



Republic of the Philippines

SANDIGANBAYAN

Quezon City

THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

-versus-

WALTER ORDINARIA ALBOS

Accused.

X-----X

Crim. Case No.

SB-16-CRM-0537

*For Violation of Sec 3 (e) RA No.
3019, as amended*

Present:


CABOTAJE-TANG, A.M., P.J.

Chairperson

FERNANDEZ, S.J. T., J. and

FERNANDEZ, B.R., J.

Promulgated:

SEPTEMBER 6, 2009


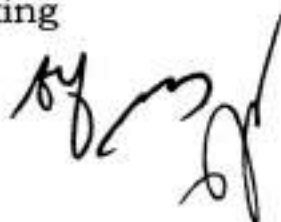
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DECISION

FERNANDEZ B. R., J.

Accused Walter Ordinaria Albos, Regional Director, Department of Education-Regional Office IX (DepEd RO IX), Pagadian, Zamboanga del Sur, stands charged before this Court for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, the accusatory portion of the Information against him reads, as follows - -

That on December 24, 2008, or sometime prior or subsequent thereto, in Pagadian City, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused WALTER ORDINARIA ALBOS, a high-ranking



public officer, with Salary Grade 28, being then Regional Director of the Department of Education, Regional Office IX, Pagadian City, Zamboanga del Sur, while in performance of his official duties, committing the offense in relation to office, through manifest partiality, evident bad faith or gross inexcusable negligence, did there and then willfully, unlawfully, and criminally give unwarranted benefits, advantage or preference to Davenport Computers, Spareparts and Services, Inc. by procuring information technology equipment worth Two Million, Nine Hundred Ninety Eight Thousand and One Hundred Pesos (P 2,998, 100.00) from the latter without competitive public bidding and without the participation of the bids and awards committee, and disregarding the procedure prescribed in R.A. 9184 (Government Procurement Reform Act) and its Revised Implementing Rules and Regulation.

CONTRARY TO LAW.

Upon arraignment, accused Albos, assisted by counsel, pleaded not guilty (Order, January 23, 2017).

Pre-trial ensued with the parties agreeing to stipulate on the following - - (1) Accused Walter Ordinaria Albos is the same person named in the Information docketed as SB-16-CRM-0537; (2) In 2008, accused Walter Ordinaria Albos was the Regional Director of the Department of Education-Regional Office IX; and, (3) The Department of Education-Regional Office IX procured information technology (IT) equipment in December 2008 (Pre-Trial Order, January 15, 2018).

Thereafter, trial commenced.

The first witness for the prosecution was **Marissa A. Santos**, the Records Officer of the Department of Budget and Management (DBM). Her testimony was dispensed with after both parties agreed to stipulate on the following - - (1) That Marissa A. Santos is the Chief Administrative Officer of the Central Records Division (CRD) of the Department of Budget and Management (DBM); (2) That the Central Records Division of the DBM has custody of the official copies of the



Special Allotment Release Order No. ROCS-08-00846 dated January 14, 2008, marked as Exhibit "O" and its Annex A as Exhibit "O-1"; (3) That attached to the said Special Allotment Release Order are copies of the following documents: (a) 1st Indorsement dated November 15, 2007, marked as Exhibit "O-2"; (b) List of Priority Development Assistance Fund for Fiscal Year 2007 marked as Exhibit "O-3"; (c) Letter dated November 13, 2007 of Congressman Erico Basilio A. Fabian addressed to the Honorable Jose C. De Venecia, Jr. marked as Exhibit "O-4"; (d) Letter dated December 12, 2007 signed by Congressman Erico Basilio A. Fabian addressed to Honorable Rolando Andaya, Jr. marked as Exhibit "O-5"; (4) That the CRD has custody of the official DBM copy of the Advise of Notice of Cash Allocation Issued (ANCAI) dated February 26, 2008 marked as Exhibit "P" and its corresponding Notice of Cash Allocation (NCA) No. 362398-1 dated February 26, 2008 marked as Exhibit "P-1"; and, (5) That the CRD of the DBM through witness Marissa A. Santos, issued certified true copies of the Special Allotment Release Order and its attachments, the ANCAI and NCA marked as Exhibits "O" to "O-1" to "O-5" and "P" and "P-1". (Order, February 14, 2018).

Thereafter, the prosecution presented **Napoleon C. Tolosa, Jr.**, the Budget Officer of the DepEd RO IX. His direct testimony was through his sworn Affidavit dated February 25, 2010 (Exh. "A"). He testified that he executed his Affidavit to expose the irregularities committed at the DepEd RO IX, particularly on the procurement of the subject IT equipment in the amount of P3,000,000.00 without public bidding. He arrived at this conclusion "because the procurement came from their Supply Office and when it presented the Disbursement Voucher (Exh. "G") for payment, it had no public bidding". He said that when he reviewed the same Disbursement Voucher, he noticed that there was no resolution from the Bids and Awards Committee (BAC). He was told by the BAC members of DepEd RO IX, who were then his supervisors, that no public bidding was conducted.

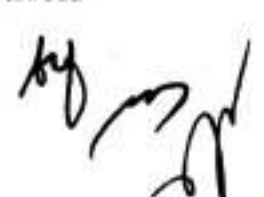
On cross-examination, witness Tolosa, Jr. testified that he has been a Budget Officer since the 1980s. In relation to this case, witness Tolosa, Jr. admitted reviewing the Disbursement Voucher (Exh. "G") and its attachments but did not recommend payment because he noticed that there was no BAC resolution for public bidding. After inquiring from the



BAC Chairman, the latter verbally confirmed that indeed there was no public bidding conducted. Witness Tolosa, Jr. further stated that all other procurements in the DepEd RO IX should also be suspended or disallowed, citing the Moratorium on the Procurement of Supplementary and Reference Materials. Although in his Affidavit dated February 25, 2010, he stated that "the procurement of IT equipment and software in issue did not undergo public bidding process as mandated by RA 9184", yet on cross-examination, he agreed that what was only suspended was the procurement of supplementary and reference materials. He added that by "IT equipment and software", he concluded that it is within the ambit of the moratorium as, according to him, it is considered as "supplementary and reference materials".

Next to testify was **Clydelyn P. Pablo**, the State Auditor IV of the Commission on Audit (COA)-Regional Office. Her testimony was dispensed with after the parties agreed to stipulate on the following - - (1) That the witness is a State Auditor IV and Audit Team Leader of the COA DepEd RO IX; (2) That in her capacity as State Auditor IV and Audit Team Leader of the COA DepEd-RO IX, the witness has custody of the following documents in connection with the procurement of the subject IT equipment by DepEd RO IX in 2008, namely: (a) Notice of Suspension No. 2011-001-101 (08); (b) Audit Observation Memorandum No. 2010-006 (09); (c) COA Inspection Report for Equipment and Facilities; (d) Disbursement Voucher and Journal Entry Voucher; (e) duplicate copy of the Check; (f) Purchase Request; (g) Purchase Order; (h) Davenport Sales Invoice No. 17753 and Official Receipt No. 5545; (i) Davenport Delivery Report Receipt No. 44215; (j) DepEd Inspection and Acceptance Report; (k) Davenport Quotation and its corresponding DepEd Request for Quotation; (l) West2East Trading Corporation and its corresponding DepEd Request for Quotation; (m) Arrex Industrial Marketing Quotation and its corresponding DepEd Request for Quotation; (4) That the witness issued certified true copies of the foregoing documents; and, (5) That the signatures above the name Clydelyn P. Pablo on the certifying portion of the documents are the signatures of the said witness (Order February 26, 2018).

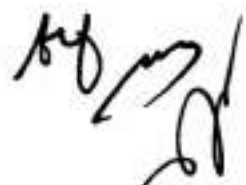
Remegio G. Suico, Jr., the State Auditor IV, COA RO IX, was called next to testify. He testified that in 2011, he was designated Audit Team Leader at the DepEd RO IX. He then



identified the following documents on record: (1) Disbursement Voucher pertaining to the payment for the procurement of computer units in the amount of P2,834,275.25 (Exh. "G"); (2) duplicate copy of the Check dated December 24, 2008 in the amount of P2,834,275.25 (Exh. "H"); (3) Purchase Request dated December 15, 2008 (Exh. "I"); (4) Official Receipt issued by the supplier Davenport dated December 24, 2008 (Exh. "L-1"); (5) Sales Invoice issued by the Supplier dated December 22, 2008 (Exh. "L"); (6) Delivery Receipt issued by the Supplier dated December 22, 2008 (Exh. "M"); (6) Inspection and Acceptance Report dated January 8, 2009 (Exh. "N"); (7) the undated Purchase Order (Exh. "K"); (8) Canvass of the price quotation and the Price Quotation issued by Davenport Computers and Spare Parts Inc. dated October 1, 2008 (Exh. "V"); Canvass Papers issued by Harpi A. Sali, the former BAC Chairman of Department of Education-Regional No. 9 (Exh. "V-1"); (9) Price Quotation issued by West2East dated October 3, 2009 (Exh. "T"); (10) the undated Canvass Quotation or Price Quotation issued by Arrex Marketing (Exh. "U"); (11) Request for Quotation (Exh. "T-1"); and, (12) Request for Quotation ("U-1").

Witness Suico, Jr. added that, after going over the foregoing documents, he noted the following deficiencies, namely: (1) it was not subjected to the competitive public bidding as provided for under Sections 5 (e) and 10 of Republic Act No. 9184; (2) the withholding taxes worth more than P163,000 were not duly remitted to the Bureau of Internal Revenue (BIR); and, (3) the deliveries were not in accordance with the specifications based on the report of the Technical and Information Technology Service of the Regional Office No. IX. As proof of his findings, he presented the Notice of Suspension dated September 8, 2011 (Exh. "C") addressed to accused Albos. In the said Notice of Suspension, he stated that (1) there was no public bidding in the procurement of the subject IT equipment because, based on his review, there was no BAC resolution awarding the contract to the winning bidder, Davenport; (2) there was no Abstract of Quotation duly signed by all the members of the BAC; and, (3) there was no competitive public bidding as required specifically under Sections 5(e) and 10 of Republic Act 9184 which specifically provides for publication in a newspaper of general circulation.

He concluded that since there was neither a public bidding nor the participation of the BAC, the procurement of



the subject IT equipment must have been done through negotiated procurement. He cited three (3) canvass papers from three (3) suppliers, which they considered as mere canvass from prospective suppliers.

In the Notice of Suspension (Exh. "C") he issued, witness Suico noted that the transaction was hastily paid two (2) days after the Disbursement Voucher (Exh. "G") was signed on December 24, 2008. He also noted from the Inspection and Acceptance Work dated January 8, 2009 (Exh. "F"), that payment was made on December 24, 2008, fifteen (15) days prior to the inspection and acceptance.

Witness Suico further testified that he reviewed the Audit Observation Memorandum (AOM) (Exh. "E") issued by the former Auditor to determine compliance as well as the other related supporting documents such as the Disbursement Voucher and the Technical Report.

In the findings of witness Suico contained in the First Indorsement dated January 15, 2012 (Exh. "6"), the Decision reads - -

WHEREFORE, premises considered, the instant request for reconsideration may now be given due course. Accordingly, subject suspension of P2,342,080.00 is hereby lifted. However, the suspension in the total amount of P656,020.00 (P631,620.00 and P24,400.00) representing quantity underruns and overpriced, respectively, should stay pending settlement thereof by effecting the deduction of the subject amount from the P300,000.00 retention money of the Supplier and by requiring him to pay the balance of P356,020.00 within ninety (90) calendar days from receipt of this Decision, otherwise, this Office will be constraint to issue Notice of Disallowance pursuant to Sections 9 and 10 of COA Circular No. 2009-006 dated 15 September 2009.

When cross-examined, witness Suico, Jr. explained that he allowed the lifting of the earlier Notice of Suspension despite the absence of a public bidding because the lifting was only premised on the actual value of the goods delivered or the fiscal accountability aspect of the transaction. The lifting



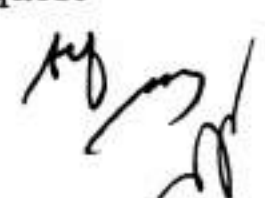
of the Notice of Suspension did not include the offenses attendant to the absence of a public bidding because, at the time of the commission of the deficiency, the regular courts, not the COA, had jurisdiction over the matter.

The next witness was **Crisologo L. Singson**, the Chief Administrative Officer of the DepEd RO IX. The following stipulations were agreed upon by the parties, namely: (1) That the witness is an employee of DepEd, Regional Office No. 9, currently holding the position of Chief Administrative Officer; (2) that, in 2008, he was the Regional Supply Officer of DepEd, Regional Office IX; (3) As such position, the witness signed the Purchase Request and the Inspection and Acceptance Report for the procurement of various IT equipment; (4) That the procurement of IT equipment worth P2,998,100.00 was not coursed through the BAC and did not undergo competitive public bidding; and, (5) That the IT equipment was directly procured from supplier Davenport Computers, Spare Parts and Services, Inc.

Witness Singson further testified that, after preparing the Purchase Request (Exh. "I"), he did not refer it to the BAC. He added that the BAC had no participation in the procurement of the subject IT equipment. He also admitted signing the Inspection and Acceptance Report (Exh. "F") after the rest of his team signed the same and inspected the delivered items on January 8, 2009, insisting that he could not have signed the Report prior to the said date.

The last witness for the prosecution was **Harpi A. Sali**. He testified that, in 2008, he was Chief Administrative Officer and the BAC Chairperson of the DepEd RO IX. He added that in 2008, the BAC did not convene to deliberate on the procurement of the subject IT equipment because there was no document submitted to the BAC for deliberation. He confirms that the subject IT equipment was procured from supplier, Davenport, without public bidding, and added that he did not know the supplier. He also denied having signed any BAC resolution awarding the contract to any supplier and the Abstract of Bids in connection with the procurement of the subject IT equipment.

On cross-examination, witness Sali denied that the BAC was directly involved in the purchase of the subject IT equipment but admitted signing the canvass forms or Request



for Quotations (Exhs. "U-1"; "V-1"; and, "T-1"). However, on re-direct, witness Sali clarified that, when he was BAC Chairman, the BAC did not deliberate on these three (3) documents.

When queried by the Court, witness Sali testified that he signed the documents as BAC Chairman because they were meant for the purchase of the subject IT equipment and was part of the procedure of the BAC. Further, witness Sali stated that the Supply Office gave the canvass forms for him to sign. After he signed them, they no longer returned to his Office or to the BAC.

Thereafter, upon a Formal Offer of Evidence dated June 18, 2018 and with the Comment/Objections dated July 5, 2018 of the defense, this Court ruled to admit prosecution's Exhibits "A"; "C"; "E" to "I"; "K" to "P"; "T" to "V"; and their respective submarkings (Minutes July 11, 2018).

Although accused Albos filed on August 2, 2018 a Motion dated August 2, 2018 seeking leave to file demurrer to the evidence, with the Opposition dated August 6, 2018 of the prosecution, this Court denied the same (Minutes, August 7, 2018).

The sole witness for the defense was accused **Walter Ordinaria Albos** himself.

Through his sworn Judicial Affidavit dated September 19, 2018, accused Albos admitted being the Regional Director of the DepEd RO IX, stationed in Pagadian City, Zamboanga del Sur, in 2008 and that his duties and responsibilities include providing leadership and management of the Department's mandate at the regional level.

He denied the charges against him on the following grounds, namely: (1) The Affidavit of complainant Napoleon Cesar Tolosa Jr., which serves as the Affidavit-Complaint in this case, was not verified by him (Tolosa Jr.) while the Certificate of Non-Forum Shopping was not signed by him (Tolosa Jr.); and, (2) the Notice of Suspension dated September 8, 2011, prepared and signed by State Auditor Remegio G. Suico, Jr. was not yet final as it was superseded and/or amended by a subsequent Decision No. 12-001-101

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(07) dated January 15, 2012, which was also prepared and signed by State Auditor Suico, Jr. .

Accused Albos also denied the allegations of BAC Chair, Harpi Sali as it was he (Sali) who was responsible for awarding the procurement of the subject IT equipment to the lowest bidder or supplier. Sali also prepared and signed the Requests for Quotations to the suppliers (Exhs. "T-1", "U-1", and "V-1"). Accused Albos stated that he neither forced nor threatened Harpi Sali to sign the requests for quotations.

He further denied not only participating in awarding the purchase of the subject IT equipment to the winning bidder and supplier as he did not even know who the winning bidder or supplier was but also participating in the alternative method of negotiated procurement without competitive bidding. He added that he did not even know that BAC Chairman Harpi Sali resorted to the alternative method of negotiated procurement.

As Regional Director of the DepEd RO IX, accused Albos maintains that it was neither his duty to conduct public bidding nor resort to negotiated procurement. This function belongs to BAC Chairman Sali. Accused Albos emphasized that his only participation in the purchase of the subject IT equipment was to sign the documents which were complete on its face and already prepared and signed by his subordinates, such as the Disbursement Voucher (Exh. "G") prepared by his subordinate, John S. Jacoba.

Aside from the said Disbursement Voucher, accused Albos admitted signing the check payable to Davenport (Exh. "H"), as part of his duty and only after first ascertaining the completeness of the documentary requirements from his subordinates and the disbursing officer who prepared the check.

Accused Albos also admitted signing not only the Purchase Request (Exh. "I") prepared by his subordinate, Crisologo Singson but also the Purchase Order (Exh. "K") prepared by his subordinates, Rogelio Jalit and John Jacoba because it was his duty to sign the same after relying, in good faith, that his subordinates regularly prepared them.

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He, however, denied having known that the purchase of the subject IT equipment were not coursed through the BAC and did not undergo competitive bidding prior to his signing the documents. He only learned of it after he was already charged before the Office of the Ombudsman and before this Court. He, likewise, denied knowing that the subject IT equipment were directly procured from Davenport since it was explained to him by his subordinates that the BAC was the one who awarded the purchase to Davenport and that the BAC did its job.

Finally, accused Albos laments that Harpi Sali, Crisologo Singson, Rogelio S. Jalit, John Jacoba and Davenport, who were the persons responsible of the transaction, were never charged. He insists that he was singled out because they harbored ill feelings against him for being strict and did not consent to their wrongdoings and requests for promotion without being qualified.

On cross-examination, accused Albos maintains that he himself verified and checked the completeness of the supporting documents and the availability of the cash for the said transaction.

The defense formally offered the Decision No. 12-001-101 (07) dated January 15, 2012 of COA Auditor Remegio Suico, Jr. (Exh. "6"). This was eventually admitted by the Court (Order, October 8, 2018).

After being allowed to present rebuttal evidence (Order, November 15, 2018), the prosecution presented **Adelaiza Ybanez**, the current Audit Team Leader of the DepEd RO IX, Pagadian City, who assumed office on March 23, 2018 pursuant to COA Reassignment Order No. 2018-17 dated January 23, 2018. As Audit Team Leader, one of her important functions includes conducting audit on the accounts and transactions of the DepEd RO IX and to exercise custody of the official files turned over to her by the previous Audit Team Leader.

Witness Ybanez brought a copy of a Letter dated December 19, 2011 (Exh. "D") in connection with the Notice of Suspension No. 2011-001-101-08 dated September 8, 2011 (Exh. "C"), which she identified as part of the documents turned over to her by the previous Audit Team Leader [dated



December 19, 2011] (Exh. "D") addressed to Fermo T. Avila, the Supervising Auditor at that time, through the Audit Team Leader Remigio Suico, Jr. from accused Albos.

Although the prosecution orally offered said Letter (Exh. "D") it was not included in its Formal Offer of Evidence.

On sur-rebuttal, the defense recalled accused Albos. He testified that he had no participation in the preparation of the December 19, 2011 Letter (Exh. "D") addressed to Fermo Avila but admitted affixing his signature on the same.

We now rule.

This case stems from an Affidavit-Complaint dated February 25, 2010 (Exh. "A") of Napoleon Caesar Tolosa Jr. filed before the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) against then Regional Director accused Albos and then Chief Administrative Officer-Finance Elizabeth Benito Tatel, both of the Department of Education, Regional Office IX, for violations of Sections 3(e) and (g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Complainant Tolosa Jr., an Administrative Officer II of DepEd RO IX assigned at the Budget and Finance Division, alleges, that in 2008, DepEd RO IX procured information and technology (IT) equipment and software for P3,000,000.00. He submitted copies of the Special Allotment Release Order (SARO) No. ROCS-08-00846 dated 14 January 2008 (Exh. "O" and "O-1" to "O-5") and the Advice of Notice of Cash Allocation Issued (NCAI) Fund 101 dated February 28, 2008 (Exh. "P"), which show that the amount of P3,000,000.00 was provided to DepEd RO IX for the procurement. To prove that the amount was disbursed, complainant Tolosa Jr. also submitted a page of the Statement of Allotment, Obligation and Balances (SAOB) of DepEd RO IX as of December 31, 2008, signed by accused Albos.

According to complainant Tolosa Jr., the procurement was illegal because not only was it a violation of DepEd Order No. 38, series of 2007, suspending the procurement of supplementary and reference materials but also no public bidding was conducted as mandated by R. A. No. 9184 or the Government Procurement Reform Act.



Hence, this case.

Section 3(e) of Republic Act No. 3019 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:

x x x

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

As could be culled from the aforementioned provision, the three (3) elements necessary to find the accused criminally liable are - - (1) that the accused must be a public officer discharging administrative, judicial or official functions; (2) that the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and, (3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions (*Consigna vs. People*, G.R. No. 175750-51, April 2, 2014).

There is no longer any necessity for further discussion on the first element as accused Albos admits being the Regional Director, DepEd RO IX at Pagadian, Zamboanga del Sur at the time material to this case. Hence, a public officer.

The second element enumerates the three (3) modes of committing the offense, namely - - (1) manifest partiality; (2) evident bad faith; or, (3) gross inexcusable negligence.



Our Supreme Court in *Sison vs. People* (G.R. Nos. 170339, 170398-403, March 9, 2010), aptly guided us on how these terms mean, to wit - -

“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 of that care which even inattentive and thoughtless men never fail to take on their own property.

On the other hand, Sec. 5(e) of R. A. No. 9184, otherwise known as the Government Procurement Reform Act, defines the term “competitive bidding”, as - -

(e) *Competitive Bidding* - refers to a method of procurement which is open to participation by any interested party and which consist of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluations of bids, post - qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.

Sec. 10 of the same law also provides - -

Sec. 10. Competitive Bidding. - All procurement shall be done through competitive bidding, except as provided for in Article XVI of this Act.

In this case, except for the Request for Quotation and the three (3) quotations from three (3) interested bidders,



namely, West2East Trading Corporation; Arrex Industrial Marketing; and Davenport Computer Spareparts and Services, Inc. (Davenport), no other documents related to the conduct of a public bidding were presented.

Harpi Sali, the BAC Chairman of the DepEd RO IX in 2008, categorically declared (TSN, May 31, 2008, pp. 8-9) that there was no public bidding - -

PROS. HERNANDEZ:

Q: Okay. In connection with this case and as the former Chief Administrative Office and BAC Chairperson, do you know, Mr. Witness, if the Regional Office procured goods or services in the year 2008?

WITNESS:

A: Yes, Ma'am.

Q: And what were those items procured by DepEd RO9?

A: IT materials, Ma'am, IT equipment like computers.

Q: Okay. You mentioned that one of your functions as BAC Chair is to convene the Bids and Awards Committee, and during your term as the BAC Chairperson and in the procurement of the IT equipment, did the Bids and Awards Committee convene to deliberate on the procurement of the said equipment?

A: None, Ma'am.

Q: Why none, Mr. Witness?

A: Because there was no document that were submitted to the BAC for deliberation.

Q: So, what was the participation of the Bids and Awards Committee in the procurement of the IT equipment subject of this case?

A: None, Ma'am.

Q: If you know, Mr. Witness, how was the IT equipment procured?



A: It was procured to quotation by the supplier Davenport without public bidding.

Q: Do you know who the supplier of the IT equipment was?

A: No, Ma'am.

PROS. HERNANDEZ:

Q: As the BAC Chairperson, did you sign any Bids and Awards Committee Resolution awarding the contract to the supplier that you mentioned?

A: None, Ma'am.

Q: Do you, as a Chairperson or any of the Member of the Bids and Awards Committee signed any Abstract of Bids in connection with the procurement of the IT equipment?

A: None, Ma'am.

Additionally, Supply Officer Crisologo Singson also confirmed that no public bidding occurred (TSN, April 25, 2018, pp. 9-10) - -

PROS. HERNANDEZ:

Q: Mr. Witness, as a Supply Officer and after your preparation of the Purchase Request---
(Interrupted)

WITNESS:

A: Yes.

Q: Did you refer the said Purchase Request to the Bids and Awards Committee?

A: No.

Q: And what was the participation of the Bids and Awards Committee of DepEd RO 9 to the procurement of the IT equipment subject of this case?

WITNESS:

A: None.

Clearly, no public bidding indeed occurred.

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Although it would have been enough for this Court to end its discussions on this singular issue, it would not, however, be fair and adequate if We did not even consider the propriety of resorting to the other alternative methods of procurement in light of the failure to conduct a public bidding.

Sec. 48 of R.A. 9184 provides for the rules on alternative methods of procurement, to wit:

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:

a. Limited Source Bidding, otherwise known as Selective Bidding - a method of procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

b. Direct Contracting, otherwise known as Single Source Procurement - a method of procurement that does not require elaborate bidding documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

c. Repeat Order - a method of procurement that involves a direct procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through competitive bidding;

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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; or

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.

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

A closer look at the foregoing enumeration will reveal that each alternative mode of procurement, particularly on direct contracting and negotiated procurement, provide specific conditions before each could be resorted to.

However, accused Albos made no attempts to show that the award of the contract to Davenport can be justified by resorting to direct contracting or negotiated procurement. Instead, accused Albos merely claims that he neither participated in the awarding of the subject IT equipment to Davenport nor knew that the BAC resorted to the alternative method of negotiated procurement.

Clearly, the action of accused Albos was done with manifest partiality and evident bad faith. Notwithstanding the excuses, albeit flimsy, of accused Albos, the prosecution was able to clearly establish that accused Albos approved the Disbursement Voucher (Exh. "G") thereby causing the payment of P2,834,275.25 (Exh. "H"), despite the incompleteness of the supporting documents. Accused Albos himself admitted that the documents he signed had no legal effect unless he signed them as the approving officer (TSN, October 8, 2018, pp. 12-13), to wit - -

A handwritten signature in black ink, appearing to be a stylized representation of the name 'Albos'.

PROSECUTOR BALISACAN:

Q: So my question Mr. Albos is this: In the disbursement voucher, the purchase request and the purchase order, you signed as the approving authority, correct?

A: Yes, sir.

Q: In fact, those documents — the disbursement voucher, the purchase request and the purchase order would not have any legal effect unless you sign them, correct?

A: Yes, sir.

Q: So you confirm that even if your subordinates have already presented you with these documents, it is still within your authority to approve them, correct?

A: Yes, sir.

Accused Albos cannot now feign ignorance of the fact that the BAC never conducted a public bidding and that the subject IT equipment were directly procured from Davenport, as he himself allowed the award of the contract and the eventual payment to the said supplier.

Likewise, accused Albos cannot hide behind his claim that he first verified from his subordinates as to the regularity and completeness of the documents he was to sign. The Disbursement Voucher (Exh. "G") itself clearly shows that this same document was incomplete on its face. The Certification portion of the same document, particularly on the boxes "Supporting Documents Complete"; "Cash Available"; and, "Subject to ADA where applicable", do not indicate any check marks.

Moreover, there was no justifiable ground for the immediate award of the contract to Davenport. Neither was there any showing that any imminent damage to or loss of life or property would justify the use of the alternative method of negotiated procurement or that the use of the alternative method of procurement was upon the recommendation of the BAC. The hasty acts of accused Albos of signing the Disbursement Voucher and in issuing the check to facilitate payment to Davenport, even when the subject IT equipment



was not even inspected, makes the procedure in the subject transaction highly suspicious.

On the third element, the law shows us two (2) ways of committing Sec. 3 (e) of R.A. No. 3019, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference.

In considering undue injury as having been caused upon any party, including the Government, We took guidance from *Llorente vs. Sandiganbayan* (G.R. No. 122166. March 11, 1998), where our Supreme Court ruled - -

X x x. 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. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

In jurisprudence, undue injury is consistently interpreted as actual damage. Undue has been defined as more than necessary, not proper, [or] illegal; and injury as any wrong or damage done to another, either in his person, rights, reputation or property[;] [that is, the] invasion of any legally protected interest of another. Actual damage, in the context of these definitions, is akin to that in civil law.

Although there were notable irregularities in the procurement of the subject IT equipment, these were, nonetheless, delivered to the DepEd RO IX for the various beneficiary schools in the 2nd District of Zamboanga City.

However, We are quick to note that the acts of accused Albos gave unwarranted benefits, advantage or preference to the supplier, Davenport.

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Not only was Davenport awarded the procurement contract without the benefit of a fair system in determining the best price for the government through public bidding but also accused Albos clearly facilitated the grant of unwarranted benefit, advantage or preference to Davenport.

Finally, we must always remember that a conviction in criminal cases mandates a higher degree of proof beyond reasonable doubt. Section 2, Rule 133 of the Revised Rules on Evidence describes this as - -

Section 2. Proof beyond reasonable doubt. - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This Court finds that the prosecution fulfilled this mandate.

WHEREFORE, judgment is hereby rendered finding accused Walter Ordinaria Albos **GUILTY** beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and, in default of any modifying circumstances in attendance, sentencing him to an indeterminate penalty ranging from **six (6) years and one (1) month, as minimum, to eight (8) years, as maximum**, and to suffer perpetual absolute disqualification; and, to pay the costs.

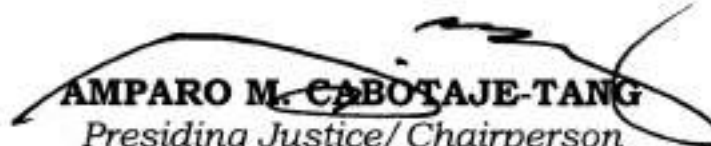
SO ORDERED.


Quezon City, Philippines.


BERNELITO R. FERNANDEZ
Associate Justice



WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice/Chairperson


SARAH JANE T. FERNANDEZ*
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.


AMPARO M. CABOTAJE-TANG
Chairperson, Third Division
Presiding Justice

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

BRF/vlg/berlin

**Sitting as Special Member as per Administrative Order No. 262-2018 dated April 30, 2018.*

