

**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

- versus -

**JULIET NGO FIEL, *et al.*,
Accused.**

**Criminal Case No. SB-16-
CRM-0643**

*For: Malversation of Public Funds
through Falsification of Public
Document*

Present:

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

Promulgated:

CABOTAJE-TANG 28, 2016

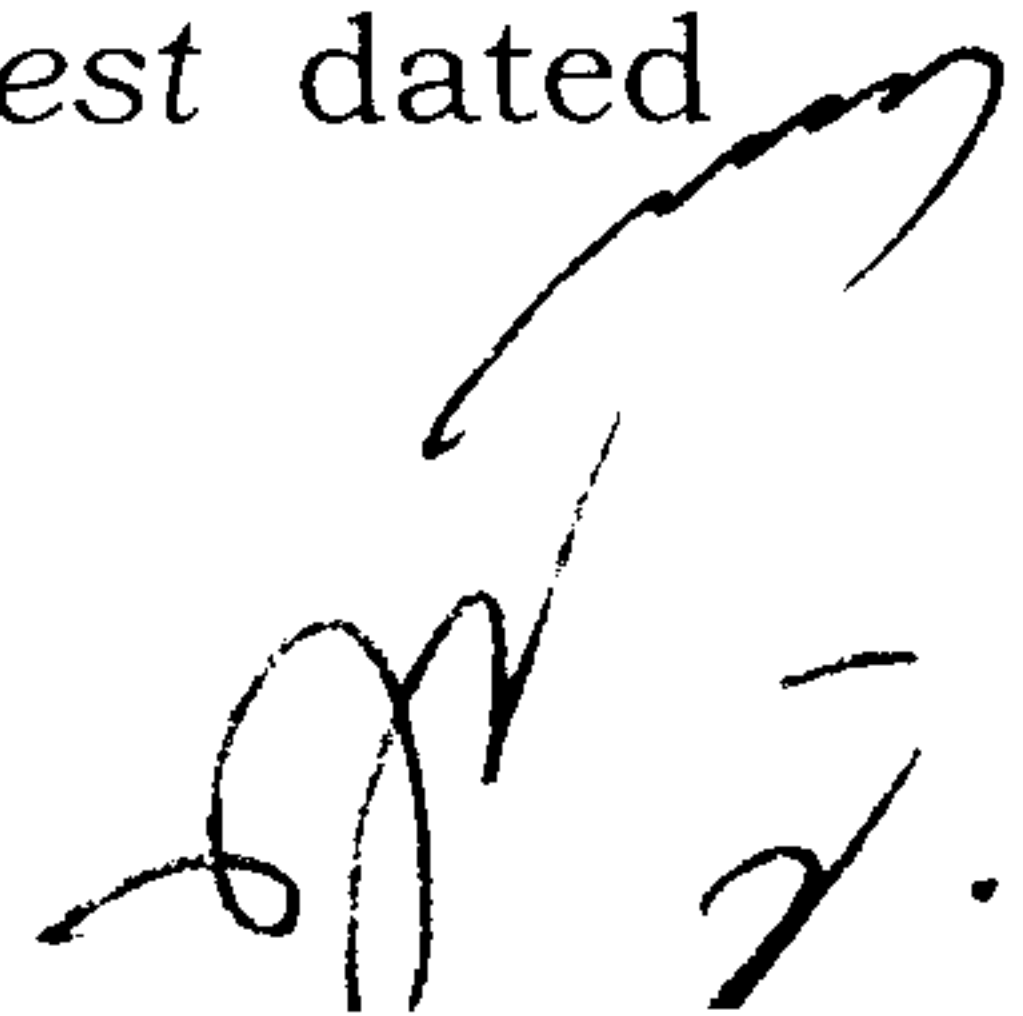
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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Juliet Ngo Fiel's
*Appearance/Motion for Judicial Determination of Probable Cause
and Motion to Suspend Issuance of Warrant of Arrest* dated

¹ Sitting as a special member per Administrative Order No. 227-2016 dated July 26, 2016



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September 20, 2016.² In her *motion*, accused Fiel avers, among other things, that:

1. The *Resolution* dated September 1, 2015 of the Honorable Ombudsman shows that there is absolutely no probable cause for malversation of public funds thru falsification of public documents in so far as accused-movant Juliet Ngo Fiel is concerned;³
2. The repair job was undertaken by the Municipal Engineer who was responsible for the hiring of the laborers. The hiring of laborers and the preparation of the job order in question are the sole functions and responsibility of the Municipal Engineer;⁴
3. Did the Mayor have to first investigate and examine the various entries in the payroll, and examine each of the signatures in the Payroll to determine whether they are genuine or forged?⁵
4. To exact of the Mayor to examine or investigate whether the said certification by the Municipal Engineer is true and correct is humanly impossible;⁶
5. There is absolutely no evidence of conspiracy. In fact, only the mayor and her aide are being charged of malversation thru falsification of public document. Respondent Saludaga, the Municipal Engineer was charged of only falsification and exonerated from administrative liability. There must be proof beyond reasonable doubt of conspiracy;⁷
6. The charge of *falsification* cannot lie in the face of the evidence of good faith which is clear in the facts and circumstances of the case; ⁸

²pp. 47-55, Record

³ p. 48, Record

⁴ p. 49, Record

⁵ p. 50, Record

⁶ p. 50, Record

⁷ p. 51-52, Record

⁸ p. 53, Record

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7. There was no such patent flaws appearing in the job order, payroll and daily time record in question that would have pricked the curiosity of the accused Mayor and prompted inquiries into the transaction, and;⁹
8. That the Mayor cannot be accused of *falsification of public documents* when all she did was to affix her signature to the Job Order and Payroll in question.¹⁰

The accused-movant invokes good faith and relies on ***Sistoza v. Desierto***¹¹ to support her arguments wherein it was held:

. . . that if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing her signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates . . .

In its *Comment/Opposition*¹² dated September 27, 2016, the prosecution contends that the accused-movant's *motion* had been rendered moot and academic since the Court had already determined the existence of probable cause and, accordingly, ordered the issuance of the warrants of arrest against both the accused;¹³ that the *motion* of the accused must fail since a *motion for determination of probable cause* is a mere superfluity; for with or without such *motion*, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence;¹⁴ that the

⁹ p. 54, Record

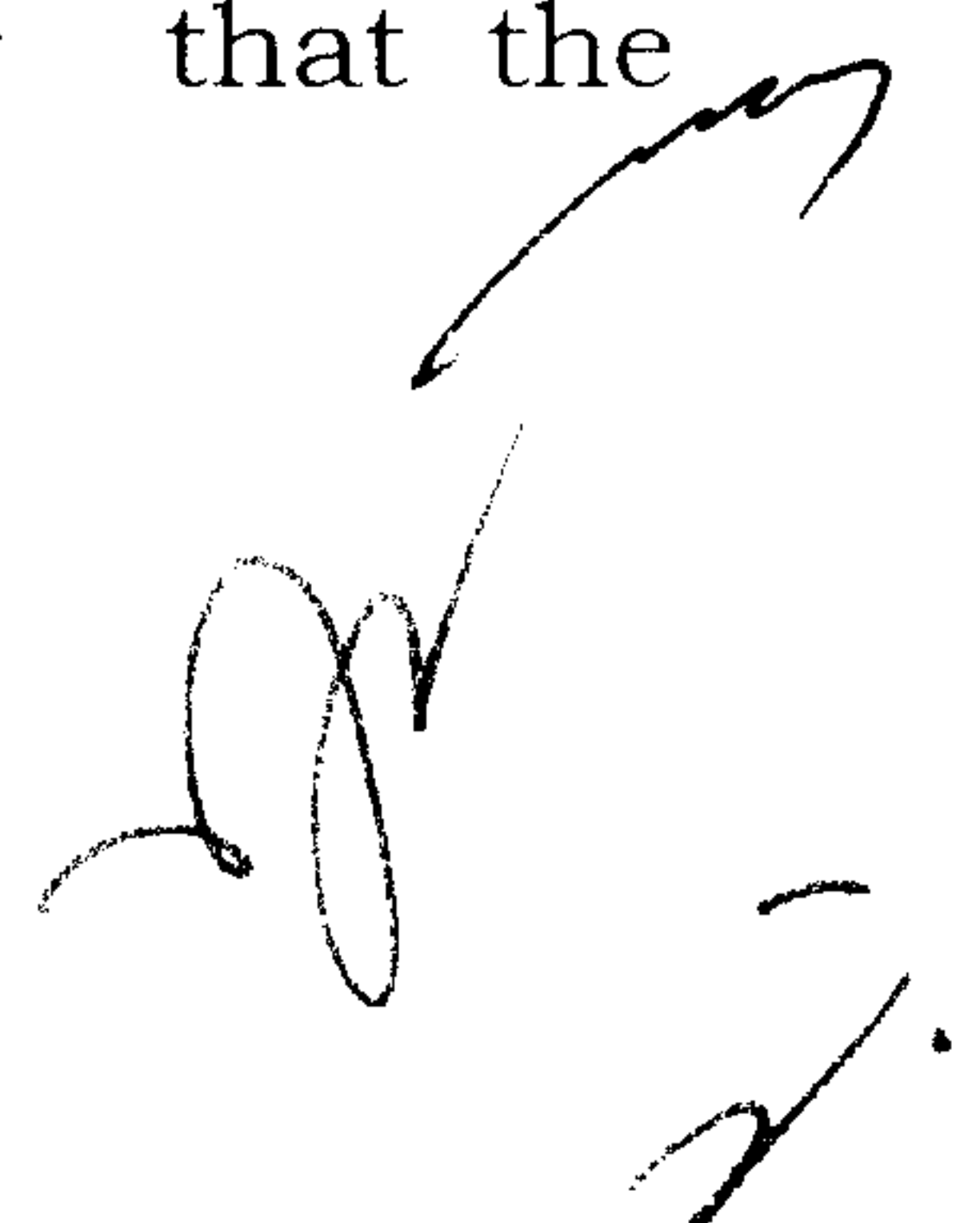
¹⁰ p. 54, Record

¹¹ 388 SCRA 307 (2002)

¹² pp.75-80, Record

¹³ p. 76, Record

¹⁴ p. 76, Record

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elements of the complex crime of *malversation of public funds through falsification of public documents* and the accused-movant's involvement therein were sufficiently established;¹⁵ that the accused-movant, being then the municipal mayor of Looc, Romblon, had in her control the funds for the payment of salaries of the laborers who undertook the repair of the mayor's office;¹⁶ that her claim of good faith, is negated by the fact that she proceeded to certify/sign the said payroll despite the absence of the initial or signature of the municipal accountant, who has the duty to prepare payrolls pursuant to Section 474 of the Local Government Code;¹⁷ that it can be reasonably inferred from the accused-movant's act of certifying/signing the subject payroll despite the obvious irregularity on the face thereof that she acted with a common design or intent with her co-accused; thus, envincing her complicity in the crime charged;¹⁸ and, that all other matters raised by the accused-movant tending to exculpate her from criminal liability are evidentiary in nature and are matters of defense, which are best passed upon in a full-blown trial.¹⁹

THE COURT'S RULING

The Court finds the subject *motion* unmeritorious.

The Supreme Court has consistently emphasized that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil.²⁰ Rather, he relies on the calculus of common sense of which

¹⁵ p. 77, Record

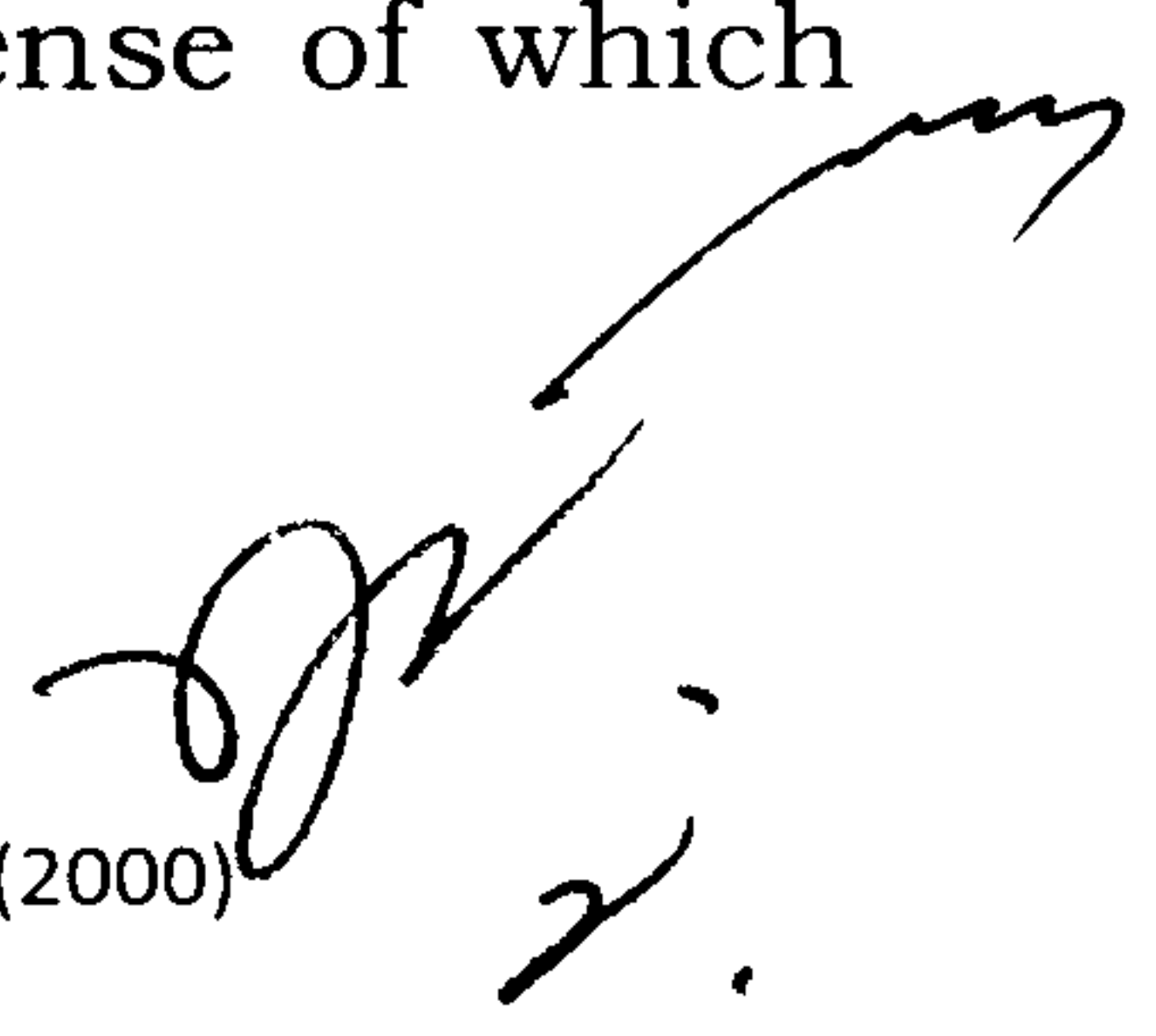
¹⁶ p. 77, Record

¹⁷ p. 78, Record

¹⁸ p. 78, Record

¹⁹ p. 79, Record

²⁰ **Webb v. De Leon**, 247 SCRA 652 (1995); **Domolanta v. COMELEC**, 334 SCRA 555 (2000)



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all reasonable men have an abundance.²¹ A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was probably committed by the accused.²²

Moreover, it is a fundamental rule in remedial law that upon receipt of the *Information*, the primordial task of the presiding judge is to determine the existence or non-existence of probable cause for the purpose of the issuance of a warrant of arrest. This is precisely what the Court did in this case. After it received the *Information*, the Court reviewed the record of the case and found the existence of probable cause. Thus, the Court promulgated its *Resolution*²³ on September 16, 2016, directing the issuance of a warrant of arrest and a hold departure order against the accused. This fact thereby renders moot and academic the present *motion*.

Indeed, the filing of the present *motion for judicial determination of probable cause* is 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.²⁴

At any rate, the Court does not find any sound reason to depart from its finding of probable cause in this case.

The *Information* in this case reads:

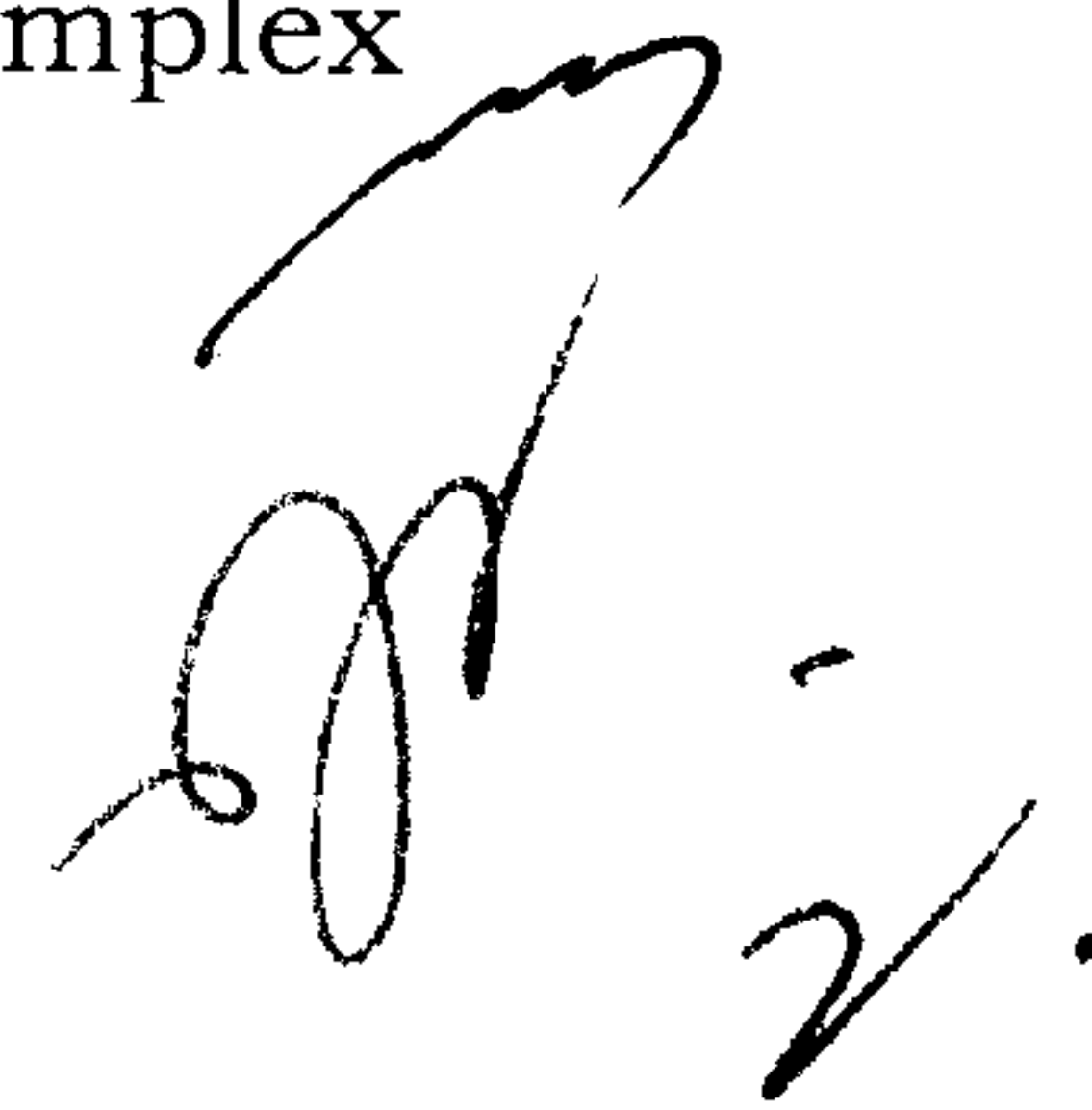
That in December 2009 or sometime prior or subsequent thereto, in the Municipality of Looc, Romblon, Philippines and within this Honorable Court's jurisdiction, the above-named accused **JULIET NGO FIEL**, Municipal Mayor of the Municipality of Barlig, Mountain Province (SG-27), a high ranking public official, who by reason of her office is accountable for public funds, committing the complex

²¹ *id*

²² *Estrada v. Office of the Ombudsman*, G.R. No. 212140-41, January 21, 2015

²³ p. 44, Record

²⁴ *Delos Santos-Dio v. Court of Appeals*, 699 SCRA 614, (2013)

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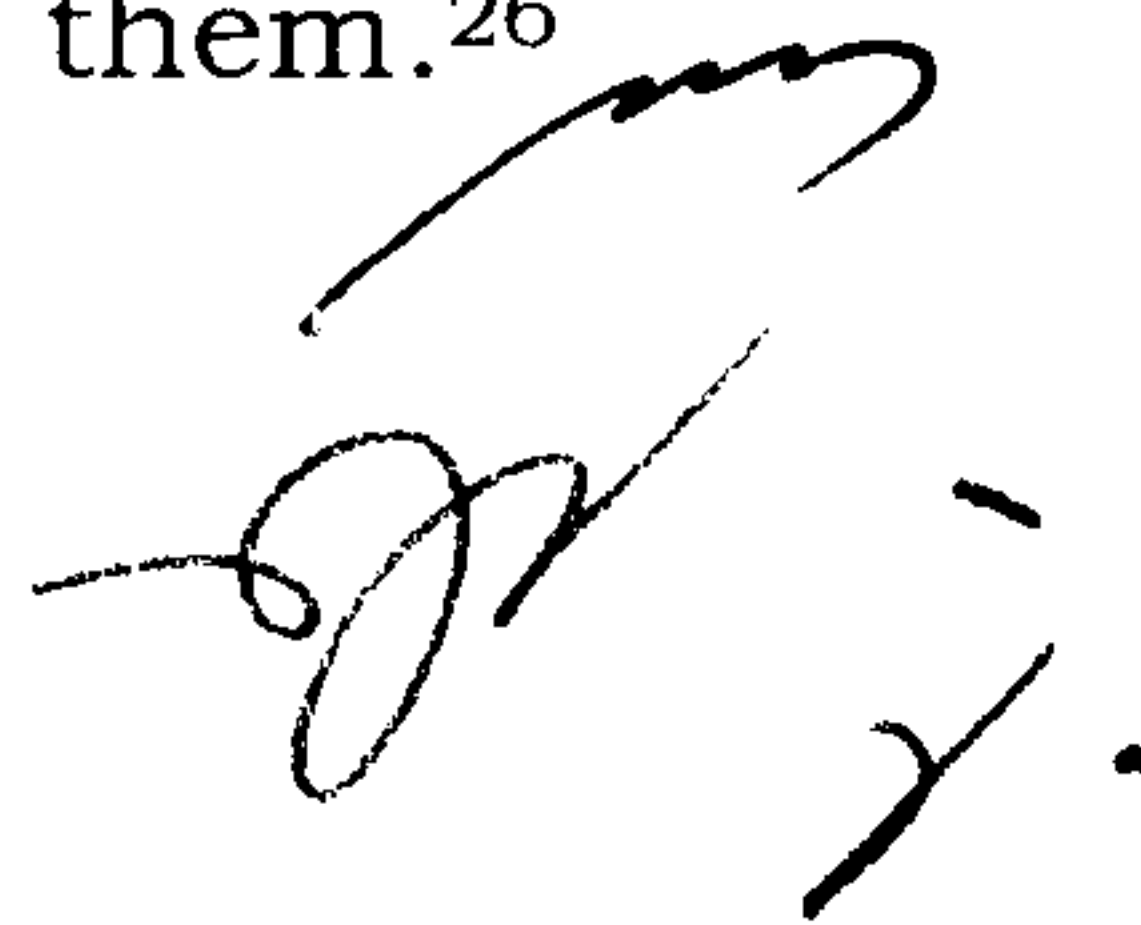
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crime charged herein while in the performance of, in relation to and/or taking advantage of her official position and function as such, conspiring and confederating with **GERVACIA STA. MARIA**, Administrative Aide VI (SG6), did then and there, willfully, unlawfully and feloniously consent to the taking and misappropriation of public funds of the Municipality of Looc, Romblon under her charge and custody in the amount of One Thousand Two Hundred Fifty Pesos (Php 1,250.00), constituting the wages of one Domingo Docog, by means of approving and attesting in the Payroll for the repair of the mayor's office, that the persons whose names appear therein had rendered services for the time stated, when in truth and in fact, Docog neither rendered services therefore nor signed in the Payroll evidencing receipt of the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Looc, Romblon in the aforestated amount. ²⁵

The abovementioned *Information* charges the accused-movant with having committed the crime of *malversation of public funds through falsification of public document* defined and penalized under Article 217, in relation to Articles 48 and 171 of the Revised Penal Code. The elements of the crime of *malversation* are:

1. That the offender is a public officer;
2. That he had the custody or control of funds or property by reason of the duties of his office;
3. That those funds or property were public funds or property for which he was accountable and;
4. That he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.²⁶



²⁵ p. 1, Record

²⁶ Reyes, L.B. (2008), *The Revised Penal Code: Book Two*, p. 426

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The evidence presented by the prosecution extant in the record of this case shows that the accused is probably guilty of the crime charged; hence, she must be arrested and brought to trial.

In its *Joint Resolution*²⁷ dated September 1, 2015, the Office of the Ombudsman found that accused Fiel was a public officer during the time material to this case.²⁸

In *Manuel D. Sandiganbayan*,²⁹ the Supreme Court ruled that municipal mayors are accountable officers for the funds of their respective municipalities as provided for under Section 340 of the Local Government Code of 1991 in relation to Section 102 of the Government Auditing Code of the Philippines, to wit:

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government, which reads:

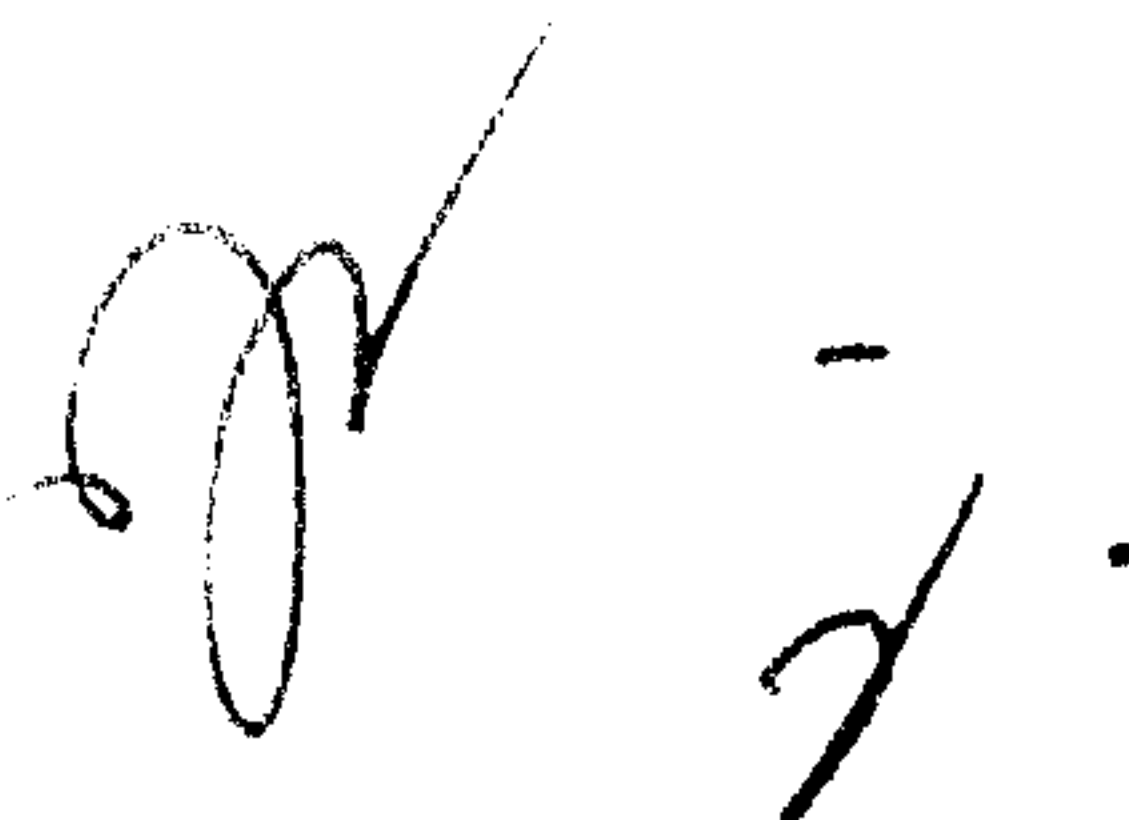
Section 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

²⁷ pp. 4-13, Record

²⁸ p. 8, Record

²⁹ 665 SCRA 266 (2012)



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Section 102. *Primary and secondary responsibility.* –
(1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.³⁰

Plainly, following both the finding of the Office of the Ombudsman and the pronouncement of the Supreme Court, the accused-movant, a public officer, which by reason of her office, had in her control and custody, the municipality's funds and property, is an accountable officer for the management and disbursement of the same. The first, second and third elements of the crime of *malversation* are undeniably present in this case.

The fourth element of the crime of *malversation* appears to be extant also from the record of the case. A review thereof shows that the accused-movant Fiel had apparently signed the daily wage payroll for the repair of the mayor's office.³¹ By apparently affixing her signature to the aforesaid payroll, the accused-movant certified that each person whose name appeared therein had rendered services for the period stated. This affirmation was purportedly made by the accused-movant despite seeing the name of one Domingo Docog. In his own *Salaysay*³² dated February 12, 2010, Docog claimed that he did not render any service to the Municipality of Looc, Romblon nor receive any remuneration for the same.³³

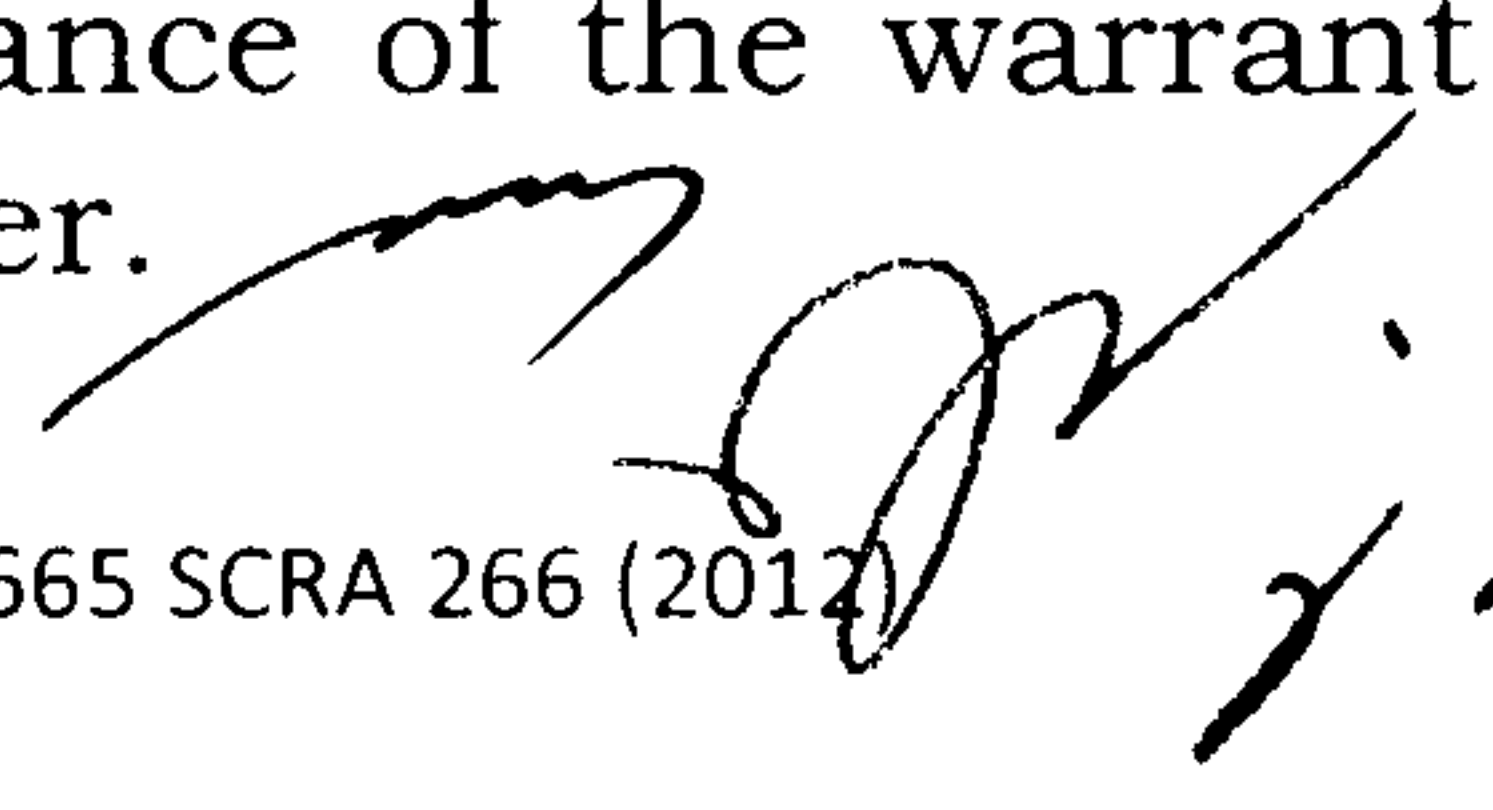
To be sure, the existence of probable cause, or the lack thereof, should be assessed based on the elements of the crime penalized under Article 217 of the Revised Penal Code *vis-à-vis* the evidence on record. As hereinbefore indicated, the established set of facts and circumstances warrants a finding that accused Fiel is probably guilty of the crime charged; hence, the issuance of the warrant of arrest and to hold her for trial is in order.

³⁰ pp. 285-286, *Manuel v. Sandiganbayan*, 665 SCRA 266 (2012)

³¹ p. 30, Record

³² p. 31, Record

³³ p. 32, Record



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In her *motion*, accused Fiel insists that: (1) she relied, in good faith, upon the certification of the municipal engineer that the daily time record of Domingo Docog is true and correct,³⁴ (2) the job order was prepared by her subordinates, who are presumed to have examined its authenticity and it is only fair and reasonable that she relied on such subordinates,³⁵ (3) there were no such patent and established flaws appearing in the job order, payroll and daily time record in question that would have picked the curiosity of the accused and prompted inquiries into the transaction,³⁶ and (4) that there is absolutely no evidence of conspiracy.³⁷

The Court finds the aforesaid averments improper subjects in the determination of the existence (or lack thereof) of probable cause.

The Supreme Court teaches in ***Enrile v. People***³⁸ that the existence of good faith or the lack of it is evidentiary in nature and are matters of defense which can be best passed upon during trial, *viz:*

We agree with public respondents that the existence of good faith or lack of it, as elements of the crimes of malversation and violation of Section 3 (e), R.A. No. 3019, is evidentiary in nature. As a matter of defense, it can be best passed upon after a full-blown trial on the merits. The issue of whether petitioners acted in good faith is best determined during the trial proper.

Also, in ***Singian Jr. v. Sandiganbayan***,³⁹ the Supreme Court held that the alleged presence or absence of any conspiracy among the accused is evidentiary in nature and is

³⁴ p. 49, Record

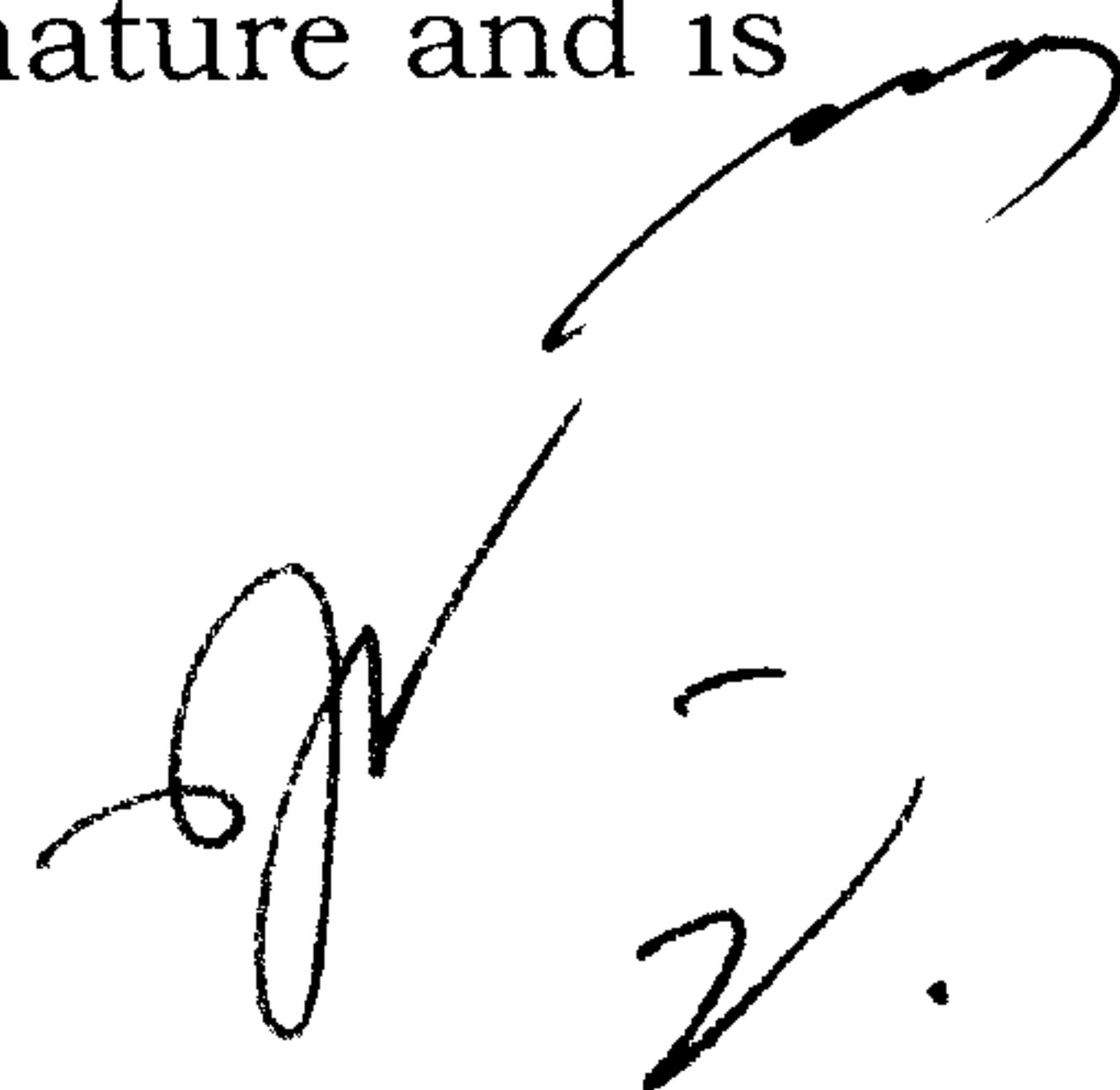
³⁵ p. 49, Record

³⁶ p. 54, Record

³⁷ p. 51, Record

³⁸ G.R. No. 213847, August 11, 2015

³⁹ 478 SCRA 348 (2005)



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a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.

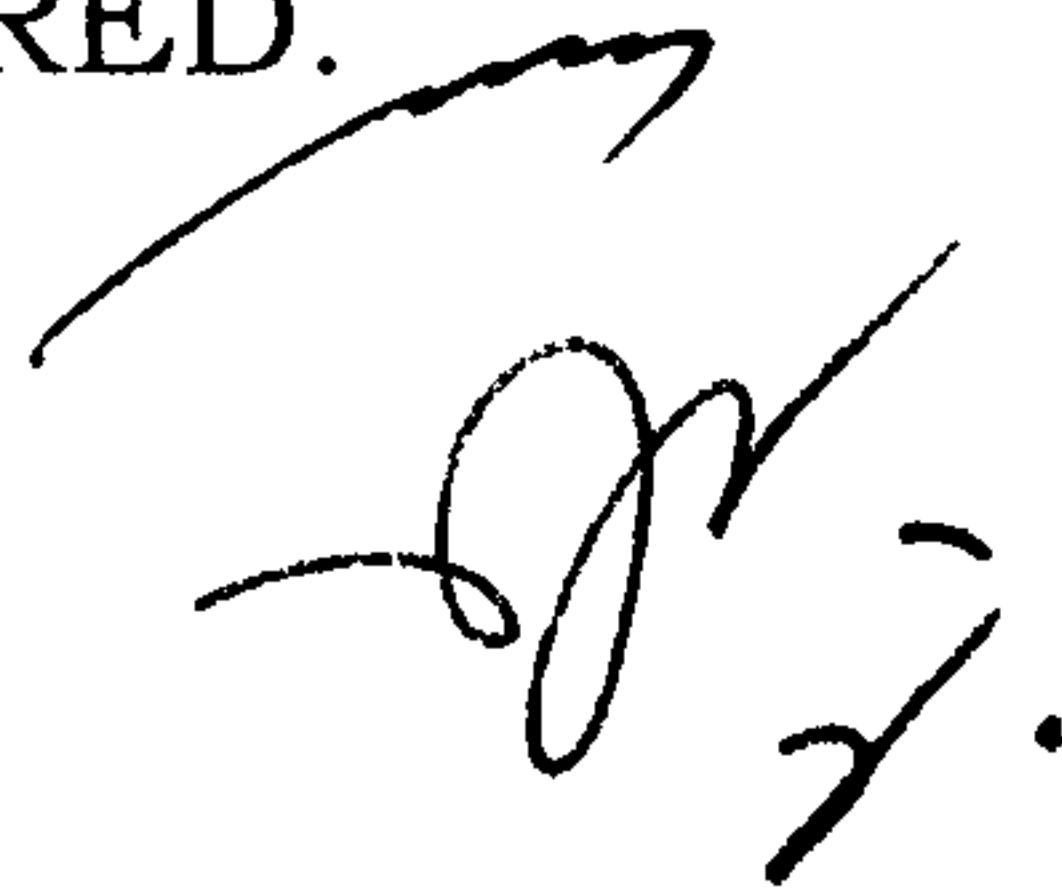
It is important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or on the admissibility or veracity of testimonies presented.⁴⁰ The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused.⁴¹

In sum, the Court does not find merit in the accused-movant's arguments that no probable cause exists in this case.

WHEREFORE, the Court maintains its finding of probable cause in this case. Accordingly, set the arraignment of accused Juliet Ngo Fiel on November 24, 2016 at 1:30 in the afternoon.

Accused Juliet Ngo Fiel's *Appearance/Motion for Judicial Determination of Probable Cause and Motion to Suspend issuance of Warrant of Arrest* dated September 20, 2016 is **NOTED**.

SO ORDERED.

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⁴⁰ *Unilever Philippines, Inc. v. Tan*, 715 SCRA 36 (2014)

⁴¹ *id*

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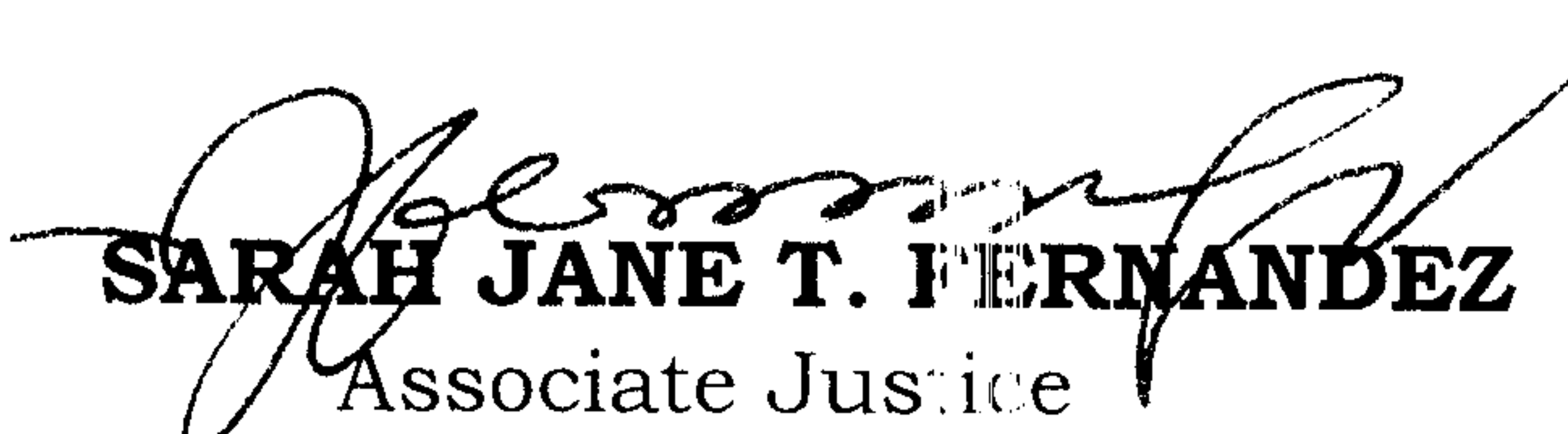
Quezon City, Metro Manila



AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:



SARAH JANE T. FERNANDEZ

Associate Justice



ZALDY V. TRESPESES

Associate Justice