

THE PEOPLE OF THE PHILIPPINES, ET AL., PETITIONERS AND APPELLANTS, VS. JOSE C. ZULUETA, RESPONDENT AND APPELLEE.

G. R. No. L-4017. August 30, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

Review of a decision of the Court of Appeals that annulled the order of Hon. Juan R. Liwag, Judge, admitting the amended information filed in Criminal Case No. 11232 of Manila.

There is no question about these facts:

- On October 15, 1949 an information was filed in said criminal case charging Jose C. Zulueta with the crime of malversation of public property. Copy of the information is appended hereto (App. A). The substance of the accusation is that the accused, as Acting Chairman of the Surplus Property Commission, wilfully or thru abandonment permitted Beatriz Poblete to take and convert 3,000 kegs of nails of the aforesaid Commission. It is alleged that he secured the approval of a sale to her of said nails at very low prices by "astutely" prevailing upon Commissioner Angel Llanes to approve it on the pretext of urgency to expedite the liquidation of surplus properties. As an alternative charge the information states that at least through abandonment the accused permitted Beatriz Poblete to carry the hardware away.
- Arraigned on November 24, 1949, the accused pleaded "not guilty."
- On January 14, 1950, the prosecution submitted an amended information (App. B), which practically reproducing the original accusation, contained the additional assertion—among others—that in permitting the misappropriation the accused Jose C. Zulueta acted in conspiracy with Commissioner Llanes, who had subsequently been booked for malversation of the identical public property (nails) in Criminal Case No. 11727 of the same court.
- The accused objected to the admission of the amended information contending that it introduced allegations about acts and omissions constituting another offense, and that the amendments were substantial and prejudicial to his rights.
- The court admitted the amended information by its order dated February 28, 1950.
- Having failed in a motion to reconsider, the accused started proceedings on certiorari in the Court of Appeals to annul the last mentioned order of admission.
- The appellate court upheld his contentions. Hence, the People presented this petition for review, which was given due course.

The issue requires application of the principles that after the defendant has pleaded, the information may be amended as to all matters of form, in the discretion of the court, when the same can be done without prejudice to the rights of the defendant. (Sec. 13, Rule 106). At that stage, no substantial amendment may be permitted.

The question for decision is: Was the amendment purely a matter of form? Or did it touch upon matters of substance?

The amended pleading, with its deletions, transpositions and rephrasings, practically added a full page to the original seven-page information. Seeing the prosecution's insistence in its admission, to the extent of appealing to this Court even at the risk of delaying the proceedings, one, would naturally suppose that its moves are dictated by the necessities—neither formal nor unsubstantial—of the case for the People.

Indeed, contrasting the two informations one will perceive that whereas in the first the accused is charged with misappropriation of public property because: (1) he deceived Angel Llanes into approving the bargain sale of nails to Beatriz Poblete or (2) at least, by his abandonment he permitted that woman to obtain the articles at very cheap prices, in the amended information a third ground of responsibility is inserted, namely, that he connived and conspired with Angel Llanes to consummate the give-away transaction.

Again it will be observed that the third ground of action in effect contradicts the original theory of the information: if the accused conspired with Llanes, he did not deceive the latter, and did not by mere negligence permit the sale.

Now therefore, an amended information setting forth a different manner of committing the felony,—a totally new proposition—does it merely introduce a formal amendment?

We do not think so. Even in civil cases—wherein the rules are more liberal as to amendments—it is not generally permissible to alter plaintiff's theory of the case, alteration being substantial.[1]

In this connection it must be recalled that under the rules of criminal procedure there is a further limitation to formal amendments, namely, that the amendment "can be done without prejudice to the rights of the defendant." Surely the preparations made by herein accused to face the original charges will have to be radically modified to meet the new situation. For undoubtedly the allegation of conspiracy enables the prosecution to attribute and ascribe to the accused Zulueta all the acts, knowledge, admissions and even omissions [2] of his co-conspirator Angel Llanes in furtherance of the conspiracy. The amendment thereby widens the battlefield to allow the use by the prosecution of newly discovered weapons, to the evident discomfiture of the opposite camp. Thus it would seem inequitable to sanction the tactical movement at this stage of the controversy, bearing in mind that the accused is only guaranteed two-days' preparation for trial. Needless to emphasize, as in criminal cases the liberty, even the life, of the accused is at stake, it is always wise and proper that he be fully apprised of the charges, to avoid any possible surprise that may lead to injustice. The prosecution has too many facilities to covet the added advantage of meeting unprepared adversaries.

Some passages from "Regala contra El Juez del Juzgado de Primera Instancia de Bataan" [3] are quoted by petitioners. Therein the accused pleaded not guilty to an information for murder, and later the fiscal amended the indictment by including two other persons charged with the same offense and alleging conspiracy between the three. Five justices held that the amendment was not substantial. But that situation differs from the one at bar. The amendment there did not modify the basic theory of the prosecution that the accused had killed the deceased by a voluntary act and deed. Here there is an innovation, or the introduction of another alternative imputation, which, to make matters worse, is inconsistent with the original allegations.

In view of the above, we believe it unnecessary to discuss the defendant's proposition that the original information did not actually describe the crime of malversation (but only of theft), which the amended information sets forth. Neither is it necessary to pass on the other minor amendments objected to.

One other point remains to be threshed out. The petitioners insist that certiorari is improper, because the accused

has an adequate remedy by appeal. Of course these special civil actions may not generally be entertained if the party has an adequate remedy by appeal. However there have been exceptions. (Cf. Moran 3rd Ed. Vol. II, p. 148). For instance, in *Yu Cong Eng vs. Trinidad* 47 Phil. 385 this Court took cognizance of a petition for certiorari and prohibition notwithstanding the accused could have appealed in due time. The Court's action was premised on the public welfare and the advancement of public policy, in view of the many merchants interested in the Chinese Bookkeeping Law.

In *Dimayuga vs. Fajardo* (43 Phil., 304) this Court admitted a petition to enjoin the prosecution of certain chiropractors. Although these could have appealed if convicted, the petition was given due course for the orderly administration of justice to avoid possible oppression by the strong arm of the law.

And *Arevalo vs. Nepomuceno*, (63 Phil. 627), was a petition for certiorari to challenge the trial judge's action permitting an amended information. This Court passed on the petition, despite the availability of appeal at the proper time.

Now, inasmuch as the surplus property cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof, and inasmuch as the Court of Appeals delving into the legal question has reached a conclusion which we do not reckon to be erroneous, it would not be, in furtherance of justice presently to dismiss the whole proceedings on the technical ground that the accused has a remedy by appeal at the proper time.

Wherefore the judgment under review will be affirmed. No costs.

Paras, C. J., FeHa, Pablo, Padilla, Tuason and Reyes, JJ., concur.

[1] Moran, Comments 3rd E. Vol. I p. 317 citing *Torres vs. Tomacruz*, 49 Phil. 913.

[2] *U. S. vs. Ipil*, 27 Phil. 530; *U. S. vs. Remigio*, 37 Phil., 599; *XL S. vs. Raymundo*, 14 Phil. 416. Amendment calling for different defense is substantial. *People vs. Sims*, 241 N. W. 247; *State vs. Walton*, 164 S. W. 211.

[3] 44 Off. Gaz., p. 45; 77 Phil., 684.

APPENDIX "A"

REPUBLIC OF THE PHILIPPINES
IN THE COURT OF FIRST INSTANCE OF MANILA
SIXTH JUDICIAL DISTRICT

[Criminal Case No. 11232 for Malversation of Public Property]
THE PEOPLE OF THE PHILIPPINES,
Plaintiff,
VERSUS
JOSE C. ZULUETA, Accused.

INFORMATION

NOW COMES the undersigned Special Attorney, Division of Special Attorneys of the Office of the Solicitor General, and appointed by the Secretary of Justice as Special Counsel under Article 1686 of the Revised Administrative Code and accuses Jose C. Zulueta of a violation of Article 217 of the Revised Penal Code committed as follows:

That on or about the period from January 10, 1949 to April 6, 1949, and for sometime prior and subsequent thereto, in the Cities of Manila and Rizal, Philippines, the herein accused Jose C. Zulueta, after having been duly appointed to the Office of Acting Chairman of the Surplus Property Commission, qualified and discharged and performed the functions and duties pertaining to his aforementioned public office; that as such Acting Chairman of the Surplus Property Commission the herein accused was entrusted and charged with the proper "administration, care, custody protection, disposition and/or sale" and "under such terms and conditions as may be deemed most advantageous" to the Government, of the surplus properties acquired under the Agreement between the United States of America and the Republic of the Philippines, as approved by the Congress of the Philippines under Republic Act No. 33, which by virtue thereof have become public properties for which the said accused Jose C. Zulueta was and is accountable by reason of his said position; that during the period from January 10, 1949 to April 6, 1949, and for some time prior and subsequent thereto, in the City of Manila, Philippines, where the offices of the Surplus Property Commission were located and in the City of Rizal where the said accused as Acting Chairman established subsidiary office without the consent of the Commission and over and above the objection of the Auditor, the said accused, as Acting Chairman of the Surplus Property Commission, did then and there wilfully, unlawfully, feloniously and fraudulently consent or at least, through abandonment permit one Beatriz Poblete to take and misappropriate, as she did take and misappropriate from Depot No. 14 of the Surplus Property Commission 3,000 kegs of surplus nails in the following manner: That on January 10, 1949, Mrs. Constantina Reyes filed with the Surplus Property Commission an offer to purchase nails at Depot No. 14 at seventy per cent (70%) of procurement cost and immediately thereafter the herein accused assumed almost absolute control over the processing of offers to purchase and invoices for nails; that thereafter there appeared offers to purchase and invoices in the name of Beatriz Poblete, Jose del Rosario, Ruben Adriano and Eugenia Adriano purportedly dated and filed "January 17, 1949", but in fact not officially filed on that day but sometime between January 18 and January 26, 1949, for the purchase of nails in Depot No. 14 at twenty-five per cent (25%) of procurement cost as follows:

Kegs (SALVAGED) at 25 per cent of

Procurement cost

Beatriz Poblete

3,000

Jose del Rosario.....

3,000

Ruben Adriano.....

1,500

Eugenia Adriano

4,020

that on January 18, 1949, Depot No. 14 was frozen allegedly preparatory to public bidding, which was not carried out, but in fact was to prevent the filing of other offers at a higher percentage; that on February 5, 1949, Depot No. 14 was declared open for negotiated sale; that on February 7, 1949, the following offers to purchase nails, salvaged at Depot No. 14 at one hundred per cent (100%) of procurement cost, were duly filed:

Eastern Commercial Corporation by:

Kegs (SALVAGED) at 25 per cent of

Procurement cost

Constantina Eeyes

2,225

Lourdes Angeles David

1,500

Fortunata Estanislao

2,010

Grata Ranara

750

Jacinto Baldeo

12

Clarito Baldeo

12

that on or about February 16, or 18, 1949, the set of invoices of Eastern Commercial Corporation filed by Constantina Reyes, Lourdes Angeles David, Fortunata Estanislao, Grata Ranara, Jacinto Baldeo, and Clarito Baldeo, all at 100 per cent of procurement cost, were unanimously recommended by the then Technical Review Committee of five (5) members, and by the Sales Manager, for approval of the Surplus Property Commission, while the act of invoices of Beatriz Poblete, Jose del Rosario, Eugenia Adriano and Ruben Adriano all at 25 per cent only of procurement cost were "conditionally" recommended by only two of the five members of the said Technical Review Committee; that on February 23, 1949, the set of invoices of Eastern Commercial Corporation by Constantina Reyes, and others, at 100 per cent of procurement cost was submitted to the Acting Chairman the accused, Jose C. Zulueta, and to Commissioners Romero and Llanes; that Commissioners Romero and Llanes upheld the opinion of the Auditor that "nails" were "critical" materials and must be bidden in accordance with Presidential directive on the matter; [that] the (said accused, Acting Chairman Jose C. Zulueta [did not oppose this opinion and] the said set of invoices were returned to the Sales Manager, but, upon a petition for reconsideration "filed by the parties concerned, the same set of invoices were again submitted to the Commission for further consideration; that on March 2, 1949, the Surplus Property Commission received the letter of the Procurement Office dated February 25, 1949, advising that said Office is ready to acquire all the "stock of 4-inch to 6-inch long nails available at the time in Engineering Depot No. 11"; that the Acting Chairman, the accused herein, in order to subserve his ulterior interested purposes, did not

indorse to Commissioner Romero and Llanes the said letter of the procurement Office, although he well knew that Government Offices had preferential right over (needed) surplus articles; that on March 3, 1940, Commissioner Romero formally made of record his "comment" on "nails" as follows:

"The Auditor * * * certified that common nails are a critical item and must be bidden in accordance with the Presidential directive, * * *. If the Control Committee, however, should waive the bidding requirement * * * and authorize the sale at 100 per cent of Procurement Cost, the undersigned will concur therein. * * *"; that on March 7, 1949, the Acting Chairman, the accused herein, indorsed to the Government Enterprises Council, the aforesaid "comment" of Commissioner Romero at the same time recommending that the requirement of public bidding for common nails as critical items be waived provided the sale be at 100 per cent of procurement cost" and forwarded to the Government Enterprises Council his indorsement together with the invoices of Eastern Commercial Corporation by Constantina Reyes, Lourdes Angeles David, Fortunata Estanislao, Grata Ranara, Jacinto Baldeo and Clarito Baldeo and the aforesaid letter of the Procurement Office that the invoices of Beatriz Poblete, Jose del Rosario, Ruben Adriano and Eugenia Adriano were purposely kept by the accused and did not submit them to Commissioner (s) Romero (and Llanes) for consideration on February (22, 23,) 1949, and craftily did not endorse them to the Government Enterprises Council [together with the invoice of Eastern Commercial Corporation by Constantina Reyes and its parallel invoices abovementioned] [that the Acting Chairman] the accused herein, knowing, or at least having reason to believe, that [the original and] the renovated invoices [of Beatriz Poblete and its sister invoices] were not properly acted upon by the Technical Review Committee and were not recommended by the Sales Manager and knowing, or at least having motives to suspect that the original and/or the renovated invoices of Beatriz Poblete and Jose del Rosario were not signed by them personally, [the Acting Chairman readily signed and approved said invoices at twenty-five per cent (25%) only of procurement cost,] notwithstanding his knowledge that there were other pending invoices at one hundred per cent (100%) of procurement cost; that pursuant to his interest in having them approved by at least the majority, the said accused, as Acting Chairman, exerted all efforts to convince Commissioner Llanes to approve the said invoice of Beatriz Poblete and its sister invoices, [but the Commissioner Llanes twice disapproved them on the ground that] the price offered was very low, nails being a critical item that should be bidden and the invoices were not recommended for approval by the Sales Manager; [that the Acting Chairman, the accused herein, submitted for the third time said invoices to Commissioner Llanes and astutely prevailed upon him to approve the same on the pretext of "urgent need to speed up liquidation" of surplus properties, and Commissioner Llanes for that alleged reason and because of the strong recommendation of the herein accused, finally] consented to approve them provided that the accused secure first the recommendation of the Sales Manager; [that before and after the approval of said invoices by Commissioner Llanes, the accused purposely withheld said invoices from the consideration of and action of Commissioner Romero, in view of the latter's comments on the subject which the accused himself had previously indorsed favorably to the Government Enterprises Council;] that on or about March 29, 1949, [the herein accused] received from the Purchasing Agent of the Procurement Office a letter advising him that they were definitely buying and wanted to take delivery of seventy-seven (77) tons of surplus nails from Depot No. 14 and enclosed with said letter the needed certification of the availability of funds for the purchase, but the herein accused, fearing that said purchase would defeat his ultimate interested purpose, did not submit said letter to the Commissioner Romero and Llanes for their consideration and action; that on April 1, 1949, the Acting Chairman issued an order, "for immediate and strict compliance", for the delivery of the 3,000 kegs of nails covered by the invoices of Beatriz Poblete which was not carried out due to the opposition of the Auditor's representative; that on April 2, 1949, the accused had learned of the advice of Atty. Gregorio S. Licaros, Executive Secretary of the Government Enterprises Council, that deliveries on invoices for nails be suspended; that anticipating that the formal decision by the Government Enterprises Council was imminently forthcoming and would adversely affect the invoice of Beatriz Poblete, as in fact said decision of the Government Enterprises Council was rendered and forwarded to the Commission on April 4, 1949, declaring that "Under no circumstances should sale of nails of any type, classification or quantity be made at less than 100% of procurement cost, any such sale pending delivery to be cancelled", and that the quantity of nails requisitioned by the Procurement Office should be

reserved, the [herein accused, as] Acting Chairman, in order to consummate the sale in favor of Beatrix Poblete in which they (he) had become [greatly] interested, issued a second order to different officer of [the Superintendent, Officer-inCharge, and Security Officer of Depot No. 14 and to other subordinate officers in] the Surplus Property Commission urging complete delivery of the nails covered by the invoice of Beatriz Poblete, regardless of tag numbers; that as a direct and necessary consequence of all the afore-stated actuations, (machinations and omissions) of the herein accused, (all) committed, incurred, and/or carried out in the Cities of Manila, Rizal and Quezon, the said accused in his capacity as Acting Commissioner (Chairman) of the Surplus Property Commission and as an accountable public officer did there and or about March 24, then on April 4, and 5, 1949 wilfully, unlawfully, feloniously and fraudulently, or at least, through abandonment, consent and permit Beatriz Poblete, through her representative Ngo Teck, to appropriate and carry away, as she did in fact appropriate and take, three thousand (3,000) kegs of nails from Engineer Depot No. 14, then with a market value of P81,000, for which public property the said accused as such Acting Chairman and public officer was then and is still accountable, to the damage and prejudice of the Surplus Property Commission, an agency of the Republic of the Philippines, in the total amount of twenty-five thousand two hundred pesos (P25,200), including compensating tax, representing 100 per cent of original procurement cost, minus six thousand three hundred pesos (P6,300) which was paid to the Surplus Property Commission under the fraudulent guise of purchase price of the said three thousand (3,000) kegs of nails.

Contrary to Law.

City of Manila, Philippines, this 15th day of October, 1949.

(Sgd.) PEDRO C. QUINTO

Special Attorney

Office of the Solicitor General

and Special Counsel

appointed by the Secretary of Justice

under section 1686 of the

Revised Administrative Code

In this copy of the original information, the words or phrases inclosed by brackets refer to deletions, transpositions, and rephrasings made in the amended information.

PEDRO C .QUINTO

Special Attorney

Office of the Solicitor General

and Special Counsel appointed

by the Secretary of Justice

APPENDIX "B"

REPUBLIC OF THE PHILIPPINES

IN THE COURT OF FIRST INSTANCE OF MANILA

SIXTH JUDICIAL DISTRICT

BRANCH IX

[Criminal Case No. 11232 for Malversation of Public Property]

THE PEOPLE OF THE PHILIPPINES,

Plaintiff,

VERSUS

JOSE C. ZULUETA, accused.

AMENDED INFORMATION

NOW COMES the undersigned Special Attorney, Division of Special Attorneys of the Office of the Solicitor General, and appointed by the Secretary of Justice as Special Counsel under Article 1686 of the Revised Administrative Code and, with leave of Court amends the information as to matter of form, by accusing Jose C. Zulueta, of a violation of Article 217 of the Revised Penal Code committed as follows:

That on or about the period from January 10, 1949 to April 6, 1949, and for sometime prior and subsequent thereto, in the Cities of Manila and Rizal, Philippines, the herein accused Jose C. Zulueta, after having been duly appointed to the Office of Acting Chairman of the Surplus Property Commission, qualified and discharged and performed the functions and duties pertaining to his aforementioned public office; that as such Acting Chairman of the Surplus Property Commission the herein accused was entrusted and charged with the proper "administration, care, custody, protection, disposition and/or sale" and "under such terms and conditions as may be deemed most advantageous" to the Government, of the surplus properties acquired under the

Agreement between the United States of America and the Republic of the Philippines, as approved by the Congress of the Philippines under Republic Act No. 33, which by virtue thereof have become public properties for which the said accused Jose C. Zulueta was and is accountable by reason of his said position; that during the period from January 10, 1949 to April 6, 1949, and for some time prior and subsequent thereto, in the City of Manila, Philippines, where the offices of the Surplus Property Commission were located and in the City of Rizal where the said accused as Acting Chairman established subsidiary office without the consent of the Commission and over and above the objection of the Auditor, the said accused, as Acting Chairman of the Surplus Property Commission, did then and there wilfully, unlawfully, feloniously and fraudulent consent or at least, through abandonment permit one Beatriz Poblete to take and misappropriate, as she did take and misappropriate from Depot No. 14 of the Surplus Property Commission 3,000 kegs of surplus nails in the following manner: that on January 10, 1949, Mrs. Constantina Reyes filed with the Surplus Property Commission an offer to purchase nails at Depot No. 14 at seventy per cent (70%) of procurement cost and immediately thereafter the herein accused assumed almost absolute control over the processing of offers to purchase and invoices for nails; that thereafter there appeared offers to purchase and invoices in the name of Beatriz Poblete, Jose del Eosario, Ruben Adriano and Eugenia Adriano purportedly dated and filed "January 17, 1949", but in fact not officially filed on that day but sometime between January 18 and January 28, 1949, for the purchase of nails in Depot No. 14 at twenty-five per cent (25%) of procurement cost as follows:

Kegs (SALVAGED) at 25 per cent

of procurement cost

Beatriz Poblete

3,000

Jose del Rosario.....

3,000

Ruben Adriano.....

1,500

Eugenia Adriano

4,02

That on January 18, 1949, Depot No. 14 was frozen allegedly preparatory to public bidding, which was not carried out, but in fact was to prevent the filing of other offers at a higher percentage; that on February 5, 1949, Depot No. 14 was declared open for negotiated sale; that on February 7, 1949, the following offers to purchase nails, salvaged at Depot No. 14, at one hundred per cent (100%) of procurement cost, were duly filed.

Eastern Commercial Corporation by:

Kegs (SALVAGED) at 25 per cent of

Procurement cost

Constantina Eeyes

2,225

Lourdes Angeles David

1,500

Fortunata Estanislao

2,010

Grata Ranara

750

Jacinto Baldeo

12

Clarito Baldeo

12

that on or about February 16, or 18, 1949, the act of invoices of Eastern Commercial Corporation filed by Constantina Reyes, Lourdes Angeles David, Fortunata Estanislao, Grato Ranara, Jacinto Baldeo, and Clarito Baldeo, all at 100 per cent of procurement cost, were unanimously recommended by the then Technical Review Committee of five (5) members, and by the Sales Manager, for approval of the Surplus Property Commission, while the set of invoices of Beatriz Poblete, Jose del Rosario, Eugenia Adriano and Ruben Adriano all at 25 per cent only of procurement cost, irregularly filed and processed, were conditionally recommended for personal use or rehabilitation purposes only by two of the five members of the said Technical Review Committee; that on February 23, 1949, the set of invoices of Eastern Commercial Corporation by Constantina Reyes, and others, at 100 per cent of procurement cost was submitted to the Acting Chairman the accused, Jose C. Zulueta, and to Commissioners Romero and Llanes; that Commissioners Romero and Llanes upheld in writing the opinion of the Auditor that "nails" were "critical materials and must be bidded⁶ in accordance with Presidential directive on the matter, and with the acquiescence of the accused, Acting Chairman Jose C. Zulueta, the said set of invoices were returned to the Sales Manager, but, upon a petition for reconsideration filed by the parties concerned, the same set of invoices were again submitted to the Commission on February 26, 1949, for further consideration; that on March 2, 1949 the Surplus Property Commission received the letter-offer of the Procurement Office dated February 25, 1949, advising that said Office was ready to acquire all the "stock of 4-inch to 6-inch long nails available at the time in Engineering Depot No. 14; that the Acting Chairman, the accused herein, in order to subserve his ulterior interested purposes, did not indorse to Commissioners Romero and Llanes the said letter of the Procurement Office, although he well knew that Government Offices had preferential right over PRIVATE PARTIES to acquire surplus articles; that on March 3, 1949, Commissioner Romero formally made of record his "comment" on "nails" as follows:

"The Auditor * * * certified that common nails are a critical item and must be bidded in accordance with the Presidential directive, * * *. If the control Committee, however, should waive the bidding requirement * * * and authorize the sale at 100 per cent of Procurement Cost, the undersigned will concur therein * * *.";

that on March 7, 1949, the accused herein, as Acting: Chairman, indorsed to the Government Enterprises Council, the aforesaid "comment" of Commissioner Romero at the same time recommending that the requirement of public bidding for common nails as critical items be waived provided the sale be at 100 per cent of procurement cost" and forwarded to the Government Enterprises Council his indorsement together with the invoices of Eastern Commercial Corporation by Constantina Reyes, Lourdes Angeles David, Fortunata Estanislao, Grata Ranara, Jacinto Baldeo and Clarito Baldeo, the AFOREMENTIONED LETTER OF EASTERN COMMERCIAL

CORPORATION ASKING FOR RECONSIDERATION, the aforesaid letter of the Procurement Office, AND OTHER PERTINENT PAPERS; that the invoices of Beatriz Poblete, Jose del Rosario, Ruben Adriano and Eugenia Adriano AT 25 PER CENT PROCUREMENT COST were purportedly retained by the herein accused and did not submit them to Commissioner Romero for consideration on February 23, 1949, and craftily did not indorse them to the Government Enterprises Council; and the accused herein, knowingly, or at least having reason to believe, that the said renovated invoices AT 25 PER CENT OF PROCUREMENT COST were not properly acted upon by the Technical Review Committee, ONE OF WHOSE MEMBERS HAVING RECOMMENDED THEM FOR PERSONAL USE ONLY AND NOT FOR RESALE, and were not recommended by the Sales Manager, knowing, or at least having motives to suspect that the original and/or the renovated invoices of Beatriz Poblete and Jose del Rosario were not signed by them personally, notwithstanding his knowledge that there were other pending invoices at one hundred per cent (100%) of procurement cost, AND IT WAS PENDING DECISION HIS INDORSEMENT AND RECOMMENDATION ABOVE-MENTIONED and pursuant to his interest in having them approved by at least a majority OF THE COMMISSION, the said accused as Acting Chairman, exerted all efforts to convince Acting Commissioner Llanes to approve the said invoices of Beatriz Poblete and its sister invoices, TAKING ADVANTAGE OF THE FACT THAT ADOLFO Q. LLANES, BROTHER OF ACTING COMMISSIONER LLANES, HAD A PENDING OFFER TO PURCHASE ALSO 2,000 KEGS OF NAILS AT DEPOT NO. 14 AT A LOW RECOVERY PRICE OR PERCENTAGE OF PROCUREMENT COST, AND IN ORDER TO ACCOMPLISH HIS PURPOSE, THE HEREIN ACCUSED BEFORE OR ABOUT FEBRUARY 23, 1949 SUBMITTED, THRU HIS REPRESENTATIVE, THE RENOVATED INVOICES OF BEATRIZ POBLETE. JOSE DEL ROSARIO, EUGENIA ADRIANO, AND RUBEN ADRIANO, AT A PRICE OF 25 PER CENT ONLY OF PROCUREMENT COST AND OTHER PERTINENT PAPERS TO ACTING COMMISSIONER ANGEL LLANES FOR HIS CONSIDERATION, WHO RETURNED AND DISAPPROVED THEM ON THE GROUND THAT NAILS WERE OF GREAT DEMAND AND SHOULD BE SOLD ON A BID BASIS, THE INVOICES WERE IMPROPERLY ACCOMPLISHED, AND WERE NOT RECOMMENDED BY THE SALES MANAGER; THAT ON MARCH 18, 1949, OR THEREABOUTS, THE HEREIN ACCUSED RESUBMITTED TO ACTING COMMISSIONER ANGEL LLANES THE AFOREMENTIONED INVOICES OF BEATRIZ POBLETE, JOSE DEL ROSARIO, EUGENIA ADRIANO, AND RUBEN ADRIANO, ALREADY SIGNED BY THE SAID ACTING CHAIRMAN, AND ACTING COMMISSIONER LLANES ON MARCH 19, 1949 DISAPPROVED THEM FOR THE SECOND TIME IN VIEW OF THE DIRECTIVE OF THE PRESIDENT OF THE PHILIPPINES DATED FEBRUARY 17, 1947 AND ON THE GROUND THAT NAILS WERE CRITICAL CONSTRUCTION ITEMS WHICH SHOULD BE SOLD TO AS MANY PEOPLE AS POSSIBLE ON A BID BASIS; THAT ON OR ABOUT MARCH 22, 1949 THE SET OF INVOICES OF BEATRIZ POBLETE, JOSE DEL ROSARIO, EUGENIA ADRIANO, AND RUBEN ADRIANO WERE SUBMITTED FOR THE THIRD TIME BY THE ACCUSED ACTING CHAIRMAN JOSE C. ZULUETA TO THE SAID ACTING COMMISSIONER LLANES FOR HIS FURTHER CONSIDERATION; THAT ON THE OCCASION THE HEREIN ACCUSED AS ACTING CHAIRMAN, AND ANGEL LLANES, AS ACTING COMMISSIONER, BOTH OF THE SURPLUS PROPERTY COMMISSION, CONSPIRED AND MUTUALLY COOPERATED BY ACTS WITHOUT WHICH THEY COULD NOT HAVE ACCOMPLISHED THEIR ILLEGAL PURPOSE, AND TO THIS EFFECT, ACTING COMMISSIONER ANGEL LLANES VOLUNTARILY CONSENTED TO APPROVE ALSO SAID INVOICES AT 25 PER CENT OF PROCUREMENT COST provided the herein accused secure first the recommendation of the Sales Manager, AS HE DID SECURE THE SAME, AFTER WHICH ON OR ABOUT MARCH 24, 1949, ACTING COMMISSIONER ANGEL LLANES ACTUALLY APPROVED ALSO SAID INVOICES WITH HIS INITIALS; THAT IN FURTHERANCE OF SAID CONSPIRACY, THE ACTING CHAIRMAN, WHO, ON OR ABOUT MARCH 29, 1949, received ANOTHER LETTER from the Procurement

Office advising that they were definitely buying 77 tons of surplus nails, ACCOMPANYING said letter with the NECESSARY certification of the availability of funds for the purchase; but fearing that said purchase would defeat their ultimate interested purpose, did not submit said letter to the COMMISSION for consideration and action; that on April 1, 1949 the Acting Chairman issued an order, "for immediate and strict compliance for the delivery of 3,000 kegs of nails covered by the invoice No. 10248 of Beatriz Poblete, which was not carried out ON ACCOUNT OF the opposition of the AUDITOR, AND DUE TO SAID OPPOSITION THE ACTING CHAIRMAN AND THE AUDITOR AGREED THAT NO ACTION ON THE MATTER OF NAILS AND ON THE INVOICE OF BEATRIZ POBLETE SHALL BE TAKEN PENDING DECISION OF THE GOVERNMENT ENTERPRISES COUNCIL; that on April 2, 1949, the Acting Chairman Jose C. Zuiueta had learned of the advice of Atty. Gregorio Licaros, Executive Secretary of the Government Enterprises Council, that deliveries on invoices for nails be suspended; that anticipating that the formal decision by the government enterprises council was imminently forthcoming and would adversely affect the invoice of Beatriz Poblete AND ITS SISTER INVOICES, as in fact said decision of the Government Enterprises Council was rendered and forwarded to the Commission on April 4, 1949, declaring that "under no circumstances should sale of nails of any type classification or quantity be made at less than 100% of procurement cost, and such sale -pending delivery to be cancelled." and that the quantity of nails requisitioned by the Procurement Office should be reserved, the Acting Chairman, CONTRARY TO SAID AGREEMENT AND THE ADVICE OF THE EXECUTIVE SECRETARY of the Government Enterprises Council and in order to consummate the sale IN FAVOR of Beatriz Poblete IN WHICH HE AND ACTING COMMISSIONER ANGEL LLANES had become interested, ISSUED A SECOND PEREMPTORY order to DIFFERENT officers of the Surplus Property Commission urging complete delivery of the nails covered by the invoice of Beatriz Poblete, regardless of tag numbers; that as a direct and necessary consequence of all the aforesaid joint actuations of the herein accused Acting Chairman of the Surplus Property Commission, and of Commissioner Angel Llanes, subsequently accused also for malversation of public property in criminal case No. 11727 of this court, committed, incurred, and/or carried out in the Cities of Manila, Rizal and Quezon, the said accused Jose C. Zuiueta, in his capacity as Acting Chairman of the Surplus Property Commission, and as an accountable officer and in conspiracy with the aforesaid Acting Commissioner Angel Llanes did then and there on or about February 23, 1949, March 24, 1949, April 4, and 5, 1949, wilfully, unlawfully, feloniously and fraudulently or at least, through abandonment or negligence, consent and permit Beatriz Poblete through her representative Ngo Teck, to appropriate and carry away, as she did in fact appropriate and take, three thousand (3,000) kegs of nails from Engineer Depot No. 14, then with a market value of P81,000, for which public property the herein accused and Acting Commissioner Angel Llanes, who as a public officers, were then and are still accountable, to the damage and prejudice of the Surplus Property Commission, an agency of the Republic of the Philippines, in the total amount of twenty-five thousand two hundred pesos (F25,2000), including compensating tax, representing 100% of original procurement cost, minus six thousand three hundred pesos (P6,300) which was paid to the Surplus Property Commission under the fraudulent guise of purchase price of the said three thousand (3,000) kegs of nails.

Contrary to Law.

City of Manila, Philippines, this 15th day of October, 1949.

(Sgd.) PEDRO C. QUINTO

Special Attorney

Office of the Solicitor General

and Special Counsel

appointed by the Secretary of Justice

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