



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-12-CRM-0086

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

-versus-

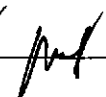
**GEMMA FLORANTE
ADANA, ET AL.,**

Accused,

PRESENT:

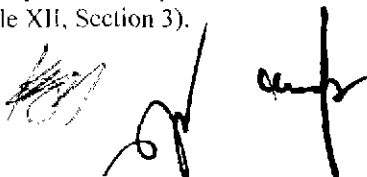
FERNANDEZ, SJ, *J. Chairperson*
MIRANDA, &
MUSNGI², *JJ.*

Promulgated:

December 4, 2018 

¹ Ponferrada, J. was the Chairperson of the 6th Division when the present case was submitted for decision. He retired on September 13, 2017. J. Fernandez, SJ will participate in the promulgation 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].

² At the time the present case was submitted for decision, Musngi, J. was designated as a temporary member of the Sixth Division, in view of the vacancy therein (as per A.O. No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).



X-----X

DECISION

MIRANDA, J.:

Accused Gemma Florante Adana (Adana) and Isabel Lugsanay Tabamo (Tabamo) were charged with violation of Section 3 (e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, in an Information dated August 16, 2011, as follows:

That on or about 30 September 2007 and subsequent thereto, in Naga, Zamboanga, Sibugay and within the jurisdiction of this Honorable Court, the accused **GEMMA FLORANTE ADANA**, a high ranking public officer being the Municipal Mayor of Naga, Zamboanga, Sibugay and **ISABEL LUGSANAY TABAMO**, also a public officer being the Municipal Social Welfare and Development Officer, also of Naga, Zamboanga Sibugay, both while in the performance of their official functions, committing the offense in relation to their offices, taking advantage of their official positions, conspiring and confederating with each other, acting with evident bad faith and manifest partiality, did then and there willfully, unlawfully, and criminally cause undue injury to the government and public interest and at the same time giving unwarranted benefits and advantages to typhoon victims Edgar Adana and Emma Aranas, accused Adana's husband and sister, respectively, by allowing and causing payment of the amounts of P45,000.00 and P40,000.00, respectively to the aforesaid persons, as cash assistance from the Municipality of Naga's calamity fund, when in truth and in fact, as the accused very well knew, the maximum amount given to typhoon victims who suffered the same economic damage as Edgar Adana and Emma Aranas was only P10,000.00, thus causing undue injury to the government and giving unwarranted benefits to said persons.

CONTRARY TO LAW.

On April 24, 2012, the Court found probable cause against accused Adana and Tabamo and issued an Order of Arrest against them.³

On May 7, 2012, the Court issued a Hold Departure Order against accused Adana and Tabamo.⁴

³ Records, Vol. 1, p. 94.

⁴ *Ibid*, p. 98.



On May 21, 2012, accused Adana and Tabamo appeared before the Regional Trial Court of Zamboanga Sibugay, Branch 24, to post cash bail bonds for their provisional liberty.⁵

On April 10, 2013, accused Adana and Tabamo were arraigned with the assistance of their respective counsel *de parte*,⁶ and pleaded “not guilty” to the offense charged.⁷

On September 5, 2013, the Court issued a Pre-trial Order containing the list of exhibits and witnesses, the issues to be resolved, and the joint stipulations of facts of the parties.⁸

Accused Adana, through counsel, admitted that: 1) She was the Municipal Mayor of the Municipality of Naga, Zamboanga Sibugay on September 30, 2007 and subsequent thereto; 2) She approved the payment and distribution of financial assistance from the calamity fund based on the resolution of the Sangguniang Bayan of the Municipality of Naga; and 3) Her husband, Edgar Adana, and sister, Emma Aranas, received the amount of P45,000.00 and P40,000.00, respectively, from the calamity fund as financial assistance for the damages suffered because of Typhoon Bebing.⁹

Accused Tabamo, through counsel, admitted that: 1) She was the Municipal Social Welfare and Development Officer (MSWDO) of the Municipality of Naga on September 30, 2007 and subsequent thereto; 2) She caused the preparation of the list of beneficiaries for the financial assistance from the calamity fund with the assistance of barangay officials; and 3) Adana approved the payment and distribution of financial assistance from the calamity fund.

The parties then agreed that the sole issue to be resolved by the Court shall be:¹⁰

Whether or not accused Gemma Adana and Isabel Tabamo gave unwarranted benefits to Edgar Adana and Emma Aranas when they gave them P45,000.00 and P40,000.00 from the calamity fund, respectively.

⁵ *Id.* pp. 110 – 128.

⁶ *Id.* Vol. 2, p. 113.

⁷ *Id.*

⁸ Pre-trial Order dated September 5, 2013, Records, Vol. 2.

⁹ *Ibid.*

¹⁰ *Id.*



On October 8, 2013, the Court ordered the preventive suspension of accused Adana upon motion of the Prosecution.¹¹

Accused Adana sought a reconsideration of the order of suspension.¹² On December 9, 2013, the Court denied the motion for reconsideration filed by accused Adana.¹³

Thereafter, trial ensued.

EVIDENCE FOR THE PROSECUTION

The Prosecution presented three (3) witnesses and their testimonies are summarized as follows:

Rolando Loon (Loon) is one of the private complainants. In his direct examination, he testified that: 1) He is a resident of Barangay Taytay Manubo, Municipality of Naga, Zamboanga Sibugay;¹⁴ 2) He owned seven (7) solar fish dryers that were destroyed by Typhoon Bebing on September 30, 2007;¹⁵ 3) There were mistakes in the master list of the calamity victims that was prepared by Tabamo;¹⁶ 4) JAMBO 1, which belonged to Edgar Adana, no longer existed when Typhoon Bebing came, while JAMBO 2, although under the name of Mayor Adana's sister, Emma Aranas, was actually owned by accused Adana herself;¹⁷ 5) JAMBO 1 only had seven (7) fish dryers but was listed to have fifteen (15) in the master list;¹⁸ 6) JAMBO 2 only had three (3) fish dryers but was listed with eighteen (18) fish dryers in the master list;¹⁹ 7) He knew of the number of fish dryers of JAMBO 1 and 2 because he served as a Kagawad in their barangay in 2007;²⁰ 8) Ernesto Tan and Ryan Tan, also typhoon victims, owned twelve (12) fish dryers each of which were destroyed by the typhoon;²¹ and 9) He did not receive the amount of Three Thousand Pesos (Php3,000.00) as financial assistance.²²

¹¹ Resolution dated October 8, 2013, Records, Vol. 2, pp. 256- 262.

¹² Motion for Reconsideration dated October 30, 2013, Records, Vol. 2, pp. 291 –298.

¹³ Resolution dated December 9, 2013, Records, Vol. 2, pp. 341 – 346.

¹⁴ p. 4, TSN dated April 10, 2014.

¹⁵ *Ibid*, p. 6.

¹⁶ *Id*, p. 8.

¹⁷ *Id*, pp. 8-9.

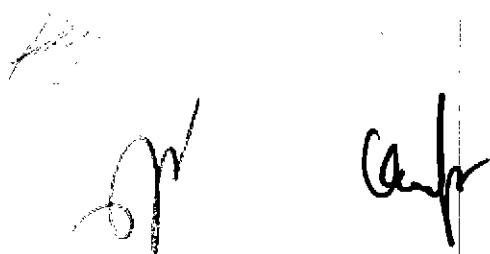
¹⁸ *Id*, p.13.

¹⁹ *Id*.

²⁰ *Id*, p. 9.

²¹ *Id*, pp. 10-11.

²² *Id*, p. 11.



When cross-examined, Loon admitted that: 1) The amount of the estimated damages in his case was Twelve Thousand Pesos (Php12,000.00);²³ 2) He was not present when Tabamo conducted the ocular inspection and assessment of actual damage sustained by typhoon victims;²⁴ 3) The amount of damage assessed to Edgar Adana and Emma Aranas was Eighty Thousand Pesos (Php80,000.00) each;²⁵ and 4) The fish dryers of Edgar Adana and Emma Aranas were bigger than his fish dryers.²⁶

During redirect examination, Loon clarified that: 1) He was not interviewed by Tabamo in the preparation of the master list of typhoon victims and assessment of the damage they sustained;²⁷ and 2) JAMBO 1 had already been destroyed in August 2007.²⁸

On re-cross examination, Loon said that: 1) JAMBO 1 was made of round timber and bamboo, and located at the seashore;²⁹ and 2) It was impossible to construct a new fish dryer from the same materials of JAMBO 1.³⁰

The second prosecution witness, **Adelaida L. Decin** (Decin), is also one of the private complainants. She testified that: 1) She is a resident of Barangay Taytay Manubo, Municipality of Naga, Zamboanga Sibugay;³¹ 2) She filed the complaint against Adana and Tabamo because of the inequality in the financial assistance given to the victims of Typhoon Bebing;³² 3) She owned six (6) fish dryers that were destroyed by Typhoon Bebing on September 30, 2007;³³ 4) She received Five Thousand Pesos (Php5,000.00) as financial assistance;³⁴ 5) JAMBO 1 which belonged to Edgar Adana no longer existed before Typhoon Bebing;³⁵ 6) JAMBO 1 was situated thirty (30) meters away from her fish dryers, and she actually saw the collapse and destruction of JAMBO 1 before Typhoon Bebing hit their municipality ;³⁶ 7) Emma Aranas was not involved in the business of fish dryers, and only lived in the house of accused Adana;³⁷ 8) JAMBO 2 has only three (3) fish dryers;³⁸ 9) JAMBO 2 was located twenty (20) meters from her house;³⁹ 10) She knew that JAMBO 2 belonged to

²³ *Id.*, pp. 14-15.

²⁴ *Id.*, p. 19.

²⁵ *Id.*, p. 16.

²⁶ *Id.*, p. 19.

²⁷ *Id.*, p. 25.

²⁸ *Id.*, p. 26.

²⁹ *Id.*, p. 30.

³⁰ *Id.*, pp. 30-31.

³¹ p. 4, TSN dated April 11, 2014.

³² *Ibid.*, p. 6.

³³ *Id.*, p. 8.

³⁴ *Id.*, p. 12.

³⁵ *Id.*, p. 10.

³⁶ *Id.*, p. 11.

³⁷ *Id.*, p. 12.

³⁸ *Id.*

³⁹ *Id.*, p. 13.

accused Adana because they are neighbors, and accused Adana admitted to her the ownership of the said fish dryers;⁴⁰ 11) Carlito Villaruel, also a typhoon victim, had seven (7) fish dryers that were destroyed by Typhoon Bebing but he only received Five Thousand Pesos (Php5,000.00) in financial assistance;⁴¹ 12) Rudy Bajo, another typhoon victim, had five (5) fish dryers that were destroyed by Typhoon Bebing but he only received Five Thousand Pesos (Php5,000.00) in financial assistance;⁴² and 13) JAMBO 1 only had seven (7) fish dryers but was listed to have fifteen (15) in the master list, and JAMBO 2 only had three (3) fish dryers but was listed to have eighteen (18) fish dryers in the master list.⁴³

On cross examination, Decin testified that: 1) There is an inconsistency in her testimony and the contents of her joint complaint-affidavit because she stated in the latter that it was JAMBO 2 instead of JAMBO 1 that was destroyed before Typhoon Bebing;⁴⁴ 2) A certain Napoleon Regondon helped them in the preparation of their joint complaint-affidavit and in the filing of the complaint against accused Adana and Tabamo;⁴⁵ 3) She received Fifteen Thousand Pesos (Php15,000.00) only, which is less than Eighty Thousand Pesos (Php80,000.00) that Edgar Adana and Emma Aranas each received;⁴⁶ 4) Accused Tabamo did not personally ask her about the extent of damage she suffered during Typhoon Bebing;⁴⁷ 5) JAMBO 1 and 2 belonged to accused Adana but were only placed in the names of her husband and sister, respectively;⁴⁸ 6) She knew of accused Adana's ownership of the fish dryers because she was present when accused Adana bought her house and the said fish dryers;⁴⁹ 7) Emma Aranas only helped in the work at the said fish dryers owned by accused Adana;⁵⁰ and 8) The damage sustained by the fish dryers may depend on the materials used in their construction.⁵¹

The last prosecution witness, **Ryan Cane Tan** (Tan), testified that: 1) He and his father, Ernesto Tan, owned twelve (12) solar fish dryers each;⁵² 2) Their fish dryers were also destroyed by Typhoon Bebing on September 30, 2007;⁵³ 3) The master list of the calamity victims indicated that he and his father together suffered damage in the amount of Eighty Thousand Pesos

⁴⁰ *Id.*, p. 15.

⁴¹ *Id.*

⁴² *Id.*, p. 16.

⁴³ *Id.*, p. 18.

⁴⁴ *Id.*, p. 28.

⁴⁵ *Id.*, pp. 28-29.

⁴⁶ *Id.*, p. 39.

⁴⁷ *Id.*, p. 45.

⁴⁸ *Id.*, p. 48-49.

⁴⁹ *Id.*, p. 49.

⁵⁰ *Id.*, p. 48.

⁵¹ *Id.*, p. 54.

⁵² *Id.*, pp. 7-8, TSN dated August 4, 2014.

⁵³ *Ibid.*, p. 7.

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(Php80,000.00) similar to the estimated damage allegedly suffered by Edgar Adana and Emma Aranas;⁵⁴ 4) The master list of the calamity victims proposed a financial assistance of Ten Thousand Pesos (Php10,000.00) in financial assistance collectively for him and his father; 5) There was an unequal distribution of financial assistance to the victims of Typhoon Bebing because he and his father should have received the same amount of financial assistance given to typhoon victims considering that they were assessed to have sustained the same amount of estimated damage;⁵⁵ and 6) JAMBO 1 and 2 actually belonged to accused Adana;⁵⁶

On cross examination, Tan admitted that: 1) He was happy to receive Ten Thousand Pesos (Php10,000.00) in financial assistance for the damage he and his father sustained during Typhoon Bebing;⁵⁷ 2) They used the said financial assistance to reconstruct some of their fish dryers;⁵⁸ 3) He had no document to show that accused Adana owned JAMBO 1 and 2;⁵⁹ and 4) He previously served as Mayor of their Municipality, and lost to accused Adana in the 2007 elections.⁶⁰

On redirect, Tan reiterated the unequal distribution of financial assistance given to them because Edgar Adana and Emma Aranas received a higher amount compared to him and his father who were also assessed to have sustained the same amount of damage.⁶¹

The Prosecution offered the following documentary exhibits⁶² which were admitted by the Court:⁶³

Exhibit	Description
B	Letter of Rolando Loon to the Office of the Ombudsman for Mindanao
C	Sangguniang Bayan Resolution No. 89-S-2007 dated October 11, 2007
D	Master List of Calamity Victims of Typhoon Bebing for Barangay Taytay Manubo
E	Supplemental Counter-Affidavit with Annexes of accused Tabamo dated March 11, 2011

⁵⁴ *Id.*, p. 10.

⁵⁵ *Id.*, p. 12.

⁵⁶ *Id.*, p. 14.

⁵⁷ *Id.*, p. 20.

⁵⁸ *Id.*, pp. 22-23.

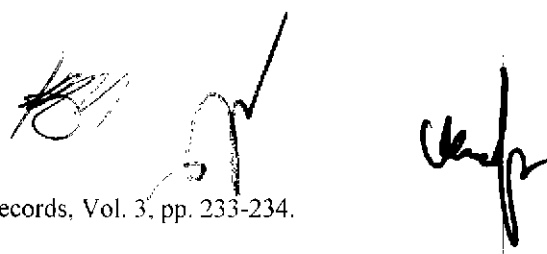
⁵⁹ *Id.*, p. 22.

⁶⁰ *Id.*, pp. 23-24.

⁶¹ *Id.*, p. 31.

⁶² Records, Vol. 3, pp. 63-223.

⁶³ Resolution dated June 5, 2015, Records, Vol. 3, pp. 233-234.



E-1	Handwritten List of Beneficiaries prepared by accused Tabamo
E-2	Handwritten List of Estimated Damage prepared by accused Tabamo
E-3	Copy of the Master List of Calamity Victims prepared by accused Tabamo
E-4	Copy of Sangguniang Bayan Resolution No. 89-S-2007
F	Joint Complaint-Affidavit of Rolando Loon, Adelaida Decin, Ernesto Dawa, Eduardo Cordova, and Napoleon dela Peña with Annexes dated March 17, 2009
F-1	
F-2 to F-3	Copy of the Sangguniang Bayan Resolution No. 89-S-2007
	Copy of the Master List of Calamity Victims prepared by accused Tabamo
G	Counter-Affidavit with Annexes of accused Tabamo dated May 29, 2009
G-1	Handwritten List of Beneficiaries prepared by accused Tabamo
G-2	Handwritten List of Estimated Damage prepared by accused Tabamo
G-3	Master List of Calamity Victims for Barangay Taytay Manubo
G-3-a	Master List of Calamity Victims for Barangays Bangkaw-bangkaw and Mamagon
G-3-b	Master List of Calamity Victims for Barangay Baluno
G-3-c	Master List of Calamity Victims for Barangays Sitio Look and Kaliantang
G-4	Summary of Financial Assistance to Calamity Victims
G-5	The name of "Rolando Loon" as one of the recipients of accused Tabamo's counter-affidavit
G-6	The name of "Adelaida Decin" as one of the recipients of accused Tabamo's counter-affidavit
I	Joint Resolution of the Office of the Ombudsman for Mindanao dated August 16, 2011
J	Disbursement Voucher No. 100-07-10-1172
J-1	Signature of Gemma Adana
J-2	Signature of Edgar Adana
K	Copy of Check No. 41151 in the name of Edgar Adana
K-1	Signature of Gemma Adana
L	Letter of State Auditor Hernando Nono to Edgar Adana dated July 8, 2008

M	Letter of Edgar Adana to State Auditor Hernando Nono dated July 15, 2008
N	Disbursement Voucher No. 100-07-10-1173
N-1	Signature of Gemma Adana
N-2	Signature of Emma Aranas
O	Copy of Check No. 0000411450 in the name of Emma Aranas
O-1	Signature of Gemma Adana
P	Letter of State Auditor Hernando Nono to Emma Aranas dated July 8, 2008
Q	Letter of Emma Aranas to State Auditor Hernando Nono dated July 15, 2008
Q-1	Signature of Emma Aranas
R	Undated Audit Investigation Report of the Commission on Audit (COA)

On June 22, 2015, accused Adana filed a Motion for Leave of Court to File Demurrer to Evidence dated June 19, 2015.⁶⁴

On July 1, 2015, accused Tabamo also filed a Motion for Leave of Court to File Demurrer to Evidence dated June 22, 2015.⁶⁵

On July 31, 2015, Atty. Chiole Chiong, counsel for accused Tabamo, filed a Motion to Dismiss in view of Tabamo's death on July 13, 2015.⁶⁶ The Court **dismissed** the case against accused **Tabamo** on March 24, 2017 after receiving an authenticated copy of her Certificate of Death from the Philippine Statistics Authority.⁶⁷

On August 17, 2015, the Court denied the respective motions for leave of court to file demurrer to evidence of accused Adana and Tabamo.⁶⁸

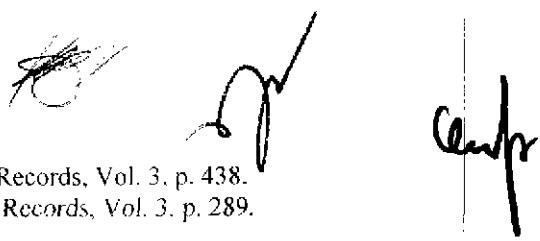
⁶⁴ Records, Vol. 3, p. 258.

⁶⁵ Records, Vol. 3, p. 249.

⁶⁶ Records, Vol. 3, pp. 274-275.

⁶⁷ Resolution dated March 24, 2017, Records, Vol. 3, p. 438.

⁶⁸ Resolution dated August 17, 2015, Records, Vol. 3, p. 289.



EVIDENCE FOR THE DEFENSE

Accused Adana presented two (2) witnesses. Their testimonies are summarized as follows:

Rolando Delos Reyes Solis (Solis) testified that: 1) He has been a carpenter of fish dryers in Taytay Manubo, Zamboanga Sibugay since 1994;⁶⁹ 2) He does the carpentry work for the fish dryers of Edgar Adana and Emma Aranas;⁷⁰ 3) Edgar Adana's fish dryers measured 40 x 50 meters while Emma Aranas' fish dryers measured 10 x 50 meters;⁷¹ 4) The fish dryers of Edgar Adana and Emma Aranas were destroyed by Typhoon Bebing;⁷² 5) He was hired by Edgar Adana and Emma Aranas to reconstruct the said fish dryers after Typhoon Bebing;⁷³ and 6) The amount spent for the reconstruction of Edgar Adana's fish dryers was One Hundred Thousand Pesos (Php100,000.00) while that of Emma Aranas was Eighty Thousand Pesos (Php80,000.00).⁷⁴

On cross examination, Solis stated that: 1) His house is located more or less fifty (50) meters from the house of Edgar Adana and Emma Aranas;⁷⁵ and 2) He knew one Adelaida Decin whose house is near the house of Edgar Adana and Emma Aranas, and who also owns fish dryers.⁷⁶

The last defense witness, **Rafael S. Jambaro** (Jambaro), took the witness stand. The Prosecution stipulated that: 1) Jambaro was the Vice-Mayor of the Municipality of Naga, Zamboanga Sibugay on September 30, 2007 and subsequent thereto;⁷⁷ 2) Sangguniang Bayan Resolution No. 89-S-2007 dated October 11, 2007 was passed authorizing the release of Two Hundred Forty Thousand Pesos (Php240,000.00) as cash assistance to the affected victims of Typhoon Bebing;⁷⁸ and 3) accused Tabamo, the Municipal Social Worker, conducted an ocular inspection and assessment of the damage sustained by the typhoon victims.⁷⁹

On cross-examination, Jambaro alleged that: 1) The Local Disaster Coordinating Council of the Municipality of Naga, Zamboanga Sibugay was not active when Typhoon Bebing struck their locality;⁸⁰ and 2) The Office of

⁶⁹ p. 15, TSN dated January 9, 2016.

⁷⁰ *Ibid*, p.16.

⁷¹ *Id*, pp. 16-17.

⁷² *Id*, p. 17.

⁷³ *Id*.

⁷⁴ *Id*.

⁷⁵ *Id*, p. 26.

⁷⁶ *Id*.

⁷⁷ p. 5, TSN dated August 22, 2016.

⁷⁸ *Ibid*.

⁷⁹ *Id*.

⁸⁰ *Id*, p. 16.

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the Municipal Social Welfare conducted the ocular inspection and assessment of damage sustained by the typhoon victims.⁸¹

To the additional questions propounded by the Court, Jambaro answered that: 1) The manner of distribution of the calamity assistance to the typhoon victims was under the control of the Mayor;⁸² and 2) He was not aware as to the limit imposed on the amount of financial assistance given to typhoon victims listed in the master list.⁸³

The Defense offered the following documentary exhibits which were admitted by the Court:⁸⁴

Exhibit	Description
4	Sangguniang Bayan Resolution No. 89-S-2007 dated October 11, 2007
6	Master List of Calamity Victims of Typhoon Bebing for Barangay Taytay Manubo
6-a	The name of "Rolando Loon" in the master list
6-b	The amount of "Php12,000.00" adjacent to the name of Loon
6-c	The name of "Edgar Adana" in the master list
6-d	The amount of "Php80,000.00" adjacent to the name of Edgar Adana
6-e	The name of "Emma Aranas" in the master list
6-f	The amount of "Php80,000.00" adjacent to the name of Emma Aranas
6-g	The name of "Adelaida Decin" in the master list
6-h	The amount of "Php15,000.00" adjacent to the name of Adelaida Decin
7	Joint Complaint-Affidavit of Rolando Loon, Adelaida Decin, Ernesto Dawa, Eduardo Cordova, and Napoleon dela Peña with Annexes dated March 17, 2009
7-a	Annexes dated March 17, 2009
7-b	Paragraph 8.3 of the joint complaint-affidavit
7-c	Paragraph 8.5 of the joint complaint-affidavit
7-d	Paragraph 10.1 of the joint complaint-affidavit
7-e	Paragraph 11.1 of the joint complaint-affidavit
	Paragraph 12.1 of the joint complaint-affidavit

⁸¹ *Id.*

⁸² *Id.*, pp. 20-21.

⁸³ *Id.*, p. 22.

⁸⁴ Resolution dated January 26, 2017, Records, Vol. 3, pp. 412-413.

9	Undated Audit Investigation Report of COA
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REBUTTAL EVIDENCE FOR THE PROSECUTION

Loon was re-called by the Prosecution to testify as rebuttal witness. In his rebuttal testimony, Loon alleged that there was no reconstruction of the fish dryers of Edgar Adana and Emma Aranas after Typhoon Bebing.⁸⁵ This is contrary to the testimony of defense witness Solis who claimed that he was hired to reconstruct JAMBO 1 and 2 after Typhoon Bebing. Loon showed four (4) pictures of vacant spaces where JAMBO 1 and 2 were located before Typhoon Bebing struck their municipality.⁸⁶ He was accompanied by Mr. Reganion when he took these pictures on October 9, 2016.⁸⁷

To the additional questions propounded by the Court, Loon clarified that he did not transfer residence from 2007 to 2016, or from the occurrence of Typhoon Bebing until the time of the taking of the said pictures.⁸⁸

The Prosecution intended to present **Napoleon G. Reganion** (Reganion) as its second rebuttal witness. The parties, however, stipulated that: 1) He will merely corroborate the rebuttal testimony of Loon;⁸⁹ and 2) He was the one who took the pictures previously identified by Loon in the said rebuttal testimony.⁹⁰

The Prosecution orally offered the following documentary exhibits which were admitted by the Court:⁹¹

Exhibit	Description
S, T, U and U-1, V, and W ⁹²	Printed pictures of the supposed locations of JAMBO 1 and 2 before Typhoon Bebing

⁸⁵ p. 9, TSN dated January 30, 2017.

⁸⁶ See Exhibit S, T, U, and V.

⁸⁷ *Supra*, p.9, TSN dated January 30, 2017.

⁸⁸ *Ibid*, pp.16-17.

⁸⁹ Order dated January 30, 2017, Records, Vol. 3, p. 417.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² p. 28, TSN dated March 28, 2017.

SUR-REBUTTAL EVIDENCE FOR THE DEFENSE

Rosalie B. Sanco (Sanco) testified that: 1) She has been the neighbor of accused Adana for twenty-seven (27) years;⁹³ 2) The fish dryers of Edgar Adana and Emma Aranas were reconstructed by Solis in 2008 after Typhoon Bebing;⁹⁴ and 3) In February 2017, she took pictures of JAMBO 1 and 2 to prove that these were indeed reconstructed after the typhoon.⁹⁵

The Defense orally offered the following documentary exhibits which were admitted by the Court:⁹⁶

Exhibit	Description
10, 10-a to 10-b, 11 to 11-a, and 12 to 12-a	Printed pictures of JAMBO 1 and 2 reconstructed after Typhoon Bebing

Thereafter, the parties were directed by the Court to submit their respective memoranda.⁹⁷ On April 19, 2017, accused Adana submitted her Memorandum dated April 19, 2017⁹⁸, while the Prosecution submitted its Memorandum dated May 18, 2017 on May 26, 2017.⁹⁹

FINDINGS OF FACTS

On the basis of the evidence on record, as well as the stipulations between the Prosecution and the Defense, the facts as found by the Court are as follows:

On September 30, 2007, the Municipality of Naga, Zamboanga Sibugay was struck by Typhoon Bebing destroying property consisting mostly of fish dryers owned by residents of coastal barangays.¹⁰⁰ One of these coastal barangays was Barangay Taytay Manubo where private complainants Loon and Decin were residents.¹⁰¹

The Office of the Municipal Social Welfare Development (MSWD), then headed by accused Tabamo, conducted an ocular inspection and assessed the damage sustained by the typhoon victims.¹⁰² She prepared a Master List

⁹³ p. 7, TSN dated March 27, 2017.

⁹⁴ *Ibid*, p. 8.

⁹⁵ *Id*, p. 13.

⁹⁶ Order dated March 28, 2017, Records, Vol. 3, p. 445.

⁹⁷ *Ibid*.

⁹⁸ Records, Vol. 3, pp. 451-459.

⁹⁹ Records, Vol. 3, pp. 464-480.

¹⁰⁰ Exhibit C.

¹⁰¹ *Supra*, p. 4, TSN dated April 10, 2014, and p. 4, TSN dated April 11, 2014.

¹⁰² *Supra*, Exhibit C.

of Calamity Victims for all barangays of the Municipality of Naga.¹⁰³ Accused Adana was the Mayor of the Municipality of Naga, Zamboanga Sibugay.¹⁰⁴

On October 11, 2007, the Office of the Sangguniang Bayan of the Municipality of Naga, Zamboanga Sibugay passed and approved Resolution No. 89, Series of 2007, appropriating Two Hundred Forty Thousand Pesos (Php240,000.00) from its calamity fund as financial assistance to all typhoon victims.¹⁰⁵ The said resolution, however, did not indicate a maximum amount of financial assistance to be given to individual victims.

The Master List of Calamity Victims for Barangay Taytay Manubo enumerated twenty-six (26) of its residents with the corresponding amount of estimated damage they sustained and the proposed financial assistance for each affected resident.¹⁰⁶

Edgar Adana and Emma Aranas, husband and sister of accused Adana, respectively, were included in the Master List of Calamity Victims.¹⁰⁷ According to the Master List, Edgar Adana and Emma Aranas each sustained damage on their properties equivalent to Eighty Thousand Pesos (Php80,000.00).¹⁰⁸ Edgar Adana and Emma Aranas later received Forty-Five Thousand Pesos (Php45,000.00) and Forty Thousand Pesos (Php40,000.00), respectively, in financial assistance.¹⁰⁹

Loon and Decin were also named beneficiaries in the same master list.¹¹⁰ Loon sustained damage equivalent to Twelve Thousand Pesos (Php12,000.00).¹¹¹ He, however, did not claim the amount of Three Thousand Pesos (Php3,000.00) in financial assistance allocated for him.¹¹² On the other hand, Decin's estimated damage was Fifteen Thousand Pesos (Php15,000.00). She, however, received only Three Thousand Pesos (Php3,000.00) in financial assistance.¹¹³

Tan, one of the Prosecution witnesses, was also listed as a beneficiary in the master list.¹¹⁴ He and his father, Ernesto Tan, were collectively assessed to have sustained Eighty Thousand Pesos (Php80,000.00) in estimated

¹⁰³ Exhibit D.

¹⁰⁴ *Supra*, Pre-trial Order.

¹⁰⁵ *Supra*, Exhibit C.

¹⁰⁶ *Supra*, Exhibit D.

¹⁰⁷ *Id.*

¹⁰⁸ *Supra*, Exhibit D.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Exhibit R.

¹¹³ *Supra*, Exhibit D.

¹¹⁴ *Id.*

damage.¹¹⁵ They, however, only received Ten Thousand Pesos (Php10,000.00) in financial assistance.¹¹⁶

In the same master list, other calamity victims like Nestor Tan, Esias Jemalan Jr., and Peter Paul Torres each sustained Sixty Thousand Pesos (Php60,000.00) in estimated damage.¹¹⁷ Each of them, however, received Ten Thousand Pesos (Php10,000.00) only in financial assistance.¹¹⁸ Carlito Villaruel, Alma Tan, and Nemesio Rawsin were assessed with Fifty Thousand Pesos (Php50,000.00) in estimated damage, but were only given Five Thousand Pesos (Php5,000.00) and Eight Thousand Pesos (Php8,000.00), respectively, in financial assistance.¹¹⁹

On November 12, 2007, Loon wrote to the Office of the Ombudsman for Mindanao requesting an audit investigation on the alleged anomalies in the distribution of financial assistance by accused Adana.¹²⁰ He claimed that twenty-four (24) of the twenty-six (26) calamity victims in Barangay Taytay Manubo did not receive the proposed financial assistance.¹²¹ It was only Edgar Adana and Emma Aranas, the husband and sister of accused Adana, who received financial assistance.¹²²

In its undated Audit Investigation Report, COA found out that all beneficiaries of the financial assistance, except Loon, received the checks issued to them in the corresponding amounts stated in the master list.¹²³ The investigation against accused Adana was thus ordered terminated.¹²⁴

Still aggrieved by the alleged inequality in the distribution of financial assistance to the calamity victims, private complainants Loon and Decin, with co-complainants Ernesto Dawa, Eduardo Cordova, and Napoleon dela Peña, filed a Joint Complaint-Affidavit dated March 17, 2009 with the Office of the Ombudsman charging accused Adana and Tabamo, and co-respondents Manuel Cuevas (Cuevas), Rodulfo Nercua (Nercua) and Emma Aranas with Violation of R.A. No. 3019.¹²⁵ They alleged that JAMBO 1, which belonged to Edgar Adana did not exist before the Typhoon Bebing came, while JAMBO 2, although named under accused Adana's, sister Emma Aranas, was actually owned by accused Adana herself.¹²⁶

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Supra*, Exhibit R.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Exhibit I.

¹²⁶ Exhibit F.

In the Resolution dated August 16, 2011, the Office of the Ombudsman found probable cause for Violation of R.A. No. 3019 against Adana and Tabamo.¹²⁷ The charges against Cuevas, Nercua and Emma Aranas were dismissed for want of evidence.¹²⁸

On April 4, 2012, the Information against accused Adana and Tabamo were filed with this Court.

DISCUSSION AND RULING

The charge against accused Tabamo is dismissed on account of her death.

The charge against accused Tabamo was dismissed on account of her death, the Court shall discuss the culpability of accused Adana only. The Court will not discuss the charge of conspiracy between accused Adana and Tabamo in the information for the same reason.

Manifest partiality and evident bad faith attended the distribution of financial assistance to the calamity victims.

Accused Adana was charged with Violation of Section 3 (e) of R.A. No. 3019, which provides that:

Sec. 3. Corrupt practices by public officers.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practice 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 of government corporations charged with the grant of licenses or permits or other concessions.

¹²⁷ *Supra*, Exhibit I.

¹²⁸ *Id.*

The elements of this crime are:

1. Accused must be a public officer discharging administrative, judicial, or official functions;
2. Accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
3. Accused caused any undue injury to any party, including the government, **or** gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.¹²⁹

It is undisputed that the first element is present in this case. A public officer is defined by law as "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class."¹³⁰


Section 2 (b) of R.A. No. 3019 provides:

Section 2. Definition of terms. As used in this Act, that term—

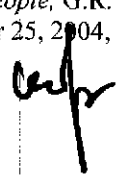
x x x

b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

As borne by the records of this case, and as specifically stipulated by the parties per the Pre-Trial Order dated September 5, 2013, accused Adana, being then the elected Mayor of the Municipality of Naga, Zamboanga Sibugay at the time of the commission of the alleged offense, is a public officer within the meaning of the term as defined above.


¹²⁹ *Uriarte v. People*, G.R. No. 169251, December 20, 2006, citing *Santos v. People*, G.R. No. 161877, March 23, 2006, *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989.

¹³⁰ Article 203, The Revised Penal Code.



The Court is now left to determine the existence of the second and third elements of Violation of Section 3 (e) of R.A. No. 3019.

The Supreme Court held in *Cabrera v. Sandiganbayan*¹³¹ that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference.

In *Bautista v. Sandiganbayan*, the Supreme Court explained:¹³²

Indeed, Sec. 3, par. (e), RA 3019, as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the government, *or* by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "**or**" connotes that either act qualifies as a violation of Sec. 3, par. (e), or as aptly held in *Santiago*, as two (2) different modes of committing the offense. **This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.**¹³³

The term "injury" was elucidated by the Supreme Court in *Cabrera v. Sandiganbayan*.¹³⁴

Section 3(e) of Rep. Act No. 3019, which was approved by Congress in Spanish reads:

(e) Causar algun perjuicio indebido a cualquiera, incluyendo al Gobierno, o dar a alguna persona particular cualesquier beneficios, vengaja o preferencia injustificados en el desempeño de sus funciones administrativas judiciales de indole oficial con manifiesta parcialidad, evidente mala fe o crasa negligencia inexcusable. Esta disposicion se aplicara a los funcionarios y empleados de oficinas o de las corporaciones del gobierno encargados de otorgar licencias o permisos u otras concesiones.

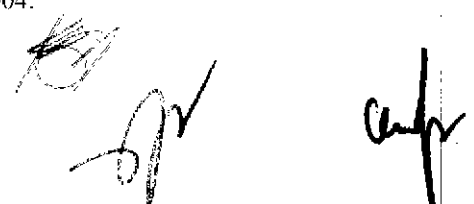
Perjuicio means prejudice, mischief, injury, damages. Prejudice means injury or damage, due to some judgment or action of another. Mischief connotes a specific injury or

¹³¹ G.R. Nos. 162314-17. October 25, 2004.

¹³² G.R. No. 136082. May 12, 2000.

¹³³ Emphasis supplied.

¹³⁴ *Supra*, *Cabrera v. Sandiganbayan*.



damage caused by another. *Indebido* means undue, illegal, immoral, unlawful, void of equity and moderations. In *Pecho v. Sandiganbayan*, the Court *en banc* defined injury as any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another. It must be more than necessary or are excessive, improper or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty. Undue injury cannot be presumed even after a wrong or a violation of a right has been established.¹³⁵

Undue injury in the commission of the crime requires proof of actual injury and damage. In *Llorente v. Sandiganbayan*,¹³⁶ the Supreme Court clarified:

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

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, or 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.

Therefore, undue injury caused to any party, including the government, under Section 3(e) of Republic Act No. 3019, could only mean **actual injury or damage** which must be established by evidence.¹³⁷

On the other hand, in *Rivera v. People*¹³⁸, the Supreme Court defined the following terms: “**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;

¹³⁵ Citations omitted.

¹³⁶ G.R. No. 122166, March 11, 1998.

¹³⁷ *Pecho v. Sandiganbayan*, G.R. No. 111399, September 27, 1996.

¹³⁸ G.R. Nos. 156577, 156587 & 156749, December 3, 2014.

benefit, profit or gain of any kind; benefit from some course of action; and “**preference**” signifies priority or higher evaluation or desirability; choice or estimation above another. The term “**private party**” or “private person” may be used to refer to persons other than those holding public office.¹³⁹

It is not enough, however, that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence.

A Violation of Section 3 (e) of R.A. No. 3019 may be committed in three ways, *i.e.*, through **manifest partiality**, **evident bad faith**, or **gross negligence**. It bears stressing that the law does not punish partiality, bad faith or negligence *per se*. These should meet the gravity required by law. This element is present when it is shown that bad faith or partiality is evident or manifest, or, that the negligent act or omission is gross and inexcusable.¹⁴⁰ Proof of **any** of these three in connection with the prohibited acts mentioned in the said provision is therefore enough to convict the accused.¹⁴¹

In *Fonacier v. Sandiganbayan*¹⁴², the Supreme Court held:

“Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” “Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.

These meanings were further explained by the Supreme Court in *Albert v. Sandiganbayan*:¹⁴³

There is “**manifest partiality**” when there is a **clear, notorious, or plain inclination or predilection to favor**

¹³⁹ Black’s Law Dictionary, p. 1196 cited in *Bautista v. Sandiganbayan*.

¹⁴⁰ *Jaca v. People*, G.R. Nos. 166967, 166974 and 167167, January 28, 2013.

¹⁴¹ *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994.

¹⁴² *Ibid.*

¹⁴³ G.R. No. 164015, February 26, 2009.

*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 or self-interest or ill will or for ulterior purposes.*¹⁴⁴

In this case, the Information against accused Adana states in part—

x x x acting with **evident bad faith** and **manifest partiality**, did then and there willfully, unlawfully, and criminally **cause undue injury to the government and public interest** and at the same time **giving unwarranted benefits and advantages to typhoon victims Edgar Adana and Emma Aranas, accused Adana's husband and sister**, respectively, by allowing and causing payment of the amounts of P45,000.00 and P40,000.00, respectively to the aforesaid persons, as cash assistance from the Municipality of Naga's calamity fund, x x x¹⁴⁵

After a careful examination of the evidence on record, the Court finds accused Adana's act of allowing the payment of financial assistance to her own husband and sister in amounts **evidently higher** than those received by other calamity victims who were similarly situated, as clear proof of evident bad faith and manifest partiality in the exercise of her position as the highest ranking public official in the municipality. This resulted to unwarranted benefit, advantage or preference given to her husband and sister.

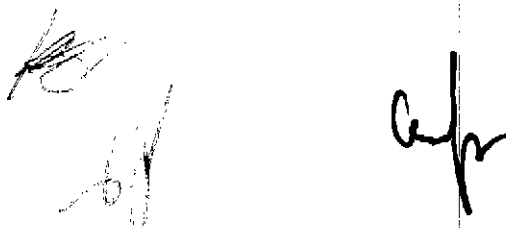
As Municipal Mayor, accused Adana is responsible for government funds, including the calamity fund, pertaining to the Municipality of Naga, Zamboanga Sibugay

Section 340 of the Local Government Code provides:

Section 340. *Persons accountable for Local Government Funds.* Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds

¹⁴⁴ Emphasis and italics supplied.

¹⁴⁵ Emphasis supplied.



through their participation in the use and application thereof.

In addition, **municipal mayors**, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he **is responsible for all the government funds pertaining to the municipality,**

Section 102. *Primary and secondary liability.*

(1) **The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.**¹⁴⁶

After the approval by the Sangguniang Bayan of Municipality of Naga, Zamboanga Sibugay of Resolution No. 89, Series of 2007, accused Adana, signed and approved the disbursement vouchers and checks for the release of financial assistance to the calamity victims. Particularly, Disbursement Voucher No. 100-07-10-1172¹⁴⁷ and Landbank Check No. 0000411451¹⁴⁸ in the amount of Forty-Five Thousand Pesos (Php45,000.00) were signed and issued to Edgar Adana, the husband of accused Adana. On the other hand, Disbursement Voucher No. 100-07-10-1173¹⁴⁹ and Landbank Check No. 0000411450¹⁵⁰ in the amount of Forty Thousand Pesos (Php40,000.00) were signed and issued to Emma Aranas, the sister of accused Adana. These documents were signed¹⁵¹ and approved¹⁵² by accused Adana in her capacity as the Mayor of the Municipality of Naga, Zamboanga Sibugay. Edgar Adana and Emma Aranas received the amounts covered by the said disbursement vouchers and checks, as evidenced by their respective letters to State Auditor Hernando Nono¹⁵³ confirming the receipt of their checks.

Accused Adana failed to rebut these overwhelming pieces of evidence as she opted not to defend herself on the witness stand. She, however, claimed in her Memorandum dated April 19, 2017 that the Prosecution utterly failed to prove her participation in the preparation of the Master List of Calamity Victims and determination of the financial assistance for each calamity victim.

¹⁴⁶ Emphasis supplied.

¹⁴⁷ Exhibits J to J2.

¹⁴⁸ Exhibits K to K-1.

¹⁴⁹ Exhibits N to N2.

¹⁵⁰ Exhibits O to O-1.

¹⁵¹ Exhibit J-1 in Disbursement Voucher 100-07-10-1172; Exhibit K-1 in Landbank Check No. 0000411451; Exhibit N-1 in Disbursement Voucher 100-07-10-1173; and Exhibit O-1 in Landbank Check No. 0000411450.

¹⁵² *Id.*

¹⁵³ Exhibits M and Q.



She alleged that it was her co-accused Tabamo who conducted the ocular inspection, assessed the damage, and came up with the said master list of calamity victims.¹⁵⁴ Unfortunately for the Prosecution, these circumstances were no longer testified to by accused Tabamo due to her untimely death before her testimony in court.¹⁵⁵

The Court, however, disagrees.

As earlier discussed, **accused Adana**, in her capacity as the Mayor of the Municipality of Naga, Zamboanga Sibugay, **had control and responsibility over the release of any government fund of the municipality, including the payment of financial assistance to the calamity victims of Typhoon Bebing from the calamity fund pursuant to Sangguniang Bayan Resolution No. 89, Series of 2007.** When accused Tabamo prepared and submitted the Master List of Calamity Victims, which detailed the amounts of assessed damage and proposed financial assistance to individual victims, she was only recommending and proposing the approval of said amounts. Accused Adana is the person **ultimately responsible** for the **approval, release, and payment of these amounts to the calamity victims.** As the mayor, her signature is needed before disbursement of public funds can be made. No checks can be prepared, and no payment can be effected without her signature on a disbursement voucher and the corresponding check. Her signatures appeared in the checks received by the beneficiaries.¹⁵⁶ Worse, accused Adana committed these acts despite knowledge that her husband and sister benefitted the most in the amount of financial assistance, and that there were other victims similarly damaged or situated as her husband and sister who received much lesser amounts.

Accused Adana's control over the distribution of financial assistance to the calamity victims was even bolstered by her own witness, Jambaro, who was the Vice-Mayor of their municipality at that time. The pertinent portion of his testimony is hereunder quoted:

Q: Who? **Who will have control? Who will have authority in the actual distribution?**

A: **It is the Executive Department already, your honor.**

Q: The Executive Department? **The Mayor?**

¹⁵⁴ p. 7, Memorandum for Accused Adana dated April 19, 2017.

¹⁵⁵ *Ibid.*

¹⁵⁶ Exhibits K to K-1, and Exhibits O to O-1.

A: **The Mayor**, your honor. ¹⁵⁷

Clearly, **evident bad faith** and **manifest partiality** attended the unequal and inconsistent distribution of financial assistance to individual calamity victims who suffered similar or almost similar amount of damage to their properties.

Tan testified that he and his father were also listed as beneficiaries in the master list, and were collectively assessed with Eighty Thousand Pesos (Php80,000.00) worth of damage similar to Edgar Adana and Emma Aranas. They, however, only received Ten Thousand Pesos (Php10,000.00) in financial assistance. This is an amount **substantially lower** than the Forty-Five Thousand Pesos (Php45,000.00) and Forty Thousand Pesos (Php40,000.00) received by Edgar Adana and Emma Aranas, respectively. The pertinent portion of Tan's testimony is hereunder quoted:

Q: I am showing to you a document which purported to be a master list of calamity victims of typhoon bebeng, kindly go over this document and tell this honorable court, if this is the list furnish to you by Municipal Social Worker?

(Witness was shown Exhibit F-2, which is entitled the Master List of Calamity Victims Typhoon Bebeng)

A: Yes, Sir, this is the list that I received, Sir.

Q: Now, kindly point in that list an entry or a statement which will support your early admission before this court that you and your father were one of the victims of the typhoon bebeng?

A: Section 9 are the names of Ryan and Ernesto Tan, Sir.

Q: Now, what can you say with this master list of calamity victims of typhoon bebeng?

A: In fact, as we received this copy, I have seen that the estimated damages are the same with Section 1 and 3 the proposed assistance is about Eighty Thousand. The proposed assistance, me and my father have Eighty Thousand and No. 1 Adana and No. 3 Emma Aranas have also Eighty Thousand but the approved proposed assistance in No. 1 Edgar Adana and No. 3 Emma Aranas each of them received/approved Forty-Five

¹⁵⁷ Emphasis supplied.

Thousand... and then Emma Aranas Forty Thousand but for us, we received only Ten Thousand, Sir.

Q: So, to clarify, you are referring to item No. 1 in the name of Edgar Adana?

A: Yes, Sir.

Q: Where the estimated damages is Eighty Thousand and the proposed assistance is Forty-Five Thousand?

A: Yes, Sir.

Q: Would you know if the proposed assistance was the one given to the victim?

A: That I do not know, Sir.

Q: You also mentioned about No. 3 in the name of Emma Aranas, where the estimated damages is Eighty Thousand and the proposed assistance is Forty Thousand, and we also refer you to item No. 9 Ryan Tan and Ernesto Tan where the estimated damages is Eighty Thousand and the proposed assistance is only Ten Thousand?

A: Yes, Sir.

Q: Now, what is wrong with that estimated damages and proposed assistance insofar as you and your father is concern?

A: **It's an unequal sharing of distribution of assistance, Sir.**

Q: What do you mean that there is an unequal sharing and distribution of financial assistance?

A: Because the estimated damages were the same so the proposed assistance should also be the same, Sir.¹⁵⁸

x x x

Q: But insofar as the amount that you and your father received which is Ten Thousand in relation to the amount that was received by Edgar Adana of Forty-Five Thousand and Emma Aranas of Forty Thousand, what can you say about that?

A: **It was not an equal distribution of financial assistance, Sir.**

¹⁵⁸ Emphasis supplied.

Q: Why do you say that it was not an equal distribution?

A: Because the estimated damages of their handayan is the same as ours but they received higher than what we received, so that is an unequal distribution, Sir.¹⁵⁹

Loon, the first Prosecution witness, echoed Tan's statements in his own testimony, *to wit*:

Q: Now, aside from entries Edgar Adana and Emma Aranas in the master list of calamity victims of Typhoon Bebing, which was marked as Exhibit F-2, was there any other observations that you can see with respect to this document?

A: Yes, Sir.

Q: What is that?

A: What I observed in this financial assistance, I saw there is a problem with regards specially to Ryan Tan and Ernesto Tan appearing on item No. 9, sir.

Q: What is wrong with that entry under item No. 9, Ryan Tan and Ernesto Tan?

A: What is wrong with this is, **why they has only a small amount for the financial assistance** and in fact up to the present Ernesto and Ryan Tan were not able to get the said amount.¹⁶⁰

In the testimony of Prosecution witness Decin, she explained the reason why she filed a complaint against accused Adana before the Office of the Ombudsman, *to wit*:

Q: Why did you file a case against accused Adana?

A: **If asked why I filed this case, it is because I am not in conformity with what she had done during the calamity, there was no equality in the giving of assistance, Sir.**¹⁶¹

¹⁵⁹ Emphasis supplied.

¹⁶⁰ Emphasis supplied.

¹⁶¹ Emphasis supplied.

For easier reference, a copy of the Master List of Calamity Victims for Barangay Taytay Manubo is provided hereunder:

ALEX "B"
 MASTERLIST OF CALAMITY VICTIMS
 TYPHOON BEBING

NO	NAME	BARANGAY	ESTIMATED DAMAGES	PROPOSED ASSISTANCE
1	EDGAR ADANA <i>Nambo</i>	TAYTAY MANUBO	P80,000.00	P45,000.00
2	CARLITO VILLA	TAYTAY MANUBO	P50,000.00	P5,000.00
3	EMIZA ARAVAS <i>Nambo</i>	TAYTAY MANUBO	P60,000.00	P40,000.00
4	RUDY DAJO	TAYTAY MANUBO	P40,000.00	P5,000.00
5	ADELADA DECM	TAYTAY MANUBO	P15,000.00	P5,000.00
6	CECILIACITA JR	TAYTAY MANUBO	P20,000.00	P5,000.00
7	ALMA TAN	TAYTAY MANUBO	P50,000.00	P5,000.00
8	BINESTOR TAN	TAYTAY MANUBO	P60,000.00	P10,000.00
9	RYAN TANERNESTO TAN	TAYTAY MANUBO	P80,000.00	P10,000.00
10	ESIAS JEMALAN JR	TAYTAY MANUBO	P60,000.00	P10,000.00
11	VICTOR BONOL	TAYTAY MANUBO	P30,000.00	P5,000.00
12	PRESCILLA JENELEZ	TAYTAY MANUBO	P15,000.00	P3,000.00
13	ERNESTO DAWA	TAYTAY MANUBO	P12,000.00	P3,000.00
14	WALFREDO APOSAGA	TAYTAY MANUBO	P40,000.00	P5,000.00
15	ERNESTO NEGAS	TAYTAY MANUBO	P40,000.00	P5,000.00
16	LURIE MADRID	TAYTAY MANUBO	P15,000.00	P3,000.00
17	ROLANDO LOON	TAYTAY MANUBO	P12,000.00	P3,000.00
18	NEMESIO BANSIN	TAYTAY MANUBO	P50,000.00	P8,000.00
19	ROSE PAJARDO	TAYTAY MANUBO	P5,000.00	P1,000.00
20	EDUARDO CORDOVA	TAYTAY MANUBO	P10,000.00	P2,000.00
21	ROSALITO ALFARAS	TAYTAY MANUBO	P10,000.00	P5,000.00
22	JGRIE BRILLANTES	TAYTAY MANUBO	P15,000.00	P3,000.00
23	RODOLFO JACA	TAYTAY MANUBO	P15,000.00	P3,000.00
24	GEDION PADERNAL	TAYTAY MANUBO	P15,000.00	P3,000.00
25	PETER PAUL TORRES	TAYTAY MANUBO	P60,000.00	P10,000.00
26	IFE ACUNA	TAYTAY MANUBO	P8,000.00	P2,000.00

ISABEL L. TABAMO, RSW
 MANUBO

[Handwritten signatures and initials]

As can be gleaned from the copy of the said master list above, other calamity victims like Nestor Tan, Esias Jemalan Jr., and Peter Paul Torres were found to have sustained Sixty Thousand Pesos (Php60,000.00) in damages to their fish dryers. However, each of them only received Ten Thousand Pesos (Php10,000.00) in financial assistance. Carlito Villaruel, Alma Tan, and Nemesio Rawsin each suffered Fifty Thousand Pesos (Php50,000.00) in damage, but were only given Five Thousand Pesos (Php5,000.00) and Eight Thousand Pesos (Php8,000.00), respectively, as financial assistance.

It is therefore evident that accused Adana gave unwarranted benefits to her husband and sister over the other calamity victims who suffered the same or almost the same amount of economic damage brought about by Typhoon Bebing. While there was no maximum limit imposed on the grant of financial assistance to each calamity victim, and that there were no standards provided in Sangguniang Bayan Resolution No. 89, Series of 2007 on the amount of financial assistance, **accused Adana's act of allowing her husband and sister to receive substantially higher amounts in financial assistance compared to the other calamity victims who suffered the same or almost the same amount of economic damage is clearly unwarranted and unjustified.**

The evidence on record also yields to a finding that JAMBO 1 no longer existed when Typhoon Bebing struck their municipality on September 30, 2007, and that JAMBO 2 actually belonged to accused Adana for which reason, Edgar Adana and Emma Aranas should not have been qualified for financial assistance in the first place. In his testimony, Loon stated:

Q: Now, on Exhibit "F-2", which is the master list of calamity victims of typhoon "Bebing". What can you say with respect to this document that was attached to your complaint?

A: Under these Jambo 1 and Jambo 2, there were some mistakes, sir.

Q: What is wrong with respect to the entry Edgar Adana/Jambo 1?

A: **This Jambo 1 before typhoon Bebing came, this is no longer existing, sir.**

x x x

Q: You also mentioned that there is wrong with respect to item no. 3 under the entry Emma Aranas/Jambo 2, what is wrong with that entry?

A: What is wrong with this, is **this Jambo 2, under the name of Emma Aranas is not owned by Emma Aranas**



but this Jambo 2-Solar Fish Dryer No. 2 is owned by Mayor Adana, sir.

Q: What is the relation of this Emma Aranas to accused Mayor Gemma Adana?

A: They are sisters, sir.¹⁶²

This was corroborated by prosecution witness Decin in her testimony, *to wit*:

Q: What is wrong with the entry Edgar Adana?

A: Because under the entry, Edgar Adana, the husband of Mayor Gemma Adana, he only owns seven (7) solar fish dryer and the estimated damage assessed to him is eighty thousand pesos (P80,000.00), he was able to get an assistance of forty-five thousand pesos (P45,000.00). **But that solar fish dryer was already destroyed even before typhoon Bebing came, sir.**

Q: What is your basis in saying that even before typhoon Bebing hit the municipality of Naga, the solar fish dryer under the name of Edgar Adana was already destroyed?

A: **Because I witnessed it, Sir, and I was even shocked when his barn collapsed.**

X X X

Q: What is wrong with the entry Emma Aranas?

A: **That Emma Aranas is not involved in the business of solar fish dryer. When she came there from Naga, she lived in the house of Gemma Adana and she does not even own a house in the place up to the present, sir.**

X X X

Q: What proof do you have to show that this Jambo 2 belongs to accused Gemma Adana?

A: **Because we are neighbors, and also, she was the one who told me that she owns this, sir.**¹⁶³

¹⁶² Emphasis supplied.

¹⁶³ Emphasis supplied.

Prosecution witness Tan also stated in his testimony that:

Q: Would you know who owns entry opposite the name Edgar Adana, the word Jambo 1, would you know who owns Jambo 1?

A: Gemma Adana, sir.

Q: How about in No. 3 Emma Aranas/Jambo 2, would you know who owns this Jambo 2?

A: Gemma Adana, sir.

Q: How would you know that this is owned by Gemma Adana and not Emma Aranas?

A: Because as far as I know, Gemma Adana owned two handayan, sir.

Q: Two handayans, so you are referring to Jambo 1 and Jambo 2?

A: Yes sir.¹⁶⁴

These testimonies have not been rebutted by the evidence presented by the Defense and failure of accused Adana to testify in court. The evidence on the reconstruction of the fish dryers of Edgar Adana and Emma Aranas after Typhoon Bebing did not address the issue on ownership of JAMBO 1 and JAMBO 2 by accused Adana. Said evidence was even refuted by prosecution witness Loon when he presented four (4) recent pictures of vacant spaces where JAMBO 1 and 2 were located before Typhoon Bebing struck their municipality.

The Prosecution failed to prove undue injury caused to the government.

The Prosecution, however, failed to prove that the distribution of unequal amounts of financial assistance to calamity victims caused undue injury to the government and public interest as alleged in the Information. As earlier discussed, undue injury is interpreted as "actual damage" and must be proved as one of the elements of the crime.¹⁶⁵ Here, the amount of Two Hundred Forty Thousand Pesos (Php240,000.00) from the calamity fund of the municipality was distributed and received by the victims of Typhoon Bebing, except Loon.¹⁶⁶ There is therefore no evidence to prove that the government actually

¹⁶⁴ Emphasis supplied.

¹⁶⁵ *Supra*, *Llorente v. Sandiganbayan*.

¹⁶⁶ Exhibit R.



sustained damage from the said act. The amount of actual damage sustained by the government and public interest was not even alleged in the Information.

The alleged admission of accused Tabamo in her counter-affidavit and supplemental counter-affidavit that accused Adana changed the entries in the handwritten list of calamity victims submitted to her is hearsay evidence and unverified because of accused Tabamo's death before she could testify in court.

Nevertheless, the evidence presented by the Prosecution clearly shows that accused Adana had given unjustified favor or benefit to her husband and sister by allowing the payment of a higher amount in financial assistance to them compared to other calamity victims. Again, there are two ways by which Section 3 (e) of R.A. 3019 may be violated: 1) by causing undue injury to any party, including the government; and 2) by giving any private party any unwarranted benefit, advantage or preference.¹⁶⁷ Although neither mode constitutes a distinct offense, an accused may be charged under either or both.¹⁶⁸ The presence of one would suffice for conviction.¹⁶⁹

CONCLUSION

In criminal procedure, the Prosecution carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probatio, qui dicit, non qui negat*, or he who asserts, not he who denies, must prove,¹⁷⁰ and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime.¹⁷¹

Accordingly, the Prosecution has the burden of proof to show: (1) the correct identification of the author of a crime, and (2) the actuality of the commission of the offense with the participation of the accused.¹⁷² All these facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. In this case, the Prosecution was able to prove beyond reasonable doubt all the elements of Violation of Section 3 (e) of R.A. No. 3019 committed by accused Adana.

WHEREFORE, accused **Gemma Florante Adana** is found **GUILTY** beyond reasonable doubt of Violation of Section 3 (e) of R.A. No. 3019, and is accordingly sentenced to suffer the indeterminate penalty of imprisonment of

¹⁶⁷ *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

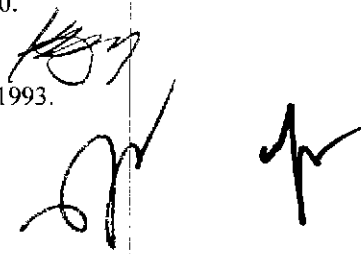
¹⁶⁸ *Ibid.*

¹⁶⁹ *Id.*

¹⁷⁰ *People v. Subingsubing*, G.R. Nos. 104942-43, November 25, 1993.

¹⁷¹ *People v. Wagas*, G.R. No. 157943, September 4, 2013.

¹⁷² *Ibid.*



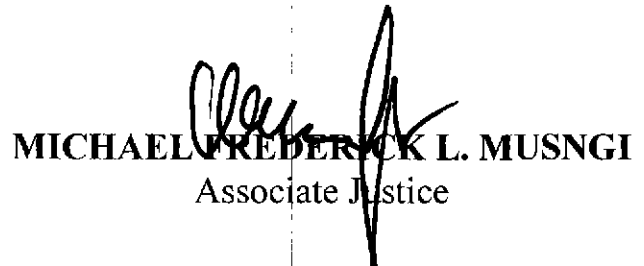
six (6) years and one month, as minimum, to eight (8) years, as maximum, and the accessory penalty of perpetual disqualification from holding public office.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

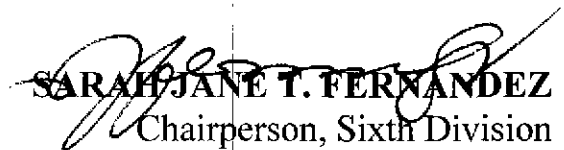
WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice

ATTESTATION

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


SARAH JANE T. FERNANDEZ
Chairperson, Sixth Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice