



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Maria Lourdes M. Lobiano-Alviola
MARIA LOURDES M. LOBIANO-ALVIOLA
Executive Clerk of Court II
OCC Fourth Division, Sandiganbayan

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES

Plaintiff

versus

CRIM. CASE NO. SB-14-CRM-0365

For Violation of Section 3 (e) of R. A. 3019,
as amended

FAUSTINO A. SILANG
VENERANDO R. REA
LUZVIMINDA V. CUADRA
REX L. ABADILLA
ABELARDO P. ABRIGO, JR.
MACARIO J. REYES
ROY GUERRERO L. CABEL
ROMEO F. CAYANAN

Accused

PEOPLE OF THE PHILIPPINES

Plaintiff

versus

CRIM. CASE NO. SB-14-CRM-0366

For Violation of Section 3 (j) of R. A. 3019,
as amended

FAUSTINO A. SILANG
VENERANDO R. REA
LUZVIMINDA V. CUADRA
REX L. ABADILLA
ABELARDO P. ABRIGO, JR.
MACARIO J. REYES
ROY GUERRERO L. CABEL
ROMEO F. CAYANAN

Accused

Present:

QUIROZ, J., Chairperson
CRUZ, J.
HIDALGO, J.

Promulgated on:

JAN 18 2019

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CRUZ, J.

On 10 October 2014, accused Faustino A. Silang ("Silang"), Venerando R. Rea ("Rea"), Luzviminda V. Cuadra ("Cuadra"), Rex L. Abadilla ("Abadilla"), Abelardo P. Abrigo, Jr., ("Abrigo"), Macario J. Reyes ("Reyes"), Roy Librado L. Oabel ("Oabel"), and Romeo F. Cayanán ("Cayanán") were charged with the violations of Section 3(e) and Section 3(j) of Republic Act (R. A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, in two (2) separate Informations, the accusatory portions of which read:

CRIM. CASE NO. 0365

That on or about 12 January 2011, or sometime prior or subsequent thereto, in the City of Tayabas, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **FAUSTINO A. SILANG, VENERANDO R. REA, LUZVIMINDA V. CUADRA, REX L. ABADILLA, ABELARDO P. ABRIGO, JR., MACARIO J. REYES, ROY LIBRADO L. OABEL** and **ROMEO F. CAYANAN**, public officers, being then the Mayor, Vice-Mayor and City Councilors, respectively, of the City of Tayabas, committing the offense while in the discharge of their respective official functions though in abuse thereof, taking advantage of the public office, conspiring, confederating, and mutually aiding one another, acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the hiring through a Contract of Service of Atty. Jose Augusto Salvacion (Atty. Salvacion), a private lawyer, to perform legal services for the City of Tayabas, for the period covering January to July 2011, at a rate of One Thousand Five Hundred Pesos (PhP1,500.00) per day, despite the legal prohibition to do so, and, despite knowledge of the mandatory provision of Section 481 of Republic Act No. 7160 which requires the appointment of a City Legal Officer to exercise such duties and/or functions, and thereafter, causing the disbursement of the amount of about Eighteen Thousand Pesos (PhP18,000.00) from the funds of the City of Tayabas as "*honorarium*" to Atty. Salvacion, thereby giving him unwarranted benefits, advantage or preference, and likewise causing undue injury to the City of Tayabas in the aforesaid amount.

CONTRARY TO LAW.¹

¹ Records, Vol. I, pp. 1-3

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CRIM. CASE NO. 0366

That on or about 12 January 2011, or sometime prior or subsequent thereto, in the City of Tayabas, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **FAUSTINO A. SILANG, VENERANDO R. REA, LUZVIMINDA V. CUADRA, REX L. ABADILLA, ABELARDO P. ABRIGO, JR., MACARIO J. REYES, ROY LIBRADO L. OABEL** and **ROMEO F. CAYANAN**, public officers, being then the Mayor, Vice-Mayor and City Councilors, respectively, of the City of Tayabas, committing the offense while in the discharge of their respective official functions though in abuse thereof, taking advantage of the public office, conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully, and criminally cause the hiring through a Contract of Service of Atty. Jose Augusto Salvacion (Atty. Salvacion), a private lawyer, to perform legal services for the City of Tayabas, for the period covering January to July 2011, at a rate of One Thousand Five Hundred Pesos (PhP1,500.00) per day, despite the legal prohibition to do so, and, despite knowledge of the mandatory provision of Section 481 of Republic Act No. 7160 which requires the appointment of a City Legal Officer to exercise such duties and functions, and thereafter, causing the disbursement of the amount of about Eighteen Thousand Pesos (PhP18,000.00) from the funds of the City of Tayabas as "honorarium" to Atty. Salvacion, thereby deliberately granting a privilege or benefit in favor of Atty. Salvacion, a person not qualified or legally entitled thereto.

CONTRARY TO LAW.²

On 17 October 2014, a Hold Departure Order³ (HDO) was issued against all of the accused. On 21 and 28 October 2014, each of the accused posted their respective cash bonds in the amount of Sixty Thousand Pesos (Php 60,000.00).⁴ Initially, their arraignment was set on 19 November 2014, but despite due notice, none of the accused appeared in court.⁵ As a result, the cash bonds they deposited for their provisional liberty were forfeited in favor of the Government, and the Court ordered the issuance of Warrants of Arrest for their apprehension and detention.⁶ On 21 November 2014, they filed a Motion for Reconsideration (of the Honorable Court's Order of Forfeiture of Bail Bond and Issuance of Bench Warrant with Attached Affidavit of Merit)⁷ dated 20 November 2014,

² Records, Vol. III, pp. 4-6

³ Records, Vol. II, p. 68

⁴ Records, Vol. II, pp. 70, 73

⁵ Records, Vol. II, p. 161

⁶ Id.

⁷ Records, Vol. II, pp. 162-165

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but their motion was denied.⁸ Consequently, their cash bonds remained forfeited, and they were given ten (10) days from receipt of the Court's resolution to post their bail bonds anew lest a warrant of arrest will be issued against them.⁹ Persistently, they filed another Motion (to Reduce Forfeiture of Accused's Cash Bond and to Defer Reposting of Bonds)¹⁰ dated 06 January 2015, but this motion was also denied.¹¹ On 04 March 2015, only accused Silang, Cuadra, Abrigo, Abadilla and Reyes posted another bail. Thus, a Warrant of Arrest¹² (WOA) was issued against accused Rea, Oabel and Cayanan for their failure to post bail.¹³ Nevertheless, said warrant of arrest was set aside after the Court approved the surety bail bonds posted by the aforementioned accused.¹⁴ Finally, all of the accused were arraigned on 07 April 2015,¹⁵ whereby they separately entered a plea of "**NOT GUILTY**" to the offenses charged.¹⁶

On 25 May 2015, the parties submitted a Joint Stipulation of Facts,¹⁷ containing the following stipulation:

1. That during the period material to this case as alleged in the respective Information of these cases, all of the accused admit their identity as named, alleged and charged in the respective informations as follows:

- a. FAUSTINO ALANDY SILANG being the Mayor of City of Tayabas.
- b. VENERANDO REYES REA being the Vice-Mayor of City of Tayabas.
- c. LUZVIMINDA BAES CUADRA being one of the City Councilors of City of Tayabas.
- d. REX LEUTERIO ABADILLA being one of the City Councilors of City of Tayabas.
- e. ABELARDO PEREZ ABRIGO, JR., being one of the City Councilors of City of Tayabas.
- f. MACARIO JARDINAN REYES being one of the City Councilors of City of Tayabas.
- g. ROY LIBRADO LADINES OABEL being one of the City Councilors of City of Tayabas.
- h. ROMEO FAJARDO CAYANAN being one of the City Councilors of City of Tayabas.

2. That whenever referred to orally or in writing by the Honorable Court and the Prosecution and/or its witnesses, the foregoing accused admit that they are the same person being referred to, the accused in this case.

 ⁸ Records, Vol. II, p. 181

⁹ Records, Vol. II, p. 181

¹⁰ Records, Vol. II, pp. 183-188

¹¹ Records, Vol. II, p. 199

¹² Records, Vol. II, pp. 204-206


¹³ Records, Vol. II, p. 203

¹⁴ Records, Vol. II, p. 222

¹⁵ Records, Vol. II, pp. 226-227

¹⁶ Records, Vol. II, pp. 229-236

¹⁷ Records, Vol. II, pp. 401-403



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The parties also agreed, as per Pre-Trial Order¹⁸ dated 07 October 2014, on the following issues¹⁹ for resolution:

1. Whether or not accused acted with manifest partiality, evident bad faith, and/or gross inexcusable negligence cause (sic) the hiring through a Contract of Service of Atty. Jose Augusto Salvacion (Atty. Salvacion), a private lawyer, to perform legal services for the City of Tayabas, for the period covering January to July 2011, at the rate of One Thousand Five Hundred Pesos (Php1,500.00) per day.
2. Whether or not accused intentionally and willfully cause the hiring of Atty. Salvacion despite the legal prohibition to do so, and despite knowledge of the mandatory provision of Section 481 of Republic Act No. 7160 which requires the appointment of a City Legal Officer to exercise such duties and/or functions.
3. Whether or not the act of the accused in hiring Atty. Salvacion amounts to giving him unwarranted benefits, advantage or preference, and likewise causing undue injury to the City of Tayabas when an amount was disbursed as "*honorarium*" to Atty. Salvacion.
4. Whether or not the act of the accused in hiring Atty. Salvacion amounts to deliberately granting a privilege or benefit in favor of Atty. Salvacion, a person not qualified or legally entitled to it.
5. Whether or not accused are liable for violation of Section 3 (e) and (j) of R. A. No. 3019.

EVIDENCE FOR THE PROSECUTION

The prosecution presented Dolores Carina N. Jalbuena, Norma S. Racelis, Maria Lourdes A. Reynoso, and Catalino R. Cabrera as witnesses, and their respective testimonies are summarized as follows:

Dolores Carina N. Jalbuena ("**Jalbuena**"),²⁰ the City Accountant of Tayabas since 2007, identified on **direct examination**²¹ several disbursement vouchers and supporting documents²² in relation to the payment of *honoraria* of Atty. Salvacion, claiming that she objected to the engagement of the services of the latter, by placing a notation above her signatures on the disbursement vouchers because of the Notice of Disallowance and absence of approval from the Solicitor General and the



¹⁸ Records, Vol. II, pp. 408-423

¹⁹ Records, Vol. II, p. 422

²⁰ Transcript of Stenographic Notes (TSN) dated 29 June 2015

²¹ TSN dated 29 June 2015, pp. 10-35

²² See Exhibits "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", and "BB"



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Commission on Audit ("COA").²³ In addition to her written objections on the disbursement vouchers, she also wrote several letters²⁴ to the Mayor reiterating her objections, which the latter received and merely replied to.²⁵ Despite her opposition, the Mayor (accused Silang), still proceeded and approved the transactions, which led to the preparation of the checks²⁶ for the payment of Atty. Salvacion's *honoraria*.

Aside from the absence of the clearance from the Solicitor General, she testified that the Notice of Disallowance from COA showed violations of COA Circular No. 1998-002, the Local Government Code, and the Government Accounting and Auditing rules. Particularly, the COA Circular, as well as the Government Accounting and Auditing rules both prohibit the local government from hiring a private lawyer to handle its cases, while the Local Government Code mandates the city to have its own Legal Officer.²⁷

She identified the COA's Audit Observation Memorandum (AOM)²⁸ and Notice of Disallowance,²⁹ claiming that the Mayor (accused Silang) was required to comment on the payment of Atty. Salvacion's *honoraria* for the legal services he rendered, and that the disallowance was issued for the legal services rendered by Atty. Salvacion on 2008.

On **cross examination**,³⁰ she verified that the payment for Atty. Salvacion's *honoraria* was taken from the budget allotted for the Office of the Mayor and not from the City's Legal Department. She affirmed that the payment made to Atty. Salvacion was for his *honoraria* as consultant. She agreed that the engagement of Atty. Salvacion was covered by an approval from the City Council.³¹ She also admitted that Atty. Salvacion was designated as a "Financial Management, Legal, and Taxation Consultant." She said that the position of City Legal Officer was vacant since 2007. However, she is not aware of any publication for the position, nor are there any applicants applying for the said position. She declared that the Audit Report upon which she based her objection was not yet final when she made the notation on the disbursement vouchers. She was also not aware of any case questioning the legality of Resolution No. 11-28.³²

 ²³ TSN dated 29 June 2015, p. 15

²⁴ See Exhibit "C-1", "C-2"

²⁵ See exhibit "C-3", with sub-marking

²⁶ See Exhibit "R", with sub-markings

²⁷ TSN dated 29 June 2015, pp. 23-24


²⁸ See Exhibit "G"

²⁹ See Exhibit "H"

³⁰ TSN dated 29 June 2015, pp. 36-50

³¹ TSN dated 29 June 2015, p. 37

³² TSN dated 29 June 2015, p. 46



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On **redirect examination**,³³ she presented Ordinance No. 10237, or the appropriation ordinance for the year 2011, where an item indicating "Legal Service Code 791" for Four Hundred Thousand Pesos (Php 400,000.00) was included on the portion for the Office of the Mayor.

Upon **inquiry from the Court**,³⁴ she confirmed that there was a Provincial Legal Officer from January to July 2011.

Norma S. Racelis ("Racelis"),³⁵ State Auditor V of the Commission on Audit, testified during her **direct examination**³⁶ that from 2004, she was the State Auditor IV assigned as the audit team leader of the City of Tayabas and seven (7) other municipalities in the Province of Quezon. She claimed that part of her duties as State Auditor IV was to settle and audit the accounts of the City of Tayabas by checking the regularity of disbursements made, the completeness of the supporting documents, communicating to the City their observations, and issuing settlement documents and Audit Observation Memoranda (AOM).

She said that she issued an AOM³⁷ regarding several transactions including the legal services of a private lawyer. She explained that in the said AOM, she referred to COA Circular No. 98-002 dated 09 June 1998 which prohibits the employment of local government units of private lawyers to handle their legal cases, and Section 481 of Republic Act 7160, which mandates the appointment of a legal officer for a city government, and that said legal officer shall "represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof in his official capacity is a party."³⁸

She narrated that a year after the issuance of the AOM, she issued the Notice of Disallowance³⁹ dated 02 October 2009, against the payment of the legal services of Atty. Salvacion. In the said Notice of Disallowance, she referred to Section 212 of the Government Accounting and Auditing Manual (GAAM) which likewise prohibits the employment of private lawyers to handle civil cases of the government. The same provision provides that the payment of public funds to private law practitioners hired without prior conformity and approval by the Solicitor General and the written concurrence of the COA shall be disallowed in audit and shall

³³ TSN dated 29 June 2015, pp. 51-55

³⁴ TSN dated 29 June 2015, p. 55

³⁵ TSN dated 18 August 2015

³⁶ TSN dated 18 August 2015, pp. 8-18

³⁷ See Exhibit "G"

³⁸ TSN dated 18 August 2015, p. 14

³⁹ See Exhibit "H"

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be the personal liability of the officials concerned.⁴⁰

On **cross examination**,⁴¹ she related that the services of Atty. Salvacion included financial management functions which can be performed by non-lawyers. She also said that she thought that "legal services" included the handling of cases in court, but that she is not aware of any payment in favor of Atty. Salvacion for the handling of such civil cases. She further admitted that the circular that she cited in her AOM prohibited the hiring of private lawyers for a fee, and that the fund used for the payment was from the Office of the Mayor's Maintenance and Other Operating Expenses (MOOE).

Upon **inquiry from the Court**,⁴² she clarified that the contract with Atty. Salvacion was a job order contract for a daily remuneration of one thousand pesos (Php1,000. 00). She said that she did not verbally ask the Office of the Mayor regarding the procurement of the private lawyer's service, but required the latter to comment on the AOM. However, the Office of the Mayor did not provide an explanation which prompted her to issue the Notice of Disallowance.

Maria Lourdes A. Reynoso ("Reynoso"),⁴³ City Councilor of Tayabas, Quezon, testified on **direct examination**⁴⁴ that one of her duties as a city councilor is to approve or disapprove resolutions and ordinances. She said that pursuant to this duty, she, along with two (2) others, voted against Resolution No. 11-28⁴⁵ dated 12 January 2011 because of the AOM and notice of disallowance from the COA. She added that despite their opposition, accused Silang, Vice Mayor Venerando Rea, and Councilors Luzviminda Cuadra, Rex Abadilla, Abelardo Abrigo, Roy Librado Oabel, Macario Reyes, and Romeo Cayanán, insisted on approving the resolution.

She recounted that accused Silang requested the *Sangguniang Panlungsod* to pass the resolution and to give him authority to sign a contract to engage the services of a private lawyer.⁴⁶ She showed the Court a copy of a committee report⁴⁷ dated 12 January 2011 wherein the chairman indicated that the Mayor (accused Silang) requested the *Sangguniang Panlungsod* to give him such authority.⁴⁸ After the approval sought was granted, the contract of service⁴⁹ was entered into by and between Atty. Salvacion and

 ⁴⁰ TSN dated 18 August 2015, p. 17

⁴¹ TSN dated 18 August 2015, pp. 18-25

⁴² TSN dated 18 August 2015, pp. 25-26

⁴³ TSN dated 18 August 2015


⁴⁴ TSN dated 18 August 2015, pp. 31-65

⁴⁵ See Exhibit "J-1"

⁴⁶ TSN dated 18 August 2015, pp. 38-39

⁴⁷ See Exhibit "GG"

⁴⁸ TSN dated 18 August 2015, p. 39-40

⁴⁹ See Exhibit "K" 

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accused Silang, representing the City of Tayabas.⁵⁰ She said that the contract is void because the act of hiring a private lawyer for the local government is prohibited by law.⁵¹ She further testified that she has copies of "certifications, processes, and orders"⁵² that would show that Atty. Salvacion represented the City of Tayabas from December 2008 to 2012. Moreover, she identified disbursement vouchers, obligation requests, accomplishment reports, and payroll⁵³ in connection with the engagement of Atty. Salvacion's services.

She said that the *honoraria* paid to Atty. Salvacion were from the account called "791" designated as "legal services" under the Office of the Mayor's MOOE. She was shown a portion of the appropriations ordinance⁵⁴ and she identified the item on the second page which shows that under the Office of the Local Chief Executive's MOOE, the account of "791" "Legal Services" was included.⁵⁵

She clarified, **upon inquiry from the Court**,⁵⁶ that the expenses under the "Legal Services" heading would include actual legal services rendered as well as other incidental expenses, while job orders and consultancy services are under the "other professional services" heading.⁵⁷ She confirmed that the "other professional services" is a general item where everything which cannot be classified under specific headings could fall. She also stated that the services rendered by Atty. Salvacion included the performance of duties of a city legal officer.

She alleged that the allotment and payment made pursuant to the contract with Atty. Salvacion caused the City of Tayabas undue injury because public funds were used to pay the services of a private practitioner, an act which is prohibited by law.

On **cross examination**,⁵⁸ she admitted that she, along with the two (2) other dissenters to the Resolution, were members of the opposing political party, and that her group filed several cases against the accused and the other councilors. She affirmed that the contract with Atty. Salvacion stated that it was for financial management, legal services, and tax consultancy.⁵⁹ She also

 ⁵⁰ TSN dated 18 August 2015, pp. 44, 46

⁵¹ TSN dated 18 August 2015, pp. 46-47

⁵² TSN dated 18 August 2015, p. 48; See Exhibits "L", "M", "N"

⁵³ See Exhibits "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", and "CC"

⁵⁴ See Exhibit "FF"

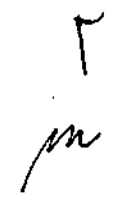
⁵⁵ TSN dated 18 August 2015, p. 56

⁵⁶ TSN dated 18 August 2015, pp. 57-63

⁵⁷ TSN dated 18 August 2015, pp. 58-60

⁵⁸ TSN dated 18 August 2015, pp. 73-104

⁵⁹ TSN dated 18 August 2015, pp. 76-77



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confirmed that the payment for the contract of service was from the MOOE and not from the budget for the Legal Office. She agreed that when she raised her objections based on the COA's AOM, the said AOM was not yet final. But, she maintained that the Notice of Disallowance issued by COA is the final notice given to an official or head, informing him that the use of fund has been disallowed by the COA as a result of a statutory prohibition.⁶⁰

When the **Court inquired** as to the number of prosecutors the local government had, she replied that they have a city prosecutor, assistant city prosecutor, and ten (10) provincial prosecutors who manifested their intention to serve as the City Legal Officer of Tayabas.⁶¹

Catalino R. Cabriga ("Cabriga"),⁶² former councilor of Tayabas City, Quezon, testified on **direct examination**⁶³ that he, along with two (2) other councilors, filed a complaint against herein accused for the alleged illegal contract entered into by the latter with Atty. Salvacion. He replied to the Court's inquiry⁶⁴ that he objected to and voted against the Resolution passed by the *Sanggunian*. He also said that he informed the *Sanggunian* about the previous similar transactions, which were the subject of several AOMs and Notices of Disallowance. The *Sanggunian* just ignored his objections and still insisted on passing the Resolution. After the passage of the Resolution, he filed a complaint before the Office of the Ombudsman.

Pursuant to the Resolution, accused Silang engaged the services of Atty. Salvacion not as a consultant but to perform the duties of the City Legal Officer.⁶⁵ He added that public funds were used to pay for the legal services of Atty. Salvacion in the guise of *honoraria* as evidenced by several disbursement vouchers.

On **cross examination**,⁶⁶ he agreed that the contract states that Atty. Salvacion was a Financial Management, Legal, and Taxation Consultant. He likewise agreed that the disbursement vouchers did not indicate that the payments made were for acceptance and appearance fees.

Meanwhile, the testimonies of the following prosecution witnesses were dispensed with:

⁶⁰ TSN dated 18 August 2015, p. 83

⁶¹ TSN dated 18 August 2015, pp. 90-91

⁶² TSN dated 06 October 2015

⁶³ TSN dated 06 October 2015, pp. 10-41

⁶⁴ TSN dated 06 October 2015, pp. 22-23

⁶⁵ TSN dated 06 October 2015, p. 32

⁶⁶ TSN dated 06 October 2015, pp. 42-48

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1. **Gemma Fe M. Llanes** (from the Commission on Audit) – after the parties stipulated that she is the record custodian of the Decision No. 2014-46 Subject: Appeal of Mayor Faustino A. Silang from Notice of Disallowance No. 2009-003-101-(08) dated 02 October 2009, marked as Exhibit "O".⁶⁷

2. **Diane Fabia R. Cabana, Jennifer P. Tiongco, Rhodora R. Gonzales, and Ziegfredo A. Eusebio** – after the parties stipulated on the genuineness and due execution of the following documents:

- a. Certification dated 26 January 2014 (Exhibit "L")
- b. Formal Appearance in Civil Case No. 2008-82 (Exhibit "M" inclusive) and Formal Appearance in SCANo. 2004-044 (Exhibit "N" inclusive)
- c. Certified List of Duly Elected Local Officers Tayabas City based on attached hereto of COC (Certificate of Canvass) of the May 10, 2010 National and Local Elections (Exhibit "A" inclusive), and d. Motion for Reconsideration (of Resolution dated 30 April 2010) with Entry of Appearance (Exhibit "D-1"), Complain in OMB-L-C-09-0190-D (Exhibit "D-2"), Position Paper in OMB-L-A-09-0190-D (Exhibit "D-3"), Compliance in OMB-L-A-09-0176-D (Exhibit "D-4"), Position Paper in OMB-L-A-09-0176-D (Exhibit "D-5"), and Opposition to the Motion to Issue Preventive Suspension in OMB-L-A-09-0176-D (Exhibit "D-6").⁶⁸

3. **Arlene Ayala Tabelon** (Secretary of the *Sangguniang Panglungsod* of Tayabas City) – after the parties stipulated that she is the custodian of Exhibits "I", "J" inclusive, "FF" inclusive, "GG" and HH, and that these documents are authentic and part of the records of the *Sangguniang Panglungsod*.⁶⁹

4. **Celerino C. Alviar** – after the parties stipulated on the genuineness and due execution of Exhibits "Q" to "X" inclusive, and that Exhibits "S" to "X" were not prepared by him.⁷⁰

5. **Nicomedes C. Abesamis** – his testimony being mere corroborative of the testimonies of witnesses Reynoso and Cabriga.⁷¹

Subsequently, the prosecution submitted its Formal Offer of Documentary Evidence,⁷² from which the Court resolved to admit⁷³ in evidence Exhibits "A," "B" and sub-markings; "C;" "C-1" and sub-markings; "C-2" and sub-markings; "C-3" and sub-markings; "D;" "D-1;" "D-2;" "D-3;" "D-4;" "D-5;" "D-6;" "D-7;" "E" and sub-markings; "F;" "G;" "H;" "I;" "J" and sub-markings (J-2 to J-5; J-6

⁶⁷ Records, Vol. II, pp. 449, TSN dated 17 August 2015, p. 10

⁶⁸ Records, Vol. II, pp. 503-504, TSN dated 05 October 2015, p. 20

⁶⁹ Records, Vol. II, p. 506, TSN dated 06 October 2015, p. 53

⁷⁰ Records, Vol. II, pp. 531-532, TSN dated 11 January 2016, p. 19

⁷¹ Records, Vol. II, pp. 531-532, TSN dated 11 January 2016, p. 22

⁷² Records, Vol. II, pp. 543-570

⁷³ Records, Vol. III, p. 35

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and sub-markings); "J-1," "K," "L," "M," "M-1," "M-2," "M-3," "M-4," "M-5," "M-6," "M-7," "M-8," "M-9," "M-10," "M-11," "N," "N-1," "N-2," "N-3," "N-4," "N-5," "N-6," "N-7," "N-8," "N-9," "N-10," "N-11," "N-12," "N-13," "N-14," "N-15," "N-16," "N-17," "N-18," "N-19," "N-20," "N-21," "N-22," "N-23," "N-24," "O," "P," "Q," "Q-1," "R," "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "S," "S-1," "S-2," "S-3," "S-4," "S-5" to "S-6," "T," "T-1," "T-2," "T-3," "T-4" to "T-5," "U," "U-1," "U-2," "V," "V-1," "V-2," "V-3," "V-4" to "V-5," "W," "W-1," "W-2," "W-3," "W-4," "W-5" to "W-6," "X," "X-1," "X-2," "X-3," "X-4," "Y" and sub-markings; "Z" and sub-markings; "AA" and sub-markings; "BB" and sub-markings; "FF" and sub-markings; "FF-1" and sub-markings; "FF-2," "GG" and sub-markings; "HH," for the purposes for which they were offered, but subject to the Court's proper appreciation of their respective probative values.

After the prosecution rested its case, the herein accused filed their Motion (for Leave to File Demurrer to Evidence)⁷⁴ dated 05 April 2016, which the Court denied.⁷⁵

EVIDENCE FOR THE DEFENSE

The defense presented Josefina O. Perez, and herein accused Abrigo, Rea and Silang as witnesses and their respective testimonies are summarized as follows:

Accused **Abrigo**,⁷⁶ City Councilor, Tayabas, Quezon, testified on **direct examination**⁷⁷ that the contract that they authorized accused Silang to sign on behalf of the City was for the engagement of a Financial Management, Legal, and Taxation Consultant and not a legal counsel. He said that he voted for the passage of the Resolution because he saw nothing irregular about it and that the consultants included therein were needed by the City.⁷⁸

He said that the fund for hiring a Financial Management, Legal, and Taxation Consultant was taken from the MOOE, and that there was a separate budget for the City Legal Officer, and that this budget was not the one used to pay for the services of Atty. Salvacion. He also noted that the City of Tayabas and its people benefitted from the contract of service.

⁷⁴ Records, Vol. III, pp. 42-50

⁷⁵ Records, Vol. III, p. 80

⁷⁶ TSN dated 20 June 2016.

⁷⁷ TSN dated 20 June 2016, pp. 9-28.

⁷⁸ TSN dated 20 June 2016, p. 15.

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Upon **inquiry from the Court**,⁷⁹ he said that they had tried several times to fill the post of the City Legal Officer; however, no one applied for the position. The Court also inquired as to the salary of the City Legal Officer, to which Abrigo replied was more or less fifty thousand pesos (PhP 50,000.00), while the *honoraria* of Atty. Salvacion was at one thousand five hundred pesos per day (PhP 1,500.00/day) or around twenty-seven thousand pesos per month after tax (PhP 27,000.00).⁸⁰ He noted that there was nothing in the contract that Atty. Salvacion must report everyday from 8:00 A.M. to 5:00 P.M.

During the **cross examination**,⁸¹ he admitted that some of the functions being performed by Atty. Salvacion are that of the duties of a Legal Officer. When asked whether he was aware of any notice of disallowance from the COA on similar transactions of the City, he answered in the negative because it was issued before he became a councilor in June 2010. He said that he only knew about it when some of the councilors objected to the passage of the Resolution because of the existence of the notices of disallowance on the City's previous transactions.

He contended that despite being informed of the disallowance and the prohibition on the engagement of private lawyers to perform the functions of a City Legal Officer, they still gave accused Silang the authority to enter into contract because that authority is one for the engagement of a Financial Management, Legal, and Taxation Consultant, and not for a legal counsel. However, he agreed that they authorized Atty. Salvacion to appear in cases involving the City Government of Tayabas. Likewise, he admitted that Atty. Salvacion appeared as the counsel of the City in several cases before the Regional Trial Court of Lucena City,⁸² and that he was paid for the services that he rendered for the City.⁸³ He said that Atty. Salvacion's appearance at the RTC of Lucena was not as a consultant, but as the lawyer of the City of Tayabas.

He also affirmed that the contract of service would not have been entered into had the *Sanggunian* not authorized the Mayor to do so. When asked as to whether he, as a member of the *Sanggunian*, studied the request made by accused Silang regarding the authority to enter into a contract with a consultant, he said that he did, but only learned about the notice of disallowance during the

⁷⁹ TSN dated 20 June 2016, p. 19.

⁸⁰ TSN dated 20 June 2016, pp. 20-21.

⁸¹ TSN dated 20 June 2016, pp. 28-57.

⁸² TSN dated 20 June 2016, p. 50.

⁸³ TSN dated 20 June 2016, p. 53.

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deliberation. Despite knowledge of the notice of disallowance, he said that he voted for the Resolution because it is for the general welfare of the local government.

The **Court inquired**⁸⁴ as to why some functions of the City Accountant were included in the contract of service of Atty. Salvacion, to which he responded that they thought it was a "bonus" for the City that Atty. Salvacion, aside from being a lawyer, can perform some of the City Accountant's tasks which the latter cannot handle anymore.

On **re-direct examination**,⁸⁵ he said that the notice of disallowance was still on appeal when the deliberations on the Resolution was held.

Upon **inquiry from the Court**,⁸⁶ he said that the fact that there were no applicants for the Legal Officer position is supported by a certification from the Human Resources Department, but he still admitted that the resolution was initiated by the City Mayor.

Josefina O. Perez ("Perez"),⁸⁷ Human Resource Management Officer, Local Government Unit of Tayabas, Quezon, on **direct examination**⁸⁸ brought to the Court documents purporting to show that notices have been posted regarding the vacancy of the Legal Officer position dated 23 December 2011, 04 September 2012, 03 January 2014, 10 January 2014, and 12 September 2014. She also referred to several certifications stating that notices were posted regarding the vacancy of the Legal Officer position.

She relayed that the regular procedure in filling vacant positions is to have it posted, but since the Legal Officer is a coterminous⁸⁹ and highly confidential position requiring trust and confidence of the local chief executive, it does not need any publication.⁹⁰ She said that for the Legal Officer position, they would accept applications and submit them to the local chief executive for him to choose. However, because the Legal Officer position had been vacant for a long time, and as advised by the local chief executive, they decided to post the vacancy. After posting the vacancy, no one applied for the position. She even added that until that hearing day, there was still no City Legal Officer.

 ⁸⁴ TSN dated 20 June 2016, pp. 58-59

⁸⁵ TSN dated 20 June 2016, pp. 62-63


⁸⁶ TSN dated 20 June 2016, pp. 63-64.

⁸⁷ TSN dated 05 October 2016.

⁸⁸ TSN dated 05 October 2016, pp. 15-48.

⁸⁹ TSN dated 05 October 2016, p. 35.

⁹⁰ TSN dated 05 October 2016, p. 34, 38.



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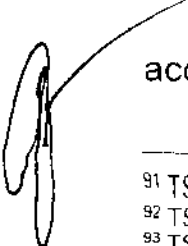
Upon **inquiry from the Court**,⁹¹ she confirmed that the City Legal Officer also submits a daily time record (DTR), however she is not sure if it is mandatory or not.

Accused **Rea**,⁹² former Vice Mayor of Tayabas City, Quezon, testified on **direct examination**⁹³ about the procedure⁹⁴ that the *Sanggunian* follows whenever an appointment is needed for a department or office. He explained that when an appointment is needed, the department heads or the Mayor would write a letter to them which they will include in the agenda for the next session of the *Sanggunian*. During the meeting, the agenda are read and then each agendum will be submitted or referred to the proper committee. The committee will then study the matter and come up with an initial finding which will be included in the committee report to be presented in the next session. On the next session, the committee will present their report and recommendation, and will entertain questions and discussions on the matter. If the body cannot agree with the recommendation, they will resort to voting. Once the matter is settled, the resolution will be approved, and the gavel will be struck. The secretary will then forward the resolution to the Office of the Mayor.

As to the engagement of Atty. Salvacion, he said that it was initiated by a letter request from the Mayor asking for a resolution from the *Sanggunian* authorizing him to enter into a contract with the former.⁹⁵ The head of the committee to which the matter was referred to was Abrigo, who thoroughly studied the request of the Mayor before arriving at a recommendation. As the Vice-Mayor, he presided the proceedings and only voted if there was a tie. In this case, since there was no tied voting, he did not cast any vote regarding the Resolution. He mentioned that the passage of the resolution for the authority to engage Atty. Salvacion's service passed through the same process, ultimately garnering the majority vote required for it to be passed.

He further averred that aside from the letter and documents sent by the Mayor to the *Sanggunian*, he received no other instructions from him.

On **cross examination**,⁹⁶ he admitted that the letter request of accused Silang was tackled in a regular session.

⁹¹ TSN dated 05 October 2016, pp. 39-40.

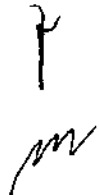
⁹² TSN dated 09 November 2016.

⁹³ TSN dated 09 November 2016, pp. 7-17.

⁹⁴ TSN dated 09 November 2016, pp. 8-9.

⁹⁵ TSN dated 09 November 2016, p. 10.

⁹⁶ TSN dated 09 November 2016, pp. 17-22.



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On **re-direct examination**,⁹⁷ he said that the Secretary's signature appeared on the Resolution to show that she attested that the contents of the Resolution are those which have been discussed during the session, while his signature as Vice Mayor served to support the Secretary's attestation.

On **re-cross examination**,⁹⁸ he said that it was possible that other contracts were also tackled on the day the Resolution was passed, but he maintains that these were thoroughly studied beforehand by the respective committees.

Upon **inquiry from the Court**,⁹⁹ he said that he was not aware of the requirement on the authority from the Office of the Solicitor General or the Department of Justice before a private lawyer is engaged for the city. He said that while he leaves to the secretary the preparation of the agenda, he would not sit idly if he thinks that a request is illegal.¹⁰⁰

Accused **Silang**,¹⁰¹ former Mayor of Tayabas City, Quezon, testified on **direct examination**¹⁰² that the budget used for several service contracts with various professionals entered into by the City were taken from the Office of the Mayor under the MOOE. He said that under the contract, Atty. Salvacion was a financial management, legal, and taxation consultant. He added that Atty. Salvacion performed functions which may be performed even if one is not a lawyer.

He asserted that the City did not have its own Legal Officer because no one applied for the position even before he assumed office in 2007.¹⁰³ Since the position of a Legal Officer is a confidential position, he said that the posting of vacancy requirement does not apply. He explained that he tried to look for a lawyer who would be willing to take the position but found no one.¹⁰⁴ Because of this, he decided to seek the assistance of Human Resources Officer Perez to post the vacancy, hoping that it would reach a wider audience. However, despite the notices posted and his own efforts, no one applied for the position.

He clarified that the legal aspect of Atty. Salvacion's engagement included only the review of *barangay* ordinances

⁹⁷ TSN dated 09 November 2016, pp. 22-25.

⁹⁸ TSN dated 09 November 2016, pp. 25-26.

⁹⁹ TSN dated 09 November 2016, pp. 26-32.

¹⁰⁰ TSN dated 09 November 2016, pp. 31-32.

¹⁰¹ TSN dated 10 November 2016.

¹⁰² TSN dated 10 November 2016, pp. 9-32.

¹⁰³ TSN dated 10 November 2016, p. 21.

¹⁰⁴ TSN dated 10 November 2016, p. 22.

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pertaining to taxes, giving of advice to *barangays* on which taxes should be imposed on businesses and establishments, and on how to impose these taxes properly. Due to Atty. Salvacion's involvement in the said matter, the businessmen had all of their grievances addressed, while *barangay* ordinances with certain defects have been corrected and the *barangay* officials have been apprised on how to properly conduct the imposition and collection of taxes.¹⁰⁵ He insisted that the City paid no acceptance fees to Atty. Salvacion, and that this claim is evidenced by the certification issued by the Municipal Accountant that no acceptance fees or payment for the performance of legal services were ever paid to Atty. Salvacion.¹⁰⁶

On **cross examination**,¹⁰⁷ he confirmed that in the budget, there is a separate provision for legal services (code 791) and for other professional services (code 799). He agreed that all disbursements relative to the services of Atty. Salvacion required his approval. But, he contended that while he signed the journal entry voucher, all the entries therein were made by the City Accountant. He said that the amount used for the payment of Atty. Salvacion's services were from fund 791. However, he averred that he was not aware that the payment will be charged under fund 791.¹⁰⁸ When asked whether he is aware that 791 was for legal services, he argued that when he signed the journal entry voucher, such entry was not yet recorded therein. He also confirmed that there is a notation saying that there was "no clearance from the Sol. Gen., COA and Notice of Disallowance."¹⁰⁹ He admitted that he knew about the prohibition on hiring of private lawyers by local government units, but he insisted that the notice sent by COA did not mention the charging of the payment for services under fund 791.

On **re-direct**,¹¹⁰ he clarified that he did not hire a private lawyer. He added that he secured clearance from COA regarding the payment stated in the voucher, and that the COA accepted their explanation that it was for the payment for Atty. Salvacion's *honorarium* for a certain period. Furthermore, he reiterated that the COA Notice of Disallowance is still pending in the COA.

Upon **inquiry from the Court**,¹¹¹ he clarified that after consultation with the COA, they changed the contract of Atty. Salvacion from service contract to a consultancy contract. He also

¹⁰⁵ TSN dated 10 November 2016, p. 23-24.

¹⁰⁶ TSN dated 10 November 2016, p. 25.

¹⁰⁷ TSN dated 10 November 2016, pp. 32-44.

¹⁰⁸ TSN dated 10 November 2016, p. 40.

¹⁰⁹ TSN dated 10 November 2016, p. 39.

¹¹⁰ TSN dated 10 November 2016, pp. 44-50.

¹¹¹ TSN dated 10 November 2016, pp. 50-54

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elaborated on the services that Atty. Salvacion performed for the City, and said that the latter assisted them in the revision of the local revenue code, particularly on the fees, charges and taxation for local businesses. He also reviewed the collections of the taxes, improvement of real property tax collection, renewed tax mapping, and revision of the comprehensive land use plan and zoning.

With the completion of the presentation of the defense evidence, accused Silang, Abadilla, Abrigo and Reyes filed their Formal Offer of Exhibits,¹¹² adopted¹¹³ by accused Rea, Oabel, Cayanan and Cuadra, and resolved¹¹⁴ by this Court as follows:

"xxx the Court **RESOLVES** to **ADMIT** into evidence defense Exhibits "1," "1-A," "1-B," "1-C," "1-D," to "1-S," "2," "2-A," "2-B," "2-C," and "2-K," "3-A," "4," "5" and series, "6" and "6-a," "7" and series, "8" and series, "9," "10," "11," "12," and "13," for the purposes for which they were offered but subject to the Court's proper appreciation of their respective probative values. xxx"

Thereafter, only accused Silang, Abadilla, Abrigo and Reyes submitted a Memorandum.¹¹⁵

THE FACTS

The following narration of facts is based on the documentary and testimonial evidence found on record, as well as on the stipulations made between the parties:

On 12 January 2011, then Vice-Mayor, accused Rea, as presiding officer of the *Sangguniang Panlungsod* of Tayabas, together with accused Cuadra, Abadilla, Abrigo, Reyes, Oabel, and Cayanan, who were then incumbent members thereof, passed and approved Resolution No. 11-28,¹¹⁶ giving then Mayor, accused Silang, the authority to enter into a Contract of Service with Atty. Salvacion as Financial Management, Legal and Taxation Consultant for the period of January to July 2011.¹¹⁷

Prior to its passage, the said Resolution was opposed by the other members of the *Sanggunian*.¹¹⁸ Apparently, on 21 August 2008, the COA issued an Audit Observation Memorandum (AOM),

¹¹² Records, Vol. III, pp. 199-216

¹¹³ Records, Vol. III, pp. 222-223, 224-225

¹¹⁴ Records, Vol. III, pp. 232, 248

¹¹⁵ Records, Vol. III, pp. 274-304

¹¹⁶ See Exhibits "J" and "J-2"

¹¹⁷ See Exhibit "J-3"

¹¹⁸ See Exhibit "J-6"

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with Reference No. AOM 2008-001,¹¹⁹ imploring accused Silang to stop hiring a private lawyer, like Atty. Salvacion, to render legal services for the City because it is prohibited under the provisions of Section 481 of R. A. No. 7160 and COA Circular No. 98-002, dated 09 June 1998. This was followed by the issuance of a Notice of Disallowance, ND No. 2009-003-101(08),¹²⁰ dated 02 October 2009, disallowing the payment of Php156,600.00 to Atty. Salvacion for being violative of COA Circular No. 98-002, and Section 212 of the Government Accounting and Auditing Manual ("GAAM"), prohibiting local government unit from employing a private lawyer to handle government cases.

Despite these prohibitions, accused Silang, by virtue of *Sangguniang Panlungsod* Resolution No. 11-28, still executed the Contract of Service¹²¹ with Atty. Salvacion. Correspondingly, Atty. Salvacion was paid and he received the following *honoraria*,¹²² for the period of January to July 2011:

Date of Check	Period Covered	Check Number	Gross Amount	Net of Tax
Feb. 1, 2011	Jan. 13-31	16444	19,500.00	17,500.00
Feb. 17, 2011	Feb. 1-15	16646	16,500.00	14,850.00
Mar. 3, 2011	Feb. 16-28	16776	13,500.00	12,150.00
Mar. 17, 2011	Mar. 1-15	16940	16,500.00	14,850.00
April 5, 2011	Mar. 16-31	17049	18,000.00	16,200.00
April 20, 2011	April 1-15	18204	16,500.00	14,850.00
May 3, 2011	April 16-30	18302	12,000.00	10,800.00
May 23, 2011	May 1-15	18468	15,000.00	13,500.00
June 1, 2011	May 16-31	18612	18,000.00	16,200.00
June 22, 2011	June 1-15	18806	16,500.00	14,850.00
July 7, 2011	June 16-30	18966	15,000.00	13,500.00
Aug. 4, 2011	July 1-15	19272	10,000.00	9,450.00
Aug. 18, 2011	July 16-31	19407	16,500.00	14,850.00
Total			204,000.00	183,600.00

On 26 August 2011 and 04 October 2011, private complainants Rosauro Q. Dalida ("Dalida"), Nicomedes C. Abesamis ("Abesamis") and Cabriga, as well as private complainant Reynoso, all members of the *Sangguniang Panlungsod* of Tayabas, filed their Joint Complaint-Affidavit¹²³ and Complaint-Affidavit,¹²⁴ respectively, against the herein accused before the Office of the Ombudsman for Luzon ("Ombudsman-Luzon"). Accordingly, administrative and criminal charges were imputed against accused Silang for entering

¹¹⁹ See Exhibit "G"

¹²⁰ See Exhibit "H"

¹²¹ See Exhibit "K"

¹²² See Exhibits "R" to "BB"

¹²³ See Exhibit "B"

¹²⁴ See Exhibit "C"

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into a contract of service with Atty. Salvacion and approving the disbursement of public funds as payment of his *honoraria*; and against accused Rea, Cuadra, Abadilla, Abrigo, Oabel, Reyes and Cayanan for authorizing accused Silang's contract with Atty. Salvacion. On 12 December 2013, the Ombudsman-Luzon issued a Consolidated Resolution,¹²⁵ finding probable cause for violations of Section 3(e) and (j) of R. A. No. 3019 and directed the filing of the corresponding Informations.

Hence, these cases.

DISCUSSION

In Criminal Case No. **SB-14-CRM-0365**, accused Silang, Rea, Cuadra, Abadilla, Abrigo, Reyes, Oabel and Cayanan (herein collectively referred to as "accused" for brevity) were charged with violation of Section 3 (e) of R. A. No. 3019, which punishes public officers who caused any undue injury to any party, including the Government, or gave any private party any unwarranted benefits, advantage, or preference in the discharge of their official, administrative, or judicial functions through manifest partiality, evident bad faith, or gross inexcusable negligence.¹²⁶ Accordingly, a successful prosecution under the said provision, entails the concurrence of the following elements:

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

After a thorough review of the evidence, the Court finds that all of the elements of the crime are present.

In this case, the first element is undisputed. As per Joint Stipulation of Facts¹²⁷ submitted by the parties, it was already admitted that the accused were public officers, holding the positions

¹²⁵ Records, Vol. I, pp. 5-30

¹²⁶ Farouk B. Abubakar vs. People of the Philippines (G. R. No. 202408, June 27, 2018)

¹²⁷ *Supra*, footnote 17

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of City Mayor, Vice-Mayor and City Councilors, respectively, at the time material to this case. Moreover, it was proven that the accused were in the discharge of their official functions when the prohibited act was committed. Here, accused Silang, as the Mayor, represented Tayabas City in executing the Contract of Service with Atty. Salvacion. On the other hand, accused Rea, Cuadra, Abadilla, Abrigo, Reyes, Oabel and Cayanan, in their capacity as *Sangguniang Panlungsod* members, granted accused Silang's authority to execute such contract with Atty. Salvacion.

The second element of Section 3 (e) provides the modalities by which a violation thereof may be committed.¹²⁸ There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.¹²⁹ Meanwhile, the concept of "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 a sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.¹³⁰ The term "evident bad faith" therefore contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes.¹³¹ "Gross inexcusable negligence" pertains to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.¹³² Significantly, jurisprudence instructs that "manifest partiality," "evident bad faith," or "gross inexcusable negligence" are not separate offenses, and thus, proof of the existence of any of the three (3) in connection with the prohibited act is enough to convict.¹³³

Here, the accused committed evident bad faith when they continued to employ the legal services of Atty. Salvacion, a private lawyer, despite the clear mandate of Section 481 of R. A. No. 7160, otherwise known as the Local Government Code of 1991 (LGC), and COA Circular No. 98-002 dated 09 June 1998. Section 481 of the LGC states that:

xxx

xxx

xxx

The appointment of legal officer shall be mandatory for the provincial and city governments and optional for the municipal

¹²⁸ *Supra*, footnote 126

¹²⁹ *People of the Philippines vs. Aristeo E. Atienza, et al.* (G. R. No. 171671, June 18, 2012)

¹³⁰ *Rolando E. Sison vs. People of the Philippines*, (G. R. Nos. 170339, 170398-403, March 9, 2010)

¹³¹ *Supra*, footnote 130

¹³² *Id.*

¹³³ *Id.*, footnote 126

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government.

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xxx

(3) In addition to the foregoing duties and functions, the legal officer shall:

(i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: *Provided*, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party; xxx

These pertinent provisions of Section 481 of the LGC was acknowledged and clarified in COA Circular No. 98-002, to wit:

xxx Finally, Section 481, third paragraph, of R. A. No. 7160 provides that "the appointment of a legal officer shall be mandatory for the provincial and city governments and optional for the municipal government." **Evidently, provincial and city governments have no choice but to appoint their respective legal officers, hence they cannot under any condition be represented by a private lawyer or law firm.**

xxx

xxx

xxx

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and properties (Sec. 2-2, Art. IX-D, Constitution), **public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government owned and controlled corporations and local government units in court or to render legal services for them.** In the event that such legal services cannot be avoided or is justified under extra-ordinary or exceptional circumstances for government agencies and instrumentalities, including government-owned or controlled corporations, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case maybe, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm. **With respect to local government units, only in those instances provided in par. 3(1), Section 481 of R. A. No. 7160, which states, thus:**

xxx *Provided*, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer

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may be employed to represent the adverse party.

may public funds be utilized as payment for the services of a private legal counsel or law firm. xxx" (*emphasis ours*)

As established from the records, accused Silang was made aware of these rules when the COA issued its AOM dated 21 August 2008. In the said AOM, accused Silang was advised to stop the hiring of a private lawyer to render legal services for the City because it runs counter to the aforementioned provisions of Section 481 of the LGC as well as COA Circular No. 98-002. Instead of complying, accused Silang ignored the restrictions and continued to hire the services of Atty. Salvacion as legal counsel for the City under the guise of a Service Contract for Consultancy.

In his defense, accused Silang denies Atty. Salvacion's employment as the City's legal counsel, contending that under the Contract of Service Atty. Salvacion's designation was "Financial Management Legal and Taxation Consultant" and his duties were limited to consultations in connection with his capacity as a Certified Public Accountant (CPA). However, the evidence on record negates accused Silang's allegation. The evidence shows that while Atty. Salvacion was hired as such consultant, he still represented Tayabas City in a special civil action¹³⁴ and in a civil case filed against the same.¹³⁵ A review of the evidence further discloses that the previous employment of Atty. Salvacion under a job contract as legal counsel for the City was merely changed into a service contract for "Financial Management Legal and Taxation Consultant" to make it appear that he was just a consultant but he remained as counsel of record for the City. This is a direct violation of the provision of Section 481 of the LGC, which states that the LGU shall be represented by its legal officer in all civil actions and special proceedings wherein which such LGU is a party.

Grasping at straws, accused Silang tried to justify the employment of Atty. Salvacion, claiming that the latter was hired because the Legal Officer's position has been vacant for years, and that despite the announcement of such vacancy no one applied for the position. This argument of accused Silang fails to persuade. The import of the mandatory appointment of a legal officer under Section 481 of the LGC is elucidated in COA Circular No. 98-002. In the said circular, the COA opines that the city government must appoint its legal officer because it cannot under any condition be represented by a private lawyer or firm. Concomitantly, the COA

¹³⁴ See Exhibits "M", "M-8" to "M-10"

¹³⁵ See Exhibits "N", "N-15" to "N-23"

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also recognized in its circular, Section 481(b)(3)(i) of the LGC, which provides that the City can avail of the services of a special legal officer only when it is the adverse party in a case involving the provincial government or another component city or municipality. The situation in this case did not fall under the exception provided in Section 481(b)(3)(i) of the LGC, since the special proceeding and the civil case handled by Atty. Salvacion for Tayabas City is not against the provincial government nor is it against another component city or municipality. Thus, the hiring of Atty. Salvacion as the city's "legal counsel/consultant" via the service contract is not allowed.

In the case of *Asean Pacific Planners, App Construction and Development Corporation and Cesar Goco, vs. City of Urdaneta, et al.*,¹³⁶ the Supreme Court upheld the mandate of Section 481 of the LGC, in this wise:

xxx We cannot agree with the Lazaro Law Firm. Its appearance as Urdaneta City's counsel is against the law as it provides expressly who should represent it. The City Prosecutor should continue to represent the city.

Section 481 (a) of the Local Government Code (LGC) of 1991 mandates the appointment of a city legal officer. Under Section 481 (b)(3)(i) of the LGC, the city legal officer is supposed to represent the city in all civil actions, as in this case, and special proceedings wherein the city or any of its officials is a party. In *Ramos v. Court of Appeals*, we cited that under Section 19 of Republic Act No. 5185, city governments may already create the position of city legal officer to whom the function of the city fiscal (now prosecutor) as legal adviser and officer for civil cases of the city shall be transferred. In the case of Urdaneta City, however, the position of city legal officer is still vacant, although its charter was enacted way back in 1998.

Because of such vacancy, the City Prosecutor's appearance as counsel of Urdaneta City is proper. The City Prosecutor remains as the city's legal adviser and officer for civil cases, a function that could not yet be transferred to the city legal officer. Under the circumstances, the RTC should not have allowed the entry of appearance of the Lazaro Law Firm vice the City Prosecutor. xxx

Moreover, the appearance of the Lazaro Law Firm as counsel for Urdaneta City is against the law. Section 481 (b) (3) (i) of the LGC provides when a special legal officer may be employed, that is, in actions or proceedings where a component city or municipality is a party adverse to the provincial government. But this case is not between Urdaneta City and the Province

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of Pangasinan. And we have consistently held that a local government unit cannot be represented by private counsel as only public officers may act for and in behalf of public entities and public funds should not be spent to hire private lawyers. *Pro bono* representation in collaboration with the municipal attorney and prosecutor has not even been allowed. xxx (*emphasis ours*)

The above-quoted ruling settles the dilemma in case of vacancy in the legal officer's position, confirming that such vacancy is not a justification for the city government to hire the services of a private lawyer or law firm. The ruling suggests that the City's remedy is to opt for the assistance of the City Prosecutor to represent it in court. This is bolstered by the doctrine laid down in the case of *Antonio C. Ramos, et al., vs. Court of Appeals, et al.*,¹³⁷ viz.:

xxxx The matter of representation of a municipality by a private attorney has been settled in *Ramos vs. Court of Appeals, et al.*, and reiterated in *Province of Cebu vs. Intermediate Appellate Court, et al.*, where we ruled that private attorneys cannot represent a province or municipality in lawsuits.


Section 1683 of the Revised Administrative Code provides:

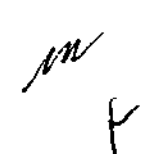
Section 1683. *Duty of fiscal to represent provinces and provincial subdivisions in litigation.* — The provincial fiscal shall represent the province and any municipality or municipal district thereof in any court, except in cases whereof (sic) original jurisdiction is vested in the Supreme Court or in cases where the municipality or municipal district in question is a party adverse to the provincial government or to some other municipality or municipal district in the same province. When the interests of a provincial government and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province.

When the provincial fiscal is disqualified to serve any municipality or other political subdivision of a province, a special attorney may be employed by its council.

Under the above provision, complemented by Section 3, Republic Act No. 2264, the Local Autonomy Law, only the provincial fiscal and the municipal attorney can represent a province or municipality in their lawsuits. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it. xxxx

The foregoing provisions of law and jurisprudence show that only the provincial fiscal, provincial attorney, and municipal attorney should represent a municipality in its lawsuits. Only in

 ¹³⁷ G. R. No. 99425, March 3, 1997



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exceptional instances may a private attorney be hired by a municipality to represent it in lawsuits. xxxx


This strict coherence to the letter of the law appears to have been dictated by the fact that 'the municipality should not be burdened with expenses of hiring a private lawyer' and that the interests of the municipality would be best protected if a government lawyer handles its litigations. xxxx

As already stated, private lawyers may not represent municipalities on their own. Neither may they do so even in collaboration with authorized government lawyers. This is anchored on the principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers. (*emphasis ours*)

The implication of the above doctrine is that the City has at its disposal the services of the other government lawyers to assist/aid it in its cases in court, but accused Silang did not explore his other options. Truth be told, his intention to circumvent the rules is further displayed in the letters he wrote to the Provincial Prosecutor¹³⁸ and the Provincial Attorney.¹³⁹ In his letters, accused Silang never even sought the assistance of the Provincial Prosecutor or the Provincial Attorney; instead he requested them to just issue a certification that their respective offices cannot accommodate the request of the city to be represented in its pending cases so he can use such certification to obtain the written conformity of the Solicitor General and the COA to allow him to hire a private lawyer. The tenor of accused Silang's letters is a confirmation of his resolve to continue the employment of Atty. Salvacion, notwithstanding the COA's admonition in its AOM dated 21 August 2008, that the employment of Atty. Salvacion is contrary to the provisions of Section 481 of the LGC and COA Circular No. 98-002.

In the same vein, accused Rea, Cuadra, Abadilla, Abrigo, Reyes, Oabel and Cayanán cannot feign ignorance of the irregularity in the contract of service between accused Silang and Atty. Salvacion. Here, the records reveal that the aforementioned accused still approved and gave accused Silang the authority to enter into the contract of service for consultancy with Atty. Salvacion, despite the outstanding Notice of Disallowance previously issued by the COA, disallowing payment for Atty. Salvacion's legal services, on the ground that there was a violation of COA Circular No. 98-002, which prohibited the LGU from hiring a private lawyer to handle its

 ¹³⁸ See Exhibit "6"

¹³⁹ See Exhibit "6-a" 

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legal cases.¹⁴⁰

The third element refers to two (2) separate acts that qualify as a violation of Section 3 (e) of R. A. No. 3019, to wit: (1) by causing undue injury to any party, including the Government, or (2) by giving any private party any unwarranted benefit, advantage or preference.¹⁴¹ In this case, the evidence adduced amply supports the allegations in the herein Information that the payment of Atty. Salvacion's *honoraria* not only gave the latter unwarranted benefits, advantage, or preference, but it also resulted in undue injury to the government.

Jurisprudence defines the word "unwarranted" as something lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason.¹⁴² "Advantage" signifies a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.¹⁴³ "Preference" denotes priority or higher evaluation or desirability; choice or estimation above another.¹⁴⁴ Here, the action of the accused in hiring the services of Atty. Salvacion despite the clear mandate of Section 481 of the LGC, resulted in the latter's receipt of unwarranted benefits because he was paid his *honoraria* for the legal services he rendered for the City. Verily, the unjustified and unauthorized payment of Atty. Salvacion's *honoraria* is evident from the directive in COA Circular No. 98-002, which prohibits the LGU's from using public funds as payment for the services of a private legal counsel or law firm to represent them or render legal services for them. In a similar way, the actions of the accused caused undue injury¹⁴⁵ to the city government because it was burdened to pay Atty. Salvacion's *honoraria* in the amount of Php183,600.00.¹⁴⁶

In Criminal Case No. **SB-14-CRM-0366**, all of the accused were charged with the violation of Section 3 (j) of R. A. No. 3019,¹⁴⁷

¹⁴⁰ See Exhibits "H", "J-2" to "J-6"

¹⁴¹ *Supra*, footnote 126

¹⁴² *Id.*

¹⁴³ *Supra*, footnote 126

¹⁴⁴ *Id.*

¹⁴⁵ In the case of Cresente Y. Llorente, Jr. vs. Sandiganbayan and Leticia G. Fuertes, (G. R. No. 122166, March 11, 1998), "undue injury" has been interpreted as actual damage. Used in this context, undue injury as an actual damage is akin to that defined under Article 2199 of the Civil Code, which states:

"Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

¹⁴⁶ *Supra*, footnote 122

¹⁴⁷ Section 3 (j) of R. A. No. 3019, provides:

Knowingly approving or granting any license, permit, privilege or benefit in favor of any

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which punishes the act of public officers who knowingly approve or grant a license, permit, privilege or advantage to a person not qualified or legally entitled thereto.¹⁴⁸ The records in this case verify that all of the accused knew and were made aware of the prohibition on the hiring of a private lawyer for the legal needs of the City. The Court notes that as early as 2008, accused Silang was informed about this prohibition when the COA, in its AOM dated 21 August 2008, cautioned him from continuing the employment of Atty. Salvacion as legal counsel of the City. In the said AOM the COA clearly pointed out that the hiring of a private lawyer, like Atty. Salvacion, to render legal services for the City is not allowed as it contradicts the provisions of Section 481 of the LGC and COA Circular No. 98-002. Undeterred, accused Silang continued the employment of Atty. Salvacion. In fact, accused Silang initiated and asked for authorization to enter into a contract of service with Atty. Salvacion, knowing full well that the latter is not legally entitled nor is he qualified to render legal services for the City. Similarly, accused Rea, Cuadra, Abadilla, Abrigo, Reyes, Oabel and Cayanan, were given notice of the same prohibition during the deliberation for the authorization of accused Silang's execution of the contract of service with Atty. Salvacion. As found in the records of the case, the other members of the *Sangguniang Panlungsod* opposed and voted against giving accused Silang such authority because of the outstanding Notice of Disallowance issued by the COA, which explicitly prohibits the LGU from employing private lawyers to handle its legal cases. This notwithstanding, accused Rea, Cuadra, Abadilla, Abrigo, Reyes, Oabel and Cayanan, approved and authorized accused Silang to execute the contract of service with Atty. Salvacion.

Likewise, the allegation of conspiracy against the accused is established. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime, and decide to commit it.¹⁴⁹ As enshrined in jurisprudence, direct proof is not essential to show conspiracy.¹⁵⁰ This is so because conspiracy may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.¹⁵¹ Thus, for an accused to be validly held to

person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified of entitled.

¹⁴⁸ *People of the Philippines, vs. Sandiganbayan (1st Division), et al.*, (G. R. Nos. 162748-50, March 28, 2006)

¹⁴⁹ *Celerino Chua alias Suntay, vs. People of the Philippines* (G. R. No. 172193, September 13, 2017)

¹⁵⁰ *Miguel D. Escobar, et al., vs. People of the Philippines* (G. R. No. 205576, November 20, 2017)

¹⁵¹ *People of the Philippines vs. Jomar Sisracon y Rupisan, et al.*, (G. R. No. 226494, February 14, 2018)

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conspire with his co-accused in committing the crimes, his overt acts must tend to execute the offense agreed upon.¹⁵² Stated differently, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy.¹⁵³ Here, accused Silang's defiance of the mandate of Section 481 of the LGC and COA Circular No. 98-002, is seen when he continued to hire Atty. Salvacion's legal services under the guise of a contract of service. Despite notice of the apparent irregularity of the proposed contract of service, accused Rea, Cuadra, Abadilla, Abrigo, Reyes, Oabel and Cayanan, facilitated the execution thereof when they approved and authorized accused Silang to enter into such contract with Atty. Salvacion. Without a doubt, their individual and active participation contributed to the commission and accomplishment of the crimes charged herein.

From foregoing discussions, the Court is convinced that all of the accused committed the offenses charged and the evidence adduced is enough to support their conviction.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In **Criminal Case No. SB-14-CRM-0365**, accused **FAUSTINO A. SILANG, VENERANDO R. REA, LUZVIMINDA V. CUADRA, REX L. ABADILLA, ABELARDO P. ABRIGO, JR., MACARIO J. REYES, ROY LIBRADO L. OABEL and ROMEO F. CAYANAN** are found **GUILTY** beyond reasonable doubt of violation of Section 3 (e) of R. A. No. 3019 and, pursuant to Section 9 thereof, are hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum.

2. In **Criminal Case No. SB-14-CRM-0366**, accused **FAUSTINO A. SILANG, VENERANDO R. REA, LUZVIMINDA V. CUADRA, REX L. ABADILLA, ABELARDO P. ABRIGO, JR., MACARIO J. REYES, ROY LIBRADO L. OABEL and ROMEO F. CAYANAN** are found **GUILTY** beyond reasonable doubt of violation of Section 3 (j) of R. A. No. 3019 and, pursuant to Section 9 thereof, is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum.

SO ORDERED.

¹⁵² *Id.*, footnote 147

¹⁵³ Atty. Allan S. Hilbero, vs. Florence A. Morales, Jr. (G. R. No. 198760, January 11, 2017)

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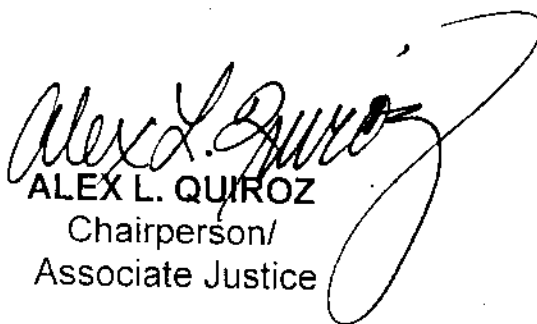
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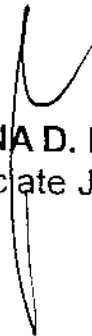
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REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


***GEORGINA D. HIDALGO**
Associate Justice

* Sitting as *Special Member* of the Fourth Division per Administrative Order No. 448-2018 dated 05 September 2018.

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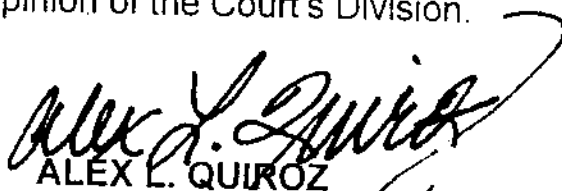
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ATTESTATION

I attest that the conclusion in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEX L. QUIROZ

Chairperson, Fourth Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

