REPUBLIC OF THE PHILIPPINES
**Sandiganbayan**
QUEZON CITY

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**SEVENTH DIVISION**

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| **PEOPLE OF THE PHILIPPINES,** Plaintiff, | Crim. Case No. **SB-16-CRM-0529** |
| -versus- | Present: |
| **ROMEL PATALITA YOGORE, GIOVANNI MILLENA ROBLES, JOSEPH ALFONSO LEYVA MANAYON, ERNESTO SEMANIA GENOVIS, DAISY CAGAYANAN GALVE, MERLENE ESPOLON MAGBANUA, AND JONIE BARCOS NIEVE,** Accused. | Gomez-Estoesta, J., *Chairperson*<br>Trespeses, J., and<br>Hidalgo, J.<br><br>Promulgated: November 29, 2019 |

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# DECISION

**GOMEZ-ESTOESTA, *J.*:**

Expediency and neutrality are reconcilable concepts in procurement law. In haste, one may tend to be sacrificed for the other, as in this case where the accused stand charged of favoring the Municipal Mayor's brother-in-law in supplying the materials for the repair and rehabilitation of the municipality's Rural Health Unit. The *Information* against them reads:

> That on or about 18 December 2008, or sometime prior or subsequent thereto, in the Municipality of Valladolid, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMEL P. YOGORE (YOGORE), GIOVANNI M. ROBLES, JOSEPH ALFONSO L. MANAYON, ERNESTO S. GENOBIS,**[1] **DAISY C. GALVANTE** and **MERLENE E. MAGBANUA,** public officers, then the Municipal Mayor, Chairman, Vice-Chairman, and Members respectively, of the Bids and Awards Committee

[1] Caption amended to read Genovis

> of the Municipality of Valladolid, in such capacity and committing the offense in relation to office, taking advantage of their respective position, conniving, conspiring, confederating and mutually helping with each other and with accused **JONIE B. NIEVE (NIEVE)**, owner/proprietor of **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES,** acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally award the procurement of construction materials for the repair and improvement of the Rural Health Unit of Valladolid worth about Two Hundred Thirty Thousand Three Hundred Ninety Five Pesos & 31/100 (Php230,395.31), to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES,** owned by accused **NIEVE,** the brother-in-law of accused **YOGORE,** without conducting competitive/public bidding, as required under Section 10 of Republic Act 9184 (Government Procurement Reform Act), thereby giving unwarranted benefits, advantage or preference to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES,** and depriving the Municipality of Valladolid and/or the government, the lowest calculated responsive bid, and thereafter, accused **YOGORE** cause the disbursement of the amount of Two Hundred Thirty Thousand Three Hundred Ninety Five Pesos & 31/100 (Php230,395.31), as payment to **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES,** thus, causing undue injury to the government in the aforestated amount.
>
> CONTRARY TO LAW.[2]

A Hold Departure Order was issued against the accused on August 22, 2016,[3] followed by a Warrant of Arrest on the following day, August 23, 2016.[4] For their provisional liberty, the accused posted their respective bail bonds.[5]

On January 16, 2017, accused Manayon filed a *Motion to Quash Information (Denial of Constitutional Right to Speedy Disposition of Cases).*[6] According to Manayon, the lapse of five (5) years and three (3) months from the filing of the Complaint to the filing of the Information was violative of his constitutional right to the speedy disposition of cases. The other accused concurred and adopted Manayon's *Motion.*[7] Accused Yogore further supplemented said *Motion,* adding that he has already been exculpated of his administrative liability by virtue of his re-election in May 2010, per the Ombudsman's Decision of the Graft Investigation and Prosecution Officer dated October 30, 2012. Said Decision itself waited more than a year for the Ombudsman's approval, while his co-respondents' Motion for Partial Reconsideration took eight (8) months to approve.[8] Accused Manayon

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[2] *Records*, Vol. 1, pp. 1-3
[3] *Id.*, pp. 123-124
[4] *Id.*, pp. 127-129
[5] Yogore – *Records,* Vol. 2, pp. 11-18; Robles – *Id.*, pp. 19-25; Manayon – *Id.*, pp. 26-32; Genovis – *Id.*, pp. 33-39; Galve – *Id.*, pp. 40-46; Magbanua – *Id.*, pp. 47-53; Nieve – *Id.*, pp. 54-60
[6] *Id.*, pp. 114-128
[7] Order dated January 17, 2017, *Id.*, pp. 132-133; Accused Yogore's Manifestation dated January 24, 2017, *Id.*, pp. 156-165; Accused Nieve's Entry of Appearance with Manifestation to Adopt the Motion to Quash Information, *Id.*, pp. 178-186; Accused Robles, et al.'s Manifestation to Adopt the Motion to Quash, *Id.*, pp. 212-221
[8] Accused Yogore's Supplement to Motion to Quash, *Id.*, pp. 166-173

likewise supplemented his own *Motion,* fortifying it with Supreme Court Decisions, as applied by this Court in its own Resolutions finding inordinate delay in preliminary investigation.[9]

In its *Consolidated Opposition*,[10] the Prosecution countered that there was no inordinate delay in the conduct of preliminary investigation under the four-fold test. The delay was not vexatious, capricious or oppressive; instead it was reasonable, as the accused themselves contributed to the delay, and in view of the time necessary to study the case in order to come up with a fair resolution. Moreover, the cases cited by the accused were not applicable in this case, as they had different factual milieu.

In its *Resolution* dated March 3, 2017,[11] this Court denied the accused's *Motion to Quash,* explaining that mere mathematical reckoning of the time involved is not sufficient to rule that there had been inordinate delay, and that speedy trial cases are to be approached on an *ad hoc* basis. While it took time to complete preliminary investigation, such time was neither vexatious nor oppressive to the accused, who also contributed to the delay. The accused likewise did not assert their right to the speedy disposition of cases before the Ombudsman, or the Supreme Court, when they questioned the finding of probable cause; and this militated against their claim of serious prejudice on their part. The accused's *Motions for Reconsideration*[12] were denied.[13]

When arraigned on August 17, 2017, all the accused pleaded *not guilty.*[14]

During pre-trial, the parties stipulated on the following:[15]

I
ADMITTED FACTS

1. That when referred to orally and in writing in the course of the proceedings, all the accused admit their identity as the same persons charged in the Information;

2. That accused Yogore, Robles, Manayon, Genovis, Galve, Magbanua are all public officers at the time material to the case.

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[9] Accused Manayon's Supplement to Motion to Quash Information, *Id.,* pp. 188-207
[10] *Id.,* pp. 245-255
[11] *Id.,* pp. 256-264
[12] Manayon – *Id.,* pp. 328-351; Nieve – *Id.,* pp. 367-378; Robles, et al. – *Id.,* pp. 379-391
[13] Resolution dated May 30, 2017, *Records,* Vol. 3, pp. 129-134, The accused's respective Petitions for Certiorari before the Supreme Court were denied – *Nieve v. Sandiganbayan,* UDK-16001, *Records,* Vol. 5, pp. 110-111; *Manayon v. Sandiganbayan,* G.R. No. 233340, *Id.,* p. 130, Vol. 6, p. 102; *Robles, et al. v. Sandinganbayan,* G.R. No. 235679, *Records,* Vol. 5, p. 311, Vol. 6, p. 252
[14] Order dated August 17, 2017, *Id.,* pp. 184-185
[15] Joint Stipulation of Facts and Issues dated March 5, 2018, *Records,* Vol. 6, pp. 43-56; Pre-Trial Order dated March 20, 2018, *Id.,* pp. 80-93

IV
ISSUES

Whether or not the accused are guilty of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act?

Whether or not Jonie Nieve conspired with the public accused in committing the offense charged?

With the above stipulations and joinder of issues, trial ensued.

## EVIDENCE FOR THE PROSECUTION

The Prosecution presented nine (9) witnesses, who testified as follows:

1. **Dr. Nelson L. De La Fuente** ["De La Fuente"],[16] Municipal Health Officer of Valladolid. In 2008, he was the Rural Health Physician of Valladolid, and headed the Municipal Health Office. He performed clinical and administrative functions and facilitated the implementation of health projects and programs.[17]

De La Fuente recounted that among the municipality's health projects in 2008 was the repair and improvement of the Rural Health Unit of Valladolid, which has been discussed even before accused Yogore's administration. When the funds finally became available, he wrote a letter to accused Yogore[18] advising him of the release of funds and requesting the prompt implementation of the project.[19]

As Rural Health Physician, he signed the Bill of Materials and Cost Estimates with the attached Floor Plan,[20] and the Quotation of JB Nieve and Construction Supplies dated December 19, 2008.[21]

On cross-examination, De La Fuente clarified that the funds for the project came from the Department of Health and were not part of the municipality's budget. His sense of urgency came from his belief that maternal and child health projects should be prioritized, but he would not say that there was an emergency. The project was ultimately completed and implemented.[22]

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[16] Judicial Affidavit dated March 1, 2018, *Records,* Vol. 5, pp. 440-507
[17] *Id.,* Q&A Nos. 2-3
[18] Exhibit "A-1"
[19] Judicial Affidavit of Nelson George De La Fuente, Q&A Nos. 4-8
[20] Exhibit "A-2"
[21] Exhibit "A-7"; Judicial Affidavit of Nelson George De La Fuente, Q&A Nos. 9-11
[22] TSN dated March 13, 2018, pp. 58-62, 67

2. **Larry B. Concepcion** ["Concepcion"] identified his Complaint-Affidavit[23] and Reply Affidavit,[24] which served as his direct testimony.

In his Complaint-Affidavit, Concepcion alleged that (a) the project on the repair and improvement of the Rural Health Unit of Valladolid was undertaken without an Annual Procurement Plan; the purchase request was without an Allotment and Obligation Slip (ALOBS); and the Purchase Order was not certified as to availability of funds; (b) the Bids and Awards Committee resolved to procure the materials for the project by *alternative method of procurement,* which was not justified under R.A. 9184; (c) Quotations were sent out by the BAC to three (3) suppliers, and on the same day, caused the award of the contract to JB Nieve Hardware, *after* the materials have been delivered by JB Nieve; and (d) JB Nieve Harware & Construction Supply was owned and operated by Junie B. Nieve, accused Yogore's brother-in-law.

On cross-examination, Concepcion testified that he did not conduct his own investigation before he filed his Complaint-Affidavit or witness the transaction in 2008; he merely relied on documents. He never worked for the municipal government, or as a contractor. From the documents, he did not find evidence of overpricing, delivery of substandard materials, or incompetence on the part of the supplier.[25] He also confirmed that the Rural Health Unit was completely implemented.[26]

Concepcion acknowledged that when he filed his Complaint-Affidavit dated May 6, 2011, libel cases filed by accused Yogore and Robles were already pending against him, but his motive remained to be helping eliminate graft and corruption. He was a volunteer reporter receiving only commissions from commercials, but no salary. He also received commissions from political commercials, but not from accused Yogore's political rivals.[27]

3. **Nemia J. Empiales** ["Empiales"],[28] State Auditor IV, Audit Team Leader of the COA-LBP, Bacolod City. She was assigned as OIC-Audit Team Leader of Bago City and Palupandan and Valladolid, Negros Occidental in 2017, and in such capacity, received a subpoena from the Office of the Special Prosecutor to produce original or certified copies of documents, copies of which were attached to said subpoena, all relating to the Repair and Improvement of the Rural Health Unit of Valladolid.[29]

To comply with the subpoena, she conducted a diligent search, but could not locate the documents subject of the subpoena. In a *Certification,* she stated that "[t]he pertinent documents were not among those turned over by Mr. Perico H. Hernandez to [Empiales] upon [her] assumption to office on

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[23] Exhibit "A"
[24] Exhibit "B"
[25] TSN dated March 13, 2018, pp. 86-88, 100
[26] *Id.,* p. 109
[27] *Id.,* pp. 101-108
[28] Judicial Affidavit dated March 1, 2018, *Records,* Vol. 5, pp. 374-382
[29] *Id.,* Q&A Nos. 2-5

February 22, 2017, and said documents [could not] be located despite diligent search by [her] office.[30]

She then proceeded to the Office of the Municipal Accountant to check for these documents, and learned that Marissa Lamis, an accounting clerk, had duplicate copies of some of the documents, as follows:

a. Journal Entry Voucher No. 300-0901-001 dated January 9, 2009;
b. Disbursement Voucher in the name of JB Nieve Hardware & Construction Supply;
c. Inspection and Acceptance Report;
d. Purchase Order dated January 8, 2009; and
e. Purchase Request dated December 18, 2008.

Lamis also submitted photocopies of (a) Official Receipt No. 0335 dated January 9, 2009; (b) Land Bank Check No. 1431905 dated January 9, 2009; (c) several delivery receipts; (d) Quotations from JB Nieve Hardware and Construction, Valladolid Lumber Enterprises, and Lolo Camon Hollow Blocks Enterprises; (e) Bill of Materials and Cost Estimates; (f) floor plan; (g) BAC Resolution No. 02, series of 2008; and (h) letter of Dr. Nelson George L. Dela Fuente dated December 16, 2018.[31]

She turned over these documents to State Auditor Larry E. Murillo, then Team Leader of the Municipality of Valladolid.[32]

On cross-examination, Empiales declared that there was no Notice of Disallowance in the documents she searched pertaining to the Rural Health Unit of Valladolid.[33]

4. **Jocelyn Cordova** ["Cordova"],[34] Engineering Assistant, was designated as BAC Secretariat Head in 2011 up to 2017. In 2016, she received a subpoena to produce documents pertaining to the purchase of materials for the repair and improvement of the Valladolid Rural Health Unit, but despite an exhaustive search within their office, she could not locate them. These documents were not turned over to her by the previous BAC Secretariat.[35]

**5. Cherryl P. Aguirre** ["Aguirre"],[36] Municipal Government Assistant Department Head of the MPDO. .In 2008, she was the OIC-Municipal Accountant of the Municipality of Valladolid, where her functions included signing disbursement vouchers and journal entry vouchers, as well as preparing reports as required by the COA.[37]

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[30] *Id.*, Q&A Nos. 6-10; Exhibit "C"
[31] Judicial Affidavit of Nemia Empiales, Q&A Nos. 1-13
[32] *Id.*, Q&A No. 14
[33] TSN dated March 12, 2018, p. 14; Hearing conducted in the Regional Trial Court of Iloilo City
[34] Judicial Affidavit dated March 2, 2018, *Records*, Vol. 5, pp. 394-398
[35] *Id.*, Q&A Nos. 2-6
[36] Judicial Affidavit dated March 2, 2018, *Records*, Vol. 5, pp. 413-439
[37] *Id.*, Q&A Nos. 2-4

Aguirre identified a Disbursement Voucher dated January 9, 2009,[38] which she signed to certify that its supporting documents, namely, the Inspection and Acceptance Report,[39] Purchase, Request,[40] Purchase Order,[41] quotations,[42] and delivery receipts,[43] were complete. She also signed the Journal Entry Voucher pertaining to this transaction.[44]

On cross-examination, Aguirre testified that the source of the funds for the rehabilitation of the Rural Health Unit was a trust fund, for which an Allotment and Obligation Slip (ALOBS) was not necessary.[45]

6. **Arnaldo S. Virgo** ["Virgo"],[46] Executive Assistant I at the Office of the Mayor of Valladolid. In 2008, he held the position of Executive Assistant III at the same office, and was designated as Inspection Officer of the Information Office of the TESDA Coordinator, and Pubic Employment Service Officer.[47]

On December 18, 2008, Virgo inspected the materials for the repair and improvement of the Rural Health Unit of the Municipality of Valladolid. During inspection, he examined the delivery receipts[48] to ascertain if the items delivered were the same as those under the Purchase Order,[49] which came from the Bids and Awards Committee. After his inspection, he signed the Inspection and Acceptance Report.[50]

7. **Lilian D. Española** ["Española"][51] was the Local Treasury Operations Officer IV of Negros Occidental, and was assigned as OIC-Municipal Treasurer of Valladolid in 2008. As OIC-Municipal Treasurer, she was tasked with the collection and disbursement of local government funds and had custody of and managed the funds of the local government. She also signed disbursement vouchers and checks, and received official receipts.[52]

Española recalled having signed the original copy of the Disbursement Voucher for the purchase of materials for the repair and improvement of the Valladolid Rural Health Unit in 2009, but must have forgotten to sign its

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[38] Exhibit "A-12"
[39] Exhibit "A-6"
[40] Exhibit "A-4"
[41] Exhibit "A-8"
[42] Exhibits "A-7", "A-7-a", and "A-7-b"
[43] Exhibits "A-5", et seq.
[44] Exhibit "A-9"; Judicial Affidavit of Cherryl Aguirre, Q&A Nos. 5-14
[45] TSN dated March 13, 2018, p. 18
[46] Judicial Affidavit dated March 1, 2018, Records, Vol. 5, pp. 399-412
[47] *Id.*, Q&A Nos. 2-4
[48] Exhibit "A-5"
[49] Exhibit "A-8"
[50] Exhibit "A-6" (adopted as Exhibit "5-Yogore", "32-A-Manayon"); Judicial Affidavit of Arnaldo Virgo, Q&A Nos. 6-15; TSN dated March 13, 2018, pp. 29, 32, 41
[51] Judicial Affidavit dated March 2, 2018, Records, Vol. 5, pp. 383-393
[52] *Id.*, Q&A Nos. 2-3

duplicate copy.[53] She also signed the check[54] and received the official receipt[55] issued for said purchase.[56]

8. **Wilfredo I. Picazo III** ["Picazo"][57] was the Trade and Industry Development Specialist of the Department of Trade and Industry (DTI), and as such, was tasked with the post-evaluation of business name registrations approved online and the preparation of certifications of business/owners' names.[58]

Upon receiving a subpoena from the Office of the Special Prosecutor requesting for a certification that Jonie B. Nieve owned JB Nieve Hardware and Construction, he searched their database, but found no current business name registration for JB Nieve Hardware and Construction Supplies. This business name, however, appeared in the DTI's Business Name Archive search menu, which also showed its owner, Jonie B. Nieve. He thus prepared the Certification dated April 10, 2018 issued by Assistant Secretary Mary Jean Pacheco,[59] stating that:

> x x x [T]here is no existing business name registration filed as:
>
> 1. **JB NIEVE HARDWARE AND CONSTRUCTION SUPPLIES.**
>
> However, the DTI has issued Business Name Certification with a similar name:
>
> 1. **JB NIEVE HARDWARE & CONSTRUCTION SUPPLIES**
> Name of Owner: **Jonie B. Nieve**
> Date Registered: July 06, 2007
> Certificate No.: 00171910
> Date Expired: July 06, 2012

9. **Bernard V. Corrales** ["Corrales"], whose testimony was dispensed with on the following stipulations:

1. That the witness is a Legal Assistant II at the Legal Services Office of the Philippine Statistics Authority;

2. That he received a Subpoena from the Office of the Special Prosecutor requesting for the submission of the following documents:

    a. Birth Certificate of Romel P. Yogore
    b. Birth Certificate of Ma. Theresa Yogore (as corrected by the Local Civil Registrar); and

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[53] Exhibit "A-12"
[54] Exhibit "A-9-b" / "A-9-c"
[55] Exhibit "A-9-a"
[56] Judicial Affidavit of Lilian Española, Q&A Nos. 4-23
[57] Judicial Affidavit dated May 18, 2018, *Records*, Vol. 6, pp. 119-131
[58] *Id.*, Q&A Nos. 2-3
[59] *Id.*, Q&A Nos. 4-12; Exhibit "F"

c. Marriage Certificate of Jonie Bargos Nieve and Ma. Theresa Yogore Nieve.[60]

The Prosecution then filed its Formal Offer of Documentary Evidence,[61] as follows:

| Exhibit | Document |
|---|---|
| "A" | Complaint-Affidavit of Larry B. Concepcion dated May 6, 2011 |
| "A-1" | Letter of Dr. Nelson George L. Dela Fuente dated December 16, 2008 |
| "A-2" | Bill of Materials and Cost Estimates |
| "A-3" | BAC Resolution No. 02, series of 2008 |
| "A-4" | Purchase Request No. MED-08-124 |
| "A-5" | Delivery Receipts |
| "A-6" | Inspection and Acceptance Reports dated December 18, 2008 |
| "A-7" | Quotation from JB Nieve Hardware & Construction Supplies |
| "A-7-a" | Quotation from Valladolid Lumber Ent. |
| "A-7-b" | Quotation from Lolo Camon Hollow Blocks Ent. |
| "A-8" | Purchase Order dated January 8, 2009 |
| "A-9" | Journal Entry Voucher dated January 9, 2009 |
| "A-9-a" | Official Receipt No. 0335 dated January 9, 2009 |
| "A-9-b" | Check No. 1431905 |
| "A-10" | Excerpt of COA Annual Audit Report of 2008 |
| "A-11" | Excerpt of COA Annual Audit Report of 2009 |
| "A-12" | Disbursement Voucher for the Purchase of Materials for the Repair & Improvement of Valladolid Rural Health Unit |
| "B" | Reply-Affidavit of Larry Concepcion dated October 27, 2011 |
| "B-1" | Affidavit of Leonila Bolauro dated October 27, 2011 |
| "B-2" & "B-3" | Facebook profiles of Jonie Nieve and Ma. Theresa Nieve |
| "B-4" & "B-5" | Certificates of Live Birth of Michael Kean Yogore Nieve and Jomarie Yogore Nieve |
| "C" | Certification of Nemia J. Empiales dated September 18, 2017 |
| "F" | DTI Certificate dated April 10, 2018 |
| "G" | Certificate of Live Birth of Romel P. Yogore |
| "G-1" to "G-1-a" | Certificate of Live Birth of Ma. Theresa Yogore |
| "G-2" | Marriage Contract of Jonie B. Nieve and Ma. Theresa Yogore |

In its *Resolution* dated September 17, 2018,[62] this Court admitted Exhibits "A", "A-1", "A-2", "A-3", "A-4", "A-6", "A-7", "A-8", "A-9", "A-9-a", "A-9-b", "A-12-d", "B", "B-4", "B-5", "C", "F", "G", "G-1"and "G-2", and excluded Exhibits "A-5" to "A-5-d", "A-7-a", "A-7-b", "A-10", "A-11", "B-1", "B-2", and "B-3" for lack of proper authentication, and Exhibit "A-12" for violation of the Best Evidence Rule.

On September 24, 2018, accused Yogore filed a *Motion for Leave of Court to File Demurrer to Evidence,*[63] maintaining that JB Nieve Hardware & Construction Supplies indeed offered the lowest quotation among the suppliers, that the procurement of construction materials was for a legitimate

[60] Order dated May 30, 2018, *Records,* Vol. 6, p. 137
[61] *Records,* Vol. 6, pp. 151-229
[62] *Id.,* pp. 308-315
[63] *Id.,* pp. 319-341

purpose to serve the constituents, and that no undue injury was suffered by the government. Accused Nieve followed suit with his own *Motion for Leave,*[64] claiming that the exclusion of the delivery receipts in evidence left the Prosecution with no proof that he in fact delivered materials for the project. Finally, accused Robles, Genovis, Galve and Magbanua made a general allegation in their own *Motion for Leave*[65] that the Prosecution failed to establish the elements of Sec. 3(e) of R.A. 3019, much less their participation therein.

In its *Consolidated Opposition,*[66] the Prosecution underscored that the construction materials were procured without public bidding, contrary to Section 10 of R.A. 9184, and that shopping was unduly resorted to. Moreover, JB Nieve delivered the materials even before it sent its quotation, highlighting the irregularity of the procurement. The Inspection and Acceptance report sufficiently proved the delivery of the materials even with the exclusion of the delivery receipts.

In its *Resolution*[67] dated October 17, 2018, this Court denied the accused's *Motions for Leave of Court to File Demurrer to Evidence.*

The accused thus proceeded to present evidence in their defense.

## EVIDENCE FOR THE ACCUSED

***For Manayon:***

1. **Ramonito Amazona** ["Amazona"][68] was Stenographer 1 of the Office of the Sangguniang Bayan of the Municipality of Valladolid. He was also officially designated Head of the BAC Secretariat, but he had no staff as the municipality had no budget for it. As Head of the BAC Secretariat, he provided administrative support to the BAC, kept its records, prepared its minutes, prepared and delivered communications and quotations to prospective suppliers and bidders, and acted as canvasser during procurement.[69] He had since been dismissed from service in relation to another complaint filed by Larry Concepcion against accused Yogore and the BAC members, including him. He had since also lost his sight.[70]

Amazona recalled having executed an Affidavit[71] on the procurement of construction materials for the repair/rehabilitation of the Municipal Health Unit of Valladolid. In it, he related:[72]

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[64] *Id.,* pp. 352-357
[65] *Id.,* pp. 364-368
[66] *Id.,* pp. 387-395
[67] *Id.,* pp. 401-407
[68] Judicial Affidavit dated October 24, 2018, *Records,* Vol. 7, pp. 69-102
[69] *Id.,* Q&A Nos. 7-11
[70] *Id.,* Q&A Nos. 2-6
[71] Exhibit "2"
[72] Judicial Affidavit of Ramonito Amazona, Q&A Nos. 12-19

x x x

3. Last December 18, 2008, at about 9:00 o'clock in the morning, I sent out requests for price quotations to different suppliers for the procurement of materials needed for the repair of the Health Center, Valladolid, Negros Occidental. As Head of the BAC Secretariat, I was given a free hand in sending the requests for price quotations. On the other hand, the three (3) suppliers merely responded to my request for price quotations I gave. For all legal intents and purposes, the three (3) suppliers were merely passive recipients of my requests for price quotations. On the same day, at about 1:00 o'clock in the afternoon, I returned and collected the price quotations that were already filled up by the three (3) suppliers. The foregoing allegations are supported by the Affidavits of Christine Yap, Rizalina Tiu and Jonie B. Nieve attached hereto as Annexes 1, 2, and 3. If ever, the Quotations were erroneously dated December 19, 2008, it was because I committed an honest mistake in filling-up the blanks after I received them in the afternoon of December 18, 2008.

4. In the afternoon of December 18, 2008, I informed Hon. Yogore that the price quotations were already returned and the lowest and most advantageous price was offered by JB Nieve Hardware and Construction Supplies. Simultaneously, I requested Hon. Yogore to sign the Purchase Order on the same day, December 18, 2008. Thus, for all intents and purposes, the procurement process was completed in the afternoon of December 18, 2008. If the Purchase Orders were also erroneously dated January 08, 2009, it was because I committed an honest mistake in filling-up the blanks after I reported back to work on January 08, 2009. However, the true date of execution and signing of the Purchase Orders for this project was December 18, 2008. I know this fact because I was present before Hon. Yogore when he signed the Purchase Orders last December 18, 2008.

x x x

Amazona related that by 1:00 p.m. of December 18, 2008, three suppliers had already filled up quotations in their standard form, which he signed as BAC Secretariat. He identified the three (3) quotations from JB Nieve Hardware & Construction Supplies,[73] Valladolid Lumber Ent.,[74] and Lolo Camon Hollo Blocks Ent.[75] The BAC signed only the quotation of the winning supplier.[76]

Answering questions from the Court, Amazona attributed his mistakes in the dates to his eye condition. He explained that because of the urgency of the request, he had to double his efforts to complete the purchase, which he was able to do in only one day. While this was not the practice in the municipality, he had to do it without conducting a public bidding; in any event, he was told by Mr. June Caberoy, the Head of the Provincial BAC

[73] Exhibit "22"
[74] Exhibit "23"; adopted as Exhibit "H" by the Prosecution
[75] Exhibit "24"; adopted as Exhibit "I" by the Prosecution; Judicial Affidavit of Ramonito Amazona, Q&A Nos. 20-26
[76] TSN dated November 6, 2018 (a.m.), p. 11

Secretariat, that this was permissible in emergency purchases as long as the BAC passes a resolution adopting an alternative mode of procurement.[77]

2. **Dr. Nelson George De La Fuente** ["De La Fuente"],[78] Municipal Health Officer of Valladolid, Negros Occidental, identified the documents he executed / signed in such capacity, pertaining to the repair of the Municipal Health Unit of Valladolid, as follows:[79]

| Document | Exhibit |
|---|---|
| Affidavit dated October 10, 2011 | "1-F" |
| Affidavit dated September 9, 2016 | "3" |
| Letter to Municipal Mayor Romel Yogore dated December 16, 2008 | "20" |
| Memorandum of Agreement for the Repair of the Main Health Center | "1-E"[80] |
| Report on Deliveries of Municipal Health Office of the Municipality of Valladolid from year 2007 to 2012 | "4" |
| Letter to Municipal Mayor Romel Yogore dated April 4, 2011 | "5" |
| Memorandum of Agreement dated June 29, 2011 | "7" |
| Memorandum of Agreement dated July 20, 2011 | "6" |

On cross-examination, De La Fuente stated that his reason for treating the repair of the Municipal Health Center as urgent was that stated in his letter dated December 16, 2008 to Mayor Yogore[81] – to improve services to maternity and newborn patients, and not the three (3)-month margin provided under the MOA.[82] The municipality received the check for the project from DOH in December 2008, which meant that it had until March 2009 to commence its implementation.[83]

Answering questions from the Court, De La Fuente remarked that since he became the doctor of the municipality in 1994, he observed that fewer people go to the clinic for consultation during the holidays.[84]

3. **Joesanil B. Esportuno** ["Esportuno"][85] was employed as Laborer 1 of the Municipal Engineer's Office since 1997. He assisted the

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[77] *Id.*, pp. 12-13
[78] Judicial Affidavit dated October 20, 2018, *Records*, Vol. 7, pp. 29-59
[79] *Id.*, Q&A Nos. 4-28
[80] Adopted as Exhibit "1-e-Yogore"; "1-e-Robles"
[81] Exhibit "20"
[82] As adverted to in his Affidavit, Exhibit "1-F"
[83] TSN dated November 6, 2018 (a.m.), pp. 23-26
[84] *Id.*, pp. 28-29
[85] Judicial Affidavit dated October 25, 2018, *Records*, Vol. 7, pp. 126-130

Municipal Engineer in inspecting structures within the municipality before, during and after the implementation of projects.[86]

In 2008, Esportuno assisted then Municipal Engineer Joseph Alfonso Manayon in the inspection of the old Rural Health Unit. At that time, its wooden partition walls and doors were infested with termites, and the building itself was dilapidated. If not repaired right away, the termite infestation would get worse, and may cause the building to collapse. To his knowledge, Dr. De La Fuente requested the immediate repair and improvement of the building, and this was implemented, with the inclusion of a new birthing station.[87] The repair was finished around the end of January.[88]

4. **Margarito L. Lizada** ["Lizada"][89] was the Officer-in-Charge Human Resource Management Officer of Valladolid from 2009 to 2017. In such capacity and upon request, he issued Certifications that the members of the Bids and Awards Committee from July 2007 to January 2009 (a) had no legal background,[90] based on his opinion and their respective 201 files[91] and (b) have not attended any seminar on R.A. 9184 for the same period.[92]

While the then newly-created BAC attended a seminar conducted by the Bids and Awards Committee of the Province of Negros Occidental in 2007, they never attended any seminar conducted by the Government Procurement Policy Board (GPPB) at the provincial, regional or national level.[93]

Lizada related that accused Robles, Manayon and Galve were meted a 90-day suspension during the pendency of Ombudsman Case No. V-A-11-0277-F, which they duly served.[94]

5. **Cherryl P. Aguirre** ["Aguirre"][95] was the OIC-Municipal Accountant of Valladolid from 2008 to 2013, and then designated as OIC-Municipal Treasurer from 2013 to 2016. She stated that Valladolid was a fourth-class municipality, and in 2008, its BAC members were not paid honoraria. Upon request of accused Manayon and Galve, Aguirre issued a Certification dated June 14, 2016[96] on the honoraria received by the BAC Members on limited occasions in 2009 to 2014.[97]

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[86] *Id.*, Q&A Nos. 3-6
[87] *Id.*, Q&A Nos. 7-13
[88] TSN dated November 6, 2018 (a.m.), p. 35
[89] Judicial Affidavit dated October 26, 2018, *Records,* Vol. 7, pp. 105-115
[90] Exhibit "11"
[91] Counter-stipulation of Atty. Manayon, Order dated November 6, 2018 (a.m.), pp. 185-186
[92] Exhibit "10"; Judicial Affidavit of Margarito Lizada, Q&A Nos. 2-16
[93] Judicial Affidavit of Margarito Lizada, Q&A Nos. 16-17
[94] Letter dated December 2, 2017, Exhibit "30"
[95] Judicial Affidavit dated October 26, 2018, Records, Vol. 7, pp. 118-124
[96] Exhibit "15"
[97] Judicial Affidavit of Cherryl Aguirre, Q&A Nos. 9-12

Aguirre recalled that the supplies used for the repair and renovation of the Rural Health Unit in 2008 were funded by a grant to the Municipality by the Department of Health, while local funds were used for the labor component. After the implementation of the Project, the Department of Health gave an additional grant of ₱3,659,387.00 in two tranches for the expansion/improvement/upgrade of the Rural Health Unit and birthing station.[98]

6. **Atty. Diana P. Manayon** ["Manayon"],[99] counsel for accused Manayon, testified on her research on home birth mortality. She identified the articles she downloaded from the internet on this subject,[100] as well as a local article on R.A. 9184 or The Government Procurement Reform Act.[101]

Answering questions from the Court, Manayon stated that she did not conduct her own analysis of what was actually happening at the Rural Health Station of Valladolid. She surmised that the internet articles, which pertained to United States data, would be even more true in the local setting.[102]

7. **Temujin H. Tumbagahan** ["Tumbagahan"][103] was the Executive Assistant at the Mayor's Office from 2007 to 2014, when he was appointed as Municipal Government Assistant Department Head I of the Economic Enterprise Development Office of Valladolid.[104]

As co-terminous Executive Assistant of then Mayor Yogore, he assisted him in the performance of his functions and performed tasks that were assigned to him. He recalled that sometime in December 2008, Dr. De La Fuente came to accused Yogore's office to let him know that the DOH had released its financial grant of ₱250,000.00 to the municipality for the repair and improvement of the Rural Health Unit with birthing station. This was a Project that was then often discussed, and De La Fuente requested for its immediate implementation in order to provide the municipality a birthing unit as soon as possible. Previously, Dr. De La Fuente had submitted to the Mayor's Office a report on the statistics of home birth mortalities.[105]

Accused Yogore then discussed the matter with Municipal Engineer Joseph Manayon, who said that the Project could be implemented only by January 2009 in view of the coming holidays. However, accused Yogore insisted on its implementation by December because of the urgent need for birthing facilities and the dilapidated condition of the building. The Project was indeed implemented in December 2008. The DOH attended the

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[98] *Id.*, Q&A Nos. 13-16
[99] Judicial Affidavit dated October 26, 2018, *Records*, Vol. 7, pp. 158-173
[100] Exhibits "17" and "18"
[101] Exhibit "19"; Judicial Affidavit of Diana Manayon, Q&A Nos. 2-33
[102] TSN dated November 6, 2018 (a.m.), pp. 58-61
[103] Judicial Affidavit dated October 26, 2018, *Records*, Vol. 7, pp. 62-67
[104] *Id.*, Q&A Nos. 2-5
[105] *Id.*, Q&A Nos. 6-12, 15, 18; TSN dated November 6, 2018 (p.m.), p. 10

inauguration of the improved Rural Health Unit with birthing station, and were so satisfied with it that they gave the municipality an additional grant of more than ₱3Million for further upgrading of the Rural Health Unit.[106]

8. **June C. Caberoy** ["Caberoy"], Civil Engineer and Supply Officer IV of the Province of Negros Occidental whose testimony was instead stipulated that he could identify his Affidavit dated August 30, 2016,[107] describing the advice he rendered to Ramonito Amazona on the use of alternative methods of procurement for the rehabilitation of the Valladolid Rural Health Unit.

The presentation of another witness for accused Manayon was dispensed with on the parties' stipulation on Administrative Order No. 2008-229 dated September 19, 2008.[108]

***For Yogore:***

9. **Romel P. Yogore** ["accused Yogore"] former Municipal Mayor of Valladolid, Negros Occidental, identified his Counter-Affidavit dated October 10, 2011,[109] wherein he alleged that (a) The complaint was a retaliatory act against him by his political rival; (b) Under the Memorandum of Agreement with the DOH, the municipality had 3 months within which to commence the implementation of the repair and improvement of the Rural Health Unit; (c) The municipality received the ₱250,000.00 grant from the DOH in December 2008, giving it until March 2009 to commence the project; (d) Dr. Nelson George De La Fuente suggested to conduct the repairs in December during the holidays and before the health center got busy again in January; (e) The BAC resolved to procure the needed supplies through shopping, which he approved, believing that the BAC members were updated on the provisions of R.A. 9184; (f) He approved the Purchase Request on December 18, 2008 in the morning, and by afternoon of the same day, quotations of 3 suppliers have already been submitted, where JB Nieve submitted the lowest and most advantageous price. He signed the Purchase Order on the same day. Delivery was also made on the same day; and (g) No adverse audit finding was made by the COA regarding this project.

Answering additional questions on direct examination, accused Yogore testified that it took only three (3) weeks, from December 2008 to January 2009, to repair the Rural Health Center. The DOH Regional Director was so pleased with the repair that he granted the municipality another ₱3Million to build a Rural Health Office.[110] He explained that the Rural Health Center, as

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[106] Judicial Affidavit of Temujin Tumbagahan, Q&A Nos. 13-14, 16-17, 19-21
[107] Exhibit "9"; Order dated November 6, 2018 (p.m.), Records, Vol. 7, pp. 190-191
[108] Exhibit "31"; Order dated November 6, 2018 (p.m.), Records, Vol. 7, pp. 190-191
[109] Exhibit "1-Yogore"
[110] TSN dated November 7, 2018 (a.m.), pp. 10-11

repaired, was only a temporary structure that was informally settled in the area. The ₱3Million grant later given was used to build a bigger structure.[111]

On cross-examination, accused Yogore acknowledged that when the BAC advised him that it was JB Nieve that offered the lowest and most advantageous price, he knew that it was owned by Jonie Nieve, his brother-in-law. He never discussed the project with Nieve; not even during family gatherings, as he had no time to do so.[112] When asked by the Court, Yogore replied that the Rural Health Unit was only around 15 meters from the Municipal Hall, while the suppliers were located within a walking distance of five to ten minutes, or around 500 meters, from the Municipal Hall.[113] There were only four suppliers in the municipality.[114] The nearest hospital was Valladolid District Hospital, which was around 1 kilometer from the municipality. This was managed by the Province of Negros Occidental, and had around 50 beds. Midwives from this hospital were usually called to assist in home births.[115]

Yogore adopted the following exhibits for the Prosecution:

| Pros. | Document | Yogore |
|---|---|---|
| "A-3" | BAC Resolution No. 02, series of 2008 | "8" [116] |
| "A-7-a" ("H") | Quotation from Valladolid Lumber Ent. | "4-a" [117] |
| "A-7-b" ("I") | Quotation from Lolo Camon Hollow Blocks Ent. | "4-b" [118] |

***For Robles, Genovis, Galve and Magbanua:***

10. **Daisy C. Galve** ["accused Galve"] identified the Joint Counter-Affidavit she executed with her co-respondents Alfonso Manayon, Giovanni Robles, Ernesto Genovis, Merlene Magbauna, Arnold Virgo, and Cherryl Aguirre before the Office of the Ombudsman.[119]

In said Counter-Affidavit, the respondents asserted that they merely relied on the guidance of Mr. Percival Salado, Chairman of the BAC of Negros Occidental, who advised them that they could conduct shopping as an alternative mode of procurement in the repair and rehabilitation of the Rural Health Unit of Valladolid. Shopping was resorted to with the approval of the procuring entity, and considering the request of Dr. De La Fuente to complete the project during the Christmas holidays. The Purchase Request, quotations,

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[111] *Id.*, pp. 16-17
[112] *Id.*, pp. 22, 42-43
[113] *Id.*, pp. 32, 34
[114] *Id.*, pp. 41-42
[115] *Id.*, pp. 39-40
[116] Also adopted as Exhibit "21-Manayon"; "16-Robles, et al."
[117] Also adopted as Exhibit "3-Nieve"
[118] Also adopted as Exhibit "4-Nieve"
[119] Exhibit "2-Robles, et al."; adopted as Exhibit "2-Manayon" and "1-Nieve"

award, Purchase Order, and delivery of the supplies were all done in one day. Since the funds for the repair/rehabilitation were a grant from the DOH, an ALOBS was no longer required, as alleged against them. Neither was the requirement of disclosure of relations applicable against them, as they resorted to alternative methods of procurement, and not competitive bidding.

Galve further related in her testimony that she signed the BAC Resolution in the morning of December 18, 2008, and noticed that it had already been signed by the Mayor by afternoon of the same day, when the quotations were returned. He did not know when Mayor Yogore signed the BAC Resolution as she thought her duty ended with signing it.[120] The BAC relied on the advice of the Provincial BAC Chairman, and no longer read the provisions of R.A. 9184.[121]

***For Nieve***

11. **Jonie B. Nieve** ["accused Nieve"][122] identified his Affidavit dated August 26, 2011.[123] Further, he testified on what transpired on December 18, 2008.[124]

Accused Nieve recounted that on December 18, 2008 at around 9:00 a.m., Ramonito Amazona visited his store to ask him for price quotations for various construction materials. When he inquired on the reason for such request, he was told that the municipality was looking for a supplier who would give the lowest price in the market for the construction materials in the list, to be used in the repair and improvement of the Rural Health Unit. He was also told that he would return later that day to get his quotation.[125]

He immediately had the quotation form filled up with the prevailing market prices of the construction materials,[126] which he gave to Mr. Amazona when he returned later that day. On the same day, past 1:00 p.m., he received a Purchase Order from the Local Government of Valladolid and was told that he gave the lowest price quotation. He had the materials delivered to the LGU of Valladolid, which they inspected and subsequently accepted.[127] He was subsequently paid for the delivery.[128]

Having no more witnesses to present, the accused formally offered their exhibits as follows:

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[120] TSN dated November 7, 2018, pp. 56-60
[121] *Id.*, pp. 63-64
[122] Judicial Affidavit dated October 25, 2018, *Records,* Vol. 6, pp. 450-458
[123] Exhibit "1-a-3"; Adopted as Exhibit "2-a-3-Manayon"
[124] Judicial Affidavit of Jonie Nieve, Q&A Nos. 2-5
[125] *Id.*, Q&A Nos. 6-10
[126] Exhibit "2"
[127] Judicial Affidavit of Jonie Nieve, Q&A Nos. 11-23; TSN dated November 7, 2018, p. 91
[128] TSN dated November 7, 2018, p. 91

| Yogore[129] | Manayon[130] | Robles, et al.[131] | Nieve[132] | Document |
|---|---|---|---|---|
| "1" | "1" | "1" | "1" | Counter-Affidavit of xxx Yogore dated October 10, 2011 |
| "1-a" | "1-a" | "1-a" | | Complaint-Affidavit dated August 26, 2010 against Larry Concepcion |
| "1-c" | "1-c" | "1-c" | | Complaint Affidavit dated August 6, 2010 against Larry Concepcion |
| "1-d " | "1-d" | "1-d" | | Letter-request dated November 17, 2018 |
| "1-e" | "1-e" | "1-e" | | Memorandum of Agreement between DOH CHD WV and Municipal Government of Valladolid |
| "1-f" | "1-f" | "1-f" | | Affidavit of Dr. Nelson George L. Dela Fuente dated October 10, 2011 |
| "1-l" | "1-l" | "1-l" | | Resolution No. 08-11-04 of the Office of the Liga ng mga Barangay dated August 5, 2011 |
| | | "2" | | Joint Counter-Affidavit of Manayon, Robles, Genovis, Galve, Magbanua, Virgo and Aguirre dated October 10, 2011 |
| "2-a" | "2-a" | "2-a" | "1-a" | Affidavit of Ramonito F. Amazona dated October 10, 2011 |
| | "2-a-1" | "2-a-1" | "1-a-1" | Affidavit of Christine Yap dated August 26, 2011 |
| | "2-a-2" | "2-a-2" | "1-a-2" | Affidavit of Rizalina Tiu dated August 26, 2011 |
| | "2-a-3" | "2-a-3" | "1-a-3" | Affidavit of Jonie B. Nieve dated August 26, 2011 |
| "3" | "20 | "9" | | Letter of Dr. Nelson George L. Dela Fuente dated December 16, 2008 (Exh. "A-1") |
| | "3" | "3" | | Affidavit of Dr. Nelson De La Fuente dated September 9, 2016 |
| | "4" | "4" | | Report on Deliveries from the Municipal Health Office |
| "4" | "22" | "10" | "2" | Quotation of JB Nieve Hardware & Construction Supplies (Exh. "A-7") |
| "4-a" | "23" | "11" | "3" | Quotation of Valladolid Lumber Ent. (Exh. "A-7-a" / "H") |
| "4-b" | "24" | "12" | "4" | Quotation of Lolo Camon Hollow Blocks Ent. (Exh. "A-7-b" / "I") |
| "5" | "32" | | | Inspection and Acceptance Report (Exh. "A-6") |
| | "5" | "5" | | Letter of Dr. Nelson Dela Fuente dated April 4, 2011 |
| | "6" | "6" | | MOA between DOH Western Visayas and Municipality of Valladolid dated July 20, 2011 |
| | "7" | "7" | | MOA between DOH Western Visayas and Municipality of Valladolid dated June 29, 2011 |
| | "8" | | | Book entitled *Government Procurement Reform Act (R.A. 9184) and its Implementing Rules and Regulations-A* |
| | "8-A" | | | GPPB Resolution No. 012-2006, *"Providing for the definition and scope of 'ordinary or regular office supplies' for the procurement through shopping under Section 52(b) of the IRR-A of R.A. 9184"* |
| | "8-b" | | | Non-Policy Opinions – NOM 040-2005 |
| | "9" | "15" | | Affidavit of June Caberoy dated August 30, 2016 |
| | "21" | "16" | | BAC Resolution No. 002 (Exhibit "A-3") |

[129] *Records*, Vol. 7, pp. 213-440
[130] *Id.*, pp. 446-B to 446-G
[131] *Id.*, pp. 446-J to 638
[132] *Id.*, pp. 639-672

| | | | | |
|---|---|---|---|---|
| | "10" | | | Certification issued by Margarito Lizada dated June 15, 2015 |
| | "11" | | | Certification issued by Margarito Lizada dated June 15, 2015 |
| | "15" | | | Certification issued by Cherryl Aguirre dated June 14, 2016 |
| | "16"<br>"16-A" | "14" | | CHED Memorandum Order No. 01, series of 2008<br>Letter-request dated November 14, 2018 |
| | "17" | | | Internet article: "Home Births Tied to Higher Infant Death Rates" by Steven Reinberg |
| | "18" | | | Internet article: "Increasing Trend in Home Birth Neonatal Mortality Rates" |
| | "19" | | | Internet article: "RA 9184 or the Government Procurement Reform Act of 2003: Boon or Bane? By ACA Nimfa Cuesta Vilches |
| | "25" | | | Ombudsman Decision dated October 30, 2012 in OMB-V-A-11-0277-F |
| | "26" | | | Sec. 65, Art. XXI, RA 9184 |
| | "27" | | | CSC v. Ledesma, G.R. No. 154521, September 30, 2005 |
| | "28" | | | Ombudsman v. Miedes, G.R. No. 176409, February 27, 2008 |
| | "29" | | | Constantino v. Sandiganbayan, G.R. No. 140656, September 13, 2007 |
| | "30" | | | Letter of Margarito Lizada dated December 2, 2014 |
| | "31-a"<br><br><br><br><br>"31-b"<br><br>"31-c"<br>"31-d" | | | Department Memorandum No. 2011-0117, Adoption of the Manual of Operations to Assist and Support Local Government Units in the Implementation of the Maternal, Newborn Child Health and Nutrition (MNCHN) Strategy<br>Department of Health MNCHN Strategy Manual of Operations<br>Letter-request dated November 12, 2018<br>Official Receipt |
| | "33" | | | Book entitled *Philippines National Demgraphic and Health Survey 2008* |
| | "34"<br><br>"34-a"<br>"34-b" | | | Study on Newborn Deaths in the Philippines by Aurora T. Reolalas and Ma. Goretti M. Novilla<br>Letter-Request dated November 12, 2018<br>Official Receipt |
| | "35" | | | Medical Certificate of Ramonito Amazona |

In its *Resolution* dated March 29, 2019,[133] this Court admitted the following exhibits:

| Yogore | Manayon | Robles, et al. | Nieve |
|---|---|---|---|
| "1" | "1" | "1" | "1" |
| "1-d " | "1-d" | "1-d" | |
| "1-e" | "1-e" | "1-e" | |
| "1-f" | "1-f" | "1-f" | |
| | | "2" | |
| "2-a" | "2-a" | "2-a" | "1-a" |
| | "2-a-3" | "2-a-3" | "1-a-3" |
| "3" | "20 | "9" | |

[133] *Records*, Vol. 8, pp. 406-412

| | | | |
|---|---|---|---|
| | "3" | "3" | |
| | "4" | "4" | |
| "4" | "22" | "10" | "2" |
| "4-a" | "23" | "11" | "3" |
| "4-b" | "24" | "12" | "4" |
| "5" | "32" | | |
| | "5" | "5" | |
| | "6" | "6" | |
| | "7" | "7" | |
| | "8" | | |
| | "8-A" | | |
| | "8-b" | | |
| | "9" | "15" | |
| | "21" | "16" | |
| | "10" | | |
| | "11" | | |
| | "15" | | |
| | "25" | | |
| | "26" | | |
| | "27" | | |
| | "28" | | |
| | "29" | | |
| | "30" | | |
| | "31-A"<br>"31-B"<br>"31-C"<br>"31-D" | | |
| | "33" | | |
| | "34"<br>"34-A"<br>"34-B" | | |
| | "35" | | |

It took judicial notice of Exhibits "8", "8-a", "8-b", "31-a", "31-b", "33", "26", "27", "28", and "29"; and excluded the following exhibits:

| **Yogore** | **Manayon** | **Robles, et al.** | **Nieve** |
|---|---|---|---|
| "1-a" | "1-a" | "1-a" | |
| "1-c" | "1-c" | "1-c" | |
| "1-l" | "1-l" | "1-l" | |
| | "2-a-1" | "2-a-1" | "1-a-1" |
| | "2-a-2" | "2-a-2" | "1-a-2" |
| | "16"<br>"16-A" | "14" | |
| | "17" | | |
| | "18" | | |
| | "19" | | |

On rebuttal, the Prosecution offered Exhibits "H" and "I", which were its Exhibits "A-7-a" and "A-7-b", that were initially excluded by this Court.

Being common exhibits with the accused, these documents were admitted on rebuttal.[134]

Upon submission of the parties' respective *Memoranda,*[135] this case was submitted for decision.

Meanwhile, on September 2, 2019, after entering into a plea-bargaining agreement with the Office of the Ombudsman, accused Manayon pleaded guilty to a lesser offense of violation of Section 7(a) of R.A. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.[136]

## THE COURT'S RULING

The Municipal Mayor of Valladolid, Negros Occidental, as well as the members of its Bids and Awards Committee, has been charged with violation of Sec. 3(e) of R.A. 3019, or the Anti-Graft and Corrupt Practices Act, after securing supplies for the repair and rehabilitation of the Rural Health Unit from Municipal Mayor Yogore's brother-in-law, without a public bidding.

> *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:
>
> (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.

In every prosecution for the violation of Section 3 (e) of R.A. No. 3019, the State must prove the following essential elements, namely:

(a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers);

(b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and

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[134] Resolution dated May 28, 2019, *Records,* Vol. 8, pp. 475-476

[135] Yogore – *Records,* Vol. 9, pp. 49-77; Prosecution – *Id.,* pp. 80-109; Robles, et al. – *Id.,* pp. 127-137; Nieve – *Id.,* pp. 149-156

[136] *Records,* Vol. 9, pp. 163-173. Manayon was sentenced to pay a fine in the amount of Five Thousand Pesos (₱5,000.00)

(c) that his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[137]

There is no dispute as to the first element. The parties stipulated during pre-trial "that accused Yogore, Robles, Manayon, Genovis, Galve, Magbanua are all public officers at the time material to the case."[138] Accused Nieve, a private individual, has been charged with acting in conspiracy with these public officers.

The second and third elements will be discussed jointly below.

***The municipality accepted the supplies delivered by accused Nieve even before any form of procurement was conducted.***

Article IV, Section 10 of R.A. 9184 or the Government Procurement Reform Act mandates that, except as otherwise provided under Article XVI thereof, **all procurement shall be done through Competitive Bidding.** In *Philippine Sports Commission v. Dear John Services, Inc.*,[139] the Supreme Court explained the importance of public bidding, thus:

> Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity, and accountability. 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 and in order to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. **Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding.**
>
> In the case of *Agan, Jr. v. Philippine International Air Terminals Co, Inc.*,[140] the Court held:
>
> > Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking, but also that it be legitimate, fair and honest; and not designed to injure of defraud the government.
>
> It has been held that the three principles in bidding are the offer to the public, opportunity for competition, and a basis for the exact comparison of bids. A regulation of the matter which excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption.

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[137] *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018
[138] Joint Stipulation of Facts and Issues dated March 5, 2018, *Records*, Vol. 6, pp. 43-56; Pre-Trial Order dated March 20, 2018, *Id.*, pp. 80-93
[139] G.R. No. 183260, July 4, 2012
[140] 450 Phil. 744, 814 (2003)

> As pointed out in the case of *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated,*[141] an essential element of a publicly bidded contract is that all bidders must be on **equal footing,** not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bidded upon. (emphases supplied)

There is no dispute that no public bidding was conducted for the supply of materials for the repair and rehabilitation of the Rural Health Unit. Both the Prosecution and the accused presented in evidence *Quotations,* [142] all dated December 19, 2008, from three suppliers, indicating a resort to alternative methods of procurement.

**Prior to this date,** however, it would appear that JB Nieve had already **delivered,** and the municipality already **inspected and accepted,** the supplies for the Project.

The Inspection and Acceptance Report[143] indicate that the materials for the repair and rehabilitation of the Rural Health Unit were delivered by JB Nieve, as well as inspected by Arnaldo Virgo and accepted by Joseph Alfonso Manayon, on **December 18, 2008,** a day before the quotations appeared to have been distributed to suppliers.

In his Affidavit, Ramonito Amazona related that he sent out the Requests for Quotation on December 18, 2008 at 9:00 a.m., but committed an error when he dated it later in the day, after he received them back. He claimed that writing December 19, 2008 on the Requests for Quotation was an honest mistake.

This Court is not convinced.

Amazona's Affidavit was executed on October 10, 2011, almost three (3) years after December 18, 2008. After that lapse of time, a person would hardly remember that he dated a document, let alone the **exact** date and time he affixed such date, and even more unlikely, that he dated it wrongly. As explained in *People v. Fabro:*[144]

> As between a **writing or document** made contemporaneously with a transaction in which are evidenced facts pertinent to an issue, when admitted as proof of these facts, **is ordinarily regarded as more reliable proof and of greater probative value than oral testimony** of a witness as to such facts based upon memory and recollection. **The reason behind this is obvious, human memory is fallible and its force diminishes with the lapse of time.** (emphases supplied)

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[141] G.R. No. 183789, August 24, 2011, 656 SCRA 214, 231-232
[142] Exhibits "A-7", "H", and "I"
[143] Exhibit "A-6"
[144] G.R. No. 114261, February 10, 2000

In the same vein, Amazona's statement in his affidavit that the Purchase Order[145] was signed by accused Yogore on December 18, 2008, but he affixed the date only on January 8, 2009, when he returned to work, is far from persuasive. In all, the shared account of the accused that the **entire** procurement process, from the BAC resolution to resort to alternative methods of procurement up to the delivery of supplies worth ₱230,395.31 is just too strained and implausible. This is especially true in the face of the documents that tell a different story.

The Inspection and Acceptance Report, Quotations, and Purchase Order, reveal the plausible actual chronology of the procurement of the supplies for the project, improperly **commencing with their delivery** by JB Nieve on December 18, 2008. This was before, perhaps regardless of, the conduct of any form of procurement under R.A. 9184.

*Unwarranted benefits were given to accused JB Nieve through manifest partiality.*

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.

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.[146]

In *Sison v. People,*[147] 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** were given unwarranted benefits and profited from the transactions without showing proof that their prices were the most beneficial to the government. In this case, the contract was good as awarded to JB Nieve when the municipality accepted the supplies he delivered, even before any procurement could be done.

In *Abubakar v. People,*[148] the Supreme Court ruled that contractors allowed to deploy their equipment ahead of a scheduled public bidding were given unwarranted benefits and advantage. It elucidated:

> This Court finds that petitioners Baraguir and Guiani gave unwarranted benefits and advantage to several contractors by allowing them to deploy their equipment ahead of the scheduled public bidding.

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[145] Exhibit "A-8"
[146] *Sison v. People,* G.R. Nos. 170339 & 170398-403, March 9, 2010
[147] *Ibid.*
[148] G.R. Nos. 202408, 202409 & 202412, June 27, 2018

x x x

> The acts of identifying certain contractors ahead of the scheduled public bidding and of allowing the advanced deployment of their equipment through the issuance of certificates of mobilization are glaring irregularities in the bidding procedure that engender suspicion of favoritism and partiality towards the seven (7) contractors. **These irregularities create a reasonable, if not conclusive, presumption that the concerned public officials had no intention of complying with the rules on public bidding and that the results were already predetermined.**
>
> Although petitioner Baraguir concedes that contractors can only commence work after they receive a notice to proceed, he justifies the irregularity on an alleged "risk-taking strategy" employed by some contractors.
>
> **This appears to be a flimsy excuse. There is no justifiable reason why contractors should be allowed to deploy their equipment in advance considering that it would defeat the very purpose of competitive public bidding.** Benefits derived from this practice, if any, would certainly not redound to the government. (emphases supplied)

Similarly, the acceptance of JB Nieve's delivery of supplies even before any procurement process was initiated all but foreclosed the selection of any other supplier, rendering subsequent procurement activities completely useless.

*Manifest partiality in favor of JB Nieve*

In *Fuentes v. People,*[149] the Supreme Court described the three modes of committing a violation of Sec. 3(e) of R.A. 3019:

> ***As to the second element***, it is worthy to stress that the law provides three modes of commission of the crime, namely, through "manifest partiality", "evident bad faith", and/or "gross negligence." In *Coloma, Jr. v. Sandiganbayan,* the Court defined the foregoing terms as follows:
>
> > **"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud."** "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission

[149] G.R. No. 186421, April 17, 2017

> of that care which even inattentive and thoughtless men never fail to take on their own property."
>
> In other words, *there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.* On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. (Boldface and underscoring in the original; italics supplied)

The acceptance of the materials delivered by accused Nieve before the conduct of any form of procurement is strongly indicative of manifest partiality in his favor. As shown by the quotations and testified by accused Yogore,[150] there were other suppliers of the same materials in the municipality, who could have offered a better deal. They, however, were never considered.

***Liability of the members of the Bids and Awards Committee***

The members of the Bids and Awards Committee, namely, Robles, Manayon, Genovis, Galve, ad Magbanua, together with Municipal Mayor Yogore, have been charged for awarding the contract to JB Nieve without the conduct of public bidding.

As discussed above, the supplies delivered by JB Nieve were accepted **before any form of procurement**, public bidding or otherwise, was even carried out. Such acceptance was tantamount to awarding the supply contract to JB Nieve, as it effectively foreclosed the participation of any other supplier for the **delivery of materials that the municipality already had**.

The Inspection and Acceptance Report[151] reveals that *Joseph Alfonso Manayon* accepted the materials delivered by JB Nieve on December 18, 2008, in his capacity as Municipal Engineer. However, Manayon **was also a member of the Bids and Awards Committee**, who initiated procurement through *shopping* only the next day, or on December 19, 2008.

**What this shows is that, as far as Manayon was concerned, the purpose of procurement was no longer to seek the lowest price for the contract, but only to make it appear that this was done.** As BAC member, Manayon carried the responsibility of ensuring that the Procuring Entity abided by the standards set forth by R.A. 9184 and its IRR.[152] Instead, he participated in the unlawful selection of JB Nieve as supplier for the project. Having accepted JB Nieve's delivery the day before, Manayon could not have

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[150] TSN dated November 7, 2018 (a.m.), pp. 41-42
[151] Exhibit "A-6"
[152] Sec. 14, R.A. 9184

taken part in the subsequent procurement expecting the grant of the award to any other supplier than JB Nieve.

Incidentally, Manayon has pleaded guilty to the lesser offense of Violation of Sec. 7(a) of R.A. 6713, and this Court has accordingly rendered judgment against him.[153]

**The other members of the BAC, on the other hand, could not be charged with the same prior knowledge of the delivery by J.B Nieve in the absence of evidence to this effect. There is no showing that they witnessed or were aware of the delivery of the materials before they distributed the Requests for Quotation the next day.**

The signatures of the BAC, as a group, only appeared in the following documents:

(a) BAC Resolution No. 02, Series of 2008 (undated), recommending the use of alternative methods of procurement when practicable, subject to the limitations under the IRR of R.A. 9184;[154] and

(b) Quotation of JB Nieve Hardware & Construction Supplies dated December 19, 2008 (except Robles)[155]

From the evidence presented, there was no more action on the part of the BAC after signing JB Nieve's quotation. Thus, while they recommended the use of shopping as alternative method of procurement, albeit erroneously, as will be discussed later, and initiated the process by giving out quotations, maybe going as far as examining them, there is no proof that they **selected and recommended** JB Nieve as supplier of the necessary materials.

*Shopping was the wrong method of procurement.*

As discussed above, all government procurement must undergo competitive bidding, as a general rule. However, the government entity may, **subject to certain conditions**, resort to alternative methods of procurement, namely: (1) limited source bidding, (2) direct contracting, (3) repeat order, (4) shopping, and (5) negotiated procurement. The procuring entity must ensure that in any of these methods, it secures the most advantageous price for the government.[156]

In sum, the witnesses for the accused testified that due to (a) the dilapidated condition of the Rural Health Unit; (b) practicality of completing the project by December, the RHU's lean month, before it got busy again in January; and (c) the necessity of constructing birthing stations to minimize

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[153] Decision dated September 2, 2019, Records, Vol. 9, pp. 163-172
[154] Exhibit "A-3"
[155] Exhibit "A-7"
[156] *Office of the Ombudsman v. De Guzman*, G.R. No. 197886, October 4, 2017

birth mortalities, the BAC had to resort to shopping as alternative mode of procurement.

Section 48 of 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:
>
> x x x
>
> **(d) Shopping** – a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for **readily available off-the-shelf Goods or ordinary/regular equipment** to be procured directly from suppliers of known qualification;

Section 52, in turn, provides:

> *SECTION 52. Shopping.* — Shopping may be resorted to under any of the following instances:
>
> (a) When there is an unforeseen contingency requiring **immediate purchase**: Provided, however, That the amount shall not exceed Fifty thousand pesos (₱50,000); or
>
> (b) Procurement of **ordinary or regular office supplies and equipment** not available in the Procurement Service involving an amount not exeeeding Two hundred fifty thousand pesos (₱250,000): Provided, however, That the Procurement does not result in Splitting of Contracts: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.
>
> x x x

The supplies for the repair and rehabilitation of the RHU cost ₱230,395.31.[157] Even assuming that there was actual urgency in such repair, shopping was **not** an available alternative mode of procurement, being limited to immediate purchases **not exceeding Fifty Thousand Pesos (₱50,000.00).**

In any event, the accused were unable to prove the urgency of such repair.

Aside from the bare testimonies of their witnesses, the accused presented no evidence to prove the condition of the Rural Health Unit. While witness Joesanil Esportuno testified that the building was dilapidated and infested with termites that may cause it to collapse, none of the witnesses presented an inspection report on the condition of the building. Moreover, this was actually in conflict with the other reason cited for the urgency of repair – it would no longer be safe to accept patients in a building in **urgent** need of repair. Still, according to witness Dr. Nelson De La Fuente, he

[157] Disbursement Voucher, Exhibit "A-12"

advised that the repair be done during the holidays, when the RHU expected **fewer** patients, clearly indicating that the RHU continued to operate in whatever state it was in. And as with the condition of the building, there was no evidence presented to show that fewer people came to the RHU for consultation during the holidays, and then increased thereafter, to lend support to the accused's defense that repairs urgently had to be done in December. Even the Memorandum of Agreement with the DOH[158] gave them three (3) months from receipt of the funds within which to **commence** repair on the building.

Finally, while Dr. Nelson De La Fuente mentioned in his letter dated December 16, 2008[159] that the repair and rehabilitation of the RHU would "enable the Main Health Center to attend to deliveries as a **birthing station** among other functions," oddly, the Bill of Materials and Cost Estimates[160] for said project made no mention of the construction of a birthing station, but the following:

I. Repair of Walls and Doors
II. Conversion of MHO Store Room to Family Planning Room
III. Conversion of S.I. Room to Store Room
IV. Concreting of Footwalk towards Laboratory
V. Improvement of Municipal Health Extension Office (Former Assessor's Office)
VI. Improvement of Waiting Area
VII. Construction of Steel Gate & Slop Sink at the Back of Laboratory
VIII. Construction of Canopy at Waiting Area & Laboratory
IX. Electrical Works
X. Painting

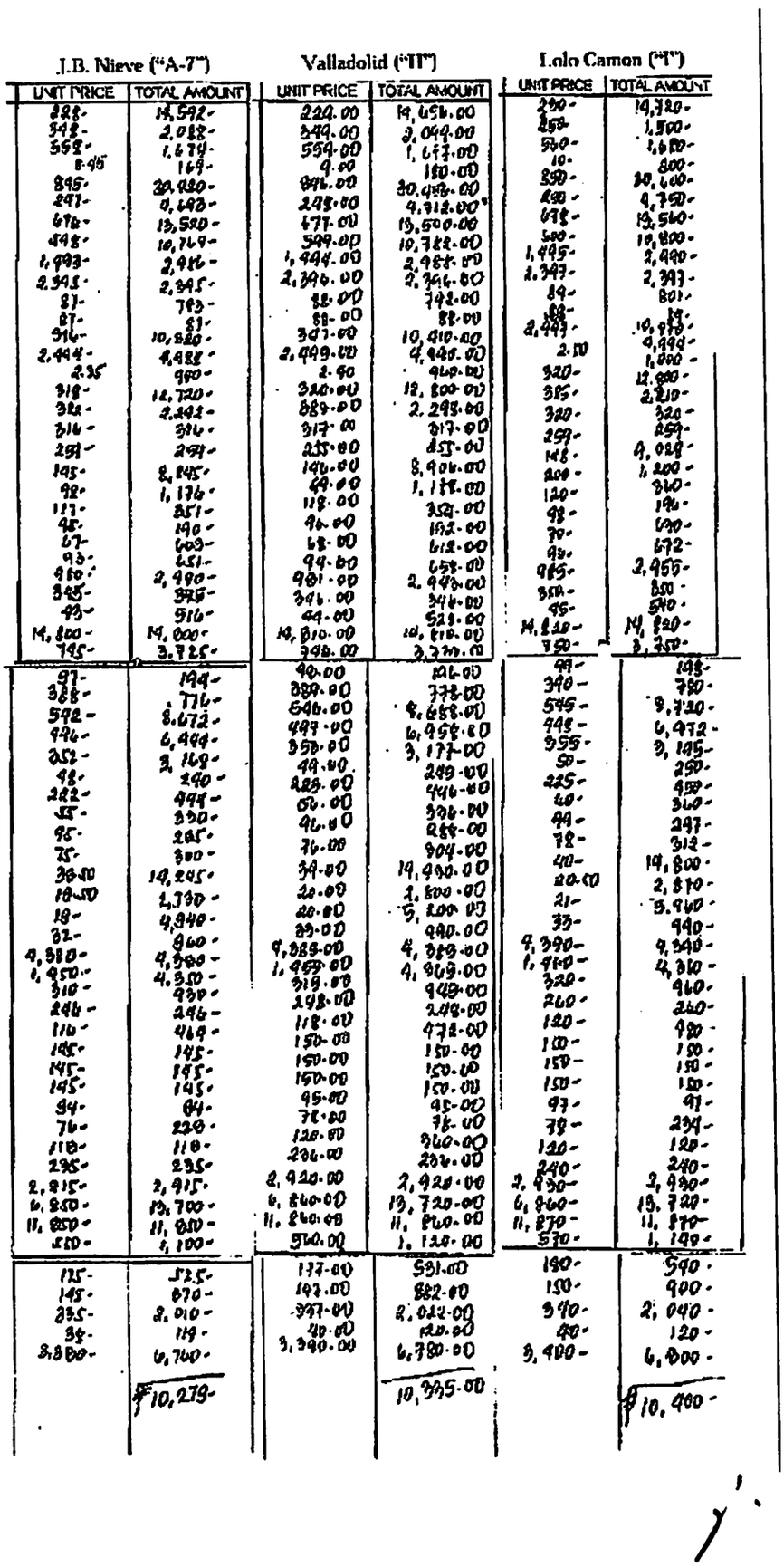
Moreover, as testified by Dr. De La Fuente, the establishment of a birthing station has been discussed long before the municipality received funds from the DOH for the rehabilitation of the RHU. There was thus **no** unforeseen contingency that would merit resort to shopping. If the DOH trust fund was indeed to be used for the establishment of birthing stations, as stated by Dr. De La Fuente in his letter dated December 16, 2008, then there was no need to rush the purchase of supplies, since the Memorandum of Agreement with the DOH gave the municipality three months from receipt of the funds to **commence** the project.

Similarly, by no stretch of imagination could the supplies necessary for the repair and rehabilitation of the RHU be considered *ordinary or regular office supplies and equipment.* As defined under *GPPB Resolution No. 12-06,* "ordinary or regular office supplies" includes supplies, commodities or materials which, depending on the procuring entity's mandate and nature of operations, are necessary in the transaction of its official businesses; and **consumed in the day-to-day operations** of said procuring entity. However, office supplies **shall not include services such as repair and maintenance**

[158] Exhibit "1-e" (Yogore, Robles, Manayon)
[159] Exhibit "A-1"
[160] Exhibit "A-2"

**of equipment and furniture,** as well as trucking, hauling, janitorial, security, and related or analogous services. While it is true that it is a municipality's mandate to safeguard the health of its constituents, the supplies for the repair of the RHU are hardly necessary in its day-to-day operations.

It may not be amiss to discuss at this juncture an interesting and telling irregularity observed by this Court in the quotations purportedly submitted by JB Nieve, Valladolid, and Lolo Camon. When juxtaposed, the entries on all quotations appear as follows:



| J.B. Nieve ("A-7") | | Valladolid ("II") | | Lolo Camon ("I") | |
|---|---|---|---|---|---|
| UNIT PRICE | TOTAL AMOUNT | UNIT PRICE | TOTAL AMOUNT | UNIT PRICE | TOTAL AMOUNT |
| 328- | 14,592- | 224.00 | 14,456.00 | 290- | 14,720- |
| 348- | 2,088- | 349.00 | 3,049.00 | 150- | 1,500- |
| 558- | 1,674- | 554.00 | 1,662.00 | 590- | 1,770- |
| 8.45 | 169- | 9.00 | 180.00 | 10- | 800- |
| 895- | 20,980- | 896.00 | 20,496.00 | 850- | 20,400- |
| 297- | 8,613- | 295.00 | 8,732.00 | 190- | 4,750- |
| 678- | 13,560- | 677.00 | 13,500.00 | 678- | 13,560- |
| 548- | 10,769- | 509.00 | 10,782.00 | 500- | 10,000- |
| 1,993- | 2,916- | 1,944.00 | 2,952.00 | 1,995- | 2,990- |
| 2,395- | 2,395- | 2,396.00 | 2,394.00 | 2,397- | 2,397- |
| 87- | 783- | 88.00 | 792.00 | 89- | 801- |
| 87- | 87- | 88.00 | 88.00 | 88- | 88- |
| 916- | 10,980- | 347.00 | 10,410.00 | 2,447- | 10,988- |
| 2,444- | 4,888- | 2,449.00 | 4,948.00 | 2.10 | 4,998- |
| 2.35 | 980- | 2.40 | 960.00 | | 1,000- |
| 318- | 12,720- | 320.00 | 12,800.00 | 320- | 12,800- |
| 322- | 2,898- | 289.00 | 2,298.00 | 385- | 2,310- |
| 316- | 316- | 317.00 | 317.00 | 320- | 320- |
| 297- | 297- | 255.00 | 255.00 | 297- | 297- |
| 195- | 8,385- | 196.00 | 8,904.00 | 148- | 4,028- |
| 92- | 1,196- | 49.00 | 1,176.00 | 200- | 1,200- |
| 117- | 351- | 118.00 | 354.00 | 120- | 360- |
| 45- | 180- | 96.00 | 192.00 | 98- | 196- |
| 67- | 603- | 68.00 | 612.00 | 70- | 630- |
| 93- | 651- | 94.00 | 658.00 | 96- | 672- |
| 950- | 2,850- | 981.00 | 2,943.00 | 985- | 2,955- |
| 345- | 345- | 346.00 | 346.00 | 350- | 350- |
| 93- | 936- | 44.00 | 528.00 | 95- | 540- |
| 14,800- | 14,800- | 14,810.00 | 14,810.00 | 14,820- | 14,820- |
| 795- | 3,975- | 798.00 | 3,990.00 | 750- | 3,750- |
| 97- | 194- | 90.00 | 180.00 | 99- | 198- |
| 388- | 776- | 389.00 | 778.00 | 390- | 780- |
| 592- | 8,672- | 646.00 | 9,688.00 | 545- | 8,720- |
| 996- | 6,444- | 997.00 | 6,958.00 | 998- | 6,972- |
| 252- | 2,169- | 958.00 | 3,174.00 | 955- | 2,145- |
| 48- | 240- | 49.00 | 249.00 | 50- | 250- |
| 222- | 999- | 223.00 | 446.00 | 225- | 450- |
| 55- | 330- | 56.00 | 336.00 | 60- | 360- |
| 95- | 285- | 96.00 | 288.00 | 99- | 297- |
| 75- | 300- | 76.00 | 304.00 | 78- | 312- |
| 36.00 | 14,245- | 34.00 | 14,430.00 | 40- | 14,800- |
| 18.00 | 1,730- | 20.00 | 1,800.00 | 20.00 | 2,310- |
| 18- | 4,940- | 20.00 | 5,200.00 | 21- | 5,940- |
| 32- | 960- | 33.00 | 990.00 | 33- | 990- |
| 4,380- | 4,380- | 4,388.00 | 4,368.00 | 4,390- | 4,390- |
| 1,450- | 4,350- | 1,459.00 | 4,869.00 | 1,460- | 4,380- |
| 310- | 930- | 319.00 | 948.00 | 320- | 960- |
| 246- | 246- | 248.00 | 248.00 | 240- | 240- |
| 116- | 464- | 118.00 | 472.00 | 120- | 480- |
| 145- | 145- | 150.00 | 150.00 | 150- | 150- |
| 145- | 145- | 150.00 | 150.00 | 150- | 150- |
| 145- | 145- | 150.00 | 150.00 | 150- | 150- |
| 94- | 94- | 95.00 | 95.00 | 97- | 97- |
| 76- | 228- | 78.00 | 78.00 | 78- | 234- |
| 118- | 118- | 120.00 | 360.00 | 120- | 120- |
| 295- | 295- | 296.00 | 296.00 | 240- | 240- |
| 2,915- | 2,915- | 2,920.00 | 2,920.00 | 2,990- | 2,990- |
| 6,850- | 13,700- | 6,860.00 | 13,720.00 | 6,860- | 13,720- |
| 11,850- | 11,850- | 11,860.00 | 11,860.00 | 11,870- | 11,870- |
| 550- | 1,100- | 560.00 | 1,120.00 | 570- | 1,140- |
| 135- | 525- | 137.00 | 531.00 | 180- | 540- |
| 145- | 870- | 142.00 | 852.00 | 150- | 900- |
| 335- | 2,010- | 337.00 | 2,022.00 | 340- | 2,040- |
| 39- | 119- | 40.00 | 120.00 | 40- | 120- |
| 3,800- | 6,740- | 3,340.00 | 6,780.00 | 3,400- | 6,800- |
| | ₱10,279- | | 10,395.00 | | ₱10,400- |

Jurisprudence on forgery, which is instructive by analogy, imparts that the trial court may validly determine forgery from its own independent examination of the documentary evidence at hand, without necessarily resorting to experts, **especially when the question involved is mere handwriting similarity or dissimilarity**, which can be determined by a visual comparison of specimen of the questioned signatures with those of the currently existing ones.[161] Here, **even the untrained eye could very clearly decipher that the entries on all three quotations were written by one and the same person**. Amazona stated in his Affidavit that he sent out the requests to three (3) suppliers, who each responded to his request.[162] Accused Nieve, for his part, testified that he had the quotation filled up, and then returned it to Amazona later that day.[163] If the same process was utilized for the other two suppliers, it would be impossible to see the very same handwriting on all three quotations.

This Court likewise finds it unusual that the **unit prices** of **all items** in JB Nieve's Quotation are **consistently the lowest** among the three quotations. The prices gradually and consistently increase in Valladolid's, and then Lolo Camon's respective quotations, with none of Lolo Camon's prices being lower than Valladolid's. The quotations are a virtual ladder of unit prices, with JB Nieve at the bottom, Valladolid in the middle, and Lolo Camon at the top.

In view of these glaring irregularities, the quotations are clearly incompetent to prove that JB Nieve offered the lowest prices for the necessary supplies. What they proved to be were means to make it appear so.

*The BAC had no hand in the selection of JB Nieve.*

As members of the BAC, accused Robles, Manayon, Genovis, Galve and Magbanua had the following responsibilities under R.A. 9184:

> *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

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[161] *Carbonell v. Carbonell-Mendes,* G.R. No. 205681, July 1, 2015
[162] Affidavit of Ramonito Amazon dated October 10, 2011, Exhibit "2-a" (Yogore, Manayon, Robles, et al.)
[163] Judicial Affidavit of Jonie Nieve dated October 25, 2018, *Records,* Vol. 6, pp. 450-458, Q&A Nos. 11-14

of technical, financial and/or legal experts to assist in the procurement process.

Regardless of whether or not procurement was properly conducted by the BAC, however, what is noticeably missing is **evidence** that the BAC recommended the award of the supply contract to JB Nieve. They may have gone through the wrong process, but from the evidence, there was no end to these means.

Nowhere in BAC Resolution No. 02, or JB Nieve's quotation, did the BAC recommend to the Head of the Procuring Entity the award of the contract to JB Nieve. Likewise, nowhere in the Records, or even any of the witnesses' testimonies, can it be deduced that the BAC issued any such recommendation. Apparently, the process stopped with the quotations that indicated that JB Nieve was offered the lowest prices for the materials. This was, in fact, the accused's common defense.

This, when considered with the observed irregularities in the quotations, validates that delivery was done even before procurement. The quotations were accomplished the next day, as properly dated, but not for its intended purpose under procurement law. **"Procurement" was done not to select the most advantageous offer, but to validate a selection already made.** Indeed, the issuance of the quotations was the last act attributable to the BAC, as their conclusion and recommendation were no longer necessary.

While the option to resort to shopping and the distribution of requests for quotation could be attributable to the BAC, there is no evidence that the members of the BAC were aware of the irregularity that attended the accomplishment of the quotations, much less participated in it. Even assuming that they were aware of such irregularity, this had no effect on decisions they never made.

***Liability of accused Yogore and Nieve***

The authority and task of issuing the Notice of Award, upon approval of the BAC's recommendation, fell in the hands of then Municipal Mayor Yogore, as Head of the Procuring Entity.[164]

No Notice of Award was issued in this case by accused Yogore to accused Nieve. Still, such award is very clear from the issuance of the Purchase Order[165] to Nieve and the Disbursement Voucher[166] for his payment. Both were signed by accused Yogore.

[164] Section 37, R.A. 9184
[165] Exhibit "A-8"
[166] Exhibit "A-12-d"

As discussed above, the supply contract was awarded to accused Nieve without the requisite public bidding. The proper conduct of procurement would have disqualified accused Nieve as bidder, being accused Yogore's brother-in-law,[167] hence a relative within the second degree of affinity.[168] Under the 2003 IRR of R.A. 9184:

> SECTION 47. Disclosure of Relations. —
>
> In addition to the proposed contents of the Invitation to Apply for Eligibility and to Bid as mentioned under Section 21 of this IRR-A, all bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR-A. **For this reason, relation to the head of the procuring entity within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity.** x x x

The fact alone that accused Nieve was related to him within the second degree of affinity should have put accused Yogore on guard. Instead, and despite this, accused Yogore proceeded to award the contract to accused Nieve notwithstanding that no proper procurement was conducted. This, accused Yogore knew, not having approved any recommendation from the BAC. Significantly, even accused Yogore testified only on having been *informed* by the BAC that the lowest price quotations were offered by JB Nieve,[169] without reference to any document bearing the BAC's recommendation after finding that JB Nieve indeed offered the lowest prices for the necessary materials.

That accused Yogore still proceeded to award the contract to accused Nieve (a) independently of any recommendation from the BAC after the conduct of procurement, and (b) notwithstanding their familial relation, showed his manifest partiality to accused Nieve. Even these legal impediments were not able to dissuade him from proceeding with the contract.

To disregard the lawful procurement process is indicative not only of manifest partiality, but also gross ignorance of the law. In *Ong v. People,*[170] the Supreme Court explained:

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[167] Exhibits "G" and "H", Birth Certificates of Romel and Ma. Theresa Yogore, Exhibit "G-2", Marriage Contract of of Jonie Nieve and Ma. Theresa Yogore

[168] *Cf. Garcia v. Dela Peña,* A.M. No. MTJ-92-687, February 9, 1994; Relationship by affinity refers to a relation by virtue of a legal bond such as marriage (*People v. Atop,* G.R. Nos. 124303-05, February 10, 1998)

[169] Counter-Affidavit of Romel Yogore, Exhibit "1-Yogore", par. 10

[170] G.R. No. 176546, September 25, 2009

> The Sandiganbayan correctly ruled that by procuring the subject truck through a negotiated purchase without public bidding, petitioner failed to comply with the above stated procedure. **Indeed, as the local chief executive, petitioner is not only expected to know the proper procedure in the procurement of supplies, she is also duty bound to follow the same and her failure to discharge this duty constitutes gross and inexcusable negligence.** (emphasis supplied)

The Supreme Court also held in *Sison v. People:*[171]

> In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. **This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.** (emphasis supplied)

There is no similar burden on accused Nieve, a private person. He is not placed in the same guarded position as accused Yogore as Municipal Mayor. The fact alone that he is the brother-in-law of accused Yogore, without any proof of any agreement on their part, does not prove conspiracy. There is also no showing that accused Nieve intended to, or caused, undue injury to the government, in receiving payment for the materials he delivered. Conspiracy cannot be presumed and must be shown as distinctly and conclusively as the crime itself.[172]

There could be various reasons why JB Nieve was singled out for the supply contract. These could range from convenience, to expediency, to bad faith, and none of these was proven. This Court recognizes the municipality's noble aim of improving its health services to its constituents and commends its intention to do so with dispatch. This, however, is different from proceeding with undue haste, to a point where laws are disregarded.

Regardless of intent, the fault in the outright selection of JB Nieve lies in the failure to give other prospective suppliers the opportunity to offer a possibly more advantageous deal to the municipality for the materials to be used for the project, which procurement law guarantees. Even the most urgent

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[171] G.R. Nos. 170339, 170398-403, March 9, 2010
[172] *People v. Cervantes,* et al., G.R. No. 191752, June 10, 2013

procurements, which this was not proven to be, are subject to the proper limitations and procedure, which must be strictly followed.

WHEREFORE, accused **ROMEL PATALITA YOGORE** is found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e) of R.A. 3019. He is hereby sentenced to suffer the indeterminate penalty of **IMPRISONMENT** of **SIX (6) years and ONE (1) month** as **minimum**, to **EIGHT (8) years** as **maximum,** and is perpetually disqualified from holding public office.

For failure of the prosecution to prove their guilt beyond reasonable doubt, accused **GIOVANNI MILLENA ROBLES, ERNESTO SEMANIA GENOVIS, DAISY CAGAYANAN GALVE, MERLENE ESPOLON MAGBANUA, AND JONIE BARCOS NIEVE** are **ACQUITTED** of the crime of Violation of Sec. 3(e) of R.A. 3019.

The bail bonds posted by accused **ROBLES, GENOVIS, GALVE, MAGBANUA** and **NIEVE** are ordered released subject to the usual accounting procedures. The Hold Departure Order issued by this Court on August 22, 2016 against them is set aside and the Order issued by the Bureau of Immigration incorporating their names in the Hold Departure List is ordered recalled and cancelled.

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.

**AMPARO M. CABOTAJE-TANG**
*Presiding Justice*