

REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-10-CRM-0127

- *versus* -

**FOR: Violation of Section 3(e)
of Republic Act No. 3019**

HERMINIO CASAL REYES
Municipal Mayor
MA. MARLEY C. DADAY
LEO BAUSING GOMEZ
ARTURO ELUMBA ESTIL
JOEL DINGLE PLAZA
ROMEO O. MAGADAN
(all) Member, Sangguniang Bayan
VIRGILIO A. JULAO
Member, Sangguniang Bayan/
Acting Presiding Officer
FILOMENO CASEÑAS SALISE
Municipal Treasurer
(all of) Loreto, Agusan del Sur
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-10-CRM-0128

- *versus* -

**FOR: Malversation of Public Funds
(Article 217 of the Revised Penal Code)**

Present:

HERMINIO CASAL REYES
Municipal Mayor
FILOMENO CASEÑAS SALISE
Municipal Treasurer
(both of) Loreto, Agusan del Sur
Accused.

QUIROZ, J., Chairperson,
CRUZ, J., and
JACINTO, J.

Promulgated on:

September 28, 2018 *ant*

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DECISION**QUIROZ, J.:**

This case stemmed from three complaints – two from anonymous complainants and one complaint indorsed by the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG), alleging the misappropriation of the ₱1,600,000.00 allocation for the construction of the municipal building.¹

In its Resolution dated August 24, 2009, the Office of the Ombudsman Mindanao found that there was probable cause that a Violation of Section 3(e) of Republic Act No. 3019 had been committed by Herminio Casal Reyes, Ma. Marley C. Daday, Leo Bausing Gomez, Arturo Elumba Estil, Joel Dingle Plaza, Romeo O. Magadan, Virgilio A. Julao, and Filomeno C. Salise (all of the Municipality of Loreto, Agusan del Sur); and that the crime of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code had been committed by Reyes and Salise.²

Accordingly, in Criminal Case No. SB-10-CRM-0127, Reyes, Daday, Gomez, Estil, Plaza, Magadan, Julao, and Salise are charged with Violation of Section 3(e) of R.A. No. 3019 in an Amended Information which reads as follows:

That on 10 March 2003, or sometime prior or subsequent thereto, in the Municipality of Loreto, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, accused HERMINIO CASAL REYES, a high ranking public officer being the Municipal Mayor of Loreto, Agusan del Sur with Salary Grade 27, accused FILOMENO CASEÑAS SALISE, a public officer being the Municipal Treasurer of the same municipality (Loreto), accused VIRGILIO A. JULAO, a public officer being a member of the said Sangguniang Bayan, together with MA. MARLEY C. DADAY, LEO BAUSING GOMEZ, ARTURO ELUMBA ESTIL, JOEL DINGLE PLAZA and ROMEO O. MAGADAN, the remaining five accused are also

¹ As per Resolution of the Office of the Ombudsman Mindanao dated August 24, 2009, Records, Volume II, pp. 6-30.

² *Id.*

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public officials being members of the said Sangguniang Bayan of Loreto, Agusan del Sur, all accused while committing the offense in relation to their office, conspiring and confederating with one another did then and there willfully, unlawfully and maliciously through evident bad faith and manifest partiality cause the transfer of One Million Six Hundred Thousand Pesos (Php 1,600,000.00) from the General Fund account of the municipality with the Land Bank of the Philippines, San Francisco, Agusan del Sur Branch to Current Account No. 0972-1043-96 of a private entity Loreto Transport Services Association, Inc. (LOTSA) of Loreto, Agusan del Sur, in the same bank branch through mere debit advice in violation of Commission on Audit (COA) rules, and immediately, LOTSA released said funds to accused HERMINIO CASAL REYES, LEO BAUSING GOMEZ, ARTURO ELUMBA ESTIL, JOEL DINGLE PLAZA, MA. MARLEY C. DADAY, and ROMEO MAGADAN, SR., among others, thereby giving unwarranted benefits, advantage or preference to LOTSA on which said accused have financial and pecuniary interests and causing undue damage and injury to the government in the aforestated amount.

CONTRARY TO LAW.³

In Criminal Case No. SB-10-CRM-0128, Reyes and Salise are charged with the crime of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code (RPC) in an Amended Information which reads as follows:

That on or about 1 July 2003 or sometime prior or subsequent thereto, in the Municipality of Loreto, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, accused HERMINIO CASAL REYES, a high-ranking public official being a Municipal Mayor of Loreto, Agusan del Sur with Salary Grade 27 and accused FILOMENO CASEÑAS SALISE also a public officer being the Municipal Treasurer of Loreto, Agusan del Sur, both accused by reason of their duties are accountable public officials, committing the offense in relation to office and taking advantage thereof, conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously request and approve for the transfer by mere debit advise of One Million Six Hundred Thousand Pesos (Php 1,600,000.00) from the General Fund account of the Municipality (Loreto) with the Land Bank of the Philippines, San Francisco, Agusan del Sur Branch to Current Account No. 0972-1043-96 of the Loreto Transport Services Association (LOTSA), Loreto, Agusan del Sur with the same branch and thereafter take or misappropriate, consent to the appropriation or misappropriation, or convert the said amount for their own personal and other use and benefit to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.⁴

³ Records, Volume 1, pp. 254-257.

⁴ *Id.*, pp. 258-260.

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On September 8, 2010, the Court directed the Bureau of Immigration and Deportation to issue a Hold Departure Order against all the accused.⁵

On various dates from January to February 2011, Reyes, Daday, Gomez, Estil, Plaza, Julao, Magadan, and Salise posted bail.⁶

On May 9, 2011, upon arraignment, Gomez, Plaza, Salise, Julao, Daday, Reyes, and Magadan pleaded “not guilty.”⁷

During pre-trial, the parties stipulated on the following issues:

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V.
ISSUES

A. FOR THE PROSECUTION

SB-10-CRM-0127

1) Whether or not accused Herminio Casal Reyes, former Mayor of Loreto, Agusan del Sur, in conspiracy with his co-accused Ma. Marley Calistro, Leo Bausing Gomez, Arturo Elumba Estil, Joel Dingle Plaza, Romeo Otero Magadan, Virgilio Agustin Julao and Filomeno Caseñas Salise, all being public officers, committed the offense in relation to their office, through evident bad faith or manifest partiality, gave unwarranted benefits, advantage or preference to themselves and to other individuals or cause undue injury to the government in the amount of P1.6 M, by causing its transfer from the General Fund account of the Municipality of Loreto, Agusan del Sur with the Land Bank of the Philippines, San Francisco, Agusan del Sur Branch to the account of the Loreto Transport Services Association, Inc.

2) Whether or not accused are guilty of violating Section 3(e) of RA 3019, as amended.

SB-10-CRM-0128

1) Whether or not accountable public officers Hermino Casal Reyes, Municipal Mayor of Loreto, Agusan del Sur and Filomeno Caseñas Salise, Municipal Treasurer of Loreto, Agusan del Sur, conspired in requesting and approving the transfer of P1.6 Million through debit advice from the General Fund account of the Municipality of Loreto Transport Services Association, Inc. (LOTSA) and thereafter appropriate, take or

⁵ *Id.*, p. 56.

⁶ *Id.*, pp. 183-224.

⁷ *Id.*, pp. 278-284.

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misappropriate, consent to the appropriation or misappropriation, or convert said amount for their own personal and other use and benefit.

2) Whether or not accused Herminio Casal Reyes and Filomeno Caseñas Salise committed Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code.

B. FOR THE DEFENSE

1) Whether or not the elements of the crime charged are present in these cases, particularly, a) undue injury to any party, whether the Government or a private party; b) such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and c) the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

2) Whether or not the elements of the crime of Malversation of Public Funds are present in these cases;

3) Whether or not the full return of the amount to the Municipality of Loreto, Agusan del Sur, extinguishes any perceived criminal liability of the accused.

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Pre-trial was terminated on August 24, 2011, the above-quoted stipulations of which became the basis for the Pre-Trial Order of the same date.⁹ Trial thereafter ensued.

EVIDENCE FOR THE PROSECUTION

Prosecution witness Herbert Luna, Branch Manager of Land Bank San Francisco Branch, Agusan del Sur from March 1, 2011 up to the time of his testimony,¹⁰ testified that he would oversee the day-to-day operations of the bank, including the approval of transactions related to deposits, opening of accounts, withdrawal of deposits, encashment of checks which would require his approval if the amount was more than ₱50,000.00, acting as signatory of loan transactions, and issuing certifications.¹¹ Luna said that he was directed to

⁸ *Id.*, Volume II, pp. 9-20.

⁹ *Id.*

¹⁰ TSN dated October 5, 2011, p. 6.

¹¹ *Id.*, pp. 6-7.

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bring the following documents:¹² the letter of Filomeno Salise, Municipal Treasurer, Municipality of Loreto, Agusan del Sur, dated July 1, 2003;¹³ Debit Advice dated July 11, 2003 from Account No. 0792-1043-96 to Account No. 07921003-07 in the amount of ₱1,600,000.00;¹⁴ signature cards of Account No. 0792-1043-96;¹⁵ Bank Statement of Land Bank of the Philippines Current Account No. 0972-1003-07 of the Municipality of Loreto for the period June 30, 2003 to July 31, 2003;¹⁶ and Bank Statement of Land Bank of the Philippines Current Account No. 0972-1043-96 of the Loreto Transport Association for the period June 30, 2003 to July 31, 2003.¹⁷ He affirmed that he made the certifications on the documents in question.¹⁸ He explained that upon receiving the *subpoena*, he requested the document examiner of the bank to retrieve the documents from their files and reproduce them, after which Luna scanned them before signing the certified true copies.¹⁹ When asked with regard to Exhibit “PP,” he affirmed that the letter dated July 1, 2003 was addressed to the Branch Manager of Land Bank of the Philippines, San Francisco Branch, San Francisco, Agusan del Sur.²⁰ He read its contents as thus: “Sir, I have the honor to request for transfer of the amount of ₱1,600,000.00 from General Fund Account Code 0092100307 to Account No. 0792104396. Hoping for your consideration and approval.”²¹ He said that the letter was signed by Filomeno C. Salise, the Municipal Treasurer of the Municipality of Loreto, and approved by Herminio C. Reyes, Municipal Mayor of the Municipality of Loreto.²² He said that during that time, the manager of San Francisco Branch was Robert Acob, and that the branch honored the request.²³ He explained that the debit advice was the official document which recorded the request of the Municipality of Loreto to debit the ₱1,600,000.00

¹² *Id.*, p. 9.

¹³ Exhibit “BB.”

¹⁴ Exhibit “CC.”

¹⁵ Exhibit “GG-1.”

¹⁶ Exhibit “HH.”

¹⁷ Exhibit “II.”

¹⁸ TSN dated October 5, 2011, p. 13.

¹⁹ *Id.*

²⁰ *Id.*, p. 14.

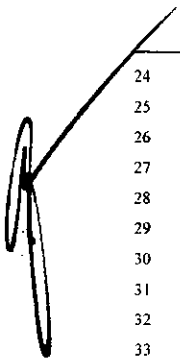

²¹ *Id.*


²² *Id.*

²³ *Id.*, pp. 15-16.

from its account.²⁴ He affirmed that, based on the letter, the account number for the Municipality of Loreto was 00792-1003-07 while the account number for Loreto Transport Services Association (LOTSAs) was 0792-1043-96.²⁵ He explained that the credit advice showed the transaction of crediting the amount of ₱1,600,000.00 to the account of LOTSAs.²⁶ When asked with regard to the bank statement of LOTSAs for June 30 to July 31, 2003, he said that the amount of ₱1,600,000.00 was credited to its account on July 11, 2003.²⁷ He said that this transaction was also confirmed by the bank statement of the Municipality of Loreto for June 30 to July 31, 2003.²⁸ When he examined the specimen signature card for LOTSAs, he said that the authorized signatories therefor were Atty. George Legaspi and Edna Percy.²⁹ With regard to the specimen signature card for the Municipality of Loreto, he said that the authorized signatories therefor were Salise and Reyes.³⁰

Prosecution witness Sally Ladaga, State Auditor II of the Commission on Audit (COA) from November 2002 up to the time of her testimony, testified that she had been assigned as staff of the Regional Legal and Adjudication Office (RLAO).³¹ Ladaga said that she was tasked to assist in the audit and adjudication functions of the RLAO.³² She would draft communications for motion for reconsideration, relief from accountability, and conduct special audits assigned with the RLAO.³³ She recalled having conducted a special audit in the Municipality of Loreto, Agusan del Sur, based on COA RLAO Order Nos. 2006-13001 and 001A dated March 17 and 23, 2006.³⁴ As Special Audit Team Leader, she said that she and her team reviewed the complaint, prepared an audit program, gathered documents, interviewed the concerned officials and employees of the Municipality of Loreto, conducted inspection, and after

 
²⁴ *Id.*, p. 16.
²⁵ *Id.*, pp. 16-17.
²⁶ *Id.*, p. 17.
²⁷ *Id.*
²⁸ *Id.*
²⁹ *Id.*, p. 18.
³⁰ *Id.*
³¹ *Id.*, pp. 23-24.
³² *Id.*, p. 24.
³³ *Id.*
³⁴ *Id.*, p. 24; Exhibits "U" and "T."



gathering all the data, they prepared an audit observation memorandum³⁵ which they issued to the concerned officials and employees.³⁶ They then received management comments on the audit observation memorandum, after which they prepared a special audit report,³⁷ which they submitted to the Regional Cluster Director of the RLAO, who in turn would transmit the report to the Office of the Ombudsman.³⁸ She said that those who submitted their comments were Reyes,³⁹ Edna Percy and Estanislao Irisari,⁴⁰ Romeo Magadan,⁴¹ Virgilio Julao,⁴² and Maria Marley Daday.⁴³ When asked by the Court, she explained that the COA could conduct further examination if the findings show an irregularity or error.⁴⁴ She said that those who submitted their comments (except for Julao) said that they had availed of the loan and then requested for an extension of time to settle their unpaid obligations until March 2007.⁴⁵ However, Julao did not avail of the loan and Magadan had already paid his loan before the conduct of the special audit.⁴⁶ She affirmed having signed the special audit report together with Engr. Rolando G. Milan and Marah M. Mendoza.⁴⁷ She enumerated their findings, thus: 1.) that the Municipality of Loreto disbursed the amount of ₱1,600,000.00 to the LOTSA, a private entity, intended as loan to certain municipal officials and employees to purchase motor vehicles; 2.) the disbursement of ₱1,600,000.00 was made through a fund transfer using a debit advice and it was not receipted by the LOTSA, the recipient, and it was not recorded on time; and 3.) they were not able to pay the ₱1,600,000.00 on the three-year period as provided in the memorandum of agreement.⁴⁸ She said that the amount had been loaned by the LGU to the LOTSA as per *Sangguniang Bayan* Resolution No. 38-2003 approving the loan of ₱1,600,000.00 to certain municipal officials and employees; the Minutes of the Meeting of the said SB

35 Exhibit "AAA."
 36 TSN dated October 5, 2011, p. 28.
 37 Exhibit "V."
 38 TSN dated October 5, 2011, p. 28.
 39 Exhibit "BBB."
 40 Exhibit "CCC."
 41 Exhibit "GGG."
 42 Exhibit "FFF."
 43 TSN dated October 5, 2011, p. 30; Exhibit "HHH."
 44 *Id.*, p. 33.
 45 *Id.*, p. 34.
 46 *Id.*
 47 *Id.*, pp. 35-36; Exhibit "V-1."
 48 TSN dated October 5, 2011, p. 37.

Resolution; the memorandum of agreement entered into by the Municipality of Loreto and certain officials and employees; the letter-request of the Municipal Treasurer as approved by the Municipal Mayor to Land Bank requesting the transfer of the fund to LOTSA; and the debit advice issued by Land Bank showing the transfer of the fund of ₱1,600,000.00 and the bank statement of the LOTSA provided to her by the LOTSA treasurer.⁴⁹ She reiterated that those who availed of the loan among the accused were Reyes, Daday, Gomez, Estil, Plaza, and Magadan, based on the schedule submitted to the team by Percy.⁵⁰ She said that the ₱1,600,000.00 was sourced from the 20% Development Fund of the Municipality in 2003 which was intended for the payment of loans with Land Bank for the construction of the municipal building of the Municipality of Loreto.⁵¹ She said the basis for her answer was the *Sangguniang Bayan* Resolution No. 38-2003⁵² wherein they mentioned that they would borrow the amount from the municipal building fund; and the *Sangguniang Bayan* Resolution No. 207-2002 approving the 20% Development Fund for the year 2003 wherein among the programs to be funded by the 20% Development Fund was the payment of the loan with Land Bank.⁵³ She clarified that there were two versions of Resolution No. 38-2003 – one reflected that the amount of ₱1,500,000.00 would be borrowed and granted in the form of loan to employees and officials of the Municipality, while the other was for the purchase of motor vehicles.⁵⁴ She also explained that based on their annual investment plan for 2003 of the Municipality with regard to the 20% Development Fund, the ₱5,000,000.00 was intended for the payment of loan interest in relation to the construction of the municipal building.⁵⁵ She said that based on Section 4(2) of Presidential Decree No. 1445, otherwise known as the State Auditing Code, the transfer of the ₱1,600,000.00 from the LGU fund to the LOTSA was in violation of the section which states that government funds and property should be used or spent solely for public purpose only.⁵⁶

⁴⁹ *Id.*, p. 38.

⁵⁰ *Id.*, pp. 38-39; Exhibit "BB."

⁵¹ TSN dated October 5, 2011, p. 40.

⁵² Exhibits "X" and "W."

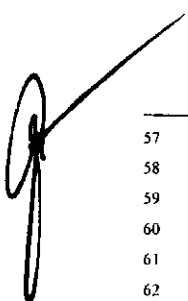
⁵³ TSN dated October 5, 2011, p. 40.

⁵⁴ *Id.*, p. 43.

⁵⁵ *Id.*, p. 44.

⁵⁶ *Id.*

With regard to Findings No. 2, the transfer of fund from the General Fund of Loreto to the account of the LOTSA, Ladaga said that the Municipal Treasurer sent a letter-request⁵⁷ to Land Bank, with approval of the Municipal Mayor to transfer ₱1,600,000.00 from the account of the Municipality to the account of the LOTSA, which she believed violated the Government Accounting and Auditing Manual wherein for every disbursement of the government fund, there should be a corresponding disbursement voucher.⁵⁸ She explained that a debit advice could only be used if a person transfers an account to another account of the same agency or the same municipality.⁵⁹ With respect to the transfer from the Municipality of Loreto, she maintained that a debit advice should not have been used because it was a form of disbursement.⁶⁰ She affirmed that based on the debit advice in question, the amount of ₱1,600,000.00 was taken from Account No. 0972-1003-07 and transferred to Account No. 0972-1043-96 on July 11, 2003.⁶¹ She believed this was contrary to Section 430 of the Government Accounting and Auditing Manual (GAAM) which requires that every disbursement of government funds should be supported by disbursement vouchers.⁶² She also observed that the transfer was not receipted by the LOTSA, which she believed was contrary to Section 4(2) of the State Audit Code of Presidential Decree No. 1445 requiring that claims from government funds should be duly supported by complete documentation; and the same was not recorded in the daily manual, but subsequently, in the journal entry voucher⁶³ for the year 2004.⁶⁴ She maintained that the transaction should be recorded in the year it was made, based on the accrual basis of accounting as provided for in Section 31 of the GAAM Volume II.⁶⁵



⁵⁷ Exhibit "BB."

⁵⁸ TSN dated October 5, 2011, p. 44.

⁵⁹ *Id.*, p. 47.

⁶⁰ *Id.*


⁶¹ *Id.*, p. 48.

⁶² *Id.*

⁶³ Exhibit "EE."

⁶⁴ TSN dated October 5, 2011, p. 49.

⁶⁵ *Id.*, p. 50.



Ladaga said that the audit team also executed a Joint Affidavit dated May 9, 2007⁶⁶ wherein they stated their authority to conduct the audit, then their findings, and recommendations.⁶⁷ She stated that, based on the affidavit, the LOTSA had an unpaid obligation with the Municipality for about ₱864,188.90.⁶⁸ She said that based on the memorandum of agreement,⁶⁹ the due date for payment of loans should have been three (3) years after the release of the amount on July 2003.⁷⁰ However, when their special audit team report was finalized on March 2007, the same was still not paid, and they had an unpaid obligation amounting to ₱864,188.90.⁷¹ This meant that as of March 2007, only ₱735,811.10 had been paid.⁷² Based on the agreement, the amount of ₱1,500,000.00 would be taken from the money intended for the municipal building – it would be borrowed and subject for replenishment; if the municipal officials and employees would be willing to avail of the loan to borrow the amount of ₱1,500,000.00 from the appropriation coming from the municipal building which would be for the fifteen (15) local officials in the amount of ₱100,000.00 each purposely to purchase service vehicles for official use of the local officials; and the ₱100,000.00 would be payable for three (3) years through payroll deduction until the principal amount of ₱100,000.00 is fully paid.⁷³ Ladaga said the RLAO submitted the report to the Office of the Ombudsman-Mindanao, and the Regional Cluster Director issued a Notice of Disallowance pertaining to the unpaid balance of the loan.⁷⁴

Prosecution witness Manuel L. Lozada, Municipal Accountant I of Loreto, Agusan del Sur from November 20, 1996 to September 26, 2004, issued and approved vouchers, recorded all transactions of the municipality, issued certifications and other documents in his custody.⁷⁵ Lozada recalled having

66 *Id.*; Exhibit "E."
 67 TSN dated October 5, 2011, p. 51.
 68 *Id.*, p. 52.
 69 Exhibit "K."
 70 TSN dated October 5, 2011, p. 52.
 71 *Id.*
 72 *Id.*
 73 *Id.*, p. 53.
 74 *Id.*, p. 54.
 75 *Id.*, p. 74.

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approved a journal entry voucher⁷⁶ which contained the availment of loan to the LOTSA as per debit advice of a certain *Sangguniang Bayan* resolution.⁷⁷

Prosecution witness Marco Anacleto P. Buena, Chief of the Complaints Unit of the Office of the Ombudsman for Mindanao from 1998 up to the time of his testimony, testified that their unit acts on the complaints filed with the Office of the Ombudsman for Mindanao which are insufficient in form and substance.⁷⁸ He said that sometime in September 2003, he encountered a letter complaint against the officials of the Municipality of Loreto, Agusan del Sur.⁷⁹ Their unit then forwarded the letter to the COA Region XIII with the request for an audit investigation.⁸⁰ He explained that he referred the letter complaints to the COA because there were allegations of misappropriation of public funds intended for the construction of the municipal building.⁸¹ In 2005, they received a similar complaint or report of misappropriation of public funds intended for the construction of the municipal building from the Philippine National Police Criminal Investigation and Detection Group.⁸² They then made a follow-up letter to the COA, which in turn submitted an Audit Report.⁸³ After that, their unit reviewed the Audit Report and concurred with their findings, and Buena executed an affidavit-complaint.⁸⁴ He affirmed, as per their findings, that malversation and violation of Republic Act No. 3019 had been committed by the local government officials of Loreto, Agusan del Sur, specifically Reyes, Virgilio Julao, Leo A. Heje, Ma. Marley C. Daday, Leo Gomez, Joel Plaza, Arturo Estil, Rolando Irisari, Remy Acla, Romeo Magadan, and Filomeno Salise.⁸⁵

The prosecution also intended to present Mirasol Perez Reyes as witness, but the parties instead agreed to stipulate and admit the existence of prosecution

76 Exhibit "EE" with sub-markings.
 77 TSN dated October 5, 2011, p. 75.
 78 TSN dated February 8, 2012, pp. 12-13.
 79 *Id.*, p. 13; Exhibits "F" and "G."
 80 TSN dated February 8, 2012, pp. 14-15.
 81 *Id.*, p. 15.
 82 *Id.*, p. 16; Exhibit "H."
 83 TSN dated February 8, 2012, p. 17; Exhibits "C," "E," and "B."
 84 TSN dated February 8, 2012, p. 18; Exhibit "A."
 85 TSN dated February 8, 2012, pp. 21-22.

Exhibits “X” (Resolution No. 38-2003 entitled “Resolution to Borrow the amount of ₱1.5M taken from the Municipal Building and such amount be granted to members of the *Sangguniang Bayan*, including the secretary in the purchase of motor vehicle and such amount is considered an individual loan which is payable for three (3) years through payroll deduction”); “W” (Resolution No. 38-2003 entitled “Resolution to Borrow the Amount of ₱1.5M taken from the Municipal Building and such amount to be granted as a livelihood projects (*sic*) to some government employees/officials in a form of loan and payable for a period of three (3) years through a payroll deduction” dated March 10, 2003; and “L” (Resolution No. 126-2003 entitled “Resolution Requesting Hon. Herminio C. Reyes, Municipal Mayor and Mr. Felomino C. Salise, Municipal Treasurer, to release the 1.6 M to be deposited with the Land Bank of the Philippines in Favor of Loreto Transport Services Association, Inc. Loreto, Agusan del Sur” dated June 2, 2003).⁸⁶

The parties also dispensed with the testimony of prosecution witness Sampaguita Rey Hipolito Ladrido, Securities Counsel III of the Securities Exchange Commission (SEC), after the defense admitted the existence of the Certificate to File Information,⁸⁷ Certificate of Incorporation,⁸⁸ Articles of Incorporation,⁸⁹ and Registration Data Sheet of LOTSA.⁹⁰

The prosecution also submitted the following exhibits:

EXHIBIT	DESCRIPTION
“I”	Investigation Report on Complaint against Officials of Loreto, Agusan del Sur prepared by Alexy Francis B. Avenido, Police Officer 2 and concurred by Benhur Salazar Mongao, Police Superintendent, Regional Chief.
“V”	Results of the Audit/Investigation on the Case Entitled: “Concerned Citizens versus Concerned Officials” Municipality of Loreto, Agusan del Sur, docketed as CPL-M-03-0896, CPL M-03-0975 and CPL M-050124 dated April 24, 2007 with annexes consisting of 118 pages.
“Z”	(Same as Exhibit “L.”)

⁸⁶ TSN dated October 5, 2011, p. 80.

⁸⁷ Exhibit “LL.”

⁸⁸ Exhibit “MM.”

⁸⁹ Exhibit “NN.”

⁹⁰ TSN dated November 9, 2011, p. 15-16; Exhibit “OO.”

"DD"	Credit Advice dated July 11, 2003 in the amount of P1,600,000.00.
"GG-1"	Signature card on Account No. 0972-1043-96 in the name of George S. Legaspi/Loreto Transport Services Association Inc. with Customer Information Sheet for Government Customer Account No. 0972-1003-07 dated January 5, 2006 with attachments.
"VV"	Table reflecting the amount granted to LOTSA and amount returned to the Municipality of Loreto, Agusan del Sur as of September 26, 2006.

On March 16, 2012, the prosecution submitted its Formal Offer of Evidence consisting of Exhibits "A," "C," "E," "F," "G," "H," "I," "K," "L," "T," "U," "V," "W," "X," "BB," "CC," "DD," "EE" with sub-markings, "GG" and "GG-1," "HH," "II," "LL," "MM," "NN," "OO," "VV," "AAA," "BBB," "CCC," "FFF," "GGG," and "HHH."⁹¹

In its Minute Resolution dated July 9, 2012, the Court admitted Exhibits "A," to "Z," "AA" to "EE," "EE-1" to "EE-3," "GG-1," "HH" to "OO," "VV" to "ZZ," "AAA" to "CCC," and "FFF" to "HHH," subject to the appreciation of the Court as to the probative value thereof, with the following qualifications: Exhibit "V" consists of eleven (11) pages, not one hundred eighteen (118) pages as alleged in the offer of evidence; Exhibit "AA" consists of three (3) pages, not four (4) pages as alleged in the offer of evidence; and Exhibit "FF" is a one (1) page document, not four (4) pages as alleged in the offer of evidence.⁹²

EVIDENCE FOR THE DEFENSE

Accused Virgilio Agustin Julao was member of the *Sangguniang Bayan* of Loreto, Agusan del Sur from 1998 to 2007, while its Mayor was co-accused Herminio C. Reyes from 1998 to 2004; and co-accused Romeo Magadan, Sr., from 2004 to 2007.⁹³ He affirmed that Reyes's Vice Mayor was George

⁹¹ Records, Volume II, pp. 94-122.

⁹² Records, Volume II, p. 284.

⁹³ TSN dated February 18, 2013, p. 9.

Legaspi.⁹⁴ During Julao's incumbency, he served as Temporary Presiding Officer when Resolution No. 38-2003 was passed because Legaspi had been on official business.⁹⁵ He explained that the *Sangguniang Bayan* resolved that the Municipality of Loreto, Agusan del Sur would borrow the amount of One Million Five Hundred Thousand Pesos (₱1,500,000.00) to be taken from the funds of the municipal building of which the construction was suspended, and the amount would be used to purchase motor vehicles intended for some government officials and employees.⁹⁶ The latter would pay for them within three (3) years through payroll deduction.⁹⁷ During the passage of the resolution, he maintained that he could not participate in the deliberation and approval thereof because he was the presiding officer.⁹⁸ He denied having conspired with the other accused in causing the transfer of ₱1,600,000.00 from the general fund account of the Municipality of Loreto to the account of LOTSA.⁹⁹ He maintained that he did not participate in the deliberation of the resolution and did not avail of the loan.¹⁰⁰ He also said that before the resolution was passed by the *Sangguniang Bayan*, the Municipality of Loreto consulted the local auditor of COA through the *Sangguniang Bayan* secretary.¹⁰¹ He affirmed having executed a counter-affidavit during the preliminary investigation of this case.¹⁰² He said that the loan availed of by the other accused had been paid, and he knew of this because he was able to read the letter from State Auditor Christopher Rivas addressed to Atty. Roy Ursal, Regional Director, COA Regional Office XIII in Butuan City, that the ₱1,600,000.00 was already paid.¹⁰³

On re-direct examination, Julao said that the following signatories in the Memorandum of Agreement were not charged before this Court: Estanislao Irisari, *Sangguniang Bayan* secretary; Delia Castillo, Municipal Budget Officer;

⁹⁴ *Id.*, p. 10.

⁹⁵ *Id.*, pp. 10-11.

⁹⁶ *Id.*

⁹⁷ *Id.*, p. 11.

⁹⁸ *Id.*

⁹⁹ *Id.*, p. 12.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, pp. 14-15.

¹⁰² *Id.*, p. 15; Exhibit "15."

¹⁰³ TSN dated February 18, 2013, pp. 17-18; Exhibit "4."

Manuel Lozada, Municipal Accountant; Edna Percy, Assistant Municipal Treasurer; and George Legaspi, Municipal Vice Mayor.¹⁰⁴ He said that Magadan also availed of the loan, and had paid the same.¹⁰⁵

Accused Ma. Marley C. Calixtro-Daday, incumbent member of the *Sangguniang Bayan* of Loreto, Agusan del Sur at the time of her testimony, said that in 2003, she was a councilor.¹⁰⁶ She recalled the passage of Resolution No. 38-2003, and affirmed having availed of a loan of Forty-Three Thousand Pesos (₱43,000.00) which she already paid.¹⁰⁷ She said that the other government officials who obtained loans were also able to repay them as well.¹⁰⁸ She quoted the COA result that the loan was paid by the treasurer of the LOTSA,¹⁰⁹ which was also affirmed by the letter of State Auditor Christopher Rivas addressed to Atty. Roy Ursal, Regional Director, COA Regional Office XIII in Butuan City.¹¹⁰ She said that before the passage of the resolution, the *Sangguniang Bayan* secretary asked their Local Auditor, Auditor Lorete, if the resolution they passed was legal, and the latter replied in the affirmative.¹¹¹

Accused Joel Dingle Plaza, former member of the *Sangguniang Bayan* of Loreto, Agusan del Sur, testified that he recalled the passage of Resolution No. 38-2003, which referred to the amount of ₱1,500,000.00 for the livelihood project of the officials and members of Loreto.¹¹² Plaza said that before the passage of the resolution, they referred it to the COA personnel, who in turn told them that there was no question with regard to the allocation.¹¹³ He himself said that he had borrowed One Hundred Thousand Pesos (₱100,000.00), but the same had been paid.¹¹⁴ He said that the others had also paid their loans, as relayed to him by the LOTSA treasurer, Edna Percy.¹¹⁵

¹⁰⁴ TSN dated February 18, 2013, pp. 53-54.

¹⁰⁵ *Id.*, pp. 54-55.

¹⁰⁶ TSN dated April 29, 2013, p. 13.

¹⁰⁷ *Id.*, p. 15.

¹⁰⁸ *Id.*, p. 16.

¹⁰⁹ *Id.*

¹¹⁰ Exhibit "4."

¹¹¹ TSN dated April 29, 2013, pp. 18-19.

¹¹² TSN dated June 13, 2013, p. 10.

¹¹³ *Id.*, pp. 10-11.

¹¹⁴ *Id.*, p. 11.

¹¹⁵ *Id.*

On re-direct examination, Plaza affirmed, as per the document marked as Exhibit “3,” that they had paid their loans.¹¹⁶

When asked by the Court, Plaza affirmed that the money that had been loaned came from the Municipality.¹¹⁷ He explained that the LOTSA was an organization of the employees of the Municipality of Loreto, while the fund that was allocated by the Municipality for the livelihood project was coursed through the LOTSA.¹¹⁸ He said that the loan did not charge interest.¹¹⁹ When asked why the loan they secured had been coursed through the LOTSA instead of from the Municipality itself, he said that he did not know.¹²⁰

Accused Christopher C. Rivas, Auditor IV of the COA, affirmed that he issued the Certification dated April 4, 2011.¹²¹ Rivas brought with him the following documents: Certification dated April 4, 2011; Journal Entry Voucher No. 3069 in the amount of Thirteen Thousand Five Hundred Pesos (₱13,500.00);¹²² Journal Entry Voucher No. 3085 dated June 30, 2005 in the amount of One Hundred Seventeen Thousand Pesos (₱117,000.00)¹²³ covered by Official Receipt No. 0220799 dated June 22, 2005;¹²⁴ Journal Entry Voucher No. 00111 dated February 28, 2007 in the amount of One Hundred Nineteen Thousand Three Hundred Ninety Pesos (₱119,390.00)¹²⁵ covered by Official Receipt No. 1160724;¹²⁶ Journal Entry Voucher No. 00024 dated August 31, 2007 in the amount of One Hundred Twelve Thousand Six Hundred Fifty-Nine Pesos and Ninety-Eight Centavos (₱112,659.98);¹²⁷ Journal Entry Voucher No. 0063 in the amount of Fifty-Four Thousand Eight Hundred Thirty-

116 *Id.*, p. 29; Exhibit “3.”
 117 TSN dated June 13, 2013, p. 33.
 118 *Id.*, p. 34.
 119 *Id.*, p. 35.
 120 *Id.*, p. 36.
 121 TSN dated September 30, 2013, p. 10; Exhibit “4.”
 122 Exhibit “15.”
 123 Exhibit “5-a.”
 124 Exhibit “5.”
 125 Exhibit “6-a.”
 126 Exhibit “6.”
 127 Exhibit “8-a.”

One Pesos and Seventy-Four Centavos (₱54,831.74);¹²⁸ Journal Entry Voucher No. 00707 in the amount of Sixty Thousand Six Hundred Forty Pesos and Ninety-Eight Centavos (₱60,640.98);¹²⁹ Report of Collections and Deposits dated March 27, 2008 in the amount of Thirty Thousand Three Hundred Twenty Pesos and Forty-Nine Centavos (₱33,320.49);¹³⁰ and Journal Entry Voucher No. 13648 dated September 30, 2010 in the amount of Six Hundred Thirty Thousand Seven Hundred Thirty-Two Pesos and Fifty-Five Centavos (₱630,732.55)¹³¹ covered by Official Receipt No. 1160729;¹³² all of which he said supported his Certification dated April 4, 2011 that the LOTSA paid the amount of One Million Six Hundred Thousand Pesos (₱1,600,000.00).¹³³

Accused Leo Gomez testified that in 2003, he was a member of the *Sangguniang Bayan* of the Municipality of Loreto, Agusan del Sur.¹³⁴ He recalled having passed a resolution borrowing the amount of ₱1,600,000.00 from the construction of the building for the Municipality, as the latter had been suspended.¹³⁵ He said that the money was used for the livelihood program intended for the government officials and employees through a loan payable in three (3) years.¹³⁶ He said that the loan had already been paid to the Municipality through the LOTSA treasurer, Percy.¹³⁷

Accused Herminio Casal Reyes testified that in 2003, when he was Municipal Mayor of the Municipality of Loreto, Agusan del Sur, he signed a resolution where the LOTSA borrowed the amount of ₱1,600,000.00 from the Municipality.¹³⁸ Reyes believed that the loan had been paid within one year.¹³⁹

¹²⁸ Exhibit "10-a."

¹²⁹ Exhibit "9-b."

¹³⁰ Exhibit "9-a."

¹³¹ Exhibit "7-a."

¹³² Exhibit "7."

¹³³ TSN dated September 30, 2013, p. 13.

¹³⁴ TSN dated November 25, 2013, p. 10.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*, pp. 10-11.

¹³⁸ *Id.*, p. 18.

¹³⁹ *Id.*

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Accused Romeo O. Magadan testified that in 2003, he was an *ex-officio* member of the *Sangguniang Bayan*.¹⁴⁰ Magadan explained that he was then the president of the Association of Barangay Captains, which was why he automatically became the *ex-officio* member.¹⁴¹ He affirmed that Resolution No. 38-2003 referred to the ₱1,500,000.00 for the livelihood projects.¹⁴² He said that the whole obligation of ₱1,600,000.00 had been paid one year later, according to the COA.¹⁴³ He said that Resolution No. 38-2003 had been passed in order for the municipal officials and employees to borrow the amount of One Million Five Hundred Thousand Pesos (₱1,560,000.00) for their livelihood projects, in the form of a loan payable in three (3) years.¹⁴⁴ He said that before they passed the resolution, they obtained the COA opinion from COA Resident Auditor Arsenio Lorete saying that it was legal.¹⁴⁵

Defense witness Arsenio B. Lorete, retired State Auditor of the COA at the time of his testimony,¹⁴⁶ testified that in 2003, the local officials of the Municipality of Loreto were Mayor Herminio Casal Reyes and Vice Mayor George Legaspi; and the members of the *Sangguniang Bayan* were Julao, Daday, Plaza, Gomez, and Irisari.¹⁴⁷ Lorete said that sometime in February 2003, Irisari, the *Sangguniang Bayan* secretary, consulted him about the plan to realign the unexpended balance of the municipal building free from other obligations to finance the livelihood projects intended for the people thereat.¹⁴⁸ He said that the construction of the municipal building at that time had been suspended because of weather conditions, peace and order, and the revision of the Program of Work for the building.¹⁴⁹ He affirmed that he had told Irisari “yes.”¹⁵⁰ When asked by the Court, he admitted that he had given advice but first told Irisari that fiscal responsibility was interrogative in management; and that they (the COA) would function on a post-audit basis for the evaluation of

¹⁴⁰ TSN dated March 10, 2014, p. 10.

¹⁴¹ *Id.*

¹⁴² *Id.*, p. 11.

¹⁴³ *Id.*, p. 15.

¹⁴⁴ *Id.*, p. 18.

¹⁴⁵ *Id.*, p. 19.

¹⁴⁶ *Id.*, pp. 6.

¹⁴⁷ *Id.*, p. 11.

¹⁴⁸ *Id.*, p. 12.

¹⁴⁹ *Id.*

¹⁵⁰ TSN dated May 13, 2014, pp. 13-14.

the transaction.¹⁵¹ He said that after his conference with Irisari, an anonymous complaint signed by “a.k.a. Gary and Marcy” addressed to the Office of the Ombudsman requesting for an investigation on the borrowing of funds intended for the municipal building which was loaned to the local officials and employees, was endorsed by Atty. Marisol Legaspi to his office for a comment on the matter.¹⁵² He then conducted his own investigation and submitted a report entitled “Fourth Endorsement” dated October 1, 2004.¹⁵³ His endorsement was received by Regional Cluster Director Romeo C. Uy.¹⁵⁴ He explained that a statement therein, “it being illegitimate association,” was mistakenly encoded.¹⁵⁵ He said that the Loreto Transport Association was a legitimate association as it was already existing before the same was changed to Loreto Transport Services, Incorporated.¹⁵⁶ He also explained that in his report, he stated a variation order dated December 21, 2004, while his endorsement was dated October 1, 2004.¹⁵⁷ He said that when he prepared the investigation report, it was drafted in the computer itself by the encoder pending submission of the variation orders.¹⁵⁸ After submitting on December 21, 2004, he finalized his report and submitted the same to his supervising auditor, Romeo C. Uy.¹⁵⁹

The defense also submitted the following exhibits:

EXHIBIT	DESCRIPTION
“1”	O.R. No. 2911879 dated September 1, 2010 issued by the Office of the Provincial Treasurer, Province of Agusan del Sur for the sum of Php 603,732.55.
“2”	Land Bank of the Philippines deposit slip dated September 2, 2010 in the amount of Php 603,732.55.
“8”	O.R. No. 1586520 dated August 15, 2007 issued by the Office of the Provincial Treasurer, Province of Agusan del Sur for the sum of Php 56,329.99.
“9”	O.R. No. 1587488 dated March 27, 2008 issued by the Office of the

¹⁵¹ *Id.*, p. 15.

¹⁵² *Id.*, p. 17.

¹⁵³ *Id.*, pp. 17-18; Exhibit “13-a.”

¹⁵⁴ TSN dated May 13, 2014, p. 26.

¹⁵⁵ *Id.*, p. 26.

¹⁵⁶ *Id.*, p. 27.

¹⁵⁷ *Id.*, p. 28.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

	Provincial Treasurer, Province of Agusan del Sur for the sum of Php 30,320.49.
"10"	O.R. No. 1586537 dated September 17, 2007 issued by the Office of the Provincial Treasurer, Province of Agusan del Sur for the sum of Php 27,415.87.
"11"	O.R. No. 2911879 dated September 1, 2010 issued by the Office of the Provincial Treasurer, Province of Agusan del Sur for the sum of Php 630,732.55.
"12"	Comment to the Motion for Reinvestigation filed by Atty. Roy Ursal dated December 15, 2010.
"13"	Counter-Affidavit of accused Herminio Casal Reyes, Jose D. Plaza, Arturo E. Estil, and Leo B. Gomez dated 13 August 2007.
"13-a" "13-b" "13-c"	4 th Indorsement dated October 1, 2004 issued by State Auditor IV, Arsenio B. Lorete, re: Comment on the anonymous complaint of "Concerned Citizens vs. Concerned Officials, LGU Loreto, Agusan del Sur" as indorsed by the Office of the Deputy Ombudsman for Mindanao, docketed as CPL-M-03-0975 for alleged misuse of funds.
14	Counter-Affidavit of accused Ma. Marley C. Daday dated September 4, 2007.

On June 13, 2014, the defense submitted its Formal Offer of Evidence consisting of Exhibits "1," "2," "5," "6," "7," "8," "9," "10," and "11."¹⁶⁰

In its Minute Resolution dated August 23, 2017, the Court admitted into evidence Exhibits "4," "13-a," "13-b," "13-c," "15," "16," and "17," subject to its proper appreciation as to the probative value thereof.¹⁶¹

On August 22, 2017, the Court dismissed the cases against Salise on account of his death.¹⁶²

On May 21, 2018, these cases were submitted for decision.¹⁶³

¹⁶⁰ Records, Volume II, pp. 371-377.

¹⁶¹ Records, Volume II, p. 391.

¹⁶² Records, Volume II, pp. 387-388.

¹⁶³ Records, Volume II, p. 394.

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ANALYSIS AND DISCUSSION

Herein accused are charged with Violation of Section 3(e) of R.A. No. 3019, the elements of which are as follows:

- (a) that the accused is a public officer discharging administrative, judicial or official functions;
- (b) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- (c) that 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.¹⁶⁴

Reyes and Salise are also charged with Malversation of Public Funds as defined and penalized under Article 217 of the RPC, the elements of which are as follows:

- (a) the offender is a public officer;
- (b) he has custody or control of the funds or property by reason of the duties of his office;
- (c) the funds or property are public funds or property for which he is accountable; and most importantly,
- (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.¹⁶⁵

As all of the accused are government officials and employees of the Municipality of Loreto, Agusan del Sur, they are unquestionably public officers. The ₱1,600,000.00 in question came from funds for the construction of the municipal building; hence, the same would be classified as public funds as referred to under Article 217 of the RPC. The Court holds that although the

¹⁶⁴ *Garcia v. Sandiganbayan*, March 26, 2014, 720 SCRA 155, 167-168.

¹⁶⁵ *Panganiban v. People*, G.R. No. 211543, December 9, 2015, 777 SCRA 467, 476-477.

amount of ₱1,600,000.00 had been transferred to a private current account, the money remained as public funds because aside from the COA finding that the transaction was in violation of the State Auditing Code, the local officials of Loreto obligated themselves to repay the same to the Municipality.

The prosecution was able to establish – and as admitted by the accused themselves – that in 2003, the latter passed Resolution No. 38-2003 which enabled the release of ₱1,500,000.00 from the general fund account for the construction of the municipal building, to the Land Bank account of the LOTSA, a private entity, and subsequently to be granted as “a livelihood project to government employees/officials in a form of loan.” The Debit Advice dated July 11, 2003, the Bank Statements issued by Land Bank for the period in question, and the letter dated July 1, 2003 of Salise all reflect the transfer of ₱1,600,000.00 to the Land Bank account of the LOTSA. These are likewise bolstered by the findings of the COA, which must be accorded great weight and respect.¹⁶⁶

In their Memorandum, Daday, Julao and Magadan maintain that they did not act with bad faith, or cause undue injury to the government or to any private party.

In *Rivera v. People*, the Supreme Court defined “undue injury” in this wise:

Undue injury in the context of Section 3(e) of R. A. No. 3019 should be equated with that civil law concept of “actual damage.” Unlike in actions for torts, undue injury in Section 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, **it is required that the undue injury be specified, quantified and proven to the point of moral certainty.**¹⁶⁷

¹⁶⁶ *Jaca v. People*, G.R. No. 166967, January 28, 2013, 689 SCRA 270, 301.

¹⁶⁷ G.R. Nos. 156577, 156587 and 156749, December 3, 2014, 743 SCRA 476, 503.

In the present case, the Court is satisfied by the proof shown by the prosecution that the amount of ₱1,600,000.00 was taken from the general fund account and later disbursed through eight (8) encashments to the accused. By the terms of the Memorandum of Agreement dated March 2003 signed by Reyes and the local officials of the Municipality of Loreto, the loan should have been paid three years thereafter. However, the COA affirmed that as of March 2007, only ₱735,811.10 had been paid; hence, there was still an unpaid balance of ₱864,188.90. The defense, on the other hand, presented receipts of payments to show that the loans had been fully paid by September 1, 2010.

Did herein accused act with bad faith and manifest partiality? In *Luspo v. People*, the Supreme Court held that:

x x x “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.
x x x¹⁶⁸

Herein accused argue that they acted in good faith because they had consulted Auditor Lorete with regard to the legality of their intention to borrow the unexpended allotment/appropriation of the municipal building before the passage of the *Sangguniang Bayan* resolution. The Court must disagree. The accused are public officers who should have known better than to rely on the verbal affirmation (albeit erroneous) of a COA auditor as to whether their action was proper. Auditor Lorete himself testified that he had merely rendered an opinion. He testified:

DSP SOMIDO

Would it be correct, Mr. Witness, to say that the advice you rendered was not made in accord with your official position as an auditor?

WITNESS

Will you repeat, sir?

Q

The advice which you rendered was not made in accordance with your official position as an auditor of the Commission on Audit?

¹⁶⁸ G.R. Nos. 188487, 188541 and 188556, February 14, 2011, 642 SCRA 729, 750.

- A It was in accordance with my *kuwan* because when I rendered my opinion x x x and because you know in the local government, sir, they are, from time to time, x x x referral advice.
- Q Not in your capacity as auditor?
- A That is in line with my function opinion as *kuwan* because as I've said earlier, sir, **perform such other functions like rendering opinions and advices to a client local government officials** in furtherance of their function to deliver the basic services in order to cater the needs of the populace, sir.
- Q Are you telling us, Mr. Witness, that as an auditor, the local government is your client?
- A In auditing parlance, that is considered a clientele of auditing, sir.¹⁶⁹

Not even Julao, who claims that he had not participated in the deliberation or passage of the resolution enabling the transfer of funds, can be exonerated because he still signed his attestation to Resolution No. 38-2003, and did not manifest thereafter his disagreement to the passage thereof.

The accused claim that they tried to ask for an extension to settle their obligations. The Court, however, believes that they did so as a mere afterthought in order to escape liability, as it occurred only after the COA audit observation.

With regard to the charge of Malversation of Public Funds, the Court also finds Reyes and Salise guilty. Reyes, as Municipal Mayor, and Salise, as Municipal Treasurer, were accountable for the municipal building funds. As held in *People v. Pantaleon, Jr.*, a municipal treasurer is an accountable officer because among his or her duties is “to take custody and exercise proper management of the funds of the local government unit concerned”¹⁷⁰ while a municipal mayor is “immediately and primarily responsible for all government funds and property pertaining to his agency.”¹⁷¹

¹⁶⁹ TSN dated May 13, 2014, pp. 34-35.

¹⁷⁰ G.R. Nos. 158694-96, March 13, 2009, 501 SCRA 140, 162; quoting Section 470(d)(2) of Republic Act No. 7160.

¹⁷¹ *Id.*; quoting Section 102 of the Government Auditing Code of the Philippines.

The element of misappropriation is likewise present, for as held in *Legrama v. Sandiganbayan*:

Under Article 217, a presumption was installed that upon demand by any duly authorized officer, the failure of a public officer to have duly forthcoming any public funds or property — with which said officer is accountable — should be prima facie evidence that he had put such missing funds or properties to personal use. When these circumstances are present, a "presumption of law" arises that there was malversation of public funds or properties as decreed by Article 217. To be sure, this presumption is disputable and rebuttable by evidence showing that the public officer had fully accounted for the alleged cash shortage.¹⁷²

In the present case, Reyes and Salise failed to account for the funds which they borrowed from the Municipality after being presented with the COA audit observation. Their concerted acts made it possible for the local officials of the Municipality themselves to receive the amount in question in the form of loan. Reyes affirmed he had signed the resolution which allowed the LOTSA to borrow ₱1,600,000.00 from the Municipality. Salise, on the other hand, made a letter-request to the Land Bank for the transfer of the amount in question from the general fund account to the current account of the LOTSA.

Under Section 3(e) of R.A. No. 3019, the penalty for the violation thereof is imprisonment for not less than six (6) years and one (1) month nor more than fifteen years, and perpetual disqualification from public office. Under Section 1 of the Indeterminate Sentence Law (ISL)¹⁷³ and taking its cue from a previously decided case of similar import,¹⁷⁴ the Court imposes the indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

¹⁷² G.R. No. 178626, June 13, 2012, 672 SCRA 270, 279.

¹⁷³ SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (*As amended by Act No. 4225.*)

¹⁷⁴ *People v. Pajaro, et al.*, G.R. Nos. 167860-65, June 17, 2008, 554 SCRA 572, 582-583; *Ong v. People*, G.R. No. 176546, September 25, 2009, 601 SCRA 47, 52; *Nacaytuna v. People*, G.R. No. 171144, November 24, 2006, 508 SCRA 128, 131.

On the other hand, the penalty for Malversation of Public Funds under Article 217 of the RPC, as amended by Republic Act No. 10951,¹⁷⁵ is *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000). The accused shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed. Again applying the Indeterminate Sentence Law, this Court imposes the indeterminate penalty ranging from six (6) years and one (1) day of *prision mayor* in its minimum period, as minimum, to ten (10) years of *prision mayor* in its medium period, as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱1,600,000.00.

WHEREFORE, in light of the foregoing, the Court renders judgment:

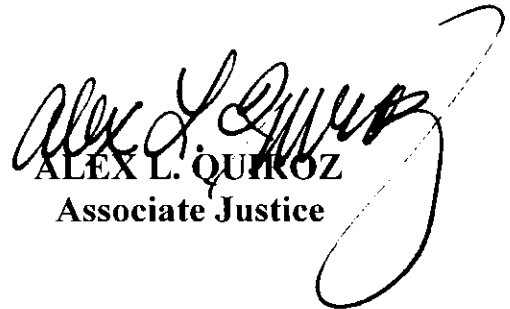
1. In Criminal Case No. SB-10-CRM-0127, finding Herminio Casal Reyes, Ma. Marley C. Daday, Leo Bausing Gomez, Arturo Elumba Estil, Joel Dingle Plaza, Romeo O. Magadan, and Virgilio A. Julao **GUILTY** beyond reasonable doubt of Violation of Section 3(e) of Republic Act No. 3019, and are sentenced to suffer the indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.
2. In Criminal Case No. SB-10-CRM-0128, finding Herminio Casal Reyes **GUILTY** beyond reasonable doubt of Malversation of Public Funds, and is sentenced to suffer the indeterminate penalty ranging from six (6) years and one (1) day of *prision mayor* in its minimum period, as minimum, to ten (10) years of *prision mayor* in its

¹⁷⁵ “An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as “The Revised Penal Code”, as Amended.” Approved on August 29, 2017.




medium period, as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱1,600,000.00.

SO ORDERED.


ALEX L. QUIROZ
Associate Justice

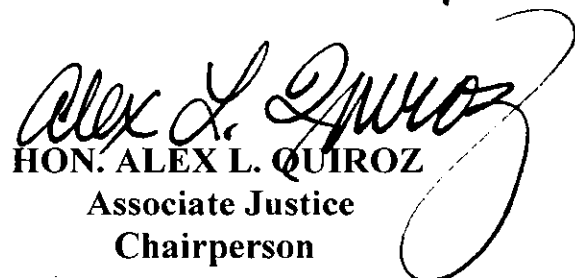
WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


BAYANI H. JACINTO
Associate Justice

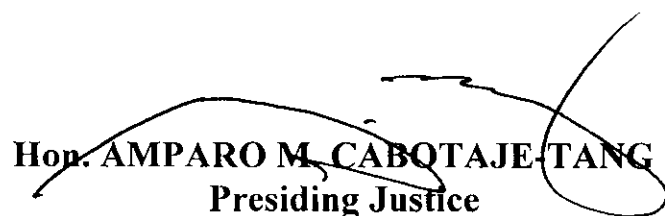
ATTESTATION

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


HON. ALEX L. QUIROZ
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


Hon. AMPARO M. CABOTAJE TANG
Presiding Justice