



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. SB-12-CRM-0173

Present:

Gomez-Estoesta, J., *Chairperson*
Trespeses, J. and
Hidalgo, J.

- versus -

ELENO U. COLINARES, JR.,
Accused.

Promulgated:

November 16, 2018 *Jr*

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DECISION

Hidalgo, J.:

In an Amended Information quoted below, the People of the Philippines charged Eleno Uttoh Colinares Jr. (herein referred to as accused Colinares, Jr.), former Regional Director of the Department of Public Works and Highways (DPWH), Regional Office No. V, for Violation of **Section 3(h) of Republic Act No. 3019**, otherwise known as **Anti-Graft and Corrupt Practices Act**, to wit:

“That on or about January 17, 2001, or sometime prior or subsequent thereto, in Legazpi City, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, a public officer, being then the Regional Director of the Department of Public Works and Highways (DPWH), Regional Office No. V, while in the performance of his duties and taking advantage of his position and committing the offense in relation to

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his office, did then and there, willfully, unlawfully and criminally acquire and obtain a pecuniary interest in a business, contract or transaction in which he intervened or took part in his official capacity, by entering, in behalf of the DPWH, Regional Office No. V, into a Fully Maintained Equipment Lease Contract dated January 17, 2001, with a certain ELVIN C. BAUTISTA of Zamboanga City, whereby the DPWH leased from said ELVIN C. BAUTISTA a motor vehicle described as Pajero Intercooler Turbo, model 1995 with Plate No. UEY-937, and thereafter, signing and approving the corresponding vouchers and checks authorizing the release of the total amount of Php 362,372.72 as rental payments of the said vehicle; and later depositing one of the checks he signed and approved, LBP Check 0001028074 dated June 5, 2001, in the amount of Php134,836.36, payable to the said ELVIN C. BAUTISTA, to his personal account with Metrobank under Account No. 31380588, when in fact, ELVIN C. BAUTISTA is a mere dummy, and the beneficial owner of the said leased vehicle is actually himself, to the damage and prejudice of the government and the public interest.

CONTRARY TO LAW.”

When arraigned on April 25, 2013, accused Colinares Jr., with the assistance of his counsel pleaded NOT GUILTY to the crime charged.¹ During the Pre-trial Conference which took place on July 8, 2013, the parties entered into the following stipulations:

1. The identity of the accused Colinares as the same person charged.
2. That accused Colinares was a public officer, being then the incumbent Regional Director of the Department of Public Works and Highways (DPWH), Regional Office No. V, Legaspi City, at the time of the commission of the offense, as alleged in the information.
3. That on December 13, 1999, Engr. Sardua sold his Pajero to a certain Mr. Elvin C. Bautista, for Five Hundred Thousand Pesos (P 500,000.00), as evidenced by a Deed of Absolute Sale dated December 13, 1999 marked as Exhibit “C” for the prosecution.
4. That the rental payments of Php 141, 076.38 covering the periods August 1, 1999 to November 30, 1999; Php 227,536.36 covering the periods December 1, 1999 to July 31, 2000 and Php 134,836.36 covering the periods February 1, 2011 to May 31, 2001 were all disallowed in audit due to the absence of any authority from the DBM allowing accused Colinares to rent motor transport equipment for a continuous period of more than fifteen (15) days.

¹ Records Vol. I, p. 45

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5. That as a matter of procedure, prior approval from the Central Office of the DPWH is necessary before accused can enter into a Lease Contract.
6. That it was the Circular of the Department of Budget and Management which caused the disallowance of the Lease Contract entered into by the accused.²

They likewise marked their respective documentary evidence³ and identified the following issues:

1. Whether the accused is guilty of Violation of Section 3(h) of R.A. 3019, for entering into a Fully Maintained Equipment Lease Contract in behalf of DPWH-Regional Office No. V as lessee, with Elvin C. Bautista, as lessor, over a Pajero Intercooler Turbo 1995 for the period of December 1, 1999 to July 31, 2000 and February 1, 2001 to May 31, 2001;
2. Whether the accused is the actual owner of the vehicle leased by the DPWH from Mr. Elvin Bautista;

EVIDENCE PRESENTED

ON THE SIDE OF THE PROSECUTION:

The prosecution presented testimonial evidence consisting of the testimonies of Edita Orogo Nota, Wilson Jacinto Eugenio, Atty. Maria Elena A. Roxas, Carmelo Dargo Gines, and Anthony Catiwa Natividad.

Edita Orogo Nota (Nota), State Auditor IV of the Commission of Audit, based in Regional Office No. 5 of Legazpi City and assigned to the DPWH.⁴ She testified that from April to May 2002, she conducted a regular audit on the account of DPWH Region 5, Legazpi City.⁵ In the course of her audit investigation, she discovered that the DPWH entered into a lease contract for the utilization of a Mitsubishi Pajero by the Office of the Regional Director, Regional Office No. V,⁶ with one Joevie Sardua (Sardua) from August 1, 1999 to July 31, 2000, for Php 1,200/day rental. Rental in the amount of Php141,076.38 was paid to Sardas Construction as evidenced by Landbank Check No. 0001024779 dated November 29, 1999, Disbursement Voucher No. 00772 bearing the signature of accused Colinares Jr. and Official Receipt No. 1086 dated December 2, 1999. She likewise testified that, "after the rentals and the lease contract was paid⁷," the Mitsubishi Pajero was

² Records Vol. 1 pp 177,178, 179

³ Id. P. 171-180

⁴ TSN dated January 27, 2014, p. 3-4

⁵ Id. p. 9

⁶ Id. p. 7

⁷ TSN, dated January 27, 2014, p. 18

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sold by Sardua to a certain Elvin Bautista (Bautista). That DPWH continued to lease the Mitsubishi Pajero [but] now with the new owner (Bautista) as evidenced by a Fully Maintained Lease Contract entered between Elvin Bautista as the lessor and Engineer Eleno Colinares Jr. Regional Director, DPWH, Regional Office No. V, as lessee⁸ covering the period February 1, 2001 until January 31, 2002 and renewable every one (1) year thereafter. By way of rental, Landbank Check Nos. 0001027549⁹ dated April 4, 2001 in the amount of Two Hundred Twenty Seven Thousand Five Hundred Thirty Six Pesos and Thirty Six Centavos (P227,536.36), and Landbank Check No. 0001028074¹⁰ dated June 5, 2001 in the amount of One Hundred Thirty Four Thousand Eight Hundred Thirty Six Pesos and Thirty Six Centavos (P134, 836.36) (subject matter of the case) were paid. Corresponding Disbursement Vouchers Nos. 006785¹¹ and 002492¹² were issued relative to these checks. That later she issued COA Notice of Suspension dated May 16, 2002 and Notice of Disallowance with Numbers 2002-101-004, 2002-101-005, 2002-101-006 all dated August 1, 2002, disallowing the rental payments for the Mitsubishi Pajero¹³ due to the absence of authority of accused Colinares Jr. from the Secretary of the Department of Budget and Management (DBM) for the lease rental of more than fifteen (15) days¹⁴ pursuant to NBC DBM Circular No. 446 Series of 1995.¹⁵ The disallowance was affirmed by the Commission on Audit.¹⁶

On cross examination, she stated that DPWH's non-compliance with the DBM circular could be cured by an authority from the DBM which should be submitted within six (6) months from the Notice of Disallowance.¹⁷ She added that she did not believe that the agreement was a ghost contract.¹⁸

Wilson Jacinto Eugenio (Eugenio), Paralegal Officer of Metrobank Legal Services Department since 2009. As such, his duties and responsibilities include attending court hearings pursuant to a *subpoena duces tecum ad testificandum* received from the courts.¹⁹ Equipped with an Authorization Letter²⁰ dated 21 January 2014 signed by Carlos E. Rosana, Branch Head, Legazpi Rizal Branch, he submitted, on behalf of the bank, the Statement of

⁸ TSN dated January 27, 2014 p. 23

⁹ Records, Vol. 2 Exh "E"

¹⁰ Records, Vol. 2 Exh. "F"

¹¹ Records, Vol. 2 Exh. "K"

¹² Records, Vol. 2 Exh. "J"

¹³ TSN dated January 27, 2014, p. 35-37

¹⁴ TSN dated January 27, 2014, p. 46

¹⁵ 3.3 Limitation on Rental of Motor Vehicles. Section 76, Chapter 7, Book VI of Executive Order No. 292 (Administrative Code of 1987) provides that no appropriations authorized in the General Appropriations Act shall be used for renting motor transport equipment for a continuous period of more than fifteen days, except as may be authorized by the Secretary of Budget and Management.

¹⁶ Id. p. 46

¹⁷ TSN dated January 28, 2014, p. 6

¹⁸ Id. p. 12

¹⁹ TSN dated April 23, 2014, p. 12

²⁰ Records Vol. 2 p. 218

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Account of accused Colinares Jr., to reflect the transactions made therein during the period January 2001 to August 2002.²¹ He brought with him an electronic copy of the Statement of Account generated by the Records Management Department, under the name of Eleno U. Colinares with No. 3138058893, covering said period.²²

Atty. Maria Olivia Elena A. Roxas (Roxas), Graft Investigation and Prosecution Officer II, General Investigation Bureau B-FIO, Office of the Ombudsman. She testified that she executed a Complaint against accused Colinares Jr., attaching thereto an affidavit executed by a certain Engr. Joevie Sardua and the original Subpoena Ad Testificandum²³ issued by the Office of the Ombudsman to said Engr. Joevie Sardua, dated March 31, 2003, containing a handwritten notation stating the following: “[a]ddressee appeared on April 30, 2003 at 1PM. He manifested that he will submit a sworn affidavit on May 9, 2003,” along with a signature on top of Engr. Joevie Sardua’s printed name.²⁴

Carmelo Dargo Gines (Gines), Associate Graft Investigation Officer I of the Office of General Investigation, Bureau C, Field Investigation Office II, Office of the Ombudsman. That pursuant to the request of Prosecutor Lyn Dimayuga, he conducted an investigation on a certain Elvin C. Bautista and in relation thereto, he prepared a Background Investigation Report and a Supplemental Background Investigation Report,²⁵ stating that, the whereabouts of said Elvin C. Bautista cannot be determined. He was not listed as a registered voter in any of the barangays in the Municipality of Minglanilla and as per the Records and Information Management Department of the Social Security system (SSS), he is not a member of the SSS. And, as last witness

Anthony Catiwa Natividad (Natividad), the Records Officer I of the Commission on Elections (COMELEC). He identified a List of Voters from Barangay Linao, Municipality of Minglanilla, Province of Cebu where No. 54 of the said document lists the following entries:

**“Name: Colinares, Elvin Bautista
Voter’s Address: 4344 Countryside Village, Linao, Minglanilla, Cebu
Sex: Male
Status: Married
Birthdate: May 31, 1965
Registration Date: June 14, 1997.”**²⁶

Purposely, the testimonies of Gines and Natividad were presented to prove that there is no real person whose identity matches said Elvin C.

²¹ Id. p. 14

²² Id. p. 24

²³ Id. p. 119

²⁴ TSN dated October 15, 2015 p. 5

²⁵ TSN dated July 22, 2015, p. 7

²⁶ TSN dated November 5, 2014 p. 8

Bautista, the one who purportedly entered into a Deed of Absolute Sale²⁷ with Engr. Jovie Sardua.

After the above witnesses testified, the prosecution offered its documentary exhibits, consisting of the following:

“Exhibit “A”, Certified True Copy of Fully Maintained Equipment Lease Contract dated July 23, 1999, executed between Engineer Jovie A. Sardua, as Lessor, and Engineer Eleno U. Colinares, Jr., representing the DPWH, as Lessee; **Exhibit “B”**, Certified True Copy of LBP Check No. 0001024779 in the amount of One Hundred Forty-one Thousand Seventy-six Pesos and 38/100, (P141,076.38), dated November 29, 1999; **Exhibit “B-1”**, Dorsal side of Exhibit B pertaining to the signature of Mr. Sardua; **Exhibit “B-2”**, Signature of Accused Colinares; **Exhibit “C”**, Certified True Copy of Deed of Absolute Sale between Engineer Jovie A. Sardua and Elvin C. Bautista, dated December 13, 1999; **Exhibit “D”**, Certified True Copy of Fully Maintained Equipment Lease Contract dated January 17, 2001, executed between Mr. Elvin Bautista, as lessor, and Engineer Eleno U. Colinares Jr., representing the DPWH as lessee; **Exhibit “E”**, Certified True Copy of LBP Check No. 0001027549 dated April 4, 2001, in the amount of Two Hundred Twenty-seven Thousand Five Hundred Thirty-six Pesos and 36/100 (P 227,536.36); **Exhibit “E-1”**; **“E-2”**; and **“E-3”**, submarkings in the check **Exhibit “F”**, Certified True Copy of LBP Check No. 0001028074 dated June 5, 2001 in the amount of One Hundred Thousand Eight Hundred Thirty-six Pesos and 36/100 (P 134,836.36); **Exhibit “F-1”**, dorsal side of Exhibit F; **Exhibit “G”**, Certified True Copy of Notice of Disallowance No. 2002-101-006 from COA; **Exhibit “H”**, Certified True Copy of Notice of Disallowance No. 2002-101-005 form COA; **Exhibit “I”**, Certified True Copy of Disbursement Voucher No. 2002-101-004 from COA; **Exhibit “J”**, Certified True Copy of Disbursement Voucher No. 002492 pertaining to release of the amount of P 134,836.36 with original copy compared and attached; **Exhibit “K”**, True Copy of Disbursement Voucher No. 006785 pertaining to the release of the amount of P 227,536.36; **Exhibits “K-1” and “K-2”**, signatures of accused Colinares in the DV; **Exhibit “L”**, True Copy of Disbursement Voucher No. 007772 pertaining to the release of the amount of P 141,076.38; **Exhibits “L-1” and “L-2”**, signatures of accused in the DV; **Exhibit “M”**, Original Copy of Certification dated February 5, 2013 issued by Nida San Buenaventura, Chief, LTO Pasig District Office; **Exhibit “N”**, Certified True Copy of LTO Certificate of Registration No. 54446264; **Exhibit “O”**, Original Copy of Affidavit dated May 9, 2003 executed by Jovie Sardua; **Exhibits “O-1” and “O-2”**, Subpoena ad Testificandum to Engr. Jovie Sardua and Marginal Note in the Subpoena; **Exhibit “P”**, Certified True Copy of Affidavit dated February 19, 2007 executed by Elvin C. Bautista; **Exhibit “Q”**, Certified True Copy of Affidavit-Complaint dated March 29, 2006 executed by Maria Elena A. Roxas, GIPO II, Office of the Ombudsman; **Exhibit “R”**,

²⁷ Records Vol. II, p. 97 Exh. “C”

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Certified Photocopy of Metrobank Deposit Slip for Account No. 3138058893 under the name Eleno U. Colinares, Jr. in the amount P134,836.36; **Exhibit “S”**, Original Copy of COA Decision No. 2010-083 dated August 31, 2010; **Exhibit “T”**, Original Copy of Audit Observation Memorandum No. 2002-012 dated March 15, 2002 issued by the Commission on Audit; **Exhibits “U” and “U-1”**, Original Copy of Counter-Affidavit executed Mr. Eleno U. Colinares dated January 7, 2013; **Exhibit “V” and submarkings**, Bank Records, particularly Statements of accused Colinares, with Metrobank, Legazpi, Albay, under Account No. 3138058893, for the period covering 2000 to 2005; **Exhibit “W”**; **“W-1” and “W-2”**, Certificate of Live Birth of baby Boy Colinares; Father’s name of the baby which is Eleno Uttoh Colinares who is the accused and date of birth of the baby boy; **Exhibit “X”**, Notice of Suspension No. 2002-101-004 dated May 16, 2004; **Exhibit “Y”**, Official g24Receipt No. 1086 dated December 2, 1999, issued by SARDS Construction; **Exhibit “Z”**, Certificate of Registration No. 65200105; **“Z-1”**, Official Receipt MVMRR No. 94323745 dated March 15, 2001; **Exhibit “AA-1” and “AA-2”**, Certification dated July 9, 2003, issued by Lorna P. Rojas, OIC-LBP Legazpi Branch; **Exhibit “BB” and submarkings**, Bank records, including Statement of Account of Elvin C. Bautista with Metrobank Legazpi Albay for the period covering 2000-2005; **Exhibit “CC”**, Comelec’s List of Voters; **Exhibit “DD” to “DD-13”**, Memorandum (July 14, 2014) and Background Investigation Report; **Exhibit “EE” to “EE-19”**, Supplemental Background Investigation Report; **Exhibit “FF”**, Certified True Copy of the Personal Data Sheet of accused Eleno U. Colinares, **Exhibit “GG”**, Authorization letter from Metrobank authorizing Mr. Eugenio to testify and identify the bank documents related to the case; **Exhibit “HH”**, Letter addressed to the Honorable Justices from Mr. Carlos E. Rosana informing the court that the original copy of Deposit Slip involving the Php 134,836.36 deposited to the account of accused Colinares can no longer be retrieved;²⁸

In a Resolution²⁹ dated February 28, 2017, the Court admitted Exhibits **“A”**, **“B”**, **“C”**, **“D”**, **“E”**, **“F”**, **“G”**, **“H”**, **“I”**, **“J”**, **“K”**, **“L”**, **“M”**, **“N”**, **“O”**, **“Q”**, **“S”**, **“T”**, **“U”**, **“W”**, **“X”**, **“CC”**, **“DD” to “DD-13”**, **“EE” to “EE-18”**, **“FF”**, **“GG”** and **“HH”**. Exhibits **“P”**, **“R”** and **“Y”** were not admitted while Exhibits **“Z”**, **“AA”** and **“BB”** were not offered.

After the prosecution has formally offered its documentary evidence, in its Resolution³⁰ dated April 27, 2017, this Court granted prosecution’s Motion to Recall Prosecution Witness Jovie Sardua³¹. Record shows that despite the granting of the said Motion, Sardua was not presented. Nonetheless, his Affidavit³² was admitted in evidence as forming part of the

²⁸ Records Vol. 2, Pp 74-91

²⁹ Id. Pp. 236-238

³⁰ Records, Vol. II, Pp. 263-268

³¹ Id. Pp 241-244

³² Records, Vol. 2, Exh “O”

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testimony of Atty. Maria Olivia Elena A. Roxas³³, in this Court's Resolution dated February 28, 2017.

ON THE SIDE OF THE DEFENSE:

Accused Colinares Jr., through counsel, filed a Motion with Leave of Court to File Demurrer to Evidence, which this Court denied in its Resolution³⁴ dated June 21, 2017. A Motion for Reconsideration³⁵ was filed on July 20, 2017, but was also denied in a Resolution³⁶ dated August 22, 2017.

After the denial of the Motion for Reconsideration, the accused testified:

Eleno U. Colinares, Jr., Regional Director of the Department of Public Works and Highways, Bicol Region, Region 5 from 1999 to 2002. He said that, since there was no service vehicle for his use so he could perform his duties as Regional Director of the Bicol Region which is very big, he requested from the Secretary of the DPWH to hire a service vehicle through a letter dated May 21, 1999.³⁷ Said request was approved by the Department through a Memorandum³⁸ prompting the Regional Equipment Engineer to canvass prices for a service vehicle. After the canvass, a Lease Contract Agreement (herein referred to as the **FIRST LEASE CONTRACT**) between him and Sardua was prepared and forwarded to the DPWH and the Bureau of Equipment for their approval.³⁹ After it was approved, a service vehicle was leased. That on December 30, 1999, the subject service vehicle was sold by Sardua to Engr. Elvin Bautista as evidenced by a Deed of Absolute Sale dated December 30, 1999.⁴⁰ After the sale, he wrote Bautista asking him if he is amenable to have the same vehicle leased for the same rate. After Bautista expressed his conformity, they prepared another Fully Maintained Lease Contract (herein referred to as the **SECOND LEASE CONTRACT**) which was forwarded to DPWH for approval.⁴¹ He denied being the owner of the motor vehicle subject of the second lease contract. He denied likewise being related to Bautista. Regarding the disallowed payments made by COA on the lease contract⁴², he said, when he received a Notice of Disallowance from the Commission on Audit, "the amount disallowed was deducted from his terminal leave benefits".⁴³

³³ Records, Vol. 2 Pp. 236-238

³⁴ Id Pp. 285-288

³⁵ Id. Pp 292-300

³⁶ Id Pp 311-313

³⁷ TSN dated April 4, 2018 p. 16

³⁸ Id p. 22

³⁹ Id p. 23

⁴⁰ Id p. 32

⁴¹ Id. p. 33

⁴² P. 35 TSN April 4, 2018

⁴³ Id. p. 35

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On cross examination, he affirmed his request for a service vehicle, because the service vehicle temporarily assigned to him was just borrowed from the Material Engineer⁴⁴. When confronted about his counter-affidavit regarding the check deposited to his account, he affirmed the same. Anent Bautista's identity, he said, he is not related to him but knew him as a contractor in Sulu⁴⁵. He is not his son but affirmed that the registration papers of the "unit was cared of to his address."⁴⁶

After his testimony, accused Colinares Jr. through counsel, formally offered his documentary evidence consisting of the following:

Exhibit "1", Letter dated May 19, 1999 by Francisco R. Luz, Jr., **Exhibit "2"**, Letter dated May 21, 1999 by the accused to the Secretary, DPWH; **Exhibit "3"**, Indorsement dated July 6, 1999; **Exhibit "4" and "4-A"**, Memorandum dated July 22, 1999 by Manuel M. Bonoan, Under Secretary, DPWH, **Exhibit "5"**, Abstract of Quotation/Bid and Awards dated July 8, 2013; **Exhibit "6" and "6-A"**, Fully maintained Equipment Lease Contract dated July 23, 1999; **Exhibit "10"**, Deed of Absolute Sale between Engr. Jovie R. Sardua and Elvin C. Bautista; **Exhibits "14"** Notice of Suspension of check covering payment of equipment rentals; **Exhibit "15"**, Letter dated July 10, 2006; and **Exhibit "20"**, Certification issued by Teresita S. De Vera.⁴⁷

Among the documentary exhibits offered, only **Exhibit "10"** was admitted.⁴⁸

Thereafter, in a Resolution⁴⁹ dated May 21, 2018, parties were given thirty (30) days to file their respective Memoranda. Only the prosecution submitted its Memorandum.⁵⁰

THE COURT'S RULING

Accused Colinares, Jr. stands charged for Violation of Section 3(h) of RA 3019. Pertinent provision of the law states that:

"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 X X X X X.

⁴⁴ P.44 TSN, April 4, 2018

⁴⁵ P. 53 TSN, April 4, 2018

⁴⁶ P. 49 TSN April 4, 2018

⁴⁷ Id. Pp 343,344,345

⁴⁸ Records, Vol. II Pp. 378,379

⁴⁹ Id P. 384

⁵⁰ Id. Pp 388-407

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(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

x x x x x x x x.”

As enshrined in the case of *Teves v. Sandiganbayan*⁵¹, the following elements should be proven for the crime to exist:

1. The accused is a public officer
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction, and;
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.

Let us therefore determine whether these elements were proven in the instant case.

The accused is a public officer.

It is not disputed that, at the time material to this case, accused Colinares, Jr., is a public officer, being the Regional Director of Region V of the Department of Public Works and Highways. This fact was also stipulated upon by both parties during the Pre-Trial on January 13, 2014, thus the existence of the first element.

He has a direct or indirect financial or pecuniary interest in any business, contract or transaction.

Direct or indirect financial or pecuniary interest in any business, contract or transaction is illustrated in the *Teves* case in this wise:

“There are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft Law. The first mode is if in connection with his pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his official capacity. The second mode is when he is prohibited from having such interest by the Constitution or any law.”⁵²

⁵¹ G.R. No. 154182, December 17, 2004, 447 SCRA 309

⁵² *Teves vs Sandiganbayan*, G.R. No. 154182, Dec. 17, 2004

From the evidence presented, what could be deduced is, after the Fully Maintained Equipment Lease Contract (First Lease Contract) executed by Engr. Jovie Sardua and accused Colinares Jr.,⁵³ allowing the latter's Office to use a Pajero Intercooler Turbo 1995 owned by Sardua, with a daily rental of Php1,200 for one (1) year has expired, accused Colinares, Jr. entered into another Fully Maintained Equipment Lease Contract dated January 17, 2001 (Second Lease Contract) involving the same Pajero Intercooler Turbo this time with one **Bautista**- the new owner thereof, also for one (1) year, i.e., from February 1, 2001 to January 31, 2002⁵⁴ and for the same rental. The sale of the Pajero to Bautista was evidenced by a Deed of Absolute Sale dated December 13, 1999. It is in the second lease contract where accused Colinares Jr. showed his direct financial or pecuniary interest. Verily, while he wants to impress to the Court that the second lease contract is valid, accused Colinares Jr. displayed several acts which when scrutinized will reveal his real intention in entering the said lease contract. As pointed out by the prosecution, these acts consist of **first**, accused Colinares Jr. though has no authority from the DBM [as per National Budget Circular 446, series of 1995] to enter into a lease contract of a motor vehicle for a continuous period of more than fifteen (15) days, just the same entered into the said contract effective **August 1, 1999 to July 31, 2000 and February 1, 2001 to January 31, 2002;** **second**, accused Colinares Jr. entered into the said lease contract with one Bautista, who is believed to be his son if not an unknown person and **third**, accused Colinares Jr. deposited Landbank Check No. 0001028074 which is payable to Bautista in the amount of P134, 836.36, representing rental payment for the period February 1, 2001 to May 31, 2001 to his personal account (Metrobank Savings Account No. 3138058892).

Surprisingly, all these allegations were not squarely rebutted by accused Colinares Jr. Regarding the lease contract, all he said was, he needs a service vehicle to do his duties as Regional Director and rightly, he should be provided with one. Regarding Bautista's identity, he denied knowing him. Specifically he said, he is a contractor from Sulu but he does know him. He denied also that Bautista is his son even when he was shown the Birth Certificate⁵⁵ of one Bb. Boy Bautista Colinares born on May 31, 1965 at Jolo, Sulu, to Eleno Uttoh Colinares and Evelyn Reliz Bautista. Accused Colinares Jr. however admitted that the address appearing on the Certificate of Registration of the Mitsubishi Pajero with No. 65200105 issued on March 15, 2001 by the Land Transportation Office registered to Elvin Bautista is his address. Nonetheless, denial as a defense has always been looked with disfavor, being a weak defense, if not the weakest. In countless decisions, the High Court said, DENIAL is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Regarding, the rental deposit to his personal account, which he never denied, his explanation was, **“ x x x, the said check was deposited in my account**

⁵³ Exh. "A" Records Vol. II, p. 93

⁵⁴ Exh. "D" Records Vol II, p.100

⁵⁵ Records, Vol. 2, P. 162, Exh. "W"

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because Mr. Bautista was in need of cash and for him to encash would entail time, considering that the check was issued in Legaspi City, thus, I accommodated his request and this would explain why the check was deposited in my personal account x x x".⁵⁶ Weighing his defenses side by side with that of the prosecution, what the Court can say is, the evidence of the prosecution pointing to his direct financial and pecuniary interest on the contract of lease is strong, more so, that he did not even negate the assertions of Sardua in his Affidavit that he sold his Pajero to him in 1999- which obviously is the same Pajero which is the subject matter of the two lease contracts. Worse, accused Colinares Jr. never presented Bautista the named payee of the check payment to at least convince the Court that he really exist and that he is in dire need of cash if only to explain why he has to advance the payment of the rentals. Had he done so, perhaps the Court might understand why he deposited the check payment payable to Bautista to his personal account and consider said check as endorsed to him if such was the fact.

Given our observations above, this Court, therefore finds the existence of the second element. Without sounding repetitive, the "**direct or indirect financial or pecuniary interest**" of accused Colinares Jr., is shown by his very act of entering into a lease contract sans authority with one who appears to be a fictitious person, so he can be financially benefited as shown by his act of knowingly depositing the proceeds of the second lease contract for the period of February 1, 2001-May 31, 2001 to his own personal account with Metrobank.

He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.

The third element enumerates the two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract or transaction may violate Section 3(h) of the Anti-Graft Law. The **first mode** is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.⁵⁷

Anent the first mode, clearly, accused Colinares Jr. is a party to both contracts of lease more specifically to the second contract where his direct financial and pecuniary interest were made more obvious.

To reiterate, from the evidence of the prosecution, it is very evident that accused took part in his official capacity in connection with such interest, for accused Colinares Jr. did not only indorse the questioned lease contract but

⁵⁶ Records, Vol. 2 p. 165 Exh. "U"- "U-2"

⁵⁷ G.R. Nos. 137355-58

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approved it and signed the same in his capacity as Regional Director. Jurisprudence provides: “what is contemplated in Section 3(h) of the Anti-Graft Law is the **actual intervention** in the transaction in which one has financial or pecuniary interest in order that liability may attach. For the law aims to prevent dominant use of influence, authority and power”⁵⁸. Actual intervention as contemplated in Section 3(h) of RA 3019 would mean a public officer’s taking part in his or her official capacity, whether approve, indorse or in any capacity take part in the business or transaction which he or she has financial interest. In the cited Trieste case, the Supreme Court illustrated “actual intervention” in this wise:

“There is “actual intervention” when Trieste, who was then the mayor of Numancia, Aklan, purchased construction materials from Trigen Agro-Industrial Development Corporation of which allegedly he is the president. Obviously, by way so, he had displayed willful and unlawful financial interest over a contract, which in the first place, he is prohibited by law to enter, taking into consideration his position as a Mayor, and the same time the president of Trigen Agro-Industrial Development Corporation.”

In this case and as pointed out earlier, accused Colinares Jr. is undoubtedly an approving authority to the 2nd Fully Mantained Equipment Contract. Without his approval and signature, there is no Lease Contract to speak of nor will there be the issuance of Disbursement Vouchers for the payment of the rentals. These documents were signed by accused Colinares, Jr. thus readily showing his actual intervention to the transaction which is the lease of his service vehicle. Clearly, the 2nd Fully Maintained Equipment Lease Contract was perfected with the indispensable participation and intervention of accused Colinares Jr. Thusly, it is the perfect “actual intervention” that is contemplated by law that gives rise to his liability as a public officer.

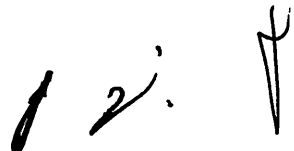
Anent the second mode, this Court finds no need to discuss this mode in length because obviously, it is the first mode which accused Colinares Jr. has committed and guilty of. For emphasis however, it is worthy to note that the findings of the COA⁵⁹ to the effect that accused Colinares Jr. cannot enter into a lease agreement for a period of more than fifteen (15) days was never rebutted. Absence of contrary evidence to disprove said finding, the same could be relied upon.

Our discussions above taken all together, what could be concluded is, all the elements for the crime of Violation of Sec. 3(h) of RA 3019 were successfully proven by the prosecution.

Well-entrenched in jurisprudence is the rule that:

⁵⁸ Trieste, Sr. v. Sandiganbayan, G.R. Nos. 70332-43, November 13, 1996, 145 SCRA 508.

⁵⁹ Records Vol 2 Exh. “H” P. 106



“Criminal prosecutions primarily revolve around proving beyond reasonable doubt the existence of the elements of the crime charged. As such, they mainly involve questions of fact. There is a question of fact when the doubt or difference arises from the truth or the falsity of the allegations of facts. Put a bit differently, it exists when the doubt or difference arises as to the truth or falsehood of facts or when the inquiry invites calibration of the whole gamut of evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation”⁶⁰

“The conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.

It is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond reasonable doubt, as a consequence of the tenet *ei incumbit probatio, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove, and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of the crime, and (2) the actuality of the commission of the offense with participation of the accused. 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 defense⁶¹”.

“Between the categorical statements of the prosecution witness, on one hand and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellants.”⁶²

Taking into consideration our observations above, this Court has no recourse but to find the prosecution’s case far stronger than that of the defense especially so, that even the documentary evidence offered by accused Colinares Jr. were not admitted, which makes his case even weaker. Time and again the High Court said: “When the prosecution has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the

⁶⁰ Santos vs Committee on Claims Settlement, G.R. 158071, April 2, 2009

⁶¹ Macayanan Jr., vs Pp. G.R. 175842

⁶² People vs. Anticamara and Fernandez, G.R. No. 178771, June 8, 2011

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court of the truth of the allegations in the Information, or has established a prima facie case against the accused, the burden of evidence shifts to the accused making it incumbent upon him to adduce evidence in order to meet and nullify, if not overthrow, the prima facie evidence.”⁶³

QUANTUM OF PROOF IN CRIMINAL CASES

Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:

Section 2. Proof beyond reasonable doubt. - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility or error, produces absolute certainty. **Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.**” (underscoring ours)

Following the above legal principles, if the State as in this case is able to meet this quantum of evidence required in criminal cases, or the moral certainty that the accused committed the crime charged, then the Court, without more, must convict the accused.

IMPOSABLE PENALTY

Section 9 of R.A. 3019 provides for the penalties for violations of the said act. It states:

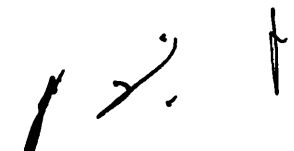
Section 9. Penalties for Violations.

“(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income”.⁶⁴

The prosecution having discharged its function of establishing guilt beyond reasonable doubt, lamentably, the Court has no recourse but to convict accused Colinares Jr.

⁶³ People vs. Villanueva, G.R. No. 172116, October 30, 2006, 506 SCRA 280

⁶⁴ Sec. 9, Par. 1 RA 3019.




WHEREFORE, in view of the foregoing, this Court finds accused Eleno Uttoh Colinares Jr. **GUILTY** beyond reasonable doubt of violating **Section 3(h) of Republic Act No. 3019** and is sentenced to suffer an indeterminate penalty of imprisonment for a period of **SIX (6) YEARS AND ONE (1) MONTH to EIGHT (8) YEARS** with perpetual disqualification from public office.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice


WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, *Chairperson*


ZALDY V. TRESPESSES
Associate Justice

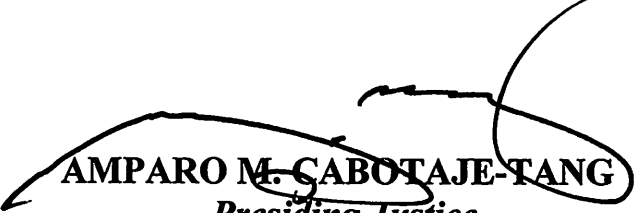
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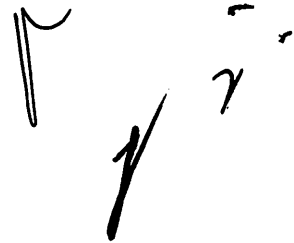
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's division.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, *Chairperson*

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





REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

Seventh Division

November 5, 2018

IN RE: *PP vs. ELENO U. COLINARES, JR.*

Criminal Case No. *SB-12-CRM-0173*

The Honorable Presiding Justice:

We hereby transmit pursuant to Article VIII, Section 13 of the 1987 Constitution, the attestation and certification (page 17 of the **Decision** in the above-entitled case, which is due for promulgation. We attest that the conclusions in the said Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Very truly yours,


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Associate Justice


ZALDY V. TRESPESSES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice