



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City  
FIRST DIVISION

CERTIFIED TRUE COPY:

ESTELA TERESITA C. ROSETE  
Executive Clerk of Court III  
Sandiganbayan-First Division

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

-versus-

JOEL G. SALVADOR, ET AL.,  
*Accused.*

SB-15-CRM-0096 to 0098  
For: Violation of Sec. 3(e),  
R.A. No. 3019, as amended

SB-15-CRM-0099  
For: Illegal Use of Public  
Funds penalized under  
Article 220 of the Revised  
Penal Code

Present:  
DE LA CRUZ, J. *Chairperson*  
ECONG, J. and  
CALDONA, J.

PROMULGATED:

JUN 21 2019

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DECISION

*Econg, J:*

Accused **Joel G. Salvador** ("Salvador") stands charged for three (3) counts of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and one (1) count of Illegal Use of Public Funds defined and penalized under Article 220 of the Revised Penal Code.

Accused **Rolando C. Reyes** ("Reyes") is being charged for two (2) counts of violation of Section 3(e) of R.A. 3019, while accused **Asterio C. Tolentino, Jr.** ("Tolentino") and **Perlita L.**

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**Mauri** ("Mauri") stand charged with one (1) count of violation of Section 3(e) of R.A. 3019 and one (1) count of Illegal Use of Public Funds defined and penalized under Article 220 of the Revised Penal Code. Accused **Marlano L. Ang** ("Ang") and **David O. Dominong** ("Dominong") are being charged with one (1) count of violation of Section 3(e) of R.A. 3019.

The Informations in these cases read as follows,<sup>1</sup> to wit:

**SB-15-CRM-0096 (Pp vs. Salvador, et al.)**  
**(Violation of Section 3(e), R.A. 3019)**

That on or about December 29, 2003, or sometime prior or subsequent thereto, in Baguio City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [**Joel G. Salvador**], a high ranking public officer, being then Regional Director of Environment and Natural Resources, Cordillera Administrative Region (CAR), committing the crime herein charged in relation to his office and taking advantage of his official functions, acting with manifest partiality and evident bad faith, did then and there willfully, unlawfully and criminally give unwarranted benefit, privilege or advantage to David Dominong by awarding the repair/rehabilitation of the Regional Director's Office and Environmental Information Center located at the Department of Environment and Natural Resources, Baguio City without public bidding as required by Republic Act No. 9184 thereby causing undue injury to the government and to the public as a whole.

CONTRARY TO LAW.

**SB-15-CRM-0097 (Pp vs. Salvador, et al.)**  
**(Violation of Section 3(e), R.A. 3019)**

That on or about December 29, 2003, or sometime prior or subsequent thereto, in Baguio City, Philippines, and within the jurisdiction of this Honorable Court, accused **Joel G. Salvador**, being then then the Regional Director and a high ranking public officer, **Rolando C. Reyes** then Officer-in-Charge of Administrative and Finance Division, **Asterlo C. Tolentino, Jr.**, then Accountant, and **Perlita L. Mauri**, then Budget Officer, all of the Environmental Management Bureau, Department of Environment and Natural Resources, Cordillera Administrative Region (CAR), committing the crime herein charged in relation to their office and taking advantage of their official or administrative functions, acting with manifest partiality and evident bad faith and conspiring and confederating with accused **Marlano Ang**, owner of Pyramid Hardware and Construction Supply (PHCS) and with one another, did then and there willfully, unlawfully and criminally give unwarranted

<sup>1</sup> Records, Vol. 1, page 1.

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benefit to accused Mariano Ang by purchasing from PHCS the construction materials used in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the Department of Environment and Natural Resources, Baguio City in the amount of Seven Hundred Fifty Eight Thousand Nine Hundred Ninety Eight Pesos and Seven Centavos (PhP758,998.07) without public bidding as required by Republic Act No. 9184 which amount was already paid to and accepted by accused Ang despite the fact that the goods had not been delivered, thereby causing undue injury to the government and to the public as a whole.

CONTRARY TO LAW.

**SB-15-CRM-0098 (Pp vs. Salvador, et al.)**  
**(Violation of Section 3(e), R.A. 3019)**

That on or about December 29, 2003, or sometime prior or subsequent thereto, in Baguio City, Philippines, and within the jurisdiction of this Honorable Court, accused **Joel G. Salvador**, being then the Regional Director and a high ranking public officer, and **Rolando C. Reyes**, then Officer-in-Charge of Administrative and Finance Division, both of the Environmental Management Bureau, Department of Environment and Natural Resources, Cordillera Administrative Region (CAR), as such public officers, committing the crime herein charged in relation to their office and taking advantage of their official functions, acting with manifest partiality and evident bad faith and conspiring and confederating with accused **David Dominong** and with one another, did then and there willfully, unlawfully and criminally give unwarranted benefit, privilege or advantage to David Dominong, a private Contractor, authorizing the payment of retention fee in the amount of Thirty Three Thousand Seven Hundred Seventy Nine Pesos and Fourteen Centavos (PhP33,779.14) to the latter despite glaring structural defects in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the Department of Environment and Natural Resources, Baguio City, with DAVID DOMINONG accepting the same amount knowing fully well that he is not entitled thereto, thereby causing undue injury to the government.

CONTRARY TO LAW.

**SB-15-CRM-0099 (Pp vs. Salvador, et al.)**  
**(Illegal Use of Public Funds defined and penalized Under Article 220, Revised Penal Code)**

That on or about December 29, 2003, or sometime prior or subsequent thereto, in Baguio City, Philippines, and within the jurisdiction of this Honorable Court, accused **Joel G. Salvador**, being then the Regional Director and a high ranking

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public officer, **Asterio C. Tolentino Jr.**, Accountant and **Perlita L. Mauri**, being then the Budget Officer, respectively, all of the Environmental Management Bureau, Department of Environment and Natural Resources, Cordillera Administrative Region (CAR), committing the felony in relation to their office, conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously apply, without any legal authority, the public funds under their custody amounting to One Million One Hundred Fourteen Thousand Seven Hundred Seventy One Pesos and Thirty Four Centavos (PhP1,114,771.34) for the repair/rehabilitation of the Regional Director's Office and Environmental Information Center, located at the Department of Environment and Natural Resources, Baguio City, knowing fully well that such public fund has been specifically appropriated by law for the implementation of Ecological Waste Management project and for the Maintenance and Other Operating Expenses, thereby causing damage or embarrassment to the public service.

CONTRARY TO LAW.

A Hold Departure Order was issued on April 24, 2015 against accused Salvador, Reyes, Tolentino, Mauri, Ang and Dominong for Criminal Cases Nos. SB-15-CRM-0096 TO 0098,<sup>2</sup> while a Hold Departure Order was issued on April 25, 2015 against accused Salvador, Tolentino and Mauri for Criminal Case No. SB-15-CRM-0099.<sup>3</sup> Subsequently, a Warrant of Arrest was issued on April 30, 2015 against accused Salvador, Reyes, Tolentino, Mauri, Ang and Dominong for Criminal Cases Nos. SB-15-CRM-0096 TO 0098<sup>4</sup> and another Warrant of Arrest was issued on the same date against accused Salvador, Tolentino and Mauri for Criminal Case No. SB-15-CRM-0099.<sup>5</sup>

On May 20, 2015, accused Salvador filed a Motion for Reduction of Bail,<sup>6</sup> which was granted by the Court in its Resolution dated May 20, 2015.<sup>7</sup> He then posted his consolidated cash bail on May 20, 2015 in the reduced amount for his provisional liberty.<sup>8</sup>

<sup>2</sup> Records, Vol. 1, at p. 215.

<sup>3</sup> Id. at 216.

<sup>4</sup> Id. at 218.

<sup>5</sup> Id. at 219.

<sup>6</sup> Id. at 230.

<sup>7</sup> Id. at 231-A.

<sup>8</sup> Id. at 233.

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On May 22, 2015, accused Ang posted his cash bail.<sup>9</sup> On May 25, 2015, accused Reyes, Tolentino and Dominong posted their cash bail.<sup>10</sup> On May 28, 2015, Mauri posted her cash bail.<sup>11</sup>

Upon being arraigned on June 18, 2015, accused Salvador, assisted by his counsel, pleaded "Not Guilty" to the charges against him.<sup>12</sup>

On June 22, 2015, accused Tolentino filed a Motion to Nullify Decision / Resolution Issued in the Above-Entitled Cases dated June 17, 2015.<sup>13</sup> On July 22, 2015, he also filed an Omnibus Motion (To Defer Proceedings, To Quash the Information and To Dismiss the Case) dated July 9, 2015.<sup>14</sup>

During their arraignment on July 23, 2015, accused Reyes, Mauri, Ang and Dominong, assisted by their respective counsels, separately pleaded "Not Guilty" to the charges against them.<sup>15</sup> As regards accused Tolentino, his counsel moved for the deferment of his arraignment on the ground that he has a pending Omnibus Motion (To Defer Proceedings, To Quash the Information and To Dismiss the Case) dated July 9, 2015.<sup>16</sup>

On August 7, 2015, the prosecution filed its Comment/Opposition (To Omnibus Motion dated July 9, 2015) dated August 5, 2015.<sup>17</sup> In its Resolution dated August 15, 2015, the Court resolved to partially grant accused Tolentino's Omnibus Motion (To Defer Proceedings, To Quash the Information and To Dismiss the Case) dated July 9, 2015, it appearing that accused Tolentino had not been accorded his right to preliminary investigation.<sup>18</sup> The Court then ordered the Office of the Ombudsman, through the Office of the Special Prosecutor, to conduct a preliminary investigation insofar as the accused-movant Tolentino is concerned and that the proceedings in these cases be suspended insofar as accused Tolentino is concerned.<sup>19</sup>

On October 28, 2015, the prosecution filed an Urgent Ex-Parte Motion for Extension of Time to Submit the Result of the

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<sup>9</sup> Id. at 271.

<sup>10</sup> Id. at 272, 273 and 275.

<sup>11</sup> Id. at 274.

<sup>12</sup> Id. at 286-A.

<sup>13</sup> Id. at 305.

<sup>14</sup> Id. at 301.

<sup>15</sup> Id. at 319.

<sup>16</sup> Id.

<sup>17</sup> Id. at 383.

<sup>18</sup> Id. at 246.

<sup>19</sup> Id.

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Preliminary Investigation dated October 27, 2015,<sup>20</sup> which was granted by the Court in its Resolution dated October 29, 2015.<sup>21</sup>

During Pre-trial, the parties, except for accused Tolentino, entered into the following stipulations:

### I. STATEMENT OF ADMITTED FACTS

The accused admitted the following facts:

- Accused Joel Salvador, Rolando Reyes, Asterio Tolentino, Jr., Perlita Mauri, Mariano Ang and David Dominong admitted that they are the same persons charged in the information.
- Accused Joel Salvador admitted that he was the Regional Director of the Environmental Management Bureau (EMB) – Cordillera Administrative Region (CAR), DENR at the time of the alleged commission of the offense.
- Accused Rolando C. Reyes admitted that he was the Officer-in-Charge of the EMB-CAR, DENR at the time of the alleged commission of the offense.
- Accused Perlita L. Mauri admitted that she was the Budget Officer of the EMB-CAR, DENR at the time of the alleged commission of the offense.
- Accused Mariano Ang admitted that he was the owner of the Pyramid Hardware and Construction Supplies located at No. 33 Bonifacio St., Baguio, at the time of the alleged commission of the offense.

In turn, the prosecution stipulated as follows:

- A Memorandum dated January 26, 2004 was issued by the Director Julian D. Amador of the EMB-Central Office to the Regional Director, EMB-CAR.
- The construction materials used in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR,

<sup>20</sup> Records, Vol. 2, p. 50.

<sup>21</sup> Id. at 50.

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Baguio City, was purchased from Mariano Ang, the owner of PHCS.

- Accused Perlita Maura certified and obligated the availability of funds for the repair and rehabilitation of Regional Director's Office of EMB-CAR, DENR, on December 30, 2003.<sup>22</sup>

The issues proposed to be resolved are as follows:

As proposed by the prosecution:

- In SB15CRM0096 – Whether accused Joel G. Salvador is guilty for the crime of Violation of Section 3(e) of Republic Act No. 3019 for acting with manifest partiality and evident bad faith, giving unwarranted benefit, privilege or advantage to accused David Dominong by awarding the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, without public bidding as required by Republic Act No. 9184, thereby causing undue injury to the government.
- In SB15CRM0097 – Whether accused Joel G. Salvador, Rolando C. Reyes, Asterio C. Tolentino, Jr. Perlita L. Mauri and Mariano Ang are guilty for violation of Section 3(e) of Republic Act No. 3019 by acting with manifest partiality and evident bad faith and conspiring and confederating with one another to give unwarranted benefit, privilege or advantage to accused Mariano Ang by purchasing from Pyramid Hardware and Construction Supply (PHCS) owned by accused Mariano, the construction materials used in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, in the amount of P758,998.70 without public bidding as required by Republic Act No. 9184, which amount was already paid to and accepted by accused Ang despite the fact that the goods had not been delivered, causing undue injury to the government.
- In SB15CRM0098 – Whether accused Joel G. Salvador, Rolando C. Reyes and David Dominong are guilty for violation of Section 3(e) of Republic Act No. 3019 by

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<sup>22</sup> Id. at 207-208.

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acting with manifest partiality and evident bad faith and conspiring and confederating with one another to give unwarranted benefit, privilege or advantage to accused Dominong, a private contractor, by authorizing the payment of retention fee in the amount of P33,779.14 to the latter despite glaring structural defects in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, which amount was already paid to and accepted by accused Dominong knowing that he was not entitled thereto, causing undue injury to the government.

- In SB15CRM0099 – Whether accused Joel Salvador, Asterio C. Tolentino, Jr. and Perlita L. Mauri are guilty for Illegal Use of Public Funds defined and penalized under Article 220 of the Revised Penal Code for conspiring and confederating with one another in applying without any legal authority, the public funds under their custody amounting to P1,114,771.34 for the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, knowing fully well that such public fund has been specifically appropriated by law for the implementation of Ecological Waste Management project for the Maintenance and Other Operating Expenses, causing damage or embarrassment to the public service.

As proposed by accused Joel G. Salvador:

- Whether the accused should be held liable for the crimes of violation of Section 3(e) of Republic Act No. 3019.
- Whether the accused should be held liable for the crime of Technical Malversation under Article 220 of the Revised Penal Code.

As proposed by accused Rolando C. Reyes:

- Whether public bidding is required by law under the circumstances then existing for the purchase of construction materials for the repair/rehabilitation of the Regional Director's Office and Environmental

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Information Center of the Department of Natural Resources in Baguio City.

- Whether there is proof beyond reasonable doubt that construction materials allegedly purchased from PHCS were not delivered.
- Whether there is proof beyond reasonable doubt that the accused gave unwarranted benefit to accused Mariano Ang.
- Whether there is proof beyond reasonable doubt that the accused acted in conspiracy with the other accused in these cases.
- Whether there is proof beyond reasonable doubt that the accused caused undue injury to the government and the public.
- Whether there is proof beyond reasonable doubt that at the time the retention fee was purportedly paid to David Dominong, the subject building had "glaring structural defects.

As proposed by accused David Dominong:

- Whether the guilt of accused David Dominong in SB-15-CRM-0098 for violation of Section 3(e) of R.A. 3019 for allegedly accepting the retention fee of P33,779.14, even if he was not entitled thereto, can be proven beyond reasonable doubt.<sup>23</sup>

On November 4, 2015, accused Mauri and Reyes filed their waivers of appearance both dated November 4, 2015,<sup>24</sup> which were noted by the Court in its Resolution dated November 12, 2015.<sup>25</sup>

On December 4, 2015, the prosecution filed its Manifestation/Compliance dated December 3, 2015, attaching thereto the approved Office of the Special Prosecutor's Resolution dated November 11, 2015 resolving to maintain the Informations in Criminal Case Nos. SB-15-CRM-0097 and SB-15-CRM-0099

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<sup>23</sup> Id. at 208-211.

<sup>24</sup> Records, Vol. 2 at pp. 56-57.

<sup>25</sup> Id. at 64-A.

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against accused Tolentino and the other accused.<sup>26</sup> In its Resolution dated December 4, 2015, the Court noted the said Manifestation/Compliance and ordered the cases against accused Tolentino to proceed.<sup>27</sup>

Meanwhile, on February 4, 2016, accused Tolentino filed a Motion to Dismiss dated February 4, 2016,<sup>28</sup> which was denied by the Court in its Resolution dated March 17, 2016.<sup>29</sup>

On February 19, 2016, the prosecution filed a Motion to Suspend Pendente Lite dated February 19, 2016 as to accused Salvador, Mauri and Reyes, praying that they be suspended from their present and from any other public office which they may occupy pending trial.

On February 29, 2016, the prosecution started presenting its evidence.<sup>30</sup>

On May 2, 2016, accused Tolentino filed his Most Urgent Motion to Dismiss on Ground of Violation of Right to Speedy Disposition of Cases dated May 2, 2016.<sup>31</sup> On May 19, 2016, the prosecution filed its Comment/Opposition (To Most Urgent Motion to Dismiss on Ground of Violation of Right to Speedy Disposition of Cases) dated May 17, 2016.<sup>32</sup> On June 9, 2016, accused Tolentino filed his Reply (To the Prosecution's Comment/Opposition dated May 17, 2016) dated June 9, 2016.<sup>33</sup> In its Resolution dated July 27, 2016, the Court denied accused Tolentino's Most Urgent Motion to Dismiss on Ground of Violation of Right to Speedy Disposition of Cases dated May 2, 2016.<sup>34</sup>

On August 1, 2016, accused Dominong filed his Waiver of Appearance dated July 29, 2016,<sup>35</sup> which was noted by the Court in its Resolution dated August 11, 2016.<sup>36</sup>

On August 16, 2016, accused Tolentino filed a Motion for Reconsideration dated August 15, 2016, praying for the Court to reconsider its Resolution dated July 27, 2016.<sup>37</sup> On September

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<sup>26</sup> Id. at 68.

<sup>27</sup> Id. at 93.

<sup>28</sup> Id. at 99.

<sup>29</sup> Id. at 155.

<sup>30</sup> Id. at 138.

<sup>31</sup> Id. at 206.

<sup>32</sup> Id. at 264.

<sup>33</sup> Id. at 292.

<sup>34</sup> Id. at 376.

<sup>35</sup> Id. at 389.

<sup>36</sup> Id. at 416.

<sup>37</sup> Id. at 422.

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2, 2016, the prosecution filed its Comment/Opposition (to Motion for Reconsideration dated August 15, 2016) dated September 1, 2016.<sup>38</sup> In its Resolution dated October 6, 2016, the Court resolved to deny the accused Tolentino's Motion for Reconsideration dated August 15, 2016.<sup>39</sup>

On September 20, 2016, accused Ang filed his Waiver of Appearance dated September 7, 2016,<sup>40</sup> which was noted by the Court in its Resolution dated September 21, 2016.<sup>41</sup>

On October 6, 2016, upon being arraigned separately in Criminal Cases No. SB-15-CRM-0097 and No. SB-15-CRM-009, accused Tolentino refused to enter any plea;<sup>42</sup> hence the Court entered a plea of "Not Guilty" in behalf the said accused.<sup>43</sup>

On October 12, 2016, the prosecution filed a Motion to Suspend Accused Pendente Lite dated October 11, 2016 as to accused Tolentino.

On January 16, 2017, the prosecution rested its cases as against accused Salvador, Reyes, Mauri, Ang and Dominong.<sup>44</sup>

In its Resolution dated March 2, 2017, the Court granted the prosecution's Motion to Suspend Accused Pendente Lite dated February 19, 2016 and Motion to Suspend Accused Pendente Lite dated October 1, 2016.<sup>45</sup>

In a separate Pre-trial, the prosecution and accused Tolentino entered into the following stipulations:

#### I. STIPULATIONS AND ADMISSIONS

From the proposals of the prosecution for stipulation, accused Tolentino admitted the following facts:

1. Asterio Tolentino is the same person charged in the Information SB-15-CRM-0097 and SB-15-CRM-0099; and

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<sup>38</sup> Id. at 468.

<sup>39</sup> Id. at 502.

<sup>40</sup> Id. at 493.

<sup>41</sup> Id. at 522.

<sup>42</sup> Id. at 505.

<sup>43</sup> Section 1(c), Rule 116 of the Revised Rules of Criminal Procedure.

<sup>44</sup> Records, Vol. 3, p. 54.

<sup>45</sup> Id. at 410.

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2. Accused Asterio C. Tolentino, Jr. was the Accountant II of EMB-CAR, DENR at the time of the commission of the offenses.

From the proposals for stipulation made by accused Tolentino, the prosecution admitted the following fact:

1. Accused Asterio C. Tolentino, Jr. was not part of the Bids and Awards Committee (BAC) at the time the questioned transaction happened.<sup>46</sup>

On the other hand, the issues proposed to be resolved by the said parties are as follows:

## II. ISSUES TO BE RESOLVED

As proposed by the plaintiff:

- In SB15CRM0096 – Whether accused Joel G. Salvador is guilty for the crime of Violation of Section 3(e) of Republic Act No. 3019 for acting with manifest partiality and evident bad faith, giving unwarranted benefit, privilege or advantage to accused David Dominong by awarding the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, without public bidding as required by Republic Act No. 9184, thereby causing undue injury to the government.
- In SB15CRM0097 – Whether accused Joel G. Salvador, Rolando C. Reyes, Asterio C. Tolentino, Jr. Perlita L. Mauri and Mariano Ang are guilty for violation of Section 3(e) of Republic Act No. 3019 by acting with manifest partiality and evident bad faith and conspiring and confederating with one another to give unwarranted benefit, privilege or advantage to accused Mariano Ang by purchasing from PHCS owned by accused Mariano, the construction materials used in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, in the amount of P758,998.70 without public bidding as required by Republic Act No. 9184, which amount was already paid to and accepted by accused Ang despite the fact that the goods had not

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<sup>46</sup> Records, Vol. 4, p.345.

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been delivered, causing undue injury to the government.

- In SB15CRM0098 – Whether accused Joel G. Salvador, Rolando C. Reyes and David Dominong are guilty for violation of Section 3(e) of Republic Act No. 3019 by acting with manifest partiality and evident bad faith and conspiring and confederating with one another to give unwarranted benefit, privilege or advantage to accused Dominong, a private contractor, by authorizing the payment of retention fee in the amount of P33,779.14 to the latter despite glaring structural defects in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, which amount was already paid to and accepted by accused Dominong knowing that he was not entitled thereto, causing undue injury to the government.
- In SB15CRM0099 – Whether accused Joel Salvador, Asterio C. Tolentino, Jr. and Perlita L. Mauri are guilty for Illegal Use of Public Funds defined and penalized under Article 220 of the Revised Penal Code for conspiring and confederating with one another in applying without any legal authority, the public funds under their custody amounting to P1,114,771.34 for the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, knowing fully well that such public fund has been specifically appropriated by law for the implementation of Ecological Waste Management project for the Maintenance and Other Operating Expenses, causing damage or embarrassment to the public service.

As proposed by the accused:

- Whether accused Asterio C. Tolentino, Jr. is guilty of the charge of Violation of Section 3(e) of R.A. 3019 by conspiring and confederating with the other accused in giving unwarranted benefit, privilege or advantage to accused Mariano Ang by purchasing from Pyramid Hardware and Construction Supply (PHCS) owned by the said accused the construction materials used in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the

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DENR, Baguio City, in the amount of Php758,998.70; and

- Whether accused Asterio C. Tolentino, Jr. is guilty of the charge of Violation of Article 220 of the Revised Penal Code (for Technical Malversation) by conspiring and confederating with the other accused in applying without authority, the public funds amounting to Php1,114,771.34 for the repair and rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, knowing fully well that such public fund has been specifically appropriated by law for the implementation of the Ecological Solid Waste Management (ESWM) project.<sup>47</sup>

On February 13, 2018, the defense started presenting its evidence.<sup>48</sup>

On April 15, 2019, after trial on the merits, the prosecution and accused Salvador filed their Memorandum dated April 10, 2019 and Memorandum dated April 12, 2019, respectively. On April 30, 2019, accused Reyes, Dominong and Ang filed their Memorandum dated April 15, 2019, Memorandum dated April 12, 2019 and Memorandum dated April 12, 2019, respectively.

### **EVIDENCE FOR THE PROSECUTION**

In support of its accusations against all the accused for Violation of Sec. 3(e), R.A. No. 3019, as amended and/or Illegal Use of Public Funds penalized under Article 220 of the Revised Penal Code, the Prosecution presented nine (9) witnesses, namely: Josephine A. Tilan, Reymax F. Busque, Anabella C. Laborte, Ligaya C. Garcia, Hermelina D. Lausa, Januario S. Borillo, Marissa A. Santos, Dennis Marvin H. Agcon and Adeline M. Ramos.

1. **Josephine A. Tilan**<sup>49</sup> ("Tilan"), Attorney VI of the Commission on Audit, Cordillera Administrative Region (COA-CAR), is the Regional Cluster Director of the Legal & Adjudication Office of COA at the time material to these cases. She testified, among others, that on May 4, 2005, she received a Letter-Complaint against accused Salvador, for which she formed an Audit Team to audit and investigate the said incident. She

<sup>47</sup> Id. at 346-347.

<sup>48</sup> Records, Vol. 4, p. 501; TSN dated February 13, 2018.

<sup>49</sup> TSN dated February 29, 2016 and March 1, 2016

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informed the Court that the transaction complained of in the Letter-Complaint is the rehabilitation of the Office of the Regional Director of the EMB-CAR, DENR because the construction materials were allegedly procured through a particular hardware supplier, while the labor was provided by another contractor without any public bidding.

She further testified that in the course of the investigation, it was found out that the project was implemented "without public bidding, and that funds used for the construction were taken from the allotment for Ecological Solid Waste Management Project, and additional operating requirements of the EMB.

Tilan also identified the following documentary exhibits: (a) Anonymous Letter-Complaint dated May 3, 2005,<sup>50</sup> (b) Regional Legal & Adjudication Office Order No. 05-001 dated July 25, 2005,<sup>51</sup> (c) Sub-Allotment Advice,<sup>52</sup> (d) Audit Observation Memorandum,<sup>53</sup> (e) Management Comment of Joel G. Salvador,<sup>54</sup> (f) Management Comment of Asterio C. Tolentino, Jr.,<sup>55</sup> (g) Management Comment of Perlita L. Mauri,<sup>56</sup> (h) Management Comment of Rolando Reyes,<sup>57</sup> (i) Management Comments of other officers Hermielina Lausa, Ligaya Garcia, Mario Lopez, Randy Langgawan and Sunny D. Florendo,<sup>58</sup> (j) Audit Survey Report,<sup>59</sup> (k) Transmittal Letters dated November 15, 2007 addressed to Regional Director Paquito Moreno, DENR EMB-CAR; dated November 19, 2007 addressed to the Deputy Ombudsman for Luzon, Victor C. Fernandez; and dated November 15, 2007 addressed to Joel G. Salvador,<sup>60</sup> (l) Certificate of Acceptance dated January 14, 2005,<sup>61</sup> (m) EMB-CAR Special Order No. 57, series of 2001,<sup>62</sup> and (n) Memorandum signed by Julian D. Amador Re: Request for the Release of Capital Outlay to Finance Implementation of Land and Building Improvements within EMB-CAR.<sup>63</sup>

On cross-examination, the defense pointed out that the payment was directly made to the contractors involved in these

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<sup>50</sup> Exhibit G

<sup>51</sup> Exhibit H

<sup>52</sup> Exhibits X, X-1 and X-2

<sup>53</sup> Exhibit I

<sup>54</sup> Exhibit J

<sup>55</sup> Exhibit K

<sup>56</sup> Exhibit L

<sup>57</sup> Exhibit N

<sup>58</sup> Exhibits O to W with sub-markings

<sup>59</sup> Exhibits F, F-1, F-2, F-3 and F-4

<sup>60</sup> Exhibits E, E-1 and E-2

<sup>61</sup> Exhibit JJ

<sup>62</sup> Exhibit ZZ

<sup>63</sup> Exhibit M

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cases. The participation of accused Dominong was also mentioned; particularly, that he received the Retention fee "despite noted defects." Interestingly, a point of defense regarding the funds that were used being from end-of-year savings was also mentioned.

2. **Reymax F. Busque**<sup>64</sup> ("Busque") is the Technical Audit Specialist in the COA-CAR. He informed the Court that he was Senior Technical Audit Specialist during the time material to these cases. He narrated that he conducted the inspection of the project in question on April 22, 2005. He said that there were "deflections of the second floor steel deck slab," as well as cracks in the supporting beams. When asked about his professional opinion on these, he said that since "deflections were readily visible by [sic] to the naked eye, there's a possibility of structural failure like maybe collapse of the slab," and that there is a possibility of "collapse of the structure."

Busque also mentioned his observation that the project, in reality, involves the "demolition (of the old) and building of a new EMB structure" despite the fact that the project is for the repair and rehabilitation of the same building, as is seen in the title and description of the plans provided.

Busque identified the following documents during his testimony: (a) First Indorsement signed by accused Asterio C. Tolentino, Jr. and Ligaya C. Garcia,<sup>65</sup> (b) Contract of Service executed between EMB-CAR thru accused Salvador and the contractor, accused Dominong,<sup>66</sup> (c) Notice of Award dated December 29, 2003,<sup>67</sup> (d) Notice to Proceed dated October 15, 2004,<sup>68</sup> (e) Certificate of Acceptance dated January 14, 2005,<sup>69</sup> (f) Plans and Specifications (Perspective, Location and Site Development Plan) of the proposed repair and rehabilitation of the Environmental Education and the RD Office of the EMB-CAR,<sup>70</sup> (g) Specification of the proposed repair and rehabilitation of Environmental Education and RD's Office in EMB-CAR,<sup>71</sup> (h) Summary of Agency Estimated Project Cost,<sup>72</sup> (i) Work Activities and Bar Chart of Work Activities,<sup>73</sup> (j) Statements of Work

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<sup>64</sup> TSN dated May 3, 2016

<sup>65</sup> Exhibit SS

<sup>66</sup> Exhibit Z

<sup>67</sup> Exhibit AA

<sup>68</sup> Exhibit GG

<sup>69</sup> Exhibit JJ

<sup>70</sup> Exhibit B<sup>3</sup>

<sup>71</sup> Exhibit G<sup>3</sup>, G<sup>3</sup>-1 to G<sup>3</sup>-3

<sup>72</sup> Exhibit J

<sup>73</sup> Exhibit I<sup>3</sup>

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Debit (ADA) for the repair and rehabilitation of the subject EMB building, specifically, one for (the account of) Dominong and (another) one for Ang. On cross-examination, Garcia revealed that she was a member of the Bids and Awards Committee in 2000, the year wherein the project was approved. She even signed as witness for the Contract of Service for the same.

In the course of her testimony, Garcia identified the following documents: (a) List of Due and Demandable Accounts Payable-External Creditors submitted to the DBM on March 10, 2004,<sup>88</sup> (b) Advice of NCA Issued dated October 1, 2004 addressed to Joel G. Salvador from the DBM,<sup>89</sup> (c) Advice/Authority to Debit Account, Debit Memo No. 04-10-015 dated October 27, 2004 in favor of David A. Dominong in the amount of Php101,397.49 with the handwritten notations on the portion and deduction,<sup>90</sup> (d) Advice/Authority to Debit Account, Debit Memo No. 04-11-019 dated November 30, 2004 in favor of David A. Dominong in the amount of Php101,397.49,<sup>91</sup> (e) Contract of Service executed between EMB-CAR thru accused Salvador and the contractor accused Dominong,<sup>92</sup> (f) Disbursement Voucher No. 01-11-0129 dated November 30, 2004 for the payment of 30% accomplishment of EMB-CAR Building in the amount of Php101,397.49 net of tax,<sup>93</sup> and (g) Document Action of David Dominong with the handwritten note which states: "Rolly, Please estimate percentage completion for the corresponding release, initialed and signed December 20."<sup>94</sup>

5. **Hermelina D. Lausa**<sup>95</sup> ("Lausa") was the Cashier of the EMB-CAR at the time material to these cases. In her testimony, Lausa confirmed that she prepared a check for Dominong, as well as the ADA for accused Ang.

In the course of her testimony, Lausa identified the following documents: (a) List of Due and Demandable Accounts Payable-External Creditors submitted to the DBM on March 10, 2004,<sup>96</sup> (b) Advice of NCA Issued dated October 1, 2004 addressed to Joel G. Salvador from the DBM,<sup>97</sup> (c) Advice/Authority to debit Account, Debit Memo No. 04-10-015 dated October 27, 2004 in favor of David A. Dominong in the amount of P101,397.49 with

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<sup>88</sup> Exhibit CC

<sup>89</sup> Exhibit DD

<sup>90</sup> Exhibit C<sup>3</sup>, C<sup>3</sup>-1 and C<sup>3</sup>-3

<sup>91</sup> Exhibit E<sup>3</sup>

<sup>92</sup> Exhibit Z

<sup>93</sup> Exhibit E<sup>3</sup>-2

<sup>94</sup> Exhibit E<sup>3</sup>-4

<sup>95</sup> TSN dated June 7, 2016

<sup>96</sup> Exhibit CC

<sup>97</sup> Exhibit DD

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the handwritten notations on the lower portion and deduction,<sup>98</sup> (d) Advice/Authority to Debit Account, Debit Memo No. 04-10-017 dated November 18, 2004 in favor of David Dominong in the amount of P101,397.49,<sup>99</sup> (e) Advice/Authority to Debit Account, Debit Memo No. 04-11-019 dated November 30, 2004 in favor of David A. Dominong in the amount of P101,397.49,<sup>100</sup> (f) Advice/Authority to Debit Account, Debit Memo No. 04-10-010 dated October 11, 2004 in favor of Mariano Ang in the total amount of P758,998.70,<sup>101</sup> (g) Disbursement Voucher No. 04-11-0130 dated November 30, 2004 in the amount of P33,779.14,<sup>102</sup> (h) Landbank Check No. 691035 dated February 16, 2005 in favor of David Dominong in the amount of P33,779.14,<sup>103</sup> and (i) Report of Check Issued for the Month of February 1-28, 2004 which listed Check No. 691035 for payee David Dominong in the amount of P33,779.14.<sup>104</sup>

6. **Januario S. Borillo**<sup>105</sup> ("Borillo") is Engineer II of the City Buildings and Architecture Office from the time material to these cases up to the present. He discussed his findings where he inspected the Environmental Education building. He said that the construction is "not as per standard practice" and that hairline cracks on the interior beam tend to establish the "probability that improper construction was followed." He also noted that there were also cracks on the exterior beams which means that there are defects in the construction.

Pertaining to the building of the Regional Director, Borillo said that what he inspected is a new building, not a rehabilitated one.

In the course of his testimony, Borillo identified the following documents: (a) Perspective, Location and Site Development Plan for the construction of a new Regional Director's Office building,<sup>106</sup> (b) Summary of Agency Estimated Project Cost for the Project: Repair and Rehabilitation of the Regional Environmental Education and Information Center and the Regional Director's Office dated December 16, 2003 as approved by Joel G. Salvador with attachments,<sup>107</sup> (c) Inspection Report from the City Buildings and Architecture Office of Baguio City dated February 15, 2006

<sup>98</sup> Exhibits C<sup>3</sup>, C<sup>3</sup>-1 and C<sup>3</sup>-3

<sup>99</sup> Exhibit D<sup>3</sup>

<sup>100</sup> Exhibit E<sup>3</sup>

<sup>101</sup> Exhibit EE

<sup>102</sup> Exhibit VV

<sup>103</sup> Exhibit VV-1

<sup>104</sup> Exhibit VV-2

<sup>105</sup> TSN dated June 8, 2016

<sup>106</sup> Exhibit B<sup>3</sup>

<sup>107</sup> Exhibit J<sup>3</sup>

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signed by Engineer II Januario S. Borillo and Engineer IV Rizalino M. Banta, together with the transmittal letter of even date addressed to Atty. Josephine A. Tilan and signed by Oscar V. Flores, City Building Official,<sup>108</sup> (d) Photographs taken by Engr. Januario S. Borillo showing the noted structural defects in the newly constructed building,<sup>109</sup> and (e) Letter dated February 1, 2006 with handwritten note: "Engr. Borillo, Submit report ASAP dated February 9, 2006" with the attached Letter request from Atty. Josephine A. Tilan dated November 16, 2005.<sup>110</sup>

The defense herein pointed out that Borillo's inspection was limited in that it is based on visual inspection only. Furthermore, the defense posited that the hairline cracks may have been caused by changes in temperature.

7. **Marissa A. Santos**<sup>111</sup> ("Santos"), Chief Administrative Officer of the Department of Budget and Management Central Records Division, testified that she issued a Certification pursuant to a subpoena she received from the Ombudsman. The Certification states that the documents being requested cannot be located, particularly the Sub-Allotment Advice, List of Due and Demandable Accounts Payable, and the Special Allotment Release Orders.

In the course of her testimony, she identified the following documents: (a) Subpoena addressed to Ms. Marissa A. Santos dated July 11, 2016 and Subpoena addressed to Ruby R. Esteban dated June 13, 2016,<sup>112</sup> (b) National Budget Circular No. 488 dated May 22, 2003 from the Department of Budget and Management (DBM),<sup>113</sup> (c) Notice of Cash Allocation No. 224403-4 dated October 1, 2004 from the Department of Budget and Management (DBM),<sup>114</sup> (d) Advice of NCA Issued dated October 1, 2004 addressed to Joel G. Salvador from the DBM,<sup>115</sup> and (e) Certification dated July 7, 2016 signed by Marissa A. Santos, Chief Administrative Officer, Central Records Division of DBM.<sup>116</sup>

8. **Dennis Marvin H. Agcon**<sup>117</sup> ("Agcon") was State Auditor I of Regional Legal and Adjudication Office in COA-CAR at the time relevant to these cases. In his testimony, he said he

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<sup>108</sup> Exhibit UU

<sup>109</sup> Exhibits UU-1 to UU-11

<sup>110</sup> Exhibits W<sup>3</sup> and W<sup>3</sup>-1

<sup>111</sup> TSN dated August 1, 2016

<sup>112</sup> Exhibits X<sup>3</sup> and Y<sup>3</sup>

<sup>113</sup> Exhibit X-3

<sup>114</sup> Exhibit X-4

<sup>115</sup> Exhibit DD

<sup>116</sup> Exhibit Z<sup>3</sup>

<sup>117</sup> TSN dated August 3, 2016, September 5, 6 and 7, 2016

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signed by Engineer II Januario S. Borillo and Engineer IV Rizalino M. Banta, together with the transmittal letter of even date addressed to Atty. Josephine A. Tilan and signed by Oscar V. Flores, City Building Official,<sup>108</sup> (d) Photographs taken by Engr. Januario S. Borillo showing the noted structural defects in the newly constructed building,<sup>109</sup> and (e) Letter dated February 1, 2006 with handwritten note: "Engr. Borillo, Submit report ASAP dated February 9, 2006" with the attached Letter request from Atty. Josephine A. Tilan dated November 16, 2005.<sup>110</sup>

The defense herein pointed out that Borillo's inspection was limited in that it is based on visual inspection only. Furthermore, the defense posited that the hairline cracks may have been caused by changes in temperature.

7. **Marissa A. Santos**<sup>111</sup> ("Santos"), Chief Administrative Officer of the Department of Budget and Management Central Records Division, testified that she issued a Certification pursuant to a subpoena she received from the Ombudsman. The Certification states that the documents being requested cannot be located, particularly the Sub-Allotment Advice, List of Due and Demandable Accounts Payable, and the Special Allotment Release Orders.

In the course of her testimony, she identified the following documents: (a) Subpoena addressed to Ms. Marissa A. Santos dated July 11, 2016 and Subpoena addressed to Ruby R. Esteban dated June 13, 2016,<sup>112</sup> (b) National Budget Circular No. 488 dated May 22, 2003 from the Department of Budget and Management (DBM),<sup>113</sup> (c) Notice of Cash Allocation No. 224403-4 dated October 1, 2004 from the Department of Budget and Management (DBM),<sup>114</sup> (d) Advice of NCA Issued dated October 1, 2004 addressed to Joel G. Salvador from the DBM,<sup>115</sup> and (e) Certification dated July 7, 2016 signed by Marissa A. Santos, Chief Administrative Officer, Central Records Division of DBM.<sup>116</sup>

8. **Dennis Marvin H. Agcon**<sup>117</sup> ("Agcon") was State Auditor I of Regional Legal and Adjudication Office in COA-CAR at the time relevant to these cases. In his testimony, he said he

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<sup>108</sup> Exhibit UU

<sup>109</sup> Exhibits UU-1 to UU-11

<sup>110</sup> Exhibits W<sup>3</sup> and W<sup>3</sup>-1

<sup>111</sup> TSN dated August 1, 2016

<sup>112</sup> Exhibits X<sup>3</sup> and Y<sup>3</sup>

<sup>113</sup> Exhibit X-3


<sup>114</sup> Exhibit X-4

<sup>115</sup> Exhibit DD

<sup>116</sup> Exhibit Z<sup>3</sup>

<sup>117</sup> TSN dated August 3, 2016, September 5, 6 and 7, 2016

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investigated accused Salvador for the projects in question and the following were his findings:

- a. The EMB-CAR constructed a building by entering into a service contract without the mandatory competitive bidding;
- b. Materials were purchased without the necessary documentation;
- c. Some materials were not delivered by the supplier;
- d. The Retention Fee was paid out even though there were defects in the construction;
- e. The contract for services and the purchases for materials came from a fund that was irregularly aligned.

In the course of his testimony, he identified the following documents: (a) Regional Legal and Adjudication Office Order No. 05-001 dated July 25, 2005 signed by Atty. Josephine A. Tilan,<sup>118</sup> (b) Anonymous letter-complaint dated May 3, 2005 addressed to Atty. Josephine A. Tilan, Regional Cluster Director, COA-CAR, La Trinidad, Benguet from the "Concerned EMB-CAR, DENR Personnel,"<sup>119</sup> (c) 1<sup>st</sup> Indorsement dated May 16, 2005 signed by Asterio C. Tolentino, Jr. and Ligaya C. Garcia,<sup>120</sup> (d) Advice/Authority to Debit Account, Debit Memo No. 04-10-015 dated October 27, 2004, with its supporting documents: Disbursement Voucher for the payment of 30% accomplishment of EMB-CAR Building with the attached Official Receipt No. 0444 dated October 27, 2004 from Darwin's Welding Shop in the amount of P101,397.49, Box D of Disbursement Voucher which shows the name and signature of David Dominong in the Received Payment portion, Statement of Work Accomplished (SWA) for the 30% accomplishment of the project, Notice of Completion for 30% accomplishment signed by David Dominong,<sup>121</sup> (e) Advice/Authority to Debit Account, Debit Memo No. 04-10-017 dated November 18, 2004 in favor of David Dominong in the amount of P101,397.49 and its supporting documents: Disbursement Voucher for the payment of 30% accomplishment of EMB-CAR Building with the attached Official Receipt No. 0736 dated November 19, 2004 from Darwin's Welding Shop in the amount of P101,397.49, Box D of Disbursement Voucher which shows the name and signature of David Dominong in the Received Payment portion, Statement of Work Accomplished (SWA) for the 60% accomplishment of the project, Notice of Completion dated November 15, 2004 for 30% accomplishment signed by David


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<sup>118</sup> Exhibit H

<sup>119</sup> Exhibit G

<sup>120</sup> Exhibit SS

<sup>121</sup> Exhibits C<sup>3</sup> and submarkings

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Dominong,<sup>122</sup> (f) Advice/Authority to Debit Account, Debit Memo No. 04-11-019 dated November 30, 2004 in favor of David Dominong in the amount of P101,397.49 and its supporting documents: Disbursement Voucher No. 01-11-0129 dated November 30, 2004 for the payment of 30% accomplishment of EMB-CAR Building with the attached Official Receipt No. 0858 dated December 23, 2004 from Darwin's Welding Shop in the amount of P101,397.49, Box D of Disbursement Voucher which shows the name and signature of David Dominong in the Received Payment portion, Document Action of David Dominong with the handwritten note which states: "Rolly, Please estimate percentage completion for the corresponding release, initialed and signed December 20, Request letter from David Dominong dated December 16, 2004 requesting the release of a certain amount corresponding to the remaining percentage of the labor accomplished, Statement of Work Accomplished (SWA) for the 100% accomplishment of the project,<sup>123</sup> (g) Report of Disbursement,<sup>124</sup> (h) Justification on Why the Deviation on the Procedures of Procurement for Infrastructure as Provided for Under the IRR of RA 9184 signed by accused Rolando C. Reyes,<sup>125</sup> (i) Indorsement Letter dated August 15, 2005 addressed to Regional Cluster Director of COA-CAR Atty. Josephine A. Tilan signed by Loida O. Santiago, State Auditor III, Audit Team Leader from the COA-Office of the Auditor, EMB-CAR, together with the transmittal letter dated August 22, 2005,<sup>126</sup> (j) Disbursement Voucher No. 04-12-969 dated December 29, 2004 with copy of Check and attached supporting documents,<sup>127</sup> (k) Disbursement Voucher No. 04-12-0891 dated December 29, 2004 with copy of the Check and attached supporting documents,<sup>128</sup> (l) Disbursement Voucher No. 04-11-0130 dated November 30, 2004 for the payment of 10% retention fee for the labor requirements in the construction of EMB-CAR building in the amount of P33,779.14 net of taxes in favor of David Dominong, Landbank Check No. 691035 dated February 16, 2005 in favor of David Dominong in the amount of P33,779.14, Report of Check Issued for the Month of February 1-28, 2004 which listed Check No. 691035 for Payee David Dominong in the amount of P33,779.14, Portion in the Disbursement Voucher (Exhibit VV) under Box D which shows the signature above the name David Dominong for Check No. 691035 dated February 16, 2005,<sup>129</sup> (m) Inspection

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<sup>122</sup> Exhibits D<sup>3</sup> and submarkings

<sup>123</sup> Exhibits E<sup>3</sup> and submarkings

<sup>124</sup> Exhibit TT

<sup>125</sup> Exhibit Y

<sup>126</sup> Exhibit XX

<sup>127</sup> Exhibits NN and submarkings

<sup>128</sup> Exhibits OO and submarkings

<sup>129</sup> Exhibits VV, VV-1, VV-2 and VV-3

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Report for Infrastructure Projects prepared by Engr. Reymax F. Bosque, Senior Technical Audit Specialist (Sr. TAS) of the RTSO of COA-CAR dated October 19, 2005, together with the 3<sup>rd</sup> Indorsement dated October 19, 2005 signed by Regional Cluster Director Alfredo P. Pico,<sup>130</sup> (n) Inspection Report from the City Buildings and Architecture Office of Baguio City dated February 15, 2006, together with the transmittal letter of even date addressed to Atty. Josephine A. Tilan and signed by Oscar V. Flores, City Building Official,<sup>131</sup> (o) Advice/Authority to Debit Account (ADA) Debit Memo No. 04-10-010 dated October 11, 2004 under Payee Mariano Ang in the total amount of P758,998.70,<sup>132</sup> (p) Sub-Allotment Advice SAA No. EMB-03-11-05 dated November 28, 2003 and the Environmental Management Bureau List of Transfer of Funds to Regions 1-13, NCR and CAR as additional operating requirements and for the implementation of ESWM,<sup>133</sup> (q) Contract of Service executed between EMB-CAR thru accused Salvador and the contractor, accused Dominong,<sup>134</sup> (r) Notice of Award dated December 29, 2003 in favor of accused David Dominong,<sup>135</sup> (s) Notice of Temporary Deferment dated January 15, 2004,<sup>136</sup> (t) List of Due and Demandable Accounts Payable – External Creditors, submitted to the DBM on March 10, 2004, signed and certified correct by accused Asterio C. Tolentino, Jr. and as signed and approved by accused Joel G. Salvador,<sup>137</sup> (u) Advice of NCA issued dated October 1, 2004 addressed to Joel G. Salvador from the DBM,<sup>138</sup> (v) Regional Special Order No. 89, Series of 2004 Designating SEMS Rolando C. Reyes as Project Engineer and Inspector for the Improvement/Repair of the Office of the Regional Director and EEIS Building of EMB-CAR,<sup>139</sup> (w) Letter dated October 22, 2004 signed by Rolando C. Reyes which certified and acknowledged that the amount of P357,772.50 was received from Pyramid Hardware and Construction Supply representing the excess amount from the payment of cost of construction materials,<sup>140</sup> (x) Notice to Proceed dated October 15, 2004 addressed to David Dominong and signed by Joel G. Salvador,<sup>141</sup> (y) Statement of Account from Pyramid Hardware & Construction Supply dated December 14, 2004 which listed the date, reference number and

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<sup>130</sup> Exhibit RR

<sup>131</sup> Exhibit UU

<sup>132</sup> Exhibit EE

<sup>133</sup> Exhibits X, X-1 and X-2

<sup>134</sup> Exhibit Z with submarking

<sup>135</sup> Exhibit AA

<sup>136</sup> Exhibit BB

<sup>137</sup> Exhibit CC

<sup>138</sup> Exhibit DD

<sup>139</sup> Exhibits V to V-1

<sup>140</sup> Exhibit FF

<sup>141</sup> Exhibit GG

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amount of materials to be used in the construction of the RD's office building,<sup>142</sup> (z) Letter of Turn-Over dated January 7, 2005 addressed to Engr. Joel G. Salvador and signed by Mr. David Dominong,<sup>143</sup> (aa) Certificate of Acceptance dated January 14, 2005 signed by Joel G. Salvador,<sup>144</sup> (bb) Canvass Papers from Baguio Victory Furniture and Construction Supply dated December 22, 2003,<sup>145</sup> (cc) Canvass Papers from Pyramid Hardware and Construction Supplies dated December 22, 2003,<sup>146</sup> (dd) Certification dated October 6, 2005 signed by Accountant Asterio C. Tolentino, Jr.,<sup>147</sup> (ee) Excerpt from the Security Guard logbook,<sup>148</sup> (ff) EMB-CAR Special Order No. 57, Series of 2001 dated August 13, 2001 with Subject: Amendment to EMB-CAR Special Order No. 19-2000 re: Creation of an Interim Pre-Qualification, Bidding and Awards Committee (PBAC) for the Environmental Management Bureau (EMB-CAR) with Engr. Rolando C. Reyes as Chairman for Infrastructure for EMB-CAR Infrastructure Projects,<sup>149</sup> (gg) Audit Observation Memorandum AOM No. 06-003 dated September 12, 2006,<sup>150</sup> (hh) Management Comment of accused Joel G. Salvador,<sup>151</sup> (ii) Management Comment of the accountant accused Asterio C. Tolentino, Jr.,<sup>152</sup> (jj) Management Comment of Perlita L. Mauri,<sup>153</sup> (kk) Memorandum issued by Julian Amador dated January 26, 2004,<sup>154</sup> (ll) Management Comment of Rolando C. Reyes,<sup>155</sup> (mm) Management Comments of Ligaya C. Garcia with attachments,<sup>156</sup> (nn) Management Comment of Ligaya C. Garcia with attachments,<sup>157</sup> (oo) Management Comment of the General Service Officer/Acting Supply Officer Mario T. Lopez and attachments,<sup>158</sup> (pp) Management Comment of the Property Inspector Randy S. Langgawan and Sallie D. Florendo with attachments,<sup>159</sup> (qq) Audit Survey on the EMB-CAR Project: Repair/Rehabilitation of the Environmental Education & Information Center and Regional Director's Office submitted in

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<sup>142</sup> Exhibit HH

<sup>143</sup> Exhibit II

<sup>144</sup> Exhibit JJ

<sup>145</sup> Exhibit KK

<sup>146</sup> Exhibit MM

<sup>147</sup> Exhibits WW, WW-1 and WW-2

<sup>148</sup> Exhibit YY

<sup>149</sup> Exhibit ZZ

<sup>150</sup> Exhibit I

<sup>151</sup> Exhibit J

<sup>152</sup> Exhibit K

<sup>153</sup> Exhibit L

<sup>154</sup> Exhibit M


<sup>155</sup> Exhibit N

<sup>156</sup> Exhibit Q

<sup>157</sup> Exhibit Q

<sup>158</sup> Exhibit R

<sup>159</sup> Exhibits S, T, U, V and W

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compliance with Office Order No. 05-001 dated July 25, 2005,<sup>160</sup> (rr) Letter dated November 13, 2007 of Dennis Marvin H. Agcon, Team Leader, from the Legal and Adjudication Sector, COA-CAR addressed to Regional Cluster Director, Atty. Josephine A. Tilan,<sup>161</sup> (ss) Treasury Account Current – MDS Checks – Monthly Reconciliation Statement as of October 30, 2004<sup>162</sup> with attached List of Outstanding Checks as of October 31, 2004<sup>163</sup> and Statement of Account as of October 2004 consisting of 2 pages and its pertinent portion,<sup>164</sup> (tt) Treasury Account Current – MDS Checks – Monthly Reconciliation Statement as of November 30, 2004<sup>165</sup> with attached List of Outstanding Checks as of November 30, 2004<sup>166</sup> and Statement of Account as of November 2004 and its pertinent portion,<sup>167</sup> (uu) List of Outstanding Checks as of December 31, 2004 certified correct by Asterio C. Tolentino, Jr. with the Statement of Account for the month of December 2004 and its pertinent portion,<sup>168</sup> (vv) Canvass Papers from Baguio Victory Furniture and Construction Supply dated December 22, 2003,<sup>169</sup> Canvass Papers from Wi-Al Construction Builders dated December 22, 2003<sup>170</sup> and Canvass Papers from Pyramid Hardware and Construction Supplies dated December 22, 2003,<sup>171</sup> and (ww) Memorandum No. 2002-053 and pertinent portions thereof.<sup>172</sup>

9. **Adeline M. Ramos**<sup>173</sup> (“Ramos”) is the Department Manager of Landbank of the Philippines, Baguio City. Her testimony was dispensed with after the parties stipulated on the documents she was to authenticate during the proceedings. The following are the documents or bank records admitted and stipulated: (a) Certification dated June 20, 2016 signed by witness Adeline M. Ramos,<sup>174</sup> (b) Original Printout from System of Land Bank of the Philippines Statement of Account (2004) for the month of October 2004 which shows entry for NCA/NTA/Check No. 410010 dated October 12, 2004 in the amount of P758,998.70,<sup>175</sup> (c) Original Printout from System of Land Bank

<sup>160</sup> Exhibits F and submarkings

<sup>161</sup> Exhibit E-3

<sup>162</sup> Exhibit K<sup>3</sup>

<sup>163</sup> Exhibit K<sup>3</sup>-1

<sup>164</sup> Exhibits K<sup>3</sup>-2, K<sup>3</sup>-2-a, K<sup>3</sup>-3 and K<sup>3</sup>-3-a

<sup>165</sup> Exhibit L<sup>3</sup>

<sup>166</sup> Exhibit L<sup>3</sup>-1

<sup>167</sup> Exhibits L<sup>3</sup>-2 and L<sup>3</sup>-2-a

<sup>168</sup> Exhibits M<sup>3</sup>, M<sup>3</sup>-1 and M<sup>3</sup>-1-a

<sup>169</sup> Exhibit KK

<sup>170</sup> Exhibit LL

<sup>171</sup> Exhibit MM

<sup>172</sup> Exhibits A<sup>4</sup> and submarkings

<sup>173</sup> TSN dated October 10, 2016

<sup>174</sup> Exhibit B<sup>4</sup>

<sup>175</sup> Exhibits N<sup>3</sup> and N<sup>3</sup>-1

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of the Philippines Modified Disbursement System Statement of Account for the month of October 2004 which shows the entry under NCA/NTA/Check No. 410015 dated October 29, 2004 in the amount of P101,397.49,<sup>176</sup> and (d) Original Printout from System of Land Bank of the Philippines Modified Disbursement System Statement of Account for the month of November 2004 which shows the entry under NCA/NTA/Check No. 410017 dated November 19, 2004 in the amount of P101,397.49.<sup>177</sup>

On February 9, 2017, the prosecution made its Formal Offer of Documentary Exhibits dated February 8, 2017.<sup>178</sup> Accused Salvador, Reyes, Ang and Mauri then filed their respective Comments to the Prosecution's Formal Offer of Evidence.<sup>179</sup> The Court, in its Resolution dated April 19, 2017, resolved to admit in evidence all the documentary exhibits offered in the tenor that they were testified to by the witnesses. It also made the following observations as regards the offer: (1) The description of Exhibit F-8 does not correspond to the portion actually marked in the document; (2) Exhibits T3, NN-1, OO-1 and C3-1 were attached to the offer, although not offered; hence shall be disregarded; (3) Exhibit NN is a Disbursement Voucher dated December 29, 2004, not December 16, 2004, as described in the offer; (4) Exhibit OO is a Disbursement Voucher numbered 04-12-0891, not 04-12-969 as described in the offer; (5) The routing slip attached to Exhibit U is dated 7/18/05, not July 7, 2005 as stated in the offer; (6) The document described as Exhibit A4-4 was actually marked as Exhibit A4-7.<sup>180</sup>

On May 8, 2017, accused Salvador filed a Motion for Leave of Court to File Demurrer to Evidence dated May 8, 2017 and Demurrer to Evidence (with Prior Leave of Court) dated May 8, 2017.<sup>181</sup> On May 15, 2017, the prosecution filed its Comment/Opposition (to Motion for Leave of Court to File Demurrer to Evidence filed by Accused Joel G. Salvador) dated May 12, 2017.<sup>182</sup> Following this, accused Reyes, Ang and Dominong separately filed Motions for Leave of Court to File Demurrer to Evidence.<sup>183</sup> In its Order dated May 18, 2017, the Court granted the Motions for Leave of Court to File Demurrer to Evidence as to Reyes, Ang and Dominong.<sup>184</sup> Thus, on June 2,

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<sup>176</sup> Exhibits O<sup>3</sup> and O<sup>3</sup>-1

<sup>177</sup> Exhibits P<sup>3</sup> and P<sup>3</sup>-1

<sup>178</sup> Records, Vol. 3, p. 77

<sup>179</sup> Id. at 437, 454, 470 and 472


<sup>180</sup> Id. at 493.

<sup>181</sup> Id. at 502, 507.

<sup>182</sup> Id. at 524.

<sup>183</sup> Id. at 544, 552, 559.

<sup>184</sup> Id. at 567.

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2017, accused Ang, Dominong and Reyes filed their respective Demurrers to Evidence.<sup>185</sup> On June 15, 2017, accused Mauri filed her Motion for Leave to file Demurrer to Evidence dated June 6, 2017.<sup>186</sup> On June 16, 2017, the prosecution filed its Consolidated Comment/Opposition (to Demurrer to Evidence) dated June 15, 2017 and Comment/Opposition to the Motion for Leave to file Demurrer to Evidence filed by Accused Perlita L. Mauri.<sup>187</sup>

Meanwhile, on July 18, 2017, accused Tolentino filed a Manifestation dated July 6, 2017, in which he stated that he is adopting the cross-examinations conducted by the counsels of all the other accused for all the witnesses for the prosecution and would like to make additional cross-examination for witnesses Agcon and Lausa.<sup>188</sup> The same was noted by the Court in its Resolution dated July 18, 2017.<sup>189</sup>

In its Resolution dated August 1, 2017, the Court denied the Demurrers to Evidence filed by accused Ang, Dominong and Reyes, as well as the Motion for Leave to File Demurrer to Evidence filed by accused Mauri.<sup>190</sup> On August 25, 2017, accused Reyes filed his Motion for Reconsideration of the said Resolution dated August 18, 2017.<sup>191</sup> On September 13, 2017, the prosecution filed its Comment/Opposition to the Motion for Reconsideration dated August 18, 2017. In its Resolution dated September 29, 2017, the Court resolved to deny Reyes' Motion for Reconsideration dated August 18, 2017.<sup>192</sup>

Meanwhile, in its Resolution dated August 30, 2017, the Court denied accused Salvador's Demurrer to Evidence dated May 8, 2017.<sup>193</sup> On September 19, 2017, Salvador filed a Motion for Reconsideration dated September 19, 2017.<sup>194</sup> On October 4, 2017, the prosecution filed its Comment/Opposition (to Motion for Reconsideration dated September 19, 2017) dated October 3, 2017.<sup>195</sup> The Court, in its Resolution dated October 25, 2017, denied Salvador's Motion for Reconsideration dated September 19, 2017 for lack of merit.<sup>196</sup>

<sup>185</sup> Records, Vol. 4, pp. 30, 34, 61.

<sup>186</sup> Id. at 133.

<sup>187</sup> Id. at 141, 165.

<sup>188</sup> Id. at 199.

<sup>189</sup> Id. at 203.

<sup>190</sup> Id. at 209.

<sup>191</sup> Id. at 233.

<sup>192</sup> Id. at 317.

<sup>193</sup> Id. at 276.

<sup>194</sup> Id. at 311.

<sup>195</sup> Id. at 329.

<sup>196</sup> Id. at 391.

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On October 27, 2017, accused Tolentino filed his Comment on the Prosecution's Formal Offer of Documentary Exhibits dated October 26, 2017.<sup>197</sup> Acting thereon, the Court, in its Resolution dated November 6, 2017, admitted all the exhibits offered in the tenor that they were testified on by the witnesses, over the objection of accused Tolentino to the purposes and relevance to the purposes for which the exhibits were offered, the self-serving character as to some of the documents offered and the evidentiary weight thereof, which will be considered in the evaluation of the evidence in the decision of the case on the merits.<sup>198</sup>

On November 28, 2017, accused Tolentino filed a Motion for Leave of Court to File Demurrer to Evidence dated November 27, 2017.<sup>199</sup> On December 1, 2017, the prosecution filed its Comment/Opposition (to Motion for Leave of Court to File Demurrer to Evidence filed by Accused Asterio C. Tolentino) dated November 29, 2017.<sup>200</sup> In its Resolution dated December 1, 2017, the Court denied accused Tolentino's Motion for Leave of Court to File Demurrer to Evidence.<sup>201</sup> On January 18, 2017, Accused Tolentino filed a Motion for Reconsideration of the Resolution dated December 1, 2017 dated January 17, 2018. On January 31, 2018, the prosecution filed its Comment/Opposition (to Motion for Reconsideration of the Resolution dated December 11, 2017 filed by Accused Asterio C. Tolentino, Jr.) dated January 29, 2017.<sup>202</sup> In its Resolution dated February 20, 2018, the Court denied accused Tolentino's Motion for Reconsideration.<sup>203</sup>

### EVIDENCE FOR THE DEFENSE

In view of the denial of their Demurrer to Evidence, the defense, on February 13, 2018, started presenting their witnesses. They presented accused Joel G. Salvador, Laureta A. Wakat, Rolando C. Reyes, Perlita L. Mauri, Mariano Ang, David A. Dominong and Asterio C. Tolentino, Jr.

1. Accused **Joel G. Salvador**<sup>204</sup> is the Regional Director of the EMB, Regional Office No. 1 of the DENR and was assigned in Baguio City sometime in October 2003. He stated via Counter-

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<sup>197</sup> Id. at 401.

<sup>198</sup> Id. at 408.

<sup>199</sup> Id. at 445.

<sup>200</sup> Id. at 453.

<sup>201</sup> Id. at 467.

<sup>202</sup> Id. at 486.

<sup>203</sup> Id. at 504.

<sup>204</sup> TSN dated February 13, 2018

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Affidavit<sup>205</sup> that EMB-CAR had been occupying a very old and dilapidated building used to house the Forest Research Institute (FORI) employees and their families in the early 1970s. EMB-CAR then requested the EMB-Central Office to provide the necessary funds for the rehabilitation of the EMB-CAR existing old dilapidated building. As a result, the EMB-CAR was advised verbally by the EMB-Central Office that it had no released capital outlay for calendar year 2003 but the EMB-CAR may use its own savings and/or the allotment downloaded to the EMB-CAR office for the improvement of its old existing building. This verbal instruction was later on allegedly confirmed by Memorandum dated January 26, 2004 of Director Julian D. Amador of the EMB-Central Office.

On December 2, 2003, the EMB-CAR received the Sub-Allotment Advice No. EMB-03-11 dated December 28, 2003, which was intended for the implementation of the Ecological Solid Waste Management Project (ESWMP) and additional operating requirements of the EMB-CAR. However, since the required expenditures for the implementation of the ESWMP had already been fully covered by the EMB-CAR regular allotment, the EMB-CAR decided to pursue the repair or rehabilitation of its existing old EMB-CAR building using the SAA funds considering that the subject funds already became savings of the EMB-CAR. The same can allegedly be realigned in conformity with the verbal advice from the EMB-Central Office. He further claims that there was an immediate need to rehabilitate or repair the old dilapidated EMB-CAR building to ensure the safety of all the personnel working in the subject building considering that the structure had already been greatly compromised by the earthquake that hit Baguio City sometime in 1990.

He claimed that he approved the project with a condition that the EMB-CAR sought clearance from the Commission on Audit (COA-CAR). The COA-CAR then advised the EMB-CAR to use Section 53 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184, otherwise known as the "Government Procurement Act" to allocate and obligate subject funds for the project considering that it was then reported that if the EMB-CAR fails to allocate or obligate subject funds at the end of the year, it would revert back to the national government. As advised, EMB-CAR secured at least three (3) price quotations from suppliers pursuant to Section 53 of subject IRR; hence the SAA funds were allocated and obligated at the year ending December 31, 2003. He alleged that under the circumstances, the negotiated

<sup>205</sup> Records, Vol. 1, p. 186

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procurement under Section 53 of the IRR of R.A. No. 9184 could very well be used to forego with the public bidding requirement because of the immediate necessity of rehabilitating or restoring the old dilapidated EMB-CAR building into a safe and workable area of the EMB-CAR personnel to ensure an efficient and public service.

He further states that EMB-CAR was initially hesitant to implement the project because the requirement under R.A. No. 9184, particularly the bidding process, has not been complied with. Thus, a meeting between the EMB-CAR representatives and the resident COA auditors was held on October 5, 2004 to discuss the issue of whether to pursue with the project. Admittedly, he was not present during the meeting. Engr. Rolando Reyes informed him, however, that the COA auditors approved the project and suggested that the EMB-CAR use Section 53 of R.A. No. 9184 or the negotiated procurement for the procurement of labor while the acquisition of materials for the project would be done administratively.

As to the findings that the retention fee was paid to the contractor despite noted defects and that the fee was charged from the Environmental Revolving Fund in violation of PD. No. 1586 and its IRR, he claims that the noted defects on the project as contained in Memorandum dated February 15, 2006 of the City Buildings and Architecture Office is more apparent than real.

Relative to the audit finding that the retention fee was allegedly charged from the Environmental Revolving Funds, he alleged that the letter dated October 10, 2006 of Hermelina D. Lausa states that the amount of P33,779.14 was originally charged to Fund 101 (Accounts Payable), a fund already allotted and obligated. Check No. 411020 dated November 30, 2004 was then issued payable to Mr. David Dominong. But when the contractor went to the bank to withdraw the amount he was informed that there was a lapsed NCA as a consequence of funding reversion due to the Land Bank's fault. Since the accountant was absent at that time, Ms. Lausa was instructed to communicate with the Accountant of EMB Central Office and the latter mentioned that though there was an admittance from the bank of their fault, it is still their obligation to settle their accounts with the external client. Ms. Lausa was then instructed to charge the retention fee under the Environmental Revolving Fund of which Ms. Lausa relayed to the Regional Director and complied with such instruction. Thus Check No. 691935 dated February 16, 2005 was issued payable to the claimant.

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Accused Salvador in open court discussed the reason for dispensing with the public bidding, explaining that there is some alternative mode of procurement and one is the negotiated procurement, which allows for procurement without having to go undergo bidding because there is an immediate need or it required an immediate action to prevent the loss of life or damage to property.

He reiterated the condition of the building, describing it as a non-workable place in that water goes into the office when it rains, there were cracks and holes in the walls and the rest rooms cannot be used properly that visitors and clients had to be directed to go to the other building of the Regional Office.

He also pointed out that the Order of the Ombudsman suspending him for one year was appealed to the Court of Appeals, which reduced the penalty to one month and one day.<sup>206</sup>

Accused identified the following documents: (a) Memorandum of Regional Director Julian D. Amador;<sup>207</sup> (b) Memorandum dated October 10, 2006;<sup>208</sup> (c) Notice of Judgment in CA - G.R. SP No. 139818, Joel G. Salvador vs. Public Assistance and Corruption Prevention Office (PACPO), et al.;<sup>209</sup> (d) Decision in CA - G.R. No. 139818 promulgated on January 23, 2017;<sup>210</sup> and (e) Dispositive portion partially granting the petition and modifying the assailed decision.<sup>211</sup>

On cross-examination, he declared that there was partial demolition of the building and that the one-storey building became two-storey after the construction. He admitted that there is no capital outlay in 2003 based on the Memorandum. He also acknowledged that he entered into Contract of Service with herein accused Dominong despite the absence of public bidding and that he approved the release of funds in the latter's favor. He mentioned, as well, that he released the funds in favor of supplier herein accused Ang, owner of PHCS.

Accused Salvador alleged that there was perhaps no delivery at the time the List of Due and Demandable Accounts Payable (A/P) was sent to DBM [on March 10, 2004] as deliveries were

<sup>206</sup> Exhibits 6-A and 6-A-1-Salvador

<sup>207</sup> Exhibit 1-Salvador

<sup>208</sup> Exhibit 5-Salvador

<sup>209</sup> Exhibit 6-Salvador

<sup>210</sup> Exhibit 6-A-Salvador

<sup>211</sup> Exhibit 6-A-1-Salvador

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made only on October 12, 2004. He also admitted that there were noted defects in the construction of the building, although the same are not sufficient cause for alarm. He stated that there was no application for the issuance of a building permit and that there was no certificate of occupancy issued by the City Building and Architecture Office.

He admitted that he asked for deferment on January 15, 2004, but the project only pushed through on October 2004 and that he has no knowledge of any public bidding from January until October 2004.

On re-direct examination, accused Salvador testified that the EMB-Central Office approved the rehabilitation of the dilapidated building because of the Memorandum of Director Julian Amador that EMB-CAR will use the funds. He also stated that there was no written approval from the Resident Auditor, but according to their project engineer who was constantly meeting with the Resident Auditor, EMB-CAR can go ahead with negotiated procurement. That allegedly served as their authority to proceed even without public bidding.

He reiterated that the funds for the repair and rehabilitation of the building were taken from the SAA because it forms part of the savings of the office. He further alleges that the purpose of the SAA is for the ESWMP and that it was released in 2003; hence EMB-CAR can use that as savings because all of the ESWMP projects that were implemented utilized the regular funds. Funds used then for that building referred to the additional operating requirements stated in the SAA.

He also claims that what was intended to be repaired is the office of the Regional Director and not the whole building. It was thus only a rehabilitation or repair of the building.

2. Witness **Laureta A. Wakat**<sup>212</sup> ("Wakat") was next presented to testify for accused Reyes. She testified via Judicial Affidavit<sup>213</sup> that she is the Environmental Management Specialist II at the time material to these cases. She was then also the acting Human Resources Management Officer and the acting Supply Officer. She alleged that the building subject matter of the case was rehabilitated because it was already dilapidated at that time. Prior to the rehabilitation of the building, the 30-year old building was already very old and worn-out. There were water leaks in the

<sup>212</sup> TSN dated March 12, 2018

<sup>213</sup> Judicial Affidavit of Laureta A. Wakat dated March 7, 2018. Records, Vol. 5, p. 19.

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walls and ceiling whenever it rains that they had to put plastic cans and pails all over the place to catch water leaks. There were also cracks in the walls and in the floor caused by the big earthquake that happened in 1990 in Baguio City. There was only one comfort room that was not working properly, so the women share with the men. The comfort room emits very repulsive odor and the smell permeates the whole office.

She explained that before proceeding with the rehabilitation, Ms. Loida Santiago ("Santiago"), who happened to be the Resident Auditor of the COA at that time, was consulted through a face to face meeting sometime in October 2004. Engr. Rolando Reyes, Asterio Tolentino and Ligaya Garcia were also present. During the meeting, Santiago called up her superior in the COA and after they talked, the COA Resident Auditor told them to proceed with the rehabilitation even without a public bidding. She further testified that there was a canvass conducted in relation to the materials and supplies that were used in the rehabilitation of the building. They allegedly obtained quotations from several hardware stores in Baguio City, and it was PHCS which happen to have offered the lowest prices.

3. Accused **Rolando C. Reyes**<sup>214</sup> next took the witness stand and identified his Counter-Affidavit.<sup>215</sup> He is the OIC of Administrative Division, EMB in 2003 and the OIC-Pollution Control Division Chief, EMB in 2004. He claims that good faith and fairness attended the purchase of the construction materials from PHCS used in the repair and rehabilitation of the building subject matter of the case. He explained that EMB-CAR was designated to occupy an old and worn-out building constructed in the 1970s and previously used as a housing unit of the old forestry bureau. He also alleged that the condition of the said building was unpleasant, thereby greatly affecting the performance of work and the provision of public service.

Thus, EMB-CAR requested EMB-Central Office to allegedly allocate funds for its improvement. Though EMB-Central Office agreed to allocate funds for the renovation of the building, it told EMB-CAR to wait for the budget for the succeeding year since the fiscal year was about to end. EMB-Central Office, however, advised EMB-CAR that it could utilize the savings on operational expenses and the upcoming allotment for operational expenses for the intended repair. The Memorandum of Director Julian Amador dated January 26, 2004 was the basis in stating that the

<sup>214</sup> TSN dated April 2, 2018, 8:30am & TSN dated April 2, 2018, 1:30pm

<sup>215</sup> Counter-Affidavit of Rolando C. Reyes dated April 30, 2003, Records, Vol. 1, p.190

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EMB-Central Office authorized the use of savings for the improvement of the said building. On December 2, 2003, EMB-CAR received a faxed copy of SAA No. EMB-03-11-05 worth P1,150,000.00. The fund was for additional operating requirement and as fund for the implementation of the ESWM Project.

The following day, in a meeting attended by Reyes, Tolentino, Jr., Garcia, Wakat, Lausa, Resident Auditor Santiago and her assistant Susan Ocon ("Ocon"), the issues and concerns of the office were discussed and it was allegedly decided that the project be done through negotiated procurement inasmuch as they could not go away with the provisions of R.A. No. 9184 on the requirement of public bidding. Santiago mentioned that she will call first her superior Atty. Cesar Villena ("Villena") regarding the issues and concerns and it was done through cellphone in loud speaker so everyone could hear their conversation. Ms. Santiago mentioned that they are ready to return the money and also mentioned '*Sayang naman ang pera kapag hindi magamit.*' Reyes recalled Santiago saying that Villena has given the go signal provided that canvassing would be done and the lowest prices would be chosen.

EMB-CAR informed the COA that they could not possibly comply with all the requirements under R.A. No. 9184 and the project itself before the end of the year. The COA, through Santiago, allegedly assured that there is no need to conduct competitive bidding since the obligation falls under Section 53 of the IRR of R.A. No. 9184.

The EMB-CAR then implemented the negotiated procurement by issuing canvass forms to various suppliers for the latter's submission of their price quotation, of which PHCS submitted the lowest prices of the materials to be used. Accused Reyes pointed out that prior to the purchase of materials, he does not know accused Ang, the owner of PHCS.

Accused Reyes admitted that he was designated by the Regional Director (herein accused Salvador) as the Project Engineer and Inspector for the repair or improvement of the building subject matter of this case. He further claims that he prepared the site specifications for the repair and rehabilitation of the Regional Director's Office and Environmental Education Information Center. No third party was outsourced or engaged to prepare the site development plan in order to save money and avoid additional expenses. No additional compensation for the

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specification prepared was also received. The plans and specifications were eventually furnished to accused Dominong whom accused Reyes described as technically and financially capable contractor to do the project. Afterwards the Allotment and Obligation Slip (ALOPS) for the project was submitted to the budget unit on December 20, 2003.

On January 15, 2004, a Notice of Temporary Deferment of the project was issued because of delay in the release of the fund. On October 1, 2004, the DBM released the budget but EMB-CAR management was hesitant to start the project as the procedure required by R.A. No. 9184 was not complied with. Hence, a meeting was conducted on October 5, 2004 among EMB-CAR representatives and the COA Auditor with the latter confirming that the funds be used for the project. On October 19, 2004, he was designated by the Regional Director (herein accused Salvador) as project engineer and inspector. Accused Reyes claims that since he was ordered to implement the project, he had no other recourse than to follow the order, lest he be charged for insubordination.

On the issue of technical malversation, Reyes claims that the same has no basis in fact and in law. He stated that his actions were in consonance to the decisions of the EMB-CAR, which were perfected only after due consultation with the advice of COA. He was only acting under such due advice and decisions of COA and EMB-CAR and thus should not be faulted if the advice is proven wrong in the end.

Furthermore, he contends that there is no technical malversation since the fund under SAA No. EMB-03-11-05 is not exclusively allocated for the implementation of the ESWM. The fund is also directed to be used as additional operating requirements. Being an additional operating requirement, the said fund can be categorized under the EMB-CAR's Maintenance and Other Operating Expenses (MOOE). Being a fund under the MOOE, the EMB-CAR then can realign the fund without securing an authorization from the DBM. This authority is provided under Section 58 of R.A. No. 9206 (2003 General Appropriations Act). Said provision of law specifically states:

Section 58. Augmentation of Maintenance and Other Operating Expenses (MOOE) Items. Agencies may augment an item of expenditure within MOOE, except intelligence and confidential fund, from savings in other items of MOOE without prior approval of the DBM.

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He then reiterates that the fund is already considered savings under the MOEE since all the targets for the implementation of the ESWM were already implemented by the EMB-CAR.

As to the issue of non-compliance with the provisions of R.A. No. 9184, accused Reyes alleged that his actions were undertaken after the COA had approved that the provisions of R.A. No. 9184 were satisfied. Thus, his actions should be reviewed under the said conditions.

As also previously mentioned, the condition of the old building of the EMB-CAR was unpleasant, thereby greatly affecting the performance of work and the provision of public service. The clamor to repair and rehabilitate the old building was great; and even the EMB-Central Office agreed to the rehabilitation of the said building. The fund for the rehabilitation of the said building, however, was allegedly hindered by requirements of official procedures like budget allocation, approval, term for the accomplishment of the said procedures and the length of time consumed for undertaking the aforesaid procedures. In the meantime, that the said processes are undertaken, the provision of public service is greatly impeded, as well.

Thus, when the EMB-CAR was confronted with the chance of using savings to repair the old building, vis-à-vis the concern regarding the usage of funds within a fiscal year, the COA suggested the use of Sec. 53 of the IRR of R.A. No. 9184. The said section of the IRR allows Negotiated Procurement or the direct negotiation of contract with a contractor when immediate action is necessary in order to restore vital public services and infrastructure facilities. In this regard, accused Reyes maintained that the IRR of R.A. No. 9184 was not violated by the EMB-CAR.

Moreover, he alleged that the EMB-CAR cannot be faulted in further implementing the said project since the COA itself had approved of the project during the meetings conducted on December 3, 2003 and October 5, 2004.

With regard to the issue of the disbursement of fund in favor of accused Ang/PHCS, accused Reyes insists that he is not accountable therein since disbursement of such funds is not within his control.

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Accused Reyes averred that the materials were indeed purchased from accused Ang / PHCS and that the construction materials that were purchased were all delivered. The said purchase was discontinued, however, since the quotation provided by accused Ang / PHCS in December 2003 were different to the prices which were prevailing in October 2004. Considering the possibility of shortfall of the appropriated funds, accused Ang / PHCS returned to the EMB-CAR, through accused Reyes, the excess of the payment of the materials which were not completely utilized in purchasing materials from the aforesaid company. Accused Reyes declared that he was present when accused Ang withdrew the money from Landbank, Harrison Road Branch, which is 2 kilometers away, and gave it to cashier Lausa. At the time when the cashier received the said amount, the cashier did not issue the official receipt of the Republic of the Philippines showing proof that the money of the government was returned. Accused Reyes was also certain that he did not see a receipt that was issued. He stated that the value of the materials and supplies delivered by PHCS was allegedly P401,226.20, for which the latter received the same amount and that there was a return by PHCS of a portion of amount.

He pointed out that in the Certification dated October 22, 2004,<sup>216</sup> the return of the fund for purchase of materials was with the notation of the COA Resident Auditor and under authority of the Regional Director, although the cashier has no signature on the acknowledgment receipt. This certification allegedly only goes to show that the return of funds to EMB-CAR thru Reyes was under the direct regulation of the COA.

He further mentioned that in the Statement of Account of PHCS, EMB-CAR still purchased materials from the said seller on December 23, 2003. Said purchase was made even after the time that the seller returned the unused amount to the EMB-CAR on December 22, 2003. This fact allegedly goes to show that EMB-CAR was keen on the price of the materials, such that it did not have any reservations to purchase from the said seller if the price of the said materials are lower compared to other sellers.

On the other hand, with regard to the donation of 100 bags of cement by the Philex Mining Corporation on December 1, 2004, accused Reyes reasoned out that the same was accepted by him only because the funds for the project were deficient. At this point, the remaining amount of funds allocated for the purchase of materials for the said project only amounted to P19,622.00.

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<sup>216</sup> Exhibits 40, 40-A and 40-B-Reyes

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This amount is said to be inadequate to pay the balance owing to PHCS in the amount of P31,032.00, which is the payment of purchases made after the return of the fund for materials to the EMB-CAR. Accused Reyes begged the indulgence of the Honorable Ombudsman for not reporting the said donation in the accounting by the government. He stated, however, that the donation was not in any way concealed since the delivery was recorded in the logbook and no effort was made to cover up the contents of the said logbook. Moreover, as can be seen from the logbook, the construction workers were to receive and wait for the delivery of the donated cement at the place at 4:20 in the afternoon. The donation, however, was not reported for accounting as required by Section 63 of PD1445.

On the other hand, accused Reyes alleged that neither undue injury was caused to the government for unwarranted benefit given to the private contractor herein accused Dominong when the latter's retention fee of P33,779.14 was paid because no structural defect on the building ever existed at the time of payment thereof and up to the present. He went on to state that as of now, the building is still standing and is being used ever since. Moreover, the retention fee was said to have been released to accused Dominong as the building has already been finished. As per evaluation, there are no glaring structural defects, so a letter of acceptance has been agreed by the Regional Director herein accused Salvador and the retention fee eventually released.

When asked in open court if he, being the project manager, conducted the inspection of the project, accused Reyes declared that the evaluation was discussed with Engr. Raul Tubangay. He admitted that despite the presence of the hairline cracks as assessed, he never asked for the repair of these hairline cracks prior to the acceptance. He mentioned that as a licensed Civil Engineer who has been a professor for three years, he is of the position that it has no glaring structural defects.

Accused Reyes explained that the hairline cracks near the stairway are structural by itself and are cracks from the cement crust,<sup>217</sup> while the big hairline cracks are due to plastering.<sup>218</sup> He further stated that these hairline cracks which are less than an inch in depth and less than a millimeter in width will have no effect inasmuch as the building itself has been there for fourteen

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<sup>217</sup> Exhibit 39-F-Reyes

<sup>218</sup> Exhibit 39-G-Reyes

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(14) years already and nothing happened. These are the same cracks that were identified by the COA in their report.

Accused Reyes alleged that the repair and rehabilitation was completed and that he did not receive any pecuniary benefit from the repair or rehabilitation.

Accused Tolentino adopted the testimony of accused Reyes.

On additional direct examination by counsel of accused Mauri, accused Reyes mentioned that his subordinates were accused Tolentino, accused Mauri, Lausa and Malou Weigan. Accused Tolentino is allegedly the immediate supervisor of accused Mauri and all the things that accused Mauri does will be checked and approved by accused Tolentino.

Accused Reyes mentioned that he believes that it was after the transmittal of Amador that there was a collegial discussion as to how the savings would be used sometime in 2003 because Amador has already authorized the use of savings. The prosecution notes, however, that the written letter of Julian Amador is dated January 26, 2004 and not 2003.

Counsel for Tolentino adopted the testimony of accused Reyes with qualification. To be specific, the testimony with respect to the savings is adopted, but not the following: (1) When they were into the discussion as to the negotiation and meeting in resorting to some form or modes of procurement, that accused Tolentino is present; (2) The letter of acceptance despite the cracks or minor defects after they checked the building, where the retention money was based, and (3) That accused Mauri is directly reporting to accused Tolentino.

Accused Reyes identified the following documentary exhibits: (a) Counter-affidavit of Rolando C. Reyes<sup>219</sup> and his signature;<sup>220</sup> (b) Regional Special Order No. 89 dated October 19, 2004<sup>221</sup> and the signature;<sup>222</sup> (c) Memorandum of Director Julian Amador dated January 26, 2000;<sup>223</sup> (d) Canvass papers,<sup>224</sup> and abstract of canvass;<sup>225</sup> (e) Audit Survey on the EMB-CAR project, repair and rehabilitation of the environmental education

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<sup>219</sup> Exhibit 3-Reyes

<sup>220</sup> Exhibit 3-A-Reyes

<sup>221</sup> Exhibit 49-Reyes

<sup>222</sup> Exhibit 49-A-Reyes

<sup>223</sup> Exhibit 7-Reyes

<sup>224</sup> Exhibits 19, 20, 21, 22, 23, 24, 25, 26, 27 and 42- Reyes

<sup>225</sup> Exhibit 51- Reyes

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information center of the regional director's office;<sup>226</sup> (f) Portion stating that that review of the submitted documents show that canvass forms were issued to various supplies, for the latter's submission of their price quotation, of which Pyramid Hardware and Construction Supply submitted the lowest bid and there is a reference;<sup>227</sup> (g) Site development plan;<sup>228</sup> (h) Specification for the repair and rehabilitation of the Regional Director's Office and Environmental Education Information Center<sup>229</sup> and signatures of Reyes and Regional Director;<sup>230</sup> (i) Letter dated October 22, 2004 to COA informing that the money was returned to EMB and signatures of Reyes and COA Resident Auditor Santiago;<sup>231</sup> (j) Delivery Receipts;<sup>232</sup> (k) Cash invoice, receipts, statements of accounts from different hardwares;<sup>233</sup> (l) Pictures of the building;<sup>234</sup> (m) Certificate of Acceptance dated January 14, 2005 and signature<sup>235</sup> and (n) PHCS Statement of Account.<sup>236</sup>

During his cross examination, accused Reyes mentioned that the building was only partly demolished, but admitted that the one-storey building eventually became a two-storey building. He also stated that the conceptualizing and planning for the repair of the building, which then involved the improvement of the office of the Director with a meeting space for clients, was begun sometime during the second quarter of 2003. However, the plan was admittedly finished around 2004.

Reyes averred that the rehabilitation of the building started sometime in October 2004, or ten (10) months after the amount was obligated, which was admittedly too long. He explained that the funds were already obligated as of 2003, but they were not yet approved. Since there was no capital outlay, EMB-CAR can only the savings of the SAA.

Accused Reyes admits that he has already met with accused Dominong, who is a welding shop owner, prior to the transaction because he made a garage and that he did not ask for any document to prove his technical capability or financial capability.

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<sup>226</sup> Exhibit 43-Reyes

<sup>227</sup> Exhibit 43-A-Reyes

<sup>228</sup> Exhibit 44-Reyes

<sup>229</sup> Exhibit 61-Reyes

<sup>230</sup> Exhibits 61-A and 61-B-Reyes

<sup>231</sup> Exhibits 40, 40-A and 40-B-Reyes

<sup>232</sup> Exhibit 41-Reyes

<sup>233</sup> Exhibits 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 45, 47 and 57-Reyes

<sup>234</sup> Exhibits 39, 39-A, 39-B, 39-C, 39-D, 39-E, 39-F, 39-G-Reyes

<sup>235</sup> Exhibit 18-Reyes and 18-A-Reyes

<sup>236</sup> Exhibit 16-Reyes

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He also admits that there is no proof of written authority or advice from COA as to the use of such method of negotiated procurement of the infrastructure project.

Reyes alleged that he is neither aware of realignment of funds in this transaction nor that DBM had not approved any realignment of funds.

As to the previous allegation that all orders from Pyramid were delivered, it was clarified that there was already payment although there were items still undelivered. And that is why PHCS had to return the money overpaid considering that the materials paid were not delivered yet.

Regarding the release of the retention fee right after acceptance of EMB-CAR, accused Reyes acknowledged that there was no one year retention before the release of the bond. He also confirmed that he did not ask for the repair of those portions with hairline cracks, deflection in the steel deck slabs and the roof deck slabs before the release of the retention amount. He opined that these are minor defects. Reyes admitted that he lost the copy of the report of Engr. Tubangay who inspected on this before the acceptance.

Accused Reyes admits that from January 2004 when the notice of temporary deferment was issued until October 2004, when the DBM released the budget, no action was taken to rehabilitate the building for 10 months. Reyes believes though that public bidding should have been conducted, which is why he was hesitant at that time. This is also why he made a justification with respect to the deviation on the procedure of the procurement for infrastructure as provided for under the IRR of R.A. No. 9184.

Also, he alleged that during the meeting with COA Resident Auditor held on October 5, 2004 in the temporary office of the Regional Director in the other building, he does not remember the model of the cellphone when Loida was talking with Cluster Director Villena, even on speaker mode. He claims that Director Villena mentioned, "*Eh kung ganyan lang ang sinasabi mo, go with the project.*" He also admits that there is no documentary evidence of the statement that EMB-CAR was advised to finish the project by the end of December 2004 since the fund has already been obligated under the 2003 budget and that if they fail to use the fund by the end of 2004, then the fund has to be returned to the National Treasury. Accused Reyes admitted that they did not want to return the fund to the National Treasury.

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There is also no documentary proof that there was an assurance on the part of the COA that there is no need to conduct a competitive bidding since the obligation falls under Section 53 of the IRR of R.A. No. 9184.

Accused Reyes maintains that there was imminent danger to the properties of the government although he initially admits that for that particular period in which they had a meeting on December 2003 deciding collegially the use of the negotiated procurement, there was no state of calamity. In fact, there was no state of calamity in 2003 and 2004 but he asserts that he considers typhoon as a natural calamity and that during December 2003, there was allegedly a typhoon.

Accused Reyes further contends that immediate action is necessary because public service is being sacrificed. He agreed, however, that there was no immediate action taken from December 2003 until the start of the rehabilitation on October 2004. During that period, employees were housed in the subject building. The stoppage of work due to the rehabilitation was admitted to have happened only happened on October 2004, and not from December 2003.

Accused Reyes mentioned that they had to ask for the return of the excess amount paid to accused Ang/PHCS because the prices of costs of the materials are no longer applicable due to inflation. He admitted that this would not have happened if they followed the public bidding because there should be a period of time where the price quotation of the supplier would be available.

On re-direct examination, accused Reyes clarified that as to the Disbursement Voucher dated November 30, 2004 prepared by him, payment of the retention fee was received by accused Dominong on February 16, 2005, as reflected on the lower right portion of the disbursement voucher in the box, 'Received Payment.' Accused Reyes explained that the retention fee was released because the project was already completed and also for humanitarian reasons. He was allegedly informed that two weeks after the start of the project, accused Dominong was electrocuted because of faulty wirings that were being removed and that the latter sustained major burns in the body and confined in Saint Louis Hospital. Due to the hospital billings, accused Dominong's wife frequented their office and asked for the retention fee for the payment of the hospital bills.

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Accused Reyes also mentioned that accused Dominong was chosen as the contractor because prior to the project, accused Dominong was also contracted to construct the garage near the subject building and after the accomplishment of that garage, EMB-CAR was satisfied of his work. It was thus allegedly recommended by the EMB Civil Engineer Engr. Randy Talauan that accused Dominong be contracted again to make the project.

With respect to the deflection, Accused Reyes maintains that as far as he is technically capable, the deflection appears in a certain section and not on the whole, entire slab. When he allegedly took pictures in 2016, the deflection was still the same and did not freely go further, despite being used, loaded and placed with heavy materials.

Accused Ang and Doming adopted the direct testimony of accused Reyes, with additional questions.

During the additional re-direct by Counsel for Ang and Dominong, accused Reyes claims that he has no participation as to Exhibit EE.<sup>237</sup> Also, he acknowledges that the Letter dated October 22, 2004,<sup>238</sup> which essentially provides that he acknowledges the receipt of P357,772.50 from PHCS, was executed by him to prove that the amount was really returned to him. The said Letter was allegedly made in the office and signed by the COA Resident Auditor.

Accused Mauri and Tolentino adopted the testimony.

During the additional re-direct examination by Counsel for accused Mauri and Tolentino, accused Reyes admits that when Lausa and Ligaya prepared the P758,998.70 payment to PHCS, there was already a budget allotted to PHCS in this amount. Particularly, Mauri had nothing to do with the preparation of the ADA and the payment of P758,998.70 to PHCS. Moreover, the total budgetary requirement for the rehabilitation of the EMB-CAR building was allegedly around P1.2 million. It was allegedly the EMB cashier Ms. Lausa, and not accused Mauri, who released the payments for these amounts to the contractor and to the supplier of the materials.

On re-cross examination, accused Reyes again insisted that payment was made after delivery, because the billing statement

<sup>237</sup> Advice/Authority to Debit Account Debit Memo No. 04-10-010 dated October 11, 2004 under Payee Mariano Ang in the total amount of P758,998.70

<sup>238</sup> Exhibit 40-Reyes

Handwritten signature and initials in the bottom right corner.

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totalled the delivery receipts, the individual delivery receipts amounting to [P401,226.20]. He admits however that he is not involved in financial matters.

As to the allegation of conspiracy with accused Dominong, accused Reyes reiterated humanitarian reason and insisted that accused Dominong is financially capable. He also mentioned that they verbally contracted other contractors aside from accused Dominong but they refused. He admitted that there was no other procedure made by the office and that they merely accepted a recommendation. There was no written proposal submitted to the BAC by accused Dominong. There also no document like a canvass sheet. Reyes admitted that he is the Interim Chair of the BAC at that time. He also admits that there was no posting of the project in the bulletin board of the public or public places. The project was also not published in newspaper of general circulation, and there was no bid security was submitted by accused Dominong. Accused Dominong, however, signed a contract.

4. Accused **Perlita L. Mauri**<sup>239</sup> next took the witness stand and identified her Counter-Affidavit.<sup>240</sup> She is the Budget Officer of the EMB-CAR at the time material to these cases. She claims that her only participation as to the renovation and construction of the EMB-CAR building is with respect to the allocation of funds. She was instructed by her immediate supervisor herein accused Reyes to look for a budget for the purpose of renovating and/or improving the structure which is now the Office of the EMB-CAR. The allotment used in obligating accused Dominong (ALOBS#1203635) and PHCS (ALOBS#1203563) under Program/Project/Activity (P/P/A) were allegedly from the savings generated or pooled at the end of the year after completion of all the transactions to be funded. The obligation allegedly occurred on the last working day of the year, which is December 30, 2003.

Accused Mauri mentioned that there was at that time a standing letter request allegedly for fundiong in the improvement of the existing building to the EMB-Central Office, EMB-CAR was advised verbally by EMB-Central Office to use the savings and the allotment downloaded to their office. She claims that she has no other participation after funding the transaction.

<sup>239</sup> TSN dated April 3, 2018

<sup>240</sup> Counter-Affidavit of Perlita L. Mauri dated December 28, 2012. Supra note 1 at 207.

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She averred that before the budget for the improvement of the EMB-CAR building was prepared, advice was first sought by the EMB-CAR from the EMB-Central Office which allowed the use of EMB-CAR's savings and/or capital allotment downloaded to EMB-CAR by its central Office.<sup>241</sup>

Accused Mauri claims that based on SAA No. EMB-03-11-05 dated November 28, 2003 (Fund 101), the budget code for the Ecological Solid Waste Management project was actually identified as "A.03.a" and "A.03.b." This account is different from the budget where the funds used to improve EMB-CAR's office came which are: "III.a" (Account Code 755 and 811). The budget was never used by EMB-CAR to fund the improvement of its building. Instead, what was actually used were the savings of EMB-CAR which came from the Allotment "III-a."<sup>242</sup> In other words, the funds coming from this obligation are not those coming from the ESWM project. These funds came from the regular fund of EMB-CAR. This regular fund has a budget coming directly from the DBM at the start of the year. Allotment Plus 101 is EMB-CAR's regular fund at the start of the year - the General Appropriations Act (GAA) fund. She further alleged that the COA Team of Investigators failed in identifying the use of the actual budget allocation identifications considering that they did not actually talk with the persons involved. She further avers that adding the amounts of P790,623.65 in ALOBS (MOEE-03-12-636) dated December 30, 2003<sup>243</sup> and P355,780.64 in ALOBS (MOEE-03-12-635) dated December 30, 2003,<sup>244</sup> the total is P1,146,404.29. These amounts came from different funding sources, which is the general fund. The ESWM budget downloaded to the office is P1,150,000.00. Also, the amount obligated to the "III.a" (755 and 811) account of EMB-CAR is actually shown in the List of Accounts Payable as of December 31, 2003.<sup>245</sup>

She further alleged that she had no participation in the engagement of the contractor, preparation and execution of the Contract between accused Dominong and Salvador, in the award of the project to accused Dominong and the execution of the project.<sup>246</sup> Furthermore, she had no hand in the payment of the creditors of EMB-CAR in relation to the improvement of the building of EMB-CAR.<sup>247</sup>

<sup>241</sup> Exhibits 4-Reyes; 4-A-Reyes

<sup>242</sup> Exhibit 5-Mauri

<sup>243</sup> Exhibit 14-Mauri

<sup>244</sup> Exhibit 15-Mauri

<sup>245</sup> Exhibit 18-Mauri

<sup>246</sup> Exhibits 6 to 8-Mauri

<sup>247</sup> Exhibit 9-Mauri

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Accused Mauri also contends that she had no participation whatsoever in the preparation and payment of the sum of P758,998.70 in favor of accused Ang as the person responsible therein were Acting Cashier Lausa and OIC, Chief Admin & Finance Division Garcia who were never implicated in these cases.<sup>248</sup>

Furthermore, she stated that none of all those facing charges in these cases illegally took monies to the damage and prejudice of the government, going on further to state that accused Reyes even returned the money he received and which in turn were turned over by accused Ang due to excess payment committed by Lausa and Garcia.<sup>249</sup>

Accused Mauri also alleged that she had no participation in the preparation and execution of Disbursement Voucher dated December 16, 2004 and Disbursement Voucher dated December 29, 2004.<sup>250</sup>

In the course of her testimony, she identified the following documents: (a) Position Description Form dated May 6, 1989;<sup>251</sup> (b) Memorandum from Director Julian D. Amador dated January 26, 2004;<sup>252</sup> (c) SAA No. EMB-03-11-05 dated November 28, 2003 (Fund 101);<sup>253</sup> (d) Contract of Service dated December 29, 2003;<sup>254</sup> and (e) Budget Unit Flowchart.<sup>255</sup>

Accused Ang, Dominong, Salvador, Reyes and Tolentino adopted the testimony of accused Mauri.

During the additional direct examination by Counsel of Reyes, accused Mauri, referring to the Contract of Service with Dominong<sup>256</sup> admitted that accused Reyes, together with Ms. Garcia, merely signed as a witness.

On additional direct examination by counsel for Tolentino, accused Mauri admits that the ALOBS (MOEE-03-12-636) dated December 30, 2003 and ALOBS (MOEE-03-12-635) dated

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<sup>248</sup> Exhibit 10-Mauri

<sup>249</sup> Exhibit 11-Mauri

<sup>250</sup> Exhibits 12 and 13-Mauri

<sup>251</sup> Exhibits 1 and I-A-Mauri

<sup>252</sup> Exhibit 4-Mauri; Exhibit M

<sup>253</sup> Exhibit 5-Mauri

<sup>254</sup> Exhibit 6-Mauri

<sup>255</sup> Exhibit 3-Mauri

<sup>256</sup> Exhibit 6-Mauri

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December 30, 2003 prepared by her bears only her signature and not that of accused Tolentino.

During the additional direct examination by counsel for accused Mauri, referring to the Sub-Allotment Advice SAA No. EMB-01-11-05 dated November 28, 2003,<sup>257</sup> accused Mauri declared that the code 969 found below the column New Account Code was for the solid waste expense. She thinks that this was only put in as new account code. The 101 fund code is the general fund also but it is coming from the Central Office, so it is the downloaded fund. The general fund for the whole EMB is labeled as 101.

On cross-examination, accused Mauri mentioned that her immediate supervisor is accused Reyes, the OIC Admin Officer at that time. Around the last quarter of 2003, accused Reyes allegedly asked Mauri to look for savings or funds for the repair or rehabilitation of the old building. Thus, sometime in December 2003, accused Mauri called up the Budget Officer of the Central Office Ms. Laborte. Mauri allegedly talked to her in via telephone in person and Laborte said that EMB-CAR can use the savings to be generated. He said that there was a go signal from Director Amador, although accused Mauri did not talk to Director Amador.


When asked where in the Memorandum of Director Amador<sup>258</sup> is the advice given to use the downloaded funds for the ESWM or additional operating expenses, Mauri reiterated that she only used the savings generated or the pooled funds. When asked if it included the additional operating expense, the additional ESWM downloaded to the office, she answered in the negative.

Accused Mauri declared that at the time she talked with Anabella Laborte ("Laborte"), she requested for a formal written instruction. Laborte allegedly said that they will issue a letter to that effect. Accused Mauri then obligated it at the last day of December 2003, but she did not wait for the written instructions anymore. The funds were allocated and obligated before the copy of the letter of Julian Amador was received.

When asked as to the timeline with respect to the contract of service and the ALOBS, accused Mauri cannot recall which came first – the execution of the contract of service or the issuance

<sup>257</sup> Exhibit X-2

<sup>258</sup> Exhibit M



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of the ALOBS. The Contract of Service<sup>259</sup> was dated December 29, 2003 and she obligated it on December 30, 2003.<sup>260</sup> It was noted that December 30, 2003 is a holiday, but accused Mauri stated that she was on overtime because they could not go on holiday if the funds were not closed.

Moreover, accused Mauri admitted that she does not know the reason as to why the ALOBS (MOOE-03-12-636) dated December 30, 2003 and ALOBS (MOOE-03-12-635) dated December 30, 2003<sup>261</sup> were not signed by the accountant (herein accused Tolentino). She was not sure, as well, if the staff of the accused Tolentino was at the office on that date.

Accused Mauri eventually confessed, while referring to Exhibit X,<sup>262</sup> that the A.3.a can possibly be the same as III.a in the ALOBS.<sup>263</sup> The III.a allegedly meant Environmental Management Expenses, not Environmental Solid Waste Management, while III. B is for solid waste. 3.a is for Environmental Management and Pollution Control and A.03.b is for Toxic Substance and Waste Management.

Finally, accused Mauri stated earlier that she was not invited or asked to participate in the COA audit, but when confronted with Exhibits L<sup>264</sup> and Exhibit M,<sup>265</sup> it appears that she was the one who submitted the same to COA.

5. **Mariano L. Ang**<sup>266</sup> took the witness stand next and he identified his Judicial Affidavit.<sup>267</sup> He testified via Judicial Affidavit that he is the owner and general manager of Pyramid Hardware & Construction Supply. He claims that he does not know accused Salvador, Reyes, Tolentino and Mauri. He does not personally know accused Reyes but he already saw his name in the canvass papers brought at the store in December 2003. He saw him only twice prior to payment – first, when he went to the store and gave the canvass papers and second, when he gave the list of materials to deliver. When the materials were already delivered, accused Reyes was the one who paid Ang at the bank.

<sup>259</sup> Exhibit 6-Mauri

<sup>260</sup> Exhibits 14 and 15-Mauri

<sup>261</sup> Id.

<sup>262</sup> SAA No. EMB-03-11-05 dated November 28, 2003

<sup>263</sup> Exhibits 14 and 15-Mauri

<sup>264</sup> COA Audit Observation No. 06-003 dated October 10, 2006 signed by Perlita L. Mauri

<sup>265</sup> Attachment to the Management Comment of Perlita L. Mauri – Memorandum of Director Julian Amador

<sup>266</sup> TSN dated May 28, 2018

<sup>267</sup> Judicial Affidavit of Mariano L. Ang dated March 27, 2018

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Accused Ang testified that on December 22, 2003, PHCS received canvass papers from the EMB-CAR signed by herein accused Reyes.<sup>268</sup> On October 11, 2004, accused Reyes went back to his store to make the purchase of the construction materials. From October 12 to October 23, 2004, accused Ang / PHCS made the deliveries of the construction materials as contained in the list of purchased materials.<sup>269</sup> Accused Ang mentioned that it was only after the delivery of all the construction materials that he was paid.<sup>270</sup> On October 22, 2004, accused Reyes allegedly paid him in cash in the amount of P401,226.20, representing the materials that were delivered, at the Landbank, Harrison Road Branch, Baguio. On the same date, Pyramid gave back the amount of P357,772.50, representing the excess amount from the payment of cost of construction materials for the repair and rehabilitation of the EMB-CAR Regional Director's Office and Environmental Education and Information Center, to EMB-CAR through accused Reyes.<sup>271</sup> On October 23, 2004, the last delivery for the materials in the amount of P31,032.00 was made.

Because accused Ang was allegedly not paid for the last delivery in the amount of P31,032.00, he demanded payment from the DENR so he sent a statement of account to show them that they still have a balance.<sup>272</sup> He was allegedly not paid the said amount.

In the course of his testimony, Accused Ang identified the following documentary exhibits: (a) Canvass papers;<sup>273</sup> (b) Purchase order which is also the list of materials brought by Engr. Reyes;<sup>274</sup> (c) Delivery Receipts;<sup>275</sup> and (e) Delivery Receipt dated October 23, 2004 of last delivery.<sup>276</sup>

Accused Salvador and Tolentino adopted the testimony of accused Ang. Accused Reyes adopted the testimony of accused Ang only as to the portion on the canvass and delivery of the materials.

On cross-examination, accused Ang mentioned that he does not remember being asked about PHCS' financial capability.

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<sup>268</sup> Exhibit 1-Ang

<sup>269</sup> Exhibit 2-Ang

<sup>270</sup> Exhibits 3-Ang to U-Ang

<sup>271</sup> Exhibit 4-Ang; Exhibit FF

<sup>272</sup> Exhibit 3-W-Ang

<sup>273</sup> Exhibit 1-Ang

<sup>274</sup> Exhibit 2-Ang

<sup>275</sup> Exhibits 3 to 3-T-Ang

<sup>276</sup> Exhibit 3-U-Ang

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Meanwhile, it was noted that the date as appearing on the Advice/Authority to Debit Account Debit Memo No. 04-10-010 (Exhibit EE) is the same date when Reyes gave the list of materials, which was October 11, 2004. Ang alleged that he is not aware of Landbank Account 0221-3223-80, although his name appears in the Advice/Authority to Debit Account Debit Memo No. 04-10-010 dated October 11, 2004<sup>277</sup> as payee. He also claims that he is not aware of the source of the funds used to pay the materials and that he does not know the signatories. Also, it was noted that the price quotation for the construction materials, as stated in the canvass papers, has a total of P758,998.70. Accused Ang reasoned out that this might have been the total of the amount in the materials canvassed.<sup>278</sup> He pointed out that he was only able to deliver what was in the List of Ordered Construction Materials<sup>279</sup> and not all the supplies as stated in the Canvass papers.<sup>280</sup>

On re-direct examination, he alleged that he verified with the Landbank, through a certain Christine Santos, as to the Landbank Account 0221-3223-80 and he was told that they have no knowledge about the existence of this account, considering the length of time that has passed. After going to the Landbank, accused Ang went to Lausa and inquired from her of this account, but the latter also cannot remember about this account.

On re-cross examination, accused Ang stated that he and Lausa went to Landbank on April 2018 but he did not ask for any certification from Landbank regarding Authority to Debit Account.

He further mentioned that he does not remember if the DENR required from PHCS the DTI permit, business permit, etc. He cannot recall if he gave the required documents for bidding or canvass. He admits seeing Exhibit EE<sup>281</sup> only on April 2018. When Engr. Reyes paid him in Landbank, the total amount paid was P401,226.20, and not P758,998.70.

6. **David A. Dominong**<sup>282</sup> was presented next in the witness stand. He is a welder and is the contractor for the labor services of the repair and rehabilitation of the old EMB building.

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<sup>277</sup> Exhibit EE

<sup>278</sup> Exhibit 1-Ang, pages 1 to 6

<sup>279</sup> Exhibit 2-Ang

<sup>280</sup> Exhibit 1-Ang

<sup>281</sup> ADA Debit Memo No. 04-10-010 dated October 11, 2004

<sup>282</sup> TSN dated May 28, 2018

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of the EMB-CAR. In his Counter-Affidavit,<sup>283</sup> he stated that the COA's Audit Report neither mentioned allegations of conspiracy between him and the other accused nor any statement that he colluded with them. He also averred that if irregularities were indeed committed by the officers and personnel of EMB-CAR anent the project he has done, he should not in any way be faulted together with them for what he merely provided was labor services in the repair of EMB-CAR's building. Also, he was able to accomplish and complete the work, for which he should necessarily be compensated.

On direct examination, he declared that after completing the work, the EMB-CAR building was turned over to the EMB Regional Director (herein accused Salvador), who eventually accepted it. EMB-CAR, the end user, duly accepted the completed repair and rehabilitation project. The repair and rehabilitation project was allegedly duly inspected when it was already 100% accomplished by Engr. Cubangay, the technical inspector who was not charged in relation to this case.<sup>284</sup> He mentioned that a check representing the retention money was then given to him. This was allegedly given a month after the building was repaired. He averred that he did not receive any complaints as to his work. Also, prior to the time when he received the check, no document was allegedly received from EMB-CAR. After encashing the check, no document was also received.

In the course of his testimony, accused Dominong identified the following documents: (a) his own Counter-affidavit,<sup>285</sup> and (b) Certificate of Acceptance signed by Joel Salvador dated January 14, 2005.<sup>286</sup>

Accused Salvador, Reyes, Tolentino and Mauri adopted the testimony of accused Dominong.

On cross-examination, accused Dominong mentioned that accused Reyes contacted him for the repair. He was then asked to provide for requirements before the signing of the contract with the DENR. He claims that he has the permits required by law to operate the welding shop, including the BIR Certificate of Registration and Mayor's Permit. He alleged that he submitted financial statements, but these documents were not asked of him before signing the Contract of Service.

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<sup>283</sup> Exhibit 5-Dominong.

<sup>284</sup> Exhibit 7-Dominong

<sup>285</sup> Exhibit 5-Dominong

<sup>286</sup> Exhibit 7-Dominong; Exhibit JJ

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Accused Dominong admitted that he was not asked of any proof of financial capacity or technical capability before signing the contract. He alleged that he considers himself as technically capable to render labor services for the rehabilitation of an old building, but only for small buildings around 10 x 5 meters in floor area.

Accused Dominong mentioned that he was electrocuted while rendering labor services in the rehabilitation of the old building but he stressed that he was not rendering labor services for the electricity of the building. In connection with this, however, he denied using the fact that he got electrocuted to request for the release of the retention fee.

He also confirms that he received the Landbank check in the amount of P33,779.14 on February 16, 2005, which he allegedly encashed on the same day. When asked if he was aware of the one year retention period before the release of the retention fee, he answered in the negative.

On re-direct examination, Dominong alleged that at the time when accused Reyes approached him for the rehabilitation and repair of the building, he does not know him that well and that he only came to know him because of the garage they worked on.

Accused Tolentino adopted the testimony of accused Dominong.

On additional re-direct by counsel for accused Tolentino, accused Dominong reiterates that prior to the construction of the garage, he has not met Engr. Reyes. Due to the electrocution during the construction of the building, as well, he was hospitalized for more than one month.

When asked by the Court as to the scope of his work as a labor service contractor, Accused Dominong stated that this includes 'contracting' and masonry work. When he said contracting, he meant that the employees he hired did the carpentry works. He admitted that he has no permit from the Contractor's Association of the Philippines to undertake construction work, no permit from the DOLE to undertake labor service contracting. He confessed, as well, that the only safety policy of his firm is the use of gloves and harness. Furthermore, accused Dominong admitted that he does not have a copy of the payroll that indeed he hired the more or less 15 workers to undertake this work for the government. He only has a logbook

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which they signed for their payrolls. He has no SSS coverage, PAG-Ibig payments or Philhealth contributions despite having more than 10 employees, because they do not have regular work. He claims that he was not aware that he was making the government liable by not making those payments.

Accused Dominong contends that when he rendered services for the DENR, he merely relied on the plan as provided by accused Reyes.

7. The last witness for the defense is **Asterio C. Tolentino**.<sup>287</sup> He is the Head of the Accounting of EMB-CAR.

Accused Tolentino claims that he was in good faith in the performance of his duties and responsibilities being the head of the Accounting Unit of EMB-CAR. Such duties include the preparing the monthly, quarterly and financial reports, requesting Notice of Cash Allocation (NCA) from the DBM and certifying funds availability in the contracts of service and job orders.

He testified that based on COA Circular No. 2006-003,<sup>288</sup> he has a ministerial duty in certifying funds. Paragraph 2.4 thereof states that "For Contract of Purchase Order, the Head of the Accounting Unit shall certify the availability of funds based on the ObR [Obligation Request] or BUR [Budget Utilization Request] duly certified by the Budget Officer." The ObR used to be the ALOBS.<sup>289</sup>

Accused Tolentino alleged that there is a difference between "funds" and "cash." He has no control over the funds, and that it is his ministerial duty to certify the availability of funds in the purchase order or contract of services once the budget officer already determined that there is allotment available through the ALOBS/OBr.<sup>290</sup> He alleged that under the New Government Accounting System (NGAS), which took effect in 2002, "funds" is construed to mean appropriations, allotments or budget.<sup>291</sup> It is not synonymous or similar with the term "cash." It is the Budget Officer who has control of the funds. On the other hand, it is the Accountant who has control of the cash, or rather, certifies on the availability of the cash.

<sup>287</sup> TSN dated May 28, 2018 and TSN dated October 15, 2018.

<sup>288</sup> Exhibit 7-Tolentino

<sup>289</sup> Exhibit 7-A-Tolentino

<sup>290</sup> Exhibit 6-Tolentino, 6-A-Tolentino, 7-Tolentino; 7-A-Tolentino

<sup>291</sup> Exhibit 6-A-Tolentino

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Accused Tolentino mentioned that he certified funds available by affixing his signature in the Contract of Services or Purchase Order. He usually certified funds once he receives the ALOBS coming from the Budget Officer. He defined the ALOBS as an instrument which proves that there is already an allotment or budget for that particular purpose or that a claim has been obligated and that fund has been certified. It allegedly makes the signing of the Accountant ministerial in nature.

Accused Tolentino also contends that he never signed any of the Disbursement Vouchers in favor of accused Dominong and Ang / PHCS. On this note, he explained the process of disbursement of government funds. He testified that the basis for the Budget Officer in preparing the ALOBS is that the necessary documents will come from the requesting unit or the end user. These documents will be forwarded to the Budget Officer, who will in turn determine the completeness of the documents or sufficiency of the documents. If these documents are incomplete, the Budget Officer will return it to its origin for completion. If the documents are complete, the Budget Officer will prepare or execute a document denominated as ALOBS, certifying the availability of the allotment or budget, and obligate it by affixing his signature in that ALOBS. The term "obligation" refers to a commitment by a government agency arising from an act of a duly authorized government official, which vice the government to the immediate or eventual payment of a sum of money. Under the NGAS which took effect in 2002, it is already the Budget Officer who has the duty or the power to obligate in their office, but before that, it is the Accountant under the old government accounting system. On this note, he mentioned that in the preparation of the ALOBS, the Purchase Order and the Contract of Services were used as basis for the claim of accused Ang/PHCS and accused Dominong, respectively.

He went on to state that after the budget or allotment has been obligated, these documents are forwarded to the accounting. In the accounting unit, there are 3 material things that the Accountant determines - cash availability, completeness of documents and the mode of payment (whether this is payable through a commercial check, MBS check or through the Authority ADA. If the documents are incomplete, the Accountant will simply return those documents to its origin for completion. If cash is not available, the Accountant will request Notice of Cash Allocation (NCA) from the DBM. The Accountant affixes his signature only after it has already been verified that the documents are complete, the cash is already available and the

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mode of payment has already been determined. The same will then be forwarded to the head of the office for the approval of payment. Once approved, it will be forwarded to the Cashier for the preparation of the ADA or check. Once this ADA or check has been signed by the Cashier, it will be returned again to the Head of the office for counter signing. And then, it will be returned to the Cashier. From there, the payee shall be paid. The payee shall acknowledge payment by signing in that particular box of the Disbursement Voucher and issuing an official receipt.

He testified that for purposes of payment, there were four (4) Disbursement Vouchers issued in favor of Dominong, while there was none as to PHCS. He testified that he did not affix his signature on the Disbursement Voucher for ADA-04-10-015.<sup>292</sup> He also stated that he did not certify that the supporting documents are complete or proper and that cash is available. In addition, he did not have any participation in the payment and/or disbursement of funds and/or cash allocation in favor of accused Dominong.<sup>293</sup> In fact, there was even a notation down below in the Disbursement Voucher<sup>294</sup> enumerating the documents that he required before affixing his signature. The documents he required are: (1) the Contract, (2) the Statement of Work Accomplished by Technical Inspector, (3) Billing by the Contractor, (4) Agency estimate or specification, (5) Plan Program of Work, (6) Justification (7) Canvass or authority to enter into a negotiated contract. He also required the RIS, the Letter of Award, the Notice to Proceed, a building permit in another set of notation. He also made a notation that before release of the retention fee, there should be validation from the Special Technical Auditor (STAD). He also required the occupancy permits. He vehemently objected to the payment and/or disbursement of the funds/cash allocation in favor of accused Dominong. Despite his objection, however, it appears that the funds have been released.<sup>295</sup>

He also contends that he was by-passed in the other Disbursement Vouchers, perhaps because of his Annotation in the initial Disbursement Voucher requiring several documents that they were not able to comply with. Without his signature, there should have been no actual disbursement of funds.

<sup>292</sup> Exhibit 1-Tolentino; Exhibit C<sup>3</sup>-1 to C<sup>3</sup>-3

<sup>293</sup> Exhibit 2-Tolentino, 2-A-Tolentino, 2-B-Tolentino, 2-C-Tolentino, 2-D-Tolentino and 2-E-Tolentino

<sup>294</sup> Id.

<sup>295</sup> Exhibit 1-Tolentino, 1-A-Tolentino, 1-B-Tolentino, 1-C-Tolentino, 1-D-Tolentino, 1-E-Tolentino, 1-F-Tolentino, 1-G-Tolentino

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Furthermore, he claims that as the accountant, he is prohibited from becoming a member of the Bids and Awards Committee (BAC) and participate in the bidding/procurement process.<sup>296</sup>

On the other hand, accused Tolentino admitted that he requested for NCA from the DBM including requesting for cash allocation in favor of accused Dominong and PHCS. However, he stressed that by requesting for NCA in the favor of the said accused, it does not follow that one can be guilty of violating Section 3(e) of R.A. No. 3019, because requesting NCA from the DBM is one thing, the actual disbursement of cash allocation is an entirely different thing. In fact, in the NCA issued by the DBM, there is a notation there which states that: "It is understood that the actual utilization of the disbursement of this cash allocation shall be subject to the usual accounting, auditing and budgeting rules and regulations." Under the NGAS which took effect in 2002, accounts payable are simply obligations that remained unpaid at the end of the year, regardless of whether or not the goods are delivered or services are rendered.

During the time of the transaction, the new government accounting system is in effect, but Tolentino admitted using the old definition and that he committed in error. The reason for requesting for NCA from the DBM in favor of accused Ang/PHCS and Dominong, as can be gleaned from the list of joint demand accounts payable is the existence of the ALOBS.

Tolentino admitted having identified the accounts payable using the old government accounting system, instead of applying the new one. The mistake committed, however, was allegedly fairly common at that time, considering that a lot of accountants were not yet thoroughly familiar with all the changes brought about by the NGAS at that time.

As to the allegation that there is technical malversation by conspiring with accused Salvador and Mauri in preventing the SAA from being reverted to the National Treasury, accused Tolentino points out that what prevented the SAA funds from being reverted to the National Treasury is the exclusive act of the Budget Officer (herein accused Mauri) in obligating it in favor of accused Dominong and Ang/PHCS. He mentioned that under the NGAS, he is no longer the one authorized to obligate.

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<sup>296</sup> Exhibit 9-Tolentino

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Accused Salvador, Mauri, Ang and Dominong did not adopt the testimony of accused Tolentino, while accused Reyes adopted the said testimony.

In the course of his testimony, accused Tolentino identified the following documentary evidence: (a) Circular No. 2006, dated January 31, 2006 and paragraph 2.4, page 2;<sup>297</sup> (b) COA Circular 2005-001 dated February 28, 2005 and paragraph 2.4, page 2 thereof;<sup>298</sup> (c) Disbursement Voucher with the Advice Authority to Debit Account, particular portion which provides for the printed name, Asterio C. Tolentino, Jr., the annotation with all the enumerations as read and identified by accused Tolentino, the particular portion for reproduction pyramid papers and Tolentino's signature on bottom portion of document;<sup>299</sup> (d) box containing the printed name as Asterio C. Tolentino, Jr. without signature;<sup>300</sup> (e) Disbursement Voucher, second page thereof and the particular name appearing on left bottom most portion;<sup>301</sup> (f) Disbursement Voucher and the name of Asterio Tolentino;<sup>302</sup> (g) COA Circular dated July 30, 2003 No. 2003-004 and the last sentence in the first paragraph and the second paragraph.<sup>303</sup>

On cross-examination by the counsel for Mauri, accused Tolentino stated that the process as to the budget allocations he mentioned is the same as that of the flow chart pertaining to the process on how the budget is allocation.<sup>304</sup> He again denies being a participant in the approval or in the execution of the contract service.

Accused Ang and Dominong did not adopt the testimony of Tolentino.

During the cross-examination by counsel for Ang and Dominong, accused Tolentino clarified that while his duty as to certifying funds availability is ministerial, his participation in the disbursement vouchers is discretionary. Tolentino admits that he signed the Contract of Service. He has no knowledge if there was a Notice of Award as to David Dominong, although he later on learned that there was a Notice to Proceed.

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<sup>297</sup> Exhibits 7 and 7-A Tolentino

<sup>298</sup> Exhibits 6 and 6-A Tolentino

<sup>299</sup> Exhibits 1 to 1-G-Tolentino

<sup>300</sup> Exhibit C<sup>3</sup>-1

<sup>301</sup> Exhibits 2 to 2-B-Tolentino

<sup>302</sup> Exhibit E<sup>3</sup>-1

<sup>303</sup> Exhibits 9 and 9-A-Tolentino

<sup>304</sup> Exhibit 3-Mauri

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On cross-examination by the prosecution, accused Tolentino acknowledged that the term ministerial, in relation to his certification of availability of funds, was not mentioned in the COA Circular 2006-003. He admits that the COA Circular 2006-2003 and COA Circular 2005-001 were inexistent at the time the transactions happened in 2003 up to 2004. He denies, however, that COA Circular 2005-001 was applied only as of April 1, 2005.

Accused Tolentino again denies certifying first the funds availability in the Contract of Service prior to checking the ALOBS issued by Mauri.

He claims that, referring to the List of Due and Demandable Accounts Payable-External Creditors,<sup>305</sup> the accounts payable are the obligations where goods are already delivered or services rendered but remain unpaid under the NGAS. He clarified that the meaning of Accounts Payable is not limited to prior years' unpaid obligations. He also confirms that the List of Due and Demandable Accounts Payable was received by the DBM on March 10, 2004 and that at that time, there was no delivery yet of construction supplies from PHCS.

Tolentino testified that what is written in the SAA<sup>306</sup> is the same as that written on the GAA, referring to the Environmental Management and Pollution Control. However, he does not recall why he did not sign the documents.

He also explains that the provision in Section 14, NGAS which provides that the Accountant or Head of the Accounting Unit shall certify to the correctness and validity of obligations and availability of funds has been modified. Way back in 2002, that provision has allegedly been removed. He mentions, however, that it has not been changed when he signed the Contract of Service in 2003.

On re-direct examination, accused Tolentino clarified that COA Circular No. 2005-001 and Circular No. 2006-003 did not necessarily take effect on those particular dates in 2005 and 2006, even if the same were issued on those dates. He reasoned out that at the outset of the implementation of the NGAS, there has been a lot of confusion, which is why they made subsequent COA circulars to clarify the provisions of the NGAS in 2002. The subsequent COA Circulars were thus issued to merely clarify the provisions of the NGAS which took effect way back in 2002. In

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<sup>305</sup> Exhibit CC

<sup>306</sup> Exhibit X-2

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2003 and 2004 when the transactions took effect, the NGAS is already in effect. And COA Circulars Nos. 2005-001 and 2006-003 are merely implementing rules and guidelines in accordance with the new government accounting system.

Also, he explained that while he certified in the Contract of Service that funds are available because of the ALOBS on December 29, 2003, he did not notice the date December 30, 2003 indicated in the ALOBS attached to the contract of service. At the time he affixed his signature in the contract of service, the ALOBS was already there. Regardless of the dates, witness allegedly already has the ALOBS with him at that time or before that time or before he affixed his signature in the contract of service.

He also alleged that under the new government accounting system, accounts payable is actually defined as obligations in which the goods are delivered or services are rendered and remained unpaid on part of the year, and not necessarily at the end of the year. Tolentino admitted that in his listing of accounts payable or in his request for cash allocation, he included in the said request the claim of accused Dominong and Ang, despite the fact that the goods or services were not yet delivered, because he was not yet totally familiar with all the changes brought about by the new government accounting system. If they were following the definition of accounts payable under the old government accounting system, he might probably be correct. In other words, he admits that he committed a mistake or error in requesting for the claims of accused Doming and Ang, although the said mistake was made in good faith.

Despite the overstatement of accounts payable in the financial statements, particularly in the balance sheet, it allegedly does not follow that there will be disbursement of government funds; hence it was not harmful on the part of the government. He claims that there is no relevance of the mistake to the improper disbursement of government funds or cash allocation. There is no connection between certifying accounts payable and the actual disbursement or utilization of cash allocation. As mentioned in the advice of NCA issued by the DBM, "It is understood that actual utilization or disbursement of cash allocation shall be subject to the usual accounting and auditing rules and regulations, and one of that usual accounting and auditing rules and regulations is that the basis for disbursement and in all government agencies is the disbursement voucher, not any other document being a list of due and demandable accounts payable whatsoever." He insists that the Disbursement Voucher

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is what actually paved the way to the actual disbursement of government funds.


Accused Tolentino mentioned that he does not communicate with the Budget Officer (herein accused Mauri) with respect to certifying funds because they allegedly have different duties and responsibilities. While accused Mauri certifies the availability of allotment and obligates it, he certifies the availability of funds based on the certification made by the Budget Officer. He states that he does not directly report to the Budget Officer. Neither does the Budget Officer directly report to him.

On re-cross by the counsel for Mauri, accused Tolentino alleged that after certifying the obligation, the Budget Officer need not do anything more and thus she has no participation in the release, cash allocation, execution of the disbursement voucher and in the issuance of the ADA.

On re-cross by the prosecution, accused Tolentino alleged that he cannot recall when he actually received the contract of services and the ALOBS. The documents were simply forwarded to him by the bookkeeper. He also did not communicate with accused Mauri. He is absolutely sure, though, that the ALOBS attached to the contract was already signed by the time that he received it in the office, although he does not know the date when it was signed. He also cannot recall if he was at the office on December 30, 2003.

He admits that upon seeing the ALOBS, he saw that there was a box supposedly signed by him as the Accountant II. He does not remember his reason for not placing his signature. It was allegedly possible, however, that it was just a mere oversight or he must have had a reservation as to the legality of the transaction.

He also clarified that under the old accounting rules, they are still using the Request of Allotment (ROA). At the end of the year, they collate all ROAs which remain unpaid, and they classified them as accounts payable regardless of whether those goods are delivered or services rendered. Again, he reiterates he made a mistake. He mentioned that he was not aware that this mistake or error facilitated the release of funds in favor of accused Ang/PHCS and Dominong.



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Accused Reyes withdrew adoption of testimony of accused Tolentino.<sup>307</sup>

After the presentation of the last witness for the defense, all the accused proceeded to formally offer their documentary exhibits.<sup>308</sup> The Court ruled to admit the following: Exhibits 1 to 7 (of accused Joel G. Salvador); Exhibits 3,7,16,18, 19, 22, 23, 24, 25, 26, 27, 51, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 to 39-g, 40, 40-a, 40-b, 41, 43, 44, 47, 49, 49-a, 61, 61-a, 61-b, 64 and 69-a (of accused Rolando C. Reyes); Exhibits 1, 1-a, 1-b, 1-c, 1-d, 1-e, 1-f, 1-g, 2, 2-a, 2-b, 2-c, 2-d, 2-e, 3, 3-a, 3-b, 3-c, 3-d, 3-e, 3-f, 6, 6-a, 7, 7-a, 9 and 9-a (of accused Asterio C. Tolentino, Jr.); Exhibits 1, 1-a, 2,3, 4, 4-a, 5, 6, 7,8,9,10,11,12,13,14,15,17,18, 19 (of accused Perlita L. Mauri); and Exhibits 1,2,3,3-a,5,7,7-1,7-2 and 7-3 (of accused David A. Dominong); and Exhibits 1,2,3 and series, except 3-v and 4 (of accused Mariano L. Ang).<sup>309</sup>

### REBUTTAL EVIDENCE FOR THE PROSECUTION

The prosecution presented the following rebuttal witnesses:  
(1) Dennis Marvin H. Agcon and (2) Liza Melendez

1. The prosecution recalled to the witness stand **Dennis Marvin H. Agcon**<sup>310</sup> who testified and identified his Judicial Affidavit dated December 28, 2018.<sup>311</sup>

Agcon alleged that COA Circular Nos. 2006-003 and 2005-001 mentioned by Tolentino, which were issued on January 31, 2006 and February 28, 2005, are not applicable in these cases as these circulars were not yet available at the time the subject construction happened in 2003 to 2004. The applicable issuance, instead, is COA Circular No. 2002-02 (Prescribing the Manual on the New Government Accounting System [Manual Version] for Use in All National Government Agencies) which was issued on June 18, 2002. Said Manual allegedly makes Tolentino liable as accountant. Section 14 of the Manual provides:

“SECTION 14. Accounting for Obligation – Obligation refers to a commitment by a government agency arising from an act of a duly authorized official which binds the government to the immediate or eventual payment of a sum of money. The agency is authorized to incur obligations only in the

<sup>307</sup> TSN dated October 16, 2018

<sup>308</sup> Records, Vol. 5, p. 191

<sup>309</sup> Id.

<sup>310</sup> TSN dated January 7, 2018

<sup>311</sup> Judicial Affidavit dated December 28, 2018. Records, Vol. 5, p. 206

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performance of activities which are in pursuit of its functions and programs authorized in appropriation acts/laws within the limit of the ARO.

Obligations shall be taken up in the registries through the ALOBS prepared/processed by the Budget Unit. The Budget Officer/Head of the Budget Unit/designated Budget Officer shall certify to the availability of allotment and such is duly obligated by signing in the appropriate box of the ALOBS. On the other hand, the Accountant/Head of the Accounting Unit shall certify to the correctness and validity of obligations, and availability of funds. Both Budget and Accounting Units shall coordinate in the filling up of the Status of the Obligation in their respective copies of the ALOBS.

He explained that from the foregoing provision, it can be gleaned that the responsibilities of the Budget Officer and the Accountant were delineated wherein the accountant has the responsibility to certify the correctness and validity of the obligations and availability of funds. The responsibilities of each official are particularly evident in the ALOBS, wherein the Budget Officer certifies that the allotment was available and duly obligated while the Responsibility of the Accountant is to certify the correctness and validity of the obligations and availability of fund. Thus, the Accountant cannot claim that he merely relied on the ALOBS that was certified by the Budget Officer. This is aside from the fact that the accountant certified that funds are available in the Contract of Service which was dated on December 29, 2003 while the ALOBS was dated December 30, 2003. Moreover, the accountant has the duty to verify the correctness and validity of the obligations and availability of funds as certified by the Budget Officer. Accused Tolentino cannot thus validly claim that his responsibility is merely ministerial in nature.

Furthermore, he testified that with respect to the reversion to the National Treasury, this would apply to cash allocation which was not utilized or paid after the validity of the NCA. On the other hand, unobligated allotment will merely lapse and no longer require a reversing entry. Nevertheless, jurisprudence dictates that reversion to the National Treasury is not a valid reason to forego public bidding.

He also mentioned that accounts payable shall refer to prior years reported unpaid obligations of the agency for which goods and services have already been delivered and/or rendered as provided in DBM Circular Letter No. 99-2. Hence for requesting cash allocation, it is required that goods were already delivered and that services were already rendered contrary to the testimony

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of accused Tolentino and that this was not required at the time material to these cases.

Agcon went on to state that the List of Due and Demandable Accounts Payable-External Creditor signed by the accountant (herein accused Tolentino) clearly stated in the certification portion that "the above List of Due and Demandable A/Ps was prepared in accordance with existing budgeting, accounting and auditing rules and regulations, including DBM Circular Letter Nos. 99-2, 99-2A and 2000-17." These circulars, particularly Circular Letter No. 99-2, specifically provides that A/Ps shall refer to prior years recorded unpaid obligations of the agency, for which goods and services have already been delivered and/or rendered, and, are thus ready for payment in accordance with existing accounting and auditing rules and regulations.

While it is allegedly true that during the old accounting system, the obligation was already considered as accounts payable in the existence of a valid contract, this is for recording purposes only. However, for the purpose of requesting a cash allocation, it is required that goods were already delivered and that the services were already rendered, hence the necessary certification of the accountant in the List of Due and Demandable Accounts.

He also stressed that contrary to the claim of accused Tolentino in his testimony, there is no existing Purchase Order for the purchase of construction supply from PHCS as noted by the Accountant in his 1st Indorsement dated May 16, 2005.<sup>312</sup> The Purchase Order mentioned by accused Ang is a mere list of construction supplies being requested. Hence, the inclusion of PHCS in the List of Due and Demandable Accounts has no valid basis. The same is allegedly true, as well, for accused Dominong in the absence of the performance of his service contract.

On this note, Agcon stated that accused Tolentino facilitated the payment even if he did not sign the disbursement vouchers in these transactions. In certifying the List of Due and Demandable Accounts Payable, accused Tolentino caused the DBM to issue NCA. Without the cash allocation, the payment would not have been possible if there was no cash in the first place, even if all the documents are complete, signed by all the certifying officials, and goods were already delivered and services rendered. The act of the accountant facilitated the payment even in the absence of performance of service and delivery of goods. The management

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<sup>312</sup> Exhibit SS

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was even forced to make the payment considering that the NCA's validity is only until the end of the succeeding month from the date of issuance, to avoid the reversion of cash to the national treasury.

He testified that the use of Savings from the MOOE for the use of capital outlay or realignment is irregular since it was without prior approval from the DBM. On this note, he mentioned that the transaction involves capital outlay and not MOOE because the request made by the accused to the central office was for capital outlay and the site development plan includes details which point to a construction of a new building. Furthermore, the Memorandum of Mr. Julian Amador<sup>313</sup> categorically stated that the savings and/or allotment downloaded to their office could be used for the improvement of an existing building while the construction of a new one was not mentioned.

He declared, as well, that there was no distinction between A.3.a in the SAA and the Roman Numeral III.a in the ALOBS as the same was described as environmental management and pollution control which is the same as that stated in R.A. No. 9206 or the GAA for the year 2003 and that the SAA mentions Fund Code 101 which is also regular fund as that in the ALOBS.

In the course of his testimony, Agcon identified the following documentary evidence: (a) DBM Circular Letter No. 99-2 dated January 15, 1999, Revised Procedures in the Payment of Accounts Payable;<sup>314</sup> as well as (b) the pertinent portion thereof which defines "Accounts Payable" or A/Ps.<sup>315</sup>

On cross-examination by the counsel for Tolentino, accused Agcon stated that while he agreed that COA Circular 2002-02 does not mention how the Accountant certifies the correctness and validity of the obligation including the availability of funds and does not provide that the duty of the Accountant is ministerial or discretionary, he insists that the COA Circular Nos. 2006-002 and 2005-01 are different from COA Circular 2002-002.

2. The last rebuttal witness for the prosecution is **Lisa J. Melendez** ("Melendez").<sup>316</sup> She is the Assistance Vice President / Head of Landbank, Baguio Branch. She was the Manager of a different branch during the time material to these cases. She

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<sup>313</sup> Exhibit M

<sup>314</sup> Exhibit D<sup>4</sup>

<sup>315</sup> Exhibit D<sup>4</sup>-1

<sup>316</sup> TSN dated March 25, 2019

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testified, based on the documents available, that the amount of P763,998.70 was credited to the account of a certain Mariano L. Ang under the Account No. 0221322380 on October 12, 2004 and that the said account was already closed as of September 15, 2005.

In the course of her testimony, she identified the following documentary evidence: (a) Statement of Account of accused Mariano Ang, particularly the entry "Account No. 0221-3223-80 dated October 12, 2004 in the amount of P758,998.70;<sup>317</sup> and (b) the Status of Account of accused Mariano Ang and the pertinent entry "Account No. 0221-3223-80 Mariano L. Ang, 16 M Roxas St., Baguio City, 4427307 Date September 16, 2005 CLOSED TODAY."<sup>318</sup>

On cross-examination by the counsel for Ang and Dominong, she admitted that she has no personal knowledge as to who personally opened the savings time deposit and as to how the amount of P758,998.70 was paid and as to how and who closed the account on September 16, 2005. On cross-examination by counsel for Tolentino, she also declared that that the documents pertaining to Mariano Ang were already subject to the retention policy of the bank wherein documents of more than 10 years of age already discarded. She confirmed that there is no document to prove that it was accused Ang who opened the account based on the documents at hand. However, she mentioned that the records allegedly speak for themselves and that the bank has a very strict policy as to the determination of clients who open accounts with them.

### **THE COURT'S FINDING OF FACTS**

The testimonial and documentary evidence of the prosecution and the defense establish the following facts relevant to the charges of violation of Section 3(e), R.A. No. 3019 and Illegal Use of Public Funds penalized under Article 220 of the Revised Penal Code:

On July 10, 1987, Executive No. 192 created the Environmental Management Bureau (EMB) and designated it as a bureau of the Department of Environment and Natural Resources (DENR). By reason of the aforesaid organization, the EMB was designated to occupy an old and worn-out building of the DENR at the DENR Compound, Gibraltar Road, Baguio City.

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<sup>317</sup> Exhibits E<sup>4</sup> and E<sup>4</sup>-1

<sup>318</sup> Exhibits F<sup>4</sup> and F<sup>4</sup>-1

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To elucidate, the EMB-CAR was to utilize, as an office, a building which was earlier used as a bunkhouse for the employees and families of the personnel of the Forest Research Institute. Said building has been occupied since the early 1970s as a residence for families.<sup>319</sup>

The workspace, which consisted of a one storey building, with an area of approximately 30 square meters, became the office of the EMB. At the inception of the bureau, the said office was fairly decent by the standards at that time. As the time evolved, the need for environmental management, conservation and pollution control rapidly multiplied.<sup>320</sup>

In order to accommodate the growing number of employees in the bureau, a new building was constructed adjacent to the old building. The new building became the office of the Pollution Control Division and the Regional Environmental Laboratory and Training Center. Meanwhile, all the other divisions of the bureau retained their office at the old building. Through time, the office space at the old building underwent minor repairs but then, the office space technically remained the same. Also, as a result of the normal wear and tear of usage, plus the passage of time, the old EMB office eventually evoked a desolate working condition.<sup>321</sup>

To explicate, the walls and roof would leak during the rainy season, that is, from the months of June to October of every year. The water seepages could be explained by the distress caused not just by time but also of the damage caused by the 1990 earthquake. In addition, the supposed comfort room facilities of the said office were inoperative and the odor emitted therefrom was repulsive. It is in this sordid state that demands for the rehabilitation of the said office were clamored by the employees. The EMB-CAR eventually requested the EMB Central Office to allocate funds that will be used to improve the building around the end of 2003.<sup>322</sup>

On or around November 28, 2003, the repair and rehabilitation of the subject building was conceived. The amount of P1,150,000.00 under SAA No. EMB-03-11-05 was issued in favor of the DENR-CAR as fund for additional operating requirements and as fund for the implementation of the Ecological Solid Waste Management (ESWM) Project in the

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<sup>319</sup> Records, Vol. 1, p. 191

<sup>320</sup> Id.

<sup>321</sup> Id.

<sup>322</sup> Id. at 192.

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Municipality of Tuba, Benguet, CAR.<sup>323</sup> On December 2, 2003, the EMB-CAR received a faxed copy of the said SAA No. EMB-03-11-05.

On December 3, 2003, the concerned employees of the DENR-CAR had a meeting where the repair and rehabilitation of the building and the said appropriation were the subject. At that meeting, it was pointed out that the targets in the implementation of ESWM were already implemented, as covered by regular funds of the EMB-CAR. The EMB-CAR personnel acquiesced to prioritize the projects to which the funds may be used. It was suggested during the meeting that instead of waiting for the allotment from the EMB-Central Office for the improvement of the old EMB-CAR building, the EMB-CAR should act already and use the fund so that the working condition would also improve quickly. The proposal to use the fund in improving the old building was thoroughly supported.<sup>324</sup>

At the said meeting, the issue as to the use of the fund before the end of the fiscal year also became an issue. It was said that the fund if not obligated by the end of the year would have to be returned to the National Treasury and be utilized as funding for the next fiscal year. Therefore, the EMB-CAR was again faced with the question of complying with the requirements of R.A. No. 9184 or the Government Procurement Reform Act. The EMB-CAR cannot obligate the funds as expenses for the improvement of the old building since they would still have to go through the process of competitive bidding. The conduct of such process would take time and consequently, the fund for improving the old building would not be obligated within the year.<sup>325</sup>

At that point, it was suggested that Section 53 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184 could be used in the particular instance.<sup>326</sup> The said section of IRR provides:

**"Section 53. Negotiated Procurement.**

**Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:**

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<sup>323</sup> Exhibits X, X-1 and X-2

<sup>324</sup> *Supra* note 1 at 193.

<sup>325</sup> *Id.* at 193-194.

<sup>326</sup> *Id.*



b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or **other causes where immediate action is necessary** to prevent damage to or loss of life or property, or **to restore vital public services, infrastructure facilities and other public utilities.** *In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP;*

xxx (Italics, Emphasis and Underscoring Supplied)

The EMB-CAR consulted the COA, through its resident Auditor Santiago, regarding this section of the IRR and they were advised that they could use such method in the procurement of such infrastructure project. In the desire to improve the working space and the EMB-CAR's quality of work as induced by the working condition, it was then agreed that the EMB-CAR shall follow the advice of the COA and obligate the funds before the end of the fiscal year. The EMB-Central Office allegedly advised the EMB-CAR verbally that in order to make major repairs on the building, the EMB-CAR could utilize the savings, on the operational expenses, of the regional office and the upcoming allotments for operational expenses.<sup>327</sup>

On December 4, 2003, the EMB-CAR technical personnel conducted preliminary activities, like site evaluation, assessment and survey in order to determine the extent of the proposed project. The next day, a meeting was called by the Regional Director (herein accused Salvador) in which the proposed project was discussed. A rough estimate of the proposed project was presented by the technical personnel.<sup>328</sup> The office decided to undertake the construction project by administration and hire a service contractor for the hiring of labor and purchase of goods required for the construction.

On December 6, 2003, the engineering plans, specifications and cost estimate were made. The same were then submitted to the Regional Director for his approval. Eventually, the plans and specifications were prepared and furnished to the contractor (herein accused Dominong). The plan was accepted by the latter and so the ALOBS for the said project was eventually submitted to the budget unit.

<sup>327</sup> Id. at 194.

<sup>328</sup> Id. at 195.

On December 22, 2003, a canvass from different suppliers (Bagulo Victory Furniture and Construction Supply, Wi-Al Construction Builders and PHCS) was conducted in relation to the materials and supplies that were used in the rehabilitation of the building.<sup>329</sup>

On December 29, 2003, accused Salvador, representing the EMB-CAR, entered into a Contract of Service with accused Dominong for the repair or rehabilitation of the EMB-CAR's existing building. Accused Tolentino, as Accountant II, signed and certified that funds are available for the project.<sup>330</sup> On the same day of signing of the Contract of Service, accused Salvador issued a Notice of Award in favor of accused Dominong under "Negotiated Contract" (Section 53, par. d, R.A. 9184).<sup>331</sup>

On January 15, 2004, a Notice of Temporary Deferment of the project was issued due to non-assurance of the date of release of the allocated funds for the project by the DBM.<sup>332</sup>

On or around January 26, 2004, the EMB-Central Office gave an instruction to the EMB-CAR via the Memorandum of Director Julian Amador. The Memorandum provides:

"With reference to your request for the release of the capital outlay to finance implementation of land and building improvements, we regret to inform you that we do not release Capital Outlay for CY 2003. However, for improvement of any existing building, you may use your savings and/or allotment downloaded to your Office."<sup>333</sup>

On March 10, 2004, the List of Due and Demandable Accounts Payable-External Creditors was submitted to DBM signed and certified correct by accused Tolentino and signed and approved by accused Salvador, which listed accused Dominong and PHCS as external creditors of EMB-CAR, DENR. The budget was then released by DBM on October 1, 2004.<sup>334</sup>

On October 5, 2004, inasmuch as the procedures provided under R.A. No. 9184 were not complied, the management was allegedly hesitant then to start the project. As such, another meeting was conducted by the EMB-CAR representatives with the resident COA auditor. The OIC Chief of the Pollution Control

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<sup>329</sup> Exhibits KK, LL and MM

<sup>330</sup> Exhibit Z and Z-1

<sup>331</sup> Exhibit AA

<sup>332</sup> Exhibit BB

<sup>333</sup> Exhibit M

<sup>334</sup> Exhibit X-4, DD

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Division, Resident Auditor, Assistant of the Resident Auditor and Human Resources Officer were present at such meeting. The Regional Director (herein accused Salvador) was then on official business but had approved of such meeting. The issue on the continuance of the project was discussed. It was discussed at the said meeting that if there is no prior approval by the COA, it would be best for EMB-CAR to return the fund to the National Treasury. At that point, the COA Resident Auditor called her Cluster Director – Director Villena, through cellphone in loud speaker mode, in front of the convened group. The COA Resident Auditor inquired regarding the use of the said fund and even mentioned the following words, "*Sayang naman kung ibabalik ang pera.*" That allegedly served as confirmation on the part of EMB-CAR to use the fund since the same has been obligated under Section 53 of the IRR of R.A. No. 9184.

The COA gave the EMB-CAR a term to finish the project. The EMB-CAR was advised to finish the project by the end of December 2004 since the fund has been obligated under the 2003 budget. Therefore, if they fail to use the fund by the end of 2004, then the fund has to be returned to the National Treasury. As such, the EMB-CAR again informed the COA that they could not possibly finish the requirements under R.A. No. 9184 and also the project before the end of December 2004. The COA allegedly assured that there is no need to conduct competitive bidding since the obligation falls under Section 53 of the IRR of R.A. No. 9184. Accused Salvador was informed of the matters discussed during the meeting.

On the October 11, 2004, the amount of P758,998.70 was debited to accused Ang.<sup>335</sup> Accused Engr. Reyes allegedly went back to PHCS on the same date to make the purchase by giving the list of materials needed.<sup>336</sup> On October 12, 2004, the amount of 758,998.70 was credited to the account of a certain Mariano L. Ang under Landbank Account No. 0221-3223-80.<sup>337</sup> On October 12, 14, 16, 19, 20, 21, 22 and 23, 2004, accused Ang made deliveries of the construction materials as contained in the list of purchase materials submitted by accused Reyes.<sup>338</sup>

On October 15, 2004, accused Salvador issued a Notice to Proceed with the project addressed to accused Dominong.<sup>339</sup>

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<sup>335</sup> Exhibits EE, HH, K<sup>3</sup> with submarkings; N<sup>3</sup> to N<sup>3</sup>-1

<sup>336</sup> TSN dated May 28, 2018

<sup>337</sup> TSN dated March 25, 2019, Exhibit E4-1-Rebuttal

<sup>338</sup> Exhibit H

<sup>339</sup> Exhibit GG

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On October 19, 2004, accused Reyes was designated as project engineer and inspector.<sup>340</sup>

On October 22, 2004, accused Ang met with accused Reyes, accompanied by the cashier Lausa, in Landbank, Harrison Branch, Baguio City. He claims to have been paid only the amount of [401,226.20] for the construction materials delivered.<sup>341</sup> The amount of P357,772.50, which represents the excess, was returned to accused Reyes.<sup>342</sup>

On October 23, 2004, accused Ang / PHCS allegedly made its last delivery for materials in the amount of P31,032.00. Claiming that there was no payment for this last delivery, accused Ang / PHCS demanded payment from the DENR so a Statement of Account was sent to EMB-CAR to show the balance. The said amount was not paid.<sup>343</sup>

Meanwhile, it appears based on the records that accused Dominong received the amount of P101,397.49 on three separate dates - October 27, 2004, November 19, 2004 and November 30, 2004.<sup>344</sup> On November 30, 2004, as well, Disbursement Voucher No. 04-11-0130 was issued in the amount of P33,779.14 in favor of accused Dominong for the payment of the 10% retention fee for labor requirements.<sup>345</sup> Accused Dominong thus received the total amount of P33,971.61 including the 10% retention fee.

On December 1, 2004, Philex Mining Corporation donated 100 bags of cement which was accepted by Reyes, which was recorded in the logbook. The same was not reported in the accounting by the Government.<sup>346</sup>

On January 7, 2005, accused Dominong turned over the project to EMB-CAR through accused Salvador.<sup>347</sup> On January 14, 2005, the project was accepted by EMB-CAR through accused Salvador.<sup>348</sup>

On February 16, 2005, accused Dominong received a check in the amount of P33,779.14 as payment for the 10% retention

<sup>340</sup> TSN dated April 2, 2018.

<sup>341</sup> TSN dated May 28, 2018; Manifestation of Mariano Ang dated March 27, 2013, Records, Vol. 1 at 210.

<sup>342</sup> Exhibit FF

<sup>343</sup> Supra note 1 at 338.

<sup>344</sup> Exhibits C3, D3, E3 with submarkings; Exhibits K3-3 to K3-3-a; Exhibits L3 and M3 with submarkings; and Exhibits O3, P3 and B4 with submarkings

<sup>345</sup> Exhibit VV

<sup>346</sup> TSN dated April 2, 2018

<sup>347</sup> Exhibit II

<sup>348</sup> Exhibit JJ

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fee.<sup>349</sup> The retention fee was charged from the Environmental Revolving Fund, as evidenced by the Certification dated October 6, 2005 signed by accused Tolentino.<sup>350</sup>

On May 3, 2005, an anonymous complaint from concerned EMB-CAR, DENR personnel, relative to the alleged violation of the usual accounting and auditing rules in the construction of the new EMB-CAR, DENR Office of the Regional Director Building and related transactions, was submitted to the COA-CAR for action.<sup>351</sup> On July 25, 2005, the COA-CAR, through Regional Cluster Director Atty. Tilan, requested for an investigation directed to Agcon and Marissa C. Cayowet ("Cayowet"). Pursuant to RLA-CAR Office Order No. 05-001 dated July 9, 2005, an audit team conducted a survey to determine whether or not the allegations are true. The audit team submitted its findings in its Audit Survey on the EMB-CAR Project.<sup>352</sup> Based on the Audit Survey Report, the findings, observations and recommendations of the COA are the following, among others:

Finding No. 1 – The project awarded to Mr. David Dominong and the construction materials purchased from Pyramid Construction Supply were undertaken without the requisite of public bidding contrary to the provisions of Republic Act No. 9184;

Recommendation – File appropriate charges against Eng. Joel G. Salvador and Engr. Rolando C. Reyes for violation of the provision of R.A. 9184.

Finding No. 2 – The fund specifically allotted for the purpose of the implementation of Ecological Solid Waste Management (ESWM) project in the Municipality of Tuba, Benguet, was instead used for the construction of Regional Director's Office.

Recommendation – File appropriate charges against the former Regional Director Engr. Joel Salvador, Accountant Asterio Tolentino and Budget Officer Perlita Mauri.

Finding No. 3 – Accounts Payable was set-up in favor of Mr. David Dominong and Pyramid Hardware Construction Supply even in the absence of the actual

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<sup>349</sup> Exhibits VV-1 to VV-3

<sup>350</sup> Exhibits WW to WW-2

<sup>351</sup> Exhibit G

<sup>352</sup> Exhibit H

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performance of the contracted labor and deliveries of construction materials; respectively, in violation of existing budgeting, accounting and auditing laws, rules and regulations.

Recommendation - File appropriate charges against the accountant Asterio Tolentino and former Regional Director Joel G. Salvador.

Finding No. 4 - The amount of P758,998.07 was disbursed without legal basis due to absence of Purchase Order, was paid in advance to the supplier, and in the absence of other essential documents, thus, undermining existing laws, rules and regulations.

Recommendation - File appropriate charges against Project Engineer Rolando Reyes, accountant Asterio C. Tolentino, Jr. and Pyramid Hardware and Construction Supply, among others.

Finding No. 5 - Retention fee in the amount of P33,779.14, net of tax, was paid to the contractor despite of noted defects.

Recommendation - File appropriate charges against Engr. Joel G. Salvador, Engr. Rolando C. Reyes, among others.

A copy of the report on the Audit Survey was furnished to EMB-CAR Regional Director Paquito Moreno,<sup>353</sup> Deputy Ombudsman for Luzon, Hon. Victor C. Fernandez,<sup>354</sup> EMB-Region 1 Director Joel G. Salvador,<sup>355</sup> and Regional Cluster Director Atty. Josephine A. Tilan.<sup>356</sup>

Audit Team Leader Agcon directed the management of EMB-CAR to submit their comments/reply on the audit observations.<sup>357</sup> The latter, including herein accused Salvador,<sup>358</sup> Reyes,<sup>359</sup> Tolentino<sup>360</sup> and Mauri<sup>361</sup> eventually submitted their

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<sup>353</sup> Exhibit E

<sup>354</sup> Exhibit E-1

<sup>355</sup> Exhibit E-2

<sup>356</sup> Exhibit E-3

<sup>357</sup> Exhibit I

<sup>358</sup> Exhibits J, J-1

<sup>359</sup> Exhibit N

<sup>360</sup> Exhibits K, K-1

<sup>361</sup> Exhibits L, M

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Management Comments to the findings and observations in Audit Observation Memorandum (AOM) No. 06-003.<sup>362</sup>

An inspection of the subject constructed building was also conducted by the City Buildings and Architecture Office (CBAO) as per request from Atty. Tilan. The report noted certain structural defects in the building, such as deflections in the steel deck slab, hairline cracks in the exterior beam, deflection in the roof slab and no issuance of building permit, among others.<sup>363</sup>

On February 22, 2008, the Public Assistance and Corruption Prevention Office of the Deputy Ombudsman for Luzon (PACPO-Luzon), represented by then Director Wilbert L. Candelaria filed the present case. Initially, only accused Salvador was named as the sole respondent. He is being charged of Malversation of Public Funds and Violation of R.A. No. 9184. Eventually, accused Reyes, Tolentino, Mauri, Lausa, Garcia, PHCS and Dominong were included as respondents.<sup>364</sup>

Finding probable cause to indict accused Salvador for three (3) counts of violation of Section 3(e) of Republic Act No. 3019 and one (1) count of Illegal Use of Public Funds defined and penalized under Article 220 of the Revised Penal Code, accused Reyes for two (2) counts of violation of Section 3(e) of R.A. 3019, accused Tolentino and Mauri for one (1) count of violation of Section 3(e) of R.A. 3019 and one (1) count of Illegal Use of Public Funds defined and penalized under Article 220 of the Revised Penal Code, accused Ang and Dominong for one (1) count of violation of Section 3(e) of R.A. 3019, the Office of the Ombudsman filed four (4) separate informations against them.

### ISSUES

Two issues require resolution in the instant case, to wit:

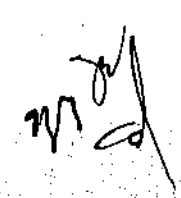
- (a) Whether or not accused Salvador, Reyes, Tolentino, Mauri, Ang and Dominong are guilty beyond reasonable doubt for having violated Section 3(e), R.A. 3019; and
- (b) Whether or not accused Salvador, Tolentino and Mauri are guilty beyond reasonable doubt for having committed the crime of Illegal Use of Public Funds under Article 220, RPC (Technical Malversation)

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<sup>362</sup> Id.

<sup>363</sup> Exhibits UU with submarkings and W3 to W3-1 with submarkings

<sup>364</sup> Records, Vol. 1, p. 8.



## RULING

### A. Violation of Section 3(e), R.A. 3019

*Criminal Case No. SB-15-CRM-0096*

The Information in Criminal Case No. SB-15-CRM-0096 charges accused Salvador of violating Section 3(e), R.A. No. 3019 with manifest partiality and evident bad faith in giving unwarranted benefit, privilege or advantage to David Dominong by awarding the repair or rehabilitation of the Regional Director's Office and Environmental Information Center located at the DENR, Baguio City without public bidding as required by R.A. No. 9184, thereby causing undue injury to the government and to the public as a whole.<sup>365</sup>

Section 3(e) of R.A. 3019, as amended, provides:

"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:

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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. xxx** (*Italics and Emphasis Supplied*)

To be convicted of violation of Section 3(e) of R.A. No. 3019, as amended, the following elements must concur:

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 gross inexcusable negligence; and
3. That 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>366</sup>

<sup>365</sup> Records, Vol. 1, p. 1

<sup>366</sup> *Consigna v. People, et al.*, G.R. Nos. 175750-51, April 2, 2014

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The first element is present in the instant case. The prosecution and accused Salvador stipulated during pre-trial that the latter is the Regional Director of the EMB-CAR, DENR at the time material to these cases.

This Court is thus left to determine the existence of the other two elements.

The second element enumerates three (3) ways by which a violation of Section 3(e), R.A. No. 3019 may be committed, i.e. manifest partiality, evident bad faith or gross inexcusable negligence. It has been held that proof of any of these three (3) means in connection with the prohibited act mentioned in the provision is enough to warrant a conviction.<sup>367</sup>

In the case of *Sison v. People of the Philippines*,<sup>368</sup> the Supreme Court propounded on what constitutes evident bad faith and manifest partiality, to wit:

"Partiality is synonymous with bias which excites a disposition to see and report matters as they wished for rather 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. xxx"

Mere bad faith or partiality *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must, in the first place, be evident or manifest.<sup>369</sup> Evident bad faith was further described in *Consigna v. People*<sup>370</sup> in this manner:

"Evident bad faith contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes, which manifested in petitioner's actuations and representation."

At the outset, it is clear that the procurement of the service contractor, Dominong, is not in accord with the required public bidding. The accused spontaneously admitted that there was no public bidding and instead, the alternative mode of procurement of a service contractor not of works was availed of. DENR-EMB

<sup>367</sup> *Ampil v. The Hon. Office of the Ombudsman, et al.* G.R. No. 192685, July 31, 2013 citing *Sison v. People of the Philippines*, G.R. Nos. 170339 & 170398-403, March 9, 2010.

<sup>368</sup> G.R. Nos. 170339 & 170398-403, March 9, 2010.

<sup>369</sup> *Constantino v. Hon. Sandianbayan (First Division), et al.* G.R. No. 140656 and 154482, September 13, 2007.

<sup>370</sup> April 2, 2014, 720 SCRA 350

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Baguio City decided to proceed with the rehabilitation/construction project by administration only.

On the other hand, the Information is very specific and charged accused Salvador of "awarding the repair/rehabilitation of the Regional Director's Office and Environmental Information Center located at the Department of Environment and Natural Resources, Baguio City without public bidding", which is not the case. The contract between accused Salvador and Dominong clearly states that the contract entered into was a services contract. Thus,

4. That due to limited funds to accomplish the proposed project, the EMB-CAR management intends to conduct the project administratively inasmuch that the bureau has competent licensed Civil and Sanitary Engineers, that is, materials for construction shall be procured by management and labor shall be contracted.
5. That the SECOND PARTY has agreed to furnish labor services to the FIRST PARTY particularly the building repair/rehabilitation as per the approved scope of work based on plans and specifications and scheduling as per bar chart of work activities.

In this particular case, the testimonial and documentary evidence of both prosecution and accused sufficiently proved that accused Salvador actually signed a contract for labor services signifying the parties' true intent and not the repair, rehabilitation and/or construction of the EMB-CAR, DENR building, contrary to the acts charged in the criminal Information.

The Constitution guarantees that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. To give substance to this constitutional guarantee, Section 8 of Rule 110 of the Rules of Court requires that the acts or omissions complained of as constituting the offense must be stated in an ordinary and concise language so as (a) to enable a person of common understanding to know what offense is intended to be charged; and (b) to enable the court to pronounce proper judgment. The statement need not necessarily be in the language of the statute. What is important is that the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged; or stated in such a way that a person of ordinary intelligence may immediately know what is meant, and the court can decide the matter according to law.<sup>371</sup>

<sup>371</sup> Matilde, Jr. v. Jabson, G.R. No. L-38392, [December 29, 1975], 160-A PHIL 1098-1106

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The main purpose of this requirement is to enable the accused to suitably prepare for his defense. He is presumed to be innocent and has, therefore, no independent knowledge of the facts that constitute the offense with which he is charged.<sup>372</sup> The real nature of the criminal charge is determined by the actual recital of facts in the complaint or information, as the Court held in *People v. Mendoza*: "It is well settled that the real nature of the criminal charge is determined not from the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information."<sup>373</sup>

The importance of the proper manner of alleging the nature and cause of the accusation in the information should never be taken for granted by the State. An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless the crime is alleged or necessarily included in the information filed against him.<sup>374</sup>

Considering that the Information failed to allege the correct description of the act allegedly committed by accused, he could not be convicted for entering into a contract for labor services as the charge is entering into a contract for the construction, repair and rehabilitation of the EMB-CAR, DENR building.

Even the current procurement law differentiates between a contract for works or infrastructure and a contract for services, to which the labor services provided by Dominong would fall. In this case, the construction, repair and rehabilitation was undertaken by administration. This was never contracted to Dominong or anyone else.


Besides, even if this Court would brush aside the defect in the Information that the true intent of the prosecution was really to charge accused Salvador of awarding the labor services instead of the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of EMB-CAR, DENR to accused Dominong without the required public bidding and even if Section 53 of the IRR of R.A. No. 9184 is not applicable, the

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<sup>372</sup> Ibid.

<sup>373</sup> *People v. Bernas y Nacario*, G.R. Nos. 133583-85, [February 20, 2002], 427 PHIL 649-671.

<sup>374</sup> *Patula v. People*, G.R. No. 164457, [April 11, 2012], 685 PHIL 376-411.



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prosecution still failed to establish evident bad faith, manifest partiality or gross inexcusable neglect. There was no act that would even tend to show or establish dishonest intent or gross negligence on the part of accused Salvador when he selected accused Dominong to be the labor/service contractor. Their even had to stop the rehabilitation, construction and repair as the EMB-CAR, DENR officials had to determine the better way to proceed utilizing their office savings.

It is to be conceded that, indeed, there were violations of the procurement act or law and yet, the prosecution did not charge the accused for violation of such law. Instead, they chose to proceed against the accused for violation of Sec. 3(e), R.A. 3019, which would entail proof of manifest partiality, evident bad faith or gross inexcusable neglect.

In *De Guzman v. The Office of the Ombudsman*,<sup>375</sup> the High Court ruled as follows, to wit:

**Section 10, Article IV, in relation to Section 5, pars. (n) and (o), Article I, of RA 9184 mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. This principle is elucidated by this Court in *Lagoc v. Malaga*, thus:**

**[A] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. (Emphasis Supplied)**

Thus, considering that the fact alleged in the Information is clearly not in attendance inasmuch as the contract entered into between accused Salvador and Dominong is one of contract for labor services and not for works (construction), this Court is

<sup>375</sup> G.R. No. 229256, November 22, 2017

convinced that accused Salvador could not be found guilty. Neither could civil liability attached as there would be no basis from which this could arise.

*Criminal Case No. SB-15-CRM-0097*

On the other hand, the Information in Criminal Case No. SB-15-CRM-0097 charges accused Salvador, Reyes, Tolentino and Mauri of violating Section 3(e), R.A. No. 3019 with manifest partiality and evident bad faith and conspiring and confederating with accused Ang, owner of PHCS, in giving unwarranted benefit, privilege or advantage to the latter by purchasing from PHCS the construction materials used in the repair or rehabilitation of the Regional Director's Office and Environmental Information Center located at the DENR, Baguio City in the amount of Seven Hundred Fifty Eight Thousand Nine Hundred Ninety Eight Pesos and Seven Centavos (PhP758,998.07) without public bidding as required by Republic Act No. 9184, which amount was already paid to and accepted by accused Ang despite the fact that the goods had not been delivered, thereby causing undue injury to the government and to the public as a whole.

The first element is already established as to accused Salvador. Accused Reyes admitted that he held the position of Officer-in-Charge of the EMB-CAR, DENR at the time of the alleged commission of the offense. Accused Tolentino admitted that he was the Accountant II of EMB-CAR, DENR at the time material to these cases, while accused Mauri admitted that he is the Budget Officer in the same office.<sup>376</sup> As a private individual, accused Ang's criminal liability is dependent on proof that he conspired with the other accused in committing the acts imputed on them. Private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019.<sup>377</sup> It has been stipulated that accused Ang is the owner of the PHCS and that the construction materials used in the repair or rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, were purchased from him.<sup>378</sup>

As to the second and third elements, the Court finds that they were sufficiently proved by the prosecution as to accused Salvador, Reyes, Mauri and Ang, but not as to accused Tolentino. The totality of evidence in this case points to the fact that there

<sup>376</sup> Pre-Trial Order dated May 3, 2016.

<sup>377</sup> *Go v. Sandiganbayan, et al.*, G.R. No. 172602, April 13, 2007

<sup>378</sup> *Supra* note 332.

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was conspiracy among the accused Salvador, Reyes, Mauri and Ang for the purchase of construction supplies from accused Ang in connection with the repair and rehabilitation of the subject building.

The High Court's disquisition in *People of the Philippines v. Go*,<sup>379</sup> citing *People v. Peralta*,<sup>380</sup> as to the nature of and the principles governing conspiracy is instructive, to wit:

**xxx A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.** Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason, rebellion and sedition. The crime of conspiracy known to the common law is not an indictable offense in the Philippines. An agreement to commit a crime is a reprehensible act from the view-point of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed.

However, when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators. In stressing the significance of conspiracy in criminal law, this Court in *U.S. vs. Infante and Barreto* opined that:

While it is true that the penalties cannot be imposed for the mere act of conspiring to commit a crime unless the statute specifically prescribes a penalty therefor, nevertheless the existence of a conspiracy to commit a crime is in many cases a fact of vital importance, when considered together with the other evidence of record, in establishing the existence, of the consummated crime and its commission by the conspirators.

**Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of all. The foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each**

<sup>379</sup> G.R. No. 168539, March 25, 2014

<sup>380</sup> G.R. No. L-19069, October 29, 1968

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individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone." Although it is axiomatic that no one is liable for acts other than his own, "when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy." The imposition of collective liability upon the conspirators is clearly explained in one case where this Court held that x x x it is impossible to graduate the separate liability of each (conspirator) without taking into consideration the close and inseparable relation of each of them with the criminal act, for the commission of which they all acted by common agreement xxx. The crime must therefore in view of the solidarity of the act and intent which existed between the xxx accused, be regarded as the act of the band or party created by them, and they are all equally responsible xxx

Verily, the moment it is established that the malefactors conspired and confederated in the commission of the felony proved, collective liability of the accused conspirators attaches by reason of the conspiracy, and the court shall not speculate nor even investigate as to the actual degree of participation of each of the perpetrators present at the scene of the crime. Of course, as to any conspirator who was remote from the situs of aggression, he could be drawn within the enveloping ambit of the conspiracy if it be proved that through his moral ascendancy over the rest of the conspirators the latter were moved or impelled to carry out the conspiracy.

In fine, the convergence of the wills of the conspirators in the scheming and execution of the crime amply justifies the imputation to all of them the act of any one of them. It is in this light that conspiracy is generally viewed not as a separate indictable offense, but a rule for collectivizing criminal liability.

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A time-honored rule in the corpus of our jurisprudence is that once conspiracy is proved, all of the conspirators who acted in furtherance of the common design are liable as co-principals. This rule of collective criminal liability emanates from the ensnaring nature of conspiracy. The concerted action of the conspirators in consummating their common purpose is a patent display of their evil partnership, and for the consequences of such criminal enterprise they must be held solidarily liable. (Emphasis Supplied)

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Indeed, as correctly pointed out by the prosecution, the individual acts of accused Salvador, Reyes and Mauri, in conspiracy with each other and with accused Ang, in: (a) purchasing from accused Ang / PHCS the construction materials used in the project, without the required competitive public bidding, despite the fact that Section 53 of the IRR of RA 9184 is not applicable (no imminent danger to life or property during a state of calamity; time is not of the essence arising from natural or manmade calamities); (b) failing to execute any contract with the supplier accused Ang/PHCS; (c) accused Mauri certifying the allotment as available even if the fund used was intended for ESWM; (d) setting up accounts payable in favor of accused Ang even in the absence of deliveries of construction materials; (e) accused in disbursing the amount of P758,998.70 without legal basis due to the absence of Purchase Order, which was paid in advance in favor of accused Ang, who accepted the said amount in the absence of delivery and other essential documents; (f) accused Salvador failing to ensure the veracity and accuracy of the listed claims and authenticity of the supporting documents submitted by the claimants; (g) accused Reyes being responsible for the purchases and actual disbursement of the funds despite absence of Purchase Order; and (h) accused Reyes in preparing the necessary documents and making prior commitment with accused Ang/PHCS to serve as the payee despite the absence of public bidding and execution of a valid contract constitute manifest partiality, and evident bad faith and gave unwarranted benefit, privilege or advantage to the supplier Ang, the owner of PHCS.<sup>381</sup>

Accused Salvador, Reyes and Mauri attempted to justify the absence of the public bidding by arguing that there was an immediate necessity to repair or rehabilitate the subject building and that if the EMB-CAR fails to allocate or obligate subject funds at the end of the year, it would revert back to the National Treasury; hence their decision to follow the alleged advice of COA to undertake negotiated procurement. This Court however is of the opinion that this is a flimsy excuse to avoid the conduct of a public bidding. To reiterate, none of the circumstances as stated in Section 53 of the IRR of R.A. No. 9184 were present during the period when the project was allotted. Also, the almost ten (10) months deferment of the implementation of the project could have been used by the accused in complying with the required bidding process.

<sup>381</sup> Memorandum for the Prosecution dated April 10, 2019

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The records also show that the construction materials were purchased through "shopping" under Section 52, R.A. 9184, instead of the required competitive public bidding. As correctly pointed out by the prosecution, the use of "shopping" is not in accordance with the said provision. Section 52, R.A. 9184 provides, thus:

Shopping is a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotation for readily available **off-the-shelf goods or ordinary/regular equipment** to be procured directly from suppliers of known qualifications. This method shall be employed in any of the following cases:

(a) When there is **unforeseen contingency** requiring immediate purchase: provided, however, that the amount shall not exceed fifty thousand pesos (P50,000.00); or

(b) **Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount of not exceeding two hundred fifty thousand pesos (P250,000.00);** Provided, however, that the procurement does not result in splitting of contracts, as provided in Section 54.1 of this IRR-A; provided, further, that at least three (3) price quotations from bona fide suppliers shall be obtained. (*Emphasis and Underscoring Supplied*)

The canvass forms issued to various suppliers for the submission of their price quotation proved that indeed there was no public bidding conducted in the procurement of construction supplies.<sup>382</sup> In fact, these construction supplies could not have been included in the provision of Section 52, R.A. 9184 as the supplies covered by the said provision refer only to "off-the-shelf goods" or "ordinary/regular equipment." Moreover, even if the construction supplies fall under the terms "goods" and "equipment" covered by "shopping," the cost of the construction materials exceeds the P250,000.00 ceiling price provided by the said provision. Also, there was no showing of any unforeseen contingency requiring the immediate purchase of the construction supplies. As pointed out during the cross-examination of Reyes, the rehabilitation of the building started sometime in October 2004, or ten months after the amount was obligated. Ten months is a long period of time to conduct public bidding, yet the accused did not undertake it.

More importantly, payment was made for materials even if these were not yet completely delivered. This is a clear showing

<sup>382</sup> Exhibits KK, LL and MM

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of manifest partiality on the part of accused government officials in favor of Ang. It also appears, based on the records, that there was already full payment to accused Ang of the full amount of P758,998.70 on October 11, 2004.<sup>383</sup> While accused Reyes insists that all the orders from accused Ang / PHCS were delivered prior to payment, such claim is, however, belied by his own admission that he asked for the return of the excess payment. It must be emphasized that the construction commenced only on October 15, 2004 as evidenced by the Notice to Proceed<sup>384</sup> and that the delivery of the construction materials commenced only on October 12, 2014 as evidenced by the Statement of Account issued by PCHS dated December 14, 2004.<sup>385</sup>

It is worth stressing, as well, that there was no contract in favor of accused Ang, no purchase order, no disbursement voucher, no official receipt, no inspection and acceptance report and no abstract of bids, and yet, accused Mauri obligated the amount in his favor even before he made deliveries of the construction materials. It is even a wonder how payment was processed and made when the disbursement voucher was not processed. In the end, accused Ang had to return a portion of the said full payment as he could no longer deliver the construction materials due to increase in prices. Such advance payment made in favor of accused Ang is prohibited under Section 88 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, which states:

Section 88. *Prohibition against advance payment on government contracts.* - (1) Except with the prior approval of the President (Prime Minister), **the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered** under any contract therefore. No payment, partial or final, shall be made on any such contract, except upon certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted. (*Emphasis, Italics and Underscoring Supplied*)

All these circumstances taken together clearly demonstrate the manifest partiality of accused Salvador, Reyes and Mauri towards accused Ang, giving the latter unwarranted benefits to obtain the government project.

<sup>383</sup> Exhibits EE, K<sup>1</sup>-2-A, E<sup>4</sup> and E<sup>4</sup>-1

<sup>384</sup> Exhibit GG

<sup>385</sup> Exhibit HH

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As to accused Ang, it bears to reiterate the settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.<sup>386</sup>

In the present case, the prosecution has sufficiently proven that accused Ang indeed conspired with accused Salvador, Reyes and Mauri as to the purchase of the construction materials in connection with the repair or rehabilitation of the subject building. Accused Ang insists that there was no conspiracy, explaining that payment was made after delivery. He claims that deliveries were made beginning October 12, 2004 and that he received payment by the EMB-CAR, DENR thru accused Reyes at the Landbank, Harrison Road Branch in the amount of P401,226.20 only on October 22, 2004 after the deliveries were made. He claims that another delivery was made on October 23, 2004 in the amount of P31,032.00, but he remains unpaid for the said amount.

However, this claim that there was delivery prior to payment is belied by the fact that the amount of 758,998.70 was credited to the account of a certain Mariano L. Ang under Landbank Account No. 0221-3223-80 on October 12, 2004.<sup>387</sup> Accused Ang claims that he is not aware of Landbank Account No. 0221-3223-80, although his name appears in the Advice/Authority to Debit Account Debit Memo No. 04-10-010 dated October 11, 2004. The Court is inclined to give more weight to the testimony of the rebuttal witness for the prosecution, the Head of Landbank Baguio, that the records speak for itself and that the bank is very strict in determining the clients who open the bank with them, making it unlikely that another person other than accused Ang, would use the account of Mariano Ang and apply a time deposit or savings account. Add to that the dubious circumstance that accused Ang happened to start making deliveries exactly on October 12, 2004 and that there was a return of the excess payment in the amount of P357,772.50 on October 22, 2004. Also, the circumstance that the casual meeting between accused Reyes and Ang happened to be in Landbank, Harrison Road Branch, Baguio City, which is around 2 kilometers away from the office when it involves an official transaction, fails to convince this Court that the transactions were attended with good motives.

<sup>386</sup> Gregorio Singian, Jr. v. Sandiganbayan, G.R. Nos. 195011-19, September 30, 2013

<sup>387</sup> E4 and E4-1-Rebuttal

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All these actuations of accused Salvador, Reyes, Mauri and Ang reflect a blatant disregard of the requirements of R.A. 9184 and its IRR and its noble aim of ensuring the punctilious selection of the entity to award a government contract to. It is thus clear that there was manifest partiality, evident bad faith in the giving of unwarranted benefits, in the purchase of the construction supplies from accused Ang on the part of accused Salvador, Reyes and Mauri. These irregularities could have been avoided if accused Salvador, Reyes and Mauri only resorted to public bidding for the purchase of the construction materials. However, with manifest partiality and evident bad faith, the accused in this case, acted in conspiracy to give unwarranted benefits, advantage and preference in favor of accused Ang.

On the other hand, as to accused Tolentino, to recall, the Information in Criminal Case No. SB-15-CRM-0097 charges accused Tolentino of conspiring with his co-accused in violating Section 3(e), R.A. No. 3019 through manifest partiality and evident bad faith in giving unwarranted benefit, privilege or advantage to accused Ang. On this note, it must be emphasized that it is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality and evident bad faith.<sup>388</sup> In addition, mere bad faith or partiality *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must, in the first place, be evident or manifest.<sup>389</sup>

The terms partiality and bad faith have been explained 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."**  
(Emphasis and Underscoring Supplied)

The established facts show that as to accused Tolentino, manifest partiality, as well as evident bad faith, are inexistent in the present case. As pointed out by the prosecution, the significant acts of accused Tolentino proven by the prosecution in relation to this particular case are: (a) certifying that the list

<sup>388</sup> Sison v. People, G.R. Nos. 170339, 170398-403, March 9, 2010

<sup>389</sup> Constantino v. Hon. Sandianbayan (First Division), et al. G.R. No. 140656 and 154482, September 13, 2007.

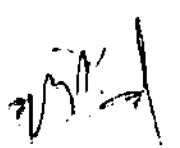
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of Due and Demandable A/Ps was prepared in accordance with existing budgeting, accounting rules and regulations; and (b) certifying the amount P758,998.70 as accounts payable even if there was no valid and existing claim by PHCS. Such acts, however, could neither be read as manifesting partiality or bad faith, based on the above-mentioned definition.

As explained by accused Tolentino, based on COA Circulars Nos. 2005-001 and 2006-003,<sup>390</sup> he has a ministerial duty in certifying funds. Paragraph 2.4 thereof states that "For Contract of Purchase Order, the Head of the Accounting Unit shall certify the availability of funds based on the ObR or BUR duly certified by the Budget Officer." The ObR used to be the ALOBS. Under the NGAS which took effect in 2002, "funds" is construed to mean appropriations, allotments or budget. It is not synonymous or similar with the term "cash." It is the Budget Officer who has control of funds, while it is the Accountant who control of the cash, or rather, certifies on the availability of cash. On this note, he certifies 'funds' after he receives the ALOBS coming from the Budget Officer, which makes his signing merely ministerial in nature.

He explained that while admittedly the transactions occurred in 2003 to 2004, COA Circular Nos. 2005-001 and 2006-003, which were issued on 2005 and 2006, respectively, have taken effect way back in 2002 and are merely issuances to clarify the provisions of the NGAS in 2002 brought about by the confusion during the outset of the implementation of the NGAS. While accused has Tolentino arrogated unto himself the interpretation of his duty with respect to certifying funds, there is insufficient showing of bias or some dishonest purpose or moral obliquity enough to convince this Court that there was manifest partiality or evident bad faith on his part, as alleged in the Information.

The same finding also goes for accused Tolentino's admission that there was a mistake in his Listing of Accounts Payable or in his request for cash allocation as to accused Ang/PHCS and Dominong. Under the NGAS, accounts payable is actually defined as obligations in which the goods are delivered or services are rendered and remained unpaid on any part of the year, and not necessarily at the end of the year. He admitted that if he was following the definition of accounts payable under the old government accounting system, he might probably be correct. The confusion or erroneous interpretation was brought about by

<sup>390</sup> Exhibits 6, 6-A, 7 and 7-A-Tolentino





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his unfamiliarity with the changes brought about by the new government accounting system. Nevertheless, the Court is of the view that this is not sufficient to conclude that the second element exists in the instant case.

Also, on a side note, the absence of conspiracy, as well as partiality and bad faith, was shown with accused's inclination to object to the payment and/or disbursement of the funds or cash allocation in connection with the project, particularly in the case of accused Dominong, unless the requirements are met. As previously discussed, jurisprudence dictates that in order for conspiracy to exist, two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Moreover, the foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone."<sup>391</sup>

The Court is inclined to consider accused Tolentino's testimony that he was indeed by-passed with respect to the Disbursement Vouchers issued in favor of accused Dominong more likely due to his Annotation in the first Disbursement Voucher requiring several documents which were not complied with. Despite his objection, however, it appears that the funds have been released which should not have been the case. The Court also gives credence to the statement given by accused Tolentino that he checked the ALOBS, although dated December 30, 2004, issued by the Budget Officer Mauri prior to certifying the funds availability in the Contract of Service dated December 29, 2004, thus negating the existence of partiality or bad faith. The Court takes judicial notice of the fact that December 30 is a holiday.<sup>392</sup>

In view of the foregoing, the prosecution failed to prove beyond reasonable doubt the existence of the second element in order to indict accused Tolentino for Violation of Section 3(e), R.A. 3019. In all criminal prosecutions, the accused shall enjoy the right to be presumed innocent until the contrary is proved.<sup>393</sup> Hence, he is entitled to an acquittal as a matter of course.

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<sup>391</sup> People of the Philippines v. Go, G.R. No. 168539, March 25, 2014

<sup>392</sup> Section 2, Rule 129, Revised Rules of Evidence

<sup>393</sup> Article III, Section 14(2), 1987 Constitution

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On the matter of civil liability of the accused who are found guilty, the following matters should be considered: the return of P357,772.50 by accused Ang to EMB-CAR, DENR and the delivery of certain construction supplies. The prosecution did not, however, present any evidence to prove the loss that government suffered as a result of failure to comply with the bidding procedure. Therefore, the loss could not be ascertained.

*Criminal Case No. SB-15-CRM-0098*

On the other hand, the Information in Criminal Case No. SB-15-CRM-0098 charges accused Salvador and Reyes of violating Section 3(e), R.A. No. 3019 with manifest partiality and evident bad faith and conspiring and confederating with accused Dominong and with one another in giving unwarranted benefit, privilege or advantage to the latter who is a private contractor by authorizing the payment of retention fee in the amount of Thirty Three Thousand Seven Hundred Seventy Nine Pesos and Fourteen Centavos (Php33,779.14) to the latter despite glaring structural defects in the repair/rehabilitation of the Regional Director's Office and Environmental Information Center of the DENR, Baguio City, with accused Dominong accepting the same amount knowing fully well that he is not entitled thereto, thereby causing undue injury to the government.

The first element has already been stipulated as to accused Salvador and Reyes. As to accused Dominong, his criminal liability is dependent on proof that he conspired with his co-accused Salvador and Reyes in committing the alleged violation of Section 3(e), R.A. 3019. As previously mentioned, private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019.<sup>394</sup> The fact that accused Dominong is the service contractor in the instant case is undisputed.

As for the second and third elements, an examination of facts and circumstances of the instant case convinces this Court that the same were not proven by the prosecution beyond reasonable doubt.

As discussed above, the contract between DENR-EMB-CAR is for the provision of labor services for the repair, rehabilitation or construction of the DENR-EMB-CAR building. For accused Salvador and Reyes to be liable for the release of the retention money, the prosecution should sufficiently establish that the

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<sup>394</sup> Supra note 334

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government official is duty-bound to withhold retention money for contract of services.

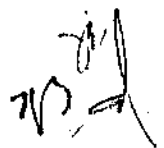
"Retention money" is a sum of money equivalent to ten percent (10%) of the total amount due to the contractor retained by the procuring entity, which will answer for the purpose for which it is intended, i.e. to cover uncorrected discovered defects and third party liabilities.

In *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*<sup>395</sup>, the Supreme Court held that in the construction industry, the 10% retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work — if any — becomes necessary. The requirement of withholding the retention money is usually provided for in the contract of works, services or even of goods and has become a standard for works contracts. A perusal of the contract signed by accused Salvador and Dominong, however, shows that there is no provision requiring the retention of 10% of the contract price and since the contract is not a construction works contract, then the ruling in *Carlos Construction* is not applicable.

The structural defects enumerated in the inspection reports of COA, which include: (a) The steel deck slab at the second floor deflected by about sixty (60) millimeters; (b) Hairline cracks at regular intervals were noted on the building's exterior beam support. At least 2 hairline cracks were noted on the interior beam near the stair well; (c) Deflection of about 20 millimeters was observed at the roof slab as evidenced by accumulation of water at the midspan of the steel deck; and (d) the more significant finding of the deflection of the steel deck slab in most portions, the left rear second slab showing the most deflection. The prosecution is correct that this is quite disturbing and alarming to think that even the maximum allowable deflection should not be noticed.<sup>396</sup> However, the prosecution must be mindful that this is a projection by administration. The DENR-EMB-CAR who maintained that they have competent organic personnel should have seen these defects. The burden lies with them and not with the labor service contractor who performed the carpentry, masonry and steelworks under the supervision of the project manager, accused Reyes. In contracting the services of laborers instead of a works contractor to undertake the project, the office took a collective decision to be responsible for the

<sup>395</sup> *BF Corp. v. Werdenberg International Corp.*, G.R. No. 174387, December 9, 2015.

<sup>396</sup> Memorandum for the Prosecution, p. 20



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defects mentioned. Even the scope of work of the service contractor as contained in the contract does not conceive of any liability for the construction defects and probably, this is the reason why no retention fee was required.

In view of the foregoing, accused Salvador, Reyes and Dominong could not be held criminally and civilly liable for violation of Section 3 (e) of R.A. No. 3019 in this case.

**B. Illegal Use of Public Funds penalized under Article 220 of the Revised Penal Code**

*Criminal Case No. SB-15-CRM-0099*

For this case, accused Salvador, Tolentino and Mauri are being charged for Illegal Use of Public Funds penalized under Article 220 of the Revised Penal Code for having conspired and confederated with one another in applying without any legal authority the public funds under their custody for the repair or rehabilitation of the Regional Director's Office and Environmental Information Center, knowing fully well that such public fund has been specifically appropriated by law for the implementation of the ESWM project and for the MOOE, thereby causing damage or embarrassment to the public service.

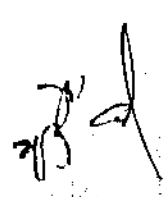
Article 220 of the Revised Penal Code provides as follows, to wit:

**Art. 220. Illegal use of public funds or property.** - Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offended shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 percent of the sum misapplied. (*Emphasis and Italics Supplied*)

In *Parungao v. Sandiganbayan*,<sup>397</sup> the High Court held that the essential elements of the crime of violation of Article 220 of the RPC, more commonly known as technical malversation, are as follows:

<sup>397</sup> G.R. No. 96025, May 15, 1991



- (1) That the offender is an accountable public officer;
- (2) That he applies public funds or property under his administration to some public use; and
- (3) That the public use for which the public funds or property were applied is different from the purpose for which they were originally appropriated by law ordinance.

As to the first element, it has already been stipulated that accused Salvador, Tolentino and Mauri hold the positions of Regional Director, Accountant II and Budget Officer, respectively, of the EMB-CAR, DENR and as such are accountable public officers at the time material to these cases.

Executive Order (E.O.) No. 292 or the Administrative Code of 1987 specifies as follows, to wit:

#### CHAPTER 5 FIELD OFFICES

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Section 23. *Administration of Regional Office.* - **The regional office shall be headed by a Regional Director who may be assisted by one (1) Assistant Regional Director, except as may otherwise be provided by law. The Regional Director shall be responsible for the department of agency functions performed in the region under his direction.**

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#### CHAPTER 9 ACCOUNTABILITY AND RESPONSIBILITY FOR GOVERNMENT FUNDS AND PROPERTY

Section 50. *Accountable Officers; Board Requirements.*-

- (1) Every officer of any government agency whose duties permit or require the possession or custody of government funds shall be accountable therefor and for safekeeping thereof in conformity with law; and
- (2) Every accountable officer shall be properly bonded in accordance with law.

Section 51. *Primary and Secondary Responsibility.*-

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

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- (2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the Government. (Emphasis and Underscoring Supplied)

Based on the above, accused Salvador, Tolentino and Mauri, being then the Regional Director, Accountant II and Budget Officer, respectively, of EMB-CAR, DENR are accountable officers under the circumstances.

The second and third elements also exist in the instant case. The evidence of the prosecution sufficiently established that the funds used in the repair or rehabilitation of the Regional Director's Office and Environmental Information Center of DENR Baguio City were from Sub-Allotment Advice SAA No. EMB-03-11-05 dated November 28, 2003 for the specific purpose of additional operating requirements and for the implementation of Ecological Solid Waste Management Project in the Municipality of Tuba, Benguet of CAR. Among the evidence presented were the testimonies of all the witnesses and the following documentary evidence:

- (a) Sub-Allotment Advice SAA No. EMB-03-11-05 and its attachments;<sup>398</sup>
- (b) Affidavit of Loss of Anabella Laborte, Subpoenas addressed to Marissa A. Santos and Ruby R. Esteban, Certification signed by Marissa A. Santos;<sup>399</sup>
- (c) Disbursement Vouchers with attached Requisition and Issue Slip, Allotment and Obligation Slips (ALOBS), Canvass Papers and Cash Invoices/Official Receipts;<sup>400</sup>
- (d) Inspection Report from the City Buildings and Architecture Office of Baguio City with attachments and Letter dated February 1, 2006;<sup>401</sup>
- (e) Inspection Report from the City Buildings and Architecture Office of Baguio City with attachments and Letter dated February 1, 2006;<sup>402</sup>
- (f) Excerpt from the Official Gazette dated May 12, 2003 showing the General Appropriations Act for 2003 for EMB of the DENR;<sup>403</sup>

<sup>398</sup> Exhibit X

<sup>399</sup> Exhibits V<sup>3</sup>, X<sup>3</sup>, Y<sup>3</sup>, Z<sup>3</sup>

<sup>400</sup> Exhibits NN, OO, PP with submarkings, QQ with submarkings

<sup>401</sup> Exhibits RR and U<sup>3</sup>

<sup>402</sup> Exhibits UU with submarkings and W<sup>3</sup> with submarkings

<sup>403</sup> Exhibit A<sup>3</sup>

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- (g) Perspective, Location and Site Development Plan for the construction of a new Regional Director's Office building;<sup>404</sup>
- (h) Specification for the Proposed Rehabilitation or Repair of the Regional Director's Office and the Environmental Education & Information Center;<sup>405</sup>
- (i) Work Activities and Bar Chart Work Activities for the Proposed Repair and Rehabilitation of the EMB-CAR Regional Director's Office, Environmental Education and Information Center, Management Information System and Library;<sup>406</sup>
- (j) Summary of Agency Estimated Project Cost with attachments;<sup>407</sup>
- (k) Financial Report as of December 31, 2003 of DENR EMB-CAR;<sup>408</sup>
- (l) Statement of Allotment, Obligations and Balances as of December 31, 2003 of DENR EMB-CAR;<sup>409</sup>
- (m) Memorandum of Director Julian D. Amador Re: Request of Capital Outlay to Finance Implementation of Land and Building Improvements within the EMB-CAR Baguio City;<sup>410</sup>
- (n) Audit Survey on the EMB-CAR Project;<sup>411</sup>
- (o) Memorandum No. 2002-053 dated August 26, 2002 of the Commission on Audit.<sup>412</sup>

Accused contends that the alleged fund which was used formed part of the savings. However, there is no sufficient evidence in the court records which proves that indeed the funds intended for additional operating requirements and for the implementation of ESWM Project in the Municipality of Tuba, Benguet, CAR, already formed part of the savings of the agency.

Indeed, even assuming for the sake of argument that the fund used for the repair or rehabilitation of the Regional Director's office building was taken from the savings, the same would still be highly irregular. The prosecution was able to prove that the project entitled "repair or rehabilitation" was indeed a construction of a new two-storey building. Hence the realignment should have been with the authority of the DBM. It bears

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<sup>404</sup> Exhibit B<sup>3</sup>

<sup>405</sup> Exhibits G<sup>3</sup> with submarkings

<sup>406</sup> Exhibit I<sup>3</sup>

<sup>407</sup> Exhibits J<sup>3</sup> with submarkings

<sup>408</sup> Exhibit R<sup>3</sup>

<sup>409</sup> Exhibit S<sup>3</sup>

<sup>410</sup> Exhibit M

<sup>411</sup> Exhibits F with submarkings

<sup>412</sup> Exhibits A<sup>4</sup> with submarkings

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that the subject SAA was intended for the MOOE and implementation of ESWM projects in Tuba, Benguet. In this case, the MOOE could not be used for projects intended for capital outlay. Realignment can only be had if the items are within the same expense class of their respective appropriations and the same should have been with a validly enacted appropriation or ordinance. This is not the case under the instant milieu.

A careful examination of the excerpt from the Official Gazette dated May 12, 2003 showing the General Appropriations Act for 2003 for EMB of the DENR<sup>413</sup> would show that the EMB-CAR did not have capital outlay at that time. This, coupled with the fact that the Memorandum of Julian Amador<sup>414</sup> which categorically stated that the agency did not have capital outlay manifestly show that indeed accused are guilty of Technical Malversation.

Finally, the prosecution sufficiently established that in the instant case, accused Salvador and Mauri acted in concert to facilitate the illegal release of public funds, which are intended for some other purposes, i.e. additional MOOE and implementation of ESWM projects. The said accused actively participated in the preparation, processing and/or approval of the disbursement of public funds relative to the construction of the new Regional Office building in EMB-CAR. Jurisprudence dictates that conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence of prior agreement to commit the crime.<sup>415</sup> In criminal law, where the quantum of evidence required is proof beyond reasonable doubt, direct proof is not essential to show conspiracy – it may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.<sup>416</sup>

This Court, however, recognizes that while it was the intent or purpose of the accused to build a new office befitting the Regional Director of the EMB, it would have been prudent for EMB-CAR to wait for the appropriation for capital outlay before it proceeded building the new office. Since the offense committed by accused Salvador and Mauri is not grave, such would warrant a mere fine.<sup>417</sup> Specifically, no damage or embarrassment was caused to government and public service.

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<sup>413</sup> Exhibit A<sup>3</sup>

<sup>414</sup> Exhibit M

<sup>415</sup> *People v. Quirol*, G.R. No. 149259, October 20, 2005

<sup>416</sup> *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 159556, May 26, 2005

<sup>417</sup> *Id.*

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On the other hand, as for accused Tolentino, he invoked good faith in the performance of his duties and responsibilities being the head of the Accounting Unit of EMB-CAR. He also pointed out that what prevented the SAA funds from being reverted to the National Treasury is the exclusive act of the Budget Officer in obligating it in favor of accused Ang / PHCS. Admittedly, however, he certified that the List of Due and Demandable A/P was prepared in accordance with existing budgeting, accounting rules and regulations and certified the amount P758,998.70 as accounts payable, which eventually facilitated the release of the amount corresponding to the certified A/P which was subsequently released to the supplier accused Ang / PHCS. However, what is most important is that he (Tolentino) already desisted from participating in the illegal disbursement of public funds when he refused to sign one (1) disbursement voucher for the release of funds to accused Dominong without the required documents and he was bypassed in the processing of the other disbursement vouchers relating to the project. While he may have participated in the preliminary acts that paved the way for the eventual release of funds for the purpose the money was not intended for, he was no longer a participant in the final act of releasing the amounts to accused Dominong and Ang.

Inasmuch as the public funds were not used for private gain but was used for another government purpose, no damage is found and adjudged.

**WHEREFORE**, in view of the foregoing, this Court hereby renders judgment as follows:

1. In Criminal Case No. SB-15-CRM-0096, accused **JOEL G. SALVADOR** is found **NOT GUILTY** and is hereby **ACQUITTED** of the charge for violation of Section 3(e) of R.A. 3019. He is also found to be not civilly liable as the Court finds no basis to hold him liable therefor. Let the hold departure order against him by reason of this case be lifted and set aside, and his bond released, subject to the usual accounting and auditing procedure.

2. In Criminal Case No. SB-15-CRM-0097, accused **JOEL G. SALVADOR, ROLANDO C. REYES, PERLITA L. MAURI** and **MARIANO L. ANG** are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. 3019, and pursuant to Section 9 thereof, they are 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

g/s Jc

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disqualification from holding public office. No civil liability is adjudged as the Court finds no basis to make them liable therefor.

Accused **ASTERIO C. TOLENTINO, JR.**, is hereby found **NOT GUILTY** and **ACQUITTED** of the charges against him for failure of the prosecution to prove his guilt beyond reasonable doubt. No civil liability is adjudged as the Court finds no basis to make him liable therefor. Let the hold departure order against him by reason of this case be lifted and set aside, and his bond released, subject to the usual accounting and auditing procedure.

3. In Criminal Case No. SB-15-CRM-0098, accused **JOEL G. SALVADOR, ROLANDO C. REYES** and **DAVID O. DOMINONG** are **NOT GUILTY** of violation of Section 3(e) of R.A. 3019, and are hereby **ACQUITTED** of the charge. No civil liability is adjudged as the Court finds no basis to make them liable therefor. Let the hold departure order against them by reason of this case be lifted and set aside, and their bonds released, subject to the usual accounting and auditing procedure.

4. In Criminal Case No. SB-15-CRM-0099, accused **JOEL G. SALVADOR** and **PERLITA L. MAURI** are found guilty beyond reasonable doubt of the crime of Illegal Use of Public Funds penalized under Article 220 of the Revised Penal Code and are hereby meted a fine of Sixty Thousand Nine Hundred Fifty Pesos (P60,950.00), pursuant to the second paragraph of the said provision. No civil liability is hereby adjudged as the court does not find any basis therefor.

Accused **ASTERIO C. TOLENTINO, JR.** is found **NOT GUILTY** of the crime of Illegal Use of Public Funds penalized under Article 220 of the Revised Penal Code and is hereby **ACQUITTED** of the charge. No civil liability is hereby adjudged as the court does not find any basis therefor. Let the hold departure order against him by reason of this case be lifted and set aside, and his bond released, subject to the usual accounting and auditing procedure.


**SO ORDERED.**

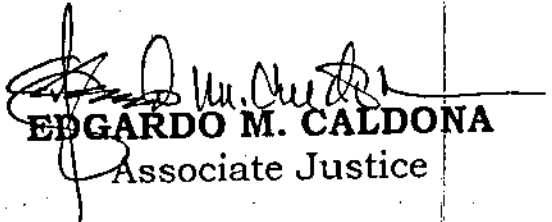
Quezon City, Metro Manila, Philippines.

*Geraldine Faith A. Econg*  
**GERALDINE FAITH A. ECONG**  
Associate Justice

*PS*


WE CONCUR:

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

  
**EDGARDO M. CALDONA**  
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice