



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-16-CRM-0417 to
SB-16-CRM-0420
For: Violation of Section 3(e),
Republic Act No. 3019

SB-16-CRM-0421 to
SB-16-CRM-0424
For: Malversation under Article
217 of the Revised Penal
Code

RENO GUTLAY LIM,
ANTONIO YRIGON ORTIZ,
DENNIS LACSON CUNANAN,
MARIVIC VILLARUZ JOVER,
MA. ROSALINDA MASONGSONG LACSAMANA,
CONSUELO LILIAN REYES ESPIRITU,
CARLOS SORIANO,
FRANCE A. MERCADO,
CARMELITA BARREDO,
Accused.

X-----X

Present:

HERRERA, J., Chairperson
CALDONA, J. and
MALABAGUIO, J.

Promulgated:

May 5, 2023 *unb*

X-----X

DECISION

CALDONA, J.:

For the alleged anomalous disbursement and/or misappropriation of the Priority Development Assistance Fund (PDAF) in the amount of P30,000,000.00 which was allocated to him as representative of the 3rd

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District of Albay, accused Reno Gutlay Lim, together with all his co-accused, except Dennis L. Cunanan who is not included in Criminal Cases Nos. SB-16-CRM-0417 and SB-16-CRM-0421, stand charged with four (4) counts of the crime of violation of Section 3 (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and another four (4) counts of the crime of malversation as defined and penalized under Article 217 of the Revised Penal Code, as amended.

The subject PDAF allocation was transferred by the Department of Budget and Management (DBM) to the Technology Resource Center (TRC) in two (2) tranches on the strength of request letters by accused Reno G. Lim dated August 29 and November 21, 2007 addressed to then House Speaker Jose De Venecia through the Chairman of the House Committee on Appropriations supposedly for the implementation of livelihood projects in the 3rd District of Albay. The fund transfers were covered by two (2) Special Allotment Release Orders (SARO) namely: a) SARO No. ROCS-07-07208 dated September 25, 2007 for P15,000,000.00 and b) SARO No. ROCS-08-00129 dated January 9, 2008 for P15,000,000.00.

Considering that accused Lim chose Kaagapay Magpakailanman Foundation, Inc. (KMFI) in his letters to accused Antonio Yrigon Ortiz, Director General of the TRC, dated October 11, 2007 and January 28, 2008 as partner or co-implementer of the livelihood projects, the TRC released from the first tranche covered by SARO No. ROCS-07-07208 the sums of P12,000,000.00 as budget for the projects and P1,500,000.00 as retention fee; while the balance of P1,500,000.00 was retained by the TRC representing its management and service fee. The two (2) fund



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releases are the subject of separate informations in Criminal Cases Nos. SB-16-CRM-0417 and SB-16-CRM-0418, to wit:

Criminal Case No. SB-16-CRM-0417

That on January 24, 2008, or sometime prior or subsequent thereto, in Quezon City, Philippines and within this Honorable Court's jurisdiction, accused public officers RENO GUTLAY LIM (Lim), being then the Congressman of the Third District of Albay, ANTONIO YRIGON ORTIZ (Ortiz), being then the Director General, Dennis Lacson Cunanan (Cunanan) being then the Deputy Director General, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), being then the Group Manager, MARIVIC VILLALUZ JOVER (Jover), being then the Chief Accountant, and CONSUELO LILIAN REYES ESPIRITU (Espiritu), being then the OIC Budget Officer, all of the Technology and Resource Center (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals, FRANCE A. MERCADO (Mercado), CARLOS SORIANO (Soriano), and CARMELITA C. BARREDO (Barredo), acting with manifest partiality, evident bad faith and/or gross inexcusable negligence; did then and there willfully, unlawfully, and criminally cause undue injury to the government and/or give unwarranted benefits to said private individuals and Kaagapay Magpakailanman Foundation Inc. (KMFI) in the amount of at least TWELVE MILLION PESOS (P12,000,000.00) through the following acts:

- a) Lim unilaterally chose and indorsed KMFI, a non-government organization represented by aforesaid private individuals, as "project partner" in implementing livelihood projects for his constituents in the Third District of Albay, which were funded by Lim's PDAF allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07208, in disregard of the appropriation law and its implementing rules, and/or without benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with KMFI being unaccredited and unqualified to undertake the projects;
- b) Lim likewise submitted a Project Proposal which he solely signed;
- c) Upon release by the Department of Budget and Management of the said PDAF-drawn funds, Lim and TRC's Ortiz entered into a Memorandum of Agreement with KMFI on the implementation of Lim's purported PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;
- d) Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher



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(DV) No. 012008010077 along with Jover, Lacsamana and Espiritu, as well as causing the issuance of Land Bank Check No. 885668 in the amount of P12,000,000.00 to KMFI which was co-signed by Ortiz, without accused TRC officers and employees having carefully examined and verified the accreditation and qualification of KMFI as well as the transaction's supporting documents.

- e) Mercado, acting for and in behalf of KMFI, received the above cited check from TRC;
- f) By their above acts, Lim and the above-named TRC officials allowed Mercado, Soriano, and Barredo and KMFI to divert said PDAF-drawn funds and benefit therefrom, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while Mercado and Soriano caused the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.

Criminal Case No. SB-16-CRM-0418

That on February 26, 2008, or sometime prior or subsequent thereto, in Quezon City, Philippines and within this Honorable Court's jurisdiction, accused public officers RENO GUTLAY LIM (Lim), being then the Congressman of the Third District of Albay; ANTONIO YRIGON ORTIZ (Ortiz), being then the Director General, Dennis Lacson Cunanan (Cunanan) being then the Deputy Director General, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), being then the Group Manager, MARIVIC VILLALUZ JOVER (Jover), being then the Chief Accountant, and CONSUELO LILIAN REYES ESPIRITU (Espiritu), being then the OIC Budget Officer, all of the Technology and Resource Center (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals, FRANCE A. MERCADO (Mercado), CARLOS SORIANO (Soriano), and CARMELITA C. BARREDO (Barredo); acting with manifest partiality, evident bad faith and/or gross inexcusable negligence; did then and there willfully, unlawfully, and criminally cause undue injury to the government and/or give unwarranted benefits to said private individuals and Kaagapay Magpakailanman Foundation Inc. (KMFI) in the amount of at least ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) through the following acts:



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- a) Lim unilaterally chose and indorsed KMFI, a non-government organization represented by aforesaid private individuals, as "project partner" in implementing livelihood projects for his constituents in the Third District of Albay, which were funded by Lim's PDAF allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07208, in disregard of the appropriation law and its implementing rules, and/or without benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with KMFI being unaccredited and unqualified to undertake the projects;
- b) Upon release by the Department of Budget and Management of the said PDAF-drawn funds, Lim and TRC's Ortiz entered into a Memorandum of Agreement with KMFI on the implementation of Lim's purported PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;
- c) After the release to KMFI of the PDAF allocations of Lim pertaining to aforesaid project, Mercado requested, and which Lacsamana recommended, the release of the ten percent (10%) retention fee;
- d) Ortiz then facilitated, processed, and approved the disbursement of the subject of the ten percent (10%) retention fee by signing the Disbursement Voucher (DV) No. 012008020353 along with Jover, Cunanan and Espiritu, with Lacsamana issuing a memorandum recommending the release of Lim's PDAF, as well as causing the issuance of Land Bank Check No. 885692 in the amount of P1 500,000.00 to KMFI which was co-signed by Ortiz, without accusee TRC officers and employees having carefully examined and verified the accreditation and qualification of KMFI as well as the transaction's supporting documents;
- e) Mercado, acting for and in behalf of KMFI, received the above cited check from TRC;
- f) By their above acts, Lim and the above-named TRC officials allowed Mercado, Soriano, and Barredo and KMFI to divert said PDAF-drawn funds and benefit therefrom, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while Mercado and Soriano caused the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

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With regard to SARO No. ROCS-08-00129 covering the second tranche, funds were likewise released in favor of KMFI in the same sums of P12,000,000.00 as budget for the livelihood projects and P1,500,000.00 as retention fee; while the balance of P1,500,000.00 was retained by the TRC representing its management and service fee. These subsequent two (2) fund releases in favor of KMFI are the subject of the corresponding informations in Criminal Cases Nos. SB-16-CRM-0419 and SB-16-CRM-0420 which are similarly couched as the above-quoted informations except as to the date of commission of the crime, disbursement voucher and Land Bank of the Philippines check numbers¹.

Meanwhile, the four (4) separate informations for the crime of malversation of public funds are the offshoot of the four (4) above-mentioned charges of violation of Section 3 (e) of R.A. No. 3019, as amended. The informations in Criminal Cases Nos. SB-16-CRM-0421 and SB-16-CRM-0422 are quoted hereunder, to wit:

Criminal Case No. SB-16-CRM-0421

That on January 24, 2008, or sometime prior or subsequent thereto, in Quezon City, Philippines and within this Honorable Court's jurisdiction, accused public officers RENO GUTLAY LIM (Lim), being then the Congressman of the Third District of Albay; ANTONIO YRIGON ORTIZ (Ortiz), being then the Director General, Dennis Lacson Cunanan (Cunanan) being then the Deputy Director General, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), being then the Group Manager, MARIVIC VILLALUZ JOVER (Jover), being then the Chief Accountant, and CONSUELO LILIAN REYES ESPIRITU (Espiritu), being then the OIC Budget Officer, all of the Technology and Resource Center (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals, FRANCE A. MERCADO (Mercado), CARLOS SORIANO

¹ In **Criminal Case No. SB-16-CRM-0419** the alleged date of commission of the crime is on March 19, 2008 involving Disbursement Voucher (DV) No. 012008030775 and Land Bank Check No.885738. In **Criminal Case No. SB-16-CRM-0420** the alleged date of commission of the crime is April 4, 2008 involving Disbursement Voucher (DV) No. 012008040897 and Land Bank Check No 885752.

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(Soriano), and CARMELITA C. BARREDO (Barredo), did then and there willfully, unlawfully, and criminally allow private individuals and Kaagapay Magpakailanman Foundation Inc. (KMFI) to take public funds to at least TWELVE MILLION PESOS (P12,000,000.00) through the following acts:

- a) Lim, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the General Appropriations Act for the year 2007, unilaterally chose and indorsed KMFI, a non-government organization represented by aforesaid private individuals, as "project partner" in implementing livelihood projects for his constituents in the Third District of Albay, which were funded by Lim's PDAF allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07208, 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 KMFI being unaccredited and unqualified to undertake the projects;
- b) Lim likewise submitted a Project Proposal which he solely signed;
- c) Lim and TRC's Ortiz entered into a Memorandum of Agreement with KMFI on the implementation of Lim's purported PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;
- d) Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) No. 012008010077 along with Jover, Lacsamana and Espiritu, as well as causing the issuance of Land Bank Check No. 885668 in the amount of P12,000,000.00 to KMFI which was co-signed by Ortiz, without accused TRC officers and employees having carefully examined and verified the accreditation and qualification of KMFI as well as the transaction's supporting documents;
- e) Mercado, acting for and in behalf of KMFI, received the above cited check from TRC;
- f) By their above acts, Lim and the above-named TRC officials allowed Mercado, Soriano and Barredo and KMFI to take possession and thus misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while Mercado and Soriano caused the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.



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CONTRARY TO LAW.

Criminal Case No. SB-16-CRM-0422

That on February 26, 2008 or sometime prior or subsequent thereto, in Quezon City, Philippines and within this Honorable Court's the jurisdiction, accused public officers RENO GUTLAY LIM (Lim), being then the Congressman of the Third District of Albay; ANTONIO YRIGON ORTIZ (Ortiz), being then the Director General, Dennis Lacson Cunanan (Cunanan) being then the Deputy Director General, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), being then the Group Manager, MARIVIC VILLALUZ JOVER (Jover), being then the Chief Accountant, and CONSUELO LILIAN REYES ESPIRITU (Espiritu), being then the OIC Budget Officer, all of the Technology and Resource Center (TRC); while in the performance of their administrative and/or official functions; and conspiring with one another and with private individuals, FRANCE A. MERCADO (Mercado), CARLOS SORIANO (Soriano), and CARMELITA C. BARREDO (Barredo); did then and there willfully, unlawfully and criminally allow private individuals and Kaagapay Magpakailanman Foundation Inc. (KMFI) to take public funds amounting to at least ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) through the following acts:

- a) Lim, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the General Appropriation Act for the year 2007, unilaterally chose and indorsed KMFI, a non-government organization represented by aforesaid private individuals, as "project partner" in implementing livelihood projects for his constituents in the Third District of Albay, which were funded by Lim's PDAF Allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07208, 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 KMFI being unaccredited and unqualified to undertake the projects;
- b) Lim and TRC's Ortiz entered into a Memorandum of Agreement with KMFI on the implementation of Lim's purported PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;
- c) After the release to KMFI of the PDAF allocations of Lim pertaining to aforesaid project, Mercado requested, and which Lacsamana recommended, the release of the ten percent (10%) retention fee.



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- d) Ortiz then facilitated, processed, and approved the disbursement of the subject ten percent (10%) retention fee by signing the Disbursement Voucher (DV) No. 012008020353 along with Jover, Cunanan, and Espintu, with Lacsamana issuing a memorandum recommending the release of Lim's PDAF fund, as well as causing the issuance of Land Bank Check No. 885692 in the amount of P1,500,000.00 to KMFI which was co-signed by Ortiz, without accused TRC officers and employees having carefully examined and verified the accreditation and qualification of KMFI as well as the transaction's supporting documents;
- e) Mercado, acting for and in behalf of KMFI, received the above cited check from TRC;
- f) By their above acts, Lim and the above-named TRC officials allowed Mercado, Soriano, and Barredo and KMFI to take possession and thus misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while Mercado and Soriano caused the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.

The informations in Criminal Cases Nos. SB-16-CRM-0423 and SB-16-CRM-0424 are similarly couched with the above-quoted informations for the crime of malversation having typical allegations constitutive of the elements of the crime with notable variance only regarding the alleged dates of commission of the crime, Disbursement Voucher and Land Bank of the Philippines check numbers.²

The accused, assisted by counsel, were arraigned on different dates whence all interposed the plea of "Not guilty", to wit: a) accused Consuelo Lilian Reyes Espiritu on August 10, 2017; b) accused Ma. Rosalinda Masongsong Lacsamana on October 6, 2017; c) accused Dennis Lacson Cunanan on November 17, 2017; d) accused Marivic Villaruz Jover on April 13, 2018; and e) accused

² See Note No. 1.

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Reno Gutlay Lim on July 27, 2018. Meanwhile, accused Antonio Yrignon Ortiz, France Mercado, Carlos Soriano and Carmelita Barredo remain at-large.

Pre-trial conferences were held also on different dates. With respect to accused Cunanan, Lacsamana and Espiritu on November 4, 2017, accused Jover on April 20, 2018 and accused Lim on November 9, 2018 on which they admitted their respective positions in the government during the dates material to these cases as cited in the informations.

In the course of the trial on the merits, the prosecution presented as witnesses: a) Marissa Santos, Chief Administrative Officer, DBM; b) Atty. RJA. Banal, Securities Counsel III, Company Registration and Monitoring Department, Securities and Exchange Commission (SEC); c) Atty. Melissa A. Santiago-Yan, Deputy Executive Director IV, GPPB-TSO, d) Lolita M. Soriano, Supervising Administrative Officer, Commission on Audit (COA) - Special Audit Office (SAO); e) Joan Agnes N. Alfafaras, COA State Auditor IV; f) Rachel M. Abendanio, OIC Chief, COA Records Management Services; and g) Atty. Winston D. Oscaris, Investigator, Field Investigation Unit, Office of the Ombudsman (OMB).

DBM Chief Administrative Officer **Marissa Santos**³ testified that upon receipt of the subpoena from the Office of the Ombudsman she submitted as required therein certified true copies of the two (2) Special Allotment Release Orders (SAROs) together with the attached indorsement letters by accused Reno G. Lim, Notices of Cash Allocation and the Advice of Notices of Cash Allocation.⁴

³ Judicial Affidavit, Records, Vol. IV, p. 86-93; TSN dated September 18, 2019, pp. 6-13.

⁴ Exhibits "M", "O", "LL", "P" and "MM".



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Atty. RJ A. Bernal,⁵ Securities Counsel III, Company Registration and Monitoring Department of the SEC certified as true copies the following SEC documents regarding Kaagapay Magpakailanman Foundation Inc. (KMFI), to wit: Certificate of Incorporation dated August 23, 2006; Articles of Incorporation adopted March 20, 2006; By-laws; SEC Registration Notice; SEC Reservation Payment Confirmation; SEC Reservation Notice; Verification/Reservation Request; Certification of Bank Deposit of KMFI by the Bank of Commerce, Mandaluyong Shaw Blvd. Branch; Registration Data Sheet; Statement of Willingness to be Audited; Certificate of Filing Amended Articles of Incorporation; Payment Assessment Form; Amended Articles of Incorporation; Company Data Maintenance Form; and Financial Statements for 2005-2010.

Atty. Melissa A. Santiago-Yan,⁶ Deputy Executive Director IV of the GPPB-TSO submitted certified true copies of GPPB Resolution No. 12-2007⁷ to the Office of the Special Prosecutor on July 20, 2018.

Lolita M. Soriano,⁸ currently the Supervising Administrative Officer assigned at COA-SAO was State Auditor II from June 22, 2004 to March 2015. Acting on a subpoena from the Office of the Ombudsman, she submitted certified true copies of the COA Special Audit Report No. 2012-03 and the attached documents.⁹

Rachel M. Abendanio¹⁰, Officer-in-Charge, Records Management Services of the COA, also submitted to the Office of the Special Prosecutor certified true copies of the four (4) COA Office Orders and two

⁵ Judicial Affidavit, Records, Vol. IV, pp. 223-227; TSN dated July 11, 2018, pp. 14-15.

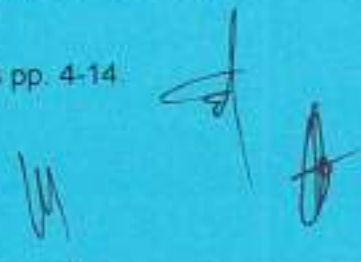
⁶ Judicial Affidavit, Records, Vol. IV, pp. 345-349; TSN dated September 19, 2019, pp. 4-5.

⁷ Exhibits "C" to "C-2".

⁸ Judicial Affidavit, Records, Vol. IV, pp. 361-369; November 21, 2019, pp. 4; TSN dated August 1, 2018, pp. 4-13.

⁹ Exhibits "A" to "A-463" and "Q".

¹⁰ Judicial Affidavit, Records, Vol. IV, p. 319-323; TSN dated July 11, 2018 pp. 4-14.



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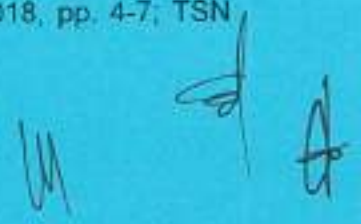
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(2) COA Circulars, namely: COA Office Order No. 2010-309 dated May 13, 2010; COA Office Order No. 2010-327 dated May 18, 2010; COA Office Order No. 2011-039 dated January 19, 2011; COA Office Order No. 2011-428 dated June 17, 2011; COA Audit Circular No. 96-003 dated February 27, 1996; and COA Audit Circular No. 2007-001 dated October 25, 2007.

State Auditor IV **Joan Agnes N. Alfafaras**¹¹ testified that she was part of the COA-SAC Team that conducted an ocular inspection of the office address of KMFI on January 28, 2011. The team noticed that some of the documents submitted by C.C. Barredo Publishing House to other NGOs are the same as that of KMFI. Thereafter, the team proceeded to the supposed address of KMFI at No. 339 Quezon Avenue, Quezon City. The address turned out to be that of C.C. Barredo Publishing House. On January 31, 2011, the team went back to the same address of the publishing house for the purpose of conducting an inspection in the presence of a NABCOR representative but by then it was already closed. She then received a text message from accused Mercado informing her that KMFI already transferred to Unit 134 Chateau Verde Condominium, Valle Verde, Brgy. Ugong, Pasig City. The team however found that it was a residential unit with no signage to identify that an NGO was indeed operating in the said unit. Alfafaras then took a photo of the business site/s of C.C. Barredo Publishing House and KMFI located at No. 339 Quezon Avenue, Quezon City and Unit 134 Chateau Verde Condominium, Valle Verde, Brgy. Ugong, Pasig City¹².

¹¹ Judicial Affidavit, Records, Vol. V, pp.17-39; TSN dated August 13, 2018, pp. 4-7; TSN dated September 18, 2019, pp. 26-27.

¹² Exhibits "A-467" to "A-474".



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Atty. Winston D. Oscaris¹³ is currently an investigator at the Office of the Ombudsman. In 2014 he was assigned at the Field Investigation Unit in the Office of the Deputy Ombudsman for Luzon. During that period, he was assigned to a special team of investigators that conducted a fact-finding investigation on the PDAF of accused Lim. In the course of the fact-finding investigation, legal processes were issued to the COA and other government agencies to validate the supposed beneficiaries of PDAF funded projects. The team was able to obtain certifications from local government officials denying having received any of the livelihood kits that were supposedly given to them. The special team of investigators evaluated and analyzed all the documents that they have gathered and came up with its findings and recommendations. These findings and recommendations became the bases of the Complaint-Affidavit dated July 1, 2014 for the charges of violations of the Anti-Graft and Corrupt Practices Act and Malversation against all the accused.

The prosecution formally offered its evidence against accused Cunanan, Lacsamana, Jover and Espiritu on November 26, 2019¹⁴ consisting of Exhibits "AAA" to "ZZZ", "A⁴", "D⁴", "R⁴", and "T⁴" with submarkings which were admitted by the Court in its Resolution dated September 19, 2022. With respect to accused Lim, the Court resolved to admit Exhibits "A" to "F", "M" to "Z", "AA" to "ZZ", "AAA" to "ZZZ", "A⁴", "D⁴", "R⁴", and "T⁴" inclusive of submarkings on May 19, 2021.

Thereafter, the following motions were filed: a) Motion for Leave of Court to File Demurrer to Evidence¹⁵ dated March 4, 2019 by accused Lacsamana; b) (Ad Cautelam) Motion for Leave of Court to File Demurrer

¹³ TSN dated August 29, 2018, pp. 9-39, TSN dated June 25, 2019, pp. 6-17.

¹⁴ Records, Vol. VII, pp. 241-325.

¹⁵ Records, Vol. VI, pp. 438-442.



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to Evidence¹⁶ dated March 6, 2019 by accused Cunanan; and c) Motion for Leave of Court to File Demurrer to Evidence¹⁷ dated March 6, 2019 by accused Jover. After hearing the contentions of the prosecution and the defense, the Court resolved to deny all the motions in a Resolution¹⁸ dated April 29, 2019. A motion for reconsideration of the resolution was filed on May 14, 2019 by accused Lacsamana but was denied on June 14, 2019.

Accused Lim filed a Motion for Leave to File Demurrer to Evidence¹⁹ dated July 6, 2021 which was opposed by the prosecution in its Comment/Opposition dated July 9, 2021. The Court in a Resolution²⁰ dated August 4, 2021 denied the request for leave. Subsequent motion for reconsideration was also denied on September 16, 2021.

Thereafter, the following accused testified for their respective defenses: a) Dennis Cunanan; b) Maria Rosalinda Lacsamana; c) Marivic Jover; d) Consuelo Lilian Espiritu and e) Reno Lim who also presented as his witness Senior Document Examiner Jennifer B. Dominguez of the NBI Questioned Document Division.

Dennis Cunanan²¹ was the Deputy Director General of the TRC from December 2004 until December 2009. From December 2009 up to March 2014 he served as Director General of the same agency. He testified that he only signed disbursement vouchers when all the necessary attachments are complete in accordance with the checklist required by accused Ortiz which are the SAROs, indorsement letters from legislators, memorandum of agreement and the project proposal, among

¹⁶ *Id.* pp. 453-456.

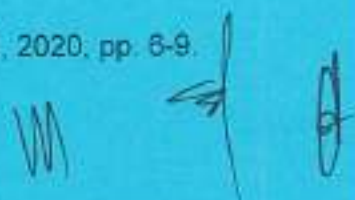
¹⁷ *Id.* pp. 457-460.

¹⁸ *Id.* pp. 495-499.

¹⁹ Records, Vol. IX, pp. 409-463.

²⁰ Records, Vol. IX, pp. 483-485.

²¹ Judicial Affidavit, Records, Vol. VIII, pp. 108-117; TSN dated November 23, 2020, pp. 6-9.



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others. He claimed that accused Ortiz limited his participation in PDAF transactions through Office Circular No. 00GE0098 which was issued and took effect on January 19, 2007. This circular limited his signing authority for TRC's checks, which used to be on the same level as that of the Director General, up to P1,000,000.00 only. He also stated that Office Circular No. 00P0099 issued on September 3, 2007 provides that PDAF transactions shall be indorsed by the Legislative Liaison Officer and herein accused Lacsamana for approval by Director General Ortiz after being reviewed by the Legal Department and initialed by the Group Manager of the Corporate Support Services Group (CSSG). As a result, his office was stripped of any participation in the implementation of PDAF funded projects. According to him, he signed the disbursement vouchers for check preparation only and after all the other TRC officials who were required to examine and verify the same had either initialed or signed the same.

Maria Rosalinda M. Lacsamana²² stated that among her duties as Group Manager of the TRC was to ascertain that the supporting documents pertaining to the PDAF projects were signed, complete, and in order. She denied having participated in the selection, indorsement, and approval of the NGO as co-implementer of the PDAF funded projects of accused Lim. She has no authority to enter into any agreement with the concerned legislator and the NGOs for the release of funds and implementation of their projects. In fact, the two (2) memoranda of agreement²³ between the TRC, the legislator and the NGO do not bear her name and her signature either as authorized representative or witness thereto. As regards the accusation that she wrote memoranda addressed to accused Ortiz to facilitate the release of the funds to KMF1 even before

²² Judicial Affidavit, Records, Vol. VII, pp. 161-167; TSN dated March 12, 2020, pp. 4-6.

²³ Exhibits "2" and "5".



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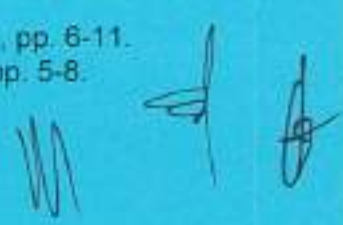
the execution of the memoranda of agreements she explained that there were instances when the same were submitted to her office already signed by the concerned parties while the notarization thereof would come later. She wrote the memoranda and the disbursement vouchers in good faith believing that the necessary procedures for the issuance of the PDAF funds to KMFI were already complied with. She denied receiving anything of value in consideration of TRC's implementation of PDAF funded projects.

Consuelo Lilian Espiritu²⁴ was Budget Officer IV from September 5, 2007 until the abolition of TRC in 2015. She testified that she signed Box B of the disbursement vouchers above the phrase "Certified within the budget". This means that the requested amount was found to be within the budget of the TRC as reflected in the SARO, Notice of Cash Allocation (NCA) and Official Receipt (OR). She claimed that once all the necessary documents were completed, she had no choice but to certify that the requested expenditure was within the budget of the TRC and that she had no discretion to do otherwise.

Marivic V. Jover²⁵ was the Chief Accountant of the TRC at the time of the questioned transactions. According to her, all her actions were in accordance with the Revised Implementing Guidelines on PDAF accounts covered by Office Circular No. 000P0100 effective November 27, 2007 which supersedes Office Circular No. 00FN0059. The disbursement vouchers were required to be routed in sequence from one office to another since there is an order of procedure. The signatory of Box A will be the first to sign the disbursement voucher followed by the signatory of Box B and Box C. She cannot affix her signature if the prior box has not

²⁴ Judicial Affidavit, Records, Vol. VIII, pp. 270-297; TSN dated April 29, 2021, pp. 6-11.

²⁵ Judicial Affidavit, Records, Vol. IX, pp. 115-122; TSN dated June 9, 2021, pp. 5-8.



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yet been signed. The accounting division becomes involved in the process after the signatory to Box A of the disbursement voucher had already certified the lawfulness of the intended project pursuant to the TRC circulars. Her division accomplished the accounting entries and checked the required supporting documents. Afterwards, she would make a certification in Box B of the disbursement voucher as to the availability of funds, that expenditure is properly certified, that expenditure is supported by documents, that the account codes are proper and that previous cash advances, if any, had been liquidated or accounted for.

Accused **Reno G. Lim**²⁶ testified that he did not sign the memorandum of agreement between the TRC and KMFI dated January 28, 2008 and March 19, 2008 and that his purported signatures in the said memoranda were a forgery. His alleged signature in the Letter dated January 28, 2008 supposedly indorsing KMFI as co-implementer of the projects funded by his PDAF was also a forgery. He engaged the services of Erlinda B. Samson, a retired PNP handwriting expert, to examine his questioned signatures in the memoranda and the letter. According to him, the handwriting expert concluded that there were marked differences between his purported signatures in the memoranda and the letter vis-à-vis his standard signatures. In fact, accused Lim filed a falsification case against Atty. Manguiat, a notary public, accused Ortiz and accused Mercado before the Metropolitan Trial Court of Quezon City. During the trial, he filed a motion to refer the questioned documents to the NBI for expert examination and analysis. The NBI stated in its findings in a transmittal letter²⁷ dated August 8, 2018 that his signature in the Memorandum of Agreement which was notarized on March 19, 2008 was

²⁶ TSN dated March 21, 2022 pp.21-50.

²⁷ Exhibits "19" to "19-C".



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forged. These findings were contained in the NBI Questioned Documents Report No. 278-618.

On cross-examination,²⁸ he admitted that the document containing the signature that was found as forged by the NBI Document Examiner in the lower court was an unnotarized Memorandum of Agreement dated March 19, 2008, and not the same document that was presented in evidence by the prosecution and marked as Exhibits "Q-5" to "Q-10" which was notarized by Atty. Manguiat and entered in his notarial register as Document No. 363, Page No. 73, Book No. 77, Series of 2008.

Moreover, he testified that he had no mandate to conduct and/or participate in any bidding process to select either an implementing agency or its project partner. He belied that he signed the Project Proposal, Work and Financial Plan, PDAF Accomplishment Form, and Certificate of Acceptance. He also denied receiving copy of the letter from the COA asking him to confirm his signatures.

Jennifer B. Dominguez²⁹ is currently a Senior Document Examiner of the NBI Questioned Document Division. She testified that she received an Order from the Court to conduct handwriting examination on certain documents and to make a report on her findings. She adopted the regular procedure as she went about examining the documents in the COA SAO office under the stereoscopic microscope and magnifying lens. She took photographs of the said documents and later on reproduced them. She compared the signatures appearing in the questioned documents with the standard signatures of accused Lim taking into account the natural writing characteristics of the author. After scientific comparative examination, she

²⁸ TSN dated April 4, 2022, pp. 8-22.

²⁹ TSN dated March 21, 2022 pp. 6-63.

Handwritten marks and signatures at the bottom right of the page, including a stylized 'M' and a signature that appears to be 'J. Dominguez'.

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concluded that the questioned signatures of accused Lim and the standard specimen signatures were not written by one and the same person because of the significant differences such as the manner of strokes, line quality, and structural formation of the characters. As for the second findings, she concluded that no definite opinion can be rendered on the questioned signatures in the photocopies.

On cross-examination,³⁰ the witness pointed out that considering the lapse of time from 2008 to 2022 there is a possibility that natural variation will occur which means that due to lapse of time a person may vary the shape, form or change the stroke in his signature.

On re-direct examination,³¹ the witness affirmed that the specimen signatures of the accused are still reliable even if years had passed. Besides, not all signatures would look exactly the same.

The defense formally offered its evidence which were admitted by the Court as follows: for accused Lacsamana: Exhibits "1" to "11";³² for accused Cunanan: Exhibits "1" to "1-C", "2" to "2-B", "3-3-C", "4", "5" to "5-F", "6" and "6-A";³³ for accused Espiritu: Exhibits "1" to "8", and "8-a", "9", to "13", and "13-a", "14", and "14-a", "15" to "21", and "21-a", and "22";³⁴ for accused Jover: Exhibits "1" to "5";³⁵ and lastly for accused Lim: Exhibits "4" to "4-J", "7", and "9-W", "7-F", "7-G", "7-J", "8" to "8-B", "9-J", and "9-J-1", "9-2", "9-AA", to "9-CC", "9-EE" to "9-HH", "9-RR" and "9-OO", "9-II", "10-N" to "10-S", "10-J" to "10-Z", "15-A" to "15-D", "20" to "20-I", "24" to "24-G", "25", "26", "27", "28", "29", and "29-A", "30" to "30-D", "66" to

³⁰ TSN dated August 4, 2022, pp.6-8.

³¹ TSN dated August 4, 2022, pp. 9-10.

³² Records, Vol. VII, pp. 407-415

³³ Records, Vol. VIII, pp.155-159.

³⁴ Records, Vol. IX, p. 351.

³⁵ Records, Vol. IX, p. 453.



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"82", "83" to "117". Not having been properly identified Exhibits "16" to "16-B", "17" to "17-A", "18", "19", "19-S" to "19-C were admitted only as part of the testimony of the witness and not as to the truth of their contents.³⁶

On September 19, 2022, the parties were directed to file their respective memoranda within thirty (30) days from receipt; after which the cases would be deemed submitted for decision.

These cases stemmed from the 2010-2013 government wide performance audit pursuant to COA Office Order No. 2010-309 dated May 13, 2010 which directed the COA-SAO to conduct an audit on the utilization of the PDAF of certain legislators. Accordingly, the COA-SAO team conducted an audit on the utilization of the PDAF of accused Lim for calendar years 2007 to 2009. It was gathered that accused Lim wrote request letters for the DBM to release his PDAF thereby paving the way for the issuance of SARO No. ROCS-07-07208 dated September 25, 2007 for P15,000,000.00 and SARO No. ROCS-08-00129 dated January 9, 2008 for P15,000,000.00.

Subsequently, the COA-SAO team found irregularities in the utilization of accused Lim's PDAF as embodied in the Special Audit Report No.2012-03.³⁷ The Office of the Ombudsman then conducted an investigation which led to the filing of complaint affidavit dated July 1, 2014 for violation of Section 3 (e) of R.A. No. 3019, as amended, and for malversation against herein accused.

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

³⁶ Records, Vol. XI, p.476.

³⁷ See Note No. 10.



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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 the case of *Consigna vs. People*³⁸ the elements of the offense are enumerated as follows: 1) that the accused must be a public officer discharging administrative, judicial or official functions; 2) that he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3) that his action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

It is not disputed that accused Lim and the officers of the TRC held public positions during the period material to the instant cases. Accused private individuals Mercado, Soriano, and Barredo, who are at large, were sued for having allegedly conspired with the accused government officials in the commission of the crimes charged.

As regards the second element of the offense, the same may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence.³⁹ In *Sison vs. People of the Philippines*,⁴⁰

³⁸G.R. No. 175750-51, April 2, 2014.

³⁹ *Ampil vs. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013.

⁴⁰ G.R. Nos. 170338, 170396-403, March 9, 2010.



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the Supreme Court explained the modes by which the offense may be committed i.e., through manifest partiality, evident bad faith or gross inexcusable negligence. In explaining what "partiality," "bad faith" and "gross negligence" mean, the Supreme Court stated that:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." **"Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."**

The prosecution claims that accused Lim, without public bidding and in disregard of the appropriation law, personally selected KMFI as project partner of the TRC in implementing livelihood projects funded by his PDAF in the 3rd District of Albay although KMFI is not accredited or a bogus NGO and thus, not qualified to carry out the projects for his constituents. True enough, the projects were never implemented thus allowing the accused to pocket a total of P30,000,000.00 in public funds to the damage and prejudice of the government.

Accused Lim denied any participation in the commission of the crimes as he disowned the signatures appearing on his alleged indorsement letters addressed to TRC Director General and herein accused Antonio Ortiz dated October 11, 2007 and January 28, 2008; the Memoranda of Agreements dated January 28, 2008 and March 19, 2008; as well as the Project Proposals. He even filed a case for falsification against Ortiz, Mercado, and Atty. Manguiat before the Metropolitan Trial

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Court of Quezon City⁴¹ claiming that his alleged signatures in the memoranda of agreements were forgery. The same was confirmed in open court by the NBI Senior Document Examiner Jennifer B. Dominguez who executed a report⁴² on the matter.

Accused Lim testified that none of the prosecution witnesses claimed to have conferred nor met with him, much less demanded nor received money relative to PDAF transactions. He never had custody of the said funds considering that the DBM directly released the same to the TRC and on to KMFI being a co-implementer of the projects. In fact, it was TRC which was audited by the COA-SAO while he was merely furnished with a copy of the notice of disallowance. Neither did he receive any letter from the COA-SAO asking him to confirm the signatures appearing on the documents relative to his PDAF.

In essence, accused Lim's principal defense is that his only participation relative to his PDAF allocation was to request for its release by the DBM as evidenced by his request letters dated August 29, 2007 and November 21, 2007. He denied any involvement in the subsequent transactions as he claimed that his signatures were forged in the letters addressed to TRC Director General and herein co-accused Ortiz dated October 11, 2007 and January 28, 2008, the Memoranda of Agreement dated January 28, 2008 and March 19, 2008 as well as the Project Proposals.

On proving forgery, the High Court expounded in *Philippine Trust Company vs. Gabinete et. al.*⁴³ that as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The

⁴¹ Exhibits "15A" to "15-D".

⁴² Records, Vol. 11, pp. 141-145.

⁴³ G.R. No. 216120, March 29, 2017.



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burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.

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.⁴⁴ While findings and opinions of experts have persuasive effect, the judge still exercises independent judgment on the issue of authenticity of the signature under scrutiny.⁴⁵

For ready reference, below are the respective facsimiles of the questioned signatures of accused Lim appearing on his letters to TRC Director General and herein co-accused Ortiz dated October 11, 2007 and January 28, 2008; on the Memoranda of Agreements dated January 28, 2008 and March 19, 2008; and on the Project Proposals:

Figure 1.1: Letter to TRC Director General Ortiz dated October 11, 2007

Figure 1.2: Letter to TRC Director General Ortiz dated January 28, 2008

Figure 1.3: Memorandum of Agreement dated January 28, 2008

Figure 1.4: Memorandum of Agreement dated March 19, 2008

Figure 1.5: Project Proposal marked as Exhibit "S"

Figure 1.6: Project Proposal marked as Exhibit "OO"

On the other hand, below are the facsimiles of the signatures admittedly belonging to the accused which appear on the two (2) request letters dated August 29, 2007 and November 21, 2007 addressed to the

⁴⁴ *Gepulle-Garbo vs. Spouses Garabato*, G.R. No. 200013, January 14, 2015.

⁴⁵ *Mendoza vs. Fermin*, G.R. No. 177235, July 7, 2014.

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Speaker of the House of Representatives requesting the release of his PDAF allocation:



Figure 2: Letter to House Speaker De Venecia dated August 27, 2007



Figure 2.1: Letter to House Speaker De Venecia dated November 21, 2007

Moreover, reproduced hereunder are accused Lim's standard specimen signatures which he submitted for examination by the expert witness from the NBI Questioned Documents Division:



Figure 3



Figure 3.1



Figure 3.3



Figure 3.4



Figure 3.5



Figure 3.6



Figure 3.7



Figure 3.8



Figure 3.9



Figure 3.10

After a circumspect comparison and analysis of the above alleged forged signatures *vis-à-vis* those admittedly his on the two (2) request Letters dated August 27, 2007 and November 21, 2007 the Court cannot perceive glaring or stark variations in their general appearance. The differences in his signatures, if any, are only minimal which do not constitute sufficient basis for a finding of forgery. Besides, and as confirmed by defense witness Jennifer Dominguez herself,⁴⁶ a person's signature cannot be the same and exact replica of his other signatures since the strokes, lines, and pressure may vary every time he signs. This is made more manifest upon examination of the standard specimen

⁴⁶ TSN dated August 4, 2022, pp.7-8.

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signatures of the accused that he submitted to the NBI for examination which bear high degree of variance even with the signatures that are admittedly his in the two (2) request letters to the Speaker of the House of Representatives. Curiously, these two (2) sets of signatures are strikingly different although they were admittedly written by the same author. It becomes apparently clear then that the accused could have varying signatures on different documents. However, the fact remains that the questioned signatures have great similarity with those admittedly his in the two (2) request letters that could only lead to the conclusion that the accused was also the author of the former.

As such, accused Lim had been privy all along in the transactions involving his PDAF allocation. He, in effect, indorsed, as he purportedly did not object, to the designation of KMFI as co-implementer of the supposed livelihood projects to be funded by his PDAF despite the obvious red flags appearing on records. As testified by accused Lacsamana, the DBM will not unilaterally release the funds to an implementing agency without a request from the lawmaker himself. Accused Lim admitted that he prepared and signed the letters addressed to then House Speaker Jose De Venecia requesting for the release of the second and third tranches of his PDAF allocations amounting to P30,000,000.00. In the same letter, he indicated the TRC as his implementing agency.

Based on record, prior to the issuance of the Advice of Notice of Cash Allocation to the TRC dated December 17, 2007, accused Lim already indorsed KMFI as the co-implementer of his livelihood projects as evidenced by his letter⁴⁷ addressed to accused Ortiz dated October 11, 2007. However, KMFI's authority to engage in livelihood projects was

⁴⁷ Exhibit "Q"



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limited only to areas located within Quezon City based on KMFI's Articles of Incorporation⁴⁸ which was to promote livelihood projects particularly in the NCR-Quezon City. Besides, at the time KMFI was selected as project co-implementer sometime in October 2007, it had not yet complied with the two (2)-year period of existence as required under TRC Office Circular 000P0100 since KMFI was incorporated only on March 20, 2006 and was registered with the SEC on August 23, 2006. Accused Lim clearly favored KMFI supposedly to implement his PDAF-funded projects.

Worse, accused Lim was a party to the memoranda of agreement with the TRC and KMFI where he assumed responsibilities regarding the disbursement of his PDAF. Therein, accused Lim warranted that KMFI is a legitimate and *bonafide* entity with good track record and capable of implementing the projects. He also undertook to approve and sign the Completion Certificate/Report to be submitted by the foundation upon completion of the project. This he did though none had ever been undertaken. Thus, he reneged on the said responsibilities which facilitated the commission of anomalies that ultimately led to the taking of huge public funds to the tune of P30,000,000.00. The acts of accused Lim in indorsing KMFI and disregarding its clear lack of capacity or qualification and accreditation requirements, entering into memoranda of agreements only to renege on his responsibilities and signing false Project Proposals,⁴⁹ and Accomplishment Forms⁵⁰ indubitably prove manifest partiality and evident bad faith on his part.

As to the involvement of accused TRC officials, the prosecution asserted that accused Lacsamana, in furtherance of the conspiracy, aided and permitted the disbursement of the subject PDAF by signing the two

⁴⁸ Exhibit "F".

⁴⁹ Exhibits "S" and "OO".

⁵⁰ Exhibits "BB" and "YY".



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(2) disbursement vouchers and causing the release of the checks in favor of KMFI, without having scrutinized and confirmed the qualifications or accreditation of KMFI. In particular, accused Lacasamana signed Box A of Disbursement Voucher No. 012008010077⁵¹ in relation to SARO No. ROCS-07-07208 dated January 24, 2008. She also signed Box A of Disbursement Voucher No. 012008040897⁵² in relation to ROCS-08-00129 dated April 4, 2008. Moreover, she signed Land Bank of the Philippines checks issued in KMFI's favor as supposed payment for the total amount of P27,000,000.00⁵³ after deducting a total of P3,000,000.00, which remains unliquidated up to the present, as purported service and management fee from the P30,000,000.00 PDAF allocation. However, COA Circular No. 92-839 required that signatories to Box A must first review the disbursement vouchers and the supporting documents. Certifications should be made only if the same were found in order and that the expenses are necessary, lawful, and incurred under their direct supervision. Undeniably, accused Lacsamana did not comply with this requirement.

In her defense, accused Lacsamana cites Office Circular No. 000P0099 dated September 3, 2007⁵⁴ and Office Circular No. 000P0100 dated November 27, 2007⁵⁵ to show that affixing her signatures on the two (2) disbursement vouchers were part of her duties as public officer and a mere ministerial function. She also denied awareness of any anomaly in the PDAF transactions.

⁵¹ Exhibit "T".

⁵² Exhibit "EEE".

⁵³ Exhibits "FFF" and "U".

⁵⁴ Exhibit "3".

⁵⁵ Exhibit "4".

Handwritten signatures and initials at the bottom right of the page. There are two distinct signatures, one appearing to be 'M' and another more complex signature.

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Such denial runs counter to the evidence on record. In particular, accused Lacsamana, in her capacity as Group Manager of Technology and Livelihood Information Dissemination Services Group (TLIDSG) and Legislative Liaison Officer (LLO), admitted that she wrote the Release Memoranda dated January 7, 2008⁵⁶, February 8, 2008⁵⁷ February 19, 2008⁵⁸ and March 19, 2008⁵⁹ all addressed to accused Ortiz, indorsing the release of accused Lim's PDAF to KMFI which, save for the dates and SARO numbers, are icentically couched as follows:

January 7, 2008⁶⁰

Memorandum

For: Antonio Y. Ortiz
Director General

From: Ma. Rosalinda M. Lacsamana, MPSA, DPA
Group Manager-TLIDS
LLO

SUBJECT: Release of PDAF of Congressman Reno G. Lim

In accordance to the Memorandum of Agreement between TRC and Kaagapay Magpakailanman Foundation, Inc., we are recommending the release of Congressman Reno Lim's PDAF in the amount of P15,000,000.00 for the implementation of various livelihood and development projects in the 3rd district of Albay. Following the MOA we have retained the amount pf P750,000.00 for management and service fee, P750,000.00 for livelihood materials, and P1,500,000.00 for retention fee to be returned to the implementor upon submission of project completion and liquidation report duly signed by the CONGRESSMAN.

The above-mentioned amount was released by the Department of Budget and Management (DBM) to TLRC under SARO No. 07-C7208 dated September 25, 2007.

For your consideration.

⁵⁶ Exhibit "W"

⁵⁷ Exhibit "QQ"

⁵⁸ Exhibit "GG"

⁵⁹ Exhibit "DDD"

⁶⁰ February 8, 2008, SARO No. 08-00129 dated January 9, 2008.



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February 19, 2008⁶¹

Memorandum

For: Antonio Y. Ortiz
Director General

From: Ma Rosalinda M. Lacsamana, MPSA, DPA
Group Manager-TLIDS
LLo

SUBJECT: Recommending Final Release of PDAF of Congressman Reno G. Lim

Following the approval and acceptance by Congressman Reno G. Lim, as evidenced by the Certificate of Completion and other documents they have submitted in accordance with Office Circular No. 000P0099 dated September 3, 2007 on the implementation of his Priority Development Assistance Fund under SARO NO. ROCS-08-00129 dated January 9, 2008 in the amount of P*,500,000.00 to Kaagapay Magpakailanman Foundation, Inc

For your consideration.

It may be gleaned from the above-cited Release Memoranda dated January 7, 2008 and February 19, 2008, that accused Lacsamana recommended the release of Lim's PDAF allocation covered under SARO No. ROCS-08-00129 dated January 9, 2008 even prior to the issuance of ANCAI by the DBM dated February 19, 2008. Moreover, the Memorandum of Agreement between accused Lim, TRC and KMFI dated March 19, 2008 is clear that accused Lacsamana indorsed the issuance of funds in favor of KMFI through her memoranda to TRC Director General and herein accused Ortiz even before the execution of the said memorandum of agreement. The same goes with SARO No. ROCS-07-07208 dated September 25, 2007, where accused Lacsamana similarly indorsed the release of funds to KMFI through Release Memorandum dated January 7, 2008 prior to the execution of the Memorandum of

⁶¹ March 19, 2008, SARO NO. ROCS-08-00129 dated January 9, 2008.



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Agreement between accused Lim, TRC and KMFI dated January 28, 2008.

Accused Lacsamana's acts could only indicate a mutual and concerted design with accused Lim, both of which are indispensable for the release of the PDAF allocation to KMFI notwithstanding the lack or insufficiencies, nay irregularities, in documentary requirements. Accused Lim and Lacsamana took advantage of their public positions, acted with manifest partiality and evident bad faith towards the common objective of funneling PDAF funds to KMFI for eventual misappropriation. It cannot be gainsaid, given the facts established by the evidence on record, that these two (2) accused had unity of purpose to achieve a common illegal objective to bilk the government of the much needed public funds for their own interests. There is conspiracy where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose; such as had happened in these cases.⁶²

Anent accused Cunanan, Jover and Espiritu, other than their signatures on the disbursement vouchers, which were affixed in the regular course of their official functions, the prosecution failed to show any other act that would link them to the crimes charged. The acts of signing the disbursement vouchers, wanting any other evidence that the same were done with evident bad faith, manifest partiality or gross inexcusable negligence will not make them liable for the crimes charged.

The Supreme Court in a number of cases has consistently held that every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a

⁶² *People vs. Jesalva*, G.R. No. 227306, June 19, 2017.



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conspirator in a crime which transpired at a stage where he had no participation. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence. The fact that such officer signs or initials a voucher as it is going the rounds does not necessarily follow that the said person becomes part of a conspiracy in an illegal scheme. The guilt beyond reasonable doubt of each supposed conspirator must be established.⁶³

Additionally, in *Pareño vs. Sandiganbayan*,⁶⁴ the Supreme Court ruled that guilt in a conspiracy must be premised on a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy. While accused Cunanan, Jover and Espiritu admitted having certified the disbursement vouchers that eventually led to the disbursement of funds to KMFI, it behooves the prosecution to prove bad faith or ill-motive in light of their protestations to the contrary. Accused Cunanan, Jover and Espiritu insist that the disbursement vouchers which were supported by the indorsement letters, memoranda of agreement, SAROs, and project proposals, among others, were regular on their face. The State, through the prosecution, carries the *onus probandi* or burden of proof in establishing the guilt of the accused beyond reasonable doubt; but which it failed to discharge.

Anent the third element, it was clearly established that the combined and concerted acts of accused Lim and Lacsamana caused undue injury to the Government as well as gave unwarranted benefits to private parties. Said acts undeniably facilitated the unjustified release of huge sum of public funds to a sham or bogus NGO to be misappropriated. As

⁶³ *Albert vs. Gangan*, G.R. No. 126557, March 6, 2001, citing *Gomez vs. Intermediate Appellate Court*, 135 SCRA 620 [1985]; *Macadangdang vs. Sandiganbayan*, 170 SCRA 308, 326 [1989]

⁶⁴ G.R. Nos. 107119-20, April 17, 1996



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a consequence of their manifest partiality and evident bad faith, accused Lim and Lacsamana were conspirators in the total loss of P27,000,000.00 to the damage and prejudice of the government.⁶⁵

As mentioned above, the herein accused are likewise indicted for the PDAF transactions that took place in 2008 of four (4) counts of Malversation under Article 217 of the Revised Penal Code the pertinent proviso of which reads:

Art. 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 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, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
3. The penalty of *prision mayor* in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.
4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

⁶⁵It should be pointed out that while the audit report claims that the amount of P30,000,000.00 representing the total PDAF allocations for accused Lim remains unliquidated, the sum of P3,000,000.00 which was deducted by TRC as supposed service and management fee was not subject of any of the instant informations.

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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.

The above penal provisions of Art. 217 of the Code have since been amended by R.A. No. 10951 which took effect on August 29, 2017 such that the same now reads:

x x x

1. The penalty of *prisión correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000.00);
2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty Thousand Pesos (P40,000.00) but does not exceed One Million Two Hundred Thousand Pesos (P1,200,000.00);
3. The penalty of *prisión mayor* in its maximum period to *reclusión temporal* in its minimum period, if the amount involved is more than One Million Two Hundred Thousand Pesos (P1,200,000.00) but does not exceed Two Million Four Hundred Thousand Pesos (P2,400,000.00);
4. The penalty of *reclusión temporal*, in its medium and maximum periods, if the amount involved is more than Two Million Four Hundred Thousand Pesos (P2,400,000.00) but does not exceed Four Million Four Hundred Thousand Pesos (P4,400,000.00).
5. The penalty of *reclusión temporal* in its maximum period, if the amount involved is more than Four Million Four Hundred Thousand Pesos (P4,400,000.00) but does not exceed Eight Million Eight Hundred Thousand Pesos (P8,800,000.00). If the amount exceeds the latter, the penalty shall be *reclusión perpetua*.

It should be stressed that malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, permitting any other person to take such public funds or property; or by being



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otherwise guilty of the misappropriation or malversation of such funds or property.⁶⁶

To commit the crime of malversation of public funds, the following elements must be present: a) that the offender is a public officer; b) that he had the custody or control of funds or property by reason of the duties of his office; c) that the funds or property were public funds or property for which he was accountable; and d) that he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.⁶⁷

The first element was stipulated. Accused Lim, Cunanan, Jover and Espiritu were public officers at the time material and relevant to the present cases. They stand charged in conspiracy with the other accused private individuals who are at large.

Likewise, the second and third elements are present. By virtue of their respective positions and roles in the subject transactions, the accused public officials are considered accountable officers having custody and control over the disbursement of the subject PDAF, which is undisputedly public funds. As defined, the PDAF is a lump sum discretionary fund wherein legislators are able to effectively control certain aspects of the funds utilization and is primarily intended for local projects.⁶⁸ Accused Lim, for his part, had control over his PDAF allocation and requested its release for the supposed implementation of his livelihood projects. Accused officials of the TRC, which is Lim's chosen implementing agency, received the PDAF allocation then processed and effected its disbursement to KMFI.

⁶⁶ *Zoleta vs. Sandiganbayan (Fourth Division)*, July 29, 2015, 764 SCRA 110, 122.

⁶⁷ *Mesina vs. People*, G.R. No. 162489, June 17, 2015.

⁶⁸ *Belgica vs. Executive Secretary Ochoa*, G.R. No. 208566, November 19, 2013.

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As to the fourth element, the Court finds that it has also been sufficiently established by the prosecution against accused Lim and Lacsamana.

In the crime of malversation of public funds, all that is necessary for conviction is sufficient proof that the accused accountable officer had received public funds or property, and did not have them in his possession when demand therefor was made without any satisfactory explanation of his failure to have them upon demand. For this purpose, direct evidence of the personal misappropriation by the accused is unnecessary as long as he cannot satisfactorily explain the inability to produce or any shortage in his accounts.⁶⁹

In the present cases, it is not disputed that KMFI failed to implement the supposed livelihood projects which were funded by Lim's PDAF. To date, the funds remain unliquidated. The concerned local chief executives in the 3rd District of Albay, at the time material to the cases, denied receiving or knowing about the programs. Thus, public funds were disbursed to finance fictitious projects facilitated by an unqualified and unaccredited NGO. To put it bluntly, nothing came out of the PDAF allocations of accused Lim for the subject period.

Based on accused Lacsamana's testimony, it was the lawmaker that chooses the NGO that will receive the funds and implement the projects. This was further evinced when Lim signed the Project Proposals prepared by KMFI, and the tripartite memoranda of agreement, together with TRC's Ortiz and KMFI. To complement Lim's indorsement, accused Lacsamana recommended the release of the PDAF to KMFI, despite not

⁶⁹ *Nicolas vs. Sandiganbayan*, G.R. Nos. 175930-31, February 11, 2008.



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properly accrediting the NGO and ascertaining the capability in implementing the programs. Accused Lacsamana had the duty to examine and review the relevant documentation of the NGOs. From her own testimony, she admitted that her duties and responsibilities include ascertaining that the supporting documents relating to the projects were signed, complete and in order. However, as shown by the evidence on record, she blatantly and willfully disregarded the prevailing laws and rules at the time, which resulted in the unfortunate disbursement of millions of PDAF allocation to an unscrupulous NGO.

Following R.A. No. 9184 and considering the attendant circumstances in the present cases, a competitive bidding should have been done in the selection of the NGO. Next, the proper accreditation of the NGO should have been conducted by Lacsamana. Minimum requirements asked of the NGO are the certificates of registration to ensure its legal personality, that it has responsible officers, and that it is based in the community where the project shall be implemented. The NGO's financial statements for at least three (3) years should also have been checked, as well as a list of projects that it has previously undertaken. Notably, Lacsamana failed to adduce evidence that these steps in the accreditation of KMFI, if at all an accreditation was conducted, were followed. Admittedly, there was no competitive bidding held as they went with Lim's choice of NGO which, as it turned out, proved to be a sham. Had accused Lacsamana not actively participated in the illegality of the whole process, the PDAF will not have fallen into KMFI's hands to be malversed.

Thus, the Court finds that the prosecution was able to prove beyond reasonable doubt that accused Lim and Lacsamana, through their concerted actions, as public officers accountable for the PDAF allocations



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which are under their custody or control by reason of the duties of their office, misappropriated or permitted KMFI to take the funds, thereby committing the crime of malversation.

At this point it should be mentioned that R.A. No. 10951, which amended Art. 217 of the Revised Penal Code, provides that the law shall have retroactive effect if the same is favorable to the accused. While the acts as charged in the informations were committed prior to the amendment of the law, the penal provisions of R.A. No. 10951 may be given retroactive effect insofar as favorable to the accused.

As to accused Cunanan, Jover, and Espiritu it is well to recapitulate that the prosecution failed to prove beyond reasonable doubt that they acted with a common criminal design in allowing the release of the PDAF to KMFI. It is elementary rule that the evidence for the prosecution is the yardstick for determining the sufficiency of proof necessary to convict; and that the prosecution must rely on the strength of its own evidence rather than on the weakness of the evidence for the defense.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Cases Nos. SB-16^{ant}-CRM-0417 to 0420, the Court finds accused **RENO GUTLAY LIM** and **MA. ROSALINDA MASONGSONG LACSAMANA**, **GUILTY** beyond reasonable doubt of four (4) counts of the crime of violation of Section 3 (e) of R.A. No. 3019, as amended, and are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, for each count, and to suffer perpetual disqualification from holding public office.



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Said accused are ordered to indemnify the national government and return to the National Treasury, jointly and severally, the total sum of Twenty-Seven Million Pesos (P27,000,000.00) representing the amount wrongfully and illegally disbursed as charged in the above informations.

Accused **DENNIS LACSON CUNANAN, MARIVIC VILLARUZ JOVER** and **CONSUELO LILIAN REYES ESPIRITU** are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

2. In Criminal Cases Nos. SB-16^{ant}-CRM-0421 and SB-16^{ant}-CRM-0423, the Court finds accused **RENO GUTLAY LIM** and **MA. ROSALINDA MASONGSONG LACSAMANA, GUILTY** beyond reasonable doubt of two (2) counts of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended, and are hereby sentenced to suffer the penalty of *reclusion perpetua*, for each count.

Said accused are ordered to pay a fine of Twelve Million Pesos (P12,000,000.00) equivalent to the amount malversed as charged in each of the above informations. They shall also suffer the penalty of perpetual special disqualification from holding any public office.

3. In Criminal Cases Nos. SB-16^{ant}-CRM-0422 and SB-16^{ant}-CRM-0424, the Court finds accused **RENO GUTLAY LIM** and **MA. ROSALINDA MASONGSONG LACSAMANA, GUILTY** beyond reasonable doubt of two (2) counts of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended. There being no mitigating nor aggravating circumstance in these cases, they are sentenced to suffer the indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, for each count.

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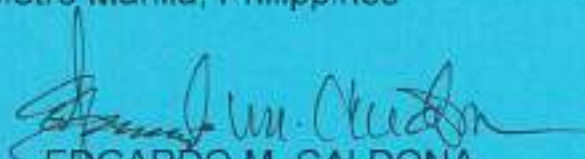
Said accused are ordered to pay a fine of One Million Five Hundred Thousand Pesos (P1,500,000.00) equivalent to the amount malversed as charged in each of the above informations. They shall also suffer the penalty of perpetual special disqualification from holding any public office.

Accused **DENNIS LACSON CUNANAN, MARIVIC VILLARUZ JOVER** and **CONSUELO LILIAN REYES ESPIRITU** are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.


The Hold Departure Order (HDO)⁷⁰ dated October 5, 2016 issued against Cunanan, Jover and Espiritu is also hereby recalled.


SO ORDERED.

Quezon City, Metro Manila, Philippines


EDGARDO M. CALDONA
Associate Justice

WE CONCUR:


OSCAR C. HERRERA JR.
Associate Justice
Chairperson


ARTHUR O. MALABAGUIO
Associate Justice

⁷⁰ Records, Vol. 2, p. 147.

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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.


OSCAR C. HERRERA JR.
Chairperson, Second 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.


EFREN N. DE LA CRUZ
Acting Presiding Justice*

* Designated as Acting Presiding Justice per Administrative Order No. 108-2023.