

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

- versus -

VICTORIA ANDREA
PERALTA AGUINALDO and
OSCAR DANCEL
AGUINALDO

Accused,

-----and-----

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

-versus-

VICTORIA ANDREA
PERALTA AGUINALDO and
OSCAR DANCEL
AGUINALDO

Accused.

CASE NO. SB-17-CRM-0261

FOR: Violation of Section 3(e) of
Republic Act No. 3019 (Anti-Graft
and Corrupt Practices Act), as
amended)

CASE NO. SB-17-CRM-0262

FOR: Violation of Section 7(a) of
R.A. No. 6713 (Code of Conduct
and Ethical Standards for Public
Officials and Employees)

Present:

LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

September 13, 2019 mca

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DECISION

LAGOS, J.:

Accused Victoria Andrea Peralta Aguinaldo is the wife of co-accused Oscar Dancel Aguinaldo. During the time material to these cases,

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she was the Municipal Mayor of Pasuquin, Ilocos Norte, while her husband was the owner/manager of North Metro Gasoline Station (also referred to as "North Metro Oil"), located at Barangay No. 24, Nagsanga, of the same municipality (Exhibit "L").

On January 30, 2013, the Office of the Ombudsman (OMB) in Quezon City received a **Complaint-Affidavit**¹ against herein accused, docketed as OMB-L-C-13-0320, for violation of (i.) Malversation under Article 217 of the Revised Penal Code, (ii.) Sec. 3(e) of RA 3019, known as the Anti-Graft and Corrupt Practices Act, and (iii.) Sec. 7(a) of RA 6713, known as the Code of Conduct and Ethical Standards for Public Officials and Employees. The complainants, both residents of Pasuquin, Ilocos Norte, were **Felix Dancel Aguinaldo, Jr.**, who was then the Vice-Mayor of Pasuquin,² and also brother and brother-in-law of accused Oscar and Victoria, respectively, and **Jesus Dulwe Lagazo**, now deceased, who was then Director/Board Member of the Zanjera Cadaclan Pasayacan, Inc., which claims stewardship of the herein irrigation canal project. Complainants alleged among others, the following:

COMPLAINT-AFFIDAVIT

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3) The National Irrigation Administration (NIA) extended a financial assistance to our municipality in the amount of One Million Five Hundred Thousand (P1,500,00.00) for the rehabilitation of the irrigation canal under the stewardship of Zanjera Cadaclan Pasayacan, Inc.

4) The implementation of the project however is conditioned upon the appropriation of a counterpart fund from the municipality in the amount of One Hundred Eighty Seven Thousand Five Hundred Pesos (P187,500.00).

5) Hence, on 09 January 2012, the Sangguniang Bayan of the municipality adopted *Municipal Ordinance No. 2012-01* appropriating the counterpart fund. The ordinance was duly approved by respondent Hon. Aguinaldo as Municipal Mayor. A copy of the ordinance was marked and attached as **Annex "A"**.

6) Of the counterpart fund of P187,500.00 appropriated thru the ordinance, the amount of One Hundred Eighty Six Thousand Nine Hundred Forty (P186,940.00) has already been released/disbursed allegedly for the purchase of Diesel, Oil, Brake Fluid for the implementation of the project as evidenced by a *Purchase Request* and *Acceptance and Inspection Report*. Certified copies of said documents were marked and attached as **Annexes "B" and "C"**.

¹ Records, pp. 22-38.

² TSN dated March 7, 2018, p. 7.

7) Of the P186,940.00 released/disbursed fund, One Hundred Twenty Three Thousand Five Hundred Pesos (P123,500.00) was allegedly used for the payment of Two Thousand Six Hundred (2,600) liters of Diesel as evidenced by an *Obligation Request* and *Disbursement Voucher* and *Purchase Order* certified copies of them were marked and attached a **Annexes "D", "E" and "F"**, respectively.

8) On the other hand, the remaining Sixty Three Thousand Four Hundred Forty Pesos (P63,440.00) was used for the payment of oils and brake fluid as evidenced by an *Obligation Request* and *Disbursement Voucher* certified copies of them were marked and attached as **Annexes "G" and "H"**.

9) While disbursement of the above-mentioned fund should have been perfectly legal as it is sanctioned by an ordinance and for the purpose of carrying out a valid project, the disbursement are rather illusory and clearly adopted by respondent for their benefits or advantage to the undue prejudice of the municipality and the people whose taxes the same are sourced as the funds were not actually used in the project.

10) Thus, while the documents (*Annexes "B" to "H"*) supporting disbursement indicates that those amount are intend (sic) for the excavation of the Cadaclan Pasayakan which is the irrigation project mentioned in the above-mentioned ordinance (*Annex "A"*), a report dated 26 December 2012 of Municipal Engineer Abraham A. Mamuad states that the project has not started because the backhoe of the municipality is under repair. Copy of the said report was marked and attached as **Annex "I"**.

11) More, the disbursement of P123,500.00 for the alleged payment of 2,600 liters of diesel is very irregular as the supplier, North Metro Gasoline Station is owned and managed by respondent Oscar D. Aguinaldo, husband of respondent Hon. Victoria Andrea P. Aguinaldo as evidenced by a *Certification* issued by the Municipal Treasurer marked and attached as **Annex "J"**.

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Giving due course to the complaint, and as part of its preliminary investigation thereof, the Ombudsman then directed therein respondents (now accused) to file, which they correspondingly complied by filing, their respective counter-affidavits on the matter. In a Resolution dated February 5, 2015, duly approved by then Ombudsman Conchita Carpio Morales, OMB Graft Investigation and Prosecution Officer I (GIPO I) Janice M. Didal-Vargas found probable cause to indict both accused for violation of **Sec. 3(e) of RA 3019** and **Sec. 7(a) of RA 6713**. It found, however, "that there was no malversation...Other than complainant's allegations, they failed to adduce evidence to show that respondent Victoria, in conspiracy with respondent Oscar, appointed, took, consented or through abandonment or negligence, permitted another person to take the questioned fund." As important, it was clearly confirmed in the same Resolution that, "**In fact, the questioned**

amount was actually used for the purpose it was appropriated as evidenced by the Certificate of Project Completion and Statement of Work Accomplished as of 1 February 2013.³ (Emphasis supplied.) The accused's motion for reconsideration on the finding of probable cause was denied as "[t]he motion was filed out of time."⁴

Consequently, two (2) separate Informations were filed and docketed in the Sandiganbayan on February 13, 2017 as **SB17-CRM-0261** for violation of Sec. 3(e) of RA 3019 (the Anti-Graft and Corrupt Practices Act), and **SB17-CRM-0262** for violation of Section 7(a) of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).

These cases were first raffled to the Seventh (7th) Division of the Court. Subsequently, on February 21, 2017, they were transferred to the present Fifth (5th) Division, in a swap with another case in which this Court had inhibited from.⁵

On February 23, 2017, the Court issued Hold Departure Orders against both accused⁶ and, on the same date, found that sufficient grounds for the finding of probable cause exist and ordered warrants of arrest issued against them.⁷ In a 'Return of Warrant' issued by the National Bureau of Investigation (NBI), Laoag City, dated March 14, 2017, signed by SA Hilario C. Manding and noted by Atty. Diosdado N. Araos, Agent-In-Charge, it was reported that both accused were arrested by elements of the Pasuquin Municipal Police Station and that "after they posted bail at the Clerk of Court, RTC-Laoag City, Judge Philip G. Salvador ordered their release on March 10, 2017."⁸ Arraignment was scheduled on May 9, 2017,⁹ whereupon both accused assisted by counsel pleaded not guilty to the charges against them¹⁰ and ordered to attend preliminary conference before the Division Clerk of Court set for June 23 and August 4, and pre-trial on August 10, 2017.¹¹

On June 23, 2017, the accused filed a *Motion to Quash*,¹² thus, forestalling and causing the resetting of the scheduled preliminary conference to August 4, 2017,¹³ and still later moved to September 1, 2017.¹⁴ The

³ Resolution, pp. 8-9.

⁴ Order dated August 10, 2016, pp. 16, 17.

⁵ Minutes of Proceedings dated February 21, 2017, p. 51.

⁶ Records, p. 54.

⁷ *Id.*, p. 55.

⁸ *Id.*, p. 72. See Copy of Order of Release at pp.76 and 85.

⁹ *Id.*, p. 93

¹⁰ *Id.*, Certificate of Arraignment, pp. 102 and 103

¹¹ *Id.*, Order, p. 126

¹² *Id.*, p. 112

¹³ *Id.*, see Minutes of Proceedings held on June 23, 2017 on p. 119.

¹⁴ *Id.*, p. 137

prosecution filed its *Opposition*¹⁵ to the accused's *Motion to Quash* on July 10, 2017. The Court denied for lack of merit the accused's *Motion to Quash* in its Resolution dated July 17, 2017, as well as the *Motion for Reconsideration*¹⁶ which the accused filed on August 4, 2017 – with *Opposition*¹⁷ from the prosecution dated August 7, 2017 – per the Court's Resolution¹⁸ dated August 15, 2017.

The preliminary conference previously set for September 1, 2017 was cancelled due to the observance the public holiday *Eid'l Adha*, and reset to September 15, 2017.¹⁹ For lack of 'return of service' as to the last setting, the same was again reset to October 15, 2017²⁰, and finally concluded on the said date. Pre-trial was set, and the Court declared the same terminated and issued its Pre-trial Order on November 23, 2017²¹.

Initial trial dates were set for March 6 and 7, 2018.²² In a surprise move, the prosecution filed on January 10, 2018, a *Motion for Pre-Marking of Additional Exhibits for the Prosecution*.²³ The accused filed their *Comment and/or Opposition*²⁴ to the motion. In its March 1, 2018 *Resolution*, the Court granted the said motion and allowed the prosecution to pre-mark its Exhibits "P" and "P-1" to "P-4", in time for the initial presentation of the prosecution evidence set on March 6 and 7, 2018.²⁵ Trial commenced as scheduled.

EVIDENCE FOR THE PROSECUTION

The prosecution presented as part of its evidence the testimony of each of the following witnesses: (1.) Ermeline Cariaga, (2.) complainant Felix Dancel Aguinaldo, (3.) Nehemia S. Calija, and (4.) Engr. Abraham A. Mamuad.

Erneline Luz Cariaga is the Municipal Treasurer of the Municipality of Pasuquin, Ilocos Norte. She executed a Judicial Affidavit which was presented in court and she confirmed the veracity of the contents of the said document.

During cross-examination, she testified that she has been the Municipal Treasurer of Pasuquin, Ilocos Norte since 2006. She also stated that as a

¹⁵ *Id.*, p. 122

¹⁶ *Id.*, p. 131

¹⁷ *Id.*, p. 138

¹⁸ *Id.*, p. 142

¹⁹ *Id.*, p. 148

²⁰ *Id.*, p. 152

²¹ *Id.*, p. 157

²² *Id.*, p. 174

²³ *Id.*, p. 184

²⁴ *Id.*, p. 250

²⁵ *Id.*, p. 256

member of the Bids and Awards Committee (BAC) of Pasuquin, she is under obligation to make a pre-qualification of bidders in a particular project and to conduct post qualification of winning bidders before a contract is awarded.

In addition, Cariaga asserted that there was no bidding conducted on the project in question due to the fact that it involved 'very small value' procurement and because they or the BAC resorted to alternative modes of procurement which include shopping and canvassing. The witness confirmed that she solicited or asked for price quotation from possible suppliers. Among other business establishments, BAC solicited quotations from North Metro Oil. Out of the quotations solicited from North Metro Oil and others, Cariaga affirmed that it was the former that gave the lowest price. Due to this, she recommended the said company to the head of the procurement committee.

The witness testified that she found no need to examine the supporting documents on the subject procurement, as when the accountant had already signed the disbursement voucher. She was not the one to look into the requirements, but she had seen some of the attachments though she was not sure if these were complete. The witness also stated that there was no pre-audit, but only post audit on the covered transaction. Cariaga mentioned that project documents were later submitted to the Commission on Audit (COA) for post audit. She also signed the Disbursement Voucher for payment to Jasper Marketing and General Merchandise.

Complainant Felix D. Aguinaldo, Jr. was the Vice-Mayor of the Municipality of Pasuquin, Ilocos Norte during the time material to these cases. He executed the Complaint-Affidavit which became the basis of the investigation in these cases. The witness confirmed his signature and also validated the signature of Jesus Dulwe Lagazo found in the said Complaint-Affidavit. According to the witness, Jesus Lagazo, who is now deceased, was a director or board member of Cadaclan Pasayakan, Inc.

As stated in the complaint-affidavit, the witness affirmed that there was a Municipal Ordinance showing the amount of One Hundred Eighty-Seven Thousand and Five Hundred pesos (P187,500.00) which was appropriated for the rehabilitation of the Cadaclan Pasayakan Irrigation Canal. He also confirmed the existence of the excerpt of the Minutes of the Regular Session of the Sangguniang Bayan of Pasuquin, held on January 9, 2012, containing Municipal Ordinance No. 2012-01 appropriating P187,500.00 for the National Irrigation Administration (NIA)-assisted project, particularly the rehabilitation of the Cadaclan Pasayakan Irrigation Canal. Said excerpt is marked as "Annex A" in his Complaint-Affidavit. He confirmed his signature above his printed name and likewise affirmed the signature of accused Victoria Andrea Aguinaldo above her printed name in the said excerpt. According to the witness, accused Victoria was Municipal Mayor of Pasuquin from 2010 up to 2013.

The witness identified the attached Purchase Request of diesel and brake fluid, and Acceptance and Inspection Report. In the Purchase Request, he identified the signature contained as that of accused Victoria Andrea Aguinaldo. In the Acceptance and Inspection Report, it was pointed out that the supplier reflected is North Metro Oil and Jasper Marketing. The witness also identified the Obligation Request, Disbursement Voucher and Purchase Order which are attachments in his Complaint-Affidavit. In all the three documents, the witness confirmed that the signatures contained in them belong to the accused Victoria Andrea Aguinaldo. He then affirmed and confirmed the veracity of the contents of his Complaint-Affidavit. He also clarified that the owner of North Metro Oil is accused Oscar Aguinaldo, his brother, and accused Victoria Andrea Aguinaldo is accused Oscar's spouse.

During the cross-examination, the witness confirmed that he was the Vice-Mayor of Pasuquin from 2010 to 2013, while accused Victoria was the Mayor. He admitted that both he and accused Oscar ran for the same position for Mayor in the 2013 midyear (local) election. The witness also stated that he did not at first vote for the appropriation in favor of Zanjera Cadaclan Pasayakan, Inc., except to break a tie. He also testified that he signed the resolution. The witness further explained that the Sangguniang Bayan adopted Municipal Ordinance No. 2012-01 so that he can help the Cadaclan Pasayakan canal in bringing the water downstream. He stated that he is not aware of the procedure of the Sangguniang Bayan after the budget; he further stated that it was up to the Mayor to decide or to handle the appropriated amount. Moreover, he asserted that as Vice-Mayor, he verified that said appropriation was to be implemented by "administration," but only the appropriated amount was managed by the latter. He is not aware if the matter was coursed through the Municipal Engineering Office since it was infrastructure in nature. He further stated his belief that the Office of the Mayor is responsible for the abovementioned project and not the Municipal Engineering Office. As narrated by the witness, he had no knowledge regarding implementation of the project as soon as they finished the ordinance. Since he was not a member of the Bids and Awards Committee (BAC), the witness said that he had no knowledge of whether the procurement of diesel was made through the said committee. When questioned further by the defense counsel, the witness affirmed that he inquired from Engineer Abraham Mamuad about the status of the implementation of the project.

The witness confirmed that he was interested in the implementation of said project being the President of Cadaclan Pasayakan, Inc. He also confirmed that the project's implementation was delayed due to the repair of the equipment of the Municipality. The witness declared that he only became familiar with the procurement process after he was elected Mayor in 2013. He likewise stated that he is familiar with the alternative modes of procurement such as shopping and canvass, and that he is aware of the rule in

shopping wherein the supplier who provides the lowest price could be more advantageous to the government than the one who does not.

The witness affirmed that his complaint against his brother and sister-in-law is about the procurement of diesel supplies, and he also affirmed that there was no BAC in 2012. He also did not raise any question before the Commission on Audit (COA) regarding the legality of the procurement of diesel from North Metro Oil, and he could not recall questioning Engineer Mamuad about the procurement of said diesel from North Metro Oil.

The witness confirmed that he filed the complaint in 2013 knowing that the transactions occurred in 2012. He also clarified that his complaint is not about the delay of the implementation of the project but only the mode of purchase.

On re-cross examination, the witness stated that since he became Mayor, he came to know the rules on procurement and he became knowledgeable about the specific instances when shopping or negotiated procurement can be availed of.

Nehemia S. Calija is the Municipal Accountant of the Municipality of Pasuquin, Ilocos Norte. He executed a Judicial Affidavit, and affirmed and confirmed the veracity of the said document.

During cross-examination, the witness confirmed that the Purchase Request emanated from a request of Engineer Abraham Mamuad, and said Request was attached to the Disbursement Voucher that the witness himself prepared. Calija affirmed that he is not a member of the Bids and Awards Committee (BAC). He also indicated that in preparing the Disbursement Voucher, all the supporting documents were complete, and said supporting documents were included in the BAC resolution. With regard to the inclusion of price quotations of interested suppliers, the witness stated that aside from the key attachments such as Purchase Request and Purchase Order, normally they attach canvass results and the BAC resolution. Calija affirmed that said documents were submitted to their office. When asked if BAC resolution marked as "Exhibit 3" is the same BAC resolution he was referring to, the witness answered that he cannot remember if the document shown is the same BAC resolution. When asked if "Exhibit 4" is also one of the attachments in the Disbursement Voucher with price quotation, the witness answered that he cannot remember.

Calija confirmed that when he handles a Disbursement Voucher, he also examines the attached documents. He also affirmed that the supporting documents he mentioned in his Judicial Affidavit are the Purchase Request, Bids and Awards Resolution, Canvass and Notice of Awards, Purchase Order and Obligation Request.

Likewise, the witness identified "Exhibit H" in his Judicial Affidavit. He also affirmed that this document was received by the Commission on Audit (COA). The witness also declared that he is not sure if the BAC resolution was also submitted to COA, but supposedly it should have been submitted. Same goes with the Purchase Request, Purchase Order and the Obligation Request. Calija confirmed that the Procurement of Diesel was indeed audited by COA. He then declared that he cannot recall any audit findings. He also said that he did not come across any Notice of Disallowance or Suspension of Payment.

The witness affirmed that "Exhibit E" is the Acceptance and Inspection Report that was part of the Disbursement Voucher that was submitted to their office. In said report, he confirmed that it was executed by Engineer Abraham Agustines Mamuad and inspected by Ellie Laguatan. Likewise, the witness stated that he did not personally inspect if there was complete delivery of the diesel purchased, and he simply relied on the Acceptance and Inspection Report of Engineer Mamuad. He also confirmed that Engineer Mamuad is the implementing Supervisor of the mentioned project.

Calija affirmed that aside from Shell and Flying V, the third operating gas station in Pasuquin at that time is North Metro Oil. He also stated that the method of procurement adopted by the BAC in his evaluation of the submitted document at the time he prepared the Disbursement Voucher was the shopping method. As per Calija, this method is normally utilized for the said kind of transaction.

Engr. Abraham A. Mamuad was formerly the Municipal Engineer and a member of the Bids and Awards Committee (BAC). He executed a Judicial Affidavit that he submitted to the Court.

During the direct examination, the prosecution moved to additionally mark the following Exhibits:

- "P"- The Certification dated December 28, 2017 certifying that the BAC Resolution recommending the use of the shopping method was not submitted to Engr. Mamuad's office;
- "P-1" - The Certification dated December 28, 2017 certifying that the summary of quotations regarding the price of diesel was not submitted to Engr. Mamuad's office;
- "P-2" - The Certification dated December 28, 2017 certifying that request for was not submitted to Engr. Mamuad's office; and
- "P-4" - The Certification dated December 28, 2017 relating to the transaction on the purchase of diesel to be used for the Cadaclan Pasayacan Irrigation Canal was not submitted to Engr. Mamuad's office.

After marking, the defense proceeded to cross examine Mamuad. Mamuad confirmed that prior to July 2013 he was not yet the Chairman of the BAC. He was back then a member of the BAC and Municipal Engineer. He confirmed that he was the one who requested for the purchase of diesel and oil materials for the repair of Pasayacan Cadaclan Zanjera. He also confirmed executing the purchase request.

Mamuad affirmed that as Municipal Engineer he had to have a program of works stating the required volume of diesel and oil needed. He recalled preparing one and submitting it to the BAC as basis for the purchase. It is necessary that the program of works will constitute the amount because the Municipal Accountant has to make a certification of the availability of funds for the project to be submitted likewise to the BAC. Such certification of availability of funds was submitted to the BAC. He also recalled that a plan was submitted to the BAC as an attachment to the program of works.

Mamuad further affirmed that as Municipal Engineer there were no pertinent documents relating to the transaction and the purchase of diesel to be used for the Cadaclan Pasacayan Irrigation Canal in his office. However, he is not sure if these documents were submitted and available before the Secretariat of the BAC because he was not the BAC Chairman before.

Mamuad confirmed that the purchase of diesel and oil was made through the shopping method where the usual procedure involves soliciting quotations of prices from suppliers. As a member of the BAC, Mamuad does not remember soliciting quotations from suppliers. But he was informed of the result of the solicitation of quotations. In fact, he signed the summary of quotations. His signature was marked Exhibit "4-A-1".

When asked if it was the BAC who recommended that diesel be procured at Metro North Oil, Mamuad said that he cannot remember. However, when Mamuad was confronted with the Resolution from the BAC (Exhibit "3") he confirmed that he signed said Resolution.

The prosecution asked upon re-direct examination, when Mamuad signed the Resolution. Mamuad said that maybe he signed it after the purchase of the diesel.

After the presentation of its last witness, the prosecution filed its *Formal Offer of Exhibits* on June 28, 2018,²⁶ to wit:

EXHIBITS
"A" to "A-3"

DESCRIPTION
Original copy of Complaint-Affidavit dated
29 January 2013

²⁶ *Id.*, p. 310

“B”	Certificate of Non-Forum Shopping
“C”	Excerpt from Minutes of the SB regular session on 09 January 2012
“D”	Certified True Copy of Purchase Request No. 2012-09-08 dated 09-10-12
“E”	Certified True Copy of Acceptance and Inspection Report (undated)
“F”	Certified True Copy of Obligation Request No. 03.2012.09.0001, dated 24 September 2012
“G”	Certified True Copy of Disbursement Voucher No. 2012.09.0853
“H”	Certified True Copy of Purchase Order No. 12.09.10
“I”	Certified True Copy of Obligation Request No. 03.2012.09.0002
“J”	Certified True Copy of Disbursement Voucher No. 2012.09.0852
“K”	Original Copy of Report by Municipal Engineer Abraham A. Mamuad, dated 26 December 2012
“L”	Original Copy of Certification by Municipal Treasurer Erneline L. Caraiga
“M”	Original Copy of Six (6) pictures
“O” to “O-1”	Original Copy of Certificate of Marriage Contract of Victoria Andrea and Oscar Dancel Aguinaldo
“P” to “P-4”	Original Copy of Certifications dated 28 December 2017 issued by Municipal Engineer Abraham A. Mamuad
“Q”	Certified Photocopy of Philippine National Bank Statement dated 31 October 2012, with account number 15-593-940001-5

The accused filed their *Comment and/or Objection* to the prosecution’s formal offer on August 8, 2018. Meantime, the initial presentation of defense evidence was set to start on August 7, 2018,²⁷ later reset to September 18th,²⁸ pending resolution of the prosecution’s offer of exhibits and the accused’s comment/opposition. After due consideration, the Court resolved “to admit all the Exhibits offered by the prosecution,” either for lack of objection or over the objection to their admissibility, on August 8, 2018, and deemed the

²⁷ *Id.*, p. 308

²⁸ *Id.*, p. 351

prosecution to have rested its case.²⁹ That no Exhibit “N” was offered by the prosecution was noted by the Court.

The accused filed a *Motion for Leave to File Demurrer to Evidence* on September 6, 2018, and submitted the same per notice of hearing “for the attention and consideration of the Honorable Court on September 7, 2017 (sic)...without further argument...,”³⁰ The Court denied the motion for reason that that it “failed to state any specific grounds” in support thereof.³¹ On the date set for the initial presentation of defense evidence on September 18, 2018 as previously set, the accused *asked* for a “reconsideration” of the denial of their ‘motion for leave.’ The Court denied the same in open court and set the case for defense evidence on November 27, 2018, and January 10 and 24, 2019.

EVIDENCE FOR THE DEFENSE

Commencing on November 27, 2018 and subsequent trial dates thereafter, the defense presented the following witnesses, namely: (1) Accused Oscar Dancel Aguinaldo, (2) Engr. Conrado Cariaga De Vera, and (3) Accused Victoria Andrea Peralta Aguinaldo, who testified, as follows:

Accused Oscar Dancel Aguinaldo was presented by the defense to refute allegations in the Information, particularly the fact that he is a private individual and that he has no hand in the awarding and bidding of the diesel and he just responded to the request for quotation and received payment after the delivery of the same. He executed a Judicial Affidavit that he submitted to the Court.

During the cross examination, Aguinaldo confirmed that he was a former mayor of Pasuquin, Ilocos Norte prior to term of his wife. He held three terms immediately before his wife. It was during the term of his wife that the municipality purchased diesel from North Metro Oil Gasoline Station. Aguinaldo owns said gas station and confirmed receiving payment after the delivery. The receipt was reflected in the Disbursement Voucher.

Aguinaldo also confirmed that the Request for Quotation has no date. He denied being invited to join a Public Bidding before receiving the Request for Quotation.

Engr. Conrado Cariaga De Vera is the Civil Engineer/Municipal Planning and Development Coordinator of Pasuquin. The witness was presented to testify to the following:

²⁹ Id., Minutes of the Proceedings held on August 8, 2018, p. 358-359.

³⁰ Id., pp. 362-363

³¹ Id., p. 365

- That in 2011-2013, De Vera was the Chairman of BAC;
- That the BAC adopted the shopping method;
- That the procedures on shopping pursuant to procurement rules were complied with;
- That the BAC recommended the procurement of diesel oil from North Metro Oil as it offered the lowest and most advantageous price to the government; and
- That the diesel oil procured was delivered and accepted and that the project was completed.

He executed a Judicial Affidavit which he submitted to the Court.

During cross examination, De Vera stated that he signed a BAC Resolution (Exhibit "3") on August 11, 2012. The prosecution pointed out that the Purchase Request was dated September 12, 2012. De Vera admitted that as a regular procedure, a Purchase Request should come before the BAC Resolution.

When asked if there was any verification made by him as BAC Chairman as to when the BAC Resolution was actually signed, De Vera said that it was on August 2012. De Vera also identified the signature of Ernaline Carriaga on the BAC Resolution.

As for the Price Quotations and Summary of Quotations, De Vera confirmed that these are undated. De Vera also confirmed that the Certification dated October 30, 2013 (Exhibit "5") was issued long after the transaction subject of the case was consummated.

When asked about the turnover of the documents to the succeeding BAC Chairman (Engr. Mamuad) De Vera said that he did not do so because that is in his capacity as the Municipal Engineer.

Accused Victoria Andrea Peralta Aguinaldo was the Municipal Mayor of Pasuquin, Ilocos Norte. The witness was presented to testify to the following:

- As the Municipal Mayor, she relied on the recommendations of the BAC in the procurement of the diesel oil from North Metro Oil Gasoline Station; and
- The facts stated in her counter-affidavit.

During the cross-examination, Ms. Aguinaldo confirmed that her counter affidavit and the certification to the inquiries with gasoline stations were of the same date, October 30, 2013. She also admitted that she approved the purchase of the diesel products from North Metro Oil but insisted that it was because of the recommendation of the BAC. It was also shown that full

payment for the diesel products were received in September 25, 2012. When confronted with statements in the counter affidavit, particularly paragraph 4.2, page 3, in the second paragraph in its last two sentences – “Regular refueling was done at said gasoline station on a per work day basis or as needed”, the witness said that she had no record of this because it was the Municipal Engineer who was responsible for such records because the equipment were under his care.

The witness was asked if she remembered when the project was completed and whether she knew that the payee of the check would be North Metro Oil. She said she could not remember the exact date when the project was completed but a project completion report was among the documents that they had. She also acknowledged that she knew that the payee would be North Metro Oil.

During the re-direct examination, the witness said that they consulted with a representative from COA regarding the shopping method used by the BAC. The witness said that the COA representative said that it was okay since they used the shopping method plus North Metro Oil had the lowest price which they considered to be advantageous to the government.

The Court asked the witness if they bought any other products from North Metro Oil, the witness answered that they only bought diesel. The chairman pointed out that in the purchase request there was a need for oil and brake fluid and asked where they bought such products. Ms. Aguinaldo said that they bought it from another supplier, Jasper, because they had the lowest price and North Metro Oil did not sell any other products.

The defense asked if they could present another witness, Ms. Ernaline Carriaga, and also asked for the court to issue a subpoena for the said witness.

On March 14, 2019, the defense presented its last witness and filed its *Formal Offer of Exhibits*³² on April 2, 2019, to wit:

<u>EXHIBITS</u>	<u>DESCRIPTION</u>
1, 1-A to 1-C	Counter-Affidavit of Victoria Andrea Peralta Aguinaldo
1-D and 1-E	Program of Works and Detailed Cost Estimates for the Rehabilitation Project
1-F	Certificate of Project Completion
1-G	Statement of Work Accomplished[?]
1-H	Certificate of Acceptance

³² Id., pp. 429-433

2, 2-A, 2B	Counter-Affidavit of Oscar Dancel Aguinaldo
3	Bids and Awards Committee Resolution Recommending the Use of Shopping Method
4	Summary of Price Quotations
5	Certification from the Bids and Awards Committee

The prosecution filed its *Opposition/Comment* to the said offer of exhibits on April 10, 2019.³³ On April 29, 2019, the Court resolved to admit the accused's Exhibits 1, 1-d to 1-h, 3, 4, 4-a to 4-e, and 5, including exhibits offered by the defense, not otherwise objected by the prosecution,³⁴ such as Exhibit 2.

The prosecution filed its *Consolidated Memorandum for the Plaintiff* on May 21, 2019,³⁵ while the accused filed their *Memorandum* on June 7, 2019.³⁶

FINDINGS OF FACT

On January 9, 2012, the Sangguniang Bayan of Pasuquin, Ilocos Norte, at its regular session presided by one of herein complainants, then Vice Mayor Felix D. Aguinaldo, Jr. of Pasuquin, passed Municipal Ordinance No. 2012-01 (**Exhibit C³⁷**), which provides:

MUN. ORDINANCE NO. 2012-01

APPROPRIATING THE AMOUNT OF ONE HUNDRED EIGHTY SEVEN THOUSAN FIVE HUNDRED PESOS (P187,500.00) FOR THE REPAIR/REHABILITATION OF THE ZANJERA CADACLAN PASAYACAN, INC.

WHEREAS, the national government thru the National Irrigation Administration allocated an amount of One Million Five Hundred Thousand Pesos (P1.5M) for the rehabilitation of the irrigation canal of Zanjera Cadaclan Pasayacan, Inc., this municipality;

WHEREAS, in order to avail of this assistance, there is a need to put up counterpart fund by the municipal government and the Zanjera at P187,000.00 each,

³³ *Id.*, 453-457

³⁴ *Id.*, pp. 460-461

³⁵ *Id.*, p. 464-481

³⁶ *Id.*, pp. 486-512

³⁷ EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE SANGGUNIANG BAYAN OF PASUQUIN, ILOCOS NORTE HELD AT ITS SESSION HALL ON JANUARY 9, 2012

WHEREAS, there is fund available for the purpose.

NOW THEREFORE, be it enacted:

Section 1. The amount of P187,000.00 is hereby allocated for the above NIA-assisted project sourced from the share of the municipal government from RA 8240 or Burley Tobacco Excise Tax.

Section 2. This ordinance takes effect upon approval.

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The said Ordinance was subsequently approved by then Municipal Mayor of Pasuquin, accused Victoria Andrea P. Aguinaldo ("Mayor Aguinaldo"). Appropos, Purchase Request (PR) No. 2012-09-08 (**Exhibit D**), dated "09-10-12", for "EXCAVATION OF CADAKLAN PASAYAKAN IRRIGATION" was prepared and submitted by Engr. Abraham Mamauad (sic) ("Mamauad"), and the same approved by Mayor Aguinaldo, with Cash availability attested by the Municipal Treasurer, Erneline L. Cariaga. This covered the purchase of 2,600 liters of "Diesel" fuel, estimated at P47.50/liter or a total cost of P123,500.00. Also listed in the same PR as Items No. 2,3,4 and 5 are Oil #40, #10, #30 and brake fluid, costing P63,440.00.

For the heavy equipment or machinery needed and used in the implementation of the project, the municipality of Pasiquin had to buy and pay for P123,500.00 worth of diesel fuel, which the municipality contracted with, was supplied by, and paid to **Metro North Oil** – a business owned and managed by the husband of Mayor Aguinaldo, accused Oscar Dancel Aguinaldo. Such is the '*casus belli*' in these cases.

The defense offered **Exhibit 3** to show that when Purchase Request (PR) No. 2012-09-08 (**Exhibit D**) was referred to the Bids and Awards Committee (BAC), it evaluated the same, and in the process passed "BAC Resolution Recommending the use of Shopping Method," dated August 11, 2012.

Corollary to the foregoing, the BAC then sent out Requests for Quotation to Flying V, Shell, North Metro Oil, "Jashfer" (also referred to as "Jasper"), and Jhon Henry (**Exhibits 4-a, 4-b, 4-c, and 4-d, and 4-e, respectively**), for their lowest price on, among other things, "Diesel @ P47.50/lit." for total volume of 2,600 liters. North Metro Oil (Metro Oil) submitted the lowest quote for the diesel fuel at P47.50/ltr., Jashfer for oil #s 40, 10, 30, and John Henry for brake fluid.

Exhibit 4 shows a summary of the price quotation solicited by the BAC and submitted by the various entities involved or participants, to wit:

Republic of the Philippines
MUNICIPALITY OF PASUQUIN
Ilocos Norte

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Qty	Unit	ARTICLES	JHON HENRY		Flying V		JASHER		Shell		metro oil	
			U. PRICE	T. PRICE	U. PRICE	T. PRICE	U. PRICE	T. PRICE	U. PRICE	T. PRICE	U. PRICE	T. PRICE
2,800.00	lits	Diesel	0.00	0.00	49.50	128,700.00	0.00	0.00	50.05	130,130.00	47.50	123,500.00
104.00	lits	#40 oil	159.00	16,536.00	158.00	16,432.00	150.00	15,600.00	160.00	16,640.00	0	0
104.00	lits	#10 oil	190.00	19,760.00	175.00	18,200.00	175.00	18,200.00	180.00	18,720.00	0	0
104.00	lits	#30 oil	158.00	16,432.00	158.00	16,432.00	150.00	15,600.00	155.00	16,120.00	0	0
52.00	lits	Brake fluid	185.00	9,620.00	296.00	15,392.00	270.00	14,040.00	300.00	15,600.00	0	0
			62,348.00		195,156.00		63,440.00		197,210.00		123,500.00	

Exh. 4
Date: 10/27/18

ERNESTINE L. CARIAGA
Rep of the Mun. Treasurer

FELIZA C. RATUITA
MCR

WILERM N. M. ALMAZAN
Rep. Of the Mun. Mayor

The prices offered by _____ being the lowest and the most advantageous to the government are _____ is therefore hereby notified of the acceptance and the same time requested to furnish the articles or services desired at the same time specified in the place indicated in the Canvas Form.

ALEGRIA P. REYES

ENRIE ABRAHAM MAMUAD

ERNESTINE L. CARIAGA

VICTORIA ANDREA P. GUINALDO

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Exhibit H, is Purchase Order No. 12, referencing P.R. No. 2012-09-08, with North Metro Oil as supplier of 2,600 liters of Diesel at P47.50 per liter, for a total of P123,500.00, signed by Mayor Aguinaldo and with the conforme of North Metro Oil. **Exhibit E** is an undated Acceptance and Inspection Report signed by Engr. "Mamaud" to acknowledge "complete" receipt and/or acceptance of 2,600 liters of Diesel, including 104 liters each of Oil #s 40,30, 10, and Brake Fluid. **Exhibit F** is Obligation Request No. 03-2012-0001 for the payment of 2,600 liters of "Diesel for the Excavation of Cadaklan Pasayakan" amounting to P123,500.00, dated September 24, 2012, signed by Mayor Aguinaldo, payable to North Metro Oil. **Exhibit G** is Disbursement Voucher No. 2012-09-0853, dated September 25, 2012, referencing Obligation Request No. 03.2012.09.0001, for a check payment of P116,883.93 to North Metro Oil Gasoline Station for 2,600 liters of diesel valued at P123,500.00 used for the "Excavation of Cadaklan-Pasayakan of this municipality as per supporting papers attached," net of "FVAT (5%) and CIT (1%)." The said voucher was approved for payment by Mayor Aguinaldo, and payment acknowledged received on behalf of North Metro Oil Gasoline Station on September 25, 2012. **Exhibits I and J** are the Obligation Request and Disbursement Voucher, respectively, covering the purchase of Oils and Brake fluid from Jasper Marketing (& Gen. Mdse.) also for the Excavation of Cadaklan Pasayakan project.

Adding color to controversy in these cases is the letter/memo (**Exhibit K**) of Engr. Abraham Mamuad for then Acting Municipal Mayor Felix D. Aguinaldo, Jr., dated 26 December 2012, "Re: SUBMISSION OF MUNICIPAL REPORT OF THE IRRIGATION OF CANAL OF THE ZANJERA CADAACLAN PASAYACAN, INC." which reported that, "Implementation of municipal counterpart for the Rehabilitation of the Irrigation Canal of Zanjera Cadaclan Pasayakan, Inc. is not yet started because backhoe is under repair," albeit despite the payment already made as early as September 25, 2012 to North Metro Gasoline Station for the diesel fuel ordered and delivered for the project, evidenced by Disbursement Voucher (**Exhibit G**). Actual payment is evidenced by **Exhibit Q**, which is a certified photocopy of Philippine National Bank Check No. 14710, payable to "North Metro Gasoline Station, Pasaquin I. Norte," in the amount of P116,883.93.

Although it is not disputed that the project suffered some delays based on the earlier-mentioned report of Municipal Engineer Abraham A. Mamuad in his report dated December 26, 2012 (**Exhibit K**), the project was nevertheless duly implemented and 100% completed, as evidenced by **Exhibit 1-f: Certificate of Project Completion**, signed, among others, by Engr. Mamuad³⁸. Exhibits "1-g" and "1-h" also established that the project was accomplished and accepted by NIA and the barangay concerned.

³⁸ Records, p. 45, as Exhibit 1-f.

ISSUE

Whether or not accused Victoria and Oscar Aguinaldo are guilty of the offenses charged in these two (2) Informations.

DISCUSSION AND RULING

Sec. 14(2), Article III (Bill of Rights) of the 1987 Constitution provides that “[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved xxx.” As held in *People vs. Luna*,³⁹ “The cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent. By this presumption, the Constitution places the *onus probandi* on the prosecution to prove the guilt of the accused on the strength of its own evidence, not on the weakness of the defense. Hence, the accused need not offer evidence on his behalf and may rely on the presumption entirely, should the prosecution fail to overcome its burden of proof.” And in *People vs. Claro*,⁴⁰ “In every criminal case where the accused enjoys the presumption of innocence, he is entitled to acquittal unless his guilt is shown beyond reasonable doubt.” Such is the quantum of proof mandated and defined under Sec. 2, Rule 133, of the Rules of Court, to wit:

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

Again, in the *Claro case*, “The requirement of proof beyond reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he [or she] may lose his [or her] liberty upon conviction and because of the certainty that he [or she] would be stigmatized by the conviction.”⁴¹

SB-17-CRM-0261 for Violation of Sec. 3(e) of RA 3019 (the Anti-Graft and Corrupt Practices Act)

The accusatory portion of the Information in this case reads:

INFORMATION

xxx

³⁹ G.R. No. 219164, March 21, 2018; citations omitted.

⁴⁰ G.R. No. 199894, April 5, 2017

⁴¹ *Id.*

That in September 2012, or sometime prior or subsequent thereto, in Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, **VICTORIA ANDREA PERALTA AGUINALDO**, a public officer, being then the Municipal Mayor of Pasuquin, Ilocos Norte, acting in relation to office and taking advantage of her official position, conspiring and confederating with her spouse, accused private individual **OSCAR DANCEL AGUINALDO**, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or benefit to North Metro Oil by approving the Bids and Awards Committee's recommendation that the contract to supply 2,600 liters of diesel to the municipality be awarded to [the] said company and the payment thereof in the amount of One Hundred Twenty Three Thousand and Five Hundred Pesos (P123,500.00), **despite its automatic disqualification pursuant of Section 47 of the Implementing Rules and Regulations of R.A. No. 9184, as North Metro Oil is owned by her spouse, accused OSCAR DANCEL AGUINALDO, to the damage and prejudice of the government and of public interest.**

CONTRARY TO LAW

Sec. 3(e) of RA 3019 provides:

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

xxx

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

xxx

The Information alleges that accused Mayor Aguinaldo committed a violation of Sec. 3(e) of RA 3019, when she approved “the Bids and Awards Committee’s recommendation that the contract to supply 2,600 liters of diesel to the municipality be awarded to said company [North Metro Oil] and the payment thereof...despite its automatic disqualification pursuant to Section 47 of the Implementing Rules and Regulations of RA 9184, as North Metro Oil is the owned by her spouse, accused Oscar Dancel Aguinaldo, to the damage and prejudice of the government and of public interest.” (Emphasis in the original; underscoring supplied.)

Sec. 47 of the Revised Implementing Rules and Regulations (IRR) of RA 9184 (2009)⁴² reads:

Section 47. Disclosure of Relations

All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. For failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement contracts of the procuring entity. On the part of the bidder, this provision shall apply to the following persons:

- a) If the bidder is an individual or a sole proprietorship, to the bidder himself;
- b) If the bidder is a partnership, to all its officers and members;
- c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders; and
- d) If the bidder is a joint venture, to the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

A reading of the above-quoted provision readily shows that such automatic disqualification applies to a bidder who participates in a bidding for the procurement of goods or services. "Bid" and "competitive bidding" are defined as:

(d) Bid – refers to a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.

(e) Competitive Bidding – refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.⁴³

Section 10 of R.A. 9184 provides that "all procurement shall be done through competitive bidding, except as provided for in Article XVI of this Act". Article XVI of R.A. 9184 refers to alternative methods of procurement

⁴² To be distinguished from the 2016 Revised IRR of RA 9184

@<http://www.bsp.gov.ph/downloads/procurement/RA9184%20ChangeMatrix.pdf>

⁴³ See Sec. 5, (d) and (e), R.A. 9184.

which do not involve bidding or the procedures involved therein, nor the rules on qualification or disqualification of bidders' attendant thereto.

To obtain a conviction, the prosecution is, therefore, required to prove by competent evidence that the procurement of the 2,600 liters of diesel was required to be done through competitive bidding for the disqualification under Section 47 of the IRR of R.A. 9184 to apply.

Examining the testimonies of prosecution witnesses Felix Dancel Aguinaldo, Cariaga, Calija and Mamuad show that there is complete absence of any testimony that the procurement of 2,600 liters of diesel was required to be done through competitive bidding. Private complainant Felix Dancel Aguinaldo in his complaint-affidavit (which served as his direct testimony) only emphasized that the irrigation project had not yet been started and was not yet finished despite the fact that the diesel fuel purchased was already paid for. Nothing in his testimony points to any belief on his part that bidding should be employed. On the contrary, he admitted on cross-examination that he became aware only of the procurement rules when he became Mayor in the year 2013.⁴⁴ Cariaga and Calija only testified on their involvement in the processing of the disbursement voucher covering the purchase of the diesel fuel and the payment thereof. Mamuad only testified, on direct examination, that he did not have in his custody, the documents pertinent to the purchase of the said 2,600 liters of diesel. These prosecution witness, on the other hand, all testified that the procurement was made through the shopping method, an alternative method of procurement, which is entirely different from bidding, as it is defined as:

(d) Shopping – a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification.⁴⁵

Prosecution witness Calija testified that for purchases of gasoline and oil products, it was normal for the municipality to employ the shopping method.⁴⁶ Witness Cariaga, another prosecution witness, and who was the municipal treasurer at that time said that there was no bidding because it was a "very small value procurement" and that was why they availed of shopping and canvass.⁴⁷

⁴⁴ TSN of March 7, 2018, p. 36.

⁴⁵ See Sec. 48, (d), R.A. 9184.

⁴⁶ TSN of April 24, 2018, p. 20.

⁴⁷ TSN of March 6, 2018, p. 8.

The prosecution's "star" witness, Engr. Mamuad had this to say:

Q: Likewise, Mr. Witness, you recall, as the member of the BAC at that time, that this project was made through or by administration, correct?

A: By administration, sir.

Q: So the purchase of this diesel and oil from the suppliers was made through shopping, correct?

A: Shopping method, sir.

Q: And in shopping method, it is your usual procedure that you solicit quotations of prices from the suppliers, correct?

A: Yes, sir.

Q: And you recall you, as one of them, soliciting quotations from the suppliers?

A: Yes, sir. (See TSN of June 19, 2018, p. 15)

None of the prosecution witnesses testified that the accused should have conducted competitive bidding for the purchase of 2,600 liters of diesel. These products may be procured through shopping as these fall within the phrase "ordinary or regular office supplies" which can be consumed in day-to-day operations. It should be noted that the cost of the purchase was only P123,500.00, which was well within the threshold ceiling of P250,000.00 provided for under Sec. 52 of R.A. 9184.⁴⁸

There is also absolutely no testimonial or documentary evidence presented by the prosecution to prove that shopping as an alternative method of procurement, should not have been resorted to for the purchase of the said products. The evidence presented by the accused showed that the BAC, of which Mamuad and Cariaga were members of, recommended "shopping" as the mode of procurement for these products, as it qualified under the conditions set forth by R.A. 9184 (See Exhibit "3"). The BAC Chairman, witness de Vera, categorically testified that the BAC members all signed Exhibit "3" on August 11, 2012. Quotations from three (3) suppliers namely: Shell, Flying V and North Metro, were taken and a canvass of their prices

⁴⁸ Sec. 52. Shopping – Shopping may be resorted to under any of the following instances: (a) When there is an unforeseen contingency requiring immediate purchase: *Provided, however,* That the amount shall not exceed Fifty Thousand (P50,000); or (b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding Two Hundred Fifty Thousand Pesos (P250,000): *Provided, however,* That the Procurement does not result in Splitting of Contracts: *Provided, further,* That at least three (3) price quotations from bona fide suppliers shall be obtained.

were made, with North Metro Oil's quotation being the lowest (See Exhibits "4-a" up to "4-e"). The summary of price quotations solicited by the BAC was even signed by prosecution witness Mamuad and Cariaga (See Exhibit "4"). North Metro Oil's quotation of P47.50/liter was P2.00 lower than of Flying V and P2.55 lower than that of Shell. Accordingly, the BAC recommended that the diesel requirement be purchased from the supplier which quoted the lowest price.

The prosecution was not able to rebut these documentary evidence of the accused nor was there evidence offered by the prosecution to prove that these were fabricated or simulated documents. Witnesses Cariaga and Calija testified that all the supporting documents were submitted to the COA for post-audit and there was no notice of disallowance or suspension issued by the COA on these purchases.⁴⁹

To reiterate, the prosecution failed to hurdle the burden of proving beyond reasonable doubt that the procurement had to be done through competitive bidding. Even assuming that bidding was required, there is no clear evidence that accused Victoria Aguinaldo through evident bad faith, gross inexcusable negligence or manifest partiality, approved the transaction to favor North Metro Oil. No prosecution witness testified that Victoria Aguinaldo influenced or pressured the BAC members to choose North Metro Oil as the diesel supplier. The evidence points to the BAC members acting within their mandate by choosing North Metro Oil because it offered the lowest and most advantageous quote of P47.50/liter.

Accused Victoria Aguinaldo cannot be said to have given "unwarranted" benefit or preference to North Metro Oil because the term "unwarranted" means lacking adequate or official support, unjustified, unauthorized or without justification or adequate reason (See *Sison vs. People*, 614 SCRA 670, 681-682). Here, accused Victoria Aguinaldo relied on the BAC recommendation to use "shopping" and award the contract to North Metro in accordance with the latter's mandate under Section 12.1 of the IRR of R.A. 9184.⁵⁰ Seeing that North Metro Oil's quote was the lowest and therefore the most advantageous, she approved said transaction as to do otherwise would have meant a costlier purchase for the municipality. There

⁴⁹ TSN of April 24, 2018, p. 18.

⁵⁰ Section 12. Functions of the BAC. 12.1. The BAC shall have the following functions: (a) advertise and/or post the invitation to bid/request for expressions of interest; (b) conduct pre-procurement and pre-bid conferences; (c) determine the eligibility of prospective bidders; (d) receive and open bids; (e) conduct the evaluation of bids; (f) undertake post-qualification proceedings; (g) resolve requests for reconsideration; (h) recommend award of contracts to the HoPE or his duly authorized representative; (i) recommend the imposition of sanctions in accordance with Rule XXIII; (j) recommend to the HoPE the use of Alternative Methods of Procurement as provided in Rule XVI hereof; (k) conduct any of the Alternative Methods of Procurement.

was, therefore, adequate reason and official support for her to approve the transaction. More importantly, no BAC member was impleaded as an accused in these cases which signifies that the prosecution believed that their actions in recommending “shopping” and choosing North Metro Oil were above-board.

Even assuming, *arguendo*, that “shopping” was not proper as a procurement method, both accused cannot be convicted in this case because the Information failed to allege that fact. The hornbook doctrine is that an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. This mandatory requirement is dictated by the accused’s constitutional right to be informed of the nature and cause of the accusation against him. The object of the written accusation, which underlies the heart of the constitutional guarantee, is *first*, to furnish the accused with such a description of the charge against him as will enable him to make his defense; *second*, to avail himself of his conviction or acquittal, for protection against a further prosecution for the same cause; and *third*, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint or information must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged.⁵¹

Considering that the Information is silent about any improper use of “shopping” as a procurement method, both accused’s constitutional rights to be informed of the nature and cause of accusation could be infringed upon, if they are found guilty in this case on the basis that “shopping” was improperly resorted to.

Further, even assuming that Victoria Aguinaldo committed a mistake is not subjecting the procurement to competitive bidding, it is settled that such mistake is not actionable absent any clear showing that she was motivated by malice or gross negligence amounting to bad faith. In *Joson v. COA*, G.R. No. 223762, Nov. 7, 2017, the Supreme Court stated:

As this Court held in the case of *Ramon Albert v. Celso D. Gangan, et al.*:

We have consistently held that every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at

⁵¹ *People v. Quitlong*, 96 SCAD 85, 292 SCRA 360 [1998]; *Pecho v. People*, 74 SCAD 833, 262 SCRA 528 [1996].

a stage where he had no participation. His knowledge of the conspiracy and his active knowing participation therein must be proved by positive evidence. The fact that such officer signs or initials a voucher as it is going the rounds does not necessarily follow that the said person becomes part of a conspiracy in an illegal scheme. The guilt beyond reasonable doubt of each supposed conspirator must be established. (Emphasis Ours)

Petitioner, being the head of the procuring entity in addition to his duties as the governor of Nueva Ecija, is responsible for the whole province. With the amount of paperwork that normally passes through in his office and the numerous documents he has to sign, it would be counterproductive to require petitioner to specifically and meticulously examine each and every document that passes his office. Thus, petitioner has the right to rely to a reasonable extent on the good faith of his subordinates.

Mere signature of the petitioner in the award of the contract and the contract itself without anything more cannot be considered as a presumption of liability. It should be recalled that mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency. (Underscoring supplied)

Lastly, no damage or prejudice to the government, as alleged by the prosecution, was proven. Witness Mamuad issued a "Certificate of Completion" attesting to the completion of the irrigation project and Brgy. Captain Valienta accepted the project as 100% complete (See Exhibits "1-f" and "1-h"). Such fact of completion was admitted by the no less than the Ombudsman itself when it stated in its Resolution dated February 5, 2015 that "the questioned amount was actually used for the purpose it was appropriated as evidenced by the Certificate of Project Completion and Statement of Work Accomplished as of 1 February 2013. xxx xxx xxx At all events, there is no evidence to show that procured diesel was used for the personal benefit of respondents to warrant their indictment."⁵² Thus, no "undue injury" is present in this case. Considering the utter failure of the prosecution to prove the allegations in the Information, accused Victoria and Oscar Aguinaldo cannot be convicted in this case.

SB-17-CRM-0262 for
Violation of Section 7(a) of RA 6713

The accused are charged with violation of Sec 7(a) of RA No. 6713, allegedly committed as follows:

That in September 2012, or sometime prior or subsequent thereto, in Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this

⁵² See Records, Vol. 1, p. 9.

Honorable Court, the above-named accused, **VICTORIA ANDREA PERALTA AGUINALDO**, a public officer, being then the Municipal Mayor of Pasuquin, Ilocos Norte, acting in relation to office and taking advantage of her official position, conspiring and confederating with her husband, accused private individual **OSCAR DANCEL AGUINALDO**, did then and there willfully, unlawfully and criminally approve the Bids and Awards Committee's recommendation that the contract to supply 2,600 liters of diesel to the municipality be awarded to North Metro Oil and the payment thereof in the amount of One Hundred Twenty Three Thousand Five Hundred Pesos (P123,500.00), despite having direct or indirect financial interest therein as North Metro Oil is owned by accused **OSCAR DANCEL AGUINALDO**, to the damage and prejudice of the government and of public interest.

CONTRARY TO LAW. (Emphasis in the original)

Section 7(a) of RA 6713 reads:

SECTION 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

- (a) **Financial and material interest.** – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

In this case, it is not denied by the defense that accused Victoria Aguinaldo is married to Oscar Aguinaldo, the proprietor of North Metro Oil, which was the supplier of the diesel fuel. As such, Victoria Aguinaldo had a direct financial or material interest in North Metro Oil because it was owned by her husband, Oscar Aguinaldo, and therefore that business formed part of their community property. The transaction covering the purchase of 2,600 liters of diesel fuel required accused Victoria Aguinaldo's approval which is evidenced by her signature in Exhibit "H", the disbursement voucher. Whether Victoria Aguinaldo's acted in good or bad faith in approving the transaction is immaterial in this case as mere possession of the prohibited interest is sufficient to incur criminal liability.⁵³ Because of her direct financial or material interest in North Metro Oil, accused Victoria Aguinaldo would probably have benefitted from the transaction. And Sec. 3 of RA 6713 defines "public officials" to include "**elective and appointive official and employees....**" (Emphasis supplied.)

Under Sec. 11 of the law, it is provided that:

⁵³ Villaroman, N. G., *Laws and Jurisprudence on Graft and Corruption*, p. 251.

SECTION 11. Penalties. – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under any law, he shall be prosecuted under the latter statute. Violations of sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

XXX

(c) **Private individuals** who participate in conspiracy as co-principals, accomplices or accessories, with public official or employee, in violation of the Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them. (Emphasis added.)

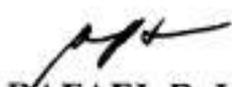
XXX

Oscar Aguinaldo's supplying the diesel fuel to the Municipality of Pasuquin, despite his knowing that his wife was the approving authority infers that he was a willing participant in violating Section 7(a) of R.A. 6173. The evidence therefore fully establishes their guilt.

WHEREFORE, premises considered, the Court rules:

- 1.) To **ACQUIT** both accused in Crim. Case No. SB-17-CRM-0261 for failure of the prosecution to prove the guilt of accused Victoria Andrea Peralta Aguinaldo and Oscar Dancel Aguinaldo, beyond reasonable doubt. No civil liability is adjudged as the act or omission on which this could be based, does not exist.
- 2.) To find accused Victoria Andrea Peralta Aguinaldo and Oscar Dancel Aguinaldo **GUILTY** beyond reasonable doubt of violating Section 7(a) of R.A. 6173 and therefore they are ordered to each pay a fine of Five Thousand Pesos (P5,000.00).

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson



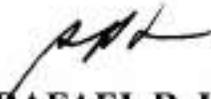
WE CONCUR:


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
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.


RAFAEL R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's foregoing *Attestation*, it is 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