



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

First Division

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus-

**CRIM. CASE NO. SB-13-CRM-0735**

*FOR: Violation of Section 3(e), RA 3019, as amended*

**CRIM. CASE NO. SB-13-CRM-0736**

*FOR: Violation of Section 3(a), RA 3019, as amended*

**DANIEL A. DIMAGIBA,**

Accused.

**Present:**

**DE LA CRUZ, J. Chairperson**

**ECONG, J.**

**CALDONA, J.**

**Promulgated on:**

JUN 14 2019

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**DECISION**

**DE LA CRUZ, J.:**

Accused Daniel A. Dimagiba former Deputy Director General for Operations of the Civil Aviation Authority of the Philippines (CAAP), stand charged for violation of Section 3(e) and Section 3(a) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The accusatory portions of the Informations, both dated June 7, 2013, read as follows:

Criminal Case No. SB-13-CRM-0735

That on or about August 1, 2008, or sometime prior or subsequent thereto, in the City of Pasay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, **DANIEL A. DIMAGIBA**, a high-ranking public officer, being then the Deputy Director General for Operations of the Civil Aviation Authority of the Philippines (CAAP), committing the

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offense in relation to his official duties, and taking advantage of the public office, acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to One Sky Aviation Services Incorporated (OSASI, for brevity), by issuing Air Carrier Operating Certificate No. 4AN2006005 to the latter despite the lack of a valid Certificate of Public Convenience and Necessity from the Civil Aeronautics Board issued to OSASI, a mandatory requirement under Section 66 of RA 9497, the absence of documents and inspection requirements necessary for the approval and issuance of this Certificate, and his lack of authority to issue the same since this power pertains only to the Director General of CAAP, to the damage and prejudice of CAAP.

CONTRARY TO LAW.

### Criminal Case No. SB-13-CRM-0736

That on or about September 11, 2008, or sometime prior or subsequent thereto, in the City of Pasay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, **DANIEL A. DIMAGIBA**, a high-ranking public officer, being then the Deputy Director General for Operations of the Civil Aviation Authority of the Philippines (CAAP), and who exercises supervision and control over Capt. Andrew V. Florentino (Capt. Florentino, for brevity) and Capt. Ismael C. Lapuz, Jr. (Capt. Lapuz, Jr., for brevity), both Flight Operations Inspectors, committing the offense in relation to his official duties, and taking advantage of the public office, did then and there, willfully, unlawfully and criminally influenced Capt. Florentino and Capt. Lapuz, Jr., to change the FAILING check grades they gave to Capt. Jayfred L. Basawil and Capt. Saturnino Dela Cruz to PASSING grades under threat that their respective licenses will not be issued among others, act violative of the rules and regulations duly promulgated by competent authority relative to their respective duties.

CONTRARY TO LAW.

On July 29, 2013, the accused moved to quash<sup>1</sup> the *Information* on the grounds that the Sandiganbayan has no jurisdiction over the cases, and that the Informations lack sufficient allegations to show the intimate connection between the offenses charged and the discharge of his official public duties as the *interim* Deputy Director General for Operations of the CAAP.

<sup>1</sup> Motion to Quash, Records, Vol. 1, pp. 377-386.

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In its *Resolution*,<sup>2</sup> dated September 26, 2013, the Court denied the motion. It also denied in its *Resolution*,<sup>3</sup> dated January 22, 2014, the accused's *Motion for Reconsideration*.<sup>4</sup>

On January 20, 2014, the accused filed a *Motion for Judicial Determination of Probable Cause*,<sup>5</sup> praying that the cases against him be dismissed for lack of probable cause, and that his arraignment be cancelled.

On February 27, 2014, the Court issued a *Resolution*<sup>6</sup> denying the accused's motion, pointing out that the matter raised therein is evidentiary in nature, the truth of which can be best passed upon after a full-blown trial on the merits.

Upon his arraignment on March 20, 2014, the accused entered a plea of not guilty.<sup>7</sup> Pre-trial then ensued.

Based on the *Pre-Trial Order*,<sup>8</sup> dated August 22, 2014, it was admitted that accused Daniel A. Dimagiba is the same person referred to in both *Informations*.<sup>9</sup>

The parties also agreed on the following issues to be resolved:

### As proposed by the prosecution:

Whether or not the accused is criminally and civilly liable for violation of Section 3(e) and Section 3(a) of R.A. No. 3019, as charged in the *Informations*.

### As proposed by the accused:

1. Whether or not the accused acted with manifest partiality, evident bad faith and gross inexcusable negligence in approving the second renewal (third issuance) by One Sky Aviation Services,

<sup>2</sup> Records, Vol. 1, pp. 436-443.

<sup>3</sup> Id., pp. 510-512.

<sup>4</sup> Records, Vol. 1, pp. 452-462.

<sup>5</sup> Id., pp. 483-503.

<sup>6</sup> Records, Vol. 2, p. 43.

<sup>7</sup> Order, dated March 20, 2014; Records, Vol. 2, p. 48.

<sup>8</sup> Records, Vol. 2, pp. 125-140.

<sup>9</sup> Id., see *Pre-Trial Order*, pp. 317-325.

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Inc. (OSASI) of its Air Carrier Operating Certificate (ACOC) when the accused relied in good faith and in all honesty:

(a) In the wisdom and discretion of his predecessor, former Assistant Secretary Nilo C. Jatico (Asec Jatico), who approved the original application and the first renewal of the ACOC of OSASI, and;

(b) In the recommendations, technical know-how and lawful performance of duties by the Aviation Safety Division (ASD)-Air Carrier Operation Section (which has the duty to investigate; check compliance by applicants of standard requirements; and to recommend the approval of ACOC).

2. Whether or not the accused who had supervision and control over consultants Capt. Andrew V. Florentino and Capt. Ismael C. Lopus, Jr. can be accused of any wrongdoing when he allegedly ordered them to change and correct the failing check ride grades they gave to ASD Organic Pilots Capt. Jayfred L. Basawil and Capt. Saturnino Dela Cruz to passing grades (under threat that the respective licenses of consultants Capt. Florentino and Capt. Lopus, Jr. will not be issued and their International Civil Aviation Organization [ICAO] funding would not be forthcoming due to their serious disobedience and gross insubordination).

### **EVIDENCE FOR THE PROSECUTION**

At the initial reception of evidence for the prosecution, the testimony of witness **Aida S. Romulo**, the Chief of the Central Records and Archives Division of CAAP, was dispensed with, in view of the stipulations between the parties that **at the time material to these cases, accused Dimagiba was the Deputy Director General of CAAP, while its Director General was Ruben F. Ciron.**<sup>10</sup>

The prosecution thereafter presented the following witnesses: **Wilmer Camba, Atty. Ma. Elben S. Moro, Capt. Andrew V. Florentino, Capt. Ismael C. Lopus, Jr., Capt. Emmanuel C. Generoso, Capt. Elmer F. Peña, Carl Benedict G. de Guzman,**

<sup>10</sup> TSN, dated September 22, 2014

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and Capt. Efren C. Rocamora. Their respective testimonies are summarized below.

Wilmer C. Camba,<sup>11</sup> Records Officer II, Records Section of the Civil Aeronautics Board (CAB) since March 10, 2004. He testified that as Head of the Records Section of CAB, his duties include, among others, to safeguard, maintain, monitor and supervise the operation and staff of the Records Section.

The records under his safekeeping are Board Resolutions of CAB, 201 Files of its applicants and the Minutes of the Meetings and Inter-Agency Communications of the Board. The Board Resolutions cover all the CAB's policies, Board actions pertaining to the applications to operate air transportation services such as the Certificate of Public Convenience and Necessity (CPCN). The CAB permit or CPCN is granted to qualified Filipino applicants intending to operate domestic and international air transportation services. The 201 Files of the CAB applicants also contains the Board Resolutions and supporting documents which are required by the Board.

He received from CAB Acting Secretary, Atty. Jean Marianne A. Bermudez, a subpoena issued by the Office of the Ombudsman (OMB). The subpoena directed the CAB to submit a certification whether OSASI has applied or has been issued a CPCN by the CAB. Upon personal verification, he found no record of Board resolution pertaining to the approval of the issuance of CPCN to OSASI, and also the absence of 201 files of OSASI, which means that OSASI had never applied for nor was it issued by the CAB of CPCN to operate domestic and international air transportation services. After that, he prepared a Certification,<sup>12</sup> dated September 3, 2014, initialed by him and signed by Atty. Bermudez, which reads in part:

x x x

This is to certify that the company "One Sky Aviation Services, Inc." has **never applied nor was issued** a Certificate of Public Convenience and Necessity (CPCN) to Operate Domestic

<sup>11</sup> TSN dated November 17, 2014.

<sup>12</sup> Exhibit Z, Z-1, Z-2

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and/or International Air Transportation Service to and from the Philippines.

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During cross-examination, he testified that he appeared in Court upon the verbal request made by Atty. Bermudez. He admitted that he does not know that OSASI is based in Australia and that its operator is not a Filipino.

He confirmed that OSASI has not been issued a CPCN by the CAB in the years 2006, 2007 and 2008. He also confirmed that he issued the *Certification* on September 3, 2014, or more than six (6) years after the alleged crime in this case transpired.

Atty. Ma. Elben S. Moro,<sup>13</sup> CAB's Chief Hearing Examiner Division since 2007 and designated as CAB's concurrent acting Board Secretary from 2007 until 2011.

She testified that the requirements for the issuance of a CPCN is provided under *Administrative Order No. 1, Series of 1960*. A CPCN is a permit issued by the CAB and is a pre-condition for an airline to operate as an air operator. For original applications, the applicant files an application for the issuance of a CPCN with the corresponding filing fee and the notice of hearing. The notice is required to be published by the applicant for a period of three (3) consecutive weeks in a newspaper of general circulation. Thereafter, a hearing is set for the parties where the applicant and the opposing party, if any, appear. The CPCN is valid for five (5) years.

Sometime in 2009, the officials of the Civil Aviation Safety Authority (CASA) of Australia paid a courtesy visit to the CAB and she was invited there. She, the CAB Executive Director, and another lawyer from CAB, and the officials of CASA Australia met. The officials of CASA Australia brought to their attention about the case of OSASI which was issued a foreign carrier's permit to operate cargo services in Australia. One reason of the visit was to inquire whether CAB had issued a CPCN to OSASI. She, the Executive Director of CAB, and another lawyer were directed to conduct an inquiry.

<sup>13</sup> TSN, dated November 19, 2014; TSN, dated February 16, 2015.

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It was found that OSASI did not have a CPCN or any records from CAB, and that despite the absence of the CPCN, CAAP issued ACOC No. 4AN2006005 to OSASI, valid from August 1, 2008 until July 31, 2009, which was signed by one "Daniel A. Dimagiba",<sup>14</sup> the accused in this case. The officials of CASA Australia showed to them the said ACOC. Upon verifying that OSASI was granted an ACOC by CAAP without the required CPCN issued by CAB, they submitted a report to the CAB. Thereafter, the CAB issued *Resolution No. 39 (2009)*, dated July 11, 2009, signed by Acting Chair, Usec. Doroteo AS. Reyes II, Vice Chair, CAAP Director General Ruben F. Ciron (DG Ciron), and its members, Renato V. Diaz and Atty. Moro,<sup>15</sup> expressing, among others, ***"its serious apprehension and grave concern over such actuations of unscrupulous elements in the CAAP that has compromised the image of Philippine Aviation in the international aviation community."*** The said *Resolution* reads in part:

x x x [T]he Board x x x found that One Sky Aviation, Inc., was granted an ACOC by the CAAP without the required CPCN issued by the Board on the basis of which, it was able to secure a foreign carrier's permit in Australia;

x x x [T]he Board regards this act perpetrated by certain CAAP officials as utter disregard of the authority of the Board, and existing laws, rules and regulations, inimical to the public welfare and public interest;

x x x [T]he Board expresses its serious apprehension and grave concern over such actuations of unscrupulous elements in the CAAP that has compromised the image of Philippine Aviation in the international aviation community. x x x

During cross-examination, she mentioned that the governing law on the issuance of a CPCN at the time the officials of CASA Australia visited the CAB is RA 776.<sup>16</sup>

By way of procedure, the application for the issuance of CPCN is filed with the Hearing Examiner's Division of CAB, and

<sup>14</sup> Exhibit D.

<sup>15</sup> Exhibits K, K-1, K-2, K-3, K-4, K-5.

<sup>16</sup> *An Act to Reorganize the Civil Aeronautics Board and The Civil Aeronautics Administration, To Provide for The Regulation of Civil Aeronautics in The Philippines and Authorizing the Appropriation of Funds Therefor. Enacted into Law on June 20, 1952: G*

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once all the requirements have been submitted, hearings will be set and conducted. After the applicant has submitted all the requirements, the said Division will make the necessary recommendations to the CAB. The CAB members rely on the completeness of the requirements of the applicant based on her signature and that of the Executive Director. After the CAB issues a resolution, the CPCN issued to a foreign carrier is then forwarded to the Office of the President.

It was DG Ciron and General Batac who provided her with a copy of OSASI's ACOC No. 4AN2006005 during their inquiry. She did not bother to ask them whether or not previous ACOCs were issued to OSASI in the past years. This is so because her division's only concern is whether or not OSASI has been issued a CPCN. She did not also ask Asec Jatico, then the head of ATO in 2006, whether or not he issued an ACOC in favor of OSASI. She is not aware that Asec Jatico issued the first ACOC to OSASI in 2006 and a renewal in 2007. She does not know that ACOC No. 4AN2006005 which was issued by the accused to OSASI is the third of its kind, and merely a second renewal.

On re-direct,<sup>17</sup> she testified that she invited CAAP to the investigation and at the meetings conducted by CAB as regards OSASI, as a result of which, an Investigation Report was submitted to CAB. Also, as a result of the investigation, one particular aircraft registered under the name of Transglobal Airways Corporation, a CAB-licensed entity, was found to have been also registered to OSASI, and to One Sky Cargo Services, Inc.

Capt. Andrew V. Florentino,<sup>18</sup> a CAAP Flight Operations Inspector (FOI) authorized as such by DG Ciron through a letter, dated July 23, 2008.<sup>19</sup> He testified that as part of his duties, he conducts *Safety Oversight Surveillance* and *Certification Activities* including, but not limited to, cockpit *en-route* inspections, simulator certifications, designated check airmen (Company Designated Check Pilots), cabin safety inspections and licensing issue and renewal checks.

<sup>17</sup> TSN, dated February 16, 2015

<sup>18</sup> TSN, dated November 25, 2014.

<sup>19</sup> Exhibits V, V-1

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He also testified that he conducted a check ride on Capt. Jayfred Basawil to qualify him as a check pilot for the *Airbus 320*. Also present during the check ride was Capt. Conner, a PAL instructor, whose role was to operate the flight simulator. He gave Capt. Basawil a grade of "*below standard*" because during the check ride, he made four major mistakes and did not have his pilot's license. The check ride was conducted in Hongkong in *Dragonair's A320 Simulator* for two (2) hours.

On September 15, 2008, the accused called him and the other ICAO FOIs to a meeting in the Operation's Division Area. The other attendees were Engr. Anabella Calamba, then the OIC of the Flight Standards Inspectorate Service (FSIS), ICAO pilots Capt. Elmer F. Peña, Capt. Ismael Lopus, Jr., Capt. Hernando Villavicencio and Capt. Francisco M. Juliano.

At the meeting, Engr. Calamba informed him and Capt. Lopus, Jr. that the renewal and release of their licenses and those of the other ICAO FOIs can only be approved if they (Capt. Florentino and Capt. Lopus, Jr.) would change the check rides failing grades they gave to Basawil and Dela Cruz into passing grades. The accused agreed with the suggestion of Engr. Calamba, and also told him and Capt. Lopus, Jr. for about three times, that they had to pass Capt. Dela Cruz and Basawil, or their licenses would not be issued.

He refused to change the failing check ride grade of Basawil since it was against the rules. Capt. Lopus, Jr. also refused to do so vis-à-vis Capt. Dela Cruz, stating that he will stand by the failing check ride grade he gave. After that, the accused reiterated to the other pilots who failed the check rides that six (6) out of eight (8) pilots who failed the check rides will be re-trained, but Capts. Dela Cruz and Basawil must pass.

Pursuant to Section 2.2.6.3(e) of the Philippine Civil Aviation Rules (PCAR), in order for Capt. Basawil to get a passing grade, he needs to undergo remedial training before he could undergo another check ride which he must pass. Capt. Lopus, Jr. also refused to change the failing grade he gave to Capt. Dela Cruz. The accused threatened him and Capt. Lopus, Jr. that their licenses will not be renewed. The incident was witnessed by the other FOIs, notably Capt. Elmer Peña, the President of Pilots

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Association of the Philippines (PAOP). Upon hearing the threat, Capt. Peña walked out of the meeting as he could not stand what was happening. The witness identified his *Proficiency Flight Check Test Report (Fixed Wing)*<sup>20</sup> on Capt. Basawil, dated July 30, 2008.

After the meeting, he submitted a written report on the matter to Mr. Peter Weiss, the ICAO Team Leader.

During cross-examination, he admitted that he was not in possession of a regular/permanent license when he conducted the check ride on Capt. Basawil. He also admitted that he did not give DG Ciron a report on the check ride of Capt. Basawil. Furthermore, he stated that they are training organic pilots like Capt. Basawil to replace them once they qualify. He knows that as of the date that he was testifying, Capt. Basawil has already been flying with Zest Air, and that Capt. Dela Cruz is already a regular employee of CAAP with the position of Director General II.

About eight (8) months after the meeting or on March 1, 2009, he, together with Capt. Lapus, Jr., Francisco M. Juliano, Capt. Elmer F. Peña, Capt. Florentino C. Concepcion and Capt. Hernando C. Villavicencio, executed a *Joint Affidavit*,<sup>21</sup> which reads in part:

9. x x x Ms. Calamba pointed out that the reasons for the non-issuance of our licenses were the following:

a. Captain Hooker's qualifications were questionable as not rated on B747-400 and A340;

b. The checks done by Capt. Lapus, Jr. for Capt. Peña, Capt. Villavicencio and Capt. Florentino were void because Capt. Lapus, Jr. was not A320 rated.

c. Check done by Capt. Lapus, Jr. for Capt. Dela Cruz was also void but he and the others should be given licenses because Philippine Airlines check pilot had allegedly passed them.

10. DDG Dimagiba and Ms. Calamba pointed out that since eight (8) organic pilots have attended ground schooling and simulation training, they should be allowed to conduct checks.

<sup>20</sup> Exhibits X and X-1

<sup>21</sup> Exhibit Y

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"They will not fly anyway", DDG Dimagiba and Ms. Calamba further emphasized;

11. Both DDG Dimagiba and Ms. Calamba specified that they would issue our licenses if Capt. A. Florentino and Capt. I. Lapus, Jr., would change the respective check-ride grades of Capt. J. Basawil and Capt. Dela Cruz from failure to passing. DDG Dimagiba reminded us that if Capt. Florentino and Capt. Lapus, Jr. would not change their decisions for the two, the six (6) of us will not get our licenses and funds for the continuance of the ICAO project would not be forthcoming; x x x

He did not interpose any objection to Engr. Calamba's statement that he and Capt. Lapus, Jr.'s check rides on Capt. Basawil and Capt. Dela Cruz were void since they were not qualified to conduct the check rides considering that they only possess temporary licenses. He also stressed that none of those who were present during the meeting made any protest or objection to Engr. Calamba's statement.

On re-direct examination, he explained that a temporary license has the same effect and validity of a regular or permanent license; its effectivity is temporary but it can be used during the check rides. He pointed out that the PAL is not part of the check rides, and that a PAL pilot cannot conduct a check ride on a CAAP pilot. It is the CAAP which has jurisdiction over all pilots and airlines, including PAL.

On re-cross examination, he testified that he did not change the failing grade of Capt. Basawil into a passing grade.

Capt. Ismael C. Lapus, Jr.,<sup>22</sup> a CAAP FOI, and authorized as such by DG Ciron through a letter, dated July 23, 2008.<sup>23</sup> He testified that he conducted a check ride on Capt. Saturnino dela Cruz to qualify him as a check pilot for the Airbus 340. Capt. Butch Generoso, a PAL pilot, whose role was to operate the flight simulator, was likewise present during the check ride. Capt. Lapus, Jr. gave Capt. Dela Cruz a grade of "below standard" because he violated airspeed and altitude rules and did not follow procedures during the check ride.

<sup>22</sup> TSN dated November 26, 2014.

<sup>23</sup> Exhibits V, V-1

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On September 15, 2008, he, together with other FOIs, attended a meeting called by the accused. At the said meeting, the accused and Engr. Calamba, then OIC of the FSIS, told him and Capt. Florentino to change to passing grade the failing check ride grades they gave to Capt. Dela Cruz and Capt. Jayfred L. Basawil.

Engr. Calamba told them that if they want their licenses to be released, they should give Dela Cruz and Basawil a chance because they had gone on training anyway. The accused agreed with Engr. Calamba, reiterating that Engr. Calamba would not release their licenses. He felt that they were being blackmailed when they were told to change the check ride grades of Dela Cruz and Basawil as a condition for the renewal/release of their licenses. Thus, he told the accused that he cannot change the check ride grade of Dela Cruz since it has been completed, and that everything had to be done according to procedures, like Dela Cruz undergoing additional training, among others.

The incident was witnessed by other FOIs, notably Capt. Elmer Peña, the President of the PAOP, who walked out of the meeting because he could no longer condone what was happening.

During cross-examination, he testified that the reason given by Engr. Calamba why she wanted the failing grades of Capt., Basawil and Capt. Dela Cruz changed is that they had already undergone a *Computer Based Training* (CBT) with the PAL which is strict, expensive and intensive. And, besides, according to Engr. Calamba, they will not fly anyway or that they will not be handling the controls of the aircraft.

He also knew that if the CAAP pilots like Basawil and Dela Cruz would qualify as flight inspectors although they failed in the check rides, his services may be terminated since there was no need for his services anymore. He admitted that "politics" was evident in the CAAP during that time since "monies" were not being given to the proper projects. He further stated that there had been some wrangling between the accused and DG Ciron, and that he guessed that the present case was filed against the accused in order to prevent him from being the successor of DG Ciron, and to

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stop the wrangling. He identified the *Joint Affidavit*<sup>24</sup> that he and the other five FOIs executed on March 1, 2009.

On re-direct examination, he identified a photocopy of the *Proficiency Flight Check Test Report (Fixed Wing)*<sup>25</sup> of Capt. Dela Cruz on July 28, 2008.

On re-cross, he stressed that the FOIs are the ones who, after assessment, give the organic pilots passing or failing grades.

**Capt. Emmanuel C. Generoso**,<sup>26</sup> Chief Pilot of the Airbus 340 and 330 of PAL in 2008, whose duties include conducting check rides twice a year for PAL pilots.

He testified that his license was issued by the ATO now the CAAP. The CAAP sub-contracted the PAL to conduct simulation training for CAAP pilot personnel. He was present during the check ride given by Capt. Lapus, Jr. on Capt. Dela Cruz on July 28, 2008, but only to operate the flight simulator and complete Capt. Dela Cruz's training on the Airbus 340 in accordance with the contract between PAL and CAAP. He gave Capt. Dela Cruz a rating of "standard" but conceded that the rating given by Capt. Lapus, Jr. was the official grade of Capt. Dela Cruz for license purposes. He identified his *Proficiency Flight Check Test Report (Fixed Wing)*<sup>27</sup> on Capt. Dela Cruz. Although his assessment was not official but for training purposes only, he used the CAAP form because that was the one given to him by Capt. Dela Cruz.

During cross-examination, he testified that in instances where CAAP personnel were present, the grades of the pilots being trained were given immediately.

**Capt. Elmer F. Peña**,<sup>28</sup> a former CAAP FOI at the time material to this case and, as stipulated by the parties, was called to the witness stand to corroborate the testimonies of Capt. Florentino and Capt. Lapus, Jr.

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<sup>24</sup> Exhibit Y

<sup>25</sup> Exhibits B, W

<sup>26</sup> TSN, dated February 16, 2015.

<sup>27</sup> Exhibits CC

<sup>28</sup> TSN, dated February 17, 2015.

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During cross-examination, Capt. Peña testified that being the OIC-FSIS, Engr. Calamba is within her rights to make the report as mentioned in *paragraph 9 of the Joint Affidavit*, to make recommendations concerning the issuance or non-issuance of licenses, including matters relating to her office, to say whether the acts of her subordinates are legal and to make necessary recommendations to correct an invalid act.

He neither made any protest nor did he ask the others to make any protest against the recommendations made by Engr. Calamba as mentioned in *paragraph 9 of their Joint Affidavit*.

On re-direct, he testified that it was illegal for the FOIs to change the failing check ride grades of pilots into passing grades, and if the auditors would find it out, they would turn it down.

On re-cross, he testified that CAAP subcontracted PAL only to assist the CAAP in conducting check rides on pilots by operating the simulator, but not for purposes of PAL personnel to conduct the check rides. The training being given by PAL to its pilots is different from the check rides being conducted by CAAP. Capt. Generoso told Capt. Peña why he took it upon himself to give a grade to Capt. Dela Cruz. Capt. Lopus, Jr. gave a grade to Capt. Dela Cruz but the same was missing in the files of the office. He also stated that his group did not file a case against Capt. Generoso for giving a grade even if he was not supposed to.

**Carl Benedict G. de Guzman.**<sup>29</sup> In view of the stipulations between the parties that (1) the Memorandum, dated November 28, 2008, of the witness (Exhibit J and Exhibit 19) is authentic and duly executed, (2) OSASI never applied for an ACOC, (3) ACOC No. 4AN2006005 is only a reserved number in the records of CAAP, (4) ACOC No. 4AN2006005 with validity period from August 1, 2008 to July 31, 2009 was issued to OSASI by the accused, and (5) In the issuance of the aforementioned ACOC, OSASI did not submit a CPCN, further testimony of witness De Guzman was dispensed with.

<sup>29</sup> TSN, dated September 7, 2015.

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there was no acknowledgment receipt to show it. He admitted that he did not execute an *Affidavit of Loss* pertaining to the two documents.

DG Ciron directed him to conduct an inspection and evaluation of *RP-C 8019* and *RP-C 8020* of OSASI and was ordered to evaluate the legality or validity of the ACOC issued to OSASI. He is aware that Asec. Jatico, then the Head of ATO, issued an ACOC to OSASI—the first was in 2006, which was valid from November 13, 2006 to November 12, 2007, and the second was in 2007, which was valid from September 3, 2007 to September 2, 2008. He is also aware that the accused issued the third ACOC to OSASI which was valid from August 1, 2008 to July 31, 2009, and which is the subject of this case.

Before an ACOC is issued, as a matter of procedure, a *Certification Team* conducts the necessary inspections/investigations concerning the aircraft applicants' compliance with the requirements. The *Certification Team* recommends to the CAAP Head whether to issue or not to issue an ACOC to an applicant. The CAAP Head simply relied on the recommendations of his subordinates. He does not actually inspect or scrutinize every single document forwarded to his table. If the necessary signatures or recommendations are already in place, the CAAP Head signs the documents.<sup>40</sup>

As regards the ACOCs issued by Asec. Jatico to OSASI in 2006 and 2007, and the ACOC issued by the accused to OSASI in 2008, he had no report on that, meaning he had no knowledge about them.<sup>41</sup>

In his re-direct examination, he stated that the certification process for the issuance of an ACOC undergoes five (5) phases: Phase 1—Verification; Phase 2 (*inaudible*); Phase 3—Document and Evaluation; Phase 4—Demonstration; and Phase 5—the issuance of the ACOC and the Operation Specifications to the applicant. But, in this case, there are no office records showing that OSASI underwent any certification process.

<sup>40</sup> TSN, dated October 27, 2015, pp. 6-10.

<sup>41</sup> Id., page 9 and 10

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**Capt. Efren C. Rocamora**,<sup>30</sup> a Department Manager III at the Regulatory Standards Department, CAAP FSIS. Subject to cross-examination, the prosecution and the defense stipulated on the following: (1) Capt. Rocamora is a Department Manager III at the Regulatory Standards Department, FSIS of the CAAP; (2) At the time relevant to the cases, he was a Check Pilot Aviation Safety Inspector; (3) He and Valentino A. Dionela, Airworthiness Inspector, went to Australia in November 2008 to conduct an inspection on the aircrafts owned by OSASI and submitted a Report dated November 25, 2008; (4) OSASI did not undergo the certification process for the issuance of an ACOC and did not comply with the documentary and inspection requirements for the issuance of an ACOC;<sup>31</sup> (5) On August 27, 2008, the CASA of Australia issued Air Operator's Certificate No. 1-2FPLZ-08 to OSASI, valid from September 1, 2008 to November 30, 2008; and (6). The genuineness and due execution of the following documents: (a) Memorandum, dated November 25, 2008, of Capt. Rocamora and Mr. Dionela for the CAAP Director-General;<sup>32</sup> (b) Air Operator's Certificate No. 1-2FPLZ-08 to OSASI, valid from September 1, 2008 to November 30, 2008;<sup>33</sup> (c) Letter, dated July 11, 2008, of the accused to Wal Slaven;<sup>34</sup> (d) Letter, dated July 14, 2008, of Rob Wright to the accused;<sup>35</sup> and (e) Letter, dated September 3, 2008, of Wal Slaven to the accused.<sup>36</sup>

Despite diligent search, the original copies of the *Joint Affidavit*, dated March 1, 2009, of Capt. Florentino and Capt. Lapus, Jr.,<sup>37</sup> and the *Proficiency Flight Check Test Report (Fixed Wing)*<sup>38</sup> on Capt. Dela Cruz, cannot be found in the records of the CAAP.

During cross-examination, he testified that the *Joint Affidavit*, dated March 1, 2009, of Capt. Florentino and Capt. Lapus, Jr., and the *Proficiency Flight Check Test Report (Fixed Wing)* on Capt. Dela Cruz,<sup>39</sup> were turned over to him by the former custodian, but

<sup>30</sup> TSN, dated October 26, 2015; TSN, dated October 27, 2015.

<sup>31</sup> Exhibit U

<sup>32</sup> Exhibit I

<sup>33</sup> Exhibit S

<sup>34</sup> Exhibit L

<sup>35</sup> Exhibit F

<sup>36</sup> Exhibit G

<sup>37</sup> Exhibit Y

<sup>38</sup> Exhibits B and W

<sup>39</sup> Exhibits CC

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During re-cross examination, he testified that Exhibit D, containing the ACOC signed by the accused and issued to OSASI is merely a photocopy. (At this juncture, the prosecution presented a certified true copy of the subject document and had it marked during the trial as Exhibit D-1.) He admitted that the ACOC does not bear any initials of the accused's subordinates.

On November 26, 2015, the prosecution formally offered its Exhibits A, B, B-1, C, D, D-1, E, F, G, H, I, J, J-1, K, K-1 to K-5, L, S, U, V, V-1, W, X, X-1, Y, Y-1 to Y-6, Z, Z-1, Z-2, BB, CC, CC-1, GG, GG-1 to GG-3.<sup>42</sup>

In its Resolution, dated February 15, 2016,<sup>43</sup> the Court admitted all the said exhibits, except Exhibit H, for lack of testimony, and Exhibit BB, in view of the accused's objection to the non-inclusion of the document in the *Pre-Trial Order* and the failure of the prosecution to present its original copy. Thereafter, the prosecution rested its case.<sup>44</sup>

On February 23, 2016, the accused filed a *Motion for Leave to File and to Admit Demurrer to Evidence*, dated February 19, 2016.<sup>45</sup> In its *Resolution*, dated March 18, 2016,<sup>46</sup> the Court denied the said motion, but gave the accused a non-extendible period of ten (10) days within which to file, if he so desires, a *Demurrer to Evidence* without prior leave of court, subject to the legal consequences set forth in Section 23, Rule 119 of the Rules of Court.

On April 12, 2016, the accused filed his *Compliance (Re: Supplement to Demurrer to Evidence and Reply)*,<sup>47</sup> manifesting that he is adopting the grounds, arguments, allegations and pieces of evidence in his *Demurrer to Evidence*, dated February 19, 2016, as well as those in his *Reply*, dated March 7, 2016. On June 6, 2016, the prosecution filed its *Comment/Opposition*<sup>48</sup> to the accused's *Compliance*. On June 21, 2016, the Court issued a

<sup>42</sup> Records, Vol. 2, pp. 273-287.

<sup>43</sup> Id., pp. 368-369.

<sup>44</sup> Records, Vol. 3, p. 324.

<sup>45</sup> Records, Vol. 2, pp. 373-451.

<sup>46</sup> Records, Vol. 3, pp. 5-6.

<sup>47</sup> Id., pp. 18-22.

<sup>48</sup> Records, Vol. 3, pp. 104-129.

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*Resolution*,<sup>49</sup> directing the accused to categorically manifest within ten (10) days from notice, whether he is filing a demurrer to evidence without leave of court.

On July 14, 2016, the accused filed a *Motion to Present the Accused on the Bases of the Admissions and Documents of the Prosecution*,<sup>50</sup> to which the OMB filed its *Opposition*,<sup>51</sup> dated August 3, 2016. The accused, in turn, filed his *Reply and Manifestation for the Dismissal of These Cases*,<sup>52</sup> dated August 26, 2016, praying that: (1) he be allowed to: (a) withdraw his *Demurrer to Evidence* in these cases; (b) testify on the bases of the Court's control powers in the interest of justice; and (2) these cases be dismissed for lack of legal and factual bases.

On September 6, 2016, the Court issued a *Resolution*<sup>53</sup> granting the accused's *Motion* to present evidence, in the interest of substantial justice. On September 27, 2016, the prosecution moved to reconsider the Court's September 6, 2016 *Resolution*,<sup>54</sup> which the accused opposed.

On December 7, 2016, the Court issued a *Resolution*, denying the prosecution's *Motion for Reconsideration*, reasoning that the accused did not make any categorical manifestation that he is waiving his right to present evidence by filing a demurrer to evidence without leave of court, among others. Thus, the accused presented his evidence.<sup>55</sup>

### EVIDENCE FOR THE DEFENSE

The defense presented as its lone witness accused **Daniel A. Dimagiba**.

**Daniel A. Dimagiba**,<sup>56</sup> CAAP Deputy Director General-Operations, effective July 30, 2008.

<sup>49</sup> Id., p. 134.

<sup>50</sup> Id., pp. 156-184.

<sup>51</sup> Id., pp. 209-219.

<sup>52</sup> Id., pp. 244-307.

<sup>53</sup> Id., p. 311.

<sup>54</sup> Id., pp. 320-329.

<sup>55</sup> *Sandiganbayan Order*, dated January 19, 2017; Records, Vol. 3, p. 417.

<sup>56</sup> TSN dated April 3, 2017; TSN dated April 4, 2017; TSN April 5, 2017; November 19, 2018.

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He testified on the proper way of issuing official documents in general, as follows: When he signs a "certification," he first sees to it if there is a: (1) previous renewal approval; (2) the attachment of airworthiness and registration are current; and (3) Inspector Checklist Report with the indicating "initials" below the inspectors' signature and below the accused's name.

Exhibits D and D-1,<sup>57</sup> which mention the ACOC permit issued to OSASI effective August 1, 2008 to July 31, 2009, is incomplete, since his name and his designation as Executive Director of ATO under it, and the "initials" of inspectors did not appear there, and because of which, he claimed that the signature appearing there.

He also claimed that Asec Jatico issued two (2) ACOCs to OSASI—one was issued on November 30, 2006, and the other on September 3, 2007. The accused issued the third one on August 1, 2008, which is the second renewal and is the subject of this case. Before he issued the third ACOC to OSASI, he reviewed the previous renewal, the attachments, the registration, the airworthiness, the checklist of the Inspector that performed the inspection of the aircraft and the test flight. The basis for this renewal appears in CAAP's Memorandum, dated November 28, 2008.<sup>58</sup>

He learned for the first time in November 2008 that no CPCN had been issued to OSASI when he was already the CAAP OIC. Thereafter, he sent a letter, dated February 10, 2009, to Daniel Calleja Crespo,<sup>59</sup> explaining in all honesty that he did not have any knowledge about this and informing him that he already suspended the operation of OSASI. The said letter reads in part:

February 10, 2009

Mr. Daniel Calleja Crespo

*Director General for Energy and Transport European Commission*

It is unfortunate, however that while we pool all our efforts to restore the Philippine Civil Aviation to Category 1 status, the issue on One Sky Aviation Services propped up. To give you a little background on the matter, the former ASEC Nilo Jatico issued the

<sup>57</sup> Exhibits 17 and 17-C (for the Defense).

<sup>58</sup> Exhibit 19 (Exh. J for the Prosecution.)

<sup>59</sup> Exhibit 45.

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original Air Carrier Operating Certificate (ACOC) to the One Sky Aviation Services in 2006. The same ACOC was renewed a year after. *When I assumed office as OIC in September 2007, a renewed ACOC for One Sky Aviation Services was again issued bearing my signature. It was later found out that One Sky Aviation Services has not obtained the required Civil Aeronautics Board (CAB) authority.*

We called the attention of the operator of the One Sky Aviation Services and eventually cancelled their permit. The operation of the latter was suspended.

x x x *My signing of the renewal documents was on the belief that all the requirements were complied with considering that all the papers contain initials of our men in the Authority.* There was never an iota of intention on my part to violate the civil aviation regulation of the contracting states. x x x

Thank you very much *amigo*.

Very truly yours,

DANIEL A. DIMAGIBA (Sgd.)  
Deputy Director General-Operations

DG Ciron assumed as CAAP's Director General on July 1, 2008. DG Ciron told him to "continue to oversee the operational side", to which the accused replied, "I will not sign any financial matter." DG Ciron verbally instructed him to sign the subject ACOC. Aside from the said verbal instruction, there were times when DG Ciron told him to sign documents which were supposed to be signed by the DG, such as the pending application of the Philippine Airlines, which he signed in front of DG Ciron and his staff.<sup>60</sup> DG Ciron asked the accused to sign since he was new in the service and needs to study more about the papers. The accused likewise averred that the third ACOC appearing in Exhibit D-1<sup>61</sup> which was prepared by the FSIS does not indicate the name of the accused.

As to the second charge, DG Ciron verbally instructed him through a "call" to preside over the meeting on September 15, 2008.

<sup>60</sup> Exhibit 18

<sup>61</sup> Exhibit 17-C-1

Handwritten initials and signature in the bottom right corner.

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Engr. Calamba, then the head of the FSIS, suggested during the meeting that the failing grades given to the organic pilots be changed from failing grade to passing grade since they "*will not fly anyway*". She could invalidate the grades given by the Check Pilots since the latter were not in possession of a permanent license. Engr. Calamba also said that Capt. Dela Cruz was given a passing grade by Capt. Generoso during the check ride in Hongkong in July 28, 2008.<sup>62</sup> Engr. Calamba further said that Capt. Basawil has undergone a check ride with PAL.

It was not he, but Engr. Calamba, who requested that the failing grades of the pilots be changed to passing grades. In his letter<sup>63</sup> addressed to Peter Weiss, ICAO Team Leader, Capt. Florentino stated, among others, that the efforts of Engr. Calamba—not the accused—to pressure them to change the failing grades which he and Capt. Lapus, Jr. gave Capt. Dela Cruz and Capt. Basawil into passing grades as a condition for the release of their licenses may be considered as a blackmail. The letter reads:

September 15, 2008

Mr. Peter Weiss  
ICAO Team Leader

Subject: Meeting with FSIS Organic Personnel

Sir:

The six (6) National Flight Safety Inspectors were invited today to a 1300H meeting with DDG Daniel Dimagiba, presiding, and all Organic FSIS Chiefs and "Check Pilots" to include pilot applicants for consultancy with CAAP. After you were unceremoniously excused from the meeting, Mrs. Annabella Calamba, Chief of Flight Safety Inspectorate Service of CAAP started questioning again our recurrency training. She once more stated that Capt. James Hooker, ICAO Team Leader, was not qualified to check Capt. F. Concepcion, F. Juliano, and I. Lapus, since he was not typed-rated on the equipment. Also, she asked who authorized Capt. Hooker to check us in the first place, thus, she stated that our licenses cannot be issued. However, she was willing to issue our licenses if we decide to change our check ride grades for Capt. Dela Cruz and J. Basawil from failure to passing. If we refuse to do so, there was the threat of terminating the ICAO Inspector Project.

<sup>62</sup> Exhibit CC

<sup>63</sup> Exhibit 43

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In other words, we will lose our jobs and be replaced by other consultants they will hire. If this is not blackmail, what is? x x x

Capt. Andrew V. Florentino  
National Flight Safety Inspector

During cross-examination, he admitted that as an Executive Director of ATO, he had no authority to issue an ACOC. He, however, issued the third ACOC in favor of OSASI on August 1, 2008 effective until July 31, 2009. He also agreed with the prosecutor that under RA 9497, only the Director General can approve and issue an ACOC. Although he had no authority to issue the third ACOC, he was verbally authorized by DG Ciron to oversee the "operational aspect", which included the signing of ACOCs, Air Traffic Service, Air Navigation Services, and FSIS Service.

DG Ciron verbally authorized him to handle operation and administrative matters since he (DG Ciron) was still new on the job and was still in the orientation stage. He did not ask for a written authority since in his experience, most military men give authorizations verbally.

Exhibit D, where the issuance of the third ACOC was indicated, is incomplete and fabricated since his designation does not appear thereon. The previous ACOCs were not attached to the third ACOC since the latter is only a renewal. When he signed the certificate for the third ACOC, he recalled that there were "initials" of several persons on the said certificate, namely: initial of Mr. Cabugon, Engr. Calamba, Mr. Florentino and Mr. Tolentino, but these initials were now missing on the said document. He, however, did not confirm from them if those were indeed their signatures, and he admitted that he simply assumed that those were theirs.

The accused testified that he agreed with Engr. Calamba's suggestion that Capt. Florentino and Capt. Lapus, Jr. should change the failing check grades into passing grades because she was the head of the FSIS. Even if he had direct ascendancy over her, he did not override the suggestion of Engr. Calamba.

On re-direct examination, he testified that he issued the ACOC in OSASI's favor in his capacity as Executive Director of

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ATO since his position as such was a plantilla position. He issued the third ACOC based on the verbal directive of DG Ciron since the matter was properly indorsed to him by the ASD (now FSIS) which meant that the requirements were complete. He claimed that he need to follow DG Ciron's verbal directive since he might file an administrative case against him.

He issued the third ACOC to OSASI even without the CPCN because of the contents of *Memorandum*, dated November 28, 2008.<sup>64</sup> If it is a mere renewal of an ACOC, he claimed that it is understood that the people who made and affixed their initials thereon have complied with the requirements, such as the CPCN which is good for five (5) years.

Apart from issuing the third ACOC to OSASI, he, through a verbal order by DG Ciron, also issued an ACOC<sup>65</sup> in favor of Transglobal Airways Corporation (TAC). In that certificate, the accused's designation as Executive Director was present and so was the "initials" of Engr. Calamba. The accused was not familiar with the other "initials" appearing on the certificate.

DG Ciron verbally ordered him to attend the QANTAS conference<sup>66</sup> and the *ICAO Asia and Pacific Regional Accident Investigation Workshop* in Singapore.<sup>67</sup> The accused, however, cannot find his travel authority.

After he issued the third ACOC in OSASI's favor, he asked his staff to return the certification to the office of DG Ciron which the office received as appearing in the logbook.<sup>68</sup> The document,<sup>69</sup> which he sent to DG Ciron's office reads in part:

February 13, 2009

To whom it may concern:

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<sup>64</sup> Exhibit 19

<sup>65</sup> Exhibit 46, 46-A, 46-B, and 46-C

<sup>66</sup> Mentioned as Exhibit 47 in the TSN, dated November 19, 2018, p. 10 but was not attached to the accused's Formal Offer of Exhibits.

<sup>67</sup> Exhibit 48

<sup>68</sup> Exhibit 50

<sup>69</sup> Exhibit 49



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Reference the case of One Sky Aviation Service, Inc., submitted hereunder is the sequence of events that transpired to the signature of the undersigned for the certificate of ACOC (renewal).

1. The document was submitted to the DDG's office on July 10, 2008.
2. Same was acted upon and transmitted to the office of the Director General on July 15, 2008. Received by Mae.
3. It was noted that the original ACOC was signed by the former DG or ASEC of ATO, Hon. Nilo Jatico. With the approval of the original ACOC it was incorrectly assumed that CAB has already approved it.
4. All necessary initials were noted and evidently the document was ministerially signed by the DDG.

Attached is the DDG's office log duly certified by the records Section, CAAP.

DANIEL A. DIMAGIBA (Sgd.)  
Deputy Director General-Operations

There is a difference between the ACOC which he issued to Transglobal and the one he issued to OSASI. In the former, his name, his designation and the initials of his subordinates were present, while in the latter, his designation and the initials of his subordinates do not appear. He surmised that some committee intentionally photocopied it in order to file charges against him. The accused also testified that the significance of the "initials" in the certificate means that "they completed the minimum requirements."

On re-cross examination, he testified that the subject of the letter, dated February 13, 2009, is the Australian Government Civil Aviation Safety Authority regarding OSASI and not the ACOC certification appearing in *Exhibit D*. He admitted that attending seminars was administrative, and not operational. He also stated that "maybe" DG Ciron told him to sign the ACOC.

On November 27, 2018, the accused formally offered in evidence Exhibits 1, 2, 6, 8, 11, 11-A to 11-M, 12, 13, 13-A, 14, 14-A, 15, 15-A, 16, 16-A, 17, 17-B, 17-C, 17-C-1, 18, 18-A, 18-B, 19, 19-B to 19-K, 19-K-1 go 19-K-4, 20, 20-A, 21, 22, 23, 24, 25, 26, 27,

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28, 30, 31, 32, 33, 35, 37, 38, 43, 44, 44-A, 45, 45-A, 45-B, 46, 46-A to 46-D, 48, 49 and 50.<sup>70</sup>

Except for Exhibits 11, 11-A to 11-M, 46, 46-A to 46-D, 48, 49 and 50, which were not admitted, the Court admitted all the exhibits offered by the accused.<sup>71</sup> The accused then rested his case.

### **REBUTTAL EVIDENCE**

The prosecution recalled Capt. Andrew V. Florentino to the witness stand as a rebuttal witness,<sup>72</sup> who testified that as Chief of the Air Carrier Operations Section of the CAAP from 2004 to 2007, his primary function was to recommend to the Director General the approval of ACOC's after the applicant has passed the requirements for certification as determined by the certification team. The certification team is composed of different specialists who will evaluate the financial and technical capability of the applicant airline to conduct safety operations. His "initials" on the duplicate of an ACOC means that the applicant has passed all requirements for the issuance of an ACOC. Sometime in 2008, DG Ciron asked him if he made "initials" on the duplicate of an ACOC issued to OSASI, particularly an ACOC valid from August 1, 2008 to July 31, 2009. He told DG Ciron that he had not; he pointed out that he had already retired from CAAP in 2007 so he was no longer in a position to make "initials" on the subject ACOC issued by the accused. DG Ciron believed him because he was never investigated and no charges were filed against him in connection with the subject ACOC.

### **THE FACTS**

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The Court finds the relevant facts as set forth below.

On March 4, 2008, Republic Act No. 9497, also known as the "Civil Aviation Authority Act of 2008," was enacted into law. The said law abolished ATO and, in lieu thereof, CAAP was created,

<sup>70</sup> Formal Offer of Evidence, Records, Vol. 4, pp. 83-113.

<sup>71</sup> Id., pp. 455.

<sup>72</sup> TSN, March 11, 2019.

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and "[a]ll powers, duties and rights vested by law and exercised by ATO was transferred to CAAP."<sup>73</sup> As stipulated by the parties, on July 1, 2008, Ruben F. Ciron, complainant in the case before the OMB, was appointed as CAAP Director General,<sup>74</sup> and on July 30, 2008,<sup>75</sup> the accused was appointed as CAAP Deputy Director General.

In or about August, 2008, the accused renewed ACOC No. 4AN2006005 to OSASI, with validity period from August 1, 2008 up to July 31, 2009, certifying that OSASI has met the minimum requirements of the ATO for an ACOC and authorized to operate International and Domestic Non-Scheduled Air Transportation Services in accordance with the laws, rules and regulations and standards prescribed by the ATO.

Under the law, it is the Director General of CAAP who has the authority to issue an ACOC to air carrier operators. Before an ACOC is issued, a Certification Team is formed, and inspects and investigates compliance or non-compliance with the requirements for the issuance of ACOC, and recommends to the CAAP head the issuance or non-issuance of an ACOC to an applicant. No Certification Team was formed and no inspection and investigation were made before the said ACOC was issued to OSASI. Also before an ACOC would be issued, the air carrier operators must have secured from the CAB a CPCN. ACOC No. 4AN2006005 was issued to OSASI and it was renewed twice without a CPCN.

It was ATO Asec Nilo C. Jatico who issued in 2006 to OSASI ACOC No. 4AN2006005 with validity of from November 13, 2006 to November 12, 2007, and it was also the same ATO Asec Jatico who renewed sometime in 2007 the said ACOC with validity of from September 3, 2007 to September 2, 2008. OSASI never applied for any ACOC before ATO, and the master list at CAAP disclosed that ACOC No. 4AN2006005 was a mere reserved number and was never issued to OSASI.

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<sup>73</sup> Section 85, RA 9497

<sup>74</sup> Exhibit C

<sup>75</sup> Exhibit A (Exhibit 6)

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On July 23, 2008, DG Ciron authorized in writing<sup>76</sup> CAAP FOIs Capt. Florentino and Capt. Lapus, Jr. to "act as representatives of the Director General of Civil Aviation for the conduct of Safety Oversight Surveillance and Certification activities including but not limited to cockpit en-route Inspections, simulator certifications, designated check airmen (Company Designated Check Pilots) checks, cabin safety inspections and licensing issue and renewal checks".

On July 28, 2008,<sup>77</sup> Capt. Lapus, Jr. conducted a check ride on Capt. Dela Cruz to qualify him as a check ride pilot for the Airbus 340. Capt. Butch Generoso, a Philippine Airlines pilot, was also present and the one who operated the flight simulator. After the check ride, Capt. Lapus, Jr. gave Capt. Dela Cruz a failing grade of "below standard" because he violated airspeed and altitude rules and did not follow procedures.

On July 30, 2008,<sup>78</sup> Capt. Florentino conducted a check ride on Capt. Jayfred Basawil to qualify him as a check pilot for the Airbus 320. Also present during the check ride was PAL instructor Capt. Conner, a Philippine Airlines pilot, who operated the flight simulator. Capt. Florentino gave Capt. Basawil a failing grade of "below standard" because he made four major mistakes and did not have his pilot's license at the time of the check ride. The check ride was conducted in Hongkong in *Dragonair's A320 Simulator* for two (2) hours.

On September 15, 2008, the accused called a meeting of the FOIs at the Operation's Division Area. Capt. Florentino and Capt. Lapus, Jr. and other FOIs attended the said meeting. The accused, Engr. Anabelle Calamba, then the OIC of the FSIS, ICAO pilots Capt. Peña, Hernando Villavicencio and Capt. Juliano were also present.

At the meeting, Engr. Calamba informed Capt. Florentino and Capt. Lapus, Jr. that their applications for the renewal of their

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<sup>76</sup> Exhibits V, V-1.

<sup>77</sup> Exhibits B and W.

<sup>78</sup> Exhibit X.

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pilot's licence would be approved and released only if they would change the failing check ride grades they gave to Capt. Basawil and Capt. Dela Cruz into passing grades. Engr. Calamba explained that: (a) Capt. Florentino and Capt. Lopus, Jr. did not possess a regular license which is a pre-requisite in order to conduct a check ride; (b) Capt. Basawil and Capt. Dela Cruz had already undergone a *Computer Based Training* (CBT) with the PAL which is strict, expensive and intensive; and (c) Capt. Basawil and Capt. Dela Cruz will not fly anyway or that they will not be handling the controls of the aircraft. The accused reiterated what Engr. Calamba said three times.

However, Capt. Florentino and Capt. Lopus, Jr. stood pat and refused to change the failing check ride grades of Capt. Basawil and Capt. Dela Cruz because it was against the Philippine Civil Aviation Rules, providing that to get a passing grade, Capt. Basawil and Capt. De la Cruz need to undergo remedial training before they could submit to another check ride which they must pass.

About eight (8) months after the meeting or on March 1, 2009, Capts. Florentino, Lopus, Jr., Juliano, Peña, Concepcion and Villavicencio executed a *Joint Affidavit*,<sup>79</sup> essentially narrating the events that transpired during the meeting called by the accused on September 15, 2008.

## DISCUSSION

### Criminal Case No. SB-13-CRM-0735

The prosecution charges the accused of violation of Section 3(e) of RA 3019.

Section 3(e) of R.A. No. 3019, reads:

**SEC. 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

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<sup>79</sup> Exhibit Y.

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

The following are the essential elements of violation of Sec. 3(e) of RA 3019:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>80</sup>

*The first element is present.* As stipulated by the parties, at the time material to the case, the accused was a public officer discharging public functions as CAAP Deputy Director General.

*The second element is also present.* The law provides three modes of commission of the crime, namely, through "*manifest partiality*", "*evident bad faith*", and/or "*gross inexcusable negligence*." In *Coloma, Jr. v. Sandiganbayan*,<sup>81</sup> the Supreme Court elucidated on the meaning of the foregoing terms as follows:

"*Partiality*" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "*Bad faith*" does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. "*Gross negligence*" has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious

<sup>80</sup> *People v. Atienza*, G.R. No. 171671, June 18, 2012, 673 SCRA 470, 479-480.

<sup>81</sup> G.R. No. 205561, September 24, 2014, 736 SCRA 523.

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indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.<sup>82</sup>

To put it differently, there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "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.<sup>83</sup> In requiring the negligence to be both gross and inexcusable, the law demands the neglect or disregard of duty to be willful and intentional in order for a violation to exist, although it may fall short of the required degree of bad faith, which must be evident, or of partiality, which must be manifest.<sup>84</sup>

The accused acted with manifest partiality, evident bad faith or, at the very least, with gross inexcusable negligence when, without authority, he issued the third ACOC to OSASI in violation of the law. Indeed, the accused is aware that under the law, it is the CAAP Director General—and not him—who has the power and authority to issue the said ACOC to OSASI.

Section 35 of RA 9497 provides:

**Sec. 35. Powers and Functions of the Director General.**—The Director General shall be the chief executive and operating officer of the Authority. He shall have the following powers, duties and responsibilities:

x x x

(e) *To issue air carrier operating certificate* in accordance with the minimum safety standards for the operation of the air carrier to whom such certificate is issued. The air carrier operating certificate shall be issued only to aircrafts registered under the provisions of this Act; x x x [Emphasis Supplied.]

<sup>82</sup> *Id.* at 229, citing *Fonacier v. Sandiganbayan*, G.R. No. L-50691 December 5, 1994, 238 SCRA 655.

<sup>83</sup> *Uriarte v. People*, G.R. No. 169251, December 20, 2006, 511 SCRA 471.

<sup>84</sup> *Jaca v. People*, G.R. Nos. 166967, 166974, January 28, 2013, 689 SCRA 270.

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In fact, the accused himself admitted that he had no authority to issue the same. Yet, he justified the issuance of the third ACOC to OSASI (valid from August 1, 2008 to July 31, 2009), by claiming that DG Ciron verbally authorized him to oversee the "operational aspect" in CAAP. He claimed that issuance of ACOCs is covered by the term "operational aspect". He averred that he did not request a written authority from DG Ciron as based on his experience, most military men give authorizations only verbally, and thus, he needed to follow his verbal directive. To support his claim about the verbal authorization of DG Ciron, he alleged that there were occasions when the Director General verbally told him to sign documents which were supposed to be signed by him as CAAP head, such as the pending application of the Philippine Airlines,<sup>85</sup> which he signed in the presence of DG Ciron and his staff, and even the issuance of ACOC of Transglobal Airways Corporation.<sup>86</sup>

The Court is not persuaded.

Considering that the law explicitly vested upon the Director General of CAAP the power to issue an ACOC, the accused cannot claim good faith when on his own, and without any showing of authority from DG Ciron, he issued the subject ACOC to OSASI. At the very least, proof of a valid delegation coming from DG Ciron, authorizing the accused to issue the ACOC to OSASI, should have been presented. The Court also notes the accused's claim that he signed the said ACOC in his capacity as Executive Director of ATO, and not as Deputy Director General of CAAP. It should be stressed that as early as March, 2008, ATO had already been abolished. Hence, his claim that he signed the second renewal of OSASI's ACOC in his capacity as Executive Director of ATO is highly irregular.

In support of his claim that DG Ciron verbally authorized him to sign the subject ACOC of OSASI, the accused averred that on one occasion he was also verbally instructed by DG Ciron to sign the application of Philippine Airlines, which he did in DG Ciron's presence. However, the application of Philippine Airlines that the accused referred to does not involve an ACOC, but it pertains to

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<sup>85</sup> Exhibit 18

<sup>86</sup> Exhibit 46

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the "issuance of an aircraft typing classification for our cabin crew qualifications." Indeed, there is no need for a written authorization from DG Ciron because as the accused claims, he signed it in the presence of DG Ciron and the latter's staff. And, in fact, above his signature<sup>87</sup> on the application of Philippine Airlines bore his own notation "Approved w/ DG approval."<sup>88</sup>

He also claims that he was the one who signed ACOC No. 4AN2005002 of Transglobal Airways Corporation upon the verbal instruction of DG Ciron. This claim does not inspire belief because on the face of the said document, the accused signed the said ACOC not as Deputy Director General of CAAP, but as ATO Executive Director and, above his signature, it is stated that it was "Approved by authority of the SECRETARY, DOTC," and not by DG Ciron. Again, considering that ATO had been abolished as early as March, 2008, the accused had no authority to sign the said ACOC.

The Court agrees with the prosecution's stance that if DG Ciron indeed authorized the accused to issue the subject ACOC, DG Ciron would have issued a written instruction, and the accused would have also requested for one for his protection considering that by law, it is only the Director General who is authorized to issue ACOCs.

In his effort to show that DG Ciron had knowledge of the issuance of the subject ACOC, the accused attached a copy of the CAAP's logbook<sup>89</sup> with the following entry dated July 15, 2008:

Australian Government  
Civil Aviation Safety Authority  
Regarding: One Sky Aviation Services, Inc. Air  
Carrier Operating Certificate 4AN2006005

A perusal, however, of the said entry simply refers to a document coming from the CASA of Australia concerning OSASI and ACOC No. 4AN2006005, and nothing more. Again, the Court is not convinced that DG Ciron was aware of the issuance of the subject ACOC to OSASI.

<sup>87</sup> Exhibit 18-A

<sup>88</sup> Exhibit 18-B

<sup>89</sup> Exhibit 50.

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Assuming, for the sake of argument, that DG Ciron verbally authorized the accused to issue the said ACOC still, the accused may be regarded as having acted with gross inexcusable negligence when he renewed ACOC No. 4AN2006005 without checking if OSASI had complied with the requirements of the law.

Section 66 of R.A. No. 9497, provides:

### C. Air Operator Certificate

**SEC. 66. Application and Issuance.** – Any air carrier who is a citizen of the Philippines may file with the Director General an application for an air operator certificate. *If the Director General finds, after thorough investigation, that such air carrier is properly and adequately equipped and has demonstrated the ability to conduct a safe operation in accordance with the requirements of this Act and the rules, regulations and standards issued pursuant thereto, the Director General shall issue an air operator certificate to such air carrier: Provided, however, That in no event shall the Director General issue an air operator certificate to an air carrier that does not possess a valid Certificate of Public Convenience and Necessity (CPCN) issued pursuant to this Act and its implementing rules.* [Emphasis Supplied.]

There are three significant requirements that should have been complied with for the issuance of an ACOC to an air carrier. *First*, before the issuance of an ACOC, the Director General must first conduct a thorough investigation on the air carrier. *Second*, the air carrier must show that it is properly, adequately equipped and has the ability to conduct a safe operation in accordance with the requirements of R.A. No. 9497. And *lastly*, the Director General is proscribed to issue an ACOC to an air carrier that does not possess a valid CPCN.

As has been discussed, the accused is not authorized under the law to issue an ACOC. Logically, therefore, he cannot conduct a thorough investigation on the air carrier. However, the accused argued that he based the issuance of the subject ACOC on the contents of CAAP's Memorandum, dated November 28, 2008,<sup>90</sup> which states, among others, that "the signed ACOC was properly endorsed and it was initialed by Capt. Andrew Florentino, the then

<sup>90</sup> Exhibit 19. (Exh. J for the Prosecution.)

Handwritten signature or initials.

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Chief, Air Carrier Operations Section, Aviation Safety Division". He insists that if the ACOC is a mere renewal, it is understood that the people who signed with their "initials" thereon have complied with the requirements, such as the CPCN. The accused maintains that he relied in good faith upon the recommendations and endorsements of the CAAP Team that included Capt. Florentino. The accused, essentially anchors his arguments on the case of *Arias v. Sandiganbayan*.<sup>91</sup>

The accused is mistaken.

Again, assuming for arguments' sake, that the accused had been validly authorized by DG Ciron to issue the third ACOC, it does not follow that his reliance on the recommendations of his subordinates is tantamount to good faith.

The *Arias* doctrine espouses the general rule that all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. The case of *Cruz v. Sandiganbayan*<sup>92</sup> carved out an exception to the *Arias* doctrine. In that case, the Supreme Court ruled:

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

Evidently, the *Arias* doctrine is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.<sup>93</sup> Thus, *Arias* cannot be applied to exculpate the accused in view of the peculiar circumstances in this case which should have prompted him to exercise a higher degree of circumspection and, necessarily, go beyond what his subordinates

<sup>91</sup> G.R. No. 81563, December 19, 1989, 180 SCRA 309.

<sup>92</sup> G.R. No. 134493, August 16, 2005, 467 SCRA 52.

<sup>93</sup> *Rivera v. People*, G.R. No. 156577, December 3, 2014, 743 SCRA 476.

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had prepared.<sup>94</sup> It should be noted also, that the accused was supposed to be signing the subject ACOC not as the head of the agency, but merely as Deputy Director General.

Consider the following: *First*, the CAAP's *Memorandum* was dated November 28, 2008, and he signed and issued the subject ACOC to OSASI on August 1, 2008. It was impossible for the accused to have relied on the said memorandum which was non-existent yet when he signed and issued the ACOC to OSASI.

Besides, even assuming for the sake of argument that the said memorandum was available before August 1, 2008, the accused should have been alerted by its contents which reads: "10. A check on the ACOC master list reveals that 4AN2006005 is only a reserved ACOC number for One Sky Aviation Service, Inc. x x x 11. x x x the required five (5) phases of ACOC Certification were disregarded yet the signed ACOC was properly endorsed. x x x".

Indeed, the accused should have been forewarned that OSASI never applied for an ACOC nor did it undergo the proper certification process for the issuance by the CAB of a CPCN—both indispensable requirements under Sec. 66 of R.A. No. 9497 which were mentioned in the said memorandum.

Also, the accused's claim that he issued the subject ACOC upon reliance on the "*initial*" of Capt. Florentino is belied by the fact that Capt. Florentino already retired from CAAP in 2007.<sup>95</sup> Hence, it was improbable that Capt. Florentino could have affixed his "*initial*" on the subject ACOC.

The accused likewise testified that prior to the issuance of the subject ACOC to OSASI, he reviewed the previous renewal, the attachments, the registration, the airworthiness, the checklist of the Inspector that performed the inspection of the aircraft and the test flight, because these are the things which he considered very important.<sup>96</sup> This claim is not correct. How could the accused have reviewed the documents he mentioned to have gone over before signing and issuing the subject ACOC to OSASI when these

<sup>94</sup> See *Lihaylihay v. People*, G.R. No. 191219, July 31, 2013, 702 SCRA 476.

<sup>95</sup> TSN, March 11, 2019.

<sup>96</sup> TSN, April 3, 2017, p. 60

Handwritten signature/initials in the bottom right corner.

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documents were not existing? It should be stressed that OSASI never applied for the issuance of an ACOC. The CAAP master list disclosed that ACOC No. 4AN2006005 was only a reserved number for OSASI. Neither did OSASI secure from CAB a CPCN. In short, the accused signed and issued the subject ACOC to OSASI without regard to the requirements of the law for its issuance.

The third element is also present.

There are two ways by which a public official violates Section 3(e) of RA 3019, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.<sup>97</sup>

As to the first mode, the Supreme Court in *Pecho v. Sandiganbayan*,<sup>98</sup> defined "injury" as any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another. It must be more than necessary or are excessive, improper or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty.<sup>99</sup> "Undue" means illegal, immoral, unlawful, void of equity and moderations.<sup>100</sup> It has likewise been held that proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible.<sup>101</sup>

To be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the

<sup>97</sup> *Braza v. Sandiganbayan*, G.R. No. 195032, February 20, 2013, 691 SCRA 471, citing *Velasco v. Sandiganbayan*, G.R. No. 160991, February 28, 2005, 452 SCRA 593; *Constantino v. Sandiganbayan*, G.R. No. 140656, September 13, 2007, 533 SCRA 205.

<sup>98</sup> G.R. No. 111399, November 14, 1994, 238 SCRA 116, 133.

<sup>99</sup> *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, citing *Llorente vs. Sandiganbayan*, G.R. No. 122166 March 11, 1998.

<sup>100</sup> *Id.*

<sup>101</sup> *Alvarez v. People*, G.R. No. 192591, June 29, 2011, 653 SCRA 52, citing *Fonacier v. Sandiganbayan*, G.R. Nos. 50691, 52263, 52766, 52821, 53350 & 53397, December 5, 1994, 238 SCRA 655.

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exercise of his official, administrative and judicial functions<sup>102</sup>. The element of damage is not required.<sup>103</sup> In **Cabrera v. Sandiganbayan**,<sup>104</sup> the Court ruled that "unwarranted" means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

Here, the parties stipulated that OSASI did not apply for and was never in possession of a CPCN, which is a condition *sine qua non* before an ACOC can be issued. Had the accused exercised proper diligence, he would have found that OSASI did not comply with the law requiring the issuance of a CPCN before an ACOC will be issued. But, he did not. He claimed to have simply relied on the "initials" of his subordinates allegedly appearing on the ACOC. This, however, is insufficient, considering that there were circumstances that would have compelled him to be more prudent in acting on the third ACOC. That he ignored these circumstances clearly demonstrates his manifest partiality towards OSASI, giving the latter unwarranted benefits to obtain the said ACOC which enabled it to conduct international air transport operations in Australia.

Hence, there is no question that the accused gave unwarranted benefit to OSASI when he issued ACOC No. 4AN2006005 to OSASI without compliance with existing laws.

### Criminal Case No. SB-13- CRM -0736

The prosecution charges the accused of violation of Section 3(a) of RA 3019 when he persuaded and influenced Capt. Florentino and Capt. Lapus, Jr. to change the failing check ride grades they gave to Capt. Basawil and Capt. Dela Cruz into passing grades under threat that their respective licenses will not be issued, in violation of the rules and regulations duly

<sup>102</sup> *Ambit. Jr. v. Sandiganbayan*, G.R. No. J75457, July 6, 2011, 653 SCRA 576, 602.

<sup>103</sup> *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010, 614 SCRA 670, 681, citing *Quibal v. Sandiganbayan*, G.R. No. 109991, May 22, 1995, 244 SCRA 224.

<sup>104</sup> G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 3477, citing *Gallego v. Sandiganbayan*, G.R. No. L-57841 July 30, 1982, 115 SCRA 793.

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promulgated by competent authority relative to their respective duties.

The Court differs.

Sec. 3(a) of R.A. No. 3019, reads:

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

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense. x x x

In *Ampil v. Ombudsman*,<sup>105</sup> the Supreme Court held that the elements of violation of Section 3(a) of R.A. No. 3019 are:

1. The offender is a public officer;
2. The offender persuades, induces, or influences another public officer to perform an act or the offender allows himself to be persuaded, induced, or influenced to commit an act;
3. The act performed by the other public officer or committed by the offender constitutes a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duty of the latter.

The first element is present. It was stipulated that the accused was the CAAP's Deputy-Director General for Operations at the time material to the case.

However, the second and third elements are absent.

The accused may have reiterated the instruction of Engr. Calamba to Capt. Florentino and Capt. Lopus, Jr. to change the failing check ride grades which they gave to Capt. Basawil and

<sup>105</sup> *Ampil v. Ombudsman*, G.R. Nos. 192685 & 199115, July 31, 2013, 703 SCRA 1.

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Capt. Dela Cruz or else the licenses of Capt. Florentino and Capt. Lapus, Jr. would not be renewed or released.

Engr. Calamba justified the said instruction by claiming that (1) the check rides conducted by Cpts. Florentino and Lapus, Jr. on Cpts. Basawil and Dela Cruz were void, considering that the former captains were not in possession of a regular or permanent license; (2) that Cpts. Basawil and Dela Cruz had already undergone a computer based training with PAL which is strict, extensive and expensive; (3) that they will not be handling the controls of an aircraft as they would not be flying anyway; and (4) that PAL Capt. Generoso had given Capt. Dela Cruz a passing check ride grade.

The Court is not persuaded by Engr. Calamba's justifications.

If the check rides conducted by Cpts. Florentino and Lapus, Jr. on Cpts. Basawil and Dela Cruz were void for lack of regular or permanent license on the part of Cpts. Florentino and Lapus, Jr. at the time the check rides were conducted, why would the same check ride grades become valid if the failing grades would be changed into passing grades?

The Court is inclined to believe Capt. Florentino when he testified that at the time they conducted check rides on Cpts. Basawil and Dela Cruz both he and Capt. Lapus, Jr. were in possession of temporary license. And a temporary license has the same effect of a regular license, and its effectivity is temporary but it can be used during check rides.

As regards the computer based training undergone by Capt. Basawil and Dela Cruz with PAL which Engr. Calamba considered as strict, extensive and expensive, the same cannot be used as a substitute for the check rides being conducted by CAAP. Again, the Court is inclined to agree with Capt. Florentino's testimony that while PAL continues to train its personnel, the said training cannot be used as a substitute for the check rides being conducted by CAAP especially for those who are being tested to be CAAP regulators, just like Cpts. Basawil and Dela Cruz. Indeed, Capt. Florentino's testimony appears to be in accord with law and logic that PAL cannot conduct a check ride on a CAAP pilot or personnel, and it is the CAAP which has jurisdiction to conduct check rides on

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pilots of different airlines, including PAL. The reason for this is that it is the CAAP that is the licensing government agency for all personnel of airlines.

Also, the Court does not subscribe to the justification that Capts. Basawil and Dela Cruz should have been given passing check ride grades because they would not be handling the controls of an aircraft as they would not be flying anyway. Check rides on aircraft simulator were conducted on Capts. Basawil and Dela Cruz because they were being tested if they would qualify as Flight Operations Inspectors who would replace the ICAO FOIs. Capts. Basawil and Dela Cruz should have proven their qualifications by passing the simulator check rides because they will be the one to conduct check rides on aspiring pilots who would actually fly and operate aircrafts. And the check rides conducted by Capts. Florentino and Lapus, Jr. were the test used to measure their qualifications.

Engr. Calamba also mentioned that Capt. Generoso, the one who assisted in the operation of the simulator during the check ride on Capt. Dela Cruz had already given him passing grade and, therefore, Capt. Lapus, Jr. should have changed the failing grade he gave to Capt. Dela Cruz. Again, the Court takes exception to this contention.

PAL Capt. Generoso himself testified that his participation in the check ride conducted by Capt. Lapus, Jr. on Capt. Dela Cruz on July 28, 2008 was only to operate the flight simulator then used, and according to him, he had no authority to grade Capt. Dela Cruz. He conceded that the rating given by Capt. Lapus, Jr. was the official grade of Capt. Dela Cruz for license purposes.

Thus, the foregoing justifications advanced by Engr. Calamba, which the accused adopted and reiterated in directing Capts. Florentino and Lapus, Jr. to change the failing grades of Capts. Basawil and Dela Cruz into passing grades are mere subterfuge to persuade, induce or influence FOIs Capts. Florentino and Lapus, Jr. to change their minds and pass Capts. Basawil and Dela Cruz, without complying with the Philippine Civil Aviation Regulations providing that those who failed in the check ride should have undergone additional training, and again given another check ride which they should pass before they are entitled to passing grades.

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This is the provision of Section 2.2.6.3(e) of the Philippine Civil Aviation Regulations. Thus:

**2.2.6.3 KNOWLEDGE AND SKILL TESTS AND CHECKS.  
TIME, PLACE, DESIGNATED PERSONS AND  
FORMAT**

x x x

- (e) An applicant for a knowledge or skill test who fails that test may reapply for the test only after the applicant has received:
  - (1) The necessary training from an authorized instructor who has determined that the applicant is proficient to pass the test; and
  - (2) An endorsement from an authorized instructor who gave the applicant the additional training.

Be that as it may, the Court is not inclined to rule that the accused violated Section 3(a) of RA 3019.

The case of *Baviera v. Zoleta*,<sup>106</sup> is instructive. In the said case, the Supreme Court, citing the Senate deliberations on Section 3(a) of RA 3019, ruled that to constitute a violation of the law, there must be proof that the accused received or is expecting to receive material remuneration in exchange for his use of influence upon another public officer to perform the act mentioned in the law. Thus:

Senate deliberations (July 13, 1960)

Senator MARCOS. I see. Now, I come to the second most important point. Is it true as charged that this bill does not punish influence peddling which does not result in remuneration, or rather in which remuneration cannot be proved? I refer to Section 3, subsection (a), lines 10 to 13 on page 2 of the bill. It is to be noted that this section reads, as the first corrupt practice or act of a public official:

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<sup>106</sup> 504 SCRA 281

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Now, suppose the influence that is extended to influence another public official is for the performance of an act that is not a crime like the issuance of license by the Monetary Board (p. 226)

Senator TOLENTINO. I see. (p. 226)

Senator MARCOS. It is claimed and charged by observers that this bill is deliberately watered down in order to save influence peddlers who peddle their influence in the Monetary Board, in the Reparations Commission, in government banks and the like. I would like the author to explain the situation. (p. 226)

Senator TELENTINO (sic). In the first place, I cannot conceive of an influence peddler who acts *gratis*. The very term "influence peddler" implies that there is something being sold, that is, the influence. So that when we say influence peddler who does not receive any advantage, that is inconsistency in terms because that would apply to any congressman, for instance, and precisely it was made clear during the debates that if a congressman or senator tries to use influence in the act of another by, let us say, trying to obtain a license for his constituent, if he does not get paid for that he does not use any influence. (p. 226)

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Senator MARCOS. So, it is admitted by the author that the lending or utilization of influence x x x provided that there is no proof that he has been given material remuneration is not punished by this Act. (pp. 226-227)

Senator TOLENTINO. No, the mere fact of having used one's influence so long as it is not to induce the commission of a criminal act would not be punished if there is no consideration. It would not be graft. (p. 227)

Senator MARCOS. There is no proof of consideration because that is one thing difficult to prove. (p. 227)

Senator TOLENTINO. If you say there is no proof of consideration, as far as the bill is concerned, there is no offense. So, so long as there is no proof of the consideration in the use of the influence, the offense is not committed under the bill because that would not be graft.

Senator MARCOS. But we all admit that it is an immoral act for a public official like the President, the Vice-President, members of the Senate to unduly influence the members of the

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Monetary Board even without remuneration and say, "You better approve this license, this application of a million dollars of my good friend and compadre Mr. Cheng Cheng Po" or whatever he may be. But **he does not receive any reward, payment or remuneration for it.** Under the bill, he can get away with this act.

Senator TOLENTINO. If Your Honor considers it in that light, **I don't think that would constitute graft** and I don't think that would be included.

Senator MARCOS. **But it is immoral.**

Senator TOLENTINO. It may be so, but it depends on the circumstances. **But our idea, the main idea of the bill is to punish graft and corrupt practices. Not every act maybe, that is improper would fall under the provision of the bill.** (p. 227)<sup>107</sup>

Hence, following the intent of the law, violation of Section 3(a) of RA 3019 may be committed only if the offender has the expectation of some consideration, reward, gain or advantage for himself in perpetrating the act.

In this case, the prosecution neither alleged in the Information, nor did it present any evidence that will prove that the accused acted for a consideration, payment or remuneration and that the accused intended to obtain personal gain, enrichment or advantage. Hence, the Court rules and so hold, that the second and third elements of the offense have not been established.

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt.<sup>108</sup>

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

<sup>107</sup> At pages 293-295

<sup>108</sup> *People v. Baulite*, 366 SCRA 732, 738-739

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1. In Criminal Case No. *SB-13-CRM-0735*, accused Daniel A. Dimagiba is hereby found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019. Pursuant to Section 9 of RA 3019, the accused is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum, with perpetual disqualification from holding public office.

2. In *Criminal Case No. SB-13-CRM-0736*, accused Daniel A. Dimagiba is hereby **ACQUITTED** of the crime of violation of Section 3(a), RA 3019 on the ground that his guilt was not established beyond reasonable doubt.

As the act or omission from which the civil liability might arise did not exist, no pronouncement as to the civil liability of the accused is here made.

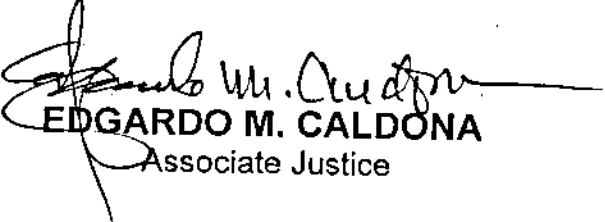
Let the hold departure order issued by reason of *Criminal Case No. SB-13-CRM-0736* be ordered lifted and set aside, and the bond posted by the accused in the said case released, subject to the usual accounting and auditing procedures.

**SO ORDERED.**

  
**EFREN N. DE LA CRUZ**  
Chairperson/Associate Justice

**We Concur:**

  
**GERALDINE FAITH A. ECONG**  
Associate Justice

  
**EDGARDO M. CALDONA**  
Associate Justice

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**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.

  
**EFREN N. DE LA CRUZ**  
Chairperson, First Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division's 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

