

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE  
PHILIPPINES,

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,

Accused.

Present:

**CABOTAJE-TANG, P.J.**,  
Chairperson,  
**FERNANDEZ, J.** and  
**TRESPESES,<sup>1</sup> J.**

Promulgated:

OCTOBER 14, 2016

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**RESOLUTION**

**CABOTAJE-TANG, PJ:**

For resolution is the *Motion for Judicial Determination of Probable Cause* dated July 21, 2016 filed by accused William Sobiaco Duma-an.<sup>2</sup>

In his aforesaid motion, accused prays that the Court conduct a “new judicial determination of probable cause” in this case on the ground that private complainant Roseller N. Macayra executed an Affidavit of Recantation dated April 20,

<sup>1</sup> Sitting as special member per Administrative Order No. 227-2016 dated July 26, 2016

<sup>2</sup> pp. 311-327, Record, Vol. I

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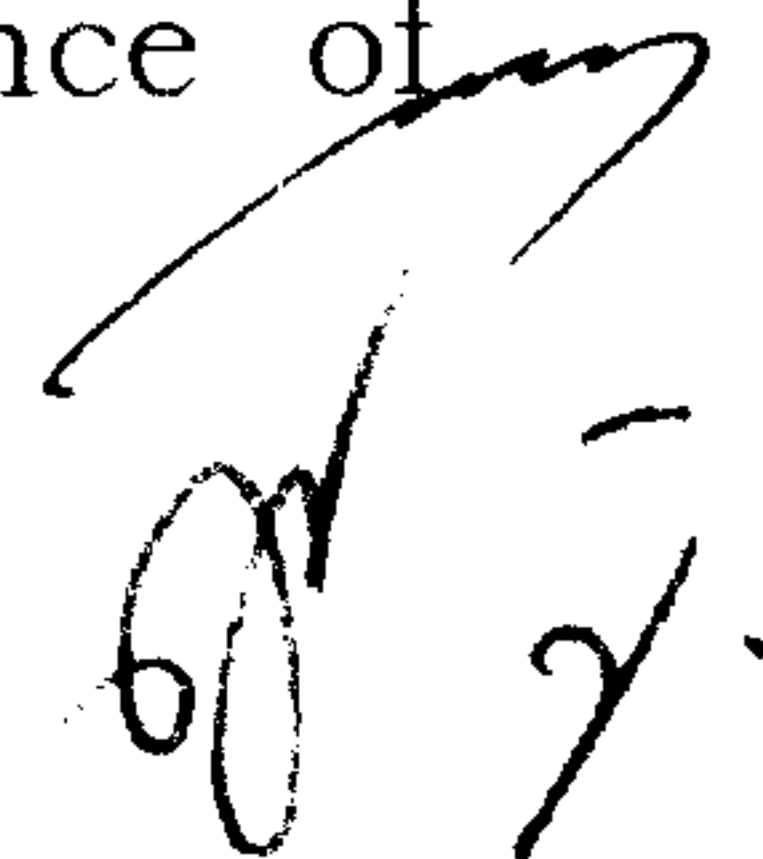
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2016. He contends that the said affidavit of recantation is a new piece of evidence which may require a re-assessment of the existence of probable cause. He argues that Macayra did not deny the existence of a transaction between them in the said affidavit. Allegedly, Macayra merely clarified that he did not lend money to the accused because of the promise that his service fee will be released. According to him, the said affidavit of recantation practically confirmed the original findings of the Office of the Ombudsman in Mindanao that the two million pesos (P2,000,000.00) that he borrowed from Macayra was a personal undertaking and that Macayra's recourse is to file a civil case in court. He also claims that the said affidavit of recantation is an offshoot of a compromise agreement between him and Macayra before the Philippine Mediation Office of Tagum City in connection with the case for estafa which Macayra filed against him involving the same subject loan transactions in the total amount of two million pesos (P2,000,000.00). Allegedly, this criminal case for estafa was consequently dismissed by the regional trial court pursuant to said compromise agreement. To further support his motion, accused attached to his subject motion copies of the following documents which allegedly show Macayra's lack of interest to testify against him: (1) Order dated December 2, 2011 issued by the Graft Investigation and Prosecution Officer II Grace H. Morales dismissing Macayra's complaint against the accused for violation of R. A. No. 3019; (2) Memorandum dated February 28, 2012, addressed to the Ombudsman from the Assistant Ombudsman, recommending disapproval of the Order dated December 2, 2011 and the conduct of further preliminary investigation of the case which was approved by the Ombudsman; (3) Compromise Agreements both dated November 4, 2015 executed by Macayra and the accused in Criminal Cases Nos. 4037 and 4038; (4) Joint Order dated November 25, 2015 issued by the Regional Trial Court, Branch 7 in Baganga, Davao Oriental dismissing Criminal Cases Nos. 4037 and 4038; and (5) Informations in Criminal Cases Nos. 4037 and 4038.

In its Opposition dated August 15, 2016, the prosecution argues that the Court already determined the existence of





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probable cause when it ordered the issuance of a warrant of arrest against the accused; hence, subject motion is moot. It also argues that the compromise agreement cannot be made a basis to conclude that Macayra has lost interest to prosecute the present case because the said compromise agreement refers only to the estafa cases which Macayra filed against the accused. It further argues that since the present case involves public interest, the prosecution of this case cannot be made to depend on Macayra. According to the prosecution, the series of actions of Macayra in pursuit of this case establish the voluntariness of the execution of his affidavit-complaint and the truthfulness of the allegations therein. It contends that the affidavit of recantation, on the other hand, is hearsay for failure of Macayra to appear in Court to testify thereon despite the Court's order.

The Court finds the motion bereft of merit.

Judicial determination of probable cause refers to the prerogative of the judge to ascertain if a warrant of arrest should be issued against the accused. At this stage, the judge makes a preliminary examination of the evidence submitted, and on the strength thereof, and independent from the findings of the public prosecutor, determines the necessity of placing the accused under immediate custody in order not to frustrate the ends of justice.<sup>3</sup>

Notably, since the judge is already duty-bound to determine the existence or non-existence of probable cause for the arrest of the accused immediately upon the filing of the information, the filing of a motion for judicial determination of probable cause becomes a mere superfluity, if not a deliberate attempt to cut short the process by asking the judge to weigh in on the evidence without a full-blown trial.<sup>4</sup>

To be sure, in its Resolution dated March 14, 2016, the Court found that probable cause exists in this case; hence, it

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<sup>3</sup> *Young vs. People*, G.R. No. 213910, February 3, 2016

<sup>4</sup> *Delos Santos-Dio vs. Court of Appeals*, 699 SCRA 614 (2013)

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issued a warrant of arrest against the accused.<sup>5</sup> Thereby, the issue of the existence of probable cause is now academic as correctly pointed out by the prosecution.

The accused, however, insists that the affidavit of recantation is a new evidence which “clouds the previous statements of private complainant in the filing of this case.” Thus, there is a ground to conduct a “new judicial determination.”<sup>6</sup>

After a careful re-assessment of the records of this case, the Court maintains its finding that probable cause exists to justify the issuance of warrant of arrest against the accused and to hold him for trial.

To begin with, an affidavit of recantation cannot be considered a new piece of evidence or a newly discovered evidence. Under Section 2, Rule 121 of the Rules of Court, the requisites for newly discovered evidence are: (1) the evidence was discovered after trial (in this case, after investigation); (2) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (3) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.<sup>7</sup>

In this case, Macayra could have easily executed the said affidavit of recantation earlier if, indeed, the statements in his affidavit-complaint were not true. Thus, it cannot be said that such evidence could not have been discovered and produced during the investigation with reasonable diligence.

Moreover, the said affidavit of recantation cannot be given weight for being hearsay. It is an oft-repeated rule that an affidavit is merely hearsay evidence where its affiant/maker did not take the witness stand.<sup>8</sup> Any recantation must be

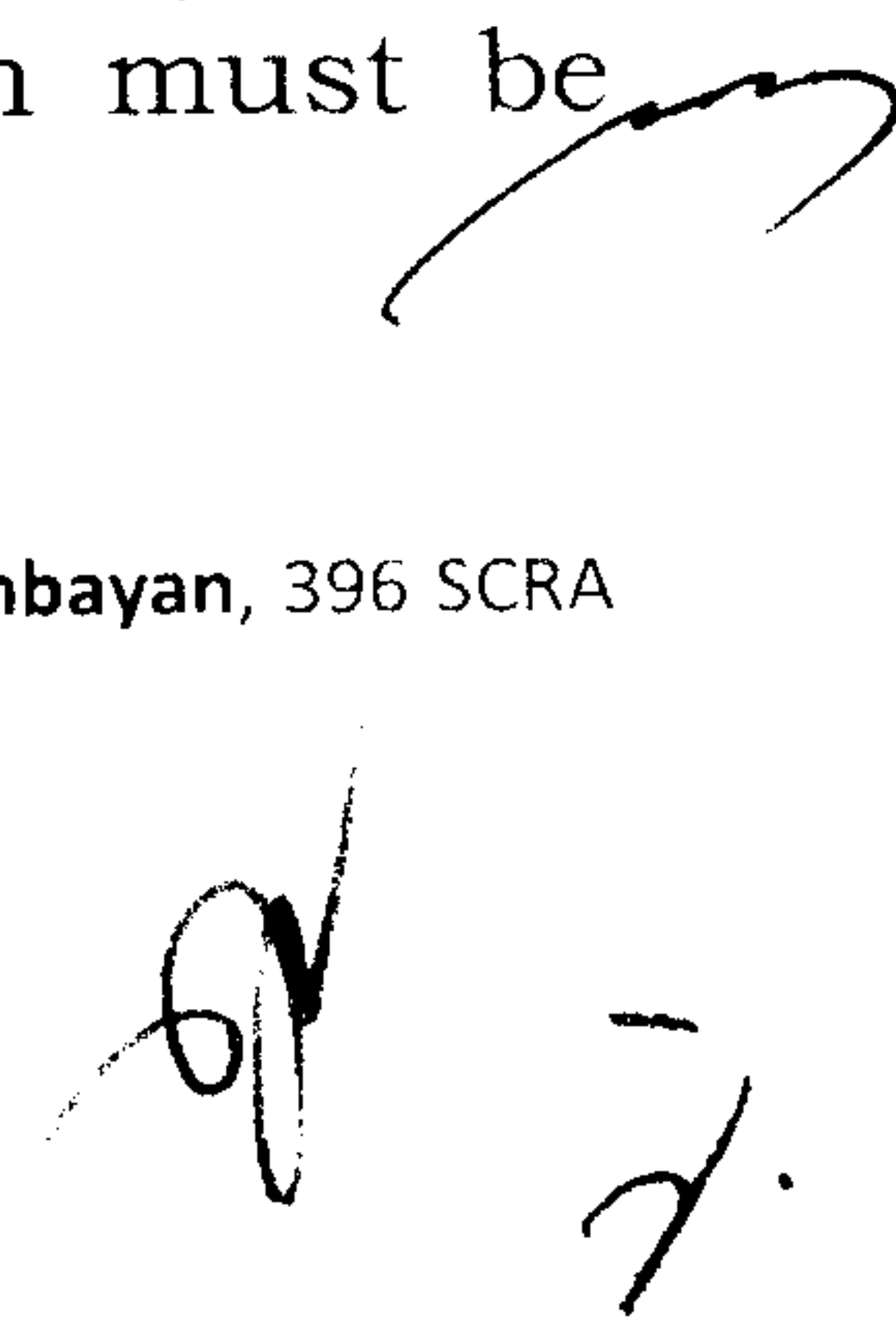
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<sup>5</sup> p. 165, Record, Vol. 1

<sup>6</sup> p. 3, Motion for Judicial Determination of Probable Cause; p. 313, Record, Vol. 1

<sup>7</sup> *Saludaga vs. Sandiganbayan*, 619 SCRA 364 (2010), citing *Amarillo, et al. vs. Sandiganbayan*, 396 SCRA 434 (2003), *Amper vs. Sandiganbayan*, 279 SCRA 434 (1997)

<sup>8</sup> *Rosit vs. Davao Doctors Hospital*, G.R. No. 210445, December 7, 2015





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tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness.<sup>9</sup>

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 in this case.<sup>10</sup> Macayra, however, failed to appear on the said date without offering even the faintest explanation for such failure.<sup>11</sup>

At any rate, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable 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.<sup>12</sup> 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.<sup>13</sup>

In its Resolution promulgated on October 11, 2016, this Court declared that there are no such special circumstances extant in the records for it to accord weight to Macayra’s affidavit of recantation. In fact, the said affidavit of recantation fails to negate the allegations in the complaint that accused was able to secure a loan from Macayra for his personal benefit through his assurance that as the mayor, he will release Macayra’s service fee: Thus, the Court held:

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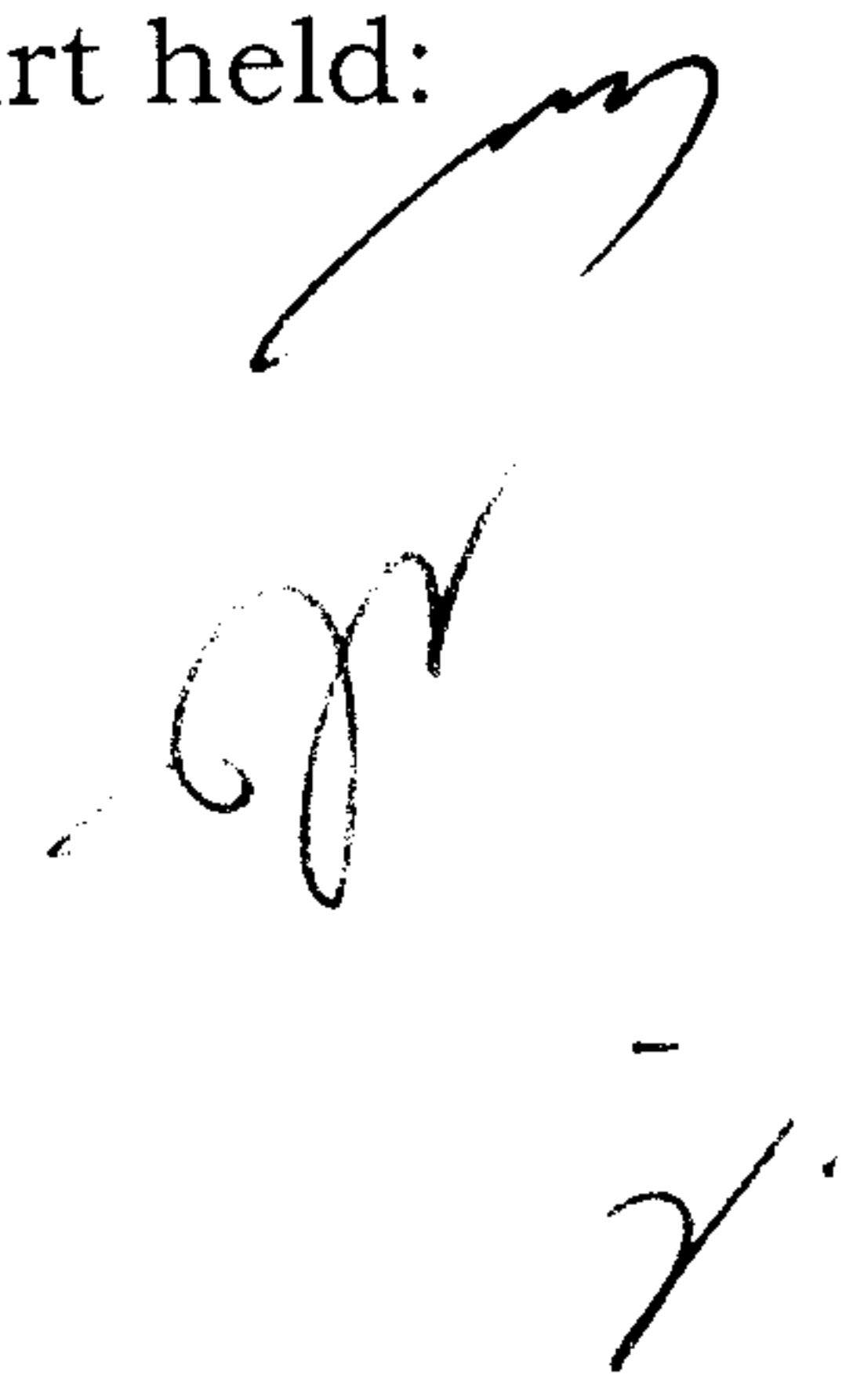
<sup>9</sup> **People vs. Montejo**, 355 SCRA 210 (2001)

<sup>10</sup> p. 287, Record, Vol. I

<sup>11</sup> p. 300, Record, Vol. I

<sup>12</sup> **Victoriano vs. People**, 509 SCRA 483 (2006)

<sup>13</sup> **People vs. Lamsen**, 709 SCRA 522 (2013)

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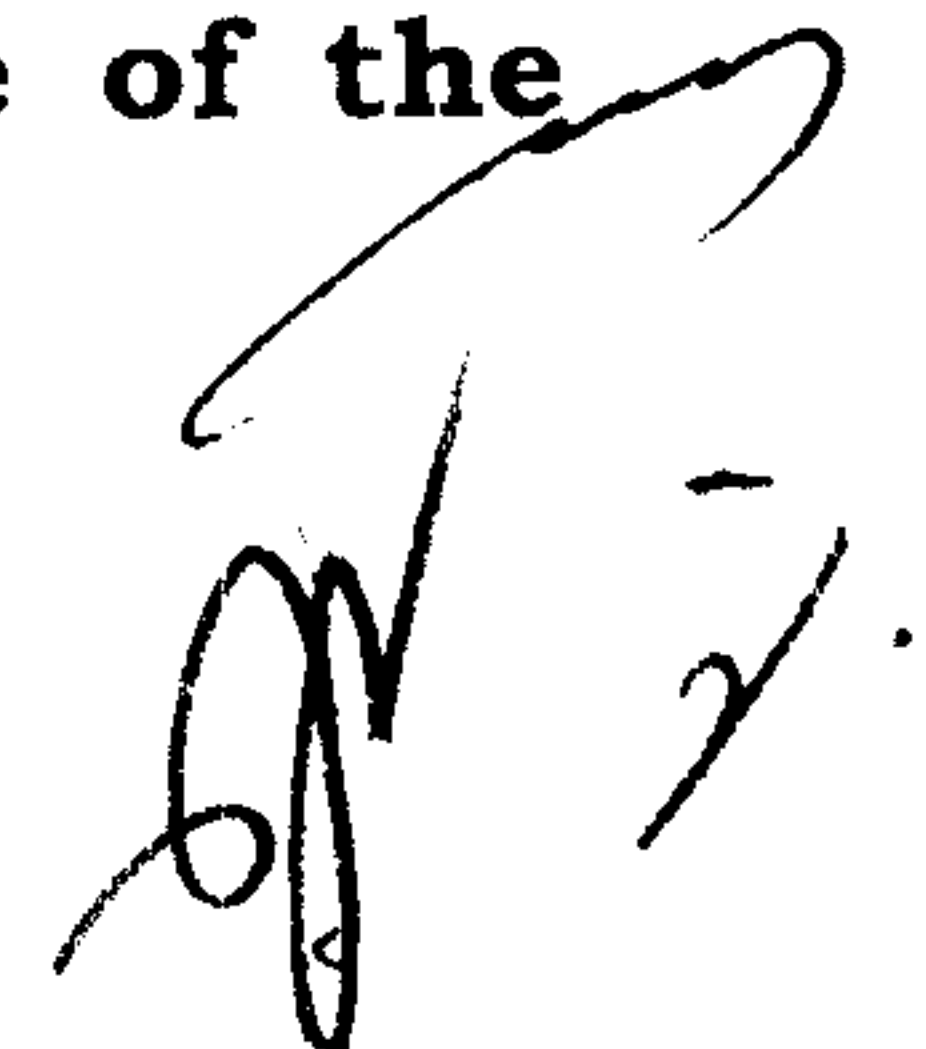
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To be sure, Macayra repeatedly declared in his affidavit-complaint that he granted loans to the accused on two (2) occasions because of the accused's assurance that as mayor, he will release to Macayra his service fee:<sup>14</sup>

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 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**

<sup>14</sup> pp. 20-21, Record, Vol. I; emphasis supplied



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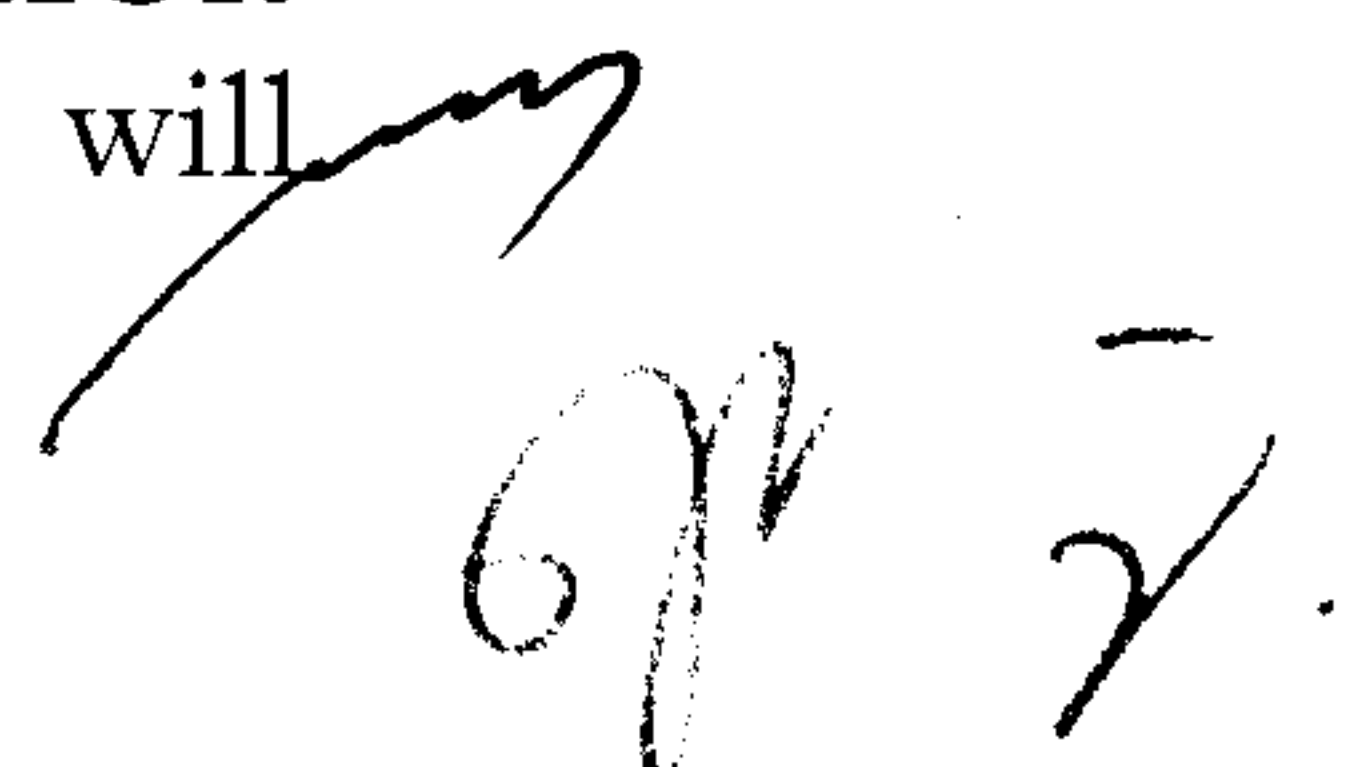
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**above three (3%) percent Service Fee and further assured me that he can promptly pay as he has political power, influence and position and has collectible SOP from the contractors;** that he brought with him and handed to me personally his letter 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





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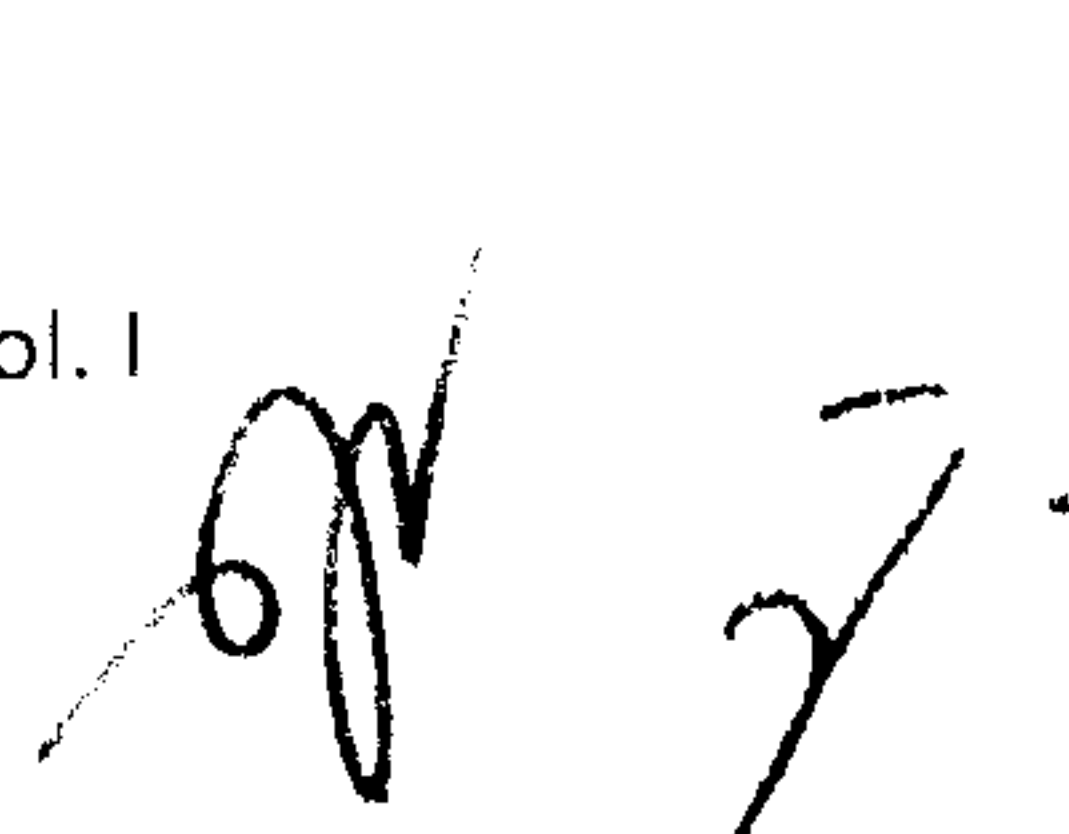
return the total capital with interest same of five (5%) payable within ten (10) months in ten equal monthly installment, commencing from the earlier release on July 10, 2010 and the subsequent second release and in case of default of four (4) months, the whole sum becomes due and demandable and in case 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:<sup>15</sup>

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;

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<sup>15</sup> p. 3, Affidavit of Recantation; p. 177, Records, Vol. I





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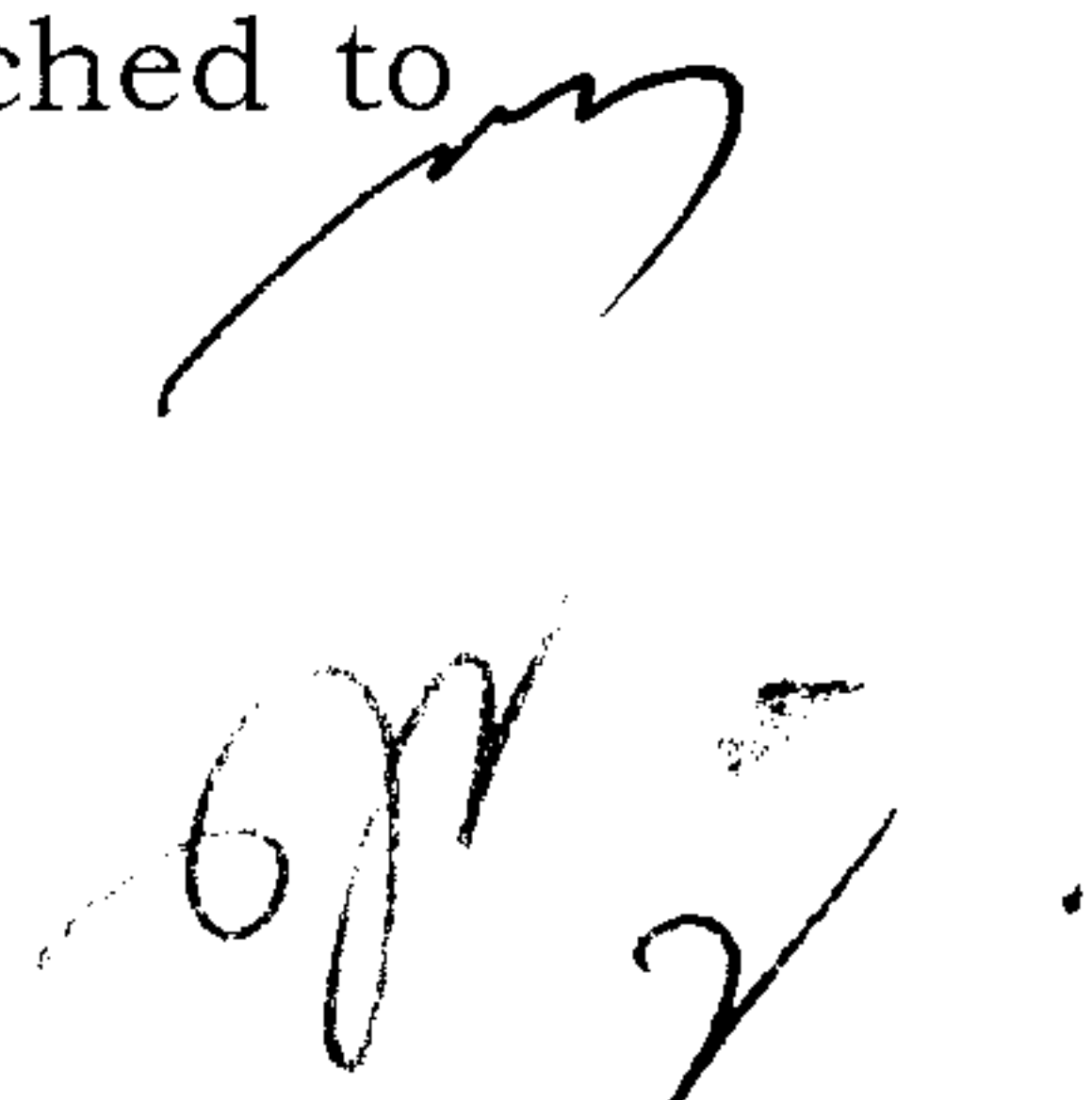
15. It is not true that I lent money to DUMA-AN because of his assurance that he will release to me my service fees because at that time where I deposited the money in his account [o]n July 10, 2010 DUMA-AN had barely assumed office on June 30, 2010 and the *Sangguniang Bayan* of the Municipality of 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:<sup>16</sup>

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.

<sup>16</sup> at pp. 2-3, Comment; pp. 207-208, Record, Vol. I

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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.

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."

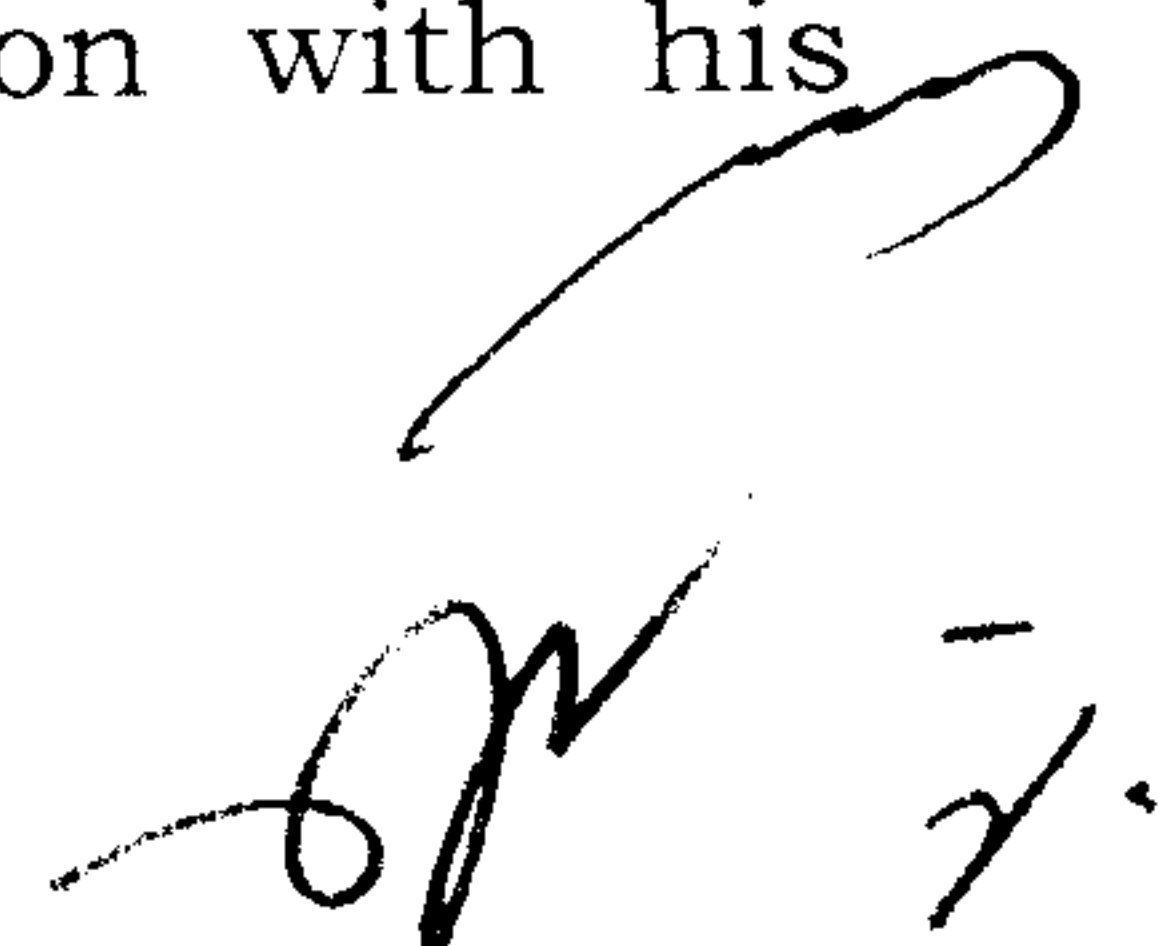
31.5 On July 13, 2012, Macayra filed a Supplemental Motion for Preventive Suspension of the accused.

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.

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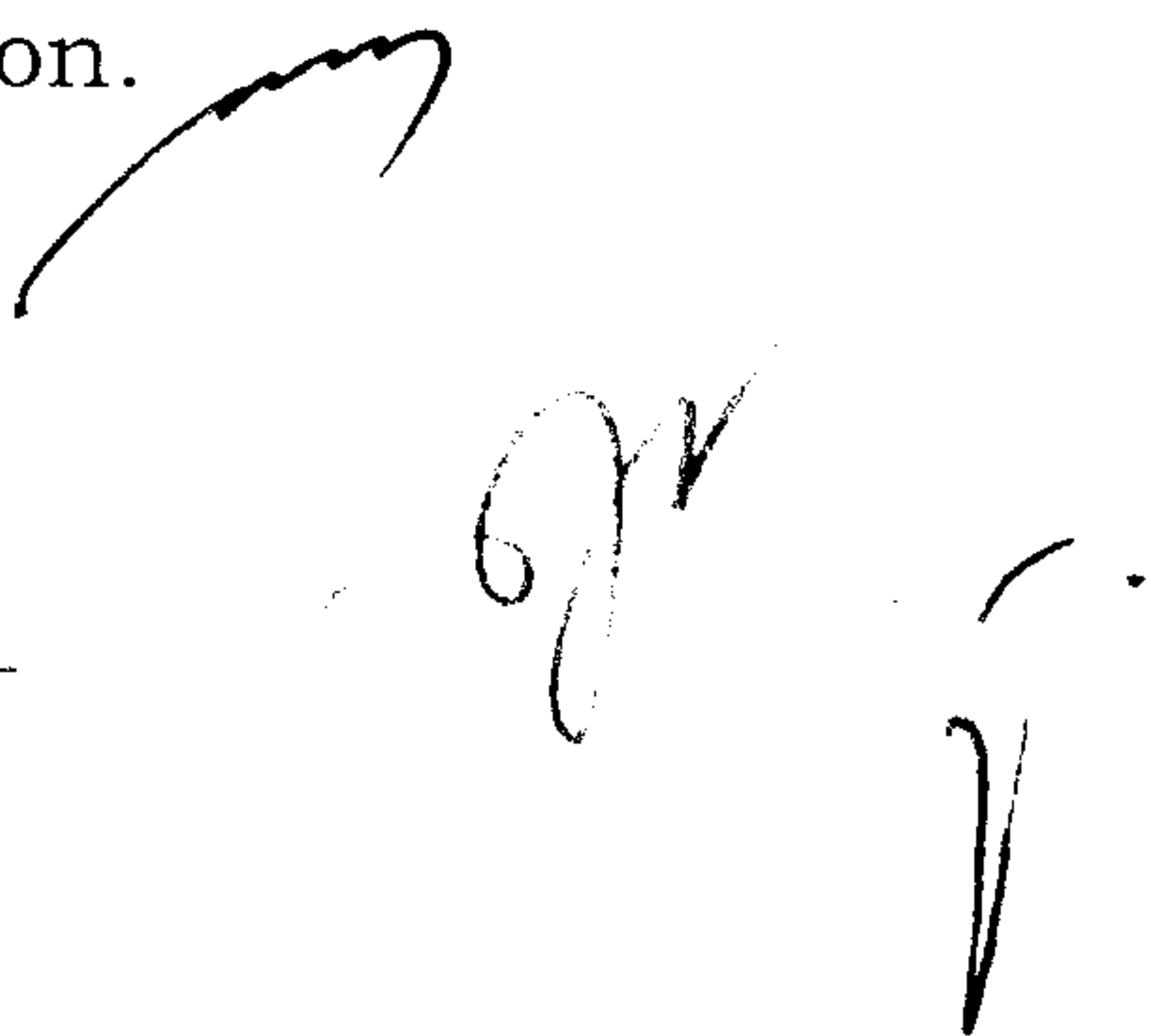
31 10 Lastly, by Supplemental Manifestation dated April 18, 2014, Macayra moved for an early resolution of the case. Said manifestation was sworn to before GIPO Marilou B. Unabia of the Office of the Ombudsman-Mindanao.

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 to the One Stop Public Assistance Center of National Telecommunications Commission.<sup>17</sup>

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.”

... ..

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.



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<sup>17</sup> pp. 145-149, Record, Vol. I



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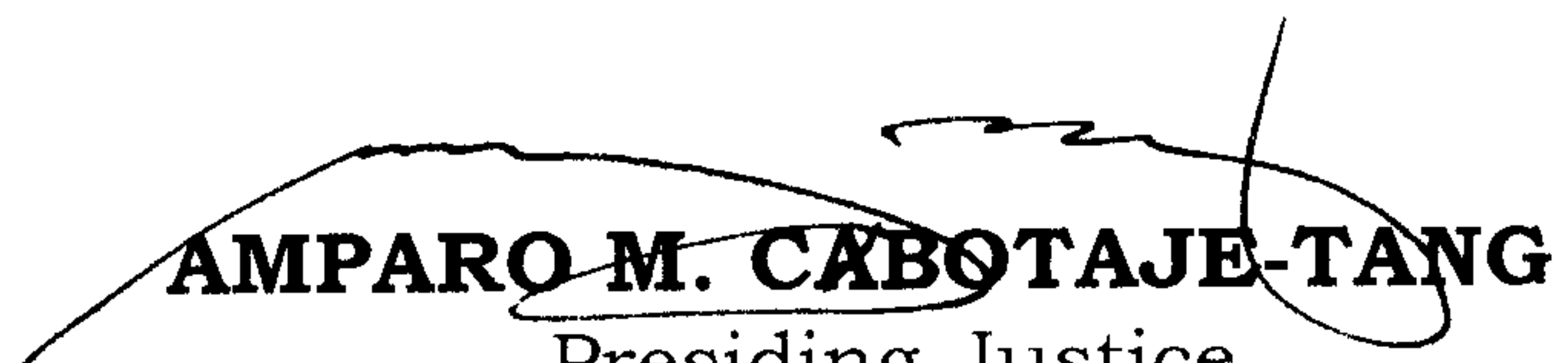
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**WHEREFORE**, the Court maintains its finding that probable cause exists in this case and, accordingly, sets the arraignment of the accused on November 28, 2016 at 1:30 in the afternoon.

Accused William Sobiaco Duma-an's Motion for Judicial Determination of Probable Cause dated July 21, 2016 is NOTED.


**SO ORDERED.**

Quezon City, Metro Manila

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

**WE CONCUR:**

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice

  
**ZALDY V. TRESPESES**  
Associate Justice