



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-15-CRM-0101-0102
For: Violations of Sec. 3(e) of
R.A. 3019 and Sec. 7(d) of
R.A. 6713

- versus -

HENRY M. GELACIO,
Accused.

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated: April 29, 2015

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DECISION

VIVERO, J.

For decision is the charge for violations of Section 3(e) of
Republic Act No. 3019 (R.A. No. 3019)1 or the Anti-Graft and Corrupt
Practices Act, as amended, and Section 7(d) of Republic Act No. 6713
(R.A. No. 6713)2 otherwise known as the Code of Conduct and Ethical

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

x x x

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

2 Section 7. Prohibited Acts and Transactions. - In addition to acts and omissions of public officials
and employees now prescribed in the Constitution and existing laws, the following shall constitute
prohibited acts and transactions of any public official and employee and are hereby declared to be
unlawful:

x x x

(d) Solicitation or acceptance of gifts. - Public officials and employees shall not solicit or accept,
directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value

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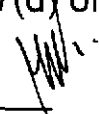
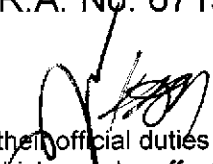
Standards for Public Officials and Employees against Henry Magaway Gelacio (accused), Regional Agrarian Reform Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB) – Region XII, Kidapawan City, for allegedly soliciting and accepting, on separate occasions, the aggregate amount of One Hundred Twenty Thousand Pesos (PhP120,000.00) and a whole tuna fish in consideration of his issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI) relative to a case pending before him.

The accusatory portion of the Information dated 20 October 2014³ in SB-15-CRM-0101 for violation of Section 3(e) of R.A. No. 3019 filed with this Court on 28 April 2015 reads:

“That on five separate occasions during the period of 14 August to 19 November 2007, or sometime prior or subsequent thereto, in Kidapawan City, Philippines, and within the jurisdiction of this Honorable Court; accused **HENRY MAGAWAY GELACIO**, Regional Agrarian Reform Adjudicator (SG-28) of the Department of Agrarian Reform Adjudication Board – Region XII, Kidapawan City did then and there, wilfully, unlawfully, criminally and with evident bad faith, demand and extort from Eduardito Garbo and the group of Miguel Egagamao, Marisa Egagamao, Bebiano Egagamao, Zenona Egagamao, Saturnina Egagamao, Dominador Egagamao, Lucia Egagamao, Celso Palado, Sr., Aniceto Mejala, Jonathan Villegas, Herminigilda Garbo, Shirley Glodove and Norberto Malubay as complainants in DARAB Case NO. XII-990-SC-2007 (Miguel Egagamao, et al. vs. DARBACI and Alfonso, et al.), the total amount of ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00) and a whole tuna fish in exchange for the issuance in said DARAB case of a Temporary Restraining Order and Injunction Order in complainants' favor; for which reason said complainants were forced to sell their farm animals, tools and materials at extremely low prices, resulting in more difficult farming conditions and their children's inability to continue attending school; thus causing undue injury to said complainants in the amount of no less than P120,000.00, and in undue injury even to said DARAB case's respondents DARBACI and Alfonso, et al. whose rights and interests were compromised; to the damage and prejudice of said parties.

CONTRARY TO LAW.”

On the other hand, the accusatory portion of the Information dated 20 October 2014⁴ in SB-15-CRM-0102 for violation of Section 7(d) of R.A. No. 6713 filed with this Court on 28 April 2015 reads:

from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

³ Rollo (SB-15-CRM-0101), pp. 1-2.

⁴ Rollo (SB-15-CRM-0102), pp. 1-2.

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“That on five separate occasions during the period of 14 August to 19 November 2007, or sometime prior or subsequent thereto, in Kidapawan City, Philippines, and within the jurisdiction of this Honorable Court; accused Regional Agrarian Reform Adjudicator (SG-28) of the Department of Agrarian Reform Adjudication Board – Region XII, Kidapawan City did then and there, wilfully, unlawfully, criminally solicit and accept from Eduardito Garbo and the group of Miguel Egagamao, Marisa Egagamao, Bebiano Egagamao, Zenona Egagamao, Saturnina Egagamao, Dominador Egagamao, Lucia Egagamao, Celso Palado, Sr., Aniceto Mejala, Jonathan Villegas, Herminigilda Garbo, Shirley Glodove and Norberto Malubay as complainants in DARAB Case NO. XII-990-SC-2007 (Miguel Egagamao, et al. vs. DARBACI and Alfonso, et al.) , the total amount of ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00) and a whole tuna fish in the course of and in exchange for the issuance in said DARAB case of a Temporary Restraining Order and Injunction Order in complainants' favor.

CONTRARY TO LAW.”

When accused was arraigned on 08 July 2015, he pleaded “Not Guilty” to both charges.⁵

During the pre-trial,⁶ the parties stipulated that at the time material and relevant to the case:

1. The accused was the Regional Agrarian Reform Adjudicator, Department of Agrarian Reform Adjudication Board, Region XII and concurrent Adjudicator for the other provinces in said region: Sultan Kudarat, North and South Cotabato and Maguindanao;⁷
2. In 2007, the case of Miguel Egagamao, et al. versus DARBCI, et al. docketed as DARAB XII-990-SC-2007 (DARAB case) was assigned to the accused for adjudication;⁸ and
3. A Temporary Restraining Order and a Writ of Preliminary Mandatory Injunction were issued in DARAB XII-990-SC-2007;⁹

They also agreed that the issues to be resolved are as follows:¹⁰

⁵ *Rollo* (SB-15-CRM-0101), pp. 83-84.

⁶ *Id.* at pp. 107-111 (Pre-Trial Order dated 03 February 2016).

⁷ *Id.* at p. 107.

⁸ *Id.* at p. 108.

⁹ *Ibid.*

¹⁰ *Id.* at p. 109.

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1. Whether or not the accused should be held liable for violation of Section 3(e) of Republic Act No. 3019 as charged in the Information in SB-15-CRM-0101; and
2. Whether or not the accused should be held liable for violation of Section 7(d) of Republic Act No. 6713 as charged in the Information in SB-15-CRM-0102.

Thereafter, trial on the merits ensued.

Evidence for the Prosecution

The prosecution presented the following witnesses: **Lorna Nietes Garte**,¹¹ **Atty. Johnny Landero**,¹² **Herminigilda Garbo**,¹³ and **Dominador Egagamao**.¹⁴

Lorna Nietes Garte

The parties stipulated on the following subjects of testimony of witness Garte:

1. That she is the Supervising Agrarian Reform Program Officer and designated Clerk of the Board, Department of Agrarian Reform Adjudication Board, Office of the Provincial Adjudicator, Koronadal City, South Cotabato; and
2. That in relation to her position and designation, she issued authenticated copies (Certified True Copies) of the Complaint marked as Exhibit "B", with its Annexes, the Temporary Restraining Order (TRO), marked as Exhibit "C", dated October 2, 2007, and the Writ of Preliminary Mandatory Injunction, marked as Exhibit "D", dated November 19, 2007, in DARAB Case XII-990-SC-2007.¹⁵

Atty. Johnny Landero

Atty. Landero identified the following documents:

1. Eduardito Garbo's Affidavit Complaint dated 01 May 2009 (Exhibit "A");
2. DARAB Complaint dated 01 August 2007 (Exhibit "B");

¹¹ Transcript Stenographic Notes (TSN), dated 29 February 2016.

¹² TSN, dated 18 October 2016.

¹³ TSN, dated 27 June 2017.

¹⁴ TSN, dated 28 June 2017.

¹⁵ *Rollo* (SB-15-CRM-0101), p. 119.

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3. Temporary Restraining Order dated 02 October 2007 (Exhibit "C");
4. Writ of Preliminary Mandatory Injunction Order dated 19 November 2007 (Exhibit "D");
5. Written Manifestation dated 13 November 2009 (Exhibit "E"); and
6. Reply to Comment of Atty. Henry Gelacio dated 18 November 2009 (Exhibit "F")

He also testified on the following:

1. He served as counsel for the complainants in the agrarian case docketed as DARAB Case XII-990-SC-2007 entitled "Miguel Egagamao, et al. v. DARBC, et al."¹⁶
2. As such, he prepared the Complaint dated 01 August 2007 (Exhibit "B") and filed the case with the DARAB South Cotabato on 14 August 2007. The case was assigned to accused Gelacio, who, at that time, was in North Cotabato;¹⁷
3. He was advised by the receiving officer to go to Kidapawan City to see the accused regarding the provisional remedies prayed for in the Complaint;¹⁸
4. He and his client, complainant Eduardito Garbo (Mr. Garbo), immediately went to the office of the accused in Kidapawan City, and he presented to the accused the provisional remedies and the nature of the complaint;¹⁹
5. After a short briefing, the accused told him that he will interview his client. He went out of the office leaving behind Mr. Garbo with the accused;²⁰
6. On their way back to South Cotabato, Mr. Garbo told him that the accused asked for the amount of Twenty Thousand Pesos (Php20,000.00). Mr. Garbo said to him "*Nangayo of 20,000.00 si Judge Gelacio*", meaning – Judge Gelacio asked for Php20,000.00. When asked what did he do, Eduardito Garbo said "*Gihatagan ko*", meaning, "*I gave him*";²¹

¹⁶ TSN, dated 18 October 2016, p. 8.

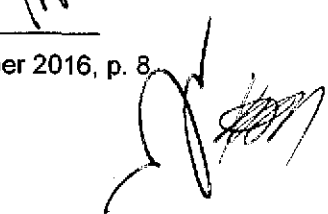
¹⁷ *Id.* at pp. 8-11.

¹⁸ *Id.* at p. 11.

¹⁹ *Id.* at p. 12.

²⁰ *Ibid.*

²¹ *Id.* at pp. 13-15.



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7. When asked about the status of the TRO, Mr. Garbo said to him, "*Pabalikon ako*", meaning, "*I was asked to return*",²²
8. On 13 September 2007, Mr. Garbo called him to follow up the TRO. He told his client to proceed to Koronadal City to make a follow up.²³
9. On the same date, Mr. Garbo informed him that he and his wife Herminigilda Garbo (Mrs. Garbo) went to DARAB Koronadal City but was informed that the accused was not in his office. The spouses proceeded to see the accused in Kidapawan City;²⁴
10. In the afternoon of the same date, Mr. Garbo went to his office and informed him that the TRO was not yet in hand but he gave additional PhP20,000.00 to the accused so that the TRO will be released immediately;²⁵
11. On 24 September 2007, he received a call from the accused and the latter told him to advise his client to see him at Tiboli Hotel;²⁶
12. He escorted Mr. Garbo to Tiboli Hotel. He stayed in his car while Mr. Garbo went inside to meet the accused;²⁷
13. After 20 minutes, Mr. Garbo came back and told him that there was already a draft TRO and that accused would call if it is already finished;²⁸
14. Mr. Garbo also told him that he gave another PhP20,000.00 and the accused asked for a tuna fish;²⁹
15. He and Mr. Garbo went to the former's house to get an ice box and the two proceeded to the General Santos fish port to buy the fish;³⁰

²² *Id.* at p. 16.

²³ *Ibid.*

²⁴ *Id.* at p. 17.

²⁵ *Id.* at p. 18.

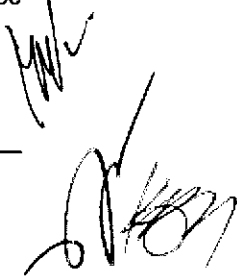
²⁶ *Id.* at p. 19.

²⁷ *Id.* at p. 20.

²⁸ *Ibid.*

²⁹ *Id.* at p. 21.

³⁰ *Ibid.*



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16. He called up the accused to ask where he would deliver the tuna fish. Accused replied, "*Panero, we are heading going back to Kidapawan. We will meet at the junction of Makar,*"³¹
17. They met accused at the junction of Crossing Makar and, with the help of accused's driver Mr. Payao, loaded the ice box into accused's pick up;³²
18. Later, he was informed that accused called Mr. Garbo instructing him to get the TRO in Kidapawan City. Mr. Garbo went to Kidapawan City to get the TRO;³³
19. Mr. Garbo went to him with the TRO and told him that he gave accused another PhP20,000.00;³⁴
20. Surprised on why Mr. Garbo brought the TRO to him, he instructed his client to give the TRO to the office of the DARAB in Koronadal City;³⁵
21. Mr. Garbo went to DARAB at Koronadal and gave the TRO to Sheriff Gonora, who then implemented the TRO and all the complainants were able to take possession of their land peacefully;³⁶
22. Accused set the hearing for the injunction and during the hearing, the parties were advised to submit their position paper;³⁷
23. After submitting the position paper, Mr. Garbo called him saying that he was asked by the accused to go to Kidapawan because the injunction was already finished. Mr. Garbo then went to Kidapawan City;³⁸
24. Mr. Garbo came back to General Santos City and handed over to him the injunction and informed the latter that he already gave a copy to the sheriff. Mr. Garbo also told Atty. Landero, "*Mahal man hid ka injunction oy PhP40,000.00*

³¹ *Id.* at p. 22.

³² *Ibid.*

³³ *Id.* at p. 25.

³⁴ *Ibid.*

³⁵ *Id.* at pp. 25-26.

³⁶ *Id.* at p. 26.

³⁷ *Ibid.*

³⁸ *Id.* at pp. 26-27.

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man", meaning "the price of the injunction is very high, it is worth PhP40,000.00";³⁹

25. Every time there will be a meeting between Mr. Garbo and the accused, the farmers – plaintiffs were also conducting a meeting to contribute money to be brought by Mr. Garbo;⁴⁰
26. He served as counsel in the criminal case filed by Mr. Garbo against the accused before the Office of the Ombudsman in Davao City;⁴¹
27. Mr. Garbo died after two or three years since the filing of the case against the accused;⁴²
28. The name of Mr. Garbo does not appear in DARAB Case XII-990-SC-2007 but only his wife Mrs. Garbo because in another case, Mr. Garbo was already awarded by the DARAB more or less one (1) hectare under his name;⁴³
29. The group of farmers/plaintiffs appointed Mr. Garbo to represent them because he has knowledge in representing cases in DARAB but no Special Power of Attorney was executed;⁴⁴
30. He knew about the meetings conducted by the farmers/plaintiffs where they contributed money because the family of Egagamao told him;⁴⁵
31. There is no instance that he saw the handing over of money by Mr. Garbo to the accused;⁴⁶ and
32. There is likewise no instance wherein he saw farmers – plaintiffs contributing money and gave it to Mr. Garbo.⁴⁷

Herminigilda Garbo

Mrs. Garbo identified the following documents:

³⁹ *Id.* at p. 27.

⁴⁰ *Ibid.*

⁴¹ *Id.* at p. 28.

⁴² *Ibid.*

⁴³ *Id.* at p. 33.

⁴⁴ TSN, dated 23 November 2016, at pp. 32-33.

⁴⁵ *Id.* at p. 34.

⁴⁶ *Ibid.*

⁴⁷ *Id.* at pp. 34-35.



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1. DARAB Complaint dated 01 August 2007 (Exhibit "B");
2. Temporary Restraining Order dated 02 October 2007 (Exhibit "C"); and
3. Writ of Preliminary Mandatory Injunction Order dated 19 November 2007 (Exhibit "D").

The witness also testified on the following:

1. She was one of the complainants in the DARAB case filed in 2007 and the said case was assigned to the accused;⁴⁸
2. Her group agreed to raise funds to be given to the accused;⁴⁹
3. She knew that that the funds raised were given to the accused because the latter called her husband several times, telling them to go to Kidapawan and demanding money from them.⁵⁰ After the conversation of her husband and the accused, her husband usually tells her that the accused is demanding money;⁵¹
4. She accompanied her husband twice to Kidapawan to give money to the accused. During the first instance, she and her husband handed the amount of PhP20,000.00 to accused's "body body" (assistant) who is a limp person since the accused was not in the office when they arrived;⁵²
5. When she and her husband came back the second time around, accused asked for PhP20,000.00. She took an envelope containing the money from her bra and gave the PhP20,000.00 to her husband, who later on gave the money to the accused. Upon inquiry, accused confirmed that he received the PhP20,000.00 earlier handed to his "body body".⁵³ When accused and her husband had conversation, Mrs. Garbo was just sitting somewhere and was not able to listen;⁵⁴
6. The giving of money to the accused caused a big effect on the group's livelihood as they had to sell their cows, hogs and

⁴⁸ TSN, dated 27 June 2017, pp. 7-8.

⁴⁹ *Id.* at pp. 9-10.

⁵⁰ *Id.* at pp. 10-11.

⁵¹ *Id.* at p. 37.

⁵² *Id.* at pp. 11-12.

⁵³ *Id.* at p. 14.

⁵⁴ *Id.* at p. 37.

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sprayer, and she could no longer give money to his youngest son who is attending school;⁵⁵

7. She has seen the accused many times but only her husband was able to talk with him;⁵⁶ and
8. She accompanies her husband every time the accused has something to require her husband.⁵⁷

Dominador Egagamao

The parties stipulated that Dominador Egagamao (D. Egagamao) is one of the complainants in the DARAB Case NO. XII-990-SC-2007.⁵⁸ The witness identified the following documents:

1. Temporary Restraining Order dated 02 October 2007 (Exhibit "C"); and
2. Writ of Preliminary Mandatory Injunction Order dated 19 November 2007 (Exhibit "D").

The witness testified that:

1. Mr. Garbo was his neighbor and was their representative in the DARAB case;⁵⁹
2. In 2007, in order to secure the TRO, his group met many times and contributed money for the accused;⁶⁰
3. One time, the group contributed Php2,000.00 per person or a total of Php20,000.00 to be given to the accused. He himself carried the money when he and Mr. Garbo went to the office of the accused in Kidapawan City. When they reached the office of the accused, he gave the money to Mr. Garbo who was the one who entered the office. When Mr. Garbo came out from the office, he was informed by Mr. Garbo that he already gave the money to the accused. He could also recognize from Mr. Garbo's pocket that the money was no longer there;⁶¹

⁵⁵ *Id.* at p. 15.

⁵⁶ *Id.* at pp. 19-20.

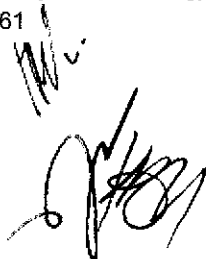
⁵⁷ *Id.* at p. 27.

⁵⁸ TSN, dated 28 June 2017, pp. 5-6.

⁵⁹ *Id.* at p. 8.

⁶⁰ *Id.* at pp. 9-10, p. 14.

⁶¹ *Id.* at pp. 9-12, p. 26



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4. Their group was able to raise money by selling their cows and pigs. It affected their lives since his children stopped attending school for a year;⁶² and
5. Apart from him, other members of the group, such as Bebiano Egagamao and Celso Palado, also accompany Mr. Garbo to Kidapawan to see the accused.⁶³

After the prosecution formally offered its evidence, the Court admitted the following exhibits:⁶⁴

Exhibit	Document
A	Eduardito Garbo's Affidavit Complaint dated 01 May 2009
B	DARAB Complaint dated 01 August 2007
C	Temporary Restraining Order dated 02 October 2007
D	Writ of Preliminary Mandatory Injunction Order dated 19 November 2007
E	Written Manifestation dated 13 November 2009
F	Reply to Comment of Atty. Henry Gelacio dated 18 November 2009

Evidence for the Defense

The defense presented the following witnesses: **Bebiano Egagamao,**⁶⁵ **Atty. Noli L. Lechonsito,**⁶⁶ and the **accused himself.**⁶⁷

Bebiano Egagamao

Witness Bebiano Egagamao (B. Egagamao) testified on the following:

1. He is one of the complainants in the subject DARAB case;⁶⁸
2. He is the brother of prosecution witness D. Egagamao;⁶⁹
3. It is not true that their group raised money to be given to the accused;⁷⁰

⁶² *Id.* at p. 13.

⁶³ *Id.* at pp. 22-23.

⁶⁴ *Rollo* (SB-15-CRM-0101), p. 209.

⁶⁵ TSN, dated 22 August 2017.

⁶⁶ TSN, dated 10 April 2018.

⁶⁷ TSN, dated 30 May 2018.

⁶⁸ TSN, dated 22 August 2017, pp. 7-8.

⁶⁹ *Id.* at p. 27.

⁷⁰ *Id.* at p. 10.

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4. While it is true that the group indeed held meetings and contributed money which sometime would reach PhP20,000.00, the same were given to Atty. Landero, who was their lawyer in the DARAB case. He was the one handling the money and the one who handed it over to Atty. Landero in his office in General Santos City;⁷¹
5. It is not true that Spouses Garbo and D. Egagamao sold farm animals in order to raise funds in every meeting that they will be having because they have no farm animals;⁷²
6. It is not true that Atty. Landero, Mrs. Garbo and D. Egagamao, all in all, have given PhP120,000.00 and a tuna fish to the accused. Upon being asked if he was with them twenty four hours, he clarified that maybe on other times, another occasion, Mr. Garbo gave the money;⁷³ and
7. He did not join Mr. Garbo's complaint against the accused because he did not know anything about that complaint;⁷⁴

Atty. Noli L. Lechonsito

Atty. Lechonsito identified the following documents:

1. His Judicial Affidavit dated 04 March 2018;
2. Written Manifestation dated 13 November 2009 (Exhibit "E");
3. Atty. Lechonsito's Comment-Answer to the Written Manifestation (Exhibit "5"); and
4. Eduardito Garbo's Affidavit Complaint dated 01 May 2009 (Exhibit "A").

He likewise testified on the following:

1. He is the Chief of the Legal Division of the Department of Agrarian Reform (DAR) in Cotabato City;⁷⁵
2. He personally knows the accused being the Regional Adjudicator for Region XII of DAR;⁷⁶ and

⁷¹ *Id.* at pp.12-15.

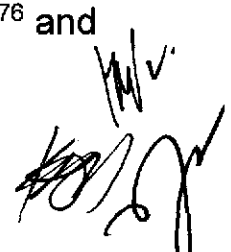
⁷² *Id.* at pp. 16-18.

⁷³ *Id.* at pp. 18-19.

⁷⁴ *Id.* at p. 24.

⁷⁵ TSN, dated 10 April 2018, p. 4.

⁷⁶ *Rollo* (SB-15-CRM-0101) (Judicial Affidavit of Atty. Lechonsito dated 04 March 2018), pp. 240-241.



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3. He assisted Mr. Garbo in preparing and drafting his Affidavit of Retraction wherein he retracted his statements or accusations against the accused as contained in his Affidavit Complaint that he filed with the Office of the Ombudsman;⁷⁷

Accused Gelacio

The accused identified the following documents:

1. His Judicial Affidavit dated 23 May 2018;
2. Report and Recommendation of the Commission on Bar Discipline of the IBP dated 26 June 2015 (Exhibit "6");
3. Notice issued by the IBP Board of Governors (Exhibit "7"); and
4. Supreme Court's Notice of Resolution in Adm. Case No. 8402 (Exhibit "8").

He testified on the following:

1. He is the Regional Adjudicator for Region XII of DAR;⁷⁸
2. He knows Eduardito Garbo as petitioner-plaintiff in DARAB Case No. XII-786-SC-2003 and the husband of Hermigilda Garbo, one of the plaintiffs in DARAB Case NO. XII-990-SC-2007;⁷⁹
3. He knows Atty. Landero as plaintiffs' counsel in DARAB Case No. XII-990-SC-2007 and of Mr. Garbo in DARAB Case No. XII-786-SC-2003, and the one who filed or caused the filing of various cases against him;⁸⁰
4. On 08 September 2009, Mr. Garbo filed a complaint for disbarment against him in the Supreme Court in relation to the issuance of a TRO in DARAB Case NO. XII-990-SC-2007. Upon the recommendation of the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP), the Supreme Court dismissed the disbarment case for being inconclusive and unreliable due to the shifting positions of the complainant;⁸¹ and

⁷⁷ *Id.* at p. 241.

⁷⁸ *Rollo* (SB-15-CRM-0101) (Judicial Affidavit of accused Gelacio dated 23 May 2018), p. 258.

⁷⁹ *Ibid.*

⁸⁰ *Id.* at pp. 258-259.

⁸¹ *Id.* at pp. 260-262.

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5. He denies all the accusations and allegations against him on the alleged bribery and violation of Code of Conduct and Ethical Standards for Public Officials;⁸²

After the defense formally offered its evidence, the Court admitted the following exhibits:⁸³

Exhibit	Document
1	Joint-Affidavit of Bebiano Berse Egagamao and Zenona Enobio-Egagamao dated 23 December 2014
6 to 6-L	Report and Recommendation of the Commission on Bar Discipline of the IBP dated 26 June 2015
7 to 7-A	Notice issued by the IBP Board of Governors
8 to 8-A	Supreme Court's Notice of Resolution in Adm. Case No. 8402

Memoranda of the Parties

Memorandum for the Prosecution

In its Memorandum dated 05 October 2018⁸⁴, the prosecution submits that:

1. All the elements of violation of Section 3(e) of R.A. No. 3019 are present in the case at bar;⁸⁵
2. Accused acted with manifest partiality, evident bad faith or gross inexcusable negligence as he, on several occasions, demanded and received the total amount of PhP120,000.00 and a whole tuna fish from the plaintiffs in the DARAB case for the issuance of the TRO and the Injunction Order in their favor;⁸⁶
3. Accused's act of soliciting and accepting monetary gift in exchange for the issuance of the TRO and the Injunction Order caused undue injury to the complainants in the DARAB case. Prosecution witnesses Mrs. Garbo and D. Egagamao testified that they were able to raise money by selling their farm animals, tools and materials, resulting in more difficult

⁸² TSN, dated 30 May 2018, pp. 24-25.

⁸³ *Rollo* (SB-15-CRM-0101), p. 333.

⁸⁴ *Id.* at pp. 336-358.

⁸⁵ *Id.* at p. 349.

⁸⁶ *Id.* at pp. 349-353.

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farming conditions and their children's inability to continue attending school;⁸⁷

4. Accused also violated Section 7(d) of R.A. 6713 which prohibits public officials and employees from soliciting and accepting gifts;⁸⁸
5. Prosecution witnesses Atty. Landero, Mrs. Garbo and D. Egagamao categorically stated that accused directly solicited and accepted from Mr. Garbo and the complainants in the DARAB case, the total amount of PhP120,000.00 and a whole tuna fish, in connection with the DARAB case pending before him and in exchange for the issuance of a TRO and Injunction Order in favor of the complainants;⁸⁹
6. Defense of denial is inherently weak and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.⁹⁰
7. That Mr. Garbo allegedly recanted his complaint against the accused does not absolve the latter of liability because: (a) the Affidavit of Retraction was not admitted in evidence; (b) even without the testimony of Mr. Garbo, the prosecution witnesses testified that accused demanded and received money and gift from the complainants in the DARAB case; and (c) as a rule, recantations are frowned upon by the courts;⁹¹
8. The claim that the filing of the present cases is upon the manipulation of Atty. Landero is lame and self-serving absent showing of any improper motive;⁹² and
9. The dismissal of the disbarment case will not exonerate accused from criminal liability since administrative liability is separate and distinct from the penal liability which may arise from his wrongful act.



⁸⁷ *Id.* at p. 354.

⁸⁸ *Id.* at p. 355.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Id.* at p. 356.

⁹² *Ibid.*

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Memorandum for the Accused

In its Memorandum dated 19 October 2018⁹³, the defense contends that:

1. Accused did not demand, ask and receive money from Mr. Garbo;⁹⁴
2. The complaint in these cases was authored or engineered by Atty. Landero in order to harass, threat and damage the reputation of the accused;⁹⁵
3. Prosecution witness Atty. Landero has no personal knowledge on the alleged giving and receiving of money from Mr. Garbo to the accused as well the alleged meetings and contributions of complainants in the DARAB case;⁹⁶
4. There are conflicting testimonies between Mrs. Garbo and Atty. Landero. Mrs. Garbo testified that accused called up Mr. Garbo to go to Kidapawan City while Atty. Landero, on the other hand, declared that Mr. Garbo called him and he advised the latter to make a follow up on the TRO in the DARAB Office in Kidapawan City;⁹⁷
5. Mrs. Garbo and Atty. Landero also contradict each other on who got the TRO. Mrs. Garbo stated that it was Atty. Landero who got the TRO and the Injunction Order but Atty. Landero testified that it was his client, Mr. Garbo, who got the TRO;⁹⁸
6. Prosecution witness D. Egagamao did not actually see the alleged giving of money by Mr. Garbo to the accused;⁹⁹
7. There is also inconsistency and contradiction in the testimonies of Mrs. Garbo and D. Egagamao. Mrs. Garbo testified that every time the accused has something to require from her husband, then she will be with her husband. There was no mention of D. Egagamao;¹⁰⁰

⁹³ *Id.* at pp. 360-375.

⁹⁴ *Id.* at p. 370.

⁹⁵ *Ibid.*

⁹⁶ *Id.* at p. 364.

⁹⁷ *Id.* at pp. 365-366.

⁹⁸ *Id.* at pp. 366-367.

⁹⁹ *Id.* at p. 369.

¹⁰⁰ *Id.* at pp. 369-370.

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8. Defense witness B. Egagamao belied the claim that Spouses Garbo's children stopped from going to school just to raise fund to bribe the accused;¹⁰¹
9. While it is true that the defense of denial is inherently weak and that the recantation of Mr. Garbo is frowned upon as it can easily be obtained through intimidation or for monetary consideration, this particular case is different because the reason why Mr. Garbo executed his Affidavit of Retraction, was because he was misled by his counsel and was made to believe that the document he signed, which turned out to be the Affidavit Complaint, could help expedite the resolution of his case;¹⁰²
10. The dismissal of the disbarment case, which only requires substantial evidence as the quantum of evidence, finds significance in the instant criminal case, which requires higher quantum of evidence – proof beyond reasonable doubt;¹⁰³ and
11. Prosecution should not rely on the weakness of the evidence of the defense but on the strength of its own evidence.¹⁰⁴

OUR RULING

I. SB-15-CRM-0102 [Violation of Section 7(d) of R.A. No. 6713]

The Court finds that the prosecution has established beyond reasonable doubt the guilt of the accused for violation of Section 7(d) of R.A. No. 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, as charged in the Information dated 20 October 2014¹⁰⁵ in SB-15-CRM-0102.

Section 7 (d) of R.A. No. 6713 provides:

“Section 7. Prohibited Acts and Transactions. —
In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and

¹⁰¹ *Id.* at p. 375.

¹⁰² *Id.* at p. 372.

¹⁰³ *Id.* at pp. 372-373.

¹⁰⁴ *Id.* at p. 373.

¹⁰⁵ *Rollo* (SB-15-CRM-0102), pp.1-2.

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transactions of any public official and employee and are hereby declared to be unlawful:

X X X

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

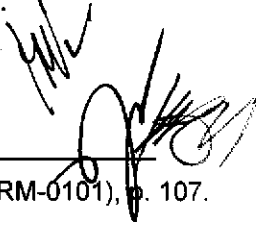
To be held liable under the said crime, the following elements must be satisfied:

- 1) The accused is a public official or employee;
- 2) He/she solicits or accepts, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person; and
- 3) The solicitation or acceptance is in the course of the public employee's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his/her office.

We, thus, evaluate the charge on the basis of the foregoing elements.

The accused is a public official

The Court need not belabor on the first element as it is indisputably present. As stipulated by the parties, at the time material to the present cases, the accused was the Regional Agrarian Reform Adjudicator, Department of Agrarian Reform Adjudication Board, Region XII and concurrent Adjudicator for the other provinces in said region: Sultan Kudarat, North and South Cotabato and Maguindanao.¹⁰⁶


¹⁰⁶ Rollo (SB-15-CRM-0101), p. 107.

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The accused solicited and accepted money and gift from Mr. Garbo and the plaintiffs in the DARAB case

As to the second element, the Court considers clear, credible and convincing evidence the testimonies of prosecution witnesses Atty. Landero, Mrs. Garbo, and D. Egagamao on the fact that the accused directly and repeatedly solicited and accepted sums of money and a whole tuna fish from Mr. Garbo and the plaintiffs in the DARAB Case No. XII-990-SC-2007, in exchange for his issuance of the TRO and Injunction Order in the said case.

While the Court cannot accord probative value upon the following pieces of evidence: (a) Affidavit Complaint dated 01 May 2009,¹⁰⁷ which was not identified under oath by Mr. Garbo who died prior to him being called to the witness stand; (b) the testimonies of Atty. Landero, Mrs. Garbo, and D. Egagamao on what they merely learned or heard from Mr. Garbo, being hearsay; and (c) D. Egagamao's testimony on the giving of bribe money by Mr. Garbo to the accused as he did not personally witness the same; the defense, however, failed to dispute the straightforward, positive, and detailed personal accounts of Atty. Landero on the giving of one whole tuna fish and of Mrs. Garbo on the handing over of the total amount of PhP40,000.00, in two separate occasions, all of which were solicited and accepted by the accused.

Atty. Landero testified on point that they delivered to the accused a whole tuna fish upon the latter's request. The excerpt of Atty. Landero's testimony reads:

"PROS. CALALANG

Q: Okay. And so, after you were informed that Atty. Gelacio will just call your client, what happened next?

A: **My client told me that he gave another 20,000 and Atty. Gelacio asked for a tuna fish.**

Q: And, what did you do when you were informed about the request for tuna fish?

A: My client is asking from me boxes because he has two (2) boxes where to place the tuna so I volunteered I have boxes in my house.

Q: So, you went to your house. What did you do after, sir?

A: We proceeded to my house in Gen. Santos City and the boxes, ma'am, have 1/3 of that table. It is an ice box.

¹⁰⁷ Exhibit "A".

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Q: And, after getting your ice box from your house, what did the two of you do?

A: We proceeded to Gen. Santos fish port and he bought fish there while I was waiting in the parking space.

Q: So, after he bought the fish, what happened next?

A: He was with the other person carrying that ice box and proceeded to where my car was and helped them load the ice box full with tuna fish to my car was and helped them load the ice box full with tuna fish to my car.

Q: And then, what happened after the ice box was loaded to your car, sir?

A: **So, we were about to deliver the tuna fish. While on the way going to Tiboli Hotel, I called up Gelacio. In this way, "Sir, ang request mo na tuna, naa na. Asa ko ihatud?"**

Q: Can you just translate for the court?

A: **Sir, your request of tuna is already on hand. Where should I deliver this?**

THE CHAIRPERSON

Q: And, what was his response, if any?

A: **He told me, "Panero, we are heading going back to Kidapawan. We will meet at the junction of Makar."**

Q: And then, what happened, sir, after you were told that you will just meet at the junction?

A: **So, we meet each other at the junction of Crossing Makar. They were driving a pick-up and I am driving a Revo. We unloaded the ice box and his driver Mr. Payao helped us in loading to their pick-up.**¹⁰⁸ (Emphasis supplied)

For her part, Mrs. Garbo, who is one of the plaintiffs in the DARAB case, testified that, on two separate occasions, the accused demanded and received the sum of Php20,000.00 thru his aide/assistant and another Php20,000.00 directly from her and her husband, or a total of Php40,000.00. Mrs. Garbo positively narrated that:


¹⁰⁸ TSN, 18 October 2016, pp. 20-22.

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"PROS. CALALANG

Q: The money that was raised by your organization, how did it reach Judge Gelacio?

A: We'll go to Kidapawan.

Q: How do you give the money to Judge Gelacio?

A: When we arrived there, Judge Gelacio is not around. So, the instruction is just to give to his body body.

Q: Do you know the name of Judge Gelacio's body body?

A: I do not know the person.

Q: Can you describe that person who received the money?

A: It was described by my husband. In fact, we were reprimanded. We gave that money to the limp person.

Q: Who was reprimanded?

A: My husband.

Q: Who reprimanded your husband?

A: Judge Gelacio.

Q: How much was that the amount of the money you gave to that person?

A: Php20,000.00

Q: How do you know that that (sic) money was received by that person?

A: We are there. We gave the money, me and my husband.

Q: Ma'am, how do you know that the money you gave to Judge Gelacio's body body was received or reached Judge Gelacio?

A: When he came back the second time, we inquired from Judge Gelacio if, indeed, he received the money and he confirmed in the affirmative that he received the money.

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THE CHAIRPERSON

Q: By the way, to whom did you give the money?

A: To his body body.



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THE CHAIRPERSON

Alalay

X X X

Q: Okay. Just to clarify. Where did you give the money to his body body?

A: Because the judge was not there, so, at this courtroom.

X X X

A: There were two (2) body bodies. One is stricken with polio and the other is normal.

PROS. CALALANG

Q: Then, who between the two (2) persons received the money?

A: The one stricken with polio.

X X X

Q: My next question is how many times did you witness the giving of the money?

A: Only that instance, the second time around we came back and he again asked PhP20,000.00. It was inside the envelope. I put it in my bra and I got the money and gave it to my husband.

Q: And, where did you do all these?

A: At the courtroom of judge.

Q: Okay. That 20,000 that you got from your bra, how do you know that it was received by Judge Gelacio?

A: We were in front of him. He opened the door and in fact, my husband and judge had a handshake at that time. Garbo told the judge, "You count it judge."

Q: And, what was the reply of the judge?

A: He said, "Never mind, it is okay."¹⁰⁹ (Emphasis supplied)

¹⁰⁹ TSN, dated 27 June 2017, pp. 11-15.

The solicitation or acceptance is in the course of his official duty

The third element is also well-established. The solicitation and acceptance made by the accused was, undoubtedly, in connection with the transaction that affects the function of his office. The prosecution was able to prove beyond reasonable doubt that the aggregate amount of PhP40,000.00 and the one whole tuna fish sought and received by the accused, was in consideration of a favorable issuance of a TRO and Injunction Order in the case of Miguel Egagamao, et al. versus DARBCI, et al. docketed as DARAB XII-990-SC-2007, which was assigned to the accused for adjudication.

Relative to this matter, Mrs. Garbo testified that in order for them to secure the issuance of the TRO and Injunction Order, their group or the plaintiffs in the DARAB case agreed to raise money to be given to the accused. The material portions of Mrs. Garbo's testimony are as follows:

"PROS. CALALANG

Q: Now, for the issuance of the Temporary Restraining Order and Injunction Order, what steps, if any, or action did you and your group take for the release of these?

A: We created a sort of an organization so we can enter the area.

Q: So, that organization, **what did your organization do for the release of the TRO?**

A: **We had a meeting and came to an agreement that we will raise funds pertaining to that matter.**

Q: Okay. **And, that funds, to whom will it be given?**

A: **To the judge.**

Q: For the record, what is the name of the judge?

A: **The surname is Gelacio.**

Q: Okay. Madam Witness, **how do you know that money that you raised will be given to Judge Gelacio?**

A: **I know of that because he called my husband through the cellphone.**

Q: And, who calls your husband?

A: Judge Gelacio, ma'am.



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Q: How do you know that Judge Gelacio calls your husband?

A: When he called up my husband, he told us to go to Kidapawan.

Q: Why does your husband go to Kidapawan every time he receives a call from Judge Gelacio?

A: Because the judge told us to go to Kidapawan, both of us.

Q: Okay, And, what did you do?

A: He gave an instruction to my husband.

Q: What is that instruction?

A: **He was demanding money.**¹¹⁰ (Emphasis supplied)

This was corroborated under oath by D. Egagamao who is also one of the plaintiffs in the said case. On direct examination, he declared the following under oath:

"PROS. CALALANG

Q: What action did your group take in order to secure the temporary restraining order?

A: We contributed money.

Q: What was the money for?

A: For Judge Gelacio."¹¹¹

II. SB-15-CRM-0101 [Violation of Section 3(e) of R.A. No. 3019]

The Court also finds that the prosecution has established beyond reasonable doubt the guilt of the accused for violation of Section 3(e) of R.A. No. 3019 otherwise known as the *Anti-Graft and Corrupt Practices Act*, as amended, as charged in the Information dated 20 October 2014¹¹² in Criminal Case No. SB-15-CRM-0101.

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

"Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already

¹¹⁰ *Id.* at pp. 9-10.

¹¹¹ TSN, dated 28 June 2017, p. 9.

¹¹² *Id.* at pp.1-2.

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penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X

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

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

- (1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they caused undue injury to any party, whether the Government or a private party or gave unwarranted benefits, advantage or preference to such parties; and
- (4) That the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.¹¹³

The discussion will thus hinge on the foregoing elements.

The accused is a public official who committed a prohibited act during the performance of his official duties or in relation to his public position

The first and second elements are evidently present. Accused, as Regional Agrarian Reform Adjudicator, was a public officer discharging his official functions when the offense was committed. As such, the accused committed a prohibited act during the performance of his official duties or in relation to his public position. As previously

¹¹³ *Dela Chica vs. Sandiganbayan*, G.R. No. 144823, 08 December 2003 in relation to *Alvarez vs. People*, G.R. No. 192591, 29 June 2011.

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discussed, the accused violated Section 7(d) of R.A. No. 6713 which prohibits solicitation or acceptance of gifts, directly or indirectly, from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

The accused caused undue injury and at the same time gave unwarranted benefits, advantage or preference to Mr. Garbo and the plaintiffs in the DARAB case

Under the third element, there are two (2) modes of committing the offense of violation of Section 3(e) of R.A. No. 3019, to wit: (1) the public officer caused any undue injury to any party, including the government; or (2) the public officer gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹¹⁴ The Supreme Court in *Alvarez vs. People*¹¹⁵ clarified the use of the disjunctive term "or" (between "undue injury to any party, including the government" and "by giving any private party unwarranted benefits, advantage or preference") connotes that either act qualifies as a violation of Sec. 3, par. (e), or as two (2) different modes of committing the offense. This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.¹¹⁶

The Supreme Court in *Llorente, Jr. vs. Sandiganbayan*¹¹⁷ defined "undue" as "more than necessary, not proper, or illegal" and "injury" as "any wrong or damage done to another, either in his person, rights, reputation or property, that is, the invasion of any legally protected interest of another". In *Fonacier v. Sandiganbayan*,¹¹⁸ it was held that proof of the extent or quantum of damage is not essential; it should be sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible.

In fine, a review of the testimonies and evidence in this case reveals the attendance of the third element of the offense. The delictual act of the accused resulted in both undue injury and giving of

¹¹⁴ *Constantino vs. Sandiganbayan*, G.R. No. 140656, 13 September 2007.

¹¹⁵ G.R. No. 192591, 29 June 2011.

¹¹⁶ *Ibid.*

¹¹⁷ G.R. No. 122166, 11 March 1998.

¹¹⁸ G.R. No. L-50691, 05 December 1994.

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unwarranted benefits, advantage or preference to Mr. Garbo and the plaintiffs in the DARAB case.

The prosecution correctly pointed out that the accused caused undue injury to Mr. Garbo and the plaintiffs in the DARAB case when he solicited and accepted the aggregate amount of PhP40,000.00 and a whole tuna fish in exchange for the issuance of the TRO dated 02 October 2007¹¹⁹ and Writ of Preliminary Injunction Order dated 19 November 2007¹²⁰, forcing the said plaintiffs to sell their farms animals, tools and materials, resulting in more difficult farming conditions.¹²¹ The actuation of the accused falls squarely within the definition of "undue injury" under the law.

Public officials and employees should perform his or her duties without expecting or demanding anything in return. Jurisprudence repeatedly teaches that litigants are entitled to nothing less than the cold neutrality of an impartial judge.¹²² Litigants have the right to have their cases speedily resolved based on the merits without being required to bribe anyone. In this case, instead of issuing the TRO and Injunction Order objectively and based on the merits of the case, the accused demanded monetary gifts in exchange for the issuance of the said orders to the damage and prejudice of Mr. Garbo and the plaintiffs in the DARAB case.

The other mode of committing the third element of Section 3(e), which is giving unwarranted benefits, advantage or preference to any party, was similarly proven with moral certainty. The terms "unwarranted benefits, advantage or preference to any party" was elucidated by the Supreme Court in *Alvarez*,¹²³ to wit:

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

The unwarranted benefit, advantage or preference in this case lies in the very fact that the accused issued the TRO and Injunction Order in favor of the plaintiffs in the DARAB case in exchange for the

¹¹⁹ Exhibit "C" for the Prosecution.

¹²⁰ Exhibit "D" for the Prosecution.

¹²¹ *Rollo* (SB-15-CRM-0101), p. 354.

¹²² *Abundo vs. Judge Manio Jr.*, A.M. No. RTJ-98-1416, 06 August 1999.

¹²³ G.R. No. 192591, 29 June 2011.

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bribe money. The accused clearly issued the said orders without regard to the merits or demerits of the case but rather to fulfil his part of the agreement between him and the plaintiffs in the DARAB case.

Accused acted with manifest partiality and evident bad faith

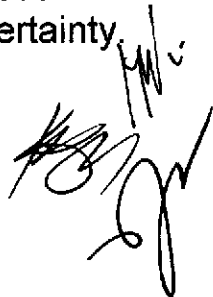
In order to determine whether accused acted with manifest partiality, evident bad faith or gross inexcusable negligence in the discharge of his function, we preliminarily define what these terms mean. The Supreme Court in *Uriarte v. People*¹²⁴ defined these terms in this manner:

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

The Supreme Court in *Sistoza vs. Desierto*¹²⁵ stressed that for culpability to attach under Section 3(e) of R.A. No. 3019, it is not enough to show mere bad faith, partiality or negligence because the law requires the bad faith or partiality to be evident or manifest, respectively, and the negligent deed to be gross and inexcusable, and that the acts indicating any of these modalities of committing the violation must be determined with certainty.

¹²⁴ G.R. No. 169251, 20 December 2006.

¹²⁵ G.R. No. 144784, 03 September 2002.



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Based on the discussion above, We find the accused to have acted with manifest partiality and evident bad faith. The accused was motivated with malice sufficient to meet the requirement of proof beyond reasonable doubt when he demanded money and gift in exchange for his issuance of the TRO and Writ of Preliminary Injunction in the DARAB case. Accused had a deliberate intent to violate the rule against solicitation and acceptance of gifts of public officials and employees and he has done it for a dishonest purpose, ill will or self-interest.

As a government official, the accused is presumed to have acted in good faith in issuing the TRO and Injunction Order. However, the presumption of good faith was adequately overturned by the prosecution in this case.

Mere denial of the accused cannot prevail over the direct and positive testimonies of the prosecution witnesses

The Court considers the testimonies of the prosecution witnesses to be concise, candid, straightforward, firm and unshaken by rigid cross-examination. There was no showing that they were actuated by any ill or improper motive to testify falsely against the accused inasmuch as the latter in fact issued the TRO and Injunction Order in their favor and no decision has been issued yet in the DARAB case when they testified in court. The claim of the defense that the complaint was concocted by Atty. Landero in order to expedite the resolution of the DARAB case runs counter to human logic and experience, and inherently unworthy of belief. No lawyer in his right mind would fabricate and file a baseless charge against a public official from whom he still seeks a favorable decision.

Given such circumstance, their testimonies must be given full faith and credit. As held by the Supreme Court in *People vs. Excija*:¹²⁶

“On this score, it is settled that where there is no indication that the principal witness for the prosecution was actuated by improper motive, the presumption that the witness was not so actuated stands and the testimony thus given is entitled to full faith and credit.”



¹²⁶ G.R. No. 119069, 05 July 1996.

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On the other hand, in an attempt to dispute the allegations of his accusers, **the accused only made sweeping self-serving denial of the accusations against him.** Noteworthy is the fact that the accused, in his Judicial Affidavit dated 04 March 2018,¹²⁷ did not even categorically deny the allegations against him. It was only during his brief direct examination, which was swiftly concluded on 30 May 2018, when he made a belated general denial of the charges, to wit:

“ATTY. LUMACAD

Q: What can you say about this accusation against you in SB-15-101, is it true or not?

A: Based on my comment in the Complaint, Your Honor I belie all the accusations against me in my comment to the Complainant. I specifically deny all the allegations against me respectfully on the alleged Bribery, Your Honor.

X X X

Q: Also what can you say with this accusations in SB-15-102 for Violation of R.A. 6713 Code of Conduct and Ethical Standards for Public Officials, what can you say about that?

X X X

A: Also in my Comment, Your Honor I also deny all the accusations against me.”¹²⁸ (Emphasis supplied)

Other than the above unsupported general denial, accused failed to recount his own version of facts in order to refute the detailed narration of events made by the prosecution witnesses. Accused’s testimony merely revolved around the Affidavit of Retraction of Mr. Garbo and the dismissal of his disbarment case, instead of specifically denying the allegations against him.

No less than the defense itself admitted that denial is inherently weak.¹²⁹ The defense is accurate on this point. It is a time honored principle that the positive testimony by a witness destroys the defense of denial. The Supreme Court thus held in *People vs. Bitancor*.¹³⁰

“Denial is inherently a weak defense which cannot outweigh positive testimony. As between a categorical statement that has the earmarks of truth on the

¹²⁷ Rollo (SB-15-CRM-0101), pp. 257-264.

¹²⁸ TSN, dated 30 May 2018, pp. 24-25.

¹²⁹ Rollo (SB-15-CRM-0101), p. 372.

¹³⁰ G.R. No. 147968, 04 December 2002.

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one hand and bare denial, on the other, the former is generally held to prevail.” (Emphasis supplied)

Mistakenly, the defense heavily indulged on the Affidavit of Retraction to prove that Mr. Garbo did not willingly and knowingly sign the Affidavit Complaint against the accused and that it was only prepared and fabricated by Atty. Landero. The Court, however, finds Mr. Garbo's Affidavit of Retraction irrelevant in proving the guilt or innocence of the accused. For one, Mr. Garbo never took the witness stand to identify his Affidavit Complaint, hence, his statements therein cannot be used as evidence. In the same vein, Mr. Garbo's statements in his Affidavit of Retraction, which was not even admitted as evidence, cannot also be accorded probative value. Second, the testimonies of the prosecution witnesses stand firm even without the testimony or statement of Mr. Garbo. Lastly, courts look with disfavor on affidavits of desistance and/or retraction.¹³¹

The accused cannot also take refuge in the dismissal of his disbarment case as it has no relevance to this case. First, the disbarment charge against the accused was dismissed merely because the sole proof therein that the accused received money in consideration of the issuance of the TRO and Injunction Order was only the Affidavit Complaint, which can no longer be relied upon in view of the repeated retractions of Mr. Garbo.¹³² Second, the Investigating Commissioner of the IBP Commission on Bar Discipline had no opportunity to consider the material and positive testimonies of herein prosecution witnesses since they were never called to testify or give statements in the disbarment case. Last and most importantly, it is a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission.¹³³ Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*.¹³⁴

The testimonies of the two other witnesses for the defense also failed to overcome the overwhelming pieces of evidence of the prosecution. Like the accused, Atty. Lechonsito's testimony hinged on the circumstances of the execution of Mr. Garbo's Affidavit of Retraction, which, as discussed above, finds no significance in this case.

The testimony of defense witness B. Egagamao, who is also one of the plaintiffs in the DARAB case, that it is not true that Atty. Landero,

¹³¹ *People vs. Orje*, G.R. No. 189579, 12 September 2011.

¹³² *Rollo* (SB-15-CRM-0101), p. 322

¹³³ *Paredes vs. CA*, G.R. No. 169534, 30 July 2007.

¹³⁴ *Ibid.*

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Mrs. Garbo and D. Egagamao, all in all, have given PhP120,000.00 and a tuna fish to the accused¹³⁵ cannot be given probative weight. When asked by the Court if he is with them 24 four hours every day, he clarified that maybe on other times, another occasion, Mr. Garbo gave the money.¹³⁶

While the defense points out some inconsistencies in the testimonies of the prosecution witnesses, the Court considers the same *minor and immaterial*. A review of the relevant portions of the transcripts pointed out by the accused reveals that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of their testimonies. The Supreme Court had this to say in *Madali vs. People*.¹³⁷

“Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well settled that **immaterial and insignificant details do not discredit a testimony** on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. **The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed.**”
(Emphasis supplied)

The other issues raised by the defense are too trivial to merit the full attention of this Court.

We cannot overemphasize the need for honesty and integrity on the part of all those who are in the government service. No less than the Constitution sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency.¹³⁸ The Court takes this opportunity to remind every public official and employee that they are under obligation to perform the duties of their

¹³⁵ TSN, dated 22 August 2017, p. 10.

¹³⁶ *Id.* at pp. 18-19.

¹³⁷ G.R. No. 180380, 04 August 2009.

¹³⁸ Section 1, Article XI, 1987 Philippine Constitution.

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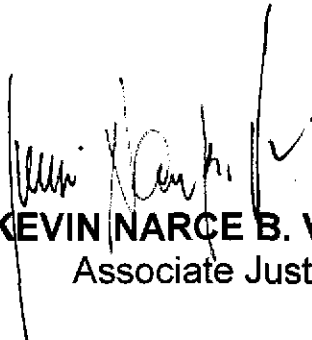
office honestly, faithfully and to the best of their ability.¹³⁹ We likewise remind every litigant that they are also enjoined to act in such a way that will not place the integrity of legal proceedings in jeopardy.¹⁴⁰

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

- (1) In **Criminal Case No. SB-15-CRM-0101**, the Court finds Henry Magaway Gelacio **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, and is hereby sentenced to suffer the following penalties: (a) imprisonment for six (6) years and one (1) month, as minimum, to eight (8) years, as maximum; and (b) perpetual disqualification from public office.

- (2) In **Criminal Case No. SB-15-CRM-0102**, the Court finds Henry Magaway Gelacio **GUILTY** beyond reasonable doubt of violation of Section 7(d) of R.A. No. 6713 and is hereby sentenced to suffer the following penalties: (a) imprisonment from one (1) year and one (1) day, as minimum, to five (5) years, as maximum; (b) fine of Five Thousand Pesos (PhP5,000.00); and disqualification to hold public office.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

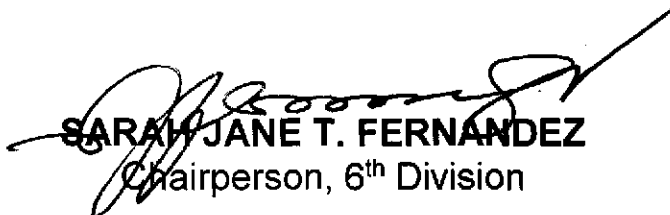

KARL B. MIRANDA
Associate Justice

¹³⁹ *Gaviola v. Navarette*, A.M. No. P-97-1245, 07 July 1997.

¹⁴⁰ *Sison-Barias vs. Judge Rubia*, A.M. No. RTJ-14-2388, 10 June 2014.

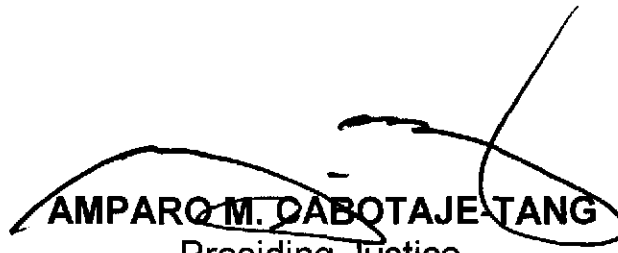
ATTESTATION

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


SARAH JANE T. FERNANDEZ
Chairperson, 6th Division

CERTIFICATION

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


AMPARO M. DABOTAJETANG
Presiding Justice

