



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Crim. Case No. SB-18-CRM-0253
For: Violation of Sec. 3(e) of R.A.
No. 3019, as amended

MA. LUISA JUDAL LOOT,
SAMUEL PUNAY MORALDE,
Accused.

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Crim. Case No. SB-18-CRM-0254
For: Malversation of Public Funds
under Art. 217 of the Revised
Penal Code

MA. LUISA JUDAL LOOT,
SAMUEL PUNAY MORALDE,
Accused.

Present:
Gomez-Estoesta, J., *Chairperson,*
Trespeses, J. and
Hidalgo, J.

Promulgated:

August 2, 2019 JP

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DECISION

TRESPESES, J.:

Accused Ma. Luisa Judal Loot and Samuel Punay Moralde have been charged with Violation of Sec. 3(e) of Republic Act No. 3019 (RA No. 3019) in Crim. Case No. SB-18-CRM-0253, and Malversation of Public Funds

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defined and penalized under Art. 217 of the Revised Penal Code (RPC) in Crim. Case No. SB-18-CRM-0254. As the charges involved the same facts, and were based on the same evidence, the cases were jointly tried; hence, this joint decision.

PROCEEDINGS BEFORE THE SANDIGANBAYAN

On 6 April 2018, the Office of the Ombudsman filed two Informations accusing Loot and Moralde of the crimes of Violation of Sec. 3(e) of R.A. No. 3019 and Malversation of public funds. The accusatory portion of the Informations reads as follows:

In Crim. Case No. SB-18-CRM-0253

That on 28 February 2007, or sometime prior or subsequent thereto, in the Municipality of Daanbantayan, Cebu, Philippines and within the jurisdiction of this Honorable Court, accused **MA. LUISA JUDAL LOOT**, a high-ranking public officer, being then the Municipal Mayor of the Municipality of Daanbantayan, Cebu, in such capacity and while in the performance of her administrative and/or official functions, committing the crime in relation to office, taking advantage of her official position, conspiring and confederating with a private individual **SAMUEL PUNAY MORALDE** (Moralde), Chairman of the RBA Quails Raisers Association (RBA), acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give RBA/Moralde unwarranted benefit, advantage or preference by executing, signing and/or approving, on behalf of the said municipality and without the authority from the Sangguniang Bayan of Daanbantayan, the Memorandum of Agreement (MOA) between RBA and the Municipality of Daanbantayan which granted financial assistance to the former, in a form of a loan, amounting to Php500,000.00, and causing the release of such public fund despite the following irregularities/anomalies:

- (1) That at the time of the execution of the MOA, RBA was not an accredited organization;
- (2) By failing to perform their respective duties under the MOA;
- (3) By accused Loot's neglect to conduct the periodic monitoring and evaluation to ascertain the operation of Moralde's quail egg farming, and by failing to ensure the proper utilization of the public funds and to enforce RBA/Moralde's contractual obligations or intervene and institute corrective measures to safeguard the said funds;
- (4) Accused Moralde's failure to pay the loan and to submit evidence showing that the said public fund was used for the intended purpose;

thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.

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In Crim. Case No. SB-18-CRM-0253

That on 28 February 2007, or sometime prior or subsequent thereto, in the Municipality of Daanbantayan, Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused a high-ranking public officer MA. LUISA JUDAL LOOT, being then the Municipal Mayor of the Municipality of Daanbantayan, Cebu who by reason of her office and duties was responsible and accountable for public funds, committing the offense in relation to office, taking advantage of her official position, conspiring and confederating with private individual SAMUEL PUNAY MORALDE (Moralde), the Chairman of the RBA Quail Raisers Association, did then and there willfully, unlawfully and feloniously consent and/or through abandonment or negligence, allow, consent or permit RBA/Moralde to appropriate, misappropriate, take, embezzle and convert to its/his own personal use and benefit the amount of PhP500,000.00, in public funds, representing the loan granted by the said municipality to RBA Quail Raisers Association (RBA), and which amount was under accused's Loot custody and control, and for which she was accountable, by causing or facilitating the release thereof to RBA/Moralde, despite the fact the RBA was not an accredited organization, and by failing to conduct the periodic monitoring and/or evaluation to ascertain the operation of Moralde's quail egg farming, and by neglecting to ensure the proper utilization of the public funds and to enforce RBA/Moralde's contractual obligations or to intervene and institute corrective measures to safeguard the said fund; which acts/negligence caused the misappropriation thereof, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.

On 18 April 2018, a Hold Departure Order was issued against accused Loot and Moralde.¹ In the Minute Resolution² dated 20 April 2018, the Court found the existence of probable cause for Malversation and violation of Sec. 3(e) of RA No. 3019 against accused and ordered the issuance of a warrant³ for their arrest.

Accused Loot voluntarily surrendered on 26 April 2018 and posted cash bond⁴ for her temporary liberty. On 10 May 2018, accused Moralde likewise surrendered and posted his cash bail bond.⁵

Upon arraignment on 8 June 2018, both accused, with the assistance of their respective counsels, pleaded Not Guilty to the two charges.⁶

¹ Record, Vol. 1, pp. 76-77.

² Id. at 78.

³ Id. at 80-81.

⁴ Id. at 99, 119.

⁵ Id. at 142, 196.

⁶ Id. at 184-185.

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Minute Resolution

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Thereafter, the parties submitted their Joint Stipulation of Facts⁷ and so the Court considered the pre-trial conference terminated on 16 July 2018.⁸ The parties stipulated on the following facts:

1. Accused Ma. Luisa Judal Loot (Loot) and Samuel Punay Moralde (Morale) are the same persons charged in and arraigned under the Informations.
2. During the time material to these cases, accused Loot was a public officer being then the incumbent municipal mayor of Daanbantayan, Cebu. Her term as mayor ended on June 30, 2007.
3. During the time material to these cases, accused Moralde was the Chairman of the RBA Quail Raisers Association.
4. On February 28, 2007, accused Loot representing the Municipality of Daanbantayan, Cebu and Moralde representing RBA Quail Raisers Association, signed a Memorandum of Agreement whereby the former granted a financial assistance to the latter, in a form of loan in an amount of P500,000.00.
- 4-A. That accused Moralde received the amount of P500,000.00.
5. Accused Loot was authorized by the Sangguniang Bayan of Daanbantayan, Cebu to provide financial assistance in the amount of P500,000.00 to the RBA Quail Raisers Association.
6. The loan will be paid by RBA Quail Raisers Association to the Municipality of Daanbantayan, Cebu through the Municipal Treasurer's Office with a monthly amortization of Php 41,667 starting January 2008 up to January 2011.
7. The RBA Quail Raisers Association and RBA-Quail Farm Association is one and the same entity.
8. The Certificate of Accreditation of RBA-Quail Farm Association was issued on December 19, 2008 by accused Loot, who was then an incumbent vice mayor of Daanbantayan, Cebu.
9. Accused Moralde failed to pay the entire amount of Php 500,000.00.
10. The Philippines was hit by typhoon Frank on June 18 to 23, 2008.

Trial ensued thereafter.

⁷ Record, Vol. 1, p. 287-294.

⁸ Id. at 316.

PROSECUTION'S EVIDENCE

The prosecution's testimonial evidence consisted of the testimonies of the following witnesses:

1. Mariano Pepito Diaz

Diaz was the Vice-Mayor of the Municipality of Daanbantayan from 2004 to 2007. As vice-mayor, he presides sessions of the Sangguniang Bayan (SB) of Daanbantayan, Cebu.

He identified the excerpts of the minutes of the regular session of the SB of Daanbantayan quoting Resolution No. 2007-38 which authorized Loot to provide financial assistance to RBA Quail Raisers Association (RBA) in the amount of ₱500,000.00. The proponent of Resolution No. 2007-38 was SB member Mamerto Q. Rodrigo. He was also the movant for the approval and passage of the said resolution. Rodrigo is a loyal political ally of Loot.

Diaz alleged that RBA was not really an association of quail raisers. Accused Moralde organized it to make it appear that it is an organization of independent quail raisers. He believes that Loot was aware of that fact. The individual members of RBA are relatives and workers of Moralde in his RBA Quail Farm.

Diaz also identified the excerpts of the SB minutes of the regular session conducted on 23 February 2007 quoting Resolution No. 2007-48 authorizing Mayor Loot to enter into a Memorandum of Agreement for and in behalf of the Municipality of Daanbantayan with the RBA Quail Raisers Association. When Resolution No. 2007-48 was submitted for deliberation by the SB, Diaz relinquished his chair so that he can vote on the matter. He voted against it because he knew that the loan was made in exchange for political consideration. The Sanggunian Resolution must be approved by the municipal mayor for it to become effective. In this case, Resolution No. 2007-48 was approved by Mayor Loot on 8 March 2007.

On cross-examination, Diaz testified that when they deliberated on Resolution No. 2007-38, he did not find any legal ground to deny the granting of financial assistance to RBA and so he voted in its favor.⁹ He voted against Resolution No. 2007-48 because he was apprehensive that the money will not be disbursed for its intended purpose. He has no idea where the money released to RBA went.¹⁰

⁹ TSN, 18 July 2018, p. 18.

¹⁰ Id. at 28.

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On re-direct examination, he clarified that since some of the workers in RBA are his compadres or sponsored sons in marriage, he knows where the money went.¹¹ He said that those people were asking him whether the money was released.

2. Eva P. de Leon

Prior to her testimony, the following stipulations were made:

- a.) That Eva De Leon was the Municipal Treasurer from January 27, 1999 to the present of the Municipality of Daanbantayan, Cebu;
- b.) That in the period of 2007-2010, Mr. Sunjay Shimura was the Municipal Mayor;
- c.) That during the term of Mr. Shimura, accused Ma. Luisa Loot was the Vice Mayor;
- d.) That from 2010-2013, accused Ma. Luisa Loot was the Municipal Mayor of Daanbantayan, Cebu;
- e.) That Mr. Samuel Moralde, representing the RBA Quail Raisers Association, failed to pay the amount of ₱500,00.00; and
- f.) That the witness, Eva De Leon, in her capacity as Municipal Treasurer, issued a Certification dated February 24, 2015 that no single payment was made by the said Association.

Thereafter, De Leon identified her judicial affidavit which was adopted as her direct testimony. She alleged that the Municipality of Daanbantayan and RBA entered into a Memorandum of Agreement wherein the former will grant financial assistance to the latter in the form of a loan in the amount of ₱500,000.00. It was agreed that RBA will pay the loan on a quarterly basis from January 2008 to January 2011 with a monthly amortization of ₱41,667.00 to be paid at the Municipal Treasurer's Office. However, Moralde did not pay a single centavo.

Diaz said that during the period from 2007 to 2011, there was one time that she sent a collector to RBA to collect the payment. On the other hand, the municipal government of Daanbantayan did not take any action to collect the payment for the loan. On 12 December 2013, during the incumbency of Mayor

¹¹ TSN, 18 July 2018, p. 30.

Augusto Corro, she sent a demand letter¹² to Moralde requesting for the payment of the entire amount plus interest. Moralde did not heed the request for payment. Thus, on 20 March 2014, she sent another demand letter¹³ requiring Moralde to pay within ten days from receipt of the said letter but still no payment was made.

On cross-examination, De Leon testified that there was no instruction from accused Loot not to demand payment from accused Moralde.¹⁴ From 2008 to 2011, although she sent a collector to follow up payment, she confirmed that she did not send a demand letter to RBA.¹⁵

On re-direct examination, she said that there was no demand from 2008 to 2011, but she sent a collector.

3. Rosanni A. Luche

Luche identified his judicial affidavit which was admitted in lieu of his direct testimony.¹⁶ He alleged therein that he was the Acting Municipal Administrator of Daanbantayan, Cebu from January 2015 to June 2016.

Mayor Augusto D. Corro instructed him to conduct inventories and to review the financial transactions entered into by the former mayors including Loot. The Secretary of the Sangguniang Bayan, Monalisa O. Ancao, furnished him documents including a folder related to the Memorandum of Agreement between the Municipality of Daanbantayan represented by Loot and the RBA represented by Moralde. The folder contains:

1) Excerpts taken from the Minutes of the special meeting of the RBA Quail Raisers Association held on 31 January 2007 quoting Resolution No. 01-2007 requesting the local government unit of Daanbantayan to provide it with financial assistance in the amount of ₱500,000.00;¹⁷

2) Excerpts from the Minutes of the regular session of the Sangguniang Bayan of Daanbantayan held on 9 February 2007 quoting Sangguniang Bayan Resolution No. 2007-38 authorizing Mayor Loot to provide financial assistance in the amount of ₱500,000.00 to RBA Quail Raisers Association;¹⁸

¹² Exh. F.

¹³ Exh. G.

¹⁴ TSN, 18 July 2018, p. 44.

¹⁵ Id. at 44-45.

¹⁶ Id. at 49.

¹⁷ Exh. A.

¹⁸ Exh. B.

3) Memorandum of Agreement between the Municipality of Daanbantayan and RBA Quail Raisers Association dated 28 February 2007;¹⁹

4) Excerpts from the minutes of the regular session of the Sangguniang Bayan of Daanbantayan held on 23 February 2007 quoting Sangguniang Bayan Resolution No. 2007-48 (approved on 8 March 2007) authorizing Mayor Loot to enter into a Memorandum of Agreement with RBA Quail Raisers Association, and;²⁰

5) Certificate of Accreditation of RBA Quail Raisers Association issued on 19 December 2008 and signed by Ma. Luisa J. Loot, Municipal Vice-Mayor^{21, 22}

He also secured the following documents from the Municipal Treasurer of Daanbantayan:

1. Demand letter dated 12 December 2013;
2. Second demand letter dated 20 March 2014;
3. Original copy of the Certification from the Office of the Municipal Treasurer dated 24 February 2015.

Based on the Memorandum of Agreement, the municipal government is duty bound to conduct periodic monitoring and evaluation to ascertain the progress of the project. However, no monitoring was undertaken during the time of Loot and thus, it can no longer be determined whether the amount of ₱500,000.00 was indeed used for the project.

It was also provided in the MOA that the municipal government shall keep record of all transactions related to the implementation of the Quail Raising Project and maintain a subsidiary ledger for the proponent's loan repayments. It was stated therein that failure to comply with the provisions of the Agreement will give rise to civil or criminal liability. Notwithstanding the provisions in the MOA, accused Loot did not keep a record of transactions related to the implementation of the project nor maintain a ledger for the proponent's loan repayment. She also did not file any action against RBA Quail Raisers Associations.

¹⁹ Exh. C.

²⁰ Exh. D.

²¹ Exh. E-1.

²² Exh. E.

That because RBA, represented by Samuel P. Moralde, did not make any single payment, Eva P. De Leon, Municipal Treasurer, sent a demand letter to Moralde dated 12 December 2013.²³ Moralde did not pay. Thus, a second demand letter was sent to him on 20 March 2014.²⁴ Eva De Leon issued a Certification dated 24 February 2015 certifying that no single payment has been made by the RBA Quail Raisers Association.

Luche alleged that Moralde was the political nemesis of accused Loot as they both ran for mayoralty position during the 1998 and 2001 elections. In 2004, Moralde ran as vice-mayor in tandem with the mayoralty candidate against the group of Loot. But in the 2007 elections, Moralde did not run and instead, he actively campaigned for Loot. Luche claimed that it was because on 28 February 2007 or two months before the election, the Municipality of Daanbantayan and RBA Quail Raisers entered into a Memorandum of Agreement that effectively transferred to the latter the amount for P500,000.00.

On cross-examination, Luche testified that RBA was the lone applicant for financial assistance and that there was no organization that was denied assistance.

On re-direct, Luche said that of the seven conditions provided in the MOA, none was complied with by RBA.²⁵

4. Peter Jay Sevilla Geniston

Prior to Geniston's testimony, the prosecution and the defense stipulated that:²⁶

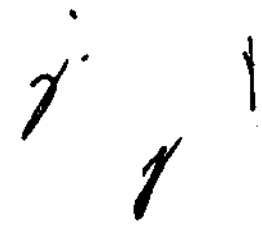
- a.) The witness is the incumbent Resident Auditor of the Municipality of Daanbantayan, Cebu since April 13, 2018;
- b.) The witness conducted an audit of the transactions entered into by the Municipality of Daanbantayan, Cebu; and he is also the custodian of the Audit Findings of the audit previously conducted by his predecessor;
- c.) The existence, due execution, and the authenticity of the Annual Audit Report of the Municipality of Daanbantayan, Province of Cebu, for the year ending December 31, 2014;

²³ Exh. F.

²⁴ Exh. G.

²⁵ TSN, 18 July 2018, p. 58.

²⁶ TSN, 12 September 2018, pp. 6-8.



d.) As incumbent Resident Auditor, he is aware that no payment has been made by RBA Quail Raisers Association to the Municipality of Daanbantayan, Cebu.

Geniston identified his judicial affidavit which was admitted in lieu of the direct testimony. He alleged therein that in compliance with the subpoena *duces tecum* he received from the Office of the Special Prosecutor, he submitted a certified true copy of the Annual Audit Report for the year ended 31 December 2014.²⁷ The Report contains the audit findings in connection with the Memorandum of Agreement entered into by the Municipality of Daanbantayan represented by Mayor Loot and RBA Quail Raisers Association represented by Samuel Moralde. He further alleged that because RBA failed to pay its loan, the municipal government of Daanbantayan was deprived of government resources that could have been used in other government projects.

On cross-examination, Geniston confirmed that he does not have personal knowledge of the transaction subject of this case. The COA Audit Report marked as Exh. K is only a report of the general findings and that there was no specific audit report for a specific transaction.²⁸

5. Ma. Teresa M. Magdadaro

Magdadaro was the Resident Auditor of the Municipality of Daanbantayan, Cebu, from January 2013 to April 2018. During her stint as the resident auditor, her office conducted financial and compliance audit on the accounts and operations of the municipality of Daanbantayan. Subject of the audit was the loan receivables or uncollected amount of loans granted by the municipality to various private entities. The audit was conducted based on the financial statements furnished by the municipal accountant and the municipal treasurer.

Upon review of the financial statements of the municipality, they noticed that sometime in 2007, the municipality granted a huge amount of loan to RBA and that no single amortization was paid. She then issued an Audit Memorandum Observation (AOM) dated 25 February 2015 which was reproduced in the Annual Audit Report on the Municipality of Daanbantayan for the year ended 31 December 2014.²⁹

On page 32 of the Report appears a recommendation which reads: "Furthermore, we recommend that management impose the sanction in Section 5 of the Memorandum of Agreement, for those borrowers who failed

²⁷ Exh. K.

²⁸ TSN, 12 September 2018, p. 10.

²⁹ Exh. K.

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to pay despite repeated demands made, stating that: Civil and Criminal Liability. In case the proponent fails to comply with the provisions of this Agreement, the agreement is deemed revoked and shall give rise to civil and criminal liability].” Nothing happened with the recommendation because the amount of ₱500,000.00 remains outstanding in the books.

On cross-examination, Magdadaro said that she is not aware of any special or regular audit conducted by her predecessor involving the subject transaction. When the AOM was issued in 2015, the Mayor was Augusto Corro. She confirmed that Corro did not act on her recommendation because the amount as of December 2017 is still the same. Corro also did not file any case against Moralde pursuant to the recommendation.³⁰

On re-direct examination, she said that the current mayor of Daanbantayan, Cebu is the husband of accused Loot.

After the testimonies of its witnesses, the prosecution formally offered its evidence. On 8 January 2019, the Court admitted into evidence prosecution’s Exhs. A, B, C, D, E, F, G, H, K, K-1, and K-2.³¹

On 22 January 2019, accused Loot and Moralde filed a Motion for Leave of Court to file demurrer to evidence³² which the Court denied in the Order dated 25 January 2019.³³

DEFENSE EVIDENCE

After the prosecution rested its case, the defense presented its sole witness who testified, inter alia, as follows:

A. Samuel P. Moralde

Moralde is an incumbent Municipal Councilor of Daanbantayan, Cebu and a businessman engaged in meat processing business in Manila. He also had a farm in Daanbantayan, Cebu named RBA Farm which started operation in June 2004. The farm was doing well and so he was able to convince the tenants to stop planting and focus on raising cows, goats, horses, chickens and quails. The tenants were the first members of the association, which they found later on.

³⁰ TSN, 7 November 2018, pp. 14-15.

³¹ Record, Vol. 2, pp. 108-109.

³² Id. at 112-115.

³³ Id. at 118.

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The quail raising was the most promising of all the farm products as it generated income for the farm and its workers. They were able to produce 2,000 quail eggs every day. In a short period of time, RBA became known as the supplier of quail eggs and meat in Daanbantayan, Cebu. So, he thought of expanding their reach and supply quail eggs at Carbon Market in Cebu City.

Moralde said that former Cebu Governor Gwendolyn F. Garcia was able to taste the quail meats and she liked it. Gov. Garcia, together with the members of the Cebu Provincial Board and then Mayor Maria Luisa J. Loot visited RBA farm around December 2006. Gov. Garcia saw its potential and instructed Mayor Loot to extend assistance to RBA. He recalls Gov. Garcia made a remark that Daanbantayan should support RBA and include its products under the "One Town One Product Program." She wanted to make Daanbantayan the center of quail egg and meat production in the Province of Cebu.

Thereafter, Maria Lina Jugan, Municipal Agriculturist of Daanbantayan, Cebu, together with her team, visited RBA to inspect the area. They conducted feasibility studies, prepared reports and recommendations for purposes of expansion and support from government. For his part, he merely answered queries and showed some papers to them.

They were told to make a formal request to the local government unit (LGU) for assistance in their plan for expansion. On 31 January 2007, RBA passed a Resolution³⁴ requesting the local government of Daanbantayan, Cebu to provide financial assistance to RBA for the expansion of its operations.

The Sangguniang Bayan (SB) of Daanbantayan, Cebu passed Resolution No. 2007-38 on 9 February 2007³⁵ and Resolution No. 2007-48 on 23 February 2007,³⁶ authorizing then Municipal Mayor Ma. Luisa Loot to grant financial assistance to RBA in the amount of ₱500,000.00. After the approval, he went to the office of the mayor and discussed the terms of the loan. The office of the mayor directed the preparation of a Memorandum of Agreement (MOA).

After a week, the MOA dated 28 February 2007³⁷ was prepared. Prior to the signing, the MOA was referred to a certain Atty. Maderaso, a private practitioner, so that the LGU would be fully protected before the amount is released to RBA. Upon suggestion by Atty. Maderaso that there should be a schedule of payment, Mayor Loot asked the Municipal Accountant to prepare a schedule of amortizations and appended it on the MOA itself.

³⁴ Exh. 4-Moralde.

³⁵ Exh. 1-Moralde.

³⁶ Exh. 2-Moralde.

³⁷ Exh. 3-Moralde.

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Moralde confirmed having received the amount of P500,000.00 after the MOA was signed on 28 February 2007. The money was used to buy 4,000 one-day old quail chicks at P10.00 each and quail feeds. The remaining amount was spent to cover the operating expenses for the farm. He hired six additional workers and improved the structural designs of the farm. Mayor Loot did not interfere in the actual spending of the loan proceeds. Although she regularly visits the farms, the actual management thereof was left to RBA.

Unfortunately, RBA suffered immense losses due to typhoon Frank that hit Daanbantayan, Cebu between 18 to 23 June 2008. The farm buildings collapsed and all quails were killed. They tried to secure loans from other financial institutions but were denied because they lacked collateral. He turned to loan sharks but with the interest of 10% per month, it only made their situation worse.

Due to the damage caused by the typhoon, RBA failed to pay its loan with the government. A staff of Mayor Sun Shimura who served as Mayor of Daanbantayan from 2007 to 2010 sent notices to him. Even Mayor Loot reminded him of his loan but he still failed to pay because RBA was shattered by the typhoon. He requested the SB for the condonation of RBA's loan, which the former just noted without further action.

He admitted having received the demand letters dated 12 December 2013 and 20 March 2014. He said that months before he received the letters, he talked to Mayor Corro, the political nemesis of Mayor Loot, and asked for time to pay the loan. He also wrote Mayor Corro a formal request about his loan. Corro said to him *"Sam, kadugo raba ta sa side sa mga Arisgado. Pwede rana nimu bayran 'little by little'. Nganu naa man ka diha sa mga Loot nga dili man na nimu kadugo? Anhi na ka naku sa pamulitika."*³⁸ He asked Corro to give him time to think because Loot has been a good leader so he could not just shift political support. He was surprised to receive thereafter the Order of the Ombudsman directing him to answer the charges for malversation and graft filed against him by Mr. Luche - Mayor Corro's protegee.

Moralde explained that what the RBA got from the government was a loan and the SB authorized Mayor Loot to grant the same. He was embarrassed to Mayor Loot who he claimed did not take any money illegally and who did not benefit from the loan. It was he who applied for the loan before the SB and Mayor Loot only signed the MOA after the SB passed the proper authority. On the other hand, it was the SB which approved the request and Mayor Loot had nothing to do with it. The RBA took charge of the proceeds of the loan

³⁸ Record, Vol. 1 (Judicial Affidavits), p. 11 (page 10 of the Judicial Affidavit of Samuel Moralde).

Translation: "Sam, you are related to me by blood under the Arisgado clan. You can pay your loan little by little. Why are you allied with the Loots when they are not your relatives? Join me in my political group instead."

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and if there is any liability, it is only because he failed to pay the loan. He claimed that politics was the motive in the filing of the cases against him and Mayor Loot because Corro wanted to stain the reputation of the latter. It was also Corro's way of getting back at him because he did not support him.

On cross-examination, Moralde testified that Mayor Loot instructed Lina Jugan to conduct an inspection to the RBA farm.³⁹ He confirmed that in 2010, 2013 and 2016 elections, he was elected as SB member of Daanbantayan. Despite being gainfully employed, he did not pay any amortization.⁴⁰

On questions from the Court, Moralde said that he got the idea of obtaining a loan from the LGU from then Governor Garcia.⁴¹ He welcomed the idea because he thought of increasing the number of his quail poultry and he was hoping that somebody would come to help him.⁴² He added that there are no other financial institutions from which he could obtain the loan and he has not tried securing a loan from banks. He admitted that he preferred borrowing from the LGU.⁴³

After the termination of the testimony of accused Moralde, said accused's counsel orally offered Exhs. 1, 2, 3, and 4, which were all admitted by the Court. With the admission of the documentary exhibits, the defense rested its case.

On 19 March 2019, the prosecution filed its Memorandum. Accused, on the other hand, filed their Memorandum on 27 March 2019.

ISSUES

The parties agreed on the following issues to be resolved by the Court:

1. Whether or not accused Loot and Moralde violated Section 3(e) of Republic Act No. 3019;
2. Whether or not accused Loot and Moralde violated Art. 217 of the Revised Penal Code.⁴⁴

³⁹ TSN, 18 February 2019, p. 26.

⁴⁰ Id. at 30.

⁴¹ Id. at 31.

⁴² Id. at 32.

⁴³ Id. at 33.

⁴⁴ Record, Vol. 1, p. 322 (page 5 of the Pre-trial Order).

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OUR RULING

I. CRIM. CASE NO. SB-18-CRM-0253 **For violation of Sec. 3(e) of R.A. 3019**

To hold a person liable under Sec. 3(e) of R.A. 3019, the concurrence of the following elements must be established by the Prosecution:

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

It has been consistently held that there are two ways by which a public official violates Sec. 3(e) of RA No. 3019 in the performance of his functions, to wit: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3 (e) of R.A. No. 3019.

First element

The first element is satisfied as accused Loot admittedly was a public officer, being then the Municipal Mayor of Daanbantayan, Cebu, at the time material to this case. Upon the other hand, accused Moralde is a private individual who allegedly conspired with a public officer. It is such conspiracy that purportedly support the charge against him. Settled is the rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019.⁴⁵

Second Element

The prohibited act attributed to accused Loot was for having caused undue injury to the government, which she did while in the performance of her

⁴⁵ *Cambe v. Office of the Ombudsman*, G.R. Nos. 212014-15, 6 December 2016,

official function as Municipal Mayor of Daanbantayan, Cebu. The undue injury consisted of the fact that accused Loot granted RBA Quail Raisers Association, represented by accused Moralde, financial assistance in the form of a loan amounting to ₱500,000.00, despite the fact that RBA was not an accredited people's organization at the time of the execution of the Memorandum of Agreement (MOA). Other irregularities were established such as accused Loot's neglect to conduct periodic monitoring and evaluation to ascertain the operation of Moralde's quail egg farm, failure to ensure the proper utilization of the public funds, and failure to institute corrective measures to safeguard the said funds. It was proven that the ₱500,000.00 was not returned to the municipality.

Accused Loot committed the aforesaid prohibited act through evident bad faith, manifest partiality and/or gross inexcusable negligence. In *People v. Atienza*,⁴⁶ the Supreme Court explained the meaning of evident bad faith, manifest partiality and gross inexcusable negligence in the commission of the offense under Section 3(e) of RA 3019 as follows:

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

These are conspicuously attendant in the instant case, as hereunder discussed.


On the issue of accreditation, accused alleged that there is nothing in the Local Government Code which provides that prior accreditation is required before financial assistance could be granted to RBA. It argued that the concurrence of the Sanggunian concerned is all that is needed for the grant of such assistance.

We do not agree.

COA Audit Circular No. 96-003⁴⁷ restating with amendments COA Circular No. 95-003, requires prior accreditation of the non-governmental

⁴⁶ 688 Phil. 122-136 (2012).

⁴⁷ Subject: Restatement with Amendments of COA Circular No. 95-003 dated February 15, 1995 Prescribing Accounting and Auditing Guidelines on the Release of Funds Assistance to Non-Governmental organizations/People's Organization.



organizations (NGO) and/or people's organization (PO) by the government office (GO) before the latter could extend financial assistance to the NGO/PO. The said COA Circular further provides the following requirements for accreditation:

3.3 The following shall be the requirements for the NGO/PO accreditation:

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.

(Emphasis supplied.)

The purpose of the circular is to ensure that the accountability for the funds extended are adhered to and to determine the accountability relationships between the NGO/PO and the grantor government office.⁴⁸ The setting of the condition for prior accreditation for the extension of fund assistance is a reasonable safeguard to forestall abuses in the disbursement of such funds for purposes of financing developmental projects of the NGOs/POs, which must not be ignored.

Record shows that the Certificate of Accreditation was issued to RBA by accused Loot herself during her term as Vice Mayor, only on 19 December 2008 or one year and ten months after the execution of the MOA.⁴⁹ Based on the foregoing, it can be said that RBA was not an accredited people's

⁴⁸ COA Circular No. 95-003.

⁴⁹ The MOA was signed by the parties on 28 February 2007.

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organization when the MOA was entered into by accused Loot with RBA. Accused, therefore, acted in evident bad faith when she deliberately disregarded the requirement for accreditation by the afore-mentioned COA circular.

Observably, accused Loot never took the witness stand to at least show that she endeavoured to safeguard the funds by at least checking RBA's documentations proving its legal personality, its officers, and its capacity to implement the project, or to explain or justify her act of entering into a MOA with RBA despite its non-accreditation. Accused Moralde, on the other hand, failed to refute prosecution's claim that it is not accredited or show that it is eligible for financial assistance from the local government unit (LGU).

In their defense, accused harps on the fact that the MOA between the Municipality of Daanbantayan and RBA was authorized by the Sangguniang Bayan through Resolution No. 2007-48.⁵⁰ However, it is the position of the prosecution that the MOA was without authority from the SB because it was entered into prior to the effectivity of Resolution No. 2007-48.

To give a clearer picture, the relevant timeline is as follows:

(1) On 23 February 2007, the Sangguniang Bayan of Daanbantayan passed Resolution No. 2007-48 authorizing accused loot to enter into a Memorandum of Agreement between the Municipality and the RBA;

(2) On 28 February 2007, the MOA was executed and signed by accused Loot and accused Moralde, representing RBA, and;

(3) On 8 March 2007, Resolution No. 2007-48 was approved by accused Loot.

It should be noted that resolutions are enacted in the same manner prescribed for ordinances,⁵¹ and every ordinance enacted by the sanggunian shall be presented to the local chief executive for approval.⁵² Considering that

⁵⁰ Authorizing Hon. Ma. Luisa J. Loot, Municipal Mayor, Daanbantayan, Cebu, to Enter into Memorandum of Agreement Between the Municipality and the RBA Quail Raisers Association.

⁵¹ RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE OF 1991 (1992), Art. 107 (c).

⁵² **SECTION 54. Approval of Ordinances.** — (a) Every ordinance enacted by the sanggunian shall be present to the local chief executive. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the sanggunian, which may proceed to reconsider the same. The sanggunian concerned may override the veto of the local chief executive by two-

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Resolution No. 2007-48 was approved only on 8 March 2007, it can be said that it was not yet in effect when the MOA was executed on 28 February 2007.

The defense also argued that accused Loot's signature of approval in the said Resolution is inconsequential because what controls its efficacy is the resolution's date of passage. Accused further claims that it would be superfluous to require prior signature thereof as she herself was the one being authorized by it.

Accused's arguments deserve scant consideration.

As mentioned earlier, every ordinance enacted by the sanggunian shall be presented to the local chief executive for approval. The local chief executive, however, is not obliged to approve every resolution presented to him because he has the authority to reject the same as provided under Sec. 55 of RA No. 7160 or the Local Government Code of 1991. Thus:

Section 55. Veto Power of the Local Chief Executive. –

- (a) The local chief executive may veto any ordinance of the sanggunian panlalawigan, sangguniang panlungsod, or sanggunian bayan on the ground that it is ultra vires or prejudicial to the public welfare, stating his reasons therefor in writing.
- (b) *The local chief executive, except the punong barangay, shall have the power to veto any particular item or items of an appropriations ordinance, an ordinance or resolution adopting a local development plan and public investment program, or an ordinance directing the payment of money or creating liability. In such a case, the veto shall not affect the item or items which are not objected to. The vetoed item or items shall not take effect unless the sanggunian overrides the veto in the manner herein provided; otherwise, the item or items in the appropriations ordinance of the previous year corresponding to those vetoed, if any, shall be deemed reenacted. (Emphasis supplied.)*

In *Regidor, Jr. v. People*, the Supreme Court declared that veto power confers authority beyond the simple mechanical act of signing an ordinance or resolution as a requisite to its enforceability. Thus, the concurrence of a local chief executive in the enactment of an ordinance or resolution requires, not

thirds (2/3) vote of all its members thereby making the *ordinance or resolution* effective for all legal intents and purposes.

- (b) The veto shall be communicated by the local chief executive concerned to the sanggunian within fifteen (15) days in the case of a province, and ten (10) days in the case of a city or a municipality; otherwise, the ordinance shall be deemed approved as if he had signed it.

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only a flourish of the pen, but the application of judgment after meticulous analysis and intelligence as well.⁵³ Therefore, it is erroneous to consider as insignificant the signature of accused in the assailed Resolution. Her approval of resolutions is not merely ministerial but involves a determination of the propriety or impropriety of the subject matter thereof.

In this case, the subject of Resolution No. 2007-48 is the authority to enter into a contract of loan with the RBA. Considering that it involves money of the LGU, it necessitates review by the local chief executive. The fact that the Resolution was approved on 8 March 2007, it can be inferred that accused has not reviewed it yet when the MOA was signed on 28 February 2007. Accused Loot's undue haste in entering into a MOA with RBA is another badge of bad faith. Had accused reviewed the Resolution and evaluated its supporting documents, she could have determined that it was not qualified for financial assistance, and she could have at least assessed the capacity of RBA to carry out its undertakings under the contract. As it turned out, RBA indeed was incapable of complying with its obligation as it failed to pay its loan obligation to the municipality.

The prosecution further claims that the failure of accused to perform their respective duties under the MOA caused undue injury to the government. To bolster its claim, prosecution witness Rossani A. Luche alleged in his judicial affidavit that:

74. Q : You stated earlier that the Municipal Government of Daanbantayan, Cebu, represented by Mayor Loot is duty bound under the Memorandum of Agreement to conduct periodic monitoring and evaluation to ascertain the progress/accomplishments of the project, proper utilization of fund and compliance with the provision stipulated in the agreement, what monitoring and evaluation actions was undertaken by Mayor Loot.

A : None, sir. As a result of her inaction, it can no longer be determined whether or not the amount of P500,000.00 was indeed used to the said project.

75. Q : You also mentioned that under the MOA, Municipal Government of Daanbantayan Cebu, represented by Mayor Loot is duty bound to keep record of all transactions related to the implementation of the Quail Raising project and maintain a subsidiary ledger for the proponents loan repayments, were there any actions taken by Mayor Loot that will ensure compliance with this provision?

A : None sir. She did not keep a record of transactions related to the implementation of the Quail Raising Project nor maintain a subsidiary ledger for the proponent's loan repayment.

⁵³ *Regidor, Jr. v. People*, 598 Phil. 714-739 (2009).

76: Q : You also mentioned that if RBA Quail Raisers Association failed to comply with the provisions of the Memorandum of Agreement, it will give rise to a civil or criminal liability, what action if any did Mayor Loot did when the former failed to comply with its obligations?

A : None sir. She did not file either criminal or civil action against the RBA Quail Raisers Association.⁵⁴

What the prosecution asserted was a negative fact. It is settled that where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control.⁵⁵

In here, the fact that no document related to the monitoring and evaluation of the progress or accomplishment of the project was found, as testified to by the prosecution witness, it can be reasonably concluded that accused Loot did not comply with her obligation to keep a record of all transactions related to the implementation of the project. Accused Loot could have easily disproved this and debunk Luche's testimony but as it would be recalled, she did not take the witness stand. Moreover, if accused Loot actually monitored the progress of the project, she would have known that RBA failed to comply with the terms of the agreement.

For his part, accused Moralde merely alleged that the amount of ₱500,000.00 was used to buy quail chicks, feeds, and portion of it was spent to cover the operating expenses for the farm. However, such allegation was not sufficiently established because accused Moralde did not submit any proof or evidence that indeed the ₱500,000.00 was actually applied for the project.

The defense also argued that accused Loot's term as municipal mayor ended on 30 June 2007 or a few months after the loan was granted to RBA. Thus, it was impossible for her to implement the provisions of the contract, monitor the project and/or enforce the contractual obligation of RBA/accused Moralde.

We are not convinced.

A review of the records reveal that accused Loot was elected as vice-mayor for the years 2007 to 2010. Instead of enforcing the obligation of RBA, accused even issued a Certificate of Accreditation⁵⁶ to RBA on 19 December

⁵⁴ Record, Vol. 1, pp. 247-248 (pp 21-22 of the Judicial Affidavit of Rosanni A. Luche.

⁵⁵ *People v. Lagman*, 593 Phil. 617-631 (2008) quoting *People v. Manalo*, 300 Phil. 317-330 (1994).

⁵⁶ Exh. E.



2008. This was despite the fact that RBA was already delinquent in its loan obligation for almost one year because the first amortization should have been paid in January 2008.

From 2010 to 2012, accused Loot again served as municipal mayor of Daanbantayan. It was during this term that the loan of RBA was supposed to mature because the final payment, as reflected in the Schedule of Payment, was in January 2011. However, the loan remains outstanding as accused Loot apparently did not order to demand payment from RBA. Accused Moralde testified that the notices he received was during the term of Mayor Sun Shimura in 2007 to 2010. Also, the demand letters⁵⁷ sent to him were issued by the municipal treasurer during the term of Mayor Augusto Corro. Accused Moralde attempted to show that accused Loot complied with her duty in enforcing RBA's obligation by alleging that accused Loot also reminded him of his loan. However, this is mere allegation unsubstantiated by concrete evidence.

Third Element

Under the facts established, it is clear that accused Loot acted with evident bad faith when she signed the MOA without any authority from the Sangguniang Bayan and despite the fact that RBA was not qualified to receive financial assistance. Moreover, accused Loot failed to conduct progress monitoring and evaluation of the operation of the quail farm and ensure the proper utilization of the public funds. When the loan matured, accused Loot failed to demand payment and institute action to recover the amount, to the detriment of the government.

Accordingly, unwarranted benefit was accorded to RBA which caused undue injury against the government in the amount of P500,000.00.

II. CRIM. CASE NO. SB-18-CRM-0254 FOR MALVERSATION

Malversation is defined and penalized under Article 217 of the RPC, as amended by Republic Act (R.A.) No. 10951, as follows:

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

⁵⁷ Exhs. F and G.

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public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

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

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

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

For a prosecution of the crime to prosper, concurrence of the following elements must be satisfactorily proved: (a) the offender is a public officer, (b) he has custody or control of the funds or property by reason of the duties of his office, (c) the funds or property are public funds or property for which he is accountable, and, most importantly, (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.⁵⁸

a) Accused Loot is a public officer

There is no dispute as to the existence of the first element. A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class."⁵⁹ At the time material to this case, accused Loot was a public officer being then the Municipal Mayor of Daanbantayan, Cebu.

***b) Accused Loot was accountable
for public funds***

Accused was an accountable public officer within the purview of Art. 217 of the Revised Penal Code. Under the Government Auditing Code of the Philippines, an accountable public officer is a public officer who, by reason of his office, is accountable for public funds or property.⁶⁰

⁵⁸ *Venezuela v. People*, G.R. No. 205693, 14 February 2018.

⁵⁹ Art. 203 of the Revised Penal Code.

⁶⁰ *Frias, Sr. v. People*, 561 Phil. 55-69 (2007).

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The definition of an accountable public officer was expanded in the Local Government Code with regard to local government officials.⁶¹ Thus, the Supreme Court, in *Escobar v. People*⁶² citing *Zoleta v. Sandiganbayan*,⁶³ declared that local government officials become accountable public officers either because of the (1) nature of their functions; or (2) on account of their participation in the use or application of public funds.

Moreover, Section 102 of the Government Auditing Code of the Philippines provides that “(t)he head of any agency of the government is responsible for all government funds and property pertaining to his agency.”

Verily, accused Loot being the municipal mayor was the chief executive of the municipality and thus, responsible for all government funds pertaining to the municipality.

c) The funds were public in nature for which accused was accountable. Accused Loot appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another to take them

The third and fourth elements are discussed jointly as they are interrelated.

In the crime of malversation, funds, money or property taken must be public funds or private funds impressed with public attributes or character for which the public officer is accountable.⁶⁴

Accused argued that the subject of the MOA is a contract of loan. Thus, when the amount of ₱500,000.00 was transferred to the physical custody of RBA, it was stripped of its “public character” and accused Loot ceased to become the custodian thereof. As such, the said funds could not be a valid subject of malversation.

⁶¹ Section 340 of the Local Government Code, reads:

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

⁶² G.R. No. 205576, 20 November 2017.

⁶³ 765 Phil. 39 (2015).

⁶⁴ *Salamera v. Sandiganbayan*, 362 Phil. 556-568 (1999).



In support of their arguments, accused invoked *Ocampo III v. People of the Philippines*.⁶⁵ In said case, petitioner Mariano Un Ocampo III, Provincial Governor of Tarlac, loaned out P56.6 Million to the Lingkod Tarlac Foundation, Inc. (LTFI), represented by Andres S. Flores, for the implementation of various livelihood projects. The money was used to purchase Juki embroidery machines and the release of funds was covered by a loan document. The P56 Million became the subject of numerous criminal cases, including Crim. Case Nos. 16794 and 16795. The fund alleged to have been malversed in Crim. Case No. 16794 amounting to P1,180,496.48 represents the discrepancy of the cost of the Juki embroidery machines as listed in the books of LTFI and the amount actually paid to open the letter of credit for the payment of the machines. While in Crim. Case No. 16795, the fund allegedly malversed in the amount of P58,000.00 is the money left in the PNB LTFI account which was withdrawn upon the authorization of petitioner Flores and said withdrawal was neither reflected as deposit in the bank accounts of LTFI nor spent by it.

The Supreme Court held in that case that there can be no malversation because the loan transferred ownership and custody of the funds to LTFI making them private in character for which petitioner Ocampo could no longer be held accountable. It was further held that "in a contract of loan once the money is received by the debtor, ownership over the same is transferred. Being the owner, the borrower can dispose of it for whatever purpose he may deem proper."

However, this Court finds *Ocampo* not on all fours with the instant case. In *Ocampo*, the malversation was committed only *after* the fund was already transferred to LTFI or when it was already private in character. There was no issue as to the eligibility of LTFI to borrow money from the government and the manner by which the livelihood project was carried out. Although the MOA entered into by petitioner Ocampo with LTFI was not duly authorized by the Sangguniang Panlalawigan, it was impliedly ratified when the Sanggunian despite knowledge of the controversy, authorized Ocampo to enter into a tripartite agreement with LTFI and Barangay Unity for Industrial and Leadership Development (BUILD) wherein the liabilities of LTFI in favor of the Province of Tarlac was transferred and assumed by BUILD.

On the other hand, the transaction in this case, unlike in *Ocampo*, was anomalous from the very beginning. It is undisputed that RBA was not an accredited people's organization at the time the MOA was executed. As such, it was not eligible for the grant of financial assistance from the municipality under COA Circulars. Also, as already discussed, the MOA was entered without authority from the Sanggunian. There is no showing that the Sanggunian ratified the MOA either expressly or impliedly.

⁶⁵ 567 Phil. 461-486 (2008).

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As the municipal mayor, accused has the duty to safely keep the funds belonging to the municipality and disburse the same in accordance with the standard procedure for the benefit of the municipality.⁶⁶ Any deviation thereto renders the disbursement of funds unlawful. Thus, when accused Loot signed the MOA with RBA thereby allowing the latter to obtain the loan and receive the amount of ₱500,000.00 from the coffers of the government, malversation was already committed. It should be noted that the source of funds granted to RBA, being municipal funds, is public in character. As the municipal mayor, accused Loot had control of the subject funds, and was accountable therefor.⁶⁷

As consistently ruled by jurisprudence, a public officer may be held liable for malversation even if he does not use public property or funds under his custody for his personal benefit, but consents to the taking thereof by another person, or, through abandonment or negligence, permitted such taking. The felony may be committed, not only through the misappropriation or the conversion of public funds or property to one's personal use, but also by knowingly allowing others to make use of or misappropriate the funds.⁶⁸

There is no denial that the ₱500,000.00 was given to accused Moralde/RBA in the form of a loan. The Court is faced with the question whether the said amount was actually used for the intended purpose. However, as testified to by prosecution witness Luche, no record of transaction related to the implementation of the project was found. Records show that accused was given the opportunity to refute the charges against them but only accused Moralde testified who nevertheless failed to help their cause.

Accused Moralde alleged that the subject amount was used to buy quail chicks, feeds and portion of it was used to defray its operating expenses. However, no supporting document was submitted by accused to the Court. It should be noted that mere allegation of forgery is not evidence and the burden of proof lies in the party making the allegation.⁶⁹ Considering that the whereabouts of the subject fund have not been accounted for and nothing happened to the project, the Court is inclined to conclude that the loaned amount was not actually used for its intended purpose.

Accordingly, by disregarding the COA Circulars in approving the resolution and further neglecting her duty to conduct periodic monitoring and evaluation, accused Loot consequently allowed accused Moralde to misappropriate the funds.

In sum, the elements of Malversation have thus been equally established beyond reasonable doubt by the prosecution.

⁶⁶ *Manuel v. Sandiganbayan*, 681 Phil. 273-298 (2012).

⁶⁷ *Id.*

⁶⁸ *People v. Pantaleon, Jr.*, 600 Phil.186-229 (2009).

⁶⁹ *St. Mary's Farm, Inc. vs. Prima Real Properties, Inc.*, 582 Phil. 673-685 (2008).

CONSPIRACY

There is conspiracy when two or more persons come to an agreement concerning the commission of a crime and decides to commit it.⁷⁰

Jurisprudence teaches us that proof of the agreement need not rest on direct evidence, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense.⁷¹ It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out.⁷² Therefore, conspiracy may be appreciated even though there was no direct proof that accused agreed to cause injury to the government and give unwarranted benefits to a certain association or person, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective.

In this case, the conspiracy among accused was clearly established.

It should be stressed that it was accused Loot who instructed Daanbantayan's Municipal Agriculturist, Ma. Lina Jugan, to inspect the farm of RBA and conduct feasibility study.⁷³ Accused Moralde formalized his request for loan and submitted RBA Resolution No. 01-2007⁷⁴ to the Sangguniang Bayan, which was approved by accused Loot. Accused Loot actively participated in the execution of the MOA and hastily signed it, despite the fact that the Resolution authorizing its execution was not yet approved and overlooking the seeming ineligibility of RBA for financial assistance.

On the other hand, accused Moralde was aware that RBA was not accredited but still proceeded to borrow from the LGU. The Court finds it incredible to believe that accused Moralde, who claims himself as a businessman, would choose to borrow from a local government unit instead from financial institutions simply because he has not tried applying for loan from the bank.

When called to the witness stand, Moralde admitted that he did not pay any amortization on the loan.⁷⁵ As an excuse, he reasoned that RBA suffered great losses when all the quails were killed when typhoon Frank struck Cebu in June 2008. The Court finds it untenable because during that time, RBA was already six months delayed in the payment of its loan. It should be recalled that the fund was released to RBA after the signing of the MOA on 28 February

⁷⁰ Article 8, second paragraph, Revised Penal Code.

⁷¹ *Guy v. People of the Philippines*, 601 Phil. 105 (2005).

⁷² *Id.*

⁷³ TSN, 18 February 2019, p. 26.

⁷⁴ Exh. B.

⁷⁵ TSN, 18 February 2019, p. 30.

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2007 and it was supposed to make its first payment in January 2008. In that span of time, RBA is expected to make/gain profit because accused Moralde himself claimed that among the farm products, quail-raising generated income for the farm. Thus, there was no reason that he could not pay.

The fact that no payment was made in January 2008 – the start of the amortization schedule – belies accused Moralde's reasoning that his inability to pay the loan was due to the devastation brought by typhoon Frank that happened in June 2008. Whereas accused Loot did not make any attempt to ensure the implementation and completion of the project for which the funds were disbursed, as well as monitor the funds after it was released. She also did not demand payment or file any criminal or civil case against Moralde. Accused's continued failure to comply with their respective duties and responsibilities provided in the agreement demonstrates unity of the objective thereby causing undue injury to the government.

PENALTY

Sec. 9(a) of R.A. No. 3019 provides that any public officer or private person committing any unlawful acts or omissions enumerated in Sec. 3 of the said Act shall be punished with *imprisonment for not less than six years and one month nor more than fifteen years* and perpetual disqualification from public office. Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.⁷⁶

In view of the absence of aggravating and mitigating circumstances, accused is meted the indeterminate penalty of six (6) years and one (1) month, as minimum to eight (8) years, as maximum. Accused are likewise perpetually disqualified from holding any public office.

With respect to the charge of malversation, Republic Act No. 10951,⁷⁷ particularly Sec. 40 thereof states:

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

Art. 217. Malversation of public funds or property. — Presumption of malversation. — Any public officer who, by reason of the duties of his

⁷⁶ *Umipig v. People*, 691 Phil. 272-313 (2012).

⁷⁷ 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.

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office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

X X X X

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

X X X X

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

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

Since the amount malversed amounted to P500,000.00, the impossible penalty is *prisión mayor* in its minimum and medium period, which ranges from six (6) years and one (1) day to ten (10) years. The minimum period of said penalty is six (6) years, and one (1) day to seven (7) years, and four (4) months; its medium period is seven (7) years, four (4) months, and one (1) day to eight (8) years, and eight (8) months; and the maximum of which is eight (8) years, eight (8) months and one (1) day to ten (10) years.⁷⁸ There being no aggravating and mitigating circumstances in this case, the maximum of the penalty should be fixed in its medium period.⁷⁹

Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower from the maximum penalty impossible, shall be within the range of *prisión correccional* in its medium and maximum period, or two (2) years, four (4) months, and one (1) day to six (6) years.⁸⁰

⁷⁸ Luis B. Reyes, *The Revised Penal Code, Criminal Law*, Book 2, 2001 (Fifth Edition), p. 1024.

⁷⁹ Art. 64. Rules for the application of penalties which contain three periods. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

X X X X

⁸⁰ Luis B. Reyes, *The Revised Penal Code, Criminal Law*, Book 2, 2001 (Fifth Edition), p. 1022.

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Accordingly, the indeterminate sentence for accused is modified to two (2) years, four (4) months, and one (1) day of *prision correccional* in its minimum period as minimum, to seven (7) years, four (4) months and one day (1) of *prision mayor* in its medium period, as maximum.

WHEREFORE, premises considered, Judgment in these cases is as follows:

1. In SB-18-CRM-0253: finding accused Ma. Luisa Judal and Samuel Punay, ^{MORALDE} acting in conspiracy with one another, **GUILTY** beyond reasonable doubt of the offense of **Violation of Sec. 3(e) of RA No. 3019** and sentencing each of them to suffer an indeterminate prison term of *six years (6) and one (1) month as minimum to eight (8) years, as maximum*, with *perpetual disqualification from public office*.
2. In SB-18-CRM-0254: finding accused Loot and Moralde, acting in conspiracy with one another, **GUILTY** beyond reasonable doubt of the crime of **Malversation of Public Funds** defined and penalized under Art. 217 of the Revised Penal Code, and sentencing them to each suffer the indeterminate prison term of *two (2) years four (4) months and one (1) day of prision correccional, in its minimum period, as minimum to seven (7) years four (4) months and one (1) day of prision mayor in its medium period, as maximum*, and the penalty of *perpetual special disqualification from holding any public office*.
3. Accused are liable to indemnify jointly and severally the Municipality of Daanbantayan, Cebu in the amount of **Five Hundred Thousand Pesos (P500,000.00)**, plus interest thereon at the rate of 6% per annum reckoned from the finality of this decision until the amount is fully paid.


SO ORDERED.

Quezon City, Philippines.


ZALBY V. TRESPESES
Associate Justice

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WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


GEORGINA D. HIDALGO
Associate Justice

ATTESTATION

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


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice