

**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

**THE
Plaintiff,**

**Criminal Case No. SB-16-
CRM-0100**

**For: Violation of Section
3(b), Republic Act (R. A.) No.
3019**

- versus -

**WILLIAM SOBIACO DUMA-
AN, et. al.**

Accused.

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
MARTIRES,¹ J. and
FERNANDEZ, J.

Promulgated:

OCTOBER 11, 2016



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RESOLUTION

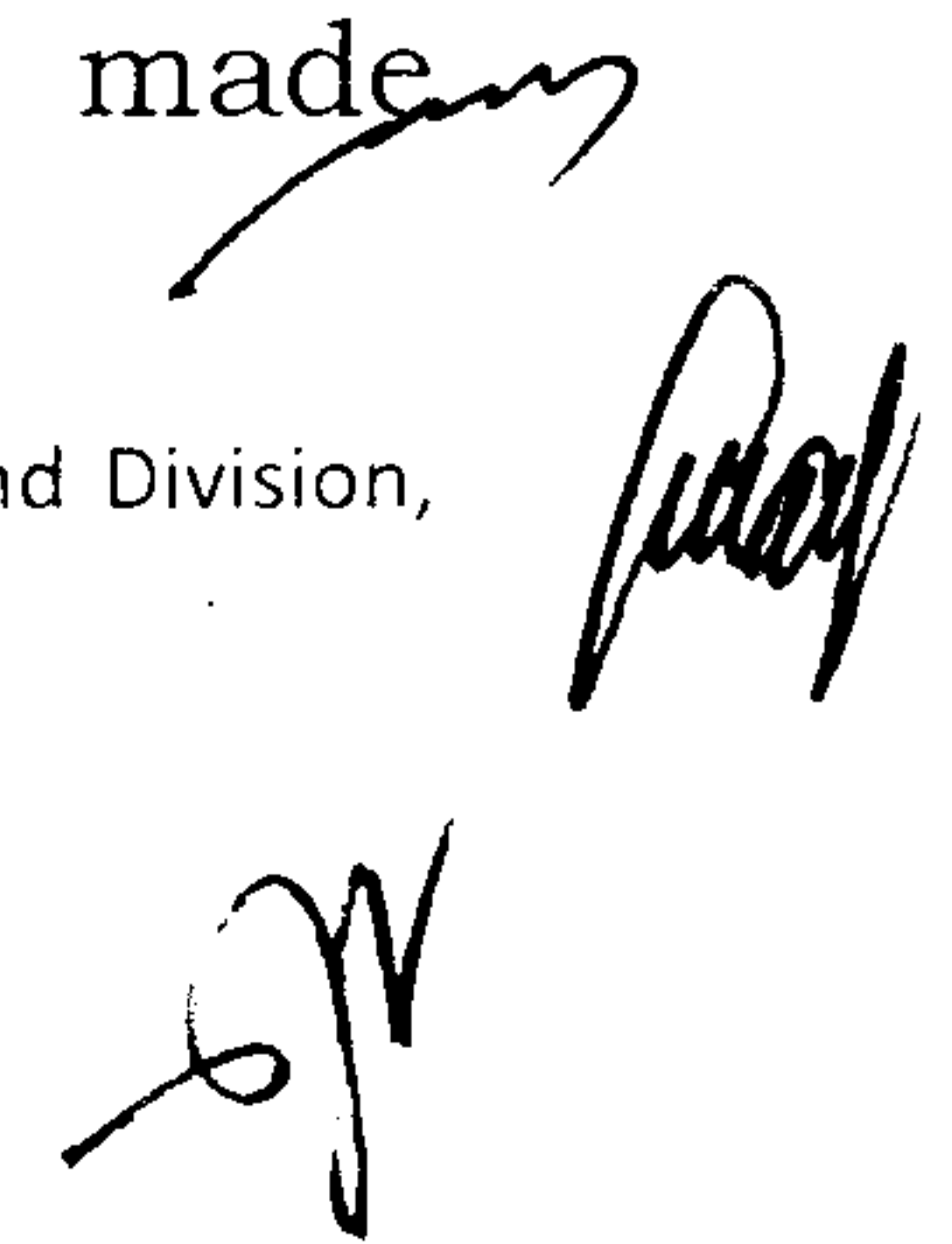
CABOTAJE-TANG, P.J.:

For resolution is the *Affidavit of Recantation* dated April 20, 2016 filed by private complainant Roseller N. Macayra.²

Macayra filed the aforesaid affidavit of recantation "to prompt the Ombudsman and this Honorable Court of the truth of the matter and to cause the withdrawal of the case." In the same affidavit, Macayra alleges that he made

¹ The incident was submitted for resolution when J. Martires, now Chairperson of the Second Division, was still a senior member of the Third Division.

² pp. 175-178, Record, Vol. I



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statements in his sworn complaint against accused William S. Duma-an which are not entirely true. According to him, it is not true that the reason he extended a loan in favor of the accused was because of the accused's promise to release his consultancy and service fee under the memorandum of agreement he executed with the former mayor of the Municipality of Caraga. Macayra claims that he only made the said statement and filed a case against the accused before the provincial prosecutor and the Ombudsman because accused refused to pay his loan despite several written and verbal demands. He further claims that he and the accused had already agreed that the accused will pay his loan on a monthly installment basis and that the accused had substantially complied with his obligations.³

The prosecution filed its comment on the subject affidavit of recantation on May 23, 2016. It contends that there is doubt whether Macayra freely and voluntarily executed the affidavit of recantation because the records of the case show that Macayra actively and arduously pursued his complaint against the accused. According to the prosecution, Macayra even appeared before the Office of the Ombudsman to affirm his pleadings and he filed motions to suspend the accused from office. Further, it argues that the facts established by Macayra's affidavit-complaint are not necessarily negated by the allegations in his affidavit of recantation. Allegedly, the said affidavit of recantation is hearsay unless the affiant is presented in Court. Finally, it argues that recantation and desistance of a witness are generally frowned upon by the Court and regarded with disfavor.⁴

After a careful scrutiny of the records of the case, the Court finds the affidavit of recantation without persuasive value.

As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable

³ pp. 1-3, Affidavit of Recantation; pp. 175-177, Record, Vol. I

⁴ pp. 206-282, Record, Vol. I



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because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable. By itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court.⁵ Only when there exist special circumstances in the case which, when coupled with the retraction, raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.⁶

In this case, the Court finds no such special circumstances extant in the records for it to accord weight to the affidavit of recantation.

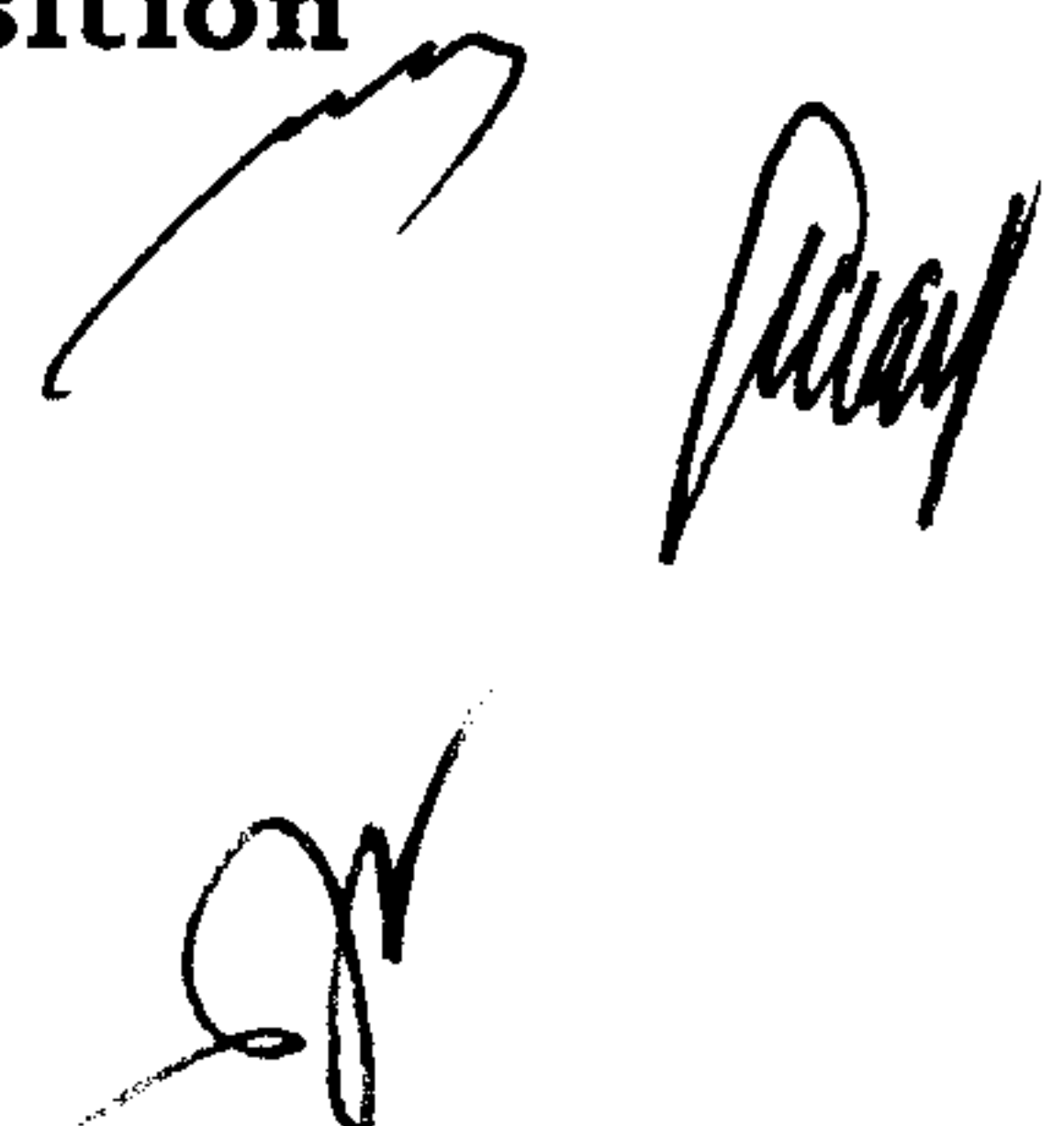
To be sure, Macayra repeatedly declared in his affidavit-complaint that he granted loans to the accused on two (2) occasions because of the accused's assurance that as mayor, he will release to Macayra his service fee:⁷

2. That sometimes prior to July 10, 2010, the respondent, days after he assumed his position as a duly elected Mayor, went to see me in my residence in Baganga Davao Oriental; that I entertained him; that he told me that I have a collectible three (3%) percent Service Fee per existing Memorandum of Agreement as financial Advisor/Consultant of Caraga Davao Oriental regarding the loan granted to the latter by the loan provider Philippine Veterans Bank for the P110,000,000.00 Million for Construction and Development of the Caraga Public Market/Terminal & Commercial Complex; that he informed me that he urgently need money to pay his indebtedness incurred and spent during election period which he will be obliged to pay his creditors 20% interest, among other obligations, with higher interest rates; **that I initially declined but the respondent assured me that being an incumbent Mayor, with the use of his position**

⁵ Victoriano vs. People, 509 SCRA 483 (2006)

⁶ People vs. Lamsen, 709 SCRA 512 (2013)

⁷ pp. 20-21, Record, Vol. I; emphasis supplied



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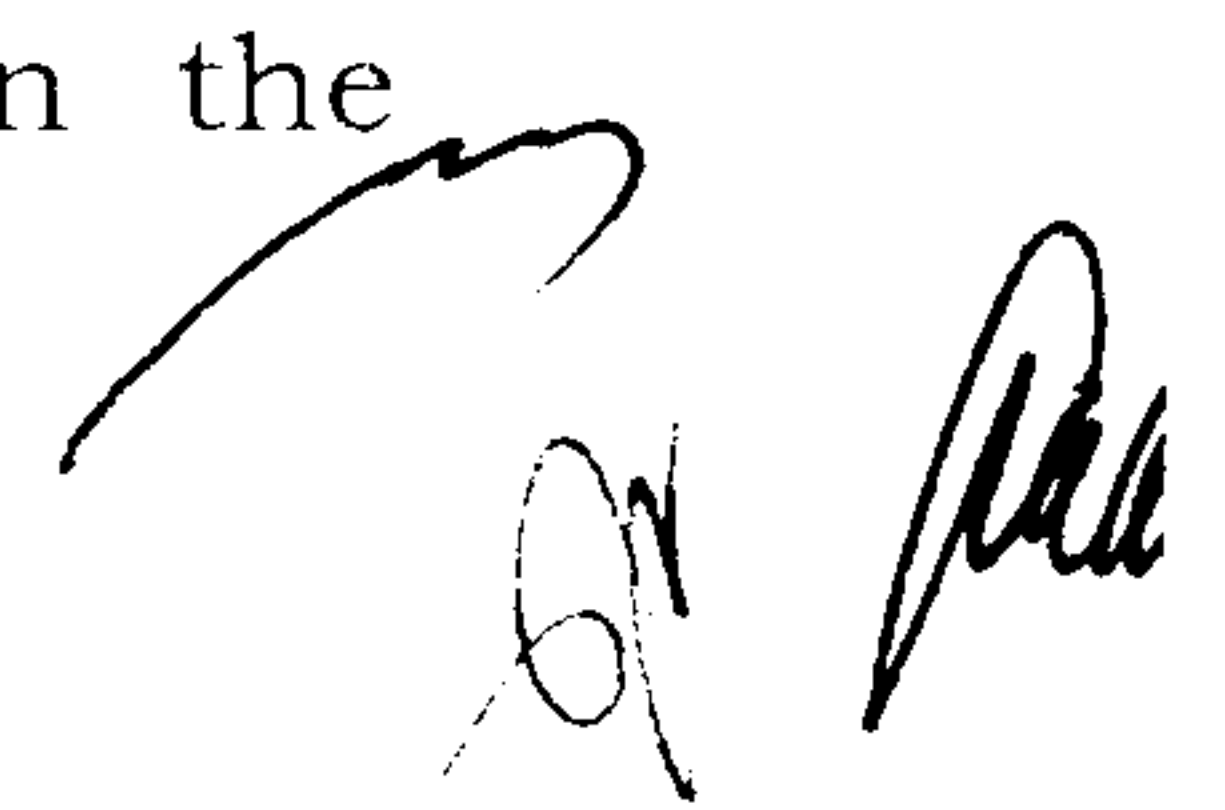
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and influence that he will release the Service Fee if I will entrust to him ONE MILLION (Php1,000,000.00) PESOS and he will pay me sufficient interest of five (5%) percent per month payable within the period of five (5) months from the date of release;

3. That the respondent went back again to me in Baganga Davao Oriental on July 9, 2010 reiterating his above representation and assurance **that being a Mayor, he will ensure the release of the above three (3%) percent Service Fee and further assured me that he can promptly pay as he has political power, influence and position and has collectible SOP from the contractors;** that he brought with him and handed to me personally his letter dated July 9, 2010 with logo from the Office of the Municipal Mayor binding himself unconditionally to pay said Service Fee, hereto attached as Annex "A" causing me to repose full trust and confidence in him; Sensing that I have succumbed to his assurances, he thereafter instructed me to deposit in his BANCO DE ORO (BDO) Savings Account in Mati Davao Oriental, thus, after securing said amount of money I have parted to him the sum of ONE MILLION (Php1,000,000.00) PESOS at his BDO Savings Account bearing Savings Account No. 3730056977 in Mati Davao Oriental on July 10, 2010, hereto attached the BDO deposit slip for the said amount as ANNEX "B"; that respondent has acknowledged and confirmed his receipt of said sum immediately thru mobile phone call;

4. That respondent WILLIAM S. DUMA-AN went back sometime after the town fiesta before September 17, 2010 in Baganga Davao Oriental and had personally acknowledged and confirmed his receipt of the above sum and had repeatedly extended thanks to me; that thereafter he made further representation that since he cannot cope up to pay within the period of five months as he was not yet paid of the SOP (misnomer for bribe commission), and as he has insufficient money for the payment of his Hummer vehicle and **assured me further that as a Mayor, he will cause the release of one-half of the above Service Fee and as such to part him additional amount of ONE MILLION (Php1,000,000.00) PESOS** which he will return the



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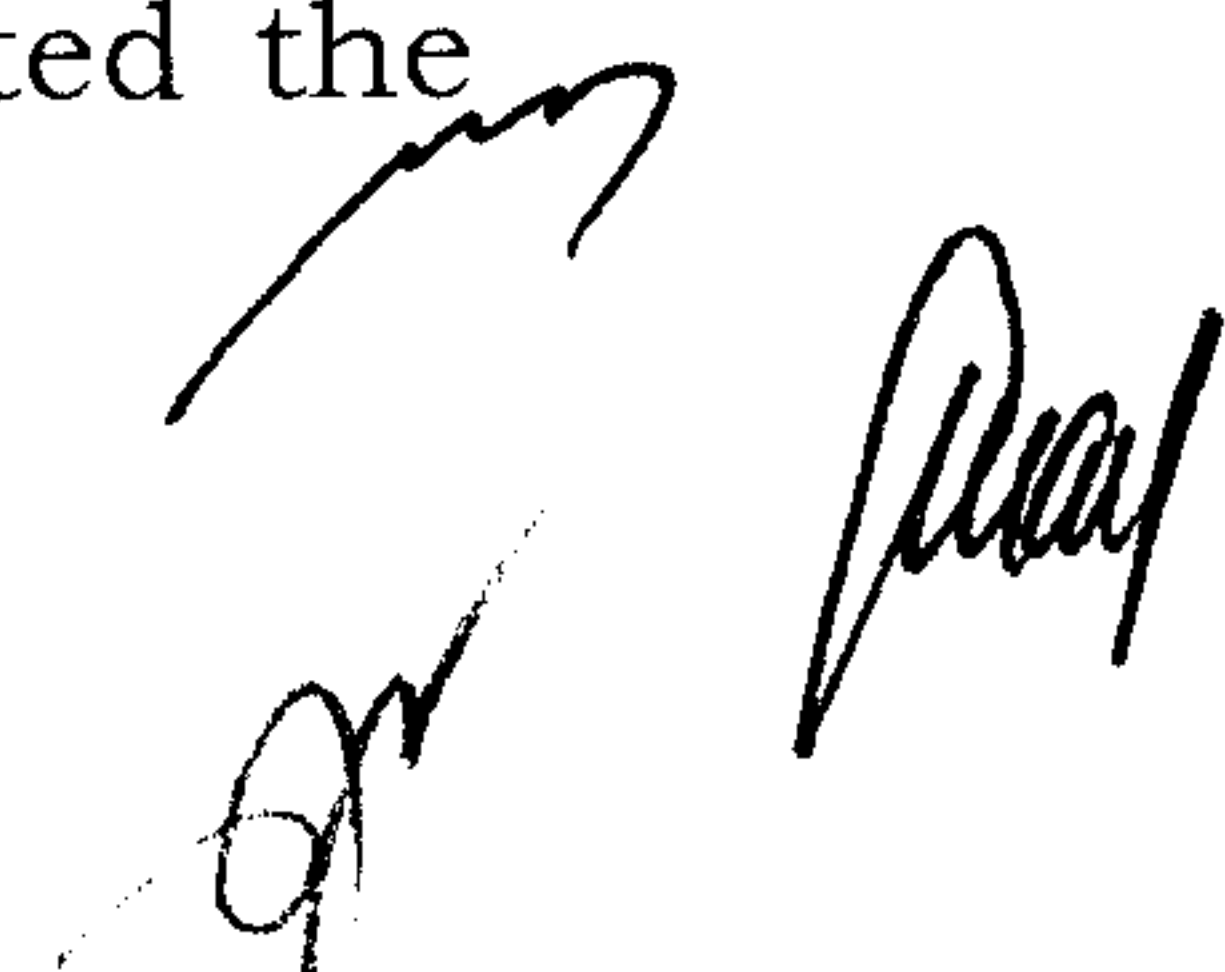
total capital with interest same of five (5%) payable within ten (10) months in ten equal monthly installment, commencing from the earlier release on July 10, 2010 and the subsequent second release and in case of default of four (4) months, the whole sum becomes due and demandable and in case of monthly default payment, he committed to pay further additional interest of two (2%) percent with my option to institute a case in court;

Notably, Macayra affirms in his affidavit of recantation that he loaned the accused money in the total amount of P2 million pesos which he deposited to the accused's bank account on two (2) occasions, to wit: July 10, 2010 and September 2010; that his company has an existing memorandum of agreement pertaining to the engagement of his company as advisor and consultant signed by former mayor Alicia B. Mori on behalf of the Municipality of Caraga. However, he declares in his affidavit of recantation that there is no truth to his statement in his sworn complaint that he loaned money to the accused because the accused assured him that he will release his service fee pursuant to the memorandum of agreement allegedly because of the following reasons:⁸

14. The statements in my sworn affidavit-complaint where I said that the reason why I lent money to DUMA-AN was because of his promise to release to me my consultancy and service fees under the memoranda which I had with the former mayor of the municipality of Caraga, ARE NOT TRUE and are only exaggerations prompted by my resolved to get paid the soonest;

15. It is not true that I lent money to DUMA-AN because of his assurance that he will release to me my service fees because at that time where I deposited the

⁸ p. 3, Affidavit of Recantation; p. 177, Records, Vol. I



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money in his account [o]n July 10, 2010 DUMA-AN had barely assumed office on June 30, 2010 and the *Sangguniang Bayan* of the Municipality of Caraga had not even began its regular sessions;

16. Only recently DUMA-AN and I have come to terms where the latter undertook to pay his obligations to me although in monthly installment basis. And so far, DUMA-AN had substantially complied with his obligations to me.

As correctly pointed out by the prosecution, the facts as established by Macayra's affidavit-complaint are not necessarily negated by the allegations in his affidavit of recantation. On the contrary, the actions of Macayra from the time he filed his complaint before the Office of the Ombudsman only show his "active and arduous pursuit" of his complaint against the accused. The prosecution cites the following acts of Macayra which indeed reveal the truthfulness of the allegations in his sworn complaint:⁹

31.1 On October 25, 2011, Macayra freely and voluntarily executed his Affidavit-Complaint and subscribed it personally before Graft Investigation and Prosecution Officer I (GIPO) Samuel P. Naungayan of the Office of the Ombudsman-Mindanao, with all the necessary pieces of evidence attached to it.

31.2 By letter dated October 27, 2011, Macayra wrote Ombudsman Conchita Carpio Morales reiterating his allegations in his affidavit-complaint and praying that accused be outrightly dismissed and removed from office.

31.3 On April 24, 2012, Macayra filed a Motion for Preventive Suspension against the accused.

⁹ at pp. 2-3, Comment; pp. 207-208, Record, Vol. I



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31.4 By letter dated April 25, 2012, Macayra made a follow up of his complaint and reiterated his motion for preventive suspension of the accused, citing threats to his life and limb, and further prayed for "fast justice."

31.5 On July 13, 2012, Macayra filed a Supplemental Motion for Preventive Suspension of the accused.

31.6 On August 30, 2012, Macayra filed his reply to the Counter-Affidavit of the accused which he personally filed and subscribed and sworn to before GIPO Noel Q. Gelito of the Office of the Ombudsman-Mindanao.

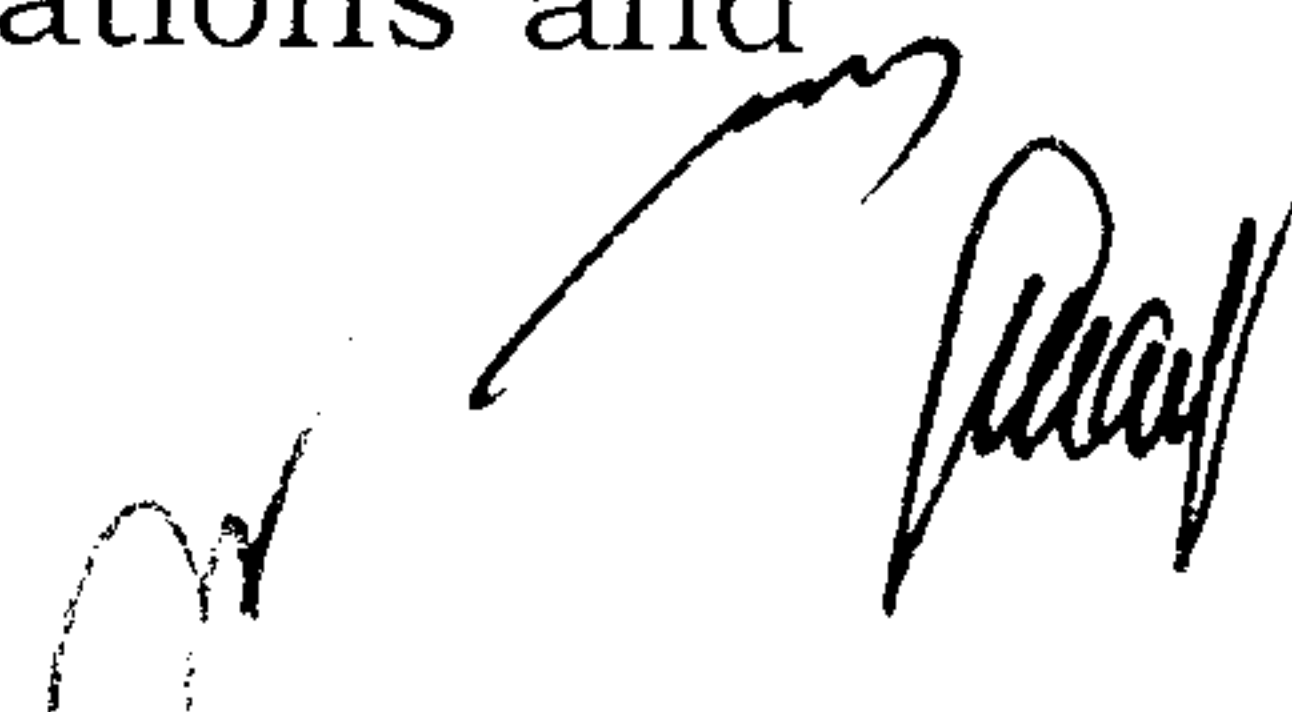
31.7 On October 30, 2012, Macayra, through his handwritten letter of even date submitted documents in compliance with the Order of the Office of the Ombudsman.

31.8 Also, on October 30, 2012, Macayra filed a Motion for Reconsideration of the Order of the Office of the Ombudsman which denied his Motion for Preventive Suspension of the accused.

31.9 Through a letter dated November 6, 2012, Macayra submitted additional original documents in connection with his complaint.

31.10 Lastly, by Supplemental Manifestation dated April 18, 2014, Macayra moved for an early resolution of the case. Said manifestation was sworn to before GIPO Marilou B. Unabia of the Office of the Ombudsman-Mindanao.

The record further shows that Macayra received death threats twice through text messages telling him to stop filing cases with the Office of the Ombudsman and Fiscal if he wants to be saved and that he is being followed anywhere he goes. He reported said threats to different police stations and



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to the One Stop Public Assistance Center of National Telecommunications Commission.¹⁰

Moreover, the affidavit of recantation was filed after almost five (5) years from the time Macayra filed his sworn-complaint against the accused before the Office of the Ombudsman-Mindanao. It is simply incredible that after going through almost five (5) years of arduous process of filing his complaint, preparing his pleadings and documents and enduring death threats, Macayra would just declare that his statements “are not true” and “are only exaggerations prompted by [his] resolve to get paid the soonest.”

It also bears stress that in its Resolution dated May 30, 2016, the Court directed the parties, together with private complainant Macayra, to appear before the Court on June 29, 2016 for the conduct of a hearing on the “Affidavit of Recantation” executed by Macayra.¹¹ Macayra, however, failed to appear on the said date.¹²

The failure of Macayra to testify on his affidavit renders the same as hearsay. Any recantation must be tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness.¹³

In sum, Macayra’s affidavit of recantation is not only hearsay. It also fails to negate the allegations in his complaint that accused was able to secure a loan from Macayra for his personal benefit through his assurance that as a mayor, he will release Macayra’s service fee. Thus, the affidavit of recantation does not deserve the least consideration.




WHEREFORE, the Court **DENIES** Rosseller N. Macayra’s request for the withdrawal of the case, as stated in his Affidavit of Recantation dated April 20, 2016, for lack of merit.

¹⁰ pp. 145-149, Record, Vol. I

¹¹ p. 287, Record, Vol. I

¹² p. 300, Record, Vol. I

¹³ **People vs. Montejó**, 355 SCRA 210 (2001)

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SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


SAMUEL R. MARTINES
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice