



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SECOND DIVISION

The People of the Philippines,
Plaintiff,

Criminal Case No.
SB-19-CRM-171

-versus-

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

Antonio Yrigon Ortiz,
Dennis Lacson Cunanan,
Maria Rosalinda Masongsong
Lacsamana
Francisco Baldoza Figura
Butch Suniel Canoy,
Vincent Vallar Jaudian,
Mercy Uayan Cabig,
Alfredo S. Soriano,

Accused.

x-----x

The People of the Philippines,
Plaintiff,

Criminal Case No.
SB-19-CRM-172

For: Malversation of Public Funds

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Caldona, J. &
Malabaguio, J.

Antonio Yrigon Ortiz,
Dennis Lacson Cunanan,
Maria Rosalinda Masongsong
Lacsamana,
Francisco Baldoza Figura,
Accused.

Promulgated:

August 4, 2023 ant

DECISION

HERRERA, JR., J.:

These are two (2) consolidated criminal cases that pertain to the misuse/misappropriation of the Priority Development Assistance Fund (PDAF) of the late former 2nd District Compostela Valley Representative Prospero S. Rep. Amatong (Rep. Amatong for short). The charges are contained in two (2) separate *Informations* dated August 23, 2018.

In Criminal Case No. SB-19-CRM-0171 for *Violation of Section 3(e) of Republic Act (R.A) No. 3019, as amended*, or the *Anti-Graft and Corrupt Practices Act*, the following are charged as accused: 1) **Antonio Yrigon Ortiz** (Ortiz for short); 2) **Dennis Lacson Cunanan** (Cunanan for short); 3) **Maria Rosalinda Masongsong Lacsamana** (Lacsamana for short); 4) **Francisco Baldoza Figura** (Figura for short); 5) **Butch Suniel Canoy** (Canoy for short); 6) **Vincent Vallar Jaudian** (Jaudian for short); 7) **Mercy Uayan Cabig** (Cabig for short); and 8) **Alfredo Sabuero Soriano** (Soriano for short). The accusatory portion of the *Information*¹ reads:

"That on 4 May 2007 up to August 14, 2013 or sometime prior or subsequent thereto, in Makati City, and within this Honorable Court's jurisdiction, Director General **ANTONIO ORTIZ y YRIGON**, Salary Grade 29, Director General and Deputy Director General **DENNIS CUNANAN y LACSON**, Salary Grade 29, Legislative Liaison Officer and Group Manager of the Technology & Livelihood Information Dissemination Services Group **MARIA ROSALINDA LACSAMANA y MASONGSONG**, Salary Grade 28, and Group Manager for Corporate Support Services **FRANCISCO FIGURA y BALDOZA**, Salary Grade 28, all of the Technology Research Center (TRC) (*formerly the Technology and Livelihood Resource Center*), all public officers, in such capacities and while in the performance of their administrative and/or official functions, taking advantage of their official positions, conspiring with one another and with the late 2nd District Representative of Compostela Valley **PROSPERO S. REP. AMATONG (REP. AMATONG)**, and with the Philippine Environmental and Ecological Development Association,

¹ Record of SB-19-CRM-171, Volume 1, pp. 1-5

Incorporated (PEEDAI) Chief Executive Officer **BUTCH CANOY y SUNIEL (CANOY)**, Chief Operating Officer **VINCENT JAUDIAN y VALLAR (JAUDIAN)**, Treasurer **MERCY CABIG y UAYAN (CABIG)** and Vice President **ALFREDO S. SORIANO (SORIANO)**, acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits and advantage to the PEEDAI and its officers Canoy, Jaudian, Cabig and Soriano, in relation to the funds release amounting to **TEN MILLION PESOS (PHP10,000,000.00)** intended for the implementation of livelihood and development projects in the 2nd District of Compostela Valley entitled "District-Wide Livelihood [sic] & Entrepreneurial Promotions and Development Program", drawn from the late Prospero S. Rep. Amatong's Priority Development Fund (PDAF) and coursed through the TRC, covered by SARO No. D-07-05540 as reflected in the undated Disbursement Voucher No. 012007050820, through the following acts:

- 1) Ortiz when he a) entered into and signed the undated tripartite Memorandum of Agreement (MOA) with the Philippine Environmental and Ecological Development Association, Inc. (PEEDAI) and Rep. Amatong, in disregard of the requirement of public bidding and accreditation process mandated under Republic Act No. 9184 and the Commission on Audit (COA) Circular No. 96-003; b) authorize the lump sum release of funds to PEEDAI in disregard of the three-tranche rule under Section 3.8 of the said COA Circular; c) signed Box C of DV No. 012007050820, thereby approving the release of Php9,800,000.00 to PEEDAI, and retention by TRC of Php200,000.00 as service fee and cost of livelihood materials; and d) signed LBP Check No. 399416 in the amount of Php9,800,000.00 issued to PEEDAI;
- 2) Cunanan, Lacsamana and Figura when they facilitated, processed and released the PDAF disbursement to PEEDAI despite the latter's doubtful credentials and non-submission of periodic project reports and liquidation report;
- 3) Ortiz, Cunanan, Lacsamana and Figura failed to document and account for the utilization of the Php200,000.00 retained by the TRC as service fee and cost of livelihood materials;
- 4) Canoy entered into and signed the undated tripartite MOA, undated Project Proposal, undated Work and Financial Plan, the undated Disbursement Voucher No. 012007050820 as recipient of the Php9,800,000.00, and issuing the PEEDAI Official Receipt No. 031 dated 04 May 2007 acknowledging the receipt of the Php9,800,000.00 from the TRC;

- 5) Canoy, along with Jaudian, Cabig and Soriano, failed to liquidate the funds transferred by TRC to the PEEDAI; and
- 6) By their above acts, accused public officers allowed Canoy, Jaudian, Cabig, Soriano and themselves, through PEEDAI, to take possession and thus misappropriate public funds, instead of implementing the said PDAF-funded project in the 2nd District of Compostela Valley, which project turned out to be non-existent, to the damage and prejudice of the government in the said amount."

CONTRARY TO LAW."

In Criminal Case No. SB-17-CRM-0172 for *Malversation of Public Funds, under Article 217 of the Revised Penal Code*, only the following are charged as accused: 1) **Antonio Yrigon Ortiz**; 2) **Dennis Lacson Cunanan**; 3) **Maria Rosalinda Masongsong Lacsamana**; and 4) **Francisco Baldoza Figura**. The accusatory portion of the *Information*² reads:

"That on 4 May 2007 up to August 14, 2013 or sometime prior or subsequent thereto, in Makati City, and within this Honorable Court's jurisdiction, Director General **ANTONIO ORTIZ y YRIGON**, Salary Grade 29, Director General and Deputy General **DENNIS CUNANAN y LACSON**, Salary Grade 29, Legislative Liaison Officer and Group Manager of the Technology & Livelihood Information Dissemination Services Group **MARIA ROSALINDA LACSAMANA y MASONGSONG**, Salary Grade 28, and Group Manager for Corporate Support Services **FRANCISCO FIGURA y BALDOZA**, Salary Grade 28, all of the Technology Research Center (TRC) (formerly the Technology and Livelihood Resource Center), all public officers, in such capacities and while in the performance of their administrative and/or official functions, taking advantage of their official positions, conspiring with one another and with the late 2nd District Representative of Compostela Valley **PROSPERO S. REP. AMATONG (REP. AMATONG)**, and with the Philippine Environment and Ecological Development Association, Incorporated (PEEDAI) Chief Executive Officer **BUTCH CANOY y SUNIEL (CANOY)**, Chief Operating Officer **VINCENT JAUDIAN y VALLAR (JAUDIAN)**, Treasurer **MERCY CABIG y UAYAN (CABIG)** and Vice President **ALFREDO S. SORIANO**, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent to, or through abandonment or negligence, allow

² Record of SB-19-CRM-172, pp. 1-4

herein private individual to take public funds or convert to their own personal use and benefit said public funds amounting to, more or less, **TEN MILLION PESOS (PHP10,000,000.00)** intended for the implementation of livelihood and development projects in the 2nd District of Compostela Valley entitled "District-Wide Livelihood [sic] & Entrepreneurial Promotions and Development Program", drawn from the late Prospero S. Rep. Amatong's Priority Development Assistance Fund (PDAF) and coursed thru the TRC, covered by SARO No. D-07-05540 as reflected in the undated Disbursement Voucher No. 012007050820, through the following acts:

- 1) Ortiz when he a) entered into and signed the undated tripartite Memorandum of Agreement (MOA) with the Philippine Environmental and Ecological Development Association, Inc. (PEEDAI) and Rep. Amatong, in disregard of the requirement of public bidding and accreditation process mandated under Republic Act No. 9184 and the Commission on Audit (COA) Circular No. 96-003; b) authorize the lump sum release of funds to PEEDAI in disregard of the three-tranche rule under Section 3.8 of the said COA Circular; c) signed Box C of DV No. 012007050820, thereby approving the release of Php9,800,000.00 to PEEDAI, and retention by TRC of Php 200,000.00 as service fee and cost of livelihood materials; and d) signed LBP Check No. 399416 in the amount of Php9,800,000.00 issued to PEEDAI;
- 2) Cunanan, Lacsamana and Figura when they facilitated, processed and released the PDAF disbursement to PEEDAI despite the latter's doubtful credentials and non-submission of periodic project reports and liquidation report;
- 3) Ortiz, Cunanan, Lacsamana and Figura failed to document and account for the utilization of the Php200,000.00 retained by the TRC as service fee and cost of livelihood materials;
- 4) Canoy entered into and signed the undated tripartite MOA, undated Project Proposal, undated Work and Financial Plan, the undated Disbursement Voucher No. 012007050820 as recipient of the Php9,800,000.00, and issuing the PEEDAI Official Receipt No. 031 dated 04 May 2007 acknowledging the receipt of the Php9,800,000.00 from the TRC;
- 5) Canoy, along with Jaudian, Cabig and Soriano, failed to liquidate the funds transferred by TRC to the PEEDAI; and
- 6) By their above acts, accused public officers allowed Canoy, Jaudian, Cabig, Soriano and themselves, through PEEDAI, to take possession and thus misappropriate public funds, instead of implementing the said PDAF-funded project in the 2nd District of Compostela Valley, which project turned out to be non-existent, to the damage and prejudice of the government in the said amount."



CONTRARY TO LAW.⁷

Accused Cunanan,³ Lacsamana,⁴ Figura,⁵ Canoy,⁶ Jaudian,⁷ Cabig,⁸ and Soriano⁹ posted bail for their provisional liberty in these cases, while accused Ortiz remains at large. Since Ortiz is at-large, he was excluded in the trial of these cases but his relevant participation will necessarily have to be included in the discussion herein.

On November 29, 2019, accused Lacsamana, assisted by counsels, was arraigned and she pleaded not guilty to the charges against her.¹⁰

On December 6, 2019, accused Figura, assisted by counsel, was arraigned and he pleaded not guilty to the charges.¹¹

Accused Cunanan, Soriano, Jaudian, and Cabig, assisted by their respective counsels, were arraigned on October 9, 2020 and they pleaded not guilty to the charge/s.¹²

Lastly, accused Canoy's conditional arraignment on December 13, 2019, where he pleaded not guilty to the charge against him, is considered as his regular arraignment.¹³

The pre-trial of the cases culminated in the issuance by the Court of *Pre-Trial Order*¹⁴ of February 26, 2021.

Trial of the cases ensued.

³ Records, Volume 2, p. 159, Order dated March 3, 2020

⁴ Records, Volume 1, p. 298, Order dated November 18, 2019

⁵ Id., p. 349, Order dated November 25, 2019

⁶ Id., p. 412, Order dated December 12, 2019

⁷ Records, Volume 2, p. 19, Order dated December 19, 2019 by the Office of the Executive Judge of Cagayan de Oro City

⁸ Id.

⁹ Id.

¹⁰ Records, Volume 1, p. 401, Order dated November 29, 2019

¹¹ Id., p. 442, Order dated December 6, 2019

¹² Records, Volume 2, p. 208, Order dated October 9, 2020

¹³ Id., p. 92, Resolution dated January 30, 2020

¹⁴ Records, Volume 3, pp. 82-94, as regards accused Canoy, Jaudian, Cabig, and Soriano

On March 9, 2022, the prosecution filed a **Formal Offer of Evidence**,¹⁵ with the Court resolving to admit prosecution Exhibits "A" to "J", "K", "K-1" and "K-2", "L", "L-1" and "L-2", "M" and "M-1", "N" to "S", "S-1", "T", "T-1", "U", "V" to "V-472", "W" to "Z", and "AA" to "MM", inclusive, as well as the submarkings thereof per its **Resolution** ¹⁶ dated April 25, 2022.

Defense evidence were presented.

Accused Cunanan filed his **Formal Offer of Documentary Exhibits**¹⁷ on July 12, 2022. His Exhibits "1" to "1-C", "2" to "2-B", "3" to "3-C", "4", "5" to "5-F", and "6" to "6-A", "11" and "12" to "12-A" were admitted by the Court per its **Resolution**¹⁸ dated August 3, 2022.

Accused Lacsamana, on the other hand, filed her **Formal Offer of Documentary Evidence** ¹⁹ on July 29, 2022. Her Exhibits "1", "2", "3", and "4" were admitted by the Court in a **Resolution** ²⁰ dated August 18, 2022.

Accused Figura subsequently filed his **Formal Offer of Evidence** ²¹ on August 23, 2022. In a **Resolution** ²² dated September 12, 2022, the Court resolved to admit his Exhibits "1" to "8", and "8-A".

For accused Canoy, Jaudian, Soriano, and Cabig, the Court resolved²³ to admit their Exhibits "1" to "6" and "8", "9", "11", and "12" following their **Formal Offer of Exhibits** ²⁴ on January 23, 2023. Exhibit "7" was admitted only as part of the testimony of accused Canoy.

¹⁵ Records, Volume 4, pp. 20-41

¹⁶ Id, p. 125

¹⁷ Id, pp. 431-437

¹⁸ Id, p. 515

¹⁹ Id, pp. 498-502

²⁰ Id, p. 559

²¹ Records, Volume 5, pp. 68-75

²² Id, p. 147

²³ Id, p. 328

²⁴ Records, Volume 7, 119-124

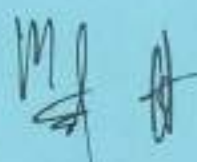
To prove the charges, the prosecution presented as witnesses Atty. Ronald Allan Ramos, Jhoven Litana, Marissa A. Santos, Rachel M. Abendanio, Shari-Ann Harriet F. Cabuhat, Joan Agnes Alfafara, Anita T. Arancon, Emma T. Juntilla, Alyn M. Atienza, Danilo G. Calcaben, Lorenzo L. Balbin, Jr., and RJ A. Bernal.

The prosecution also submitted as evidence the following documents: Exhibit "A", Letter-Request dated 18 January 2007 of former House of Representative Prospero Amatong, 2nd District, Compostela Valley; Exhibit "B", Special Allotment Release Order (SARO) No. D-0705540; Exhibit "C", Advice of Notice of Cash Allocation (NCA) No. BMB-D-070001793; Exhibit "D", Endorsement-Letter dated 26 March 2007 of former House of Representative Prospero Amatong, 2nd District, Compostela Valley; Exhibit "E", Official Receipt dated 30 March 2007 in the amount of Php100 Million issued by the Bureau of Treasury as PAYOR thereof to TRC; Exhibit "F", Memorandum dated 30 April 2007 addressed to Director General Ortiz from Lacsamana, Group Manager, TRC; Exhibit "G", Notarized Certification as to Availability of Funds signed by Marivic Jover on 03 May 2007; Exhibit "H", TLRC's Disbursement Voucher No. 012007050820; Exhibit "I", LBP Check No. 399416 dated 04 May 2007; Exhibit "J", PEEDAI's Official Receipt No. 31; Exhibit "K", Memorandum of Agreement (MOA) signed by Ortiz, Canoy, and Rep. Amatong; Exhibit "K-1", Project Proposal signed by Canoy and Rep. Amatong; Exhibit "K-2", Work and Financial Plan signed by Canoy and Rep. Amatong; Exhibit "L", Letter dated 12 May 2016 by Alvera Veronica R. Rimando, Municipal Mayor, Municipality of Maco, Compostela Valley; Exhibit "L-1", Certification issued on 11 May 2016 by Emma T. Juntilla, Municipal Accountant, Municipality of Maco, Compostela Valley; Exhibit "L-2", Certification issued on 12 May 2016 by Alvera Veronica R. Rimando, Municipal Mayor, Municipality of Maco, Compostela Valley; Exhibit "M", Compliance dated 06 May 2016 by Romeo C. Clarin, Municipal Mayor, Municipality of Nabunturan, Compostela Valley; Exhibit "M-1", Certification issued on 06 May 2016 by Romeo C. Clarin, Municipal Mayor, Municipality



x-----x

of Nabunturan, Compostela Valley; Exhibit "N", Letter dated 18 May 2016 by Robert M. Yugo, Municipal Mayor, Municipality of Pantukan, Compostela Valley; Exhibit "O", Certification issued on 18 May 2016 by Anita T. Arancon, Municipal Accountant, Municipality of Pantukan, Compostela Valley; Exhibit "P", Certification issued on 06 May 2016 by Eutropio S. Jayectin, Municipal Mayor, Municipality of Montevista, Compostela Valley; Exhibit "Q", Certification issued on 18 May 2016 by Cora A. Delos Reyes and Danilo C. Calcaben, Municipal Treasurer and Accountant, respectively, Municipality of Montevista, Compostela Valley; Exhibit "R", Certification issued on 05 May 2016 by Elyn M. Atienza, Municipal Accountant, Municipality of Monkayo, Compostela Valley; Exhibit "S", Compliance by Cesar C. Colina, Sr., Municipal Mayor, Municipality of Maragusan, Compostela Valley; Exhibit "S-1", Certification issued on 14 May 2016 by Cesar C. Colina, Sr., Municipal Mayor, Municipality of Maragusan, Compostela Valley; Exhibit "T", Letter dated 18 May 2016 by Evalina J. Jampayas, Municipal Mayor, Municipality of Mawab, Compostela Valley; Exhibit "T-1", Certification issued on 18 May 2016 by Evalina J. Jampayas, Municipal Mayor, Municipality of Mawab, Compostela Valley; Exhibit "U", Certification issued on 05 May 2016 by Lorenzo L. Balbin, Municipal Mayor, Municipality of New Bataan, Compostela Valley; Exhibit "V" to "V-472", SAO Report No. 2012-03 entitled *Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)*, and its Annexes/supporting documents; Exhibit "W", 2007 TRC Annual Audit Report by COA (*Reserved*); Exhibit "X", 2008 TRC Annual Audit Report by COA (*Reserved*); Exhibit "Y", 2009 TRC Annual Audit Report by COA (*Reserved*); Exhibit "Z", COA Circular No. 2007-001 (*Reserved*); Exhibit "AA", COA Circular No. 96-003; Exhibit "BB", GPPB Resolution No. 012-2007; Exhibit "CC", Certificate of Incorporation of PEEDAI; Exhibit "DD", Articles of Incorporation and By-Laws of PEEDAI; Exhibit "EE", Certificate of Filing of Amended Articles of Incorporation of PEEDAI; Exhibit "FF", Audited Financial Statements of PEEDAI for the years 2006 to 2008; Exhibit "GG", General Information Sheet of PEEDAI for the years 2006 to 2008; Exhibit "HH", Certification dated 10 August 2016 and its



attachments, issued by the Business Permits and Licensing Division, Cagayan de Oro City; Exhibit "II", Personal Data Sheets (PDS), Job Description, and Service Record of Antonio Ortiz; Exhibit "JJ", Personal Data Sheets (PDS), Job Description, and Service Record of Dennis Cunanan; Exhibit "KK", Personal Data Sheets (PDS), Job Description, and Service Record of Maria Rosalinda Lacsamana; Exhibit "LL", Personal Data Sheets (PDS), Job Description, and Service Record of Francisco Figura; Exhibit "MM", Complaint filed by the FIO, Office of the Ombudsman.

For the defense, accused Cunanan, Lacsamana, Figura, Soriano, Cabig, and Canoy testified as witnesses for themselves. Jaudian, however, was no longer presented in Court to testify.²⁵ Accused Canoy, Jaudian, Cabig, and Soriano also presented as witnesses Ma. Cecilia Y. Martinito, Peter Quijal, Bebelyn D. Quinco, and Ernelyn C. Simbajon.

Accused Cunanan proffered the following documentary evidence: Exhibits "1" to "1-C", Technology Resource Center (TRC) Office Circular No. 00GE0098 dated 19 January 2007 issued by Dir. Gen Antonio Y. Ortiz on the subject: "Reiteration of Office Policies on Authorized Signatories for Official Documents"; Exhibit "2" to "2-B", Office Circular 00OP0099 dated 3 September 2007 issued by Dir. Gen. Antonio Y. Ortiz on the subject: "Implementing Guidelines on Priority Development Assistance Fund (PDAF) Accounts"; Exhibit "3" to "3-C", Office Circular 00OP00100 dated 27 November 2007 issued by Dir. Gen. Antonio Y. Ortiz on the subject: "Revised Implementing Guidelines on Priority Development Assistance Fund (PDAF) Accounts"; Exhibit "4", Memorandum No. ODG-200712-081 dated 20 December 2007 issued by Dir. Gen Antonio Y. Ortiz on the subject: Amendment to Office Circular No. 00GE0098 dated 19 January 2007; Exhibit "5" to "5-F", Office Circular No. 00PE0100b dated 28 January 2010 issued by Dir. Gen. Dennis L. Cunanan on the subject: "Implementing Guidelines of Projects Funded through PDAF or Other Government

²⁵ Records, Volume 5, p. 271. Order dated January 18, 2023

Subsidy"; Exhibit "6" to "6-A", Memorandum dated 16 July 2010 issued by Dir. Gen. Dennis L. Cunanan on the subject: "Barring the Center from Entering into Agreement with Specific Institutions"; Exhibit "11", Stamp "Verified as to the Completeness of Documents Attached" along with the signature below it found on TLRC Disbursement Voucher No. 01007050820; and Exhibit "12" to "12-A", Memorandum dated 09 February 2007 from Deputy Dir. Gen. Dennis L. Cunanan on the subject: "PDAF Implementations".

Accused Lacsamana, on the other hand, submitted the following documentary evidence: Exhibits "1", Memorandum of Agreement (MOA) between Technology and Livelihood Resource Center (TLRC), Philippine Environmental & Ecological Development Association, Inc. (PEEDAI) and Cong. Prospero S. Amatong under SARO No. D-07-05540; Exhibit "2", Memorandum dated April 30, 2007; Exhibit "3", TRC Office Circular No. 000P0099 issued on September 3, 2007; and Exhibit "4", TRC Office Circular No. 000P0100 issued on November 27, 2007.

For his part, Accused Figura submitted as evidence the following documents: Exhibits "1"; Office Circular No. 000P0099 dated 3 September 2007 (Implementing Guidelines on PDAF Accounts); Exhibit "2", Office Circular No. 000P0100 dated 27 November 2007 (Implementing Guidelines on PDAF Accounts); Exhibit "3", Office Circular No. 000E0098 dated 19 January 2007 (Reiteration of Office Policies on Authorized Signatories for Official Documents); Exhibit "5", Memorandum Order No. 07 dated 22 June 2005 (Reactivation of Legislative Liaison Office (LLO) and Designation of Legislative Liaison Officer); Exhibit "6", Memorandum Reference No. ODG-200601-002 issued on 10 January 2006 by TRC DG Ortiz; Exhibit "7", Memorandum dated 4 April 2007 (Memo of Atty. Figura to DG Ortiz requesting to be relieved of duty or responsibility as signatory to the DVs in his capacity as Officer-in-Charge, Deputy Director General insofar as PDAF of legislators are concerned); Exhibit "8", Memorandum dated 9 February 2007 from DDG Cunanan to DG Ortiz which was coursed

through the Office of accused Atty. Figura; Exhibit "8-A", Handwritten Note of Atty. Figura on the said Memo dated 9 February 2007.

Lastly, accused Canoy, Jaudian, Soriano, and Cabig submitted the following documentary evidence: Exhibit "1", Memorandum of Agreement signed by Ortiz, Rep. Amatong, and Canoy; Exhibit "2", Project Proposal signed by Rep. Amatong and Canoy; Exhibit "3", Work and Financial Plan signed by Rep. Amatong and Canoy; Exhibit "4", TRC's Disbursement Voucher No. 012007050820; Exhibit "5", LBP Check No. 399416 dated May 4, 2007; Exhibit "6", PEEDAI's Official Receipt No. 31; Exhibit "8", Affidavit of Mario Espinosa, PEEDAI's records/filing clerk; Exhibit "9", Certification issued by Rosemary Lorna V. Uy, Barangay Chairwoman of Barangay Carmen, Cagayan de Oro City, dated November 17, 2017, certifying that Mario Espinosa is a resident of Barangay Carmen, Cagayan de Oro and that he was a victim of typhoon Sendong that occurred in December 2011; Exhibit "11", Certificate of Filing of Amended Articles of Incorporation of PEEDAI; and Exhibit "12", Certification of issuance of business permit issued by Business Permits and Licensing Division of Cagayan de Oro City.

In addition, Exhibit "7" was admitted as part of the testimony of accused Canoy. It is a Letter by Jaudian dated January 10, 2012 addressed to TRC Director-General requesting for xerox copies of records of progressive reports, liquidation and completion reports submitted by PEEDAI since 2007.

SUMMARY OF TESTIMONIES OF PROSECUTION WITNESSES

Atty. Ronald Allan Ramos testified that, as a Graft Investigation and Prosecution Officer III at the Field Investigation Office (FIO), Office of the Ombudsman, his functions include conducting fact-finding investigations on cases assigned to FIO and filing of necessary complaints. He led a team of fact-finding investigators tasked to investigate the release and utilization of PDAF of the late former Representative Prospero S. Amatong of the 2nd

District of Compostela Valley. After the investigation, he filed a **Complaint**²⁶ before the Office of the Ombudsman.

Ramos said that their team was proscribed from directly contacting any of the accused that is why they did not interview staff from TLRC or staff of the late Congressman. They relied on official documents gathered from government agencies, which they presumed to be public documents and no further verification was needed. He added that they went to the LGUs concerned to check if there were indeed projects implemented in their respective area, and there were none.²⁷

Jhoven Litana testified by way of **Judicial Affidavit**.²⁸ Being the Supervising Administrative Officer under the General Service Division of DOST Central Office and designated Records Officer of TRC Transition Committee of the DOST, his duties and responsibilities include the overall supervision of the activities of the team relative to the management of TRC records from inventory up to retrieval of paper and electronic files. Relative to his duties, he received a subpoena from the Office of the Special Prosecutor (OSP) requiring him to produce and submit a certified true copy of the latest Personal Data Sheet (PDS), Service Records, and Job Description of the following accused: 1) Antonio Ortiz; 2) Dennis Cunanan; 3) Francisco Figura; and 4) Ma. Rosalinda Lacsamana. He retrieved the source documents from official files and had them reproduced. He compared the source documents with the photocopies to ensure that the photocopies are faithful reproduction of the source documents in the official files. He then affixed his signature on each and every page of the documents and submitted them to the OSP. He assured that as part of the strategy to digitize the source documents for easy retrieval, the electronic files are the faithful reproduction of the source on file.²⁹

Marissa A. Santos testified on direct-examination by way of **Judicial Affidavit**.³⁰ As the Chief Executive Officer of the Central Records Division under the Administrative Service of the DBM, her duties and responsibilities include the following: 1) to supervise the day-to-day operations of the CRD of the DBM; 2) to act as the official custodian of the records and issuances of the DBM; 3) to issue certified true copies of the said records and issuances under her custody upon request of the proper parties or authorities; and 4) to perform other functions necessary in the discharge of her duties. Relative to her duty, she received a subpoena from the OSP requiring her to submit certified true copies of the following documents: a) Letter dated 18 January 2007 of Congressman Prospero S. Amatong to DBM Secretary Rolando G. Andaya; b) Special Allotment Release Order (SARO) No. D-07-05540 dated 22 March 2007; c) Advice of SARO/NCA

²⁶ Exhibit "MM"

²⁷ TSN dated May 11, 2021

²⁸ Judicial Affidavit of Jhoven Litana, Records, Volume 2, pp. 474-478

²⁹ TSN dated May 25, 2021

³⁰ Judicial Affidavit of Marissa A. Santos, Records, Volume 3, pp. 54-58

Issued dated March 22, 2007 addressed to the Bureau of Treasury; d) DBM Letter dated March 22, 2007 to Mr. Antonio Y. Ortiz, Director General, Technology and Livelihood Resource Center (TLRC); and e) Notice of Cash Allocation (NCA) No. BMB-D-070001793 dated 23 March 2007. She compared the source documents on file in their records room and had them reproduced. The photocopies are faithful reproduction of the source documents in their official files. She affixed her signature on each and every page of the documents and certified thereon that the documents are faithful reproduction of the source documents in their official files before submitting them to the OSP. She clarified during her cross-examination that the source documents in her custody are not necessarily original copies, some are photocopies, but are official DBP copies.³¹

Rachel M. Abendanio's direct testimony is contained in her *Judicial Affidavit*.³² She testified that she was the Director II/Service Chief of the Records Management Services from July 3, 2017 until October 14, 2020. Her duties and responsibilities as then Director II/ Service Chief of the Records Management Services were as follows: 1) ensure provision of safe, secure and adequate storage for the safekeeping of the records of the Commission; 2) direct supervision of the systematic recording, safekeeping, and releasing of all documents transactions and activities in the Records Management Services; and 3) supervision of the activities of subordinate personnel. She recalled having received a subpoena from the OSP directing her to submit a certified true copy of COA Circular 96-003. She directed her staff to retrieve the requested document on file in the storage room and had the document reproduced under her direct supervision. She compared the source document with the photocopy to ensure that the photocopy is a faithful reproduction of the source document in their official files. Thereafter, she affixed her signature on each and every page of the document and certified thereon that the document is a faithful reproduction of the source document in their official files before submitting the same to the OSP.

Shari-Ann Harriet F. Cabuhat testified by way of *Judicial Affidavit*.³³ She has occupied the PMO V position since September 2020 and have been designated as the OIC of the Secretariat Division since March 2020. Her duties and responsibilities include certifying true copies of GPPB issuances such as resolutions, guidelines, and circulars, preparing and reviewing minutes of the GPPB and its Inter-Agency Technical Working Group Meetings, drafting of memoranda, reply, and other documents to be issued by the GPPB. Relative to her duties, she received a subpoena from the OSP directing her office to submit a duly certified copy of GPPB Resolution No. 12-2007. A digital scanned record of the said resolution was forwarded to her which she then compared with the official book-bound files to ascertain that the said resolution was a faithful reproduction of the source

³¹ TSN dated June 8, 2021

³² Judicial Affidavit of Rachel M. Abendanio, Records, Volume 3, pp. 113-115

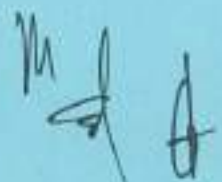
³³ Judicial Affidavit of Shari-Ann Harriet F. Cabuhat, Id, pp. 129-133



document. She then certified the scanned copy and affixed her signature on each and every page of the document before sending it to the OSP through email on April 30, 2021.

Joan Agnes Alfafara testified on direct examination by way of *Judicial Affidavit*.³⁴ She testified that she is a State Auditor IV assigned at the Special Audits Office, Commission on Audit (COA), from August 10, 1998 continuously up to present. She participated in the conduct of special audits of various government projects and programs, such as government-wide performance audit, sectoral performance audit, and other special audits, sometimes as a Member of the Audit Team and at other times as Over-all Team Leader or Co-Team Leader. In relation to the present cases, she was designated as Co-Team Leader in the special audit of PDAF which was conducted from June 2010 to September 2012. The team was composed of 19 members subdivided into sub-groups, whose names and signatures are found in the Special Audit Reports. The PDAF of former Representative Prospero S. Amatong was among those covered by the audit, which focused on the allocation and transfer of funds and monitoring of releases and implementation of the livelihood and development programs or projects. The team performed the following during the audit: a) implemented the audit plan; b) determined and secured relevant rules and regulations affecting the allocation, releases and utilization of the PDAF; gathered schedule of releases covered in the audit made by the DBM to the Implementing Agencies (IAs); d) gathered, obtained and reviewed the documents pertaining to implementation and utilization of PDAF by the IAs and Non-governmental Organizations (NGOs) in accordance with existing laws, rules and regulations; e) confirmed the validity of the transactions and authenticity of the documents gathered from concerned parties such as beneficiaries, suppliers, legislators, NGOs and regulatory offices to determine the validity of the reported transactions; g) conducted ocular inspection of selected business sites of NGOs and suppliers to determine their existence and operation; h) analyzed all documents gathered, concluded the audit and prepared audit report, and i) prepared Notices of Disallowance for review and approval of over-all Team Leader and SAO Director. The audit team confirmed that based on the documents examined, there were neither suppliers nor recipients, and that the subject transaction remained unliquidated. She personally prepared the Notice of Disallowance for SARO No. D-07-05440 for the following reasons: 1) the SARO was released by the DBM to TLRC despite the absence of document required to be submitted by TLRC to DBM as Implementing Agency; 2) Php9,800,000.00 was merely transferred by TLRC to PEEDAI, despite the absence of appropriation law earmarking an amount to be contracted out to NGO; 3) the selection of NGO, for those allowed under the law, is subject to the guidelines to be issued by the Government Policy Procurement Board (GPPB) as required in the President's Veto Message for FY 2007 GAA, and those prescribed under COA Circular No. 96-003 and the fund was

³⁴ Judicial Affidavit of Joan Agnes N. Alfafaras, Records, Volume 3-A, pp. 1-22



transferred even before the issuance by the GPPB of the required guidelines while the provisions under COA Circular No. 96-003 were not at all observed.

The individual participation of accused public officers are mostly because they are signatories to documents that led to the transfer of fund to NGOs without legal basis. She reiterated that she found it illegal and irregular for several senators and congressmen to have released funds to NGOs because NGOs are not among the implementing parties of PDAF defined in GAA. There were no NDs issued in 2007, 2008, 2009, 2010, only the ND issued pertaining to the present cases in 2013, six (6) years after the release of the PDAF of Rep. Amatong.³⁵ There were irregularities noted by the resident auditor, Jerry Calayan, of TRC. In the Annual Audit Report, the TRC is not compliant with the COA Circular 96-003 despite substantial unliquidated amount releases to NGOs, TRC continuously released funds to NGO. However, the report was not specific to a legislator, transaction or operation. The team covered not only the TRC but also the DPWH, DSWD and almost 37 Implementing Agencies including District and Regional Offices. The projects intended for marginal sector in the jurisdiction of former Rep. Amatong remains unliquidated. There were no suppliers or beneficiaries submitted. Thus, the fund release for the PDAF of former Rep. Amatong is unliquidated.³⁶

Anita T. Arancon,³⁷ Emma T. Juntilla,³⁸ Elyn M. Atienza,³⁹ and Danilo G. Calcaben⁴⁰ testified by way of *Judicial Affidavit*. They are currently the Municipal Accountant of their respective municipality, Pantukan, Maco, Moncayo, and Montevista, all in Davao de Oro. Their duties and responsibilities include the following: 1) to certify the availability of budgetary allotment to which expenditures and obligations may be properly charged; 2) to review supporting documents before preparation of vouchers to determine completeness of requirements; 3) to prepare and submit Financial Statement to the Municipal Mayor and to the Sangguniang Bayan; and 4) to perform other functions necessary or incidental to the abovementioned duties. In relation to their duties as Municipal Accountants, they received subpoenas from the Office of the Ombudsman thru the Office of their Municipal Mayors, directing them to submit documents relative to "District-Wide Livelihood and Entrepreneurial Promotions and Development Program" in the second district of Compostela Valley funded by the PDAF of former Rep. Amatong, implemented by the TRC in coordination with PEEDA. They searched and checked reports on PDAF transferred to their respective LGU found out that during Calendar Year 2007 their LGUs were neither recipients of the PDAF nor beneficiaries of any project funded by PDAF of former Rep. Amatong under SARO No. D-07-05540 dated March

³⁵ TSN dated October 5, 2021

³⁶ TSN dated October 19, 2021

³⁷ Judicial Affidavit of Anita T. Arancon, Records, Volume 3, pp. 365-369

³⁸ Judicial Affidavit of Emma T. Juntilla, id, pp. 371-375

³⁹ Judicial Affidavit of Elyn M. Atienza, id, pp. 390-394

⁴⁰ Judicial Affidavit of Danilo G. Calcaben, id, pp. 396-402

22, 2007. They all issued a Certification stating that their LGUs were neither recipients of the PDAF nor beneficiaries of any project funded by the PDAF of former Rep. Amatong under SARO No. D-07-05540 dated March 22, 2007, and submitted the same to the office of their Municipal Mayors, and then forwarded to the Office of the Ombudsman.

The Municipality of Moncayo is under the First District of Davao de Oro.⁴¹ Same with Calcaben, Montevista is likewise under the First District of Davao de Oro represented by another legislator in the person of Representative Manuel A. Zamores. Thus, their municipalities cannot be the recipient of the PDAF of former Rep. Amatong as they are outside the latter's Congressional District.⁴²

Lorenzo L. Balbin, Jr.'s testimony is contained in his *Judicial Affidavit*.⁴³ He was the Municipal Mayor of New Bataan, Compostela Valley (now Davao de Oro) from Year 2006 when he assumed the position having succeeded after the death of former Mayor. His first elective term as Mayor commenced in the year 2007 and he was re-elected twice until his third term ended on June 30, 2016. His duties and responsibilities included the following: 1) to cause the implementation of all national laws, circulars and directives as well as provincial and municipal ordinances and policies; 2) to administer the personnel complement of the Municipal Government as well as provide leadership and direction in the implementation of municipal, provincial, and national programs delegated to the LGU; 3) to ensure that the budget of the municipality goes to the sectors that need assistance and basic services the most; and 4) to perform other functions necessary or incidental to the abovementioned duties. Relative to his duty as Mayor, he received a subpoena from the Office of the Ombudsman sometime in May 2016 directing him to submit documents relative to "District- Wide Livelihood and Entrepreneurial Promotions and Development Program" in the second district of Compostela Valley funded by the PDAF of former Representative Rep. Amatong, implemented by the TRC in coordination with PEEDAI. He immediately directed his staff to look for any accounting records at the accounting system pertaining to the implementation of said project in the municipality and found out there was none. After that, he issued a Certification stating that as per record of his office, the LGU of New Bataan did not receive any funding from the PDAF of former Rep. Amatong. He then forwarded it to the Office of the Ombudsman. He also inquired from the other departments like the General Services Office, Municipal Social Welfare and Development Office, and the Municipal Agricultural Office if there was funding received or projects funded by the PDAF of former Representative Rep. Amatong, but there was none. However, he clarified that the Municipality of New Bataan is under the First District of Compostela Valley.⁴⁴

⁴¹ TSN dated November 23, 2021, p. 37

⁴² TSN dated November 23, 2021, pp. 17-24

⁴³ Judicial Affidavit of Lorenzo L. Balbin, Jr., Records, Volume 3, pp. 423-426

⁴⁴ TSN dated February 8, 2022

Atty. RJ A. Bernal testified on direct- examination by way of *Judicial Affidavit*.⁴⁵ He testified that he is currently the Chief Counsel of the Company Registration and Monitoring Department of the Securities and Exchange Commission (SEC). His duties include, among others, registration of domestic corporations and partnerships, acting as official custodian of corporate and partnership documents filed with the SEC, and attending court hearings. Relative to his duties, his office had received a subpoena from the OSP requesting for the issuance of certified true copies of SEC documents of PEEDAI. After searching for the source files, he made a print-out copy of all the subpoenaed documents and verified the same with the Corporate Filing and Records Division. Thereafter, he asked Atty. Daniel P. Gabuyo, the Officer-in-Charge of the Corporate Filing and Records Division, to certify that the documents as true copies of the official files in the SEC database. He then forwarded the following documents to the OSP: 1) General Information Sheet; 2) Certificate of Incorporation; 3) Articles of Incorporation and By-Laws; 4) Certificate of Filing of Amended Articles of Incorporation; and 5) Independent Auditor's Report.

SUMMARY OF THE TESTIMONIES OF DEFENSE WITNESSES

Dennis Lacson Cunanan's *Judicial Affidavit*⁴⁶ served as his direct testimony. He stated that he was the Deputy Director General of the TRC from December 2004 until December 2009. He was eventually appointed as Director General (replacing former TRC Director General Antonio Ortiz) and held such post from January 2010 until his resignation on March 2014. Upon assumption in 2004, he was Head of the Change Management Team (CMT) responsible for the day-to-day administration of the then TLRC, particularly with respect to maintaining the financial stability of their organization. When he assumed the post of Deputy Director General, he likewise became its Chief Operating Officer. He was required to be a co-signatory in the disbursement vouchers pertaining to the financial transactions of TRC. When required, he would also make reports to the Board of Trustees of TRC about the transactions of the office and make recommendations about policies. TRC had already been receiving PDAF allocations since it was established. TRC started receiving PDAF from legislators sometime 2005 until 2008. It went on until 2009 because TRC was included in the General Appropriations Act (GAA) as one of the implementing agencies (IAs) for PDAF-funded projects. All PDAF transactions and processing were lodged under the direct supervision of the Office of the Director General. It was former DG Ortiz who directly dealt with and supervised the processing of all PDAF-related projects of the TRC. Through the issuance of Office Circular 00OP0098, his authority in relation to PDAF matters had then been limited

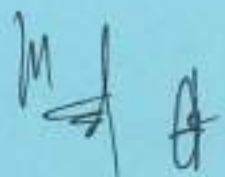
⁴⁵ Judicial Affidavit of RJ A. Bernal, Records, Volume 3, pp. 440-444

⁴⁶ Judicial Affidavit of Dennis L. Cunanan, Records, Volume 4, pp. 290-306



x-----x

to signing TLRC checks in amounts ranging from P100,000.00 up to P1,000,000.00 only. By way of Office Circular 00OP0099, DG Ortiz specifically stated, among others, that no PDAF shall be implemented without a Memorandum of Agreement (MOA) duly executed. All MOA need to be endorsed by the Legislative Liaison Officer (LLO) for approval by DG Ortiz after being reviewed by the Legal Department and initialed on by the Group Manager of the Corporate Support Services Group (CSSG). The Office of the Deputy Director General which he headed was stripped off any participation in the implementation of PDAF-funded projects. There is also Office Circular 000P0100 which revised the implementing guidelines for PDAF accounts and reiterated previously stated points on signing authority and preparation of documents for PDAF. DG Ortiz also issued Memorandum No. 0DG-200712-081 which amended Office Circular 00OP0098. This memorandum provided for alternate signatories as "Recommending Authority" (Box A) to TRC's disbursement vouchers for any amount exceeding One Million Pesos (P1,000,000.00). Before signing any disbursement voucher, he makes sure that the attachments are complete in accordance with the checklist that was required by memos and office circulars, the SAROs, endorsement letters from the legislator, Memorandum of Agreement, Project Proposals, among others. The PDAF is treated as special fund when it reaches TRC, as opposed to the general fund of TRC. Upon endorsement by the legislator as to how the fund should be used and allocated, the Legislative Liaison Office will forward the endorsement to the Office of the Director General. As soon as the Director General approves the notice to proceed, the disbursement voucher will be prepared and routed for signature. Given that PDAF is a special fund, he gets to sign the vouchers before the final signature of the Director General for check preparation after all initials and pertinent signatures are in place. During that time, he worked upon the assumption that the PDAF-funded projects were regular and legitimate undertakings of TRC as it was authorized by the GAA to be designated implementing agency for PDAF. During regular audit and as manifested in the regular annual audit report of TRC, there had been no red flag to which the attention of their office had been drawn regarding the processing or accrediting of PDAF funds. There were no adverse observations or disallowances except when the results of the Special Audit came in. When he assumed the position of Director General in 2010, he immediately organized a committee to investigate and review TRC's implementation of PDAF projects and initiated communication with the concerned NGOs to enable them to rectify deficiencies, if any, and to afford them the chance to liquidate all unliquidated funds on record. He also caused the blacklisting of NGOs that failed to comply with his initial letter, instructing them to update their legal documents, rectify their deficiencies, and/or similarly liquidate funds that remained unliquidated. He had not met nor had spoken with former Rep. Amatong nor had received any money or other form of benefit in exchange for his signature.



Maria Rosalinda Masongsong Lacsamana testified on direct examination by way of *Judicial Affidavit*.⁴⁷ She said that at the time material to these cases, she was employed at TRC as Group Manager. When she joined TRC in 2006, it was already implementing livelihood projects funded by the PDAF of members of Congress. Alongside her position as Group Manager, she was also designated as Legislative Liaison Officer (LLO) for PDAF projects. Her duties included ensuring that the supporting documents relating to projects were signed, complete, and in order. She averred, however, that she had no participation in the selection, endorsement, or approval of the NGO which will implement the project funded by a legislator's PDAF and that she had no authority to enter into any agreement with the legislators or the NGOs for the release of funds and the implementation of their projects. In the MOA of TRC, the legislators, and the NGOs, neither her name nor her signature appears. She does not know the NGO involved in these cases nor its corporate officers. She did not derive any pecuniary benefit from the subject transactions. None of the prosecution witnesses had testified that she received any kickback, commission, or anything of value in consideration of TRC's implementation of PDAF projects. Her only participation was as signatory in the memorandum, a ministerial role vested upon her by the relevant TRC Office Circulars. The tripartite Memorandum came into existence after passing several processes and procedures. As a subordinate employee of TRC, she was not in a position to question the request for the release of a legislator's PDAF allocation nor the endorsement of the legislator's request to the DBM by the Senate President or the House Speaker. Neither can she assail the issuance by the DBM of the Special Allotment Release Order (SARO) or the tripartite Memorandum of Agreement entered by the legislator, TRC, and the NGO.

Atty. Francisco B. Figura's direct testimony is contained in his *Judicial Affidavit*.⁴⁸ According to him, he joined the TRC in July 1986, initially as part of the task force to reorganize TRC. Eventually, he was appointed Head of the Litigation Division of its Legal Department. In 2007 to 2010, he was the Officer-in-Charge of the Corporate Support Services Group (CSSG). As TRC OIC-Group Manager, he monitored and supervised the performance of the department heads, rated them accordingly, addressed their concerns to ensure efficiency, and represented them in the Management Committee of TRC, among others. He was familiar with PDAF because it is commonly known as a discretionary fund given to legislators to finance the projects in their districts. The Fund's predecessor, the Countrywide Development Fund or CDF, used to be implemented by TRC in the 1900's. He recalled that sometime in August 2006, Deputy Director General Dennis Cunanan announced during a ManCom meeting that TRC had been officially chosen as one of the agencies authorized under the

⁴⁷ Judicial Affidavit of Maria Rosalinda M. Lacsamana, Id, pp. 335-340

⁴⁸ Judicial Affidavit of Atty. Francisco B. Figura, Records, Volume 5, pp. 10-26



General Appropriations Act (GAA) to implement the PDAF projects of legislators. The ManCom members were jubilant because that meant the influx of substantial revenue for TRC from the full operationalization of its livelihood training programs and a ready market for their livelihood materials/training kits. As head of TRC, Director General Antonio Ortiz (DG Ortiz) said that the inclusion of TRC in the GAA is a welcome development especially because TRC's finances are in the "red". Several months later, DG Ortiz issued Office Circular No. OOG0098 dated 19 January 2007 which reiterated the Office Policies on Authorized Signatories for Official Documents. He recounted that soon after, DG Ortiz called for a ManCom meeting to discuss certain concerns regarding the PDAF projects. One of the things mentioned was the requirement of public bidding in the selection of the conduit NGO which will be implementing the projects. Livelihood training, according to DG Ortiz, is part of the "soft" portion of the PDAF which doesn't require public bidding unlike the "hard" portion which requires public bidding because it involves infrastructure. DG Ortiz also intimated that since the PDAF is considered a discretionary fund of the legislators, the TRC (as implementing agency) had to respect the wishes of the legislators, like in their choice of NGO which will serve as conduit of the TRC. Since the DBM Circular requiring public bidding even for NGO's had not been issued yet, he found some logic and merit on the stand of DG Ortiz. Finally, DG Ortiz decided that the NGO or Foundation designated in the official letter of the legislator should serve as the TRC conduit in the implementation of the PDAF. He also decided to impose a one (1) percent management fee plus Php50,000.00 worth of TRC livelihood materials for every PDAF account. He reiterated that the designated Legislative Liaison Officer (LLO) should continue to coordinate with the legislators' office, vet or assess the qualifications of the recommended NGO, prepare the MOA for review of the Legal Department and such other initiatory work needed to process the PDAF projects. Having reservations on the matter, he made a handwritten note to both DG Ortiz and DDG Cunanan that due to the far-reaching implications and consequences of these PDAF matters/issues which may affect the very existence of the Center, he suggested that these matters be thoroughly discussed in the ManCom and presented to the Board of Trustees of TRC for approval since policies related to operations were unavoidably involved. To that end, he issued a Memorandum addressed to DG Ortiz wherein he requested to be relieved of the duty to sign Box "A" of the DV in his capacity as OIC-DDG (as the DDG was then out of the country), in view of the serious implications and responsibilities attached to such signature, not to mention the huge amounts involved, in so far as releases of the PDAF of the congressmen to NGOs/foundations are concerned. Unfortunately, this Memorandum was not acted upon by DG Ortiz. On September 3, 2007, DG Ortiz finally issued Office Circular OOO009 which set the Implementing Guidelines for PDAF accounts and established the uniform requirements and methodology for implementing



x-----x

livelihood projects funded under the PDAF of members of Congress. Later, Office Circular No. OOP0100 dated November 27, 2007, was issued by DG Ortiz which partially revised the Implementing Guidelines on PDAF accounts. The latter Circular emphasized that no PDAF releases shall be made to conduit project implementors who had outstanding unliquidated funds from prior releases. He stated that his office did not have any role in coordinating with the legislators on their PDAF projects nor in the accreditation of the NGO-conduits, such tasks belonging to the LLO of TRC, as stated in Memorandum Order No. 7 issued by DG Ortiz on June 22, 2005. He said that the task of monitoring project implementation rested with the Technology and Livelihood Information Dissemination Services Group (TLIDSG). A Management Letter dated September 14, 2009, issued by the Corporate Auditor to DG Ortiz, indicated that concerns about non-liquidation of PDAF Funds were to be coursed through the Group Manager of TLIDSG and not to the Legal Department. During the years 2007, 2008, 2009, and 2010 exit conferences were conducted and not a single Notice of Disallowance was issued on PDAF projects by the Corporate or Resident Auditor. Since there was no showing from the Office of the Corporate Auditor that the handling of the PDAF projects was irregular, his office continued to perform its regular mandated functions under the Office Circulars. He countersigned checks because he was performing a ministerial function under Office Circular No. OGGE0098. He does not personally know former Rep. Amatong nor has he ever talked to him or any officers of PEEDAI.

Alfredo S. Soriano testified by way of *Judicial Affidavit*.⁴⁹ He testified that although he was the Vice President of PEEDAI, he could act only in the absence of the President. He denies having met or talked to former Rep. Amatong, accused Ortiz, Cunanan, Lacsamana, and Figura. He does not know the details about the livelihood program as he had not signed any document relative thereto. He only heard of the program from Jaudian's report which include the following matters: 1) the budget of Ten Million Pesos from the PDAF of former Rep. Amatong allocated for the livelihood program for the 2nd District of Compostela Valley (now Davao de Oro); 2) the training conducted for the beneficiaries of said program listed by the office of Rep. Amatong numbering almost 1,000, to impart them skills like haircut, manicure and others; and 3) the amount of Php7,000.00 given to each and every beneficiary as capital to start a livelihood using their newly acquired skills. However, the said report was no longer available as all documents of PEEDAI were swept away by flood waters during the onslaught of typhoon Sendong in December 2011. Request for a copy of the report and documents to TRC was made, however, no response was ever received from TRC.

⁴⁹ Judicial Affidavit of Alfred S. Soriano, Id. pp. 93-95

M
A

x-----x

Ma. Cecilia Y. Martinito,⁵⁰ **Peter Quijal**,⁵¹ **Bebelyn D. Quinco**,⁵² and **Ernelyn C. Simbajon**⁵³ testified on direct examination by way of **Judicial Affidavit**. They testified that they were beneficiaries of the livelihood program of former Rep. Amatong that was implemented in May 2007. A staff of Representative Rep. Amatong and NGO headed by 'Sir Vince' went to Barangay Cuambog, Concepcion, Laak, and Kingking to invite residents belonging to poor sectors who want to benefit from the livelihood program. The beneficiaries, them including, were taught with different kinds of skills for five (5) days like haircutting and trimming, hair dyeing, trimming of eyebrows, massage, manicure, pedicure, face make-up for women, dressmaking, among others. They chose their respective training and were given with training kits. Trainings started at 8:00 in the morning and ended at 4:00 in the afternoon. They were given free lunch and snacks, aside from the Php100.00 given each day for five (5) days for fare and household expenses. After the training, they were given Php7,000.00 each as startup capital for the livelihood chosen but they were cautioned that they will be monitored and checked if the money received was used for the purpose it was given. They were made to sign a document acknowledging receipt of the Php7,000.00.

Mercy U. Cabig's direct testimony is contained in her **Judicial Affidavit**.⁵⁴ She testified that as the Treasurer of PEEDAI, she received funds and monies in the name of PEEDAI and deposited them in the savings account of PEEDAI with the Land Bank of the Philippines, A. Velez Branch, Cagayan de Oro City. She made disbursements upon directive by the President and authority of the Board of Trustees. She denies the charge against her. She has never met nor talked to former Rep. Amatong, her co-accused Ortiz, Cunanan, Lacsamana, and Figura. She did not know the details about the livelihood program and she did not sign any document relative thereto. She only knew about the report submitted by accused Jaudian detailing the successful implementation of the livelihood program in cooperation with the Office of Rep. Amatong and TRC. As far as she can remember, the report contains the following: 1) the budget of Ten Million Pesos from the PDAF of Rep. Amatong allocated for the livelihood program for the 2nd District of Compostela Valley (now Davao de Oro), though only Php9,800,000.00 was turned over to PEEDAI, and received by President Canoy and Jaudian; 2) the training conducted for the beneficiaries of said program in May 2007, numbering about 960 as listed by the Office of Rep. Amatong to impart them skills, like haircut, manicure, dressmaking, and others; and 3) the amount of Php7,000.00 given to each and every beneficiary as capital to start a livelihood using newly acquired skills, and Php500.00 each for fare during training. The copy of the said report was kept in custody by Mario Espinosa, PEEDAI's Records Officer. However, the

⁵⁰ Judicial Affidavit of Ma. Cecilia Y. Martinito, Id, pp. 133-146

⁵¹ Judicial Affidavit of Peter L. Quijal, Id, pp. 140-146

⁵² Judicial Affidavit of Bebelyn D. Quinco, Id, pp. 165-170

⁵³ Judicial Affidavit of Ernelyn C. Simbahon, Id, pp. 171-176

⁵⁴ Judicial Affidavit of Mercy U. Cabig, Id, pp. 219-223

records were no longer available as all documents of PEEDAI were swept away by flood waters during the onslaught of Typhoon Sendong in December 2011. She did not make any disbursements with regard the Php9,800,000.00 PDAF of Rep. Amatong. When the check of Php9,800,000.00 came, she was in Bukidnon for personal matters. Accused Canoy and Jaudian, as her alternate bank signatory, encashed the check to start the full implementation of the project. She just reminded accused Canoy that she will be needing all documentation and receipts of all the expenses for proper recording in their books. The receipts issued by the beneficiaries for the amounts received were included in the report of accused Jaudian but were among the documents swept away by flood water. She did not receive the check amounting to Php9,800,000.00. The check was encashed by her co-accused Canoy and Jaudian to start the full implementation of the livelihood projects. Her knowledge of the implementation of livelihood program was from the "Report" of Jaudian and information being relayed by Canoy. She included the five percent out of the Php9,800,000.00 of TRC in the Financial Statement of PEEDAI.⁵⁵

Butch S. Canoy testified by way of *Judicial Affidavit*.⁵⁶ He testified that as the President and Chief Executive Officer of PEEDAI, he was equipped with a Board Resolution approved by the Board of Trustees of PEEDAI in March 2007 authorizing him to enter into transaction with TRC and former Rep. Amatong relative to the implementation of the PDAF of the latter for livelihood projects in the 2nd District of Compostela Valley (now Davao de Oro). Unfortunately, all documents relating to the livelihood projects of Rep. Amatong in May 2007, including said Board Resolution, MOA with TRC and Rep. Amatong, Project Proposal, Work and Financial Plan, list of beneficiaries, progress reports, liquidation, Articles of Incorporation and By-laws of PEEDAI all submitted to TRC, bank documents, business permit and others, were swept away by heavy rains brought by Typhoon Sendong in December 2011. Accused Jaudian requested TRC for copies of all documents/records submitted to TRC since 2007. However, the request remained unheeded. He denies the charge against him and the conspiracy among the PEEDAI officers, with Rep. Amatong and TRC officials. When he met with Rep. Amatong, he was complimented about his management of his business, Radio Mindanao Network (RMN). Rep. Amatong told him that he was convinced that PEEDAI would do well in the implementation of the projects. Rep. Amatong confirmed to DG Ortiz that he selected PEEDAI as conduit-NGO to implement the livelihood projects costing Php10,000,000.00 under his PDAF allocation for 2007. He asked Rep. Amatong if his selection of PEEDAI as conduit-NGO of TRC is sufficient without any bidding. He was assured that there would be no problem because Rep. Amatong was authorized under the TRC Circular 00OPP0099 to select the conduit-NGO which is also consistent with COA Circular 96-003.

⁵⁵ TSN dated October 19, 2022

⁵⁶ Judicial Affidavit of Butch S. Canoy, Records, Volume 5, pp. 224-235

STIPULATED FACTS

As per *Pre-Trial Order*⁵⁷ of February 26, 2021, the following facts were stipulated upon by the plaintiff and accused Canoy, Jaudian, Cabig, and Soriano:

- 1) The identity of accused Canoy, Jaudian, Cabig, and Soriano as the same persons named as among the accused in SB-19-CRM-0171;
- 2) The respective positions in PEEDAI of the following accused at the time material and relevant to the case:
 - a. Ike Suniel Canoy – Chief Executive Officer
 - b. Vincent Vallar Jaudian – Chief Operating Officer
 - c. Mercy Uayan Cabig – Treasurer
 - d. Alfred Sabuero Soriano – Vice President
- 3) The late Prospero S. Rep. Amatong was the elected Representative of the 2nd District of Compostela Valley for Calendar Years 2004-2007;
- 4) The TRC issued undated Disbursement Voucher (DV) No. 012007050820 and Land Bank of the Philippines Check No. 399416 dated May 4, 2007, transferring the subject funds to PEEDAI;
- 5) Canoy received on May 4, 2007 the Land Bank of the Philippines Check No. 399416 and he, in turn, issued Official Receipt No. 31;
- 6) A tripartite Memorandum of Agreement (MOA) was executed by Ortiz, Canoy, and Rep. Amatong, representing the TRC, PEEDAI, and Congress, respectively, and it was notarized on May 7, 2007;
- 7) The incorporation of PEEDAI as a non-profit and non-stock association on October 25, 2001 and its primary purpose was to develop and produce tree seedlings of various species for proper

⁵⁷ Records, Volume 3, pp. 82-94. As regards accused Canoy, Jaudian, Cabig, and Soriano

- distribution to different civic organizations and/or clubs and others for the greening of the country. Its initial capital was sourced from the contributions of its incorporators in the total amount of Php62,000.00;
- 8) TRC Disbursement Voucher (DV) No. 012007050820 and Land Bank of the Philippines Check No. 399416;
 - 9) PEEDAI Official Receipt No. 31;
 - 10) Notarized Memorandum of Agreement signed by Ortiz, Canoy, and Rep. Amatong;
 - 11) Project Proposal signed by Rep. Amatong; and Canoy;
 - 12) Work and Financial Plan signed by Rep. Amatong and Canoy;
 - 13) Certificate of Incorporation, Articles of Incorporation and By-Laws and Certificate of Filing of Amended Articles of Incorporation of PEEDAI.

UNDISPUTED FACTS

The antecedent facts, as culled from the record, are as follows:

During a government-wide performance audit on the Priority Development Assistance Fund (PDAF) allocations and disbursements covering Calendar Years 2007-2009, the Commission on Audit (COA), through its Special Audit Office (SAO), uncovered various irregularities in the release and utilization of the PDAF by Implementing Agencies (IAs), including the Technology Resource Center (TRC),⁵⁸ to Non-Governmental Organizations (NGOs). Pertinent to the present cases, the audit found that former Rep. Amatong, through the TRC, sought the release and transfer of his PDAF in the total amount of Php10,000,000.00 to Philippine

⁵⁸ Formerly the Technology and Livelihood Resource Center (TLRC); terms will be used alternately

Environmental and Ecological Development Association, Incorporated (PEEDAI),⁵⁹ a duly organized non-stock, non-profit NGO based in Cagayan de Oro City, Misamis Oriental.

In a **Letter**⁶⁰ dated January 18, 2007, Rep. Amatong made a request to then Secretary Rolando G. Andaya, Jr. (Secretary Andaya for short) of the Department of Budget and Management (DBM) for the allocation of Ten Million Pesos (Php10,000,000.00) to TLRC to cover the livelihood and other development projects in the 2nd District, Compostela Valley. On March 22, 2007, the DBM, through Secretary Andaya, issued **Special Allotment Release Order (SARO) No. D-07-05540**⁶¹ authorizing the allotment of Php10,000,000.00 to Rep. Amatong as subsidy to cover the implementation of various livelihood development projects in the 2nd District of Compostela Valley. The DBM likewise issued the **Advice of SARO/NCA Issued (Fund 104)**⁶² for credit of the said amount to the account of TLRC at the Land Bank of the Philippines (LBP) Intramuros, Manila Branch under MDS Sub-Account No. 2001-90167-3.

In a **Letter**⁶³ dated March 26, 2007 of Rep. Amatong to Ortiz, then Director General of TLRC, with attention to Cunanan, then Deputy Director General of TLRC, Rep. Amatong endorsed PEEDAI⁶⁴ as the implementing NGO for the funds allocated in the 2nd District of Compostela Valley (now Davao de Oro).

In a **Memorandum**⁶⁵ dated April 30, 2007 prepared by accused Lacsamana, Group Manager, TLIDS/LLO, for Ortiz, with subject "Release of PDAF of Congressman PROSPERO S. AMATONG", it was stated: "[I]n accordance to the Memorandum of Agreement between TLRC and the

⁵⁹ Exhibits "CC", "DD", "EE"

⁶⁰ Annex "A"

⁶¹ Exhibit "B", "E"

⁶² Exhibit "C"

⁶³ Exhibit "D"

⁶⁴ Exhibit "CC", "DD", "EE", "FF", "GG"

⁶⁵ Exhibit "F"

Philippine Environmental & Ecological Development Association, Inc., we are recommending the release of Congressman PROSPERO S. AMATONG's PDAF in the amount of P9,800,000.00 for the implementation of various livelihood projects in the 2nd District of Compostela Valley. Following the MOA, we have retained the amount of P100,000.00 for service fee and P100,000.00 as cost of livelihood materials."

Thereafter, the TLRC released to PEEDAI, through accused Canoy as claimant, the financial grants from the PDAF of Rep. Amatang as evidenced by **Disbursement Voucher No. 012007050820**,⁶⁶ certified by Cunanan in his capacity as Deputy Director General and approved by Ortiz in his capacity as Director General. Attached thereto was the **LBP Check No. 0000399416**⁶⁷ dated May 4, 2007, and signed by Ortiz and Figura, indicating payment to the order of PEEDAI of the amount of Php9,800,000.00. Afterwards, Canoy issued **PEEDAI Official Receipt No. 031**⁶⁸ evidencing receipt of the amount.

An undated **Memorandum of Agreement (MOA)**⁶⁹ was entered into by TLRC (represented by Ortiz), Rep. Amatang, and PEEDAI (represented by Canoy) where Rep. Amatang will release to TLRC the Php10,000,000.00 for the implementation of livelihood and development projects in the 2nd District of Compostela Valley. TLRC shall then transfer the amount to PEEDAI which has accepted full responsibility in the disposition/disbursement of funds in accordance with the specific programs, activities, target date, and budget requirement stated in the **Project Proposal**⁷⁰ and **Work and Financial Plan**⁷¹ prepared by accused Canoy and Rep. Amatang. TLRC, on the other hand, was to monitor the implementation of the projects and the utilization of funds.

⁶⁶ Exhibit "H"
⁶⁷ Exhibit "I"
⁶⁸ Exhibit "J"
⁶⁹ Exhibit "K"
⁷⁰ Exhibit "K-1"
⁷¹ Exhibit "K-2"

PEEDAI and TLRC have the following respective responsibilities as stated in the MOA:

PEEDAI

- I. The FOUNDATION shall:
 - a. Submit to TLRC a duly certified list of the target areas/beneficiaries of the livelihood projects;
 - b. Submit a Work and Financial Plan in the amount of TEN MILLION PESOS (Php10,000,000.00) as a pre-requisite to the transfer of funds;
 - c. Take full responsibility in the proper disposition/disbursement of funds in accordance with the program guidelines and the Work and Financial Plan;
 - d. Submit to TLRC a regular project implementation report including funds utilized and pertinent documents relative to the disbursement/disposition of funds;
 - e. Coordinate with TLRC for the post-evaluation of the project implementation per agreed schedules.

- II. TLRC shall:
 - a. Transfer the amount of TEN MILLION PESOS (P10,000,000.00) to the FOUNDATION for its implementation;
 - b. Provide necessary technical assistance to the FOUNDATION to ensure that the program objectives are met;
 - c. Require the FOUNDATION to submit, progressively, project implementation reports in accordance with the agreed schedules and data requirements;
 - d. Monitor the status of the implementation of the program and the utilization of the Fund during actual project implementation;
 - e. Retain ONE PERCENT (1%) of the amount released as service fee for its role in the implementation of the project and ONE PERCENT (1%) worth of printed and video materials.

In a **Letter**⁷² dated May 30, 2012, the COA-SAO, through its Director IV Susan P. Garcia, requested for PEEDAI's confirmation of its receipt of the total amount of Php9,800,000.00 and proof of implementation of the district-wide livelihood and entrepreneurial promotions and development program. Further, the COA-SAO requested for the submission of liquidation documents supported with Official Receipts and Invoices of items procured and duly signed list of beneficiaries with complete names and addresses of the recipients, including the: (1) manner and criteria for selection of beneficiaries; (2) the manner of selection of suppliers; (3) the manner by

⁷² Exhibit "V-464-465"

which [it] was selected as partner in the implementation of the priority projects; and (4) the problems encountered in the implementation of the projects.

As the funds released for the implementation of livelihood projects in the 2nd District of Compostela Valley remained unliquidated as of audit date, **Notice of Disallowance (ND)** with **SAO ND No. TRC-2015-037-PDAF (07-09)**⁷³ dated October 26, 2015, was sent to persons identified therein as liable, accused herein included, to refund the full amount disallowed amounting to Php10,000,000.00 as the transaction was undertaken without due regard to existing laws and regulations.

After conducting an independent fact-finding investigation and on the basis of the **COA-SAO Report No. 2012-03**,⁷⁴ the Field Investigation Office (FIO) of the Office of the Ombudsman filed a **Complaint**⁷⁵ dated September 27, 2016 against the accused.

ISSUE

The question now is whether the accused are liable for **Violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act** and for **Malversation of Public Funds**, as defined and penalized under **Article 217 of the Revised Penal Code, as amended**, as charged under the **Informations** filed.

FINDINGS AND CONCLUSION

In criminal cases, the accused is presumed innocent and the burden is on the prosecution to establish his guilt of the crime charged by proof beyond a reasonable doubt. Every element of the crime charged must be

⁷³ Exhibit "V-467-471"

⁷⁴ Exhibit "V"-V-472"

⁷⁵ Exhibit "MM"

proved with this requisite quantum of proof. Proof beyond reasonable doubt requires moral certainty, or that degree of proof which produces conviction in an unprejudiced mind. It is such certainty that satisfies the judgment and conscience of a reasonable mind that the accused is guilty of the crime charged. Conviction must rest on the strength of the prosecution evidence and not on the weakness of the defense.⁷⁶

The Court will first deal with Criminal Case No. SB-19-CRM-0171 for alleged **Violation of Section 3(e) of R.A. No. 3019, as amended**. The **Information** essentially alleges that the accused conspired with one another, acted with manifest partiality and/or evident bad faith, and, in so doing, caused undue injury to the government.

To begin with, **Section 3(e) of R.A. 3019** provides, insofar as pertinent:

"SEC. 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:

xxxxx

(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 for **Violation of Section 3(e) of R.A. 3019, as amended**, the following elements must be sufficiently established by the prosecution:⁷⁷

⁷⁶ Section 14(2), Article III, 1987 Constitution; Section 2, Rule 133, Revised Rules of Court; *People v. Tolentino*, 16 SCRA 467.

⁷⁷ *Fuentes v. People*, G.R. No. 186421, April 17, 2017; *Uriarte v. People*, G.R. No. 169251, December 20, 2006.

1. The accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers;
2. The accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and
3. In the discharge of his functions, the accused caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference.

The presence of the first element is not disputed. At the time material and relevant to the case, accused Cunanan, Lacsamana, and Figura were public officers being the Deputy Director General, Group Manager, and Legal Management Manager, respectively, of TRC. Canoy, Jaudian, Cabig, and Soriano, who acted as President/CEO, Chief Operating Officer, Treasurer, and Vice President, respectively, of PEEDAI, are private individuals who are alleged to have conspired with the aforementioned public officers.

While not all are public officials, however, the Supreme Court has already ruled on many occasions that a private individual may be liable if such private individual conspires with an accountable officer to commit the offense charged.⁷⁸ The first element thus exists.

The second element describes the three modes of commission of the offense, namely, through "manifest partiality", "evident bad faith", and/or "gross inexcusable negligence". Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) is enough to convict.⁷⁹

⁷⁸ *Barriga v. Sandiganbayan*, G.R. No. 161784-86, April 26, 2005

⁷⁹ *Sison v. People*, 628 Phil. 573, 583 (2010)

In *Coloma, Jr. v. Sandiganbayan*,⁸⁰ the Court expounded on the different modes of committing the offense penalized under Section 3(e), viz.:

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

The prosecution avers that manifest partiality, gross negligence, and/or evident bad faith of the accused is demonstrated in their individual yet concerted acts which eventually led to the release of Rep. Amatong's PDAF to PEEDAI, an NGO preselected to undertake the livelihood program of Rep. Amatong but whose competence and qualification to undertake the livelihood programs had not been duly ascertained.

For reference, let us recall first the process involved in the release of a legislator's PDAF before the Court delves into a discussion of the remaining two interrelated elements.

Generally, the process begins with a request from a legislator to the Chairman of Committee of Appropriations, House of Representatives, for a release of a specified amount for "soft projects" chargeable against the legislator's PDAF. Customarily, such request already identifies the type of program/project to be carried out, its intended beneficiary, and the implementing agency. The Committee on Appropriations, in turn, indorses the same to the Secretary of the Department of Budget and Management (DBM), attaching a list of projects similarly submitted by the other Representatives. The DBM will then issue the corresponding SARO and NCA, whereupon the legislator concerned indorses to the implementing

⁸⁰ 744 Ph.E. 214 (2014)

agency the NGO chosen after a selection process in accordance with the prescribed procedure. The NGO would be the entity to actually implement the projects in the legislator's congressional district. Along with the request, the legislator prepares and attaches his/her Project Proposal and the Work and Financial Plan prepared by the NGO. Consequently, the legislator, the implementing agency, and the NGO will enter into a tripartite memorandum of agreement. The implementing agency will then check if the documents are in order and complete before preparing the DV and the check payable to the NGO. After crediting the allocated amount stated in the MOA, the implementing agency will release the DV and check to the NGO which will then withdraw the funds for the implementation of the projects pursuant to the tripartite MOA. Thereafter, the NGO will submit to the implementing agency a regular project implementation report including funds utilized and pertinent documents relative to the disbursement of funds. In turn, the implementing agency will monitor the status of the implementation of the projects/programs and the utilization of the funds.

The selection process of an NGO in accordance with the *Implementing Rules and Regulations of R.A. No. 9184*⁸¹ (the *Procurement Law*) provides that an NGO may be contracted only when so authorized by an appropriation law or ordinance, thus:

53.11. *NGO Participation.* When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations, the Procuring Entity may enter into a Memorandum of Agreement with an NGO, subject to the guidelines issued by the GPPB for the purpose.

The pertinent issuance by the Government Procurement Policy Board (GPPB), viz., *Resolution No. 12-2007*,⁸² buttresses such requirement and provides as guidance:

4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the

⁸¹ Government Procurement Reform Act, IRR-A

⁸² Exhibit "BB"

procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A.

However, in the present case, evidence clearly validate the fact that PEEDAI was unilaterally chosen and endorsed as project implementor for the livelihood programs of former Rep. Amatong in his Congressional District in Compostela Valley (now Davao de Oro) without the benefit of either an appropriation law or ordinance or the conduct of a public bidding which would have served as basis for its selection.

In particular, the Court notes Canoy's testimony:

*Q29: How come that PEEDAI got involved in the PDAF allocation of the late Cong. Amatong in 2007?

A29: If I can remember right, sometime in early March 2007, I had a meeting with TRC Director General Antonio Ortiz upon his invitation at his office. In that occasion Mr. Ortiz told me that PEEDAI was selected by Cong. Amatong as the conduit-NGO of his livelihood project under his 2007 PDAF allocation, because of his good impression of me. He gave me a checklist of what documents to submit to TRC to support PEEDAI's selection and for PEEDAI to coordinate immediately with Cong. Amatong.

Q30: What happened next?

A30: I instructed Vincent Jaudian, the Chief Operation Officer, to immediately seek an appointment with Cong. Amatong to discuss about his livelihood project.

Q31: What was the result of your instruction to Jaudian?

A31: Having obtained an appointment with Cong. Amatong, I, together with Jaudian had a meeting with him a few days later in the morning, at the Manila Hotel.

Q32: What transpired in the meeting?

A32: Cong. Amatong confirmed that he has informed Director General Ortiz that he has selected PEEDAI, as a conduit-NGO to implement as early as possible his livelihood project costing Php10,000,000.00 under his PDAF allocation for 2007, and that he had made already steps to have the release of his PDAF by DBM.

Q33: What else did you talk about with Cong. Amatong?

A33: He said, modesty aside, that he was really impressed of my good reputation as part of RMN management and that he was convinced that PEEDAI could do the job very well of project implementation and

M J A

asked us to coordinate with his office to accomplish all requirements to TRC."⁸³

Further, he himself reveals:

Q34: What else?

A34: I asked Cong. Amatong if his selection of PEEDAI as the conduit-NGO of TRC is sufficient without any bidding.

Q35: What was the answer of Cong. Amatong?

A35: He assured me that there is no problem because he was authorized under the TLRC Circular 00OP0099 to select the conduit-NGO and that the circular was still subsisting at that time and not repealed. He just wanted the project to be implemented to serve as his legacy to the poor people of the 2nd District of Compostela Valley, now Davao de Oro."⁸⁴

The burden of accrediting and monitoring of NGOs is vested in the procuring/implementing agency which, in this case, was the TRC. *COA Circular No. 96-003*⁸⁵ lays down the role of said Government Organization (G.O.) as follows:

4.0 DUTIES AND RESPONSIBILITIES OF THE GO

The GO shall:

4.1 accredit the NGO/PO after proper verification and validation of required documents and statements;

Section 3.3 of the same *COA Circular* specifically enumerates the requirements for the accreditation of an NGO/PO, to wit:

3.3.1 Certificate of Registration with the Securities and Exchange Commission (SEC) and/or with either the Cooperatives Development Authority (CDA) or the Department of Labor and Employment (DOLE), as the case may be, depending on the nature of the service required or to be rendered. This is to ensure that the NGO has a legal personality, has officers who are responsible and accountable for its operations, and is based in the community where the project shall be implemented.

3.3.2 Financial statements for at least three (3) years operation to ensure that:

⁸³ Judicial Affidavit of Ike Suniel Canoy, Records, Volume 5, pp. 229-230

⁸⁴ Judicial Affidavit of Ike Suniel Canoy, Id. p. 230

⁸⁵ Exhibit "AA"

- It has a stable financial condition so that the fund assistance shall not be its sole source of funds; and
- It has proven experience in fund management so that the grant shall be managed efficiently and economically.

3.3.3 For NGO/PO which has been in operation for less than 3 years, proof that it had previously implemented similar projects and certificate from LGU concerned attesting to the credibility and capability of the officers and staff of the NGO/PO shall be submitted in lieu of financial statements.

3.3.4 List of projects it has previously undertaken to show its experience and expertise in implementing the project to be funded.

Despite the foregoing guidelines, nowhere in the records would show that TRC complied or dutifully vetted the qualification of PEEDAI as the NGO pre-identified by Rep. Amatong.

Lacsamana testified:

*PROS. LEAL

Q: And, for the eligibility of implementors, you are guided by Office Circular No. 00GE0098 and 00GE0099, correct?

THE WITNESS

A: Yes, sir.

Q: And, it requires you to check the eligibility of the implementation or the NGO that they have at least two (2) years prior to the dealing with the TLRC, correct?

A: Yes, sir.

Q: And, despite that PEEDAI was only incorporated on July 21, 2006 and the transactions was in 2007, you still recommended the release of 9.8 million, correct?

A: The attachment during that time, mentions or provided that they already have two (2) years financial documents.

Q: What is that document, Madam Witness?

A: I think... I'm not really sure now but it's the one of the requirements is the financial capacity or the financial statement, Audited Financial Statement.

Q: So, you are saying that you did not see any Articles of Incorporation and Constitution and By-Laws?

A: There are, sir. All of the documents were complete during that time and even the Audited Financial Statement for three (3) years were attached.

PROS. LEAL

That would be all for this witness, Your Honors.⁴⁶

This brings the Court, therefore, to a consideration of the alleged acts/participation of the accused TRC officers of the offense charged.

Under the graft charge, the prosecution alleges that accused Cunanan, Lacsamana, and Figura – by their overt acts or willful omission – unlawfully facilitated the processing, approval, and release of the PDAF of Rep. Amatong to PEEDAI.

Even though PEEDAI was selected and recommended by its sponsor-legislator, former Rep. Amatong, (despite the absence of an appropriation law or ordinance or the conduct of a public bidding), evidence would confirm that such unilateral choice was authorized and assented to by the TRC officers who were burdened by their mandate to screen and evaluate such selection.

In particular, the Court finds TRC's Legislative Liaison Officer, accused Lacsamana, criminally liable under the graft charge. Her significant role in recommending the NGO through which the legislator's PDAF is to be coursed through cannot be denied.

As previously mentioned, Canoy as President/CEO of the implementor-NGO, together with Jaudian as Chief Operating Officer, were directed to proceed to TRC office to coordinate all requirements that need to be accomplished. Being the facilitator and coordinator of partnership program projects of TRC, Lacsamana was the one who supposedly evaluated and verified the requirements submitted by PEEDAI, and

⁴⁶ TSN dated July 26, 2022, p. 9

eventually issued a Memorandum endorsing the transfer of funds to PEEDA.

Pursuant to **TRC Memorandum Order No. 7**⁸⁷ dated June 22, 2005, the office of the LLO had been reactivated and organized directly under the Office of the Director General. Among other things, the Memorandum vested the LLO with the following functions:

- To establish close working relationship and strong linkages with the Congressional Offices (COs).
- To take charge and/or monitor the Priority Development Assistance Funds (PDAFs) released to TLRC and facilitate the execution of Agreements relative to the utilization of the said funds in accordance with Special Allotment Release Order (SARO).
- To offer Technology and Livelihood program packages specifically designed for Congressional District areas.
- To coordinate, monitor, and liaise facilitation of partnership program/projects with Congressional Districts.
- To perform such other functions as the Director General may deem necessary and appropriate.

Reinforcing the extensive participation of the LLO in the PDAF-related transactions undertaken by the office, **Memorandum ODG-200712-081**⁸⁸ amended the signatories on the Disbursement Vouchers that involved PDAF funds and made the General Manager of the TLIDSG (who was concurrently the LLO) as the alternate signatory of the Deputy Director General. Without doubt, such important role devolved upon Lacsamana who was the office's LLO.

Moreover, **TRC Office Circular No. 00OP009**⁸⁹ mandated that no PDAF shall be implemented without a Memorandum of Agreement duly executed and properly notarized, and which shall strictly comply with the requirement reproduced hereunder, i.e.:

⁸⁷ Exhibit "5" for Figura
⁸⁸ Exhibit "4" for Cunanan
⁸⁹ Exhibit "1" for Figura

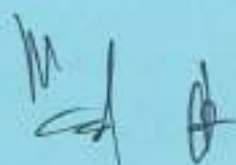
M

1. All MOA shall be endorsed by the TRC, LLO/GM, TLIDSG for approval by the Director General after being reviewed by the Legal Department and initialed by the GM, CSSG.

Be it noted that Lacsamana recommended the release of the PDAF to PEEDAI through a Memorandum on April 30, 2007. The tripartite MOA was undated and was only notarized on May 7, 2007. One can only conclude that Lacsamana enabled and authorized the released of PDAF funds absent the mandatory and properly notarized Memorandum of Agreement.

Curiously, Lacsamana still failed to observe and question the fact that the activities mentioned in the Work and Financial Plan that was submitted to TRC to be undertaken in the "*District-wide Livelihood & Entrepreneurial Promotions and Development*", i.e. livelihood undertakings, entrepreneurial exposures, seminars and materials for scheduling and distribution to the people, were far-off to the purpose of PEEDAI which is re-greening the country especially the denuded portions of Philippine forests, maintaining its biodiversity, the ecological balance and environmental dis-impact (sic) in line with the government's thrust in saving the dying forests of the country. The target beneficiaries of PEEDAI are civic organizations and/or clubs, non-government organizations, government schools, colleges and universities in the Philippines and small-time tree farmers. Whereas the livelihood program's target beneficiaries are persons belonging to poor sector to address the pressing issues on human survival and sustenance. Despite documents submitted, Lacsamana chose to indorse the release of Rep. Amatang's PDAF which would have raised questions and cast doubt to a reasonable mind why an NGO whose purpose is for the environment be qualified to implement livelihood projects. Lacsamana, however, chose to ignore such red flag. By perfunctorily going through the motions of her task she lent validity and imprimatur to Rep. Amatang's unqualified indorsement of PEEDAI as a project implementor.



As it stands, not only was the prescribed procedure in choosing an NGO blatantly disregarded, Lacsamana also turned a blind eye in accrediting an implementor despite lack of qualification and capability to undertake the livelihood programs. Being the frontline officer responsible for taking charge and monitoring the legislators' PDAF, she was expected to know and comply with the pertinent laws and regulations. Glaringly, she failed to adhere to what was required of her as LLO when she made the initial recommendation that allowed the eventual release of Rep. Amatong's PDAF to PEEDAI, indicating nothing short of manifest partiality and an unfounded predilection for the said NGO.

As for Figura, he had the role – as TRC's Legal Management Manager/OIC-CSSG – of reviewing the recommendations coming from the LLOs when it came to matters pertaining to PDAF. *TRC Office Circular No. 000P009*⁹⁰ mandates that MOA shall have to be reviewed by the Legal Department and initialed by the General Manager, CSSG before its endorsement and approval by the Director General. Similarly, pertinent to the instant case, his participation in the PDAF transactions is to be gleaned from his signature appearing in Land Bank Check No. 0000399416⁹¹ that was made payable to PEEDAI.

The obligation of Figura to sign on the checks is a result of *TRC Office Circular No. OOG0098*,⁹² dated January 19, 2007, which identifies the OIC-CSSG as a counter-signatory to checks involving any amount exceeding Php1,000,000.00. Figura thus merely signed in obeisance to such directive. Necessarily, any check which exceeded the amount of One Million Pesos demanded his signature. It is therefore his role in the review process which requires the Court's more careful scrutiny.

⁹⁰ Exhibit "2" for Cunanan

⁹¹ Exhibit "1"

⁹² Exhibit "3" for Figura, Exhibit "1" for Cunanan

Relevantly, even while the CSSG, headed by Figura had a central role in filtering and vetting the recommendation emanating from the LLO, the Court gathers from evidence that Figura is able to timely raise his reservations concerning PDAF by having appended a handwritten note⁹³ to DDG Cunanan's February 9, 2007 Memorandum suggesting that "these matters be thoroughly discussed in the ManCom and presented to the Board of Trustees of TRC due to the far-reaching implications and consequences of the PDAF issues". Subsequently, Figura himself also issued a Memorandum⁹⁴ dated April 4, 2007, requesting to be relieved of his duty and responsibility as a signatory to the PDAF-related Disbursement Vouchers in his capacity as then OIC-DDG of the Center.

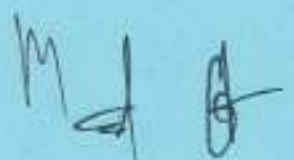
Figura had prudently manifested his reservations in affixing his signature on the PDAF vouchers because of what he considered as serious implications and responsibilities attendant thereto. It is likewise favorable to his defense when he opined that while the livelihood training projects may certainly be delegated to a foundation/NGO that enjoys the recommendation of congressmen, the ideal situation would still be the Center as the implementor of the programs since the latter had the expertise to do so. In regard of the foregoing, therefore, Figura cannot be said to be liable under the herein charge of graft.

In like manner, even as Cunanan had been a signatory as then-Deputy Director General in the two Disbursement Vouchers involving Rep. Amatong's PDAF, he had unequivocally indicated his misgivings on the process of implementation as borne by the *Memorandum*⁹⁵ of February 9, 2007 that he addressed to Director General Ortiz, through the attention of Group Manager Figura. Therein, he had enjoined that the Center come up with clear Policy Guidelines which he anticipated would have averted further confusion in the implementation of the legislators' PDAF projects. It also

⁹³ Exhibit "B-A" for Figura

⁹⁴ Exhibit "7" for Figura

⁹⁵ Exhibit "12" - "12-A" for Cunanan



bears to stress that when Cunanan assumed as Director General in 2010, he blacklisted several NGOs for failure to liquidate the PDAF funds they received from the TRC, and PEEDAI was one of those NGOs that got blacklisted.⁹³

With respect to the involvement of Canoy in the subject transaction, the prosecution maintains that his participation, as President/CEO of PEEDAI, oiled the wheels of Rep. Amatong's PDAF scheme.

To recall, Canoy is the signatory of both the WFP and MOA as the President/CEO of PEEDAI. He played an indispensable part in the PDAF scheme by representing PEEDAI in the tripartite MOA that resulted in the release of PDAF funds to PEEDAI.

In Canoy's own words, Rep. Amatong had chosen PEEDAI because he was impressed with Canoy's business expertise but nothing about PEEDAI's qualifications to undertake the livelihood programs in the 2nd District of Compostela Valley (now Davao de Oro).

The Court wonders, for someone who has a sense of astute business acumen, Canoy did not hesitate and question the capability of PEEDAI, as its President/CEO, to embark on a task foreign to its purpose. Worth reiterating that PEEDAI's primary purpose is the proper distribution of various species of tree seedlings, not in any way related to livelihood programs such as haircutting, manicure/pedicure, dressmaking, among others. Absent such basis of choosing PEEDAI, the Court is of the view that its selection as implementor of the livelihood programs funded by the subject PDAF is tainted with bad faith. It is undeniable from the established facts, even as stated by accused Canoy during his meeting with Rep. Amatong, that PEEDAI had been chosen as the preferred NGO absent the required public bidding as substantiation of its qualification or competence to carry

⁹³ TSN dated July 7, 2022, pp. 8-9

out the livelihood projects. The unfounded indorsement of PEEDAI as project implementor and conduit of congressional funds gained momentum as it passed through the hands of the public officers involved and such deplorable status was but a necessary consequence, *inter alia*, of the procedural lapses that occurred within the TRC.

It bears to stress that Canoy was fully aware that his signatures on both MOA and WFP were necessary for the release of the PDAF funds to PEEDAI. He signed the said documents notwithstanding knowledge of absence of either an appropriation law or ordinance or the conduct of public bidding which would have served basis for its selection, more so, its incapability to implement the livelihood program. Therefore, the Court finds his acts imbued with a dishonest purpose and conscious doing of a wrong.

Similarly, Cabig, Jaudian, and Soriano are also considered responsible officers of PEEDAI for the criminal act committed by the NGO. The reason is that the NGO can act only through its officers and agents. Criminal accountability extends to the officers who participated and responsible for the criminal act.

Accused Cabig cannot hide behind the defense of alibi, saying she did not personally receive the check amounting to Php9,800,000.00 as she was in Don Carlos, Bukidnon from May 2-15, 2007 to attend a very important matter. However, being the Treasurer of PEEDAI, she herself testified that she customarily received funds and monies intended to or in the name of PEEDAI and deposited them in the savings account of PEEDAI, as well as made disbursements upon directive by the President and authority of the Board of Trustees. Thus, she cannot excuse herself from this specific transaction just because she was not physically present to receive the check. Her responsibility as Treasurer did not stop by her absence and resumed when she got back. She also admitted that PEEDAI earned a 5% commission or service fee out of the Php9,800,000.00. However, there was

no report of such income in PEEDAI's Income statement either for the years ended December 2006, 2007, or 2008.

As disclosed by Canoy himself, he and Jaudian met with Rep. Amatong to discuss PEEDAI's selection as a conduit-NGO to implement the livelihood project costing Php10,000,000.00 under Rep. Amatong's PDAF allocation for 2007. As PEEDAI's Chief Operating Officer, Jaudian was the one who prepared the requirements for accreditation of PEEDAI by TRC. He also headed the implementation of the livelihood projects as testified to by the supposed beneficiaries. Subsequently, according to Cabig and Soriano, he prepared the "Report" of the supposed implementation of the livelihood programs.

Soriano cannot deny involvement as well in this PDAF scheme. Being PEEDAI's Vice President, he certified correct the Income Statement of PEEDAI for years ended December 2006, 2007, and 2008, where it was not shown the 5% commission or service fee out of the Php9,800,000.00 received by TRC.

To the mind of the Court, as officers, they were privy in all of the transactions involving PEEDAI. Thus, they were also immersed and participated in facilitating the release and utilization of the PDAF funds in this case. There was a pattern in the acts of Canoy, Jaudian, Cabig, and Soriano, together with Lacsamana, indicative of an overall unlawful scheme, which is the release of the PDAF funds of Rep. Amatong to PEEDAI albeit irregularities in its documents and qualification.

Lastly, the Court also finds the third element present.

The PDAF-related transactions caused undue injury to the government and gave unwarranted benefits to Rep. Amatong and/or PEEDAI in the total amount of Php9,800,000.00. Evidence on record

indicates that the disbursement of Rep. Amatong's PDAF under SARO No. D-07-05540, remained unliquidated despite notice and opportunity to settle. Even the Php200,000.00 retained by TRC as service fee for technical assistance and learning materials was not accounted for. The fact that there was no liquidation of the supposed projects and beneficiaries covered by the SARO in this case is not disputed. Except for the uncorroborated testimonies of the supposed beneficiaries of the livelihood program, no indicia that the projects proposed by PEEDAI had been implemented can be seen from the records. Accused PEEDAI officers' defense was that the records were all swept away by the flood brought by Typhoon Sendong in December 2011. They claimed that they had requested the TRC, thru Jaudian's *Letter*⁹⁴ dated January 10, 2012, for copies of the documents they submitted to the latter upon implementation of the livelihood program. However, there was no response received from TRC. Even so, given that the accused were notified to liquidate, at least efforts were made to obtain a copy of the "Report" or whatever documentation of the supposed successful implementation of the livelihood program from the Office of Rep. Amatong, who was also furnished with a copy thereof. Moreover, accused was afforded enough time, more than three years before the issuance of the Notice of Disallowance dated October 26, 2015 to be more resourceful and could have requested copies from the DOST, the now custodian of all TRC files and documents.

Canoy testified:

*PROS. LEAL

Let's go to your Judicial Affidavit.

Q: In your Judicial Affidavit, you said PEEDAI submitted liquidation reports to TRC and the Office of Cong. Amatong, is that correct?

THE WITNESS

⁹⁴ Exhibit 7.

A: Yes, sir.

Q: And you said that you cannot get copies of the liquidation reports because they are all washed out by floods sometime in 2011 by Typhoon Sendong, is that correct?

A: Yes, Sir.

Q: Have you requested copies of the liquidation report from the office of Cong. Amatong?

A: We did also, sir, and together, we also requested TRC to send us a copy. Because at that time, we have no more copies because it was all washed out. It's washed out in the flood, so all our documents—

PROS. LEAL

I have to cut you.

Q: Sir, you said you requested a Letter Request to Cong. Amatong, yes or no?

A: We did not. No.

PROS. LEAL

Thank you.

CHAIRPERSON HERRERA:

How did you make the request for copies of the liquidation documents? In writing or...

WITNESS:

No, Your Honor. We first requested copies from TRC because we be submitted the documents also in TRC, Your Honor.

CHAIRPERSON HERRERA:

Continue.

PROS. LEAL:

Q: So during the transition period of TRC under the DOST transition period, did you request a copy of the liquidation reports from the official custodian of the DOST TLRC?

WITNESS:

A: No, Sir. Because we hope the letter will be received by TRC
(interrupted)

PROS. LEAL:

Okay, that's it.

CHAIRPERSON HERRERA:

Let him finish, noh? What is that again? Can you repeat that? Can
you repeat your answer?

WITNESS:

No, Your Honor."⁸⁵

Accused Lacsamana, being the facilitator of the partnership programs between the government and NGO, could have easily presented documents and/or reports pertaining to the supposed implementation of the livelihood programs. However, there was none. Thus, the livelihood program is deemed non-existent, especially insofar as documentation is concerned. The only proof in support of this contention are the uncorroborated testimonies of supposed beneficiaries which for the Court deserve scant consideration. There was no proof that they were indeed on the "list" of beneficiaries made by the Office of Rep. Amatang, if there was any, nor were there any photographs showing the actual conduct of livelihood trainings, or any document exhibiting that the supposed beneficiaries acknowledged receipt of the Php7,000.00 startup capital. Since there is evidently a failure to account for Rep. Amatang's PDAF, which amounts are specific and quantifiable, the Court is led to conclude that the government suffered undue injury in such amount within the purview of **Section 3(e) of R.A. 3019**.

⁸⁵ TSN dated October 26, 2022, pp. 10-11

We now deal with Criminal Case No. SB-19-CRM-0172 for **Malversation**, defined and penalized under **Article 217** of the **Revised Penal Code**.

The **Information** alleges that the accused in this case, conspiring with one another, willfully, unlawfully and feloniously took, misappropriated or consented to, and converted to personal use and benefit the fund releases drawn from Rep. Amatong's PDAF, totaling to Php9,800,000.00, intended for the implementation of livelihood and development projects in the 2nd District of Compostela Valley (now Davao de Oro), to the damage and prejudice of the government.

As provided for under the **Revised Penal Code**, the crime of **Malversation** arises when:

"Art. 217. **Malversation of public funds or property**. — Presumption of malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or 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:

XXXXX"

In its simplest terms, malversation of public funds is the crime where an accountable officer had received the public funds but failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.⁹⁶

The following are the elements necessary for conviction:

1. That the offender is a public officer;

⁹⁶ Valenzuela v. People, G.R. No. 205693, February 14, 2018

2. That he had the custody or control of funds or property by reason of the duties of his office;
3. That the funds or property were public funds or property for which he was accountable; and
4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁹⁷

The first element is not contested. The accused were public officers at the time material to this case.

The basic definition of an accountable officer: 1) he received government funds or property *by reason of his office*, and 2) he is bound to later account for said government funds or property. It is important in the crime of malversation that the offender has been given the custody or control of the funds and therefore accountable for such.

The subject funds or property in consideration is the Priority Development Assistance Fund (PDAF), otherwise referred to as the congressional pork barrel, which is an appropriation in the national budget given to each member of Congress for their projects in their respective congressional districts. Being sourced from the national budget, the PDAF is undeniably a fund impressed with public character and, as such, is bound to be treated, utilized, and accordingly accounted for under prevailing laws and regulations.

For a public officer to be accountable, the Supreme Court imparts in *Alejo v. People*,⁹⁸ "[A]n accountable public officer, within the purview of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office. To be liable for malversation,

⁹⁷ *Ocampo III v. People*, G.R. Nos. 156547-51 & 156384-85, February 4, 2008.

⁹⁸ G.R. No. 173360, March 28, 2008.

x-----x

an accountable officer need not be a bonded official. The name or relative importance of the office or employment is not the controlling factor. What is decisive is the nature of the duties that he performs and that as part of, and by reason of said duties, he receives public money or property which he is bound to account for.”

As held by the Supreme Court, “what is decisive is the nature of the duties that he performs.” Thus, in determining who is an accountable officer, the controlling factor is *the public official’s usual, expected, and regular duties*, and not merely some isolated and incidental acts performed by him. The common characteristics shared by the accountable officers is that custody or control of the funds or property under their charge is part and parcel of their usual and regular duties. In other words, the public funds or property came into their custody or control “by reason of their office.”

The Court takes heed from the landmark consolidated cases of *Belgica, et al. v. Executive Secretary Ochoa, et al., Alcantara v. Drilon, et al., and Nepomuceno v. President Aquino, et al.*,⁹⁹ where it was held that in a Congressional Pork Barrel System, including the PDAF subject of this case, the legislator exercises actual control and custody of the PDAF share allocated to him by the appropriations statute. Such control and custody of funds allow the legislator, whether directly or through his staff, to participate in the fund release and implementation of the PDAF-funded projects. The Supreme Court - in explaining the unconstitutionality of PDAF – stated that the system has violated the principle of separation of powers and the principle of non-delegability of legislative power, “insofar as it has conferred unto legislators the power of appropriation by giving them personal, discretionary funds from which they are able to fund specific projects which they themselves determine.”

⁹⁹ G.R. Nos. 208566, 208493 and 209251, November 19, 2013

Here, Rep. Amatong himself determined how the fund is to be utilized and he himself identified the Implementing Agency and the NGO as the implementor of the livelihood project for his congressional district. He chose TRC as the implementing agency and preselected PEEDAI as the project implementor.

Accused Lacsamana facilitated the processing, approval, and release of the PDAF of Rep. Amatong to PEEDAI. She participated in how the PDAF of Rep. Amatong was to be used and applied. Also, there being an allegation of conspiracy, the element of accountability and control attaches to the individual acts of the conspirators because the act of each, when taken together, lends facility in the commission of the crime of misappropriation.

Without a doubt, the element of accountability and control similarly attaches to the PEEDAI officers who conspired with Lacsamana in facilitating the actual release of the PDAF funds to the NGO in the face of glaring irregularities and lack of qualification. Surprisingly, they were not included as accused herein case.

With respect to accused Figura and Cunanan, however, they are properly entitled to exculpation taking into consideration the misgiving and protestation they timely raised with regards to the PDAF transactions, as earlier discussed herein. On the other hand, accused Ortiz, who is at-large, remains beyond the jurisdiction of this Court in this case.

Anent the last element, direct evidence of misappropriation is often impossible to come by and intent even harder to establish. Suffice it to stress that the law grants leeway to courts in recognition of such difficulty and thus provides that 1) commission of the same may be by way of abandonment or negligence, and 2) a failure to have public funds or property duly forthcoming constitutes *prima facie* evidence that such funds or property have been put to personal use. Thus, an accountable officer may be convicted of

malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in the officer's account which he has not been able to explain satisfactorily upon demand.¹⁰⁰

Here, the fact that the amount released to PEEDAI remains unliquidated necessarily gives rise to the presumption that said funds have been misappropriated or converted to someone's personal use and benefit. Opportunities were given to those who handled the funds to provide documentation evidencing the supposed successful implementation of the livelihood program. However, the request for liquidation has remained unheeded. PEEDAI purportedly failed to obtain a copy, if there was any, of a report showing the successful implementation of the livelihood program submitted to TRC that could have indicated how funds had been utilized and if the terms of the MOA with respect to project implementation were even observed.

In the *Articles of Incorporation*¹⁰¹ of PEEDAI, as well as in its *Certificate of Filing of Amended Articles of Incorporation*,¹⁰² its primary and secondary purpose relates to ecology and environment, not a thing about undertaking of livelihood projects, to wit:

SECOND: That the purpose for which such association is incorporated are – PRIMARY: Development and production of tree seedlings of various species for proper distribution to organizations, government schools, colleges and universities in the Philippines, small time tree farmers and others for the purpose of re-greening the country especially the denuded portions of Philippine forests thus maintaining its biodiversities, (sic) the ecological balance and environmental dis-impact (sic) in line with the government's thrust in saving the dying forests of our country.

AND SECONDARILY: To seek assistance from different agencies and instrumentalities of the government in line with the aims and aspirations of the association and not limited to teach-ins, (sic) seminars, symposia and or lectures on the importance of biodiversities, (sic) the maintenance of excellent environment and perpetual balance of the ecology.

¹⁰⁰ Villaroman, *Laws and Jurisprudence on Graft and Corruption*, 3rd Edition, p. 81

¹⁰¹ Exhibit "DD"

¹⁰² Exhibit "EE"

Needless to say, PEEDAI is not in any way engaged in livelihood programs. Obviously, therefore, no lawful nexus connects PEEDAI to the Project Proposal of Rep. Amatong.

The subsequent absence of any progress/status report relative to the supposed livelihood projects reinforces the presumption of misappropriation/malversation.

In contemplation of law, since the act of one is the act of all, each individual participated in the wrongdoing is in law responsible for the whole.¹⁰³ Here, the totality of evidence shows that by the permissiveness or negligence of accused Lacsamana, with the active participation of others some of whom have not been included as accused in this case, she had created an opportunity for the unlawful funneling of the Php9,800,000.00 in PDAF funds.

Since the complained act in this case was committed before the enactment of the amendatory law¹⁰⁴ that adjusted the amounts and values upon which penalties are based, the provisions therein cannot be applied retroactively, especially inasmuch as the adjusted penalty for **Malversation** under said law (given the amount involved herein) turns out prejudicial and disadvantageous to the accused.¹⁰⁵ Therefore, the penalties of Article 217 of the **Revised Penal Code** shall be made to apply and hereby imposed against those found liable, conformably with the instructions on the proper application of the *Indeterminate Sentence Law* as reiterated in *Zafra v. People*.¹⁰⁶

¹⁰³ *People v. Go*, G.R. No. 168539, March 25, 2014

¹⁰⁴ Republic Act No. 10951, An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended

¹⁰⁵ SEC. 40, Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

xxx

"5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). **If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.** (emphasis supplied)

¹⁰⁶ G.R. No. 176317, July 23, 2014, 730 SCRA 438, 454

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

1) In **Criminal Case No. SB-19-CRM-0171**, the Court finds accused MARIA ROSALINDA MASONGSONG LACSAMANA, BUTCH SUNIEL CANOY, VINCENT VALLAR JAUDIAN, MERCY UAYAN CABIG, and ALFREDO SABUERO SORIANO **GUILTY** beyond reasonable doubt of the crime of **Violation of Section 3(e) of R.A. 3019, as amended**, and are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer perpetual disqualification from holding public office.

Accordingly, by way of civil liability, accused Lacsamana, Canoy, Jaudian, Cabig, and Soriano are hereby ordered to indemnify the National Government and return to the National Treasury, jointly and severally, the sum of TEN MILLION PESOS (Php10,000,000.00), representing the amount wrongfully and illegally disbursed and which thus caused injury to government, with legal interest until its full satisfaction.

Accused DENNIS LACSON CUNANAN and FRANCISCO BALDOZA FIGURA are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

2) In **Criminal Case No. SB-19-CRM-0172**, the Court finds accused MARIA ROSALINDA MASONGSONG LACSAMANA **GUILTY** beyond reasonable doubt of the crime of **Malversation of Public Funds** under **Article 217 of the Revised Penal Code, as amended**. There being no mitigating nor aggravating circumstance in this case, she is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of reclusion temporal, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to suffer the penalty of perpetual special disqualification from holding any public office.

Conformably with the **RPC**, she is ordered to pay a fine in the amount of TEN MILLION PESOS (Php10,000,000.00) equivalent to the amount malversed.

By way of civil liability, accused Lacsamana is also ordered to restitute to the government the amount of TEN MILLION PESOS (Php10,000,000.00), to earn legal interest until its full satisfaction.

Accused DENNIS LACSON CUNANAN and FRANCISCO BALDOZA FIGURA are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Court hereby authorizes the release to accused Cunanan and Figura of the amount they deposited as bail for their provisional liberty in these cases, subject to the usual accounting and auditing procedures. The **Hold Departure Orders** ¹⁰⁷ issued against Cunanan and Figura are likewise lifted and set aside. The Bureau of Immigration (BI) is directed to remove their names in the hold-departure list, insofar as these cases are concerned.

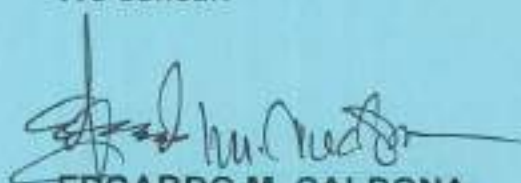
These cases are **ARCHIVED** as against accused ANTONIO YRIGON ORTIZ, to be revived upon his arrest or voluntary surrender.

Let alias warrant of arrest be issued against accused Ortiz.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice

We concur:


EDGARDO M. CALDONA
Associate Justice


ARTHUR O. MALABAGUIO
Associate Justice

¹⁰⁷ Records, Volume 1, pp. 360-361

ATTESTATION

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


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

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


EFREN N. DE LA CRUZ
Acting Presiding Justice

