



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

**DATU UMBRA BAYAM
DILANGALEN, RAHIMA ABPI ALI,
and KABIBA ABDUL MAEL,**

Accused.

SB-18-CRM-0396

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

Present:

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

Promulgated:

September 09, 2022

Gezyl E. Giron

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DECISION

CORPUS-MAÑALAC, J.:

Accused **Datu Umbra Bayam Dilangalen** (Dilangalen), **Rahima Abpi Ali** (Ali), and **Kabiba Abdul Mael** (Mael), as mayor, accountant, and treasurer, respectively, of the Municipality of Northern Kabuntalan, Maguindanao (Municipality) at the time material to this case, are charged with violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, as amended. The Information¹ alleges:

That in December 2011, or sometime prior or subsequent thereto, in the Municipality of Northern Kabuntalan, Maguindanao Province, Philippines, and within the jurisdiction of this Honorable Court, accused **DATU UMBRA BAYAM DILANGALEN, AL HADJ**, a high-ranking public officer, being then the Municipal Mayor, **RAHIMA A. ALI**, Municipal Accountant, **KABIBA A. MAEL**, Municipal Treasurer, all of Northern Kabuntalan, Maguindanao, in such capacity, while in the

¹ Records, Vol. 1, pp. 1-2.

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performance of their respective official positions, committing the crime in relation to office, conspiring and confederating with one another, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give FFJJ Construction unwarranted benefit, advantage or preference by releasing, causing the release, and/or giving the full payment for the Small Water Impounding Project in favor of the latter, despite the fact that the project was not yet completed, to the damage and prejudice of the government.

CONTRARY TO LAW.

Antecedents

The Field Investigation Unit, Mindanao Area Office, Office of the Ombudsman, on the basis of a complaint filed by Mohidin S. Lauban (Lauban), then-councilor of the Municipality, conducted an investigation that led to its filing of the Affidavit-Complaint² dated October 19, 2016 with the Office of the Ombudsman. Accused Dilangalen, Ali, Mael, and four other employees of the Municipality were named respondents. After preliminary investigation, the Office of the Ombudsman found probable cause to indict accused Dilangalen, Ali, and Mael for violation of Section 3(e) of RA 3019 but dismissed the complaint as against the rest of the respondents.

In its Resolution³ dated November 14, 2017, the Office of the Ombudsman determined that the accused violated the anti-graft law when they caused/released the payment of the full contract price for the construction/rehabilitation of a Small Water Impounding Project (the project) to FFJJ Construction⁴ despite that the project was not yet completed:

“ . . . Dilangalen, Mael and Ali acted with manifest partiality, evident bad faith, or gross inexcusable negligence, and gave unwarranted benefits, advantage, or preference to FFJJ Construction when they signed the Disbursement Vouchers, thereby causing the first and final payment for the [Small Water Impounding Project] SWIP. Clearly, they violated the IRR of R.A. No. 9184 [or the “Government Procurement Reform Act”] which requires that “[t]he procuring entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents. At no time should full payment be made prior to the completion of the project, which is what happened in this case. Moreover, respondents cannot feign ignorance of the rules considering that the cited provision is likewise stipulated in the Contract of Agreement between the Municipality, represented by respondent Dilangalen, and FFJJ Construction. Notably, in this Contract, respondent Mael also certified “Ok as to Fund.”⁵

² Id. at 20-25.

³ Id. at 5-13.

⁴ Referred to as ‘FFJJ Construction and Supply’ in other documents.

⁵ Id. at 9-10.

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Accused Dilangalen and private complainant Lauban each separately moved for the reconsideration of the resolution finding probable cause. However, in an Order⁶ dated February 15, 2018, the motions for reconsideration were denied. Consequently, on May 28, 2018, the Information charging accused Dilangalen, Ali, and Mael with one count of violation of Section 3(e) of RA 3019 was filed before the Court and docketed as SB-18-CMR-0396.

Proceedings before the Court

On June 4, 2018, the Court issued a Hold Departure Order⁷ against the accused. On June 5, 2018, after perusing the Information and its attachments, the Court found probable cause for and thus ordered the issuance of a warrant for the arrest of the accused.⁸ A Warrant of Arrest⁹ was issued on June 7, 2018.

Meanwhile, each of the accused posted cash bail bond with the Regional Trial Court, Branch 15, Shariff Aguak, Maguindanao. The RTC then transmitted the bail bond documents to this Court,¹⁰ which the Court received on July 24, 2018. In a Resolution¹¹ dated July 25, 2018, the Court noted the posting of cash bail bonds and set the case for arraignment.

On August 3, 2018, all three accused were arraigned and each pleaded “Not guilty” to the charge.¹²

On August 22, 2018, accused Ali and Mael filed a Motion to Nullify the Information and to Dismiss the Case for Lack of Jurisdiction,¹³ which Accused Dilangalen adopted as his own.¹⁴ On September 7, 2018, the prosecution filed its Comment/Opposition thereto.¹⁵ By a Resolution of September 24, 2018, the Court denied the motion for lack of merit.¹⁶

Preliminary conference and pre-trial then ensued. As indicated in the Pre-Trial Order¹⁷ dated February 15, 2019, the parties made several stipulations as follows:

Between the prosecution and accused Dilangalen:

- (1) The Court has jurisdiction over the case;

⁶ Id. at 15-18.

⁷ Id. at 71.

⁸ Id. at 70.

⁹ Id. at 73.

¹⁰ Id. at 83-99.

¹¹ Id. at 101.

¹² Id. at 119-122.

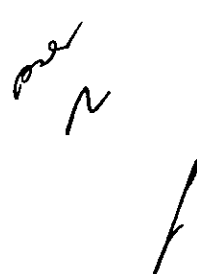
¹³ Id. at 146-149.

¹⁴ Id. at 158, 170-177, 180.

¹⁵ Id. at 181-185.

¹⁶ Id. at 191-197.

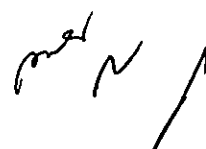
¹⁷ Id. at 287-295.



- (2) Accused Dilangalen was the Mayor of the Municipality at the time material to this case;
- (3) The Statement of Time Elapse and Work Accomplished contained in the Final Inspection Report dated March 12, 2012, the Certificate of Completion dated March 14, 2012, and the Certificate of Acceptance dated September 14, 2012 were submitted during the audit and investigation;
- (4) FFJJ Construction won the bidding for the construction/rehabilitation of the project; and
- (5) The contract for the construction/rehabilitation of the project was awarded to FFJJ Construction.

Between the prosecution and accused Ali & Mael:

- (1) The Court has jurisdiction over the case;
- (2) Accused Dilangalen was the Mayor of the Municipality at the time material to this case;
- (3) Accused Ali and Mael were public officers in that accused Ali was the Accountant, and accused Mael was the Treasurer and member of the Bids and Awards Committee of the Municipality at the time material to this case;
- (4) Accused Mael certified "Ok as to Fund" in the Memorandum of Agreement dated October 4, 2011 entered into between and among the Municipality, the Bureau of Soils and Water Management (BSWM), and the Department of Agriculture-Regional Field Office No. DAF ARMM.
- (5) Accused Mael received a P5-million check from the BSWM on November 28, 2011 as fund for the project, which she acknowledged through her signature on the pertinent Disbursement Voucher and Official Receipt issued for the purpose;
- (6) Accused Dilangalen, Ali, and Mael signed the Disbursement Voucher, causing the first and final payment of P5 million for the project prior to its completion; and
- (7) The Statement of Time Elapse and Work Accomplished contained in the Final Inspection Report dated March 12, 2012, the Certificate of Completion dated March 14, 2012, and the



Certificate of Acceptance dated September 14, 2012 were submitted during the audit and investigation.

Trial on the merits then ensued.

Evidence for the Prosecution

The prosecution presented the following witnesses, namely: (1) **Mohidin S. Lauban**,¹⁸ then-councilor of the Municipality and private complainant; (2) **Atty. Roel John M. Ladeza**,¹⁹ the Graft Investigation and Prosecution Officer who conducted the investigation and filed the Affidavit-Complaint against the accused; (3) **Engr. Osmeña L. Palanggalan**,²⁰ the owner and proprietor of FFJJ Construction; (4) **Engr. Allan Ritche T. Tamayo**,²¹ Technical Audit Specialist of the Commission on Audit (COA) Region XI, Davao City; (5) **Oscar M. Lim**,²² COA team leader assigned to the BSWM; (6) **Rodrigo I. Ablaza**,²³ BSWM accountant; and (7) **Engr. Teng A. Ungkakay**,²⁴ Engineer and Bids and Awards Committee Chairman of the Municipality.

Mr. **Mohidin S. Lauban** related that he was a councilor of the Municipality when he filed the complaint with the Office of the Ombudsman against the accused. In the course of his direct testimony, he identified and affirmed the contents of his Complaint Affidavit²⁵ and its attachments, which included pictures²⁶ allegedly showing that the project was never implemented.²⁷

Answering cross-examination questions from accused Dilangalen's counsel,²⁸ Mr. Lauban admitted that he has no documents to prove that the project was not completed other than the pictures supposedly showing that no structure was built on the project site. He further stated that he was not aware of any document indicating that the project had been completed.

The counsel for accused Ali and Mael adopted the cross-examination conducted by accused Dilangalen's counsel and asked additional cross-examination questions.²⁹ When further cross-examined, Mr. Lauban stated that he did not see a COA report stating that the project was implemented.

¹⁸ Id. at 298.

¹⁹ Id. at 351.

²⁰ Id. at 394.

²¹ Id.

²² Id. at 425.

²³ Id.

²⁴ Id. at 457.

²⁵ Exhibit "A" to "A-4".

²⁶ Marked as Exhibits "X" to "X-5".

²⁷ Transcript of Stenographic Notes (TSN) dated May 21, 2019, pp. 1-17.

²⁸ TSN dated May 21, 2019, pp. 17-22.

²⁹ TSN dated May 21, 2019, pp. 22-31.

The next prosecution witness to testify was **Atty. Roel John M. Ladeza**, Graft Investigation & Prosecution Officer of the Office of the Ombudsman in Mindanao. The parties stipulated that Atty. Ladeza can identify his Affidavit-Complaint³⁰ dated October 19, 2016, including its attachments, which served as Atty. Ladeza's direct testimony.³¹

On cross-examination conducted by accused Dilangalen's counsel,³² Atty. Ladeza stated that Mr. Lauban's affidavit-complaint stated that, up to the filing of the complaint, the construction of the project has not yet started even though payment for it had already been made.

On further cross-examination conducted by accused Ali and Mael's counsel,³³ Atty. Ladeza said that he is testifying on the investigation that he conducted. He stated that undue injury is not needed in a Section 3(e) charge since giving of unwarranted benefit to a private party is sufficient. When asked, he answered that the unwarranted benefit consisted of paying the contractor the full amount of P5 million even though the project has not yet started, which is a violation of certain rules and regulations. He added that the payment should have been made upon the completion of the project.

Engr. Osmeña L. Palanggalan testified on his Judicial Affidavit.³⁴ He related that FFJJ Construction, a construction company that he owns and manages, won the bid and was awarded the contract for the project in Brgy. Damatog in the Municipality. According to him, accused Dilangalen signed the contract on behalf of the Municipality. He further stated that they proceeded with the clearing and grubbing of the project site right after receiving a notice to commence the construction of the project. He also averred that he received the payment for the project in December 2011. In the Course of his testimony, he identified several documents, namely: (1) the Contract of Agreement³⁵ dated November 29, 2011, (2) the Notice to Commence³⁶ dated November 29, 2011, (3) the Check³⁷ dated December 1, 2011, (4) the Disbursement Voucher.³⁸

When cross-examined by accused Dilangalen's counsel,³⁹ Engr. Palanggalan confirmed that he received a one-time payment of P5 million for the project. He added that he asked neither for a one-time payment nor for an immediate full payment. Accused Ali and Mael's counsel adopted the cross-examination of accused Dilangalen's counsel. On additional cross-

³⁰ Exhibit "W".

³¹ TSN dated July 30, 2019, pp. 5-6.

³² TSN dated July 30, 2019, pp. 6-10.

³³ TSN dated July 30, 2019, pp. 11-17.

³⁴ Records, Vol. 1, pp. 361-370.

³⁵ Exhibit "M" to "M-1".

³⁶ Exhibit "N".

³⁷ Exhibit "O".

³⁸ Exhibit "O-1".

³⁹ TSN dated September 10, 2019, pp. 7-8.

examination questions from accused Ali and Mael's counsel,⁴⁰ he asserted that he could finish the project even without the advance payment.

Engr. Allan Ritche T. Tamayo, Technical Audit Specialist of the COA Region XI, Davao City, testified on his Judicial Affidavit.⁴¹ He claimed that he conducted a technical review and inspection of the project in the Municipality. The results of the review and inspection are contained in the Technical Evaluation Report⁴² dated January 25, 2013 and COA Inspection Report⁴³ dated January 25, 2013. The project, he said, had been fully completed on March 12, 2012, as per the Statement of Work and Accomplishment.⁴⁴ In the course of his testimony, Engr. Tamayo also identified (1) the Contract of Agreement⁴⁵ dated November 29, 2011, (2) the Statement of Time Elapsed and Work Accomplished⁴⁶ dated March 12, 2012, (3) the Final Inspection Report⁴⁷ dated March 12, 2012, (4) the Certificate of Completion⁴⁸ dated March 14, 2012, and (5) the Certificate of Acceptance⁴⁹ dated September 14, 2012.

When cross-examined by accused Dilangalen's counsel,⁵⁰ Engr. Tamayo affirmed that the project was completed. The cross-examination conducted by accused Dilangalen's counsel was adopted by accused Ali and Mael's counsel. On further cross-examination conducted by accused Ali and Mael's counsel,⁵¹ Engr. Tamayo stated that the project was performed in accordance with the contract and that it was turned over to the government.

Mr. **Oscar M. Lim**, COA team leader assigned to the BSWM, would have been presented to establish that the documents previously marked as Exhibits "B", "C", "D", "E", "F", and "G" were faithful reproduction of the original documents. However, the parties stipulated such fact. In view thereof, his open court testimony was dispensed with.⁵²

The open court testimony of Mr. **Rodrigo I. Ablaza** was dispensed with in light of the parties' stipulations that: (1) Mr. Ablaza is an accountant of the BSWM; (2) his duty includes certifying availability of funds for transfer to agencies to fund various projects; (3) he signed the MOA executed by and between the BSWM and the Municipality; (4) he can identify the documents attached to his Judicial Affidavit,⁵³ including his

⁴⁰ TSN dated September 10, 2019, pp. 8-10.

⁴¹ Records, Vol. 1., pp. 374-391.

⁴² Exhibit "V".

⁴³ Exhibit "U".

⁴⁴ Exhibit "P".

⁴⁵ Exhibit "M".

⁴⁶ Exhibit "Q".

⁴⁷ Exhibit "R".

⁴⁸ Exhibit "S".

⁴⁹ Exhibit "T".

⁵⁰ TSN dated September 10, 2019, pp. 13-14.

⁵¹ TSN dated September 10, 2019, pp. 14-15.

⁵² TSN dated November 5, 2019, pp. 5-8; the markings on the copies certified as true by one William S. Claveria, the former documents custodian, were transferred to the copies that were certified by Mr. Lim.

⁵³ Records, Vol. 1, pp. 399-404.

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signatures and that of other BSWM officials on the MOA and the Disbursement Voucher.⁵⁴

Likewise, the open court testimony of **Engr. Teng A. Ungkakay** was dispensed with in view of the parties' stipulations that: (1) Mr. Ungkakay was the Engineer and Bids and Awards Committee Chairman of the Municipality at the time material to this case; (2) the pre-bid conference up to the awarding of the contract happened from November 11, 2011 to November 24, 2011; (3) he inspected the project and issued a Certificate of Completion⁵⁵ on March 14, 2012; and (4) he can identify his judicial affidavit, the documents attached thereto, and the signatures appearing thereon.

During the January 19, 2021 online hearing, the prosecution and accused Ali and Mael's counsel stipulated the existence and authenticity of the following documents: Exhibits "H", "I", "J", "K", "L", "M", "N", "O", "O-1", "P", "Q", "R", "S", "T", "U", "U-1", and "V". As regards accused Dilangalen, the Court directed his counsel, who failed to appear thereat, to manifest whether accused Dilangalen would also make a similar stipulation. In the same hearing, the prosecution manifested that it would dispense with the presentation of its last witness, the custodian of the aforementioned documents, should accused Dilangalen agree to make a similar stipulation and that it would thereafter make a formal offer of its exhibits.

On January 25, 2021, by way of manifestation and in compliance with the Order⁵⁶ dated January 19, 2021, accused Dilangalen, through his counsel, admitted the existence and authenticity of the said exhibits, which would have been the substance of the testimony of the prosecution's last witness.⁵⁷

Subsequently, the prosecution filed its Formal Offer of Evidence dated March 30, 2021.⁵⁸ The accused filed their respective comments thereto.⁵⁹ By a Resolution of June 10, 2021, the Court resolved to admit the following: Exhibits "A" to "A-4", "B" to "B-3", "C", "D", "E" to "E-2", "F", "G", "H", "I" to "I-1", "J", "K", "L", "M" to "M-1", "N", "O" to "O-1", "P", "Q", "R", "S", "T", "U" to "U-1", "V", and "W". However, the Court denied the admission in evidence of Exhibits "X" to "X-5" under the original document rule and for failure of the prosecution to present a witness with personal knowledge about the photographs.

On June 22, 2021, accused Dilangalen filed a Motion for Leave of Court to File a Demurrer to Evidence.⁶⁰ The prosecution opposed the

⁵⁴ TSN dated November 5, 2019, pp. 9-14.

⁵⁵ Exhibit "S".

⁵⁶ Records, Vol. 2, pp. 34-35.

⁵⁷ Id. at 36-38.

⁵⁸ Id. at 148-210.

⁵⁹ Id. at pp. 138-142 (Accused Dilangalen's Comment/Opposition); Id. at pp. 211-212 (Accused Ali and Mael's Comment/Objection).

⁶⁰ Id. at 221-226.

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motion.⁶¹ By a Resolution of July 9, 2021, the Court denied the motion.⁶² Accused Dilangalen moved for reconsideration,⁶³ but it was denied in a Resolution⁶⁴ dated August 9, 2021.

Evidence for the Defense

Each of the accused testified in his/her defense.

Accused Dilangalen, Mayor of the Municipality in 2011, testified through his Judicial Affidavit.⁶⁵ He stated that the project was funded by the BSWM and was completed during his term of office.⁶⁶ He referred to a Certificate of Completion⁶⁷ dated March 14, 2012 signed by Municipal Engineer Teng A. Ungkakay. He also averred that he issued a Certificate of Acceptance⁶⁸ dated September 14, 2012 after the project was completed.⁶⁹ He also identified the Inspection Report⁷⁰ and the Technical Evaluation Report,⁷¹ both issued by the COA-ARMM.⁷²

According to accused Dilangalen, FFJJ Construction undertook the construction/rehabilitation of the project. The said project was, he added, completed sometime in March 2012. He also recalled that he paid the contractor after the execution of the contract. When asked why did he cause the payment of the full contract price of the project even before construction started, accused Dilangalen answered, “When the check and the voucher was (sic) sent to my office for my signature[,] attorney[,] I signed it (sic) because there was already a contract with FFJJ and the funds was (sic) already received by the LGU so I thought that I should pay the contract price.” He further stated that he did not think that the municipality will be prejudiced because he was confident that the contractor will fulfill his contractual obligations. Moreover, he stated that he knew that the owner of FFJJ Construction is Engr. Palangalan because the latter is known in the construction business in Maguindanao and has many projects with the government.⁷³

Accused Dilangalen further testified that he did not have an agreement with the contractor regarding one-time payment of the contract price of the project. He also testified that the contractor did not ask for full payment after

⁶¹ Id. at 232-238.

⁶² Id. at 256-259.

⁶³ Id. at 263-278.

⁶⁴ Id. at 308-312.

⁶⁵ Id. at 341-349; the parties stipulated that the documents identified by accused Dilangalen in his Judicial Affidavit are the same documents that were offered in evidence by the prosecution (see TSN dated November 11, 2021, p. 7); the parties also stipulated that accused Dilangalen can identify his Judicial Affidavit and his signature thereon (see TSN dated November 11, 2021, p. 8).

⁶⁶ Id. at 344-345.

⁶⁷ Exhibit “1” for accused Dilangalen.

⁶⁸ Exhibit “2” for accused Dilangalen.

⁶⁹ Records, Vol. 2, pp. 345.

⁷⁰ Exhibit “3” to “3-A” for accused Dilangalen.

⁷¹ Exhibit “4” for accused Dilangalen.

⁷² Records, Vol. 2, pp. 346.

⁷³ Id. at 346-347.

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the execution of the construction contract. He also denied making full payment on account of familiarity with the contractor. The case, he claimed, is politically motivated. He asserted that the complainant is his political rival.⁷⁴

On cross-examination, accused Dilangalen acknowledged that he paid FFJJ Construction the full contract price and that such “payment was made prior to the start of the construction.”⁷⁵ He also confirmed that he is a signatory to the contract executed by and between the Municipality and FFJJ Construction in connection with the project.⁷⁶ When confronted with the provision in the contract regarding the payment of mobilization fee equivalent to 15% of the contract price, he answered that he could not remember it since the project happened a long time ago.⁷⁷ He also confirmed that the payment of the contract price was not based on the actual completion of the project.⁷⁸ Additionally, he affirmed that the inspection and acceptance of the project happened after the full contract price had been paid.⁷⁹

On redirect examination, he stated that he had no intention of violating any rule when he made the full payment and that he would have not done it had he known the rule.⁸⁰ On re-cross examination, he confirmed that there was no written request for advance payment from the contractor.⁸¹ Answering questions from the Court, accused Dilangalen stated that he inspected the project after it was completed, but he could not remember the date when he conducted the inspection.⁸²

Accused Mael, Treasurer of the Municipality in 2011, identified her Judicial Affidavit,⁸³ which served as her direct testimony. She recalled that the Municipality bid out the contract for the construction of the project. It was, she further stated, awarded to FFJJ Construction. She added that the project was actually constructed and completed and that FFJJ Construction was paid the full contract price of the project. According to her, it was accused Dilangalen who gave the instruction to prepare the documents required for the payment of the full contract price of the project.⁸⁴

When asked whether she found it unusual to pay the full contract price before the project was completed, accused Mael answered that she and accused Ali followed the instructions of accused Dilangalen, which they had

⁷⁴ Id. at 348.

⁷⁵ TSN dated November 11, 2021, pp. 9-11.

⁷⁶ TSN dated November 11, 2021, pp. 11-12.

⁷⁷ TSN dated November 11, 2021, p. 12.

⁷⁸ TSN dated November 11, 2021, pp. 13-14.

⁷⁹ TSN dated November 11, 2021, p. 14.

⁸⁰ TSN dated November 11, 2021, p. 15.

⁸¹ TSN dated November 11, 2021, pp. 16-17.

⁸² TSN dated November 11, 2021, pp. 17-18.

⁸³ Records, Vol. 2, pp. 401-404.

⁸⁴ Id. at 402-403.

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to follow. Finally, she claimed that to her knowledge the COA did not issue a Notice of Disallowance on the payment made for the project.⁸⁵

On cross-examination,⁸⁶ she testified that: (1) she was a member of the Bids and Awards Committee; (2) the project was awarded to FFJJ Construction on November 24, 2011; (3) she received the fund allocated for the project from the BSWM; (4) she signed the contract with FFJJ Construction on November 29, 2011 and on the same day issued a Notice to Proceed to FFJJ Construction; and (5) then she signed the P5 million check as “first and final payment” to FFJJ Construction, including the Disbursement Voucher. She confirmed that FFJJ Construction was paid the full contract price right after the contract was awarded to it. She also averred that she merely acted on the instruction of accused Dilangalen. She admitted that she did not object to the payment since the project was already finished. She insisted that the project was already finished when full payment of the contract price was made to FFJJ Construction. When asked for the basis of her claim, she said that the voucher was completely accomplished when she received it; hence, she prepared the check. She explained that once prepared/approved, the voucher will be forwarded to her office and the check will be prepared. When asked about the attachments to the voucher, she made reference to an inspection report of the auditor describing that the project was finished. That is why, she claimed, accused Dilangalen advised her to make the payment for the said project.

On questions from accused Dilangalen’s counsel,⁸⁷ accused Mael stated that the fund for the payment of the contract price was already available when the voucher was prepared. When asked about the instructions given to her by accused Dilangalen, she said that she was told, “We will pay . . . FFJJ Construction because we are already using that project, the Small Water Impounding Project.” On redirect examination,⁸⁸ she reiterated that when she made the payment, the voucher was already prepared. On re-cross examination,⁸⁹ she stated that after getting the 15% mobilization fee, the project was prepared. But she confirmed that the voucher for P5 million was the only voucher prepared for the project.

Accused Ali, then-accountant of the Municipality, testified through her Judicial Affidavit.⁹⁰ Essentially, she corroborated the direct testimony of accused Mael.

On cross-examination,⁹¹ accused Ali affirmed that the Municipality paid the full contract price of the project to FFJJ Construction right after the execution of the contract. She also stated that the voucher was for the first

⁸⁵ Id. at 403.

⁸⁶ TSN dated March 30, 2022, pp. 4-9.

⁸⁷ TSN dated March 30, 2022, pp. 10-11.

⁸⁸ TSN dated March 30, 2022, p. 12.

⁸⁹ TSN dated March 30, 2022, pp. 13-14.

⁹⁰ Records, Vol. 2, pp. 421-424.

⁹¹ TSN dated March 30, 2022, pp. 18-21.

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and last payment for the project in the amount of P5 million. She admitted that she certified in the voucher that the supporting documents were complete even if at the time there was no Certificate of Completion, Inspection Report, and Certificate of Acceptance of the project by the municipality yet. She reasoned that she and the municipal treasurer just followed the instruction of accused Dilangalen to prepare the documents for the payment of the project.

On question from accused Dilangalen's counsel,⁹² accused Ali stated that she prepared the voucher for the payment of the project and that she, the municipal treasurer, and the mayor were the signatories to the said voucher. According to her, she prepared the voucher and forwarded it to the municipal treasurer. She testified that the fund for the project was already available when she prepared the voucher. When asked for the instruction given by accused Dilangalen, she mentioned that the fund was already available and that she was instructed to prepare the papers.

On redirect examination,⁹³ accused Ali stated that she prepared the voucher but the actual payment was made by the municipal treasurer. She also stated that the municipal engineer inspected the project and found that it was completed. On re-cross examination,⁹⁴ accused Ali confirmed that the project was completed after full payment had been made.

Having no additional witnesses to present, the accused filed their respective Formal Offer of Exhibits—accused Ali and Mael on April 12, 2022,⁹⁵ while accused Dilangalen on May 5, 2022.⁹⁶ The prosecution filed a consolidated comment thereto.⁹⁷ By a Resolution of May 6, 2022, the Court resolved to admit **Exhibits "1" to "1-f", "2", "3", "4", "5", "6", "7", "8" to "8-a", "9", "10", "11", "12" to "12-a", "13", "14" to "14-a", "15", "16", "17", "18", "19", "20" to "20-a", "21", and "22" of accused Ali and Mael; and Exhibits "1", "2", "3" to "3-A", "4", "5" to "5-C", "6", "7", "8", "9", and "10" of accused Dilangalen.**

In the same resolution, the Court gave the parties fifteen (15) days within which to file their respective memoranda, noting that the case shall be deemed submitted for decision upon receipt of all of the parties' respective memoranda or the expiration of the period granted to file the same, whichever comes first.

Thereafter, accused Dilangalen⁹⁸ and the Prosecution⁹⁹ filed their respective memoranda. The Court did not receive a memorandum from accused Ali and Mael.

⁹² TSN dated March 30, 2022, pp. 21-22.

⁹³ TSN dated March 30, 2022, p. 23.

⁹⁴ TSN dated March 30, 2022, p. 24.

⁹⁵ Records, Vol. 2, pp. 449-451.

⁹⁶ Id. at 463-466.

⁹⁷ Id. at 452-455.

⁹⁸ Id. at 479-501.

With the period to file memoranda having elapsed, the case was submitted for decision.

On July 7, 2022, the Court received from accused Ali and Mael, through their counsel, a Manifestation Adopting the Memorandum of Accused Dilangalen¹⁰⁰ dated July 4, 2022. Acting on the said manifestation,¹⁰¹ the Court merely noted the submission considering that the case was already submitted for decision.

Issue

Whether accused Dilangalen, Ali, and Mael violated Section 3(e) of R.A. 3019 or the Anti-Graft and Corrupt Practices Act, as amended.

Ruling

Section 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:

x x x x .

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

In *Libunao v. People*,¹⁰² the Supreme Court enumerated the three (3) elements of violation of Section 3(e) of RA 3019: (1) that the accused is a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officer; (2) that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

⁹⁹ Id. at 502-512.

¹⁰⁰ Id. at 27-28.

¹⁰¹ Records, Vol. 3, p. 30.

¹⁰² G.R. Nos. 214336-37, February 15, 2022, citing *Tio v. People*, G.R. Nos. 230132 & 230252, January 19, 2021.

First element: Accused are public officers discharging official functions

The first element is indisputably present. At pre-trial, the parties stipulated that accused Dilangalen was the mayor, accused Mael the accountant, and accused Ali the treasurer of the Municipality at the time material to this case. Moreover, it was established at trial that each of the accused signed the Disbursement Voucher¹⁰³ covering the payment of the project's full contract price. In affixing their signatures, accused Dilangalen, as then mayor, approved the payment; accused Ali, as then accountant, certified that the allotment had been obligated for the purpose and that supporting documents were complete; and accused Mael, as then treasurer, certified the availability of funds. Moreover, the fact of signing the Disbursement Voucher was stipulated by accused Ali and Mael at pre-trial. Also, both accused Dilangalen and Mael signed the corresponding Check.¹⁰⁴ Clearly, the accused were public officers and they signed the Disbursement Voucher and the Check in the discharge of their official functions as officials or employees of the Municipality.

Second element: Accused acted with evident bad faith or gross inexcusable negligence

The **second element** enumerates the different modes of violating Section 3(e) of RA 3019, namely: through manifest partiality, evident bad faith, or gross inexcusable negligence.¹⁰⁵ Jurisprudence instructs that proof of just one mode is enough to sustain a conviction.¹⁰⁶ *Araullo v. Office of the Ombudsman*¹⁰⁷ explained each of these modes:

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 of 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.

The felonious acts ascribed to the accused are their "releasing, causing the release, and/or giving the **full payment** for the Small Water Impounding

¹⁰³ Exhibit "O-1"; Exhibit "14-a" for accused Ali and Mael.

¹⁰⁴ Exhibit "O"; Exhibit "14" for accused Ali and Mael.

¹⁰⁵ *People v. Naciongayo*, G.R. No. 243897, June 8, 2020.

¹⁰⁶ *Id.*

¹⁰⁷ G.R. No. 194157, July 30, 2014, citing *People v. Atienza*, G.R. No. 171671, June 18, 2012,

Project in favor of” FFJJ Construction, **“despite the fact that the project was not yet completed.”**

The Implementing Rules and Regulations (IRR) of RA No. 9184 or the Government Procurement Reform Act, as amended,¹⁰⁸ prescribes “the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the Government of the Philippines.”¹⁰⁹ Annex E¹¹⁰ thereof contains provisions regulating advance payments to contractors of infrastructure projects:

4. Advance Payment

4.1. The procuring entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

4.2. The advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.

X X X X

5. Progress Payment

5.1. Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed.

X X X X

Here, the testimonial and documentary evidence established that:

In October 2011, the Department of Agriculture-ARMM and the BSWM, on one hand, and the Municipality, on the other hand, executed a MOA¹¹¹ over the construction/rehabilitation of a Small Water Impounding Project in Brgy. Damatog in the Municipality. Pursuant to the MOA, the BSWM transferred P5 million as the allocated fund for the project to the Municipality. In turn, the Municipality undertook to implement the project.

¹⁰⁸ Revised 2009.

¹⁰⁹ Section 1. Purpose and General Coverage.

¹¹⁰ Contract Implementation Guidelines for the Procurement of Infrastructure Projects.

¹¹¹ Exhibit “B”; Exhibit “5” for accused Dilangalen; Exhibit “1” for accused Ali and Mael.

x ----- x

It awarded the contract for the construction/rehabilitation of the project to FFJJ Construction.¹¹² On November 29, 2011, the Municipality, represented by accused Dilangalen, as then mayor, and FFJJ Construction entered into a Contract of Agreement¹¹³ to implement the project.

Just two (2) days after the execution of the contract, accused caused the preparation of the Disbursement Voucher¹¹⁴ and Check¹¹⁵ for P5 million as “[f]irst and [f]inal payment of the [c]onstruction of Small Water Impounding Project (SWIP) xxx.”¹¹⁶ The Disbursement Voucher shows that: accused Dilangalen, as then mayor, approved the payment; accused Ali, as then accountant, certified that the allotment had been obligated for the purpose and that supporting documents were complete; and accused Mael, as then treasurer, certified the availability of funds. Also, both accused Dilangalen and Mael signed the corresponding Check.

Subsequently, FFJJ Construction received the payment for the project. Eng. Palangalan, the owner of FFJJ Construction, testified that he received the payment sometime in December 2011.¹¹⁷ Accused Mael and Ali likewise testified that the full payment was made right after the execution of the construction contract.¹¹⁸

Significantly, at the time of payment, the project was yet to be completed. Municipal Engineer Ungkakay stated in his Final Inspection Report¹¹⁹ that the project was completed only on March 12, 2012. In accused Dilangalen’s Judicial Affidavit,¹²⁰ it can also be gleaned that payment of the full contract price took place even before the construction of the project started:

(Q): Based on the complaint filed against you, you caused the full payment of the contract price to the contractor **even before the commencement or the beginning of the construction**, why did you?

(A): When the check and the voucher was sent to my office for my signature[,] attorney[,] I signed (sic) it because there was already a contract with FFJJ [Construction] and the funds (sic) was already received by the LGU so I thought that I should pay the contract price. (Emphasis supplied)

That “the payment was made prior to the start of the construction” was affirmed by accused Dilangalen on cross-examination:¹²¹

¹¹² Exhibits “K” and “L”; Exhibits “10” and “11” for accused Ali and Mael.

¹¹³ Exhibit “M”; Exhibit “12” for accused Ali and Mael.

¹¹⁴ Exhibit “O-1”; Exhibit “14-a” for accused Ali and Mael.

¹¹⁵ Exhibit “O”; Exhibit “14” for accused Ali and Mael.

¹¹⁶ See the explanation on the Disbursement Voucher (Exhibit O-1).

¹¹⁷ Records, Vol. 1, p. 365.

¹¹⁸ Records, Vol. 2, p. 402 (Accused Mael’s Judicial Affidavit, p. 2, answer to question no. 7); Vol. 2, p. 422 (Accused Ali’s Judicial Affidavit, p. 2, answer to question. no. 7.).

¹¹⁹ Exhibit “R”; Exhibit “17” for accused Ali and Mael.

¹²⁰ Id. at 347 (Accused Dilangalen’s Judicial Affidavit, Question and Answer no. 20).

¹²¹ TSN dated November 11, 2021, p. 11.



Prosecutor (Q): But Sir, you are sure that you have caused the full payment even before the completion of the project?

Counsel of the accused: Can I repeat the question, Your Honor[?] May I be allowed to repeat the question, You Honor, because the witness could hardly hear it, Your Honor[?]

Justice Lagos: Okay, sige.

Counsel of the accused: The prosecutor asked you, but are you sure that you made full payment to FFJJ even before the completion of the project?

Accused Dilangalen: **The payment was made prior to the start of the construction, Sir.** (Emphasis supplied)

Facts and circumstances considered, it is clear that the accused signed the Disbursement Voucher and the Check, and caused the payment of the full contract price in December 2011 **way before** the completion of the project in March 2012. And, in so doing, they disregarded the provisions of the IRR of the Government Procurement Reform Act, as cited above, governing advance payments to infrastructure-project contractors. *First*, the advance payment of the **full** contract price was unwarranted because the rules allow for an initial payment of only up to fifteen percent (15%) of the contract price, which is given as contractor's mobilization fee. *Second*, payment of the full contract price prior to the completion of the project deviated from the rule that advance payment shall be made based on percentage of work completed. *Third*, it does not appear from the records that FFJJ Construction made a request for advance payment, which is required in making the initial payment. Verily, accused Dilangalen testified that there was no written request for advance payment.¹²²

Additionally, the accused also disregarded the provision in the contract that limits the amount of initial payment that could be given to FFJJ Construction to fifteen percent (15%) of the contract price—a cap similar to that permitted under the IRR of the Government Procurement Reform Act. Paragraph 4 of the contract unmistakably states:

NOW THEREFORE, for and in consideration of the total amount of ***FIVE MILLION PESOS & 00/100***, Philippine Currency, of which the Party of the First Part agreed to pay the Contractor/Party of the Second Part of the above-mentioned project for its services [subject] to the following terms and conditions:

x x x x

4. That the Contractor maybe allowed to claim partial payment equivalent to fifteen (15%) percent of the contract price representing Mobilization Fund of the Contractor;

x x x x

¹²² TSN dated November 11, 2021, pp. 16-17.

Moreover, accused acted contrary to Section 338 of the Local Government Code¹²³ which prohibits advance payments “on account of any contract under which no services have been rendered or goods delivered.” Here, it was shown that the payment of the full contract price of the project occurred prior to the rendition of service.¹²⁴

Such failure to observe basic rules governing disbursements of public funds and wanton disregard of a clear contractual provision manifests “patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive,” or, at the least, “want of even the slightest care . . . with conscious indifference to consequences.”¹²⁵

More telling of gross inexcusable negligence is that the accused signed the disbursement voucher *sans* supporting documents.

In *Tio v. People*,¹²⁶ the accused therein, a municipal mayor and a municipal accountant, were found grossly and inexplicably negligent when they signed the disbursement voucher despite lack of supporting documents:

There was gross inexcusable negligence on Tio’s part when he approved the Disbursement Voucher despite the lack of supporting documents. Through this, he showed his indifference as to the repercussions of his act because it was done with disregard to the requirements under the law. Being the local chief executive and having administrative control of the local funds, it is his duty to ensure that public funds are disbursed only after having complied with the law.

x x x x

In this case, Cadiz should not have signed the Disbursement Voucher, in the absence or lack of supporting documents. By doing so, there was unlawful disbursement. As a result, there was failure on the part of Cadiz to perform her duty as Municipal Accountant, which is to ensure that public funds are disbursed only after the requirements of law are complied with. **She was remiss of her duty as Municipal Accountant, constitutes gross inexcusable negligence.** (Emphasis supplied)

Here, the accused signed the Disbursement Voucher despite lack of supporting documents. As testified to by accused Mael on cross-examination, she signed it even without a certificate of completion, an inspection report, and a certificate of acceptance attached thereto:

Prosecutor And in this voucher you certified that the supporting
(Q): documents are complete, is that correct?
Accused Mael Yes, Sir.
(A):

¹²³ Republic Act. No. 7160.

¹²⁴ TSN dated November 11, 2021, pp. 9-11.

¹²⁵ See *Quibal v. Sandiganbayan*, G.R. No. 109991, May 22, 1995.

¹²⁶ G.R. Nos. 230132 & 230252, January 19, 2021.

- Q: But at the time that you certified this voucher there was no certificate of completion yet, is that correct?
- A: Yes, Ma'am.
- Q: And there was also no Inspection Report and/or Acceptance of the Project by the Municipality, is that correct?
- A: Yes, Sir.

Indeed, the Final Inspection Report¹²⁷ and the Certificate of Completion,¹²⁸ both signed by Municipal Engineer Ungkakay, were prepared on March 12, 2012 and March 14, 2012, respectively; while the Certificate of Acceptance¹²⁹ was issued on September 4, 2012. Clearly, these documents could not have been available at the time the accused affixed their signatures on the Disbursement Voucher and on the Check in December 2011.

Accused Mael claimed that the project was already completed when the Disbursement Voucher was prepared and that an inspection report was attached thereto.¹³⁰ This claim, however, is belied by the overwhelming evidence to the contrary. A basic rule of evidence is that, generally, documentary evidence prevails over testimonial evidence.¹³¹ As shown above, the prosecution's documentary evidence undeniably established that the Disbursement Voucher and the Check were prepared and the payment to FFJJ Construction was made before the project was completed. Besides, for evidence to be believed it must not only proceed from the mouth of a credible witness but it must be credible in itself.¹³² In this case, accused Mael's assertion that the project was already completed as of December 1, 2011, the date of the check, two (2) days after the contract was signed and executed on November 29, 2011 is highly incredible.

The Court is unconvinced of accused Dilangalen's claim that he did not know the rules governing disbursement of public funds. As mayor, he ought to know these basic rules and regulations. This is especially true since local chief executives are bound to ensure that public funds are disbursed only after compliance with the law.¹³³ Besides, his feigning ignorance of the rules is hardly believable considering that, in his Letter of Undertaking¹³⁴ dated October 4, 2011 to the Department of Agriculture, he committed "to carry out the project with due diligence and **in compliance to . . . the governing procurement law as prescribed by the implementing rules and regulations of the RA 9184.**" What further militates against his claim is, as pointed out by the prosecution, he disregarded the stipulation in the

¹²⁷ Exhibit "R"; Exhibit "17" for accused Ali and Mael.

¹²⁸ Exhibit "S"; Exhibit "18" for accused Ali and Mael; Exhibit "1" for accused Dilangalen.

¹²⁹ Exhibit "T"; Exhibit "19" for accused Ali and Mael; Exhibit "2" for accused Dilangalen.

¹³⁰ TSN dated March 30, 2022, pp. 6-8.

¹³¹ *Government Service Insurance System v. Court of Appeals*, G.R. No. 52080, May 28, 1993.

¹³² *People v. Capuno y Tison*, G.R. No. 185715, January 19, 2011.

¹³³ *Tio v. People*, G.R. Nos. 230132 & 230252, January 19, 2021.

¹³⁴ Exhibit "C"; Exhibit "2" for accused Ali and Mael.

x ----- x

contract—that he himself signed as then mayor and representative of the Municipality—regarding the amount of initial payment that could be advanced to FFJJ Construction.

On the other hand, accused Ali and Mael’s asseveration that they simply followed accused Dilangalen’s instructions fails to persuade. Under the Local Government Code,¹³⁵ the treasurer is tasked to “[t]ake custody and exercise proper management of the funds of the local government unit concerned” and “[t]ake charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority.”¹³⁶ On the other hand, the same code mandates the accountant to “review supporting documents before preparation of vouchers to determine completeness of requirements.”¹³⁷ Evidently, both accused failed to live up to their duties as municipal treasurer and municipal accountant when they affixed their signatures on the Disbursement Voucher despite lack of supporting documents and in violation of several rules governing disbursement of public funds.

Third element: FFJJ Construction received unwarranted benefit or advantage

The **third element** provides for two ways by which Section 3(e) of R.A. No. 3019 may be violated: (1) by causing undue injury to any party, including the government; or (2) by giving any private party any unwarranted benefit, advantage or preference.¹³⁸ An accused may be charged under either or both.¹³⁹ These two separate punishable acts were explained in *Cabrera v. People*¹⁴⁰ as follows:

The first punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be “some reasonable basis by which the court can measure it.” Aside from this, the loss or damage must be substantial. It must be “more than necessary, excessive, improper or illegal.”

The second punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or quantum of damage is not thus essential. It is sufficient that the accused has given “unjustified favor or benefit to another.”

¹³⁵ Republic Act No. 7160 (RA 7160).

¹³⁶ RA 7160, Article II, Section 470 (d)(2) and (3).

¹³⁷ RA 7160, Article IV, Section 474 (b)(1).

¹³⁸ *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010.

¹³⁹ *Id.*, citing *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993; and *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004.

¹⁴⁰ G.R. Nos. 191611-14, July 29, 2019.

X ----- X

In this case, although the Information alleges damage and prejudice to the government, it is clear from the records that the prosecution intended **not** to charge the accused under the **first punishable act**—causing undue injury to the government or any private party. This is apparent from the Ombudsman’s Resolution finding probable cause against the accused, wherein only the second punishable act was discussed:

The attending circumstances show that respondents Dilangalen, Mael and Ali acted with manifest partiality, evident bad faith or gross inexcusable negligence, **and gave unwarranted benefits, advantage, or preference to FFJJ Construction** when they signed the Disbursement Voucher, thereby causing the first and final payment for the SWIP xxx. (Emphasis supplied)

In fact, a reading of the prosecution’s Memorandum¹⁴¹ shows an apparent lack of discussion as to how the accused caused undue injury to the government or the kind of damage that the government sustained because of the premature payment that the Municipality made to FFJJ Construction in connection with the project.

At any rate, the records do not support a finding of undue injury or damage to the government. On the contrary, the parties’ exhibits established that the project was satisfactorily completed. In the Statement of Time Elapsed and Work Accomplished,¹⁴² the Final Inspection Report,¹⁴³ and the Certificate of Completion,¹⁴⁴ prosecution witness Municipal Engineer Ungkakay described the project as 100% or satisfactorily completed. He further stated in the Final Inspection Report that “[t]he project is 100% accomplished and implemented in accordance with the Schedule, Plan, Specification and Program of Work.”¹⁴⁵ Even in the COA Inspection Report,¹⁴⁶ the project was said to be “100% physically completed.”¹⁴⁷ Notably, these documents are common exhibits of the parties and their contents were not seriously contested during trial.

As to the **second punishable act**, the Court finds that FFJJ Construction received unwarranted benefit or advantage when the accused caused the payment of the **full** contract price **prior to** the completion of the project.

In *Sison v. People*,¹⁴⁸ the words “unwarranted,” “advantage,” and “preference” were explained as follows:

¹⁴¹ Records, Vol. 2, pp. 502-512.

¹⁴² Exhibit “Q”.

¹⁴³ Exhibit “R”; Exhibit “17” for accused Ali and Mael.

¹⁴⁴ Exhibit “S”; Exhibit “18” for accused Ali and Mael; Exhibit “1” for accused Dilangalen.

¹⁴⁵ See “B. FINDINGS/OBSERVATIONS”; Exhibit “R”; Exhibit “17” for accused Ali and Mael.

¹⁴⁶ Exhibit “U”; Exhibit “20” for accused Ali and Mael; Exhibit “3” for accused Dilangalen.

¹⁴⁷ See item “1” under the heading “F. NARRATIVE FINDINGS AND OBSERVATIONS”; Exhibit “U-1”; Exhibit “20-a” for accused Ali and Mael; Exhibit “3-A” for accused Dilangalen.

¹⁴⁸ G.R. Nos. 170339 & 170398-403, March 9, 2010.

X ----- X

The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.

In this case, given the pertinent provisions on advance payments of the IRR of the Government Procurement Reform Act, the Local Government Code, and the contract between the parties, and considering the lack of supporting documents, FFJJ Construction should not have received, as it was not entitled to, any payment, much less full payment, before the completion of the project. Yet, it received the full contract price *sans* any justification or reasonable basis. Simply, the payment to FFJJ Construction was premature and unjustified. This clearly proves unwarranted benefit or advantage.

The accused conspired with one another in effecting the payment to FFJJ Construction

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.¹⁴⁹ Its elements must be proven beyond reasonable doubt just like the acts constituting the crime itself.¹⁵⁰ However, direct proof is not necessary since it may be inferred from the acts of the accused. As held in *Typoco, Jr. v. People*,¹⁵¹ viz:

Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime, as it can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part of and another performing another so as to complete it with a view to the attainment of the same object, and their acts although apparently independent were, in fact, concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.

An examination of the records reveals that the separate and individual acts of the accused taken closely together show a concerted action towards the attainment of a common unlawful purpose: The premature and unjustified payment of the full contract price to FFJJ Construction prior to the completion/start of the construction of the project for which payment was made. As earlier noted, despite the pertinent provisions on advance payments of the IRR of the Government Procurement Reform Act, the Local Government Code, and the contract, and the absence of supporting documents, they nevertheless affixed their respective signatures on the

¹⁴⁹ *Fact-Finding Investigation Bureau-OMB-MOLEO v. Miranda*, G.R. No. 216574, July 10, 2019, citing the case of *Bahilidad v. People*, G.R. No. 185195, March 17, 2010; see also Article 8, Chapter 1, Title I, Book I, Revised Penal Code.

¹⁵⁰ *Id.*

¹⁵¹ G.R. Nos. 221857 & 222020, August 16, 2017; citations omitted.

x ----- x

Disbursement Voucher and the Check, thereby resulting in the premature payment of the full contract price of the project. Clearly, circumstances were present that would have impelled the accused to question the transaction. Instead, none of accused, as nothing on the records would show, expressed objection to paying the full amount of the contract price prior to the completion of the project. These circumstances indicate conspiracy among the accused.


WHEREFORE, accused **DATU UMBRA BAYAM DILANGALEN, RAHIMA ABPI ALI,** and **KABIBA ABDUL MAEL,** are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, as amended, and each is hereby sentenced to suffer imprisonment for six (6) years and one (1) month as minimum to seven (7) years as maximum, and perpetual disqualification to hold public office.¹⁵²

No civil liability is adjudged against the accused for failure of the prosecution to prove damage or injury to the government.

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹⁵² Section 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income (see also *Lucman v. People*, G.R. No. 238815, March 18, 2019).

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


RAFAEL R. LAGOS
Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


EFREN N. DE LA CRUZ*
Acting Presiding Justice



*Designated as Acting Presiding Justice for the period August 8-12, 2022, as per Administrative Order No. 175-2022.