



Republic of the Philippines
SANDIGANBAYAN
Quezon City

**PEOPLE OF THE
PHILIPPINES,**
Plaintiff,

CRIM. CASE NO. SB-08-CRM-0260
For: Violation of Sec. 3(e) of R.A. 3019

-versus-

JESUS O. TYPOCO, JR.,
Accused.

CRIM. CASE NO. SB-08-CRM-0261
For: Violation of Art. 315, Sec. 2a of the
Revised Penal Code

Present:

Herrera, Jr., J. Chairperson
Musngi, J. &
Pahimna, J.

Promulgated:

November 23, 2018

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DECISION

PAHIMNA, J.:

Accused is charged before this Court with ***Violation of Sec. 3(e) of R.A. 3019 otherwise known as Anti-Graft and Corrupt Practices Act and Violation of Art. 315 No. 2(a) of the Revised Penal Code as amended*** under two separate *Informations*¹ both dated March 28, 2007, filed by Assistant Special Prosecutor III Bienvenida A. Gruta of the Office of the Special Prosecutor, which bears the approval of then Ombudsman Ma. Mercedes Navarro Gutierrez. The accusatory portion of which reads:

¹ Records, Vol. I, pp. 1-3

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SB-08-CRM-0260
For: Violation of Sec. 3(e) of R.A. 3019

“That during the period December 1, 2001 to June 6, 2002, or sometime prior or subsequent thereto in Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, accused Jesus O. Typoco, Jr., a high ranking public officer, being then the Governor of the Province of Camarines Norte, and as such is responsible for ensuring that all Purchase Orders he issues and approves have corresponding appropriations, and that procurements made under said purchase orders will be properly paid to the concerned supplier, while in the performance of his official administrative function as such, and committing the offense in relation to office, acting with evident bad faith and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to Ildefonso Macaraig, owner and proprietor of Crown IBM Trading in Batangas City, by issuing and approving a Purchase Order in favor of said Ildefonso Macaraig for the supply and delivery of the following items/goods:

7,219 pieces school armchairs made of steel and wood

180 sets of plant cultivation implements and fertilizer application

100 sets of garden site and soil preparation

*All in the amount of **FOURTEEN MILLION NINE HUNDRED NINETY NINE THOUSAND AND NINE HUNDRED EIGHTY PESOS (14,999,980.00)** knowing fully well that there was NO corresponding appropriation for the payment of the aforesaid items mentioned in the Purchase Order and thereafter instructing the provincial government employees and using government vehicles to cause the pick up from the factory of Macaraig and the completion of delivery of the school chairs and garden implements to the provincial capitol compound in Daet, Camarines Norte and falsely promising/reassuring Ildefonso Macaraig that as Governor, he would pay for the purchases upon completion of delivery, but despite full delivery of all items in his Purchase Order, and despite repeated demands for payment, accused refused and still fails to pay Ildefonso Macaraig the purchase amount, to the damage and prejudice of supplier Ildefonso Macaraig in the aforementioned amount of **FOURTEEN MILLION NINE HUNDRED NINETY NINE THOUSAND AND NINE HUNDRED EIGHTY PESOS (14,999,980.00)***

CONTRARY TO LAW.”



SB-08-CRM-0261
Violation of Art. 315 No. 2 (a) of the RPC as amended

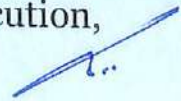
“That during the period December 1, 2001 to June 6, 2002, or sometime prior or subsequent thereto in Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, accused Jesus O. Typoco, Jr., a high ranking public officer, being then the Governor of the Province of Camarines Norte, taking advantage of his official position as such committing the offense in relation to office, with intent to defraud and employing deceit, did then and there willfully, unlawfully and feloniously pretend to possess authority and financial ability to procure for the provincial government of Camarines Norte 7,219 pieces school armchairs made of steel and wood, 180 sets of plant cultivation implements and fertilizer application sets, 100 pieces of garden site and soil preparation implements, all in the total amount of **FOURTEEN MILLION NINE HUNDRED NINETY NINE THOUSAND AND NINE HUNDRED EIGHTY PESOS (14,999,980.00)** from Ildefonso Macaraig, owner and proprietor of CROWN IBM Trading in Batangas City, and issue the corresponding Purchase Order for the supply and delivery of the aforesaid goods/items, knowing fully well there was no corresponding appropriation for their payment from the provincial government of Camarines Norte; instruct the provincial government employees to use government vehicles and cause the pick up from the factory of Macaraig and the completion of the school chairs and garden implements to the provincial capitol compound in Daet, Camarines Norte; falsely promise/reassure Ildefonso Macaraig that as Governor he would pay for the total amount of purchases upon completion of the delivery, and relying on said false pretense and promises of the accused, Mr. Ildefonso Macaraig parted with his goods/items subject of the Purchase Order but despite full delivery of all items in his Purchase Order, and despite repeated demands for payment, accused refuses and fails and still fails to pay Ildefonso Macaraig the purchase amount, to the damage and prejudice of supplier Ildefonso Macaraig in the aforesaid sum of **FOURTEEN MILLION NINE HUNDRED NINETY-NINE THOUSAND AND NINE HUNDRED EIGHTY PESOS (14,999,980.00)**.

CONTRARY TO LAW.”

ANTECEDENT FACTS

After accused posted bail², he filed a **Motion for Reinvestigation** alleging therein that he was charged with the offense without the benefit of preliminary investigation and with the Comment filed by the Prosecution,

² Per Certification issued on April 15, 2008, p.108



the same was granted per **Resolution**³ of the Court and the Office of the Special Prosecutor was ordered to conduct a reinvestigation and to submit its report within an unextendible period of sixty (60) days from receipt.

Thereafter, a **Resolution**⁴ was issued by the Office of the Ombudsman on the reinvestigation conducted and recommended that the Information charging accused of violation of Section 3(e) of R.A. 3019 (SB-08-CRM-0260) and the information charging him of violation of Art. 315 of the Revised Penal Code (SB-08-CRM-0261) be maintained.

On March 22, 2012, accused filed a **Motion to Quash**⁵ the Information in Criminal Case No. SB-08-CRM-0260 for violation of Section 3(e) of R.A. 3019 on the ground that the facts charged do not constitute an offense and that it contains averments which if true, would constitute a legal excuse or justification. This **Motion** was denied per **Resolution**⁶ stating that the facts alleged in the Information charge an offense and the elements of Estafa under Art. 315 of the Revised Penal Code have been sufficiently alleged and that the words of the Information substantiate such view.

Accused filed a **Motion for Reconsideration**⁷. However, when the case was called for hearing on September 20, 2012, accused through counsel manifested that he is withdrawing the said **Motion** and he would be ready for his arraignment. Thus, when the two Informations were read to him in English which he fully understood, he pleaded not guilty to the offenses charged.⁸ Consequently, his **Motion to Defer Arraignment** was deemed moot and academic.⁹

Pending submission of the Joint Stipulation of Facts, the Prosecution presented on April 23, 2013, its first witness, private complainant Ildefonso Baes Macaraig. However, due to the failure of defense counsel to appear despite due notice, the Court granted the Prosecution's **Motion** that accused be deemed to have waived his right to cross-examine Mr. Macaraig.¹⁰

³ Records, p. 146

⁴ *Ibid*, p. 169

⁵ *Ibid*, p. 193

⁶ *Ibid*, p. 227

⁷ *Ibid*, p. 254

⁸ *Ibid*, p. 279

⁹ Per Order dated October 12, 2012, records, p. 285

¹⁰ Per Order dated June 19, 2013, records, p. 367

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On April 29, 2013, Prosecution filed an *Ex-Parte Motion for Issuance of Writ of Preliminary Attachment*¹¹ which the Court granted on September 3, 2013.¹² Thus, a *Writ of Preliminary Attachment* was issued.¹³



On December 5, 2013, a *Motion for Forfeiture of Bail Bond, Issuance of Warrant of Arrest, To Declare Trial in Absentia, and to Appoint Counsel de Officio*¹⁴ was filed by the Prosecution which was denied by the Court per *Resolution*¹⁵ dated March 12, 2014. Meanwhile, accused, through counsel filed a *Motion to Lift Writ of Attachment*¹⁶ which the Court, in its *Resolution*¹⁷ granted and ordered to recall the *Writ of Preliminary Attachment* dated December 9, 2013 without prejudice to the issuance of another upon filing of the required applicant's bond.

EVIDENCE FOR THE PROSECUTION

To prove the charges against the accused, Prosecution presented the private complainant, **ILDEFONSO B. MACARAIG**, 68 years old, married, a businessman and a resident of Paharang West, Batangas City.

He identified the following documents, to wit: his Affidavit-Complaint as Exhibit "A", his original Supplemental-Complaint as Exhibit "B", the updated Purchase Request as Exhibit "C", the Travel Order dated April 12, 2012 issued to Driver Nazareno Daquiado and mechanic Alberto Valles as Exhibit "D", the Memorandum dated June 5, 2012 as Exhibit "F", the Certificate of Appearance issued by Ildefonso Macaraig as Exhibit "G", the various delivery receipts as Exhibits "H" to "H-26", the pictures of the pick-up truck used as Exhibit "I", the pictures of the armchairs with the words Atoy Typoco as Exhibit "J", the letter-request for payment dated July 8, 2012 as Exhibit "K", the Sales Invoice as Exhibit "L", the original brochure of garden site and soil set as Exhibit "M", the letter-request of Corazon Palisoc addressed to President Gloria Macapagal Arroyo as Exhibit

¹¹ Records, p. 341
¹² Records, p. 388
¹³ Records, p. 429, Vol. II
¹⁴ Records, p. 417
¹⁵ Records, p. 467, Vol. II
¹⁶ Records, p. 434
¹⁷ Records, p. 493, Vol. II



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“N”, the Indorsement from PACC signed by Bobby Dumlao as Exhibit “O”, the letter of accused dated March 7, 2003 to Dumlao as Exhibit “P”, the letter-request of private complainant dated May 7, 2013 to Atty. Galvez as Exhibit “Q”, the Minutes of Meeting Conference in RAC-C -03-0881 dated July 16, 2013 as Exhibit “R” and the service record of the accused as Exhibit “S”.

During the continuation of presentation of prosecution evidence on March 24, 2014, the **Joint Stipulation of Facts**¹⁸ was filed and **VENER MACALALAD** was presented and whose testimony was the subject of stipulation by the parties in this wise: (1) that the witness has no knowledge of the actual transaction that transpired between the private complainant and the accused (2) that the delivery receipts marked as Exhibits “H” to “H-26” were admitted to be authentic by the defense including the correctness of the details contained therein; (3) that the individual amounts of the items delivered to the accused by the private complainant were in the exact amounts of P5,197,680.00 for 7,219 pcs of armchairs, P7,017,300.00 for 180 sets of plant cultivation and fertilizers and P2,785,000.00 for 100 sets of garden site and soil preparations for a total amount of P14,999,980.00.

On June 24, 2014, Prosecution presented **NAZARENO DEQUIADO, SALVADOR PRESBITERO AND ARNULFO BALANE**, whose testimonies were the subject of stipulations with the defense counsel. Defense counsel, Atty. Roy Allan T. Arellano counter-stipulated that witness Dequiado has no personal knowledge about the agreement between Ildefonso Macaraig and Governor Typoco and admitted that Dequiado is an employee of the government of the Province of Camarines Norte; that he received a Travel Order dated April 12, 2002 from accused to proceed to Batangas City and pick up armchairs from Crown IBM Trading and bring them to the provincial capitol of Camarines Norte; that he is the driver of a dump truck with plate no. DTI 09 used to pick up the school armchairs; that he received a Certificate of Appearance dated April 14, 2002 from Ildefonso Macaraig and submitted the same to the Provincial Accountant and in effect corroborating the testimony of two witnesses, the first one being Ildefonso Macaraig and the second being Vener Perez. Atty. Arellano likewise counter-stipulated that witness Presbitero has no personal knowledge as to the actual transaction between

¹⁸ Records, p. 474, Vol. II



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the private complainant and the accused had admitted that Presbitero is an employee of the government of the Province of Camarines Norte; that he accepted on several dates the delivery of school armchairs from Crown IBM Trading; that his signature appears in the Delivery Receipts marked as Exhibits H-7, H-8, H-9, H-12, H-13, H-15, H-17, H-18, H-20, H-21, H-22 and H-26; that the school armchairs were actually requested by principals of different schools in Camarines Norte and they were donated to the schools, thus corroborating the testimonies of witnesses Ildefonso Macaraig and Vener Perez. It was likewise stipulated that in 2002, witness Arnulfo Balane was a Division Supervisor of DepEd Camarines Norte, that as such, it was his duty to visit the schools in the different districts of the province and that he saw with his own eyes the school armchairs with the name Governor "Atoy" Typoco in white capital letters at the backside of the school armchairs, which in effect corroborating the testimonies of witnesses Ildefonso Macaraig, Vener Perez and Salvador Presbitero.

DOCUMENTARY EVIDENCE

On September 4, 2014, Prosecution filed its Formal Offer of Exhibits and the Court admitted the following documentary Evidence inclusive of its sub-markings, to wit:¹⁹

EXHIBITS	DESCRIPTION
A	Affidavit-Complaint of Private Complainant Ildefonso B. Macaraig
A-1	Signature of Ildefonso B. Macaraig
A-2	Letter of Atty. Victorio U. Tabanguil dated July 11, 2003, addressed to Ombudsman Simeon V. Marcelo submitting the Supplemental Affidavit-Complaint of Macaraig
B	Original Supplemental-Complaint of Macaraig, dated July 11, 2003
C	Certified True Copy of Purchase Request
C-1	Certified True Copy of Purchase Order
C-1-a	Signature of Jesus O. Typoco, Jr., Local Chief
D	Certified True Copy of Travel Order dated April 12, 2002
E	Certified True Copy of Certificate of Appearance dated April 14, 2002
F	Certified True Copy of Memorandum dated June 5, 2002
G	Certified True Copy of Certificate of Appearance dated June 6, 2002
H to H26	Duplicate Original Delivery Receipts
I to I-2	Original Pictures of three Pick Up Trucks
J to J4	Original Pictures of school armchairs with words "Gov. Atoy Typoco" at

¹⁹ Records, Vol II, p. 591

	the back of armchair
K	Certified True Copy of the Letter-Request for payment dated July 8, 2002 of Mr. Ildefonso Macaraig and addressed to Gov. Jesus O. Typoco, Jr.
L	Certified True Copy of the Sales Invoice issued by Mr. Ildefonso Macaraig
M	Original Brochure showing pictures of Garden Site Soil Perforation Sets
M-1	Page 2 of the Brochure showing plant cultivation, Protection and Application Fertilizer Set
N	Certified True Copy of the Letter-Request of Corazon Palisoc dated February 13, 2003 addressed to President Gloria Macapagal-Arroyo
O	Certified True Copy of the 1 st Indorsement from the Presidential Action Center of the Office of the President, Malacañang, Manila and signed by Mr. Bobby V. Dumlao, Director IV
P	Original Letter of accused Governor Typoco, Jr. dated March 7, 2003, addressed to Director Bobby V. Dumlao, Presidential Action Center, Malacañang, Manila
Q	Original Letter Request of Macaraig dated May 7, 2003, addressed to Atty. Marlyn Torres Galvez of the Public Assistance Bureau, Office of the Ombudsman
R	Copy of Minutes of Meeting relative to conference in RAS-C-03-0881, dated July 16, 2003 held in Public Assistance Bureau, Office of the Ombudsman
S to S12	Original Service Records of Provincial Government employees involved in the deliveries, acceptance and distribution of school armchairs and garden tool subject of these cases namely: Myla A. Avellana, Efren O. Bajaro, Wilson O. Desbarro, Romeo A. Cabarle, Nazareno P. Daquiado, Jose Fernando Ceneta, Edwin M. Pacala, Salvador T. Presbitero, Jose Rene Gacho Ruidera, Ferdinand Santos, Antonio O. Pelleja, Jose M. Solares and Nestor P. Manarang

EVIDENCE FOR THE DEFENSE

For the defense, accused **JESUS TYPOCO, JR.** presented himself on July 15, 2015, as its witness and whose direct testimony was concluded.²⁰ Accused then submitted and identified the following documents as his evidence, to wit: the Purchase Request as Exhibit “1”, the Purchase Order as Exhibit “2”, the Counter-Affidavit as Exhibit “3”, the Supplemental Counter-Affidavit as Exhibit “4”, the Resolution dated January 3, 2007 as Exhibit “5” and the letter dated March 7, 2003 as

²⁰ Records, Vol II, p. 657

[Handwritten signatures and initials]

Exhibit "6". His cross-examination was finally concluded on January 27, 2016.²¹

On February 9, 2017²² defense presented Retired Governor **RAUL RODRIGUEZ LEE**. He testified that during the period between December 2001 to June 2002, he was then the incumbent Governor in the Province of Sorsogon; that he became the Governor in the said province since 1979 until the last election of 2016; that he knows the accused, being a co-Governor from Bicol; that he remembered that sometime in 2001, all of the six Governors of Bicol had a meeting with a certain Helen right before the Governor's League at Linden Suite where accused also occupied one room and they were told by the accused to meet each other in his room; that prior to the said meeting, he had a call regarding a proposal by Helen's Company to supply every governor, all six (6) of them, with educational and agricultural supplies and were told by Helen that she could follow up the funding of these supposed supplies from the Department of Budget and Management and that all they have to do is to receive the farm implements and the educational arm chairs that will be given to them; that they acceded to the request of Helen as they see nothing illegal nor anomalous in her proposal as they just have to receive the items once they are delivered; that after hearing the proposal, all of them were delighted. But he later found out that it was only Governor Typoco who received goods from Helen's company.

On cross-examination, he testified that he never knew Helen prior to the meeting held at Linden Suite and it was only at the said meeting that he met Helen. He likewise narrated that Helen told them that she is going to follow it up with the Department of Budget and Management; that he was not able to personally talk to Mr. Macaraig as the latter had already left when he arrived at the Linden Suite for the supposed meeting.

On May 8, 2017, accused filed his Formal Offer of Evidence²³ and the Court admitted exhibits "1" to "6" inclusive of its submarkings.²⁴

²¹ Records, Vol. II, p.687

²² Records, Vol. II, p.743

²³ Records, Vol. II, p. 759

²⁴ Records, Vol. II p. 799



DOCUMENTARY EVIDENCE

EXHIBITS	DESCRIPTION
1	Purchase Request
2	Purchase Order
3	Counter Affidavit of Accused
3A	Signature of Accused
4	Supplemental Counter-Affidavit
4A	Signature of Accused
5	Resolution dated January 30, 2007
6	Letter dated March 7, 2003*

*previously marked as Exh. 5

ISSUES

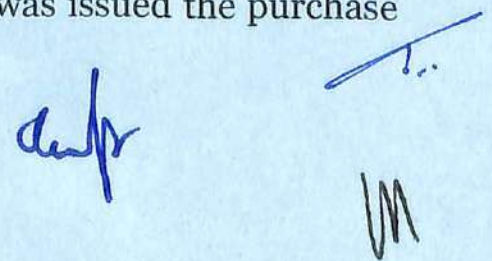
The issue in the instant case can be summed up to this: (1) Whether or not accused is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019 and (2) whether or not he can be held liable for *Estafa* under Art. 315, No. 2a of the Revised Penal Code.

THE FACTS

Culled from the evidence adduced by the Prosecution, both testimonial and documentary, *vis-à-vis* the admissions and stipulations made in the course of the trial in the instant case, the following facts have been duly established:

Accused was then the Governor of the Province of Camarines Norte while private complainant is a businessman who entered into a transaction for the purchase and delivery of school equipment like armchairs and garden tools. According to the private complainant, he was approached by one Helen Enriquez, a representative allegedly of accused Jesus Typoco, Jr., for the procurement of armchairs and garden tools intended for the schools under the jurisdiction of Governor Typoco., Jr.²⁵ Private Complainant was later introduced to accused by Helen Enriquez at Meralco Avenue in Pasig City where said Governor mentioned the proposal for the purchase of the aforementioned items and that he was issued the purchase

²⁵ TSN, April 23, 2013, p. 13



order²⁶ and purchase request²⁷ for the said items which accused personally signed right then and there at the hotel.

After the signed documents were given to private complainant, the latter asked for a downpayment but the accused claimed that there is no need for such downpayment as he is the Governor and requested that he deliver the items and the accused will pay him.²⁸

In order to defray the cost for the purchased items, private complainant sold his three (3) door apartment, had his land mortgaged and sold his vehicles.²⁹ After which, private complainant started with the delivery of these items as evidenced by the several delivery receipts³⁰ and some items were picked up from his place by employees of the Provincial Government of Camarines Norte duly issued with Travel Order³¹ and for which reason, he issued a Certificate of Appearance³².

To prove that private complainant actually sold the armchairs and garden tool sets to the Province of Camarines Norte, he issued a sales invoice³³ in the total amount of Fourteen Million Nine Hundred Ninety-Nine Thousand Nine Hundred Eighty (P14,999,980.00) Pesos and reflecting therein the items as follows:

7,219 pieces school armchairs made of steel
and wood
180 sets of plant cultivation implements and
fertilizer application
100 sets of garden site and soil preparation

Further, the armchairs delivered by private complainant to the different public schools bore the painted words "Gov. Atoy Typoco" at the back of these chairs as it was the instruction of the accused.³⁴

²⁶ Exh. C

²⁷ Exh. C-1

²⁸ TSN, April 23, 2013, p. 18

²⁹ Ibid.

³⁰ Exh. H to H26

³¹ Exh. E

³² Exh. F

³³ Exh. L

³⁴ TSN, April 23, 2013, p. 39

Handwritten signatures and initials:
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A blue signature is written below the footnotes.
A blue initial 'M' is written to the right of the signature below the footnotes.

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After deliveries of these garden set, armchairs and fertilizers, private complainant went to the office of the accused sometime in June 2002 to ask for payment through a letter-request which was personally received by the said office on July 11, 2002³⁵.

That after visiting and talking to the accused who reassured that he would be paid, still, no such payment was ever made by him prompting private complainant through his representative Corazon Palisoc to seek help by sending a letter to President Gloria Macapagal-Arroyo³⁶.

Thereafter, the Office of the President wrote a letter³⁷ to accused where the latter responded³⁸ but even after such response, private complainant has yet to receive the promised payment from herein accused.

Due to continuous non-payment of his debt to private complainant, the business of the latter weakened because of loss in his capital and now lives in a small hut after selling his three-door apartment.

Accused for his part, admitted having met the private complainant in a Governor's League Conference and during said meeting, he and with five other Governors in Bicol Block was introduced with the subject items and when he stated that they do not have the budget allocation for the said items, private complainant allegedly told him that he just has to receive the items and private complainant will take care of it.³⁹

Accused likewise alleged that the Purchase Order and Purchase Request offered in evidence by the private complainant are not the same documents from the Province of Camarines Norte as they do not have numbers and do not bear a seal or logo. He also denies the signature in the said purchase order and request as his considering that they are blurred and does not have the provincial logo. He insisted that it was private complainant who approached him and five other governors of Bicol for the purchase of the subject items and despite knowing that there is no fund allocation for it, complainant assured accused that he need not worry about it and that he just needs to receive the said items.⁴⁰

³⁵ Exh. K

³⁶ Exh. N, TSN, April 23, 2013, p. 42

³⁷ Exh. O

³⁸ Exh. P

³⁹ TSN, July 15, 2015, p. 9

⁴⁰ TSN, July 16, 2015, p. 6



COURT'S RULING

The requirements of the law on government procurements should never be taken for granted because grave consequences await those who violate them.⁴¹

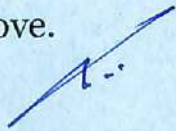
Fittingly, acquisition of supplies by local government units by competitive bidding is explicitly provided by Republic Act No. 7160⁴². It is also provided that the term supplies as used by the law includes everything, except real property which may be needed in the transaction of public business or in the pursuit of any undertaking, project or activity, whether in the nature of equipment, furniture, stationary materials for construction or personal property of any sort, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related services.⁴³

By way of exception, no bidding is required in the following instances:⁴⁴

- (1) Personal canvass of responsible merchants;
- (2) Emergency purchase;
- (3) Negotiated purchase;
- (4) Direct purchase from manufacturers or exclusive distributors and
- (5) Purchase from other government entities.

In the instant case, the purchases made by the accused did not go through the prescribed competitive bidding as he issued the Purchase Order and Purchase Request directly in favor of private complainant.

Now the question we have to ask is whether or not these purchases subject of the instant case is within the purview of the fourth exception as provided above.





⁴¹ Sison vs. People, G.R. No. 170339, 170398-403, March 9, 2010

⁴² Section 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

⁴³ Sec. 357 (c), id.

⁴⁴ Sec. 366 id.

Accordingly, procurement may be made directly from duly licensed manufacturers in cases of supplies of Philippine manufacture or origin and in case there are two (2) or more manufacturers of the required supplies, canvass of the known manufacturers shall be conducted to obtain the lowest price for the quality of the said supplies.⁴⁵

Procurement may, in the case of supplies of foreign origin, preferably be made directly from the exclusive or reputable Philippine distributors or agents, subject to the following conditions:

- (a) That the Philippine distributor has no sub dealers selling at lower prices; and
- (b) That no suitable substitutes or substantially the same quality are available at lower prices.⁴⁶

However, from the records of the instant case, it was never established that private complainant was considered a duly licensed manufacturer or that he was an exclusive distributor of the items purchased by accused.

Considering that no competitive bidding was made in the procurement of the subject items and that the same does not even fall within the exceptions provided by law, accused was therefore charged with violation of Sec. 3(e) of R.A. 3019.

Section 3(e) of RA 3019 provides:

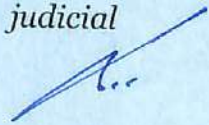
Section 3. Corrupt practices of public officers—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

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

⁴⁵ Sec. 370, R.A. 7160

⁴⁶ Sec. 371, R.A. 7160



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functions through manifest partiality, evident bad faith or gross inexcusable negligence. xxx.

To be found guilty under said provision, the following elements must concur:

- (1) the offender is a public officer;*
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;*
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and*
- (4) the public officer caused any undue injury to any party, including the Government, or gave any private party any unwarranted benefits, advantage or preference.⁴⁷*

Accused was charged with the above-cited provision by causing undue injury to Macaraig committed with evident bad faith and/or inexcusable negligence due to his responsibility in ensuring that all Purchase Orders issued and approved by him have corresponding appropriations and that procurements made under such orders will be properly paid to the concerned suppliers while in the performance of his official functions as Governor of the Province of Camarines Norte.

The first two elements are undisputed. Being a provincial governor, accused was a public officer discharging official functions when he misused such position to be able to procure from Macaraig, who was misled into the belief that accused, being the Chief Executive of the Province of Camarines Norte can purchase the garden tool sets and armchairs which he distributed to his constituents.

Accused posits that the Purchase Order and Purchase Request from which the subject transaction arose, is irregular as the same does not bear the provincial logo and that he does not think it was his signature on top of his typewritten name for being blurred and a mere photocopy as stated in his testimony⁴⁸ taken on July 16, 2015, to wit:

⁴⁷ Bautista v. Sandiganbayan, G.R. No. 136082, 12 May 2000
⁴⁸ TSN July 16, 2015, pp. 3-4

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Q: Yesterday, Mr. Witness, you made mention of a Purchase Request or Purchase Order. And you also said that the Purchase Order or Purchase Request does not bear or they do not bear the official seal of the Provincial Government of Camarines Norte and that they not bear serial numbers. With those observations over the Purchase Request/Purchase Order, what else can you say about the Purchase Request and the Purchase Order?

A: They are irregular.

Q: I am showing to you a copy of the Purchase Request bearing the marking Exhibit "C" provisionally marked, attached to the Formal Offer of Evidence of the prosecution. There appears to be a signature on top of the printed name Jesus O. Typoco, Jr. Is that your signature?

A: I said this is irregular because it does not have a provincial logo.

Q: There appears a signature over printed name Jesus O. Typoco, Jr. Is this your signature?

A: I don't think so. It is blurred and Xerox copy. I want to see the original because this does not have the provincial logo and no serial numbers. (emphasis supplied)

However, in his letter-reply to Dir. Bobby. V. Dumlao, CESO III of the Presidential Action Center, Malacañang, dated March 7, 2003, accused wrote:

xxxx

Actually, said transaction was initiated by Ildefonso B. Macaraig, the proprietor of Crown IBM Trading and a certain Helen Enriquez right after I assumed as newly elected Governor, who represented to work for the sourcing, allocation, approval and release of the amount needed therefor. What they ask me was just to issue a purchase request and order which they themselves provided. Being then new in the service, I was enticed to issue the required documents, in my ardent desire to bring in such tools and equipments for my constituents. It may be observed they were not even processed. (emphasis supplied)

xxxx

Clearly, accused admits having issued and signed the subject documents which he later refuted in his above-cited testimony.



Further, accused alleged that he sent a letter dated January 7, 2002 to private complainant stating therein that no funds have been allocated yet for the payment of the subject goods and instructed to withhold any delivery. Yet, he issued a Travel Order to his employees to pick up the said items from the factory of private complainant.

The third element of Section 3 (e) of RA 3019 may be committed in three ways, i.e., through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.⁴⁹

As explained, "partiality," "bad faith" and "gross negligence" mean:

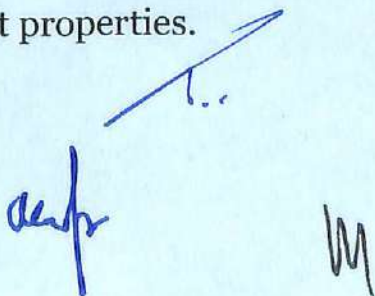
"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach 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 willfully 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."⁵⁰

Accused was grossly negligent in the issuance of the Purchase Order and Purchase Request from which stemmed the delivery by private complainant of the garden tool sets and the armchairs that even bear his name therein without going through proper procurement process as provided by law.

His admission of issuing the subject Purchase Request and Purchase Order because he was merely 'enticed' to do so only proved his utter disregard for the consequences of his actions. His defense of being new in the service could not be accepted as an excuse for his non-compliance to the process requirement of procurement of government properties.

⁴⁹ Fonacier v. Sandiganbayan, G.R. No. 50691, 5 December 1994

⁵⁰ ibid

Handwritten signatures and initials in blue ink at the bottom right of the page. There are three distinct marks: a signature that appears to be 'L.', another signature that appears to be 'depr', and a third mark that appears to be 'M'.

As reiterated in **Sison vs. People**⁵¹ “the Supreme Court ruled that no matter how strict they may have been, *dura lex sed lex*. The law is difficult but it is the law. These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements.

As for the fourth element, the same is likewise present. Private complainant suffered actual loss of capital by the continuous non-payment of the accused for the cost of the items he caused to be delivered to his constituents. Private complainant had to sell his personal belongings as he was banking on the prompt payment he will receive from the Provincial Government of Camarines Norte through the accused being its Provincial Governor. Likewise, because accused failed to procure the said items within the means provided by law and sans public bidding, accused, in effect has given unjustified favor or benefit to a sole supplier, in this case, the private complainant, in the exercise of his official, administrative or judicial functions. The fact that he failed to comply the requirements of RA 7160 on government acquisition of supplies proves that unwarranted benefit, advantage or preference was given to private complainant who was just too unlucky to have failed in securing payment for the items the accused have caused to be delivered. Private Complainant was awarded the Purchase Order without the benefit of a fair system in determining the best possible price for the government. The private complainant was able to secure the transactions without even showing proof that his prices were the most beneficial to the government. For this reason alone, accused must now suffer the consequences of his actions.

Anent the charge of Violation of Art. 315 No. (2a), the law explicitly provides that in the prosecution for Estafa under the said provision, it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or at least simultaneously with the commission of the fraud, it being essential that

⁵¹ G.R. No. 170339, 170398-403, March 9, 2010



x-----x

such false statement or representation constitutes the very cause or the only motive which induced the offended party to part with his goods.

Paragraph 2(a), Art. 315 of the Revised Penal Code provides:

Art. 315. Swindling (estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

x x x x


The elements of estafa by means of deceit, whether committed by false pretenses or concealment, are the following: (a) there must be a false pretense, fraudulent act or fraudulent means; (b) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (c) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (d) as a result thereof, the offended party suffered damage.⁵²

In the instant case, the elements of estafa by means of deceit as enunciated above have not been satisfactorily met. The prosecution failed to establish the willful intent to defraud on the part of the accused.

In other words, to sustain a charge and subsequent conviction for estafa under the aforecited provision, accused must be alleged to have actually made fraudulent representations which, in turn, caused private complainant to part with his goods.

The fraud must be alleged to have been personally committed by accused Typoco prior to or simultaneously with the delivery of the subject

⁵² R.R. Paredes v. Calilung, 546 Phil. 198, 223 (2007)



goods. If there be no such prior or simultaneous false statement or fraudulent representation, any subsequent act of the accused, however fraudulent or suspicious it may appear, cannot serve as basis for prosecution for that class of estafa.

To establish the alleged deceit on the part of accused Typoco, the prosecution presented the original letter dated March 7, 2003 of accused to then President Action Center Director Bobby V. Dumlao⁵³. This letter was offered to prove, among others, that the accused "employed deceit when he promised Macaraig many times that he would pay for the supplies after all the deliveries were completed x x x."⁵⁴ However, such documentary evidence merely established the gross inexcusable negligence of accused Typoco for relying on a private individual to secure the funding for the procurement made by the Provincial Government.

Accordingly, prosecution failed to ascertain by clear and positive evidence that accused Typoco as Governor of Camarines Norte, misrepresented himself that he has the financial capacity to pay for the subject goods. At most, the prosecution merely established that he was the Governor of Camarines Norte and that he will pay upon complete delivery of the items. Clearly, such representation of the accused is neither false nor fraudulent. As the Governor of Camarines Norte, he is authorized to make procurement on behalf of the province, subject to compliance with the requirements of pertinent laws, rules and regulations.

THE PENALTY

On the penalty imposed, RA 3019 lays down the penalty for a violation committed under its Secs. 3, 4, 5, and 6. To recapitulate:

Section 9. Penalties for violations. (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

⁵³ Exhibit P

⁵⁴ Formal Offer of Evidence filed by plaintiff on September 4, 2014.



Applying Sec. 1 of the Indeterminate Sentence Law which provides that in offenses punishable by a law, other than the Revised Penal Code, the maximum term of the penalty should "not exceed the maximum fixed by said law and the minimum (should) not be less than the minimum term prescribed by the same."

WHEREFORE, judgment is hereby rendered as follows:


(1) In Criminal Case No. SB-08-CRM-0260, accused is found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of the Republic Act No. 3019, and is hereby **SENTENCED** to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum to eight (8) years, as maximum; and, perpetual disqualification from holding public office.

(2) In Criminal Case No. SB-08-CRM-0261 accused is **ACQUITTED** for insufficiency of evidence for Estafa under Article 315 No. (2a) of the Revised Penal Code.

SO ORDERED.

LORIFEL L. PAHIMNA
Associate Justice

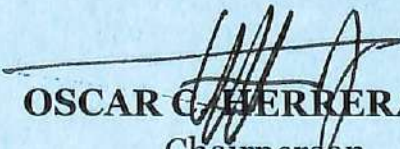
We concur:


OSCAR G. HERRERA, JR.
Chairperson
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice

ATTESTATION

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


OSCAR G. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

