



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-18-CRM-0541

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

-versus-

SB-18-CRM-0542

For: Malversation of Public
Funds, defined and penalized
under Article 217 of the
Revised Penal Code.


Present:

**JAMALODEN HADGI FAISAL and
ALIKAHN M. EBRAHIM,**

Accused.

**CABOTAJE-TANG, A.M.
P.J.,
Chairperson,
FERNANDEZ, B.R., J. and
MORENO, R.B. J.**

Promulgated:

June 23, 2023 

X-----X

DECISION

Moreno, J.:

In Criminal Case No. SB-18-CRM-0541, accused **JAMALODEN HADGI FAISAL**¹ (“Faisal”) and **ALIKAHN M. EBRAHIM** (“Ebrahim”) are charged with the crime of violation of Section 3 (e) of Republic Act No. 3019 (“R.A. No. 3019”), as amended (“Anti-Graft and Corrupt Practices Act”). The information² reads:

¹ Also appears as “Paisal” and “Faizal” in the Record.
² Record, Vol. I, pp. 4-6.

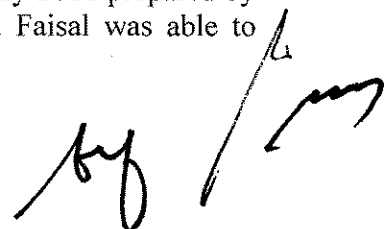
That in January 2011, or sometime prior or subsequent thereto, in the Municipality of Tugaya, Province of Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused JAMALODEN H. FAISAL (Faisal), a high-ranking public officer being then the Acting General Manager of Tugaya Water District, a government-owned and controlled corporation, while in the performance of his administrative and/or official functions and committing the crime in relation to office, taking advantage of his official position, conspiring and confederating with ALIKAHN M. EBRAHIM (Ebbrahim)³, a private individual, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of PhP10,074,680.00, representing the initial funding for the construction of the water supply improvement project of Tugaya Water District, and received by Faisal, by making it appear that the construction/project was implemented and partly accomplished, when in truth and in fact, the same was not implemented as the project was fictitious and non-existent, but which accused Faisal was able to liquidate through the Physical Accomplishment Report as of July 2011 prepared by accused Ebrahim, and thereafter accused Faisal appropriated the said public funds for his own personal use and benefit, to the damage of the government in the aforesaid amount.

CONTRARY TO LAW.

In Criminal Case No. SB-18-CRM-0542, accused Faisal and Ebrahim are charged with Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code (“RPC”). The information⁴ reads:

That in January 2011, or sometime prior or subsequent thereto, in the Municipality of Tugaya, Province of Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused JAMALODEN H. FAISAL (Faisal), a high-ranking public officer being then the Acting General Manager of Tugaya Water District, a government-owned and controlled corporation, who by reason of his office and duties was responsible and accountable for public funds, committing the offense in relation to office, taking advantage of his official position, conspiring and confederating with private individual ALIKAHN M. EBRAHIM (Ebbrahim), did then and there willfully, unlawfully and feloniously appropriate, misappropriate, take, embezzle and convert to accused Faisal’s own personal use and benefit the amount of PhP 10,074,680.00, in public funds, intended for the water supply improvement project of the Tugaya Water District, which amount was received by Faisal from the Local Water Utilities Administration (LWUA) and over which he had custody and control, and for which he was accountable, by making it appear that the project was implemented and partly accomplished using the said amount when in truth and in fact, the same was not implemented as the project was fictitious and non-existent, but which accused Faisal was able to liquidate through the Physical Accomplishment Report as of July 2011 prepared by accused Ebrahim, and through this scheme accused Faisal was able to

³ Also appears as “Ebrahim” in the Record.
⁴ Record, Vol. I, pp. 1-3.



x-----x

appropriate the said public funds for his own personal use and benefit, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.

In its *Resolution*⁵ dated November 21, 2018, the Court found the existence of probable cause against accused Faisal and Ebrahim pursuant to Section 5, Rule 112 of the Revised Rules on Criminal Procedure. Thus, the Court issued *hold departure orders*⁶ and *warrants of arrest*⁷ against them.

On January 14, 2019, accused Faisal, through his bondswoman Hamida A. Pacalna, deposited with the Office of the Clerk of Court VI, Regional Trial Court (“RTC”) of Lanao del Sur, Marawi City, the cash bond for his provisional liberty in the amount of Thirty Thousand Pesos (Php 30,000.00).⁸

On the other hand, the National Bureau of Investigation (“NBI”) Iligan District Office failed to serve the warrant of arrest against accused Ebrahim on the ground that he is no longer living in the Municipality of Tugaya. Accused Ebrahim is still at-large up to the present time.

Accordingly, the arraignment and pre-trial of accused Faisal were set.⁹ During the scheduled arraignment on May 31, 2019, accused Faisal pleaded “NOT GUILTY” to the crime charged.¹⁰

During the pre-trial, the parties jointly agreed to stipulate the following:

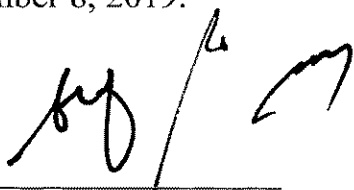
II. STIPULATIONS OF FACT

The parties have not agreed on any stipulation of facts.

IV. ISSUE

- a. Whether accused Faisal is a public officer;
- b. Whether the Honorable Court has acquired jurisdiction over the case and the person of the accused Faisal; and
- c. Whether accused Faisal is guilty beyond reasonable doubt of the offenses charged in the Informations.

These stipulations were adopted in the *Pre-trial Order*¹¹ dated November 8, 2019.



⁵ Record, Vol I, p. 116.
⁶ Record, Vol. I, p. 106.
⁷ Record, Vol. I, p. 116.
⁸ Record, Vol. I, p. 142.
⁹ Record, Vol. I, p. 178.
¹⁰ Record, Vol. I, pp. 233-234.
¹¹ Record, Vol. I, pp. 521-531.

EVIDENCE FOR THE PROSECUTION

On January 21, 2020, the prosecution called to the stand witness **Marvin Cuisia Gines, Jr. (“Gines”)**,¹² who testified on direct examination through his Judicial Affidavit¹³ dated January 10, 2020. However, for purposes of expediency, the parties stipulated as to the nature of the testimony of the witness as follows:

1. That he is presently an Administrative Assistant V assigned at the Commission on Audit-Local Water Utilities Administration (“COA-LWUA”);

2. That as Administrative Assistant V, his duties and responsibilities include: (1) safe-keeping of LWUA documents submitted to COA-LWUA for post audit and safe-keeping of office supplies; (2) reproduction and authentication of existing records kept in the COA-LWUA Office; (3) liaison to other government agencies; and (4) other duties that may be assigned by the COA-LWUA Supervising Auditor;

3. That he will identify the relevant documents kept in the files of his office, which he submitted to the Office of the Special Prosecutor (“OSP”), as well as the signatures therein;

4. That he will identify the Certification dated June 20, 2019, he issued relative to the documents in his custody, previously marked as Exhibit “B” for the prosecution;

5. That if he will be called to testify, he can identify his Judicial Affidavit, including all its attachments; and

6. That his Judicial Affidavit will form part of his direct testimony.

In relation to the documents that witness Gines submitted to the OSP, he identified the following documentary Exhibits:

Exhibit	Description	Nature of Document
“B” ¹⁴	Certification dated June 20, 2019.	Original
“B-1” ¹⁵	Disbursement Voucher No. 1-2011-01-0002 dated January 3, 2011.	Original
“B-2” ¹⁶	Acknowledgment Receipt signed by Jamaloden H. Faisal, stamped “PAID LWUA”.	Original
“B-3” ¹⁷	Project Profile, Tugaya Water District, December 2009.	Original
“B-4” ¹⁸	Authorization to Receive Check dated January 11, 2011.	Original

¹² TSN dated January 21, 2020.

¹³ Record, Vol. I, pp. 434-470.

¹⁴ Record, Vol. I, p. 444.

¹⁵ Record, Vol. I, p. 445.

¹⁶ Record, Vol. I, p. 446.

¹⁷ Record, Vol. I, p. 447.

¹⁸ Record, Vol. I, p. 448.

x-----x

"B-5" ¹⁹	LWUA Form No. 021 dated January 28, 2010 (Brief to the Acting Administrator) signed by Bernardito De Jesus, LWUA Acting Deputy Administrator, Area Operations.	Original
"B-6" ²⁰	Disbursement Voucher No. P-2010-02-0053 dated February 9, 2010.	Original
"B-7" ²¹	Budget Status Form dated February 1, 2010.	Original
"B-8" ²²	LWUA Form No. 008, Memorandum for the Administrator from PMED/Area 9, Operations Mindanao dated January 28, 2010, Subject: Release of Funds – Tugaya Water District (Lanao del Sur) – NLIF.	Original
"B-9" ²³	Claims Information Sheet dated February 8, 2010.	Original
"B-10" ²⁴	Program of Work, Tugaya (Lanao del Sur) Water District, Dec-09.	Photocopy
"B-11" ²⁵	Tugaya Water District – WSSIP, Detailed Cost Estimate.	Original
"B-12" ²⁶	Page 1 of Resolution No. 005 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled "A Resolution Requesting LWUA for the Release of Funds Intended for the Implementation of the P25.0M Tugaya Water District Supply System Project."	Original
"B-13" ²⁷	Page 2 of Resolution No. 005 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled "A Resolution Requesting LWUA for the Release of Funds Intended for the Implementation of the P25.0M Tugaya Water District Supply System Project."	Original
"B-14" ²⁸	Page 1 of Resolution No. 003 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled "Resolution Authorizing the Acting-General Manager to sign the Memorandum of Understanding and Financial Assistance Contract for an (sic) in behalf of the Tugaya Water District relative to the implementation of the proposed P25.0M Tugaya Water Supply System Project."	Original
"B-15" ²⁹	Page 2 of Resolution No. 003 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled "Resolution Authorizing the Acting-General Manager to sign the Memorandum of Understanding and Financial Assistance Contract for an (sic) in behalf of the Tugaya Water District relative to the implementation of the proposed P25.0M Tugaya Water Supply System Project."	Original
"B-16" ³⁰	Projected Cash Requirement.	Original
"B-17" ³¹	Page 1 of the Cost Breakdown, Tugaya (Lanao del Sur) Water District, Dec-09.	Original

¹⁹ Record, Vol. I, p. 449.
²⁰ Record, Vol. I, p. 450.
²¹ Record, Vol. I, p. 451.
²² Record, Vol. I, p. 452.
²³ Record, Vol. I, p. 453.
²⁴ Record, Vol. I, p. 454.
²⁵ Record, Vol. I, p. 455.
²⁶ Record, Vol. I, p. 456.
²⁷ Record, Vol. I, p. 457.
²⁸ Record, Vol. I, p. 458.
²⁹ Record, Vol. I, p. 459.
³⁰ Record, Vol. I, p. 460.
³¹ Record, Vol. I, p. 461.

Handwritten signature and initials in the bottom right corner of the page.

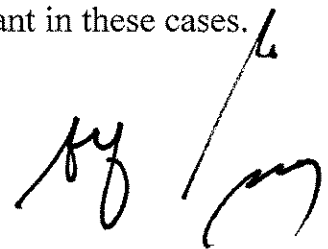
x-----x

"B-18" ³²	Page 2 of the Cost Breakdown, Tugaya (Lanao del Sur) Water District, Dec-09.	Original
"B-19" ³³	Field Cash Requirement, Tugaya Water District.	Original
"B-20" ³⁴	LWUA Board of Trustees Resolution No. 55 series of 2010, Subject: P25 Million Financial Assistance for Tugaya WD (Lanao del Sur)	Photocopy
"B-21" ³⁵	Identification Card No. TLDS-027 of Mr. Omar G. Ampuan, Information Officer, Municipality of Tugaya, Lanao del Sur and Community Tax Certificate ("CTC") No. CC12009-21577076 dated January 7, 2010	Photocopy
"B-22" ³⁶	LWUA Memorandum of Consideration of Board of Trustees dated January 6, 2009, Subject: Financial Assistance for Tugaya (Lanao del Sur) WD	Photocopy
"B-23" ³⁷	Memorandum for the Administrator dated January 6, 2010, Subject: Proposed Php25.0M Program of Work (POW) and Financial Assistance for Tugaya (Lanao del Sur) Water District ("TWD")	Photocopy
"B-24" "B-25" "B-26" ³⁸	Undated Memorandum of Understanding	Original

The counsel for accused Faisal agreed to the stipulation, however, with a counter-stipulation that the witness had no participation in the execution of the documents, except for the Certification which he personally issued. The same was duly stipulated upon by the prosecution.

On January 22, 2020, the prosecution called to the witness stand **Edgardo S. Pates ("Pates")**,³⁹ who identified his Judicial Affidavit dated January 15, 2020,⁴⁰ which constituted as his direct testimony. The testimony of witness Pates was offered to prove the following: (1) he is presently the Branch Manager of the Philippine National Bank Carmen-CDO Branch; (2) his duties and responsibilities, among others, include (a) marketing of products and services of the bank; (b) oversee the proper implementation of processes by the branch; and (c) safe-keeping of bank records of PNB Account No. 432017300020 under the name Tugaya Water District with Jamaloden Manceo Hadji Faisal and Junaina Balindong Macaborod as authorized signatories; (3) he will identify the aforesaid bank records reserved as Exhibit "F and series" for the prosecution, which he submitted to the Office of the Special Prosecutor ("OSP"), as well as his signatures therein; (4) he will identify the Certification dated 10 October 2019 he issued relative to the documents in his custody; (5) he will identify his Judicial Affidavit including all its attachments; (6) he will testify on other matters relevant in these cases.

³² Record, Vol. I, p. 462.
³³ Record, Vol. I, p. 463.
³⁴ Record, Vol. I, p. 464.
³⁵ Record, Vol. I, p. 465.
³⁶ Record, Vol. I, p. 466.
³⁷ Record, Vol. I, p. 467.
³⁸ Record, Vol. I, pp. 468-470.
³⁹ TSN dated January 22, 2020.
⁴⁰ Record, Vol. I, pp. 471-500.



x-----x

In relation to the documents that witness Pates submitted to the OSP, he identified the following documentary Exhibits:

Exhibit	Description	Nature of Document
"F" ⁴¹	Certification dated 10 October 2019 stating that the documents covering the account of Tugaya (Lanao del Sur) Water District are all faithful reproductions and/or true copies of the original documents on file, signed by Edgardo S. Pates, Branch Manager, PNB Carmen-CDO.	Original
"F-1" ⁴²	PNB Account Information Form for Regular Passbook (Government) with Account No. 432017300020 signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod.	Certified True Copy of the original
"F-2" ⁴³	Client Information Form of Jamaloden Mangco Hadji Faisal.	Certified True Copy of the original
"F-3" ⁴⁴	Client Information Form of Junaina Balindong Macaborod.	Certified True Copy of the original
"F-4" ⁴⁵	Signature Card of Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod	Certified True Copy of the original
"F-5" ⁴⁶	Business Information Form for Tugaya Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories.	Certified True Copy of the original
"F-6" ⁴⁷	Addendum to the Terms and Conditions Governing the Opening and Maintenance of Deposit Accounts signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories for PNB Account No. 432017300020.	Certified True Copy of the original
"F-7" ⁴⁸	Identification Cards of Jamaloden Mangco Hadji Faisal with stamp "ORIGINAL DOCUMENT SIGHTED Jan 13,2011".	Certified True Copy of the original
"F-8" ⁴⁹	Identification Cards of Junaina Balindong Macaborod with stamp "ORIGINAL DOCUMENT SIGHTED Jan 13, 2011".	Certified True Copy of the original
"F-9" ⁵⁰	Conditional Certificate of Conformance issued to Tugaya Water District (Lanao del Sur).	Photocopy on file
"F-10" ⁵¹	Sangguniang Bayan Resolution No. 001 Series of 2011, designating the PNB Carmen-Cagayan de Oro City as Depository Bank of Tugaya Water District and authorizing the Acting General Manager Mr. Jamaloden	Certified True Copy of the original

41 Record, Vol. I, p. 481.
 42 Record, Vol. I, p. 482.
 43 Record, Vol. I, p. 483.
 44 Record, Vol. I, p. 484.
 45 Record, Vol. I, p. 485.
 46 Record, Vol. I, p. 486.
 47 Record, Vol. I, p. 487.
 48 Record, Vol. I, p. 488.
 49 Record, Vol. I, p. 489.
 50 Record, Vol. I, p. 490.
 51 Record, Vol. I, pp. 491-492.

Handwritten signature and initials in black ink, located at the bottom right of the page.

x-----x

	Mangco Hadji Faisal and the Cashier/Treasurer as the Official Signatories of the said Deposit Accounts, consisting of 2 pages.	
"F-11" ⁵²	Certificate of Canvass of Votes and Proclamation of Winning candidates for Tugaya Mayor and Vice Mayor for the November 13, 2010, Special Elections, signed by the Municipal Board of Canvassers.	Photocopy on file
"F-12" ⁵³	Certificate of Canvass of Votes and Proclamation of Winning candidates for Members of the City/Municipal Council for the November 13, 2010, Special Elections, signed by the Municipal Board of Canvassers.	Photocopy on file
"F-13" ⁵⁴	LWUA Report of Checks Issued Against LWUA Equity (Account No. 1462-10001-71).	Photocopy on file
"F-14" ⁵⁵	Follow-up Letter dated November 26, 2010, signed by Mayor Alber N.A.P. Balindong, Municipal Mayor addressed to Daniel I. Landingin, LWUA Acting Administrator thru Engr. Bede Gata, Technical Engineering Department, requesting for the release of the PhP25 Million loan.	Photocopy on file
"F-15" ⁵⁶	Sangguniang Bayan Resolution No. 02 Series of 2010, requesting the LWUA to release the payment for the Development of Tugaya Water District in favor of Mr. Jamaloden H. Faisal, consisting of 2 pages.	Photocopy on file
"F-16" ⁵⁷	Appointment Paper of Jamaloden M. H. Faisal as Acting General Manager of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipal Mayor.	Photocopy on file
"F-17" ⁵⁸	Appointment Paper of Junaina B. Macaborod as Cashier/Treasurer of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipal Mayor as recommended by Jamaloden M.H. Faisal, General Manager.	Photocopy on file
"F-18 to F-24" ⁵⁹	Deposit Slips, Bank Statement of Account, and Manager's Check.	Photocopy of the Original

On cross-examination, witness Pates admitted that with regard to Exhibits "F-14" to "F-17", he has no personal knowledge so far as the signatures of the supposed signatories to the documents.⁶⁰

On questions propounded by the court, witness Pates testified that the signature appearing on the left side of the withdrawal slips dated January 18, 2011 (Exhibit "F-19"), and January 26, 2011 (Exhibit "F-20"), which pertains to the signature of the depositor belongs to accused Faisal based on the

⁵² Record, Vol. I, p. 493.

⁵³ Record, Vol. I, p. 494.

⁵⁴ Record, Vol. I, p. 495.

⁵⁵ Record, Vol. I, p. 496.

⁵⁶ Record, Vol. I, pp. 497-498.

⁵⁷ Record, Vol. I, p. 499.

⁵⁸ Record, Vol. I, p. 450.

⁵⁹ Marked as additional evidence during the Cross-examination of witness Pates, TSN dated January 22, 2020, pp. 11-13.

⁶⁰ TSN dated January 22, 2020, p. 16.

X-----X

specimen signature that the latter submitted to the bank. Likewise, the signature of accused Faisal also appears as the “recipient’s signature” on both withdrawal slips.⁶¹

On January 28, 2020, the prosecution presented witness **Amelia G. Dumindin (“Dumindin”)**,⁶² who testified on direct examination through her Judicial Affidavit⁶³ dated January 22, 2020. In open court, she identified her Judicial Affidavit as well as her signature appearing in the document. Witness Dumindin is the Chief Administrative Officer of the Records and Communications Division (“RCD”), General Services Department (“GSD”), of the Local Water Utilities Administration (“LWUA”). As the Chief Administrative Officer, her duties and responsibilities include: (1) overall supervision of the RCD; (2) records management; (3) monitoring of incoming and outgoing communications; (4) reproduction and authentication of existing records in the records storage room; and (5) other duties that may be given from time to time by her immediate supervisor, the GSD Department Manager, or the Deputy Administrator for Administrative Service.

She likewise identified the following documents attached to her Judicial Affidavit:

Exhibit	Description	Nature of Document
“C-1” ⁶⁴	Conditional Certificate of Conformance (CCC No. 805) issued to Tugaya Water District (Lanao del Sur).	Photocopy on file
“C-2” ⁶⁵	Certification Program from Tugaya Water District, consisting of four (4) pages.	Photocopy on file
“C-3” ⁶⁶	Tugaya Water District Board Resolution No. 003, series of 2009 requesting Chairman Prospero Pichay to grant PhP25 Million for the construction of water supply facilities for various barangays in the Municipality of Tugaya, Lanao del Sur adopted on November 20, 2009, consisting of two (2) pages.	Certified true from Original on file
“C-4” ⁶⁷	Municipality of Tugaya, Sangguniang Bayan (SB) Resolution No. 041, series of 2009 dated April 21, 2009, creating the Tugaya Water District, consisting of three (3) pages.	Certified true from Original on file
“C-5” ⁶⁸	LWUA Form No. 008, Memorandum for the Administrator from WDD/Mindanao, OSDA dated December 9, 2009, signed by Emmanuel B. Malicdem, Acting Senior Deputy Administrator, recommending the approval of the formation of Tugaya Water District (Lanao del Sur).	Certified true from Original on file

⁶¹ TSN dated January 22, 2020, pp. 18-23.

⁶² TSN dated January 28, 2020.

⁶³ Record, Vol. I, pp. 560-578.

⁶⁴ Record, Vol. I, p. 561.

⁶⁵ Record, Vol. I, pp. 562-565.

⁶⁶ Record, Vol. I, pp. 566-567.

⁶⁷ Record, Vol. I, pp. 568-570.

⁶⁸ Record, Vol. I, p. 571.

x-----x

"C-6" ⁶⁹	LWUA Form No. 008, Memorandum for the Administrator from WDD/Mindanao, OSDA dated December 9, 2009, signed by Emmanuel B. Malicdem, Acting Senior Deputy Administrator, recommending the approval of the issuance of Conditional Certificate of Conformance to Tugaya Water District (Lanao del Sur).	Certified true from Original on file
"C-7" ⁷⁰	Formation Action Checklist dated December 28, 2009, evaluated by Engr. Bede G. Gata, OIC, A9-WDD Mindanao, checked by Almer A. Zerrudo, Acting Manager, WDD Mindanao, Recommended for filing by Emmanuel B. Malicdem, Acting Senior Deputy Administrator, and, Approved for filing by Daniel I. Landingin, Acting Administrator, all of LWUA	Certified true from Original on file
"C-8" ⁷¹	Tugaya Water District Board Resolution No. 005, series of 2009 requesting LWUA for the release of Funds intended for the implementation of the PhP25 Million Tugaya Water Supply System Project adopted on November 14, 2009, consisting of two (2) pages.	Certified true from Original on file
"C-9" ⁷²	LWUA Office of the Administrator logbook, entry dated December 22, 2010, with the following information: LTR DTD 26 Nov. 2010 FROM: Mun. Mayor Hon. Alber A. Balindong RE: Attached Board Res No. 02 S 2010, requesting the LWUA to release to the payment of the Dev't of Tuwagay WD in favor of Mr. Jamaloden H. Faizal & appointment of newly appointed as acting GM and other pertinent documents, consisting of two (2) pages, found on pages 70-71 of the logbook.	Certified true from Original on file
"F-14" ⁷³	Follow-up Letter dated November 26, 2010, signed by Mayor Alber N.A.P. Balindong, Municipal Mayor addressed to Daniel I. Landingin, LWUA Acting Administrator thru Engr. Bede Gata, Technical Engineering Department, requesting for the release of the PhP25 Million loan.	Photocopy on file
"F-15" ⁷⁴	Sangguniang Bayan Resolution No. 02 Series of 2010, requesting the LWUA to release the payment for the Development of Tugaya Water District in favor of Mr. Jamaloden H. Faisal, consisting of 2 pages.	Photocopy on file
"F-16" ⁷⁵	Appointment Paper of Jamaloden M. H. Faisal as Acting General Manager of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipal Mayor	Photocopy on file
"F-17" ⁷⁶	Appointment Paper of Junaina B. Macaborod as Cashier/Treasurer of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipal Mayor as recommended by Jamaloden M.H. Faisal, General Manager	Photocopy on file

⁶⁹ Record, Vol. I, p. 572.
⁷⁰ Record, Vol. I, p. 573.
⁷¹ Record, Vol. I, pp. 574-575.
⁷² Record, Vol. I, pp. 576-577.
⁷³ Record, Vol. I, pp. 574-575.
⁷⁴ See Record, Vol. II, pp. 389-390.
⁷⁵ See Record, Vol. II, p. 391.
⁷⁶ See Record, Vol. II, p. 392.

x-----x

During the scheduled presentation of witness Dumindin, the counsel for accused Faisal manifested that he is waiving his right to examine the witness.⁷⁷

On January 29, 2020, the prosecution called to the witness stand **Engineer Bede G. Gata (“Gata”)**,⁷⁸ who identified his Judicial Affidavit dated January 22, 2020,⁷⁹ which constituted as his direct testimony. Witness Gata is the Division Manager of the Utilities Development-4 (“UDEV-4”), Water and Sanitation Utilities Development Department (“WSUDD”), Local Water Utilities Administration (“LWUA”). As the Division Manager, his duties and responsibilities include the following: (1) coordination/conducting briefing to Local Government Units (“LGUs”) interested in forming Local Water Districts; (2) providing management advisory assistance to water districts concerning policy formulation, operating rules and regulations, operating systems and procedures, strategies and programs; (3) monitoring the implementation of the same including safekeeping of documents requested from or submitted by the water districts; (4) supervision of management Advisors who are his subordinates in UDEV-4; and (5) other duties that may be given from time to time by his immediate supervisor, the WSUDD Department Manager.

Witness Gata likewise identified the following documents attached to his Judicial Affidavit:

Exhibit	Description
“C-10” ⁸⁰	Letter dated November 26, 2010, signed by Mayor Alber N.A.P. Balindong addressed to Daniel I. Landingin, Acting Administrator, LWUA.
“C-11” ⁸¹	Appointment Paper of Mr. Jamaloden H. Faisal as Acting General Manager of Tugaya Water District dated December 16, 2010, signed by Mayor Alber N.A.P. Balindong.
“C-12” ⁸²	Appointment Paper of Ms. Junaina B. Macaborod as Cashier/Treasurer of Tugaya Water District dated December 16, 2010, signed by Mayor Alber N.A.P. Balindong.

Witness Gata testified that he recalled having received the appointment papers of the directors and the general manager of the Tugaya Water District pursuant to the application for the formation thereof. The appointment papers of the directors and the general manager are required so that LWUA can communicate and coordinate with the duly appointed officers of the water district. Further, LWUA communicates with the general manager of the water district concerned, since he has full supervision and control of the maintenance and operation of water district facilities, and he is the representative of the Board of Directors before the LWUA. Witness Gata also

⁷⁷ TSN dated January 28, 2020, p. 8.

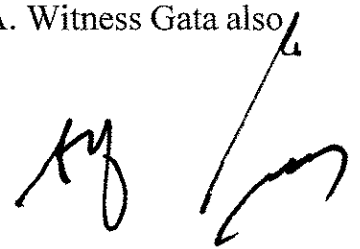
⁷⁸ TSN dated January 29, 2020.

⁷⁹ Record, Vol. I, pp. 505-520.

⁸⁰ Record, Vol. I, p. 520.

⁸¹ Record, Vol. I, p. 518.

⁸² Record, Vol. I, p. 519.



X-----X

recalled that it was Mayor Balindong who brought the appointment papers of accused Faisal and Macaborod during one of his visits to the LWUA office.

On cross-examination, witness Gata admitted the source of Exhibits “C-10”, “C-11”, and “C-12” are mere photocopies. He also admitted that he has knowledge only as to the fact of reporting and the reports which are submitted to him by the Advisor Manager concerning the local water districts. As the Division Manager, part of his duties and responsibilities is to approve or disapprove the formation of local water districts, including the approval or disapproval of the appointment of the General Manager or the OIC. Witness Gata likewise admitted that he did not scrutinize the appointment paper of accused Faisal and only relied on the presumption that the appointment was regular, as it is already included in the application for conformance. As for the alleged meeting with Mayor Alber Balindong, he did not request for the presentation of any identification card because Mayor Balindong was referred to his office by then LWUA Chairman Pichay.⁸³

On question propounded by the Court, witness Gata clarified that he saw the originals of Exhibits “C-10”, “C-11”, and “C-12” when he had them photocopied for purposes of record keeping. However, he admitted that the appointment paper of accused Faisal submitted to LWUA was not in accordance with Sections 3 and 9 of P.D. No. 198, which states that the Board of Directors of the local water district should appoint the General Manager. While the LWUA has the authority to nullify the said appointment, they were not able to do so because of inadvertence. Nevertheless, LWUA continued to recognize accused Faisal as the Acting General Manager and corresponded and coordinated with him. According to witness Gata, his office was only able to discover the impropriety of the appointment of accused Faisal when they received the *subpoena* from the Office of the Ombudsman.⁸⁴

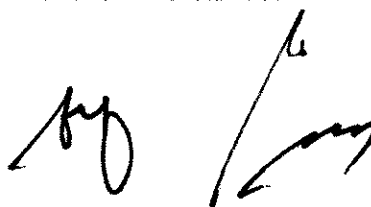
On March 9, 2020, the prosecution presented its next witness **Froilan Casian B. Grageda (“Grageda”)**,⁸⁵ who identified his Judicial Affidavit dated February 17, 2020,⁸⁶ which constituted as his direct testimony. Witness Grageda is a Special Investigator III (“SI III”) of the NBI-Bohol District Office. From 2009 until 2016, he was assigned to the NBI-Iligan District in Lanao del Norte. As an SI III, his duties and responsibilities include: (1) investigating crimes on his own initiative or as the public interest requires; (2) acting as team leader on cases assigned to him for the conduct of investigations in which the NBI has primary jurisdiction to undertake; (3) prepare and sign affidavits in relation to his assigned cases; (4) perform such other tasks as may be assigned by the head of the office.

⁸³ TSN dated January 29, 2020, pp. 10-42.

⁸⁴ TSN dated January 29, 2020, pp. 43-43.

⁸⁵ TSN dated March 9, 2020.

⁸⁶ Record, Vol. I, pp. 597-637.



x-----x

Witness Grageda testified that in 2014, by virtue of the Memorandum dated August 13, 2014, from the Department of Justice (“DOJ”) Secretary, the Letter dated July 10, 2014, of one Norodin A. Guraolim (“Guraolim”) was referred to the NBI. In the said letter, Guraolim is requesting NBI’s assistance to conduct a fact-finding investigation or ocular inspection in relation to the approved and released Php25 Million Water Supply Project of the Tugaya Water District. Subsequently, another Memorandum dated November 11, 2014, from the DOJ Secretary, was issued referring to the letter dated October 21, 2014, of Guraolim addressed to the NBI. In January 2015, witness Grageda was assigned as a member of the NBI team, along with NBI Intelligence Officer I Mahatma E. Sarip and Rogelio Cabahug, a retired Pipefitter Foremen of the Iligan Water Works System, tasked to conduct an ocular inspection relating to the said project. On February 12, 2015, the NBI team went to the Municipality of Tugaya, Lanao del Sur, and conducted an ocular inspection of the nine (9) reservoirs and one (1) primary reservoir located in Mt. Gurain, as reflected in the Development Map. After conducting the ocular inspection, the NBI team prepared, signed, and submitted a Joint Affidavit of Inspection dated February 12, 2015.

Witness Grageda likewise identified the following documentary exhibits for the prosecution:

Exhibit	Description
“A-7” ⁸⁷	Joint Affidavit of Inspection by the NBI Team.
“A-7-b” ⁸⁸	Signature of witness Grageda appearing in the Joint Affidavit.
“A-7-c” ⁸⁹	Signature of Rogelio Cabahug appearing in the Joint Affidavit.
“A-7-d” ⁹⁰	Signature of Atty. Alex T. Cabornay appearing in the Joint Affidavit
“A-6” ⁹¹	Memorandum from the Secretary dated August 13, 2014.
“A-5” ⁹²	Memorandum from the Secretary dated November 11, 2014.
“A-1” ⁹³	Letter dated July 10, 2014, of Norodin A. Guroalim.
“A-8” ⁹⁴	Development Map of the Municipality of Tugaya.
“A-9” ⁹⁵	Distance of Intake Tank (Source Water) to Primary Reservoir from Primary Reservoir to Reservoir 1, 2 and 3.
“A-10” to “A-10- o” ⁹⁶	Sixteen (16) pictures of the locations of the alleged nine (9) reservoirs and one (1) primary reservoir of the Tugaya Water District taken during the inspection conducted on February 12, 2015.
“A-4” ⁹⁷	Letter of Atty. Cabornay dated February 23, 2015, addressed to the Ombudsman-Mindanao.
“A-4-a” ⁹⁸	Signature of Atty. Cabornay found on the last page of the letter dated February 23, 2015.

⁸⁷ Record, Vol. I, pp. 612-614.
⁸⁸ Record, Vol. I, p. 614.
⁸⁹ *Id.*
⁹⁰ *Id.*
⁹¹ Record, Vol. I, p. 615.
⁹² Record, Vol. I, p. 616.
⁹³ Record, Vol. I, p. 617.
⁹⁴ Record, Vol. I, p. 618.
⁹⁵ Record, Vol. I, pp. 619-620.
⁹⁶ Record, Vol. I, pp. 621-626.
⁹⁷ Record, Vol. I, pp. 627-637.
⁹⁸ Record, Vol. I, p. 637.

Handwritten signatures and initials, including a large signature that appears to be 'Gy' and another signature below it, with a line pointing to the table above.

On questions propounded by the Court, witness Grageda testified that he was accompanied by witness Mahatma Sarip, Cabahug, military personnel, and barangay officials when they conducted the inspection on February 12, 2015. It was the barangay officials who pointed to the team where the reservoirs are supposed to be situated. However, on inspection, the alleged reservoirs were not existing. Moreover, the team found that a public bidding did not take place and the accused only used the name of NASCON Builders in the papers to make it appear that the project was implemented.⁹⁹

The next witness for the prosecution is **Mahatma E. Sarip** (“Sarip”), whose Judicial Affidavit¹⁰⁰ dated January 23, 2020, constituted as his direct testimony. Witness Sarip is an employee of the NBI-Iligan City District Office. He was assigned as a member of the NBI Team, along with witnesses Grageda and Cabahug, tasked to conduct an ocular inspection relating to the Water Supply Project of the Tugaya Water District. Witness Sarip, in his Judicial Affidavit, identified the same documents previously identified by witness Grageda.

During the March 9, 2020, hearing,¹⁰¹ counsel for accused Faisal offered to stipulate on the testimony of the witness Sarip - that if asked the same questions during the cross-examination, the same witness will give the same answers to the questions earlier asked from the prosecution witness Grageda. With this stipulation, the prosecution dispensed with the presentation of witness Sarip.

On October 22, 2021, the prosecution called to the witness stand **Cecile Jacqueline Pelayo Larena** (“Larena”),¹⁰² who identified her Judicial Affidavit dated May 3, 2021,¹⁰³ which constituted as her direct testimony. Witness Larena is holding the position of Associate Graft Investigation Officer III (“AGIO III”) assigned at the Fact-Finding Investigation Bureau of the Office of the Ombudsman for Mindanao. As AGIO III, her duties and responsibilities include: (1) evaluating criminal and administrative complaints and/or intelligence information; (2) conducting fact-finding investigation; (3) gathering documentary evidence through the preparation and issuance of *subpoenas*, letters, and other correspondences; (4) prepare complaint-affidavits relative to the fact-finding investigation assigned to her; (5) testify as a witness on cases investigated; and (6) perform such other tasks as may be assigned by the head of the office. Witness Larena prepared and filed the Complaint-Affidavit dated March 28, 2016, against accused Faisal and Ebrahim for violation of Section 3(e) of R.A. No. 3019 relative to the Php25 Million Water Supply Project of the Tugaya Water District.

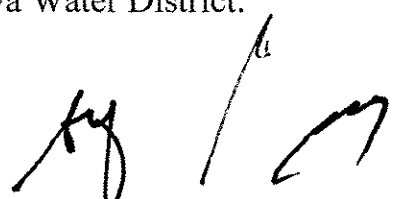
⁹⁹ TSN dated March 9, 2020, pp. 10 -22.

¹⁰⁰ Record, Vol. I, pp. 638-681.

¹⁰¹ TSN dated March 9, 2020, pp. 23-27.

¹⁰² TSN dated October 22, 2021.

¹⁰³ Record, Vol. I, pp. 682-762.



x-----x

Witness Larena likewise identified the following documentary exhibits for the prosecution:

Exhibit	Description
"A" ¹⁰⁴	Complaint-Affidavit dated March 28, 2016, with attachments.
"A-22" ¹⁰⁵	Signature of witness Larena appearing in the Complaint-Affidavit.

The counsel for accused Faisal manifested that he is not conducting any cross-examination on witness Larena.

On November 5, 2021, the prosecution presented its next witness **Wilfredo I. Picazo III ("Picazo III")**,¹⁰⁶ who identified his Judicial Affidavit dated November 2, 2021,¹⁰⁷ which constituted as his direct testimony. The prosecution offered the following matters for stipulation to the defendant counsel, namely: (1) that Picazo III is a Trade and Industry Development Specialist at the Business Name Registration Division of the Competitiveness Bureau of the Department of Trade and Industry ("DTI"); (2) that as a Trade and Industry Development Specialist, he is tasked to act on *subpoenas*/requests of government agencies for verification of business names and prepare the corresponding negative or affirmative certifications; (3) that in compliance with the *subpoena* of the Office of the Ombudsman, he prepared a Certification dated June 21, 2019 for the signature of Mary Lou A. Gesilva then Assistant Director, Competitiveness Bureau of the DTI; (4) that Picazo III will testify that he can identify Exhibits "D" to "D-6"¹⁰⁸ as the certification he prepared, with the attached printouts of database search results, as well as his initial, the initial of the proof-reader, and the signature of Assistant Director Mary Lou A. Gesilva appearing thereon; (5) that in connection with these cases, he executed a Judicial Affidavit and that he can identify the same and his signature appearing thereon as well as the attachments thereto; and (6) that if testified, he will affirm and confirm the truthfulness and veracity of the contents of Exhibits "D to D-6" and his Judicial Affidavit. These were all stipulated upon by the defense counsel. Thereafter, the prosecution dispensed with the testimony of Picazo III.

On December 3, 2021, the prosecution called to the witness stand **Atty. Honorio Eduardo B. Reyes III ("Reyes III")**,¹⁰⁹ who identified his Judicial Affidavit dated November 25, 2021,¹¹⁰ which constituted as his direct testimony. The testimony of witness Reyes III was offered for the following purposes: (1) that witness Reyes III is the Chief of the Monitoring and Enforcement Division and concurrent Chief OIC of the Records and

¹⁰⁴ Record, Vol. I, pp. 689-762.

¹⁰⁵ Record, Vol. I, p. 699.

¹⁰⁶ TSN dated November 5, 2021.

¹⁰⁷ Record, Vol. II, pp. 46-64.

¹⁰⁸ Record, Vol. II, pp. 57-64.

¹⁰⁹ TSN dated December 3, 2021.

¹¹⁰ Record, Vol. II, pp. 91-117.

x-----x

Information Division of the Philippine Contractor's Association Board, Construction Industry Authority of the Philippines, Department of Trade and Industry ("DTI"); (2) that as Chief OIC of the Records and Information Division, he is tasked to act on *subpoenas*/requests of government agencies for verification of contractor's license and issue certifications requested and whenever necessary; (3) that in compliance with the *subpoena* of the Office of the Special Prosecutor, he prepared the letter dated June 19, 2019, confirming that NASCON Builders is a registered contractor attaching therewith a certified true copy of the Contractor's License of Nascon Builders, previously marked as Exhibits "E" to "E-1"¹¹¹, respectively, of the prosecution; (4) that he can identify Exhibits "E" to "E-1" as the letter he prepared, the Contractor's License which he signed as certified true copy, as well as the signatures appearing thereon; (5) that in connection with these cases, he executed a present Judicial Affidavit and that he can identify his signature appearing on page 6 thereof as well as the attachments thereto; and (6) that he can affirm and confirm the truthfulness and veracity of the contents of Exhibits "E" to "E-1" and his Judicial Affidavit. These were all stipulated upon by the counsel for accused Faisal. However, with respect to stipulation number 3, the counsel for accused Faisal stipulated thereon with the qualification that the answers of witness Reyes III in his Judicial Affidavit be likewise taken into consideration in appreciation thereof. With these stipulations, the prosecution dispensed with the testimony of witness Reyes III.

On February 9, 2022, the prosecution called to the witness stand **Nasrodin Lamping Mitmug ("Mitmug")**,¹¹² who identified his Judicial Affidavit dated January 25, 2021,¹¹³ which constituted as his direct testimony. Witness Mitmug is the sole proprietor and Authorized Managing Officer ("AMO") of NASCON Builders, a construction business duly licensed with the Philippine Contractor's Accreditation Board ("PCAB") under Contractor's License No. 14786. According to witness Mitmug, he renewed the license of NASCON Builders annually since 1992 and it has never been canceled or revoked by PCAB nor transferred to another entity. The counsel for accused Faisal did not conduct any cross-examination. As proof of ownership, witness Mitmug identified a copy of the PCAB contractor's license for FY 2011-2012 and DTI business name renewal for FY 2011-2016 in his files as proof of ownership of NASCON Builders. He executed a Sworn Statement dated February 6, 2015 (Exhibit "A-11")¹¹⁴ before the NBI-Iligan District Office with Annexes "B" and "C" (Exhibit "A-12").¹¹⁵ Witness Mitmug also testified that he had no participation in the alleged project of the Tugaya Water District and that he had no employee by the name of Engr. Alikhan M. Ebrahim. Moreover, he denied knowing accused Faisal and

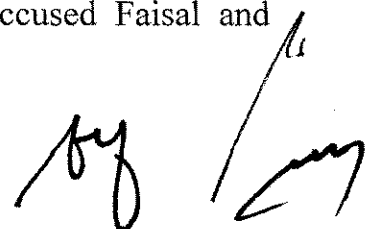
¹¹¹ Record, Vol. II. pp. 114-116.

¹¹² TSN dated January 9, 2022.

¹¹³ Record, Vol. II. pp.133-152.

¹¹⁴ Record, Vol. II. pp.147-148.

¹¹⁵ Record, Vol. II. pp.150-151.



x-----x

Ebrahim. The counsel for accused Faisal did not conduct any cross-examination.

In view thereof, the prosecution filed its *Formal Offer of Documentary Evidence*,¹¹⁶ offering the following documentary exhibits and their respective purposes, to wit:

Exhibit	Description
"A" ¹¹⁷	Complaint-Affidavit of Associate Graft Investigation Officer III Cecile Jacqueline P. Larena dated March 28, 2016, consisting of twelve (12) pages, with Certificate of Non-Forum Shopping.
"A-1" ¹¹⁸	Letter dated July 10, 2014, from Norodin P. Guroalim addressed to former Ombudsman Conchita Carpio Morales, consisting of one (1) page. Annex "A" of the Complaint-Affidavit of Larena.
"A-2" ¹¹⁹	Affidavit of Guroalim dated February 5, 2016, consisting of three (3) pages, with Verification and Certificate of Non-Forum Shopping. Annex "B" of the Complaint-Affidavit of Larena.
"A-3" ¹²⁰	Letter dated April 24, 2015, from Guroalim addressed to former Ombudsman Conchita Carpio Morales, consisting of two (2) pages. Annex "C" of the Complaint-Affidavit of Larena.
"A-4" ¹²¹	Letter dated February 23, 2015, from Atty. Alex Cabornay addressed to the Ombudsman-Mindanao, consisting of eleven (11) pages. Annex "D" of the Complaint-Affidavit of Larena.
"A-5" ¹²²	Memorandum from the Secretary, Department of Justice dated November 11, 2014; Subject: Letter of Mr. Norodin A. Guroalim, Re: Request for investigation in relation to the Php25 Million Water Supply Project to the Tugaya Water District (TWD), which remains unimplemented, consisting of one (1) page. Annex "D-11" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-6" ¹²³	Memorandum from the Secretary, Department of Justice dated August 13, 2014; Subject: Letter of Mr. Norodin A. Guroalim, Re: Request for investigation in relation to the Php25 Million Water Supply Project to the Tugaya Water District (TWD), which remains unimplemented, consisting of one (1) page. Annex "D-12" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-7" ¹²⁴	Joint Affidavit of Inspection by NBI Team dated February 12, 2015, consisting of three (3) pages. Annex "D" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-8" ¹²⁵	Development Map; Map of the Municipality of Tugaya, Lanao Del Sur, consisting of one (1) page. Annex "F" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-9" ¹²⁶	Detailed Cost Estimate, consisting of two (2) pages. Annexes "G" and "G-1" of the Complaint-Affidavit of Larena dated March 28, 2016.

¹¹⁶ Record, Vol. II, pp. 218-396.
¹¹⁷ Record, Vol. II, pp. 241-252.
¹¹⁸ Record, Vol. II, p. 253.
¹¹⁹ Record, Vol. II, pp. 254-256.
¹²⁰ Record, Vol. II, pp. 257-258.
¹²¹ Record, Vol. II, pp. 259-269.
¹²² Record, Vol. II, p. 270.
¹²³ Record, Vol. II, p. 271.
¹²⁴ Record, Vol. II, pp. 271-273.
¹²⁵ Record, Vol. II, p. 280.
¹²⁶ Record, Vol. II, p. 280.

x-----x

"A-10" ¹²⁷	One (1) picture. Annex "H" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-10-a" "A-10-b" "A-10-c" ¹²⁸	Three (3) pictures. Annex "H-1" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-10-d" "A-10-e" "A-10-f" ¹²⁹	Three (3) pictures. Annex "H-2" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-10-g" "A-10-h" "A-10-I" ¹³⁰	Three (3) pictures. Annex "H-3" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-10-j" "A-10-k" "A-10-l" ¹³¹	Three (3) pictures. Annex "H-4" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-10-m" "A-10-n" "A-10-o" ¹³²	Three (3) pictures. Annex "H-5" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-11" ¹³³	Sworn Statement of Nasrodin L. Mitmug dated February 6, 2015, consisting of four (4) pages. Annex "I" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-12" ¹³⁴	Summary of Expenses Released to Tugaya Water District, consisting of two (2) pages. Annexes "J" and "J-1" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-13" ¹³⁵	Sworn Statement of Mohammad M. Aliaromponi dated February 13, 2015, consisting of four (4) pages. Annexes "K", "K-1", "K-2" and "K-3" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-14" ¹³⁶	Letter dated January 10, 2013, addressed to Hon. Rene Villa, consisting of one (1) page. Annex "L" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-15" ¹³⁷	Memorandum dated March 17, 2015, from Commission on Audit ("COA") State Auditor IV Mimbawag M. Salic addressed to Ompig D. Zainal, Director III/OIC, COA-ARMM, Cotabato City, consisting of ten (10) pages. Annexes "M", "M-1", "M-2", "M-3", "M-4", "M-5", "M-6", "M-7", "M-8", and "M-9" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-16" ¹³⁸	Memorandum dated August 25, 2015, from Commission on Audit ("COA") State Auditor IV Mimbawag M. Salic addressed to Atty. Milagros De Jesus-Macaraig, Graft Investigation and Prosecution Officer II, OIC, Field Investigation Unit, consisting of two (2) pages. Annexes "N", and "N-1" of the Complaint-Affidavit of Larena dated March 28, 2016.

¹²⁷ Record, Vol. II, p. 281.
¹²⁸ Record, Vol. II, p. 275.
¹²⁹ Record, Vol. II, p. 276.
¹³⁰ Record, Vol. II, p. 277.
¹³¹ Record, Vol. II, p. 278.
¹³² Record, Vol. II, p. 279.
¹³³ Record, Vol. II, pp. 282-285.
¹³⁴ Record, Vol. II, pp. 286-287.
¹³⁵ Record, Vol. II, pp. 288-291.
¹³⁶ Record, Vol. II, p. 292.
¹³⁷ Record, Vol. II, pp. 293-302.
¹³⁸ Record, Vol. II, pp. 303-304.

Handwritten signatures and initials, including a large 'L' and a signature that appears to be 'sy'.

X-----X

"A-17" ¹³⁹	Undated Resolution of the Tugaya Water District Board entitled "A Resolution Requesting LWUA for the Next Release of Funds for the Continuous Implementation of the P25,000,000.00 Tugaya Water District Supply System Improvement Project," with the following attachments: (1) Letter dated November 29, 2012, from Jamalodin H. Paisal (sic) addressed to Atty. Bato Ali, Regional Director, COA-ARMM; (2) Summary of Expenses of the Tugaya Water Supply System Project (First Liquidation); (3) Physical Accomplishment, as of July 2011; (4) Summary of Expenses, Details of the Period Expenses (First Billing); consisting of five (5) pages. Annexes "O", "O-1", "O-2", "O-3", and "O-4" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-18" ¹⁴⁰	Appointment Paper of Jamaloden H. Faisal as Acting General Manager of the Tugaya Water District, consisting of one (1) page. Annex "P" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-19" ¹⁴¹	Acknowledgment Receipt signed by Jamaloden H. Faisal. Annex "Q" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-20" ¹⁴²	Land Bank of the Philippines ("LBP") Check No. 402892 dated January 7, 2011. Annex "R" of the Complaint-Affidavit of Larena dated March 28, 2016.
"A-20-a" ¹⁴³	Dorsal portion of LBP Check No. 402892 dated January 7, 2011. Annex "R-1" of the Complaint-Affidavit of Larena dated March 28, 2016.
<p>Purposes:</p> <p>Exhibits "A" to "A-20-a" are being offered to prove that:</p> <ol style="list-style-type: none"> 1. Nominal complainant Field Investigation Unit ("FIU"), Office of the Deputy Ombudsman for Mindanao, represented by AGIO Larena, filed a complaint after conducting fact-finding investigation. 2. The FIU verified the allegations in the letter-complaint dated July 10, 2014, of Guraolim as well as his Affidavit dated February 5, 2016, by gathering evidentiary documents to support the charge against the accused. The FIU attached to the complaint, the evidentiary documents gathered as Annexes "A" to "R-1" which have been marked as Exhibits "A-1" to "A-20-a". 3. Actual physical inspection was conducted by the NBI pursuant to Memoranda dated August 13, 2014, and November 11, 2014, from the Secretary of Justice, directing the NBI to verify the veracity of the allegation of private complainant Guraolim. 4. The NBI Team from NBI-Iligan District Office (NBI-IDO) composed of Special Investigator Grageda, Intelligence Officer Sarip, with the help of Mr. Cabahug, retired Pipefitter Foreman of Iligan City Water Works System, executed a Joint Affidavit of Inspection (Exhibit "A-7") after actual ocular inspection of the location of the alleged Water Supply System Project of TWD confirming that the project was fictitious and non-existent. 5. The NBI Team discovered that there were no reservoirs constructed in their supposed location based on the Detailed Cost Estimate and Program of Work (Exhibits "A-8") 	

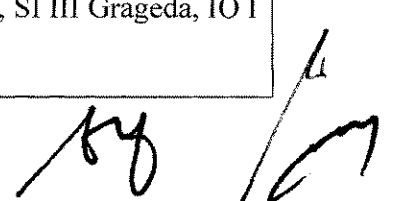
¹³⁹ Record, Vol. II, pp. 305-309.
¹⁴⁰ Record, Vol. II, p. 310.
¹⁴¹ Record, Vol. II, p. 311.
¹⁴² Record, Vol. II, p. 312.
¹⁴³ Record, Vol. II, p. 312.

X-----X

and "A-9") of the Php25.0M Water Supply System Project of the TWD using the initial funding of Php10,074,680.00 that accused Faisal received from the LWUA.

6. Accused Faisal as TWD Acting General Manager, was discharging official functions when he received the public funds, LWUA's initial funding of Php10,074,680.00 out of the Php25 Million loan as evidenced by LBP Check No. 402892 dated January 7, 2011 (Exhibits "A-19" to "A-20-a").
7. Accused Faisal as TWD Acting General Manager, submitted the liquidation documents (Exhibit "A-17," pages 1 to 5) to Atty. Bato Ali, Regional Director, COA-ARMM such as Summary of Expenses he prepared and signed (see Exhibit "A-17," pages 3 and 5) and Physical Accomplishment as of July 2011 (Exhibit "A-17," page 4) prepared by Accused Ebrahim that he "verified and certified correct," which turned out to be falsified to make it appear that the project was implemented and partly accomplished using the aforesaid amount, when in truth and in fact, the same was not implemented as the project was fictitious and non-existent.
8. Accused Faisal caused undue injury to the government. He acted with manifest partiality, evident bad faith, and gross inexcusable negligence when he submitted, in conspiracy with Accused Ebrahim, liquidation documents (Exhibit "A-17," pages 1 to 5) to Atty. Bato Ali, Regional Director, COA-ARMM such as Summary of Expenses that he prepared and signed (Exhibit "A-17," page 4) prepared by accused Ebrahim "verified and certified correct," which turned out to be falsified to make it appear that the project was implemented and partly accomplished using the said amount, when in truth and in fact, the same was not implemented as the project was fictitious and non-existent, to the damage and prejudice of the government in the aforesaid amount.
9. Witness Nasrodin L. Mitmug, the owner and Authorized Managing Officer ("AMO") of NASCON Builders, in his Sworn Statement dated February 6, 2015, executed before the NBI-IDO (Exhibits "A-11" to "A-12") that he or NASCON Builders "never engaged that particular project of Tugaya Water District" and that accused Ebrahim was not connected to his construction firm. Thus, confirming that the liquidation documents prepared and submitted by Accused Faisal and Ebrahim were falsified to make it appear that the project was implemented and partly accomplished using the said amount when in truth and in fact, the same was not implemented as the project was fictitious and non-existent.
10. Mr. Mohammad M. Aliaromponi, former Punong Barangay of Barangay Dalimbayan, Tugaya, Lanao del Sur, in his Sworn Statement dated February 13, 2015, executed before the NBI-IDO (Exhibit "A-13") denied that he signed the letter dated January 10, 2013 (Exhibit "A-14") addressed to LWUA Chairman Rene Villa requesting the release of the second tranche of the Php25.0 M loan from LWUA and confirm that "the said project was not implemented to my Barangay and other Barangays."
11. Accused Faisal in conspiracy with Accused Ebrahim, was able to appropriate, misappropriate, take, embezzle, and convert to his own personal use and benefit the amount of Php10,074,680.00, in public funds intended for the Water Supply System Project of the TWD, to the damage and prejudice of government in the aforesaid amount.

Also offered as part of the testimony of witnesses AGIO Larena, SI III Grageda, IO I Sarip, and Mitmug of NASCON Builders.



x-----x

"B" ¹⁴⁴	Certification dated June 20, 2019, issued by Marvin C. Gines, Jr., Administrative Assistant V of LWUA.
"B-1" ¹⁴⁵	Disbursement Voucher No. 1-2011-01-0002 dated January 3, 2011.
"B-2" ¹⁴⁶	Acknowledgment Receipt signed by Jamaloden H. Faisal, stamped "PAID LWUA."
"B-3" ¹⁴⁷	Project Profile, Tugaya Water District, December 2009.
"B-4" ¹⁴⁸	Authorization to Receive Check dated January 11, 2011.
"B-5" ¹⁴⁹	LWUA Form No. 021 dated January 28, 2010, signed by Bernardito L. De Jesus, LWUA Acting Deputy Administrator, Area Operations.
"B-6" ¹⁵⁰	Disbursement Voucher No. P-2010-02-0053 dated February 9, 2010.
"B-7" ¹⁵¹	Budget Status Form dated February 1, 2010.
"B-8" ¹⁵²	LWUA Form No. 008, Memorandum for the Administrator from PMED/Area 9, Operations Mindanao dated January 28, 2010, Subject: Release of Funds – Tugaya Water District (Lanao del Sur) – NLIF.
"B-9" ¹⁵³	Claims Information Sheet dated February 8, 2010.
"B-10" ¹⁵⁴	Program of Work, Tugaya (Lanao del Sur) Water District, Dec-09.
"B-11" ¹⁵⁵	Tugaya Water District – WSSIP, Detailed Cost Estimate.
"B-12" ¹⁵⁶	Page 1 of the Resolution No, 005 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled " <i>A Resolution Requesting LWUA for the Release of Funds Intended for the Implementation of the P25.0M Tugaya Water Supply System Project.</i> "
"B-13" ¹⁵⁷	Page 2 of the Resolution No, 005 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled " <i>A Resolution Requesting LWUA for the Release of Funds Intended for the Implementation of the P25.0M Tugaya Water Supply System Project.</i> "
"B-14" ¹⁵⁸	Page 1 of the Resolution No. 003 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled " <i>Resolution Authorizing the Acting-General Manager to sign the Memorandum of Understanding and Financial Assistance Contract for an (sic) in behalf of the Tugaya Water District relative to the implementation of the proposed P25.0 M Tugaya Water Supply System Project.</i> "
"B-15" ¹⁵⁹	Page 2 of the Resolution No. 003 series of 2009 issued by the Board of Directors of the Tugaya Water District entitled " <i>Resolution Authorizing the Acting-General Manager to sign the Memorandum of Understanding and Financial Assistance Contract for an (sic) in behalf of the Tugaya Water District relative to the implementation of the proposed P25.0 M Tugaya Water Supply System Project.</i> "
"B-16" ¹⁶⁰	Projected Cash Requirement.

144 Record, Vol. II, p. 313.
 145 Record, Vol. II, p. 314.
 146 Record, Vol. II, p. 315.
 147 Record, Vol. II, p. 316.
 148 Record, Vol. II, p. 317.
 149 Record, Vol. II, p. 318.
 150 Record, Vol. II, p. 319.
 151 Record, Vol. II, p. 320.
 152 Record, Vol. II, p. 321.
 153 Record, Vol. II, p. 322.
 154 Record, Vol. II, p. 323.
 155 Record, Vol. II, p. 324.
 156 Record, Vol. II, p. 325.
 157 Record, Vol. II, p. 326.
 158 Record, Vol. II, p. 327.
 159 Record, Vol. II, p. 328.
 160 Record, Vol. II, p. 329.

Handwritten signatures and a number 4.

X-----X

"B-17" ¹⁶¹	Page 1 of the Cost Breakdown, Tugaya (Lanao del Sur) Water District, Dec-09.
"B-18" ¹⁶²	Page 2 of the Cost Breakdown, Tugaya (Lanao del Sur) Water District, Dec-09.
"B-19" ¹⁶³	Field Cash Requirement, Tugaya Water District.
"B-20" ¹⁶⁴	LWUA Board of Trustees Resolution No. 55 series of 2010, Subject: P25.000 Million Financial Assistance for Tugaya WD (Lanao del Sur)
"B-21" ¹⁶⁵	Identification Card No. TLDS-027 of Mr. Omar G. Ampuan, Information Officer, Municipality of Tugaya, Lanao del Sur and Community Tax Certificate ("CTC") No. CCI2009-21577076 dated January 7, 2010.
"B-22" ¹⁶⁶	LWUA Memorandum for Consideration of Board of Trustees dated January 6, 2009, Subject: Financial Assistance for Tugaya (Lanao del Sur) WD.
"B-23" ¹⁶⁷	Memorandum for the Administrator dated January 6, 2010, Subject: Proposed Php25.0M Program of Work ("POW") and Financial Assistance for Tugaya (Lanao del Sur) Water District ("TWD").
"B-24" "B-25" "B-26" ¹⁶⁸	Undated Memorandum of Understanding.
<p>Purposes:</p> <p>Exhibits "B" to "B-26" are being offered to prove that:</p> <ol style="list-style-type: none"> 1. COA-LWUA has in its custody the documents pertaining to the Php25.0M loan of the TWD for the proposed Water Supply System Project in the Municipality of Tugaya, Lanao del Sur. 2. LWUA approved the loan to finance the proposed Php25.0M Program of Work ("POW") and Financial Assistance for TWD (Exhibit "B-23"). The loan amount was processed under Disbursement Voucher ("DV") No. P-2010-02-0053 dated February 9, 2010 (Exhibit "B-6") but the corresponding check was not claimed by a representative of TWD, and thus, it became stale. 3. By letter dated November 26, 2010 (Exh. "C-10") of former Tugaya Municipal Mayor Alber N.A.P. Balindong addressed to Daniel I. Landingin, Acting Administrator LWUA thru Engr. Bede Gata, Technical Engineering Department Area 9, a request was made for the release of the funds and thus, a subsequent voucher, DV No. 1-2011-01-0002 dated January 3, 2011 (Exhibit "B-1") was prepared for the release of the funds to the TWD under LBP Check No. 402892 dated January 7, 2011. 4. Accused Faisal received LBP Check No. 402892 dated January 7, 2011, as shown in the undated Acknowledgement Receipt (Exhibit "B-2") he issued in the performance of his official duties as Acting General Manager of TWD. <p>Also offered as part of the testimony of Mr. Marvin C. Gines, Jr., Administrative Assistant V of COA-LWUA.</p>	

¹⁶¹ Record, Vol. II, p. 330.
¹⁶² Record, Vol. II, p. 331.
¹⁶³ Record, Vol. II, p. 332.
¹⁶⁴ Record, Vol. II, p. 333.
¹⁶⁵ Record, Vol. II, p. 334.
¹⁶⁶ Record, Vol. II, p. 335.
¹⁶⁷ Record, Vol. II, p. 336.
¹⁶⁸ Record, Vol. II, pp. 337-339.

X-----X

C (not offered)	Letter dated June 26, 2019, from Jeci A. Lapus addressed to GIPO I Christian Jesse G. Batalla.
"C-1" ¹⁶⁹	Certificate of Conformance No. 85 issued to Tugaya WD (Lanao del Sur), consisting of one (1) page.
"C-2" ¹⁷⁰	Certification Program from Tugaya WD, consisting of four (4) pages.
"C-3" ¹⁷¹	Tugaya WD Board Resolution No. 003, series of 2008, consisting of two (2) pages.
"C-4" ¹⁷²	Municipality of Tugaya, Sangguniang Bayan Resolution No. 041 Series of 2009, entitled: Resolution Creating Tugaya Water District and Providing Funds therefore and For Other Purposes, consisting of three (3) pages.
"C-5" ¹⁷³	LWUA Memorandum for the Administrator dated 9 December 2009 from WDD/Mindanao, OSDA recommending the Approval of the formation of Tugaya Water District, with stamped "Approved" dated December 18, 2009, signed by Daniel I. Landingin.
"C-6" ¹⁷⁴	LWUA Memorandum for the Administrator dated 9 December 2009 from WDD/Mindanao, OSDA recommending the Issuance of Conditional Certificate of Conformance to Tugaya Water District (Lanao del Sur) signed by Emmanuel B. Malicdem, Acting Senior Deputy Administrator with stamped "APPROVED" dated December 18, 2009, signed by Daniel I. Landingin.
"C-7" ¹⁷⁵	Formation Action Check List evaluated by Bede G. Gata OIC, A9-WDD Mindanao.
"C-8" ¹⁷⁶	TWD Board Resolution No. 005 Series of 2009, entitled: <i>A Resolution Requesting LWUA for the Release of Funds Intended for the Implementation of the P25.0M Tugaya Water Supply System Project, consisting of 2 pages.</i>
"C-9" ¹⁷⁷	Certified true copy of Logbook entry under entry number 2587-10, confirming that the Office of the Administrator, LWUA received the letter dated November 26, 2010, from Tugaya Municipal Mayor Alder A. Balindong with attached Board Resolution No. 02 S. 2010 requesting the LWUA to release to the payment for the Development of Tugaya WD in favor of Mr. Jamaloden H. Faizal & Appointment of Acting GM & Other pertinent documents; consisting of two pages.
"C-10" ¹⁷⁸	Letter dated November 26, 2010, of Tugaya Municipal Mayor Alber N.A.P. Balindong addressed to Daniel I. Landingin, Acting Administrator LWUA thru Engr. Bede Gata, Technical Engineering Department Area 9.
"C-11" ¹⁷⁹	Appointment paper dated December 16, 2010, of Mr. Jamaloden H. Faisal as Acting General Manager of Tugaya Water District signed by Tugaya Municipal Mayor Alber N.A.P. Balindong.
"C-12" ¹⁸⁰	Appointment paper dated December 16, 2010, of Ms. Junaina B. Macaborod as Cahier/Treasurer of Tugaya Water District signed by Tugaya Municipal Mayor N.A.P. Balindong.
Purposes:	

¹⁶⁹ Record, Vol. II, p. 340.
¹⁷⁰ Record, Vol. II, pp. 341-344.
¹⁷¹ Record, Vol. II, pp. 345-346.
¹⁷² Record, Vol. II, pp. 347-349.
¹⁷³ Record, Vol. II, p. 350.
¹⁷⁴ Record, Vol. II, p. 351.
¹⁷⁵ Record, Vol. II, p. 352.
¹⁷⁶ Record, Vol. II, p. 353-354.
¹⁷⁷ Record, Vol. II, pp. 355-356.
¹⁷⁸ Record, Vol. II, p. 357.
¹⁷⁹ Record, Vol. II, p. 358.
¹⁸⁰ Record, Vol. II, p. 359.

Handwritten signatures and initials, including a large signature that appears to be 'Jy' and another signature to its right.

x-----x

Exhibits "C" to "C-12" are being offered to prove that:

1. The TWD was created pursuant to the requirement of Presidential Decree No. 198, as amended.
2. LWUA Utilities Development (UDEV-4), Water and Sanitation Utilities Development Department (WSUDD) has in its custody a photocopy of the appointment papers of Accused Jamaloden H. Faisal (Exhibit "C-11") and Ms. Juniana B. Macaborod (Exhibit "C-12"). The documents were submitted personally by Mayor Alber N.A.B. Balindong as testified by witness Engr. Bede G. Gata.
3. The appointment papers were attached to a letter of Mayor Alber N.A.B. Balindong (Exhibit "C-10") requesting the release of loan from LWUA Acting Administrator Daniel I. Landingin.
4. Accused Faisal was duly appointed as Acting General Manager of the TWD, although his appointment was not in accordance with Section 23 of PD No. 198, as amended and his Appointment paper was duly received by LWUA on December 22, 2010.
5. The Appointment papers of Accused Faisal and Ms. Macaborod (Exhibits "C-11" and "C-12" were stamped received at the Office of the Administrator, LWUA as shown in the Logbook entry dated December 22, 2010, found on pages 70 and 71 of said logbook (Exhibits "C-9") as testified to by witness Amelia G. Dumindin, Chief Administrative Officer, LWUA Records, and Communications Division. The aforesaid appointment papers with stamped received by the Office of the Administrator, LWUA were the same documents that Accused Faisal and Ms. Macaborod presented to the PNB Carmen Branch in opening the PNB Regular Government savings Account Number 432017300020, under Account Name Tugaya Lanao del Sur Water District (see also Exhibit "F-16" and "F-17").
6. As explained by Engr. Bede G. Gata, their office did not see the need for an original or a certified true copy of the appointment papers "since we are only using the document to update us of the duly appointed directors and managers of the water district. the original of appointment papers should be in the custody of the water district and the appointee."

Also offered as part of the testimony of witnesses Dumindin and Gata.

"D" ¹⁸¹	Certification dated June 21, 2019, issued by Mary Lou A. Gesilva, Assistant Director, Competitiveness Bureau, Department of Trade and Industry ("DTI"), consisting of two (2) pages.
"D-1" ¹⁸²	Subpoena dated June 18, 2019, addressed to the Program of Director, Program Management Team for Business Registration ("PMT-BR"), DTI
"D-2" ¹⁸³	Search page, computer print-out of the record of NASCON Builders, Business Names Services, DTI.
"D-3" ¹⁸⁴	Transaction Inquiry, computer print-out of the record of NASCON Builders, Business Names Services, DTI.
"D-4" ¹⁸⁵	Business Names Services Archive Search of NASCON Builders, Business Names Services, DTI.

¹⁸¹ Record, Vol. II, pp. 360-361.

¹⁸² Record, Vol. II, p. 362.

¹⁸³ Record, Vol. II, p. 363.

¹⁸⁴ Record, Vol. II, p. 364.

¹⁸⁵ Record, Vol. II, p. 365.

X-----X

<p>“D-5”¹⁸⁶ “D-6”¹⁸⁷</p>	<p>Business Information of NASCON Builders, Business Names Services, DTI.</p>
<p>“D-7”¹⁸⁸</p>	<p>DTI Business Name Registration renewal for NASCON Builders with Certificate No. 01498648 valid from September 6, 2011, to September 6, 2016.</p>
<p>Purposes:</p> <p>Exhibits “D” to “D-7” are being offered to prove that:</p> <ol style="list-style-type: none"> 1. NASCON Builders is a business name duly registered with the DTI under the name of Mr. Nasrodin Lamping Mitmug as a sole proprietorship business since January 1992. 2. NASCON Builders’ DTI business name registration has been continuously renewed by the owner, Nasrodin Lamping Mitmug. 3. At the time material to these cases, NASCON Builders had a valid and existing DTI Business Name Registration. NASCON Builders’ license was renewed (Exhibit “D-7”) from September 6, 2011, to September 6, 2016. 4. There is no NASCON Builders on record with the DTI under the name of accused Alikhan M. Ebrahim as General Manager. 5. Exhibit “A-12” was falsified to make it appear that Accused Alikhan M. Ebrahim was the General Manager of NASCON Builders and to make it appear that NASCON Builders implemented the construction project of TWD to from part of the liquidation documents for the initial funding of Php10,074,680.00 for the TWD Water Supply System Project through a loan from LWUA and as a requirement for the release of the second tranche of the Php24 million loan. <p>Also offered as part of the testimony of witness Picazo and Mitmug.</p>	
<p>“E”¹⁸⁹</p>	<p>Letter dated June 19, 2019, from Atty. Honorio Eduardo B. Reyes III, Chief, Monitoring and Enforcement Division, Concurrent Chief OIC, Records, and Information Division, Construction Industry Authority of the Philippines, consisting of two (2) pages.</p>
<p>“E-1”¹⁹⁰</p>	<p>Contractor’s License of NASCON Builders (renewal) under License No. 14786 with a validity period from July 1, 2019, to June 30, 2020.</p>
<p>“E-2”¹⁹¹</p>	<p>Contractor’s License of NASCON Builders (renewal) under License No. 14786 with a validity period from July 1, 2011, to June 30, 2012.</p>
<p>Purposes:</p> <p>Exhibits “E” to “E-1” are being offered to prove that:</p> <ol style="list-style-type: none"> 1. NASCON Builders is duly registered and licensed with the Philippine Contractor’s Accreditation Board (“PCAB”) under the name of Nasrodin Lamping Mitmug, owner and its AMO. 	

¹⁸⁶ Record, Vol. II, p. 366.
¹⁸⁷ Record, Vol. II, p. 367.
¹⁸⁸ Record, Vol. II, p. 368.
¹⁸⁹ Record, Vol. II, pp. 369-370.
¹⁹⁰ Record, Vol. II, p. 371.
¹⁹¹ Record, Vol. II, p. 372.

x-----x

2. NASCON Builders' contractor's license has been continuously renewed by the owner, Nasrodin Lamping Mitmug.
3. At the time material to his cases, NASCON Builders had a valid and existing Contractor's License renewal and was renewed (Exhibit "E-2") from July 1, 2011 to June 30, 2012.
4. There is no NASCON Builders on record with the PCAB under the name of Accused Alikhan M. Ebrahim as either owner and/or AMO.
5. Exhibit "A-12" was falsified to make it appear that accused Alikhan M. Ebrahim was the General Manager of NASCON Builders and make it appear that NASCON Builders implemented the construction project of TWD to form part of the liquidation documents for the initial funding of Php10,074,680.00 for the TWD Water Supply System Project through a loan from LWUA and as a requirement for the release of the second tranche of the Php25 million loan.

Also offered as part of the testimony of witnesses Reyes III and Mitmug.

"F" ¹⁹²	Certificate dated October 10, 2019, that the documents covering the account of Tugaya (Lanao del Sur) Water District are all faithful reproduction and/or certified true copies of the original documents on file with the CDO-Carmen Branch signed by Edgardo S. Pates, Branch Manager
"F-1" ¹⁹³	PNB Account Information Form for Regular Passbook (Government) with Account No. 432017300020 signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod.
"F-2" ¹⁹⁴	Client Information Form of Jamaloden Mangco Hadji Faisal.
"F-3" ¹⁹⁵	Client Information Form of Junaina Balindong Macaborod.
"F-4" ¹⁹⁶	Signature Card of Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod.
"F-5" ¹⁹⁷	Business Information Form from Tugaya Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories.
"F-6" ¹⁹⁸	Addendum to the Terms and Conditions Governing the Opening and Maintenance of Deposit Accounts signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories for PNB Account No. 432017300020.
"F-7" ¹⁹⁹	Identification Cards of Jamaloden Mangco Hadji Faisal with stamp "ORIGINAL DOCUMENT SIGHTED Jan 13, 2011".
"F-8" ²⁰⁰	Identification Cards of Junaina Balindong Macaborod with stamp "ORIGINAL DOCUMENT SIGHTED Jan 13, 2011".
"F-9" ²⁰¹	Conditional Certificate of Conformance issued to Tugaya Water District (Lanao del Sur).

¹⁹² Record, Vol. II, p. 373.
¹⁹³ Record, Vol. II, p. 374.
¹⁹⁴ Record, Vol. II, p. 375.
¹⁹⁵ Record, Vol. II, p. 376.
¹⁹⁶ Record, Vol. II, p. 377.
¹⁹⁷ Record, Vol. II, p. 378.
¹⁹⁸ Record, Vol. II, p. 379.
¹⁹⁹ Record, Vol. II, p. 380.
²⁰⁰ Record, Vol. II, p. 381.
²⁰¹ Record, Vol. II, p. 382.

Handwritten signatures and initials, including a large signature that appears to be 'by' and another signature below it, with an arrow pointing to the right.

X-----X

"F-10" ²⁰²	Sangguniang Bayan Resolution No. 001 Series of 2011, designating the PNB Carmen-Cagayan de Oro City as the Depository Bank of Tugaya Water District and authorizing the Acting General Manager Mr. Jamaloden Mangco Hadji Faisal and the Cashier/Treasurer as the Official Signatories of the said Deposit Accounts, consisting of 2 pages.
"F-11" ²⁰³	Certificate of Canvass of Votes and Proclamation of Winning candidates for Tugaya Mayor and Vice Mayor for the November 13, 2010, Special Elections, signed by the Municipal Board of Canvassers.
"F-12" ²⁰⁴	Certificate of Canvass of Votes and Proclamation of Winning candidates for Members of the City/Municipal Council for November 13, 2010, Special Elections, signed by the Municipal Board of Canvassers.
"F-13" ²⁰⁵	LWUA Report of Checks issued against LWUA Equity (Account No. 1462-10001-71)
"F-14" ²⁰⁶	Follow-up Letter dated November 26, 2010, signed by Mayor Alber N.A.P. Balindong, Municipal Mayor addressed to Daniel I. Landingin, LWUA Acting Administrator thru Engr. Bede Gata, Technical Engineering Department, requesting for the release of the Php25 Million loan.
"F-15" ²⁰⁷	Sangguniang Bayan Resolution No. 02 series of 2010, requesting for the LWUA to release the payment for the Development of the Tugaya Water District in favor of Mr. Jamaloden H. Faisal, consisting of 2 pages.
"F-16" ²⁰⁸	Appointment Paper of Jamaloden H. Faisal as Acting General Manager of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipality Mayor
"F-17" ²⁰⁹	Appointment Paper of Junaina Balindong Macaborod as Cashier/Treasurer of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipality Mayor.
"F-18" ²¹⁰	PNB Deposit Slip with the handwritten date January 12, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District for check deposit of LBP Check No. 402892 amounting to Php10,074,680.00.
"F-19" ²¹¹	PNB Withdrawal Slip with the handwritten date January 18, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php5,650,000.00.
"F-20" ²¹²	PNB Withdrawal Slip with the handwritten date January 26, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php394,000.00.
"F-21" ²¹³	PNB Statement of Account for Saving Regular Government Tugaya (Lanao del Sur) Water District, Account Number 432017300020.
"F-22" ²¹⁴	PNB Manager's Check dated January 6, 2012, payable to the order of Tugaya (Lanao del Sur) Water District amounting to Php11,003.17.

202 Record, Vol. II, pp. 383-384.
 203 Record, Vol. II, p. 385.
 204 Record, Vol. II, p. 386.
 205 Record, Vol. II, p. 387.
 206 Record, Vol. II, p. 388.
 207 Record, Vol. II, pp. 389-390.
 208 Record, Vol. II, p. 391.
 209 Record, Vol. II, p. 392.
 210 Record, Vol. II, p. 393.
 211 *Id.*
 212 *Id.*
 213 Record, Vol. II, p. 394.
 214 Record, Vol. II, p. 395.

Handwritten signatures and initials, including a large signature that appears to be 'Jy' and another signature below it, with a long arrow pointing from the top right towards the table area.

x-----x

"F-23" ²¹⁵	PNB Miscellaneous Transaction Slip dated January 6, 2012, purchasing a Manager's Check for the amount of PHP11,003.17 to close Account Number 432017300020 under Account Name Tugaya (Lanao del Sur) Water District.
"F-24" ²¹⁶	Print out of Status Report for Account name Tugaya (Lanao del Sur) Water District with status "Account to be closed and to be transferred to other account maintained with Marawi Branch."
<p>Purposes:</p> <p>Exhibits "F" to "F-24" are being offered to prove that:</p> <ol style="list-style-type: none">1. Accused Faisal and Macaborod opened with PNB Carmen Branch, Cagayan de Oro City, a regular government passbook savings account under the name of Tugaya (Lanao del Sur) Water District with the two of them as authorized signatories as shown in the specimen signature cards (Exhibits "F-2", "F-3", and "F-4") with their photos and copies of their government-issued identification cards (Exhibits "F-7" and "F-8"), presenting themselves to be the duly authorized representative of the TWD as its Acting General Manager and Cashier/Treasurer, respectively.2. Accused Faisal and Macaborod presented to the PNB Carmen Branch Exhibits "F-9" to "F-17" to show proof that both were duly appointed Acting General Manager (Exhibit "F-16") and Cashier/Treasurer (Exhibit "F-17"), respectively and duly authorized by the Sangguniang Bayan of Tugaya Lanao del Sur under Sangguniang Bayan Resolution No. 001 Series of 2011 (Exhibit "F-10") as the official signatories to the bank account and designating PNB Carmen Branch as the depository bank of TWD.3. Accused Faisal acting as TWD Acting General Manager, was discharging official functions when he received the public funds, LWUA's initial funding of Php10,074,680.00 out of the Php25 million loan as evidenced by LBP Check No. 402892 dated January 7, 2011.4. Accused Faisal has custody and control of public funds by reason of the duties of his office. He and Ms. Macaborod opened PNB Regular Government Savings Account Number 432017300020, under Account Name Tugaya Lanao del Sur Water District at the PNB Carmen, Cagayan de Oro City, and deposited the check, again in the discharge of their official functions and pursuant to SB Resolution No. 001 Series of 2011. Notably, the dorsal portion of the aforesaid check (see Exhibit "A-20-a") bears the handwritten name and signature of Accused Faisal and Ms. Macaborod.5. Accused Faisal and Ms. Macaborod, as authorized signatories of PNB Regular Government Savings Account, are the only persons who can withdraw from the account (Exhibits "F-18", "F-19", and "F-20")6. Accused Faisal and Ms. Macaborod withdrew the amount in four withdrawals as shown in Exhibits "F-19" to "F-23", eventually closing the account on January 6, 2011.7. The Php10,074,680.00 that was deposited and withdrawn from the PNB Regular Government Savings Account was public funds for which Accused Faisal was accountable. He submitted the liquidation documents (Exhibit "A-17", pages 1 to 5)	

215

Id.

216

Record, Vol. II, p. 396.

x-----x

to Atty. Bato Ali, Regional Director, COA-ARMM such as Summary of Expenses that he prepared and signed (see Exhibit "A-17", pages 3 and 5) and Physical Accomplishment as of July 2011 (Exhibit "A-17", page 4) prepared by accused Ebrahim that he verified and certified correct", which turned out to be falsified to make it appear that the project was implemented and partly accomplished using the said amount when in truth and in fact, the same was not implemented as the project was fictitious and non-existent.

8. It bears reiterating that Accused Faisal in conspiracy with accused Ebrahim, was able to appropriate, misappropriate, take, embezzle, and convert to his own personal use and benefit the amount of Php10,074,680.00, in public funds withdrawn from PNB Regular Government Savings Account Number 432017300020, intended for the Water Supply System Project of the TWD, to the damage and prejudice of government in the aforesaid amount.
9. Accused Faisal caused undue injury to the government. He acted with manifest partiality, evident bad faith, and gross inexcusable negligence when he submitted, in conspiracy with accused Ebrahim, liquidation documents (Exhibit "A-17", pages 1 to 5) to Atty. Bato Ali, Regional Director, COA-ARMM such as Summary Expenses that he prepared and signed (see Exhibit "A-17", pages 3 and 5) and Physical Accomplishment as of July 2011 (Exhibit "A-17", page 4) prepared by accused Ebrahim that he verified and certified correct", which turned out to be falsified to make it appear that the project was implemented and partly accomplished using the said amount, when in truth and in fact, the same was not implemented as the project was fictitious and non-existent, to the damage and prejudice of government in the aforesaid amount.

The Court, taking into consideration the objections of the defense, resolved to admit the following exhibits of the prosecution in its *Resolution* dated March 11, 2022:

Exhibits A, A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-10-a, A-10-b, A-10-c, A-10-d, A-10-e, A-10-f, A-10-g, A-10-h, A-10-i, A-10-j, A-10-k, A-10-l, A-10-m, A-10-n, A-10-o, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-18, A-19, A-20, A-20-a, B, B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10, B-11, B-12, B-13, B-14, B-15, B-16, B-17, B-18, B-19, B-20, B-21, B-22, B-23, B-24, B-25, B-26, C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, C-12, D, D-1, D-2, D-3, D-4, D-5, D-6, D-7, E, E-1, E-2, F, F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-10, F-11, F-12, F-13, F-14, F-15, F-16, F-17, F-18, F-19, F-20, F-21, F-22, F-23, and F-24.²¹⁷

EVIDENCE FOR THE DEFENSE

The defense presented the following witnesses:

On June 20, 2022, the defense presented witness **Sahania M. Sumndad-Amito ("Amito")**,²¹⁸ to testify on direct examination through her Judicial Affidavit²¹⁹ dated June 15, 2022. During the hearing, the prosecution

²¹⁷ Record, Vol II, p. 421.

²¹⁸ TSN dated June 20, 2022.

²¹⁹ Record, Vol. II, pp. 453-503.

x-----x

interposed its objection to the presentation of witness Amito on the ground that she is incompetent to testify on the matters contained in her Judicial Affidavit that she is supposed to testify on. The said objection was sustained by the Court. Accordingly, witness Amito was not allowed to testify. Thereafter, the defense counsel for accused Faisal made a tender of excluded evidence that if witness Amito was allowed to testify, she would have testified, as follows: (1) that the purported Appointment Letter of accused Faisal allegedly signed by Mayor Alber Balindong, which was marked by the prosecution as Exhibit “C”, is not part of the record of the LGU of Tugaya, considering the fact that no such person by the name of Jamaloden H. Faisal has ever been connected to the LWUA LGU of Tugaya; (2) that accused Faisal is not among the roster of personnel of the LGU Tugaya as shown by the documents attached to her intended Judicial Affidavit, which are the plantilla records of the LGU Tugaya; and (3) that the subject Appointment Letter presented by the prosecution purportedly signed by Mayor Balindong is not in an official form.²²⁰

On July 12, 2022,²²¹ the defense called to the witness stand, **Alber Balindong (“Balindong”)**, to testify on direct examination through his Judicial Affidavit²²² dated July 4, 2022. The prosecution raised an objection as to the presentation of witness Balindong on the ground that the documents that he will identify are immaterial and irrelevant to the case, as they pertain to appointments of different individuals, in different forms. Thus, the Court sustained the objection interposed by the prosecution. Thereafter, the counsel for accused Faisal proffered the testimony of witness Balindong to the effect that, if he was made to testify, he would testify on the following matters: (1) that he did not sign Exhibit “C-13” indicating the appointment of accused Faisal; (2) that the signature appearing therein was not his signature; (3) that Exhibit “C-13” differs radically from the usual Civil Service Form as indicated in the attached Exhibit “3” by the defense; and that (4) there was no employee of LGU Tugaya that goes by the name of Jamaloden Faisal.²²³

On July 22, 2022, the defense filed its *Manifestation and Motion for Marking of Exhibit for Accused Faisal (With Withdrawal of Appearance of Atty. Napoleon U. Galit)*²²⁴ and *Accused Jamaloden H. Faisal’s Formal Offer of Exhibits*,²²⁵ offering the following documentary exhibits and their respective purposes, to wit:

Exhibit	Description	Purpose
“1” ²²⁶	Certification dated June 14, 2022, from the Human	To disprove the prosecution’s allegations and/or accusations that accused Faisal is a

²²⁰ Order dated June 20, 2022, Record, Vol. II, pp. 579-580.

²²¹ TSN dated July 12, 2022.

²²² Record, Vol. II, pp. 588-598.

²²³ Order dated July 12, 2022, Record, Vol. II, pp.604-605.

²²⁴ Record, Vol. II, pp. 612-614.

²²⁵ Record, Vol. II, pp. 615-630.

²²⁶ Record, Vol. II, p. 621.

x-----x

	Resource Management Office (HRMO) of the Municipality of Tugaya.	public officer, allegedly appointed by LWUA LGU Tugaya.
"2" ²²⁷	Judicial Affidavit of Mayor Alber Balindong.	Adopting the repleading and purposes stated in his Judicial Affidavit.
"2-a" ²²⁸	Certified true copy of the Appointment Form/Letter of a certain Juhairy A. Abulkhair dated April 18, 2012, with stamp received from the Civil Service Commission (CSC)	To prove that the prosecution's presented Appointment Paper of accused Faisal, Exhibit "C-11", is forged, not the official form, no signature from the Civil Service.
"2-b" ²²⁹	Certified true copy of the Appointment Form/Letter of a certain Aniraica A.H. Zaman dated April 18, 2012, with stamp received from the Civil Service Commission (CSC)	To support the above-stated purposes, showing the mark difference of prosecution's presented Exhibit "C-11".

On August 9, 2022, the prosecution filed its *Motion with Leave of Court to Admit Attached Opposition (Re: Manifestation and Motion for Marking of Exhibit for Accused Faisal)*²³⁰ and the *Opposition (Re: Manifestation and Motion for Marking of Exhibit for Accused Faisal)*.²³¹ On the same date, the prosecution likewise filed its *Motion with Leave of Court to Admit Attached Opposition (Re: Accused Jamaloden H. Faisal's Formal Offer of Exhibits)*²³² and the *Opposition (Re: Accused Jamaloden H. Faisal's Formal Offer of Exhibits)*.²³³

Acting on the foregoing, the Court, in its *Resolution*²³⁴ dated August 25, 2022, granted the prosecution's motions, and admitted the attached oppositions. Accordingly, the Court granted the withdrawal of appearance of Atty. Napoleon U. Galit and noted the entry of appearance of Atty. McDonald M. Galit for accused Faisal. The Court denied the motion for marking of accused Faisal's exhibit on the ground that the Court had already rejected the presentation of witness Amito's testimony, and that the subject certification to be marked is in fact attached to her *Judicial Affidavit* dated June 15, 2022. As for accused Faisal's *Formal Offer of Exhibits*, the Court merely noted the same in accordance with its previous *Orders* dated June 20, 2022, and July 12, 2022.

ISSUES

The following issues were raised by parties during the pre-trial.

²²⁷ Record, Vol. II, pp. 622-627.
²²⁸ Record, Vol. II, p 628.
²²⁹ Record, Vol. II, pp. 629-630.
²³⁰ Record, Vol. II, pp. 631-634.
²³¹ Record, Vol. II, pp. 635-639.
²³² Record, Vol. II, pp. 640-643.
²³³ Record, Vol. II, pp. 644-648.
²³⁴ Record, Vol. II, pp. 653-655.

x-----x

1. Whether accused Faisal is a public officer;
2. Whether the Honorable Court has acquired jurisdiction over the case and the person of the accused Faisal; and
3. Whether accused Faisal is guilty beyond reasonable doubt of the offenses charged in the Informations.

Ultimately, the issue for the Court's consideration is whether the accused are criminally liable for the violation of Section 3(e) of R.A. No. 3019, as amended in SB-18-CRM-0541; and for malversation of public funds under Article 217 of the RPC in SB-18-CRM-0542.

RULING OF THE COURT

I. Criminal Case No. SB-18-CRM-0541 for violation of Section 3(e) of Republic Act No. 3019, as amended ("Anti-Graft and Corrupt Practices Act").

Section 3(e) of Republic Act No. 3019, as amended, reads:

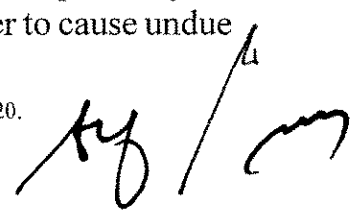
Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

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

To sustain a conviction under this provision, the prosecution must sufficiently establish that: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative, or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage, or preference.²³⁵

Hence, the State must allege in the information and establish beyond reasonable doubt during the trial that the accused acted in the discharge of his official, administrative, or judicial functions through manifest partiality or evident bad faith, or with gross inexcusable negligence in order to cause undue



x-----x

injury to any party, including the Government, or to give any private party any unwarranted benefits, advantage, or preference. The mere allegation of such modes, not being evidence, is not competent as proof of guilt.²³⁶

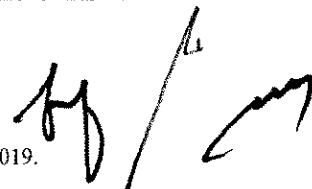
A review of the Information filed against accused Faisal and Ebrahim would readily show that they were charged with violating Section 3(e) of R.A. No. 3019, as amended “for acting with evident bad faith, manifest partiality, and/or gross inexcusable negligence” for liquidating public funds in the amount of Php10,074,680.00, representing the initial funding for the construction of the water supply improvement project of Tugaya Water District, “by making it appear that the construction/project was implemented and partly accomplished when in truth and in fact, the same was not implemented as the project was fictitious and non-existent, through the Physical Accomplishment Report as of July 2011 prepared by accused Ebrahim, and thereafter accused Faisal appropriated the said public funds for his own personal use and benefit, to the damage of the government in the aforesaid amount.”

A. The first and second elements of the violation of Section 3(e) of R.A. No. 3019, as amended: the accused is a public officer and the act was done in the discharge of official functions.

In resolving whether the first and second elements of a violation of Section 3(e) of R.A. No. 3019, it is necessary that the court must also determine whether accused Faisal is a public officer under the purview of R.A. No. 3019 and whether the Court has jurisdiction over the case and the person of the accused. To note, these facts were not stipulated upon by the parties and were brought up as issues to be resolved.

- 1. Accused Faisal is a public officer under the purview of R.A. No. 3019, as amended, and the act complained of was done in the discharge of his official function.*

Section 2(b) of R.A. No. 3019, as amended, defines the term “public officer” as that which includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government. This includes public officers in the national government, local governments, government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches as provided under Section 2(a) of the same law.



x-----x

The Supreme Court has already settled in *Davao City Water District, et. al. v. CSC and COA*,²³⁷ that local water districts formed and created pursuant to the provisions of P.D. No. 198, as amended,²³⁸ are government-owned and controlled corporations with original charter falling under the Civil Service Law and/or covered by the visitorial power of the Commission on Audit. Applying this ruling, the Supreme Court in *Eulogio Morales, et al. v. People*²³⁹ held that the clear import of the *Davao City Water ruling* “was to place employees of water districts under the Anti-Graft Law and thus within the jurisdiction of the Sandiganbayan.” Thus, pursuant to Section 4(a)(g) of R.A. No. 10660,²⁴⁰ the Sandiganbayan has exclusive original jurisdiction in all cases involving a violation of R.A. No. 3019, as amended, where one or more of the accused are presidents, directors, or trustees, or managers of government-owned or controlled corporations.²⁴¹ Consequently, general managers of local water districts are considered public officers under R.A. No. 3019, as amended, and R.A. No. 10660.

In proving that accused Faisal is an employee of the Tugaya Water District, the prosecution offered in evidence the alleged appointment paper of accused Faisal signed by Mayor Balindong, designating him as Acting General Manager of Tugaya Water District (Exhibit “A-18”²⁴², “C-11”²⁴³, and “F-16”²⁴⁴). Notably, the appointment paper identified by witness Gata was a mere photocopy, the original of which was never been presented. Witness Gata likewise testified that the appointment paper of accused Faisal was not compliant with the provisions of P.D. No. 198,²⁴⁵ considering that it should be the local water district’s Board of Directors, and not the Municipal Mayor, who should appoint its General Manager. Section 23 of P.D. No. 198, as amended,²⁴⁶ states:

SEC. 23. The General Manager. – At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall not be removed from office, except for cause and after due process.

²³⁷ G.R. No. 95237-38, September 13, 1991.

²³⁸ Otherwise known and referred to as the “Provincial Water Utilities Act of 1973.”

²³⁹ G.R. No. 144047, July 26, 2022.

²⁴⁰ An Act Strengthening Further the Function and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as Amended, and Appropriating Funds Therefor.

SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving: “a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

“(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade ‘27’ and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

XXXX

“(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

²⁴² Record, Vol. II, p. 310.

²⁴³ Record, Vol. I, p. 518.

²⁴⁴ Record, Vol. I, p. 499.

²⁴⁵ The Provincial Water Utilities Act of 1973.

²⁴⁶ As amended by P.D. No. 768 and R.A. No. 9286.

Accordingly, it is clear that by law, accused Faisal was not regularly appointed or elected to the position of Acting General Manager of Tugaya Water District. Nonetheless, the prosecution's evidence still established several facts that would support the application of estoppel against accused Faisal.

First, aside from the appointment paper, the prosecution also offered in evidence the Sangguniang Bayan Resolution No. 001, series of 2011 (Exhibit "F-10").²⁴⁷ Based on this resolution, the Sangguniang Bayan of the Municipality of Tugaya recognized accused Faisal as the Acting General Manager of the Tugaya Water District and even designated him as one of the authorized signatories who can transact with PNB Carmen-CDO branch on behalf of the water district.

Second, as can be culled from the testimony of witness Gata, the LWUA itself, the only specialized institution for the promotion, development, and financing of local water districts, recognized accused Faisal as the Acting General Manager of the Tugaya Water District. According to witness Gata, LWUA continued working and coordinating with accused Faisal for matters relating to the Tugaya Water District. This was further evidenced by the various documents which was signed by accused Faisal or which designated him as the Acting General Manager of the Tugaya Water District, and which LWUA accepted as official documents emanating from the said water district (e.g., Appointment Paper of Accused Faisal and the Acknowledgment Receipt for the Php10,074,680.00). These documents bolstered witness Gata's testimony that the LWUA indeed transacted with accused Faisal as if he was the validly appointed Acting General Manager of Tugaya Water District.

Third, accused Faisal himself accepted the designation and discharged the functions of the Acting General Manager of Tugaya Water District as evidenced by his actions, particularly concerning the bank account of Tugaya Water District and the LWUA-drawn funds. These actions of accused Faisal were duly echoed in the following bank documents, which are certified true copies from the original on file:

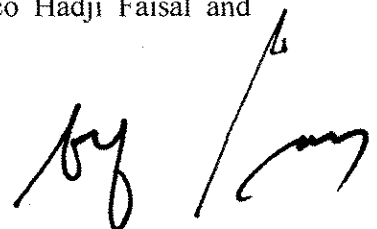
PNB Account Information Form for Regular Passbook (Government) with Account No. 432017300020 signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod (Exhibit "F-1");²⁴⁸ Client Information Form of Jamaloden Mangco Hadji Faisal (Exhibit "F-2");²⁴⁹ Signature Card of Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod (Exhibit "F-4");²⁵⁰ Business Information Form from Tugaya Water District signed by Jamaloden Mangco Hadji Faisal and

²⁴⁷ Record, Vol. II, pp. 383-384.

²⁴⁸ Record, Vol. II, p. 374.

²⁴⁹ Record, Vol. II, p. 375.

²⁵⁰ Record, Vol. II, p. 377.

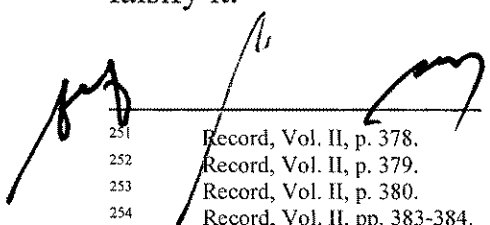


x-----x

Junaina Balindong Macaborod as authorized signatories (Exhibit “F 5”);²⁵¹ Addendum to the Terms and Conditions Governing the Opening and Maintenance of Deposit Accounts signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories for PNB Account No. 432017300020 (Exhibit “F-6”);²⁵² Identification Cards of Jamaloden Mangco Hadji Faisal with stamp “ORIGINAL DOCUMENT SIGHTED Jan 13 2011 (Exhibit “F-7”);²⁵³ Sangguniang Bayan Resolution No. 001 Series of 2011, designating the PNB Carmen-Cagayan de Oro City as Depositary Bank of Tugaya Water District and authorizing the Acting General Manager Mr. Jamaloden Mangco Hadji Faisal and the Cashier/Treasurer as the Official Signatories of the said Deposit Accounts, consisting of 2 pages (Exhibit “F-10”);²⁵⁴ Deposit Slips, Bank Statement of Account, and Manager’s Check (Exhibits “F-18” to “F-24”);²⁵⁵ PNB Withdrawal Slip with the handwritten date January 18, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php5,650,000.00 (Exhibit “F-19”);²⁵⁶ the PNB Withdrawal Slip with the handwritten date January 26, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php394,000.00 (Exhibit “F-20”);²⁵⁷ and the original copy of the Acknowledgement Receipt signed by accused Faisal (Exhibit “B-2”);²⁵⁸

Based on the above-mentioned documentary exhibits, it can be inferred that accused Faisal, as the Acting General Manager of Tugaya Water District, facilitated the opening of the bank account by submitting the Client Information Form, Business Information Form, and signature specimens. He then received the Landbank check issued by the LWUA for the initial tranche of funds, issued an Acknowledgment Receipt for the same, and then deposited the check with the PNB Carmen-CDO Branch. Thereafter, accused Faisal facilitated the withdrawal of the LWUA-drawn funds and the eventual closing of the bank account under the name of Tugaya Water District.

The principle of equitable estoppel or *estoppel in pais* would now operate to prevent accused Faisal from asserting that he is not the Acting General Manager of the Tugaya Water District. Sec. 2(a), Rule 131 of the Rules of Court states that “whenever a party has, by his [sic] own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he [sic] cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.”



251 Record, Vol. II, p. 378.
252 Record, Vol. II, p. 379.
253 Record, Vol. II, p. 380.
254 Record, Vol. II, pp. 383-384.
255 Record, Vol. II, p. 393-396.
256 Record, Vol. II, p. 393
257 *Id.*
258 Record, Vol. II, p. 315.

Equitable estoppel under Sec. 2(a), Rule 131 prevents accused Faisal from taking the view that he was never associated with the Tugaya Water District or that he was not the Acting General Manager thereof, during the period material to the cases at bar, despite the lack of a valid appointment in accordance with P.D. No. 198.

In addition to the principle of equitable estoppel, the Court also declares accused Faisal as a *de facto* officer under the *de facto* officer doctrine. Jurisprudence defines *de facto* officers as those who have the reputation or appearance of being the officers they assume to be but who, in fact, under the law, have no right or title to the office they assume to hold.²⁵⁹

In *Reynaldo Tuanda, et al., v. Sandiganbayan et al.*,²⁶⁰ the Supreme Court laid down the conditions and elements of *de facto* officership, namely: (1) there must be a *de jure* office; (2) there must be a color of right or general acquiescence by the public; and (3) there must be actual physical possession of the office in good faith.

The Supreme Court resorts to the *de facto* officer doctrine to accord validity to the actions of a *de facto* officer during the period of such officer's wrongful tenure, insofar as the public or third persons are concerned. This principle was born of necessity, as the public cannot be expected to investigate the right of a public official to an office before transacting with them. Thus, on the basis of public policy and convenience, the public may assume that officials are legally qualified and in office.²⁶¹

In the case of *Benito Codilla, et. al. v. Jose Martinez, et. al.*,²⁶² the Supreme Court, citing the trial court *a quo*, ruled the designation of the acting mayor not entirely void and considered him as a *de facto* officer despite the fact that his designation was not made in accordance with the provisions of Revised Administrative Code and the Revised Election Code.

As held by the Supreme Court in a more recent case of *Libertad Alameda, et al., v. Commission on Audit*,²⁶³ the Court found the Municipal Health Officer of San Agustin, Surigao del Sur as a *de facto* officer, based on the general acquiescence by the public as shown by certain documentary exhibits (*e.g.*, Appropriation Ordinance, Plantilla of Personnel of Civil Service Commission, Photographs, and Certificates of Appreciation).

Applying this doctrine to the present case, it is established that:

²⁵⁹ *Benito Codilla, et. al. v. Jose Martinez, et. al.*, G.R. No. L-14569, November 23, 1960.

²⁶⁰ G.R. No. 110544, October 17, 1995.

²⁶¹ *Lee T. Arroyo v. The Honorable Court of Appeals and Ulysses A. Brito*, G.R. No. 202860, April 10, 2019.

²⁶² *Supra*.

²⁶³ G.R. No. 254394, April 5, 2022.

(1) there is a *de jure* office of General Manager of the Tugaya Water District under P.D. No. 198;

(2) there was a color of right or general acquiescence by the public when the Sangguniang Bayan of the Municipality of Tugaya itself, through a resolution that accused Faisal does not dispute, recognized him as the Acting General Manager of the Tugaya Water District and designated him as the authorized signatory for the bank account of the water district. The LWUA likewise recognized him as the Acting General Manager when it communicated or coordinated with him as to matters regarding the Tugaya Water District, as evidenced by the fact that he was able to receive the check for the LWUA-drawn funds. Moreover, the employees and officers of PNB Carmen-CDO branch, relying on the appointment paper and the Sangguniang Bayan Resolution, believed that accused Faisal was the Acting General Manager in 2011 and 2012, and allowed him to transact for and on behalf of the Tugaya Water District;

(3) there was a physical possession of the office in good faith since accused Faisal himself discharged the functions of his office as evidenced by his receipt of the LWUA-drawn funds and the transactions he made with the PNB Carmen Branch.

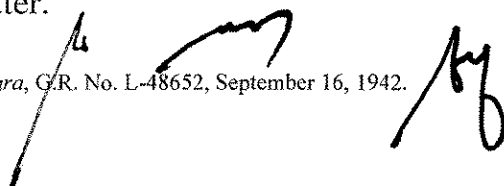
Thus, the doctrine may be relied upon to hold that at the time material to the cases, accused Faisal was a public officer discharging administrative or official functions of the Acting General Manager of the Tugaya Water District as far as the public was concerned.

2. The Court has acquired jurisdiction over the case and the person of accused Faisal.

Considering the foregoing, the Court now discusses whether it has acquired jurisdiction over the case and the person of accused Faisal.

Jurisdiction over the case or subject matter is the power of the court to hear and determine cases of the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court and defines the court and defines its powers.²⁶⁴

Section 4(a) of R.A. No. 10660 provides that the Sandiganbayan shall exercise exclusive jurisdiction in all cases involving violations of R.A. No. 3019, as amended. In this case, the Information charges accused Faisal with violation of Section 3(e) of R.A. No. 3019, as amended. Hence, the Court has jurisdiction over the subject matter.



As for the jurisdiction over the person of accused Faisal, it is well-settled that the jurisdiction over the person of an accused is acquired upon either his apprehension, with or without a warrant, or his submission to the jurisdiction of the court.²⁶⁵ Here, accused Faisal voluntarily surrendered to the Court on January 14, 2019, when he posted the cash bond for his provisional liberty.

All told, the first and second elements of the crime of violation of Section 3(e) of R.A. No. 3019, as amended, are satisfied. The prosecution was able to establish that accused Faisal was a public officer at the time material to these cases.

B. The third element of the violation of Section 3(e) of R.A. No. 3019, as amended: the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence.

The third element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. "*Manifest partiality*," "*evident bad faith*," or "*gross inexcusable negligence*" are not separate offenses, and proof of the existence of any of these three (3) "in connection with the prohibited acts is enough to convict."²⁶⁶

There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.²⁶⁷

To reiterate, the prosecution charged accused Faisal with violation of Section 3(e) of R.A. No. 3019, as amended, by allegedly appropriating Php10,074,680.00 government funds using the Physical Accomplishment Report as of July 2011, although the water supply improvement project of the Tugaya Water District was neither implemented nor partly completed.

²⁶⁵ *Maximo Valdepenas v. People*, G.R. No. L-20687, April 30, 1966.

²⁶⁶ *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409, and 202412, June 27, 2018; citations omitted.

²⁶⁷ *Jose Tapales Villarosa v. People of the Philippines*, G.R. Nos. 233155-63, June 23, 2020.

In the succeeding discussions, the Court finds that the modality of evident bad faith is present in the questioned transactions, as proved by the non-implementation of the water supply improvement project of the Tugaya Water District, as well as the liquidation and utilization of the LWUA-drawn funds by accused Faisal.

a. The water supply improvement project of the Tugaya Water District was neither implemented nor partly completed.

The records uncover the following factual antecedents of the water supply improvement project of the Tugaya Water District.

In a Special Session held on November 14, 2009, the Board of Directors of the Tugaya Water District issued its Resolution No. 005, Series of 2009, (Exhibit "C-8")²⁶⁸ requesting the LWUA for the release of the funds intended for the implementation of the P25,000,000.00 Tugaya Water Supply System Project. On November 20, 2009, the Board of Directors of the Tugaya Water District issued its Resolution No. 003, Series of 2009, (Exhibit "C-3")²⁶⁹ requesting the LWUA to grant Php25,000,000.00 for the construction of water supply facilities for various barangays in the municipality of Tugaya, Lanao Del Sur.

Thereafter, a Program of Work ("POW") dated December 2009 (Exhibit "B-10")²⁷⁰ was prepared for the Tugaya Water District. The POW was subsequently approved by the LWUA through a Memorandum for the Administrator dated January 6, 2010 (Exhibit "B-23")²⁷¹. Under the said LWUA Memorandum, the amount of Php25,000,000.00 is to be sourced from the Non-LWUA Initiated Funds ("NILF-PSF IV"). On January 28, 2010, the LWUA, through its Memorandum for the Administrator (Exhibit "B-8")²⁷² recommended the release of the P10,074,680.00, representing the estimated field cash requirement for the first two (2) months of construction.²⁷³

In support of its claim that the construction/project was neither implemented nor partly completed, the prosecution offered as evidence the Complaint-Affidavit (Exhibit "A")²⁷⁴ of witness Larena, Associate Graft Investigation Officer III. The Complaint-Affidavit includes, among others, the following: (1) Summary of Expenses of the Tugaya Water Supply System Project (First Liquidation) (Exhibit "A-12")²⁷⁵; (2) Physical Accomplishment,

²⁶⁸ Record, Vol. II, pp. 353-354.

²⁶⁹ Record, Vol. II, pp. 345-346.

²⁷⁰ Record, Vol. II, p. 323.

²⁷¹ Record, Vol. II, p. 336.

²⁷² Record, Vol. II, p. 321.

²⁷³ Exhibit "B-16", Record, Vol. II, p. 329; Exhibit "B-19", Record, Vol. II, p. 332.

²⁷⁴ Record, Vol. II, pp. 241-252.

²⁷⁵ Record, Vol. II, pp. 286-287.

x-----x

as of July 2011 (Exhibit “A-17”)²⁷⁶; (3) Summary of Expenses, Details of the Period Expenses (First Billing) (Exhibit “A-17”)²⁷⁷; and (4) Joint Affidavit of Inspection conducted by Special Investigator Grageda and Sarip (Exhibit “A-7”)²⁷⁸.

As proved by the prosecution, the NBI team, composed of Special Investigator Grageda and Sarip, with the support of retired pipefitter foreman Cabahug, conducted a verification/investigation of the water supply development project of the Tugaya Water District. The team utilized the Development Map (Exhibit “A-8”)²⁷⁹ and the Detailed Cost Estimate which includes the Distance of Intake Tank (Exhibit “A-9”)²⁸⁰ in conducting the ocular inspection and in concluding that the construction/project was neither implemented nor partly completed.

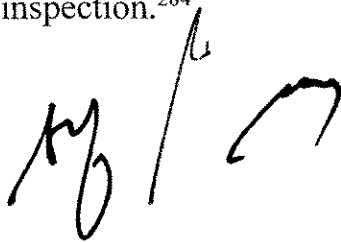
After a judicious review of the records, the Court finds that the construction/project was neither implemented nor partly completed based on the result of the verification/investigation conducted by the NBI team, the findings of State Auditor Salic, and the testimonial evidence of prosecution witness Mitmug, to wit:

1. *The verification/investigation conducted by the NBI-Iligan District Office.*

The result of the verification/investigation conducted by the NBI team belies the report submitted by accused Faisal that the construction/project was implemented and partly completed. The Court finds that the Tugaya Water District, under the leadership of accused Faisal, did not implement the water supply improvement project.

The testimonies of witnesses Grageda and Sarip and the admitted documentary exhibits consisting of the Joint Affidavit of Inspection and the Letter of Atty. Cabornay dated February 23, 2015, show the methodology used by the team in verifying and investigating the actual existence of the water supply improvement project of the Tugaya Water District. As testified to by witness Grageda in his Judicial Affidavit dated February 17, 2020, the team utilized the Development Map (Exhibit “A-9”),²⁸¹ Detailed Cost Estimate (Exhibit “A-9”),²⁸² and Distance of Intake Tank (Exhibit “A-9”)²⁸³ in the conduct of the ocular inspection.²⁸⁴

276 Record, Vol. II, pp. 305-309.
277 Record, Vol. II, pp. 305-309.
278 Record, Vol. II, pp. 271-273.
279 Record, Vol. II, p. 280.
280 *Id.*
281 Record, Vol. II, p. 280.
282 *Id.*
283 *Id.*
284 Record, Vol I, p. 604.



x-----x

The Development Map provides the following structural planning: (1) a primary reservoir should have been constructed in the Torayas Spring; (2) the primary reservoir will distribute water to the three (3) constructed secondary reservoirs, which must be located in the barangays of Sogodamawatan, Mapantao, and Campongtalao,²⁸⁵ using 150mm O PVC pipe; (3) the three (3) constructed secondary reservoirs will, in turn, distribute water to another five (5) reservoirs.

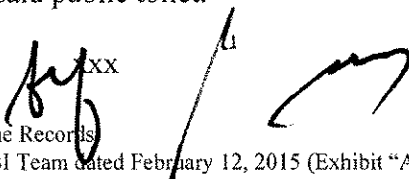
At this juncture, it is pertinent to cite the results of the verification/investigation of the NBI team:

- (1) The secondary reservoir in barangay Campongtalao, which appeared to be located in a cornfield, is not existing. The only water reservoir in the barangay is located inside a mosque which appears to be used only for public toilet and ablution and is funded by the people in the barangay and not by the LWUA/DOH funds;
- (2) The reservoirs in the barangay which are supposed to be located in Barangay Mapantao, Barangay Gurain, and Barangay Sugodmawatan were not implemented. The team only found reservoirs funded by the ARMM SOCIAL FUND PROJECT ("ASFP") and the project of Congressman Benasing Macarambon. These reservoirs were built in 1992 and were already dilapidated at the time of inspection;
- (3) Based on the Details Cost Estimate (Exhibit "A-9"), the Construction Intake Structure, Two (2) Units of 1.5x1.5x1.5m Break Pressure Chamber, and other parts of the reservoirs were not existing at the time of inspection.²⁸⁶

It is worth noting that witness Grageda, in his Judicial Affidavit, testified that there were infrastructures already existing in the alleged location as indicated in the Development Map.²⁸⁷ According to him, these existing infrastructures were the projects of different government agencies and were merely used by accused Faisal in rendering the accomplishment report and to make it appear that the construction/project was implemented or partly accomplished. The following were the statements made by witness Grageda in his Judicial Affidavit dated February 17, 2020:

44. Q: May I call your attention to Exhibits "A-10-a", "A-10-b", "A-10-c", where were these pictures taken?

A: Exhibit "A-10-a" was taken in front of the public toilet located beside the corn field where one of the reservoirs in Brgy. Campong-Talao is supposed to be located. Exhibits "A-10-b" and "A-10-c" were taken inside the said public toilet.



²⁸⁵

Also appears as "Campong-Talao" in the Records

²⁸⁶

See Joint Affidavit of Inspection by NBI Team dated February 12, 2015 (Exhibit "A-7"), Record, Vol. II, pp. 271-273.

²⁸⁷

Judicial Affidavit of witness Grageda, pp. 10-11, Record, Vol. I., p. 606-607.

x-----x

47. Q: May I call your attention to Exhibits "A-10-j", "A-10-k", "A-10-l", where were these pictures taken?

A: Those pictures were taken at the base of Mt. Gurian where the supposed location of another reservoir is situated.

48. Q: Why did your team took those pictures previously marked as Exhibits "A-10-j", "A-10-k", "A-10-l"?

A: Our team took those pictures to show that in the location indicated in the Development Map (Exhibit A-8), the infrastructure that we saw was non-functional, dilapidated, moss-covered and it was a project funded by the DSWs as shown in Exhibit "A-10-l".

49. Q: May I call your attention to Exhibits "A-10-m", "A-10-n", "A-10-o", where were these pictures taken?

A: Those pictures were taken at the supposed location at the primary reservoir, where the Toraya Spring is situated.

50. Q: Why did your team took those pictures previously marked as Exhibits "A-10-m", "A-10-n", "A-10-o"?

A: Our team took these pictures to show that in the location indicated in the Development Map (Exhibit A-8), the infrastructure that we saw was non-functional, dilapidated, and moss-covered.²⁸⁸

As culled from the records, the NBI team only provided the photographs of the alleged locations of the primary reservoir at the base of Mt. Gurain and Barangay Campongtao but failed to provide pictures of the other alleged locations in barangays Buadidico, Buadialawang, Pandiaranao, Bubong, Dandamun, Lumbac, Pindolonan 2, Pagalamatan, Sugod 1, Tangkal, Dilimbayan, Pob. Ingud, Sumbagarogong, and Raya. Be that as it may, witness Grageda, in his Judicial Affidavit, testified that the team no longer took pictures in the above-mentioned barangays because they did not find any infrastructure at the alleged locations of the reservoir.²⁸⁹

Aside from the Joint Affidavit of witnesses Grageda and Sarip, and the pictures taken during the verification/inspection, the prosecution likewise offered in evidence the Sworn Statement dated February 13, 2015, of the Mohammad Aliaromponi (Exhibit "A-13"),²⁹⁰ which was attached to the Complaint-Affidavit of witness Larena. In the said Sworn Statement, Aliaromponi identified himself as the former Barangay Chairman of Barangay Dilimbayan during the time material to the case. Aliaromponi likewise mentioned that while was aware of the water supply improvement project of the Tugaya Water District, it was not implemented in his barangay.

²⁸⁸

Id.

²⁸⁹

Id., p. 607.

²⁹⁰

Record, Vol. II, pp. 288-291.

x-----x

To corroborate this, prosecution witness, Grageda testified that barangay officials were present during the inspection and pointed to them the location of the supposed reservoirs. The following exchanges during the cross-examination of witness Grageda point to that effect:

Justice R. B. Moreno:

Q: Where are they supposed to be situated?

Witness Grageda:

A: In the different barangays of Tugaya, Lanao del Sur, Your Honor.

Q: Meaning they should have been in the different barangays?

A: Yes, Your Honor.

Q: Did you get certification from the different barangays where these water reservoirs should have been in place?

A: No, Your Honor.

Q: No, you did not?

A: Yes, Your Honor.

Q: But were they present during the inspection?

A: Yes, Your Honor, the barangay officials were the ones who pointed to us the area where supposedly these reservoirs were have [sic] been located, Your Honor.²⁹¹

The Court finds the result of the verification/inspection conducted by the NBI team as mentioned in the Joint Affidavit of witnesses Grageda and Sarip to be credible and with probative value. The pictures taken by the NBI team show that there are existing infrastructures in the supposed location of the water reservoirs. These infrastructures are either non-functional, dilapidated, moss-covered, or with markings indicating that such were constructed and funded by other government agencies or NGOs. On the other hand, the lack of pictures in other barangays, coupled by the testimonial evidence provided by witnesses Grageda and Sarip and the Sworn Statement of Aliaromponi advances the prosecution's claim that the water supply improvement project was neither implemented nor partly completed.

Despite such overwhelming evidence pointing to the fact of the non-existence of the water supply improvement project of the Tugaya Water District, accused Faisal chose not to present any evidence to the contrary. If indeed the construction/project was implemented or partly accomplished, accused Faisal could have easily produced documentary evidence proving the

²⁹¹ TSN dated March 9, 2020, p. 13.

x-----x

same. In this case, accused Faisal only raised the defense that he is not the Acting General Manager of the Tugaya Water District.

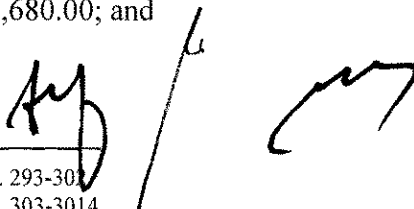
Based on the foregoing, it is clear that accused Faisal utilized existing buildings and structures, funded by other government agencies and NGOs, in order to make it appear that the water supply improvement project of Tugaya Water District was implemented or partly accomplished.

2. *The Memoranda of COA State Auditor Salic dated March 17, 2015, and August 25, 2015.*

In her Complaint-Affidavit, witness Larena, made reference to the findings of COA State Auditor Salic which were included in the Memorandum dated March 17, 2015 (Exhibit "A-15")²⁹² and Memorandum dated August 25, 2015 (Exhibit "A-16").²⁹³

The following observations made by State Auditor Salic were also adopted in the Complaint-Affidavit of witness Larena:

- (1) The accuracy of the figures in the Summary of Expenses, Physical Accomplishment showing 59% completion of the project, Statement of Work Accomplished and other supporting documents was [sic] not validated;
- (2) Statement of Work Accomplished and other supporting documents was [sic] not validated due to the peace and order situation in the area as reported by their Area Operations for Mindanao;
- (3) The total amount of fund actually received for the construction of Level III Water Supply System of Tugaya Water District could not be determined due to lack of records showing receipts of fund;
- (4) No pertinent reports of collections and deposits or official receipts were submitted for audit;
- (5) No data was gathered directly from TWD as the agency lacks a permanent official station where they could officially transact business;
- (6) The only documents available were those turned over by the outgoing audit team consisting of Disbursement Vouchers (DVs) and attachments relative to the construction of Level III Water Supply System of TWD;
- (7) The Summary of Expenses included among those turned over, for the construction of TW Supply System Project covering April 21-July 26, 2011, reflects information that the funds released to TWD amounted to Php10,074,680.00; and

Handwritten signatures and initials in black ink, including a large signature on the left and a smaller one on the right.

x-----x

- (8) The documents/liquidation papers submitted by the Local Waters and Utilities Administration to the COA Regional Office on November 29, 2012, and received on December 2012, could not be relied upon as a basis of the evaluation because there was no indication that such was post audited by the Audit Team Leader of the Municipality of Tugaya.²⁹⁴

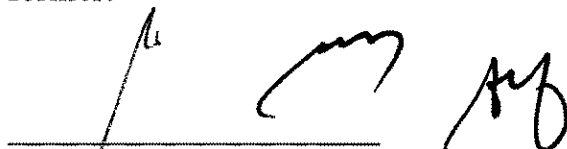
Quite notable is the comment made by COA State Auditor Salic in her Memorandum dated March 17, 2015, that the process of audit evaluation required under the COA Memorandum dated August 10, 2011, was “not strictly followed due to the lack of related documentation which may be in possession of the incumbent Audit Team Leader of the Municipality of Tugaya.”²⁹⁵

It bears reiteration that the Summary of Expenses and the Physical Accomplishment Report as of July 2011 all bore the name and signature of accused Faisal, as the acting General Manager of the Tugaya Water District. These liquidation documents were included in the letter of accused Faisal to Atty. Bato Ali, the Regional Director of the Commission on Audit, as part of the First Liquidation report in connection with the water supply development project. By affixing his name and signature to the said documents, accused Faisal certified as to the truthfulness and correctness of the facts stated therein, including the supposed amounts used and the physical accomplishment of the construction/project.

However, the findings and comments of COA State Auditor Salic belie accused Faisal’s certification. The lack of records showing how the LWUA-drawn funds were used in relation to the implementation of the construction/project furthers the prosecution’s claim that the water supply improvement project of the Tugaya Water District was neither implemented nor partly completed.

3. *The Testimonial Evidence of witness Nasrodin Lamping Mitmug (“Mitmug”).*

In the Physical Accomplishment Report as of July 2011 and the Summary of Expenses (Exhibit “A-12”),²⁹⁶ the name of NASCON Builders appeared as the payee and the corporation that was engaged to implement the water supply improvement project of the Tugaya Water District. Aside from NASCON, accused Ebrahim’s name also appeared in the Physical Accomplishment Report as of July 2011 as the General Manager of the former.



²⁹⁴ Record, Vol. II, pp. 247-248.

²⁹⁵ Record, Vol. II, p. 293.

²⁹⁶ Record, Vol. II, pp. 286-287.

After a review of the records, this Court finds that NASCON Builders was not actually engaged by the Tugaya Water District in the implementation of its water supply improvement project. The prosecution was able to present before the Court the actual sole proprietor and Authorized Managing Officer of NASCON Builders, Nasrodin Lamping Mitmug (“Mitmug”). During his testimony, it was revealed that witness Mitmug was the owner and the general manager of NASCON Builders since 1992 and during the alleged period of the implementation of the construction/project in 2011. This was sufficiently proved by the original Certification from the Department of Trade of Industry (Exhibit “D”)²⁹⁷ indicating that NASCON Builders was owned by witness Mitmug since its registration on September 4, 2006, and during its time of issuance on June 21, 2019. Moreover, witness Mitmug also identified his Sworn Statement dated February 6, 2015 (Exhibit “A-11”),²⁹⁸ wherein he indicated that NASCON Builders had no participation or involvement in the water supply improvement project of the Tugaya Water District and that it had no employee by the name of Engr. Alikhan M. Ebrahim.

The foregoing findings lead to the logical conclusion that the water supply improvement project of the Tugaya Water District was indeed neither implemented nor partly completed. The Court found that accused Faisal only fabricated the Summary of Expenses and the Physical Accomplishment Report as of July 2011 by indicating false information regarding the status of the construction/project, the persons and entities that participated therein, the supplies and services utilized, as well as the amounts allegedly disbursed in the implementation thereof.

b. Accused Faisal received the LWUA-drawn funds in the amount of Php10,074,680.00 despite the non-implementation of the water supply improvement project of the Tugaya Water District.

Despite the non-implementation of the water supply improvement project, accused Faisal was able to liquidate and appropriate the LWUA-drawn funds in the amount of Php10,074,680.00 by utilizing the Physical Accomplishment Report as of July 2011 which was prepared by accused Ebrahim, Summary of Expenses.

To prove that the LWUA-drawn funds were released to the Tugaya Water District for the implementation of its water supply improvement project, the prosecution presented the original copies of the Disbursement Voucher No. P-2011-01-0002 dated January 3, 2011 (Exhibit “B-1”),²⁹⁹ the

²⁹⁷ Record, Vol. II, pp. 360-361.

²⁹⁸ Record, Vol. II, pp. 147-148.

²⁹⁹ Record, Vol. II, p. 314.

x-----x

Authorization to Receive Check dated January 11, 2011 (Exhibit "B-4"),³⁰⁰ the Brief to the Acting Administrator dated January 28, 2010 (Exhibit "B-5"),³⁰¹ the Memorandum for the Administrator dated January 28, 2010 (Exhibit "B-8"),³⁰² and the Claims Information Sheet dated February 8, 2010 (Exhibit "B-9").³⁰³

As to the fact that accused Faisal received the Php10,074,680.00 LWUA-drawn funds, the prosecution presented the original copy of the Acknowledgement Receipt signed by accused Faisal (Exhibit "B-2"),³⁰⁴ the photocopy of the Land Bank of the Philippines (LBP) Check No. 402892 dated January 7, 2011 (Exhibit "A-20"),³⁰⁵ and the dorsal portion of the LBP Check No. 402892 dated January 7, 2011 (Exhibit "A-20-a"),³⁰⁶ the PNB Withdrawal Slip with the handwritten date January 18, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php5,650,000.00 (Exhibit "F-19"),³⁰⁷ the PNB Withdrawal Slip with the handwritten date January 26, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php394,000.00 (Exhibit "F-20"),³⁰⁸ PNB Deposit Slip with handwritten date January 12, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District for check deposit of LBP Check No. 402892 amounting to Php10,074,680.00 (Exhibit "F-19"),³⁰⁹ and the PNB Statement of Account for Tugaya (Lanao Del Sur) Water District (Exhibit "F-21"),³¹⁰

The Court finds that the undated Acknowledgement Receipt signed by accused Faisal sufficiently established how he came into possession of the LBP Check No. Check No. 402892, in the amount of Php10,074,680.00. On the other hand, the PNB Deposit Slip shows that the LBP Check No. 402892 was deposited by accused Faisal to the Tugaya Water District PNB Account on January 12, 2011. The deposit was reflected in the PNB Statement of Account for Tugaya (Lanao Del Sur) Water District on January 13, 2011.

Thereafter, on different occasions, accused Faisal with the help of Macaborod, withdrew the LWUA-drawn funds from the PNB Deposit Account of the Tugaya Water District to wit:

300 Record, Vol. II, p. 317.
301 Record, Vol. II, p. 318.
302 Record, Vol. II, p. 321.
303 Record, Vol. II, p. 322.
304 Record, Vol. II, p. 315.
305 Record, Vol. II, p. 312.
306 Record, Vol. II, p. 313.
307 Record, Vol. II, p. 393.
308 *Id.*
309 *Id.*
310 Record, Vol. II, p. 394.

Handwritten signatures and initials, including a large 'M' and a signature that appears to be 'Macaborod'.

X-----X

Date of Withdrawal	Amount Withdrew
January 18, 2011	Php 5,650,000.00
January 21, 2011	Php 4,020,000.00
January 26, 2011	Php 394,000.00
January 6, 2012	Php 11,003.17

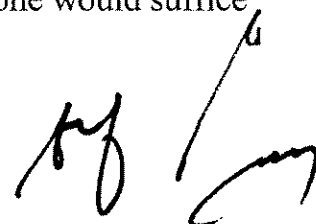
Here, it is clear that accused Faisal acted with evident bad faith when he caused the withdrawal of the LWUA-drawn funds despite the non-implementation of the water supply improvement project of the Tugaya Water District. As the acting General Manager, accused Faisal is presumed to be knowledgeable on the status of the construction/project. Under the law, accused Faisal has the full supervision and control of the construction of the water supply of the Tugaya Water District, which includes the purported water supply improvement project. Section 23, Chapter VI of P.D. No. 198 provides for the duties and responsibilities of the general manager, to wit:

Section 24. Duties. - The duties of the officer shall be those customary to the office held and as determined and specified from time to time by the board. The general manager, who shall not be a director, shall, subject to approval of the board, have full supervision and control of the maintenance, operation and construction of water supply and wastewater disposal and administrative facilities of the district, with full power and authority to exercise management prerogatives as set forth in the district's personnel rules and regulations.

Moreover, by virtue of the Sangguniang Bayan of Tugaya Municipal Resolution No. 001, series of 2011, dated January 5, 2011, accused Faisal and Macaborod were designated as official signatories of the PNB Deposit Account in the name of the Tugaya Water District. Taking advantage of his designation, accused Faisal was able to sign the deposit slips and take possession of the LWUA-drawn funds.

C. The fourth element of the violation of Section 3(e) of R.A. No. 3019: causing undue injury to the government.

As to the fourth element, there are two (2) ways by which Section 3(e) of R.A. No. 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.³¹¹



X-----X

The Supreme Court defined injury as "any wrong or damage done to another, either in his person or in his rights, reputation or property; the invasion of any legally protected interests of another." It must be more than necessary or are excessive, improper, or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty. Undue injury cannot be presumed even after a wrong or a violation of a right has been established. Corollary thereto, proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered, or benefits received can be perceived to be substantial enough and not merely negligible.³¹²

Under the second mode, damage is not required. The word "unwarranted" 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. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.³¹³

The Information charged accused Faisal and Ebrahim with the first mode, causing undue injury to the government in the amount of Php10,074,680.00, the initial funding for the construction of the water supply improvement project of Tugaya Water District.

The Court finds that the prosecution has sufficiently proved that the scheme designed and executed by accused Faisal caused undue injury to the Government in the amount of Php10,074,680.00. Based on the documentary and testimonial evidence of the prosecution, accused Faisal utilized his official function as the Acting General Manager of the Tugaya Water District to directly participate in the supposed implementation of the construction/project, in the opening of the PNB bank accounts under the name of the Tugaya Water District, and in the withdrawal and liquidation the LWUA-drawn funds intended for the construction/project.

The injury to the government is apparent considering that the prosecution was able to prove that the water supply improvement project of Tugaya Water District was neither implemented nor partly completed and that accused Faisal was able to appropriate the said funds by utilizing the falsified Accomplishment Report.

³¹² *Librado M. Cabrera, et. Al v. The Honorable Sandiganbayan*. G.R. Nos. 162314-17, October 25, 2004; citations omitted.

³¹³ *Ampil v. Office of the Ombudsman, Supra*.

II. Criminal Case No. SB-18-CRM-0541 for violation of Article 217 of the Revised Penal Code, as amended.

The accused had been charged in Criminal Case Nos. SB-18-CRM-05461 for violation of Article 217 of the Revised Penal Code, as amended, which reads:

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

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

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.³¹⁴

The felony involves breach of public trust, and whether it is committed through *dolo* or *culpa* the law makes it punishable and prescribes a uniform penalty therefor. Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense.³¹⁵

Parenthetically, the elements of malversation of public funds are that: (1) the offender is a public officer; (2) he has custody or control of the funds or property by reason of the duties of his office; (3) the funds or property are public funds or property for which he is accountable, and, most importantly; (4) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.³¹⁶

A. The first element of the violation of Article 217 of the Revised Penal Code: the offender is a public officer.

Considering that the Court has already settled the fact that accused Faisal is the Acting General Manager of the Tugaya Water District, the first element of the offense under Article 217 of the RPC is complied with.

³¹⁴ As amended by R.A. No. 1060.

³¹⁵ *Milagros Diaz v. Sandiganbayan*, G.R. No. 125213, January 26, 1999; citations omitted.

³¹⁶ *Manuel Venezuela v. People of the Philippines*, G.R. No. 205693, February 14, 2018.

At issue are the second, third, and fourth elements of the offense. Verily, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.³¹⁷

B. The second and third elements of the violation of Article 217 of the Revised Penal Code: the offender has custody or control of the funds or property by reason of the duties of his office.

For the second and third elements, the Court finds that accused Faisal is an accountable officer. An accountable officer under Article 217 of the RPC is a public officer who, by reason of his office, is accountable for public funds or property. Sec. 101(1) of the Presidential Decree No. 1445 ("P.D. No. 1445")³¹⁸ defines an accountable officer to be every officer of any government agency whose duties permit or require the possession or custody of government funds or property and who shall be accountable therefor and for the safekeeping thereof in conformity with the law.³¹⁹ In the determination of who is an accountable officer, it is the nature of the duties which he performs - the fact that, as part of his duties, he received public money for which he was bound to account, and not the nomenclature or the relative importance the position held - which is the controlling factor.³²⁰

In the case at bar, the prosecution was able to prove by evidence that accused Faisal was in possession or custody of the government funds in the amount of Php10,074,680.00, representing the initial funding for the construction of the water supply improvement project of Tugaya Water District. As evidenced by the documentary exhibits of the prosecution, accused Faisal and Macaborod opened PNB Regular Government Savings Account Number 432017300020, under Account Name Tugaya Lanao del Sur Water District at the PNB Carmen, Cagayan de Oro City and deposited the LBP Check No. 402892 dated January 7, 2011, representing the LWUA's initial funding of Php10,074,680.00. As authorized signatories of PNB Regular Government Savings Account, accused Faisal and Macaborod were the only persons who can withdraw from the account, which they did when they signed the withdrawal slips.

³¹⁷

Id.

³¹⁸

Government Auditing Code of the Philippines, June 11, 1978.

³¹⁹

Section 101. Accountable officers; bond requirement.

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law. xxx

³²⁰

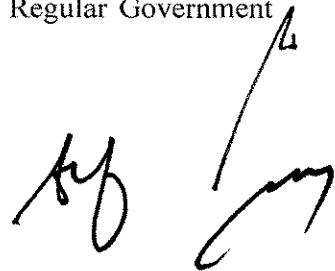
Flordeliza F. Querijero v. People and Sandiganbayan, G.R. No. 153483, February 14, 2003.

x-----x

These factual antecedents were proved by the following documentary exhibits which were properly identified by prosecution witness Pates of the PNB Carmen Branch, to wit:

Certificate dated October 10, 2019, that the documents covering the account of Tugaya (Lanao del Sur) Water District are all faithful reproduction and/or certified true copies of the original documents on file with the CDO-Carmen Branch signed by Edgardo S. Pates, Branch Manager (Exhibit "F");³²¹ PNB Account Information Form for Regular Passbook (Government) with Account No. 432017300020 signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod (Exhibit "F-1");³²² Client Information Form of Jamaloden Mangco Hadji Faisal (Exhibit "F-2");³²³ Client Information Form of Junaina Balindong Macaborod (Exhibit "F-3");³²⁴ Signature Card of Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod (Exhibit "F-4");³²⁵ Business Information Form from Tugaya Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories (Exhibit "F-5");³²⁶ Addendum to the Terms and Conditions Governing the Opening and Maintenance of Deposit Accounts signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod as authorized signatories for PNB Account No. 432017300020 (Exhibit "F-6");³²⁷ Identification Cards of Jamaloden Mangco Hadji Faisal with stamp "ORIGINAL DOCUMENT SIGHTED Jan 13 2011" (Exhibit "F-7");³²⁸ Identification Cards of Junaina Balindong Macaborod with stamp "ORIGINAL DOCUMENT SIGHTED Jan 13 2011" (Exhibit "F-8");³²⁹ Sangguniang Bayan Resolution No. 001 Series of 2011, designating the PNB Carmen-Cagayan de Oro City as Depository Bank of Tugaya Water District and authorizing the Acting General Manager Mr. Jamaloden Mangco Hadji Faisal and the Cashier/Treasurer as the Official Signatories of the said Deposit Accounts, consisting of 2 pages (Exhibit "F-10");³³⁰ PNB Deposit Slip with handwritten date January 12, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District for check deposit of LBP Check No. 402892 amounting to Php10,074,680.00 (Exhibit "F-18");³³¹ PNB Withdrawal Slip with handwritten date January 18, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php5,650,000.00 (Exhibit "F-19");³³² PNB Withdrawal Slip with handwritten date January 26, 2011, Account Number 432017300020, Account Name Tugaya Lanao del Sur Water District signed by Jamaloden Mangco Hadji Faisal and Junaina Balindong Macaborod for withdrawal of Php394,000.00 (Exhibit "F-20");³³³ and PNB Statement of Account for Saving Regular Government

321 Record, Vol. II, p. 373.
322 Record, Vol. II, p. 374.
323 Record, Vol. II, p. 375.
324 Record, Vol. II, p. 376.
325 Record, Vol. II, p. 377.
326 Record, Vol. II, p. 378.
327 Record, Vol. II, p. 379.
328 Record, Vol. II, p. 380.
329 Record, Vol. II, p. 381.
330 Record, Vol. II, pp. 383-384.
331 Record, Vol. II, p. 393.
332 Record, Vol. II, p. 393.
333 Record, Vol. II, p. 393.



x-----x

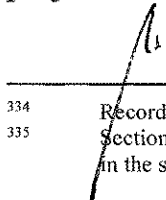
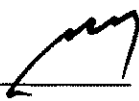

Tugaya (Lanao del Sur) Water District, Account Number 432017300020
(Exhibit "F-21").³³⁴

Anent the third element, Section 3 (2) of P.D. No. 1445, defines public funds as that which includes public money of every sort and other resources pertaining to any agency of the government.³³⁵ Considering that the amount in question pertains to the LWUA's initial funding for the construction of the water supply improvement project of Tugaya Water District and that the Tugaya Water District, though accused Faisal had gained possession, custody, or control thereof by virtue of the amount having deposited in its account, there is no denying that the same is considered a public fund.

C. The fourth element of the violation of Article 217 of the Revised Penal Code: the offender has appropriated, taken, misappropriated, or consented, or, through abandonment or negligence, permitted another person to take them.

As for the fourth element, the Court finds that accused Faisal appropriated, took, or misappropriated the LWUA-drawn funds, instead of implementing the water supply improvement project of the Tugaya Water District, with turned out to be non-existent.

To establish the fourth element, it is sufficient to show that accused appropriated, took, misappropriated, or consented or, through abandonment or negligence, permitted another person to take public funds. In this case, it has already been established and discussed that accused Faisal gained custody of the Php10,074,680.00 LWUA-drawn funds, which he deposited to the account of the Tugaya Water District in PNB-Camren Branch. Subsequently, he was able to withdraw the said amount over several occasions as the authorized signatory of the said account, ostensibly to pay for the expenses related to the water supply project. However, none of the expenses which he listed under the Summary of Expenses and none of the progress which is outlined in the Physical Accomplishment Report as of July 2011 for the water supply project turned out to be true. Moreover, the testimonies of the members of the NBI team and the sole proprietor of NASCON Builders belie the actual undertaking of any such project. Clearly, despite withdrawing the LWUA-drawn funds from the PNB Carmen-CDO Branch account, accused Faisal never used them for the implementation of the water supply improvement project.




³³⁴ Record, Vol. II, p. 394.

³³⁵ Section 3. Definition of terms. Wherever used in this Code, the following terms shall be taken and understood in the sense indicated hereunder, unless the context otherwise requires:

xxx

2. "Government funds" includes public moneys of every sort and other resources pertaining to any agency of the government.

Accused Faisal himself proffered no evidence to dispute or rebut the abovementioned facts and circumstances against him. Neither did he offer any evidence to explain where the LWUA-drawn funds, over which he had custody, were used.

Verily, the prosecution was able to prove by moral certainty that the accused misappropriated the LWUA-drawn public funds. Aside from the fact that the accused was able to gain possession, custody, or control of the said funds, the prosecution was also able to prove that the alleged water supply improvement project of the Tugaya Water District was neither implemented nor partly completed.

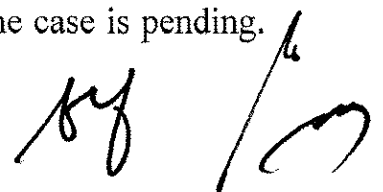
III. The Admissibility and Evidentiary Weight of the Prosecution's Evidence.

The prosecution's evidence was offered to prove the different stages leading to the consummation of the crimes as charged in the Informations – the non-implementation of the water supply improvement project of the Tugaya Water District and the appropriation of the LWUA-drawn funds in the amount of Php10,074,680.00.

A scrutiny of the records reveals that some of the prosecution's evidence were either formally offered as photocopies or certified true copies of the photocopies on file, which includes, among others the following:

Program of Work, Tugaya (Lanao del Sur) Water District, Dec-09; LWUA Board of Trustees Resolution No. 55 series of 2010, Subject: P25 Million Financial Assistance for Tugaya WD (Lanao del Sur); LWUA Memorandum of Consideration of Board of Trustees dated January 6, 2009, Subject: Financial Assistance for Tugaya (Lanao del Sur) WD; Memorandum for the Administrator dated January 6, 2010, Subject: Proposed Php25.0M Program of Work (POW) and Financial Assistance for Tugaya (Lanao del Sur) Water District (TWD); Sangguniang Bayan Resolution No. 02 Series of 2010, requesting the LWUA to release the payment for the Development of Tugaya Water District in favor of Mr. Jamaloden H. Faisal, consisting of 2 pages; Appointment Paper of Jamaloden M. H. Faisal as Acting General Manager of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipal Mayor; Appointment Paper of Junaina B. Macaborod as Cashier/Treasurer of Tugaya Water District dated December 16, 2010, approved by Hon. Alber N.A.P. Balindog, Municipal Mayor as recommended by Jamaloden M.H. Faisal, General Manager; Conditional Certificate of Conformance (CCC No. 805) issued to Tugaya Water District (Lanao del Sur); and Certification Program from Tugaya Water District, consisting of four (4) pages.

The admissibility and the evidentiary weight of the prosecution's evidence are governed by the rules effective at the time the case is pending.



x-----x

The 2019 Amendments to the 1989 Revised Rules on Evidence³³⁶ took effect on May 1, 2020, following its publication in the Official Gazette or in two (2) newspapers of national circulation. Considering that the cases were still pending on May 1, 2020, the 2019 Amendments to the Revised Rules on Evidence shall be applied.

Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, where probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.³³⁷

In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, it is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered.³³⁸

Here, all of the prosecution's evidence was admitted by the Court in its *Resolution* dated March 11, 2022. To note, accused Faisal never raised the objection on admissibility grounded on the Original Document Rule under Section 3, Rule 130 of the Amendments to the Revised Rules on Evidence. As such, he is now estopped from raising the issue of the admissibility of the prosecution's evidence.

Even if we are to disregard the utter failure of accused Faisal in invoking the Original Document Rule, the photocopies offered by the prosecution may still be admitted by the Court. Original documents, under Section 4, Rule 130 of the same Rules enumerates the two (2) kinds of "original document" as referred to in Section 3, Rule 130 – original and duplicate, to wit:

An "original" of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an "original."³³⁹

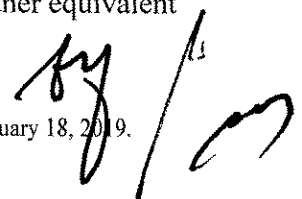
On the other hand, A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent

³³⁶ A.M. No. 19-08-15-SC.

³³⁷ *Ma. Melissa Villanueva Magsino v. Rolando N. Magsino*, G.R. No. 205333, February 18, 2019.

³³⁸ *Id.*

³³⁹ Section 4(a), Rule 130 of the Revised Rules on Evidence.



x-----x

techniques which accurately reproduce the original.³⁴⁰ Under the Rules, a duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.³⁴¹

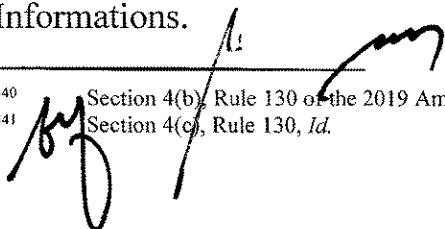
In the case at bar, the Court rules that the photocopies formally offered by the prosecution are considered as duplicates and thus admissible as the originals of the documents to which they pertain. The foregoing reasoning takes its basis on the following grounds: *first*, there is no genuine question raised by Accused Faisal as to the authenticity of the original; and *second*, the admission of the photocopies in lieu of the original is neither unjust nor inequitable.

Assuming, arguendo, that the photocopies do not qualify as duplicate originals, they can still be admitted as secondary evidence. Section 5, Rule 130 of the Amendments to the Revised Rules on Evidence states that “when the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its availability without bad faith on his or her part, may prove its contents by a copy, or by recital of its contents in some authentic documents, or by the testimony of witnesses in the order stated.” Here, the prosecution was able to prove the due execution of the photocopies through the proper authentication of its witnesses and the sufficient explanation made as to the unavailability of the originals. Considering the foregoing, the Court rules that the photocopies formally offered by the prosecution are all properly admitted.

As to the evidentiary weight of these documents, the Court reiterates its previous findings that the prosecution’s evidence proved all the elements of the violation of Section 3(e) of R.A. No. 3019, as amended and Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code.

Taken together, the prosecution’s evidence is so overwhelming that even if we are to disregard the probative value of the photocopies, the conviction against accused Faisal would still stand. The Court notes that the photocopies formally offered serve as the bedrock of the prosecution’s position that the water supply improvement project of the Tugaya Water District was neither implemented nor partly completed. Be that as it may, the photocopies only tend to prove a part of the scheme which accused Faisal meticulously concocted – to make it appear that the construction/project was implemented or partly completed. Aside from that, the prosecution was also able to present original documents or certified true copies from the originals on file that proves all the elements of the crimes as charged in the Informations.

³⁴⁰ Section 4(b), Rule 130 of the 2019 Amendments to the Revised Rules on Evidence.
³⁴¹ Section 4(c), Rule 130, *Id.*



Indeed, the *corpus de licit* of the crimes as charged is not dependent entirely on whether the construction/project was neither implemented nor partially completed, but more on proving the fact of causing undue injury to the government with evident bad faith, manifest partiality, and/or gross negligence by appropriating public funds for personal use or advantage, and that accused appropriated, took, misappropriated, or consented or, through abandonment or negligence, permitted another person to take public funds. It is sufficient that such facts have been established, as the prosecution did in these cases.

IV. The Proper Penalty.

A. In SB-18-CRM-0541 for Violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended.

On the appropriate penalty, a person guilty of violating Section 3(e) of R.A. No. 3019, as amended, is punishable with imprisonment of not less than six (6) years and one (1) month nor more than fifteen (15) years and perpetual disqualification from public office.

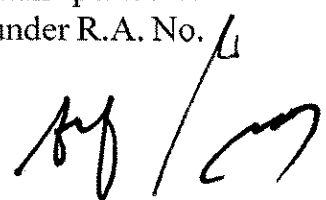
Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.

Accordingly, the Court finds it proper to impose an indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum.

In addition, the accused shall suffer perpetual disqualification from holding public office and loss of all retirement or gratuity benefits under existing laws.

B. In SB-18-CRM-0542 for Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code.

The amount malversed in SB-18-CRM-0542 is Ten Million Seventy-Four Thousand Six Hundred Eighty Pesos (Php 10,074,680.00). Under the old law, the imposable penalty is *reclusion temporal* in its maximum period to *reclusion perpetua*. However, with the amendment introduced under R.A. No.



x-----x

10951,³⁴² the proper imposable penalty corresponding to the amount malversed is *reclusion perpetua*. Considering that *reclusion perpetua* is an indivisible penalty, with no minimum or maximum period, the Indeterminate Sentence Law is not applicable.³⁴³

In addition, accused Faisal should be sentenced to suffer perpetual disqualification from holding any public office and loss of all retirement and gratuity benefits under existing laws. Further, he should be ordered to pay a fine of Ten Million Seventy-Four Thousand Six Hundred Eighty Pesos (Php 10,074,680.00) in SB-18-CRM-0542. The said amount shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.³⁴⁴

C. Civil Liability.

Article 100 of the RPC provides that every person criminally liable for a felony is also civilly liable. Corollary, R.A. No. 10660 provides that recovery of civil liability shall be simultaneously instituted with, and jointly determined in, the same proceeding. Considering that all the elements of the crime of malversation of public funds, as defined and penalized under Article 217 of the RPC, have been proved with moral certainty, the Court holds that accused Faisal shall be liable to reimburse the whole of the amount malversed.

WHEREFORE, in light of the foregoing, the Court hereby renders judgment as follows:

1. In **Criminal Case No. SB-18-CRM-0541**, the Court finds accused **JAMALODEN HADGI FAISAL (“FAISAL”) GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, as amended, and pursuant to Section 9 thereof, is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum.

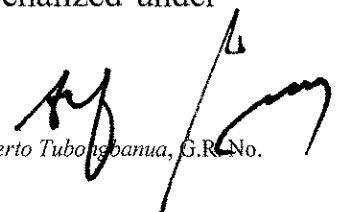
In addition, accused Faisal shall suffer perpetual disqualification from holding any public office and loss of all retirement or gratuity benefits under the law.

2. In **Criminal Case No. SB-18-CRM-0542**, the Court finds accused **JAMALODEN HADGI FAISAL (“FAISAL”) GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under

³⁴² Passed by Congress on August 29, 2017.

³⁴³ See Concurring Opinion of Justice Tinga in *People of the Philippines v. Elberto Tubongbama*, G.R. No. 171271, August 31, 2006.

³⁴⁴ *Id.*



Article 217 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua*.

In addition, accused Faisal shall suffer perpetual disqualification from holding any public office and loss of all retirement or gratuity benefits under the law.

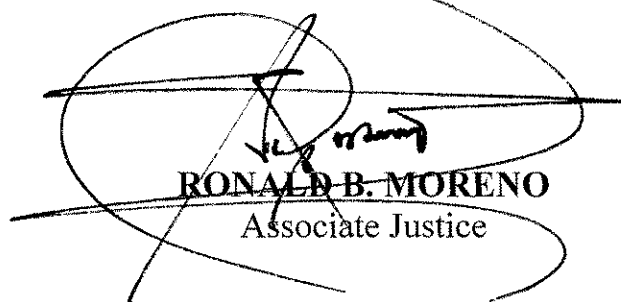
Further, accused Faisal is ordered to pay a fine of Ten Million Seventy-Four Thousand Six Hundred Eighty Pesos (Php 10,074,680.00). The said amount shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.

Accused Faisal is likewise held liable to return and reimburse to the government, through the Bureau of Treasury, the amount of Ten Million Seventy-Four Thousand Six Hundred Eighty Pesos (Php 10,074,680.00) which shall earn legal interest at the rate of six percent (6%) per annum computed from the finality of this Decision until paid.

Since the Court has not acquired jurisdiction over the person of **ALIKAHN M. EBRAHIM** as he remains at large, the cases against him in Criminal Case Nos. **SB-18-CRM-0541-42** are hereby ordered **ARCHIVED**, the same to be revived upon his arrest. Let the appropriate alias warrant of arrest be issued against the said accused.

SO ORDERED.

Quezon City, Metro Manila, Philippines.



RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
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.


AMPARO M. CABOTAJE-TANG
Chairperson, Third 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

