



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-11-CRM-0368

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

-versus-

**JOHN PAUL K. ALVAREZ,
MANUEL H. SITCHON,
ELBERT L. MAGBATO,
JOSEPH A. QUIJANO,
HEGEL L. DUMADIA,
ALBERTO D. GIDALANON,
JOELITO B. CORDERO,
JANY JOE V. BOBON, and
ARSENIA D. JUANERO,¹**

Accused,

PRESENT:

FERNANDEZ, SJ, J.,² Chairperson
MIRANDA, J, &
MUSNGI, J.³

Promulgated:

December 6, 2018

X-----X

DECISION

MIRANDA, J.:

In an information filed on July 28, 2011, the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), charged

¹ The case was unloaded to the newly created Sixth Division of the Court pursuant to a special raffle on April 22, 2016. The records of the case were received by the Sixth Division Office of the Executive Clerk of Court III on May 5, 2016.

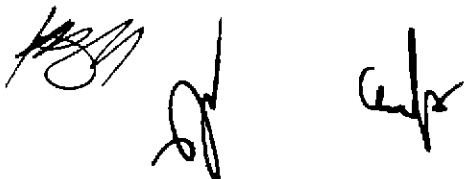
² J. Ponferrada, Chairperson of the 6th Division when the case was submitted for decision, retired on September 13, 2017. J. Fernandez, SJ will participate in the decision of the case in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

³ Special Member in view of the vacancy in the Sixth Division, per Administrative Order No. 124-2017 dated April 4, 2017 when the case was submitted for decision.

[Handwritten signatures]

accused Municipal Mayor John Paul Kho Alvarez (Alvarez), Municipal Engineer Manuel Hechanova Sitchon (Sitchon), Planning Officer Elbert Lutao Magbato (Magbato), Municipal Health Officer Joseph A. Quijano (Quijano), Budget Officer Hegel Loriega Dumadia (Dumadia), Municipal Treasurer Alberto Dela Vega Gidalanon (Gidalanon), Draftsman/Inspector Designate Joelito Balcera Cordero (Cordero), Property Officer Jany Joe V. Bobon (Bobon), all from the Municipality of Ilog, Negros Occidental, and District Supervisor Arsenia Ditchon Juanero (Juanero) from the Department of Education (DepEd), Ilog District I, Ilog, Negros Occidental, with violation of Section 3(e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The information states:

That on or about the 30th day of November 2004, or for sometime prior or subsequent thereto, at the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOHN PAUL K. ALVAREZ, Municipal Mayor; MANUEL H. SITCHON, Municipal Engineer and Chairman of the Bids and Awards Committee (BAC); ELBERT L. MAGBATO, Planning Officer and BAC Vice-Chairman; JOSEPH A. QUIJANO, Municipal Health Officer and BAC Member; HEGEL L. DUMADIA, Budget Officer and BAC Member; ALBERTO V. GIDALANON, Municipal Treasurer and BAC Member; ARSENIA D. JUANERO, DepEd, Ilog District I Supervisor and BAC Member; JOELITO B. CORDERO, Draftsman/Inspector Designate; and JANY JOE V. BOBON, Property Officer, all of the Municipality of Ilog, Negros Occidental, public officers, being in such respective public positions, in such capacity and committing the offense in relation to office, conniving, conspiring and confederating together and mutually helping with each other, with deliberate intent, manifest partiality or evident bad faith, did then and there willfully, unlawfully and feloniously cause the award to Miasar Car Care, owned and operated by Walter O. Millares, Jr., the repair and motor engine replacement of one unit Mitsubishi Pajero with Plate No. UV-T-0630-003, service vehicle of DepEd Ilog District I, Ilog, Negros Occidental, for NINETY-EIGHT THOUSAND FIVE HUNDRED PESOS (P98,500.00), Philippine Currency, by preparing the Minutes of the Public Bidding, Abstract of Bids, Bids and Awards Committee Preliminary Examination, Post Qualification Evaluation Summary Report, Resolution Recommending the Award of Contract and other bidding documents, despite absence of a public bidding and compliance of the legal requirements under Republic Act 9184, otherwise known as the Government Procurement Reform Act, and aside from awarding the repair and motor engine replacement to Miasar Car Care, accused Joelito Cordero and Jany Joe Bobon make it appear in the Acceptance and Inspection Report dated December 8, 2004, that they have inspected, verified and accepted the task as complete as to quantity and specifications, and thereupon paid the amount of Ninety-Eight Thousand Five Hundred Pesos (P98,500.00), Philippine Currency, as full payment for the said vehicle repair and engine replacement to Miasar Car Care, as per Check Disbursement Journal Entry Voucher



dated December 21, 2004, although the said repair and motor engine replacement has not yet been completed as of that time, thereby giving unwarranted benefits, advantage and preference to Miasar Car Care and further causing undue injury to the government, particularly the Municipal Government of Ilog, Negros Occidental, in the amount aforestated.

CONTRARY TO LAW.⁴

On August 1, 2011, the Court found probable cause for the issuance of a warrant of arrest against all of the accused.⁵

On August 31, 2011, Alvarez was conditionally arraigned and pleaded "not guilty" to the charge against him.⁶

On October 4, 2011, all of the accused, except Alvarez, filed an Urgent Omnibus Motion (to Quash the Information, to Order a Reinvestigation and to Defer Arraignment) dated October 2, 2011. They alleged that the Information violated their constitutional right to be informed of the nature and cause of the accusation against them. They contended that the Sandiganbayan had no jurisdiction over them because their salary grades were below grade 27.⁷

On March 2, 2012, the Court denied the urgent omnibus motion. The Court ruled that the information sufficiently alleged all the elements of the charge against all of the accused, and that the Court had jurisdiction over them because of the allegation that they conspired with Alvarez, the Municipal Mayor of Ilog, who had a salary grade of 27, in committing the crime.⁸

On August 12, 2011, the Regional Trial Court of Silay City approved the application for bail filed by all of the accused, except Quijano who remained at large.⁹

⁴ Information dated January 26, 2010, Records, vol. 1, pp. 1-5.

⁵ Minutes of the Proceedings held on August 1, 2011, Records, vol. 1, p. 204.

⁶ Order dated August 31, 2011, Records, vol. 1, p. 266; Certificate of Arraignment dated August 31, 2011, Records, vol. 1, p. 263.

⁷ Urgent Omnibus Motion (to Quash the Information, to Order a Reinvestigation and to Defer Arraignment) dated October 2, 2011, Records, vol. 1, pp. 298-310.

⁸ Resolution dated March 2, 2012, Records, vol. 1, pp. 380-399.

⁹ Order dated August 12, 2011 of the Regional Trial Court of Silay City, Records, vol. 1, pp. 215-216; Letter dated August 25, 2011 of Police Senior Inspector Joshua A. Villasis of Ilog Police Station to the Sandiganbayan, Records, vol. 1, p. 290.



Assisted by counsel, Sitchon, Magbato, Dumadia, Gidalanon, Cordero, Bobon, and Juanero pleaded "not guilty" to the charge against them.¹⁰ Quijano remained at large. The Court issued an Alias Order of Arrest against him on March 7, 2012.¹¹

Upon motion by the Prosecution,¹² the Court suspended all of the accused for ninety (90) days.¹³

In the Pre-Trial Order dated September 6, 2012,¹⁴ the parties stipulated on the following:

1. Identities of all the accused as the same persons charged in the information, and their respective public positions;
2. Miasar Car Care repaired the Mitsubishi Pajero (Pajero), the service vehicle of the Department of Education, Culture and Sports (DECS) Ilog, District 1, hereinafter referred to as the Department of Education (DepEd);
3. Sitchon was the Chairman of the Bids and Awards Committee (BAC);
4. Magbato was the Vice-Chairman of the BAC;
5. Quijano, Dumadia, Gidalanon, Juanero, and Cordero were members of the BAC; and
6. Alvarez was not a member of the BAC;

After taking into consideration the issues proposed by the parties, the Court shall resolve the issues:

1. Whether or not the Sandiganbayan has jurisdiction over the case;
2. Whether or not the accused are guilty of violation of section 3(e) of R.A. No. 3019;
3. Whether or not the contract for the repair and motor engine replacement of the Pajero was awarded to Miasar Car Care without competitive public bidding;


¹⁰ Order dated August 31, 2011, Records, vol. 1, p. 266; Certificate of Arraignment of Sitchon dated April 26, 2012, Records, vol. 1, p. 429; Certificate of Arraignment of Magbato dated April 26, 2012, Records, vol. 1, p. 426; Certificate of Arraignment of Dumadia dated April 26, 2012, Records, vol. 1, p. 428; Certificate of Arraignment of Gidalanon dated April 26, 2012, Records, vol. 1, p. 425; Certificate of Arraignment of Cordero dated April 26, 2012, Records, vol. 1, p. 430; Certificate of Arraignment of Bobon dated April 26, 2012, Records, vol. 1, p. 427; Certificate of Arraignment of Juanero dated April 26, 2012, Records, vol. 1, p. 424; and Order dated April 26, 2012, Records, vol. 1, p. 431.

¹¹ Alias Order of Arrest, Records, vol. 1, p. 411.

¹² Motion to Suspend Accused Pendente Lite dated July 19, 2012, Records, vol. 1, pp. 544-547.

¹³ Resolution dated September 21, 2012, Records, vol. 2, pp. 78-81.

¹⁴ Records, vol. 2, pp. 66-77.



4. Whether or not the repair and motor engine replacement of the Pajero was completed sometime on April 15, 2005, or thereafter; and
5. Whether or not the accused conspired with each other in committing the crime.

On February 15, 2017, after trial on the merits, Sitchon, Magbato, Quijano, Dumadia, Gidalanon, Cordero, Bobon, and Juanero filed their Memorandum dated February 12, 2017.¹⁵ Defense counsel still represented Quijano in the Memorandum despite the fact that Quijano had neither been arraigned nor his death verified and proven.

On March 6, 2017, the Prosecution filed its Memorandum dated March 3, 2017.¹⁶

EVIDENCE FOR THE PROSECUTION

In support of its accusation against all of the accused for violation of Section 3(e) of R.A. No. 3019, the Prosecution presented nine (9) witnesses, namely: 1) Menci Barlicos Mamaspas (Mamaspas); 2) Lyneth Bito-on Nobleza (Nobleza); 3) Pilar del Pilar (del Pilar); 4) Jeremias Grino Agui (Agui); 5) Moises Tubilla Padilla (Padilla); 6) Atty. Gileo Sioson Alojado (Alojado); 7) Rebecca Nequia-de Guzman (Nequia-de Guzman); 8) Eduardo Azuelo Panes (Panes); and 9) Jose Austero Rivas (Rivas).

Mamaspas testified that:

1. He was a Special Investigator III of the National Bureau of Investigation (NBI) Bacolod City District Office;¹⁷
2. He investigated the repair and engine replacement of the Pajero (plate no. UVT 0360-003) which was donated by the Municipality of Ilog, Negros Occidental to the DepEd;¹⁸
3. During his initial investigation, he sent a letter to the Municipality of Ilog requesting for authenticated documents on the repair and engine replacement of the Pajero. He received no reply from the Municipality of Ilog. He then proceeded to the Municipal Hall and inquired from Municipal Treasurer Cordero

¹⁵ Memorandum dated February 12, 2017. Records, vol. 4, pp. 464-486.

¹⁶ Memorandum dated March 3, 2017, Records, vol. 4, pp. 499-519.

¹⁷ TSN dated October 23, 2012, pp. 9-10.

¹⁸ *Ibid.*, pp. 10, 18.



- and Property Officer Bobon about the status of the Pajero. They informed him that the vehicle was under repair.¹⁹
4. He verbally requested for and got unauthenticated copies of *Sangguniang Bayan* Resolution No. 2004-181 dated August 11, 2004 (Exhibit "C"), the check, Abstract of Bids dated November 30, 2004 (Exhibit "P"), Preliminary Examination, undated Post Qualification Evaluation Summary Report (Exhibit "R"), undated Notice of Award (Exhibit "T"), and Inspection and Acceptance Report dated December 8, 2004 (Exhibit "W") involving the Pajero from the people of the Municipal Hall of Ilog;²⁰
 5. He interviewed Walter Millares (Millares), owner of Miasar Car Care, the representative of Elaine's Car Care, and a third bidder. All three bidders informed Mamaspas that they did not participate in bidding for the repair and engine replacement of the Pajero;²¹
 6. On April 20, 2005, Millares executed a *Sinumpaang Salaysay* at the NBI Bacolod City District Office, and gave it to Mamaspas. Millares told Mamaspas that he submitted an undated quotation or repair estimate for the Pajero sometime on September 2004 but did not bid. The Pajero was still undergoing repair as of April 2005, but the Municipality of Ilog already paid him Ninety-Three Thousand Five Hundred Seventy-Five Pesos (Php93,575.00) on December 21, 2004;²²
 7. On April 28, 2005, Nequia-de Guzman executed a sworn statement before Mamaspas and in the presence of Special Investigator Edgardo Kawada at the NBI Bacolod City District Office. In the said sworn statement (Exhibit "G"), Nequia-de Guzman stated that she neither saw nor signed the Bill of Quantities. She also did not participate in the bidding;²³
 8. He got the sworn statements of Rivas and Zosima Abapo Arroz, the BAC Secretary. In his sworn statement (Exhibit "E"), Rivas said that he neither signed nor saw the Bill of Quantities allegedly issued by Rivas Repair Shop.²⁴ In her sworn statement (Exhibit "I"), Arroz stated that Juanero's representative submitted the Inspection and Acceptance Report dated December 8, 2004 (Exhibit "W") to her on December 21, 2004. The said document was signed by Cordero and Bobon;²⁵

¹⁹ TSN dated October 23, 2012, p. 22, 66-68.

²⁰ *Ibid.*, pp. 19-21, 66-68.

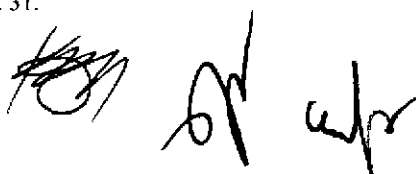
²¹ *Ibid.*, p. 23.

²² *Ibid.*, pp. 24-25, 31-33.

²³ *Ibid.*, pp. 26-28.

²⁴ *Ibid.*, pp. 28-30.

²⁵ *Ibid.*, p. 31.



9. He did not call Juanero, Alvarez, Sitchon, Magbato, Gidalanon, Cordero, and Quijano to shed light on the matter. He did not verify the engine number and the plate number of the Pajero;²⁶
10. On April 15, 2005, he conducted an ocular inspection at Miasar Car Care in Bacolod City. Thereat, he saw the Pajero with its engine taken out despite the earlier Inspection and Acceptance Report dated December 8, 2004 of Cordero and Bobon stating that the Pajero had a general body repair, rewiring of general electric wires, and replacement of wiring harness, power window and accessories, engine, and machining adaptor yoke. He then requested a photographer to take pictures of the Pajero. Millares informed him that the original engine was replaced with another engine;²⁷ and
11. On February 11, 2008, he executed an Affidavit and submitted it to Assistant Ombudsman Virginia Palangka Santiago.²⁸

Nobleza's testimony was dispensed with after the Defense stipulated that she was the Secretary to the *Sangguniang Bayan* of the Municipality of Ilog, Negros Occidental, and on the due execution, genuineness, and authenticity of the certified true copy of *Sangguniang Bayan* Resolution No. 2004-181 dated August 11, 2004 (Exhibit "C").²⁹ Said resolution granted Alvarez the authority to donate the Pajero to the DepEd Ilog District I.

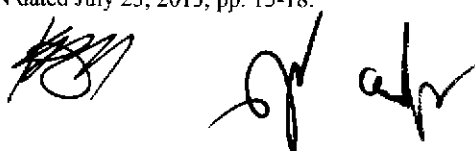
Del Pilar's testimony was likewise dispensed with after the Defense stipulated that she was the Chief, Records Management Services of the Commission on Audit (COA), and on the due execution, genuineness, and authenticity of the following documents attached to her Judicial Affidavit dated September 17, 2013: a) COA Audit Report dated February 28, 2005 (Exhibit "E"); b) Inspection Report for Equipment and Facilities dated June 13, 2005 (Exhibit "EE-3"); c) Audit Observation Memorandum No. 2005-003 dated June 20, 2005 (Exhibit "EE-4"); d) undated Detailed Work Program for the Repair and Replacement of DECS Service Vehicle (Exhibit "EE-5"); e) Fifth Indorsement dated August 2, 2005 (Exhibit "EE-6"); f) Reply to Audit Observation Memorandum dated June 27, 2005 (Exhibit "EE-7"); g) Notice of Disallowance No. 2005-001-100(4) dated September 13, 2005 (Exhibit "EE-8"); h) Letter to Mr. Jeremias Agui dated October 17, 2005 from Viola P. Villanueva, RLAO Director (Exhibit "EE-9"); i) undated Reply ND No. 2005-001-100(04) of Mayor John Paul Alvarez (Exhibit "EE-10"); j) First Indorsement dated May 15, 2006 (Exhibit "EE-11"); k) Notice of Appeal and Memorandum dated July 5, 2006 (Exhibit "EE-12"); l) Reply

²⁶ TSN dated October 23, 2012, pp. 71-72, 83.

²⁷ *Ibid.*, pp. 75, 78-79, 82.

²⁸ *Ibid.*

²⁹ TSN dated July 23, 2013, pp. 15-18.



Memorandum dated February 28, 2007 (Exhibit "EE-13"); m) Excerpts of Documents and Summaries of Events dated February 27, 2007 (Exhibit "EE-14"); and n) Decision LAO-Local No. 2008-028 dated August 28, 2008 (Exhibit "EE-15").³⁰

Agui testified that:

1. He was the COA Acting Audit Team Leader of the Municipality of Ilog. He identified his Judicial Affidavit dated September 3, 2013;³¹
2. He audited the financial transactions of the Municipality of Ilog for the year ended December 31, 2004, including the repair and engine replacement of the Pajero which was charged against the Special Education Fund of the Municipality. His audit findings were contained in the Annual Audit Report on the Municipality of Ilog, Negros Occidental for the Year Ended December 31, 2004;³²
3. The service contractor for the repair and engine replacement of the Pajero was fully paid although there were repair deficiencies amounting to Thirty-Four Thousand Four Hundred Seventy-Five Pesos (Php34,475.00). The Report of Waste Materials and Service Contractor's Warranty Certificate were not attached to the disbursement voucher. Disbursement Voucher No. 200-04-12-0192 dated December 20, 2004 was not signed by the Municipal Accountant. The amount of One Hundred Thousand Pesos (Php100,000.00) was based on the undated Detailed Work Program submitted by the Municipal Mechanic;³³
4. He reviewed the completeness of the required signatures in Disbursement Voucher No. 200-04-12-0192 dated December 20, 2004, verified the completeness of the required supporting documents, and requested the Technical Audit Services Office for the inspection of the Pajero;³⁴
5. There were defects in the repair and engine replacement of the Pajero based on the Inspection Report for Equipment and Facilities dated June 13, 2005. If the defects were not rectified, the total estimated equivalent labor cost amounting to Thirty-Four Thousand Four Hundred Seventy-Five Pesos (Php34,475.00) should be refunded;³⁵

³⁰ Judicial Affidavit dated September 17, 2013, Records, vol. III, pp. 146-263; TSN dated October 16, 2013, pp. 9-13; Order dated October 16, 2013, Records, vol. 3, pp. 297-298.

³¹ Judicial Affidavit dated September 3, 2013, Records, vol. III, pp. 21-89; TSN dated October 16, 2013, p. 29.

³² *Ibid.*, Records, vol. III, pp. 21-89, 22.

³³ *Ibid.*, Records, vol. III, pp. 21-89, 23-24.

³⁴ *Ibid.*, Records, vol. III, pp. 21-89, 24.

³⁵ Judicial Affidavit dated September 3, 2013, Records, vol. III, pp. 21-89, 25.



6. He prepared Audit Observation Memorandum dated June 20, 2005 (Exhibit "EE-4") which he indorsed to Maria Gleda E. Lim, Regional Cluster Director, Sub-cluster III, Cluster IV-Visayas, Local Government Sector, COA for further review, evaluation, and appropriate action;³⁶
7. He also indorsed the Reply to the Audit Observation Memorandum dated June 27, 2005 of Alvarez to the Regional Legal Adjudication Unit. The said reply, received by Agui on June 28, 2005, contained the Waste Materials Report dated December 8, 2004 and the Warranty Certificate dated December 21, 2004;³⁷
8. The waste materials report should be submitted upon payment to the supplier pursuant to Section 362 of the Government Accounting Manual, vol. 1. All of the accused, except for the mechanic and the supply officer, are not required to submit or prepare the waste materials report. On the other hand, the warranty certificate is submitted by the contractor.³⁸ The disbursement voucher is prepared by the accountant;³⁹
9. He accepted the explanation of the accountant on the latter's failure to sign the disbursement voucher, and indorsed it to the Regional Legal Office;⁴⁰
10. He received information that the defects were rectified. The Municipality of Ilog followed the recommendations of the COA to require the contractor to perform a back job repair on the vehicle without additional cost to the Municipality and to issue a Warranty Certificate;⁴¹
11. He did not mention the lack of public bidding in the report because there was no question on the legality of the procedure adopted in the award of the service;⁴² and
12. He did not find anything anomalous in awarding the repair and service of the Pajero to Miasar Car Care.⁴³

Padilla testified that:

1. He was a Technical Audit Specialist II of the COA. He identified his Judicial Affidavit dated October 7, 2013. After being requested by Agui, he conducted a physical, actual, and ocular

³⁶ Indorsement dated August 2, 2005 (Exhibit "EE-6" and sub-markings); Judicial Affidavit dated September 3, 2013, Records, vol. III, pp. 21-89, 26

³⁷ TSN dated October 16, 2013, pp. 39-41, 44, 46.

³⁸ *Ibid.*

³⁹ *Ibid.*, p. 47.

⁴⁰ *Ibid.*, pp. 49-50.

⁴¹ *Ibid.*, pp. 67, 73.

⁴² *Ibid.*, pp. 77-78.

⁴³ *Ibid.*, pp. 86-87.



inspection of the general body repair and engine replacement of the Pajero on June 13, 2005 at the Municipality of Ilog, and tested the vehicle afterwards;⁴⁴

2. He prepared and issued the Inspection Report for Equipment and Facilities dated June 13, 2005 (Exhibit "EE-3") with the following findings: a) When the unit was at full stop, the engine would shut off automatically due to low idling and sudden acceleration or deceleration; b) Some body parts of the Pajero rattled; c) The rear right door was not properly aligned/fixed; d) The Pajero had a rusty undercarriage and roofing sheets on some portions; e) The undercarriage, replaced wall/sidings, and top gutter sheets of the Pajero were improperly welded and not grinded smoothly; f) The Pajero's electrical system was not fixed properly; g) The on and off switches of the power windows were also not fixed properly; h) The speedometer, fuel, oil pressure and temperature gauges were not functioning; and i) The injection pump/nozzle assembly should be properly checked and fixed/adjusted/calibrated. He submitted the said report to his supervisor, Inocencio V. Cabahug, Jr.;⁴⁵
3. In conducting the inspection and preparation of the report, he followed the Implementing Guidelines and Procedures for the Inspection of Real Estate Properties, the Manual on Property Inspections, COA Circular 659-A on Disposal of Property, and the Manual on Appraisal of Unserviceable Property for Disposal Other than Real Property, Works of Arts or Antique Properties;⁴⁶
4. The Pajero is a reconditioned second-hand vehicle with a 4D engine model;⁴⁷
5. All the items in the job order and work program were accomplished or installed on the vehicle but he nevertheless found defects;⁴⁸
6. The contractor should refund Thirty-Four Thousand Seven Hundred Fifty Pesos (Php34,750.00) to the Municipality of Ilog if the defects were not rectified immediately;⁴⁹ and
7. Upon the request of Agui, he inspected the Pajero again after the defects were rectified. In his Report dated August 12, 2005, he only found minimal defects, but he was satisfied with the rectifications made on the Pajero.⁵⁰

Alojado testified that:

⁴⁴ Judicial Affidavit dated October 7, 2013, Records, vol. 3, p. 284; TSN dated October 16, 2013, pp. 90-91, 98.

⁴⁵ *Ibid.*, Records, vol. 3, pp. 285-286.

⁴⁶ *Ibid.*, Records, vol. 3, pp. 283-287, 284.

⁴⁷ TSN dated October 16, 2013, pp. 92-93.

⁴⁸ *Ibid.*, p. 104.

⁴⁹ *Ibid.*, pp. 107-108.

⁵⁰ Judicial Affidavit dated October 7, 2013, Records, vol. 3, pp. 106-110; TSN dated October 16, 2013, pp. 109-110.



1. He was an Attorney V at the COA Regional Legal Adjudication Office. He identified his Judicial Affidavit dated September 3, 2013;⁵¹
2. After evaluating the documents related to the repair and engine replacement of the Pajero, COA Regional Legal Adjudication Office prepared Notice of Disallowance No. 2005-001-100(4) dated September 13, 2005 (Exhibit "EE-8") which was approved by COA Region VI Director Atty. Viola P. Villanueva;⁵²
3. The disbursement was contrary to Section 272 of R.A. No. 7160 and DepEd, Department of the Interior and Local Government (DILG) and Department of Budget and Management (DBM) Joint Circular No. 1, Series of 1998. The notice of award was signed only by the BAC Chairman, and not by the Head of the Procuring Entity, in violation of R.A. No. 9184. The Inspection Report for Equipment and Facilities dated June 13, 2005 (Exhibit "EE-3") revealed defects in the repair of the Pajero;⁵³
4. Alvarez sought a reconsideration of the notice of disallowance which was denied on the ground that the disbursement cannot be charged against the Special Education Fund of the Municipality of Ilog pursuant to Section 272 of the Local Government Code and R.A. No. 5447;⁵⁴
5. The COA Regional Legal Adjudication Office received the Notice of Appeal and Memorandum dated July 5, 2006 (Exhibit "EE-12") of Alvarez. He then prepared Reply Memorandum dated February 28, 2007 (Exhibit "EE-13") and Excerpts of Documents and Summaries of Events dated February 27, 2007 (Exhibit "EE-14"). Thereafter, the Legal and Adjudication Office-Local issued Decision LAO No. 2008-028 dated August 28, 2008 (Exhibit "EE-15") denying the appeal and affirming Notice of Disallowance No. 2005-001-100(4) dated September 13, 2006 in the total amount of Ninety-Three Thousand Five Hundred Seventy-Five Pesos (Php93,575.00);⁵⁵
6. There was confusion as to the procurement rules to be applied because R.A. No. 9184 was implemented only in 2003. Prior to R.A. No. 9184, only the BAC Chairman was required to sign the notice of award. Under COA Circular No. 92-96, it is now the Executive (Head of Procuring Agency) who signs the notice of award;⁵⁶
7. There is nothing anomalous in the actual repairs themselves and the manner by which the repair and engine replacement of the

⁵¹ TSN dated October 17, 2013, p. 10.

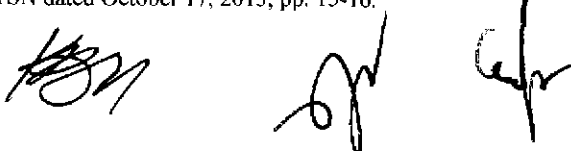
⁵² Judicial Affidavit dated September 3, 2013, Records, vol. 3, p. 90.

⁵³ *Ibid.*, Records, vol. 3, pp. 90-92.

⁵⁴ *Ibid.*, Records, vol. 3, p. 93.

⁵⁵ *Ibid.*, Records, vol. 3, pp. 94-95.

⁵⁶ TSN dated October 17, 2013, pp. 15-16.



Pajero was awarded to the service shop, except for the notice of award;⁵⁷

8. He did not know whether the amount was refunded by the accused to the Municipality of Ilog on February 12, 2007. If a refund was made, the issue will now become moot and academic with respect to the civil liability arising from the notice of disallowance;⁵⁸ and
9. Audit Observation Memorandum No. 2005-003 dated June 20, 2005 (Exhibit "EE-4") did not find any irregularity in the bidding but it recommended the submission of additional documents and an explanation on the failure of Cordero to identify the deficiencies in the Pajero during inspection, and on the payment to Miasar Car Care despite the lack of signature of the Municipal Accountant on the disbursement voucher.⁵⁹

Nequia-de Guzman testified that:

1. She was the Secretary of Elaine's Car Care. She identified her judicial affidavit;⁶⁰
2. She was commissioned by Panes, owner of Elaine's Car Care, to participate in biddings as his representative;⁶¹
3. Panes was also authorized to sign bidding documents;⁶²
4. She prepared job orders and other documents needed in the repair shop;⁶³
5. Panes commissioned her to go to the NBI because she knew the details of biddings participated in by Elaine's Car Care;⁶⁴
6. She was not familiar with the undated Bill of Quantities (Exhibit "H") shown to her at the NBI;⁶⁵ and
7. The signature appearing in the said undated Bill of Quantities (Exhibit "H") was not the signature of Panes or Elaine Panes Llamo.⁶⁶

Panes testified that:

⁵⁷ TSN dated October 17, 2013, pp. 18-19.

⁵⁸ *Ibid.*, pp. 29-30.

⁵⁹ *Ibid.*, pp. 33-34.

⁶⁰ TSN dated June 23, 2014, pp. 5, 26.

⁶¹ *Ibid.*, pp. 23-24.

⁶² *Ibid.*, p. 25.

⁶³ *Ibid.*, p. 39.

⁶⁴ *Ibid.*, p. 43.

⁶⁵ *Ibid.*, pp. 44, 60.

⁶⁶ TSN dated June 23, 2014, pp. 51.

1. He has been the owner and sole proprietor of Elaine's Car Care since 2000;⁶⁷
2. Ellaine's Car Care did not prepare the job estimate because it was not in its format;⁶⁸
3. The signature on the undated Bill of Quantities (Exhibit "H") was not his;⁶⁹
4. He learned of the repair and engine replacement made on the Pajero only when the NBI summoned him sometime in 2005;⁷⁰
5. He sent Nequia-de Guzman, his secretary, to the NBI to check his signature on the undated Bill of Quantities (Exhibit "H");⁷¹
6. Nequia-de Guzman told Panes that it was not his signature on the undated Bill of Quantities (Exhibit "H") and that they did not join in the bidding for the repair and engine replacement of the Pajero;⁷²
7. He saw the job order, job description, and undated Bill of Quantities (Exhibit "H") only during his testimony;⁷³
8. Only he and Nequia-de Guzman were authorized to sign quotations;⁷⁴ and
9. He did not receive any payment from the Municipality of Ilog for the repair and engine replacement of the Pajero.⁷⁵

Jose Austero Rivas (Rivas) testified that:

1. He was the owner of Rivas Engine Rebuild Service. He identified his Judicial Affidavit dated April 29, 2013;⁷⁶
2. Mamaspas interviewed him in the presence of Special Investigator Edgardo Kawada at the NBI Bacolod City District Office regarding the repair and engine replacement made on the Pajero;⁷⁷
3. The signature above his name in the undated Bill of Quantities (Exhibit "F") was not his signature, and the name of the shop was different. He neither participated in any bidding nor signed any document relative to the repair of any government vehicle;⁷⁸ and

⁶⁷ TSN dated September 29, 2014, p. 9.

⁶⁸ *Ibid.*, pp. 11-12.

⁶⁹ *Ibid.*, p. 15.

⁷⁰ *Ibid.*, pp. 12, 17.

⁷¹ *Ibid.*, pp. 17-18.

⁷² *Ibid.*, p. 25.

⁷³ *Ibid.*, p. 18.

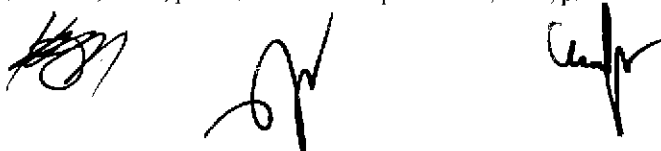
⁷⁴ *Ibid.*, p. 27.

⁷⁵ *Ibid.*, p. 43.

⁷⁶ Records, vol. 3, pp. 318-322; TSN dated September 30, 2014, pp. 8-9.

⁷⁷ Judicial Affidavit dated April 29, 2013, Records, vol. 2, p. 318.

⁷⁸ *Ibid.*; Records, vol. 2, p. 319; TSN dated September 30, 2014, p. 21.



4. Upon request of the NBI agent, he affixed his signature and thumbmark on the right margin of the said undated Bill of Quantities as a specimen signature.⁷⁹

On October 20, 2014, the Prosecution offered the following exhibits in evidence:⁸⁰

Exhibit	Description
"B" "B-1" to "B-2"	Original copy of the Affidavit dated February 11, 2008 of Mamaspas, with cover letter dated February 11, 2008
"C"	Certified true copy of <i>Sangguniang Bayan</i> Resolution No. 2004-181 dated August 11, 2004 of the Municipality of Ilog
"E" "E-1"	Sworn Statement of Rivas before NBI Special Investigator III Mamaspas at the NBI Bacolod City District Office on April 28, 2005
"F" "F-1" to "F-3"	Bill of Quantities allegedly submitted by the owner of Rivas Repair Shop (undated)
"G" to "G-1"	Sworn Statement of Nequia-de Guzman before Mamaspas at the NBI Bacolod City District Office on April 28, 2005
"H" to "H-1"	Certified copy on file of the Bill of Quantities allegedly submitted by the owner of Elaine's Car Care (undated)
"I" to "I-1"	Sworn Statement of Zosima A. Arroz before Mamaspas at the NBI Bacolod City District Office on April 28, 2005
"O"	Allotment and Obligation Slip No. 2100-04-11-0168 dated November 25, 2004
"P"	Abstract of Bids dated November 30, 2004
"R"	Post Qualification Evaluation Summary Report (undated)
"T"	Notice of Award (undated)
"W"	Inspection and Acceptance Report dated December 8, 2004
"EE" "EE-1" to "EE-2"	Certified machine copy of the Annual Audit Report on the Municipality of Ilog, Negros Occidental for the Year Ended December 31, 2004
"EE-3" to "EE-3-b"	Certified copy on file of the Inspection Report for Equipment and Facilities dated June 13, 2005
"EE-4" to "EE-4-a"	Certified copy on file of the Audit Observation Memorandum No. 2005-003 dated June 20, 2005
"EE-5" to "EE-5-a"	Certified copy on file of the Detailed Work Program (undated)

⁷⁹ TSN dated September 30, 2014, pp. 34-36.

⁸⁰ Prosecution's Formal Offer of Exhibits dated October 20, 2014, Records, vol. 4, pp. 27-222.

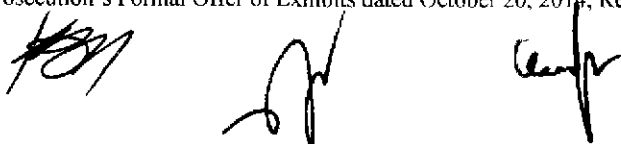


Exhibit	Description
"EE-6" to "EE-6-a"	Certified copy on file of the Fifth Indorsement dated August 2, 2005 of State Auditor I Agui
"EE-7" to "EE-7-a"	Letter dated June 27, 2005 of Alvarez to State Auditor I Agui
"EE-8" to "EE-8-b"	Certified copy on file of the Notice of Disallowance No. 2005-001-100(04) dated September 13, 2005
"EE-9" to "EE-9-a"	Certified copy on file of the Letter dated October 17, 2005 of State Auditor V Viola P. Villanueva to State Auditor I Agui
"EE-10"	Certified copy on file of the undated letter of Alvarez to State Auditor V Viola P. Villanueva
"EE-11" to "EE-11-a"	Certified copy on file of the First Indorsement dated May 15, 2006 of State Auditor V Viola P. Villanueva to Alvarez
"EE-12"	Certified copy on file of the Notice of Appeal and Memorandum dated July 5, 2006
"EE-13" to "EE-13-a"	Certified copy on file of the Reply Memorandum dated February 28, 2007
"EE-14" to "EE-14-a"	Certified copy on file of the Excerpts of Documents and Summaries of Events dated February 27, 2007
"EE-15"	Certified copy on file of the Decision LAO No. 2008-028 dated August 28, 2008

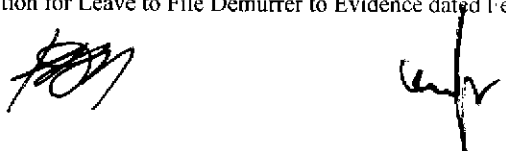
In its Minutes dated January 20, 2015, the Court admitted Exhibits "B", "B-1", "B-1-A", "B-2", "C", "E", "E-1", "F", "F-1", "F-2", "F-3", "G", "G-1", "H", "H-1", "I", "I-1", "O", "P", "R", "T", "W", and "EE" to "EE-15" for the Prosecution. The Court noted that the Prosecution did not offer Exhibits "A", "D", "J", "K", "L", "M", "N", "Q", "S", "U", "V", "X", "Y", "Z", "AA", "BB", "CC", and "DD".⁸¹

On January 29, 2015, accused Sitchon, Magbato, Quijano, Dumadia, Gidalanon, Cordero, Bobon, and Juanero filed a Motion for Leave to File Demurrer to Evidence dated January 28, 2015.⁸² On February 11, 2015, Alvarez also sought leave to file a demurrer to evidence.⁸³

⁸¹ Records, vol. 4, p. 240.

⁸² Motion for Leave to File Demurrer to Evidence dated January 28, 2015; Records, vol. 4, pp. 242-245.

⁸³ Motion for Leave to File Demurrer to Evidence dated February 7, 2015; Records, vol. 4, pp. 257-261.



On February 17, 2015, the Prosecution filed its Consolidated Comment opposing the motions for leave to file demurrer to evidence.⁸⁴

On March 23, 2015, the Court denied the motions for leave to file demurrer to evidence.⁸⁵

Thereafter, the Defense proceeded with the presentation of its evidence.

Evidence for the Defense

The Defense presented the following as witnesses: 1) Magbato; 2) Alvarez; 3) Juanero; 4) Arnulfo Serlicula Lirazan (Lirazan); 5) Cordero; and 6) Dumadia.

Magbato testified that:

1. He was the Municipal Planning and Development Coordinator and Vice-Chairman of the BAC of the Municipality of Ilog, Negros Occidental at the time material to this case. He identified his Judicial Affidavit dated August 24, 2015;⁸⁶
2. Prior to the award of the repair and engine replacement of the Pajero to Miasar Car Care, he and the other accused BAC members met and filled-up the Abstract of Bids;⁸⁷
3. The BAC resorted to competitive public bidding because the estimated cost of the repair and engine replacement of the Pajero was One Hundred Thousand Pesos (Php100,000.00), and they did not know the threshold amount of the public bidding;⁸⁸
4. BAC Secretary Zosima Arroz prepared the bid form and invitation to bid, and distributed it to prospective bidders;⁸⁹
5. The Municipal Mechanic certified that he personally inspected the vehicle;⁹⁰

⁸⁴ Consolidated Comment to the Motion for Leave to File Demurrer to Evidence dated February 17, 2015; Records, vol. 4, pp. 262-266.

⁸⁵ Minutes dated March 23, 2015, Records, vol. 4, pp. 268-269.

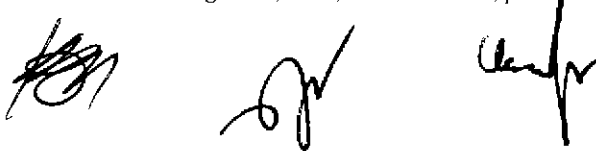
⁸⁶ Judicial Affidavit dated August 21, 2015, Records, vol. 4, pp. 279-286; TSN dated September 1, 2015, pp. 8-9.

⁸⁷ TSN dated September 1, 2015, pp. 12-14.

⁸⁸ Judicial Affidavit dated August 21, 2015, Records, vol. 4, p. 280.

⁸⁹ *Ibid.*, Records, vol. 4, p. 280.

⁹⁰ Judicial Affidavit dated August 21, 2015, Records, vol. 4, p. 280.



6. The bidding was conducted on November 30, 2004, while the award was on December 3, 2004 although he was not sure of this;⁹¹
7. He was present during the public bidding for the repair and engine replacement of the Pajero and the other municipal projects on November 30, 2004;⁹²
8. Rivas Engine Rebuild Service and Elaine's Car Care both bid One Hundred Thousand Pesos (Php100,000.00) for the repair and engine replacement of the Pajero. Miasar Car Care's bid was Ninety-Eight Thousand Five Hundred Pesos (Php98,500.00). Miasar Car Care won the bidding in the amount of Ninety-Three Thousand Five Hundred Seventy-Five Pesos (Php93,575.00) as stated in the check;⁹³
9. He did not know any of the bidders either in a professional or personal capacity.⁹⁴
10. He thinks that BAC Secretary Arroz maintained and kept a logbook for the minutes of the bidding. Sitchon made a roll call of all the BAC members and ensured that all the bidders were present. The bidders stood up or their presence acknowledged when the BAC called their attention.⁹⁵ The bidders did not sign any attendance sheet.⁹⁶ When each bid envelope was opened, they called the owners or representatives of the bidders to check if they were present. Otherwise, they would not have proceeded;⁹⁷
11. The basis of the award to Miasar Car Care was the indorsement of the Technical Committee that the bid of Miasar Car Care was the lowest calculated and responsive bid.⁹⁸
12. Miasar Car Care was fully paid on December 21, 2004. The Municipal Mechanic accomplished the undated Post Qualification Evaluation Summary Report (Exhibit "R") but this was signed by Magbato;⁹⁹ and
13. After the Pajero was repaired, the BAC learned that it later overheated. The Pajero was then returned to Miasar Car Care for further repairs as the warranty period was until December 21, 2005. Miasar Car Care completed the repairs and painted the

⁹¹ TSN dated September 1, 2015, pp. 39, 43.

⁹² Judicial Affidavit dated August 21, 2015, Records, vol. 4, p. 280.

⁹³ *Ibid.*, Records, vol. 4, p. 281.

⁹⁴ *Ibid.*

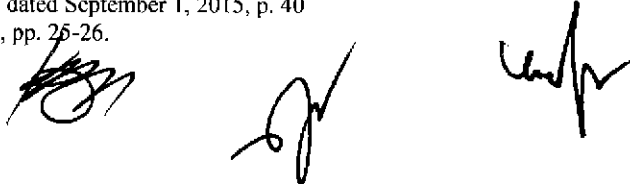
⁹⁵ TSN dated September 1, 2015, pp. 34-36, 39

⁹⁶ *Ibid.*, pp. 26-28.

⁹⁷ Judicial Affidavit dated August 21, 2015, Records, vol. 4, p. 281.

⁹⁸ TSN dated September 1, 2015, p. 40

⁹⁹ *Ibid.*, pp. 25-26.



rusty portion of the Pajero out of generosity even if said repair and painting were not part of the contract.¹⁰⁰

Alvarez testified that:

1. At the time of his testimony, he was the Municipal Vice-Mayor of the Municipality of Ilog, Negros Occidental. He was the Municipal Mayor of the Municipality of Ilog when the Pajero was repaired and its engine replaced. He identified his Judicial Affidavit dated August 27, 2015;¹⁰¹
2. The budget for the repair of the Pajero came from the School Board's funds. He was the *Ex-Officio* Chair of the School Board. He neither participated nor intervened in the acts of the School Board other than to affix his signature after determining that the appropriation of funds was regularly passed and that there were actual funds;¹⁰²
3. He did not participate in the public bidding. He only signed the award after determining that the bidding process was conducted in accordance with law. He then signed the check to pay for the repair of the Pajero after verifying the existence of funds, and getting an assurance from his subordinate officials that all requirements were met;¹⁰³
4. He does not know Millares of Miasar Car Care;¹⁰⁴
5. Before releasing the check, the persons responsible assured him that the repair was completed according to the Job Order, the vehicle was with them and will be tested, and repaired at no cost to the DepEd or the Municipality if there were defects. After defects were later found, Miasar Car Care shouldered the repair of the Pajero in the amount of Thirty-Four Thousand Pesos (Php34,000.00);¹⁰⁵
6. He received the final disallowance after the case was filed in court;¹⁰⁶
7. The COA Annual Audit Report on the Municipality of Ilog, Negros Occidental for the Year Ended December 31, 2004 disallowed the disbursement and ordered its reimbursement because school funds cannot be used to repair the Pajero. He

¹⁰⁰ Judicial Affidavit dated August 21, 2015, Records. vol. 4, pp. 281-282; TSN dated September 1, 2015, p. 31.

¹⁰¹ Judicial Affidavit dated August 27, 2015, Records. vol. 4, pp. 294-308; TSN dated January 19, 2016, pp. 6-8.

¹⁰² Judicial Affidavit dated August 27, 2015, Records. vol. 4, pp. 294-308.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

immediately reimbursed the entire amount of Ninety-Eight Thousand Pesos (Php98,000.00);¹⁰⁷

8. Sitchon, Magbato, Gidalanon, Quijano, and Dumadia assured him that the bidding was regular;¹⁰⁸ and
9. He asked the inspectors, mechanic, end user, and some BAC members if the Pajero was properly repaired. They informed him that the repair and engine replacement of the Pajero was bid, awarded, and completed.¹⁰⁹

Juanero testified that:

1. She was the DepEd Public Schools District Supervisor and end-user of the Pajero. She identified her Judicial Affidavit dated January 12, 2016;¹¹⁰
2. The Pajero was donated by Alvarez to the DepEd pursuant to *Sangguniang Bayan* Resolution No. 2004-181 dated August 11, 2004 (Exhibit "C") granting him the authority to do so;¹¹¹
3. She requested for the repair of the Pajero, and that a bidding was conducted on November 30, 2004;¹¹²
4. She sent a DepEd personnel, whose name she cannot recall, to represent the DepEd in the November 30, 2004 bidding. She had no direct knowledge of what transpired during the bidding.¹¹³ She, however, signed all bid documents pertaining to the repair of the Pajero as a BAC member.¹¹⁴ She cannot recall if she signed any minutes in any of the biddings she attended;¹¹⁵
5. She did not know any of the BAC members;¹¹⁶
6. She received a report of the rusty portion and the overheating of the Pajero during its testing;¹¹⁷
7. After the appeal of all the accused regarding the disallowed amount was denied by COA, she contributed Eighteen Thousand Seven Hundred Fifteen Pesos (Php18,715.00) for the reimbursement of the amount disallowed as evidenced by the official receipt issued by the Municipal Treasurer;¹¹⁸ and

¹⁰⁷ Judicial Affidavit dated August 27, 2015, Records, vol. 4, pp. 294-308.

¹⁰⁸ TSN dated January 19, 2016, pp. 21-22, 25.

¹⁰⁹ *Ibid.*, pp. 26-28.

¹¹⁰ *Ibid.*, pp. 32-33.

¹¹¹ Judicial Affidavit dated January 12, 2016, Records, vol. 4, pp. 311-315.

¹¹² *Ibid.*, Records, vol. 4, pp. 311-315.

¹¹³ *Ibid.*, Records, vol. 4, pp. 311-315, TSN dated January 19, 2016, pp. 35-36.

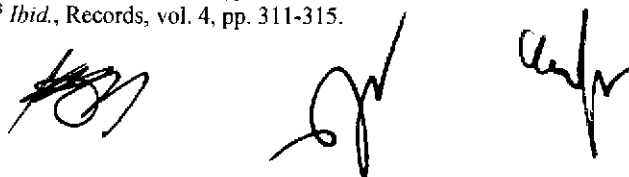
¹¹⁴ TSN dated January 19, 2016, pp. 39-40, 53.

¹¹⁵ *Ibid.*, pp. 40-41.

¹¹⁶ Judicial Affidavit dated January 12, 2016, Records, vol. 4, pp. 311-315.

¹¹⁷ *Ibid.*, Records, vol. 4, pp. 311-315.

¹¹⁸ *Ibid.*, Records, vol. 4, pp. 311-315.



8. She did not use the Pajero because she had another service vehicle. The Pajero was intended for the other district.¹¹⁹

Lirazan testified that:

1. He was a Mechanic I of the Municipality of Ilog from March 1999 to December 31, 2015. He identified his Judicial Affidavit dated March 7, 2016;¹²⁰
2. On or about November 10, 2004, the Office of the Mayor of the Municipality of Ilog requested him to conduct a pre-inspection of the Pajero. He found out that the Pajero was not in running condition, the engine needed to be pulled-out and replaced, needed body, floor, side repairs, specific realignment of the door assembly, and general rewiring and replacement of the power windows;¹²¹
3. After an inspection, he prepared a work program which included the replacement of the engine, electrical work, and some body repair. He did not repair the Pajero because the electrical work and the replacement of the engine had to be done in a specialist shop. As the only mechanic of the municipality, he prioritized repairs of vehicles in running condition. It would have been more expensive for him to repair the Pajero because he did not have the facilities and equipment to overhaul the vehicle and do extensive body repair and electrical works;¹²²
4. He did not see Miasar Car Care and Elaine's Car Care participate in the bidding;¹²³ and
5. He was not a member of the BAC. His experience is limited to the inspection of the Pajero before and after the repair.¹²⁴

Cordero testified that:

1. He was the Municipal Draftsman and Municipal Inspector of the Municipality of Ilog at the time material to this case. He identified his Judicial Affidavit dated March 7, 2016;¹²⁵
2. DepEd driver Cyril Patricio drove the Pajero from Bacolod City and delivered it to him for inspection at the Municipal Building on December 21, 2004;¹²⁶

¹¹⁹ TSN dated January 19, 2016, p. 46

¹²⁰ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 341-344; TSN dated March 30, 2016, pp. 8-9.

¹²¹ *Ibid.*, Records, vol. 4, pp. 341-344.

¹²² *Ibid.*, Records, vol. 4, pp. 341-344.

¹²³ TSN dated March 30, 2016, p. 13.

¹²⁴ *Ibid.*, p. 14.

¹²⁵ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 337-340; TSN dated March 30, 2016, pp. 8-9.

¹²⁶ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 337-340.



3. Based on his inspection which he conducted on December 2004, the job order specifications were all completed. The Pajero's engine was replaced and electrical works, body repairs on the vehicle were completed. A brief road test was conducted. There was no problem with overheating or breakdown considering that the Pajero traveled from Bacolod City to the Municipality of Ilog or a distance of more than 100km that day. Prior to the repair, the Pajero was not in running condition because it was unused and parked for a long time in the DepEd garage;¹²⁷
4. It was not his job to certify as to the quality or roadworthiness of the Pajero. His duty was to certify that work on the checklist as indicated in the Job Order was completed;¹²⁸
5. His only participation in the Inspection and Acceptance Report was limited to the inspection of the vehicle, and not its acceptance;¹²⁹ and
6. The general body repair, electrical rewiring in the power windows and harnesses, and replacement of the engine and machining adaptor yoke of the vehicle were completed.¹³⁰

Dumadia testified that:

1. He was the Municipal Budget Officer of the Municipality of Ilog at the time material to this case. He identified his Judicial Affidavit dated March 7, 2016;¹³¹
2. He certified in the purchase request that funds in the amount of One Hundred Thousand Pesos (Php100,000.00) was available for the repair of the Pajero. The amount was taken from the Local School Board Supplemental Budget #2, CY 2004;¹³²
3. He attended the November 30, 2004 bidding as a BAC member. He did not know any of the three (3) bidders. The presence of the bidders or their representatives was first determined before their sealed bid envelopes were opened;¹³³
4. The owners and representatives of the three (3) bidders were present during the bidding but he cannot recall their names;¹³⁴
5. The amount of the winning bid was Ninety-Eight Thousand Five Hundred Pesos (Php98,500.00) or Ninety-Three Thousand Five Hundred Seventy-Five Pesos (Php93,575.00) without taxes;¹³⁵

¹²⁷ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 337-340.

¹²⁸ *Ibid.*, Records, vol. 4, pp. 337-340.

¹²⁹ TSN dated March 30, 2016, p. 16-19.

¹³⁰ TSN dated July 20, 2016, pp. 20-21.

¹³¹ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 331-336; TSN dated March 30, 2016, pp. 17-18.

¹³² Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 331-336.

¹³³ *Ibid.*, Records, vol. 4, pp. 331-336.

¹³⁴ TSN dated March 30, 2016, p. 31.

¹³⁵ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 331-336.



6. The repair contract was awarded to Miasar Car Care per BAC Resolution dated December 3, 2004;¹³⁶
7. COA disallowed the payment because the Special Education Fund cannot be used for the repair of the Pajero;¹³⁷
8. Alvarez sought a reconsideration of the disallowance, and settled the disallowance by contributing Eighteen Thousand Seven Hundred Fifteen Pesos (Php18,715.00) along with Sitchon, Cordero, Juanero, and Edgardo Bondad (Bondad);¹³⁸ and
9. There were no minutes taken or an attendance sheet during the November 30, 2004 BAC meeting. It was not his function to keep the records of the minutes.¹³⁹

On August 9, 2016, Sitchon, Magbato, Quijano, Dumadia, Gidalanon, Cordero, Bobon, and Juanero offered the following exhibits as their evidence:¹⁴⁰

Exhibit	Description
1	Resolution No. 2004-181 dated August 11, 2004 of the <i>Sangguniang Bayan</i> of the Municipality of Ilog
2 and 4	Joint Counter-Affidavit of John Paul Alvarez, Manuel H. Sitchon, Elbert L. Magbato, Joseph A. Quijano, Albert V. Gidalanon, Arsenia B. Juanero, Joselito Cordero, and Jany Joe Bobon dated July 9, 2008 in OMB-V-C-08-0104-C and OMB-V-A-08-0087-C
3	Joint Motion for Reconsideration dated December 8, 2010 in OMB-V-C-08-0104-C and OMB-V-A-08-0087-C

On September 1, 2016, Alvarez formally offered the following exhibits as his evidence:¹⁴¹

Exhibit	Description
1	Certified copy of Decision LAO No. 2008-028 dated August 28, 2008
2	Official Receipt No. 9246915 dated February 12, 2007 in the name of Dumadia

¹³⁶ Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 331-336.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ TSN dated March 30, 2016, p. 30.

¹⁴⁰ Formal Offer of Documentary Evidence, with Manifestation dated August 8, 2016, Records, vol. 4, pp. 374-405.

¹⁴¹ Offer of Exhibits dated August 27, 2016, Records, vol. 4, pp. 413-432.

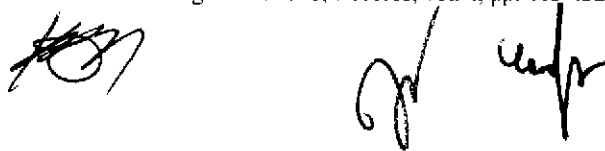


Exhibit	Description
3	Official Receipt No. 9246918 dated February 12, 2007 in the name of Sitchon
4	Official Receipt No. 9246916 dated February 12, 2007 in the name of Bondad
5	Official Receipt No. 9246914 dated February 12, 2007 in the name of Alvarez
6	Official Receipt No. 9246913 dated February 12, 2007 in the name of Juanero
7	Judicial Affidavit of John Paul Alvarez dated August 27, 2015
8	Anonymous letter dated April 13, 2005 to the NBI Bacolod District Office
9	Joint Counter-Affidavit of John Paul Alvarez, Manuel H. Sitchon, Elbert L. Magbato, Joseph A. Quijano, Albert V. Gidalanon, Arsenia B. Juanero, Joselito Cordero, and Jany Joe Bobon dated July 9, 2008 in OMB-V-C-08-0104-C and OMB-V-A-08-0087-C

On January 6, 2017, the Court admitted all exhibits offered by Sitchon, Magbato, Quijano, Dumadia, Gidalanon, Cordero, Bobon, and Juanero, and noted said accused' manifestation that they were adopting the exhibits of Alvarez. The Court also admitted all exhibits offered by Alvarez.¹⁴²

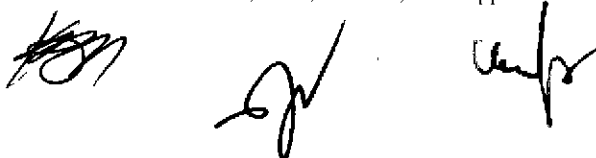
THE COURT'S RULING

The Sandiganbayan has jurisdiction over the case.

The Court will first tackle the issue on jurisdiction. All of the accused, except for Alvarez, argue that the Sandiganbayan has no jurisdiction over them because their salary grades are below grade 27. The Court reiterates its Resolution promulgated on March 2, 2012.¹⁴³ Accused Alvarez, a Municipal Mayor with salary grade 27, was charged with conspiring with the other accused, who are public officers with salary grades below 27, in violating Section 3(e) of R.A. No. 3019. They were charged to have committed the offense in their capacities as public officers and in relation to their respective

¹⁴² Minutes dated January 6, 2017, Records, vol. 4, pp. 457-458.

¹⁴³ Resolution dated March 2, 2012, Records, vol. 1, pp. 380-399.



offices. The Court clearly has jurisdiction over all of the accused in this case.¹⁴⁴

Alvarez and the accused BAC members are guilty as charged.

Now, to the substantive issues. The accused were charged with violation of Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, which 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:

X X X

(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 functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of violation of Section 3(e) of R.A. No. 3019 are: 1) The accused must be a public officer discharging administrative, judicial, or official functions, or a private person charged in conspiracy with the public officer; 2) The accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and 3) The act caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.¹⁴⁵

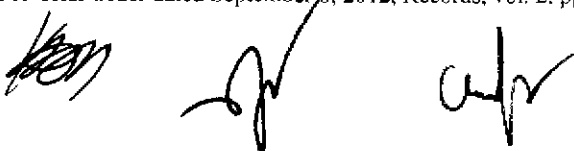
First Element

Accused Alvarez, Sitchon, Magbato, Quijano, Dumadia, Gidalanon, Cordero, Bobon, and Juanero all admit that they were public officers at the time material to this case.¹⁴⁶ In their capacities as such, they were charged with awarding the repair and engine replacement of the Pajero to Miasar Car

¹⁴⁴ Section 4, Presidential Decree No. 1606, as amended, in relation to *People v. Chua*, G.R. No. 121792, October 7, 1998.

¹⁴⁵ *Consigna v. People*, G.R. Nos. 175750-51, April 2, 2014.

¹⁴⁶ Pre-Trial Order dated September 6, 2012, Records, vol. 2, pp. 66-77.



Care without a public bidding, and paying Miasar Car Care even if the repairs were not yet complete. Said accused stipulated on their respective public positions. This fact is clear in the Pre-Trial Order dated September 6, 2012. Thus, the Court is now left to determine the existence of only the second and third elements of violation of Section 3(e) of R.A. No. 3019.

Second Element

Violation of Section 3(e) of R.A. No. 3019 may be committed through: 1) manifest partiality; 2) evident bad faith; or 3) gross inexcusable negligence.¹⁴⁷

In *People v. Atienza*,¹⁴⁸ the Supreme Court ruled:

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

The Information dated July 28, 2011 charges the accused of having acted with manifest partiality and evident bad faith. It alleges that the accused public officials sometime on November 30, 2004, in conspiracy with each other, having acted with deliberate intent, manifest partiality and evident bad faith, gave unwarranted benefits, advantage, and preference to Miasar Car Care, owned and operated by Walter O. Millares, by awarding to it the repair and engine replacement of the Pajero, and in preparing the Minutes of the Public Bidding, Abstract of Bids, Bids and Awards Committee Preliminary Examination, Post Qualification Evaluation Summary Report, Resolution Recommending the Award of Contract and other bidding documents, despite the absence of a public bidding and compliance with R.A. No. 9184, otherwise known as the Government Procurement Reform Act. In addition, accused Cordero and Bobon made it appear in the Acceptance and Inspection Report dated December 8, 2004 that they inspected, verified and accepted the task as complete as to quantity

¹⁴⁷ *Alvarez v. People*, G.R. No. 192591, June 29, 2011.

¹⁴⁸ G.R. No. 171671, June 18, 2012.

and specifications, resulting in the full payment of Ninety-Eight Thousand Five Hundred Pesos (Php98,500.00) to Miasar Car Care although the said repair and engine replacement had not yet been completed, thereby causing undue injury to the Municipality of Ilog, Negros Occidental.

Law requires competitive public bidding.

The law governing public procurement during the time material to this case is R.A. No. 9184, or the Government Procurement Reform Act, which took effect on January 26, 2003. Section 10 of R.A. No. 9184 states:

Section 10. Competitive Bidding.- All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. (Emphasis supplied)

Competitive Bidding, as defined in Section 5(e) of the same Act, refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluations of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the Implementing Rules and Regulations (IRR) to be promulgated under said Act.

The applicable IRR-A took effect on October 8, 2003. Section 10, Rule IV of the said IRR-A states that all procurements shall be done through competitive bidding, except as provided in Rule XVI of the IRR-A, which provides for the alternative modes of procurement, such as, limited source bidding, direct contracting, repeat order, shopping, and negotiated procurement. Section 48, Rule XVI of the IRR-A also provides that the general mode of procurement shall be public bidding, and that alternative methods shall be resorted to only in highly exceptional cases.

Specifically, limited source bidding involves direct invitation to bid by the concerned procuring entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. Direct contracting is resorted to when procuring items of proprietary nature which can only be obtained from the proprietary source, critical plant components from a specific manufacturer, supplier, or distributor, and items sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government. Repeat Order is resorted to when procuring goods from a



previous winning bidder to replenish goods procured under a previously awarded contract through competitive bidding. Shopping is resorted to when there is an unforeseen contingency requiring the immediate purchase of goods not exceeding Fifty Thousand Pesos (Php50,000.00), or when procuring ordinary or regular office supplies and equipment not available in the Procurement Service and not exceeding Two Hundred Fifty Thousand Pesos (Php250,000.00).

The rule is clear: all procurements should be made through competitive public bidding. The exception is when it is covered by the alternative methods of procurement. The repair and engine replacement of the Pajero falls within the general rule. It is not covered by the alternative methods of procurement.

While Section 53(h), Rule XVI of the IRR-A allows a procuring entity to procure goods by directly negotiating with a technically, legally and financially capable supplier or contractor, this is limited to instances where the amount involved is Fifty Thousand Pesos (Php50,000.00) or less. Since the approved budget for the repair and engine replacement of the Pajero was One Hundred Thousand Pesos (Php100,000.00), it clearly required competitive public bidding.

Accused BAC members claim that they resorted to competitive public bidding. The question now before the Court is whether or not a competitive public bidding was *indeed* held before the award of the contract for the repair and engine replacement of the Pajero. If the BAC subjected the repair and engine replacement of the Pajero to a competitive public bidding, it should have complied with the rules and provisions of R.A. No. 9184 and its IRR-A.

Accused BAC members allege that on November 30, 2004, Miasar Car Care, Elaine's Car Care, and Rivas Repair Shop all participated in a public bidding for the repair and engine replacement of the Pajero. They claim to have acknowledged the presence of the representatives of the three (3) bidders before the sealed bid envelopes were opened.¹⁴⁹ For his part, Alvarez claims that he did not participate in the bidding and that he signed the award of the contract to Miasar Car Care after determining that the bidding process was conducted in accordance with law. He also claims to have signed the check in payment for the work done on the Pajero after

¹⁴⁹ Judicial Affidavit dated August 21, 2015, Records, vol. 4, p. 281; TSN dated September 1, 2015, pp. 34-36, 39; Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 331-336; TSN dated March 30, 2016, p. 31.



verifying the existence of the funds and getting an assurance from his subordinate officials that all requirements for said payment were met.¹⁵⁰

No bidding was held by the BAC.

Despite the insistence of accused BAC members that a competitive public bidding was conducted, it is plain from the Prosecution's evidence that this is not true. The owner and representative of Elaine's Car Care and the owner of Rivas Repair Shop all denied any participation in the claimed competitive public bidding.

Panes, the owner and sole proprietor of Elaine's Car Care, testified that he did not join the public bidding for the repair and engine replacement of the Pajero. He said that the job estimate shown to him by the Public Prosecutor during his testimony was not theirs because it was not in their format. He also claims that the signature appearing in the Bill of Quantities was not his. He only learned of the claimed bidding when the NBI summoned him sometime in 2005. He likewise testified that only he and his secretary, Nequia-de Guzman, were authorized to sign quotations, viz:

Q: If I show to you a Job Estimate, would you be able to tell us if this is one of the job estimates that you drafted, had your assistant typed it and subsequently signed? Would you be able to confirm if this is one of the documents that you prepared as the owner of Elaine's Car Care?

A: This is the Job Estimate but this is not the - we have our own format.

Q: You are saying that this is not one of those documents that was accomplished by you as the owner?

A: Yes, ma'am.


Q: I am showing to you Exhibit "H", that is with the heading Bill of Quantities. At the lower portion is the name of bidder, the Elaine's Car Care, name of signatory and a signature appears therein. Could you tell us whose signature is this?

A: That is not mine, ma'am.

Q: As owner of Elaine's Car Care, have you come across a transaction for the repair and replacement of a DepEd service vehicle, one Mitsubishi Pajero?

A: I only knew about it when there was a summons sent by the NBI, ma'am.

¹⁵⁰ Judicial Affidavit dated August 27, 2015, Records, vol. 4, pp. 294-308.



X X X X X

Q: Earlier, Mr. Witness, when the Bill of Quantities was shown to you, you said that it was not one of those documents that you prepared as the owner of Elaine's Car Care. I am showing to you this certified copy on file from the Commission on Audit with the heading Bill of Quantities consisting of one (1) page. Kindly go over this document once more and tell this Honorable Court if this is one of the documents that you prepared as the owner of Elaine's Car Care?

A: This is not my signature, ma'am.

X X X X X

Q: You mentioned also that you instructed Rebecca Nequia-de Guzman to go to the NBI. What did Rebecca Nequia-de Guzman do after you instructed her to go to the NBI to comply?

A: When she returned, she told me that it was not my signature and then she further told me that we did not join in the bidding.

X X X X X

Q: Mr. Witness, who signs the quotation for Elaine's Car Care?

A: I don't know, your Honor.

Q: No, in your business transactions, who is authorized to sign quotations for Elaine's Car Care?

A: Only myself and my secretary, Your Honor.¹⁵¹

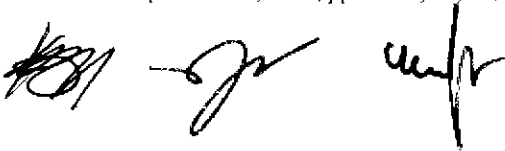
Panes also testified that he did not join any public bidding except for the bidding in the City of Bago which was held later:

Q: Just a question, Mr. Witness. Based on your long experience in the car care business, what would be a satisfactory proof to you that no such bidding was conducted based on the statement made by your secretary?

A: Because during those years, I have not entered or joined in any bidding yet.

Q: Would it be fair to assume that any document would satisfy your curiosity whether such bidding took place?

¹⁵¹ TSN dated September 29, 2014, pp. 11-12, 15, 18, 27.



A: It was only lately that we joined in the bidding in the City of Bago.¹⁵²

Panes testified that only he and his secretary (Nequia-de Guzman) were authorized to sign any bidding-related document, to wit:

Q: And you said that you are the sole owner?

A: Yes, ma'am.

Q: No one co-owns the shop with you?

A: No more ma'am. I have it named after my daughter.

Q: And your wife is not also a co-owner of your shop?

A: No, only myself. In the DTI only my name appears.

Q: And Mr. Witness, are you the only person authorized to delegate or to ask your secretary or any representative to sign on your behalf?

A: I am the one who signs on any document but if there is a bidding, I have to issue a special power of attorney to my secretary.

Q: Aside from you, there is no one else, not even your wife, who can commission your secretary to participate in biddings as the representative of Elaine's Car Care?

A: No more because it is only my secretary who knows about bidding.

Q: No, I am not asking about what your secretary knows. The authority to have your secretary participate in any bidding, in any transaction, is it only you who can give her that authority and no one else?

A: Yes ma'am.¹⁵³

Nequia-de Guzman testified that she was authorized by Panes to participate in biddings and sign documents relative thereto but they never joined any bidding involving the Municipality of Ilog. She is the one who would prepare job orders and other documents needed for the repair of a vehicle. When the bill of quantities involving the Pajero was shown to her, she testified that she was not familiar with it and that the signature of Panes appearing thereon was not his:

Q: And after that?

A: I answered all the questions, Your Honor. I was asked if I am familiar with the signature of my boss, Eduardo Panes, and I said yes, because I was already with them back

¹⁵² TSN dated September 29, 2014, p. 30.

¹⁵³ *Ibid.*, pp. 40-41.



when I was as child.

Q: But did you see if it is the signature of Eduardo Panes that is appearing in the Bill of Quantities?

A: That is not the signature of my boss, your Honor.

x x x x x

Q: Were you asked by the NBI to identify in the Bill of Quantities the signature of Elaine Panes Llamo or Eduardo Panes?

A: The question asked was, is this the signature of the owner. The question of the NBI was is this the signature Elaine Panes Llamo or Eduardo Panes.

x x x x x

Q: When asked by the NBI as to whose signature is depicted in that document, whether the signature of Elaine or Eduardo, what was your answer?

A: I answered No, Your Honor.

Q: Does it mean that it was not the signature of Elaine nor of Eduardo?

A: Yes, Your Honor.

x x x x x

Q: Based on your experience with Elaine's Car Care, what were these particular three (3) instances where you participated in a bidding? Can you recall what these particular three (3) instances of bidding in government repairs were?

A: It was a long time ago, Your Honor. It was for the repair of vehicles

Q: What specific transaction?

A: One concerning the provincial government.

Q: Provincial government of what province?

A: Bago City, Your Honor.

Q: What about the second one?

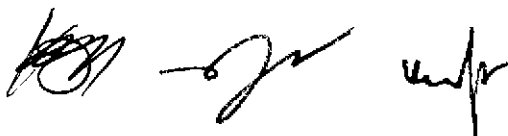
A: Another in Bacolod City.

Q: And the third one?

A: I can only recall Bago and Bacolod City, Your Honor.

Q: So for the record, it was not (3) transactions but merely two (2)?

A: Because we usually join in the biddings in Bago.



- Q: The question is, it was not three (3) transactions as you said, but only two (2), in Bago and Bacolod?
- A: It was three (3), Your Honor, and the one concerning agriculture.
- Q: Department of Agriculture?
- A: Yes, Your Honor.

X X X X X

- Q: Madame Witness, you were asked during your cross examination about the bidding documents. Did Elaine's Car Care participated in that bidding?
- A: No, ma'am.¹⁵⁴

On the other hand, Rivas, the owner of Rivas Engine Rebuild Service, also testified that he neither joined in the public bidding for the repair and engine replacement of the Pajero nor signed any document relative to the repair of any government vehicle. He pointed out that the signature appearing in the Bill of Quantities was not his and that the name of the shop thereon was different. The pertinent portions of the testimony of Rivas are quoted hereunder:

- Q: Mr. Witness, you've mentioned that you were interviewed by the NBI regarding a certain transaction?
- A: Yes, ma'am, they went to my shop and they asked me if it was my signature on the bidding and I answered them that it is not my signature; and it's not the name of my shop. Then, he told me to clear my name, I should go to him in Bacolod and tell him that I have no relation at all with the transaction

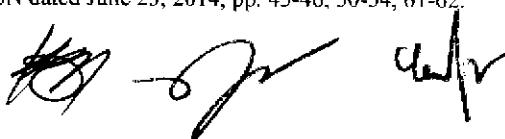
X X X X X

- Q: When you were shown a copy of the document, which supposedly had your signature, and you told them that it was not your signature, did you not complain to the NBI that it was forged, that it was a false document?
- A: Yes, ma'am, I answered him that it is not my signature and it was just forged and then he asked me to execute an Affidavit that it is not really my signature and he asked me to sign it, and I signed it.

X X X X X

- Q: Mr. Witness, the NBI asked you if you were participated in any bidding, is that correct?
- A: Yes, I was investigated, and I told them that I don't know

¹⁵⁴ TSN dated June 23, 2014, pp. 45-46, 50-54, 61-62.



about that, I did not even see their vehicle.

Q: Did you participate in any bidding?

A: Not at all, Ma'am, I don't participate in bidding specially if it is more than Php5,000.00, I don't even have a permit. Yes may be I submitted a quotation, that's all.

Q: Were you in anyway contacted by anyone from any local government unit regarding any bidding respecting any Pajero unit by the Department of Education?

A: Not at all, sir.¹⁵⁵

Mamaspas, the NBI special investigator who investigated the repair and engine replacement of the Mitsubishi Pajero, interviewed Millares (owner of Miasar Car Care), Nequia-de Guzman (representative of Elaine's Car Care), and Rivas (owner of Rivas Engine Rebuild Service). Millares told Mamaspas that he did not participate in the bidding claimed by accused BAC members to have been held.¹⁵⁶ Nequia-de Guzman and Rivas also testified that they did not participate in the bidding. Mamaspas also found out that Millares submitted a quotation or repair estimate for the Pajero on September 2004,¹⁵⁷ and that the Pajero was still undergoing repair as of April 2005. Millares, however, had already been paid Ninety-Eight Thousand Five Hundred Pesos (Php98,500.00), less taxes, by the Municipality of Ilog on December 21, 2004.¹⁵⁸

Cordero and Bobon also informed Mamaspas that the Pajero was under repair.¹⁵⁹ Mamaspas conducted an ocular inspection at Miasar Car Care in Bacolod City on April 15, 2005 where he saw the Pajero with its engine taken out despite the Inspection and Acceptance Report dated December 8, 2004 of Cordero and Bobon that the Pajero was accepted after all the works indicated in the work program were completed. He then requested a photographer to take pictures of the Pajero. Millares informed him that the original engine was replaced with another engine.¹⁶⁰

In Agui's Annual Audit Report on the Municipality of Ilog for the Year Ended December 31, 2004,¹⁶¹ he found that the service contractor for the repair and engine replacement of the Pajero was fully paid although there were repair deficiencies amounting to Thirty-Four Thousand Four Hundred Seventy-Five Pesos (Php34,475.00). The required Report of Waste Materials

¹⁵⁵ TSN dated September 30, 2014, pp. 17, 20-21, 31-32

¹⁵⁶ TSN dated October 23, 2012, p. 23.

¹⁵⁷ *Ibid.*, pp. 24-25, 31-33.

¹⁵⁸ *Ibid.*, pp. 24-25, 31-33.

¹⁵⁹ *Ibid.*, pp. 22, 67-68.

¹⁶⁰ *Ibid.*, pp. 75, 78-79, 82.

¹⁶¹ Annual Audit Report on the Municipality of Ilog, Negros Occidental For the Year Ended December 31, 2004, Exhibits "EE" to "EE-2"; Judicial Affidavit dated September 3, 2013, Records, vol. III, pp. 21-89, 22.

and service contractor's Warranty Certificate were also not attached to the Disbursement Voucher.¹⁶²

In Padilla's physical, actual, and ocular inspection of the general body repair and motor engine replacement of the Pajero on June 13, 2005, he found several defects amounting to Thirty-Four Thousand Seven Hundred Fifty Pesos (Php34,750.00). After the defects were rectified by Miasar Car Care, Padilla re-inspected the Pajero and was satisfied with the rectifications although there were still minimal defects.¹⁶³

Alojado pointed out that the fund disbursement for the repair and engine replacement of the Pajero violated Section 272 of R.A. No. 7160 and DECS, DILG and DBM Joint Circular No. 1, Series of 1998. The Notice of Award was signed only by the BAC Chairman, and not by the Head of the Procuring Entity, in violation of R.A. No. 9184. The Inspection Report of the COA Technical Service indicated deficiencies in the repair of the Pajero.¹⁶⁴

In the face of the foregoing evidence presented by the Prosecution, accused BAC members nevertheless insist that a competitive public bidding was conducted. They claim that they acknowledged the presence of the owners or representatives of Miasar Car Care, Elaine's Car Care, and Rivas Repair Shop before opening the sealed bid envelopes.¹⁶⁵

A thorough review of the evidence readily shows that there was no competitive public bidding held for the repair and engine replacement of the Pajero. The representative and owners of two entities that allegedly joined the bidding testified before the Court that they did not participate in the public bidding conducted on November 30, 2004. Panes, Rivas, and Nequia-de Guzman testified that they were not present during the alleged November 30, 2004 public bidding. They also denied submitting any bill of quantities. On the other hand, Millares told Mamaspas, when the latter interviewed the former, that he also did not participate in the public bidding. He only submitted a quotation.

The Court cannot determine the veracity of the declarations of Millares considering that he did not testify. The Court will only consider the fact that during the course of his investigation, Mamaspas interviewed

¹⁶² Judicial Affidavit dated September 3, 2013, Records, vol. III, pp. 21-89, 23-24.

¹⁶³ Judicial Affidavit dated October 7, 2013, Records, vol. 3, pp. 106-110, 284; TSN dated October 16, 2013, pp. 98, 109-110.

¹⁶⁴ Judicial Affidavit dated September 3, 2013, Records, vol. 3, pp. 90-92.

¹⁶⁵ TSN dated September 1, 2015, pp. 34-36, 39; Judicial Affidavit dated March 7, 2016, Records, vol. 4, pp. 331-336;

Millares and learned of the said declarations. This, however, does not affect the Court's findings that Alvarez and the accused BAC members violated Section 3(e) of R.A. No. 3019 because there is sufficient evidence of the absence of a competitive public bidding.

Lirazan, a witness for the Defense, even testified that he did not see any representative from Miasar Car Care and Elaine's Car Care in the bidding:¹⁶⁶

Q: And you also admit Mr. Lirazan that you had no personal knowledge if Miasar Car Care or Ellaine's Repair Shop actually participated in the bidding for the replacement of the engine of the Mitsubishi Pajero, yes or no Mr. Witness?

A: Pardon.

Q: You did not see them during the bidding proceedings? Yes or no, sir?

A: No.

Magbato also testified that he **never saw** any of the claimed bidders. His testimony proves that he did not see any of them even at the public bidding accused BAC members claim to have been held on November 30, 2004:

Q: You also mentioned that in your Judicial Affidavit in Question 15, the question was:

"Do you know or are you familiar with any of the owners and/or representatives of the three bidders for the Mitsubishi Pajero?"

Your answer was:

"No, I did not know any of them either in a professional or personal capacity."

A: Yes.

Q: You do not know them because you never saw them, am I correct?

A: Yes, ma'am.¹⁶⁷

¹⁶⁶ TSN dated July 20, 2016, p. 13.

¹⁶⁷ TSN dated September 1, 2015, p. 26.

Accused BAC members Sitchon, Magbato, Dumadia, Gidalanon, Juanero, and Quijano all signed the Abstract of Bids dated November 30, 2004¹⁶⁸ and the Post Qualification Evaluation Summary Report¹⁶⁹ without a public bidding first being conducted. While Juanero claimed that she only sent a representative to the alleged public bidding on November 30, 2004, the fact remains that she signed the Abstract of Bids and Post Qualification Evaluation Summary Report. Juanero did not even present any witness to corroborate her claim that she did not attend the said public bidding. The other Defense witnesses also did not testify on Juanero's claim.

The Notice of Award was signed only by Sitchon and was not approved by Alvarez as the Head of the Procuring Entity. This readily shows that Miasar Car Care was given unwarranted benefits when the repair and engine replacement of the Pajero was awarded to it despite the lack of approval by Alvarez as required by the R.A. No. 9184.

Section 37, Article XI of R.A. No. 9184 provides:

***Notice and Executive of Award.* - Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.**

Within ten (10) calendar days from receipt of the Notice of Award, the Winning bidder shall formally enter into contract with the Procuring Entity. When further approval of higher authority is required, the approving authority for the contracts shall be given a maximum of twenty (20) calendar days to approve or disapprove it.

In the case of government-owned and/or -controlled corporations, the concerned board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor (Emphasis supplied).

¹⁶⁸ Exhibit "P".

¹⁶⁹ Exhibit "R".



Accordingly, the BAC shall recommend the award of the repair and engine replacement of the Pajero to the lowest calculated and responsive bid, and the Head of the Procuring Entity, or his duly authorized representative, shall approve the said recommendation and issue the Notice of Award to the winning bidder. R.A. No. 9184 took effect on January 26, 2003 while the Implementing Rules and Regulations (IRR) took effect on October 8, 2003. Both R.A. No. 9184 and its IRR-A have already been in effect for more than one (1) year when the bidding for the repair and engine replacement of the Pajero was conducted. Alvarez and Sitchon had no reason not to comply with it since R.A. No. 9184 clearly states that the approving authority is the Head of the Procuring Entity. Sitchon cannot be the duly authorized representative of the Head of the Procuring Entity because of conflict of interest. Sitchon cannot be the BAC Chairperson and duly authorized representative of the Head of the Procuring Entity at the same time.

While the information alleges that the accused prepared other BAC documents in the commission of the offense, such as the Minutes of the Public Bidding, Bids and Awards Committee Preliminary Examination, and Resolution Recommending the Award of Contract, the Court can neither discuss nor rule on the said BAC documents because these were not formally offered in evidence by the Prosecution or the Defense.

Without a doubt, however, irregularities attended the preparation of the Abstract of Bids and Post Qualification Evaluation Summary Report, and the conduct of the alleged public bidding in violation of R.A No. 9184.

The participation of Alvarez, the Head of the Procuring Entity at that time, is also significant. As earlier discussed, the Notice of Award was neither signed nor approved by Alvarez. He testified that he signed the check for the payment of the repair and engine replacement of the Pajero after verifying the existence of funds and getting the assurance of his subordinate officials that the bidding process was regularly conducted, the vehicle repaired according to the job order, and that all requirements were met. Alvarez, in effect, claims to have relied to a reasonable extent on what his subordinates told him:¹⁷⁰

Q: Mayor Alvarez, you confirm in Answer No. 9 in your Affidavit that you personally determined—based on your answer, you signed the award only after determining that the bidding process and award were properly and regularly done. So, you confirm that you personally determined that the bidding process was regularly done?

¹⁷⁰ TSN dated January 19, 2016, pp. 20-22, 25-26.



A: Based on your answer.
Based on my answer, yes, ma'am.

X X X X X

Q: And also, part of your answer states that you were assured by-who assured you? Who gave you an assurance that the bidding process was regular?

A: The BAC, ma'am

Q: To be more specific, was Manuel H. Sitchon, the BAC Chairman at that time, one of those who assured you?

A: Yes, ma'am.

Q: How about Elbert L. Magbato, the BAC Vice-Chairman at that time, he also gave you an assurance?

A: Yes, ma'am.

Q: The same with Alberto V. Gidalanon, a BAC member?

A: Yes, ma'am.

Q: And during that time, Dr. Joseph Quijano who is now deceased, at that time, also assured you that it was regular?

A: Yes, ma'am.

X X X X X

Q: How about Hegel L. Dumadia?

A: Yes, he is a member.

Q: Did he give an assurance?

A: Yes.

Q: You also mentioned, Mayor Alvarez, in Question No. 11, you also confirmed that you called the persons responsible and you examined them?

A: Yes, ma'am.

Q: When you say persons responsible and you examined them, would these be the same persons that gave you assurance that the bidding was regular? Are these the same persons?

A: I asked the inspectors, the mechanic, and the end-user if the vehicle is properly done.

In *Arias v. Sandiganbayan*,¹⁷¹ the Supreme Court held that heads of offices can rely to a reasonable extent on their subordinates unless there is a

¹⁷¹ G.R. Nos. 81563 & 82512, December 19, 1989.

reason why they should personally examine a reimbursement voucher in detail:

All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. **There has to be some added reason why he should examine each voucher in such detail.** Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction. (Emphases and underscoring supplied)

In *Cruz v. Sandiganbayan*,¹⁷² however, the Supreme Court held that the discrepancy in the names of the payee in the checks and in the disbursement voucher is an added reason or exceptional circumstance which should have prodded petitioner therein to look beyond what his subordinates did:

Unlike in *Arias*, however, there exists in the present case an exceptional circumstance which should have prodded petitioner, if he were out to protect the interest of the municipality he swore to serve, to be curious and go beyond what his subordinates prepared or recommended. In fine, **the added reason contemplated in *Arias*** which would have put petitioner on his guard and examine the check/s and vouchers with some degree of circumspection before signing the same was obtaining in this case.

We refer to the unusual fact that the checks issued as payment for construction materials purchased by the municipality were not made payable to the supplier, *Kelly Lumber*, but to petitioner himself even as the disbursement vouchers attached thereto were in the name of *Kelly Lumber*. The discrepancy between the names indicated in the checks, on one hand, and those in the disbursement vouchers, on the other, should have alerted petitioner - if he were conscientious of his duties as he purports to be - that something was definitely amiss. (Emphasis and underscoring supplied)

¹⁷² G.R. No. 134493, August 16, 2005.



Again, in *Leycano, Jr. v. Commission on Audit*,¹⁷³ the Supreme Court held that an exceptional circumstance that should have called the attention of the petitioner existed therein. The acceptance or turnover of Provincial School Board projects is effected only after these projects have gone through the Inspectorate Team. Petitioner therein should have realized the anomaly in the Acceptance Reports executed by DECS officials prior to the assessment of the projects by the Inspectorate Teams and its issuance of a certificate of inspection. Instead of being alerted by this circumstance, petitioner therein even claims that these Acceptance Reports were among his bases for signing the Certificate of Inspection.

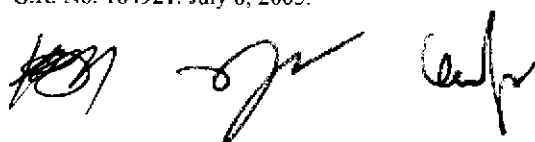
Finally, in *Escara v. People*,¹⁷⁴ the Supreme Court held that petitioner therein failed to observe the requisite caution required by the circumstances because he had prior knowledge that the subject logs have been confiscated by the DENR. When petitioner therein signed the Inspection Report and Disbursement Voucher No. 001-9302-957, he had clearly taken himself out of the ambit of the protective blanket given to public officers by the *Arias* ruling.

In this case, there is an exceptional circumstance that should have alerted Alvarez and caused him to make further inquiries from his subordinates, inspect the details of the documents submitted to him, and even check on the Pajero. The undated Notice of Award (Exhibit "T") was not approved by Alvarez, the Head of the Procuring Entity, in violation of R.A. No. 3019 and its IRR-A. It was Sitchon, as BAC Chairman, who signed the notice of award. Alvarez should have known that as Head of the Procuring Entity, only he or his duly authorized representative can approve the notice of award. Sitchon, as the BAC Chairman, can only recommend approval of a notice of award. Sitchon had no authority to approve the notice of award because he was not authorized to do so. Moreover, Sitchon cannot head the BAC and be the approving authority at the same time because of conflict of interest. This alone should have forewarned Alvarez of irregularities, and made him go into the details of the repair and engine replacement of the Pajero. Alvarez, however, failed to do so.

This exceptional circumstance should had alerted Alvarez and led him to make further inquiries. He should have inspected the documents and the Pajero itself rather than merely ask the BAC members, inspectors, mechanic, and end-user if the claimed bidding was regularly conducted. Since Alvarez had knowledge of this exceptional circumstance, he cannot claim protection under the *Arias* doctrine.

¹⁷³ G.R. No. 154665, February 10, 2006.

¹⁷⁴ G.R. No. 164921, July 8, 2005.



Third element

The third element in the violation of Section 3(e) of R.A. No. 3019 is present when the acts of the accused are proven to have caused undue injury to any party, including the government, or have given any private party unwarranted benefits, advantage, or preference.

The accused may be charged under either mode or both. The presence of one is sufficient to convict them.¹⁷⁵ In this case, the accused were charged with both.

In *Guadines v. Sandiganbayan and People*,¹⁷⁶ the Supreme Court explained undue injury:

The term undue injury in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of causing undue injury to any party, has a meaning akin to that civil law concept of actual damage. The Court said so in *Llorente vs. Sandiganbayan*, thus:

In jurisprudence, **undue injury is consistently interpreted as actual damage. Undue has been defined as more than necessary, not proper, [or] illegal; and injury as any wrong or damage done to another, either in his person, rights, reputation or property [; that is, the] invasion of any legally protected interest of another.** Actual damage, in the context of these definitions, is akin to that in civil law. (Emphasis supplied)

In this case, the Municipality of Ilog suffered damages in the amount of Ninety-Eight Thousand Five Hundred Pesos (Php98,500.00). This represents the amount paid by the Municipality of Ilog to Miasar Car Care for the repair and engine replacement of the Pajero, and the amount stated in the undated Notice of Award. In fact, Alvarez, Sitchon, Cordero, Juanero, and Bondad contributed Eighteen Thousand Seven Hundred Fifteen (Php18,715.00) each or a total of Ninety-Three Thousand Five Hundred Seventy-Five Pesos (Php93,575.00), as evidenced by official receipts issued by the Office of the Municipal Treasurer of Ilog. The difference in the amount refunded and the amount paid to Miasar Car Care represents the tax withheld by the Municipality of Ilog.

¹⁷⁵ *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

¹⁷⁶ G.R. No. 164891, June 6, 2011, citing *Santos v. People*, G.R. No. 161877, March 23, 2006.



On the other hand, in *Sison v. People*,¹⁷⁷ the Supreme Court defined unwarranted benefits, advantage, or preference as follows:

The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.

In giving unwarranted benefits, advantage or preference, damage is not required.¹⁷⁸ The Prosecution proved beyond reasonable doubt that the accused gave unwarranted benefits, advantage, or preference to Miasar Car Care when the repair and engine replacement of the Pajero was awarded to it even if no competitive public bidding was conducted. While Magbato testified that the Pajero was returned to Miasar Car Care for further repairs without additional cost to the Municipality of Ilog, this does not negate the fact that Miasar Car Care was given unwarranted benefits when the repair and engine replacement of the Pajero was awarded to it without a competitive public bidding.

Since both undue injury to the Municipality of Ilog and unwarranted benefits given to Miasar Car Care are present, the third element of the violation of Section 3(e) of R.A. No. 3019 has been sufficiently proven by the Prosecution.

There is insufficient evidence against Cordero and Bobon.

The Prosecution alleges that on December 21, 2004, Cordero and Bobon made it appear in the Acceptance and Inspection Report that Cordero inspected, verified, and was satisfied that the Pajero was repaired as to quantity and specifications, and that Bobon made it appear that he accepted the Pajero after the repair and inspection by Cordero.

The Court finds that the evidence is insufficient to convict Cordero and Bobon.

Accused Cordero testified that he made a brief road test after the Pajero was delivered to the Municipality of Ilog. At that time, the Pajero had already travelled more than one hundred (100) kilometers from Miasar Car

¹⁷⁷ *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

¹⁷⁸ *Id.*



Care in Bacolod. The Pajero did not overheat, break down, or encounter any problems. During his inspection of the Pajero, Cordero reported and testified that the job order specifications on the repair and engine replacement of the Pajero were all completed. The general body repair, electrical rewiring in the power windows and harnesses, and replacement of the engine and machining adaptor yoke of the Pajero were completed.¹⁷⁹

While the Pajero may have overheated when used for a few more days, the vehicle was returned and underwent further repairs at the expense of Miasar Car Care. This defect only came out after the vehicle was inspected and road tested by Cordero, and accepted by Bobon.

Conspiracy

Conspiracy is present when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence of prior agreement to commit the crime.¹⁸⁰ In criminal law, where the quantum of evidence required is proof beyond reasonable doubt, direct proof is not essential to show conspiracy. It may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interest.¹⁸¹

To be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity. Once proved, the act of one becomes the act of everyone. All the conspirators are answerable as co-principals regardless of the extent or degree of their participation.¹⁸²

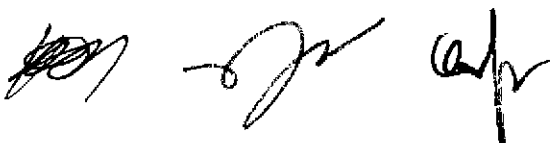
In this case, conspiracy was established by the Prosecution. *First*, Sitchon, Gidalanon, Magbato, Juanero, and Dumadia prepared the Abstract of Bids and Post Qualification Evaluation Summary Report, and other BAC documents, and made it appear that a public bidding was conducted on November 30, 2004 even if two of the alleged bidders testified that they did not participate in the said public bidding. *Second*, Alvarez signed the check to pay for the repair and engine replacement of the Pajero despite the presence of an exceptional circumstance that should have caused him to

¹⁷⁹ Judicial Affidavit dated March 7, 2016. Records, vol. 4, pp. 337-340; TSN dated July 20, 2016, pp. 20-21.

¹⁸⁰ *People v. Quirol*, G.R. No. 149259, October 20, 2005.

¹⁸¹ *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 159556, May 26, 2005

¹⁸² *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008.



inquire further from his subordinates, inspect the details of the documents, and check on the Pajero.

Taken together, the overt acts of Sitchon, Gidalanon, Magbato, Juanero, Dumadia, Quijano, and Alvarez point to a joint purpose and design, concerted action, and community of interest, which is the unwarranted award, approval, and payment of the repair and engine replacement of the Pajero to Miasar Car Care.

Finally, the records show that Quijano is still at-large and has yet to be arraigned. In one of the hearings of this case, the Court inquired whether the Defense counsel, Atty. Oliver B. San Antonio, was able to confirm the death of Quijano. Counsel for Quijano affirmed his client's death. Thereafter, the Court directed Quijano's counsel to submit proof of his death in open court and for the Prosecution to confirm such fact. To date, however, no proof or verification of Quijano's death has been submitted to this Court. Quijano's counsel has also continued representing him during the hearings and in the pleadings filed before the Court, the latest of which is the Memorandum dated February 12, 2017.

Conclusion

The Prosecution has proven beyond reasonable doubt all the elements of violation of Section 3(e) of R.A. No. 3019 against Sitchon, Gidalanon, Magbato, Juanero, Dumadia, Quijano, and Alvarez, acting in conspiracy with each other. On the other hand, the Prosecution failed to establish the guilt of Cordero and Bobon of the same charges beyond reasonable doubt.

WHEREFORE, judgment is hereby rendered as follows:

1. Accused **JOHN PAUL K. ALVAREZ, MANUEL H. SITCHON, ELBERT L. MAGBATO, HEGEL L. DUMADIA, ALBERTO D. GIDALANON, and ARSENIA D. JUANERO**, are found **GUILTY** beyond reasonable doubt of violating Section 3(e) of R.A. No. 3019. Each of them is accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification to hold public office.

2. Accused **JOELITO B. CORDERO and JANY JOE V. BOBON** are **ACQUITTED** of the charge of violation of Section 3(e) of



R.A. No. 3019 for failure of the Prosecution to prove their guilt beyond reasonable doubt. Accordingly, the hold departure order issued against them by reason of this case is hereby **LIFTED** and **SET ASIDE**, and the bonds separately posted by them are **RELEASED** subject to the usual accounting and auditing procedures.

3. The case against **JOSEPH A. QUIJANO** is hereby ordered **ARCHIVED** until he is brought within the jurisdiction of the Court or his death verified and proven.


4. Atty. Oliver B. San Antonio, counsel of **JOSEPH A. QUIJANO**, is ordered to show cause within fifteen (15) days why he should not be cited in contempt for his failure to submit proof of death of his client despite a previous order given in open court.

5. The Prosecution is ordered to verify the fact of death of **JOSEPH A. QUIJANO** within fifteen (15) days from notice.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

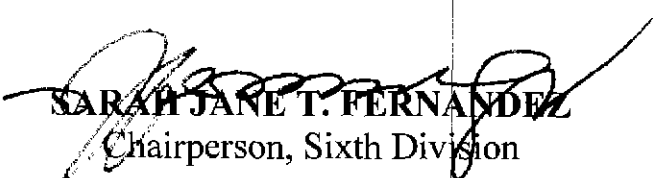
WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


MICHAEL FREDERICK L. MUSNQUI
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.


SARAH JANE T. FERNANDEZ
Chairperson, Sixth Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

