

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Special Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. **SB-17-CRM-2096**
to 2103

*For: Violation of Section 3(e) of
Republic Act No. 3019, as amended*

Crim. Cases Nos. **SB-17-CRM-2104**
to 2107

*For: Violation of Article 217 of the
Revised Penal Code*

- versus -

Crim. Cases Nos. **SB-17-CRM-2108**
to 2111

*For: Violation of Article 217 in rel.
to Articles 48 and 171 of the
Revised Penal Code*

Present:

Herrera, Jr., J. *Chairperson*
Musngi, J. &
Malabaguio, J.
Lagos, J.*
Pahimna, J.*

Candido P. Pancrudo, Jr. *et al.*,
Accused.

Promulgated:
April 14, 2023 ant

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DECISION

HERRERA, JR., J.:

Eight public officers and two private individuals are before the Court on multiple indictments that allege conspiracy in the irregular utilization of

* Sitting as Special Members per Administrative Order No. 8-C-2022 dated December 5, 2022



Congressional Priority Development Assistance Funds (PDAF) in the years 2007 and 2008.

Uniformly facing eight counts of **Violation of Section 3 (e) of Republic Act No. 3019, as amended** (the **Anti-Graft and Corrupt Practices Act**), four counts of **Malversation (Violation of Art. 217 of the Revised Penal Code)**, and four counts of **Malversation of Public Funds through Falsification of Public Documents (Violation of Article 217 in relation to Articles 48 and 171 of the Revised Penal Code)** are: Candido P. Pancrudo, Jr. ("Pancrudo", for brevity), former legislator for the 1st District of Bukidnon; Jesus P. Esmeralda ("Esmeralda"), a Project Consultant-designate; Antonio Y. Ortiz ("Ortiz"), Dennis L. Cunanan ("Cunanan"), Maria Rosalinda M. Lacsamana ("Lacsamana"), Marivic V. Jover ("Jover"), Consuelo Lilian R. Espiritu ("Espiritu"), and Francisco B. Figura ("Figura"), all belonging to the Technology Resource Center (TRC); and private individuals Johanne Edward B. Labay ("Labay") and Victorino C. Ujano ("Ujano")¹.

The accusatory portion of the **Information**² dated July 10, 2017 in Criminal Case No. **SB-17-CRM-2096** for **Violation of Sec. 3(e) of R.A. 3019, as amended**, reads:

"That in 2007 or sometime prior or subsequent thereto, in Quezon City, and within the jurisdiction of this Honorable Court, accused then Congressman Candido P. Pancrudo, Jr. (Pancrudo) of the 1st District of Bukidnon, a high-ranking public officer, and other public officers, Director General Antonio Y. Ortiz (Ortiz), Deputy Director General Dennis L. Cunanan (Cunanan), Group Manager Maria Rosalinda Lacsamana (Lacsamana), Chief Accountant Marivic V. Jover (Jover), Group Manager Francisco B. Figura (Figura), all of the Technology and Resource Center, while in the performance of their official functions and committing the offense in relation to office, taking advantage of their official positions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, conspiring and confederating with one another, together with private individuals Johanne Edward B. Labay (Labay), and Victorino C. Ujano (Ujano), did

¹ All cases against him were dismissed per Ombudsman *Resolution* in OMB-C-C-14-0291 in light of accused's demise during the pendency of the Preliminary Investigation.

² Record, Crim. Cases Nos. SB-17-CRM-2096 to 2111, Vol. 1, pp. 1-3

... 

then and there willfully, unlawfully and criminally, give above-mentioned private individuals and Farmerbusiness Development Corporation (FDC), a non-government organization assigned to implement accused Pancrudo's Priority Development Assistance Fund (PDAF) assisted livelihood projects, unwarranted benefits, privilege, and advantage in the amount of Php 16,000,000.00, through a scheme described as follows:

- a) Pancrudo unilaterally chose and indorsed FDC, a non-government organization operated and controlled by Labay, as "project partner" in implementing livelihood projects for his constituents in the 1st District of Bukidnon, which was funded by Pancrudo's PDAF allocation covered by SARO No. ROCS-07-008787, despite the absence of a public bidding, and in violation of Section 53.11 of the Implementing Rules and Regulations (IRR) of RA 9184 and National Budget Circular (NBC) No. 476, as amended by NBC No. 479, or in spite of the absence of any appropriation law or ordinance which could have allowed the use of negotiated procurement with said NGO, under GPPB Resolution No. 12-2007, and by failing to monitor the implementation of the project by FDC and to submit liquidation documents, thereby causing undue injury to the government in the total amount of Php 16,000,000.00;
- b) Pancrudo, as represented by Esmeralda and TRC's Ortiz then entered into a Memorandum of Agreement with FDC, as represented by Labay on the implementation of Pancrudo's purported PDAF-funded projects;
- c) Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) No. 012007122133, dated December 20, 2007, for the amount P16,000,000.00, along with Jover, Espiritu, Cunanan and Figura, as well as causing the issuance of the corresponding Land Bank Check No. 0000885616 for the said amount to FDC, which were signed by Ortiz, without accused TRC Officers and Employees having carefully examined and verified the accreditation and qualification of FDC and the transaction's supporting documents;
- d) Ujano, acting for and in behalf of FDC, received the above-cited LBP check from TRC and issued the corresponding Official Receipt No. 71; and
- e) By their above acts, Pancrudo and the above named TRC officials allowed FDC through Labay, 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 Labay submitted falsified liquidation reports to the Commission on Audit, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.*



The accusatory portion of the **Information in Criminal Cases³ Nos. SB-17-CRM-2097 to 2103**, also for **Violation of Sec. 3(e) of R.A. 3019, as amended**, are similarly worded, differing only in their material date, transactional amount, the number of the covering Special Allotment Release Order (SARO), number and date of the consequent Disbursement Voucher, the number and amount corresponding to the ensuing LBP check, and the number of the Official Receipt issued therefor.

For clarity, the variance is indicated in table form below:

CASE NO.	DATE	SARO NO.	AMOUNT (PhP)	DV NO. AND DATE	LBP CHECK NO.	OFFICIAL RECEIPT NO.
SB-17-CRM-2096	2007	ROCS-07-008787	16,000,000	0120007122133 December 20, 2007	885616	71
SB-17-CRM-2097	2007	ROCS-07-008787	2,000,000	01200808081831 August 6, 2008	889938	72
SB-17-CRM-2098	2008	D-08-1450	4,800,000	012008030587 August 6, 2008	885720	0023
SB-17-CRM-2099	2008	D-08-1450	600,000	12008081829 -	889931	0067
SB-17-CRM-2100	2008	D-08-02604	8,000,000	012008051147 May 6, 2008	86704	32
SB-17-CRM-2101	2008	D-08-02604	1,000,000	12008081832 -	889929	-
SB-17-CRM-2102	2008	D-08-02605	4,000,000	012008051148 -	866703 and 889930	-
SB-17-CRM-2103	2008	D-08-02605	500,000	12008081830 -	889930	0065

³ Vol. 8, pp. 5-39

The accusatory portion of the *Information*⁴ in Criminal Case No. **SB-17-CRM-2104**, where the charge is *Malversation of Public Funds* under *Article 217 of the Revised Penal Code*, reads:

"That in 2007 or sometime prior or subsequent thereto, in Quezon City, and within the jurisdiction of this Honorable Court, accused then Congressman Candido P. Pancrudo Jr. (Pancrudo) of the 1st District of Bukidnon, a high-ranking public officer, and other public officers, Director General Antonio Y. Ortiz (Ortiz), Deputy Director General Dennis L. Cunanan (Cunanan), Group Manager Maria Rosalinda Lacsamana (Lacsamana), Chief Accountant Marivic V. Jover (Jover), Group Manager Francisco B. Figura (Figura), all of the Technology and Resource Center, while in the performance of their official functions and committing the offense in relation to office, taking advantage of their official positions, conspiring and confederating with one another, together with private individuals Johanne Edward B. Labay (Labay), and Victorino C. Ujano (Ujano), did then and there willfully, unlawfully and feloniously, allow the above-mentioned private individuals and Farmer business Development Corporation (FDC), a non-government organization assigned to implement accused Pancrudo's Priority Development Assistance Fund (PDAF) assisted livelihood projects, to take away public funds coming from the said PDAF of accused Pancrudo amounting to P16,000,000.00, through a scheme described as follows:

- a) Pancrudo unilaterally chose and indorsed FDC, a non-government organization operated and controlled by Labay, as "project partner" in implementing livelihood projects for his constituents in the 1st District of Bukidnon, which was funded by Pancrudo's PDAF allocation covered by SARO No. ROCS-07-008787, despite the absence of a public bidding, and in violation of Section 53.11 of the Implementing Rules and Regulations (IRR) of RA 9184 and National Budget Circular (NBC) No. 476, as amended by NBC No. 479, or in spite of the absence of any appropriation law or ordinance which could have allowed the use of negotiated procurement with said NGO, under GPPB Resolution No. 12-2007, and by failing to monitor the implementation of the project by FDC and to submit liquidation documents, thereby causing undue injury to the government in the total amount of Php 16,000,000.00;
- b) Pancrudo, as represented by Esmeralda and TRC's Ortiz then entered into a Memorandum of Agreement with FDC on the implementation of Pancrudo's purported PDAF-funded projects;

⁴ Id., pp. 40-58



- c) Lacsamar issued a Memorandum dated 19 December 2007, recommending the release to FDC of Pancrudo's PDAF in the amount of P20,000,000.00, less P1,000,000.00 for service or management fees, less another 1,000,000.00 for cost of materials and another P2,000,000.00 for retention fees, leaving the amount of P16,000,000.00;
- d) Ortiz facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Vouchers (DV) No. 012007122133, dated December 20, 2007, for the amount P16,000,000.00, along with Jover, Espiritu, Cunanan and Figura, as well as caused the issuance of the corresponding Land Bank Check No. 0000885616 signed by Ortiz in the aforesaid amount to FDC, without accused TRC Officers and Employees having carefully examined and verified the accreditation and qualification (of) FDC and the transactions' supporting documents;
- e) Ujano, acting for and in behalf of FDC, received the above cited LBF check from TRC and issued the corresponding receipt;
- f) By their above acts, Pancrudo and the above named TRC officials allowed FDC through Labay and Ujano, to take possession and thus appropriate for their own use or misappropriate PDAF-drawn public funds, instead of implementing accused Pancrudo's PDAF-funded projects, which turned out to be non-existent, while Labay and Ujano caused/participated in 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 accusatory portion of the *Informations* in Criminal Cases Nos. SB-17-CRM-2105 to 2107, also for *Malversation of Public Funds*, are likewise almost similarly worded, except on certain details presented in the table below:

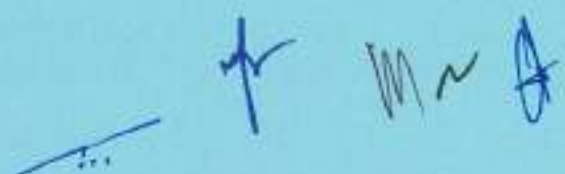
CASE NUMBER	DATE	SARO NO.	AMOUNT (PhP)	DV NO. AND DATE	LBP CHECK NO.
SB-17-CRM-2105	2008	D-08-1450	4,800,000	012008030587 August 6, 2008	-
SB-17-CRM-2106	2008	ROCS-08-02604	8,000,000	012008051147 May 6, 2008	866704
SB-17-CRM-2107	2008	ROCS-08-02605	4,000,000	012008051148 May 6, 2008	866703

Except for some pertinent details, the accusatory portion of the *Informations*⁵ filed in relation to the four counts of **Malversation of Public Funds through Falsification of Public Documents** are also analogous and follow the wording of the *Information* pertinent to **Criminal Case No. SB-17-CRM-2108** which reads:

“That in 2007 or sometime prior or subsequent thereto, in Quezon City, and within the jurisdiction of this Honorable Court, accused then Congressman Candido P. Pancrudo Jr. (Pancrudo) of the 1st District of Bukidnon, a high-ranking public officer, and other public officers, Director General Antonio Y. Ortiz (Ortiz), Deputy Director General Dennis L. Cunanan (Cunanan), Group Manager Maria Rosalinda Lacsamana (Lacsamana), Chief Accountant Marivic V. Jover (Jover), Group Manager Francisco B. Figura (Figura), all of the Technology and Resource Center, while in the performance of their official functions and committing the offense in relation to office, taking advantage of their official positions, conspiring and confederating with one another, together with private individuals Johanne Edward B. Labay (Labay), Victorino C. Ujano (Ujano), and Aileen F. Carrasco, did then and there, willfully, unlawfully and feloniously, allow the above-mentioned private individuals and Farmer business Development Corporation (FDC), a non-government organization assigned to implement accused Pancrudo’s Priority Development Assistance Fund (PDAF) assisted livelihood project covered by SARO No. D-08-01450 in the amount of P4,800,000.00, to take away part of such public fund in the form of 10% retention fees amounting to P600,000.00 payable to the said Non-Government Organization (NGO) implementing said livelihood project (FDC), by committing the following acts:

- a) Pancrudo unilaterally chose and indorsed FDC, a non-government organization operated and controlled by Labay, as “project partner” in implementing livelihood projects for his constituents in the 1st District of Bukidnon, which was funded by Pancrudo’s PDAF allocation covered by SARO No. D-08-01450, despite the absence of a public bidding, and in violation of Section 53.11 of the Implementing Rules and Regulations (IRR) of RA 9184 and National Budget Circular (NBC) No. 476, as amended by NBC No. 479, or in spite of the absence of any appropriation law or ordinance which could have allowed the use of negotiated procurement with said NGO, under GPPB Resolution No. 12-2007, and by failing to monitor the implementation of the project by FDC and to submit liquidation documents, thereby unlawfully entitling FDC to

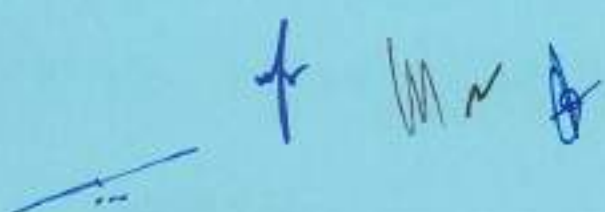
⁵ Id., pp. 60-79



- a retention fee of P600,000.00 causing undue injury to the government in the same amount;
- b) Pancrudo, as represented by Esmeralda and TRC's Ortiz then entered into a Memorandum of Agreement with FDC, as represented by Labay, on the implementation of Pancrudo's purported PDAF-funded projects;
 - c) Accused Ujano and Labay, both of FDC, with the conforme of Pancrudo, issued and submitted a TRC PDAF Monitoring Report Form stating that the Livelihood Training Seminar conducted to improve the lives of the farmers and small scale entrepreneurs of Bukidnon under SARO No D-08-01450;
 - d) To support the said TRC PDAF Monitoring Report, Liquidation and Disbursement Report, Audited Financial Statements of the Project needed for the release of the retention fee, accused Carrasco, Felta's Accountant/Comptroller, issued O.R. No. 2154 dated 21 May 2008 for the Livelihood Training Course Package (LTCP) worth P9,000,000.00 purportedly purchased by TRC from FDC, when in truth and in fact there was no such purchase made;
 - e) Figura issued a memorandum recommending the release of the retention fee;
 - f) Ortiz also facilitated processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) No. 01200808081829, dated August 4, 2008, for the amount of P600,000.00, along with Jover, Espiritu, Cunanan and Figura, as well as causing the issuance of the corresponding Land Bank Check No. 0000889931 for said DV in the same amount to FDC, which was signed by Ortiz, without accused TRC Officers and Employees having carefully examined and verified the accreditation and qualification FDC and the transactions' supporting documents;
 - h) By their above acts, Pancrudo and the above named TRC officials allowed FDC through Labay, to take possession and thus misappropriate said retention fee of P600,000.00 as part of the said PDAF-drawn public fund for said livelihood project, which turned out to be non-existent, while Labay, Ujano and Carrasco caused/participated in 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 pertinent details in the accusatory portion of the *Informations* in Criminal Cases Nos. SB-17-CRM-2109 to 2111, the three (3) other counts



of *Malversation of Public Funds through Falsification of Public Documents*, are presented in the table below:

CASE NUMBER	DATE	SARO NO.	AMOUNT (PhP)	DV NO. AND DATE	LBP CHECK NO.
SB-17-CRM-2109	2008	ROCS-08-02604	1,000,000	0120080881832 August 4, 2008	889929
SB-17-CRM-2110	2008	ROCS-08-02605	500,000	012008081830 August 4, 2008	889930
SB-17-CRM-2111	2007	ROCS-07-008787	2,000,000	012008081831 August 6, 2008	889938

On January 12, 2018, accused Pancrudo⁶ and Lacsamana⁷ were arraigned, assisted by their counsel, separately pleading not guilty to the charges against them. On the occasion of the arraignment of accused Cunanan⁸ on March 16, 2008, and of accused Figura⁹, Jover¹⁰, and Espiritu¹¹ on April 13, 2008, all of them similarly entered a plea of "Not Guilty". Accused Labay¹² refused to enter a plea during his arraignment on June 29, 2018, thus the Court entered for him a plea of "Not Guilty".

Accused Ortiz and Esmeralda remain at large.

On April 20, 2018, the Court issued a *Pre-Trial Order*¹³ with respect to accused Pancrudo, Lacsamana, Cunanan, Jover, Espiritu, and Figura. Thereafter, on August 17, 2018, a *Pre-Trial Order*¹⁴ as to accused Labay was issued by the Court.

Trial ensued.

⁶ Vol. 2, p. 88

⁷ Id., p. 90

⁸ Id., p. 295

⁹ Id., p. 473

¹⁰ Id., 475

¹¹ Id., p. 477

¹² Vol. 3, p. 211

¹³ Id., pp. 232-253

¹⁴ Id., pp. 305-320

On May 2, 2019, the prosecution filed its **Formal Offer of Documentary Evidence**¹⁵, acting upon which the Court resolved: "to admit plaintiff's Exhibits "A" and "A-1", "E", "E-1" and "E-2", "F" to "R", "R-1" to "R-3", "S", "T", "T-1" to "T-23", "U", "U-1" to "U-4", "BBB", "FFF" to "HHH", "B", "B-1" and "B-1-a", "DD" to "GG", "GG-1" to "GG-3", "HH", "HH-1" to "HH-3", "II", "II-1" to "II-23", "CCC", "C", "C-1", "MM", "NN" to "PP", "PP-1" and "PP-2", "QQ" and "QQ-1", "RR", "RR-1" to "RR-3", "SS", "SS-1" to "SS-19", "DDD", "D", "D-1", "UU" to "WW", "WW-1" to "WW-4", "XX", "XX-1" to "XX-3", "YY", "YY-1" to "YY-27", and "EEE".¹⁶

Motions for Leave to File Demurrer to Evidence were promptly filed by accused Cunanan¹⁷, Lacsamana¹⁸, and Pancrudo¹⁹, and by accused Figura, Jover and Espiritu jointly.²⁰

In a **Resolution**²¹ dated October 24, 2019, the Court denied the **Motions**. A **Motion for Reconsideration**²² was filed by accused Labay which, however, merited a similar denial from the Court.²³

Notwithstanding the denial of leave, accused Labay forthwith filed his **Demurrer to Evidence**²⁴ on January 2, 2020.

Presentation of defense evidence followed.

Accused Pancrudo was the first to tender his documentary evidence, consisting of Exhibits "2", "3", and "4", which the Court all admitted on March 9, 2020.²⁵

¹⁵ Id., Vol. 5, pp. 94-138

¹⁶ Id., pp. 496-497

¹⁷ Id., Vol. 5, pp. 80-84

¹⁸ Id., pp. 85-91

¹⁹ Id., pp. 138-140

²⁰ Id., pp. 166-169

²¹ Id., pp. 207-212

²² Id., pp. 219-226

²³ Id., pp. 327-329

²⁴ Id., pp. 344-400

²⁵ Id., p. 510-A



Accused Cunanan filed his **Formal Offer of Documentary Exhibits**²⁶ on March 29, 2021, the offer of which was admitted *in toto* by the Court.²⁷

Also duly admitted²⁸ was the offer of documentary evidence²⁹ filed by accused Lacsamana on May 20, 2021.

The documents in the joint **Formal Offer of Evidence**³⁰ filed by accused Figura, Jover, and Espiritu were likewise all admitted by the Court per its **Resolution**³¹ of November 4, 2021.

No evidence on rebuttal was presented by the prosecution.

Only accused Cunanan opted to file a **Memorandum**³² on May 24, 2022.

SUMMARY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES

DARWIN SOTTO is a Securities Counsel at the Securities and Exchange Commission. In relation to his function of processing applications for registration of corporations, he identified the following documents of FARMERBUSINESS Development Corporation (FDC): 1) Certificate of Incorporation, Articles of Incorporation and By-Laws; 2) General Information Sheet for the year 2007; 3) Financial Statement; 4) Amended Articles of Incorporation dated June 24, 2008; and 5) General Information Sheet for the year 2009. He did not personally see the original of the aforesaid documents nor compare the certified true copies with the original on file with their office, but attested that their department is the official custodian of such documents.³³

²⁶ Vol. 7, pp. 309-313.

²⁷ Vol. 8, p. 321.

²⁸ *Id.*, p. 186.

²⁹ *Id.*, pp. 88-107.

³⁰ *Id.*, pp. 525-535, with attachments.

³¹ Vol. 9, p. 97.

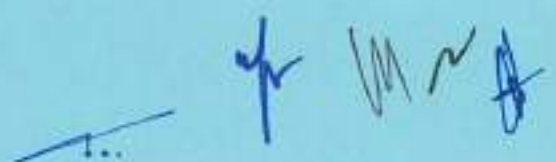
³² *Id.*, Vol. 9, pp. 190-233.

³³ Judicial Affidavit, Record, Vol. 3, pp. 386-390, TSN of January 14, 2019, pp. 14-28.

FELIX S. TIANGCO, JR. is a Certified Public Accountant who had served as an independent accountant of Felta Multi-Media Incorporated ("Felta"). He recounted that he executed an affidavit before the Office of the Ombudsman sometime in March, 2014, wherein he denied having prepared or executed the Independent Accountant Reports supposedly in favor of FARMERBUSINESS Development Corporation. He testified that while his letterhead and specimen signature are available electronically from Felta, the reports being attributed to him were not rendered in his usual style or format of reporting. Two other Independent Accountant Reports he was confronted with were not his, although they bore what appeared to be his signature. It may have been a certain Miss Segesmundo of Felta who could have falsified the Reports, in connivance with Felta's office manager/bookkeeper, Aileen Carrasco. His electronic signature is accessible from Felta's computer but Felta staff, Ms. Segesmundo and Miss Bona Argonia, were not authorized to affix his signature on the subject Reports.³⁴

MARIA AILEEN R. ABIVA-SAZON testified that she is the President/CEO of Felta Multi-Media Incorporated, an entity engaged in the sale, manufacture, and distribution of educational and instructional materials, science equipment, and educational mobile devices, among others. Sometime in the year 2013, their company received a letter from the Commission on Audit (COA) seeking confirmation of the veracity of Felta transactions involving Official Receipts Nos. 2143 and 2154. She personally delivered to COA Director Susan Garcia her reply letter dated August 27, 2013. Director Garcia showed her a letter coming from Felta's former accountant/comptroller, Aileen Carrasco, averring that Felta issued Official Receipts to the NGOs, FARMERBUSINESS Development Corporation and Aaron Foundation Phils., Inc., and the Department of Social Welfare and Development Region III office. She responded that Felta never transacted with NGOs, particularly with FDC and Aaron Foundation. The claimed transactions were fraudulent and that the receipts alluded to were never

³⁴ TSN of January 28, 2019, pp. 6-29.



issued by their company. Certain Official Receipts had actually been declared missing, as attested to by Jessie Efeño, one of Felta's freelance sales agent, in an Affidavit of Loss the latter executed on May 31, 2010. She sent a second letter to COA Director Garcia definitively denying the supposed NGO transactions, after she was able to verify with their in-house auditor that the Official Receipts mentioned in the letter of Carrasco were the same as those missing from their inventory. Carrasco connived with Efeño in using Felta's official receipts and delivery receipts for the fraudulent transactions. Official Receipt Nos. 2143 and 2154, in particular, purportedly covering transactions with Felta in the respective amounts of P9,000,000.00 and P9,450,000.00 were part of a booklet that have gone missing from Felta's account. Delivery Receipts bearing numbers 19552 and 19563 had been likewise fraudulently issued to support the supposed delivery of Felta products. Actual transactions with Felta commence with receipt of purchase orders from schools or government educational agencies. Delivery of their products are supported by sales invoices and corresponding delivery receipts, with official receipts being subsequently issued when payment to them has been effected. Since such procedure had not been followed, the transactions involving the said receipts are fraudulent. There were also other badges of irregularity based on the receipts, such as: absence of signature on the portion intended for the authorized signatory; absence of entries under "details of collection" and "mode of payment"; typewritten (instead of handwritten) dates, names of payer, and addresses; and certain details that remained incomplete. The package indicated also does not comprise an authorized product package of Felta. Neither were the claimed deliveries to FDC on April 24, 2008 and on May 21 of the same year authorized. She only came to know about FDC when Felta was alluded to in a news article of the Philippine Daily Inquirer on August 18, 2013. Carrasco had resigned from the company a year before, or on May 9, 2012, but it was only upon their discovery of the missing receipts that charges were pressed against the former employee for Estafa, Falsification, and Violation of B.P. 22. Carrasco must have taken advantage of the time that she was in the middle of a family crisis when she undertook the fraudulent transactions with FDC and Aaron Foundation Philippines, Inc. Carrasco used to be in charge of the financial

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aspect of the business while she had been involved in the operations and management of the company. She gave Carrasco blank checks for use in the company's operations. She normally issues such blank checks when she goes on business travel. At the time that she discovered the loss, Carrasco had already resigned from Felta. The multi-media company was only used by Carrasco and Felta did not transact with FDC.³⁵

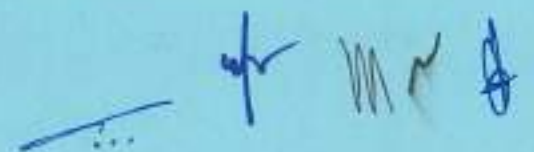
NIÑO IAN U. PEREZ is an Administrative Aide at the Commission on Audit. He testified that his duties at the Commission included the following: assisting the supervising administrative officer in safekeeping COA records and files that were collected during the special audits conducted on PDAF and Various Infrastructure including Local Projects, pursuant to Special Audit Office Report No. 2012-03; furnishing certified true copies of files and records to government agencies; and testifying as to the existence of such documents and records in the COA Special Audits Office. In compliance with a subpoena from the Office of the Special Prosecutor, he secured from their office the original Special Allotment Release Orders numbered ROCS-07-08787, D-08-01450, ROCS-08-02604, and ROCS-08-02605, and related documents in their custody, photocopied them and furnished the requesting office with certified true copies/certified true copies from photocopy of the said documents, consisting of Exhibits "A", "A-1", "B", "B-1", "B-1-a", "C", "C-1", "D", "D-1", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R" to "R-3", "T" to "T-23", "U" to "U-4", "DD", "DD-1", "EE", "FF", "GG" to "GG-3", "HH" to "HH-3", "II" to "II-23", "MM", "NN", "NN-1", "OO-1", "PP" to "PP-2", "QQ", "QQ-1", "RR" to "RR-3", "SS" to "SS-19", "UU", "VV", "WW" to "WW-4", "XX" to "XX-3", and "YY" to "YY-27". He did not take part in the preparation of the Special Audit Report; neither was he familiar with its contents.³⁶

SUSAN P. GARCIA testified that she was the Director of the Special Audits Office (SAO) of the Commission on Audit (COA) prior to holding her present position of COA Assistant Commissioner. As then-head of the SAO, she was in charge of planning the operations of the office,

³⁵ Judicial Affidavit, Record, Vol. 3, pp. 477-486; TSN of January 29, 2019, pp. 5-30

³⁶ Judicial Affidavit, Record, Vol. 4, pp. 58-77; TSN of March 4, 2019, pp. 5-25

supervised the conduct of audits, and reviewed special audit reports. Part of the audits undertaken in 2010 were the special audit on the Priority Development Assistance Fund (PDAF), or the lump-sum appropriation intended to finance the priority programs and projects of legislators. The special audit was prompted by concerns arising from unliquidated fund transfers, undocumented transactions, and violations of rules and regulation in utilizing the subject Fund. The 2-year audit they conducted of the Fund's utilization for the years 2007 to 2009 was meant to determine the propriety of the fund releases by the Department of Budget and Management (DBM) to the implementing agencies, to assess the efficiency of the Fund's utilization, and to ascertain the effectiveness of the implementation of the PDAF-funded projects. In that regard, they compiled, evaluated, and analyzed various documents pertaining to the release and utilization of the PDAF. They also interfaced with legislators, officials, regulatory offices, suppliers and NGOS, and went on related inspections. A Special Allotment Release Order is a specific authority issued to an identified agency to incur obligations up to a certain amount, for a specified period and for such purposes as identified in the same. Pertinent to the present cases, the DBM released four SAROs to the Technology and Livelihood Resource Center (now the Technology Resource Center, TRC) relative to the PDAF of accused Pancrudo. These were: 1) SARO No. ROCS-07-0787 in the amount of P20,000,000.00 (Exhibit "A"); 2) SARO No. D-08-01450 in the amount of P6,000,000.00 (Exhibit "B"); 3) SARO No. ROCS-08-02604 in the amount of P10,000,000.00 (Exhibit "C"); and 4) SARO No. ROCS-08-02605 in the amount of P5,000,000.00 (Exhibit "D"). The corresponding Advice of Notice of Cash Allocation Issued (ANCAI) issued to cover the funding requirement of the SAROs specifically indicated that the Release Orders were upon the initiative of accused Pancrudo. From among the confirmation letters they sent out, a response from Felta - who was an indicated supplier of FARMERBUSINESS Development Corporation - was received by the Special Audit team where Felta Accountant/Comptroller Aileen Carrasco confirmed that the company issued Official Receipts to FDC after receiving payment in the total



amount of P144,630,000.00 for services rendered and products delivered. The audit team had likewise reached out to the printing press indicated in Felta's Official Receipts but failed to receive a reply from them. After the PDAF Report was released, the President/CEO of Felta, Maria Aileen Abiva-Sazon, visited her sometime in August, 2013 to personally deliver her reply-letter. During the said meeting, Abiva-Sazon registered surprise at Felta being implicated in the SAO Report for having transacted with the NGOs. Abiva-Sazon denied the supposed Felta transactions with FDC and informed that C.R. Nos. 2140 to 2175 have been actually reported lost in early 2009. Subsequently, or on September 2, 2013, another letter was sent by Abiva-Sazon disavowing Carrasco's actions and the claims that the latter made in her letter to COA that affirmed the supposed transactions. A letter was similarly sent to accused Pancrudo (Exhibit "FFF", dated October 10, 2011) inquiring as to the subject transactions, to which the legislator replied via a letter dated January 8, 2012 (Exhibit "GGG") confirming that the signatures appearing on the documents sent to him were his. She enumerated the Disbursement Vouchers and documents in support of the respective SAROs, which reflected that the funds covered by the same were released to TRC and thereafter downloaded to FDC. Their findings included the following: that there was no legal basis in the transfer of funds from TRC to the FDC as there was no appropriation law nor selection process providing for the same, in contravention of GPPB Resolution No. 12-2007 and COA Circular No. 2007-01; the NGO was selected upon mere endorsement of accused Pancrudo; the DBM was not compliant with existing laws and guidelines governing the release of the legislators' PDAF; the liquidation documents submitted were dubious in light of the disavowal made by Felta's President/CEO; and the payments made to other purported suppliers/providers who merely issued acknowledgment - and not official - receipts, and without a specification of the names and addresses of the supposed establishments they represent, render them unverifiable. Subsequent to such adverse findings, she said that COA issued Notices of Disallowance (NDs) relating to the four subject SAROs. The Resident Auditor of TRC had not issued such a disallowance for the transactions in



question which prompted the COA Chairperson to create a Special Audit Team after issues pertaining to PDAF began to emerge. Their verificatory efforts were left unanswered by Johanne Labay, President of FDC, and out of twenty-one individuals identified as participants to the livelihood training activity funded by PDAF, only nine confirmed with the Auditors their attendance to the same, while one confirmed receipt of a training kit.³⁷

SUMMARY OF THE TESTIMONIES FOR THE DEFENSE

CANDIDO PANCRUDO, JR. is the former Representative of the First District of Bukidnon. He testified that he executed a Counter-Affidavit (Exhibit "2") and a Motion for Reconsideration (Exhibit "4") before the Office of the Ombudsman when the latter was undertaking a fact-finding investigation as to his involvement in the questioned utilization of his PDAF. When his attention was drawn to the following prosecution Exhibits, he separately denied as his the signatures appearing thereon, to wit:³⁸

Exhibit "F"	Letter dated December 5, 2007, addressed to TRC Director General Antonio Ortiz designating Jesus P. Esmeralda as Representative Pancrudo's Project Consultant
Exhibit "T"	Project Final Report involving the use of P20 Million for PDAF-funded livelihood and development projects
Exhibit "T-23"	PDAF Monitoring Report Form (indicating 100% project completion)
Exhibit "DD-1"	Letter dated February 11, 2008 designating Jesus P. Esmeralda as Pancrudo's Project Consultant, to facilitate/monitor/check project status and sign documents related to the projects
Exhibit "II"	Project Final Report pertaining to the implementation of the project amounting to P6 Million

³⁷ Judicial Affidavit Record, Vol. 4, pp. 396-433, TSN of April 2, 2019, pp. 4-54

³⁸ TSN of February 3, 2020, pp. 5-12



Exhibit "SS"	Project Final Report pertaining to the implementation of the project amounting to P10 Million
Exhibit "SS-1"	PDAF Monitoring Report indicating 100% completion of the project activities amounting to P10 Million
Exhibit "YY-2"	Project Final Report pertaining to the implementation of the project amounting to P5 Million
Exhibit "YY-27"	PDAF Monitoring Report Form (indicating 100% completion of the project amounting to P5 Million)

DENNIS CUNANAN testified that he served as Deputy Director General of the Technology and Livelihood Resource Center (TLRC; presently, the TRC) before he rose to be the Center's Director General from January 2010 until his resignation on March, 2014. As the then-Deputy, he headed the Change Management Team that had been organized to streamline the operations of the Center. He also concurrently acted as TRC's Chief Operating Officer where part of his duties was to be a co-signatory in the Disbursement Vouchers in support of the financial transactions of the Center. TRC had been receiving PDAF allocations since its creation and, in particular, began receiving legislator-associated PDAF from 2005 until around 2009 during which time the General Appropriations Act specifically identified TRC as an authorized implementing agency for PDAF-financed projects. He pointed to the then-Director General (DG) Antonio Ortiz as the person who directly dealt with and supervised the processing of the PDAF projects passing through the TRC. He does not know, however, the present whereabouts of Ortiz. He had limited involvement in PDAF-related matters, as borne by the directives issued by the Center, i.e., 1) Office Circular 00GE0098, effective January 19, 2007, downgrading his authority to sign checks only in the range of P100,000.00 to P1,000,000.00; 2) Office Circular 000P0099, restating limits to the authority to sign PDAF documents and requiring the execution of a Memorandum of Agreement that is endorsed by the Center's Legislative Liaison Officer (LLO), the review of the Legal Department and initials of the Group Manager of the Corporate Support Services Group (CSSG), and the



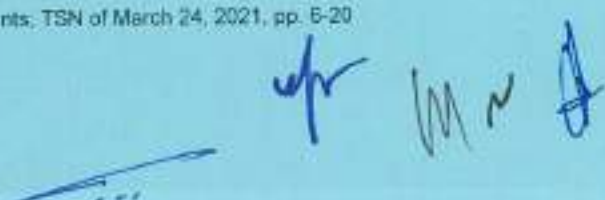
final approval of DG Ortiz prior to any implementation of a PDAF project, leaving out the participation of the Deputy Director General; and 3) Office Circular 000P0100 which, among others, revised the implementing guidelines on PDAF accounts. There is also Memorandum No. ODG-200712-081, which amended Office Circular 00GE0098, that introduced alternate signatories in Box A of the Disbursement Voucher, thus broadening the authority that used to vest solely with the Deputy Director General. Amounts sourced from PDAF go to a special trust fund, access to which is triggered only by the legislator under whose name the PDAF is to be drawn. He reviews the completeness of documents that are in support of Disbursement Vouchers where he signs off, such as the attendant SARO, endorsement letter from the sponsoring legislator, Memorandum of Agreement, and the pertinent project proposal. Once a legislator identifies how the fund is to be used and allocated, the Legislative Liaison Officer will accordingly forward the legislator's endorsement to the Office of the Director General. The necessary supporting documents are then reviewed, subsequent to which a Notice to Proceed is issued and the corresponding Disbursement Voucher prepared and routed for signature. He was of the belief that PDAF-funded projects were regular and legitimate undertakings that were able to provide income to the Center in the form of Management, Product, and Service Fees which they were able to deduct therefrom. To be able to collect such fees, they had to process and release the PDAF as instructed, for the purpose that they were intended. Without the disbursements being flagged by the Center's Resident Auditors, he assumed that the transactions were regular and in accord with COA rules and regulations. When eventually he assumed the post of TRC Director General in 2010, and realizing the magnitude of the PDAF they were handling, he promptly constituted a committee to review the implementation of PDAF-sourced projects and issued Office Circular 00PE0100b5 providing Implementing Guidelines on Projects Funded through PDAF or Other Government Subsidy to make the same compliant with COA Circular No. 2007-001. He also reached out to partner-NGOs so that they may rectify any outstanding deficiency and account for funds that remained unliquidated. The NGOs who still failed to comply were included in a blacklist embodied



in a Memorandum he consequently issued in July, 2010. FDC was not subjected to a public bidding but, rather, an accreditation process that was performed by a committee. The signature in the Disbursement Vouchers pertinent to the instant cases were his, but he does not personally know accused Pancrudo. He did not have any agreement or arrangement with any of his co-accused nor did he benefit from the assailed transactions. The changes he initiated at the Center were prior to the PDAF investigations and, under his leadership, the audit of the PDAF projects was transformed from one that was administrative to one that was investigative in character.³⁹

MARIA ROSALINDA LACSAMANA testified that she was a Group Manager at the Technology Resource Center from July, 2006 until her retirement in October, 2010. Among her duties was to ascertain that documents in support of projects were signed, complete, and were in order. The duties she performed were part of TRC's standard operating procedures and the same were ministerial in nature. She signed Memoranda and Disbursement Vouchers relative to the present transactions but that was only pursuant to TRC Office Circulars 000P0099 and 000P0100. The Memoranda she signed were merely recommendatory, as evidenced by her annotation "For your consideration", and was not at all indicative of a command to her superior, accused Ortiz, who has the final say as to which NGO shall be awarded with the implementation of a project. The Release Memoranda she signed were supported by documents such as the pertinent SARO, endorsement letter from the legislator, Memorandum of Agreement, and Project Proposal. She was in no position to question the request for the PDAF release, the endorsement of the Committee Chair, the issuance of the SARO nor the execution of the Memorandum of Agreement (MOA) between TRC, the legislator, and the NGO. As to the MOA, the same is triggered by a request from the legislator for the release of his/her PDAF which will then be forwarded to either the Senate Finance Committee or the House Appropriations Committee, as appropriate. The Chair of such Committee then endorses the same to the Senate President or the Speaker of the

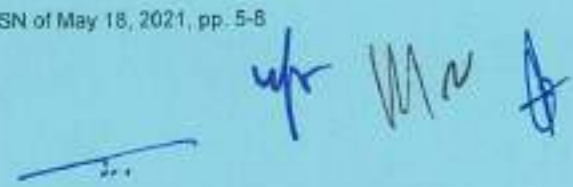
³⁹ Judicial Affidavit, Record, Vol. 7, pp. 220-230, with attachments; TSN of March 24, 2021, pp. 6-20




House who thereafter transmits the request to the Department of Budget and Management (DBM). The Department consequently releases the funds to the implementing agency identified by the lawmaker who is furnished with a copy of the pertinent SARO. The lawmaker thereafter selects the NGO that will receive the funds and implement the projects, the parties' respective obligations being outlined in a Memorandum of Agreement executed among the sponsoring legislator, the implementing agency, and the NGO. Although the signatures on the Disbursement Vouchers were hers, she was not motivated by bad faith, manifest partiality or unity with her co-accused in defrauding the government. While there was no public bidding conducted in the selection of FDC, she had no participation in the selection, endorsement, and approval of the NGO that will implement the PDAF project and did not receive any consideration except for her monthly salary in signing the Memoranda and the Disbursement Vouchers. All her acts were done in good faith.⁴⁰

CONSUELO LILIAN R. ESPIRITU testified that she held the position of Budget Officer IV of the Technology Resource Center from September 5, 2007 until the Center was abolished in 2015. In the years she was with TRC, she served as Officer-in-Charge of the Budget Division (known as the Financial Planning and Monitoring Division, or FPMD) from October 2, 2007 to January 6, 2010, after which she was transferred to the Technology Utilization and Commercialization Services Group (TUCSG). In such former capacity as OIC of the Budget Division, she was responsible for certifying the availability of budget relative to requests for expenditure by the Center, including those connected with the PDAF allocations. Such certification appears on Box B of the Disbursement Vouchers. Adhering in particular to their Office Circular 000P0100, on Revised Implementing Guidelines on PDAF Accounts (which superseded Office Circular 000P099), she only certifies the expenditure as within budget after she has ascertained the availability of budget based on documents such as the SARO and NCA issued by the Department of Budget and Management, and the TRC Official

⁴⁰ Judicial Affidavit, Record, Vol. 7, pp. 335-354, with attachments; TSN of May 18, 2021, pp. 5-8



Receipt acknowledging actual receipt of the funds. Should there be documents lacking relative to a Disbursement Voucher, she returns the same to the requesting unit. Once she determines that details such as amount, identity of the sponsoring legislator, date of issuance of the SARO, NCA and the Official Receipt are in order and do not show any irregularity, she has no choice but to certify that the requested expenditure is within the budget. Finding general guidance from Office Circular 00FN0059 issued in 1995, i.e., *Guidelines on the Processing of Disbursement Vouchers and Checks*, when a Disbursement Voucher is initiated by the Legislative Liaison Officer or the Deputy Director General, a review and concomitant certification on Box A follows, subsequent to which the Voucher is forwarded to the Accounting and Billing Division where Box B is accomplished and the Voucher is accordingly numbered. The Voucher and its supporting documents are then brought to the Budget Division which certifies budget availability and verifies if the amount indicated therein corresponds to the budget allocated by the DBM and released by the Bureau of Treasury to the TRC. If the amounts match, the Budget Division Chief certifies that the expense is within the budget allocated for the purpose and affixes his/her signature on Box B of the Disbursement Voucher. The documents are then transmitted to the Chief of the Accounting and Billing Division who certifies, after review, in the Accounting portion under Box B of the Disbursement Voucher. If TRC's in-house auditor finds everything in order, he/she duly stamps and signs "Verified as to the completeness of documents attached"; otherwise, any adverse finding is communicated to the Chief Accountant to whom the Voucher and supporting documents are also returned. Sans a negative finding, however, Box C is signed by the TRC Director General or the designated authorized signatory therefor, after which the documents are conveyed to the Cash and Collection Division for the preparation of the corresponding check. It is the Legislative Liaison Officer (LLO) who is in charge of coordinating with the offices of the legislators whose PDAF allocations are being implemented through the TRC, as borne by the TRC issuances Memorandum Order No. 07, dated June 22, 2005, and Memorandum Order ODG-200601-002, dated January 10, 2006. The LLO monitors the PDAFs released to TRC for utilization, in accordance with the



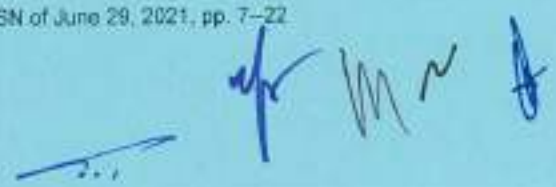
SARO. The proper officials to sign on Box A of the Disbursement Voucher were the Deputy Director General and the Group Manager (concurrently, the Legislative Liaison Officer) of the Center. A subsequent Office Circular amended such authority so that for any amount above P1,000,000.00, the authorized signatory was the Deputy Director General, and the Group Manager of the Technology and Livelihood Information Dissemination Services Group (TLIDSG) in the case of the legislators' PDAF. She faces the present charges for having signed Disbursement Vouchers numbered 012007122133, 012008081831, 012008030587, 012008081829, 012008051147, 012008081832, 012008051148, and 012008081830 in her capacity as OIC of the Budget Division. Her role was limited, however, to determining only if the requested expense was adequately supported by the budget. Her certification was only based on a given set of facts and the prescribed rules. The required supporting documents, such as endorsement letter from the legislator, the corresponding MOA, project proposal, Work and Financial Plan, Project Implementation Schedule, SARO, NCA, and Official Receipt were all attached to the Disbursement Vouchers. She evaluates the documents on their face and as long as they appear to be in order and within budget, she is constrained to certify the expenditure. She cannot anymore recall if the Memorandum of Agreement had been notarized, but the same does not prevent her from certifying the expense as within budget since the MOA can be notarized even after her certification. The signature and notarization of the MOA is relevant only prior to the preparation of the corresponding check and there was, therefore, no irregularity involved when she certified the Disbursement Vouchers for which the MOAs were only thereafter signed or notarized, i.e., Disbursement Vouchers Nos. 012007122133, 012008030587, 012008051117, and 012008051148. The LLO, the Internal Audit Office, and the Resident COA Auditor were the entities responsible for ascertaining the genuineness of the documents of the NGO. There had been no adverse audit finding against her or the Disbursement Vouchers. As evidenced by the management letter from the COA Audit Team (dated September 14, 2009), the pertinent documents and Vouchers were received by the COA, but only Aaron Foundation Philippines, Inc., which implemented the PDAF project of



another legislator, was found non-compliant with liquidation requirements. She had no participation in the release of the related checks and did not receive any consideration when she affixed her signature on the Vouchers. Her role in the transaction is merely ministerial and limited only to determining the availability of budget for the subject expenditure. While no public bidding was conducted for the transactions, she affixed her signature on the Disbursement Vouchers because of the endorsement letter addressed to the TRC Director General and since funds were actually available to finance the disbursement.⁴¹

MARIVIC B. JOVER testified that she was Chief Accountant of the Technology Resource Center from April 2007, until the Center was abolished in 2015. Her duties included, *inter alia*, certifying Disbursement Vouchers as to availability of funds; preparation of financial reports; and ensuring that all accounting activities were in conformity with COA accounting guidelines, specifically the Philippine Financial Reporting Standards (PFRS) and the Manual on the New Government Accounting System (NGAS). Her duties relative to the PDAF were limited to its financial aspect and did not pertain to the implementation of the PDAF-budgeted projects. The Accounting Division only steps in to accomplish the portion for accounting entries in the Disbursement Vouchers, stamp the corresponding number on the Voucher, and check the required documents, after Box A has been duly signed, implying that the expense to be incurred was necessary and lawful. By subsequently signing on Box B, she attests to the availability of funds; that the expenditure is supported by the necessary documents; and any previous cash advance has been liquidated or accounted for. The required supporting documents (SARO, NCA, Official Receipt, endorsement letter from the legislator, and corresponding MOA) provided the basis for her eventual certification as to the availability of funds for the subject transactions. Office Circular No. 000P0100 governed the preparation and processing of Disbursement Vouchers involving PDAF and Office Circular No. 00FN0059 delineated the respective roles, duties and responsibilities of

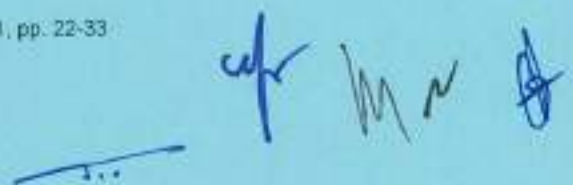
⁴¹ Judicial Affidavit, Record, Vol. 8, pp. 206-233, with attachments, TSN of June 29, 2021, pp. 7-22



officials involved in the process of disbursement. She adhered to the procedures and requirements laid down in the pertinent issuances of the office, and her function was only ministerial. She did not receive any consideration in signing the subject Disbursement Vouchers and she did not have any derogatory record - whether administrative or criminal - in the twenty-four years that she had been a government employee. She had no part in the selection of the NGO and belied awareness of a public bidding requirement for such. Her duty was confined to recording the transaction, the Disbursement Voucher number, and classifying the transactions for the concomitant financial report.⁴²

FRANCISCO B. FIGURA testified that he was the OIC-Group Manager of the Corporate Support Services Group (CSSG) of the Technology Resource Center at the time material to these cases. The CSSG consisted of TRC's Legal and Administrative Department, Financial Services Department, and the Corporate and Acquired Assets Department. As such OIC-Group Manager, his duties included monitoring and supervision of the subsumed departments. He was familiar with the PDAF as a discretionary fund given to legislators in order to finance projects in their respective districts. During a Management Committee meeting sometime in August 2006, Deputy Director General Cunanan announced that the Center had been identified under the General Appropriations Act as one of the implementing agencies authorized to implement the PDAF projects of lawmakers and that, in view of the same, Office Circulars pertaining to PDAF would be accordingly drawn up. Office Circular No. 00GE0098, dated January 19, 2007, was thus issued providing "Office Policies on Authorized Signatories for Official Documents". Another Management Committee meeting transpired in late January, 2007 where concerns regarding PDAF were taken up. At that meeting, he recommended that the TRC itself should undertake implementation of the PDAF projects as had been successfully done in the 1990s. The proposal was countered by accused Ortiz who had opined that the Center lacked the personnel to implement the projects. On


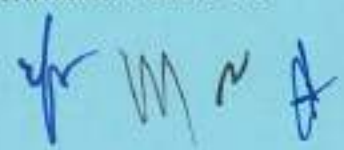
⁴² Judicial Affidavit, Record, Vol. B, pp. 296-205; TSN of June 29, 2021, pp. 22-33



the matter of NGO selection through public bidding, Ortiz ratiocinated that the livelihood training programs were part of the "soft" portion of PDAF that did not require competitive bidding unlike the "hard" portion of the Fund. Ortiz similarly explained that since PDAF is a discretionary fund of lawmakers, the Center had to defer to the legislator's preference when it came to project implementation and their selection of partner-NGOs. He maintained his position that TRC itself should be implementing the livelihood training activities funded by PDAF and, to underscore his misgivings, alluded to the Memorandum of April 4, 2007 that he addressed to accused Ortiz where he sought to be relieved of the duty to sign Box A of the Disbursement Voucher in the absence of the Deputy Director General of the Center. Owing to the serious implication and responsibilities attached to the said signature and the huge amounts involved, he had reservations in affixing his signature on the PDAF-related Vouchers. He proposed that if lack of personnel prevented TRC from undertaking the project implementation under PDAF, then partner-NGOs should first be duly accredited with the TRC, bear a good track record in implementing training and livelihood programs, and be managed by competent personnel to ensure successful implementation of the project activities. There was a Memorandum dated February 9, 2007, emanating from accused Cunanan, raising policy issues to the attention of Director General Ortiz, where he had appended a handwritten note recommending that such PDAF matters be thoroughly discussed in the Management Committee and be presented likewise to TRC's Board of Trustees. Accused Ortiz decided that the legislator-identified NGO be the Center's conduit in implementing the PDAF projects and, further, that the Center collect one *per centum* (1%) of the fund as management fee and provide Fifty Thousand Pesos' worth of TRC materials for every PDAF account. Ortiz directed that the designated LLO should continue to coordinate with the legislators' offices, vet the qualifications of the recommended NGOs, prepare the corresponding MOAs, and perform the necessary initiatory work in line with the PDAF projects. There were guidelines provided under Office Circular 000P0099 concerning PDAF accounts and a consequent revision under Office Circular 000P0100 which prescribed that no PDAF releases shall be effected to conduit NGOs with



remaining unliquidated accounts from prior disbursements. His office did not have a role in interfacing with the legislators nor in the accreditation of the NGOs, saying that such was the responsibility of the LLO as provided by Memorandum Order No. 07 issued in 2005. Belina Concepcion was the LLO in 2006, but was replaced by Maria Rosalinda Lacsamana the following year. He had no participation in the implementation and monitoring of the PDAF projects as the same were supposedly the responsibility of the Technology and Livelihood Information Dissemination Services Group (TLIDSG). His signatures on the Memoranda recommending the release of retention fee in favor of FDC in the respective amounts of One Million Pesos and Five Hundred Thousand were made when he was Acting LLO at the time that the incumbent was on official travel. He signed thereon only after the responsible officer showed him the appurtenant liquidation documents including the certification signed by accused Pancrudo indicating satisfaction with the implemented project. He relied on the certification issued by the regular LLO and duly signed by the corporate auditor stating that the FDC had fully liquidated the funds disbursed to it for the implementation of the PDAF projects. He attended exit conferences with the COA Resident Auditor from the year 2007 to 2010, and in 2008, the COA Resident Auditor reminded that fund releases from PDAF should be made in tranches and that proper project monitoring should be undertaken by the Center. No mention of public bidding as a requirement was supposedly made, but the auditor requested the Director General to negotiate with the legislators to allow the TRC to implement the projects rather than their chosen NGO. In the 2009 exit conference, the audit team disclosed that some NGOs that they have inspected had failed to implement the PDAF projects assigned to them and recommended that those NGOs be made to explain and be blacklisted. For those three years, however, the auditors did not observe or communicate any irregularity and no Notice of Disallowance pertaining to PDAF was ever issued. Since the auditors did not flag them for any irregularity or for the need of a public bidding, his act of signing was proper. He does not personally know accused Pancrudo or the officers of the FDC. He had never been charged with any administrative or criminal offense in the several years that he had worked in government. While he

only mentioned about the release of P1.5 Million in his Judicial Affidavit, he may have overlooked the other releases in the amount of P1 Million, P2 Million, P500,000.00, and P600,000.00. He believed in the authenticity of the documents supporting the transactions and had no basis to determine if they had been forged or fabricated.⁴³

ISSUE

The Court is confronted with the question of whether the accused may be held liable for graft under the provision of **Section 3 (e), Republic Act No. 3019, as amended**, and of the crimes of **Malversation of Public Funds** and of **Malversation through Falsification of Documents**, defined and penalized under the **Revised Penal Code**, as charged under the respective **Informations**.

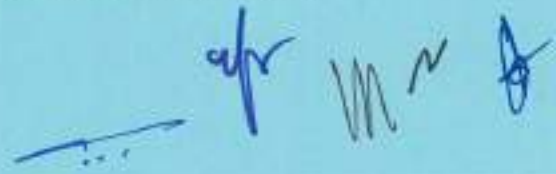
DISCUSSION AND RULING

The Priority Development Assistance Fund cases ("PDAF cases") trace their provenance, in large part, to a government-wide performance audit of the use of the said Fund by various legislators during the years 2007 to 2009. The investigation – which extensively covered some 58% of congressional PDAF and 32% of releases under the Various Infrastructures Including Local Projects (VILP) component of the budget – was carried out by the Commission on Audit and culminated in a scathing report (Report No. 2012-03, or the "COA Report"⁴⁴) which uncovered, among others, that:

- i. Amounts released for projects identified by a considerable number of legislators significantly exceeded their respective allocations;
- ii. Significant amounts were released to implementing agencies without the latter's endorsement and without considering their mandated functions,

⁴³ Judicial Affidavit, Record, Vol. 8, pp. 381-398, with attachments, TSN of October 12, 2021, pp. 6-15

⁴⁴ Exhibit "HHH"

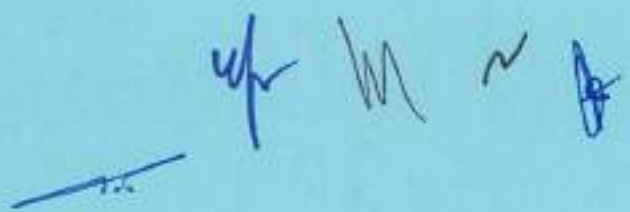


administrative and technical capabilities to implement projects;

- iii. Implementation of most livelihood projects was not undertaken by the implementing agencies themselves but by NGOs endorsed by the proponent legislators to which the Funds were transferred;
- iv. The funds were transferred to the NGOs in spite of the absence of any appropriation law or ordinance;
- v. Selection of the NGOs were not compliant with law and regulations;
- vi. Eighty-Two (82) NGOs entrusted with implementation of seven hundred seventy two (772) projects amounting to P6.156 Billion were either found questionable, or submitted questionable/spurious documents, or failed to liquidate in whole or in part their utilization of the Funds; and
- vii. Procurement by the NGOs, as well as some implementing agencies, of goods and services reportedly used in the projects were not compliant with law.

Petitions challenging the constitutionality of the Pork Barrel System (under which the PDAF fell) were promptly brought before the Supreme Court which, in the main, struck down for being constitutionally infirm the assailed provisions that allowed legislators "whether individually or collectively organized into committees – to intervene, assume or participate **in any of the various post-enactment stages of the budget execution** xxx unrelated to the power of congressional oversight".

The pervasiveness of the odious practice, meanderingly followed by the High Court under its different appellations and through various presidential administrations, led It to describe the constitutional aberration as an "*error which has persisted in the chronicles of our history*", begging to be rectified.



The magnitude of the questionable dealings involved ultimately prompted the Supreme Court to DIRECT:

"xxx all prosecutorial organs of the government to, within the bounds of reasonable dispatch, investigate and accordingly prosecute all government officials and/or private individuals for possible criminal offenses related to the **irregular, improper and/or unlawful disbursement/utilization of all funds under the Pork Barrel System.**"

That exhortation laid the groundwork for the present cases before Us.

The Transactions

At the pith of the controversy besetting the accused is the disbursement of Forty-One Million Pesos from the PDAF of Representative Candido Pancrudo Jr., under the cover of four Special Allotment Release Orders (SAROs) bearing the following details:

SARO No. 1) ROCS-07-08787 dated November 13, 2007, in the amount of P20,000,000.00;

SARO No. 2) D-08-01450 dated February 8, 2008, in the amount of P6,000,000.00;

SARO No. 3) ROCS-08-02604 dated March 12, 2008, in the amount of P10,000,000.00; and

SARO No. 4) ROCS-08-02605 similarly dated March 12, 2008, in the amount of P5,000,000.00.

All four invariably provided that the purpose of the fund allotment was to support the implementation of livelihood programs and projects in the first district of Bukidnon.

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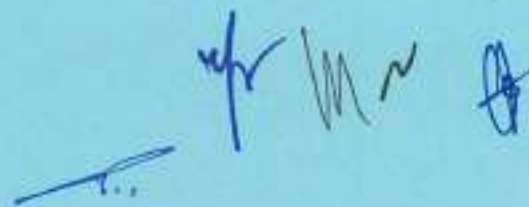
The Release Orders were succeeded by the issuance of the corresponding Advice of Notice of Cash Allocation (NCA) informing the Bureau of Treasury of the credit of the respective amounts for the purpose of carrying out the said livelihood projects in the first district of Bukidnon, anchored "upon the initiative of Congressman Candido Pancrudo, Jr."

Even before the issuance of the Notices of Cash Allocation, however, letters ostensibly emanating from Representative Pancrudo and addressed to Director General Antonio Ortiz of the Technology Resource Center (TRC) uniformly appointed the FARMERBUSINESS Development Corporation (FDC), a "non-government organization and socio-entrepreneurial arm of the farmer sector", as implementor of the livelihood programs for the constituents of accused Pancrudo, with the request that the Center accordingly facilitate the release of the four allotment to the FDC.

Under at least two of those SAROs, additional letters that were similarly addressed to accused Ortiz bore the designation of Jesus P. Esmeralda as Pancrudo's project consultant, tasked to facilitate and monitor/check the status of the livelihood projects and to sign documents relating to such current and forthcoming programs under the name of the legislator.

In the ensuing tripartite Memoranda of Agreement entered into by the TRC, the FDC, and accused Pancrudo (through his designee, Esmeralda), the parties laid down and agreed to carry out their respective responsibilities with the end in view of implementing the livelihood and development projects sponsored by Pancrudo's PDAF.

For the four transactions, the chain of events would then be continued by accused Rosalinda Lacsamana who - on those four occasions - would recommend to accused Ortiz the release of the full amount of the subject PDAF.



The eventual release of the amounts (from which would be deducted the costs of service/management fee, cost of materials, and retention fee) would be spurred by the preparation of the corresponding Disbursement Vouchers.

In the said Vouchers, accused Dennis Cunanan (and, alternately, accused Lacsamana) would certify that the expenses are necessary and are incurred under his (her) direct supervision; accused Espiritu affirms that the expense is within budget; accused Marivic Jover would sign to indicate that the expenditure is properly supported by available budget and the required documents; and accused Ortiz gives his imprimatur to finally effect the disbursement.

The release of funds under the four SAROs were all eventually disallowed in audit as borne by the Notices of Disallowance⁴⁵ issued by the Commission on Audit.

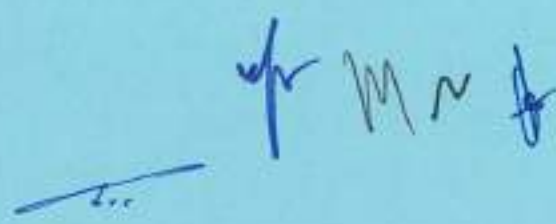
The Graft Charges

Eight indictments for graft have been lodged against the accused. Of these, four pertained to the alleged wrongful disbursement of project funds to FDC as NGO-implementor, and another four for the alleged wrongful release also to FDC of the amounts earmarked as retention fee.

In the words of the Commission on Audit:

"The transactions amounting to _____ are being disallowed in audit as these were undertaken without due regard to existing laws and regulations. The release of SARO and corresponding Notice of Cash Allocation (NCA) by the FDC were not compliant with the requirements of DBM National Budget Circular (NBC) No. 476 dated September 20, 2001, pertinent provisions of the General Appropriations Act (GAA) for the year, Government Procurement Policy Board (GPPB) Resolution No. 12-2007 issued on June 29, 2007, Implementing Rules and Regulations (IRR)-A of RA No. 9184 and COA Circular No. 2007-001 dated October 25, 2007.

⁴⁵ Exhibits "BBB", "CCC", "DDD", and "EEE"



Thus, the transactions were considered illegal and irregular as defined under COA Circular No. 85-55A xxx"

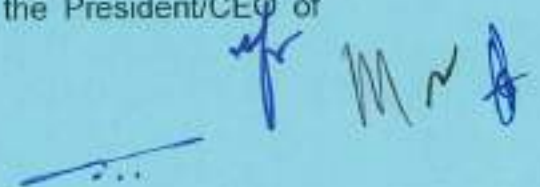
Quoting from the findings of COA, embodied in the four Notices of Disallowance that were issued simultaneously on October 26, 2015, the following graphically illustrate what the COA Audit Team observed:

- "SARO and NCA were released by the DBM to TRC in the absence of documents required under DBM NBC No. 476 to be submitted by TRC to DBM as implementing agency (IA) xxx
- Of the amount received by TRC without endorsement, _____ was merely transferred to FDC, a non-governmental organization (NGO), **despite the absence of an appropriation law earmarking an amount to be contracted out to NGOs xxx. NGOs were also not among those identified in the GAA** for the years 2007 and 2008 as implementing arms of PDAF Projects. The transfer, which was covered by a tripartite Memorandum of Agreement (MOA) xxx, is therefore considered without legal basis.
- The selection of NGO, for those allowed under the law, is **subject to the guidelines** prescribed under **GPPB Resolution No. 12-2007** and **COA Circular No. 2007-001** which were not at all observed xxx" [boldface and underscoring supplied]

Further, under the specific Notices of Disallowance, the COA Special Audits Office observed, to wit:

SAO ND No. TRC-2015-186-PDAF (07-09)

- "The amount transferred to FDC was purportedly used to procure **60 sets of LTCP** from Felta Multi-Media, Inc., and pay various expenses such as salaries and wages/mobilization, training materials and venue, catering services, transportation and administrative expenses. The validity of such transactions is also questionable for the following reasons:
 - The Accountant/Comptroller of Felta Multi-Media, Inc. Confirmed its transactions with this NGO in her letter dated May 30, 2011. However, in the letter dated September 2, 2013, the President/CEO of



Felta Multi-Media, Inc. claimed that the former Accountant/Comptroller acted independently and fraudulently with the intention of maliciously concealing the transactions and information. She further claimed that the subject Official Receipt (OR) Nos. 2136-2175 were missing and that she never had transactions with FDC;

- o The NGO's disbursement vouchers representing payments for training materials and venue, salaries, wages and mobilization fee, administrative expenses, catering services and transportation expenses **amounting to P9.00 Million were not supported with receipts, Sales Invoices and Delivery Receipts (DRs)**. These were merely reflected in the FDC's Disbursement Vouchers without any supporting schedules or any details. The names of personnel paid with salaries and wages, venues, establishments being represented by the recipient of payments for training materials, foods and miscellaneous expenses as well as the types of vehicles rented for transporting participants were not disclosed. **None of these payments can therefore be validated;** and
 - o The suppliers/providers were apparently paid **in cash in amounts ranging from P0.560 Million to P9.00 Million which is unlikely and questionable.**
- Among the documents submitted are registration forms containing 110 purported participants from various barangays of Malitbog and Baungon on candle making and fish processing. There were, however, no indications that the listed participants received livelihood materials as well.
 - The amount of P19.00 Million spent for purported 110 training participants **may not be considered cost effective.**
 - xxx (eight) **denied receipt of training kits or LTCP.** xxx Considering, however, the denial by the supplier and the deficiency of the transactions, the trainings confirmed attended by a participant may have been funded from other source.
 - The Election Officer of Baungon informed the Audit Team that of the 11 listed beneficiaries from their municipality, **5 are not found in the registry of voters of their municipality**
 - The **utilization of P2.00 Million retained by TRC as service fee for technical assistance and learning materials cannot also be accounted for as it was not documented.** Considering the above-mentioned deficiencies in the project implementation, it is apparent that TRC did not use the service fee in assessing the

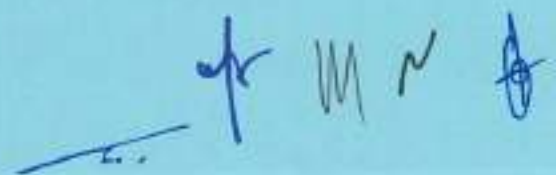
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qualification of FDC and supervising the implementation of the project."

SAO ND No. TRC-2015-185-PDAF (07-09)

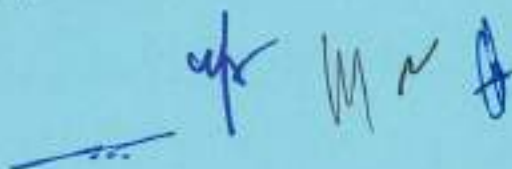
- "The amount transferred to FDC was purportedly used to procure **18 sets of LTCP** from Felta Multi-Media, Inc., and pay various expenses such as salaries and wages/mobilization, training materials and venue, catering services, transportation and administrative expenses. The validity of such transactions is also questionable for the following reasons:
 - The Accountant/Comptroller of Felta Multi-Media, Inc. Confirmed its transactions with this NGO in her letter dated May 30, 2011. However, in the letter dated September 2, 2013, the President/CEO of Felta Multi-Media, Inc. claimed that the former Accountant/Comptroller acted independently and fraudulently with the intention of maliciously concealing the transactions and information. She further claimed that the subject Official Receipt (OR) Nos. 2136-2175 were missing and that she never had transactions with FDC;
 - The NGO's disbursement vouchers representing payments for training materials and venue, salaries, wages and mobilization fee, administrative expenses, catering services and transportation expenses **amounting to P2.70 Million were not supported with receipts, Sales Invoices and Delivery Receipts (DRs)**. These were merely reflected in the FDC's Disbursement Vouchers without any supporting schedules or any details. The names of personnel paid with salaries and wages, venues, establishments being represented by the recipient of payments for training materials, foods and miscellaneous expenses as well as the types of vehicles rented for transporting participants were not disclosed. **None of these payments can therefore be validated**; and
 - The suppliers/providers were apparently paid **in cash in amounts ranging from P0.220 Million to P2.70 Million which is unlikely and questionable**.
- Among the documents submitted are registration forms containing 61 purported participants from Brgy. Crossing, Libona on detergent soap making. There were, however, no indications that the listed participants received livelihood materials as well.



- The amount of P5.70 Million purportedly spent for training 61 participants **may not be considered cost effective**.
- Of the 5 participants selected for validation, 2 confirmed attendance to training with **1 denying receipt of training kits or LTCP**, while 3 others did not respond to the Audit Team's request for confirmation. Considering, however, documentary deficiencies and the denial by the purported supplier, the trainings confirmed attended by selected beneficiaries may have been sourced from other funds.
- The Election Officer of Libona, Bukidnon informed the Team that 15 out of the 56 legible names being confirmed are **not found in the registry of voters of the said municipality**.
- The **utilization of P600,000 retained by TRC as service fee for technical assistance and learning materials cannot also be accounted for as it was not documented**. Considering the above-mentioned deficiencies in the project implementation, it is apparent that TRC did not use the service fee in assessing the qualification of FDC and supervising the implementation of the project."

SAO ND No. TRC-2015-187-PDAF (07-09)

- "The amount transferred to FDC was purportedly used to procure **30 sets of LTCP** from Felta Multi-Media, Inc., and pay various expenses such as salaries and wages/mobilization, training materials and venue, catering services, transportation and administrative expenses. The validity of such transactions is also questionable for the following reasons:
 - The Accountant/Comptroller of Felta Multi-Media, Inc. Confirmed its transactions with this NGO in her letter dated May 30, 2011. However, in the letter dated September 2, 2013, the President/CEO of Felta Multi-Media, Inc. claimed that the former Accountant/Comptroller acted independently and fraudulently with the intention of maliciously concealing the transactions and information. She further claimed that the subject Official Receipt (OR) Nos. 2136-2175 were missing and that she never had transactions with FDC;
 - The NGO's disbursement vouchers representing payments for training materials and venue, salaries, wages and mobilization fee, administrative expenses, catering services and transportation expenses **amounting to P4.50 Million were not supported with receipts, Sales Invoices and**

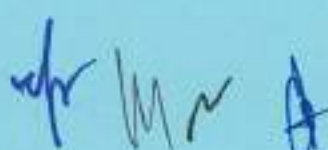


Delivery Receipts (DRs). These were merely reflected in the FDC's Disbursement Vouchers without any supporting schedules or any details. The names of personnel paid with salaries and wages, venues, establishments being represented by the recipient of payments for training materials, foods and miscellaneous expenses as well as the types of vehicles rented for transporting participants were not disclosed. **None of these payments can therefore be validated;** and

- o The suppliers/providers **were apparently paid in cash in amounts ranging from P0.370 Million to P4.50 Million which is unlikely and questionable.**
- **There were no documents to prove the conduct of livelihood trainings and distribution of kits as there were no list of participants/beneficiaries and trainings conducted.**
- **The utilization of P1.00 Million retained by TRC as service fee for technical assistance and learning materials cannot also be accounted for as it was not documented.** Considering the above-mentioned deficiencies in the project implementation, it is apparent that TRC did not use the service fee in assessing the qualification of FDC and supervising the implementation of the project.”

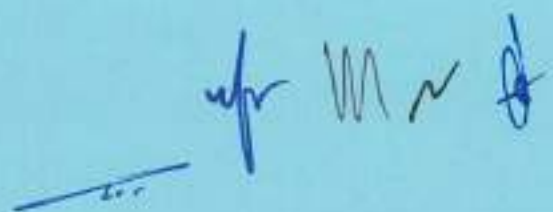
SAO ND No. TRC-2015-188-PDAF (07-09)

- **“The amount transferred to FDC was purportedly used to procure 15 sets of LTCP from Felta Multi-Media, Inc., and pay various expenses such as salaries and wages/mobilization, training materials and venue, catering services, transportation and administrative expenses. The validity of such transactions is also questionable for the following reasons:**
 - o The Accountant/Comptroller of Felta Multi-Media, Inc. Confirmed its transactions with this NGO in her letter dated May 30, 2011. However, in the letter dated September 2, 2013, the President/CEO of Felta Multi-Media, Inc. claimed that the former Accountant/Comptroller acted independently and fraudulently with the intention of maliciously concealing the transactions and information. She further claimed that the subject Official Receipt (OR) Nos. 2136-2175 were missing and that she never had transactions with FDC;



J.C.

- o The NGO's disbursement vouchers representing payments for training materials and venue, salaries, wages and mobilization fee, administrative expenses, catering services and transportation expenses **amounting to P2.25 Million were not supported with receipts, Sales Invoices and Delivery Receipts (DRs)**. These were merely reflected in the FDC's Disbursement Vouchers without any supporting schedules or any details. The names of personnel paid with salaries and wages, venues, establishments being represented by the recipient of payments for training materials, foods and miscellaneous expenses as well as the types of vehicles rented for transporting participants were not disclosed. **None of these payments can therefore be validated**, and
 - o The suppliers/providers **were apparently paid in cash in amounts ranging from P0.185 Million to P2.25 Million which is unlikely and questionable**.
- Among the documents submitted are registration forms containing 172 selected participants from various barangays of Libona and Manolo Fortich on fish processing, silk screen printing and soap making. **There were, however, no indications that the listed participants received livelihood materials as well.**
- Of the 34 participants selected for validation, 5 confirmed attendance to training on fish processing but denied receipt of LTCP, 1 cannot be located at her given address, while 28 others did not respond to the Audit Team's request for confirmation. Considering the deficiencies in the documentation and the denial by the supplier, the trainings confirmed attended by the participants may have been funded from other sources.
- The Election Officers of Libona and Manolo Fortich informed the Audit Team that of the 168 legible listed beneficiaries, 73 were **not found in the registry of voters of the said municipalities**.
- The **utilization of P500,000 retained by TRC as service fee for technical assistance and learning materials cannot also be accounted for as it was not documented**. Considering the above-mentioned deficiencies in the project implementation, it is apparent that TRC did not use the service fee in assessing the qualification of FDC and supervising the implementation of the project."



The graft charges are premised on the alleged violation of **Sec. 3(e) of Republic Act No. 3019, as amended**, which provision defines as a corrupt practice the following act:

"Section 3. *Corrupt Practices of Public Officers.*

xxx

(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."**

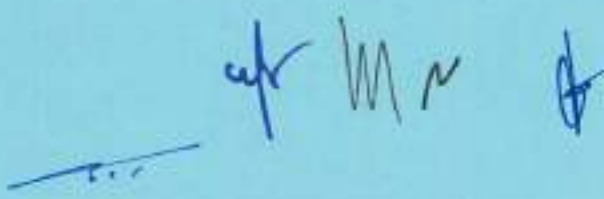
An accused faces conviction thereunder if the following facts are established beyond reasonable doubt⁴⁶:

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

While the statute aims to protect society from corrupt public officers, **Sec. 9 of the Anti-Graft Act** similarly penalizes private persons found to be conniving with such public officers, thus:

"Sec. 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 xxx" [emphasis and underscoring supplied]

⁴⁶ Villanueva v. People, G.R. No. 218652, February 23, 2022



**Status of Accused Comprise
Proper Subject Matter for the
Charge of Graft**

The existence of the first element is uncontested.

Accused Pancrudo was a duly-elected legislator representing the 1st District of Bukidnon at the time the disbursements transpired. He is, therefore, a public officer as defined and contemplated by law.

Accused Cunanan, Espiritu, Jover, and Figura, who are from the Technology Resource Center (TRC) and over whose persons the Court has acquired jurisdiction, are likewise undeniably public officers, albeit from the executive branch, whose assailed acts were performed while in the exercise of their respective official functions.

On the other hand, accused Labay, of the non-government organization FARMERBUSINESS Development Corporation, is a private individual alleged to have conspired with the aforementioned public officers.

The Court's discussion will be confined to above-named accused inasmuch as Antonio Ortiz and Jesus Esmeralda remain at large and are therefore beyond the reach of the Court.

Victorino Ujano, who is identified in the *Informations* as an accused, passed away during the pendency of the preliminary investigation and all charges against him have been dismissed by the Ombudsman.

***FDC, through its officers,
unjustly received benefits,
advantage***

By way of preliminaries, the Court seeks to emphasize that its consideration of the felonious acts attributed to the accused does not at all pertain to, nor center on, the constitutionality of the congressional PDAF. To



be sure, the same had already been passed upon by the Supreme Court in the 2013 consolidated *Belgica* cases. There is therefore no room for the operative fact doctrine to apply as an exculpatory precept, particularly for accused legislator Pancrudo, since all the accused in these cases have not been haled to Court on the ground of their acts being contrary to the Constitution. Rather, the accused face the present charges because their acts are claimed to have been in breach of law for having extended undue advantage and benefit to private persons and the non-government organization, FDC. Regardless, therefore, of the constitutionality (or not) of the congressional post-enactment acts of identifying a project stream and naming a program implementing agency therefor, the question that behooves the Court to determine is whether the acts of the accused, alleged to be carried out in concert, were tainted with manifest partiality, evident bad faith, or gross inexcusable negligence and gave benefit to one who was not a qualified recipient of such.

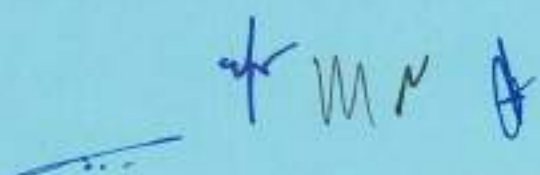
With that, the Court confronts the issues before it.

Uplifting the community through livelihood and development programs are a staple component of every elected officer's platform. Representative Pancrudo was no different in this regard. For the years 2007 and 2008, he sought to utilize the Priority Development Assistance Funds (PDAF) allocated to his office for supporting livelihood projects to benefit his constituents in the first district of Bukidnon.

The use of PDAF for the year 2007 is particularly governed by the budget heading for the same (Section XLVII, PDAF) under the **General Appropriations Act** (GAA), stipulating *inter alia*:

"*Special Provision(s)*.

1. Use and Release of the Fund. The amount appropriated herein shall be used to fund priority programs and projects under the Ten Point Legacy Agenda of the national government and shall be released directly to the implementing agencies as indicated hereunder, to wit:



XXX

PARTICULARS	PROGRAM/PROJECT	IMPLEMENTING AGENCY
C.	Livelihood/CIDSS (Small & Medium Enterprise/ Livelihood Comprehensive Integrated Delivery of Social Services)"	DTI/TLRC/DA/ LIVECOR/CDA/ OMA/DSWD

As shown above, clearly identified as implementing agencies of projects that pertain to livelihood and delivery of social services are the following: DTI, TLRC (eventually renamed the TRC, or Technology Resource Center), the DA, LIVECOR, CDA, OMA and DSWD.

Interestingly, the 2008 PDAF - while still premised on the same conditions as the preceding year - excluded TRC as an implementing agency for programs and projects relating to livelihood and small & medium enterprises, leaving only DTI, DA, LIVECOR, CDA, OMA, and DSWD as the officially-sanctioned implementing bodies.

Completing the factual backdrop, the following issuances relative to the participation of Non-Government Organizations/People's Organizations in project implementation were approved and made effective in the year 2007: 1) **GPPB Resolution No. 12-2007**, on June 29, 2007; and 2) **COA Circular 2007-001**, on October 25, 2007. The former makes possible - as an alternative mode of procurement - direct negotiation, *via* a Memorandum of Agreement, with a duly-qualified Non-Government Organization when an appropriation law or ordinance earmarks an amount to be specifically contracted to an NGO. The latter, on the other hand, provides guidelines that shall apply to all funds granted to NGOs/POs in the implementation of projects that may be beyond the capability of Government Organizations (GOs) to carry out, to be likewise facilitated by a Memorandum of Agreement.



When accused Pancrudo thus identified the NGO, FARMERBUSINESS Development Corporation, to be the implementor of the livelihood projects for his district, urging simultaneously the TRC to facilitate the release of the project funds to said NGO, the requirements for such downloading should have been compliant with the prevailing regulations and guidelines.

Either there had to be an appropriation law or ordinance that specifically earmarked the legislator's PDAF to FDC, as required by the **GPPB Resolution**, or the project to be funded is shown to be beyond the capability of the GO (in this case, the TRC) to undertake, as required by the **COA Circular**.

The evidence before the Court, however, neither shows that such an appropriation law or ordinance existed nor that the TRC was determined to be incapable of implementing the project and, corollarily, that FDC was rightfully entitled to the grant and utilization of such government funds.

The guidelines provided by the Commission on Audit specifically requires an NGO/PO seeking to avail of government funding to submit proof of its legal, technical and financial capacity as follows:

*4.4 Requisites for entitlement to government funds

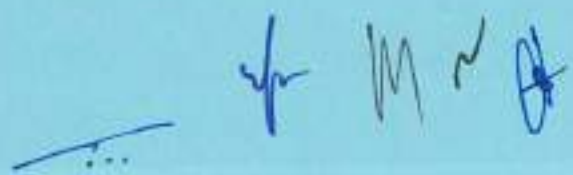
The NGO/PO shall submit the proposal or application for funding accompanied by the following documents:

4.4.1 Certificate of registration with the Securities and Exchange Commission xxx. This is to ensure that the NGO/PO has a legal personality, has officers who are responsible and accountable for its operations, and is based in the community where the project shall be implemented. xxx

4.4.2 Authenticated copy of the latest Articles of Incorporation xxx

4.4.3 Financial reports, audited by an independent Certified Public Accountant, for the past three years preceding the date of project implementation, to ensure that it has a stable financial condition and that the funds provided by the GO shall not be its sole source of funds. For NGO/PO which

...



has been in operation for less than three (3) years, report of accomplishment or any equivalent proof certified by its President and Secretary that it had previously implemented similar projects shall be required, in addition to financial reports for the years it has been in operation.

4.4.4 Disclosure xxx of other related business, if any, and extent of ownership therein

4.4.5 WFP, and sources and details of Proponent's Equity Participation in the project

4.4.6 Complete project proposal xxx

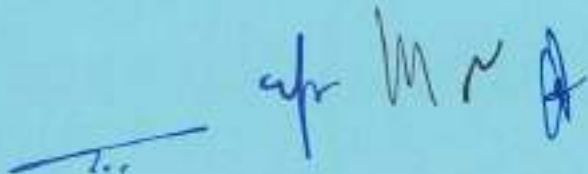
4.4.7 List and/or photographs of similar projects previously completed by the NGO/PO, if any xxx

4.4.8 A sworn affidavit of the Secretary of the NGO/PO that none of its incorporators, organizers, directors or officials is an agent or related by consanguinity or affinity up to the fourth civil degree to the officials of the GO authorized to process and/or approve the proposal, the MOA and the release of funds xxx"

The General Information Sheet submitted by FDC (Exhibit "E-1") indicate that it was registered as a corporation on November 15, 2005.

When it was indorsed as the implementing entity of the livelihood projects in the name of accused Pancrudo, it had been in existence for a mere two years or one year short of the expected minimum of three years of operational existence. While the COA guidelines certainly allowed a shorter period, the appointed NGO/PO had the burden of proving that it had implemented similar projects in the past, on top of a showing of its financial condition during such prior years. The reports are to ensure that it is a financially stable organization and that it would not be solely reliant on the GO-provided funds in order to operate.

To be sure, no indication of such financial capability of the FDC was adduced. Neither were there documents showing prior successful project implementation by FDC. There is also absence of documentation to show that the NGO contributed (or was in a capacity to contribute) to the project by way of an equity participation.

Handwritten signature and initials in blue ink, including a horizontal line and the letters 'M R A'.

With only a total paid-up capital of P237,190.00 in 2007 (only slightly increasing to P299,800.00 thereafter), the said entity was encumbered to implement an aggregate of 41 Million Pesos worth of PDAF-drawn money (approximately **137 times larger** in magnitude than its paid-up capital) at the ostensible behest of accused Pancrudo.

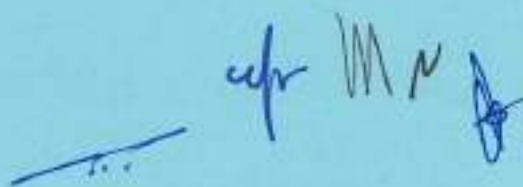
It does not bode favorably, too, that the registered address of FDC's principal office is at the Department of Agriculture compound at Quezon City. Such is in blatant contravention of the requirement that the NGO be based in the community where the project shall be implemented, i.e., Bukidnon.

Given the miserable dearth of substantiation to support the selection of Farmerbusiness Development Corporation as NGO-implementor, the Court can only conclude that the advantage/benefit granted to FDC was certainly unwarranted.

"Unwarranted advantage" is a calibration firmly entrenched in jurisprudence. Echoing from the deep chasm of case law, the Supreme Court reiterates in *Cabrera v. People*:

"'[U]nwarranted' means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. 'Advantage' means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. 'Preference' signifies priority or higher evaluation or desirability; choice or estimation above another."

When FDC was identified, allowed, and tolerated as a supposed implementor of government-funded projects totaling P41 Million - without basis to be accorded such privilege - it thus automatically enjoyed a status that was unwarranted under the circumstances and to the exclusion of others who may have been in better position to do so but who were arbitrarily and unjustly deprived of such opportunity.



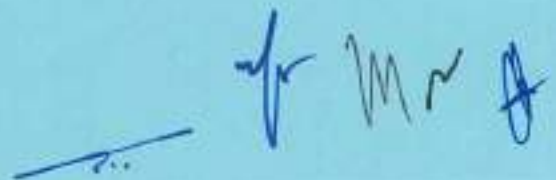
With only its two-year existence to account for, the corporation was barely compliant with the legal and regulatory requirements to deserve the advantage of utilizing government funds which, in the regular course of things, should have been subjected to competitive bidding or was otherwise eligible under the framework of an alternative mode of procurement.

Further highlighting what was already an untenable advantage accorded to the NGO, the FDC even gained from the transactions when it collected retention fees in the respective amounts of P2 Million; P600,000.00; P1 Million; and P500,000.00, or an aggregate amount of P4.1 Million, for having allegedly completed the projects.

The matrix of evidence, however, proves the contrary and the Court enumerates why.

One: The *Reports of the Independent Accountant* have been disavowed by their supposed author, Felix Tiangco, Jr.

For the liquidation of the amounts disbursed under the four SAROs, the FDC (acting through accused Labay) used, *inter alia*, the *Report of the Independent Accountant* as a supporting document to lend a badge of veracity to the supposedly-incurred expenses. Exhibits "T-2", "II-3", "SS-3", and "YY-4" thus attempt to pass off that the respective amounts of P20 Million, P6 Million, P10 Million, and P5 Million were accordingly utilized. Tiangco's resolute testimony, however, coupled with his affirmation of the facts stated in his earlier-executed affidavit, effectively dispels such claims. Tiangco explains that both his letterhead and signature are electronically available from Felta's computer, betraying their easy accessibility to malefactors. He denies having given consent to the use of his signature on the *Reports* and likewise negates the form and style that the *Reports* have been rendered in as not being his. Fortifying his rejection of the *Reports*, in fact, is the similar denial by Felta's President/CEO, Abiva-Sazon, that the multi-media company ever transacted with FARMERBUSINESS Development Corporation (FDC).



Those denials lead the Court to its next point.

Two: The claim that Felta did business with FDC rests on shaky ground.

For the alleged provision by Felta of Livelihood Training Course Packages (LTCP) to FDC, the latter supposedly paid and consequently secured two Official Receipts drawn by Felta Multi-Media, viz., O.R. 2143 in the amount of P9 Million, and O.R. No. 2154 in the amount of P9.45 Million.

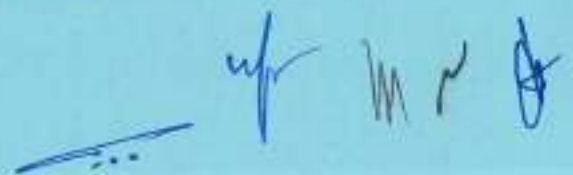
Official Receipt No. 2143 was submitted as part of the liquidation of the first SARO (ROCS-07-08787) while Official Receipt No. 2154 was submitted as part of the liquidation documents for the transactions under the succeeding SAROs (D-08-01450, ROCS-08-02604, and ROCS-08-02605).

Testimonial and documentary evidence provided by the head of the multi-media company, however, disclose that Felta has no record of a customer named FARMERBUSINESS Development Corporation and that, in fact, the subject Official Receipts were part of those declared missing and lost after the conduct of an in-house audit in 2009. The said O.R.s are part of a booklet with receipts numbered from 2140 to 2175.

As emphasized by Felta president, Abiva-Sazon, the alleged items of sale were not an authorized product package of Felta and that, contrary to their business practice, too many details have been left blank in the Delivery Receipts and Official Receipts purporting to support the transactions.

Three: No Official Receipts support the claimed transaction by FDC with the other providers/suppliers.

In the attempt to liquidate the funds disbursed to it, the FDC had submitted acknowledgment receipts signed by individuals for services supposedly rendered by them in the following staggering amounts:



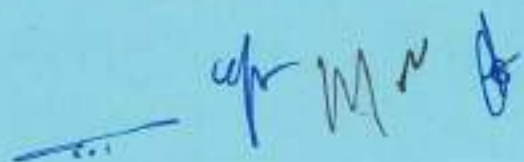
SARO No.	Salaries & Wages	Venue & Administration	Transportation	Catering	Trng. Materials
ROCS-07-08787	P.8 M	P5.5 M	P.56 M	P1.3 M	P.84 M
D-08-01450	P.24 M	P1.5 M	P.26 M	P.48 M	P.22 M
ROCS-08-02604	P.4 M	P2.5 M	P.43 M	P.8 M	P.37 M
ROCS-08-02605	P.2 M	P1.25 M	P.215 M	P.4 M	P.185 M

The acknowledgement receipts for each of the expense (salaries and wages; venue and administration; transportation; catering; and training materials) were uniformly signed by the same individuals for each of the SARO-related disbursement but were issued with neither sufficient detail/ itemization or related breakdown of cost nor even an indication of the business entity that said signatories represented.

Official receipts are the "traditional artifact recognized xxx as evidence of receipt of payment for disbursements of government agencies"⁴⁷ and alternative instruments are only acceptable upon exceptional circumstances. The resort to a nebulous acknowledgment for expenses that ran to the millions for an activity that each lasted only five days fails to give justification for the steep amounts involved and only raises doubts as to the validity and fact of occurrence of the claimed FDC disbursements.

Four: The documentation pertaining to the conduct of livelihood activities suffers from lack of credibility.

⁴⁷ COA Circular No. 2004-006, Guidelines and Principles on the Acceptability of the Evidence of Receipt of Payment for Disbursements



According to FDC's submissions, the training events under the SAROs were conducted on: April 21-26, 2008; May 19-23, 2008; and May 26-30, 2008 (the third and fourth SARO).

The Court notably observes the following from the documents they submitted in support of liquidation: 1) For the first training activity, only an undated registration list consisting of 43 participants was submitted. At a project cost of P20 Million, that would amount to an expense of **P465,116.28 for each participant**; 2) For the second training activity, two undated lists showing over-all attendance of 61 participants were submitted. At a project cost of P6 Million, this translates to an expense of **P98,360.66 for every participant**; 3) For the third training activity, costing P10 Million, **there was no list of participant submitted**; 4) The training activity under the last SARO was supported by seven pages of registration list, six of which were undated and one - though dated May 26, 2008 - was visibly overwritten on a since-erased date. The total participants indicated therein was 172. At a project cost of P5 Million, that would mean an expenditure of **P29,069.77 per participant**.

The cost-effectiveness of the amounts involved is doubtful, to say the least, especially since the activities involved (candle-making, detergent soap-making, silkscreen printing) are almost commonplace undertaking that do not require huge sums for supposed "transfer of technology, intellectual property rights, consultation and professional fees" as claimed by FDC in their disbursement documents.

What is ultimately more telling is the fact that the photographs accompanying the four "separately-conducted" training programs all bore the dates July 16 to 19, 2008 on the tarpaulins visible thereon.

As the COA Special Audit team aptly determined, the validity of the transactions is questionable.

...
efr M n A

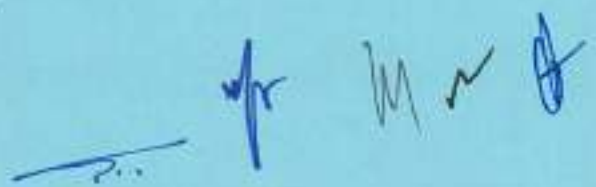
Given the foregoing, not only is it clear that an unwarranted advantage and benefit was given to the arbitrarily-selected NGO, there was likewise a concomitant injury caused to the government in the amount represented by the supposed project disbursements.

The Court weighs the alleged contributory acts of the accused against the evidence.

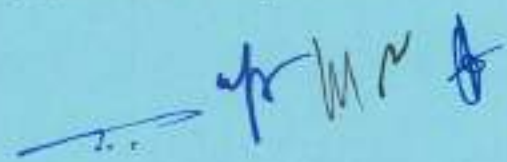
***Modality, Burden of Evidence,
and Conspiracy
Intersect to Establish Guilt***

The prosecution premises the involvement of accused Pancrudo in the assailed transactions on the following documents where his signature appears:

- | | |
|--------------|---|
| Exhibit "F" | Letter of Rep. Pancrudo, Jr. to TRC Director-General Ortiz dated December 5, 2007, designating Jesus P. Esmeralda to facilitate, monitor/check status of the project and to sign documents |
| Exhibit "G" | Letter of Rep. Pancrudo, Jr. to TRC dated November 15, 2007, requesting the Center to facilitate the transfer of TWENTY MILLION PESOS under SARO No. ROCS-07-08787 to FARMER BUSINESS DEVELOPMENT CORPORATION (FBDC) as the partnership with the same "is necessary to efficiently undertake the livelihood program of this representation." |
| Exhibit "T" | Project Final Report relative to the TWENTY MILLION PESOS PDAF project, issued by Johanne Edward Labay with the conforme of Rep. Pancrudo, Jr. |
| Exhibit "DD" | Letter of Rep. Pancrudo, Jr. to TRC Director-General Ortiz dated February 11, 2008, requesting the Center to facilitate transfer of SIX MILLION PESOS under SARO No. D-08-01450 to Farmer Business Development Corporation |



- Exhibit "DD-1" Letter of Rep. Pancrudo, Jr. to TRC Director-General Ortiz dated February 11, 2008, "designating as well as authorizing his project consultant, Jesus Esmeralda, to facilitate, monitor/check status of the project, and sign documents related to current projects and as well as upcoming projects"
- Exhibit "II" Project Final Report relative to the SIX MILLION PESOS PDAF project issued by Johanne Edward Labay with the conforme of Rep. Pancrudo, Jr.
- Exhibit "II-20" PDAF Monitoring Report Form indicating 100% completion of SIX MILLION PESOS PDAF project under SARO No. D-08-01450, prepared by Victorino Ujano, certified correct by Johanne Edward B. Labay and with the conforme of Rep. Pancrudo, Jr.
- Exhibit "MM" Letter of Rep. Pancrudo, Jr. to TRC Director-General Ortiz dated February 11, 2008, requesting the Center to facilitate transfer of **TEN MILLION PESOS** under SARO No. ROCS-08-02604 to Farmerbusiness Development Corporation
- Exhibit "SS" Project Final Report relative to the TEN MILLION PESOS PDAF project issued by Johanne Edward Labay with the conforme of Rep. Pancrudo, Jr.
- Exhibit "SS-1" PDAF Monitoring Report Form indicating 100% completion of TEN MILLION PESOS PDAF project under SARO No. ROCS-08-02604, prepared by Victorino Ujano, certified correct by Johanne Edward B. Labay and with the conforme of Rep. Pancrudo, Jr.
- Exhibit "UU" Letter of Rep. Pancrudo, Jr. to TRC Director-General Ortiz dated February 11, 2008, requesting the Center to facilitate transfer of **FIVE MILLION PESOS** under SARO No. ROCS-082605 to Farmerbusiness Development Corporation (FDC)
- Exhibit "YY-2" Project Final Report relative to the FIVE MILLION PESOS PDAF project issued by Johanne Edward Labay with the conforme of Rep. Pancrudo, Jr.
- Exhibit "YY-27" PDAF Monitoring Report Form indicating 100% completion of FIVE MILLION PESOS PDAF project under SARO No. ROCS-08-02605, prepared by Victorino Ujano, certified correct by Johanne Edward B. Labay and with the



conforme of Rep. Pancrudo, Jr.

On the other hand, accused Pancrudo is wont to diminish his participation in the subject PDAF disbursements, acknowledging only that he "recommended FDC to TRAC as the implementing partner organization that would implement projects utilizing my PDAF funds,"⁴⁸ without more. He disavows as his the signature affixed on the other documents where his name appears. Significantly, when he took the witness stand, he specifically denied his signatures on nine prosecution documents that were presented to him. Asking that they be accordingly marked, he nevertheless opted **not** to offer those same Exhibits as part of his defense.

He negates his involvement in this wise:

"I sent a letter to TRC endorsing Farmers Business Development Corporation (FBDC) as the implementing partner. At that time, I did not know about FBTC (*sic*) except that its office was located inside the compound of the Department of Agriculture (DA) at Elliptical Road, Diliman, Quezon City. The presence of the FBTC's (*sic*) office inside the DA main office compound made me think that said NGO was perhaps qualified to implement the project so I decided to issue endorsement in its favor. **My endorsement, however, of FBDC as the partner organization was just a proposal to TRC and is not tantamount to automatically designating FBDC as the outright implementor of the livelihood project** because I was aware at time that there is an existing procedure before a non-governmental organization could avail of government fund to implement a government project."⁴⁹ [emphasis supplied]

In the same breath that he professes familiarity with the framework governing the use by NGOs of government funds, he also lamely offers that his recommendation of FDC (FBDC, per his usage) had been based merely on the fact that its office was situated inside the premises of a government agency, inferring therefrom that it was perhaps qualified to implement his

⁴⁸ Exhibit "4" (Pancrudo), Motion for Reconsideration, OMB-C-C-14-0291, second page, last par.

⁴⁹ Exhibit "2" (Pancrudo), Counter-Affidavit, OMB-C-C-14-0291, p. 2.



projects. He then points to the TRC as the entity responsible for ensuring that the NGO-implementor was actually qualified to undertake the projects.

The tenor of his letters, however, belie the mere recommendatory character that he wishes to typify his NGO designation with.

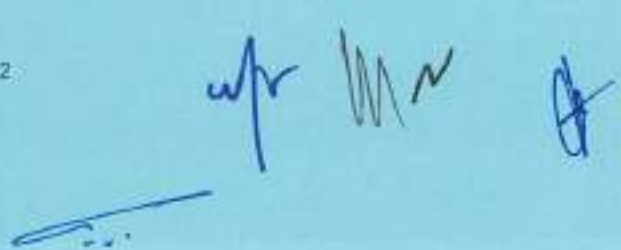
In his four letters - effectively prompting the TRC to release ₱41 Million worth of projects to FDC - he explains that the partnership **"is necessary to efficiently undertake the livelihood program of this representation"**. He says the transfer of funds **"would greatly help in the realization of our objective"**. Thus, notwithstanding the denomination of the letter as a mere request, his ratiocination why FDC is a worthy recipient of his PDAF allotment, borne on the official letterhead of the august House of Representatives, already carried the imprimatur and weight of congressional approbation.

No less than the Supreme Court, when it tackled the 2013 *Belgica* cases, recognized:

"Besides, it must be pointed out that respondents have nonetheless **failed to substantiate their position that the identification authority of legislators is only of recommendatory import**. Quite the contrary, respondents - through the statements of the Solicitor General during the Oral Arguments - have admitted that **the identification of the legislator 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.**"⁶⁰ [emphasis supplied]

Again, it bears to stress that it is **not** the unconstitutionality of the legislators' post-enactment intervention in the budget that is at issue in the present cases. Their identification of a partner NGO or PO would have been deemed regular and accorded the badge of validity, but only if such selection

⁶⁰ Exhibit "2" (Pancrudo), Counter-Affidavit, OMB-C-C-14-0291, p. 2.



could have reasonably passed regulatory muster and had not been executed with such arbitrariness or carelessness.

Here, however, accused Pancrudo on multiple times endorsed, sans any basis but the NGO's address, the transfer of his Priority Development Assistance Funds to FDC as a partner supposedly necessary for his livelihood projects to take off. Then on a mere sweeping denial, he brushes off his participation in the utilization of his multi-million PDAF, claiming absence of knowledge how or where it was spent and denying the signatures meant to lend concurrence and satisfaction to the supposed completion of the projects.

Time and again, however, the Supreme Court has eschewed denial as an "inherently weak defense."⁵¹ In its emphatic words: "Denial and alibi are among the weakest, if not the weakest, defenses in criminal prosecution.' It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law."⁵²

In the cases before Us, accused Pancrudo cries forgery of the signatures appearing on the subsequent liquidation documents but manifestly fails to adduce evidence to reinforce his claim.

Without a doubt, burden of proof encumbers the prosecution to establish to the required degree its allegations under the charges and, yet, burden of evidence has now shifted to and hounds the accused if he is to successfully prop up his defense of forgery.

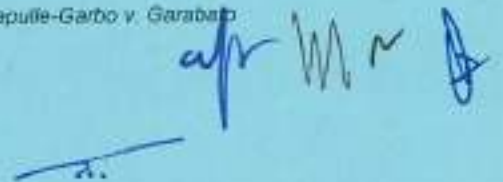
Jurisprudence⁵³ instructs:

"As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges

⁵¹ Loreño v. Office of the Ombudsman, G.R. No. 242901, September 14, 2020

⁵² People v. Vitero, G.R. No. 175327, April 3, 2013

⁵³ Gatán et al. v. Vinarao et al., G.R. No. 205912, October 18, 2017, citing Gepulle-Garbo v. Garabito



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.**⁵⁴ [emphasis supplied]

Accused Pancrudo does not lift a finger, however, to sustain his claim. Quite contrary to common human experience and conduct, if indeed he and his constituents lost Forty-One Million Pesos (P41,000,000.00) in funds intended to uplift the latter, he would have at least endeavored to find out how such massive amount was funneled from his office and diverted from his intended beneficiaries. Instead, he endorses the FDC three more times over, unaccompanied by any palpable effort to determine how his funds were eventually utilized under the PDAF. His feigned lack of knowledge, however, begs credulity. Clearly, such lack of interest over the proper utilization of his allocated PDAF reeks of nothing but negligence that is both gross and inexcusable.

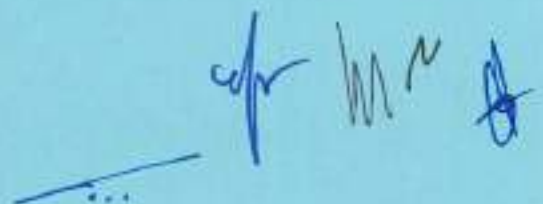
We now cast our attention to the accused TRC officials.

In gist, the prosecution anchors their alleged felonious act on their respective role in the processing of the funds disbursement under cover of the four SAROs.

There were two tranches of disbursement for each of the subject SARO: the first, for the project amount net of 20% deductions; and the second, for the release of the 10% retention fee to the conduit-implementor, conditioned upon the completion of the relevant project or activity.

The signatories to the attendant Disbursement Vouchers can be seen from the table below:

⁵⁴ Exhibit "2" (Pancrudo), Counter-Affidavit, OMB-C-C-14-0291, p. 2



DV No.	AMOUNT	Box A	Box B	Box C
(ROCS-07-08787)				
012007122133	P16 M	D. Cunanan	C. Espiritu, M. Jover	A. Ortiz
012008081831	P 2 M	F. Figura	C. Espiritu, M. Jover	A. Ortiz
(D-08-1450)				
012008030587	P4.8 M	D. Cunanan	C. Espiritu, M. Jover	A. Ortiz
012008081829	P0.6 M	F. Figura	C. Espiritu, M. Jover	A. Ortiz
(ROCS-08-02604)				
012008051147	P 8 M	R. Lacsamana	C. Espiritu, M. Jover	A. Ortiz
012008081832	P 1 M	F. Figura	C. Espiritu, M. Jover	A. Ortiz
(ROCS-08-02605)				
012008051148	P 4 M	R. Lacsamana	C. Espiritu, M. Jover	A. Ortiz
012008081830	P0.5 M	F. Figura	C. Espiritu, M. Jover	A. Ortiz

Box "A" of the Disbursement Voucher is a certification that the "Expense/Cash advance is necessary, lawful and incurred under [signatory's] direct supervision". **Box "B"** contains the certification by accused Espiritu that the expense is "Within Budget", and the further certification by accused Jover that "Adequate available funds/budgetary allotment in the [indicated] amount; expenditure properly certified; supported by documents (marked per checklist xxx); account codes proper; previous cash advance liquidated/accounted for." **Box "C"**, on the other hand, depicts the final approval of the disbursement by TRC's Director General.

The preparation of each DV was triggered by a Memorandum, signed either by the LLO, accused Lacsamana, or by Figura in his concurrent

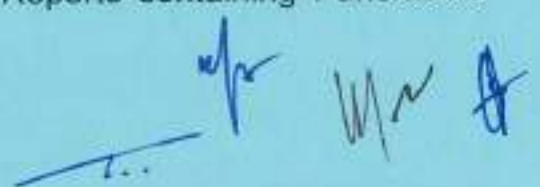
capacity as Group Manager, CSSG/Acting LLO, recommending the release of the respective amounts.

Based on evidence, the Court can easily dispense with the alleged felonious/unlawful act attributed to accused Espiritu and Jover. Their certification visibly pertained to the financial aspect of the disbursement and confined to the fact that budgetary allotment was actually available to finance the expenditure. Having ascertained that the Center had secured the SARO and the NCAI, and that the amounts have been credited by the Bureau of Treasury to TRC's account, nothing was left for them to do but to indicate the funds were available because, indeed, they were. That the impending expenditure was supported by the legislator's endorsement and the required Memorandum of Agreement, coupled with the certification as to necessity and lawfulness already indicated on the signed Box A of the form, both accused expectedly acted as required of them. Their involvement in the whole scheme of things could not be said to have been tainted with evident bad faith, manifest partiality, or gross inexcusable negligence.

On reasonable doubt, the Court is similarly minded to exclude accused Cunanan and Figura from a finding of culpability. As they have suitably demonstrated, the certification they rendered in the DVs were made in reliance of the supporting documents accompanying the disbursement. Under compulsion of endorsement letters emanating from Pancrudo (the execution of which were duly admitted by the accused legislator), and the attendant SAROs, MOAs, and project proposals, among others, their imprimatur on the disbursements was almost ineluctably called for.

As accused Cunanan particularly explained, the amounts under PDAF were treated as special funds, access to which is inevitably triggered when the source itself - in this case, the legislator - gives the go-signal thereto in the form of an endorsement.

The similar cursory reliance they placed on the liquidation documents, among which were the PDAF Monitoring Reports containing Pancrudo's

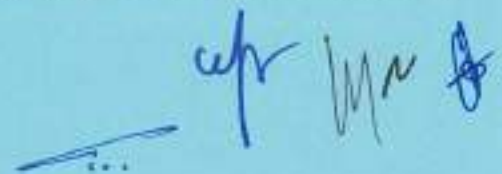


conforme to the projects' full completion, situates Cunanan's and Figura's certifications on the DVs within the believable sphere of presumed regularity.

While a more prudent and careful inspection of the documents would have made the badges of fraud discoverable to them, the scant and perfunctory attention given by accused Group Manager Figura and accused Deputy Head Cunanan to the attendant documents may be dismissed as simple negligence given the stamp of approval already extended by the sponsoring legislator to the projects under his name.

The duty to have exercised the required diligence, however, rests heavily on TRC's administrative frontliner tasked directly to handle PDAF, i.e., the Legislative Liaison Officer.

TRC issuance Memorandum No. 07, dated June 22, 2005, specifically directs the LLO, insofar as pertinent to PDAF, to: 1) establish a close working relationship and strong linkages with the Congressional offices; 2) take charge and monitor the PDAF released to TRC and facilitate the execution of Agreements relative to the utilization of the PDAF in accordance with the SARO; 3) offer technology and livelihood program packages specifically designed for congressional district areas; and 4) coordinate, monitor and liaise facilitation of partnership programs/projects with congressional districts. As the officer directly charged with facilitating and monitoring project partnerships under the PDAF umbrella, accused Lacsamana was expected to have been circumspect in reviewing the submissions pertaining to project implementation and to have accordingly alerted her superiors upon the discovery of any irregularity. Notwithstanding the deference she may have had to the congressional offices, accountability and due performance of duty is still exacted of her. It was thus incumbent upon her to assiduously review the submissions required particularly by the prevailing regulations, viz., SEC certificate of registration, financial reports, work plan, sources and details of the proponent's equity participation in the project, Memorandum of Agreement, and, subsequently, the liquidation reports/documents. Accused Lacsamana miserably failed to conduct such



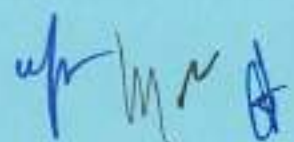
diligent review and to enforce the lawful criteria for NGO participation in the PDAF framework.

The Court is, of course, mindful that Lacsamana could not have foretold, for example, that the Official Receipts issued in the name of Felta were part of a booklet that has been reported missing, or that the Independent Auditor's Reports submitted by FDC had been simulated. Without the belated disavowal of Felta's President/CEO and of independent auditor Tiangco, those documents may appear regular and legitimate on their face. Lacsamana, however, should have noticed that FDC's qualifications under the pertinent COA Circular were painfully wanting and that, post-project implementation, their liquidation submissions were faulty and deficient. The project dates on paper and on the supporting photos were incongruent; Official Receipts involving hefty amounts paid to supposed providers/suppliers were lacking; and the documentation relating to the project beneficiaries were highly-suspect for being mostly undated and not in accord with the project sums involved.

While bad faith is a matter that is generally harder to calibrate as it pertains to intent or state of mind, it cannot be gainsaid that accused Lacsamana's act of recommending the fund releases despite the indicia of fraud and irregularity constitutes gross and inexcusable negligence. Her conduct textually adheres to case law's characterization of gross inexcusable negligence as "the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected."⁵⁵

The willfulness of FDC president Johanne Edward Labay in the questionable projects implementation is even more evident and unmistakable. Without the necessary qualification for the NGO to lawfully participate in PDAF-assisted projects, he nonetheless entered the multi-

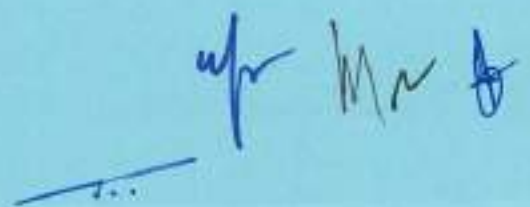
⁵⁵ *Cabrera et al. v. People*, G.R. No. 192611-14, July 29, 2019



million peso undertaking with the sanction of the accused lawmaker. Labay (and the NGO he represented) was not a mere innocent beneficiary of an unwarranted advantage; his fingers were deep into the proverbial pie.

Accused Labay's signature on the documents supposed to evidence the utilization of the funds and the completion of the livelihood projects are undeniable. They were on the Project Final Reports (Exhibits "T", "II", "SS", and "YY-2"); the Liquidation Reports (Exhibits "T-1", "II-2", "SS-2", and "YY-3"); and the Reports of Disbursement (Exhibits "T-3", "II-4", "SS-4", and "YY-5"). They were additionally on FDC's records of disbursement, ostensibly to show payment for provisions it secured in the conduct of the livelihood training sessions, such as: VENUE AND ADMINISTRATIVE EXPENSES (Exhibits "T-10", "II-17", "SS-11", and "YY-12"); CATERING (Exhibits "T-12", "II-11", "SS-13", and "YY-14"); SALARIES AND WAGES, a.k.a. mobilization fees (Exhibits "T-8", "II-9", "SS-9", and "YY-10"); TRANSPORTATION (Exhibits "T-14", "II-13", "SS-17", and "YY-16"); TRAINING MATERIALS (Exhibits "T-16", "II-15", "SS-15", and "YY-18"); and LIVELIHOOD TRAINING COURSE PACKAGE (Exhibits "T-4", "II-5", "SS-6", and "YY-6").

The array of evidence, however, suggests that none of the livelihood activities transpired as envisioned. The ₱9.45 Million in Official Receipts supposedly issued by Felta has been disowned by its head, and the liquidation documents submitted by FDC show, instead, an activity that was held from July 16 to 19, 2008. The verification made by COA disclose that several of those whom they surveyed and who responded denied receiving training kits or Livelihood Training Course Packages (LTCP) and that the residence of certain listed attendees could not even be established based on the feedback of Election Officers whom they reached out to. The utilization of the project funds for the purpose they were intended, being unsupported by Official Receipts, likewise could not be established. The only reasonable inference therefrom is that the PDAF activities did not really occur or were "ghost projects", contrary to the submissions made by FDC/accused Labay. His actions were veritably fraught with evident bad



faith, or that which "contemplates a state of mind affirmatively operating with furtive design"⁵⁶.

At this juncture, the Court finds it apt to recall the import of conspiracy in an *Information* that charges such.

Conspiracy is a manner of commission of a felony.

As illustrated in the nascent jurisprudence on the subject, the Supreme Court *En Banc*, in 1968, had the occasion to emphasize⁵⁷:

"The resolution of this issue is of marked importance because upon it depends the **quantity and quality of the penalties** that must be imposed upon each (of the appellants)" [boldface supplied]

Conspiracy, as can be gleaned above, does not *per se* add another element to the felony but assumes importance only in determining the liability to be borne by the multiple accused. The High Court elaborated⁵⁸:

"Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law *the act of one is the act of all*.

xxx


It is in this light that conspiracy is generally viewed not as a separate indictable offense, **but a rule for collectivizing criminal liability.**" [boldface supplied]

If the existence of conspiracy is proven, liability would therefore be shouldered solidarily; if not, each of the accused would only be liable for the overt act that he/she committed.

⁵⁶ *Fuentes v. People*, G.R. No. 186421, April 17, 2017, citing *Unarte v. People*

⁵⁷ *People v. Peralta et al.*, G.R. No. L-19069, October 29, 1968, citing *U.S. v. Infante and Barreto*

⁵⁸ *Ibid.*



Since conspiracy is generally a product of furtive design, case law acknowledges that it may be difficult to prove directly and, hence, allows an inference of an implied conspiracy.

In the words of the Supreme Court⁵⁹:

"An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact, independent and cooperative, indicating closeness of personal association and a concurrence of sentiment."

In the present cases, evidence indubitably shows that the grossly negligent acts of Pancrudo and Lacsamana cohere with the deliberate, fraudulent acts of Labay to establish an implied conspiracy that accorded FDC an unwarranted advantage in securing the PDAF sums. While their individual roles in the transactions might appear independent and disparate, all actually concur to produce the unified effect of an unjustified grant of benefit to the aforesaid NGO and the causing of undue injury to government in the amounts received by FDC as project fund and retention fees.

The Malversation Charges

The accused similarly face four counts of **Malversation of Public Funds** under **Article 217** of the **Revised Penal Code**.

The pertinent provision states:

"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

⁵⁹ *People v. Manzanilla*, G.R. No. 235787, June 8, 2020

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 xxx”

To sustain a conviction thereunder, the prosecution has the onus of establishing that the offender:

- “1) is a public officer;
- 2) had custody or control of funds or property by reason of the duties of his or her office;
- 3) which funds or property were xxx for which he or she was accountable; and
- 4) (such offender) appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.”⁶⁰

There is no contest as to the presence of the first element. Accused Pancrudo, Cunanan, Espiritu, Jover, Figura, and Lacsamana were public officers at the time material to the cases at bar. Private individual Labay joins them as an accused under a charge of conspiracy.

The second and third elements are inter-related and comprise the subject of an exposition made by the High Tribunal in the case of *Alejo v. People*:⁶¹

“An accountable officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office. To be liable for malversation, an accountable officer need not be a bonded official. The name or relative importance of the

⁶⁰ *Corpuz v. People*, G.R. No. 241383, June 8, 2020

⁶¹ G.R. No. 173360, March 28, 2008

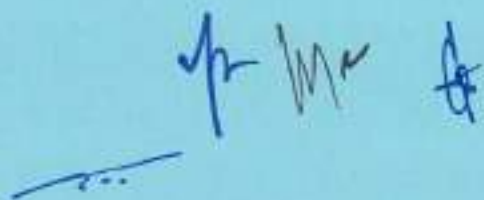
office or employment is not the controlling factor. **What is decisive is the nature of the duties that he (or she) performs and that as part of, and by reason of, said duties, (the offender) receives public money or property which (offender) is bound to account for."**

Viewed through the foregoing lens, the following determinations can be made: 1) Accused Pancrudo, by virtue of the PDAF allocation in his name and over which discretionary fund he exercises authority and control, is accountable for the same; 2) TRC officers Cunanan, Figura, Lacsamana, Jover and Espiritu are similarly rendered accountable for the said Fund owing to their integral role in disbursing the same - as indicated by their certification, recommendation, or otherwise imprimatur in such process.

The public nature of the Fund is likewise a fact to be conceded, being a component of the national budget instituted under the **General Appropriations Act**⁶².

The proffered evidence has also demonstrably shown - beyond reasonable doubt - that Pancrudo's subject PDAF had been misappropriated. The documentation purporting the Fund's due utilization in the conduct of livelihood training activities have been debunked in no uncertain manner by both the Commission on Audit and the other witnesses of the prosecution. There is a gaping discrepancy between the claimed occurrence of the project activities (April 21-26; May 19-23; May 26-30; and again on the same dates of May 26-30, 2008) and the documentation submitted by the FDC (showing an activity that transpired from July 16 to 19, 2008) in its attempt to liquidate and account for the funds. The registered list of beneficiaries/training recipients were highly suspect (most of the attendance sheets were undated) and a significant number of individuals who were sampled by COA for verification either did not respond or denied that they received training materials. As also extensively discussed earlier, the claimed transaction by FDC with the multi-media company Felta had

⁶² Republic Act No. 9401



been denounced by the latter's President, such disavowal being actually supported by the fact that the Official Receipts supposedly issued for the transaction had already been declared missing from their inventory.

All told, no other conclusion arises except that the amounts released to FARMERBUSINESS Development Corporation were indeed misappropriated.

As can be recalled, the disbursement under each of the four SAROs was effected twice: the first was for the specific project amount, from which has been deducted 10% in favor of TRC and another 10% withheld as retention fee, and the second, the release of such retention fee to the assigned NGO after proof of project completion. The present **Malversation** charges pertain to the first disbursement under every SARO, viz., the net project amounts of P16 Million; P8 Million; P4.8 Million, and P4 Million.

What is left to ascertain at this point is the culpability of those charged under the pertinent **Informations**.

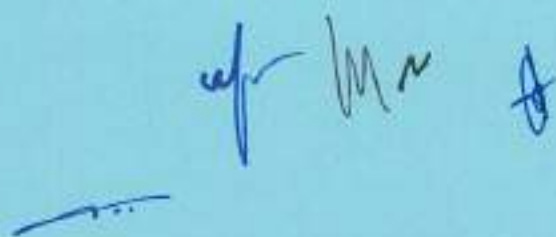
Malversation is a crime that is committed either intentionally or by negligence.⁶³ Stating such fact as early as 1938 in the consolidated cases of *The Philippine National Bank v. Tugab*⁶⁴, the Supreme Court affirmed that:

"According to Article 217 of the Revised Penal Code, malversation of government funds or properties **may be committed either by direct appropriation** of the same by the public officer or **when through negligence or lack of care** by the latter government funds or properties are unlawfully misappropriated by others." [boldface supplied]

The **Informations** charge that the concerted action of the accused "allow(ed) the xxx private individuals and the FARMERBUSINESS

⁶³ *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015

⁶⁴ G.R. No. L-45040, November 26, 1938

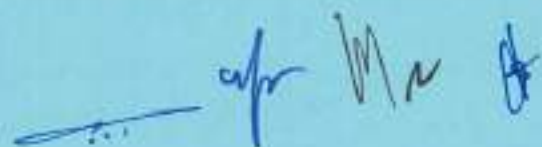


Development Corporation xxx to take away public funds coming from the PDAF of accused Pancrudo".

The first disbursement under the SAROs merely involved the release of funds to the selected NGO in order that it may accordingly carry out the projects envisioned by the sponsoring legislator. At this early stage, liquidation is not yet an issue but, certainly, the qualification and competency of an NGO were.

Under the 2007 *Appropriations Law*, TRC was among the designated implementing agencies for livelihood and social service projects and was, therefore, the responsible entity for giving life to Pancrudo's PDAF. Any subsequent transfer of such responsibility, say to a Non-Government Organization (NGO) or People's Organization (PO) had to be compliant with legal and regulatory requirements. For the relevant period, that meant mandatory adherence to *GPPB Resolution No. 12-2007*, which permits direct negotiation with a duly-qualified Non-Government Organization when an appropriation law or ordinance earmarks an amount to be specifically contracted to an NGO, or *COA Circular 2007-001*, which provides guidelines that apply to funds granted to NGOs/POs in the implementation of projects that may be beyond the capability of Government Organizations (GOs) to carry out. The implementor-NGO/PO therefore either had to be backed up by an appropriation law or ordinance or was otherwise qualified to be a project partner in the event that the assigned Government Organization was unable to carry out the project.

The FDC was neither designated under an appropriation law nor by virtue of a local ordinance. It was identified and chosen, sans lawful basis, by accused Pancrudo citing a necessity to partner with the said NGO in uplifting the lives of his constituents. By his act of arbitrarily lending congressional sanction to FDC by means of his "recommendation" letters - the issuance of which he admitted - he practically triggered the misappropriation of his multi-million PDAF. While professing awareness of the requirements under COA Circular No. 2007-001, he himself concedes



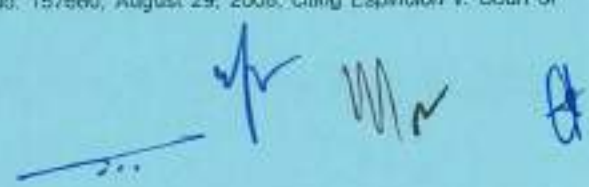
that he had merely relied on the address of the NGO in making his endorsement.

Trusting an entity with Forty-One Million Pesos' worth of project funds with scant consideration of its reputation, competence, and financial/technical standing is hardly indicative of the standard of care exercised by prudent men in looking after their property or charge. As a lawmaker under whose auspices the PDAF had actually been enacted and allotted, the blatant disregard of how and who utilizes the funds in his name is discomfiting, to say the least. Such negligence renders him liable.

The Court finds accused Lacsamana similarly negligent and accountable for the four occasions of project funds disbursement under the SAROs. Her duties as the Legislative Liaison Officer are distinctly laid out in TRC Memorandum Order No. 7 where, among others, she is mandated to "take charge and monitor the PDAF released to TRC". Organizationally, therefore, she is the frontliner burdened with the task of initially vetting the qualifications of the selected NGO and to ensure its compliance with the regulatory guidelines. Her deference to congressional authority does not excuse her from regularly and assiduously performing her obligations, especially since the option to report to her superiors any irregularity or non-compliance was always available to her. The defense that her task was merely ministerial is unavailing. The duty to review the worthiness of the conduit-implementors of the legislators' PDAF devolved upon her. As jurisprudence instructs: "The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment."⁶⁵ The determination of an NGO's qualifications and competence precisely involves discretion and judgment.

Because initial judgment squarely rested on the shoulders of the LLO, the consequent certifications of TRC officers Cunanan and Figura perforce place them within the realm of reasonable doubt. Their negligence - which

⁶⁵ *Mallari v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 157660, August 29, 2008, citing *Espiridon v. Court of Appeals*



permitted the first disbursements to transpire - cannot be ruled with moral certainty considering the favorable recommendation already given by the responsible administrative officer to the said expenditure.

Larger leeway is given to accused Espiritu and Jover in the said occasions as they were merely obliged to certify budget availability after an ascertainment that it indeed existed. As to them, no negligence or evil design can be inferred.

Contrarily, the Court holds that FDC president Labay positively misappropriated the project funds under the four SAROs in the following amounts: P16 Million; P4.8 Million; P8 Million; and P4 Million. FDC was adequately shown to have received the aforesaid amounts as evidenced by the checks drawn by the TRC (Exhibits "K", "GG-2"; "PP-1"; and "WW-3") and the receipts issued by FDC therefor (Exhibits "Q"; "GG-3"; "PP-2"; and "WW-4"). FDC, through its officers, thus clearly acquired custody of and control over the subject funds. Its subsequent failure to properly account for the amounts, providing only spurious documents to support their alleged utilization, ineluctably proves that the aggregate amount of P32.8 Million was misappropriated.

*The Charges of Malversation
through Falsification*

The subject of the instant cases covers the amounts initially withheld as retention fees but which were eventually released to the FDC, upon the latter's representation of due utilization of the funds and the liquidation thereof.

Malversation of Public Funds through Falsification of Documents is a complex crime⁶⁶ denoting that one offense (the falsification) was a necessary means for committing the other (malversation).

⁶⁶ Revised Penal Code, Article 48, Penalty for Complex Crimes. - When a single act constitutes two or more crimes, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Specifically, the indictment for **Malversation (Article 217, RPC)** is posited to be in relation to **Article 171** of the same **Code** which provides:

"Article 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of *prison mayor* and a fine xxx 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.

For conviction to be upheld, all the elements of the two crimes of **Malversation** and of **Falsification of Documents** need to be proven in the quantum required by law.

A judicial conclusion of **Falsification** becomes inevitable when the following facts⁶⁷ are sufficiently established:

- 1) The offender is a public officer, employee, or notary public;
- 2) He (or she) takes advantage of his (or her) official position;
- 3) He (or she) falsifies a document by committing any of the acts mentioned in **Article 171** of the **Revised Penal Code**.

⁶⁷ Vide Reyes, *The Revised Penal Code*, Book 2 (13th ed., Rev. 1993), pp. 191-192.

Accused legislator and TRC officials are undeniably public officers. The acts attributed to them relative to the transactions were performed precisely because they were in the exercise of their respective official positions, which acts could not have been carried out without taking advantage of such official positions. Their decisive role in effecting the disbursements render them accountable over the sums so disbursed.

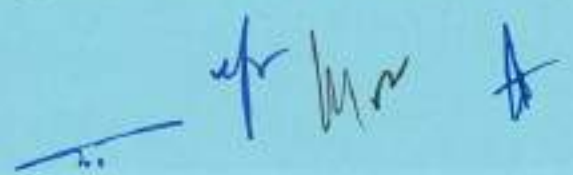
Accused Labay, who is a private individual, is brought before the Court together with the said public officers upon an allegation of conspiracy. The **Informations** charge that, because of their acts so-described therein, the 10% retention fees amounting to P2 Million; P600,000.00; P1 Million; and P500,000.00, respectively, were misappropriated or allowed to be misappropriated.

The fact of subsequent due custody of and control over the said amounts by FDC/accused Labay are sufficiently evidenced by the TRC checks issued in favor of the NGO (Exhibits "R-2"; "HH-2"; "RR-1"; and "XX-2") and the concomitant Official Receipts issued by the latter (Exhibits "R-3"; "HH-3"; "RR-3"; and "XX-3") for the said sums. That these PDAF-sourced funds are public in nature is duly established, being allotments provided under the **General Appropriations Act**.

The second-tranche releases under the four SAROs are supposed to be effected upon due completion of the project activities.

For such purpose, the liquidation documents especially gain heightened significance because disbursement was conditional on their propriety. Here, absent reliable and accurate substantiation of the utilization of the initial project funds released to the NGO, FDC's lawful claim to the 10% retention fees has no basis to stand on.

The Court duly notes that the second releases under the SAROs had been effectively prompted by the affirmation of 100% project completion declared by accused Labay - with the express conforme of accused



Pancrudo - as appearing on Exhibits "T", "II", "II-20", "SS", "SS-1", "YY-2", and "YY-27", which comprise the Project Final Report and the PDAF Monitoring Report Form for the four disbursements.

Accused Pancrudo has repudiated his signature on the foregoing as having been forged and, yet, has not even attempted to show by competent evidence the fact of such claimed forgery. As things therefore stand, the documents are to be accorded credence as to their due execution and accorded their corresponding probative value.

Given the foregoing, the Court holds that Labay's certification and Pancrudo's concurrence **as to the verity of projects completion** render the two of them complicit in making untruthful statements, that is, passing off the projects as having been duly implemented when, in fact, no sufficient proof exists that they were indeed carried out and the truth of the matter is that the livelihood activities supposedly conducted were "ghost" or inexistent.

As aptly indicated in the pertinent **Informations**:

"xxx

c) Accused Ujano and Labay, both of FDC, with the conforme of Pancrudo, issued and submitted a TRC PDAF Monitoring Report Form stating that the Livelihood Training Seminar (*sic*) conducted to improve the lives of the farmers and small scale entrepreneurs of Bukidnon xxx"

Lacsamana's integral role as the LLO and responsible frontliner officer at the TRC in the administrative handling of congressional PDAF similarly cannot be brushed off. The Center's Office Orders duly enumerate the responsibilities vested upon her with respect to interfacing with the legislators' offices and the NGOs implementing their projects. The negligence that allowed the transactions to proceed – and the amounts to thus be consequently misappropriated – is tantamount to an abandonment of duty for which she should be criminally liable.



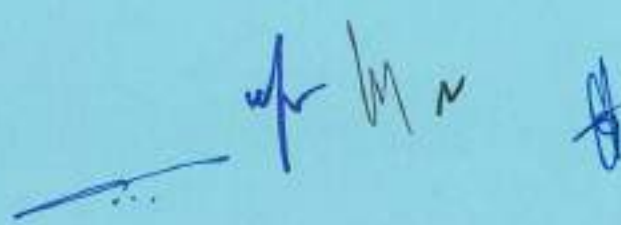
With regard to accused Jover and Espiritu, who had primarily functioned only to certify funds availability as, in fact, such existed, they are perforce excluded from the web of culpability. The same can be concluded of accused Cunanar whose signature or involvement in the subject disbursements do not appear.

Figura's involvement in recommending the releases, presumably premised on the assurance given him as to the propriety of the liquidation, places his participation within the purview of reasonable doubt.

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

A) In **Criminal Cases Nos. SB-17-CRM-2096 to 2103**, the Court finds accused CANDIDO P. PANCRUDO, JR., MARIA ROSALINDA M. LACSAMANA, and JOHANNE EDWARD B. LABAY **GUILTY** beyond reasonable doubt of **Violation of Sec. 3 (e) of Republic Act No. 3019, as amended**, as charged in the **Informations** uniformly dated July 10, 2017. Accused Pancrudo, Jr., Lacsamana, and Labay 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** of the eight counts with which they are charged and to suffer perpetual disqualification from holding public office.

With the fact of undue injury to the government being sufficiently proven, the aforesaid accused are likewise ordained civilly liable, jointly and severally, in the total amount of Thirty-Six Million Nine Hundred Thousand Pesos (P36,900,000.00), to be paid to the Government, through the Bureau of Treasury, with legal interest until its full satisfaction.



The prosecution having absolutely failed to establish the guilt of accused CONSUELO LILIAN R. ESPIRITU and MARIVIC V. JOVER, the said accused are hereby **ACQUITTED**.

On the basis of reasonable doubt, the Court likewise **ACQUITS** accused DENNIS L. CUNANAN and FRANCISCO B. FIGURA.

B) In **Criminal Cases Nos. SB-17-CRM-2104 to 2107**, the Court finds accused CANDIDO P. PANCRUDO, JR., MARIA ROSALINDA M. LACSAMANA, and JOHANNE EDWARD B. LABAY **GUILTY** beyond reasonable doubt of the crime of *Malversation of Public Funds or Property*, as defined and penalized under *Art. 217 of the Revised Penal Code*.

In each of the aforementioned Criminal Cases, the accused are sentenced to suffer imprisonment and each pay the fine indicated below, as well as to solidarily pay the civil liability also indicated hereunder, the fact of undue injury to the Government being sufficiently proven:

CRIMINAL CASE NO.	PENALTY OF IMPRISONMENT	FINE	CIVIL LIABILITY
SB-17-CRM-2104	ten (10) years and one (1) day of <i>prision mayor maximum</i> , as minimum, to eighteen (18) years, eight (8) months and one (1) day of <i>reclusion temporal maximum</i> , as maximum	₱16,000,000.00	₱16,000,000.00
SB-17-CRM-2105	fourteen (14) years, eight (8) months, and one (1) day of <i>reclusion temporal medium</i> , as minimum, to eighteen (18) years and three (3) months of <i>reclusion temporal maximum</i> ,	₱4,800,000.00	₱4,800,000.00

	as maximum		
SB-17-CRM-2106	fourteen (14) years, eight (8) months, and one (1) day of <i>reclusion temporal medium</i> , as minimum, to eighteen (18) years and three (3) months of <i>reclusion temporal maximum</i> , as maximum	₱8,000,000.00	₱8,000,000.00
SB-17-CRM-2107	ten (10) years and one (1) day of <i>prision mayor maximum</i> , as minimum, to sixteen (16) years, five (5) months, and eleven (11) days of <i>reclusion temporal medium</i> , as maximum	₱4,000,000.00	₱4,000,000.00

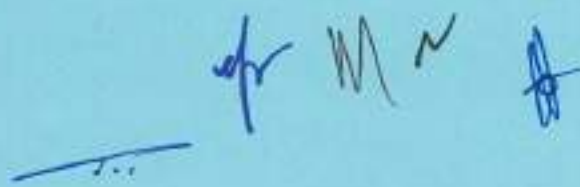
They shall also suffer the penalty of perpetual special disqualification.

The penalty of imprisonment is in conformity with **Article 217 of the Revised Penal Code** and is in accordance with the **Indeterminate Sentence Law**.

The amount of the fine in each case which each of the accused is ordered to pay is equal to the amount malversed. The amount of civil liability shall be paid to the Government, through the Bureau of Treasury, with legal interest until its full satisfaction.

Accused CONSUELO LILIAN R. ESPIRITU, MARIVIC V. JOVER, and FRANCISCO B. FIGURA are **ACQUITTED** for failure of the prosecution to establish their guilt.


Accused DENNIS L. CUNANAN is similarly **ACQUITTED**, albeit on the basis of reasonable doubt.



C) In **Criminal Cases Nos. SB-17-CRM-2108 to 2111**, the Court finds accused CANDIDO P. PANCRUDO, JR., MARIA ROSALINDA M. LACSAMANA, and JOHANNE EDWARD B. LABAY **GUILTY** beyond reasonable doubt of the crime of *Malversation of Public Funds through Falsification*, as defined and penalized under **Art. 217 of the Revised Penal Code, in relation to Art. 171**, of the same Code. Pursuant to said **Article 217**, in relation to **Art. 171**, and in accordance with the **Indeterminate Sentence Law**, accused Pancrudo, Jr., Lacsamana, and Labay are hereby sentenced to suffer the penalty of imprisonment of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years, eight (8) months, and one (1) day of *prision mayor*, as maximum, and to suffer the penalty of perpetual special disqualification for each charge in **Criminal Cases Nos. SB-17-CRM-2108, 2109, and 2110**. They are sentenced to suffer imprisonment of six (6) years and one (1) day of *prison mayor*, as minimum, to thirteen (13) years, one (1) month, and eleven (11) days of *reclusion temporal* as maximum and to suffer perpetual special disqualification for the charge in **Criminal Case No. SB-17-CRM-2111**.

Accused Pancrudo, Jr., Lacsamana, and Labay are also ordered to each pay a fine equal to the amount malversed, as follows: 1) P600,000.00 in **Criminal Case No. SB-17-CRM-2108**; 2) P1,000,000.00 in **Criminal Case No. SB-17-CRM-2109**; 3) P500,000.00 in **Criminal Case No. SB-17-CRM-2110**; and 4) P2,000,000.00 in **Criminal Case No. SB-17-CRM-2111**.

The amount misappropriated being adequately proven, accused Pancrudo, Jr., Lacsamana, and Labay are likewise decreed civilly liable, jointly and severally, in the respective amounts of: 1) P600,000.00 in **Criminal Case No. SB-17-CRM-2108**; 2) P1,000,000.00 in **Criminal Case No. SB-17-CRM-2109**; 3) P500,000.00 in **Criminal Case No. SB-17-CRM-2110**; and 4) P2,000,000.00 in **Criminal Case No. SB-17-CRM-2111**, payment of which shall be to the Government, through the Bureau of Treasury, with legal interest until full satisfaction.

.....


Accused CONSUELO LILIAN R. ESPIRITU, MARIVIC V. JOVER, and DENNIS L. CUNANAN are **ACQUITTED** for failure of the prosecution to establish their guilt.

Accused FRANCISCO B. FIGURA is **ACQUITTED** on the basis of reasonable doubt.

With their acquittal from all the charges, the Court hereby authorizes the release to accused Espiritu, Jover, Figura, and Cunanan the amounts individually deposited by them as bail for their provisional liberty in all these cases, subject to the usual auditing and accounting procedures.

The Hold Departure Orders (HDOs) issued against accused Espiritu, Jover, Figura, and Cunanan are ordered **LIFTED** and **SET ASIDE**. The Court hereby **DIRECTS** the Bureau of Immigration to remove their names in the Hold Departure List, insofar as these cases are concerned.

D) Meantime, cognizant of the demise of VICTORINO C. UJANO prior to the filing of the *Informations*, the Court **REITERATES** the dismissal of all the cases against him.

E) Finally, **Criminal Cases Nos. SB-17-CRM-2096 to 2111** are ordered **ARCHIVED** with respect to accused ANTONIO Y. ORTIZ and JESUS P. ESMERALDA, to be revived upon their arrest or voluntary surrender. Let an *Alias Warrant of Arrest* be **ISSUED** against aforementioned accused.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice



We concur:



RAFAEL R. LAGOS
Associate Justice


ARTHUR O. MALABAGUIO
Associate Justice

We dissent: *Pls see separate concurring and dissent*


MICHAEL FREDERICK L. MUSNGI
Associate Justice

adopts the concurring and dissenting opinion of J. Musngi


LORIFEL LACAP PAHIMNA
Associate Justice

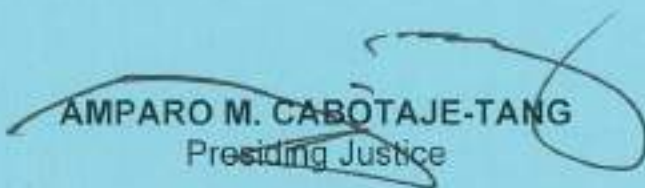
ATTESTATION

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


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

CONCURRING AND DISSENTING OPINION

MUSNGI, J.:

I concur with the ponencia of Chairperson Justice Oscar C. Herrera, Jr. except that I respectfully dissent from the said Decision as regards the liability of accused Candido P. Pancrudo, Jr.

For violation of Section 3(e) of R.A. No. 3019 (SB-17-CRM-2096 to 2103), the undersigned finds that the prosecution failed to establish that accused Pancrudo acted with manifest partiality, evident bad faith, and gross inexcusable negligence in endorsing FDC as project implementer (Exhibits "G", "DD", "MM", and "UU"). The Supreme Court in the case of *Belgica, et al. v. Hon. Executive Secretary Ochoa, Jr., et al.*¹ has recognized that the endorsements of legislators for the use of their PDAF have become a widely recognized and accepted practice, thus:

As may be observed from its legal history, **the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.**

At its core, legislators – may it be through project lists, prior consultations or program menus – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations. Under the 2013 PDAF Article, the statutory authority of legislators to identify projects post-GAA may be construed from the import of Special Provisions 1 to 3 as well as the second paragraph of Special Provision 4. To elucidate, Special Provision 1 embodies the program menu feature which, as evinced from past PDAF Articles, allows individual legislators to identify PDAF projects for as long as the identified project falls under a general program listed in the said menu. Relatedly, Special Provision 2 provides that the implementing agencies shall, within 90 days from the GAA is passed, submit to Congress a more detailed priority list, standard or design prepared and submitted by implementing agencies from which the legislator may make his choice. The same provision further authorizes legislators to identify PDAF projects outside his district for as long as the representative of the district concerned concurs in writing. Meanwhile, Special Provision 3 clarifies that PDAF projects refer to "projects to be identified by legislators" and thereunder provides the allocation limit for the total amount of projects identified by each legislator. Finally, paragraph 2 of Special Provision 4 requires that any modification and revision of the project identification "shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be." From the foregoing special provisions, **it cannot be seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects.**

Aside from the area of project identification, legislators have also been accorded post-enactment authority in the areas of fund

¹ G.R. No. 208566, 19 November 2013.

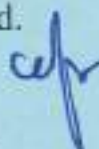


release and realignment. Under the 2013 PDAF Article, the statutory authority of legislators to participate in the area of fund release through congressional committees is contained in Special Provision 5 which explicitly states that "all request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by House Committee on Appropriations and the Senate Committee on Finance, as the case may be"; while their statutory authority to participate in the area of fund realignment is contained in: first, paragraph 2, Special Provision 4 which explicitly states, among others, that "any realignment of funds shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be; and, second, paragraph 1, also of Special Provision 4 which authorizes the "Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry x x x to approve realignment from one project/scope to another within the allotment received from this Fund, subject to among others (iii) **the request is with the concurrence of the legislator concerned.**" (*Emphasis supplied*)

Although the Supreme Court has declared the PDAF as unconstitutional when it promulgated its Decision in *Belgica vs. Hon. Executive Secretary* on 19 November 2013 insofar as it has conferred unto legislators the power of appropriation by giving them discretionary funds, nonetheless, under the operative fact doctrine, any act by the legislators prior to said date shall be deemed valid and constitutional.

The mere endorsement of accused Pancrudo does not equate to manifest partiality, evident bad faith, or gross inexcusable negligence. In the case of *Suba vs. Sandiganbayan*,² the Supreme Court held that "there is no such thing as presumption of bad faith in cases involving violations of the Anti-Graft and Corrupt Practices Act." In his *Counter-Affidavit*, accused Pancrudo stated that his only participation in the whole process was his endorsement of FDC. He claimed that he had no knowledge of the execution of the other documents. During direct examination, accused Pancrudo denied his signatures on the Project Final Reports (Exhibits "P", "H", "SS", and "YY-2") and PDAF Monitoring Report Forms (Exhibits "T-23", "SS-1", and "YY-27").

In this case, the four (4) MOAs covering the four (4) SAROs were signed by Jesus Esmeralda and not by accused Pancrudo (Exhibits "H", "EE", "OO-1", and "VV"). The first MOA was dated 20 December 2007 while the other three were all undated. The relationship between Esmeralda and Pancrudo was also not established by the prosecution. Accused Pancrudo also denied issuing the letters dated 05 December 2007 (Exhibit "F") and 11 February 2008 (Exhibit "DD-1") authorizing Jesus Esmeralda as his project consultant to facilitate and monitor the status of the project, as well as sign documents on his behalf relating to the projects. He claimed in his *Counter-Affidavit* that he has never met Jesus Esmeralda and that his signature in the authorization letters were forged.



² G.R. No. 235418, 03 March 2021.

Witness COA Director Garcia testified that accused Pancrudo sent a letter dated 08 January 2012 (Exhibit "GGG") where he allegedly confirmed his signatures on certain documents. However, the letter, which does not even have a letterhead, was not authenticated. The prosecution likewise failed to confront accused Pancrudo with this document. In fact, the prosecution did not conduct a cross-examination when accused Pancrudo testified in court, or present rebuttal evidence to prove the authenticity of the documents.

Moreover, Section 4.5.2 of COA Circular 2007-001 provides that the government organization,³ in this case the TRC, 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 Circular provides that the said 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."

Verily, the mere endorsement of accused Pancrudo is not the only determining factor in the award of the PDAF to FDC. The TRC is mandated to accredit the NGO by evaluating the latter's qualification documents. In fact, TRC Director General Ortiz issued Office Circular No. OOOP0099 dated 03 September 2007 and Office Circular No. 000P0100 dated 27 November 2007 or the Implementing Guidelines on PDAF Accounts enumerated the "endorsement letter from concerned legislator" as only one of the required documents for accreditation.

The *Informations* also state that accused Pancrudo failed to monitor the implementation of his PDAF-funded projects, but this is the function of the TRC under the MOA. The MOAs provide that the TRC "shall monitor the status of the implementation of the program and the utilization of the PDAF during actual project implementation." The TRC even charged five percent (5%) of the total PDAF as management fee.

Pertaining to malversation (SB-17-CRM-2104 to 2107), the prosecution failed to present any evidence, direct or circumstantial, to prove that accused Pancrudo appropriated, took, misappropriated, or permitted another, through abandonment or negligence, to take the PDAF. It was accused Lacsamana who recommended the release of the PDAF to FDC despite the incomplete accreditation documents and the non-compliance of the MOAs with COA Circular No. 2007-001. Accused Lacsamana also certified that the liquidation of Pancrudo's PDAF was already complete.

Lastly, with regard to malversation through falsification of public documents (SB-17-CRM-2108 to 2111), the undersigned finds that the

³ Section 2.4 of COA Circular 2007-01 provides that:

Government Organization – refers to national government agencies, local government units, government-owned or controlled corporations and their subsidiaries providing fund to the NGO/PO.



prosecution failed to establish which of the accused public officers committed any of the alleged acts of falsification. None of the accused public officials signed the questionable documents. According to prosecution witness Abiva-Sazon, it was her former employee Aileen Carrasco who falsified the Felta receipts. Witness Felix Tiangco also testified that the Independent Audit Reports were falsified by a Ms. Segesmundo. The allegation of conspiracy was also not established by sufficient evidence. Therefore, the charge of complex crime of malversation thru falsification cannot stand.

The Court cannot judge the guilt or innocence of the accused based on mere presumptions. Mere speculation and probabilities cannot substitute for proof required in establishing the guilt of an accused beyond reasonable doubt.⁴

ACCORDINGLY, I vote to **DISMISS** the cases against accused Candido P. Pancrudo, Jr. for failure of the prosecution to prove his guilt beyond reasonable doubt.


MICHAEL FREDERICK L. MUSNGI
Associate Justice

⁴ *Arriola vs. People*, G.R. No. 217680, 30 May 2016.