," "G<sup>2</sup>-2," "U<sup>2</sup>-2," "F<sup>6</sup>-2," and "H<sup>6</sup>-2."

On 12 August 2010, the Court issued a *Resolution*,<sup>38</sup> denying the prosecution's *Motion to Discharge*. The *Motions for Reconsideration* filed by the prosecution, accused Legaspi, and accused Bardaje, Jr. were likewise denied in a *Resolution* dated 7 January 2011.<sup>39</sup>

The main trial of these cases then proceeded, with the prosecution presenting a total of 12 witnesses: five were presented during the hearing of the Motion to Discharge and whose testimonies were adopted as part of the prosecution's evidence in chief; and, seven other witnesses were presented in the main hearing. Their testimonies are summarized as follows:

(1) **Atty. Edna P. Forto**, State Auditor V, COA.<sup>40</sup> She was part of the team that audited the transactions/purchases of Western Samar for the period 1 January 2001 to April 2003. The Audit was selective, covering only the procurement of supplies such as cement, t-shirts, assorted goods, electric fans, medicine, and the grant of financial assistance.<sup>41</sup> The team's findings, which were based on relevant documents from the Provincial Auditor's Office,<sup>42</sup> are as follows:

SB-06-CRM-0457 and 0458 involve the purchase of desk fans covered by D.V. No. 221-2002-11065<sup>43</sup> and D.V. No. 221-2002-

<sup>31</sup> *Memorandum* dated 22 September 2009, *id.* pp. 82-89.

<sup>32</sup> *Memorandum* dated 10 October 2009, *id.* pp. 127-128.

<sup>33</sup> *Memorandum* dated 2 October 2009, *id.* pp. 137-140.

<sup>34</sup> *Memorandum* dated 9 October 2009, *id.* pp. 141-156.

<sup>35</sup> *Memorandum* dated 14 December 2009, *id.* pp. 210-217.

<sup>36</sup> *Id.* pp. 227-237.

<sup>37</sup> *Id.* pp. 223-226.

<sup>38</sup> *Records*, Vol. VII, p. 308.

<sup>39</sup> *Id.* pp. 464-475.

<sup>40</sup> TSNs, 5 August, 2008, 8 September 2008, and 9 September 2008.

<sup>41</sup> TSN, 5 August 2008, pp. 17-30.

<sup>42</sup> *Id.*

<sup>43</sup> Exh. "KK."

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12083, respectively.<sup>44</sup> Both transactions were made to appear to have undergone public bidding<sup>45</sup> since their supporting documents included a Notice to Bid and Abstract of Bids.<sup>46</sup> However, the Audit Team discovered that essential documents, such as the bidder's bond, copy of the publication for bids, and performance bond, among others, were not among the supporting documents for the transactions, contrary to the requirements of COA Circular No. 92-386, prescribing the Rules and Regulations on Supply and Property Management for Local Governments.

The team also noted the following inconsistencies in the supporting documents of D.V. No. 221-2002-11065 for the purchase of 176 units of desk fans: (i) bidding was allegedly conducted on 19 November 2002, or two days ahead of the Purchase Order (P.O.) dated 21 November 2002; (ii) the Delivery Receipt (D.R.) is dated 19 November 2002, indicating that the desk fans were delivered on the same day the bidding was held, and two days ahead of the P.O.; (iii) the Sales Invoice indicating payment by the Province is dated 20 November 2002, also earlier than the P.O.; and (iv) the desk fans appear to have been distributed only on 31 August 2003, thereby showing that there was no necessity of the purchase at the time it was made. Page 31 of the team's Final Report points out that the date of resolution of the teacher's request for such desk fans and its approval came months after the purchases had already been made.

There were also inconsistencies in the supporting documents of D.V. No. 221-2002-12083, covering the purchase of 1,000 desk fans, such as: (i) while the bidding was allegedly conducted on 17 December 2002, the P.O. was actually dated a day later, or on 18 December 2002; (ii) the Inspection Report and D.R.'s were dated 16 December 2002, a day earlier than the supposed bidding; and (iii) the said desk fans were distributed on various dates between May to June 2003 – at about the same time the Audit Team requested for the supporting documents for said transaction.<sup>47</sup>

Due to the missing supporting documents and inconsistencies in the available documents, the Audit Team concluded that the said purchases were not made through public bidding, but through a mere personal canvass.<sup>48</sup> Likewise, they concluded that the purchases were unnecessary, on the ground that the request and distribution were only

<sup>44</sup> Exh. "TT"

<sup>45</sup> TSN, 5 August 2001, p. 28

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*



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made in 2003, while the purchase was made in December 2002.<sup>49</sup> Upon confirmation with the purported recipients, most of them were surprised, thinking that the electric fans were gifts. Upon learning that the fans were, in fact, government property, they commented that there should have been a memorandum receipt issued for the said purpose.<sup>50</sup>

As to the procurements of assorted medicine covered by D.V. 101-2002-01-1093<sup>51</sup> (SB-06-CRM-0460) in the amount of PhP 1,689,790.00, and D.V. 101-2002-01-0194<sup>52</sup> (SB-06-CRM-0461) in the amount of P2,258,815.00, the Audit Team found that they were not made in accordance with COA Circular No. 92-386, which governs the procurement of supplies through emergency purchase. Under Sec. 85 of the said Circular, emergency purchases could only be resorted to when there is an exceptionally urgent or absolutely indispensable need, and only to prevent imminent and real danger to or loss of life and property. The Audit Team did not find that there was imminent danger of loss of life and property in the Province of Samar at the time the purchases were made.<sup>53</sup>

She further identified the letter from Victor Nanking, Managing Director of Medic Aid Distributors (Medic Aid),<sup>54</sup> one of the purported suppliers, stating that said company does not deal with Government entities because of too many requirements, and that the invoice presented for the subject transaction is spurious. The genuine copy of Invoice No. 66083 is dated 20 September 2000, had only one item, with typewritten entries, properly signed by the relevant company officials, and with the Bureau of Internal Revenue (BIR) permit details at the lower portion. The spurious Invoice No. 66083 used in this case is dated 14 December 2002, is a reprinted copy with several handwritten entries, contains no signature whatsoever, and no proper BIR notation of permit is printed on the lower portion.

As to the four procurements of assorted goods from Wilmar's Mini Mart, Tacloban City, covered by D.V. No. 101-2002-03-1202<sup>55</sup> (SB-06-CRM- 0463) in the amount of PhP 2,243,700.00; D.V. No. 101-2002-03-1203<sup>56</sup> (SB-06-CRM-0462) in the amount of PhP

<sup>49</sup> *Id.*, p. 29.

<sup>50</sup> *Id.*, pp. 29-30.

<sup>51</sup> Exh. "J4."

<sup>52</sup> Exh. "S1."

<sup>53</sup> TSN, 5 August 2001, pp. 30-32.

<sup>54</sup> *Id.*, pp. 33-37. See Exh. "I9."

<sup>55</sup> Exh. "B1."

<sup>56</sup> Exh. "P1."



1,952,900.00; D.V. No. 101-2002-02-0763<sup>57</sup> (SB-06-CRM-0464) in the amount of PhP 2,737,344.00; and D.V. No. 101-2002-02-0764<sup>58</sup> (SB-06-CRM-0459) in the amount of PhP 3,680,558.40, the same were supposed to be distributed to victims of "Typhoon Kidang" as stated in the Purchase Requests.

However, the Audit Team was able to secure a Certification from the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) stating that Tropical Storm Quedan passed through the Western Samar on 4 and 5 December 2002. The *Sangguniang Panlalawigan* Resolution declaring the Province to be in a state of calamity attached to D.V. No. 101-2002-03-1202 and D.V. No. 101-2002-03-1203, on the other hand, was passed sometime in November 2001. This led the team to conclude that the transactions were not really for emergency needs.<sup>59</sup> The Audit Team also noted that the date of the transactions, issuance of the P.O's, deliveries, and inspections of the goods all occurred in just one day.<sup>60</sup>

She also testified that accused Bardaje, Jr. and Legaspi voluntarily went to the COA to cooperate in its investigation. Specifically, they informed the COA of the lack of delivery of the procured goods and executed affidavits for this purpose.<sup>61</sup> As a result of which, their request to be utilized as state witnesses was favorably acted upon by the COA's Office of the General Counsel.<sup>62</sup>

(2) **Nelia C. Cruz**, Human Resource Management Officer, Province of Western Samar.<sup>63</sup> She was supposed to identify the 201 Files, Service Records, and Statements of Assets, Liabilities and Networth (SALN) of the accused to prove that at the time material to these cases they were public officers. Her testimony, however, was dispensed with after the parties stipulated on the existence, authenticity, and due execution of said documents.<sup>64</sup>

(3) **Victor Alcazar Ngking**, Managing Director of Medic Aid.<sup>65</sup> He identified the Letter<sup>66</sup> dated 17 March 2006 that he sent to COA

<sup>57</sup> Exh. "L."

<sup>58</sup> Exh. "B."

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*, p. 39.

<sup>61</sup> Exh. "X<sup>8</sup>," which is part of Exh. "J<sup>10</sup>."

<sup>62</sup> TSN, 5 August 2008, pp. 41-45.

<sup>63</sup> TSN, 18 February 2009.

<sup>64</sup> Exhs. "A" to "BB."

<sup>65</sup> TSN, 19 February 2009.

Chairman Guillermo Carague. In his Letter, he explained that the PhP 1.6 million transaction involving Western Samar that was being investigated by the BIR never occurred.<sup>67</sup> He also stated that Alex Sotto, the payee of the check purportedly intended for Medic Aid, was not connected in any way with his company.<sup>68</sup>

(4) **Numeriano C. Legaspi**, Administrative Officer III of the Samar Provincial Hospital and designated Inspector of the Province of Western Samar during the period relevant to these cases.<sup>69</sup> He is one of two accused sought to be discharged by the prosecution to be used as state witness.

He testified that it was his duty to go to the Office of the Property Officer – then accused Montejo – and see if the purchased goods were really in the latter's custody before he signs an Inspection Report. In these cases, he did not see the goods supposedly purchased by the Province, but he signed the inspection reports because he was threatened by the "people of the Governor." He noticed that the Inspection Reports for all the goods purchased were already pre-signed by the other accused officials. However, the first time he was asked to sign, accused Tan's bodyguard, whom he recognized as someone from Masbate, pointed a gun at him,<sup>70</sup> out of fear, he thereafter signed all subsequent documents coming from accused Tan and Montejo without question.<sup>71</sup> The instructions for him to sign the documents came from accused Tan, as relayed to him by accused Montejo.

(5) **Aurelio A. Bardaje, Jr.**, General Services Officer of the Province of Western Samar from 18 October to 21 December 2001,<sup>72</sup> and the other accused sought to be utilized by the prosecution as its state witness.

He testified on the step-by-step process for procurement *via* bidding and *via* emergency purchase. He was made to confirm the procurement documents subject of all these cases, as well as the dates as appearing therein.<sup>73</sup> He said that all the supporting documents for the purchase of goods in SB-06-CRM-0459 are dated 12 December 2001 because accused Tan personally instructed him and accused Montejo that Wilmar's Minimart would be the winning supplier for the said transaction, and she had set 12

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<sup>66</sup> Exh. "I."

<sup>67</sup> TSN, 19 February 2009, pp. 12-14.

<sup>68</sup> *Id.*, p. 24.

<sup>69</sup> TSN, 19 February 2009.

<sup>70</sup> *Id.*, p. 56.

<sup>71</sup> *Id.*, pp. 51, 55-62.

<sup>72</sup> TSN, 20 April 2009.

<sup>73</sup> *Id.*, pp. 36-47, 52-122.



December 2001 as the date of delivery.<sup>74</sup>

At first, they intended to conduct a public bidding, but accused Tan instructed them to facilitate the early payment for the said transaction, and so accused Montejo inserted a certification in the Abstract of Bids that public bidding shall be dispensed with, and that they are instead to resort to emergency purchase.<sup>75</sup>

He testified that it was impossible for delivery to have been made on the same day of purchase, considering the distance of Wilmar's Minimart in Tacloban City from Calbayog City - which is about 111 kilometers - and taking into account the time required to prepare the documents before delivery.<sup>76</sup>

He also said that it was impossible for the medicine to have been delivered on the dates stated.<sup>77</sup> Regardless, there was no bidding conducted for the said purchase.<sup>78</sup> He also confirmed the Affidavits that he submitted before the COA attesting to the fact of ghost deliveries.<sup>79</sup>

On re-direct examination, he clarified that officials from Masbate participated in the preparation of the procurement documents upon the invitation of accused Tan.<sup>80</sup> He also testified that he was threatened by accused Tan, describing the incident as follows:<sup>81</sup>

PROS. DELA CRUZ:

XXXX

Q Mr. Witness, during the cross examination specifically on page 9 of the TSN, you answered during the cross examination of Atty. Diaz, "yes, because I was threatened to sign those several documents not only those documents subject of these instant cases." Could you tell us what specific threat was propounded to you by accused Milagrosa Tan?

A On December 18, 2001, I received a phone call from the cellphone of Governor Milagrosa Tee Tan. Now, when I answered it, it's not

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<sup>74</sup> *Id.*, pp. 47-49.

<sup>75</sup> *Id.*, pp. 50-51.

<sup>76</sup> *Id.*, pp. 51-52.

<sup>77</sup> *Id.*, pp. 55-58.

<sup>78</sup> *Id.*, pp. 58-59, 63.

<sup>79</sup> Exhs. "83," "83-A," "83-B," and "83-C."

<sup>80</sup> TSN, 20 April 2009, pp. 55-57.

<sup>81</sup> *Id.*, pp. 57-62.

who was a close aid of Governor Milagrosa Tan. She instructed me to come to Himyangan because Governor Tan wanted to see me. There are problems with respect to the sets of documents pertaining to procurement, sir.

Q And what specific threat was given to you by Governor Milagrosa Tee Tan?

XXXX

A. BARDAJE, JR.

When I reached Himyangan, I was.... Beth was there to accompany me to the bedroom of Governor Milagrosa Tan at Himyangan. She informed me that she was instructed by Governor Tan to accompany me to the door. When we reached the door, we knocked at the door. Governor Tan opened the door and upon reaching inside the bedroom of Governor Milagrosa Tan at Himyangan, I saw Governor Tan with two unidentified men standing with guns protruding at their waists. Now, Governor Tan asked me, "*Unsa may problema nimo?*"

AJ HERNANDEZ

Translate, translate. Who can translate?

A. BARDAJE, JR.

What is your problem?

XXXX

A. BARDAJE, JR.

*Unsa may problema nimo nga dili man nimo pirmahan kining mga vouchers sa medisina, sa assorted goods ug sa bigas. Unsa may problema nimo? Dili ba giingon-ko na sa imo nga tapuson gud ni kay daghan kog utang, daghan kog bayaran.*

AJ HERNANDEZ

Teka muna. Translate.

(As translated by Atty. Diaz)

Why don't you sign the papers pertaining to the medicines? Why don't you not sign now because I have plenty of debts to pay?

XXXX





A. BARDAJE, JR.

Then she told me, "you said that you will sign those documents." I answered the Governor, "well, yes, Governor."

AJ HERNANDEZ

To cut it short, what was the threat?

A. BARDAJE, JR.

The threat was that after she scolded me why I did not sign, she said, okay, if you do not want to sign these documents, she approached the two men and then whispered to these two men and she got out. When she was about to get out of the bedroom, I said, okay, Gov, I will just sign this. Just let me out of this bedroom. And I got out using the back door of Himyangan and upon reaching the back, I went out through the main entrance without anybody seeing me.

AJ HERNANDEZ

So, there was no threat actually uttered to you or by the action of the Governor?

A. BARDAJE, JR.

She pointed her finger to me like this *po*. *Unsa may di nimo pirmahan ni, o, isang bala lang gud na.*

AJ HERNANDEZ

Translate.

(as translated by AJ Hernandez aided by Atty. Diaz)

If you do not sign this, you are only one bullet with one finger pointing to the right temple of the witness.

A. BARDAJE, JR.

Then upon doing that, she approached these two unidentified men with guns in their waist.

AJ HERNANDEZ

So, it was the Governor who made that gesture?

A. BARDAJE, JR.

Yes, your Honor. *y*



He pointed to Exhibits "W",<sup>82</sup> "B",<sup>83</sup> "C",<sup>84</sup> "D",<sup>85</sup> "E",<sup>86</sup> "G",<sup>87</sup> "H",<sup>88</sup> "J",<sup>89</sup> and "L".<sup>90</sup> as having been signed by accused Tan even before the other accused had affixed their signatures thereto.<sup>91</sup> Exhibits "F",<sup>92</sup> "I",<sup>93</sup> was likewise offered in evidence for the same purpose. He also confirmed that it was a certain Thelma Cinco who signed Exhibits "C"<sup>94</sup> and "S",<sup>94</sup> instead of accused Sison.<sup>94</sup>

As for the signatures on the Abstract of Bids, accused Bardaje Jr. confirmed that his, accused Tan, and Conde signatures appear therein, but stated that Detusin signed the same instead of accused Reales.<sup>95</sup>

(6) **Adrianita S. Castillo**, Administrative Officer V at the Food and Drug Administration.<sup>96</sup> She identified her certifications in, and confirmed that the original copies of Exhibits "E",<sup>97</sup> "F",<sup>98</sup> "G",<sup>99</sup> "H",<sup>100</sup> and "I".<sup>101</sup> are in the Records of her Office.

(7) **Cynthia R. Rierras**, Regional Director of the Department of Trade and Industry (DTI).<sup>102</sup> The witness was supposed to testify on the

<sup>82</sup> Undated Purchase Request for sardines and noodles signed solely by accused Tan.

<sup>83</sup> Undated Abstract of Bids for rice signed solely by accused Tan.

<sup>84</sup> Undated and unnumbered D.V. for 1,440 sacks of commercial rice signed solely by accused Tan.

<sup>85</sup> Undated and unnumbered D.V. for tax remittance amounting to PhP 52,363.63 signed solely by accused Tan.

<sup>86</sup> Undated and unnumbered D.V. for assorted goods amounting to PhP 3,680,320.00 signed solely by accused Tan.

<sup>87</sup> Undated (although with year "2001") and unnumbered Bids and Canvass for rice, pork and beans, outmeal (sic), sardines (Hakata), noodles (Maggi), brown sugar, sausage (El Rancho), corned beef (Young Town), beef loaf, and Alphine signed solely by accused Tan.

<sup>88</sup> Undated and unnumbered D.V. for assorted medicine amounting to PhP 1,134,965.00 signed solely by accused Tan.

<sup>89</sup> Undated and unnumbered Bids and Canvass for medicine signed solely by accused Tan.

<sup>90</sup> Unnumbered Abstract of Bids dated 2 May 2001 for cement (Portland) signed by accused Tan and Montejo.

<sup>91</sup> TSN, 20 April 2009, pp. 62, 63, 65-75.

<sup>92</sup> Undated (although with year "2001") and unnumbered Purchase Order for rice, pork and beans, outmeal (sic), sardines (Hakata), noodles (Maggi), brown sugar, sausage (El Rancho), corned beef (Young Town), beef loaf, and Alphine containing only accused Tan's signature.

<sup>93</sup> Undated and unnumbered Purchase Order for medicine amounting to PhP 1,134,965.00 signed solely by accused Tan.

<sup>94</sup> *Id.*, pp. 77-80, Exhs. "C" and "S" both refer to the Certificate of Emergency Purchase.

<sup>95</sup> *Id.*, pp. 83-84.

<sup>96</sup> TSN, 16 November 2009.

<sup>97</sup> Lumar Pharmaceutical Laboratory's License to Operate as Drug Manufacturer dated 31 January 2001.

<sup>98</sup> Magic Aid Distributor's License to Operate as Drug Distributor dated 14 March 2006.

<sup>99</sup> JRAC Pharmaceuticals Distributor's License to Operate as Drug Distributor/Wholesaler dated 16 June 2000.

<sup>100</sup> Rilem Pharma's License to Operate as Drug Distributor/Wholesaler dated 14 February 2002.

<sup>101</sup> Cysna Christine Pharmaceutical Dealer's License to Operate as Drug Distributor/Wholesaler dated 22 August 2001.

<sup>102</sup> TSN, 16 November 2009.



"Y"<sup>103</sup> series of exhibits, but her presentation was dispensed with upon stipulation of the defense counsels of the existence, authenticity, and due execution of said documents.

(8) **Alfredo C. Delecto**, Secretary of the *Sangguniang Panlalawigan* of Western Samar.<sup>104</sup> He testified on the existence of *Sangguniang Panlalawigan* Resolution No. 88-2001 dated 21 November 2001,<sup>105</sup> declaring the entire Province of Samar as a calamity area due to Typhoon Nanang.

(9) **Victor D. Pagarao**, Licensing Officer III of Catbalogan, Western Samar.<sup>106</sup> The witness testified on the existence of the following documents:

i.	Exh. "Y" <sup>107</sup>	Application for Mayor's or Business Permit for Raechel's Shoppers Plaza for Calendar Year 2001
ii.	Exh. "Z" <sup>108</sup>	Application for Mayor's or Business Permit for Raechel's Shoppers Plaza for Calendar Year 2002
iii.	Exh. "A" <sup>109</sup>	Application for Mayor's or Business Permit for Raechel's Shoppers Plaza for Calendar Year 2003
iv.	Exh. "B" <sup>110</sup>	Sworn Statement for business tax determination 2003
v.	Exh. "C" <sup>111</sup>	Sworn Statement for business tax determination 2002
vi.	Exh. "D" <sup>112</sup>	Sworn Statement for business tax determination 2001

(10) **Edgar Ramos**, Provincial Director of the DTI, Province of Masbate.<sup>107</sup> His testimony was dispensed with given that the defense counsels stipulated on the existence and authenticity of Exhibit "I," which is the Brenda Store's Certificate of Registration dated 15 November 2002.

(11) **Francisco A. Paragatos**, Senior Trade and Industry Development Specialist at the DTI, Province of Leyte.<sup>108</sup> The witness initially commenced his testimony, but defense counsels eventually stipulated on the authenticity, genuineness, and due execution of the

<sup>103</sup> Application for Mayor's Business Permit documentation pertaining to Raechel Shopper's Plaza for the year 2001.

<sup>104</sup> TSN, 8 February 2010.

<sup>105</sup> Exh. "D".

<sup>106</sup> TSN, 8 February 2010, pp. 28-42.

<sup>107</sup> Order dated 8 February 2010.

<sup>108</sup> TSN, 24 March 2010, pp. 6-12.

following documents relevant to SB-06-CRM-0462 to 64:

i.	Exh. "T" <sup>6</sup>	Registration of JRACS Pharmaceutical Distributor Tacloban Branch
ii.	Exh. "U" <sup>6</sup>	Application Form for Business Name and Registration
iii.	Exh. "W" <sup>6</sup>	Registration of Wilmar's Minimart owned by Marilou Ty
iv.	Exh. "X" <sup>6</sup>	Certificate of Registration of Wilmar's Minimart, Calanipawan Road, Tacloban City

(12) **Zorina David-Aldana**, Senior Trade and Industry Development Specialist, DTI.<sup>109</sup> Her testimony was dispensed with given that the defense counsels stipulated on the authenticity, genuineness, and due execution of the following documents relevant to SB-06-CRM-0461: (i) Exh. "J"<sup>7</sup> - DTI Application for Renewal of Registration, and (ii) Exh. "K"<sup>7</sup> - Lumar Pharmaceutical Laboratory's Registration.

The prosecution thereafter filed its *Formal Offer of Evidence* on 24 November 2010.<sup>110</sup> In its 15 March 2011 *Resolution*, the Court admitted Exhibits "A" to "Z," "AA" to "BB," "JJ" to "ZZ," "AAA" to "ZZZ," "AAAA" to "EEEE," "GGGG" to "YYYY," "A"<sup>5</sup> to "Z,"<sup>5</sup> "A"<sup>6</sup> to "K,"<sup>6</sup> "T,"<sup>6</sup> "W,"<sup>6</sup> "Y,"<sup>6</sup> "Z,"<sup>6</sup> "A"<sup>7</sup> to "L,"<sup>7</sup> "V"<sup>7</sup> to "Z,"<sup>7</sup> "A"<sup>8</sup> to "N,"<sup>8</sup> "X"<sup>8</sup> to "Y,"<sup>8</sup> "E,"<sup>9</sup> "F,"<sup>9</sup> "H"<sup>9</sup> to "I,"<sup>9</sup> "S,"<sup>9</sup> and "I-1," and ordered the re-marking of Exhibits "D"<sup>4</sup> and "Y"<sup>6</sup>-1.<sup>111</sup>

Accused Tan,<sup>111</sup> Reales,<sup>112</sup> Yabut,<sup>113</sup> Montejo,<sup>114</sup> and Sison<sup>115</sup> filed motions for leave to file their demurrer to evidence, which were duly opposed by the prosecution.<sup>116</sup> Their motions were denied in the Court's *Resolutions* dated 28 March 2011, 5 April 2011, and 8 November 2011.<sup>117</sup>

In the meantime, the Court directed the prosecution to present witnesses against accused Legaspi and Bardaje, Jr. in view of the Supreme Court's *Resolution* dismissing the Petition for Certiorari assailing the Court's 12 August 2010 and 7 January 2011 *Resolutions*, which denied the

<sup>109</sup> *Id.*, pp. 13-31.

<sup>110</sup> Records, Vol. VII, pp. 410-422.

<sup>111</sup> Records, Vol. III, pp. 5-72.



<sup>112</sup> *Id.*, pp. 73-76.

<sup>113</sup> *Id.*, pp. 80-84.

<sup>114</sup> *Id.*, pp. 95-96.

<sup>115</sup> *Id.*, pp. 120-123.

<sup>116</sup> *Id.*, pp. 77-79, 87-94, 126-130, 133-136.

<sup>117</sup> Records, Vol. VIII, pp. 119, 137-138, 252-253.  



two accused's motion to be discharged and to be utilized as state witnesses.<sup>118</sup> Thus, the prosecution presented Atty. Nilda B. Plaras and recalled Atty. Edna Forto and Nelia Cruz. They testified as follows:

**Atty. Nilda B. Plaras**, Chief Executive Staff of the Office of the Chairman, COA,<sup>119</sup> She testified that from 1 January 2001 to April 2003 she, Atty. Edna Forto (Team Leader), and Jonathan Golgota (co-member) conducted a selective audit of the purchases of electric fans, medicine, and assorted goods made by the Province of Western Samar. They examined the D.V.'s relating to said purchases and reduced the results of their inquiry into writing.<sup>120</sup>

Thereafter, **Atty. Edna Forto**<sup>121</sup> was recalled to the witness stand. In addition to her previous testimony, she identified accused Legaspi and Bardaje Jr.'s signatures on the documents previously presented by the prosecution. She was also asked to reconfirm her signature on the COA Audit Report and identify affidavits executed by accused Legaspi and Bardaje, Jr.<sup>122</sup>

**Nelia Cruz**, Human Resource Management Officer IV of the Provincial Government of Western Samar, was also recalled, but her testimony was dispensed with upon the stipulation made by the defense that the accused are public officers.<sup>123</sup>

On 16 January 2012, the prosecution rested its case with respect to accused Bardaje, Jr. and Legaspi, and filed a *Manifestation (with Formal Offer of Documentary Evidence Against Aurelio A. Bardaje, Jr. and Numeriano C. Legaspi)*.<sup>124</sup> On 9 May 2012, the Court resolved to admit Exhibits "LL," "PP," "RR," "UU," "YY," "C<sup>1</sup>" to "G<sup>3</sup>," "K<sup>3</sup>," "L<sup>3</sup>," "U<sup>3</sup>" to "X<sup>3</sup>," "C<sup>4</sup>," "L<sup>4</sup>," "N<sup>4</sup>," "R<sup>4</sup>," "S<sup>4</sup>," "X<sup>4</sup>," "D<sup>5</sup>" to "I<sup>5</sup>," "R<sup>5</sup>" to "V<sup>5</sup>," "X<sup>5-1</sup>," "B<sup>6</sup>," "D<sup>6</sup>" to "H<sup>6</sup>," and "V<sup>7-6</sup>" to "V<sup>7-7</sup>."

Once more, accused Tan filed a *Motion for Leave of Court to File Demurrer to Evidence*,<sup>125</sup> but the same was denied by the Court through its

<sup>118</sup> Order dated 03 August 2011.

<sup>119</sup> TSNs, 27 July 2010 and 26 October 2010.

<sup>120</sup> TSN, 27 July 2010, pp. 8-16.

<sup>121</sup> TSN, 1 December 2011.

<sup>122</sup> *Id.* pp. 40-41.

<sup>123</sup> *Id.* p. 44.

<sup>124</sup> Records, Vol. VIII, pp. 284-294.

<sup>125</sup> Dated 15 May 2012, *id.* pp. 315-384.

*Resolution* dated 10 July 2012.<sup>126</sup>

In the meantime, on 13 June 2014 the Court issued a *Resolution* dismissing the case as against accused Conde in view of his death and ordered the return of the bond posted for his provisional liberty.<sup>127</sup>

Presentation of defense evidence thereafter commenced, with accused Tan presenting 13 witnesses, who testified accordingly:

(1) **Luz Cabueñas Tacal**, Provincial Social Welfare Development Officer of the Province of Western Samar.<sup>128</sup> She testified that when there are calamities and disasters they coordinate with the Provincial GSO to procure relief commodities and participate in the distribution thereof to affected families. They also assist the different mayors and other community leaders in the planning and implementation of different restoration and rehabilitation activities in affected communities.<sup>129</sup>

She was at Catbalogan City when “Typhoon Nanang” hit Samar on November 2001. The typhoon caused widespread destruction in the Province, and that families had to be relocated because of floods and landslides. The major affected areas at that time were the islands of Daram, Tagapul-an Almagro and Santo Niño. The areas of Catbalogan, San Jose de Buan, Gandara, and San Jorge were likewise hit by the storm.<sup>130</sup> Relief operations lasted until January 2002, and that right after conducting an emergency relief survey, they undertook restoration activities, wherein they likewise gave food items to the victims of the disaster.<sup>131</sup>

She reaffirmed that “Typhoon Quedan” hit the Province of Samar on 4 December 2001, while “Typhoon Nanang” hit the Province on 7 November 2001.<sup>132</sup> She claimed that it was accused Tan who called a meeting and asked the GSO to procure goods. Accused Tan also asked her to be in charge of the distribution operations for the affected areas.<sup>133</sup> By her account, there were no ghost purchases because there were actual commodities delivered to the victims.<sup>134</sup>

<sup>126</sup> *Id.*, pp. 393-394.

<sup>127</sup> Counsel for accused Conde submitted the latter's Death Certificate on 27 March 2013, Records, Vol. VIII, pp. 457-460.

<sup>128</sup> TSN, 26 September 2012.

<sup>129</sup> *Id.*, pp. 13-14.

<sup>130</sup> *Id.*, pp. 15-17.

<sup>131</sup> *Id.*, p. 31.

<sup>132</sup> *Id.*, pp. 32-33.

<sup>133</sup> *Id.*, p. 36.

<sup>134</sup> *Id.*, p. 39.



(2) **Vicente Manlapas Limipado, Jr.**, Municipal Vice Mayor of Tagapul-an, Samar, during the period subject of these cases.<sup>135</sup> He testified that he asked Tan for relief goods such as rice, sardines, noodles, and assorted medicine because his Municipality was hit by two typhoons. Provisions were given by accused Tan, but he could no longer remember if he signed a document evidencing receipt.<sup>136</sup> He confirmed that goods were distributed *via* a disaster group sometime in November and December.<sup>137</sup>

(3) **Nilda P. Acaylar**, Administrative Aide III at the GSO of the Province of Western Samar and designated Bidding Clerk at the time relevant to these cases.<sup>138</sup> She testified that on 18 November 2002 she was at the GSO and prepared the Notice of Bidding to be held on 19 November 2002. She prepared five notices to bidders at 2 p.m. of the same day, then furnished a copy each to four offices, specifically: (i) the Office of the Provincial Auditor; (ii) the Provincial Budget Office; (iii) the Provincial Treasurer's Office; and (iv) the Provincial Governor's Office. She put the remaining notice in a box and/or kept it on file. She stated that there were no particular addressees indicated in the notice, and that she had no knowledge of how the bidders were notified, given that it was a certain Abrena, an Administrative Officer, who was in charge of notifying the bidders.<sup>139</sup>

She further narrated that on 17 December 2002 Mr. Daganzo (the representative from the Provincial Treasurer's Office), Mrs. Villacorte (the representative from the Budget Office), Mrs. Pelayo (the representative from the Provincial Accountant's Office), and accused Montejo (from the Governor's Office) attended the bidding. This can also be seen in the attendance sheet.<sup>140</sup>

She claims that the evidence to prove that there was bidding on 17 December 2002 is the excerpt of the Minutes.<sup>141</sup> The bidding for 1,000 desk fans took place, with Raechel Shopper's Plaza being declared as the lowest bidder.<sup>142</sup> She, however, admitted that the notices to bid did not indicate the quantity of the items for bidding.<sup>143</sup> She also could not tell whether it was the bidders who in fact submitted their respective bids because she was just assisting therein.<sup>144</sup>

<sup>135</sup> TSN, 8 October 2012.

<sup>136</sup> *Id.*, pp. 13-16.

<sup>137</sup> *Id.*, pp. 17-18.

<sup>138</sup> TSN, 9 October 2012.

<sup>139</sup> *Id.*, pp. 15-26, 32.

<sup>140</sup> *Id.*, pp. 46-47.

<sup>141</sup> *Id.*, p. 51.

<sup>142</sup> *Id.*, p. 54.

<sup>143</sup> *Id.*, p. 50.

<sup>144</sup> *Id.*, p. 62.

(4) **Alex. L. Sotto**, businessman and freelance distributor of Medic Aid,<sup>145</sup> He narrated that he passed by the Provincial Capitol in the morning of 14 December 2001 and saw two requests for quotation at the bulletin board of the GSO. He went inside the said office and asked for the requests. He filled up one request for Rilem Pharma and another one for Medic Aid.<sup>146</sup> He was then asked to wait by GSO officers until 11 a.m. because the Bids and Awards Committee will have to meet after the other suppliers have submitted their price quotations. At 11 a.m., he was told that he won the bid and so he went to his double-cab pick-up truck and got all the medicine required.<sup>147</sup> He was able to collect the payment for the medicine on 15 January 2002.<sup>148</sup>

(5) **Marissa S. Mabingnay**, Administrative Officer III, GSO of the Province of Western Samar.<sup>149</sup> She stated that, on 17 November 2002, public bidding was conducted for the purchase of drugs, medicine, and electric fans. She was tasked to review if the entries in the Notice to Bidders and Abstract of Bids were correct, but only to the extent that she called attention to the documents when she found errors. She did not participate in the bidding.<sup>150</sup> She stated that the actual members of the BAC were not there, and that only their representatives attended the bidding,<sup>151</sup> save for accused Bardaje, Jr.<sup>152</sup> She claimed that a Notice to Bidders were sent to prospective bidders before the bid, but none were posted at the bulletin board.<sup>153</sup>

(6) **Erin P. Pelayo**, Accounting Clerk at the Provincial Accountant's Office.<sup>154</sup> She testified that she attended the bidding held on 19 November 2002 together with the following: accused Bardaje, Jr., accused Montejo, Villacorte, and Daganzo.<sup>155</sup> The first order of business for the committee was to check if there was a quorum and if there were bidder's bonds submitted.<sup>156</sup> Three bidders were present during the bid: Rens-J Store, Raechel Shopper's Plaza, and Fyles Marketing. Raechel won since it had the lowest bid.<sup>157</sup>

<sup>145</sup> TSN, 7 August 2013.

<sup>146</sup> *Id.*, pp. 20-22.

<sup>147</sup> *Id.*, pp. 22-24.

<sup>148</sup> *Id.*, p. 25.

<sup>149</sup> TSN, 8 August 2013 and 2 October 2013.

<sup>150</sup> TSN, 8 August 2013, pp. 13-21.

<sup>151</sup> *Id.*, p. 28.

<sup>152</sup> TSN, 2 October 2013, pp. 29-30.

<sup>153</sup> TSN, 8 August 2013, pp. 38-40.

<sup>154</sup> TSN, 2 October 2013, pp. 38-83.

<sup>155</sup> *Id.*, pp. 42-44.

<sup>156</sup> *Id.*, p. 47.

<sup>157</sup> *Id.*, pp. 47-48. *q*



During the December 2002 bidding, the following were present: accused Montejo, Mahinay, Daganzo, herself, and accused Bardaje, Jr., as shown in the Minutes.<sup>158</sup> They checked if there was a quorum and bidder's bonds were submitted.<sup>159</sup> Three bidders were present: Bonn's Marketing, Rachel Shopper's Plaza, and M&J Hardware. Raechel had the lowest bid.<sup>160</sup>

(7) **Rosie A. Villacorte**, Accounting Clerk at the Provincial Budget Office during the period relevant to these cases.<sup>161</sup> She testified that during the bidding held on 19 November 2002 the following were present: accused Bardaje, Jr., accused Montejo, Villacorte, Daganzo, and herself.<sup>162</sup> They checked if there was a quorum and if the documents were complete, and found that Raechel Shopper's Plaza was the lowest bidder *per* the notice to bidders and acknowledgment receipts.<sup>163</sup>

(8) **Corazon M. Villarin**, Supply Officer at the Provincial Government during the period relevant to these cases.<sup>164</sup> She testified that she received the 1,000 units of desk fans, and signed an Inspection and Acceptance Report as well as a Requisition and Issue Slip.<sup>165</sup> She also stated that they distributed the fans.<sup>166</sup>

(9) **Regina B. Lipasama**, Principal of Daram II Central School in Daram, Samar, in 2002.<sup>167</sup> She narrated that she found out from a friend that there were electric fans at the Governor's Office that were being distributed to teachers from all the Districts of the Division of Samar. She thus told other teachers about it, and so about fifty of them went to the Office of the Governor even without an appointment. They each received an electric fan and were issued Requisition and Issue slips.<sup>168</sup>

(10) **Bienvenido S. Sabenecio**, member of the Provincial School Board and OIC-Provincial Treasurer in 2002.<sup>169</sup> He testified that he attended the meetings of the Provincial School Board on 11 November 2002 and 10 December 2002, where the purchase of electric fans were discussed.<sup>170</sup> In

<sup>158</sup> *Id.*, pp. 48-50.

<sup>159</sup> *Id.*, p. 52.

<sup>160</sup> *Id.*, pp. 53-54.

<sup>161</sup> TSN, 30 January 2014, pp. 8-44.

<sup>162</sup> *Id.*, pp. 10-11.

<sup>163</sup> *Id.*, pp. 11-12.

<sup>164</sup> *Id.*, pp. 45-55.

<sup>165</sup> *Id.*, pp. 47-50.

<sup>166</sup> *Id.*, p. 48.

<sup>167</sup> TSN, 30 January 2014, pp. 56-73.

<sup>168</sup> *Id.*, pp. 58-60.

<sup>169</sup> *Id.*, pp. 74-88.

<sup>170</sup> *Id.*, p. 76.

attendance at that time were the following persons: accused Tan, as Chairman; Quitalig, District Superintendent of Samar, as Vice-Chairman; himself, as OIC Treasurer and member; Sison, as Provincial Budget Officer and member; Bienvenida Repol, as member; and Tomasa Perez, as Secretary.

The agenda for the 11 November 2002 meeting was to re-appropriate a portion of the Special Education Fund (SEF) allocated for the improvement, construction, and maintenance of school buildings, to supplies and materials, such as electric fans. This was due to a clamor from the teachers because of the heat, given that some of the classrooms had no ceilings.<sup>171</sup> The agenda was approved and the Board appropriated the amount of PhP 244,000.00 for the purchase of electric fans.

During the meeting held on 10 December 2002, the agenda was to re-appropriate the amount of PhP 1,390,000.00 from the SEF to procure additional fans because there were other schools that wanted the same. The Agenda was approved.

(11) **Januario Arnaiz**, Publisher and Editor-in-Chief of Samar Reporter in 2002.<sup>172</sup> He identified the photocopy of the Invitation to Bid<sup>173</sup> for the 19 November 2002 bidding that was published in the Samar Reporter. He confirmed that the clipping was indeed part of their publication, but he could no longer present the original copy of the edition where it was published because the company had already folded up, its office burglarized, and its roof torn off by Typhoon Yolanda.<sup>174</sup>

On cross-examination by Prosecutor Dela Cruz, however, he admitted that the Invitation to Bid for the 19 November 2002 bidding was published in the Samar Reporter only on 19 November 2002. He pointed to the notation "SR Issue of November 19-25, 2002" of the clipping, which indicated the date of publication.<sup>175</sup>

(12) **Alfredo C. Delecto**, Secretary of the *Sangguniang Panlalawigan*.<sup>176</sup> His testimony, however, was dispensed with upon stipulation of the parties as to the existence and due execution of

<sup>171</sup> *Id.*, p. 78.

<sup>172</sup> *Id.*, pp. 90-100.

<sup>173</sup> Exh. "5"

<sup>174</sup> TSN, 30 January 2014, pp. 94-96.

<sup>175</sup> *Id.*, p. 98.

<sup>176</sup> TSN, 12 March 2014.



*Sangguniang Panlalawigan* Resolution No. 88-200<sup>177</sup> and that he affixed his signature thereon. Other documents offered in relation to his testimony include Exhibits “D<sup>4</sup>-2” to “D<sup>4</sup>-5.”

(13) **Milagrosa T. Tan**, accused and Governor of Western Samar during the period relevant to these cases.<sup>178</sup> She testified that the **desk fans** were intended for public school teachers, as shown by the corresponding Minutes of the School Board meeting. She claims that they were procured through public bidding, as evidenced by the Allotment and Obligation Slips, canvass, Notice to Bidders, Abstract of Bids, and Minutes;<sup>179</sup> the desk fans were thereafter delivered to the teachers, as shown by the Delivery Receipts and Inspection and Acceptance Reports;<sup>180</sup> they were distributed by Corazon Villarin, who in turn asked the recipients to sign Requisition and Issue Slips;<sup>181</sup> and, the supplier was then paid, as shown by the disbursement vouchers.<sup>182</sup>

The **medicine**, on the other hand, were procured through personal canvass because the Province was in a state of calamity, as declared in the Minutes of the 16<sup>th</sup> Regular Session of the *Sangguniang Panlalawigan*.<sup>183</sup> As evidence that there was a canvass conducted, she referred to the Request for Quotation, Bids, and Canvass,<sup>184</sup> and they were delivered, as shown by the delivery receipts, Inspection and Acceptance of Delivery of Supplies and Materials forms, and Requisition and Issue Slips.<sup>185</sup> As proof that there were funds and that payments were made to the suppliers, she pointed to the Allotment and Obligations Slips (ALOBs), D.V.s, and official receipts.<sup>186</sup>

The **assorted goods** were also purchased through personal canvass because the Province was in a state of calamity.<sup>187</sup> She also pointed to the Requests for Quotation, Bids, and Canvass, wherein it can be seen that Wilmar’s Minimart was the supplier that offered the lowest price.<sup>188</sup> As with the other procurements, she pointed to documents that evidence delivery, receipt, payment, availability of funds, and distribution, specifically: delivery receipts, Inspection and Acceptance of Delivery of Supplies and

<sup>177</sup> Exh. “D<sup>4</sup>.”

<sup>178</sup> TSNs, 30 April 2014 and 30 June 2014.

<sup>179</sup> *Id.*, pp. 14-16.

<sup>180</sup> *Id.*, pp. 28-32.

<sup>181</sup> *Id.*, pp. 36-37.

<sup>182</sup> *Id.*, pp. 33-35.

<sup>183</sup> *Id.*, pp. 37-38.

<sup>184</sup> *Id.*, pp. 37-39.

<sup>185</sup> *Id.*, pp. 43-44, 46-48.

<sup>186</sup> *Id.*, pp. 44-48.

<sup>187</sup> *Id.*, p. 49.

<sup>188</sup> *Id.*, pp. 50-53.

Materials forms, D.V.s, O.R.s, ALOBS, Requisition and Issue Slips, and distribution lists.<sup>189</sup> She stated that the goods were turned over to accused Montejo who, in turn, turned them over to the person in charge of distribution.<sup>190</sup> She mentioned that there were pictures of the goods, but did not identify them in Court.<sup>191</sup>

She testified that a Notice of Disallowance was issued for the said transactions, and that she has a pending Motion for Reconsideration.<sup>192</sup>

Accused Sison, Bardaje, Jr., Yabut, and Reales offered their own testimonies for their defense. Their testimonies are as follows:

**Maximor D. Sison, Jr.**,<sup>193</sup> accused and Provincial Budget Officer during the period subject of these cases. He testified that there was an administrative case that was likewise filed against him before the OMB, but the case was later overturned by the Court of Appeals, and that the OMB's appeal to the Supreme Court was denied.<sup>194</sup>

His knowledge about the biddings for the desk fans is based solely on the Minutes of the biddings and from information he gathered from Villaforte and Mahinay.<sup>195</sup>

He denied that the procurement of **assorted goods** worth PhP 3,390,000.00 (SB-06-CRM-0459) was irregular, stating that since it was an emergency purchase, public bidding was not required. It was enough that there was a calamity, thus necessitating the emergency purchase using the calamity funds. The purchase was nonetheless awarded to the lowest bidder after canvass.<sup>196</sup> He claimed that he certified one transaction, while the other two certifications were made by his assistant, Wilma Cinco, because he was out of the Province at the time.<sup>197</sup> Out of the Certificates of Emergency Purchase marked as Exhibits "L<sup>3</sup>," "C<sup>4</sup>," and "S<sup>4</sup>," he only signed Exhibit "L<sup>3</sup>."<sup>198</sup>

<sup>189</sup> *Id.*, pp. 53-62.

<sup>190</sup> *Id.*, pp. 59-60.

<sup>191</sup> *Id.*, pp. 61-62.

<sup>192</sup> *Id.*, pp. 63-64.

<sup>193</sup> TSN, 01 September 2014.

<sup>194</sup> *Id.*, pp. 12-22.

<sup>195</sup> *Id.*, pp. 23, 37.

<sup>196</sup> *Id.*, pp. 38-42.

<sup>197</sup> *Id.*, pp. 46-47.

<sup>198</sup> *Id.*, pp. 47-49.



As regards the purchases of **medicine**, he only certified that funds were available, but did not personally participate in the procurement because he was also out of the Province at the time they were made.<sup>199</sup>

Finally, he denied having acted in conspiracy with the other accused and claimed that since he only did what his functions required.<sup>200</sup>

**Aurelio A. Bardaje, Jr.**,<sup>201</sup> accused. He adopted his earlier testimony for the hearing on the *Motion to Discharge*.<sup>202</sup> In addition thereto, he identified the OMB Resolution dated 27 November 2006<sup>203</sup> and the Immunity Agreement he and the OMB executed.<sup>204</sup>

**Reynaldo T. Yabut**,<sup>205</sup> accused and owner of Raechel Shopper's Plaza. He testified that he found out about the bidding for desk fans scheduled on **19 November 2002** after seeing the posting at the bulletin board sometime on 14 November 2002. He thus got a Notice to Bidders<sup>206</sup> and got a receipt therefor.<sup>207</sup> He said that all the details were already written on the Notice to Bidders except for the price and his signature.<sup>208</sup>

Prior to the bidding on the 19<sup>th</sup> of November 2002, he sent a representative to place his bid together with the bidder's bond. On the 19<sup>th</sup>, he sent his representative to attend the bidding and was later informed that they won.<sup>209</sup> That same night, he directed his staff to prepare the delivery receipts and told them to issue the receipt the next day because he was leaving for Cebu.<sup>210</sup> His staff received the P.O. on 21 November 2002, so he ordered them to deliver the goods to the GSO in the afternoon of the same day. He was paid during the last part of the month.<sup>211</sup>

As for the bidding held on **17 December 2002**, he likewise saw the posting at the bulletin board and inquired about the 1,000 fans. He underwent the same process as in the bid for the 176 electric fans.<sup>212</sup> The

<sup>199</sup> *Id.*, p. 45.

<sup>200</sup> *Id.*, p. 50.

<sup>201</sup> TSN, 14 October 2014.

<sup>202</sup> *Id.*, pp. 17-18.

<sup>203</sup> *Id.*, pp. 19-21. Exh. "152."

<sup>204</sup> *Id.*, pp. 122-125. Exh. "153."

<sup>205</sup> TSN, 13 May 2015.

<sup>206</sup> Exh. "28."

<sup>207</sup> Exh. "31."

<sup>208</sup> TSN, 13 May 2015, pp. 14-19.

<sup>209</sup> *Id.*, pp. 19-20.

<sup>210</sup> *Id.*, p. 22.

<sup>211</sup> *Id.*, pp. 25-26.

<sup>212</sup> *Id.*, pp. 34-35, 37-42.

same day that they won the bid, or on 17 December 2002, he directed his staff to inventory his stocks and they waited for a P.O. Upon receiving the P.O. on 18 November 2002, he had the items delivered.<sup>213</sup>

**Romeo Reales**,<sup>214</sup> accused and Provincial Accountant, but was allegedly designated as Provincial Administrator during the period subject of these cases. He presented a Memorandum dated 19 December 2001, which appears to have been signed by accused Tan, stating that Mr. Francasio M. Detosil was appointed as Provincial Accountant in his stead.<sup>215</sup>

The accused mostly testified on the signatures that appear on the documents, stating that the following documents were signed by Detosil without his authorization:

	Document	Exhibit
i.	D.V. No. 101-2002-01-0194	S <sup>3</sup> , 154
ii.	Bids and Canvass for Deliveries and Furnishing of Supplies, Furniture and Equipment <sup>216</sup>	V <sup>3</sup>
iii.	D.V. No. 101-2002-01-0193	J <sup>4</sup> , 156
iv.	Bids & Canvass for Deliveries & Furnishing Supplies/Materials/ Equipment	M <sup>4</sup> , 157
v.	D.V. No. 101-2002-03-1202	B <sup>5</sup> , 158
vi.	Abstract of Bids under Bid No. 1406-2001	G <sup>5</sup> , 159
vii.	D.V. No. 101-2002-03-1203	P <sup>5</sup> , 160
viii.	Abstract of Bids under Bid No. 1417-2001	U <sup>5</sup> , 161
ix.	D.V. No. 101-2002-02-0763	Z <sup>5</sup> , 162
x.	Abstract of Bids under Bid No. 1425-2001	F <sup>6</sup> , 163
xi.	D.V. No. 221-2002-11065	KK, 164
xii.	D.V. No. 221-2002-12083	T <sup>2</sup> , 165
xiii.	D.V. No. 101-2002-020764 <sup>217</sup>	B <sup>3</sup> , 166

He affirmed having had signed the Certificate of Emergency Purchase,<sup>218</sup> but denied any participation in the transaction because he was no longer the Provincial Accountant, and that he reported as the Acting Provincial Administrator on 19 December 2001.<sup>219</sup>

<sup>213</sup> *Id.*, pp. 41-44.

<sup>214</sup> TSN, 14 May 2015.

<sup>215</sup> *Id.*, pp. 13-17. Exh. "152." Offered as tender of excluded evidence, and not allowed marking.

<sup>216</sup> *Id.*, pp. 20-25.

<sup>217</sup> *Id.*, pp. 25-36.

<sup>218</sup> Exhs. "C<sup>24</sup>" and "S<sup>10</sup>"; TSN, 14 May 2015, pp. 23-28.

<sup>219</sup> *Id.*, pp. 36-39.



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Accused Yabut, Tan, Bardaje, Jr., Sison, and Reales thereafter filed their Formal Offers of Evidence.<sup>220</sup> On 3 January 2018, the Court admitted the following evidence:

	Accused	Exhibits Admitted
i.	Reales	"154" to "166"
ii.	Bardaje, Jr.	"56" to "64," "83" to "83-A," "83-B," "83-C," "152," and "153"
iii.	Tan	
	a. SB-06-CRM-0457	"1," "1-a," "3," "13" to "13-a," "13-a-i," "14," "14-a," "14-b," "15," "15-a," "16," "16-a," "17," "17-a," "18," "18-a," and "19"
	b. SB-06-CRM-0458	"2," "2-a-i," "2-a-ii," "4," to "8," "10," "10-a," "11," "11-a," "11-a-i," "11-b," "12," "12-c," "12-b," "110" to "118," "118-a" to "118-o," "119," "119-a," to "119-d," "119-d-i," "119-e," "119-e-i," "119-f," "119-f-i," and "119-g"
	c. SB-06-CRM-0459	"120," "120-a," "120-a-i," "120-b," "120-b-i," "120-c," "120-c-i," "120-d," "120-d-i," and "120-e" to "120-k"
	d. SB-06-CRM-0460	"121," "121-a," "121-b," "121-b-i," "121-c," "121-c-i," "121-d," "121-e," "121-f" to "121-h," "126," "121-i," and "121-i-l"
	e. SB-06-CRM-0461	"122," "132," "122-a," "122-b," "122-b-i," "122-c," "122-c-i," "122-d," "122-e" to "122-i," "122-i-i," "122-j," "122-j-i," and "135"
	f. SB-06-CRM-0462	"123," "123-a," "123-l," "123-b-i," "123-c," "123-c-i," "123-d," "123-d-i," "123-e," "123-e-l," "123-f," "123-g," "123-h," "123-i," "123-j," "123-k," and "123-l"
	g. SB-06-CRM-0463	"124," "124-a," "124-b," "124-b-i," "124-c," "124-c-i," "124-d," "124-d-i," "124-e," "124-e-i," "124-f," "124-g" to "124-o," "124-q" to "124-s," and "124-t" to "124-j <sup>10</sup> "
	h. SB-06-CRM-0464	"125," "125-a," "125-b," "125-c," "125-d," "125-e," "125-e-i," "125-f," "125-f-i," "125-g" to "125-j," "125-k" to "125-r," and "125-s" to "125-z <sup>6</sup> "
iv.	Yabut	"26," "27," "28," "28-a," "28-b," "29," "31," "31-a," "32," "32-a," "33," "33-a," "34," "35," "35-a," "35-b," "36," "37," and "39."

The Court admitted Exhibits "48," "49" to "55," "146," and "147" for accused Sison in a *Resolution* dated 26 March 2018.<sup>221</sup>

<sup>220</sup> Records, Vol. IX, pp. 265-370.

<sup>221</sup> *Id.*, pp. 512-513.

Only accused Tan,<sup>222</sup> Sison,<sup>223</sup> Yabut,<sup>224</sup> Bardaje, Jr.,<sup>225</sup> and Montejo<sup>226</sup> filed their respective Memoranda. The prosecution failed to do so within the extended period it was given.

### THE COURT'S RULING

The governing law at the time the transactions took place was R.A. No. 7160.<sup>227</sup> The present law, R.A. No. 9184, likewise requires that procurements be done through public bidding,<sup>228</sup> except when circumstances allow the alternative methods of procurement.<sup>229</sup>

In these cases, the prosecution alleges that the purchases made by the accused were not done through competitive public bidding and thereby violated Sec. 3(e) of R.A. No. 3019. The defense, on the other hand, claim that the purchases of desk fans subject of SB-06-CRM-0457 and 0458 underwent public bidding, while the purchases of assorted goods subject of SB-06-CRM-0459, and 0462 to 0464, and medicines subject of SB-06-CRM-0460 to 0461, were emergency purchases that did not require public bidding.

Sec. 3(e) of R.A. No. 3019 provides:

**Section 3. Corrupt practices of public officers.** In addition to acts or omissions of public officers already penalized by existing law, the

<sup>222</sup> Memorandum dated 3 March 2018 and Supplemental Memorandum dated 23 April 2018, Records, Vol. IX, pp. 424-501 and 517-534.

<sup>223</sup> Memorandum dated 30 April 2018, Records, Vol. X, pp. 34-53.

<sup>224</sup> Memorandum dated 17 May 2018, *Id.*, pp. 77-103.

<sup>225</sup> Memorandum dated 17 May 2018, *Id.*, pp. 133-198.

<sup>226</sup> Memorandum dated 13 June 2018, *Id.*, pp. 207-233. In the interest of justice, the Court grants the Motion to Admit Attached Memorandum dated 13 June 2018.

<sup>227</sup> Local Government Code

<sup>228</sup> Sec. 356 of R.A. No. 9184 provides:

SEC. 356. *General Rule in Procurement or Disposal.* – Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. Supplies which have become unserviceable or no longer needed shall be sold, whenever applicable, at public auction, subject to applicable rules and regulations.

<sup>229</sup> Sec. 366 of R.A. No. 9184 provides:

SEC. 366. *Procurement Without Public Bidding.* – Procurement of supplies may be made without the benefit of public bidding under any of the following modes:

- (a) Personal canvass of responsible merchants;
- (b) Emergency purchase;
- (c) Negotiated purchase;
- (d) Direct purchase from manufacturers or exclusive distributors; and
- (e) Purchase from other government entities.



following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

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

The essential elements of the said crime 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 inexcusable negligence; and,
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>230</sup>

The Court finds that all the elements of the offense charged have been established beyond reasonable doubt by the prosecution.

**First element:**

There is no issue that the first element is present in all cases, in view of the admissions made during the pre-trial as to the positions held by accused public officials during the applicable period.

In so far as SB-06-CRM-0457 and 0458 are concerned, although accused Yabut is a private individual, he is accused of having acted in conspiracy with the accused public officials; for which reason, he may be held liable for Violation of Sec. 3 of R.A. No. 3019.<sup>231</sup>

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<sup>230</sup> *Consigna v. People*, G.R. No. 175750-51, 2 April 2014; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, 25 October 2004, citing *Jacinto v. Sandiganbayan*, G.R. No. 84571, 2 October 1989

<sup>231</sup> *Braca v. Sandiganbayan*, G.R. No. 195032, 20 February 2013.



**Second element:**

*Coloma v. Hon. Sandiganbayan*<sup>232</sup> instructs that the second element of Sec. 3(e), R.A. No. 3019 may be committed in three ways: manifest partiality, evident bad faith, or gross inexcusable negligence. Proof of any of the three in connection with the prohibited acts mentioned in the third element is enough to convict. In this connection, "partiality," "bad faith," and "gross negligence," have been defined as follows:

"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." (citations omitted).

*People v. Africa*<sup>233</sup> also holds as follows:

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

**SB-06-CRM-0457 and 0458**

SB-06-CRM-0457 and 0458 involve separate purchases of desk fans from Raechel's Shopper's Plaza, owned by accused Yabut.

<sup>232</sup> G.R. No. 205561, 24 September 2014.

<sup>233</sup> G.R. No. 171671, 18 June 2002.



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Prosecution witness Atty. Forto of the COA testified that both transactions were made to appear to have undergone public bidding but the absence of essential supporting documents, such as the bidder's bond and the inconsistencies in the supporting documents attached to the corresponding D.V.'s, belie such claim.

To begin with, no Notice to Bidders were validly sent out for both purchases, notwithstanding the testimonies of defense witness Nilda P. Acaylar, who claimed to have prepared the "notices," and accused Yabut, who claimed to have seen them posted at the bulletin board.

Sec. 362 of R.A. No. 7061 requires that the Call for Bids or notice to bid shall show the complete specifications and technical descriptions of the required supplies. Sec. 363 further requires that such notice "shall be given the widest publicity possible, sending by mail or otherwise, any known prospective participant in the locality, of copies of the call and by posting copies of the same in at least three (3) publicly accessible and conspicuous places in the provincial capitol, or city, municipal, or barangay hall, as the case may be."

While there is a Notice<sup>234</sup> attached to D.V. No. 221-2002-11-065 subject of SB-06-CRM-0457, the same did not specifically refer to the purchase of desk fans. The *Notice* merely referred to the bidding for "Drugs and Medicines, Tires and Tube" with the words "and others" typed in a different font – indicating that they were just inserted. The body of the notice reads:

The Provincial Auditor  
This Province

Greetings

Please be notified that there will be a public bidding on November 14, 2002  
at 1:00 O'Clock in the afternoon in this office for Drugs & Medicines, Tires and  
Tubes and others.

AURELIO A. BARDAJE, JR.  
OIC - General Services Officer

NOTED

ORIGINAL SIGNED  
MILAGROS T. TAN  
Governor

<sup>234</sup> Exh. "15,"

When defense witness Nilda P. Acaylar, who prepared said "Notice," was confronted about the difference in the font of the words "and others," she merely replied that she did not know about it.<sup>235</sup> More importantly, she admitted having no knowledge as to how the prospective bidders were notified.<sup>236</sup>

Considering that the Notice did not include desk fans in the items sought to be purchased, it would take a generous amount of liberality to consider the inserted phrase "and others" as having included desk fans among the items to be purchased. Further, there was no mention of the quantity sought to be purchased, as admitted by defense witness Acaylar<sup>237</sup> and accused Yabut.<sup>238</sup> The "Notice" also did not contain specifications of the desk fans sought to be purchased, such as the dimension or blade size. Again, it would require an exercise of undue generosity from the Court to consider the said "Notice" sufficient for a supplier to be informed of the bidding and of the quantity, specifications, and technical description of the desk fans, especially considering that the posting was made only the day before the purported bidding date, and only at the GSO.

The lack of specifications for the desk fans begs the question as to how the accused were able to determine which bids were most advantageous to the Government. In this connection, Sec. 357 of R.A. No. 7160 defines what a "lowest complying and responsible bid" constitutes, while Sec. 365 mandates that an award should be made to such bidder.<sup>239</sup>

SECTION 357. Definition of Terms. - When used in this Title, the term -

(a) "Lowest Complying and Responsible Bid" refers to the proposal of one who offers the lowest price, meets all the technical specifications and requirements of the supplies desired and, as a dealer in the line of supplies involved, maintains a regular establishment, and has complied consistently with previous commitments;

SECTION 365. Rule on Awards. - Awards in the procurement of supplies shall be given to the lowest complying and responsible bid which meets all the terms and conditions of the contract or undertaking.

Further, none of the supposed substitute members to the Committee on Awards were able to definitively and satisfactorily explain how they were

<sup>235</sup> *Id.*, pp. 42-43.

<sup>236</sup> TSN, 9 October 2012, pp. 15-26, 32.

<sup>237</sup> *Id.*, p. 56.

<sup>238</sup> TSN, 13 May 2015, pp. 83-84.

<sup>239</sup> Also in Art. 428(a), Rule XXXV of A.O. 270.



informed of the 19 November 2002 bidding. For example, witness Villacorte first claimed that she received the Notice of Bidding on 18 November 2002 and that she was authorized by accused Sison to attend the same. However, after being confronted with the fact that their office only received the Notice on 19 November 2002, she recanted and stated that she instead found out about the bidding when she saw the posting at the GSO bulletin board.

In addition, at the hearing on the prosecution's *Motion to Discharge*, accused Bardaje, Jr. testified that the purchases were anomalous, simulated, no deliveries were actually made, and that documents supporting the transactions were pre-signed by accused Tan, with Raechel Shopper's Plaza as the pre-determined winner. All of these prompted him to leave before the biddings started, and is also the reason why he did not sign the attendance sheets.<sup>240</sup> On cross-examination, he even claimed that he was introduced to the person who would win the bid by accused Tan herself.<sup>241</sup>

He explained that he was called to the Governor's Residence, where he was given the said documents by accused Tan, thus:<sup>242</sup>

AJ HERNANDEZ:

Mr. Bardaje, why did you say that the six (6) documents you mentioned.... The documents first. I am referring to the six (6) – disbursement vouchers, the abstract, the purchase request, the purchase order, were pre-signed by the Governor? How did you arrive at that conclusion?

A. BARDAJE, JR.

Because I was called to Himyangan and she presented to me these six (6) documents, around fourteen (14) sets of procurement documents already pre-signed by the Governor and I was instructed to process immediately these sets of documents for procurement, Your Honor.

AJ HERNANDEZ:

So, if the disbursement vouchers are or were already pre-signed by the Governor, why is there a need to pass it to other offices? What then is the process?

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<sup>240</sup> *Id.*, pp. 42-43.

<sup>241</sup> *Id.*, pp. 49-50.

<sup>242</sup> *Id.*, pp. 36-37.

A. BARDAJE, JR.

Your Honor, the signature will be needed because otherwise the process will not be completed and the COA may not accept the disbursement vouchers if other signatories did not comply, your Honor.

Further, *per* Articles 432 to 434 and 436, Rule XXXV of the Implementing Rules and Regulations of R.A. No. 7160<sup>243</sup> and accused Bardaje, Jr.'s testimony, the usual procurement process<sup>244</sup> is as follows: (i) a Purchase Request would be issued by the Office of the Governor, as head of the procuring entity; (ii) an ALOBS is then issued by the Provincial Budget Office to show that there are funds available for the intended purchase; (iii) the GSO assigns a bidding number to the purchase and schedules the same for bidding; (iv) a Notice to Bidders would then be published at least 10 days prior to the bidding in a newspaper of general circulation and/or posted in at least three publicly accessible and conspicuous places; (v) the bids, with the bid/performance bonds, are received by the GSO before bidding is held; (vi) bidding is held to determine the most-qualified bidder, and thereafter an Abstract of Bids would be prepared, which is subject to the approval of the Governor; (vii) a Purchase Order is thereafter prepared and given to the winning bidder; (viii) delivery is then accomplished, as evidenced by a delivery receipt and a sales invoice; (ix) the Inspector issues an Inspection and Acceptance Report upon due inspection of the items delivered; (x) the concerned officers prepare a D.V.; (xi) a check is drawn in order to effect payment to the supplier; and (xii) during the distribution of the procured goods, the recipients or beneficiaries would then be issued Requisition and Issue Slips to evidence receipt.

If the procedure as laid out above were followed, the supporting documents, beginning from the Purchase Request, would have been sequentially dated. The supporting documents in these cases, however, show otherwise.

In SB-16-CRM-0457, the dates of the supporting documents attached to D.V. No. 221200211065 are jumbled, showing that the process as mentioned above, was not followed and thereby reinforcing the prosecution's claim that no bidding was actually conducted. Thus:

<sup>243</sup> Administrative Order No. 270.

<sup>244</sup> TSN, 20 April 2009, pp. 36-47. See also Exhs. "W" and "28."



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Purchase Request	Notice to Bidders	Date of Bidding/ Abstract	Purchase Order (P.O.)	Delivery Receipt (D.R.)	Sales Invoice	Inspection and Acceptance Report	D.V.	Check
13 Nov. 2002 <sup>245</sup>	13 Nov. 2002 <sup>246</sup>	19 Nov. 2002 <sup>247</sup>	21 Nov. 2002 <sup>248</sup>	19 Nov. 2002 <sup>249</sup>	20 Nov. 2002 <sup>250</sup>	22 Nov. 2002 <sup>251</sup>	22 Nov. 2002 <sup>252</sup>	25 Nov. 2002 <sup>253</sup>

While the P.O. was made on 21 November 2002, the delivery – based on the D.R. – was made on 19 November 2002, the same day the bidding was purportedly conducted, and two days *before* the purchase order was even made.

All the witnesses for the accused were also unable to reconcile the disparity between the attendance sheets and the Minutes for each bidding process. There are also incompatibilities between the testimonies of the accused themselves and their witnesses. For one, accused Yabut claims that he had a representative who attended both bids subject of SB-06-CRM-0457 and 0458, and thus he was readily informed that his company won in both instances. His testimony, however, is contradicted by the testimonies of other defense witnesses such as Ms. Acaylar,<sup>254</sup> who testified that no bidders attended the bidding. Ms. Pelayo also admitted on cross-examination that during the 19 November 2002 bidding, only Daganzo, Pelayo, Villacorte, and accused Montejo were present,<sup>255</sup> while on 17 December 2002 only Daganzo, Mahinay, Pelayo, and accused Montejo were present.<sup>256</sup>

It also bears noting that none of the defense witnesses who testified on the delivery of desk fans by Racquel Shopper's Plaza pursuant to the 19 November 2002 bidding could remember the brand or basic specifications of the items. This includes witnesses Corazon Villarin, who supposedly participated in the distribution and inspection of the fans, and Regina Lipasama, one of the alleged recipients thereof. Even accused Tan herself, despite testifying that she had participated in the distribution of some of the desk fans, could not recall what specific type of fans were distributed. The

<sup>245</sup> Exh. "QQ."

<sup>246</sup> Exhs. "PP" and "15."

<sup>247</sup> Exh. "V-81."

<sup>248</sup> Exh. "LL."

<sup>249</sup> Exh. "OO."

<sup>250</sup> Exh. "MM."

<sup>251</sup> Exh. "RR."

<sup>252</sup> Exh. "KK."

<sup>253</sup> Exh. "JJ."

<sup>254</sup> TSN, 9 October 2012, p. 88.

<sup>255</sup> TSN, 2 October 2013, pp. 68-70.

<sup>256</sup> *Id.*, pp. 70-72.

Court finds this circumstance incredible, especially considering that the witnesses were able to give specific details as to what supposedly occurred during the biddings. The fact that none of the witnesses can recall the other items that were bid out on 19 November 2002, while being able to supposedly vividly remember just the bidding for electric fans, likewise renders their testimonies suspect. These inadequacies put a dent on their credibility. As held in *People v. De Guzman*,<sup>257</sup>

The time-honored test in determining the value of the testimony of a witness is its compatibility with human knowledge, observation and common experience of man. Thus, whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance. Consistently, the Court has ruled that evidence to be believed must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind. In the case at bench, the testimony of Flores, the lone eyewitness of the prosecution does not bear the earmarks of truth and, hence, not credible.

In addition, the Court notes that the testimony of defense witness Arnaiz, who was presented with the intent to show that Notices to Bid were actually published, only served to confirm that none were duly carried out. As can be seen from Exh. "5," the Invitation to Bid states that bids were to be submitted by 17 November 2002, or two days before the bidding. However, as per the document itself, and as testified to by Arnaiz, the notice was only published in the Samar Reporter on 19 November 2002, in clear violation of Sec. 363 of R.A. No. 7160, which requires that publication be made at least 10 days prior to bidding. This also shows that it would have been practically impossible for bidders to have been properly informed of the bidding, especially considering that only one posting was made for the same, and that the said Notice did not even mention or include desk fans.

All these circumstances, in turn, lend credence to the prosecution's claim that no actual bidding took place for the 176 desk fans, and that the supplier was already pre-determined to be Raechel Shopper's Plaza.

In SB-06-CRM-0458, on the other hand, involving the purchase of 1,000 desk fans, the supporting documents attached to D.V. No. 221-2002-12-083 are as follows:

<sup>257</sup> G.R. No. 192250, 11 July 2012, citing *Ocampo v. People*, G.R. No. 163705, 30 July 2007 and *Zapatos v. People*, G.R. Nos. 147814-15, 16 September 2003.



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Purchase Request	Date of Bidding	Purchase Order	Delivery Receipt	Sales Invoice	Inspection and Acceptance Report	D.V.	Check	Requisition and Issue Slip
10 Dec. 2002 <sup>258</sup>	17 Dec. 2002	18 Dec. 2002 <sup>259</sup>	16/19 Dec. 2002 <sup>260</sup>	18 Dec. 2002 <sup>261</sup>	16 Dec. 2002 <sup>262</sup>	19 Dec. 2002 <sup>263</sup>	20 Dec. 2002 <sup>264</sup>	19 Dec. 2002 <sup>265</sup>

No notice to bidders or O.R. issued by Raechel's Shoppers Plaza was attached to D.V. No. 221-2002-12-083. There is also no evidence to suggest that a notice was published in a newspaper of general circulation in the locality, or posted in conspicuous places in the Province.

As can be seen from the dates indicated on the documents, the inspection of the items came ahead of the bidding, the P.O., and the sales invoice. Specifically, the items appear to have been inspected on 16 December 2002, the same date of the supposed delivery, or one day ahead of the bidding on 17 December 2002. It is also noticeable that the Delivery Receipt (Exh. "WW"), appears to have been intercalated to show either 16 or 19 December.

It has not escaped the Court's scrutiny that while the P.O. (Exh. "UU") is dated 18 December 2002, the body of the Inspection & Acceptance Report (Exh. "YY") for the 1,000 desk fans refers to a P.O. dated 9 December 2002.

In all, the post-bidding activities appear to have been carried out prior to the actual bidding itself. And, the accused have failed to explain all the inconsistencies in the dates of the supporting documents of these two transactions, thereby giving credence to the prosecution's claim that no biddings were actually conducted for both purchases.

On the other hand, in both SB-06-CRM-0457 and 0458, the evidence presented by the accused failed to controvert the prosecution's evidence, especially considering the positive testimony of the two accused as to the irregularities in the subject procurements. No evidence was presented by the defense to specifically dispute accused Legaspi and Bardaje Jr.'s allegations

<sup>258</sup> Exh. "VV."

<sup>259</sup> Exh. "UU," or 9 December 2002, as per Exh. "WW."

<sup>260</sup> Exh. "WW."

<sup>261</sup> No year discernable from the document. Exh. "XX."

<sup>262</sup> Exh. "YY."

<sup>263</sup> Exh. "TT."

<sup>264</sup> Exh. "SS." For Php 600,000.00 only, stated as "partial payment in the DV."

<sup>265</sup> Exh. "ZZ."



that they were threatened by accused Tan, either directly or through her associates, and as a result of which they were constrained to sign the papers relating to the procurements. Significantly, accused Tan did not address the matter at any point in her testimony. It bears emphasis that their disavowals relating to the legitimacy of the procurement process and the delivery of items are of paramount importance, since it is the GSO that directly oversees bids and canvasses, and that accused Legaspi is in charge of inspecting any goods that are supposed to have been delivered.

Exhibits "110" to "118" and "118-a" to "118-o<sup>6</sup>," which are likewise part of the Exh. "V<sup>7</sup>," was offered by accused Tan to purportedly serve as evidence of receipt of the 1,000 desk fans procured. However, as pointed out by prosecution witnesses Atty. Forto and Atty. Plasas in their COA Audit Report,<sup>266</sup> upon inspection, the Requisition and Issue Slips<sup>267</sup> were found to be either undated or contained erasures as to the dates. Specifically, the original dates were 31 August 2003, with the erasures made to show "22 November 2002" instead, which means that the same were executed much earlier than the purported dates of bidding, purchase, and delivery as claimed by the accused in SB-06-CRM-0458. Even supposing that the same is to be construed as evidence for SB-06-CRM-0457, which pertains to the November bidding, accused could still not account why most of the documents were dated 31 August 2002. The Court, therefore, cannot accord credence to the defense's claim that the said documents evidence receipts of desk fans from either procurement.

The fact that accused had pre-signed the supporting documents and threatened accused Legaspi and Bardaje, Jr. to make them sign spurious documents indicate that they had a "patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will conscious wrongdoing."

There is also manifest partiality towards Yabut as the supplier of the desk fans. In addition to the testimonies of Legaspi and Bardaje, Jr. that suppliers were pre-determined by accused Tan, the fact that accused Yabut was able to supply the desk fans that were purportedly up to the specifications and quantity sought by the Province despite the lack of such details in the notice to bid, as earlier pointed out, could only have been possible if he was acting in connivance with accused public officials.

<sup>266</sup> Exh. "V<sup>7</sup>."

<sup>267</sup> Annexes "42-2" to "42-7" of Exh. "V<sup>7</sup>." Also offered by accused Tan as Exhs. "100" to "118" and "118-a" to "118-o<sup>6</sup>."



Clearly then, the evidence shows that both purchases of desk fans were made without public bidding and they were done with evident bad faith, and carried out with manifest partiality towards accused Yabut, who was the proprietor of Raechel's Shoppers Plaza.

SB-06-CRM-0459 to 0464

SB-06-CRM-0459 to 0464 involve emergency purchases that would not have required public bidding: SB-06-CRM-0459 and 0462 to 0464 involve the procurement of assorted goods, while SB-06-CRM-0460 and 0461 involve the procurement of assorted medicine. Being an exception to the general rule requiring public bidding, Sec. 368 of the Local Government Code provides for certain conditions when this alternative mode of procurement can be resorted to:

SEC. 368. *Emergency Purchase.* — In cases of emergency where the need for the supplies is exceptionally urgent or absolutely indispensable and only to prevent imminent danger to, or loss of life or property, local government units may, through the local chief executive concerned, make emergency purchases or place repair orders, regardless of amount, without public bidding. Delivery of purchase orders or utilization of repair orders pursuant to this Section shall be made within ten (10) days after placement of the same. Immediately after the emergency purchase or repair order is made, the chief of office or department making the emergency purchase or repair order shall draw a regular requisition to cover the same which shall contain the following:

- (a) A complete description of the supplies acquired or the work done or to be performed;
- (b) By whom furnished or executed;
- (c) Date of placing the order and the date and time of delivery of execution;
- (d) The unit price and the total contract price;
- (e) A brief and concise explanation of the circumstances why procurement was of such urgency that the same could not be done through the regular course without involving danger to, or loss of, life or property;
- (f) A certification of the provincial or city general services or the municipal or barangay treasurer, as the case may be, to the effect that the price paid or contracted for was the lowest at the time of procurement; and
- (g) A certification of the local budget officer as to the existence of

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appropriations for the purpose, the local accountant as to the obligation of the amount involved, and the local treasurer as to the availability of funds.

The goods or services procured under this Section must be utilized or availed of within fifteen (15) days from the date of delivery or availability.

Without prejudice to criminal prosecution under applicable laws, the local chief executive, the head of department, or the chief of office making the procurement shall be administratively liable for any violation of this Section and shall be a ground for suspension or dismissal from service.

The following series of events are culled from the records and are material to these cases:

- (i) On 22 October 2001, the Local Health Board of Gandara, Samar, approved a "Resolution Requesting Funds from Hon. Mila Tan, Provincial Governor, Province of Samar, Needed for the Procurement of Medicines;"<sup>268</sup>
- (ii) On 7 November 2001 Public Storm Signal No. 2 was raised over the Province of Western Samar in view of Tropical Depression Nanang;<sup>269</sup>
- (iii) From 9 November 2001 to 13 November 2001 relief goods consisting of rice, noodles, and sardines were distributed by the Provincial Government to affected constituents;<sup>270</sup>
- (iv) On 13 November 2001, accused Tan sent a letter to the *Sangguniang Panlalawigan*,<sup>271</sup> requesting for a resolution declaring the Province of Samar as a calamity area in view of the damage brought about by "Typhoon Nanang," and another resolution seeking financial assistance from the Office of the President through the Chairman of the National Disaster Coordinating Council (NDCC);
- (v) On 21 November 2001, the *Sangguniang Panlalawigan* approved Resolution No. 88-2001 dated 15 November 2001 entitled "Resolution Declaring the Entire Province of Samar as

<sup>268</sup> No resolution number indicated. Exh. "V1."

<sup>269</sup> Exhs. "D<sup>1</sup>-4," "D<sup>1</sup>-4," and "S<sup>2</sup>-2."

<sup>270</sup> TSN, 26 September 2012, pp. 57-67.

<sup>271</sup> Exh. "D<sup>1</sup>-3."

*MT*



a Calamity Area Caused by Typhoon Nanang,<sup>272</sup> recognizing that the said typhoon hit the Province of Samar on 6 November 2001, causing damage to crops and infrastructure;

- (vi) Between 4 to 7 December 2001, Tropical Storm Quedan passed through the south of Samar. At its strongest, Storm Signal No. 2 was raised over the Province. This was at around 8:00 p.m. of 4 December 2001.<sup>273</sup> There is no evidence of any Resolution issued by the *Sangguniang Panlalawigan* of Samar or the NDCC declaring the Province to be under a state of calamity;
- (vii) On 12 December 2001,<sup>274</sup> accused Tan signed a Purchase Request for the procurement of 3,000 sacks of commercial rice, 502 boxes of Hakata sardines, and 564 boxes of Maggi noodles for distribution to barangays affected by "Typhoon Kiddang." The mode of procurement was by means of emergency purchase, and the winning supplier was determined to be Wilmar's Minimart, which is located in Tacloban City and owned by Marilou C. Ty. The quotation, release of the ALOBS, purchase, delivery, and inspection of the said items were all dated on the same day;<sup>275</sup>
- (viii) On 14 December 2001, accused Tan signed two Purchase Requests<sup>276</sup> for the procurement of the following assorted medicine, all of which the Provincial Government was able to eventually procure through emergency purchase:

Items	Units	Rilem	Medic Aid	Total Units	Price per Unit	Total Price in PhP
Isoniazid HCL syrup 120 ml.	bottles	800	600	1,400	PhP 90.00	126,000.00
Bromhexine HCL 60 ml.	bottles	600	500	1,100	65.00	71,500.00
Carbocisteine drops	bottles	800	700	1,500	59.00	88,500.00
Multivitamins syrup 60 ml.	bottles	1,000	900	1,900	64.40	122,360.00
Carbocisteine syrup 60 ml.	bottles	1,000	1,000	2,000	56.40	112,800.00
Ascorbic acid 500 mg	boxes	300	200	500	350.00	175,000.00
Multivitamins cap	boxes	400	300	700	600.00	420,000.00
Cotri susp. 200/60 ml.	bottles	700	600	1,300	53.80	69,940.00
Amoxicillin susp. 250/60 ml.	bottles	650	500	1,150	123.70	142,255.00
Paracetamol syrup 125/60 ml.	bottles	750	700	1,450	56.00	81,200.00
Aminophylline amp. 250 mg.	boxes	200	100	300	4,000.00	1,200,000.00

<sup>272</sup> Exh. "T<sup>4</sup>."

<sup>273</sup> Exh. "S<sup>9</sup>."

<sup>274</sup> Exh. "H<sup>3</sup>."

<sup>275</sup> Exhs. "H<sup>3</sup>," "C<sup>3</sup>," "D<sup>3</sup>," "E<sup>3</sup>," "F<sup>3</sup>," "G<sup>3</sup>," "J<sup>3</sup>," and "K<sup>3</sup>."

<sup>276</sup> Exhs. "K<sup>4</sup>" and "T<sup>3</sup>."

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Cotri cap. 400/80	boxes	250	100	350	700.00	245,000.00
Paracetamol tab. 500 mg	boxes	200	100	300	205.00	61,500.00
Amoxicillin cap 500 mg	boxes	150	200	350	1,240.00	434,000.00
Mefenamic Acid cap 500 mg	boxes	200	200	400	568.00	227,200.00
Cefalexin caps. 500 mg, 100's	boxes	150	200	350	1,061.00	371,350.00
					<b>PhP</b>	<b>3,948,605.00</b>

- (ix) Separate purchases were purportedly made from Rilem Pharmacy and Medic Aid Distributors through Alex Sotto, who allegedly offered the lowest prices per canvass;
- (x) On 18,<sup>277</sup> 19,<sup>278</sup> and 20<sup>279</sup> December 2001, accused Tan signed Purchase Requests for the procurement of the following items:

Items	Units	Units procured on December			Total Qty.	Price in PhP	Total Price In PhP
		18	19	20			
Rice (commercial)	Sacks	1,000	900	1,000	2,900	1,200.00	3,480,000.00
Pork and Beans	Boxes	100	100	200	400	1,135.00	454,000.00
Outmeal (sic)	Kilos	500	400	3,000	3,900	68.00	265,200.00
Sardines (Hakata)	Boxes	100	100	200	400	900.00	360,000.00
Noodles (Maggi)	Boxes	150	100	300	550	405.00	222,750.00
Brown Sugar	Boxes	150	100	150	400	1,060.00	424,000.00
Sausage (El Rancho)	Boxes	150	100	150	400	925.00	370,000.00
Corned Beef (Young Town)	Boxes	100	100	150	350	1,534.00	536,900.00
Beef Loaf	Boxes	180	100	200	480	1,300.00	624,000.00
Alpline <sup>280</sup>	Boxes	50	100	100	250	1,200.00	300,000.00
						<b>PhP</b>	<b>7,036,850.00</b>

- (xi) All of the said purchases for assorted goods were made from Wilmar's Minimart.

All the accused, with the exception of accused Legaspi and Bardaje, Jr., claim that the said purchases were emergency purchases due to the weather disturbances that hit the Province, thus they did not require public bidding. However, Luz Cabueñas Tacal, the Provincial Social Welfare Development Officer, testified that it was Tropical Depression Nanang that hit Samar on 7 November 2001 and caused widespread destruction in the Province.<sup>281</sup> Although she initially testified that relief operations lasted until

<sup>277</sup> Exh. "C".

<sup>278</sup> Exh. "Q".

<sup>279</sup> Exh. "A".

<sup>280</sup> Presumably "Alpine Milk."

<sup>281</sup> TSN, 16 September 2012, pp. 42-43.



January 2002,<sup>282</sup> she clarified during cross-examination that relief operations commenced on 9 November 2001, or two days after “Nanang” hit the Province, and that distribution of relief goods was concluded on 13 November 2001. Thus, what lasted until January 2002 were the restoration and rehabilitation efforts, not the distribution of goods.<sup>283</sup>

The purchases in these cases, therefore, could not have been made to address the emergency or calamity caused by Tropical Depression Nanang for the simple reason that they were made after distribution operations for said calamity already ended on 13 November 2001. While another weather disturbance – Tropical Storm Quedan – hit the Province again on 4 December 2001, it was not placed under a state of calamity; thus, there was no justifying reason to resort to emergency purchases.

Moving on, the Certificate of Emergency Purchase<sup>284</sup> for the medicine supposedly executed by accused Tan, Conde, Reales, Sison, and Bardaje, Jr., reads:

THIS IS TO CERTIFY that the purchase under Bid. No. 1405-2001 dated December 18, 2001; Bid No. 1418-2002 December 19, 2000; Bid No. 1419-2001 dated December 19, 2001; Bid No. 1420-2001 dated December 19, 2001, all for drugs and medicines, are pursuant to Sec. 368 of RA 7610. Because the purchase is exceptionally urgent and absolutely indispensable so as to prevent eminent danger to, or loss of life or property, that there was no material time to procure the same through public bidding and that the price offered is the lowest at the time of the procurement and is most advantageous to the government.

Clearly, it refers to purchases made from 18 to 19 December 2001, with no reference to any earlier or subsequent purchases. The supporting documents attached to the D.V.s for medicine, on the other hand, show that canvass was made on the 20<sup>th</sup> of December 2001, albeit some of the documentation would tend to show that they may have been carried out as early as 14 December 2001:



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<sup>282</sup> *Id.*, p. 31.

<sup>283</sup> *Id.*, pp. 57-67.

<sup>284</sup> Exh. “51.”



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Case/ Supplier	Purchase Request	A.O.B.S.	Request for Quotation	Bids & Canvass <sup>285</sup>	Purchase Order	Sales Invoice	Inspection and Acceptance Report	D.V.	Check and O.R.
<b>460</b> Medic Aid	14/19 Dec. 2001 <sup>286</sup>	14 Dec. 2001 <sup>287</sup>	14/19 Dec. 2001 <sup>288</sup>	20 Dec. 2001 <sup>289</sup>	14/19 Dec. 2001 <sup>290</sup>	14 Dec. 2001 <sup>291</sup>	Undated <sup>292</sup>	20 Dec. 2001 <sup>293</sup>	15 Jan. 2002 <sup>294</sup>
<b>461</b> Rilem	19 Dec. 2001 <sup>295</sup>	14 Dec. 2001 <sup>296</sup>	14/19 Dec. 2001 <sup>297</sup>	20 Dec. 2001 <sup>298</sup>	14/19 Dec. 2001 <sup>299</sup>	14 Dec. 2001 <sup>300</sup>	14 Dec. 2001 <sup>301</sup>	20 Dec. 2001 <sup>302</sup>	15 Jan. 2002 <sup>303</sup>

The dates indicated in the Purchase Request subject of SB-06-CRM-0460 and the Request for Quotation and Purchase Orders in both cases (SB-06-CRM-0460 and 0461) were intercalated, thereby making it difficult to determine whether they were dated 14 or 19 December 2001. Nevertheless, the Sales Invoices and the Inspection and Acceptance Report of the medicine from Rilem Pharma are dated 14 December 2001, which leads to the conclusion that the purchases were in fact made on the 14<sup>th</sup> of December 2001, and as such were not covered by the above-quoted Certification for emergency purchase, and preceded the canvass itself.

Additionally, the document denominated as "Bids & Canvass for Deliveries & Furnishing Supplies/Materials/Equipments"<sup>304</sup> contains a notation stating that -

The Committee on Awards hereby resolves that no Public Bidding was conducted due to Typhoons that hit Region 8 and the unprecedented long Christmas (sic) vacation declared by President Gloria Macapagal Arroyo, hence EMERGENCY PURCHASE was Recommended. (underscoring in the original)

<sup>285</sup> The documents are denominated "Bids & Canvass for Deliveries & Furnishing Supplies/ Materials/ Equipments for the Office of the Provincial Governor."

<sup>286</sup> Exh. "K".

<sup>287</sup> Exh. "U".

<sup>288</sup> Exh. "L".

<sup>289</sup> Exh. "M". Undated above but signatures below are dated "20 Dec. 01."

<sup>290</sup> Exh. "N". See also TSN dated 20 April 2009, pp. 55-58.

<sup>291</sup> Exh. "Q".

<sup>292</sup> Exhs. "O" and "R".

<sup>293</sup> Exh. "J".

<sup>294</sup> Exhs. "I" and "P".

<sup>295</sup> Exh. "T".

<sup>296</sup> Exh. "E".

<sup>297</sup> Exh. "U".

<sup>298</sup> Exh. "V".

<sup>299</sup> Exh. "W".

<sup>300</sup> Exh. "Y" in the amount of PhP 1,474,750.00, and Exh. "Z" in the amount of PhP 784,065.00.

<sup>301</sup> Exhs. "X" and "B", unsigned Receipt of Acceptance of Delivery of Supplies and Materials.

<sup>302</sup> Exh. "S".

<sup>303</sup> Exhs. "R" and "A".

<sup>304</sup> Exh. "M".



There is no mention that the purchase was due to the declaration placing the Province under a state of calamity. In addition, the Court takes notice that the items and prices in the said document were computerized, while the names of the suppliers themselves, as well as the purported purpose for procurement were typewritten, and that the indication of the winning bidder was handwritten. If indeed the document was drawn to reflect information received on the same time and day, then all the entries therein should have been computerized or at least uniformly written.

The same is noticeable from the allegedly pre-signed bids and canvass documents for assorted goods and for medicine submitted by the prosecution,<sup>305</sup> which had the details of the supposed amount of prices offered by suppliers already in computerized form, albeit the names of the purported suppliers remain blank. Despite the glaring lack of bid details and absent the signature of the other accused public officers, accused Tan's signature appears thereat. While the pre-signed documents, by themselves, may not serve as direct evidence of accused Tan's guilt for the transactions subject of these cases, it lends credence to accused Bardaje, Jr.'s testimony regarding pre-determined purchases, and shows the proclivity of accused Tan to disregard proper bidding procedures.

The P.O.'s<sup>306</sup> Sales Invoices,<sup>307</sup> and Inspection Report for the medicine purchased from Rilem<sup>308</sup> point to 14 December 2001 as the date of purchase, or six days before any canvass and award were made.<sup>309</sup> The intercalations on the other supporting documents, such as the Purchase Request<sup>310</sup> and Requests for Quotation,<sup>311</sup> could only be construed as vain attempts to reconcile them with the defense's account. However, they only serve to corroborate accused Legaspi and Bardaje, Jr.'s testimonies that the suppliers were already pre-selected, and that they were forced at gunpoint to affix their signatures on documents coming from accused Tan's office that were already pre-signed by other officials to reflect transactions that have yet to take place - or did not take place to begin with.

In addition, prosecution witness Ngking denied having any transaction between his company, Medic Aid, and the Province of Samar for the purchase of medicine. He pointed out that the receipt issued in the company's name was falsified as he likewise disavowed Alex Sotto's

<sup>305</sup> Exhs. "G" and "H."

<sup>306</sup> Exhs. "N" and "W."

<sup>307</sup> Exhs. "Q" and "Y."

<sup>308</sup> Exh. "X."

<sup>309</sup> Exhs. "M" and "V."

<sup>310</sup> Exh. "K."

<sup>311</sup> Exhs. "L" and "U."

personality to represent Medic Aid.

On the other hand, the Court cannot give credence to the testimony of defense witness Sotto, who allegedly supplied the medicine from Rilem Pharma and Medic Aid. For one, it was too much of a coincidence that he just happened to pass by the provincial capitol in the morning of 14 December 2001, and saw the request for quotation posted at the bulletin board and that he happened to have the following medicine at the required quantities loaded in his pick-up truck at that very moment:

Items	Units	Total
Isoniazid HCL syrup 120 ml.	Bottles	1,400
Bromhexine HCL 60 ml.	Bottles	1,100
Carbocisteine drops	Bottles	1,500
Multivitamins syrup 60 ml.	Bottles	1,900
Carbocisteine syrup 60 ml.	Bottles	2,000
Ascorbic acid 500 mg	Boxes	500
Multivitamins cap	Boxes	700
Cotri susp. 200/60 ml.	Bottles	1,300
Amoxicillin susp. 250/60 ml.	Bottles	1,150
Paracetamol syrup 125/60 ml.	Bottles	1,450
Aminophylline amp. 250 mg.	Boxes	300
Cotri cap. 400/80	Boxes	350
Paracetamol tab. 500 mg	Boxes	300
Amoxicillin cap 500 mg.	Boxes	350
Mefenamic Acid cap. 500 mg.	Boxes	400
Cefalexin caps. 500 mg. 100's	Boxes	350

It is doubtful that all those items would fit in Sotto's pickup truck.

He likewise failed to provide any explanation why he was carrying about PhP 3,000,000.00 worth of medicine without a specific order for it, considering that Rilem Pharma and Medic Aid are based in Quezon City and Pasay City, respectively, and that he did not specifically state that he had a base of operations in the area. Further, he did not sufficiently explain why he was carrying medicine for Medic Aid despite Ngking's disavowal that he was connected to the said company.

As to the purchase of assorted goods, the documents attached to the D.V.'s subject of these cases are as follows:



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SB-06-CRM-	Purchase Request	AL/OBS	Request for Quotation	Abstract of Bids	Purchase Order	Delivery Receipt	Sales Invoice	Inspection and Acceptance Report	DV	Check
459	11 Dec 2001 <sup>312</sup>	12 Dec 2001 <sup>313</sup>	12 Dec 2001 <sup>314</sup>	12 Dec 2001 <sup>315</sup>	12 Dec 2001 <sup>316</sup>	12 Dec 2001 <sup>317</sup>	07 Feb 2002 <sup>318</sup>	12 Dec 2001 <sup>319</sup>	6 Feb 2002 <sup>320</sup>	07 Feb 2002 <sup>321</sup>
463	18 Dec 2001 <sup>322</sup>	13 Dec 2001 <sup>323</sup>	18 Dec 2001 <sup>324</sup>	18 Dec 2001 <sup>325</sup>	18 Dec 2001 <sup>326</sup>	18 Dec 2001 <sup>327</sup>	18 Dec <sup>328</sup>	18 Dec 2001 <sup>329</sup>	31 Jan 2002 <sup>330</sup>	06 Mar 2002 <sup>331</sup>
462	19 Dec 2001 <sup>332</sup>	n/a	Undated <sup>333</sup>	19 Dec 2001 <sup>334</sup>	19 Dec 2001 <sup>335</sup>	19 Dec 2001 <sup>336</sup>	n/a	19 Dec 2001 <sup>337</sup>	31 Jan 2002 <sup>338</sup>	06 Mar 2002 <sup>339</sup>
464	20 Dec 2001 <sup>340</sup>	20 Dec 2001 <sup>341</sup>	20 Dec 2001 <sup>342</sup>	20 Dec 2001 <sup>343</sup>	20 Dec 2001 <sup>344</sup>	20 Dec 2001 <sup>345</sup>	n/a	20 Dec 2001 <sup>346</sup>	31 Jan 2002 <sup>347</sup>	07 Feb 2002 <sup>348</sup>

The coincidence that the processing of the documentation for all purchases,<sup>349</sup> and the alleged delivery of a significant quantity of goods from a supplier in Tacloban City were done in a day is too much not to notice. Yet, the coincidence does not end there: (i) the prices offered by Wilmar's Minimart are exactly as those indicated in the Purchase Requests for every

<sup>312</sup> Exh. "N".

<sup>313</sup> Exh. "H".

<sup>314</sup> Exhs. "C", "D", and "E".

<sup>315</sup> Exh. "I".

<sup>316</sup> Exh. "G".

<sup>317</sup> Exh. "J".

<sup>318</sup> Exh. "I".

<sup>319</sup> Exh. "K".

<sup>320</sup> Exh. "B".

<sup>321</sup> Exh. "A".

<sup>322</sup> Exh. "C".

<sup>323</sup> Exh. "N".

<sup>324</sup> Exhs. "D" to "F".

<sup>325</sup> Exh. "G".

<sup>326</sup> Exh. "H".

<sup>327</sup> Exh. "I".

<sup>328</sup> Exh. "XX".

<sup>329</sup> Exhs. "I" and "M".

<sup>330</sup> Exh. "B".

<sup>331</sup> Exh. "A".

<sup>332</sup> Exh. "Q".

<sup>333</sup> Exhs. "R" to "T".

<sup>334</sup> Exh. "U".

<sup>335</sup> Exh. "V".

<sup>336</sup> Exh. "W".

<sup>337</sup> Exh. "X".

<sup>338</sup> Exh. "P".

<sup>339</sup> Exh. "O".

<sup>340</sup> Exh. "A".

<sup>341</sup> Exh. "K".

<sup>342</sup> Exhs. "B", "D", "E".

<sup>343</sup> Exh. "P".

<sup>344</sup> Exh. "Q".

<sup>345</sup> Exh. "I".

<sup>346</sup> Exh. "H".

<sup>347</sup> Exh. "Z".

<sup>348</sup> Exh. "Y".

<sup>349</sup> Save for the Purchase Request in SB-06-CRM-0459.

item as indicated; (ii) the handwriting in all the requests for quotation, which were supposedly filled up by different individuals, are the same; and (iii) accused Reales's name was misspelled as "Realez" but no corrections were made in all documents.


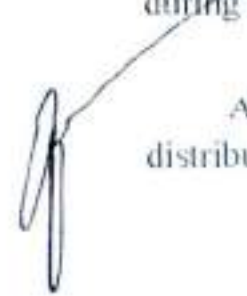
As with the purchase of medicine, the purchases of goods in these cases were not supported by proof of an emergency that would have justified resorting to emergency procurement. No resolution regarding the existence of an emergency or state of calamity was submitted in evidence, save for the resolution pertaining to "Typhoon Nanang." Also, the supporting documents do not even show that deliveries were made at all of the goods said to have been purchased, since there are no documents evidencing delivery in SB-06-CRM-0462 and 0464.

All these observations on the supporting documents are to be considered in light of accused Legaspi and Bardaje, Jr.'s testimonies - that the documents were pre-signed and that they were merely constrained to certify that canvasses and deliveries were made, when in fact they did not see the goods alleged to have been purchased - and point to the reality that the transactions or purchases were irregular.

As in the other cases, the defense's evidence does not help to provide a more credible alternative version of events. For one, they tried to prove that the relief goods were purchased because of the requests made by the Municipality of Tarangnan and Gandara due to Tropical Storm Quedan. The request of Tarangnan, however, was dated 3 December 2001, while that of Gandara was dated October 2001. In other words, the requests preceded Quedan, which hit the Province on 4 December 2001. This can only mean that they did not pertain to the said storm, as claimed by the accused.

Witness Limipado's testimony that his Municipality did in fact receive relief goods also cannot be relied upon. In the first place, he could not remember when he made the request for goods, and that he had no personal knowledge if the goods were actually delivered to his Municipality or were directly distributed to his constituents. He only made a general statement that they received goods in November and December, but for lack of any details regarding the said "goods," the Court cannot simply presume that these are the same goods that were procured by the Provincial Government during the dates subject of these cases.

Also of note is witness Tacal's testimony that her office only distributed rice, sardines, and noodles, and that their distribution lasted only





until 13 November 2001. Her testimony fails to account for the procurement and alleged distribution of pork and beans, oatmeal, brown sugar, El Rancho Sausages, Young Town Corned Beef, beef loafs, and Alpine Full Cream Milk.

In sum, the prosecution's evidence proves that there was no actual calamity or emergency that justified the resort to emergency purchases. While reference is made to a "Typhoon Kidang," accused failed to present evidence that the Province was placed under a state of calamity, or even that requests for relief were made because of Tropical Storm Quedan. In other words, the evidence shows that the emergency purchases were attended by evident bad faith, and resorted to only to avoid competitive public bidding.

As with the transactions with the desk fans, manifest partiality in favor of the chosen suppliers – Alex Sotto and Walmart's Minimart – is present in these cases. As noted earlier, it is too much of a coincidence that Alex Sotto just happened to pass by the GSO Office of the Province, read the notice to bid at the bulletin board, and had exactly all the medicine sought by the Province in the exact quantity already loaded in his pickup truck. Walmart's Minimart, on the other hand, could not have delivered the purchased goods on the same day the P.O. was issued considering the distance of its store in Tacloban City from Calbayog, unless its proprietor knew of the purchases in advance.

In sum, the second element is present in all cases.

### Third Element:

There are two modes of violating Sec. 3(e) of R.A. No. 3019: (1) by causing undue injury to a private individual or the Government, or (2) by giving any private party any unwarranted benefit, advantage, or preference.<sup>350</sup> An accused may be charged under either or both modes, and the presence of one would suffice for conviction.

*Cabrera v. Sandiganbayan*<sup>351</sup> defines unwarranted benefit or advantage as follows:

xxx "unwarranted" means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons.

<sup>350</sup> *People v. Sotto*, G.R. Nos. 170339, 170398-403, 9 March 2010.

<sup>351</sup> *Supra* at Note 230, citing *Gallego v. Sandiganbayan*, G.R. No. 57841, 30 July 1982.

"**Advantage**" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. "**Preference**" signifies priority or higher evaluation or desirability; choice or estimation above another. (emphasis added)

The Court finds that the prosecution failed to prove beyond reasonable doubt undue injury to the Government as a result of said purchases. While there is testimony that the prices of the items purchased were overpriced, the same has not been validly corroborated. No canvass was made on the prices offered by other suppliers, which would allow the Court to compare the price of all purchases in these cases. In other words, the prosecution's evidence is insufficient to prove that the Province could have bought the said items at lower prices from legitimate suppliers.

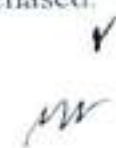

Similarly, the testimonies of accused Legaspi and Bardaje, Jr. that no items were actually delivered only prove that no deliveries were made for the purchased items at the time that inspections were made by said accused. As earlier discussed, said circumstances further highlight the irregularities in the procurements and bidding processes. However, they are insufficient to rule out the possibility that deliveries were subsequently made at a much later date.

However, in SB-06-CRM-0457 and 0458, the fact that no legitimate public biddings were conducted for the purchase of desk fans clearly show that undue preference or unjustified favor was accorded to Raechel Shopper's Plaza, owned by accused Yabut. The same is true with respect to the purchase of medicine in SB-06-CRM-0460 and 0461 and assorted goods in SB-06-CRM-0459 and 0462 to 0464, although the Court notes that the favored suppliers - Alex L. Sotto, from whom the medicines were said to have been purchased, and Marilou C. Ty, proprietor of Wilmar's Mini Mart from where the assorted good were purchased - have not been impleaded as accused. Such fact, however, is not fatal to the prosecution of accused public officials for their respective liabilities.

With the foregoing findings, therefore, what is left for the Court to determine is the liability of each accused.

#### Accused Tan and Montejo's liability

The evidence shows that accused Tan exercised active and conscious participation in carrying out the transactions subject of these cases, specifically by directing accused Bardaje, Jr. and Legaspi to just sign the inspection reports and by pre-selecting the suppliers for the items purchased.





As the Governor of the Province, accused Tan is expected to know the proper procedure in the procurement of supplies and is duty-bound to follow the same. However, she used her office to orchestrate the scheme to do away with the public bidding for all the purchases subject of these cases. The supporting documents for the transactions came from her office and it was upon her instructions that they were pre-signed even before the procurement processes were initiated. Uncontroverted evidence of threats upon her co-accused, as well as her directive to pre-select winning suppliers, prove her guilt.




The evidence on record likewise shows accused Montejo's knowledge, complicity, and active participation in facilitating the signing of documents despite the lack of public bidding, non-compliance with relevant procurement laws, and despite the lack of actual inspection and delivery of the goods supposedly purchased. Of note is that, especially in the purchase of electric fans, accused Montejo is the only accused to have attended and facilitated the simulated biddings.

#### Accused Yabut's liability

As discussed above, accused Yabut's establishment, Raechel's Shoppers Plaza, was pre-selected by accused Tan to supply the desk fans; he executed documents to make it appear that purchases were made despite lack of delivery of the desk fans at the time of inspection by accused Bardaje, Jr.; and receipt of payment therefor, point to his complicity in the whole scheme. This provides the elements of manifest partiality and evident bad faith required in an indictment for Violation of Sec. 3(e) of R.A. No. 3019.

#### Accused Bardaje Jr. and Legaspi's liability

Accused Bardaje, Jr. and Legaspi do not deny that they signed the documents in these cases with the full knowledge of the illicit nature of the transactions. However, they claim that they were threatened by accused Tan and her associates and forced to sign the said documents in order to push through with the disbursements. The Court is inclined to give credence to the testimonies given by both accused. Their testimonies concur with the other factual circumstances relative to these cases, and pronounced consideration must be given to the fact that, despite the Court's denial of their plea to be discharged as state witnesses, they did not disavow the testimonies that they have previously made.





In this regard, while the justifying and exempting circumstances under the Revised Penal Code cannot be appreciated in their favor, the Court finds that there was no manifest partiality, evident bad faith, or gross inexcusable negligence attributable to their actions. At the very least, they have presented evidence to show that they did not intend to participate in the criminal design of the other accused but were merely forced to do so.




Accused Reales and Sison's liability

Accused Reales's defense is that he did not sign the supporting documents subject of these cases, and that he was already assigned to a different position during the subject periods. While the Court finds this explanation doubtful, since he confirmed that he signed three ALOBS as well as the Certificate of Emergency Purchase within the same period, and that his transfer to a different position is not reflected in his service record, there exists reasonable doubt as to the extent of his personal knowledge and participation in the conspiracy to commit the crimes as charged.

An examination of the documentation for SB-06-CRM-0462 to 0464 shows that accused Reales's name was misspelled, but no corrections or alterations were attempted. This is contrary to common experience. Apart from this, even supposing that he did sign off on the ALOBS and Certificate of Emergency Purchase, these acts are insufficient to show his active participation or actual knowledge of the illegality of the purchases made. He also was not personally present during the bids for the desk fans, which is corroborated by other witnesses. Lastly, accused Bardaje, Jr. likewise affirmed that most of the signatures in the documents were not accused Reales's.

The same lack of direct evidence applies to accused Sison. As with accused Reales, there is no evidence to show that he was cognizant of the illegality of the transactions. Considering also that his duties do not require him to personally confirm whether deliveries are made, there exists reasonable doubt that he signed off on the procurements despite knowledge of any wrongdoing.

Thus, for the existence of reasonable doubt that the two accused conspired with accused Tan, Montejo, and Yabut, reasonable doubt can be appreciated in their favor.





**Applicable Penalty**

Under Sec. 9 of R.A. No. 3019, the penalty imposable for Violation of Sec. 3 thereof is imprisonment of not less than six years and one month, nor more than 15 years, with perpetual disqualification from office. Thus, applying the Indeterminate Sentence Law, the penalties for each case shall be determined based on the factual circumstances attendant in each case and the sums involved.

**WHEREFORE**, in view of the foregoing, judgment is rendered as follows:



1. In SB-06-CRM-0457 accused **MILAGROSA TEE TAN, ROLANDO BOLASTIG MONTEJO, and REYNALDO ANGELES YABUT** are hereby found **GUILTY** beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day as minimum and ten (10) years as maximum, with perpetual disqualification from holding public office.

Accused **ROMEO CHAN REALES, MAXIMO DACUNDAY SISON, JR., AURELIO AQUINO BARDAJE, JR., and NUMERIANO CUNA LEGASPI** are hereby **ACQUITTED** for failure of the prosecution to prove their culpability beyond reasonable doubt.

2. In SB-06-CRM-0458 accused **MILAGROSA TEE TAN, ROLANDO BOLASTIG MONTEJO, and REYNALDO ANGELES YABUT** are hereby found **GUILTY** beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day as minimum and fifteen (15) years as maximum, with perpetual disqualification from holding public office.

Accused **ROMEO CHAN REALES, MAXIMO DACUNDAY SISON, JR., AURELIO AQUINO BARDAJE, JR., and NUMERIANO CUNA LEGASPI** are hereby **ACQUITTED** for failure of the prosecution to prove their culpability beyond reasonable doubt.

3. In SB-06-CRM-0459 to 0464 accused **MILAGROSA TEE TAN and ROLANDO BOLASTIG MONTEJO** are hereby found **GUILTY** beyond reasonable doubt of six (6) counts of Violation of Sec.



3(c) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day as minimum and fifteen (15) years as maximum, with perpetual disqualification from holding public office for each count.

Accused **ROMEO CHAN REALES, MAXIMO DACUNDAY SISON, JR., AURELIO AQUINO BARDAJE, JR., and NUMERIANO CUNA LEGASPI** are hereby **ACQUITTED** for failure of the prosecution to prove their culpability beyond reasonable doubt.

4. The cash bond posted by accused Sison for his provisional liberty is ordered **RELEASED**, subject to the usual accounting and auditing procedures, and the Hold Departure Order issued against him is therefore **LIFTED**.


5. The surety bonds posted by accused Reales, Bardaje, Jr., and Legaspi for their provisional liberty are **CANCELLED** and the Hold Departure Orders issued against them are therefore **LIFTED**.

6. The cases against accused **DAMIANO ZERDA CONDE** had earlier been dismissed by reason of his death per *Resolution* dated 13 June 2014.

**SO ORDERED.**

  
**BAYANI H. JACINTO**  
*Associate Justice*

**WE CONCUR:**

  
**ALEX L. QUIRÓZ**  
*Associate Justice*  
*Chairperson*

  
**REYNALDO P. CRUZ**  
*Associate Justice*



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### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation with the Justices of the Court's Division.

  
ALEX L. QUIROZ  
Associate Justice  
Chairperson, Fourth Division

### CERTIFICATION

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

  
AMPARO M. CABOTAJE-TANG  
Presiding Justice