



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

**CRIM. CASES NOS.
SB-08-CRM-0379 TO
0380**

*For Violation of Sec 3 (e) RA No. 3019,
as amended and Estafa
thru Falsification of Official/Public/
Commercial Documents*

**ANTONIO P. BELICENA,
ULDARICO P. ANDUTAN, JR.,
RAUL C. DE VERA,
ROSANNA P. DIALA and
JOSEPH A. CABOTAJE,**
Accused.

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Present:

CABOTAJE-TANG, A.M.,
P.J./ Chairperson
FERNANDEZ, B. R., J. and
FERNANDEZ, S.J.T*, J.

Promulgated:

OCTOBER 4, 2019 

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DECISION

FERNANDEZ B. R., J.

Before this Court stand charged, in an Amended Information, accused Antonio P. Belicena, Uldarico P. Andutan, Jr., Raul C. de Vera, Rosanna P. Diala and Joseph Cabotaje, for violation of Section 3(e) of Republic Act No.

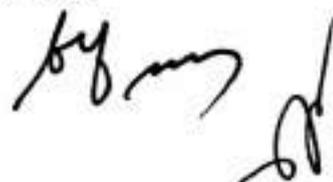


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3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, the accusatory portion of which reads - -

Crim. Case No. SB-08-CRM-0379

That on or about March 11, 1998 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO BELICENA y DE LA PENA, ULDARICO ANDUTAN y PONSARAN, JR., RAUL DE VERA y CLAUREN and ROSANNA P. DIALA, all public officers being then the Undersecretary, Deputy Executive Director, Officer-In-Charge of the Net Local Content/Net Value and Domestic Capital Division and Senior Tax Specialist, respectively of the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (Center, for brevity), while in the performance of their local official duties and taking advantage of their public office, conspiring and confederating and mutually aiding each other with accused JOSEPH CABOTAJE, representative of JAM TRANSIT INCORPORATED (JAM TRANSIT, for brevity), an operator of public utility buses, through evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to JAM TRANSIT for tax incentive from the government, by causing the approval, processing of the application for tax credit certificate purportedly for its eight (8) buses which did not exist and despite the falsified public and comment documents submitted by JAM TRANSIT in support of its application, which approval and processing then later caused the government through the Center to issue and deliver, as in fact the Center issued and delivered Tax Credit Certificate (TCC) No. 9461 in the amount of SIX MILLION SIXTY FOUR THOUSAND SIX HUNDRED SIXTY NINE PESOS (Php 6,064,669.00) in favor of JAM TRANSIT, and once in possession of said tax credit certificate JAM TRANSIT willfully, unlawfully assigned this to ISUZU for consideration, in the



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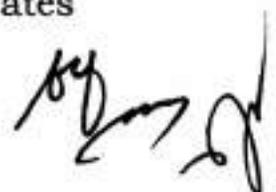
amount of SIX MILLION SIXTY FOUR THOUSAND SIX HUNDRED SIXTY NINE PESOS (Php, 6,064,669.00) to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW.

The same accused also stand charged, in an Amended Information, for estafa through falsification of official/public/commercial documents allegedly committed, as follows - -

Crim. Case No. SB-08-CRM-0380

That on or about March 11, 1998 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO P. BELICENA y DELA PEÑA, ULDARICO P. ANDUTAN y PONSARAN, JR. RAUL C. DE VERA y CLAUREN, ROSANNA P. DIALA, all of public officers, being then the Undersecretary, Deputy Executive Director, Officer-In-Charge of the Net Local Content/Net Value and Domestic Capital Equipment and Senior Tax Specialist, respectively of the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (Center, for brevity), committing the offense in relation to their official duties and taking advantage of their public office, conspiring and confederating and mutually aiding each other and with accused JOSEPH CABOTAJE, representative of JAM Transit Incorporated (JAM TRANSIT for brevity, an operator of public utility buses, did there and then willfully, unlawfully and feloniously defraud the government as follows: the said accused under false and fraudulent representation and by means of deceit made it appear to the government that JAM TRANSIT possessed the necessary qualification and entitled to claim for tax credit incentive from the government purportedly for its eight (8) buses which did not exist, and notwithstanding the falsity of JAM TRANSIT's application for tax credit through the submission of falsified documents as follows: Pilipinas Hino Sales Invoice, Delivery Receipt and LTO Certificates



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of Registration, accused approved, processed the application for Transfer Certificate of Title knowing fully well of the fraudulent representations, falsity and deceit, which later caused the government through the Center to issue and deliver, and in fact the Center issued and delivered JAM TRANSIT, Tax Credit Certificate No. 009461 in the amount of SIX MILLION SIXTY FOUR THOUSAND SIX HUNDRED SIXTY NINE PESOS (Php 6,064,669.00); and once in possession of said tax credit certificate, willfully, unlawfully assigned this to ISUZU for consideration in the amount of SIX MILLION SIXTY FOUR THOUSAND SIXTY HUNDRED SIXTY NINE PESOS (Php 6,064,669.00) to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW.

Originally, accused Homero Mercado y Alon-alon was indicted as an accused, together with the other accused, and actually pleaded not guilty to both charges, when arraigned (Order, December 8, 2008). However, by granting the Motion of the prosecution, this Court admitted the Second Amended Informations dropping Homero Mercado as an accused (Order, January 12, 2010).

Earlier, accused Raul de Vera y Clauren and accused Rosanna Diala y Pangilinan, when arraigned, both pleaded not guilty to the charges (Order, July 30, 2009).

Pre-trial proceeded as to accused de Vera and accused Diala. The parties agreed to stipulate on the following: (1) that accused Raul de Vera y Clauren is the same Raul de Vera y Clauren, who was arraigned on July 30, 2009; (2) that accused Rosanna Diala y Panganiban is the same Rosanna Diala y Panganiban, who was arraigned on July 30, 2009; and, (3) that both accused Raul de Vera y Clauren and Rosanna Diala y Panganiban are public officers at the time material to this cases (Pre-Trial Order, November 12, 2010).

On the other hand, accused Uldarico Andutan, Jr., when arraigned, likewise, pleaded not guilty to both charges (Order, January 19, 2011).



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During the pre-trial of accused Andutan Jr., both parties agreed to stipulate on the following - - (1) that he is the same Uldarico P. Andutan, Jr., who was arraigned on January 19, 2011; (2) that he was a public officer at all times relevant to the cases, being then the Deputy Executive Director of the One Stop Shop Tax Credit and Duty Drawback Center, Department of Finance; and, (3) that the One Stop Shop is a permanent unit in the Department of Finance that facilitates the processing and release of the claims for tax credit/duty drawbacks by export oriented firms (Pre-Trial Order, June 13, 2011).

Accused Antonio Belicena, despite posting bail, was never arraigned. On the other hand, accused Joseph Cabotaje died during the course of the trial (Certificate of Death, November 6, 2009), which was merely noted by the Court (Minutes, January 28, 2014).

Trial proceeded.

The first witness for the prosecution was **Dave Segunial**, the Head Agent of the National Bureau of Investigation (NBI), tasked to lead Task Force 156 (Task Force) and to conduct an investigation concerning the Application of and the issuance of Tax Credit Certificate (TCC) No. 009461 to Jam Transit, as well as its subsequent transfer. He explained the process used in the conduct of their investigation and their eventual findings and recommendations. He also testified that Jam Transit was not entitled to a tax credit as it made false representations in order to have the subject TCC approved.

He explained that a tax credit is actually a form of incentive given to deserving businesses pursuant to certain rules under the law while a TCC is the document evidencing the amount of tax credit granted to a claimant. The TCC is processed by the One-Stop Inter-Agency Tax Credit and Duty Drawback Center (One Stop Center), through its authorized representatives. The One Stop Center is part of the revenue operations of the Department of Finance (DOF).

In conducting a tax credit investigation, witness Segunial and the Task Force first familiarized themselves with the law creating the One Stop Center and the rules governing the grant of the tax credit incentive. The Task Force then requested for the docket folder of an applicant for study and



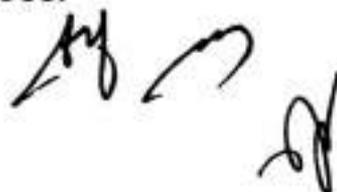
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evaluation. The Task Force also interviewed witnesses and invited the respondents involved in the transaction.

Witness Segunial further elaborated that, under the law, a business entity must be duly-registered with the One Stop Center at the time of the filing of the claim and the equipment for which a tax credit is applied for must have been purchased from a domestic manufacturer on or before December 31, 1997 for entities located within the National Capital Region (NCR) or on December 31, 1999 for those outside NCR. It is also a requirement for a tax credit claim that an applicant paid the taxes on the domestic capital equipment in order to safeguard the system from fraudulent claims for tax incentives.

Particular to the instant cases, the Task Force was directed, through a formal Endorsement (Exh. "B"), to conduct the tax credit investigation pertaining to the subject TCC No. 009461.

The Task Force initially reviewed the docket folder of Jam Transit involving the subject TCC. Witness Segunial thus identified the Claimant Information Sheet or CIS dated December 29, 1997 (Exh. "C"); undated Sales Invoice No. 10181 (Exh. "D"); Delivery Receipt No. 1909 dated February 18, 1997 (Exh. "E"); eight (8) Land Transportation Office (LTO) Certificates of Registration (CRs) and Official Receipts (ORs) (Exhs. "G" to "G-7-d"); Board of Investment (BOI) Certificate of Registration dated September 29, 1994 (Exh. "R"); three (3) copies of Substitution Units from the Land Transportation Franchising and Regulatory Board (LTFRB) (Exhs. "FF" to "FF-2"); photographs of the eight (8) buses (Exhs. "GG"- "GG-7"); Schedule of Purchase (Exh. "I"); Order of Payment dated December 29, 1997 (Exh. "CC"); Checklist of Requirements (Exh. "DD"); Evaluation Report dated March 17, 1998 (Exhs. "J" to "J-2"); Tax Credit Certificate No. 009461 (Exh. "K"); Tax Debit Memorandum of Tax Credit Certificate No. 009461 dated April 3, 1998 (Exh. "L"); Letter dated May 6, 1999 addressed to Pilipinas Hino (Exh. "N"); Letter dated October 12, 1999 addressed to the One Stop Center (Exh. "O"); Cancellation Memorandum dated March 27, 2000 (Exh. "M"); and, an extract of a Logbook (Exh. "VVV"). He also asked the one who issued the Cancellation Memorandum dated March 27, 2000 to execute an Affidavit (Exh. "P"). He likewise identified the Investigation Report (Exh. "VVVV-3") prepared by the Task Force.



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The investigation of the Task Force reveals that Jam Transit is not a manufacturer of buses and trucks and that it will still be required to pay taxes and duties on account of the raw materials which were imported to manufacture the buses bought by Jam Transit. These taxes and duties were incorporated in the price paid for by Jam Transit to Pilipinas Hino Inc., who manufactured the buses. Therefore, it was actually Pilipinas Hino Inc., who paid for these duties, sold the buses to its dealers, who, in turn sold them to their buyers.

In sum, had the subject buses been exempted from paying taxes and duties on account of the raw materials, then Jam Transit should have paid a much lesser amount from the dealer. The basis of Jam Transit in applying for a tax credit claim is the incentive granted to them by the Board of Investment (BOI).

When the Task Force was evaluating the documents and the other entities involved in the tax scam, witness Segunial accidentally discovered that undated Sales Invoice No. 10181 (Exh. "D"), purportedly issued by Pilipinas Hino, Inc., was also used for a separate tax credit claim of Florida Liner. He further stated that the same Sales Invoice (Exh. "D") for the eight (8) buses reflects a total amount of P33,750,000.00, while the amount considered by accused Diala in her Evaluation Report (Exhs. "J" to "J-2") reflects the amount of P38,780,000.00.

Witness Segunial also testified that, per the records of Jam Transit, there were certain buses which were not bought from Pilipinas Hino. He, after reading the Consolidated Affidavit of Homero Mercado, discovered that accused Cabotaje facilitated the processing of the subject TCC No. 009641 for Jam Transit. It was also confirmed that the buses did not exist and that the sales invoice generated to support the claim was spurious.

To prove that the documents submitted were spurious, witness Segunial added that the CRs and ORs (Exhs. "G" - "G-7-d") of the buses indicated that the owner was actually Jam Liner and not Jam Transit, the company claiming the tax credit. Upon further verification of the CRs and ORs from the records of the Land Transportation Office (LTO), San Pablo



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District Office (Exhs. "H-2" to "H-9"), witness Segunial discovered that the two (2) sets of CRs and ORs were different.

Witness Segunial also testified that the subject TCC No. 009641 (Exh. "K") was recommended to and approved by accused Andutan Jr. and eventually approved by accused Belicena.

It would appear from the dorsal portion of the subject TCC that this was transferred by Jam Transit to Isuzu Philippines Inc. in its total physical value. He also noted that the Tax Debit Memorandum dated April 3, 1998 (Exh. "L"), was signed by accused Belicena, representing the One Stop Center, which authorized the full amount of tax credit in favor of Isuzu Philippines Inc.

When cross-examined, witness Segunial admitted that he was unable to speak to any of the accused herein. Although the Task Force invited the accused to air their side, they refused upon advised of counsel. He, however, clarified that the accused were not summoned relative to the investigation of the subject TCC No. 009461. Neither were the accused sent summons after the Task Force submitted its report to the Executive Committee.

On queries from the Court, witness Segunial added that the discrepancies on the face of the documents are so obvious that accused Diala and accused de Vera could not to have noticed them. He clarified that they had no way of determining the intention of the accused or whether or not they intentionally ignored the irregularities.

Thereafter, witness **Felipe Barroga**, the Vice-President and Treasurer of Pilipinas Hino Inc. from 1992-2005, was called to the witness stand. He testified that when he was then supervising the Accounting and Control Department and Credit Collection Department, he kept records and documents of Pilipinas Hino Inc. He recalled receiving two (2) letter-queries from Alberto Salanga, first as Director of the One Stop Center and the other as member of the Task Force (Exhs. "N" and "UUUU"). These letter-queries pertain to Sales Invoice No. 10181 (Exh. "D") and Delivery Receipt No. 1909 (Exh. "E"), submitted by Jam Transit in support of its Application for tax credit with the One Stop Center. In response, witness Barroga sent two (2) letters (Exhs. "O" and "VVVV"), stating that Sales Invoice No. 10181 and Delivery Receipt No. 1909 did not come from Pilipinas Hino Inc.



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When cross-examined, witness Barroga testified that he could not declare if there were any defects in the two (2) documents. He could only state that, after verification from the records of the Accounting Department, Sales Invoice No. 10181 does not exist in the files of Pilipinas Hino Inc.

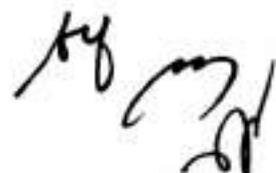
The third prosecution witness was **Isidro Eusebio**, the Records Officer of the LTO, San Pablo District Office. He identified LTO Official Receipts (ORs) and Certificates of Registration (CRs) of the eight (8) buses of Jam Transit with MV File Nos. 047273144; 047273145; 047273146; 047273147; 047273148; 047273149; 047273150; and, 047273151 (Exhs. "G" to "G-7", respectively), subject of the tax credit incentive claim of Jam Transit Inc.

He adds that he issued a Certification dated July 24, 2000 (Exh. "H") to the effect that he verified the subject eight (8) buses. Attached to his Certification were the CRs and the ORs (Exhs. "H-2" to "H-9", respectively) of the same eight (8) buses. His Certification and its attachments referred to were turned over to his Chief of Office then and that he had no receiving copy of the same. Witness Eusebio added that, after receiving a subpoena from the Office of the Ombudsman, he submitted certified true copies of the CR's and OR's (Exhs "MMMM" to "TTTT") attached to his Certification dated July 24, 2000.

On cross-examination, witness Eusebio admitted that he neither had copies of the original documents nor knew what happened to them after he submitted them to his Chief of Office. He further admitted that the verification stage underwent many levels before a document is returned to him for his signature. However, he was not physically present when the other signatories affixed their respective signatures on the documents.

Witness Eusebio further admitted that he did not actually see the subject buses but merely relied on the Inspection Report and the stencils of the chassis numbers submitted to him. He, however, clarified that physical inspection of vehicles was not part of his job.

When queried by the Court, witness Eusebio testified that, it was safe to assume, that the engine numbers, the chassis numbers, the CRs, the ORs and the Inspection Stencil



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Report are different from one another. He added that the details of the subject vehicles listed in the letter-request of the Task Force were different from the inspection reports in their Office.

Witness **Homero Mercado**, the President of Jam Transit and Jam Liner from 1986 to 2000, was called next. He testified that Jam Transit and Jam Liner are engaged in the business of public transportation using Nissan, Hino and other makes of buses. Prior to 1995, their bus companies bought Hino buses, manufactured by Pilipinas Hino Inc., from Hino Sales Corporation, the local dealer of Hino buses.

As president of Jam Transit in 1997, witness Mercado applied for tax credits with the Department of Finance (DOF). He explains that tax credits are incentives granted by the DOF, through the BOI, to legitimate bus operators for either tax credits or tax duty free, for importation of buses.

Witness Mercado also testified that Jam Transit was accredited with the BOI in 1990 under the Commercial Vehicle Development Program. During this time, Jam Transit had 150 registered units with a non-pioneer status. Prior to 1995, they bought the buses directly from the dealer of the buses. However, after 1995, his company bought the buses directly from the manufacturer, pursuant to a ruling of the Department of Finance that buses should be bought from the manufacturers, and not from the dealers.

He further testified that Jam Transit started applying for tax credit and was registered with the BOI as early as 1990 but could no longer produce its 1990 Certificate of Registration.

Recalling, witness Mercado further testified that, initially, the process for a tax credit claim was done at the Board of Investment (BOI). However, after the formation of the One Stop Center by the Department of Finance (DOF), it required the submission of the manufacturer's invoice instead of submitting the sales invoices from the dealers. His company also applied for tax credit in 1995 and 1996 with the DOF, which were subsequently approved.

During the first three (3) quarters of 1997, his company did not file any application with the DOF because it did not buy any buses. However, in the last quarter of 1997, Jam



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Transit applied for a tax credit with the One Stop Center. It was at this time that accused Joseph Cabotaje informed witness Mercado that there were eight (8) unused registered units of Jam Transit with the DOF. Accused Cabotaje suggested that witness Mercado apply for these eight (8) buses before the December 30, 1997 deadline despite not having the buses then.

Accused Cabotaje was a former salesman of Diamond Motors sometime in June 1997 and introduced himself as the one assigned by Diamond Motors to facilitate its applications.

Witness Mercado further testified that accused Cabotaje represented to him that he (accused Cabotaje) can process applications for a fee, considering that he (accused Cabotaje) knows certain DOF officials at that time, such as accused de Vera, accused Andutan, Jr. and accused Belicena. Since their applications remain pending for almost a year, witness Mercado agreed to the proposal of accused Cabotaje. With the services of accused Cabotaje, the application for tax incentives of Jam Liner was approved after several weeks. Regarding the buses which did not exist yet, accused Cabotaje also offered to process their applications and was eventually approved after several months.

Subsequently, witness Mercado learned that the Task Force was organized to investigate the tax credit scam and, when invited, was shown some documents relating to the applications of Jam Transit and other bus companies. He also learned that accused Cabotaje filed the application through the documents shown to him. Witness Mercado identified these documents, as follows: (1) Claimant Information Sheet (CIS) with Application No. 98-D-0029 dated December 29, 1997 (Exh. "C"); (2) undated Pilipinas Hino Inc. Sales Invoice No. 10181 (Exh. "D"); (3) Pilipinas Hino Inc. Delivery Receipt No. 1909 dated February 18, 1997 (Exh. "E"); (4) Certificates of Registration (Exhs. "G" - "G-7"); (5) Schedule of Purchase (Exh. "I"); and, Tax Certificate No. 009461 (Exh. "K"). Witness Mercado, however, denied that the signatures appearing on the CIS and the Sales Invoice are his. He added that the buses mentioned therein were neither existing nor delivered to or paid by Jam Transit, despite the Delivery Receipts.

Witness Mercado further testified that the Schedule of Purchase (Exh. "I"), containing a brief description of the supplier, engine and chassis numbers, the amount in the

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sales invoice, delivery dates, plate numbers and the case numbers of the Land Transportation Franchising and Regulatory Board (LTFRB), all pertain to non-existent buses. With respect to the CRs issued to Jam Transit, witness Mercado observed that the buses appear to have been acquired from Pil Hino but there were no such buses.

He also knew that accused Cabotaje prepared and submitted documents to the One Stop Center. He recalls that, sometime in March 1998, he was informed by accused Cabotaje that the Application of Jam Transit was approved and for him (witness Mercado) to prepare the facilitation fee. He was also informed by accused Cabotaje that he (latter) will arrange for the approved tax credit to be transferred to the CVDP Company, with the approval of the former. Sometime in April 1998, witness Mercado signed a Deed of Assignment (Exh. "KK"), shown to him by accused Cabotaje. He was likewise shown a Tax Credit Memorandum dated April 3, 1998 (Exh. "L") from the DOF signed by accused Belicena, approving the transfer of the tax credit from Jam Transit to Isuzu Philippines.

Witness Mercado also testified that, after preparing a check in the amount of P3 Million, he met with accused Cabotaje and presented to him the photocopy of the deposit slip (Exh. "BBBBB"), as proof that he (witness Mercado) deposited the same check to the account of accused de Vera. Witness Mercado added that, after the P3 Million check was encashed, accused de Vera deposited P2.3 Million to his account at Far East Bank, Binan branch. The P2.3 Million represented partial payment of the processing fee for the subject TCC of Jam Transit while the balance of P700,000.00 was the facilitation fee of accused Cabotaje.

He further testified that this was not the only time that he paid accused Cabotaje money to facilitate transactions for him. He also identified a copy of a deposit slip (Exh. "AAAAA") showing that a deposit was made on February 11, 1998 in the account of accused de Vera at the Far East Bank and Trust Company and a Certification (Exh. "CCCCC") issued by a certain Pamela Hernandez, the then Branch Manager of Far East Bank, as to deposits made to the account of accused de Vera in the amounts of P600,000.00 and P2.3 Million, as well as his Affidavit (Exh. "Q").

The block contains two handwritten signatures. The one on the left is a stylized signature, possibly 'M'. The one on the right is a more complex signature with a large loop at the top and a vertical stroke at the bottom.

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On cross-examination, witness Mercado testified that Jam Transit and Jam Liner are two separate and distinct corporations both engaged in public transportation. Although not convinced at first, witness Mercado eventually agreed to the offer of accused Cabotaje after his first transaction with Jam Transit. He also confirmed having been invited by the Task Force and, as part of its investigation, was shown photocopies of documents which he identified. Witness Mercado also testified that the subject TCC was eventually cancelled while the investigation was on-going, although he did not object to the cancellation.

Prosecution witness **Joselito Maghirang**, the Executive Assistant of Homero Mercado, the owner of HM Cable, Jam Transit and Greenstar, from 1990 to 2005, was called next. As Executive Assistant of Homero Mercado, witness Maghirang performed tasks assigned to him including following up applications with different agencies regarding the transportation business of Mercado and their tax incentives.

He recalls that, in April 1998, Mercado entrusting to him a check in the amount of P3 Million, drawn from the Far East Bank and to be paid to accused Cabotaje, who was then processing their tax credit applications with the DOF. Accused Cabotaje later picked up the said check. Witness Maghirang confirms meeting accused Cabotaje approximately four (4) times, twice at the DOF. When he met accused Cabotaje at the DOF, witness Maghirang neither knew that he (Cabotaje) would file their tax credit application nor with whom he dealt with in this regard. Witness Maghirang, nevertheless, clarified that accused Cabotaje would meet a certain "Boss George", whose real name was accused Raul de Vera.

On cross-examination, witness Maghirang testified that he was merely tasked to follow up the tax incentive applications filed by Homero Mercado. He likewise did not know anything about the check which he handed to accused Cabotaje.

Next to be called was witness **Jesus Salvador**, the Records Officer of the Office of the Ombudsman, Central, since 1993 and the custodian of the documents relative to the investigation on the fraudulent issuances of the tax credit certificates including the subject TCC No. 009461. He



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testified that, by virtue of Office Order No. 09-0282 dated July 29, 2009 (Exh. "XXXXX"), issued by the then over-all Deputy Ombudsman Orlando Casimiro, he had access to the vault of the Department of Finance (DOF). He added that, upon examination of the documents (Exhs. "C"; "D" and series; "F"; "G" and series; "H" and series; "I"; "J"; "K"; "L"; "P"; "Q" and series; "S" and series; "T" and series; "U"; and, "V" and series; "W" to "Z"; "AA" and "BB"; "AAAA" to "JJJJ" and series; "KKKK" and series; "LLLL"; and, "UUUU") presented to him, he confirmed that they were certified true copies of the documents on file in the DOF vault.

On cross-examination, witness Salvador confirmed being the records custodian of the Office of the Ombudsman but not the One Stop Center. He added that he was not directly in charge of the records of the One Stop Center.

Witness Salvador further testified that the documents presented to him were part of the documents inside the DOF vault referring to the subject TCC of Jam Transit but he was not the one who certified that the documents came from the One Stop Center or were duplicate originals. He noted that it was a certain Philip R. Santiago, the previous records officer of the DOF, who certified the documents. He added that the records were merely turned over to him and that he had no personal knowledge as to the original source of the documents.

When clarified by the Court, witness Salvador admitted that his copies were mere photocopies, not the original documents.

Thereafter, witness **Rosario Fuerte**, the Chief Administrative Officer, Personnel Services Division, Department of Finance since 1991, testified. She identified certified true copies of the following documents, namely: (1) Service Record of accused de Vera (Exh. "MMM"); (2) Personal Data Sheet of accused de Vera (Exh. "NNN"); (3) Service Record of accused Diala (Exh. "QQQ"); (4) Position Description Form of accused Diala (Exh. "RRR"); (5) *Panunumpa sa Katungkulan* of accused Diala as Senior Task Specialist (Exh. "SSS"); (6) Personal Data Sheet of accused Diala (Exh. "TTT"); (7) Appointment of accused Diala as Senior Task Specialist (Exh. "UUU"); and, (8) Service Record of accused Andutan Jr. (Exh. "VVVVV"). Both parties agreed to stipulate as to the

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authenticity and due execution of these documents (Order, November 26, 2013).

Finally, **Pamela A. Hernandez**, the former Branch Manager of Far East Bank and Trust Company (now Bank of the Philippine Islands), Biñan branch, from September 1, 1999 to August 2001, was called to testify. She recalled that, sometime in May 2000, Homero Mercado requested for a certification relative to two (2) Deposit Slips (Exhs. "AAAAA" and "BBBBB"), showing deposits made in her Branch in the amount of P2.3 Million and P612,000.00, respectively, by Homero Mercado in the name of accused de Vera. After verifications were made on the duplicate deposit slips brought by Mercado and the records of the Branch, the Branch Bookkeeper confirmed the transactions and photocopied the Branch's copies. The photocopies were then stamped "certified true copy" and a Certification was correspondingly signed by witness Hernandez (Exh. "CCCCC").

Witness Hernandez adds that the files of the Bank were only kept for five (5) years, hence, these records are no longer with the Bank of the Philippine Islands, Biñan branch, when she testified.

On cross examination conducted by accused de Vera, through counsel, witness Hernandez admitted that, although she personally prepared her Certification (Exh. "CCCCC"), she merely relied on her bookkeeper to retrieve and show her the documents which were made the basis of the Certification. She further admitted that, although she saw the name "Raul de Vera" indicated therein as depositor, she could not say for certain if it was indeed accused de Vera himself who deposited the same because it is common practice that other persons made deposits for others.

When clarified by the Court, witness Hernandez added that it was also possible for accused de Vera to have made the deposits as his name appears on the Deposit Slips.

Acting on the Formal Offer of Documentary Exhibits dated April 7, 2014 of the prosecution, the Court admitted Exhibits "B", "B-1", "C" to "G", "G-1" to "G-7", "H", "H-2" (also Exh. "SSSS"), "H-3" (also Exh. "RRRR"), "H-4" (also Exh. "TTTT"), "H-5" (also Exh. "NNNN"), "H-6" (also Exh. "OOOO"), "H-7" (also Exh. "MMMM"), "H-8" (also Exh. "PPPP"), "H-9" (also Exh. "QQQQ"), "I" to "Z", "AA" to "DD", "KK", "MMM",



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"NNN", "QQQ" to "VVV", "XXX", "VVVV" "VVVV-3", "VVVV-21", "AAAAA", "BBBBB", "CCCCC", "UUUUU", and "VVVVV", together with their respective submarkings (Minute Resolution, August 5, 2014).

The defense, thereafter, presented its witnesses.

Accused Raul de Vera was a former Supervising Tax Specialist and Officer-in-Charge in the Net Local Content, Net Value Equipment and Domestic Capital Equipment of the One Stop Center. He testified that his function was to review the evaluations made by his subordinates who served as evaluators. The review process was focused on two (2) key functions – the completeness and the correctness of every tax credit application.

He explained that the review process begins with an evaluator determining if an applicant submitted to the One Stop Center the required documents pursuant to their checklist. If the documents submitted by the applicant are not complete, his (accused de Vera) role as an OIC was to return the application back to the evaluator for completion.

He further testified that it was not his duty and function to determine the genuineness and authenticity of the pertinent documents submitted to the One Stop Center by an applicant in support of the latter's tax credit application.

Accused de Vera emphasized that, during his stay at the One Stop Center, he had not encountered any spurious document but only photocopies or those with unclear/blurred entries. He testified that his division was a frontline office which basic function was strictly to process applications that were complete pursuant to Section 3b of Administrative Order No. 266. He relied on the Attestation Clause in the application stating that the documents submitted were genuine.

He further testified that, at the time he signed the Evaluation Report of accused Diala (Exh. "G"; "Exh "2-de Vera" and Exh "4-Diala"), he found all the submitted documents complete and in order, explaining also that there was no way for them to know whether the documents were fake or not. He identified the CIS of Jam Transit (Exh "C"; and Exhibit "1-de Vera") and pointed to the Attestation Clause with a signature above the name Homero Mercado appearing



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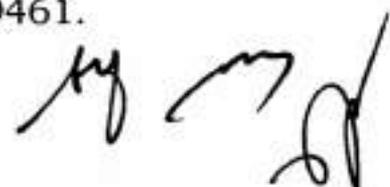
thereon, stressing that he relied on the genuineness of the documents based on the Attestation Clause.

Accused de Vera also stated that they process an average of about 50 applications a month and, pursuant to their Administrative Order No. 266, they are required to process each application within 30 days or face administrative sanctions.

After signing the Evaluation Report of accused Diala, accused de Vera stated that he merely submits all the documents relative to the application to the Deputy Executive Director and the Assistant or the Undersecretary or the Executive Director for final action. He no longer had any knowledge as to the status of the applications after they were evaluated by and signed at his office. He added that based on his experience, the documents are usually forwarded to a secretariat pool for processing and signing by the concerned authorities, like the Deputy Executive and the Executive Director, after which the TCC will be ready for release. Accused de Vera also identified the Checklist of Requirements (Exh "DD"; and Exh "3-de Vera and Diala").

Accused de Vera further admits receipt of the deposits made to his account in the amounts of P600,000.00 and P2.3 million. However, he explains that these are for a different transaction because he was dealing then with a certain Bong Maghirang, who was operating a cable TV in GMA, Cavite and in San Pedro, Laguna. He identified the Deposit Slips for the P600,000.00 (Exh. "AAAAA"; and "Exh "4-de Vera") and the P2.3 million (Exh. "BBBBB"; and Exh "5-de Vera"). He adds that these same Deposit Slips were also used in evidence against him in the other tax credit scam cases before other Divisions of this Court where he is stands as an accused.

On cross-examination conducted by the counsels of accused Andutan Jr. and accused Belicena, accused de Vera emphasized that his only intervention in the evaluation report was to sign the same and to indicate that the tax credit application was in order and regular in its preparation. He admitted that there was no procedure in their department requiring them to further examine the documents submitted for approval of the application of tax credit. He mentioned that the TCC itself indicates that it was subject to post-audit, however, he was unaware if a post-audit was actually conducted on the subject TCC No. 009461.



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When cross-examined by the prosecution, accused de Vera clarified that he was effectively dismissed from the DOF because of his appointment as Deputy Executive Director. He also emphasized that he neither checked on the genuineness of the documents submitted by the applicant nor call Homero Mercado to his office relative to the application of Jam Transit.

Accused de Vera also admitted that when he was investigated for the tax scam cases, he never filed a falsification case against the applicant as he was no longer connected with the Department of Finance.

He further admitted that he had an agreement with Bong Maghirang to deposit certain amounts to his (accused de Vera) saving account with Far East Bank but this did not materialize and that some of the payments made pertain to the processing of documents relative to a cable television franchise.

On re-direct examination, accused de Vera explained that he no longer called Homero Mercado at his office for clarification because he (accused de Vera) already found the application for tax credit regular and complete.

When queried by the Court, accused de Vera testified that he did not find it unusual if the Jurat in the Claimant Information Sheet (Exh "C"; Exh "1") did not contain the date and name of the supposed notary public.

For her part, accused Rosanna P. Diala presented three (3) witnesses, namely: Melquiades del Carmen Castillo, Paulita Astorga and Lourdes Emelita Arante.

Initially, the parties agreed to stipulate on the testimony of witness **Melquiades del Castillo** as to the following: (1) that witness del Castillo was a prosecution witness in *People vs. Antonio Belicena, et al.* (Crim. Cases Nos. 25596 to 25631; 25633 to 25636) heard before this Court (Third Division) on May 19, 2015; (2) that, on page 5 of the Transcript of Stenographic Notes (TSN) dated May 19, 2015, the testimony of witness del Castillo was offered to prove that: (a) he has been working with the One Stop Center since 1995 up to the present; and, (b) that he has personal knowledge of the procedures observed at the One Stop Center in the processing

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of applications for a tax credit claims at the time relevant to these cases.

Witness del Castillo further testified that as a former Tax Specialist II, he received applications for tax credit claims. After receiving them, he recorded them in the office logbook and forward the applications to the divisions concerned. The division concerned will enter the application in their logbook and the head of the division will assign the same to an evaluator. After evaluation, the application will be forwarded to the approving authorities. During his time, there was no procedures for the verification of the claims, instead, there was only a table audit where they merely relied on the application and the documents submitted by the applicant. However, in 2001, the procedure was changed from an industry-based system to a process-based system and a division for verification and authentication was created.

When cross-examined by the prosecution, witness del Castillo admitted that, as far as he knew, accused Diala was dismissed from the service, although he was not sure as to accused de Vera. He also admitted that he had an experience being a Tax Specialist 1 in 1997 but in a different division with different responsibilities.

On re-direct examination, witness del Castillo clarified that if a discrepancy in an application is discovered, they will send a letter-communication to the applicant for correction. He added that if there are no problems after evaluation, they will prepare a final report and submit the same for the approval of accused Andutan, Jr.

When queried by the Court, witness del Castillo clarified that they only conduct a table audit until they shifted to the process-based system.

Thereafter, accused Diala called her next witness, **Paulita Astorga**. Her testimony was dispensed with after the parties agreed to stipulate on the following: (1) that she was the stenographer who took the stenographic notes of the proceedings on May 19, 2015 for the cases of People vs. Belicena, *et al.* (Crim. Cases Nos. 25596 - 25631 and 25633 - 25636) before this Court (Third Division), where witness Melquiades Del Carmen Castillo was then testifying; (2) as to the correctness of the transcript of stenographic notes (TSN)

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which she took on said date; and, (3) that she can identify her TSN of May 19, 2015 (Order, January 13, 2016).

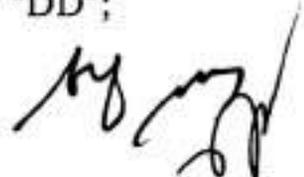
Then, **accused Rosanna Diala** took the witness stand. She testified that as a Senior Tax Specialist of the Investment-Incentive Group of the One Stop Center, she was tasked to process and evaluate the completeness of the applications for tax credit, to compute the allowable tax credit claims, to draft the evaluation report and to submit the same to the Division Head.

She explained that the first step in applying for a tax credit was to file an application with the Receiving Section of the One Stop Center. The receiving clerk segregates the different applications according to type of tax credit applications applied for. Thereafter, the receiving clerk forwards all the applications to the corresponding group concerned, which will then check the completeness of the documents submitted, based on its corresponding checklist of documentary requirements.

After checking the completeness of the documents submitted, the application with the documents will be returned to the Receiving Section for the payment of the corresponding processing fee. Thereafter, the concerned group will compute the allowable tax credit. After the computation is done, she then prepares the evaluation report and forwards it to a superior officer for review. If the evaluation report is found to be in order, the superior officer returns the same to her for finalization. Finally, the docket will then be forwarded to the recommending approval division and to the Director of the One Stop Center.

Accused Diala confirms following the same procedure with regard to the Application of Jam Transit. She admits finding the same Application in order and that she prepared and submitted her Evaluation Report dated March 17, 1998 (Exh. "J"; Exh "4- Diala and de Vera). She also identified her Performance Appraisal Report (Exhs. "2" to "2-d") to prove that she was employed as a Senior Tax Specialist with the DOF.

She further testified that, in evaluating the documents submitted by Jam Transit, she merely relied on the completeness of the documents attached to the Application when compared to the Checklist of requirements (Exh. "DD");



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Exh. "3-Diala and de Vera") and relied on the Attestation Clause in the Claimant Information Sheet, declaring that all documents are genuine and authentic. She adds that the training she had with the BOI was limited only to computing the allowable tax credit and not to further validating the documents submitted.

Accused Diala also testified that, if in the course of her evaluation, she determines that the documents submitted are spurious or fake, she would disallow them and will not include them in the computation. However, if all the documents are spurious then the claim will be denied.

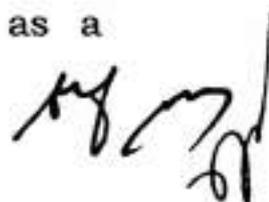
She further testified that she was unaware of any law or regulation that prohibits her from conducting further verification on the documents submitted by the applicant. However, she adds that she no longer verified the documents because she relied on the Attestation Clause in the CIS. She notes that a Verification Division was only introduced after the tax scam cases were unearthed and became part of the process.

On cross-examination by the prosecution, accused Diala testified that she did not know if Homero Mercado personally submitted the Application of Jam Transit. However, she admits being introduced to him during their training at the BOI sometime in 1994. She also admits never calling the attention of Homero Mercado himself regarding his Application but merely relied on the Attestation Clause found in the CIS.

Accused Diala further admitted being investigated and eventually administratively dismissed because of the cases arising from the investigation conducted on the tax credit applications. She adds that she could not remember any instance when accused de Vera or accused Andutan Jr. questioned her evaluation reports or whether they ask her how she conducted her evaluations.

On re-direct examination, accused Diala clarified that she did not see the need to personally call Homero Mercado at his office.

The last witness for accused Diala was **Lourdes Emelita Arante**. Her testimony was adopted by and for accused Andutan Jr. Witness Arante was also presented as a



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prosecution witness in *People vs. Belicena, et al.* (Crim. Cases Nos. SB-12-CRM-0068 to 0073), pending before this Court (Second Division), particularly testifying on the guidelines and procedures of the BOI which the One Stop Center followed in processing tax credit applications.

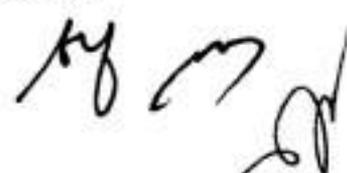
She substantially corroborated the testimonies of earlier witnesses who testified on the step-by-step procedure in the processing of tax credit applications.

On cross-examination by the prosecution, witness Arante admitted that she was never involved in the processing of tax credit applications with the Domestic Capital Equipment Division (DCED) because she was assigned to the Construction and Electronic Division (CED) and had no personal knowledge on the process of applications for tax credit by the DCED. She was also unaware if they were prohibited from conducting an actual verification. However, in her experience, a verification was not conducted until a change in the procedure was done in their office because of the tax scam investigations.

Upon a re-direct examination, witness Arante clarified that they were only following one BOI-adopted procedure in the processing of tax credit applications. The only difference between the procedures used by the CED and the DCED was as to the documents required to be submitted.

Thereafter, accused Andutan Jr. presented **Maria Theresa Mejos** as his witness. Her testimony was to (1) identify a Tax Credit on Domestic Capital Equipment (Exh. "16-Andutan Jr."); (2) to explain the procedure how a tax credit certificate is issued; (3) to identify Office Order No. 002-15 (Exh. "17-Andutan Jr."); and, (4) to prove that she as a Statistician II of the DOF she was authorized to sign certified true copies of documents of the Office of the Executive Director with the concurrent function at the Duty Drawback Group.

When cross-examined, witness Mejos admitted that she certified only a portion of the entire Manual of procedures, from a photocopy handed to her. She further admitted that she was not connected with the Domestic Capital Division (DCD) of the One Stop Center and had no personal knowledge on whether the Manual was applied by the DCD.



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After the completion of the presentation of witnesses for each accused, accused Andutan filed his Formal Offer of Documentary Exhibits dated December 22, 2016. Accused Diala and accused de Vera likewise filed their Formal Offer of Evidence dated January 13, 2017. Thereafter, the prosecution filed its Consolidated Comment dated January 27, 2017.

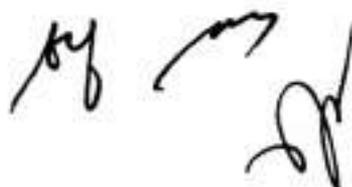
Subsequently, this Court ruled to admit accused' respective exhibits in the following manner: For accused Andutan Jr. - Exhs. "1" to "17"; for accused de Vera - Exhs. "1" to "6"; and, for accused Diala - Exhs. "1" to "4" (Minutes of the Proceedings, February 6, 2017).

When allowed (Minutes, February 6, 2017), the prosecution submitted its Consolidated Memorandum dated March 7, 2017. Accused Andutan Jr. likewise submitted his own Memorandum dated March 14, 2017 while accused de Vera and accused Diala submitted their Joint Memorandum dated March 25, 2017.

The prosecution, in its Consolidated Memorandum dated March 7, 2017, argued that it had sufficiently established the culpability of all the accused beyond reasonable doubt. According to the prosecution, the concerted acts of the accused betray an utter lack of due diligence and existence of manifest partiality, noting that these are repeated transactions of bus companies.

It emphasized that these bus companies already had previous applications for tax credit as far back as 1995, and accused could easily verify the existence and genuineness of the supporting documents through official channels or agency-to-agency verifications like the Land Transportation Office, Bureau of Customs and even the existence of eight (8) buses in the Binan, Laguna Office of the Jam Transit.

The prosecution also pointed out that the accused cannot merely rely on the Jurat portion of the Claimant Information Sheet, as the same neither contains any printed name of the notary public nor a date. Having seen this on the face of the Claimant Information Sheet, the accused could have required the personal appearance of the applicant himself, Homer Mercado.



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It further averred that accused de Vera, Diala and Andutan Jr. knew that they have on their files the LTO documents of bus companies. They could have easily compared previously submitted documents with the latest supporting documents and would have discovered the discrepancies.

Further, the prosecution pointed out that only accused de Vera admitted having received amounts deposited to his bank accounts on two separate occasions, but claimed that these refer to different business transactions with Bong Maghirang, the Executive Assistant of Homero Mercado. On cross-examination, however, accused de Vera admitted that these different business transactions with "Bong" Maghirang never pushed through but he retained the money just the same.

Accused de Vera and Diala admitted that they did not conduct an actual verification of the existence, authenticity and veracity of the documents submitted in support of the subject Application even if they could have easily done so. Accused Andutan Jr. likewise did not ask accused de Vera or Diala if the documents were verified. He (accused Andutan Jr.) merely adopted the defenses of accused Diala and accused de Vera that they merely did a table audit.

Lastly, the prosecution alleged that the accused were the officials and employees instrumental in the issuance of the subject TCC. Accused Andutan Jr., accused de Vera and accused Diala knew from the start that the Application was supported by spurious documents and they did not bother to compare them with documents from previous submissions.

On the other hand, accused Andutan Jr., in his own Memorandum dated March 14, 2017, argues that the prosecution failed to adduce any evidence, testimonial or documentary, to establish that his act of recommending the approval of the Application of Jam Transit was attended with evident bad faith and manifest partiality *ie.* that it was the result of an alleged inclination or predeliction on his part to favor Jam Transit over another. Accused Andutan Jr. also insists that his role was merely recommendatory, having relied on the recommendation of his subordinates, hence, he could not be held liable for a violation of Section 3 (e) of R. A. 3019.

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He further maintains that the prosecution failed to adduce any evidence to prove, to the point of moral certainty, that he had actual or personal knowledge of the purportedly falsified documents. In the absence of this proof, accused Andutan Jr. concludes that he cannot be held liable for Article 315, in relation to Article 171 of the Revised Penal Code. Finally, accused Andutan Jr. alleges that a conspiracy among the accused was not proven as the prosecution relied solely on its bare and unsubstantiated assertions that the accused acted together in the commission of the offenses charged.

For their part, accused de Vera and accused Diala, in their Joint Memorandum dated March 25, 2017, argue that the accusations levelled against them are unfounded because the prosecution hinged its case on the testimony of Homero Mercado, the man who admittedly submitted falsified documents and who had most to gain in the transactions. Both accused aver that Homero Mercado, in order to exculpate himself from criminal liability, lied under oath to implicate accused de Vera particularly, as the person he (Mercado) allegedly paid to allow the illegal transaction to proceed.

Both accused insists that, apart from the testimony of Homero Mercado, there was no evidence showing that they knew that the documents submitted by Jam Transit were fake.

They add that, under Administrative Order No. 266, the One Stop Center is mandated to finish the evaluation within 30 working days from the date of acceptance of the complete applications. Pursuant to this same AO, accused de Vera, as Supervising Tax Specialist, was not obliged to authenticate or validate the submitted documents from their source or from the issuer.

Accused Diala and accused de Vera also emphasized that the documentary evidence presented by the prosecution were inadmissible, as most of the original copies of the documents were never presented in Court, such as the originals of the Sales Invoices, Delivery Receipts, Certificates of Registrations and Official Receipts, citing US vs. Gregorio (G. R. No. 156055, March 5, 2007).



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According to both accused, the prosecution never established that accused de Vera and accused Diala acted with manifest partiality, evident bad faith or gross inexcusable negligence, arguing that they were merely required to do a table audit of the applications for tax credit.

The Court now rules.

In **Criminal Case No. SB-08-CRM-0379**, the accused are charged with violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

The following elements must be established, namely: (1) that the offender is a public officer; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence, and, (3) that his actions caused undue injury to any party, including the government, or gave any party unwarranted benefits, preference or advantage in the discharge of his official functions (*Velasco vs. Sandiganbayan*, G. R. No. 160991, [February 28, 2005], 492 PHIL 669-681, citing *Librada M. Cabrera, et al. vs. Sandiganbayan*, G. R. Nos. 162314-17, October 25, 2004).

Herein, all the accused already admitted being public officials at the time of the alleged commission of the offense. Accused Rosanna Diala was a Senior Tax Specialist; accused Raul de Vera was Supervising Tax Specialist; and, accused Uldarico Andutan Jr. was the Deputy Executive Director, all of the One Stop Center.

Hence, the core of the controversy lies with the remaining elements of the offense.

In *Consigna vs. People* (GR No. 175750-57, April 2, 2014), our Supreme Court mentioned two (2) ways by which a public official violates Section 3(e) of R. A. No. 3019, in the performance of his functions. They are: (a) by causing undue injury to any party, including the Government; or, (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either modes or under both.



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For an act to be considered as exhibiting "manifest partiality", there must be a showing of a clear, notorious or plain inclination or predilection to favor one side rather than the other. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are". "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 (Villarosa vs. Ombudsman, G.R. No. 221418, January 23, 2019).

A brief perusal of the Claimant Information Sheet (CIS) submitted by applicant Jam Transit will show blanks which were not filled in by the applicant himself. On its face alone, it is clear that there existed red flags to alert the evaluator and the reviewing officer on possible irregularities in the CIS. Even the Attestation Clause itself in the CIS was not notarized. Hence, the subject Application should not have been given due course at the onset, owing to the irregularities present therein.

As correctly observed by prosecution witness Dave Segunial, the discrepancies on the face of the Application and its attachments are so obvious and glaring that accused Diala and accused de Vera could not have noticed them. This, despite the fact, that the Application underwent a thorough screening to determine completeness, as testified to by accused de Vera testified (pp. 9-10, TSN, June 15, 2015), to wit - -

Q: Okay. How do you know if the documents required to be submitted to the Center pursuant to the checklist are complete? How do you know that the documents.... I'll reform the question, Your Honors. How do you know if the applicant was able to submit to the Center the required documents pursuant to the checklist?

A: Well, basically it is screened by our Records Division according to the checklist attached to the application form. And the Records Division performs certain markings whether they complied with in that application. After which, this



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application is forwarded to my evaluator, again, to conduct a second test or second check whether the claimant have filed or submitted the required documents according to the checklist of requirements he is applying for.

Although the defense maintains that the documents presented by the prosecution should not be accorded weight as they were mere photocopies, this Court views otherwise.

Secondary evidence of the contents of a written instrument or document refers to evidence other than the original instrument or document itself. A party may present secondary evidence of the contents of a writing not only when the original is lost or destroyed, but also when it is in the custody or under the control of the adverse party. In either instance, however, certain explanations must be given before a party can resort to secondary evidence (*Edsa Shangri-La Hotel and Resort, Inc. vs. BF Corp.*, G. R. Nos. 145842 and 145873, June 27, 2008).

Thus, We are guided by Section 5 of Rule 130 of the Rules of Court, which states - -

Sec. 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Hence, before a party is allowed to adduce secondary evidence to prove the contents of the original sales invoices, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and, (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents. At the sound discretion of the court, this order may be changed if necessary (*Citibank vs. Teodoro*, G.R. No. 150905, September 23, 2003).



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Clearly, some of the originals of the documents were no longer available during trial. However, the prosecution was able to adequately explain the circumstances of the lost in accordance with the foregoing requirements. Thus, this Court admitted and gave due consideration to the copies.

It must be remembered that Rules of procedure are not ends in themselves. The object of these Rules is to assist and facilitate a trial court's function to be able to receive all the evidence of the parties, and evaluate their admissibility and probative value in the context of the issues presented by the parties' pleadings in order to arrive at a conclusion as to the facts that transpired. Having been able to establish the facts, the trial court will then be able to apply the law and determine whether a complainant is deserving of the reliefs prayed for in the pleading. (Republic vs. Sps. Gimenez, G.R. No. 174673, January 11, 2016).

We also found that manifest partiality exists when accused Andutan Jr., accused de Vera and accused Diala, despite the glaring inconsistencies and irregularities found in the supporting documents of the subject Application, reviewed, processed and approved Tax Credit Certificate No. 009461 amounting to Six Million Sixty Four Thousand Six Hundred Sixty Nine Pesos (P6,064,669.00) in favor of Jam Transit, to the damage and prejudice of the Government.

It is undeniable that even if their function required them to conduct a thorough evaluation and review of the supporting documents of the subject Application of Jam Transit, the accused failed.

In **Criminal Case No. SB-08-CRM-0380**, the same accused are likewise charged for estafa through falsification of public documents. Herein, it is imperative that the elements of each individual crime must be present.

Estafa by means of false pretenses is punished under paragraph 2, Section 315 of the Revised Penal Code, as amended, to wit - -

315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:



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

(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.

In *Tanenggee vs. People* (G.R. No. 179448, June 26, 2013), our Supreme Court explained that when the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime, like estafa, theft or malversation, the two (2) crimes form a complex crime.

Under Article 48 of the Revised Penal Code, there are two (2) classes of a complex crime. A complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another.

Citing *Domingo vs. People* (G.R. No. 186101, October 12, 2009), the *Tanenggee* case further explains that the falsification of a public, official, or commercial document may be a means of committing estafa, since prior to utilizing the falsified document to defraud another, the crime of falsification has already been consummated. By actually utilizing the falsified public, official or commercial document to defraud another is estafa. However, the damage is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of a public, official or commercial document is only a necessary means to commit estafa.

Guided by the foregoing and after carefully considering the evidence on record, it neither appears that the accused-public officials were the ones who falsified nor had a hand in the falsification of the documents attached to the Application for tax credit of Jam Transit.

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As may be gleaned from the testimonies of the witnesses, the falsification of the documents was already completed prior to the filing of the Application. It appears further that when the Application for tax credit was submitted, all that the accused had to do was evaluate, process and approve the same without performing any act of falsification. Absent any proof that they falsified the documents themselves, they cannot now be held liable of the crime charged. Neither was it established beyond reasonable doubt that any of the accused actually profited from the utilization of the subject Tax Credit Certificate No. 009461.

It is a basic principle that the conviction of an accused must rest not on the weakness of the defense but on the strength of the prosecution. This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt. This standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime he is charged with (People vs. Rodriguez, G.R. No. 211721, September 20, 2017).

WHEREFORE, in view of the foregoing, judgment is hereby rendered in the following manner - -

1) For **Criminal Case No. SB-08-CRM-0379**, accused Uldarico Andutan Jr., Raul de Vera and Rosanna Diala are hereby found **GUILTY** beyond reasonable doubt of violation of Section (3) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and are each sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum to ten (10) years as maximum. Additionally, the said accused are to suffer perpetual disqualification to hold public office.

2) For **Criminal Case No. SB-08-CRM-0380**, accused Uldarico P. Andutan Jr., Raul C. de Vera and Rosanna P. Diala are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

The respective bail bonds of the foregoing accused are hereby ordered **RELEASED**, subject to the usual accounting and auditing procedures.



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3) In view of the death of accused Joseph Cabotaje, as evidenced by the Certificate of Death attached to the Compliance dated January 22, 2014 submitted by the prosecution and duly noted by this Court on January 28, 2014, the cases against said accused are hereby ordered **DISMISSED**.

4) With respect to accused Antonio P. Belicena, who remains at-large, let the instant cases be sent to **ARCHIVES** subject to revival upon his arrest. The bail bond he posted for his provisional liberty is hereby ordered **FORFEITED** in favor of the Government. In the meantime, let an alias warrant for the arrest of accused Antonio P. Belicena be **ISSUED**.

SO ORDERED.



BERNELITO R. FERNANDEZ
Associate Justice

We concur:



AMPARO M. CABOTAJE-TANG
Presiding Justice/Chairperson

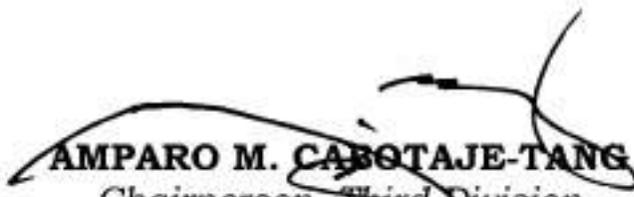


SARAH JANE T. FERNANDEZ*
Associate Justice

X-----X

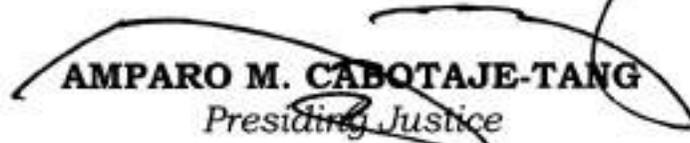
ATTESTATION:

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.


AMPARO M. CABOTAJE-TANG
*Chairperson, Third Division
Presiding Justice*

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.


AMPARO M. CABOTAJE-TANG
Presiding Justice

