



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
Quezon City

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-16-CRM-0582

For: Violation of Sec. 3(e),
R.A. No. 3019

Crim. Case No. SB-16-CRM-0583

For: Violation of Sec. 3(h),
R.A. No. 3019

- versus -

SUSANA ARIOLA SALVACION
(SG 23), Dean, College of Allied
Medicine, Southern Luzon State
University,

Accused.

Present:

GOMEZ-ESTOESTA, J., Chairperson,
TRESPESES, J., and
HIDALGO, J.

Promulgated:

January 25, 2019 *Y2*

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DECISION

HIDALGO, J.:

The People of the Philippines charged **SUSANA ARIOLA SALVACION** (accused Salvacion for brevity), Dean of the College of Allied Medicine (COAM), Southern Luzon State University (SLSU), for Violation of Sections 3(e) and (h) of Republic Act (RA) 3019 in two separate INFORMATIONS quoted below, to wit:

For Criminal Case No. SB 16 CRM 0582:

“That during the period from 16 April to 14 May 2012, or some-time prior or subsequent thereto, in the Municipality of Lucban, Quezon, Philippines, and within the jurisdiction of the Honorable Sandiganbayan, accused **SUSANA A. SALVACION**, a high ranking public officer, being then the Dean of the College of Allied Medicine (COAM) at the Southern Luzon State University (SLSU), committing the offense in relation to and taking ad-

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vantage of her official functions, with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Nurmed Hyperlearn Review and Tutorial Services (Nurmed), her own private review center, by allowing Nurmed to conduct review classes at the COAM auditorium for a period of 21 days, from 16 April 2012 to 14 May 2012, without the latter securing a permit or authority to use the COAM auditorium and without entering into a contract or memorandum or agreement with SLSU that would determine the amount of reasonable compensation for the use of the COAM auditorium. (emphasis ours)

CONTRARY TO LAW.”

For Criminal Case No. SB 16 CRM 0583:

“That during the period from 16 April 2012 to 14 May 2012, or sometime prior or subsequent thereto, in the Municipality of Lucban, Quezon, Philippines, and within the jurisdiction of the Honorable Sandiganbayan, accused SUSANA A. SALVACION, a high ranking public officer, being then the Dean of the College of Allied Medicine (COAM) at the Southern Luzon State University (SLSU) and as such, was responsible for the over-all administration of the College and its facilities, committing the offense in relation to her office and taking advantage thereof, **did then and there wilfully, unlawfully and criminally introduce and promote Nurmed Hyperlearn Review and Tutorial Services (Nurmed) as an alternative review facility to SLSU students who would be taking the nursing licensure examinations, and facilitate the use of the COAM auditorium as venue for Nurmed’s review classes without requiring a permit or contract for the use of the said auditorium, said accused having a direct financial or pecuniary interest therein considering the fact that she is the owner of Nurmed, (emphasis ours)**

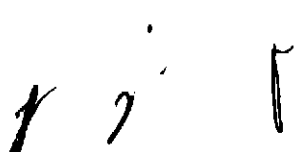
CONTRARY TO LAW.”

ANTECEDENT FACTS:

The cases were filed with this Court on August 24, 2016. Immediately thereafter, a Hold Departure Order dated August 30, 2016¹ and a Warrant of Arrest dated September 14, 2016² were issued against accused Salvacion. For her provisional liberty, she posted bail bond on September 23, 2016 for both cases.

¹ Record, Vol. 1, p. 87.

² Id. at 99.



Accused Salvacion was arraigned on October 17, 2016, with the assistance of her counsel and she pleaded NOT GUILTY to the crimes charged.³ Pre-trial Conference took place on June 22, 2017. During said proceedings, the parties entered into the following stipulations:

1. That the accused is a public officer being the Dean of the College of Allied Medicine at the Southern Luzon State University (SLSU). (underline ours)
2. The identity of the accused as the same being charged in the Information.
3. That NURMED conducted review classes at the College of Allied Medicine Auditorium owned by Southern Luzon State University (SLSU) from April 15 to May 14, 2012.
4. That SLSU is governed by Board of Regents.

Likewise, they marked their respective documentary evidence and identified the following issues:

1. Whether or not the accused is liable for violating Section 3(e) of Republic Act 3019 as charged;
2. Whether or not the accused is liable for violating Section 3(h) of Republic Act 3019 as charged.⁴

EVIDENCE PRESENTED

FOR THE PROSECUTION:

To substantiate the charges filed, the prosecution presented testimonial and documentary evidence.

Testimonial:

The following witnesses testified:

Fidel A. Suarion (Suarion), whose testimony was stipulated consisting of 1) he is the Secretary to the Sangguniang Bayan (SB) of Lucban, Quezon since 1990; (2) That he can testify on his duties and functions as SB Secretary, as follows, (a) That he attends the regular and special sessions of the Sangguniang Bayan; (b) That he prepares the Minutes of the regular and special sessions of the Sangguniang Bayan; (c) That he makes searches of the resolu-

³ Order dated 17 October 2016, Record, Vol. 1, p. 130.

⁴ Pre Trial Order dated June 22, 2017, Record, Vol. 1, pp. 187-193.

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tions and ordinances approved by the Sangguniang Bayan; (d) That he furnishes all concerned with copies of all resolutions and ordinances and (e) That he is the custodian of all Sangguniang Bayan records.⁵

Edeliza P. Macasero (Macasero), whose testimony was likewise stipulated consisting of 1) she is the Municipal Treasurer of Lucban Quezon since August 28, 2014 and (2) that the Office of the Municipal Treasure is in-charge of the collection of receipts and revenues and it is in custody of the documents pertaining to Business Permits and Licensing. She identified **Exhibits “C” “D” “E” “F” and “G”**.⁶

Federico B. Belen (Belen), a Secondary School Teacher, Member of the SB of Lucban and the Chairman of the Committe on Education. He said that, on July 6 and 9, 2012, the SB conducted an investigation about an undated anonymous letter⁷ against Nurmed sent to the Office of the Mayor. The latter referred said letter to the SB, specifically to the Committees on Education and on Good Government. In the course of the investigation, SB discussed eight (8) issues pointed out in the anonymous complaint. These issues are: (1) *Ang agarang pagpapalit ng review center na ayon sa dekana ay Hindi naging maganda at maayos dahil sa naging Bunga ng nakaraang board examination;* (2) *Ang pagbabago sa Aim One Center bilang matagal na review center sa bagong Nurmed Hyperlearning and Tutorial Center (initially for midwifery) sa solong pag-aari ng dekana ng kolehiyo na si Dr. Susana Salvacion at di umano sa pamamahala ng kanyang Anak na si Cel Gina Salvacion Dator;* (3) *Ang pagpili ng ilang magagaling na mga nagsipagtapos bilang unang batch na magrereview upang magkaroon ng magandang bunga ang Nurmed bilang bagong review center at pagkatapos nito ang mga natitira naman para sa ikalawa at huling batch;* (4) *Ang di-umanong sapilitan sa mga matatalinong nagsipagtapos na magreview sa bagong review center at mag-ing bahagi ng unang batch;* (5) *Ang tuwirang pagkaitan ang mga nagsipagtapos na mareview (ikalawang batch) ayon sa gusto nilang panahon o pagkakataon;* (6) *Ang di makatuwirang halaga ng mga bayarin ng mga nagrereview;* (7) *Ang di umanong paggamit ng ilang review materials na mula sa dating review center;* and (8) *Ang di umanong paggamit ng Nurmed sa pasilidad ng SLSU sa mahigit kumulang na isang buwan bago lumipat sa lugar ng itinadhana ng review center.* In connection with the investigation, the SB also invited reviewees of Nurmed Review Center.

On cross-examination, he admitted that, ordinarily, if a complaint or letter addressed to the SB is not signed or is anonymous, the Vice Mayor does not consider it, but in this case, since the anonymous complaint was indorsed by then Mayor, Moises Villaseñor, the same was accommodated by the SB.

⁵ TSN dated July 12, 2017.

⁶ TSN dated July 13, 2017.

⁷ Record, Vol. 1, p. 26.

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He admitted that a Committee Report was prepared by the SB but there was no recommendation made. Apparently, some of the issues were favorable to the accused while some were not. The reviewees who were called during the investigation also admitted that some of the issues were true while the others are favorable to accused Salvacion.⁸

Dr. Petronillo V. Faller (Faller), a physician and also a Sangguniang Bayan Member in 2012. He corroborated the testimony of Mr. Belen in so far as the investigation conducted by the SB on July 6 and 9, 2012.⁹

Moises B. Villaseñor (Villaseñor), the Municipal Mayor of Lucban, Quezon in 2012. He filed a Complaint-Affidavit and a Supplemental Complain-Affidavit against accused Salvacion and her daughter Cel Gina Salvacion-Dator with the Office of the Ombudsman-Luzon. The said Complaint-Affidavit and Supplemental Complaint-Affidavit were adopted as his Direct-examination. That among others, the Affidavit-Complaint states that:

“Dean Salvacion applied for a Mayor’s Permit to operate a Review School initially for midwives. The said review school is registered under the name of Dean Salvacion, thus it is wholly owned by Dean Salvacion and is being managed by her daughter, Cel Gina Salvacion-Dator. While the same mayor’s permit states that the review school has its address at No. 56 Plaridel St., Brgy. 6, Lucban, Quezon, the review school held its review classes from April 16 to May 14, 201 2 at the auditorium of the Southern Luzon State University. And that for the whole month, the university’s auditorium together with its air-conditioning were utilized without Dean Salvacion paying for its use.”

On cross examination, he admitted that, he filed the complaint-Affidavit in his capacity as a concerned citizen, a taxpayer, mayor and councilor. When asked, he said that he and the incumbent Mayor [Mayor Dator], who happens to be the son-in-law of Dean Salvacion being the husband of Cel Gina Salvacion Dator are not political rivals, but for several instances, they were pitted against each other when they both ran as Mayor of Lucban in 2010 and 2016. He testified that, he received oral and written complaints and anonymous letters from concerned citizens, but did not immediately indorse the same to the SB for investigation. Anent the anonymous complaint against accused Salvacion however, he immediately indorsed it to the SB. The gist of the complaint is about the Southern Luzon State University’s auditorium being utilized as review center by accused Salvacion and said center admitted only intelligent students. The incompetent ones were just told to take the review next time. Student reviewees also complained about the food that were fed them. That even without any supporting documents, he believed the allegations in the affidavit- complaint

⁸ TSN dated September 26, 2017.

⁹ Id.

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because he was able to talk directly to some parents who had the same complaint. He continued to say that he filed the cases against accused Salvacion with the Ombudsman after receiving the transcript relative to the investigation that was conducted- notwithstanding the fact that the SB did not make any recommendation about the complaint. That when he saw the investigation report he believed that a violation was committed by accused Salvacion.¹⁰

Maria Joriselle Origenes (Origenes), a graduate of Nursing at SLSU in 2012. She testified that there were around 200 nursing graduates in 2012. Out of the 200 graduates, 61 of them enrolled at Nurmed. She further testified that they reviewed at Nurmed for around two (2) months, every day from Monday to Friday. The fees paid included review handouts and in house review for almost one (1) month at Kamayan sa Palaisdaan Hotel and Restaurant.¹¹

Melanie Salazar Cadao (Cadao), the Director of the Business Affairs Office (BAO) of SLSU since 2016. She identified the Official Receipt as well as the Record Requisition Slip issued by her office but maintains that there are no records on file with her office of any Contract of Lease or Memorandum of Agreement between SLSU and accused Salvacion or Nurmed Hyper Learn Review Center and Tutorial Services for the period of April 11 to May 14, 2012.¹² Likewise, she did not find a letter request from accused Salvacion regarding the use of the auditorium. She further testified that she tried to verify from the record in her office regarding these documents but discovered there was none prompting her to make a request with the Head of the SLSU Records Office.¹³

And,

Engr. Stella Y. Dahilig (Dahilig), the Director of the BAO of SLSU in 2012. She testified that according to page 14 of the Manual of the Operations of the Business Affairs Office¹⁴ (Manual), accused Salvacion is considered as an outsider client of the university when she used the auditorium because she used it not in her capacity as dean of COAM but as the owner of Nurmed. She further testified that, there is a procedure in renting out the facilities of the university including the auditorium and the said procedure is outlined in the Manual. She also claims that the auditorium is under the direct

¹⁰ TSN dated September 26, 2017.

¹¹ TSN dated November 29, 2017, pp. 22-23.

¹² TSN dated November 29, 2017, p. 16.

¹³ TSN dated October 25, 2017.

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supervision of the Dean of the College of Allied Medicine, no less than accused Salvacion¹⁵

On cross examination, she admitted about the existence of an Official Receipt issued by the Cashier Department for the use of the COAM Auditorium from April 8 to May 14, 2012 dated July 10, 2012.¹⁶

After the testimony of the above witnesses, the prosecution offered the following documentary evidence for both cases consisting of the following:

“Exhibit “A”, Complaint-Affidavit of Moises B. Villaseñor and Casiano Sonny O. Venezuela dated July 16, 2012; **“Exhibit A-1”**, Signature of Moises B. Villaseñor; **“Exhibit A-2”**, Signature of Casiano Sonny O. Venezuela; **Exhibit “B”**, Supplemental Complaint-Affidavit dated August 6, 2012 of Moises B. Villaseñor and Casiano Sonny O. Venezuela; **Exhibit “B-1”**, Signature of Moises B. Villaseñor; **Exhibit “B-2”**, Signature of Casiano Sonny O. Venezuela; **Exhibit “C”**, Certified True/Xerox Copy of the Mayor’s Permit issued to NURMED Hyperlearn Review and Tutorial Services; **Exhibit “D”** and **“D-1”**, Certified True/xerox copy of the application form for business permit tax year 2012; **Exhibit “E”**, Certified True/xerox copy of the Barangay Business Clearance granted to Nurmed Hyperlearn issued on January 30, 2012; **Exhibit “F”**, Certified true/xerox copy of the Community Tax Certificate CCI2011 02383610 issued to Susana A. Salvacion; **Exhibit “G”**, Certified True/xerox Copy of Official Receipt No. 0538909; **Exhibit “H”**, Katitikan Ng Pangkaraniwang Pulong Ng Sangguniang Bayan Ng Lucban, Quezon, na idinaos sa Batasang Pambayan, Bahay Pamahalaan, noong Ika-9 ng Hulyo 2012; **Exhibit “H-1”**, pages 6-8, mga ulat ng Lupon I Unang Pagdinig; **Exhibit “H-1-a”** page 7, **Exhibit “H-1-a-1”** paragraph 2; **“Exhibit H-1-a-2”**, paragraph 4; **Exhibit “H-1-b”** page 8, par. 6; **Exhibit “H-1-b-1”**, par. 8; **Exhibit “H-2”**, pages 8-20, “Tala (Transcription) Ng Panlupong Pandinig” **Exhibit “H-3”**, pages 20-22, II. Ikalawang Pagdinig; **Exhibit “H-3-a”**, page 21; **Exhibit “H-3-a-1”**, par. 2, page 21; **Exhibit “H-3-a-2”**, par 4, page 21; **Exhibit “H-4”**, pages 22-33 “Tala (Transcription) Ng Panlupong Pagdinig; **Exhibit “H-4-a”**, par. 8 page 22; **Exhibit “I”**, DTI Certification; **Exhibit “I-1”**, signature of Virgilio P. Fulgencio; **Exhibit “I-2”**, Initials below the name of Virgilio P. Fulgencio; **Exhibit “J”**, Official Receipt dated July 10, 2012; **Exhibit “K”**, Record Requisition Slip; **Exhibits “K-1”**, signature of Aurora Sumague; **Exhibit “L”**, Manual of Operations; **Exhibits “L-1”**, page 14-operations; **Exhibit “L-2”**, page 35- flow chart for the use of SLSU facilities/equipment;¹⁷

which this Court admitted in a Resolution¹⁸ dated February 23, 2018.

¹⁵ TSN dated November 28, 2017, p. 9.

¹⁶ TSN dated November 28, 2017.

¹⁷ Record, Vol. 1, pp. 352-358.

¹⁸ Record, Vol. 2, pp. 14-16.

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FOR THE DEFENSE:

Also, the defense presented both testimonial and documentary evidence.

Testimonial:

The following witnesses testified:

Dean Susana Ariola Salvacion, the accused. She testified that the auditorium, sound system and other facilities of SLSU are open to all. What is required only is, a letter request should be filed with the BAO, which she did. After the request, the Dean's Office will note of the availability of the facilities during the dates requested. If the auditorium or any other facility is available then they could use it immediately or the requestor could pay its rent to the BAO. Regarding to the use by Nurmed of the COAM auditorium, she candidly said that, when she came to know that the auditorium is available during the dates that Nurmed needed it for review, she wrote a letter request addressed to the BAO specifically to Prof. Delsie Sabas or the one in charge for the rental of the auditorium. She delivered the letter request to the office of Prof. Sabas and same was received by a certain Ms. Caballes. Nurmed thus proceeded to use the auditorium for the review of the students. The use of the auditorium was duly paid by Nurmed.¹⁹

Jameel Mykaela O. Bisagas, a graduate of Nursing at SLSU in 2012. She was the class president of the graduating class during said year. There were 220 nursing graduates and around 50-60 graduates reviewed at Nurmed for the July 2012 examination. All the reviewees passed the Nursing Licensure Examination. For the December 2012 examination, 158 reviewed under Nurmed and again 100% passed the examination. The review was conducted at the COAM auditorium located inside SLSU. She added that, it was the students who chose the COAM auditorium to be the venue of their review classes foremost reason is, it is accessible to them. The choice was in consultation with the faculty members and their parents. That altogether there were four (4) review centers for nurses. Nurmed was chosen because it offered the cheapest fees beside the fact that it has the most strategic location, i.e., the review classes are held at the SLSU compound.²⁰

Lorna L. Cano, an associate professor of SLSU and is assigned at the Physical Plant and Facilities. She testified that, she is in charge of the auditorium and only a letter request is needed for its use. That a

¹⁹ TSN dated May 31, 2018.

²⁰ TSN dated April 26, 2018.

letter request for scheduling [was] addressed to Dean Salvacion who recommended to BAO.²¹

Prof. Necita Delsie M. Sabas, presently a Professor at SLSU and was Assistant Director of the Business Affairs Office of SLSU in 2012. As Assistant Director, she provides assistance to her Director through the operation of the facilities and other income-generating projects of the university. Also, she was the manager of the printing press services and is in charge in the facilitation of requests for the use of the facilities of the university and assist students in using the facilities. She brought with her photocopies of the documents subject matter of the subpoena, such as a) letter of accused Salvacion [to her] dated April 12, 2012 b) demand letter of Prof. Sabas addressed to accused Salvacion and c) statement of account of Nurmed which were all provided to her by her former Director. She admitted that, they do not have copies of the said documents and **that the documents were photocopies of documents provided to them by the accused herself, Dean Salvacion.**²² She likewise testified that, her staff told her that Dr. Salvacion wanted a Statement of Account [SOA] in May 21, 2012. Her staff prepared the SOA and she signed the “noted by” portion. When questioned further, she admitted that she does not know whether a letter request was made by Dean Salvacion for Nurmed before the Statement of Account was prepared. The SOA was [allegedly] received by Dean Salvacion herself. That two Official Receipts [OR’s] were issued for the said SOA- one is for the use of the sound system dated July 12.²³ Finally, she confirmed that the BAO does not have a copy of said SOA in its files.

After the above witnesses testified, the defense offered the following **documentary evidence:**

Exhibit “1”, Sworn Statement of Susan Ariola Salvacion dated Sept. 27, 2012; **Exhibit “1-a” - “1-d”**, pages 2-5; **Exhibit “1-e”**, name and signature of Susana Salvacion; **Exhibit “1-f”**, Minutes of the Meeting of the graduating students and their parents and the clinical instructors of the College of Allied Medicine of Southern Luzon State University held on March 24, 2012; **Exhibit “1-f-1”**, attendance of the July 2012 NLE Takers and Parents Meeting held on March 24, 2012; **Exhibit “1-f-1-a”-“1-f-1-c”**, page 2, 3 and 4; **Exhibit “1-g”**, Official Receipt No. 0229584 dated July 10, 2012 issued by Hector A. Macaraan, University Cashier; **Exhibit “1-h”**, Official Receipt No. 0229666 dated July 12, 2012 issued by Hector A. Macaraan, University Cashier; **Exhibit “1-i” - “1-t”**, letters of support from students/reviewees; **Exhibit “3”**, letter of Catherine Exconde, President, Review Class 2012 dated July 5, 2012;

²¹ TSN dated April 26, 2018, p. 49.

²² TSN dated May 30, 2018, p. 21.

²³ TSN dated May 30, 2018, p. 70.

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Exhibit “4”, letter of Dr. Susana Salvacion to Dr. Cecilia A. Gascon dated July 10, 2012; **Exhibit “7”**, original copy of Statement of Account dated May 21, 2012 for customer NURMED Hyperlearn Review and Tutorial Services; **Exhibit “7-a”**, the name of Prof. Necita Delsie M. Sabas and her signature over it; **Exhibit “7-b”**, the name of Jennifer D. Caballes and her signature over it. **Exhibit “8”**, original copy of letter request of accused Dr. Susana A. Salvacion, owner, NURMED, dated April 12, 2012 addressed to Prof. Delsie Sabas; **Exhibit “8-a”**, printed name of Dr. Susana A. Salvacion and her signature over it; **Exhibit “8-b”**, hand written acknowledgment “rec’d by: J.P. Caballes” with her initial and date 4/12 over it; **Exhibit “8-c”**, printed name of Prof. Delsie Sabas;²⁴

Of the above documentary evidence, only **Exhibits “1-g”, “1-h”, Exhibits “7”, “7-a”, “7-b”, Exhibits “8”, “8-a”, “8-b” and “8-c’** were admitted.²⁵

No rebuttal evidence was presented thereby terminating trial. Thereafter, and as prayed, parties were given time to file their respective memoranda. On September 18, 2018, the prosecution submitted its **Memorandum**.²⁶ For its part, the defense submitted its **Memorandum**²⁷ on October 12, 2018.

THE COURT’S RULING

As earlier mentioned, accused Salvacion stands charged for Violation of Sections 3(e) and (h) of RA 3019. Pertinent provisions of the law state that:

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

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

²⁴ Record, Vol. 2, pp. 85-120.

²⁵ Id. at 170-172.

²⁶ Id. at 192-215.

²⁷ Id. at 219-232.

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(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

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Let us evaluate the cases.

**CRIMINAL CASE NO. SB-16-CRM-0582
VIOLATION OF SEC. 3 (e) RA 3019**

In every prosecution for Violation of Section 3(e) of RA 3019, the State must prove the following essential elements namely: (1) accused is a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of his functions; and (3) 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.²⁸ Moreover, the Court has consistently held that there are two ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.²⁹ It is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.³⁰

We now test whether the elements for violation of Sec. 3 (e) of RA 3019 to thrive are present and whether proven by the prosecution.

Accused is a public officer discharging administrative, judicial or official functions.

²⁸ *Giangan v. People*, G.R. No. 169385, 26 August 2015.

²⁹ *Braza v. Sandiganbayan*, G.R. No. 195032, February 20, 2013, 691 SCRA 471, citing *Velasco v. Sandiganbayan*, 492 Phil. 669, 677 (2005); *Constantino v. Sandiganbayan*, 559 Phil. 622, 638 (2007).

³⁰ *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670, 679.

During the preliminary conference, the parties submitted a "Joint Stipulation of Facts and Issue" dated May 30, 2017³¹ and among the admitted facts is, accused Salvacion is a public officer being the Dean of the College of Allied Medicine at the Southern Luzon State University (SLSU).³²

There is thus no dispute that the first element of the offense is present.

Accused acted with manifest partiality, evident bad faith or gross inexcusable negligence in the discharge of her function.

It is worthy to stress that, the law provides the ways how the offense can be committed. These are through "manifest partiality", "evident bad faith", and/or "gross negligence" in the discharge of his/her function. In *Coloma, Jr. v. Sandiganbayan*,³³ 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 of that care which even inattentive and thoughtless men never fail to take on their own property."³⁴

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.³⁵

³¹ Record, Vol. 1, pp. 178-186.

³² Id. at 187-193.

³³ 744 Phil. 214 (2014).

³⁴ Id. at 229, citing *Fonacier vs. Sandiganbayan*, 308 Phil. 660, 693-694 (1994).

³⁵ *Uriarte vs. People*, 540 Phil. 474, 494 (2006).

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J. V.

In this case it is obvious that Nurmed was favored. Verily, its review classes were conducted at the COAM auditorium- which whether accused Salvacion admits or not is under her control and supervision being the dean of COAM. While at a first glance, there is nothing irregular for the use of said auditorium in view of accused Salvacion's allegation that the use of the same or the other facilities of SLSU is open for all, what makes its use irregular is, the auditorium was used without Nurmed or accused Salvacion first complying with the requirements for its usage as provided in the Manual of Operation of BAO and more, without observing those required as testified to by witness Dahilig. Notably, she said that, for the use of the auditorium, the following should be done:

1. There must be a letter request from the client submitted to the Head of Rental;
2. If the facility is available, the Head of the Rental will go to Physical Plant and Facilities to coordinate and inform the intended schedule of the use of the facility as requested by the client;
3. The client is given payment slip by the Head of the Rental or the staff; and
4. The client will go back to the Head of the Rental or staff and give copy of the Official Receipt.³⁶

which to the mind of the Court should be done before a client can start using the auditorium. Clearly, of the four (4) things needed to be done, only the execution of the letter-request was done by supposed client accused Salvacion- the owner of Nurmed. As the approving officer, she unilaterally approved the request without seeing to it that all the requirements were complied with. In short, accused Salvacion allowed the usage of the auditorium without having it inspected, waiting for the payment slip and ultimately showing the official receipt for the necessary rental. Here, rental was even paid after the auditorium was used and surprisingly after a complaint was made and an investigation was conducted. If what happened is not an open display of "giving favor" to Nurmed, what else can one think accused Salvacion did, more so that no evidence was shown that similar treatment was given to those who have availed of the use of the auditorium in the past, to at least, show that one can go short cut. Needless to state, the Manual of Procedure of the BAO states that:

"3. Operations

Procedures for the use of the SLSU facilities/equipment and space will vary depending on the classification of the rentee.

(The Outsider and the Insider)

³⁶ TSN dated November 28, 2017.

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Outsiders are private individuals, organizations that will avail of the service.

Insiders are organizations duly recognized by the university existing in the Campus such as Faculty association, employees

- a. Request will be send (sic) by outside customer to the Office of Business Affairs for approval;
- b. Business Affairs will be in constant coordination with the Physical Plant and Facilities, in return will be responsible with other offices such as maintenance, security and in-charge of the facility involved.
- c. Contract of lease will be prepared by the BAO and signed by the President of the University as the first party (Lessor) and notarized by authorized lawyer at the expense of the second party (Leasee)(sic).

which were not followed also except the making of a letter-request. Clearly, without executing a Lease Contract or Memorandum of Agreement [which was "admitted by the accused Salvacion during the investigation before the SB], accused Salvacion allowed the use of the auditorium by Nurmed. Her act of not complying with what are those required in the Manual shows her obvious display of abuse of authority, if not bad faith. As a dean of a State University and a public officer at that, she is expected to adhere to established rules and therefore must not exhibit any act, which can surely put her in a bad light. Much more, when her act will redound to the benefit of anything which she has substantial interest as in the case of Nurmed.

Her 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.

While it could be said that injury to the government or any party was not sufficiently proven, the element of giving of unwarranted benefit and advantage or preference to a private party is obvious, hence the existence of this element.

As defined in a long line of cases³⁷, "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".

³⁷ *Rivera vs. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014.

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2.

Indubitably, and as earlier discussed, accused Salvacion gave Nurmed, her own personal review center preferential treatment therefore giving benefit to it. The fact that Nurmed or accused Salvacion actually paid rental for the usage of the auditorium will not exempt her from liability, more so that payment was belatedly made. If at all, it was just an afterthought.

**CRIMINAL CASE NO. SB-16-CRM-0583
VIOLATION OF SEC. 3 (h) RA 3019**

As enshrined in the case of *Teves v. Sandiganbayan*³⁸, the following elements should be proven for the crime to exist:

1. The accused is a public officer
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction, and;
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.

Let us also determine whether these elements were proven by the prosecution in this instant case.

The accused is a public officer.

It is not disputed that, at the time material to this case, accused Salvacion, is a public officer, being then the Dean of the College of Allied Medicine at the Southern Luzon State University (SLSU). This fact was also stipulated upon by both parties during the Pre-Trial on May 30, 2017, thus the existence of the first element.

She has a direct or indirect financial or pecuniary interest in any business, contract or transaction.

Direct or indirect financial or pecuniary interest in any business, contract or transaction is illustrated in the *Teves* case in this wise:

“There are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft Law. The first mode is if in connection with his pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his official capacity. The second mode is when he is

³⁸ G.R. No. 154182, December 17, 2004, 447 SCRA 309.

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prohibited from having such interest by the Constitution or any law."³⁹

The Court finds this element existing.

Verily, accused Salvacion is the Dean of the COAM of SLSU-a state university. As an official of the university, she is supposed and expected to protect the interest of the institution where she works. In relation to this, it is her duty to protect the name of the school, its reputation, the students enrolled therein, and the properties and effects owned by said school. But, regrettably, she took advantage of the facilities of the university by using her position. To repeat, in obvious disregard of procedure, she allowed the use of the university's auditorium as venue for the review classes of Nurmed, her very own review center. Again, the alleged claim that she paid rentals for the use of the auditorium cannot be taken in her favor. Evidence shows that payment was only made on July 12, 2012, obviously after realizing that what she did is inappropriate. Again, such payment as earlier found is an afterthought. Or, she has to pay otherwise it will become apparent that with her position as dean, she can use the auditorium whether she pays rent or not, with or without lease contract or Memorandum of Agreement. For if this is not her intention, why did she not comply with the requirements before the auditorium is used.

In sum, after going over the evidence presented, what can be surmised is, this second element is also existing.

She either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.

The third element enumerates the two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract or transaction may violate Section 3(h) of the Anti-Graft Law. The **first mode** is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The **second mode** is when he is prohibited from having such an interest by the Constitution or by law.⁴⁰

Anent the first mode, jurisprudence provides: "what is contemplated in Section 3(h) of the Anti-Graft Law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may

³⁹ *Teves vs. Sandiganbayan*, G.R. No. 154182, Dec. 17, 2004.

⁴⁰ *Caballero vs. Sandiganbayan*, G.R. Nos. 137355-58, September 25, 2007.

attach. For the law aims to prevent dominant use of influence, authority and power”⁴¹. Actual intervention as contemplated in Section 3(h) of RA 3019 would mean a public officer’s taking part in his or her official capacity, whether approve, indorse or in any capacity take part in the business or transaction which he or she has financial interest. In the cited Trieste case, the Supreme Court illustrated “actual intervention” in this wise:

“there is “actual intervention” when Trieste, who was then the mayor of Numancia, Aklan, purchased construction materials from Trigen Agro-Industrial Development Corporation of which allegedly he is the president. Obviously, by way so, he had displayed willful and unlawful financial interest over a contract, which in the first place, he is prohibited by law to enter, taking into consideration his position as a Mayor, and the same time the president of Trigen Agro-Industrial Development Corporation.”

Thusly, it is the perfect “actual intervention” that is contemplated by law that gives rise to his liability as a public officer. In this case, sensibility or “delicadeza” should have guided accused Salvacion not to allow the use of the state university’s auditorium as venue for the review classes of Nurmed, which undeniably belongs to her. Whether she admits or not, her position as Dean of the COAM of SLSU made it easier for her to utilize the facilities of the school. That while she meant well when she said that “she just wanted to help the students pass the examination”, that is why she established Nurmed, her words alone cannot be taken as an expression of good faith, because in the first place, her action of not going through the proper procedure for the rental of the said auditorium is suspect.

Again, while it may be true that she made a letter request for the use of the auditorium, the making of a letter-request is not all. There is even no showing that she granted the request in black and white. To be specific and as an expression of good faith, an approval letter should have been presented, or better still a Memorandum of Agreement (MOA) or a Lease Contract. Her testimony that an oral arrangement with BOA is not enough. She should remember that she is dealing with a government property where formalities are needed for its use. Therefore, what could be interpreted to have happened was, accused Salvacion used the auditorium to hold review classes provided by her OWN REVIEW CENTER, because she can easily use the school’s facility, she being the dean of COAM. Without her actual intervention or influence, surely the use of the auditorium without complying with the necessary requirements could not have been easily done. With this and as earlier found, even her good intention of improving the performance of COAM’s nursing graduates in the board exam, could not be fully appreciated even if she is in

⁴¹ *Trieste, Sr. v. Sandiganbayan*, G.R. Nos. 70332-43, November 13, 1996, 145 SCRA 508.

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fact good faith. Verily, while good faith is always presumed, the law considers this presumption of good faith as disputable, that is, it is deemed satisfactory if uncontradicted,⁴² but may be contradicted and overcome by other evidence as in this case. Couched differently, she meant well when she established Nurmed as an alternative review center, but sadly, she faltered tremendously when she did not do the appropriate act and followed procedure for the legal use of the venue of her review center. The fact that it was the students who chose the venue is of no help. While students can choose, their choice is not controlling. Fact remains that, an auditorium owned by a state university was used in favor of a private entity owned no less than by one who has a "say" in said university.

Anent the second mode, this Court finds no need to discuss this mode in length because obviously, government officials or employees are not allowed to use government facilities without complying with essential requirements as provided for its usage, to suit their own needs or to benefit any of their interests.

Our discussions above taken all together, what could be concluded is, all the elements for the crime of Violation of Sec. 3(h) of RA 3019 were successfully proven by the prosecution.

Well-entrenched in jurisprudence is the rule that:

"Criminal prosecutions primarily revolve around proving beyond reasonable doubt the existence of the elements of the crime charged. As such, they mainly involve questions of fact. There is a question of fact when the doubt or difference arises from the truth or the falsity of the allegations of facts. Put a bit differently, it exists when the doubt or difference arises as to the truth or falsehood of facts or when the inquiry invites calibration of the whole gamut of evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation"⁴³

More so, it is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond reasonable doubt, as a consequence of the tenet *ei incumbit probatio, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove, and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime. Accordingly, the State has the burden of proof to show: (1) the correct identification of the author of the crime, and (2) the actuality of the commission of the offense with participation of the accused. All these facts must be proved by the State beyond

⁴² *Surtida vs. Rural Bank of Malinao (Albay), Inc.*, G.R. No. 170563, Dec. 20, 2006.

⁴³ *Santos vs. Committee on Claims Settlement*, G.R. No. 158071, April 2, 2009.

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reasonable doubt on the strength of its evidence and without solace from the weakness of the defense⁴⁴”.

Indeed, the Court finds the prosecution to have succeeded in its burden of proving its case. Having found so, there is no need to discuss the evidence adduced by the defense, which the Court finds to be weak, more so, that her only admitted pieces of documentary evidence consisting of a letter request and the Official receipts of payment are of little help or no help at all. Jurisprudence is replete of cases saying: “when the prosecution has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the court of the truth of the allegations in the Information, or has established a prima facie case against the accused, the burden of evidence shifts to the accused making it incumbent upon him to adduce evidence in order to meet and nullify, if not overthrow, the prima facie evidence.”⁴⁵ Otherwise, the Court has no recourse but to rule against the defense, as in these cases.

QUANTUM OF PROOF IN CRIMINAL CASES

Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:

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, excluding possibility or error, produces absolute certainty. **Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.**” (underscoring ours)

Following the above legal principles, if the State as in these cases is able to meet this quantum of evidence required in criminal cases, or the moral certainty that the accused committed the crime charged, then the Court, without more, must convict the accused.

IMPOSABLE PENALTY

Section 9 of R.A. 3019 provides for the penalties for violations of the said act. It states:

Sec. 9 Penalties for Violations.

“(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one

⁴⁴ *Macayanan Jr., vs. People*, G.R. No. 175842, March 18, 2015.

⁴⁵ *People vs. Villanueva*, G.R. No. 172116, October 30, 2006, 506 SCRA 280.

year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income”.

WHEREFORE, premises considered, the Court finds in:

CRIMINAL CASE NO. SB-16-CRM-0582,

Accused **SUSANA ARIOLA SALVACION GUILTY beyond reasonable doubt** of Violation of **Sec. 3(e) of RA 3019** and is thereby sentenced with the penalty of imprisonment for a period of **SIX (6) years and ONE (1) month**, as minimum, to **EIGHT (8) years** as maximum, applying the Indeterminate Sentence Law.

CRIMINAL CASE No. SB-16-CRM-0583,


Accused **SUSANA ARIOLA SALVACION GUILTY beyond reasonable doubt** of Violation of **Sec. 3(h) of RA 3019** and is thereby sentenced with the penalty of imprisonment for a period of **SIX (6) years and ONE (1) month**, as minimum, to **EIGHT (8) years** as maximum, applying the Indeterminate Sentence Law.

Having been found **GUILTY** for both offenses, accused Susana Ariola Salvacion is perpetually disqualified to hold public office.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:


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


ZALBY V. TRESPESES
Associate Justice

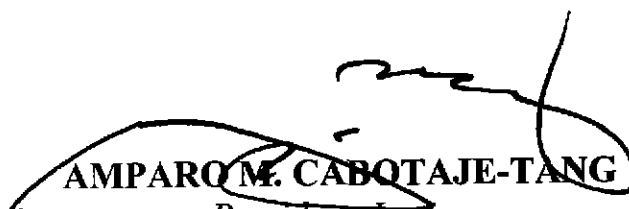
ATTESTATION

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





REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

Seventh Division

January 22, 2019

IN RE: **PP vs. SUSANA ARIOLA SALVACION**

Criminal Case No. *SB-16-CRM-0582-0583*

The Honorable Presiding Justice:

We hereby transmit pursuant to Article VIII, Section 13 of the 1987 Constitution, the attestation and certification (page 21) of the **Decision** in the above-entitled case, which is due for promulgation. We attest that the conclusions in the said Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Very truly yours,


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


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice