



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**  
QUEZON CITY

## Sixth Division

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

- versus -

GREGORIO T. IPONG,  
ANTONIO Y. ORTIZ,  
DENNIS L. CUNANAN,  
MARIVIC V. JOVER, and  
ALFREDO A. RONQUILLO,  
*Accused.*

SB-17-CRM-1496-1497

For: Violation of **SECTION 3(e)** of **REPUBLIC ACT NO. 3019** and **MALVERSATION (ARTICLE 217, REVISED PENAL CODE)**

PRESENT:

FERNANDEZ, J., *Chairperson*  
JACINTO, J.<sup>1</sup> and  
VIVERO, J.

Promulgated:

September 13, 2022 *[Signature]*

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## DECISION

VIVERO, J.:

### CHARGES

Accused **GREGORIO T. IPONG** ('accused Ipong'), **ANTONIO Y. ORTIZ** ('accused Ortiz'), **DENNIS L. CUNANAN** ('accused Cunanan'), **MARIVIC V. JOVER** ('accused Jover'), and **ALFREDO A. RONQUILLO** ('accused Ronquillo'), stand charged before this Court for violation of **Section 3(e)** of **Republic Act No. 3019**, otherwise known as **Anti-Graft and Corrupt Practices Act**, as amended, and **Malversation of Public Funds or Property** as defined and punished under **Article**

<sup>1</sup> Special Member in view of the inhibition of Associate Justice Karl B. Miranda per Administrative Order No. 276-A-2017 dated 14 August 2017.

*[Signature]*

*[Handwritten mark]*

217 of the **Revised Penal Code**,<sup>2</sup> the accusatory portion of the two *Informations* read—

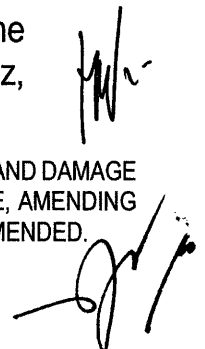
### SB-17-CRM-1496

On 03 May 2007, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **GREGORIO T. IPONG** (Ipong), the then Representative of the Second District of North Cotabato; **ANTONIO Y. ORTIZ** (Ortiz), Director General; **DENNIS L. CUNANAN** (Cunanan), Deputy Director General; and **MARIVIC V. JOVER** (Jover), Chief Accountant; all of the Technology and Livelihood Resource Center (TLRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individual **ALFREDO A. RONQUILLO** (Ronquillo); acting with manifest partiality, evident bad faith and/or gross inexcusable negligence; did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individual in the amount of at least **FOUR MILLION NINE HUNDRED THOUSAND PESOS (PHP4,900,000.00)**, through a scheme described as follows:

- (a) **Ipong** unilaterally chose and indorsed Aaron Foundation Philippines Inc. (AFPI), a non-government organization operated and/or controlled by Ronquillo, as "project partner" in implementing livelihood projects for his constituents in the Second District of North Cotabato, which were funded by Ipong's Priority Development Assistance Fund (PDAF) allocation covered by **Special Allotment Release Order (SARO) No. ROCS-07-5416**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with AFPI being unaccredited and unqualified to undertake the projects;
- (b) **Ipong** and TLRC's **Ortiz** then entered into a Memorandum of Agreement with AFPI on the implementation of Ipong's purported PDAF-funded projects;
- (c) **Ortiz** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher (DV) No. 012007050821** along with **Jover**, and **Cunanan**, as well as causing the issuance of **Land Bank Check No. 399418** in the amount of **PHP4,900,000.00** to AFPI which was signed by Ortiz,

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<sup>2</sup> As amended by R.A. No. 10951, AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED.




without accused TLRC Officers and Employees having carefully examined and verified the accreditation and qualification of AFPI as well as the transaction's supporting documents;

- (d) **Ronquillo**, acting for and in behalf of AFPI, received the above cited check from TLRC;
- (e) By their above acts, **Ipong and the above-named TLRC officials** allowed **Ronquillo**, through AFPI, to take possession and thus misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while **Ronquillo** failed to submit liquidation reports despite demand by the Commission on Audit, to the damage and prejudice of the Republic of the Philippines.

### SB-17-CRM-1497

That on 03 May 2007, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers **GREGORIO T. IPONG** (Ipong), the then Representative of the Second District of North Cotabato; **ANTONIO Y. ORTIZ** (Ortiz), Director General; **DENNIS L. CUNANAN** (Cunanan), Deputy Director General; and **MARIVIC V. JOVER** (Jover), Chief Accountant; all of the Technology and Livelihood Resource Center (TLRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individual **ALFREDO A. RONQUILLO** (Ronquillo); did then and there willfully, unlawfully and criminally allow Aaron Foundation Philippines, Inc., (AFPI) to take public funds amounting to at least **FOUR MILLION NINE HUNDRED THOUSAND PESOS (PHP4,900,000.00)**, through a scheme described as follows:

- (a) **Ipong**, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the General Appropriation Act for the year 2007, unilaterally chose and indorsed **AFPI**, a non-government organization operated and/or controlled by Ronquillo, as "project partner" in implementing livelihood projects for his constituents in the Second District of North Cotabato, which were funded by Ipong's PDAF allocation covered by **Special Allotment Release Order (SARO) No. ROCS-07-5416**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with AFPI being unaccredited and unqualified to undertake the projects;



- (b) **Ipong** and TLRC's **Ortiz** then entered into a Memorandum of Agreement with AFPI on the implementation of Ipong's purported PDAF-funded projects;
- (c) **Ortiz** also facilitated, processed, and approved the disbursement of the subject PDAF release by signing **Disbursement Voucher (DV) No. 012007050821** along with **Jover, and Cunanan**, as well as causing the issuance of **Land Bank Check No. 399418** in the amount of **PHP4,900,000.00** to AFPI which was signed by Ortiz, without accused TLRC Officers and Employees having carefully examined and verified the accreditation and qualification of AFPI as well as the transaction's supporting documents;
- (d) **Ronquillo**, acting for and in behalf of AFPI, received the above cited check from TLRC;
- (e) By their above acts, **Ipong and the above-named TLRC officials** allowed **Ronquillo**, through AFPI, to take possession and thus misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while **Ronquillo** failed to submit liquidation reports despite demand by the Commission on Audit, to the damage and prejudice of the Republic of the Philippines.

### PROCEDURAL ANTECEDENTS

On 15 August 2017, the Court found probable cause to hold herein accused for trial, and thus issued arrest warrants against accused Ortiz, Cunanan, Jover, and Ronquillo. Accused Ipong had earlier posted his bond.<sup>3</sup>

On 16 August 2017, accused Ipong filed an *Omnibus Motion (To Dismiss/To Quash Information)*,<sup>4</sup> to which the prosecution, on 13 September 2017, filed its *Comment/Opposition (To Accused Ipong's Omnibus Motion)*.<sup>5</sup>

Meanwhile, on 15 September 2017, the Court approved accused Cunanan's bail application and recalled the arrest warrant issued against him on 15 August 2017.<sup>6</sup>

On 04 October 2017, the Court issued a *Resolution*<sup>7</sup> denying accused Ipong's *Omnibus Motion* for lack of merit. Unfazed, on 11 October 2017, accused filed a *Motion for Reconsideration (To the Resolution dated 4 October 2017)*,<sup>8</sup> while on 13 October 2017, the prosecution filed its *Comment/Opposition (to accused Ipong's*

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<sup>3</sup> *Rollo*, Volume I, page 140.

<sup>4</sup> *Id.*, p. 149.

<sup>5</sup> *Id.*, p. 230.

<sup>6</sup> *Id.*, p. 238.

<sup>7</sup> *Id.*, p. 260.

<sup>8</sup> *Id.*, p. 278.

*Motion for Reconsideration dated 11 October 2017*).<sup>9</sup> Accused Ipong's *motion* was denied by the Court in its *Resolution*<sup>10</sup> dated 09 November 2017.

Arraignment was set on 24 November 2017, during which accused Ipong and Cunanan both pleaded '*not guilty*' to each *Information*.<sup>11</sup>

As for accused Jover, the Court approved the surety bond<sup>12</sup> she posted on 05 April 2018, while her arraignment was set on 17 April 2018, where she likewise pleaded '*not guilty*' to both charges.<sup>13</sup>

During the Pre-Trial, the prosecution and accused Ipong, Cunanan, and Jover jointly agreed to stipulate on the following:

1. The identities of accused Gregorio Tocmo Ipong, Dennis Lacson Cunanan, and Marivic Villaluz Jover as the persons named in the *Informations* as accused;
2. Accused Ipong is a high-ranking public officer, being the Representative of the 2<sup>nd</sup> District of North Cotabato from July 1, 1998 to June 30, 2007;
3. Accused Cunanan is a public officer, being then the Deputy Director General of the Technology and Livelihood Resource Center (TLRC);
4. Accused Jover is a public officer, being then the Chief Accountant of TLRC;
5. The jurisdiction of the Court over the persons of the accused; and
6. Accused Ipong further admits that the criminal complaint was filed against him on May 29, 1015.<sup>14</sup>

Thereafter, trial commenced as regards accused Ipong, Cunanan, and Jover, while accused Ortiz remained at-large.

### **PROSECUTION'S EVIDENCE**

In support of the prosecution's accusations against the accused it presented (11) witnesses, namely: (a) **LOLITA M. SORIANO** ('Soriano'); (b) **LYDIA L. MORALES** ('Lydia Morales'); (c) **ENGR. DIVINA M. FUENTES** ('Engr. Fuentes'); (d) **LORNA C. MORALES** ('Lorna Morales'); (e) **MARISSA A. SANTOS** ('Santos'); (f)

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<sup>9</sup> *Id.*, p. 287.

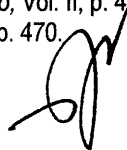
<sup>10</sup> *Id.*, p. 319.

<sup>11</sup> *Id.*, p. 338.

<sup>12</sup> *Id.*, p. 396.

<sup>13</sup> *Rollo*, Vol. II, p. 434-A.

<sup>14</sup> *Id.*, p. 470.



**ATTY. DARWIN C. SOTTO** ('Atty. Sotto'); (g) **KATRINA M. AGPOON** ("Agpoon"); (h) **ATTY. ALMEDA-SAKIMA P. VINLUAN** ('Atty. Vinluan') (i) **AVELINA H. ZUMARRAGA** ('Zumarraga'); (j) **LEONA A. ANDRIANO** ('Andriano'); and (k) **JOAN AGNES N. ALFAFARAS** ('Alfafaras').

**LOLITA M. SORIANO**

The prosecution first summoned on the witness stand Lolita M. Soriano, who is the *Supervising Administrative Officer*, Special Audits Office (SAO), Commission on Audit (COA). She testified that she has been holding this position for three (3) years since 20 March 2015 with the following duties, to wit: (i) prepares quarterly accomplishment reports of SAO; (ii) prepares monthly report of attendance and absences and monthly report of RATA recipients; (iii) assists in the supervision of administrative staff; (iv) prepares draft memo for transmittal to court and other parties; and (v) takes direct custody and safekeeping of original audit reports.

Witness recalled having received a *subpoena* from the Court directing her to submit certified true copies of documents pertaining to the utilization of the Priority Development Assistance Fund (PDAF) allocation of former Representative Gregorio T. Ipong. Accordingly, she issued certified true copies of the following documents: (a) **Letter** addressed to Director Antonio Y. Ortiz dated 28 March 2007 (**Exhibit "H"**); (b) **Memorandum of Agreement (MOA)** by and between Technology and Livelihood Resource Center (TLRC), Hon. Gregorio T. Ipong and Aaron Foundation Philippines, Inc. (AFPI) notarized on 07 May 2007 (**Exhibit "I"**); (c) TLRC **Disbursement Voucher (DV) No. 012007050821** (**Exhibit "J"**); (d) **Landbank Check No. 399418** (front and dorsal portion) (**Exhibit "K"**); (e) **Official Receipt No. 0074** issued by Aaron Foundation Philippines, Inc. and **Memo for Cash Division dated** 03 May 2007 (**Exhibits "L" and "L-1"**); (f) **SAO Report No. 2012-03** (**Exhibit "U"**); (g) **Certification** issued by the Bureau of Permits, Manila, dated 21 March 2011 (**Exhibit "V"**); (h) **Memorandum** for Antonio Y. Ortiz dated 30 April 2007 (**Exhibit "W"**); (i) **Letter** addressed to The President, Aaron Foundation Philippines, Inc. dated 30 May 2012 (**Exhibit "CC-1"**); (j) **Letter** addressed to Assistant Commissioner Carmela S. Perez dated 26 March 2012 (**Exhibit "DD-1"**); (k) **SAO Notice of Disallowance No. TRC-2015-131-PDAF (07-09)** (**Exhibit "EE"**); (l) COA **Office Orders No. 2010-309, 2010-327, 2011-039, and 2011-428** (**Exhibits "FF", "FF-1", "FF-2", and "FF-3"**); (m) **Letter** addressed to Gregorio T. Ipong dated 10 February 2012 (**Exhibit "KK"**); (n) **Project Proposal** for the District-wide Livelihood & Entrepreneurial Promotions & Development Program (**Exhibit "X"**); (o) **Letter** addressed to Hon. Gregorio T. Ipong dated 27 March 2007 (**Exhibit "Y"**); (p) **Letter** addressed to Hon. Gregorio T. Ipong dated 23 March 2007 (**Exhibit "Z"**); (q) **Official Receipt No. 5296547** dated 02 April 2007 (**Exhibit "AA"**); and (r) **Disbursement Voucher No. 104-07-03-325** dated 29 March 2007 (**Exhibit "BB"**).



To authenticate these documents, she then placed her signature below the statement '**Certified True Copy**', which stamp appears on each and every document mentioned above.<sup>15</sup>

**LYDIA L. MORALES**

Lydia L. Morales, *Municipal Accountant* assigned at the Municipality of Makilala, Province of Cotabato, was second to testify. Witness averred that she has been the accountant of Makilala, Cotabato, for almost (23) years or since her appointment in December 2005. Her duties are as follows: (i) installs and maintains an internal audit system in her municipality; (ii) prepares and submits financial statements to the local executive and officers; (iii) apprises the officers on the financial condition and operations of their municipality; (iv) certifies the availability of budgetary allotment to which expenditures and obligations may be properly charged; (v) reviews supporting documents before preparation of vouchers to determine completeness of requirements; (vi) prepares statements of cash advances, liquidation, salaries, allowances, reimbursements, and remittances; (vii) prepares statement of journal vouchers and liquidation; (viii) posts individual disbursements to the subsidiary ledger and index cards; (ix) maintains individual ledgers for officials and employees; (x) records and posts in index cards details of purchased furniture, fixtures, and equipment; (xi) accounts for all issued requests for obligations and maintains and keeps all records and reports related thereto; (xii) prepares journals and the analysis of obligations and maintains and keeps all records and reports related thereto; and (xiii) exercises such other powers and performs such other duties and functions as provided by law or ordinance.

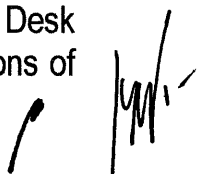
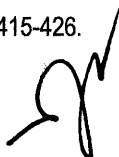
She then issued a document denominated as '**Certification**' (Exhibit "T"), which reads: '**THIS IS TO CERTIFY per records shows there was no Fund Downloaded in the Municipality of Makilala intended for Training and Livelihood Projects through Technology Resource Center in the year 2007.**' She issued the *Certification* only after checking the Subsidiary Ledger of the PDAF of Representative Gregorio T. Ipong downloaded to the Municipality of Makilala. The **Subsidiary Ledger (Exhibit "HH")** with marking '*Authenticated Machine Copy From Office File*' bears her signature. The original copy of the same remains with her custody.<sup>16</sup>

**ENGR. DIVINA M. FUENTES**

Thereafter, the prosecution called Engr. Divina M. Fuentes, *City Planning and Development Coordinator* of the City of Kidapawan. She has been with the City Government of Kidapawan for (24) years or since 1993. She rose from the rank being then *Project Development Officer II* before becoming the *City Planning and Development Coordinator*. Back in 2007, Engr. Fuentes was the *Assistant City Planning and Development Coordinator* and designated *Manager, Livelihood Desk and Farmers Information Technology System*. She is in charge of the operations of

<sup>15</sup> *Rollo*, Vol. I, pp. 415-426.

<sup>16</sup> *Id.*, pp. 404-409.



the livelihood program of the City of Kidapawan. It was a specialized office created purposely to plan, strategize, facilitate, and implement all livelihood concerns and programs of the City Government be it locally funded or nationally funded programs and projects.

As *City Planning and Development Coordinator*, her main duties and responsibilities are: (i) formulating economic, social, physical, and other development plans and policies for consideration of the Local Government Development Council; (ii) conducting continuing studies, researches, and training programs necessary to evolve plans and programs for implementation; and (iii) monitoring and evaluating the implementation of the different development programs, projects, and activities in the LGU concerned in accordance with the approved development plan.

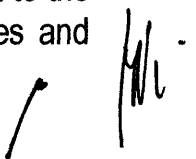
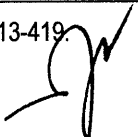
She issued, as part of her function, a ***Certification (Exhibit "Q")*** dated 23 January 2015, which reads: ***'THIS IS TO CERTIFY that per record of the Kidapawan City Livelihood Desk (KCLD), the City Government of Kidapawan has not been a recipient of any training and livelihood project conducted by the Aaron Foundation Philippines, Inc. through Technology Resource Center in 2007.'*** The issuance of the same was based on her personal knowledge and on the records of their office, particularly for ***CY 2007 Accomplishment Report (Exhibit "II")***, which she signed at the last page together with her former boss, Benjamin C. Catolico. She had seen how Benjamin Catolico signed the document; thus, she was aware that the signature appearing in the same was Catolico's signature.

Finally, the *Report* reflects all training and livelihood programs implemented in 2007 by the City Government of Kidapawan. The original copy of the *Report* was with the City Cooperative Office. Each and every page of the aforesaid document reflects the signature of Myla G. Gundran, *Records Custodian*, City Cooperative Office, City of Kidapawan, below the phrase *'Authenticated Machine Copy*. Engr. Fuentes knows that those are signatures of Myla Gundran since she signed the same in her presence.<sup>17</sup>

### **LORNA C. MORALES**

The next prosecution witness was Lorna C. Morales, *City Social Welfare and Development Officer* of the City of Kidapawan, Province of Cotabato, who testified that she has been working with the City Government of Kidapawan for (19) years or since 1999. In 2007, she was the *Assistant City Social Welfare and Development (CSWD) Officer*, while in April 2013, she was designated as *Acting CSWD Officer*. As *Assistant CSWD*, her duties and responsibilities centers on handling poverty alleviation and empowerment through training and livelihood programs in close coordination with the *Manager* of the Livelihood Desk of the City of Kidapawan. As *Acting CSWD Officer*, her duties and responsibilities are chiefly: (i) to formulate measures for the approval of the *Sangguniang Panlungsod* and provide technical assistance and support to the *City Mayor* in carrying out measures to ensure the delivery of basic services and

<sup>17</sup> Rollo, Vol. II, pp. 413-419.





provision of adequate facilities relative to social welfare and development services; and (ii) to develop plans and strategies and, upon approval thereof by the *City Mayor*, implement the same, particularly those which have to do with social welfare and development programs and projects which the *City Mayor* is empowered to implement and which the *Sangguniang Panlungsod* is empowered to provide.

She testified that she issued and signed a **Certification (Exhibit "R")** dated 23 January 2015, which reads: **'THIS IS TO CERTIFY that as per records of the City Social Welfare and Development Office, Kidapawan City, the Aaron Foundation Philippines, Inc. through Technology Resource Center in 2007 up to present has not conducted any training and livelihood project.'** The issuance of the **Certification** was based on Lorna Morales' personal knowledge and based on records of the City Livelihood Desk covering the *CY 2007 Accomplishment Report*. The *Report* reflects all trainings and livelihood programs implemented in 2007 by the City Government of Kidapawan.

In the course of her testimony, she identified the signatures of Engr. Divina M. Fuentes, *Manager*, Livelihood Desk and Farmers Information Technology System, and Benjamin C. Catolico, *City Planning and Development Coordinator*, appearing on the last page of the *Report* since she was familiar with their signatures and she knows they signed the same.<sup>18</sup>

### **MARISSA A. SANTOS**

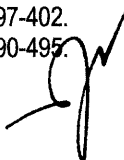
Next on the witness stand was Marissa A. Santos, *Chief Administrative Officer* of the Department of Budget and Management (DBM). She assumed the position of *Chief Administrative Officer* on 31 March 2015 with the following principal duties and functions: (i) supervises the day-to-day operation of the Central Records Division of DBM; (ii) takes official custody of the DBM official documents filed at the Central Records Division; and (iii) performs other duties and functions that may be assigned to her by superiors from time to time;

Upon receiving the Court's *subpoena*, she issued the certified true copies of the following documents, relative to the PDAF of Representative Gregorio T. Ipong, thus: (a) **Special Allotment Release Order (SARO) No. ROCS-07-05416** dated 19 March 2007 (**Exhibit "F"**); (b) **Advice of NCA Issued** dated 27 March 2007 (**Exhibit "G"**); (c) **Notice of Cash Allocation No. 336952-0** dated 27 March 2007 (**Exhibit "G-1"**); (d) **Letter** addressed to Hon. Gregorio T. Ipong dated 27 March 2007 (**Exhibit "Y"**); and (e) **Letter** addressed to Hon. Gregorio T. Ipong dated 23 March 2007 (**Exhibit "Z"**). All these documents were marked "**CERTIFIED COPY OF THE MACHINE COPY ON FILE**" and were signed by her and then submitted to the Office of the Special Prosecutor.<sup>19</sup>



<sup>18</sup> *Id.*, pp. 397-402.

<sup>19</sup> *Id.*, pp. 490-495.



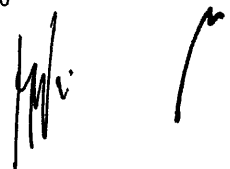
**ATTY. DARWIN C. SOTTO**

Thereafter, Atty. Darwin C. Sotto, *Securities Counsel I* of the Securities and Exchange Commission (SEC), was next to testify. He occupied the position of *Securities Counsel I* at the Company Registration and Monitoring Department (CRMD) of the SEC since 02 May 2017. His duties, responsibilities, and functions are: (i) checks the accuracy of information indicated in the articles of incorporation during processing for incorporation and amendment purposes; (ii) testifies before a court as witness on behalf of CRMD in relation to the documents filed with the SEC; and (iii) performs other tasks that may be assigned by the *Director* of CRMD. He received a *subpoena* from the Office of the Assistant Special Prosecutor for a case conference, for the preparation of his *judicial affidavit*, and to attest on the documents that his office furnished to the Office of the Special Prosecutor. He identified the *Certificate of Incorporation* of AFPI approved on 24 March 1999 with attached **Articles of Incorporation (AOI) (Exhibit "M")** and *By-laws*.

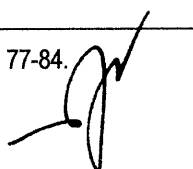
Likewise, upon perusal of the AOI, he identified the name of Alfredo A. Ronquillo appearing on the fifth (**Exhibit "M-1"**), sixth (**Exhibit "M-2"**), and seventh articles (**Exhibit "M-3"**) and in the signature page (**Exhibit "M-4"**). He identified the name of Alfredo A. Ronquillo appearing on the By-laws particularly on the signature page (**Exhibit "M-5"**). He testified that per seventh article of the AOI, the contribution of Alfredo A. Ronquillo is PhP10,000.00 (**Exhibit "M-3-a"**), while the capital contribution of Aaron Foundation Philippines, Inc. is PhP68,000.00 (**Exhibit "M-3-b"**).

Witness Atty. Sotto, likewise identified Aaron Foundation Philippines, Inc.'s **Audited Statement of Revenues and Operating Expenses for the Year Ended December 31, 2006 (Exhibit "N")**; **Audited Balance Sheet as of 31 December 2006 (Exhibit "N-1")**; and its Net Savings (Loss) of PhP750.00 (**Exhibit "N-1-a"**). Furthermore, he identified Aaron Foundation Philippines Inc.'s **Audited Statement of Revenues and Operating Expenses for the Year Ended December 31, 2007 (Exhibit "O")**; its Net Savings (Loss) of PhP5,840.00 (**Exhibit "O-1-a"**); and **Audited Sources and Uses of Funds for the Year Ended December 31, 2007 (Exhibit "O-1")**.

Finally, on the back portion of each and every document he identified is the stamp with handwritten notations of Atty. Daniel P. Gabuyo, *Officer-in-Charge* in the Corporate Filing and Records Division (CFRD), a division of SEC, certifying that the copy furnished to OSP is the true and correct digital reproduction of the official files in SEC's custody. Witness Atty. Sotto testified that the same are the true and genuine signatures of Atty. Gabuyo, his superior, since he has seen how Atty. Gabuyo signed the documents and that he is familiar with Atty. Gabuyo's signatures.<sup>20</sup>



<sup>20</sup> Rollo, Vol. III, pp. 77-84.



**KATRINA M. AGPOON**

Katrina M. Agpoon, *Licensing Officer II* at the Administrative Services of Bureau of Permits in the City of Manila, under oath, averred that she occupied the position since 01 October 2015 with primary duties of evaluating and issuing business permits. Per *subpoena* she received from the Assistant Special Prosecutor, she identified the ***Certification*** dated 19 June 2018 (**Exhibit “V-1”**), she previously issued, which reads: ***“This is to certify that based on the database of this Office, NO business permit was issued to AARON FOUNDATION PHILIPPINES INC. with address located at 2326 Juan Luna St., Gagalangin, Tondo, Manila as operator of business in the City of Manila from CY 2004 to present.”*** She likewise identified the *Certification* dated 21 March 2011 (**Exhibit “V”**), which her office issued to COA. The document bears the name and signature of Victoria Sto. Domingo, former *Officer-in-Charge* of Administrative Services. She is familiar with the signature of OIC Sto. Domingo since the latter was her former immediate supervisor.<sup>21</sup>

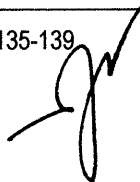
**ATTY. ALMEDA-SAKIMA P. VINLUAN**

Atty. Almeda-Sakina P. Vinluan, *member* of the Special Panel of Investigators, Team IV, Field Investigation Office, Office of the Ombudsman, testified that she is one of the complainants who initiated and signed the ***Complaint-Affidavit with Prayer for Preventive Suspension Pending Investigation (Exhibit “A”)*** dated 29 May 2015.

She further testified *via* her *complainant-affidavit* that:

1. Representative Ipong of the 2<sup>nd</sup> District of North Cotabato, TLRC Director General Antonio Y. Ortiz, TLRC Deputy Director General Dennis L. Cunanan, TLRC Chief Accountant Marivic V. Jover, and President Alfredo A. Ronquillo of Aaron Foundation Philippines, Inc. all conspired with one another in violating Article 217 of the Revised Penal Code and Section 3(e) of Republic Act No. 3019;
2. She added that since accused Ipong, Ortiz, Cunanan, and Jover, all accountable public officers, could not account for the PDAF when audited, there is *prima facie* evidence that they have put such missing funds to personal use and therefore liable for Malversation of Public Funds under Article 217 of the Revised Penal Code and violation of Section 3(e) of Republic Act No. 3019;
3. Upon further investigation, her team found out that the projects funded by the PDAF of Representative Ipong in 2007, specifically the training and livelihood projects implemented by TLRC through Aaron Foundation in the 2<sup>nd</sup> District of North Cotabato, do not exist; and

<sup>21</sup> *Id.*, pp. 135-139



4. Private individual Alfredo A. Ronquillo, President of Aaron Foundation, helped the named public officials in the consummation of the criminal acts by direct participation. The NGO, being the chosen implementing agency of Representative Ipong, made it appear that such projects existed when in truth and in fact, they did not.<sup>22</sup>

#### **AVELINA H. ZUMARRAGA**

Avelina H. Zumarraga, during her direct examination, testified that she is the *Chief Treasury Operations Officer II*, Miscellaneous Accounts Accounting Division, Bureau of Treasury. She was the *Chief Treasury Operations Officer II* since 25 April 2003. She supervises the day-to-day operations of the Miscellaneous Accounts Accounting Division including the recording and processing of the release subsidy and equity to Government-Owned and -Controlled Corporations and allocations of Local Governments Units. She also safekeeps documents relative to fund releases like SAROs and ANCAIs issued by the DBM.

Per *subpoena* issued to her, she was requested to submit the certified true copies of Bureau of Treasury **Disbursement Voucher No. 104-07-03-325 (Exhibit "BB")** dated 29 March 2007, which she signed below the statement, "**CERTIFIED TRUE COPY OF THE ORIGINAL (SECOND COPY).**" Likewise, she submitted the **Official Receipt (O.R.) No. 5296547 H (Exhibit "AA")** dated 02 April 2007, which was issued by TLRC to acknowledge receipt of the check, and which original copy was already transmitted to the *resident auditor* of the Bureau of Treasury for post-audit.<sup>23</sup>

#### **LEONA A. ANDRIANO**

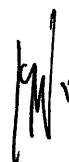
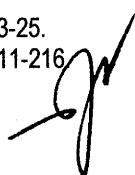
Leona A. Andriano, *State Auditor V*, SAO, COA, for her part stated that she has been with COA for about (37) years or since 1981. Her duties pertain to all tasks assigned to her by the *Director* of SAO. She was also designated as *Co-Team Leader* in various audit assignments on all government-wide performance audit, sectorial performance audits and others. In the year 2010, the team from SAO conducted special audit covering the releases and utilization of PDAF of lawmakers and Various Infrastructure Projects including Local Projects.

Andriano described PDAF as a lump sum appropriation provided in the General Appropriations Act (GAA), the purpose of which is to finance the priority programs and projects of legislators. COA then initiated the special audit of the legislators' PDAF due to emerging issues in its utilization such as unliquidated fund transfers, undocumented disbursements, and non-compliance with existing rules and regulations. Andriano testified that the authority of SAO to conduct the special audit of the legislators' PDAF was **Office Orders No. 2010-309, 2010-327, 2011-039, and 2011-428 (Exhibits "FF", "FF-1", "FF-2", and "FF-3")**.

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<sup>22</sup> *Id.*, pp. 13-25.

<sup>23</sup> *Id.*, pp. 211-216



As Co-Team Leader, her duties and responsibilities are: (i) to participate in the preparation of audit plan and work activities to be undertaken by the audit teams for presentation, discussion, review, and approval of the *Director*; (ii) to implement audit plan along with team members; (iii) to obtain relevant rules and regulations affecting allocation, releases, and utilization of PDAF; (iv) to gather the schedule of releases made by the DBM in the audit and obtain copies of SAROs and Advice of Notice of Cash Allocation Issued (ANCAIs); (v) to obtain and review disbursement vouchers together with the supporting documents and to verify whether funds were used for the purposes intended and disbursed in accordance with existing laws, rules, and regulations; (vi) to confirm the authenticity of the documents from concerned parties such as beneficiaries, suppliers, legislators, NGOs, and regulatory offices to determine their existence, condition, and status; (vii) to conduct ocular inspections of selected projects to determine their existence, condition, and status; (viii) to analyze all documents gathered and conclude the audit; (ix) to discuss audit issues and concerns encountered during the audit execution and preparation of audit report to the *Team Supervisor* and *Director*; and (x) to prepare Notice of Disallowances for review and approval of the *Team Supervisor* and *Director*.

The procedure for the release of PDAF allocation, according to the witness, is found under DBM National Budget Circular No. 476, which provides that requests for funds chargeable against the PDAF of a legislator shall be supported by a Project Profile and Endorsement from the implementing agency.

The coverage of Andriano's special audit are fiscal years 2007 to 2009, and the methodologies they employed in the conduct of their special audit consist of the following: (a) obtaining all relevant rules and regulations affecting the allocation, releases, and utilization of the PDAF which include, among others, General Appropriations Act (GAA) for 2007, 2008, and 2009; National Budget Circular No. 476, RA No. 9184, GPPB Resolution No. 12-2007, COA Circulars Nos. 2007-001 and 96-003; (b) gathering the schedule of releases made by the DBM from 2007 to 2009 to the Implementing Agencies covered in the audit and obtaining copies of Special Allotment Release Orders (SAROs) relative to these PDAF releases, Advice of Notice of Cash Allocation Issued (ANCAIs); among others; (c) obtaining and reviewing disbursement vouchers charged against PDAF releases, together with the supporting documents and assessing whether the funds were used for the purposes intended and disbursed in accordance with existing laws, rules, and regulations; (d) confirming the authenticity of the documents from concerned parties such as beneficiaries, suppliers, legislators, NGOs, and regulatory offices to determine the validity of reported transactions; and (e) conducting ocular inspection of selected projects and equipment, NGOs and suppliers, to determine their existence, condition, and status.

Andriano stated that her team made a special audit on the PDAF of Representative Gregorio T. Ipong, which PDAF was released to TLRC and the Department of Social Welfare and Development (DSWD), and eventually released by TLRC to AFPI. The basis of the said release was *via* SARO, a specific authority issued



to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated.

Witness Andriano identified **SARO No. ROCS-07-05416 (Exhibit "F")** and **SARO No. ROCS-07-03536**, which her team got from TLRC and DSWD, respectively. The said SARO pertains to the PDAF of Representative Ipong and it was specifically stated in the said **Advice of Notice of Cash Allocation (Exhibit "G")** and **Notice of Cash Allocation No. 336952-0 (Exhibit "G-1")** dated 27 March 2007 that the same was issued upon the initiative of Representative Ipong.

As for the team's findings on the PDAF utilization of Representative Ipong, the latter appointed AFPI, a non-governmental organization (NGO), to implement his PDAF project when said NGO was not identified in the GAA for the year 2007 as among the implementing arms of PDAF funded projects. The team found out that TLRC merely transferred the funds to the NGOs when said NGOs were not among the implementing arm defined in the GAA and there were no funds earmarked for the implementation by the NGOs. The release of the fund was also not in accordance with the provisions of COA Circular No. 96-003, which prescribed the accounting and auditing guidelines on fund assistance to NGOs and People's Organizations (POs).

Witness' team also found out that the PDAF utilization of Representative Ipong was not in compliance with DBM National Budget Circular No. 476 because there was no project profile and endorsement from TLRC. The significance of the project profile and endorsement letter is to express the intention and commitment by the Implementing Agency (IA) to implement and monitor project implementation. Representative Ipong appointed AFPI to implement his PDAF through a **Letter (Exhibit "H")** dated 28 March 2007 addressed to Antonio Y. Ortiz, *Director General*, TLRC, appointing AFPI as conduit in the implementation of his project.

Witness observed that the Five Million PDAF of Representative Ipong under SARO No. ROCS-07-05416 was supposed to be used for the implementation of livelihood projects in the 2<sup>nd</sup> District of North Cotabato.

Andriano identified the following disbursement vouchers and supporting documents relative to the SARO of Representative Ipong: (a) **MOA (Exhibit "I")** entered into by and between the TLRC, Representative Ipong, and AFPI notarized on 07 May 2007 (four pages); (b) **Disbursement Voucher No. 012007050821 (Exhibit "J")**; (c) **Landbank Check No. 399418 (Exhibit "K")** dated 04 May 2007 in the amount of Php4,900,000.00 payable to AFPI and **dorsal portion of the check (Exhibit "K-1")**; (d) AFPI **Receipt No. 0074 (Exhibit "L")** dated 04 May 2007 in the amount of Php4,900,000.00 and **Memo for Cash Division (Exhibit "L-1")** dated 03 May 2007; (e) **Memorandum (Exhibit "W")** dated 30 April 2007 from Ma. Rosalinda M. Lacsamana, *Group Manager*, TLIDS, LLO, recommending the release of the PDAF of Representative Ipong; (f) **Project Proposal (District-Wide Livelihood & Entrepreneurial Promotions and Development Program (Exhibit "X")** (two pages); (g) **Letter (Exhibit "Y")** dated 27 March 2007 from Rolando G. Andaya Jr., *Secretary*, advising the issuance of Notice of Cash Allocation No. 336952-0; (h) **Letter**



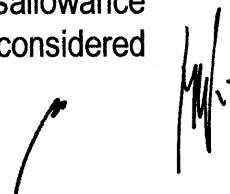
(**Exhibit "Z"**) dated 23 March 2007 from Secretary Andaya Jr. advising the issuance of SARO No. ROCS-07-05416; (i) **Official Receipt No. 5296547 (Exhibit "AA")** dated 02 April 2007; and (j) **Disbursement Voucher No. 104-07-03325 (Exhibit "BB")** dated 29 March 2007.

Furthermore, Andriano also identified the documents, earlier marked, proving AFPI received the PDAF allocation of Representative Ipong, to wit: Exhibits "H", "I", "J", "K", "L", and "L-1", she observed that the PhP4,900,000.00 were transferred to AFPI despite the absence of an appropriation law earmarking an amount to be contracted. She also added that it was TLRC that should have implemented the project itself since it was one of the identified IA of the PDAF funded projects under the GAA for the relevant year while AFPI was not. The release of the fund was not in accordance with COA Circular 96-003.

More importantly, witness Andriano averred that AFPI was selected and accepted by TLRC merely on the endorsement of Representative Ipong, sponsoring legislator, and without undertaking accreditation procedure and further validation of its physical and legal existence. The existence and capability of AFPI to implement the project were not established, which is in violation of COA Circular No. 96-003. Andriano stressed that the tripartite MOA was also not compliant with the provisions of COA Circular No. 96-003 providing control and guidance on the transfer, utilization, and management of funds released to NGOs/POs.

Her team found out that AFPI's physical and legal existence turned out to be questionable as its given address was a vacant lot used for storing Maynilad Water Services, Inc. (MWSI) equipment and it has no permit to operate business from the City Government of Manila. Her team then sent confirmation letters to AFPI's *President*, Business Permits and Licensing Office of Manila, and Representative Ipong. She identified the following documents: (a) **Letter** addressed to AFPI's *President (Exhibit "CC" to "CC-2") dated 30 May 2012; (b) **Certification (Exhibit "V")** dated 21 March 2011 issued by Bureau of Permits, Manila, stating that based on their records, AFPI was not issued business permit to operate any business in Manila from CY 2004 to the date of certification; (c) **Letter Reply** of former Representative Ipong (**Exhibit "DD" to "DD-1")** dated 26 March 2012, confirming that the signatures in each of the documents attached as Annexes 1 to 9 are authentic; and (d) **Letter (Exhibit "KK")** dated 10 February 2012 addressed to former Representative Ipong.*

After conducting the audit, Andriano's team prepared **SAO Report No. 2012-03 (Exhibit "U")**, to which she affixed her signature on the last page of the document. Thereafter, her team issued a **Notice of Disallowance (Exhibit "EE")** for SARO No. ROCS-07-05416, to which she affixed her signature on the last page of the document. Copies of the disallowance were furnished to Representative Ipong, the officials of DBM and TLRC, and AFPI. As stated, the basis for the issuance of the disallowance on the PDAF of Representative Ipong is because the transactions were considered



irregular and illegal for being non-compliant with existing laws, rules and regulations, and for being supported by questionable documents.<sup>24</sup>

**JOAN AGNES N. ALFAFARAS**

Joan Agnes N. Alfafaras, *State Auditor IV*, SAO, COA, narrated that she has been with COA for (20) years handling audits on the school building program of the Department of Education, utilization of loans and borrowings of selected Local Government Units, rate audit of waterworks and sewerage system, and PDAF, among others.

She participated in the special audit of Representative Ipong’s PDAF by conducting ocular inspection of the business site of AFPI and by preparing the confirmation letter addressed to the Bureau of Permits, Manila. Her team went to the given address of AFPI at No. 2346 Juan Luna Street, Gagalangin, Tondo, Manila, which address was based on the SEC documents, MOA, and official receipt issued by AFPI to TLRC. Alfafaras and her team observed that AFPI’s given address was a vacant lot where the equipment of Maynilad Water Services, Inc. were stored.

Thereafter, they took **photographs** of the place they inspected (**Exhibit “U-1”**) and attached the same in the SAO Report No. 2012-03 (page 205). The **first** photograph (**Exhibit “U-1-a”**) depicts a vacant lot with a truck and equipment inside with movable fence; the **second** photograph (**Exhibit “U-1-b”**) shows the adjacent establishment of the vacant lot, which is a school. The witness mentioned that she used her personal digital camera (Casio EX-Z75) in taking the photographs.

Subsequently, she wrote a letter to the Bureau of Permits, Manila, requesting for information as to the business permits issued to the business establishments involved in the audit of Aaron Foundation. The Bureau of Permits issued a *Certification* dated 21 March 2011, that Aaron Foundation is among the establishments which have no business permits to operate in Manila from CY 2004 to present.<sup>25</sup>

On 14 October 2019, the prosecution offered the following exhibits in evidence:<sup>26</sup>

EXHIBIT	DESCRIPTION
“A”	Complaint-Affidavit of Field Investigation Office (FIO), Office of the Ombudsman, consisting of (13 pages) dated 22 April 2015
“F”	Special Allotment Release Order No. ROCS-07-05416
“G”	Advice of NCA Issued
“G-1”	Notice of Cash Allocation No. 336952-0
“H”	Letter dated 28 March 2007

<sup>24</sup> *Id.*, pp. 231-248.

<sup>25</sup> *Id.*, pp. 301-D-301-J.

<sup>26</sup> *Id.*, p. 400.



"I"	Memorandum of Agreement entered into by and between the Technology and Livelihood Resource Center, Gregorio Tocmo Ipong and Aaron Foundation Philippines, Inc. on 07 May 2007 (4 pages)
"J" "J-1" "J-2" "J-3" "J-4" "J-5" "J-6"	Disbursement Voucher No. 012007050821 Amount of PhP4,900,000.00 Less: Service fee of 1% Cost of materials 1% Signature of Dennis L. Cunanan Signature of Marivic V. Jover Signature of Allen T. Basaya Signature of Antonio Y. Ortiz
"K" "K-1" "K-1-a"	Landbank Check No. 399418 Dorsal Portion Signature of Antonio Y. Ortiz
"L" "L-1"	Official Receipt No. 0074 in the amount of PhP4,900,000.00 Memo for Cash Division dated 03 May 2007
"M" "M-1" "M-2" "M-3" "M-3-a" "M-3-b" "M-4"	Certificate of Incorporation & Articles of Incorporation of Aaron Foundation Philippines, Inc. Name of Alfredo A. Ronquillo appearing on Fifth Article of the Articles of Incorporation Name of Alfredo A. Ronquillo appearing on Sixth Article of the Articles of Incorporation Name of Alfredo A. Ronquillo appearing on Seventh Article of the Articles of Incorporation Amount of contribution of Alfredo A. Ronquillo appearing on Seventh Article of the Articles of Incorporation Capital contribution of AFPI Signature of Alfredo A. Ronquillo
"N" "N-1" "N-1-a"	Audited Statement of Revenues and Operating Expenses for the Year 2006 of Aaron Foundation Philippines, Inc. Audited Balance Sheet as of December 31, 2006 Amount of PhP750.00 (net savings)
"O" "O-1" "O-1-a"	Audited Statement of Revenues and Operating Expenses for the Year 2007 of Aaron Foundation Philippines, Inc. Audited Sources and Uses of Funds for the Year Ended December 31, 2007 Amount of (5,840) Net savings (Loss)
"P"	Letter dated 23 January 2015 from Joseph A. Evangelista, City Mayor of Kidapawan City, Cotabato
"Q"	Certification dated 23 January 2015 issued by Divina M. Fuentes, Office of the City Planning and Development Coordinator, Kidapawan City, Cotabato
"R"	Certification dated 23 January 2015 issued by Lorna C. Morales, Acting City Social and Development Officer, Kidapawan City, Cotabato

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"S"	Certification dated 22 January 2015 issued by Mayor Rudy S. Caoagdan, Mayor of Municipality of Makilala, Cotabato
"T"	Certification dated 22 January 2015 issued by Lydia L. Morales, Municipal Accountant of Makilala, Cotabato
"U" "U-1" "U-1-a" to "U-1-b"	SAO Report No. 2012-03 Page 205 of the SAO Report Photos of the supposed business site of AFPI
"V" "V-1"	Certification dated 21 March 2011 issued by the Bureau of Permits, Manila Certification dated 19 June 2018 issued by the Bureau of Permits, Manila
"W"	Memorandum dated 30 April 2007 recommending the release of PDAF of Representative Ipong
"X"	Project Proposal
"Y"	Letter dated 27 March 2007 advising the issuance of Notice of Cash Allocation No. 336952-0
"Z"	Letter dated 23 March 2007 advising the issuance of SARO No. ROCS-07-05416
"AA" "AA-1"	Official Receipt No. 5296547 dated 02 April 2007 Official Receipt No. 5296547 dated 02 April 2007
"BB-1"	Disbursement Voucher No. 104-07-03-325 dated 09 March 2007
"CC" to "CC-2"	Letter dated 30 May 2012 addressed to the President of Aaron Foundation Philippines, Inc.
"DD" "DD-1"	Confirmation Letter and Reply dated 26 March 2012 Letter envelope
"EE"	SAO Notice of Disallowance No. TRC-205-131-PDAF (07-09) dated 26 October 2015
"FF" "FF-1" "FF-2" "FF-3"	COA Office Order No. 2010-309 dated 13 May 2010 COA Office Order No. 2010-327 dated 18 May 2010 COA Office Order No. 2011-039 dated 19 January 2011 COA Office Order No. 2011-428 dated 17 June 2011
"GG" "GG-1" "GG-2"	Office Order No. 46, series of 2014 Office Order No. 642, series of 2014 Office Order No. 148, series of 2015
"HH"	Subsidiary Ledger of the PDAF of Representative Ipong for the year 2007 in the Municipality of Makilala, Province of Cotabato
"II" "II-1" "II-2"	CY 2007 Accomplishment Report Entry 1.2 of the Report Entry 9.1 of the Report
"KK"	Letter dated 10 February 2012 addressed to Gregorio T. Ipong

On 14 November 2019, the Court admitted Exhibits "A", "F", "G", "G-1", "H", "I", "J", "J-1", "J-2", "J-3", "J-4", "J-5", "J-6", "K", "K-1", "K-1-a", "L", "L-1", "M", "M-1", "M-2", "M-3", "M-3-a", "M-3-b", "M-4", "N", "N-1", "N-1-a", "O", "O-1", "O-1-a", "P", "Q", "R", "S", "T", "U", "U-1", "U-1-a" to "U-1-b", "V", "V-1",

“W”, “X”, “Y”, “Z”, “AA”, “AA-1”, “BB-1”, “CC” to “CC-2”, “DD”, “DD-1”, “EE”, “FF”, “FF-1”, “FF-2”, “FF-3”, “GG”, “GG-1”, “GG-2”, “HH”, “II-1”, “II-2”, and “KK” of the prosecution.<sup>27</sup>

On 26 November 2019, accused Cunanan filed his *Motion for Leave (To File Demurrer to Evidence)*,<sup>28</sup> while on 28 November 2019, he filed a *Supplemental to the Motion for Leave (To File Demurrer to Evidence)*.<sup>29</sup> Following accused Cunanan, on 04 December 2019, accused Jover also filed her *Motion for Leave to File Demurrer to Evidence*.<sup>30</sup>

Meanwhile, on 10 December 2019, the prosecution filed its *Consolidated Opposition (Re: Motion for Leave (To File Demurrer to Evidence) and Supplemental to the Motion for Leave to File Demurrer to Evidence* filed by accused Cunanan and *Motion for Leave to File Demurrer to Evidence* filed by accused Jover.<sup>31</sup> On 29 January 2020, the Court in its *Resolution* denied accused Cunanan's and Jover's respective *motions*.<sup>32</sup>

On 10 March 2020, accused Ipong filed his *Motion for Leave (To File Demurrer to Evidence)*<sup>33</sup> in connection with which, the prosecution filed its *Opposition [Re: Motion for Leave (To File Demurrer to Evidence) filed by accused Ipong]* on 24 July 2020.<sup>34</sup> On 25 August 2020, the Court in its *Resolution* denied accused Ipong's *motion*.<sup>35</sup>

Aggrieved by the Court's *Resolutions*, both accused Cunanan<sup>36</sup> and Ipong<sup>37</sup> filed their respective *Motions for Reconsideration* but the same were denied for lack of merit in the Court's *Minutes Resolution* dated 09 March 2020<sup>38</sup> and *Resolution* dated 08 October 2020, respectively.<sup>39</sup>

### DEFENSE'S EVIDENCE

In support of their defenses and countervailing arguments, the following witnesses were presented: (a) **Accused Cunanan**; (b) **Accused Ipong**; and (c) **Accused Jover**.



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<sup>27</sup> *Rollo*, Vol. IV, p. 306.

<sup>28</sup> *Id.*, p. 314.

<sup>29</sup> *Id.*, p. 323.

<sup>30</sup> *Id.*, p. 337.

<sup>31</sup> *Id.*, p. 341.

<sup>32</sup> *Id.*, p. 354.

<sup>33</sup> *Id.*, p. 396.

<sup>34</sup> *Id.*, p. 414.

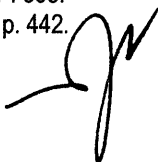
<sup>35</sup> *Id.*, p. 424.

<sup>36</sup> *Id.*, p. 375.

<sup>37</sup> *Id.*, p. 448.

<sup>38</sup> *Id.* P. 393.

<sup>39</sup> *Id.*, p. 442.



**DENNIS L. CUNANAN**

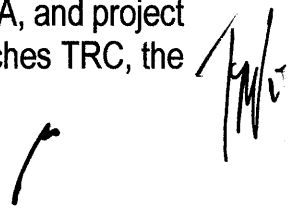
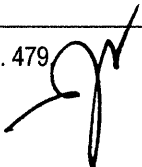
Accused Dennis L. Cunanan testified that he was the former *Deputy Director General* of TLRC from December 2004 to December 2009 and was thereafter appointed as *Director General* of now Technology Resource Center (TRC) from January 2010 to March 2014. As *Deputy Director General* of TLRC, accused's primary duty was to head the Change Management Team, which was tasked to rationalize the operations of TLRC. He also served as co-signatory in the disbursement vouchers for the financial transactions undertaken by TLRC. This was required because of the level of his position and his designation as chief operating officer.

Since his assumption to office, TLRC started receiving PDAF fund allocation from legislators from 2005 to 2008 and it spilled over to 2009 since TLRC was included in the GAA as one of the authorized implementing agencies for PDAF-funded projects. PDAF transactions and processing were under the direct supervision of the office of Director General Antonio Y. Ortiz, who directly dealt with and supervised the processing of all PDAF-related projects. Accused Cunanan testified that Director General Ortiz fled the country when the PDAF-controversy arose.<sup>40</sup> He also testified that Director General Ortiz limited his signing authority to keep him away from handling PDAF-related matters as evidenced by **Office Circular 00GE0098 (Exhibit "1" to "1-C")**, which took effect on 19 January 2009, limiting his signing authority to above PhP100,000.00 up to PhP1,000,000.000.

Director General Ortiz also issued **Office Circular 000P0099 (Exhibit "2" to "2-b")**, which took effect on 03 September 2007, stating that no PDAF shall be implemented without a MOA duly executed and that the same shall be endorsed by the Legislative Liaison Officer (LLO) for the approval of Director General Ortiz after being reviewed by the Legal Department and initiated by the Group Manager of the Corporate Support Services Group. Further, Office Circular 000P0099 stripped accused Cunanan of any participation in the implementation of PDAF-funded projects. Meanwhile, **Office Circular 000P0100 (Exhibit "3" to "3-C")** dated 27 November 2007 was issued, which revised the implementing guidelines on PDAF accounts and at the same time reiterated the previously stated points about signing and preparation of PDAF Documents. Director General Ortiz also issued **Memorandum No. ODG-200712-081 (Exhibit "4")** dated 19 January 2007, providing alternative signatories as recommending authority to TRC's disbursement vouchers for any amount exceeding PhP1,000,000.00. Prior to said Memorandum, this was the function solely of the Deputy Director General.

Before accused Cunanan signs disbursement vouchers related to PDAF, he makes sure that the attachments are complete in accordance with the checklist that was laid down and required by Director General Ortiz's memos. These attachments are the appropriate SAROs, endorsement letters from the legislator, MOA, and project proposal, among others. PDAF are treated as special funds when it reaches TRC, the

<sup>40</sup> *Id.*, p. 479



fund goes to a special trust fund which cannot be accessed unless triggered by the source of fund, who are the legislators.

Upon endorsement by the legislator as to how the fund should be used, the LLO forwards the endorsement to the Office of the Director General. Next will be the fund disbursement and endorsement with notice to proceed advise issued upon review of all documents and attachments. The Director General approves the notice to proceed and the disbursement voucher will thereafter be prepared and routed for signature. Accused Cunanan signs the vouchers before the final signature of the Director General. Accused Cunanan claimed that during the course of the regular audit of COA Auditor and the regular annual audit report of TRC, there was never any warning, or red flag, to stop processing PDAFs.

Upon accused Cunanan's assumption as *Director General*, he immediately organized a committee to investigate and review TRC's PDAF project implementation and caused the issuance of **Office Circular OOPE100b5 (Exhibits "5" to "5-F")** dated 28 January 2010, which is the Implementing Guidelines on Projects Funded through PDAF or other Government Subsidy, to be compliant with COA Circular No. 2007-001. Relative to the foregoing, he caused the blacklisting of NGOs that failed to comply with TRC's previous letters *via Memorandum (Exhibit "6" to "6-A")*.

Accused Cunanan ended his testimony by insisting that he did not personally know Representative Ipong or have any agreement or arrangement with any of his co-accused. He did not receive any money or other form of benefit for signing the disbursement vouchers.<sup>41</sup>

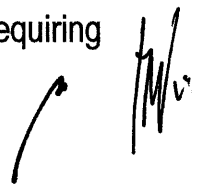
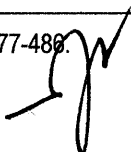
### **GREGORIO T. IPONG**

Accused Gregorio T. Ipong, while on witness stand, narrated that he was the Representative of 2<sup>nd</sup> District of North Cotabato and his term ended on the last day of June 2007. His primary duties were to legislate and make laws, and to represent and serve his constituents. He identified his **Counter-Affidavit (Exhibit "1")** dated 03 November 2015 and **Supplemental Counter-Affidavit (Exhibit "2")** dated 11 April 2016, respectively, in answer to the complaint filed by the Office of the Ombudsman.

He likewise identified the **Endorsement Letter (Exhibit "3")** dated 28 March 2007, which according to him is merely recommendatory in nature. He denied endorsing AFPI as the sole NGO conduit of his office in the implementation of his PDAF funded livelihood project for his district. He claimed that he recommended several NGOs and organizations to undertake the same, *i.e.*, ECOSOC, BANGSAMORO Neighborhood Association, Kidapawan City Employees Association, Kidapawan Small Market Vendors Association, and 7<sup>th</sup> Day Adventist Association.

At the time he signed the *endorsement letter* and the **Memorandum of Agreement (MOA) (Exhibit "4")** dated 18 April 2007, there is no law or rule requiring

<sup>41</sup> *Id.*, pp. 477-486.



public bidding for the selection of NGO. More so, he claims that it is not his obligation to conduct public bidding because he is a legislator and not part of the implementing agency, which is the TLRC. He never conspired with the other accused since he does not personally know them and the MOA was brought to his office for his signature as formality to acknowledge that he is the proponent of the livelihood project funded by his PDAF. Notably, a reading of the MOA shows he does not have any responsibility under it. He does not have any participation in the implementation of the project as its Representative proponent of it.

He identified his **Service Record (Exhibit "5")** showing that he held no public office after 2007 making him unable to monitor the implementation of the PDAF funded project after his term ended in 2007. It was in 2015, when he was Vice-Governor of North Cotabato, when he learned about the non-implementation of the project. Moreover, it was on 26 November 2015, when he received a copy of the **Notice of Disallowance (Exhibit "6")** in connection with which, he filed with COA an **Appeal Memorandum (Exhibit "7")**.<sup>42</sup>

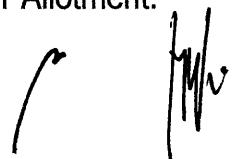
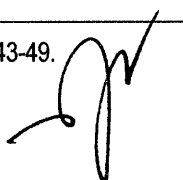
### **MARIVIC V. JOVER**

Accused Marivic V. Jover, during her direct examination, averred that she was the *Chief Accountant* of TLRC from 29 March 2007 until 31 October 2015 as shown in her **Service Record (Exhibit "7")**. Her duties and functions include: (i) monitoring accounting functions of the center; (ii) certifying disbursement vouchers (DVs) as to availability of funds, preparation of financial reports for submission to TLRC's Management; and (iii) making sure that all accounting transactions are in compliance or in conformity with COA accounting guidelines, specifically on the recording and reporting based on the Philippine Financial Reporting Standards (PFRS) and the Manuals on the New Government Accounting System (NGAS) as shown in her **Job Description (Exhibit "6")**. Her functions did not include procurement, operation, audit, and cash release.

As chief accountant, accused's duty relates only to the financial matters connected with PDAF projects and not on its implementation. Accounting Division of TLRC becomes involved in PDAF projects after the signatory to Box A of the DVs had certified the lawfulness of the intended project. Her division accomplished the accounting entries box, assigned and stamped number to the DVs and checked the supporting documents, thereafter, she makes a certification in Box B of the DV.

In certifying Box B of the DV, accused Jover certifies (a) the availability of funds; (b) that the expenditure is properly certified; (c) that the expenditure is supported by documents; (d) that the account codes are proper; and (e) that previous cash advance, if any, has been liquidated or accounted for. In certifying availability of funds, her bases are the TLRC Official Receipt, which evidenced receipt of funds from the Bureau of Treasury and the Special Allotment Release Order or Notice of Cash Allotment.

<sup>42</sup> Rollo, Vol. V, pp. 43-49.



She checks whether the DV is supported by an endorsement letter from the concerned legislator and is accompanied by a MOA.

Part of her duty in determining that the expenditure is properly supported by documents is to check the supporting documents attached to the DVs, such as the Special Allotment Release Order / Notice of Cash Allocation, TRLC Official Receipt, signature on Box A of the requesting unit, endorsement letter of the legislator, and the MOA.

She further testified that **Office Circular No. 00FN0059 (Exhibit "3")** governs the preparation and processing of DVs. It took effect last 18 July 1995 and it is the circular observed by TLRC in the preparation and processing of DVs. DVs were required to be routed from one office to another. Each signatory to Box A, Box B, and Box C has their respective expertise, duties, and responsibilities.

As chief accountant, the duty of her office is limited only to the financial aspects of the project. Her certification is based only on a given set of facts, that is, that the transactions were supported by documents as prescribed in Office Circular No. 00FN0059. She does not personally know accused Ipong and have not met him before or during the time material in the processing of his PDAF. In signing the DVs, she did not receive any consideration. Once the required supporting documents were attached, her functions become ministerial. Accused never exercised discretion in performing her duties as *Chief Accountant*. As part of her defense in these charges, she filed her **Counter-Affidavit (Exhibit "1")** dated 28 September 2015 and **Motion for Reconsideration (Exhibit "2")** dated 10 April 2017.<sup>43</sup>

On 25 January 2021, accused Ipong offered the following exhibits in evidence:<sup>44</sup>

EXHIBIT	DESCRIPTION
"1"	Counter Affidavit of Accused Ipong in the OMB Complaint
"2"	Supplemental Counter Affidavit of Accused Ipong in the OMB Complaint
"3"	Letter to TLRC dated 28 March 2007
"4"	Memorandum of Agreement (MOA) of TLRC, Gregorio Ipong and AFPI
"5"	Service Record of Gregorio Ipong
"6"	Notice of Disallowance
"7"	Appeal Memorandum

Further, on 20 February 2021, accused Jover offered the following exhibits in evidence:<sup>45</sup>

<sup>43</sup> *Id.*, pp. 186-195

<sup>44</sup> *Id.*, p. 123.

<sup>45</sup> *Id.*, p. 293.

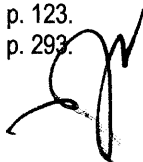
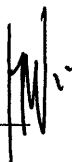


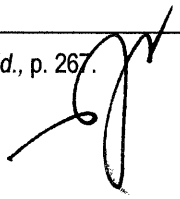
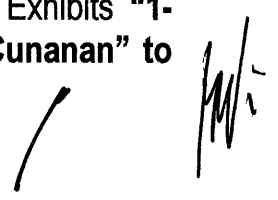
EXHIBIT	DESCRIPTION
"1-Jover"	25-Page Counter-Affidavit of Accused Jover dated 28 September 2015
"2-Jover"	19-Page Motion for Reconsideration dated 10 April 2017
"3-Jover"	2-Page Transmittal Letter dated 04 July 2007
"4-Jover"	2-Page Management Letter dated 14 September 2009
"5-Jover"	Letter dated 16 September 2009
"6-Jover"	Job Description of Accused Jover relative to her position as an Accountant of TLRC
"7-Jover"	Service Record of Accused Jover
"9-Jover"	Office Circular No. 00FN0059 dated 18 July 1995

Furthermore, on 01 March 2021, accused Cunanan offered the following exhibits in evidence:<sup>46</sup>

EXHIBIT	DESCRIPTION
"1-Cunanan" to "1-C Cunanan"	Technology Resource Center (TRC) Office Circular No. 00GE0098 dated 19 January 2007 issued by Dir. Gen. Antonio Y. Ortiz on the subject: "Reiteration of Office Policies on Authorized Signatories for Official Documents" consisting of 4 pages
"2-Cunanan" to "2-B Cunanan"	Office Circular 00OP0099 dated 03 September 2007 issued by Dir. Gen. Antonio Y. Ortiz on the subject: "Implementing Guidelines on Priority Development Assistance Fund (PDAF) Accounts" consisting of 3 pages
"3-Cunanan" to "3-C Cunanan"	Office Circular 00OPO100 dated 27 November 2007 issued by Dir. Gen. Antonio Y. Ortiz on the subject: "Revised Implementing Guidelines on PDAF Accounts" consisting of 4 pages
"4-Cunanan"	Memorandum No. ODG-200712-081 dated 20 December 2007 issued by Dir. Gen. Antonio Y. Ortiz on the subject: Amendment to Office Circular No. 00GE0098 dated 19 January 2007
"5-Cunanan" to "5-F Cunanan"	Office Circular No. 00PE0100b dated 28 January 2010 issued by Dir. Gen. Dennis L. Cunanan on the subject: "Implementing Guidelines of Projects Funded through PDAF or Other Government Subsidy" consisting of 7 pages
"6-Cunanan" to "6-A Cunanan"	Memorandum dated 16 July 2010 issued by Dir. Gen. Dennis L. Cunanan on the subject: "Barring the Center from Entering into Agreement with Specific Institutions" consisting of 2 pages

On 16 March 2021, the Court admitted Exhibits "1", "2", "3", "4", "5", "6", and "7" of accused Ipong; Exhibits "1-Jover", "2-Jover", "3-Jover", "4-Jover", "5-Jover", "6-Jover", "7-Jover", and "9-Jover" of accused Jover; and Exhibits "1-Cunanan" to "1-c-Cunanan", "2-Cunanan" to "2-b-Cunanan", "3-Cunanan" to

<sup>46</sup> *Id.*, p. 267.



“3-c-Cunanan”, “4-Cunanan”, “5-Cunanan” to “5-f-Cunanan”, and “6-Cunanan” to “6-a-Cunanan” of accused Cunanan.<sup>47</sup>

Thereafter, the accused were deemed to have rested their respective cases.

### **RULING**

Accused Ipong, Cunanan, Jover, and Ronquillo were haled to Court to hold them accountable for alleged violation of Section 3(e) of R.A. No. 3019 and for *Malversation of Public Funds or Property* under Art. 217 of the Revised Penal Code. The Court will rule and discuss the foregoing indictments in *seriatim*.

#### **CRIMINAL CASE NO. SB-17-CRM-1496 (For violation of Sec. 3(e) of R.A. No. 3019)**

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.

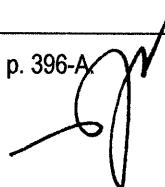
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Sec. 3(e) of R.A. No. 3019 has the following elements:

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 gross inexcusable negligence; and



<sup>47</sup> *Id.*, p. 396-A



3. 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.<sup>48</sup>

### THE FIRST ELEMENT

The presence of the first element is not in dispute. Accused Ipong, Cunanan, and Jover have all admitted that, at all times relevant to these cases, they were in government service discharging administrative and official functions.<sup>49</sup>

As regards accused Ronquillo, the fact that he is a private person is not a bar to his indictment in these cases, and even conviction.

In the case of *Canlas v. People*,<sup>50</sup> the Supreme Court had once more enunciated that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, can be 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.

### THE SECOND ELEMENT

The second element provides the three modalities by which violation of Section 3(e) of R.A. No. 3019 may be committed. These three are, “**manifest partiality**,” “**evident bad faith**,” or “**gross inexcusable negligence**.” A showing of the existence of any of these three, in connection with the prohibited acts committed, is sufficient to convict.<sup>51</sup>

In *Uriarte v. People*,<sup>52</sup> the Supreme Court explained that Sec. 3(e) of R.A. No. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence.

There is “**manifest partiality**” when there is 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 or ill-motive. 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

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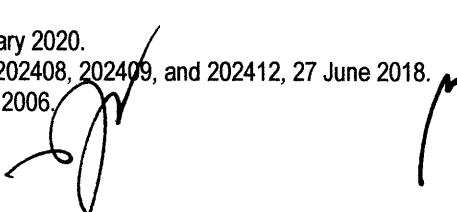
<sup>48</sup> *Cabrera v. People*, G.R. Nos. 191611-14, 29 July 2019.

<sup>49</sup> *Supra* note 12.

<sup>50</sup> G.R. Nos. 236308-09, 17 February 2020.

<sup>51</sup> *Abubakar v. People*, G.R. Nos. 202408, 202409, and 202412, 27 June 2018.

<sup>52</sup> G.R. No. 169251, 20 December 2006.

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act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>53</sup>

The evidence on record unequivocally established the elements of manifest partiality, evident bad faith, and, at the very least, gross inexcusable negligence on the part of the accused.

As shown by the prosecution, manifest partiality and evident bad faith are present in this case when established rules, regulations, and policies of COA were wantonly disregarded by accused Ipong when he allowed the anomalous disbursement of his Php4.9 Million PDAF fund allocation to finance the fictitious livelihood project of AFPI, a non-existent NGO.

As demonstrated by the prosecution, accused Ipong selected and endorsed AFPI as implementor of his PDAF funded livelihood project allegedly for the benefit of his poor and marginalized constituents in the Second District of North Cotabato, while accused Cunanan and Jover knowingly processed, approved, and subsequently released to AFPI the PDAF in question.

It must be borne in mind that at the time the subject transaction was entered into, the participation of NGOs in public procurements was chiefly governed by COA Circular No. 96-003<sup>54</sup> which took effect on 26 February 1996. Under the aforesaid COA Circular, the accounting and auditing guidelines relative to fund assistance released to NGOs were clearly spelled out. As a matter of policy, COA Circular No. 96-003 was introduced to provide control and guidance on the transfer, utilization, and management of funds released to NGOs. It ensures that through proper accreditation and qualification of NGOs, no public funds would end up in the hands of unscrupulous persons or entities in connivance with public officers. For this reason, NGOs were required to undergo strict accreditation procedures before it may be allowed to participate and act as conduits in the implementation of government-sponsored projects.

Thus, for the extension of fund assistance to NGOs, Sec. 3 of COA Circular No. 96-003<sup>55</sup> requires that:



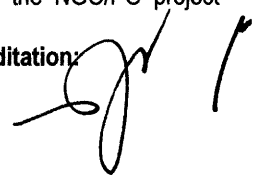
<sup>53</sup> *Plameras v. People*, G.R. No. 187268, 04 September 2013.

<sup>54</sup> RESTATEMENT WITH AMENDMENTS OF COA CIRCULAR NO. 95-003 DATED 15 FEBRUARY 1995, PRESCRIBING ACCOUNTING AND AUDITING GUIDELINES ON THE RELEASE OF FUNDS ASSISTANCE TO NON-GOVERNMENTAL ORGANIZATIONS/PEOPLE'S ORGANIZATIONS (NGOs/POs).

<sup>55</sup> **3.0 GENERAL GUIDELINES**

The following are the general guidelines in the extension of the fund assistance to the NGO/PO:

- 3.1. The project shall be included in the WFP and budget of the GO. If the fund assistance will be charged to savings or trust receipts received for the purpose, such utilization shall be approved by proper authorities.
- 3.2. **The NGO/PO shall be accredited by the GO.** In the case of non-regularly-funded GOs which generate their funds out of donations and shares from other GOs like the Presidential Management Staff with respect to the President's Special Fund, the implementing GOs shall set the minimum requirements/criteria for the selection of the NGO/PO project partners as stipulated in each program guideline.
- 3.3. **The following shall be the requirements for the NGO/PO accreditation:**



- a. Primordially, the NGO shall be properly accredited;
- b. Presentation of certificate of registration with the Securities and Exchange Commission (SEC);
- c. Submission of financial statements proving three (3) years of operation;
- d. Exhibition of list of projects undertaken by NGO to show its expertise in the project to be undertaken; and
- e. Execution of MOA embodying the (i) project statement; (ii) standards for project implementation; (iii) systems and procedures for project implementation; (iv) project cost estimates and time schedules; and (v) reporting, monitoring, and inspection requirements.



- 
- 3.3.1. **Certificate of registration** with the Securities and Exchange Commission (SEC), and/or with either the Cooperatives Development Authority (CDA) or the Department of Labor and Employment (DOLE), as the case may be, depending on the nature of the service required or to be rendered. This is to ensure that the NGO/PO has a legal personality, has officers who are responsible and accountable for its operations, and is based in the community where the project shall be implemented.
  - 3.3.2. **Financial statements** for at least three (3) years operation to ensure that:
    - it has a stable financial condition so that the fund assistance shall not be its sole source of funds; and
    - it has proven experience in fund management so that the grant shall be managed efficiently and economically.
  - 3.3.3. For NGO/PO which has been in operation for less than 3 years, proof that it had previously implemented similar projects and a certificate from LGU concerned attesting to the credibility and capability of the officers and staff of the NGO/PO shall be submitted in lieu of financial statements.
  - 3.3.4. **List of projects it has previously undertaken** to show its experience and expertise in implementing the project to be funded.
  - 3.4. **The GO and the NGO/PO shall enter into a Memorandum of Agreement (MOA) or similar document, incorporating the following requirements:**
    - 3.4.1. **Project statement including identification of beneficiaries;**
    - 3.4.2. **Standards for project implementation** by the NGO/PO and acceptance by the GO to include completion date;
    - 3.4.3. **Systems and procedures for project implementation** such as but not limited to, the procurement of goods and services by the NGO/PO and the schedule of release of the fund assistance by the GO. In the development of the system and procedures, the GO and the NGO/PO shall be guided by generally accepted management principles for economical, efficient and effective operations;
    - 3.4.4. **Project cost estimates and time schedules;** and
    - 3.4.5. **Reporting, monitoring and inspection requirements.**


x x x x

#### 4.0 DUTIES AND RESPONSIBILITIES OF THE GO

The GO shall :

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

x x x x



Examining the entire length and breadth of the records of these cases, the Court observes that none of the foregoing requirements were complied with when accused Ipong personally handpicked AFPI in the implementation of his PDAF-funded project.

Notably, evidence is miserably lacking in showing that AFPI furnished its certificate of registration to ensure the following: (a) *that it has legal personality*; (b) *that its officers are responsible and accountable for its operations*; and (c) *that it is based in the community where the project shall be implemented*.

The records are also bereft of any showing that AFPI submitted the required financial statements for the last three years of its operation. As a matter of fact, AFPI also did not submit a list of projects it was involved in to show that it had gained experience and expertise in implementing the livelihood project to be funded by accused Ipong's PDAF.

As the records further disclosed, non-compliance with COA Circular No. 96-003 were highlighted through accused Ipong's very own admissions, thus:

CROSS-EXAMINATION OF WITNESS GREGORIO TOCMO IPONG  
BY PROSECUTOR RODA B. RIGOS

X X X X

PROSEC. RIGOS

Q Now, sir you stated in your answer to question number 17, of your judicial affidavit, that at the time you signed this Endorsement Letters and Memorandum of Agreement, there is no law or rule requiring public bidding for the selection of NGOs, do you confirm that, sir?

WITNESS

A Yes, ma'am.

Q Are you aware sir of COA circular number 96-003 which lay down the guidelines on the release of funds assistance to NGOs?

A **I cannot anymore recall that same memorandum circular.**

Q You can no longer recall. But, sir are you aware that the NGO must first be accredited, before it is allowed to participate in the implementation of government projects?

A **I really don't know, ma'am because the accreditation does not fall under me, it's under the implementing agency.<sup>56</sup>**

Interestingly, when asked by the prosecution as to the underlying reason behind accused Ipong's lone appointment of AFPI to act as conduit of his office in the implementation of his PDAF-funded livelihood project, he lamely justified his choice as follows:

<sup>56</sup> Transcript of Stenographic Notes (TSN) dated 19 January 2021, page 18.

Handwritten signatures and marks at the bottom of the page, including a large signature on the left and several smaller marks on the right.

X X X X

Q Now, my question to you, sir is what was your basis in choosing or appointing Aaron Foundation as the conduit of your office in the implementation of your PDAF funded project under SARO Number ROSC0705416?

A **It was presented to me, ma'am and I accepted the presentation.**

Q Who presented the -- ?

A **I cannot anymore remember that—**

Q Person, sir?

A Yes, ma'am.

Q So, you could no longer recall the person who presented to you the Aaron Foundation, Inc.?

A Yes, ma'am.

Q Okay, sir when this person, sir this certain person, whose identity you could no longer recall, presented this NGO before you, did you bother to check the background of this NGO, sir?

A **No more, ma'am because that is not my duty to check the background of NGOs, ma'am.**

Q Okay, sir did you bother to check what were the projects previously undertaken by this NGO?

A **I cannot anymore recall, ma'am but maybe it was discussed during that time.**

Q Cannot anymore recall, okay. Sir did you check whether this NGO is financially or technically capable to undertake a five (5) Million project?

A **It's not my duty, ma'am to ascertain as to their capability.**

Q Not your duty, sir. Sir you did not observe any standard in selecting and appointing Aaron Foundation as the conduit of your office?



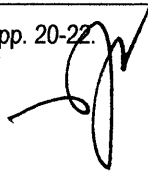
A **No, ma'am because I know, that the final say in selecting NGOs lies with the implementing agency.**

Q Okay, sir. Sir in short, you merely relied on the recommendation of that person whose identify you could no longer recall?

A **Yes, ma'am because anyway TLRC will review the recommendation.<sup>57</sup>**

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<sup>57</sup> *Id.*, pp. 20-22.



x x x x

Clearly, accused Ipong appointed AFPI to serve as conduit of his office in the implementation of his PDAF-funded livelihood project without observing the requirements of COA Circular No. 96-003. By his very own admission, he chose AFPI based on the presentation of an individual whose identity he can no longer recall and did not even bother to look into AFPI's corporate profile to check its capability to undertake the project. Regrettably, the *Endorsement Letter* dated 28 March 2007 which he executed was used by TLRC as its authority to process and to release the funds to AFPI.<sup>58</sup> Without said endorsement, accused Ipong's PDAF funds would not have reached the hands of AFPI.

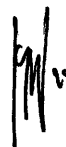
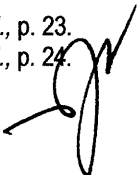
Indeed, nothing demonstrates manifest partiality and evident bad faith more than the above narrative showing unerringly the cavalier manner by which AFPI was chosen by accused Ipong in the implementation of his PDAF-funded project. As a member of the House of Representatives, accused must know that AFPI should have initially gone through accreditation before being appointed as implementer of his PDAF-funded project. Had he complied with this basic requirement of the law, this aberration could have been aborted. It is accused Ipong's supreme duty to act with circumspection to protect government funds and interest, failing which is tantamount to manifest partiality, evident bad faith, or at the very least, gross inexcusable negligence. Such observation, it must be emphasized, goes without mentioning that the evidence show that there was a clear inclination on the part of accused Ipong to favor AFPI by brushing aside wholesale the requirements set forth by COA Circular No. 96-003. By choosing AFPI and doing away with the accreditation requirements, accused Ipong was evidently in bad faith and gave unwarranted benefit, advantage or preference in favor of AFPI through manifest partiality.

The same thing could be said regarding the tripartite MOA dated 07 May 2007, executed by accused Ipong, TLRC, and AFPI for it is similarly not compliant with and in violation of COA Circular No. 96-003. For one, the MOA lacks provisions as regards (a) *Identification of the Beneficiaries*; (b) *Standards for Project Implementation*; (c) *Systems and Procedures for Project Implementation*; (d) *Project Cost Estimates and Time Schedules*; and (e) *Reporting, Monitoring, and Inspection Requirements*. These provisions are demanded by COA Circular No. 96-003 as accrediting tools and qualifying measures before an NGO can be awarded government funding for the implementation of specific projects. Too, the presence of manifest partiality and evident bad faith were further made clear when accused Ipong, upon query by the prosecution, admitted without equivocation that he did not know whether the MOA complied with the essential provisions required by COA Circular No. 96-003 since he merely affixed his signature to it after it was presented to him.<sup>59</sup>

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<sup>58</sup> *Id.*, p. 23.

<sup>59</sup> *Id.*, p. 24.



What is more damaging to accused Ipong is the fact that the MOA did not contain any details of the project intended to be carried out, the time frame for its completion, or any set measures to assure the review of the same. These are simple yet essential details required in any government contract regardless of whether COA Circular No. 96-003 was applicable to the subject undertaking.

Representative Ipong profess innocence of the crime levelled against him. He claims that he did not appoint AFPI as conduit in the implementation of his PDAF-funded project. He claims that it was TLRC who chose AFPI and was responsible in vetting the credentials of AFPI whom he merely recommended to be considered. The law and evidence, however, conspire against accused Ipong's foregoing protestations. Evidently, accused Ipong's actions concerning the selection of AFPI and the eventual release of his PDAF all reveal his nonchalant attitude towards his duties as a public official and a steward of public funds. Legislators are not required to utilize their PDAF allocations, however, when they do so, it is reasonable to presume that they would be interested in seeing that their projects are effectively and efficiently carried out. Applied to this case, accused Ipong's PDAF was supposed to fund a project that aims to address the pressing issues on human survival and sustenance of his constituents. The only conclusion this Court can surmise is that accused Ipong simply assumed that AFPI will be able to implement the livelihood project in question despite its lack of accreditation and qualification.

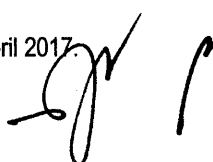
**ACCUSED CUNANAN AND JOVER  
PLAYED INDISPENSABLE ROLES  
LEADING TO THE PROCESSING AND  
EVENTUAL REMITTANCE OF PDAF TO  
AFPI**

Based on the foregoing disquisition, it appears that accused Cunanan and accused Jover, both officers of TLRC, are similarly at fault and equally shown to be guilty of manifest partiality, evident bad faith, and at the very least, gross inexcusable negligence in causing the disbursement of government funds despite clear deficiencies in the MOA and lack of proper accreditation of AFPI.

As defined by jurisprudence, partiality is synonymous with bias which excites a disposition to see and report matters as they are wished for rather than as they are. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.<sup>60</sup>

As heretofore emphatically stated, there is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, 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

<sup>60</sup> *Fuentes v. People*, G.R. No. 186421, 17 April 2017.





**DECISION**

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x-----x

of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.<sup>61</sup>

Under Item 3.3.1 of COA Circular No. 96-003, the NGO should be based in the community where the project should be implemented. As the records would bear, AFPI is based in Tondo, Manila, while accused Ipong's PDAF allocation for livelihood project was purportedly intended to be implemented in the Second District of North Cotabato. More, there is nothing on record showing that such project was undertaken by the former through the TLRC.<sup>62</sup>

In addition, under Item 4.1 of the same COA circular, TLRC may accredit AFPI only after proper verification and validation of required documents, which very clearly was not undertaken in this case since AFPI's physical and legal existence turned out to be at best, dubious. AFPI's physical and legal existence were found to be questionable as its given office and postal address turned out to be a vacant lot used for storing various MWSI equipment<sup>63</sup> and had no permit to operate business in the City of Manila since 2004 to 2009.<sup>64</sup>

Despite these deficiencies, TLRC still accredited AFPI and even proceeded to release in its favor accused Ipong's PDAF allocation. The Court thus finds TLRC to have miserably failed in its duty in observing properly the requirements under COA Circular No. 96-003.

*Office of the Deputy Ombudsman for Mindanao v. Llauder*<sup>65</sup> instructs that:

Government employees must perform their duties with utmost care and responsibility, and must be held accountable for their actions at all times. There is gross neglect of duty when one's action, even if not willfully or intentionally done to cause harm, are characterized by want of even the slightest care and a blatant indifference to the consequences of one's actions to other persons.

From what appears on record, manifest partiality and evident bad faith can be imputed to accused Cunanan for his deliberate disregard to observe the basic requirements spelled out in COA Circular No. 96-003. From accused Cunanan's very own lips he admitted, thus:

x x x x

PROSEC. RIGOS

Q Sir, did you personally examine the MOA if the same is compliant with the provisions of COA Circular, COA Circular No. 96-003 which

<sup>61</sup> *Ibid.*

<sup>62</sup> *Rollo*, Vol. II, pp. 399-400 and 415-416. See also Exhibits "Q" and "R," respectively.

<sup>63</sup> *Rollo*, Vol. III, pp. 301-F to 301-G and Exhibits "U-1-a" and "U-1-b".

<sup>64</sup> *Id.*, p. 137 and Exhibit "V-1".

<sup>65</sup> G.R. No. 219062, 29 January 2020

requires the incorporation of certain requirements which I just mentioned a while ago?

A Ah, ma'am, as I said when I got *(interrupted)*

Q Did you personally examine, Sir?

A When I got into TLRC this was already *(interrupted)*

Q **Yes Sir?**

A Ma'am, when I got into TLRC, this was already their process and ah *(interrupted)*

Q No, I'm asking Sir, did you personally, personally examine this MOA?

A Yes ma'am, we need *(interrupted)*

Q Thank you, Sir.

A We need to see it, yeah.

Q Thank you, Sir. So Sir, did you find the MOA then compliant with the COA Circular No. 96-003?

A As far as our legal is concerned ma'am, when they endorsed it to me, yes.

Q Yes, okay Sir.

A Because I wasn't the one who reviews it, it's the legal department.

Q Okay, thank you, Sir. Sir, when you processed the release of the PDAF of accused Ipong under SARO No. ROCS-07-05416 to Aaron Foundation and signed Box A of the disbursement voucher marked as Exhibit J for the prosecution, Sir, did you personally check or examine the Securities and Exchange Commission to ensure that it has a legal personality, has officers who are responsible and accountable for its operations and is based on the community where the project shall be implemented? Yes or no, Sir?

A **No ma'am because that is the role of our legal department, not my job.**

Q Thank you, Sir. Sir, how about the, did you personally check or examine its financial statement for at least three (3) years to ensure that it has a stable financial condition so that the fund assistance shall not be its sole source of funds, yes or no?

A **No ma'am, because that is the role of our legislative liaison office.**

Q Okay, Sir, no. How about the, did you personally check or examine the list of projects it has previously undertaken to show its experience and expertise in implementing the project to be funded, just yes or no, Sir?

A           **No ma'am.**

Q           Okay Sir, but you affirmed Sir your signature in box A and certified that the expenses from accused Ipong's 2000 PDAF allotment were necessary, lawful and incurred under your direct supervision, correct? Yes Sir, yes or no?

A           **Yes ma'am, because all those under me have undertaken their job.**

Q           My question to you Sir is, you certified?

A           Yes ma'am.<sup>66</sup>

It should be stressed at this point that by signing in Box A of DV No. 012007050821, accused Cunanan certified that expenses to be incurred relative to the implementation of accused Ipong's livelihood projects "were necessary, lawful and incurred under his direct supervision." Before doing so, accused Cunanan should have at least reviewed and evaluated whether AFPI was qualified under the accreditation requirements provided for by COA Circular No. 96-003. The huge sum of government funds involved should behoove him to take a closer look at the COA circular, to include reviewing corporate and allied documents pertaining to AFPI.

In the exercise of such power, accused Cunanan should have, at a bare minimum, verified and validated the existence and qualification of AFPI pursuant to and in accordance with the aforementioned COA circular. For it did not simply direct him to affix his signature on a plain box—more is expected of him being TLRC's Deputy Director General. His authority to sign carries with it the duty to determine the qualification of AFPI and the sufficiency of the tripartite MOA as an integral part thereof. Accused Cunanan cannot simply certify DV No. 012007050821 without taking into consideration COA Circular No. 96-003 under pain of being accused of manifest partiality, evident bad faith, or at the very least, of gross inexcusable negligence.

Furthermore, had accused Cunanan made even just a cursory examination of the *Memorandum of Agreement*,<sup>67</sup> which was one of the attachments to the disbursement voucher, he would have noticed that the amount indicated therein had no basis. Item I. b. of the said *Memorandum* reads:

I. The **FOUNDATION** shall:

a. x x x

b. Submit a Work and Financial Plan in the amount of **FIVE MILLION PESOS (P5,000,000.00) PESOS** as pre-requisite to the transfer funds.

<sup>66</sup> TSN dated 09 November 2020, pp. 57-59.

<sup>67</sup> Exhibit "I"



As indicated in the *Particulars of Payment* portion of the DV, it does not appear that the Work and Financial Plan, which was a pre-requisite for the release of the funds to AFPI, was attached. Such document would have indicated the period within which the project would have been implemented, which in turn, would determine the basis for the amounts to be released. Indeed, Item 3.8 of COA Circular No. 96-003 reads:

3.8 The fund assistance shall be released as follows:

3.8.1 If the project is for implementation within a period of three (3) months, the assistance shall be released as follows:

3.8.1.1 For projects of P300,000 or less, assistance be released in full.

3.8.1.2 For projects of more than P300,000, release may be in three tranches:

- 15% upon approval and signing of the MOA;
- 35% after 50% project completion;
- 50% upon completion of the project, subject to the favorable evaluation/inspection by the GO of the results of the release(s).

3.8.2 If the project is to be implemented for more than 3 months, the first release shall cover two (2) months operation but not to exceed 30% of the total assistance, subject to the release of the remaining balance upon submission of accomplishment reports evidenced by pictures of the accomplishments and/or report of inspection by the GO and certifications of receipt by beneficiaries/payrolls/invoices, etc.

Clearly, there was no legal basis for the subject disbursement, and accused Cunanan should not have signed Box A of the subject DV, or should have secured the necessary documents before signing the same.

It is also the Court's conclusion that accused Jover likewise exhibited manifest partiality and evident bad faith by perfunctorily affixing her signature in Box B of DV No. 012007050821 without diligently checking if the attached documents are compliant with the rules. Accused Jover wanted to impress upon the Court that she had no other option but to sign Box B considering that Box A already had accused Cunanan's signature. Such excuse is dead in the water since as TLRC's Chief Accountant, accused Jover is expected to exercise a similar high degree of circumspection or even to go beyond what her colleague, accused Cunanan, had evaluated and signed.

In the case of *Marivic V. Jover v. Field Investigation Office, Office of the Ombudsman*,<sup>68</sup> an administrative case involving herein accused Jover, the Supreme Court had occasion to underscore the sensitive and important task of an accountant in approving proposed disbursements involving public funds. The Supreme Court declared that:

“Notably, COA Circular No. 96-003 was addressed to Chief Accountants such as petitioner. As Chief Accountant, one of petitioner’s responsibilities was to ensure that all accounting transactions are in compliance/conformity with COA and TRC policies, rules, and regulations.

Equally important is COA Circular No. 92-389,<sup>69</sup> also directed to Chief Accountants like petitioner, which states that in signing disbursement vouchers (DVs), the submission of complete documents does not preclude **REASONABLE QUESTIONS** on the funding, legality, regularity, necessity, or economy of the expenditure, viz:

X X X X

### 3. Document Checklist at the Back of the Voucher

The checklist at the back of the voucher enumerates the mandatory minimum supporting documents for the selected transactions.

It should be clear, however, that the submission of the supporting documents enumerated under each type of transaction does not preclude **REASONABLE QUESTIONS** on the funding, legality, regularity, necessity or economy of the expenditure or transaction. Such questions may be raised by any of the signatories to the voucher.” (Emphasis ours)

No less than accused Jover’s testimony belies her statement that signing Box B of DV No. 012007050821 is only a ministerial task, thus:

X X X X

CHAIRPERSON FERNANDEZ:

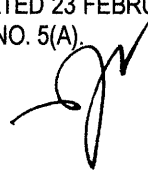
But if you do not agree with the, let us say the expense to be incurred, can you question that and talk to the person signing Box A?

A Nakabase lang po kasi ako sa.. (interrupted)



<sup>68</sup> G.R. No. 253519, 11 November 2021.

<sup>69</sup> RESTATING WITH MODIFICATIONS COA CIRCULAR 81-155 DATED 23 FEBRUARY 1981, AND PRESCRIBING THE USE OF THE DISBURSEMENT VOUCHER, GENERAL FORM NO. 5(A).



CHAIRPERSON FERNANDEZ:

No, just answer the question. Can you question the decision made by the person who signed Box A?

A No.

X X X X

JUSTICE VIVERO:

So Ms. Jover, when you signed in effect, when you sign the Disbursement Voucher, what in effect are you certifying? What are the matters that you are certifying once you affixed your signature in a particular disbursement voucher?

A Iyong cinecertify ko po ay iyong funds availability. Tapos the disbursement is properly certified. That there is a document, supported by documents, accounts are proper. So iyon pong cinecertify ko ng funds availability kasama iyong O.R. Tapos transaction is properly certified. **Tinitignan ko po iyon kung may pirma ng Box A at saka kung iniendorse siyang tama ng may-ari ng pera which is the Memorandum of Agreement tsaka iyong Endorsement Letter.** Iyon po iyong mga..

X X X X

CHAIRPERSON FERNANDEZ:

You said that on your part you also checked certain documents of which what documents do you referred to?

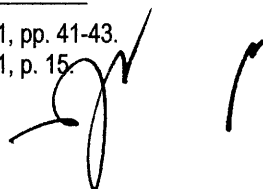
A Iyong ano po SARO, NCA at funds availability. Tapos iyong, una po iyong O.R. kasi dapat po pumasok sa amin iyong O.R. **Tapos iyong Endorsement Letter para alam naming kung kaninong legislator, kung tama iyong nakasulat sa voucher tsaka tama po iyong magiging entry namin. Tsaka po iyong Memorandum of Agreement kasi po nandoon po iyong pangalan ng NGO kung kanino ilalagay.** Kung magtatally po iyong endorsement tsaka Memorandum of Agreement.<sup>70</sup>

Simply stated, accused Jover merely browsed the *endorsement letter* and tripartite MOA attached to the DV without determining if these documents, as well as supporting papers, were compliant with COA Circular No. 96-003. Verily, she ought to have known readily that AFPI was not properly accredited when it was endorsed by accused Ipong to be the conduit of his office in the implementation of his livelihood project. Yet she proceeded to sign the DV in question.

Interestingly, accused Jover admitted that she was not familiar with COA Circular No. 96-003 when she signed the DV.<sup>71</sup> This notwithstanding, she admitted

<sup>70</sup> TSN dated 03 February 2021, pp. 41-43.

<sup>71</sup> TSN dated 10 February 2021, p. 15.



during her cross-examination that part of her duties and responsibilities was to ensure that all accounting transactions shall be in conformity with rules and regulations set forth by COA and TLRC.<sup>72</sup> It was likewise admitted by accused Jover that she did not personally review and examine the MOA<sup>73</sup> and that contrary to her claim that signing the DV was a ministerial act, her duty under Office Circular No. 00FN0059 was to observe some degree of discretion in questioning the funding legality, regularity, necessity or economy of the PDAF transaction.<sup>74</sup>

Verily, as Chief Accountant, among accused Jover's duties and responsibilities was to ensure that all accounting transactions are in compliance/conformity with the COA and TLRC policies, rules, and regulations.<sup>75</sup> Under COA Circular No. 92-389 dated 03 November 1992—cited in Office Circular No. 00FN0059,<sup>76</sup> with which accused Jover claims that she complied—the Accountant is responsible for accomplishing Box B of the DV, which certifies, among others, the completeness of the supporting documents that serve as evidence of the basis of the claim. As exhaustively discussed in the aforementioned case of *Jover v. Field Investigation Office-OMB*,<sup>77</sup> the same COA circular states that in signing DVs, the submission of complete documents does not preclude reasonable questions on the funding, legality, regularity, necessity or economy of the expenditure. COA Circular No. 92-389 provides for how to determine the completeness of supporting documents. To wit:

### 3. Document Checklist at the Back of the Voucher

The checklist at the back of the voucher enumerates the mandatory minimum supporting documents for selected transactions.

It should be clear, however, that the submission of the supporting documents enumerated under each type of transaction does not preclude reasonable questions on the funding, legality, regularity, necessity or economy of the expenditure or transaction. Such questions may be raised by any of the signatories to the voucher.

The demand for additional documents or equivalents should be in writing. A blank space is provided for additional requirements, if any, and if authorized by any law or regulation. If the space is insufficient, separate check may be used and attached to the voucher.

X X X

### 5. Documentation of Claim not Covered by the Checklist

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<sup>72</sup> *Id.*, p. 16.

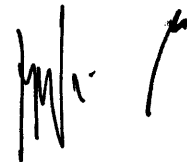
<sup>73</sup> *Id.*, pp. 20-21.

<sup>74</sup> *Id.*, p. 22.

<sup>75</sup> Item No. 5, Exhibit "6-Jover".

<sup>76</sup> Exhibit "9-Jover".

<sup>77</sup> *Supra* note 68.



Constraints of space prevent the inclusion of all transactions in the checklist of supporting documents.

As to the transactions not covered by the checklist, reference should be made to the Government Accounting and Auditing Manual (GAAM) and other COA issuances. (Underscoring supplied)

The subject transaction is not among those transactions enumerated at the back of the usual DV. Thus, accused Jover should have referred to COA Circular No. 96-003 to determine the completeness of the supporting documents. As with accused Cunanan, accused Jover, as Chief Accountant, was expected to have been familiar with COA Circular No. 96-003, and should have ensured that the necessary documents under the said circular were attached before she made her certification. As previously mentioned, there was no evidence to show that AFPI had the necessary accreditation, and no evidence to show the basis for the amount disbursed. Thus, accused Jover should not have signed Box B of the subject DV, and instead, should have returned the DV and the attachments to the requesting unit for appropriate action, as provided for in Item 5. d. of Office Circular 00FN0059.


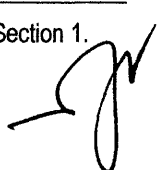
To reiterate, accused Jover cannot brandish away her responsibility under COA Circular No. 96-033 and TLRC's Office Circular No. 00FN0059 knowing fully well that she has the duty to personally check, evaluate, and verify the documents relative to DV No. 012007050821 that she examined and signed. When affixing her signature in the said DV, accused Jover was not only certifying as to the availability of funds and budgetary allotment, but more importantly, she was attesting that the DV was properly supported by a valid and compliant *endorsement letter* and MOA, and that all documents conform with the rules. Her signature in Box B is not a mere ceremonial act paving the way for the release of the 4.9 Million Land Bank of the Philippines (LBP) check to AFPI. Her signature signifies that the transaction that TLRC was about to enter into is valid, lawful, and would not result in wastage of public funding.

Corollarily, the Court frowns upon at the defense of alleged ignorance of the nuances of the pertinent COA circular as raised by all of the accused and their preposterous act of passing upon the responsibility of checking the legality of AFPI from one co-accused to another. As public officers, accused here are demanded to perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.

It saddens the Court to discover how convenient it was for the accused in these cases to easily sign the documents for the release of accused Ipong's PDAF, and subsequently, plead ignorance of the COA circular when the documents and very transaction came under the scrutiny of COA SAO.

Moreover, it cannot be stressed enough that public office is a public trust.<sup>78</sup> To maintain inviolate the public trust reposed in them, public officers must, in the

<sup>78</sup> Constitution, Article XI, Section 1.





performance of their duties, exercise the diligence of a good father of a family. This entails, *inter alia*, that they observe relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds.<sup>79</sup> Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.<sup>80</sup>

**AT THE VERY LEAST, ACCUSED  
CUNANAN AND JOVER ARE BOTH  
GUILTY OF GROSS INEXCUSABLE  
NEGLIGENCE**

Stripped of the non-essentials, accused Cunanan and Jover insist by way of defense that they acted in good faith and diligence in affixing their respective signatures in Boxes A and B of Disbursement Voucher (DV) No. 012007050821.

We do not agree.

The Supreme Court's ruling in *Celeste v. Commission on Audit*,<sup>81</sup> citing *Madera v. Commission on Audit*,<sup>82</sup> is instructive in determining whether certifying officers acted in good faith and diligence. The pertinent portion of the said *Decision* reads:

*Madera* further discusses how to proceed in determining whether the approving and certifying officers acted in good faith in their participation in the disallowed disbursements:


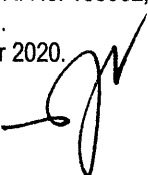

Notably, the COA's regulations relating to settlement of accounts and balances illustrate when different actors in an audit disallowance can be held liable either based on their having custody of funds, and having approved or certified the expenditure. The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the MCSB [(Manual on Certificate of Settlement and Balances)], and Sections 16.1.1 and 16.1.3 of the RSSA [(Rules and Regulations on Settlement of Accounts)], may nevertheless be held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Section 16.1.2 of the RRSA. To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of

<sup>79</sup> Concurring and dissenting opinion of Justice Arturo D. Brion in *Technical Education and Skills Development Authority v. Commission on Audit*, G.R. No. 204869, 11 March 2014.

<sup>80</sup> *Yap v. Commission on Audit*, G.R. No. 158562, 23 April 2010.

<sup>81</sup> G.R. No. 237843, 15 June 2021.

<sup>82</sup> G.R. No. 244128, 08 September 2020.

**whether an authorizing officer exercised the diligence of a good father of a family.**

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

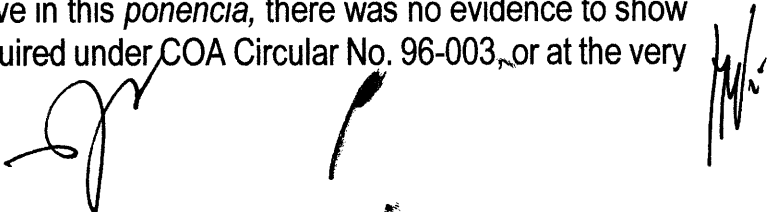
**Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable.** The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein. (Citations omitted, and emphasis and underscoring supplied)

In other words, the Court must look into the nature of the participation of the officers concerned and the existence of badges of good faith or circumstances which tend to prove that said officers exercised the requisite diligence in the performance of their duties.

Although the ruling in the said cases pertains to the personal liability of public officers for disbursements disallowed by the COA, the same may also be used as guide in determining whether herein accused certifying officers are liable for violation of Sec. 3(e) of R.A. No. 3019 because good faith and diligence will negate evident bad faith, manifest partiality, and gross inexcusable negligence. Applying the said ruling, accused Cunanan and Jover may be held liable based on the extent of their respective certifications, and for this Court, they failed to satisfactorily show that they acted with good faith and diligence.

As previously mentioned, accused Cunanan signed Box A of the subject DV, certifying that the expense was necessary, legal, and incurred under his direct supervision. It is immediately apparent from the certification that such act involved the determination of the legality, or the legal basis, of the expense. Hence, before accused Cunanan made his certification in the subject DV, he was expected to have reasonably ensured that the expense subject of the DV had legal basis.

As clearly emphasized above in this *ponencia*, there was no evidence to show that AFPI had the accreditation required under COA Circular No. 96-003, or at the very



least, evidence showing that AFPI complied with the requirements for accreditation under the said COA Circular. According to accused Cunanan, he determined that the documents attached to the DV were complete based on the checklist issued by Director General Ortiz. However, accused Cunanan did not present such office memoranda as his evidence. Thus, it cannot be determined if the only documents listed therein are those that were actually attached to the DV. At any rate, even if the documents in the checklist excluded some documents required under COA Circular No. 96-003, accused Cunanan was still expected to have been familiar with the pertinent laws, rules, and regulations, including COA Circular No. 96-003, which was issued as early as 1996.

In the case of accused Jover, while it may be argued that her responsibility was limited to checking whether the required documents were attached to the disbursement voucher, and certifying that the funds were available for the stated purpose, we must hasten to stress that COA Circular No. 92-389, cited in Office Circular No. 00FN0059, ***“provides for how to determine completeness of supporting documents attached to a particular disbursement voucher.”***

The aforesaid COA Circular No. 92-389 specifically states that “the submission of the supporting documents enumerated under each type of transaction does not preclude reasonable question on funding, legality, regularity, necessity or economy of the expenditure or transaction.”

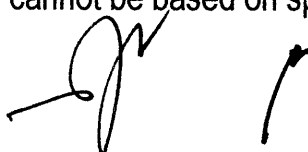
As exhaustively discussed in the above ***rationes*** it appears that accused Jover merely checked the completeness of the attachment to the disbursement voucher and thereafter, in a clearly perfunctory fashion, affixed her signature therein. Indeed, she even admitted that she did not exert any effort to determine if those documents attached to the disbursement voucher were in fact compliant with existing COA Circular No. 96-003 and 92-389, among others. She did not deem it necessary to ask ***“reasonable questions”*** that would have exposed the fact that AFPI was not properly accredited and yet was endorsed by accused Ipong. She also did not raise such reasonable question as to the basis of releasing the full amount of PhP4,900,000.00 representing accused Ipong’s PDAF allocation notwithstanding the clear provision of Item 3.8 of COA Circular No. 96-003, which set forth the schedule of release of fund assistance depending on the period of completion of a given project.

All the foregoing demonstrates that at the very least, accused Cunanan and Jover are guilty of gross inexcusable negligence.

### THE THIRD ELEMENT

Finally, the third element refers to two separate acts that qualify as a violation of Sec. 3(e) of R.A. No. 3019.

The *first* punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or



damage need not be proven with actual certainty, however, there must be some reasonable basis by which the court can measure it. Aside from this, the loss or damage must be substantial. It must be more than necessary, excessive, improper or illegal.<sup>83</sup>

The *second* punishable act is that the accused is said to have given unwarranted benefits, advantage or preference to a private party. Proof of the extent or *quantum* of damage is not essential.<sup>84</sup> It is sufficient that the accused has given unjustified favor or benefit to another.<sup>85</sup>

An accused may be charged with the commission of either or both. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Sec. 3(e) of R.A. No. 3019.<sup>86</sup>

“Undue injury” is consistently interpreted as “actual damage.” Undue has been defined as “more than necessary, not proper, or illegal;” and injury as “any wrong or damage done to another, either in his person, rights, reputation or property; that is, the invasion of any legally protected interest of another.” Actual damage, in the context of these definitions, is akin to that in civil law.<sup>87</sup>

Without doubt, the concerted acts of accused Ipong, Cunanan, and Jover, which led to AFPI being appointed as the implementor of accused Ipong’s PDAF-funded project caused undue injury to the Philippine government, and at the same time extended unwarranted benefits to accused Ronquillo and his AFPI to the tune of PhP4.9 Million.

Running through the prosecution’s evidence consisting of both testimonial and documentary, the following facts were established:

- a. Accused Ronquillo’s AFPI turned out to be a bogus and nonexistent foundation;
- b. Despite the release of PhP4.9 Million funding to AFPI, it failed to undertake livelihood and entrepreneurial promotions and developments to accused Ipong’s constituents;
- c. The utilization of PhP100,000.00 under the account of TLRC representing service fee and grant of technical assistance and learning materials cannot be accounted for since it was not properly documented; and



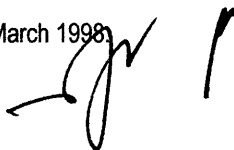
<sup>83</sup> *Abubakar v. People*, *supra* note 46.

<sup>84</sup> *Fonacier v. Hon. Sandiganbayan*, G.R. No. L-50691, 05 December 1994.

<sup>85</sup> *Supra* note 49.

<sup>86</sup> *Cabrera and Cabrera v. People*, *supra* note 45.

<sup>87</sup> *Llorente v. Sandiganbayan*, G.R. No. 122166, 11 March 1998



- d. The amount of PhP4,900,000.00 released to AFPI remains unaccounted for.

Suffice it to state that the illegal transfer of public funding to accused Ronquillo and AFPI clearly caused pecuniary loss to the government. The Court could not agree more with the prosecution that the acts of all accused constitute undue injury within the purview of Sec. 3(e) of R.A. No. 3019. On the other hand, unwarranted benefits or privileges refer to those accommodations, gain or perquisites that are granted to private parties without proper authorizations or reasonable justifications.<sup>88</sup> By failing to observe COA Circular No. 96-003 in the unjustified and biased appointment and selection of AFPI, accused Ipong, Cunanan, and Jover all gave unwarranted benefit to accused Ronquillo and AFPI.

In fine, the prosecution proved beyond reasonable doubt that **(1)** accused Ipong, Cunanan, and Jover were public officers discharging their respective official functions; **(2)** the act of accused Ipong in appointing AFPI to be his PDAF-funded project implementor, and subsequent acts of accused Cunanan and Jover in processing and releasing the funding to AFPI, all undertaken by reason of their respective official positions, were tainted with manifest partiality, evident bad faith and/or at the very least, gross inexcusable neglect; and **(3)** the same caused undue injury to the government and gave undue benefit to a private party thereby resulting to wastage of public funding in the aggregate amount of Five Million Pesos.

**CRIMINAL CASE NO. SB-17-CRM-1496**  
**(For Malversation of Public Funds under Art. 217 of the RPC)**

Malversation is defined and penalized under Art. 217 of the RPC, as amended by R.A. No. 10951,<sup>89</sup> to wit:


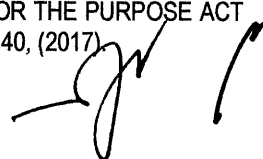
*Article 217. Malversation of public funds or property. Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment of negligence,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

X X X X

5. The penalty of reclusion temporal in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (PhP4,400,000) but does not exceed Eight million eight

<sup>88</sup> *Enrile v. People*, G.R. No. 213455, 11 August 2015.

<sup>89</sup> 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. Section 40, (2017).

hundred thousand pesos (PhP8,800,000). If the amount exceeds the latter, the penalty shall be reclusion perpetua.

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

X X X X

The elements of malversation under the foregoing provision are:

1. The offender is a public officer;
2. He had custody or control of funds or property by reason of the duties of his office;
3. Those funds or property were 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.<sup>90</sup>

**ALL THE ELEMENTS FOR THE CRIME OF  
MALVERSATION OF PUBLIC FUNDS  
WERE SUFFICIENTLY PROVEN BY THE  
PROSECUTION**

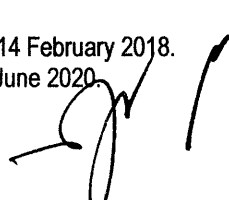
As already discussed earlier in this *ponencia*, the presence of the **first element** is beyond cavil.

As for the **second** and **third elements**, there is no quibble that accused Ipong, being then Representative, was entrusted with his PDAF allocation for his wise disposal subject to accounting. Accused Ipong is by all means an accountable officer. An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property.<sup>91</sup> It bears emphasis that accused Ipong had control and accountability over the five million PDAF allocation entrusted under his name.

Similarly, accused Cunanan and Jover are also accountable officers within the purview of Art. 217 of the RPC. Their accountabilities were attached to their respective acts of certifying and signing the DV leading to the disbursement of accused Ipong's PDAF in favor of AFPI. As accountable officers who are bound to observe the law,

<sup>90</sup> *Venezuela v. People*, G.R. No. 205693, 14 February 2018.

<sup>91</sup> *Corpuz v. People*, G.R. No. 241383, 08 June 2020.



accused Cunanan and accused Jover joined accused Ipong in totally disregarding the requirements laid down by COA Circular No. 96-003 when they processed and facilitated the release of accused Ipong's PDAF from TLRC to AFPI.

The ***last element***, *i.e.*, whether or not accused misappropriated his PDAF, requires an extended discussion.

In the crime of malversation, all that is necessary for conviction is 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<sup>92</sup> as long as the accused cannot explain satisfactorily the shortage in his accounts.

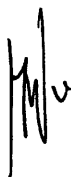
Finding the presence of the last element, it was sufficiently established that accused Ipong allowed and consented his Php5 Million-worth of PDAF allocation under SARO No. ROCS-07-05416 to be released to AFPI. This was shown when accused Ipong signed his *endorsement letter* and thereafter executed the tripartite MOA with TLRC and AFPI naming the latter as his project partner in the implementation of his livelihood project. Regrettably, the COA SAO Report and certifications from key witnesses showed that accused Ipong's livelihood project purportedly for the benefit of the Second District of North Cotabato turned out to be bogus and nonexistent.

To bolster accused Ipong's criminal responsibility under Art. 217 of the RPC, COA's "***call***" and notices for the liquidation of his 2007 PDAF fund allocation fell on deaf ears. No less than Art. 217 of the RPC states that 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.

Moreover, 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.<sup>93</sup>

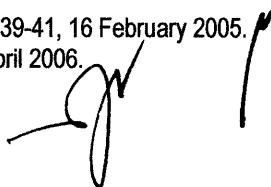
**ACCUSED IPONG, CUNANAN, AND  
JOVER ALL CONSPIRED TO COMMIT  
THE CRIMES CHARGED AGAINST THEM**

The Court finds that the prosecution proved the existence of conspiracy among the accused.



<sup>92</sup> *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, 16 February 2005.

<sup>93</sup> *Davalos Sr. v. People*, G.R. No. 145229, 20 April 2006.



It has been held in the case of *People v. Escobar*<sup>94</sup> that with respect to proving the existence of conspiracy, there are two (2) forms—the express form, where the actual agreement to commit a crime must be proved; and the implied form, which is proved through the mode and manner of the commission of the offense, or from the acts of the accused, pointing to a joint purpose, a concert of action and a community of interest.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; hence, the agreement concerning the commission of the crime must be shown to precede the decision to commit it. Knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.<sup>95</sup>

In *Macapagal-Arroyo v. People*,<sup>96</sup> the Supreme Court had the occasion to extensively discuss the scope and meaning of conspiracy in its second form. Conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.

Although there is no direct proof of agreement or cooperation between accused Ipong, Cunanan, and Jover in appointing and releasing in favor of AFPI accused Ipong's PDAF funds, it must be emphasized that the prosecution was able to prove beyond reasonable doubt the existence of implied conspiracy as can be gleaned from the respective acts and omissions of all the accused.

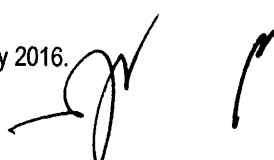
From the appointment of AFPI by accused Ipong to the subsequent processing and ultimate remittance of his PDAF funds by accused Cunanan and accused Jover, the Court is convinced that these acts were connected and cooperative with the end in view of defrauding the government by allowing AFPI, a bogus and nonexistent foundation, to serve as the implementor of accused Ipong's PDAF-sponsored livelihood project.

Most notably, the endorsement made by accused Ipong heavily favoring and appointing AFPI to act as implementor of his purported PDAF-sponsored livelihood project sans compliance with COA Circular No. 96-003 acted as the **“trigger”** initiating the processing of his PDAF documents. To solidify the appointment of AFPI, accused

<sup>94</sup> G.R. No. 206292, 11 October 2017.

<sup>95</sup> *Ibid.*

<sup>96</sup> G.R. Nos. 220598 and 220953, 19 July 2016.





Ipong, TLRC, and AFPI thereafter executed the tripartite MOA, which again did not conform to the dictates of the aforesaid COA circular.

Meanwhile, accused Cunanan and accused Jover, invoking the highly anomalous endorsement and grossly defective MOA, processed and thereafter released accused Ipong's PDAF in favor of AFPI. Accused Cunanan signed Box A of the DV, certifying that the expenses for the implementation of the livelihood project were necessary and lawful, while accused Jover signed Box B, certifying availability of funds and completeness of allied documents. As already discussed in detail, the certifications made by the two did not conform to the mandates set forth by COA Circular No. 96-003.

Taken all together, accused Cunanan and accused Jover miserably failed in their respective duties to verify the documents attached in the DV. Lamentedly, the unexplained omissions committed by the pair in reviewing the accreditation and qualification requirements of AFPI caused tremendous injury to the government in the form of dissipation of government funding.

On a plain view, the respective actuations of accused Ipong, accused Cunanan, and accused Jover may appear distinct. However, subjected to probing query, their actions were all directed towards the attainment of a common objective—that is, the unlawful release of government funds to AFPI, which turned out to be a sham foundation. Taken all together, this Court subscribes to the theory of the prosecution that conspiracy exists in this case and that accused Ipong, accused Cunanan, accused Jover, and accused Ronquillo perpetrated the delictual acts mentioned in the two *Informations*.

The role played by each of the accused was so indispensable that without any of them, the processing and releasing of accused Ipong's PDAF would have failed. All things considered, the combined acts performed by all of the accused indubitably point to a concerted action aimed to divert public funds sourced through accused Ipong's PDAF allocation.

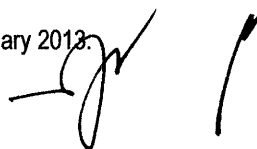
It must be remembered that the concerted disregard of administrative and legal requirements by officers whose interrelated functions are necessary to the disbursement of public funds admit to conspiracy through negligence.<sup>97</sup>

### **PROPER PENALTY FOR THE CRIME OF MALVERSATION**

Accused Ipong, Cunanan, and Jover are entitled to the mitigating circumstance of voluntary surrender. The records show that accused Ipong voluntarily surrendered and posted his cash bond even before the issuance of the warrant of arrest against

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<sup>97</sup> *Jaca v. People*, G.R. Nos. 166967, 166974, and 167167, 28 January 2012.



him.<sup>98</sup> On the other hand, it does not appear that accused Cunanan<sup>99</sup> and Jover<sup>100</sup> were arrested before they posted their cash and surety bonds, respectively.

The penalty in R.A. No. 10951 should not be retroactively applied to the present cases because it will not benefit the accused. While the maximum penalty imposable under R.A. No. 10951 is lower than under Art. 217 of the RPC before its amendment, the minimum penalty, after applying the *Indeterminate Sentence Law (ISLAW)* will be higher. In *Abalos v. People*,<sup>101</sup> it was held that the penalty with the lower minimum period is more beneficial to the accused.

The penalty prescribed under Art. 217 of the RPC, if the amount malversed exceeds PhP22,000.00 is *reclusion temporal* in its maximum period to *reclusion perpetua*. Applying the *Indeterminate Sentence Law* and taking into consideration the presence of one (1) mitigating circumstance, the resulting ranges of penalties will be as follows: ten (10) years and one (1) day, as minimum, to seventeen (17) years, four (4) months, and one (1) day, as maximum.

In addition, under the second paragraph of Art. 217 of the RPC, persons adjudged guilty of the same shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of funds malversed, which in this case is PhP4,900,000.00.

## CONCLUSION

In SB-17-CRM-1496, the prosecution proved beyond reasonable doubt all the essential elements of violation of Section 3(e) of Republic Act No. 3019.

In SB-17-CRM-1497, the prosecution likewise proved beyond reasonable doubt all the essential elements of Malversation under Article 217 of the Revised Penal Code.

**WHEREFORE**, the Court hereby renders judgment as follows:

1. In **SB-17-CRM-1496**, accused **GREGORIO T. IPONG, DENNIS L. CUNANAN, and MARIVIC V. JOVER** are found **GUILTY** beyond reasonable doubt for violation of Section 3(e) of Republic Act No. 3019 and are each sentenced to suffer the indeterminate penalty of imprisonment of **SIX (6) YEARS AND ONE (1) MONTH**, as minimum, to **(10) YEARS**, as maximum, with **PERPETUAL DISQUALIFICATION** to hold public office; and
2. In **SB-17-CRM-1497**, accused **GREGORIO T. IPONG, DENNIS L. CUNANAN, and MARIVIC V. JOVER** are found **GUILTY** beyond reasonable doubt for *Malversation of Public Funds* under Article 217 of the Revised Penal Code, as

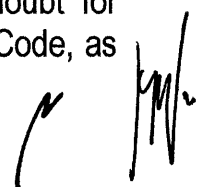
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<sup>98</sup> *Rollo*, Vol. I, p. 140.

<sup>99</sup> *Id.*, p. 238.

<sup>100</sup> *Id.*, p. 396.

<sup>101</sup> G.R. No. 221836, 14 August 2019.



amended, and are each sentenced to suffer the indeterminate penalty of imprisonment of **TEN (10) YEARS AND ONE (1) DAY**, as minimum, to **SEVENTEEN (17) YEARS, FOUR (4) MONTHS, AND ONE (1) DAY**, as maximum.

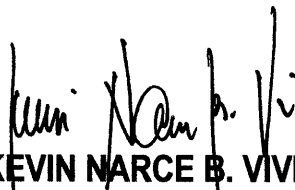
In addition, each accused is ordered to pay a fine of **Four Million Nine Hundred Thousand Pesos (PhP4,900,000.00)** equal to the amount malversed.

Finally, by way of civil liability, accused Ipong, accused Cunanan, and accused Jover are hereby ordered to jointly and severally indemnify the Republic of the Philippines, through the Bureau of Treasury, the amount of PhP4,900,000.00 with legal interest of six percent (6%) *per annum* reckoned from the finality of this *Decision* until full satisfaction.

As regards accused **ALFREDO A. RONQUILLO** and **ANTONIO Y. ORTIZ** who remain at-large, the charges against them are hereby ordered **ARCHIVED** subject to its revival upon their arrest or voluntary surrender.

Let an *alias* arrest warrant be **ISSUED** against accused Ronquillo and Ortiz.

**SO ORDERED.**

  
**KEVIN NARCE B. VIVERO**  
*Associate Justice*

**WE CONCUR:**

  
**SARAH JANE T. FERNANDEZ**  
*Associate Justice*  
*Chairperson*

  
**BAYANI H. JACINTO**  
*Associate Justice*

### ATTESTATION

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

  
**SARAH JANE T. FERNANDEZ**  
*Chairperson, 6<sup>th</sup> 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. CABOTAJE-TANG**  
*Presiding Justice*





