



Republic of the Philippines
Supreme Court
 Manila

EN BANC

JOEL NEMENSIO M. G.R. No. 226898
MACASIL,*
 Petitioner, Present:

— versus —

FRAUD AUDIT AND
INVESTIGATION OFFICE
(FAIO) – COMMISSION ON
AUDIT, PUBLIC
ASSISTANCE AND
CORRUPTION
PREVENTION OFFICE
OMBUDSMAN – VISAYAS
REGIONAL OFFICE NO.
VIII, and OFFICE OF THE
OMBUDSMAN (VISAYAS),
 Respondents.

GESMUNDO, C.J.,
 PERLAS-BERNABE, S.A.J.,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.
 DELOS SANTOS,
 GAERLAN,
 ROSARIO, and
 LOPEZ, J.Y., JJ.

Promulgated:

May 11, 2021

X-----*Alonzo*-----X

R E S O L U T I O N

LOPEZ, M., J.:

The effort to eradicate graft and corruption and remove scalawags in government is commendable. Yet, this Court cannot overemphasize the admonition to agencies tasked with preliminary investigation to shield the innocent from precipitate, spiteful and burdensome prosecution.¹ The

* Also referred to as “Joel Nemesio Macasil” in some parts of the rollo.

¹ *De Jesus v. Sandiganbayan*, 562 Phil. 377, 389 (2007).

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existence of probable cause is the core issue in this Petition for *Certiorari*² assailing the Office of the Ombudsman's Consolidated Resolution³ dated May 8, 2015 finding *prima facie* case for violation of the Anti-Graft and Corrupt Practices Act and Falsification.

ANTECEDENTS

On February 7, 2005, the Commission on Audit Regional Office No. VIII investigated the infrastructure projects of the Tacloban City Sub-District Engineering Office for calendar years 2003 and 2004. Based on the audit investigation, the review of the projects cannot be completed due to delay and non-submission of contract documents. Accordingly, the Regional Legal and Adjudication Office (RLAO) issued notices of suspension to the responsible officers, directing them to submit the required documents. Upon compliance, the RLAO reviewed the documents and discovered that several projects bore identical, if not exact, descriptions. The RLAO considered this as red flag and recommended for an in-depth audit investigation. Later, the Fraud Audit and Investigation Office (FAIO) examined the transactions and found that 32 infrastructure projects did not comply with approved plans and were overpaid due to bloated accomplishment reports, thus:

3. Reported accomplishments in the Statements of Work Accomplished (SWAs) for 32 infrastructure projects, which were the bases for the payments to the contractors, **were overstated resulting in overpayment in the amount of P52,178,645.18[.]** Moreover, the reported actual accomplishments for two projects amounting to P1,972,962.00 were not properly identified during the ocular inspection; while one project **was found out not in accordance with DPWH Highway Design and Standards.**⁴ (Emphases supplied.)

On the basis of the FAIO's findings, the Public Assistance and Corruption Prevention Office Fact-Finding Unit filed a Complaint⁵ against Materials Engineer Joel Nemensio M. Macasil (Macasil) and other officials for violation of Section 3(e) of Republic Act (RA) No. 3019 or the Anti-Graft and Corrupt Practices Act and Falsification under Article 171 of the Revised Penal Code (RPC) before the Office of the Deputy Ombudsman Visayas. Allegedly, Macasil certified that the Statements of Work Accomplished (SWA) for 32 infrastructure projects were in accordance with the approved plans and specifications, despite the fact that the reported accomplishments were overstated/bloated, and that the projects were overpaid, to wit:

Project Name	Percentage of Completion		Variance		Extent of Participation
	Per SWA	Per FAIO	In %	In Pesos	

² *Rollo*, pp. 3-96.

³ *Id.* at 100-274.

⁴ *Id.* at 670-673.

⁵ *Id.* at 460-602.

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		evaluati on			
1. Completion of 4 CL Elem[.] School, San Jose Elem[.] School	100	63.00	37	₱175,693.18	For certifying that the reported and paid accomplishments in SWA are in accordance with the approved plans and specifications.
2. Completion of Multi-Purpose Bldg., Leyte National Highschool (Phase II)	100	81.83	18.17	₱2,157,311.70	- do -
3. Concreting of Brgy. 109A V&G Subd., Tacloban City	100	53.44	46.56	₱709,641.11	- do -
4. Improvement/Widening of Manlurip-McArthur Rd, Along Manlurip	90	87.19	2.81	₱49,776.12	- do -
5. Conc./Rahab [sic] of Calanipawan Road, Tacloban City	100	78.78	21.22	₱397,579.13	- do -
6. Improvement/Rehab of National Rd (Picas-San Jose Rd.), Tacloban City (Sta. Km 907+850-Km 913+450 w/ exceptions)	90	55.80	34.20	₱653,782.50	- do -
7. Construction of drainage system along Daan Maharlika (Nula-Tula Section)	100	74.54	25.46	₱521,065.08	- do -
8. Const. of Multi-Purpose Bldg. (Covered Court), Brgy. 82, Tacloban City, Phase III	89.22	39.63	49.59	₱471,054.15	- do -
9. Improvement/Rehab along Manlurip-McArthur Park Rd Tacloban City (Sta. Km 911+200-Km 914+950, Traffic Eng'g Signage & Pavement Markers)	100	89.81	10.19	₱490,363.00	- do -
10. Repair/Improvement of drainage system along Apitong-Paterno Rd, Tacloban City	88.90	40.23	48.67	₱1,199,782.00	- do -
11. Conc. Of shoulders along Daan Maharlika Rd, Tacloban City (Sta. Km 901+000 – Km 904+100)	98.84	72.01	26.93	₱782,210.00	- do -

12. Improvement/Widening of shoulders along Daan Maharlika Rd-Diit Babalawan Section, Tacloban City (Sta. Km 903+210 – Km 903+828)	100	85.59	14.41	₱301,645.68	- do -
13. Const. of One (1) classroom, Sto. Niño SPED Tacloban City	88.07	79.23	8.84	₱45,802.43	- do -
14. Improvement/Rehab of Tigbao Sta. Fe Rd., Brgy. Salvacion (Sta. Km 903+552-Km 908+600, with exceptions)	85.30	20.18	65.12	₱7,625,709.00	- do -
15. Improvement/Rehab of Tigbao Sta. Fe San Miguel Rd., (Km 904+000-Km 908+000) Traffic Eng'g Signage Markers	100	91.12	8.88	₱426,926.65	- do -
16. Improvement/Rehab along Leyte-Samar Rd., (Km 897+341.70 – Km 904+841.70), with exceptions	100	52.40	47.60	₱2,281,237.00	- do -
17. Improvement/Rehab along Leyte-Samar Rd., (Km 898+417 – Km 904+841.70), with exceptions. Traffic Eng'g Signage Pavement Markers; Description: Guardrails, Road Signs	100	73.81	26.19	₱1,258,480.19	- do -
18. Improvement/Rehab along Tacloban Baybay Rd., (Km 907+982 – Km 916+615), with exceptions. Caibaan Rd., Traffic Eng'g Signage Pavement Markers	100	50.41	49.59	₱1,897,751.79	- do -
19. Improvement/Rehab along Daan Maharlika (Km 895+361.97 – Km 910+870.20) w/ exception. Traffic Eng'g Signage Pavement Markers: Description: Guardrails, Thermoplastic	100	23.29	76.71	₱3,650,922.31	- do -
20. Improvement/Rehab along Daan Maharlika (Km 895+361.97 – Km 910+870.20) w/ exception. Traffic Eng'g Signage Pavement Markers: Description: Guardrails & Road Signs	100	16.98	83.02	₱3,994,746.24	- do -

21. Improvement/Rehab of Caibaan Road (Km 912+165 – Km 915+665)	100	16.04	83.96	₱3,995,684.00	- do -
22. Improvement/Rehab of Rizal Ave. & Rizal Ave. Ext. (Km 904+357.78 – Km 906+054, Km 907+982 – Km 908+546) Traffic Eng'g Signage Pavement Markers	100	48.33	51.67	₱2,482,618.57	- do -
23. Improvement/Rehab along Daan Maharlika (Km 905+000 – Km 909+000) w/ exception	90.00	77.52	12.48	₱139,991.00	- do -
24. Construction of Perimeter drainage at LNHS	100	6.92	93.08	₱3,503,583.28	- do -
25. Completion of LNHS Gymnasium, Phase IV	100	46.87	53.13	₱1,487,899.75	- do -
26. Completion of Multi-Purpose Bldg. at LNHS Gymnasium, Phase V	100	94.58	5.42	₱52,079.71	- do -
27. Fabrication & Installation of RROW along Daan Maharlika Km. 895+361.97 – Km 910+870.20, with exceptions	100	69.29	30.71	₱141,285.64	- do -
28. Improvement/Widening of Tigbao Sta. Fe Rd., (Km 905+300 – Km 906+040)	100	31.13	68.87	₱1,908,367.91	- do -
29. Improvement/Rehab of Daang Mahalika Rd. (Km 898+000 – Km 902+370.20) w/ exceptions, Traffic Eng'g Signage	100	1.59	0.98	₱1,870,618.31	- do -
30. Widening//downgrading of Salvacion-San Miguel Road	100	29.83	70.17	₱3,285,247.32	- do -
31. Improvement/Widening of Tigbao Sta. Fe-San Miguel Rd.	100	24.56	75.44	₱3,507,826.60	- do -
32. Rehabilitation of LNHS Gymnasium	84.75	59.98	24.76	₱711,961.36	- do -
TOTAL				₱52,178,645.18⁶	

Macasil denied the charges and averred that, as a Materials Engineer, his work revolves around the quality control aspect of the infrastructure projects, such as quality control testing, sampling, and pre-testing of

⁶ Id. at 506-509; and 537-564.

construction materials. On the other hand, the FAIO inspection reports focused on the quantity aspect. Specifically, Engr. Owen Kim S. Monter, a member of the investigating team, stated that “[t]he conduct of inspection was limited only to the existence of visible portion of the project as physically examined and validated by the undersigned”⁷ and that the “inspection was focused on the verification of [the] quantity.”⁸ Moreover, it is the Project Engineer who certifies the SWAs. Macasil also disavowed any participation in the alleged overpayment of the projects as he was not part of the team that recommended payment of the contract price to the contractors. He also did not sign any disbursement voucher. Lastly, he was not included in the fact-finding phase of the investigation, and was not named in the notice of suspension. He only came to know of the investigation and the adverse findings when he received a copy of the complaint.⁹

On May 8, 2015, the Office of the Ombudsman (Visayas)¹⁰ found probable cause to indict Macasil for 23 counts of violation of Section 3(e) of RA No. 3019, and 26 counts of Falsification of Public Documents under paragraph 4, Article 171 of the RPC, viz.:

CONCLUSION

In fine, sufficient evidence shows that there is probable cause to indict the following respondents x x x for Violation of Section 3(e) of RA 3019, as amended, and Falsification of Public Documents under paragraph 4, Article 171, Revised Penal Code for their respective participation in signing in each of the SWAs and DV for the 34 infrastructure projects per Finding No. 3 of the FAIO Report No. 2011-02 that are considered by complainant FAIO as either bloated or overstated as regards the extent of the project accomplishment.

x x x x

Moreover, of the 49 infrastructure projects subject of the case, 31 projects were shown to be irregular and had sufficient evidence showing Violation of Section 3(e) of RA 3019, as amended. 34 projects were likewise shown to be irregular and had sufficient evidence for Falsification of Public Document under Article 171, paragraph 4 of the Revised Penal Code.

x x x x

WHEREFORE, this Resolution is rendered:

a) FINDING PROBABLE CAUSE for Violation of Section 3(e), RA 3019, as amended, x x x:

⁷ Id. at 799.

⁸ Id.

⁹ Id. at 797-800.

¹⁰ Supra note 3.

NAME OF PROJECT	NAME OF RESPONDENTS
1. Completion of 4 CL Elem. School, San Jose Elementary School, Tacloban City	x x x Joel [Nemensio] Macasil
2. Completion of Multi-Purpose Bldg., Leyte National Highschool (Phase II)	- do -
3. Concreting of Brgy. 109A V&G Subdivision, Tacloban City	- do -
4. Construction/ Rehabilitation of Calanipawan Road, Tacloban City	- do -
5. Improvement/Rehab of National Rd. (Picas-San Jose Rd.) Tacloban City (Sta. Km 907+850-Km 913+450 w/ exceptions)	- do -
6. Construction of Drainage System along Daan Maharlika (Nula-Tula Section), Tacloban City	- do -
7. [Construction] of Multi-Purpose Bldg. (Covered Court), Brgy. 82, Tacloban City, Phase III	- do -
8. Improvement/Rehabilitation along Manlurip McArthur Park Rd[,] Tacloban City (Sta. Km 914+950, Traffic Eng'g Signage & Pavement Markers)	- do -
[9.] Construction Of one (1) Classroom, Sto. Nino SPED Center Tacloban City	- do -
[10.] Improvement/Rehab along Leyte-Samar Rd., (Km 897+341.70 Km 904+841.70), with exceptions	- do -
[11.] Improvement/Rehab along Leyte-Samar Rd., (Km 898+417 - Km 904+841.70), with exceptions. Traffic Eng'g Signage Pavement Markers; Description: Guardrails, Road Signs	- do -
[12.] Improvement/Rehab along Tacloban Baybay Rd., (Km 907+982-Km 916+615), with exceptions. Caibaan Rd., Traffic Eng'g Signage Pavement Markers	- do -
[13.] Improvement/Rehab along Daan Maharlika (Km 895+361.97 - Km 910+870.20) w/ exception. Traffic Eng'g Signage Pavement Markers: Description: Guardrails, Thermoplastic	- do -
[14.] Improvement/Rehab along Daan Maharlika (Km 895+361.97 - Km 910+870.20) w/ exception. Traffic Eng'g Signage Pavement Markers: Description: Guardrails & Road Signs	- do -
[15.] Improvement/Rehab of Caibaan Road (Km 912+165 - Km 915+665)	- do -



[16.] Improvement/Rehab of Rizal Ave. & Rizal Ave. Ext. (Km. 904+357.78 – Km 906+054, Km 907+982 – Km 908+546) Traffic Eng'g Signage Pavement Markers	- do -
[17.] Improvement/Rehab along Daan Maharlika (Km 905+000 – Km 909+000) w/ exception	- do -
[18.] Rehabilitation of LNHS Gymnasium	- do -
[19.] Improvement/Widening of Tigbao Sta. Fe Rd., (Km 905+300 – Km 906+040)	- do -
[20.] Improvement/Rehab of Daang Mahalika Rd. (Km 898+000 – Km 902+370.20) w/ exceptions, Traffic Eng'g Signage	- do -
[21.] Widening/downgrading of Salvacion-San Miguel Road	- do -
[22.] Improvement/Widening of Tigbao Sta. Fe-San Miguel Road	- do -
[23.] Completion of LNHS Gymnasium, Phase IV[,] Rehabilitation of LNHS Gymnasium	- do -

b) FINDING PROBABLE CAUSE for Falsification of Public/Official Documents x x x:

NAME OF PROJECT	NAME OF RESPONDENTS
1. Completion of 4 CL Elem. School, San Jose Elementary School, Tacloban City	Joel [Nemensio] Macasil
2. Completion of Multi-Purpose Bldg., Leyte National Highschool (Phase II)	- do -
3. Concreting of Brgy. 109A, V&G Subdivision, Tacloban City	- do -
4. Construction/ Rehabilitation of Calanipawan Road, Tacloban City	- do -
5. Improvement/Rehab of National Rd. (Picas-San Jose Rd.), Tacloban City (Sta. Km 907+850-Km 913+450 w/ exceptions)	- do -
6. Construction of Drainage System along Daan Maharlika (Nula-Tula Section), Tacloban City	- do -
7. Construction of Multi-Purpose Bldg., (Covered Court), Brgy. 82, Tacloban City, Phase III	- do -
8. Improvement/Rehabilitation along Manlurip-McArthur Park Rd Tacloban City (Sta. Km 911+200-Km 914+950, Traffic Eng'g Signage & Pavement Markers)	- do -

[9.] Improvement/Widening of Shoulders along Daan Maharlika Rd.-Diit Cabalawan Section, Tacloban City (Sta. Km 903+210 – Km 903+828)	- do -
[10.] Construction of one (1) Classroom, Sto Niño SPED Center, Tacloban City	- do -
[11.] Improvement/Rehab along Leyte-Samar Rd., (Km 897+341.70 Km 904+841.70), with exceptions	- do -
[12.] Improvement/Rehab along Leyte-Samar Rd., (Km 898+417 – Km 904+841.70), with exceptions. Traffic Eng'g Signage Pavement Markers; Description: Guardrails, Road	- do -
[13.] Improvement/Rehab along Tacloban – Baybay Rd., (Km 907+982-Km 916+615), with exceptions. Caibaan Rd., Traffic Eng'g Signage Pavement Markers	- do -
[14.] Improvement/Rehab along Daan Maharlika (Km 895+361.97 – Km 910+870.20) w/ exception. Traffic Eng'g Signage Pavement Markers: Description: Guardrails, Thermoplastic	- do -
[15.] Improvement/Rehab along Daan Maharlika (Km. 895+361.97 – Km 910+870.20) with exception. Traffic Eng'g Signage Pavement Markers: Description: Guardrails & Road Signs	- do -
[16.] Improvement/Rehab of Caibaan Road (Km 912+165 – Km 915+665)	- do -
[17.] Improvement/Rehab of Rizal Ave. & Rizal Ave. Ext. (Km. 904+357.78 – Km 906+054, Km 907+982 – Km 908+546) Traffic Eng'g Signage Pavement Markers	- do -
[18.] Improvement/Rehab along Daan Maharlika (Km 905+000 – Km 909+000) w/ exception	- do -
[19.] Rehabilitation of LNHS Gymnasium	- do -
[20.] Improvement/Widening of Tigbao Sta. Fe Rd., (Km 905+300 – Km 906+040)	- do -
[21.] Improvement/Rehab of Daang Maharlika Rd. (Km 898+000 – Km 902+370.20) w/ exceptions, Traffic Eng'g Signage	- do -
[22.] Widening/Downgrading of Salvacion-San Miguel Road	- do -
[23.] Improvement/Widening of Tigbao Sta. Fe-San Miguel Road	- do -

[24.] Road Improvement/Widening of Manlurip-McArthur Rd., Along Manlurip, Tacloban City	- do -
[25.] Improvement/Rehab of Tigbao Sta. Fe San Miguel Rd., (Km 904+000-Km 908+000) Traffic Eng'g Signage Markers	- do -
[26.] Completion of Multi-Purpose Bldg. At LNHS Gymnasium, Phase V (Supply and Installation of Fiberglass Chairs)	- do -

x x x x

SO ORDERED.¹¹ (Emphases in the original.)

Macasil's Motion for Reconsideration¹² was denied.¹³ Hence, this Petition for *Certiorari*¹⁴ imputing grave abuse of discretion on the part of the Ombudsman (Visayas) in finding probable cause for violation of Section 3(e) of RA No. 3019, as amended, and paragraph 4, Article 171 of the RPC.

RULING

The petition is meritorious.

The Office of the Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. This Court, generally, does not interfere with the Ombudsman's findings as to whether probable cause exists,¹⁵ except: (a) to afford protection to the constitutional rights of the accused; (b) when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (c) when there is a prejudicial question which is *sub judice*; (d) when the acts of the officer are without or in excess of authority; (e) where the prosecution is under an invalid law, ordinance or regulation; (f) when double jeopardy is clearly apparent; (g) where the court has no jurisdiction over the offense; (h) where it is a case of persecution rather than prosecution; and (i) where the charges are manifestly false and motivated by the lust for vengeance.¹⁶

Particularly, grave abuse of discretion is defined as the capricious and whimsical exercise of judgment on the part of the public officer concerned, which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary

¹¹ Id. at 260-271.

¹² Id. at 290-349 and 390-395.

¹³ Id. at 275-287.

¹⁴ Supra note 2.

¹⁵ *Casing v. Hon. Ombudsman*, 687 Phil. 468, 475-476 (2012).

¹⁶ *Vergara v. Hon. Ombudsman*, 600 Phil. 26, 42 (2009).

and despotic manner by reason of passion or hostility.¹⁷ Here, We find grave abuse of discretion on the part of the Ombudsman.

Probable cause for filing a criminal information constitutes facts sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.¹⁸ The Ombudsman found probable cause to indict Macasil for violation of Section 3(e)¹⁹ of RA No. 3019 based on his certification that the reported and paid accomplishments in the SWAs were in accordance with the approved plans and specifications, despite the fact that such reported accomplishments were bloated or overstated. The elements of the above offense are as follows: (a) the accused must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁰

The first element is undisputed, considering that Macasil is a Materials Engineer of the Department of Public Works and Highways (DPWH) of Tacloban City and is performing governmental functions for the benefit of the public.²¹ The second element refers to the different modes of committing the offense.²² “*Manifest partiality*” is present 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.²³ None of these modes were established in this case.

¹⁷ *Gov. Garcia, Jr. v. Office of the Ombudsman*, 747 Phil. 445, 458 (2014).

¹⁸ *Public Attorney's Office v. Office of the Ombudsman*, 821 Phil. 286, 296 (2017).

¹⁹ SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

XXXX

(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.

XXXX

²⁰ *Roy III v. The Honorable Ombudsman*, G.R. No. 225718, March 4, 2020, citing *Garcia v. Sandiganbayan*, 730 Phil. 521, 534 (2014).

²¹ See *Khan v. Office of Ombudsman*, 528 Phil. 32, 40 (2006).

²² *Belongilot v. Cua*, 650 Phil. 392, 408 (2010).

²³ *Catindig v. People*, 616 Phil. 718, 734 (2009), citing *Soriano v. Marcelo*, 610 Phil. 72, 80 (2009); and *Albert v. Sandiganbayan*, 599 Phil. 439, 450-451 (2009).

Foremost, the SWAs attached to the records would reveal that Macasil was not the officer who certified the percentage of completion of the infrastructure projects and their compliance with the approved plans and specifications. The SWAs contained three certifications signed by the contractor, the project engineer, and the materials engineer, to wit:

I HEREBY CERTIFY that the amount and work accomplished stated below are correct and all labor and materials in connection with this project were completed.

X X X

Name of Firm

I HEREBY CERTIFY that all work items were only certified by undersigned and have been accomplished in accordance with the approved plans and specifications of the project.

X X X

Project Engineer

I HEREBY CERTIFY that the materials used in this project have been tested and passed all the requirements.

JOEL NEMENSIO MACASIL

Materials Engineer²⁴ (Emphases in the original.)


As can be gleaned from the certifications, it is the contractor who certified that the *amount and work accomplished x x x are correct* while it is the Project Engineer who certified that *the work items x x x have been accomplished in accordance with the approved plans and specifications of the project*. Incidentally, DPWH Department Order No. 115, Series of 2018²⁵ provides that the duty to check/verify statement of work accomplished, among others, pertains to the Project Engineer. DPWH's Department Memorandum dated April 12, 1994 (Circular No. 49)²⁶ also states that a project shall be the responsibility of the [P]roject Engineer. In addition, the Memorandum listed down the tasks of a Materials Engineer for the purpose of fixing the responsibility where quality and quantity of construction materials are concerned, to wit:

In order to pinpoint responsibility where quality and quantity of construction materials are concerned, the following guidelines are hereby prescribed for the guideline of all concerned.

²⁴ *Rollo*, p. 351.

²⁵ REVISED GUIDELINES ON THE ACCREDITATION AND ASSIGNMENT OF DPWH PROJECT ENGINEERS AND INSPECTORS; dated August 3, 2018.

²⁶ *Rollo*, p. 828.



1. Quality of materials is the primary responsibility of Materials Engineers. This includes responsibility over the sampling, testing, inspection and the submittal of data and recommendations on whether the quality of materials to be used is acceptable or not and, if not acceptable, whatever corrective measures may be done to improve the quality and make the materials acceptable.

2. Quantity control is the primary responsibility of Quantity Engineers, such checkers, inspectors or Resident engineers, under the Project/Maintenance engineers of Construction/Maintenance Projects. This includes responsibility for weight, volume, area, thickness, width and/or other lineal measurements.

X X X X

The foregoing notwithstanding, it must be kept in mind that the overall supervision of the project shall be the responsibility of the [P]roject Engineer.²⁷ (Emphasis supplied.)

Macasil's name appears on the third certification which guarantees the quality of the materials used, and the fact that such materials underwent and passed the required tests. Pertinently, the DPWH Staffing Manual enumerates the duties and responsibilities of a Materials Engineer,²⁸ namely: (1) ascertain that all materials incorporated into the work pass the requirements of the DPWH Standard Specifications for Highways, Bridges, Airports, and to strictly comply with the schedule of Minimum Testing Requirements; (2) advise the Project Engineer on the acceptance or rejection of construction materials intended for use in the project, based on test results; (3) recommend to the Project Engineer remedial measures for the correction of unsatisfactory conditions of materials; (4) check/certify design mixes prepared by contractors for concrete and bituminous mixtures; (5) fully acquaint himself with the standard procedures of sampling, testing and control; (6) see that the field laboratory is adequately equipped such that the progress of the work will not be impeded to laboratory testing and non-performance of tests should not be a cause of delay in the prosecution of the work; (7) keep a record of the daily activities ready for inspection anytime; and (8) submit within the required time frame test reports and other pertinent papers to the Regional Office concerned.²⁹

Thus, the DPWH's Department Memorandum and Staffing Manual has delineated the scope of the functions of a Materials Engineer which mainly revolves around ensuring the quality of materials used in an infrastructure project. In this case, there is no controversy with regard to the quality of the materials used in the questioned infrastructure projects. To reiterate, the charges leveled against Macasil refer to the overstatement in the SWAs and the non-compliance of the projects with the approved plans

²⁷ Id.

²⁸ Id. at 802.

²⁹ Id.

and specifications. Hence, it would be unjust and unreasonable to indict Macasil simply because he was part of the supposed anomalous projects, even if the alleged illegal act is beyond the scope of his functions. The sheer volume of the projects is likewise insufficient to deduce any illegal act, absent specific facts that demonstrate Macasil's manifest partiality, evident bad faith, or inexcusable negligence. At any rate, it is axiomatic that good faith is always presumed, unless convincing evidence to the contrary is adduced. The party alleging bad faith has the burden of proof. Absent clear evidence of bad faith, the presumption of good faith prevails.

Similarly, there is no probable cause to charge Macasil with falsification under paragraph 4,³⁰ Article 171, of the RPC. The crime has the following elements, namely: (1) that the offender makes in a document statements in a narration of facts; (2) that he has a legal obligation to disclose the truth of the facts narrated by him; (3) that the facts narrated by the offender are absolutely false; and (4) that the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person. In addition, it must be proven that the public officer or employee had taken advantage of his official position in making the falsification. In falsification of public document, the offender is considered to have taken advantage of his official position when: (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.³¹

The Ombudsman's finding that Macasil made an untruthful statement when he certified in the SWAs that the reported and paid accomplishments of the infrastructure projects were in accordance with the approved plans and specifications is not moored on evidence. As intimated earlier, Macasil did not certify on the work accomplished for the infrastructure projects nor was he the responsible officer to make such certification. To stress, Macasil is a Materials Engineer who only certified on the quality of the materials incorporated into the projects, and their compliance with the requirements of the DPWH Standard Specifications for Highways, Bridges, Airports, and the schedule of Minimum Testing Requirements. More importantly, criminal intent must be present in felonies committed by means of *dolo*, such as falsification. However, there was nothing willful or felonious in Macasil's actions that satisfies the requisite criminal intent or *mens rea*.³²

In sum, there is no *prima facie* case to support a finding of probable cause for violation of the Anti-Graft and Corrupt Practices Act and

³⁰ ART. 171. *Falsification by public officer, employee, or notary or ecclesiastical minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

XXXX

4. Making untruthful statements in a narration of facts.

XXXX

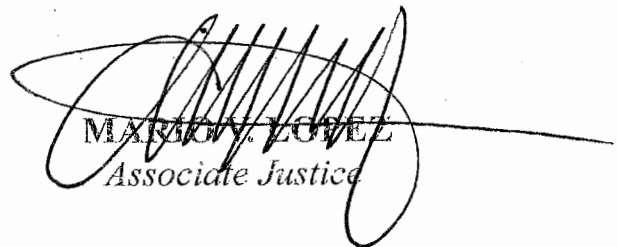
³¹ *Fullero v. People*, 559 Phil. 524, 539 (2007).

³² *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 191, 116 (2002).

Falsification. It bears emphasis that the primary objective of a preliminary investigation is to free respondent from the inconvenience, ignominy, and stress of defending himself in the course of a formal trial. It also protects the state from the burden of the unnecessary expense and effort in prosecuting alleged offenses, and in holding trials arising from false, frivolous, or groundless charges.³³ Thus, when at the outset the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.³⁴

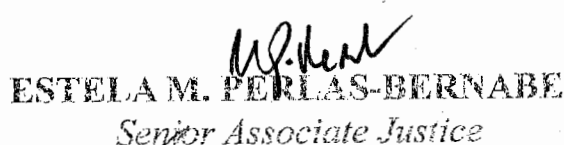
FOR THESE REASONS, the petition is **GRANTED.** The Consolidated Resolution dated May 8, 2015 of the Office of the Ombudsman (Visayas) in OMB-V-C-13-0355 and OMB-V-C-14-0012, finding probable cause against Joel Nemensio M. Macasil for violation of Section 3(e) of Republic Act No. 3019 and paragraph 4, Article 171 of the Revised Penal Code is **ANNULLED** and **SET ASIDE.**

SO ORDERED.

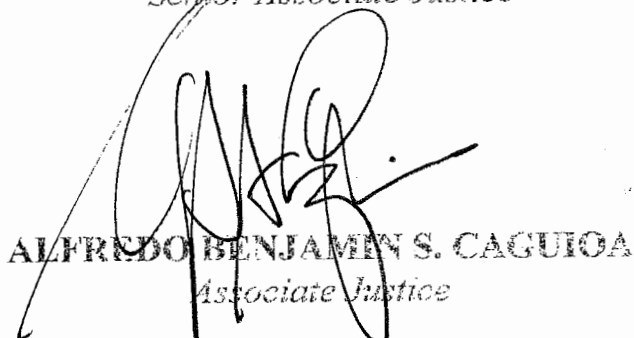

MARIANO V. LOPEZ
Associate Justice

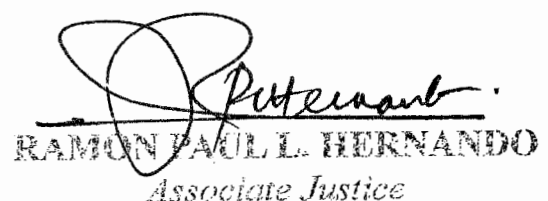
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

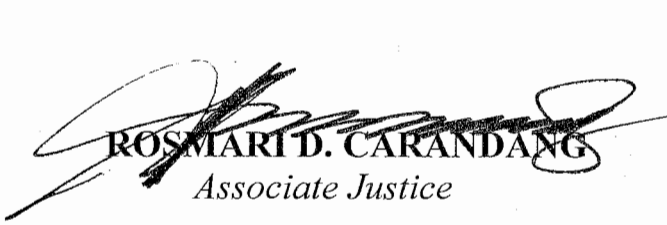

MARVIC M.V. E. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

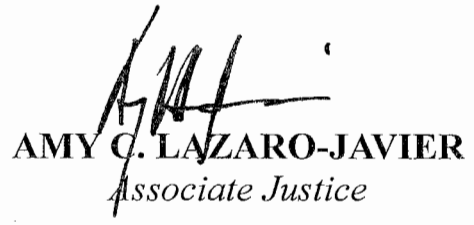

RAMON PAUL L. HERNANDO
Associate Justice

³³ *Ledesma v. CA*, 544 Phil. 207, 226 (1997).

³⁴ *De Jesus v. Sandiganbayan*, *supra* note 1.



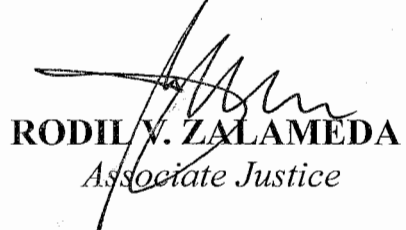
ROSMARID D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



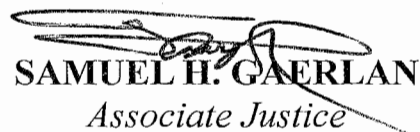
HENRI JEAN PAUL B. INTING
Associate Justice



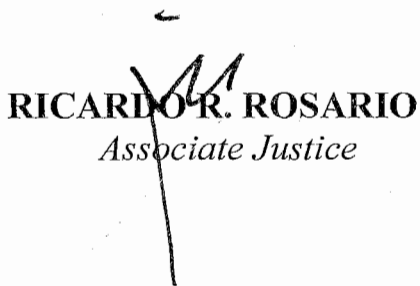
RODIL V. ZALAMEDA
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



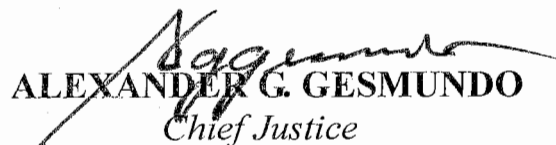
RICARDO R. ROSARIO
Associate Justice



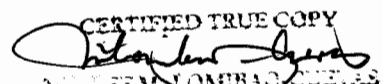
JHOSEP V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFEME LOMBARO CUEVAS
 Secretary