

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

CRIM. CASES NOS. SB-11-
CRM-0008 to 0011

*For: Violation of Article 171 of the
Revised Penal Code (Falsification)*

- versus -

CRIM. CASE NO. SB-11-CRM-
0012

*For: Violation of Article 217 of the
Revised Penal Code (Malversation)*

R/ADM. CONSTANCIO L.
JARDINIANO, JR., ET AL.,

Accused.

Present:

HERRERA, Jr., J., Chairperson

MUSNGI, J., Associate Justice

PAHIMNA, J., Associate Justice

October 25, 2019
Promulgated

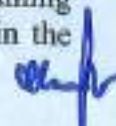
DECISION

MUSNGI, J.:

Accused R/ADM Constancio L. Jardiniano, Jr. ("**Jardiniano**") and LCDR Manuel L. Gimena ("**Gimena**") then the Commander and the Special Disbursing Officer (SDO), respectively, of the Naval Education and Training Command ("**NETC**"), are originally charged with four (4) counts of Falsification under Article 171 and one (1) count of Malversation under Article 217 of the Revised Penal Code ("**RPC**") in the *Informations* dated 12 January 2011, as follows:

SB-11-CRM-0008

That in or about February 2006, or sometime prior or subsequent thereto, in San Antonio, Zambales, Philippines, and within the jurisdiction of this Honorable Court, accused **R/ADM CONSTANCIO JARDINIANO, JR.**, and **LCDR MANUEL L. GIMENA**, both public officers, being then the Commander, Naval Education and Training Command, and Special Disbursing Officer, Naval Education and Training Command, by taking advantage of their official positions, while in the



performance of their official duties, committing the offense in relation to their office as Commander and Special Disbursing Officer of NETC respectively, they are accountable for the purchases and disbursements made by NETC, conniving and conspiring with one another, did then and there willfully, unlawfully and feloniously falsify sales invoice no. 2569 from R.T. Franco Pharmacy by causing it to appear that the following medicines:

1 ea-	Davonex Oint 30g-	P1,109.00
1 ea-	Davonex Oint 30g-	1,300.00
25 pcs-	Insyte G-22-	1,925.00
10 amp-	Furopenide-	1,500.00
10 amp-	Ramitidine 150 mg 12 ml	1,100.00
10 btl-	D5Lril	1,000.00
12 pcs-	Nebulizer tube-	1,059.00
	TOTAL	P8,993.00

were purchased from RT Franco Pharmacy amounting to P8,993.00, when in truth and in fact no such purchase was made by the NETC from RT Franco Pharmacy, thereby making untruthful statements in a narration of fact in a commercial document to the damage and prejudice of the government.

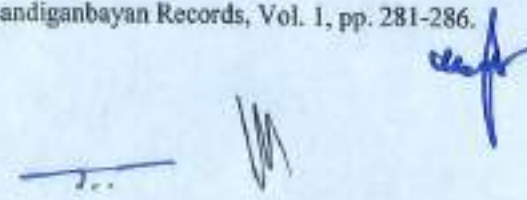
Contrary to law.

SB-11-CRM-0009¹

That in or about February 2006, or sometime prior or subsequent thereto, in San Antonio, Zambales, Philippines, and within the jurisdiction of this Honorable Court, accused **R/ADM CONSTANCIO JARDINIANO JR.**, and **LCDR MANUEL L. GIMENA**, both public officers, being then the Commander, Naval Education and Training Command, and Special Disbursing Officer, Naval Education and Training Command, by taking advantage of their official positions, while in the performance of their official duties, committing the offense in relation to their office as Commander and Special Disbursing Officer of NETC respectively, they are responsible for the purchases and disbursements made, conniving and conspiring with one another, did then and there willfully, unlawfully and feloniously falsify cash invoice no. 1129 from Farmacia Pascasio by making and/or causing it to appear that the following medicines:

3 bxs-	<u>Lidocane</u>	P1,050.00
3 ea-	Spray Surface Anesthesia-	3,100.00
2 bxs-	surgical gloves-	575.00
50 tbs-	paracetamol 500 mg-	1,850.00
2 bxs-	<u>amoxicillin</u> (sic) 500 mg-	1,800.00
3 bxs-	disposables (sic) needles-	1,590.00
	TOTAL	P9,965.00

¹ As amended pursuant to Resolution dated 05 March 2013, Sandiganbayan Records, Vol. 1, pp. 281-286.



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were purchased from Farmacia Pascasio amounting to P9,965.00, when in truth and in fact no such purchase was made by the NETC from Farmacia Pascasio, thereby making untruthful statements in a narration of fact in a commercial document to the damage and prejudice of the government.

Contrary to law.

SB-11-CRM-0010

That in or about February 2006, or sometime prior or subsequent thereto, in San Antonio, Zambales, Philippines, and within the jurisdiction of this Honorable Court, accused **R/ADM CONSTANCIO JARDINIANO JR.**, and **LCDR MANUEL L. GIMENA**, both public officers, being then the Commander, Naval Education and Training Command, and Special Disbursing Officer, Naval Education and Training Command, by taking advantage of their official positions, while in the performance of their official functions, committing the offense in relation to their office as Commander and Special Disbursing Officer of NETC respectively, they are responsible for the purchases and disbursements made by NETC, conniving and conspiring with one another, did then and there willfully, unlawfully and feloniously falsify sales invoice no. 2386 from Farmacia Callo by making and/or causing it to appear that the following medicines:

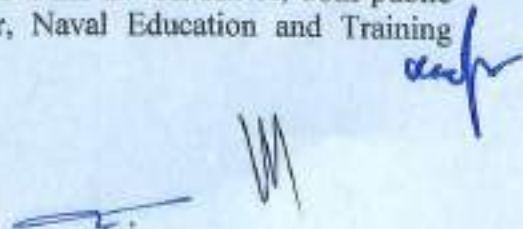
50 tabs-	hydrite-	600.00
10 pcs-	noavaluzid sachet-	350.00
10 pcs.	Nafarin syrup 60 ml-	1,100.00
6 amp-	imanadol-	510.00
1 bx-	catropil-	2,725.00
5 bxs-	loperamide 2mg cap-	2,550.00
3 bxs-	cotrimoxasol-	1,950.00
1 bx-	mononidine-	1,411.00
	TOTAL	11,196.00

were medicines purchased from Farmacia Callo amounting to P11,196.00, when in truth and in fact no such purchase was made by the NETC from Farmacia Callo, thereby making untruthful statements in a narration of fact in a commercial document to the damage and prejudice of the government.

Contrary to law.

SB-11-CRM-0011

That in or about February 2006, or sometime prior or subsequent thereto, in San Antonio, Zambales, Philippines, and within the jurisdiction of this Honorable Court, accused **R/ADM CONSTANCIO JARDINIANO JR.**, and **LCDR MANUEL L. GIMENA**, both public officers, being then the Commander, Naval Education and Training



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Command, and Special Disbursing Officer, Naval Education and Training Command, by taking advantage of their official positions, while in the performance of their official duties, committing the offense in relation to their office as Commander and Special Disbursing Officer of NETC respectively, they are responsible for the purchases and disbursements made by NETC, conniving and conspiring with one another, did then and there willfully, unlawfully and feloniously falsify sales invoice no. 2356 from F.R. Estrada Pharmacy by making and/or causing it to appear that the following medicines:

2 pcs -	Erythromycin 500 mg-	P3,254.00
5 ea-	Silk Wineedle 2.0-	3,750.00
3 bxs-	Disposable needle-	1,590.00
2 bxs-	Amoxillin (sic) 500 mg-	2,502.00
25 btls-	DLRIL-	1,250.00
	TOTAL	P12,340.00

were purchased from F.R. Estrada Pharmacy amounting to P12,340.00, when in truth and in fact no such purchase was made by the NETC from F.R. Estrada Pharmacy, thereby making untruthful statements in a narration of fact in a commercial document to the damage and prejudice of the government.

Contrary to law.

SB-11-CRM-0012

That in or about February 2006, or sometime prior or subsequent thereto, in San Antonio, Zambales, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **R/ADM CONSTANCIO JARDINIANO, JR.**, and **MANUEL L. GIMENA**, both public officers, being then the Commander, Naval Education and Training Command (NETC), and Special Disbursing Officer, Naval Education and Training Command, and as such, had in their possession and custody public funds representing miscellaneous funds of NETC, for which they are accountable by reason of the duties of their office, committing the offense in relation to office, conniving and confederating together and mutually helping each other, taking advantage of their official positions, did then and there willfully, unlawfully and feloniously misappropriate, take, embezzle and convert into their own personal use and benefit the amount of **THREE HUNDRED FORTY THREE THOUSAND TWO HUNDRED NINETY SEVEN PESOS (Php343,297.00)**, Philippine Currency, and despite demands made upon them to account for said public funds, they have failed to do so, to the damage and prejudice of the government, particularly the Naval Education Training Command in the aforesaid amount.

Contrary to law.



ANTECEDENT FACTS

On 05 May 2011, accused Jardiniano and Gimena were arraigned and pleaded "not guilty" to the offenses charged.² The prosecution and defense then submitted their *Joint Stipulation of Facts with Marking of Evidence*³ on 26 September 2011.

The case proceeded to trial and the prosecution presented its documentary and testimonial evidence. On 24 October 2012, the prosecution filed a *Motion for Leave to Admit Amended Information*⁴ in order to correct certain inconsistencies in the *Information* to conform with evidence. The same was granted by the Court in its *Resolution* dated 05 March 2013.⁵ After the prosecution rested its case, it submitted its *Formal Offer of Evidence*⁶ on 17 October 2016. In a *Minute Resolution*⁷ dated 20 April 2017, the Court admitted prosecution Exhibits "A" to "Z" and "AA" to "RR", including the submarkings therein.

Pursuant to the *Order*⁸ of the Court dated 20 September 2016, which granted the oral motion for leave of the defense, accused Jardiniano filed his *Demurrer to Evidence*⁹ dated 30 May 2017 and accused Gimena filed his *Demurrer to Evidence*¹⁰ dated 08 June 2017. The prosecution then filed its *Consolidated Comment/Opposition (to Accused's Demurrer to Evidence)*¹¹ on 23 June 2017.

In a *Resolution*¹² dated 18 January 2018, the Court partially granted accused Jardiniano's *Demurrer to Evidence* dated 30 May 2017 and dismissed Criminal Cases Nos. SB-11-CRM-0008 to 0011 as to him, due to the insufficiency of evidence to establish his guilt of the crime of Falsification under Article 171 of the RPC. In the same *Resolution*, however, the Court denied accused Jardiniano's *Demurrer to Evidence* with respect to the crime of Malversation in Criminal Case No. SB-11-CRM-0012 and the *Demurrer to Evidence* filed by accused Gimena for lack of merit.

² Sandiganbayan Records, Vol. 1, pp. 104-105.

³ *Ibid.*, pp. 170-184.

⁴ *Ibid.*, pp. 234-237.

⁵ *Ibid.*, pp. 281-286.

⁶ Sandiganbayan Records, Vol. 2, pp. 23-36.

⁷ *Ibid.*, p. 367.

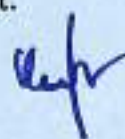
⁸ *Ibid.*, p. 12.

⁹ *Ibid.*, pp. 371-404.

¹⁰ *Ibid.*, pp. 405-414.

¹¹ *Ibid.*, pp. 415-433.

¹² *Ibid.*, pp. 451-467.



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The *Motion for Partial Reconsideration*¹³ dated 07 February 2018, *Motion for Reconsideration*¹⁴ dated 18 January 2018, and *Motion for Partial Reconsideration*¹⁵ dated 02 March 2018, respectively filed by the prosecution, accused Gimena and Jardiniano were denied by the Court in its *Order*¹⁶ dated 23 February 2018, *Resolution*¹⁷ dated 15 March 2018, and *Order*¹⁸ dated 15 March 2018. Thus, accused Jardiniano now stands charged with one (1) count of Malversation under Article 217 of the RPC in Criminal Case No. SB-11-CRM-0012, and the charges against accused Gimena for one (1) count of Malversation under Article 217 and four (4) counts of Falsification under Article 171 of the RPC in Criminal Cases Nos. SB-11-CRM-0008 to 0012 remains.

Accused Jardiniano and Gimena then presented their evidence and rested their case on 24 September 2018¹⁹ and 25 September 2018.²⁰ After the prosecution presented its rebuttal evidence, accused Gimena and Jardiniano respectively filed their *Memorandum*²¹ dated 27 April 2019 and *Memorandum*²² dated 08 April 2019. The prosecution filed its *Memorandum*²³ on 08 July 2019.

Accordingly, the case was submitted for decision.

EVIDENCE FOR THE PROSECUTION

Josephine So Vargas

*Josephine So Vargas ("Vargas")*²⁴ is a Graft Investigation Officer I of the Fact-Finding Investigation Bureau at the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) at the time of her testimony. Prior to her appointment in the said position, she was an Associate Graft Investigation Officer III from 1997 to 2004 and an Executive Assistant IV from 1994 to 1997 at the Office of the Ombudsman. She was likewise employed at the Commission on Audit (COA) from June

¹³ *Ibid.*, pp. 474-483.

¹⁴ *Ibid.*, pp. 484-489.

¹⁵ Sandiganbayan Records, Vol. 3, pp. 11-22.

¹⁶ Sandiganbayan Records, Vol. 2, p. 496.

¹⁷ Sandiganbayan Records, Vol. 3, pp. 36-38.

¹⁸ *Ibid.*, p. 41.

¹⁹ *Ibid.*, p. 101.

²⁰ *Ibid.*, p. 108.

²¹ *Ibid.*, pp. 150-164.

²² *Ibid.*, pp. 191-212.

²³ *Ibid.*, pp. 241-256.

²⁴ TSN dated 08 November 2011.

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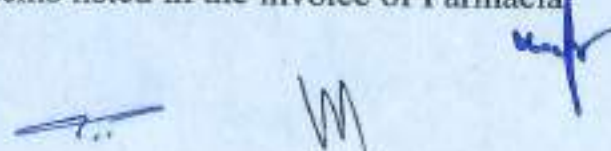
1994 to November 1994 as State Audit Examiner II. As Graft Investigation Officer I, she conducts fact-finding investigations, interviews, ocular inspections and surveillances, coordinates with government agencies or offices, prepares subpoena *duces tecum*, affidavits and investigation reports, and acts as a nominal complainant in cases the office investigates.

Vargas testified that she received an assignment on 02 June 2006, to conduct a fact-finding investigation against Rear Admiral Constancio Jardiniano, Jr., the Commander of the NETC at San Antonio, Zambales, based on an anonymous complaint from the concerned men and officers of the NETC alleging corruption and irregularities in the disbursement of funds of the whole Command and in the procurement of medicines intended for the hospital. Her office received the said complaint on 30 May 2006.

Upon receiving the assignment, an Investigation Team was formed composed of Atty. Julius Java, Sandy Alcantara, Gladys Marie Postrada, and Vargas as the Team Leader. The Mission and Travel Orders were thereafter issued for the team to proceed to the NETC Zambales to validate the allegations in the complaint, such as the irregularity in the disbursement of funds, cash advances, and questionable release of funds by the Special Disbursing Officer (SDO).

The Investigation Team went to NETC Zambales on 06 and 07 June 2006. They first interviewed Carlito C. Varias ("**Varias**"), the Resident COA Auditor therein, who told them that the SDO of the NETC is Lieutenant Commander Manuel Gimena and showed them the latter's designation. The team requested Varias for copies of the list of the Cash Advance and Liquidation Vouchers for 2005 and 2006, Statement of Liquidation and Balances for 2005 and 2006, Abstract of Over-the-Counter Purchase for Medicines, Sales Invoices from F. Callo Pharmacy, and Cash Invoices from R.T. Franco Pharmacy, F.R. Estrada and Farmacia Pascasio. After showing the said documents, Varias thereafter accompanied the team to the Naval Station San Miguel Hospital and Dental Clinic to validate the Sales Invoices and whether the medicines and dental supplies indicated therein were indeed delivered to the hospital.

At the hospital, the team interviewed Marjorie Buenaventura ("**Buenaventura**"), the Supply Accountable Officer of the Naval Hospital, and showed her the invoices of F. Callo Pharmacy, R.T. Franco Pharmacy, and F.R. Estrada. Buenaventura allegedly told the team that there were no deliveries coming from the said establishments from January to June 2006 and she was willing to execute a certification to that effect. The team then interviewed Joselito Apin ("**Apin**"), the Supply Accountable Officer at the Dental Clinic, to validate whether the items listed in the invoice of Farmacia



Pascasio were delivered to the said clinic. Apin likewise denied that the items listed in the said invoice were delivered to them. He intimated that he was willing to execute a certification for that purpose.

The team then decided to validate the receipts from Callo Pharmacy, Franco Pharmacy, Farmacia Pascacio and R.F. Estrada Pharmacy but since it was already late then, Varias volunteered to obtain certifications from the said establishments on their behalf. Afterwards, the team went back to the office of Varias to secure photocopies of the Cash Advance Vouchers, Liquidation Vouchers and all the supporting documents. Janice Labrador ("**Labrador**"), one of the staff of Varias, went to Troban General Merchandize ("**Troban**") to photocopy the said documents. When Labrador came back, she told the team that a certain Edwin Trono, the owner of the photocopying establishment, saw the receipts attached to the Liquidation Voucher being photocopied and told her that the receipt purported to be Troban's did not come from the latter, as it does not sell the items listed therein. The team asked Labrador to execute an Affidavit to that effect. The Investigation Team then prepared the pro-forma Certifications that there were no deliveries made by the above-mentioned establishments and the subpoena *duces tecum* for Varias, Buenaventura, and Apin.

Vargas further stated that on 21 June 2006, Auditor Varias went to the Office of the Ombusman to submit the documents contained in the subpoena, such as the Certification issued by Apin, two (2) Certifications issued by Buenaventura to the effect that there were no deliveries made by RM Comet Trading & General Services, R.T. Franco Pharmacy, Farmacia Callo, and F.R. Estrada Pharmacy, Audit Observation Memorandum (AOM) Nos. 2006-006, 2006-011, and Abstract Nos. 001-2006 to 009-2006.²⁵ She mentioned that on the same day, Auditor Varias brought accused Gimena with him as the latter allegedly wanted to testify and give his voluntary statement on the investigation. Accused Gimena purportedly knows about the cash advances and liquidation of the NETC as he was the one who was designated to encash the same; and that he personally gave the cash advances to accused Jardiniano or the latter's secretary, Analyn Magdaraog. According to Vargas, accused Gimena supposedly executed an Affidavit dated 21 June 2006 regarding the said oral testimony and a sworn statement with waiver which he signed in the presence of Vargas.

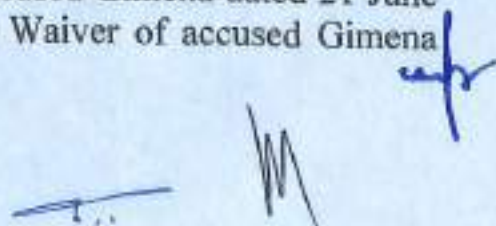
After Vargas received the documents from Auditor Varias and heard the testimony of accused Gimena, the former allegedly found that almost all the supporting documents attached to the liquidation voucher were spurious based on the validation conducted by Auditor Varias, as testified upon by

²⁵ TSN dated 17 November 2011.



accused Gimena, and as corroborated by the Certifications issued by Buenaventura and Apin. Among the documents alleged to be spurious were cash invoice from Farmacia Callo with Invoice No. 2386 (Exhibit "H"), Cash Invoice No. 2569 from R.T. Franco (Exhibit "I"), Cash Invoice No. 2356 from F.R. Estrada (Exhibit "J") and Cash Invoice No. 1129 from Farmacia Pascasio (Exhibit "K") and the Official Receipts and Invoices which were attached as the supporting documents of the P343,297.00 cash advance. The said supporting documents were attached to the Abstracts which supports the AOMs issued by Varias. Vargas then prepared the team's Investigation Report (Exhibit "MM") and submitted the same to Director Marifi P. Chua, who approved their recommendation to file administrative and criminal charges against the accused and several other persons involved in the subject transactions. Vargas was then tasked to prepare the Complaint (Exhibit "A"), which was submitted to the Criminal Investigation Prosecution, Administrative Adjudication Bureau of the Office of the Deputy Ombudsman for the MOLEO for preliminary investigation, and to act as the nominal complainant.

She identified the undated Letter from the Concerned Officers and Men of NETC (Exhibit "B" to "B-1"), Special Order No. 10 denominated as Extract dated 14 January 2005 (Exhibit "C" to "C-1"), List of Disbursement Vouchers for 2005 and 2006 (Exhibits "S" and "T"), List of Liquidation Vouchers for 2005 and 2006 (Exhibits "U" and "V"), Statement of Liquidation and Balances for 2005 and 2006 (Exhibit "D" and "E"), Abstract of Over the Counter Purchase for Medicines (Exhibit "F"), Report of Liquidation and Balances of the Abstract of the Over-the-Counter Purchase (Exhibit "G"), Sales and Cash Invoice from F. Callo Pharmacy, R.T. Franco Pharmacy, F.R. Estrada and Farmacia Pascasio (Exhibits "H", "I", "J", "K"), Affidavit of Labrador (Exhibit "L"), subpoena *duces tecum* for Varias, Buenaventura, and Apin (Exhibits "M", "N", "O"), Certifications from Buenaventura dated 08 June 2006 (Exhibit "P" and "Q"), Certification from Apin dated 08 June 2006 ("R"), AOM Nos. 2006-06 to 2006-11 (Exhibits "W" to "W-5"), Abstract No. 001-2006 (Exhibits "X" to "X-13"), AOM No. 2006-07 dated 13 June 2006 (Exhibit "Y" to "Y-1"), Abstract No. 002-2006 (Exhibit "Z" to "Z-35"), AOM 2006-08 dated 13 June 2006 (Exhibit "AA"), Abstract 003-2006 (Exhibit "BB" to "BB-10"), AOM No. 2006-09 dated 27 June 2006 (Exhibit "CC" to "CC-8"), Abstract 004-2006 (Exhibit "DD" to "DD-31"), AOM No. 2006-10 dated 27 June 2006 (Exhibit "EE" to "EE-5"), Abstract 005-2006 (Exhibit "FF" to "FF-64"), Abstract No. 006-2006 (Exhibit "GG" to "GG-25"), AOM No. 2006-11 dated 27 June 2006 (Exhibit "HH" to "HH-5"), Abstract 008-2006 (Exhibit "II" to "II-29"), Abstract 009-2006 (Exhibit "JJ" to "JJ-29"), Affidavit of accused Gimena dated 21 June 2006 (Exhibit "LL"), Sworn Affidavit with a Waiver of accused Gimena



(Exhibit "KK"), Investigation Report (Exhibit "MM" to "MM-12"), and the Complaint (Exhibit "A" to "A-43").

On cross-examination,²⁶ Vargas confirmed that only accused Jardiniano was mentioned in the anonymous letter which became the basis of her investigation. She never verified who sent the said letter. She also confirmed that accused Gimena was not assisted with a counsel of his own choice when he executed his Waiver. Accused Gimena allegedly executed the same so that he will not be incarcerated in the present case. Vargas also confirmed that the contents of the said Waiver was read to accused Gimena.

Vargas explained that he advised accused Gimena of his right against self-incrimination and made sure that his testimony was freely given, without duress and intimidation. Despite the said assurances, Vargas still included accused Gimena as one of the respondents in the Complaint because she found out that based on the documents she received, accused Gimena was the one who prepared the liquidation vouchers approved by accused Jardiniano. She then retracted her earlier statement that accused Gimena was given a guarantee that he will not be included as accused in the present case by executing an Affidavit considering that the latter was only acting upon the orders of his superior in fabricating the invoices in support of the liquidation vouchers. She clarified that during her conversation with accused Gimena, it was only a standard operating procedure for the latter to execute an Affidavit which will be evaluated later on. Accused Gimena was actually recommended to be utilized as a state witness but he was not exonerated during the preliminary investigation of the case.

With respect to accused Gimena's statement in his Affidavit that he was told by accused Jardiniano to "*Maghanap ka, mag initiate ka na lang,*" Vargas explained that accused Gimena told her that when he gave the cash to accused Jardiniano and the COA required him to liquidate the same, Jardiniano allegedly ordered Gimena to "*siya na ang gumawa ng paraan*". During the clarificatory hearing of the case, accused Gimena allegedly told Vargas that he falsified the receipts under the order of accused Jardiniano and that he just fabricated the invoices to support the liquidation of the cash advances since there were no actual procurements made. She averred in her Complaint that accused Gimena conspired with accused Jardiniano because he was the special disbursement officer who received the cash advances under the order of Jardiniano and without his participation, the cash advances and the fabrication would not have been made. She confirmed that her office can still investigate the case even without the testimony of Gimena because based on the audit findings of Varias, the documents attached to the liquidation

²⁶ TSN dated 17 November 2011, p. 29.

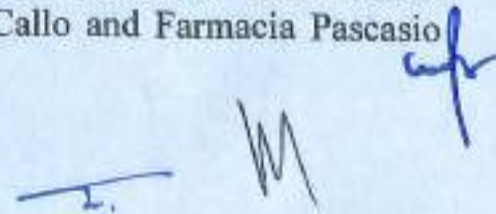
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vouchers were spurious. When asked if Gimena told her that a certain PO2 Argunillo was the one who filled up the blank official receipts, she denied that Gimena ever mentioned the same.

In the Investigation Report dated 02 August 2006 marked as Exhibit "MM" and the Complaint, she confirmed that there was no specific mention of certain sales invoices from Farmacia Callo, R.T. Franco Pharmacy, F.R. Estrada Pharmacy, Farmacia Pascasio as the same were included in the total cash advances which have separate attached documents in the liquidation. The purchase delivery sales invoices were just attached as annexes to the Complaint to support the general statement on the alleged irregularities in the procurement of medicine supplies by the NSSM Hospital.

On cross-examination conducted by counsel for accused Jardiniano on 01 March 2002, Vargas averred that she was not the one in-charge of preparing the *Informations* in the present cases, but the matter of falsification was discussed in her Investigation Report as a general accusation. When confronted with copies of the AOMs marked as Exhibits "W", "Y", "AA", "CC", "EE" and "HH", Vargas confirmed that the spaces designated for the Management Comment therein were left blank. She also does not know the procedure in availing cash advances as she was never part of the Accounting Division in her office. As far as she knows, there should be an authority from the head of the office in the issuance of cash advances and whoever that head designates to hold the cash advance is the one responsible to account for it. If there is an expense, the person liquidating the same should submit all the supporting documents pertaining to that cash advance. Vargas confirmed that she did not wait for the State Auditor's action on whether the Management Comments in the subject AOMs were satisfactory or acceptable.

On re-direct examination, Vargas stated that accused Gimena was asked during the fact-finding investigation whether he would like to secure a counsel of his own choice. She explained that in clarificatory hearings, the assistance of lawyers is not required as the same only involves gathering of evidence and cases are not yet filed against the probable respondents. It is during preliminary investigation before the Criminal Investigation and Prosecution Bureau that the parties are allowed to secure a counsel of their own choice and not during the fact-finding investigation. She also mentioned that during the clarificatory hearing, accused Gimena just voluntarily executed an affidavit, but the recommendation for Gimena to be made a state witness was only made after the submission of the Investigation Report when the Director noted the same on top of her signature. Such recommendation, however, was not approved by the Criminal Investigation and Administrative Adjudication. She also clarified that the sales invoices of R.T. Franco Pharmacy, F.R. Estrada Pharmacy, Farmacia Callo and Farmacia Pascasio



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were included in the attached documents of the Investigation Report and the same became the basis of the *Informations*.

Upon re-cross-examination, Vargas maintained that it was only a Standard Operating Procedure in the Fact-Finding Bureau that the presence of counsel is not required. Accused Gimena allegedly executed a waiver because Vargas found out during the interview that the money pertaining to the cash advance were taken by accused Jardiniano. When Gimena was asked if he could voluntarily execute an affidavit to that effect, Gimena was allegedly apprised of his right against self-incrimination because his statements might incriminate him during investigation. Gimena was asked to sign a waiver because of the implications of the admissions he made in his affidavit.

During the presentation of the prosecution's rebuttal evidence, Vargas adopted her Judicial Affidavit dated 06 November 2018²⁷ as her testimony. She stated that the allegations of Gimena in numbers 19 to 31 of his Judicial Affidavit dated 23 September 2018 are false. She maintained that he met accused Gimena for the first time on 21 June 2006 when he came with Auditor Varias to clear his name on the then on-going fact-finding investigation against Jardiniano. Upon consultation with her Director, she decided to attend to Gimena and gather more data and information on the case. Vargas called her team and met with Gimena who was with Auditor Varias.

According to Vargas, Gimena openly confessed that it was Jardiniano who ordered the liquidation of all cash advances without official receipts. He allegedly stated that Jardiniano commanded the outsourcing of receipts to support the liquidation, which later turned out to be fake. She also denied that she prepared the Letters-Explanation as the same were already with Gimena when he arrived at her office. The letters were allegedly submitted by him and Auditor Varias. To prove her claims that the letters were prepared before Gimena came to her office on 21 June 2006, Vargas stated that all the letters are dated 19 June 2006 and a handwritten receipt note by Janice Labrador showing the date 20 June 2006 appear on the letters. Since the said letters were not under oath, she asked accused Gimena to execute an Affidavit and Waiver which he voluntarily signed even though he was not assisted by a lawyer.

On cross-examination,²⁸ Vargas clarified that when the team asked Gimena to make a sworn statement regarding the cash advances taken, it was

²⁷ Sandigabayan Records, Vol. 3, pp. 114-120.

²⁸ TSN dated 13 November 2018.



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then that Gimena showed them the Letter-Explanation he earlier submitted to Auditor Varias. The said letters were then submitted to the investigating team as additional evidence. Auditor Varias also earlier submitted the documents subpoenaed such as the liquidation of cash advances. She confirmed that she did not require Varias or Janice Labrador to execute an Affidavit regarding the letters that were addressed to him. She likewise confirmed that when the Letters-Explanation were presented to Gimena and when he signed the Waiver, the latter was not accompanied by a lawyer of his own choice, and that the admissions in the Letters-Explanation were the same admissions in the Affidavit dated 21 June 2006.

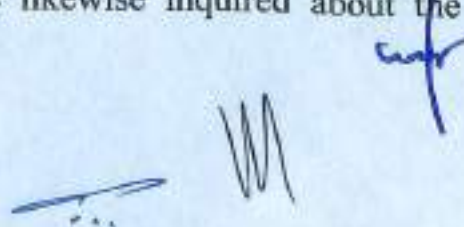
Carlito Castañeda Varias

*Carlito Castañeda Varias ("Varias")*²⁹ is a State Auditor III of the COA since 1997 up to the time of his testimony. He was the Resident Auditor at the NETC from 01 November 2000 to 31 October 2006. As State Auditor III at the NETC, he conducts financial and compliance audit on a post audit basis, performance audit, value for money audit, cash examination, prepares AOMs if necessary, Annual Audit Reports, and other assignments directed by his superior.

Varias testified that sometime in May 2006, he received an information from a certain Captain Rodriguez, then a Deputy Commander of the NETC, that most of the supporting documents of liquidation vouchers were spurious. Based on the said information, Varias allegedly gathered all the supporting documents of the liquidation vouchers from January 2005 up to April 2006 already submitted before his office and evaluated the same. He examined the Official Receipts attached to the liquidation vouchers and found out that the receipts were computer generated and signed by one and the same person although different establishments were indicated. Finding such irregularity, he started to gather documents and prepared the necessary report. He identified the List of Disbursement Vouchers for cash advances for 2005 and 2006 (Exhibit "S"), List of Liquidation Vouchers for 2005 (Exhibits "U" and "U-1") and Receipt from Farmacia Callo (Exhibit "H").

In June 2006, a group of investigators from the Office of the Ombudsman allegedly went to his office and brought him subpoena to produce documents pertaining to the subject cash advance and liquidation vouchers. The investigators purportedly requested for copies of the cash advances, vouchers and liquidation documents for January 2005 to April 2006, which he provided. The investigators likewise inquired about the

²⁹ TSN dated 28 March 2012.



purchases of medicine. He thus accompanied the investigators to the Naval Station San Miguel Hospital to ask the persons concerned on the medicines purchased. Varias and the investigators allegedly talked with Dr. Marjorie Buenaventura, who stated that the hospital did not receive any medicine from suppliers such as Farmacia Callo, Farmacia Estrada and R.T. Franco. According to Varias, Dr. Buenaventura refused to sign the Certification being served by the investigators and recalled that she was crying, although she earlier admitted that the hospital did not receive the subject medicine. Afterwards, Varias and the investigators went to the office of Major Joselito M. Apin, the dentist of the Command, who also denied receiving any medicine and signed the Certification immediately. The investigators then went back to the office of Varias to ask him questions and to photocopy documents such as the liquidation vouchers from January 2005 to April 2006.

Varias allegedly requested his staff, Janice, to accompany him and photocopy the documents outside the Command. When Janice was having the same photocopied, the owner of Troban General Merchandising saw the receipt purporting to be its receipt, and supposedly told Janice and Varias that Troban is not dealing with NETC and it does not sell the items included in the receipt being photocopied. When Varias went back to his office, the investigators asked him to prepare certifications to all the receipts and to all the establishments attached in the liquidation vouchers.

Varias went to R.T. Franco Pharmacy to validate the receipt no. 2569 purportedly attached to the liquidation voucher of the NETC and marked as Exhibit "I".³⁰ According to him, the owner of R.T. Franco Pharmacy showed him its genuine receipt being issued by the said drugstore but the said document is with the COA NETC. Varias observed that the original receipt shown by the owner of R.T. Franco Pharmacy is very different from the receipt attached to the liquidation voucher marked as Exhibit "I" and attached to Abstract No. 003-2006 (Exhibit "BB-6") in terms of physical appearance, such as the font size and the signature which appear to be made by only one person.

He also went to Farmacia Callo to validate the official receipts attached to the liquidation voucher of the NETC but the owner of the said drugstore likewise denied that the same were their official receipt. The owner then showed Varias their genuine receipt (Exhibit "AA-8"). After comparison, Varias noticed that the Sales Invoice No. 2386 (Exhibit "H") attached to the liquidation voucher of NETC and the genuine receipt were also different in physical appearance. The one attached to the liquidation voucher of NETC was brownish in color while the genuine receipt was white. The font size of

³⁰ TSN dated 30 May 2012.

Handwritten signatures and marks at the bottom right of the page, including a blue signature and a black scribble.

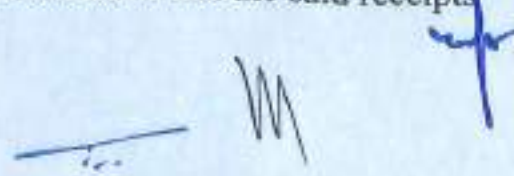
the receipts and the name of the owner were also different, and appeared to be signed by only one person.

Varias went to Farmacia Estrada to validated the Invoice No. 2356 (Exhibit "J") it purportedly issued as attached to the NETC liquidation voucher. The owner of Farmacia Estrada showed Varias the genuine receipt (Exhibit "AA-4" and "AA-5") being issued by the said drugstore and upon its comparison with the receipt attached to the NETC liquidation vouchers, Varias observed that the name of the owner in the genuine receipt is "Ferdinand R. Estrada" while the other indicates "Ferdinand L. Estrada". Two genuine receipts were shown to Varias, which is from F.R. Estrada Pharmacy and the F.R. Estrada Medical Clinic and Laboratory. Varias allegedly showed the owner of Farmacia Estrada a draft certification to the effect that the latter never transacted with NETC but the owner refused to sign the same. The owner only allowed Varias to photocopy Farmacia Estrada's genuine receipts.

Varias then proceeded to Farmacia Pascasio to validate if the Cash Invoice No. 1129 (Exhibit "K") attached to the NETC liquidation voucher were valid. The owner of the said pharmacy, Ogie Pascasio, signed a certification dated 15 June 2006 (Exhibit "AA-9") denying all the official receipts attached to the liquidation voucher, as the same were allegedly spurious. Pascasio then presented an original receipt (Exhibit "AA-10") of its drugstore which Varias photocopied for comparison with the receipts attached in the liquidation voucher.

After gathering the said receipts and certification from the establishments, Varias allegedly prepared all the documents for submission to the Office of the Ombudsman on 19 June 2006, including the Certifications issued by Dr. Buenaventura (Exhibit "P" and "Q") and Apin (Exhibit "R") dated 08 June 2006, six (6) AOMs with attached documents, and liquidation vouchers. Varias issued the said AOMs to inform the NETC Management of his audit findings.

Varias issued an AOM for his audit in Abstract No. 001-2006 amounting to P50,000.00. In the course of the audit, Varias supposedly discovered that all the attached receipts in the liquidation vouchers for the amount of P50,000.00 were falsified or fabricated, such as the receipt from Gwyneth Grill & Fastfood which was closed since October 2005 per certification, but the official receipt attached in the liquidation was dated 06 February 2006. Other receipts allegedly falsified or fabricated to liquidate the amount of P50,000.00 were from Melane's Meatshop, Clarita Grocery, Kimayong Variety Store, Gwyneth Grill & Fastfood, and Consorcia Fruits and Vegetables, some of which issued certifications (Exhibit "W-2", "W-3") denying that they issued receipts. Varias also concluded that the said receipts

Handwritten signatures and initials in blue ink at the bottom of the page. There are several distinct marks, including a large 'M' and a cross-like symbol.

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(Exhibit "X") were fabricated because the entries therein were prepared and signed by only one person. As a result, Varias, recommended the management to refund the amount of P50,000.00.

For AOM No. 2006-07 (Exhibit "Y") and Abstract No. 002-2006 in the amount of P153,841.00, Varias allegedly made similar findings of fabrication, the signature made by the same person and the font size as compared to genuine receipts were different. The establishments whose purported receipts were attached to the liquidation (*i.e.* Standard Blue Auto Supply, family Auto Supply, Fronte Motor Part Inc., Rex Motor Parts, Ronnette's Educational Supply, Double Golf General Merchandize, Mary Grace Educational Supply, Psalms 127 Electronics Shop and Supply) denied that they had any transaction with the NETC and gave their original receipts for comparison. Varias again disallowed the transactions and asked the NETC to refund the said amount.

With respect to AOM No. 2006-09 (Exhibit "CC") and Abstract No. 004-2006 in the amount P74,388.65 (Exhibit "DD"), Varias likewise discovered that the submitted receipts from Pamy Bakery, Kabayan Meatshop & Rice Supply, Kimayong, Gwyneth Grill & Fastfood Restaurant, were fabricated. The owners of the establishments issued certifications denying transactions of the said receipts (Exhibits "CC" to "CC-8"). Based on his audit findings, Varias also disallowed the transactions amounting to P74,388.65 and recommended its refund.

As to AOM No. 2006-08 (Exhibit "AA"), and Abstract No. 003-2006 in the amount of P42,500.00 (Exhibit "BB"), Varias stated that almost all the receipts attached to the liquidation voucher were found to be fake and falsified. The establishments involved therein were Farmacia Callo, F.R. Estrada Pharmacy, Farmacia Pascasio and R.T. Franco Pharmacy. The owners of the said drugstores issued Certifications and provided copies of their genuine receipts for comparison. The said amount was also disallowed and recommended to be refunded. The same findings were made by Varias for AOM No. 2006-10 (Exhibit "EE") and Abstract No. 005-2006 in the amount of P63,028.25, AOM No. 2006-13 (Exhibit "HH") and Abstract No. 006-2006 (Exhibit "GG") in the amount of P69,000.00, and Abstract No. 008-2006 (Exhibit "II") amounting to P72,616.00.

Varias averred that accused Gimena, the SDO of NETC, submitted three (3) letters (Exhibits "P" to "R") dated 19 June 2006 explaining his comments on the AOMs issued to the NETC. The original copies of the said letters are in the possession of then present auditor of COA-NETC. In the said letters, accused Gimena allegedly admitted that he secured blank receipts to liquidate the cash advances upon the direction of accused Jardiniano, the Commander of the NETC. Accused Gimena then purportedly approached

Varias requesting the latter to accompany him to the Office of the Ombudsman to tell them everything about the anomaly.

On cross-examination,³¹ Varias confirmed that it was the Deputy Commander of the NETC, Captain Rodriguez, that informed him through a phone call that most of the supporting documents of the liquidation vouchers were spurious. He allegedly asked Captain Rodriguez to help secure his safety if he were to act on the said anomaly as the person involved therein was the Commander of the NETC. After talking with Captain Rodriguez, Varias gathered all the documents relative to the said information without confirming it with other persons. Captain Rodriguez purportedly did not mention that the information came from accused Gimena.

Varias averred that he only made a random sampling of the documents which he reviewed for a week before the investigators from the Office of the Ombudsman came to his office. He confirmed that he is not a handwriting expert nor had he received any relevant training, but it is part of his duties to examine documents alleged to be spurious. He concluded that the documents were spurious based on the certifications he obtained from several establishments.

At the time that Varias was preparing his report on the disallowed vouchers, he considered the SDO of the NETC to be liable as he was the one disbursing the cash advance. He confirmed that accused Gimena approached him before going to the Office of the Ombudsman, who allegedly informed him of the irregularities verbally and through his admission in the letters submitted to Varias regarding the AOMs. According to Varias, accused Gimena told him that he was ordered by the NETC Commander to secure blank receipts to finish the liquidation report. He was also told by the investigators that if Gimena qualifies, then the latter will be allowed to be a state witness.

Varias confirmed that the amounts involved in the Sales Invoices Nos. 2569, 21129, 2386, 2356 and the amount of P343,297.00 were disallowed by him. He likewise confirmed that the subject cash advance was availed by and in the sole accountability and responsibility of accused Gimena and not accused Jardiniano. Based on COA Circular No. 97-002, it is accused Gimena who will identify which budget he would take as cash advance and will request for the issuance of the cash advance. Since the request was approved, a Land Bank check in the amount of P343,297.00 was issued and was encashed by the Special Disbursement Officer, accused Gimena. He confirmed that based on his examination, the amount of P343,297.00 was used

³¹ TSN dated 25 June 2012.

up by accused Gimena as supported by the Abstract he testified on his direct examination. Varias also stated that the Sales Invoices presented bear different serial numbers with the samples given by the different establishments. He did not check whether the printer of the receipts changed but he only relied on the information given by the owners of the establishments. He identified the Cash Book of accused Gimena and his signature on the portion "examined and verified this 16th day of October 2006 and found zero balances". He also confirmed that his last day at the Command was on 16 October 2006. Based also on COA Circular No. 97-002, the Special Disbursement Officer is given the chance to correct the disallowed sales invoices and cash invoices but he does not believe that Gimena is allowed to refund the money since the receipts were already submitted. When a clarificatory question was asked by the Court, counsel for the accused stated that accused Gimena already restituted the subject amount. Varias however clarified that the auditor presently assigned at the NETC told him that there was no restitution made.

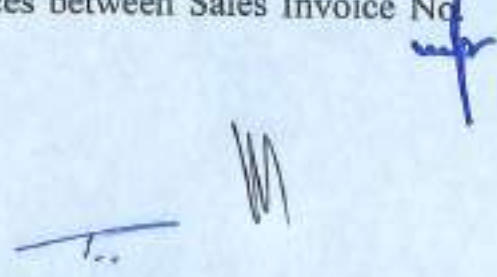
On re-direct examination, Varias testified that he was referring to accused Jardiniano when he spoke about the commander of the arm who gave the orders regarding the spurious documents. He also clarified that the fund of the NETC is the responsibility of the Special Disbursement Officer and the Commander of the NETC since he is a signatory to the approval of the voucher, and without the latter's signature, the amount will not be paid. When he left the Command in October, the auditor who replaced him did not convert the AOMs which Varias prepared into notices of disallowance. He was not able to prepare the notices of disallowance because he was already transferred to another agency. He also explained that "zero balance" in the cash book of Gimena meant that all of the cash had already been disbursed but its liquidation is a different matter since it is based on the liquidation vouchers.

On re-cross-examination, Varias confirmed that he did not furnish the Office of the Ombudsman with a copy of the cash book because the latter did not request for it.

Ogie Pascasio

Ogie Pascasio ("*Pascasio*")³² is the registered owner of Farmacia Pascasio, a pharmacy established on 10 February 2000. Pascasio testified that he issues sales invoice to their customers in the day-to-day operations of the pharmacy. He claimed that the alleged Sales Invoice No. 1129 (Exhibit "K") of Farmacia Pascasio is a fake invoice because it is different from the one they are using. He alleged that there are differences between Sales Invoice No.

³² TSN, 13 September 2012 and 05 June 2013.



1129 and the genuine one with respect to (1) the font type, font size, and spacing of the name Farmacia Pascasio; (2) the address of the pharmacy; (3) the width of the document; (4) the print of the document; and (5) the absence of perforation in the fake document.

Pascasio testified that Sales Invoice No. 1129 was first shown to him by a lady who came to the pharmacy and asked if they issue that kind of receipt. He claimed that he then immediately replied that Sales Invoice No. 1129 is a fake, and compared the same with the original sales invoice. He alleged that he gave the lady a photocopy of the original sales invoice (Exhibit "AA-10"), and that he signed a Certification that they did not transact with NETC for the purchase of medicines and medical supplies (Exhibit "AA-9").

On cross-examination, Pascasio testified that he does not remember the name of the lady who came to the pharmacy and showed him the alleged fake invoice. He claimed that the said lady was from the Office of the Ombudsman who told him that the purpose of the Certification, which he signed, is for the filing of a case against a certain high-ranking official in NETC. He admitted that the Certification was prepared beforehand, but he was the one who supplied the handwritten portions of the document.

Pascasio also testified that when he was presented with the alleged fake invoice, he showed the same to his employees who also confirmed that the invoice is fake. He also confirmed that while he was alarmed that a fake invoice exists, he did not bother to conduct his own investigation because he relied on the Office of the Ombudsman who told him that a case was going to be filed against a public officer.

Gelly Geralde Pascasio

Gelly Geralde Pascasio ("*Ms. Pascasio*")³³ is a registered pharmacist and the first registered owner of Farmacia Pascasio. Ms. Pascasio testified that she is the one who manages the pharmacy, checks the stocks and inventories, and deals with the agents. She alleged that she is the one who directly orders and does the inventory of the products that they will sell in the pharmacy. She also claimed that the other personnel in the pharmacy are authorized to issue receipts, but always with her permission. She asserted that the subject Sales Invoice No. 1129 is a fake considering that it is computer-generated. She added that the same is a cash invoice instead of a sales invoice. She also confirmed that the signature in Sales Invoice No. 1129 does not belong to any of their personnel.

³³ TSN, 05 June 2013.



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As a registered pharmacist, Ms. Pascasio testified that they do not sell certain items indicated in Sales Invoice No. 1129 such as spray surface anesthesia. She also noticed that huge quantities of medicines are indicated in the invoice. She alleged that they do not sell lidocaine, amoxicillin, disposable needles, and surgical gloves in boxes. Lastly, she mentioned that the prices stated in the subject invoice are too high.

On cross-examination, she testified that the first time she saw the alleged spurious document was when the lady from the Office of the Ombudsman showed the document to them. She affirmed that they did not report the fake document to the authorities because the government is already going to file a case. She likewise affirmed that her husband signed a Certification that they did not transact with NETC.

Dr. Ferdinand R. Estrada

*Dr. Ferdinand R. Estrada ("Dr. Estrada")*³⁴ is a medical doctor who owns FR Estrada Pharmacy and Medical Clinic. Dr. Estrada testified that he transacted with NETC one time in 1994 where the latter ordered medicines, and medical and dental supplies. He claimed that it was the only time he transacted with NETC. He alleged that he refused to transact with NETC again due to difficulty in collecting payments.

Dr. Estrada testified that Official Receipt No. 2356 (Exhibit "J") dated 10 February 2005 is a fake receipt because of certain differences compared with the authentic receipts with respect to (1) the size of the document; (2) the name of the pharmacy; (3) the address of the pharmacy; (4) the name of the owner Dr. Estrada; (5) the series number of the receipt; and (6) the name of the printing press. Dr. Estrada also claimed that he or his secretaries did not issue the subject receipt considering that for purchases over PhP1,000.00 such as in this case, it is their Standard Operating Procedure that he will personally issue the receipts.

Dr. Estrada alleged that he came to know of Official Receipt No. 2356 when a COA Auditor visited the pharmacy in 2006 asking whether the subject receipt is authentic. He allegedly told the COA Auditor that the receipt is a fake, and he gave the latter a photocopy of the genuine receipts (Exhibits "AA-4" and "AA-5"). He also identified a Certificate (Exhibit "AA-2") and an Affidavit (Exhibit "AA-3"), which he refused to sign, since he thought that

³⁴ TSN, 01 August 2013.



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the photocopy of the genuine receipts is already enough to make a comparison with the alleged fake receipt.

On cross-examination, Dr. Estrada affirmed that it is possible that an NETC personnel bought from his pharmacy over the counter. He also alleged that he does not remember the name of his secretaries during that time because they are not permanent employees. He also confirmed that the COA Auditor arrived at the pharmacy with a prepared Certification and Affidavit for his signature.

Teodora Mas Callo

*Teodora Mas Callo ("Callo")*³⁵ is a Senior Process Executive at Infosys BPO since 2011 up to the time of her testimony, and the daughter of Leticia Callo, the registered owner of Farmacia Callo. She testified that prior to her employment at Infosys, she assisted her sister in managing their family business, Farmacia Callo, from 2001 to 2007. In 2004, she took over and managed Farmacia Callo. As such, she dealt with medical representatives and medical distributors and purchased supplies and priced the same. She was also the sole authorized signatory of the official receipts they issued to customers and acted as the cashier of the pharmacy. Farmacia Callo is allegedly a small drugstore with only four (4) personnel composed of her sister as the licensed pharmacist, two (2) sales clerks and herself as the manager. Leticia Callo, her mother and the registered owner, only goes to the store and attends to it once in a while since she is also an elected Barangay Captain of San Gregorio, San Antonio, Zambales. It was Callo who usually stays at the drugstore and was in-charge of its day-to-day operations.

According to Callo, an investigator from the Office of the Ombudsman and a COA auditor went to Farmacia Callo sometime in 2006 and showed her Sales Invoice No. 2386 (Exhibit "H") named after their pharmacy. She was then asked to verify if the said document is a legitimate document of Farmacia Callo. She found the document to be fake and showed the investigator and the auditor a genuine copy of their receipt (Exhibit "AA-8"). She found the sales invoice to be fake because it was computer generated, the fonts were not embossed and appeared to be different, wider and longer. The receipt number also appeared to be bigger than their original receipt. Even if the numbers are not the same, she asserted that the receipts should still have the same information and appearance as both were within the series

³⁵ TSN dated 11 November 2013.

Upon a clarificatory question from the Court, she mentioned that the pharmacy then still had a copy of the receipt bearing the same serial number but she was not able to verify if the authentic receipt corresponds with it. She keeps the books of the pharmacy but she cannot recall an instance wherein the pharmacy had a single transaction amounting to P11,196.00. She further noted the following difference between the genuine receipt and receipt in the liquidation voucher (Exhibit "H"): (a) the third line of the genuine receipt contains "U. Price" but Exhibit "H" contains "U/P"; and (b) the genuine receipt has seven (7) lines for the items while Exhibit "H" has nine (9) lines.

She allegedly purchases the medicines and does quarterly inventory at the pharmacy but she does not recognize the medicines that were listed on Exhibit "H", such as 6 amp. of Imanadol amounting to P510.00 and one box of Moxonidine amounting to P1,411.00. She adds that the pharmacy does not purchase the said medicines from distributors or medical representatives because the pharmacy only had fast moving medicines. She also mentioned that the prices in Exhibit "H" are overpriced, *i.e.* hydrite tablet only cost approximately P9.50 and not more than P10.00, but in Exhibit "H" 50 tablets cost P600.00 which is more than P10.00; Captropil 25 mg only cost P8.00 per tablet but in Exhibit "H" one box cost P2,725.00 which is equivalent to P27.25 per tablet. She averred that the pharmacy only keeps two (2) boxes of Loperamide and two (2) boxes of Cotrimoxazole per purchase but five (5) boxes of Loperamide amounting to P2,550.00 and three (3) boxes of Contrimoxazole were purportedly purchased as indicated in Exhibit "H". She further noted that the pharmacy only makes P2,000.00 to P5,000.00 per day but the sale of P11,196.00 as indicated in Exhibit "H" is extraordinary. She recalled not having any transaction with any government agency or the NETC.

Callo identified the Certification and Affidavit (Exhibit "AA-7") dated 08 June 2006 signed by her mother, Leticia Callo, as proprietor of Farmacia Callo.

On cross-examination, Callo confirmed when she took over as manager of the pharmacy, her sister still manned the same but did not do the purchasing and pricing of the medicines. She likewise confirmed that her mother was a Barangay Captain in San Gregorio, San Antonio Zambales in 2006. Although her mother is the registered proprietor of the pharmacy, the latter had no hand in its actual operation, but only goes to the drugstore whenever Callo is not around. Callo mentioned that her mother was present when the investigators and the COA representative first went to their pharmacy. It was her mother who signed the Certification because the pharmacy was under her name and she is likewise familiar with the receipts they issue. She stated that it is possible that an NETC personnel would buy in their pharmacy from 2001 to

2007 since the Command is about one (1) to two (2) kilometers away from the pharmacy.

On re-direct examination, Callo clarified that if an NETC personnel would buy from their drugstore, the name of the individual who purchased the items would be indicated in the sales invoice and not NETC.

Janice R. Labrador

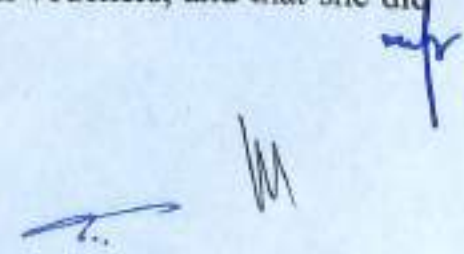
*Janice R. Labrador ("Labrador")*³⁶ was the Administrative Aide IV or Clerk II at the Special Disbursing Office of the NETC at the time she was presented in court. She testified that she was previously assigned or detailed at the COA-NETC from 2005 until 2011. Her functions allegedly include the (1) encoding of reports, Audit Observation Memoranda (AOMs), letters, and other communications; and (2) doing other tasks assigned by Auditor Varias.

Labrador recalled that in June 2006, she was asked by Auditor Varias to photocopy some of the liquidation reports by accused Gimena for the period covering February 2006 to April 2006 (Exhibits "X", "ZZ", "BB", "DD", "FF", "GG", "JJ", and "II"). She alleged that accused Gimena was the SDO of the NETC during that time. She claimed that the assignment was unusual because investigators from the Office of the Ombudsman asked for the photocopy of the said liquidation reports. She then went to Troban General Merchandise to photocopy the liquidation reports while being accompanied by the Ombudsman investigators. She alleged that Edwin L. Trono ("Trono"), owner of Troban General Merchandise, noticed that one of the receipts that he was reproducing is under the name Troban General Merchandise. He allegedly denied that Official Receipt No. 2410 (Exhibit "II-9"), which was attached to Liquidation Report Abstract No. 008-2006 (Exhibit "II"), is a genuine receipt for the following reasons: (1) the TIN Number is different; (2) the items indicated in the receipt are not available in their store; and (3) they did not transact with NETC. Labrador added that Trono showed to her the original receipt of Troban General Merchandise (Exhibit "II-27").

Labrador testified that she signed an affidavit (Exhibit "L") pertaining to the matter as requested by the investigators from the Office of the Ombudsman. She likewise identified other affidavits (Exhibit "A-19", "II-23").

On cross-examination, Labrador testified that as Administrative Aide IV, it was her first time to photocopy liquidation vouchers, and that she did

³⁶ TSN, 12 February 2014.



not see Trono browsing over the documents. She confirmed that Trono showed her their original receipt but the same was not indicated in her affidavit. She also claimed that her boss, Auditor Varias, went back to Troban General Merchandise but she did not come with them. She also testified that Auditor Varias accompanied her when she signed her affidavit.

Ninabel Concepcion Kimayong




*Ninabel Concepcion Kimayong ("Kimayong")*³⁷ is the proprietor of Kimayong Variety Store which was established in 2002 and still existing at the time of her testimony. She testified that the store sells school and office supplies, cosmetics and accessories.

According to Kimayong, a representative from the Office of the Ombudsman and the COA came to her store sometime in June 2006 to validate sales invoices (Exhibits "X-6", "BB-16", "GG-15", "JJ-25", and "JJ-26") allegedly issued by their store. Kimayong denied that their store issued the said receipts and claimed that the same were fake as the items listed therein were not being sold by their store, *i.e.* cupcake, coke in can, fudge bar, fun snacks, coffee mate and others. She also notes several physical differences between the invoices shown to her and the genuine invoice issued by the store. She stated that the genuine receipt is smaller inch than the fake one, the printing of the heading of the genuine receipt is bigger than the fake receipt, and the signature appearing on the fake receipt is not their signature.

After noting the differences in the invoices, she gave the investigator a copy of the store's genuine receipt (Exhibit "W-5") with her signature. She also agreed to sign a Certification (Exhibit "W-3") to the effect that the invoices shown to her were fake.

On cross-examination, Kimayong averred that the distance between the NETC and their store is about eight (8) kilometers. She confirmed that it was the COA Auditor who prepared the Certification but she had to look at the invoices before she signed the same. She also confirmed that it was the COA Auditor who wrote the handwritten entries regarding the invoices in the Certifications. She explained that the name of her store in her Affidavit was left in blank because the same information was already indicated in her certification. She was allegedly surprised and alarmed upon knowing about the fake receipts but she did not conduct any investigation in relation to it. She also confirmed that there is no categorical statement in her Certification and

³⁷ TSN dated 29 May 2014.



x-----x

Affidavit that the subject invoices are fake and that she and her husband were the only ones issuing the store's invoices.

Carlos Teves Co

*Carlos Teves Co ("Co")*³⁸ is the proprietor of Standard Blue Auto Supply which was in operation since 1981 up to the time of his testimony. He testified that the store sells automotive spare parts, and being manned by himself, his son and one (1) saleslady.

Sometime in June 2006, a COA personnel allegedly came to his store to verify whether certain invoices (Exhibit "Z-9", "Z-10", and "Z-26") came from his store. He stated that the receipts shown to him were fake because the handwriting does not belong to any of their staff and the printing was different from their original invoice. He added that the store never transacted with NETC, the items listed in the receipts appeared to be overpriced and the serial number is not the store's invoice.

Co identified the duplicate original of the sales invoices (Exhibits "Z-9-A", "Z-10-A", and "Z-26-B") they issued and noted that the items in the two (2) receipts were sold in cash while the last receipt was a returned merchandize and also sold in cash. Considering that the last receipt was a returned transaction, the original receipt (Exhibit "Z-26-A") was also returned to the store.

After noting the differences in the invoices shown to him, Co was then asked to certify the same as fake but he refused to sign as he did not want to be disturbed in becoming a witness to the case. However, Co asserted that the invoices shown to him by the COA are indeed fake. He gave a copy of the store's sales invoice to the COA representative. He stated that in 2004, the Bureau of Internal Revenue required the receipts to contain the phrase "not to be issued for non-VAT or VAT exempt sale of goods, properties or services and, if issued, sales shall be subjected to VAT." The said phrase was included in the store's sales invoice but the same was not indicated in the sales invoices shown to him by the COA Auditor.

On cross-examination, Co stated that the store sometimes had 20 to 30 walk-in customers per day in 2006, but the customers do not order in blank. He clarified that when he was first shown a copy of the alleged fake receipts, he did not make the computation but only examined the document. He confirmed that he did not sign nor indicate the date in the photocopy of the

³⁸ TSN dated 18 June 2014.



original receipts he gave to the COA Auditor. He did not obtain a copy of the alleged fake receipts. He likewise asked his personnel if the supposed fake receipts were issued by them, but his personnel denied issuing the same. He did not look into his records to verify if the subject serial numbers were in his sales invoice. He admitted that the handwritten entries in the Certification regarding the sales invoices, amounts and date were supplied by the COA representative.

Genevieve Justiniano Cadiente

Genevieve Justiniano Cadiente ("**Cadiente**")³⁹ is the proprietor of Kabayan Meat Shop and Rice Supply ("**Kabayan**") which was established in 1995 and still in operation at the time of her testimony. She testified that the store sells frozen meat products such as tocino, longganisa, hotdog, products of Pampanga's Best and Meken, and retail of rice. The store's usual customers are walk-in. It opens on a limited time from 8:00 a.m. to 12:00 n.n. and 4:00 to 8:00 p.m., and tended by herself and her husband.

She stated that sometime in June 2006, a COA Auditor went to their store to verify whether the sales invoice (Exhibit "**DD-17**") alleged to be Kabayan's was indeed issued by them. She claimed that the said sales invoice was fake and showed the COA Auditor the store's genuine receipt (Exhibit "**DD-17-A**") for comparison. Cadiente noted the following differences in the receipts showed to her and the store's genuine receipt: (a) the printing of the business name and style in the genuine receipt is elongated vertically while the alleged fake receipt's printing is widely spread and small in characters; (b) the address in the alleged spurious receipt is only San Antonio, Zambales while the genuine receipt has the complete address of "National Road Rizal, San Antonio, Zambales"; (c) the family name of "Cadiente" in the genuine receipt is misspelled in the fake receipt as "Cadionte"; (d) the TIN in the fake receipt did not indicate the "000" while the same is present in the genuine receipt; (e) the invoice number of the genuine receipt has five (5) digits while the fake receipt only has four (4); and (f) the printing press indicated in the original receipt is G.R.G Printing Press while the other receipt indicated Family Printing Press. Cadiente also mentioned that the store does not sell pork, canton and *bihon*. She does not recognize the signature appearing in the alleged fake signature as it was neither her nor her husband's signature.

After noting the differences in the receipt, she agreed to give a copy of their genuine receipt (Exhibit "**CC-7**") to the COA Auditor with her signature (Exhibit "**CC-7-A**"). She also signed a Certification (Exhibit "**CC-5**") and

³⁹ TSN dated 29 May 2014.



Affidavit (Exhibit "CC-6") attesting to the fact that the alleged fake invoice was not issued by their store. She mentioned that NETC never became a customer of Kabayan store.

On cross-examination, Cadiente confirmed that she is the proprietor of Kabayan and showed a Certificate of Registration from the Department of Trade and Industry (DTI) dated 27 May 2010. She explained that the said Certificate is renewable. When she operated the store in 2006, there was only one branch and there were no employees in the store except her and her husband. She confirmed that the handwritten entries in the Certification were not supplied by her. When she was first visited by the COA Auditor in 2006, the handwritten entries in the Certificate and Affidavit were not yet there. She signed the same with the blank spaces for the entries.

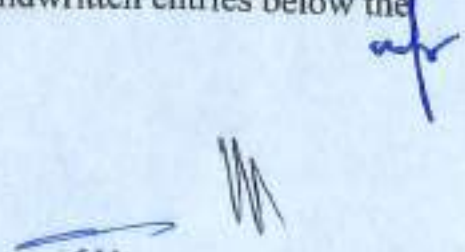
Josie Dolandolan Española

*Josie Dolandolan Española ("Española")*⁴⁰ is a Cashier at Ronnette's Educational Supply ("Ronnette's") from 2002 up to the time of her testimony. She was the only employee at the said store. As cashier, she is in-charge of the cash register, issues sales invoices and official receipts to customers and signs the same. Only Española and the owner of Ronnette's are authorized to issue sales invoices to customers.

Española testified that sometime in June 2006, a representative from COA went to Ronnette's and showed her sales invoices (Exhibits "Z-19" and "II-12") alleged to be that of Ronnette's. However, she noticed that the business name and style in the said sales invoices were different from the sales invoices that they issue. She further mentioned the following differences between the sales invoices shown to her by the COA representative and the genuine receipt of Ronnette's: (a) the name of Ronnette's in the genuine receipt was printed in capital letters while the other contains small letters; (b) the TIN indicated in the genuine receipt is VAT Registered while the other contains NV or Non-Vat; (c) the address indicated in the genuine receipt is 990 Rizal Avenue, East Tapinac, Olongapo City. She stated that she cannot recognize the signatures appearing in Exhibits "Z-19" and "II-12" as the same were not her signature nor of the owner. She also denied selling any items to NETC.

Española then gave a photocopy of the Ronnette's genuine receipt (Exhibit "II-29") to the COA representative and signed a Certification (Exhibit "II-28"). She stated that she wrote the handwritten entries below the

⁴⁰ TSN dated 04 September 2014.



signature but the COA representative wrote the handwritten entries in the body of the Certification.

On cross-examination, Española stated that the name of the owner of Ronnette's is Rona G. Cruz ("**Cruz**"). There is another branch of Ronnette's located in Iba, Zambales, also owned by Cruz. She only informed Cruz about the matter of the sales invoices and the latter did not see the same. She confirmed that the other branch has its own cashier who issues separate receipts under the name of Cruz.


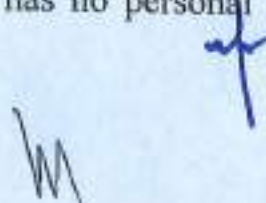
Dante Escusa Garcia

*Dante Escusa Garcia ("Garcia")*⁴¹ is the manager of Rona's and Ronnette's Educational Supply at the time of his testimony. He stated that the registered owner of Rona's Educational Supply is his father, Rodolfo Agtarap Garcia and the registered owner of Ronnette's Educational Supply is his sister, Rona Garcia Cruz who are both in the United States. Rona's was established in the mid 70's while Ronette's began its operation in 2001. The stores are engaged in the retail of school and office supplies.

When Garcia was confronted with sales invoices marked as Exhibits "**Z-19**", "**II-12**" purportedly issued by Ronnette's and "**II-16**" supposedly issued by Rona's, he noted several discrepancies therein such as: (a) the address of Ronnette's should be 990 Rizal Avenue, East Tapinac, and not 1015 Rizal Avenue, West Tapinac, Olongapo City which is indicated in Exhibits "**Z-19**", "**II-12**"; (b) the other branch is located in Iba, Zambales, and not in 1015 Rizal Avenue, West Tapinac, Olongapo City; (c) Rona's correct address should be 21st St., East Tapinac, Oongapo City and not on the 18th Street as indicated in the subject invoice; and (d) the stores' genuine receipt indicates the complete address of the Printing Press but the address shown in the Exhibits "**Z-19**" and "**II-12**" only abbreviates Olongapo City as "O.C.". Garcia also observed that some of the items allegedly indicated in the subject invoices were overpriced while some not being sold by their stores such as Ink Epson T028 and T029 which cost more than P1,000.00, two (2) rolls tape binding, three (3) ring binder, chart navigation.

On cross-examination, Garcia clarified that he was not part of the staff or employee of the Rona's and Ronnette's in 2006 as his sister was the manager and the owner of the stores then. He only saw his parents prepare the receipts. He became the manager of Rona's in 2013. He has no personal knowledge of what happened in 2006.

⁴¹ *Ibid.*, p. 22.



On re-direct examination, he clarified that by merely looking at the Exhibits presented to him, he can identify whether the said invoice came from their stores.

Dennis V. Covacha

The testimony of *Dante V. Covacha* ("*Covacha*")⁴² of the Philippine Navy was dispensed with after stipulation among the parties that the copy of the Disbursement Voucher for the cash advance of P343,397.00 marked as Exhibit "NN" and its accompanying check marked as Exhibit "OO" are true and faithful reproductions of the original on file with the office.

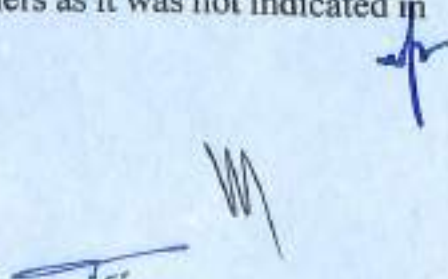
Col. Joselito Maestre Apin

Col. Joselito Maestre Apin ("*Col. Apin*")⁴³ is the Chief Dental Surgeon of the Philippine Navy from 28 November 2014 up to the time of his testimony. He was the Deputy Naval Dental Surgeon at Fort Bonifacio and a Commanding Officer of the Philippine Marine Corps, Dental Detachment from 2007 up to 2009. In 2004, he was assigned as the Commanding Officer of the NETC Dental Dispensary under the Naval Station San Miguel (NSSM) in San Antonio, Zambales until he was relieved in February 2007. As Dental Dispensary of NETC, he was responsible for all the activities of the Dental Dispensary in relation to dental matters, including the procurement of dental supplies and medicines.

Col. Apin testified that sometime in 2006, personnel from the Office of the Ombudsman visited him and inquired if he received the items listed in a certain Cash Invoice No. 1129 dated 07 February 2006 and marked as Exhibit "K". He asked his Supply Sergeant, Pepito Pascasio, if the Dispensary had the items listed in the said cash invoice but the latter said that the items were not in the inventory. He stated that he does not recall having requested the said items. He also mentioned that once the items are received, the same are immediately listed in the stock card of the Supply Office, where the date received, date expended, and the remaining balance of the medicine are recorded. The stock card is placed in a box at the Supply Office. Once the items in the stock card has a zero balance, it is placed inside another box as reference for another procurement. Col. Apin stated that Pepito Pascasio was not able to locate the items specified in the vouchers as it was not indicated in

⁴² TSN dated 26 November 2014.

⁴³ *Ibid.*, p. 22.



the stock card which bears the same date. Thus, he signed a certification (Exhibit "R") that the said items were not received by the Dispensary.

On cross-examination, Col. Apin averred that he did not issue a request for the purchase of the supply covered in the subject voucher. He did not know who requested for such purchase. He also explained that over-the-counter purchases are not part of those stated in the stock cards and that he never made over-the-counter purchases. He affirmed that Exhibit "K" is not part of the documents being submitted to his office, hence, the details contained therein are not recorded in the stock cards in his office.

Col. Apin confirmed that the COA Auditor and two (2) representatives from the Office of the Ombudsman went to his office. He did not personally conduct the inventory but it was Pepito Pascasio, his Supply Sergeant. He also did not report the incident to his superior officer, Captain Gilbert Molo. He did not require Pepito Pascasio to submit a report to him regarding the inventory.

On re-direct examination, Col. Apin explained that Exhibit "K" might be an over-the-counter purchase because it was signed by another person. As a standard operating procedure, all requests for procurement of dental supplies come from his office, signed by him and submitted to the NSSM to be acted upon. He is not aware of any instances when dental medicines are purchased by other personnel outside of his unit as he never made any over-the-counter purchases. He asserted that no dental medicines would be given to the personnel if there is no procurement from his office. With respect to the Affidavit marked as Exhibit "2", Col. Apin explained that the same was made by the Judge Advocate of their office and the same was only presented to him for his signature.

According to Col. Apin, his office then had one (1) officer and six (6) enlisted personnel. Sergeant Pepito Pascasio is the one in-charge of the inventory. He confirmed that he checks the supplies and knows the medicines in the Dispensary. He would also know every time a delivery is made to their office. When Sergeant Pepito Pascasio reported to him that there was no delivery of the items listed in Exhibit "K", Col. Apin believed it to be true because that was Pascasio's regular function.

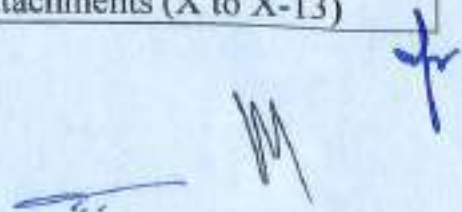
On re-cross-examination, Col. Apin claimed that he does not know whether the SDO has the authority to grant request of a certain Navy personnel in an emergency purchase of dental medicine.

Documentary Evidence

On 20 April 2017, the Court resolved to admit all the prosecution's documentary evidence.

EXHIBITS	DESCRIPTION
A A-1 to A-43	Complaint dated 05 September 2006 consisting of 12 pages with attachments
A-11-a	Encircled Signature of Josephine S. Vargas, as the nominal complainant against accused Jardiniano and Gimena
B to B-1	Anonymous Complaint under the assumed name of Concerned Officers and Men of NETC Zambales, consisting of 2 pages
C to C-1	Special Orders No. 10 dated 14 January 2005, Extract, Designation of Manuel Gimena as Special Disbursing Officer of NETC
D	Statement of Liquidation and Balances for CY 2005
E	Statement of Liquidation and Balance for CY 2006
F	Abstract of over-the-counter purchases of medicine for the month of February 2006 (Certified True Copy)
G	Report of Disbursement (Replenishment, Liquidation of Cash Advance) dated 10 February 2006
H	Official Receipt No. 2386 of Farmacia Callo
I	Official Receipt No. 2569 of R.T. Franco Pharmacy
J	Official Receipt No. 2356 of F.R. Estrada Pharmacy
J-1	Bracketed business name and style of F.R. Estrada Pharmacy
J-2	Bracketed address of F.R. Estrada Pharmacy
J-3	Bracketed name of the proprietor
J-4	Bracketed name of the printing press
K	Official Receipt No. 1129 of Farmacia Pascasio
K-1	Genuine Receipt of Farmacia Pascasio (compared with the original)
L	Affidavit of Janice Labrador

L-1	Encircled signature of Janice Labrador
L-1-a	Encircled signature of Atty. Julius A. Java, administering officer
M	Subpoena dated 07 June 2006 to COA Auditor Carlito Varias
N	Subpoena dated 07 June 2006 to Major Joselito Apin
O	Subpoena dated 07 June 2006 to Dr. Marjorie Buenaventura
P	Certification dated 08 June 2006 of Dr. Marjorie Buenaventura on the Medical and Laboratory Supplies received by NSSM Hospital for the period January 2006 to June 2006
Q	Certification dated 08 June 2006 of Dr. Marjorie Buenaventura stating that NSSM Hospital has not received the items listed in OR Nos. 2386 (Farmacia Callo), 2569 (R.T. Franco Pharmacy) and 2356 (F.R. Estrada Pharmacy)
R	Certification dated 08 June 2006 of Major Joselito Apin stating that NSSM Dental has not received the items listed in O.R. No. 1129 (Farmacia Pascasio)
S	List of Disbursement Vouchers of Cash Advances for CY 2005
T	List of Disbursement Vouchers of Cash Advances for CY 2006
U to U-1	List of Liquidation for CY 2005
V	List of Liquidation for CY 2006
W	Audit Observation Memorandum (AOM No. 2006-06) dated 13 June 2006 of CAO Auditor Carlito C. Varias with attachments (W to W-6)
W-3	Certification of Ninabel C. Kimayong dated 08 June 2006, proprietress of Kimayong Variety Store
W-4	Affidavit of Ninabel Kimayong
W-5 and W-6	Genuine Sales Invoice of Kimayong Variety Store
W-3-a W-4-a W-5-a	Encircled Signature of Ninabel Kimayong
X	Abstract No. 001-2006 with attachments (X to X-13)



Y	Audit Observation Memorandum (AOM No. 2006-07) dated 13 June 2006 of COA Auditor Carlito C. Varias with attachments
Z	Abstract No. 002-2006 with attachments (Z to Z-35)
Z-9	Spurious Invoice of Standard Blue Auto Supply
Z-9-a	Genuine Invoice of Standard Blue Auto Supply bearing the same Invoice Number as Exhibit Z-9
Z-10	Spurious Invoice of Standard Blue Auto Supply
Z-10-a	Genuine Invoice of Standard Blue Auto Supply bearing the same Invoice Number as Exhibit Z-10
Z-26	Spurious Invoice of Standard Blue Auto Supply
Z-26-a and b	Genuine Invoice of Standard Blue Auto Supply bearing the same Invoice Number as Exhibit Z-26 showing that it was a cancelled transaction with a different sales transaction than that indicated in the spurious invoice (Exhibit Z-26) attached to the Liquidation voucher of the accused
Z-19	Spurious Invoice of Ronnette's Educational Supply
Z-34	Certification of Standard Blue Auto Supply owner, Carlos T. Co.
Z-35	Sample of the original sales invoice of Standard Blue Auto Supply obtained during the investigation
Z-35-A	Encircled notation on the original sales invoice of Standard Blue Auto Supply
AA	Audit Observation Memorandum (AOM No. 2006-08) dated 13 June 2006 of COA Auditor Carlito C. Varias with attachments (AA to AA-10)
AA-4 AA-5	Genuine Invoice of F.R. Estrada Pharmacy & Medical Clinic and the Official Receipt of Estrada Medical Clinic & Laboratory
AA-8	Genuine Invoice of Farmacia Callo

AA-10	Genuine Invoice of Farmacia Pascasio
AA-6	Certification of Leticia M. Callo, Proprietor of Farmacia Callo
AA-9	Certification of Ogie Pascasio, Proprietor of Farmacia Pascasio
AA-9-a	Signature of Ogie Pascasio
BB	Abstract No. 003-2006 with attachments (BB to BB-10)
BB-5	Spurious Sales Invoice No. 2386 of Farmacia Callo
BB-6	Spurious Cash Invoice No. 2569 of R.T. Franco Pharmacy
BB-7	Spurious Invoice No. 2356 of F.R. Estrada Pharmacy
BB-8	Spurious Invoice No. 1129 of Farmacia Pascasio
CC	Audit Observation Memorandum (AOM No. 2006-09) dated 27 June 2006 of COA Auditor Carlito C. Varias with attachments (CC to CC-8)
CC-2	Certification of Genevieve J. Cadiente, Proprietor of Kabayan Meat Shop & Rice Supply
CC-4	Certification of Ninabel C. Kimayong, Proprietor of
CC-4-a	Kimayong Variety Store
CC-5	Signature of Genevieve Cadiente
CC-5-a	
CC-7	Genuine Receipt of Kabayan Meat Shop & Rice Supply
CC-7-a	Signature of Genevieve Cadiente
DD	Abstract No. 004-2006 with attachments (DD to DD-31)
EE	Audit Observation Memorandum (AOM No. 2006-10) dated 27 June 2006 of COA Auditor Carlito C. Varias with attachments
FF	Abstract No. 005-2006 with attachments
GG	Abstract No. 006-2006 with attachments (GG-GG-25)



GG-26	Audit Observation Memorandum (AOM No. 2006-13) dated 27 June 2006 of COA Auditor Carlito C. Varias with attachments (GG-26 to GG-29)
HH	Audit Observation Memorandum (AOM No. 2006-11) dated 27 June 2006 of COA Auditor Carlito C. Varias with attachments
II	Abstract No. 008-2006 with attachments (II-II-29)
II-23	Affidavit of Janice R. Labrador
II-23-A	Signature of Labrador
II-23-B	Signature of Atty. Julius A. Java
II-28	Certification of Josie Espanola, Cashier of Ronnette's Educational Supply
II-28-a	Signature of Josie Espanola
JJ	Abstract No. 009-2006 with attachments (JJ-JJ-29)
KK	Sworn Affidavit dated 21 June 2006 of Manuel L. Gimena with waiver
LL	Affidavit dated 21 June 2006 of LCDR Manuel Gimena
MM	Investigation Report
NN	Disbursement Voucher No. 0130-003 for P343,297 Cash Advance
OO	Check No. 72661 in the amount of P343, 297
OO-1	Dorsal portion of Check No. 72661
PP	Letter-Explanation dated 19 June 2006 of accused Gimena to Auditor Carlito Varias
PP-1	Bracketed paragraph b of the letter
QQ	Letter-Explanation dated 19 June 2006 of accused Gimena to Auditor Carlito Varias
QQ-1	Bracketed portion of the letter
QQ-2	Bracketed paragraph a of the letter
QQ-3	Bracketed paragraph b of the letter
RR	Letter-Explanation dated 19 June 2006 of accused Gimena to Auditor Carlito Varias
RR-1	Bracketed paragraph of the letter

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EVIDENCE FOR THE DEFENSE

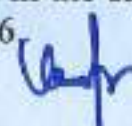
R/Adm Constancio L. Jardiniano, Jr.

R/Adm Constancio L. Jardiniano, Jr. ("**Jardiniano**")⁴⁴ adopted his Judicial Affidavit dated 01 June 2018 as his direct testimony. In the said Judicial Affidavit, accused Jardiniano attested that he was a Rear Admiral in the Philippine Navy assigned as a Commander of the NETC in San Antonio, Zambales, at the time material to the instant cases. As Commander of the NETC, he (a) assists the Flag Officer-in-Command, Philippine Navy pertaining to personnel management and administration of the NETC; (b) plans and coordinates all administrative matters to ensure efficient and smooth functioning of the division; (c) enforces observance of discipline, rules and regulations among personnel of the Command; (d) reviews all directives and publications pertaining to Personnel Administration and Management emanating from higher headquarters and prepare any required interpretative letters and/or memoranda for guidance and reference of NETC personnel; and (e) formulates and recommends policies and procedures for Personnel Management and Administration, among others. However, he allegedly did not have direct control of the Resident COA Auditor, NETC Accountant, which is under the Chief Accountant, and CO, Naval Finance Service Unit, Fort Bonifacio, Taguig City.

Accused Jardiniano enumerated the steps in the processing of documents before his approval. According to him, before any document reaches his office for his signature, it passes the offices of the Deputy Commander, Chief of Staff, Staff Supervisor/Program Director, Fiscal Officer (Comptroller), and Security Officer for verification and correctness of entries. He thus claims presumption of regularity when his Flag Secretary forwards documents for his signature after examining the initials of the heads of offices in the routing slip. As CO of the NETC, the procurement, disbursement, liquidation of cash advance and custody of funds are not purportedly included in his duties.

With respect to the *Information* for Malversation in the instant cases, his only participation was the approval of the cash advance and liquidation voucher after the supporting documents were certified complete and proper by Victoria Buhia ("**Buhia**"), Head of the Accounting Unit. He alleged that the prosecution failed to prove that the amount of P343,297.00 was missing as Buhia was not presented. The payee of the check in the said amount was accused Gimena as he was the SDO of NETC in 2006.

⁴⁴ Sandiganbayan Records, Vol. 3, pp. 62-75.



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Accused Jardiniano categorically denied the allegations in the Letters-Explanation (Exhibits "PP", "QQ", "RR") of accused Gimena that he directed accused Gimena to give the cash advance of P50,000.00 to ENS Annaleen Magdaraog and to liquidate the said cash advance without official receipts of the actual expenditures; that he authorized NETC personnel to receive medicines intended for himself; and directed Gimena to prepare liquidation vouchers using official receipts of drugstores without waiting for the official receipts from recipients.

Jardiniano averred that the AOM dated 13 August 2006 covering Abstract No. 001-2006 dated February 2006 in the amount of P50,000.00 is immaterial and irrelevant to the Malversation case because it refers to the Cash Advance dated 31 January 2006 covered by LBP Check No. 72660. The same goes with the following: (1) AOM No. 2006-08 in the amount of P42,500.00 as it refers to cash advance dated 21 March 2006 covered by LBP Check No. 72715; (2) Liquidation Voucher dated 08 February 2006, the AOM No. 2006-06, and Letter-Explanation (Exhibit "PP") as the same refers to the cash advance of P50,000.00. The cash advance allegedly covered by the Malversation case is covered by LBP check No. 72661 in the amount of P393,297.00 under Abstract No. 002-2006.

According to Jardiniano, the AOM No. 2006-07 dated 13 June 2006 wherein the COA Auditor recommended to refund the total amount of P153,841.00 which refers to the cash advance of P393,297.00 covered by LBP Check No. 72661 is covered by COA Circular No. 97-002 dated 10 February 1997. The said COA Circular provides that in the liquidation of cash advances, the accountable officer shall be deemed to have complied with the requirement of proper accounting for cash advance upon the receipt by the Accountant of liquidation documents and shall be considered liquidated upon the recording thereof by the Accountant in the books of account. It shall be audited and in case of suspensions or disallowances, the Auditor shall issue a corresponding credit notice to the accountable officer, who in turn will submit to the Auditor the documents to settle his suspensions/disallowances. He explained that such provision gives the accountable officer the opportunity to submit another supporting documents to the COA to settle his disallowances and does not require a certain period of time within which to avail the said remedy. Thus, falsification allegedly cannot yet be committed at such point.

Jardiniano further insisted that there was no evidence presented to prove that there was an accounting entry on the NETC books of account due to a disallowance or any unsettled cash advance of the SDO. The head of the NETC accounting, Buhia, who should have testified on the factual issues was never presented.



As regards the Liquidation Vouchers dated 21 February 2006 in the amounts of P153,641.00 (Exhibit "Z-1") and P42,500.00 (Exhibit "BB-1"), accused Jardiniano maintained that his only participation therein was to approve the same after he saw the certification by Buhia that supporting documents are complete, and signed the Certification of over-the-counter purchase form which is not illegal. Exhibits "CC", "EE", "HH", and "GG-26" are allegedly immaterial and irrelevant as such were not offered by the prosecution as evidence for the malversation case and he did not have a hand in the production of the said documents. It was never his duty to keep sales invoices used in the liquidation of cash advances. He categorically denied ordering anyone to produce fake or spurious sales invoices. He likewise never received a formal letter from the COA assigned at the NETC for the return of the cash advance of P343,297.00. Based on the Cash Book of his co-accused Gimena, the latter was free from any cash liability as of 16 October 2006 when Auditor Varias made a notation therein that it was examined and verified and found a zero balance.

On cross-examination,⁴⁵ Jardiniano confirmed that the Resident COA Auditor, the NETC Accountant and the CO are units attached to the NETC but he did not have direct control of the same. However, he did not have any documents to support his allegation. Although the said units are not under his operational control, they are within his administrative control. He mentioned that the annual budget of the NETC for 2005 was done by the previous Commander while the 2006 budget was planned by the HPN. He affirmed that there will be no disbursement of funds without his approval and he is the final approving authority for liquidations of cash advances for NETC. He confirmed his signatures in Exhibits "X-1", "X-2", "Z-1", "Z-2", "BB-1", "BB-2" and his certification that the purchaser made an informal canvass and the purchase prices were lowest in the general locality where the purchases were undertaken. He clarified that when it comes to disbursement, Gimena cannot disburse fund exceeding P50,000.00 but the latter does not need to come to Jardiniano every time there is a need for cash advance such as in repair of vehicles or graduation because those are automatic. He also confirmed his signature in the Disbursement Voucher for the amount of P343,297.00 (Exhibits "OO" and "MM"). *clm*

Manuel L. Gimena

*Manuel L. Gimena ("Gimena")*⁴⁶ adopted his Judicial Affidavit dated 23 September 2018 as his direct testimony. In the said Judicial Affidavit,

⁴⁵ TSN dated 24 September 2018.

⁴⁶ Sandiganbayan Records, Vol. 3, pp. 87-99.

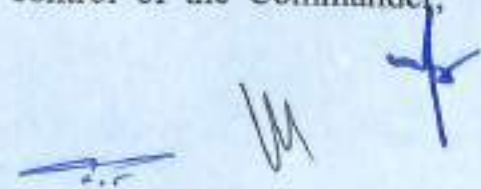
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accused Gimena stated that he was a Lieutenant of the Philippine Navy and an SDO at the NETC from 2005 to 2006. He retired from the military service with the rank of Commander or Lieutenant Colonel on 01 February 2018. As SDO of the NETC, Zambales, he was responsible for the preparation of Disbursement Vouchers for cash advances supported by approved Disposition Forms coming from the Commander, which are prepared by subordinate units, namely the HNETC, NCSC, NSC, NSSM and TDC. He mentioned that checks from such cash advances were issued in his name and had to be encashed by him at the Land Bank Office in Olongapo City, Zambales.

According to Gimena, he was not the one who prepared the receipts which are subject of the present cases. He only prepared the liquidation based on the receipts collated and submitted to him by several Supply Officers of the units concerned under accused Jardiniano, to whom the respective cash advances were released. He narrated that during liquidation, Supply Officers are required to submit to the NETC the After Expenditures Report with attached receipts, which Gimena will also attach to the Disbursement Vouchers for liquidation, for submission to accused Jardiniano and then to COA Auditor Varias. Gimena allegedly did not have any personal knowledge of the authenticity and due execution of the receipts submitted to him.

Gimena averred that Jardiniano is the approving authority before the SDO can issue and release the cash advances spent for Maintenance and Other Operating Expenses or MOOE of NETC through the over-the-counter purchase (OCP). OCP is intended for emergency situations. He denied that he misappropriated the cash advance in the amount of P343,297.00 since the same was purportedly liquidated, settled and accounted for in the Official Receipts coming from subordinate units of NETC and approved by accused Jardiniano for submission to the COA Auditor.

Accused Gimena explained that in the fund distribution of MOOE through OCP, the Unit Supply Officer is held responsible to account and clear their respective cash advances withdrawn by them from the SDO. The five (5) Unit Commanders of HNETC, NCSC, NSC, NSSM and TDC are held responsible to manage the Unit Supply Officer of each Unit. The Supply Accountable Officer is responsible to check and inspect the authenticity of all supplies and materials being delivered with Official Receipts prior withdrawal from the end users. The SDO is responsible for the preparation of Disbursement Vouchers for cash advances supported by the approved Disposition Forms prepared by subordinate units. The Special Staff is in-charge with the control and release of funds by quarter as per program from the higher headquarters. The Program Directors (T1, T3 and T4) are designated Central Staff of NETC under the control of the Commander,

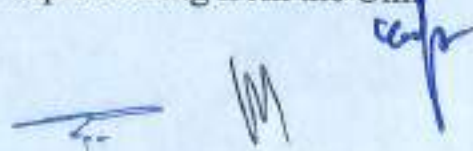


accused Jardiniano, who is the approving authority of the NETC MOOE Funds.

Gimena further mentioned that for OCPs, the Unit Supply Officer is responsible for the unit's requirements of emergency nature. The Unit Supply Officer withdraws the MOOE through OCP and submits the After Operation and Expenditure Report attached with Official Receipts for documentation and subsequent submission to the NETC Commander with attention to the SDO. The Program Director monitors and records all units' emergency requirements while the Management Fiscal Office (MFO) releases funds of MOOE through OCP as per emergency needed by the unit. The Supply Accountable Officer (SAO) then monitors, inspects and accepts the line items with Official Receipts prior to dispatch with the respective units. The Naval Accounting Service Unit (NASU) monitors, inspects receipts through OCP of the line items procured that were aligned according to object classes. The Unit Commander submits requirements on supplies and materials through OCP as needed during mission or operations. The Commander of the NETC approves the unit's requirements through OCP prior to cash advance.

In the preparation of Disbursement Vouchers on cash Advance for OCP, the Unit Supply Officer prepares the letter-request addressed to the Commander for the unit's requirements in missions and operations during calamities which the Program Director records. The SDO monitors and prepares the cash advance voucher then the Program Director recommends to the NETC Commander the release of fund intended for the unit's supplies and material requirements. The SAO monitors and conducts inventory of the line items requested if available while the NASU records and accounts all fund releases of the command. The Unit Commander submits the line items and recommends approval to the Commander, who will then approve the Disbursement Voucher for the Cash Advance.

As to the preparation of Disbursement Voucher for liquidation of cash advance for OCP, Gimena asserts that the Unit Supply Officer prepares, accounts and submits the After Expenditure Report (AER) with Official Receipts of items purchased prior to submission with the SDO for proper liquidation. The SDO prepares the Liquidation Voucher enclosed with all the Official Receipts submitted by the Unit Supply Officer of the unit. The program Director monitors and notify the proper liquidation of the SDO and the MFO monitors the proper liquidation of fund releases. The SAO conducts proper inspection of the receipts attached to the Disbursement Voucher for proper liquidation. The NASU conducts further inspection of Official Receipts and alignment based on approved fund releases. The Commander of NETC then approve and signs the Disbursement Voucher for liquidation. Gimena asserts that the submission of Official Receipts coming from the Unit



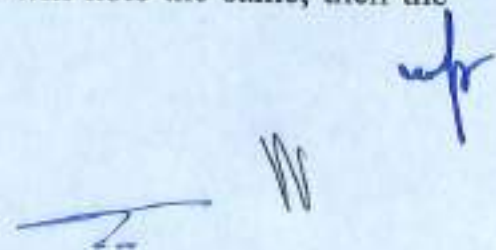
Supply Officer of the respective units is not under the control of the SDO. He allegedly relied on the receipts submitted from the Unit Supply Officer of respective units which he claimed to be authentic since the Cash Book was cleared by Auditor Varias on 16 October 2006. The notation of Varias in Gimena's Cash Book supposedly signified that he was free from any cash accountability and he cannot be transferred to another assignment without clearance from the COA.

Gimena stated that the Letters-Explanation (Exhibits "PP to "RR") were all made by Vargas and her team, with the assistance of Auditor Varias and under the influence of Captain Armando Rodriguez, the Deputy Commander of NETC, and executed in the Office of the Ombudsman. He was only made to sign the same. He averred that the Affidavit dated 21 June 2006 which was also executed in the Office of the Ombudsman was not admitted by the Court because he was not assisted by a counsel of his own choice when he executed a waiver. The Letters were also signed without the assistance of a counsel of his own choice. He was allegedly scared and hesitant when he signed the said Letters but he was assured by Vargas then that the latter will not file a case against him and will utilize him as a state witness if he signed the Affidavit and the letters. Moreover, Captain Armando Rodriguez instructed him to do so, otherwise a case will be filed against him for insubordination. According to him, Captain Rodriguez was one of the most senior officers at NETC who wanted to expose the alleged anomalies of Jardiniano because he and the other subordinate officers did not receive any MOOE from Jardiniano.

On cross-examination,⁴⁷ Gimena confirmed that all the checks for cash advances in 2005 to 2006 were issued in his name as he was the SDO of the NETC. He was the one who encashed the checks and took hold of the proceeds of the money. The cash advances were allegedly given to the units in case of emergency, through the supply officer upon the approval of Jardiniano. He gets the money from the vault in his office and personally gives the same to the supply unit. The approval of Jardiniano is obtained through a petty cash voucher duly signed, or through a phone call if there is an emergency. He liquidates expenditures through Official Receipts provided by the supply officers of the units concerned.

Gimena explained that after his encashment of the check, the supply officer will claim the money intended for emergency or OCP which they are authorized to withdraw in case of emergency in their units through a disposition form. The supply officer will prepare the After Activity Report and receipts for submission to Jardiniano who will note the same, then the

⁴⁷ TSN dated 25 September 2018.



receipts will be transmitted to Gimena to start the liquidation. Gimena then sorts out the money according to the receipts given and reconcile the same with all the disbursements. According to Gimena, it is not part of his duty to inquire whether the receipts are authentic. His duty is to dispose or release the money and retrieve the After Activity Reports with the receipts covering the expenses. He confirmed that before a disbursement voucher is processed, he is required to sign the same, but the Disbursement Voucher marked as Exhibit "NN" did not contain his signature. After preparing the Disbursement Voucher for liquidation, the Supply Accountable Officer checks the authenticity of the receipts then the Program Director checks where the money came from. It will then be submitted to the Chief Accountant to identify all the money released from the Program Director then to the Commander of NETC, Jardiniano, for approval of the disbursement voucher for liquidation, and finally to the COA Auditor.

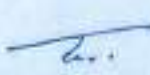

On re-direct examination, Gimena mentioned that the Disbursement Voucher marked as Exhibit "NN" was produced in three (3) copies, one for the SDO, one for the unit, and one for the COA Auditor. However, he could not identify to which the copy presented in Court belongs. When asked with a clarificatory question from the Court if he has any other proof aside from his testimonial evidence to show that such was the process, Gimena reiterated that it has always been the practice in the Navy.

THE FACTS AND THE CASE

At the time material to the instant cases, accused Jardiniano was the Commander of the NETC while accused Gimena was the SDO of the same Command pursuant to Special Order No. 10 dated 14 January 2005, entrusted with the maximum cash accountability of P1,000,000.00 to defray the miscellaneous expenses of NETC.

On the basis of an undated anonymous *Complaint* received by the Office of the Ombudsman on 30 May 2006 regarding the alleged corrupt activities of accused Jardiniano, a Fact-Finding Investigation was conducted by the Fact Finding and Investigation Bureau of the Office of the Ombudsman for the MOLEO. The Fact-Finding Team submitted a Report dated 02 August 2006⁴⁸ recommending the conduct of preliminary investigation against accused Jardiniano, Gimena and several other personnel of the NETC.

⁴⁸ Sandiganbayan Records, Vol. 1, pp. 19-29.






In the *Complaint*⁴⁹ dated 05 October 2006, Vargas as the nominal complainant on behalf of the Fact-Finding Investigation Bureau, alleged that in 2005 and 2006, Gimena made cash advances respectively totaling P4,334,052.67 and P1,381,093.00. After verification with the COA-NETC, it was purportedly revealed that the liquidations of cash advances were supported by Official Receipts or Sales Invoices which were found to be spurious based on the following: (1) the Affidavit of Labrador disclosing that O.R. No. 2410 of Troban General Merchandise which was used by Gimena as supporting document in its liquidation was denied by the owner of Troban; (2) per AOM No. 2006-06 dated 13 June 2006, the Official Receipts presented in the liquidation of cash advance of Gimena amounting to P50,000.00 as per Abstract No. 001-2006 dated February 2006 disclosed that the same were fake and thus disallowed (*i.e.* Gwyneth Grill and Fastfood with Sales Invoice No. 5415 dated 06 February 2006 was already closed in October 2005, Invoices from Delia's Fruits and Vegetable Store, Melanie Meat Shop, Jhing-Jhing Variety Store and Consorcia Sanguyo Fruits and Vegetables were prepared and signed by one person and examination thereof shows fraud); and (3) per AOM No. 2006-07 dated 13 June 2006, during the post-audit of the liquidation of accused Gimena per Abstract No. 002-2006 dated February 2006, the Official Receipts submitted were fabricated based on confirmation from certain establishments and careful examination, thus disallowing the liquidation of P153,841.00.

Complainant also stated that on 21 June 2006, Gimena appeared before the Office of the Ombudsman and submitted his Affidavit admitting that he caused the preparation of the Disbursement Vouchers which were normally supported by Disposition Forms from NETC Subordinate Units, but several Disbursement Vouchers were prepared based on a letter request for cash advances signed by Jardiniano. When the Disbursement Vouchers for Cash Advances were approved by Jardiniano and released by means of checks payable to Gimena, Jardiniano allegedly took cash from Gimena personally or through his Flag Secretary Ensign Annaleen C. Magdaraog without supporting documents. Upon liquidation thereof, Gimena was purportedly forced to use blank receipts due to alleged failure of Jardiniano to submit receipts.

Furthermore, there were supposedly purchases of medicine supplies through cash advances from Farmacia Callo, R.T. Franco Pharmacy, F.R. Estrada Pharmacy and Farmacia Pascasio which were not actually delivered to the NSSM as certified to by Dr. Buenaventura and Apin. The AOM No. 2006-08 dated 13 June 2006 based on Abstract No. 003-2006 dated February

⁴⁹ *Ibid.*, pp. 38-49.



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2006 allegedly shows that the said Official Receipts were also fabricated, thus disallowing the amount of P42,500.00 covered in the said receipts.

After preliminary investigation, the Office of the Ombudsman issued a *Resolution*⁵⁰ dated 12 January 2011, finding probable cause against the accused for Malversation and four (4) counts of Falsification concerning the amount of P343,297.00.

ARGUMENTS OF THE PARTIES

At the outset, the prosecution argues in its *Memorandum*⁵¹ dated 08 July 2019 that all the elements of Malversation under Article 217 of the RPC are present in this case.

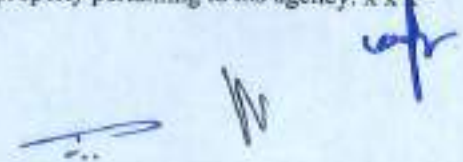
According to the prosecution, the first element was shown by the stipulation of the parties in the *Joint Stipulation of Facts with Marking of Evidence* dated 26 September 2011, that the accused were public officers at the time of the commission of the alleged offense. It further claims that the second and third elements are likewise present considering that accused Jardiniano, as head of NETC, is primarily responsible for the public funds pertaining to his agency, and such responsibility is spelled out in Section 102 of the Government Auditing Code.⁵² Accused Gimena, as SDO, is also an accountable officer by virtue of his duties, having been entrusted with custody of NETC funds which he is bound to account for.

As to the fourth element, the prosecution asserts that accused Jardiniano appropriated, took, and misappropriated the cash advances of accused Gimena as disclosed by the latter during the fact-finding investigation before the Office of the Ombudsman. The said position was allegedly supported by the testimony of Vargas, the Affidavit of Gimena dated 21 June 2006 and the Letters-Explanation (Exhibits "PP" to "RR") which were admitted by the accused as to existence, authenticity and due execution. The said Letters-Explanation were supposedly in response to the AOMs, which essentially state that there were discrepancies between the copies of the official receipts or invoices attached to the liquidation vouchers and those which were presented to the COA by the owners of the establishments, thus recommending the refund of the disallowed amount. Accused Gimena, who purportedly submitted the said Letters-Explanation, admitted therein that he was directed by accused Jardiniano to liquidate cash advances without official

⁵⁰ Sandiganbayan Records, Vol. 1, pp. 4-18.

⁵¹ Sandiganbayan Records, Vol. 3, pp. 241-256.

⁵² Section 102. Primary and secondary responsibility. – (1) the head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency. x x x



receipts of the actual expenditures and used blank receipts in preparing the liquidation. The subject liquidation vouchers were all prepared and signed by Gimena and approved by Jardiniano. The disbursement voucher in the amount of P343,297.00 was also signed by Jardiniano.

The prosecution maintains that the failure of accused to make money readily available, immediately refund the shortage, or explain satisfactorily the disallowed amount upon demand by the COA gave rise to the presumption that both accused committed Malversation.

With respect to the charge of Falsification, the prosecution argues all the requisite elements of Article 171 (4) are likewise present. It avers that since the subject sales invoices were intended to be part of public records and actually became part of the liquidation documents, the same should be considered as public documents which fall under the contemplation of Article 171 of the RPC.

The prosecution claims that accused Gimena already admitted in his Letters-Explanation that he resorted to the use of blank receipts as supporting evidence of his liquidation of the cash advances. He supposedly had the means and opportunity "to make or prepare or otherwise to intervene in the preparation of the" invoices and had official custody thereof before the same were turned over to form part of his liquidation.

Accused Gimena allegedly had the legal obligation to disclose the truth of the facts in the submission of the liquidation documents pursuant to his duties as SDO, such as submitting genuine receipts or sales invoices to reflect the correct and accurate transactions upon which public funds entrusted to him were spent.

The falsified receipts were likewise supposedly proven by testimonial evidence to contain untruthful statements. The owners of the establishments uniformly stated that the subject invoices did not originate from them and that the entries therein were falsified. Genuine receipts of the said establishments were likewise presented for comparison to support such claims. The prosecution thus asserts that considering that its testimonial and documentary evidence was not controverted, and the accused's defense of denial was unsupported, the accused should be held liable for the crime charged.

Conversely, in a *Memorandum*⁵³ dated 27 April 2019, accused Gimena argues that the prosecution failed to prove his guilt beyond reasonable doubt.

⁵³ Sandiganbayan Records, Vol. 3, pp. 150-164.

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First, Gimena asserts that the prosecution failed to identify or mention him as the one who falsified the invoices or that he induced any person to issue the alleged falsified receipts. The testimonies of prosecution witnesses were allegedly fabricated as the same were dictated upon by Vargas and Varias. The only proof of falsification the prosecution supposedly presented is the impression of COA Auditor Varias during his investigation. Citing *Jimenez, et al. v. UCCP*,⁵⁴ he asserts that "the slight dissimilarities do not indicate forgery for these are natural, expected and inevitable variations in genuine signatures made by one and the same person."

Furthermore, Gimena points out that the Court should not rely on the AOMs of Varias which are mere observations and the testimonies of prosecution witnesses who have no personal knowledge and expertise to prove that it was accused Gimena who falsified the receipts and sales invoices. Particularly, he stresses that: (a) witness Pascasio was not sure if the invoices shown to him are fake; (b) witness Callo admitted that she was not able to verify if the authentic receipt she issued corresponds to the same number of receipt shown to her in Court; (c) Rafanan and all the other witnesses were not able to show proof that their businesses were legitimate as they did not show their authority in Court.

Gimena avers that there are factors involved in examining handwritings. Based on the cross-examination of Auditor Varias, it was allegedly shown that he cannot conclude any falsification of the documents in the absence of any confession from accused Gimena. He asserts that he could not have falsified the subject receipts considering that his duties as SDO only involve the disposal or release of money and retrieval of the After Activity Report with receipts submitted by the Supply Officer and Training Command thru a letter to the NETC Commander.

The prosecution purportedly relied on Gimena's Affidavit dated 21 June 2006 and Letters-Explanation (Exhibits "PP" to "RR") which are in the nature of extrajudicial confessions. As such, said documents should comply with the Constitutional requirements as laid down in the case of *People v. Muleta*.⁵⁵ However, the said documents were executed without the assistance of a counsel. Moreover, Gimena was brought by COA Auditor Varias supposedly to make a confession under a false promise to utilize him as a state witness. The same was allegedly shown during Varias' cross-examination wherein he admitted that Gimena will be utilized as a state witness, in connivance with the Ombudsman investigators, before he brought Gimena for investigation. The testimonies of Varias and Vargas also supposedly show that

⁵⁴ G.R. No. 140472, 10 June 2001.

⁵⁵ G.R. No. 130189, 25 June 1999.

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the Letters-Explanation dated 19 June 2006 were not yet in existence when Gimena was brought by Varias to the Ombudsman Investigators for questioning.

As to the charge of Malversation, Gimena claims that the element of "misappropriation" and "shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property" are lacking. The prosecution supposedly relied on the findings of falsified receipts by unreliable witnesses and Auditor Varias who is not an expert witness. No handwriting expert was presented by the prosecution. Gimena thus maintains that without proof beyond reasonable doubt that falsification was committed by him, the charge of Malversation must likewise fail.

Citing the case of *Deloso v. Ho. Desierto*,⁵⁶ Gimena argues that to sustain a charge of Malversation, there must either be a criminal intent or criminal negligence. However, the same were not proven in the instant case as accused Gimena did not benefit from the encashed checks. It was not allegedly shown that he misappropriated the public funds for his personal use. He claims that good faith must be appreciated in his favor considering the nature of his position as compared to his superior officer and co-accused Jardiniano. The presumption of Malversation is likewise deemed overthrown when the accountable officer satisfactorily proves that not a single centavo of the missing funds was used by him for his personal interest but were extended as cash advances to co-employees as it was a practice tolerated in the office. In the instant case, Gimena emphasized that such presumption was overthrown when it was shown in the Resolution of the Ombudsman that the SDO Cash Book was examined and verified by Auditor Varias on 16 October 2006 and found zero balance.

According to Gimena, he is being charged for Falsification and Malversation by being a mere signatory to the subject documents. The prosecution allegedly failed to show and prove that there was a shortage of funds. Since the amount involved is P343,927.00, the amounts covered by AOMs dated 27 June 2006 and the Letters-Explanation dated 19 June 2006 as purported reply to AOM dated 13 June 2006 should not be included in the Malversation charge. Gimena also asserts that the prosecution failed to prove conspiracy between him and his co-accused Jardiniano. Mere signature or approval appearing on a voucher, check or warrant is not enough to sustain a finding of conspiracy among public officials and employees charged with defraudation.

⁵⁶ 372 Phil. 805, 813 (1999).

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In a *Memorandum*⁵⁷ dated 08 April 2019, accused Jardiniano argues that only the Letters-Explanations (Exhibits "PP" to "RR") submitted to COA Auditor Varias are left to prove the fourth element of Malversation. However, it was allegedly shown in the testimony of Investigator Vargas that such documents were made part of the Affidavit of Gimena (Exhibit "LL") which was struck down by the Court in its 18 January 2018 Resolution as the waiver of his right to counsel was made without the assistance of a counsel. Jardiniano avers that since the primary evidence had been found to have no evidentiary value by the Court, it follows that the supporting documents that were made part of the Affidavit should also be struck down to have no evidentiary value.

Moreover, Jardiniano maintains that the prosecution failed to prove or present evidence that there was indeed shortage in accused Gimena's account. Auditor Varias allegedly stated nothing about any shortage in his last cash count against the books of accused Gimena. Reiterating his previous statements in his Judicial Affidavit, accused Jardiniano claims that there was no formal audit to determine whether accused Gimena incurred a shortage. When accused Gimena was transferred from NETC to another tour of duty on 16 October 2006, Auditor Varias allegedly conducted a cash count and personally wrote at the end of the Cash Book of Regular Accountable Officers that he found a zero balance. Jardiniano asserts that such shortage must be indubitably established as held in the case of *Enriquez v. People*.⁵⁸ Such fact was further supposedly supported by the Investigation Report of Vargas which did not mention that a COA Audit was conducted and that a shortage was indubitably established.

RULING

Falsification



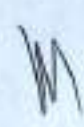
Accused Gimena is charged with the crime of Falsification of Public Documents under paragraph 4 Article 171 of the RPC which provides:

Article 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of prision mayor and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

⁵⁷ Sandiganbayan Records, Vol. 3, pp. 191-212.

⁵⁸ G.R. No. 119285, 09 May 2000.

4. Making untruthful statements in a narration of facts;

x x x

The elements of falsification by a public officer or employee or notary public as defined in Article 171 of the RPC are that:

- (1) the offender is a public officer or employee or notary public;
- (2) the offender takes advantage of his official position; and
- (3) he or she falsifies a document by committing any of the acts mentioned in Article 171 of the RPC.⁵⁹

In order to be held liable for Falsification under paragraph 4 of Article 171 of the RPC, the following requisites must likewise be present:

1. The offender makes in a document untruthful statements in a narration of facts;
2. The offender has a legal obligation to disclose the truth of the facts narrated; and
3. The facts narrated by the offender are absolutely false.⁶⁰

As regards the nature of a sales invoice, it is well-settled that if the document is intended by law to be part of the public or official record, the preparation of which being in accordance with the rules and regulations issued by the government, the falsification of that document, although it was a private document at the time of its falsification, is regarded as falsification of public or official document.⁶¹ Since the subject sales invoices in these cases are intended to be part of the public records, then they may be considered as public documents which fall under Article 171 of the RPC or falsification of public documents.

Delving on the presence of the aforementioned requisites of the crime, it is undisputed that accused Gimena is a public officer. A public officer is defined in the RPC as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class."⁶² As shown

⁵⁹ *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 263.

⁶⁰ *Rolando Santos Ramirez v. Sandiganbayan, et al.*, G.R. No. 71523-25, 08 December 2000.

⁶¹ *Aurea R. Monteverde v. People of the Philippines*, G.R. No. 139610, 12 August 2002.

⁶² *Zoleta v. Sandiganbayan*, G.R. No. 185224, 29 July 2015.



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by Gimena's admission in his Judicial Affidavit dated 23 September 2018, his designation in Special Order No. 10 dated 14 January 2005 marked as Annex "B", and the *Joint Stipulation of Facts with Marking of Evidence* dated 26 September 2011,⁶³ accused Gimena was the Special Disbursing Officer of the NETC at all times material to the instant case, making him a public officer as defined by law.

As to the second element, an offender is considered to have taken advantage of his official position when "(1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies."⁶⁴

In the instant case, the second element is also present considering that accused Gimena was entrusted with a maximum cash accountability of One Million Pesos (P1,000,000.00) effective as of 09 October 2004 to defray the miscellaneous expenses of NETC.⁶⁵ Pursuant to the Rules and Regulations on the Granting, Utilization and Liquidation of Cash Advances under COA Circular No. 97-002 dated 10 February 1997, he is an accountable officer who is duty-bound to prepare reports of disbursements, liquidation vouchers and submit supporting documents such as receipts and invoices.⁶⁶ As shown by the evidence presented, accused Gimena prepared the Liquidation Vouchers (Exhibits "X-1", "Z-1", "BB-1", "DD-1", "FF-1", "GG-1", "II-1", "JJ-1"), Abstracts of Over-the-Counter Purchases (Exhibits "X-3", "Z-3" to "Z-4", "Z-13" to "Z-14", "Z-22", "Z-27", "BB-3", "DD-3" to "DD-5", "FF-3" to "FF-6", "GG-6" to "GG-8", "GG-22", "II-3" to "II-5", "JJ-3" to "JJ-6") and Reports of Disbursements (Exhibits "X-4", "Z-5" to "Z-6", "Z-15" to "Z-16", "Z-23", "Z-28", "BB-4", "DD-6" to "DD-9", "FF-7" to "FF-10", "GG-9" to "GG-11", "II-6" to "II-8", "JJ-7" to "JJ-10") to liquidate the cash advances and disbursements under his name.

With respect to the third element, the Court notes at the outset that Gimena has the legal obligation to disclose the truth of the facts narrated in the documents that he prepares pursuant to his duties as SDO under COA Circular No. 97-002 dated 10 February 1997 discussed above, which includes the supporting documents such as official receipts and sales invoices.

The issue left for the determination of the Court as to the Falsification charges is whether accused Gimena committed the act of falsification by making untruthful statements in a narration of facts, and whether the same are absolutely false. Specifically, the prosecution contends that accused Gimena

⁶³ Records, Vol 1, p. 170.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ COA Circular No. 97-002 dated 10 February 1997, No. 5.

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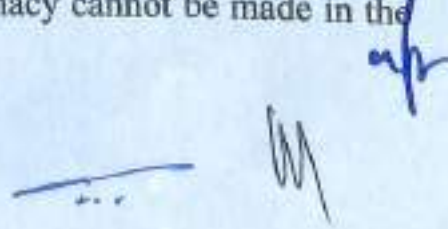
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falsified Sales Invoice No. 2569 of R.T. Franco Pharmacy, Cash Invoice No. 1129 of Farmacia Pascasio, Sales Invoice No. 2386 of Farmacia Callo, and Sales Invoice No. 2356 of F.R. Estrada Pharmacy to make it appear that certain medicines were purchased from the respective pharmacies in the amounts of P8,993.00, P9,965.00, P11,196.00, and P12,340.00 when no such purchases were allegedly made. Gimena purportedly made untruthful statements in a narration of fact in a commercial document and caused damage and prejudice to the government when the alleged falsified cash/sales invoices were used by accused Gimena to liquidate his cash advances as the SDO of the NETC.

In order to prove their allegations of falsification, the prosecution presented as evidence the testimonies of Investigator Vargas, COA Auditor Varias, representative of the NSSM Dental Dispensary, the owners or representatives of the subject pharmacies, the sales or cash invoices attached in the Liquidation Vouchers prepared by accused Gimena, the sample sales or cash invoices provided by the owners or representatives of the subject establishments and the Affidavit and Waiver of accused Gimena with attached Letters-Explanation in response to the AOMs sent by Auditor Varias.

First, in SB-11-CRM-0008, to prove that Sales Invoice No. 2569 of R.T. Franco Pharmacy was falsified, the prosecution presented COA Auditor Varias who testified that: (1) he secured a Certification from Dr. Buenaventura that the items listed in the receipt of R.T. Franco Pharmacy were not delivered to the NSSM Hospital; (2) he went to R.T. Franco Pharmacy to validate the receipt; and (3) he made an observation in his AOM that the receipt attached in Gimena's Liquidation Vouchers appeared to be spurious upon comparison with the receipt he obtained from R.T. Franco Pharmacy. The Court notes, however, that the copy of the sample genuine receipt allegedly provided by R.T. Franco Pharmacy was not presented in evidence as the same was in the custody of the present NETC COA Auditor as testified to by Varias.

The Court notes that no representative from R.T. Franco Pharmacy nor any Certification therefrom was likewise presented to prove the alleged falsification. The Certification allegedly issued by Dr. Buenaventura to the effect that the NSSM Hospital did not receive the items listed in the subject invoice does not by itself prove that falsification was committed by the accused considering that Dr. Buenaventura was also not presented to testify as to the contents of her Certification. The Court also cannot rely on the sole observation of Auditor Varias in his AOM without any other supporting evidence to prove that the Sales Invoice No. 2569 of R.T. Franco Pharmacy was indeed fabricated. Thus, the determination of whether Gimena falsified the Sales Invoice No. 2569 of R.T. Franco Pharmacy cannot be made in the



absence of the genuine receipt allegedly falsified, hence accused cannot be made liable thereto.

As for SB-11-CRM-0009, SB-11-CRM-0010 and SB-11-CRM-0011, the testimonies of spouses Pascasio, Callo, and Dr. Estrada all dispute their issuance of the questioned invoices (Exhibits "K", "J" and "H") and specified their notable differences with the genuine receipts that they issue, thus the prosecution concludes that the said invoices have been falsified.




In SB-11-CRM-0009, to prove that Cash Invoice No. 1129 from Farmacia Pascasio was falsified, the prosecution presented spouses Ogie and Gellie Pascasio, the proprietors of the said pharmacy, who claimed that the alleged Sales Invoice No. 1129 (Exhibit "K") of Farmacia Pascasio is a fake invoice because it is different from the one they are using. They noted the distinctions of the alleged spurious receipt with the sample copy of their genuine receipt which was marked as Exhibit "AA-10". They signed a Certification to the effect that Ogie was not the one who issued Sales Invoice No. 1129.

According to Ogie Pascasio, the name of "Farmacia Pascasio" in the subject cash invoice is different from their own sales invoice (Exhibit "K-1")⁶⁷ because (1) the "I" in the name looks like a loop; (2) the font size is bigger; (3) the address is different; (4) they use sales invoice instead of cash invoice; (5) the subject invoice is slightly wider by ¼ inch; (6) the subject invoice was printed only in computer; and (7) there is no perforation.

Witness Gelly Pascasio, who is the manager of Farmacia Pascasio and the wife of witness Ogie Pascasio, testified that (1) they do not dispense lidocaine in boxes and the price is too high as stated in the subject invoice; (2) the price of the paracetamol 500 mg stated in the invoice is also too much; and (3) they do not sell amoxicillin and disposable needles in boxes. She also testified that she doesn't recognize the signature in the subject invoice.

For SB-11-CRM-0010, the prosecution presented witness Callo, the daughter of the registered owner of Farmacia Callo, who testified that Sales Invoice No. 2386 (Exhibit "H") allegedly from Farmacia Callo was a fake upon a comparison with the genuine copy of their receipt (Exhibit "AA-8"). Callo identified the Certification issued by her mother, Leticia Callo, to the effect that the said pharmacy did not issue the alleged fake invoice and noted the discrepancies in the sample genuine copy of their receipt and the alleged fake invoice.

⁶⁷ Records, Vol 2, p. 91.



Callo testified that the photocopy of the sales invoice of Farmacia Callo (Exhibit "AA-8")⁶⁸ compared to the subject falsified invoice shows the following physical differences: (1) the subject falsified invoice is computer-generated; (2) the font or the letters are not embossed; (3) the subject invoice is also wider by ¼ inch and longer by 1 inch; (4) the font style is different; (5) the receipt number is also smaller; (6) Unit Price was also indicated as "U/P" instead of "U.Price"; (7) the subject receipt has nine (9) lines for items instead of seven (7) lines compared to the original; (8) the items listed in the subject receipt such as imanadol and moxonidine were not sold in Farmacio Callo; (9) the item hydrite is overpriced; and (10) they do not sell boxes of medicines as stated in the subject invoice because they only maintain a few boxes in stock.

With respect to Sales Invoice No. 2356 from F.R. Estrada Pharmacy covered by SB-11-CRM-0010, the prosecution presented Dr. Estrada, the owner of the pharmacy, who testified that the Official Receipt No. 2356 (Exhibit "J") was a fake but refused to sign a Certification to that effect. He noted the discrepancies of the said receipt with the photocopies of the genuine receipts (Exhibits "AA-4" and "AA-5") of his pharmacy.

Dr. Estrada stated that he only transacted with NETC once in 1994. He refused to accept further transaction because it is hard for him to collect payment from the agency. As regards the physical appearance of the subject receipt compared with his own official receipt (Exhibit "AA-4"),⁶⁹ witness Dr. Estrada claims that (1) the same is bigger by ¼ inch compared to his own official receipt; (2) the subject receipt bears the title "FR Estrada Pharmacy" instead of "FR Estrada Pharmacy and Medical Clinic"; (3) the address is different; (4) the subject receipt states that the name of the owner is Ferdinand L. Estrada instead of Ferdinand R. Estrada; (5) the subject receipt with Official Receipt Number 2356 is outside of the series 2501 to 6000; (6) the printing press stated in the subject receipt is GRG Printing Press instead of Family Press; and (7) witness Dr. Estrada did not recognize the signature in the subject receipt.

A perusal of the abovementioned evidence establishes the fact that the said invoices have been falsified. All the representatives of the establishments denied having issued the invoices subject of the falsification cases and positively asserted that the same were spurious. However, a scrutiny of their testimonies will also show that there is no direct evidence to prove that accused Gimena himself actually falsified the sales or cash invoices in question. The substance of their testimonies do not point to accused Gimena

⁶⁸ Records, Vol 2, p. 160.

⁶⁹ Records, Vol 2, p. 165.

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as the author of the falsified invoices. The primary evidence relied upon by the prosecution in establishing his culpability in the crime charged was the Affidavit and Waiver (Exhibits "KK" and "LL") he allegedly executed and the Letters-Explanation (Exhibits "PP", "QQ", and "RR") attached therein, which are allegedly in the nature of an extrajudicial confession.

In the said Affidavit, accused Gimena allegedly disclosed that he was forced to use blank receipts indicating the amount as stated in the cash advance. He also waived his rights under Section 12, Article III of the 1987 Constitution in the said Waiver. On the other hand, the Letter-Explanation which solely pertains to the falsification charges is the Letter-Explanation marked as Exhibit "RR", the substance of which is quoted hereunder:

x x x

In compliance with the above memorandum, the undersigned was directed by the Commander, NETC to prepare the liquidation voucher using official receipts of drugstore without waiting the official receipts from the recipients who signed in the Petty Cash Voucher.

x x x

In the case of *People v. Muleta*,⁷⁰ the Supreme Court discussed the nature and admissibility of extrajudicial confessions in determining the guilt of accused with moral certainty, to wit:

To be acceptable, extrajudicial confessions must conform to constitutional requirements. A confession is not valid and not admissible in evidence when it is obtained in violation of any of the following rights of persons under custodial investigation: to remain silent, to have independent and competent counsel preferably of their own choice, to be provided with counsel if they are unable to secure one, to be assisted by such counsel during the investigation, to have such counsel present when they decide to waive these rights, and to be informed of all these rights and of the fact that anything they say can and will be used against them in court. In *People v. Santos*, we held:

A confession is not admissible unless the prosecution satisfactorily shows that it was obtained within the limits imposed by the 1987 Constitution. Section 12, Article III thereof, provides:

- (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel

⁷⁰ G.R. No. 130189 June 25, 1999.

preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

XXX XXX XXX

- (3) Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him.

If the extrajudicial confession satisfies these constitutional standards, it is subsequently tested for voluntariness, *i.e.*, if it was given freely — without coercion, intimidation, inducement, or false promises; and credibility, *i.e.*, if it was consistent with the normal experience of mankind.

A confession that meets all the foregoing requisites constitutes evidence of a high order because no person of normal mind will knowingly and deliberately confess to be the perpetrator of a crime unless prompted by truth and conscience. Otherwise, it is disregarded in accordance with the cold objectivity of the exclusionary rule. (Citations omitted)

Under the Constitution and existing law as well as jurisprudence, a confession to be admissible must satisfy the following requirements: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.⁷¹

The purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting confession by coercion no matter how slight, as would lead the accused to admit something false. What is sought to be avoided is the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him. These constitutional guarantees have been made available to protect him from the inherently coercive psychological, if not physical, atmosphere of such investigation.⁷²

While the Constitution sanctions the waiver of the right to counsel, it must, however, be voluntary, knowing, and intelligent, made in the presence and with the assistance of counsel, and it must be in writing. Indeed, any waiver of the right to counsel without the assistance of counsel has no evidentiary value.⁷³


⁷¹ *People v. Janson*, G.R. No. 125938, April 4, 2003.

⁷² *Ibid.*

⁷³ *Ibid.*

In the instant case, after a review of the records, the Court is convinced that the above-quoted constitutional requirements have not been complied with, thus rendering the extrajudicial confession inadmissible in evidence.

At the outset, a perusal of the prosecution evidence bears out that there was already an on-going investigation on the alleged irregularities in the disbursement of funds happening in NETC as early as 06 June 2006, the date when the Investigation Team went to meet with Auditor Varias. It was on the same day that Auditor Varias mentioned accused Gimena as the SDO of the NETC, and this was shown during the direct examination of Investigator Vargas, thus:

Q: So when did your team go to Naval Education and Training Command Zambales?

A: On June 6, 2006 ma'am. We have a Travel Order dated June 6 to June 7, 2006.

Q: When you arrived on June 6, 2006 at the Naval Education and Training Command Zambales, how did you conduct your investigation when you were already there?

A: We first went to the Office of the Resident COA Auditor to validate those allegations in the complaint, ma'am.

Q: Now, who was the Resident COA Auditor at the time of Naval Education and Training Command Zambales?

A: He is Carlito C. Varias, ma'am.

Q: And when you were already at the Office of the COA Auditor Varias, what happened next?

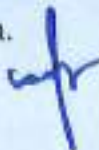
A: We interviewed Resident COA Auditor Varias with regards to the disposition of funds under the keeping and personal disposition of Rear Admiral Jardiniano, Jr. as Special Disbursing Officer, ma'am.

Q: And what did you elicit from Auditor Varias?

A: He told us that it was not accused Jardiniano, Jr. who was the Special Disbursing Officer but it was Lieutenant Commander Manuel Gimena and he showed us proof of Gimena's designation as Special Disbursing Officer, ma'am.

Q: Who is the Special Disbursing Officer of the Naval Education and Training Command Zambales?

A: Manuel Gimena, ma'am.



Consequently, the Court notes that even before accused Gimena executed his Affidavit and Waiver dated 21 June 2006, and Letters-Explanation dated 19 June 2006, he was already the subject of the said investigation considering that the latter was made known to the Investigators as the SDO of NETC who is accountable for disbursement of the subject cash advances.

Evidence on record likewise shows that the manner by which the Affidavit, Waiver, and Letters-Explanation executed by accused Gimena were obtained was in violation of the accused's constitutional right to counsel. The Court, in its 18 January 2018 *Resolution*,⁷⁴ made a pronouncement that the Affidavit and Waiver have no evidentiary value as the waiver of the right to counsel was made without the assistance of a counsel. This is evident in the cross-examination⁷⁵ of Investigator Vargas.

Q You mentioned a while ago that accused Gimena executed a waiver wherein he, according to you, signed the Waiver that his statement in his affidavit were freely and voluntarily given or sworn, is that correct?

A Yes, sir.

Q And you also mentioned that he was not assisted by a lawyer when he executed this Waiver?

A When he arrived, he was only with Carlito Varias but then one of our team is a lawyer, Atty. Julius Java who was also present during the clarificatory hearing.

Q Yes, but she was not a counsel of choice?

A Yes

Q Are you aware Ms. Witness that when an accused executes a waiver, he must be assisted also by his own counsel?

A Actually, he told us, he said to us that when we asked him if he was willing to execute an affidavit in his own, voluntarily –

x x x

Q Yes, that is with respect to the execution of the affidavit but with respect to Waiver Ms. Witness he was not assisted by a lawyer?

A In fact, the presence of Atty. Java was- we told him that he is a lawyer in our office. So, when he gave his testimony, we have aa

⁷⁴ Sandiganbayan Records, Vol. 2, pp. 460-461.

⁷⁵ TSN dated 17 November 2011, pp. 30-32.



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lawyer. He has a lawyer with him and we also asked him whether he wants, in the presence of Atty. Java to give his testimony.

ATTY. ATIENZA

We want to strike from the record the answer of the witness for being not responsive to the question. I was just asking if he was assisted by a lawyer of his own choice?

CHAIRPERSON

Just answer the question. If he was not- he was not.

In relation to this, the Court emphasizes that the right to counsel refers to competent and independent lawyers preferably chosen by the accused persons themselves.⁷⁶ In the present case, although the prosecution tried to show that accused Gimena was offered the assistance of a counsel, the Court did not have the opportunity to determine the competence and the independence of the lawyer because the prosecution failed to present Atty. Java. As stated in our earlier discussions, since Gimena was not assisted by a lawyer when the waiver was made, there was no valid waiver to speak of.

With respect to the Letters-Explanation, the same are still considered inadmissible as such were obtained during the on-going investigation of Gimena on 21 June 2006, the day when the Affidavit and Waiver were executed. The Letters were also executed without the assistance of counsel and used in violation of accused Gimena's right against self-incrimination, hence, cannot be given weight and evidentiary value. It is likewise noteworthy that the statement he made in Exhibit "RR" that "he was directed to prepare the liquidation voucher using official receipts of drugstore" is vague and ambiguous as to his participation in the alleged falsification of the invoices. Thus, such Letter cannot be used to convict the accused, given that the said Affidavit and Waiver were ruled to be constitutionally infirm.

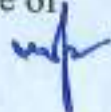
It is well-settled that the Constitution abhors an uncounselled confession or admission and whatever information is derived therefrom shall be regarded as inadmissible in evidence against the confessant.⁷⁷

In *People v. Javar*,⁷⁸ the Supreme Court was clear in pronouncing that any statement obtained in violation of the Constitution, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession contains a grain of truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of

⁷⁶ *People v. Deniega*, 251 SCRA 626, December 29, 1995.

⁷⁷ *People v. Tan*, G.R. No. 117321, 11 February 1998, 286 SCRA 207, 213.

⁷⁸ G.R. No. 82769, 6 September 1993, 226 SCRA 103.



coercion or even if it had been voluntarily given.⁷⁹ Furthermore, in *People v. Gomez*,⁸⁰ citing *People v. Rodriguez*,⁸¹ it was held that Section 12(1), Article III of the Constitution requires the assistance of counsel to a person under custody even when he waives the right to counsel.

In view of the lack of evidentiary weight of the accused's alleged extrajudicial confession, the prosecution's case rests purely on circumstantial evidence. Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience.⁸² It is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.⁸³

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person.⁸⁴ Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.⁸⁵

After a careful consideration of the records of these cases, the Court is convinced that the prosecution presented no adequate circumstantial evidence which would warrant Gimena's conviction for the crime of Falsification. As earlier stated, the prosecution was only able to establish that the invoices were falsified as the representatives of the establishments repudiates having issued the same. However, it was not clearly established from their testimonies that it was accused Gimena who falsified their receipts of that he was the one who supplied the details or signed therein.

Under Rule 132, Section 22 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the

⁷⁹ *Supra*, note 76.

⁸⁰ G.R. No 101817, 26 March 1997, 270 SCRA 432, 444.

⁸¹ G.R. No. 95902, 4 February 1992, 205 SCRA 791.

⁸² *People v. Ibañez*, G.R. No. 191752, June 10, 2013, 698 SCRA 161, 176.

⁸³ *Atienza et al. v. People of the Philippines*, G.R. No. 188694, 12 February 2014.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

evidence is offered, or proved to be genuine to the satisfaction of the judge. This was not shown with respect to the handwriting of accused Gimena to prove that he in fact signed or wrote the details in the invoices alleged to be falsified.

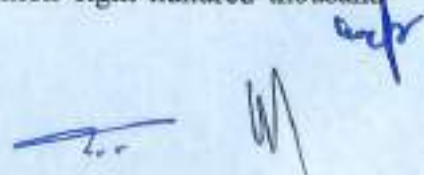
The circumstantial evidence presented acquires significance only when taken together with the accused's confession. Due to its constitutional infirmity, however, all the other evidence presented are inadequate and uncorroborated. Thus, the circumstantial evidence cannot sustain a conviction. Where the state's evidence does not constitute an unbroken chain leading beyond reasonable doubt to the guilt of the accused, the constitutional presumption of innocence prevails and the accused is entitled to an acquittal.

Malversation

In SB-11-CRM-0012, the accused are charged with Malversation of public funds in the amount of P343,297.00 under Article 217 of the RPC, thus:

Art. 217. Malversation of public funds or property. — Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of prisión correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).
2. The penalty of prisión mayor in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).
3. The penalty of prisión mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).
4. The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).
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.

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

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.⁸⁶

The elements of Malversation under Article 217 of the RPC are as follows:

1. That the offender is a public officer;
2. That he had the custody or control of funds or property by reason of the duties of his office;
3. That those 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.⁸⁷

As discussed above, accused Jardiniano and Gimena are public officers at the time material to the commission of the crime being the Commander and the SDO, respectively, of the NETC. As found by the Court in its *Resolution* dated 18 January 2018, the second and third elements of Malversation as mentioned above are likewise present, thus:

The second and third elements are likewise present. Accused Jardiniano, as the head of the NETC, is primarily responsible for the public funds pertaining to his agency. Section 102 of the Government Auditing Code provides that:

"Section 102. Primary and secondary responsibility. - (1)
The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency, xxx"

On the other hand, accused Gimena, as the Special Disbursing Officer, was entrusted with a maximum cash accountability of One Million Pesos starting 14 January 2005 only to defray the miscellaneous expenses of NETC. Thus, he is also an accountable officer for being entrusted with custody of funds which he is bound to account for.

⁸⁶ As amended by Republic Act No. 10951.

⁸⁷ *Tello v. People of the Philippines*, G.R. No. 165781, 05 June 2009.



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In *Cabarlo v. People of the Philippines*,⁸⁸ the Supreme Court has explained the evidence required to prove the existence of the fourth element of malversation, to wit:

“Thus, what remains to be resolved is whether petitioner has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property.”

‘Pursuant to Article 217 of the Revised Penal Code, the failure of the petitioner to have duly forthcoming such public funds or property upon demand, is prima facie evidence that he has put such missing funds to personal use. Being an accountable officer, petitioner may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his accounts which he is unable to explain.’⁸⁹

Malversation may thus be committed either through a positive act of misappropriation of public funds or property or passively through negligence by allowing another to commit such misappropriation. Nonetheless, all that is necessary to prove in both acts are the following: (a) that the defendant received in his possession public funds or property; (b) that he could not account for them and did not have them in his possession when audited; and (c) that he could not give a satisfactory or reasonable excuse for the disappearance of said funds or property.⁹⁰ An accountable officer may thus 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 accounts which he has not been able to explain satisfactorily.⁹¹

With respect to the fourth element, the Court is convinced that the same is present.

First, Auditor Varias stated that based on his audit findings in the documents submitted for the liquidation of the P343,297.00 cash advance, he found that certain receipts attached in the Liquidation Vouchers signed by accused Gimena and Jardiniano were spurious. He thus issued AOMs addressed to the accused informing them of the disallowance of the amounts being liquidated covered by the P343,297.00 cash advance and directing them to refund the subject amounts.

⁸⁸ G.R. No. 172274, 16 Nov. 2006.

⁸⁹ *Id.* (emphasis supplied).

⁹⁰ *Caballo v. Sandiganbayan*, G.R. No. 93885, 14 May 1991.

⁹¹ *Bacasnot vs. Sandiganbayan, et al.*, 155 SCRA 379 (1987); *De Guzman vs. People, et al.*, 119 SCRA 337 (1982).

This is supported by Abstract Nos. 002-2006 (Exhibit "Z"), 003-2006 (Exhibit "BB"), 004-2006 (Exhibit "DD") and 005-2006 (Exhibit "FF") which pertain to the liquidation of the P343,297.00 for check no. 72661, the subject of the Malversation charge. After noting that certain receipts attached to the said Abstracts were allegedly spurious, Auditor Varias issued AOM Nos. 2006-07 (Exhibit "Y"), 2006-08 (Exhibit "AA"), 2006-09 (Exhibit "CC") and 2006-10 (Exhibit "EE") respectively disallowing the amounts of P153,841.00, P42,500.00, P73,002.60, and P60,307.35 and recommended the refund of the said amounts. Thus, there is evidence of shortage in the accounts as shown by the disallowance of the said amounts.

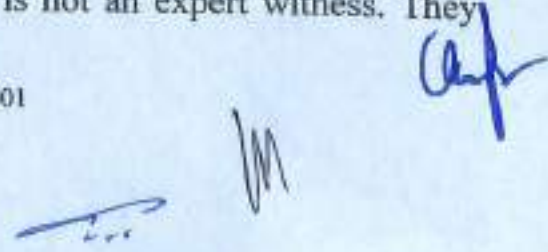
Furthermore, the testimonies of the owners or representatives of the establishments such as spouses Pascasio, Callo, Dr. Estrada, Labrador, Kimayong, Co, Cadiente, Española and Garcia established that the receipts attached in the liquidation of P343,297.00 allegedly pertaining to the establishments represented by the said witnesses were spurious, hence supporting the finding of disallowance by Auditor Varias.

Second, the Disbursement Voucher and LBP Check No. 72661 signed by accused Jardiniano for the disbursement of the P343,297.00 shows the participation of accused Jardiniano in the disbursement of the questioned cash advance. A perusal of the said voucher also shows irregularity in the disbursement of the said amount considering that the same was unsigned by accused Gimena as SDO, and yet the same was still approved by accused Jardiniano. The documentary evidence such as the Liquidation Vouchers, Certifications, Abstracts of Over-the-Counter Purchase and Reports of Disbursements signed by the accused, from which the AOMs were based show the participation of both the accused in the preparation thereof by the appearance of their signatures in the said documents. All these prove that the questioned cash advances were received by the accused.

Third, the law creates a presumption that the mere failure of an accountable officer to produce public funds which have come into his hand on demand by an officer duly authorized to examine his accounts is *prima facie* evidence of conversion. The presumption is, of course, rebuttable. Accordingly, if accused is able to present adequate evidence that can nullify any likelihood that he had put the funds or property to personal use, then that presumption would be at an end and the *prima facie* case is effectively negated.⁹²

The accused contended that the Court cannot rely on the findings of falsification by accused Varias as the latter is not an expert witness. They

⁹² *Madarang v. Sandiganbayan*, G.R. No. 112314, 28 March 2001



assert that there was no evidence of shortage as there was no formal audit conducted. They claim that there was no evidence shown that they benefitted from the questioned amounts or used it for their personal use.

The Court is not persuaded.

It bears emphasis that the accused in this case failed to give satisfactory or reasonable excuse for the disappearance of said funds. They also could not account for the said amounts and did not have them in his possession when Auditor Varias issued them the AOMs informing them of the disallowance. Accused Gimena, in his Letter-Explanation tried to justify the same but only offered a vague reason stating that he "prepared the liquidation voucher using official receipts of drugstore"⁹³ and that the receipts used in the liquidation were secured from outside source.⁹⁴ Accused Jardiniano, on the other hand, did not even respond to the AOM. He asserts his position that there was no shortage proved as the there was no formal audit and that Auditor Varias allegedly conducted a cash count and personally wrote at the end of the Cash Book of Regular Accountable Officers that he found a zero balance. However, the said allegations are unsupported as the Cash Book was not even presented as evidence, and the fact that Auditor Varias disallowed the subject amounts already equates to a shortage.

Even if the extra-judicial confession of accused Gimena is not taken into consideration by the Court in view of its constitutional infirmity as discussed above, the Court is still convinced that all the elements of Malversation as defined under Article 217 of the RPC are present.

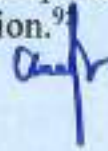
The defenses of the accused failed to overcome the presumption of law. For one, the Supply Officers who allegedly provided Gimena with the receipts shown to be spurious were not presented to support his claim. Moreover, when accused Varias issued the AOMs informing them of the disallowance of the questioned amounts, not only did the accused fail to make the same readily available, they also could not satisfactorily explain its whereabouts.

Indeed, in the crime of Malversation, all that is necessary for conviction is sufficient proof that the accountable officers had received public funds, that they did not have them in their possession when demand therefor was made, and that they could not satisfactorily explain their failure to do so. Thus, even if it is assumed that it was somebody else who misappropriated the said amount, the accused may still be held liable for Malversation.⁹⁵

⁹³ Exhibit "RR-1".

⁹⁴ Exhibit "QQ-3".

⁹⁵ *Hernan v. Sandiganbayan*, G.R. No. 217874, 5 December 2017.



The conspiracy among the accused was also sufficiently established. Under the Revised Penal Code, there is a conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."⁹⁶

It is well established that conspiracy may be inferred. In *Alvizo v. Sandiganbayan*,⁹⁷

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.

The concurrence of the wills or unity of purpose of the accused is amply supported by the records: (a) accused Gimena and Jardiniano signed the Liquidation Vouchers of the questioned disbursements; (b) accused Jardiniano signed the Certification on the regularity of the Over-the-Counter Purchases; (c) both accused signed the Abstracts of Over-the-Counter Purchase; (d) Gimena signed the Report of Disbursement, all of which were necessary for the liquidation of the disbursed amount; and (e) Accused Jardiniano signed the Disbursement Voucher and the Check which gave rise to the release of the cash advance.

As regards the amount alleged to have been Malversed, the Court finds that only AOM Nos. 2006-07, 2006-08, 2006-09 and 2006-10 pertain to the liquidation of Php343,297.00 which has been alleged in the *Information*. In the said AOMs, Auditor Varias disallowed the following amounts, as he found the receipts attached in the liquidation to be fabricated:

AOM	Abstract No.	Amounts
AOM No. 2006-07	002-2006	P153,841.00
AOM No. 2006-08	003-2006	P42,500.00

⁹⁶ *Escobar, et al. v. People*, G.R. No. 205576, 20 November 2017.

⁹⁷ 454 Phil. 34 (2003) [Per J. Austria-Martinez, En Banc].

DECISION

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AOM No. 2006-09	004-2006	P73,002.60
AOM No. 2006-10	005-2006	P60,307.35

The Court notes, however, that not all of the invoices attached in the above-mentioned Abstracts from which the subject AOMs or disallowances were based, were proven to have been fabricated. A perusal of the testimony of Auditor Varias will also show that he only did a random sampling of the establishments and was only able to validate several receipts from certain establishments. Considering that the prosecution was only able to present witnesses Pascasio, Dr. Estrada, Callo, Kimayong, Co, Cadiente, Española, and Garcia to prove the falsity of the subject cash or sales invoices to which amounts were not satisfactorily explained by accused, the Court finds the following amounts to have been malversed:

Prosecution Witness	Name of Establishment	Receipt No.	Amount
Pascasio	Farmacia Pascasio	1129	P9,965.00
Callo	Farmacia Callo	2386	P11,196.00
Dr. Estrada	FR Estrada Pharmacy and Medical Clinic	2356	P12,346.00
Kimayong	Kimayong Variety Store	2174	P7,012.00
Co	Standard Blue Auto Supply	148726 148724 148728	P13,800.00 P4,285.00 P14,600.00
Cadiente	Kabayan Meat Shop and Rice Supply	1562	P4,070.00
Española	Ronnette's Educational Supply	5243	P6,660.00
			P83,934.00

Pursuant to Section 40 of Republic Act No. 10951,⁹⁸ otherwise known as "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", the penalty for Malversation was amended, thus:

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

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

⁹⁸ Republic Act No. 10951, 24 July 2017.

X-----X

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:

X X X

"2. The penalty of prisión mayor in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

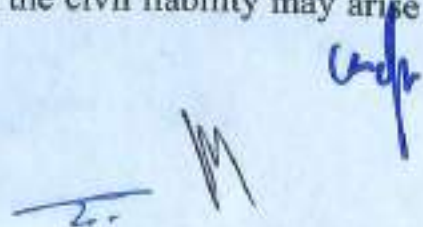
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"In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

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

WHEREFORE, in light of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. SB-11-CRM-0008, for Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, accused **MANUEL L. GIMENA** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The act or omission from which the civil liability may arise did not exist.
2. In Criminal Case No. SB-11-CRM-0009, for Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, accused **MANUEL L. GIMENA** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The act or omission from which the civil liability may arise did not exist.
3. In Criminal Case No. SB-11-CRM-0010, for Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, accused **MANUEL L. GIMENA** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The act or omission from which the civil liability may arise did not exist.



4. In Criminal Case No. SB-11-CRM-0011, for Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code, accused **MANUEL L. GIMENA** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The act or omission from which the civil liability may arise did not exist.

5. In Criminal Case No. SB-11-CRM-0012, accused **CONSTANCIO L. JARDINIANO, JR.** and **MANUEL L. GIMENA** are found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds or Property under Article 217 of the Revised Penal Code, and are hereby sentenced to suffer an indeterminate penalty of imprisonment from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, with perpetual disqualification from holding any public office, and to pay a fine equal to the malversed amount of Eighty Three Thousand Nine Hundred Thirty Four Pesos (P83,934.00).

SO ORDERED.



MICHAEL FREDERICK L. MUSNGI
Associate Justice

WE CONCUR:



OSCAR C. HERRERA, JR.
Associate Justice
Chairperson



LORIFEL LACAP PAHIMNA
Associate Justice

ATTESTATION

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



OSCAR W. HERRERA, JR.
Chairperson, Second Division

CERTIFICATION

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



AMPARO M. CABOTAJE-TANG
Presiding Justice

