



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CANDIDO PIOS PANCRUDO,
JR., ALAN ALUNAN
JAVELLANA*, RHODORA
BULATAO MENDOZA, MARIA
NINEZ PAREDES GUAÑIZO,
VICTOR ROMAN COJAMCO
CACAL, and MARK BENETUA
ESPINOSA,

Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CANDIDO PIOS PANCRUDO,
JR., ALAN ALUNAN
JAVELLANA*, RHODORA
BULATAO MENDOZA, MARIA
NINEZ PAREDES GUAÑIZO,
VICTOR ROMAN COJAMCO
CACAL, and MARK BENETUA
ESPINOSA,

Accused.

X ----- X

**CRIM. CASE Nos. SB-
16-CRM-0114 and 0116**

*For: Violation of Sec. 3(e), R.A. No.
3019, as amended*

**CRIM. CASE No. SB-16-
CRM-0115**

For: Malversation of Public Funds

* At-large.

DECISION

*People v. Candido Pios Pancrudo, Jr., et. al.
Criminal Case Nos. SB-16-CRM-0114 to 0117
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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

**CANDIDO PIOS PANCRUDO,
JR., ALAN ALUNAN
JAVELLANA*, RHODORA
BULATAO MENDOZA, MARIA
NINEZ PAREDES GUAÑIZO,
VICTOR ROMAN COJAMCO
CACAL, and MARK BENETUA
ESPINOSA,**

Accused.

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x

**CRIM. CASE No. SB-16-
CRM-0117**


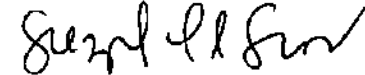
*For: Malversation of Public Funds
through Falsification of Public
Documents*

Present:

Lagos, J., Chairperson,

Mendoza-Arcega, J.,
and
Corpus-Mañalac, J.

Promulgated:

October 21, 2022 


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DECISION

MENDOZA-ARCEGA, J.:

Following the *exposé* on the multi-billion "Pork Barrel Scam of 2013", then Ombudsman Conchita Carpio-Morales created a panel to look into the alleged "ghost projects" reportedly funded by the Priority Development Assistance Fund (PDAF) of certain lawmakers. Interestingly, the cases before us do not involve the infamous Janet Lim Napoles and her allegedly bogus non-government organizations (NGOs), but nevertheless, these cases appear to feature the same crafty scheme in the alleged funneling of "Pork Barrel" funds or PDAF from the Department of Budget and Management (DBM), to various implementing agencies, and eventually to NGOs. As a result, these cases before us were filed owing to the Office of the Ombudsman's government-wide investigation.



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Herein accused **Candido Pios Pancrudo, Jr.** ("Pancrudo"), **Alan Alunan Javellana** ("Javellana"), **Rhodora Bulatao Mendoza** ("Mendoza"), **Maria Ninez Paredes Guañizo** ("Guañizo"), **Victor Roman Cojamco Cacal** ("Cacal"), and **Mark Benetua Espinosa** ("Espinosa") are charged with violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), as amended ("Anti-Graft and Corrupt Practices Act") on two (2) counts, Malversation of Public Funds, and Malversation of Public Funds through Falsification.

The accusatory portion of the *Informations*¹ in **SB-16-CRM-0114** and **-0116** for violation of Section 3(e) of R.A. No. 3019, as amended, read as follows:

Criminal Case No. SB-16-CRM-0114

"On 20 February 2009 or sometime prior or subsequent thereto, in Pasig City, Philippines and within this Honorable Court's jurisdiction, accused public officers **CANDIDO PIOS PANCRUDO, JR.** (Pancrudo), the then Congressman of the First District of Bukidnon; **ALAN ALUNAN JAVELLANA** (Javellana), President, **RHODORA BULATAO MENDOZA** (Mendoza), Administrative and Finance Director, **MARIA NINEZ PAREDES GUAÑIZO** (Guañizo), Accounting Division Officer-in-Charge, **VICTOR ROMAN COJAMCO CACAL** (Cacal), Paralegal, all of the **NATIONAL AGRIBUSINESS CORPORATION (NABCOR)**, while in the performance of their administrative and/or official functions and conspiring with one another and with private individual **MARK BENETUA ESPINOSA** (Espinosa); acting with manifest partiality and/or evident bad faith; did then and there willfully, unlawfully and criminally give unwarranted benefits and advantage to **USWAG PILIPINAS FOUNDATION, INC. (UPFI)** and Espinosa and cause undue injury to the government in the amount of at least **ONE MILLION ONE HUNDRED NINETY-THREE THOUSAND ONE HUNDRED PESOS (P1,193,100.00)**, through the following acts:

- (a) **Pancrudo** unilaterally chose and indorsed UPFI, a non-government organization represented by Espinosa as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Pancrudo's Priority Development Assistance Fund (PDAF) allocation covered by **Special Allotment Release Order (SARO) No. ROCS-08-05200**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and

¹ Record of Crim. Case No. SB-16-CRM-0114 to 0117, Volume (Vol.) 1.

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regulations, and with UPFI being unaccredited and unqualified to undertake the projects;

- (b) **Pancrudo** and **NABCOR's Javellana** then entered into a Memorandum of Agreement (MOA) with UPFI on the purported implementation of Pancrudo's PDAF-funded projects, and which MOA was prepared and/or reviewed by **Cacal**;
- (c) **Javellana** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher No. 09-02-0592** along with **Cacal** and **Guañizo**, as well as causing the issuance of **United Coconut Planter's Bank (UCPB) Check No. 455530** in the amount of P1,193,100.00 to UPFI which was signed by **Javellana** and **Mendoza**, without accused **NABCOR** officers and employees having carefully examined and verified the accreditation and qualifications of UPFI as well as the transaction's supporting documents;
- (d) **Espinosa** caused/participated in the preparation and signing of the **Work and Financial Plan** and **Project Proposal** which were used as supporting documents in the illegal release of the funds, and thereafter, acting for and in behalf of UPFI, received the corresponding check from **NABCOR**; and
- (e) The above acts of all the accused thus allowed **Espinosa** and UPFI to have control of and benefit from said PDAF-drawn public funds, instead of implementing the projects which turned out to be non-existent.

CONTRARY TO LAW."

Criminal Case No. SB-16-CRM-0116

"On 1 April 2009 or sometime prior or subsequent thereto, in Pasig City, Philippines and within this Honorable Court's jurisdiction, accused public officers **CANDIDO PIOS PANCRUDO, JR.** (Pancrudo), the then Congressman of the First District of Bukidnon; **ALAN ALUNAN JAVELLANA** (Javellana), President, **RHODORA BULATAO MENDOZA** (Mendoza), Administrative and Finance Director, **MARIA NINEZ PAREDES GUAÑIZO** (Guañizo), Accounting Division Officer-in-Charge, **VICTOR ROMAN COJAMCO CACAL** (Cacal), Paralegal, all of the **NATIONAL AGRIBUSINESS CORPORATION (NABCOR)**; while in the performance of their administrative and/or official functions and conspiring with one another and with private individual **MARK BENETUA ESPINOSA** (Espinosa); acting with manifest partiality and/or evident bad faith; did then and there willfully, unlawfully and criminally give unwarranted benefits and advantage to **USWAG PILIPINAS FOUNDATION, INC. (UPFI)** and **Espinosa** and cause

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undue injury to the government in the amount of at least **SIX MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED PESOS (P6,760,900.00)**, through the following acts:

- (a) **Pancrudo** unilaterally chose and indorsed UPFI, a non-government organization represented by Espinosa as “project partner” in implementing livelihood projects to farmers in his legislative district, which were funded by Pancrudo’s Priority Development Assistance Fund (PDAF) allocation covered by **Special Allotment Release Order (SARO) No. ROCS-08-05200**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with UPFI being unaccredited and unqualified to undertake the projects;
- (b) **Pancrudo** and NABCOR’s **Javellana** then entered into a Memorandum of Agreement (MOA) with UPFI on the purported implementation of Pancrudo’s PDAF-funded projects, and which MOA was prepared and/or reviewed by **Cacal**;
- (c) **Javellana** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher No. 09-04-1133** along with **Cacal** and **Guañizo**, as well as causing the issuance of **United Coconut Planter’s Bank (UCPB) Check No. 455721** in the amount of P6,760,900.00 to UPFI which was signed by **Javellana** and **Mendoza**, without accused NABCOR officers and employees having carefully examined and verified the accreditation and qualifications of UPFI as well as the transaction’s supporting documents;
- (d) **Espinosa** caused/participated in the preparation and signing of the acceptance and delivery reports, disbursement reports and other liquidation documents, which were all falsified and used as supporting documents of the disbursement; thereafter, acting for and in behalf of UPFI, Espinosa received the corresponding check from NABCOR; and
- (e) The above acts of all the accused thus allowed Espinosa and UPFI to have control of and benefit from said PDAF-drawn public funds, instead of implementing the projects which turned out to be non-existent.

CONTRARY TO LAW.”

The accusatory portion of the *Information*² in **SB-16-CRM-0115** for the crime of Malversation of Public Funds, as defined and penalized

² *Id.*

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under Article 217 of the Revised Penal Code (RPC), as amended, reads as follows:

Criminal Case No. SB-16-CRM-0115

“On 20 February 2009 or sometime prior or subsequent thereto, in Pasig City, Philippines and within this Honorable Court’s jurisdiction, accused public officers **CANDIDO PIÓS PANCRUDO, JR.** (Pancrudo), the then Congressman of the First District of Bukidnon; **ALAN ALUNAN JAVELLANA** (Javellana), President, **RHODORA BULATAO MENDOZA** (Mendoza), Administrative and Finance Director, **MARIA NINEZ PAREDES GUAÑIZO** (Guañizo), Accounting Division Officer-in-Charge, **VICTOR ROMAN COJAMCO CACAL** (Cacal), Paralegal, all of the **NATIONAL AGRIBUSINESS CORPORATION (NABCOR)**, while in the performance of their administrative and/or official functions and conspiring with one another and with private individual **MARK BENETUA ESPINOSA** (Espinosa); did then and there willfully, unlawfully and criminally allow **USWAG PILIPINAS FOUNDATION, INC. (UPFI)** and Espinosa to take public funds amounting to at least **ONE MILLION ONE HUNDRED NINETY-THREE THOUSAND ONE HUNDRED PESOS (P1,193,100.00)**, through the following acts:

- (a) **Pancrudo**, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2008, unilaterally chose and indorsed UPFI, a non-government organization represented by **Espinosa**, as “project partner” in implementing livelihood projects to farmers in his legislative district, which were funded by Pancrudo’s Priority Development Assistance Fund (PDAF) allocation covered by **Special Allotment Release Order (SARO) No. ROCS-08-05200**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with UPFI being unaccredited and unqualified to undertake the projects;
- (b) **Pancrudo** and NABCOR’s **Javellana** then entered into a Memorandum of Agreement (MOA) with UPFI on the purported implementation of Pancrudo’s PDAF-funded projects, and which MOA was prepared and/or reviewed by **Cacal**;
- (c) **Javellana** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher No. 09-02-0592** along with **Cacal** and **Guañizo**, as well as causing the issuance of **United Coconut Planter’s Bank (UCPB) Check No. 455530** in the amount of P1,193,100.00 to UPFI which was signed by **Javellana** and

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Mendoza, without accused NABCOR officers and employees having carefully examined and verified the accreditation and qualifications of UPFI as well as the transaction’s supporting documents;

- (d) **Espinosa** caused/participated in the preparation and/or signing of the Work and Financial Plan and Project Proposal, which were used as supporting documents of Disbursement Voucher No. 09-02-0592, and thereafter, acting for and in behalf of UPFI, Espinosa received the corresponding check from NABCOR; and
- (e) By their above acts, all the accused allowed Espinosa and UPFI to take or misappropriate PDAF-drawn public funds, instead of implementing the projects which turned out to be non-existent, to the damage and prejudice of the government.

CONTRARY TO LAW.”

The accusatory portion of the *Information*³ in **SB-16-CRM-0117** for the crime of MALVERSATION THROUGH FALSIFICATION OF PUBLIC DOCUMENTS, as defined and penalized under Article 217, in relation to Articles 171 and 48, of the Revised Penal Code, as amended, reads as follows:

Criminal Case No. SB-16-CRM-0117

“On 1 April 2009 or sometime prior or subsequent thereto, in Pasig City, Philippines and within this Honorable Court’s jurisdiction, accused public officers **CANDIDO PIOS PANCRUDO, JR.** (Pancrudo), the then Congressman of the First District of Bukidnon; **ALAN ALUNAN JAVELLANA** (Javellana), President, **RHODORA BULATAO MENDOZA** (Mendoza), Administrative and Finance Director, **MARIA NINEZ PAREDES GUAÑIZO** (Guañizo), Accounting Division Officer-in-Charge, **VICTOR ROMAN COJAMCO CACAL** (Cacal), Paralegal, all of the NATIONAL AGRIBUSINESS CORPORATION (NABCOR), while in the performance of their administrative and/or official functions, taking advantage of their position, and conspiring with another and with private individual **MARK BENETUA ESPINOSA** (Espinosa); did then and there willfully, unlawfully and criminally allow USWAG PILIPINAS FOUNDATION, INC. (UPFI) and Espinosa to take public funds amounting to at least **SIX MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED PESOS** (P6,760,900.00), through the following acts:

- (a) **Pancrudo**, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated

³ *Id.*

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to him by the general appropriation law for the year 2008, unilaterally chose and indorsed UPFI, a non-government organization represented by the **Espinosa**, as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Pancrudo's PDAF allocation covered by **Special Allotment Release Order (SARO) No. ROCS-08-05200**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with UPFI being unaccredited and unqualified to undertake the projects;

- (b) **Pancrudo** and NABCOR's **Javellana** then entered into a Memorandum of Agreement (MOA) with UPFI on the purported implementation of Pancrudo's PDAF-funded projects, and which MOA was prepared and/or reviewed by **Cacal**;
- (c) **Javellana** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher No. 09-04-1133** along with **Cacal** and **Guañizo**, as well as causing the issuance of **United Coconut Planter's Bank (UCPB) Check No. 455721** in the amount of P6,760,900.00 to UPFI which was signed by **Javellana** and **Mendoza**, without accused NABCOR officers and employees having carefully examined and verified the accreditation and qualifications of UPFI as well as the transaction's supporting documents;
- (d) **Espinosa** caused/participated in the preparation and/or signing of the reports, certificate of acceptance, official receipts, delivery receipts, sales invoices, purchase order and livelihood training program registration forms to support the transaction and make it appear in said documents that certain suppliers transacted with UPFI for the projects indicated therein and that livelihood trainings for certain beneficiaries were conducted when, in truth and in fact, as he and his co-accused fully knew, said suppliers did not have transaction with UPFI for the subject projects and there were no trainings conducted for the beneficiaries; and thereafter, acting for and in behalf of UPFI, **Espinosa** received the corresponding check from NABCOR; and
- (e) By their above acts, all the accused allowed **Espinosa** and UPFI to take or misappropriate PDAF-drawn public funds, instead of implementing the projects which turned out to be non-existent, to the damage and prejudice of the government.

CONTRARY TO LAW."

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ANTECEDENT PROCEEDINGS

The proceedings before the Office of the Ombudsman occurred as follows:⁴

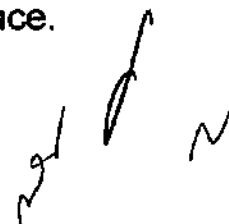
The Affidavit-Complaint stemmed from the Fact-Finding Investigation Bureau, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices' (FFIB-MOLEO) investigation based on the COA's Special Audit Office (SAO) Report No. 2012-03 dated 4 August 2013 covering the PDAF releases by the Department of Budget and Management (DBM) for Calendar Years (CY) 2007 to 2009. The funding for the priority development programs and projects identified by legislators are included in the General Appropriations Act (GAA) as a lump sum appropriation under PDAF for soft projects. The projects eligible for funding under PDAF for CY 2007-2009 were described as soft projects under the category of education, health, livelihood comprehensive integrated delivery of social services, and financial assistance to address specific pro-poor programs of the government, among others.

Then-1st District of Bukidnon Representative Pancrudo initiated the release of his PDAF in the amount of P8,200,000.00 for the implementation of livelihood programs in the 1st District of Bukidnon. Following a series of transactions, a total of P7,954,000.00 of the said amount was eventually released to and received by a non-government organization known as Uswag Pilipinas Foundation, Incorporated (UPFI), through its Corporate Secretary Mark B. Espinosa.

The Office of the Ombudsman found that the misuse of the subject PDAF allotted to Pancrudo was coursed through a scheme involving a project supposed to be funded by said PDAF which turned out to be inexistent or "ghost," and the funds intended for the implementation of the PDAF-funded project was diverted to the possession and control of UPFI. The Ombudsman concluded that the following irregularities confirmed the existence of the elaborate scheme to misuse or divert the PDAF allocation of Pancrudo:

1. Pancrudo directly chose UPFI to implement his projects without the benefit of a public bidding and without being authorized by an appropriation law or ordinance.

⁴ Records, Vol. 1; Resolution (OMB-C-C-14-0290), p. 3.



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2. Pancrudo and NABCOR officers failed to verify UPFI's legitimate existence or capacity to perform/deliver.
3. UPFI was chosen as conduit for the funds despite its ineligibility to implement the livelihood projects in violation of COA Circular No. 2007-001.
4. Respondents facilitated the approval of DV No. 09-02-0592 and the release of P1,193,100.00 despite the inconsistencies in the documents that supported the transaction.
5. Respondents facilitated the approval of DV No. 09-04-1133 and the release of P6,760,900.00 with the use of falsified reports, receipts, invoices, and other documents.
6. Respondents approved DV No. 09-04-1133 despite the inconsistencies in the documents that supported the transaction.
7. Conspiracy among the respondents is manifest: Pancrudo chose UPFI, and signed the MOA, Accomplishment Report, Certificate of Acceptance, and registration forms to facilitate the release of funds to UPFI. Incidentally, the funds in question could not have been transferred to UPFI if not for the certifications, approvals, and signatures found in the DVs and checks.

Based on the foregoing, the Office of the Ombudsman found probable cause and filed the corresponding *Informations*⁵ against Pancrudo, Javellana, Mendoza, Guañizo, Cacal, and Espinosa before the Sandiganbayan on 14 March 2016. As contained in the *Resolution*⁶ dated 23 March 2016, this Court held that sufficient grounds exist for the finding of probable cause for the purpose of issuing warrants of arrest in Crim. Case Nos. **SB-16-CRM-0114, -0115 and -0117**; thus, warrants of arrest were issued against accused Pancrudo, Jr., Javellana, Mendoza, Guañizo, Cacal, and Espinosa. This Court ordered the dismissal of **SB-16-CRM-0116** because it was a mere duplication of the Information in **SB-16-CRM-0114**,⁷ however, the prosecution pointed out that one of the copies for the information in SB-16-CRM-0114 was inadvertently marked and docketed as SB-16-CRM-0116, and such incorrectly marked copy was the one attached to the case records.⁸

⁵ SB-16-CRM-0114 to 0117.

⁶ *Records*, Vol. 2, p. 49.

⁷ *Id.*

⁸ *Id.* at 110 par. 5.

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On 14 April 2016, the prosecution filed a *Motion for Partial Reconsideration (Re: Minute Resolution dated March 23, 2016)*⁹ praying that the Court reconsider the dismissal of SB-16-CRM-0116 because the said Information was not a mere duplication of SB-16-CRM-0114. The Informations contained therein refer to different dates of the alleged violation of Section 3(e) of R.A. No. 3019, and to different amounts as to the undue injury caused to the government.¹⁰ In its *Resolution*¹¹ dated 15 June 2016, this Court granted the prosecution's *Motion for Partial Reconsideration* dated 14 April 2016, because there was undeniable inadvertence and clerical error involved. This Court withdrew the incorrectly marked Information and substituted it with the correct copy of the Information bearing the docket number SB-16-CRM-0116.¹²

On 19 April 2016, the prosecution also filed a *Manifestation*¹³ explaining that the prosecutors handling the case recommended to the Ombudsman that the two Informations in SB-16-CRM-0115 and SB-16-CRM-0117 be amended to include material allegations constituting the charge of malversation against all the accused, and that the prosecution would immediately file with the Court the Amended Informations in the two cases upon approval by the Ombudsman.¹⁴ On 27 April 2016, the prosecution filed its *Manifestation with Motion to Admit Amended Information*¹⁵ informing the Court that they were allowed by the Ombudsman to amend the Informations in Crim. Case Nos. SB-16-CRM-0115 and SB-16-CRM-0117. According to the prosecution's Memorandum to the Ombudsman, the two Informations in Crim. Case Nos. SB-16-CRM-0115 and SB-16-CRM-0117, although well-prepared, should include some essential allegations in the charges for Malversation, which also form part of the elements of the crimes charged.¹⁶ The prosecution insisted that the amendment of Information is a matter of right pursuant to Section 14, Rule 110 of the Revised Rules on Criminal Procedure, considering that all accused have not been arraigned yet.¹⁷ The proposed Amended Informations in Crim. Case Nos. SB-16-CRM-0115 and SB-16-CRM-0117 read as follows:

⁹ *Id.* at 109-121.
¹⁰ *Id.* at 110, par. 4.
¹¹ *Id.* at 258-261.
¹² *Id.* at 260.
¹³ *Id.* at 133-134.
¹⁴ *Id.* at 133.
¹⁵ *Id.* at 151-169.
¹⁶ *Id.* at 157.
¹⁷ *Id.* at 158.



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Criminal Case No. SB-16-CRM-0115

“On 20 February 2009 or sometime prior or subsequent thereto, in Pasig City, Philippines and within this Honorable Court’s jurisdiction, accused public officers **CANDIDO PIOS PANCRUDO, JR.** (Pancrudo), the then Congressman of the First District of Bukidnon, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him through the general appropriation law in the year 2008 by reason of the duties of his office, in conspiracy with **ALAN ALUNAN JAVELLANA** (Javellana), President, **RHODORA BULATAO MENDOZA** (Mendoza), Administrative and Finance Director, **MARIA NINEZ PAREDES GUAÑIZO** (Guañizo), Accounting Division Officer-in-Charge, **VICTOR ROMAN COJAMCO CACAL** (Cacal), Paralegal, all of the **NATIONAL AGRIBUSINESS CORPORATION (NABCOR)**, while in the performance of their administrative and/or official functions, together with private individual **MARK BENETUA ESPINOSA** (Espinosa), did then and there willfully, unlawfully and criminally misappropriate or consent, or through abandonment or negligence, permit or allow **USWAG PILIPINAS FOUNDATION, INC. (UPFI)** and Espinosa to take public funds amounting to at least **ONE MILLION ONE HUNDRED NINETY-THREE THOUSAND ONE HUNDRED PESOS (P1,193,100.00)**, through the following acts:

- (a) Pancrudo, unilaterally chose and indorsed UPFI, a non-government organization represented by Espinosa, as “project partner” in implementing livelihood projects to farmers in his legislative district, which were funded by Pancrudo’s PDAF allocation covered by **Special Allotment Release Order (SARO) No. ROCS-08-05200**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with UPFI being unaccredited and unqualified to undertake the projects;
- (b) **Pancrudo** and **NABCOR’s Javellana** then entered into a Memorandum of Agreement (MOA) with UPFI on the purported implementation of Pancrudo’s PDAF-funded projects, and which MOA was prepared and/or reviewed by **Cacal**;
- (c) **Javellana** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher No. 09-02-0592** along with **Cacal** and **Guañizo**, as well as causing the issuance of **United Coconut Planter’s Bank (UCPB) Check No. 455530** in the amount of **Php1,193,100.00** to UPFI which was signed by **Javellana** and **Mendoza**, without accused **NABCOR** officers and employees having carefully examined and verified the accreditation and

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qualifications of UPFI as well as the transaction's supporting documents;

- (d) **Espinosa** caused/participated in the preparation and/or signing of the Work and Financial Plan and Project Proposal, which were used as supporting documents of Disbursement Voucher No. 09-02-0592, and thereafter, acting for and in behalf of UPFI, Espinosa received the corresponding check from NABCOR; and
- (e) By their above acts, all the aforementioned accused misappropriated or consented, or through abandonment or negligence, permitted or allowed Espinosa and UPFI to take or misappropriate PDAF-drawn public funds, instead of implementing the projects which turned out to be non-existent, to the damage and prejudice of the government.

CONTRARY TO LAW.¹⁸ (*Emphases supplied to the amended portions*)

Criminal Case No. SB-16-CRM-0117

"On 1 April 2009 or sometime prior or subsequent thereto, in Pasig City, Philippines and within this Honorable Court's jurisdiction, accused public officers **CANDIDO PIOS PANCRUDO, JR.** (Pancrudo), the then Congressman of the First District of Bukidnon, a public officer accountable for exercising control over the Priority Development Assistance Fund (PDAF) allocated to him through the general appropriation law in the year 2008 by reason of the duties of his office, in conspiracy with **ALAN ALUNAN JAVELLANA** (Javellana), President, **RHODORA BULATAO MENDOZA** (Mendoza), Administrative and Finance Director, **MARIA NINEZ PAREDES GUAÑIZO** (Guañizo), Accounting Division Officer-in-Charge, **VICTOR ROMAN COJAMCO CACAL** (Cacal), Paralegal, all of the NATIONAL AGRIBUSINESS CORPORATION (NABCOR), while in the performance of their administrative and/or official functions, while taking advantage of their positions, together with private individual **MARK BENETUA ESPINOSA** (Espinosa), did then and there willfully, unlawfully and criminally misappropriate or consent, or through abandonment or negligence, permit or allow USWAG PILIPINAS FOUNDATION, INC. (UPFI) and Espinosa to take public funds amounting to at least **SIX MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED PESOS** (P6,760,900.00), through the following acts:

- (a) Pancrudo, unilaterally chose and indorsed UPFI, a non-government organization represented by the Espinosa, as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Pancrudo's PDAF

¹⁸ *Id.* at 161-162.

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- allocation covered by **Special Allotment Release Order (SARO) No. ROCS-08-05200**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with UPFI being unaccredited and unqualified to undertake the projects;
- (b) **Pancrudo** and NABCOR's **Javellana** then entered into a Memorandum of Agreement (MOA) with UPFI on the purported implementation of Pancrudo's PDAF-funded projects, and which MOA was prepared and/or reviewed by **Cacal**;
- (c) **Javellana** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher No. 09-04-1133** along with **Cacal** and **Guañizo**, as well as causing the issuance of **United Coconut Planter's Bank (UCPB) Check No. 455721** in the amount of P6,760,900.00 to UPFI which was signed by **Javellana** and **Mendoza**, without accused NABCOR officers and employees having carefully examined and verified the accreditation and qualifications of UPFI as well as the transaction's supporting documents;
- (d) **Espinosa** caused/participated in the preparation and/or signing of the reports, certificate of acceptance, official receipts, delivery receipts, sales invoices, purchase order and livelihood training program registration forms to support the transaction and make it appear in said documents that certain suppliers transacted with UPFI for the projects indicated therein and that livelihood trainings for certain beneficiaries were conducted when, in truth and in fact, as he and his co-accused fully knew, said suppliers did not have transaction with UPFI for the subject projects and there were no trainings conducted for the beneficiaries; and thereafter, acting for and in behalf of UPFI, **Espinosa** received the corresponding check from NABCOR; and
- (e) By their above acts, all the accused misappropriated or consented or, through abandonment or negligence, permitted or allowed **Espinosa** and UPFI to take or misappropriate PDAF-drawn public funds, instead of implementing the projects which turned out to be non-existent, to the damage and prejudice of the government.

CONTRARY TO LAW.¹⁹ (*Emphases supplied to the amended portions*)

During the conditional arraignment on 20 May 2016, pleas of "Not Guilty" were entered for accused **Espinosa** (in Crim. Case Nos. SB-16-

¹⁹ *Id.* at 166-168.

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CRM-0114, 0115 and 0117) and Pancrudo (in Crim. Case No. SB-16-CRM-0114).²⁰

In its *Resolution*²¹ dated 15 June 2016, this Court granted the prosecution's *Manifestation with Motion to Admit Amended Information*, and admitted the Amended Informations in SB-16-CRM-0115 and SB-16-CRM-0117, stating that the prosecution may amend the Informations as a matter of right considering that accused Espinosa's arraignment was merely conditional and none of the other accused have been arraigned.²² This Court also ruled that in the present cases a reinvestigation is not needed since the charge of malversation was not the one being changed, but only the modality of the perpetration thereof.²³

During the arraignment on 23 June 2016, accused Pancrudo entered a plea of "Not Guilty" in SB-16-CRM-0115 and 0117.²⁴ On 11 July 2016, accused Espinosa was arraigned in SB-16-CRM-0115, 0116 and 0117, while accused Pancrudo was arraigned in SB-16-CRM-0116.²⁵ Both accused Espinosa and Pancrudo entered "Not Guilty" pleas in the respective cases. Accused Cacal entered a plea of "Not Guilty" during his arraignment on 20 September 2016 for Criminal Case Nos. SB-16-CRM-0114 to 0117.²⁶

As contained in the *Pre-trial Orders*²⁷ dated 1 February 2017, the prosecution and the defense stipulated on the following facts and arguments:²⁸

1. **Identity** of accused Pancrudo, Espinosa and Cacal as the same persons charged in the information in these cases, and the jurisdiction of the Honorable Court;
2. At the time material to the instant cases, the following accused were public officers occupying the following respective positions:
 - a. Candido Pios Pancrudo, Jr. – Representative, 1st District of Bukidnon, House of Representatives, Republic of the Philippines;

²⁰ *Id.* at 239.

²¹ *Id.* at 262-272.

²² *Id.* at 264.

²³ *Id.* at 270.

²⁴ *Id.* at 306.

²⁵ *Id.* at 355.

²⁶ *Id.* at 417.

²⁷ *Id.* at 256-302; and 303-353.

²⁸ *Id.* at 294-297.

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- b. Alan Alunan Javellana – President, National Agribusiness Corporation (NABCOR);
 - c. Maria Ninez Paredes Guañizo – Officer-in-Charge of Accounting Division, NABCOR; and
 - d. Victor Roman Cojamco Cacal – Paralegal/General Services Supervisor, NABCOR;
3. Accused Pancrudo, Espinosa and Cacal admit the **existence** but not the authenticity of the following:
 - a. SARO-ROCS-08-05200 dated 11 June 2008 in the amount of P8,200,000.00;
 - b. Notice of Cash Allocation No. 368491-4 dated 13 June 2008 in the amount of P8,200,000.00;
 - c. Advice of NCA Issued dated 13 June 2008 in the amount of P8,200,000.00;
 - d. 1st Indorsement dated 22 May 2008 from the House of Representatives with attached list of projects for the First Tranche of FY 2008 chargeable against the PDAF, consisting of two pages;
 4. At the time material to the instant cases, accused Pancrudo was a **Public Officer**, being the incumbent Representative of the First District of Bukidnon in the House of Representatives;
 5. The **existence** of Exhibit "C-5" Indorsement Letter dated 7 May 2008 addressed to Prospero Nograles, Speaker of the House of Representatives – **ADMITTED** by the defense counsel of Pancrudo as to its existence;
 6. That the Department of Budget and Management (DBM) issued Special Allotment Release Order (SARO) No. **ROCS-08-05200** dated 11 June 2008 in the amount of **Php8,200,000.00** and Advice of Notice of Cash Allocation (NCA) No. 368491-4 to the Department of Agriculture (DA) to cover cash requirements for financial assistance for the implementation of the livelihood programs in the 1st District of Bukidnon, upon the initiative of accused Cong. Pancrudo, chargeable against PDAF, FY 2008 Budget – **ADMITTED** by accused Cacal;
 7. The fund of Php8,200,000.00 covered by SARO No. ROCS-08-05200 was transferred to the National Agribusiness Corporation (NABCOR), per Memorandum of Agreement dated 23 December 2008 between the DA, represented by then Secretary Arthur C. Yap and NABCOR, represented by its President, accused Javellana – **ADMITTED** by accused Cacal;

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8. The fund of Php8,200,000.00 covered by SARO No. ROCS-08-05200 was released to Us汪 Pilipinas Foundation, Inc. (UPFI) per Memorandum of Agreement dated 20 February 2009 between NABCOR represented by accused Javellana, accused Pancrudo and UPFI represented by accused Espinosa, UPFI's Corporate Secretary – **ADMITTED** by accused Cacal;
9. VICTOR ROMAN C. CACAL is one of the accused in these cases – **ADMITTED** with qualification that accused Cacal is the same person charged in the Informations subject of these cases;
10. At the time material to these cases, the following public officers of NABCOR were President ALAN ALUNAN JAVELLANA, VP for Admin & Finance RHODORA BULATAO MENDOZA, OIC-Accounting MARIA NINEZ PAREDEZ GUANIZO and General Services Supervisor/Paralegal VICTOR ROMAN C. CACAL – **ADMITTED** with qualification that accused Mendoza was the Director for Admin and Finance and later on appointed as the Vice-President for Admin and Finance;
11. On 20 August 2008, [accused Cacal] was authorized to sign Box "A" of Disbursement Vouchers of all PDAF transactions.

Trial ensued following the termination of pre-trial as regards accused Pancrudo, Espinosa, and Cacal.

In the course of trial, the prosecution made an Ex-Parte Manifestation on 15 March 2017²⁹ that accused Javellana, Mendoza and Guañizo remained at large,³⁰ and while accused Javellana went into hiding and left the country,³¹ accused Mendoza and Guañizo were still residing in the Philippines.³² Thus, this Court caused the issuance of *alias* warrants of arrest, as contained in the *Minutes* dated 20 March 2017.³³

On 14 July 2017, accused Guañizo was brought under the custody of the Sheriff & Security Services Division of the Sandiganbayan.³⁴ Accused Guañizo was arraigned on 3 August 2017, and entered a "Not Guilty" plea.³⁵

²⁹ *Id.* at 358.

³⁰ *Id.* at par. 1.

³¹ *Id.* at par. 3.a.

³² *Id.* at pars. 3.b. and 3.c.

³³ *Id.* at 388.

³⁴ *Records*, Vol. 4, p. 18.

³⁵ *Id.* at 90.

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On 10 August 2017, accused Guañizo filed her Pre-Trial Brief.³⁶ On 23 October 2017, the Court issued the Pre-Trial Order as regards accused Guañizo.³⁷ Counsel for accused Guañizo adopted the stipulations, manifestations and observations of the counsels for accused Pancrudo, Espinosa, and Cacal.³⁸

Accused Guañizo also admitted the following stipulation of facts proposed by the prosecution, to wit:³⁹

1. The Department of Budget and Management (DBM) issued Special Allotment Release Order (SARO) No. ROCS-08-05200 dated 11 June 2008 in the amount of Php8,200,000.00 and Advice of Notice of Cash Allocation (NCA) No. 368491-1 to the Department of Agriculture (DA) to cover cash requirements for financial assistance for the implementation of the livelihood programs in the 1st District of Bukidnon, upon the initiative of accused Cong. Pancrudo, chargeable against PDAF, FY 2008 Budget;
2. The fund of Php8,200,000.00 covered by SARO No. ROCS-08-05200 was transferred to the National Agribusiness Corporation (NABCOR), per Memorandum of Agreement dated 23 December 2008 between the DA, represented by then Secretary Arthur C. Yap and NABCOR, represented by its President, accused Javellana;
3. The fund of Php8,200,000.00 covered by SARO No. ROCS-08-05200 was released to USWAG Pilipinas Foundation, Inc. (UPFI) per Memorandum of Agreement dated 20 February 2009 between NABCOR represented by accused Javellana, accused Pancrudo and UPFI represented by accused Espinosa, UPFI's Corporate Secretary;
4. The **existence** of the following:
 - a. SARO-ROCS-08-05200 dated 11 June 2008 in the amount of P8,200,000 (Exh. "A-8"; "A-8-a"; "C");
 - b. Notice of Cash Allocation No. 368491-4 dated 13 June 2008 in the amount of P8,200,000.00 (Exh. "C-1");
 - c. Advice of NCA Issued (ANCAI) dated 13 June 2008 in the amount of P8,200,000.00 (Exh. "A-8-e"; "A-8-f"; "C-2"); and
 - d. 1st Indorsement dated 22 May 2008 from the House of Representatives with attached list of projects for the First Tranche of FY 2008 chargeable against the PDAF, consisting of two (2) pages (Exh. "A-8-b"; "A-8-c"; "C-3"; "C-4").

³⁶ *Id.* at 120.

³⁷ *Id.* at 183.

³⁸ *Id.*

³⁹ *Id.* at 186-187.

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5. The **existence and due execution** of the Disbursement Vouchers and that her signature appears thereon, as contained in Exhibits **"B-18-J"** and **"B-18-p"**.
6. Accused Guañizo admits the following facts alleged by the prosecution in the Amended Informations:
 - a. The personal circumstances of the plaintiff;
 - b. The personal circumstances of the accused;
 - c. Her official position in NABCOR as bookkeeper—with counter proposal from the prosecution that at the time material to the charges, Guañizo is the Officer-in-Charge of the Accounting Services Division of the NABCOR.

The prosecution stipulated that accused Guañizo signed the Disbursement Voucher on Box "B" of the Disbursement Voucher, "Certified: Supporting documents complete and proper" on Exhibit **"B-18-J"** and Exhibit **"B-18-p"**.⁴⁰

While trial was ongoing, this Court issued a Bench Warrant of Arrest against accused Guañizo in view of her failure to attend the hearings for these cases.⁴¹ This Court also issued an Alias Warrant of Arrest against accused Mendoza in view of her continued failure to attend the hearings for these cases.⁴²

On 2 March 2018, accused Mendoza was brought under the custody of the Sheriff & Security Services Division of the Sandiganbayan.⁴³ During her arraignment on 14 March 2018, accused Mendoza entered a plea of "Not Guilty."⁴⁴

On 29 April 2019, the prosecution filed its *Formal Offer of Evidence*.⁴⁵ This Court resolved the formal offer and the comments/opposition thereto in its *Resolution*⁴⁶ dated 13 August 2019.

Herein accused filed their respective *Motions for Leave (to File Demurrer to Evidence)*⁴⁷, which the Court resolved to deny in its *Resolution*⁴⁸ dated 26 September 2019. Accused Espinosa's *Motion*

⁴⁰ *Id.* at 188.

⁴¹ *Minute Resolution dated 07 February 2018; Records, Vol. 4, p. 236.*

⁴² *Minute Resolution dated 07 February 2018; Records, Vol. 4, p. 238.*

⁴³ *Records, Vol. 4, p. 313.*

⁴⁴ *Id.*, at 366.

⁴⁵ *Records, Vol. 7, pp. 5-1330.*

⁴⁶ *Records, Vol. 8, pp. 281-316.*

⁴⁷ *Records, Vol. 8, p. 351; p. 356; 367.*

⁴⁸ *Id.*, at 407.

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for Reconsideration⁴⁹ of the Resolution denying their Motions for Leave, was likewise denied by this Court in its Resolution⁵⁰ dated 23 October 2019.

After the presentation of the last witness for the defense, the Court ordered⁵¹ all accused to file their formal offer of exhibits. The accused filed their respective *Formal Offer of Evidence*,⁵² which the Court resolved in two separate *Resolutions* dated 12 April 2022,⁵³ and 21 April 2022.⁵⁴ Thereafter, trial was terminated and these cases were submitted for decision.

EVIDENCE FOR THE PROSECUTION

I. TESTIMONIAL EVIDENCE

- a. **Don A. Esquivel** – Currently a Graft Prevention and Control Officer V at the Office of the Ombudsman; previously an Associate Graft Investigation Officer (AGIO) III assigned at the Fact-Finding Investigation Bureau, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (FFIB, OMB-MOLEO)

On 15 March 2017 the prosecution presented its first witness, **Don A. Esquivel** (“Esquivel”). As culled from the *Joint Stipulations (on witness Esquivel’s Direct Testimony)*⁵⁵ dated 25 April 2017, the parties stipulated that Esquivel was asked to conduct fact-finding investigation, including field investigation of regular cases and special cases such as PDAF, prepare reports, sworn statements, gather evidence, prepare complaints and other pleadings for filing, and testify in court. In March 2014, he was designated as a member of OMB Special Team 12, created under Office Order No. 46, Series of 2014 to conduct fact-finding investigation on the utilization of the PDAF of former Congressman Candido P. Pancrudo, Jr. per Case Referral Sheet FF-C-14-0085.⁵⁶ Esquivel’s team gathered and validated

⁴⁹ *Id.*, at 421.

⁵⁰ *Id.*, at 475.

⁵¹ Order dated 22 February 2022; *Records*, Vol. 9, p. 364.

⁵² *Records*, Vol. 9, p. 372 (for Espinosa); Vol. 10, p. 19 (for Cacal, Mendoza and Guañizo); Vol. 10, p. 57 (for Pancrudo).

⁵³ *Records*, Vol. 10, p. 172.

⁵⁴ *Id.*, at 199.

⁵⁵ *Records*, Vol. 3, pp. 472-487.

⁵⁶ *Id.* at 472-473.

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documents and records obtained from several government agencies.⁵⁷ After the investigation, the team came up with its findings and on the basis of which, the team, through Esquivel and three other members of the OMB Special Team 12, namely: Atty. Maria Teresa L. Lee-Rafols, La Joyce Wyne T. Nomi, and AGIO Edwin Q. Benabese, prepared and signed an *Affidavit Complaint* under oath representing the OMB Special Team 12 as complainant.⁵⁸

The prosecution and defense stipulated: (1) that Esquivel can affirm the truthfulness and veracity of the contents of the complaint marked as Exhibit "A";⁵⁹ (2) that witness Esquivel can also identify all its attachments (Exhibits "A-1" to "A-28-m") as the documents gathered and examined by him and the members of the team in the course of the investigation;⁶⁰ and (3) on the existence of the documents marked as Exhibits "A" to "A-28-m".⁶¹ Esquivel testified that after their team gathered the said documents, they conducted the field validation of the alleged beneficiaries of the livelihood projects of accused Pancrudo's PDAF,⁶² and among their team, it was him and AGIO Edwin Benabese who conducted the field validation pursuant to the Travel Order issued by their office.⁶³ They went to Bukidnon and conducted the validation of the Municipal Relation Officers and different *barangays* in the First District of Bukidnon⁶⁴ and found that the supposed livelihood projects of Pancrudo were ghost projects because the alleged beneficiaries are nonexistent and there were no livelihood trainings done, according to the statements and certifications they took from different *barangays* in the First District of Bukidnon.⁶⁵ They also discovered that the conduit non-government organization "Uswag Pilipinas Foundation Inc." does not exist at its office address at Haro (sic), Iloilo City,⁶⁶ by seeking the assistance of NBI Iloilo in determining whether the said organization was conducting business at its given address at Hardeliza (sic) Building, Haro (sic), Iloilo City.

⁵⁷ *Id.* at 473, par. 5.

⁵⁸ *Id.* at par. 6.

⁵⁹ *Id.* at 485, par. 11.

⁶⁰ *Id.* at par. 12.

⁶¹ *Id.* at par. 13.

⁶² TSN dated 25 April 2017, p. 14.

⁶³ *Id.* at 14-15.

⁶⁴ *Id.* at 15-16.

⁶⁵ *Id.* at 16-17.

⁶⁶ *Id.* at 17.

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The NBI reported that UPFI was not a tenant of the said building.⁶⁷ Based on the documents gathered by the witness and his team from the Securities and Exchange Commission, UPFI, which was selected by Pancrudo to implement his livelihood project in the First District of Bukidnon, was formerly called “Uswag Guimaras Foundation” before it changed its name sometime in 2008.⁶⁸ After they established that the livelihood project of Pancrudo in the First District of Bukidnon was a ghost project, witness Esquivel and the team prepared the Investigation Report, and the Affidavit Complaint.⁶⁹

On cross-examination, witness Esquivel confirmed that they gathered documents and took the statements of witnesses in the process of their field investigation.⁷⁰ Esquivel also clarified that his conclusion that the livelihood project of Pancrudo was a ghost project was based on the “statements of the witnesses, *barangay* captains and the Municipal Election Officer on whether the alleged beneficiaries are residents of their *barangay* as identified in the [list of] beneficiaries of the PDAF,⁷¹ and the “certifications based on the official records of the *barangay*.”⁷² Esquivel said they did not go beyond the statements and certifications because “they [the beneficiaries] cannot be located”⁷³ and that the records of the Municipal Election Officer also show that the persons “did not exist.”⁷⁴ Esquivel also admitted that in the course of their validation of UPFI, none of the team members contacted the individual officers and members of the Board of Trustees of UPFI to determine the existence of the NGO,⁷⁵ and that apart from the documents from the SEC, their team did not refer to any other documents such as Business, Mayor’s, or Sanitation Permits to determine the existence of UPFI.⁷⁶

On re-direct, witness Esquivel reiterated the purpose of conducting a background investigation of UPFI, which was to

⁶⁷ *Id.* at 18.
⁶⁸ *Id.* at 19.
⁶⁹ *Id.* at 20-21.
⁷⁰ *Id.* at 23.
⁷¹ *Id.* at 26.
⁷² *Id.* at 27.
⁷³ *Id.*
⁷⁴ *Id.* at 27-28.
⁷⁵ *Id.* at 30-31.
⁷⁶ *Id.* at 31-32.

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determine whether the said organization actually exists and if it really "existed at its given address."⁷⁷ He said that UPFI not existing at their given address meant that UPFI was a bogus NGO because it only "exists in papers."⁷⁸

b. Marissa A. Santos - Chief Administrative Officer of the Central Records Division of the DBM

The prosecution's next witness was **Marissa A. Santos**. Per *Order* dated 18 May 2017,⁷⁹ the parties stipulated that she is in custody of Exhibits "C" to "C-5", and that she issued certified true copies of the same.

c. Carmencita N. Delantar – Formerly Director IV of the DBM assigned at the Budget and Management Bureau-G ("Bureau-G") (2000-2015)

Carmencita N. Delantar ("Delantar"), per *Joint Stipulations (on witness Delantar's Direct Testimony)*,⁸⁰ testified that Bureau-G used to be known as Regional Operations and Coordination Service (ROCS) until it was reorganized in 2009. Bureau-G is one of the technical operating bureaus in charge of the processing of funds such as the Internal Revenue Allotment, special shares of Local Government Units (LGUs), the PDAF of legislators, calamity fund, among others, and preparing the release documents such as the Special Allotment and Release Order (SARO), Notice of Cash Allocation (NCA) and Advice of Notice of Cash Allocation Issued (ANCAI), among others. As head of Bureau-G, she supervised the processing of the **SARO ROCS-08-05200**, dated 11 June 2008, in the amount of **Php8,200,000.00** (Exhibit "C") relating to the PDAF allocation of accused Pancrudo, subject of these cases. Delantar explained that a SARO refers to the authority to incur expenditures. It is a formatted, accountable document, which shows the following details: the Recipient Department Code, Implementing Agency, Agency Code, Fund Code, Appropriation Source and Amount. **SARO ROCS-08-05200** was processed and issued upon the

⁷⁷ *Id.* at 36-37.

⁷⁸ *Id.* at 37.

⁷⁹ *Records*, Vol. 3, p. 501.

⁸⁰ *Records*, Vol. 4 pp. 92-96.

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initiative of accused Pancrudo, as Representative of the First District of Bukidnon. The documents involved in processing the said SARO include: letter from the Representative to the Speaker submitting a list of priority projects to be funded from the Representative's PDAF allocation, and indorsement from the Speaker and the Chairman of the Appropriations Committee to the Secretary of DBM of a list of priority projects to be funded from the PDAF allocations, which Delantar will identified as follows:

Exhibit	Description
C-3 to C-4	1 st Indorsement, dated 22 May 2008, from the House of Representatives, with attached list of projects for the First Tranche of FY 2008, chargeable against the PDAF, consisting of two pages (<i>Certified True Copy</i>)
C-5	Letter from Candido P. Pancrudo, Jr., dated 7 May 2008, addressed to Prospero C. Nograles, Speaker of the House of Representatives (<i>Certified True Copy</i>)

Delantar explained that in the preparation of the SARO, Bureau-G evaluates whether the project listing is in accordance with the project menu under the Government Appropriations Act (GAA). The project menu is a list of programs and projects mandated to be undertaken by authorized implementing agencies. After evaluation, the bureau thereafter proceeds with the preparation of the SARO in five (5) copies, namely: the **white copy**, the original copy, which is released to the implementing agency; and the duplicate originals consisting of (a) the second copy, the **pink copy**, that goes to the Budget and Technical Services (BTS) which is the releasing unit that distributes copies to the appropriate offices; (b) the third copy, a **blue copy**, which is the copy that goes to the Commission on Audit; (c) the fourth copy, a **light green copy**, which goes to the originating bureau that processes the release documents; (d) and the fifth copy, the **light yellow copy**, which goes to the DBM Regional Office. The SARO is then forwarded to the DBM Office of the Undersecretary Mario L. Relampagos for further evaluation and finally sent to the Office of the Secretary (OSEC) for his signature. After the SARO is signed, it goes back to the Bureau-G for a recording to be made that the SARO was already approved and signed. A

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photocopy of a signed SARO is furnished to the legislator by the OSEC, informing the legislator that the SARO has been approved. The original copy of the SARO is then sent to the BTS of the DBM, the bureau that officially releases the SARO. On the basis of the approved SARO, the Notice of Cash Allocation (NCA) and the Advice of NCA Issued (ANCAI) are prepared by Bureau-G, which Delantar identified as follows:

Exhibit	Description
C-1	Notice of Cash Allocation (NCA) No. 368491-4 dated 13 June 2008, in the amount of Php8,200,000.00 (<i>Certified True Copy</i>)
C-2	Advice of NCA Issued, dated 13 June 2008, in the amount of Php8,200,000.00 (<i>Certified True Copy</i>)

The NCA is the authority to pay and is a document that goes to the bank for credit to the account of the Implementing Agencies, in this case, the Department of Agriculture, Office of the Secretary. The ANCAI is a notice to the agency informing them that the cash requirement has already been processed and issued to the bank for credit to their account. The NCA and ANCAI are also released by the BTS.

The parties stipulated on the **existence** but denied the due execution of documents enumerated above marked as **Exhibits "C", "C-1", "C-2", "C-3", "C-4", and "C-5"**. The counsels for accused Pancrudo, Espinosa and Cacal further stipulated that Delantar can identify the documents subject of the proposals for stipulations, as well as the process and eventual issuance of the SARO.

Delantar further explained during her direct testimony that each SARO contains seventeen (17) "boxes;" each department and each agency has a unique agency [code] and no one can just put any code because codes are agreed upon by the Department of Finance, DBM and the COA.⁸¹ In filling up the seventeen (17) boxes, each one has its individual code; a "colatilla" exists in all SAROs,⁸² and the colatilla refers to the

⁸¹ TSN dated 23 October 2017, pp. 16-17.

⁸² *Id.* at 16.

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portion stating "the allotment herein authorized shall be used solely for the purpose indicated [x x x]".⁸³ She also explained that a Notice of Cash Allocation (NCA) is "a document for the bank and not anyone else because it is a document proving that there is cash to be deposited in the authorized depository bank of the department or agency."⁸⁴ This NCA is released in only two copies—a green copy goes to the bank, while a pink copy goes to the DBM Releasing unit.⁸⁵ She also described the Advice of NCA Issued (ANCAI) as a "notification to the department or the agency that the cash has already been prepared and given to the authorized bank of the department or agency."⁸⁶

During cross-examination, Delantar stated that it is the congressman who states the department, agency or bureau that has primary responsibility over the disbursement contained in the SARO, and not the DBM.⁸⁷ In the subject SARO she identified, the department chosen to have primary responsibility over the disbursement is the Department of Agriculture.⁸⁸

d. Darwin C. Santos – Currently Securities Counsel II of the Securities and Exchange Commission (SEC)

The parties stipulated that **Darwin C. Santos** ("Santos") had custody of **Exhibits "A-16" to "A-16-J,"** which are certified true copies of UPFI's Articles of Incorporation, General Information Sheet, and other documents coming from the SEC. The parties also stipulated on the existence of the said documents identified by Santos.⁸⁹

e. Gregorio A. Tomagan, Jr. - Special Investigator III of the National Bureau of Investigation (NBI); previously assigned at NBI-Western Visayas Regional Office VI (NBI-WEVRO VI) Iloilo City from 2011 to 2016

⁸³ *Id.* at 17.

⁸⁴ *Id.* at 18.

⁸⁵ *Id.* at 19.

⁸⁶ *Id.*

⁸⁷ *Id.* at 23.

⁸⁸ *Id.*

⁸⁹ TSN dated 27 September 2017, pp. 9-14.

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As stipulated by the defense counsels,⁹⁰ witness **Gregorio A. Tomagan, Jr.** ("Tomagan") can identify the following documents,⁹¹ to wit:

Exhibit	Description
A-27	Memorandum, dated 27 March 2014, addressed to Atty. Maria Teresa L. Lee-Rafols, from NBI Regional Director Atty. Manuel A. Almendares (<i>Annex X of the Affidavit-Complaint</i>)
A-27-a	Memorandum, dated 27 March 2014, addressed to RD, WEVRO, from SI Gregorio A. Tomagan, Jr., consisting of four (4) pages
A-27-b	Memorandum, dated 27 March 2014, addressed to SI Gregorio A. Tomagan, Jr., from Atty. Manuel A. Almendares
A-27-c	Letter of Atty. Manuel A. Almendares, dated 17 March 2014, addressed to the SEC-Region VI Regional Director
A-27-d	SEC Certificate of Corporate Filing/Information issued by Atty. Russell I. Ildesa on 27 March 2014
A-27-e	Computer printout of images of Jardeleza building and Law Office of Atty. Edgar T. Espinosa, attached as Annex F to F-2 to the NBI Disposition Report dated 27 March 2014 consisting of three (3) pages
A-27-f	Letter, dated 20 March 2014, addressed to Manuel A. Almendares from Mark Geraldine Ryan A. Bion (<i>Annex X-1 of the Complaint-Affidavit</i>)

According to the Memorandum (Exh. "A-27-a")⁹² he prepared, Tomagan was assigned to investigate and make a report⁹³ about the existence of "USWAG Pilipinas Inc., or USWAG Pilipinas Foundation Inc.," a non-governmental organization with office address located at No. 192 Jardeleza Bldg., Jaro Plaza, Jaro, Iloilo City. After his investigation, he found that Jardeleza Building exists and could be located at Plaza Jaro, Jaro, Iloilo City. Said building was owned by the Jardeleza Family of Jaro. One of the owners of the building, Mr. Noel Jardeleza, informed the witness that one of the units of the

⁹⁰ Records, Vol. 4, p. 192.

⁹¹ *Id.*

⁹² Records, Vol. 4, p. 170.

⁹³ Exh. "A-27-b".

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building was leased/rented by Atty. Edgar T. Espinosa as Law Office since 1991 up to the time of writing of the report. Mr. Jardeleza also informed the Tomagan that the Atty. Edgar T. Espinosa who leased the unit is the same Atty. Edgar T. Espinosa who was a former Congressman of Guimaras.⁹⁴ His report also contained the following findings:

"06. [x x x] [A]n interview was conducted with Ms. SALLY BALISTA (Secretary of Atty. Edgar T. Espinosa at his Law Office located in one of the units of Jardeleza Building), and she said that "USWAG" was established by Atty. Edgar T. Espinosa when he was still a Congressman of Guimaras, but when Espinosa lost his reelection bid in 2007, "USWAG" ceased its operation. Balista also said that Atty. Espinosa was a Congressman of Guimaras from 2001 up to 2007."⁹⁵

"07. When interviewed, Atty. Espinosa admitted that he rented a unit of Jardeleza Building located at Plaza Jaro, Jaro, Iloilo City, where he put up his Law Office. x x x [H]e admitted that he founded USWAG but after losing his reelection bid in 2007, the same ceased its operation."⁹⁶

"09. Verification with the Securities and Exchange Commission (SEC-Region 6, Iloilo City), disclosed that USWAG Guimaras Foundation Inc., was incorporated under the Laws of the Philippines on 11 December 2001 with SEC Registration No. CN200100833. It further certified that USWAG Guimaras Foundation, Inc., later changed its corporate name to USWAG Pilipinas Foundation, Incorporated, which was approved by the SEC on September 26, 2008 (Exh. "A-27-d") [x x x]."⁹⁷

The photographs included in his report (Exh. "A-27-e" series) did not show any signage pertaining to UPFI.⁹⁸

Based on the *Barangay* Certificate (Exh. "A-27-f") given to him by *Barangay* Chairman Mark Geraldine Ryan A. Bion of *Brgy.* Luna, Jaro, Iloilo City, the *barangay* had no records to present for the *barangay* clearance and *barangay* business permit of "USAWAG (sic) Pilipinas Foundation, with the claimed address at 192 Jardeleza Bldg. Plaza Jaro, Iloilo City" for the calendar years 2007-2009 until 2014. It stated that "[a]ll

⁹⁴ *Id.*, at 171.

⁹⁵ *Id.*

⁹⁶ *Id.*, at 172.

⁹⁷ *Id.*

⁹⁸ *Id.*, at 177-179.

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establishment that are operating in *Barangay* Luna, Jaro, Iloilo City has been recorded in [their] data's (sic) with the exemption (sic) of USWAG Pilipinas Foundation Inc." In conclusion, "USWAG Pilipinas Foundation Inc. did not exist to (sic) the said address of 192 Jardeleza Bldg., Plaza Jaro, Iloilo City from 2007-2009 to this date (20 March 2014)."⁹⁹

On cross-examination, Tomagan testified that the validation or verification of the existence of UPFI was conducted in "more or less ten (10) days, ten (10) days from the date [they] received a request and the date [he] submitted [his] report."¹⁰⁰ Tomagan also admitted that in conducting the validation/verification of UPFI's existence, he did not conduct any validation for years after 2009 (i.e. 2010, 2011, 2012 and 2013);¹⁰¹ he did not interview the other owners of the Jardeleza Building apart from Mr. Noel Jardeleza;¹⁰² when he interviewed the other occupants of the building, he was told that they did not know the "existence of any [UPFI] at 2014";¹⁰³ he did not require or ask proof from Ms. Balista regarding the filing of Uswag Pilipinas of any documents with the SEC regarding its cessation of operations after she mentioned to the witness that Uswag ceased its operation after Atty. Espinosa lost his reelection bid in 2007;¹⁰⁴ he did not ask Atty. Espinosa if Uswag Pilipinas filed any document with the SEC regarding its cessation of operations;¹⁰⁵ and he did not reach out or interview the other founders of UPFI indicated in the SEC Certificate of Corporate Filing of Information.¹⁰⁶

During the re-direct examination, Tomagan clarified that he did not conduct validation for the existence of UPFI for the years 2012, 2013 and 2014 because "when the request was received by [their] office, it was already 2014, and based on the records, and according to Congressman Espinosa and his secretary, [UPFI] ceased to exist in 2007."¹⁰⁷

⁹⁹ *Id.*, at 180.

¹⁰⁰ TSN dated 27 February 2018, p. 6.

¹⁰¹ *Id.*, at 7-8.

¹⁰² *Id.*, at 8.

¹⁰³ *Id.*, at 13.

¹⁰⁴ *Id.*, at 14.

¹⁰⁵ *Id.*, at 15.

¹⁰⁶ *Id.*, at 16-18.

¹⁰⁷ *Id.*, at 21-22.

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- f. **Elizabeth Lacson Ferrer** – Proprietor/owner of Screenmark Printing & Advertising, one of the suppliers of Livelihood Technology Kits under the “Alternative Livelihood Opportunities Through the Use of Livelihood Technology Kits” Program funded by the PDAF of Pancrudo

In her Judicial Affidavit, **Elizabeth Lacson Ferrer** (“Ferrer”) testified that she is the proprietor owner of Screenmark Printing & Advertising from 1999 to 2012.¹⁰⁸ In 2010, Ferrer received a Letter from the Commission on Audit (COA) asking her to confirm the issuance and authenticity of Official Receipt No. 6623 from Screenmark Printing & Advertising to UPFI (Exh. “**A-19-e**”). She denied knowing accused Pancrudo¹⁰⁹ and having issued the said receipt to UPFI. She testified that the receipt from COA was false, and Screenmark Printing & Advertising did not receive such amount indicated therein, i.e., **SEVEN MILLION SEVENTEEN THOUSAND FIVE HUNDRED PESOS** (P7,017,500.00) in payment for “Livelihood Technology Kits”.¹¹⁰ Contrary to COA’s copy, their true copy of Official Receipt No. 6623 was issued to one “Z-Zone” in the amount of P1,473.21, not to Uswag Pilipinas Foundation.¹¹¹ She identified the documents she received from COA, marked as Exhibit “**A-19-e**”,¹¹² and her Reply Letter to COA dated 9 December 2010, marked as Exhibit “**A-20**”.¹¹³

On cross-examination, Ferrer testified that she handles the sales and receipt of payments, and she enters into dealings or contracts with their customers in her personal capacity.¹¹⁴ She also testified that although her nickname “Beth Ferrer” appears above the portion authorized signature over printed name in Official Receipt No. 6623, she claimed that it was not her signature,¹¹⁵ and she did not know who made the said receipt that’s why she did not file any case for falsification or forgery.¹¹⁶ When asked about the Reply Letter she sent to COA, she clarified that she sought the help of another person to write the

¹⁰⁸ *Records*, Vol. 4, p. 259.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, at 280; Exh. “A-19-e”.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*, at 261.

¹¹⁴ TSN dated 27 February 2018, p. 34.

¹¹⁵ *Id.*, at 38.

¹¹⁶ *Id.*

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same because she did not know how to use a computer.¹¹⁷ She admitted she did not contact UPFI regarding Official Receipt No. 6623 despite her claim that it was not the true Official Receipt.¹¹⁸

g. Barangay Chairpersons and Election Officers from the First (1st) District of Bukidnon

Yolanda M. Valdehueza (“Valdehueza”) testified¹¹⁹ that she was the *Barangay* Chairman of *Barangay* Sto. Niño, Manolo Fortich, Bukidnon in March 2014. Sometime in 2014, she received a subpoena from Atty. Lee-Rafols of OMB-MOLEO containing a list of individuals and she was directed to issue a written information thru a certification under oath stating whether the listed individuals were residents and/or registered voters of *Barangay* Sto. Niño, Manolo Fortich, particularly during 2007 to 2009. Pursuant to the subpoena, she issued a Certification dated 29 March 2014 (Exh. “A-28-e”), certifying that the names listed in the subpoena dated 25 March 2014 are not *bonafide* residents of her *barangay* since 2007 up to 2014, and that UPFI did not conduct training in *Barangay* Sto. Niño, Manolo Fortich in the years mentioned.

On cross-examination, witness Valdehueza admitted that she was not the incumbent *barangay* chairman during the period of 2007 to 2009¹²⁰ and that she had no personal knowledge as to whether UPFI conducted any training in their *barangay*.¹²¹ She explained that her basis for issuing and signing the Certification (Exh. “A-28-e”) is the fact that she had been a resident of Sto. Niño, Manolo Fortich for almost 42 years since 1976, and because she was a teacher from 1976 to 2012, she knew almost everyone since it was only a small *barangay*.¹²² When she read the names listed in the subpoena from Atty. Lee-Rafols, she was sure that they were not *bonafide* residents of Sto. Niño.¹²³ She even asked the *kagawad*, secretary and the treasurer of the *barangay* if they knew the names and they answered that those people were not from Sto. Niño.¹²⁴ Valdehueza also stated that

¹¹⁷ *Id.*, at 40-41.

¹¹⁸ *Id.*, at 42.

¹¹⁹ Records, Vol. 4, pp. 335-336.

¹²⁰ TSN dated 3 May 2018, p. 10.

¹²¹ *Id.*

¹²² *Id.*, at 11.

¹²³ *Id.*, at 14.

¹²⁴ *Id.*

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she had a list of registered voters from 2007 to 2010, and the names were not there.¹²⁵

Enrique B. Nemenzo, Jr. ("Nemenzo") testified that he is the *Barangay* Chairman of *Barangay* Sta. Fe, Libona, Province of Bukidnon in March 2014 up to present.¹²⁶ On 30 March 2014, he issued a Certification (Exh. "A-28-I")¹²⁷ because he received from the Office of the Ombudsman¹²⁸ a subpoena dated 25 March 2014 (Exh. "A-6-x") clarifying whether the names listed therein are residents of the *Barangay* Sta. Fe, Libona, Bukidnon, particularly during 2007 to 2009.¹²⁹ Pursuant to the subpoena, he issued a Certification dated 30 March 2014 (Exh. "A-28-I"), certifying that based on the records in their *barangay* (a logbook containing the residents of the *barangay* from 2006 to 2009¹³⁰), the individuals listed in the subpoena are not residents of their *barangay*.¹³¹ According to him, there was no livelihood "Training Program on Beef Cattle Fattening in their *barangay* by Uswag Filipinas (sic) Foundation" particularly in 2007 to 2008 because when he asked his secretary to produce the records of any trainings and seminars, the latter provided the records and informed him that there aren't any records of the said seminar, and that the Cattle Training was from "Government (sic) Zubiri."¹³²

On cross-examination, Nemenzo testified that he was a resident of Sta. Fe, Libona, Bukidnon from 1990 up to 2018,¹³³ and prior to being *Punong Barangay* of *Brgy.* Sta. Fe from 2010 to 2018, he was not a *barangay* official because he lost the elections in 2007.¹³⁴ He claimed to have personal knowledge as to the absence of the livelihood program of Beef and Cattle Fattening by Uswag Filipinas (sic) Foundation for the year 2007 and 2008 in *Brgy.* Sta. Fe because that's where he stayed after he lost the election of 2007.¹³⁵ He also testified that he can

¹²⁵ *Id.*

¹²⁶ TSN dated 26 July 2018.

¹²⁷ *Id.*, at 11.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 14-15.

¹³¹ *Id.*, at 13.

¹³² *Id.*, at 15.

¹³³ *Id.*, at 19-21.

¹³⁴ *Id.*, at 18.

¹³⁵ *Id.*, at 17.

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identify each and every resident, even transients and temporary residents of his *barangay* in his capacity as *Barangay Captain*.¹³⁶ He testified that based on his records, there are more or less 2,003 residents, inclusive of all ages from 1-100 years old, in *Brgy. Sta. Fe* as of 26 July 2018.¹³⁷ He claimed that he could identify these residents both through their faces and names.¹³⁸ He also testified that the Certification (Exh. "A-28-l") was based on documents that were available from the time he was not the *barangay captain*.¹³⁹

Dantes C. Yabes, Jr. ("Yabes") testified¹⁴⁰ that he is the current Election Officer III of Lantapan, Bukidnon¹⁴¹, and that among his duties and functions as such is to preserve and ensure the integrity of the voters' registration records or the permanent list of voters in their municipality. He received a subpoena from Atty. Lee-Rafols of OMB-MOLEO containing lists of individuals and he was directed to issue a written information thru a certification under oath stating whether the individuals listed therein were registered voters of Sumilao Municipality, particularly during 2007 to 2009. Pursuant to the subpoena, he issued a Certification dated 28 March 2014 (Exh. "A-28-m"), certifying that per records of his office, the individuals listed in the three (3) subpoenas dated 25 March 2014 were not registered voters to any precinct of Sumilao Municipality. He also testified during his direct examination that his basis in issuing the Certification (Exh. "A-28-m") is the database from their office from the year 1997 to 2014 (as of 28 March 2014)¹⁴² and that he personally¹⁴³ verified each of the names individually from the database, but he could not find them there.¹⁴⁴ He also testified that the database contained the voters, including active, inactive and deleted voters, from 1997 to 2014.¹⁴⁵ He testified that the Election Assistant and himself, as the Election Officer, were the ones who had access to that system.¹⁴⁶

¹³⁶ *Id.*, at 22.
¹³⁷ *Id.*, at 24-25.
¹³⁸ *Id.*, at 26-27.
¹³⁹ *Id.*, at 29.
¹⁴⁰ *Id.*, at 338-339.
¹⁴¹ *TSN* dated 5 July 2018, p. 6.
¹⁴² *Id.*, at 9.
¹⁴³ *Id.*, at 10.
¹⁴⁴ *Id.*
¹⁴⁵ *Id.*
¹⁴⁶ *Id.*

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On cross-examination, he testified that at the time he issued the Certification (Exh. "A-28-m"), he was the Election Officer II in Sumilao, Bukidnon¹⁴⁷ from 19 June 2009 to 2 March 2015. From 3 March 2015 up to present, he became the Acting Election Officer in Lantapan, Bukidnon. He also testified that the regular verification of registration records or permanent list of voters through coordination with the Local Civil Registrar, DSWD and other agencies was done quarterly.¹⁴⁸ He admitted that when he issued the Certification (Exh. "A-28-m"), where the source of verification was not indicated, he used the COMELEC's database, not the Voters Registration System (VRS) records.¹⁴⁹ He said that it is possible for a resident of Sumilao to be a registered voter in another town;¹⁵⁰ that he did not go to the Local Civil Registrar to check whether the names on the list were in fact residents of Sumilao, and that he was only saying that the names were not registered voters of Sumilao.¹⁵¹

The proposed testimonies of **Henry Lim**, **Consuelo Inojaldo**, and **Godofredo Gaid** were not stipulated upon by the defense. They were neither presented in court, nor were they cross-examined by the accused.

Henry L. Lim's proposed testimony¹⁵² stated that he was the *Barangay* Chairman of *Barangay Darilig*, Manolo Fortich, Bukidnon in March 2014. Sometime in 2014, he also received a subpoena from Atty. Lee-Rafols of OMB-MOLEO containing a list of individuals and he was directed to issue a written information thru a certification under oath stating whether the listed individuals were residents and/or registered voters of *Barangay Darilig*, Manolo Fortich, particularly during 2007 to 2009. Pursuant to the subpoena, he issued a Certification dated 28 March 2014 (Exh. "A-28-h"), certifying that the names listed in the subpoena dated 25 March 2014 are not found in the list of registered *barangay* inhabitants/registered voters particularly in

¹⁴⁷ *Id.*, at 12.

¹⁴⁸ *Id.*, at 13.

¹⁴⁹ *Id.*, at 19-20.

¹⁵⁰ *Id.*, at 24.

¹⁵¹ *Id.*, at 26.

¹⁵² Records, Vol. 4, p. 336.

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calendar year 2007 to 2009, and therefore, not residents of *Barangay Darilig*.

Consuelo M. Inojaldo's proposed testimony¹⁵³ stated that she is the *Barangay* Chairman of *Barangay* Kisolon, Sumilao, Bukidnon in March 2014. She also received a subpoena from Atty. Lee-Rafols of OMB-MOLEO containing a list of individuals and she was directed to issue a written information thru a certification under oath stating whether the listed individuals were residents and/or registered voters of *Barangay* Kisolon, particularly during 2007 to 2009. Pursuant to the subpoena, she issued a Certification dated 27 March 2014 (Exh. "A-28-L"), stating that as far as the records in her office, the names listed in the subpoena dated 25 March 2014 are not residents of *Brgy. Kisolon, Sumilao, Bukidnon*.

Godofredo A. Gaid's proposed testimony¹⁵⁴ stated that he is the Election Officer II of COMELEC stationed at Municipality of Talakag, Bukidnon, and that among his duties and functions as such is to preserve and ensure the integrity of the voters' registration records or the permanent list of voters in their municipality. He also received a subpoena from Atty. Lee-Rafols of OMB-MOLEO containing a list of individuals and he was directed to issue a written information thru a certification under oath stating whether the individuals listed therein were registered voters of Talakag Municipality, particularly during 2007 to 2009. Pursuant to the subpoena, he issued a handwritten Certification dated 28 March 2014 (Exh. "A-28-b"), certifying among others, that as per available records in his office the name of a certain Ace Buenaventura and the thirty-four (34) other individuals listed in the subpoena dated 25 March 2014 are not registered voters of Talakag, Bukidnon, particularly in 2007-2014.

h. Joan Agnes N. Alfafaras – State Auditor IV of the Commission on Audit

In her judicial affidavit,¹⁵⁵ **Joan Agnes N. Alfafaras** ("Alfafaras"), testified that in 2010, the Special Audits Office

¹⁵³ Records, Vol. 4, pp. 337-338.

¹⁵⁴ Records, Vol. 4, pp. 339-340.

¹⁵⁵ Records, Vol. 5, p. 46.

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(SAO) where she was assigned conducted a government-wide performance audit on Priority Development Assistance Fund (PDAF) and Various Infrastructure Projects including Local Projects (VILP), due to emerging issues that time regarding the utilization of PDAF based on the audit reports of COA Resident Auditors, such as unliquidated fund transfers, undocumented disbursements, and non-compliance with existing rules and regulations.¹⁵⁶ Alfafaras was a designated co-team leader in the audit, per COA Office Order No. 2010-309, dated 13 May 2010.¹⁵⁷ She enumerated the duties and responsibilities of the audit team, and basically, they were tasked to investigate the allocation, releases, and utilization of the PDAF, and eventually to prepare Notices of Disallowance.¹⁵⁸

She reiterated that the SAO conducted the special audit of the PDAF transactions of the legislators to determine the propriety of the releases of PDAF by the DBM, the efficient utilization of government funds and effective implementation of the projects by the IAs taking into consideration the menu of programs defined in the General Appropriation Act (GAA) and pertinent laws, rules and regulations.¹⁵⁹ The special audit covered releases by the DBM and utilization thereof by the following IAs during calendar years 2007 to 2009: Department of Agriculture (DA); Department of Public Works and Highways (DPWH); Department of Social Welfare and Development (DSWD); Technology Resource Center (TRC); National Livelihood and Development Corporation (NLDC); National Agribusiness Corporation (NABCOR); ZNAC Rubber Estate Corporation (ZREC); and Selected Local Government Units (LGUs).¹⁶⁰ These government agencies were selected because of the materiality of amounts released to implementing agencies using the National Expenditures Program (NEP). The DA, DPWH and DSWD were the top three National Government Agencies (NGAs). TRC and NLDC were the top two government-owned and controlled corporations (GOCCs) while funds released by

¹⁵⁶ *Id.*, at 47-48.

¹⁵⁷ *Records*, Vol. 5, p. 48.

¹⁵⁸ *Id.*, at 48-49.

¹⁵⁹ *Id.*, at 50.

¹⁶⁰ *Id.*, at 49.

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the DBM to DA were transferred by DA to NABCOR and ZREC, which are both wholly-owned subsidiaries of the DA.¹⁶¹

In conducting the special audit, their team (1) obtained all relevant rules and regulations affecting the allocation, releases and utilization of the PDAF; (2) gathered the schedule of releases made by the DBM from 2007 to 2009 to the IAs covered in the audit and obtained copies of the SAROs relative to these PDAF releases, ANCAIs, among others; (3) obtained and reviewed disbursement vouchers charged against the PDAF releases, together with the supporting documents, and assessed whether the funds were used for the purposes intended and disbursed in accordance with existing laws, rules and regulations; (4) confirmed the authenticity of the documents from the concerned parties such as beneficiaries, suppliers, legislators, NGOs and regulatory offices to determine the validity of reported transactions; and (5) conducted ocular inspection of selected projects, business sites of NGOs and suppliers to determine their existence, condition and status.¹⁶² Among the laws, rules and regulations they obtained are the GAA for 2007, 2008 and 2009, DBM National Budget Circular (NBC) No. 476, the Government Procurement [Reform] Act (RA 9184), the Government Auditing Code (PD 1445), Government Procurement Policy Board (GPPB) Resolution No. 12-2007, and COA Circular 2007-001, because these governed the allocation, releases and utilization of PDAF and fiscal responsibility of the IA's personnel over the financial affairs, transactions and operations of the government agency.¹⁶³

In accused Pancrudo's case, their team gathered, among others, the SARO and ANCAI, disbursement vouchers and their supporting documents, such as memorandum of agreement (MOA), copy of facsimile letter of Congressman Pancrudo to the DA Secretary requesting transfer of fund to NABCOR, Work and Financial Plan, Checks, suppliers' receipts and invoices, Certificate of Acceptance, Accomplishment Report, Inspection Report, list of beneficiaries, and confirmation replies from the

¹⁶¹ *Id.*

¹⁶² *Id.*, at 50.

¹⁶³ *Id.*, at 50-51.

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concerned parties.¹⁶⁴ These documents were documents secured from the implementing agencies where the PDAF of Congressman Pancrudo was released (DA and NABCOR), and replies from Congressman Pancrudo, regulatory offices, suppliers and beneficiaries.¹⁶⁵

Alfafaras was able to identify the exhibits marked as Exhibit “B-18” to “B-18-pp”; “B-19” to “B-19-a”; and “B-20” to “B-20-III”.¹⁶⁶ Based on their audit, accused Pancrudo’s PDAF allocation amounted to P8.20 million based on SARO No. ROCS-08-05200, and the DBM released the said amount by issuing the corresponding Advice of NCA Issued (ANCAI), indicating that SARO No. ROCS-08-05200 was issued upon the initiative of Congressman Candido Pancrudo Jr.¹⁶⁷ The amount was released by the DBM to the Department of Agriculture (DA), which was the implementing agency. Alfafaras’ team found that the DBM did not comply with the rules and regulations governing the release of PDAF because there was no Project Profile and endorsement from the DA as required under DBM-NBC No. 476.¹⁶⁸ According to her, the Project Profile and Indorsement Letter are documents that serve as the basis of releasing SARO and corresponding NCA to DA.¹⁶⁹ Alfafaras also said that under the law, the DA should have implemented the project itself as it was among the identified IAs in the GAA for the year; however, based on documents they gathered, the DA indeed transferred the fund to NABCOR, its wholly-owned subsidiary, upon the request of Congressman Pancrudo.¹⁷⁰

Their team also discovered that the transfer was not compliant with the provisions of the GAA for the year 2008,¹⁷¹ DBM-NBC No. 476 and COA Circular No. 2007-001 because *firstly*, NABCOR was not among the IAs of PDAF projects identified in the GAA for the year. *Secondly*, the proposed project was not within the mandated functions of NABCOR, which was a condition under NBC No. 476. NABCOR apparently was mere

¹⁶⁴ *Id.*, at 51-52.

¹⁶⁵ *Id.*, at 52.

¹⁶⁶ *Id.*, at 52-66.

¹⁶⁷ *Id.*, at 67.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ TSN dated 25 August 2018, p. 7.

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conduit of fund as it was specifically provided in the MOA between the DA and NABCOR that the latter shall enter into agreement with the concerned proponent in implementing the projects, and NABCOR was to charge a management fee—such provision was a clear admission that NABCOR had no capability to implement the project, and as it turned out, the implementation of the project was transferred to an NGO of questionable existence. *Lastly*, the MOA did not include the provisions of project name, intended beneficiaries, benefits to be derived, brief description and site/location, systems and procedures to implement the project, and the time schedule for the periodic inspection/evaluation of the project.¹⁷² The P8.2 million fund under SARO ROCS-08-05200 was utilized to implement an integrated livelihood development program endorsed by Pancrudo, and was carried out through a tripartite MOA entered into by and between NABCOR, Pancrudo and UPFI.¹⁷³ Incidentally, the tripartite MOA was also not compliant with the provisions of COA Circular No. 2007-001 providing control and guidance on the transfer, utilization and management of funds released to NGOs/POs, insofar as it did not include provisions on the following: (a) Systems and procedures to implement the project; (b) Time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion; (c) Visitorial audit by the officials and personnel of COA; and (d) Project description, beneficiaries, benefits and site/location.¹⁷⁴

UPFI was selected because it was identified by the legislator as stated in the MOA. Based on their team's findings, UPFI had no business permits from the City Government of Iloilo at the time of project implementation (2009), and UPFI did not submit any written confirmation on these transactions and additional documents requested by the Audit Team.¹⁷⁵ The team also discovered the lack of business permits from the City Government of Iloilo based on the reply of the Business Permits and Licensing Office of the City Government of Iloilo to the Audit Team's confirmation letter.¹⁷⁶ The team was able to conclude

¹⁷² *Records*, Vol. 5, Judicial Affidavit of SA IV Joan Agnes N. Alfafaras, p. 68.

¹⁷³ *Id.*, at 68-69.

¹⁷⁴ *Id.*, at 69.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

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that NABCOR indeed transferred the implementation of the project to UPFI because there were DVs under the name of UPFI, MOA, checks paid to the order of UPFI, and ORs issued by UPFI acknowledging receipt of funds amounting to P7.954 Million¹⁷⁷ from NABCOR, among others.¹⁷⁸

Alfazaras testified that the transfer of fund to UPFI lacked legal basis because of the following reasons:

First, NGOs were not included among the IAs of PDAF in the GAA.

Second, under Government Procurement Policy Board (GPPB) Resolution No. 12-2007, funds may be transferred to NGOs only if there is an appropriation law or ordinance that earmarks an amount to be specifically contracted out to NGOs. PDAF was not earmarked for the implementation of NGOs. Moreover, NABCOR simply relied on the NGO identified by the sponsoring legislator when under GPPB Resolution No. 12-2007, NGOs should be selected through public bidding or negotiated procurement prescribed therein.

Third, under Item 4.5.1 of COA Circular No. 2007-001, the projects identified for implementation by the NGO shall be made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the project to ensure transparency. There was no document submitted to show compliance with this requirement.

Fourth, under the said COA Circular, an NGO shall be accredited by the Bids and Awards Committee after conducting a selection process, including screening of the qualification documents, ocular inspection of NGOs business site and evaluation of their technical and financial capability. There were, however, no documents submitted to show compliance to this requirement.¹⁷⁹

With respect to the implementation of the integrated livelihood development project/program by UPFI, the team found that:

First, the purported procurement of 2,005 of 5-volume Livelihood Technology Kits from Screenmark Printing & Advertising is questionable as this supplier denied having

¹⁷⁷ *Id.*, at 70.

¹⁷⁸ *Id.*, at 69.

¹⁷⁹ *Id.*, at 70.

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transacted business with UPFI and claimed that the receipt allegedly issued to UPFI in the amount of P7,017,500 was actually issued to Z-zone on 11 June 2009 in the amount of only P1,473.21 and the amount of P7,107,500 was apparently paid in cash which is unlikely and questionable.

Second, the purported payment of training services conducted by Grayline Enterprises is also questionable as this supplier cannot be located at its given address and the amount of P936,500 was apparently paid in cash which is unlikely and questionable.

Third, the purported procurement and training were reportedly conducted on January 16 to 27, 2009 which were made even before the execution of the MOA and the release of the first check, which were both dated 20 February 2009.

Fourth, there were no documents to prove distribution of LTKs and 84 out of 100 selected purported training participants were unknown at their given addresses of which 21 were attested by the *barangay* officials or local registrar to be non-residents of their respective *barangays*.

Finally, the utilization of P246,000 retained by NABCOR as administrative cost cannot be accounted as the said amount formed part of its income. Considering the above-mentioned deficiencies in the project implementation, it is apparent that NABCOR did not use the fund in assessing the qualification of UPFI and supervising the implementation of the project.¹⁸⁰

Insofar as SARO No. ROCS-08-05200 was concerned, the persons involved in the transaction were:¹⁸¹ DBM officials namely Rolando G. Andaya, Jr., Mario Relampagos and Carmencita N. Delantar, Congressman Candido P. Pancrudo, Jr.; DA officials namely Arthur C. Yap, Jesus Emmanuel M. Paras, Eduardo C. Nolasco, Telma C. Tolentino and Charie Sarah D. Saquing; NABCOR officials namely Alan A. Javellana, Rhodora B. Mendoza, Victor Roman Cacal, Maria Ninez P. Guañizo; UPFI's authorized representative Mark Espinosa, and the suppliers. With particular regard to the accused named in these cases, their participation according to the team's findings are as follows:¹⁸²

1. **Candido P. Pancrudo, Jr.** – requested the transfer of fund to NABCOR when this entity is not identified under the GAA for

¹⁸⁰ *Id.*, at 71.

¹⁸¹ *Id.*, at 71.

¹⁸² *Id.*, at 72-73.

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the year as implementing agency of PDAF projects and the project to be implemented is not within its mandated functions, and participated in the implementation of the projects as manifested in his signatures appearing in the MOA, Work and Financial Plan, Accomplishment Report, Certificate of Acceptance of 2,005 sets of LTKs and Registration Form; and his obligation under the MOA;

2. **Alan A. Javellana** – entered into MOA with UPFI, approved the DVs and signed checks releasing the funds to UPFI when NGOs were not identified in the GAA for the year 2008 as among the implementing arms of PDAF funded project, there was no appropriation law earmarking the amounts for the implementation of NGOs; under the GPPB guidelines, NGOs are required to be selected through public bidding or negotiated procurement under RA 9184, process prescribed under COA Circular No. 2007-001 for the selection of NGOs were not observed, questionable existence of UPFI and capability to undertake the project; and failed to monitor project implementation as evident by submission of spurious documents by UPFI;
3. **Rhodora B. Mendoza** – signed the check released to UPFI when NGOs were not identified in the GAA for the year 2008 as among the implementation arms of PDAF funded project, there was no appropriation law earmarking amounts for the implementation of NGOs; under the GPPB guidelines, NGOs are required to be selected through public bidding or negotiated procurement under RA 9184, process prescribed under COA Circular No. 2007-001 for the selection of NGOs were not observed, questionable existence of UPFI and capability to undertake the project; and inspected LTKs when the supplier denied the transaction and existence of recipients is questionable;
4. **Victor Roman Cacal** – certified that expenses are necessary and lawful when fund transfer to NGO has no basis, selection of NGO is not in accordance with existing laws, rules and regulations, and the documents submitted are spurious;
5. **Maria Ninez P. Guañizo** – certified that the supporting documents are complete and proper when transfer of fund to NGO is not proper as NGOs are not among the identified implementing arms of the PDAF projects, NGO was not selected in accordance with existing laws, projects, NGO was not selected in accordance with existing laws, rules and regulations, and the documents submitted are spurious; and
6. **Mark Espinosa** – submitted spurious documents to liquidate funds received.

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Alfafaras' team used the said findings to prepare the Audit Report denominated as Special Audits Office (SAO) Report No. 2012-03 (Exh. "B", with submarkings Exh. "B-1" to "B-16-c") containing all the audit findings pertaining to livelihood projects, financial assistance and various infrastructure including local projects funded out of PDAF of various legislators.¹⁸³ The findings contained in the COA SAO Report No. 2012-03 with respect to Pancrudo were summarized in the **Notice of Disallowance**, a document informing the agency of the results of the audit conducted by the team and enumerating the persons liable therein and their participation and the need for them to refund the full amount disallowed, issued for SARO No. ROCS-08-05200.¹⁸⁴ The Notice of Disallowance, which was issued after the release of the report, was addressed to the head of the Implementing Agencies, with attention to the accountant and to the persons liable in the disallowed transactions, and served to inform them of their liability regarding the covered transactions and to inform them to refund the full amount disallowed.¹⁸⁵

On cross-examination, Alfafaras testified that on page 2 of SAO ND No. DA-2014-052-3(07 to 09) marked as Exhibit "B-19", accused Espinosa was not one of the persons listed as liable for the transaction stated in the Notice of Disallowance.¹⁸⁶ She also agreed that the Liquidation Report marked as Exhibit "B-18-r" was proof that the project "Alternative Livelihood Opportunity for the use of livelihood technology in the 1st District of Bukidnon" was liquidated.¹⁸⁷ However, Alfafaras also testified that although the Accomplishment Report (Exh. "B-18-s") signed by accused Espinosa was proof that the subject project was accomplished, the question "lies as to its implementation".¹⁸⁸ Alfafaras categorically stated that based on their audit, UPFI did not participate or initiate the issuance or release of SARO ROCS-08-05200.¹⁸⁹ She also stated that UPFI did not have a hand in the transfer of funds from the DA to NABCOR, and did not make

¹⁸³ *Id.*, at 73.

¹⁸⁴ *Id.*, at 74.

¹⁸⁵ *Id.*

¹⁸⁶ *TSN* dated 15 November 2018, p. 7-8.

¹⁸⁷ *Id.*, at 45-46.

¹⁸⁸ *Id.*, at 46.

¹⁸⁹ *Id.*, at 52-53.

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a similar request as alleged by Pancrudo.¹⁹⁰ She testified further that the Php8.2 Million fund was released by NABCOR to UPFI upon the request of accused Pancrudo, and no other endorsement was made by any other person or entity.¹⁹¹ She also testified that the only act that can be attributed to accused Espinosa was his submission of the spurious document to liquidate the funds received.¹⁹²

i. Felix Saldaña Tiangco, Jr. – Certified Public Accountant (CPA) who issued the Independent Audit Report (IAR) that formed part of the attachments of DV No. 09-04-1133

Felix Saldaña Tiangco, Jr. (“Tiangco”) stated¹⁹³ that in 2014 or during the fact-finding investigation conducted by the Office of the Ombudsman relative to the alleged irregularities in the implementation of PDAF of Pancrudo, he executed an Affidavit dated 18 March 2014 (marked as Exhibit “A-23”) denying any participation in the preparation of an Independent Audit Report (IAR) for an NGO named Uswag Pilipinas Foundation, Inc. (UPFI). He also stated that the purported IAR for UPFI, which was presented to him during the investigation by the Office of the Ombudsman marked as Exhibit “A-19-b”, was falsified since it was not in conformity with his style of making reports. Likewise, his purported signature appearing therein was forged. He explained that this was possible because his previous employer, Felta Multimedia¹⁹⁴ Office, had a file copy of his personal letter-head. As a point of comparison with his style of reporting/IAR preparation, he submitted a sample document entitled “*Report of Independent Certified Public Accountant,*” bearing his personal letterhead and his true and correct signature, which was attached to his affidavit and previously marked as Exhibit “A-23-a.”

On cross-examination, Tiangco admitted that he did not pursue any legal action for the supposed falsification of his signature because he was informed that the one who perpetrated

¹⁹⁰ *Id.*, at 55.

¹⁹¹ *Id.*, at 56

¹⁹² *Id.*, at 58-59.

¹⁹³ *Records*, Vol. 6, pp.105-112. See *Manifestation*, together with the Affidavit of Felix Saldaña Tiangco, Jr.

¹⁹⁴ TSN dated 6 February 2019, p. 19.

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its preparation was already a co-accused in these cases.¹⁹⁵ Tiangco, while vehemently denying that he was the one who prepared the IAR, admitted that at the time the IAR was executed, he was still employed at Felta Multi-Media Inc. until 2012 or 2013.¹⁹⁶

j. Rodrigo H. Pada - Bank Manager of United Coconut Planter's Bank (UCPB) Tektite Branch, Ortigas, Pasig City since 2004

Rodrigo H. Pada testified¹⁹⁷ that based on their records, the UCPB Check dated 20 February 2009 marked as Exhibit "A-17-C", and UCPB Check dated 1 April 2009 marked as Exhibit "A-18-A", were deposited on 23 February 2009 and 1 April 2009, respectively, to the account of USWAG Pilipinas Incorporated who had an existing account at UCPB Tektite Branch.¹⁹⁸

II. DOCUMENTARY EVIDENCE

In its *Resolution*¹⁹⁹ dated 13 August 2019, the Court admitted the following documentary exhibits formally offered by the prosecution: Exhibits "A", "A-1", "A-2", "A-3", "A-4", "A-5", "A-6" to "A-6-w" except Exhibits "A-6-k" and "A-6-x", "A-7" to "A-7-a", "A-8" to "A-8-f", "A-9" to "A-9-b", "A-10" to "A-10-p", "A-11" to "A-11-j", "A-12" to "A-12-i", "A-13" to "A-13-n", "A-14", "A-15", "A-16" to "A-16-k", "A-17" to "A-17-d", "A-18" to "A-18-b", "A-19" to "A-19-ff", "A-20", "A-21", "A-22", "A-23" to "A-23-a", "A-24" to "A-24-j", "A-25" to "A-25-l", "A-26" to "A-26-a", "A-27" to "A-27-f", "A-28" to "A-28-m" except Exhibit "A-28-i", "B" to "B-16-c", "B-1" to "B-1-a", "B-18" to "B-18-pp", "B-19" to "B-19-a", "B-20" to "B-20-jjjj", and "C" to "C-5", over the objection of the accused.

EVIDENCE FOR THE DEFENSE

I. TESTIMONIAL EVIDENCE

a. Candido Pios Pancrudo, Jr. – House Representative of the First District of Bukidnon (14th Congress, 2007-2010)

¹⁹⁵ TSN dated 6 February 2019, p. 18.

¹⁹⁶ *Id.*, at 23.

¹⁹⁷ TSN dated 21 March 2019, p. 4.

¹⁹⁸ *Id.*, at 5.

¹⁹⁹ *Records*, Vol. 8, p. 281.

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Candido Pios Pancrudo, Jr. ("Pancrudo") testified²⁰⁰ that in 2008, his allocated Priority Development Assistance Fund (PDAF) for the first tranche was Fifteen (15) Million Pesos.²⁰¹ He sent a Letter Request (Exh. "2" Pancrudo) to House Speaker Prospero Nograles, Sr. for the release of the amount.²⁰² He requested that PhP8,200,000.00 out of his total PDAF allocation be released and channeled to the DA.²⁰³ The DA, in turn, released the said amount to NABCOR by virtue of the letter request he sent to the DA.²⁰⁴ However, he claimed that he did not allocate a single centavo thereof to fund a project to be implemented by National Agribusiness Corporation (NABCOR) and Uswag Pilipinas Foundation Incorporated (UPFI) in his congressional district. As shown in the complaint, SARO No. ROCS-08-05200 and Advice of Notice of Cash Allocation (NCA) in the amount of P8,200,000.00 were issued by the DBM to the DA. The fund did not come from his PDAF, and he had no knowledge whatsoever about the implementation of the said project. As it happened, COA did not apply the rules on PDAF when its auditors conducted the audit of the fund utilization of the project, but instead used COA Circular 2007-001.²⁰⁵

He also cannot remember participating, signing or issuing the following documents to support the implementation of the livelihood project, to wit: (1) MOA between him, NABCOR and UPFI dated 20 February 2009; (2) Work and Financial Plan and Project Proposal; and (3) Liquidation Report, Accomplishment Report, Certificate of Acceptance, Registration Forms/List of Beneficiaries, and Independent Audit Report. He reiterated that those documents were executed without his knowledge, and the signatures appearing thereon were not his. He claimed that somebody must have executed the said documents to make it appear that he was part of the implementation of the said project. There are substantial differences from his real signature to that of the signatures appearing in the said documents. Pancrudo added that the fund used in the project was not under his custody

²⁰⁰ TSN dated 19 November 2019; *Records*, Vol. 10, p. 74.

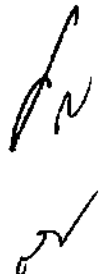
²⁰¹ TSN dated 19 November 2019, p. 14.

²⁰² *Id.*, at 15.

²⁰³ *Id.*, at 25.

²⁰⁴ *Id.*, at 29-30.

²⁰⁵ *Revised Guidelines in the Granting, Utilization, Accounting and Auditing of the Funds Released to Non-Governmental Organizations/People's Organization (NGOs/POs).*



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and control because the said fund came from the DA, and there was no evidence that he appropriated or permitted another to use or take the fund.

On cross-examination, accused Pancrudo admitted that he knew of the SAROs release to the DA.²⁰⁶ He, in fact, wrote the Department of Agriculture a letter so that the funds will be coursed through NABCOR.²⁰⁷ He admitted though that he did not bother checking whether the project was implemented in his district because, according to him, his “projects were being monitored by [his] staff and they just need to inform [him].”²⁰⁸ He was aware that he was accountable for the fund and that he had to see to it that the project or fund was properly implemented.²⁰⁹ He also reiterated that he only came to know about the documents enumerated in “paragraph 3.3” of his *Counter-Affidavit*²¹⁰ when these cases were filed; however, he did not conduct or initiate any investigation as to who affixed the signatures thereon.²¹¹ He received a letter (Exh. “B-20”) from the COA dated 10 October 2011 asking him whether the signatures appearing on the documents attached as Annex A were his.²¹² His reply letter (Exh. “B-20-a”) thereto said that after examining the documents that bore his signature, he “hereby confirmed that the signature that appears on this document are [his] signature.”²¹³ However, he claimed that he relied on his former staff to make the reply letter (Exh. “B-20-a”), and that even though he signed it, he was not the one who made the letter.²¹⁴ He also admitted that he did not submit his signature to a handwriting expert for examination, nor did he file any case for falsification with respect to that amount which he claimed that his signature was forged.²¹⁵

²⁰⁶ TSN dated 19 November 2019, p. 42.

²⁰⁷ *Id.*, at 43.

²⁰⁸ *Id.*

²⁰⁹ *Id.*, at 45.

²¹⁰ Exhibit “3-Pancrudo”, p. 2:

“ [x x x] ”

3.3 I cannot remember participating, signing or issuing the following documents in order to support the implementation of the said project, to wit:

- a. Memorandum of Agreement (MOA) between me and and (sic) NABCOR and UPFI, dated February 20, 2009
- b. Work and Financial Plan and Project Proposal
- c. Liquidation Report, Accomplishment Report, Certificate of Acceptance, Registration Forms/List of Beneficiaries, and Independent Audit Report. [x x x]”

²¹¹ *Id.*, at 47-48.

²¹² *Id.*, at 52.

²¹³ *Id.*, at 54.

²¹⁴ *Id.*, at 58-60.

²¹⁵ *Id.*, at 63-64.

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b. Victor Roman C. Cacal – Paralegal (from 20 May 2008 to 31 July 2009),²¹⁶ and General Services Supervisor (from 1 August 2009 to 31 January 2014)²¹⁷ at NABCOR

As contained in his Judicial Affidavit,²¹⁸ accused **Victor Roman C. Cacal** (“Cacal”) testified that on 20 August 2008²¹⁹ he was authorized by NABCOR President Alan A. Javellana to sign Box “A” of the Disbursement Vouchers of all transactions involving PDAF. Consequently, he signed Box “A” of Disbursement Voucher No. 09-02-0592 and Disbursement Voucher No. 09-04-1133, certifying that the expenses/advances were necessary, lawful and incurred under his direct supervision²²⁰ after ascertaining that all the attachments thereto²²¹ were complete. He believed that insofar as the handling of the disbursement vouchers are concerned, he was merely performing a ministerial act. He said that he was only performing his regular duties as a Paralegal of NABCOR when he placed his signature on the subject Disbursement Vouchers. He also said that it was the accounting assistant who prepared the Disbursement Vouchers and its attachments. He did not participate in the implementation, monitoring and liquidation of the project sourced from the PDAF. He also said that he had no discretion in so far as the release of any funds and the selection of the foundation. Other than the NABCOR officers, he personally does not know the rest of the accused in these cases. He also did not receive any consideration or material benefit for signing the subject Disbursement Vouchers because according to him, he was merely doing his job as a paralegal.

On cross-examination, he clarified that as part of his duties as signatory to the DV, he determined only the completeness of the attached documents, and their genuineness if they are original or not.²²² He affirmed that he was necessarily concerned if the attached documents support the validity of the transactions because without the complete signatories in the DVs, the funds

²¹⁶ Exh. “A-12-i” for the prosecution; Exh. “1-CACAL” for the defense.

²¹⁷ Exh. “A-12-e” for the prosecution; Exh. “5-CACAL” for the defense.

²¹⁸ *Records*, Vol. 9, p. 12.

²¹⁹ Exh. “A-12-h” for the prosecution; Exh. “2-CACAL” for the defense.

²²⁰ *Records*, Vol. 9, p. 16.

²²¹ *Id.*

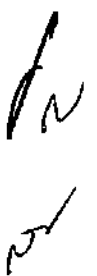
²²² *Id.*, at 12.

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being incurred thereon will not be released.²²³ However, he admitted that he did not check if the Memorandum of Agreement signed by the DA, the NABCOR president, and Pancrudo was compliant with the COA Rules.²²⁴ He also said that he knew UPFI was an NGO allowed to implement the PDAF project of Pancrudo because there was a letter indorsement from the Office of Congressman Pancrudo, and the said NGO had already been transacting with NABCOR before.²²⁵ He confirmed that there was no other document aside from Pancrudo's letter that justified the selection of UPFI to implement the project. He also admitted that although it was part of his duty to verify if the transaction was legal or not, he and their office did not check if the implementation of the project by UPFI complied with the requirements of procurement laws.²²⁶ He claimed that the implementation of the PDAF project of Pancrudo is within the mandated function of NABCOR because NABCOR is a corporate arm of the DA. He did not know why NABCOR implemented the project through UPFI but he knew that NABCOR retained 3% of the total amount of the funds as management fee.²²⁷ He admitted that NABCOR's Finance Department is the one that dealt with and oversaw the implementation of the PDAF project of Pancrudo because the Finance Department was responsible for making the inspection report.²²⁸ However, he was assigned by the NABCOR president as a signatory to the DV even though he was not part of the Finance Department and it was not a regular function of a paralegal to sign DVs.²²⁹ He believed that the NABCOR president gave him the special task of signing DVs because he had a background in law, but he did not act with greater diligence because at the time, he was only a 2nd year law student and a newly-hired government employee, and he was not at liberty to refuse said task assigned by Javellana.²³⁰



²²³ *Id.*, at 13-14.

²²⁴ *Id.*, at 16-17.

²²⁵ *Id.*, at 17.

²²⁶ *Id.*, at 18.

²²⁷ *Id.*, at 19-20.

²²⁸ *Id.*, at 21.

²²⁹ *Id.*, at 21-22.

²³⁰ *Id.*, at 24-25.

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c. **Maria Ninez Guañizo** - Accounting Assistant (30 March 2007 to 30 September 2007), and Bookkeeper (1 October 2007 to 30 November 2011) at NABCOR

Maria Ninez Guañizo ("Guañizo") testified²³¹ that on 3 April 2007, she was authorized to sign Box "B" of the Disbursement Vouchers (DVs) of all transactions or disbursements, including PDAF, by NABCOR President Alan A. Javellana.²³² Then in 2009, she signed two DVs with number 09-02-0592 and 09-04-1133 in connection with Memorandum of Agreement between NABCOR and UPFI. According to her, she was merely performing her regular duties when she affixed her signatures thereon because, at the time of signing, she was the Bookkeeper and designated Officer-in-Charge for the Accounting Division due to the resignation of the previous chief accountant.²³³ By affixing her signature thereto, she certified that all supporting documents were complete and proper, meaning all the required attachments to the DV were present (completeness), and all the documents correspond to the list of attachments stated in the DV (properness). She explained that the DV and its attachments were prepared by their accounting assistants by first assessing if all the required documents are present. If the documents are complete, they will prepare the DV and transmit the latter to her; she then double-checks if all the documents listed under the attachments portion are complete and present. She affixes her signature only if the documents are complete and correspond to the list. Thus, her participation is limited only to the act of checking if all the required documents are present and complete. She also claimed that she personally knows Victor Roman Cacal, Rhodora Mendoza, and Alan Javellana. She maintained she did not conspire nor confederate with any of the accused named in these cases because she merely performed her work with utmost honesty and dedication as an employee of NABCOR.

On cross-examination, she confirmed that the authorization letter (Exh. "6-Guañizo") allowing her to sign Box "B" of the DVs was given to her on 4 April 2007, or less than five

²³¹ Records, Vol. 9, p. 196, *Judicial Affidavit of Maria Ninez Guañizo*.

²³² Exh. "6-GUAÑIZO".

²³³ Exh. "3-GUAÑIZO".

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(5) days from when she was initially hired as an Accounting Assistant on probationary status, i.e. on 30 March 2007.²³⁴ She recalled that the Chief Accountant at the time, a certain Roderica Vitancor, already resigned and they needed someone to sign the DV, thus, she was tasked to sign the voucher.²³⁵ She admitted that at the time, she was not able to think about the huge responsibility entailed in affixing her signature on the DVs since she was very new to Manila, and new in her work at NABCOR.²³⁶ When she got the Authorization, she thought that signing Box "B" of the DV was just part of her job and since there was no Chief Accountant at the time, she was the one assigned to process the DV and prepare the payments.²³⁷ She maintained she had no idea how government processes worked at the time, and she accepted every responsibility given to her by her immediate superior.²³⁸ She claimed that at the time she was checking the documents attached to the first DV, i.e. the Work and Financial Plan and Project Proposal, she did not find any irregularities.²³⁹ As to the second DV, she believed that the attachments, i.e. Accomplishment Report, Independent Audit Report, Certificate of Acceptance, Inspection Report, etc. were all original, and she was not in a capacity to tell if the signatures thereon were fake or not.²⁴⁰ She also recalled having verified the legitimacy of UPFI as a corporation by checking the latter's existence with the SEC, but did not verify the existence of an actual office because it was not part of her job description.²⁴¹ She was aware that without her signature in Box "B", the funds would not have been released to UPFI. However, she maintained that as a bookkeeper, it was not her regular function to sign Box "B" of the DV; she was just designated and tasked to do so by Mr. Javellana by virtue of the Authorization.²⁴² She also reiterated that she did not personally know accused Pancrudo nor his signature.²⁴³ She narrated that after she signed Box "B" of the DVs, she would forward the documents to the Accounting Assistant for collating and routing, and then Rhodora Mendoza would sign the check. She claimed

²³⁴ TSN dated 22 September 2021, p. 75.
²³⁵ *Id.*, at 76.
²³⁶ *Id.*
²³⁷ *Id.*, at 77.
²³⁸ *Id.*, at 78.
²³⁹ *Id.*, at 82.
²⁴⁰ *Id.*, at 83.
²⁴¹ *Id.*, at 86.
²⁴² *Id.*, at 90-91.
²⁴³ *Id.*, at 93.

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that there was no single or lead person responsible for overseeing the implementation of PDAF projects within NABCOR, but as far as Guañizo knew, Rhodora Mendoza, as Head of Finance, oversaw the functions of all the Accounting staff.

On redirect examination, she reaffirmed that by signing Box "B" she would be certifying that the documents were proper, meaning, all the documents attached are related to the disbursement of the funds, i.e., in relation to Pancrudo's PDAF project and are authentic, i.e., the documents were all originally signed.²⁴⁴

d. Rhodora Mendoza – Former Manager for Administration and Finance (16 April 2006 to 30 September 2006); former Director for Financial Management Service (1 October 2006 to 31 December 2008); and former Vice President for Administration and Finance (1 January 2009 to 23 March 2011) at NABCOR

Rhodora Mendoza ("Mendoza") testified²⁴⁵ that in 2009, she signed 2 UCPB checks: Check No. 455530 in the amount of PhP1,193,100.00, and Check No. 455721 in the amount of PhP6,760,900.00, both issued to USWAG Pilipinas Inc. (UPFI). According to her, she was merely performing her regular duties when she affixed her signatures thereon, because at the time of signing, she was the Vice President for Administration and Finance.²⁴⁶ Part of her duties as such is to be one of the signatories of checks issued by NABCOR in all financial obligations and transactions with non-governmental agencies in connection with funds from the Department of Agriculture (DA), to review Work and Financial Plans and approve requests for finances of existing projects,²⁴⁷ to review and analyze financial documents and/or transactions,²⁴⁸ and to attend meetings with the DA and other government agencies like COA. She admitted she was familiar with UPFI because NABCOR had a Memorandum of Agreement (MOA) dated 20 February 2009 with

²⁴⁴ *Id.*, at 108.

²⁴⁵ *Records*, Vol. 9, p. 210, *Judicial Affidavit* of Rhodora Mendoza.

²⁴⁶ Exh. "1-Mendoza" to "4-Mendoza".

²⁴⁷ *Records*, Vol. 9, p. 222; Exh. "5-Mendoza".

²⁴⁸ *Id.*

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the said NGO. According to her, NABCOR's role based on the MOA was to transfer the funds to the non-government organization, i.e., UPFI. She said that after the MOA was signed, NABCOR was to receive all the documents indicated in the MOA from UPFI, and after receipt thereof, their office would prepare the check and release it to UPFI. Based on her knowledge, all the funds were released to UPFI after the submission of the required documents as stated in the MOA, and it was certified in the DVs that all supporting documents were complete and proper. Afterwards, the documents submitted by UPFI would be audited by the Supervising Auditor of NABCOR, then a report signed by the auditor would be submitted to the DA. Thereafter, the DA's resident auditor would issue a credit notice, and Mendoza would continue to follow the conditions in the MOA and submit all the documents to the supervising auditor for liquidation. She admitted that as regards the Inspection Report dated 16 March 2009,²⁴⁹ she could no longer recall if she was the one who made the document, which had no indicated date beside her purported signature. According to her, she would usually indicate the date whenever she would sign documents. Conducting inspections was not among her primary duties as Vice President for Administration and Finance,²⁵⁰ but there were instances where she was instructed by Mr. Javellana to conduct inspection. During those instances, she would be accompanied by another NABCOR employee, a certain Ms. Shyr Anne Montuya, and both of them would sign the inspection report. In the subject Inspection Report, there was no counter-signature by Ms. Montuya, therefore, Mendoza could not ascertain if she was the one who prepared the same. Among all the accused in these cases, she only personally knows Victor Roman Cacal, Rhodora Mendoza, and Alan Javellana. She did not conspire nor confederate with any of the accused named in these cases because she merely performed her work with utmost honesty and dedication as an employee of NABCOR, and did not have any discretion in so far as the release of any funds and selection of the foundation is concerned. She also claimed she did not receive any material benefit from these acts and that she was merely performing a ministerial act when she did her job.

²⁴⁹ Exh. "A-19-d" for the prosecution.

²⁵⁰ Exh. "A-11-e" for the prosecution; Exh. "5-Mendoza" for the defense.



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On cross-examination, she testified that NABCOR coordinates with and implements tasks and projects given by the DA.²⁵¹ She also said that the implementation of an integrated livelihood development program/project from a Congressman's PDAF is not within the mandated functions of NABCOR, but they were involved in the PDAF project of Pancrudo because of the letter Pancrudo gave to DA Secretary Arthur C. Yap, with the instruction to transfer the fund to NABCOR.²⁵² She also admitted she was aware that the selection of the NGO in the MOA was done by Pancrudo, and the implementation of the project was made by UPFI through NABCOR.²⁵³ NABCOR transferred 97% of the P8,200,000.00 fund to UPFI, and the 3% was retained by NABCOR as management fee under the MOA.²⁵⁴ She said that since this was not the first time NABCOR had PDAF, the retention of 50% of the management fee was "pro-forma already" and it was the "Executive's agreement."²⁵⁵ She said that the 3% management fee or almost Two Hundred Sixty-Four Thousand Pesos (P264,000.00) was used for the payment of the processing of documentation.²⁵⁶ She admitted that NABCOR had a role in the PDAF project of Pancrudo aside from the transfer of funds, which was to conduct periodic monitoring of the implementation of the project. NABCOR, however, did not conduct independent monitoring as they were only getting reports and documents from UPFI. Mendoza also admitted that she did not personally check the background or existence of UPFI before she signed the checks because according to her, the validation of the documentary requirements was not her responsibility, and although her act of signing the checks involved millions of pesos, the same was purely ministerial since there were other people in-charge of checking the documentary requirements. She also said that the DVs were already signed by NABCOR President Javellana when the checks came into her office.²⁵⁷ Mendoza also admitted that based on the MOA, NABCOR had the obligation to liquidate the funds and to check

²⁵¹ TSN dated 22 September 2021, p. 16.
²⁵² *Id.*, at 17-18.
²⁵³ *Id.*, at 19-20.
²⁵⁴ *Id.*, at 20.
²⁵⁵ *Id.*, at 21.
²⁵⁶ *Id.*, at 21-22.
²⁵⁷ *Id.*, at 32-33.

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whether the project was properly implemented.²⁵⁸ According to Mendoza, Ms. Shyr Anne Montuya was the person in charge with monitoring and validating the implementation of PDAF-related projects of NABCOR, and that Ms. Montuya was her subordinate.²⁵⁹

On redirect examination, Mendoza testified that she did not have any discretion on the imposition of a retention fee in connection to a particular project, and that it was not within her duties to conduct periodic monitoring of the project implementation of the PDAF project of Pancrudo. She clarified with regard to the signing of the checks, as long as the documents already passed through the process and were signed by the persons in-charge, she could then affix her signature.²⁶⁰ She also clarified that Ms. Montuya was the one communicating with the NGOs, doing follow-ups on the submission of documents, and preparing the liquidation report that will be submitted to the Supervising Auditor. She also said that it was not within her duties to conduct actual validation of the PDAF-related projects.²⁶¹

On re-cross examination, Mendoza admitted that she believed the authenticity of the documents submitted by UPFI because the latter was their partner in the implementation and there was also a Certificate of Acceptance coming from Pancrudo.²⁶² She did not, however, see Pancrudo sign the said Certificate.²⁶³

e. Salvacion Cerbas Balista – Former President of Uswag Pilipinas Foundation, Incorporated, formerly USWAG Guimaras Foundation, Inc.

Salvacion Cerbas Balista testified²⁶⁴ that as President of UPFI, she had personal knowledge of the projects, activities and programs implemented by UPFI. She was responsible for monitoring, overseeing, and assessing UPFI's programs,

²⁵⁸ *Id.*, at 48-49.

²⁵⁹ *Id.*, at 49, 53-54.


²⁶⁰ *Id.*, at 56.

²⁶¹ *Id.*, at 57.

²⁶² *Id.*, at 60-61.

²⁶³ *Id.*, at 61.

²⁶⁴ *Records*, Vol. 9, p. 237, *Judicial Affidavit of Salvacion Balista*.

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projects and activities that will promote the Foundation's advocacies and community missions, which included livelihood projects of Pancrudo in the 1st District of Bukidnon. In 2009, UPFI authorized its Corporate Secretary, herein accused Mark B. Espinosa, to enter into a Memorandum of Agreement with NABCOR and Pancrudo for the implementation of livelihood projects among the constituents of Congressman Pancrudo in the First District of Bukidnon. She said that Mr. Espinosa informed her of the complete implementation of the project, which was also confirmed by Congressman Pancrudo as the livelihood projects were closely monitored by Pancrudo's staff. The complete implementation was evidenced by the liquidation documents including the Accomplishment Reports,²⁶⁵ Certificate of Acceptance signed by Pancrudo,²⁶⁶ and Pancrudo's letter²⁶⁷ to COA Assistant Arcadio B. Cuenco dated 8 January 2012 stating that Pancrudo's staff named Atty. Juevanrey A. Narisma attended and monitored the livelihood seminars that were conducted.

On cross-examination,²⁶⁸ Balista said that during the transaction subject of these cases took place, she was the President of UPFI, and she could confirm that UPFI received funds from NABCOR in connection with the implementation of the PDAF projects of accused Pancrudo. She authorized Mark Espinosa to enter into a MOA with NABCOR for said purpose. The project involved the holding training programs in Bukidnon, and the purchase and distribution of livelihood and training kits amounting to more or less seven million pesos (P7,000,000.00). She said she was in Iloilo City to monitor the implementation of the said project in Bukidnon. She admitted that it was only Espinosa who went to Bukidnon, and she was monitoring the same through Espinosa's updates. Thus, she had no personal knowledge as to whether or not the training kits were truly distributed to the beneficiaries of accused Pancrudo in Bukidnon. She confirmed that the livelihood training kits were purchased from a supplier in Quezon City, but she had no participation in the purchase of said training kits. She also admitted she did not

²⁶⁵ Exh. "8-a-Espinosa"; Exh. "A-19-a" for the prosecution.

²⁶⁶ Exh. "8-c-Espinosa"; Exh. "A-19-C" for the prosecution.

²⁶⁷ Exh. "B-20-A" for the prosecution.

²⁶⁸ TSN dated 22 February 2022, p. 12.

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participate in the holding of the training programs either, thus, she had no personal knowledge as to whether or not the training programs were indeed conducted. She also confirmed that she did not conduct her own verification as to whether or not the project was implemented. She admitted to only seeing the documentary proof of the project implementation attached to her JA after the completion of the project, and there was no periodic reporting of said documents made to her, either. She also admitted that it was Espinosa’s lawyers who asked her in 2021 to testify in these cases. She was not aware that the local officials and beneficiaries indicated in the documentary proof she received from Espinosa denied being recipients of Pancrudo’s PDAF projects. She admitted to having completely relied on the representations of Espinosa, because he was the one authorized by the foundation to transact.

On redirect examination, Balista said that she asked Espinosa many times about the project sometime in 2009. As far as she could remember, the projects were implemented in 2008.²⁶⁹ The authorization, however, was made in 2009.²⁷⁰

On re-cross examination, Balista admitted that she was convinced that the project was implemented after she saw the accomplishment report from Espinosa, the Certificate of Acceptance signed by Pancrudo, and the letter dated 8 January 2012. She did not exert efforts to validate the actual implementation of the project, and she also would not know if the documents she relied on were fabricated or not.²⁷¹

II. DOCUMENTARY EVIDENCE

In its *Resolution*²⁷² dated 12 April 2022, and *Resolution*²⁷³ dated 21 April 202, the Court resolved to admit the following documentary exhibits formally offered by the defense: Exhibits “10 and 13 (-Espinosa)”, “4, 5, 5-A and 5-B (-Espinosa)”, “8-A; 8-C to 8-FF (-Espinosa)”, “9, 9-A to 9-E (-Espinosa)”, “11 and 14 (-Espinosa)”, “15-Espinosa”, “1-Cacal to 10-Cacal”, “1-Mendoza to 5-Mendoza”,

²⁶⁹ *Id.*, at 28-29.
²⁷⁰ *Records*, Vol. 9, p. 241.
²⁷¹ *TSN* dated 22 February 2022, pp. 31-32.
²⁷² *Records*, Vol. 10, p. 172.
²⁷³ *Id.*, at 199.

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“1-Guañizo to 6-Guañizo”, and “2-Pancrudo to 12-Pancrudo”, over the objection of the prosecution.

FINDINGS OF FACT

The following facts were established from the evidence presented and admitted in the course of trial, together with the stipulations between the prosecution and defense, to wit:

At the time material to these cases, accused Pancrudo was the elected District Representative of the First (1st) District of Bukidnon for the 14th Congress. On May 7, 2008, Pancrudo wrote a letter (Exh. **“2-Pancrudo”**) addressed to House Speaker Prospero C. Nograles containing a list of his Priority Projects for the 1st District of Bukidnon chargeable against his PDAF, 1st Tranche FY 2008, amounting to PhP15,000,000.00, and among these projects was the Livelihood Development Program worth PhP8,200,000.00, which is the subject of these cases. According to the said letter, the assigned implementing agency for the said project was the Department of Agriculture (DA), Central Office.

On June 11, 2008, the DBM through Secretary Rolando G. Andaya, Jr. released **Special Allotment Release Order (SARO) No. ROCS-08-05200** (Exh. **“B-18”**) to the DA. The source of the fund was PDAF 2008 Budget, RA No. 9498. The purpose indicated in the release order was for the “Financial assistance for the implementation of livelihood programs in the 1st District of Bukidnon”, and the amount authorized under the SARO was **EIGHT MILLION TWO HUNDRED THOUSAND PESOS (PhP8,200,000.00)**. A few days later, the DBM through Secretary Rolando G. Andaya, Jr. sent a document called **Advice of NCA [Notice of Cash Allocation] Issued (Fund 101)** (Exh. **“B-18-a”**) addressed to the Secretary of the DA, informing the latter that the DBM had issued **NCA No. 368491-4**, crediting the amount of **EIGHT MILLION TWO HUNDRED THOUSAND PESOS (PhP8,200,000.00)** to the DA’s Landbank account. Said amount will cover the cash requirements for financial assistance for the implementation of livelihood programs in the 1st District of Bukidnon authorized under SARO No. ROCS-08-05200 dated June 11 2008, issued upon the initiative of accused Pancrudo.

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On August 11, 2008, Pancrudo wrote another letter (Exh. “**B-18-g**”), this time to Secretary Arthur Yap of the DA in reference to the implementation of his PDAF as covered by SARO No. ROCS-08-0520 dated June 11 2008 and NCA No. 368491-4 dated June 13 2008. Pancrudo requested for the transfer of the fund in the amount of **EIGHT MILLION PESOS (Php8,000,000.00)**²⁷⁴ to **National Agribusiness Corporation (NABCOR)**, which shall act as the conduit agency in implementing the Livelihood Development Project in Pancrudo’s District.

On **December 23, 2008**, the **DA**, represented by Sec. Yap, and **NABCOR**, represented by accused Javellana entered into a **Memorandum of Agreement** (Exh. “**B-18-h**”) for the transfer of the **EIGHT MILLION TWO HUNDRED THOUSAND PESOS (Php8,200,000.00)** covered under SARO No. ROCS-08-05200 dated June 11 2008 and NCA No. 368491-4 dated June 13 2008. As stated in one of the “Whereases”, it was the desire of Pancrudo “to transfer his allocation to NABCOR for faster implementation and closer monitoring.” The transfer would be made by the DA to NABCOR. NABCOR shall, among others, (1) issue an official receipt corresponding to the amount received, (2) retain an amount equivalent to 3% of the total amount as management fee, and (3) submit accomplishment reports, liquidation reports corresponding to disbursements (duly verified by their resident auditor). A day later or on December 24, 2008, the DA issued Landbank Check No. 468555 (Exh. “**B-18-b**”) to **NABCOR** in the amount of **EIGHT MILLION TWO HUNDRED THOUSAND PESOS (Php8,200,000.00)**. On January 10, 2009, **NABCOR** issued Official Receipt No. 0001010 (Exh. “**B-18-c**”) in favor of the Department of Agriculture for the total amount of **EIGHT MILLION TWO HUNDRED THOUSAND PESOS (Php8,200,000.00)** received through LBP Check No. 468555 dated December 24, 2008.

On **February 20, 2009**, four vital events occurred, as evidenced by the following documents:

First, a **Memorandum of Agreement (MOA)** (Exh. “**B-18-l**”; “**5-Pancrudo**”; “**4-Espinosa**”) was entered into by **NABCOR** represented by accused Javellana, **OFFICE OF CONG. CANDIDO P. PANCRUDO, JR.**, and **USWAG PILIPINAS INC.** represented by

²⁷⁴ As contained in the Letter marked as Exhibit “**B-18-g**” for the prosecution.

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accused Espinosa. The MOA contained three "whereas" clauses, including (1) the allocation of funds amounting to **EIGHT MILLION TWO HUNDRED THOUSAND PESOS (PhP8,200,000.00)** by NABCOR to support and manage activities for the project "**Alternative Livelihood Opportunities Through the USE of Livelihood Technology Kits**", and (2) the identification by the OFFICE OF CONG. PANCRUDO of USWAG PILIPINAS INC. as having the capability to implement the livelihood projects.

Second, by virtue the MOA, NABCOR was able to issue on the same day (or on February 20, 2009) Disbursement Voucher (DV) No. 09-02-0592 (Exh. "**B-18-j**"), the particulars of which read as follows: "Representing 15% payment for the Integrated Livelihood Development Program per SARO No. ROCS-08-5200 endorsed by Cong. Candido Pancrudo, with attachments: MOA, project proposal, budgetary requirements, endorsement" in the amount of **ONE MILLION ONE HUNDRED NINETY-THREE THOUSAND ONE HUNDRED PESOS (PhP1,193,100.00)**. The indicated name of claimant was **USWAG PILIPINAS INC.** Box "A" of the DV, which is a certification that the "Expenses/Advances" were "necessary, lawful and incurred under my direct supervision", was signed by Victor Roman Cacal (Paralegal). Box "B" of the DV, which is a certification that the "Supporting documents" were "complete and proper", was signed by Maria Ninez P. Guañizo (OIC-Accounting Services Division). Box "C" of the DV, indicating that the same is approved for payment of PhP1,193,100.00, was signed by Alan A. Javellana (President). Box "D", indicating that payment through UCPB Check No. 455530 dated 02/20/09 was received, appeared to have the signature of Mr. Mark Espinosa.

Third, NABCOR issued UCPB Check No. 455530 (Exh. "**B-18-i**"), dated February 20, 2009 and signed by accused Rhodora Mendoza and accused Alan Javellana, in favor of USWAG PILIPINAS INC. in the amount of **ONE MILLION ONE HUNDRED NINETY-THREE THOUSAND ONE HUNDRED PESOS (PhP1,193,100.00)**.

Finally, **USWAG PILIPINAS FOUNDATION INCORPORATED**, with address at 192 Jardeleza Bldg., Plaza Jaro, Iloilo City, issued Official Receipt No. 001 (Exh. "**B-18-k**") dated February 20, 2009 for the amount of **ONE MILLION ONE HUNDRED NINETY-THREE**

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THOUSAND ONE HUNDRED PESOS (PhP1,193,100.00) received from **NABCOR** as payment for "Check # 455530", bearing the Authorized Signature of Mr. Mark Espinosa.

On March 16, 2009, a Certificate of Acceptance (Exh. "**B-18-u**"; "**11-Pancrudo**") coming from the Office of 1st District of Bukidnon Representative Candido P. Pancrudo, Jr. was issued, certifying that 2,005 sets of LIVELIHOOD TECHNOLOGY KIT BOOKS have been delivered and accepted by Pancrudo's District Office in Bukidnon for the implementation of alternative livelihood opportunities. Pancrudo also certified that various livelihood training programs have been conducted in his district.

Thereafter, on **April 1, 2009**, three significant events occurred which led to the release of the rest of the PhP8.2M fund, as evidenced by the following documents:

First, **NABCOR** issued Disbursement Voucher (DV) No. 09-04-1133 (Exh. "**B-18-p**"), the particulars of which read as follows: "Representing reimbursement per liquidation of DV# 09-02-0592 (Implementation of the Integrated Livelihood Development Program per SARO No. ROCS-08-5200 endorsed by Cong. Candido Pancrudo/15% liquidation), with Attachments: accomplishment report, independent audit report, certificate of acceptance, inspection report, sec & dti registration, OR#6623, SI#2972, DR#3116, PO#003, quotations, contract of services, acknowledgement receipt, training module, list of beneficiaries, pictures, copy of DV#09-02-0592, copy of moa" in the amount of **SIX MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED PESOS (PhP6,760,900.00)**. The indicated name of claimant was **USWAG PILIPINAS INC.** Box "A" of the DV, which is a certification that the "Expenses/Advances" were "necessary, lawful and incurred under my direct supervision", was signed by Victor Roman Cacal (Paralegal). Box "B" of the DV, which is a certification that the "Supporting documents" were "complete and proper", was signed by Maria Ninez P. Guañizo (OIC-Accounting Services Division). Box "C" of the DV, indicating that the same is approved for payment of PhP6,760,900.00, was signed by Alan A. Javellana (President). Box "D", indicating that payment through UCPB Check No. 455721 dated 4/1/9 was received, appeared to have the signature of Mr. Mark Espinosa.



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Second, NABCOR issued UCPB Check No. 455721 (Exh. “B-18-o”), dated April 1, 2009 and signed by accused Rhodora Mendoza and accused Alan Javellana, in favor of USWAG PILIPINAS INC. in the amount of SIX MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED PESOS (PhP6,760,900.00).

Third, USWAG PILIPINAS FOUNDATION INCORPORATED, with address at 192 Jardeleza Bldg., Plaza Jaro, Iloilo City, issued Official Receipt No. 003 (Exh. “B-18-q”) dated April 1, 2009 for the amount of SIX MILLION SEVEN HUNDRED SIXTY THOUSAND NINE HUNDRED PESOS (PhP6,760,900.00) received from NABCOR as payment for “Check # 455721”, bearing the Authorized Signature of Mr. Mark Espinosa.

In 2010, the Commission on Audit led a government-wide performance audit on the utilization of the Priority Development Assistance Fund (PDAF) of lawmakers, and this audit included the releases and utilization of the PDAF by implementing agencies during calendar years 2007 to 2009. Among the funds subject of the government-wide performance audit is the PDAF allocation of Pancrudo covered by SARO No. ROCS-08-05200.²⁷⁵ The Special Audit Team issued a Notice of Disallowance (Exh. “B-19”) dated August 12, 2014 in relation to the release of SARO No. ROCS-08-05200.

ISSUES

Taking into consideration all the established facts, the question before us now is whether or not accused Pancrudo, Javellana, Mendoza, Guañizo, Cacal, and Espinosa are guilty beyond reasonable doubt of the crimes charged, to wit:

- I. Two (2) counts of Violation of Section 3(e) of R.A. No. 3019;
- II. Malversation of Public Funds (Art. 217, RPC); and
- III. Malversation of Public Funds through Falsification (Art. 217, in relation to Art. 171, RPC).

²⁷⁵ Records, Vol. 10, p. 304.

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THE COURT'S RULING

In 2013, the Supreme Court in one of its landmark decisions *Belgica v. Ochoa*,²⁷⁶ penned by now-retired Associate Justice Estela M. Perlas-Bernabe, defined what is commonly known as the **Priority Development Assistance Fund (PDAF)**. The Court pronounced thus:

“[T]he Court defines **the Pork Barrel System** as the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government, including its members. [x x x]

[x x x] [T]here is **the Congressional Pork Barrel** which is herein defined as a kind of lump-sum, discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund’s utilization through various post-enactment measures and/or practices. In particular, petitioners consider the PDAF, as it appears under the 2013 GAA, as Congressional Pork Barrel since it is, *inter alia*, a post-enactment measure that allows individual legislators to wield a collective power [x x x].” (*Citations omitted.*)

The Supreme Court declared in the *Belgica* case that “the 2013 PDAF Article, as well as all Congressional Pork Barrel Laws of similar operation, to be unconstitutional. That such budgeting system provides for a greater degree of flexibility to account for future contingencies cannot be an excuse to defeat what the Constitution requires. Clearly, the first and essential truth of the matter is that unconstitutional means do not justify even commendable ends.”²⁷⁷ The High Court conclusively recognized that the “informal practices, through which legislators have effectively intruded into the proper phases of budget execution, must be deemed as **acts of grave abuse of discretion** amounting to lack or excess of jurisdiction [x x x]” and that “legislators cannot exercise powers which they do not have, whether through formal measures written into the law or informal practices institutionalized in government agencies.”²⁷⁸

²⁷⁶ G.R. Nos. 208566, 208493, 209251 & L-20768, November 19, 2013, 721 PHIL 416-732.
²⁷⁷ *Id.*
²⁷⁸ *Id.*

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Before we proceed with our ruling and discussion, it should be noted that we opted to exclude accused Alan A. Javellana²⁷⁹ from the Court's determination in these cases since he was neither arrested nor arraigned, and remains at large, thus, jurisdiction over his person was never obtained. As such, we shall focus on determining the culpability, if any, of the five (5) other accused named herein.

CRIM. CASE NOS. SB-16-CRM-0114 and 0116:

Violation of Sec. 3(e) of R.A. No. 3019

Section 3(e) of R.A. No. 3019,²⁸⁰ as amended, states:

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

x x x

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

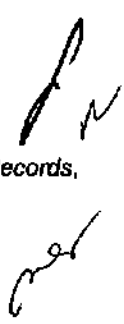
In order to hold a person liable under this provision, the following elements must concur, to wit:

- (1) The accused is a public officer discharging administrative, judicial, or official functions;
- (2) He or she must have **acted with manifest partiality, evident bad faith**, or gross inexcusable negligence; and
- (3) In the discharge of his or her functions, he or she had **caused undue injury to any party, including the government, or gave any private party unwarranted benefit, advantage, or preference.**²⁸¹ (*emphases supplied*)

²⁷⁹ At large; as per NBI, accused Javellana took flight and left the country on September 12, 2013. (Records, Vol. 3, pp. 358; 364)

²⁸⁰ Anti-Graft and Corrupt Practices Act.

²⁸¹ Cabarios v. People, G.R. Nos. 228097-103 & 228139-41, September 29, 2021.



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We go through each element one by one.

First element.

The existence of the first element invites no dispute. Accused Candido Pios Pancrudo, Jr., at the time material to these cases, was the incumbent District Representative of the 1st District of Bukidnon.

On the other hand, accused Rhodora Bulatao Mendoza, Maria Ninez Paredes Guañizo, and Victor Roman Cojamco Cacal categorically admitted that they were, indeed, incumbent officials of NABCOR at the time material to these cases. Their former positions are as follows:

NAME	POSITION
RHODORA BULATAO MENDOZA	Vice President for Administration and Finance
MARIA NINEZ PAREDES GUAÑIZO	Bookkeeper; Officer-in-Charge for the Accounting Division
VICTOR ROMAN COJAMCO CACAL	Paralegal

Meanwhile, Mark Benetua Espinosa cannot escape potential liability under these charges based on the fact that he is admittedly a private person, since the punitive clause of R.A. No. 3019 itself provides:

Section 9. Penalties for Violations. – (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished [x x] (*emphasis supplied*)

The Supreme Court has indoctrinated in a number cases²⁸² that private individuals may be held liable under Section 3 (e) of R.A. No. 3019 if they act in conspiracy with public officers. It is a well-settled rule that “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 R.A. No. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of

²⁸² *Canlas v. People*, G.R. Nos. 236308-09 (Resolution), February 17, 2020; *Uyboco v. People*, 749 Phil. 987, 993-994 (2014), citing *People v. Go*, 730 Phil. 362, 369 (2014).

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public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.”²⁸³ (*emphasis supplied; citations omitted*)

Thus, the core in determining culpability of a private person is collusion with a public officer in committing an act declared unlawful by R.A. No. 3019. In the cases at hand, the *Informations* sufficiently alleged that all the accused, including Espinosa, committed unlawful acts **“In the performance of their administrative and/or official functions and conspiring with one another.”**

Since conspiracy was properly alleged, let us now discuss whether the evidence to support it was shown by direct proof or may necessarily be inferred from shown acts and conduct of the accused in these cases.

Article 8 of the Revised Penal Code (RPC) states that “conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” Conspiracy, just like any other element of a crime, must also be proven by proof beyond reasonable doubt. The Supreme Court held in the recent case of *People v. Arnado*²⁸⁴ that in proving the existence of conspiracy, direct proof is not required, as the existence of conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design. However, **conspiracy may not be presumed**, as it must be certain that there is a conscious design to commit the offense.²⁸⁵

The Supreme Court previously discussed the rules on conspiracy, in particular relation to Sec. 3 (e) of R.A. No. 3019, in the case of *Zapanta v. People*,²⁸⁶ viz.:

There is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy as a mode of incurring criminal liability must be proven separately from and with the same quantum of proof as the crime itself. **Conspiracy need not be proven by direct evidence. After all, secrecy and concealment**

²⁸³ *Id.*

²⁸⁴ G.R. Nos. 250100-02, March 21, 2022.

²⁸⁵ *Id.*

²⁸⁶ G.R. Nos. 192698-99, April 22, 2015, 759 PHIL 156-178.

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are essential features of a successful conspiracy. Conspiracies are clandestine in nature. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Paraphrasing the decision of the English Court in *Regina v. Murphy*, conspiracy may be implied if it is proved that **two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.** To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an **overt act in pursuance or furtherance of the complicity.** There must be **intentional participation in the transaction** with a view to the furtherance of the common design and purpose. (*Emphases supplied.*)

The case of *Estrada v. Sandiganbayan* is also instructive, viz.:

The allegation of conspiracy in the information must not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by **evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it.** (*Emphasis supplied.*)

At the outset, this Court is inclined to rule that the prosecution was able to substantiate, with circumstantial evidence, its allegation that accused Pancrudo “unilaterally chose and indorsed UPFI [x x x] in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding [x x x] and with UPFI being unaccredited and unqualified to undertake the projects”—the allegation that, if proven, would show collusion between Pancrudo and Espinosa.²⁸⁷ The key piece of document revealing the conspiracy link between Pancrudo and UPFI was the tripartite MOA²⁸⁸ executed on February 20, 2009, because by virtue of this MOA, the P8.2M fund (less 3%) was deposited into the UCPB account of UPFI in Pasig City.²⁸⁹ The records show that the parties stipulated as to the MOA’s existence, but the prosecution presented no witness to testify as to its authenticity and due execution. In addition, a close look at the said MOA would reveal that no other person, apart from Javellana,

²⁸⁷ *Informations* for SB-16-CRM-0114 and -0116.

²⁸⁸ Exh. “A-15”; “B-18-I”.

²⁸⁹ Exh. “A-17-C” and “B-18-I”; “A-18-A” and “B-18-o”.

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appeared before the Notary Public who allegedly notarized the said document.

Nevertheless, the subject MOA was identified by State Auditor Alfafaras as one of the documents she received and reviewed during the course of their audit. As held in the case of *Jaca v. People*,²⁹⁰ "COA's findings are accorded great weight and respect, unless they are clearly shown to be tainted with grave abuse of discretion; the COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to, the government. [x x x] An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with official guidelines and regulations. Under the Rules on Evidence and considering the COA's expertise on the matter, the presumption is that official duty has been regularly performed unless there is evidence to the contrary (*citations omitted.*)"

Furthermore, it is a settled rule that "a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity."²⁹¹ By failure to overcome this presumption, with clear and convincing evidence, parties to the document are estopped from questioning the regularity of the execution of the deed, contract or memorandum. None of the parties presented evidence to contest the notarized MOA, thus, the presumption holds.

Although the prosecution was not able to show any direct evidence of Pancrudo overtly choosing and indorsing UPFI to be the entity to implement the livelihood projects that turned out to be inexistent, the prosecution was able to provide circumstantial evidence pointing to the same: Pancrudo's letter to the DA, Pancrudo's acquiescence in identifying UPFI as "having the capability to implement livelihood projects x x x" when in truth and in fact it did not have such capacity or capability, and Pancrudo's signatures on the supporting documents submitted by UPFI to NABCOR. The signatures of both accused serve as evidence of actual cooperation;

²⁹⁰ G.R. Nos. 166967, 166974 & 167167, [January 28, 2013], 702 PHIL 210-262.
²⁹¹ *Loyola v. Court of Appeals*, G.R. No. 115734, February 23, 2000, 383 PHIL 171-186.

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of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to give unwarranted advantage and benefits to UPFI and actually pursue it.

However, this Court is inclined to rule that the prosecution was not able to establish the existence of implied conspiracy among Espinosa and the other accused from NABCOR, namely: Mendoza, Guañizo, and Cacal due to insufficient evidence pointing to the same. The rule is that implied conspiracy is proved not by direct evidence or mere conjectures, but through the mode and manner of the commission of the offense, or from the acts of the accused before, during, and after the commission of the crime indubitably pointing to a joint purpose, a concert of action, and a community of interest.²⁹² Here, the prosecution failed to establish that the NABCOR officials' acts were overt acts showing that they conspired to give unwarranted benefits and advantage to UPFI as we will discuss later.

Second element.

As jurisprudence dictates, the offense under Section 3(e) of R.A. No. 3019 may be committed either by *dolo* or by *culpa*. The Supreme Court aptly set forth in *Uriarte v. People*²⁹³, *dolo* exists when the accused acts with evident bad faith or manifest partiality, while *culpa* exists when the accused commits gross inexcusable negligence. The same case²⁹⁴ discussed the definitions of “manifest partiality”, “evident bad faith”, and “gross inexcusable negligence” as follows:

“There is “**manifest partiality**” when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. “**Evident bad faith**” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.”²⁹⁵ (*emphasis supplied; citations omitted*)

In the cases before us, the prosecution alleged that the accused committed the unlawful acts by *dolo*, or with manifest partiality and/or

²⁹² *Manangan v. People*, G.R. No. 218570, November 22, 2017.

²⁹³ G.R. No. 169251, December 20, 2006.

²⁹⁴ *Id.*

²⁹⁵ *Id.*, citing *Sistoza v. Desierto*, supra note 69, at 326, citing *De la Victoria v. Mongaya*, 404 Phil. 609, 619 (2001).

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evident bad faith. A quick recap of the acts imputed to each accused and a detailed examination of their liability, if any, is in order, thus:

Accused Pancrudo

The prosecution accused Pancrudo of **unilaterally** choosing and indorsing UPFI, an unaccredited and unqualified non-government organization represented by Espinosa, as “project partner” in implementing livelihood projects in the 1st District of Bukidnon, using his PDAF allocation covered by SARO No. ROCS-08-05200 to fund the implementation—in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding required under Republic Act No. 9184 and its implementing rules and regulations. Pancrudo requested the DA to transfer the fund covered by SARO No. ROCS-08-05200 to NABCOR, despite the fact that it was not identified under the 2008 GAA as an implementing agency of PDAF projects. NABCOR and Pancrudo then entered into an agreement with UPFI for the latter to implement the livelihood projects in Bukidnon, pursuant to the “whereas” clause in the tripartite MOA²⁹⁶, to wit:

“WHEREAS, the OFFICE OF CONG. PANCRUDO, has properly identified USWAG PILIPINAS, INC., having the capacity to implement livelihood projects that would improve and sustain the economic development of the rural areas in the said district.”

As we have stated earlier, the prosecution showed that Pancrudo conspired with UPFI's representative Espinosa. Moreover, this Court is convinced that Pancrudo acted with evident bad faith and/or manifest partiality from moment he initiated the release of his PDAF allocation under SARO No. ROCS-08-05200 to NABCOR. Such an act runs contrary to the principle of separation of powers enshrined in the 1987 Constitution. The *Belgica*²⁹⁷ case tells us what **separation of powers** means, to wit:

“[I]t means that the “Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government.” To the legislative branch of government, through Congress, belongs the power to make laws; to the executive branch of government, through the

²⁹⁶ Exh. “A-15”.

²⁹⁷ *Belgica v. Ochoa*, G.R. Nos. 208566, 208493, 209251 & L-20768, [November 19, 2013], 721 PHIL. 416-732.

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President, belongs the **power to enforce laws**; and to the **judicial branch** of government, through the Court, belongs the **power to interpret laws**. Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere." Thus, "the **legislature has no authority to execute or construe the law**, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. **Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.**" (*Citations omitted; emphasis supplied.*)

In the same case, the Supreme Court opined that "[u]pon approval and passage of the GAA, Congress' law-making role necessarily comes to an end and from there the Executive's role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress **must not concern itself with details for implementation by the Executive.**" The case also reiterated that the ruling in *Abakada Guro Party List v. Purisima*²⁹⁸ that "**from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.**" (*Emphasis and underscoring supplied.*)

Pancrudo played a role in the implementation or enforcement of the law when he requested for the transfer of the P8.2M fund covered by SARO No. ROCS-08-05200 to NABCOR, and eventually, to UPFI. Pancrudo keenly insisted that he did not allocate any single centavo of his PDAF allocation to NABCOR or UPFI, but if we examine the facts carefully, NABCOR would not have had custody over the P8.2M fund if it weren't for the Letter Request (Exh. "B-18-g") dated August 11, 2008 addressed to DA Secretary Yap. Pancrudo's claim that he

²⁹⁸ G.R. No. 166715, August 14, 2008, 562 SCRA 251.

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“cannot remember participating, signing or issuing” the documents that facilitated the transfer of the P8.2M fund from the DA to NABCOR and UPFI deserves scant consideration. Pancrudo knew and admitted in open court that he was accountable for the P8.2M fund and the implementation of the projects in his district that was supposed to be funded, to wit.²⁹⁹

DIR. MA. CHRISTINA T. MARALLAG-BATACAN

Q x x x [M]y question is you know that you are accountable for this fund and it is your look out that the project covered by this fund are properly implemented or the funds were properly utilized?

WITNESS (PANCRUDO)

A Yes, ma'am
(Objection was raised)

AJ ARCEGA

A He knows that; he was the congressman. [x x x]

Pancrudo tried to prove that he did not fund the projects subject of these cases by denying the signatures in the documents³⁰⁰ implicating him in the scheme. However, he admitted³⁰¹ in open court that he did not conduct any investigation to find out who affixed the signatures above his printed name (Candido Pancrudo) on the documents even if he very well knew that involved the utilization of P8.2M, and made it appear that he caused the implementation of the project. Additionally, Pancrudo failed to substantiate his claim of forgery. He merely stated that he was “planning to subject [his] signature to an expert,” and he “asked [his] lawyer to make a request,”³⁰² but when these cases were filed, he failed to do those things. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.³⁰³ Settled is the rule that the issue on the forgery of signatures is essentially a question of fact.³⁰⁴ Forgery cannot be presumed and must be proved by clear, positive and convincing evidence; thus, the

²⁹⁹ TSN dated 19 November 2019, p. 46.

³⁰⁰ MOA dated February 20, 2009; Work and Financial Plan and Project Proposal; and Liquidation Report, Accomplishment Report, Certificate of Acceptance, Registration Form/List of Beneficiaries and Independent Audit Report.

³⁰¹ TSN dated 19 November 2019, p.48-50

³⁰² TSN dated 19 November 2019, p. 51.

³⁰³ *Supra* at note 297 (Gepulle).

³⁰⁴ *Spouses Coronel v. Quesada*, G.R. No. 237465, October 7, 2019.

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burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his/her case by a preponderance of evidence.³⁰⁵ Given that Pancrudo failed to prove the existence of forgery, this Court is inclined to rule that subject documents contain his signature.

The denials of Pancrudo of the allegations against him, vis-à-vis the clear and consistent testimonial evidence, cannot convince this Court to believe his innocence. Denial is inherently a weak defense.³⁰⁶ Furthermore, unsubstantiated denial cannot be given credence as it is self-serving.³⁰⁷ The records, coupled with the findings in the *Belgica*³⁰⁸ case, show that the “identification of the legislator,” Pancrudo in this case, “constitutes a mandatory requirement before his PDAF can be tapped as a funding source, thereby highlighting the indispensability of the said act to the entire budget execution process.” After the transfer of fund from the DBM to the DA, Pancrudo should not have had any control over the money, but somehow, NABCOR was able to come into possession of the fund, and by virtue of the MOA dated February 20, 2009, UPFI was able to receive about 97% of the fund as evidenced by the receipts it issued.

Alfazaras, the prosecution witness from COA, told a story similar to the findings in *Napoles v. Sandiganbayan*³⁰⁹ regarding the elaborate scheme perpetuated by lawmakers to divert funds from our national budget to their own or someone else’s private coffers. In *Napoles*, the scheme “began through a letter originating from the office of former Senator Enrile being sent to the concerned implementing agency, informing the latter that the office of former Senator Enrile designated Jose Antonio Evangelista (Evangelista) as its representative in the implementation of the PDAF-funded project. Evangelista, who was likewise the Deputy Chief of Staff of former Senator Enrile and acting in representative capacity, then sends another letter to the implementing agency designating a specific NGO to implement the PDAF-funded project. Thereafter, the NGO that was endorsed by Evangelista submits a project proposal to the implementing agency, and proceeds to enter into a memorandum of agreement (MOA) with the implementing agency and former Senator Enrile as the parties.”

³⁰⁵ *Gepulle-Garbo v. Spouses Garabato*, G.R. No. 200013, January 14, 2015.

³⁰⁶ *Loreño v. Office of the Ombudsman*, G.R. No. 242901, September 14, 2020.

³⁰⁷ *Villanueva v. People*, G.R. No. 237864, July 8, 2020.

³⁰⁸ *Supra* at note 291 (*Belgica*).

³⁰⁹ *Napoles v. Sandiganbayan (Third Division)*, G.R. No. 224162, November 7, 2017.

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Similarly, Pancrudo triggered the same scheme by writing a letter to the Secretary of the DA for the transfer of his PDAF allocation supposedly for the implementation of livelihood projects in the 1st District of Bukidnon to NABCOR. In fact, he admitted during cross-examination, thus:³¹⁰

DIR. MA. CHRISTINA T. MARALLAG-BATACAN

Q And in fact you wrote the Department of Agriculture a letter so that the funds will be coursed through NABCOR?

WITNESS (PANCRUDO)

A Yes, I was informed by my staff that in order to implement it, it will re-channel to NABCOR, ma'am (*emphasis supplied*) [x x x]

As borne by the records, the DA transferred Pancrudo's P8.2M PDAF allocation to NABCOR, and by virtue of the tripartite MOA, 97% of the said fund was eventually received by UPFI. UPFI, through its authorized representative Espinosa, allegedly completed the implementation of Pancrudo's livelihood projects as evidenced by the liquidation documents they submitted to NABCOR, including the registration forms containing the names of the supposed "beneficiaries" of the livelihood project. However, such completion only appears to be on paper because not a single one of these "beneficiaries" have been found by the prosecution witnesses, the NBI investigating team or the COA State Auditors, nor have any of them claimed to be recipients of "livelihood training kits" printed by Screenmark Printing, or participants in the "training programs" led by Grayline Enterprise.

In light of the foregoing, this Court is morally certain that evident bad faith on the part of accused Pancrudo existed when he requested for the release of his PDAF to NABCOR, in violation of appropriation laws, and the principle of separation of powers.

Accused Mendoza, Guañizo, and Cacal (NABCOR)

The prosecution accused Cacal and Guañizo of **facilitating, processing and approving** the disbursement of the subject PDAF release by signing the following DVs:

³¹⁰ TSN dated 19 November 2019, p. 42-43.

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Case No.	Disbursement Voucher No.	Amount
SB-16-CRM-0114	09-02-0592	One Million One Hundred Ninety-Three Thousand One Hundred Pesos (P1,193,100.00)
SB-16-CRM-0116	09-04-1133	Six Million Seven Hundred Sixty Thousand Nine Hundred Pesos (P6,760,900.00)

without having carefully examined and verified the accreditation and qualifications of UPFI and the transactions' supporting documents.

On the other hand, the prosecution accused Mendoza of **causing the issuance of, and signing** the following United Coconut Planter's Bank (UCPB) checks:

Case No.	UCPB Check No.	Amount
SB-16-CRM-0114	455530	One Million One Hundred Ninety-Three Thousand One Hundred Pesos (P1,193,100.00)
SB-16-CRM-0116	455721	Six Million Seven Hundred Sixty Thousand Nine Hundred Pesos (P6,760,900.00)

without having carefully examined and verified the accreditation and qualifications of UPFI and the transactions' supporting documents.

The prosecution also accused Cacal of **preparing and/or reviewing** the MOA among Pancrudo, NABCOR, and UPFI. However, no evidence can be found in the records to prove the same. Thus, we will only focus on the participation of Mendoza in the signing of the checks, and of Guañizo and Cacal in the signing of the DVs.

This Court is not convinced that the three accused acted with manifest partiality and/or evident bad faith when they affixed their respective signatures on the disbursement vouchers and UCPB checks that led to the release of PDAF funds to UPFI. Allow us to discuss.

In order to determine whether manifest partiality or evident bad faith tainted the three accused's act of signing, we must first resolve two pressing issues: (1) the validity of contracting an NGO to

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implement the PDAF-funded project; and (2) UPFI's capability to implement the livelihood projects and to comply with terms of the MOA.

Validity of contracting an NGO to implement PDAF projects

The prosecution contended that NABCOR's release of funds to UPFI did not comply with the guidelines prescribed under GPPB Resolution No. 12-2007³¹¹ and COA Circular No. 2007-001³¹²; hence, such release was irregular and illegal.³¹³

The pertinent provisions of GPPB Resolution No. 12-2007 and COA Circular No. 2007-001 that would address the issue of whether or not NABCOR was legally allowed to further transfer the responsibility of implementing the livelihood project to non-governmental organizations are as follows:

GPPB Resolution No. 12-2007

AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT

X X X

Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects, and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

X X X

(j) **When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs)**, the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB. *(Emphasis supplied.)*

X X X

COA CIRCULAR No. 2007-001 dated October 25, 2007

³¹¹ Dated 29 June 2007.
³¹² Dated 25 October 2007.
³¹³ Prosecution's Memorandum, p. 11.

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**REVISED GUIDELINES IN THE GRANTING, UTILIZATION, ACCOUNTING
AND AUDITING OF THE FUNDS RELEASED TO NON-GOVERNMENTAL
ORGANIZATIONS/PEOPLE'S ORGANIZATIONS (NGOS/POS)**

x x x

4.2 Types of Projects which may be granted government funds

x x x

4.3.1 Livelihood development

x x x

4.5 Procedure for the Availment, Release and Utilization of Funds

The following procedures shall be **strictly complied with**:

4.5.1 The [government organization (GO)] shall **identify the priority projects** under its [Work and Financial Plan] which may be implemented by the NGO/PO, their **purpose/s, specifications and intended beneficiaries** as well as the **time frame within which the projects are to be undertaken**. To ensure **transparency, the foregoing information shall be made public** via newspapers, agency websites, bulletin boards and the like, **at least three months prior to the target date of commencement of the identified projects**.

4.5.2 For each project proposal, the GO shall **accredit the NGO/PO project partners through the Bids and Awards Committee (BAC)**, or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO.

4.5.3 Upon proper evaluation, the GO, thru the Committee, shall award the project to the NGO/PO which **meets the minimum qualification requirements and the specifications for the project** and which can satisfactorily undertake the project at terms most advantageous to the beneficiaries, taking into consideration the cost effectiveness of the project. x x x *(Emphases supplied.)*

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Based on the above-mentioned provisions, NABCOR had no **legal basis** to further transfer the responsibility of implementing the livelihood project to non-governmental organizations. As uncovered by the State Auditor Alfafaras and their team during the conduct of their audit, the 2008 GAA did not earmark the PDAF to be specifically contracted out to NGOs.³¹⁴ Neither were NGOs included among the implementing agencies of PDAF. Even assuming *arguendo* that the appropriation law of that year earmarked funds to be specifically contracted out to NGOs, the selection of UPFI still failed to meet the strict requirements under 4.5.1, 4.5.2, and 4.5.3 of COA Circular No. 2007-001. Thus, we are convinced that NABCOR irregularly contracted out the implementation of the livelihood project to UPFI.

UPFI's capability to implement the project and comply with the terms of the MOA

A careful examination of the records revealed that UPFI at the time material to these cases was **neither equipped, accredited nor qualified** to undertake the livelihood projects for the 1st District of Bukidnon. As stated under the terms of the MOA, UPFI was to "provide equity to the project not less than twenty percent (20%) of the total project cost or the amount of, which may be in the form of labor, land for the project sites, facilities, equipment [x x x] to be used in the project." The SEC documents, however, exposed that UPFI's total assets and equity as of yearend 2007 only amounted to P100,000.00, and P99,728.00, respectively.³¹⁵ The terms of the MOA required UPFI to provide not less than 20% of the total project cost, or at least P1,590,800.00, in the form of labor, land, facilities, equipment, etc. By this alone, UPFI could not have possibly been qualified, let alone chosen, if an actual public bidding pursuant to R.A. No. 9184 was conducted.

Additionally, the NBI investigation revealed that UPFI's office could not be located at its registered address. Furthermore, as Alfafaras testified, "UPFI had no business permits from the City Government of Iloilo at the time of project implementation, and UPFI did not submit any written confirmation on these transactions and additional documents requested by the Audit Team." The audit

³¹⁴ Records, Vol. 5, pp. 69-70.
³¹⁵ Exh. "A-16-I" series.

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investigation, coupled with the admissions of herein accused, point to the fact that UPFI was only chosen as the project partner for the implementation of the livelihood projects because (a) it was identified by the Office of Cong. Pancrudo, and (b) it had already been transacting with NABCOR before. To our mind, the selection of UPFI, despite its dubious and questionable existence at the time of the project implementation, is highly indicative of manifest partiality and/or evident bad faith.

In *Martel v. People*,³¹⁶ the Supreme Court ruled that in criminal cases involving Sec. 3 (e) of R.A. No. 3019 in relation to alleged irregularities in procurement committed by public officers, "findings of violations of procurement laws, rules and regulations, on their own, do not automatically lead to the conviction of the public officer under the said special penal law. This case also tells us that the **"manifest partiality"** contemplated by R.A. No. 3019 is a clear, notorious, or plain inclination or predilection to favor one side or person rather another, and "partiality" was further defined as "bias" which excites a disposition to see and report matters as they are wished for rather than as they are."³¹⁷

Here, these three accused did not deny having participated in the execution of the DVs and the checks, but claimed that they were merely performing their ministerial duties when they affixed their respective signatures. Cacal admittedly signed the DVs because he was authorized by Javellana to do so. He knew that without his signature, the funds would not be released to UPFI. Guañizo admittedly signed the DVs because she was just a relatively "new" employee, and she accepted every responsibility given by her immediate superior. Mendoza admittedly signed the checks because she was Vice President for Administration and Finance, and it was part of her duties to sign checks issued by NABCOR. She also admitted that she did not bother to personally verify the legitimacy of UPFI and its implementation of the livelihood project when she affixed her signature because she saw that the check was "already signed by Javellana." NABCOR served as a mere conduit or "layover" for the P8.2M PDAF of Pancrudo, because ultimately, the said funds were withdrawn by UPFI through Espinosa. Even accused Mendoza

³¹⁶ *Martel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

³¹⁷ *Id.*

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admitted that "NABCOR's only role based on the MOA was to transfer the funds to the NGO".³¹⁸

This Court is inclined to rule that accused Mendoza, Guañizo and Cacal did not act with manifest partiality and/or bad faith. All their allegations and defenses point to NABCOR President Javellana as the main reason for their act of signing. Concurrently, it was Javellana who had the authority and capacity to have chosen UPFI as the project partner of NABCOR in implementing the PDAF projects.

At the very least, the acts of Mendoza, Guañizo and Cacal were tainted with "**gross inexcusable negligence**," which refers to that "negligence characterized by 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."³¹⁹ Unlike manifest bias which is committed by *dolo*, gross inexcusable negligence is committed by *culpa*, or performed with imprudence, negligence, lack of foresight or skill.³²⁰ Without Mendoza's, Guañizo's and Cacal's signatures, certification and approval, said funds would not have been released from the bank account of NABCOR to UPFI. All of them admitted that they placed their signatures because of the authorization given to them by Javellana, and that they did not go beyond the contents of the documents attached to the disbursement vouchers and the checks to be signed. They relied on the face values of the documents submitted by UPFI's Espinosa, even though the transactions covered by the DVs and the checks involved millions of pesos. By failing to act with reasonable diligence and careful discretion in the performance of their tasks, accused Mendoza, Guañizo and Cacal are deemed to have acted with gross inexcusable negligence, but not manifest partiality nor evident bad faith. Unfortunately, the *Informations* failed to allege "gross inexcusable negligence" as a mode of commission of the unlawful acts of the accused. Therefore, they cannot be found guilty of committing Section 3(e) of R.A. 3019 through gross inexcusable negligence, because to rule otherwise is a violation of their right to be informed of the nature and cause of the accusation against them.³²¹

³¹⁸ *Records*, Vol. 9, p. 213.

³¹⁹ *Sabalдан, Jr. v. Office of the Ombudsman for Mindanao*, G.R. No. 238014, June 15, 2020.

³²⁰ *Supra*, at note 311 (Martel).

³²¹ Section 14 (2), Article III, 1987 Constitution; see *People v. Caloring*, G.R. No. 250980, [March 15, 2022].

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Moreover, in the instant case, the prosecution alleged that the three NABCOR employees are guilty of evident bad faith. However, this Court finds that the evidence offered by the prosecution is not sufficient to prove the accused's evident bad faith. While the Constitution exacts a higher standard of accountability with respect to public officers, as indeed public office is a public trust, the constitutional right of presumption of innocence in criminal prosecutions is likewise enjoyed by public officers who stand accused. Therefore, in order to justify conviction, their guilt must be proven beyond reasonable doubt, as with any other person who stands accused.³²²

Accused Espinosa

The prosecution accused Espinosa of **causing/participating in the preparation and signing** of the Work and Financial Plan and Project Proposal, which were used as supporting documents for the illegal release of Pancrudo's PDAF allocation; **causing/participating in the preparation and signing** of the acceptance and delivery reports, disbursement reports and other liquidation documents, which were all falsified and used as supporting documents of the disbursement; and of **receiving** the corresponding checks from NABCOR **acting for and in behalf of UPFI**.

Accused Espinosa argued that he "was a private individual at the time material to these cases, therefore he cannot be held liable for crimes wherein one of the essential elements is that the offender is a public officer or employee."³²³ He insisted that the prosecution failed to substantiate its allegation that he conspired with the other accused because (1) the funds were released by the DBM directly to DA which then transferred the funds to NABCOR then to UPFI, but despite so, the concerned officers of the DBM and DA who had initial control and custody of the funds were never made accused in these cases considering the fact that a Notice of Disallowance was issued by COA to the concerned officials of DBM and DA;³²⁴ (2) there was not a single evidence implying that Espinosa benefited from the transactions subject of these cases;³²⁵ and (3) UPFI could not have been a bogus NGO since it has already undertaken a PDAF project before, particularly the Electrification Project in the Province of Guimaras

³²² *Supra*, at note 316 (Martel).

³²³ *Memorandum for Accused Espinosa*, p. 11.

³²⁴ *Id.* at 12.

³²⁵ *Id.* at 14.

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amounting to Php18,430,000.00 funded by then Congressman Edgar Espinosa's PDAF.³²⁶

While we agree with Espinosa that no direct evidence was presented to prove that he personally benefited from these transactions, the fact that he was an officer of UPFI during the transactions in question still remains. Furthermore, we cannot agree with his other arguments because firstly, this Court does not have control over who or who does not get to be part of the accused. It is a settled rule that the Court will not interfere with the Office of the Ombudsman's determination of probable cause, unless there is a clear and convincing showing of grave abuse of discretion.³²⁷ Secondly, this Court is not convinced as to the relevance of UPFI undertaking a similar project, particularly the Electrification Project, because there was no evidence presented to prove the same. Mere allegations could not be considered as evidence by any means.³²⁸

Contrary to accused Espinosa's contentions, the prosecution sufficiently proved that UPFI, through its authorized representative Espinosa, auspiciously benefited from these transactions to the tune of:

Case No.	Amount
SB-16-CRM-0114	One Million One Hundred Ninety-Three Thousand One Hundred Pesos (P1,193,100.00)
SB-16-CRM-0116	Six Million Seven Hundred Sixty Thousand Nine Hundred Pesos (P6,760,900.00)

Such unwarranted benefit would not be possible without Espinosa being authorized by UPFI³²⁹ to enter into the MOA with NABCOR and Pancrudo, and to execute and prepare a compilation of falsified and spurious documents that eventually led to the release of Pancrudo's PDAF to UPFI. Espinosa's submission of the documents required for the release of the fund was heavily tainted with bad faith. As can be gleaned from the records, the Work and Financial Plan³³⁰ for the livelihood project did not contain any list of beneficiaries. What then would be the basis for the validation, evaluation and monitoring if they do not have a scintilla of idea whom the supposed beneficiaries of the project are? This coupled with the fact that neither the Work and Financial Plan nor the MOA dated February 20, 2009 contained any

³²⁶ *Id.* at 15.

³²⁷ Binay v. Office of the Ombudsman, G.R. No. 213957-58, August 7, 2019.

³²⁸ In re Ong, A.M. No. SB-14-21-J, [September 23, 2014], 743 PHIL 822-824.

³²⁹ Records, Vol. 9, p. 237

³³⁰ Exh. "B-18-F".

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provision on the (1) time schedules for periodic inspection and evaluation, reporting, monitoring, and specific target date of completion; (2) visitorial audit by the officials and personnel of COA; and (3) project description, benefits and site/location³³¹ are proof that UPFI, through Espinosa, had patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive, i.e. to have control over the public funds that was supposed to benefit Pancrudo's constituents in the 1st District of Bukidnon.

The following pieces of evidence also prove evident bad faith on the part of accused Espinosa and UPFI: (1) the FIO findings revealed that at the time of the supposed project implementation, UPFI could not be found at its registered address; (2) all the Livelihood Training Program Registration Forms were undated; (3) UPFI's President admitted that she did not know whether the training kits were truly distributed to the beneficiaries in Bukidnon, she did not exert efforts to validate the actual implementation of the project, and she would not know if the documents she relied on were fabricated or not; and (4) not a single beneficiary testified as to actually receiving either actual training or a livelihood training kit.

Bad faith on the part of Espinosa, as the authorized representative of UPFI, was also clearly manifested through the liquidation documents submitted to NABCOR to justify UPFI's receipt of the funds. A careful scrutiny of the documents on record would show that even before the MOA was entered into by Pancrudo, NABCOR, and UPFI, the receipts, sales invoice, delivery receipt for the supposed purchase of Livelihood Technology Kits, and even the requests for quotation for the conduct of training courses, were all dated prior to February 20, 2009, the supposed date of execution of the MOA. However, COA Circular No. 2007-001³³² clearly provides that "[n]o portion of the funds shall be released before the signing of the MOA." These pieces of documents taken together with the fact that a number of witnesses testified as to the non-existence of the supposed beneficiaries of the project could only mean that UPFI lied about the actual implementation of the livelihood project using the PDAF-drawn funds.

³³¹ Records, Vol. 5, p. 69

³³² COA Circular No. 2007-001, paragraph 6.1.

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All told, this Court holds that the second element of violation of Sec. 3 (e) of R.A. No. 3019 is present for accused Pancrudo and Espinosa.

Third element.

We now determine if the said acts of the accused gave rise to the third element. The third element may be committed in two ways: (i) by causing undue injury to any party including the Government, or (ii) by giving any private party any unwarranted benefit, advantage or preference. An accused may be charged under either or both but the presence of one would suffice for conviction.³³³ Here, the Informations allege both modes.

The determinative characteristics of unwarranted benefits, advantage, or preference under Sec. 3(e) of R.A. No. 3019 was discussed in *Lee v. Sandiganbayan, First Division*³³⁴ accordingly:

The term "unwarranted" means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. Advantage means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. Preference signifies priority or higher evaluation or desirability; choice or estimation above another.

The Supreme Court has treated undue injury in the context of Section 3(e) of R.A. No. 3019 as having a meaning akin to the civil law concept of actual damage:

Undue injury in the context of Section 3 (e) of R.A. No. 3019 should be equated with the civil law concept of "actual damage." Unlike in actions for torts, undue injury in Sec. 3 (e) **cannot be presumed** even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, **it is required that the undue injury be specified, quantified and proven to the point of moral certainty.**³³⁵ (*Emphases supplied.*)

In the present cases, the prosecution successfully proved beyond reasonable doubt that UPFI was given unwarranted benefit,

³³³ See *Villarosa v. People*, G.R. No. 233155-63, June 23, 2020.

³³⁴ G.R. Nos. 234864-67, January 12, 2021.

³³⁵ *Tio v. People*, G.R. Nos. 230132 & 230252, January 19, 2021.

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advantage or preference through the acts of (1) Pancrudo, of identifying and selecting UPFI to be the proponent or project partner for the implementation of the livelihood projects despite UPFI being unqualified both in law and in fact to do so; and (2) Mendoza, Guañizo and Cacal, of signing disbursement vouchers and checks thereby allowing the release of public funds to UPFI.

Likewise, the prosecution sufficiently proved that the government actually suffered undue injury. UPFI, through Espinosa, allegedly paid Screenmark Printing & Advertising the amount of PhP7,017,500.00 for the purchase of 2,005 sets of livelihood technology kits.³³⁶ The prosecution, however, through its witness Elizabeth Ferrer proved that Screenmark Printing & Advertising did not receive the said amount because the company never transacted with UPFI, and that the Official Receipt No. 6623 submitted by UPFI to NABCOR as part of the supporting documents was fabricated and falsified.

As regards the PhP936,500.00 allegedly paid by UPFI to Grayline Enterprises for the conduct of trainings, the same was proven to the point of moral certainty that it was never used to conduct the livelihood training courses for the benefit of the farmers in the 1st District of Bukidnon. Hence, the same must be returned to our public coffers.

In sum, the prosecution proved beyond reasonable doubt that Pancrudo and Espinosa conspired to commit unlawful acts in violation of Sec. 3 (e) of R.A. No. 3019, as amended. However, the same cannot be said as to Mendoza, Guañizo and Cacal for failure of the prosecution to prove the attendance of manifest partiality and/or evident bad faith on the part of said accused.

CRIM. CASE NOS. SB-16-CRM-0115:

Malversation of Public Funds

Article 217 of the Revised Penal Code³³⁷ defines and penalizes Malversation, viz.:

Article 217. Malversation of public funds or property; Presumption of malversation. — *Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other*

³³⁶ Exhs. "B-18-x" to "B-18-bb".

³³⁷ Act No. 3815, December 8, 1930.

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person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property [...]

X X X

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.

X X X

In the recent case of *People v. Asuncion*,³³⁸ the Supreme Court reiterated the elements and the modes of commission of Malversation under Art. 217, viz.:

The elements of Art. 217 are: (1) the offender is a public officer, (2) he or she has custody or control of the funds or property by reason of the duties of his office, (3) the funds or property are public funds or property for which the offender is accountable, and, most importantly, (4) the offender has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

X X X

Malversation may be committed intentionally (*dolo*) or by means of negligence (*culpa*). The crime is committed by means of *dolo* when the act is accompanied by criminal intent as when the offender misappropriated or converted public funds or property to one's personal use. Malversation may also be committed by means of *culpa* or by such negligence or indifference to duty or to consequences as, in law is equivalent to criminal intent; as when the offender knowingly allowed another or others to make use of or misappropriate public funds or property. (*Citations omitted.*)

In light of our findings and reasons already discussed in SB-16-CRM-0114 and -0116, and based on following disquisition that will be laid down, this Court holds that all four (4) elements of Malversation concurred in this case.

First element.

As to accused Pancrudo, Mendoza, Guañizo, and Cacal, there is no dispute on the existence of the first element, for at the time

³³⁸ G.R. Nos. 250366 & 250388-98, April 6, 2022.

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material to this case, the accused stipulated that they were, indeed, public officers.

With respect to accused Espinosa, who admittedly is a private person, this Court already held that he cannot escape liability for the reasons contained in our previous disquisition, i.e., there was implied conspiracy among him and the other accused as sufficiently proved by the prosecution beyond reasonable doubt. Article 222 of the Revised Penal Code, as amended, provides for the following private individuals who may be liable under Article 217 to 221 or malversation, to wit:

Art. 222. Officers included in the preceding provisions. – The provisions of this chapter shall apply to private individuals who, in any capacity whatever, have charge of any insular (now national), provincial or municipal funds, revenues or property and to any administrator or depository of funds or property attached, seized or deposited by public authority, even if such property belongs to a private individual.

We now move to the discussion on how the second, third and fourth elements concur in this case.

Second and third element.

Before the landmark decision of the Supreme Court to declare PDAF Articles unconstitutional in *Belgica*,³³⁹ the term "Pork Barrel" has been typically associated with lump-sum, discretionary funds of Members of Congress. Hence, at the time material to this case, the PDAF allocation of Pancrudo earmarked for the implementation of livelihood programs and projects in the 1st District of Bukidnon formed part of our **public funds** since its direct source or legal basis for disbursement was the 2008 GAA. The said PDAF allocation does not shed off its character as public funds even after its release and distribution to different implementing agencies that will use the funds for the programs/projects identified by the lawmaker.

In this case, we can safely conclude that Pancrudo, as a duly elected member of 14th Congress from 2007-2010, had control over and accountability for the lump-sum, discretionary fund or "Pork Barrel" fund in the amount of P8,200,000.00. This amount necessarily includes the P1,193,100.00 worth of public funds subject of this particular case.

³³⁹ *Supra*, at note 272 (*Belgica*).

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Granted that Pancrudo had no physical custody of the subject PDAF, he could, however, dictate and identify projects and programs, as well as implementing agencies, to where such fund may be allocated. This was exactly what happened when he wrote the letters to then House Speaker Nograles, to the DBM Secretary, and to the DA Secretary, for the transfer of his PDAF.

With respect to accused Cacal, Guañizo and Mendoza, their control or custody of the PDAF-drawn funds was factually established by the prosecution, since as signatories to the disbursement vouchers (Cacal and Guañizo) and checks (Mendoza), the three officers from NABCOR allowed or could not have allowed the release of the funds that were supposed to be for the benefit of Pancrudo's constituents in the 1st District of Bukidnon.

As to Espinosa's control or custody of the funds, this Court holds that the same was also successfully established by the prosecution. By virtue of the MOA dated February 20, 2009, UPFI (and necessarily, Espinosa as the authorized representative to handle the implementation of the livelihood project according to UPFI President Balista) had control or custody of the funds, and was accountable for the same. The MOA showing UPFI's accountability for the fund provides, to wit:

"5. The PROPONENT shall:

x x x

4. Administer, manage and disburse the **FUND** in accordance with sound, financial and accounting procedures as per approved project documents;

5. Open and maintain a separate savings account for each fund received from **NABCOR**;

x x x

7. Conduct periodic monitoring and evaluation to ascertain the progress/accomplishments of the project and submit regular report o the status of the project of **NABCOR**;

8. Prepare a report of disbursement attested by an independent Certified Public Accountant [x x x] and submit the same to **NABCOR** immediately upon project completion as liquidation of the **FUNDS** utilized in the implementation of the project. [x x x]³⁴⁰

x x x"

³⁴⁰ Records, Vol. 5, p. 566.

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Evidently, it was part of UPFI's duty as signatory to the MOA to comply with the terms, and that means being held accountable for the funds entrusted to them for the implementation of the livelihood project. Thus, the second and third element are deemed present.

Fourth element.

The last and most important element to be proved by the prosecution for malversation to exist is that the offender has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them. This Court is convinced that the prosecution was able to prove its existence in this case. Allow us to discuss.

Accused Pancrudo

As alleged in the Information, Pancrudo's acts of unilaterally choosing and indorsing UPFI in implementing livelihood projects to farmers in his legislative district, and of entering into the MOA with UPFI on the implementation of the projects meant that he misappropriated or consented, or, through abandonment or negligence, permitted another person to take P1,193,100.00 worth of public funds.

To prove these acts, the prosecution presented its chief witness, State Auditor Alfafaras who made an in-depth narration of the results of their audit of the funds allocated to Pancrudo. As previously discussed, the existence of the subject MOA was duly proven and stipulated. The existence of the Indorsement Letters/Letter Requests were also sufficiently established by the prosecution. The supposed beneficiaries of the livelihood projects were also proven to be non-existent.

Pancrudo, on the other hand, denied funding any project allegedly implemented by NABCOR and UPFI, and participating in the implementation of the livelihood project. His defense predominantly rests on the following asseverations, which, if proven, would necessitate his acquittal in this case: (1) that his signatures were forged, and (2) that his staff was doing all the work for him. Were these sufficiently proven? This Court rules in the negative.

Pancrudo merely denied the charges against him and alleged that his signatures were forged without offering any piece of proof. It is

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settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.³⁴¹ Thus, applying the presumption in Art. 217, the prosecution only had to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same.³⁴² An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily.³⁴³ Hence, in the absence of substantial defense to refute the charges against him, we hold Pancrudo liable for the misappropriation of the PDAF-drawn funds by allowing UPFI, through its representative Espinosa, to take or misappropriate the said public funds.

Accused Mendoza, Guañizo, and Cacal

As alleged in the Information, the NABCOR officers' acts of facilitating, processing and approving the disbursement of the subject PDAF release by signing the DV No. 09-02-0592 (accused Guañizo and Cacal) and UCPB Check No. 455530 (accused Mendoza) without carefully examining and verifying UPFI's accreditation and qualification, and the transaction's supporting documents meant that they misappropriated or consented, or, through abandonment or negligence, permitted UPFI to take the PDAF-drawn public funds.

All three accused did not deny signing the subject DVs and checks. Their defense rested on the fact that their acts of signing were ministerial and part of their jobs. Essentially, they are relying on the defense of good faith. We are not convinced.

As adequately proven by the prosecution, the act of signing and certifying these UCPB Check No. 455530 and DV No. 09-02-0592 was neither simple nor ministerial. It required the exercise of discretion, prudence and cautious judgment because it involved the release of public funds. The Supreme Court ruled in the case of *Zoleta v. Sandiganbayan*³⁴⁴ that:

³⁴¹ *Eduarte v. Ibay*, A.M. No. P-12-3100, November 12, 2013, 721 PHIL 2-11.

³⁴² *Estrada v. Sandiganbayan*, G.R. No. 125160, June 20, 2000, citing *People v. Pepito*, 267 SCRA 358,368, See also *Felicilda v. Grospe*, 211 SCRA 285.

³⁴³ *Navallo v. Sandiganbayan*, 234 SCRA 175, 185; *Villanueva v. Sandiganbayan*, 200 SCRA 722, 734.

³⁴⁴ *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015.

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The term *voucher*, when used in connection with disbursement of money, implies some instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment. Corollarily, when an authorized person approves a disbursement voucher, he certifies to the correctness of the entries therein, among others: that the expenses incurred were necessary and lawful, the supporting documents are complete, and the availability of cash therefor.

Furthermore, we previously discussed that without Mendoza's, Guañizo's and Cacal's signatures, certification and approval, said funds would not have been released from the bank account of NABCOR to UPFI. Such failure to act with reasonable diligence and careful discretion in the performance of their tasks amounts to gross inexcusable negligence allowing UPFI to take the PDAF-drawn public funds.

The individual acts of Pancrudo, Mendoza, Guañizo, and Cacal taken together amounts to a conspiracy to execute the devious scheme to misappropriate P1,193,100.00 worth of public funds, instead of implementing the projects intended for the farmers of the 1st District of Bukidnon. Hence, we adjudge them **GUILTY beyond reasonable doubt** and liable as co-principals in **Crim. Case No. SB-16-CRM-0115**.

CRIM. CASE NOS. SB-16-CRM-0117:

Complex Crime of Malversation of Public Funds through Falsification of Public Document

The charge of the complex crime of malversation of public funds through falsification of public document, as defined and penalized under Article 217 of the Revised Penal Code, in relation to Article 171.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.³⁴⁵

³⁴⁵ *Supra*, at note 339 (Zoleta).

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Here, the elements needed to be established by the prosecution are similar to those previously discussed in SB-16-CRM-0115. All these elements were likewise established by the prosecution in this case. The main difference in this case, aside from the amount involved, lies in the means of the commission of the crime, because here, falsification was a necessary means to commit the crime of malversation. Article 171 of the Revised Penal Code, provides:

ART. 171. Falsification by public officer, employee or notary or ecclesiastic 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:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book. x x x

In the present case, the records showed that the following documents necessary for the release of P6,760,900.00 worth of public funds were falsified by the respective public officers, to wit:

NAME	DOCUMENT	MARKING
Pancrudo and Espinosa	Accomplishment Report, prepared and signed by Pancrudo and Espinosa	"A-19-a"

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Pancrudo	Certificate of Acceptance, signed by Pancrudo	"A-19-c"
Mendoza	Inspection Report, signed by Mendoza	"A-19-d"
Pancrudo and Espinosa	Livelihood Training Program Registration Form containing the list of Beneficiaries, signed by Pancrudo and Espinosa	"A-19-f" to "A-19-ff"

It was also sufficiently proved that the other documents, which were necessary attachments for the signing of Disbursement Voucher No. 09-04-1133, and the subsequent issuance of UCPB Check No. 455721 for the release of the P6,760,900.00 to UPFI, were also falsified by Espinosa. The Independent Audit Report³⁴⁶ of UPFI, which was submitted by Espinosa, was repudiated and disclaimed by its purported maker and signatory Felix Tiangco in open court. Screenmark's Official Receipt, Sales Invoice, Delivery Receipt and Purchase Order,³⁴⁷ which were also submitted by Espinosa, were falsified as well because Elizabeth Ferrer, the purported maker and signatory of the said documents, denied their validity in open court. The prosecution alleged that the livelihood project was a "ghost" or inexistent project, and the documents proving its implementation and accomplishment were falsified. We are persuaded. In this case, not a single printed copy of the module or training kit from the supplier was presented by the defense in evidence, and not a single beneficiary testified to undergoing the livelihood training or receiving the training kit. Settled is the rule that in the absence of a satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification.³⁴⁸

Taken together with the circumstances that as grantee of the PDAF, Pancrudo was given the discretion to choose the implementing agency of his priority project, and that as disbursing officers of NABCOR, Cacal and Guañizo were in charge of certifying and signing the DV, and Mendoza was the one in charge of preparation and delivery of check issued by NABCOR, the conclusion is inevitable that all accused had a united purpose, that is, to allow UPFI, through Espinosa, to receive the check and misappropriated the proceeds thereof. Time and time again, the Supreme Court has ruled that when conspiracy is proven, the act of one is the act of all.³⁴⁹

³⁴⁶ Exh. "A-19-b".
³⁴⁷ Exh. "A-19-e" to "A-19-h".
³⁴⁸ *Maliwat v. Court of Appeals*, G.R. No. 107041-42, May 15, 1996, 326 PHIL 732-750.
³⁴⁹ *People v. Lago*, G.R. No. 121272, [June 6, 2001], 411 PHIL 52-62, citing *Froilan v. Sandiganbayan*, GR No. 115221, March 17, 2000; *People v. Panganiban*, 241 SCRA 91, 102, February 6, 1995; *People v. Hernandez*, 182 SCRA 794, 798, February 27, 1990.

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In summary, this Court is convinced that all accused, acting in conspiracy, are **GUILTY beyond reasonable doubt** and are liable as co-principals in **Crim. Case No. SB-16-CRM-0117**.

WHEREFORE, premises considered, the Court renders judgment as follows:

1. In **Criminal Case No. SB-16-CRM-0114**, this Court finds the accused **CANDIDO PANCRUDO, JR.** and **MARK ESPINOSA** **GUILTY** beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, as amended, and sentences each of them to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month as minimum to ten (10) years as maximum; and to suffer perpetual disqualification from public office.

Accused **RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO** and **VICTOR ROMAN C. CACAL** are **ACQUITTED** for violation of Section 3(e) of R.A. No. 3019, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt.

2. In **Criminal Case No. SB-16-CRM-0116**, this Court finds the accused **CANDIDO PANCRUDO, JR.** and **MARK ESPINOSA** **GUILTY** beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, as amended, and sentences each of them to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month as minimum to ten (10) years as maximum; and to suffer perpetual disqualification from public office.

Accused **RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO** and **VICTOR ROMAN C. CACAL** are **ACQUITTED** for violation of Section 3(e) of R.A. No. 3019, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt.

3. In **Criminal Case No. SB-16-CRM-0115**, this Court finds the accused **CANDIDO PANCRUDO, JR., RHODORA B.**



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MENDOZA, MARIA NINEZ P. GUAÑIZO, VICTOR ROMAN C. CACAL, and MARK ESPINOSA GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, and sentences **CANDIDO PANCRUDO, JR. and MARK ESPINOSA** to suffer the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and the accessory penalty of perpetual special disqualification from holding any public office, taking into consideration the attendance of the mitigating circumstance of voluntary surrender. **RHODORA B. MENDOZA, VICTOR ROMAN C. CACAL and MARIA NINEZ P. GUAÑIZO** are sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and the accessory penalty of perpetual special disqualification from holding any public office. Further, each accused is herein ordered to pay a fine of PhP1,193,100. They are also held jointly and severally liable to return and to reimburse the government, through the Bureau of Treasury, the amount of PhP1,193,100.00 representing the amount malversed, and the costs, with interest computed from the finality of this decision until paid.

4. In Criminal Case No. SB-16-CRM-0117, this Court finds the accused **CANDIDO PANCRUDO, JR., RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO, VICTOR ROMAN C. CACAL, and MARK ESPINOSA** GUILTY beyond reasonable doubt of the complex crime of malversation of public funds through falsification of a public document under Articles 217 and 171 in relation to Article 48 of the Revised Penal Code, as amended, and sentences **CANDIDO PANCRUDO, JR. and MARK ESPINOSA** to suffer the penalty of imprisonment for an indeterminate period of fourteen (14) years, eight (8) months and (1) day, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law, taking into consideration the attendance of the mitigating circumstance of

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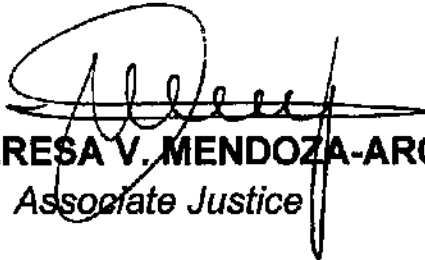
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voluntary surrender. **RHODORA B. MENDOZA, VICTOR ROMAN C. CACAL** and **MARIA NINEZ P. GUAÑIZO** are sentenced to suffer the penalty of imprisonment for an indeterminate period of sixteen (16) years, five (5) months and 10 days, as minimum, to seventeen (17) years, four (4) months and 1 day of *reclusion temporal*, as maximum, and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law. Further, each accused is herein ordered to pay a fine of PhP6,760,900.00. They are also held jointly and severally liable to return and to reimburse the government, through the Bureau of Treasury, the amount of PhP6,760,900.00 representing the amount malversed, and the costs, with interest computed from the finality of this decision until paid.

With respect to accused Alan A. Javellana, considering that he remained at large and jurisdiction over his person had yet to be acquired, let the cases against him be archived, and let an alias warrant of arrest issue against him.

SO ORDERED.

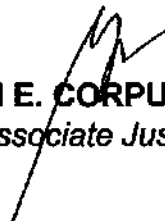


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:



RAFAEL R. LAGOS
Associate Justice
Chairperson



MARYANN E. CORPUS-MAÑALAC
Associate Justice

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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.



RAFAEL R. LAGOS

Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson'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

