

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

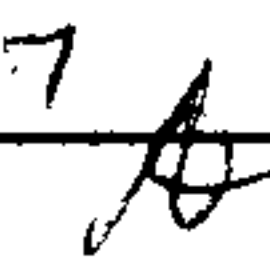
PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-11-CRM-0451
For: Malversation (Article 217
of the Revised Penal Code)

- versus -

CLEMENTE G. SANDIGAN, JR.,
Accused.

Present:
HERRERA, JR., J., Chairperson
MUSNGI, J., Associate Justice
PAHIMNA, J., Associate Justice

August 22, 2017
Promulgated 

DECISION

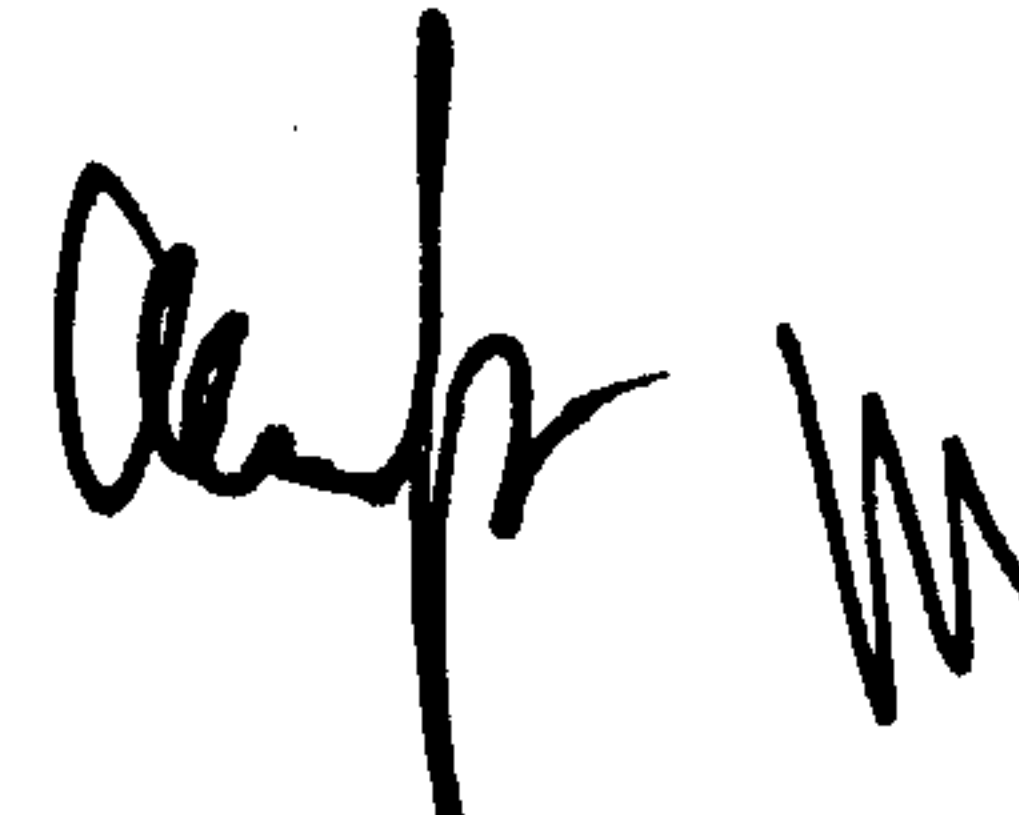
MUSNGI, J.:

Accused **Clemente G. Sandigan, Jr.** (hereinafter "**Sandigan**") is charged with the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) for allegedly misappropriating and converting to his own use the amount of Seven Hundred Thousand Pesos (P700,000.00) from the Priority Development Assistance Fund (PDAF) of then Senator Robert Z. Barbers (hereinafter "**Senator Barbers**") to finance several projects of different barangays in the Municipality of Malimono, Surigao del Norte.

The *Information*¹ filed on 15 November 2011 reads, thus:

"That between the period January 2004 to December 2004, or sometime prior or subsequent thereto, in the Municipality of Malimono, Surigao del Norte, Philippines, and within the jurisdiction of the Honorable Court, accused **CLEMENTE GESTA SANDIGAN, JR.**, a high ranking public officer being the Municipal Mayor of Malimono, Surigao del Norte, and as such is responsible and accountable for the disbursement of public funds deposited in the municipality's current account, while in the performance of his official function, committing the offense in relation to office and

¹ Sandiganbayan Records, Vol 1, pp.1-3.



taking advantage of his official position, did then and there willfully, unlawfully and feloniously take, misappropriate and convert to his own personal use and benefit the amount of **P700,000.00 (SEVEN HUNDRED THOUSAND PESOS)**, to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.”

THE FACTS

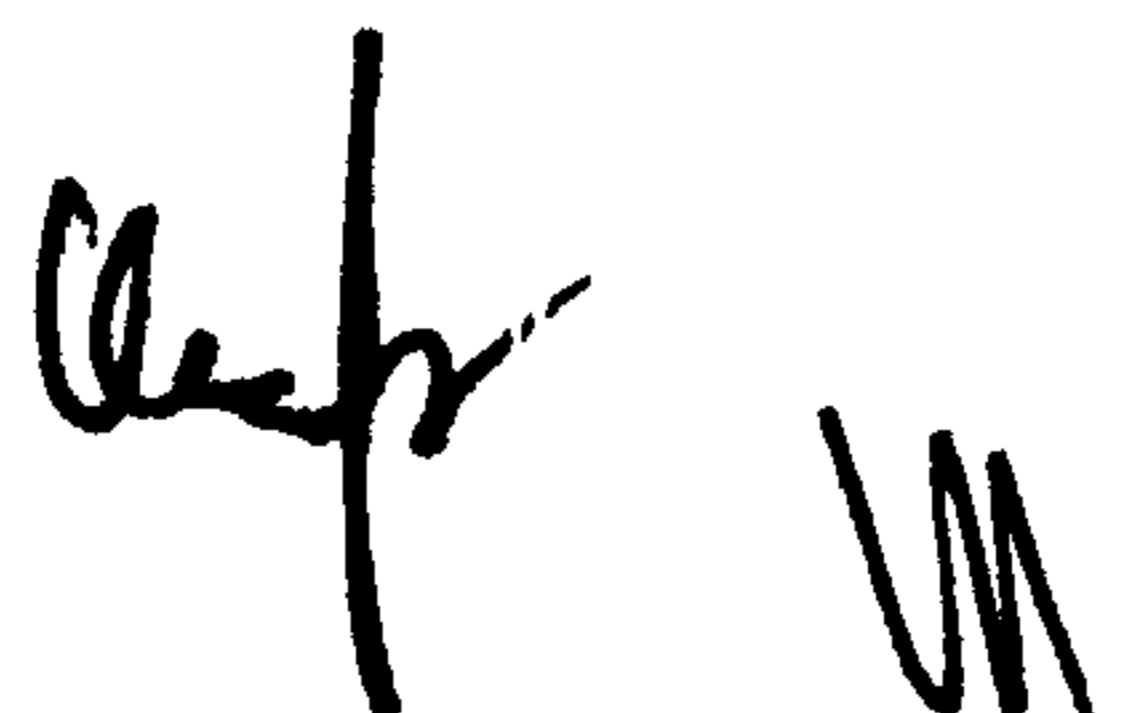
This case stemmed from the Report on the Special Audit of the Municipality of Malimono, Surigao del Norte² (hereinafter “**Special Audit Report**”) issued by the Commission on Audit (COA) on 07 September 2006. The audit was conducted between 27 March to 11 April 2006 pursuant to the request letter dated 02 February 2006 of then Surigao del Norte Provincial Governor Robert Lyndon S. Barbers. Among others, the COA found that “Funds allocated for various undertakings/programs/projects of the Municipality of Malimono in the total amount of P849,233.36 including the amount of P700,000.00 from the Priority Development Assistance Fund of Senator Robert Z. Barbers, were used to finance activities and projects other than those for which they were intended.” Thus, the COA recommended that this matter be referred to the Office of the Ombudsman (OMB) for further investigation.

The COA issued an Audit Observation Memorandum requiring the Municipality of Malimono to submit its comment on the Special Audit Report. Municipal Budget Officer Alex C. Lambus submitted his comment,³ thus:

“Records showed that the PDAF of P700,000.00 was credited to the account of the LGU of Malimono on January 24, 2004 but the Department of Budget and Management released the amount on February 2, 2004 however, the Special Allotment Released (sic) Order (SARO) was received only on December 16, 2004. With that premises (sic), the Mayor Hon. Clemente G. Sandigan, Jr., implemented the PDAF of P700,000.00 for the rehabilitation of Brgy Hanagdong farm to market road which during that time urgently needed to be rehabilitated or repair (sic). It was implemented last February 2004 (sic) and was completed March of 2004. (there was a bidding and a [sic] qualified bidders) Believing it was a development fund that’s why the Mayor used it to finance said road rehabilitation. If we had remembered municipality of Malimono was once damaged during December 2003 flash (sic) floods and Brgy Hanagdong farm to market road was greatly affected which needs urgent repair. Year 2004 was also the election year comes (sic) last May. Comelec ban started March of said year. In order not to be within the ban period the amount was used to implement infra development projects. Later it was found out that based on the SARO which was received late of 2004 that said PDAF has its priority development project as stated

² *Supra* note 1, at pp.321-335.

³ *Memorandum (For Accused Sandigan, Jr.)* dated 27 June 2016, pp.4-5.



therein. But the LGU has no more means anymore (sic) to follow its original purpose because the amount was already implemented. It might be a diversion of funds but it was honestly been done not intentionally...”

Consequently, a *Complaint*⁴ for violation of Article 217 and/or Article 220 of the RPC was filed before the OMB on 20 October 2006 against accused Sandigan and Gorgonio S. Cabañas, Jr., Municipal Accountant of Malimono. In a *Resolution*⁵ dated 21 April 2008, the OMB found probable cause to indict accused Sandigan for violation of Article 217 of the RPC, but dismissed the complaint with regard to Cabañas because the latter’s participation in the disbursement of the P700,000.00 PDAF was not shown.

As culled from the records, the factual antecedents are as follows:

Upon the request of accused Sandigan as Mayor of the Municipality of Malimono, then Senator Barbers allocated P700,000.00 from his PDAF for the implementation of the following projects by the local government:

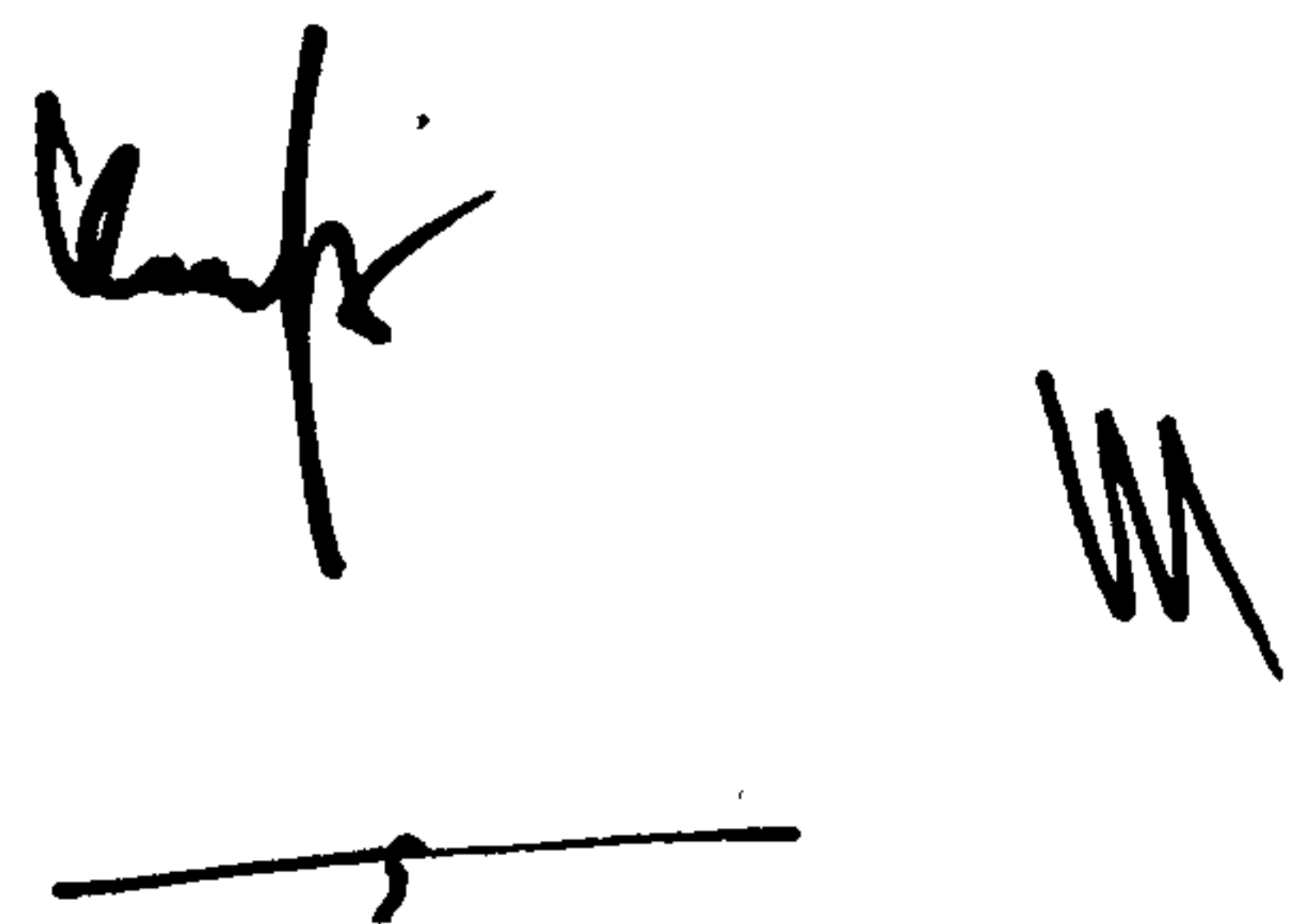
NAME OF PROJECT	AMOUNT
Construction of 2-storey Multi-Purpose Building, Barangay Hall Office, Barangay Social Hall at Barangay Masgad	P200,000.00
Concreting of Barangay Karihatag Road in Poblacion	P50,000.00
Construction of Day Care Center at Barangay Hanagdong	P200,000.00
Construction of Barangay Hall at Barangay Pili	P200,000.00
Repair of Hanagdong Elementary School at Barangay Hanagdong	P50,000.00
TOTAL:	P700,000.00

The PDAF was credited in the LandBank of the Philippines (LBP) Current Account No. 0982-1082-25 of the Municipality of Malimono on 29 January 2004 pursuant to two (2) separate Special Allotment Release Orders (SARO) namely, SARO No. ROXIII-2003-183 dated 25 October 2003 for the amount of P450,000.00, and SARO No. ROXIII-2003-192 dated 06 November 2003 for the amount of P250,000.00.

However, the said projects have not yet been implemented as found by the COA in its Special Audit Report.

⁴ *Supra* note 1 at pp.15-33.

⁵ *Id.*, pp.5-38.



The OMB indicted accused Sandigan for violation of Article 217 of the RPC because despite the non-implementation of the said projects, the P700,000.00 PDAF is no longer within the coffers of the Municipality of Malimono.

On 28 November 2011, accused Sandigan filed before the Court his *Entry of Appearance and Urgent Motion for Reduction of Bail*.⁶ The Court granted the same in an *Order* dated 29 November 2011. Hence, the accused posted a reduced bail in the amount of P20,000.00 cash, instead of the P40,000.00 bail bond. Subsequently, the Court issued a Hold Departure Order against accused Sandigan on 05 December 2011.

On 07 February 2012, accused Sandigan filed a *Motion to Quash the Information with Urgent Motion to Defer Arraignment*⁷ on the ground that the OMB had already lost the authority to file the *Information* due to a violation of his right to speedy disposition of the case. The Court denied the same in a *Resolution*⁸ dated 22 May 2012.

Upon arraignment on 31 July 2012, accused Sandigan, with the assistance of his counsel, pleaded not guilty to the offense charged.

During pre-trial, the parties agreed only on the following stipulations:

1. "That the accused is a public officer, being then the Municipal Mayor of Malimono, Surigao del Norte;"
2. 'That the amount of Seven Hundred Thousand Pesos (Php700,000.00) was a public fund;' and
3. 'That the amount was deposited with the Land Bank (sic) of the Philippines under Current Account No. 0982-1082-25.'⁹

The presentation of evidence for the prosecution then followed. After the prosecution rested its case, accused Sandigan filed on 20 November 2013 his *Motion for Leave of Court to File the Attached Demurrer to Evidence*¹⁰ which the Court denied in a *Resolution*¹¹ dated 06 March 2014. Consequently, the defense proceeded to present its evidence.

Thereafter, the parties submitted their respective *Memoranda* and the case was deemed submitted for decision.

⁶ *Supra* note 1, at pp.39-40.

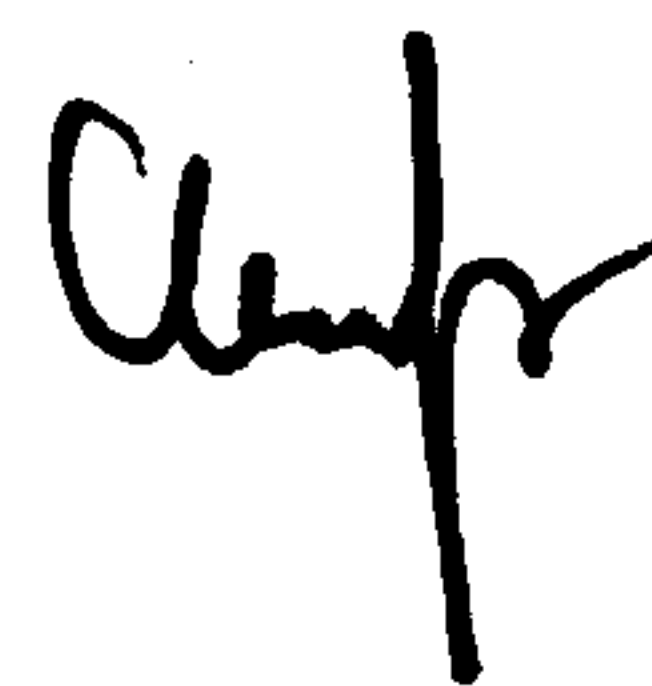
⁷ *Id.*, pp.63-71.

⁸ *Id.*, pp. 108-115.

⁹ *Id.*, pp. 151-162.

¹⁰ *Id.*, pp. 474-488.

¹¹ Sandiganbayan Records, Vol. 2, pp. 509-511.



EVIDENCE FOR THE PROSECUTION

The prosecution presented the testimonial evidence of **Alejandro B. Biñan**, **Romeo B. Tanjutco**, **John M. Silvosa**, **Enecitas B. Suizo**, and **Emelita I. Escalante**. Only the following testimonies pertinent to this case are summarized below:

The first witness for the prosecution is **Alejandro B. Biñan** (hereinafter "**Biñan**"), one of the private complainants in this case. At the time his testimony was taken, Biñan was a retired Philippine National Police Non-Commission Officer.¹² He was the duly elected Vice Mayor of the Municipality of Malimono for two (2) consecutive terms specifically, 2004 to 2007, and 2007 to 2010.¹³

Biñan testified that they filed the complaint against accused Sandigan "because he did not release the PDAF to the Barangay Captains for their implementation of the projects" covered by the said fund.¹⁴ In the third quarter of 2004, the other private complainants went to Biñan's office to inform him about the PDAF that was not released to them. Thereafter, Biñan and the other private complainants went to the office of Ms. Helen Cartin, Malimono's Bookkeeper at that time, to confirm if the money from the PDAF was already deposited in the account of the Municipality of Malimono. Ms. Cartin confirmed this and said that the PDAF was already deposited in the current account of the municipality.¹⁵ Biñan further confirmed with Ms. Cartin if the full amount of the P700,000.00 PDAF was still deposited in the current account of the municipality and she replied that the same had already been withdrawn. The remaining amount was, more or less, only P130,000.00.¹⁶

When asked what proof they have that the projects were not implemented, Biñan stated that (1) they conducted an ocular inspection of the barangays concerned; (2) the Barangay Captains signed a Certification stating therein that the projects were not implemented in their respective barangays; (3) Barangay Captains Patricio Laurenciana and Abdon Estrella, Sr. executed affidavits stating that no projects were implemented in their respective barangays which came from the PDAF of Senator Barbers; (4) the Municipal Engineer and accused Sandigan signed an Accomplishment Report stating that no projects were implemented from the PDAF of Senator barbers.

Biñan further testified that after learning that the projects were not implemented, the *Sangguniang Bayan* (SB) passed a Resolution requesting the COA to conduct a special audit in the Municipality of Malimono. The

¹² TSN dated 09 October 2012, p.8.

¹³ *Id.*, p.15.

¹⁴ *Id.*, p.16.

¹⁵ *Id.*, p.19.

¹⁶ *Id.*, pp.38-39.



audit was conducted from March to April 2006, and they were able to secure a copy of the Special Audit Report.

During cross-examination, Biñan testified that he is unsure whether accused Sandigan used up the full amount of the PDAF and whether the remaining balance in the municipality's current account to the amount of, more or less, P130,000.00 forms part of the same fund. Moreover, he confirmed that the Mayor is not authorized to withdraw any fund from the municipality's bank account without any supporting documents.¹⁷

When asked about the declaration of a state of calamity in Surigao del Norte, Biñan testified that the Municipality of Malimono, as well as the farm-to-market road of Barangay Hanagdong, were less affected. He stated that there was a graveling of the farm-to-market road but he did not know where the fund therefor came from. Moreover, he did not notice that the PDAF was used to cover the graveling of Hanagdong farm-to-market road because there was no resolution realigning the fund.

The next witness presented by the prosecution is **Romeo B. Tanjutco** (hereinafter "**Tanjutco**"). At the time his testimony was taken, Tanjutco was State Auditor III of the COA. He led the team that conducted the special audit involving the financial transactions of the Municipality of Malimono. He was State Auditor II at that time, and among the functions of his office "is to conduct Special Audit based on complaint, audit field works and preparation of Audit Reports relative to the audit conducted."¹⁸

Tanjutco testified that a total of P700,000.00 from the PDAF of Senator Barbers was deposited to the General Fund of the Municipality of Malimono on 29 January 2004 under Current Account No. 0982-1082-25. He identified in the Bank Statement secured from the LBP two (2) separate amounts of P250,000.00 and P450,000.00 credited to the said account of the municipality totaling P700,000.00.¹⁹ When asked where a PDAF should normally be deposited, Tanjutco answered that "normally it should be booked as Trust Fund."²⁰ After the PDAF was deposited to the General Fund of the municipality, it was recorded in its General Ledger that as of 31 January 2004, the total amount deposited therein is P2,099,033.00.

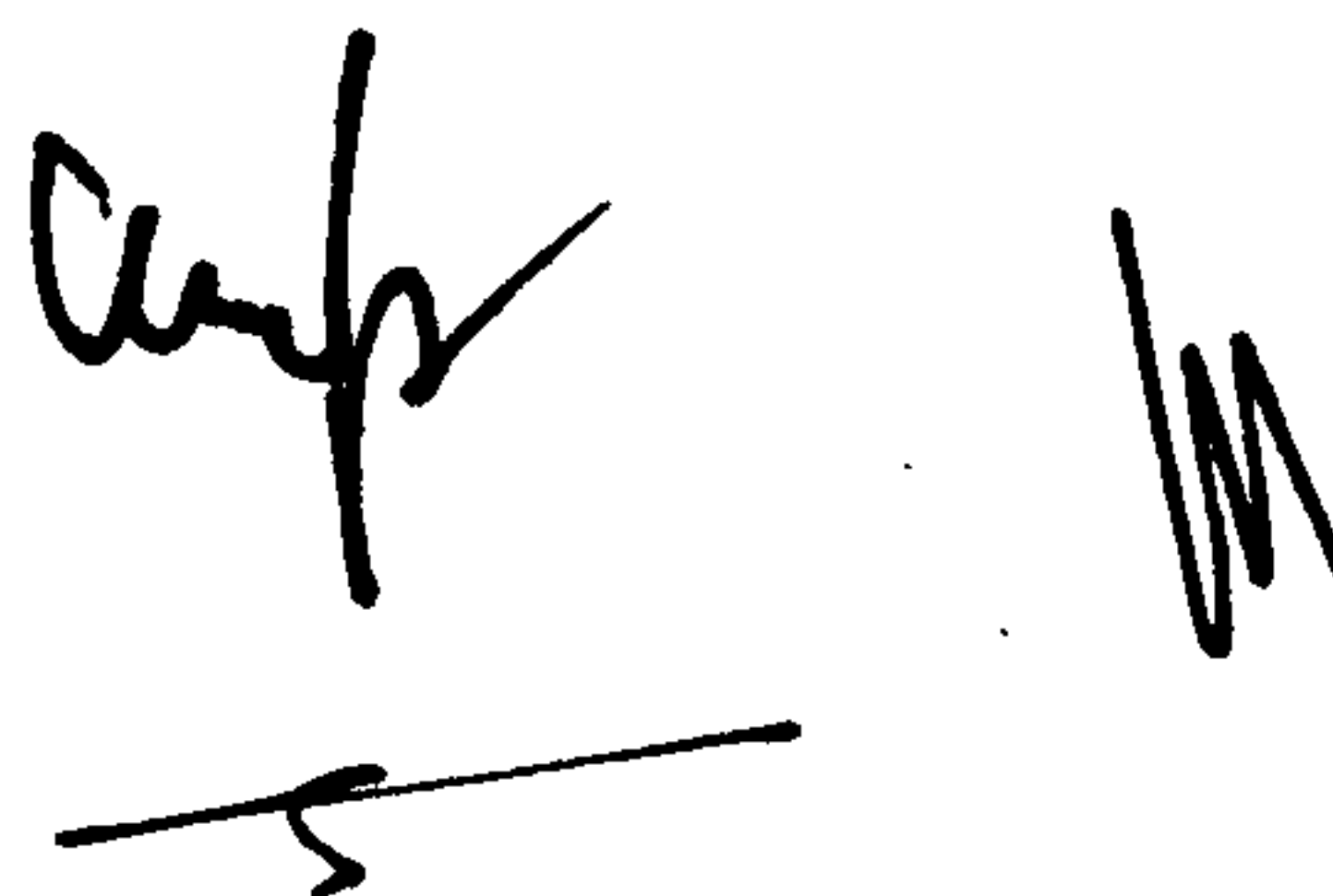
Before conducting the special audit, Tanjutco and the members of the special audit team made a courtesy call to accused Sandigan. Tanjutco narrated that in that meeting, accused Sandigan told him that "the projects under PDAF Funds were not implemented and instead they used it in other

¹⁷ TSN dated 18 February 2013, p.33.

¹⁸ TSN dated 10 April 2013, p. 6.

¹⁹ *Id.*, p.15.

²⁰ *Id.*, p.19-20.

The image shows three handwritten signatures or initials. The first is a cursive signature that appears to be 'Carp'. The second is a stylized signature that looks like 'M'. Below these is a horizontal line with a small mark at the end, possibly a signature or a mark.

projects.”²¹ He narrated further that accused Sandigan told him that “The amount of PDAF Fund was used to finance the farm to market road, the rehabilitation of Hanagdong road...”²² To verify the accused’s statement, Tanjutco gathered the following documents from the municipality to show that the PDAF was used to finance the road rehabilitation project: (1) Disbursement Voucher; (2) Bidder’s Bond; (3) Statement of Work Accomplished; and (4) Abstract of Bids. However, Tanjutco stated that none of these documents showed the source of the fund for the rehabilitation of Hanagdong farm-to-market road. These documents only revealed the irregularity in the bidding process conducted by the municipality.

The third witness presented by the prosecution was **John M. Silvosa** (hereinafter “**Silvosa**”). At the time his testimony was taken, Silvosa is already a businessman. However, he served as an SB Member of the Municipality of Malimono for nine years (2001 to 2010), including the time material to this case.²³ He stated that he also served as Committee Chairman of the infrastructure projects of the municipality, and among his duties is to assist and monitor infrastructure projects in Malimono.

Silvosa testified that he joined the other private complainants in filing the complaint against accused Sandigan after they went to the Office of the SB and “reported that the PDAF of Senator Barbers for the barangays was not implemented in their respective barangays.”²⁴ As then Committee Chairman of infrastructure projects, he conducted an inspection of the respective barangays and found that no projects were implemented using the PDAF of Senator Barbers. Thereafter, the SB had a talk with the Barangay Captains of the concerned barangays and decided to file a complaint against accused Sandigan.²⁵

Moreover, Silvosa testified that he monitored the infrastructure project involving the farm-to-market road of Barangay Hanagdong. He expressed his surprise to the road re-graveling because it was still very passable and did not require repair. He said that he knew this for a fact because he passes by the same almost everyday. He stated that he approached those who were working on the re-graveling and asked if there was any contract or Program of Work therefor. The workers replied that there was none.

The next prosecution witness was **Enecitas B. Suizo** (hereinafter “**Suizo**”), Municipal Treasurer of Malimono. Her main function as such is to disburse the fund of the municipality.

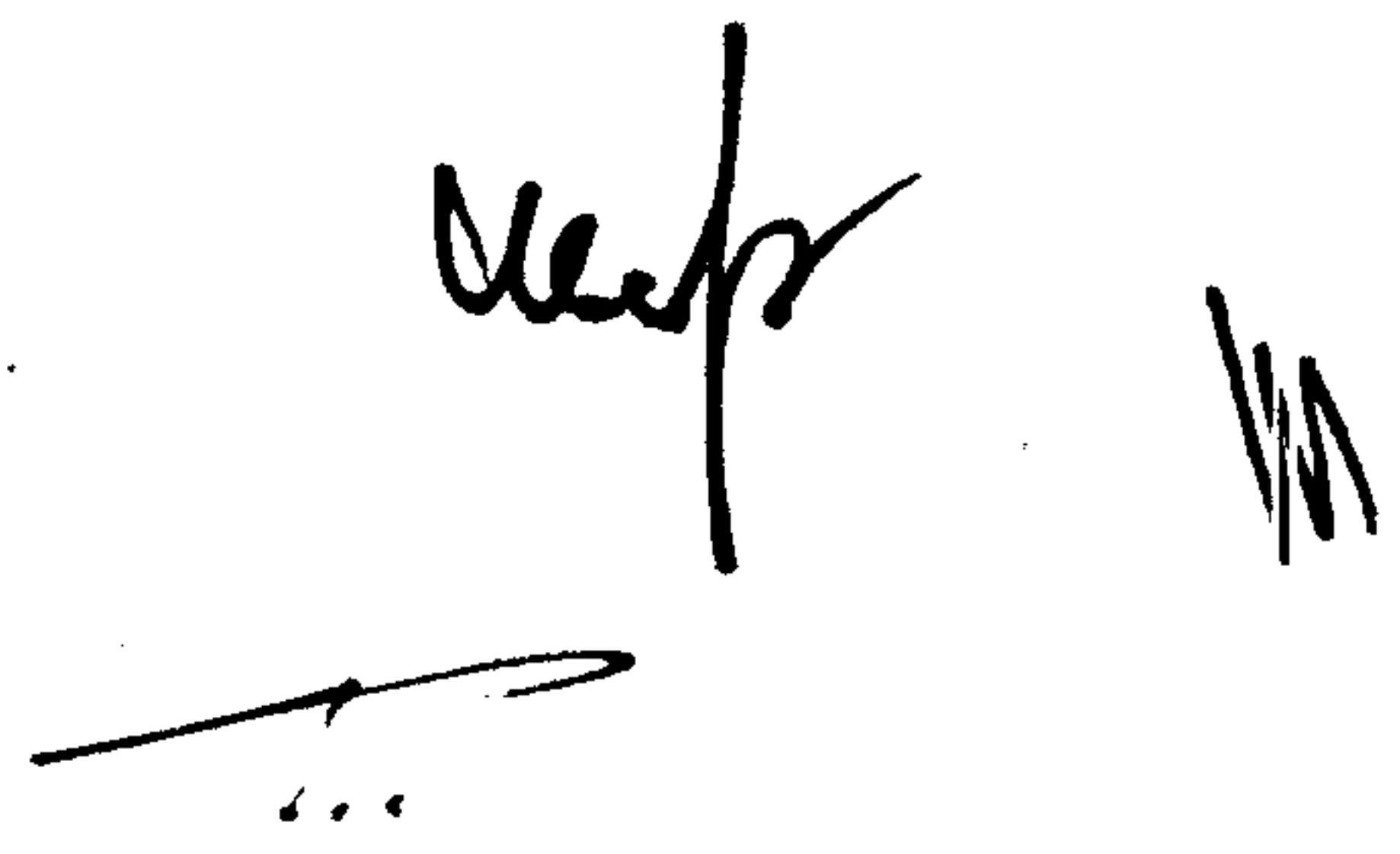
²¹ TSN dated 10 April 2013, p.12.

²² TSN dated 01 July 2013, p.6.

²³ TSN dated 06 May 2013, pp.5-6.

²⁴ *Id.*, p.9.

²⁵ *Id.*, p.10.

Handwritten signatures and initials at the bottom of the page. There are three distinct marks: a large, stylized signature on the left, a smaller signature or set of initials in the middle, and a vertical mark on the right.

In her cross-examination, Suizo testified that the municipality maintains three accounts namely, the General Fund, the 20% Development Fund, and the Trust Fund. The fund that enters the General Fund is the Internal Revenue Allotment (IRA), while the money for special projects goes into the Trust Fund. When asked about in which account the PDAF goes to, Suizo answered that she is not aware of this kind of fund.²⁶

The sixth witness for the prosecution was **Emelita I. Escalante** (hereinafter "**Escalante**"). At the time her testimony was taken, Escalante was the Acting Head of the LBP, Surigao Branch. Among her duties is to oversee the branch operations of the bank.

During her direct examination, Escalante identified the bank statements of the municipality's Current Account No. 0982-1082-25 which reflected the General Fund of Malimono for the periods 30 November 2004 to 31 December 2004; 30 April 2004 to 31 May 2004; 31 March 2004 to 30 April 2004; 29 February 2004 to 31 March 2004; and 31 December 2003 to 31 January 2004.

On cross-examination, Escalante testified that the Municipality of Malimono also maintained a Trust Fund Account with LBP, Surigao Branch. She affirmed that the IRA of Malimono is also recorded in its General Fund account but the crediting thereof is done by LBP, Butuan City Branch. When asked if she can identify the fund credited to the account which comes from the IRA, Escalante said yes. However, she cannot identify the other funds that are credited to the same account. As regards the question on whether she knew that the P700,000.00 from the PDAF of Senator Barbers was remitted in the General Fund account of Malimono, Escalante said, "If we go to your statement, sir, you may check some amounts that would correspond to that amount you are looking for, but as to the source documents, we do not have them in our branch."²⁷

DOCUMENTARY EVIDENCE

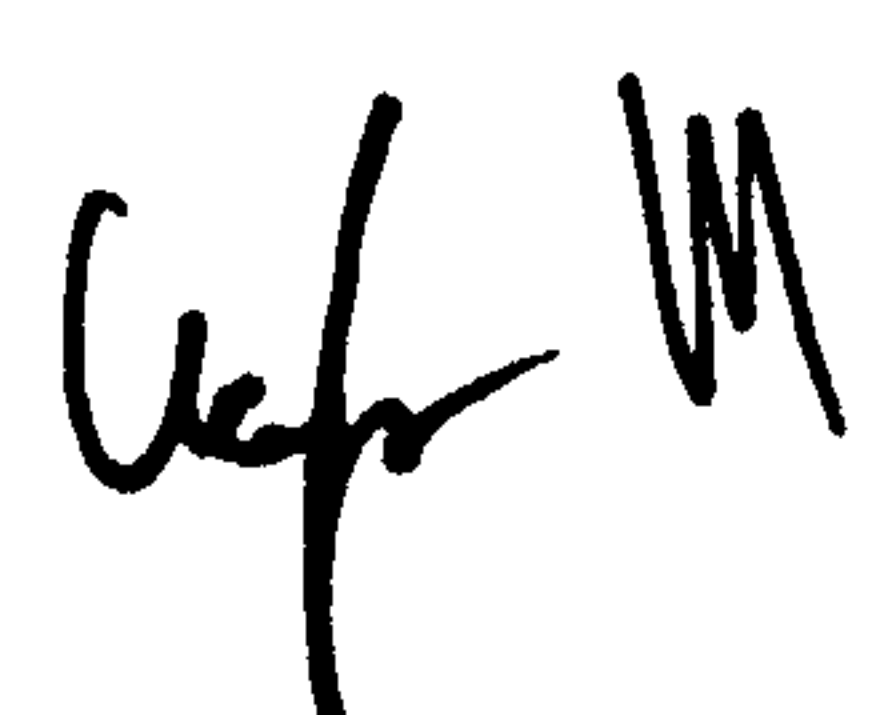
<u>Exhibits</u>	<u>Description</u>
"A"	Complaint-Affidavit of Alejandro Biñan, Joelito L. Sinaca, Abdon M. Estrella, Sr., John Silvosa, Patricio B. Laurenciana and Margarito B. Mula dated 20 October 2006
"B"	Position Paper dated 16 April 2007
"C"	Senator Robert Z. Barbers' Letter dated 14 November 2003 addressed to accused Clemente G. Sandigan, Jr.

²⁶ *Supra* note 23 at pp. 17-22.


²⁷ TSN dated 07 May 2013, pp.54-55.



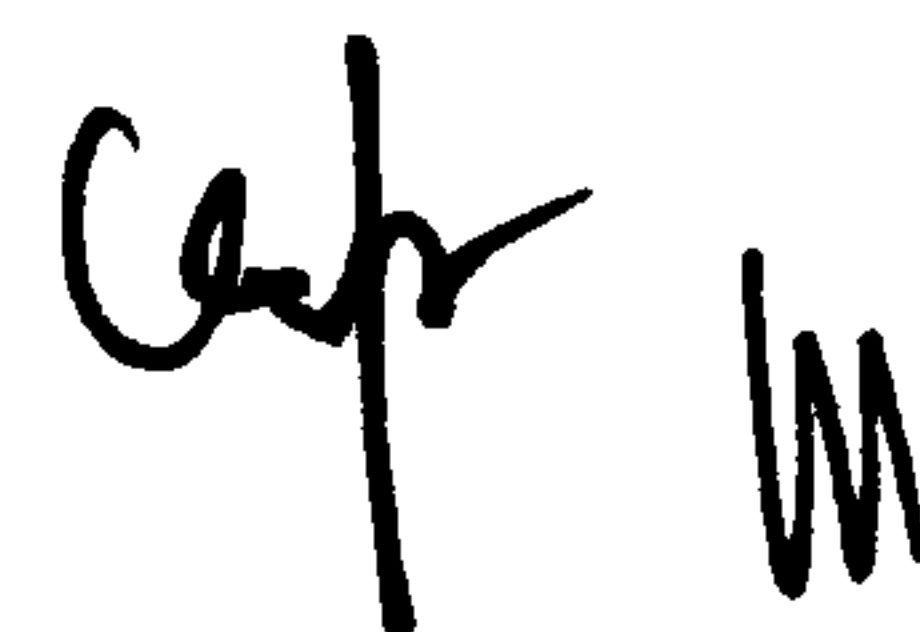
<u>Exhibits</u>	<u>Description</u>
	with attachments
"C-1 to C-2"	Special Allotment Release Order for Fiscal Year 2003 dated 28 October 2003 with attached DARO No. ROXIII-2003-183 (dated 28 October 2003)
"D"	Special Allotment Release Order for Fiscal Year 2003 dated 28 October 2003
"D-1"	Special Allotment Release Order for Fiscal Year 2003 dated 06 November 2003
"E"	SARO No. ROXIII-2003-183 (dated 28 October 2003)
"F"	Envelope addressed to accused Clemente G. Sandigan, Jr. and containing Senator Robert Z. Barbers' Letter dated 14 November 2003 with attachments
"F-1"	Postal Stamp "RECEIVED DEC 16 2003"
"G"	Senator Robert Z. Barbers' Letter dated 14 November 2003 and addressed to Barangay Captain Abdon M. Estrella, Sr. with attachments
"G-1 to G-2"	Special Allotment Release Order for Fiscal Year 2003 dated 28 October 2003 with attached SARO No. ROXIII-2003-183 (dated 28 October 2003)
"H"	Senator Robert Z. Barbers' Letter dated 27 January 2004 and addressed to Barangay Captain Joselito L. Sinaca
"I"	SARO No. ROXIII-2003-192 (dated 06 November 2003)
"J"	Landbank of the Philippines (LBP) Bank Statement for the Municipality of Malimono, Surigao del Norte's Current Account No. 0982-1082-25 for the period 31 December 2003 to 31 January 2004
"J-1"	Credit Entries for 29 January 2003
"K to K-1"	Notice of Funding of (sic) of Check Issued Fund 103 dated 27 January 2004
"L to L-1"	Notice of Funding of (sic) Check Issued Fund 103 dated 27 January 2004
"M"	Barangay Captain Patricio B. Laurenciana's Certification dated 17 January 2006
"N"	Barangay Captain Joelito L. Sinaca's Certification dated 17 January 2006
"O"	Barangay Captain Abdon M. Estrella, Sr.'s Certification dated 17 January 2006



<u>Exhibits</u>	<u>Description</u>
"P"	Barangay Captain Bergida D. Betonio's Certification dated 17 January 2006
"Q to Q-6"	Municipality of Malimono Surigao del Norte's Accomplishment Report as of December 2005 prepared by Municipal Engineer Ephraim B. Lagare, Sr. and Noted by accused Mayor Clemente G. Sandigan, Jr.
"R"	Landbank of the Philippines (LBP) Bank Statement for the Municipality of Malimono, Surigao del Norte's Current Account No. 0982-1082-25 for the period 30 November 2004 to 31 December 2004
"R-1"	Balance Entry for 28 December 2004
"S"	Barangay Captain Patricio B. Laurenciana's Affidavit dated 04 May 2007
"T"	Commission on Audit's (COA) Report on the Special Audit of the Municipality of Malimono, Surigao del Norte dated 07 September 2006
"U"	Official Cash Book for Account No. 0982-1082-25 for January 2004
"U-1 to U-2"	Entry for 26 January 2004
"V"	Resolution No. 061 Series of 2006 entitled "A Resolution Realigning the amount of P300,000.00 from the Health Expropriation of 20% Mutual Development Fund 2006 for Financial Assistance to the Construction of Pili and Masgad Multi-Purpose Buildings"
"Y"	Barangay Captain Abdon M. Estrella's Affidavit dated 04 May 2007
"Z"	Commission on Audit's Legal and Adjudication Office Order No. 2006-026 dated 08 March 2006 with the Subject: Special Audit/Investigation of Selected Transaction of the Municipal Government of Malimono, Surigao del Norte
"AA"	Commission on Audit's Work/Audit Plan – Audit Investigation of the Alleged Irregular Transactions in the Municipality of Malimono, Surigao del Norte
"BB"	Commission on Audit's Letter dated 21 March 2006 addressed to the accused as then Mayor of the Municipality of Malimono, Surigao del Norte
"BB-1"	Commission on Audit's Letter dated 21 March 2006 addressed to the Regional Cluster Director, LGS-Sub Cluster I, COA Regional Office No. XIII, Butuan City
"BB-2"	Commission on Audit's Letter dated 21 March 2006



<u>Exhibits</u>	<u>Description</u>
	addressed to the Regional Cluster Director, Legal and Adjudication Office COA Regional Office No. XIII, Butuan City
“CC to CC-2”	Municipality of Malimono, Surigao del Norte’s General Ledger with Account Title: Cash in Bank-LCCA and Account Code 111 and Entries for January 2004
“DD”	Landbank of the Philippines (LBP) Bank Statement for the Municipality of Malimono, Surigao del Norte’s Current Account No. 0982-1082-25 for the period 31 January 2004 to 29 February 2004
“EE”	Landbank of the Philippines (LBP) Bank Statement for the Municipality of Malimono, Surigao del Norte’s Current Account No. 0982-1082-25 for the period 29 February 2004 to 31 March 2004
“FF”	Landbank of the Philippines (LBP) Bank Statement for the Municipality of Malimono, Surigao del Norte’s Current Account No. 0982-1082-25 for the period 31 March 2004 to 30 April 2004
“GG”	Landbank of the Philippines (LBP) Bank Statement for the Municipality of Malimono, Surigao del Norte’s Current Account No. 0982-1082-25 for the period 30 April 2004 to 31 May 2004
“HH”	Municipality of Malimon, Surigao del Norte’s Abstract of Bids for the Rehabilitation of Hanagdong Farm-to-Market Road Phase II with attached Contractor’s Conforme and Acceptance and Notice to Commence Work
“II to II-1”	Jaycon Trading and Construction’s Bidders Bond G(2) No. 256531 with Indemnity Agreement dated 26 February 2004
“JJ to JJ-1”	Alnor Construction’s (Mr. Norberto Perez) Bidders Bond G(2) No. 112 dated 26 February 2004 with Indemnity Agreement dated 26 February 2004
“KK to KK-1”	RF Varquez Construction’s (Mr. Roldan F. Varquez) Bidders Bond G(2) No. 114399 dated 26 February 2004 with Indemnity Agreement dated 26 February 2004
“LL”	Municipality of Malimono, Surigao del Norte’s Statement of Work Accomplished as of 09 March 2004 for the Rehabilitation of Hanagdong Farm-to-Market Road
“MM”	Municipality of Malimono, Surigao del Norte’s Disbursement Voucher dated 15 March 2004





<u>Exhibits</u>	<u>Description</u>
"NN"	Commission on Audit's Audit Highlights for the Municipal Government of Malimono, Surigao del Norte

EVIDENCE FOR THE DEFENSE

The defense presented the testimonial evidence of **Patricio B. Laurenciana, Engr. Ephraim B. Lagare, Alex C. Lambus**, and accused **Sandigan**. Pertinent parts of their testimonies are summarized as follows:

The first witness for the defense was **Patricio B. Laurenciana** (hereinafter "**Laurenciana**"). At the time his testimony was given, Laurenciana was a farmer and a resident of Hanagdong, Malimono.²⁸ He served as Barangay Captain in the year 2004.²⁹ He is one of the private complainants in this case.

Laurenciana testified that it was Biñan and Silvosa who prepared the Complaint-Affidavit against accused Sandigan, as well as the Position Paper and Certification submitted to the OMB.³⁰ He did not understand the contents of these documents because it was written in English, and he can only understand a little of the said language.³¹ Biñan and Silvosa did not explain the content of the documents to him when they asked him to sign the same.³² The documents were signed at the office of then Governor Lyndon Barbers.

Laurenciana stated further that he did not want to sign the documents. He signed the same only because he was threatened that a case against him will be filed if he does not do so and that he can no longer receive assistance from the Office of the Governor.³³ When asked why he thinks Biñan was interested in filing this case, Laurenciana answered that he really does not know.³⁴

The next witness presented by the defense was **Engr. Ephraim B. Lagare** (hereinafter "**Lagare**"), Civil Engineer of BLIMEX Construction. Lagare was the former Municipal Engineer of Malimono from 1997 to 2004. As Municipal Engineer, he was in-charge of all infrastructure projects in Malimono.³⁵

²⁸ TSN dated 03 June 2014, p.16.

²⁹ *Id.*

³⁰ *Id.*, p.20.

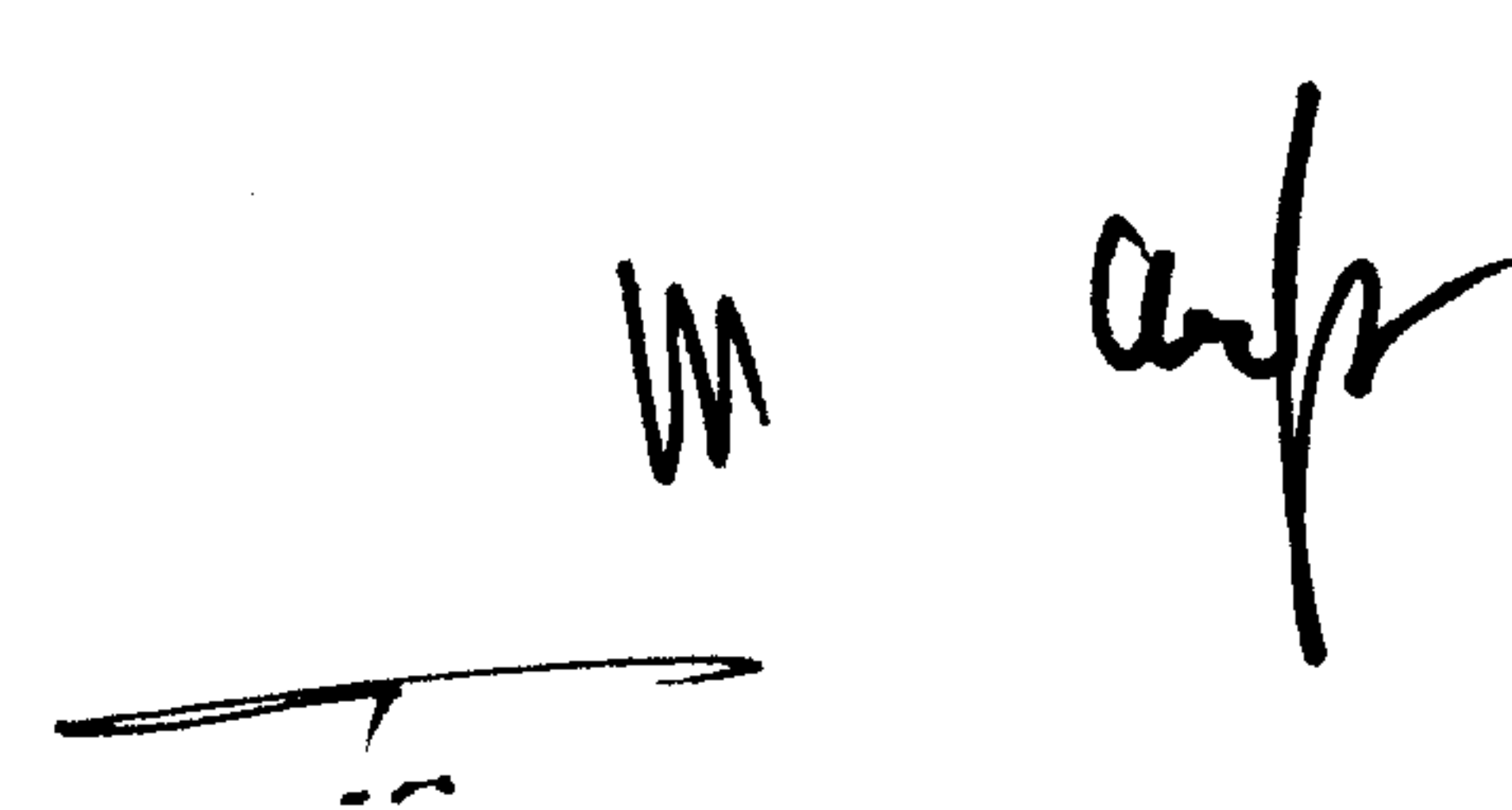
³¹ *Id.*, p.19.

³² *Id.*, p.20.

³³ *Id.*, p.23.

³⁴ *Id.*, p.24.

³⁵ TSN dated 04 September 2004, p.7.



Lagare testified that in 2003, the Municipality of Malimono suffered a calamity in the months of July and December because of heavy rains. After conducting an ocular inspection of the affected areas in the municipality, he found serious damage to the road of Barangay Hanagdong, among others.³⁶ Thereafter, he attended a number of meetings with accused Sandigan as Mayor, the Municipal Treasurer, and the Barangay Captains of affected areas in Malimono.

During one of their meetings in January 2004, the Municipal Treasurer reported to accused Sandigan that the municipality's IRA is "ready." Lagare admitted that he did not know how much IRA was received by Malimono at that time, but the Municipal Treasurer informed them that they "had excess money of Seven Hundred Thousand (700,000.00)."³⁷ He testified further that "The municipal treasurer told the mayor that he don't know because he expected that this money was the increase of our IRA. Because there is no specific letter or information about this money."³⁸ When asked what the response of accused Mayor was to this information, Lagare answered that accused Sandigan instructed him to implement the rehabilitation of barangay roads in Hanagdong.³⁹

On cross-examination, Lagare testified that he does not have with him any proof that the expenses for the rehabilitation of barangay roads was charged to the IRA.⁴⁰ Moreover, he affirmed that he did not know "in particular where the funds that was allegedly used" in the rehabilitation project of Hanagdong were taken from.⁴¹ He also affirmed that he did not know that the municipality received the sum of P700,000.00 from the PDAF of Senator Barbers.⁴²

The third defense witness was **Alex C. Lambus** (hereinafter "**Lambus**"), Contractor of Fharj Ventures Development Corporation. At the time material to this case, Lambus was the Municipal Budget Officer of Malimono. He was appointed in 1989 and resigned in 2007.⁴³ Among his duties as Municipal Budget Officer are, "to prepare the executive budget of the Local Government Unit like Malimono, to disseminate informations relevant to budgetary matters, to receive comments like Notice of Funding Check Issued, Special Allotment Release Orders, memorandum, circulars from the Department of Budget and Management."⁴⁴

³⁶ *Supra* note 35 at pp.9-10.

³⁷ *Id.*, p.11.

³⁸ *Id.*

³⁹ *Id.*, p.12.

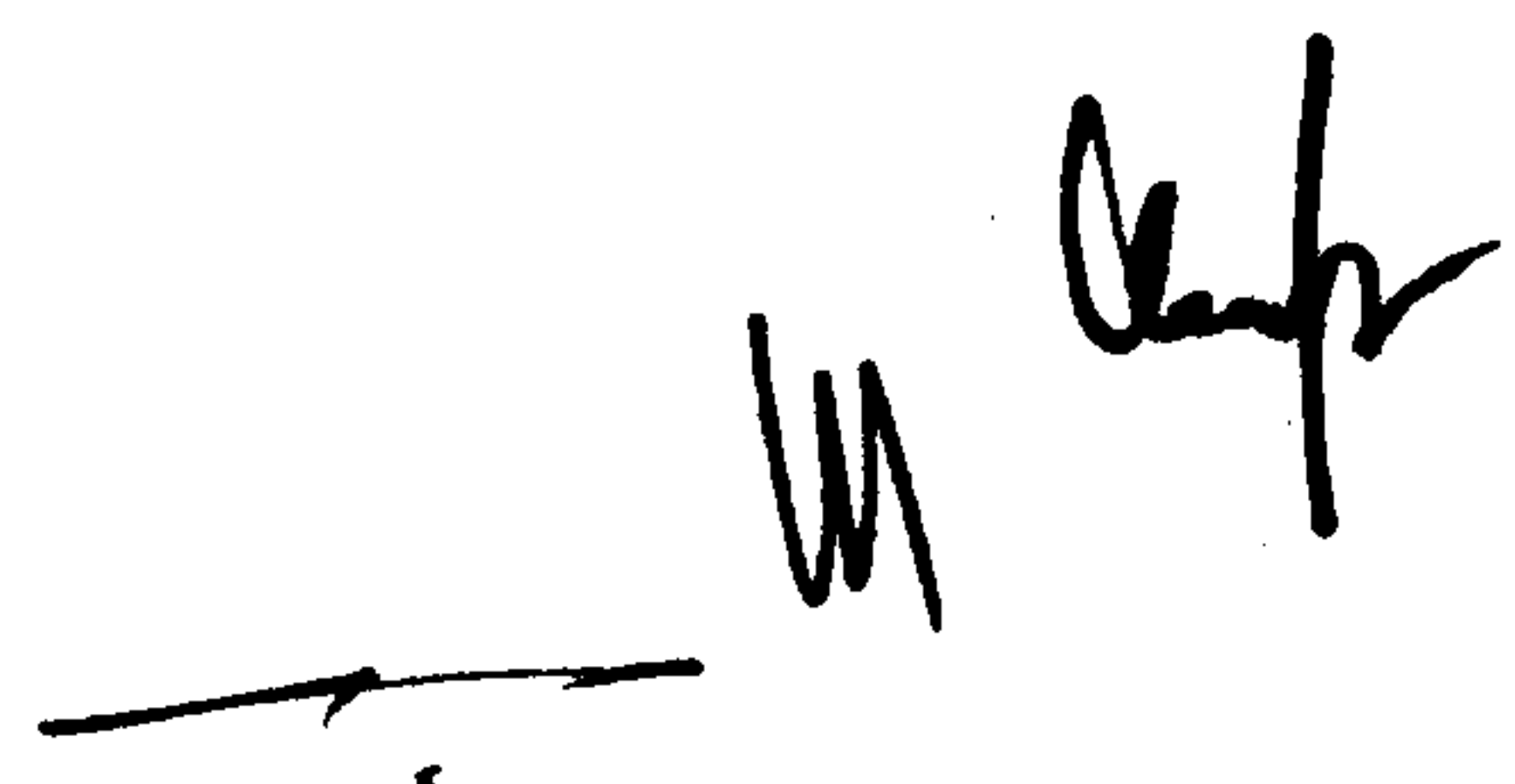
⁴⁰ *Id.*, pp.14-15.

⁴¹ *Id.*, p.27.

⁴² *Id.*

⁴³ TSN dated 01 December 2014, p.6.

⁴⁴ *Id.*

Handwritten initials 'M' and a signature 'Lambus' are present at the bottom right of the page.

Essentially, Lambus affirmed the truthfulness and validity of the contents of the Comments on the Audit Observations/Report made by the National Auditing Team during their Special Audit made last March 8 to 18, 2006 at the Municipality of Malimono, Province of Surigao del Norte, which was executed by him.

He testified that he came to know about the P700,000.00 PDAF when his office received a copy of the Notice of Funding Check Issued from the DBM.⁴⁵ Lambus also stated that the SARO therefor was received on 16 December 2004. When inquired as to the reason why he received the SARO only on said date, Lambus answered, "As what I have seen in the documents and as I was able to read it, it was dated December 16, 2004, maybe because during that time our Municipality of Malimono having a distance of 31 kilometers was not easily being passed by any means of transportation. So the road was not really accessible during that time."⁴⁶

Lambus testified further that after discovering that the P700,000.00 came from the PDAF of Senator Barbers, he advised accused Sandigan "to find any other source of funds in order to finance the said PDAF" because he believed that said amount had already been implemented and used for other purposes.⁴⁷ He was sure that the P700,000.00 was used to finance the rehabilitation of Barangay Hanagdong farm-to-market road. However, on cross-examination he explained that he had no documents in his possession to prove the same because he is already separated from the municipality.⁴⁸

The last witness for the defense was the accused himself, **Clemente G. Sandigan, Jr.** He served as Municipal Mayor of Malimono for two (2) consecutive terms, from 2001 up to 2007.⁴⁹

Accused Sandigan testified that some barangays of Malimono were heavily damaged by the heavy rains that occurred in 2003 and January 2004, particularly Barangay Hanagdong. The whole province of Surigao del Norte was placed under a state of calamity pursuant to a resolution issued by the Provincial Government.⁵⁰ He explained that their request for financial assistance to the amount of P600,000.00 for the rehabilitation of Hanagdong farm-to-market road was not acted upon by the Provincial Government so they continued to look for funds.⁵¹

Accused Sandigan testified further that during their meeting on the last week of January 2004, the Municipal Treasurer informed him that Malimono

⁴⁵ *Supra* note 43 at p.11.

⁴⁶ *Id.*, p.12.

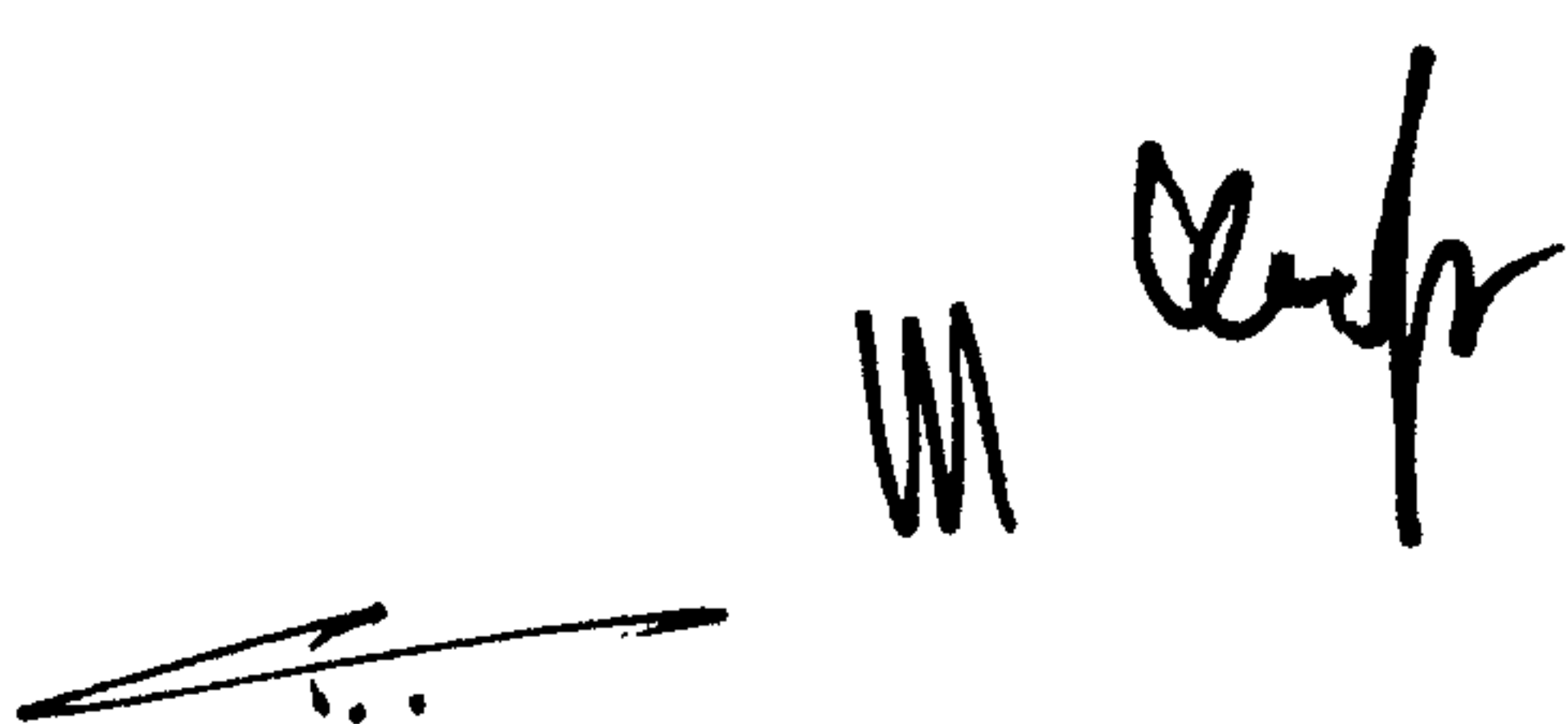
⁴⁷ *Id.*, p.14.

⁴⁸ *Id.*, pp.21-22.

⁴⁹ TSN dated 22 April 2015, p.7.

⁵⁰ *Id.*, p.11.

⁵¹ *Id.*

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'C. Sandigan' and the initials are 'MS'.

already had an available fund in the amount of P700,000.00 which was incorporated to their monthly IRA. Hence, they immediately implemented the rehabilitation of Hanagdong farm-to-market road.⁵²

According to accused Sandigan, he learned of the true nature of the P700,000.00 fund only in December 2004, when the Municipal Treasurer gave him all the documents pertinent thereto, such as “the Notice of DBM and the SARO coming from Senator Barbers.” He said that he did not receive these documents personally because it was just brought to him by the Municipal Treasurer.⁵³ Thereafter, accused Sandigan talked to Senator Barbers to inform him about what happened to his PDAF. Senator Barbers asked him to draft a letter to also formally inform the DBM.⁵⁴ When asked what he did to restitute the fund, accused Sandigan explained that he informed the concerned barangay captains that “the amount has already been implemented” and, if possible, he will replace it with Malimono’s 20% development fund.⁵⁵

On cross-examination, accused Sandigan admitted that he did not check or confirm from the documents of the municipality whether there was indeed an increase in their IRA. He also admitted that he merely relied on the information given by the Municipal Treasurer.⁵⁶

DOCUMENTARY EVIDENCE

<u>Exhibits</u>	<u>Description</u>
“6”	Counter-Affidavit of accused, Clemente G. Sandigan, Jr. dated March 5, 2007 (5 pages “6-A” to “6-D”)
“6-E”	Name and signature of Clemente Sandigan, Jr.
“8”	Letter of Joecel F. Obenza, DBM Director IV, to Hon. Clemente G. Sandigan, Jr. dated January 27, 2004 re: NOTICE OF FUNDING CHECK ISSUED FUND 103 stating among others, that “... MDS Check No. 12465 dated January 27, 2004 in the amount of P3,600,000.00 has been deposited at LBP Butuan City Branch of which P450,000.00 is for credit to your account maintained with LBP – Surigao City Branch (Current Account No. 0982-1082-25). Said amount represents the cash requirement for SARO No. ROXII-2003-183 dated October 28, 2003 to cover the financial support for priority development programs and projects which was released upon the initiative of Sen. Robert Barbers chargeable against the PDAF, R.A. 9206”

⁵² *Supra* note 49 at pp.14-15.

⁵³ *Id.*, p.16.

⁵⁴ *Id.*, p.19.

⁵⁵ *Id.*, p.20.

⁵⁶ TSN dated 22 July 2015, p.8.



<u>Exhibits</u>	<u>Description</u>
"8-A"	STAMPED "RELEASED FEB. 02 2004"
"9"	Letter of Joecel F. Obenza, DBM Director IV, to Hon. Clemente G. Sandigan, Jr. dated January 27, 2004 re: NOTICE OF FUNDING CHECK ISSUED FUND 103 stating among others, that "... MDS Check No. 12465 dated January 27, 2004 in the amount of P5,477,400.00 has been deposited at LBP Butuan City Branch of which P250,000.00 is for credit to your account maintained with LBP – Surigao City Branch (Current Account No. 0982-1082-25). Said amount represents the cash requirement for SARO No. ROXII-2003-183 dated November 6, 2003 to cover the financial support for priority development programs and projects which was released upon the initiative of Sen. Robert Barbers chargeable against the PDAF, R.A. 9206"
"9-A"	STAMPED "RELEASED FEB. 02 2004"

After the parties submitted their respective *Memoranda*, the instant case was deemed submitted for Decision.

ISSUE

The issue before the Court is whether the accused committed the crime of Malversation of Public Funds penalized under Article 217 of the RPC.

DISCUSSION AND RULING

Article 217 of the RPC provides, thus:

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

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed 200 pesos.
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.

Capr

W
