



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-17-CRM-0219

-versus-

Present:

ALEX B. WANGKAY and
ROBERTO S. SEMILLA,
Accused.

Gomez-Estoesta, J., *Chairperson*
Trespeses, J., and
Hidalgo, J.

Promulgated:

February 22, 2019 ip

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DECISION

GOMEZ-ESTOESTA, J.:

Irregularities, as exposed by a private person, besiege the award of the Small Water Impounding Project in Jose Abad Santos, Davao del Sur¹ without public bidding, and implemented in a location not stipulated under the Memorandum of Agreement with the funding agency. The municipal mayor of Jose Abad Santos, accused Alex B. Wangkay, stands charged together with the awardee of the contract, accused Roberto S. Semilla, with violation of Sec. 3(e) of R.A. 3019, or the Anti-graft and Corrupt Practices Act, the *Information* of which reads:

That in March to April, 2009, or sometime prior or subsequent thereto, in the Municipality of Jose Abad Santos, Davao Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused ALEX B. WANGKAY, a public officer, being then the Municipal Mayor of Jose Abad Santos, Davao del Sur, while in the performance of his official function, taking advantage of his position, and committing the offense in relation to office, conspiring and confederating with private individual accused ROBERTO S. SEMILLA, owner and proprietor of R. Semilla Construction and Marketing, acting with evident

¹ Now Davao Occidental

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bad faith, manifest partiality or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefit, advantage, and preference to said private individual or his assignee, by allowing and awarding him the contract for the construction of a Small Water Impounding Project (SWIP) in the Municipality [of] Jose Abad Santos, without the benefit of a public bidding and subsequently, allowing the release of public funds in the amount of Php4,500,000.00, to the damage and prejudice of the government in the amount afore-stated.

CONTRARY TO LAW.²

On February 20, 2017, this Court issued a Hold Departure Order³ against the accused, and on February 23, 2017, a Warrant of Arrest⁴ was subsequently issued. The accused posted their respective cash bonds⁵ for their provisional liberty.

When arraigned on March 17, 2017, accused Semilla pleaded not guilty.⁶

Meanwhile, accused Wangkay filed a *Motion to Dismiss / Motion for Redetermination of Probable Cause*⁷ on March 27, 2017, asserting the violation of his constitutional right to due process of law. According to accused Wangkay, he never received the Notice from the Office of the Ombudsman to file his counter-affidavit. Further, the public bidding was in fact published in the March 11, 2009 issue of Mindanao Post. In its *Comment/Opposition*,⁸ the Prosecution countered that several notices were actually sent to accused Wangkay at his last known address; hence, he was accorded sufficient opportunity to refute the charges against him. That there was publication of the public bidding is a matter of defense; and the Prosecution could prove during trial that no public bidding was conducted for the Small Water Impounding Project. This Court denied accused Wangkay's *Motion* in its *Resolution* dated May 16, 2017,⁹ finding that the Ombudsman's notices to accused Wangkay were twice returned with the notation "RTS – moved out of town," and it was not incumbent on the Office of the Ombudsman to ascertain his present whereabouts. Accused Wangkay's other arguments were evidentiary in nature and matters of defense, which were not to be passed upon in the determination of probable cause.

When arraigned, accused Wangkay refused to enter a plea; thus a plea of not guilty was entered for him.¹⁰

During pre-trial, the parties entered into the following stipulations:

² Records, Vol. 1, pp. 1-3

³ *Id.*, p. 27

⁴ *Id.*, p. 29

⁵ Accused Wangkay – *Id.*, pp. 65-74; Accused Semilla – *Id.*, pp. 81-95; 110-112, 115

⁶ Order dated March 17, 2017, *Id.*, pp. 105-106; Amended Order dated April 18, 2017, *Id.*, p. 196

⁷ *Id.*, pp. 137-166-A

⁸ *Id.*, pp. 179-195

⁹ *Id.*, pp. 213-217

¹⁰ Order dated June 6, 2017, *Id.*, pp. 258-259; Resolution dated June 7, 2017, *Id.*, p. 266

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ADMITTED / STIPULATED FACTS

1. That whenever referred to, orally or in writing, in the course of the trial, accused Wangkay and accused Semilla admit that they are the same accused referred to in the Information;
2. At the time material to this case, accused Wangkay held the position of Municipal Mayor of the Municipality of Jose Abad Santos, Davao del Sur;
3. At the time material to this case, accused Semilla was the owner and proprietor of R. Semilla Construction and Marketing.¹¹

The issue is whether or not accused Wangkay and accused Semilla are guilty of violation of Section 3(e) of Republic Act No. 3019.¹²

Trial ensued.

EVIDENCE FOR THE PROSECUTION

The Prosecution presented ten (10) witnesses, clustered as follows:

A. Private Complainant

1. **Primo C. Foronda** ["Foronda"], private complainant, identified his Affidavit-Complaint dated January 13, 2012,¹³ which served as his direct testimony.¹⁴

In his Affidavit-complaint, Foronda alleged that the local government of Jose Abad Santos, Davao del Sur entered into a Memorandum of Agreement¹⁵ for the construction of a Small Scale Irrigation Project (SSIP)¹⁶ at Barangay Quiapo, for an approved project cost of ₱5 Million. He found the implementation of the project irregular as follows:

That on March 14, 2009, the Local Government Unit of Jose Abad Santos represented by Former Mayor Alex B. Wangkay, entered into agreement hereby attached as Annex "A";

¹¹ Joint Stipulation of Facts and Issue dated October 20, 2017, *id.*, pp. 371-396; Pre-Trial Order dated October 25, 2017, *id.*, pp. 400-412

¹² *Ibid.*

¹³ Exhibit "A"

¹⁴ TSN dated November 23, 2017, pp. 6-8

¹⁵ Exhibit "B"

¹⁶ As used in the Memorandum of Agreement (Exhibit "B") and Evaluation Report (Exhibit "G"). This is the same as the Small Water Impounding Project (SWIP), as used in the contract (Exhibit "Z") and the Information.

That in the said Memorandum of Agreement, the Local Government Unit represented by Former Mayor Alex B. Wangkay, signified its intent to undertake the construction of Small Scale Irrigation Project in Barangay Quiapo, this municipality;

That, the approved project cost of Five Million Pesos (Php5,000,000.00) is envisioned to enhance the agricultural productivity and accelerate development and improve economic resources of the small farmers in Barangay Quiapo;

That sometime on May 2009, Mr. Roy A. Dalit, Municipal Treasurer of Jose Abad Santos received the check from Department of Agriculture-Bureau of Soils and Water Management, Manila in the amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (Php3,500,000.00) representing 70% of the total approved fund, hereby attached as Annex "B";

That sometime also on May 2009, Mr. Roy A. Dalit, Municipal Treasurer of Jose Abad Santos received another check from Department of Agriculture-Bureau of Soils and Water Management, Manila in the amount of ONE MILLION PESOS (Php1,000,000.00) as 20% of the approved project cost, hereby attached as Annex "C";

That, the Local Government Unit of Jose Abad Santos has received a total amount of FOUR MILLION FIVE HUNDRED THOUSAND PESOS which is 90% of the total approved fund for the said project;

That, in the Memorandum of Agreement entered into by the Local Government Unit of Jose Abad Santos represented by Former Mayor Alex B. Wangkay, the Department of Agriculture-Bureau of Soils and Water Management will transfer the 20% of the total project cost to the Local Government Unit upon submission of the Notice of Award and Notice to Proceed by the Local Government Unit of Jose Abad Santos;

That, the Local Government Unit of Jose Abad Santos represented by Former Mayor Alex B. Wangkay issued a Notice of Award and Notice to Proceed to an unknown contractor without the conduct of public bidding;

That, as per Republic Act 9184, procurement of goods, services and infrastructure projects will be done through competitive public bidding;

That, funds intended for the said project were disbursed by Former Mayor Alex B. Wangkay and Mr. Roy Dalit, Municipal Treasurer this municipality, not in accordance with government accounting and auditing procedures; x x x¹⁷

Accordingly, he charged the officials responsible for said disbursement, *i.e.*, then Municipal Mayor, accused Wangkay, with violation of R.A. 3019, and Municipal Treasurer Roy Dalit, with Violation of R.A. 6713 and Grave Misconduct.

On cross-examination, Foronda conceded that he had no personal knowledge of the construction of the SWIP. He was neither a contractor nor a losing bidder for the project. He filed the complaint because the SWIP was never completed, according to several informants from Jose Abad Santos.¹⁸

¹⁷ Affidavit dated January 13, 2012, Exhibit "A"

¹⁸ TSN dated November 23, 2017, pp. 11, 18

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Foronda testified that he used to be with the Philippine Army before he resigned after starting a family. When asked about a case filed against him for malversation of public property for failing to return his service firearm, he replied that he had already returned said firearm, and the case against him has been dismissed.¹⁹ After resigning from the Philippine Army, he was rehired as a contractual employee in the Office of then Mayor Jimmy Joyce, where he was tasked with monitoring said office's projects.²⁰ When he executed his Affidavit-Complaint in 2012, the Municipal Mayor was Jimmy Joyce, whom he used to work for as a bodyguard, and who was not from the same political party as accused Wangkay.²¹

Foronda was also confronted with his Affidavit dated August 26, 2016,²² which he affirmed. While he claimed that to his knowledge, such affidavit was not one of desistance from implicating accused Semilla, he reasoned that he executed said affidavit because according to his informant, it was a certain Jose Agduma who received the money.²³

B. Funding for the Project

2. Roy A. Dalit ["Dalit"],²⁴ was the Municipal Treasurer of Jose Abad Santos, Davao del Sur since 2010 up to the time he testified. He was the Officer-in-Charge Municipal Treasurer prior to his appointment as Municipal Treasurer. As such, he was tasked with the safekeeping and collection of funds.²⁵

In response to a subpoena issued by the Office of the Special Prosecutor, he submitted Official Receipt Nos. 1855663 and 1855667.²⁶ He issued Official Receipt No. 1855663 upon receipt of the check for ₱3.5 Million from the Bureau of Soils and Water Management (BSWM) in Manila and forthwith deposited said check to the nearby branch of Land Bank of the Philippines (Landbank).²⁷ He then submitted a Report of Collection to the accounting office and wrote a letter to the Manager of the Digos City Branch of Landbank²⁸ requesting for the issuance of a Manager's Check in the amount of ₱3,222,450.00 in favor of R. Semilla Construction and Marketing.²⁹

On cross-examination, Dalit identified the Contract for the SWIP.³⁰ He affirmed that during the procurement of the SWIP, he was a member of the

¹⁹ *Id.*, p. 14

²⁰ *Id.*, pp. 24-25

²¹ *Id.*, pp. 19-20

²² Exhibit "10-Semilla"

²³ TSN dated November 23, 2017, pp. 22-24

²⁴ Judicial Affidavit dated November 6, 2017, *Records*, Vol. 1, pp. 431-438

²⁵ *Id.*, Q&A Nos. 2-4

²⁶ Exhibits "C" and "D"

²⁷ TSN dated November 23, 2017, pp. 31-35

²⁸ Exhibit "W"

²⁹ TSN dated November 23, 2017, pp. 37-39

³⁰ Exhibit "Z" / "6-Wangkay" / "7-Semilla"

BAC, and maintained that said procurement was subject of a public bidding, which was likewise published beforehand.³¹

3. **Jennifer Leila S. Salvador** ["Salvador"], whose testimony was partly subject of the following stipulations:³²

- a. Her position as Acting Municipal Accountant who has custody of accounting documents;
- b. Her duties and functions as Acting Municipal Accountant, *i.e.*, to certify in the Disbursement Vouchers that "allotment [was] obligated for the purpose indicated" and that "supporting documents [are] complete";
- c. That she was a member of the Technical Working Group created by Mayor Wangkay through Executive Order No. 09-010 dated June 26, 2009 marked as Exhibit "H";
- d. That as custodian of documents, she was able to certify and submit to the Office of the Ombudsman, Mindanao, the following marked documents in answer to the subpoena issued:

Exhibit	Document
"H"	Executive Order No. 09-010 dated June 26, 2009
"U"	Official Receipt No. 1768 dated May 5, [no year] issued by Semilla Construction
"V"	Unnumbered, undated Disbursement Voucher for the payment for first billing of contract for the construction of SWIP (70% accomplishment)
"X"	Official Receipt No. 1710 dated May 26, 2009 issued by Semilla Construction
"Y"	Unnumbered, undated Disbursement Voucher for the payment for first billing of contract for the construction of SWIP (90% accomplishment)
"Z"	Contract between the Municipality of Jose Abad Santos and R. Semilla Construction and Marketing dated April 17, 2009
"AA"	Notice of Award dated April 10, 2009
"BB"	Notice to Proceed dated April 17, 2009
"CC"	Abstract of Quotation dated March 27, 2009
"DD"	Unsigned Invitation to Apply for Eligibility to Bid
"EE"	Unsigned Detailed Cost Estimate
"FF"	Resolution No. 02 of the Tanggapan ng Sangguniang Barangay ng Quiapo
"GG"	Report of Check Issued for the period covered: May 01-31, 2009
"HH" to "HH-11"	Photos of the Small Water Impounding Project

Answering additional questions on direct examination, Salvador testified that she did not sign the Disbursement Voucher for the payment for

³¹ TSN dated November 23, 2017, pp. 39-48

³² Order dated November 23, 2017, *Records*, Vol. 1, pp. 494-495

the first billing under the contract for the construction of the SWIP³³ because it lacked the requisite Abstract of Quotation and the signatures of the BAC members.³⁴ While she was a member of the Technical Working Group as of June 2009, she was not a member before that, and was not aware if public bidding was conducted with respect to the construction of the SWIP, although she was aware that there was such a project.³⁵

On cross examination, Salvador explained that she only executed her Affidavit³⁶ in 2013, or four (4) years after the subject procurement, because it was only then that they received a subpoena from the Office of the Ombudsman Mindanao to execute an affidavit alleging the submission of incomplete documents.³⁷

4. The testimony of **Joseph R. Agullo** ["Agullo"], Branch Manager of Landbank Digos Branch since 2016, was dispensed with on the following stipulations:

a. He was the Assistant Department Manager of Landbank Digos Branch;

b. In compliance with a subpoena issued by the Office of the Ombudsman-Mindanao, he issued a letter dated August 29, 2013 (Exhibit "M") with the attached bank statement showing the debited amount of ₱3,500,000.00 and ₱1,000,000.00 on May 4 and May 22, respectively, to the LGU of Jose Abad Santos, Davao del Sur (Exhibit "M-1").³⁸

On cross-examination, Agullo stated that he was not aware if the Land Bank of the Philippines filed a complaint against accused Wangkay.³⁹

5. **Rodrigo I. Ablaza** ["Ablaza"],⁴⁰ Accountant III of the Bureau of Soils and Water Management from 2002 up to the time he testified, was tasked with overseeing the financial transactions of the BSWM, and issuing certifications relevant thereto.⁴¹ Upon request by the Office of the Special Prosecutor, he issued a Certification on June 14, 2017,⁴² accompanied by its

³³ Exhibit "V"

³⁴ TSN dated November 23, 2017, pp. 63-64

³⁵ *Id.*, pp. 64-66

³⁶ Exhibit "J"

³⁷ TSN dated November 23, 2017, pp. 67-68

³⁸ Order dated January 22, 2018, *Records*, Vol. 2, p. 88

³⁹ TSN dated January 22, 2018, p. 26

⁴⁰ Judicial Affidavit dated December 12, 2017, *Records*, Vol. 2, pp. 67-79

⁴¹ *Id.*, Q&A Nos. 1-2

⁴² Exhibit "T"

supporting documents, *i.e.*, subsidiary ledger,⁴³ reports of checks issued,⁴⁴ and transmittal sheet.⁴⁵

In his Certification, he attested that “per accounting records, the MUNICIPAL GOVERNMENT OF JOSE ABAD SANTOS, DAVAO DEL SUR has not submitted any audited liquidation report regarding the amount of ₱4,500,000.00 fund transferred to their end.” The details were provided as follows:⁴⁶

CASH ADVANCES

Date	Voucher	Check No.	Purpose	Amount
4.27.09		453944		3,500,000.00
4.29.09		454059		1,000,000.00
7.31.09		492758	STALE CHECK	500,000.00
Total Cash Advance				5,000,000.00

LIQUIDATION

Date	Liquidation Voucher No.	Remarks	Amount
-	-	for check no	-
-	-		-
2.8.10	10-02-0154		500,000.00
-	-		-
-	-		-
Total Liquidation			500,000.00
UNLIQUIDATED CAS As of February, 2017			450,000.00

On cross-examination, Ablaza expounded that a total of ₱5 Million was released by the BSWM to the local government of Jose Abad Santos, but the last check for ₱500,000.00 was not claimed by or released to the municipality. While the liquidation report states that said ₱500,000.00 was liquidated, this was merely an adjusting entry in the BSWM’s books to reflect the stale check. When confronted with BSWM disbursement vouchers for ₱3,500,000.00 and ₱1,000,000,⁴⁷ Ablaza confirmed having signed them. This amount, totaling ₱4,500,000 is the amount released to the municipality, the last check for ₱500,000.00 not having been released, for reasons he was not aware of. Ablaza also confirmed having signed the MOA, and having certified that funds were available therefor, in the amount of ₱5Million.⁴⁸

C. BAC Members

⁴³ Exhibit “T-1”

⁴⁴ Exhibits “T-2” and “T-3”

⁴⁵ Exhibit “T-4”

⁴⁶ Exhibit “T-1”

⁴⁷ Exhibits “20-Semilla” and “21-Semilla”

⁴⁸ TSN dated January 23, 2018, pp. 14-25

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6. **Avelino B. Bernardo** ["Bernardo"], Municipal Engineer of Jose Abad Santos since 1992, was tasked with the preparation of plans and detailed estimates of infrastructure projects. Per Executive Order No. 09-010,⁴⁹ he was designated as member of the Bids and Awards Committee as of July 1, 2009, and later selected as chairperson.⁵⁰ E.O. No. 09-010 was issued to re-constitute the BAC after the retirement of former Municipal Treasurer Emeterio Dagasdas.⁵¹

Bernardo identified his Affidavit dated August 20, 2013,⁵² which he executed together with Robinson B. Sioco and Rodrigo B. Muda, Jr., also members of the BAC. In said Affidavit, which formed part of his direct testimony, he and his co-affiants stated that they "did not conduct a public bidding nor [had] knowledge of the Small Water Impounding Project located at Barangay Malalan, Municipality of Jose Abad Santos, Davao del Sur, [which] was undertaken by the Municipality of Jose Abad Santos." He explained that with respect to the SWIP, the BAC did not receive the necessary documents for the conduct of public bidding, namely Purchase Request, which should have stated the project description, and which should have been signed by the requisitioner and local chief executive; or its accompanying Detained Engineering Cost Estimates and Plan. Consequently, he did not sign any Program of Works, Invitation to Apply Eligibility and to Bid, or Abstract of Quotation, in connection with the SWIP.⁵³

On cross-examination, Bernardo claimed that even as Municipal Engineer, he was unaware of the construction of the SWIP, having learned of it only after receiving the complaint and subpoena from the Office of the Ombudsman-Mindanao sometime in August 2013.⁵⁴ Neither did he conduct an inspection of the project.⁵⁵

7. **Ronville M. Muego** ["Muego"], Municipal Agriculturist of Jose Abad Santos since 1997, had the primary function of assisting and recommending to the local chief executive programs, projects and activities for agriculture and fisheries development. He was also designated chairman of the Technical Working Group of the Bids and Awards Committee of Jose Abad Santos.⁵⁶

Muego identified his Affidavit dated August 20, 2013⁵⁷ where he stated that "the Small Water Impounding Project located at Barangay Malalan, Municipality of Jose Abad Santos did not pass through the Technical Working Group." He explained that no eligibility documents for said project, *i.e.*, mayor's permit, DTI registration, and ITR, reached his office. The Office of

⁴⁹ Exhibit "H"

⁵⁰ TSN dated November 23, 2017, pp. 74-75, 77-78, 80

⁵¹ *Id.*, p. 85

⁵² Exhibit "L"

⁵³ TSN dated November 23, 2017, pp. 75-83

⁵⁴ *Id.*, pp. 86-88, 92

⁵⁵ *Id.*, p. 93

⁵⁶ Executive Order No. 09-010, Exhibit "H"; TSN dated November 23, 2017, p. 99

⁵⁷ Exhibit "I"

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the Municipal Agriculturist was the end-user of the SWIP, but he never prepared a Purchase Request for this project.⁵⁸

On cross-examination, Muego explained that it took him four years to execute his affidavit, only after receiving a subpoena from the Office of the Ombudsman-Mindanao calling for a hearing/conference, where he and six other persons were interviewed separately.⁵⁹ The subpoena from the Office of the Ombudsman was received by the Office of the Mayor, which, in turn, gave him a copy.⁶⁰

According to Muego, he knew of the SWIP, being the Municipal Agriculturist, but was unaware if it underwent public bidding, as its technical documents never went through him. While he took part in requesting for funding for the project, he no longer interfered in its implementation. To his knowledge, after inspection by the Department of Agriculture and its technical staff, the project was deemed not completed.⁶¹

Answering questions from the Court, Muego testified that the SWIP was initially intended for Barangay Mulmol, an upland ricefield tended by farmers who requested for a small water impounding area for its irrigation. Muego's request to the Department of Agriculture for the construction of this water impounding area was approved, after which accused Wangkay signed a Memorandum of Agreement with the Department of Agriculture and the LGU. Later, however, per barangay resolution, and without him knowing, the project was transferred to Brgy. Malalan, a coastal area, thus defeating the purpose of irrigating upland ricefields.⁶²

8. **Ermelita G. Malaki** ["Malaki"], Human Resource Management Officer of Jose Abad Santos since November 2014, was the custodian of the 201 Files of all employees, as well as their Service Records and Leave Cards.⁶³ Among these are the Service Records of accused Wangkay, which the parties stipulated on.⁶⁴

Malaki was also designated as chairperson of the BAC Secretariat effective July 1, 2009, per Executive Order No. 09-010.⁶⁵ She identified her Affidavit dated August 20, 2013,⁶⁶ wherein she stated that she "did not issue an Invitation to Bid nor sell bid forms for the construction of [the] Small Water Impounding Project located at Barangay Malalan, Municipality of Jose Abad Santos," and that she "[had] no knowledge that such project was undertaken by the Municipality of Jose Abad Santos, Province of Davao del Sur." According to Malaki, she did not receive the necessary approved Purchase

⁵⁸ TSN dated November 23, 2017, pp. 100-102

⁵⁹ Exhibit "19-Semilla"; TSN dated November 23, 2017, pp. 106-111

⁶⁰ TSN dated November 23, 2017, pp. 113-116

⁶¹ *Id.*, pp. 103-104, 120

⁶² *Id.*, pp. 117-118

⁶³ *Id.*, pp. 131-132

⁶⁴ Exhibits "Q", "R", and "S"; TSN dated November 23, 2017, pp. 127-128

⁶⁵ Exhibit "H"

⁶⁶ Exhibit "K"

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Request, Program of Works, and Detailed Engineering Cost, and thus, could not have commenced the procurement process.⁶⁷

On cross-examination, Malaki explained that it was the BAC Secretariat which received the approved purchase requests, which it then relayed to the BAC chairperson, so that it could proceed with the bidding process. However, the BAC Secretariat did not receive any approved Purchase Requests for the SWIP.⁶⁸ She likewise denied that the bidding of the SWIP was published.⁶⁹

D. COA Findings

9. **Manolo C. Sy** ["Sy"],⁷⁰ Assistant Commissioner of the Commission on Audit,⁷¹ testified that in 2011, when he held the position OIC-Director IV of COA-Region XI, and as part of his functions, he endorsed⁷² a complaint concerning the unfinished construction of a Small Scale Irrigation Project in Jose Abad Santos, Davao del Sur to Atty. Susan Donalvo. Said project had a project cost of ₱5Million.⁷³

On cross-examination, he clarified that he merely endorsed the complaint and had no participation in its investigation. It was Atty. Donalvo who conducted the investigation.⁷⁴ He also confirmed that the COA did not file a complaint against accused Wangkay and Semilla.⁷⁵

10. **Susan Pace-Donalvo** ["Donalvo"] was the officer of the COA, Regional Office No. XI, who conducted the preliminary investigation of the alleged unfinished construction of the SSIP at Jose Abad Santos, Davao del Sur. She identified her Affidavit dated March 15, 2013⁷⁶ and the Evaluation Report that she submitted to the COA.⁷⁷

The following were her findings under the Evaluation Report on the Preliminary Investigation Conducted on the Unfinished Construction of the Small Scale Irrigation Project (SSIP), Municipality of Jose Abad Santos, Province of Davao del Sur:

III. FINDINGS AND OBSERVATIONS

⁶⁷ TSN dated November 23, 2017, pp. 129-134

⁶⁸ *Id.*, p. 138

⁶⁹ *Id.*, pp. 135-136

⁷⁰ Judicial Affidavit dated December 11, 2017, *Records*, Vol. 2, pp. 33-48

⁷¹ *Id.*, Q&A No. 2

⁷² Indorsement Letter dated June 15, 2011, Exhibit "E"; Follow-up Memorandum dated February 8, 2012, Exhibit "G", p. 8

⁷³ Judicial Affidavit of Manolo Sy, Q&A Nos. 3-8

⁷⁴ TSN dated January 22, 2018, pp. 16-17

⁷⁵ *Id.*, p. 19

⁷⁶ Exhibit "F"

⁷⁷ Exhibit "G"

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1. **On the Project Site/Location:** There was a change of Project Site/Location from Barangay Quiapo to Barangay Malalan without the concurrence of the Funding Source Agency in violation [of] the Memorandum of Agreement.

It was provided for in the Memorandum of Agreement (Annex 2) that the construction of the Small Water Impounding Project (SWIP) shall be in Barangay Quiapo of the Municipality of Abad Santos. However, the project was implemented in Barangay Malalan. Barangay Quiapo is about six (6) barangays farther from Barangay Malalan. It was noted that Barangay Quiapo waive[d] its right to implement the Small Water Impounding Project (SWIP) as shown in the Barangay ng Quiapo Resolution No. 2. There is no showing that concurrence from the BWSM and DA-RFU XI has been secured.

2. **On the Financial Aspect: a. Source of Project Funds**

The project was funded by the Bureau of Soils and Water Management (BSWM) with a total amount of P4.5 Million as shown in the retrieved photocopy of BSWM disbursement voucher no. 09-0401866 involving an amount of P3.5 Million representing 70% of the total project cost and was acknowledged received by the LGU Jose Abad Santos under Official Receipt No. 1855663 dated May 4, 2009 and the subsequent release of P1 Million representing the 20% of the project cost acknowledged also by Official Receipt No. 1855667 dated May 21, 2009.

The above funds covering the first release amounting to P3.5 Million and the subsequent release of P1 Million have been deposited to the separately opened Land Bank of the Philippines-Digos Branch – Current Account No. 0332-1070-70 on May 4, 2009 and May 22, 2009, respectively as checked against the bank statement. Transactions barely appearing in this particular bank account were those receipts/releases from the source agency as well as the payments to the contractor of the project. These data were based on photocopied documents retrieved in view of the unavailability of the said original documents.

2. **On the Financial Aspect: b. Procedure in the Release and Disposition of the Project Funds.**

The disbursement of the project funds was done through the issuance of Manager's Checks. Sec. 345 of the Local Government Code, RA No. 7160, provides that checks in settlement of obligations shall be drawn by the local treasurer and countersigned by the local administrator.

The disbursement vouchers where its payments were done through Manager's checks were not among those submitted paid vouchers accompanying the Report of Checks Issued.

3. **On the Procurement Process: Non-Compliance with R.A. No. 9184, the Government Procurement Reform Act of 2003 and its Implementing Rules and Regulations in this Procurement**

- a. **Mode of Procurement** – Procurement documents scanned/browsed have appeared to be that of standard bidding documents, however, there were no signatures appearing thereon. There was an Invitation to Apply for Eligibility and to Bid, however, there was no indication that this was published and posted in the PhilGEPS. Hence, compliance with the Government Procurement Law, RA No. 9184 and its Implementing Rules and Regulations had appeared to be not complied with.

4. Implementation/Execution Process

a. Statement of Work Accomplished

There were no Statements of Work Accomplished supporting the claims for payment of accomplishment.

b. Verification on whether or not respective responsibilities of the parties in the MOA were complied with:

From the available records scanned/browsed, there was no showing that the collaborating national agencies have monitored the project implementation.

c. Ocular inspection of the project site at Barangay Malalan

The project was constructed in Barangay Malalan, about three (3) hours land trip from the Poblacion of Jose Abad Santos and geographically nearer as compared with the location of Barangay Quiapo which is an upland area and about six (6) barangays farther from Barangay Malalan.

The construction of the Small Water Impounding Project (SWIP) had caused coconut trees to be cut and uprooted. It appearing to be unnecessary and misplaced in the Barangay Malalan since the area is not devoted for grain production and other high-value commercial crops but coconut trees. The project was adjacent to the river and near the seashore, thus defeating the envisioned enhancement of agricultural productivity of small farmers.

d. Verbal Inquiry from the nearby settlers

Verbal inquiry from the settlers as well as from the incumbent barangay officials revealed/expressed their incomprehension of putting up the water impounding in their barangay. It was also revealed that a complaint for cutting/uprooting of the coconut trees where the project was constructed has been filed with the Philippine Coconut Authority, Davao del Sur Provincial Office reporting the illegal cutting of coconut trees.

e. Other Data/Documents deemed relevant in the issue at hand.

Recently taken pictures would show that the project negates the very purpose of establishing the SWIP. Scanning/browsing the As-Built Plan of the Barangay Malalan SWIP had showed that there were no technical responsible officials/personnel who have signed on said plan except for the approval done by certain Hon. Alex B. Wangkay, Municipal Mayor.

IV. CONCLUSION

Based from the results of preliminary investigation conducted, the transactions enumerated in the letter-request were marred with irregularities and public officials involved shall be held responsible, accountable and liable.

Answering additional questions on direct examination, Donalvo explained that in coming up with her findings, she conducted an ocular

inspection at the project site, and made verifications by browsing through available records. The site was at Brgy. Malalan, instead of Brgy. Quiapo, as stipulated in the Memorandum of Agreement, and there was thus a breach thereof. At the project site, she saw a small hole/excavation, which was already covered with weeds.⁷⁸

Donalvo added that the disbursement for the SWIP deviated from the Local Government Code, which required that government obligations be settled by check signed by the Municipal Treasurer and countersigned by the local chief executive. Instead, a manager's check was used. Also, the Invitation to Bid and Eligibility was not posted in a conspicuous place or the website.⁷⁹

On cross-examination, Donalvo was asked why it took more than a year from Sy's 1st indorsement and a follow-up before she completed her preliminary investigation. She responded that she could not recall when exactly she received the memorandum following up on the report, but she submitted it within the same year, or in 2012.⁸⁰

Donalvo explained that her investigation covered four areas: the project site location, financial aspect, procedure in the disposition of funds, and the project implementation. She did not require the respondents to give their side because by then, accused Wangkay was no longer the local chief executive. The required documents were not submitted for audit. She got to talk with the barangay officials of Brgy. Malalan, and was aware of the resolution allowing the transfer of the SWIP from Brgy. Quiapo to Brgy. Malalan, but she did not feel the need to include this in her report, or to dig into it any further, as she saw an outright violation of the MOA on account of such transfer, and needed then to prepare and submit the report the soonest. While they asked if the MOA was amended to incorporate the transfer of the project from Brgy. Quiapo to Brgy. Malalan, they were never given any.⁸¹

Finally, Donalvo clarified that her task was limited to investigation, which was completed upon the submission of her report, and thus, she was not aware whether cases were filed after her investigation, or the outcome of these cases, if any.⁸²

The Prosecution then offered the following documentary exhibits:⁸³

Exhibit	Document
"A"	Affidavit-Complaint of Primo C. Foronda dated January 13, 2012
"B"	Memorandum of Agreement dated March 24, 2009 by the Bureau of Soils and Water Management, the Department of Agriculture Regional Field Unit No. XII, and the Municipality of Jose Abad Santos
"C"	Official Receipt No. 1855663 dated May 4, 2009

⁷⁸ TSN dated January 23, 2018, pp. 32-34

⁷⁹ *Id.*, pp. 35-36

⁸⁰ *Id.*, pp. 36-41

⁸¹ *Id.*, pp. 41-50

⁸² *Id.*, pp. 51-53

⁸³ Formal Offer of Prosecution's Documentary Exhibits dated March 19, 2018, *Records*, Vol. 2, pp. 107-204

"D"	Official Receipt No. 1855667 dated May 21, 2009
"E"	1 st Indorsement of Director Manolo Sy dated June 15, 2011
"F"	Affidavit of Susan L. Pace-Donalvo dated March 15, 2013
"G"	Commission on Audit Evaluation Report on the Preliminary Investigation Conducted on the Unfinished Construction of the Small Scale Irrigation Project (SSIP), Municipality of Jose Abad Santos, Province of Davao del Sur dated June 29, 2012
"H"	Executive Order No. 09-010 dated June 26, 2009
"I"	Affidavit of Ronville M. Muego dated August 20, 2013
"J"	Affidavit of Jennifer Leila S. Salvador dated August 20, 2013
"K"	Affidavit of Ermelita G. Malaki dated August 20, 2013
"L"	Affidavit of Robinson V. Sioco, Avelino B. Bernardo, and Rodrigo B. Muda dated August 20, 2013
"M"	Landbank of the Philippines letter from Joseph R. Argullo dated August 29, 2013
"M-1"	Bank Statement – Current Account No. 0332-1070-70 in the name of the Local Government of Jose Abad Santos for the period covered: April 30, 2009 to May 31, 2009
"Q"	Service Record of Alex B. Wangkay
"R"	Service Record of Alex B. Wangkay
"S"	Service Record of Alex B. Wangkay
"T"	Certification from the Accountant III of the Bureau of Soils and Water Management dated June 14, 2017
"T-1"	Advances and Liquidations – February 2017
"T-2"	Report of Checks Issued – BSWM General Fund, April 27, 2009
"T-3"	Report of Checks Issued – BSWM General Fund, April 29, 2009
"T-4"	Report to the Auditor, Bureau of Soils Re: LBP Checks issued in April 2009
"U"	Official Receipt No. 1768 dated May 5, [no year] issued by Semilla Construction
"V"	Unnumbered, undated Disbursement Voucher for the payment for first billing of contract for the construction of SWIP (70% accomplishment)
"W"	Request for the Issuance of a Manager's Check dated May 5, 2009
"X"	Official Receipt No. 1710 dated May 26, 2009 issued by Semilla Construction
"Y"	Unnumbered, undated Disbursement Voucher for the payment for first billing of contract for the construction of SWIP (90% accomplishment)
"Z"	Contract for the Small Water Impounding between the Municipality of Jose Abad Santos and R. Semilla Construction and Marketing dated April 17, 2009
"AA"	Notice of Award dated April 10, 2009
"BB"	Notice to Proceed dated April 17, 2009
"CC"	Abstract of Quotation dated March 27, 2009
"DD"	Unsigned Invitation to Apply for Eligibility and to Bid
"EE"	Unsigned Detailed Cost Estimate
"FF"	Resolution No. 02 of the Tanggapan ng Sangguniang Barangay ng Quiapo dated March 11, 2009
"GG"	Report of Check Issued for the period covered: May 01-31, 2009
"HH" to "HH-11"	Photos of the Small Water Impounding Project

In its *Resolution* dated April 11, 2018,⁸⁴ this Court admitted all the exhibits offered by the Prosecution.

⁸⁴ *Id.*, pp. 214-216

Accused Wangkay and Semilla filed separate *Motions for Leave to File Demurrer to Evidence*.⁸⁵ In his *Motion*, accused Wangkay made a general allegation that the Prosecution failed to present sufficient evidence against him, while accused Semilla pointed to the fact that the private complainant did not even implead him in his charges, and in fact even absolved him of any wrongdoing. During the hearing on April 27, 2018, this Court denied both accused's *Motions*,⁸⁶ ruling that accused Wangkay failed to specify the grounds to support a demurrer; and that other witnesses presented by the Prosecution aside from Foronda established accused Semilla's culpability for the crime charged. The accused then proceeded to present evidence in their defense.

EVIDENCE FOR THE ACCUSED

Only one witness testified for both accused Wangkay and Semilla. Accused Semilla presented Engr. Ronaldo C. Layague, whose testimony was adopted by accused Wangkay.

Layague testified through his Affidavit dated April 7, 2017,⁸⁷ wherein he alleged:

1. I am employed as project engineer of R. SEMILLA CONSTRUCTION AND MARKETING with business address at Pioneer Drive, Bajada, Davao City since 2008 continuously up to the present;

2. The Contract for the Construction of Small Water Impounding Project (SWIP) at Barangay Malalan, Jose Abad Santos, Davao del Sur was awarded to R. SEMILLA CONSTRUCTION AND MARKETING;

3. The aforesaid project was subcontracted by Jose P. Agduma who is a close friend of former Mayor Alex B. Wangkay of the Municipality of Jose Abad Santos;

4. After Jose P. Agduma received first partial payment, he abandoned the project prompting our construction firm R. SEMILLA CONSTRUCTION AND MARKETING to take over and eventually completed the project under my supervision as the project engineer;

5. We took over the project as R. SEMILLA CONSTRUCTION AND MARKETING does not want that its license be blacklisted;

6. Unfortunately there was no acceptance of the completion of the project by the Municipality of Jose Abad Santos under the administration of Mayor Jimmy Joyce notwithstanding the fact that our construction firm fully completed the construction of the same owing to the fact that Ex-Mayor Alex B. Wangkay under whose administration the project was awarded is the political opponent of Mayor Joyce; x x x

⁸⁵ Wangkay – *Id.*, pp. 218-220; Semilla – *Id.*, pp. 221-223

⁸⁶ Order dated April 27, 2018, *Id.*, pp. 232-233

⁸⁷ Exhibit "11"

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On additional direct examination, he identified the documents on which he based his statement that the contract was awarded to R. Semilla Construction and Marketing, which he secured from the Office of the Ombudsman-Mindanao.⁸⁸

On cross-examination by Prosecutor Tadeo, Layague clarified that he was not the project manager assigned to the SWIP at its inception, but as his employer told him, there was an internal agreement between the R. Semilla and Jose Agduma, who were friends, to subcontract the project to Agduma. He did not know the purpose of this agreement, for which there was no formal contract. He did not personally know Agduma, but he heard that he was a friend of accused Wangkay. According to him, the project "wasn't really started by R. Semilla."⁸⁹ He did not know when Agduma received the first partial payment; he was just told that Agduma abandoned the project, and he was tapped sometime in April 2010, when R. Semilla took over the project again.⁹⁰ 24-27

On cross-examination by Atty. Kallos,⁹¹ Layague confirmed that the invitation to bid was published.⁹² He was asked by the contractor to monitor this project, but he did not prepare the bid documents necessary for the bid or award. The project, which was eventually completed, was 90% paid by the BSWM in tranches during its construction.⁹³

The accused then proceeded to formally offer their evidence, as follows:

Exhibits		Documents
Wangkay	Semilla	
"1"	"4"	March 11, 2009 issue of Mindanao Post
	"1"	Memorandum of Agreement dated March 24, 2009 by the Bureau of Soils and Water Management, the Department of Agriculture Regional Field Unit No. XII, and the Municipality of Jose Abad Santos (Exhibit "B")
"2"		Executive Order No. 09-010 dated June 26, 2009 (Exhibit "H")
	"2"	Resolution No. 02 of the Tanggapan ng Sangguniang Barangay ng Quiapo dated March 11, 2009 (Exhibit "FF")
"3"	"3"	Unsigned Invitation to Apply for Eligibility and to Bid (Exhibit "DD")
"4"	"5"	Letter of Intent for Eligibility from R. Semilla Construction and Marketing dated March 25, 2009
"5"	"6"	Notice of Award dated April 10, 2009 (Exhibit "AA")
"6"	"7"	Contract for the Small Water Impounding between the Municipality of Jose Abad Santos and R. Semilla Construction and Marketing dated April 17, 2009 (Exhibit "Z")
"7"	"8"	Notice to Proceed dated April 17, 2009 (Exhibit "BB")
"8"	"7-d"	Performance Bond of R. Semilla Construction dated April 15, 2009

⁸⁸ Exhibits "1", "2", "4", "5", "6", "8", "11", "14", "15", "16", "21", "20", "19", "18", "13", "12", "10", "9", and "7"; TSN dated July 9, 2018, pp. 13-18

⁸⁹ TSN dated July 9, 2018, p. 29

⁹⁰ *Id.*, pp. 24-27

⁹¹ Counsel for accused Wangkay

⁹² Exhibit "2-Wangkay" / "4-Semilla"; TSN dated July 9, 2018, p. 31

⁹³ TSN dated July 9, 2018, pp. 31, 35-36

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"9"		Order of the Office of the Ombudsman-Mindanao in OMB-M-C-14-0041
"9-a"		Order of the Office of the Ombudsman-Mindanao in OMB-M-C-14-0041 dated June 17, 2014
"10"	"12"	Resolution of the Office of the Ombudsman-Mindanao dated July 15, 2015 in OMB-M-C-10-0367-K
	"9"	Request for the Issuance of a Manager's Check dated May 5, 2009 (Exhibit "W")
	"9-a"	Official Receipt No. 1710 dated May 26, 2009 issued by Semilla Construction (Exhibit "X")
	"10"	Affidavit of Primo C. Foronda dated August 26, 2016
	"11"	Affidavit of Engr. Rolando C. Layague dated April 7, 2017
	"11-a"	Letter of Dir. Silvino Q. Tejada to Engr. Layague / R. Semilla Construction and Marketing dated July 26, 2010
	"13"	Page 258 of the Ombudsman-Mindanao Record
	"14"	Affidavit of Publication of the Publisher of the Mindanao Post dated August 22, 2017
	"15"	Bidder's Bond of R. Semilla Construction & Marketing dated March 24, 2009
	"16"	Bid of R. Semilla Construction and Marketing
	"17"	Bid of Lambayong Construction
	"18"	Bid of Masulot Construction
	"19"	Subpoena issued by the Office of the Ombudsman-Mindanao dated August 13, 2013
	"20"	Disbursement Voucher No. 09-07-1866 dated April 20, 2009 for P3,500,000.00
	"21"	Disbursement Voucher for P1,000,000.00 (other entries illegible)

In a Resolution dated September 21, 2018, this Court admitted the documents offered by Semilla, except Exhibit "11-A" for being hearsay, and all documents offered by Wangkay.⁹⁴ With the filing of the parties' respective *Memoranda*,⁹⁵ this case is now submitted for decision.

THE COURT'S RULING

The accused, Municipal Mayor Alex Wangkay, and the contractor for the SWIP, Roberto Semilla, face charges for violation of Sec. 3(e) of R.A. 3019, which 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

(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

⁹⁴ *Id.*, pp. 362-365; as affirmed in the Resolution dated October 15, 2018 denying the Prosecution's Motion for Reconsideration (*Id.*, pp. 387-390)

⁹⁵ Memorandum for the Prosecution – *Id.*, pp. 393-419; Memorandum for Semilla – *Id.*, pp. 420-432; Memorandum for Wangkay – *Id.*, pp. 433-437

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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.

The following are the essential elements of violation of Sec. 3(e) of RA 3019:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁹⁶

As a private individual, accused Semilla's criminal liability is dependent on proof that he conspired with accused Wangkay in committing the acts imputed on them. Private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of RA 3019.⁹⁷

It has been the subject of stipulation that at the time material to this case, accused Wangkay held the position of Municipal Mayor of the Municipality of Jose Abad Santos, Davao del Sur, and that accused Semilla was the owner and proprietor of R. Semilla Construction and Marketing.⁹⁸ This Court is left to determine the existence of the other two elements, which will be discussed jointly.

The Small Water Impounding Project was awarded to accused Semilla without the benefit of a public bidding.

The Prosecution's charge against the accused for violation of Sec. 3(e) of R.A. 3019 is hinged on the procurement of the SWIP without the requisite public bidding.

R.A. 9184 or the Government Procurement Reform Act, which took effect in January 2003, applies to the procurement of **Infrastructure Projects, Goods and Consulting Services** by local government units.⁹⁹ Except

⁹⁶ *Consigna v. People, et al.*, G.R. Nos. 175750-51, April 2, 2014

⁹⁷ *Go v. Sandiganbayan, et al.*, G.R. No. 172602, April 13, 2007

⁹⁸ Pre-Trial Order dated October 25, 2017, *Records*, Vol. 1, pp. 400-401

⁹⁹ Section 4, R.A. 9184

only in cases in which alternative methods of procurement are allowed, **all government procurement shall be done by competitive bidding.** This is initiated by the BAC, which advertises the Invitation to Bid for contracts under competitive bidding in order to ensure the widest possible dissemination thereof. The BAC then sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184 (IRR-A).¹⁰⁰

The Prosecution presented Executive Order No. 09-010¹⁰¹ constituting the municipality's Bids and Awards Committee (BAC), its Secretariat and Technical Working Group (TWG) **effective July 1, 2009.** Prior to said date, however, or on April 10, 2009, a Notice of Award¹⁰² had already been issued to accused Semilla for the construction of the SWIP. Thus, while witnesses from the BAC, Secretariat and TWG constituted under E.O. 09-010 consistently testified that the procurement of the SWIP was never referred to them, their testimonies cannot be taken to rule out a public bidding that could have been conducted prior to their constitution on July 1, 2009.

This Court, however, finds no evidence of a duly-constituted Bids and Awards Committee prior to July 1, 2009.

Prosecution witness Jennifer Leila S. Salvador, Municipal Accountant of Jose Abad Santos and custodian of the municipality's accounting documents, presented an Abstract of Quotation,¹⁰³ stating that bids for the SWIP were opened on March 27, 2009, and identifying the following members of the **Committee on Award:**

[signed]
ALEX B. WANGKAY
Requisitioner

AVELINO A. BERNARDO
Chairman

GENCIANO O. QUIOCHO
Co Chairman

RODRIGO MUDA
Member

DANILO M. BANZON
Member

ROBINSON V. SIOCO
Requisitioner

[signed]
ROY A. DALIT
Member

¹⁰⁰ i.e., 2003 IRR of R.A. 9184; *COA v. Link Worth International, Inc.*, G.R. No. 182559, March 13, 2009

¹⁰¹ Exhibit "H"

¹⁰² Exhibit "AA"

¹⁰³ Exhibit "CC"

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While the Local Government Code provides for a Committee on Awards, which is headed by the local chief executive, to decide the winning bids and questions of awards on **procurement and disposal of property**,¹⁰⁴ even before the advent of R.A. 9184, it was the Local Prequalification, Bids and Awards Committee that was primarily responsible for the conduct of prequalification of contractors, bidding, evaluation of bids, and the recommendation of awards concerning **local infrastructure projects**.¹⁰⁵ R.A. 9184 has since required all procuring entities, including local governments, to establish a single BAC for its procurement.¹⁰⁶

Avelino Bernardo, who was named Chairman of the Committee on Award, testified in the Joint Affidavit he executed with his fellow BAC members Robinson Sioco and Rodrigo Muda, that **they did not conduct a public bidding nor had knowledge of the SWIP at Brgy. Malalan**. This is bolstered by the lack of their signatures on the Abstract of Quotation, which was signed only by accused Wangkay and Roy Dalit. Incidentally, Roy Dalit, who was presented by the Prosecution in his capacity as Municipal Treasurer, testified during cross-examination that he was part of the BAC that conducted public bidding for the SWIP in 2009.

Section 32.5 of the 2003 Implementing Rules and Regulations of R.A. No. 9184 (IRR-A), which was in effect in March 2009 when the SWIP was procured, requires that the Abstract of Bids should be signed by **all members of the BAC**, which, in no case shall include the head of the procuring entity.¹⁰⁷ Even if the Committee on Awards be considered as the municipality's duly-constituted BAC, the lone signature of Roy Dalit on the Abstract of Quotations could not have validly been the basis of the award of the SWIP to accused Semilla. This authority pertains to the Bids and Awards Committee as a body.

The Invitation to Apply for Eligibility and to Bid¹⁰⁸ is likewise unsigned by Avelino Bernardo, who was named therein as the Chairperson of the Bids and Awards Committee, validating his testimony that he never signed an Invitation to Bid with respect to the SWIP.¹⁰⁹ The same Invitation to Bid appears in the March 11, 2009 issue of Mindanao Post,¹¹⁰ which, according to the accused, proves that public bidding was conducted in the procurement of the SWIP.

Procurement by public bidding does not begin and end with the publication of the Invitation to Bid. It undergoes a meticulous process in line with the principles that permeate the provisions of R.A. 9184 from the

¹⁰⁴ Sec. 364, Local Government Code

¹⁰⁵ Sec. 37, Local Government Code

¹⁰⁶ Secs. 11 and 5(o), R.A. 9184

¹⁰⁷ Sec. 11. 2.5, IRR-A (2003) of R.A. 9184

¹⁰⁸ Exhibit "DD" (Also Exhibit "3-Semilla" and Exhibit "3-Wangkay")

¹⁰⁹ TSN dated November 23, 2017, p. 82

¹¹⁰ Exhibit "1-Wangkay"/ Exhibit "4-Semilla"

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procurement process to the implementation of the awarded contracts, *i.e.*, transparency, competitiveness, simplicity and accountability.¹¹¹

There is likewise no evidence that the award of the SWIP to accused Semilla underwent this process.

The following procurement documents were presented in evidence:

Prosecution	Document	Wangkay	Semilla
"EE"	Unsigned Detailed Cost Estimate		
"DD"	Unsigned Invitation to Apply for Eligibility and to Bid	"3"	"3"
	March 11, 2009 issue of Mindanao Post	"1"	"4"
	Letter of Intent for Eligibility from R. Semilla Construction and Marketing dated March 25, 2009	"4"	"5"
	Bidder's Bond of R. Semilla Construction & Marketing dated March 24, 2009		"15"
	Bid of R. Semilla Construction and Marketing		"16"
	Bid of Lambayong Construction		"17"
	Bid of Masulot Construction		"18"
"CC"	Abstract of Quotation dated March 27, 2009		
"AA"	Notice of Award dated April 10, 2009	"5"	"6"
"BB"	Notice to Proceed dated April 17, 2009	"7"	"8"
	Performance Bond of R. Semilla Construction dated April 15, 2009	"8"	"7-d"

Based on these documents, procurement for the SWIP went through the following steps, *vis-à-vis* the steps provided under R.A. 9184 and its IRR:

Procurement Stages	R.A. 9184 and IRR	SWIP
Invitation to Apply for Eligibility and to Bid and its Advertisement	All Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof. (Sec. 21, R.A. 9184)	Published on March 11, 2009 (Exhibit "1-Wangkay" / "4-Semilla")
Submission of Eligibility Requirements	Shall be submitted on or before the deadline specified in the Invitation to Apply for Eligibility and to Bid, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents from the procuring entity. Sec. 23.1, IRR) The BAC shall inform an eligible prospective bidder that it has been found eligible to participate in the bidding.(Sec. 23.3, IRR)	March 23, 2009 (Exhibit "1-Wangkay" / "4-Semilla")
Issuance of Bidding Documents	Within thirty (30) calendar days from the last day of the period of advertising and/or posting of the invitation to Apply for Eligibility and to Bid (Sec. 21.2.2 [ii], IRR)	March 24, 2009 (Exhibit "1-Wangkay" / "4-Semilla")
Pre-bid Conference	The pre-bid conference(s) shall be held within a reasonable period before the	March 26, 2009 (Exhibit

¹¹¹ COA v. Link Worth International, Inc., G.R. No. 182559, March 13, 2009

	<p>deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR. (Sec. 22, R.A. 9184)</p> <p>Shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids (Sec. 22.2, IRR)</p>	<p>"1-Wangkay" / "4-Semilla")</p>
Opening of Bids	<p>The deadline for the receipt of bids shall be fixed by the BAC, giving it sufficient time to complete the bidding process and giving the prospective bidders sufficient time to study and prepare their bids. The deadline shall also consider the urgency of the procurement involved. (Sec. 25, R.A. 9184)</p> <p>15 to 30 calendar days from issuance of bidding documents (Sec. 21.2.2 [ii], IRR)</p>	<p>March 27, 2009 (Exhibit "1-Wangkay" / "4-Semilla")</p>
Post-Qualification	<p>Post-qualification is the stage where the bidder with the Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents. (Sec. 34, R.A. 9184)</p> <p>Within seven (7) calendar days from the determination of Lowest Calculated Bid or the Highest Rated Bid, as the case may be, the BAC shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated Bid/Highest Rated Bid (Sec. 34.1, IRR)</p>	<p>n/a</p>
Notice of Award	<p>Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid (Sec. 37, R.A. 9184)</p>	<p>April 10, 2009 (Exhibit "AA" / "5-Wangkay" / "6-Semilla")</p>

From the foregoing, it can be discerned that for a ₱5,000,000 project, it took only seventeen (17) days from the publication of the Invitation to Bid on March 11, 2009, up to the opening of bids on March 27, 2009. Only one day was deemed necessary to review the eligibility documents; and the pre-bid conference was scheduled **the day before the opening of bids**, when R.A. 9184 and its IRR provide for a reasonable time of **at least twelve (12) days** from pre-bid conference to the opening of bids. The opening of bids was scheduled a mere three (3) days from the issuance of bid documents, for which

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the IRR-A provided a fifteen (15) to thirty (30)-day gap. There is likewise no evidence that post-qualification was done to verify, validate and ascertain all statements made and documents submitted by accused Semilla.¹¹²

All this reflects a blatant disregard of the requirements of R.A. 9184 and its IRR and its noble aim of ensuring the punctilious selection of the entity to award a government contract to. This is further emphasized by the award of the contract to accused Semilla without him even submitting the proper eligibility and bid documents, as follows:

Eligibility Documents	Bid Documents
<p><u>IRR-A</u></p> <p>SECTION 23.6. Eligibility Check for the Procurement of Goods and Infrastructure Projects The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:</p> <p>1. Class "A" Documents —</p> <p>Legal Documents</p> <p>a) Department of Trade and Industry (DTI) business name registration or SEC registration certificate, whichever may be appropriate under existing laws of the Philippines;</p> <p>b) Valid and current Mayor's permit/municipal license;</p> <p>c) Taxpayer's Identification Number;</p> <p>d) Statement of the prospective bidder that it is not "blacklisted" or barred from bidding by the Government or any of its agencies, offices, corporations or LGUs, including non-inclusion in the Consolidated Blacklisting Report issued by the GPPB, once released in accordance with the guidelines to be issued by the GPPB as provided in Section 69.4 of this IRR-A;</p> <p>e) Other appropriate licenses as may be required by the procuring entity concerned;</p> <p>f.) Certificate of G-EPS Registration</p> <p>Technical Documents</p> <p>f) Statement of the prospective bidder of all its ongoing and completed government and private contracts within the relevant period, where applicable, including contracts awarded but not yet started, if any. The statement shall state for each contract whether said contract is:</p> <p>f.1. Ongoing, Completed or Awarded but not yet started: within the relevant period, where applicable. The statement shall include, for each contract, the following:</p> <p style="text-align: center;">x x x</p>	<p><u>R.A. 9184</u></p> <p>SECTION 25. Submission and Receipt of Bids. — A bid shall have two (2) components, namely the technical and financial components which should be in separate sealed envelopes, and which shall be submitted simultaneously.</p> <p style="text-align: center;">x x x</p> <p><u>IRR-A</u></p> <p>SECTION 25.3. The first envelope (Technical Proposal) shall contain the following technical information/documents, at the least:</p> <p style="text-align: center;">x x x</p> <p>B. For the procurement of infrastructure projects:</p> <ol style="list-style-type: none"> 1. Bid Security as to form, amount and validity period; 2. Authority of the signing official; 3. Construction schedule and S-curve; 4. Manpower schedule; 5. Construction methods; 6. Organizational chart for the contract to be bid; 7. List of contractor's personnel (viz., Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, with their complete qualification and experience data; 8. List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project; 9. Equipment utilization schedule; 10. Affidavit of site inspection; 11. Commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid: Provided, however, That if the bidder

¹¹² Cf. Section 34.2, IRR-A.

f.1.2. For the procurement of infrastructure projects:

- (i) the name of the contract;
- (ii) date of award of the contract;
- (iii) contract duration;
- (iv) owner's name and address;
- (v) nature of work;
- (vi) contractor's role (whether sole contractor, sub-contractor, or partner in a joint venture);
- (vii) total contract value at award;
- (viii) date of completion or estimated completion time;
- (ix) total contract value at completion, if applicable;
- (x) percentages of planned and actual accomplishments, if applicable;
- (xi) value of outstanding works, if applicable;
- (xii) the statement shall be supported by the notices of award and/or notices to proceed issued by the owners; and
- (xiii) the statement shall be supported by the Contractor's Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance, if applicable.

f.2. Similar or not similar in nature and complexity to the contract to be bid. AEDISC

g) In the case of procurement of infrastructure projects, a valid Philippine Contractors Accreditation Board (PCAB) license and registration for the type and cost of the contract to be bid;

h) In the case of procurement of infrastructure projects, the prospective bidder's statement of:

h.1. Availability of the prospective bidder's key personnel, such as project managers, project engineers, materials engineers and foremen, that may be used for construction contracts; and

h.2. Availability of equipment that he owns, has under lease, and/or has under purchase agreements, that may be used for construction contracts, provided that ownership of equipment is not a requisite for eligibility;

Financial Documents

i) The prospective bidder's audited financial statements, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective bidder's total and current assets and liabilities; and

j) The prospective bidder's computation for its Net Financial Contracting Capacity (NFCC) which shall be in accordance with Section 23.11 of this IRR-A; or a commitment

previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice;

12. Construction safety and health program of the contractor;

13. Certificate from the bidder under oath of its compliance with existing labor laws and standards;

14. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and

15. Documents/materials to comply with other non-discretionary criteria and requirements as stated in the Instructions to Bidders.

x x x

25.4. The second envelope (Financial Proposal) shall contain the following financial information/documents, at the least:

x x x

B. For the procurement of infrastructure projects:

1. Bid prices in the Bill of Quantities in the prescribed Bid Form;

2. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid; and

3. Cash flow by the quarter and payments schedule.

from a licensed bank to extend to it a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid.

To facilitate eligibility checking, the BAC of a procuring entity may maintain a file of the foregoing Class "A" documents submitted by manufacturers, suppliers, distributors and contractors for non-common goods and/or for infrastructure projects, as may be applicable. When such file is required by the procuring entity, a manufacturer, supplier, distributor or contractor who wishes to participate in a public bidding for non-common goods and/or infrastructure projects should maintain this file current and updated at least once a year, or more frequently when needed. A manufacturer, supplier, distributor or contractor who maintains a current and updated file of his Class "A" documents will be issued a certification by the BAC to that effect, which certification may be submitted to the procuring entity concerned in lieu of the foregoing Class "A" documents.

2. Class "B" Documents —
 - a) Valid joint venture agreement, in case of a joint venture; and
 - b) Letter authorizing the BAC or its duly authorized representative/s to verify any or all of the documents submitted for the eligibility check.

Instead, accused Semilla merely presented a Letter of Intent for Eligibility,¹¹³ containing a checklist of eligibility documents attached as annexes, which he purportedly complied with, but never bothered to present.

Interestingly, it was accused Semilla who presented the purported bids of his competitor bidders, namely, Lambayog Construction and Masulot Construction who, incidentally, supposedly submitted bids as identically flawed as Semilla's bid was. All three purported bids – Semilla's, Lambayog's, and Masulot's¹¹⁴ – indicated only the total amounts of their respective bids and nothing else.

Not only is this Court convinced that no public bidding was actually conducted for the procurement of the SWIP, it is also convinced that the accused conspired to make it appear otherwise while ensuring that the award was given to accused Semilla.

¹¹³ Exhibit "4-Wangkay" / "5-Semilla"

¹¹⁴ Exhibits "16-Semilla", "17-Semilla, and "18-Semilla"

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The procurement and implementation of the SWIP were fraught with anomalies evincing the accused's evident bad faith.

Breathing life into the Small Water Impounding Project is the Memorandum of Agreement among the Bureau of Soils and Water Management (BSWM), Department of Agriculture Regional Field Unit No. XI (DA-RFU XI), and the Municipality of Jose Abad Santos, represented by accused Wangkay.¹¹⁵

The MOA mentions the BSWM's mandated function of "promoting the conservation and proper utilization of soil and water resources of the country", for which reason it has "allocated funds for the construction of Small Scale Irrigation Project for the upland rainfed barangays", which, in this case, was **Barangay Quiapo** in the municipality of Jose Abad Santos.

On March 11, 2009, an Invitation to Bid for the SWIP located at **Brgy. Malalan**, Jose Abad Santos, signed by accused Wangkay, was published on Mindanao Post.¹¹⁶ On the same day, the Sangguniang Barangay of Quiapo issued Resolution No. 2 waiving its right to the SWIP,¹¹⁷ the MOA for which, as of said date, **has not yet been signed.**

The MOA was signed on March 24, 2009. Under said MOA, the BWSM would fund the construction of a Small-scale Irrigation Project at **Brgy. Quiapo**. Accused Wangkay signed the MOA, fully aware that he had already commenced procurement for a SWIP at **Brgy. Malalan**. Simply put, accused Wangkay signed the MOA knowing that he had already breached it. The funds to be released by the BSWM under the MOA have already been earmarked for a project not contemplated under the MOA, without the consent of the BSWM.

The reason for such breach was never explained by accused Wangkay, who chose not to testify. This Court is thus left only with evidence that accused Wangkay, in flagrant disregard of the MOA and the law, took into his own hands the selection not only of a different location for the project, but also its contractor.

"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.¹¹⁸

The accused's evident bad faith can be clearly discerned from accused Wangkay's unjustified and unauthorized deviation from the MOA by moving

¹¹⁵ Exhibit "B" / "1-Semilla"

¹¹⁶ Exhibit "1-Wangkay" / "4-Semilla"

¹¹⁷ Exhibit "FF" / "2-Semilla"

¹¹⁸ *Fuentes v. People*, G.R. No. 186421, April 17, 2017

the SWIP from Brgy. Quiapo to Brgy. Malalan, the swift albeit irregular procurement of the project, and its award to accused Semilla.

Prosecution evidence shows that none of the procurement documents for the SWIP at Brgy. Malalan were duly signed by the municipality's Bids and Awards Committee. Yet, an Invitation to Bid, which bore only the signature of accused Wangkay who "noted" it, was published on Mindanao Post on March 11, 2009. R. Semilla, then prospective bidder, managed to comply within the very tight timeline of procurement activities listed in the Invitation to Bid, and, offering a bid with the exact same infirmity as those of the two other bidders, gained the prompt recommendation to be awarded the SWIP contract, without having gone through post-qualification.

This recommendation was made in an Abstract of Quotation, which was issued after the opening of bids on March 27, 2009, and **signed by accused Wangkay**,¹¹⁹ who was not even a member of the BAC. Shortly thereafter, accused Wangkay **signed the Notice of Award**¹²⁰ and **Notice to Proceed**,¹²¹ in favor of accused Semilla, thereby prompting the release of funds by the BWSM, which did not take too long to reach the hands of accused Semilla.

Unwarranted benefits were given to accused Semilla after being awarded the contract for the SWIP in a bogus bidding.

Under the MOA, the BSWM released 90% of the project cost in two tranches: ₱3,500,000 on May 4, 2009,¹²² and ₱1,000,000 May 21, 2009.¹²³

Only one day after the release of the first tranche, or on May 5, 2009, accused Semilla billed and received payment for "70% Accomplishment", in the amount of ₱3,222,450.00.¹²⁴ Since the contract was dated April 17, 2009, this meant that accused Semilla accomplished 70% of the SWIP in only eighteen (18) days. Five (5) days after the release of the second tranche, or on May 26, 2009, accused Semilla billed and received payment for "90% Accomplishment" in the amount of ₱920,700.00.¹²⁵ This was a mere 39 days from the execution of the contract.

The Disbursement Vouchers¹²⁶ for these payments to accused Semilla were **undated and unnumbered**. Even more, they were **unsigned** by Municipal Accountant Jennifer Leila Salvador, whose task was to certify that "allotment [was] obligated for the purpose indicated above" and "supporting documents [are] complete." During her testimony, she explained that she did

¹¹⁹ Exhibit "CC"

¹²⁰ Exhibit "AA"

¹²¹ Exhibit "BB"

¹²² Exhibit "C"

¹²³ Exhibit "D"

¹²⁴ Exhibits "V" and "U"

¹²⁵ Exhibits "Y" and "X"

¹²⁶ Exhibits "V" and "Y"

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not sign these disbursement vouchers because there were no supporting documents attached to them.¹²⁷ Otherwise stated, the payments made to accused Semilla had no basis.

Notwithstanding that the Disbursement Vouchers lacked the requisite signature certifying that their supporting documents were complete, accused Wangkay approved the payments thereunder to accused Semilla, who received such payments.¹²⁸

It is evident that accused Wangkay gave unwarranted benefits to accused Semilla, who readily received them. As contemplated under Sec. 3(e) of R.A. 3019, 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.¹²⁹

Not only was accused Semilla awarded the contract for the SWIP without basis, he was also paid using BSWM's funds without basis. And this Court finds that accused Semilla had a hand in both instances.

Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It is common design which is the essence of conspiracy – conspirators may act separately or together, in different manners but always leading to the same unlawful result.¹³⁰ In this case, there is a clear common design between accused Wangkay, who ensured the award of the SWIP contract to accused Semilla, and accused Semilla, who received its benefits. Incidentally, while the MOA requires the submission to BSWM of an audited Statement of Liquidation and Physical Accomplishment Report within 30 calendar days from reported project completion, the total amount of ₱4,500,000 released by the BSWM to the Municipality of Jose Abad Santos for the SWIP, remains unliquidated as of February 2017.¹³¹

In *Santillano v. People*,¹³² the Supreme Court found that the accused therein, a private person, acted in a concerted effort with the other accused public officers, as he was on the receiving end of overpayments, for which he issued receipts, and was unable to justify these excessive payments.

Like accused Wangkay, accused Semilla never testified. Instead, he presented as witness Engr. Ronaldo Layague, project engineer of R. Semilla Construction and Marketing, who testified that (a) R. Semilla subcontracted the SWIP to a certain Jose Agduma; and (b) After Jose Agduma received the

¹²⁷ Affidavit dated August 20, 2013, Exhibit "J"; TSN dated November 23, 2017, p. 63

¹²⁸ Exhibits "V", "U", "Y", and "X"

¹²⁹ *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, December 3, 2014

¹³⁰ *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008

¹³¹ Certification dated June 14, 2017, Exhibit "T", and its annexes

¹³² G.R. Nos. 175045-46, March 3, 2010

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first partial payment, he abandoned the project, prompting R. Semilla to take over it again.

If anything, Layague's testimony solidifies accused Semilla's participation in the scheme, as no contractor would expend time and resources only to subcontract a project even before the first partial payment is made. It also confirms that there could have been no basis for the payments made to accused Semilla, as the lack of supporting documents would show, since the project was supposedly abandoned after the first partial payment.

While it is true that private complainant Primo Foronda, who knew practically nothing about this transaction, instituted the complaint that eventually ripened into this case, he uncovered an anomaly that nobody else might have otherwise spoken of. Procurement laws, stringent as they are, were made for a reason, and are not to be trifled with to advance personal interest.

WHEREFORE, accused ALEX B. WANGKAY and ROBERTO S. SEMILLA are found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e) of R.A. 3019. They are 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**. Accused ALEX B. WANGKAY is perpetually disqualified from holding public office.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

ATTESTATION

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


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division.

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

