



Republic of the Philippines
Sandiganbayan
Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES

CRIM. CASE No. SB-14-CRM-0425

- versus -

For: Violation of Article 218 of the
Revised Penal Code


ANTONIO MARTINEZ SUBA,
Accused.

Present:

FERNANDEZ, SJ., J.
Chairperson

JACINTO,* J. and
VIVERO, J.

Promulgated:

July 31, 2019 

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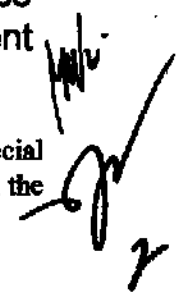
DECISION

VIVERO, J.:

THE CHARGE

Accused, Antonio Martinez Suba (*Suba*, for brevity), then-Vice-President for Operations of the Philippine Aerospace Development

* Per Administrative Order No. 382-2017, Justice Bayani H. Jacinto has been designated Special Member of the Sixth Division in lieu of Justice Karl B. Miranda who inhibited himself from the above-entitled case.



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Corporation¹ (PADC), a government-owned and controlled corporation (GOCC), is indicted for violation of Article 218 of the Revised Penal Code of the Philippines (RPC). The delictual allegations of the Information² are couched in the following language:

SB-14-CRM-0425

"That in March 2007, or sometime prior or subsequent thereto, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused **ANTONIO MARTINEZ SUBA**, a high ranking public officer, being the Department Manager B of the Philippine Aerospace Development Corporation, a government-owned and/or controlled corporation attached to the Department of Transportation and Communications, and as such, is accountable for public funds he received and used by reason of his office, committing the offense in relation to [his] office, did then and there, willfully, unlawfully, and feloniously *fail to render accounts* totaling One Hundred Thirty-Two Thousand Nine Hundred Seventy-Eight Pesos and 68/100 (Php 132,978.68), which amount accused received by way of *cash advances* for his plane fare and hotel accommodation (Php 108,500.00); per diems and allowances (US\$ 458.40 or Php 22,978.68); and pre-travel expenses (Php 1,500.00) in connection with his travel to Beijing, China from 10 to 14 October 2006, for a period of two months after such accounts should have been rendered pursuant to *Executive Order No. 298* (amending Executive Order Nos. 248 and 248-A), and *Commission on Audit Circular No. 96-004* requiring that all cash advances used for foreign travels must be duly liquidated within sixty days after his return to the Philippines, to the prejudice of the government.

"CONTRARY TO LAW.

"Quezon City, Philippines, 04 March 2014."³ (Emphasis and Italics Supplied.)



¹ The Philippine Aerospace Development Corporation was created on September 5, 1973 by virtue of Presidential Decree (P.D.) No. 286, as restructured and amended by P.D. No. 696, for purposes of undertaking all manner of activity, business or development projects to establish a reliable aviation and aerospace industry. <http://padc.com.ph/about-padc/mandate/>

² Information dated March 4, 2014, pp. 1 - 3 (Records, Vol. 1, pp. 1 - 3).

³ Id. at pp. 1 - 2.

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THE CASE

Records show that on November 2, 2011, the Field Investigation Officer (FIO), Office of the Ombudsman lodged a complaint⁴ against the following officials of the Philippine Aerospace Development Corporation (PADC), namely:

1. **Roberto R. Navida**, President and Chief Executive Officer;
2. **Antonio M. Suba**, Vice-President for Operations;
3. **Richard K. Lazaro**, Acting President;
4. **Corazon T. Aguinaldo**, Executive Secretary B; and
5. **Rolando B. Broas**, Head Cashier.

Among the recommendations of the Field Investigation Office (FIO), the Office of the Ombudsman, are the following:

"19. x x x

"23.1 (sic) [A]n information be filed in court charging respondents Robarto (sic) R. Navida, Antonio M. Suba, Richard R. Lazaro, Corazon T. Aguinaldo, and Rolando B. Broas for Malversation of Public Funds and Property and for Failure of Accountable Officer to Render Accounts as defined and penalized under Article 217 and 218, respectively, of the Revised Penal Code, as amended; and for violation of Section 89 of Presidential Decree No. 1445 x x x;

"23.2 x x x Respondents Antonio M. Suba and Rolando B. Broas be held liable for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service pursuant to Rule IV, Section 52(A), pars. 1, 3, and 20 of Civil Service Commission (CSC) Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, as amended;

"23.2 Considering the gravity of the offense and administrative infractions committed by Respondents

⁴ Complaint dated April 8, 2011, of the Field Investigation Office of the Office of the Ombudsman, pp. 1 - 10 (Records, Vol. 1, pp. 33 - 40).

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Antonio M. Suba and Rolando B. Broas, it is respectfully prayed that they be placed under preventive suspension for six (6) months without pay pursuant to the provisions of Section 24 of Republic Act No. 6770, otherwise known as 'The Ombudsman Act of 1989;'

"x x x." 5

On February 13, 2012, Antonio M. Suba filed his counter-affidavit.⁶ His asseverations are as follows:

"15. . . . [T]he critical questions that must be resolved are, *first*, whether I was directly responsible for the expenditure in violation of [the] law; and *second*, did Col. Navida, as Head of PADC, ensure the proper granting, utilization and liquidation of the cash advances?

"16. It is my humble submission that both questions must be answered in the negative.

"17. To begin with, the trip to China could not have been possible without the approval of Col. Navida, who was President/CEO at that time and thus exercises authority and control over me on official matters. x x x

"1. x x x I was on **OFFICIAL TRIP** to China from 10 - 14 October 2006.

"x x x

"18. Moreover, **Col. Navida approved all the cash advances** and knew very well where such cash advances will be used. **Although the cash advances were in my name, the decisions made and actions taken - which made the disbursement illegal due mainly to traveling without a valid Travel Authority - were not my own and much more were not my direct responsibility.** Being merely Col. Navida's subordinate, I could not possibly be held liable for the consequences of Col. Navida's decision to depart for China without a Travel Authority.

"19. x x x Col. Navida, even before the trip, was aware that the DOTC already denied his Request for Travel Authority. x x x.

⁵ Records, Vol. 1, pp. 37 - 38.

⁶ Counter-Affidavit dated February 10, 2012, pp. 1 - 1 (Records, Vol. 1, pp. 97 - 109). y

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"20. The denial of Col. Navida's request was contained in the letter dated 19 September 2006 of Asec. Emmanuel Noel A. Cruz addressed to Col. Navida himself. x x x.

"21. **Had I known that Col. Navida's request for Travel Authority was denied by the DOTC, I would not have joined the trip and allowed myself to be used as payee of the cash advance.**

"x x x

"24. Col. Navida stayed on as President/CEO until the PADC Board of Directors . . . affirmed his preventive suspension [which was] issued by the Presidential Anti-Graft Commission effective 8 January 2007. Unfortunately, during the whole time he was in office, he was not able to secure the Travel Authority despite his follow-ups . . . x x x.

"25. Even with Col. Navida's submission of the Post-Travel Report to DOTC, . . . the DOTC still did not issue any Travel Authority. x x x.

"x x x

"27. Auditor [Arsenio S.] Rayos [Jr.] in his Memorandum dated 12 March 2008 found me liable for the cash advance and cited my failure to inform Col. Navida in writing that (1) we should have separate cash advances and (2) we do not have an approved Travel Authority and Itinerary of Travel. x x x.

"x x x.

"29. . . . **[M]y outstanding cash advance of P241,478.68 (all of which were approved by Col. Navida and of which P 108,395.40 were spent for Col. Navida himself) could not have happened if only Col. Navida just decided to cancel the travel due to the absence of the Travel Authority which he fully knew was already disapproved.** Would it not be very unfair and unjust if I, as a mere subordinate, should be made to bear the consequences of the wrongful or irregular act of my superior who was no less the President/CEO?

"x x x." ⁷ (Emphasis Supplied.)

On July 24, 2014, the Office of the Ombudsman issued a Resolution⁸ finding probable cause to hold to account Col. Roberto R.

⁷ Id. at pp. 6 – 12 (Records, Vol. 1, pp. 107 – 112).

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Navida (ret.) and Antonio M. Suba for violation of Article 218 of the Revised Penal Code.⁹ On August 11, 2014, Suba filed a motion for reconsideration. On October 23, 2014, the Office of the Ombudsman denied¹⁰ said motion while stressing that:

"On December 2006, Suba should have liquidated his cash advances for his Beijing, China travel pursuant to COA Circular No. 96-004. Since Suba submitted the required official receipts only on 23 August 2007, or **AFTER TWO MONTHS** from December 2006, he already **CONSUMMATED THE OFFENSE** of Failure to Render Accounts defined and penalized under Article 218 of he Revised Penal Code."¹¹ (Emphasis and Capitalization Supplied.)

The Informations against accused Suba and his superior, accused Navida, were filed coetaneously before this Court. The case against the accused were docketed as Criminal Case Nos. SB-14-CRM-0425 and SB-14-CRM-0426, respectively.

Verily, the facts in this case are inextricably woven with those involving accused Navida. Hence, the nonfeasance imputed against accused Suba Navida is kindred *mutatis mutandi* to the irregularity allegedly committed by Navida. This may be gleaned from the Information against Navida, which is quoted below, viz:

SB-14-CRM-0426

"That in March 2007, or sometime prior or subsequent thereto, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused **ROBERTO RELEVANTE NAVIDA**, a high ranking public officer, being the President (Salary Grade 28) and Chief Executive Officer of the Philippine Aerospace Development Corporation, a government-owned and/or controlled corporation attached to the Department of Transportation and Communications, and as such, is accountable for public funds he received and used by reason of his office,

⁸ Resolution dated March 4, 2014, of the Office of the Ombudsman, pp. 1 – 18 (Records, Vol. 1, pp. 5 - 22).

⁹ The complaints against R. R. Navida and A. M. Suba for Malversation and Violation of Section 89 of P.D. No. 1445 were **DISMISSED**.

¹⁰ Order dated September 30, 2014, pp. 1 – 9, of the Office of the Ombudsman, pp. 1 – 9 (Records, Vol. 1, pp. 23 – 30).

¹¹ Id. at p. 7 (Records, Vol. 1, p. 29).

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committing the offense in relation to [his] office, did then and there, willfully, unlawfully, and feloniously ***fail to render accounts*** totaling One Hundred Eight Thousand Five Hundred Pesos (Php 108,500.00), which amount accused received by way of ***cash advance*** for his plane fare and hotel accommodation in connection with his travel to Beijing, China from 10 to 14 October 2006, for a period of two months after such account should have been rendered pursuant to ***Executive Order No. 298*** (amending Executive Order Nos. 248 and 248-A), and ***Commission on Audit Circular No. 96-004*** requiring that all cash advances used for foreign travels must be duly liquidated within sixty days after his return to the Philippines, to the prejudice of the government.

"CONTRARY TO LAW.

"Quezon City, Philippines, 04 March 2014."¹² (Emphasis and Italics Supplied.)

On November 18, 2014, accused Suba voluntarily surrendered and posted the cash bond for his provisional liberty.¹³ On December 4, 2014, accused Navida followed suit.¹⁴ Accordingly, the warrants of arrest issued against both accused were recalled.

On November 19, 2014, the Court issued a Hold Departure Order against accused Suba and Navida.¹⁵

On November 26, 2014, accused Suba moved for consolidation of Criminal Case Nos. SB-14-CRM-0330 (for violation of Section 3(e) of Republic Act No. 3019) against accused Navida and Suba, and SB-14-CRM-0425 (for violation of Article 218 of the Revised Penal Code) against accused Suba.¹⁶ On January 5, 2015



¹² Record, pp. 1 – 2.

¹³ Order dated November 18, 2014, p. 1 (Records, Vol. 1, p. 153).

¹⁴ Minutes of the proceedings held on June 16, 2015, p. 1 of 2 (Records, Vol. 1, p. 228).

¹⁵ Order dated November 19, 2014, p. 1 (Records, Vol. 1, pp. 157 – 158).

¹⁶ Motion to Consolidate Cases dated November 25, 2014, of Antonio M. Suba, pp. 1 – 4 (Records, Vol. 1, pp. 160 – 163).

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accused Navida filed a similar motion.¹⁷ Unlike in the latter case, accused had already been arraigned in SB-14-CRM-0330.¹⁸

On May 29, 2015, the Court denied the *Motion to Consolidate Cases* filed by accused Suba for lack of merit.¹⁹ Likewise, the Court denied the *Motion to Consolidate the Instant Criminal Case with Criminal Case No. SB-14-CRM-0330* filed by accused Navida.²⁰

On July 28, 2015, accused Suba, while assisted by his counsel, was arraigned and he pleaded "**Not Guilty**" to the offense charged in the Information.²¹ Afterwards, the Court ordered the parties to file their pre-trial briefs. Accused Suba filed seasonably his brief.²²

On August 27, 2015, accused Navida, with the assistance of counsel, pleaded "**Not Guilty**" after the Information was read to him in English, a language he speaks and understands.²³ Thereafter, the Court set the preliminary conference and directed the parties to file their respective pre-trial briefs.²⁴

On December 1, 2015, the preliminary conference got under way.²⁵ Documentary exhibits of the parties were marked provisionally.²⁶

¹⁷ Motion to Consolidate the Instant Criminal Case with Criminal Case No. SB-14-CRM-0330 dated January 5, 2015, of Roberto Relevante Navida, pp. 1 – 3 (Records, Vol. 1, pp. 196 – 198).

¹⁸ Opposition to the Motion to Consolidate Cases Filed by Accused Antonio M. Suba dated December 9, 2014, p. 2 of 3 (Records, Vol. 1, p. 169).

¹⁹ Resolution dated May 29, 2015, pp. 1 – 6 (Records, Vol. 1, pp. 220 – 222).

²⁰ Resolution dated June 1, 2015, pp. 1 – 6 (Records, Vol. 1, pp. 224 – 226).

²¹ Order dated July 28, 2015, p. 1 (Records, Vol. 1, p. 234); Certificates of Arraignment dated November 17, 2016, p. 1 (Records, Vol. 1, pp. 370 – 375).

²² Pre-trial Brief dated January 7, 2016, of Antonio M. Suba, pp. 1 – 7 (Records, Vol. 1, pp. 247 – 252).

²³ Certificate of Arraignment dated August 27, 2015 (Record, p. 55); Order dated August 27, 2015, p. 1 (Record, p. 56).

²⁴ Pre-Trial Brief (Record, pp. 58 – 62) of Accused Navida dated January 8, 2015 (sic), was filed on January 8, 2016, while the Pre-trial Brief (Records, Vol. 1, pp. 247 – 252) of A. M. Suba was filed on January 11, 2016. On the other hand, the Office of the Special Prosecutor filed its Pre-Trial Brief (Record, pp. 63 - 70) dated January 7, 2016, was filed on January 11, 2016.

²⁵ TSN dated December 1, 2015, pp. 1 – 11.

²⁶ *Ibid.*, TSN dated December 2, 2015, pp. 1 – 25.

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On January 12, 2016, counsel for both accused and the prosecution informed the Court that they were finalizing their Joint Stipulations of Fact. Accordingly, the pre-trial for these cases was terminated.²⁷

On February 10, 2016, both accused and the prosecution filed their *Joint Stipulation of Fact and Issues*.²⁸ The Court admitted it,²⁹ and a Pre-trial Order³⁰ consistent therewith was issued accordingly.

Trial on the merits commenced on March 14, 2016,³¹ and the Prosecution presented as its initial witness, Josefa R. Cabangangan.³² Continuous hearings were held in order to expedite matters.

On October 13, 2016, accused Roberto R. Navida *died*.³³ Accordingly, deceased's counsel filed a *Notice of Death of Accused Navida with Motion to Dismiss Crim. Case No. SB-14-CRM-0426*.³⁴ Consistent with Article 89³⁵ of the Revised Penal Code, as well as Section 4, Rule 111 of the Rules of Criminal Procedure,³⁶ and the Supreme Court's ruling in *People v. Bayotas*,³⁷ and after verifying

²⁷ Order dated January 12, 2016, p. 1.

²⁸ Joint Stipulation of Fact and Issues dated February 1, 2016, pp. 1 – 11 (Record 78 – 88).

²⁹ Minute Resolution dated February 10, 2016, p. 1 (Record, p. 76).

³⁰ Pre-trial Order dated February 23, 2016, pp. 1 – 8 (Record, pp. 268 – 275).

³¹ Order dated March 14, 2016, p. 1 (Records, Vol. 1, p. 284).

³² *Ibid*; TSN dated March 14, 2016, pp. 1 – 29.

³³ Certificate of Death No. 2016-18487 stated that Roberto Relevante Navida died of "Acute Decompensated Heart Failure" on October 13, 2016.

³⁴ Records, Vol. 1, pp. 324 – 326; TSN dated December 6, 2016, pp. 3 - 5.

³⁵ Paragraph 1 of Art. 89 of the Revised Penal Code provides:

"Criminal liability is totally extinguished:

"1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before judgment."

³⁶ Section 4, Rule 111 of the Revised Rules of Court provides:

"SEC. 4. *Effect of death on civil actions.* - The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict. x x x."

³⁷ G.R. No. 102007, September 2, 1994 [236 SCRA 239, 255], reiterated in *People v. Bayot* G.R. No. 20030, April 18, 2012.

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accused's alleged demise, the Court **dismissed** the case (i.e. SB-14-CRM-0426) against accused Navida.³⁸ The Court's ratiocination runs thus:

"x x x [I]t is clear that **the death of accused Roberto R. Navida pending trial of this case extinguishes his criminal liability as well as his civil liability *ex delicto***. The reason being that the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case."³⁹ (Emphasis Supplied.)

In addition, the Court, upon motion⁴⁰ of deceased's counsel, ordered the release of the cash bond to the rightful heirs of accused Navida, subject to the usual auditing and accounting rules and regulations.⁴¹ Case closed.

The case against accused Suba proceeded onwards. On March 13, 2017, the Prosecution wound up the presentation of its witnesses. Immediately thereafter, the Court directed the Office of the Special Prosecutor to file its formal offer of exhibits, and for the defense to submit its comment/opposition thereon.⁴² In compliance with the Court's directive, the *Prosecution's Formal Offer of Documentary Exhibits* was filed on April 3, 2017.⁴³ On the other hand, accused Suba filed his comment on April 20, 2017.⁴⁴

After the Court ruled on the admissibility of the documents formally offered by the Prosecution,⁴⁵ accused Suba filed a *Motion*

³⁸ Resolution dated February 14, 2017, pp. 1 – 4 (Records, Vol. 1, pp. 368 – 371).

³⁹ Citing *People v. Romero*, 365 Phil. 531, 543 [1999].

⁴⁰ Motion to Release Cash Bond dated May 18, 2017, pp. 1 – 2 (Records, Vol. 1, pp. 462 – 463).

⁴¹ Order dated May 25, 2017, p. 1 (Records, Vol. 1, p. 466).

⁴² Order dated March 13, 2017, p. 1 (Records, Vol. 1, p. 394).

⁴³ Prosecution's Formal Offer of Documentary Exhibits dated March 31, 2017, pp. 1 – 22 (Records, Vol. 1, pp. 399 – 420).

⁴⁴ Comment and Objection to the Formal Offer of Documentary Exhibits dated April 19, 2017, of A. M. Suba, pp. 1 – 6 (Records, Vol. 1, pp. 456 – 461).

⁴⁵ Minute Resolution dated June 9, 2017, pp. 1 – 2 (Records, Vol. 1, pp. 469 – 470).

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*Requesting Leave to File Demurrer to Evidence.*⁴⁶ The specific grounds set forth in his motion are as follows:

"3. . . . Accused Suba had proven in the course of the proceedings the following:

"a. that the Auditor who issued the Notice of Disallowance had not complied with the Rules and Regulations of COA in the issuance thereof;

"b. **it was not established that accused Suba had criminal intent to violate Article 218**, which is a felony and punishable by the Revised Penal Code, considering that the failure to render account of money belonging to the public funds is inherently immoral;

"c. that the **accused Suba paid the sum due on his cash advance** and was able to settle the Notice of Disallowance. Thus, evidencing his good faith and lack of criminal intent to violate Art. 218 of the Revised Penal Code;

"d. the Auditor admitted in the course of his testimony on February 17, 2017 as shown in p. 73 of the TSN of even date that the accused Suba was able to liquidate the cash advance by way of submission of official receipts within the period required by law;

"e. that the proceedings before the Ombudsman, during field investigation and preliminary investigation are void since it violated the right of the accused Suba to due process and to be presumed innocent."⁴⁷ (Emphasis Supplied.)

The Prosecution opposed accused's motion. Its assertion that it had adduced sufficient and weighty evidence to prove the felony hinged on the following premises:

"5. x x x Accused's failure to liquidate said cash advance within sixty days after his return, a requirement under Executive Order No. 298 . . . was evident from the Notice of Suspension . . . and Notice of Disallowance . . . issued against him by the Commission on Audit (COA).

⁴⁶ Motion Requesting Leave to File Demurrer to Evidence dated June 20, 2017, of A. M. Suba, pp. 1 - 6 (Records, Vol. 1, pp. 478 - 483).

⁴⁷ *Op. cit.*, pp. 1 - 2 (Records, Vol. 1, pp. 478 - 479).

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"6. **Accused cannot feign ignorance of the fact that he failed to liquidate subject cash advance within the period required by law**, considering his receipt of the Memorandum dated February 2, 2010 issued by the COA affirming the finality of the Decision on the issuance of the Notice of Disallowance against him by the said government agency . . .

"7. x x x

"8. **[T]here was no liquidation of the cash advance within the prescribed period in view of the lack of travel authority from the Department of Transportation and Communication (DOTC).** The lack of travel authority was precisely the reason for the issuance of the Notice of Disallowance that eventually became final x x x."⁴⁸ (Emphasis Supplied.)

On October 2, 2017, the Court denied the *Motion Requesting Leave to File Demurrer to Evidence* filed by accused Suba.⁴⁹ Undaunted, accused moved for reconsideration of the Court's ruling.⁵⁰ Nonetheless, the Court denied said motion,⁵¹ subject, however, to the following:

"x x x Accused Suba, through counsel, is given a non-extendible period of ten (10) days from notice within which to file, if he so desires, a Demurrer to Evidence without leave of court, subject to the legal consequences set forth in Section 23, Rule 119 of the Revised Rules of Criminal Procedure. x x x."⁵²

On December 27, 2017, accused Suba filed a *Manifestation with Motion to be Allowed to Present Evidence*.⁵³ Thence, he opted to forego altogether the filing of a demurrer to evidence.

⁴⁸Comment/ Opposition (To Accused Antonio Suba's 'Motion Requesting Leave to File Demurrer to Evidence') dated August 2, 2017, pp. 2 - 3 (Records, Vol. 1, pp. 490 - 491).

⁴⁹ Minute Resolution dated October 2, 2017, p. 1 of 2 (Records, Vol. 1, p. 518).

⁵⁰ Motion for Reconsideration of the Order Denying Leave to File Demurrer to Evidence dated October 25, 2017, pp. 1 - 7 (Records, Vol. 1, pp. 525 - 531).

⁵¹ Minute Resolution dated November 9, 2017, p. 1 - 2 (Records, Vol. 1, p. 538 - 539).

⁵² *Ibid.*

⁵³ Records, Vol. 1 pp. 546 - 548.

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On January 10, 2018, the Court set the reception of evidence for the accused.⁵⁴ On January 23, 2018, the defense presented its lone witness, Rolando B. Broas.⁵⁵ Thereupon, the Court ordered accused's counsel to file his formal offer of evidence, while the Prosecution was directed to file its comment or opposition thereto.⁵⁶ In compliance therewith, both parties filed seasonably their respective papers.⁵⁷

Only nine (9)⁵⁸ out of the twenty-four (24) documentary exhibits that accused Suba formally offered were considered admissible by the Court. In particular, the Court resolved:

- To **DENY** the admission of the following exhibits offered by the accused, to wit: **Exhibit '1'**, considering that while the same is alleged to be a common exhibit, *i.e.*, **Exhibit 'P'** of the prosecution, it was not offered by the prosecution, and thus, its existence and due execution have not been established nor testified to and identified by any witness; and
- To **DENY** the admission of the following exhibits offered by accused Suba, to wit: **Exhibits '7', '8', '9', '10', '11', '12', '14', '16', '17', '18', '19', '20', and '21', the existence and due execution of which have not been established by the said accused nor testified to and identified by his witness.**⁵⁹ (Emphasis and Underscoring Supplied.)

Incensed by the exclusion of his fourteen (14) exhibits, accused Suba filed a *Motion for Reconsideration of the Resolution Denying Admission of Defense Exhibits 1, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 21*,⁶⁰ but to no avail. Still, the Court resolved to deny accused Suba's motion, without prejudice to his right to tender

⁵⁴ Minute Resolution dated January 10, 2018 (Records, Vol. 2, p. 3).

⁵⁵ Minutes of proceedings on January 23, 2018, p. 1 (Records, Vol. 2, p. 8).

⁵⁶ Order dated January 23, 2018, p. 1 (Records, Vol. 2, p. 10).

⁵⁷ The Formal Offer of Accused Suba's Documentary Exhibits was filed on January 29, 2018 (Records, Vol. 2, pp. 12 - 17), while the Office of the Special Prosecutor filed its Comment/Opposition (To the Formal Offer of Accused Suba's Documentary Exhibits) on February 5, 2018 (Records, Vol. 2, pp. 120 - 131).

⁵⁸ Minute Resolution dated May 15, 2018, pp. 1 - 2 (Records, Vol. 2, p. 133 - 134).

⁵⁹ *Ibid.*

⁶⁰ Received by the Court via registered mail on July 18, 2018; Records, Vol. 2, pp. 147 - 152.

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excluded evidence in accordance with Rule 132, Section 40 of the Rules of Court.⁶¹

On September 17, 2018, accused Suba filed a *Motion to Tender Excluded Exhibits*.⁶² The Court ordered that the photocopy of the document (i.e. original) in the actual possession of the prosecution and which had been pre-marked as Exhibit "P" be marked as Exhibit "1".⁶³ Accused's motion was merely noted.⁶⁴

With the admission of accused's documentary exhibits and based on the declarations of witnesses who testified thereon, accused Suba is deemed to have rested his case. For its part, the prosecution manifested that no rebuttal evidence will be presented.⁶⁵ Thence, Court gave the parties thirty (30) days within which to file their respective memoranda.⁶⁶ Neither the prosecution nor accused Suba did so. Be that as it may, this case is submitted for decision.

FACTUAL ANTECEDENTS

The facts, as culled from the records, are summarized below, viz:

The Philippine Aerospace Development Corporation⁶⁷ (PADC) is a government-owned and controlled corporation (GOCC) with an original charter.⁶⁸ It is an attached agency of the Department of Transportation and Communications (DOTC).⁶⁹

On September 2006, Col. Roberto R. Navida, then-President of PADC, informed Antonio M. Suba, Treasurer/ Acting Vice-President

⁶¹ Minute Resolution dated August 14, 2018, p. 1 (Records, Vol. 2, p. 167).

⁶² Records, Vol. 2, pp. 171 – 172.

⁶³ Order dated September 20, 2018, p. 1 (Records, Vol. 2, p. 175).

⁶⁴ Minute Resolution dated September 27, 2018, p. 1 (Records, Vol. 2, p. 177).

⁶⁵ Manifestation and Compliance dated January 16, 2019, of the plaintiff, pp. 1 – 2 (Records, Vol. 4, pp. 497 – 498).

⁶⁶ Resolution dated January 16, 2019, p. 1 (Records, Vol. 4, p. 499).

⁶⁷ The office address of PADC is Hangar 2, General Aviation Area, Domestic Road, Pasay City.

⁶⁸ Presidential Decree No. 696, revising P. D. No. 286, dated September 5, 1973, as amended.

⁶⁹ Now Department of Transportation (DoTr).

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for Operations, that they were slated to attend the 4th Biennial International Aircraft Conversion & Maintenance Conference in Beijing, China from October 11 – 14, 2006. Accordingly, Col. Navida instructed Suba to secure cash advances therefor. The breakdown, as stated in the Requests for Cash Advance, the Disbursement Vouchers (DV) and Budget Utilization Slips, is as follows:

PURPOSE	AMOUNT
Travel expenses to attend conference in Beijing ⁷⁰	Php 217,000.00
Meals and incidental expenses for foreign travel ⁷¹ (Peso equivalent of US\$ 458.40)	22,978.68
Pre-travel allowance to Beijing, China ⁷²	1,500.00
TOTAL:	Php 241,478.68⁷³

Notably, the three Disbursement Vouchers were approved for payment by accused Navida sans the signature of the Comptroller on Box "A" of each DV. Nonetheless, accused Suba got hold of the cash advances for the per diems and allowances (US\$458.40), as well as the ₱1,500.00 for pre-travel expenses. Also, accused Navida instructed accused Suba to be the payee of the cash advance for their plane fare and hotel accommodation (₱217,000.00). Thence, arrangements were made with Tour Spectrum, Inc. for the travel of the two public officers to Beijing, China. This was evidenced by the following:

- 1) Statement of Account⁷⁴ No. 14779 dated October 9, 2006, issued by Tour Spectrum, Inc., which is broken down as follows:

	FOR COL. NAVIDA	FOR A. M. SUBA	TOTAL
Hotel Accomodation	₱ 60,641.60	₱ 60,641.60	₱ 121,283.20
Air Fare	42,067.60	42,067.60	84,135.20
Taxes	4,066.20	4,066.20	8,132.40

⁷⁰ EXHIBITS "A-25-C", "B", "C", "E".

⁷¹ EXHIBITS "A-25-E", "F", "G" ("6"), "H", "J"; TSN dated December 6, 2016, pp. 20 – 21.

⁷² EXHIBITS "A-25-D", "L", "M", "N", "O"; TSN dated December 6, 2016, pp. 22 – 23.

⁷³ EXHIBITS "A-17", "A-18", "A-20", "A-25-B", "V".

⁷⁴ EXHIBIT "3" ("Q").

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Travel Tax	1,620.00	1,620.00	3,240.00
TOTAL	P 108,395.40	P 108,395.40	P 216,790.80

- 2) Official Receipt⁷⁵ No. 5339 dated October 9, 2006, issued by Tour Spectrum, Inc. amounting to P216,790.80; and
- 3) Philippine Airlines plane ticket⁷⁶ and boarding pass of Antonio M. Suba.

On October 14, 2006, the two public officers flew off from Beijing, China. Conformably with Executive Order No. 298 and COA Circular No. 96-004, the cash advances they got and spent should have been liquidated within sixty (60) days after their arrival in the Philippines. December 23, 2006, the deadline for complete liquidation, came and lapsed; yet said cash advances remained unliquidated. This fact was reflected in the Statement of Cash Advances and Liquidations as of March 31, 2007.⁷⁷

The foregoing misstep and deficiency prompted the Commission on Audit, thru State Auditor IV Arsenio S. Rayos, Jr., to issue a Notice of Suspension⁷⁸ on June 29, 2007. Still, accused Suba failed to pay up and square accounts. Thence, the COA issued a Notice of Disallowance⁷⁹ on March 17, 2008. The amount disallowed was P241,478.68, and the reasons for disallowance were as follows:

- 1) No approved Authority to Travel from DOTC; and
- 2) No approved Itinerary of Travel.⁸⁰

While accused Navida was resigned to his fate,⁸¹ accused Suba, the payee of the cash advances, moved for reconsideration of

⁷⁵ EXHIBIT "4" ("R").

⁷⁶ EXHIBIT "5" ("S").

⁷⁷ EXHIBITS "A-25", "A-25-F"; TSN dated December 6, 2016, pp. 25 - 30.

⁷⁸ EXHIBIT "A-16" ("22"); TSN dated December 6, 2016, pp. 12 - 18; TSN dated February 8, 2017, p. 35.

⁷⁹ EXHIBIT "A-17" ("23"); TSN dated February 8, 2017, p. 36.

⁸⁰ *Ibid.*

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the Notice of Disallowance (ND). But this went for naught.⁸² Absent any timely appeal, the ND became final and executory.⁸³

Aggrieved, accused Suba requested reconsideration of the Notice of Finality of Decision (NFD), but this was denied.⁸⁴ On June 28, 2010, the COA Order of Execution⁸⁵ (COE) was issued. Consequently, the President of PADC was instructed to withhold the payment of the salaries of accused Suba, for the settlement of his liabilities pursuant to ND No. 2008-001-(2006).⁸⁶

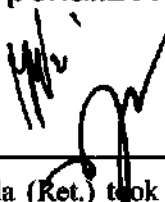
The Field Investigation Office (FIO), Office of the Ombudsman, picked up where the COA left off and delve into an in-depth inquiry into the alleged irregularities. Finding probable cause of nonfeasance, accused Navida and Suba were formally charged with violation of Article 218 of the Revised Penal Code before this Anti-Graft Court.

ISSUES

The issues to be resolved, as stated in the Court's Pre-Trial Order⁸⁷ is as follows:

"A. COMMON ISSUE

"Whether or not accused Antonio M. Suba and Roberto R. Navida are guilty of the crime of Failure of [an] Accountable Officer to Render Accounts[, as] defined and penalized under Article 218 of the Revised Penal Code.



⁸¹ Col. Roberto R. Navida (Ret.) took no action on the NS, ND, NFD and COE (TSN dated February 8, 2017, p. 11).

⁸² EXHIBIT "A-22": 4th Indorsement dated January 9, 2008, from the Cluster Director, Cluster B, Corporate Government Sector, Commission on Audit, pp. 1 - 3.

⁸³ EXHIBIT "A-18": Notice of Finality of Decision (NFD) dated February 2, 2010, p. 1; TSN dated February 8, 2017, p. 10.

⁸⁴ EXHIBIT "A-21".

⁸⁵ EXHIBIT "A-20" ("24").

⁸⁶ *Ibid.*

⁸⁷ Pre-Trial Order dated February 23, 2016, pp. 1 - 8 (Records, Vol. 1, pp. 268 - 275).

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"B. ISSUE FOR ACCUSED ROBERTO R. NAVIDA

"Whether or not the case should be dismissed on the ground that the constitutional rights of the accused had been violated."⁸⁸

JUDICIAL ADMISSION

The judicial admission, as stated in the Court's Pre-trial Order, is confined to the following:

"Accused Antonio Martinez Suba and accused Roberto Relevante Navida were **public officers** at the time material to the case."⁸⁹

EVIDENCE FOR THE PROSECUTION

A. Testimonial evidence

A.1 The Office of the Special Prosecutor presented three (3) witnesses, namely:

1. Josefa R. Cabangangan,⁹⁰
2. Arsenio S. Rayos, Jr.,⁹¹ and
3. Enrico La Madrid Umerez.⁹²

A.2 The direct testimony of each witness for the Prosecution is summarized below, viz:

⁸⁸ *Loc. cit.*, p. 6 (Records, Vol. 1, p. 273).

⁸⁹ Pre-trial Order dated p. 1 of 8 (Records, Vol. 1, p. 268).

⁹⁰ Orders dated March 14, 2016, March 15, 2016 (Records, Vol. 1, pp. 284, 286).

⁹¹ Order dated December 6, 2016 (Records, Vol. 1, p. 330); Order dated February 22, 2017 (Records, Vol. 1, p. 364).

⁹² Order dated March 13, 2017 (Records, Vol. 1, p. 394).

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1. JOSEFA R. CABANGANGAN

Josefa R. Cabangangan, then Accounting Manager for Planning and General Accounting at the PADC, was designated as the Comptroller in 2006. She outlined the procedure relative to the release of cash advances. The Disbursement Voucher (DV) for cash advance for travel and the Budget Utilization Slip shall be prepared once the request for cash advance has been approved by the head of the agency, and such request is supported by an authority to travel.⁹³ Afterwards, the DV is forwarded to the Cashier for check preparation. Then, the check is sent to the Treasurer and the head of the agency for signing before it is handed over to the recipient.⁹⁴ Following the check's encashment, the bank shall return the paid check to the Cashier of the corporation. The Journal Entry Voucher keeps tab of these transactions.⁹⁵

The three Requests for Cash Advances were processed because these were approved by the head of the agency.⁹⁶ Yet, neither the Disbursement Voucher⁹⁷ nor the Budget Utilization Slip⁹⁸ were signed by Cabangangan, the Comptroller, due to the lack of an Authority to Travel.⁹⁹ To be sure, Suba's failure to liquidate the cash advances were primarily, actually and directly attributable to the absence of an Authority to Travel approved by the Secretary of the DOTC.¹⁰⁰

Suba, then-Acting Vice-President for Operations of PADC, was "on leave"¹⁰¹ while he attended the Aviation

⁹³ TSN dated March 14, 2016, pp. 11, 23.

⁹⁴ Id. at p. 13.

⁹⁵ TSN dated March 15, 2016, pp. 6 - 7.

⁹⁶ Id. at pp. 28 - 31, 40, 69.

⁹⁷ EXHIBITS "C", "C-1".

⁹⁸ EXHIBITS "E", "E-1".

⁹⁹ Id. at p. 35.

¹⁰⁰ Id. at pp. 41, 43.

¹⁰¹ Id. at pp. 80 -83.

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Conference in Beijing, China. Hence, "the travel was actually undertaken."¹⁰² Regrettably, however, no official receipts were "submitted" to the COA, and only the plane ticket and the acknowledgement receipt from Tour Spectrum, Inc. were "shown".¹⁰³

2. ARSENIO S. RAYOS, JR.

State Auditor V Arsenio S. Rayos, Jr. was the Audit Team Leader (ATL) assigned at the PADC from 2006 to December 2010.¹⁰⁴ He took issue with the failure of Roberto R. Navida, President of the PADC, and Antonio M. Suba, Treasurer/ Acting Vice-President for Operations of said GOCC, to liquidate the cash advances that were spent for their flight to and stay in Beijing, China. To be sure, public monies were paid out to defray the costs of their official travel, hotel accommodation, incidental expenses, and attendance overseas at the 4th International Aircraft Conversion & Maintenance Conference last October 11 – 1, 2006.

Cash advances (P241,478.68) remained unliquidated due to lack of approved travel authority from the Secretary of the Department of Transportation and Communications (DOTC). ATL Rayos, Jr. opined that Navida and Suba were solidarily liable for the entire irregular expenditure (P241,478.68).

On January 22, 2008, Suba filed a Request for Relief from Liability. But ATL Rayos, Jr. maintained that:

"Although the travel to Beijing, China was made as evidenced by the attached used plane tickets, Statement of Account No. 14770 and Official Receipt No. 5339 both dated October 9, 2006 from Tour Spectrum, Inc., it was established, however, that when Mr. Suba requested cash advance for their travel which was approved by Mr. Navida, Mr. Suba did not inform in writing Mr. Navida on the illegality of his cash advance and their travel to

¹⁰² Id. at p. 85.

¹⁰³ Id. at pp. 84 – 85.

¹⁰⁴ TSN dated December 6, 2016, pp. 10 – 11.

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Beijing, China, since they have no approved Authority to Travel.¹⁰⁵

"In view thereof, we regret that the request of Mr. Antonio M. Suba for relief for liability for cash advance granted for their travel to Beijing, China on October 10 – 14, 2006 totaling P241,478.68 may not be granted. Accordingly, *a Notice of Disallowance and a Demand Letter are issued to enforce the refund of P241,478.68.*

"x x x." ¹⁰⁶ (Italics Supplied.)

Conformably with Executive Order No. 298 and COA Circular No. 96-004, cash advances granted to government officials and employees had to be liquidated within sixty (60) days after their return from official travel. In the instant case, accused Navida and Suba came back from China on October 14, 2006; thence, they had until December 23, 2006 within which to liquidate the cash advances.¹⁰⁷

The subject cash advances remained unliquidated,¹⁰⁸ and this was reflected in the Statement of Cash Advances and Liquidations as of March 31, 2007.¹⁰⁹ On June 29, 2007, State Auditor V Rayos, Jr. issued Notice of Suspension/s (NS) No. 2007-001-(2006),¹¹⁰ directing Suba, the payee of the cash advances, to submit the following:

- 1) Authority to travel;
- 2) Itinerary of travel;
- 3) Certificate of travel completed;
- 4) Used plane tickets/ boarding pass;
- 5) Certificate of Appearance/ Attendance;
- 6) Approved exemption to A.O.# 103 dtd. 8/31/04;

¹⁰⁵ EXHIBIT "A-24-B".

¹⁰⁶ EXHIBITS "A-26", "A-26-A".

¹⁰⁷ TSN dated December 6, 2016, pp. 24 – 25.

¹⁰⁸ EXHIBITS "A-25-B", "A-25-C", "A-25-D", "A-25-E" & "A-25-F".

¹⁰⁹ EXHIBIT "A-25".

¹¹⁰ EXHIBIT "A-16" ("22"); TSN dated February 8, 2017, pp. 35, 38 - 39.



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- 7) Certification as to availability of fund & that the expense is within the 75% of the allocated travel budget;
- 8) Official Receipt for advertisement;
- 9) Copy of newspaper where advertisement was published; and
- 10) Advertising Contract (attached documents in JEV#06-12-2036 are for Aug. 2006 advertisement).¹¹¹

Suba had ninety (90) days following receipt¹¹² of said NS to settle the matter, but he failed to do so. Instead, he requested for reconsideration,¹¹³ but to no avail. Accordingly, State Auditor V Rayos, Jr. issued Notice of Disallowance/s¹¹⁴ (ND) No. 2008-001-(2006) on March 17, 2008. Aggrieved, Suba filed a Request for Reconsideration with the Cluster B Director of the COA, Divinia M. Alagon, but this was denied for lack of merit.¹¹⁵ Thence, ATL Rayos, Jr. issued the Notice of Finality of Decision (NFD).¹¹⁶ Suba requested for reconsideration of the NFD to the Office of the General Counsel of the COA, but no persuasive grounds warranted its modification, much less its reversal.¹¹⁷ The COA, thru Assistant Commissioner Elizabeth S. Zosa, explained thus:

"x x x [Y]ou requested that your liability be limited to P133,083.40, the amount actually spent for your travel, while the remaining P108,395.40 should be settled by Mr. Navida representing the portion of the cash advance actually spent for his travel.

"After a circumspect evaluation, this Office . . . regrets to deny your request. The nature of the

¹¹¹ *Ibid.*

¹¹² A. M. Suba received the Notice of Suspension/s on June 29, 2007; so, he had until September 29, 2007 within which to settle the matter.

¹¹³ TSN dated December 6, 2016, p. 36.

¹¹⁴ EXHIBITS "A-17" ("23"); "A-17-A"; TSN dated February 8, 2017, p. 36.

¹¹⁵ EXHIBITS "A-22", "A-22-B", "A-22-C"; TSN dated December 6, 2016, pp. 44 - 48.

¹¹⁶ EXHIBITS "A-18", "A-18-A", "V".

¹¹⁷ EXHIBIT "A-21"; TSN dated December 6, 2016, pp. 51 - 52.

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liability of the persons liable for expenditures incurred in violation of [the] law has always been held by the Commission to be SOLIDARY or JOINT AND SEVERAL, pursuant to Section 30.1.2 of the 1993 Manual on the Certificate of Settlement and Balances, reiterating Book VI, Chapter V, Section 43 of the 1987 Revised Administrative Code, which states, to wit:

30.1.2 Every expenditure or obligation authorized or incurred in violation of law or of the annual budgetary measure shall be void. Every payment made in violation thereof shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable for the full amount so paid or received.

'x x x.'

"Accordingly, insofar as the government is concerned, **THE ENTIRE OBLIGATION CAN BE ENFORCED AGAINST ANY OF THE SOLIDARY DEBTORS,** who in turn are liable not only for a potion (sic) thereof but for its entirety. x x x

"x x x." ¹¹⁸ (Capitalization Supplied.)

On June 28, 2010, Director Alagon issued the COA Order of Execution (COE).¹¹⁹ Suba got hold of said document,¹²⁰ but the cash advances in question remained unpaid till the end of the assignment of ATL Rayos, Jr. at PADC.¹²¹

For his part, accused Navida did not take any action relative to the issuance of the NS, ND, NFD and COE that the COA issued.¹²² Meanwhile, ATL Rayos, Jr.

¹¹⁸ Memorandum dated June 1, 2010, of the Office of General Counsel, COA, to Antonio M. Suba, p. 2.

¹¹⁹ EXHIBIT "A-20" ("24").

¹²⁰ EXHIBIT "A-20-B".

¹²¹ TSN dated December 6, 2016, pp. 53 – 55.

¹²² TSN dated February 8, 2017, p. 11.

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emphasized that the legal bases for the NS and ND are Executive Order No. 298 and COA Circular No. 96-004.¹²³ He characterized the disallowed transaction as an **“unauthorized official trip”**.¹²⁴ The underlying reason is quoted below, viz:

“The travel was unauthorized because **Mr. Suba and Mr. Navida was (sic) not able to secure an authority to travel from the Secretary of DOTC.**”¹²⁵ (Emphasis Ours.)

The following documents substantiated that the cash advances were indeed paid for the travel expenses of accused Navida and accused Suba:¹²⁶

- 1) Statement of Account dated October 9, 2006, issued by Tour Spectrum, Inc. for the accommodation and airfare of R. R. Navida and A. M. Suba;¹²⁷
- 2) Official Receipt dated October 9, 2006, issued by Tour Spectrum, Inc. to PADC for the sum of P216,790.80;¹²⁸
- 3) Philippine Airlines plane ticket and boarding pass.¹²⁹

State Auditor V Rayos, Jr. stressed that submission of the above-mentioned documents constitutes **“partial settlement”**.¹³⁰

Approval of the budget for foreign travels by the Board of Directors of PADC is not enough. This must be submitted to

¹²³ TSN dated December 6, 2016, pp. 23 – 24; TSN dated February 8, 2017, pp. 40 – 45.

¹²⁴ TSN dated February 8, 2017, pp. 65.

¹²⁵ Id. at p. 79.

¹²⁶ TSN dated February 8, 2017, pp. 62 – 64.

¹²⁷ EXHIBIT “Q” (“3”).

¹²⁸ EXHIBIT “R” (“4”).

¹²⁹ EXHIBIT “S” (“5”).

¹³⁰ TSN dated February 8, 2017, pp. 69 -70.

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the Department of Budget and Management (DBM) for confirmation.¹³¹

3. ENRICO LA MADRID UMEREZ

Enrico La Madrid Umerez, the resident auditor of the Commission on Audit (COA) in the PADC, took the witness stand to authenticate documents relative to the cash advance of ₱108,500.00 which accused Navida and Suba received for their trip to Beijing, China on October 2006.¹³²

Admittedly, Umerez issued **Notice of Settlement of Suspension/ Disallowance/ Charge**¹³³ (NSSDC) No. 14-002 dated December 31, 2014, *"because the amount covered by disallowance has been paid already"*.¹³⁴ The actual settlement was made when accused Suba paid to the cashier of PADC the disallowed charge.¹³⁵

B. Documentary evidence

The documentary evidence which the Office of the Special Prosecutor formally offered,¹³⁶ and which the Court, after a close scrutiny, considered as admissible,¹³⁷ include the following:

EXHIBIT	DESCRIPTION
A-16	Notice of Suspension (NS) No. 2007-001-(2006) dated June 29, 2007)

¹³¹ Id. at pp. 29, 77.

¹³² TSN dated March 13, 2017, pp. 5 – 6.

¹³³ EXHIBIT "15".

¹³⁴ TSN dated March 13, 2017, pp. 16 – 17, 24.

¹³⁵ Id. at pp. 20 - 21.

¹³⁶ Prosecution's Formal Offer of Documentary Exhibits dated March 31, 2017, pp. 1 – 22 (Records, Vol. 1, pp. 399 - 420).

¹³⁷ Minute Resolution dated June 9, 2017, pp. 1 – 2 (Records, Vol. 1, pp. 469 – 470).

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A-16-A	Name and signature of State Auditor IV Arsenio S. Rayos, Jr.
A-16-B	Handwritten words "AM SUBA 29 Jun 07" and the signature above it
A-16-C	The figures "271,000.00," "1,500.00," and "22,978.68" appearing below the column "Amount Suspended"
A-17	Notice of Disallowance/s (ND) No. 2008-001-(2006) dated March 17, 2008, addressed to Danilo R. Crisologo, President of PADC, signed by State Auditor IV Arsenio S. Rayos, Jr.
A-17-A	The name of State Auditor IV Arsenio S. Rayos, Jr., and his signature above it
A-18	Memorandum dated February 2, 2010, of State Auditor IV A. S. Rayos, Jr. to Director Divina M. Alagon of COA regarding the subject: Notice of Finality of Decision (NFD)
A-18-A	The name of State Auditor IV Arsenio S. Rayos, Jr., and his signature above it
A-20	CoA Order of Execution (COE) dated June 28, 2010
A-20-A	The name of Director IV Divina M. Alagon, including her signature on the page 2 of Exhibit "A-20"
A-20-B	Proof of Service of COE to "Antonio M. Suba - OIC, PADC," who acknowledged receipt of said document on "8 Jul" (page 2 of Exhibit "A-20")
A-21	Letter dated June 1, 2010, of Assistant Commissioner Elizabeth S. Zosa of the CoA to Antonio M. Suba, Treasurer/Vice-President for Operations, PADC, denying the latte's request for reconsideration of the disallowance of the unliquidated cash advance amounting to P241,478.68 (3 pages)
A-21-A	Name and signature of Asst. Commissioner Elizabeth S. Zosa on page 3 of Exhibit "A-21"
A-22	4 th Indorsement dated January 9, 2008, denying the Request for Reconsideration of Mr. Antonio M. Suba, Vice-President for Operations of PADC, <i>vis a vis</i> the Notice of Disallowance on the cash advances for their travel to Beijing, China from October 10 to 14, 2006, totaling P241,478.68, which document bears the signature of Director IV Divina M. Alagon of the CoA (3 pages)
A-22-A	First paragraph of Exhibit "A-22" which reads: <i>"We have noted that from the beginning, Mr. Suba was aware of the absence of authority to travel abroad, yet this did not deter him from expending the cash advance for his and Col. Navida's travel abroad. Mr. Suba, as an accountable officer, is directly responsible for use of the cash advance and should therefore be</i>

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	<i>held primarily liable for the illegal and/or irregular use thereof. He could not pass the blame and the corresponding liability solely to Col. Navida for approving the said cash advance. Nevertheless, for having approved the cash advance and having benefited therefrom, Mr. Navida is jointly and severally liable for the same in accordance with Section 104 of P.D. 1445."</i>
A-22-B	The name and signature of Director IV Divina M. Alagon on the 3 rd page of Exhibit "A-22"
A-22-C	The stamped mark "PADC OFFICE OF THE AUDITOR, Received By" the signature across thereof, and "Date 1/14/09" on the middle, right side of page 1 of Exhibit "A-22"
A-25	"Statement of Cash Advances and Liquidation" as of March 31, 2007, of the Philippine Aerospace Development Corporation (PADC), with the name of "Accountable Officer: SUBA, ANTONIO M., Position/ Designation: Vice-President for Operations"
A-25-A	The name and signature of State Auditor IV Arsenio S. Rayos, Jr. on Exhibit "A-25"
A-25-B	The amount "Two Hundred Forty-One Thousand Four Hundred Seventy-Eight Pesos and Sixty-Eight Centavos (Php241,478.68), appearing across the word "Unliquidated Cash Advances as of March 31, 2007"
A-25-C	The amount "Two Hundred Seventeen Thousand Pesos (Php217,000.00) appearing across the phrase "Travel exp. to China to attend conference"
A-25-D	The amount "One Thousand Five Hundred Pesos (Php1,500.00) appearing across the phrase "Pre Travel all. To Beijing, China 10/10-14, 2006"
A-25-E	The amount "Twenty-Two Thousand Nine Hundred Seventy-Eight Pesos and Sixty-Eight Centavos (Php22,978.68)" appearing across the phrase "Travel to China - meals & incidental exp."
A-25-F	The following phrase which appears below the column remarks" "For NS; Submit authority to travel & other docs. for liquidation; no liquidation as of 6/22/07"
A-26	Memorandum dated March 12, 2008, of State Auditor IV Arsenio S. Rayos, Jr. to Danilo R. Crisologo, President of PADC (2 pages)

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A-26-A	The name "Arsenio S. Rayos, Jr., State Auditor IV" on page 2 of Exhibit "A-26"
A-26-B	3 rd paragraph, page 2 of Exhibit "A-26" which reads: <i>"Although, the travel to Beijing, China was made as evidenced by the attached used plane tickets, Statement of Account No. 14779, Official Receipt No. 5339, both dated October 9, 2006 from Tour Spectrum, Inc., it was established, however, that when Mr. Suba requested cash advance for their travel which was approved by Mr. Navida, <u>Mr. Suba did not inform in writing Mr. Navida on the illegality of his cash advance and their travel to Beijing, China, since they have no approved Authority to Travel.</u>"</i>
B	Request for Cash Advance dated October 6, 2006, in the amount of Two Hundred Seventeen Thousand Pesos (Php217,000.00) as travel expenses to attend conference at Beijing, China
B-1	The name "Arsenio S. Rayos, Jr.," and his signature appearing below the word "Requisitioner"
B-2	The name "Roberto R. Navida," and his signature appearing below the word "Approved by"
C	Disbursement Voucher (DV) No. 01-06-10-017 of the Philippine Aerospace Development Corporation in the amount of Two Hundred Seventeen Thousand Pesos (Php217,000.00)
C-1	The name "Josefa R. Cabangangan" and the word "Comptroller" appearing in Box "A" of the Disbursement Voucher (Exhibit "C")
C-2	The name and position "Roberto R. Navida, President" appearing in Box "B" of the Disbursement Voucher (Exhibit "C")
C-3	Signature appearing across the word "Signature" in Box "C" of the Disbursement Voucher (Exhibit "C")
D	Landbank Check No. 0000308117 dated October 6, 2006, Pay to the Order of Antonio M. Suba in the amount of Two Hundred Seventeen Thousand Pesos (Php217,000.00)
E	Budget Utilization Slip No. 01-06-10-017 dated 10.6.2006/glo in the amount of Two Hundred Seventeen Thousand Pesos (Php217,000.00)

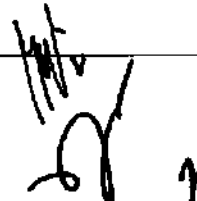
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E-1	The name and position "Josefa R. Cabangangan, Comptroller" appearing in Box "B" "Funds Available"
F	Request for Cash Advance of the PADC dated October 9, 2006, in the amount of Four Hundred Fifty-Eight dollars and 40/100 (US\$ 458.40) for meals and incidental expenses incurred in connection with his travel to Beijing, China from October 10 to 14, 2006
F-1	The name "Arsenio S. Rayos, Jr.," and his signature appearing below the word "Requisitioner"
F-2	The name "Roberto R. Navida," and his signature appearing below the word "Approved by"
G	Disbursement Voucher No. 01-06-10-024 of the PADC in the amount of Four Hundred Fifty-Eight dollars and 40/100 (US\$ 458.40) as cash advance for meals and incidental expenses during the travel to Beijing, China from October 10 to 14, 2006
G-1	The name "Josefa R. Cabangangan" and the word "Comptroller" appearing in Box "A" of the Disbursement Voucher (Exhibit "C")
G-2	The name and position "Roberto R. Navida, President" appearing in Box "B" of the Disbursement Voucher (Exhibit "C")
G-3	Signature appearing across the word "Signature" in Box "C" of the Disbursement Voucher (Exhibit "C")
H	Budget Utilization Slip No. 01-06-10-024 dated 10.09.2006/glo in the amount of Four Hundred Fifty-Eight dollars and 40/100 (US\$ 458.40) for meals and incidental expenses incurred in connection with his travel to Beijing, China from October 10 to 14, 2006
H-1	The name and position "Richard K. Lazaro, VP Admin Finance," including his signature on Box "A" - "Requested by"
H-2	The name and position "Josefa R. Cabangangan, Comptroller" on Box "B" - "Funds Available"
I	Journal Entry Voucher No. 06-10-1657 dated October 31, 2006, of the PADC amounting to Forty-Five Thousand Nine Hundred Fifty-Seven Pesos and Thirty-Six Centavos (Php45,957.36)
I-1	The name and position "Rosemarie I. Cruz, Accounting Personnel," including her signature inside the box "Prepared by"

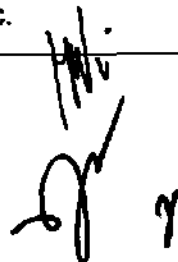


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I-2	The name and position "Josefa R. Cabangangan, Comptroller," including her signature inside the box "Approved by:"
J	Computation of travel allowance for trip to Beijing, China from October 10 to 14, 2006, including daily subsistence allowance - US\$ 191.00 (August 2006)
K	Foreign Currency Savings Account Withdrawal Slip dated October 9, 2006, under the account name: "Phi. Aerospace Dev. Corporation" with Account No. 0274-0035-88 in the amount of Nine Hundred Sixteen dollars and 80/100 (US\$ 916.80)
L	Request for Cash Advance of the PADC dated October 6, 2006, in the amount of One Thousand Five Hundred Pesos (Php1,500.00) for travel to Beijing, China from October 10 to 14, 2006
L-1	The name "Arsenio S. Rayos, Jr.," and his signature appearing below the word "Requisitioner"
L-2	The name "Roberto R. Navida," and his signature appearing below the word "Approved by"
M	Disbursement Voucher No. 01-06-10-018 of the PADC in the amount of One Thousand Five Hundred Pesos (Php1,500.00)
M-1	The name "Josefa R. Cabangangan" and the word "Comptroller" appearing in Box "A" of the Disbursement Voucher (Exhibit "M")
M-2	The name and position "Roberto R. Navida, President" appearing in Box "B" of the Disbursement Voucher (Exhibit "M")
M-3	The signature appearing across the word "Signature" inside Box "C" of the Disbursement Voucher (Exhibit "M")
N	Landbank Check No. 0000308121 dated October 9, 2006, Pay to the Order of Antonio M. Suba in the amount of One Thousand Five Hundred Pesos (Php1,500.00)
O	Budget Utilization Slip No. 01-06-10-018 dated 10.06.2006/glo in the amount of One Thousand Five Hundred Pesos (Php1,500.00)
Q	Statement of Account No. 14779 dated October 9, 2006, issued by Tour Spectrum, Inc.



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R	Official Receipt No. 5339 dated October 9, 2006, issued by Tour Spectrum, Inc. to PADC in the amount of Two Hundred Sixteen Thousand Seven Hundred Ninety Pesos and Eighty Centavos (Php216,790.80)
S	Plane ticket and boarding pass of SUBA/ANTONIO A., issued by Philippine Airlines
V	Notice of Finality of Decision (NFD) dated February 22, 2010, issued by the Commission on Audit (2 pages)
V-1	The name and position "Divina M. Alagon, Director IV" including her signature appearing on the 2 nd page of Exhibit "V"

EVIDENCE FOR ACCUSED SUBA**A. Testimonial evidence**

A.1 As stated in the Pre-trial Order,¹³⁸ the defense planned to present accused Suba, plus three witnesses.¹³⁹ During the trial, only Rolando B. Broas appeared and testified before the Court.¹⁴⁰ Although Mr. Broas was not among those named in the Pre-trial Order, the Court, "*in the higher interest of substantial justice,*" allowed the presentation of said witness.¹⁴¹

A.2 The direct testimony of the lone witness for the defense is summarized below, viz:



¹³⁸ Records, Vol. 1, pp. 268 – 275.

¹³⁹ The three purported witnesses were: (1) Human Administrative Officer Vilma Mianc; (2) Corporate Secretary Alda G. Reyes; and (3) Acting Human Resource Officer Corazon Aguinaldo.

¹⁴⁰ Order dated January 23, 2018, p. 1 (Records, Vol. 2, p. 10).

¹⁴¹ Id. at p. 11.

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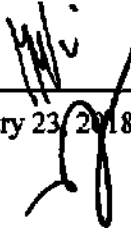
1. ROLANDO B. BROAS

Rolando B. Broas worked as Cashier at the Philippine Aerospace Development Corporation. As a defense witness, he identified documents to prove that accused Suba had paid up the cash advances that were paid out to him.¹⁴²

Broas issued PADC Non-VAT Acknowledgement Receipt No. 0093 dated September 12, 2014,¹⁴³ to accused Suba for the P241,478.68 in cash he gave “[a]s full/partial payment for settlement of his notice of disallowance no. 2008-001-(2006) dated 17 March 2008, as cash advance for travel of PADC Pres. Navida & Mr. Suba to Beijing, China on 10 – 14 Oct 2006 to attend [the] aircraft conversion conference.”¹⁴⁴ After accused Suba squared accounts, the COA issued the Notice of Settlement of Suspension/ Disallowance/ Charge (NSSDC) which the PADC received on January 6, 2015.¹⁴⁵

The Notice of Suspension¹⁴⁶ and the Notice of Disallowance¹⁴⁷ show that Broas, as representative of PADC, withdrew US\$916.80 from the Foreign Currency Savings Account of PADC in Land Bank of the Philippines (LBP).¹⁴⁸ Said public monies are part and parcel of the cash advances that accused Suba spent for his travel abroad on October 2006.

Broas was a signatory to the letter¹⁴⁹ dated July 20, 2009, which accused Suba sent to Secretary Leandro R. Mendoza, DOTC, for the purpose of requesting the issuance of a Travel Authority. However, nothing came of it. Thence, the COA's disallowance of the cash advances in question brought about this criminal action against Suba.


¹⁴² TSN dated January 23, 2018, pp. 4 – 10.

¹⁴³ EXHIBIT “13”.

¹⁴⁴ *Ibid*; TSN dated January 23, 2018, pp. 12 – 15, 21.

¹⁴⁵ EXHIBIT “15”; TSN dated January 23, 2018, pp. 15 – 16.

¹⁴⁶ EXHIBIT “A-16” (“22”), “A-16-B”.

¹⁴⁷ EXHIBITS “A-17” (“23”).

¹⁴⁸ EXHIBIT “K”.

¹⁴⁹ EXHIBIT “18”.

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B. Documentary evidence

Accused Suba had twenty-four (24) documentary exhibits pre-marked¹⁵⁰ during the preliminary conference and these were formally offered.¹⁵¹ Upon close scrutiny, the Court limited the admissible exhibits¹⁵² to the following:

EXHIBIT	DESCRIPTION
3 (Exh. "Q")	Statement of Account No. 14779 dated October 9, 2006, issued by Tour Spectrum, Inc.
4 (Exh. "R")	Official Receipt No. 5339 dated October 9, 2006, which was issued by Tour Spectrum, Inc. upon receipt of P216,790.80 from Philippine Aerospace Development Corporation
5 (Exh. "S")	Philippine Airlines ticket for flight of Antonio M. Suba from Manila to Beijing, China
6 (Exh. "F")	Request for Cash Advance dated October 9, 2009, in the amount of US\$ 458.40 for meals and incidental expenses for travel in Beijing, China on Oct. 10 – 14, 2006
13	Non-VAT Acknowledgement Receipt No. 0093 dated September 12, 2014, for the amount of P 241,478.68
15	Notice of Settlement of Suspension/ Disallowance/ Charge (NSSDC) No. 14-002 dated December 31, 2014, which was issued by Enrico L. Umerez, OIC, Audit Team Leader, Commission on Audit
22 (Exh. "A-16")	Notice of Suspension/s (For Audit of Expenditures) No. 2007-001-(2006) dated June 29, 2007

¹⁵⁰ Pre-trial Order dated February 23, 2016, pp. 3 – 4 of 8 (Records, Vol. 1, pp. 270 – 271).

¹⁵¹ Records, Vol. 2, pp. 12 – 17.

¹⁵² Order dated May 15, 2018, pp. 1 – 2 (Records, Vol. 2, pp. 133 – 134); Minute Resolution dated August 14, 2018, p. 1 (Records, Vol 2, p. 167).

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23 (Exh. "A-17")	Notice of Disallowance/s No. 2008-001-(2006) dated March 17, 2008
24 (Exh. "A-20")	CoA Order of Execution (COE) dated June 28, 2010

THE COURT'S RULING

The death of accused Roberto R. Navida during the pendency of Criminal Case No. **SB-14-CRM-0426** has *ex proprio vigore* written "*finis*" to said case.¹⁵³ Accordingly, the Court's verdict herein centers exclusively on Criminal Case No. **SB-14-CRM-0425**.

Following the Supreme Court's ruling in *Florencio B. Campomanes v. People*,¹⁵⁴ the crime consists of the following elements:

1. that the offender is a public officer, whether in the service or separated therefrom;
2. that he must be an accountable officer for public funds or property;
3. that he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and
4. that he fails to do so for a period of two months after such accounts should be rendered.¹⁵⁵



¹⁵³ Resolution dated February 14, 2017, *DISMISSING* the case against accused **Roberto R. Navida** (Records, Vol. 1, pp. 368 – 371).

¹⁵⁴ G.R. No. 161950, December 19, 2006 (511 SCRA 285, 295); See also *United States v. Saberon*, 19 Phil. 391 (1911); *Joselito Ramiero J. Daan v. Sandiganbayan (Fourth Division)*, G.R. Nos. 163972-77, March 28, 2008 (550 SCRA 233).

¹⁵⁵ *Hermes E. Frias, Sr. v. People*, G.R. No. 171437, October 4, 2007; *People v. Claudita Pelaez Baliton*, Crim. Case No. SB-09-CRM-0167, February 16, 2012.

✓

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I. ACCUSED ANTONIO M. SUBA IS AN ACCOUNTABLE PUBLIC OFFICER

That accused Suba is a public officer is beyond cavil.¹⁵⁶ This is a peremptory fact. Holding that joint stipulation of fact made by the parties are binding, the Supreme Court has stated that:

"... The declarations constitute **judicial admission**, which are binding on the parties, by virtue of which the prosecution dispensed with the introduction of additional evidence and the defense waived the right to contest or dispute the veracity of the statements contained in the exhibits.¹⁵⁷

Accused Suba, Treasurer of the Philippine Aerospace Development Corporation, is an accountable public officer. Under the Government Auditing Code of the Philippines, an accountable public officer is a public officer who, by reason of his office, is accountable for public funds or property.¹⁵⁸ Also, Section 102 of said Code provides:

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.

(2) PERSONS ENTRUSTED WITH THE POSSESSION OR CUSTODY OF THE FUNDS OR PROPERTY UNDER THE AGENCY HEAD SHALL BE IMMEDIATELY RESPONSIBLE TO HIM, without prejudice to the liability of either party to the government. (Capitalization and Emphasis supplied)

¹⁵⁶ Pre-trial Order dated p. 1 of 8 (Records, Vol. 1, p. 268).

¹⁵⁷ *People v. Cristina M. Hernandez*, G.R. No. 108028 July 30, 1996, *Citing People v. Judge Juan L. Bocar and Jose S. Simborio*, G.R. No. L-27120, [March 28, 1969.] (27 SCRA 512, 518).

¹⁵⁸ See Gov't Auditing Code, Sec. 101 (1). The section provides:

Section 101. *Accountable officers; bond requirement* - (1) Every officer of any government agency whose duties permit or require the possession or custody of government funds shall be accountable therefor and for the safekeeping thereof in conformity thereof.

2) Every accountable officer shall be properly bonded in accordance with law. (emphasis supplied)

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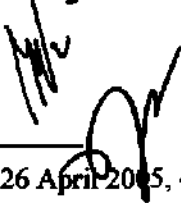
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In *Barriga v. Sandiganbayan*,¹⁵⁹ the Supreme Court held that public officers are accountable if they, as part of their duties, receive public funds or property which they are bound to account for but fail to do so.¹⁶⁰ Moreover, the record is replete with evidence¹⁶¹ in that regard. Accused Suba never denied that he received the checks representing the disallowed cash advances. He in fact admitted that the disallowed cash advances were made under his authority, that he was the payee of the checks and that he actually received them. Thus, it is clear that he, as Treasurer/Acting Vice-President for Operations of PADC, received, had possession of, and consequently was accountable for, the cash advances. *Ergo*, accused Suba was undeniably an accountable officer, and the nonfeasance was committed in relation to his office.¹⁶²

II. BOTH THE APPLICABLE LAW AND THE AUDIT REGULATION STRICTLY REQUIRE COMPLETE AND TIMELY LIQUIDATION OF UTILIZED CASH ADVANCES

Executive Order No. 298, Series of 2004 and Commission on Audit (COA) Circular No. 96-004 expressly impose, and laid upon accused Suba an obligation to square accounts within a prescribed period. Lamentably, he fell short of his responsibility. Lest we forget, prior demand from competent authority to liquidate completely within the prescribed period is unnecessary.¹⁶³ Accused Suba's omission infringes Executive Order No. 298,¹⁶⁴ Series of 2004.¹⁶⁵ Pertinent portions of said executive issuance is quoted below, *viz*:


¹⁵⁹ G.R. Nos. 161784-86, 26 April 2005, 457 SCRA 301.

¹⁶⁰ *Id.*, pp. 315-316.

¹⁶¹ EXHIBITS "A-25", "A-16", "A-16-B", "F", "F-1", "L", "L-1".

¹⁶² *Sanchez v. Demetriou*, 227 SCRA 627 (1993); *Montilla v. Hilario* [90 Phil 49 (1951)].

¹⁶³ *Mankangit v. Sandiganbayan and People*, G.R. No. 158014, August 28, 2007 (531 SCRA 130).

¹⁶⁴ Amending further Executive Order no. 248 dated May 29, 1995 as amended by Executive Order No. 248-A dated August 14, 1995, which prescribes rules and regulations and new rates of allowances for official local and foreign travels of government personnel.

¹⁶⁵ Signed on March 23, 2004.

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"SECTION 1. Section 4 of EO No. 248, as amended by EO No. 248-A, is hereby renamed as Section 2, and Items b) and c) thereof are hereby amended as follows:

"b) Travel Expenses – the amount authorized to cover hotel/lodging rate, meals and incidental expenses excluding transportation expenses going to and from the destinations.

"c) Hotel/Lodging Rate – the daily hotel/lodging cost including the prescribed taxes and service charges.

"X X X

"SEC. 3. The first (1st) paragraph of Section 5 of EO No. 248 is hereby amended to read as follows:

"Section 5. Approval of Travel and Payment of Travel Expenses. Travels of officials and employees of National Government Agencies for less than thirty (30) days and payment of travel expenses therefore shall be approved by the head of office/bureau or equivalent. X X X
The approval of the Department Secretary concerned shall be construed as equivalent to the approval of the Secretary of Budget and Management.

"SEC. 4. The first (1st), second (2nd), and third (3rd) paragraph of Section 6 of the said EO are hereby amended to read as follows:

"Section 6. Allowable Travel Expenses. The travel expenses of government personnel regardless of rank and destination shall be in the amount of Eight Hundred Pesos (P800.00) per day which shall be apportioned as follows: a) fifty percent (50%) for hotel/lodging, b) thirty percent (30%) for meals and c) twenty percent (20%) for incidental expenses.

"Claims for reimbursement of actual travel expenses in excess of the travel expenses authorized herein may be allowed upon certification the head of agency concerned as absolutely necessary in the performance of an assignment and presentation of bills and receipts. *Provided,* that, certification or affidavit of loss shall not be considered as appropriate replacement for the required hotel/lodging bills and receipts.

"Entitlement to travel expenses shall start only upon arrival at the place of destination and shall cease upon departure therefrom X X X

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"X X X

"**SEC. 14.** Section 16 of the EO is hereby amended to read as follows:

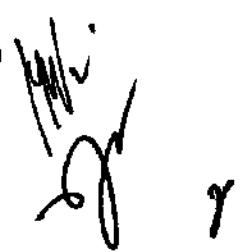
"Section 16. Rendition of Account on Cash Advances – WITHIN SIXTY (60) DAYS AFTER HIS RETURN TO THE PHILIPPINES, IN THE CASE OF OFFICIAL TRAVEL ABROAD,
X X X, **EVERY OFFICIAL OR EMPLOYEE SHALL RENDER AN ACCOUNT OF THE CASH ADVANCE RECEIVED BY HIM IN ACCORDANCE WITH EXISTING APPLICABLE RULES AND REGULATIONS AND/OR SUCH RULES AND REGULATIONS AS MAY BE PROMULGATED BY THE COMMISSION ON AUDIT FOR THE PURPOSE.** Refund of excess cash advance may be made either in U.S. dollars if allowed by the Department concerned or in Philippine currency computed at the prevailing bank rate at the day of refund. In the case of the latter, a bank certification or newspaper clipping on the bank rate should be submitted. Payment of the salary of any official or employee who fails to comply with the provisions of the Section shall be suspended until he complies therewith."

"X X X

"**SEC. 16.** The first (1st) paragraph of Section 18 of EO is amended to read as follows:

"Every official or employee assigned or authorized to travel under this Order shall, within thirty (30) days after his return to his permanent official station, submit a **REPORT WITH HIS RECOMMENDATIONS, IF ANY, ON THE CONFERENCE OR SEMINAR ATTENDED,** examination or investigation conducted, or mission undertaken, to the head of his office. In case of participation in an international conference or convention abroad in which the Philippines is represented by a delegation, a report of the delegation shall be submitted to the President of the Philippines through the department head concerned, copy furnished the DFA not later than thirty (30) days after the closing of the conference or convention. Any member of the delegation may also submit a supplementary report."

"X X X." (Capitalization Supplied.)



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Also, the nonfeasance imputed against accused Suba comes within the purview of **Commission on Audit Circular No. 96-004.**¹⁶⁶ Said regulation reads, *inter alia*:

"3.0 SPECIFIC GUIDELINES

"3.1 OFFICIAL LOCAL TRAVEL OF GOVERNMENT PERSONNEL

"X X X

"3.2 OFFICIAL TRAVEL ABROAD OF GOVERNMENT PERSONNEL

"3.2.1 DRAWING OF CASH ADVANCE

" X X X

"3.2.2 LIQUIDATION OF CASH ADVANCE

"3.2.2.1 The cash advance for travel shall be liquidated by the official/employee concerned **STRICTLY WITHIN SIXTY (60) DAYS AFTER HIS RETURN TO THE PHILIPPINES** as required under Section 16, of EO 248, as amended otherwise, payment of his salary shall be suspended until he complies therewith.

"3.2.2.2 The official/employee concerned shall draw a **LIQUIDATION VOUCHER TO BE SUPPORTED BY** the following:

- a. **CERTIFICATE OF TRAVEL COMPLETED** (Appendix B):
- b. **PLANE** or boat **TICKETS** covering actual transportation fare from the point of embarkation in the Philippines to the place of destination and back, provided, that the presentation of a certification or affidavit of loss executed by the official or employee concerned shall not be considered as appropriate replacement for the required transportation tickets;
- c. **BILLS AND RECEIPTS COVERING REPRESENTATION EXPENSES**

¹⁶⁶ Guidelines to implement Section 16 of Executive Order No. 248 as amended by Executive Order No. 248-A which prescribes the regulations and new rates of allowance for official local and foreign travels of government personnel.

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INCURRED, if the official concerned has been authorized to incur the same;

d. **HOTEL ROOM BILLS WITH OFFICIAL RECEIPTS**, regardless of whether or not the amount exceeds the prescribed rate of Two Hundred United States Dollars per day, provided that for this purpose, no certification of affidavit of loss shall be considered or accepted;

e. Where the actual travel expenses exceeds the prescribed rate of Three Hundred United States Dollars per day, the certification of the head of the agency concerned as to its absolute necessity shall also be required in addition to the presentation of the hotel room bills with official receipts.

"3.2.2.3 x x x

"x x x." (Emphasis and Capitalization Supplied.)

The gravamen of the felony is clear-cut. The Court's pronouncement on this score is instructive, viz:

"CHAIRPERSON:

". . . [H]ere, it's only **FAILURE TO RENDER AN ACCOUNT** which [is] a violation when a person or accountable officer fails to render an account within **60 days from return, or from the time that he's supposed to render an accounting.**

x x x

"CHAIRPERSON:

"So whether or not the travel was authorized or not, . . . that will be immaterial as far as this case is concerned. But will be very material in the other case of 3(e), [R.A. No. 3019] or perhaps if there's malversation. But here there's no malversation. It's only failure to render an account. It's sort of a special *malum prohibitum*.

"x x x." ¹⁶⁷ (Emphasis and Capitalization Supplied.)

¹⁶⁷ TSN dated February 8, 2017, p. 67.

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Corrolarily, the Court stressed that anything less than complete liquidation cannot discharge accused from liability. The Court pinpointed the deficiency in this wise:

"CHAIRPERSON:

"The issue is clear already.

"PROSEC. FRANZIA:

"Yes, Your Honor. x x x

"CHAIRPERSON:

"THERE WAS LIQUIDATION ONLY THERE WAS A FAILURE TO PRESENT ONLY THAT TRAVEL AUTHORITY. x x x."¹⁶⁸ (Emphasis and Capitalization Supplied.)

Contrary to the positon of accused Suba,¹⁶⁹ payment failed to write off his arrears and faithfully comply with the statutory requirements for proper liquidation. State Auditor V Rayos, Jr. clarified during cross-examination:

"ATTY. NARSOLIS:

x x x

"Q: Settled means paid? Or settled means liquidated?

"A: **SETTLEMENT does NOT mean PAYMENT. Submission of the documents will also be considered settlement, Ma'am.**

"Q: And you will admit that **THE ACCUSED SUBMITTED THE RECEIPTS, THE STATEMENT OF ACCOUNTS, THE PLANE TICKETS,** is that correct?

"A: . . . [T]hat is only a **PARTIAL SETTLEMENT** Ma'am, because **the documents we are requiring are not submitted by Mr. Suba.**

"ATTY. NARSOLIS:

¹⁶⁸ TSN dated February 8, 2017, p. 85.

¹⁶⁹ Id. at pp. 49 – 53.

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"Q: And the particular document you are talking about is the travel authority, is that correct?

"A: Yes Ma'am.

"X x x

"Q: x x x You said you issued a Statement of Cash Advances and Liquidations, is that correct?

"A: Yes, Ma'am.

"COURT INTERPRETER:

"For the record, your Honors, the witness referred to "A-25".

"ATTY. NARSOLIS:

"X x x

"Q: And you will admit that based on this document, the **accused was able to settle all the other case advances except for the cash advance pertaining to the travel to China**, is that correct?

"A: **Yes**, Ma'am.

"ATTY. NARSOLIS:

"Q: And the lacking requirement is not the official receipt, is that correct?

"A: Yes, Ma'am.

"Q: **THE LACKING REQUIREMENT IS THE TRAVEL AUTHORITY**, is that correct?

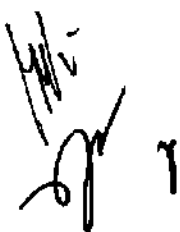
"A: **YES**, Ma'am.

"CHAIRPERSON:

"Let's make this clear.

"Q: You mean to say that **the accused here liquidated ALL, submitted ALL the necessary papers for liquidation within the period required of him, EXCEPT THE TRAVEL AUTHORITY?**

"A: **YES**, your Honor.



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"Q: **WITHIN THE 60 DAY PERIOD?** Yes?

"A: **YES**, your Honor.

"X x x." ¹⁷⁰ (Emphasis and Capitalization Supplied.)

More. Comptroller Josefa R. Cabangangan emphasized that the Authority to Travel is a *conditio sine qua non* for the legality of the foreign trip, and its timely submission is a *conditio a priori* for complete liquidation of the cash advances. These can be gleaned from her direct testimony, which reads:

"ATTY. NARSOLIS:

"X x x

"Q: . . . [W]hen you say '**LIQUIDATE**' that means to justify by issuing receipts or proof that the transaction was made. Is that correct?

"A: The liquidation is satisfying that **THESE DOCUMENTS SATISFY THE USAGE OF THE FUND** because it was a cash advance.

"Q: So you will agree that the particular travel covered by this transaction is a travel to Beijing, China to attend a conference, Is that correct?

"A: Yes, ma'am.

"Q: That is an Aviation conference?

"A: Yes, ma'am.

"X x x

"PJ TANG:

"Okay, proceed.

"RE-DIRECT EXAMINATION:

"Pros. Padaca:



¹⁷⁰ TSN dated February 8, 2017, pp. 69 - 73. 

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"Q: Madam Witness, for the liquidation of the cash advances of accused Suba, what are the documents to be submitted by Suba in order that he could liquidate?

"A: **in order for the LIQUIDATION to be OFFICIAL, there should be the TRAVEL AUTHORITY, the PLANE TICKETS, the RECEIPTS FOR THE BOARD AND LODGING, AND other INCIDENTAL RECEIPTS TO OTHER INCIDENTAL EXPENSES.**

"X X X

"RE-CROSS EXAMINATION:

"Atty. Narsolis:

"Q: If the **TRAVEL AUTHORITY . . . WAS SUBMITTED TO YOUR OFFICE**, that will be liquidated already. Is that correct?

"A: Ma'am, **IT SHOULD BE** within the prescribed period **WITHIN SIXTY (60) DAYS UPON RETURN FROM TRAVEL.**

"Q: . . . [T]echnically, was the travel justified by receipts?

"A: Technically, it has no basis because there was no authority to travel.

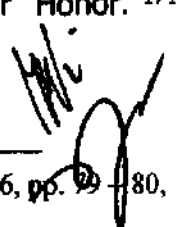
"X X X

"PJ TANG:

" . . . [T]his witness in the course of her recollection already repeatedly testified that **THE BASIC AND PRIMARY REQUIREMENTS FOR ONE TO UNDERTAKE A TRAVEL IN FACT FOR PURPOSES OF THE CASH ADVANCE IS AN AUTHORITY TO TRAVEL**, and according to her, this is not part of the documents that were submitted for liquidation purposes. That is why you did not allow this liquidation, correct?

"Witness:

"Yes, Your Honor."¹⁷¹ (Emphasis and Capitalization Supplied.)



¹⁷¹ TSN dated March 15, 2016, pp. 80, 87-90.

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III. ACCUSED'S GROSS NEGLIGENCE AMOUNTING TO BAD FAITH NEGATES THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF HIS OFFICIAL FUNCTIONS

Defense counsel argues that:

"Under the Revised Penal Code, criminal intent must be proven by the prosecution in order to convict the accused. It is the humble submission of this representation that if in fact the travel occurred and the accused presented receipts, there was proper liquidation, Your Honor. x x x The intention of the law, in our humble opinion, is that when government funds were used inappropriately. x x x In fact, in a COA Circular, they even exempt government officials from liability if the reason for non-liquidation of [the] transaction is a missing document as long as the travel or the transaction in fact occurred."¹⁷² (Emphasis and Underscoring Supplied.)

The argument is flawed and gives the misimpression that liquidation and restitution are one and the same. In *Milagros L. Diaz v. Sandiganbayan*,¹⁷³ the Supreme Court straightened out the matter in this wise:

"LIQUIDATION of obligations incurred by accountable public officials involves A LONG PROCESS; pertinent government accounting principles, require the (a) preparation of the disbursement voucher, (b) processing of the request for allotment supported by such documents as payrolls, disbursement vouchers, purchase/job orders, requisitions for supplies/materials, etc., and (c) issuance of the corresponding check.¹⁷⁴ Each time, when accomplished, the corresponding amount is debited or deducted from the available funds of the agency which would then consider the claim settled and paid although there may have yet been no actual transfer of cash involved from the government to the payee of the check. The term 'to liquidate' means to settle, to adjust, to ascertain or to reduce to precision in amount.¹⁷⁵ **'LIQUIDATION' DOES NOT**

¹⁷² TSN dated March 15, 2016, p. 91.

¹⁷³ G.R. No. 125213 January 26, 1999 (302 SCRA 118).

¹⁷⁴ GOVERNMENT ACCOUNTING AND AUDITING MANUAL, Vol. II, pp. 207-209.

¹⁷⁵ 25 WORDS AND PHRASES 539, citing *Midgett vs. Watson*, 29 N.C. 143, 145.

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NECESSARILY SIGNIFY PAYMENT,¹⁷⁶ and 'to liquidate an account,' can mean to ascertain the balance due, to whom it is due, and to whom it is payable,¹⁷⁷ hence, an account that has been '**LIQUIDATED**' CAN ALSO MEAN THAT THE ITEM HAS BEEN MADE CERTAIN AS TO WHAT, AND HOW MUCH, IS DEEMED TO BE OWING."¹⁷⁸ (Emphasis and Capitalization Supplied.)

Accused Suba invokes the twin presumptions of regularity and good faith in the performance of official duties.¹⁷⁹ The Court, hastens to add, however that these are merely presumptions *juris tantum*, however, and may be rebutted by contrary evidence.

What the presumption of regularity establishes is merely *compliance with the ordinary procedures and the usual standards* in the processing and approval of a disbursement. On the other hand, the presumption of good faith aids the public officer in establishing *substantial or colorable compliance with the law* that would exempt him from pecuniary liability *even if* he had erred in the application of the law or *even if* he had been found guilty of simple negligence in the performance of his duties. In this respect, good faith denotes freedom from knowledge of circumstances that ought to put the responsible public officer on inquiry and the honest intention to abstain from taking advantage of another – in the present case, of the government – even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render a transaction irregular.¹⁸⁰

Accused Suba cannot find solace in his invocation of good faith given the sheer clarity of the applicable law. Besides, the

¹⁷⁶ *Ibid.*, citing *Fort vs. Gooding*, N.Y., 9 Barb. 371, 377.

¹⁷⁷ *Ibid.*, citing *Midgett vs. Watson*, *supra*.

¹⁷⁸ *Ibid.*, p. 542, citing *Parks vs. Interstate Accounts Service*, D.C.Mo., 54 F. Supp. 581, 583.

¹⁷⁹ The presumption is indulged by law for the following reasons: *first*, innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. The presumption evidences a rule of convenient public policy, without which great distress would spring in the affairs of men. (*People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 796, 798-799.)

¹⁸⁰ *Philippine Economic Zone Authority (PEZA) v. Commission on Audit, et al.*, G.R. No. 189767, July 3, 2012 (657 SCRA 514, 524).

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Commission on Audit found him guilty of gross negligence¹⁸¹ amounting to bad faith that resulted in the illegal disbursement of public funds. The Court quotes with approval the the following observation of the COA:¹⁸²

“ . . . [F]ROM THE VERY BEGINNING, MR. SUBA WAS AWARE OF THE ABSENCE OF AUTHORITY TO TRAVEL ABROAD YET THIS DID NOT DETER HIM FROM EXPENDING THE CASH ADVANCE for his and Col. Navida’s travel abroad. Mr. Suba, as an accountable public officer, is directly responsible for the use of the cash advance and should therefore be held primarily liable for the illegal and/or irregular use thereof. He could not pass the blame and the corresponding liability solely to Col. Navida for approving the said cash advance. Nevertheless, for having approved the cash advance and having benefited therefrom, Mr. Navida is JOINTLY AND SEVERALLY LIABLE for the same in accordance with Section 104 of PD 1445.”¹⁸³ (Emphasis and Capitalization Supplied.)

Bureaucratic gridlocks and nonchalance, as the accused avered, may have scotched the issuance of the requisite Authority to Travel from the DOTC Secretary, but that is neither here nor there. The fact of the matter is that its absence is a dead weight for the otherwise authorized travel of the accused.

Accused Suba insists that his travel had been approved by the top brass of the PADC and the DOTC. Such Board approval, inclusive of the DOTC Secretary’s vote, is, *mutatis mutandis*, the “authority to travel” contemplated in COA’s NS and ND. To buttress this, he proffered several documents.¹⁸⁴ Regrettably, however, these were adjudged as *inadmissible*,¹⁸⁵ hence, worthless.

¹⁸¹ Gross negligence is negligence characterized by the want of even slight care; acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected (*Sison v. People*, G.R. Nos. 170339 and 170398-403, March 9, 2010 [614 SCRA 670, 680], citing *Fonacter v. Sandiganbayan*, 238 SCRA 656, 687-688.

¹⁸² EXHIBIT “A-22”: 4th Indorsement dated January 9, 2008, from the Office of the Cluster Director (Corporate Government Sector, Cluster B), Commission on Audit, regarding the denial of the motion for reconsideration of the disallowance of the unliquidated cash advance for travel to Beijing, China, p. 2.

¹⁸³ EXHIBIT “A-22-A”.

¹⁸⁴ The Court did not admit the following:

- 1) Minutes of the Meeting of the PADC Board of Directors on June 21, 2006 (EXHIBIT “10”);
- 2) Corporate Secretary’s Certificate of PADC Board Resolution No. 2 dated January 10, 2006, approving foreign travels of CY 2006 (EXHIBIT “19”);

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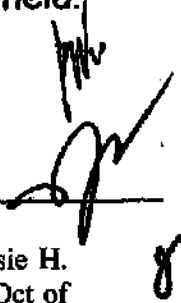
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Shifting the blame to his superior, Col. Navida, is puerile too. As a senior public official, accused Suba is reasonably expected to know that under Executive Order No. 298 and COA Circular No. 96-004, cash advances granted to government officials and employees had to be liquidated within sixty (60) days after their return from official travel. Inasmuch as he arrived from China on October 14, 2006; thence, he should have accomplished the liquidation on or before December 23, 2006.¹⁸⁶ Settlement of the disallowed cash advances eight years later¹⁸⁷ (i.e. on September 12, 2014) cannot undo his nonfeasance.

In the light of the established element of *mala fides*, accused Suba's mantle of immunity has been removed because his act falls outside the scope of his official duties.¹⁸⁸ Simply stated, accused's perfunctory reliance on the presumption of good faith does not overcome the correctness of the COA's disallowance. Suffice it to say that COA's findings are entitled to respect and finality.¹⁸⁹

In *Development Bank of the Philippines v. Commission on Audit and Janel D. Nacion*,¹⁹⁰ the Supreme Court *en banc* applied *strictissimi juris* the applicable law. In ascribing bad faith and gross negligence on the erring public officer, the Court held:

-
- 3) Letter dated October 6, 2008, of Col. Roberto R. Navida (ret.) to Josie H. Gonzales, EVP, PADC, stating that: "The travel to Beijing, China in Oct of 2006 was an official trip approved by the PADC Board and the DOTC Secretary. x x x." (EXHIBIT "20"); and
- 4) Letter dated January 23, 2009, of Col. Roberto R. Navida (ret) to Danilo R. Crisologo, President, PADC, stating that: "1) the travel to Beijing, China was an official trip approved by Sec. Mendoza and the PADC Board. Asec. Sarmiento was the one who received the post-travel report for the activity. He was supposed to issue the travel authority . . ." (EXHIBIT "21").
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¹⁸⁵ Order dated May 15, 2018, pp. 1 – 2 (Records, Vol. 2, pp. 133 – 134); Minute Resolution dated August 14, 2018, p. 1 (Records, Vol 2, p. 167).

¹⁸⁶ TSN dated December 6, 2016, pp. 24 – 25.

¹⁸⁷ EXHIBIT "13"; TSN dated January 23, 2018, pp. 12 – 15, 21. .

¹⁸⁸ *Meneses v. Court of Appeals*, G.R. Nos. 82220, 82251 and 83059, July 14, 1995 (246 SCRA 162, 174); *Vidad v. Regional Trial Court (RTC) of Negros, Br. 42*, 227 SCRA 271 [1993].

¹⁸⁹ *Nava v. Palattao*, G.R. No. 160211, August 28, 2006 (499 SCRA 745).

¹⁹⁰ G.R. No. 202733, September 30, 2014 (737 SCRA 237).

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"EO No. 248, as amended by EO No. 298, is clear and precise and leaves no room for interpretation. X X X"

"Indeed, where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.¹⁹¹ Thus, EO No. 248, as amended by EO No. 298, should be applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. X X X."

"X X X

"X X X **[N]ot only are senior government officials, such as the ... concerned officials herein, expected to update their knowledge on laws that may affect the performance of their functions, but the laws subject of this case are of such clarity . . .**

"Understanding the subject EO No. 248, as amended by EO No. 298, does not require a highly specialized knowledge of the law. X X X **Had petitioner exerted some effort and diligence in reading the applicable law in full, it would not have missed the requirement imposed on foreign travels.** We find it rather difficult to believe that officials holding positions of such rank and stature . . . would fail to comply with a plain and uncomplicated order, which has long been in effect as early as 1995, almost a decade before their respective travels." (Emphasis and Underscoring Supplied.)

While the foreign travel of accused Suba was for a **"legally authorized specific purpose,"**¹⁹² the lack of: (1) approved Authority to Travel from the Office of the Secretary of Transportation and Communications;¹⁹³ and (2) approved itinerary of travel,¹⁹⁴ tainted the regularity of the official travel, including the cash advances expended therefor. Ineluctably, utilized cash advances had to be reported and liquidated fully as soon as the purpose for which it was given has been served.¹⁹⁵ In fine, the liquidation should not only be timely, but must be complete and accurate as

¹⁹¹ *Vicencio v. Hon. Villar*, G.R. No. 182069, July 03, 2012 (675 SCRA 468, 480), citing *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910 (2000).

¹⁹² Section 89, P.D. No. 1445.

¹⁹³ EXHIBITS "A-21", "A-22".

¹⁹⁴ EXHIBITS "A-17" ("23"); "A-16" ("22").

¹⁹⁵ *People v. Delfin R. Agcaolli, et. al.*, Crim. Case No. 24463, March 31, 2005.

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well. As the presumptively fit and proper officer for his position and rank, it behooves him to exercise due diligence¹⁹⁶ and leave no stone unturned while steadfastly adhering to statutory requirements, especially those akin to accounting.

IV. ACCUSED'S PECUNIARY LIABILITY IS DIRECT, PERSONAL AND SOLIDARY

The evidence against accused Suba is sufficient to convict. The prosecution had established that the receipt, use and non-liquidation of the cash advances, a negative fact that is an essential ingredient of the offense charged.¹⁹⁷ Thence, the presumption of innocence in his favor had been overcome. Yet, instead of refuting that evidence, he smugly belittled it as if it were too inconsequential

¹⁹⁶Since PADC is a GOCC, and A. M. Suba is an officer of PADC, his acts are governed by Republic Act No. 10149, otherwise known as the GOCC Governance Act of 2011. Salient provisions therefrom are quoted below, viz:

**“CHAPTER IV
“BOARD OF DIRECTORS/TRUSTEES/OFFICERS OF
GOVERNMENT OWNED OR CONTROLLED CORPORATIONS**

“X X X

“Section 19. Fiduciary Duties of the Board and Officers. - As fiduciaries of the State, members of the Board of Directors/Trustees and the Officers of GOCCs have the legal obligation and duty to always act in the best interest of the GOCC, with utmost good faith in all its dealings with the property and monies of the GOCC.

“The members of the Board and Officers of GOCCs shall:

- (a) Act with utmost and undivided loyalty to the GOCC;
- (b) Act with due care, extraordinary diligence, skill and good faith in the conduct of the business of the GOCC;
- (c) Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;
- (d) Apply sound business principles to ensure the financial soundness of the GOCC; and
- (e) Elect and/or employ only Officers who are fit and proper to hold such office with due regard to the qualifications, competence, experience and integrity.

“X X X

“Section 21. Care, Diligence and Skill in the Conduct of the Business of the GOCC. - The members of the Board and the Officers must exercise extraordinary diligence in the conduct of the business and in dealing with the properties of the GOCC. Such degree of diligence requires using the utmost diligence of very cautious person with due regard for all the circumstances.

¹⁹⁷ *People v. Joseph Cosente and Junior Bestre*, Crim. Case No. 25106, February 24, 2006.

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to disprove. Significantly, he sought leave to file a demurrer to evidence;¹⁹⁸ but his coruscation of wit turned out to be fatuous.

To maintain inviolate the public trust¹⁹⁹ reposed on them, public officers must exercise **ordinary diligence** or the **diligence of a good father of a family**.²⁰⁰ This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. If they do not, the disbursed amounts are disallowed in audit, and the law²⁰¹ imposes upon public officers the obligation to return these amounts.

Section 42, Chapter V, Book VI of the Administrative Code expressly states that "**every official or employee AUTHORIZING or making an illegal payment and every person RECEIVING the illegal payment shall be JOINTLY AND SEVERALLY LIABLE to the Government for the FULL amount so paid or received." The obligation to refund also finds support under the principle of *solutio indebiti* which enunciates the rule that the obligation to return arises if something is received when there is no right to demand it, and when it was unduly delivered through mistake.²⁰²**

Indeed, accused Suba and Navida are "*jointly and severally liable for the entire unauthorized expenditure of P241,478.68.*"²⁰³ Along similar lines, the COA, thru Assistant Commissioner Elizabeth S. Zosa, explains:

"x x x [Y]ou requested that your liability be limited to P133,083.40, the amount actually spent for your travel, while the remaining P108,395.40 should be settled by Mr. Navida representing the portion of the cash advance actually spent for his travel.



¹⁹⁸ Motion Requesting Leave to File Demurrer to Evidence dated June 20, 2017, pp. 1 - 6 (Records, Vol. 1, pp. 478 - 483).

¹⁹⁹ 1987 CONSTITUTION, Article XI, Section 1.

²⁰⁰ P.D. No. 1445, Section 104. See also Section 8, par. 3, Rule 6 of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713).

²⁰¹ THE ADMINISTRATIVE CODE OF 1987 (E.O. No. 292), Book VI, Chapter V, Section 43.

²⁰² CIVIL CODE, Article 2154.

²⁰³ EXHIBIT "A-21": Letter dated June 1, 2010, of Assistant Commissioner E. S. Zosa to A. M. Suba, p. 1 of 3.

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"After a circumspect evaluation, this Office . . . regrets to deny your request. The nature of **the liability of the persons liable for expenditures incurred in violation of [the] law has always been held by the Commission to be SOLIDARY or JOINT AND SEVERAL**, pursuant to Section 30.1.2 of the 1993 Manual on the Certificate of Settlement and Balances, reiterating Book VI, Chapter V, Section 43 of the 1987 Revised Administrative Code, which states, to wit:

30.1.2 Every expenditure or obligation authorized or incurred in violation of law or of the annual budgetary measure shall be void. Every payment made in violation thereof shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable for the full amount so paid or received.

' x x x.'

"Accordingly, insofar as the government is concerned, **THE ENTIRE OBLIGATION CAN BE ENFORCED AGAINST ANY OF THE SOLIDARY DEBTORS**, who in turn are liable not only for a portion (sic) thereof but for its entirety. x x x

"x x x." ²⁰⁴ (Capitalization Supplied.)

Verily, accused Navida is dead. Consequently, accused Suba, as solidary obligor, must shoulder the entire debt (i.e. cash advances), and no right to reimbursement²⁰⁵ is forthcoming for obvious reasons. By force of circumstance, accused Suba becomes primarily, directly and exclusively liable for the restitution of the disallowed cash advances. *Quando de una et eadem re, duo onerabilis existent, unus, pro insufficientia alterius, de integro onerabitur* (When there are two persons liable

²⁰⁴ Memorandum dated June 1, 2010, of the Office of General Counsel, COA, to Antonio M. Suba, p. 2.

²⁰⁵ See Civil Code, Art. 1217. The article provides:

Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with interest for payment already made. If payment made before the debt is due, no interest for the intervening period may be demanded.

x x x (Emphasis Supplied)

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to a joint burden, if one make default the other must bear the whole). Full, albeit late, payment of the arrears effectively extinguishes the civil liability arising from the delict. Nonetheless, non-liquidation, which has been proven with moral certainty, warrants the imposition of the appropriate punishment under the law.

V. A STRAIGHT OR DETERMINATE PENALTY IS PROPER

Since the alleged crime has been proven beyond reasonable doubt, sentencing shall factor in the qualifying circumstances, if any. Consistent with the Supreme Court's verdict in *Aloysius Dalt Lumauig v. People*,²⁰⁶ the following mitigating circumstances deserve consideration in the instant case:

- 1) **voluntary surrender**, as borne by the records;²⁰⁷ and
- 2) **return or full restitution of the funds.**²⁰⁸

On the other hand, no aggravating circumstances are extant herein.

In malversation of public funds, the payment, indemnification, or reimbursement of the funds misappropriated may be considered a mitigating circumstance being analogous to voluntary surrender.²⁰⁹ Although this case does not involve malversation of public funds under Article 217 of the Revised Penal Code but rather failure to render an account under Article 218 (i.e., the succeeding Article found in the same Chapter), the same reasoning may be applied to the return or full restitution of the funds.

The prescribed penalty for violation of Article 218 is *prisión correccional* in its minimum period or six months and one day to two years and four months, or by a fine ranging from 200 to 6,000 pesos.

²⁰⁶ G.R. No.166680, July 7, 2014.

²⁰⁷ On November 18, 2014, accused A. M. Suba voluntarily surrendered and posted his cash bail bond (Records, Vol. 1, p. 153).

²⁰⁸ EXHIBITS "13", "14", "15".

²⁰⁹ *Kimpo v. Court of Appeals*, G.R. No. 95604, April 29, 1994 (232 SCRA 53, 62).

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or both. Considering that there are two mitigating circumstances and there are no aggravating circumstances, under Article 64 (5)²¹⁰ of the Revised Penal Code, the imposable penalty is the penalty next lower to the prescribed penalty which, in this case, is *arresto mayor* in its maximum period or four months and one day to six months.

The Indeterminate Sentence Law, under Section 2,²¹¹ is *not* applicable to, among others, cases where the maximum term of imprisonment does not exceed one year. In determining "whether an indeterminate sentence and not a straight penalty is proper, what is considered is the penalty actually imposed by the trial court, after considering the attendant circumstances, and not the imposable penalty."²¹² In the case at bar, since the maximum of the imposable penalty is six months, then the possible maximum term that can be actually imposed is surely less than one year. Hence, the Indeterminate Sentence Law is not applicable to the present case. As a result, the imposition of a straight penalty of four months and one day of *arresto mayor*²¹³ is apropos.

WHEREFORE, the Court finds and so holds that in **Criminal Case No. SB-14-CRM-0425**, accused **Antonio Martin Suba** is **GUILTY** of violation of Article 218 of the Revised Penal Code.

Accordingly, accused Suba is sentenced to suffer the penalty of imprisonment for four (4) months and one (1) day of *arresto*

²¹⁰ **ARTICLE 64. Rules for the Application of Penalties Which Contain Three Periods.** — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

x x x

- 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

²¹¹ Section 2 of the Indeterminate Sentence Law provides in part:

Sec. 2. This Act shall not apply x x x to those whose maximum term of imprisonment does not exceed one year. x x x

²¹² *Ladino v. Garcia*, 333 Phil. 254, 259 (1996); *People v. Dimalanta*, 92 Phil. 239, 242 (1952).

²¹³ Including all accessory penalties consequent thereto under Article 44 of the RPC, which reads:
Article 44. Arresto; Its accessory penalties. - The penalty of *arresto* shall carry with it that of suspension of the right too hold office and the right of suffrage during the term of the sentence.

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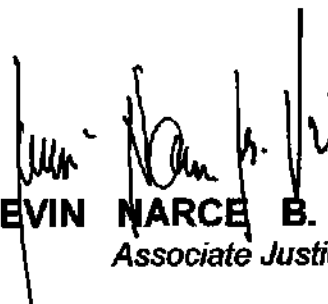
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mayor, including the accessory penalties consequent thereto under Article 44 of the Revised Penal Code.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice


WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


BAYANI H. JACINTO
Associate Justice

ATTESTATION

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


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson, Sixth Division

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CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


EFREN N. DE LA CRUZ
Acting Presiding Justice