

MIS

REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
Quezon City

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

-versus-

**SB-14-CRM-0238**  
For: Plunder

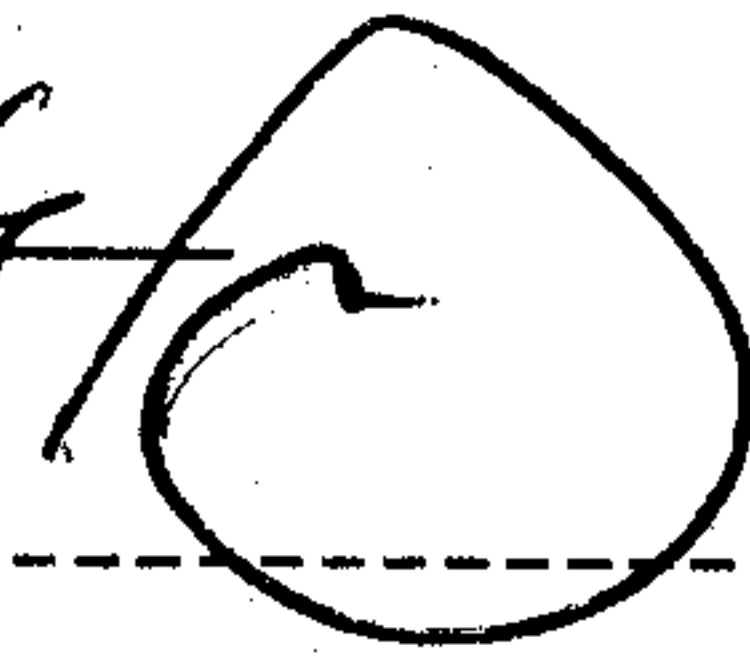
**JUAN PONCE ENRILE, et. al.,**  
Accused.

X-----X

Present:

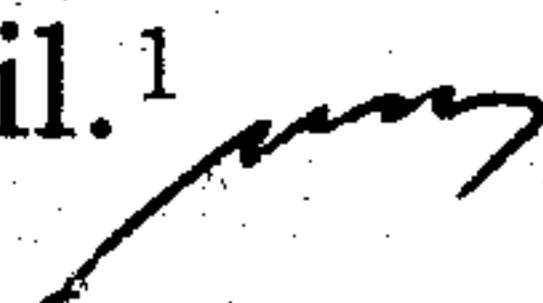
**CABOTAJE-TANG, P.J.**  
**MARTIRES, J.**  
**FERNANDEZ, J.**

Promulgated:

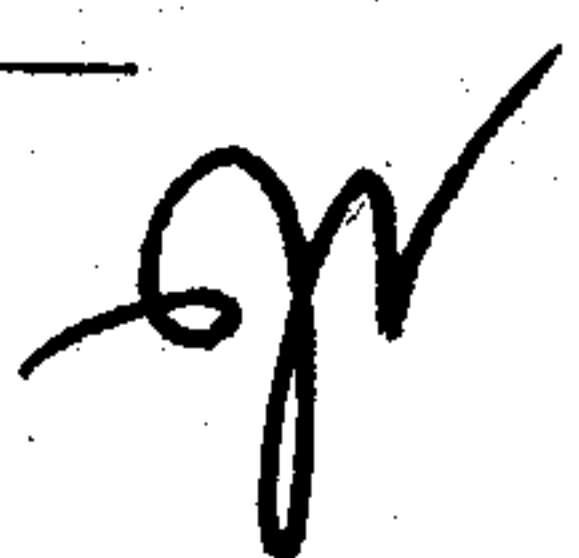
MARIA Z. 2016 

**R E S O L U T I O N**

**CABOTAJE-TANG, P.J.:**

For resolution is accused Janet Lim Napoles's *Motion for Reconsideration* dated November 4, 2015 which assails the Court's Resolution promulgated on October 16, 2015 denying her petition for bail.<sup>1</sup> 

<sup>1</sup> pp. 265-290, Record, Vol. 10



## ACCUSED NAPOLES'S SUBMISSIONS

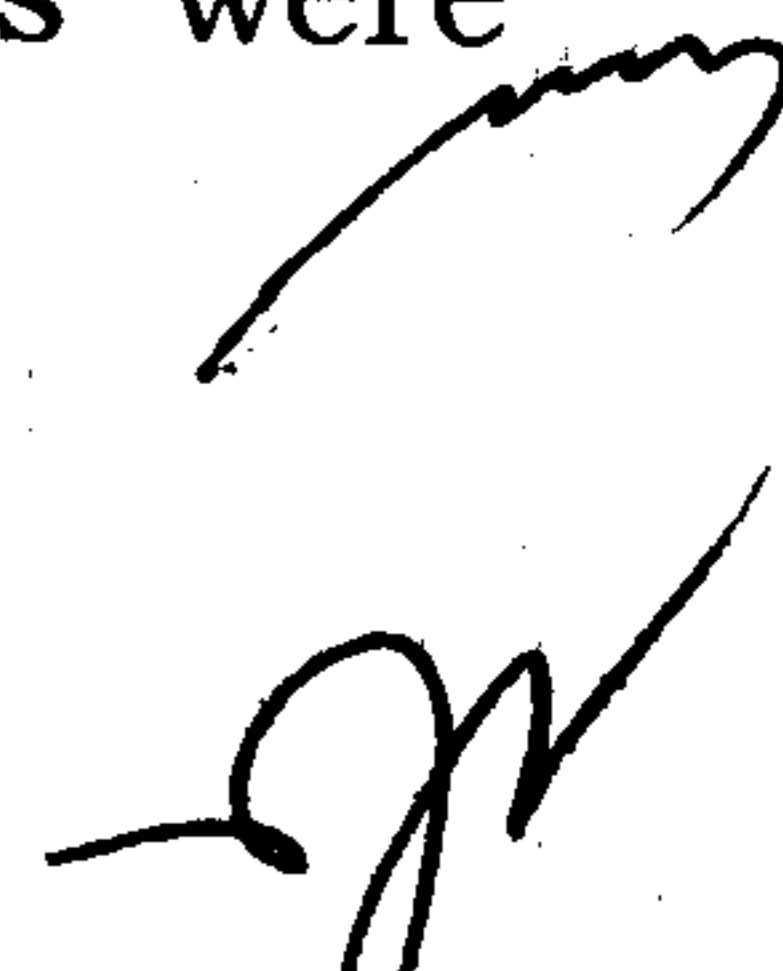
In her subject motion, accused Napoles argues that the Court seriously erred in denying her petition for bail because the prosecution purportedly failed to prove that the evidence of guilt against her for the crime of plunder is strong as shown by the following alleged circumstances:

1. There is no evidence that she or Senator Enrile performed an overt act in the commission of plunder. Absent proof that she conspired with Senator Enrile, a public officer, accused Napoles claims that being a private individual she cannot be held liable for plunder. Thus, the Court's finding of conspiracy is contrary to existing laws, jurisprudence and facts of the case;

2. The prosecution witnesses, particularly the whistleblowers were allegedly actuated by ill-motive to testify against her and their testimonies are inconsistent and self-serving; hence, their testimonies that she actively participated and actually benefitted in the misuse of public funds should not be given credence;

3. The DDRs prepared by Luy should not be accorded evidentiary value because they were not duly authenticated through the presentation and forensic examination of the external hard drive and presentation of the JLN vouchers which are the source of the entries in the said DDRs. Neither can Tuason authenticate the said DDRs because her testimony relating to her use of codename in receiving money from JLN or Luy is inconsistent with her testimony given in *People vs. Estrada* docketed as SB-14-CRM-0239;

4. The DDRs, the disbursement vouchers issued by the implementing agencies (IAs) and *Summary of Rebates* prepared by Luy do not prove that she, Senator Enrile and Atty. Reyes amassed, accumulated and/or acquired ill-gotten wealth amounting to at least P50,000,000.00 since the said documents are not proof of receipt of rebates or kickbacks; accused Napoles also points out that while Luy declared that the summary of rebates were based on the DDRs, there are entries in the *Summary of Rebates* that are not found in the DDRs; none of the witnesses testified that kickbacks were



given to Senator Enrile or that the latter received kickbacks;  
and

5. Only four (4) out of the nine (9) SAROs offered by the prosecution are mentioned in the *Summary of Rebates* and only two (2) out of the said four (4) SAROs mentioned indicate that Tuason received kickbacks on behalf of Senator Enrile. Accused Napoles asserts that the entries in the *Summary of Rebates* which do not relate to the SAROs offered by the prosecution should not be considered by the Court.<sup>2</sup>

In her reply, accused Napoles maintains that the prosecution failed to establish conspiracy allegedly because there is no evidence that Senator Enrile agreed with the other accused to commit plunder or that he received commissions. There is no evidence that her signature allegedly appear in any of the documentary exhibits of the prosecution and that the funds pilfered by the NGOs ended up in her account. Accused Napoles asserts that the testimonies of the whistleblowers should be taken with caution because they admitted to having fabricated documents and forged signatures. She insists that the presumption of suppression of evidence applies to the prosecution because it is in possession of the hard drive and personal computer of Luy. She reiterates that the DDRs do not prove that the public officers received money amounting to at least P50,000,000.00.<sup>3</sup>

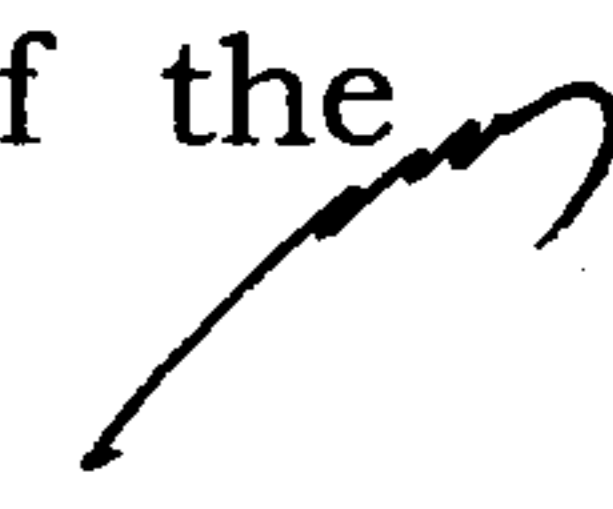
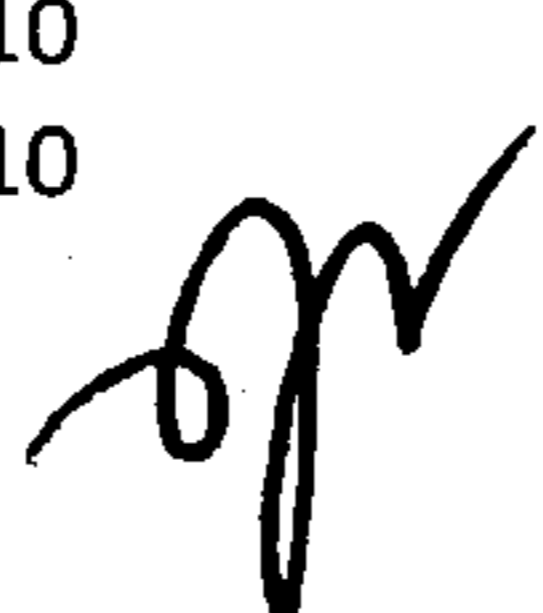
### **THE TRAVERSE OF THE PROSECUTION**

The prosecution filed its opposition to accused Napoles's motion for reconsideration. It points out that accused Napoles did not present evidence on her behalf; hence, the errors she tries to impute against the Court are matters which she utterly failed to appropriately refute. It argues that accused Napoles cannot claim that the testimonies of the whistleblowers are self-serving because she had lengthily cross-examined them. According to the prosecution, accused Napoles failed to prove that said whistleblowers had an axe to grind against her. Thus, the prosecution claims that the testimonies of the

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<sup>2</sup> pp. 265-290, Record, Vol. 10

<sup>3</sup> pp. 338-343, Record, Vol. 10



whistleblowers, corroborated by the testimonies of the COA Assistant Commissioner, DBM Director and the beneficiaries of the fictitious projects and the voluminous exhibits prove that accused Napoles conspired with Senator Enrile and Atty. Reyes and the other accused to amass ill-gotten wealth by setting up fictitious NGOs used by Senator Enrile to channel his PDAF and repeatedly giving kickbacks to Senator Enrile, through Atty. Reyes, and to Atty. Reyes herself. It further claims that the counsel for accused Napoles subjected prosecution witness Luy to cross-examination regarding the *Summary of Rebates* and DDRs which he prepared; hence, accused Napoles cannot claim that the Court erred in relying on the said documents. Contrary to accused Napoles's claim, the non-presentation of Luy's personal computer and external hard drive does not amount to suppression of evidence because it is a settled jurisprudence that the prosecution has the prerogative to choose the evidence or the witness it wishes to present. At any rate, the prosecution maintains that the DDRs and the DVs issued by the implementing agencies (IAs) are sufficient evidence to prove that money had been disbursed by the government and a substantial portion thereof was received by accused Napoles through her NGOs and Senator Enrile and Atty. Reyes through rebates or kickbacks in the amount of at least P50,000,000.00. Finally, the prosecution argues that it offered SARO No. BMB-E-04-04068 in addition to the nine (9) SAROs covering the years 2007 to 2009 which is reflected in the summary of rebates prepared by Luy.<sup>4</sup>

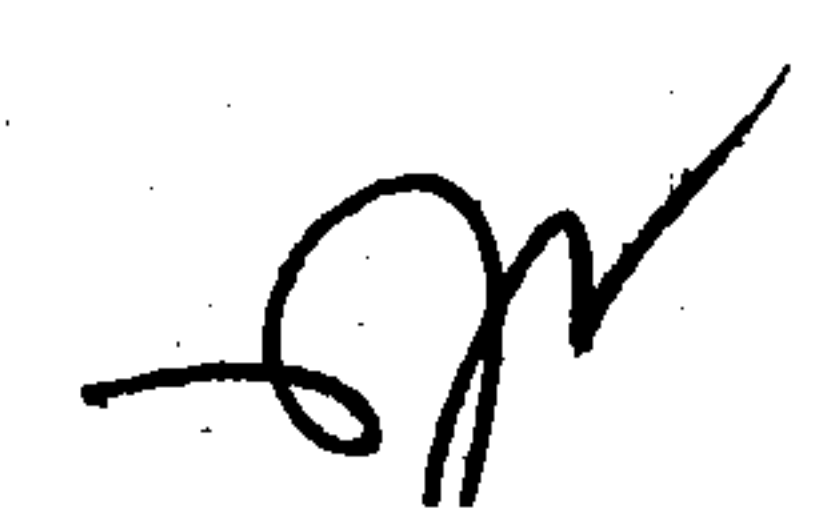
### **THE RULING OF THE COURT**

The Court finds subject motion devoid of merit.

An examination of the subject motion for reconsideration shows that accused Napoles has not raised any sound argument that would warrant a reversal of the Court's Resolution promulgated on October 16, 2015. To be sure, accused Napoles dwells on issues which were already

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<sup>4</sup> pp. 324-337, Record, Vol. 10



meticulously considered and passed upon by the Court in its assailed Resolution.

**I. The credibility of the prosecution witnesses**

It is jurisprudentially settled that the fact that an accused has been discharged as a state witness and was no longer prosecuted for the crime charged does not render his testimony incredible or lessen its probative weight.<sup>5</sup>

Here, the former employees of accused Napoles-turned whistleblowers all testified in court. They were extensively cross-examined by the counsel of accused Napoles and they even answered probing questions from the Court. While indeed the whistleblowers' testimonies should be taken with caution, there is no reason to reject their testimonies at this time considering that the same are consistent and appear to corroborate one another. As correctly pointed out by the prosecution, accused Napoles "failed to present evidence to prove that the whistleblowers had an axe to grind against Napoles."

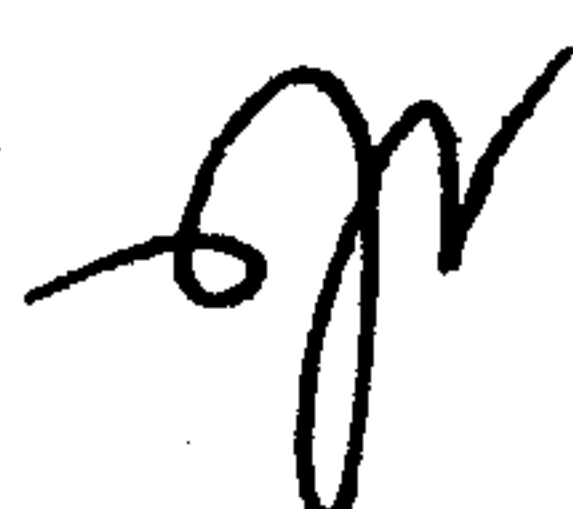
Moreover, accused Napoles has not rebutted the testimonies of said whistleblowers. Unless there is a compelling reason to reject these testimonies, they are entitled to full faith and credence.

**II. The existence of conspiracy among the accused to amass, accumulate and acquire ill-gotten wealth**

Conspiracy exists when two (2) or more persons come to an agreement to commit an unlawful act and decide to commit

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<sup>5</sup> *People vs. Bringas*, 619 SCRA 481 (2010), citing *People vs. Bohol*, 573 SCRA 557 (2008), *People v. Bocalan*, 410 SCRA 373 (2003)



RESOLUTION

*People vs. Enrile, et al.*

SB-14-CRM-0238

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it. It may be inferred from the conduct of the accused before, during, and after the commission of the crime. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest. Unity of purpose and unity in the execution of the unlawful objective are essential to establish the existence of conspiracy.<sup>6</sup>

It is necessary, however, that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators; hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.<sup>7</sup>

In this case, it is irrefutable that from 2004 to 2010, millions of pesos from the national budget were allocated for the Priority Development Assistance Fund (PDAF) of Senator Enrile. From 2007 to 2009, nine (9) SAROs in the total amount of PhP345 Million were allocated for the projects of Senator Enrile.<sup>8</sup> However, instead of being utilized for the intended purposes/projects, the money allocated therefor was siphoned to the bogus non-government organizations (NGOs) of accused Napoles. This money was apportioned like a piece of cake among accused Napoles, the middlepersons and Senator Enrile and/or Atty. Reyes in form of commissions/rebates.

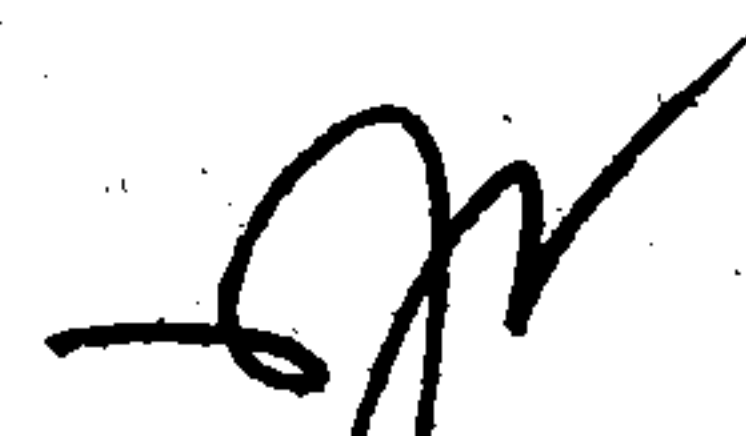
Concededly, the signature of accused Napoles does not appear in any of the documentary exhibits presented by the prosecution. This was indisputably a calculated move and a

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<sup>6</sup> *People vs. Bokingo*, 655 SCRA 313 (2011)

<sup>7</sup> *Bahilidad vs. People*, 615 SCRA 597 (2010)

<sup>8</sup> (1) ROCS No. 07-04618 dated March 6, 2007, in the amount of PhP20 Million [Exhibit "C-a"], (2) ROCS No. 08-01347 dated January 31, 2008, amounting to PhP25 Million [Exhibit "C-1-a"], (3) ROCS No. 08-5216 dated June 11, 2008, in the amount of PhP50 Million [Exhibit "C-2-a"], (4) ROCS No. 08-7211 dated October 30, 2008, in the amount of PhP50 Million [Exhibit "C-5-a"], (5) ROCS No. 09-00804 dated December 13, 2009, in the amount of PhP25 Million [Exhibit "C-7-a"], (6) ROCS No. 09-04952 dated July 9, 2009, in the amount of PhP50 Million [Exhibit "C-11-a"], (7) ROCS No. 09-4996 dated July 10, 2009, in the amount of PhP60 Million [Exhibit "C-9-a"], (8) ROCS G-09-07112 dated September 25, 2009, in the amount of PhP40 Million [Exhibit "C-14-a"] and (9) G-09-00847 dated December 12, 2009, in the amount of PhP25 Million [Exhibit "C-4-a"]



clever attempt to insulate her from any potential criminal complicity should their illicit activity be discovered. Such insidious attempt, however, has miserably failed in light of the categorical and resonating testimonies of Sula, Baltazar, Suñas and Luy that she owns and controls all the NGOs involved in this case where the PDAF of Senator Enrile was funneled. **These NGOs were all formed upon her express direction and she financed their creation.**

To repeat, accused Napoles's former employees, turned whistleblowers, at the JLN Corporation, including Sula, Baltazar, Suñas and Luy, uniformly declared that they established more than twenty (20) bogus NGOs for the sole purpose of transacting the PDAF of lawmakers. Six (6) of these NGOs dealt with the PDAF of Senator Enrile. According to these employees, the incorporators and officers of these NGOs had working relations with accused Napoles (existing employees like Sula, Suñas and Luy), or were totally unknown to her either because the persons indicated in the General Information Sheet (GIS) and/or articles of incorporation were relatives/friends of the employees of accused Napoles or are totally fictitious persons.

Also, upon the express instructions of accused Napoles, her employees forged projects proposals, lists of beneficiaries, accomplishment reports, receipts, reports of disbursements, inspection and acceptance reports and certificates of acceptance to make it appear that the "utilization" of the PDAF was properly undertaken. However, based on the Commission on Audit (COA) Report, these projects were ghost or fictitious. This was corroborated by the testimonies of these whistleblowers and the alleged beneficiaries of the said projects.

The whistleblowers further testified that the payments of commissions/rebates to the middlepersons were all done upon the instructions of accused Napoles. There were even instances when accused Napoles herself gave the commissions/rebates to Senator Enrile's middlepersons. According to Luy, accused Napoles ordered him to record all the kickbacks given to the representatives/middlepersons of Senator Enrile. Ruby Tuason, in fact, testified that accused Napoles offered her a commission of five (5) to ten (10) percent of the project cost for every transaction she would be able to



close with her lawmaker friends. Ruby Tuason accepted this offer and introduced accused Napoles to accused Atty. Reyes.

Unquestionably, the prosecution was able to expose by clear and convincing evidence accused Napoles's unseen hands in this so-called "pork-barrel" scam. Accused Napoles did not only exert moral ascendancy over her employees in engaging in this scam; she likewise actively participated, and actually materially benefitted, in the misuse of public funds.

Also, the prosecution evidence adequately establish that Senator Enrile, through Atty. Reyes, and Atty. Reyes herself, repeatedly received kickbacks/commissions/rebates amounting to at least PhP50 Million from accused Napoles. At this time, there is no sound reason for the Court to withhold full faith and credence to the testimonies of the prosecution witnesses, including the documentary exhibits which they identified in the course of their respective testimonies.

Indeed, accused Napoles has not alleged or shown any ulterior motive on the part of her former employees-turned whistleblowers why they would falsely testify against her. Jurisprudence holds that when there is no evidence to show any improper motive on the part of the witness to testify falsely against the accused or to pervert the truth, the logical conclusion is that no such motive exists, and that the former's testimony is worthy of full faith and credit.<sup>9</sup>

Aside from proving that Senator Enrile and Atty. Reyes conspired with accused Napoles in receiving kickbacks/commissions/rebates in connection with the PDAF of Senator Enrile, the prosecution was likewise able to prove that the scheme was realized because Senator Enrile and Atty. Reyes took advantage of their respective official positions and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

**First.** It was positively established that the Office of Senator Enrile repeatedly endorsed the six (6) NGOs of accused Napoles as "NGO Cooperator" of the said legislator's PDAF-funded projects.<sup>10</sup> Based solely on this endorsement, the concerned implementing agency (IA) chose the designated NGO of accused Napoles as the project implementor. It is

<sup>9</sup> *Ocampo vs. People*, G.R. No. 194129, June 15, 2015

<sup>10</sup> Exhibits "A<sup>1-6</sup>," "C<sup>1-8</sup>," "C<sup>1-10</sup>," "L<sup>1</sup>," "L<sup>1-10</sup>," "F," "F-1-A," "H<sup>1-6</sup>"





worth mentioning that **the COA special audit team came up with a finding that the selection of the NGOs of accused Napoles based SOLELY on the endorsement of the legislator violated GPPB Resolution No. 12-2007.**<sup>11</sup>

**Second.** Senator Enrile sent a letter dated September 9, 2009 to Gondelina G. Amata, President of the National Livelihood Development Corporation (NLDC), informing the latter that Evangelista was authorized to sign pertinent documents and ensure proper implementation of the PDAF-funded projects which he endorsed to the said IA.<sup>12</sup>

**Third.** Atty. Reyes sent letters to the IAs designating Evangelista as the authorized representative of Senator Enrile in connection with the latter's PDAF-funded projects.<sup>13</sup>

**Fourth.** Pursuant to the said authorization, Evangelista entered into MOAs with the IAs and accused Napoles's NGOs relative to the purported implementation of the PDAF-funded projects of Senator Enrile.<sup>14</sup>

**Fifth.** Evangelista, as Deputy Chief of Staff of Senator Enrile, signed accomplishment reports, reports of disbursements, inspection and acceptance reports and certificates of acceptance, purportedly showing the completion of projects which all turned out to be fictitious.<sup>15</sup>

**Sixth.** In his letter dated March 21, 2012, Senator Enrile confirmed to Associate Commissioner Carmela S. Perez of the COA Special Services Sector that Atty. Reyes and Evangelista were his authorized representatives and that it was indeed the latter's signatures which appear on the MOAs, endorsements letters and other documents pertaining to the utilization of his PDAF (except those in the Certificate of Acceptance and Lists of Beneficiaries).<sup>16</sup>

Undoubtedly, Senator Enrile and Atty. Reyes took undue advantage of their official positions and functions in repeatedly indorsing the NGOs of accused Napoles to be the "NGO Cooperator" of the former's PDAF-funded projects. Without these endorsements, the NGOs of accused Napoles would not

<sup>11</sup> Exhibit "GG-20"

<sup>12</sup> Exhibit "H1-6"

<sup>13</sup> Exhibits "C1-8" ("F-4") and "L1-9" ("F-14-a")

<sup>14</sup> Exhibits "C1-13," "L1-7," "T," "T-A," "T-1"

<sup>15</sup> Exhibits "A1-11," "A1-12," "C1-24," "C1-25," "L1-18," "L1-22," "L1-28," "L1-29," "L1-49," "L1-48"

<sup>16</sup> Exhibit "GG-461-c"




have had the wherewithal to implement this mephistophelian scheme. It must be stressed that according to the COA Report, the said endorsement was the **ONLY** basis of the IAs in choosing the NGOs of accused Napoles.

Verily, based on the evidence presented by the prosecution, the funds that were intended for the PDAF-funded projects of Senator Enrile were diverted to the personal accounts of accused Napoles. From these funds, Senator Enrile and/or Atty. Reyes received a fixed percentage in the form of commissions/rebates. In fact, they received the "rebates" before the checks issued by the IAs to the NGOs could even be encashed. To be sure, this scheme was realized through the simple expedient of endorsing the NGOs of accused Napoles by Senator Enrile and/or Atty. Reyes. The office of Senator Enrile, through Evangelista, signed accomplishment reports, reports of disbursements, inspection and acceptance reports to make it appear that the projects funded by the PDAF of the said legislator were legitimately accomplished although in truth, and in fact, they were an utter sham.

### **III. The admissibility of the DDRs and Summary of Rebates**

Accused Napoles argues that the said DDRs are inadmissible in evidence because they were not authenticated through the presentation and forensic examination of the external hard drive as well as the presentation of the JLN vouchers which are the sources of the entries in the said DDRs. She insists that the DDRs are merely print outs or output from the hard drive which make it an electronic evidence which should be authenticated in accordance with the Rules on Electronic Evidence; and, that there are entries in the *Summary of Rebates* that are not found in the DDRs.<sup>17</sup>

The Court finds the said argument devoid of merit.

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<sup>17</sup> pp. 7-8, 11-14, 16-21, Motion for Reconsideration; pp. 271-272, Record, Vol. 10



The *Information* alleges that Senator Enrile and Atty. Reyes, in conspiracy with accused Napoles, Lim and de Asis, amassed, accumulated, and/or acquired ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00).

This amount of PhP172,834,500.00 was taken from the *Summary of Rebates* which Luy prepared after he was released from detention and when he was already in the custody of the National Bureau of Investigation (NBI) (**Exhibit "HH-156-k-25"**). According to Luy, he based the entries appearing in the *Summary of Rebates* from the DDRs which he prepared as the finance officer of accused Napoles from 2004 to 2010, 2011 and 2012. The DDR, on the other hand, is a record of all the transactions, including the "cash-in and cash disbursed" within the day, in the office of accused Napoles. The DDR likewise shows the personalities or entities involved with JLN Corporation and their corresponding voucher numbers.<sup>18</sup>

The entries appearing in Luy's *Summary of Rebates* show that the same are verifiable from, and actually reflects the contents of, the DDRs.<sup>19</sup> Luy identified and explained each of the entries in his DDRs which corresponds to the entries in his *Summary of Rebates*. He explained how the same corresponds to the amount of rebates given to Senator Enrile and to the latter's middleperson. He even explained that the entry in his *Summary of Rebates* relative to the date "9/24/2008" in the amount of PhP3,750,000.00, pertains to the cash advance given to Senator Enrile in connection with a PDAF-funded project worth PhP100,000,000.00. According to Luy, following the procedure in their office of deducting 5% tax on the project cost, the remaining amount from the PhP100,000,000.00 would be PhP95,000,000.00. This amount would be divided into two (2) to arrive at the 50% rebate of the lawmaker which is PhP47,500,000.00. This amount was further divided into two (2), which is PhP23,750,000.00, and which represents the first and second tranches of the commission of the lawmaker.<sup>20</sup>

<sup>18</sup> pp. 6-8, TSN, May 29, 2015

<sup>19</sup> Exhibits "N1-7-a," "N1-7-c," "N1-7-f," "N1-7-I," "N1-7-k," "N1-7-l," "N1-7-m," "N1-7-n," "N1-7-p," "N1-7-r," "N1-7-t," "N1-7-u," "N1-7-v," "N1-7-w," "N1-7-z," "N1-7-aa," "N1-7-cc," "N1-7-dd," "N1-7-ee," "N1-7-ff," "N1-7-gg" and "N1-7-hh"

<sup>20</sup> pp. 9-116, TSN, May 29, 2015



As the prosecution rightly argues, the counsel of accused Napoles subjected Luy to cross-examination for more than six (6) settings mainly focusing on the details of the entries in the *Summary of Rebates and DDRs*.<sup>21</sup>

There is no question that the DDRs were printed out by Luy sometime in July 2013 from the data stored in his external hard drive and they are all unsigned.<sup>22</sup> According to Luy, the original copies of the said DDRs, which are all signed copies, were at the vault at the office of JLN Corporation, together with the checks corresponding thereto.<sup>23</sup>

Being a computer print-out, the authentication of Luy's DDRs must comply with the procedure laid down under the Rules on Electronic Evidence (REE) which, pursuant to A.M. No. 01-7-01 dated September 24, 2002, applies to criminal and civil actions and proceedings.

Section 1 (h), Rule 2 of the REE defines an "electronic document" as referring to "information or the representation of information, data, figures, symbols or **other modes of written expression**, described or however represented, by which a right is established or an obligation extinguished, or **by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes** digitally signed documents and **any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document.** For purposes of these Rules, the term "electronic document" may be used interchangeably with electronic data message."

Based on the aforesaid definition, it cannot be denied that Luy's DDRs are within the contemplation of an "electronic document" under the REE. To be sure, Luy's DDRs were prepared by him as the former finance officer of JLN Corporation of accused Napoles. Luy used Microsoft Excel in making these files of the DDRs.<sup>24</sup> The DDRs reflect all the transactions that were entered into by JLN Corporation, specifically the amounts of money which were deposited and withdrawn or disbursed, for each day. It likewise includes the names of personalities and institutions where money was

<sup>21</sup> pp. 7-8, Opposition; 330-331, Reocrd, Vol. 10

<sup>22</sup> pp. 10-11, TSN, June 19, 2015

<sup>23</sup> pp. 114-117, TSN, July 3, 2015

<sup>24</sup> p. 60, TSN, July 29, 2015



given by accused Napoles/JLN Corporation. These data were then stored in Luy's personal computer and were eventually stored in his external hard drive upon the instruction of accused Napoles.<sup>25</sup>

Being an electronic document, Luy's DDRs are considered as originals under Rule 4 of the REE, thus:

SECTION 1. *Original of an electronic document.* – An electronic document shall be regarded as the **equivalent** of an **original document** under the **Best Evidence Rule** if it is a **printout** or **output readable by sight** or other means, **shown to reflect the data accurately.**

SEC. 2. *Copies as equivalent of the originals.* – **When a document** is in two or more copies executed at or about the same time with identical contents, or **is a counterpart produced by the same impression as the original, or from the same matrix,** or by mechanical or electronic re-recording, or by chemical reproduction, or **by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.**

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original ***if:***

(a) **a genuine question is raised as to the authenticity of the original;** or

(b) **in the circumstances it would be unjust or inequitable to admit a copy in lieu of the original.**<sup>26</sup>

Indeed, Luy's DDRs are equivalent of the original DDRs under the Best Evidence Rule since they are clearly print-outs or outputs readable at sight. The said DDRs are counterpart copies of the original DDRs which were earlier printed out by Luy from his computer files. Moreover, the data reflected in the said documents appear to be accurate since the defense has not presented any competent evidence to show that it was tampered with or altered.

Further, the counsel of accused Napoles did not raise any question on the existence and authenticity of the original copies of the DDRs. What the counsel of accused Napoles

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<sup>25</sup> pp. 55-56, TSN, July 24, 2015

<sup>26</sup> Emphasis and underscoring supplied



questioned was the non-presentation of Luy's external hard drive. This is immaterial for purposes of authenticating an electronic document under the REE as will be discussed hereunder.

Also, it is worthy to note that Sula and Baltazar testified that accused Napoles ordered them to shred documents pertaining to the transactions of the NGOs, including the disbursement vouchers, in the residence of the said accused at Pacific Plaza Tower from January 2013 to May 2013. This was done to eliminate any evidence that would link her to the said foundations.<sup>27</sup> Therefore, it is not unjust or inequitable to admit the "copies" of Luy's DDRs considering that the original copies thereof were already destroyed even prior to the institution of this criminal case with the end in view of preventing the discovery of the commission of the crime.

Section 2, Rule 5 of the REE provides for the authentication of electronic documents, *viz*:

SEC. 2. *Manner of authentication.* – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or

(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

In the case at bar, letters (a) and (b) above are clearly inapplicable considering that Luy's DDRs were not digitally signed and the Supreme Court has yet to issue the appropriate security procedure or device for authentication of electronic documents. Thus, the only remaining way to authenticate Luy's DDRs is through the procedure under letter

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<sup>27</sup> Please refer to pp. 10-17, TSN, December 4, 2014 (1:30 p.m.) and pp.21-22, TSN, November 14, 2014.



(c) above, *i.e.*, by other evidence showing its integrity and reliability to the satisfaction of the judge.

It has been opined that authenticating an electronic document under this paragraph of the REE is just like authenticating a paper-based document under the traditional rules of evidence.<sup>28</sup> Following the traditional rules of evidence, Luy's DDRs are considered private documents. Section 20 of Rule 132 of the Rules of Court provides that whenever any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either by (a) **anyone who saw the document executed** or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.

Here, Luy himself encoded the entries in his DDRs as the undisputed former finance officer of accused Napoles's JLN Corporation. He testified that he was the one who copied the same in his external hard drive upon the instruction of accused Napoles to enable him to respond to the concerns of the latter when he was on an out-of-town trip and even during weekends. Luy also testified that he was the one who printed the same sometime in July 2013 at the time he was already under the custody of the NBI.

In fact, even if the said testimony of Luy pertaining to his DDRs were disregarded, the Court would still arrive at the conclusion that the said DDRs are authentic and therefore admissible in evidence.

Where there has been no witness to the signing, no witness to identify the signature, and no specimen signature for comparison by experts, **the document may be authenticated by circumstantial evidence**. The contents of a writing may for instance reveal knowledge that is sufficiently distinctive to support a finding that it was authored by a particular individual who had such knowledge. Thus, writings are sometimes authenticated, at least in part, by their use of **code terms** likely to be known only by participants in the underlying events, or by other revealing contents, such as correspondence between dates in

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<sup>28</sup> Francisco Ed. Lim, "Are Social Media Post Admissible in Evidence?" May 23, 2014; <http://business.inquirer.net/169386/are-social-media-posts-admissible-in-evidence>; accessed on October 14, 2015



the document and other dates known only to participants in the events.<sup>29</sup>

In this case, Tuason admitted that she used the codename "Andrea Reyes" when she signed some of the vouchers given by Luy for the commission of Senator Enrile.<sup>30</sup> Notably, the codename "Andrea Reyes" prominently appears in Luy's DDRs, *i.e.*, **Exhibits "N<sup>1</sup>-7-q," "N<sup>1</sup>-7-s," "N<sup>1</sup>-7-u," "N<sup>1</sup>-7-cc" and "N<sup>1</sup>-7-dd."** Further, Luy likewise used the codename "Tanda" to refer to Senator Enrile (**Exhibit "N<sup>1</sup>-7-gg"**).

Accused Napoles, however, insists that the testimony of Tuason insofar as it relates to her codename should not be given credence allegedly because her testimony in SB-14-CRM-0239 entitled "People vs. Estrada, *et. al.*" pending before the Fifth Division of the Court is inconsistent with her testimony given in this case. Allegedly, in the Estrada case, she declared that she does not have a codename and she came to know about her codename only after the PDAF scam exploded. In this case, she declared that she was given a codename as indicated in the voucher where she was asked to sign. Thus, accused Napoles concludes that Tuason has no capacity to authenticate the DDRs.<sup>31</sup>

The Court finds the insistence puerile.

The Court referred to Tuason's testimony that she used the codename Andrea Reyes in signing the vouchers given by Luy for the commission of Senator Enrile as one of the circumstances which proves that Luy personally made the entries in the DDRs. To repeat, the said codename prominently appears in Luy's DDRs.

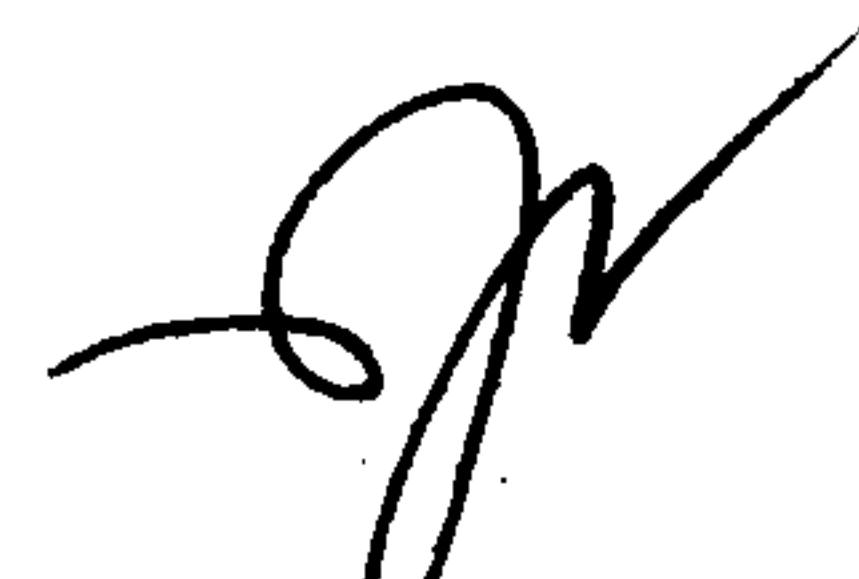
Aside from the use of the said codenames in the DDRs, these documents likewise contain distinctive entries which would not normally be known to persons who are not familiar with the transactions of JLN Corporation. Luy's DDRs do not only contain entries of payment of commissions to Senator Enrile and his middlepersons. The said DDRs likewise contain entries pertaining to accused Napoles's transactions with other legislators, normal business expenses, payment of loans, bills etc. and even donations to priests and other associations.

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<sup>29</sup> Antonio R. Bautista, *Basic Evidence*, p. 150, 2007 Edition; citing C.B. Mueller & L. C. Kirkpatrick, *Evidence*, §9, at 1135 (1995)

<sup>30</sup> pp. 37-38, TSN, July 31, 2015

<sup>31</sup> p. 15, Motion for Reconsideration; p. 279, Record, Vol. 10





Indeed, these details in the DDRs could have only been entered by a person who was really involved in the finances of JLN Corporation at the time material to this case. Also, as stated above, no evidence was presented that Luy's DDRs were tampered with and/or altered; hence, they deserve full faith and credit.

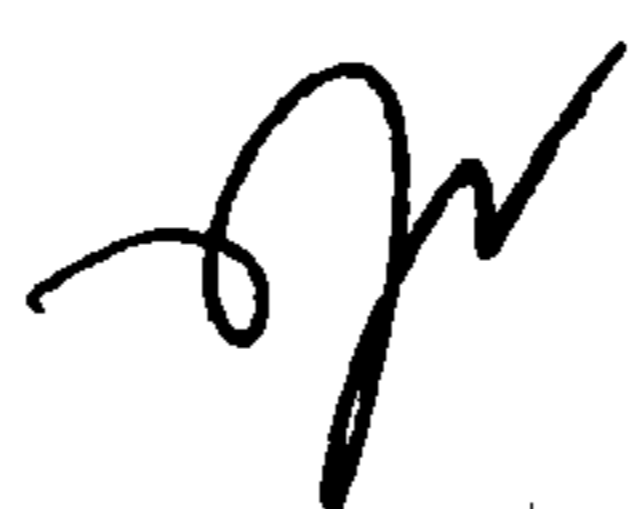
Since the DDRs of Luy are authentic pursuant to the pertinent provisions of the REE, the said electronic documents are admissible in evidence to prove that accused Napoles repeatedly gave kickbacks/commissions/rebates to Senator Enrile/Atty. Reyes in the amount of more than PhP50,000,000.00.

Accused Napoles also adverts to the fact that only four (4) out of the nine (9) SAROs offered by the prosecution are mentioned in the *Summary of Rebates* and only two (2) of the said four (4) SAROs indicate that Tuason received kickbacks on behalf of Senator Enrile and the total amount falls short of the P50 million threshold. She claims that those entries in the *Summary of Rebates* that do not relate to the SAROs offered by the prosecution should not be considered by the Court.<sup>32</sup>

The Information in this case avers that the accused conspired to amass, accumulate and/or acquire ill-gotten wealth amounting to at least P172,834,500.00 from 2004 to 2010.

The nine (9) SAROs pertaining to the PDAF of Senator Enrile which were identified by Susan Garcia, Assistant Commissioner of the COA, and which are the subject of their special audit cover only the years 2007 and 2009. These SAROs are: (1) ROCS No. 07-04618 dated March 6, 2007, in the amount of PhP20 Million [**Exhibit "C-a"**], (2) ROCS No. 08-01347 dated January 31, 2008, amounting to PhP25 Million [**Exhibit "C-1-a"**], (3) ROCS No. 08-5216 dated June 11, 2008, in the amount of PhP50 Million [**Exhibit "C-2-a"**], (4) ROCS No. 08-7211 dated October 30, 2008, in the amount of PhP50 Million [**Exhibit "C-5-a"**], (5) ROCS No. 09-00804 dated February 13, 2009, in the amount of PhP25 Million [**Exhibit "C-7-a"**], (6) ROCS No. 09-04952 dated July 9, 2009, in the amount of PhP50 Million [**Exhibit "C-11-a"**], (7) ROCS No. 09-4996 dated July 10, 2009, in the amount of PhP60 Million [**Exhibit "C-9-a"**], (8) ROCS G-09-07112 dated September 25,

<sup>32</sup> pp. 20-21, Motion for Reconsideration



2009, in the amount of PhP40 Million [**Exhibit "C-14-a**] and (9) G-09-00847 dated December 12, 2009, in the amount of PhP25 Million [**Exhibit "C-4-a"**].<sup>33</sup>

On the other hand, Luy's *Summary of Rebates* based on his DDRs cover the years 2004 to 2010. Luy mentioned four (4) of the aforesaid SAROs in his *Summary of Rebates* and identified them, i.e, ROCS No. 07-04618 for the year 2007, ROCS No. 08-5216 and ROCS No. 08-7211 for the year 2008, and G-09-00847 for the year 2009. In addition, Luy identified SARO No. T-04-04068 (**Exhibit T<sup>1</sup>-2**), SARO ROCS No. 06-07810 (**Exhibit P<sup>1</sup>-2**), 07-078630 (**Exhibit P<sup>1</sup>-4**) and SARO E-07-06805 (**Exhibit P<sup>1</sup>-10**), which are mentioned in his *Summary of Rebates*.<sup>34</sup>

Notably, Luy declared that there were times that he was not able to retrieve the SARO when he prepared the list of SAROs and the *Summary of Rebates* because there were many sub-SAROs and SARO numbers. According to Luy, in preparing the DDR, he did not indicate the SARO number as a matter of reporting to accused Napoles. He only indicated the implementing agency and the amount.<sup>35</sup>

At any rate, even if the four (4) other SAROs mentioned by Luy in his *Summary of Rebates* (but are not included in the COA special audit) were disregarded, the total amount of kickback that was given to Senator Enrile, through accused Reyes, would be P50,350,000.00 or beyond the threshold amount for the crime of plunder to be committed as shown by the following computation:<sup>36</sup>

Date	Description	Project	Amount	Source/remarks/Received by
2007				
03/27/2007	Cash	PDAF-TLRC 20M 2007-ROCS-07-04618 dtd March 6, 2007	P4,750,000.00	Cash from JLN Office vault

<sup>33</sup> pp. 18, 38-40, TSN, August 8, 2014

<sup>34</sup> pp. 7-17, TSN, June 5, 2015

<sup>35</sup> pp. 100-103, June 19, 2015

<sup>36</sup> The data were lifted from Luy's *Summary of Rebates* which are marked as **Exhibits HH-156-K-25** and **HH-156-K-26** using only the SAROs subject of the COA special audit which were included in Luy's *Summary of Rebates* and to which accused Napoles takes issue with in her subject motion for reconsideration. These are ROCS-07-04618 (2007), ROCS-08-05216 (2008) ROCS-08-07211 (2008) and ROCS-D-09-00847 (2009).



04/03/2007	Cash received by Ruby Tuason	PDAF-TLRC 20M 2007-ROCS-07-04618 dtd March 6, 2007	P5,250,000.00	Cash from JLN Office vault
2008				
07/03/2008	Cash received by Ruby Tuason	PDAF 50M NABCOR-ROCS-08-05216 dtd June 11, 2008	P11,750,000.00	Cash from JLN Office vault
09/26/2008	Cash	DA NABCOR 50M 2008-ROCS-08-07211 dtd October 3, 2008	P4,850,000.00	Cash from JLN Office vault
2009				
02/18/2009	Cash	TRC 25M-ROCS-D-09-00847 dtd February 12, 2009	P23,750,000.00	Cash from JLN Office vault
<b>TOTAL</b>			<b>P50,350,000.00</b>	

The entries in Luy's *Summary of Rebates* were based on his DDRs. For instance, the above entry dated "04/03/2007" which shows that Ruby Tuason received the amount for Senator Enrile was based on Luy's DDR dated April 2 and 3, 2007, which states: "*Voucher No. 04-8385 Senator Enrile, c/o Andrea Reyes full payment of rebate charge to PDAF TLRC P20 Million 2007 Project.*"<sup>37</sup> Tuason admitted that she used the codename "Andrea Reyes" everytime Luy would ask her to sign in the vouchers for Senator Enrile.<sup>38</sup> The same is true with the above-entry dated "7-03-2008." It was based on Luy's DDR which states: "*Andrea Reyes full payment of rebates charge P50,000,000.00 PDAF NABCOR P11,750,000.00.*"<sup>39</sup>

The rest of the three (3) entries which do not indicate that Ruby Tuason received the money for Senator Enrile were also based on the DDRs:

The eleventh entry on the *Summary of Rebates* of Luy was based on his DDR which states: "March 27, 2007 Senator Enrile, 50% upon listing charge to PDAF TLRC P20,000,000.00 2007 project in the

<sup>37</sup> pp. 17-19, TSN, June 26, 2015; Exhibit N<sup>1</sup>-7-u

<sup>38</sup> pp. 37-38, TSN, July 31, 2105; Exhibit N<sup>1</sup>-7-dd

<sup>39</sup> p. 106, TSN, May 29, 2015

amount of P4,750,000.00, and the money was taken from JLN office vault.”<sup>40</sup> The next entry dated “9-26-2008” in the summary of rebates was based on Luy’s DDR which states: “full payment of Juan Ponce Enrile P50,000,000.00 2008 project, Voucher No. 09028.”<sup>41</sup> The subsequent entry dated “2-18-2009” in the summary of rebates was based on Luy’s DDR which states: “February 16-20, 2009, with the Voucher Number 020339 Tanda full payment of rebate charge to P25,000,000.00 NABCOR and P25,000,000.00 TRC in the amount of P23,750,000.00 and the money was taken from the JLN office vault.”<sup>42</sup>

Notably, no voucher was mentioned in the aforementioned three (3) DDRs to show who received the money for Senator Enrile. According to Luy, he prepared a voucher everytime accused Napoles gave kickbacks to the lawmakers. Luy would then ask the person who is supposed to receive the same to sign the voucher for rebates. Thereafter, Luy would encode the same and prepare the DDR.<sup>43</sup> However, Luy declared that there were few instances when Ruby Tuason did not sign the voucher.<sup>44</sup> In fact, Tuason admitted that she was asked to sign a voucher for an amount that she would pick up in connection with the PDAF projects of Senator Enrile starting around 2006.<sup>45</sup> However, there were times that she did not sign the voucher and Luy would not do anything.<sup>46</sup> Tuason further declared that when she picked up the money from the office of accused Napoles, most of the time Luy would ask her to sign a voucher. However, she did not sign any receipt if she would pick it up from Pacific Plaza.<sup>47</sup>

At any rate, Luy declared that it was not only Ruby Tuason who picked up all the kickbacks for Senator Enrile. For the year 2004, Carlos “Butch” Tuason with Ruby Tuason and Maria Theresa de Joya and Atty. Alfredo Villamor picked

<sup>40</sup> p. 87, TSN, May 29, 2015

<sup>41</sup> pp. 121-122, TSN, May 29, 2015

<sup>42</sup> pp. 122-123, TSN, May 29, 2015

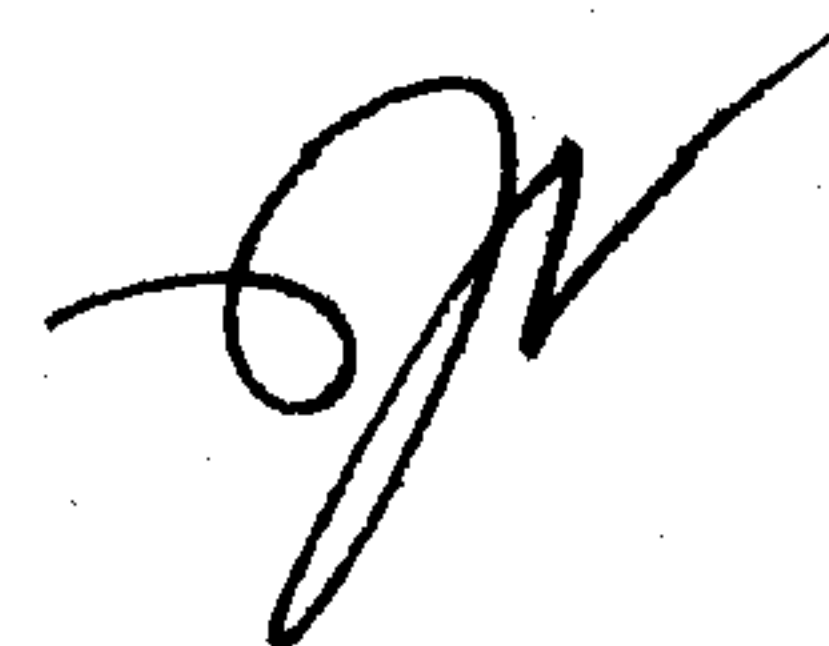
<sup>43</sup> pp. 31-40, TSN, July 24, 2015

<sup>44</sup> pp. 112-114, TSN, July 3, 2015

<sup>45</sup> pp. 72-74, TSN, July 31, 2015

<sup>46</sup> pp. 75-76, TSN, July 31, 2015

<sup>47</sup> Pp. 29-30, TSN, July 30, 2015



up the money for Senator Enrile.<sup>48</sup> For the year 2006 until 2009, Ruby Tuason picked up kickbacks for Senator Enrile. For the year 2010, they sent the money to the house of Atty. Reyes.<sup>49</sup>

Luy further explained that from 2004 to 2009, all the kickbacks of the legislators and the commissions of the middlepersons were all paid in the office of accused Napoles. There were transactions, however, wherein the latter would simply tell Luy about them. In such cases, he would enter the same, "*tapos magka cash in ako po sa akin record, cash from JLN personal.*" According to Luy, payments were still made in their office but they were recorded in accused Napoles' notebook. Luy would no longer make disbursement reports since accused Napoles does not want so many papers, DDRs and reports with attachments. All she wanted was a simple recording of the transactions in her notebook.<sup>50</sup>

In fact, Tuason herself testified that she "transacted" with accused Napoles the PDAF of Senator Enrile from 2004 to 2009.<sup>51</sup> When Ruby Tuason had the copy of the project listing from the DBM, she would bring it to accused Napoles or Luy so that she can get her first tranche of payment which is 5% or 10% of the project cost. She would receive this first payment from Luy at the office of accused Napoles or sometimes she would pick it up from her residence in Pacific Plaza Towers. Sometimes, accused Napoles's driver would deliver it to her house. After receiving the downpayment, she would meet Atty. Reyes for lunch and give the money to her or sometimes Atty. Reyes would pick it up from her house.<sup>52</sup> Once the SARO is issued, she would get the second tranche of payment. Again, she would deliver the same to Atty. Reyes.<sup>53</sup> Tuason would get a copy of the NCA and would bring it to accused Napoles. Then, accused Napoles would give her the final commission. These commissions were intended for Senator Enrile and she gave them to Atty. Reyes.<sup>54</sup>

To repeat, Luy identified and explained each of the entries in his DDRs which correspond to the entries in his

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<sup>48</sup> pp. 25-27, TSN, May 15, 2015

<sup>49</sup> pp. 33-39, TSN, May 15, 2015

<sup>50</sup> pp. 23-24, TSN, June 5, 2015

<sup>51</sup> pp. 9-22, TSN, July 30, 2015

<sup>52</sup> pp. 26-27, TSN, July 30, 2015

<sup>53</sup> pp. 27-29, TSN, July 30, 2015

<sup>54</sup> pp. 32-34, TSN, July 30, 2015

*Summary of Rebates.* He explained how the same corresponds to the amount of rebates given to Senator Enrile and to the latter's middleperson.

**IV. The aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.**

Even if the Court disregarded Luy's DDRs, there is still proof evident that the herein accused amassed, accumulated, and/or acquired ill-gotten wealth amounting to more than the threshold amount of PhP50,000,000.00.

The prosecution presented the following disbursement vouchers (DVs) that were issued by the IAs to the NGOs of accused Napoles. The details of the said DVs are hereunder reproduced for easy reference:

<b>PAYING IMPLEMENTING AGENCY</b>	<b>DV NO.</b>	<b>AMOUNT</b>	<b>PERSON WHO RECEIVED</b>
TLRC	012007040671 ( <b>Exhibit "L-B"</b> ) (SARO ROCS No. 07-04618 dated March 6, 2007 [ <b>Exhibit "C-a"</b> ])	PhP4,800,000.00	Mylene Encarnacion (CARED)
TLRC	012007040669 ( <b>Exhibit "L"</b> ) (SARO ROCS No. 07-04618 dated March 6, 2007 [ <b>Exhibit "C-a"</b> ])	PhP4,800,000.00	Mylene Encarnacion (CARED)
NABCOR	08-04-01201 dated April 11, 2008 ( <b>Exhibit "L-1"</b> )	PhP21,825,000.00	Merlina Suñas (POPDFI)

	(SARO ROCS No. 08-01347 dated January 31, 2008, [ <b>Exhibit "C-1-a"</b> ])		
NABCOR	08-07-02312 dated June 9, 2008 ( <b>Exhibit "L-1-A"</b> ) (SARO ROCS No. 08-01347 dated January 31, 2008, [ <b>Exhibit "C-1-a"</b> ])	PhP2,425,000.00	Merlina Suñas (POPDFI)
NABCOR	08-09-03575 dated September 23, 2008 ( <b>Exhibit "A1"</b> ) (SARO ROCS No. 08-5216 dated June 11, 2008 [ <b>Exhibit "C-2-a"</b> ])	PhP17,460,000.00	Marina Sula (MAMFI)
NABCOR	09-04-1622 dated May 14, 2009 ( <b>Exhibit "A1-7"</b> ) (SARO ROCS No. 08-5216 dated June 11, 2008 [ <b>Exhibit "C-2-a"</b> ])	PhP1,940,000.00	Eulogio Rodriguez (MAMFI)
NABCOR	08-09-03572 dated September 23, 2008 ( <b>Exhibit "B1"</b> ) (SARO ROCS No. 08-5216 dated June 11, 2008 [ <b>Exhibit "C-2-a"</b> ])	PhP26,190,000.00	The signature appearing therein does not identify the person who signed it. The same however was released to SDPFFI, the president of which was Luy.

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TLRC	012009040929 ( <b>Exhibit "C1-3"</b> ) (SARO ROCS 09-00847 dated February 12, 2009) [ <b>Exhibit "C-4-a"</b> ]	PhP20,000,000.00	Rodrigo Ganay (APMFI)
TLRC	012009051300 ( <b>Exhibit "C1-21"</b> ) (SARO ROCS 09-00847 dated February 12, 2009) [ <b>Exhibit "C-4-a"</b> ]	PhP2,500,000.00	Rodrigo Ganay (APMFI)
NABCOR	09-05-1773 dated May 27, 2009 ( <b>Exhibit "D1"</b> ) (SARO ROCS No. 08-7211 dated October 30, 2008, [ <b>Exhibit "C-5-a"</b> ]	PhP3,637,500.00	Marina Sula (MAMFI) ( <b>Exhibit "L-5-a"</b> )
NABCOR	09-06-2025 dated June 15, 2009 ( <b>Exhibit "D1.9"</b> ) (SARO ROCS No. 08-7211 dated October 30, 2008, [ <b>Exhibit "C-5-a"</b> ]	PhP20,612,500.00	John Raymund De Asis (MAMFI)
TLRC	012007040672 ( <b>Exhibit "L-C"</b> found in <b>Exhibit "GG-462"</b> ) (SARO ROCS No. 07-04618 dated March 6, 2007 [ <b>Exhibit "C-a"</b> ])	PhP4,800,000.00	Mylene Encarnacion (CARED)
TLRC	012007040670	PhP4,800,000.00	Mylene



	(Exhibit "L-A" found in Exhibit "GG-462") (SARO ROCS No. 07-04618 dated March 6, 2007 [Exhibit "C-a"])		Encarnacion (CARED)
NABCOR	09-05-1751 dated May 25, 2009 (Exhibit "B1-9" found in Exhibit "GG-465") (SARO ROCS No. 08-5216 dated June 11, 2008 [Exhibit "C-2-a"])	PhP2,910,000.00	Eulogio Rodriguez (SDPFFI)
NABCOR	09-05-1774 dated May 27, 2009 (Exhibit "E1" found in Exhibit "GG-468") (SARO ROCS No. 08-7211 dated October 30, 2008, [Exhibit "C-5-a"])	PhP3,637,500.00	John Raymund de Asis (SDPFFI)
NABCOR	09-06-2022 dated June 15, 2009 (Exhibit "E1-8" found in Exhibit "GG-468") (SARO ROCS No. 08-7211 dated October 30, 2008, [Exhibit "C-5-a"])	PhP20,612,500.00	Benhur Luy (SDPFFI)
NABCOR	09-05-1767 dated May 27, 2009 (Exhibit "F1" found in Exhibit "GG-469") (SARO ROCS No. 09-00804	PhP2,182,500.00	Marina Sula (MAMFI)

	dated February 13, 2009, [ <b>Exhibit "C-7-a"</b> ]		
NABCOR	09-06-2028 dated June 15, 2009 ( <b>Exhibit "F1-8"</b> found in <b>Exhibit "GG-469"</b> ) (SARO ROCS No. 09-00804 dated February 13, 2009, [ <b>Exhibit "C-7-a"</b> ]	PhP12,367,500.00	John Raymund de Asis (MAMFI)
NABCOR	09-06-1825 dated June 1, 2009 ( <b>Exhibit "G1"</b> found in <b>Exhibit "GG-470"</b> ) (SARO ROCS No. 09-00804 dated February 13, 2009, [ <b>Exhibit "C-7-a"</b> ]	PhP1,455,000.00	Benhur Luy (SDPFFI)
NABCOR	09-06-2027 dated June 15, 2009 ( <b>Exhibit "G1-9"</b> found in <b>Exhibit "GG-470"</b> ) (SARO ROCS No. 09-00804 dated February 13, 2009, [ <b>Exhibit "C-7-a"</b> ]	PhP8,245,000.00	Benhur Luy (SDPFFI)
NLDC	09091354 dated September 23, 2009 ( <b>Exhibit "H1-1"</b> found in <b>Exhibit "GG-471"</b> ) (SARO ROCS No. 09-4996 dated July 10, 2009, [ <b>Exhibit "C-9-a"</b> ])	PhP10,800,000.00	John Raymund de Asis (CARED)

NLDC	09101447 dated September 23, 2009 ( <b>Exhibit "H<sup>1</sup>-11"</b> found in <b>Exhibit "GG-471"</b> ) (SARO ROCS No. 09-4996 dated July 10, 2009, [ <b>Exhibit "C-9-a"</b> ])	PhP20,000,000.00	John Raymund de Asis (CARED)
NLDC	09101530 dated October 26, 2009 ( <b>Exhibit "H<sup>1</sup>- 21"</b> found in <b>Exhibit "GG- 471"</b> ) (SARO ROCS No. 09-4996 dated July 10, 2009, [ <b>Exhibit "C-9-a"</b> ])	PhP8,000,000.00	John Raymund de Asis (CARED)
NLDC	09091355 dated September 23, 2009 ( <b>Exhibit "I<sup>1</sup>-3"</b> ) (SARO ROCS No. 09-4996 dated July 10, 2009, [ <b>Exhibit "C-9-a"</b> ])	PhP5,400,000.00	Eulogio Rodriguez (MAMFI)
NLDC	09101443 dated October 12, 2009 ( <b>Exhibit "I<sup>1</sup>- 16"</b> ) (SARO ROCS No. 09-4996 dated July 10, 2009, [ <b>Exhibit "C-9-a"</b> ])	PhP10,000,000.00	Eulogio Rodriguez (MAMFI)
NLDC	09101534 dated October 26, 2009 ( <b>Exhibit "I<sup>1</sup>- 27"</b> ) (SARO ROCS	PhP4,000,000.00	Eulogio Rodriguez (MAMFI)

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	No. 09-4996 dated July 10, 2009, [ <b>Exhibit "C-9-a"</b> ])		
NLDC	09091353 dated September 18. 2009 ( <b>Exhibit "J1-2"</b> found in <b>Exhibit "J1"</b> ) (SARO ROCS No. 09-04952 dated July 9, 2009, [ <b>Exhibit "C-11-a"</b> ])	PhP6,750,000.00	Merlina Suñas (AEPFFI)
NLDC	09101444 dated October 12, 2009 ( <b>Exhibit "J1- 14"</b> found in <b>Exhibit "J1"</b> ) (SARO ROCS No. 09-04952 dated July 9, 2009, [ <b>Exhibit "C-11-a"</b> ])	PhP12,500,000.00	Merlina Suñas (AEPFFI)
NLDC	09101540 dated October 26, 2009 ( <b>Exhibit "J1- 24"</b> found in <b>Exhibit "J1"</b> ) (SARO ROCS No. 09-04952 dated July 9, 2009, [ <b>Exhibit "C-11-a"</b> ])	PhP5,000,000.00	Merlina Suñas (AEPFFI)
NLDC	09091358 dated September 23, 2009 ( <b>Exhibit "K1-2"</b> ) (SARO ROCS No. 09-04952 dated July 9, 2009, [ <b>Exhibit "C-11-a"</b> ])	PhP6,750,000.00	Laarnie Uy (APMFI)
NLDC	09101449 dated October 12, 2009	PhP12,500,000.00	Laarnie Uy (APMFI)

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	( <b>Exhibit "K1-14"</b> ) (SARO ROCS No. 09-04952 dated July 9, 2009, [ <b>Exhibit "C-11-a"</b> ])		
NLDC	09101535 dated October 26, 2009 ( <b>Exhibit "K1-25"</b> ) (SARO ROCS No. 09-04952 dated July 9, 2009, [ <b>Exhibit "C-11-a"</b> ])	PhP5,000,000.00	Laarnie Uy (APMFI)
NLDC	09121834 dated December 16, 2009 ( <b>Exhibit "L1-2"</b> ) (SARO ROCS G-09-07112 dated September 25, 2009, [ <b>Exhibit "C-14-a"</b> ])	PhP10,800,000.00	John Raymund de Asis (CARED)
NLDC	10010004 dated January 5, 2010 ( <b>Exhibit "L1-14"</b> ) (SARO ROCS G-09-07112 dated September 25, 2009, [ <b>Exhibit "C-14-a"</b> ])	PhP20,000,000.00	John Raymund de Asis (CARED)
NLDC	10010118 dated January 25, 2010 (Exhibit "L1-24") (SARO ROCS G-09-07112 dated September 25, 2009, [ <b>Exhibit "C-14-a"</b> ])	PhP4,000,000.00	John Raymund de Asis (CARED)
NLDC	10050747	PhP4,000,000.00	John

	dated May 6, 2010 (SARO ROCS G-09-07112 dated September 25, 2009, [Exhibit "C-14-a])		Raymund de Asis (CARED)
	TOTAL AMOUNT of MONEY RECEIVED by the NGO's of ACCUSED NAPOLES FROM SENATOR ENRILE'S PDAF	<b>PhP365,437,500.00</b>	

Accused Napoles claims that the said DVs do not prove that she, Senator Enrile and Atty. Reyes amassed, accumulated and/or acquired ill-gotten wealth amounting to at least P50,000,000.00. She further claims that none of the prosecution witnesses testified that money was given to Senator Enrile.<sup>55</sup>

The Court finds the contention devoid of merit

The aforesaid DVs are public documents since the same are official acts of public officers.<sup>56</sup> Thus, the entries therein are *prima facie* evidence of the facts therein stated

<sup>55</sup> pp. 22-25, Motion for Reconsideration; pp. 286-289, Record, Vol. 10

<sup>56</sup> Section 19, Rule 132 of the Rules of Court reads:

**Section 19. Classes of Documents.** – For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

conformably with Section 23, Rule 132 of the Rules of Court, to wit:

SEC. 23. Public documents as evidence. — **Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated.** All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.<sup>57</sup>

Based on the aforesaid DVs of the TLRC, NABCOR and NLDC, the different NGOs of accused Napoles ***received*** from the said IAs the amount of Three Hundred Sixty-Five Million Four Hundred Thirty-Seven Thousand and Five Hundred Pesos (PhP365,437,500.00), from 2007 up to 2010, which were earmarked for the implementation of the PDAF-funded projects of Senator Enrile. The entries in the said DVs are therefore *prima facie* evidence that the NGOs of accused Napoles actually received the amounts reflected therein since no countervailing evidence has been presented by accused Napoles. On the contrary, the former employees of accused Napoles, turned whistleblowers who were presidents of some of these NGOs, categorically testified that they received the checks for their respective NGOs. After their receipt, they deposited these checks in the bank accounts of their NGOs. After the checks were cleared, they withdrew the amount and turned them over to accused Napoles.

The pieces of evidence presented by the prosecution further show that these PDAF-funded projects of Senator Enrile were ghost or fictitious and the money intended therefor was partitioned among accused Napoles, Senator Enrile/Atty. Reyes and the middleperson/s.

According to Suñas, Luy and Ruby Tuason, Senator Enrile, through Atty. Reyes and Ruby Tuason, received forty to fifty percent (40% to 50%) commission/rebate, after five percent (5%) “withholding tax,” from the total cost of his PDAF-funded projects. By sheer mathematical computation, and conservatively pegging the commission at the rate of 35%, the total amount of the kickback/commission/rebate received

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<sup>57</sup> Emphasis supplied



by Atty. Reyes for Senator Enrile was **PhP127,903,125.00**,  
*i.e.*, **35%** of **PhP365,437,500.00**.

The fact that none of the prosecution witnesses testified that money was directly given to Senator Enrile or that the latter directly received kickbacks/commissions/rebates does not have any enervating impact on the weight of evidence against accused Napoles.

To stress, the *Information* charging the herein accused with plunder alleges that Senator Enrile and Atty. Reyes conspired with one another, together with accused Napoles, Lim and de Asis, in amassing, accumulating and acquiring ill-gotten wealth. In the crime of plunder, the amount of ill-gotten wealth acquired by each accused in a conspiracy is immaterial for as long as the total amount amassed, acquired or accumulated is at least P50 million.<sup>58</sup>

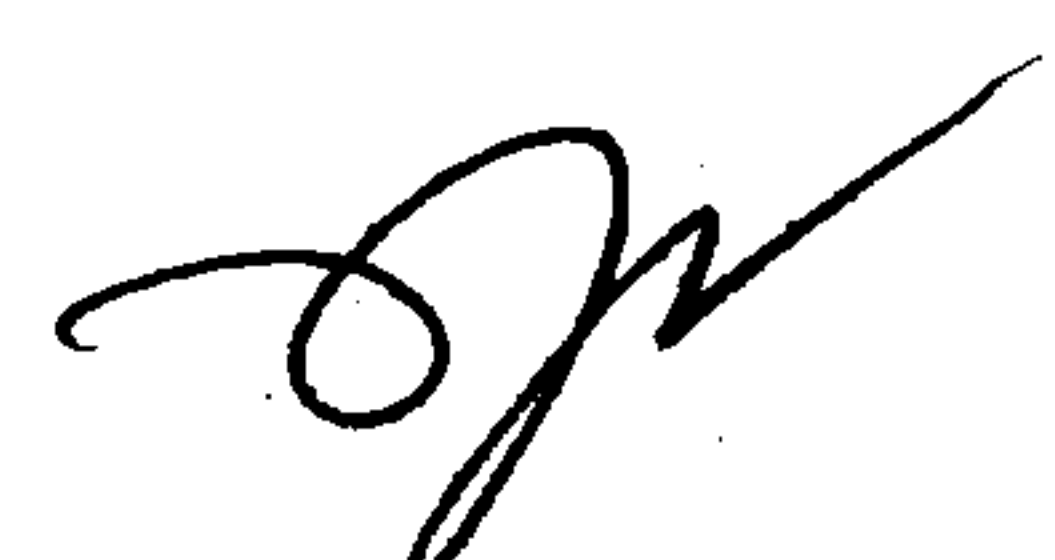
It is true that none of the prosecution witnesses testified that Senator Enrile directly received the kickbacks/commissions/rebates from accused Napoles. Based on the DDRs of Luy, accused Napoles repeatedly gave kickbacks/commissions/rebates to Senator Enrile's middlepersons. Also, prosecution witnesses Suñas and Luy categorically testified that they were the ones who prepared the documents and money in connection with the payment of the kickbacks/commissions/rebates for Senator Enrile. These kickbacks/commissions/rebates were given by them or by accused Napoles to Ruby Tuason and the other middlepersons of Senator Enrile.

Ruby Tuason, on the other hand, testified that she transacted the PDAF of Senator Enrile from 2004 to 2009. She talked to Atty. Reyes and offered her the commission proposed by accused Napoles. Initially, Atty. Reyes hesitated but she eventually agreed.<sup>59</sup> According to Ruby Tuason, she picked up the commissions for Senator Enrile from the office of accused Napoles or from the latter's residence at Pacific Plaza Towers. There were even times when accused Napoles's driver would deliver it to her house.<sup>60</sup> After receiving the payment, Ruby Tuason would meet Atty. Reyes for lunch and give the money to her or sometimes Atty. Reyes would pick it up from her

<sup>58</sup> *Enrile vs. People*, G.R. No. 213455, *Decision* promulgated on August 11, 2015

<sup>59</sup> pp. 16-20, TSN, July 30, 2015

<sup>60</sup> pp. 26-27, TSN, July 30, 2015





house.<sup>61</sup> Ruby Tuason followed this routine in collecting the second and final tranches of the kickbacks/commissions/rebates intended for Senator Enrile.<sup>62</sup>

Ruby Tuason further testified that she met with Atty. Reyes for lunch around five (5) times to deliver the commissions of Senator Enrile. Usually, the amount that she delivered to Atty. Reyes was around PhP5 to PhP6 Million.<sup>63</sup> However, Atty. Reyes also picked up commissions for Senator Enrile from her house more often than they met outside.<sup>64</sup>

Although there is no direct evidence that Senator Enrile received the kickbacks/commissions/rebates repeatedly given by accused Napoles to his middlepersons, there is more than compelling evidence, consisting of the testimony of Ruby Tuason, that Atty. Reyes received Senator Enrile's share. The *Information* in this case alleges that Senator Enrile and Atty. Reyes conspired with each other "and with Janet Lim Napoles" in amassing, accumulating and acquiring ill-gotten wealth. Thus, the receipt by Atty. Reyes, who was likewise a public officer at the time material to this case, of the said ill-gotten wealth is strong and unrebutted evidence that the crime of plunder was indeed committed and that accused Napoles played a stellar but perfidious role in this grand conspiracy.

### A FINAL WORD

The Court again stresses that in resolving this motion for reconsideration of the Court's Resolution promulgated on October 16, 2015, which denied accused Napoles's petition for bail, it is not passing judgment on the culpability or non-culpability of accused Senator Enrile, Atty. Reyes, Napoles, Lim and de Asis. In a petition for bail, the Court is only mandated to determine whether based on the pieces of evidence presented by the prosecution, proof evident exists or the presumption of guilt is strong. As above discussed, the prosecution had presented clear and strong evidence which leads to a well-guarded dispassionate judgment that the offense of plunder has been committed as charged; that accused Napoles is guilty thereof, and that she will probably

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<sup>61</sup>p. 27, *id*

<sup>62</sup> pp. 27-32, *id*

<sup>63</sup> pp. 9-11, TSN, August 4, 2015

<sup>64</sup> p. 9, TSN, August 4, 2014

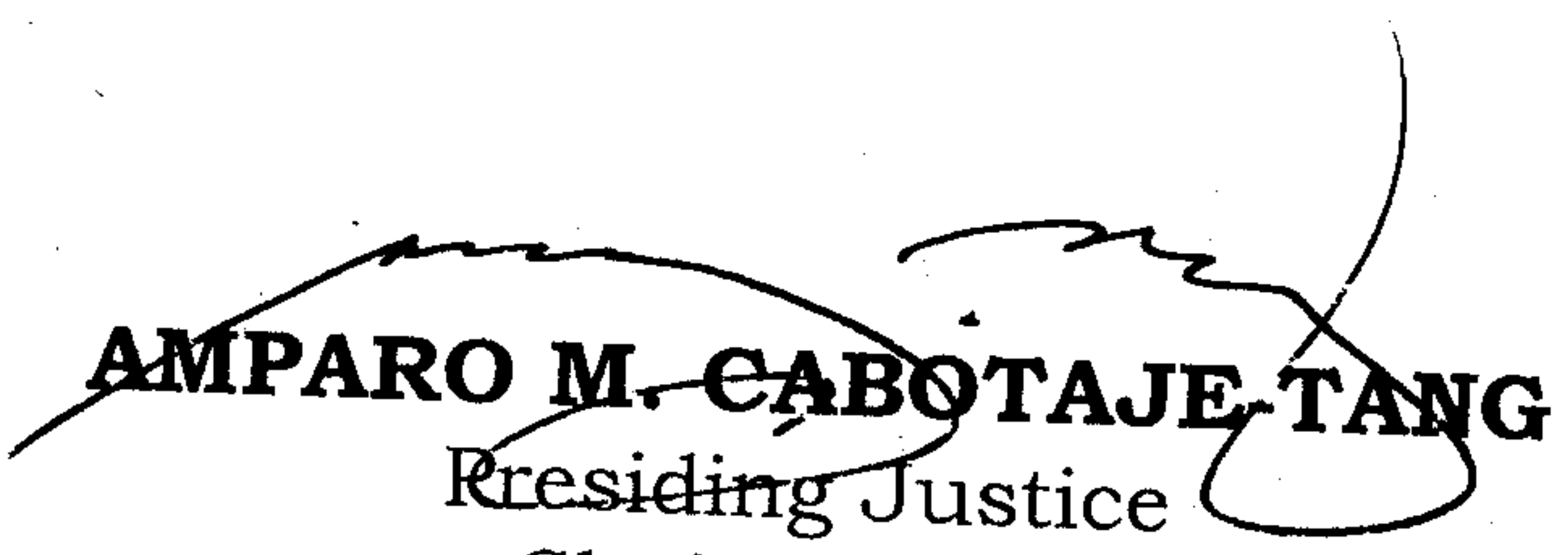


be punished capitally if the law were administered at this stage of the proceedings.

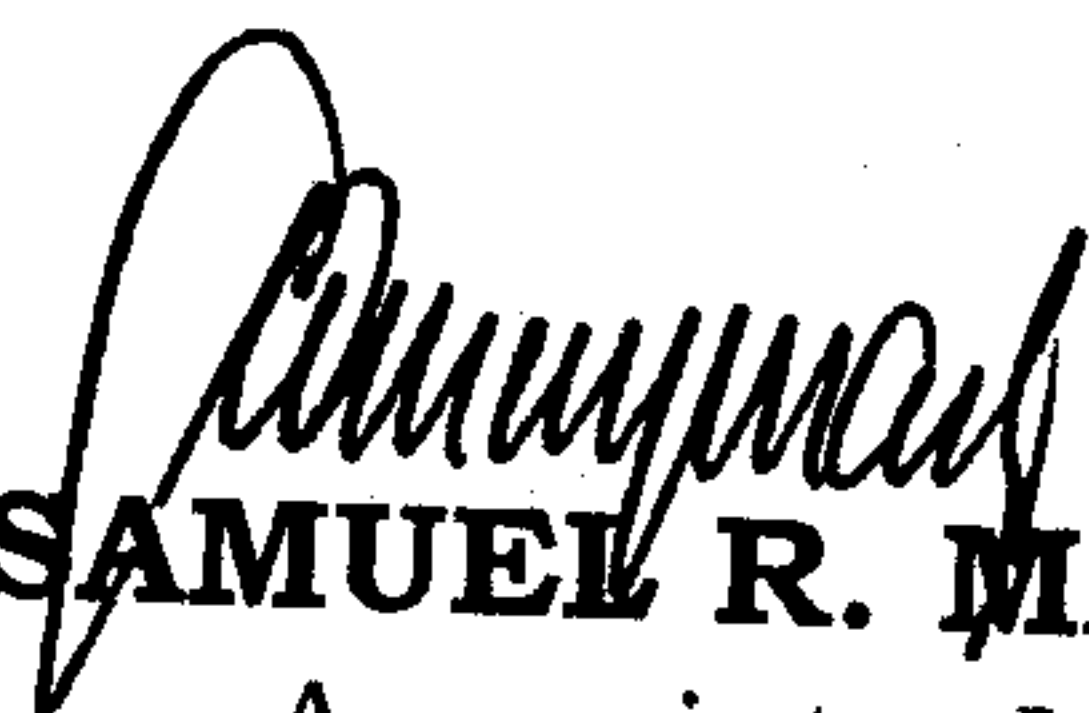
**WHEREFORE**, accused Janet Lim Napoles's *Motion for Reconsideration* dated November 4, 2015 is **DENIED** for lack of merit.

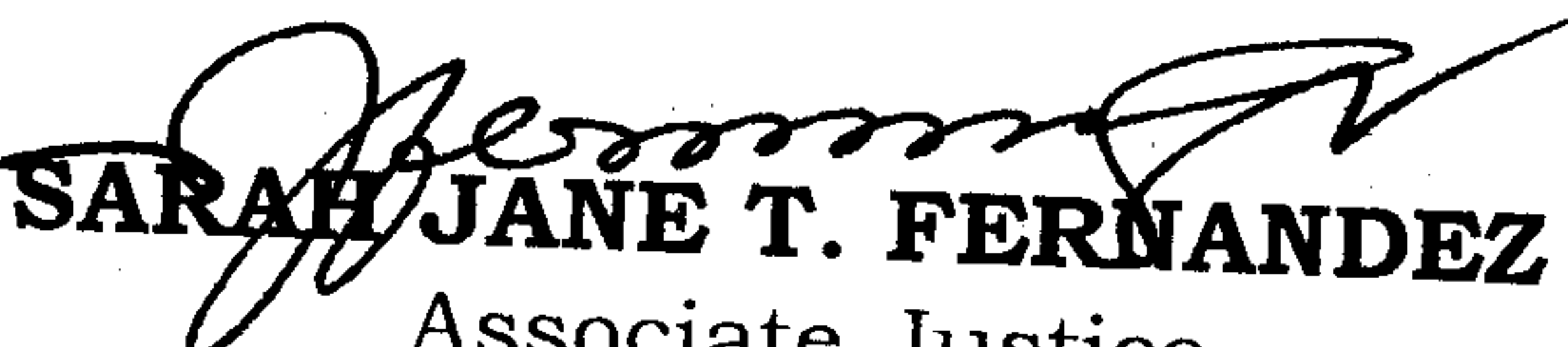
**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**  
Residing Justice  
Chairperson

**WE CONCUR:**

  
**SAMUEL R. MARTIRES**  
Associate Justice

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice