



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-16-CRM-1076
*For: Violation of Section 3(e)
of Republic Act No. 3019*

-versus-

**ADELBERTO FEDERICO YAP,
VERONICA S. ORDOÑEZ,
SIGFREDO V. DUBLIN, MA.
VENUS B. CASAS and MARLON
E. BARILLO,**
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-16-CRM-1077
*For: Violation of Section 3(g)
of Republic Act No. 3019*

-versus-

ADELBERTO FEDERICO YAP.
Accused.

Present:
Cabotaje-Tang, A.M., *PJ.*,
Chairperson
Fernandez, B., *R, J.* and
Moreno, R., *B, J.*

PROMULGATED:

FEBRUARY 14, 2020

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DECISION

Moreno, J.:

Accused Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo are charged before this Court with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended. The *Information* reads as follows:

That on 10 March 2006 or sometime prior or subsequent thereto, in the City of Lapu-Lapu, Province of Cebu, Philippines, the said accused ADELBERTO F. YAP, a high-ranking public officer, being then the General Manager, VERONICA ORDONEZ, being then the Chairman of the Bids and Awards Committee (BAC), SIGFREDO V. DUBLIN, being then the Legal Officer and a member of the BAC, MA. VENUS B. CASAS, being then the Officer-in-Charge of the Accounting Division, all of Mactan Cebu International Airport Authority (MCIAA), while in the performance of their official functions and committing the offense in relation to their office, cooperating, conspiring and confederating with one another and with accused private individual MARLON E. BARILLO, then the President of Asiaborders Philippines, Inc. (Asiaborders) unlawfully and wilfully acting with evident bad faith or gross inexcusable negligence caused the advance partial payment of Php6,000,000.00 to Asiaborders despite the fact that Asiaborders was not a qualified bidder, and the vehicle subject of the Contract for the Supply and Delivery of one Aircraft Rescue Fire Fighting Truck between MCIAA and Asiaborders had not yet then been delivered, inspected and accepted, in violation of Section 88 of Presidential Decree No. 1445, thereby giving unwarranted benefits to Asiaborders and causing undue injury to the government in the aforementioned amount.

CONTRARY TO LAW.¹

Accused Yap was likewise charged with violation of Section 3(g) of R.A. No. 3019 in an *Information* worded as follows:

That on 1 March 2006 or sometime prior or subsequent thereto, in the City of Lapu-Lapu, Province of Cebu, Philippines, accused ADELBERTO F. YAP, a high-ranking public officer, being then the General Manager of Mactan Cebu International Airport Authority (MCIAA), while in the performance of official functions and committing the offense in relation to his office, unlawfully and wilfully entered, on behalf of the government, into a contract manifestly and grossly disadvantageous to the same with Asiaborders Philippines, Inc. for the supply of one unit Aircraft Rescue Fire Fighting Truck (ARFF) for the sum of US\$732,000.00 of Php38, 137,200 when the ARFFV has a value of only US\$61, 836.86 or Php30, 903,526.69.

CONTRARY TO LAW.²

¹ Record (vol. I), pp. 3-5.

² Record (vol. II), pp. 4-5.



Accordingly, the Court issued a Hold Departure Order against the accused per its Resolution of November 21, 2016.

Barillo filed a *Motion to Quash Information*³ before the Sandiganbayan on November 25, 2016, while Yap filed a *Motion to Dismiss*⁴ with the Anti-Graft Court on December 27, 2016. Ordoñez and Dublin, for their part, filed a *Motion for Leave of Court to File Motion for Reconsideration before the Office of the Ombudsman*⁵ on January 31, 2017.

On February 2, 2017, Casas filed a *Motion to Quash Information (with Prayer to Defer or Recall Warrant of Arrest)*⁶ before the Sandiganbayan.

In its Resolution⁷ dated May 15, 2017, the Sandiganbayan denied Barillo's *Motion to Quash Information*; Yap's *Motion to Dismiss*; and Casas' *Motion to Quash Information* for lack of merit.

Barillo moved to reconsider the Court's May 15, 2017 Resolution, but his motion was denied in a Resolution⁸ dated September 4, 2017. Barillo then filed a Petition for *Certiorari* and Prohibition⁹ before the Supreme Court to assail the Court's May 15, 2017 and September 4, 2017 Resolutions.

Casas also filed a *Motion for Reconsideration* to assail the May 15, 2017 Resolution of the Sandiganbayan, but the latter denied this motion in its December 4, 2017 Resolution.

The Court also denied the *Motion for Leave of Court to File Motion for Reconsideration before the Office of the Ombudsman* filed by Dublin and Ordoñez for having been filed out of time in its Resolution¹⁰ of July 10, 2017.

Dublin and Ordoñez filed an Omnibus *Motion for Reconsideration, Determination of Probable Cause and to Quash*, but the Sandiganbayan denied this motion in its Resolution¹¹ of November 2, 2017.

³ Record, vol. I, pp. 79-128.

⁴ Captioned Entry of Appearance with Motion to Dismiss, id. at 135-159 (excluding annexes).

⁵ Record (vol. II), pp. 607-612.

⁶ Record (vol. III), pp. 37-55.

⁷ Id. at 254-283. Penned by PJ Amparo M. Cabotaje-Tang, and concurred in by Associate Justices Sarah Jane Fernandez and Bernelito Fernandez.

⁸ Id. at 515-529.

⁹ Id. at 560-587.

¹⁰ Id. at 410-414.

¹¹ Id. at 779-790. In this Resolution, the Court also noted the Motion for a Judicial Determination of Probable Cause filed by Dublin and Ordoñez; and issued warrants of arrest against them.

When accused Barillo,¹² Yap,¹³ Ordoñez,¹⁴ Dublin¹⁵ and Casas¹⁶ were arraigned, each of them individually and separately pleaded "*NOT GUILTY*".

The parties did not enter into any plea bargaining agreement during the pre-trial conference that ensued. However, the parties made the following stipulation of facts:

STIPULATIONS OF FACT

1. The identity of all the accused as the same persons charged in the instant informations;

The parties, except accused Marlon E. Barillo, agree and stipulate on the following:

2. That at the time of the alleged commission of the offenses charged in the present informations, the following accused were public officers occupying the following positions in the Mactan-Cebu International Airport Authority (MCIAA):
 - a) Accused Adelberto Yap was the General Manager from 22 February 2005 to 31 July 2006;
 - b) Accused Veronica Ordonez was the Chairperson of the Bids and Awards Committee (BAC) until relieved on July 24, 2006;
 - c) Sigfredo V. Dublin was the Legal officer and BAC member until his resignation on July 31, 2006; and
 - d) Venus B. Casas was Officer-in-Charge of the Accounting Division for the period covering March 19, 2002 to September 13, 2005 and the Division Manager of the Accounting Division from September 14, 2005 up to the present;
3. Accused YAP, DUBLIN and ORDONEZ admit that at the time of the alleged commission of the offenses charged in the present informations, accused Marlon E. Barillo was the President of Asiaborders, Inc.;
4. Accused YAP, DUBLIN and ORDONEZ admit that on March 1, 2006, the MCIAA represented by its General manager, Adelberto Yap, and Asiaborders Philippines, Inc. represented by its President, Marlon E. Barillo, entered into a Contract for the Supply and Delivery of one (1) Aircraft Rescue Firefighting Truck, marked as Exhibits "C-2", "D-2," "I," and "O-17";
5. Accused DUBLIN and ORDONEZ admit that Asiaborders Philippines, Inc. is a corporation duly-organized and existing under Philippine laws, as evidenced by a Certificate of Incorporation

¹² See Certificate of Conditional Arraignment; record (vol. III), p. 296.

¹³ Record (vol. IV), p. 27.

¹⁴ *Id.* at 28

¹⁵ *Id.* at 29.

¹⁶ *Id.* at 267

dated July 28, 2004 issued to Asia Borders Philippines, Inc. under Company Registration No. CS200411433, marked as Exhibit "O-33";

6. For purposes of procurement, MCIAA has established a Bids and Awards Committee ("BAC");
7. Accused Yap signed the Contract for the Supply (Exh. "O-33) and Delivery of One (1) Aircraft Rescue Fire Fighting Vehicle and signed also Box A of the Disbursement Voucher No. 101-2006-03118 (Exh. "D-8") for the opening of the Letter of Credit; and
8. Accused Casas admits that, as the Officer in Charge Accountant MCIAA, she signed the Disbursement Voucher No. 101-2006-03118 (Exh. "D-8") certifying that *"Adequate available funds/budgetary allotment in the amount of Php6,000,000.00; expenditure properly certified; supported by documents; account codes proper; previous cash advance liquidated /accounted for."*¹⁷

The documentary exhibits for the prosecution were marked as Exhibits "A" to "R" (with sub-markings), and that of the defense as Exhibits "1" to "6" (Yap); Exhibits "1-DO" to "16-E-DO" (Dublin and Ordoñez); Exhibits "1" to "14" (Casas); and Exhibits "1" to "6" (Barillo), also with sub-markings.

The intended witnesses for the prosecution were Lou Pagaran-Tila; Ma. Crisologo V. Saavedra; Mrs. John Paul P. Valle; Mr. Alvarado R. Derramas; Joselito Espinosa; Engr. Camilo C. Castro; Lyndon B. Bayucot; Catherine Sepulveda; Jonice S. Espere; Manuel D. Lopez; Roger M. Villacarillo; Antonio Donaire; the Branch Manager of the Land Bank of the Philippines-Lapu-Lapu City; Ledibrido S. Patalinghug; B/Gen. Danilo Augusto B. Francia; Capt. Romeo Bersonda; Ms. Divina P. Janulgue; Deborah Montejo; Ma. Socorro N. Arcaya; Teresita Coscos; Ma. Irma Purog; Nilo R. Confessor; Benjamin R. Momongan; Lenardo S. Ruiz, Jr. Allan Gajudo; Roland Andy L. Manatad; representatives from Voyage Ocean Line; Arifin Wibisiana; Atty. Maximo P. Reyes; representatives from Asiaborders Philippines, Inc.; representatives from the Securities and Exchange Commission; and representatives from the Bureau of Internal Revenue.

The intended witnesses for the defense, aside from the accused themselves, were Romeo Bersonda (for Yap) and Rowena Barongan (for Barillo).



¹⁷ Record, vol. 5, pp. 305-307.

EVIDENCE FOR THE PROSECUTION

Lou Pagaran-Tila, Graft Investigator Officer (GIO) I of the Office of the Ombudsman-Visayas, testified that she has been a GIO since 2008; and that she investigated the irregular purchase of a rescue fire-fighting vehicle when the complaint filed by Crisologo Saavedra had been raffled to her for the conduct of a fact-finding investigation. According to her, she issued subpoenas to various agencies (like the Commission on Audit) for her case build-up. Thereafter, Tila evaluated the submitted documents, and then issued a Final Evaluation Report and an Affidavit for filing.¹⁸

On cross-examination, Tila stated that her Report was based largely on the Affidavit of the COA Auditor. She explained that one of her basis for concluding that there had been manifest partiality, evident bad faith or gross inexcusable negligence was because the winning bidder had been incorporated below the required number of years. Tila confirmed that there had been a 90% price difference between the unit price (as reflected in the Custom's entry) and the price that had been paid by the MCIAA. She added that she did not anymore give any weight to the commercial invoice issued by the seller.¹⁹

On further cross, Tila confirmed that accused Yap was not a member of the MCIAA's BAC, although he considered him as the head of the procuring entity being MCIAA's general manager. She added that the head of the procuring entity will be the one who would award the contract to the winning bidder. Tila also maintained that there was a conspiracy because the transaction would not have pushed through without the individual efforts of the accused. She confirmed that Yap's signature was both in the contract for the supply and delivery of the firefighting truck and in the disbursement voucher.²⁰

Gina Q. Cane, the manager of the General Services Division of the MCIAA since 2017, declared on the witness stand that she issued certified true copies of the following documents: Terms of Preference and General Specifications; Bid Bulletin No. 2; and Contract for the Supply and Delivery of one (1) Aircraft Rescue Firefighting Truck.²¹

On cross-examination, Cane stated that the Terms of Preference and General Specifications; Bid Bulletin No. 2; and Contract for the Supply and Delivery of one Aircraft Rescue Firefighting Truck had been endorsed to her office by the Legal Division.²²

¹⁸ TSN, July 3, 2018, pp. 4-15.

¹⁹ *Id.* at 16-25.

²⁰ *Id.* at 26-40.

²¹ TSN, July 10, 2018, pp. 5-10.

²² *Id.* at 12-15.

Handwritten signature and initials. The signature appears to be 'Yap' and the initials are 'GQ'.

Ma. Irma S. Purog testified that she was a COA employee assigned as the Audit Team Leader for MCIAA from January 2010 until January 2013. Per her Affidavit dated September 13, 2012, Purog stated that the contract price for the Aircraft Rescue Fire Fighting Vehicle (ARFFV) was US\$732,000.00. She added that MCIAA Asiaborders made a ₱6,000,000.00 advance payment paid to Asiaborders for the opening of a letter of credit by the supplier. Purog explained further that the letter of credit applied for by MCIAA at the Landbank of the Philippines was used to pay balance of US\$616,836.14 to Ziegler Indonesia (manufacturer)²³

According to Purog, it was MCIAA and not Asiaborders (supplier) which opened a letter of credit; and maintained that the ₱6 million advance payment was prohibited under P.D. No. 1445.²⁴

On cross-examination, Purog stated that both the Contract and the Terms of Reference provided that it was the supplier's responsibility to open a letter of credit. She found disadvantageous the ₱6 million advance payment for the opening of the letter of credit by Asiaborders, when it was MCIAA who applied for the opening of a letter of credit, and shouldered the cost thereof. Purog maintained that the procuring entity was not allowed to open a letter of credit at the time the subject transaction occurred.²⁵

On further questioning, Purog testified that the General Manager is the one who approves whether to award the contract for the supply of one fire fighting truck to Asiaborders. She maintained that Casas had the duty to review the supporting documents before signing the disbursement voucher.²⁶

Allan R. Bisnar, the Vice President and head of the Cebu South Lending Center of the Land Bank of the Philippines since 2017, recalled that he received a subpoena from the Office of the Ombudsman requiring him to submit the original copies of documents related to the acquisition of one (1) unit Aircraft Rescue and Firefighting truck by the MCIAA, as follows: letter dated November 27, 2006 from Captain Romeo Bersonda addressed to Vivian Basnar; the LBP application and agreement for Commercial Letter of Credit No. 9115 LCCLC-06-12F dated November 28, 2006; Bill of Lading No. 42506120026-00 issued by Voyage Ocean Lines; Packing List No. 061149/EXP/PL/Z1/X1/06 dated November 30, 2006; Commercial Invoice No. 061148 EXP/INV/z1/06 dated November 30, 2006 issued by Ziegler Indonesia; and LBP Check No. 0000006621 dated March 10, 2006 in the amount of ₱6 million.²⁷

²³ TSN, July 11, 2018, pp. 4-12.

²⁴ *Id.* at 10-11.

²⁵ *Id.* at 13-19.

²⁶ *Id.* at 21-43.

²⁷ TSN, August 15, 2018, pp. 5-12.

Bisnar added that he instructed his staff to locate and search for the requested documents, but they were unable to locate it. He signed a Certification to the effect that the original of the requested documents could no longer be located. Bisnar explained how he processed applications for the letter of credit, until the release of the commodities by the Bureau of Customs.²⁸

On cross-examination, Bisnar explained that his office has an internal policy "ten-year retention period", and since the transaction happened in 2006, the documents had already been disposed.²⁹

On further query, Bisnar stated that he joined the Landbank in 1989 as a Loan Credit Specialist before he was promoted as Division Chief and then as Department Manager in 2007; and then to Assistant Vice President in 2017.³⁰

When **Ma. Chona J. Gonzales** was called to testify, the parties stipulated on the following:

x x x x (1) that Ms. Gonzales is working at the Landbank Cebu South Lending Center as Loans Administration Officer from 2015 to the present; (2) that she worked as Credit Investigation Officer from 2000 to 2015; and (3) that she also acted as Loans Administration Officer in the absence of the regular Loans Administration Officer, the said witness continued with her testimony and completed the same.³¹

On direct examination, Gonzales declared on the witness stand that one of her functions was to review applications for letters of credit.³²

On cross-examination, Gonzales clarified that she also reviewed and examined the documents submitted by the applicant for the opening of a letter of credit.³³

The parties stipulated on the following matters when **Atty. Eula G. Parawan** was called to the witness stand, viz: that Atty. Parawan is the Executive Assistant B at the Mactan Cebu International Airport Authority (MCIAA); and that her primary duty was to hold and maintain Corporate Books and Records of MCIAA.³⁴

On direct examination, Atty. Parawan stated that the Office of the Special Prosecutor required her to submit the originals of the Minutes of the MCIAA Board Meeting No. 2006-219 dated January 25, 2006; and the

²⁸ *Id.* at 13-17.

²⁹ *Id.* at 17-20.

³⁰ *Id.* at 21.

³¹ Record, vol. V, p. 546.

³² TSN, August 15, 2018, pp. 30-31.

³³ *Id.* at 34-37.

³⁴ TSN, August 29, 2018, pp. 4-8.



Minutes of the MCIAA Board Meeting No. 2006-233 dated August 31, 2006.³⁵

When **Ela R. Borinaga** was called to testify, the parties made the following stipulations: Borinaga is the Corporate Budget Officer of the MCIAA since 1998, and that in 2006, she was designated as the Officer-In-Charge (OIC) of the Cashiering Division of the MCIAA; and that part of her duties as OIC is to sign checks and ensure the completeness and correctness of vouchers and other supporting documents to said checks.³⁶

On direct examination, Borinaga stated that she signed LBP Check No. 6621 dated March 10, 2006 after examining Disbursement Voucher No. 101-2006-03118 that had been signed by accused Yap and Casas. She recalled that the check which she (Borinaga) signed was brought to the office of Yap for the latter's signature, before it was forwarded to the Cashiering Division for claiming by the payee.³⁷

During her cross-examination, Borinaga confirmed that the Contract for the Supply and Delivery of One Aircraft Rescue Firefighting Vehicle approved by the MCIAA Board was one of the supporting documents she examined.³⁸

The next prosecution witness was **Buenaventura V. Leyva** and when she was called to testify, the parties stipulated on the following matters:

1. That Mr. Leyva is a government employee of the Land Bank of the Philippines currently assigned at the Leyte Lending Center;
2. That he currently holds the position of Assistant Vice-President;
3. That he has been continuously connected with the Land Bank of the Philippines since 1991;
4. That he was an account officer at the Cebu Lending Center in November 2006;
5. That as an account officer of the Cebu Lending Center, his principal duties and responsibilities included processing of loans products and he was designated as Officer-in-Charge from time to time when the department manager was absent, on leave or unavailable; and,



³⁵ *Id.* at 9-12.

³⁶ Records, vol. V, p. 556; See also TSN, August 29, 2018, p. 22.

³⁷ TSN, August 29, 2018, pp. 23-29.

³⁸ *Id.* at 31-33.

6. As Officer-in-Charge, he signed and approved the letter of credit dated November 28, 2006, previously marked as Exhibit "O-25" for the prosecution.³⁹

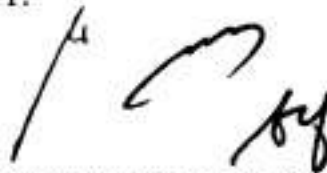
On direct examination, Leyva confirmed that he signed the application for a letter of credit as OIC of the Cebu Lending Center in November 2006; and that his approval means that the fund intended for the letter of credit had already been earmarked or set-aside.⁴⁰

Leyva also stated that she will not affix her signature if the branch of account or the servicing branch has not verified the signature of the applicant. She added that her office has to release the fund to the supplier after the equipment had already been delivered and accepted by the buyer or by the applicant.⁴¹

The prosecution called **Nilo R. Confessor** as its next witness, and offered the following matters for stipulation: (1) that at the time relevant to these cases, Confessor was a Technical Audit Specialist assigned at the Technical Services Division of the Commission on Audit, Regional Office No. VII; (2) that he, together with Engineer R. Umungan, conducted a technical inspection on the airport rescue fire fighting truck of the Mactan International Authority (MCIAA) sometime on February 14, 2011; and (3) that he will be able to identify the Inspection Report dated March 14, 2011, marked as Exhibit "O-12" for the prosecution.⁴²

On direct-examination, Confessor testified that on February 2011, he conducted the ocular inspection of a fire-fighting rescue truck together with personnel from the MCIAA Fire Department. He added that the inspection was requested by COA Auditor Maria Elma Puro.⁴³

Confessor explained that he and his companions conducted the inspection by opening the engine, taking note of the engine and chassis number, and then conducted frictional testing. According to Confessor, he prepared an Inspection Report on March 14, 2011.⁴⁴



³⁹ Record, vol. V, pp. 582-583. The counsel for accused Yap stipulated on all these matters except for the offer of stipulation number 3. The counsel for accused Barillo manifested that she is not making any comment on the said offer citing her previous manifestations that she will not conduct any cross-examination considering the position of the accused that his case should have been dismissed due to inordinate delay.

⁴⁰ TSN, September 11, 2018, pp. 9-13.

⁴¹ *Ibid.*

⁴² Record, vol. p. 585. The counsel for Casas stipulated on offer nos. 1 and 2, while the counsel for Yap stipulated on the first offer but not as to the second offer. Both accused for Yap and Casas stipulated on offer no. 3 but only with respect to the existence of the inspection report. Barillo's counsel did not enter into any stipulation considering her position on the issue of the alleged inordinate delay.

⁴³ TSN, September 18, 2018, pp. 9-14.

⁴⁴ *Id.*

On cross-examination, Confessor confirmed that the airport rescue fire fighting truck had been found to be in good operational condition.⁴⁵

On re-direct, Confessor declared that the unit had been previously used.⁴⁶

The parties dispensed with the testimony of **Joegina J. Gozo** after the parties stipulated on the following: (1) that she is currently the Acting Chief Liquidation and Billing Section of the Bureau of Customs; (2) that she will be able to testify that the source documents of the Information contained in the Letter dated January 19, 2012, marked as Exhibit "O-19," are in the custody of the Liquidation and Billing Section of the Bureau of Customs, Port of Cebu; (3) that the source documents are the original working copy of Import Entry No. 066-36-07 and its attachment; (4) that she brought with her the originals of Import Entry Nos. 066-36-07 and all its attachments from the files of her office; (5) that she will identify the documents she certified as true copies of the said documents and its attachments as well as the documents marked as Exhibit "O-19"; (6) that she will testify on the more important functions of the Liquidation and Billing Section of the Bureau of Customs; and (7) that her office prepared, and she initialled, the Letter dated January 19, 2012 of Atty. Maximo P. Reyes, Deputy Collector for Assessment, Bureau of Customs which was attached to the complaint-affidavit of Commission on Audit Auditor Auditor Irma S. Purog, as Annex U and previously marked as Exhibit "O19."⁴⁷

The testimony of **Cornelia Bacayo Wilwayco**, as culled from her Judicial Affidavit, is as follows:

Wilwayco testified that she had been an employee of the Bureau of Customs since 1992; and held the position of Customs Operations Officer III from 1998 to 2017. She recounted having examined one (1) unit of airport rescue fire fighting truck for the MCIAA covered by Import Entry No. 6636-07 in 2007, including the following shipping documents: Import Entry and Internal Revenue Declaration Entry No. 6636-07; Bureau of Customs Official Receipt No. 1322619173 dated May 15, 2007; Temporary Assessment Notice; Final Assessment Notice; Declaration of Value for Customs Duty; Commercial Invoice/Packing List No. 061148/EXP/INV/ZI/XI/06, and the Bill of Lading No. 42506120026-00 issued by Voyage Ocean.

Wilwayco testified that the consignee of Bill of Lading No. 42506120026-00 was the MCIAA, and that the truck unit arrived at the Port of Cebu on December 14, 2007. He added that the duties and taxes paid for Import Entry No. 6636-07 was ₱503, 673.00, and the amount was based on

⁴⁵ *Id.* at 15-19.

⁴⁶ *Id.* at 20-21.

⁴⁷ TSN, October 9, 2018, pp. 6-8.

the declared transactional value of the imported unit as stated in the Commercial Invoice/Packing List No. 061148/EXP/INV/ZI/XI/06. She then explained that transactional value means the amount which is inclusive of the cost of the imported goods, insurance and freight cost or the CIF; and that the CIF for Import Entry No. 6636-07 was US\$80,105.00. Wilwayco added that the importer paid an additional ₱2,356.00 as evidenced by (O.R. No. 132619173) since it is required pursuant to the notarized Declaration of Value for Customs Duty covering Import Entry No. 6636-07. She explained that the notarized Declaration of Value for Customs Duty is executed by the customs broker who facilitated the release of the unit covered by Import Entry No. 6636-07 declaring under oath the transactional value of the imported goods.⁴⁸

On cross-examination, Wilwayco explained that Import Entry No. 6636-07 was classified under 'yellow lane', which meant that it needed 'document examination' only. She added that the customs duties and taxes were based on the declared invoice value that had been supplied by Ziegler International.⁴⁹

On further questioning, Wilwayco confirmed that the Commercial Invoice/Packing List No. 061148/EXP/INV/ZI/XI/06 had been prepared by the importer through the customs broker. He added that she did not visually examine the actual truck.⁵⁰

The Prosecution formally offered its evidence on October 25, 2016 consisting of *Exhibits "A" to "S-6"* with sub-markings.⁵¹ The Court admitted Exhibits "A" to "D-"; "O" to "S-6" in its Resolution of January 11, 2019.⁵²

EVIDENCE FOR THE DEFENSE

Evidence for the defense consisted of the testimonies of Adelberto Federico Yap; Veronica Ordoñez; Atty. Sigfredo V. Dublin; and Ma. Venus B. Casas.

Adelberto F. Yap, a retired Major General, was called to the witness stand on April 8, 2019, and identified his *Judicial Affidavit*.⁵³ Yap testified that he was the MCIAA's General Manager from February 22, 2005 until he was removed by the Board of Directors on July 31, 2006.

Yap stated that he was the one who signed the contract for the supply and delivery of one (1) Aircraft Rescue Fire Fighting Vehicle (ARFFV), and

⁴⁸ Record, vol. V, pp. 593-605.

⁴⁹ TSN, October 10, 2018, pp. 6-8.

⁵⁰ *Id.* at 16-17.

⁵¹ Record, vol. 5, pp. 3-28.

⁵² *Id.* at 503-504.

⁵³ Record, vol. VI, pp. 733-747 (excluding exhibits).

the disbursement voucher for the opening of a letter of credit. He confirmed that MCIAA's corporate powers are vested in its 11-member Board.

Yap recalled that the MCIAA (Board Resolution No. 2006-1038) resolved to purchase an ARFFV in preparation for the ASEAN Summit in Cebu on 2006. He explained that the Board's approval had been based on the recommendation of the MCIAA Bids and Awards Committee (BAC) to purchase the vehicle from Asiaborders, Inc. as the winning bidder.

Yap testified that he signed the Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck because he was the duly authorized representative of the MCIAA to sign the 'finalized contract' between the parties. Yap added that he signed the corresponding disbursement voucher because he relied in good faith on the validity of the contract which had been 'cleared' by the BAC and the MCIAA's Legal Division.

Yap clarified that the administrative and criminal complaints against him filed in 2006 had already been dismissed by the Office of the Ombudsman.

On cross-examination, Yap reiterated that he signed the contract pursuant to the authority granted to him by the Board, but stressed that he did not participate in the drafting of this contract. He confirmed that he signed the disbursement voucher as its approving officer, as well as the certification part of the voucher indicating that expenses and cash advance which were necessary and lawful, have been incurred under his direct supervision. Yap explained that he signed the contract since he relied on his people.⁵⁴

Yap also recalled having received a letter from Barillo asking that the amount of ₱6 million be remitted to Asiaborders for the latter to be able to open a letter of credit, and that he wrote the marginal note "Approved GM" to this letter. He also confirmed that he directed the Chief of the Finance Division to process the request. According to Yap, he did not verify from Barillo if the ₱6 million was 20% of the cost, fees and charges for the opening of the letter of credit before approving the latter's request.⁵⁵

On re-direct examination, Yap expounded that he signed the disbursement voucher because it had already been approved by the Finance and Accounting Division. With regard to the contract, Yap recalled that he signed it because it already went through the BAC and the Legal Division, respectively, and that he found everything to be in order when it was brought to him for signing.⁵⁶

⁵⁴ TSN, April 8, 2019, pp. 14-19.

⁵⁵ *Id.* at 20-30.

⁵⁶ *Id.* at 35-36.

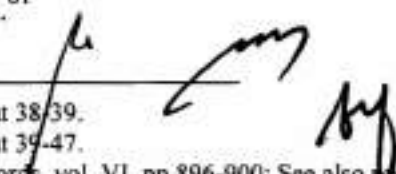
On re-cross examination, Yap admitted that he did not read the entire contract but merely scanned it because it was voluminous.⁵⁷

On further questioning by the Court, Yap admitted that the cases which have been dismissed by the Ombudsman have no relation to the present charge against him involving the advance partial payment of ₱6 million to an alleged unqualified bidder involving a vehicle that had not been delivered. He confirmed that the fire fighting truck had not yet been delivered when he signed the ₱6 million advance payment. Yap added that he assumed that the Accounting, Finance and Legal Divisions already “did diligence” before bringing the disbursement voucher to him for signing. He confirmed that the government would not have been prejudiced in the amount of ₱6 million if he did not sign the subject disbursement voucher.⁵⁸

The testimony of **Veronica Ordoñez**, per her Judicial Affidavit, were as follows: Ordoñez stated that he worked at the MCIAA from December 18, 1990: she was the Manager of the Finance Department and concurrent Chairperson of the BAC until July 2006, and was reassigned to the Human Resource Management Division in 2009 until her retirement in 2014. She recalled that the BAC conducted a bidding and award for an ARFFV in 2006, participated by Rosenbauer International; Ziegler; and Oshkosh Truck Corporation. She explained that these three foreign companies were represented by their respective local agents: Pelican Bay Group, Inc. (for Rosenbauer International), Audiophile, Inc. (for Oshkosh Truck Corp.), and Asia Borders Inc. (for Ziegler). Ordoñez testified that the contract had been awarded to Ziegler as the winning bidder.⁵⁹

On cross-examination, Ordoñez confirmed that she had been designated as MCIAA’s BAC Chairperson in 2005, but was relieved in 2006. She explained that she availed of the limited source bidding per recommendation of General Manager Yap (and the Board of Directors) as the mode of procurement for the ARFFV. She reiterated that the BAC only recommends: it is the board of Directors which decides whether to approve this recommendation.⁶⁰

Ordoñez admitted that the BAC changed the requirement of years of doing related business for local agents from five (5) years to one (1) year; and that part of the requirements of bidders was the submission of the Articles of Incorporation. She confirmed that during the bidding on February 2, 2006, AsiaBorders was already one year and seven months in operation.⁶¹


⁵⁷ *Id.* at 38/39.
⁵⁸ *Id.* at 39-47.
⁵⁹ Records, vol. VI, pp.896-900; See also pp. 680-687.
⁶⁰ TSN, May 6, 2019, pp. 5-18.
⁶¹ *Ibid.*

On re-direct examination, Ordoñez testified that the BAC chooses what mode of procurement to pursue, and then recommends it to the management who, in turn, will decide as a body.⁶²

On further questioning from the Court, Ordoñez confirmed that the members of the BAC agreed to change the requirement for the local agents (that is, from 5 years to 1 year) because they were apprehensive that none of these local agents would be able to qualify; and that two bidders (per Articles of Incorporation submitted before the SEC) would not have qualified if this requirement had not been changed.

Ordoñez likewise confirmed that there had been an advance payment totaling ₱6,000,000.00 to Asia Borders even if the fire-fighting truck had not yet been “delivered, inspected or accepted.” She later admitted that she could not explain the ₱6,000,000.00 payment, but intimated that she did not consider this amount to be an advance payment.⁶³

On additional query, Ordoñez stated that the payment of ₱6 million was for the opening of a letter of credit, but admitted that it was the procuring entity which opened a letter of credit.⁶⁴

The testimony of **Atty. Sigfredo V. Dublin**, per his Judicial Affidavit, consists of the following:

Dublin testified that he was employed with the MCIAA from January 16, 1991 until July 31, 2006. He held the positions of Legal Officer and Special Attorney, and was designated as a member of the BAC chaired by Ordoñez. He confirmed that he conducted the bidding for the supply and delivery of one aircraft rescue and fire-fighting truck in 2006. He narrated the following entities participated in the bidding, namely Asia Borders, Inc. (representing Ziegler); the Pelican Bay Group (representing Rosenbauer International); and Audiophile, Inc. (representing Oshkosh Truck Corporation).⁶⁵

Dublin stated that the contract was awarded to Ziegler (represented by Asia Borders, Inc.): the MCIAA’s General Manager issued a notice of award addressed to Asia Border, Inc. with the instruction to coordinate with his (Dublin’s) office. Dublin added that Barillo came to his office and submitted a prepared contract. He examined and reviewed the contract, and found nothing there that was anomalous or disadvantageous to the MCIAA.⁶⁶

⁶² TSN, May 6, 2019, pp.19-21.

⁶³ *Id.* at 22-32. See also Judicial Affidavit, pp. 713-717.

⁶⁴ *Ibid.*

⁶⁵ Records, vol. VI, pp. 921-922,

⁶⁶ *Id.* at 922-923.

On cross-examination, Dublin stated that he was a member of the BAC of MCIAA until he resigned on July 31, 2006. Dublin intimated that during his tenure as member of the BAC, he issued several Bid Bulletins for the procurement of a fire-fighting truck. He confirmed that the BAC reduced the number of years of an agent's experience from five (5) to one (1) year because they were apprehensive that no one would qualify for the bidding. Dublin admitted that the BAC did not conduct any 'market probe' to justify the reduction of years.⁶⁷

Dublin confirmed that under Bid Bulletin No. 2, it is the supplier which must secure and pay for the opening of a letter of credit. He also stated that Barillo came to his office during the pre-bid conference to "coordinate and submit a prepared contract." Dublin added that it was the supplier who should pay for the letter of credit. He also stated that advance payment was prohibited under Section 88 of P.D. No. 1445. Dublin further testified that MCIAA was contractually obligated to pay 20% of the cost of the letter of credit not exceeding ₱20 million.⁶⁸

On further questioning by the Court, Dublin confirmed that MCIAA's ₱6 million payment had been made before the actual delivery, inspection or acceptance of the fire truck.⁶⁹ He also admitted that the opening of the letter of credit by the MCIAA was in violation of the contract. Dublin also testified that the ₱6 million had been deducted from the contract price of ₱38,137,200.00.⁷⁰

Ma. Venus B. Casas' testimony, as culled from her Judicial Affidavit, were as follows:

Casas declared on the witness stand that she is the Division Manager of the Accounting Division of the MCIAA. She recalled that MCIAA and Asia Borders had a transaction in 2006 regarding the procurement and supply of one unit aircraft rescue firefighting vehicle: she affixed her signature in the contract for the supply and delivery in her capacity as Accounting Division head. According to Casas, MCIAA's Legal Division drafted the contract; and that it was brought to her office by the Office of the General Manager.⁷¹

Casas recalled that when she signed the contract, it had already been signed by Yap and Barillo. She maintained that she signed the contract as an "attesting official" or head of the Accounting Division. She additionally stated that she checked only the amount of the purchase since she relied on

⁶⁷ TSN, May 7, 2019, pp. 8-21.

⁶⁸ Ibid.

⁶⁹ TSN, May 7, 2019, pp. 21-22.

⁷⁰ *Id.* at 22-30.

⁷¹ Records, vol. VI, pp. 840-844.

the fact that it passed through the BAC and the Legal Division, and that the Board of Directors had already approved the award to Asia Borders. Casas maintained that the contract price of US\$732,000.00 (or ₱38, 137,200.00) was well within the approved budget.⁷²

Casas also confirmed that she signed Disbursement Voucher No. 101-2006-03118 dated March 10, 2006 in the amount of ₱6 million as head of the Accounting Division. According to Casas, she examined the entries in this voucher, and noticed that Yap already signed it. She also added that her staff found the supporting documents complete when they examined it. She maintained that she examined the voucher and its documents, and found the payment of ₱6 million to be in order.⁷³

On cross-examination, Casas admitted that she knew that the firefighting truck had not yet been delivered when she signed the disbursement voucher. She explained that Barillo's letter to GM Yap requesting for the release of the ₱6 million prompted the preparation of the disbursement voucher.⁷⁴

The accused, with counsel, offered the following documentary exhibits consisting of Exhibits "2" and "3" (Casas); "1-DO" to "16-E-DO" (Ordoñez and Dublin); and "2" to "6" (Yap), with sub-markings.

The prosecution submitted its *Comment/Objection (to the Formal Offer of Evidence x x x)* on June 24, 2019.

In its Resolution of July 19, 2019, the Court admitted the following Exhibits:

x x x x

1) For accused Ma. Venus Casas:

Exhibits 2 (Exhibit C-2 – prosecution; Exhibit 3 – accused Yap) and 3 (Exhibit D-8 – prosecution);

2) For accused Sigfredo V. Dublin and Veronica S. Ordoñez:

Exhibits 1-DO, 1-A-DO, 2-DO, 3-DO, 3-A-DO, 4-DO, 5-DO, 6-DO, 7-DO, 8-DO, 9-DO, 9-A-DO, 10-DO, 10-A-DO, 11-DO, 12-DO, 13-DO, 14-DO, 15-DO, 16-DO and 16-A-DO to 16-E-DO; and

3) For accused Adelberto Federico Yap:

⁷² *Id.* at 844-846.

⁷³ *Id.* at 847-850.

⁷⁴ TSN, May 29, 2019, pp. 6-10.



Exhibits 2, 3 (Exhibit C-2 – prosecution), 3-A, 3-B, 3-C, 4 (Exhibit O-21 – PROSECUTION), 4-A, 4-B, 4-C, 4-D, 5 (Exhibit O-9 – prosecution) and 6 (Exhibit O-10 – prosecution)

x x x⁷⁵

THE ISSUE:

The issues for the Court's consideration are:

- (1) whether accused Yap, Ordoñez, Dublin, Casas and Barillo are criminally liable for violation of Section 3(e) of Republic Act No. 3019, as amended; and
- (2) whether Yap should be convicted for violation of Section 3(g) of R.A. No. 3019.

OUR RULING:

The evidence on record convinces Us that the prosecution was able to prove the guilt of all the accused beyond reasonable doubt for the offenses charged.

I. Violation of Section 3(e) of R.A. No. 3019

The prosecution duly established the elements of the crime charged

Yap, Ordoñez, Dublin, Casas and Barillo had been charged in Criminal Case No. SB-16-CRM-1076 with violation of Section 3(e) of R.A. 3019, as amended, which reads:

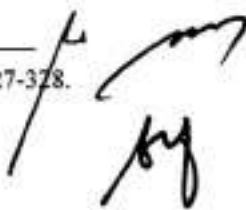
Sec. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

e. Causing 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.

⁷⁵

Record, vol. VII, pp. 327-328.



A violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The first element of the offense charged is undisputed with regard to Yap, Ordoñez, Dublin, Casas as the parties stipulated "[t]hat at the time of the alleged commission of the offenses charged in the present informations," they were public officers occupying their respective positions in the Mactan-Cebu International Airport Authority (MCIAA).

The second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. "Manifest partiality", "evident bad faith", or "gross inexcusable negligence" are not separate offenses and proof of the existence of any of these three (3) in connection with the prohibited acts is enough to convict.⁷⁶

The Supreme Court explained these terms in *Uriarte v. People*⁷⁷ in the following manner:

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

As will be explained below, we hold that the accused exhibited manifest partiality, evident bad faith and gross inexcusable negligence in causing the ₱6 million advance payment to AsiaBorders even if the subject Aircraft Rescue Fire Fighting Truck had not yet been delivered, inspected and accepted.

Opening of a letter of credit by the MCIAA

⁷⁶ See *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

⁷⁷ *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006; Emphasis in the original.

Under Article V of the *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck* (signed by Yap and Barillo for MCIAA and Asiaborders Philippines, Inc., respectively), it was the obligation of the supplier to open a letter of credit in favor of the manufacturer. For clarity, Article V of this Contract reads as follows:

LETTER OF CREDIT

1. The SUPPLIER hereby assumes the obligation of opening an irrevocable letter of credit in favor of the manufacturer which shall be issued within ten (10) days from the execution of this contract.

x x x⁷⁸

Significantly, the *Terms of Reference and General Specifications (Purchase of One [1] Unit Airport Rescue Firefighting Truck)* also states that the “opening of a letter of credit in favor of the Manufacturer shall be the sole liability and responsibility of the manufacturer’s representative or agent in the Philippines.”⁷⁹

We note in this regard that paragraph 1 of Bid Bulletin No. 2 issued by Ordoñez likewise stated that the “rules implementing RA9184 prohibits a procuring entity from opening a letter of credit. The letter of credit must be opened/issued by the representative or agent in the Philippines in favour of its foreign principal.”

In the present case, however, it is undisputed that MCIAA – the purchaser – was the one that applied for the opening of a letter of credit, and not the supplier (that is, AsiaBorders), in contravention of the terms of the Contract for the Supply x x x, the TOR and Bid Bulletin No. 2, respectively. This fact was confirmed by witnesses Purog; Leyva; and Bisnar in Court, as follows:

PROS. LYN DIMAYUGA:

Q: Now, in this case, how was the Letter of Credit use[d]?

MA. IRMA PUROG:

A: It was used to pay for the balance of US\$616, 836.86.

Q: **Who applied for this Letter of Credit?**

A: **It was the MCIAA who applied for the Letter of Credit listed in Asiaborders.**

Q: Where was it applied?

⁷⁸ Record, vol. I, p. 50.
⁷⁹ Record, vol. I, p. 46.



A: At the Landbank, the depository bank of the MCIAA.

Q: Can you tell us, who was the recipient of this Letter of Credit?

A: The recipient of course is the manufacturer Ziegler Indonesia.⁸⁰

Leyva, on the other hand, confirmed that MCIAA opened a Letter of Credit in the amount of ₱616, 836.86 in favor of PT Ziegler Indonesia x x x on November 28, 2006.⁸¹ Bisnar and Gonzales, for their part, testified that MCIAA (and not the supplier) applied for the opening of a letter of credit before the Land Bank of the Philippines.⁸²

It bears noting, too, that Atty. Dublin, MCIAA's Legal Officer and a member of the BAC, confirmed that it is the supplier who "must secure a letter of credit"; and "must be the one to pay for that letter of credit."⁸³

Significantly, Ordoñez herself admitted that the ₱6 million payment was a violation of the BAC's Bid Bulletin No. 2, thus:

PJ CABOTAJE-TANG:

Q: All right. Having admitted earlier that the Php6,000,000.00 payment was meant for opening a letter of credit, was that **not in violation of paragraph 1 of Bid Bulletin No. 2**, your very own exhibit?

VERONICA ORDOÑEZ:

A: Because the payment was based on the contract ---

Q: No, just answer the question. **Was that not in violation of this ---**

A: **Yeah, it's violated** but it was included in the contract. The payment was made based on the contract.⁸⁴

Advance payment before the complete delivery and acceptance of the aircraft and rescue firefighting truck

Paragraph 2(a), Article V of the *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck* provides that:

x x x x

⁸⁰ TSN, July 11, 2018, pp. 10-11.
⁸¹ Exhibit "O-25"; See also TSN, September 11, 2018, pp. 6-16.
⁸² See TSN, August 15, 2018, pp. 6-37.
⁸³ See TSN, May 7, 2019, p. 14.
⁸⁴ TSN, May 6, 2019, pp. 31-32 (Emphasis ours).



2. For and in consideration of the above obligation of the SUPPLIER, the PARTIES hereby agree that eighty percent (80%) of the costs, fees and charges in opening the letter of credit shall be paid by the SUPPLIER and the remaining twenty percent (20%) shall be borne by the PURCHASER subject to the following conditions:
 - a. The amount chargeable to the PURCHASER shall not exceed Six Million Pesos (Php6,000,000.00) which shall be deducted from the total contract price payable to the SUPPLIER after the complete delivery and acceptance of the aircraft and rescue firefighting truck;

x x x x⁸⁵

As expressly worded, the complete delivery and acceptance of the aircraft and rescue firefighting truck was a precondition before any payment could be made by the purchaser regarding its 20% share on the costs, fees and charges.

In the present case, however, accused Yap, Ordoñez, Dublin and Casas all **admitted that the ₱6 million payment had been made even before the delivery of the subject aircraft and rescue firefighting truck.** For clarity, we reproduce the pertinent portions of Yap's testimony:

JUSTICE MORENO:

Q: x x x x My question to you sir, is, when you signed the advance payment of Six Million (Php6,000,000.00) Pesos, **has the firefighting truck already been delivered?**

ADELBERTO YAP:

A: **No, sir.**

Q: No sir. So it is in obvious violation then of the terms and conditions provided for in Exhibit 4, correct?

A: Sir it was presented ---

Q: Just answer the question.

A: Yes, Your Honors.

For her part, Ordoñez testified as follows:

PJ CABOTAJE-TANG:

⁸⁵ Record, vol. I, p. 50.



Q: x x x x Did the Court hear you right that the Php6,000,000.00 was actually intended for purposes of opening a letter of credit?

A: Actually, Ma'am, I only learned this when the letter was forwarded to me for processing.

x x x x

Q: MCIAA paid Php6,000,000.00 to Asia Borders, correct?

A: *(Witness nodded).*

Q: **And without the items purchased having been delivered, correct?**

A: **Yeah.**

Dublin, meanwhile, declared on the witness stand, that:

PJ CABOTAJE-TANG:

Q: Did the Court hear you right that it was the MCIAA which opened this letter of credit?

SIGFREDO DUBLIN:

A: Yes, I got it from the report of the Auditor that MCIAA opened the letter in November 2006. It opened LC in November 2006.

Q: **So, this Six Million that was paid by the MCIAA was actually made before the actual delivery of the item that was purchased by MCIAA, correct?**

A: **Yes, Your Honor.**

x x x x

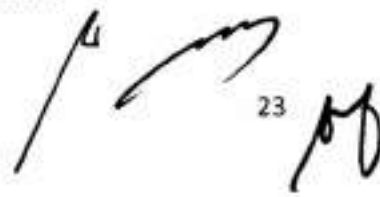
JUSTICE B. FERNANDEZ:

Q: Another reason probably is that the payment was made, of Six Million payment was made, despite the fact that the subject **fire fighting truck was not yet delivered, inspected and accepted at that time.** Anything to say?

DUBLIN:

A: **Yes, that is true, Your Honor, that it was not yet delivered.**

Q: So, you admit that **there was no delivery yet neither was there an inspection or acceptance of the fire truck when the payment of Six Million was actually made?**



23

Q: **Yes, Your Honor.**⁸⁶

In like manner, Casas testified as follows:

PROSECUTOR BLESILDA OUANO:

Q: When you signed the disbursement voucher covering the purchase, the payment for the opening of the letter of credit in the amount of P6 million, you are aware that the firefighting truck has yet to be delivered, correct?

MA. VENUS CASAS:

A: **It has yet to be delivered.**

X X X X

Q: Ms. Witness, what prompted the preparation of the disbursement voucher for the payment of P6 million considering that there was **no delivery of the firefighting at that time [sic]**?

A: There was a facsimile letter made by Marlon Barillo, the President and was addresses to GM Adelberto Yap requesting for the release of the P6 million which is equivalent to twenty percent (20%).⁸⁷

We point out, too, that per Yap's testimony, he signed the disbursement voucher even if he was *aware* of the non-delivery of the truck because he trusted the people in the Accounting, Finance and Legal Departments; and that he assumed that these people were diligent in their jobs. To directly quote from the records:

X X X X

JUSTICE MORENO:

Q: But did you not ask the Legal Division that you having read the contract and one of the terms and conditions provided that the payment should have been done only after the aircraft or the firefighting equipment has been delivered? Why do you have to sign this? Did you not ask that from the Legal, from the Accounting, from the Finance people?

YAP:

A: I asked them, your Honors, but they told me that everything is in its proper order already, Your Honors.

⁸⁶ TSN, May 7, 2019, pp. 21-22, 26 (Emphasis supplied).

⁸⁷ TSN, May 29, 2019, pp. 7-8 (Emphasis ours).

Q: You are a military officer, Mr. witness, and you are the General Manager of MCIAA. I would suppose that the President will not appoint you to that position where if not because of your sterling performance when you were an Air Force General? As you have earlier, you have agreed with me that you are a responsible officer.

A: Yes, Your Honors.

Q: Then the question is why did you sign this despite the fact that even if it was recommended to you by the Accounting, Finance, and the Legal Department, clearly this violates the terms and conditions which you have signed? Did you not say based only by reading even if I am not a lawyer, this obviously violates the terms and conditions provided for in the contract and you are not the one responsible. I will be the one responsible because I am the signatory of the contract or I was the signatory in the contract. Did you not say that?

A: Yes, Your Honors. I was just representing the MCIAA, Your Honors.

Q: Yes but your duty supposed to be as the General manager is to protect the interest of the State, correct?

A: Yes, Your Honors.

Q: **And if you did not sign this disbursement voucher, the government should not have been prejudiced by this amount of Six Million (Php6,000,000.00) Pesos had you stopped signing this disbursement voucher, correct?**

A: **Yes, your Honors.**

Q: So you are just claiming ignorance because allegedly the Accounting, the Finance, and the Legal Departments recommended this to you?

A: **I can assume that they already did diligence,** Your Honors.

Q: So you are admitting now that you did not exercise due diligence in the performance of your functions as General manager of MCIAA? Already putting up the defense, Mr. witness, that your duty as General manager of MCIA[A] is verily ministerial, that everything that comes to your office has to be signed without you thinking and going over it, without even really reading the documents?

A: No, Your Honors, I go over it.

Q: So you have all the chance, correct?

A: Yes, Your Honors.

A handwritten signature in black ink, appearing to be a stylized 'A' followed by a flourish.

Q: But you did deliberately sign the disbursement voucher despite the fact that it violated the terms and conditions of the contract?

A: Yes, Your Honors, I trusted so much the people who did that who prepared it, that is why.⁸⁸

Clearly, the ₱6 million payment constituted a violation of Section 88 of P.D. No. 1445 which provides that the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials *not yet delivered* under any contract therefor.

As General Manager of the MCIAA, it was incumbent upon Yap to protect the interest of the government, and ensure that it does not enter into transactions inimical to the State's interests. Considering the educational attainment and previous position in the government of Yap (i e., Major General and Acting Commanding Officer of the Philippine Air Force), we find it hard to fathom why he put too much reliance on MCIAA's employees, more so since he was already aware that there had been a violation of the terms of the contract which he himself was a signatory to. Verily, Yap failed to exercise the degree of diligence required of him to protect the interest of the government. The 'red flags' which he himself noticed should have prevented him from signing the disbursement voucher (and check) that led to the release of the payment to AsiaBorders.

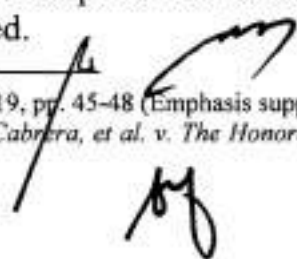
The third element had likewise been established, as the presented evidence showed that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The Supreme Court⁸⁹ defined "unwarranted" as lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

Injury, on the other hand, has been construed to mean as "any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another." It must be more than necessary or are excessive, improper or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty. Undue injury cannot be presumed even after a wrong or a violation of a right has been established.

⁸⁸ TSN, April 8, 2019, pp. 45-48 (Emphasis supplied).

⁸⁹ See *Librado M. Cabrera, et al. v. The Honorable Sandiganbayan*, G.R. Nos. 162314017, October 25, 2004.



In the present case, the MCIAA shelled out ₱6 million for the opening of a letter of credit which was supposed to be the obligation of the supplier. To make matters worse, the ₱6 million had been paid even without the delivery, inspection and acceptance of the subject firetruck. The findings of State Auditor Purog on this point are instructive, thus:

x x x x

b) The payment schedule under Item V of the Terms of Reference and General Specifications of the Contract specifically provided that the opening of a letter of credit in favour of the Manufacturer shall be the sole liability and responsibility of the manufacturer's representative or agent in the Philippines, which in this case is AsiaBorders Philippines, Inc. xxx This specific term was not pursued vigorously by MCIAA when it gave favor to AsiaBorders Philippines by allowing in Section 2(a), Article V of the Contract dated March 1, 2006 to advance 20% of the costs, fees and charges in opening the letter of credit or a maximum amount of Php6,000,000.00 xxx. MCIAA made an advance payment to AsiaBorders on March 10, 2006 the amount of Php6,000,000.00 when the latter requested it on March 9, 2006 xxx. Worst, AsiaBorders did not fulfil its obligation under Section 1, Article V of the Contract because it was MCIAA which ultimately and finally opened the Letter of Credit (LC) on November 28, 2006 xxx. Although the modified arrangement of opening the LC fortunately favored MCIAA because the peso appreciated when the US dollar-denominated LC was opened by MCIAA on November 28, 2006, the government was still at a loss because the Php6 million it shelled out earlier on March 10, 2006 must have by then carried an appreciated value of US\$119, 760.48 instead of US\$115, 163.14 as it was deducted from the US\$732,000 contract price of the ARFFV to come up with an exact CIF invoice amount of US\$616, 836.86, as billed directly by Ziegler to MCIAA xxxx.

We additionally point out that the ₱6 million 'advance payment' would not have been possible if Yap and Casas did not sign Disbursement Voucher No. 101-2006-03118 dated "03/10/2006." To be accurate, Casas certified as follows:

CERTIFIED: Adequate available funds/budgetary allotment in the amount of P6,000,000.00; expenditure properly certified; supported by documents marked (x) per checklist and back hereof; account codes proper; previous cash advance liquidated /accounted for.

In her testimony, Casas admitted that she was aware that the rescue and firefighting truck had not yet been delivered when she signed the disbursement voucher. She also knew Section 88 of P.D. No. 1445 on the prohibition on the government to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract except with the prior approval of the President.



In effect, Casas signed the disbursement voucher even if she knew that the payment of ₱6 million by MCIAA was not proper. That Yap already signed the voucher when it was forwarded to her (Casas') office; and that it had already been reviewed by the Legal Division did not oblige Casas to sign it if he discovered any irregularity in the transaction. We point out that Casas was the head of MCIAA's Accounting Division – a sensitive and crucial post – and her duty with regard to signing vouchers was not ministerial.

Notably, Auditor Purog testified that the amount indicated in the voucher would not have been paid without the signature of Casas. She added that as head of MCIAA's Accounting Division, Casas should have gone over the supporting documents. At any rate, the express terms of the Contract should have dissuaded Casas from signing the subject disbursement voucher considering that the supplier (not MCIAA) had the responsibility to open a letter of credit.

As previously discussed, Yap *did not deny* signing Disbursement Voucher No. 101-2006-03118 as approving officer. It bears pointing out in this regard that Yap signed the disbursement voucher twice: *first*, in the certification section; and *second*, in the approval portion. The *Certification* portion reads;

CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision.

During his court testimony, however, Yap admitted that he did not bother to verify from Barillo if the ₱6 million was actually 20% of the cost, fees and charges for the opening of a letter of credit; and that he did not consult anyone from the MCIAA before approving the disbursement voucher because he *trusted* the people who prepared it. We likewise highlight that Yap signed the disbursement voucher even if he was *aware* that there were violations of the terms of the contract.

Modification of required number of years for local agents/representatives

We recall that as early as 2003, the Mactan-Cebu International Airport Authority planned to procure one (1) unit Aircraft and Rescue Fire Fighting Vehicle in order to upgrade its firefighting capabilities and meet international airport standards. The BAC, through BAC Resolution No. 035-2004 dated June 17, 2004, recommended to MCIAA's General Manager to award to Audiophile Components, Inc. (the winning bidder) the supply of one unit Airport Rescue Firefighting Truck in the amount of US\$629,800.00. However, the Notice of Award to the winning bidder was declared invalid for lack of Board approval.

A handwritten signature in black ink, appearing to be a stylized 'Y' or 'J' followed by a flourish.

On 2006, the MCIAA, availing of the alternative mode of procurement, sent letters of invitation to apply for eligibility and to bid for the supply and delivery of one (1) aircraft rescue firefighting truck to the following foreign manufacturers: Ziegler; Rosenbauer International; and Oshkosh Truck Corporation.

On January 19, 2006, BAC Chairman Ordoñez issued Bid Bulletin No. 2 which required the "representative/agent to be a "corporation or firm jointly and severally liable with the foreign principal, and engage in the supply, delivery and maintenance of airport rescue firefighting truck or airport related equipment for a period of at least five years."

Less than a week later, or on January 25, 2006, Ordoñez issued Bid Bulletin No. 4, which, among others, modified the required number of years of representatives/agents from five (5) years (under paragraph 4 of Bid Bulletin Number 2) to "at least one (1) year."

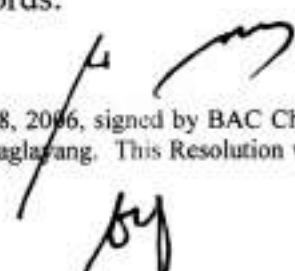
Ziegler and Rosenbauer submitted letters of intent with the information that AsiaBorders, Inc. and Pelican Bay Group, Inc. have been designated as their exclusive distributor, representative/agent in the Philippines duly authorized to bid and sign, execute and deliver the required documents. After evaluation of the eligibility documents, they were adjudged eligible to bid for the said project and accordingly filed their bid proposals. Oshkosh Truck Corp. also submitted a letter of intent but was disqualified to participate in the bidding because it had no dealer or agent in the Philippines.

The bid proposal of Pelican Bay Group, Inc. failed in the technical requirements, and the BAC recommended to the General Manager to award the *Contract for the Supply and Delivery of One Aircraft Rescue and Firefighting Truck* to AsiaBorders, Inc. in the amount of US\$732,000.00 or ₱38,137,200.00.⁹⁰

MCIAA (represented by Yap) and AsiaBorders Philippines, Inc. (represented by Barillo) entered into a *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck* dated March 1, 2006.

Ordoñez maintained that the decision to change the required number of years was a concession among the BAC members, and that the decision was unanimous. When inquired, however, on the justification for the change in the number of years, Ordoñez merely stated the BAC members were *apprehensive* that none of the bidders would be able comply with the 5-year requirement. To directly quote from the records:

⁹⁰ Per BAC Resolution No. 118-2006, dated February 8, 2006, signed by BAC Chairman Veronica Ordoñez, and BAC members Atty. Dublin and Bienvenido Maglarang. This Resolution was approved by General Manager Adelberto Yap.



X X X X

Justice R.B. Moreno:

Q: Okay. And what was supposed to be the justification why it should be reduced from five (5) years to one (1) year when the pre-bidding qualification provides that it should have been five (5) years? What was the basis to change it from five (5) to one (1) year?

Veronica Ordoñez:

A: Because nga, Sir, our apprehensive [sic] that maybe none of them were qualified.

Q: So, just a mere apprehension ---

A: Yeah.

Q: Of the members that nobody will qualify?

A: Yes.

Q: That's the reason given? *Tama po yun?*

A: Yes, Sir.

X X X X⁹¹

The apprehension among the BAC members was confirmed by the very person who prepared the Bid Bulletins, Atty. Dublin, who also admitted that the BAC did not conduct a study or 'market probe' to justify the reduction of the required number of years for local representatives/agents from five years to one year, thus:

PROS. BLESILDA OUANO:

Q: So, from five years, what is the reason that the BAC reduced the number of years to one year, if you know?

SIGFREDO DUBLIN:

A: Well, if I remember, during the pre-bid conference, there was an 'informal talk among the bidders that the five-year requirement maybe to hire [sic]. So, we were apprehensive, the BAC was apprehensive that no one would qualify and considering the fact that the bidders are only agents who are not really the suppliers, they are merely acting as agents. So, the BAC, well, it is not necessary to impose as stringent requirement of five years. What matters for us, for the BAC then, at that time is the

⁹¹ TSN, May 6, 2019, pp. 24-25.

reputation of the supplier that is why it was reduced to one year.

Q: So, you have no documents or study conducted as basis for the reduction of years, correct?

A: Document?

Q: Document or study?

A: No, Ma'am.

Q: So you did not conduct a market probe to justify the reduction of one year?

A: What is a market probe, Ma'am?

X X X X

Q: Yes, to study whether there are other suppliers that can comply with the five-year period?

A: No, Ma'am.⁹²

From these exchanges, it can be gleaned that there was really no concrete justification for the BAC to reduce the required number of years from five years to one year. While it may be true that they were apprehensive that none could comply with the five-year requirement, the BAC did not even conduct any study or research on the matter to justify their alleged apprehension on this matter. How the BAC came up with the one-year threshold is also suspect, in light of the fact that AsiaBorders had only been in operation for 1½ years at the time of the bidding

The presence of conspiracy

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. It may be deduced from the mode or manner in which the offense was perpetrated; or inferred from the acts of the accused, who were acting in concert in the pursuit of their unlawful design. Conspiracy, like the crime itself, must be proven beyond reasonable doubt. Existence of conspiracy must be clearly and convincingly proven.

In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven. Direct proof is not essential to show conspiracy. It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them.

⁹² TSN, May 7, 2019, pp. 13-14.



What are the established facts?

Dublin prepared Bid Bulletin No. 4 which modified the required number of years for local agents/representatives from five years to one year. This Bid Bulletin, as well as the previous Bid Bulletin No. 2 (also prepared by Dublin), were both signed by Ordoñez. As previously discussed, the BAC failed to justify the modification (that is, reduction) of the requirement for local agents/representatives, including the basis of the 1-year threshold for local agents/representatives.

Dublin and Ordoñez also recommended the bid of AsiaBorders despite the fact that AsiaBorders had a paid-up capital of only ₱300,000.00, and based on its BIR returns did not have any sales revenue in its limited years of existence. As previously discussed, the change in the requirement for the existence of the local agents from 5 years to 1 year had not been sufficiently justified. The financial incapacity of AsiaBorders was highlighted by the fact that it was incapable of opening a letter of credit. As stated by Ordonez and Casa, the BAC was responsible in accepting and evaluating bid proposals and in recommending to the General Manager the bid offer most advantageous to MCIAA. We are therefore at a loss how the BAC Chaired by Ordoñez could have overlooked the following critical circumstances:⁹³

- (a) AsiaBorders, Philippines, Inc. was only incorporated on July 28, 2004 per SEC Registration No. CS200411433, which means that it existed only for one-and-a-half (1½) years at the time of the bidding of the subject ARFFV);
- (b) In a letter dated February 1, 2006, the President of AsiaBorders disclosed the list of customer references for goods and services which AsiaBorders had allegedly provided within the last two (2) years and not 1½ years to coincide with the number of years of its existence. AsiaBorders listed eight (8) different firm or establishments which it had allegedly transacted xxx;
- (c) x x x in various tax returns submitted to the MCIAA as part of the requirement in the bidding, AsiaBorders Philippines, Inc. reported no sales, revenues or receipts for the years 2004 and 2005. xxx
- (d) As shown in its Articles of Incorporation, the primary purpose of AsiaBorders, Inc. is to engage in the sales, after-sales and technical support of security and detection systems (such as airport x-ray baggage scanners). It has an authorized capital stock of Php1,000,000.00 x x x x⁹⁴

Per Dublin, Barillo went to his office several times to coordinate and to submit a prepared contract. The *Contract for the Supply and Delivery of*

⁹³ As found by Purog upon her perusal of the bidding documents available on file.
⁹⁴ Affidavit of Ma. Irma Purog dated September 13, 2012.

One (1) Aircraft Rescue Fire Fighting Truck had been signed by Yap and Barillo, and attested to by Casas that funds were available.

The records also disclosed that Barillo sent a letter to Yap on March 9, 2006 requesting that the sum of ₱6 million be remitted to AsiaBorders so that it can open a letter of credit. Surprisingly, Yap approved the letter-request of Barillo on the next day, as evidenced by the marginal note "*Approved x x x To: C, Finance For Processing.*"

To be sure, Barillo was a signatory to the *Contract for the Supply x x x*, and as such, was aware of the following stipulations: *first*, the provision requiring the supplier to open an irrevocable letter of credit within 10 days from the execution of the Contract; *second*, the payment chargeable to the purchaser which shall not exceed ₱6 million could only be paid after the complete delivery and acceptance of the aircraft and rescue firefighting truck; and, *third*, the supplier shall furnish and deliver the aircraft rescue firefighting vehicle within one hundred eighty (180) calendar days x x x reckoned from the 11th day following receipt of the Notice to Proceed by the supplier. It thus baffles us why Barillo would request the ₱6 million to be remitted to AsiaBorders even if the subject vehicle had not yet been delivered, and despite the obligation on the latter's part to open a letter of credit. Even more puzzling is the approval of Yap – also a signatory to the Contract – to Barillo's letter-request a day later.

To make matters worse, Yap signed twice in Disbursement Voucher No. 101-2006-03118: he certified that the expenses and cash advance were necessary and lawful; and approved the voucher for the amount of ₱6 million. Yap was also a signatory to the LBP Check dated March 10, 2006 amounting to ₱6 million issued to AsiaBorders Philippines, Inc. to which AsiaBorders issued Official Receipt No. 17. It bears pointing out that this payment was questioned by State Auditor IV Ma. Divina Janulgue via Audit Query No. 2006-005, wherein the latter pointed out that an advance payment is not allowed by Section 88 of Presidential Decree No. 1445.

Casas, for her part, signed the subject disbursement voucher even if she was aware of the non-delivery of the aircraft rescue firefighting truck.

Under these given facts, there can be no question that the accused acted in concert to attain a common purpose. Their respective actions summed up to collective efforts to achieve a common objective.

It is common design which is the essence of conspiracy – conspirators may act separately or together, in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by

looking at it as a whole.⁹⁵ Acts done to give effect to the conspiracy may be, in fact, wholly innocent acts. Yet, if they are parts of the sum of the acts which are relied upon to effectuate the conspiracy which the law forbids, they lose that character. Such acts become a public wrong if the result is harmful to the public or to the individual against whom the concerted action is directed.⁹⁶

The Proper Penalty

On the appropriate penalty, a person guilty of violating Section 3(e) of R.A. No. 3019, as amended, is punishable with imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years and perpetual disqualification from public office.

Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.

Accordingly, the Court finds it proper to impose an indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.

II. Violation of Section 3(g) of R.A. 3019, as amended

Yap had been charged with violation of Section 3(g) of R.A. 3019, as amended, which reads:

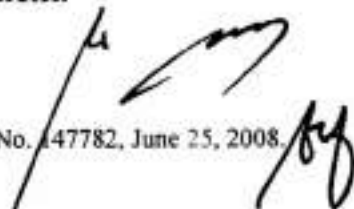
Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of this offense are *first*, the accused is a public officer; *second*, that he or she entered into a contract or transaction on behalf of the government; and *third*, that the contract or transaction is grossly and manifestly disadvantageous to the government.

⁹⁵ See *Juanita A. Aquino v. Teresita B. Paiste*, G.R. No. 147782, June 25, 2008.

⁹⁶ *Supra*, note 35.



The first element is undisputed as this had been stipulated by the parties during pre-trial. The second element is also present, as the records bear out that Yap, in his capacity as MCIAA's General Manager, transacted with AsiaBorders Philippines, Inc., as evidenced by the *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck*.

With regard to the third element, the pieces of evidence clearly showed that the contract or transaction was grossly and manifestly disadvantageous to the government. Yap is a public officer who approved the transactions on behalf of MCIAA which thereby suffered a substantial loss. The irregularities in the transactions (as found by COA Auditor Purog) were quite telling, viz:

X X X X

8. In the verification of the transaction documents, which showed how the contract was actually carried out and complied, it was found out that the subject transaction turned out to be disadvantageous to the government in view of the following deficiencies, inconsistencies or discrepancies:

- (a) The contract documents expressly provided that the price of the ARFFV of US\$732,000.00 or Php 38,137,200.00 is inclusive of customs duties and taxes xxx. The CIF value of the ARFFV per Commercial Invoice No. 061148/EXP/INV/ZI/XI/06 dated November 30, 2006 issued by Ziegler in the name of MCIAA is US\$616,836.86 xxx. However, in the entry of importation at the Bureau of Customs (BOC), the subject commodity was declared with a value of Php3,800,902.00 or roughly 10% of its invoice price, hence, it was only assessed a customs duty of Php38,188.00 and a VAT of Php464, 485.00 or a total of Php503,673.00 including Import Processing Fess (IPF) of Php1,000.00 xxx. This revenue is less than 1/5 of the expected taxes which the government could collect had the true value of the importation been declared as transacted and the duties and taxes thereon provided in the Approved Budget for the Contract (ABC). Likewise, it was noted that I the letter dated January 19, 2012 of the BOC xxx, it was disclosed that the entry of importation of the subject ARFFV was made on May2007, which is more than thirty (30) days after arrival and delivery of the imported ARFFV to MCIAA on December 20, 2006, as reported.
- (b) x x x x Worst, AsiaBorders did not fulfil its obligation under Section 1, Article V of the Contract because it was MCIAA which ultimately and finally opened the Letter of Credit (LC) on November 28, 2006 xxx. Although the modified arrangement of opening the LC fortunately favored MCIAA because the peso appreciated when the US dollar-denominated LC was

opened by MCIAA on November 28, 2006, the government was still at a loss because the Php6 million it shelled out earlier on March 10, 2006 must have by then carried an appreciated value of US\$119, 760.48 instead of US\$115, 163.14 as it was deducted from the US\$732,000 contract price of the ARFFV to come up with an exact CIF invoice amount of US\$616, 836.86, as billed directly by Ziegler to MCIAA

x x x x

- (d) It was provided in Item II, Letter G of the Terms of reference and General Specifications of the Contract that the bidder shall deliver the ARFFV within 180 calendar days from receipt of notice to proceed xxx. This instruction was modified in paragraph 2 of Bid Bulletin No. 2 dated January 19, 2006 to the effect that the complete delivery of the ARFFV be effected not later than October 31, 2006 in time for the ASEAN Summit xxx. In paragraph 1, Article III of the Contract dated March 1, 2006, it was stipulated that the Supplier shall furnish and deliver the ARFFV within 180 calendar days, CIF Mactan International Airport, Lapu-Lapu City, Cebu, reckoned from the 11th day following the receipt of the notice to proceed by the Supplier xxx. In a letter dated September 4, 2006, the former Audit Team Leader (ATL) inquired from the management of MCIAA on the due date of delivery of the ARFFV, and reminded thereon about the stipulation on liquidated damages in case of delays or non-delivery of the ARFFV xxx. On October 23, 2006, the former ATL requested from the MCIAA management about the status of the subject contract with AsiaBorders. She likewise reminded the MCIAA management that based on the contract, AsiaBorders was supposed to deliver the ARFFV not later than September 6, 2006, which is the 180th day from the date AsiaBorders received the check from MCIAA amounting to Php6 million on March 10, 2006 xxx. Despite non-delivery, MCIAA yielded to the request of AsiaBorders for final payment by securing a cash LC in favor of PT Ziegler Indonesia on November 28, 2006 xxx. Although MCIAA demanded from South Sea Surety & Insurance Co., Inc. the liquidated damages out of the Performance Bond put up by AsiaBorders, however, it was not shown that MCIAA was able to collect from the insurance company the amount of Php3, 966.268.80 as liquidated damages.

In *Castillo-Co v. Sandiganbayan*,⁹⁷ the Supreme Court expounded on the third element of violation of Section 3 (g) of R.A. No. 3019 in this wise:

⁹⁷ G.R. No. 184766, August 15, 2018.

Section 3(g) of R.A. No. 3019 is intended to be flexible in order to give judges some latitude in determining whether the disadvantage to the government, occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest. Otherwise stated, there is no hard and fast rule against which the disadvantageous acts complained of should be calibrated. The determination of whether the disadvantage caused was gross and manifest, as contemplated by Section 3(g), should be done on a case-to-case basis.

"Gross" connotes something "glaring, reprehensible, flagrant, or shocking. On the other hand, "manifest" is defined as "evident to the senses, open, obvious, notorious, and unmistakable.

We emphasize that the Contract signed by Yap for MCIAA showed that the price for the ARFFV was US\$732,000.00 or ₱38, 137,200.00 inclusive of customs duties and taxes. The cost of imported goods, insurance and freight costs (CIF) value of the ARFFV per Commercial Invoice No. 061148/EXP/INV/ZI/XI/06 dated November 30, 2006 issued by P.T. Ziegler Indonesia was US\$616, 836.86. However, the declared value of the ARFFV in BOC Import Entry & Internal Revenue Declaration No. NGA 0165-06 was only US\$80, 105.00 (or ₱4, 013,260.50) or roughly 10% of its invoice price. As such, it was only assessed a customs duty in the total amount of ₱503, 673.00 (including the Import Processing Fee of ₱1,000.00). It bears noting that the ₱503, 673.00 was less than 1/5 of the expected taxes which the government could have collected had the true value of the importation been declared.

Corollarily, COA State Auditor Purog found that the ₱6 million paid by MCIAA was an "advanced payment which is not allowable under our laws PD 1445."⁹⁸ During cross-examination, Purog maintained the advance payment was disadvantageous to the government, since the opening of a letter of credit was supposed to be done by AsiaBorders and not by MCIAA. She also testified that the MCIAA had been unable to collect liquidated damages arising from the transaction it entered into with AsiaBorders.

Significantly, Yap himself admitted that **the government would not have been prejudiced in the amount of ₱6 million if he did not sign Disbursement Voucher No. 101-2006-03118.**

We are not unaware that under the *Arias*⁹⁹ doctrine, all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.

In several cases, however, the Supreme Court also clarified that the *Arias* doctrine is not an absolute rule. It is not a magic cloak that can be

⁹⁸ TSN, July 11, 2019, p. 11.

⁹⁹ See *Arias v. Sandiganbayan*, 259 Phil. 794, 805 (1989).

used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.¹⁰⁰ The application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care.

In the case of *Jesus O Typoco, Jr. v. People of the Philippines*, the Sandiganbayan¹⁰¹ found Jesus O. Typoco, Jr. (*Typoco*) and Noel D. Reyes (*Reyes*) guilty beyond reasonable doubt of the offense of Falsification of Public Document defined and penalized under Article 171, paragraphs (5) and (6) of the Revised Penal Code.

On appeal via petition for review on certiorari, Typoco invoked the *Arias* doctrine and argued, *inter alia*, that while he may have acted negligently when he affixed his signature on the subject purchase order (which document was forwarded to him with all the necessary signatures of his subordinates), there was no criminal intent that can be attributed to him when he signed the same. He also stressed that he relied in good faith on his subordinates and provincial officers.

The Supreme Court disregarded Typoco's defenses, and held that the factual circumstances which led to the Court's ruling in *Arias* were such that **there was nothing else in the documents presented before the head of office therein that would have required the detailed examination of each paper or document.** It added that **when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing.** The High Court explained that Typoco cannot rely on the *Arias* doctrine because the falsification of the documents in that case was not apparent. In the transaction entered into by Typoco, the alteration in the subject purchase order and other documents were obviously tampered which could have not escaped his attention.

The Supreme Court's disquisition on this matter is particularly instructive, thus:

Thus, the irregularities are very apparent on the face of the documents. Had petitioner Typoco exercised the due diligence expected of him, he would have easily noticed the irregularities on the documents. As held in *Cesa v. Office of the Ombudsman*,¹⁰² when there are facts that point to an irregularity and the officer failed to take steps to rectify it, even tolerating it, the *Arias* doctrine is inapplicable.

To clarify, the *Arias doctrine* is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.

¹⁰⁰ See *Castillo-Co v. Sandiganbayan*, G.R. No. 184766, August 15, 2018 citing *Rivera v. People*, 749 Phil. 124 (2014).

¹⁰¹ G.R. No. 221857, August 16, 2017 (citations omitted).

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Thus, this ruling cannot be applied to exculpate petitioner Typoco in view of the peculiar circumstances in this case which should have prompted him, as head of office, to exercise a higher degree of circumspection and, necessarily, go beyond what his subordinates had prepared.

In the present case, there were numerous circumstances that should have prompted Yap to make further inquiries, more so since he was aware of the non-delivery of the air and rescue fire-fighting vehicle; the supplier's obligation to open an irrevocable letter of credit; and the latter's obligation to deliver the vehicle within a certain time-frame. We likewise highlight the fact that the difference between the contract price and the declared value of the ARFFV was *so glaring* that could not have been overlooked by Yap had he exercised the diligence demanded by his position.

Also, unlike in *Arias*, where there were no reasons for the heads of offices to further examine each voucher in detail, Yap, by virtue of the duty given to him as head of MCIAA, had the responsibility to examine the subject disbursement voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.¹⁰²

Considering all the foregoing, Yap must be held accountable for entering into a transaction grossly and manifestly disadvantageous to the government.

The Proper Penalty

A person guilty of violating Section 3(g) of R.A. No. 3019, as amended, is punishable with imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years and perpetual disqualification from public office.

Accordingly, the Court finds it proper to impose an indeterminate penalty of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, and to suffer perpetual disqualification from holding public office.

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

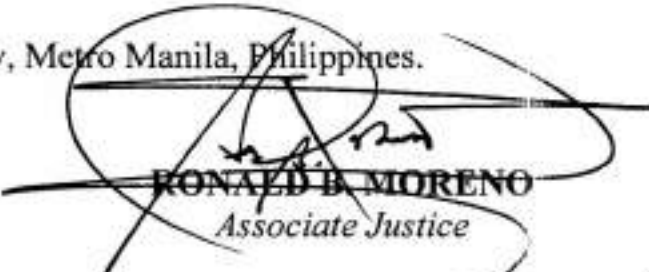
1. In SB-16-CRM-1076, accused Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, and are each hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as

maximum; and to suffer perpetual disqualification to hold public office; *and*

2. In SB-16-CRM-1077, accused Adelberto Yap is found **GUILTY** beyond reasonable doubt of violation of Section 3(g) of R.A. No. 3019, and is sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum; and to suffer perpetual disqualification to hold public office.


SO ORDERED.

Quezon City, Metro Manila, Philippines.


RONALD B. MORENO
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice, Chairperson


BERNELITO R. 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

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