



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,**

*Plaintiff,*

**SB-19-CRM-0157**

For: Violation of Section 3 (e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), in relation to Section 4 of P.D. No. 1802 (Creating the Gamefowl Commission) and Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte).

-versus-

**CHARITA MONTAÑO CHAN,**

*Accused.*

Present:

CABOTAJE-TANG, A.M.  
P.J.,  
*Chairperson,*  
FERNANDEZ, B.R., J. and  
MORENO, R.B. J.

Promulgated:

September 30, 2022

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**DECISION**

*Moreno, J.:*

In Criminal Case No. SB-19-CRM-0157, accused CHARITA MONTAÑO CHAN (“Chan”) is charged with the crime of violation of Section 3 (e) of R.A. No. 3019, as amended (Anti-Graft and Corrupt Practices Act), in relation to Section 4 of P.D. No. 1802 (Creating the Gamefowl

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Commission) and Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte). The information<sup>1</sup> reads:

That on the 28<sup>th</sup> day of August 2009, or for some time prior or subsequent thereto, at the Municipality of Babatngon, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused CHARITA MONTAÑO CHAN, then Municipal Mayor of Babatngon, Leyte, a high-ranking public officer, in such capacity and committing the offense while in the discharge of her administrative functions, taking advantage of her public position, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and criminally issue Mayor's Business Permit No. 03-30-2009 to one Nicomedes C. Alde on 28 August 2009 when she no longer had the authority from the Sangguniang Bayan of Babatngon, Leyte to do so because Resolution No. 2253-07, which authorized her to issue the permit, was earlier repealed by the same legislative body on 03 September 2008 via Resolution No. 2412-08, on grounds that Mr. Alde failed to comply with the requirements provided for under Ordinance No. 191 (Cockfighting Code of Babatngon, Leyte), thus accused, without the concurrent authority of the Sangguniang Bayan as required both under Presidential Decree No. 1802 (Creating the Gamefowl Commission) and Ordinance No. 191, has given unwarranted benefits, advantage or preference to Mr. Alde by issuing the permit.

CONTRARY TO LAW.

In its *Resolution*<sup>2</sup> dated October 21, 2019, the Court found the existence of probable cause against accused Chan pursuant to Section 5, Rule 112 of the Revised Rules on Criminal Procedure. Thus, the Court issued a *hold departure order*<sup>3</sup> and a *warrant of arrest*<sup>4</sup> against her.

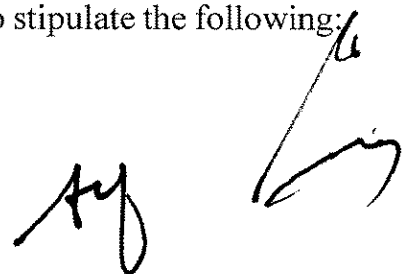
On January 6, 2020, accused Chan voluntarily surrendered to the operatives of the PNP CIDG Northern Leyte Provincial Field Unit.<sup>5</sup> On the same date, she was released from detention<sup>6</sup> upon the filing of the corresponding bail bond for her provisional liberty.<sup>7</sup>

Accordingly, the arraignment and pre-trial of accused Chan were set.<sup>8</sup> During the scheduled arraignment on February 28, 2020, accused Chan pleaded "NOT GUILTY" to the crime charged.<sup>9</sup>

During the pre-trial, the parties jointly agreed to stipulate the following:

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<sup>1</sup> Record, Vol. I, pp. 1-3.  
<sup>2</sup> Record, Vol I, pp. 53-54.  
<sup>3</sup> Record. Vol. I, pp. 55  
<sup>4</sup> Record. Vol. I, p. 56.  
<sup>5</sup> Record, Vol. I, p. 94.  
<sup>6</sup> Record, Vol. I, p. 72.  
<sup>7</sup> Record, Vol. I, pp. 70-99.  
<sup>8</sup> Record, Vol. I, p. 104.  
<sup>9</sup> Record, Vol. I, pp. 112-113.



## II. STIPULATIONS OF FACT

1. The parties stipulate as to the jurisdiction of this Honorable Court and the identity of the accused as the person charged in the Information;
2. Whenever referred to orally or in writing by the Honorable Court and the Prosecution and/or its witnesses, the accused admits that she is the same person named in the Information in the case docketed as SB-19-CRM-0157;
3. That, at the time pertinent and material to this case, accused Charita Montaña Chan was a public officer, being then the Municipal Mayor of the Municipality of Babatngon, Leyte;
4. The Sangguniang Bayan (SB) of the Municipality of Babatngon, Leyte approved and passed SB Resolution No. 2253-07;
5. The Sangguniang Bayan (SB) of the Municipality of Babatngon, Leyte approved and passed SB Resolution No. 2412-08;
6. The Sangguniang Bayan (SB) of the Municipality of Babatngon, Leyte approved and passed SB Resolution No. 2522-09;
7. The Sangguniang Bayan (SB) of the Municipality of Babatngon, Leyte approved and passed SB Resolution No. 1511-02;
8. The signature of the accused does not appear in any of the SB Resolutions mentioned in the Complaint; and
9. Mayor Charita Montaña Chan issued Mayor's Business Permit No. 03-30-2009 dated August 28, 2009.

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## IV. ISSUE

Whether Accused Charita Montaña Chan is guilty beyond reasonable doubt for the offense charged in the Information.

These stipulations were adopted in the *Pre-trial Order*<sup>10</sup> dated June 14, 2020.

## EVIDENCE FOR THE PROSECUTION

During the scheduled initial presentation of the prosecution's evidence, the prosecution manifested that it will not be presenting witnesses, which the Court granted. In view thereof, on July 29, 2021, the prosecution filed its *Formal Offer of Documentary Evidence*,<sup>11</sup> offering the following documentary exhibits and their respective purposes, to wit:

<sup>10</sup> Record, Vol. I, pp. 345-411.

<sup>11</sup> Record, Vol. I, pp. 514-523.

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Exhibit	Description	Purpose
A <sup>12</sup>	Original copy of the Complaint-Affidavit of Associate Graft Investigation Officer II Garry D. Josol dated October 29, 2014.	To prove that:
“A-1” <sup>13</sup>	S.B. Resolution No. 2253-07 entitled “ <i>A Resolution Authorizing Mayor Ernesto G. Fabi to Grant Franchise to Mr. Nicomedes C. Alde of Barangay District 4, this Locality, to Operate the Babatngon Gallera at Sitio Magsaigad, Barangay District I, Babatngon, Leyte, pursuant to Ordinance No. 191.</i> ”	1. Garry D. Josol, Associate Graft Investigation Officer II (AGIO II Josol) assigned at the Office of the Ombudsman for Visayas, Regional Office VIII, conducted a fact-finding investigation relative to the complaint of one James L. Engle (“Engle”) dated October 26, 2014, against accused Charita Montaña Chan (“Chan”).
“A-2” <sup>14</sup>	S.B. Resolution No. 2412-08 entitled “ <i>A Resolution Repealing Sangguniang Bayan Resolution No. 2253-07 Granting Franchise to Mr. Nicomedes C. Alde of Barangay District 4, Babatngon, Leyte to Operate the Babatngon Gallera at Sitio Magsaigad, Barangay District I, This Locality, and Appealing to Mayor Charita M. Chan to Revoke the Business Permit Issued to Mr. Alde.</i> ”	2. After the fact-finding investigation, AGIO II Josol prepared and signed the Complaint-Affidavit dated October 29, 2009 (Exh. A).
“A-3” <sup>15</sup>	Certification dated July 16, 2014, signed by Ma. Victoria M. Pineda.	3. AGIO II Josol verified the allegations in the complaint filed by Engle by gathering evidentiary documents to support the charge against accused Chan.
“A-4” <sup>16</sup>	Certified true copy of entries of the Official Register/Logbook of the Municipal Treasurer’s Office for the calendar year 2009.	4. In the course of his investigation, Agio II Josol made the following findings:
“A-5” <sup>17</sup>	Mayor’s Business Permit No. 03-30-2009 dated August 28, 2009, issued to Nicomedes Alde (“Alde”), operator of Babatngon Gallera.	4.1. The Sanguniang Bayan of Babatngon, Leyte issued on June 13, 2007, S.B. Resolution No. 2253-07 (Exh. A-1).
“A-6” <sup>18</sup>	S.B. Resolution No. 2522-09 entitled “ <i>A Resolution Urging and Highly Recommending to Mayor Charita M. Chan of this Locality to Reconsider and Revoke Mayor’s Business Permit No. 03-30-2009 dated August 28, 2009, issued to Nicomedes Alde for the Cockpit</i> ”	4.2. The Sanguniang Bayan of Babatngon, Leyte issued on September 3, 2008, S.B. Resolution No. 2412-08 (Exh. A-2).
		4.3. Accused Chan issued a Business Permit (Exh. A-5) to operate a cockpit in the municipality to a certain Nicomedes Alde on August 28, 2009. The issuance of the business permit by accused Chan is confirmed by the Certification dated July 16, 2014 (Exh. A-3) signed by Ma.

<sup>12</sup> Record, Vol. I, pp. 360-363.  
<sup>13</sup> Record, Vol. I, pp. 364-365.  
<sup>14</sup> Record, Vol. I, p. 366.  
<sup>15</sup> Record, Vol. I, pp. 367-368.  
<sup>16</sup> Record, Vol. I, p. 369.  
<sup>17</sup> Record, Vol. I, p. 370.  
<sup>18</sup> Record, Vol. I, pp. 371-372.

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	<p><i>Operation at Barangay District III, Batbangon Leyte for Violation of Sec. 6 (h) of Ordinance No. 191.</i>"</p>	<p>Victoria M. Pineda, Revenue Collection Clerk II of the Municipal Government of Babatngon, Leyte who was designated at the Business Permit and Licensing Office (BPLO) of the Municipal Government of Babatngon, Leyte. Pineda also issued a certified true copy of the logbook entry (Exh. A-4) showing that a business permit paid on an annual basis, was indeed released to Alde on August 28, 2009.</p>
<p>"A-7"<sup>19</sup></p>	<p>S.B. Resolution No. 1511-02 entitled "<i>A Resolution Adopting Ordinance No. 191, An Ordinance Revising Ordinance No. 46, Regulating the Operation of Cockfighting, Imposing Taxes Thereof and for Other Purposes.</i>"</p>	<p>4.4. Accused Chan granted Alde's application for business permit despite the issuance of S.B. Resolution No. 2412-08 (Exh. A-2) dated September 3, 2008, which should have barred the accused from issuing the business permit to Alde for failing to comply with the requirements under SB Resolution No. 1511-02 (Exh. A07).</p> <p>4.5. Considering that Alde was issued a Business Permit for cockpit despite the fact that his authority to operate such business was already revoked as early as September 3, 2008, the Sangguniang Bayan of Babatngon, Leyte was constrained to issue on September 16, 2009 SB Resolution No. 2522-09 (Exh. A-6).</p> <p>4.6. Accused acted without authority from the municipal council to issue the subject business permit, in violation of P.D. No. 1802 and S.B. Resolution No. 1511-02.</p> <p>4.7. Accused Chan completely disregarded and ignored the concurrent authority of the S.B. to issue license and regulate cockfighting within the municipality of Babatngon, Leyte under Section 4 of P.D. No. 1802 and Section 6(h) of Ordinance No. 191 of Batbangon, Leyte by issuing on 28 August 2009 Mayor's Business Permit No. 03-30-2009 for the cockpit operated by Alde.</p> <p>4.8. By issuing the subject business permit, notwithstanding the fact that</p>

<sup>19</sup> Record, Vol. I, pp. 373-378.

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		Alde's authority to operate a cockpit was earlier revoked by the S.B., accused Chan acted with manifest partiality, evident bad faith or gross inexcusable negligence, thereby giving the former unwarranted benefit, advantage, or preference in the discharge of her functions as Municipal Mayor of Babatngon, Leyte.
"D" <sup>20</sup>	<p>Certified true copy of S.B. No. 2253-07 entitled "<i>A Resolution Authorizing Mayor Ernesto G. Fabi to Grant Franchise to Mr. Nicomedes C. Alde of Barangay District 4, this Locality, to Operate the Babatngon Gallera at Sitio Magsaigad, Barangay District 1, Babatngon, Leyte, pursuant to Ordinance No. 191.</i>"</p> <p>Issued by the Sangguniang Bayan Secretary of Babatngon, Leyte, Marcelino.</p>	To prove that on June 13, 2007, the Sangguniang Bayan of Babatngon, Leyte issued Resolution No. 2253-07.
"E" <sup>21</sup>	<p>Certified true copy of S.B. Resolution No. 2412-08 entitled "<i>A Resolution Repealing Sangguniang Bayan Resolution No. 2253-07 Granting Franchise to Mr. Nicomedes C. Alde of Barangay District 4, Babatngon, Leyte to Operate the Babatngon Gallera at Sitio Magsaigad, Barangay District 1, This Locality, and Appealing to Mayor Charita M. Chan to Revoke the Business Permit Issued to Mr. Alde.</i>"</p> <p>Issued by the Sangguniang Bayan Secretary of Babatngon, Leyte, Marcelino.</p>	To prove that on September 3, 2008, the Sangguniang Bayan of Babatngon, Leyte issued Resolution No. 2412-08.
"F" <sup>22</sup>	<p>Certified true copy S.B. Resolution No. 2522-09 entitled "<i>A Resolution Urging and Highly Recommending to Mayor Charita M. Chan of this Locality to Reconsider and Revoke Mayor's Business Permit No. 03-30-2009 dated August 28, 2009 issued to Nicomedes Alde for the Cockpit Operation at Barangay</i></p>	To prove that on September 16, 2009, the Sangguniang Bayan of Babatngon, Leyte issued Resolution No. 2522-09.

<sup>20</sup> Record, Vol. I, pp. 379-380.  
<sup>21</sup> Record, Vol. I, pp. 381-382.  
<sup>22</sup> Record, Vol. I, pp. 383-384.

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	<p><i>District III, Babatngon Leyte for Violation of Sec. 6 (h) of Ordinance No. 191.</i></p> <p>Issued by the Sangguniang Bayan Secretary of Babatngon, Leyte, Marcelino.</p>	
"G" <sup>23</sup>	<p>Certified true copy of the S.B. Resolution No. 1511-02 entitled "<i>A Resolution Adopting Ordinance No. 91, An Ordinance Revising Ordinance No. 46, Regulating the Operation of Cockfighting, Imposing Taxes Thereof and for Other Purposes.</i>"</p> <p>Issued by the Sangguniang Bayan Secretary of Babatngon, Leyte, Marcelino.</p>	<p>To prove that on June 10, 2002, the Sangguniang Bayan of Babatngon, Leyte issued Resolution No. 1511-02.</p>
"I" <sup>24</sup>	<p>Certified true copy of entries of the Official Register/Logbook of the Municipal Treasurer's Office for the calendar year 2009.</p> <p>Issued by Ma. Victoria M. Pineda Revenue Collection Clerk II of the Municipal Government of Babatngon, Leyte, who was designated at the Business Permit and Licensing Office (BPLO) of the Municipal Government of Babatngon, Leyte.</p>	<p>To prove that in the certified true copy of the Official Register/Logbook of the Municipal Treasurer's Office for the calendar year 2009. on the 28<sup>th</sup> line of the logbook page, it is reflected that the business permit was released to Nicomedes Alde with Plate No. 234 on August 28, 2009.</p>
"K" <sup>25</sup>	<p>Certified true copy of the Minutes of the Regular Session of the Sangguniang Bayan of Babatngon, Leyte held on the 3<sup>rd</sup> day of September 2008 at the SB Session Hall.</p> <p>Issued by the Sangguniang Bayan Secretary of Babatngon, Leyte, Marcelino.</p>	<p>To prove that the Sangguniang Bayan Secretary prepared the Minutes of the 54<sup>th</sup> Regular Session of the Sangguniang Bayan of Babatngon, Leyte held on the 3<sup>rd</sup> day of September 2008 at the S.B. Session Hall. During the said session, the SB passed S.B. Resolution No. 2412-08 as recorded on line 431 until 497 thereof.</p>
"L" <sup>26</sup>	<p>Certified true copy of the Minutes of the 99<sup>th</sup> Regular Session of the Sangguniang Bayan of Babatngon, Leyte held on the 16<sup>th</sup> Day of September 2009 at the SB Session Hall.</p>	<p>To prove that the Sangguniang Bayan Secretary prepares the Minutes of the 99<sup>th</sup> Regular Session of the Sangguniang Bayan of Babatngon, Leyte held on the 16<sup>th</sup> Day of September 2009 at the S.B. Session Hall. During the said session, the SB</p>

<sup>23</sup> Record, Vol. I, pp. 385-390.  
<sup>24</sup> Record, Vol. I, pp. 391-392.  
<sup>25</sup> Record, Vol. I, pp. 393-401.  
<sup>26</sup> Record, Vol. I, pp. 402-411.

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		passed S.B. Resolution No. 2522-09, as recorded on line 215 until line 295 thereof.
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The Court, taking into consideration the objections of the defense, resolved to admit the following exhibits of the prosecution: “A”, “A-1”, “A-2”, “A-3”, “A-4”, “A-5”, “A-6”, “A-7”, “D”, “E”, “F”, “G”, “I”, “K”, and “L”.<sup>27</sup>

On October 10, 2021, accused Chan filed through electronic mail her “*Motion for Leave of Court to File Demurrer to Evidence.*”<sup>28</sup> On October 20, 2021, the prosecution filed through electronic mail their “*Opposition (Re: Motion for Leave of Court to File Demurrer to Evidence.*”<sup>29</sup>

In a *Resolution* dated October 21, 2021,<sup>30</sup> the Court resolved to deny accused Chan’s “*Motion for Leave of Court to File Demurrer to Evidence*” for lack of merit.

### EVIDENCE FOR THE DEFENSE

The defense presented the following witnesses:

On April 27, 2022, the defense presented witness **Marcelina Engle (“Marcelina”)**,<sup>31</sup> who testified on direct examination through her Judicial Affidavit<sup>32</sup> dated April 25, 2022. The testimony of witness Marcelina was offered to prove the following: (1) that she is the wife of the late James Engle, the private complainant in this case, who already passed away on February 2, 2013; (2) that her late husband and Alde were previously business associates; (3) that their business dealing failed and the relationship between Engle and Alde turned sour which triggered Engle to file several cases against Alde and only included the accused being the then Mayor of Babatngon, Leyte; (4) she desires to have the case dismissed by virtue of an Affidavit of Desistance; (5) she will testify and identify her Judicial Affidavit and attachments thereon, which will serve and form part as an integral part of her direct testimony, and will testify to such other material facts in relation to this case.

In the course of her testimony, she identified the following documentary evidence for the accused, namely: Affidavit of Witness dated February 2, 2022 (“*Exhibit 7*”),<sup>33</sup> and her signature appearing thereon (“*Exhibit 7-A*”); Affidavit of Desistance dated February 2, 2021 (“*Exhibit*”

<sup>27</sup> *Resolution dated September 17, 2021*, Record, Volume I, p. 504.

<sup>28</sup> Record, Volume I, pp. 506-507.

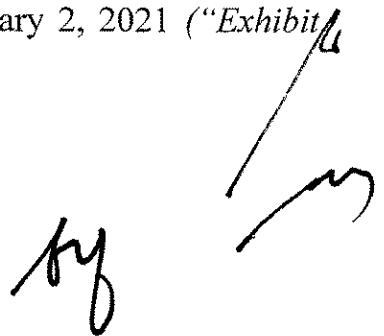
<sup>29</sup> Record, Volume I, pp. 508-513.

<sup>30</sup> Record, Volume I, p. 539.

<sup>31</sup> TSN dated April 27, 2022.

<sup>32</sup> Record, Vol. I, pp. 631-648.

<sup>33</sup> Record, Vol. I, pp. 645-646.





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8")<sup>34</sup>, and her signature appearing thereon ("*Exhibit 8-A*"); Certificate of Death of Engle ("*Exhibit 9*")<sup>35</sup>; Certificate of Marriage between Marcelina and Engle ("*Exhibit 10*")<sup>36</sup>; and Judicial Affidavit of Marcelina ("*Exhibit 11*")<sup>37</sup> and her signature appearing thereon ("*Exhibit 11-A*").<sup>38</sup>

The prosecution did not conduct any cross-examination. On questions propounded by the Court, witness Marcelina admitted that she was not present when the alleged *kasunduan* between Engle and Alde was executed. She likewise admitted that she only knows of the contents of the said document because it was mentioned to her by Engle. According to witness Marcelina, she does not know if the alleged *kasunduan* was notarized. When asked to produce the said *kasunduan*, she testified that the same was destroyed when their house in Babatngon was razed by fire sometime in 2006.

On June 1, 2022, the defense called onto the witness stand, witness **Lita G. Bergula ("Bergula")**,<sup>39</sup> to testify on direct examination through her Judicial Affidavit<sup>40</sup> dated May 27, 2022.

During the hearing, the prosecution objected to the presentation of witness Bergula on the ground that the intended testimony is irrelevant and immaterial. The said objection was sustained by the Court. Hence, the defense made a tender of excluded evidence that if witness Bergula was allowed to testify, she would have testified on the purposes enumerated in the Judicial Affidavit and identified the documents mentioned therein, to wit: (1) to prove that she knows the accused and the private complainant, James Engle; (2) that during the issuance by the accused of the questioned Mayor's Business Permit, she was then a member of the *Liga ng mga Barangay*, being then the Chairwoman of Brgy. District 2, Babatngon, Leyte; (4) that the members of the *Liga ng mga Barangay*, thru the then Liga President, Nicomedes Alde, themselves, requested for then-Mayor Charry Chan, to allow the Liga to hold "*tupadas*" every Saturday in order to raise funds to be used for the necessary expenses for its projects, instead of asking donations and solicitation from the public; (4) to prove that the accused acted in good faith in issuing the Mayor's Business Permit in favor of Nicolas Alde; and (5) that the accused did not, in any way, promote or benefitted from the cockpit business of Nicolas Alde.<sup>41</sup>

On June 2, 2022, the defense presented accused **Mayor Charita Montaña Chan ("Chan")**,<sup>42</sup> who testified on direct examination through her

<sup>34</sup> Record, Vol. I, pp. 647-648.

<sup>35</sup> Record, Vol. I, pp. 642-643.

<sup>36</sup> Record, Vol. I, p. 644.

<sup>37</sup> *Id.*

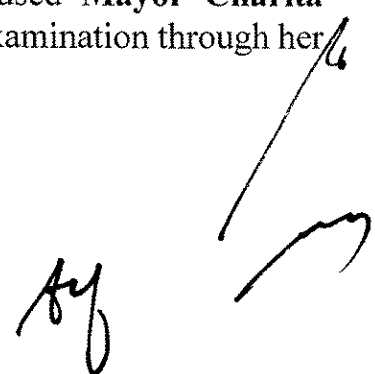
<sup>38</sup> Order dated April, 27, 2022, Record, Vol. II, pp. 25-26.

<sup>39</sup> TSN dated June 1, 2022.

<sup>40</sup> Record, Vol. II, pp. 94-103.

<sup>41</sup> TSN dated June 1, 2022.

<sup>42</sup> TSN dated June 2, 2022.



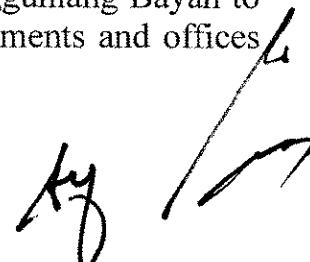
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Judicial Affidavit<sup>43</sup> dated May 27, 2022. The testimony of accused Chan was offered to prove the following: (1) that she is the accused in this case and she denies all allegations against her; (2) that she signed the questioned Mayor's Business Permit No. 03-3-2009 dated August 28, 2009, in good faith, and without receiving any consideration for herself, and had issued the same upon adoption of the Sangguniang Bayan of the authority given to the previous Mayor Ernesto Fabi granting the franchise to Nicomedes Alde; (3) that the Sangguniang Bayan adopted Resolution No. 2253-07, thus allowing accused to issue a self-limiting Mayor's Business Permit valid only for the remaining period from August 1, 2009, to December 31, 2009; (4) that the same Mayor's Business Permit itself is self-limiting and as appearing in the face thereof, was "*...subject to the provisions of RA 7610 (The Local Government Code of the Philippines), Ordinance No. 216 and other pertinent laws and regulations. This is non-transferable and shall be deemed null and void upon failure of the licensee to strictly observe the provisions of the law*"; (5) that as appearing in Resolution No. 2412-08 that on June 13, 2007, during the 141<sup>st</sup> regular session it was the private complainant himself who produce during the next session, the essential documents relevant to the granting of the Babatngon Gallera franchise to Mr. Alde, but the same credentials did not find its way to the Sanggunian Bayan; (6) that she did not and has not received copies of Resolution Nos. 2412-08 and 2522-09 when she issued the questioned Mayor's Business Permit; (7) that by the time she knew of the Resolution, the same has become moot and academic, having expired on December 2009; (8) that the accused is neither a part of the cockfighting business of Nicomedes Alde nor did she, in any way, promote or benefit from the said cockfighting business; (9) that prior of the signing of the questioned Mayor's Business Permit, the same passed through several persons first for approval and only after such approvals did the accused signed the questioned renewal Mayor's Business Permit; and (10) that the witness will identify documents mentioned and/or attached to her Judicial Affidavit will serve as part of her direct testimony.

According to accused Chan, she knows the private complainant, Engle, because he used to be one of the councilors of Babatngon, Leyte. On the other hand, accused Chan identified private complainant Alde as the Barangay Liga President of Babatngon, Leyte from December 1, 2010, up to July 15, 2018. According to her, Engle also filed two (2) administrative complaints against her, which were allegedly dismissed based on a copy of the *Decision* from the Office of the Ombudsman dated June 5, 2018 ("*Exhibit 13*").<sup>44</sup> She also testified that Engle invested money, amounting to One Hundred Thousand Pesos (Php100,000.00) in the operation of Alde's cockpit business. When the business failed, Engle demanded the return of the said amount. On August 28, 2009, acting on the continued authority given by the Sangguniang Bayan to then-Mayor Fabi, and after being assured by other departments and offices

<sup>43</sup> Record, Vol. II, pp. 49-90.

<sup>44</sup> Record, Vol. II, pp. 60-70.



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that the requirements were duly complied with, accused Chan approved and signed the subject Mayor's Business Permit ("*Exhibit 12*").<sup>45</sup> According to her, the permit was only a renewal considering that Mayor Fabi has allegedly approved and issued the previous business permit to Mr. Alde. When presented with the subject business permit, particularly the annotation mentioned therein, accused Chan testified that based on her understanding, the subject permit is valid until proven void for violating any pertinent law. According to accused Chan, before signing and approving the subject Mayor's Business Permit, the papers submitted by Alde were checked and processed by several persons before her, and she relied on their assurance that everything was in order before signing the same. Alde was the lone applicant for the operation of a cockpit and he paid the required fees in relation to his application. The said payment was paid to the Office of the Municipal Treasurer as proved by the logbook ("*Exhibit 18*").<sup>46</sup> Accused Chan also testified that during her incumbency as Mayor, she did not promote Alde's cockpit business and she did not receive any consideration for the approval of the said application. Allegedly, she was only included in the complaints against Alde because she failed to persuade him to return the money invested by private complainant Engle. When she issued the subject Mayor's Business Permit, she understood that it was a renewal of the application that was initially granted by Mayor Fabi and that she was acting within the scope of S.B. Resolution No. 2253-07 ("*Exhibit 19*"),<sup>47</sup> and subject to the provisions of pertinent laws. Accused Chan testified that when she signed and approved the subject Mayor's Business Permit on August 28, 2009, she did not read or receive a copy of the S.B. Resolution No. 2412-08 dated September 3, 2008. When presented with the S.B. Resolution No. 2412-08 ("*Exhibit 14*"),<sup>48</sup> accused Chan mentioned that on June 13, 2007, it was Engle himself who promised to produce in the following session, the essential documents relevant to the granting of the Babatngon Gallera franchise to Alde. The said credentials, however, did not find their way to the Sangguniang Bayan. This was embodied in the second paragraph of S.B. Resolution No. 2412-08. When confronted with S.B. Resolution No. 2522-09 ("*Exhibit 15*"),<sup>49</sup> accused Chan testified that she has not seen or received the same prior to the issuance of the subject Mayor's Business Permit and that it mentions that the permit was issued subject to the provisions of R.A. No. 7610 and Ordinance No. 216 and other pertinent laws. Moreover, the subject Mayor's Business Permit was allegedly not used since private complainant Engle put to stop Alde's cockpit operation based on the police blotter filed by the latter. Unfortunately, all the blotters on the date material to the case got washed out due to typhoon Urduja as evidenced by the Certification from the Babatngon Police Station ("*Exhibit 16*").<sup>50</sup> According to accused Chan, she served as the Mayor of Babatngon.

<sup>45</sup> Record, Vol. II, pp. 59.

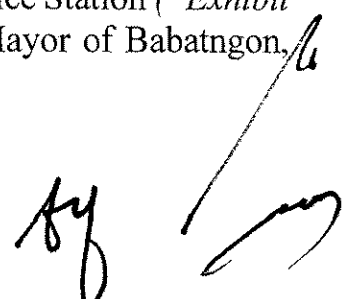
<sup>46</sup> Exhibit "A-4" for the Prosecution, Record, Vol. I, p. 369.

<sup>47</sup> Exhibit "A-1" for the Prosecution, Record, Vol. II, pp. 71-72.

<sup>48</sup> Exhibit "A-2" for the Prosecution, Record, Vol. II, pp. 71-72.

<sup>49</sup> Record, Vol. II, pp. 73-74.

<sup>50</sup> Record, Vol. II, pp. 75.



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Leyte for three (3) terms, and during those terms, she received commendations and awards in view of her service as evidenced by the photocopies of the commendations and awards (“*Exhibit 17 to 17-1*”).<sup>51</sup>

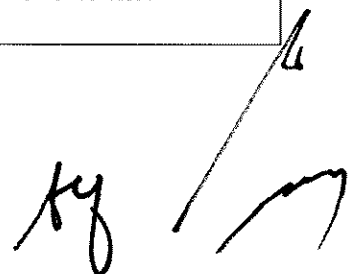
On cross-examination, accused Chan testified that as the Mayor of Babatngon from July 1, 2007, to June 30, 2016, she is very much familiar with Ordinance No. 191 (“*Exhibit G*”). She is likewise aware that the operation of a cockpit is regulated by the municipal mayor with the concurrence of the Sangguniang Bayan pursuant to P.D. No. 1802, as amended. While accused Chan knows that the grant of the franchise to operate a cockpit is issued only upon approval of the Sangguniang Bayan, she is not aware that the said legislative body has the authority to revoke the same franchise. When confronted with Ordinance No. 191, specifically Section 9, paragraph B thereof (*Exhibit G-1*), she admitted that the payment for the annual fee paid annually for the operation of the cockpit is subject to the renewal of the permit to operate and maintain a cockpit. Accused also admitted that before the signing of the Mayor’s Business Permit, her office did not coordinate with the Sangguniang Bayan to check whether the permit to maintain and operate a cockpit is still valid for the year 2009. Accused Chan also admitted that she did not check if Alde submitted proof that the annual fee for the operation of the cockpit was duly paid pursuant to Ordinance No. 191. Moreover, the accused admitted that she did not personally see the supporting documents of the application made by Aldes.

On questions propounded by the Court, accused Chan admitted that she issued the business permit on 2009 despite the fact that the resolution repealing or withdrawing the authority to issue such permit had already been issued on September 3, 2008, or almost a year prior to the issuance of the business permit.

On June 9, 2022, the defense filed its *Formal Offer of Documentary Exhibits*,<sup>52</sup> offering the following documentary exhibits and their respective purposes, to wit:

Exhibit	Description	Purpose
“1” <sup>53</sup>	Counter-Affidavit of Accused	To prove its existence and due execution, to prove that the accused acted in good faith in issuing the subject Mayor’s Business Permit.
“2” <sup>54</sup>	Service Record of accused Charita Montaña Chan	To prove the good track record of the accused, being elected for 3 terms.

<sup>51</sup> Record, Vol. II, pp. 76-85.  
<sup>52</sup> Record, Vol. II, pp. 108-175.  
<sup>53</sup> Record, Vol. II, pp. 114-117.  
<sup>54</sup> Record, Vol. II, p. 118.



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"3" <sup>55</sup>	Judicial Affidavit of accused Charita Montañó Chan	To prove its existence and due execution, to prove that accused acted in good faith in issuing the subject Mayor's Business Permit.
"3-a" <sup>56</sup>	Signature of accused Charita Montañó Chan as appearing Judicial Affidavit.	
"7" <sup>57</sup>	Affidavit of Witness Marcelina Sajorda Engle	<p>To prove that she is the wife of the late James Engle, the herein private complainant.</p> <p>That as the successor in interest of the late private complainant, she desires to have the case dismissed against the accused, thus, her execution of the Affidavit of Desistance;</p> <p>To prove good faith of the accused in issuing the subject Mayor's Business Permit.</p>
"8" <sup>58</sup>	Affidavit of Desistance executed by Witness Marcelina Sajorda Engle	To prove the fact of its existence and due execution by witness Marcelina Engle, that as the successor in interest of the late James Engle, private complainant, in this case, she wants to have the case dismissed against the accused.
"9" <sup>59</sup>	Certificate of Death of Private Complainant James Engle	<p>Offered to prove its existence and due execution;</p> <p>To prove the fact of the death of the private complainant.</p>
"10" <sup>60</sup>	Certificate of Marriage Between James L. Engle and witness Marcelina Sajorda Engle	To prove the relationship of the witness Marcelina Sajorda Engle and the late James Engle, the private complainant in this case.
"11" <sup>61</sup>	Judicial Affidavit of Marcelina Engle	<p>To prove the existence and due execution, which forms part of the testimony of the witness;</p> <p>To prove that she is the wife of the late James Engle. And that as the successor in interest of the late private complainant, she desires to have the case dismissed against the accused, thus, her execution of the Affidavit of Desistance;</p> <p>To prove good faith of the accused in issuing the subject Mayor's Business Permit.</p>

55 Record, Vol. II, pp. 119-128.  
 56 Record, Vol. II, p. 127.  
 57 Record, Vol. II, pp. 129-130.  
 58 Record, Vol. II, pp. 131-132.  
 59 Record, Vol. II, pp. 133-134.  
 60 Record, Vol. II, p. 135.  
 61 Record, Vol. II, pp. 136-144.

Handwritten signature and initials, possibly 'by' and a flourish, located at the bottom right of the page.

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"12" <sup>62</sup>	Mayor's Business Permit No. 03-30-2009	<p>To prove that the subject Mayor's Business Permit was merely a renewal and valid only within the remaining months (August 1, 2009, to December 31, 2009) and a continuation of the authority granted to the previous Mayor Fabi;</p> <p>To prove that the same is self-limiting and subject to existing laws, thus automatically voided upon violation of pertinent laws.</p>
"13" <sup>63</sup>	Decision dated June 5, 2018	<p>To prove its existence and due execution and the fact of the dismissal of one of the cases filed by the late Mr. Engle, out of the grudge he had to Mr. Aldes and accused.</p>
"14" <sup>64</sup>	SB Resolution No. 2412-08 dated September 3, 2008	<p>To prove that the private complainant himself promised to produce the essential documents relevant to the granting of the Gallera franchise to Mr. Alde, but the same did not find its way to the SB;</p> <p>To prove that the signature of the accused appears in the resolution itself or in any other document which proves that the accused was not furnished a copy or did not receive a copy of the said resolution notwithstanding the directive to forward the said resolution to her.</p>
"15" <sup>65</sup>	SB Resolution No. 2522-09 dated September 16, 2009	<p>To prove that in the said resolution, the SB recognized that the subject Mayor's Business Permit mentions that the same was issued subject to the provisions of RA No. 7610 and Ordinance No. 216 and other pertinent laws;</p> <p>To prove that the signature of the accused does not appear in the resolution itself or in any other document which proves that the accused was not furnished a copy or did not receive a copy of the said resolution notwithstanding the directive to forward the said resolution to her.</p>
"16" <sup>66</sup>	Certification dated May 20, 2022, issued by the Babatngon Police Station	<p>To prove that the private complainant James Engle caused the closure of the gallera and has in fact caused the blotter of the incident of its closure.</p>
"17 to 17-1" <sup>67</sup>	Awards and Commendations to accused Chan	<p>To prove the good track record of the accused;</p>

<sup>62</sup> Record, Vol. II, p. 145.  
<sup>63</sup> Record, Vol. II, pp. 146-156.  
<sup>64</sup> Record, Vol. II, pp. 157-158.  
<sup>65</sup> Record, Vol. II, pp. 159-160.  
<sup>66</sup> Record, Volume II, p. 161.  
<sup>67</sup> Record, Volume II, pp. 162-171.

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		To prove that accused never benefitted from any cockpit business of Mr. Alde, and to prove the improbability of the commission of graft and corrupt practices.
“18” <sup>68</sup>	Certified True Copies of the entries of the Official Register/Logbook of the Municipal treasurer’s Office for the year 2009	To prove that the payment made in the application of Mr. Alde was received by the Office of the Municipal Treasurer;  To prove that accused never benefitted from any cockpit business of Mr. Alde, and to prove the improbability of the commission of graft and corrupt practices.
“19” <sup>69</sup>	SB Resolution No. 2253-07	To prove that the accused, in good faith, then a first timer, relied on the resolution granted to the previous Mayor of Babatngon Leyte, giving the authority to grant franchise to Mr. Alde, which was merely a renewal of his mayor’s business permit.

The Court, taking into consideration the objections of the prosecution, resolved to admit the following exhibits of the defense: “1”, “2”, “3”, “3-a”, “7”, “8”, “9”, “10”, “11”, “12”, “13”, “14”, “15”, “16”, “18” and “19”. The Court excluded *Exhibits “17”, “17-a to 17-I”* considering that they were merely provisionally marked for being photocopies and the records show that neither the originals nor the certified true copies were submitted to the Court.<sup>70</sup>

**UNDISPUTED FACTS**

Accused Chan, in the *Pre-Trial Order*,<sup>71</sup> admitted the existence and identified the following common exhibits: S.B. Resolution No. 2253-07 (“*Exhibit D*”), S.B. Resolution No. 2412-08 (“*Exhibit E*”), S.B. No. 2522-09 (“*Exhibit F*”), S.B. Resolution No. 1511-02 (“*Exhibit G*”), and the Mayor’s Business Permit No. 03-30-2009 dated August 28, 2009, issued to Nicomedes Alde (“*Exhibit A-5*”).

Additionally, in her Judicial Affidavit, accused Chan identified the following documentary evidence, common to both parties: Mayor’s Business Permit No. 03-30-2009 dated August 28, 2009 (“*Exhibit 11*”); SB Resolution No. 2412-08 dated September 3, 2008 (“*Exhibit 14*”); SB Resolution No. 2522-09 dated September 16, 2009 (“*Exhibit 15*”); Certified True Copies of the entries of the Official Register/Logbook of the Municipal treasurer’s Office for the year 2009; and SB Resolution No. 2253-07 (“*Exhibit 13*”). Moreover, during the cross-examination conducted by the prosecution on June 2, 2022, admitted the existence of Mayor’s Business Permit No. 03-30-~~6~~

<sup>68</sup> Record, Volume II, p. 172.  
<sup>69</sup> Record, Volume II, pp. 173-174.  
<sup>70</sup> Resolution dated June 30, 2022, Record, Volume II, pp. 208-209.  
<sup>71</sup> Record, Vol. I, pp. 514-524.

2009 dated August 28, 2009, issued to Nicomedes Alde and Ordinance No. 191 ("*Exhibit G*").

Based on the foregoing admissions, the following facts are uncontroverted:

1. On June 19, 2002, the Sangguniang Bayan of Babatngon, Leyte enacted Ordinance No. 191 known as the Cockfighting Code of the Municipality of Babatngon, Leyte, regulating the operation of cockfights and imposing municipal taxes thereon and for other purposes. The said ordinance was enacted pursuant to Presidential Decree No. 449 of the Cockfighting Law of 1974, as amended.

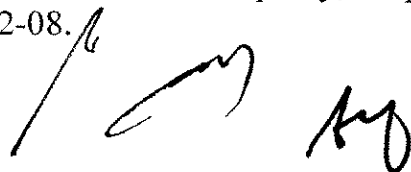
2. Under Section 6 (h) of Ordinance No. 191, the "municipal mayor is authorized to issue a license for the operation and maintenance of a cockpit, subject to the approval of the Sangguniang Bayan by resolution to operate such cockpit or cockfighting." The same provision also requires the owner, operator, lessee, or manager of the cockpit to submit the following documents to the Sangguniang Bayan, to wit:

- a. Location and vicinity plan of the cockpit; and
- b. Cockpit building plan together with the certification that the cockpit is not within 200 linear meter radiuses from any existing residential and commercial areas, hospitals, school buildings, churches or other public buildings.

3. On June 13, 2007, the Sangguniang Bayan of Babatngon, Leyte, through Resolution No. 2253-07, resolved to authorize the then Mayor Fabi to grant the franchise to Alde to operate the Babatngon Gallera in District I of the said municipality, pursuant to Ordinance No. 191.

4. On September 3, 2008, the Sangguniang Bayan of Babatngon, Leyte enacted Resolution No. 2412-08. Under the said resolution, the Sangguniang Bayan resolved to repeal SB Resolution No. 2253-07 and appealed to accused Chan to revoke the business permit issued to Alde. According to the resolution, Alde did not comply with the submission of required documents as enumerated in Ordinance No. 191 (i.e., building permit, location and vicinity map of the cockpit, cockpit building plan, certification that the cockpit is not within 200 linear meter radiuses from any existing residential and commercial areas, hospitals, school buildings, churches or other public buildings.)

5. On August 28, 2009, accused Chan, as the then Mayor of Babatngon, Leyte, issued Mayor's Business Permit No. 03-30-2009, allowing Alde to operate Babatngon Gallera in District 3 of the municipality, despite the existence of S.B. No. Resolution No. 2412-08.





6. On September 16, 2009, the Sangguniang Bayan of Babatngon, Leyte enacted Resolution No. 2522-09, “urging and highly recommending” to Accused Chan to “reconsider and revoke” Mayor’s Business Permit No. 03-30-2009 dated August 28, 2009, issued to Alde, in view of the violation of Section 6(h) of Ordinance No. 191.

### **RULING OF THE COURT**

Accused Chan had been charged in Criminal Case No. SB-19-CRM-0157 for violation of Section 3(e) of Republic Act No. 3019, as amended, (Anti-Graft and Corrupt Practices Act), in relation to Section 4 of P.D. No. 1803 (Creating the Gamefowl Commission) and Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte).

Section 3(e) of Republic Act No. 3019, as amended, reads as follows:

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

x x x

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

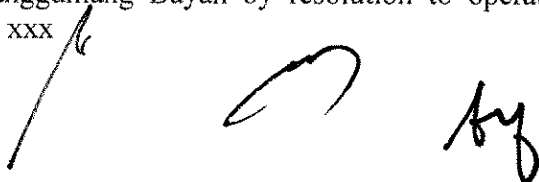
Section 4 of P.D. No. 1802 (Creating the Gamefowl Commission) provides the following:

Section 4. City and Municipal Mayors with the concurrence of their respective Sangguniang Panglunsod or Sangguniang Bayan, shall have the authority to license and regulate regular cockfighting, under the supervision of the City Mayor and the Provincial Governor, as the case may be. (See PD 1802-A)

Corollary thereto, Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte states that:

Section 6. Holding of Cockfights. – xxx

h. Licensing of Cockpits – The Municipal Mayor is authorized to issue a license for the operation and maintenance of a cockpit subject to the approval of the Sangguniang Bayan by resolution to operate such cockpit or cockfighting. xxx



To convict for the violation of Section 3(e) of Republic Act No. 3019, the State must allege in the information and establish beyond reasonable doubt during the trial that the accused acted in the discharge of his official, administrative or judicial functions through manifest partiality or evident bad faith, or with gross inexcusable negligence in order to cause undue injury to any party, including the Government, or to give any private party any unwarranted benefits, advantage, or preference. The mere allegation of such modes, not being evidence, is not competent as proof of guilt.<sup>72</sup>

Reduced to its elements, a violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial, or official functions; (2) the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>73</sup>

Here, the prosecution was able to prove beyond reasonable doubt that Accused Chan violated Section 3(e) of Republic Act No. 3019, as amended, in relation to Section 4 of P.D. No. 1803 and Section 6 (h) of Ordinance No. 191, when she issued Mayor's Business Permit No. 03-30-2009 dated August 28, 2009.

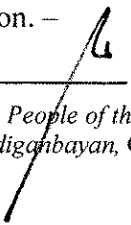
**A. The first element of the violation of Section 3(e) of R.A. No. 3019, as amended: accused Chan is a public officer discharging official functions.**

Section 2 (b) of R.A. No. 3019 defines "public officer" as elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

The first element is present, it having been stipulated during the Pre-Trial that accused Chan is a public officer, being the Municipal Mayor of Babatngon, Leyte, during the dates pertinent and material to this case.

As the Municipal Mayor, accused Chan is endowed with the power to issue business permits or licenses pursuant to Sec. 444 of R.A. No. 7160 (Local Government Code), to wit:

Section 444. The Chief Executive: Powers, Duties, Functions and Compensation. –

  
<sup>72</sup> *Rivera, et al v. People of the Philippines*, G.R. No. 228154, October 16, 2019.

<sup>73</sup> *Garcia v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.


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xxx

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

xxx

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

xxx

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;

xxx


By issuing the subject Mayor's Business License Permit to Alde, accused Chan is considered to be a public officer discharging official function within the purview of R.A. No. 3019, as amended.

At issue are the second and third elements of the offense. As described in Criminal Case No. SB-19-CRM-0157 accused Chan is charged for acting with manifest partiality and evident bad faith, in causing the issuance of Mayor's Business Permit No. 03-30-2009 to Alde on August 28, 2009, in disregard of S.B. Resolution No. 2412-0803 dated September 3, 2008, Resolution No. 2522-09 dated September 16, 2009, Ordinance No. 191 (Cockfighting Code of Babatngon, Leyte), and Presidential Decree No. 1802 (Creating the Gamefowl Commission).


**B. The second element of the violation of Section 3(e) of R.A. No. 3019: accused Chan acted with manifest partiality and evident bad faith.**

The second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. "*Manifest partiality*," "*evident bad faith*," or "*gross inexcusable negligence*" are not separate offenses, and proof of the existence of any of these three (3) "in connection with the prohibited acts is enough to convict."<sup>74</sup>

The Supreme Court, in the case of *Uriarte v. People*,<sup>75</sup> defined these modalities:

  
<sup>74</sup> *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos 202408, 202409, and 202412, June 27, 2018; citations omitted.

<sup>75</sup> *Demje L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006; Emphasis on



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

In the succeeding discussions, the Court finds that the modalities of manifest partiality and evident bad faith are both present in the instant case as proved by the irregularities and illegalities attendant in the issuance of Mayor's Business Permit No. 03-30-2009 to Alde on August 28, 2009.

Accused Chan's issuance of the subject Mayor's Business Permit was in violation of R.A. No. 7160, P.D. No. 1802, and Ordinance No. 191 of the Municipality of Babatngon, Leyte. Section 444(b)(3)(iv) of the R.A. No. 7160 (Local Government code of 1991) provides that the municipal mayor has the authority to issue, suspend, or revoke licenses and permits. However, the same provision prescribes a limit to this authority – it must be pursuant to law or ordinance.

Here, there are existing laws and ordinance which limits the authority of accused Chan to issue the subject Mayor's Business Permit, to wit: (1) Section 447 (a)(3)(v) of the R.A. No. 7160; (2) P.D. No. 1802; and (3) Ordinance No. 191 of the Municipality of Babatngon, Leyte. Under the pertinent laws and ordinance, the Municipal Mayor's authority to issue the business permit for the establishment, operation, and maintenance of cockpits must be with the approval of the Sangguniang Bayan, through a Resolution enacted for that purpose.

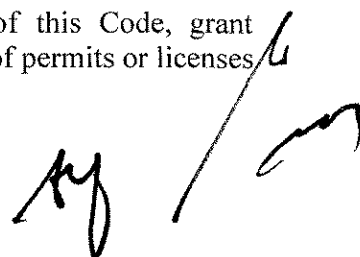
Section 447 (a)(3)(v) of the R.A. No. 7160 provides:

Section 447. Powers, Duties, Functions and Compensation. –

(a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

xxx

(3) Subject to the provisions of Book II of this Code, grant franchises, enact ordinances authorizing the issuance of permits or licenses



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or enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the municipality, and pursuant to this legislative authority shall:

xxx

(v) Any law to the contrary notwithstanding, authorize and license the establishment, operation, and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks: Provided, That existing rights should not be prejudiced; xxx

The requirement of concurrence or approval by the Sangguniang Bayan is further reiterated in Section 4 of P.D. No. 1802 and incorporated in the Ordinance No. 191 of the Municipality of Babatngon, Leyte, to wit:

Section 4 of P.D. No. 1802:

Section 4. City and Municipal Mayors with the concurrence of their respective Sangguniang Panglunsod or Sangguniang Bayan, shall have the authority to license and regulate regular cockfighting, under the supervision of the City Mayor and the Provincial Governor, as the case may be. (See PD 1802-A)

Section 6 (H) of Ordinance No. 191:

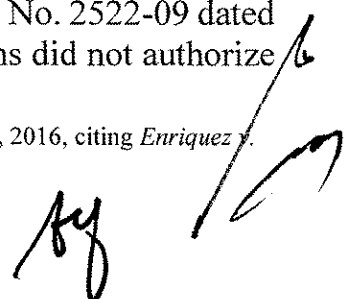
Section 6. Holding of Cockfights. – xxx

h. Licensing of Cockpits – The Municipal Mayor is authorized to issue a license for the operation and maintenance of a cockpit subject to the approval of the Sangguniang Bayan by resolution to operate such cockpit or cockfighting. xxx

Jurisprudence and statutory construction teach us that the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.<sup>76</sup> Hence, while the Municipal Mayor is empowered under the R.A. No. 7160 or the Local Government Code to issue a business permit, the authority to issue a Mayor's Business Permit to operate a cockpit is still subject to the approval of the Sangguniang Bayan. Indeed, the approval by the Sangguniang Bayan is not an empty ceremony that can be easily dispensed with by accused Chan.

Here, there are three (3) Sangguniang Bayan Resolutions that pertain to the issuance of Mayor's Business Permit No. 03-30-2009 on August 28, 2009: (1) S.B. Resolution No. 2253-07 dated June 13, 2007; (2) S.B. Resolution No. 2412-08 dated September 3, 2008; and (3) S.B. Resolution No. 2522-09 dated September 16, 2009. This Court finds that these resolutions did not authorize

<sup>76</sup> See *UCPB v. Huges Electronics Corp.*, G.R. No. 190385, November 16, 2016, citing *Enriquez v. Enriquez*, 505 Phil. 193, 199 (2005).



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accused Chan to issue the subject Mayor's Business Permit to Alde, in violation of R.A. No. 7160 (Local Government Code), P.D. No. 1802, and Ordinance No. 191 of the Municipality of Babatngon, Leyte.

*First*, S.B. Resolution No. 2253-07 did not authorize accused Chan to issue Mayor's Business Permit No. 03-30-2009 to Alde. During the cross-examination, accused Chan admitted that when Alde's application for the subject Mayor's Business Permit was forwarded to her for signature, what was attached is the S.B. Resolution No. 2253-07 dated June 13, 2007. The following exchange during the trial provides:

PROS. OUANO:

Q: Thank you, Madam Witness. When Mr. Alde applied for business permit in 2009, was the permit to operate and maintain a cockpit for the year 2009 or the Sangguniang Resolution granting him the permit to operate in 2009 attached to the application, Madam?

A: Yes, Ma'am.

Q: Which one, Madam? Was it a permit document or the Sangguniang Resolution itself?

Q: It [w]as the Sangguniang Resolution itself.

A: Madam Witness, are you referring to Resolution No. 2253-07, that's *Exhibit "A-1"* and *Exhibit - (Interrupted)*

JUSTICE B.R. FERNANDEZ:

19

PROS. OUANO:

Exhibit "19" for the defense.

JUSTICE B.R. FERNANDEZ:

Can you show it to the witness 2253-07?

WITNESS:

A: I did not receive this to my office.

PROS. OUANO:

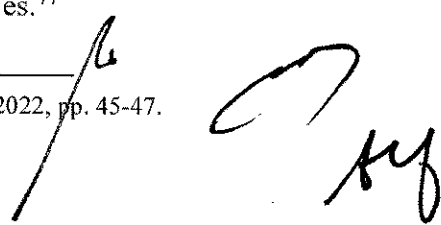
Q: Madam Witness, that's the 2007 Resolution granting Ernesto Fabi?

A: I did not receive because I am not yet the Mayor.

Q: Madam Witness, my question is, was that resolution attached to the application for business permit?

A: Yes.<sup>77</sup>

<sup>77</sup> TSN dated June 2, 2022, pp. 45-47.



The Court finds that S.B. Resolution No. 2253-07 could not have authorized accused Chan to issue the subject Mayor's Business Permit. A plain reading of the said resolution yields the following information: (1) the authority to issue the subject Mayor's Business Permit was expressly granted to the then Mayor Fabi; and (2) the franchise to operate the Babatngon Gallera is only confined to "Barangay District I".

Despite these circumstances, accused Chan proceeded to issue the Mayor's Business Permit No. 03-30-2009 to Alde, even granting the latter the authority to operate the Babatngon Gallera in "Barangay District III", which is beyond the scope of the authority granted under S.B. Resolution No. 2253-07.

*Second*, accused Chan issued the subject Mayor's Business Permit despite the fact that the Sangguniang Bayan previously revoked the franchise granted to Mr. Alde. To note, when accused Chan issued the subject Mayor's Business Permit on August 28, 2009, the Sangguniang Bayan already enacted S.B. Resolution No. 2412-08 on September 3, 2008, revoking the business permit previously issued to Mr. Alde, pursuant to S.B. Resolution No. 2253-07, for its failure to comply with the submission of required documents as enumerated in Ordinance No. 191. Moreover, she refused to revoke the subject Mayor's Business Permit despite the subsequent enactment of S.B. Resolution No. 2522-09 on September 16, 2009.

During the cross-examination, accused Chan admitted that S.B. Resolution No. 2412-08 effectively revoked Alde's franchise to operate the Babatngon Gallera, to wit:

JUSTICE R.B. MORENO:

Q: Okay, Ma'am, in this resolution, you will agree with me that it's clear that the authority for Nicomedes Alde to operate the cockpit had already been revoked by virtue of Resolution No. 2412-08. Yes or no? Only that you claimed that you have not received a copy of the resolution but this resolution says that your authority had already been revoked by virtue of this resolution, correct?

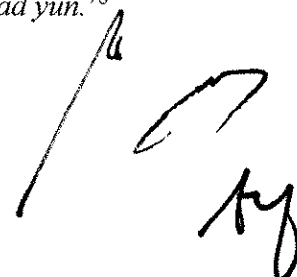
WITNESS:

A: Yes, Your Honor.

Q: And, therefore, you should not have issued the Mayor's Permit No. 03-30-2009 to Nicomedes Alde?

A: Your honor, *kung naka-receive lang po ako ng mga resolutions, ire-revoke ko kaagad yun.*<sup>78</sup>

<sup>78</sup> TSN dated June 2, 2022, p. 55.

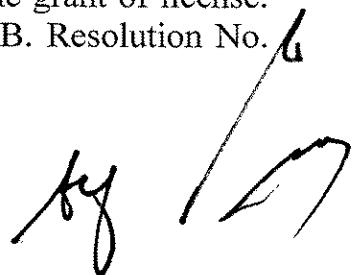


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In *Danilo Du v. Venancio Jayoma*,<sup>79</sup> the Supreme Court held that the municipal mayor is duty-bound to enforce the suspension of the cockpit operation pursuant to the Resolution enacted by the Sangguniang Bayan, to wit:

And even if he was able to get a business permit from respondent mayor for the period January 1, 1997 to December 31, 1997, this did not give him a license to operate a cockpit. Under Section 447(a)(3)(v) of the LGC, it is the Sangguniang Bayan which is empowered to "authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks." Considering that no public bidding was conducted for the operation of a cockpit from January 1, 1993 to December 31, 1997, petitioner cannot claim that he was duly authorized by the Sangguniang Bayan to operate his cockpit in the municipality for the period January 1, 1997 to December 31, 1997. Respondent members of the Sangguniang Bayan, therefore, had every reason to suspend the operation of petitioner's cockpit by enacting Municipal Resolution No. 065, series of 1997. As the chief executive of the municipal government, respondent mayor was duty-bound to enforce the suspension of the operation of petitioner's cockpit pursuant to the said Resolution. (Underscoring supplied)

Despite the lack of a Sangguniang Bayan Resolution authorizing the grant of the franchise to Alde and the subsequent call of the Sangguniang Bayan to revoke the said franchise for violation of existing law and ordinance, Accused Chan still proceeded with the issuance of the Mayor's Business Permit No. 03-30-2009 to Alde. As the municipal mayor, Accused Chan is duty-bound to recall and revoke the subject Mayor's Business Permit pursuant to S.B. Resolution No. 2412-08 and S.B. Resolution No. 2522-09.

It is worth mentioning that accused Chan mainly anchored her defense on good faith. First, she alleged that when she issued the subject Mayor's Business Permit, she was only acting in good faith based on the alleged "continued authority" given by the Sangguniang Bayan to the then Mayor Fabi. According to accused Chan, she relied on the assurance made to her by the other concerned departments and offices regarding sufficient compliance with the requirements when she signed and approved the subject Mayor's Business Permit. Second, accused Chan alleged that the private complainant Engle only instituted the present case against her because of resentment. According to her, private complainant Engle only filed the case against her because he was not able to recover the investment, he gave to Alde for the operation of the Babatngon Gallera. To prove her allegation, accused Chan offered the testimony of witness Marcelina, who also offered her Affidavit of Desistance. Third, according to accused Chan, she issued the subject Mayor's Business Permit for taxation purposes only and not for the grant of license. Lastly, accused Chan alleged that she did not receive S.B. Resolution No. 



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2412-08 and S.B. Resolution No. 2522-09, as her signature does not appear on the said documents.

The Court cannot ascribe to the defenses made by the accused. Here, there are circumstances that should have moved accused Chan to further inquire as to the correctness and completeness of Alde's Application for Mayor's Business Permit. To reiterate, what was attached to the application is the S.B. Resolution No. 2253-07, which does not expressly authorize accused Chan to issue the Mayor's Business Permit for the year 2009. In addition, thereto, if only accused Chan examined the attached Resolution, she should have known that Alde was previously allowed to operate the Babatngon Gallera only within the premises of Barangay District I and not in Barangay District III.

Besides, the good faith defense of accused Chan was effectively negated by her judicial admission during the cross-examination of her failure to coordinate with the Sangguniang Bayan regarding the existence of relevant resolutions concerning the grant of license to Alde and her failure to exercise the required diligence in reviewing the attached requirements to the application for a business permit. The following exchanges during the trial provide:

PROS. OUANO:

Q: Madam Witness, did your office coordinate with the Sangguniang Bayan to check whether the permit to maintain and operate a cockpit of Mr. Alde is still valid for the year 2009?

A: No, Ma'am.

Q: Madam Witness, may we know why you did not coordinate with the SB prior to the approval of the business permit?

A: Because it should be first in the Municipal Treasurer before I sign the Mayor's Business Permit.

Q: Madam Witness, may we know what is the distance between your office and the Office of the Secretary of the Sangguniang Bayan? How far is it from your office?

A: It is at the back of my office.

Q: Around how many meters away from your office, Madam Witness?

A: I think it is 5 meters away.

Q: So, relatively its just adjacent to your office?

A: Yeah. Yes, Ma'am.



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PROS. OUANO:

Q: Thank you, Madam Witness. When Mr. Alde applied for business permit in 2009, did you check his application for proof that the annual fee for the operation of the cockpit was duly paid pursuant to Ordinance 191?

A: *Actually po, Ma'am, ang---(Interrupted)*

Q: Madam Witness, the question is answerable by yes or no. Please answer yes or no.

A: No.<sup>80</sup>

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Q: Madam Witness, was Mr. Alde's application for business permit in 2009 voluminous, the number of documents attached to his application?

A: I don't know that, Ma'am.

Q: But the application as well as the attachments were submitted to you, you personally saw those documents?

A: No, Ma'am.<sup>81</sup>

The Court cannot also give weight to the Affidavit of Desistance executed by witness Marcelina. Under our jurisdiction, an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. To reiterate, there must be other circumstances that, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses during the trial and accepted by the judge.<sup>82</sup> Here, aside from the fact that the affidavit of desistance was executed by the wife of the private complainant and not by the private complainant himself, there were also doubts as to the statements made by the witness therein considering that she has no personal knowledge as to the circumstances leading to this case. To note, witness Marcelina was not able to prove that there was indeed a contract or agreement between private complainant Engle and Alde regarding the former's investment in the Babatngon Gallera, as well as the extent of the said agreement. The following exchanges during the trial provide:

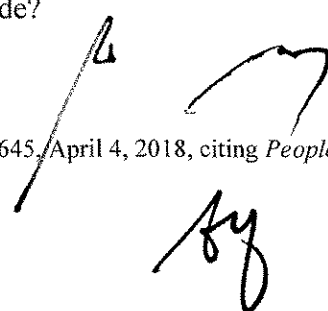
JUSTICE R.B. MORENO:

Q: Were you present during this time that your husband was negotiating with Mr. Alde?

<sup>80</sup> TSN dated June 2, 2022, pp. 44-45.

<sup>81</sup> TSN dated June 2, 2022, p. 47.

<sup>82</sup> See *Carlose Adlawan v. People*, G.R. No. 197645, April 4, 2018, citing *People v. Montejo*, 407 Phil. 502, 517 (2001).



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WITNESS MARCELINA ENGLE:

A: No.

Q: About putting up of *galyera*?

A: No.

Q: How did you come to know the terms and conditions?

A: *Kasi sinasabi kasi sa akin ng asawa ko kung ano yung usapan nila.*

Q: But you were not present during the negotiation?

A: No.

xxx

JUSTICE R.B. MORENO:

Q: *Nakasulat?*

WITNESS MARCELINA ENGLE:

A: *Opo.*

Q: *So, asan na po yung Kasunduan na papel?*

A: *Yung Kasunduan na yan nakasulat po, nasunog na po, kasi yung bahay po namin nasunog doon po sa Babatngon.*

Q: Was this *Kasunduan*, if indeed it was reduced into writing, was it notarized?

A: *Sa tingin ko po parang hindi.*

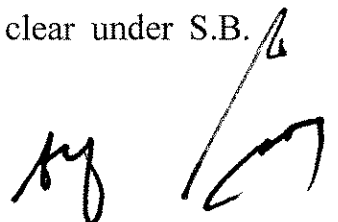
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JUSTICE R.B. MORENO:

Q: *Hindi ninyo nakita?*

A: *Hindi ko kasi nakita po yun. Basta nakalagay lang po sa isang papel po, naka-ano lang po yun, nilagay, kinabit lang po yun.*<sup>83</sup>

As for the defense that accused Chan believed that she issued the subject Mayor's Business Permit solely for taxation purposes, such deserves no consideration from the Court. In the course of the trial, accused Chan made conflicting testimonies regarding the purpose of the issuance of the subject Mayor's Business Permit. While accused Chan testified in her Judicial Affidavit that she only issued the subject Mayor's Business Permit for taxation purposes, she also made reference to the S.B. Resolution No. 2253-07, as the source of her authority for its issuance. It is clear under S.B.



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Resolution No. 2253-07 that the authority granted to Mayor Fabi was to grant a franchise to operate the cockpit, pursuant to Ordinance No. 191, and not for taxation purposes only, as alleged by accused Chan.

Accused Chan cannot also deny liability by repetitively declaring that she did not receive S.B. Resolution No. 2412-08 and S.B. Resolution No. 2522-09. Under both Resolutions, the Sangguniang Bayan resolved to forward them to accused Chan for her guidance and appropriate action. Under Section 19, Rule 132 of the Revised Rules on Evidence, the said Resolutions are considered as written official acts of the Sangguniang Bayan of Babatngon, Leyte, a local legislative body. Corollary thereto, these resolutions are *prima facie* evidence of the facts stated therein pursuant to Section 23, Rule 132 of the Revised Rules on Evidence. Moreover, accused Chan admitted that the Office of the Secretary of the Sangguniang Bayan, which keeps all the Resolutions and Ordinance of Babatngon, Leyte, is only five (5) meters away from her office. Hence, S.B. Resolution No. 2412-08 and S.B. Resolution No. 2522-09 are readily accessible to accused Chan if she only chose to do so.

Lastly, as the then Mayor of Babatngon, Leyte, it is incumbent for accused Chan to know or be informed of the existing ordinances and resolutions on the grant of license for cockpit operation within her municipality. Accused Chan ought to implement the law to the letter and she should have been the first to follow the law and see to it that it was followed by the constituency.<sup>84</sup>

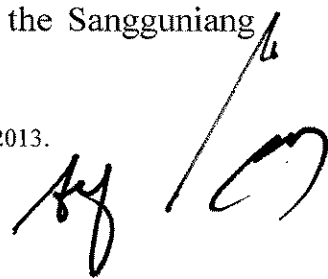
Based on the foregoing, it is clear that accused Chan unjustifiably favored Alde. Accused Chan's manifest partiality is apparent when she granted the subject Mayor's Business Permit to Alde even without the required authority from the Sangguniang Bayan. Besides, she offered no acceptable justification for violating Section 4 of P.D. No. 1802 and Section 6 (h) of Ordinance No. 191 just to favor Alde.

Assuming *arguendo* that the accused believed in good faith that she was duly authorized by S.B. Resolution No. 2253-07 to issue the subject Mayor's Business Permit, she still acted with evident bad faith when she completely disregarded S.B. Resolution No. 2412-08 and S.B. Resolution No. 2253-07, revoking the previous resolution. As can be inferred from her conduct and judicial admissions, the Court finds that accused Chan acted with deliberate intent to circumvent the relevant laws and ordinance on the issuance of the subject Mayor's Business Permit.

All told, the prosecution was able to prove, by moral certainty, that accused acted with manifest partiality and evident bad faith in issuing the subject Mayor's Business Permit without authority from the Sangguniang

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<sup>84</sup> See *Ampil v. Office of the Ombudsman, et al.*, G.R. No. 192685, July 31, 2013.



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Bayan, in violation of the R.A. No. 7160, P.D. No. 1802 and Ordinance No. 191 of the Municipality of Babatngon, Leyte.

**C. The third element of the violation of Section 3(e) of R.A. No. 3019: the acts of the accused Chan gave unwarranted benefit, advantage, or preference to Mr. Alde.**

As to the third element, there are two (2) ways by which Section 3(e) of R.A. No. 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.<sup>85</sup>

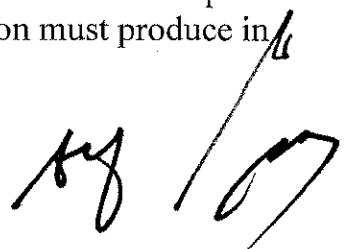
The Information charged accused Chan with giving unwarranted benefit, advantage, or preference to Alde. Under the second mode, damage is not required. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" 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 order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.<sup>86</sup>

The Court finds that the prosecution has successfully proved that accused Chan gave unwarranted benefits and advantages to Alde. Based on the evidence on record, accused Chan used her official function as the Mayor of Babatngon, Leyte to issue the subject Mayor’s Business Permit to Alde without the prior authority from the Sangguniang Bayan and despite the lack of the documentary requirements as enumerated under Ordinance No. 191. Accused Chan offered no satisfactory justification for her failure to observe the relevant laws, ordinances, and resolutions when she issued the subject Mayor’s Business Permit to Alde. By reason of accused Chan’s act, Alde was given the authority to operate the Babatngon Gallera without the required Sangguniang Bayan Resolution and without complying with the requirements under Ordinance No. 191.

In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in

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<sup>85</sup> *Ampil v. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013.  
<sup>86</sup> *Id.*



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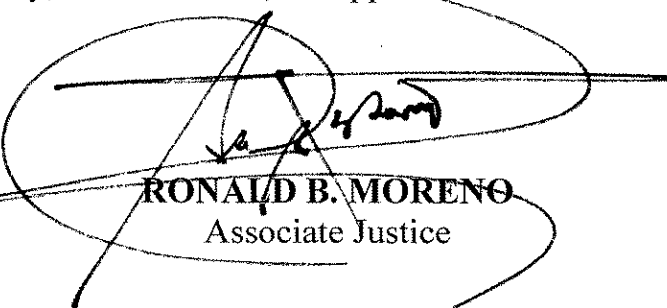
the mind of the Court a moral certainty of the accused's guilt.<sup>87</sup> Here, the prosecution was able to prove, beyond reasonable doubt, all the elements of the crime of violation of Section 3 (e) of R.A. No. 3019, as amended (Anti-Graft and Corrupt Practices Act), in relation to Section 4 of P.D. No. 1802 (Creating the Gamefowl Commission) and Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte).

WHEREFORE, premises considered, the Court finds accused, CHARITA MONTAÑO CHAN **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, as amended, in relation to Section 4 of P.D. No. 1802 (Creating the Gamefowl Commission) and Section 6 (h) of Ordinance No. 191 of Babatngon, Leyte (Cockfighting Code of Babatngon, Leyte) and is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum.

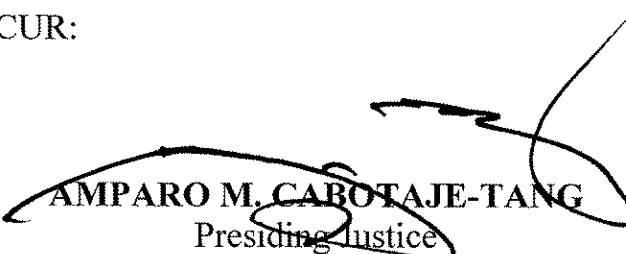
In addition, accused CHARITA MONTAÑO CHAN shall suffer perpetual disqualification from holding any public office and loss of all retirement or gratuity benefits under the law.

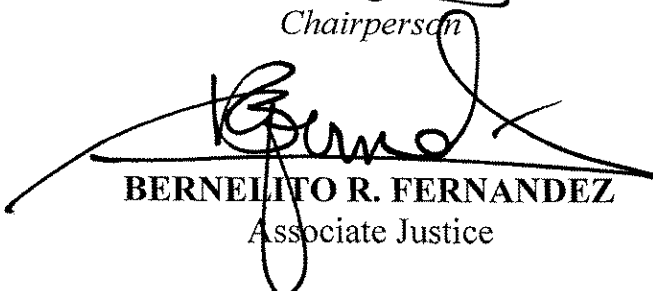
SO ORDERED.

Quezon City, Metro Manila, Philippines.

  
**RONALD B. MORENO**  
Associate Justice

WE CONCUR:

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
*Chairperson*

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

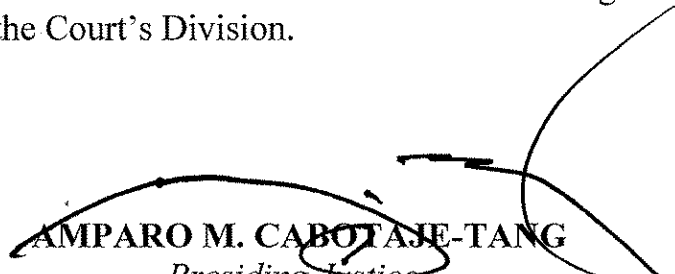
**ATTESTATION**

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

  
**AMPARO M. CABOTAJE-TANG**  
*Chairperson, Third Division*

**CERTIFICATION**

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

  
**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice*

