



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-17-CRM-0663-64

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

-versus-

SB-17-CRM-0665-66

For: Malversation of Public
Funds (Art. 217 of the
Revised Penal Code)

**TEODULO "DOLOY"
MONTANCES COQUILLA, ALAN
ALUNAN JAVELLANA,
ENCARNITA-CRISTINA P.
MUNSOD, MA. JULIE A.
VILLARALVO-JOHNSON,
ROMULO M. RELEVO, MARGIE
TAJON LUZ, MA. CRISTINA
VIZCARRA,**

Present:

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

Accused.

Promulgated:

September 2, 2022 *86*

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DECISION

Moreno, J.:

In Criminal Case No. SB-17-CRM-0663, accused TEODULO "DOLOY" MONTANCES COQUILLA ("Coquilla"), ALAN ALUNAN JAVELLANA ("Javellana"), ENCARNITA-CRISTINA POTIAN MUNSOD ("Munsod"), MA. JULIE ASOR VILLARALVO-JOHNSON ("Johnson"), ROMULO M. RELEVO ("Relevo"), MARGIE TAJON LUZ ("Luz"), and MA. CRISTINA VIZCARRA ("Vizcarra") are charged with

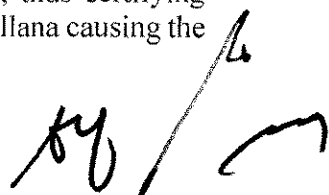
by

violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended. The amended information¹ reads:

On or about January 23, 2008, or sometime prior or subsequent thereto, in Eastern Samar, Philippines, and within this Honorable Court's jurisdiction, the abovenamed accused public officers TEODULO "Doloy" MONTANCES COQUILLA (Coquilla), the then Congressman of the Lone District of Eastern Samar; ALAN ALUNAN JAVELLANA (Javellana), President, ENCARNITA-CRISTINA POTIAN MUNSOD (Munsod), Human Resources and Administrative Manager, MA. JULIE ASOR VILLARALVO-JOHNSON (Johnson), Chief Accountant, ROMULO M. RELEVO (Relevo), Head of General Services Unit, all of the National Agribusiness Corporations (NABCOR); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals MARGIE T. LUZ (Luz), and MA. CRISTINA VIZCARRA (Vizcarra), both of GABAYMASA Development Foundation, Inc. (GABAYMASA); acting with manifest partiality, evident bad faith; did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of at least FOUR MILLION THREE HUNDRED SIXTY FIVE THOUSAND PESOS (PHP4,365,000.00), and/or give unwarranted benefits, advantage or preference to said private individuals and GABAYMASA, through the following acts:

- (a) Coquilla, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2007 by reason of the duties of his office, unilaterally chose and indorsed GABAYMASA, a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in the implementation of livelihood projects in his legislative district, which were funded by Coquilla's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07743, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public/competitive bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with GABAYMASA being unaccredited and unqualified to undertake the projects; he also signed undated Certificate of Acceptance and undated Acknowledgement Receipt to make it appear that the fictitious supplies were delivered to the intended beneficiaries in his District;
- (b) Javellana of NABCOR and Luz of GABAYMASA then entered into a Memorandum of Agreement (MOA) on the purported implementation of Coquilla's PDAF-funded projects;
- (c) Javellana also facilitated, processed, and approved the disbursement of the subject PDAF released by signing Disbursement Voucher No. 08-01-00200 along with Munsod, Revelo, and Johnson, thus certifying that the documents are complete and proper, with Javellana causing the

¹ Record, Vol. I, pp. 365-369.



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issuance of United Coconut Planters Bank (UCPB) Check No. 407937 in the amount of PhP4,365,000.00 to GABAYMASA which was signed by Javellana, without the accused NABCOR officers and employees having carefully examined and verified the accreditation and qualification of GABAYMASA as well as the transaction's supporting documents;

- (d) Luz and Vizcarra caused or participated in the preparation and signing of undated certification, certificate of acceptance, delivery reports, abstract canvass, purchase order, project proposals and other liquidation documents supporting the Disbursement Voucher No. 08-01-00200, and, likewise received the check;
- (e) By their above acts, all of the aforementioned accused embezzled or caused or allowed the embezzlement by Luz, Vizcarra and GABAYMASA of the PDAF projects, which turned out to be non-existent or fictitious, to the damage and prejudice of the Republic of the Philippines.

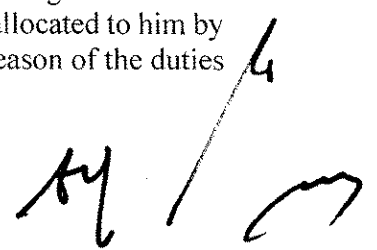
CONTRARY TO LAW.

In Criminal Case No. SB-17-CRM-0664, accused are charged with violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended. The amended information² reads:

On or about July 1, 2008, or sometime prior or subsequent thereto, in Eastern Samar, Philippines, and within this Honorable Court's jurisdiction, the abovenamed accused public officers TEODULO "Doloy" MONTANCES COQUILLA (Coquilla), the then Congressman of the Lone District of Eastern Samar; ALAN ALUNAN JAVELLANA (Javellana), President, ENCARNITA CRISTINA POTIAN MUNSOD (Munsod), Human Resources and Administrative Manager, MA. JULIE ASOR VILLARALVO-JOHNSON (Johnson), Chief Accountant, ROMULO M. RELEVO (Relevo), Human Resources and Administrative Manager, all of the National Agribusiness Corporations (NABCOR); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals MARGIE T. LUZ (Luz), and MA. CRISTINA VIZCARRA (Vizcarra), both of GABAYMASA Development Foundation, Inc. (GABAYMASA); acting with manifest partiality, evident bad faith; did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of at least FOUR HUNDRED EIGHTY FIVE THOUSAND PESOS (PHP485,000.00), and/or give unwarranted benefits, advantage or preference to said private individuals and GABAYMASA, through the following acts:

- (a) Coquilla, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2007 by reason of the duties

² Record, Vol. I, pp. 370-374.

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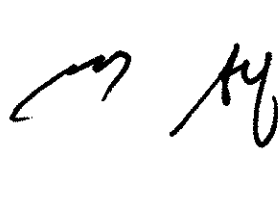
of his office, unilaterally chose and indorsed GABAYMASA, a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in the implementation of livelihood projects in his legislative district, which were funded by Coquilla's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07743, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public/competitive bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with GABAYMASA being unaccredited and unqualified to undertake the projects; he also signed undated Certificate of Acceptance and undated Acknowledgement Receipt to make it appear that the fictitious supplies were delivered to the intended beneficiaries in his District;

- (b) Javellana of NABCOR and Luz of GABAYMASA then entered into a Memorandum of Agreement (MOA) on the purported implementation of Coquilla's PDAF-funded projects;
- (c) Javellana also facilitated, processed, and approved the disbursement of the subject PDAF released by signing Disbursement Voucher No. 08-07-02229 along with Munsod, Revelo, and Johnson, thus certifying that the documents are complete and proper, with Javellana causing the issuance of United Coconut Planters Bank (UCPB) Check No. 417265 in the amount of PhP485,000.00 to GABAYMASA which was signed by Javellana, without the accused NABCOR officers and employees having carefully examined and verified the accreditation and qualification of GABAYMASA as well as the transaction's supporting documents;
- (d) Luz and Vizcarra caused or participated in the preparation and signing of undated certification, certificate of acceptance, delivery reports, abstract canvass, purchase order, project proposals and other liquidation documents supporting the Disbursement Voucher No. 08-07-02229, and, likewise received the check acting in behalf of GABAYMASA;
- (e) By their above acts, all of the aforementioned accused embezzled or caused or allowed the embezzlement by Luz, Vizcarra and GABAYMASA of the PDAF-drawn public finds, instead of implementing the PDAF projects, which turned out to be non-existent or fictitious, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.

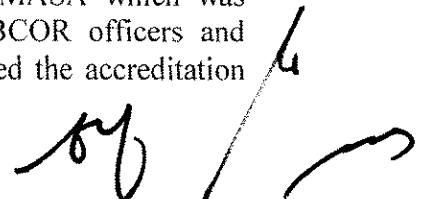
In Criminal Case No. SB-17-CRM-0665, the accused are charged with the crime of MALVERSATION OF PUBLIC FUNDS, as defined and penalized under Article 217 of the Revised Penal Code. The amended information³ reads:

³ Record, Vol. I, pp. 375-379.

Handwritten signatures and initials, including a large 'h' and a signature that appears to be 'Ty'.

On or about January 23, 2008, or sometime prior or subsequent thereto, in Eastern Samar, Philippines, and within this Honorable Court's jurisdiction, the abovenamed accused public officers TEODULO "Doloy" MONTANCES COQUILLA (Coquilla), the then Congressman of the Lone District of Eastern Samar; ALAN ALUNAN JAVELLANA (Javellana), President, ENCARNITA CRISTINA POTIAN MUNSOD (Munsod), Human Resources and Administrative Manager, MA. JULIE ASOR VILLARALVO-JOHNSON (Johnson), Chief Accountant, ROMULO M. RELEVO (Relevo), Head of General Services Unit, all of the National Agribusiness Corporations (NABCOR); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals MARGIE T. LUZ (Luz), and MA. CRISTINA VIZCARRA (Vizcarra), both of GABAYMASA Development Foundation, Inc. (GABAYMASA); did then and there willfully, unlawfully and feloniously misappropriate or consent, or allow MARGIE TAJON LUZ, MA. CRISTINA VIZCARRA and GABAYMASA to take public funds amounting to at least FOUR MILLION THREE HUNDRED SIXTY FIVE THOUSAND PESOS (PHP4,365,000.00), through the following acts:

- (a) Coquilla, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2007 by reason of the duties of his office, unilaterally chose and indorsed GABAYMASA, a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in the implementation of livelihood projects in his legislative district, which were funded by Coquilla's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07743, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public/competitive bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with GABAYMASA being unaccredited and unqualified to undertake the projects; he also signed undated Certificate of Acceptance and undated Acknowledgement Receipt to make it appear that the fictitious supplies were delivered to the intended beneficiaries in his District;
- (b) Javellana of NABCOR and Luz of GABAYMASA then entered into a Memorandum of Agreement (MOA) on the purported implementation of Coquilla's PDAF-funded projects;
- (c) Javellana also facilitated, processed, and approved the disbursement of the subject PDAF released by signing Disbursement Voucher No. 08-01-00200 along with Munsod, Revelo, and Johnson, thus certifying that the documents are complete and proper, with Javellana causing the issuance of United Coconut Planters Bank (UCPB) Check No. 407937 in the amount of Php4,365,000.00 to GABAYMASA which was signed by Javellana, without the accused NABCOR officers and employees having carefully examined and verified the accreditation

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and qualification of GABAYMASA as well as the transaction's supporting documents;

- (d) Luz and Vizcarra caused or participated in the preparation and signing of undated certification, certificate of acceptance, delivery reports, abstract canvass, purchase order, project proposals and other liquidation documents supporting the Disbursement Voucher No. 08-01-00200, and, likewise received the check;
- (e) By their above acts, all of the aforementioned accused misappropriated or consented or allowed Luz, Vizcarra and GABAYMASA to take or misappropriate PDAF-drawn public funds, instead of implementing the PDAF projects, which turned out to be non-existent or fictitious, to the damage and prejudice of the Republic of the Philippines.

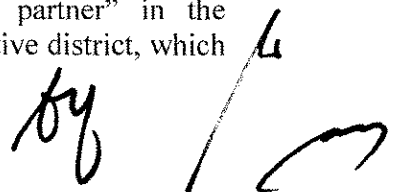
CONTRARY TO LAW.

In Criminal Case No. SB-17-CRM-0666, the accused are charged with the crime of MALVERSATION OF PUBLIC FUNDS, as defined and penalized under Article 217 of the Revised Penal Code. The amended information⁴ reads:

On or about July 1, 2008, or sometime prior or subsequent thereto, in Eastern Samar, Philippines, and within this Honorable Court's jurisdiction, the abovenamed accused public officers TEODULO "Doloy" MONTANCES COQUILLA (Coquilla), the then Congressman of the Lone District of Eastern Samar; ALAN ALUNAN JAVELLANA (Javellana), President, ENCARNITA CRISTINA POTIAN MUNSOD (Munsod), Human Resources and Administrative Manager, MA. JULIE ASOR VILLARALVO-JOHNSON (Johnson), Chief Accountant, ROMULO M. RELEVO (Relevo), Head of General Services Unit, all of the National Agribusiness Corporations (NABCOR); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals MARGIE T. LUZ (Luz), and MA. CRISTINA VIZCARRA (Vizcarra), both of GABAYMASA Development Foundation, Inc. (GABAYMASA); did then and there willfully, unlawfully and feloniously misappropriate or consent, or allow MARGIE T. LUZ, MA. CRISTINA VIZCARRA and GABAYMASA to take public funds amounting to at least FOUR HUNDRED EIGHTY FIVE THOUSAND PESOS (PHP485,000.00), through the following acts:

- (a) Coquilla, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2007 by reason of the duties of his office, unilaterally chose and indorsed GABAYMASA, a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in the implementation of livelihood projects in his legislative district, which

⁴ Record, Vol. I, pp. 380-380.

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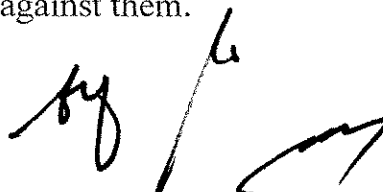
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were funded by Coquilla's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-07743, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public/competitive bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with GABAYMASA being unaccredited and unqualified to undertake the projects; he also signed undated Certificate of Acceptance and undated Acknowledgement Receipt to make it appear that the fictitious supplies were delivered to the intended beneficiaries in his District;

- (b) Javellana of NABCOR and Luz of GABAYMASA then entered into a Memorandum of Agreement (MOA) on the purported implementation of Coquilla's PDAF-funded projects;
- (c) Javellana also facilitated, processed, and approved the disbursement of the subject PDAF released by signing Disbursement Voucher No. 08-07-02229 along with Munsod, Revelo, and Johnson, thus certifying that the documents are complete and proper, with Javellana causing the issuance of United Coconut Planters Bank (UCPB) Check No. 417265 in the amount of PhP485,000.00 to GABAYMASA which was signed by Javellana, without the accused NABCOR officers and employees having carefully examined and verified the accreditation and qualification of GABAYMASA as well as the transaction's supporting documents;
- (d) Luz and Vizcarra caused or participated in the preparation and signing of undated certification, certificate of acceptance, delivery reports, abstract canvass, purchase order, project proposals and other liquidation documents supporting the Disbursement Voucher No. 08-07-02229, and, likewise received the check;
- (e) By their above acts, all of the aforementioned accused misappropriated or consented or allowed Luz, Vizcarra and GABAYMASA to take or misappropriate PDAF-drawn public funds, instead of implementing the PDAF projects, which turned out to be non-existent or fictitious, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.

In its *Resolution* promulgated on April 17, 2017⁵, the Court found existence of probable cause against accused Coquilla, Javellana, Munsod, Johnson, Relevo, Luz, and Vizcarra after a careful evaluation of the records of these cases. Thus, the Court issued *hold departure orders*⁶ and *warrants of arrest*⁷ against them.



⁵ Record. Vol. I, p. 171.

⁶ Record. Vol. I, pp. 171-172.

⁷ Record. Vol. I, p. 185.

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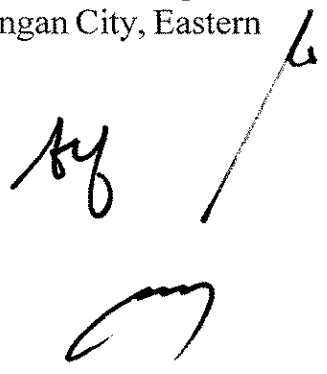
On May 29, 2017, accused Munsod voluntarily surrendered to the Court⁸ and posted her cash bail bond for her provisional liberty.⁹ Accused Javellana¹⁰ and Vizcarra were not furnished with the copies of the Informations and the warrants of arrest at their respective addresses for the reason that they are no longer residing thereat. The warrant of arrest against accused Johnson was also returned on the ground that it was unserved, citing that she cannot be located in the given address.¹¹

On June 22, 2017, accused Relevo voluntarily surrendered to the Court¹² and posted his cash bail bond for his provisional liberty on the same day.¹³ Accused Coquilla, on the other hand, voluntarily surrendered to the Court on August 2, 2017,¹⁴ and was discharged on the same date after posting his reduced cash bond for his provisional liberty.¹⁵ On August 10, 2017, accused Luz voluntarily surrendered to the Court¹⁶ and posted her reduced cash bond for her provisional liberty.¹⁷

On July 3, 2017, the prosecution filed its *Manifestation and Motion to Admit Amended Information*.¹⁸ Upon re-arraignment, accused Luz,¹⁹ Munsod, and Relevo²⁰ refused to enter a plea on the Amended Informations. Accordingly, a plea of "NOT GUILTY" was entered into the records.

On the other hand, accused Coquilla was not arraigned on the ground of his alleged fact of death.²¹ Records reveal that Atty. Roderick Joon P. Gabrillo entered his appearance as the counsel of accused Coquilla.²² On February 8, 2019, the Court had given the prosecution a period of thirty (30) days or until March 10, 2019, within which to verify the alleged fact of the death of accused Coquilla and to inform the Court of the results thereof.²³ On March 11, 2019, the prosecution filed its *Manifestation/Ex-Parte Motion* requesting an additional period of thirty (30) days within which to confirm the death of accused Coquilla. On April 11, 2019, the prosecution filed its *Manifestation with Motion* stating that upon inquiry with the Chief Statistical Specialist of Borongan City, Eastern

⁸ Record, Vol. I, p. 237.
⁹ Record, Vol. I, p. 242.
¹⁰ Record, Vol. I, pp. 266, 407, 411, 417, 542, 680.
¹¹ Record, Vol. I, p. 425; Vol. II, p. 7.
¹² Record, Vol. I, p. 327.
¹³ Record, Vol. I, p. 322.
¹⁴ Record, Vol. I, p. 481.
¹⁵ Record, Vol. I, p. 482.
¹⁶ Record, Vol. I, p. 490.
¹⁷ Record, Vol. I, p. 488.
¹⁸ Record, Vol. I, p. 360.
¹⁹ Record, Vol. II, p. 894.
²⁰ Record, Vol. III, pp. 36-37.
²¹ Record, Vol. III, pp. 219, 242, 357.
²² Record, Vol. I, p. 310.
²³ Record, Vol. III, p. 242.

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Samar, Ronnie A. Bajado, they were informed that accused Coquilla died in Manila. The prosecution also submitted the *Resolution No. 130* of the House of Representatives which was adopted on May 30, 2018, stating that accused Coquilla died on April 28, 2018.²⁴ However, the records reveal that the prosecution was not able to produce and submit the *Certificate of Death* of accused Coquilla. Hence, no resolution was issued as to the alleged death of accused Coquilla.

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

STIPULATION OF FACTS

Prosecution and Accused Romulo M. Relevo.

1. Whenever referred to orally or in writing by this Honorable Court and the prosecution and/or its witness, accused Relevo admits that he is the same person being referred to in the Informations.
2. At the time material to these cases, accused Relevo was a public Officer, being the former Head of the General Services Unit of NABCOR.
3. At the time material to these cases, Accused Coquilla was a public officer, being the Congressman of the Lone District of Eastern Samar.
4. Accused Javellana and Villaralvo-Johnson were public officers at the time material to these cases, being the President and Chief Accountant of NABCOR, respectively.
5. NABCOR is the identified implementing agency of accused Coquilla's PDAF-funded projects subject of these cases.
6. A MOA was entered into on January 16, 2008, between accused Javellana of NABCOR and accused Luz of Gabaymasa on the implementation of accused Coquilla's PDAF-funded projects.
7. Accused Relevo signed Disbursement Voucher No. 08-07-2229.

Prosecution and Accused Encarnita Cristina P. Munsod.

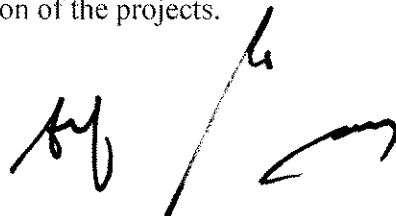
1. Whenever referred to orally or in writing by this Honorable Court and the prosecution and/or its witness, accused Munsod admits that she is the same person being referred to in the Informations.

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2. At the time material to the cases, accused Munsod was a public officer, being the former Human Resources and Administrative Manager of NABCOR.
3. At the time material to these cases, Accused Coquilla was a public officer, being the Congressman of the Lone District of Eastern Samar.
4. Accused Javellana and Villalarvo-Johnson were public officers at the time material to these cases, being the President and Chief Accountant of NABCOR, respectively.
5. NABCOR is the identified implementing agency of accused Coquilla's PDAF-funded projects subject of these cases.
6. A MOA was entered into on January 16, 2008, between accused Javellana of NABCOR and accused Luz of Gabaymasa on the implementation of accused Coquilla's PDAF-funded projects.
7. Accused Munsod signed Disbursement Voucher No. 08-01-00200.

Prosecution and Accused Margie T. Luz

1. As to the identities of the accused named in the Informations.
2. That accused Luz is the President of Gabaymasa in 2007 and 2008.
3. That NABCOR is the identified implementing agency.
4. That Gabaymasa is a non-government organization.
5. That Gabaymasa was the project partner chosen by accused Coquilla in the implementation of the livelihood projects in his district which were funded by the latter's PDAF allocation for the year 2007.
6. That accused Coquilla signed the undated Certificate of Acceptance and undated Acknowledgement Receipts.
7. A MOA was entered into on January 16, 2008 between accused Javellana of NABCOR and accused Luz of Gabaymasa on the implementation of accused Coquilla's PDAF-funded projects and one of the conditions imposed in the MOA was for Gabaymasa to coordinate with the office of accused Coquilla for the implementation of the projects.

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EVIDENCE FOR THE PROSECUTION

On October 2, 2019, the prosecution called witness **Marissa A. Santos ("Santos")**²⁵ to the stand to testify on direct examination through her Judicial Affidavit dated September 18, 2019.²⁶ The prosecution offered the testimony of witness Santos to establish the following facts: (1) that she is the Chief Administrative Officer of the Central Records Division, Department of Budget and Management ("DBM"); (2) that she has custody of the official documents on the record file of the Central Records Division, DBM, relevant to these cases; (3) that she has brought with her the official documents of said marked documents which were obtained from the record files of the Central Records Division; (4) that she will identify her Judicial Affidavit and the attached certified true copies of the official documents relative to SARO No. ROCS-07-07743 and its annexes; and (5) that she will also testify on other related matters necessary to establish the material allegations in the Informations in SB-17-CRM-0663 to 0666.

Witness Santos is the Chief Administrative Officer of the Central Records Division of the Department of Budget and Management ("DBM"). As the Chief Administrative Officer, she supervises the day-to-day operation of the Central Record Division and is assigned as the custodian and safe keeper of the DBM records (*i.e.* DMB issuances, documents, and records that are processed and issued by the DBM, such as Special Allotment Release Orders ("SARO"), Notice of Cash Allocation ("NCA"), Advice of NCA Issued ("ANCAI"), and basic agency requests). She testified having received a subpoena directing her to submit the certified true copies of the original SARO No. ROCS-07-07743 dated October 10, 2007, including its annexes issued to the Department of Agriculture ("DA"), its corresponding NCA, ANCAI, and other pertinent documents relative to the PDAF cases against accused Coquilla, et al. She submitted the certified true copies of the aforementioned documents to the Office of the Special Prosecutor ("*Exhibits TTTT to TTTT-7*").

On cross-examination, Witness Santos showed that the certified true copies of the SARO No. ROCS-07-07743 dated October 10, 2007, and its annexes, are the faithful reproduction of the originals which are in her custody.

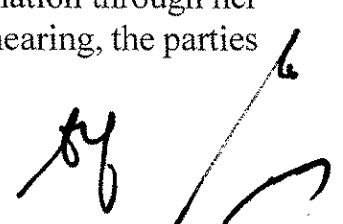
On October 3, 2019, the prosecution witness, **Lourdes B. Plechas ("Plechas")**,²⁷ took the stand to testify on direct examination through her Judicial Affidavit dated February 8, 2019.²⁸ During the hearing, the parties

²⁵ TSN dated October 2, 2019.

²⁶ Record, Vol. IV, pp. 140-155.

²⁷ TSN dated October 3, 2019.

²⁸ Record, Volume III, pp. 249-257.

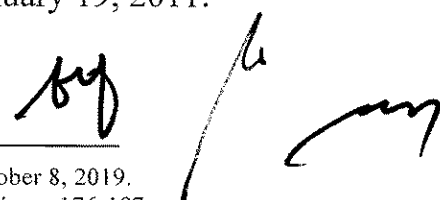
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dispensed with the presentation of witness Plechas and agreed to stipulate on the following: (1) that witness Plechas is the Officer-in-Charge, Records Division of the Department of Agriculture (“DA”), Central Office, in Diliman, Quezon City; (2) that as the Officer-in-Charge, her most important duties include releasing of acted documents from the Office of the Secretary and other DA officials, supervising the work of clerical staff, and authenticating records under her custody; (3) that she has custody of the original MOA between the DA and NABCOR dated December 28, 2007, a certified true copy of which was previously marked as *Exhibit “YYYY”*; (4) that in connection with her duties and functions, she certified a copy of the original MOA in compliance with a subpoena; (5) that she can identify her Judicial Affidavit and the attached certified true copy of the MOA; (6) that she has no personal knowledge of the contents of the MOA; and (7) that she has not participated in the execution of the same MOA.

On October 8, 2019, the prosecution called its witness, **Glicerio Kalaw (“Kalaw”)**,²⁹ to testify on direct examination through his Judicial Affidavit dated October 3, 2019.³⁰ During the hearing, the parties dispensed with the presentation of witness Kalaw and stipulated as to the purposes for which his testimony are being offered, as follows: (1) that he is the Supervising Administrative Officer of the Records Management Services of the General Services Office of the COA since January 4, 2011, up to present; (2) that as Supervising Administrative Officer, he acts as Assistant Service Chief who exercises authority over the staff and all activities of the Records Management Services and ensures that, in the absence of the Service Chief, the delegated tasks are accomplished; (3) that per Office Order No. 2018-742 dated August 28, 2018, he was designated as Officer-in-Charge (OIC) of the Records Management Services of the General Services Office of the COA effective September 3, 2018 up to September 28, 2018; (4) that in his capacity as the OIC of the Records Management Services, he certified and submitted to the Office of the Special Prosecutor, in compliance with the latter’s subpoena, Officer Orders which were previously marked as *Exhibits “SSSS” to “SSSS-3”*; (5) that he brought with him the originals of “SSSS” to “SSSS-3”; (6) that if he will be made to testify, he can identify his Judicial Affidavit, his signature thereon and the attached documents.

During the hearing on October 8, 2019, witness Kalaw clarified that the COA Office Order No. 2011-428 (*“Exhibit SSSS”*) is dated June 17, 2011, and not January 19, 2011.


²⁹ TSN dated October 8, 2019.
³⁰ Record, Vol. IV, pp. 176-187.

On October 29, 2019, the prosecution witness, **Abdelghani C. Sultan ("Sultan")**,³¹ was called to testify on direct examination through his Judicial Affidavit dated October 16, 2019.³² Witness Sultan is a State Auditor II of Team 2-National Agribusiness Corporation (NABCOR), Audit Group E-Natural Resources and Technology Group. His testimony was presented to establish the following: (1) that he is State Auditor II at the COA currently assigned to Team 2-NABCOR, Audit Group E-Natural Resources and Technology Group, Cluster 5, Corporate Government Sector; (2) that as State Auditor II, part of his duties and responsibilities is taking custody of official documents; (3) that he has custody of Audit Observation Memorandum No. 2008-7 dated July 28, 2009, and its supporting documents; (4) that he certified copy the Audit Observation Memorandum No. 2008-7 dated July 28, 2009, and its supporting documents; (5) that the documents he certified are the same as the marked exhibits; (6) that he brought with him the original of *Exhibit "HHHH"* including its attachments; (7) that he will identify his Judicial Affidavit and the attached certified true copies of Audit Observation Memorandum No. 2008-17 dated July 28, 2009, and its supporting documents.

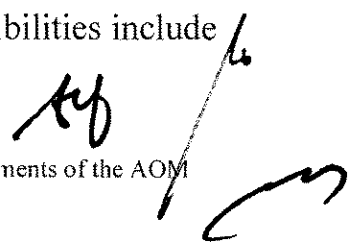
During the hearing on October 29, 2019, the parties entered into a stipulation on the following: (1) that witness Sultan will be able to identify his Judicial Affidavit and the signature appearing therein; (2) that his Judicial Affidavit will form part of his direct testimony; (3) that if the witness will be made to identify the documents attached or appended to his Judicial Affidavit, which are in his custody. However, the defense moved for a stipulation that only *Exhibit "HHHH" to "HHHH-4"* which is the Audit Observation Memorandum is an original copy, the rest are certified true copies on file (i.e. *Exhibits "IIII" to "IIII-10", "JJJJ", "KKKK", "LLLL", "MMMM", "NNNN", "OOOO", "PPPP", "QQQQ" to "QQQQ-9", "RRRR", "AAA" to "AAA-1", "BBB", "II", "T", "Z", "HHH", "GGG", "Y", "OO", "MMM", "III", "NNN", "I to I-1"*).³³ Thus, the prosecution moved to dispense with the hearing of the testimony of the witness. The parties also agreed to stipulate that witness Sultan has no personal knowledge as to the contents of the documents as well as the due execution of the said documents.

On November 6, 2019, the prosecution called into the stand, witness **Atty. RJ A. Bernal ("Bernal")**. However, the prosecution dispensed with his presentation after the defense stipulated on the following matters: (1) that he is the Chief Counsel of the Company Registration and Monitoring Department ("CRMD") of the Securities and Exchange Commission ("SEC"); (2) that as Chief Counsel, his duties and responsibilities include

³¹ TSN dated October 29, 2019.

³² Record, Vol. V, pp. 29-87.

³³ Witness Sultan testified in his Judicial Affidavit that the supporting documents of the AOM No. 2008-17 are certified true copies of the documents on file.

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checking the accuracy of information indicated in the articles of incorporation during the processing for incorporation and amendment purposes and performing other tasks that may be assigned by the Director of CRMD, such as complying with subpoena and testifying in Court on behalf of CRMD in relation to the documents filed with the SEC; (3) that, in compliance with the subpoena from the Office of the Special Prosecutor, he submitted to the latter certified true copies of relevant documents pre-marked as *Exhibits* “PP”, “QQ” to “QQ-10”, “SS”, “TT” to “TT-5”, “UU” to “UU-4”, “VV”, “WW”, “XX”, “YY” to “YY-5”, “ZZ”, to “ZZ-4”; (4) that, these exhibits are true and correct digital reproductions of the official file in custody of the SEC; and (5) that if the witness is presented can identify his Judicial Affidavit dated October 9, 2019,³⁴ his signature thereon, and the attached documents.³⁵

On November 21, 2019, the prosecution presented its witness, **Philip Daniel Mathews (“Mathews”)**,³⁶ who testified on direct examination through his Judicial Affidavit dated October 16, 2019.³⁷ The testimony of witness Mathews was offered to establish the following: (1) that he was an Associate Graft Investigation Officer I in the Field Investigation Office of the Office of the Ombudsman in 2012; (2) that one of his duties and responsibilities was to conduct ocular inspections, surveillance, and other modes of investigation to gather evidence in relation to cases assigned to him; (3) that in 2012, with the authority of his superiors, witness Mathews conducted an ocular inspection and surveillance of the premises of Marinduqueño’s Garden Shop and KP Enterprises in connection with the case concerning accused Coquilla’s PDAF; (4) that he took pictures of the premises of Marinduqueño’s Garden Shop and KP Enterprises and printed the same; (5) that during the ocular inspection and surveillance, he verified that Marinduqueño’s Garden Shop is an establishment that deals in landscaping services and is not a supplier of seedlings; (6) that he can identify his Judicial Affidavit as well as the photographs of the premises of Marinduqueño’s Garden Shop and KP Enterprises which he personally took and which are attached to his Judicial Affidavit; and (7) to prove that he can testify as to other related matters. The parties agreed to stipulate as to the offer numbers 1, 2, and 6.

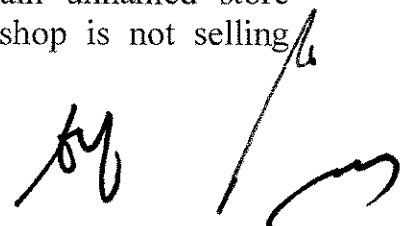
During the cross-examination, witness Mathews testified that upon conducting the ocular inspection on April 17, 2012, his team took pictures of Marinduqueño’s Garden Shop’s establishment, signboard, and signages, and then posed as buyers of the subject seedlings to inquire whether the seedlings were indeed available. However, a certain unnamed store attendant of the shop mentioned to him that the shop is not selling

³⁴ Record, Vol. IV, pp. 216-262.

³⁵ Record, Vol. V, pp. 541-542.

³⁶ TSN dated November 21, 2019.

³⁷ Record, Vol. V, pp. 304-320.

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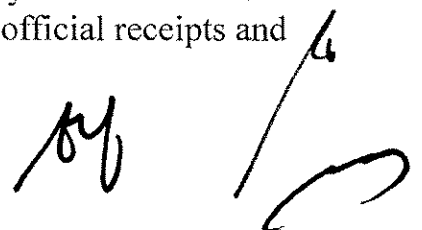
seedlings. As for KP Enterprises, they were not able to talk with anybody in the shop concerning its business.

Witness Matthews also confirmed that they used the 2007 sales invoices as the basis for the addresses of the ocular inspection conducted on April 17, 2002, of the Marinduqueño's Garden Shop and KP Enterprises. There were no other documents to prove the nature of business of both Marinduqueños Garden Shop and KP Enterprises back in 2007. Witness Matthews admitted that they were not able to check the business permit or SEC registration of Marinduqueño's Garden Shop and KP Enterprises. They relied on the Certification issued by the DTI that both shops are not duly registered.

On re-direct, witness Matthews testified that both Marinduqueño's Garden Shop and KP Enterprises are sole proprietorships, hence not registered with the SEC. It was also revealed that the sales invoices are part of the liquidation documents submitted by the LGU. On the question posed by the Court, witness Matthews testified that the sales invoices indicate only one address for Marinduqueño's Garden Shop and one address for KP Enterprises.

On November 26, 2019, the prosecution presented its witness, **Gegie Fietas ("Fietas")**,³⁸ who testified on direct examination through her Judicial Affidavit dated October 16, 2019.³⁹ The testimony of witness Fietas was offered to establish the following: (1) that in 2007, witness Fietas was the proprietor of Marinduqueño's Garden Shop; (2) that Marinduqueño's Garden Shop was selling only ornamental plants and did not sell any fruit-bearing seedlings; (3) that Marinduqueño's Garden Shop never transacted with GABAYMASA; (4) that she or any representative from Marinduqueño's Garden Shop did not receive the Purchase Order of GABAYMASA dated December 15, 2007 previously marked as *Exhibit "Z"*; (5) that the signature above the name of Fietas appearing on the left bottom portion of the purchase order does not belong to her; (6) that Marinduqueño's Garden Shop did not issue to GABAYMASA the Official Receipt No. 1026 (*"Exhibit EEE"*), Official Receipt No. 1029 (*"Exhibit FFF"*), Sales Invoice No. 1035 (*"Exhibit AA"*), Delivery Receipt dated December 27, 2007 (*"Exhibit BB"*), and Undated Price Quotation of seedlings (*"Exhibit DDD"*); (7) that Marinduqueño's Garden Shop had no employee with the name Danilo Oscoro who signed the Delivery Receipt dated December 27, 2007 (*"Exhibit BB"*); (8) that sometime in December 2010, she received a confirmation letter from the COA with a reply letter; (9) that she submitted a handwritten letter and the reply letter to the COA denying that Marinduqueños Garden Shop had issued official receipts and

³⁸ TSN dated November 26, 2019
³⁹ Record, Vol. V, pp. 326-368.



invoices or delivered goods to GABAYMASA; (10) that she executed a sworn letter to the Special Audits Office, Special Services Sector, COA, requesting for exclusion of liability as stated in SAO Notice of Disallowance dated November 24, 2014; (11) that she will identify her Judicial Affidavit, her signature thereon and the attached documents; and (12) that she will testify on other matters relevant to the material allegation in the Informations.

During the hearing, witness Fietas produced the original copies of the Application for Sole Proprietorship, Certificate of Business Name Registration, Business Permit of Marinduqueño's Garden Shop, Official Receipts, Letter addressed to Ms. Gloria Silverio dated June 1, 2015, and her identification card, all of which are made Exhibits to her Judicial Affidavit.

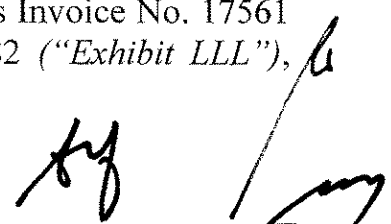
On cross-examination, witness Fietas testified that the Marinduqueño's Garden Shop in 2007 is the same shop that was photographed in 2012. It was also stipulated by the parties that witness Fietas has no knowledge as to the contents of the sales invoices or receipts that were allegedly delivered by GABAYMASA. She testified that her husband and cousin are also helping her in managing the store and that she would not know if her husband had a transaction with GABAYMASA and that the receipts in question are not legitimate receipts of the shop.

On clarification made by the Court, witness Fietas testified that neither she nor her husband made a transaction with a person named Danilo Oscoro or with anyone amounting to Php4,110,875.00. Moreover, she is the only person in the shop who is authorized to issue receipts and that the invoices or receipts in question are fake.

On November 27, 2019, the prosecution witness, **Jerry Aurellano** ("**Aurellano**"),⁴⁰ was called to the witness stand to testify on direct examination through his Judicial Affidavit dated October 16, 2019.⁴¹ The testimony of witness Aurellano was offered to establish the following facts: (1) that in 2007, he was the proprietor of KP Enterprises; (2) that KP Enterprises has been engaged in selling automotive batteries and automotive tires since 1992; (3) that he or any representative from KP Enterprises did not receive the Purchase Order of GABAYMASA dated December 11, 2007 ("*Exhibit Y*"); (4) that the signature beside the handwritten words "KP Enterprises" appearing on the upper portion of the Purchase Order does not belong to him or any of his employees; (5) that KP Enterprises did not issue to GABAYMASA Sales Invoice No. 17561 ("*Exhibit FF*"), undated Official Receipt No. 16582 ("*Exhibit LLL*"),

⁴⁰ TSN dated November 27, 2019.

⁴¹ Record, Vol. V, pp. 369-516.



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Sales Invoice No. 17550 (*Exhibit JJJ*), Official Receipt No. 16650 (*Exhibit KKK*), unnumbered Delivery Receipt dated December 7, 2007 (*Exhibit GG*), and undated Price Quotation of instructional materials (*Exhibit III*); (6) that sometime in December 2010, he received a confirmation letter from the COA enclosed with a reply letter, (7) that he sent the reply letter to the COA denying that KP Enterprises had issued official receipts and sales invoices and had delivered goods or rendered any service to GABAYMASA (*Exhibit IIII*); (8) that KP Enterprises never transacted with GABAYMASA.

Witness Aurellano is the proprietor of KP Enterprises. During the hearing, witness Aurellano testified that the DTI Certificates of Business Name and Registration of KP Enterprises (*Exhibits UUUU to UUUU-1*) are photocopies and that he was not able to present the originals thereof on the ground that he cannot locate them anymore.

On cross-examination, witness Aurellano testified that KP Enterprises has been existing since 1992 and that it has a business permit and BIR Registration. KP Enterprises has an official printer for its official receipts and invoices. The parties stipulated that witness Aurellano has no knowledge as to the preparation of the official, receipts, sales invoices, and delivery receipts. The shop has four (4) employees consisting of witness Aurellano, his son, one *tireman*, and one vulcanizer. The shop is located at the same address although the name and the number of the location changed because of local ordinance and renumbering made by the barangay. Other than selling batteries and tires, the shop is not engaged in any other businesses.

Witness Aurellano likewise testified that he doesn't know any person by the name of Jerry Aurello and Evangeline Villa. During the cross-examination, witness Aurellano testified that he only produced the Sales Invoice issued by KP Enterprises for the year 2008 to 2009 (*Exhibits ZZZZ and series*) and from November 26, 2010, to December 9, 2010 (*Exhibit VVVV and series*) on the ground that he cannot locate any invoice for the year 2007. The witness enumerated the differences between the sales invoice that the shop issued in 2010 and the sales invoice attached to the COA letter dated 2007. When confronted with the Sales Invoice marked as *Exhibit FF*, it was noted that it contains the name "Jerry Aurellano" which is the same name appearing in the Sales Invoice that the shop issued in 2010.

On re-direct, witness Aurello clarified that the sales invoice for the year 2007 is the same for the year 2010. On clarification made by the Court, witness Aurello mentioned that he only learned about GABAYMASA from the prosecutor.

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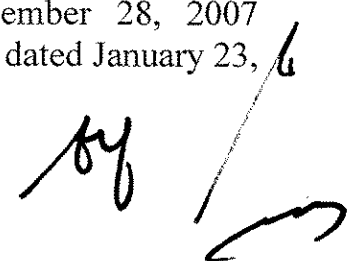
On January 14, 2020, the prosecution presented its witness, **Bella G. Tesorero** ("**Tesorero**"),⁴² who testified on direct examination through her Judicial Affidavit dated October 30, 2019.⁴³ The testimony of witness Tesorero was offered to establish the following facts: (1) that she is a State Auditor III of the COA; (2) that she was previously a State Auditor II for thirteen (13) years assigned at the Office of the Cluster Director and COA-Philippine Fisheries Development Authority (PFDA); (3) that through COA Office Order No. 2009-246 dated April 22, 2009, she was designated as member of an audit team to conduct audit of the liquidation of cash advances granted to the NABCOR by the DA for calendar years 2008 and 2007; (4) that the audit covered the fund transferred by NABCOR to GABAYMASA in the amount of Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) out of the Five Million Pesos (Php5,000,000.00) PDAF allocated to accused Coquilla; (5) that the transfer to GABAYMASA was not in accordance with COA Circular No. 2007-001 dated October 25, 2007; (6) that then accused Coquilla unilaterally chose and indorsed GABAYMASA, without the benefit of public bidding, to implement the livelihood projects in the Lone District of Eastern Samar funded by his PFAD allocation; (7) that GABAYMASA was unqualified to undertake the livelihood projects in the Lone District of Eastern Samar; (8) That NABCOR and GABAYMASA entered into a MOA on the purported implementation of Cong. Coquilla's PDAF-funded projects; (9) that the audit team's observations or findings were embodied in an Audit Observation Memorandum ("AOM") No. 2008-17 dated July 28, 2009, marked as *Exhibits "HHHH" to "HHHH-4"* of the prosecution; (10) that she will identify her Judicial Affidavit, her signature thereon and the attached documents; and (11) that she will testify on the other matters relevant to the material allegation in the Information in SB-17-CRM-0063 to 0666. The parties agreed to stipulate the offer numbers 1, 2, 3, 6, 8, 9, and 10.

Witness Tesorero is a State Auditor III of the COA. She was previously a State Auditor II for thirteen (13) years assigned at the Office of the Cluster Director and COA-Philippine Fisheries Development Authority ("PFDA"). Through COA Office Order No. 2009-246 dated April 22, 2009 ("*Exhibit SSSS-4*"), she was designated as a member of an audit team to conduct an audit of the liquidation of cash advances granted to the NABCOR by the DA for calendar years 2008 and 2007.

Witness Tesorero also identified the Certified True Copies of Disbursement Voucher No. 07-12-6779 dated December 28, 2007 ("*Exhibit H*") Disbursement Voucher No. 08-01-00200 dated January 23,

⁴² TSN dated January 14, 2020.

⁴³ Record, Vol. V, pp. 176-269.

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2008 (*"Exhibit N"*), as well as their supporting documents which were gathered during the course of the audit (*i.e. Exhibits J, M to M-2, O, P, Q, R, S, Y, Z, AA, BB, FF, GG, HH, H, JJ, KK, AAA to AAA-1, BBB, EEE, FFF, JJJ, KKK, LLL, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, VVV-1, VVV-2, WWW, WWW-1, WWW-2, XXX, XXX-1, XXX-2, YYY, YYY-1, ZZZ, ZZZ-1, AAAA, AAAA-1, BBBB, BBBB-1, CCCC, DDDD, DDDD-1, EEEE, EEEE-1, QQQQ to QQQQ-9, AAAAA, BBBB, DDDDD, DDDDD-1, EEEEE to EEEEE-4*). The foregoing Exhibits, except for the Exhibits *"AAA" to "AAA-1"* (Certified True Copy from Photocopy of Project Proposal with Project Proponent Cong. Coquilla and Total Budget Requested), *Exhibit "BBB"* (Certified True Copy from Photocopy of Detailed Budget for the project, Exhibits *"QQQQ" to "QQQQ-9"* (Certified True Copy from Photocopy on File of the Annual Audited Financial Statement of GABAYMASA as of December 31, 2007), and Exhibits *"DDDDD"⁴⁴ to DDDDD-1* (Certified True Copy of Authority issued by accused Luz in favor of accused Vizcarra to claim the check on behalf of GABAYMASA), were compared with the originals, and after comparison, the defense stipulated that these Exhibits are faithful reproduction of the originals.

Under Audit Observation No. 1.6., the team observed that the accused violated the provisions of COA Circular No. 2007-001, which provides for the guidelines for granting, utilization, accounting, and auditing of the funds released to Non-Government Organizations (NGOs) or People's Organizations (POs). The team noted that the following requirements under the COA Circular were not observed: (1) that checks issued by the government organization covering the release of the fund to the NGO shall be crossed for deposit to its savings or current accounts; (2) that the NGO shall be selected through public bidding; (3) that the NGO must be based in the community where the project shall be implemented; (4) that the NGO must submit audited financial reports for three years preceding the date of project implementation, as well as the sources and details of proponent's equity participation in the project; (5) that the Project Proposal must be approved and signed by its officers; (6) that the MOA covering the project must embody the terms of reference; (7) that an inspection report must be submitted by the NGO within sixty (60) days after the completion of the project; and (8) that the NGO must conduct simple bidding or canvass to ensure the best terms and quality of the purchase.

The team noted that GABAYMASA did not submit an inspection report within the 60-days period. Moreover, the team found no documents

⁴⁴ Certified True Copy of Authority issued by accused Luz in favor of accused Vizcarra to claim the check on behalf of GABAYMASA was compared with the original and the defense stipulated that it is the faithful reproduction of the original as part of the direct testimony of witness Alfarras in her Judicial Affidavit dated November 19, 2019.

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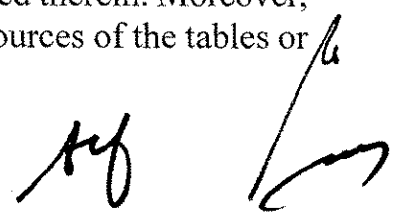
pertaining to the bidding or canvass for the procurement of various seedlings and instructional materials. Under the COA Circular, in the procurement of any type of assets out of government, the NGO must conduct simple bidding or canvass to ensure the best terms and quality of the purchase. In addition, the audit team observed that there was no list of recipients of the various livelihood projects. What was submitted was only a list of municipalities and barangays with only one person's signature per barangay. Finally, the team found that GABAYMASA did not provide an equity equivalent to twenty percent (20%) of the total project cost. These observations and findings are embodied in the AOM No. 2008-17 dated July 28, 2009, which was addressed to accused Javellana, President of NABCOR (*"Exhibits HHHH and series"*).

In response to the AOM, the management of NABCOR submitted the following comments: (1) while the NGO may not have been locally based in the area where the project was implemented, proper coordination was observed since the project was a tripartite project with the participation of the legislator, the NGO, and the NABCOR; (2) as to the non-implementation of the COA Circular, it justified that the audit of CY 2007 was concluded in October 2008 and followed by the special audit in the same month; (3) the management also submitted sources and details of equity participation of the NGO in the implementation of the project, additional liquidation documents made by the NGO, and the terms of reference; and (4) that it also committed to complying with the recommendation that the checks shall be crossed for the succeeding releases to the NGO. These comments are embodied in the Annual Audit Report for the year ended December 31, 2008 (*"Exhibits AAAAA and series"*).

When confronted with the COA Circular No. 2007-001, witness Tesorero testified that under the said circular, both the Government Organization and the Non-Government Organization involved must comply with the provisions of the MOA entered into by and between them. Moreover, both the government organization and the non-government organization must ensure that the provisions of the MOA conform with the circular.

On recross-examination on January 15, 2020,⁴⁵ witness Tesorero testified that the Annual Audit Report, as mentioned in her Judicial Affidavit, is a summary of the PDAF audit that the COA conducted for the year 2008. Thus, the particular observation or comments of the COA on the PDAF of accused Coquilla is not particularly stated therein. Moreover, considering that the Report is only a summary, the sources of the tables or

⁴⁵ TSN dated January 15, 2020.



information, as well as the management comments, were not produced or attached to the said Report.

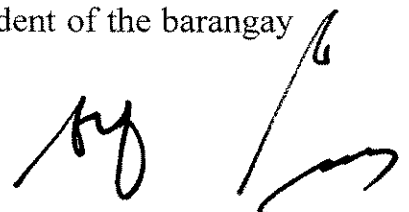
On questions propounded by the Court, witness Tesorero testified that accused Coquilla should be indicted for the offense because he unilaterally chose and endorsed GABAYMASA to be the project partner in the implementation of the PDAF-funded livelihood project. According to her, the selection of the NGO as the project partner should have undergone bidding. NABCOR is a subsidiary of the Human Settlements and Development Corporation (“HSDC”), a government corporation. Had there been no NGO involved in the implementation of the accused Coquilla’s PDAF-funded livelihood project, he should not have been indicted. On further clarification, witness Tesorero agreed with the Court that the mere fact that the accused Coquilla’s PDAF-funded livelihood project was implemented by GABAYMSA, an NGO, is already a violation of the GAA for the year 2007, absent any law or ordinance appropriating funds for the NGO. As for accused Javellana, the witness alleged that his act of entering into a MOA with Gabaymasa is already an express violation of the GAA for the year 2007. Moreover, in releasing the funds to GABAYMASA, NABCOR committed violations of the COA Circular No. 2007-001.

On January 15, 2020, the prosecution presented its witness, **Inigo Padullo (“Padullo”)**,⁴⁶ who testified on direct examination through his Judicial Affidavit dated October 25, 2019.⁴⁷ The testimony of witness Padullo was offered to establish the following facts: (1) that he was the Punong Barangay of Barangay Taytay, Guiuan, Eastern Samar, from 2007 until 2010, from 2013 up to 2018; (2) that when he was the Punong Barangay in 2007 and 2008, Barangay Taytay had not received any instructional materials and seedling from GABAYMASA in relation to the PDAF allotted to the Lone District of Eastern Samar; (3) that in the years 2007 and 2008, there was no Elena Adigue in Taytay, Guiuan; (4) that he will identify his Judicial Affidavit and his signature thereon; (5) that she will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

Witness Padullo was the Punong Barangay of Barangay Taytay, Guiuan, Eastern Samar, from 2007 until 2010, from 2013 up to 2018. On cross-examination, witness Padullo testified that during his term his Barangay did not receive any projects from accused Coquilla, more particularly agricultural projects. Moreover, witness Padullo mentioned that no person by the name of Elena Adigue is a resident of the barangay

⁴⁶ TSN dated January 15, 2020.

⁴⁷ Record, Vol. V, pp. 695-702.



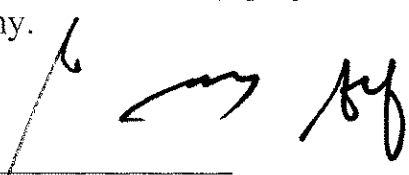
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on the date material to the cases, contrary to the undated Certificate of Acceptance (*"Exhibit HH"*).

When clarified by the Court, witness Padullo explained that any project by the government which is intended for any of his barangay constituents must be coursed through his Office, as the Punong Barangay. Moreover, witness Padullo explained that agricultural projects, specifically involving fruit-bearing seedlings, would most likely be rejected by his Barangay considering that the land, on which the Barangay is situated, is salty. The Barangay kept a record of projects that came in from NGOs from the year 2007 to 2008. Upon his verification, there was no mention that the Barangay was a recipient of fruit-bearing seedlings or instructional materials coming from any NGO from the year 2007 to 2008.

On January 15, 2020, the prosecution called **Roberto Padriquez** (**"Padriquez"**)⁴⁸ to the witness stand to testify on direct examination through his Judicial Affidavit dated October 25, 2019.⁴⁹ The testimony of witness Padriquez was offered to establish the following: (1) that he is the Punong Barangay of Barangay Campoyong, Guiuan, Eastern Samar from 2010 up to present; (2) that he was Barangay Kagawad of Barangay Campoyong, Guiuan, Eastern Samar from 2002 until 2010; (3) that there is no Barangay Campoyog in Guiuan; (4) that when he has Barangay Kagawad in 2007 and 2008, Barangay Campoyong had not received any instructional materials and seedlings from GABAYMASA in relation to the PDAF allotted to the Lone District of Eastern Samar; (5) that in years 2007 and 2008, there was no Rosendo Balagbis in Campoyong, Guiuan; (6) that he will identify his Judicial Affidavit and his signature thereon; and (7) that he will testify on other matters relevant to the material allegations in the Information in SB-17-CRM-0663 to 0666.

Witness Roberto Padriquez (**"Padriquez"**) is the Punong Barangay of Barangay Campoyong, Guiuan, Eastern Samar from 2010 up to present. Prior to being a Punong Barangay, witness Padriquez was Barangay Kagawad of Barangay Campoyong, Guiuan, Eastern Samar from 2002 until 2010. On cross-examination, witness Padriquez testified that no person by the name of Rosendo Balagwis resided or is residing in the Barangay contrary to the undated Certificate of Acceptance (*"Exhibit HH"*). The Barangay did not receive any projects or assistance from accused Coquilla. As the Barangay Kagawad from 2007 to 2008, he is authorized to receive any projects from NGOs but his Barangay did not receive any.



⁴⁸ TSM dated January 15, 2020.
⁴⁹ Record, Vol. V, pp. 670-678.

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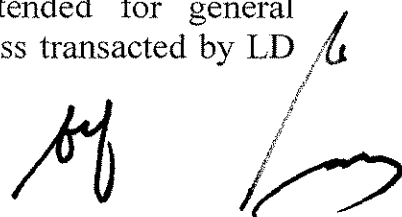
On redirect, witness Padriquez testified that he conducted a verification regarding a certain person by the name of Rosendo Balagwis who allegedly received the seedlings and instructional materials. According to him, only the barangay officials are authorized to receive donations from any NGO.

On January 22, 2020, the prosecution presented its witness, **Gemafiel R. Gaspay ("Gaspay")**,⁵⁰ who testified on direct examination through his Judicial Affidavit dated November 6, 2019.⁵¹ The testimony of witness Gaspay was offered to establish the following: (1) that she is the Licensing Officer III of the Business Permits and Licenses Division, Office of the City Mayor, Tacloban City, since July 12, 2018 up to present; (2) that as Licensing Officer III, her duties and responsibilities include evaluating requirements of business permit applicants, inspecting business establishments around the City to determine those who have no permit and to validate complaints, issuing certifications, upon proper request, and performing other related works; (3) that in relation to her function as Licensing Officer III, she submitted to the Office of the Special Prosecutor a Certification dated October 14, 2019, in compliance with the latter's subpoena; (4) that the name Lilia Dapuran with business name of LD Marketing & Services located at Barangay 95, Caibaan, Tacloban City is a registered business proprietor and business establishment since 2015; (5) that there is no business name Lila Dapuran Marketing registered in the Business Permits and Licenses Division, Tacloban City; and (6) that she will identify her Judicial Affidavit, her signature thereon, and the Certification she submitted to the Office of the Special Prosecutor ("*Exhibit BBBBBB*").

Witness Gaspay is the Licensing Officer III of the Business Permits and Licenses Division, Office of the City Mayor, Tacloban City, from July 12, 2018, to the present. During the hearing conducted on January 22, 2020, witness Gaspay testified on her Judicial Affidavit. On cross-examination, she confirmed that some business permits were affected or destroyed during typhoon Yolanda in 2013.

Upon clarificatory question propounded by the Court, witness Gaspay confirmed the following: that there is no business name Lila Dapuran Marketing registered in the Business Permits and Licenses Division, Tacloban City, contrary to the Price Quotations ("*Exhibits U and V*") submitted by GABAYMASA; that LD Marketing & Services was only registered on January 15, 2015; that based on the application for business registration, LD Marketing & Services was intended for general merchandise and manpower service; that any business transacted by LD

⁵⁰ TSN, January 22, 2020.
⁵¹ Record, Vol. V, pp. 789-795.



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Marketing & Services prior to its registration in 2015 is deemed illegal based on existing ordinances.

On January 28, 2020, the prosecution presented witness **Menardo Felipe, Jr. ("Felipe")**.⁵² Witness Felipe is the Municipal Government Department Head I assigned to the Business Permits and Licensing Office (BPLO) of San Mateo, Rizal. During the hearing, the Court noted the defense's objection to the presentation of witness Felipe due to the lack of Judicial Affidavit. The parties stipulated the following: that witness Felipe is the Municipal Government Department Head I assigned to the Business Permits and Licensing Office (BPLO) of San Mateo, Rizal; that in such capacity, his primary duties include the processing of business permits and licenses, safekeeping of the copies of business permits and supporting documents, and issue certifications with regard to the same; that in relation to his functions, he received a subpoena from the Ombudsman and issued the certification in compliance with the same ("*Exhibit BBBBBB-1*"); that based on official records of the BPLO of San Mateo, Rizal there is no registered business establishment in the name of MF MORES ENTERPRISES owned by Josephine Mores; and that he can identify certification with he issued on October 15, 2019, marked as Exhibit "B-1".

During the hearing, witness Felipe was able to present the original Certification of the Certification dated October 15, 2019 ("*Exhibit BBBBBB-1*").

On January 29, 2020, the prosecution called into the witness stand, **Ma. Liza H. Africa ("Africa")**.⁵³ The presentation of witness Africa was dispensed with after the parties stipulated the following: (1) that witness Africa is the Officer-in-Charge of the Records and Statistics Division of the Business Permits and Licensing Department of Quezon City; and (2) that she can identify the Certification dated October 9, 2019 ("*Exhibit AAAAAA-2*"), together with the attached documents: Business Permit ("*Exhibit AAAAAA-2-A*"), Barangay Certification or Clearance ("*Exhibit AAAAAA-2-B*"), Official Receipts ("*Exhibit AAAAAA-2-C*"), and Fire Safety Certificate ("*Exhibit AAAAAA-2-D*").

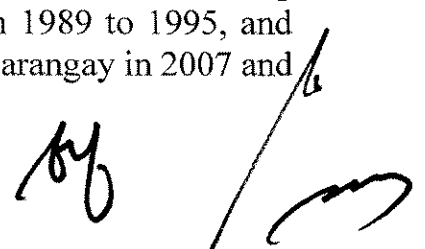
On February 5, 2020, the prosecution presented its witness **Teodoro Remojo ("Remojo")**,⁵⁴ who testified on direct examination through his Judicial Affidavit dated November 6, 2019.⁵⁵ The testimony of witness Remojo was offered to establish the following: (1) that he was the Punong Barangay of Barangay Victory, Eastern Samar, from 1989 to 1995, and from 1997 until 2010; (2) that when he was Punong Barangay in 2007 and

⁵² TSN dated January 28, 2020.

⁵³ Record, Vol. V, pp. 821-822.

⁵⁴ TSN dated February 5, 2020.

⁵⁵ Record, Vol. V, pp. 711-718.



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2008, Barangay Victory had not received any instructional materials and seedlings from GABAYMASA in relation to the PDAF allotted to the Lone District of Eastern Samar; (3) that in the year 2007 and 2008, there was no Juan Docena in Victory, Guiuan contrary to the undated Certificate of Acceptance ("*Exhibit HH*"); (4) that he will identify his Judicial Affidavit and his signature thereon; and (5) that he will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

On cross-examination, witness Remojo testified that there is no such person by the name of Juan Docena who resided or is residing in Barangay Victory Island based on the Barangay Profile, which was lost in 2013. Witness Remojo was not able to verify the name Juan Docena in the voter's list, with the civil registrar, or with other barangay. According to him, he would know everyone in the barangay considering that the barangay is just small and most of the residents are his relatives. Moreover, he testified that the barangay did not receive any fruit-bearing seedlings.

On clarification made by the Court, witness Remojo testified that he is certain that a person in the name of Juan Docena is not residing in the Barangay considering that it is just small and that most of its residents are his relatives. Moreover, it was the practice of the barangay to keep a logbook of the residents and their visitors for purposes of record-keeping. However, the said logbook was lost due to typhoon Yolanda in 2013. As for the seedlings, witness Remojo testified that it is impossible for the Barangay to receive the fruit-bearing seedlings because the main source of livelihood is fishing and not farming. The only fruit-bearing tree which survives on the island barangay is the coconut tree.

On February 5, 2020, the prosecution called into the stand, witness **Candida L. Opriasa ("Opriasa")**,⁵⁶ who testified on direct examination through her Judicial Affidavit dated October 25, 2019.⁵⁷ The testimony of witness Opriasa was offered to prove the following: (1) that she was the Punong Barangay of Barangay Hagna, Guiuan, Eastern Samar, from 2002 until 2013; (2) that when she was Punong Barangay in 2007 and 2008, Barangay Hagna had not received any instructional materials and seedlings from GABAYMASA in relation to the PDAF allocated to the Lone District of Eastern Samar; (3) that in the year 2007 and 2008, there was no Junjun Cebros in Hagna, Guiuan contrary to the undated Certificate of Acceptance ("*Exhibit HH*"); (4) that she will identify her Judicial Affidavit and her signature thereon; (5) that she will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

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TSN dated February 5, 2020

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Record, Vol. V, pp. 687-694.

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On cross-examination, witness Opriasa testified that based on her personal knowledge no person by the name Junjun Cebreros resided or is residing in the barangay. Likewise, she testified that she cannot recall that the barangay received any instructional materials and fruit-bearing seedlings from any NGOs. Moreover, it is the Punong Barangay, such as herself, who is mandated to receive any donations from any NGOs.

On clarification made by the Court, witness Opriasa testified that she is certain that a person by the name of Junjun Cebreros is not residing in the Barangay considering that it is just small and that most of its residents are her relatives.

On February 19, 2020, the prosecution presented its witness, **Rodulfo N. Lacasa ("Lacasa")**,⁵⁸ who testified on direct examination through his Judicial Affidavit dated October 26, 2019.⁵⁹ The testimony of witness Lacasa was offered in order to prove the following: (1) that he was the Punong Barangay of Barangay Bulawan, Eastern Samar, from 2007 until 2010; (2) that when he was Punong Barangay in 2007 and 2008, Barangay Bulawan had not received any instructional materials and seedlings from GABAYMASA in relation to the PDAF allotted to the Lone District of Eastern Samar; (3) that in the year 2007 and 2008, there was no Behel Loyola in Bulawan, Maslog contrary to the undated Certificate of Acceptance ("*Exhibit HH*"); (4) that he will identify his Judicial Affidavit and his signature thereon; and (5) that he will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

On cross-examination, witness Lacasa testified that he does not know any person by the name of Behel Loyola who resided or is residing in Barangay Bulawan based on the recent Barangay Profile which was prepared by the barangay secretary. According to him, the Barangay Profile for the years 2007 to 2008 can no longer be located. Aside from the recent Barangay Profile, he knows that no Behel Loyola resided or is residing in Barangay Bulawan because most of the residents are his relatives and during election time, he conducts a house-to-house campaign. However, he admitted that he was not able to verify the name of Behel Loyola with the COMELEC, Civil Registrar, or any government office.

Moreover, witness Lacasa mentioned that in 2007 and 2008, Barangay Bulawan did not receive any PDAF-funded livelihood projects from accused Coquilla. However, he admitted that the barangay did not conduct any surveys between 2007 to 2010 among the constituents to confirm whether or not they personally received any livelihood projects or any fruit-bearing seedlings.

⁵⁸ TSN dated February 19, 2020
⁵⁹ Record, Vol. V. pp. 703-710.



On February 20, 2020, the prosecution presented its witness, **Paquito Y. Naves ("Naves")**,⁶⁰ who testified on direct examination through his Judicial Affidavit dated October 26, 2019.⁶¹ The testimony of witness Naves was offered to prove the following: (1) that he was the Punong Barangay of Barangay Malobago, Maslog, Eastern Samar, from 2007 until 2010; (2) that when he was Punong Barangay in 2007 and 2008, Barangay Malobago had not received any instructional materials and seedlings from Gabaymasa Development Foundation, Inc. in relation to the PDAF allotted to the Lone District Eastern Samar; (3) that in the year 2007 and 2008, there was no Julio Acayen in Malobago, Maslog contrary to the undated Certificate of Acceptance ("*Exhibit HH*"); (4) that he will identify his Judicial Affidavit and his signature thereon; and (5) that he will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

On cross-examination, witness Naves testified that he did not know any person by the name of Julio Acayen who resided or is residing in Barangay Malobago based on his personal knowledge and the barangay profile in 2007 which was lost in 2013. He checked the name of Julio Acayen with the COMELEC Voter's List and verified that such a name is not included therein. However, he did not verify the name with the Local Civil Registrar.

Moreover, witness Naves mentioned that in 2007 and 2008, Barangay Malobago did not receive any livelihood projects from the PDAF of accused Coquilla. However, he did not conduct any survey from 2007 to 2008 as to whether any of his constituents personally received any fruit-bearing seedlings or instructional materials from any NGO.

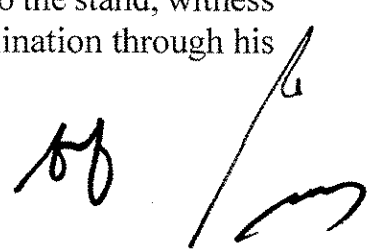
The counsel for accused Luz, Atty. Tajon made a manifestation that they have satisfied their objective of pointing out that witness Naves is not correct in saying that a Julio Acayen is not a resident of Barangay Malobago, when in truth and in fact, according to accused Coquilla, he was a recipient of a livelihood project and he signed. On the other hand, the prosecution manifested that Atty. Tajon's manifestation is misleading on the ground that the evidence was being presented precisely to prove that all the attachments to the liquidation and disbursement forms were falsified. The Court duly noted both manifestations.

On February 20, 2020, the prosecution called onto the stand, witness **Rafael Rebato ("Rebato")**,⁶² to testify on direct examination through his

⁶⁰ TSN dated February 20, 2020.

⁶¹ Record, Vol. V. pp. 679-686.

⁶² *Id.*



Judicial Affidavit dated October 26, 2019.⁶³ The testimony of witness Rebato was offered to prove the following: (1) that he was the Punong Barangay of Barangay San Miguel, Maslog, Eastern Samar, from 2007 until 2010; (2) that when he was Punong Barangay in 2007 and 2008, Barangay San Miguel had not received any instructional materials and seedlings from Gabaymasa in relation to the PDAF allotted to the Lone District of Eastern Samar; (3) that he will identify his Judicial Affidavit and his signature thereon; and (4) that he will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

His testimony was dispensed with after the parties stipulate on the following: (1) he was the Punong Barangay of Barangay San Miguel, Maslog, Eastern Samar, from 2007 until 2010; (2) he will identify his sworn Judicial Affidavit and his signature thereon; and (3) that the questions on cross-examination propounded by the counsel for the defense on witness Naves and the answers he gave will also be the same questions asked and the answers that will be given by witness Rebato.

On February 26, 2020, the prosecution presented its last witness, **Joan Agnes N. Alfafaras ("Alfafaras")**,⁶⁴ who testified on direct examination through her Judicial Affidavit dated November 19, 2019.⁶⁵ The testimony of witness Alfafaras was offered to prove the following: (1) that she is State Auditor IV of the COA assigned at the Special Audits Office (SAO); (2) that as State Auditor, she participates in the conduct of special audits of various government projects and programs, such as government wide performance audit, sectoral performance audit and other special audits; (3) that by virtue of COA Office Order No. 2010-309 dated May 13, 2010, a government-wide performance audit of PDAFs was conducted where she was designated as Co-Team Leader; (4) that the audit team's observations/findings were embodied in SAO Report No. 2012-03 ("*Exhibit XXXX*"); (5) that the Audit Team issued Notice of Disallowance No.: DA-2014-019-PDAF (07-09) and N.: NAB-2014-024-PDAF (07-09) ("*Exhibits WWWW*" and "*WWW-1*", respectively); (6) that the release of Five Million Pesos (Php5,000,000.00) PDAF allocated to Congressman Coquilla by the DBM to the DA has no basis and is in violation of DBM National Budget Circular ("NBC") No. 476, and so, the transfer of the same Five Million Pesos (Php5,000,000.00) by the DA to NABCOR is likewise illegal and in violation of the General Appropriations Act ("GAA"); (7) that the transfer of Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) by NABCOR to GABAYMASA has no legal basis and is in violation of the GAA, Government Procurement

⁶³ Record, Vol. V, pp. 719-726.

⁶⁴ TSN dated February 26, 2020.

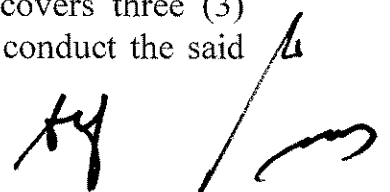
⁶⁵ Record, Vol. VI, pp. 5-633.



Policy Board (“GPPB”) Resolution No. 12-2007, IRR-A of R.A. No. 9184 (“Government Procurement Act”) and COA Circular No. 2007-001; (8) that NABCOR charged administrative costs in the amount equivalent to 5% of the Five Million Pesos (Php5,000,000.00) or One Hundred Fifty Thousand Pesos (Php150,000.00); (9) that GABAYMASA was selected merely upon the request of Congressman Coquilla and not through competitive bidding or negotiated procurement as required under GPPB Resolution No. 12-2007, in relation to the IRR-A of R.A. No. 9184; (10) that GABAYMASA was not qualified to implement the alleged livelihood projects; (11) that the supposed implementation of livelihood projects using the PDAF allocation of Congressman Coquilla for the calendar year 2007 was questionable; (12) that she will identify her Judicial Affidavit, her signature thereon; and (13) that she will testify on other matters relevant to the material allegations in the Informations in SB-17-CRM-0663 to 0666.

Witness Alfafaras testified that she is with the Special Audits Office (SAO) of the COA for twenty-one (21) years. SAO is an office within the COA that is in charge of conducting special audits of various government projects and programs. As a State Auditor of the SAO, she participates in the conduct of special audits of various government projects and programs, such as government-wide performance audits, sectoral performance audits, and other special audits. Performance audit examines the economy, efficiency, and effectiveness of government programs. In 2010, special audits were conducted on, among others, the Priority Development Assistance Funds (“PDAF”) and Various Infrastructure Projects including Local Projects (“VILP”) covering the calendar years 2007 to 2009. The special audit was prompted by the emerging issues on the utilization of the PDAF based on the audit reports of COA Resident Auditors, such as unliquidated fund transfers, undocumented disbursements, and non-compliance with existing laws, rules, and regulations. The performance-wide audit was conducted pursuant to COA Office Order No. 2010-309 dated May 13, 2010, and subsequent Office Orders (“*Exhibits SSSS to SSSS-3*”). The special audit covered the releases of PDAF by the DBM, and the utilization thereof and implementation of PDAF-funded projects by the following national government agencies and GOCCs, among others, during the calendar years 2007 to 2009: Department of Agriculture (“DA”), Department of Public Works and Highways (“DPWH”), Department of Social Welfare and Development (“DSWD”), Technology and Livelihood Resource Center (“TLRC/TRC”), National Livelihood Development Corporation (“NLDC”), NABCOR, ZNAC Rubber Estate Corporation (“ZREC”), and selected LGUs.

As a matter of policy, government wide-audit covers three (3) immediately preceding years. Since the office order to conduct the said

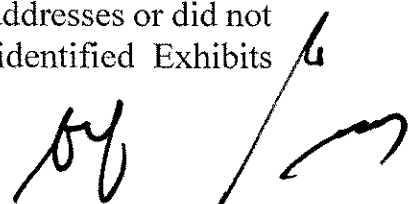
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audit was issued in 2010, then the coverage was for the years 2007 to 2009. In the conduct of this particular audit, the team used the following relevant laws, rules, and regulations: the GAA for 2007, 2008, and 2009, the R.A. No. 9184, the Government Auditing Code (P.D. No. 1445), COA Circular No. 2007-01, DBM National budget Circular ("NBC") No. 476 and GPPB Resolution No. 12-2007, among others.

In connection with these cases, the audit team gathered and obtained the following documents: Special Allotment Release Order (SARO), disbursement vouchers (DVs), and their supporting documents, such as official receipts, detailed budget, project proposal, memoranda of agreement, checks, obligation request, authorization letter and other letters, delivery receipts, sales invoices, certificate of acceptance, acknowledgment receipt, and other relevant documents. Witness identified the Certified True Copy of Duplicate Original of SARO No. ROCS-07-07743 dated October 10, 2007 ("*Exhibit TTT*") and the Certified True Copies of Disbursement Voucher No. 07-12-6779 dated December 28, 2007 ("*Exhibit H*") Disbursement Voucher No. 08-01-00200 dated January 23, 2008 ("*Exhibit N*"), as well as their supporting documents which were gathered during the course of the audit (*i.e.* "*Exhibits J, M to M-2, N, O, P, Q, R, S, T, U, V, Y, Z, AA, BB, FF, GG, HH, H, JJ, KK, BBB-1, BBB-2 to BBB-3, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, VVV-1, VVV-2, WWW, WWW-1, WWW-2, XXX, XXX-1, XXX-2, YYY, YYY-1, ZZZ, ZZZ-1, AAAA, AAAA-1, BBBB, BBBB-1, CCCC, DDDD, DDDD-1, EEEE, EEEE-1, AAAAA, BBBBB, CCCCC, DDDDD, DDDDD-1, EEEEE to EEEEE-4*"). Except for *Exhibit "BBB-1"*, (Certified true Copy from Photocopy of Detailed Budget for the project) *Exhibits "BBB-2 to BBB-3"* (Project Proposal of NABCOR) and *Exhibit "DDDDDD-1"* (Certified true Copy from Photocopy of SSS ID of accused Vizcarra), the foregoing exhibits were compared with the originals and the defense had stipulated that they were faithful reproduction of the originals.

The team also sent letters to accused Coquilla, GABAYMASA, suppliers, and selected recipients to confirm their participation in the implementation of the PDAF-funded livelihood project. Accused Coquilla did not respond to the letter. GABAYMASA did not submit written confirmation of its transaction as well as the additional documents requested by the team. The concerned suppliers, KP Enterprises and Marinduqueno's Garden Shop denied having transacted with GABAYMASA, issuing receipts and invoices, and receiving the corresponding payments. None of the selected recipients confirmed receipts of items purportedly distributed. The audit revealed that eight (8) selected recipients were either unknown at their given addresses or did not claim their confirmation letters. Witness Alfarras identified Exhibits

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"FFFFF", "HHHHH" to "HHHHH-2", "IIIII to IIII-1", and "JJJJJ to JJJJ-8."

Upon confirming with the Securities and Exchange Commission and the concerned Business Permits and Licensing Office ("BPLO"), it appeared that GABAYMASA had no business permit to operate during the calendar years 2007 to 2009 because its latest renewal for the business permit was on March 17, 2003. Witness Alfafaras identified the Indorsement issued by the concerned BPLO showing that GABAYMASA had no business permit to operate during the calendar years 2007 to 2009 as *Exhibit "GGGGG"*. During the comparison with the original, the defense stipulated that the said exhibit is a faithful reproduction of the original.

After gathering the relevant documents, confirming the participation of the legislator and other persons or entities, and determining the legal and physical existence of GABAYMASA, the team evaluated and analyzed all the documents, as well as the results of confirmation, inspection, and validation, in order to determine the propriety of the release and utilization of and implementation of the programs funded by the PDAF allocation of accused Coquilla. The following were the result of the evaluation:

(1) Five Million Pesos (Php5,000,000.00) of the PDAF allocation of accused Coquilla was released through SARO No. ROCS-07-07743 as evidenced by the "Appropriation Source" indicated in the SARO as well as the MOA between NABCOR and GABAYMASA. The Five Million Pesos (Php5,000,000.00) was intended as financial assistance to the DA-OSEC for the implementation of livelihood programs in the Lone District of Eastern Samar as indicated in the SARO. Witness Alfafaras identified the SARO and the MOA as *Exhibits "TTTT" and "M to M-2"*, respectively.⁶⁶

(2) The said fund was released by the DBM to the DA-OSEC, as the implementing agency named in the SARO. According to witness Alfafaras, the release of the fund by the DBM to DA has no basis and is in violation of DBM National Budget Circular (NBC) No. 476 since the fund was released without the required Project Profile and endorsement from the implementing agency. The DBM also failed to provide the audit team copies of the endorsement from the implementing agencies, including the DA despite repeated requests. Moreover, the implementing agencies, including the DA declared that they never endorsed any of the programs

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The original of which were presented by witnesses Santos and Perez and after the comparison, the defense stipulated that said exhibits are faithful reproduction of the originals.

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or projects forwarded to them for implementation but merely received the SARO and the corresponding NCAs from the DBM;

(3) The audit team also found that the DA merely transferred the fund to NABCOR through the execution of a MOA. Alfafaras observed that the transfer of funds is in violation of the GAA considering that the DA is expressly identified as the implementing agency of the project while NABCOR is not mandated to implement livelihood projects. Witness Alfafaras identified the MOA between the DA and NABCOR as *Exhibit "YYYY"* and the disbursement voucher and check under the name of NABCOR as payee, as well as the official receipt issued by NABCOR to DA as *Exhibits "AAAAA" and "BBBBB"*, respectively.

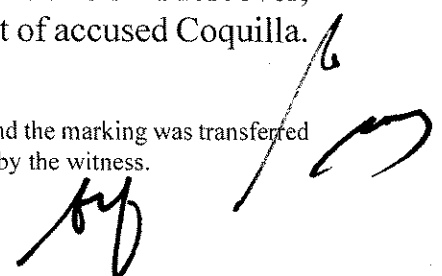
Thereafter, NABCOR implemented the project by merely transferring the amount of Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) to GABAYMASA, the NGO requested by accused Coquilla as NABCOR's conduit in the implementation of the project. NABCOR charged administrative costs in the amount of One Hundred Fifty Thousand Pesos (Php150,000.00) as recorded in the Journal Entry Voucher of NABCOR. Witness Alfafaras identified the Certified True Copy of the Journal Entry Voucher of NABCOR where the charge for administrative cost was recorded as *Exhibit "G"*. An original copy of the said exhibit was presented by the witness.⁶⁷

The amount of Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) under the SARO was transferred by NABCOR to GABAYMASA through the execution of a MOA. The said amount was released in two (2) tranches – the amount of Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00) representing ninety percent (90%) of the Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) was initially released to GABAYMASA supported with MOA and Project Proposal and the balance of ten percent (10%) or Four Hundred Eighty-Five Thousand Pesos (Php485,000.00) was subsequently released upon submission of the physical and audited financial reports, among others. Witness Alfafaras identified the MOA as *Exhibit "M to M-2"* and the disbursement vouchers, checks, official receipts issued by GABAYMASA as *Exhibits "N", "O", "P", "Q", "R", and "S"*, respectively.

As observed by the COA audit team, the funds were transferred to GABAYMASA despite the absence of law appropriating or specifically earmarking such funds to be contracted out to an NGO. Moreover, GABAYMASA was selected merely upon the request of accused Coquilla.

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The marked exhibit was not identified by the certifying auditor and the marking was transferred to new certified true copy of the Journal entry Voucher brought by the witness.



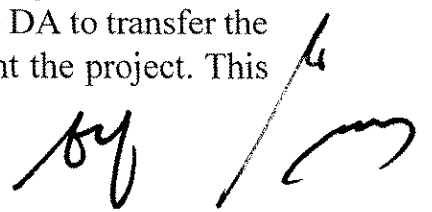
According to witness Alfafaras, the selection of and transfer of funds to GABAYMASA were in violation of GPPB Resolution No. 12-2007, in relation to the IRR-A of RA 9184 and COA Circular No. 2007-001.

The audit team also discovered that GABAYMASA only made it appear in the liquidation documents that it actually implemented the project by purchasing fruit-bearing seedlings and instructional materials from KP Enterprises, respectively, and distributing the same to the intended beneficiaries. GABAYMASA is not authorized to implement the project and it did not confirm the transactions and submitted the additional documents requested by the audit team. The purchase orders, sales invoices, official receipts, and delivery receipts were dated from November 7, 2007, to January 15, 2008, which were all before the execution of the MOA on January 16, 2008, and the issuance of the first check on January 23, 2008. Moreover, the owners of KP Enterprises and Marinduqueno's Garden Shop denied having delivered fruit-bearing seedlings and instructional materials to GABAYMASA. None of the selected recipients confirmed the receipt of the fruit-bearing seedlings and instructional materials.

The team consolidated all the observations and findings in an audit report entitled Special Audits Office (SAO) Report No. 2012-03. Witness Alfafaras identified *Exhibit "XXXX"*, a certified true copy of SAO Report No. 2012-03, which the defense already stipulated during the comparison with the original, as a faithful reproduction thereof.

Thereafter, the audit team issued two notices of disallowance: SAO ND No.: DA-2014-019-PDAF (07-09) and SAO ND No. NAB-2014-024-PDAF (07-09). These NDs were issued because the subject transactions are considered irregular and illegal for being non-compliant with existing laws, rules, and regulations, and supported by deficient documents. Witness Alfafaras identified certified true copies of the SAO ND No.: DA-2014-019-PDAF (07-09) and SAO ND No. NAB-2014-024-PDAF (07-09), marked as *Exhibits "WWW to WWW-1"*, which the defense already stipulated during the comparison with the original, as faithful reproduction thereof.

On cross-examination, witness Alfafaras testified that under the scheme, the DBM will release the SARO and NCA to the DA then the DA transfers the funds to the NABCOR, which subsequently transfers the funds to the NGO. According to her, the DA is the implementing Agency of PDAF as identified in the GAA for the year 2007. Then, the DBM releases the funds under the SARO to the DA. In these particular cases, accused Coquilla requested former Secretary Yap of the DA to transfer the funds from the DA to NABCOR, which will implement the project. This

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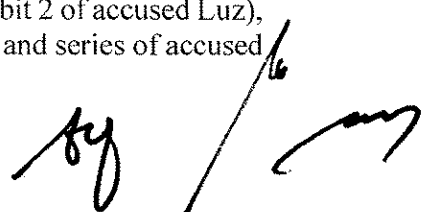
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report was based on the documents and information gathered from the various Implementing Agencies and based on the validation conducted by the COA. Witness Alfafaras also testified that her team sent letters to accused Coquilla and the alleged beneficiaries of the projects in order to confirm the authenticity of the signatures and the documents as well as to confirm the receipts of the purported items distributed by GABAYMASA. However, accused Coquilla did not reply to the audit team's confirmation letter and the letters addressed to the alleged beneficiaries were returned by the post office to the audit team on the basis that the addressees or the alleged beneficiaries were unknown in their respective given addresses. It was also mentioned that GABAYMASA did not respond to the confirmation letter sent by the team. Witness Alfafaras clarified that the funds from the DA were transferred to NABCOR upon representation of accused Coquilla although the latter is not supposed to be the implementing agency of the PDAF pursuant to the GAA for the year 2007. According to witness Alfafaras, the release of PDAF funds to NABCOR was illegal and the subsequent release of these funds from NABCOR to GABAYMASA is also illegal on the ground that the latter is not among those authorized under the GAA for the year 2007.

On clarification made by the Court, witness Alfafaras testified that the selection of NABCOR is illegal because the said agency is mandated to promote agri-business for small farmers by developing agri-business trading centers and facilities farmers and fishermen can showcase or sell their products. On the other hand, the Technology and Livelihood Resource Center ("TLRC") and Technology Resource Center ("TRC") are allowed to implement livelihood projects under the GAA for the year 2007. In the special provision of the GAA for the years 2007, 2008, and 2009, the projects that can be implemented are specifically indicated therein and the corresponding Implementing Agency which could implement the said project. Under the GAAs, NGOs are not listed among those agencies allowed to implement the PDAF-funded projects.

After presenting its witnesses, the prosecution filed its Formal Offer of Documentary Evidence. The Court, taking into consideration the objections of the accused, resolved to admit the following exhibits:⁶⁸

Exhibit G, Exhibit H, Exhibit J, Exhibit M, M-1, and M-2, Exhibit N, Exhibit O, Exhibit P, Exhibit Q (Common Exhibit; Exhibit 12 of accused Luz), Exhibit R, Exhibit S, Exhibit T, Exhibit T-1, Exhibit U, Exhibit V, Exhibit Y, Exhibit Y-1, Exhibit Z, Exhibit Z-1, Exhibit AA, Exhibit BB, Exhibit CC, Exhibit DD to DD-15, Exhibit EE to EE-15, Exhibit FF, Exhibit GG, Exhibit HH, Exhibit II, Exhibit II-1, Exhibit JJ, Exhibit KK, Exhibit PP (common exhibit; Exhibit 2 of accused Luz), Exhibit QQ to QQ-10 (common exhibit; Exhibit 3 and series of accused



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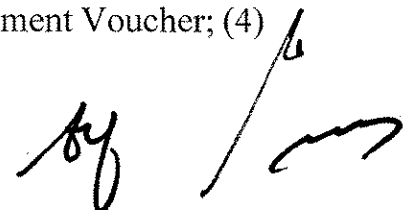
Luz), Exhibit RR (common exhibit; Exhibit 4 and series of accused Luz), Exhibit SS to SS-5 (common exhibit; Exhibit 5 and series of accused Luz), Exhibit TT (common exhibit; Exhibit 6 and series of accused Luz), Exhibit UU to UU-4 (common exhibit; Exhibit 7 and series of accused Luz), Exhibit VV, Exhibit WW, Exhibit XX, Exhibit YY to YY-5, Exhibit ZZ to ZZ-4, Exhibit AAA to AAA-1, Exhibit BBB, Exhibit BBB-1, Exhibits BBB-2 to BBB-3, Exhibit DDD, Exhibit DDD-1, Exhibit EEE, Exhibit FFF, Exhibit GGG, Exhibit GGG-1, Exhibit HHH, Exhibit HHH-1, Exhibit III, Exhibit III-1, Exhibit JJJ, Exhibit KKK, Exhibit LLL, Exhibit MMM, Exhibit NNN, Exhibit OOO, Exhibit PPP, Exhibit QQQ, Exhibit RRR, Exhibit SSS, Exhibit TTT, Exhibit UUU, Exhibit VVV, Exhibit VVV-1, Exhibit VVV-2, Exhibit WWW, Exhibit WWW-1, Exhibit WWW-2, Exhibit XXX, Exhibit XXX-1, Exhibit XXX-2, Exhibit YYY, Exhibit YYY-1, Exhibit ZZZ, Exhibit ZZZ-1, Exhibit AAAA, Exhibit AAAA-1, Exhibit BBBB, Exhibit BBBB-1, Exhibit CCCC, Exhibit DDDD, Exhibit DDDD-1, Exhibit EEEE, Exhibit EEEE-1, Exhibit HHHH, Exhibits IIII to IIII-10, Exhibit JJJJ, Exhibit KKKK, Exhibit LLLL, Exhibit MMMM, Exhibit NNNN, Exhibit OOOO, Exhibit PPPP, Exhibits QQQQ to QQQQ-9, Exhibits SSSS to SSSS-4, Exhibit TTTT, Exhibit TTTT-1, Exhibit TTTT-2, Exhibit TTTT-3, Exhibit TTTT-4, Exhibit TTTT-5, Exhibit TTTT-6, Exhibit TTTT-7, Exhibit WWWW, Exhibit WWWW-1, Exhibit XXXX, Exhibit YYYYY, Exhibit ZZZZ and ZZZZ-1, Exhibit AAAAA, Exhibit BBBB, Exhibit CCCCC, Exhibit DDDDD, Exhibit DDDDD-1, Exhibits EEEEE to EEEEE-4, Exhibit FFFFF, Exhibit GGGGG, Exhibit HHHHH, Exhibit HHHHH-1, Exhibit HHHHH-2, Exhibit IIII, Exhibit IIII-1, Exhibit JJJJ to JJJJ-8-a, Exhibit MMMM, Exhibit MMMMM-1, Exhibit MMMMM-2, Exhibit MMMMM-3 to MMMMM-7, Exhibit MMMMM-8, Exhibit MMMMM-9, Exhibit MMMMM-10 to NNNNN-2, Exhibit OOOOO, Exhibit UUUUU, Exhibit UUUUU-1, Exhibit VVVVV, Exhibit WWWW, Exhibit WWWW-1, Exhibit ZZZZ, Exhibit AAAAAA, Exhibit BBBB, Exhibit BBBB-1, Exhibit BBBB-2, Exhibit BBBB-2-d, Exhibit CCCCCC.

EVIDENCE FOR THE DEFENSE

The defense presented the following witnesses:

On May 18, 2021, the defense presented accused Encarnita Cristina P. Munsod (“**Munsod**”),⁶⁹ who testified on direct examination through her Judicial Affidavit dated March 10, 2021.⁷⁰ The testimony of accused Munsod was offered to prove the following: (1) that she was appointed as Human Resource and Administration Manager on probationary status on January 16, 2007; (2) that she was appointed as Human Resource and Administration Manager on regular status on July 16, 2007; (3) that based on a Memorandum dated February 2, 2007, issued by NABCOR President Javellana, she was authorized to sign Box A of Disbursement Voucher; (4)

⁶⁹ TSN dated May 18, 2021.
⁷⁰ Record, Vol. VIII, pp. 28-292.



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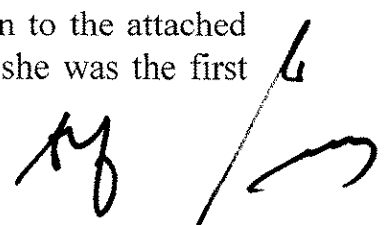
that based on a Memorandum dated February 12, 2007, issued by NABCOR President, accused Javellana, she was authorized to sign Box A of Disbursement Voucher; (5) that she will identify the above-mentioned documents marked as *Exhibit "Munsod 1 to 6"* consisting of 1 page each; and (6) that she will testify on other matters relevant to the case.

On cross-examination, accused Munsod was confronted with NABCOR Disbursement Voucher No. 08-01-00200 dated January 23, 2008. Witness Munsod testified that she signed box A of the disbursement voucher by virtue of the authorization given to her by accused Javellana. According to her, she was aware that by affixing her signature on the documents, she was certifying that the expenses indicated therein are necessary, lawful, and incurred under her direct supervision. Prior to signing the said disbursement, she already signed several of these documents. During those times, she was instructed by accused Javellana to review and inspect the attached documents to the voucher and to check whether the details are correct in the attachments and on the face of the vouchers.

Accused Munsod testified that she was not aware of the provisions of DBM NBC No. 476 and COA Circular No. 2007-001. According to her, since the DVs and their attachments came from the accounting department of NABCOR, she made an assumption that the said department has already checked or cleared all the documents. Considering that she is not part of the accounting or finance department, she relied on good faith that these departments already checked the documents and the laws pertaining thereto.

In the process of signing and certifying the said disbursement vouchers, witness Munsod testified that she did not request additional documents and that she relied on the attached project proposal, endorsement letter, and MOA. When confronted with the project proposal, she stated that she did not notice that the name GABAYMASA, while appearing in the DV, does not appear in the project proposal. Moreover, accused Munsod testified that she is not aware of any legal authority for NABCOR to retain One Hundred Fifty Thousand Pesos (Php150,000.00) as an administrative fee.

On propounding questions by the Court, accused Munsod testified that the reason why she was authorized by accused Javellana to sign the DVs related to corporate funds and project funds was that she was directly under the Administration and Finance Department. Moreover, the examination she conducted was only limited to the contents of the disbursement vouchers or the entries therein in relation to the attached documents. Moreover, accused Munsod admitted that she was the first

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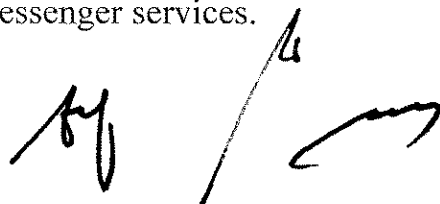
signatory of the Disbursement Voucher No. 08-01-00200 dated January 23, 2008. According to her, the funds that will be used as expenses or advances in the disbursement vouchers she signed were not really under her direct supervision. Despite this, she still signed box A. Lastly, accused Munsod likewise admitted that she was neither threatened nor forced nor promised regularization by accused Javellana to sign the disbursement vouchers.

On June 1, 2021, the defense presented Accused **Romulo Relevo** ("**Relevo**"),⁷¹ who testified on direct examination through his Judicial Affidavit dated May 28, 2021.⁷² The testimony of accused Relevo was offered to establish the following: (1) that at the time material to the case, accused Relevo is a former employee of NABCOR working as a probationary employee, assigned as the General Services Unit Head; (2) that he was not involved in the selection of the NGO for the purpose of implementing projects funded by the PDAF of accused Coquilla; (3) that he did not participate in the implementation and monitoring of the projects sourced from the PDAF as well as the liquidation thereof; (4) that he did not sign the MOA between NABCOR and DA which transferred the funds from DA to NABCOR; (5) that his authority to sign Disbursement Voucher was verbally given by NABCOR President, accused Javellana, after accused Munsod went on medical leave; (6) that he only signed the Disbursement Voucher No. 08-07-02229 dated July 1, 2008, after reviewing the relevant documents, particularly the audit reports forwarded by NABCOR's Finance Department, and after receiving the directive to sign the same from NABCOR's President, accused Javellana; (7) that the sole document where accused Relevo affixed his signature in so far as the present case is concerned is the Disbursement Voucher No. 08-07-02229 which released the retained funds based on the MOA consisting of ten percent (10%) of the PDAF Funds; (8) that he did not commit the crimes imputed against him, much less conspired with his co-accused to commit any crime or made use of his position to secure the commission of any crime; and (9) other matters which are material and relevant to the present case.

Accused Relevo is a former employee of NABCOR working as a probationary employee, assigned as the General Services Unit Head from May 12, 2008, to July 31, 2008. As the General Services Unit Head, his duties were to ensure that NABCOR had sufficient office supplies for its daily operations and in its projects through the process of procurement, as well as the management of NABCOR's stockroom. He also supervised the performance of the janitorial and messenger services.

⁷¹ TSN dated June 1, 2021.

⁷² Record, Vol. VIII, pp. 347-384.



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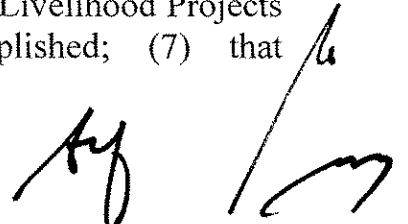
According to accused Relevo, prior to signing the Disbursement Voucher No. 08-07-02229, he was called by accused Javellana to his office and verbally instructed him to temporarily sign the disbursement vouchers *vice* accused Munsod, who was on medical leave. The said Disbursement Voucher No. 08-07-02229 was forwarded to him by the finance department together with several attached documents (*i.e.*, a copy of Disbursement Voucher No. No. 08-01-00200 dated January 23, 2008, project proposal, the MOAs, SARO, documents pertaining to GABAYMASA, and the financial reports audited by the finance department). After receiving the said documents, he read and reviewed each of them and then asked the guidance of accused Javellana before signing the Disbursement Voucher No. 08-07-02229. Lastly, accused Relevo denied being in conspiracy with the other accused in connection with the crimes charged. He likewise denied having custody of any public funds or the receipt of any part of the PDAF for his own use or benefit.

On cross-examination, accused Relevo testified that at the time he signed the Disbursement Voucher No. 08-07-02229, he was a probationary employee assigned as the General Serviced Unit Head for the period between May 12, 2008, to July 31, 2008. He signed the said disbursement voucher based on the verbal authority given to him by accused Javellana. Witness Relevo likewise mentioned that he was neither threatened nor forced by accused Javellana to sign the disbursement vouchers and that the act of signing was voluntary on his part. According to him, he knew that his signature on Box A of the disbursement voucher has the effect of certifying that the expenses indicated therein were necessary, lawful and under his supervision.

On July 23, 2021, the defense presented Accused **Margie T. Luz** ("**Luz**"),⁷³ who testified on direct examination through her Judicial Affidavit dated July 21, 2021.⁷⁴ The testimony of accused Luz was offered to establish the following: (1) that she was the president of GABAYMASA in the year 2007 and 2008; (2) that GABAYMASA was a legally registered non-stock and non-profit foundation with a legitimate Certificate of Registration issued by the SEC; (3) that GABAYMASA was chosen by then accused Coquilla in the implementation of the Livelihood Project in his Legislative District in Eastern Samar through his PDAF for the year 2007; (4) that GABAYMASA was chosen and endorsed by accused Coquilla to NABCOR; (5) that GABAYMASA submitted all the requirements and diligently followed the rules and procedures as given and directed by NABCOR, through Javellana; (6) that the transactions of GABAYMASA relative to the implementation of the Livelihood Projects were fully delivered, completed, and accomplished; (7) that

⁷³ TSN dated July 23, 2021.

⁷⁴ Record. Vol. VIII, pp. 466-491.



GABAYMASA did not conspire, confederate nor acted together, knowingly and unknowingly, with any person or entity in order to unduly benefit from the subject transactions involving the PDAF of accused Coquilla; (8) that she did not commit any of the acts as charged in these present cases; (9) to prove such other facts and circumstances pertinent and material to these instant cases.

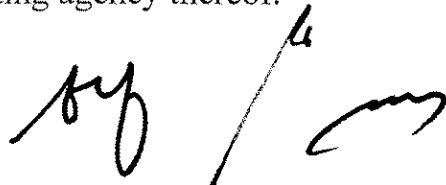
Accused Luz testified she did not receive the amounts from NABCOR. According to her, another officer of GABAYMASA, by the name of accused Ma. Cristina Vizcarra, was tasked to collect and accept the funds or payments in favor of the organization.

On cross-examination, accused Luz testified knowing that GABAYMASA was not designated as an implementer of the PDAF-funded projects under the GAA for the year 2007. She likewise admitted that GABAYMASA was not chosen through public bidding conducted by NABCOR. Despite such knowledge, she did not inquire with accused Coquilla why he chose GABAYMASA as the "project partner" of his PDAF-funded livelihood project. In fact, she mentioned that this was the first time that GABAYMASA became an implementer of accused Coquilla's PDAF-funded livelihood project. On the other hand, she confirmed having personally met accused Javellana.

Accused Luz also testified that she cannot recall being asked by NABCOR to submit audited financial statements for the past three (3) years and a list of similar projects undertaken in the past. Nevertheless, she admitted that prior to the questioned transaction, GABAYMASA became an implementer of PDAF-funded projects for other legislators.

As to the required capitalization, accused Luz testified having recalled that GABAYMASA put up capitalization or participation equivalent to twenty percent (20%) of the total project or One Million Pesos (Php1,000,000.00), which was spent for mobilization and other purposes required by NABCOR. The capitalization was not recorded in the liquidation made by GABAYMASA but accused Luz certified, as President of GABAYMASA, that twenty percent (20%) was spent for personal services. According to her, since the capitalization is considered a government fund, GABAYMASA did not report it to NABCOR.

Based on the recollection of accused Luz, accused Coquilla called and informed her that GABAYMASA has been chosen as the implementing arm of the PDAF-funded livelihood project, while NABCOR was chosen as the implementing agency thereof.

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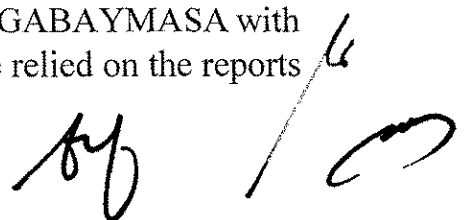
When confronted with the Project Proposal attached to the MOA between NABCOR and GABAYMASA (*"Exhibit AAA"*), accused Luz testified that aside from her signature appearing in the bottom left portion as president of GABAYMASA, the name of GABAYMASA does not appear anywhere in the Project Proposal. Moreover, she admitted that on the budget proposal she prepared, no budget was indicated for the fruit-bearing seedlings and alleged that the budget thereof is already integrated into the budget of textbooks and instructional materials.

Accused Luz testified having a meeting with accused Coquilla after the call. During the meeting, accused Coquilla gave the information and the copy of the SARO to accused Luz. Accused Coquilla instructed her that an officer of NABCOR will contact GABAYMASA in connection to the PDAF-funded project. Thereafter, accused Javellana called accused Luz and informed her that there are funds for the livelihood project and that, as the "project partner", GABAYMASA will be under the instruction of NABCOR, as the implementing agency. During the meeting, accused Javellana also discussed the requirements and the compliance thereof, for GABAYMASA to be the implementing arm of the PDAF-funded livelihood project. After the submission of the requirements, GABAYMASA conducted its canvassing among suppliers. After the canvassing, a GABAYMASA representative entered into an agreement with the supplier that the latter will allocate a certain number of seedlings for the project. As an assurance thereof, the supplier issued a sales invoice.

After the issuance of the sales invoice, accused Luz recalled that the seedlings were delivered partly in her residence and partly in the headquarters of GABAYMASA. Thereafter, the seedlings were picked up by the staff of accused Coquilla to be distributed to Eastern Samar.

As proof of the completion of the project accused Luz and Coquilla both signed an undated Certificate of Acceptance (*"Exhibit UUU"*) in the latter's office in the House of Representatives. Based on her recollection, the certificate was signed a day or two after the staff of accused Coquilla inspected and counted the items. Accused Luz admitted that she was not present when the fruit-bearing seedlings were distributed to the intended beneficiaries in Eastern Samar. She likewise admitted that she is not aware that some of the beneficiary barangays listed in the Certificate of Acceptance are coastal communities.

As President of GABAYMASA, accused Luz testified that she supervised the process towards the completion of the PDAF-funded livelihood project of accused Coquilla. As part of her supervision, she delegated accused Vizcarra to conduct dealings with GABAYMASA with regard to the project. Accused Luz admitted that she relied on the reports

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made to her by accused Vizcarra and did not conduct her own due diligence anymore. Accused Luz admitted that the canvassing and the choice of the suppliers were upon her instruction.

As part of her supervision, accused Luz also confirmed that GABAYMASA submitted several purchase orders, sales invoices, delivery receipts, and official receipts as liquidation of the project. However, she was not aware that the receipts show expenses from establishments in Metro Manila. Moreover, she was not aware that the winning bidder for the supplier of the fruit-bearing seedlings is an ornamental shop and that the winning bidder for supplying instructional materials was a seller of car batteries.

On re-direct, accused Luz explained that the reason why the sales invoices for the seedlings and instructional materials were executed by GABAYMASA even before the execution of the MOA, was because accused Coquilla wanted to fast track the project. As to the requirement of twenty percent (20%) equity, accused Luz recalled that it was spent for the mobilization of the seedlings (i.e. tracking, transfer, or shipping to Eastern Samar, and delivery from the shop to the GABAYMASA headquarters and accused Luz' residence), maintenance of the seedlings, salaries, and food of the gardener hired to maintain the plants.

On recross, accused Luz testified that it was the first time for GABAYMASA to start sourcing the materials even before the signing of the MOA with the implementing agency.

After presenting their witnesses, the accused filed their Formal Offer of Documentary Evidence. The Court, taking into consideration the objections of the prosecution, resolved to admit the following exhibits:⁷⁵

For accused Munsod:

Exhibits 1-Munsod, 2-Munsod, 3-Munsod, 4-Munsod, 5-Munsod, and 6-Munsod.

For accused Relevo:

Exhibits 1-Relevo, 2-Relevo, 3-Relevo, 4-Relevo, and 4-A-Relevo.

For accused Luz:

Exhibits 1 (Exhibit OO), 2 (Exhibit PP), 3 and series (Exhibit QQ and series), 4 (Exhibit RR), 5 and series (Exhibit SS and series), 6 (Exhibit TT), 7 and series (Exhibit UU to UU-4), 8 (Exhibit UUU), 9 (Exhibit JJJ), 10 Exhibit (KKKK), 11 and 11-a.

RULING OF THE COURT

I. Criminal Case Nos. SB-17-CRM-0063-64 for violation of Section 3(e) of Republic Act No. 3019, as amended.

All the accused had been charged in Criminal Case Nos. SB-17-CRM-0063-64 for violation of Section 3(e) of Republic Act No. 3019, as amended, which reads:

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

X X X

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

To convict for the violation of Section 3(e) of Republic Act No. 3019, the State must allege in the information and establish beyond reasonable doubt during the trial that the accused acted in the discharge of his official, administrative or judicial functions through manifest partiality or evident bad faith, or with gross inexcusable negligence in order to cause undue injury to any party, including the Government, or to give any private party any unwarranted benefits, advantage, or preference. The mere allegation of such modes, not being evidence, is not competent as proof of guilt.⁷⁶

Reduced to its elements, a violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial, or official functions; (2) the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁷⁷

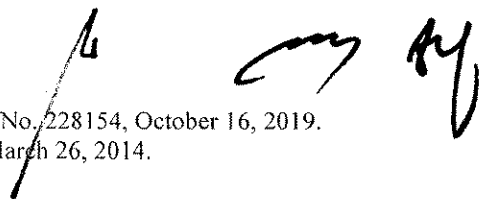
A. First element of the violation of Section 3(e) of R.A. No. 3019, as amended:

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Rivera, et al v. People of the Philippines, G.R. No. 228154, October 16, 2019.

⁷⁷

Garcia v. Sandiganbayan, G.R. No. 197204, March 26, 2014.



**accused are public officers discharging
official functions.**

Section 2 (b) of R.A. No. 3019 defines "public officer" as elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

The first element is present, it having been stipulated during the pre-trial that accused Coquilla, Munsod, and Revelo are public officers, being the Congressman of the Lone District of Eastern Samar, Human Resources and Administrative Manager, and Human Resources and Administrative Manager of NABCOR, respectively.

As for accused Luz, it bears to reiterate the settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.⁷⁸

At issue are the second and third elements of the offense. As described in Criminal Case No. SB-17-CRM-0663, accused Coquilla, Munsod, Revelo, and Luz are charged for acting with manifest partiality and evident bad faith in causing the issuance of Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00) to GABAYMASA in disregard of the appropriation law and its implementing rules, and/or without the benefit of public/competitive bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with GABAYMASA being unaccredited and unqualified to undertake the projects. In doing so, unwarranted benefits, advantage, or preference was given to accused Luz and GABAYMASA.

On the other hand, in Criminal Case No. SB-17-CRM-0664, accused Coquilla, Munsod, Revelo, and Luz are charged for acting with manifest partiality, evident bad faith in causing the issuance of Four Hundred Eighty-Five Thousand Pesos (Php485,000.00) to GABAYMASA in disregard of the appropriation law and its implementing rules, and/or without the benefit of public/competitive bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with GABAYMASA being unaccredited and unqualified to undertake the projects. In doing so, unwarranted benefits, advantage, or preference was given to accused Luz and GABAYMASA.

B. The second element of the violation of Section 3(e) of R.A. No. 3019: the accused acted with manifest partiality and evident bad faith.

The second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. "*Manifest partiality*," "*evident bad faith*," or "*gross inexcusable negligence*" are not separate offenses, and proof of the existence of any of these three (3) "in connection with the prohibited acts is enough to convict."⁷⁹

The Supreme Court, in the case of *Uriarte v. People*,⁸⁰ defined these modalities:

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

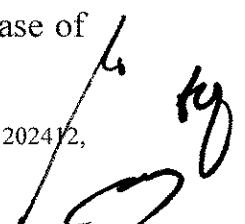
In the succeeding discussions, the Court finds that the modalities of manifest partiality and evident bad faith are both present in the questioned transactions, as proved by the irregularities and illegalities accompanying the grant of the accused Coquilla's PDAF-drawn funds to NABCOR, and its subsequent transfer to GABAYMASA, as well as the utilization of the said funds.

a. The transfer of accused Coquilla's PDAF-drawn funds to NABCOR and its subsequent transfer to GABAYMASA is a violation of the GAA for the year 2007, GPPB Resolution No. 12-2007, and NBC Circular No. 476.

Article XLVII of the GAA of 2007 ("PDAF Article") was brief and upfront as it contained a single special provision requiring the release of

⁷⁹ *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos 202408, 202409, and 202412, June 27, 2018; citations omitted.

⁸⁰ *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006; Emphasis on the original, citations omitted.

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the PDAF directly to the implementing agency specifically indicated in the program menu concept. The program menu is essentially a list of the general programs and implementing agencies from which a particular PDAF project may be subsequently chosen by the identifying authority.⁸¹ The special provision of the PDAF Article provides:

Special Provision(s)

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

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

As observed by the COA Audit Team in its Notice of Disallowance No. DA-2014-019-PDAF (07-09) dated May 4, 2014 (“*Exhibit WWW*”),⁸² the release of the SARO ROCS-07-00743 dated October 10, 2007, was disallowed as it was undertaken without due regard to the GAA for the year 2007, to wit:

“The result of the audit of this transaction are discussed below and under SAO Report No. 2012-03:

xxx

The fund received by DA was transferred to NABCOR. Such transfer was, likewise, not compliant with the provisions of the GAA for the year and DBM NBC No. 476:

DA should have implemented the projects itself as it was among the identified implementing agencies in the GAA for the year. On the other hand, NABCOR is not among the implementing agencies of PDAF as identified in the GAA for the year.”

The following exchanges during the trial highlighted the special provision of the PDAF Article in the GAA for the year 2007, thus:

JUSTICE R.B. MORENO:

Q: Madam Witness, could you educate us regarding this?
I’m inviting your attention to Question and Answer No.

⁸¹ Greco Belgica, et al. v. Hon. Executive Secretary Ochoa, et al., G.R. No. 208566, November 19, 2013.

⁸² Record, Vol. VII, pp. 205-206.

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33 regarding the significance of GAA for 2007, 2008, and 2009 because according to you, to quote your answer, "The programs and project to be funded by the PDAF of legislators as well as the implementing agencies of these programs and projects were defined in the GAA." Now, how are these programs and projects being defined in the GAA?

WITNESS ALFAFARAS:

A: Your Honor, in the special provision of the GAA 2007, the projects that can be implemented to be funded by PDAF are specifically indicated therein and likewise the corresponding Implementing Agency also indicated in the special provision of the GAA under the Priority Development Assistance Fund.

Q: Okay. Ma'am, making reference to your GAA for 2007, *meron kang kopya*?

A: Yes, your Honor.

Q: Okay. Is there a provision there allowing a Congressman to implement livelihood projects?

A: No, Your Honor, because it is indicated therein that the funds shall be released directly to the Implementing Agency.

Q: So, it made no mention of implementation of any livelihood projects?

A: The menu program, Your Honor, were enumerated in the GAA.

Q: When you say "Menu", what do you mean, Ma'am?

A: This includes the, for example, in the education then, the program that could be implemented under the education
--- *(Interrupted)*

Q: Let us focus on livelihood projects because that is the subject matter of these instant cases.

A: Under the livelihood, the programs and projects that can be implemented through PDAF shall be a medium enterprise livelihood comprehensive integrated delivery of social services and the Implementing Agencies are DTI, TLRC, DA, LIVECOR, CDA, DSWD.⁸³

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Considering the foregoing, the Court finds, with moral certainty, that manifest partiality and evident bad faith are present in the grant of accused Coquilla's PDAF-drawn funds to NABCOR, and the subsequent transfer thereof to GABAYMASA.

First, the Five Million Pesos (Php5,000,000.00) pertaining to the PDAF allocated to accused Coquilla under the GAA for the year 2007 and covered by SARO ROCS No. 07-07743 dated October 10, 2007, were transferred to NABCOR at the behest of accused Coquilla allegedly "for the implementation and closer monitoring." This fact is apparent in the letter dated September 10, 2007, signed by accused Coquilla and addressed to Speaker Joe De Venecia, Jr. ("*Exhibit TTTT-6*").⁸⁴ This was also indicated in the MOA dated December 28, 2007 entered into by the DA and NABCOR ("*Exhibit YYYY*")⁸⁵, to wit:

WHEREAS, it is now the desire of Congressman Teodulo "Doloy" M. Coquilla to transfer his allocation to NABCOR for faster implementation and closer monitoring.

In support, thereto, the prosecution presented the Certified True Copy of Journal Entry Voucher of NABCOR No. 08-00626 dated August 13, 2008, ("*Exhibit G*")⁸⁶ and the Certified True Copy of Disbursement Voucher No. 07-12-6779 dated December 28, 2007 ("*Exhibit H*").⁸⁷ These vouchers proved that the DA indeed transferred the amount covered by SARO ROCS No. 07-07743 to NABCOR. The transfer of the funds from DA to NABCOR is a clear violation of the GAA for the year 2007.

Second, accused Coquilla unilaterally chose and indorsed GABAYMASA as the cooperating non-government organization in the implementation of his PDAF-funded livelihood project despite the fact that it is not specifically included in the list of authorized implementing bodies under the GAA for 2007. The prosecution formally offered the certified true copy of the letter to accused Javellana, President of NABCOR, signed by accused Coquilla ("*Exhibit J*").⁸⁸ In the said letter, accused Coquilla informed NABCOR, that GABAYMASA has been selected as the cooperating non-government organization in the implementation of various livelihood projects in the amount of Five Million Pesos (Php5,000,000.00) covered by SARO ROCS No. 07-07743.

In support, thereto, the prosecution also offered the Certified True Copy of the MOA dated January 16, 2008, signed by accused Javellana

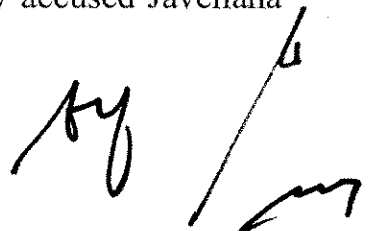
⁸⁴ Record, Vol. VII, p. 202.

⁸⁵ Record, Vol. VII, pp. 672-673.

⁸⁶ Record, Vol. VII, p. 46.

⁸⁷ Record, Vol. VII, p. 47.

⁸⁸ Record, Vol. VII, p. 48.



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(for NABCOR) and accused Luz (for GABAYMASA) (“*Exhibits M, M-1, and M-2*”).⁸⁹

The foregoing actions of accused Coquilla were downright illegal and in blatant violation of the special provision of the PDAF Article in the GAA for the year 2007. While he is the then-Congressman of the lone district of Samar, he is not authorized by law to request or participate in the implementation of the programs for the use of his PDAF. Moreso, he is not allowed to request to change the implementing agency of his livelihood project with an entity not included in the list provided for in the special provision of the PDAF Article. This was clarified in the following exchanges during the trial:

JUSTICE B.R. FERNANDEZ:

Q: Okay. The Implementing Agency is named where or is identified where?

WITNESS ALFAFARAS:

A: In the special provision of the GAA, Your Honor.

Q: The GAA.

A: Yes.

Q: Okay. So, this is enumeration of agencies?

A: Yes, Your Honor.

Q: For the particular utilization of the program like you said livelihood?

A: Yes, Your Honor.

Q: So, these is a different list or other like Technological Resources and so forth, that's a different list then?

A: Yes, Your Honor.

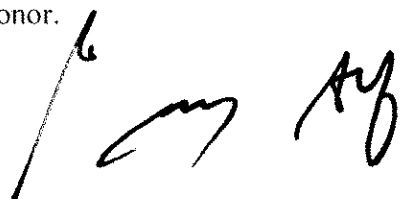
Q: Okay. In the livelihood program, DA is in that list?

A: Yes, Your Honor.

Q: NABCOR is in that list?

A: None, Your Honor.

⁸⁹ Record, Vol. VII, pp. 49-51.

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Q: None, okay. So aside from DA, do you remember any other agencies?

A: DT, Your honor, TLRC, LIVECOR, DSWD, Your Honor.

Q: All right. So, the request will from again?

A: Request from the --- (*Interrupted*)

Q: Implementing Agency?

A: Implementing Agency, Your Honor.

Q: Here in this case, was there a request made?

A: None, Your Honor.

Q: None. So, the request should come from DA?

A: Yes, Your Honor.

Q: All right. Since there was no request made by DA, would that by itself already be treated as in violation of the GAA, of a law?

A: Yes, Your Honor, because the NBC 467 is the Implementing Rules and Regulations of the GAA, Your Honor, for PDAF.

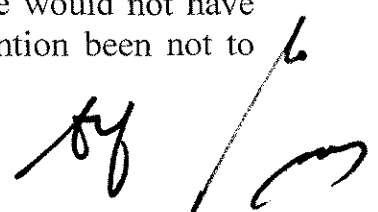
Q: All right. So, in other words, since there was no request from the DA, the process for the PDAF would not have moved forward?

A: Yes, Your Honor.⁹⁰

Under the terms of the GAA for the year 2007, the entities allowed to implement the PDAF-funded livelihood projects are limited only to those specifically enumerated therein. It is very apparent in the special provision of the PDAF Article that NABCOR and GABAYMASA are not included in the list of the implementing agencies.

It is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim "*expressio unius est exclusio alterius*." Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to

⁹⁰ TSN dated February 26, 2020, pp. 56-58.

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restrict its meaning and to confine its terms to those expressly mentioned.⁹¹ As a legislator himself accused Coquilla ought to know the very intent of the GAA in limiting the list of the implementing agencies in the program menu.

In addition, Annex "A" of the Government Procurement Policy Board (GPPB) Resolution No. 12-2007, dated June 29, 2007, states that all government procurement shall be done through competitive public bidding unless the appropriation law earmarks an amount for the project to be specifically contracted out to NGOs, thus:

As a general rule, all procurement shall be done through competitive public bidding. However, when an appropriation law earmarks an amount for projects to be specifically contracted out to NGOs, it is the intent of congress to give due preference to NGOs.

This was also the finding of the COA Audit Team in its Notice of Disallowance No. NAD-2014-024-PDAF (07-09) dated November 24, 2014 ("*Exhibit WWW-1*")⁹², to wit:

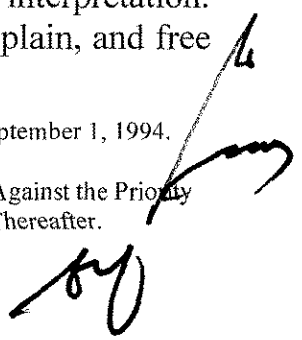
Of the amounts received by NABCOR without its endorsement, P4.85 million was merely transferred to GDFI, a non-governmental organization (NGO), despite the absence of an appropriation law earmarking an amount to be contracted out to NGOs as required under Government Procurement Policy Board (GPPB) Resolution No. 12-2007 issued on June 29, 2007 which was adopted as Section 53(j) of the IRR-A of RA No. 9184. NGOs are not among those identified in the GAA for the year as implementing arms of PDAF projects. The transfer, which was covered by Memorandum of Agreement (MOA) with NABCOR President Alan A. Javellana and GDFI President Margie T. Luz as signatories, is therefor considered without legal basis.

Moreover, the National Budget Circular (NBC) No. 476 dated September 20, 2001,⁹³ which prescribes the guidelines on the release of funds for PDAF authorized under the GAA, states that the national government agencies and GOCCs shall implement only those programs and projects which fall within their mandated function.

Here, there is no provision in the GAA for the year 2007 which specifically earmarks accused Coquilla's PDAF-drawn funds of the livelihood projects to be specifically contracted out to NGOs. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free

⁹¹ *Martin Centeno v. Hon. Victoria Villalon-Pornillos*, G.R. No. 113092, September 1, 1994.
⁹² Record, Vol. VII, pp. 208-211.

⁹³ Otherwise known as the Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for the Second Semester of FY 2001 and Thereafter.

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from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."⁹⁴

Prescinding therefrom, it is clear that the GAA for the year 2007, the GPPB Resolution No. 12-2007, and NBC No. 476, do not authorize the direct release of funds to other government agencies or NGOs not specifically enumerated in the list of implementing agencies; or the direct contracting of NGOs to implement the PDAF-funded programs.

A perusal of the special provision of the PDAF Article in the GAA for 2007 would lead anyone, more so a legislator like accused Coquilla, to conclude that NABCOR and GABAYMASA are not authorized to implement any items in the project menu. Despite such clear and unambiguous prohibition in the law and the relevant rules and regulations, accused Coquilla nevertheless allowed the participation of NABCOR and GABAYMASA in the implementation of his PDAF-funded projects, all at his behest. Indeed, what cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Certainly, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.⁹⁵

b. The subsequent transfer of accused Coquilla's PDAF-drawn funds from NABCOR to GABAYMASA is also a violation of the COA Circular No. 2007-001.

Aside from the violation of the GAA for the year 2007, GPPB Resolution No. 12-2007, and NBC No. 476, the Court finds that the grant of the PDAF to GABAYMASA in the total amount of Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) also violated COA Circular No. 2007-001 dated October 25, 2007. Assuming *arguendo* that the transfer of funds from DA to NABCOR and thereafter to GABAYMASA is not illegal, accused Coquilla, NABCOR officials, and GABAYMASA officials could still be faulted for failing to follow the provisions of COA Circular on the guidelines in the granting of funds to GABAYMASA.

⁹⁴ *Cynthia Bolos v. Danilo Bolos*, G.R. No. 86400, October 20, 2010.

⁹⁵ *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 16647, March 22, 2011.

COA Circular No. 2007-001 governs the guidelines in the granting, utilization, accounting, and auditing of the funds released to NGOs and POs. Considering that the PDAF funds of accused Coquilla were released to GABAYMASA, which is an NGO, COA Circular No. 2007-001 is applicable.

As observed by the COA Audit Team in their Audit Observation Memorandum No. 2008-17 dated July 28, 2009 ("*Exhibit HHHH*"), the following are the deviations from COA Circular No. 2007-001, as mentioned, to wit:⁹⁶

(1) One of the requisites for entitlement of NGOs to government funds is that the NGO must be based in the community where the project shall be implemented.⁹⁷ According to the SEC Cover Sheet ("*Exhibit 2*" for accused Luz)⁹⁸ and the Articles of Incorporation of GABAYMASA ("*Exhibit 5*" for accused Luz)⁹⁹, the indicated business address of GABAYMASA is in Quezon City;

(2) The United Coconut Planters Bank Check Nos. 407937 ("*Exhibit O*")¹⁰⁰ and 417265 ("*Exhibit S*")¹⁰¹, covering the PDAF of accused Coquilla in the aggregate amount of Php 4,850,000.00 were not crossed for deposit to GABAYMASA's savings or current accounts contrary to Item 6.1 of the COA Circular;

(3) GABAYMASA only submitted its audited financial reports for two (2) years contrary to Item 4.4.3 of the COA Circular which requires the submission of three years financial report preceding the date of project implementation;

(4) GABAYMASA did not submit the Sources and Details of Proponents Equity Participation in the Project contrary to Item 4.4.5 of the COA Circular;

(5) GABAYMASA did not submit the Project Proposal with the required approval or signatures of its officers ("*Exhibit AAA to AAA-I*")¹⁰² contrary to Item 4.4.6 of the COA Circular; and

(6) The MOA between NABCOR and GABAYMASA did not contain the terms of reference as required in Item 4.5.3 of the COA Circular.

Moreover, the audit disclosed the following observations:

⁹⁶ Record, Vol. VII, p. 159.
⁹⁷ COA Circular No. 2007-001, item 4.4.1.
⁹⁸ Record, Vol. VIII, p. 593.
⁹⁹ Record, Vol. VIII, p. 595.
¹⁰⁰ Record, Vol. VII, p. 53.
¹⁰¹ Record, Vol. VII, p. 57.
¹⁰² Record, Vol. VII, pp. 123-124.

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(1) GABAYMASA did not submit a simple bidding or canvass to ensure the best terms and quality of the purchase from at least three (3) suppliers for the 32,887 pieces of various seedlings and 10,470 pieces of instructional materials for a total amount of Php4,739,075.00 contrary to item 4.5.3 (f) of COA Circular;

(2) GABAYMASA did not submit an inspection report to ensure that the seedlings and instructional materials were found to be in order as to quantity and specifications contrary to Item 5.5.4 of the COA Circular;

(3) The list of recipients of the various livelihood projects only contains the signature of one person representing each barangay or municipality which received the projects; and

(4) GABAYMASA did not provide an equity equivalent to 20% of the total project cost.

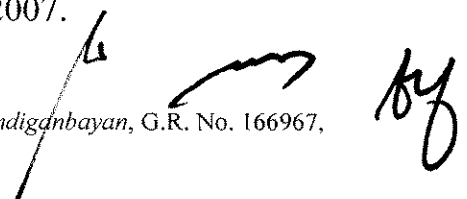
Here, a perusal of the records reveals that the parties did not comply with the provisions of the COA Circular No. 2007-001. Moreover, COA's findings are accorded great weight and respect, unless they are clearly shown to be tainted with grave abuse of discretion; the COA is the agency specifically given the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to, the government. It has the exclusive authority to define the scope of its audit and examination and to establish the required techniques and methods. An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with official guidelines and regulations. Under the Rules on Evidence and considering the COA's expertise on the matter, the presumption is that official duty has been regularly performed unless there is evidence to the contrary.¹⁰³

c. The transfer of the PDAF-drawn funds from NABCOR to GABAYMASA is a violation of the public bidding requirements under GPPB Resolution No. 012-2007.

To be clear, the mere transfer of the PDAF-drawn funds from the DA to NABCOR and its subsequent transfer from NABCOR to GABAYMASA are already violations of the law and relevant rules and regulations, indicative of manifest partiality and evident bad faith. Nevertheless, this Court finds it apt to discuss the violation of the said transfers under the GPPB Resolution No. 012-2007.

¹⁰³

See *Edna J. Jaca v. People of the Philippines and the Sandiganbayan*, G.R. No. 166967, January 28, 2013.

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Assuming arguendo that the GAA for the year 2007 specifically earmarks the PDAF-funded livelihood project to be specifically contracted out to an NGO, the engagement of GABAYMASA by NABCOR is still considered a violation of the public bidding requirement under the GPPB Resolution No. 012-2007. the relevant provision of the Resolution states:


4.1. When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A.

The general rule requiring public bidding is not without essence. The Supreme Court in *Subic Bay Metropolitan Authority v. Commission on Audit*,¹⁰⁴ has acknowledged the importance of public bidding, to wit:

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.

Alternative methods of procurement, however, are allowed under Republic Act No. 9184,¹⁰⁵ which would enable dispensing with the requirement of open, public, and competitive bidding, but only in highly exceptional cases and under the conditions set forth in Article XVI thereof. In a negotiated procurement, the procuring entity directly negotiates a contract with a technically, legally, and financially capable supplier, contractor, or consultant. Section 53 of the IRR of R.A. No. 9184 lays down the specific grounds when a negotiated procurement may be availed of; while Section 54 of the same IRR provides the additional requirements that must be complied with.¹⁰⁶

The Court finds that the accused failed to comply with the prescribed requisites for public bidding or negotiated bidding. The records reveal that the selection of GABAYMASA as the “project partner” in the implementation of the PDAF-funded livelihood project was at the behest of accused Coquilla himself and without following the prescribed guidelines under R.A. No. 9184 and its implementing rules and regulations.


104 G.R. No. 230566, January 22, 2019.

105 Otherwise known as the Government Procurement Reform Act.

106 *Subic Bay Metropolitan Authority v. COA*, G.R. No. 230566, January 22, 2019.

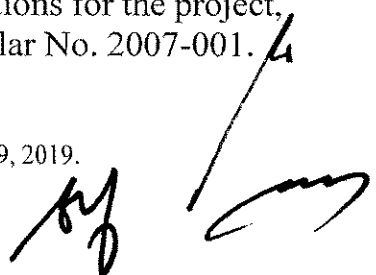
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The accused offered no sufficient justification or adequate reasons why GABAYMASA was favorably chosen. GABAYMASA was selected as a project partner without the benefit of a fair system in determining the best possible price for the government. And the only way to ascertain the best possible price advantageous to the government is through competitive public bidding. Indeed, public bidding is the accepted method for arriving at a fair and reasonable price and it ensures that overpricing and favoritism, and other anomalous practices are eliminated or minimized. To circumvent this requirement outside the valid exceptions is evidence of bad faith. Moreover, by choosing GABAYMASA without public bidding, the accused evidently gave unwarranted benefits, advantage, or preference in favor of private persons, through manifest partiality.¹⁰⁷

d. The legal and physical existence of GABAYMASA is highly questionable.

In addition to the above-mentioned violations of relevant laws and regulations, the records also reveal that the legal and physical existence of GABAYMASA turned out to be questionable. The Notice of Disallowance No. DA-2014-024-PDAF(07-09) dated November 24, 2014 (*"Exhibit WWWWW-1"*)¹⁰⁸ noted the following reasons for the disallowance on the said ground: (1) the address given by GABAYMASA is a residential unit and at the time of the delivery of confirmation letter, there was no person available to receive the letter; (2) GABAYMASA was not issued business permits to operate by the City Government of Quezon City; (3) GABAYMASA did not submit written confirmation on the subject transactions and additional documentation requested by the COA Audit Team.

To note, the Indorsement dated March 9, 2011, issued by the BPLO of Quezon City (*"Exhibit GGGGG"*)¹⁰⁹ reveals that GABAYMASA has the latest renewal of business registration on March 17, 2003. This means that in the years 2007 and 2008 when GABAYMASA was unilaterally selected as the project partner and on the implementation of the PDAF-funded livelihood project of accused Coquilla, it was not authorized by the City Government of Quezon City to conduct and transact business.

The questionable legal and physical existence of GABAYMASA was further bolstered by the fact that it was not evaluated by NABCOR or the DA, through the Bid and Awards Committee (BAC) to meet the minimum qualification requirements and the specifications for the project, in violation of items 4.5.1 and 4.5.2 of the COA Circular No. 2007-001. 

¹⁰⁷ See *Librado Cabrera, et al. v. People*, G.R. No. 191611-14, July 29, 2019.

¹⁰⁸ Record, Vol. VII, pp. 208-212.

¹⁰⁹ Record, Vol. VII, pp. 689-690.

e. The utilization of accused Coquilla's PDAF-drawn funds was undertaken irregularly and illegally.

Aside from the release of SARO ROCS-07-07743 which was marred with illegality, the Court finds that the utilization of accused Coquilla's PDAF-drawn funds was irregularly and illegally undertaken by NABCOR and GABAYMASA. To iterate, while the selection of GABAYMASA as the project partner is already considered a violation of the GAA for 2007 and GPPB Resolution No. 12-2007, the further use of the PDAF-drawn funds was also found to be questionable, evidencing evident bad faith.

Under the Advice of NCA Issued ("Fund 101") dated December 19, 2007 ("*Exhibit TTTT-3*")¹¹⁰, which authorized the release of the PDAF-drawn funds from DBM to DA, the actual utilization and disbursements out of the cash allocation issued shall be subject to existing budgeting, accounting, and auditing rules and regulations. The Court finds that there were deviations from existing budgeting, accounting, and auditing rules and regulations in the utilization of the PDAF which were also observed by the COA Audit Team in the Notice of Disallowance dated NAB-2014-024-PDAF(07-09) dated November 24, 2014 ("*Exhibit WWW-1*")¹¹¹, to wit:

First, the prosecution was able to prove that the alleged suppliers of the seedlings of agricultural crops and the instructional materials did not transact with GABAYMASA in relation to the PDAF-funded livelihood projects of accused Coquilla.

In the procurement of the seedlings for the livelihood projects, an undated Abstract of Canvass signed by accused Vizcarra of GABAYMASA ("*Exhibit T*")¹¹² and Price Quotations ("*Exhibits U and V*")¹¹³ show that three suppliers purportedly submitted price quotations for the fruit-bearing seedlings, namely: Mangopina Trading Corporation, Lilia Dapuran Marketing, and Marinduqueño's Garden Shop. Moreover, the same canvass also named the following entities as the alleged suppliers of the instructional materials: BT Mangrubang Enterprises, KP Enterprises, and MJ Mores Enterprises.

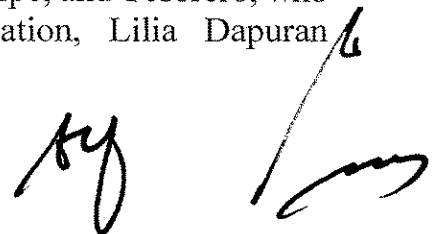
During the trial, the prosecution proved that these alleged quotations are fictitious based on the testimony of Gaspay, Felipe, and Tesorero, who testified that: (1) Mangopina Trading Corporation, Lilia Dapuran

¹¹⁰ Record, Vol. VII, p. 200.

¹¹¹ Record, Vol. VII, pp. 208-211.

¹¹² Record, Vol. VII, p. 58.

¹¹³ Record, Vol. VII, pp. 60-61.



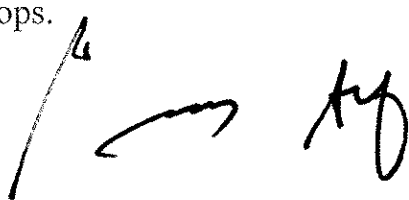
Marketing, Marinduqueño's Garden Shop, BT Mangrubang Enterprises, and MJ Mores Enterprises are not registered with the DTI; (2) KP Enterprises was registered with the DTI only on January 25, 2011, or four (4) years after the purported procurements of the instructional materials; (3) there is no business name Lila Dapuran Marketing registered in the Business Permits and Licenses Division, Tacloban City as proved by the Original Certification signed by witness Gaspay, the Licensing Officer III of the Business Permits and Licenses Division, Office of the City Mayor, Tacloban City ("*Exhibit BBBBBB*"),¹¹⁴ which was also corroborated in her Judicial Affidavit dated November 6, 2019, and identified during the hearing on January 22, 2020; (4) that based on official records of the BPLO of San Mateo, Rizal there is no registered business establishment in the name of MJ Mores Enterprises owned by Josephine Mores as evidenced by the Original Certification signed by witness Felipe, the Municipal Government Department Head I assigned to the BPLO of San Mateo, Rizal ("*Exhibit BBBBBB-1*")¹¹⁵; (5) that based on official records of the BPLO of Quezon City, while there is a proprietorship registered as BT Mangrubang, its business information is different from those appearing in the price quotation submitted by GABAYMASA, evidenced by the Original Certification signed by witness Africa, of the Business Permits and Licensing Department of Quezon City ("*Exhibit BBBBBB-2 to Exhibit BBBBBB-2-d*")¹¹⁶; and (6) KP Enterprises Inc. and Marinduqueño's Garden Shop did not transact with GABAYMASA in relation to the PDAF-funded livelihood projects of accused Coquilla.

Aside from the concocted canvass and quotations, the prosecution was also able to prove that the alleged winning bidders were also fabricated. During the trial, the proprietors of KP Enterprises Inc. and Marinduqueño's Garden Shop both denied having transacted with GABAYMASA and issuing the receipts and invoices, and receiving the corresponding payments thereto. Aside from the testimony of Associate Graft Investigation Officer I Matthews who conducted the ocular inspection and investigation of KP Enterprises Inc. and Marinduqueño's Garden Shop, the prosecution was also able to present witnesses Fietas and Aurellano, the proprietors of the establishments who categorically denied having entered into the transaction with GABAYMASA with regard to the purchase of seedlings and instructional materials. Moreover, the prosecution, through its witnesses was able to prove that KP Enterprises, Inc. is not engaged in the business of selling instructional materials while Marinduqueño's Garden Shop is not engaged in the business of selling seedlings of agricultural crops.

¹¹⁴ Record, Vol. VII, p. 884.

¹¹⁵ Record, Vol. VII, p. 885.

¹¹⁶ Record, Vol. VII, pp. 886-889.

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The prosecution was able to corroborate the testimonies of Matthews, Fietas, Sultan, Tesorero, and Aurellano with the presentation of the following evidence: Original Official Business Slip dated April 17, 2012 (*"Exhibit CC"*);¹¹⁷ Original photographs of the premises of Marinduqueño's Garden Shop (*"Exhibits DD to DD-15"*);¹¹⁸ Original photographs of the premises of KP Enterprises (*"Exhibits EE to EE-15"*);¹¹⁹ Certified True Copy of Sales Invoice No. 17561 dated December 15, 2007 (*"Exhibit FF"*);¹²⁰ Certified True Copy of Delivery Receipt dated December 17, 2007 (*"Exhibit GG"*);¹²¹ Photocopies of Business Permits of Marinduqueño's Garden for 2004 and 2005 (*"Exhibits ZZZZ to ZZZZ-1"*);¹²² Certified True Copy of Response Letter of Fietas dated January 7, 2011 (*"Exhibit HHHHH"*);¹²³ Certified True Copy of Letter of Fietas to Director Garcia (*"Exhibit HHHHH-1"*);¹²⁴ Certified True Copy of Response letter of Aurellano dated December 3, 2010 (*"Exhibit IIII"*);¹²⁵ Photocopy of Letter dated June 1, 2015 signed by Fietas and addressed to Silverio (*"Exhibit MMMMM"*);¹²⁶ Photocopy of Letter of Fietas to Garcia (*"Exhibit MMMMM-1"*);¹²⁷ Photocopy of Response Letter of Fietas to Garcia dated January 7, 2011 (*"Exhibit MMMMM-2"*);¹²⁸ Photocopy of Official Receipts of Marinduqueño's Garden Shop (*"Exhibits MMMMM-3 to MMMMM-7"*);¹²⁹ Photocopy of Price Quotation of Marinduqueño's Garden Shop (*"Exhibit MMMMM-8"*);¹³⁰ Photocopy of GABAYMASA's Purchase Order for seedlings, addressed to Marinduqueño's Garden Shop (*"Exhibit MMMMM-9"*);¹³¹ Photocopy of Official Receipt of Marinduqueño's Garden Shop (*"Exhibit OOOOO"*);¹³² Photocopy of Certificate of Registration of Business Name of KP Enterprises issued on March 12, 1998 (*"Exhibit UUUUU"*);¹³³ Photocopy of Certificate of Registration of Business Name of KP Enterprises issued on April 23, 2003 (*"Exhibit UUUUU-1"*);¹³⁴ Photocopy of Sales Invoices of KP Enterprises (*"Exhibit VVVVV"*);¹³⁵ Photocopy of Application for Sole Proprietorship of Marinduqueño's Garden Shop (*"Exhibit WWWWW"*);¹³⁶ Photocopy of

¹¹⁷ Record, Vol. VII, p. 69.

¹¹⁸ Record, Vol. VII, pp. 70-73.

¹¹⁹ Record, Vol. VII, pp. 74-77.

¹²⁰ Record, Vol. VII, p. 78.

¹²¹ Record, Vol. VII, p. 79.

¹²² Record, Vol. VII, pp. 674-675.

¹²³ Record, Vol. VII, p. 691.

¹²⁴ Record, Vol. VII, p. 692.

¹²⁵ Record, Vol. VII, p. 694.

¹²⁶ Record, Vol. VII, pp. 743-746.

¹²⁷ Record, Vol. VII, p. 747.

¹²⁸ Record, Vol. VII, p. 748.

¹²⁹ Record, Vol. VII, pp. 749-752.

¹³⁰ Record, Vol. VII, p. 753.

¹³¹ Record, Vol. VII, p. 754.

¹³² Record, Vol. VII, p. 757.

¹³³ Record, Vol. VII, p. 758.

¹³⁴ Record, Vol. VII, p. 759.

¹³⁵ Record, Vol. VII, pp. 760-810.

¹³⁶ Record, Vol. VII, p. 811. Faithful reproduction of the original; original copies were produced during the trial.

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Certificate of Business Name Registration of Marinduqueño's Garden Shop issued on September 21, 2004 ("*Exhibit WWWWW-1*");¹³⁷ Photocopy of Delivery Receipts of KP Enterprises ("*Exhibit ZZZZZ*");¹³⁸ and Photocopy of Collection Receipts of KP Enterprises ("*Exhibit AAAAAA*").¹³⁹

Second, the prosecution was able to prove that the listed barangays and municipalities in the province of Samar did not receive the seedlings of agricultural crops and the instructional materials in connection to the PDAF-funded livelihood project, contrary to the undated Certificate of Acceptance signed by accused Luz and Coquilla.

An undated Certificate of Acceptance ("*Exhibit HH*")¹⁴⁰ indicates that the seedlings and the instructional materials procured by GABAYMASA had been received by accused Coquilla. Likewise, an undated Acknowledgment Receipt ("*Exhibit II*")¹⁴¹ purports to prove that all these items were received by the selected beneficiaries of the selected municipalities and barangays of Eastern Samar. However, the records reveal that the reported distribution of the seedlings and instructional materials to the intended beneficiaries is highly questionable considering that none of the thirteen (13) selected beneficiaries confirmed receipt of the items. Moreover, eight (8) of these purported beneficiaries were either unknown at their given addresses or did not claim their confirmation letters. While other intended beneficiaries did not respond to the COA Audit Team.

On this particular matter, the prosecution was able to present the following witnesses: Padullo, former Punong Barangay of Barangay Taytay, Guiuan, Eastern Samar; Padriquez, the Punong Barangay of Barangay Campoyong, Guiuan, Eastern Samar; Remojo, former Punong Barangay of Barangay Victory, Eastern Samar; Opriasa, former Punong Barangay of Barangay Hagna, Guiuan, Eastern Samar; Lacasa, former Punong Barangay of Barangay Bulawan, Eastern Samar; Naves, former Punong Barangay of Barangay Malobago, Maslog, Eastern Samar; and Rebato, former Punong Barangay of Barangay San Miguel, Maslog, Eastern Samar. These former and incumbent Punong Barangays of the alleged beneficiaries of the PDAF-funded Livelihood project of accused Coquilla categorically denied having received any seedlings and instructional materials on behalf of their respective Barangays or knowing any of their constituents who benefited from the said project.

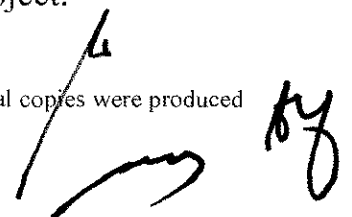
¹³⁷ Record, Vol. VII, p. 812. Faithful reproduction of the original; original copies were produced during the trial.

¹³⁸ Record, Vol. VII, pp. 813-882.

¹³⁹ Record, Vol. VII, p. 883.

¹⁴⁰ Record, Vol. VII, p. 80.

¹⁴¹ Record, Vol. VII, p. 81.

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In the implementation of livelihood projects of NGOs in the barangays, we are guided by the relevant provisions of the R.A. No. 7160 or the Local Government Code of the Philippines. Under Section 384 of the Code, the barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects, and activities in the community. In relation to NGOs, Section 35 of the Code states that local government units, including the barangay, may enter into joint ventures and other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building, and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

The Court agrees that being the Punong Barangay during the time of the alleged distribution of the livelihood project, the witnesses are in the position to receive and to know who among their constituents received the items distributed. Besides, it is highly irregular for any government project involving government funds to be implemented without the proper coordination of the local government units involved.

Moreover, as admitted by accused Luz during her testimony on July 23, 2021, she was not present when the fruit-bearing seedlings were distributed to the intended beneficiaries in Easter Samar and that the undated Certificate of Acceptance was immediately signed by accused Luz and Coquilla after the inspection made by the latter's staff, to wit:

PROS. BALISACAN:

Q: And when the staff of Cong. Coquilla picked up the items, let's say for example today, the next day, Cong. Coquilla signed this Certificate of Acceptance in front of you.

ACCUSED LUZ:

A: Sir, that is my recollection, sir. One day after or two (2) days after. After the staff inspected and counted that the items were complete and then he said, he is ready to sign the Certificate of Acceptance. So, we proceed to his office in congress and he signed the acceptance in front of me, sir.¹⁴²

With the positive testimony of the witnesses barangay officials and the admission made by accused Luz, this Court finds that no distribution of the fruit-bearing seedlings was conducted by the accused to the intended beneficiaries in Eastern Samar.

Third, the amounts transferred to GABAYMASA were purportedly used to pay fuel, meals, and representation expenses from various suppliers and to procure assorted office supplies, instructional materials, and fruit-bearing seedlings from KP Enterprises and Marinduqueño's Garden Shop as evidenced by the Certified True Copy of List of Expenses prepared and submitted by GABAYMASA ("*Exhibits EEEEE to EEEEE-4*").¹⁴³

Based on the Summary of Expenses prepared by GABAYMASA, out of the Four Million Eight Hundred Fifty Thousand Pesos (Php4,850,000.00) PDAF-drawn funds transferred from NABCOR to GABAYMASA, they spent a total of Four Million Eight Hundred Forty-Nine Thousand Nine Hundred Ninety-Five Pesos and Eighty-Seven Centavos (Php4,849,995.87) in the implementation of accused Coquilla's PDAF-funded livelihood project. The records disclose that the difference of Two Pesos and Thirty-three Centavos (Php2.33) was returned to NABCOR per JEV No. 08-00497 dated July 14, 2008.¹⁴⁴ However, the prosecution was able to prove that the Liquidation Report was supported by Official Receipts and Sales Invoices bearing dated from November 7, 2007, to January 15, 2008, all before the execution of the MOA on January 16, 2008, and the issuance of the UCPB Check No. 407937 on January 23, 2008.

The records disclose that GABAYMASA, through accused Luz and Vizcarra, received the sum of Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00) and Four Hundred Eighty-Five Thousand Pesos (Php485,000.00) only on January 26, 2008, and July 14, 2008, respectively. Hence, it is highly irregular and illogical that GABAYMASA spent the money prior to these dates.

In support, thereto, the prosecution offered the following evidence: Certified True Copy of Purchase Order signed by accused Vizcarra for KP Enterprises ("*Exhibit Y*");¹⁴⁵ Certified True Copy of the Photocopy on File of Purchase Order signed by Vizcarra for KP Enterprises ("*Exhibit Y-1*");¹⁴⁶ Certified True Copy of Purchase Order signed by accused Vizcarra for Marinduqueño's Garden Shop ("*Exhibit Z*");¹⁴⁷ Certified True Copy of the Photocopy on File of Purchase Order signed by Vizcarra for Marinduqueño's Garden Shop ("*Exhibit Z-1*");¹⁴⁸ Certified True Copy of Sales Invoice No. 1035 dated December 21, 2007 ("*Exhibit AA*");¹⁴⁹ Certified True Copy of Delivery Receipt dated December 27, 2007

¹⁴³ Record, Vol. VII, pp. 681-685.

¹⁴⁴ Record, Vol. I, p. 17.

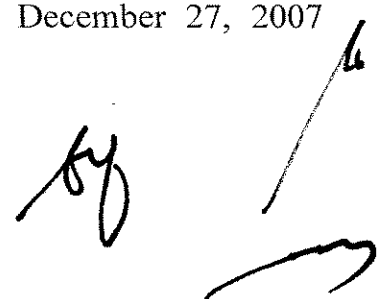
¹⁴⁵ Record, Vol. VII, p. 62.

¹⁴⁶ Record, Vol. VII, p. 63.

¹⁴⁷ Record, Vol. VII, p. 64.

¹⁴⁸ Record, Vol. VII, p. 65.

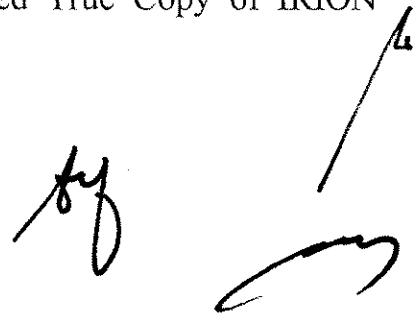
¹⁴⁹ Record, Vol. VII, p. 66.

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("Exhibit BB");¹⁵⁰ Certified True Copy of Sales Invoice No. 17561 dated December 15, 2007 ("Exhibit FF");¹⁵¹ Certified True Copy of Delivery Receipt dated December 27, 2007 ("Exhibit GG");¹⁵² Certified True Copy of the Official Receipt No. 1026 dated December 21, 2007 of Marinduqueño's Garden Shop ("Exhibit EEE");¹⁵³ Certified True Copy of the Official Receipt No. 1029 dated January 5, 2008 of Marinduqueño's Garden Shop ("Exhibit FFF");¹⁵⁴ Sales Invoice No. 17550 dated December 12, 2007 of KP Enterprises ("Exhibit JJJ");¹⁵⁵ Official Receipt No. 16650 dated December 12, 2007 of KP Enterprises ("Exhibit KKK");¹⁵⁶ Official Receipt No. 16582 of KP Enterprises ("Exhibit LLL");¹⁵⁷ Certified True Copy of Charge Invoice No. 9394 ("Exhibit VVV");¹⁵⁸ Certified True Copy of Invoice No. 14689 ("Exhibit VVV-1");¹⁵⁹ Certified True Copy of Cash Invoice No. 3862 ("Exhibit VVV-2");¹⁶⁰ Certified True Copy of Cash Invoice No. 0266 of 5-U Service Station dated December 12, 2007 ("Exhibit WWW");¹⁶¹ Certified True Copy of Cash Invoice No. 2270 of 5-U Service Station dated December 17, 2007 ("Exhibit WWW-1");¹⁶² Certified True Copy of Cash Invoice No. 597539 of Citimar Motorist CE dated January 8, 2008 ("Exhibit WWW-2");¹⁶³ Certified True Copy of Petron Cash Invoice No. 840769 B dated January 17, 2008 ("Exhibit XXX");¹⁶⁴ Certified True Copy of 5-U Service Station Cash Invoice No. 10721 ("Exhibit XXX-1");¹⁶⁵ Certified True Copy of Polloso Enterprises, Inc. Cash Invoice No. 100376 dated November 15, 2004 ("Exhibit XXX-2");¹⁶⁶ Certified True Copy of Makati Shangri-la Official Receipt No. 186492 A dated November 7, 2004 ("Exhibit YYY");¹⁶⁷ Certified True Copy of Harmony Dance Palace, Inc. Cash Invoice No. 50667 dated November 18, 2004 ("Exhibit YYY-1");¹⁶⁸ Certified True Copy of Mocha Blends Official Receipt No. 00046550 dated January 4, 2008 ("Exhibit ZZZ");¹⁶⁹ Certified True Copy of Don Henricos-Ristorante Mall of Asia Official Receipt No. 01003581 dated January 5, 2008 ("Exhibit ZZZ-1");¹⁷⁰ Certified True Copy of IRION

¹⁵⁰ Record, Vol. VII, p. 68.
¹⁵¹ Record, Vol. VII, p. 78.
¹⁵² Record, Vol. VII, p. 79.
¹⁵³ Record, Vol. VII, p. 131.
¹⁵⁴ *Id.*
¹⁵⁵ Record, Vol. VII, p. 138.
¹⁵⁶ *Id.*
¹⁵⁷ Record, Vol. VII, p. 139.
¹⁵⁸ Record, Vol. VII, p. 149.
¹⁵⁹ *Id.*
¹⁶⁰ *Id.*
¹⁶¹ Record, Vol. VII, p. 150.
¹⁶² *Id.*
¹⁶³ *Id.*
¹⁶⁴ Record, Vol. VII, p. 151.
¹⁶⁵ *Id.*
¹⁶⁶ *Id.*
¹⁶⁷ Record, Vol. VII, p. 152.
¹⁶⁸ *Id.*
¹⁶⁹ Record, Vol. VII, p. 153.
¹⁷⁰ *Id.*



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Foods Concepts Corp. Official Receipt No. 0586 (*"Exhibit AAAA"*);¹⁷¹ Certified True Copy of Serye Restaurant, Grill & Café Guest Check No. 200748 dated November 26, 2007 (*"Exhibit AAAA-1"*);¹⁷² Certified True Copy of Chili's Receipt dated January 10, 2008 (*"Exhibit BBBB"*);¹⁷³ Certified True Copy of California Pizza Kitchen Official Receipt No. 0010033532 dated January 11, 2008 (*"Exhibit BBBB-1"*);¹⁷⁴ Certified True Copy of Office Warehouse, Inc. Receipt dated January 8, 2008 (*"Exhibit CCCC"*);¹⁷⁵ Certified True Copy of National Bookstore Receipt dated January 2, 2008 (*"Exhibit DDDD"*);¹⁷⁶ Certified True Copy of National Bookstore Receipt dated January 15, 2008 (*"Exhibit DDDD-1"*);¹⁷⁷ Certified True Copy of Choi Garden Official Receipt No. 1347 dated January 14, 2008 (*"Exhibit EEEE"*);¹⁷⁸ and Certified True Copy of Jose Antonio Crepes Restaurant Official Receipt No. 3040 dated January 23, 2008 (*"Exhibit EEEE-1"*);¹⁷⁹

Fourth, the balance of One Hundred Fifty Thousand Pesos (Php150,000.00) retained by NABCOR allegedly as an administrative cost does not have a basis in law and is not duly accounted for considering that the said amount formed part of NABCOR's income. As admitted by accused Munsod during her cross-examination on May 18, 2021, NABCOR charged an administrative fee on the Five Million (Php5,000,000.00) PDAF of accused Coquilla. The retention of the said amount is neither supported by any law nor the MOA. The following exchanges point to that effect:

PROS. BALISACAN:

Q: Now, ma'am, this retention of Php150,000.00, if you know, was this authorized under the MOA that it will go to NABCOR?

ACCUSED MUNSOD:

A: Based on the MOA, sir, as far as I can see in the screen sir, I haven't really read the whole MOA. I believe, it is not stated.

Q: If you know ma'am, you said that as far as you know, the PPhp150,000.00 was retained as admin fee of NABCOR, are you aware of any authority, legal authority by which NABCOR did that?

¹⁷¹ Record, Vol. VII, p. 154.

¹⁷² *Id.*

¹⁷³ Record, Vol. VII, p. 155.

¹⁷⁴ *Id.*

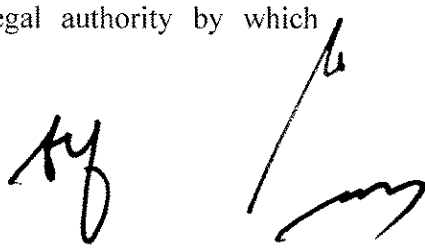
¹⁷⁵ Record, Vol. VII, p. 156.

¹⁷⁶ Record, Vol. VII, p. 157.

¹⁷⁷ *Id.*

¹⁷⁸ Record, Vol. VII, p. 158.

¹⁷⁹ *Id.*

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A: Sir, since I am not from accounting, I really don't have any idea when it comes to that. I was not privy to any information like that as an Admin and HR Manager.¹⁸⁰

Considering that NABCOR is not included in the list of the implementing agencies under the GAA for the year 2007, it is not authorized by law to charge an administrative cost on the PDAF of accused Coquilla.

Assuming arguendo that the One Hundred Fifty Thousand Pesos (Php150,000.00) administrative charge is lawful, it was not actually used for the purpose intended. Under the MOA dated December 28, 2007 (*Exhibit "YYYY"*),¹⁸¹ the PDAF allocation of accused Coquilla was transferred to NABCOR for the "faster implementation and closer monitoring." However, as discussed above, NABCOR was not able to perform its obligation under the MOA, which includes the duties to review the qualifications of GABAYMASA and monitor the implementation of the PDAF-funded livelihood project.

The foregoing deviations of pertinent laws and regulations in the grant of accused Coquilla's PDAF to NABCOR and its subsequent transfer to GABAYMASA are clear manifestations of manifest partiality in favor of the latter. Likewise, evident bad faith was also established in the utilization of the PDAF considering that the PDAF-funded livelihood project was proved to be spurious and non-existent.

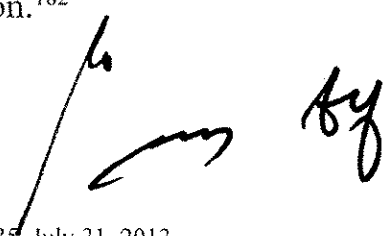
C. The third element of the violation of Section 3(e) of R.A. No. 3019: the acts of the accused caused undue injury to the government and gave unwarranted benefit, advantage, or preference to GABAYMASA and accused Luz.

As to the third element, there are two (2) ways by which Section 3(e) of R.A. No. 3019 may be violated—the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.¹⁸²

¹⁸⁰ TSN dated May 18, 2021, p. 31.

¹⁸¹ Record, Vol. VII, pp. 672-673.

¹⁸² *Ampil v. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013.

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The Supreme Court defined injury as "any wrong or damage done to another, either in his person or in his rights, reputation or property; the invasion of any legally protected interests of another." It must be more than necessary or are excessive, improper, or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty. Undue injury cannot be presumed even after a wrong or a violation of a right has been established. Corollary thereto, proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible.¹⁸³

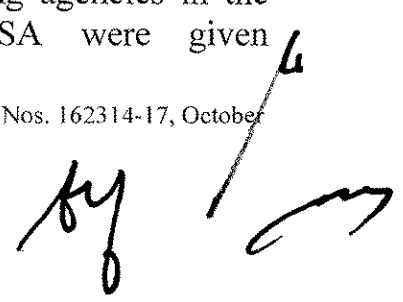
Under the second mode, damage is not required. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.¹⁸⁴

The Informations charge the accused under both modes. Under the first, mode, the Court finds that the prosecution was able to prove that the scheme designed and executed by the accused caused undue injury to the Government in the aggregate amount of Five Million Pesos (Php5,000,000.00). The injury to the government is apparent considering that the prosecution was able to prove that the PDAF-funded livelihood projects are spurious and non-existent.

As to the second mode, the Court finds that the prosecution has sufficiently proved that accused Coquilla gave unwarranted benefits and advantages to NABCOR and GABAYMASA. Based on the documentary evidence and testimony of the prosecution's witnesses, accused Coquilla used his official function as the Congressman of the Lone District of Eastern Samar to directly participate in the implementation of his PDAF-funded livelihood project by unilaterally selecting NABCOR as the "implementing agency" and GABAYMASA as the "project partner" despite the clear and unambiguous special provision in the PDAF Article of the GAA for the year 2007 and the GPPB Resolution No. 12-2007. Despite being excluded from the list of implementing agencies in the appropriation law, NABCOR and GABAYMASA were given

¹⁸³ *Librado M. Cabrera, et. Al. v. The Honorable Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004; citations omitted.

¹⁸⁴ *Ampil v. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013.

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participation in the grant and utilization of the PDAF-drawn public funds and the implementation of the spurious PDAF-funded livelihood projects.

II. Criminal Case Nos. SB-17-CRM-0065-66 for violation of Article 217 of the Revised Penal Code, as amended.

All the accused had been charged in Criminal Case Nos. SB-17-CRM-0065-66 for violation of Article 217 of the Revised Penal Code, as amended, which reads:

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

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

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.¹⁸⁵

The felony involves breach of public trust, and whether it is committed through *dolo* or *culpa* the law makes it punishable and prescribes a uniform penalty therefor. Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense.¹⁸⁶

Parenthetically, the elements of malversation of public funds are that: (1) the offender is a public officer; (2) he has custody or control of the funds or property by reason of the duties of his office; (3) the funds or property are public funds or property for which he is accountable, and, most importantly; (4) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.¹⁸⁷

¹⁸⁵ As amended by R.A. No. 1060.

¹⁸⁶ *Milagros Diaz v. Sandiganbayan*, G.R. No. 125213, January 26, 1999; citations omitted.

¹⁸⁷ *Manuel Venezuela v. People of the Philippines*, G.R. No. 205693, February 14, 2018.

A. The first element of the violation of Article 217 of the Revised Penal Code: accused are public officers.

The first element of the offense under Article 217 of the RPC is undisputed, as the parties stipulated that accused Coquilla, Relevo, and Munsod are public officers, being the Congressman of the Lone District of Eastern Samar, and officials of NABCOR, respectively.

In respect of accused Luz of GABAYMASA she is likewise liable with the accused public officers under Article 222 in relation to Article 217 of the RPC. While Article 217 of the RPC only punishes the public officer involved, Article 222 of the RPC provides that “*private individuals who, in any capacity whatever, have charge of any national, provincial, or municipal funds, revenues or property*” may be held liable under Article 217 of the same code. In conjunction thereto, the Supreme Court has also ruled that malversation of public funds can also be committed by any private individual who acted in conspiracy with an accountable public officer found guilty of malversation.¹⁸⁸

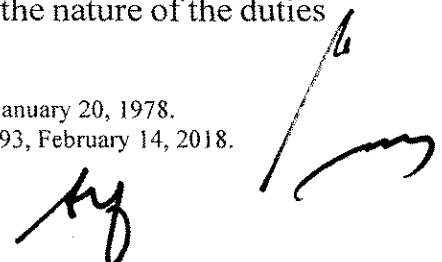
At issue are the second, third, and fourth elements of the offense. Verily, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.¹⁸⁹

B. The second and third elements of the violation of Article 217 of the Revised Penal Code: accused are accountable officers, having control and custody of the PDAF-drawn funds.

For the second and third elements, the Court finds that the accused are considered accountable officers under our jurisdiction. An accountable officer under Article 217 of the RPC is a public officer who, by reason of his office, is accountable for public funds or property. Sec. 101(1) of the Presidential Decree No. 1445 or the Government Auditing Code of the Philippines defines an accountable officer to be every officer of any government agency whose duties permit or require the possession or custody of government funds or property and who shall be accountable therefor and for the safekeeping thereof in conformity with the law. In the determination of who is an accountable officer, it is the nature of the duties

¹⁸⁸ *People v. Licerio Sandaydiego, et al.*, G.R. Nos. L-33252-54, January 20, 1978.

¹⁸⁹ *Manuel Venezuela v. People of the Philippines*, G.R. No. 205693, February 14, 2018.



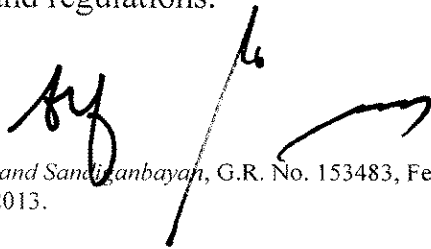
which he performs - the fact that, as part of his duties, he received public money for which he was bound to account, and not the nomenclature or the relative importance the position held - which is the controlling factor.¹⁹⁰

The Court finds accused Coquilla as an accountable officer. In the landmark case of *Belgica v. Hon. Executive Secretary*,¹⁹¹ the Supreme Court held that legislators, either individually or collectively, have control over certain aspects of the PDAF's utilization through various post-enactment measures and/or practices.

In the cases at bar, the records reveal that accused Coquilla has control over the release and implementation of the PDAF allocated to him. As evidenced by the letter dated September 10, 2007, signed by accused Coquilla and addressed to Speaker Joe De Venecia, Jr., ("*Exhibit TTTT-6*").¹⁹² This particular letter triggered and set into motion the grant of the PDAF to NABCOR and its subsequent transfer to GABAYMASA.

Accused Relevo and Munsod of NABCOR are deemed similarly situated as they are likewise government officials being then the Human Resources and Administrative Manager and Head of General Services Unit of NABCOR, respectively. Section 51, Chapter 9 of Executive No. 292 or the Administrative Code of 1987 states that "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." To reiterate, both accused admitted that when they signed box "A" of the disbursement vouchers, they were aware that they are certifying that the expenses indicated therein are necessary, lawful, and incurred under their direct supervision.¹⁹³

As for accused Luz, being the President of GABAYMASA, she is also considered as an accountable officer pursuant to the MOA entered into between NABCOR and GABAYMASA dated January 16, 2008. Being selected as the "project partner", GABAYMASA became a partner who has been delegated to undertake the PDAF-funded livelihood project for NABCOR. The MOA entered into and the funds granted become the authority for such delegation. Under the said MOA, GABAYMASA shall "administer, manage, and disburse the FUND in accordance with accounting and auditing rules and regulations."¹⁹⁴

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¹⁹⁰ *Flordeliza F. Querijero v. People and Sandiganbayan*, G.R. No. 153483, February 14, 2003.

¹⁹¹ G.R. No. 208566, November 19, 2013.

¹⁹² Record, Vol. VII, p. 202.

¹⁹³ TSN dated May 18, 2021 and June 1, 2021.

¹⁹⁴ Record, Vol. VII, p. 50.

Anent the third element, considering that accused Coquilla's PDAF is sourced from the GAA for the year 2007, there is no denying that the same is considered a public fund. The nature of the PDAF as a public fund remains to be so even after they are released and distributed to different projects or programs identified by the legislation for actual implementation.

C. The fourth element of the violation of Article 217 of the Revised Penal Code: accused misappropriated or consented or allowed accused Luz, Vizcarra, and GABAYMASA to take or misappropriate PDAF-drawn public funds

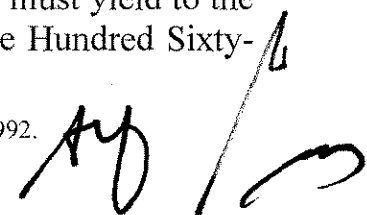
As for the fourth element, the Court finds that the accused misappropriated or consented or allowed accused Luz, Vizcarra, and GABAYMASA to take or misappropriate PDAF-drawn public funds, instead of implementing the PDAF projects, which turned out to be non-existent or fictitious. Under Article 217 of the RPC, there is *prima facie* evidence of malversation where the accountable public officer fails to have duly forthcoming any public funds with which he is chargeable upon demand by a duly authorized officer. As jurisprudence has pointed out, this presumption *juris tantum* is founded upon human experience and shall be *prima facie* evidence that he/she has put such missing funds or property to personal use.¹⁹⁵

In the case at bar, the prosecution was able to prove by moral certainty that the accused, in conspiracy with one another, misappropriated the PDAF-drawn public funds. Aside from the fact that the accused is not allowed under the law to transfer the funds to NABCOR or GABAYMASA, the prosecution was also able to prove that the alleged PDAF-funded livelihood projects of accused Coquilla are fictitious. Moreover, when required to account for the expenses allegedly incurred by GABAYMASA in connection with the said project, they supplied irrelevant, outdated, and fabricated invoices.

Verily, the elements of the crime imputed to the accused in the Informations were duly established not only by the testimony of the persecution's witnesses but also by the documentary evidence offered. Under the foregoing circumstances, it is evident that the accused have not successfully rebutted the *prima facie* presumption of malversation. The evidence of the prosecution is overwhelming and has not been overcome by the accused. The presumed innocence of the accused must yield to the positive finding that they malversed Four Million Three Hundred Sixty-

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Lucilyn T. Zambrano v. Sandiganbayan, G.R. No. 82067, April 10, 1992.



Five Thousand Pesos (Php4,365,000.00) in Criminal Case Nos. SB-17-CRM-006 and Four Hundred Eighty-Five Thousand Pesos (Php485,000.00) Criminal Case Nos. SB-17-CRM-0065-66 to the prejudice of the public whose confidence they have breached.

III. Accused acted in conspiracy with one another in committing the crimes charged in Criminal Case Nos. SB-17-CRM-0063-64 and Criminal Case Nos. SB-17-CRM-0065-66.

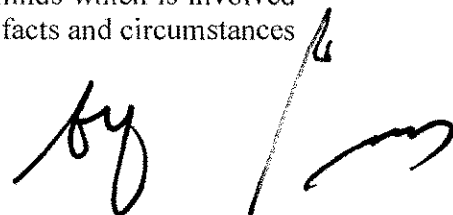
In finding conspiracy in the cases at bar, the Court is guided by the principles laid down by the Supreme Court in *People v. Peralta*,¹⁹⁶ to wit:

For this purpose, it is not amiss to briefly restate the doctrine on conspiracy, with particular emphasis on the facets relating to its nature, the quantum of proof required, the scope and extent of the criminal liability of the conspirators, and the penalties imposable by mandate of applicable law.

Doctrine. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason, rebellion and sedition. The crime of conspiracy known to the common law is not an indictable offense in the Philippines. An agreement to commit a crime is a reprehensible act from the view-point of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed. However, when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators.

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Proof of conspiracy. While conspiracy to commit a crime must be established by positive evidence, direct proof is not essential to show conspiracy. Since by its nature, conspiracy is planned in utmost secrecy, it can seldom be proved by direct evidence. Consequently, competent and convincing circumstantial evidence will suffice to establish conspiracy. According to *People vs. Cabrera*, conspiracies are generally proved by a number of indefinite acts, conditions, and circumstances which vary according to the purposes to be accomplished. If it be proved that the defendants pursued by their acts the same object, one performing one part and another part of the same, so as to complete it, with a view to the attainment of the same object, one will be justified in the conclusion that they were engaged in a conspiracy to effect the object." Or as elucidated in *People vs. Carbonel* the presence of the concurrence of minds which is involved in conspiracy may be inferred from "proofs of facts and circumstances

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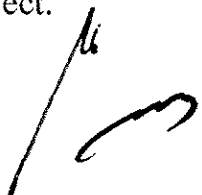

which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among to concert means is proved ..." In two recent cases, this Court ruled that where the acts of the accused, collectively and individually, clearly demonstrate the existence of a common design toward the accomplishment of the same unlawful purpose, conspiracy is evident.

Conspiracy presupposes the existence of a preconceived plan or agreement; however, to establish conspiracy, "it is not essential that there be proof as to previous agreement to commit a crime, it being sufficient that the malefactors committed shall have acted in concert pursuant to the same objective." Hence, conspiracy is proved if there is convincing evidence to sustain a finding that the malefactors committed an offense in furtherance of a common objective pursued in concert.

Liability of conspirators. A time-honored rule in the corpus of our jurisprudence is that once conspiracy is proved, all of the conspirators who acted in furtherance of the common design are liable as co-principals. This rule of collective criminal liability emanates from the ensnaring nature of conspiracy. The concerted action of the conspirators in consummating their common purpose is a patent display of their evil partnership, and for the consequences of such criminal enterprise they must be held solidarity liable.

However, in order to hold an accused guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy. The difference between an accused who is a principal under any of the three categories enumerated in Art. 17 of the Revised Penal Code and a co-conspirator who is also a principal is that while the former's criminal liability is limited to his own acts, as a general rule, the latter's responsibility includes the acts of his fellow conspirators.

Here, the prosecution was able to prove that as alleged in the Informations, accused Relevo, Munsod, and Luz conspired with accused Coquilla in violating Section 3 (e) of R.A. No. 3019 and Article 217 of the RPC. As culled from the records, accused Relevo, Munsod, and Luz willingly went along with the ignoble scheme of accused Coquilla by completing the act of embezzling the PDAF-drawn funds through the implementation of a fictitious and non-existent livelihood project.



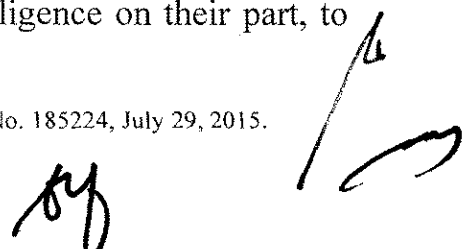
The prosecution was able to prove with documentary and testimonial evidence the following overt acts of the accused, which completed the grand scheme to embezzle the government:

Accused Coquilla triggered the illegal and irregular release of his PDAF-drawn funds, through the letter addressed to Speaker Joe De Venecia, Jr. Without the said letter, NABCOR would not have been selected as the implementing agency, in violation of the GAA for the year 2007. It was also through the letter of accused Coquilla addressed to NABCOR that GABAYMASA was selected as the project partner in the implementation of the livelihood projects, in violation of the GAA for the year 2007, GPPB Resolution No. 12-2007, and COA Circular No. No. 2007-001. It was also accused Coquilla who signed the undated Certificate of Acceptance and undated Acknowledgement Receipt to make it appear that the items were delivered to the intended beneficiaries in his congressional district.

On the other hand, accused Relevo and Munsod signed the box A of the Disbursement Voucher Nos. 08-01-00200 and 08-07-02229, respectively, thus certifying that the documents are complete and proper. Without their signatures, the UCPB Check Nos. 407937 and No. 417265 would not have been issued to GABAYMASA. Their certification as the first signatories of the disbursement vouchers made it appear that the disbursements were indeed necessary and lawful despite the glaring deficiencies in the attached supporting documents. While both accused made assumption that the accounting department of NABCOR already cleared the documents attached to the disbursement vouchers, they admitted that they did not make their own confirmation that the disbursements were indeed necessary and lawful. Corollary, when an authorized person approves a disbursement voucher, he certifies to the correctness of the entries therein, among others: that the expenses incurred were necessary and lawful, the supporting documents are complete, and the availability of cash therefor. He also attests that the person who performed the services or delivered the supplies, materials, or equipment is entitled to payment.¹⁹⁷

Accused Relevo and Munsod cannot also escape liability by invoking *Arias v. Sandiganbayan*.¹⁹⁸ Reliance of the accused on the *Arias* doctrine is misplaced considering that the said ruling was decided against an entirely different factual milieu. While the Court views that the accused Relevo and Munsod's failure to inquire further before affixing their signature despite apparent inconsistencies in the face of the disbursement vouchers and their supporting documents as negligence on their part, to

¹⁹⁷ See *Amelia Zoleta v. The Honorable Sandiganbayan*, G.R. No. 185224, July 29, 2015.
¹⁹⁸ G.R. No. 82512, December 19, 1989.



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additionally fix their signatures despite lack of supporting documents only shows gross and inexcusable disregard of the consequences of their acts as approving authorities.¹⁹⁹

In *Bacasmas v. Sandiganbayan*,²⁰⁰ the Supreme Court clarified that head of offices cannot invoke the ruling in *Arias v. Sandiganbayan* when there are reasons to further examine the documents in question by virtue of the duty given to them by law as well as by rules and regulations, to wit:

Petitioners cannot hide behind our declaration in *Arias v. Sandiganbayan* that heads of offices cannot be convicted of a conspiracy charge just because they did not personally examine every single detail before they, as the final approving authorities, affixed their signatures to certain documents. The Court explained in that case that conspiracy was not adequately proven, contrary to the case at bar in which petitioners' unity of purpose and unity in the execution of an unlawful objective were sufficiently established. Also, unlike in *Arias*, where there were no reasons for the heads of offices to further examine each voucher in detail, petitioners herein, by virtue of the duty given to them by law as well as by rules and regulations, had the responsibility to examine each voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.

Accused Relevo, in his cross-examination, observed many irregularities but remained silent and worse, allowed accused Coquilla's scheme to perpetuate. The following exchanges during the trial signify accused Relevo's acquiescence to the conspiracy:

PROS. CALALANG:

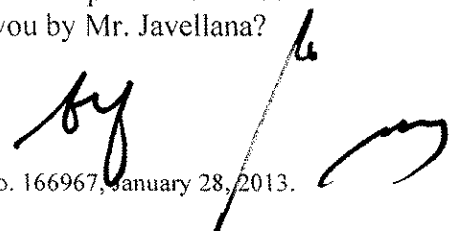
Q: Now, how come sir that you never brought up or mentioned that the authority was given to you verbally to sign the Disbursement Voucher in those documents?

ACCUSED RELEVO:

A: *Kasi po ang binigay po sa akin verbal authority lang, kasi noon panahon yon nagmamadali kasi po yon dapat pumirma diyan ay nagkasakit at nakaleave. So wala po maisipan niya na pumirma kundi ako.*

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Q: Okay. Alright. Sir, after that verbal/oral authority that was given to you, was there no follow-up memorandum or office order that was given to you by Mr. Javellana?



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A: *Wala po. Ma'am. Kasi kung mayroon nailagay naming yan nung nagfile kami ng Counter-Affidavit sa Ombudsman.*

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Q: Did you ever put in writing, sir your hesitations or reservations about accepting the assignment or the authority, sir?

A: *Ang usapan po namen kasi noon puro verbal lang, pagsinabi ko po at pinaliliwanag ko po sa kanya na initindi ko naman ay hindi yong sa main office namen kungdi yong iba namen projects sa Luzin, Visayas, Mindanao.*

Q: So you did not anymore ask for a written authority.

A: *Opo, ma'am.*

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Q: Okay, since you were new in this role, did you try to consult in the Finance Department where applicable COA Rules regarding the release for disbursement funds?

A: *Hindi po kasi po talagang nabisto ko dyan si Mr. Javellana, kasi siya naman ang nagassign sa akin dyan, nangako na tutulungan niya ako. Kaya siya lang ang aking kinukunsulta.²⁰¹*

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JUSTICE FERNANDEZ:

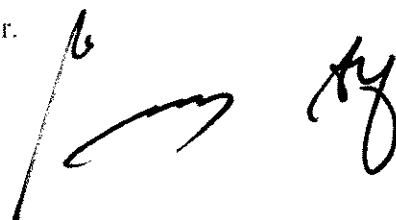
Q: What are the functions and duties generally of that Unit, General Services Unit?

A: *Ang seguridad na yong mga supplies, mga equipment like computers are properly – I mean are available when needed.*

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Q: So it would appear that your signing the Disbursement Voucher (DV) is totally alien from your regular function in the General Services Unit, is that correct?

A: *Tama po yon, Your Honor.*

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Q: Mr. Relevo, did you ask Mr. Javellana why he chose you considering that not only is your unit alien to the function of the finance but you were also a probationary employee?

A: *Pinaliwanag ko don po yan kay Mr. Javellana, ang sabi po niya noon ay 'ang tawag niya po akin ay (Mulong) Mulong ikaw na lamang ang nakikita ko na madaling makaintindi ng bagay na yan, kaya ikaw muna ang inaassign ko, kasi yung iba naman ay hindi niya alam kong – well, I don't know kung bakit ganun ang naisip niya.*

Q: Apparently, you are in a first name basis, would it be safe to say that you knew Mr. Javellana even before you entered NABCOR?

A: *Nakasama ko po kasi siya noon matagal ng panahon yon, kasi po nagtrabaho siya sa DAP, so mayroon akong mga kasamahan na kakilala siya, so doon kani nagkakilala.*²⁰²

The same holds true with regard to accused Munsod. Despite the apparent irregularities in the face of the disbursement voucher as against its attachments, she remained silent and proceeded to execute the overt act of certifying that the disbursement was necessary and lawful. The following exchanges during the trial signify accused Munsod's acquiescence to the conspiracy:

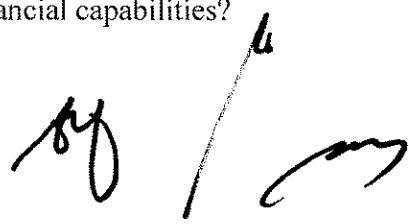
PROS. BALISACAN:

Q: Now, in your answer to question number 8 of your Judicial Affidavit, you said that you examined the attachments to the DV. In the process of performing your functions, under the authority given to you by the President of NABCOR, can you just clarify if you requested additional documents proving GABAYMASA's corporate and legal existence?

ACCUSED MUNSOD:

A: No, sir.

Q: What about additional documents pertaining to GABAYMASA's technical and financial capabilities?



X-----X

A: No. These documents are all being handed to the project team.²⁰³

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JUSTICE FERNANDEZ

Q: So, there is nothing related to anything financial or pertaining to the custody or taking care or safekeeping of public funds handled by NABCOR. Is there in your position?

A: None, Your Honor.

Q: Did you ever wonder why you were authorized to sign a disbursement voucher related to corporate funds and project funds by the President?

A: I was directly under the Admin and Finance Department, Your Honor.

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Q: Would you tell us the extent of your examination of these three (3) documents? How did you make the examination?

A: Your Honor, the extent of my examination was to check whether the data or those that were encoded in the face of the voucher is the same on the terms and conditions of the MOA. The name of the claimant, the legislator or the amount indicated in the voucher and the documents which are the project proposal and the endorsement letter, your Honor.

Q: So, in other words, you never go deeper than just reconciling the contents of the Memorandum of Agreement, Letter of Endorsement and Project Proposal vis-à-vis this disbursement voucher.

A: That is correct, Your Honor.

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Q: Is it also correct to say that when you say lawful, the expenses or advances are in accordance with law and rules and they do not violate them at all. Is this a correct understanding of the word lawful?

A: Yes *po*.

X-----X

Q: So, when you signed this, did you refer to any law or rule in order for you to sure that your certification is correct and that it is within the coverage of the word lawful?

A: No, Your Honor.²⁰⁴

The Supreme Court, in *Bacasmás v. Sandiganbayan*, further affirmed the existence of conspiracy among the accused through their unified acts of approving the disbursement vouchers and their silence to report the various irregularities.²⁰⁵ Hence, this Court finds that accused Relevo and Munsod acted in conspiracy with the accused Coquilla and Luz by turning a blind eye to the irregularities surrounding the disbursement of funds.

As for accused Luz, the record shows that she was the signatory of the MOA dated January 16, 2008, entered into and between NABCOR and GABAYMASA. Without such MOA, the PDAF-drawn fund would not have been illegally transferred from NABCOR to GABAYMASA, in violation of the GAA for the year 2007, GPPB Resolution No. 12-2007, and COA Circular No. No. 2007-001. Moreover, it was also accused Luz who led GABAYMASA during the time material to the cases, which presupposes that she had the participation or knowledge in the issuance of fictitious documents and invoices in support of the non-existing livelihood project. Accused Luz also signed the Certificate of Acceptance to conceal the fictitious and non-existing livelihood project. Moreover, it was accused Luz who issued the Certificate of Authority to accused Vizcarra to claim the check on behalf of GABAYMASA.

Despite being selected as the “project partner” of accused Coquilla’s PDAF-funded Livelihood project, GABAYMASA through accused Luz, did not perform its obligation under the MOA to implement the said project. Moreover, as admitted by accused Luz during her cross-examination on July 23, 2021, as the President of GABAYMASA, she exercises supervision over the employees and officers of the organization, thus:

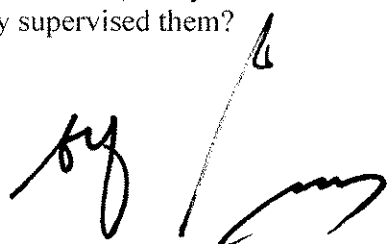
PROS. BALISACAN:

Of course, Madam Witness.

Q: But for everything that your staff does, can you tell the Court whether you reasonably supervised them?

ACCUSED LUZ:

²⁰⁴ TSN dated May 18, 2021, pp. 37-41.
²⁰⁵ *Supra*.



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A: Yes, sir.

Q: Now, as part of your supervision on what your staff is doing, you confirm that GABAYMASA submitted several purchase orders, sales invoices, delivery receipts and official receipts as liquidation of the project to NABCOR?

A: Yes, sir.

Q: And as President, were you aware, Madam Witness, that the purchase orders, sales invoices, delivery receipts and official receipts, all of them were dated prior to the execution of the MOA?

A: Yes, sir.

Q: Were you also aware that the receipts show expenses from establishments that were all based in Metro Manila?

A: No, sir.

Q: Are you aware of any sales invoice, purchase orders, delivery receipts or official receipts that you submitted to NABCOR from an establishment based on Eastern Samar?

A: No, sir.

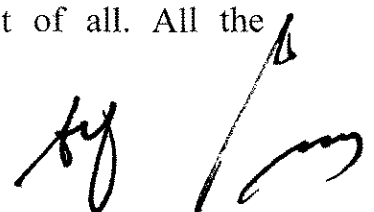
Q: Were you aware that the winning bidder for the supplier for the seedlings is an ornamental shop?

A: No, sir.

Q: Are you aware that KP Enterprises, the Marikina based winning bidder for supplying instructional materials was a seller of car batteries?

A: No, sir.²⁰⁶

Under these given facts, there can be no question that the accused acted in concert to attain a common purpose. Their respective actions, although some appear to be innocent acts, summed up to collective efforts to achieve the common objective. As the Supreme Court ruled, the character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by looking at it as a whole—acts done to give effect to the conspiracy may be, in fact, wholly innocent acts. Once proved, the act of one becomes the act of all. All the

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conspirators are answerable as co-principals regardless of the extent or degree of their participation.²⁰⁷

In sum, a conspiracy among accused Coquilla, Relevo, Munsod, and Luz has been proved beyond reasonable doubt by the prosecution. Consequently, these co-principals are adjudged guilty beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, as amended and Article 217 of the RPC.

IV. The Proper Penalty.

A. In SB-17-CRM-0663-64 for Violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended.

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

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

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

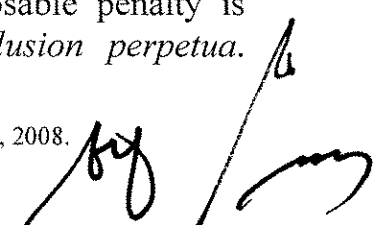
In addition, the accused shall suffer perpetual disqualification from holding public office and loss of all retirement or gratuity benefits under existing laws.

B. In SB-17-CRM-0665-66 for Violation of Article 217 of the Revised Penal Code.

The amount malversed in SB-17-CRM-0665 is Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00) while in SB-17-CRM-0666 the amount malversed is Four Hundred Eighty-Five Thousand Pesos (Php485,000.00). Under the old law, the imposable penalty is *reclusion temporal* in its maximum period to *reclusion perpetua*.

²⁰⁷

See *Juanita A. Aquino v. Teresita B. Paiste*, G.R. No. 147782, June 25, 2008.



However, with the amendment introduced under R.A. No. 10951,²⁰⁸ the proper imposable penalties corresponding to the amount malversed are as follows: *reclusion temporal*, in its medium and maximum periods in SB-17-CRM-0665; and *prision mayor* in its minimum and medium periods in SB-17-CRM-0666.

In both cases, the Court appreciates in favor of the accused, one (1) mitigating circumstance. Based on the record, accused Coquilla, Munsod, Relevo, and Luz voluntarily surrendered. Under Article 64(2) of the Revised Penal Code, when there is only a mitigating circumstance present, the Court shall impose the penalty in its minimum period. Thus, the penalties imposable are as follows: in SB-17-CRM-0665, the minimum of *reclusion temporal* medium and maximum periods, ranging from fourteen (14) years, eight (8) months, and one (1) day to sixteen (16) years, five (5) months and ten (10) days; and in SB-17-CRM-0666, the minimum of *prision mayor* in its minimum and medium periods, ranging from six (6) years and one (1) day to seven (7) years and four (4) months.²⁰⁹

Applying the Indeterminate Sentence Law, the minimum term, or the penalty next lower to the prescribed penalties are as follows: *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, which ranges from ten (10) years and one (1) day to fourteen (14) years and eight (8) months in SB-17-CRM-0665; and *prision correccional* in its medium and maximum periods, ranging from two (2) years, four (4) months, and one (1) day to six (6) years in SB-17-CRM-0666.²¹⁰

On the basis of the foregoing, accused Coquilla, Munsod, Relevo, and Luz should be sentenced to suffer the following penalties of imprisonment: ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum in SB-17-CRM-0665; and two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum in SB-17-CRM-0666.

In addition, the accused should be sentenced to suffer perpetual disqualification from holding any public office and loss of all retirement and gratuity benefits under existing laws.

Further, each of the accused should be ordered to pay a fine of Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00) in

²⁰⁸ Passed by Congress on August 29, 2017.

²⁰⁹ *Manolito Gil Z. Zafra v. People of the Philippines*, G.R. No. 176317, July 23, 2014.

²¹⁰ *Nida Corpuz v. People of the Philippines*, G.R. No. 241383, June 8, 2020.

SB-17-CRM-0665 and Four Hundred Eighty-Five Thousand Pesos (Php485,000.00) in SB-17-CRM-0666. The said amount shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.²¹¹

C. Civil Liability.

Article 100 of the RPC provides that every person criminally liable for a felony is also civilly liable. Corollary, R.A. No. 10660 provides that recovery of civil liability shall be simultaneously instituted with, and jointly determined in, the same proceeding. Considering that conspiracy has been proved with moral certainty in these cases, the Court holds that all the accused shall be liable severally among themselves to reimburse the whole of the amount malversed.

D. The criminal and civil liability of accused Coquilla.

As for accused Coquilla, the Court finds proper the dismissal of the cases against him on account of his death, pursuant to *Article 89 of the RPC*, viz:

Article 89. How criminal liability is totally extinguished.
- 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 final judgment.

xxx

While it is true that no certificate of death was produced by the prosecution or by the counsel of accused Coquilla, the Court is satisfied with the prosecution's presentation of the *Resolution No. 130* of the House of Representatives which was attached as "*Annex B*" to its *Manifestation and Motion* dated April 11, 2019.²¹² Based on the said Resolution, the House of Representatives stated that accused Coquilla died on April 28, 2018, or prior to his arraignment. Thus, the criminal liability, which includes the personal penalties and pecuniary penalties, of accused Coquilla was totally extinguished by his death.

The reliance by the Court on *Resolution No. 130* finds its legal basis in Section 1, Rule 129 of the 2019 Proposed Amendments to the Revised Rules on Evidence²¹³ which provides that the Court shall take judicial

²¹¹

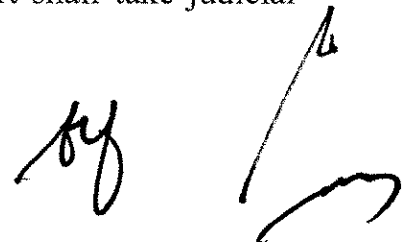
Id.

²¹²

Record, Vol. III, pp. 357-367.

²¹³

A.M. No. 19-08-15-SC.



notice, without the introduction of evidence of the official acts of the House of Representatives, to wit:

RULE 129
WHAT NEED NOT BE PROVED

Section 1. Judicial notice, when mandatory. - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

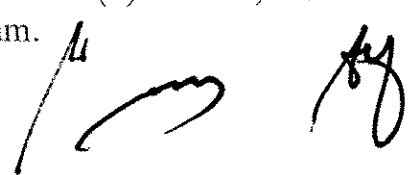
Considering that the criminal liability of accused Coquilla under SB-17-0663-66 is now considered totally extinguished, the Court likewise dismisses the civil liability based solely thereon.

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

1. In **Criminal Case No. SB-17-CRM-0663**, the Court finds accused, ENCARNITA-CRISTINA POTIAN MUNSOD ("Munsod"), ROMULO M. RELEVO ("Relevo"), and MARGIE TAJON LUZ ("Luz") **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, as amended, and pursuant to Section 9 thereof, are hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum.

In addition, accused Munsod, Relevo, and Luz shall suffer perpetual disqualification from holding any public office and loss of all retirement benefits under the law.

2. In **Criminal Case No. SB-17-CRM-0664**, the Court finds accused ENCARNITA-CRISTINA POTIAN MUNSOD ("Munsod"), ROMULO M. RELEVO ("Relevo"), and MARGIE TAJON LUZ ("Luz") **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, as amended, and pursuant to Section 9 thereof, are hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum.



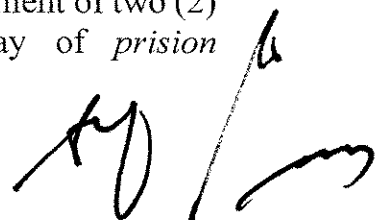
In addition, accused Munsod, Relevo, and Luz shall suffer perpetual disqualification from holding any public office and loss of all retirement benefits under the law.

3. In **Criminal Case No. SB-17-CRM-0665**, the Court finds accused ENCARNITA-CRISTINA POTIAN MUNSOD ("Munsod"), ROMULO M. RELEVO ("Relevo"), and MARGIE TAJON LUZ ("Luz") **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, and are hereby sentenced to suffer an indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

In addition, accused Munsod, Relevo, and Luz shall suffer perpetual disqualification from holding any public office and loss of all retirement benefits under the law. Further, accused Munsod, Relevo, and Luz are each ordered to pay a fine of Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00). The said amount shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.

Accused Munsod, Relevo, and Luz are likewise held liable, jointly, and severally, to return and reimburse to the government, through the Bureau of Treasury, the amount of Four Million Three Hundred Sixty-Five Thousand Pesos (Php4,365,000.00) which shall earn legal interest at the rate of six percent (6%) per annum computed from the finality of this Decision until paid.

4. In **Criminal Case No. SB-17-CRM-0666**, accused ENCARNITA-CRISTINA POTIAN MUNSOD ("Munsod"), ROMULO M. RELEVO ("Relevo"), and MARGIE TAJON LUZ ("Luz") are found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, and are hereby sentenced to suffer an indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision*

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correccional as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum.

In addition, accused Munsod, Relevo, and Luz shall suffer perpetual disqualification from holding any public office and loss of all retirement benefits under the law. Further, accused Munsod, Relevo, and Luz are each ordered to pay a fine of Four Hundred Eighty-Five Thousand Pesos (Php485,000.00). The said amount shall earn legal interest at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.

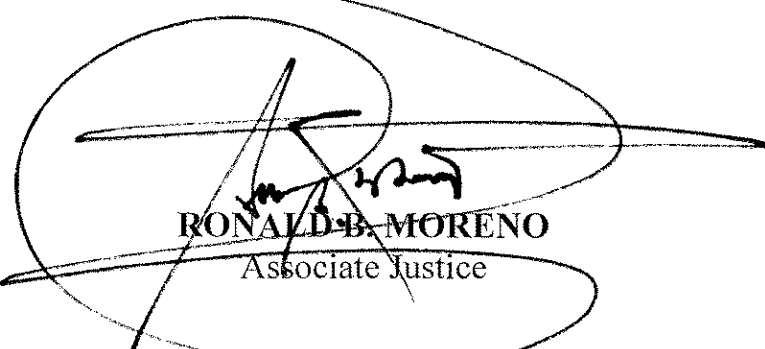
Accused Munsod, Relevo, and Luz are likewise held liable, jointly, and severally, to return and reimburse to the government, through the Bureau of Treasury, the amount of Four Hundred Eighty-Five Thousand Pesos (Php485,000.00) which shall earn legal interest at the rate of six percent (6%) per annum computed from the finality of this Decision until paid.

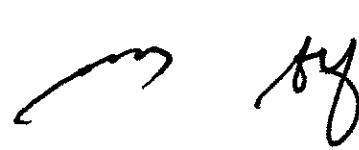
The Court orders the **DISMISSAL** of these cases against accused TEODULO "DOLOY" MONTANCES COQUILLA ("Coquilla") on account of his death.

Since the Court has not acquired jurisdiction over the persons of ALAN ALUNAN JAVELLANA ("Javellana"), MA. JULIE A. VILLARALVO-JOHNSON ("Johnson") and MA. CRISTINA VIZCARRA ("Vizcarra") as they remain at large, the cases against them in Criminal Case Nos. SB-17-CRIM-0663-66 are hereby ordered **ARCHIVED**, the same to be revived upon their arrest. Let the appropriate warrants of arrest be issued against the said accused.

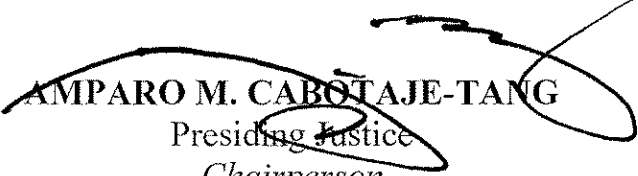
SO ORDERED.

Quezon City, Metro Manila, Philippines.

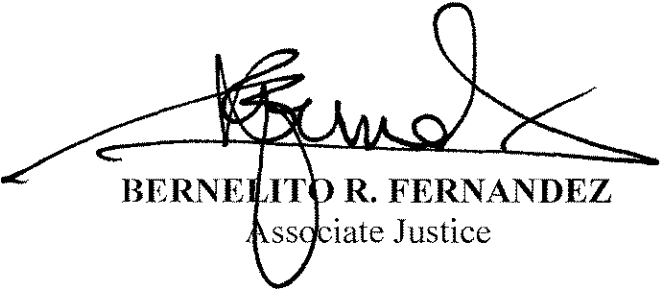

RONALD B. MORENO
Associate Justice



WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

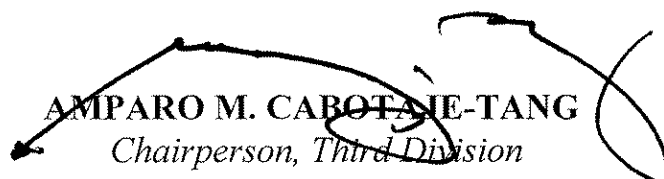


BERNELITO R. FERNANDEZ
Associate Justice

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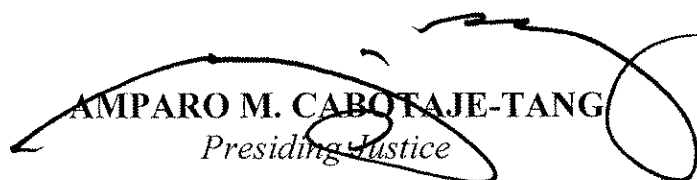
ATTESTATION

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


AMPARO M. CABOTAJE-TANG
Chairperson, Third Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

