



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,

SB-17-CRM-1023

Plaintiff,

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

-versus-

DATU SAJID ISLAM U. AMPATUAN,
JOHN ESTELITO G. DOLLOSA, JR.,
KASAN I. MAKAPENDEG,
OSMEÑA M. BANDILA,
ENGR. NORIE K. UNAS,
DATUALI K. ABPI, AL HAJ,
ENGR. LANDAP GUINAID,

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,

SB-17-CRM-1024

Plaintiff,

For: Malversation of Public
Funds under Art. 217 of
the RPC

-versus-

DATU SAJID ISLAM U. AMPATUAN,
JOHN ESTELITO G. DOLLOSA, JR.,
KASAN I. MAKAPENDEG,
OSMEÑA M. BANDILA,
ENGR. NORIE K. UNAS,
DATUALI K. ABPI, AL HAJ,
ENGR. LANDAP GUINAID,

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,

SB-17-CRM-1025 to 1097

Plaintiff,

For: Falsification of Public
Documents under Art. 171
of the RPC

-versus-

DATU SAJID ISLAM U. AMPATUAN,
JOHN ESTELITO G. DOLLOSA, JR.,
KASAN I. MAKAPENDEG,
OSMEÑA M. BANDILA,
ENGR. NORIE K. UNAS,

Present:

Quiroz, J.
Cruz, J.
Jacinto, J.

**DATUALI K. ABPI, AL HAJ,
ENGR. LANDAP GUINAID,**

Promulgated:

Accused.

22 MARCH 2019

X-----X

DECISION

JACINTO, J.:

On 27 March 2014, the Commission on Audit (COA) filed a complaint for "Malversation, Fraud Against the Public Treasury, Failure to Render Accounts, Illegal Use of Public Funds and Property, Violations of Government Auditing Code, Section 3(g) of Republic Act (R.A.) No. 3019,¹ R.A. No. 9184,² Falsification by Public Officers, and Falsification by Private Individuals and Use of Falsified Documents" with the Office of the Ombudsman (OMB) against the following officials from the Province of Maguindanao and some private individuals:

Public Respondents	Position
Datu Andal S. Ampatuan, Jr.	Governor
Datu Sajid Islam U. Ampatuan	Governor
John Estelito G. Dollosa, Jr.	Provincial Accountant, Bids and Awards Committee (BAC) member
Osmeña M. Bandila	Provincial Treasurer, BAC member
Norie K. Unas	Provincial Administrator, BAC member
Kasan I. Macapendeg	Provincial General Services Officer, BAC Chairman
Datuali K. Abpi, Al Haj	Provincial Budget Officer, BAC member
Landap Guinaid	OIC-Provincial Engineer, BAC member
Private Respondent	
John/Jane Doe	Abo Lumberyard and Construction Supply (Abo Lumberyard)

The complaint stemmed from the COA's findings in its Special Audits Office (SAO) Report No. 2010-02 dated 1 July 2011, that, between January 2008 to September 2009, several irregular cash advances were made from the Province's funds, Php85,721,000.00 of which were paid to Abo Lumberyard for the purported purchases of construction materials for the repair of school

¹ ANTI-GRAFT AND CORRUPT PRACTICES ACT.

² GOVERNMENT PROCUREMENT REFORM ACT.

buildings. The audit team discovered that despite the disbursements, no actual purchases were made. It was further observed that Abo Lumberyard did not exist as a business entity as it had no business permit to operate, no records with the Bureau of Internal Revenue (BIR), and it could not be found at its given address.

After undertaking the requisite preliminary investigation, the OMB found probable cause to indict the above-named officials, save for Datu Andal S. Ampatuan, Jr. who passed away on 17 July 2015, for one count of Violation of Sec. 3(e) of R.A. No. 3019, as amended, one count of Malversation under Article 217 of the Revised Penal Code (RPC) and 73 counts of Falsification of Public Document under Art. 171 of the RPC for transactions amounting to Php38,129,117.00

The *Informations*, all dated 31 January 2017, were filed with the Court on 22 May 2017. Subsequently, the prosecution submitted the Death Certificates of accused Macapendeg,³ Unas,⁴ and Guinaid⁵ as certified by the Philippine Statistics Authority. On 10 September 2018, the Court issued a *Resolution*, dismissing the cases against them.⁶

Accused Dollosa, Jr. and Bandila, on the other hand, remain at-large. Thus, proceedings continued only against accused Datu Sajid Islam Uy Ampatuan (Ampatuan) and Abpi.

On 29 May 2017, the Court issued a Hold Departure Order⁷ (HDO) against the accused. Accused Ampatuan and Abpi thereafter posted bail through surety bonds⁸ and were arraigned on 4 September 2017. Both entered pleas of "Not Guilty."⁹

In the course of the Pre-trial Conference, the parties filed a *Joint Narration and Stipulation of Facts and On Admission of Documentary Evidence*¹⁰ (Joint Stipulation) and thereafter, upon agreement, the Court terminated Pre-trial on 19 February 2018.¹¹ Upon manifestation of all parties that with the admission of each other's documentary exhibits they would

³ Records, Vol. IV, p. 330.

⁴ Id., pp. 331-332.

⁵ Id., p. 333.

⁶ Id., p. 334.

⁷ Records, Vol. II, pp. 225-226.

⁸ See Orders dated 1 June 2017 and 5 June 2017, Records, Vol. II, p. 370 and 502.

⁹ Order dated 4 September 2017, Records, Vol. II, pp. 532-533.

¹⁰ Records, Vol. II, pp. 710-726.

¹¹ Order dated 19 February 2018, Records, Vol. II, p. 729.

dispense with the presentation of witnesses, the Court directed them to submit their respective Formal Offers of Evidence within 15 days therefrom. They were further directed to submit their respective memoranda within 30 days from receipt of the other party's Formal Offer of Evidence.

The prosecution filed its *Formal Offer of Evidence*¹² on 21 March 2018, which was not opposed by the accused. On 29 May 2018, the Court admitted into evidence prosecution's Exhibits "A," "B" to "B-12," "C," "D," "E," "F" to "F-5-c" up to Exhibits "ZZZ" and series, "AAAA," "BBBB" to "BBBB-3," "KKKK," "LLLL," "PPPP," and "QQQQ," subject to several observations.¹³ However, upon the prosecution's motion, Exhibit "P-5-c" was later excluded from its documentary exhibits.¹⁴

Accused Ampatuan filed his *Formal Offer of Exhibits* on 19 April 2018.¹⁵ On 4 June 2018,¹⁶ the Court, taking into consideration the prosecution's *Comment*,¹⁷ admitted his Exhibits "1" to "13" into evidence.

On the other hand, for failure of accused Abpi to file his Formal Offer of Evidence as directed in the 19 February 2018 *Order*, he was considered to have waived his right to do so.¹⁸

Thereafter, the parties filed their respective Memoranda as follows: accused Ampatuan on 20 March 2018;¹⁹ accused Abpi on 8 May 2018;²⁰ and the prosecution on 10 August 2018.²¹

¹² Records, Vol. III, pp. 37-142.

¹³ The Court made the following observations:

1. There is no Exhibit "B-13" offered by the prosecution but it is included in their prayer for admission;
2. Exhibit "B-9" has only 177 pages and Exhibit "B-11" is actually marked as "B-12" which consists of two (2) separate bundles. There is no actual Exhibit "B-11" attached to the record. Its description is Exhibit "I-1-6-185" and that there is no page 3 of the 4 pages in "I-3;"
3. The description for Exhibits "M-1" is actually that of "M-2" and vice-versa. Exhibit "O-1" is that of "O-2," Exhibits "O-3" and "O-4," Exhibits "R-1" and "R-2" and "R-3" and "R-4," Exhibit "T-3" are that of Exhibit "T-4" also. Exhibit "U-1" and Exhibit "U-2," Exhibit "U-3" and "U-4"; all these exhibits have descriptions erroneously transposed into some other exhibit number;
4. There is no Exhibit "P-5-c" actually marked as proof of the Ex-Parte Manifestation with Motion (Re: Formal Offer of Evidence) filed by the prosecution on March 26, 2018 which was GRANTED by the Court in its March 27, 2018 Resolution;
5. Exhibit "BBBB-2" is actually marked as Exhibit "BBBB-3" and is not attached to the offer of exhibits but being offered by the prosecution;
6. Exhibit "BBBB-3" is actually marked as Exhibit "BBBB-4" and was offered in evidence but it is not attached to the offer exhibits;
7. Exhibit "KKKK" and "LLLL" were not attached to the said offer and pertains to accused Datuali Kanakan Abpi only but was stipulated by the defense.

¹⁴ Resolution dated 21 May 2018, Records, Vol. III, p. 223.

¹⁵ Records, Vol. III, pp. 163-187.

¹⁶ Id., p. 230.

¹⁷ Id., pp. 216-219.

¹⁸ Resolution dated 21 May 2018, Records, Vol. III., p. 222.

¹⁹ Records, Vol. III, pp. 1-34.

²⁰ Id., pp. 201-210.

²¹ Id., pp. 251-317.

ADMITTED FACTS:

The following admitted facts are culled from the Joint Stipulation:

1. Accused Ampatuan served as OIC-Governor of Maguindanao from 16 January 2009 to 15 October 2009. Accused Abpi, on the other hand, served as the Provincial Budget Officer and was a member of the Province's BAC.
2. During his tenure, accused Ampatuan signed and approved several purchase requests (P.R.), purchase orders (P.O.), and disbursement vouchers (D.V.) pertaining to the procurement of construction materials from Abo Lumberyard for the repair of school buildings in the Province upon "certification by accused John Estelito G. Dollosa, Jr., Provincial Accountant, that funds are available and the documents supporting payments are complete and proper"²² – except for 10 D.V.s (Exhibits "JJJ" to "RRR" and "TTT") and their corresponding P.R.s and P.O.s.²³
3. In addition, accused Ampatuan claims that he was out of the country from 28 April 2009 to 15 May 2009, but this claim was conditioned on the presentation of his passport.
4. Accused Abpi signed "several" Abstracts of Bids as member of the BAC, but denies that the signatures appearing on Exhibits "BBB-5 to III-5" and "SSS-5" to "ZZZ-5" are his.²⁴
5. The COA conducted a special audit of the Province of Maguindanao to assess, among others, the Province's utilization of its Internal Revenue Allotment (IRA) funds for the period of January 2008 to September 2009.²⁵ The COA's findings are contained in its SAO Report No. 2010-02.²⁶
6. The D.V.s subject of these cases were later the subject of a COA-SAO's Notice of Disallowance No. MAG-11-138-101 & 100 (08 & 09) dated 28 December 2011,²⁷ which accused Ampatuan failed to receive.


²² Supra at Note 10, No. 2, Joint Narration of Facts and No. 4, Admitted Facts of Joint Stipulation.

²³ Exhs. "JJJ-4" to "RRR-4," "TTT-4," "JJJ-3" to "RRR-3" and "TTT-3". Also see No. 4 to 6, Admitted Facts of Joint Stipulation supra at note 10.

²⁴ Supra at Note 10, No. 7, Admitted Facts of Joint Stipulation.

²⁵ Id., No. 5, Admitted Facts of Joint Stipulation.

²⁶ Exh. "C."

²⁷ Exh. "AAAA." 



RULING

Before proceeding to the merits of these cases, the Court shall first address the procedural issues raised by accused in their Memoranda.

The accused claim that the *Informations* fail to state with sufficient particularity their individual participation in the crimes charged. Accused Ampatuan points out that while the *Information* in SB-17-CRM-1023 covers the period from January 2008 to September 2009, he only assumed office on 26 January 2009. Thus, he could not be indicted for transactions that took place before he assumed office.

Both accused also challenge the prosecution's evidence that were offered to prove the lack of public bidding in relation to the transactions in question, claiming that "lack of bidding" was not alleged in the *Informations*.

Accused Ampatuan further raises undue delay in the preliminary investigation before the OMB, which he claims violated his constitutionally-guaranteed right to the speedy disposition of his cases. He asserts that the *Informations* allege that the cases stemmed from transactions entered into between the period from January 2008 to September 2009; yet he was indicted only in 2017, or eight years after the occurrence of the acts complained of.

Such arguments deserve no merit.

The Rules of Court provides several remedies to question the sufficiency of an Information. For one, an accused may file a Motion for Bill of Particulars "to enable him properly to plead and prepare for trial."²⁸ He may also file a Motion to Quash the Information.²⁹ However, these remedies are only available before an accused pleads to the charges against him. Once arraigned, an accused is deemed to have waived his right to challenge the sufficiency of the indictments against him.³⁰

In the cases at hand, both accused were arraigned on 4 September 2017 and have separately entered "Not Guilty" pleas.³¹ As such, they have already been given the opportunity to know the specific charges that confront them.³²

²⁸ RULES OF COURT, Rule 116, Sec. 9.

²⁹ *Id.*, Rule 117, Sec. 1.

³⁰ *Id.*, Sec. 9.

³¹ Order dated 4 September 2017, Records, Vol. II, pp. 532-533.

³² *Ramiscal, Jr. v. Sandiganbayan*, G.R. No. 172476-99, 25 September 2010.

Their negative pleas should constitute a bar to further question the sufficiency of the *Informations* at this stage of the proceedings.

As to the issue of inordinate delay, the same is a ground to quash the *Informations*, which should have been filed prior to entering a plea to the charges before this Court. As provided in Sec. 9, Rule 117 of the Rules of Court, the failure of the accused to assert any ground of a motion to quash before he pleads to the Complaint or Information shall be deemed a waiver of any objections. While the same Rule provides for exceptions, the ground relied upon by the accused is not one of those.

Moving on to the merits of the cases.

SB-17-CRM-1023
Violation of Sec. 3 (e) of R.A. No. 3019

The accusatory portion of the *Information*³³ for Violation of Sec. 3 (e) of R.A. No. 3019 reads:

That for the period from 1 January 2008 to 30 September 2009 or sometime prior or subsequent thereto in the Province of Maguindanao, Autonomous Region in Muslim Mindanao (ARMM), Philippines and within the jurisdiction of this Honorable Court, accused DATU SAJID ISLAM UY AMPATUAN, a high ranking public officer being then the Provincial Governor, and JOHN ESTELITO G. DOLLOSA, JR., Provincial Accountant, OSMENA M. BANDILA, Provincial Treasurer and Member, Bids and Awards Committee (BAC), KASAN I. MACAPENDEG, Provincial General Services and Chairman, BAC, Engr. NORIE K. UNAS, Provincial Administrator and Member, BAC, DATUALI K. ABPI, AL HAJ, Provincial Budget Officer and Member BAC, and LANDAP GUINAID, Officer-In-Charge, Provincial Engineer and Member, BAC, all public officers from the Provincial Government of Maguindanao in the Autonomous Region in Muslim Mindanao (ARMM), committing the offense in relation to their position, conspiring, confederating and mutually aiding each other, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the Government in the aggregate amount of **Thirty Eight Million One Hundred Twenty Nine Thousand and One Hundred Seventeen Pesos (P38,129,117.00)** which accused made to appear to have been disbursed for the purchases of various construction and lumber materials for the repair of school building within the Province of Maguindanao from Abo Lumberyard and Construction Supply, when in truth and in fact, the accused fully knew that no such purchase was made as the purported supplier Abo Lumberyard and Construction Supply, is

³³ Records, Vol. 1, pp. 1-3.

fictitious and/or non-existent resulting to the damage and prejudice to the government in the aforesaid amount.

CONTRARY TO LAW.

Sec. 3(e) of R.A. No. 3019 provides:

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 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.

The essential elements of the said crime are as follows:



1. The accused must be a public officer discharging administrative, judicial, or official functions;
2. He must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and,
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.³⁴

1st Element:

There is no dispute as to the presence of the first element. Accused Ampatuan admits having served as OIC-Governor of Maguindanao from 26 January 2009 to 12 October 2009, while accused Abpi served as the Provincial Budget Officer and BAC member.

2nd Element:

³⁴ *Consigna v. People*, G.R. No. 175750-51, 2 April 2014; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, 25 October 2004, citing *Jacinto v. Sandiganbayan*, G.R. No. 84571, 2 October 1989.



The Supreme Court in *Tiongco v. People*,³⁵ quoting *People v. Atienza*,³⁶ had occasion to reiterate what constitutes "partiality," "bad faith," and "gross negligence" accordingly:

The prohibited act of either causing undue injury or giving unwarranted benefits, advantage, or preference may be committed in three ways: through (1) manifest partiality, (2) evident bad faith, or (3) gross inexcusable negligence.

In *People v. Atienza*, the Court defined these elements:

x x x. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of 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. (Citations omitted)

As a general rule, R.A. No. 9184 provides that all procurements must undergo competitive bidding.³⁷ While there are alternative modes of procurement, such as negotiated procurement,³⁸ the same is only allowed in limited instances.³⁹ Thus, negotiated procurement can be resorted to in cases of emergency if it can be shown that: (i) there is an existing emergency; (ii)

³⁵ G.R. Nos. 218709-10, 14 November 2018.

³⁶ G.R. No. 171671, 18 June 2012.

³⁷ GOVERNMENT PROCUREMENT REFORM ACT, Sec. 10.

³⁸ *Id.*, Sec. 48(e).

³⁹ Sec. 53 of the law provides that negotiated procurement can only be resorted to in the following instances:

- a. In cases of two failed biddings;
- b. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- c. Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- d. Where the subject contract is adjacent or contiguous to an on-going infrastructure project; Provided, however, that the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar scope of work; or,
- e. Subject to the guidelines, in cases of procurement of goods from other agency of the Government.

prior approval to resort to negotiated procurement;⁴⁰ and (iii) the chosen supplier is technically, legally, and financially capable.⁴¹

In other words, even in emergency purchases, the BAC is still required to evaluate the eligibility of a participating supplier. In this connection, Sec. 23.6 of the IRR-A of R.A. No. 9184 requires, among others, that the supplier must have a valid business or mayor's permit, valid Bureau of Internal Revenue (BIR) taxpayer's identification number, and Department of Trade and Industry business name registration or a Securities and Exchange Commission registration certificate.⁴²

Nonetheless, whatever mode is resorted to, the procurement and disbursement stages are separate and distinct, and require acts that are carried out by different responsible public officers. The procurement process, as far as these cases are concerned, is carried out by the Province's BAC, whose functions include facilitating pre-procurement and pre-bid conferences, determining the eligibility of prospective bidders, receiving bids and evaluating the same, undertaking post-qualification proceedings, and thereafter recommending the award of contracts to the local chief executive – in this case accused Ampatuan. In the event that competitive bidding cannot push through, the BAC has the responsibility to recommend the resort to alternative modes of procurement provided under the R.A. No. 9184.

In other words, the BAC has complete control in determining the qualification and capacity of bidders or direct contractors to deliver goods that the Province requires. After the BAC has determined the supplier of goods, it is accused Ampatuan, as the local chief executive who signs, among others,

⁴⁰ IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 (AS AMENDED) (2003), Sec. 48.1. Hereinafter "IRR-A of R.A. 9184."

⁴¹ Id., Sec. 53.

⁴² IRR-A of R.A. No. 9184, Sec. 23.6 thereof reads:

"23.6. Eligibility Check for the Procurement of Goods and Infrastructure Projects

"The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:

"1. Class "A" Documents - Legal Documents

- a) Department of Trade and Industry (DTI) business name registration or SEC registration certificate, whichever may be appropriate under existing laws of the Philippines;
- b) Valid and current Mayor's permit/municipal license;
- c) Taxpayer's Identification Number;
- d) Statement of the prospective bidder that it is not "blacklisted" or barred from bidding by the Government or any of its agencies, offices, corporations or LGUs, including non- inclusion in the Consolidated Blacklisting Report issued by the GPPB, once released in accordance with the guidelines to be issued by the GPPB as provided in Section 69.4 of this IRR-A;
- e) Other appropriate licenses as may be required by the procuring entity concerned;
- f) Certificate of G-EPS Registration;
x x x x."

the P.O. to order the goods from the supplier, and the D.V. to effect payment of the goods delivered.

In these cases, it is the prosecution's theory that the accused conspired with each other to make it appear that: Abo Lumberyard was a qualified supplier of lumber and construction materials; it delivered such goods to the Province; and the Province disbursed public funds to pay for such goods. In truth, no such deliveries were made since Abo Lumberyard did not exist as an entity.

In all the purchases subject of these cases, the Abstracts of Bids⁴³ indicate that negotiated procurements were resorted to by the BAC due to unspecified emergencies. However, there are no supporting documents to justify the BAC's claim of emergency. There is no Resolution from the *Sangguniang Panlalawigan* declaring a state of local emergency or calamity in Maguindanao. Neither were there any Certifications of Emergency Purchase attached to the corresponding P.O.s, as required in the P.O. forms. In fact, in all the P.O.s, the box or portion requiring the details of the "Approval of Purchase through Negotiated Procurement" were left blank.⁴⁴ The P.R.s and P.O.s also do not indicate the names of the schools that needed repairs – a necessary detail for auditing purposes.

More importantly, the prosecution's evidence shows that no certificate of business registration was issued to Abo Lumberyard for the years 2008 to 2010.⁴⁵ In addition, the BIR⁴⁶ has no record of the latter as a taxpayer, and COA-SAO Report No. 2012-02⁴⁷ states that per records of the Municipal Treasurer of Parang, Maguindanao, Abo Lumberyard "including the named owners, have never been in existence in the locality" and that the "team's inquiry with some person (sic) within the vicinity such as bystanders, drivers and policemen and ocular inspection of the entire Poblacion Parang (sic) affirmed that" Abo Lumberyard did not exist. It was also found, among others, that the authority to print indicated in the receipts purportedly issued by Abo Lumberyard were actually issued by the BIR to Ismael Lumberyard and Construction Supply and Usman Lumberyard and Construction Supply for the printing of its Credit Invoices, and to Andong Lumberyard and

⁴³ See: Exhs. "G-5," "H-5," "I-5," "J-5," "L-5," "M-5," "N-5," "O-5," "P-5," "Q-5," "R-5," "S-5," "T-5," "U-5," "V-5," "W-5," "X-5," "Y-5," "Z-5," "AA-5," "BB-5," "CC-5," "DD-5," "EE-5," "FF-5," "GG-5," "HH-5," "II-5," "JJ-5," "KK-5," "LL-5," "MM-5," "NN-5," "OO-5," "PP-5," "QQ-5," "RR-5," "SS-5," "TT-5," "UU-5," "VV-5," "WW-5," "XX-5," "YY-5," "ZZ-5," "AAA-5," "BBB-5," "CCC-5," "DDD-5," "EEE-5," "FFF-5," "GGG-5," "HHH-5," "III-5," "JJJ-5," "LLL-5," "MMM-5," "NNN-5," "OOO-5," "PPP-5," "QQQ-5," "RRR-5," "UUU-5," "VVV-5," "WWW-5," "XXX-5," "YYY-5," and "ZZZ-5."

⁴⁴ Exhs. "F-3" to "ZZZ-3."

⁴⁵ Exh. "C," pp. 39-40, 63.

⁴⁶ Exh. "D."

⁴⁷ Supra at note 26.

Construction Supply and Nasser Lumberyard and Construction Supply for its O.R.s. Such authority is issued to a single business entity and could therefore not be used by Abo Lumberyard.⁴⁸ In other words, the O.R.s purportedly issued by Abo Lumberyard were spurious.

The prosecution's evidence also shows that while the procurement processes were allegedly initiated by the issuance of the Purchase Requests (P.R.s) signed by accused Ampatuan and accused Guinaid, a closer scrutiny of the supporting documents shows that 10 of the Abstract of Bids were dated earlier than the Purchase Requests, specifically:

EXH.	P.R. DATE	EXH.	ABSTRACT OF BID DATE
F-4	20 Mar. 2009 ⁴⁹	F-5-a, F-5-b and F-5-c	10 March 2009
G-4	16 Mar. 2009 ⁵⁰	G-5-a, G-5-b and G-5-c	4 March 2009
H-4	20 Mar. 2009 ⁵¹	H-5-a, H-5-b and H-5-c	10 March 2009
I-4	23 Apr. 2009 ⁵²	H-5-a, H-5-b and H-5-c	14 April 2009
J-4	15 Jan. 2009 ⁵³	H-5-a, H-5-b and H-5-c	6 January 2009
N-4	26 Jan. 2009 ⁵⁴	H-5-a, H-5-b and H-5-c	19 January 2009
BB-4	14 Apr. 2009 ⁵⁵	BB-5-a, BB-5-b and BB-5-c	5 April 2009
EE-4	27 Mar. 2009 ⁵⁶	EE-5-a, EE-5-b and EE-5-c	17 March 2009
FF-4	17 May 2009 ⁵⁷	FF-5-a, FF-5-b and FF-5-c	5 May 2009
II-4	24 Apr. 2009 ⁵⁸	II-5-a, II-5-b and II-5-c	13 April 2009

In all, accused Abpi, as member of the BAC, recommended 73 emergency purchases from Abo Lumberyard, cumulatively worth P35,747,493.00. Considering the number of purchases made within a period of nine months, all for the same items – white lawaan boards and plywood with different sizes but noticeably for the same price – and, as noted by the COA in its findings, “there were no documents to prove that the eligibility of the supplier and, the submitted quotations were evaluated,” the Court is convinced that accused Abpi acted with evident bad faith.

Moving on, after the BAC processes, the subsequent stages leading to disbursement of public funds require the participation of the Head of the

⁴⁸ COA-SAO Report, *supra* at note 26, p. 65. See also: BIR Form 1906 (Jan 2000 ENCS) – Application for Authority to Print Receipts and Invoices.

⁴⁹ P.R. No. 527.

⁵⁰ P.R. No. 520.

⁵¹ P.R. No. 528.

⁵² P.R. No. 526.

⁵³ P.R. No. 400.

⁵⁴ P.R. No. 375.

⁵⁵ P.R. No. 650.

⁵⁶ P.R. No. 649.

⁵⁷ P.R. No. 663.

⁵⁸ P.R. No. 648.

Procuring Entity (HoPE), in this case accused Ampatuan, to issue a P.O. The P.O. serves to confirm the intent of the Government to purchase the goods itemized therein. Upon the signing of the conformity portion in the said document, the chosen supplier effectively undertakes to deliver the said goods to the Government.

As mentioned above, accused Ampatuan, together with the Provincial Engineer and Requisitioning Officer, accused Guinaid, signed the P.O.s for all the transactions. A perusal the P.O.'s, however, shows that the necessary entries, such as the delivery dates and details for delivery were left blank, albeit the documents were signed by Abo Lumberyard's representative, accused Ampatuan, and accused Guinaid. These omissions cannot simply be brushed aside, as they are severely deleterious to the Government since said details are determinative of when the supplier's obligation to deliver becomes due and how they can be carried out in the first place. Moreover, the P.O.s also lack the details pertaining to the Certification of Emergency Purchase. As stated above, each P.O. contains a box with the following entries: "In case of Negotiated Purchase pursuant to Section 369 (a) of RA 7160, this portion must be accomplished xxx." Thus -

(In case of Negotiated Purchase pursuant to Section 369 (a) of RA 7160, this portion must be accomplished).
Approved to be purchased thru negotiated Purchase Per Sanggunian Res. No. _____
Certified Correct: _____ Secretary to the Sanggunian

In all, in a span of nine months from January 2009 to September 2009, accused Ampatuan signed 64 P.O.s. He signed as "few" as 5 P.O.'s in March 2009 and as much as 11 in July 2009, some of which on the same day⁵⁹ – all for emergency purchases of lawaan boards and plywood.

After the P.O. is issued and delivery of goods is made by the supplier, a D.V. is then issued to authorize payment to the supplier.

In *Zoleta v. Sandiganbayan*,⁶⁰ the Supreme Court had occasion to discuss that D.V.s pertain to instruments that certify the necessity and

⁵⁹ For example, Exhs. "R-3" and "T-3" are both dated 18 March 2009; Exhs. "KK-3," "MM-3" and "KKK-3" are all dated 30 June 2009; Exhs. NN-3 and OOO-3 both dated 15 July 2009; Exhs. "RR-3" and "QQQ-3" both dated 20 July 2009.

⁶⁰ G.R. No. 185224, 29 July 2015.

lawfulness of payment to a person for services performed or delivery of supplies, materials, and equipment, and that all the necessary requirements for the same are present at the time of signing. Thus:

The term *voucher*, when used in connection with disbursement of money, implies some instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment. Corollarily, 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.⁶¹

As stated above, accused Ampatuan admits having signed all but 10 D.V.s. However, even a cursory examination of all the D.V.s would show that they are substantially infirm, given the following circumstances: (i) the lack of required supporting documentation; (ii) the fact that the indicated payee is a non-entity; and (iii) the lack of entries relating to necessary details.

In this connection, COA Circular No. 92-389⁶² mandates that the following documents be attached to D.V.s. in cases wherein emergency purchase was resorted to:

- (i) Purchase Request (executed by Requisitioning Officer and/or HoPE);
- (ii) Purchase Order (executed by the Requisitioning Officer, HoPE, and contractor/supplier);
- (iii) Official Invoice (executed by the contractor/supplier);
- (iv) Certificate of Acceptance (executed by the End-User);
- (v) Inspection Report (executed by either the General Services Officer and/or Inspector, this is necessarily accompanied by a delivery receipt);
- (vi) Canvass Papers (submitted by the BAC);
- (vii) Three Price Quotations (submitted by the BAC); and
- (viii) Certificate of Emergency Purchase.

In these cases, the P.R.s, P.O.s, Official Invoice, Canvass Papers (in these cases denominated as Abstract of Bids Documents), and Price Quotations are found in the records. However, there are no certificates of

⁶¹ *Atienza v. Villarosa*, G.R. No. 161081, 10 May 2005.

⁶² Dated 3 November 1992, Item 3.

acceptance, inspection reports, delivery receipts, and Certificates of Emergency Purchase.

As discussed above, 10 Abstract of Bids documents preceded the execution of P.R.s. Also, the P.O.s were unaccompanied by Certificates of Emergency Purchase, which were likewise not attached to the D.V.s. More importantly though, the absolute lack of proof that deliveries were made should have prevented accused Ampatuan from signing the D.V.s, given that the Province's obligation to pay only arises after delivery of the procured materials.

In sum, the numerous infirmities in the pre-procurement, procurement, and disbursement processes convince this Court that there was unity of purpose among the accused. The number of the transactions, the mismatching dates in most of the documents – including the O.R.s *vis-à-vis* the D.V.s – the omission of important details in the documents that could have been easily supplied if the transactions were legitimate, plus the fact that the Abstract of Bids, P.O.s, and D.V.s were purportedly signed by representatives of Abo Lumberyard, albeit the same is a non-existent entity, and that Credit Invoices and Official Receipts of Abo Lumberyard which were COA found to be fake⁶³ were attached as supporting documents of the D.V.s, all point to evident bad faith, and signify a unity in purpose among the accused to consciously defraud the Government.

Against the foregoing evidence, accused Ampatuan claims that he acted in good faith and relied on the certifications of his subordinates, particularly accused Dollosa, Jr., the Provincial Accountant. He also points out that his signature does not appear in 10 D.V.s,⁶⁴ and that while some of these vouchers bear his signature, he could not have signed them because he was out of the country from 28 April 2009 to 15 May 2009.⁶⁵

As a rule, a local chief executive may rely in good faith on the actions of the members of the BAC. *Arias v. Sandiganbayan*⁶⁶ instructs that –

All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served and

⁶³ Exh. "C," COA-SAO Report, p. 38.

⁶⁴ See Prosecution Exhs. "JJJ" to "RRR" and "TTT."

⁶⁵ Supra at note 10, No. 8 of Admitted Facts, Joint Stipulation.

⁶⁶ G.R. No. 81563, 19 December 1989.

otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed.

Quite recently in *Joson III v. Commission on Audit*,⁶⁷ the Supreme Court held that:

xxxx Petitioner, being the head of the procuring entity in addition to his duties as the governor of Nueva Ecija, is responsible for the whole province. With the amount of paperwork that normally passes through in his office and the numerous documents he has to sign, it would be counterproductive to require petitioner to specifically and meticulously examine each and every document that passes his office. Thus, petitioner has the right to rely to a reasonable extent on the good faith of his subordinates.

Mere signature of the petitioner in the award of the contract and the contract itself without anything more cannot be considered as a presumption of liability. It should be recalled that mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency.

The overwhelming number of irregularities in the documents, all of which constitute red flags, accentuated by the fact that almost all of the same were replicated in all the transactions spread over nine months without any attempt by any of the accused to inquire or verify the legitimacy of the procurements negates "good faith" within the contemplation of *Arias*. As clarified in *Abubakar v. People*,⁶⁸ the application of the *Arias* doctrine –

xxx is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. In a number of cases, this Court refused to apply the *Arias* doctrine considering that there were circumstances that should have prompted the official to inquire further. (Citations omitted)

In addition to the earlier observations, the prosecution's evidence show that accused Ampatuan signed eight P.R.s and P.O.s that were dated even before he assumed office.⁶⁹ A closer scrutiny of these documents reveals that: (i) the name of the signatory was intercalated in eight documents to make it

⁶⁷ G.R. No. 223762, 7 November 2017.

⁶⁸ G.R. No. 202408, 27 June 2018.

⁶⁹ Exhs. "K-4," "O-3," "O-4," "J-3," "J-4," "P-3," "Q-4," and "M-3."

appear that it was accused Ampatuan who signed them; (ii) these insertions appear to have been made after the documents were signed; and, (iii) the signatures on Exhibits "J-3," "Q-4" and "M-3" look different from accused's signature on other admitted documents. These observations, when considered *vis-à-vis* the fact that the accused never denied having signed the eight documents, lead the Court to believe that accused Ampatuan allowed the execution of these documents under his name, even when he did not have the authority to do so.

Finally, contrary to accused Ampatuan's claim that he relied in good faith on the certifications made by accused Dollosa, Jr., it appears that he signed four D.V.s that do not bear any certification as to the propriety and completeness of supporting documents, as well as availability of funds.⁷⁰ All these additional circumstances simply militate against the grant of liberality that he prays for in order to accommodate his plea of innocence and lack of knowledge.

As to the 10 D.V.s he did not sign, a closer look at these vouchers would show that there appears to be an initial of an unidentified person. He does not dispute that funds were released and purportedly paid to Abo Lumberyard by virtue of said D.V.s. Therefore, rather than serving as evidence of his innocence, his lack of signature thereon means that he was grossly remiss in his duties to safeguard the Province's funds, considering that under the Local Government Code "[v]ouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved."⁷¹ In addition, COA Circular No. 92-389 further provides:

K. Box No. 5 is now Box C which shall be approved by the Head of the Agency or other duly authorized Official/s. *In the case of the Local Government Units, approval of the Disbursement Voucher by the Local Chief Executive himself shall be required whenever local funds are disbursed*, except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as the GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and Others.⁷² (Emphasis supplied)

In the same manner, the Court could not give credence to the claim that he was abroad on the dates indicted in some vouchers. For one, and as

⁷⁰ Exhs. "F," "G," "H," and "I."

⁷¹ R.A. No. 7160, otherwise known as the LOCAL GOVERNMENT CODE, Sec. 344.

⁷² Restating with modifications COA Circular No. 81-155, dated February 23, 1981, and prescribing the use of the D.V., General Form No. 5 (A), COA Circular No. 92-389, Item 2 (K), 3 November 1992.

discussed above, funds were actually released or disbursed by the Province. Second, he did not present his original passport, but merely submitted a photocopy to prove that he was indeed outside the country on the dates indicated in these vouchers. Third, and most importantly, he failed to prove that the signatures appearing on the subject vouchers are not his. Forgery as a defense must be proven by clear and convincing evidence, and the burden of proof lies on the party alleging forgery.⁷³

As for accused Abpi, the most that he was able to argue in his Memorandum is that his participation is limited to being a co-signatory in the Abstract of Bids documents, and that the charges do not involve matters relating to public bidding or the lack thereof; all the while failing to controvert the allegation that they caused an award to a company that does not, in fact, exist. Accused Abpi's act of having signed all but 16 Abstract of Bids,⁷⁴ paired with the circumstances elaborated above, is enough for the Court to conclude that he consented to all such transactions with evident bad faith, if not gross inexcusable negligence.

At the very least, the prosecution's evidence is also enough to sustain both accused's culpability on account of gross inexcusable negligence. In *Jaca v. People*,⁷⁵ the Supreme Court held that every officer required to intervene in disbursement documents, in particular D.V.s, have the obligation to confirm the correctness thereof, and in instances wherein there are missing entries or documents, affixing their signature thereto while failing to inquire about the omissions constitutes gross and inexcusable disregard in the performance of their duties:

As described by the prosecution, the offices involved in the processing of cash advances are technically independent of each other; one office does not form part of, or is strictly under, another. Thus, each has independent functions to perform to ensure that the funds of the local government are disbursed properly and are well accounted for. While the Court views Gaviola's failure to inquire further before affixing his signature despite the absence of the "particulars of payment" in the disbursement vouchers as negligence on his part, to additionally affix his signature despite the lack of supporting documents only shows a gross and inexcusable disregard of the consequences of his act as approving authority. If Gaviola bothered to glance at the supporting documents, he could have signaled to his co-accused that their acts or omissions opened an opportunity for

⁷³ *Marquez v. Sandiganbayan (Fifth Division)*, G.R. No. 187912-14, 31 January 2011 citing *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, 1 March 1994 and *Heirs of Severa P. Gregorio v. CA*, G.R. No. 117609, 29 December 1998.

⁷⁴ Exhs. "BBB-5," "CCC-5," "DDD-5," "EEE-5," "FFF-5," "GGG-5," "HHH-5," "III-5," "SSS-5," "TTT-5," "UUU-5," "VVV-5," "WWW-5," "XXX-5," "YYY-5," and "ZZZ-5."

⁷⁵ G.R. Nos. 166967, 166974, and 167167, 28 January 2013.

Badana to commit malversation that would result in a loss to the local government's coffers. (Citation omitted)

Jaca affirms *Sistoza v. Desierto*,⁷⁶ which held that there can be conspiracy when there is a collective exercise of gross inexcusable negligence:

In *Sistoza*, the Court already intimated on the possibility of committing a violation of Section 3(e) of RA No. 3019 through gross and inexcusable negligence, and of incurring collective criminal responsibility through a conspiracy.

... As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy.




Furthermore, even if the conspiracy were one of silence and inaction arising from gross inexcusable negligence, it is nonetheless essential to prove that the breach of duty borders on malice and is characterized by flagrant, palpable and willful indifference to consequences insofar as other persons may be affected.

As earlier discussed, considering that the gravity of negligence required by law for a violation of Section 3(e) of RA No. 3019 to exist falls short of the degree of bad faith or partiality to violate the same provision, a conspiracy of silence and inaction arising from gross inexcusable negligence would almost always be inferred only from the surrounding circumstances and the parties' acts or omissions that, taken together, indicate a common understanding and concurrence of sentiments respecting the commission of the offense. The duties and responsibilities that the occupancy of a public office carry and the degree of relationship of interdependence of the different offices involved here determine the existence of conspiracy where gross inexcusable negligence was the mode of commission of the offence.

For emphasis, the petitioners are all heads of their respective offices that perform interdependent functions in the processing of cash advances. The petitioners' attitude of buck-passing in the face of the irregularities in the voucher (and the absence of supporting documents), as established by the prosecution, and their indifference to their individual and collective duties to ensure that laws and regulations are observed in the disbursement of the funds of the local government of Cebu can only lead to a finding of conspiracy of silence and inaction, contemplated in *Sistoza*. The Sandiganbayan correctly observed that –

Finally, it bears stressing that the separate acts or omissions of all the accused in the present case contributed in the end result of

⁷⁶ G.R. No. 144784, 3 September 2002.



defrauding the government. Without anyone of these acts or omissions, the end result would not have been achieved. Suffice it to say that since each of the accused contributed to attain the end goal, it can be concluded that their acts, taken collectively, satisfactorily prove the existence of conspiracy among them. (citations omitted)

In sum, the Court finds that the second element of the crime charged is present in this case for acts performed by both accused.

3rd Element:

While the *Information* alleges that the Government suffered injury in the aggregate amount of PhP 38,129,117.00, the prosecution's evidence, as duly offered, only proves the total amount of PhP 35,747,493.00. Thus, accused's individual acts, taken together, resulted in the disbursement of the total amount of P35,747,493.00 to a non-existing entity for goods that were not actually delivered. On the basis of these circumstances, damage and prejudice to the Province of Maguindanao was clearly proven.

SB-17-CRM-1024

Malversation of Public Funds under Article 217

The *Information* for Malversation under Art. 217 of the RPC⁷⁷ reads:

That for the period from 17 February to 30 September 2009 or sometime prior or subsequent thereto in the Province of Maguindanao, Autonomous Region in Muslim Mindanao (ARMM), Philippines and within the jurisdiction of this Honorable Court, accused DATU SAJID ISLAM U. AMPATUAN, Provincial Governor, accused JOHN ESTELITO G. DOLLOSA, JR., Provincial Accountant, KASAN I. MACAPENDEG, Provincial Services Officer and Chairman, BAC, OSMEÑA M. BANDILA, Provincial Treasurer and Member, Bids and Awards Committee (BAC), NORIE K. UNAS, Provincial Administrator ad Member, BAC, DATUALI K. ABPI, AL HAJ, Provincial Budget Officer and Member, BAC and LANDAP GUINAID, Officer-In-Charge, Provincial Engineer and Member, BAC Officers with accused Ampatuan, Dollosa Jr., and Bandila being accountable for public funds and properties under their custody or control by reason of their office, while in the performance of their official functions and acting in conspiracy with one another did then and there willfully, unlawfully and feloniously take, misappropriate or appropriate into themselves public funds in the aggregate amount of Thirty Eight Million One Hundred Twenty Nine Thousand One Hundred Seventeen

⁷⁷ Records, Vol. I, pp. 4-6.

(Php38,129,117.00) resulting to the damage and prejudice of the government.

CONTRARY TO LAW.

Art. 217 of the RPC, in part, provides:

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

The elements of the said crime are:

1. the offender is a public officer;
2. he had the custody or control of funds or property by reason of the duties of his office;
3. those funds or property were public funds or property for which he was accountable; and
4. he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁷⁸




1st element:

As earlier discussed in SB-17-CRM-1023, the first element is no longer in dispute.

2nd and 3rd elements:

There is also no dispute as to the presence of the second and third elements as far as accused Ampatuan is concerned. As OIC-Governor,

⁷⁸ *Cantos v. People*, G.R. No. 184908, 3 July 2013.



accused Ampatuan had custody and control over the Province's funds, as held in *People v. Pantaleon, Jr.*,⁷⁹ to wit:

As required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be affected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibilities over the funds of the Municipality of Castillejos.

The funds for which malversation the appellants stand charged were sourced from the development fund of the municipality. They were funds belonging to the municipality, for use by the municipality, and were under the collective custody of the municipality's officials who had to act together to disburse the funds for their intended municipal use. The funds were therefore public funds for which the appellants as mayor and municipal treasurer were accountable

XXXX

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government Code, which reads:

Section 340. *Persons Accountable for Local Government Funds.* – Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

As to the identity of the funds subject of these cases, it is worthy to note that COA-SAO Report No. 2010-02 was actually a special audit "on the utilization of Internal Revenue Allotment (IRA)" of Maguindanao. Moreover, accused Ampatuan also admits having "signed and approved several Disbursement Vouchers xxx" when he was the OIC-Governor of Maguindanao.⁸⁰ Thus, there is no question that the subject funds are those pertaining to the IRA of the Province of Maguindanao.

⁷⁹ G.R. Nos. 158694-96, 13 March 1999.

⁸⁰ Supra at note 10, Item No. 4 of Admitted Documentary Evidence of the Parties' Joint Stipulation.



4th element:

Under Art. 217 of the RPC, a *prima facie* case for Malversation exists when a public officer accountable for public funds fails to produce or explain the disbursement of such funds upon demand by a duly-authorized officer. Thus, a conviction for Malversation can be sustained even if there is no direct evidence of personal misappropriation, so long as the public officer failed to satisfactorily explain the absence of the public funds involved.⁸¹

In these cases, accused Ampatuan admits the existence and due execution of the Notice of Disallowance issued by the COA.⁸² Even supposing that there was lack of personal service of the same to them, it goes without saying that the Provincial Government was adequately informed of and furnished with the same. Yet, accused Ampatuan failed to satisfactorily explain the disbursements made to Abo Lumberyard – a non-existent entity.

If it has to be conceded that the Notice of Disallowance is not the “demand” contemplated in Art. 217 of the RPC, and as such the presumption therein does not apply against them, accused Ampatuan can still be held liable for Malversation in view of his admission that he signed and approved 63 of the D.V.s despite their pronounced and inexcusable infirmities, and allowed the unlawful release of funds covered by *all* the D.V.s – including the 10 that he did not sign.

As in SB-17-CRM-1023, accused Ampatuan claims that he signed the D.V.s “upon certification by accused John Estelito G. Dollosa, Jr., Provincial Accountant that funds are available and the documents, supporting the payments are complete and proper xxx.”⁸³ In addition, he claims that he did not sign 10 of the said Vouchers,⁸⁴ and that he could not have signed some D.V.s, as he was out of the country on the dates indicated therein.⁸⁵ These arguments fail for the same reasons already stated in SB-17-CRM-1023.

Art. 217 of the RPC is designed to protect the Government and to penalize erring public officials for the loss of public funds and property by reason of corrupt motives or neglect or disregard of duty.⁸⁶ The prosecution’s evidence shows the singularity of purpose among the accused in order to accomplish the misappropriation of a total of PhP 35,747,493.00 in public

⁸¹ *People v. Sandiganbayan*, G.R. No. 198199, 27 September 2017.

⁸² See Exh. “AAAA.” See also Item No. 7 of Admitted Documentary Evidence, *Joint Stipulation*.

⁸³ *Supra* at note 10, Item No. 4 of Admitted Facts, *Joint Stipulation*.

⁸⁴ Exhs. “JJJ” to “RRR” and “TTT.”

⁸⁵ *Supra* at note 10, Item No. 8 of Admitted Facts, *Joint Stipulation*.

⁸⁶ *Quinon v. People*, G.R. No. 136462, 19 September 2001.

funds. As such, even if accused Abpi did not have a direct hand in the release of public funds *per se*, as in SB-17-CRM-1023, his complicity to the entire scheme, and commission of necessary acts in the furtherance thereof, particularly makes him equally liable with accused Ampatuan.

Even if good faith can be conceded to accused, they can still be held liable, since at the very least their actions show that they were grossly and inexcusably negligent in the performance of their duties.

That an accused might be held liable for malversation through negligence despite a criminal Information stating only intentional malversation has already been settled. In *Zoleta v. Sandiganbayan*,⁸⁷ the Supreme Court lays down the string of jurisprudential pronouncement to this effect:

The petitioner claims that he was denied due process when the Sandiganbayan granted the prosecution's motion to amend certain portions of the pre-trial order without any hearing. In essence, the petitioner argues that she could not be convicted of malversation through consent, abandonment, or negligence because this allegation was not contained in the Information.

The petitioner's argument lacks merit.

Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. All that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.⁸⁸

In *People v. Consigna, et al.*,⁸⁹ the Court first ruled that an accused charged with willful malversation can be validly convicted of malversation through negligence where the evidence sustains the latter mode of perpetrating the offense.

Similarly, in *People v. Ochoa*,⁹⁰ the Court stated that [e]ven 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.

⁸⁷ G.R. No. 185224, 29 July 2015.

⁸⁸ G.R. No. 184908, 3 July 2013.

⁸⁹ G.R. No. L-18087, 31 August 1965.

⁹⁰ G.R. No. 157399, 17 November 2005.

In *Tubola, Jr. v. Sandiganbayan*,⁹¹ we affirmed the accused's conviction of malversation of public funds under Article 217 of the Revised Penal Code, and reasoned out as follows:

Besides, even on the putative assumption that the evidence against petitioner yielded a case of malversation by negligence but the information was for intentional malversation, under the circumstances of this case his conviction under the first mode of misappropriation would still be in order. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said due process was denied by deluding the accused into an erroneous comprehension of the charge against him. That no such prejudice was occasioned on petitioner nor was he beleaguered in his defense is apparent from the records of this case. (Underscoring and emphasis in the original.)

In sum, the fourth element – that accused, acting in conspiracy, appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take public funds – has been duly proven by the prosecution. However, as mentioned, the prosecution was only able to prove the misappropriation of P35,747,493.00 instead of P38,129,117.00 as alleged in the Information. Thus, their liability is limited to the said amount.

SB-17-CRM-1025 to 1097

Falsification of Public Documents under Art. 171 of the RPC

The *Information*⁹² for Falsification of Public Documents under Art. 171 of the RPC, docketed as SB-17-CRM-1025 reads:

That on May 5, 2009 or sometime prior or subsequent thereto in the Province of Maguindanao, Autonomous Region in Muslim Mindanao (ARMM), Philippines and within the jurisdiction of this Honorable Court, accused DATU SAJID ISLAM UY AMPATUAN, Provincial Governor,

⁹¹ G.R. No. 154042, April 11, 2011, citing *Caballo v. Sandiganbayan*, G.R. No. 93885, 14 May 1991.

⁹² Records, Vol. I, pp. 7-9.

DECISION

People of the Philippines v. Ampatuan, et. al.

SB-17-CRM-1023 to 1097

Page 26 of 36

JOHN ESTELITO G. DOLLOSA, JR., Provincial Accountant, KASAN I. MACAPENDEG, Provincial Services Officer and Chairman, BAC, OSMEÑA M. BANDILA, Provincial Treasurer and Member, Bids and Awards Committee (BAC), NORIE K. UNAS, Provincial Administrator and Member, BAC, DATUALI K. ABPI AL HAJ, Provincial Budget Officer and Member, BAC and LANDAP GUINAID, Officer-In-Charge, Provincial Engineer and Member, BAC all public officials committing the offense in relation to their positions, conspiring, confederating and mutually aiding each other taking advantage of their respective positions, did then and there willfully, unlawfully and feloniously make untruthful statement in the narration of facts in an undated and unnumbered Disbursement Voucher amounting to **Five Hundred Twenty Three Thousand Seven Hundred Forty Pesos (P523,740.00)** by making it appear therein that said amount was paid to a certain supplier, Abo Lumberyard and Construction Supply, representing the expenses for the purchase of construction and lumber materials intended for the repair of school building in the Province of Maguindanao, when in truth and in fact, the above accused fully well knew, and which they are legally bound to disclose, that no such purchase was made as the purported supplier, Abo Lumberyard and Construction Supply, is a fictitious and non-existing entity resulting to the damage and prejudice of the government.

CONTRARY TO LAW.

The *Informations* for the 72 other counts of Falsification of Public Documents, docketed as SB-17-CRM-1026 to 1097, are similarly worded, differing only as regards the periods covered, amount involved, and the number and date of the D.V.s in question, to wit:

Case Number	Period Covered	Amount Involved	Document	Date of Doc
SB-17-CRM-1026	May 5, 2009 or sometime prior or subsequent thereto	Php 502,380.00	Unnumbered D.V.	Undated
SB-17-CRM-1027	-do-	Php 467,010.00	-do-	-do-
SB-17-CRM-1028	-do-	Php 411,546.00	-do-	-do-
SB-17-CRM-1029	-do-	Php 497,340.00	DV No. 100-2009-05-76	5 May 2009
SB-17-CRM-1030	-do-	Php 518,940.00	DV No. 100-2009-05-77	-do-
SB-17-CRM-1031	-do-	Php 471,231.00	DV No. 100-2009-05-78	-do-
SB-17-CRM-1032	-do-	Php 511,710.00	DV No. 100-2009-05-79	-do-
SB-17-CRM-1033	-do-	Php 516,000.00	DV No. 100-2009-06-72	-do-
SB-17-CRM-1034	-do-	Php 443,805.00	DV No. 100-2009-06-73	-do-
SB-17-CRM-1035	-do-	Php 491,616.00	DV No. 100-2009-06-74	-do-

DECISION

People of the Philippines v. Ampatuan, et. al.

SB-17-CRM-1023 to 1097

Page 27 of 36

SB-17-CRM-1036	-do-	Php 514,086.00	DV No. 100-2009-06-75	-do-
SB-17-CRM-1037	May 26, 2009 or sometime prior or subsequent thereto	Php 480,726.00	DV No. 100-2009-05-268	26 May 2009
SB-17-CRM-1038	-do-	Php 527,115.00	DV No. 100-2009-05-269	-do-
SB-17-CRM-1039	-do-	Php 474,480.00	DV No. 100-2009-05-271	-do-
SB-17-CRM-1040	-do-	Php 490,890.00	DV No. 100-2009-05-272	-do-
SB-17-CRM-1041	-do-	Php 486,654.00	DV No. 100-2009-05-273	-do-
SB-17-CRM-1042	-do-	Php 465,738.00	DV No. 100-2009-05-274	-do-
SB-17-CRM-1043	-do-	Php 521,946.00	DV No. 100-2009-05-275	-do-
SB-17-CRM-1044	-do-	Php 540,084.00	DV No. 100-2009-05-276	-do-
SB-17-CRM-1045	-do-	Php 489,756.00	DV No. 100-2009-08-270	-do-
SB-17-CRM-1046	June 16, 2009	Php 466,470.00	DV No. 100-2009-06-182	16 June 2009
SB-17-CRM-1047	-do-	Php 515,346.00	DV No. 100-2009-06-183	-do-
SB-17-CRM-1048	-do-	Php 493,920.00	DV No. 100-2009-06-184	-do-
SB-17-CRM-1049	-do-	Php 508,130.00	DV No. 100-2009-06-185	-do-
SB-17-CRM-1050	-do-	Php 479,376.00	DV No. 100-2009-06-186	-do-
SB-17-CRM-1051	-do-	Php 540,660.00	DV No. 100-2009-06-187	-do-
SB-17-CRM-1052	-do-	Php 453,420.00	DV No. 100-2009-06-188	-do-
SB-17-CRM-1053	-do-	Php 502,390.00	DV No. 100-2009-06-189	-do-
SB-17-CRM-1054	-do-	Php 427,919.00	DV No. 100-2009-06-190	-do-
SB-17-CRM-1055	July 31, 2009 or sometime prior or subsequent thereto	Php 540,350.00	DV No. 100-2009-07-529	31 July 2009
SB-17-CRM-1056	-do-	Php 464,410.00	DV No. 100-2009-07-530	-do-
SB-17-CRM-1057	-do-	Php 489,399.00	DV No. 100-2009-07-531	-do-
SB-17-CRM-1058	-do-	Php 519,780.00	DV No. 100-2009-07-532	-do-
SB-17-CRM-1059	-do-	Php 463,610.00	DV No. 100-2009-07-533	-do-
SB-17-CRM-1060	-do-	Php 517,430.00	DV No. 100-2009-07-534	-do-
SB-17-CRM-1061	-do-	Php 481,822.00	DV No. 100-2009-07-544	-do-
SB-17-CRM-1062	-do-	Php 498,787.00	DV No. 100-2009-07-545	-do-
SB-17-CRM-1063	-do-	Php 521,830.00	DV No. 100-2009-07-546	-do-
SB-17-CRM-1064	August 12, 2009 or sometime prior or subsequent thereto	Php 486,475.00	DV No. 100-2009-8-85	12 August 2009

DECISION

People of the Philippines v. Ampatuan, et. al.

SB-17-CRM-1023 to 1097

Page 28 of 36

SB-17-CRM-1065	-do-	Php 505,130.00	DV No. 100-2009-8-86	-do-
SB-17-CRM-1066	-do-	Php 508,500.00	DV No. 100-2009-08-116	-do-
SB-17-CRM-1067	-do-	Php 470,345.00	DV No. 100-2009-08-117	-do-
SB-17-CRM-1068	-do-	Php 516,180.00	DV No. 100-2009-08-118	-do-
SB-17-CRM-1069	-do-	Php 423,265.00	DV No. 100-2009-08-119	-do-
SB-17-CRM-1070	-do-	Php 532,335.00	DV No. 100-2009-08-120	-do-
SB-17-CRM-1071	-do-	Php 484,200.00	DV No. 100-2009-08-121	-do-
SB-17-CRM-1072	-do-	Php 415,840.00	DV No. 100-2009-08-122	-do-
SB-17-CRM-1073	August 31, 2009 or sometime prior or subsequent thereto	Php 349,000.00	DV No. 100-2009-08-332	31 August 2009
SB-17-CRM-1074	-do-	Php 494,025.00	DV No. 100-2009-08-333	-do-
SB-17-CRM-1075	-do-	Php 529,525.00	DV No. 100-2009-08-334	-do-
SB-17-CRM-1076	-do-	Php 518,305.00	DV No. 100-2009-08-335	-do-
SB-17-CRM-1077	-do-	Php 500,125.00	DV No. 100-2009-08-336	-do-
SB-17-CRM-1078	-do-	Php 483,955.00	DV No. 100-2009-08-337	-do-
SB-17-CRM-1079	-do-	Php 424,185.00	DV No. 100-2009-08-338	-do-
SB-17-CRM-1080	-do-	Php 502,050.00	DV No. 100-2009-08-339	-do-
SB-17-CRM-1081	September 16, 2009 or sometime prior or subsequent thereto	Php 458,810.00	DV No. 100-2009-9-390	16 September 2009
SB-17-CRM-1082	-do-	Php 462,380.00	DV No. 100-2009-9-391	-do-
SB-17-CRM-1083	-do-	Php 495,886.00	DV No. 100-2009-9-392	-do-
SB-17-CRM-1084	-do-	Php 517,660.00	DV No. 100-2009-9-393	-do-
SB-17-CRM-1085	-do-	Php 522,822.00	DV No. 100-2009-9-394	-do-
SB-17-CRM-1086	-do-	Php 471,330.00	DV No. 100-2009-9-395	-do-
SB-17-CRM-1087	-do-	Php 532,307.00	DV No. 100-2009-9-396	-do-
SB-17-CRM-1088	-do-	Php 443,760.00	DV No. 100-2009-9-397	-do-
SB-17-CRM-1089	-do-	Php 492,140.00	DV No. 100-2009-9-398	-do-
SB-17-CRM-1090	September 30, 2009 or sometime prior or subsequent thereto	Php 509,380.00	DV No. 100-2009-09-530	30 September 2009
SB-17-CRM-1091	-do-	Php 490,000.00	DV No. 100-2009-09-531	-do-
SB-17-CRM-1092	-do-	Php 498,220.00	DV No. 100-2009-09-532	-do-

SB-17-CRM-1093	-do-	Php 503,566.00	DV No. 100-2009-09-533	-do-
SB-17-CRM-1094	-do-	Php 517,620.00	DV No. 100-2009-09-534	-do-
SB-17-CRM-1095	-do-	Php 455,670.00	DV No. 100-2009-09-535	-do-
SB-17-CRM-1096	-do-	Php 524,990.00	DV No. 100-2009-09-536	-do-
SB-17-CRM-1097	-do-	Php 475,670.00	DV No. 100-2009-09-537	-do-

Art. 171(4) of the RPC provides:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* – The penalty of prision mayor and a fine not to exceed P5,000⁹³ pesos shall be imposed upon any public officer, employee, or notary public who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

XXXX

4. Making untruthful statements in a narration of facts;

XXXX

The elements thereof are as follows:

- 1) That the offender is a public officer or employee;
- 2) That he takes advantage of his official position;
- 3) That the offender makes in a document untruthful statements in a narration of facts;
- 4) That he has a legal obligation to disclose the truth of the facts narrated by him; and
- 5) That the facts narrated by the offender are absolutely false.⁹⁴

Again, the first element is not disputed. As to the second element, *People v. Santiago Uy*⁹⁵ and *U.S. v. Inosanto*⁹⁶ instruct that an accused is said to have taken advantage of his or her official position in fabricating a document when: (1) he or she has the duty to prepare or otherwise to intervene

⁹³ Under R.A. No. 10951, which amends the RPC, the fine has been increased to PhP 1,000,000 pesos.

⁹⁴ *Siquian v. People*, G.R. No. 82197, 13 March 1989.

⁹⁵ G.R. No. L-9460, 23 April 1957.

⁹⁶ G.R. No. 6896, 23 October 1911.

in the preparation of the document; or (2) he or she has the official custody of the documents which he or she falsified.

Accused Ampatuan and Abpi's functions or duties have been discussed earlier. As the OIC-Governor, accused Ampatuan's duty included that of signing or approving D.V.s. In these cases, the D.V.s state that payments were due Abo Lumberyard for the supply and delivery of construction materials. These statements are false on two aspects: (i) Abo Lumberyard does not exist, and as such the Province could not have entered into any transaction with it; and (ii) there were no deliveries of the materials itemized in the D.V.s.

Once more, accused Ampatuan claims good faith; that he relied on the certifications made by his subordinates that the supporting documents were complete and proper. However, as earlier discussed, the *Arias doctrine* is not meant to shield public officials from liability whenever they claim good faith and reliance on the certifications made by their subordinates that the supporting documents were complete and proper. *Nava v. Palattao*,⁹⁷ explains

[I]t is not unreasonable to expect petitioner to exercise the necessary diligence in making sure at the very least, that the proper formalities in the questioned transaction were observed — that a public bidding was conducted.”

XXXX

xxx. To rule otherwise would be to render meaningless the accountability of high-ranking public officials and to reduce their approving authority to nothing more than a mere rubber stamp. The process of approval is not a ministerial duty of approving authorities to sign every document that comes across their desks, and then point to their subordinates as the parties responsible if something goes awry.

Accused Ampatuan's assertion of good faith is not supported by the weight of the evidence on record. The irregularities enumerated – that at the time he signed the 63 D.V.s no proof of deliveries were attached thereto and thus, payments were not due to Abo Lumberyard and, the extent of anomalies in the documentation, including the submission of fake receipts to lend some semblance of legitimacy to the said disbursements - are enough to convince the Court that accused's acts were deliberate and planned.

⁹⁷ G.R. No. 160211, 28 August 2006.

Thus, for all these reasons, the annotations in the entries in the D.V.s satisfy the element that the accused made statements containing absolute falsities.

However, with respect to Criminal Case Nos. **SB-17-CRM-1081** to **SB-17-CRM-1089** and **SB-17-CRM-1091**, the Court cannot hold accused Ampatuan liable, since the 10 D.V.s do not contain his signatures. While in the cases for Malversation and Violation of Sec. 3(e) of R.A. No. 3019 the said documents did not affect the conclusion that there was an overall scheme to perpetuate the crimes, in cases for Falsification of Public Documents, an accused can only be held liable for each document proven to have been executed by him. In this instance, for lack of definitive proof that he signed the said documents, reasonable doubt necessitates his acquittal.

In the same manner, since accused Abpi's signature does not appear on the D.V.s. and he has not performed any positive act as far as the preparation of the DVs is concerned, the Court finds the evidence insufficient to hold him liable.

Imposable Penalties

In **SB-17-CRM-1023**, Sec. 9 of R.A. No. 3019 provides that any violation of Sec. 3(e) of the same law shall be punished with imprisonment for not less than six years and one month nor more than fifteen (15) years, with perpetual disqualification from public office. Considering that in a number of cases⁹⁸ the Supreme Court has applied the Indeterminate Sentence Law⁹⁹ in cases involving violations of R.A. No. 3019, and considering the amount and number of transactions involved in this case, the Court finds it proper to impose the indeterminate penalty of eight (8) years and one (1) month as minimum, to twelve (12) years as maximum, with perpetual disqualification from office.

⁹⁸ *People v. Pajaro*, G.R. Nos. 167860-65, 17 June 2008; *Ong v. People*, G.R. No. 176546, 25 September 2009.

⁹⁹ Sec. 1 of Act No. 4103, as amended by Act No. 4225, otherwise known as THE INDETERMINATE SENTENCE LAW, provides:

"SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x"

As to **SB-17-CRM-1024**, during the pendency of these cases R.A. No. 10951¹⁰⁰ was enacted, which modified the imposable penalties for violation of Art. 217 of the RPC accordingly:

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

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

"1. The penalty of *prisión correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).




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

"3. The penalty of *prisión mayor* in its maximum period to *reclusión temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

"4. The penalty of *reclusión temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

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

¹⁰⁰ AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED.



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

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

Art. 22 of the RPC and Sec. 100 of R.A. No. 10951 both provide for the law's retroactive application if doing so would be favorable to the accused. However, the original penalties under the RPC and the modified penalty under R.A. No. 10951 are the same for Malversation amounting to PhP 35,747,493.00. Thus, regardless of the law to be applied, the penalty imposable would still be *reclusion perpetua* plus perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

For SB-17-CRM-1025 to 1097, R.A. No. 10951 likewise modified the penalty for Art. 171(4) of the RPC¹⁰¹ insofar as the fine is concerned, but the corresponding imprisonment remains to be *prision mayor*. There being no modifying circumstance in these cases, the penalty shall be imposed in its medium period, ranging from eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, accused Ampatuan is entitled to an indeterminate penalty the minimum of which may be fixed anywhere within the range of the penalty next lower in degree to *prision mayor*, which is *prision correccional* with a duration of six (6) months and one (1) day to six (6) years. The Court therefore finds it proper to sentence accused Ampatuan to suffer the penalty of (6) six months and one (1) day of *prision correccional* to eight (8) years and one (1) day of *prision mayor* for each count of Falsification.

¹⁰¹ Which reads:

"SEC. 25. Article 171 of the same Act is hereby amended read as follows:

"ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of *prision mayor* and a fine not to exceed One million pesos (P1,000,000) shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts: x x x x"

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




1. In Criminal Case No. **SB-17-CRM-1023**, the Court finds accused DATU SAJID ISLAM U. AMPATUAN and DATUALI K. ABPI, AL HAJ **GUILTY** beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019. They are accordingly sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) month as minimum to twelve (12) years as maximum, with perpetual disqualification from holding public office.

2. In Criminal Case No. **SB-17-CRM-1024**, the Court finds accused DATU SAJID ISLAM U. AMPATUAN and DATUALI K. ABPI, AL HAJ **GUILTY** beyond reasonable doubt of the felony of Malversation of Public Funds under Art. 217 of the Revised Penal Code. They are accordingly sentenced to suffer the penalties of *reclusion perpetua* and perpetual special disqualification from holding public office. In addition, accused are ordered to pay, jointly and severally, a fine of Thirty-Five Million Seven Hundred Forty-Seven Thousand Four Hundred Ninety-Three Pesos (PhP 35,747,493.00), which is equivalent to the total amount malversed.

3. In Criminal Case Nos. **SB-17-CRM-1025 to SB-17-CRM-1080, SB-17-CRM-1090 and SB-17-CRM-1092 to SB-17-CRM-1097**, the Court finds accused DATU SAJID ISLAM U. AMPATUAN **GUILTY** beyond reasonable doubt of sixty-three (63) counts of Falsification of Public Documents, under Art. 171 of the Revised Penal Code. In accordance with the Indeterminate Sentence Law, he is sentenced to suffer the penalty of six (6) months and 1 day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum for each of the 63 counts.

However, accused Ampatuan is **ACQUITTED** in Criminal Case Nos. **SB-17-CRM-1081 to SB-17-CRM-1089 and SB-17-CRM-1091**, in view of the prosecution's failure to prove his guilt beyond reasonable doubt.

Accused DATUALI K. ABPI, AL HAJ is hereby **ACQUITTED** for all counts of Falsification under Criminal Case Nos. **SB-17-CRM-1025 to SB-17-CRM-1097**, in view of the prosecution's failure to prove his guilt beyond reasonable doubt. The surety bond posted for his provisional liberty in the said cases is hereby **CANCELLED** and the Hold Departure Order issued against him only insofar as the said cases are concerned is therefore **LIFTED**.



4. Considering that no return of the warrant of arrest previously issued against accused JOHN ESTELITO G. DOLLOSA, JR. and OSMENA M. BANDILA has been made, let the cases against them be **ARCHIVED**, pending their arrest, subject to the reinstatement of their cases once they are brought into custody.

The Director of the National Bureau of Investigation (NBI), Taft Avenue, Manila, the Chief of the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG), Camp Crame, Quezon City; the Chiefs of Police of Cotabato City and the Municipality of Sultan Kudarat, Maguindanao; and the Provincial Director of Maguinadanao PPO, Camp Datu Akila to whom the Warrant of Arrest was assigned for execution are hereby commanded to effect the **ARREST** of the said accused as ordered in the Warrant of Arrest.

SO ORDERED.


BAYANI H. JACINTO
Associate Justice

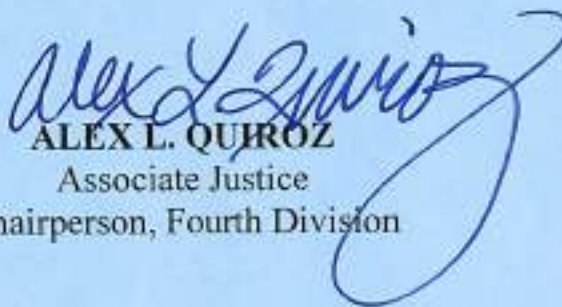
WE CONCUR:


ALEX L. QUIROZ
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation with the Justices of the Court's Division.


ALEX L. QUIROZ
Associate Justice
Chairperson, Fourth Division

CERTIFICATION

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


AMPARO M. GABOTAJE-TANG
Presiding Justice