



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RAUL RODRIGUEZA LEE,
 TERESITA DAGNALAN-
 PALADIN, MANUEL SERRANO
 LAURORA, FELICISIMO
 DOLENDO BRONDIAL, ALL OF
 THE PROVINCIAL
 GOVERNMENT OF
 SORSOGON, and ENRICO T.
 VELASCO,

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RAUL RODRIGUEZA LEE,
 ANTONIO RIVA HUAB,
 FLORENCINO C. DINO II,
 TERESITA DAGNALAN-
 PALADIN, ROSIE DIOQUINO
 AGNIS, ENGR. ARNIE
 HEQUIBAL DE VERA, ALL OF
 THE PROVINCIAL
 GOVERNMENT OF
 SORSOGON, and ENRICO T.
 VELASCO

X-----X

SB-13-CRM-0309

For: Violation of Sec. 3(e) of
 R.A. 3019

Present:

FERNANDEZ, SJ, J.

Chairperson

**FERNANDEZ, B, J. and
 VIVERO, J.**

Promulgated:

February 26, 2011 *[Signature]*

SB-13-CRM-0310

For: Violation of Sec. 3(e) of
 R.A. 3010

Present:

FERNANDEZ, SJ, J.

Chairperson

**FERNANDEZ, B, J. and
 VIVERO, J.**

Promulgated:

February 26, 2011 *[Signature]*

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JOINT DECISION

VIVERO, J.

For decision are charges for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019)¹ or the Anti-Graft and Corrupt Practices Act, as amended, under two (2) separate *Informations*, docketed as **SB-13-CRM-0309** and **SB-13-CRM-310**, against accused Raul Rodriguez Lee (Lee; in both cases), then Provincial Governor, Teresita Dagnalan-Paladin (Paladin; in both cases), then Provincial General Services Officer, Manuel Serrano Laurora (Laurora; only in SB-13-CRM-309), Inspection Officer, Felicisimo Dolendo Brondial (Brondial; only in SB-13-CRM-309), Accounting Clerk III, Atty. Antonio Riva Huab (Huab; only in SB-13-CRM-310), then Provincial Legal Officer, Florencio C. Diño II (Dino; only in SB-13-CRM-310), then Provincial Assessor, Rosie Dioquino Agnis (Agnis; only in SB-13-CRM-310), then OIC Provincial Budget Officer, Engr. Arnie De Vera (De Vera; only in SB-13-CRM-310), then Engineer IV of Provincial Engineer's Office, **ALL OF THE PROVINCIAL GOVERNMENT OF SORSOGON (PGS)**, and private individual Enrico T. Velasco (Velasco; in both cases), President and CEO of First Education and Training Ventures, Inc. (**FETVI**), for allegedly giving unwarranted benefits, advantage, and preference to the aforementioned FETVI and/or Enrico T. Velasco, and causing undue injury and damage to the Government, especially to the Provincial Government of Sorsogon.

The Charges

The two (2) separate *Informations* read:

Information in SB-13-CRM-0309²

¹Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

²Rollo, Vol. I. at pp.1-4.

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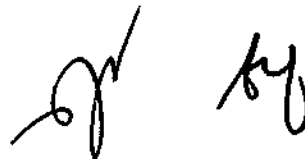
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The undersigned Graft Investigation and Prosecution Officer III of the Office of the Ombudsman hereby accuses the above-named accused **RAUL RODRIGUEZA LEE, TERESITA DAGNALAN-PALADIN, MANUEL SERRANO LAURORA, FELICISIMO DOLENDO BRONDIAL**, public officials of the Provincial Government of Sorsogon, and **ENRICO T. VELASCO**, a private individual, of the crime of violation of Section 3, paragraph (e), of Republic Act No. 3019, as amended, committed as follows:

That on October 5, 2005, or sometime prior and/or subsequent thereto, in the Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, **RAUL RODRIGUEZA LEE**, then Governor (SG 30), **TERESITA DAGNALAN-PALADIN**, then Provincial General Services Officer (SG 26), **MANUEL SERRANO LAURORA**, Inspection Officer (SG 9), **FELICISIMO DOLENDO BRONDIAL**, Accounting Clerk III (SG 8), **ALL OF THE PROVINCIAL GOVERNMENT OF SORSOGON**, and as such public officers, taking advantage of their official duties, with grave abuse of authority and committing the offense in the performance of their duties and/or in relation thereto, conspiring, confederating, and mutually helping with one another and with one **ENRICO T. VELASCO**, a private individual and President and *CEO* of *FIRST EDUCATION AND TRAINING VENTURES, INC.*, did then and there, willfully, unlawfully, feloniously, criminally, and *with evident bad faith, manifest partiality, and gross inexcusable negligence*, **DELIVER, ACCEPT, and PAY** the computer hardware and software in the sum of Nine Million Nine Hundred Ninety Six thousand Nine Hundred Ninety Nine Pesos (PHP9,996,999.00) under **PURCHASE ORDER No. 100050900529** dated 05 October 2005 and **DELIVERY RECEIPT No. 005-10-2005** dated 24 October 2005, knowing fully well that the above stated computer hardware and software are **incomplete as to quantity and not complying with specifications**, i.e., second-hand or not brand new, defective, under specifications and/or unlicensed software, thereby giving unwarranted benefits, advantage and preference to **FIRST EDUCATION AND TRAINING VENTURES, INC.** and/or accused **ENRICO T. VELASCO**, who received the payment thereof through Check dated 08 November 2005 in the net amount of Nine Million Four Hundred Ninety Seven Thousand One Hundred Forty Nine Pesos & 05/100 centavos (PHP9,497,149.05) after deducting the Value Added Tax and Withholding Tax, and causing undue injury and damage to the Government, especially to the Provincial Government of Sorsogon, in the said amount.

CONTRARY TO LAW.



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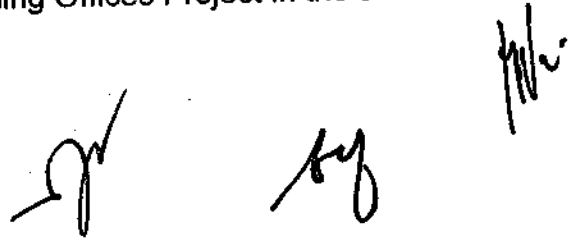
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Information in SB-13-CRM-0310³

The undersigned Graft Investigation and Prosecution Officer III of the Office of the Ombudsman hereby accuses the above-named accused RAUL RODRIGUEZA LEE, ATTY. ANTONIO RIVA HUAB, FLORENCIO C. DIÑO II, TERESITA DAGNALAN-PALADIN, ROSIE DIOQUINO AGNIS, ENGR. ARNIE HEQUIBAL DE VERA, public officials of the Provincial Government of Sorsogon, and ENRICO T. VELASCO, a private individual, of the crime of violation of Section 3, paragraph (e), of Republic Act No. 3019, as amended, committed as follows:

That on March 29, 2004, or sometime prior and/or subsequent thereto, in the Province of Sorsogon, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, **RAUL RODRIGUEZA LEE**, then Governor (SG 30), **ATTY. ANTONIO RIVA HUAB**, then Provincial Legal Officer (SG 26), **FLORENCIO C. DIÑO II**, then Provincial Assessor (SG 26), **TERESITA DAGNALAN-PALADIN**, then Provincial General Services Officer (SG 26), **ROSIE DIOQUINO AGNIS**, then OIC Provincial Budget Officer (SG 24), **ENGR. ARNIE DE VERA**, then Engineer IV of Provincial Engineer's Office (SG 22), then Head of the procurement and Bids and Awards Committee (BAC), respectively, **ALL OF THE PROVINCIAL GOVERNMENT OF SORSOGON**, and as such public officers, taking advantage of their official duties, with grave abuse of authority and committing the offense in the performance of their duties and/or in relation thereto, conspiring, confederating, and mutually helping with one another and with one ENRICO T. VELASCO, a private individual and President and CEO of FIRST EDUCATION AND TRAINING VENTURES, INC. (FETVI), did then and there, willfully, unlawfully, feloniously, criminally, and with evident bad faith, manifest partiality and gross inexcusable negligence, **PROCURE, without a competitive public bidding in violation of Republic Act No. 9184 and its implementing rules and regulations and Commission on Audit (COA) Circular No. 92-386**, three (3) sets CYBERSTREAM remote satellite gateway or satellite signal receiver/transmitter equipment in the amount of Six Million Six Hundred Thousand Pesos (PHP6,600,000.00), three (3) lots "Office Equipment" for Distance Learning Project Component in the sum of One Million Eight Hundred Thousand Pesos (PHP1,800,000.00), three (3) lots Office furniture and fixtures for Public Calling Offices Project in the sum of Two

³ Rollo, Vol. II. at pp.5-8.



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Hundred Twenty Five Thousand Pesos (PHP225,000.00) and three (3) lots "Office furniture and fixtures" for Internet Café Project in the sum of Three Hundred Seventy Five Thousand Pesos (PHP375,000.00) under **DELIVERY RECEIPT No. 2004-03-001** and **DELIVERY RECEIPT No. 2004-03-002** both dated 29 March 2004 and three (3) links satellite connectivity services (for 1 year per remote site) in the sum of Three Million Nine Hundred Sixty Thousand Pesos (PHP3,960,000.00) under **Delivery Receipt No. 2004-04-001** dated 05 April 2004 from **FIRST EDUCATION AND TRAINING VENTURES, INC. (FETVI)** and effect the payment thereof through Manager's Check No. 2532 in the amount of Six Million Pesos (PHP6,000,000.00) and Manager's Check No. 2604 in the amount of Six Million Pesos (PHP6,000,000.00), which were drawn and collected by **FIRST EDUCATION AND TRAINING VENTURES, INC./ENRICO T. VELASCO**, herein accused, on 31 March 2004 and 22 April 2004, respectively, **thereby giving unwarranted benefits, advantage and preference to FIRST EDUCATION AND TRAINING VETURES, INC. and/or accused ENRICO T. VELASCO** and causing undue injury and damage to the Government especially to the Provincial Government of Sorsogon for it has been deprived of the opportunity to obtain the most advantageous and beneficial contract.

CONTRARY TO LAW.

Proceedings before this Court

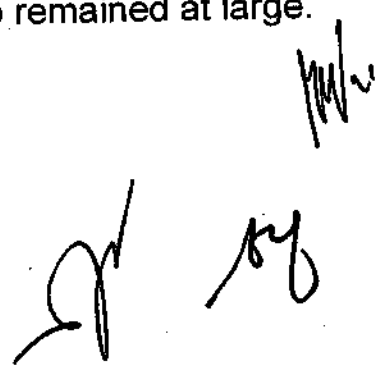
On April 24, 2013, immediately upon the filing of the Information against all the accused, and even before an actual finding of probable cause to hold them for trial and for issuance of warrants of arrest against them, Hold Departure Orders⁴ were issued against accused Raul Rodriguez Lee, Teresita Dagnalan-Paladin, Manuel S. Laurora, Felicisimo D. Brondial, and Enrico T. Velasco (collectively 'accused'). Shortly thereafter, on April 29, 2013,⁵ this Court declared the existence of probable cause and consequently ordered the issuance of warrants of arrest against the accused.

On May 17, 2013, accused Raul Rodriguez Lee, Teresita Dagnalan-Paladin, Manuel Serrano Laurora, and Felicisimo Dolendo Brondial voluntarily surrendered before the Municipal Trial Court in Cities of Sorsogon City and posted cash bonds for their provisional liberty.⁶ Enrico T. Velasco remained at large.

⁴Vol. 1. at p. 218.

⁵Id. at p. 221.

⁶Vol. 1 at pp. 237-254.



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On July 1, 2013, accused Lee filed a Motion to Quash Information⁷ alleging that (a) his right to speedy disposition of cases has been violated; and (b) that the Office of the Ombudsman failed to perform its constitutional duty to act promptly on this case. On July 9, 2013, accused Brondial, Dino, and Laurora filed a Manifestation adopting the Motion to Quash filed by Lee.⁸ On July 18, 2013, the prosecution filed their Consolidated Comment/Opposition and argued that the Office of the Ombudsman acted promptly on these cases, and therefore the accused' right to speedy disposition of cases was not violated as alleged. On September 1, 2013, Lee filed a Reply to the prosecution's Comment/Opposition.⁹

On October 3, 2013, this Court denied the aforementioned Motion to Quash of the accused for lack of merit.¹⁰ On November 4, 2013, accused Lee, Brondial, Dino, and Laurora filed a Motion for Reconsideration.¹¹ On November 26, 2013, the prosecution filed their Comment/Opposition to the said Motion for Reconsideration.¹² On December 12, 2013, accused Lee filed a Reply to the Comment/Opposition.¹³ On February 4, 2014, this Court denied the Motion for Reconsideration for lack of merit.¹⁴

On February 25, 2014, accused Paladin, Huab, Agnis, and De Vera filed a Manifestation with Motion to Dismiss arguing that there was inordinate delay on the part of the Ombudsman in resolving their case in violation of their constitutional right to speedy trial.¹⁵ On March 10, 2014, the prosecution filed its Comment/Opposition.¹⁶

On February 27, 2014, accused Lee, Brondial, Dino, and Laurora manifested that they intend to file a Petition for Certiorari before the Supreme Court to assail this Court's resolution denying their Motion to Quash.¹⁷ In view thereof, their arraignment was reset to May 5, 2014. On April 21, 2014, this Court denied accused Paladin, Huab, Agnis, and De Vera's Motion to Dismiss for lack of merit.¹⁸



⁷Id at pp. 293 - 428.

⁸ Vol. 2 at pp. 20-21

⁹ Id at pp. 93-100.

¹⁰ Id at pp. 103-108

¹¹ Id at pp. 116-125

¹² Id at pp. 138-143

¹³ Id at pp. 144-148

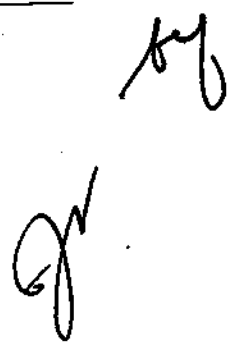
¹⁴ Id at pp. 159-163

¹⁵ Id at pp. 167-172

¹⁶ Id at pp. 183-190

¹⁷ Id at p. 176.

¹⁸ Id at pp. 193-197



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On April 21, 2014, accused Lee, Brondial, Dino, and Laurora filed a Petition for Certiorari before the Supreme Court assailing the denial of their Motion to Quash.¹⁹ On June 18, 2014, the Third Division of the Supreme Court resolved to dismiss the aforementioned petition for failure to show any grave abuse of discretion on the part of the Court in rendering the challenged resolutions.²⁰ On August 7, 2014, accused moved to reconsider the aforementioned June 18, 2014 Resolution of the Supreme Court.²¹ On February 4, 2015, the Supreme Court resolved to deny with finality accused' Motion for Reconsideration holding that there was no substantial argument adduced to warrant the reconsideration sought.²²

When arraigned on May 5, 2014, accused Lee, Brondial, Dino, and Laurora pleaded not guilty.²³

On January 22, 2014, accused Huab, De Vera, Agnis, and Paladin filed their Pre-Trial Brief.²⁴

As indicated in the *Pre-Trial Order dated 14 July 2014*,²⁵ the parties admitted and stipulated on the following:

1. Identity of the accused as stated in the Information;
2. Jurisdiction of the Court over the person of the accused;
3. Existence of the Distance Learning Program;
4. Existence and due execution of the Memorandum of Agreement dated April 25, 2003 for the implementation of the program marked as Exhibit C;
5. Existence and due execution of the Joint Venture Agreement dated April 25, 2003 for the implementation of the program marked as Exhibit "D"; and
6. Existence and due execution of the Loan Agreement between the Province of Sorsogon and Land Bank of the Philippines.

¹⁹ *Id* at pp. 198-242

²⁰ *Rollo Vol. II* at p. 371.

²¹ *Id* at 363-370

²² *Rollo Vol. II* at p. 429.

²³ *Id* at pp. 256-259

²⁴ *Id* at pp. 294-302

²⁵ *Vol. 2* at pp. 342-358

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The parties proposed several issues for resolution by this Court, to wit:

For SB-13-CRM-0309

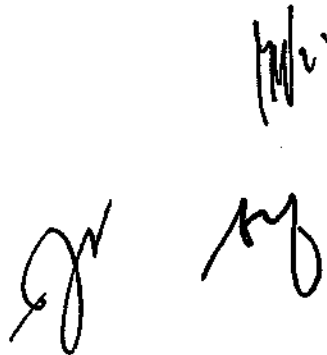
1. Whether or not there was delivery, acceptance, and payment of computer hardware and software which are incomplete in quantity and not complying with the specifications from the First Education Training Ventures, Inc.;

For SB-13-CRM-0310:

2. Whether or not the accused, representing the Provincial Government of Sorsogon, procured without bidding, the following:
 - a. 3 lots of cyber stream remote satellite gateway amounting to PHP6,600,000.00;
 - b. 3 lots of office equipment for the Distance Learning Project amounting to PHP1,800,000.00;
 - c. 3 lots of office furniture and fixtures for internet café project amounting to PHP375,000.00;
 - d. 3 lots office furniture and fixtures for public calling offices amounting to PHP225,000.00;
 - e. 3 Link Satellite Connectivity amounting to PHP3,960,000.00;
3. Whether or not the accused are guilty of the crime charged in SB-13-CRM-0310

Thereafter, trial on the merits commenced.

Evidence for the Prosecution

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The prosecution presented Luisito S. Suarez,²⁶ Renee Mark Q. Fajardo,²⁷ Fredelino Jumbas, Jr. and Jose Rey Binamira,²⁸ as its witnesses.

a) *Luisito S. Suarez*

Mr. Suarez is a Graft Investigation Officer at the Office of the Ombudsman. As a Graft Investigation Officer, he conducts fact-finding investigations, intelligence operations, and lifestyle checks.²⁹

During his direct examination, Suarez testified that he received an anonymous complaint alleging irregularities in the procurement of the computers in the Province of Sorsogon. On the basis of the said letter, Suarez conducted a fact-finding investigation by causing the issuance of a subpoena for the records from the Province of Sorsogon and Commission on Audit (COA) to verify whether the allegations are true.³⁰ Suarez stated that the documents he gathered from the subpoena were:

- 1) Project Proposal Initiative for the Establishment of Distance Learning Centers as Delivery Mechanism for Capability Building in Sorsogon Province,³¹
- 2) Memorandum of Agreement for the Implementation of the project entitled Project Study for the Initiative for the Establishment of Learning Centers for Capability Building in Sorsogon dated April 25, 2003,³²
- 3) Joint Venture Agreement executed by the Provincial Government of Sorsogon and First Education and Training Ventures, Inc. (FETVI);³³
- 4) Sangguniang Panlalawigan Resolution No. 132-03 dated July 21, 2003;³⁴
- 5) Program Presentation and Loan Negotiations with the Land Bank of the Philippines by the Provincial Government of Sorsogon in cooperation with the First

²⁶ TSNs dated 24 & 25 June 2013, 23 July 2013, 27 August 2013, 24 September 2013, and 27 January 2014.

²⁷ TSN dated August 11, 2015

²⁸ TSN dated August 1, 2017

²⁹ TSN dated October 28, 2014, p. 18

³⁰ *Ibid* pp. 18-21

³¹ Previously marked as Exhibit "B" for the prosecution and Exhibit "2" for accused Huab et. al.

³² Previously marked as Exhibit "C" for the prosecution and Exhibit "3" for accused Huab et. al.

³³ Previously marked as Exhibit "D" for the prosecution and Exhibit "4" for accused Huab et. al.

³⁴ Previously marked as Exhibit "E" for the prosecution and Exhibit "5" for accused Huab et. al.

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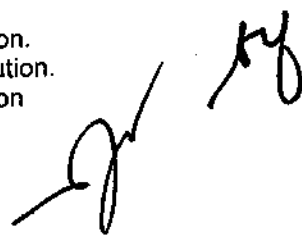
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- Education and Training Ventures Inc. dated September 19, 2003;³⁵
- 6) Executive Order No. 1 Series of 2004 by Governor Raul Lee dated March 22, 2004;³⁶
 - 7) Loan Agreement between Land Bank of the Philippines and the Province of Sorsogon;³⁷
 - 8) Sangguniang Panlalawigan Resolution No. 49-04 dated March 26, 2004;³⁸
 - 9) Delivery Receipt No. 2004-03-001 dated March 29, 2004;³⁹
 - 10) Delivery Receipt No. 2004-03-002 dated March 29, 2004;⁴⁰
 - 11) Bids and Awards Committee Member Certificate dated March 30, 2004;⁴¹
 - 12) Delivery Receipt No. 2004-04-001 dated April 5, 2004;⁴²
 - 13) Check No. 2532 amounting to Six Million in favor of First Education Training and Ventures Inc./Dr. Enrico T. Velasco;⁴³
 - 14) Land Bank Check No. 2604 dated April 22, 2004 payable to the order of First Education and Training Ventures Inc./Dr. Enrico Velasco amounting to 6 Million;⁴⁴
 - 15) Sangguniang Panglalawigan Resolution No. 43-05 dated March 7, 2005;⁴⁵



³⁵ Previously marked as Exhibit "F" for the prosecution and Exhibit "6" for accused Huab et. al.
³⁶ Previously marked as Exhibit "G" for the prosecution and Exhibit "7" for accused Huab et. al.
³⁷ Previously marked as Exhibit "H" for the prosecution and Exhibit "8" for accused Huab et. al.
³⁸ Previously marked as Exhibit "I" for the prosecution and Exhibit "9" for accused Huab et. al.
³⁹ Previously marked as Exhibit "J" for the prosecution and Exhibit "10" for accused Huab et. al.
⁴⁰ Previously marked as Exhibit "K" for the prosecution and Exhibit "11" for accused Huab et. al.
⁴¹ Previously marked as Exhibit "L" for the prosecution
⁴² Previously marked as Exhibit "M" for the prosecution; Pre-Trial Order states April 5, 2004 while TSN dated October 28, 2014 states April 25, 2004
⁴³ Previously marked as Exhibit "N" for the prosecution.
⁴⁴ Previously marked as Exhibit "N-1" for the prosecution.
⁴⁵ Previously marked as Exhibit "P" for the prosecution



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- 16) Sangguniang Panglalawigan Resolution No. 101 Series of 2005 dated June 27, 2005;⁴⁶
- 17) Purchase Order No. 100050900529 dated October 5, 2005;⁴⁷
- 18) Delivery Receipt No. 005-10-2005 dated October 24, 2005;⁴⁸
- 19) Disbursement Voucher in the name of First Education and Training Ventures Inc. for the payment of supplies amounting to PHP9,996,999.00;⁴⁹
- 20) Certificate of Partnership issued to First Education and Training Ventures Inc.;⁵⁰ and
- 21) Notice of Award dated September 29, 2005⁵¹

The parties thereafter mutually agreed to stipulate that Exhibits "J" to "HH" are the same documents which the witness gathered during his fact-finding investigation, which were all photocopies and bearing the rubber stamp "certified true copy." Suarez also identified his signature on the Complaint-Affidavit.⁵²

Initial cross examination on Suarez was conducted on October 29, 2014 by Atty. Romeo Q. Artazo, counsel for Lee, Brondial, Dino, and Laurora,⁵³ during which Suarez confirmed that the Office of the Ombudsman certified Exhibits "B" to "HH" as true copies and that they received the same from the Commission on Audit and the Province of Sorsogon, already as certified true copies.⁵⁴ Suarez confirmed that he had no personal knowledge nor participation in the conceptualization, and implementation of the activities related to the documents evidenced by Exhibits "B" to "HH" but merely compiled the aforesaid documents.⁵⁵

Atty. Eusebio M. Avila, counsel for Agnis and De Vera, proceeded with his cross-examination of Suarez on March 3, 2015. Suarez testified that based on Exhibit "B," or the Project Study for the

⁴⁶ Previously marked as Exhibit "Q" for the prosecution

⁴⁷ Previously marked as Exhibit "R" for the prosecution

⁴⁸ Previously marked as Exhibit "S" for the prosecution

⁴⁹ Previously marked as Exhibit "T" for the prosecution

⁵⁰ Previously marked as Exhibit "U" for the prosecution

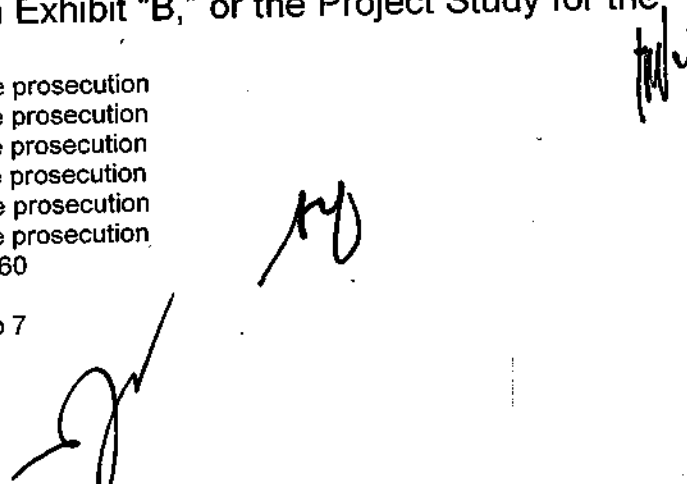
⁵¹ Previously marked as Exhibit "V" for the prosecution

⁵² TSN dated October 28, 2014 at pp. 58-60

⁵³ Order dated October 29, 2014

⁵⁴ TSN dated October 29, 2014 at pp. 6 to 7

⁵⁵ *Ibid* at pp. 9 to 16

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Initiative for the Establishment of Learning Centers for Capability Building in Sorsogon Province dated April 25, 2003, it would appear that the Provincial Government of Sorsogon had already identified FETVI as its partner.⁵⁶ Further, based on Exhibit "B," the BAC did not have any participation in the selection of the aforementioned FETVI as partner of the Local Government as it was not yet existing as of April 25, 2003.⁵⁷ Suarez testified that based on Exhibit "A", or the Complaint-Affidavit dated March 27, 2008, the initial proposal of the Province and the choice of FETVI as its partner in this venture had been affirmed by the Sangguniang Panlalawigan.⁵⁸ Suarez also confirmed that the BAC had likewise no participation in the affirmation of the Sangguniang Panlalawigan as it was not yet created at the time.⁵⁹

Suarez also stated that under Exhibit "F," or the Program Presentation and Loan Negotiations with the Land Bank of the Philippines dated September 19, 2003, there was already a presentation about the participation of FETVI.⁶⁰ Suarez further confirmed that the creation of the BAC on March 22, 2004 was in compliance with the condition imposed by the LBP that the PBAC must observe and fully comply with the required procedure for competitive bidding and/or alternate methods of procurement under the provisions of RA 9184.⁶¹

Suarez further testified that based on Exhibit "P," or the Sangguniang Panlalawigan Resolution No. 43-05 dated March 7, 2005, there was already a decision on the part of the Province of Sorsogon to choose FETVI as its partner in its joint venture without the participation of the BAC.⁶²

Suarez testified that in the subject case, the BAC merely recommended and did not award the bid contrary to what is stated in the Complaint.⁶³ Suarez further testified that the actual delivery of the equipment was completed on March 29, 2004, the Certificate of Award was issued by the BAC on March 30, 2004, while the Purchase Order was issued only on October 5, 2005.⁶⁴ Thus, Suarez concluded that the delivery of the equipment on March 29, 2004 and the Certificate of Award on March 30, 2004 were irregular.⁶⁵ Lastly,

⁵⁶ TSN dated March 3, 2015 at p. 15.

⁵⁷ *Ibid* at pp. 15 to 17

⁵⁸ TSN dated March 3, 2015 at p. 18

⁵⁹ *Ibid*

⁶⁰ *Ibid* at p. 22

⁶¹ *Ibid* at pp. 24 to 26

⁶² *Ibid* at p. 29

⁶³ TSN dated March 3, 2015 at p. 38

⁶⁴ *Ibid* at pp. 52 to 55

⁶⁵ *Ibid* at pp. 65 to 66

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he stated that BAC had nothing to do with the delivery of the equipment on March 29, 2004 as they only issued the Certificate of Award on March 30, 2004.⁶⁶

Suarez stated that he has no personal knowledge as to whether his field investigator tried to confirm the facts of the case independent of the documents attached in the Complaint.⁶⁷

On March 4, 2015, re-direct testimony of prosecution's witness Suarez was conducted.⁶⁸ Suarez stated that he obtained Exhibits "B" to "HH" through a subpoena issued to the legal officer of the province of Sorsogon.⁶⁹ He testified that based on the documents gathered for Component Number 1, which refers to the delivery of the Distance Learning Education provided by FETVI, there was no competitive bidding. However, in Component Number 2, which relates to the supply of computers, bidding was conducted. Suarez stated that all the process of bidding was undertaken by the BAC but there were no minutes or records that would show that the BAC had meetings with regard Component Number 1.⁷⁰

Suarez testified that for the second component, although bidding appears to have been conducted, there were incomplete deliveries, and that second hand computers were delivered which are not compliant with the bidding specifications.⁷¹ Suarez identified the Investigation Report which was the basis of the subject Complaint and the prosecution marked it as Exhibit TT.⁷²

Atty. Artazo conducted his re-cross examination. On re-cross, Suarez testified that Exhibit "S" shows Delivery Receipt No. 005-10-2005 with an amount stated as PHP9,996,999.00 while Exhibit "R" is a Purchase Order which has the same amount.⁷³ Suarez confirmed that the Purchase Order marked as Exhibit "R" is dated October 5, 2005 while the delivery receipt marked as Exhibit "S" is dated October 24, 2005. Thus, it would appear that there is no delivery made prior to the purchase order.⁷⁴ Suarez further testified that the delivery receipt marked as Exhibit "J", amounting to PHP6,600,000, and dated March 29, 2004 is not related to the Purchase Order marked as Exhibit "R" dated October 5, 2005.⁷⁵

⁶⁶ *Ibid* at pp. 66 to 68

⁶⁷ *Ibid* at pp. 56 to 57

⁶⁸ Order dated March 4, 2015; Rollo, Vol. II at p. 425.

⁶⁹ TSN dated March 4, 2015 at p. 7

⁷⁰ *Ibid* at p. 10

⁷¹ *Ibid* at p. 11

⁷² *Ibid* at p. 22 to 24

⁷³ *Ibid* at p. 26 to 27

⁷⁴ *Ibid* at pg. 27

⁷⁵ *Ibid*

Handwritten signatures and initials are present at the bottom of the page. On the right side, there are two distinct signatures. On the left side, there are several initials and a larger signature, possibly representing the court reporter or the attorney.

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Suarez also declared under re-cross examination that the Complaint-Affidavit marked as Exhibit "A" and all allegations therein were only based on his evaluation and observation based on the documents he gathered through subpoena and he has no personal knowledge in the preparation of the documents.⁷⁶

Atty. Avila adopted the re-cross examination of Atty. Artazo but propounded additional re-cross examination questions⁷⁷, in the course of which Suarez confirmed that when he swore to the truthfulness of the Complaint, it was based on his personal knowledge that they investigated. However, Suarez does not swear to the truthfulness of the contents of the documents.⁷⁸

Suarez further testified that there is an opening of bids in Component Number 2 but not in Component 1, and the basis of the Certificate of Awards issue allegedly by the BAC in connection with Component 1 was the Member Certificate granting the award.⁷⁹

b) Renee Mark Q. Fajardo

On August 11, 2015, direct examination of witness Renee Mark Q. Fajardo (Fajardo) was conducted.⁸⁰ Fajardo testified that he is currently the Senior Currency Specialist of the Bangko Central ng Pilipinas.⁸¹ That he was employed by the Field Investigation Office of the Office of the Ombudsman (Ombudsman) prior to his transfer to the Bangko Central ng Pilipinas. He was employed by the Ombudsman from November 15, 2005 to April 15, 2009.⁸² As part of his duties and functions as legal assistant of the Field Investigation Office of the Office of the Ombudsman, he conducted fact finding investigations and issued and executed corresponding investigation reports pursuant to such investigation. Fajardo testified that the Ombudsman received an anonymous complaint regarding the province of Sorsogon which was the reason why he conducted an investigation.⁸³

Fajardo stated under oath that after he received the anonymous complaint, he conducted investigative activities such as fact finding investigation, and ocular inspection. He also caused the issuance of

⁷⁶ *Ibid* at pg. 28 to 30

⁷⁷ *Ibid* at pg. 30

⁷⁸ *Ibid* at pg. 38

⁷⁹ TSN dated March 5, 2015 at pg. 6 to 9

⁸⁰ Order dated August 11, 2015.

⁸¹ TSN dated August 11, 2015

⁸² *Ibid* at pg. 11

⁸³ *Ibid* at pg. 11 to 13

Handwritten signatures and initials are present at the bottom of the page. On the right side, there is a signature that appears to be 'M. C.'. In the center and left-center, there are two larger, more stylized signatures, one of which appears to be 'R. M. Q. Fajardo'.

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subpoenas to corresponding agencies holding pertinent records and documents relative to the contract. Fajardo testified that upon his surveillance and intelligence gathering, he found out that no one has started to actually implement the program. All the items were dilapidated like an old warehouse and there was dust all over the place.⁸⁴ Fajardo said that after he completed his investigation, he drafted an investigation report and then submitted it to his superior for evaluation.⁸⁵ The witness then identified Exhibit "TT" as the investigation report he drafted, together with his signature thereon appearing on page 24 thereof.⁸⁶

Fajardo testified that based on his investigation, he found that the project in question was initiated by the local government of Sorsogon called Distance Learning Center Program (DLCP). The DLCP is a delivery mechanism of the province of Sorsogon wherein through wireless communications, satellites, and wireless internet programs, they can distribute through the aforesaid three (3) separate sites within the province, trainings, and education programs for its constituents.⁸⁷ Fajardo further testified that the aforesaid province conducted a feasibility study and based thereon, a Memorandum of Agreement was entered into between the province of Sorsogon and FETVI. Fajardo identified Exhibit "B" as the feasibility study and Exhibit "C" as the Memorandum of Agreement he mentioned.⁸⁸

Fajardo further testified that after the execution of the Memorandum of Agreement, there was a resolution issued by the Sangguniang Panlalawigan of Sorsogon authorizing accused Lee to undertake or to obtain a loan in the amount of Ten Million Pesos (Php10,000,000.00) with the Land Bank of the Philippines for the purpose of the Distance Learning Center Program. Fajardo identified Exhibit "E" as the Sangguniang Panlalawigan Resolution he mentioned.⁸⁹ Thereafter, Fajardo testified that a Bids and Awards Committee (BAC) was formed by the local government on March 22, 2004 to undertake the procurement for the project. The BAC then issued a Certificate of Award for the DLCP to FETVI on March 30, 2004. Fajardo identified Exhibit "L" as the Notice of Award issued by the BAC.⁹⁰

Fajardo stated that FETVI delivered the items purchased on March 29, 2004 or a day before the issuance of the Notice of Award

⁸⁴ TSN dated August 12, 2015 at p. 14 to 15

⁸⁵ *Ibid* at p. 15

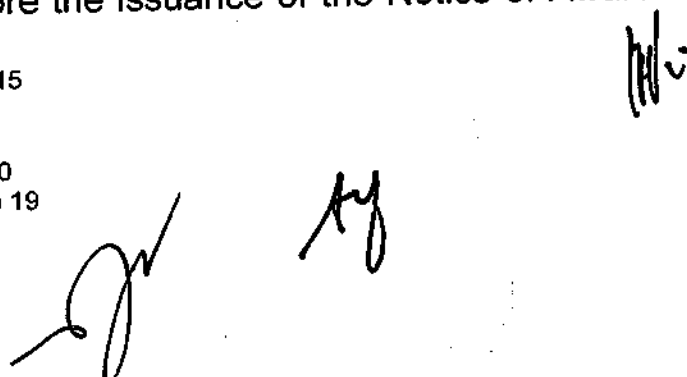
⁸⁶ *Ibid* at p. 16

⁸⁷ TSN dated November 24, 2016 at pg. 10

⁸⁸ TSN dated August 12, 2015 at pp. 17 to 19

⁸⁹ *Ibid* at p. 20

⁹⁰ *Ibid* at p. 21 to 22

The bottom of the page contains several handwritten signatures and initials. On the right side, there are initials that appear to be 'ML'. In the center and left-center, there are two larger, more complex signatures, one of which appears to be 'JW' and the other 'AJ'.

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to them. This is shown by Exhibits "J" and "K" or Delivery Receipt Nos. 2004-03-001 and 2004-03-002, both dated March 29, 2004.⁹¹

After the delivery of the items, according to witness Fajardo, the local government needed additional funding for 300 more computer sets. Thus, the Sangguniang Panlalawigan of Sorsogon issued another resolution authorizing accused Lee to obtain a loan with the Philippine National Bank in the amount of Ten Million Pesos.⁹² The BAC then conducted a bidding and issued a Notice of Award to FETVI for the acquisition of 300 sets of computers.⁹³ Thereafter, FETVI delivered the computers acquired by the local government as shown by Delivery Receipt No. 0003 dated November 8, 2005.⁹⁴

Fajardo further testified that based on the facts and documents he gathered, the mode of procurement used by local government of Sorsogon, in entering into the contract for the purchase of the requirements of its DCLP, is not by means of competitive bidding but one of the exemptions supposedly allowed under the Government Procurement Reform Act. Such resort to another mode of procurement is allegedly based on the justification that the province considered FETVI as the exclusive distributor of the facilities needed to implement its DLCP. However, upon verification by Fajardo, he found out that the exclusive distributor of the Cyber Stream Communication Satellite is Textron Corporation and Textron merely authorizes several establishments, one of which was FETVI, as service partners.⁹⁵

On cross-examination, Fajardo identified the Executive Order of the Provincial Governor of Sorsogon creating the Bids and Awards Committee.⁹⁶ Fajardo admitted and confirmed that under the law, the BAC does not award contracts.⁹⁷

Fajardo further testified that at the time of the Fact Finding Investigation, he was merely given a referral form and no specific office order was issued for him to conduct the fact finding investigation.⁹⁸

Fajardo stated that as early as April 25, 2003, the province of Sorsogon, as procuring entity, had already chosen FETVI as its

⁹¹ *Ibid* at p. 23

⁹² *Ibid* at pg. 25; Exhibit P

⁹³ *Ibid* at pg. 27; Exhibit V

⁹⁴ *Ibid* at pg. 28; Exhibit Y

⁹⁵ TSN dated November 24, 2016 at pp. 14 - 18

⁹⁶ Exhibit 7; TSN dated November 24, 2016 at p. 24

⁹⁷ TSN dated November 24, 2016 at p. 33

⁹⁸ *Ibid* at pp. 42 to 43

Handwritten signatures and initials are present at the bottom right of the page. There are two distinct signatures, one appearing to be 'JW' and another 'fy'. To the right of these, there are some vertical scribbles or initials.

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partner without the participation of BAC as it was not yet in existence then.⁹⁹ Fajardo mentioned that the Ombudsman filed a case against the members of the BAC because they signed the Certificate of Award to FETVI a mere 8 days after their creation.¹⁰⁰

c) *Fredelino Jumbas, Jr. (Crim. Case No. SB-13-CRM-0309)*¹⁰¹

On direct examination, Mr. Jumbas testified¹⁰² that in 2005, he worked as a Technical Audit Specialist II in COA Region 5. His duties and obligations include inspection of infrastructure projects, conduct appraisal of disposable equipment of the government, conduct job preview of technical aspects of the projects and other task to be assigned by their heads.¹⁰³ Witness identified Exhibits "W", "W-1", "R", "S", "S-1", and "BB". Jumbas testified that around the last week of November 2005, he conducted an inspection pertaining to the purchase of computers by the province of Sorsogon at the GSO Office Bodega with Engr. Mark Dolot and Ms. Paladin.¹⁰⁴

Jumbas stated that they took two (2) units of computers and when they plugged the first unit it exploded. The computer short-circuited then smoke came out of the unit. As to the second unit, it was found to be not compliant with the specification specified in the delivery receipt as the same had a lower capacity compared to that specified in the delivery receipt. The delivery receipt stated that the RAM was supposed to be 128mb but the actual RAM of the unit delivered was only 64mb. The delivery receipt also stated that the hard disk was supposed to be 10GB but the actual capacity of the computer supplied was only 8GB.¹⁰⁵ Jumbas and his companions then individually tested all the remaining computers and found that only 83 units were working and compliant with specifications, 143 units were working but not compliant with specification, 66 units had defective hardware or software which is not compliant with the specification, and 8 units were missing.¹⁰⁶

Jumbas then testified that he and his partner informed Ms. Paladin of their findings and the latter informed them that they will comply with the deficiencies.¹⁰⁷



⁹⁹ *Ibid* at pp. 48 to 50

¹⁰⁰ *Ibid* at pg. 52

¹⁰¹ TSN dated April 26, 2017 at p. 6

¹⁰² Order dated April 26, 2017

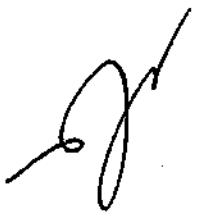
¹⁰³ TSN dated April 26, 2017 at pp. 9 to 10

¹⁰⁴ *Ibid* at pp. 10 to 26

¹⁰⁵ *Ibid* at pp. 21 to 22

¹⁰⁶ *Ibid* at pp. 22 to 24

¹⁰⁷ *Ibid* at p. 25



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On cross-examination, Jumbas stated that when he and his partner counted the computer, there were only 292 computers.¹⁰⁸ He stated that based on the documents, accused Lee is one of the signatories of the purchase order but he is not involved in the delivery and acceptance of the 300 computers. Accused Brondial and Laurora have no participation either as they are not signatories in the purchase order or the delivery receipt.¹⁰⁹

d) Jose Rey Binamira¹¹⁰

On August 1, 2017, the prosecution presented Jose Rey Binamira.

Binamira is a State Auditor of the Commission on Audit Regional Office No. 5. He has been employed with COA since March 1988 to the time of his testimony.¹¹¹ In 2004, he worked as the Auditor of the Province of Sorsogon from October 15, 2003 to January 7, 2010. His functions were to conduct financial audit or an audit of the financial statements of the Province of Sorsogon and also an audit of its operations. The financial audit includes an examination or audit of the different accounts contained in the financial statements. The accounts involved different specific assets, liabilities, and equity accounts.¹¹²

Binamira testified that in 2004 he audited the transactions pertaining to the Distance Learning Program of the province of Sorsogon. Binamira stated that they were prompted to audit the Distance Learning Program of the aforementioned province because they usually look at accounts which have significant balances such as loan accounts of provinces.¹¹³ Binamira also identified Exhibit "I" as Resolution No. 49-04 and identified the signature of accused Lee on pages 3 and 4. He also identified Exhibits "H" to "H-4".¹¹⁴

Witness Binamira confirmed that in the Distance Learning Program in question, the mode of procurement used by the province was one of the alternative modes of procurement which means it was not publicly bid.¹¹⁵ However, based on his examination it would appear that the use of Section 50 of RA 9184 was not appropriate because Section 50 only applies in the absence of suitable

¹⁰⁸ TSN dated April 27, 2017 at p. 34

¹⁰⁹ *Ibid* at pp. 41 to 42

¹¹⁰ TSN dated August 1, 2017

¹¹¹ TSN dated August 1, 2017 at pp. 5 to 10

¹¹² *Ibid* at p. 11

¹¹³ *Ibid* at p. 12

¹¹⁴ *Ibid* at pp. 17 to 19; Exhibit I-4-a

¹¹⁵ *Ibid* at p. 20

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substitutes or comparable products in the market which can be obtained at more advantageous terms to the government, and the determination of the alleged lack of suitable substitutes or comparable products could have been made had the project documents been reviewed by COA Information and Communications Technology.¹¹⁶ Further, although it is claimed that FETVI and its partner Textron Corporation are exclusive distributors and dealers of the Cyberstream VSAT model, the documents made available during the audit did not clearly show the same. The Certificate of Partnership submitted merely showed that FETVI is Textron's "authorized service partner and distributor" but not necessarily a sole distributor. Lastly, the total procurement from FETVI amounting to 12 Million consisted not only of Cyberstream Remote Satellite Gateway Equipment, but also office equipments, furnitures, and fixtures which are not exclusively distributed by FETVI and which have suitable substitutes or comparable products in the market which could have been purchased at more advantageous terms to the Province.¹¹⁷

On continuation of his direct examination, Binamira identified Exhibits "OO-8," "OO-09," "T-1," "EE-1," "R-1," "R-2," "S-1-A," and "Z-3."¹¹⁸ After the audit, Binamira prepared the Audit Observation Memorandum and issued the same for accused Lee's response.¹¹⁹ Accused Lee issued a Letter-Reply to the witness dated March 15, 2005 explaining the salient features of the project. However, accused Lee's response only explained the salient features of the program but did not specifically address the issues the audit observations raised, specifically with respect to the violation of RA 9184 on the availment of alternative mode of procurement and also with respect to what appeared as a disadvantageous sharing scheme.¹²⁰

Binamira testified that the Distance Learning Program have two phases. Phase 1 involves the acquisition of 3 satellite equipment including the furnitures and fixtures to be used for the revenue generating activity while Phase 2 involved the acquisition of 300 units of desktop computers including software and 3 network servers. For phase 2, there was a public bidding conducted by the province. FETVI won the bidding as shown by the Notice of Award.¹²¹

Binamira stated that based on his report as to the specifications and running conditions, the findings of the two engineers were: as to

¹¹⁶ *Ibid* at p. 22 to 23

¹¹⁷ *Ibid* at pp. 25 to 27

¹¹⁸ Minutes of the Proceedings dated January 8, 2018

¹¹⁹ Exhibit PP

¹²⁰ TSN dated January 8, 2018 at p. 7 to 9; Exhibit OO

¹²¹ *Ibid* at pp. 17 to 26; Exhibit V

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working and compliance as per specification, there were 143 units; on the other hand, there were 66 units which were defective hardware, software, or under-specifications; while there were 8 missing units for a total of 300 units. As to the computer servers, there were 2 units which were found working and compliant as per specification and 1 unit which was defective as to hardware/software and under-specification, for a total of 3 computer servers. As to the installed software, the report of the engineers showed that there were no software installed except for Microsoft XP Professional and Office 2000 which were, however, considered unlicensed due to the absence of original CDs for the software in the delivery.¹²²

On cross examination, Binamira agreed that under the Joint Venture Agreement, it is FETVI's obligation to supply the required equipment for the project and to hire the personnel. On the other hand, Binamira stated that it is the responsibility of the LGU to secure funding for the implementation of the project. He further stated that the funding acquired by the province of Sorsogon was for the purpose of acquiring the equipment to be used and that the equipment was eventually purchased from FETVI.¹²³

Binamira confirmed that there are 3 Distance Learning Centers established under the Joint Venture Agreement – the first Distance Learning Center was established at Sorsogon Provincial Capitol Complex in Sorsogon City, the second was established at the Municipal Hall of Bulan, Sorsogon City, and the third was established at Municipal Hall in Pilar, Sorsogon.¹²⁴

On re-direct examination, Binamira testified that with respect to the Distance Learning Program, there were other service providers and the Distance Learning Program was not exclusively offered by FETVI.¹²⁵

On February 12, 2018, the prosecution filed its Formal Offer of Exhibits.¹²⁶ On February 19, 2018, accused Huab, De Vera, Agnis, and Paladin filed their Joint Comment/Objections Re: Prosecution's Formal Offer of Documentary Evidence. On March 1, 2018, accused Lee, Dino, Brondial, and Laurora filed their Comment (Re: Prosecution's Formal Offer of Documentary Exhibits).¹²⁷

¹²² *Ibid* at p. 48

¹²³ TSN dated January 31, 2018 at pp. 13 to 23

¹²⁴ *Ibid* at pp. 24 to 25

¹²⁵ *Ibid* at pp. 26 to 27

¹²⁶ *Rollo* Vol. III, pp. 111 to 316

¹²⁷ Minutes of the Proceedings dated April 3, 2018; *Rollo* Vol. III, pp. 354 to 355

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In its Resolution dated April 3, 2018, the Court admitted the following exhibits of the prosecution:¹²⁸

Exhibit	Document
Common Exhibits for both SB-13-CRM-0309 & SB-13-CRM-0310	
"A" to "A-10"	Complaint filed by the Field Investigation Office dated March 27, 2008 consisting of 11 pages
B to B-13	Project Study for the Initiative for the Establishment of Learning Centers for Capability Building in Sorsogon Province dated April 25, 2003
C to C-8	Certified True Copy of a Memorandum of Agreement for the implementation of the project entitled Project Study for the Initiative for the Establishment of Learning Centers for Capability Building in Sorsogon dated April 25, 2003
D to D-6	Certified True Copy of the Joint Venture Agreement to Establish Revenue Generating Applications of the Project entitled Project Study for the Initiative for the Establishment of Learning Centers for Capability Building in Sorsogon dated April 25, 2003 consisting of seven pages
E to E-1	Certified True Copy of the Sangguniang Panlalawigan Resolution No. 132-03 dated July 21, 2003 consisting of two pages
F to F-28	Certified True Copy of the Program Presentation and Loan Negotiations with the Land Bank of the Philippines by the Provincial Government of Sorsogon in cooperation with the First Education & Training Ventures Inc. dated September 19, 2003
G to G-1	Certified True Copy of Executive Order No. 01, Series of 2004; RE: Creation of Bids and Awards Committee and Secretariat signed by Governor Raul Lee dated March 22, 2004
H to H-4	Certified True Copy of the Loan Agreement between Land Bank of the Philippines and the Provincial Government of Sorsogon dated March 25, 2004
I to I-4	Certified True Copy of the Sangguniang Panlalawigan Resolution No. 49-04 dated March 26, 2004
J to J-1	Certified True Copy of Delivery Receipt No. 2004-03-001 dated March 29, 2004 consisting of two pages
K to K-1	Certified True Copy of Delivery Receipt No. 2004-03-002 dated March 29, 2004 consisting of 2 pages
L to L-2	Certified True Copy of the Bids and Awards Committee Member's Certificate dated March 30, 2004

¹²⁸ Rollo, Vol. III, pp. 354 to 355

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M to M-1	Certified True Copy of Delivery Receipt No. 2004-04-001 dated April 5, 2004
N to N-1	Certified True Photocopy of the dorsal and front side of Landbank Check No. 2604 dated April 22, 2004 payable to the order of First Education and Training Ventures, Inc./ Dr. Enrico Velasco amounting to 6 Million
O	Certified Copy of Manager's Check No. 2532 dated March 31, 2004 payee is First Education and Training Ventures, Inc./ Dr. Enrico T. Velasco in the amount of PHP6,000,000.00
P to P-1	Certified True Copy of the Sangguniang Panlalawigan Resolution No. 43-05 dated March 7, 2005
Q to Q-3	Certified True Copy of the Sangguniang Panlalawigan Resolution No. 101 Series of 2005 dated June 27, 2005
R to R-2	Certified True Copy of Purchase Order No. 100050900529 dated October 5, 2005
S to S-1	Certified True Copy of Delivery Receipt No. 005-10-2005 dated October 5, 2005
T to T-1	Certified True Copy of Disbursement Voucher in the name of First Education & Training Ventures, Inc. of the payment of supplies amounting to PHP9,996,999.00
U	Certified True Copy of the Certificate of Partnership issued to First Education Training Ventures, Inc.
V	Certified True Copy of the Notice of Award dated September 29, 2005
W to W-1	Certified True Copy of the Contract Agreement between the Province of Sorsogon represented by Governor Raul R. Lee and First Education & Training Ventures, Inc. dated October 3, 2005
X	Certified True Copy of Check No. 82483 dated November 8, 2005 in the name of First Education & Training Ventures, Inc. in the amount of Nine Million Four Hundred Ninety Seven Thousand One Hundred Forty Nine Pesos and Five Centavos (PHP9,497,149.05)
Y	Certified True Copy of Official Receipt No. 0003 dated November 8, 2005
Z to Z-3	Certified True Copy of the Inspection and Acceptance Report of the Provincial Government of Sorsogon dated October 24, 2005
BB to BB-2	Certified True Copy of a Memorandum from COA dated January 4, 2006
DD	Certified True Copy of Invitation to Apply for Eligibility to Bid by the Bids and Awards Committee of the Province of Sorsogon
EE	Certified True Copy of the Purchase Request dated

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	August 15, 2005 amounting to PHP10,000,000.00
KK	Certified True Copy of Purchase Order dated March 17, 2004
LL	Certified True Copy of Purchase Order also dated March 17, 2004
MM	Certified True Copy of another Purchase Order dated March 17, 2004
NN to NN-5	Certified True Copy of the Amendment to the Memorandum of Agreement dated April 25, 2003 between the Provincial Government of Sorsogon and First Education and Training Ventures, Inc.
OO to OO-8	Certified True Copy of the Memorandum with attachments issued to Tita Embestro dated May 22, 2006
PP to PP-8	Certified True Copy of the Audit Observation Memorandum No. 2005-01 dated February 8, 2005
RR	Letter dated December 20, 2005 addressed to Ombudsman Gutierrez from concerned provincial employees
TT to TT-2	Investigation Report
WW	2 nd Indorsement dated January 30, 2006 signed by Vedastro Gambito, Officer-in-charge RTSO Region VI COA

On April 23, 2018, accused Huab, Agnis, De Vera, and Paladin filed their Motion for Partial Reconsideration from the April 5, 2018 Resolution of this Court admitting all exhibits included in the Prosecution's Offer of Exhibits.¹²⁹ On the same date, accused Lee, Dino, Brondial, and Laurora filed their Motion for Reconsideration (Re: Resolution dated 03 April 2018 on Prosecution's Formal Offer of Documentary Exhibits).¹³⁰ This Court denied both motions in its May 10, 2018 Resolutions.¹³¹

On June 22, 2018, accused Lee, Brondial, Dino, and Laurora filed their Motion for Leave to File Demurrer to Evidence. Accused argues that for SB-13-CRM-0310, the prosecution alleged that the Provincial Government of Sorsogon procured broad band equipment for internet connectivity without public bidding. However, evidence on record points out that the transaction between the Provincial Government of Sorsogon and the First Education Training Ventures, Inc. was a joint venture agreement. It is thus not a procurement transaction on goods or services which is governed by the procurement act. Thus, bidding is not required.

¹²⁹ *Rollo* Vol. III at pp. 359 to 364

¹³⁰ *Ibid* at pp. 365 to 378

¹³¹ *Ibid* at pp. 379 to 380

Handwritten signatures and initials, including a large signature that appears to be 'W. L.' and another signature below it.

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With respect to SB-13-CRM-0309, the prosecution alleged that the computer hardware and software were incomplete as to quantity and not compliant with the specifications as they were found to be second hand. The material evidence on record is the Inspection and Acceptance Report¹³² and perusal of the said piece of evidence would readily show that accused Lee is not a signatory therein. Accordingly, whatever irregularities, if there was any, in the acceptance of the computers as alleged by the prosecution, such irregularities could not be attributed to accused Lee.¹³³

In the prosecution's Comment/Opposition, it was argued that the Motion for Leave to file Demurrer of Evidence of accused Lee, Brondial, Dino, and Laurora were filed beyond the period allowed by law. In any event, the prosecution argues that in SB-13-CRM-0310, it was able to prove through witness Binamira that no public bidding was conducted by the province of Sorsogon when it purchased the broadband equipment needed for the distance learning program under its joint venture agreement with FETVI. The testimony was supported by documentary evidence showing that the mode of procurement resorted by the province was through direct negotiation in violation of the procurement law. The argument of accused Lee that public bidding is not required in a joint venture agreement is a matter of defense.

In SB-13-CRM-0309, the prosecution maintains that while it is true that Lee did not sign the Inspection Report, the evidence clearly show that he signed the Purchase Order and, more importantly, the Disbursement Voucher for the 300 units of computer software and hardware despite the fact that the aforementioned items were not in compliance with the required specifications.¹³⁴

On June 22, 2018, the wife of accused Dino filed a Notice of Death to this Court and prayed that accused Dino be dropped from the information.¹³⁵

On August 13, 2018, this Court denied the Motion for Leave filed by accused Lee, Brondial, Dino, and Laurora, holding that the evidence submitted by the prosecution, if unrebutted, is sufficient to support a verdict of guilt for violations of Section 3(e), Republic Act No. 3019.¹³⁶



¹³² Exhibit Z

¹³³ *Ibid* at pp. 401 to 402

¹³⁴ *Ibid* at pp. 406 to 412

¹³⁵ *Ibid* at pp. at 419-A to 419-C

¹³⁶ *Ibid* at pp. 425 to 427




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Evidence for the Defense

The defense presented Manuel S. Laurora,¹³⁷ Atty. Antonio Riva Huab,¹³⁸ Teresita D. Paladin,¹³⁹ Engr. Annie De Vera,¹⁴⁰ Rosie Agnis,¹⁴¹ as witnesses.

(a) Manuel S. Laurora

On November 26, 2018, Laurora testified on direct-examination through his Judicial Affidavit and the additional direct-examination conducted by Atty. Artazo.¹⁴²

During his direct examination, Laurora testified that the procurement undertaken in this case involve the purchase and delivery of computers by the Provincial Government of Sorsogon from FETVI for the use and operation of the Distance Learning Project of the former. Laurora stated that he was the designated inspector of the Provincial Government tasked to inspect all deliveries to the Provincial General Services Office including all deliveries to the different district hospitals in the province.¹⁴³

Laurora further narrated that on the date of delivery of the computers, he sought assistance from Felicisimo D. Brondial, a representative from the accounting office. They only counted the number of computer sets delivered but not the technical specifications as he and Brondial are not equipped with the technical knowledge to inspect the actual specifications of the computers. Laurora clarified that he insisted that they be assisted by a person with sufficient knowledge on computers in inspecting the deliveries thus he decided to coordinate and request assistance from the COA Provincial Auditor. The COA Provincial Office sent two IT experts from their office, Mark Fermin C. Dolot and Fredelino L. Jumbas Jr., both Technical Assistant Specialist of COA to do the actual inspection of the delivered computers with Laurora and Brondial.¹⁴⁴

While on the witness stand, Laurora was firm and consistent with his testimony that he is not a computer expert and that he could not determine or examine the delivered computers as to the

¹³⁷Judicial Affidavit dated November 14, 2018; Rollo Vol. III at pp. 466 to 468

¹³⁸ TSN dated February 21, 2019

¹³⁹TSN dated July 10, 2019

¹⁴⁰*ibid*

¹⁴¹*ibid*

¹⁴² Order dated November 26, 2018; Rollo Vol. III at p. 480

¹⁴³ *ibid* at pp. 466 to 468

¹⁴⁴ *ibid*

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specification requirement so he merely depended on the examination of the aforementioned COA IT staff. FETVI delivered all the computers as evidenced by Delivery Receipt No. 005-10-2005 dated October 24, 2005. In fact, due to the number of units, they did not finish the inspection in a day. The next day, the IT staff of COA did not come back to inspect and examine the few remaining delivered computer units. Thus, Laurora observed, it was the COA IT staff who were remiss of their duty to assist the province of Sorsogon and since Laurora and Brondial were the ones left to inspect, they proceeded to count the sets in the same manner that the COA IT staff had done and necessarily accepted them as completely delivered.¹⁴⁵

On cross examination, Laurora testified that in 2005 he was the Community Development Assistant I of the Province of Sorsogon. He was detailed at the Provincial General Services Offices and designated as Inspector. When the 300 computers were delivered, he sought assistance from the Chief of the Accounting Office because 300 computers were too numerous to count.¹⁴⁶

Laurora also stated that he depended on the examination of the COA and merely accepted what the COA certified to be the units which were in accordance with the specifications and those units that were working. After COA inspected the 300 computers, they found defects on the 300 units thus Laurora requested replacement units for the units rejected. He verbally asked Ms. Paladin to contact the dealer for the replacement of the units. However, Laurora confirmed that he signed the Inspection and Acceptance Report as to the quantity and specification despite the fact that he merely counted the computer units. Laurora alleged that what he signed was a standard form and he could not remove or erase any part of the document.¹⁴⁷

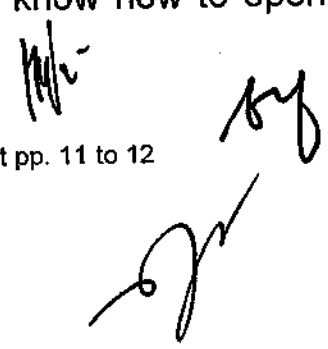
On re-direct examination, Laurora confirmed that he inspected the computer merely based on the physical numbers of the computers and not with respect to the specification of each of the said 300 computers as it is for the experts to say. After the COA identified the defective computers, Laurora set them aside to be replaced. The General Services Officer then called the dealer to replace the units and the dealer obliged and replaced it. Further, Laurora said that because COA did not return for the final inspection, he looked for another expert from the Provincial Government to assist him as he does not even know how to open computers nor was he familiar with Microsoft.¹⁴⁸

¹⁴⁵ *Ibid*

¹⁴⁶ TSN dated November 26, 2018 at pp. 11 to 12

¹⁴⁷ *Ibid* at pp. 20 to 23

¹⁴⁸ *Ibid* at pp. 28 to 30



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On re-cross examination, Laurora confirmed that the defective computers were indeed replaced.¹⁴⁹ Upon confirmation by this Court, Laurora stated that after the delivery of the replacement units by the supplier, he did not sign anything as he believes the subsequent delivery to be a continuation of the first delivery. After the replacement units were delivered, Laurora contacted again the COA experts but they did not arrive thus Laurora asked for help from the Provincial Government computer technician.¹⁵⁰

On January 30, 2019, Atty. Artazo manifested that he will no longer be presenting witness Felicisimo D. Brondial and that he has no other witness to present.¹⁵¹

(b) Atty. Antonio Riva Huab (SB-13-CRM-0130)¹⁵²

Atty. Huab is the former Provincial Legal Officer of the province of Sorsogon.¹⁵³ During his direct examination, Huab testified that he was the Provincial Legal Officer of Sorsogon on March 29, 2004. As Provincial Legal Officer, his duties and functions include attending to cases filed against the province and to render legal opinions when required and when referred to their office.¹⁵⁴

Huab stated that he was not aware of the project with FETVI when the same was being conceptualized. He only found out about the aforesaid project when he learned about the Resolution from the Sangguniang Panlalawigan authorizing the Provincial Governor to: (i) contract loans with the banks; (ii) to establish a distance learning project for the province; and (iii) enter into a contract with FETVI. Huab likewise claimed that he only found out about the contracts and resolutions after the case was filed with the Office of the Ombudsman, as the Governor of Sorsogon did not involve him with the project.¹⁵⁵

Upon perusal of the agreement, Huab surmised that the obligation on the part of province is to establish a Distance Learning Program, to provide funding, and to make available space for the establishment of the program. On the part of FETVI, it will supply the requisite equipments for the establishment of the Distance Learning Project. Based on the agreement, Huab stated that the province and

¹⁴⁹*Ibid* at p. 32

¹⁵⁰ *Ibid* at pp. 35 to 37

¹⁵¹ Order dated January 30, 2019

¹⁵² TSN dated February 21, 2019 at p. 6

¹⁵³ *Ibid*

¹⁵⁴ *Ibid* at pp. 8 to 9

¹⁵⁵ *Ibid* at p. 9

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FETVI agreed to establish the Distance Learning Program with Sorsogon province as the principal, and FETVI as the supplier.¹⁵⁶

Due to the absence of Atty. Artazo despite notice, this Court declared accused Lee, Laurora, Brondial, and Dino to have waived their right to be present and to cross-examine witness Huab.¹⁵⁷

When cross-examined, Huab testified that he was designated as member of the BAC of the province of Sorsogon on March 29, 2004 and he was impleaded herein as an accused because he was designated as a member of the BAC. He then identified Exhibit "7" for the defense or Executive Order No. 01 Series of 2014 which is the Executive Order creating the BAC. Huab further testified that the first time the BAC convened was September of 2005 but the equipment needed to establish the Distance Learning Project of POS was delivered by FETVI as early as March of 2004. The BAC had no involvement in the said delivery as they were not privy to the contract nor did they have knowledge of the same.¹⁵⁸

Huab further testified that he only learned about the province of Sorsogon's loan with the Landbank of the Philippines on March 31, 2004. Based on the promissory note signed by the province with the Landbank of the Philippines, the only requirement therefor was for the BAC to be constituted, but there was no requirement for public bidding. Thus, nothing was submitted to the BAC for bidding. Verily, as of March 30, 2004, the BAC was not yet organized.¹⁵⁹

On cross-examination, Huab confirmed that while the effectivity of Executive Order No. 01, Series of 2004¹⁶⁰ was only one year, covering the period of March 22, 2004 to March 22, 2005, the BAC was allowed to continue by the Provincial Governor despite non-renewal of the Executive Order.¹⁶¹

On re-direct examination, Huab stated that after reading the Bids and Awards Committee Members' Certificate¹⁶² he found out that it is a spurious or fake document, specifically the 2nd paragraph of the document.¹⁶³ Huab clarified that the BAC does not make an award but merely recommends who the winning bidder should be, in those instances where there is a bidding. The purpose of the Bids

¹⁵⁶ *Ibid* at pp. 10 to 13

¹⁵⁷ *Ibid* at p. 4

¹⁵⁸ *Ibid* at pp. 13 to 18

¹⁵⁹ *Ibid* at p. 19

¹⁶⁰ Exhibit G

¹⁶¹ TSN dated March 13, 2019 at p. 9

¹⁶² Exhibit L

¹⁶³ TSN dated March 13, 2019 at pp. 10 to 12

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and Awards Committee Members' Certificate is for the release of the approved loan from Landbank, but the BAC had no participation in the payment of the delivery using the proceeds of the loan from Landbank.¹⁶⁴

On re-cross examination, Huab confirmed that the Bids and Awards Committee Members' Certificate is spurious because the wording of the document states that there was already a technical working group when in fact there was neither a technical working group nor a Secretariat of the BAC at that time.¹⁶⁵

Huab also testified that to confirm that the document is spurious, he checked with the Clerk of Court of the Regional Trial Court of Sorsogon whether the document is notarized but the Clerk of Court said that the document is not registered and that its supposed document number pertains to another document. Huab also said that he got a Certification from the Clerk of Court that the number on the document pertains to another document.¹⁶⁶

(c) Teresita D. Paladin

Ms. Paladin is the former Provincial General Services Officer and former Chairman of the Bids and Awards Committee of the Provincial Government of Sorsogon.¹⁶⁷

On direct examination, Ms. Paladin testified that she could not be held liable for the offenses filed against her because the purchases were not coursed through her office and she had no knowledge or idea about the project as she was not a party to the the same. As to Crim. Case No. SB-13-CRM-0310, Paladin stated that the case is about a fake document being attributed to the Bids and Awards Committee of which she was designated as Chairman.¹⁶⁸

On cross examination, Paladin identified her signature on Delivery Receipt No. 005-10-2005¹⁶⁹ and stated that she only received the bid computers. Paladin also identified her signature in the Inspection and Acceptance Report but she alleged that it was the inspectors who marked the word complete.¹⁷⁰ Paladin confirmed that at the time the computers were delivered they counted it to be 300.¹⁷¹

¹⁶⁴ *Ibid* at pp. 14 to 16

¹⁶⁵ *Ibid* at p. 16

¹⁶⁶ *Ibid* at p. 17

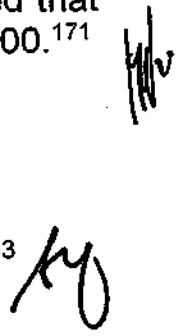
¹⁶⁷ TSN dated July 10, 2019 at p. 5

¹⁶⁸ Judicial Affidavit of Teresita D. Paladin dated May 22, 2019; *Rollo Vol IV* at pp. 55 to 63

¹⁶⁹ Exhibit S

¹⁷⁰ Exhibit Z; TSN dated July 10, 2019 at pp. 22 to 23

¹⁷¹ *Ibid* at p. 27



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Paladin clarified that there were two deliveries. As to the first contract she has no knowledge but admitted to have knowledge as to the second delivery which involves the computers. She knows about the purchase because she signed the invitation to apply for eligibility and to bid for re-purchase of the 300 units of computers and software for the Distance Learning Program.¹⁷²

Paladin further testified that the fake document she is referring to is the award and not the Bids and Awards Committee Members' Certificate.¹⁷³ She further confirmed that the Bids and Awards Committee Members' Certificate is an authentic and genuine document and she identified her signature in the document. She also affirmed what was stated in the said document.¹⁷⁴

On re-direct examination, Paladin clarified that it is not the BAC that awarded the procurement and that she is questioning the authenticity or validity of the Bids and Awards Committee Members Certificate.¹⁷⁵

Upon further questions by the Court, Paladin said that as a matter of course, they issue a Members' Certificate after a bidding but not a Notice of Award.¹⁷⁶

(d) Arnie H. De Vera

De Vera is currently the Assistant Provincial Engineer of the POS and was formerly a member of the Bids and Awards Committee of the POS.¹⁷⁷

De Vera took the witness stand and claimed that the allegation in Criminal Case No. SB-13-CRM-0310 is based on a fake document because it is in violation of the provisions of RA 9184 otherwise known as the New Procurement Reform Act of the Philippines. It is further claimed that the BAC does not make an award but merely makes a recommendation. An award need not be notarized because it is already an official document. The first page of the Bids and Awards Committee Members' Certificate¹⁷⁸ is not the same as the second page and was obviously just appended from another document bearing their original signatures. The first page was not

¹⁷² *Ibid* at p. 29

¹⁷³ Exhibit L

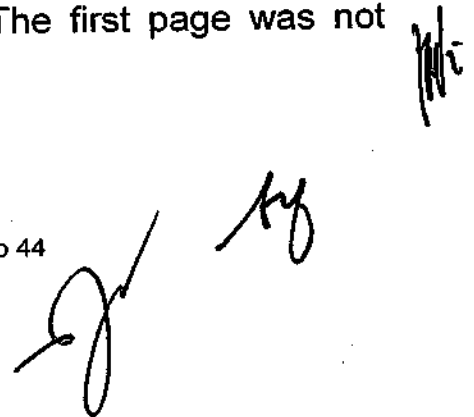
¹⁷⁴ *Ibid* at p. 34 to 41

¹⁷⁵ *Ibid* at p. 49

¹⁷⁶ *Ibid* at pp. 52 to

¹⁷⁷ Judicial Affidavit dated May 24, 2019; *Rollo Vol. IV* at pp. 38 to 44

¹⁷⁸ Exhibit L; Exhibit 24

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even signed by the BAC members which is usually done in the regular course of execution of BAC documents.¹⁷⁹

De Vera further testified that as of March 30, 2004, the newly created BAC was not yet formally organized nor functional as there was yet no formal secretariat and technical working groups. The fake award is allegedly not supported by the requisite minutes such as Invitation to Bid, Bidding documents, preliminary conference with prospective bidders.¹⁸⁰

Upon further questioning by this Court, De Vera identified her signature above her name on Exhibit "L-1". However, she testified that she only saw Exhibit "L" (the first page) when the Information was filed against them.¹⁸¹ Paladin stated that when she received a copy of Exhibit "L" along with the complaint, she was surprised because the first page of Exhibit L was wrong.¹⁸²

(e) Rosie Dioquino Agnis

On direct examination, Agnis testified that she is currently the Provincial Budget Officer but during the time when the alleged incident, subject of the case, happened, she was only the Assistant Provincial Budget Officer and member of the 2004 Bids and Awards Committee of the POS.¹⁸³

Agnis also stated that the allegation against them is false and unfounded because there was yet no formal and functional Bids and Awards Committee as of March 30, 2004. Records will show that the designated members of the newly created BAC received their respective designations only on March 29, 2004 and March 30, 2004 respectively. It is absurd to say that even before these designated members could have met and organized themselves as a regular BAC, the BAC could already deliberate on a contract to a supplier. Moreover, the BAC does not make an award but merely makes a recommendation based on the pre-qualification and bidding process. It is the Local Chief Executive who actually makes an award to a bidder. Further, Agnis stated that she personally went to the notarial section of the Regional Trial Court of Sorsogon to verify the authenticity of the document being imputed against her and she found out that: (1) the alleged notarized award is not included in the notarial report of the notary public Antonio Sagupay Orense, and (2)

¹⁷⁹ Judicial Affidavit dated May 24, 2019; *Rollo* Vol. IV at pp. 38 to 44

¹⁸⁰ *Ibid*

¹⁸¹ TSN dated July 10, 2019 at pp. 74 to 75

¹⁸² *Ibid* at p. 77

¹⁸³ Judicial Affidavit dated May 23, 2019; *Rollo* Vol. IV at pp. 45 to 54

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the document number appearing in the document refers to a Deed of Sale and not a BAC award and the book number are different from each other.¹⁸⁴

Agnis further testified that while the Provincial Government of Sorsogon indeed obtained a loan from the Land Bank of the Philippines to finance the establishment of the Distance Learning Center, the payment was not coursed through the province. The approved loan was not downloaded to the Provincial Government of Sorsogon but was paid directly to FETVI by the Landbank. Agnis identified the following documents for the defense:

1. Letter Request to the Clerk of Court of the Regional Trial Court of Bulwagan, Sorsogon City dated March 5, 2012;
2. Deed of Sale dated January 16, 2004;
3. Land Bank Manager's Check dated March 31, 2004 and April 22, 2004;¹⁸⁵
4. Land Bank Promissory Note No. SOR-239-04-C dated March 31, 2004; and
5. Acknowledgment Receipt dated June 30, 2006.¹⁸⁶

On cross examination, Agnis identified her name and signature in the Bids and Awards Committee Members Certificate.¹⁸⁷ Agnis confirmed that she knew about the existence of the document as early as 2009 as she admitted the authenticity of the document in her Counter Affidavit.¹⁸⁸

Upon clarificatory questions by the Court, Agnis confirmed that the book number is different in Bids and Awards Committee Members Certificate as compared to the Deed of Sale identified by the witness. However, Agnis did not ask the Clerk of Court to clarify because it says in the clarification that they extended the search but there is no similar notarial document.¹⁸⁹

Thereafter, accused Huab, De Vera, Agnis, and Paladin formally offered their evidence.¹⁹⁰ On July 31, 2019, the prosecution

¹⁸⁴ Judicial Affidavit dated May 23, 2019; *Rollo* Vol. IV at pp. 45 to 54

¹⁸⁵ Exhibit 13, 13-C, and 14

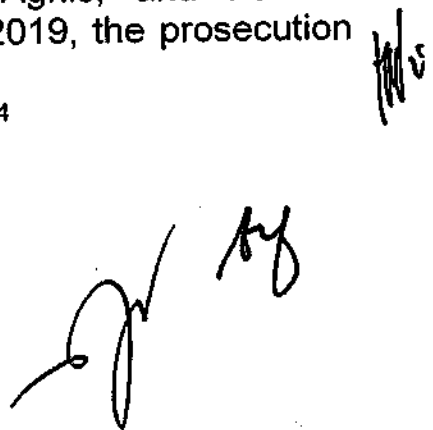
¹⁸⁶ *Ibid*

¹⁸⁷ Exhibit 24; TSN dated July 10, 2019 at p. 89

¹⁸⁸ *Ibid* at pp. 91 to 92

¹⁸⁹ *Ibid* at p. 97

¹⁹⁰ *Rollo*, Vol. IV at pp. 82 to 149

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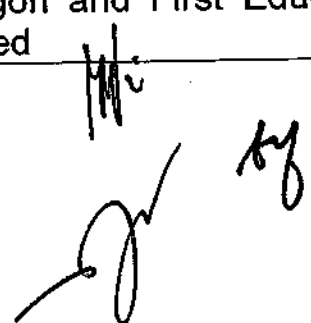
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filed their Comment to accused Huab, De Vera, Agnis, and Paladin's Formal Offer.¹⁹¹ The Court then admitted the following exhibits for the defense:¹⁹²

Exhibits	Document
1 1-A 1-B 1-C 1-D 1-E 1-F	Complaint dated March 27, 2008 filed in OMB-C-C-08-0406-1 by the Filed Investigation Office against Raul R. Lee et. al. Par. 1-8, pp. 1 & 2 Par. 10-11, p. 2 Par. 12-15, p. 2 Par. 26, p. 4 Par. 27, p. 4 Par. 31
2 2-A 2-B 2-C 2-D 2-E 2-F	Initiative for the Establishment of Distance Learning Centers as Delivery Mechanism (via satellite) for Capability Building in Sorsogon Province dated April 25, 2003 First paragraph of page 5 Box of FETVI – Figure 1 Conceptual Framework p. 7 Box with statement – Establishment of Revenue – Generating Applications thru Joint Venture Agreement between Sorsogon & FETVI p. 7 Component II – Establishment of Revenue – Generating Application thru a Joint Venture Agreement between Sorsogon and FETVI p. 9 Figure 3 Box Component II Table 1 – Box Component II & III p. 12
3 3-A	Memorandum of Agreement for the Implementation of the project entitled "Initiative for the Establishment of Distance Learning Centers as Delivery Mechanism for Capability Building in the Province of Sorsogon" executed on April 25, 2003 by and between the Provincial Government of Sorsogon represented by Governor Raul Lee and First Education and Training Ventures Incorporated represented by Dr. Enrico T. Velasco Date April 25, 2003
4	Joint Venture Agreement to Establish Revenue Generating Application of the Project entitled "Initiative for the Establishment of Distance Learning Centers as Delivery Mechanism for Capability Building in the Province of Sorsogon" executed on April 25, 2003 by and between the Provincial Government of Sorsogon and First Education and Training Ventures, Incorporated

¹⁹¹ *Ibid* at pp. 151 to 158

¹⁹² *Ibid* at pp. 162 to 163



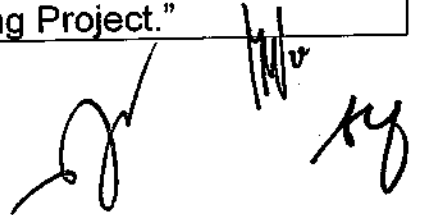
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4-A	Date April 25, 2003
5	Excerpt from the minutes of the regular session of the Sangguniang Panlalawigan held at its Session Hall, SP Bldg., Capital Compound on July 21, 2003
5-A	Resolution No. 132-03 – Amending Resolutions No. 67-03 Authorizing Hon. Gov. Raul R. Lee for and in behalf of the Province of Sorsogon to Negotiate a Loan with the Land Bank of the Philippines in the amount of Twelve Million Pesos for the Joint Venture Project of the Province with First Education & Training Venture, Inc. for the Establishment of Distance Learning Centers
6	Program Presentation & Loan Negotiation with the Land Bank of the Philippines Regional Office – Legazpi City by the Provincial Government of Sorsogon in cooperation with First Education & Training Ventures, Inc. dated September 19, 2003
6-A	Date September 19, 2003
7	Executive Order No. 01 – Series of 2004 Creation of Bids & Awards Committee and BAC Secretariat
7-A	Stamped-mark “Provincial Legal Office Received date 03/29/04”
7-B	Stamped-mark “Provincial Engineer’s Office Received date 03/29/04”
7-C	Stamped-mark “Office of the Provincial Treasurer Received 3/30/04”
7-D	Stamped-mark “Provincial Administrator Received 3/29/04”
7-E	Stamped-mark “Provincial General Services Office Received 03/29/04”
8	Loan Agreement executed on March 25, 2004 by and between Land Bank of the Philippines and the Provincial Government of Sorsogon
8-A	Date March 25, 2004
8-B	“6.7 Certification from the PBAC to the effect that the herein procurement had fully complied with the required procedures for competitive bidding and/or alternative methods of procurement under the provisions of RA 9184, otherwise known as the Government Procurement Reform Act of 2003, and its implementing Rules and Regulations and/or relevant procurement laws. As an attachment to the certification, the Local Chief Executive shall issue a certification on the composition of the BAC.”
9	Resolution No. 49-04 “Adopting, ratifying, and approving the terms and conditions of the approved Twelve Million Pesos (P12,000,000.00) with the Land Bank of the Philippines for the Distance Learning Project.”



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9-A	Date "March 26, 2004"
10	Delivery Receipt No. 2004-03-001
10-A	Delivery Date March 29, 2004
11	Delivery Receipt No. 2004-03-002
11-A	Delivery Date March 29, 2004
12	Bids and Awards Committee Members' Certificate
12-A	Page 2
12-A-1	Printed date March 30, 2004 on the jurat
13	LBP Manager's Check No. 2532 PHP6,000,000.00 dated March 31, 2004 issued to Payee First Education & Training Ventures, Inc./ Dr. Enrico T. Velasco
13-A	Notation at the dorsal portion of the check
17	Resolution in OMB-L-C-06-0401-D entitled Rebecca de Leon Aquino vs. Gov. Raul R. Lee, et al. dated November 24, 2008
17-A	Par. 4 & 5 of page 21

With the admission of the foregoing documentary exhibits and testimony of the witnesses, the accused were deemed to have rested their case.¹⁹³

This Court gave the parties a non-extendible period of twenty (20) days from receipt of the December 20, 2019 Resolution to file their respective memoranda.¹⁹⁴

Memoranda of the Parties

On February 27, 2020, accused Huab, De Vera, Agnis, and Paladin filed their Memorandum.¹⁹⁵ In their Memorandum, they argued that the documentary evidence conclusively established their innocence. The evidence proves that Sorsogon province and FETVI have agreed to be partners in the implementation of the Distance Learning Project before the BAC was even established. Accused Huab, De Vera, Agnis, and Paladin were not yet appointed to the BAC which was yet to be created after the project was already decided and implemented thus there is no basis to include them in these cases.¹⁹⁶

The prosecution, and accused Raul R. Lee, Felicisimo D. Brondial, and Manuel S. Laurora, did not file Memorandum. Accused

¹⁹³ *Ibid.*

¹⁹⁴ Resolution dated December 20, 2019

¹⁹⁵ Accused's Joint Memorandum dated January 22, 2014; *Rollo* Vol. IV at pp. 168 to 178

¹⁹⁶ *Ibid*

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Florencio C. Dino II died during the course of trial,¹⁹⁷ while accused Enrico T. Velsco remained at large.

Statement of Undisputed Facts

As borne by the collective evidence adduced by the parties consisting of both testimonial and documentary, the following are the established facts in these two (2) cases, to wit:

On April 25, 2003, the province of Sorsogon, through Governor Raul R. Lee, established a project known as "Initiative for the Establishment of Distance Learning Centers as Delivery Mechanism (via satellite) for Capability Building in Sorsogon Province."¹⁹⁸ On the same date, the aforementioned province, through accused Lee, entered into a Memorandum of Agreement¹⁹⁹ and Joint Venture Agreement²⁰⁰ with FETVI for the implementation of the said Distance Learning Project.

As of that time, the province of Sorsogon had already identified the First Education and Training Ventures, Inc. (FETVI) in its conceptual framework of the Project on Distance Learning as its strategic partner in the implementation of the said project.²⁰¹

On July 21, 2003, the Sangguniang Panlalawigan approved Resolution No. 132-03 which authorized hen Governor Lee to negotiate a loan of Twelve Million Pesos (Php12,000,000.00) with Landbank for the Joint Venture Project with FETVI.²⁰²

On March 25, 2004, the province of Sorsogon, through accused Lee, signed a Loan Agreement with the Landbank for Twelve Million Pesos (Php12,000,000.00).²⁰³ On March 26, 2004, the Sangguniang Panlalawigan of Sorsogon approved Resolution No. 49-04²⁰⁴ ratifying and approving the loan agreement with Landbank for the aforementioned

¹⁹⁷ On June 22, 2018, the wife of accused Dino filed a Notice of Death to this Court and prayed for accused Dino to be dropped from the information.

¹⁹⁸ Exhibit B; Exhibit 2 for accused Huab et. al.

¹⁹⁹ Exhibit C; Exhibit 3 for accused Huab et. al.

²⁰⁰ Exhibit D; Exhibit 4 for accused Huab et. al.

²⁰¹ Exhibit B at page 5

²⁰² Exhibit E; Exhibit 5 for accused Huab et. al.

²⁰³ Exhibit H; Exhibit 8 for accused Huab et. al.

²⁰⁴ Exhibit I; Exhibit 9 for accused Huab et. al.

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amount of Twelve Million Pesos (Php12,000,000.00) for the Distance Learning Project.

On March 29, 2004, FETVI made initial deliveries of equipments, office furnitures, computer tables, chairs, computer parts and wirings at a total price of Two Million Six Hundred Forty Thousand Pesos (Php2,640,000.00) which accused Lee received on behalf of province.²⁰⁵

On April 5, 2004, FETVI made another delivery of Satellite Connectivity Equipment worth Three Million Nine Hundred Sixty Thousand Pesos (Php3,960,000.00) which accused Lee received on behalf of Sorsogon,²⁰⁶ for which the province issued two (2) checks to FETVI, one Landbank of the Philippines Check dated March 31, 2004 for the amount of Six Million Pesos (Php6,000,000.00) and another Landbank of the Philippines Check dated April 22, 2004 for the same amount of Six Million Pesos (Php6,000,000.00).²⁰⁷

On March 22, 2004, accused Lee issued Executive Order No. 01 - Series of 2004 creating the Bids and Awards Committee and the BAC Secretariat to be "responsible for ensuring the Provincial Government of Sorsogon abides by the standards set forth by the Act (RA 9184) and its Implementing Rules and Regulations – A (IRR-A)."²⁰⁸

On March 29, 2004, FETVI delivered three (3) sets of Cyberstream Satellite Gateway Equipment, Office Equipment and Furniture & Fixtures under Delivery Receipts No. 2004-03-001 and 2004-03-002.²⁰⁹ Under Delivery Receipt No. 2004-04-001, FETVI delivered on April 5, 2004 the remaining undelivered item – One (1) Satellite link connectivity services.²¹⁰

In order to commence the Distance Learning Center Project, the Provincial Board authorized accused Lee to negotiate for a loan with the Philippine National Bank in the

²⁰⁵ Exhibit J; Exhibit 10 for accused Huab et. al.

²⁰⁶ Exhibit M

²⁰⁷ Exhibit N; Exhibits 13 to 13-C

²⁰⁸ Exhibit G; Exhibits 7 to 7-E

²⁰⁹ Exhibits J and K

²¹⁰ Exhibit M

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amount of Ten Million Pesos (Php10,000,000.00) under Sanggunian Panlalawigan Resolution No. 43-05.²¹¹

On June 27, 2005, the loan was approved and the loan agreement was ratified by the Provincial Board under SP Resolution No. 101-05.²¹² On October 5, 2005, the Purchase Order amounting to Nine Million Nine Hundred Ninety Six Thousand Nine Hundred Ninety Nine Pesos and Ninety-Nine Centavos (Php9,996,999.99) was released by the province of Sorsogon.²¹³

The items were delivered by FETVI on October 25, 2005, under Delivery Receipt No. 005-10-2005,²¹⁴ and was paid on November 8, 2005 through Check No. 82483 for the sum of Nine Million Four Hundred Ninety Seven Thousand One Hundred Forty Nine Pesos and Five Centavos (PHP9,497,149.05).²¹⁵

On March 27, 2008, Luisito S. Suarez filed a Complaint with the Ombudsman against Raul R. Lee, in his capacity as Governor of the Province of Sorsogon, Atty. Cesar J. Balmaceda, Provincial Administrator, Atty. Antonio R. Huab, Provincial Legal Officer, Engr. Arnie De Vera, Provincial Engineer's Office, Rosie D. Agnis, Provincial Budget Officer, Florencio C. Dino II, Provincial Assessor, Teresita D. Paladin, Provincial General Services Office, Felicisimo D. Brondial, Representative – Provincial Accounting Office, Manuel S. Laurora, Inspection Officer, and Enrico T. Velasco, President and CEO of FETVI.

ISSUE

For brevity, this Court has simplified the issues proffered by the parties to read as follows:

Whether or not the accused are liable for violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act under the two (2) Informations docketed as SB-13-CRM-0309 and SB-13-CRM-0310.

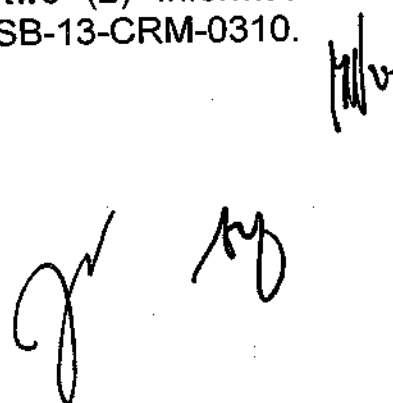
²¹¹ Exhibit P

²¹² Exhibit Q

²¹³ Exhibit R

²¹⁴ Exhibit S

²¹⁵ Exhibit T

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OUR RULING

After a careful evaluation of the evidence presented by the parties, the admissions they made, and stipulations they accepted, this Court rules as follows:

In SB-13-CRM-0309:

Accused **RAUL RODRIGUEZA LEE**, Governor, **TERESITA DAGNALAN-PALADIN**, General Services Officer, **MANUEL SERRANO LAURORA**, Inspection Officer, and **FELICISIMO DOLENDO BRONDIAL**, Accounting Clerk III, all of the Province of Sorsogon, are all **GUILTY** as charged, for violation of Section 3, paragraph (e), of RA 3019, as amended.

By the prosecution's evidence this Court finds and so rules that accused Lee acted with manifest partiality when he approved, and caused to be paid the computer hardware and software delivered by FETVI in the amount of **NINE MILLION NINE HUNDRED NINETY-SIX THOUSAND NINE HUNDRED NINETY-NINE PESOS** (PHp9,996,999.00), under Purchase Order No. 100050900529 dated October 5, 2005 and Delivery Receipt No. 005-10-2005 dated October 24, 2005, knowing full well that the said computer hardware and software were **"incomplete as to quantity, and not complying with specifications xxx"**.

In respect of accused Paladin, Laurora and Brondial, this Court finds them guilty of gross inexcusable negligence for signing the Inspection and Acceptance Report dated October 24, 2005 despite the fact that eight (8) computers were missing and several others were found to be non-compliant with the specifications indicated in the different procurement documents for the purchase of computer hardware and software awarded to FETVI. Laurora and Brondial signed as **"OK"** the aforesaid Inspection and Acceptance Report, and thus certified that the computers delivered by FETVI were not only complete as to quantity, but more importantly, compliant as to specifications, when in truth and in fact, the inspection they conducted was limited only to the number of computers so delivered. As admitted by accused Laurora on the witness stand, the inspection which he and Brondial merely counted the computer sets delivered as they did not have the necessary training or background to determine their actual specifications.

Accused Paladin on the other hand approved the Inspection and Acceptance Report dated October 24, 2005 based solely on the inspection conducted by Laurora and Brondial, and the report

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submitted in connection therewith. Paladin ought to have known that Laurora and Brondial were both without sufficient knowledge, training and expertise to determine whether or not the delivered computers were compliant with the specifications contained in the different supporting procurement documents for the purchase of the aforesaid computers.

As a result of the gross inexcusable negligence of accused Paladin, Laurora, and Brondial in signing and certifying as "OK" the Inspection and Acceptance Report dated October 24, 2005, the claim for payment by FETVI was processed, and paid in due course. Consequently, the provincial government of Sorsogon suffered injury when it paid the amount of Php9,996,999.00.

In SB 13-CRM-0310:

Accused **RAUL RODRIGUEZA LEE**, and **TERESITA DAGNALAN-PALADIN** are both **GUILTY** as charged.

Accused Lee and Paladin are equally guilty of manifest partiality, and of having conspired to grant unwarranted benefit to FETVI and/or accused Velasco when the former entered into a Memorandum of Agreement and Joint Venture Agreement with FETVI, both dated April 25, 2003, without Public Bidding and despite absence of the legal requirements for a valid resort to alternative modes of procurement in violation of Republic Act No. 9184 and its Implementing Rules and Regulations, as well as the provisions of Commission on Audit Circular No. 92-386.

Accused Paladin, on the other hand, was shown to have conspired with accused Lee in granting unto FETVI and/or accused Velasco unwarranted benefit when she signed, and admitted as genuine the Bids and Awards Committee – Members' Certificate dated March 30, 2004, which was clearly aimed to regularize the award of the contract in question to FETVI, despite the lack of public bidding, and to lend some semblance of validity thereto. By admitting to have signed the Bids and Awards Committee-Members' Certificate, accused Paladin certified to a number of falsehoods – clearly in pursuance to her manifest partiality towards FETVI and/or accused Velasco.

On reasonable doubt, the Court rules to **ACQUIT** accused **ANTONIO RIVA HUAB**, **ROSIE DIOQUINO AGNIS**, and **ARNIE HEQUIBAL DE VERA**.



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The case against accused **FLORENCIO C. DINO** was dismissed by reason of his death during trial.

THE COURT'S DISCUSSION COMMON TO BOTH SB-13-CRM-0309 and 0310

The law alleged to have been violated by the accused and its elements

Under both SB-13-CRM-0309 and SB-13-CRM-0310, the charges levelled against herein accused are based on their alleged violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides that:

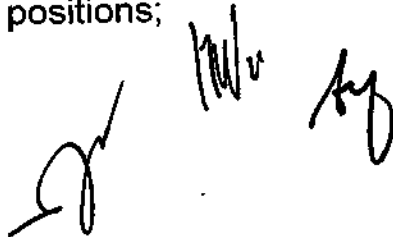
"Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing laws, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

To prove a violation of the aforementioned Section 3(e) of R.A. No. 3019, the following elements must concur:

- (1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;



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- (3) That they caused undue injury to any party, whether the Government or a private party or gave unwarranted benefits, advantage or preference to such parties; and
- (4) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.²¹⁶

We, thus, evaluate these two (2) cases on the basis of the foregoing elements.

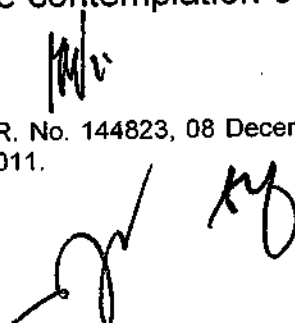
At all times material to these cases, all accused, except accused Velasco were public officers discharging their administrative/official functions; accused Velasco is charged as having conspired with them

There is no issue as to the first element. It is admitted that, at the time material to the allegations contained in the two (2) Informations herein, all the accused, except Enrico T. Velasco, were holding public office in the Province of Sorsogon, as follows:

- a. Raul R. Lee - Governor of the Province of Sorsogon;
- b. Atty. Antonio R. Huab - Provincial Legal Officer;
- c. Engr. Arnie De Vera – Engineer IV of Provincial Engineer's Office;
- d. Rosie D. Agnis - OIC Provincial Budget Officer;
- e. Florencio C. Dino II - Provincial Assessor;
- f. Teresita D. Paladin - Provincial General Services Officer;
- g. Felicisimo D. Brondial – Accounting Clerk III; and
- h. Manuel S. Laurora - Inspection Officer.

All of the aforementioned individuals, except Enrico T. Velasco, were public officers within the contemplation of Section 2 of R.A. No. 3019, which provides that:

²¹⁶ *Dela Chica vs. Sandiganbayan*, G.R. No. 144823, 08 December 2003 in relation to *Alvarez vs. People*, G.R. No. 192591, 29 June 2011.



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"Section 2. *Definition of terms.* As used in this Act, the term

(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(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."

Accused Enrico T. Velasco, on the other hand, is the President and CEO of First Education and Training Ventures, Inc. While admittedly a private individual, he is charged herein as having acted in conspiracy with the above-named accused public officers.

THE COURT'S DISCUSSION ANENT SB-13-CRM-0309

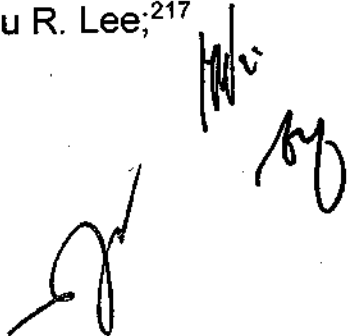
Accused Lee, acted with manifest partiality and gave unwarranted benefit to accused FETVI and/or accused Velasco

The *Information* in SB-13-CRM-0309 charged accused public officers Lee, Paladin, Laurora, and Brondial for accepting the delivery of computer hardware and software from, and causing payment of the same in favor of FETVI knowing full well that the delivery of the said computers were incomplete as to quantity and not compliant with specifications. The computers were discovered to be not only second-hand, but defective as well, while the software were found to be not in accordance with the stated specifications and/or were unlicensed.

To prove the allegations stated in the *Information* in SB-13-CRM-0309, the prosecution presented the following documentary evidence:

- 1) Purchase Request dated August 15, 2005 approved and signed by accused Governor Rau R. Lee;²¹⁷

²¹⁷ Exhibit EE

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- 2) Notice of Award to FETVI dated September 29, 2005;²¹⁸
- 3) Contract Agreement between province of Sorsogon, represented by Governor Raul R. Lee, and FETVI dated October 3, 2005;²¹⁹
- 4) Purchase Order dated October 5, 2005 signed by accused Governor Raul R. Lee;²²⁰
- 5) Check No. 82483 dated November 8, 2005 in the name of FETVI;²²¹
- 6) Official Receipt No. 0003 dated November 8, 2005;²²²
- 7) Inspection and Acceptance Report of the Provincial Government of Sorsogon dated October 24, 2005;²²³
- 8) Disbursement Voucher signed by accused Governor Raul R. Lee;²²⁴
- 9) Memorandum from COA dated January 4, 2006;²²⁵
- 10) Memorandum with attachments issued to Tita Embestro dated May 22, 2006;²²⁶
- 11) Letter dated March 15, 2005 addressed to Mr. Jose Rey Binamira, Provincial Auditor, signed by Raul R. Lee;²²⁷ and
- 12) Audit Observation Memorandum No. 2005-01 dated February 8, 2005.²²⁸

²¹⁸ Exhibit V

²¹⁹ Exhibit W

²²⁰ Exhibit R

²²¹ Exhibit X

²²² Exhibit Y

²²³ Exhibit Z

²²⁴ Exhibit T

²²⁵ Exhibit BB

²²⁶ Exhibit OO

²²⁷ Exhibit OO-9 to OO-13

²²⁸ Exhibit PP



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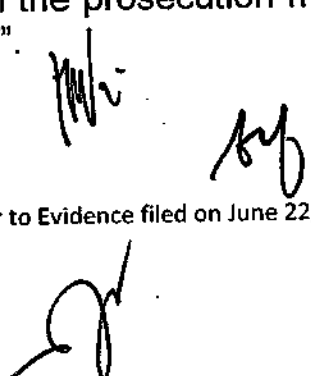
The prosecution alleges that accused Lee, Paladin, Brondial, and Laurora conspired with Enrico T. Velasco, a private individual and President and CEO of FETVI in accepting and thereafter causing the payment for the computer hardware and software under Purchase Order No. 100050900529 in the sum of Nine Million Nine Hundred Ninety-Six Thousand Nine Hundred Ninety-Nine Pesos (Php9,996,999.00) "**knowing fully well that the [above stated] computer hardware and software are incomplete as to quantity and not complying with specifications xxx**".

In refutation of the foregoing accusation levelled against him, and his co-accused in SB-13-CRM-0309, accused Lee argues that no evidence whatsoever was offered by the prosecution to prove that he conspired with any of his aforementioned co-workers in the provincial capitol, and with accused Velasco. Accused Lee insists that there was no evidence presented by the prosecution to show that he had knowledge that FETVI provided and delivered computer hardware and software "**which are incomplete as to quantity and not compliant with specifications**" as clearly shown by the Inspection and Acceptance Report which plainly reveals the absence of his signature thereon, and therefore proves that he is a complete stranger thereto. Indeed, the Inspection and Acceptance Report shows that the same was signed only by accused Teresita D. Paladin, Manuel S. Laurora and Felicisimo Brondial.²²⁹

That is not correct. While accused Lee did not sign, and indeed, had no participation in the preparation and issuance of the aforesaid Inspection and Acceptance Report, that does not necessarily mean that at the same time he appeared and caused the payment of the computer, he had no knowledge, as he gratuitously alleges, that FETVI provided and delivered computer hardware and software "**which are incomplete as to quantity and not compliant with specifications.**"

One of the witnesses called by the prosecution in these cases was Renee Mark Q. Fajardo, a former Field Investigation Officer of the Office of the Ombudsman, who was tasked to conduct an investigation regarding the questioned transactions involved in these two (2) cases. He testified that after conducting a fact-finding investigation, he prepared and submitted an Investigation Report dated June 13, 2007 which the prosecution marked and submitted to this Court as its Exhibit "TT".

²²⁹ See Motion for Leave to File Demurrer to Evidence filed on June 22, 2018.

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In the aforesaid Investigation Report dated June 13, 2007, Investigator-on-case Renee Mark Q. Fajardo wrote, among other things, the following observation:

"62. In a comment/reply to the Audit Observation Memorandum No. 2006-001 dated 17 April 2006, Subject Raul R. Lee explained that, "xxx the desktop computers are second-hand (slightly used) for practical reasons. In the face of the rising cost of computer hardware, the loan proceeds from the PNB would not be enough to buy top-of-line and branded counterparts."²³⁰

The foregoing admission attributed to accused Lee was never denied, or challenged. Accused Lee never bothered to refute such observation contained in the Investigation Report of prosecution witness Fajardo notwithstanding its damaging outturn to his cause as it virtually placed him standing foursquare within the *denuncia* spelled out in the Information that he **"willfully, unlawfully, feloniously xxx ACCEPT and PAY the computer hardware and software xxx knowing fully well that the above stated computer hardware and software are incomplete, as to quantity, and not complying with specifications, i.e., second-hand or not brand new xxx"**

Moreover, as further observed by prosecution witness Renee Mark Q. Fajardo in his aforequoted Investigation Report dated June 13, 2007, none of the procurement documents signed and approved by accused Lee in connection with the province's Distance Learning Program indicated, or even suggested, that it intended to acquire second-hand/slightly used computer hardware. Thus, it should have been clear to accused Lee that as a matter of law, the items to be procured are supposed to be brand-new pursuant to, and in accordance with Section 49 of COA Circular No. 92-386 which provides that **"Unless otherwise specified in the call for bids, all quotations shall be for brand new fresh commercial stock supplies or property"**²³¹

Too, the records show that the requisite Purchase Request (Exhibit "EE"), and Purchase Order (Exhibit "R") necessary for the procurement of the questioned three hundred (300) computer hardware and software which were found to be incomplete and non-

²³⁰ Under Item No. 62, page 16

²³¹ As cited in the Investigation Report dated June 13, 2007; Item No. 65, page 17



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compliant with specifications, as well as the Disbursement Voucher (Exhibit "T") required for the payment of such procurement were all approved and signed by accused Lee.

All told, knowing full well that FETVI delivered to the province of Sorsogon computer hardware and software which were found to be **"incomplete as to quantity, and not complying with specifications, i.e., second hand or not brand new, defective, under specifications, and/or unlicensed software"**, accused Lee nonetheless caused the payment of the sum of Nine Million Nine Hundred Ninety-Six Thousand Nine Hundred Ninety-Nine Pesos (Php9,996,999.00) in favor of FETVI thereby giving unwarranted benefit, advantage, and preference to the aforementioned company, of which accused Enrico T. Velasco was the President and CEO.

Accused Paladin, Laurora, and Brondial were guilty of gross inexcusable negligence, if not manifest partiality in the performance of their official duties in SB-13-CRM-0309

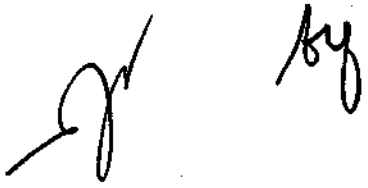
Paladin, Brondial and Laurora's participation in SB-13-CRM-0309 is evidenced by their act of signing the Inspection and Acceptance Report dated October 24, 2005 despite the fact that eight (8) computers were missing, and several computers delivered were found to be non-compliant with the specifications indicated in the contract awarded to FETVI.²³² Accused Brondial and Laurora's signature under the heading "inspection" indicated that the 300 computers were inspected, verified, and were found to be "OK" as to quantity and specifications. Accused Paladin's signature under the heading "acceptance" indicated her concurrence with, and affirmation of, the certification made by Brondial and Laurora that the delivery was complete and "OK" as to quantity and specifications.

It is not disputed - as shown by the Memorandum from COA dated January 4, 2006 - that the 300 computers delivered were re-conditioned and slightly used and the unit's computer server was found to be clone type. The Commission on Audit further made the following observations/findings, to wit:²³³

FINDINGS/OBSERVATIONS	DESKTOP COMPUTERS	COMPUTER SERVER
- Working & complied as per specification	83	2

²³² Exhibit BB

²³³ Ibid



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- Working but under specifications	143	0
- Defective hardware/software; under specifications	66	1
- Missing	8	0
Total	300	3

Except for Microsoft XP Professional Edition and Office 2000, no other software such as Broadband Access, proprietary interactive computer course and course management software, and software for access to Microsoft Certification Program software were installed in these computers. As far as Microsoft software were concerned, no original CDs of these software were included in the delivery hence considered unlicensed.

The Invitation to Apply for Eligibility and to Bid explicitly states that the software for Microsoft Operating System, Microsoft Office, and Microsoft Certification Program must be duly licensed. Thus, if only for this reason the Inspection and Acceptance Report which showed that the delivery made was "OK" should not have been signed and issued by accused Brondial and Laurora, on the one hand,²³⁴ and affirmed and confirmed by Paladin on the other.

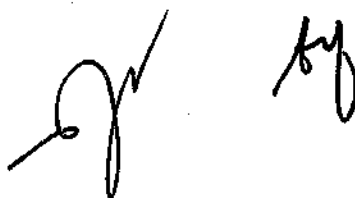
The COA also found that there were 8 missing computers. Again, the aforementioned accused should not have signed the Inspection and Acceptance Report as to the completeness of the computers. Needless to state, without Paladin, Brondial, and Laurora's signatures in the Inspection and Acceptance Report on October 24, 2005, the discrepancies with the deliveries should have been properly addressed. It stands to reason therefore that payment to FETVI would not have been made and therefore the resulting damage to the government would have been prevented.²³⁵

Laurora on his part stated that on the date of delivery of the computers, he sought assistance from accused Brondial, a representative from the accounting office. Laurora testified that he and Brondial only counted the number of computer sets delivered but did not look at the technical specifications as they were not equipped with the technical knowledge to determine the actual specifications of the computers.

Laurora testified that he insisted that they be assisted by a person with sufficient knowledge on computers in inspecting the deliveries and, thus decided to coordinate and request assistance from the COA Provincial Auditor. The COA Provincial Office responded to his request and sent two information technology experts from their office, Mark Fermin C. Dolot and Fredelino L. Jumbas Jr.,

²³⁴ Exhibit DD

²³⁵ Exhibit X and Exhibit Y



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both Technical Assistant Specialist of the COA to do the actual inspection of the delivered computers with Laurora and Brondial.²³⁶

Laurora also stated that after COA inspected the 300 computers, they found defects on the 300 units thus Laurora requested replacement units for the units rejected. He verbally asked Ms. Paladin to contact the dealer for the replacement of the units. However, Laurora confirmed that he signed the Inspection and Acceptance Report as to the quantity and specification despite the fact that he merely counted the computer units. Laurora did not even attempt to justify his clearly reckless act, and instead lamely explained that what he signed was a standard form, the contents of which he could not remove or erase.²³⁷

It is true that prosecution witness Fredelino L. Jumbas Jr. corroborated the testimony of accused Laurora when he narrated under oath before this Court that around the last week of November 2005, he conducted an inspection pertaining to the purchase of computer by the POS at the GSO Office Bodega with Engr. Mark Dolot and Ms. Paladin.²³⁸ Jumbas likewise testified that he and his partner informed Ms. Paladin of their findings and the latter informed them that they will comply with the deficiencies.²³⁹

In fine, the testimony of Jumbas' would indeed show that Laurora and Brondial merely inspected the delivered computers as to quantity but not as to specification as they were not equipped with the technical knowledge to inspect the actual specifications of the computers.

But the foregoing testimony of Jumbas, notwithstanding, this Court still finds Laurora and Brondial to have been remiss in their duty as Inspection Officers in limiting the conduct of their inspection to the quantity of the computers delivered and not as to their specification as well. Even if they indeed sought technical expertise as alleged and testified on, and duly corroborated by witness Jumbas, that did not justify their act in signing the Inspection and Acceptance Report wherein they certified, without qualifications whatsoever, that the deliverables in question were "OK", when such was not the fact.

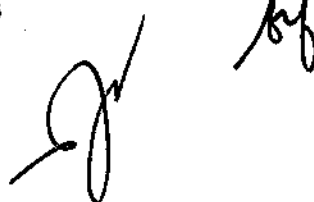
As to accused Paladin, she testified that she only received the bidded computers but it was the inspectors, Laurora and Brondial,

²³⁶ *Ibid*

²³⁷ *Ibid* at pp. 20 to 23

²³⁸ TSN dated April 27, 2017 at pp. 10 to 26

²³⁹ *Ibid* at p. 25



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who marked the word **“complete”** and **“OK”**.²⁴⁰ However, Paladin's testimony likewise showed negligence on her part when she indicated that she relied on the inspectors' report, as follows:²⁴¹

Q: Yes, you received the delivery of the computers. Okay. When you said complete, are you the one who marked the word complete here? There is a check here.

A: The inspector. Because they were the ones who –

Q: The Inspectors were the ones who indicated or who put the check complete?

A: The Inspector, Ma'am. Since they received the ano, they counted the delivery, 300, we thought it complete.

Q: Who among these two inspectors?

A: Two.

Q: Who?

A: Manuel Laurora and Felicisimo Brondial.

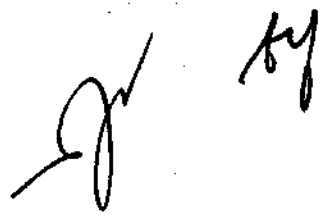
By Paladin's own admission, she simply relied on the inspection conducted by Brondial and Laurora, and the Inspection and Acceptance Report they subsequently submitted to her. She did not exert effort to confirm not only the quantity delivered but also the specification of the items. To the mind of this Court, accused Paladin is guilty of gross inexcusable negligence in relying solely on the inspection conducted by Brondial and Laurora, and the report they submitted without even exerting effort to conduct even a perfunctory confirmation or verification before signing the aforesaid Inspection and Acceptance Report.

While this Court is fully aware of the pronouncement of the Supreme Court in the case of *Arias vs. Sandiganbayan*²⁴² that **“[A]ll heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations,”** We must hasten to add that in the very same case of *Arias*, the Supreme Court likewise enjoins such **“heads of offices”** that where there exists other reasons or grounds that would arouse his or her suspicion as to the propriety, and sufficiency of a particular

²⁴⁰ TSN dated July 10, 2019 at pp. 24 to 25

²⁴¹ *Ibid*

²⁴² G.R. No. 81563, December 19, 1989.



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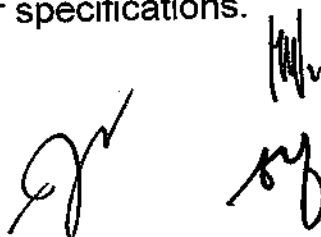
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transaction, such "other reason or ground" should behoove such head of office to personally look, closely examine, or even investigate such questionable transaction. In fine, the aforementioned **Arias case** tells us that in cases where there exist some grounds or reasons that would otherwise alert an ordinarily prudent officer holding a position of responsibility in respect of a particular transaction within his or her jurisdiction, and that officer fails to look into, or examine closely such transaction, he cannot justify said omission by the simple expedient of invoking good faith as he or she merely relied on the competence, and efficiency of his or her subordinate.

The Inspection and Acceptance Report which Brondial and Laurora signed and certified as "OK", and which Paladin likewise signed and certified as "Complete" was supposed to have been issued based on an inspection which consisted of a verification of the delivered computers not only as to quantity, but more importantly, as to specifications. As the superior of accused Laurora, and Brondial, under whose direction and instruction such inspection was undertaken, Paladin should have known that the aforementioned two (2) lowly rank-and-file personnel did not have the proper background or expertise to verify, and determine whether or not the delivered computers they were supposed to examine were compliant with the specifications indicated in the different procurement documents.

It is clear from the evidence, as they stand on record, that Paladin did not even bother to ask Laurora and Brondial whether or not they tried to determine the specifications of the subject computers and if the same satisfy the specifications indicated in the Purchase Request and Purchase Order. The records likewise fail to show that accused Paladin tried to ask whether or not accused Laurora or Brondial, or any one of them had any background in regard to the purely technical characteristics or specifications of the computers they were supposed to examine.

With the foregoing, this Court finds that Paladin, Laurora, and Brondial are all guilty of gross inexcusable negligence in the performance of their official duties if not manifest partiality. Paladin's act in relying solely on Laurora and Brondial in their examination of the computers and thereafter signing the Inspection and Acceptance Report show negligence on her part and failure to perform her duty as Provincial General Services Officer. On the part of Laurora and Brondial, they committed a prohibited act in signing the Inspection and Acceptance Report after only confirming the quantity of the computers but not as to their specifications.

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Accused Lee, Paladin, Laurora, and Brondial caused undue injury to the government in SB-13-CRM-0309

The Supreme Court in *Llorente, Jr. vs. Sandiganbayan*²⁴³ defined "undue" as "more than necessary, not proper, or illegal; and "injury" as "any wrong or damage done to another, either in his person, rights, reputation or property, that is, the invasion of any legally protected interest of another. The Supreme Court added that in jurisprudence, "undue injury" is consistently interpreted as "actual damage" and actual damage, in the context of these definitions, is akin to that in civil law.²⁴⁴

In these cases, the prosecution claims that the government through the Provincial Government of Sorsogon suffered undue injury when it paid FETVI the amount of Nine Million Nine Hundred Ninety Six Thousand Nine Hundred Ninety Nine Pesos (PHP9,996,999.00) for computer hardware and software that are incomplete as to quantity and not complying with specifications.

We agree.

The Supreme Court in *Llorente*,²⁴⁵ clarified that undue injury in Sec. 3(e) cannot be presumed. The Court thus ruled:

"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.²⁴⁶ Its existence must be proven as one of the elements of the crime.²⁴⁷ In fact, the causing of undue injury, or the giving of any unwarranted benefits, 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."²⁴⁸ (Emphasis supplied)

The aforementioned ruling was reiterated in *Soriano vs. Marcelo*²⁴⁹ that, in determining undue injury, courts cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best evidence obtainable

²⁴³G.R. No. 122166, 11 March 1998.

²⁴⁴*Ibid.*

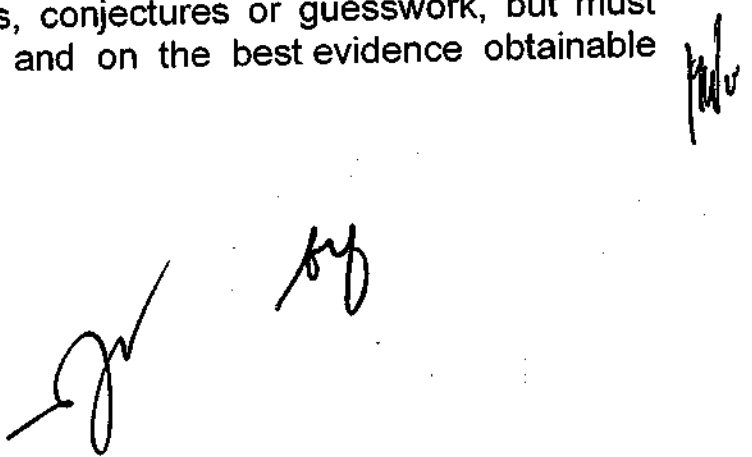
²⁴⁵*Ibid.*

²⁴⁶*Ibid.*

²⁴⁷*Ibid.*

²⁴⁸*Ibid.*

²⁴⁹G.R. No. 163178, 30 January 2009.



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regarding specific facts that could afford some basis for measuring compensatory or actual damage.²⁵⁰

This court sustains and gives credence to the contention of the prosecution that the delivery, acceptance, and payment of the computer hardware and software in the sum of Nine Million Nine Hundred Ninety Six Thousand Nine Hundred Ninety Nine Pesos (PHP9,996,999.00), under Purchase Order No. 100050900529 dated October 5, 2005 and Delivery Receipt No. 005-10-2005 dated October 24, 2005, knowing full well that the above stated computer hardware and software are incomplete as to quantity and not complying with specifications caused undue injury and damage to the Government.

The Memorandum from COA dated January 4, 2006 found that the 209 out of the 300 computers delivered were mere re-conditioned and slightly used units and the computer servers were brand new – clone type. Further, the COA found that:

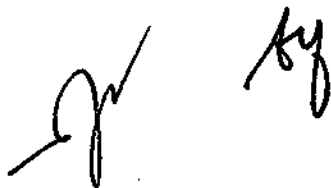
FINDINGS/OBSERVATIONS	DESKTOP COMPUTERS	COMPUTER SERVER
- Working & complied as per specification	83	2
- Working but under specifications	143	0
- Defective hardware/software; under specifications	66	1
- Missing	8	0
Total	300	3

Except for Microsoft XP Professional Edition and Office 2000, no other software such as Broadband Access, proprietary interactive computer course and course management software, and software for access to Microsoft Certification Program software were installed in these computers. As far as Microsoft software were concerned, no original CDs of these software were included in the delivery hence considered unlicensed.

The Invitation to Apply for Eligibility and to Bid explicitly states that the software for Microsoft Operating System, Microsoft Office, and Microsoft Certification Program must be duly licensed. The COA also found that there are 8 missing computers. Further, nowhere in the Invitation to Bid is it indicated that the Province of Sorsogon were buying second-hand and re-conditioned computers.

Verily, without Paladin, Brondial, and Laurora's signatures in the Inspection and Acceptance Report on October 24, 2005, the discrepancies between the deliverables and the items actually delivered would have been addressed before the payment of FETVI

²⁵⁰bid.



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via Check No. 82483 dated November 8, 2005 which resulted in damage to the government.²⁵¹

THE COURT'S DISCUSSION ANENT SB-13-CRM-0310

***Accused Lee acted with manifest partiality
in SB-13-CRM-0310***

The *Information* in SB-13-CRM-0310 charged accused public officer Lee of entering into a Memorandum of Agreement and Joint Venture Agreement with FETVI, both dated April 25, 2003, without public bidding and despite absence of legal requirements for a valid procurement process in violation of Republic Act No. 9184 and its implementing rules and regulations, as well as Commission on Audit (COA) Circular No. 92-386. The same *Information* charged public officers Huab, Dino, Paladin, Agnis, De Vera for their participation as members of the Bids and Awards Committee which allegedly executed and granted the Certificate of Award to FETVI dated March 30, 2004 despite lack of competitive bidding.

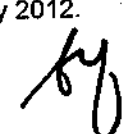
The Government Procurement Reform Act (R.A. No. 9184) explicitly enjoins that all procurements shall be done through competitive public bidding, except that, whenever justified by the conditions provided in R.A. No. 9184, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement: (a) limited source bidding; (b) direct contracting; (c) repeat order; (d) shopping; and (e) negotiated procurement.

The Supreme Court, in *Philippine Sports Commission vs. Dear John Services, Inc.*,²⁵² discussed the importance of a public bidding in government procurements, to wit:

“Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity, and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition and in order to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. Except only in cases in which alternative

²⁵¹ Exhibit X and Exhibit Y

²⁵² Philippine Sports Commission vs. Dear John Services, Inc; G.R/No. 183260, 04 July 2012.



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methods of procurement are allowed, all government procurement shall be done by competitive bidding.”

In the present case, the fact that accused Lee signed the Joint Venture Agreement and Memorandum of Agreement without prior public bidding was never disputed. Thus, the principal issue which needs to be resolved in this case is whether the contract entered into by the province of Sorsogon falls within the exceptions provided for under Section 48 of R.A. 9184 which reads:

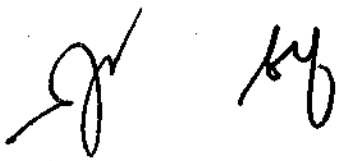
Section 48. Alternative Methods. - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

a. *Limited Source Bidding, otherwise known as Selective Bidding* - a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

b. *Direct Contracting, otherwise known as Single Source Procurement* - a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

c. *Repeat Order.* - a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

d. *Shopping* - a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular

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equipment to be procured directly from suppliers of known qualification; or

e. *Negotiated Procurement* - a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.

The Bids and Awards Committee – Members' Certificate granted the Certificate of Award to FETVI under direct contracting as stated in Section 50(c) of R.A. 9184. The Government Procurement Reform Act explains the instances in which direct contracting may be resorted to, to wit:

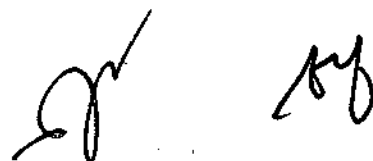
Section 50. Direct Contracting. - Direct Contracting may be resorted to only in any of the following conditions:

a. Procurement of Goods of propriety nature, which can be obtained only from the propriety source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same items;

b. When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions his contract; or,

c. Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

The prosecution argues that FETVI and its partner Textron Corporation are not the exclusive distributor of the VSAT model it supplied to the province of Sorsogon in connection with its Distance

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Learning Program. Further, the prosecution maintains that the BAC awarded to FETVI not only the purchase of the cyberstream satellites but also the furnitures and fixtures that are components thereof despite the fact that FETVI is not an exclusive distributor of the said office furnitures and fixtures needed for the first phase of the Distance Learning Program. In support of their allegation, the prosecution presented the Certificate of Partnership of FETVI with Textron Corporation which states that FETVI is merely an authorized service partner and distributor and not an exclusive distributor.²⁵³

The prosecution also presented witness Mark Q. Fajardo who testified that he found out that the exclusive distributor of the Cyber Stream Communication Satellite is Textron Corporation and Textron merely authorizes several establishments as service partners.²⁵⁴ This testimony was not belied by any of the accused thus this Court takes the same as true.

On the part of accused Lee, no evidence or explanation was offered by him to deny the allegations against him or to explain why the Province of Sorsogon resorted to direct negotiations with FETVI.

With the foregoing, this court believes and so holds that the prosecution was able to prove beyond reasonable doubt that accused Lee procured without competitive public bidding the following:

- (a) 3 sets Cyberstream Remote Satellite Gateway or Satellite Signal Receiver/Transmitter Equipment in the amount of Six Million Six Hundred Thousand Pesos;
- (b) 3 lots office equipment for Distance Learning Project Component in the sum of One Million Eight Hundred Thousand Pesos;
- (c) 3 lots office furnitures and fixtures for Public Calling Offices Project in the sum of Two Hundred Twenty Five Thousand Pesos;
- (d) 3 lots office furnitures and fixtures for Internet Café Project in the sum of Three Hundred Seventy Five Thousand Pesos; and
- (e) 3 link satellite connectivity services (for 1 year per remote site) in the sum of Three Million Nine Hundred Sixty Thousand Pesos

²⁵³ Exhibit U

²⁵⁴ TSN dated November 24, 2016 at pp. 14 - 18

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As already stated, all the foregoing were procured despite FETVI not being the exclusive distributor of the abovementioned and thereby not falling within the exceptions of RA 9184 and its implementing rules and regulations.

Relatedly, the Commission on Audit Memorandum dated May 22, 2006²⁵⁵ also noted that except for a Sangguniang Panlalawigan Resolution authorizing accused Lee to negotiate a loan with the Landbank of the Philippines and another resolution adopting, confirming, ratifying, and approving the terms of the loan agreement, there was no specific appropriation ordinance authorizing the use/disbursement of the loan proceeds for the purchase of satellite equipment.

The last element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed, to wit: "*Manifest partiality*," "*evident bad faith*," or "*gross inexcusable negligence*." Our present jurisprudence holds that the three are separate offenses, and proof of the existence of any of these three (3) in connection with the prohibited acts is enough to convict.²⁵⁶

The Supreme Court in *Uriarte v. People*²⁵⁷ defined manifest partiality, evident bad faith and gross inexcusable negligence in this manner:

"Section 3(e) of R.A. 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa as when the accused committed gross inexcusable negligence. There is "**manifest partiality**" when there is a **clear, notorious or plain inclination or predilection to favor one side or person rather than another**. "**Evident bad faith**" connotes **not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will**. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the **slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but**

²⁵⁵ Exhibit OO

²⁵⁶ *Abubakar vs. People*, G.R. No. 202408, 27 June 2018.

²⁵⁷ G.R. No. 169251, 20 December 2006.



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willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.” (Emphasis supplied)


While the Court fails to discern evident bad faith on the part of accused Lee, his act of signing the Joint Venture Agreement and Memorandum of Agreement without the required recommendations of the BAC is a clear indication of manifest partiality to favor FETVI and/or accused Velasco over other possible contractors or bidders. The act of predetermining a contractor and deciding solely to resort to alternative modes of procurement without going through the proper procedure laid down by law certainly constitutes manifest partiality, or, at the very least, gross inexcusable negligence on the part of the accused.

All told, the Court is convinced that the circumstances obtaining in this case clearly demonstrate that accused Lee is guilty of manifest partiality or gross inexcusable negligence in signing the Joint Venture Agreement and Memorandum of Agreement with FETVI on behalf of Sorsogon without prior recommendation by the Bids and Awards Committee giving the said contractor unwarranted advantage or preference over the other bidders.

Accused Lee gave FETVI and accused Velasco unwarranted benefits in the discharge of his functions

Under the third element, there are two (2) modes of committing the offense of violation of Section 3(e) of R.A. No. 3019, to wit: (1) the public officer caused any undue injury to any party, including the government; or (2) the public officer gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁵⁸ The Supreme Court in *Alvarez vs. People*²⁵⁹ clarified the use of the disjunctive term "or" (between "undue injury to any party, including the government" and "by giving any private party unwarranted benefits, advantage or preference") connotes that either act qualifies as a violation of Sec. 3, par. (e), or as two (2) different modes of committing the offense.²⁶⁰



The terms "unwarranted benefits, advantage or preference to any party" was oppositely elucidated by the Supreme Court in *Alvarez vs. People*,²⁶¹ viz:


²⁵⁸ *Constantino vs. Sandiganbayan*, G.R. No. 140656, 13 September 2007.

²⁵⁹ G.R. No. 192591, 29 June 2011.

²⁶⁰ *Ibid.*

²⁶¹ G.R. No. 192591, 29 June 2011.



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

In the subject case, accused Lee gave FETVI or Enrico T. Velasco unwarranted advantage or preference when he signed the Joint Venture Agreement and Memorandum of Agreement on April 25, 2003. Based on the discussion above, it appears that FETVI was predetermined to be the supplier for the Distance Learning Project of the Province of Sorsogon by accused Lee ahead of the creation of the Bids and Awards Committee. Accused Lee no longer waited for the recommendation of the BAC for the use of alternative methods of procurement and went ahead and signed the contract with FETVI. The creation of the BAC on March 22, 2004 or almost a year after the signing of the Joint Venture Agreement and Memorandum of Agreement is a mere afterthought calibrated to cure the obvious defect, and was created to feign compliance with RA 9184.

Accused Paladin conspired with accused Lee in giving unwarranted benefits to accused Velasco and/or FETVI and is guilty of gross inexcusable negligence

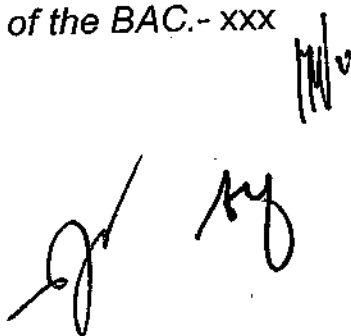
The Joint Venture Agreement and Memorandum of Agreement between the province of Sorsogon and FETVI were signed by accused Lee as early as April 25, 2003 while the Certificate of Award was granted to FETVI through direct contracting only on March 30, 2004, as evidenced by the Bids and Awards Committee – Members' Certificate.²⁶²

Too, the records show that the BAC was only created in March 22, 2004 through Executive Order No. 01 – Series of 2004²⁶³ or almost a year after accused Lee signed the Joint Venture Agreement and Memorandum of Agreement on behalf of Sorsogon. RA 9184 enumerates the duties and findings of the Bids and Awards Committee, among which are as follows:

Section 12. Functions of the BAC.- xxx

²⁶² Exhibit L

²⁶³ Exhibit G

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In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

In this case, accused Lee the head of the procuring entity, did not wait for the requisite recommendation of the BAC before he signed the Joint Venture Agreement and the Memorandum of Agreement.²⁶⁴ It is thus clear that accused Lee was already set on entering into the contract in question with FETVI with or without BAC's participation.

With respect to the other accused, the allegations against BAC members Paladin, Huab, De Vera, Agnis, and Dino in SB-13-CRM-0310 involved their alleged participation as members of the Bids and Awards Committee in the execution of the Bids and Awards Committee - Members' Certificate dated March 30, 2004.²⁶⁵ It is to be noted, however, that all of the members of the Bids and Awards Committee, except Paladin, namely: Huab, De Vera, Agnis, and Dino questioned the authenticity of the Bids and Awards Committee - Members' Certificate²⁶⁶ which granted the Certificate of Award to FETVI pursuant to Section 50(c) of RA No. 9184.²⁶⁷

Accused Paladin confirmed her signature and the authenticity of the Bids and Awards Committee - Members' Certificate in her testimony, as follows:²⁶⁸

Q: Now this is not a fake document, Exhibit "L." Okay. So again you affirm that your signature appearing in this document is your signature?

A: Yes.

Q: Madame Witness this is Bids and Awards Committee Members Sheet Members Certificate, when you signed this, since

²⁶⁴ Exhibit C, Exhibit D, and Exhibit G

²⁶⁵ Exhibit L

²⁶⁶ Exhibit L

²⁶⁷ Section 50. *Direct Contracting*. - Direct Contracting may be resorted to only in any of the following conditions:

xxx

c. Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

²⁶⁸ TSN dated July 10, 2019 at pp. 40 to 41

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you said that this is your signature, you
have read the contents of this, correct?

A: Yes

On the part of accused Huab, he testified that the first time the BAC convened was September of 2005 and that the BAC had no involvement in the said delivery of the deliverables in question, as they were not privy to the contract nor did they have knowledge of the same.²⁶⁹

Accused De Vera, on the other hand, questioned the authenticity of the Bids and Awards Committee - Members' Certificate. In her judicial affidavit, she stated that the first page of this document is not the same as the second page or that they do not form part of one and the same document. Instead, De Vera claims that it was obviously just appended from another document bearing their original signatures. The first page is not even signed by the members of the BAC which they usually do in the regular course of the execution of the BAC documents.²⁷⁰ De Vera confirmed her signature in the second page but while she insisted that the said second page does not pertain to, or does not form part of a document which includes the first page, she admitted that she could not remember which document she signed for that particular second page.²⁷¹

Accused Agnis also confirmed that it was her signature in the supposed second page of the Bids and Awards Committee - Members' Certificate²⁷² but questioned the authenticity of the same by stating that she personally verified the authenticity of the document by going to the notarial section of the Regional Trial Court of Sorsogon. Agnis testified that she found out that (a) the alleged notarized award is not included in the notarial report of the notary public Antonio Sagupay Orense and (b) the document number appearing in the Bids and Awards Committee - Members' Certificate refers to a Deed of Sale and not the BAC Members' Certificate.²⁷³ However, Agnis later admitted that the book number indicated in the Bids and Awards Committee - Members' Certificate is different from the supposed Deed of Sale because the Clerk of Court could not find a copy of the Bids and Awards Committee - Members' Certificate.

²⁶⁹ TSN dated February 21, 2019 at pp. 13 to 18

²⁷⁰ Judicial Affidavit dated May 24, 2019; *Rollo* Vol. IV at pp. 38 to 44

²⁷¹ TSN dated July 10, 2019 at p. 75

²⁷² *Ibid* at p. 90

²⁷³ Judicial Affidavit dated May 23, 2019; *Rollo* Vol. IV at pp. 45 to 54



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Significantly, in regard to Huab, De Vera, and Agnis' allegation that the Bids and Awards Committee – Members' Certificate is a fake document, this Court notes that, indeed, it found several discrepancies on the face of the said document. This Court notes that accused Paladin's name and signature appears in both the first and second page of the document. The first page refers to Paladin as Chairman while the second page refers to Paladin as Chairperson. Huab, De Vera, Agnis, and Dino only signed the second page of the document. Further, in the notarial section of the second page, accused Lee's name appears complete with his corresponding community tax certificate number despite the fact that accused Lee's signature is not found anywhere in the first or second page of the document.

With the foregoing discrepancies, this Court is inclined to agree with accused De Vera's explanation that what purports to be the first and second pages of the Bids and Awards Committee – Members' Certificate, do not pertain to, or form part of one, single document. Rather, the second page where the admittedly genuine signatures of accused Huab, De Vera, Agnis and Dino appear pertains to, and forms part of, another document appended to what was offered in these cases as the Bids and Awards Committee-Members' Certificate.

This Court also notes that FETVI was already predetermined to be the joint venture partner of the province of Sorsogon even in the absence of a public bidding. As early as April 25, 2003 such was already *fait accompli*. By signing the Joint Venture Agreement and Memorandum of Agreement, accused Lee guaranteed the contract to FETVI. Although a Bids and Awards Committee was actually created a year after the signing of the Joint Venture Agreement and Memorandum of Agreement, the Court believes that this was done as a mere formality.

Accused Paladin is guilty of having acted with manifest partiality and shown to have conspired with accused Lee in granting unwarranted benefit to FETVI and/or accused Velasco

To the mind of this Court, accused Paladin's firm and categorical affirmation that she signed the first page of the Bids and Awards Committee – Members' Certificate which were assailed as spurious by her other co-members in the Bids and Awards Committee amounts to an admission that she acted with, and is thus guilty of, manifest partiality. It is only accused Paladin who certified the

[Handwritten signatures]

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authenticity of the Bids and Awards Committee – Members' Certificate with all the other members of the BAC denying its authenticity.

Even granting that the second page of the Bids and Awards Committee – Members' Certificate was merely appended to the document, and therefore spurious as alleged by the other members of the BAC, that does not detract from the fact that the lone signature of Paladin could still be found in the first page of the document which stated that ***"after a series of thorough and judicious evaluation of technical and legal documents pertinent to the project and sufficient background check regarding the technical competence, qualifications, and eligibility of the First Education Training Ventures, Inc. (FETVI) and its associates concerned, the BAC hereby executes and hereby grants this certificate of award to the FETVI, pursuant to Section 50 of RA No. 9184."***

By admitting to have signed the aforementioned Bids and Awards Committee-Members' Certificate accused Paladin certified to a number of falsehoods – clearly in pursuance to her manifest partiality towards FETVI and/or accused Velasco, to wit:

In this case, Paladin as the Chairman of the BAC signed the Bids and Awards Committee – Members' Certificate on the first page despite FETVI and its partner Textron Corporation not being the exclusive distributor and dealers of the Cyberstream VSAT model. More importantly, Paladin signed the document despite there being no documentary proof provided by FETVI that it is indeed the exclusive distributor of the Cyberstream VSAT model. Paladin could not have made a thorough and judicious evaluation of technical and legal documents pertinent to the project and sufficient background check regarding the technical competence, qualifications, and eligibility of the FETVI and its associates concerned when the other members of the BAC denied convening to award to FETVI the contract.

It is only accused Paladin who certified the authenticity of the Bids and Awards Committee – Members' Certificate with all the other members of the BAC denying its authenticity.

WHEREFORE, in light of all the foregoing, judgement is hereby rendered as follows:

- (1) In Criminal Case No. SB-13-CRM-0309, RAUL RODRIGUEZA LEE, TERESITA D. PALADIN, MANUEL S.



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LAURORA, and FELICISIMO D. BRONDIAL are hereby found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of RA 3019 and sentenced to suffer the indeterminate penalty of imprisonment of **six (6) years and one (1) month, as minimum, up to eight (8) years, as maximum**, with perpetual disqualification from holding public office.


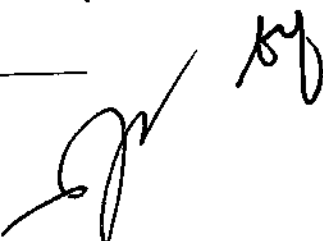
As to accused **ENRICO T. VELASCO**, who remains at large, let the case against him be archived, without prejudice to its reinstatement once the court has acquired jurisdiction over his person

- (2) In **Criminal Case No. SB-13-CRM-0310**, accused **RODRIGUEZA LEE and TERESITA D. PALADIN** are hereby found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of RA 3019 and sentenced to suffer the indeterminate penalty of imprisonment of **six (6) years and one (1) month, as minimum, up to eight (8) years, as maximum**, with perpetual disqualification from holding public office.

On the other hand, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused **ATTY. ANTONIO RIVA HUAB, TERESITA D. PALADIN, ROSIE DIOQUINO AGNIS, and ENGR. ARNIE HEQUIBAL DE VERA** are hereby **ACQUITTED** of the offense of violation of Section 3(e) of RA 3019.²⁷⁴ The hold departure order issued against them by reason of this case is hereby lifted and set aside, and the bond posted for their provisional liberty is ordered released, subject to the usual auditing and accounting procedures.²⁷⁵

As to accused **ENRICO T. VELASCO**, who remains at large, let the case against him be archived, without prejudice to reinstatement once the court has acquired jurisdiction over his person.

SO ORDERED.

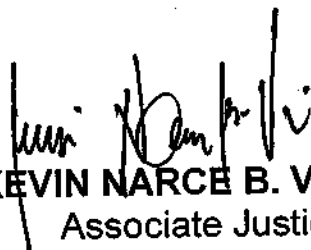



DECISION

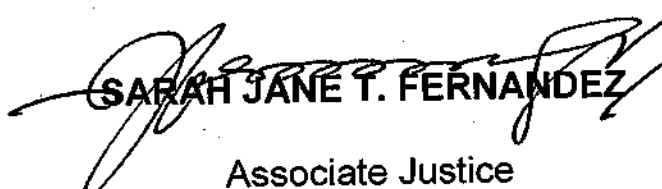
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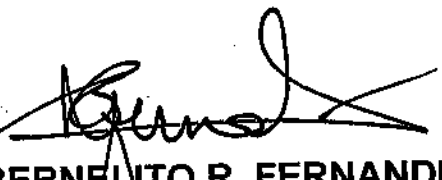
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KEVIN NARCE B. VIVERO
Associate Justice

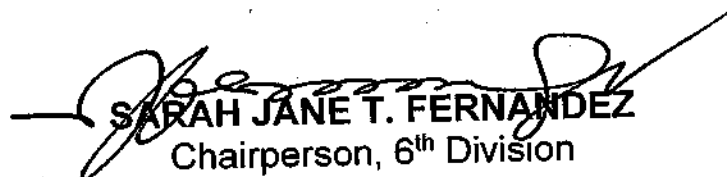
WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


BERNELITO R. FERNANDEZ
Associate Justice

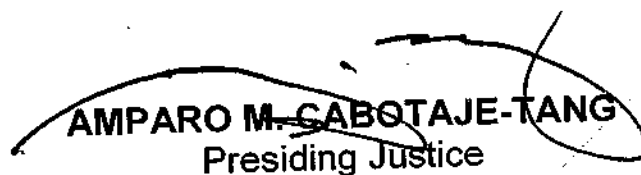
ATTESTATION

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, 6th Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice