



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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**SEVENTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

Criminal Case No. SB-20-A/R-0033  
[For Violation of Section 3 (e) of RA 3019]

- versus -

**MARIA PRIMA ABRIGO Y  
JABOLA,<sup>1</sup>**

*Accused-Appellant.*

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**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

Criminal Case No. SB-20-A/R-0034  
[For Malversation of Public Funds]

- versus -

**PRIMA ABRIGO Y JABOLA,<sup>2</sup>**  
*Accused-Appellant.*

Present:

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

Promulgated:

UP *October 21, 2021*

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**DECISION**

***GOMEZ-ESTOESTA, J.:***

This is an appeal from the judgment of the Regional Trial Court of Lucena City convicting accused-appellant, Maria Prima Abrigo y Jabola a.k.a Prima Abrigo y Jabola, of the crimes of Violation of Sec. 3(e) of R.A. 3019 and Malversation of Public Funds, *viz:*

<sup>1</sup> As amended during arraignment on January 24, 2012 in Criminal Case No. 2010-548.

<sup>2</sup> As amended during arraignment on November 11, 2014 in Criminal Case No. 2010-549; Order dated November 11, 2014; Records, Volume 2, p. 587

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In Criminal Case No. 2010-548, Ma. Prima Abrigo is found GUILTY beyond reasonable doubt of violation of Sec. 3(e) of RA 3019 and is sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum to ten (10) years as maximum with the accessory penalty of perpetual special disqualification from holding public office.

In Criminal Case No. 2010-549, Ma. Prima Abrigo is found GUILTY beyond reasonable doubt of Malversation of Public Funds under Art. 217 of the Revised Penal Code. There being no mitigating [n]or aggravating circumstance present and after applying the provision of Republic Act 10951, she is hereby sentenced to: a) an indeterminate penalty of imprisonment of three (3) years six (6) months and twenty (21) (*sic*) days of prision correccional as minimum to four (4) years, nine (9) months and ten (10) days of prision mayor as maximum; b) reimburse Development Bank of the Philippines Lucena Branch the amount of Eight Hundred Ninety One Thousand Pesos (₱891,000.00); c) pay a fine in the amount of Eight Hundred Ninety One Thousand Pesos (₱891,000.00); and d) suffer the accessory penalty of perpetual disqualification from holding any public office.

Accused Diego Jabola and Wilfredo Abrigo are both ACQUITTED in both cases for insufficiency of evidence. The cash bonds posted by bondsman accused Diego Jabola under OR Nos. 5075284 A and 5075285 A, respectively, in the amount of Thirty Thousand Pesos (₱30,000.00) each are ordered released to the bondsman or his duly authorized representative upon presentation of all requisite documents.

With respect to accused Edelyn Tarranco who remains at large, these cases are ordered ARCHIVED.

SO ORDERED.<sup>3</sup>

### FACTUAL ANTECEDENTS

Accused-appellant Maria Prima Abrigo y Jabola a.k.a. Prima Abrigo y Jabola (“accused-appellant”) was the COA Auditor of the Development Bank of the Philippines, Lucena City Branch (DBP Lucena). Meanwhile, Edelyn Tarranco (“Tarranco”), her co-accused who remains at large, was a teller of the same bank. When a considerable shortage was discovered in the bank’s cash-in-vault, a part thereof amounting to ₱891,000.00 was traced to a scheme utilized by accused-appellant Abrigo and Tarranco. Accordingly, the following *Informations* were filed against them and other individuals found to have benefited from this scheme, as follows:

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<sup>3</sup> *Records*, Volume IV, pp. 1217-1218, as amended by the *Order* dated June 2, 2020, *Id.*, pp. 1225-1226.

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**CRIMINAL CASE NO. 2010-548**  
**For: Violation of Section 3(e) of RA 3019**

That for the period from January 1998 to April 1999, and sometime prior or subsequent thereto, in Lucena City, and within the jurisdiction of this Honorable Court, EDELYN TARRANCO, a public officer being then Asst. Cashier of DBP-Lucena Branch, and PRIMA ABRIGO, another public officer, being the COA Auditor of DBP-Lucena, while in the performance of their public office, and committing the offense in relation to their office, and taking advantage of their official position, acting through evident bad faith along with private accused DIEGO JABOLA and WILFREDO ABRIGO, conspiring and confederating with each other and one another did then and there willfully, unlawfully, and criminally cause undue injury and damage to DBP-Lucena, a Government bank, in the amount of ₱891,000.00, by accommodating checks issued by PRIMA ABRIGO to conceal cash deposit slips without corresponding cash deposits, credited in the account of DIEGO JABOLA and WILFREDO ABRIGO, in the same amount of ₱891,000.00, to the damage and prejudice of DBP and the Government in the aforestated amount.

CONTRARY TO LAW.<sup>4</sup>

**CRIMINAL CASE NO. 2010-549**  
**For: Malversation of Public Funds<sup>5</sup>**

That for the period from January 1998 to April 1999, and sometime prior or subsequent thereto, in Lucena City, and within the jurisdiction of this Honorable Court, EDELYN TARRANCO, a public officer being then Asst. Cashier of DBP-Lucena Branch, and as such accountable for public funds received by her, PRIMA ABRIGO, also a public officer, being the COA Auditor at DBP-Lucena, both while in the performance of their respective public office, and committing the offense in relation to their office, and taking advantage of their official position, and private accused DIEGO JABOLA and WILFREDO ABRIGO, conspiring and confederating with each other and one another, did then and there, willfully, unlawfully and feloniously malverse, embezzle and misappropriate the amount of ₱891,000.00 by accommodating checks and/or credit cash deposit slips without corresponding check deposit issued by PRIMA ABRIGO to the account of DIEGO JABOLA and WILFREDO ABRIGO in the same amount of ₱891,000.00 thereby allowing said DIEGO and WILFREDO ABRIGO to appropriate for themselves the aforestated amount to the damage and prejudice of DBP and the Government.

CONTRARY TO LAW.<sup>6</sup>

**PROSECUTION'S EVIDENCE DURING TRIAL**

Prosecution's evidence thrived on the following testimonies:

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<sup>4</sup> *Records*, Volume 1, pp. 2-3.

<sup>5</sup> Subsequently consolidated with Crim. Case No. 2010-548 (Branch 58) – *Records* of Crim. Case No. 2010-549, p. 296.

<sup>6</sup> *Id.*, pp. 2-3.

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**Mejaide F. Poblacion**,<sup>7</sup> Branch Accountant of DBP Lucena, recalled having noticed a suspicious journal entry encoded on April 20, 1999 by Leila Ang, a member of her staff, when this was a task that exclusively pertained to the bank's Cash Division. This prompted a surprise cash count of the bank's actual cash-in-vault as of April 27, 1999, which yielded a shortage of ₱19,335,500.94.<sup>8</sup> This shortage was reported to the Commission on Audit and the DBP Head Office, which conducted parallel investigations.<sup>9</sup>

**Anastacia V. Argente**,<sup>10</sup> COA State Auditor, and her Audit Team, conducted a special audit on DBP Lucena on March 6, 1999. They reviewed bank transactions from June 20, 1997 to May 6, 1999, and found a shortage of ₱20,016,000.94. This was subsequently reduced to ₱18,800,074.94 after the concerned persons settled their accountabilities.<sup>11</sup> Among those found accountable was teller Edelyn Tarranco, who, in response to the COA's demand letter,<sup>12</sup> explained that she could not restore the amount attributable to her, as she did not have custody of said amount, saying that ₱891,000.00 was with accused-appellant Abrigo, while ₱7,309,000.00 was with a certain Leila Ang.<sup>13</sup> A fact-finding investigation was thereafter conducted, wherein Argente took the sworn statements of teller Tarranco, accused-appellant Abrigo and Mejaide Poblacion. In her *Sinumpaang Salaysay*,<sup>14</sup> Tarranco was quoted as saying that out of "pakikisama" to accused-appellant, and on at least six (6) occasions, she facilitated the deposit or cash encashment transactions of accused-appellant to Current Account No. 00216-620-3 under the name of Famous Electrical and Construction Supplies ("Famous"), which was owned by accused Abrigo's brother, Diego Jabola. She did this notwithstanding that accused-appellant deposited mere checks issued by Wilfredo Abrigo,<sup>15</sup> accused-appellant's husband, and not cash, into such account. Tarranco credited these fictitious deposits to fund Famous's inward clearing checks, all amounting to ₱891,000.00.<sup>16</sup> Accused-appellant Abrigo acknowledged this in her letter to the DBP proposing to settle her total liability in several installments.<sup>17</sup> She also corroborated Tarranco's statement insofar as the transfer of money to Famous's account for which she gave checks to Tarranco, amounting to ₱891,000.00.<sup>18</sup>

**Arlene E. Calimlim**<sup>19</sup> was Management and Audit Officer III of the DBP Head Office in 1999. She was part of the team that conducted a special

<sup>7</sup> Judicial Affidavit of Mejaide Poblacion dated July 20, 2016, *Records*, Vol. III, pp. 747-763.

<sup>8</sup> Judicial Affidavit of Mejaide Poblacion, Q&A Nos. 8-17; Exhibit "I", *Records*, Vol. III, pp. 753-754.

<sup>9</sup> Judicial Affidavit of Mejaide Poblacion, Q&A Nos. 22-23.

<sup>10</sup> Judicial Affidavit dated July 20, 2016, *Records*, Vol. III, pp. 683-743

<sup>11</sup> Judicial Affidavit of Anastacia Argente, Q&A Nos. 10-16; Report. of Cash Examination, Exhibit "J", *Records*, Vol. III, pp. 704-705.

<sup>12</sup> Exhibit "L", *Id.*, p. 706; Exhibit "M", *Id.*, p. 707.

<sup>13</sup> Judicial Affidavit of Anastacia Argente, Q&A Nos. 22-32.

<sup>14</sup> Exhibit "D", *Records*, Vol. III, pp. 709-716.

<sup>15</sup> PDCP Checks, Exhibits "F" to "F-5", *Id.*, pp. 717-718.

<sup>16</sup> Judicial Affidavit of Anastacia Argente, Q&A Nos. 42-62.

<sup>17</sup> Judicial Affidavit of Anastacia Argente, Q&A No. 47, Exhibit "N", *Records*, Vol. III, p. 725.

<sup>18</sup> Judicial Affidavit of Anastacia Argente, Q&A No. 72.

<sup>19</sup> Judicial Affidavit of Arlene E. Calimlim, *Records*, Vol. III, pp. 900-995.

audit on DBP Lucena after the DBP Head Office received reports of a cash-in-vault shortage in said branch. In the course of audit, they verified the reported shortage, examined the records, and validated them with the statements made by Tarranco and accused-appellant Abrigo before COA Auditor Argente. They likewise interviewed Tarranco and coordinated with accused-appellant Abrigo, over whom they had no audit authority.<sup>20</sup> As teller, Tarranco's duties included the taking of deposits, and in performing her functions, it was incumbent upon her to ensure the accuracy of the bank's cash count, which should tally with actual deposits made. Instead, she credited fictitious deposits to Famous's Current Account No. 00216-620-3, conspiring with accused-appellant Abrigo, her husband, Wilfredo Abrigo, and brother, Diego Jabola, to defraud the DBP in the amount of ₱891,000.00, in order to fund Famous' inward clearing checks. An inward clearing check will bounce if deposited unfunded in another bank. In this case, however, Famous's account appeared sufficiently funded, albeit with money from DBP's cash-in-vault.<sup>21</sup> A complaint was accordingly filed against them.<sup>22</sup>

### EVIDENCE OF THE ACCUSED DURING TRIAL

Originally implicated in a conspiracy with her brother Diego Jabola and husband Wilfredo Abrigo, the defense version ran, as follows:

**Diego Jabola**, accused-appellant's brother, testified that he was indicted in these cases because he shared a current account at DBP-Lucena with accused-appellant Abrigo, which account allegedly received unauthorized deposits.<sup>23</sup> He never issued any checks drawn against said account.<sup>24</sup> He did not know Edelyn Tarranco.<sup>25</sup>

**Wilfredo Abrigo**, accused-appellant's husband, testified that he issued six (6) checks dated February 9, February 10, February 11, February 16, April 5, and April 8, all in 1999.<sup>26</sup> None of these checks bore a stamp showing that they have been dishonored for insufficiency of funds. Likewise, he never received any demand to pay the amount written on these checks.<sup>27</sup> He never went to DBP Lucena in connection with these checks. He did not know Edelyn Tarranco.<sup>28</sup>

**Maria Prima Abrigo**, accused-appellant, testified that she was an auditor of DBP, and while she knew Edelyn Tarranco, she did not know her

<sup>20</sup> Judicial Affidavit of Arlene E. Calimlim, Q&A Nos. 5-13.

<sup>21</sup> Judicial Affidavit of Arlene E. Calimlim, Q&A Nos. 23-34.

<sup>22</sup> Exhibit "A", *Records*, Vol. III, pp. 923-925.

<sup>23</sup> TSN dated October 9, 2018, *Records*, Vol. III, p. 1154.

<sup>24</sup> TSN dated October 9, 2018, p. 1159.

<sup>25</sup> TSN dated October 9, 2018, p. 1160.

<sup>26</sup> Exhibits "F" to "F-5".

<sup>27</sup> TSN dated January 29, 2019, *Records*, Vol. III, pp. 1160-1161.

<sup>28</sup> TSN dated January 29, 2019, p. 1167.

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position, nor have supervision or control over her.<sup>29</sup> She denied having encashed checks drawn against the account of Famous without the corresponding money deposits, but stated that she deposited to said account checks drawn against the account of Solden Commercial. She was never apprised of what happened to these Solden Commercial checks, but to her recollection, they were sufficiently funded.<sup>30</sup>

Accused-appellant affirmed her *Sinumpaang Salaysay*,<sup>31</sup> but said that she did not recall having appeared before the notary public who notarized it.<sup>32</sup>

### THE APPEALED DECISION

In its *Judgment*,<sup>33</sup> the Court *a quo* found that accused-appellant Abrigo acted with bad faith and manifest partiality constitutive of Violation of Sec. 3(e) of R.A. 3019 based on accused-appellant Abrigo's *Sinumpaang Salaysay*,<sup>34</sup> thus:

In her *Sinumpaang Salaysay* notarized before Atty. Fidel Angelito Arias, Ms. Abrigo narrated how she committed the acts complained of. Thus:

13. TANONG: Mayroon ka bang alam sa pagpapalit ng tseke na kulang o walang pondo na ini-issue ng Famous Electrical and Construction Supplies?  
SAGOT: Opo.

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16. TANONG: Gumagawa ka ba ng deposit slip at ibinibigay mo sa teller na walang perang involve[d] o kulang ang pera?  
SAGOT: Mayroon po.

17. TANONG: Anong pinanghahawakan ng teller sa deposit slip na kulang o walang pera kang ibinigay? Magkano ang mga ito?  
SAGOT: May tseke akong ibinibigay sa teller. O di kaya naman ay binibigyan ko na lang ng cash.

18. TANONG: Kumukuha ka ba ng pera kay Ms. Tarranco at binibigyan mo siya ng tseke at ang pera ay ibinibigay mo sa teller para ideposito sa account ng Famous Electrical and Construction Supplies?

<sup>29</sup> TSN dated September 10, 2019, *Records*, Vol. IV, p. 1189.

<sup>30</sup> TSN dated January 29, 2019, pp. 1189-1190.

<sup>31</sup> Exhibit "E".

<sup>32</sup> TSN dated January 29, 2019, p. 1190.

<sup>33</sup> *Records*, Vol. IV, pp. 1204-1218.

<sup>34</sup> Exhibit "E".

SAGOT: Lately lang, mga February 1999.

19. TANONG: Magkano ang nakuha mong pera sa mga teller na sina Ma. Teresa Madrideo, Rosalinda Driz at Edelyn Tarranco?

SAGOT: Kay Ma. Theresa Madrideo ay ₱792,000.00. Kay Rosalinda Driz ay ₱3,258,000.00 at kay Edelyn Tarranco ay ₱891,000.00. Ang kabuuang halaga ay ₱4,941,000.00. x x x

In other words, Ms. Abrigo had Teller Tarranco credit fictitious cash deposits to the account of Famous Electrical and Construction Supply belonging to Ms. Abrigo and her brother/co-accused Diego Jabola. This was done to fund the inward clearing checks issued by Ms. Abrigo and/or her brother Diego under the account name Famous Electrical and Construction Supply. To conceal the fraudulent scheme and the resulting cash shortage, Ms. Abrigo gave Tarranco 6 PDCP checks issued by her husband and co-accused Wilfredo Abrigo.

The Court *a quo* held that the government suffered undue injury amounting to ₱891,000.00 equivalent to the value of the checks issued by Wilfredo Abrigo.

On the other hand, for the charge of Malversation, the trial court concluded that conspiracy to defraud the government was proven with moral certainty on the scheme employed by accused-appellant Abrigo and Tarranco. Hence, while accused-appellant Abrigo was not an accountable public officer, she was found guilty of Malversation of Public Funds, having conspired with teller Tarranco, an accountable public officer.

### GROUND S RAISED ON APPEAL

In her *Appellant's Brief*,<sup>35</sup> accused-appellant raised the following errors:

#### I.

THE "SINUMPAANG SALAYSAY" NOTARIZED BY ATTY. ANGELITO FIDEL ARIAS SUBMITTED BY THE PROSECUTION WHICH BECAME THE BASIS OF THE CONVICTION OF THE HEREIN ACCUSED-APPELLANT IS AN EXTRA-JUDICIAL CONFESSION DONE WITHOUT THE PRESENCE OF THE ACCUSED-APPELLANT'S LEGAL COUNSEL AND WITHOUT EXPLANATION TO THE ACCUSED-APPELLANT OF THE LEGAL CONSEQUENCES THEREOF.

<sup>35</sup> *Records on Appeal*, pp. 68-88.

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II.

THAT THE PROSECUTION FAILED TO PRESENT THE CHECKS ISSUED BY FAMOUS ELECTRICAL CONSTRUCTION SUPPLY UNDER CURRENT ACCOUNT NO. 00216-620-3 THAT IS ALLEGED BY THE PROSECUTION TO HAVE BEEN FUNDED WITHOUT THE CORRESPONDING ACTUAL CASH DEPOSITED (*sic*) MADE BY ACCUSED-APPELLANT MA. PRIMA ABRIGO.

III.

THAT THE PROSECUTION FAILED TO ESTABLISH THAT THE SIX (6) PDCP LUCENA BRANCH CHECKS ISSUED BY WILFREDO ABRIGO WITH THE TOTAL AMOUNT OF ₱891,000.00 HAS NO FUNDS SINCE DBP DID NOT CREDITED/ENCASHED (*sic*) THE SAME AGAINST THE ACCOUNT OF FAMOUS ELECTRICAL CONSTRUCTION SUPPLY UNDER CURRENT ACCOUNT NO. 00216-620-3.

**PROSECUTION'S REFUTATION ON APPEAL**

In its *Plaintiff-Appellee's Brief*,<sup>36</sup> plaintiff-appellee countered that accused-appellant's *Sinumpaang Salaysay* was binding on her as she executed it during an administrative investigation when assistance of counsel was not indispensable. There was no need to present the checks issued by Famous since they were not material to these cases where six (6) PDCP checks in the name of Solden Commercial instead were recovered from Tarranco. In fact, the checks purportedly issued by Famous did not exist.

Meanwhile, the PDCP checks were not deposited as accused-appellant merely instructed Tarranco to hold on to them in exchange for the ₱891,000.00 credited to Famous' account with DBP. In any event, it would not have mattered if the PDCP checks were sufficiently funded, as the amount they covered had already been credited to Famous' account.

Accused-appellant was shown to have the propensity to influence DBP's tellers as DBP's resident COA Auditor. The manner by which she caused the transfer of DBP's funds into her own account, in conspiracy with Tarranco, was correctly appreciated by the trial court in convicting her of Violation of Sec. 3(e) of R.A. 3019 and Malversation of Public Funds. These findings are entitled to great weight and respect.

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<sup>36</sup> *Records on Appeal*, pp. 105-124.



### THE COURT'S RULING

The trial court's conviction of accused-appellant centered on the strength of her own *Sinumpaang Salaysay*. Accused-appellant asserts that this was an extrajudicial confession made without the assistance of counsel and hence, should have been inadmissible as evidence. Verily, being the only evidence that bound accused-appellant to her judgment of conviction, its exclusion will certainly loosen the shackles of the penalty imposed in her conviction.

The right to counsel springs from the Constitution,<sup>37</sup> thus:

SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

However, the lack of counsel does not render **all** extrajudicial confessions inadmissible in evidence. The "investigation" in Section 12, paragraph 1 of the Bill of Rights pertains to "**custodial investigation.**" Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein which tend to elicit an admission.<sup>38</sup>

The situation contemplated is more precisely described as one where –

After a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in a strange and unfamiliar surrounding, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study has taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence xxx.<sup>39</sup>

<sup>37</sup> Article III, Section 12 of the 1987 Philippine Constitution.

<sup>38</sup> *People v. Cabanada*, G.R. No. 221424, July 19, 2017.

<sup>39</sup> *Luspo v. People* (Resolution on Motion for Reconsideration), G.R. Nos. 188487, 188541 & 188556, October 22, 2014, citing *People v. Uy*, G.R. No. 157399, November 17, 2005.

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This is not, however, the same factual aberration to which accused-appellant pleads to. The milieu to which she executed her *Sinumpaang Salaysay* is a far cry from what is considered a custodial interrogation.

***Accused-appellant's Sinumpaang Salaysay is admissible in evidence.***

As properly pointed out by the plaintiff-appellee, accused-appellant Abrigo was not under custodial investigation when she executed her *Sinumpaang Salaysay*.

Prosecution witness COA State Auditor Anastacia Argente testified that she took accused-appellant's *Sinumpaang Salaysay* during COA's fact-finding investigation.<sup>40</sup> Accused-appellant was not under police arrest nor was she confronted with questions which already isolated her as a suspect to a crime. As a COA auditor herself, accused-appellant knew exactly what the special audit was about and what the audit investigation would have entailed. She was not one to be coy about the scope and extent of the audit investigation. Clearly, when she answered questions asked by COA State Auditor Argente, it was pursuant to the mandate of the special audit. The answers given by the accused-appellant came in voluntarily. This was only because accused-appellant executed her *Sinumpaang Salaysay* away from the hostile environment of a custodial investigation. Later, and this is more important, accused-appellant was never heard to deny the voluntariness or veracity of her *Sinumpaang Salaysay* during the proceedings before the trial court. In fact, she admitted the existence of said *Sinumpaang Salaysay* during pre-trial,<sup>41</sup> as well as in response to the Prosecution's *Request for Admission*.<sup>42</sup> When asked during her testimony, she confirmed having executed the *Sinumpaang Salaysay*, albeit unassisted by counsel, and not before the Notary Public, Atty. Fidel Angelito Arias.<sup>43</sup> The voluntariness of her sworn statement remained intact.

It has been held that the admissibility of a confession in evidence hinges on its voluntariness.<sup>44</sup> Considering, therefore, that accused-appellant freely and voluntarily issued her *Sinumpaang Salaysay* before COA State Auditor Argente, there is no question that it is admissible in evidence.

The tenor of accused-appellant's statements in her *Sinumpaang Salaysay*, however, did not automatically spell a conviction on her part. Much has to be proven by the Prosecution but which, haplessly, it failed to do at this instance.

<sup>40</sup> Exhibit "E"; Judicial Affidavit of Anastacia V. Argente, Q&A No. 42, *Records*, Vol. III, p. 690.

<sup>41</sup> *Pre-Trial Order* dated March 22, 2016, Admission No. 12, *Id.*, p. 562.

<sup>42</sup> *Request for Admission – Records*, Vol. II, pp. 552-584; *Answer to Request for Admission – Id.*, pp. 591-595.

<sup>43</sup> TSN dated September 10, 2019, *Records*, Vol. IV, p. 1190.

<sup>44</sup> *People v. Satorre*, G.R. No. 133858, August 12, 2003.

***Accused-appellant was erroneously convicted on the sole basis of her Sinumpaang Salaysay.***

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers upon the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>45</sup>

Accused-appellant, however, merely raised as error the admission of her *Sinumpaang Salaysay* purely on the basis of constitutional grounds, overlooking details to which her judgment of conviction could perceptively be altered. In truth, a review of the evidence weighed against her only revealed the insufficiency of such evidence to amount to her a judgment of conviction.

To this Court, however, it was readily evident.

In her *Sinumpaang Salaysay*, accused-appellant related that Famous Electrical and Construction Supplies had issued unfunded / insufficiently funded checks; that she was accommodated funds from DBP Lucena's teller, Edelyn Tarranco; and that she gave her checks covering such funds, amounting to ₱891,000.00, which were deposited in the account of Famous Electrical and Construction Supplies. Essentially, her *Sinumpaang Salaysay* should satisfactorily establish her involvement in the crimes charged. That is, *except in a court of law*.

A perusal of the appealed Judgment shows that the trial court entirely relied on the *Sinumpaang Salaysay* of the accused-appellant in adducing that she, through Edelyn Tarranco, siphoned off money from the coffers of DBP Lucena by depositing the same into the account of Famous Electrical and Construction Supply without funding source from the depositor itself. Notably, it was the revelations made by the accused-appellant in said *Sinumpaang Salaysay* which alone established her complicity in the crimes charged. The testimonies supplied by prosecution witnesses DBP Branch Accountant Mejaide F. Poblacion, COA State Auditor Anastacia V. Argente, and DBP Management and Audit Officer III Arlene F. Calimlim did little to tattle on the active participation of the accused-appellant save for the discovery of the cash shortage in the DBP Lucena and the audit investigation made.

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<sup>45</sup> *Wacoy v. People*, G.R. Nos. 213792 & 213886, June 22, 2015.

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Can the extrajudicial confession made by accused-appellant in her *Sinumpaang Salaysay*, therefore, be the lone basis of her conviction? Otherwise stated, is the prosecution relieved of its duty to come up with evidence if the accused-appellant herself during trial has been candid enough to admit the voluntary execution of her *Sinumpaang Salaysay* detailing her participation to the charges?

Ostensibly, despite the gravity of her extrajudicial confession, it is not for the prosecution to rest easy on the fact that the accused-appellant dug herself a hole. The prosecution still has the onerous burden to prove the commission of the crimes charged.

Rule 133 of the Revised Rules on Evidence<sup>46</sup> provides:

*Section 3. Extrajudicial confession, not sufficient ground for conviction.* — An extrajudicial confession made by an accused, **shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti.** [Emphasis supplied]

In *People v. Barlis, et al.*,<sup>47</sup> the Supreme Court explained:

*Corpus delicti* is the body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man or the charred remains of a house burned down. **In a derivative sense, it means the substantial fact that a crime was committed.** It is made up of two elements: (a) that a certain result has been proved, for example, a man has died or a building has been burned; and (b) that some person is criminally responsible for the act. Section 3, Rule 133 does not mean that every element of the crime charged must be clearly established by independent evidence apart from the confession. It means merely that **there should be some evidence tending to show the commission of the crime apart from the confession.** Otherwise, utility of the confession as a species of proof would vanish if it were necessary, in addition to the confession, to adduce other evidence sufficient to justify conviction independently of such confession. Otherwise stated, the other evidence need not, independently of the confession, establish the *corpus delicti* beyond a reasonable doubt. (Emphasis supplied)

In these cases, the prosecution failed to present *independent evidence* to prove the *corpus delicti* of the charges. For the offense of Violation of Section 3(e) of RA 3019, there should have been concrete proof that accused-appellant acted with evident bad faith causing undue injury to the Government. For the crime of Malversation, the element of appropriation of public funds to which the accused-appellant, or acting in conspiracy thereof, is accountable thereto.

<sup>46</sup> Prior to its amendment, as the trial of these charges occurred before its effectivity on May 1, 2020.

<sup>47</sup> G.R. No. 101003, March 24, 1994.

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***The evidence presented by the Prosecution was insufficient to produce a conviction for the crimes charged.***

Accused-appellant, together with Edelyn Tarranco, accused-appellant's husband Wilfredo Abrigo, and brother Diego Jabola, were charged with Violation of Section 3(e) of R.A. 3019 and Malversation of Public Funds, whose elements are, as follows:

<b>Violation of Sec. 3(e) of R.A. 3019</b>	<b>Malversation of Public Funds</b>
1) The accused must be a public officer discharging administrative, judicial or official functions;	1) That the offender be a public officer. 2) That the offender had the custody or control of funds or property by reason of the duties of his or her office.
	3) That those funds or property were public funds or property for which he or she was accountable.
2) The accused must have acted with manifest partiality, evident bad faith or inexcusable negligence; and	4) That the offender appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. <sup>48</sup>
3) That accused's action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his or her functions. <sup>49</sup>	

Preliminarily, these cases involved public funds belonging to the Development Bank of the Philippines – Lucena City branch, a government financial institution.<sup>50</sup> Two public officers, DBP teller Edelyn Tarranco and COA Auditor Prima Abrigo, have been charged with acts constituting the above crimes. Abrigo was convicted of both crimes, while Tarranco remained at large.

The evidence, however, reveals a huge slip in the second and third elements of Violation of Section 3(e) of R.A. 3019, and the fourth element of Malversation of Public Funds.

<sup>48</sup> *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015.

<sup>49</sup> *Coloma v. Sandiganbayan*, G.R. No. 205561, September 24, 2014.

<sup>50</sup> *DBP v. COA*, G.R. No. 144516, February 11, 2004; Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations. (*CCFOP v. Pres. Benigno Simeon Aquino III, et al.*, G.R. No. 217965, August 8, 2017).

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The evidence presented by the Prosecution consisted only of the following:

	Particulars	Exhibit
A. Cash Counts / Audit Reports	Cash Count as of April 27, 1999 (DBP Lucena)	"I"
	Report of Cash Examination (COA)	"J"
	Written Report dated August 31, 1999 (COA)	"K"
B. Preliminary Investigation Affidavits and Resolution / COA Decision	Affidavit-Complaint of DBP's Carlos Cruz <sup>51</sup>	"A"
	Joint Affidavit of DBP's Eugenio de la Cruz and Arlene Calimlim	"B"
	Joint Counter-Affidavit of Prima and Wilfredo Abrigo and Diego Jabola	"C"
	Joint Resolution of the Office of the Ombudsman	"H"
	COA Decision No. 2008-038	"O"
C. Sworn Statements / Affidavits / Letters / Offers of compromise	Joint Affidavit of COA's Anastacia Argente, Ma. Girlie Pentinio and Abel Ragudo	"S"
	COA Office Order No. 99-526	"U"
	Sinumpaang Salaysay of DBP Lucena's Mejaide Poblacion	"Q"
	Sinumpaang Salaysay of Prima Abrigo	"C" / "E"
	Sinumpaang Salaysay of Edelyn Tarranco	"D"
	Demand Letter to tellers, including Tarranco	"L"
	Tarranco's Letter-Reply stating that ₱891,000.00 was with Prima Abrigo	"M"
Abrigo's letter "proposing to pay [her] obligation with the DBP"	"N"	
D. Six (6) PDCP Bank checks amounting to ₱891,000.00		"F" to "F-5"

The entirety of the Prosecution's evidence proves: (a) a shortage found in DBP - Lucena City's cash-in-vault which did not specifically pinpoint the irregularity to the name of accused-appellant were it not for the letter dated June 6, 1999<sup>52</sup> submitted by accused Edelyn Tarranco that "*the missing fund is not in [her] custody*" and "*the fund is with x x x Ma. Prima Abrigo – P891,000.00*"; (b) the audit investigations conducted before the cases were filed in court which resulted in the execution of the *Sinumpaang Salaysay* of the accused-appellant; and (c) the issuance of six (6) PDCP checks which were issued by Wilfredo Abrigo for Solden Commercial, not the accused-appellant as charged in the Informations.

At the outset, the prosecution may have seen the build-up of a strong case against the accused-appellant since she herself voluntarily owed up to the responsibility of having sufficient cash to fund inward checks issued by Famous Electrical & Construction Supplies which, in reality, were not sufficiently funded. To reiterate, the revelations in her *Sinumpaang Salaysay* were unmistakably blunt and direct:

<sup>51</sup> Did not testify as a witness for the prosecution.

<sup>52</sup> Exhibit "M".

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13. TANONG: Mayroon ka bang alam sa pagpapalit ng tseke na kulang o walang pondo na ini-issue ng Famous Electrical and Construction Supplies?  
SAGOT: Opo.

x x x

16. TANONG: Gumagawa ka ba ng deposit slip at ibinibigay mo sa teller na walang perang involve[d] o kulang ang pera?

SAGOT: Mayroon po.

17. TANONG: Anong pinanghahawakan ng teller sa deposit slip na kulang o walang pera kang ibinigay? Magkano ang mga ito?

SAGOT: May tseke akong ibinibigay sa teller. O di kaya naman ay binibigyan ko na lang ng cash.

18. TANONG: **Kumukuha ka ba ng pera kay Ms. Tarranco at binibigyan mo siya ng tseke at ang pera ay ibinibigay mo sa teller para ideposito sa account ng Famous Electrical and Construction Supplies?**

SAGOT: **Latel lang, mga February 1999.**

19. TANONG: Magkano ang nakuha mong pera sa mga teller na sina Ma. Teresa Madrideo, Rosalinda Driz at Edelyn Tarranco?

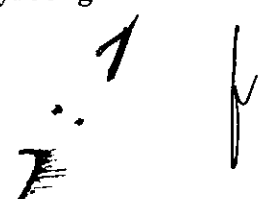
SAGOT: Kay Ma. Theresa Madrideo ay ₱792,000.00. Kay Rosalinda Driz ay ₱3,258,000.00 at kay **Edelyn Tarranco ay ₱891,000.00.** Ang kabuuang halaga ay ₱4,941,000.00. x x x

20. TANONG: Ibig kong ipaalam sa iyo na noong mag-conduct ng audit o cash [e]xamination ang audit team ng Commission on Audit ay mayroong pagkukulang sa cash accountability sa cash in vault account sa kabuuang halagang P18,800,074.94. Anong masasabi mo tungkol dito(?) Alam mo ba kung magkano ang hiniram mo na halaga sa mga teller?

SAGOT: **Wala po akong nalalaman sa ibang halaga maliban sa halaganag P4,941,000.00 na hiniram ko sa mga teller na nabanggit ko sa nakalipas na tanong.**

21. TANONG: **Maari bang ipaliwanag mo ang pagkukulang na ito?**

SAGOT: **Nagamit ko po ito sa pagpopondo sa aking mga inward check na kung dumating sa bangko ay mayroong hindi sapat na pondo.** x x x.



A perusal of accused-appellant's *Sinumpaang Salaysay* would have indeed sowed a fertile ground to the filing of the present charges. Her admissions were voluntary and spontaneous enough to be admitted as evidence. However, the Prosecution cannot simply rely on such out of court statements. Otherwise, the accused-appellant would have come to court already burdened by the certainty of her own conviction, leaving the Prosecution with nothing to prove.

This is contrary to the rule that in a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt.<sup>53</sup> Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty.<sup>54</sup>

In these cases, however, the Prosecution relied heavily on accused-appellant's own incriminating statements to supplement and piece together what scant evidence it had.

***In both charges, there is no independent proof how accused-appellant caused undue injury to or appropriated the sum ₱891,000.00 from DBP.***

In the appealed Judgment, the trial court, relying on accused-appellant's *Sinumpaang Salaysay*, concluded that:

x x x Ms. Abrigo had Teller Tarranco credit fictitious cash deposits to the account of Famous Electrical and Construction Supply belonging to Ms. Abrigo and her brother/co-accused Diego Jabola. This was done to fund the inward clearing checks issued by Ms. Abrigo and/or her brother Diego under the account name Famous Electrical and Construction Supply. To conceal the fraudulent scheme and the resulting cash shortage, Ms. Abrigo gave Tarranco 6 PDCP checks issued by her husband and co-accused Wilfredo Abrigo.

x x x

In these present cases, the records established with moral certainty that Ma. Prima and Edelyn acted in concert to achieve a common objective. They took advantage of their official positions – Ma. Prima as COA Auditor and Edelyn as bank teller – to defraud the DBP of ₱891,000.00. Ma. Prima would either encash checks or hand deposit slips to Edelyn without the corresponding cash deposit. In turn, Edelyn would either encash the checks or credit the fictitious deposits to the account of Famous Electrical and Construction Supply owned by Ma. Prima and her brother/co-accused Diego Jabola. To conceal the shortage, Ma. Prima gave Edelyn checks issued by her husband and co-accused Wilfredo Abrigo.

<sup>53</sup> Rule 133, Section 2, Revised Rules on Evidence.

<sup>54</sup> *Daayata, et al. v. People*, G.R. No. 205745, March 8, 2017.

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Since it was impossible to get direct evidence from Edelyn Tarranco, who remains at large, there should have been at least circumstantial evidence to corroborate accused-appellant's confession on which to anchor such a finding. To reiterate, **an extrajudicial confession will not support a conviction where it is uncorroborated.** There must be such corroboration that, when considered in connection with the extrajudicial confession, would show the guilt of accused beyond a reasonable doubt. Circumstantial evidence may be sufficient corroboration of a confession.<sup>55</sup>

In these cases, the damning evidence was only provided by accused-appellant's *Sinumpaang Salaysay*, nothing else. The Prosecution was not even able to introduce basic evidence which could have shown that a total of ₱891,000.00 was indeed credited to the account of Famous Electrical and Construction Supply, even if the existence of the account was stipulated during pre-trial, let alone that it was teller Edelyn Tarranco who credited it. The trial court pegged the government's undue injury to ₱891,000.00, the total amount of the six (6) PDCP checks, which was supposed to cover up the shortage, without the corresponding bogus deposits having been established. In her *Appellant's Brief*, accused-appellant averred that the checks issued by Famous (not to be confused with the six PDCP checks) should have been presented, and the six (6) PDCP checks should have been proven to be unfunded. These would have been helpful, but only alongside evidence that funds were indeed unduly credited to Famous' account. But there is confusion compounded here at the outset since the Informations actually charged checks *issued by the accused-appellant herself* which the evidence on subject checks<sup>56</sup> did not even show.

In jurisprudence, "undue injury" is consistently interpreted as actual damage, akin to that in civil law, which, in turn, is defined by Article 2199 of the Civil Code as adequate compensation only for such pecuniary loss suffered by him as he has duly proved.<sup>57</sup>

While the Prosecution independently proved a shortage in DBP Lucena's cash-in-vault, it was unable to prove the movement of a portion of said shortage amounting to ₱891,000.00 from the DBP's coffers to Famous' bank account. Undue injury was thus not proved. In the same vein, since there is no independent proof that the accused-appellant herself appropriated the amount of ₱891,000.00 from DBP, there can be no conviction for Malversation.

***Accused-appellant was convicted for acts not alleged in the Informations.***

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<sup>55</sup> *People v. Satorre*, G.R. No. 133858, August 12, 2003.

<sup>56</sup> Exhibits "F" to "F-5".

<sup>57</sup> See *Santos v. People*, G.R. No. 161877, March 23, 2006.

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In *Andaya v. People*,<sup>58</sup> the Supreme Court explained:

**It is fundamental that every element constituting the offense must be alleged in the information.** The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense.[32] **The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived.** No matter how conclusive and convincing the evidence of guilt may be, **an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein.** To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights. (emphases supplied)

On the charge of **Violation of Section 3(e) of R.A. 3019**, below is a comparison of its elements, the allegations in the *Information*, and the findings of the trial court:

Elements	Information	Finding
2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and	[Tarranco and Abrigo], acting through <b>evident bad faith</b> along with private accused DIEGO JABOLA and WILFREDO ABRIGO x x x	In the instant case, Ma. Prima Abrigo's acts were patently committed <b>not only with bad faith but also with manifest partiality.</b>
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.	cause[d] undue injury and damage to DBP-Lucena, a Government bank, in the amount of ₱891,000.00,  by accommodating checks <b>issued by PRIMA ABRIGO</b>  to conceal cash deposit slips <b>without</b> corresponding cash deposits,  <b>credited in the account of DIEGO JABOLA and WILFREDO ABRIGO, in</b>	<b>Ms. Abrigo had Teller Tarranco credit fictitious cash deposits to the account of Famous Electrical and Construction Supply</b> belonging to Ms. Abrigo and her brother/co-accused Diego Jabola  To conceal the fraudulent scheme and the resulting cash shortage, Ms. Abrigo gave Tarranco <b>6 PDCP checks issued by her husband and co-accused Wilfredo Abrigo.</b>  Diego's only 'participation' was that he happened to co-own the checking account

<sup>58</sup> G.R. No. 168486, June 27, 2006.

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	<p>the same amount of ₱891,000.00,</p>	<p>Famous Electrical and Construction Supply with his sister Ma. Prima. As for Wilfredo, his only participation was that 6 PDCP checks issued by him were found in Tarranco's possession and surrendered by the latter during the investigation. All these checks were given by Ma. Prima to Edelyn.</p>
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The only act imputed to accused-appellant Abrigo in the *Information* was the issuance of the checks accommodated by Tarranco to conceal the bogus cash deposits. **However, none of these checks issued by accused-appellant Abrigo was presented in evidence.** Instead, the trial court found that these checks were issued by Wilfredo Abrigo (for Solden Commercial),<sup>59</sup> who, in turn, was acquitted, since his participation was limited to the issuance of said checks, which was precisely the primary act accused-appellant has been charged with.

Ostensibly, there is confusion in the facts laid out by the Prosecution which glaring slip cannot sustain a solid judgment of conviction no matter how easy it became for the accused-appellant to come forward with her wrongdoing.

On the charge of **Malversation of Public Funds**, on the other hand:

Elements	Information	Finding
<p>4) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.</p>	<p>x x x malverse, embezzle, and misappropriate the amount of ₱891,000.00 by accommodating checks and/or credit cash deposit slips</p> <p>without corresponding check deposit issued by PRIMA ABRIGO</p> <p>to the account of <b>DIEGO JABOLA and WILFREDO ABRIGO</b> in the same amount of ₱891,000.00</p>	<p>Ms. Abrigo had Teller Tarranco credit fictitious cash deposits to the account of <b>Famous Electrical and Construction Supply</b> belonging to Ms. Abrigo and her brother/co-accused Diego Jabola</p> <p><b>Diego's only 'participation' was that he happened to co-</b></p>

<sup>59</sup> Exhibits "F" to "F-5".

	thereby allowing said DIEGO and WILFREDO ABRIGO to appropriate for themselves the aforestated amount to the damage and prejudice of DBP and the Government.	own the checking account Famous Electrical and Construction Supply with his sister Ma. Prima. As for Wilfredo, his only participation was that 6 PDCP checks issued by him were found in Tarranco's possession and surrendered by the latter during the investigation. All these checks were given by Ma. Prima to Edelyn.
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As with the charge for Violation of Section 3(e) of R.A. 3019, there was no proof of Diego Jabola and Wilfredo Abrigo's own bank account, separate or joint. Instead, the trial court found that accused-appellant caused teller Tarranco to credit the ₱891,000.00 to the account of **Famous Electrical and Construction Supply** belonging to accused-appellant and her brother Diego Jabola. While the *Information* alleged that it was Diego Jabola and Wilfredo Abrigo who appropriated the ₱891,000.00 credited to their account, it was accused-appellant, *who was not charged with the commission of the appropriation in the Information*, who was instead found guilty of appropriating said funds.

The conspiracy theory has been muddled at this instance. If supposed conspirators Diego Jabola and Wilfredo Abrigo were acquitted when they were supposed to have appropriated the amount of ₱891,000.00, where then will the criminal liability of the accused-appellant be linked to if the appropriation, as charged in the *Information*, was not charged to be her personal doing?

The inconsistencies at this instance weakened the stance of the Prosecution.

The evidence presented before the trial court is concededly rife with details supplied by the accused-appellant herself. She weaved her own participation which even this court has no reason to disbelieve. But a court can only rely on evidence on the basis of necessary proof of guilt beyond reasonable doubt. This is a burden that rests on the Prosecution's shoulders, not that of the accused-appellant. Should the Prosecution fail to discharge its burden, acquittal must follow as a matter of course.<sup>60</sup>

In *People v. Satorre*,<sup>61</sup> where the Supreme Court reversed the accused's conviction based on an uncorroborated extrajudicial confession, it went on to explain:

<sup>60</sup> *Daayata v. People*, G.R. No. 205745, March 8, 2017.

<sup>61</sup> G.R. No. 133858, August 12, 2003.

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To conclude, it must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. **Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable.** The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt. In fact, unless the prosecution discharges the burden of proving the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.

The criminal liability adjudged on the accused-appellant should have been based not on her admissions alone, but on separate and independent proof to establish the *corpus delicti* of the crimes.

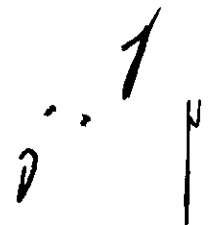
While the accused-appellant has been steered clear of her criminal liability, she is not discharged in a similar way to her civil liability *ex delicto*. The act from which the civil liability might arise did exist. At this instance, only a preponderance of evidence can be appreciated.<sup>62</sup>

***Accused-appellant should be adjudged civilly liable to pay the amount of P891,000.00 charged in the Informations, not because of her conviction as adjudged in the challenged Decision, but because there is preponderance of evidence to hold her civil liability ex delicto.***

The rule is that every act or omission punishable by law has its accompanying civil liability. The civil aspect of every criminal case is based on the principle that every person criminally liable is also civilly liable. If the accused, however, is not found to be criminally liable, it does not necessarily mean that he or she will not likewise be held civilly liable because extinction of the penal action does not carry with it the extinction of the civil action. This rule more specifically applies when (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted. The civil action based on the delict is extinguished if there is a finding in the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him. It can, therefore, be concluded that if the judgment is conviction of the accused, then the necessary penalties and civil liabilities arising from the offense or crime shall be imposed. On the contrary, if the judgment is of acquittal, then the

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<sup>62</sup> *Co v. Munoz*, G.R. No. 181986, December 4, 2013.



imposition of the civil liability will depend on whether or not the act or omission from which it might arise exists.<sup>63</sup>

Section 2, Rule 120 of the Revised Rules of Criminal Procedure states:

Section 2. *Contents of the judgment.* — x x x.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, **the judgment shall determine if the act or omission from which the civil liability might arise did not exist.** (Emphasis supplied)

In these cases, there is preponderance of evidence to establish that the act from which the civil liability might arise did exist. Accused-appellant displayed no qualms at all in admitting her civil liability.

On one hand, stipulations were made during pre-trial,<sup>64</sup> among others, where accused-appellant admitted her civil obligation to the bank, to wit:

When the case was called for pre-trial conference, where both the prosecution and the defense were duly represented, and there being no plea bargaining, the parties entered into the following stipulations/admissions:

xxx                      xxx                      xxx                      xxx.

**9) That accused Maria Prima Abrigo y Jabola and the rest of the accused had a[n] obligation in favor of the bank in the amount of ₱891,000.00; x x x.** (Emphasis supplied)

It must be noted, however, that the Pre-Trial Order was not signed by the accused-appellant and her counsel to be binding on her pursuant to Section 2, Rule 118 of the Revised Rules of Criminal Procedure.<sup>65</sup> However, this may only hold true within the context of the admission made to establish **criminal liability**. For purposes of determining the **civil liability** of the accused-appellant, the judicial admission made during pre-trial will already be appreciated. The stipulation is binding on the accused-appellant, as contained in the trial court's Pre-Trial Order.<sup>66</sup>

On the other hand, a *Request for Admission*<sup>67</sup> filed by the Prosecution during trial on November 11, 2014 requested the admission of the following:

<sup>63</sup> *Nissan Gallery-Ortigas v. Felipe*, G.R. No. 19906, November 11, 2013.

<sup>64</sup> Pre-Trial Order dated August 2, 2016; *Records of Crim. Case No. 2010-549*, Volume 1, no pagination appears.

<sup>65</sup> Section 2. *Pre-trial agreement.*—All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court. (sec. 4, cir. 38-98).

<sup>66</sup> Vide: *Lucenta v. CFI of Bukidnon*, G.R. No. L-39789, June 20, 1988.

<sup>67</sup> *Records*, Volume 2, pp. 552-554.

10. The ₱891,000.00 subject matter of this case is only a portion of the admitted liability of Accused Ma. Prima Jabola-Abrigo in the total amount of ₱4,941,000.00.

In her *Answer to the Request for Admission*,<sup>68</sup> accused-appellant registered the following:

f) Paragraph 10 is denied on the ground that the amount of ₱891,000.00 is portion, not of the alleged “admitted liability,” but of the loan transactions in the total amount of ₱4,941,000.00.

The *Answer to the Request for Admission* was not at all a denial of the civil liability but only a qualification that the amount of ₱891,000.00 was part of the loan transactions of the accused-appellant. Whether the amount was part of a loan transaction or not, the *Answer* only confirmed that accused-appellant still had a balance of ₱891,000.00 to pay.

Besides, a letter dated June 7, 1999<sup>69</sup> appeared to have made by the accused-appellant where she proposed to pay her obligation with DBP in the total amount of ₱4,941,000.00 through installments, starting with ₱300,000.00 monthly until fully paid. The total obligation in the amount of ₱4,941,000.00 has been consistently referred to. Hence, if accused-appellant admitted in her *Answer to the Request for Admission* that the amount of ₱891,000.00 formed part of the loan transaction of ₱4,941,000.00, she only had to pay. Her judicial admission in the *Answer to the Request for Admission* provided sufficient basis to adjudge her civil liability.

Where evidence to prove her criminal liability did not amount to proof beyond reasonable doubt, there is enough preponderance of evidence to adjudge accused-appellant civilly liable for the amount of ₱891,000.00 as charged in the Informations.

**WHEREFORE**, the appeal is **GRANTED**. The Judgment dated March 10, 2020 of the Regional Trial Court of Lucena City, Fourth Judicial Region, Branch 58, promulgated in Criminal Case Nos. 2010-548 and 2010-549 finding accused-appellant Maria Prima Abrigo y Jabola<sup>70</sup> a.k.a. Prima Abrigo y Jabola<sup>71</sup> guilty beyond reasonable doubt of Violation of Section 3(e) of R.A. 3019 and Malversation of Public Funds, respectively, is **REVERSED** and **SET ASIDE**.

Accused-appellant Maria Prima Abrigo y Jabola a.k.a Prima Abrigo y Jabola is **ACQUITTED** of the crimes of Violation of Section 3(e) of R.A. 3019 and Malversation of Public Funds for failure of the prosecution to prove her guilt beyond reasonable doubt.

<sup>68</sup> Records, Volume 2, pp. 591-593.

<sup>69</sup> Exhibit “N”.

<sup>70</sup> As her name appears in Criminal Case No. 2010-548.

<sup>71</sup> As her name appears in Criminal Case No. 2010-549.

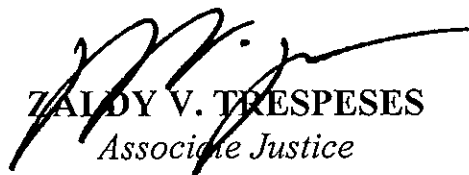
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Preponderance of evidence, however, exists to hold accused-appellant Maria Prima Abrigo y Jabola a.k.a. Prima Abrigo y Jabola civilly liable for the amount of ₱891,000.00 charged in the Informations. She is thus directed to **PAY** the Development Bank of the Philippines (DBP) – Lucena Branch the amount of ₱891,000.00 upon the finality of this Decision.

**SO ORDERED.**

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

**WE CONCUR:**

  
**ZALDY V. TRESPESES**  
*Associate Justice*

  
**GEORGINA D. HIDALGO**  
*Associate Justice*

**A T T E S T A T I O N**

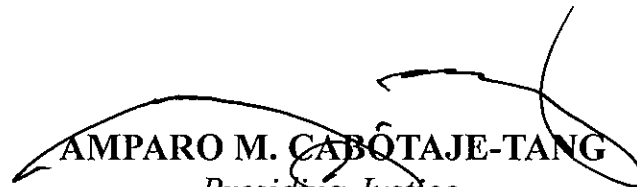
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**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. CABÓTAJE-TANG  
*Presiding Justice*

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