



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CRIM. CASE NO. SB-11-CRM-0032
For: Violation of Section 3 (e) of R. A.
3019, otherwise known as the Anti-Graft
and Corrupt Practices Act, as amended.

LAURO L. BAJA, JR.,
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CRIM. CASE NO. SB-11-CRM-0034
For: Malversation of Public Funds under
Article 217 of the Revised Penal Code.

LAURO L. BAJA, JR.,
Accused.

Present:

QUIROZ, J., *Chairperson*
CRUZ, J.
JACINTO, J.

Promulgated on:

April 13, 2018

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DECISION

CRUZ, J.

On 29 March 2011, accused Lauro L. Baja, Jr., ("Baja" for brevity) was charged in two (2) separate Informations¹ both dated 22 March 2011, with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, docketed as Criminal Case No. SB-11-CRM-0032, and Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code (RPC), docketed as Criminal Case No. SB-11-CRM-0034, the accusatory portions of which read:

Criminal Case No. SB-11-CRM-0032

"That on May 17, 2006, or sometime or prior or subsequent thereto, in the Philippine Mission to the United Nations, New York, United States of America, which is an extension of the Philippine territory and within the jurisdiction of this Honorable Court, herein accused **LAURO L. BAJA, JR.**, a high ranking public officer with Salary Grade 29, holding then the position of Philippine Permanent Representative to the United Nations and Chief of Missions I, Department of Foreign Affairs, who by reason of his office and while in the exercise and discharge of his functions, acting with manifest partiality, evident bad faith, gross inexcusable negligence, and committing the offense in relation to office, did then and there willfully, unlawfully, and criminally take, misappropriated, and convert to his personal use and benefit public funds in the amount of **US\$17,524.27** which is the sum total of the amounts: **US\$780.00** and **US\$12,504.76** representing payment of personal and building damage; **US\$1,739.51** representing "holdbacks", and **US\$2,500.00** representing proceeds of the insurance claim for the alleged "lost jewelry and cash" of his wife, thereby causing damage and undue injury to the government in the total amount of **SEVENTEEN THOUSAND FIVE HUNDRED TWENTY FOUR & 27/100 DOLLARS (US\$17,524.27)**, United States Currency.

CONTRARY TO LAW."²

Criminal Case No. SB-11-CRM-0034

"That on May 17, 2006, or sometime prior or subsequent thereto, in the Philippine Mission to the United Nations, New York City, United States of America which is an extension of the Philippine territory, and within the jurisdiction of this Honorable Court, herein accused **LAURO L. BAJA, JR.**, a high ranking public officer with Salary Grade 29, holding then the position of Philippine Permanent Representative to the United Nations and Chief of Missions I, Department of Foreign Affairs, who by reason of his office and while

¹Records, Vol. II, pp. 1-6.

²Records, Vol. II, pp. 1-3.

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in the exercise of his function, received, had control and is accountable for public funds consisting of proceeds of insurance on the Philippine owned townhouse at 15th East 66th Street New York City, United States of America, in the amounts **US\$780.00** and **US\$12,504.56** representing personal and building damage; **US\$1,739.51** representing "holdbacks"; and **US\$2,500.00** representing proceeds of the insurance claim for the alleged "lost jewelry and cash" of his wife, did then and there, willfully, unlawfully and feloniously take, misappropriate and convert to his personal use and benefit, or permit another person through abandonment or negligence, to take such public funds in the total amount of **SEVENTEEN THOUSAND FIVE HUNDRED TWENTY FOUR & 27/100 DOLLARS (US\$17,524.27)**, United States Currency, to the damage and prejudice of the government in the aforesaid total amount.

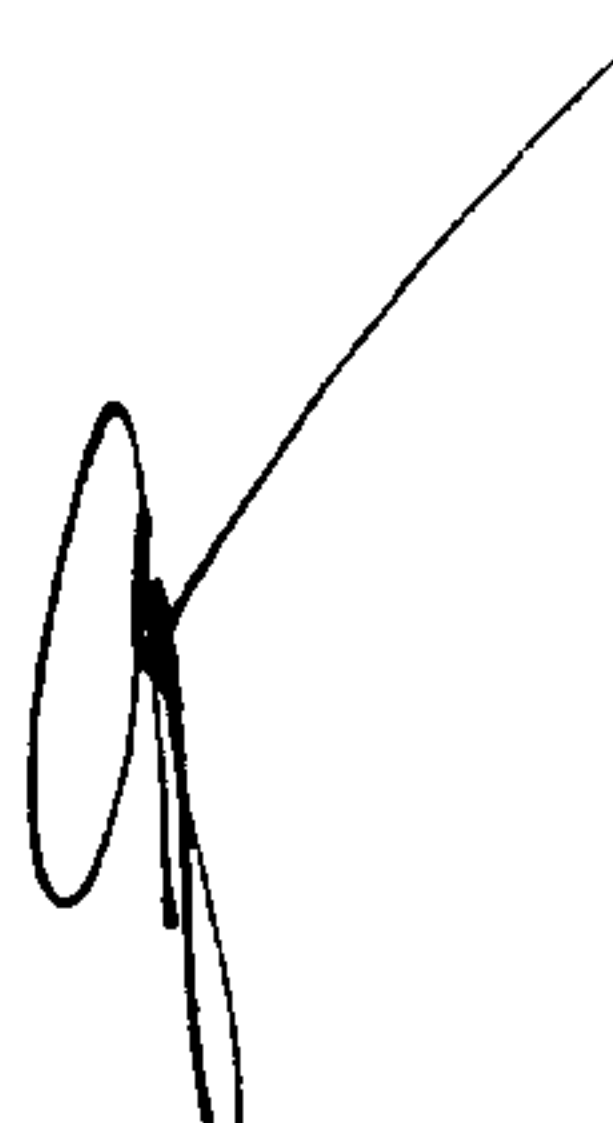
CONTRARY TO LAW."³

Upon arraignment, accused Baja pleaded "**NOT GUILTY**" to the offenses charged.⁴

In the interim, the Court ordered the consolidation of the two (2) cases for joint trial in a single proceeding, considering that said cases were founded on the same facts, and arose from the same incidents involving common questions of fact and law.⁵

Thereafter, the Court issued an Amended Pre-trial Order,⁶ which stated among others, that the parties did not enter into any stipulation or admission of facts, but agreed on the following factual and/or legal issues⁷ for resolution, to wit:

In Crim. Case No. SB-11-CRM-0032:

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- a) Whether or not accused, being an accountable officer, took misappropriated, and converted to his personal use and benefit, public funds in the amount of \$17,524.27 which is the sum total of the amounts \$780.00 and \$12,504.76 representing payment of personal and building damage, \$1,739.51 representing hold backs, and \$2,500.00 representing proceeds of the insurance claims from the alleged loss of jewelry and cash of his wife, thereby causing damage and undue injury to the government in the total amount of \$17,524.27;
 - b) Whether or not the proceeds of the insurance claim representing the payment for the repairs of the Official Residence were paid to Mr. McDonnell; and

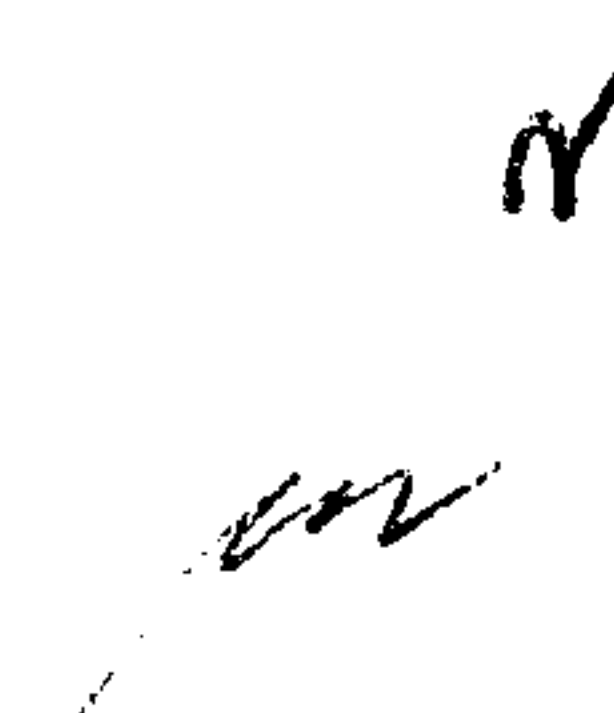
³ Records, Vol. II, pp. 4-6.

⁴ Records, Vol. III, p. 244.

⁵ Records, Vol. I, pp. 30-32, 102-103.

⁶ Records, Vol. I, pp. 249-264.

⁷ Records, Vol. I pp. 263-264.



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- c) Whether or not the proceeds of the insurance claim for the loss of Mrs. Baja's belongings, jewelry and cash constitute public funds which can be lawfully received or appropriated by the PMNY or the Philippine government.

In Crim. Case No. SB-11-CRM-0034:

- a) Whether or not accused, being an accountable officer for public funds consisting of proceeds of insurance on the Philippine-owned townhouse at 15th East 66th Street in New York City, USA in the amount of \$780.00 and \$12,504.56 representing personal and building damage, \$1,739.51 representing hold back, and \$2,500.00 representing the proceeds of insurance claims for alleged loss of jewelry and cash for his wife, took, misappropriated, and converted to his personal use and benefit, or permit another person through abandonment or negligence to take such public funds in the total amount of \$17,524.27 to the damage and prejudice of the government;
- b) Whether or not the accused is a custodian or the accountable officer of the insurance proceeds deposited with the PNB within the contemplation of Article 217 of the Revised Penal Code; and
- c) Whether or not the proceeds of the insurance claim for the loss of Mrs. Baja's belongings, jewelry and cash constitute public funds which can be lawfully received or appropriated by the PMNY or the Philippine government.

EVIDENCE FOR THE PROSECUTION

The prosecution presented witnesses Crescente R. Relacion, Mario L. De Leon, Jr., and Tomas A. Valerio, Jr., whose respective testimonies are summarized as follows:

On 01 June 2015,⁸ the prosecution presented **Crescente R. Relacion** ("Relacion" for brevity), from the Foreign Service Office of the Department of Foreign Affairs, who adopted his Judicial Affidavit⁹ during his **direct examination**,¹⁰ attesting to the following relevant facts:

1. He conducted an investigation on the Philippine Mission to the United Nations in New York;
2. Their investigation found that the NYPM filed an insurance claim for the damage caused by a broken heating system pipe at the second floor of

⁸ Transcript of Stenographic Notes (TSN) dated 01 June 2015.

⁹ Records, Vol. I, pp. 130-158.

¹⁰ TSN dated 01 June 2015, pp. 11-15.

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the townhouse. The insurance company issued three (3) checks in the amount of \$ 780.00, \$ 12,504.76, and \$ 1,739.51 respectively;

3. The said checks should be deposited to the NYPM's PNB account. However, accused Baja and Finance Officer (FO) Tomas Valerio (Valerio) opened an account under the name "Philippine Mission to the UN-Renovation of Townhouse" (Account No. 2815), and deposited the checks to the said account;
4. Several withdrawals were made from Account No. 2815 by accused Baja evidenced by a certified copy of bank documents by the General Manager of PNB New York Branch; and
5. The repair of the water-damaged townhouse was awarded to a non-bidder.

During his **cross examination**¹¹,

Relacion admitted that in the examination of the insurance claims made by the Philippine Mission for the damaged townhouse, he did not have a copy of the insurance policy, and was unable to determine the coverage of the risks insured. He also said that the hold-back, the difference between the actual value as depreciated and the replacement value, was released by the insurance company. The said hold-back would be released only after inspection conducted by the insurance company for the same to determine whether repairs were actually made.

Relacion stated that the correct procedure with regard to insurance proceeds is to deposit the proceeds to the official bank account of the Mission. Instead, the Mission opened a separate bank account under the name of the Philippine Mission, and required the signatures of accused Baja and FO Valerio. He also confirmed that the separate account was made known to the DFA through the Assistant Secretary of the Office of the Fiscal Management (OFM). He noted that the opening of the Permanent Representative of a special account is unusual since the DFA is usually the one that authorizes the opening of accounts for foreign missions.

Upon inquiry of the court,¹² Relacion said that foreign missions would have two (2) accounts, a dollar and local currency account. In this case however, the Philippine Mission already had two (2) accounts, but the third one was opened as a special separate account. He also stated that prior approval is required before a new bank account is opened. In this case, the special account was not approved because it was created prior to the necessary approval from the DFA.

¹¹ TSN dated 01 June 2015, pp. 15-57.

¹² TSN dated 01 June 2015, pp. 30-32.

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Relacion confirmed that under Section 4 of the General Appropriations Act, insurance proceeds are to be treated as trusts receipts. The said trusts receipts are liabilities of the Philippine Permanent Mission. He also stated that the Special Provisions of the 2005 and 2014 General Appropriations Act authorized the DFA Secretary to use the insurance proceeds to cover investment and/or restoration of insured properties located abroad. He also said that cash withdrawals from a government bank account is unusual, because the practice is to have a withdrawal covered by a check.

On the loss of jewelries of Mrs. Norma Baja ("Mrs. Baja" for brevity), Relacion affirmed that the Permanent Mission did not make any claim as to the ownership of the lost jewelries subject of the insurance claims.

On 15 July 2015,¹³ the prosecution presented **Mario Lopez De Leon, Jr.** ("De Leon" for brevity), Consul General of the Philippine Consulate General in New York, Department of Foreign Affairs, who adopted his Judicial Affidavit¹⁴ as his **direct examination** attesting to the following relevant facts:

1. He was assigned, together with Mr. Relacion, to conduct a fact-finding investigation and examination of the books and records of the Philippine Mission to the United Nations in New York (NYPM) to determine the soundness of its operations and fiscal management;
2. In the course of their fact-finding investigation, they identified the transaction relevant to the receipt and disposition of insurance claims of the NYPM in 2005;
3. The said insurance claims cover the water damage caused by a broken second floor heating system pipe amounting to \$15,170.78, and the lost jewelry and cash of the Ambassador's wife amounting to \$2,500.00;
4. The insurance claim filed relative to the water damage resulted to the issuance of Lexington Insurance Corporation of three (3) checks representing the "holdback" in the following amounts: \$780.00, \$12,504.76, and \$1,739.51, all in favor of the Philippine Mission to the United Nations, New York (NYPM);
5. Instead of depositing the said three (3) checks to the official PNB account of the NYPM, accused Baja and FO Valerio opened a separate account under the name "Philippine Mission to the UN-Renovation of Townhouse" with Account No. 2815 and deposited the checks to the latter account;

¹³ TSN dated 15 July 2015.

¹⁴ Records, Vol. I, pp. 159-184.

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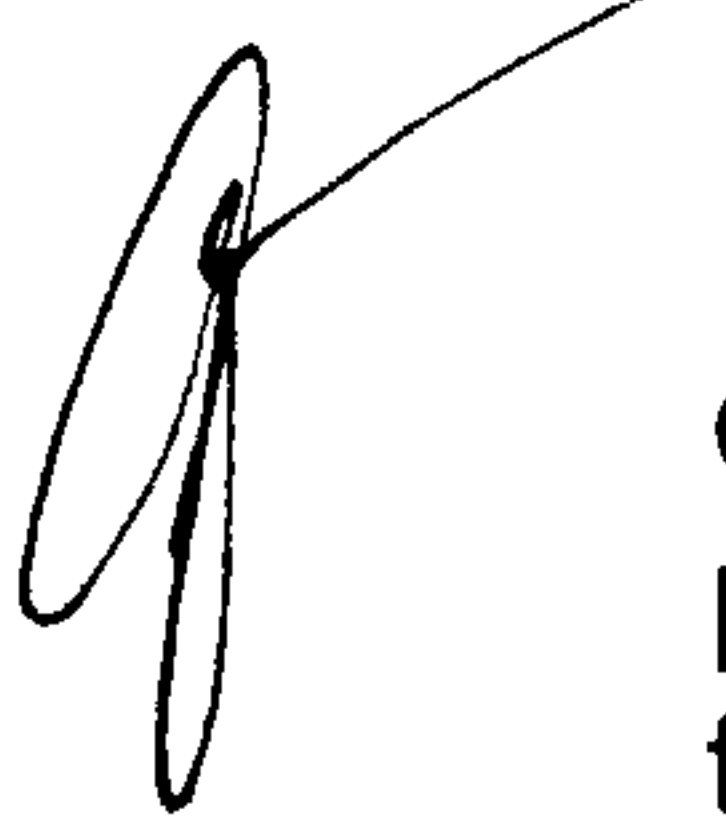
6. The insurance claim filed for the lost jewelry and cash was granted with \$2,500.00 insurance proceeds;
7. The said insurance proceeds and holdback were withdrawn by accused Baja in several transactions;
8. The fact-finding team found that all the checks were issued by the insurance company in the name of the government but the same were not properly receipted and deposited in the official bank account of the Mission contrary to existing government accounting rules and regulations; and
9. In accordance with Section 5 of the Special Provisions of the General Appropriations Act on the "Use of Insurance Proceeds", the insurance proceeds should have been withdrawn through the issuance of official checks, and not through cash withdrawals as done by accused Baja.¹⁵

On **cross examination**,¹⁶ De Leon confirmed that the issue on the opening of bank accounts in the name of the Philippine Mission and the withdrawal of insurance proceeds was not a part of the COA findings. He likewise confirmed that the opening and existence of the account was included in the report to the DFA.

De Leon affirmed that no other person or entity made an insurance claim relative to the water damage in the townhouse and the lost jewelry and cash. He also agreed that the withdrawal slips were signed by both accused Baja and FO Valerio.

On 8 September 2015,¹⁷ the prosecution presented **Tomas Aquitania Valerio, Jr.** ("Valerio" for brevity), Finance Office of the Philippine Mission to the United Nations in Geneva, Switzerland.

During his **direct examination**,¹⁸ Valerio confirmed that he signed on the lower portion of several withdrawal slips dated 29 July 2005, 15 July 2005, 17 August 2005, 22 September 2005, 23 November 2005, 30 January 2006, and 3 April 2006. He stated that he did not receive any benefit from any of the withdrawals made through the signed withdrawal slips.



On **cross examination**,¹⁹ Valerio affirmed that on June 2005, accused Baja informed him that two (2) checks were issued representing payment of the insurance claims made by the NYPM. He said that he told accused Baja that they should be deposited to the Mission's PNB account and an official receipt must be issued.


¹⁵ Records, Vol. I, pp. 178-181.

¹⁶ TSN dated 15 July 2015, pp. 27-54.

¹⁷ TSN dated 08 September 2015.

¹⁸ TSN dated 08 September 2015, pp. 7-17.

¹⁹ TSN dated 08 September 2015, pp. 17-45.



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Valerio agreed that the insurance proceeds are trust receipts and not income of the Mission. As such, the insurance proceeds are not to be mixed with the General Fund of the Mission, but should still be deposited in the official depository bank of the Philippine Mission. He admitted that he did not issue the necessary official receipt for the check payments received from the insurance claims. He also acquiesced that the checks would not have been deposited to the personal account of accused Baja because they were payable to the Philippine Mission.

Valerio also confirmed that it was him who made the suggestion to accused Baja to open a separate PNB account. He said that he made that suggestion to expedite the transactions because accused Baja insisted that the insurance proceeds are his money and that the latter engaged contractors for the repairs. He also said that he did not prepare the monthly bank reconciliation report because Account No. 2815 is not an officially authorized account by the DFA.

Valerio stated that he felt compelled by accused Baja, being the latter's subordinate, to sign withdrawal slips with no amount indicated. He noted that he found the signing of blank withdrawal slips unusual, but he did not bother to question his superior.

Upon inquiry of the court,²⁰ Valerio agreed that his duties include monitoring the use of the insurance proceeds. However, he did not make the report nor did he report the conduct of the disposition of the insurance proceeds to the DFA.

With the completion of its presentation of evidence, the prosecution filed its formal offer²¹ of the same, which the Court resolved,²² as follows:

1. Exhibits "D", "E" and sub-markings, "J", "NN", "NN-1", and "OO", are **ADMITTED** into evidence, without prejudice to the Court's proper appreciation of their respective probative values in relation to the facts for which they were offered in evidence.
2. Exhibits "F", "G", "H" and sub-markings, are **DENIED** admission into evidence for being irrelevant and immaterial to this case.

After the prosecution rested its case, accused Baja filed a "Motion for Leave to File Accused's Demurrer to Evidence,"²³ which the Court denied.²⁴

²⁰ TSN dated 08 September 2015, pp. 35-37.

²¹ Records, Vol. II, pp. 7-14.

²² Records, Vol. II, p. 609.

²³ Records, Vol. II, pp. 617-622, Vol. III, pp. 38-42.

²⁴ Records, Vol. II, p. 633.

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EVIDENCE FOR THE DEFENSE

The defense presented accused **Lauro L. Baja, Jr.**, as its lone witness, on 05 April 2017.²⁵ He adopted as his testimony on **direct examination** his Judicial Affidavit,²⁶ attesting to the following relevant facts:

1. He deposited the check payments of the insurance claims in a separate PNB account (Account No. 2815) under the name "Philippine Mission to the UN-Renovation of Townhouse";
2. He did so following the advice of FO Valerio, to prevent the insurance proceeds from co-mingling with the other funds of the PMNY;
3. The negotiated contract procurement method was chosen because it requires no constitution of a Bids and Awards Committee (BAC) necessary due to the urgency of the repairs and to prevent further damage to the government property caused by the massive flooding;
4. Despite the chosen procurement method, the NYPM still attempted to solicit project quotations for several contractors through an unofficial public bidding to get the best price possible for the repair of the official residence;
5. The services of a certain James McDonnell ("McDonnell" for brevity) were engaged because he offered the lowest price for the repair project;
6. He sought clearance from Administrative Officer (AO) Romua and FO Valerio, both of whom responded favorably;
7. The DFA was also made aware of the commencement of the repair and renovation work;
8. The insurance proceeds were used to pay for the repair of the damages in the official residence in 2005;
9. Receipts were accordingly issued by the contractor hired to accomplish the repairs in the official residence;
10. The DFA-OFM did not demand from him the return of the insurance proceeds. Instead, the DFA merely requested for documentation in relation to the insurance claims filed by the NYPM;
11. In response to the request of the DFA, he issued a Memorandum dated 01 June 2006 informing the former of the status of the insurance claims filed;

²⁵ TSN dated 05 April 2017.

²⁶ Records, Vol. I, pp. 53-71.

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12. His wife filed a police report for the loss of jewelry and cash, and the possible involvement of two household helpers who surreptitiously departed from the official residence;
13. An insurance claim was filed in relation to the lost jewelry and cash;
14. Lexington Insurance issued a check as payment for the insurance claim in the amount of \$2,500.00. The payment received was deposited to PNB Account No. 2815 following the advice of Valerio;
15. Since the payment was made in relation to personal property owned by his wife, he thought that the payment should go to the person whose loss was insured;
16. Instead of causing the NYPM to pay his wife first, then claim from the insurance company, he thought it was wiser to claim the insurance and wait for its payment in order to avoid having the government paying out from its own funds.²⁷

On **cross examination**,²⁸ accused Baja reiterated that the insurance proceeds in relation to the claims for the water damage in the official residence were deposited in PNB Account No. 2815 following the advice of Valerio. He stated that the insurance proceeds were later used for the payment of the repairs made on the official residence. The payments were made in cash installments, each according to the billing statement of the contractors as the work progressed.

Upon inquiry of the court,²⁹ accused Baja stated that aside from the proceeds from the water damage insurance claim, the proceeds from the lost jewelry and cash insurance claim were also deposited in PNB Account No. 2815, still on the advice of Valerio.

Accused Baja confirmed that he sent a letter recommending a certain Burda Construction for the repair of the official residence because of its lowest bid and familiarity with the structural layout of the premises.

On **redirect examination**,³⁰ accused Baja said that he only followed the advice of Valerio not to intermingle the proceeds with the regular funds of the Mission. Moreover, Valerio further said that if the proceeds will be deposited to the official bank account of the Mission, it will take a longer time for the amount to be processed and given to the Mission. He considered the urgency of the repair and the damages that will be further incurred if the repair is not expedited. He stated that

²⁷ Records, Vol. I, pp. 58-69.

²⁸ TSN dated 05 April 2017 pp. 19-25.

²⁹ TSN dated 05 April 2017 pp. 22-23.

³⁰ TSN dated 05 April 2017 pp. 26-28.

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aside from the two (2) proceeds from two (2) insurance claims, no other funds were deposited to PNB Account No. 2815.

Furthermore, accused Baja narrated that the letter sent to the DFA did not mention McDonnell because it was sent before McDonnell placed his bid.

In response to the inquiry of the Court,³¹ accused Baja said that he did not issue another Memorandum to inform the DFA of the award of the repair project to another contractor because the latter did not reply to his first recommendation. He also said that he is not aware of any prohibition against opening a separate bank account for the Mission.

Acting on accused Baja's Formal Offer of Evidence,³² the Court **ADMITTED** exhibits "1-A", "1-B", "1-C", "1-D", "1-E", "1-F", "2-A", "2-B", "2-C", "2-D", "3-A", "3-B", "3-C", "3-D", "3-E", "3-F", "4", "5", "6", and "6-A", for the purpose for which they were offered, subject to the proper appreciation of their respective probative value.³³

Then, both the parties submitted their respective Memoranda.³⁴

THE FACTS

The following narration of facts is based on the documentary and testimonial evidence found on record, as well as on the stipulations made between the parties:

Sometime in December 2004, the official residence of the Permanent Representative, located in a townhouse at 15th East 66th Street, was damaged due to flooding caused by the bursting of its second floor heating pipes (hereinafter referred to as the "water-damaged property" for brevity).³⁵

On 28 February 2005, accused Baja, then the Permanent Representative (PR) of the New York Philippine Mission (NYPM) to the United Nations (UN), requested the Office of Fiscal Management (OFM) for authority to pay the cost of the emergency repairs of the water-damaged property, and recommended the hiring of the services of Burda Construction.³⁶

³¹ TSN dated 05 April 2017, pp. 28-29.

³² Records, Vol. III, pp. 58-68.

³³ Records, Vol. III, p. 113.

³⁴ Records, Vol. III, pp. 158-218, 242-253.

³⁵ Records, Vol. II, pp. 94-95, 104.

³⁶ Records, Vol. II, pp. 95, 107, 199-200.

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On 17 March 2005, the water-damaged property was reported to C & M First Services, Inc.³⁷ After inspection,³⁸ the general adjuster from York Claims Services, Inc., approved and prepared the amount of \$12,504.76 and \$780.00, representing the replacement cash value of the damaged portion of the building and personal property, respectively.³⁹ On 18 June 2005, the corresponding checks for the aforementioned amounts were issued to the NYPM by Lexington Insurance Company (“insurance company” for brevity).⁴⁰

Sometime during the latter part of June 2005, accused Baja sought the advice of Finance Officer (FO) Tomas A. Valerio, Jr., on what to do with the said checks.⁴¹ Initially, FO Valerio proposed the deposit of the checks in the NYPM’s official Philippine National Bank (PNB) account, but accused Baja allegedly refused.⁴² Thus, FO Valerio suggested the opening of a separate account.⁴³ On 29 June 2005, PNB Account No. 2815, with account name “Philippine Mission to the UN – Renovation of Townhouse”, was opened and the checks were deposited therein on the same day.⁴⁴ Thereafter, accused Baja authorized several withdrawals from PNB Account No. 2815.⁴⁵

The checks for the payment of the “holdback” in the amount of \$1,739.51, as well as, for the lost jewelry and cash of accused Baja’s wife amounting to \$2,500.00,⁴⁶ released by the insurance company, were also deposited to and subsequently withdrawn from the said PNB account.⁴⁷

On 03 April 2006, PNB Account No. 2815 was closed after accused Baja allowed the withdrawal of the remaining balance therein.⁴⁸

On 17 May 2006, OFM Assistant Secretary Armando B. Fernandez, Jr. (“Fernandez” for brevity), requested from the NYPM a complete damage report on the flooding that occurred in the PR’s official residence, and required the submission of documents relative to the insurance claim for the water-damaged property for proper evaluation and accounting.⁴⁹

³⁷ Records, Vol. II, pp. 95, 118, 200.

³⁸ Records, Vol. II, pp. 120-122.

³⁹ Records, Vol. II, pp. 95, 124.

⁴⁰ Records, Vol. II, pp. 95, 126.

⁴¹ Records, Vol. I, p. 59, Vol. II, pp. 95, 128.

⁴² Records, Vol. II, pp. 95, 128.

⁴³ Records, Vol. I, p. 59, Vol. II, pp. 95-96, 128.

⁴⁴ Records, Vol. I, p. 59, Vol. II, pp. 96, 128, 136.

⁴⁵ Records, Vol. II, pp. 96, 135, 137-142, 144-145, 151, 153-154.

⁴⁶ Records, Vol. I, pp. 58-59, 66, 68, Vol. II, pp. 96, 99, 152.

⁴⁷ Records, Vol. I, pp. 58-59, 66, 68, Vol. II, pp. 96, 99, 152.

⁴⁸ Records, Vol. II, pp. 97, 153-155.

⁴⁹ Records, Vol. II, p. 163.

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On 01 June 2006, accused Baja responded to the query of OFM Assistant Secretary Fernandez, informing the latter that on various dates, the Lexington Insurance Company issued checks to the NYPM for the repair of the water-damaged property and refund of claim payments "holdbacks" in the amount of \$13,431.27 and \$1,739.51, respectively.⁵⁰ Accused Baja also stated that the insurance proceeds from these checks were deposited under PNB-New York Account No. 2815 – Philippine Mission to the U. N. Renovation of the Townhouse.⁵¹

On 25 April 2007, Hilario G. Davide, Jr., ("Davide" for brevity), then the new PR of NYPM, with the assistance of FO Valerio, gave a detailed report on the release and disposition of the insurance proceeds, received by the NYPM during the term of accused Baja as PR, for the repairs of the water-damaged property.⁵²

This was followed by a fact-finding investigation, and examination of the books and records of the NYPM conducted on 05 May to 12 May 2007, by then Acting Assistant Secretary of the OFM, Crescente R. Relacion, and Senior Special Assistant of the Office of the Undersecretary of the DFA, Mario L. De Leon, pursuant to Travel Authority No. 351-07, dated 26 April 2007.⁵³ The report⁵⁴ of the fact-finding team on the receipt and disposition of the said insurance proceeds revealed several irregularities. As a result, the Department of Foreign Affairs (DFA) through the Presidential Anti-Graft Commission (PAGC), represented by Commissioner Jaime D. Jacob ("Jacob" for brevity), filed a Complaint-Affidavit⁵⁵ against accused Baja before the Office of the Ombudsman (Ombudsman). After the preliminary investigation, the Ombudsman found probable cause to indict accused Baja for the offenses charged, and the corresponding Informations were filed.⁵⁶

Hence these cases.

DISCUSSION

In **Criminal Case No. 28278**, accused Baja is charged with violation of Section 3 (e) of R. A. No. 3019,⁵⁷ as amended. A

⁵⁰ Records, Vol. II, pp. 169-170.

⁵¹ Records, Vol. II, pp. 169-170.

⁵² Records, Vol. II, pp. 104-105.

⁵³ Records, Vol. I, pp. 130-131, 159-160.

⁵⁴ Records, Vol. II, pp. 94-100.

⁵⁵ Records, Vol. II, pp. 15-16 (See Exhibit "D").

⁵⁶ Records, Vol. I, pp. 55, 57.

⁵⁷ Section 3 (e) of R. A. No. 3019, states:

"Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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conviction under this section requires the concurrence of the following elements:

1. That the accused is a public officer discharging administrative, judicial or official functions;
2. That the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. That the action of the accused caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁵⁸

After a careful evaluation of the records, the Court finds that all of the aforementioned elements are present.

At the outset, it is admitted that accused Baja is a public officer, holding the position of Permanent Representative of the NYPM to the UN, at the time material to this case.⁵⁹ It is also established that while in the discharge of his official function as such, accused Baja received checks of insurance proceeds on behalf of the NYPM amounting to \$17,524.27. The said amount was then deposited in a separate PNB account (PNB Account No. 2815) from which accused Baja authorized several withdrawals.⁶⁰ Significantly, the circumstances surrounding these undisputed facts displayed accused Baja's evident bad faith⁶¹ in the handling and disposal of the amount of said insurance proceeds.

Jurisprudence describes "evident bad faith" as something that connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoings for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose.⁶²

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permit or other concessions. xxx"

⁵⁸ Napoleon O. Cedeño vs. People of the Philippines and the Sandiganbayan, Fifth Division (G. R. No. 193020 & 193040-193042, November 08, 2017)

⁵⁹ Records, Vol. I, p. 54, Vol. III, p. 163, TSN dated 16 March 2016, pp. 6-7.

⁶⁰ Records, Vol. I, p. 59, Vol. II, pp. 134-155, Vol. III, p. 163-164.

⁶¹ The case of People of the Philippines vs. Aristeo E. Atienza (673 SCRA 470, p. 480, June 18, 2012) held that "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrong doing for some perverse motive or ill-will; it contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose.

⁶² Silverina E. Consigna vs. People of the Philippines, et al. (720 SCRA 350, p. 368, April 02, 2014).

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Here, the Court gives credence to the statement of prosecution witness Valerio, who consistently testified that he informed accused Baja that the checks respecting the insurance proceeds should be deposited in the NYPM's official PNB bank account, with the issuance of the corresponding receipts.⁶³ Despite this information, accused Baja disregarded protocol⁶⁴ and insisted on opening a separate PNB account where the said checks were deposited. To justify his actions, accused Baja contends that he exercised transparency, maintaining that all the transactions related to the insurance proceeds, including all deposits and withdrawal from the separate PNB account, were properly documented, accounted for, and known to the NYPM.⁶⁵ But, these allegations of accused Baja find no support in evidence. A perusal of the records shows that the DFA only found out about the separate PNB account after OFM Assistant Secretary Fernandez asked for the documents relative to the insurance claim filed by the NYPM for the water-damage property.⁶⁶ To note, in his "extremely urgent" letter, OFM Assistant Secretary Fernandez specifically required the submission of said documents for the DFA's proper evaluation and accounting.⁶⁷ This corroborates the statement of prosecution witness Valerio that the opening of the separate PNB account where the checks of insurance proceeds were deposited had no prior approval from the DFA.⁶⁸ Since the opening of the said PNB account was not reported and was not officially authorized by the DFA, the insurance proceeds deposited therein were not reflected in the NYPM's balance of accounts because no bank reconciliation statement was prepared for the said amounts.⁶⁹ Consequently, the DFA had no information about the insurance proceeds because the funds were purposely isolated and separated from NYPM's official bank account.

The other instances of accused Baja's lack of transparency can be seen in his Memorandum⁷⁰ dated 01 June 2006, which he submitted in response to the queries of OFM Assistant Secretary Fernandez. In this case, the main defense offered by accused Baja is that he used the insurance proceeds to pay the services of a certain James McDonnell ("McDonnell" for brevity).⁷¹ According to accused Baja, he hired McDonnell because he submitted the lowest bid⁷² for the proposed repairs of the water-damaged property. Oddly, accused

⁶³ Records, Vol. I, p. 245, Vol. II, pp. 128-131; TSN dated 08 September 2015, pp. 21-24, 28.

⁶⁴ Under the General Policies and Guidelines of the National Budget Circular No. 342, Commission on Audit Circular No. 81-160, dated April 21, 1981, proceeds from insurance of national government properties paid directly to the insured government office or beneficiary shall be deposited with the National Treasury and shall be considered as income of the General Fund.

⁶⁵ Records, Vol. III, 174.

⁶⁶ Records, Vol. II, p. 163.

⁶⁷ Records, Vol. II, p. 163.

⁶⁸ TSN dated 08 September 2015, p. 25-28.

⁶⁹ Records, Vol. I, p. 243, TSN date 08 September 2015, pp. 25-28.

⁷⁰ *Supra*, footnote 51.

⁷¹ Records, Vol. I, p. 60.

⁷² Records, Vol. I, p. 78.

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Baja did not disclose in the said Memorandum that he hired the services of McDonnell. Neither did accused Baja mention that McDonnell was one of the bidders who submitted a quotation for the repairs of the water-damaged property, nor did he state that the latter submitted the lowest bid. The Court also notes that despite the availability of the alleged bid document submitted by McDonnell on 27 June 2005, the same was excluded among the documents adduced in accused Baja's Memorandum.⁷³ In addition, accused Baja kept mum about the withdrawal of the insurance proceeds⁷⁴ and the subsequent closure of PNB Account No. 2815, where said insurance proceeds were deposited.⁷⁵ Accused Baja insists that he did not hide any transactions concerning the withdrawal of the insurance proceeds.⁷⁶ However, the records show that as of 03 April 2006, accused Baja knew that PNB Account No. 2815 was already closed because he authorized the withdrawal of the remaining balance thereon, and yet, he did not divulge this information when he submitted his Memorandum on 01 June 2006. Instead of reporting the closure of the said PNB account, accused Baja made it appear in his Memorandum that the said insurance proceeds were still deposited therein. This notwithstanding, the withdrawal of the insurance proceeds from PNB Account No. 2815 and the consequent closure thereof were later discovered when the fact-finding team conducted their investigation. Under the circumstances, the Court is convinced that the feigned transparency of accused Baja betrays his active concealment of the use and disposal of the insurance proceeds he received on behalf of the NYPM.

Grasping at straws, accused Baja tries to persuade the Court that the amount of the insurance proceeds was used as payment for the repair of the water-damaged property. To support this claim, accused Baja presented photocopies of receipts as evidence of payment for the alleged services of McDonnell, but the Court is not convinced.

Under the best evidence rule, the original document must be produced whenever the contents thereof are the subject of inquiry.⁷⁷

⁷³ Records, Vol. II, pp. 169-192.

⁷⁴ Records, Vol. II, pp. 134-155.

⁷⁵ Records, Vol. I, pp. 153-155.

⁷⁶ Records, Vol. I, 69.

⁷⁷ Country Bankers Insurance Corporation vs. Antonio Lagman (653 SCRA 765, July 13, 2011, and Section 3, Rule 130 of the Revised Rules on Evidence which states:

"Sec. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost, or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered; and the latter fails to produce it after reasonable notice;

