



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. **SB-16-CRM-0076**

-versus-

Present:

CARIDAD BAGUIO BALAOD,
GLORIA VICENTA NEMEÑO
BATION, ALEXANDER
FERNANDEZ REMOTO,
BIENVENIDO CAGAS SUCO,
ISIDRO MAGLAKI EBRADO, JR.,
AND ELVIE GEALON DOONG,
Accused.

Gomez-Estoesta, J., *Chairperson*
Trespeses, J., and
Hidalgo, J.

Promulgated:

July 19, 2019 *JP*

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DECISION

GOMEZ-ESTOESTA, J.:

An unfortunate confluence of marital and official woes has brought to fore a transaction for which the Municipal Mayor and the members of the municipal Bids and Awards Committee are now indicted. Initiated by a complaint filed by the husband of accused Municipal Mayor Caridad Balaod, the *Information* against them for violation of Sec. 3(e) of R.A. 3019, or the Anti-Graft and Corrupt Practices Act, charges:

That on 17 July 2012, or sometime prior or subsequent thereto, in Tambulig, Zamboanga del Sur, Philippines and within the jurisdiction of the Honorable Court, accused **Caridad Baguio Balaod**, a high-ranking public officer being the Mayor of the Municipality of Tambulig with Salary Grade 27, together with the following public officers and employees of the Municipality of Tambulig, namely: (1) **Gloria Vicenta N. Bation**, Budget Officer with Salary Grade 24; (2) **Alexander F. Remoto**, Member of the Bids and Awards Committee with Salary Grade 24; (3) **Bienvenido C. Suko**, Member of the Bids and Awards Committee with Salary Grade 24; (4) **Isidro Maglaki Ebrado Jr.**, Member of the Bids and Awards

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Committee with Salary Grade 15; and (5) Elvie Gealon Doong, Member of the Bids and Awards Committee with Salary Grade 9, committing the crime in relation to their office and in the discharge of their official administrative functions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring, confederating, and mutually helping each other, did then and there willfully, unlawfully, and criminally give unwarranted benefit, advantage, or preference to a certain Evelyn T. Ranile and cause undue injury to the government, by purchasing through negotiated procurement and without conducting a public bidding from said Evelyn T. Ranile a used or second-hand motor vehicle, an Isuzu DMAX 4x4 Diesel Crew Cab Pick-Up Utility Vehicle model 2007 with plate number KDM 277 and Chassis Number PABTFS77H50000092, with displacement of 300cc, a vehicle previously adjudicated to accused Balaod through a compromise agreement entered into on January 14, 2011 in connection with judicial proceeding for separation of properties, which vehicle was then valued at Nine Hundred Thousand Pesos (PhP900,000.00), and later registered in the name of said Evelyn T. Ranile on August 01, 2012, for and in consideration of the amount of Nine Hundred Thousand Pesos (PhP900,000.00), in violation of Republic Act No. 9184 and its Implementing Rules and Regulations, thereby depriving other prospective business enterprises equal opportunity of transacting business with the local government unit of the Municipality of Tambulig for the supply and delivery of a motor vehicle and depriving said municipality the chance to obtain the best, if not, the most reasonable price, to the damage and prejudice of the government.

CONTRARY TO LAW.¹

A *Hold-Departure Order*² was issued against the accused on February 22, 2016, followed by a *Warrant of Arrest*³ on March 8, 2016. The accused posted their respective cash bonds on March 18, 2016.⁴

On May 16, 2016, the accused⁵ filed a *Motion to Quash*⁶ alleging that the Information charged two (2) offenses – violation of Sec. 3(e) of R.A. 3019, and violation of R.A. 9184. In its *Opposition*,⁷ the Prosecution insisted that only one offense was charged, *i.e.*, violation of Sec. 3(e) of R.A. 3019, and the act alleged to have been committed in violation of R.A. 9184 was the very act that supported the allegation of giving unwarranted benefit to Evelyn Ranile, which resulted in undue injury to the government. The *Motion to Quash* was denied in this Court's *Resolution* dated June 1, 2016.⁸

When arraigned, all the accused pleaded *not guilty*.⁹

During Pre-Trial, the parties stipulated on the following:

¹ Records, Vol. 1, pp. 1-3

² *Id.*, p. 66

³ *Id.*, p. 74

⁴ *Id.*, pp. 87-144

⁵ All represented by Atty. Domingo T. Redelosa IV

⁶ Records, Vol. 1, pp. 186-192

⁷ *Id.*, pp. 193-198

⁸ *Id.*, pp. 199-205

⁹ *Id.*, pp. 210-217

I.
ADMITTED FACTS

1. That at the time material to the case, accused were public officers and employees of the Municipality of Tambulig, Zamboanga del Sur.
2. That all the accused are the same persons as charged in the Information.
3. That Caridad B. Balaod is legally married to Eduardo Balaod.
4. That the vehicle subject of the crime was previously adjudicated to accused Balaod through a compromise agreement entered into between her and her husband on January 14, 2011.¹⁰

In a *Resolution* dated September 11, 2013, this Court granted the Prosecution's *Motion to Suspend* the accused *pendente lite*.¹¹

Trial ensued.

EVIDENCE FOR THE PROSECUTION

The Prosecution presented five (5) witnesses, whose testimonies were all dispensed with on the following stipulations:

1. **Myrna V. Samillano** ["Samillano"]:

- a. That if the witness will be allowed to testify, she will testify that she was the Human Resource Management Officer of the Municipality of Tambulig, Zamboanga del Sur in 2012;
- b. That also in 2012, she was designated as the BAC Secretary;
- c. That as BAC Secretary, one of her duties and functions was to prepare drafts of BAC Resolutions;
- d. That as BAC Secretary, she can identify Resolution No. 143-2012 marked as Exh. "C" which she drafted or prepared;
- e. That the Municipality of Tambulig, Zamboanga del Sur bought a vehicle, an Isuzu D-Max from Evelyn T. Ranile sometime in 2012.¹²

2. **Divina T. Roble** ["Roble"]:

- a. That if this witness will be allowed to testify, she will testify that she was the OIC-Municipal Accountant of the Municipality of Tambulig, Zamboanga del Sur in 2012;

¹⁰ Joint Stipulation of Fact and Issue dated October 3, 2016, *id.*, pp. 236-244; Pre-Trial Order dated October 5, 2016, *id.*, pp. 245-257

¹¹ *Records*, Vol. 2, pp. 56-58

¹² Order dated January 18, 2017, *Records*, Vol. 1, pp. 284-285

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- b. That as such, one of the functions was to approve vouchers, as to their completeness of supporting documents;
- c. That she will testify that in 2012, the Municipality of Tambulig, Zamboanga del Sur bought a vehicle, an Isuzu D-Max, from Evelyn T. Ranile;
- d. That this witness will identify the documents being processed and transmitted to her, in relation to the purchase of the said Isuzu D-Max, such as the BAC Resolution No. 143-2012 marked as Exhibit "C" and admitted by the defense during pre-trial; a certified true copy of Purchase Request marked as Exh. "D" for the prosecution and Exh. "20" for the defense; the Certificate of Registration No. 14688528-1 under the name of Evelyn Ranile, as Exh. "E"; Obligation Request dated August 24, 2012, as Exh. "F"; Disbursement Voucher in connection with the purchase of the vehicle, Isuzu D-Max, as Exh. "G"; Deed of Absolute Sale between accused Balaod and Evelyn Ranile, as Exh. "H"; and the certified true copy of the check dated August 31, 2012 – Exh. "I".¹³

On cross-examination, Roble testified that the voucher for this transaction passed through her office before it was approved by accused Balaod, after which, it was referred to the COA Team Leader. On re-direct examination, Roble averred that she wrote a letter-inquiry to the COA regarding the subject procurement, but she did not know where said letter was anymore.¹⁴

3. Abdul-Rauf P. Mutin ["Mutin"]:

- a. To prove that if he will testify in court, he would answer that he is connected with the Department of Transportation in Pagadian Satellite Office as Land Transportation Officer I;
- b. From the year 2011 to January 25, 2017, he was the OIC Chief of the LTO Molave Extension Office in Zamboanga del Sur;
- c. As OIC Chief, he was the approving officer / supply officer / signatory to certificates of registration issued by the Land Transportation Office;
- d. That he received a subpoena by the Office of the Special Prosecutor and this Court to bring Certificate of Registration No. 14688528-1 dated August 1, 2012 issued to one Evelyn Ranile; and
- e. He can identify such Certificate of Registration No. 14688528-1 dated August 1, 2012.¹⁵

4. Evelyn T. Ranile ["Ranile"]:

- a. That on January 23, 2012, she purchased from accused Caridad B. Balaod a motor vehicle described as Isuzu DMAX 4x4 with Plate No. KDM 277;
- b. That on August 31, 2012, the same motor vehicle, Isuzu DMAX 4x4 with Plate No. KDM 277 was purchased by the Local Government Unit of Tambulig represented by Caridad B. Balaod from Evelyn T. Ranile;

¹³ Order dated January 18, 2017, *id.*, pp. 284-285, as amended on March 22, 2017, *id.*, pp. 308-309

¹⁴ TSN dated January 18, 2017, pp. 13-14

¹⁵ Exhibit "E", Order dated March 21, 2017, *Records*, Vol. 1, pp. 306-307

- c. And that she will identify Certificate of Registration No. 14688528-1 (Exhibit ["E"]) issued to her by the Land Transportation Office.¹⁶

5. **Teofilo Q. Macatiog, Jr. ["Macatiog"]:**

- a. That in 2012, the witness was the Records Officer III of the Office of the Ombudsman Mindanao;
- b. That his office (Records Section) is in-charge of receiving complaints, pleadings and other incoming documents;
- c. That he will identify the Complaint Affidavit (Exhibit "A") filed by Eduardo C. Balaod against Caridad B. Balaod and others on December 10, 2012 before the Office of the Ombudsman;
- d. That he will identify the Covering Letter (Exhibit "A-2") of the Complaint Affidavit indicating therein the received stamp which shows that the Complaint Affidavit was received by the Office of the Ombudsman Mindanao on December 10, 2012;
- e. That he will also identify the initial of Roberto A. Saremas, as appearing in the Receiving Stamp of the Clerk from the Records Section (Exhibit "A-2-a"), who received the Complaint Affidavit filed by Eduardo C. Balaod.

The Prosecution offered the following exhibits:¹⁷

Exhibit	Document
"A"	Complaint-Affidavit of Eduardo C. Balaod dated December 6, 2012
"B"	Judgment on Compromise Agreement in Civil Case No. 2009-20-426 dated January 14, 2011
"C"	Resolution No. 143, series of 2012, dated July 17, 2012
"D"	Purchase Request dated July 13, 2012
"E"	Certificate of Registration No. 14688528-1 dated August 1, 2012
"F"	Obligation Request dated August 24, 2012
"G"	Disbursement Voucher No. 100-12081065
"H"	Deed of Absolute Sale dated August 31, 2012
"I"	Check for P900,000.00 dated August 31, 2012

In a *Resolution* dated August 23, 2017,¹⁸ this Court admitted Exhibits "A" to "I".¹⁹ The accused forthwith filed a *Motion for Leave of Court to File Demurrer to Evidence*²⁰ alleging that the Prosecution did not present any audit finding to show that the subject transaction was anomalous. Quite the reverse, Divina T. Roble, the municipal accountant, testified that the municipal accounting office reviewed the transaction before the disbursement voucher was presented to accused Balaod for her approval. Opposing the *Motion*,²¹ the Prosecution countered that it was able to establish that the LGU of

¹⁶ Order dated May 10, 2017, *id.*, p. 326

¹⁷ Formal Offer of Documentary Evidence dated July 7, 2017, *id.*, pp. 337-370

¹⁸ *Records*, Vol. 2, pp. 31-32

¹⁹ Exhibit "A" was admitted only as part of the stipulated testimony of Teofilo Q. Macatiog, Jr.

²⁰ *id.*, pp. 40-43

²¹ *id.*, pp. 63-70

Tambulig acquired the subject vehicle through negotiated procurement from Evelyn Ranile, who, in turn, had just acquired it from accused Balaod, Municipal Mayor, herself. Accused Balaod knew that this was the very vehicle to be purchased by the local government, showing her evident bad faith, manifest partiality or gross inexcusable negligence. This purchase was made possible by the BAC. In a *Resolution* dated September 27, 2017,²² this Court denied the *Motion for Leave* filed by the accused.

EVIDENCE FOR THE ACCUSED

In their defense, the accused presented thirteen (13) witnesses, who testified by Judicial Affidavit:

1. **Gloria Vicenta N. Bation** ["accused Bation"],²³ has been the Municipal Budget Officer of the Municipality of Tambulig, Zamboanga del Sur since 1986. As such, her duties included consolidating yearly budget proposals and signing the departments' obligation requests based on the approved budget ordinance for the year.²⁴

In 2011, Bation was designated Chairman of the Bids and Awards Committee (BAC) of Tambulig, which she held concurrent to her position as Municipal Budget Officer. She presided over BAC meetings and signed BAC resolutions procuring items for the local government. When necessary, she called meetings especially when there is an urgent need to procure items.²⁵

Bation recalled that in 2012, the Office of the Municipal Mayor issued a Purchase Request for a pickup truck, accompanied by a letter from the Mayor, accused Balaod, advising the BAC of an urgent request to procure a 4x4 vehicle to be used for rescue and medical operations in flooded areas where there is difficult terrain, as accused Balaod had been using her own vehicle, a Toyota Fortuner, for this purpose. Attached to the letter were Barangay Resolutions²⁶ relating to calamities in low-lying barangays that cause severe flooding and damage to farms and property. These calamities happened every year.²⁷

Acting on the urgent request from the Mayor's Office, Bation called an urgent meeting with the BAC on June 13, 2012, where she also invited members of the Technical Working Group. During said meeting, they considered that the budget for the vehicle was only P900,000.00, which would be insufficient to buy a brand new 4x4 vehicle, which would cost more than a million, as well as the length of time such procurement would take, which would not be less than two (2) months. Unsure of what to do and apprehensive

²² *Id.*, pp. 72-74

²³ Judicial Affidavit dated November 13, 2017, *Records*, Vol. 2, pp. 99-114. Witness for the BAC Members; testimony adopted by Accused Balaod (TSN dated February 21, 2018, p. 25)

²⁴ *Id.*, Q&A Nos. 2-5

²⁵ *Id.*, Q&A Nos. 6-7

²⁶ Exhibits "16" and "17"

²⁷ Judicial Affidavit of Gloria Vicenta Bation, Q&A Nos. 8-15

of a disallowance, the BAC agreed to refer the matter to the Auditor. It was Divina Roble, then OIC-Municipal Accountant, but not a member of the BAC,²⁸ who consulted the auditor on the matter. The auditor then did not have an office in the LGU of Tambulig.²⁹ The BAC was unable to come up with a Resolution relating to the purchase of the pickup truck during the meeting on June 13, 2012.³⁰

Bation later discovered that the Purchase Request initially received by the BAC, which indicated only a 4x4 pickup vehicle with high horsepower and torque, turned out to be different from the one actually used to purchase the vehicle.³¹ As explained by accused Balaod's staff, the Purchase Request was changed, upon instruction by OIC-Municipal Accountant Roble, to conform to the pickup truck that was agreed to be procured on emergency where the LGU merely negotiated with only one supplier. Since Roble had already conferred with the Auditor, she no longer questioned the changes made.³²

Thus, the BAC authorized the procurement of the pickup truck from Evelyn Ranile through negotiated purchase considering the urgent need for said vehicle. By this time, Roble, had given her signal to proceed after consulting the auditor.³³ It was the TWG, through Aristarco Navarro, who recommended the procurement of said pickup truck from Ranile. Navarro, however, has since gotten sick and could no longer testify.³⁴ No suspension or disallowance was made by the COA on the procurement of the pickup truck from Evelyn Ranile.³⁵

On cross-examination, Bation confirmed that there were no existing rescue or medical operations when the subject vehicle was procured.³⁶ They considered it very necessary to buy a vehicle for the Mayor, who used her own vehicle even during official operations.³⁷ As Chairman of the BAC, he merely presided over meetings but did not participate in the discussion, decide or vote, except perhaps in case of a tie.³⁸

Answering questions from the Court, Bation testified that since the Mayor made it clear that the procurement of the vehicle was urgent, the BAC had no more time or option to find other prospective sellers or request for quotations, but just grabbed the opportunity presented by Navarro to negotiate with Ranile.³⁹

²⁸ TSN dated November 20, 2017, p. 21

²⁹ *Id.*, p. 26

³⁰ *Id.*, Q&A Nos. 16-22, 29; Minutes dated July 13, 2012, Exhibit "23"

³¹ Exhibit "20"

³² Judicial Affidavit of Gloria Vicenta Bation, Q&A Nos. 23-28

³³ TSN dated November 20, 2017, p. 31

³⁴ Medical Certificate dated November 8, 2017, Exhibit "24"

³⁵ Judicial Affidavit of Gloria Vicenta Bation, Q&A Nos. 30-33, 22

³⁶ TSN dated November 20, 2017, p. 16

³⁷ *Id.*, p. 18

³⁸ *Id.*, p. 24

³⁹ *Id.*, p. 37

Members of the Bids and Awards Committee

2. **Isidro M. Ebrado, Jr.** ["accused Ebrado"],⁴⁰ Engineer I
3. **Alexander F. Remoto** ["accused Remoto"],⁴¹ Municipal Planning and Development Coordinator
4. **Elvie G. Doong** ["accused Doong"],⁴² Local Revenue Collection Clerk III and designated Supply Officer
5. **Bienvenido C. Suco** ["accused Suco"],⁴³ Municipal Engineer and Building Official

The members of the Bids and Awards Committee corroborated each other's testimonies, as follows:

As members of the BAC, they attend meetings and deliberate on resolutions for the procurement of items by the local government of Tambulig. In 2012, acting on an urgent request of the Office of the Mayor, the BAC procured a vehicle by emergency purchase, to be used for rescue and medical operations in calamity-affected barangays of Tambulig.⁴⁴ In July 2012, two (2) barangays became flooded due to incessant rains.⁴⁵ Every year, the municipality suffers flooding due to heavy rains.⁴⁶

They recalled that on July 13, 2012, the BAC Chairman called an urgent meeting with the BAC and the TWG,⁴⁷ wherein they learned that P900,000.00 had been allotted for the purchase of a 4x4 pickup truck. A brand new 4x4 pickup truck would cost more than 1 Million and would take not less than two (2) months to deliver. Not knowing how to address such situation, the BAC was unable to pass a resolution during said meeting. Upon the suggestion of Alexander Remoto, they referred the matter to the auditor, through OIC-Municipal Accountants Divina Roble.⁴⁸ The auditor subsequently gave the go-signal to proceed with the procurement of a second-hand pickup truck. It was Mr. Aristarco Navarro, TWG head, who recommended the pickup truck of Evelyn Ranile.⁴⁹

According to the BAC members, since the procurement of the subject vehicle was an emergency purchase, it was an authorized negotiated procurement under Section 53(b) of R.A. 9184, as well as Section 368 of the Local Government Code.⁵⁰ Moreover, there was no price ceiling on emergency purchases, nor a need to conduct a prior canvass.⁵¹ Emergency purchases could also be made even without a declaration of a State of Calamity by the Sangguniang Bayan, as long as the existence of a calamity is

⁴⁰ Judicial Affidavit dated November 14, 2017, *Records*, Vol. 2, pp. 115-119

⁴¹ Judicial Affidavit dated November 14, 2017, *id.*, pp. 120-126

⁴² Judicial Affidavit dated December 16, 2017, *id.*, pp. 159-168

⁴³ Judicial Affidavit dated December 16, 2017, *id.*, pp. 153-158 Witness for the BAC Members; testimony adopted by Accused Balaod (TSN dated February 22, 2018, pp. 13-14)

⁴⁴ Judicial Affidavit of Isidro Ebrado, Q&A Nos. 7-12

⁴⁵ Judicial Affidavit of Elvie Doong, Q&A No. 12

⁴⁶ *Id.*, Q&A No. 37

⁴⁷ Minutes of the BAC Meeting on July 13, 2012, Exhibit "23"

⁴⁸ Judicial Affidavit of Elvie Doong, Q&A Nos. 19-21

⁴⁹ Judicial Affidavit of Isidro Ebrado, Q&A Nos. 13-19, 21

⁵⁰ *Id.*, Q&A No. 20, Judicial Affidavit of Alexander F. Remoto, Q&A No. 19

⁵¹ Judicial Affidavit of Elvie Doong, Q&A Nos. 25-26

recorded in the minutes of the BAC Meeting, especially since it was not the calamity fund to be used.⁵² Besides, the BAC no longer had time to conduct a public bidding, and such procurement was sanctioned by the COA auditor,⁵³ and was never disallowed.⁵⁴

It was the TWG, assisted by the Municipal Engineer's Office, that inspected Ranile's pickup truck.⁵⁵ Accused Doong, as designated Supply Officer, signed the Inspection and Acceptance Report⁵⁶ after such inspection to ensure that the specifications of the pickup truck corresponded to those indicated in the purchase request.⁵⁷ According to Mr. Navarro, Ranile agreed to deliver the pickup truck by July 18, 2012 for immediate use, notwithstanding that payment would be delayed. Navarro had since suffered paralysis following a stroke.⁵⁸

On cross-examination, accused Ebrado stated that the BAC considered Evelyn Ranile as a technically, legally, and financially capable supplier, as required under R.A. 9184, as recommended by Aristarco Navarro, and considering the budget, as well as the time and location constraints of the purchase.⁵⁹ He admitted that the need for a second hand vehicle was not posted in the bulletin board, which is the duty of the BAC Secretariat, and that Divina Roble was not a member of the BAC, thus, the auditor's go-signal through Roble was not personally given to the BAC.⁶⁰ No written opinion or memorandum was issued by the Auditor on the matter.⁶¹

On re-direct examination, accused Ebrado explained that the pickup truck would be used to transport the Mayor and the medical staff to deliver medical supplies to calamity-hit barangays.⁶²

Answering questions from the Court, accused Suco reiterated that the emergency being addressed by the purchase of a 4x4 pickup truck was the flash floods in some barangays in Tambulig. These flash floods occur every year, as Brgy. San Jose and Brgy. Lower Usugan are surrounded by three (3) major rivers. The roads going to these barangays are merely gravel and not concrete, hence, only a 4x4 vehicle could pass under these conditions.⁶³

When asked about the reference to the supposed purchase of a vehicle in 2011 budget in the Minutes of the July 13, 2012 BAC meeting, accused Suco could not explain if this is the same budget used for the subject

⁵² *Id.*, Q&A Nos. 27-31

⁵³ Judicial Affidavit of Bienvenido Suco, Q&A No. 22

⁵⁴ Judicial Affidavit of Elvie Doong, Q&A No. 38

⁵⁵ Certification dated July 16, 2012, Exhibit "21"

⁵⁶ Inspection and Acceptance Report dated July 18, 2012, Exhibit "25"

⁵⁷ Judicial Affidavit of Elvie Doong, Q&A Nos. 34-35

⁵⁸ Judicial Affidavit of Alexander F. Remoto, Q&A Nos. 25-28

⁵⁹ TSN dated November 21, 2017, pp. 10-12

⁶⁰ *Id.*, pp. 13-14, 30

⁶¹ *Id.*, p. 35

⁶² *Id.*, pp. 18-19

⁶³ TSN dated February 22, 2018, pp. 14-16

emergency purchase, but only knew that the said pickup truck was procured because of the inclement weather then prevailing.⁶⁴

6. **Manolo L. Baguio** ["Baguio"],⁶⁵ has been with the Local Government of Tambulig since 2011. In 2012, he was assigned at the Office of the Municipal Mayor as messenger,⁶⁶ where his tasks included preparing Purchase Requests, as instructed by the Mayor.⁶⁷

Baguio related that the Office of the Mayor procured a 4x4 pickup truck in 2012, for which he prepared the Purchase Request. Initially, he prepared a purchase request for a 4x4 pickup vehicle with high horsepower and torque, but later amended it⁶⁸ at the behest of the Divina Roble, OIC-Municipal Accountant, who told him that it should indicate the particular vehicle to be procured as it was an emergency purchase and it was necessary to negotiate with only one supplier.⁶⁹

Barangay Chairpersons

7. **Bobby G. Sunogan** ["Sunogan"],⁷⁰ Chairperson of Brgy. Balugo;
8. **Leonardo T. Gapo** ["Gapo"],⁷¹ Chairperson of Brgy. San Jose;
9. **Erlinda R. Lozada** ["Lozada"],⁷² Chairperson of Brgy. Usogan;
10. **Algerica A. Hilaga** ["Hilaga"],⁷³ Chairperson of Brgy. Kapalaran.

The witnesses were Barangay Chairpersons in 2012,⁷⁴ at the time that the subject vehicle was procured. They testified on their respective barangays' Resolutions declaring a state of calamity because of severe flooding / flash floods, as follows:

Exhibit	Barangay	Resolution No.	Date
"16"	Lower Usogan	12-07-012	July 10, 2012
"17"	San Jose	021, s. 2012	July 11, 2012
"18"	Balugo	2012-013	August 30, 2012
"19"	Kapalaran	06, s. 2012	August 30, 2012

⁶⁴ *Id.*, pp. 16-19

⁶⁵ Judicial Affidavit dated November 13, 2017, *Records*, Vol. 2, pp. 94-98 Witness for the BAC Members; testimony adopted by Accused Balaod (TSN dated February 21, 2018, p. 25)

⁶⁶ TSN dated November 20, 2017, p. 47

⁶⁷ Judicial Affidavit of Manolo Baguio Q&A Nos. 2-5, TSN dated November 20, 2017, p. 47

⁶⁸ Exhibit "20"

⁶⁹ Judicial Affidavit of Manolo Baguio, Q&A Nos. 6-12, 16

⁷⁰ Judicial Affidavit dated June 28, 2018, *Records*, Vol. 2, pp. 183-186

⁷¹ Judicial Affidavit dated June 28, 2018, *Id.*, pp. 187-191

⁷² Judicial Affidavit dated June 28, 2018, *Id.*, pp. 192-185

⁷³ Judicial Affidavit dated June 28, 2018, *Id.*, pp. 202-205

⁷⁴ Stipulation was made that their Judicial Affidavits were to take the place of their direct testimonies, and on the execution and authenticity of the documents attached to their Judicial Affidavits. (Order dated July 18, 2018 [a.m.], *Records*, Vol. 2, pp. 209-210)

They testified that they each personally handed a copy of their respective Resolutions to accused Balaod, as a matter of procedure,⁷⁵ in order to get their apportionment from the calamity fund for food and medical assistance.⁷⁶ They confirmed that medical and rescue operations were indeed conducted by the municipal government during said calamities.

11. **Myrna V. Samillano** ["Samillano"]⁷⁷ has worked for the local government of Tambulig since 1993. In 2012, she held the position Human Resource Management Officer IV, and was the designated BAC Secretariat.⁷⁸

Samillano took down the minutes of the meeting of the Bids and Awards Committee of Tambulig on July 13, 2012,⁷⁹ where the procurement of a second hand 4x4 pickup truck was discussed. She also prepared the BAC Resolution dated July 17, 2012, also relating to the procurement of the subject pickup truck.⁸⁰

12. **Divina T. Roble** ["Roble"],⁸¹ OIC-Municipal Accountant in 2012, had the function of reviewing documents and certifying them before submitting them to the Local Chief Executive for signature and approval.⁸²

Roble recalled reviewing the procurement documents of a second hand pickup vehicle in 2012. She confirmed that it was through her that the BAC referred the matter of procuring a second hand 4x4 pickup truck to Mrs. Florence Arellano, then circuit auditor. She called up Arellano using her cellular phone, and asked if the local government could purchase a second-hand pickup for the urgent use of the Office of the Mayor in its medical and rescue operations in calamity-stricken barangays, given that the budget of ₱900,000.00 was insufficient to buy a brand new vehicle. According to Roble, Arellano told her to go ahead with the purchase, provided that there is a BAC resolution justifying its purchase by negotiated procurement, as well as a Certification from the Engineer's Office that the vehicle is in good condition.⁸³

Thus, Roble proceeded to tell Gloria Bation, Budget Officer and BAC Chairman, of the auditor's advice. Accused Remoto also inquired on what the auditor had said, and he was also advised of the auditor's go-signal. She also stated that no suspension or disallowance was given for said procurement.⁸⁴

⁷⁵ TSN dated July 18, 2018, p. 13

⁷⁶ *Id.*, p. 14

⁷⁷ Judicial Affidavit dated November 24, 2018, *Records*, Vol. 2, pp. 229-236

⁷⁸ *Id.*, Q&A Nos. 3-5

⁷⁹ Exhibit 23"

⁸⁰ Judicial Affidavit of Myrna Samillano, Q&A Nos. 6-11

⁸¹ Judicial Affidavit dated November 24, 2018, *Records*, Vol. 2, pp. 237-242

⁸² Cross examination on Bobby Sunogan, *Id.*, Q&A Nos. 4-6

⁸³ *Id.*, Q&A Nos. 7-11

⁸⁴ *Id.*, Q&A Nos. 14-15

On cross-examination, Roble clarified that her functions were limited to reviewing the completeness of supporting documents. She also confirmed that her consultation with the auditor was merely verbal, which is how she usually made her consultations.⁸⁵

13. **Evelyn T. Ranile** ["Ranile"]⁸⁶ testified that she was the owner of the 4x4 pickup truck that was sold to the LGU of Tambulig on August 31, 2012. She said that she acquired the pickup from accused Balaod on January 23, 2012 for ₱950,000.00,⁸⁷ but did not pay cash for it, as its purchase price was offset with accused Balaod's payables to her. Ranile's business was "buy and sell" of rice, and she delivered rice to accused Balaod, which she had not paid.⁸⁸ She sold the truck because she needed funds to finance her and her son's candidacy in the 2013 elections.⁸⁹

Balaod believed that she purchased the pickup truck for a reasonable price, as accused Balaod had recently introduced enhancements and accessories to it. With this and the pickup's depreciation in consideration, she and the local government, particularly the TWG led by Aristarco Navarro, agreed on a consideration of ₱900,000.00 for the pickup.⁹⁰

Answering questions from the Court, Ranile explained that after purchasing the pickup truck and executing the Deed of Sale, she did not immediately register the pickup in her name as its registration has not yet expired, and she could no longer remember when she registered it with the LTO.⁹¹

The accused proceeded to offer their exhibits, as follows:⁹²

Exhibit		Document
Balaod	Bation, et al.	
"1"		Deed of Absolute Sale dated January 23, 2012
"2"		Delivery Receipt dated May 28, 2010
"3"		Delivery Receipt dated July 26, 2010
"4"		Delivery Receipt dated August 18, 2010
"5"		Delivery Receipt dated December 9, 2010
"6"		Delivery Receipt dated May 27, 2011
"7"		Delivery Receipt dated June 14, 2011
"8"		Delivery Receipt dated July 20, 2011
"9"		Delivery Receipt dated August 30, 2011
"10"		Delivery Receipt dated November 15, 2011
"11"		Official Receipt from Taps Auto Care dated December 19, 2011 for P40,000.00
"12"		Official Receipt from Taps Auto Care dated December 29, 2011 for 70,990.00

⁸⁵ TSN dated December 3, 2018, pp. 24, 28

⁸⁶ Judicial Affidavit dated December 28, 2018, *Records*, Vol. 2, pp. 249-263

⁸⁷ Deed of Absolute Sale dated January 23, 2012, Exhibit "1"

⁸⁸ Delivery receipts, Exhibits "2" to "10"

⁸⁹ Judicial Affidavit of Evelyn Ranile, Q&A Nos. 3-10

⁹⁰ *Id.*, Q&A Nos. 11-14

⁹¹ TSN dated January 16, 2019, pp. 11-12

⁹² Joint Formal Offer of Exhibits dated January 21, 2019, *Records*, Vol. 2, pp. 284-318

"13"		Official Receipt from Taps Auto Care dated December 23, 2011 for P44,000.00
"14"		Judgment on Compromise Agreement in Civil Case No. 2009-20-426 dated January 14, 2011 (Exhibit "B")
"16"	"16"	Resolution No. 12-07-012 of Barangay Lower Usogan dated July 10, 2012
"16-a" to "16-d"	"16-a" to "16-d"	Pictures depicting flooded areas
"17"	"17"	Resolution No. 021 series of 2012 of Brgy. San Jose dated July 11, 2012
"18"		Resolution No. 2012-013 of Brgy. Balugo dated August 30, 2012
"19"		Resolution No. 06, series of 2012 of Brgy. Kapalaran dated August 30, 2012
"20"	"20"	Purchase Request dated July 13, 2012 (Exhibit "D")
"21"	"21"	Certification from the Municipal Engineer's Office dated July 16, 2012
"22"		Purchase Order dated July 18, 2012 (Exhibit "K")
"23"	"23"	Minutes of the meeting of the Bids and Awards Committee dated July 13, 2012
"24"	"24"	Medical Certification dated November 8, 2017
"25"	"25"	Inspection and Acceptance Report dated July 18, 2012
"26"		Certificate of Canvass for Sangguniang Bayan members of Mahayag for the May 13, 2013 National and Local Elections
"27"		Certificate of Canvass and Proclamation of Winning Candidates for the October 28, 2013 Barangay Elections

In a *Resolution* dated February 12, 2019,⁹³ this Court admitted Exhibits "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "16", "17", "18", "19", "20", "21", "22", "23", and "25". Exhibits "16-a", "16-b", "16-c", and "16-d", "24", "26" and "27" were excluded for lack of proper authentication.

With the filing of the parties' respective *Memoranda*,⁹⁴ this case was submitted for resolution.

THE COURT'S RULING

The Bids and Awards Committee, upon the request of the Municipal Mayor, procured a second-hand pickup truck previously owned by the Municipal Mayor, without the benefit of a public bidding. They have been charged with violation of Section 3(e) of R.A. 3019, or the Anti-Graft and Corrupt Practices act, which 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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⁹³ *Id.*, pp. 331-334

⁹⁴ Memorandum for the Prosecution dated March 15, 2019, *id.*, pp. 340-368; Memorandum for accused Balaod dated March 26, 2019, *id.*, pp. 371-387; Memorandum for accused Bation, Doong, Suco, Ebrado and Remoto dated March 28, 2019, *id.*, pp. 388-403

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

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

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. 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.⁹⁵

Under the *Information*, the accused are charged with having given unwarranted benefit to Evelyn Ranile, and causing undue injury to the government, by effecting such purchase through manifest partiality, evident bad faith, or gross inexcusable negligence.

There is no dispute as to the first element, there being a stipulation among the parties that at the time material to the case, accused were public officers and employees of the Municipality of Tambulig, Zamboanga del Sur.⁹⁶ The procurement subject of the charge was made in the accused's discharge of their official functions.

There is likewise no dispute that the subject vehicle was procured, not only without the requisite public bidding, but with only one vehicle and one seller in consideration. The Purchase Request⁹⁷ emanating from the office of accused Balaod indicated the following specifications peculiar to one particular vehicle:

“ISUZU 2007
CREWCAB PICKUP
DMAX 4x4
ENGINE NO. 4JHI 262450
CHASIS NO. PABTFS77H50000092
PLATE NO. KDM 277
C.R. NO. 13125046-4”

⁹⁵ *Consigna v. People, et al.*, G.R. Nos. 175750-51, April 2, 2014

⁹⁶ Joint Stipulation of Fact and Issue dated October 3, 2016, *id.*, pp. 236-244; Pre-Trial Order dated October 5, 2016, *id.*, pp. 245-257

⁹⁷ Dated July 13, 2012, Exhibit “D”

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With the vehicle and the seller already pre-determined, it made no more sense to conduct public bidding.

The accused blatantly disregarded the requirement of public bidding in the procurement of the subject vehicle, giving unwarranted benefit to Evelyn Ranile through manifest partiality.

As a general rule, all government procurement must undergo competitive bidding. This ensures transparency, competitiveness, efficiency, and public accountability in the procurement process.⁹⁸ A competitive public bidding is not some token procedure in the government designed to suit the whim of a public officer. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru **open competition**. Another self-evident purpose of public bidding is to **avoid or preclude suspicion of favoritism and anomalies** in the execution of public contracts.⁹⁹

Competitive public bidding may not be dispensed with nor circumvented, and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law.¹⁰⁰ Alternative methods of procurement, are allowed under RA 9184 which would enable dispensing with the requirement of open, public and competitive bidding, but only in **highly exceptional cases** and under the conditions set forth in Article XVI thereof.¹⁰¹

Acting on the Purchase Request from the office of accused Balaod, the BAC issued Resolution No. 143, Series of 2012, which stated:

A RESOLUTION AUTHORIZING THE LOCAL GOVERNMENT UNIT THRU THE LOCAL CHIEF EXECUTIVE HON. CARIDAD B. BALAOD TO PURCHASE A SECOND HAND FOUR WHEEL VEHICLE (ISUZU CREWCAB PICK UP, DMAX 4X4) FROM EVELYN RANILE OF MAHAYAG, ZAMBOANGA DEL SUR IN THE AMOUNT OF NINE HUNDRED THOUSAND PESOS (900,000.00) THRU NEGOTIATED MODE OF PURCHASE.

WHEREAS, it cannot be denied that the Office of the Municipal Mayor has no vehicle to be used during assemblies/meetings in the different barangays of the municipality during conferences which needs to be attended outside the municipality;

⁹⁸ *Office of the Ombudsman v. De Guzman*, G.R. No. 197886, October 4, 2017

⁹⁹ *Miranda v. Sandiganbayan*, et al., G.R. Nos. 144760-61, 167311-12 & 167625-26, August 2, 2017

¹⁰⁰ *Capalla, et al. v. COMELEC*, G.R. Nos. 201112, 201121, 201127 & 201413, June 13, 2012

¹⁰¹ *De Guzman v. Ombudman, et al.*, G.R. No. 229256, November 22, 2017; R.A. 9184, Section 10.

Competitive Bidding. — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

WHEREAS, the incumbent Municipal Mayor has been serving the municipality for two (2) terms and was not provided with a government vehicle for her use on her official transactions;

WHEREAS, the Municipal Mayor could not act/respond immediately if there are emergency calls from higher authorities outside the municipality;

WHEREAS, the BIDS AND AWARDS COMMITTEE, convened to discuss the mode of procurement of a second hand four wheel vehicle;

WHEREAS, the BAC find its importance and necessity to purchase a vehicle for use by the Municipal Mayor of this Municipality;

WHEREAS, after careful study and evaluation of the necessity, the BIDS AND AWARDS COMMITTEE unanimously agreed to authorize the Local Government Unit thru the Municipal Mayor to purchase a second hand four wheel vehicle from Evelyn Ranile of Mahayag, Zamboanga del Sur in the amount of NINE HUNDRED THOUSAND PESOS (900,000.00) thru negotiated mode of procurement.

APPROVED UNANIMOUSLY. (emphases supplied)

In brief, the considerations for purchasing the Isuzu D-Max from Evelyn Ranile "through negotiated procurement" were (a) the Municipal Mayor had no service vehicle after serving two terms, thus (b) she had nothing to use for assemblies and meetings within the municipality, and conferences outside the municipality; and (c) she could not act/respond immediately if there are emergency calls from outside the municipality.

Resort to negotiated procurement was improper.

There is nothing **highly exceptional** about these considerations that would justify dispensing with the requisite public bidding and forthwith resorting to negotiated procurement. In fact, these are very common reasons to procure a government service vehicle.

R.A. 9184 provides:

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

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

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

Section 53. Negotiated procurement. — Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two (2) failed biddings, as provided in Section 35 hereof;

(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;**

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, 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;

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letter of Instruction No. 755 and Executive Order No. 359, series of 1989.

In their defense during these proceedings, however, the accused asserted that the subject vehicle was actually an “emergency purchase” acquired through negotiated procurement in view of the continuous flooding brought about by inclement weather in some of the barangays in Tambulig; thus, negotiated procurement was allowed under Section 53(b).

In *Office of the Ombudsman v. De Guzman*,¹⁰² the Supreme Court explained:

However, negotiated procurement under Republic Act No. 9184, Section 53 (b) involves situations beyond the procuring entity's control. Thus, it speaks of “imminent danger . . . during a state of calamity . . . natural or man-made calamities [and] other causes where immediate action is

¹⁰² G.R. No. 197886, October 4, 2017

necessary." Following the principle of *ejusdem generis*, where general terms are qualified by the particular terms they follow in the statute, the phrase "other causes" is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities. (emphases supplied)

The purported need for a service vehicle arose sometime before July 13, 2012, when the BAC met to discuss its procurement.¹⁰³ Notably, while by this time, two resolutions have already been made by two barangays in Tambulig declaring a state of calamity,¹⁰⁴ this was never brought up during the meeting. Instead, the Minutes of said BAC meeting recounts a consideration of "the urgency of the situation and the pressures on their part since it is already typhoon season". Clearly, as of this time, there was no imminent danger where inaction could result in loss of life or property. In fact, the BAC had time to refer the matter to the auditor for advice, which, under the circumstances, would still prove inconsequential, being in the nature of a "pre-audit", which is not even necessary.¹⁰⁵

More importantly, when the BAC convened again on July 17, 2012 to authorize the procurement of Ranile's pickup by negotiated purchase, its Resolution made no mention of ongoing or persistent inclement weather or imminent danger to Tambulig's constituents, when it should have been the most discernible, if not the most important, consideration.

The urgency of such "emergency" purchase is also doubtful as the accused obviously had time to wait until Ranile registered the pickup in her name on August 1, 2012¹⁰⁶ to be able to proceed with the sale on August 31, 2012.¹⁰⁷

All of these circumstances contradict the existence of an imminent danger or emergency to justify the outright resort to negotiated procurement. Besides, flooding is apparently something not new to Tambulig. Accused Bation, Doong, and Suco testified¹⁰⁸ that it rains and floods every year.

Also in *Office of the Ombudsman v. De Guzman*,¹⁰⁹ the Supreme Court went on to elucidate:

The expiration of the mail carriage drivers' employment contracts is not a calamitous event contemplated under Republic Act No. 9184, Section 53 (b).

The contracts were undertaken with a definite expiration date, i.e., March 31, 2004. The expiration of the contracts was not a sudden

¹⁰³ Exhibit "23"

¹⁰⁴ Brgy. Lower Usogan Resolution No. 12-07-012 dated July 10, 2012, Exhibit "16" and Brgy. San Jose Resolution No. 021, s. 2012 dated July 11, 2012, Exhibit "17"

¹⁰⁵ *Dela Llana v. COA*, G.R. No. 180989, February 7, 2012

¹⁰⁶ Certificate of Registration, Exhibit "E"

¹⁰⁷ Deed of Absolute Sale, Exhibit "H"

¹⁰⁸ Bation – Judicial Affidavit, Q&A No. 13, *Records*, Vol. 2, p. 102; Doong – Judicial Affidavit, Q&A No. 37, *Id.*, p. 165; Suco – TSN dated February 22, 2018, pp. 14-16

¹⁰⁹ G.R. No. 197886, October 4, 2017

unexpected event. Respondent admits that a post study was conducted on the delivery system to study its effectivity. This means that immediately after the contracts were executed, the Central Mail Exchange Center was already gauging the delivery system's performance and studying alternative solutions. **Before the contracts expired, there was still time to consider outsourcing mail carriage and the conduct of public bidding.**

However, respondent chose to wait until the contracts expired to offer the Board of Directors a viable solution. Under the guise of an "emergency," he was able to skirt the requirement of competitive bidding and directly contract with Aboitiz One. **Had outsourcing been discussed before the employment contracts actually expired, there would have been time to conduct a competitive public bidding.** (emphases supplied)

The same is true in this case. The inclement weather and flooding that purportedly presented the emergency to justify negotiated procurement was **expected**; hence, there was no reason to wait for such calamity to procure a service vehicle for the Municipal Mayor through the proper means – *i.e.*, competitive public bidding, especially since, as the BAC Resolution indicates, accused Balaod was the Municipal Mayor of Tambulig for two (2) terms when the negotiated procurement of Ranile's van was authorized. Instead, the accused, under the guise of an emergency, albeit inexistent, **singled out** Ranile's van for procurement, to the exclusion of all other vehicles and all other sellers.

Evident bad faith and manifest partiality attended the procurement of the subject vehicle.

Under the *Information*, the accused are charged with the commission of all three (3) modes of violation of Section 3(e) of R.A. 3019, *i.e.*, manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.¹¹⁰

There is "manifest partiality" when there is 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. "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. "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.¹¹¹

¹¹⁰ *Ampil v. Ombudsman*, G.R. Nos. 192685 & 199115, July 31, 2013

¹¹¹ *Plameras v. People*, G.R. No. 187268, September 4, 2013

This Court finds that accused Balaod acted with evident bad faith in selecting the particular vehicle to procure, and, conspiring with the BAC, effecting such procurement through manifest partiality in favor of Evelyn Ranile.

The subject pickup truck, which Evelyn Ranile bought from accused Balaod, was not registered in Ranile's name until August 1, 2012. Prior thereto, accused Balaod had already requested for the procurement of such truck. Simply put, accused Balaod did not just want to procure a pickup truck – she wanted to procure **that** pickup truck.

Parenthetically, Section 3(h) of R.A. 3019 prohibits directly or indirectly **having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity.** Notwithstanding that the pickup truck was still registered in her name, and with absolute disregard of this prohibition, the strict requirement of public bidding, the limitations of negotiated procurement, and propriety in general, accused Balaod was unfazed in requesting, and eventually, procuring the said pickup truck. This begs the question of why, with all the time in her hands and all the available vehicles that could do the same job, accused Balaod had to procure a particular second-hand vehicle which was still registered in her name.

This, however, could not have been done without the participation of the BAC, who, under R.A. 9184, is laden with the following responsibilities:

SECTION 12. Functions of the BAC. — The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

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

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

The BAC, acting on the glaringly irregular purchase request for a particular vehicle, resolved to approve its procurement by negotiated purchase. As discussed above, the BAC did not give much as an attempt to

justify negotiated procurement to procure the subject vehicle, and their defenses in this case proved inadequate as well.

In any procurement, not even reference to brand names is allowed.¹¹² The underlying policy behind this prohibition is to **prevent undue preference on certain goods or products and ensure fair and equal competition among the bidders.**¹¹³ Preference is evident than in this case when not just the brand is specified, but the very object sought to be procured, *i.e.*, a 2007 Isuzu D-Max 4x4 Crewcab Pickup with Engine No. 4JHI 262450, Chasis No. PABTFS77H50000092, Plate No. KDM 277 AND C.R. No. 13125046-4. The seller herself was likewise specified: Evelyn Ranile.

Public bidding aims to secure for the government the **lowest possible price under the most favorable terms and conditions**, to curtail favoritism in the award of government contracts and avoid suspicion of anomalies, and **it places all bidders in equal footing.**¹¹⁴

There is no equal footing to speak of in this case, where the particular item and seller have already been chosen as early as the issuance of the purchase request. The accused, acting together, have exhibited manifest partiality in favor of Evelyn Ranile, to the exclusion of every other supplier, who were not even given the opportunity to make the potentially most favorable offer to the government.

The accused assert that the procurement of the subject second-hand vehicle had the imprimatur of the auditor. As testified by Divina Roble, however, such approval relayed through her was merely verbal; hence, a mere allegation bereft of proof. That no disallowance was meted by the COA does not exculpate the accused. The COA's approval of their disbursements only relates to the administrative aspect of the matter of their accountability, but the question in this case is their criminal liability for violation of Sec. 3(e) of R.A. 3019.¹¹⁵

Unwarranted benefits were given to Evelyn Ranile.

R.A. 3019, Section 3, paragraph (e), as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the Government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3, paragraph (e), or as two (2) different modes of committing the offense.¹¹⁶ Here, the accused are charged with both giving unwarranted benefits to Evelyn Ranile and causing undue injury to the

¹¹² Section 18, R.A. 9184

¹¹³ *Office of the Ombudsman-Mindanao v. Martel*, G.R. No. 221134, March 1, 2017

¹¹⁴ *Capalla, et al. v. COMELEC*, G.R. Nos. 201112, 201121, 201127 & 201413, June 13, 2012

¹¹⁵ *Cf. Aguinaldo v. Sandiganbayan, et al.*, G.R. No. 124471, November 28, 1996

¹¹⁶ *Evangelista v. People, et al.*, G.R. Nos. 108135-36, August 14, 2000

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government by depriving it the chance to obtain the best, if not most reasonable price, in procuring a service vehicle.

While it is true that the municipality was deprived of the most favorable deal, having procured the subject vehicle without public bidding, this alone is not sufficient to prove undue injury under Sec. 3(e) of R.A. 3019, which should be equated with that civil law concept of "actual damage." Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. It is required that the undue injury be specified, quantified and proven to the point of moral certainty.¹¹⁷ This was not done in this case, as there is no proof how much injury was suffered by the municipality from being deprived of potentially more favorable offers.

Unwarranted benefits, however, were clearly given to Evelyn Ranile.

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.²⁸ "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.¹¹⁸ The municipality procured a second-hand pickup truck from Ranile not because she made the most favorable offer to the municipality, but because she was the municipality's chosen seller from the very start.

In *Sison v. People*,¹¹⁹ the Supreme Court held that suppliers who were awarded contracts without the benefit of a fair system in determining the best possible price for the government, like the suppliers therein, who were personally chosen by the respondent, were given unwarranted benefits and profited from the transactions without showing proof that their prices were the most beneficial to the government.

The circumstances of how this transaction, blatantly irregular as it is, reached the Ombudsman, and eventually this Court, is unfortunate. That it had to take a marital spat to expose such irregularity gives this Court an incidental glimpse of personal resentments and a clear view of how things like this are allowed to happen.

WHEREFORE, accused CARIDAD B. BALAOD, GLORIA VICENTA N. BATION, ALEXANDER F. REMOTO, BIENVENIDO C. SUCO, ISIDRO M. EBRADO, JR., AND ELVIE G. DOONG are found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e) of R.A. 3019.

¹¹⁷ *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014

¹¹⁸ *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010

¹¹⁹ *Ibid.*

They are hereby sentenced to suffer the indeterminate penalty of **IMPRISONMENT of SIX (6) years and ONE (1) month as minimum, to TEN (10) years as maximum** with perpetual disqualification to hold public office.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

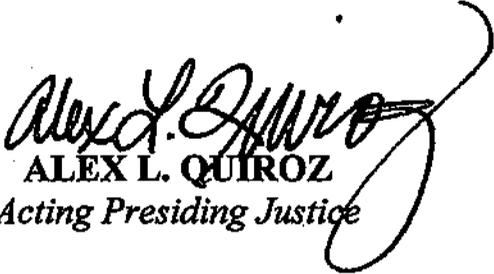
ATTESTATION

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.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

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.


ALEX L. QUIROZ
Acting Presiding Justice

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