

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Cases Nos. SB-13-CRM-0112 to
SB-13-CRM-0113

For: Malversation of Public Funds or
Property

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

Allan C. Putong, et al.,
Accused.

Promulgated:

23 June 2017 *W*

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RESOLUTION

HERRERA, JR., J.:

For resolution of the Court are the following:



- 1) ***Demurrer To Evidence***¹ dated August 30, 2016, filed by accused Allan C. Putong (Accused Putong for short), through counsel, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Comment/Opposition (To Accused Allan C. Putong's Demurrer To Evidence dated 30 August 2016)***² dated September 5, 2015;
- 2) ***Demurrer To Evidence (With Prior Leave of Court per hearing on 22 August 2016)***³ dated August 30, 2016, filed by accused Bernardo P. Quipit, Jr., (Accused Quipit for short), through counsel, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Comment/Opposition (To accused Bernardo P. Quipit, Jr.'s Demurrer To Evidence dated 30 August 2016)***⁴ dated September 13, 2016. Accused Quipit, through counsel, filed a ***Reply [To the Prosecution's Comment/Opposition dated***

¹ Record, Vol. 2, pp. 779-787

² Id, pp. 804-823

³ Id, pp. 788-802

⁴ Id, pp. 824-844

September 13, 2016, With Prayer to Admit)⁵ dated September 29, 2016.

Accused Putong and Quipit are jointly charged with **Malversation of Public Funds or Property**, defined and penalized under **Article 217 of the Revised Penal Code (RPC)** and with **Violation of Section 3(e) of Republic Act (R.A.) No. 3019**, also known as the **Anti-Graft and Corrupt Practices Act**, under two (2) separate **Informations** both dated November 6, 2012 filed by the Office of the Ombudsman.

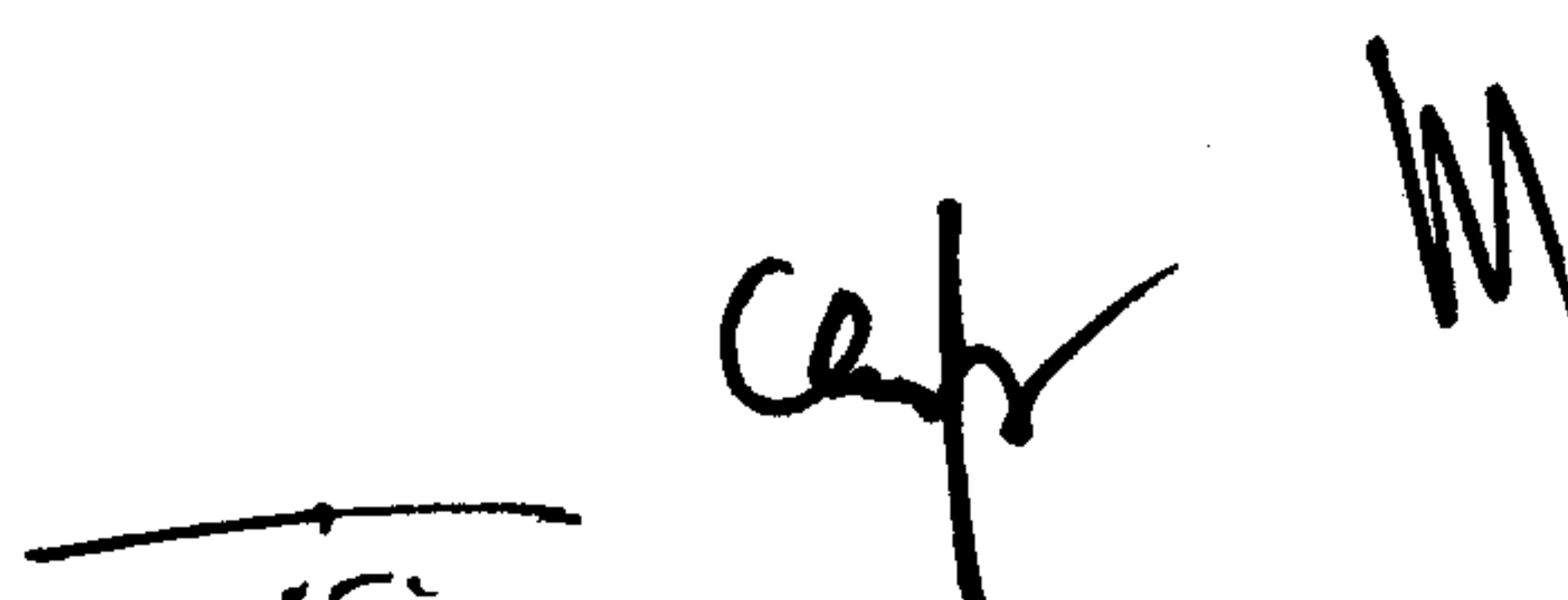
In Criminal Case No. SB-13-CRM-0112, where the accused are charged with **Malversation of Public Funds or Property**, the accusatory portion of the **Information**⁶ reads:

“That on December 18, 2002, or sometime prior or subsequent thereto, in the Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, both public officers, being the Provincial General Services Officer and Provincial Administrator, respectively, of the Provincial Government of Davao del Sur, conspiring and confederating with one another, while in the performance of their official functions, committing the offense in relation to their office, and taking advantage of their respective official positions, and in grave abuse thereof, having control of public property in the form of goods, i.e., rice, valued at a total amount of Seventy-eight Thousand Pesos (Php78,000.00) per Purchase Order No. 0185 dated December 18, 2002, which were placed under their administration by reason of the duties of their office, and are accountable for said goods pursuant to Section 340 of the Local Government Code, did then and there, wilfully, unlawfully, and feloniously appropriate, take or misappropriate, consent or through abandonment or negligence, permit other persons to take the said public property purchased by the Provincial Government of Davao del Sur purposely for distribution to indigent constituents of different barangay units of the province, but which were not, in fact, distributed to said supposed beneficiaries who did not actually receive any, to the damage and prejudice of the government in the afore-stated amount.

CONTRARY TO LAW.”

⁵ Id, pp. 850-856

⁶ Id, pp. 498-500

Handwritten signatures and initials at the bottom of the page, including a signature that appears to be 'Cep' and another set of initials 'M'.

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In Criminal Case No. SB-13-CRM-0113, where the accused are charged with **Violation of Section 3(e) of R.A. 3019**, the accusatory portion of the **Information**⁷ reads:

“That on December 18, 2002, or sometime prior or subsequent thereto, in the Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, both public officers, being the Provincial General Services Officer and Provincial Administrator, respectively, of the Provincial Government of Davao del Sur, conspiring and confederating with one another, while in the performance of their official functions, committing the offense in relation to their office, and taking advantage of their respective official positions, with evident bad faith or gross inexcusable negligence, did then and there wilfully, unlawfully, and criminally, cause undue injury to the government by taking or consenting or permitting other persons to take public property in the form of goods, i.e., rice, valued at a total amount of Seventy-eight Thousand Pesos (Php78,000.00), purchased by the Provincial Government of Davao del Sur per Purchase Order No. 0185 dated December 18, 2002, purposely for distribution to the indigent constituents of different barangay units of the province, but which were not, in fact, distributed to said supposed beneficiaries who did not actually receive any, to the damage and prejudice of the government in the afore-said amount.”

CONTRARY TO LAW.”

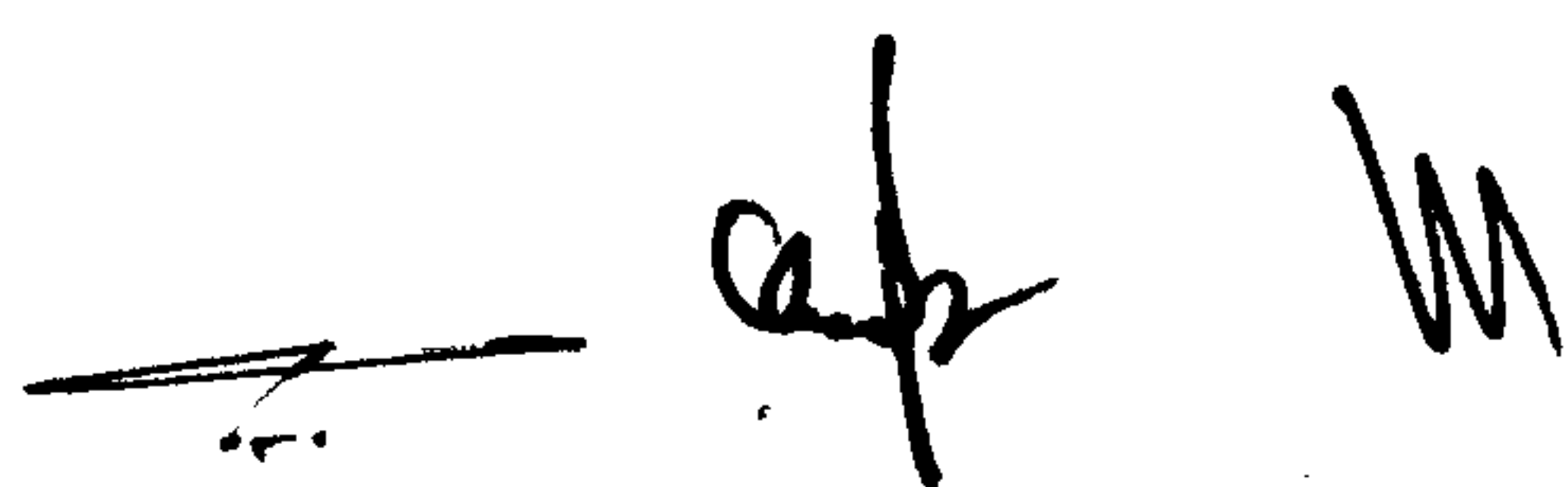
Records show that the prosecution filed its **Formal Offer Of Exhibits**⁸ dated March 17, 2016 on March 21, 2016. On May 6, 2016, the Court issued a **Resolution**⁹ admitting all the prosecution exhibits, except the one marked Exhibit “K”.

Accused Putong, in his **Demurrer To Evidence**, contends that the prosecution failed to prove that the accused were obligated by law to distribute the rice or that there was no distribution of said rice to the indigent constituents of Davao del Sur nor that through the negligence of the accused, the government suffered damage in the amount of ₱78,000. Upon the other hand, accused Quipit, in his separate **Demurrer To Evidence**, essentially claims that the prosecution failed to establish all the

⁷ Record of Crim. Case No. SB-13-CRM-0113, pp. 1-3

⁸ Record, Vol. 2, pp. 623-739

⁹ Id, p. 751



essential elements of **Malversation** and **Violation of Section 3(e) of R.A. 3019**. He argues that, under the facts, circumstances and evidence presented, as applied to prevailing law and jurisprudence, his guilt has not been proven beyond reasonable doubt.

A demurrer to evidence is a motion filed by the accused, on the ground that the evidence adduced by the prosecution is insufficient for conviction. It is filed by the accused after the prosecution rests its case.¹⁰

The Court finds no merit in the contentions of accused Putong and Quipit.

To prove the charges, the prosecution presented as witnesses the following: 1) Maria Juson Allado, State Auditor II of the Commission on Audit (COA), Region XI; 2) Alicia Divinagracia San Juan, State Auditor III, COA, Region XI; and 3) one Flora May Rom Baluya. The presentation of witness Jessica Jane Sabado, also from the COA, was dispensed with by the prosecution, following a stipulation with the accused, through counsels, that her testimony would corroborate those of COA Auditors Allado and San Juan. The prosecution also submitted as evidence documents marked Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", and "T", with submarkings therein.

After a careful study, the Court finds that the aforementioned evidence adduced by the prosecution, testimonial and documentary, appear to be *prima facie* sufficient to sustain a conviction, unless successfully rebutted by countervailing evidence.

In **Soriquez v. Sandiganbayan**,¹¹ the Supreme Court explained:

"A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole

¹⁰ Section 23, Rule 119, Rules of Court

¹¹ 474 SCRA 222

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evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

XXX.

The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a prima facie case against an accused is left to the exercise of sound judicial discretion.”

WHEREFORE, premises considered, the Court resolves, as follows:

- 1) To hereby deny the ***Demurrer To Evidence*** dated August 30, 2016 filed by accused Allan C. Putong, through counsel;

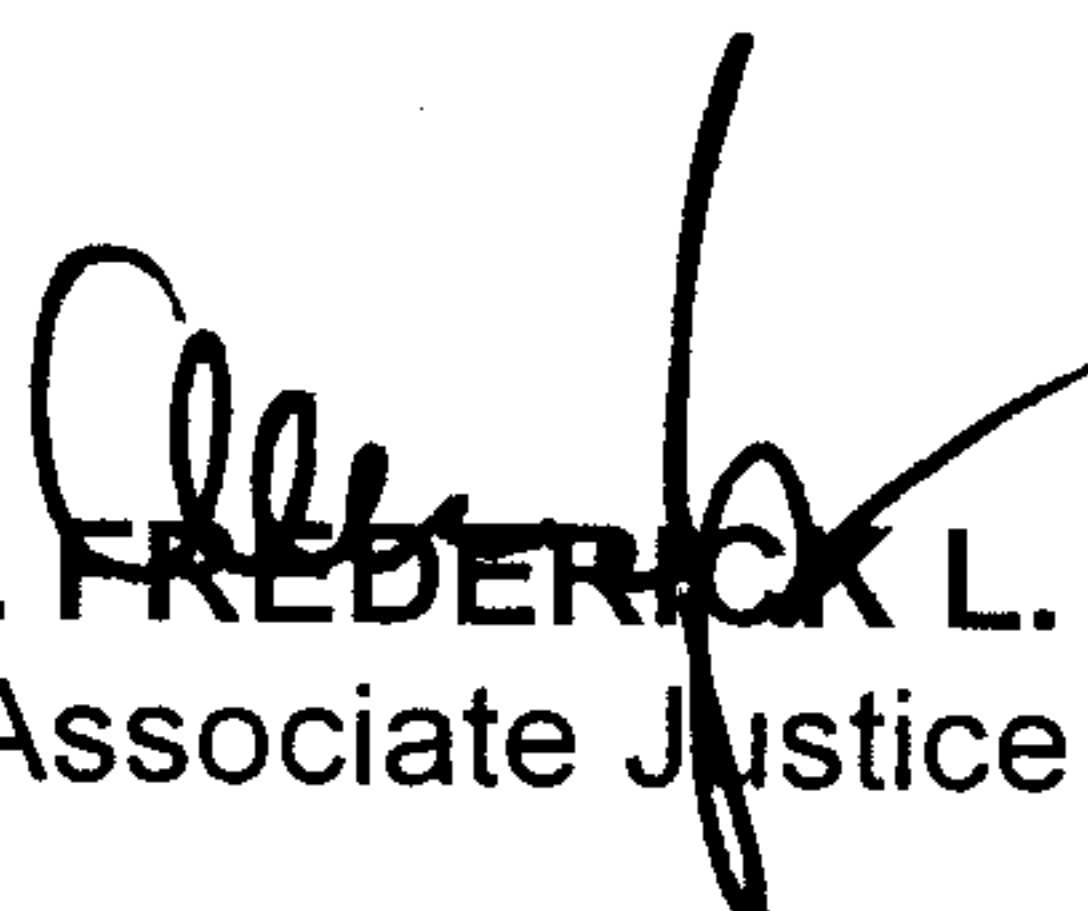
and

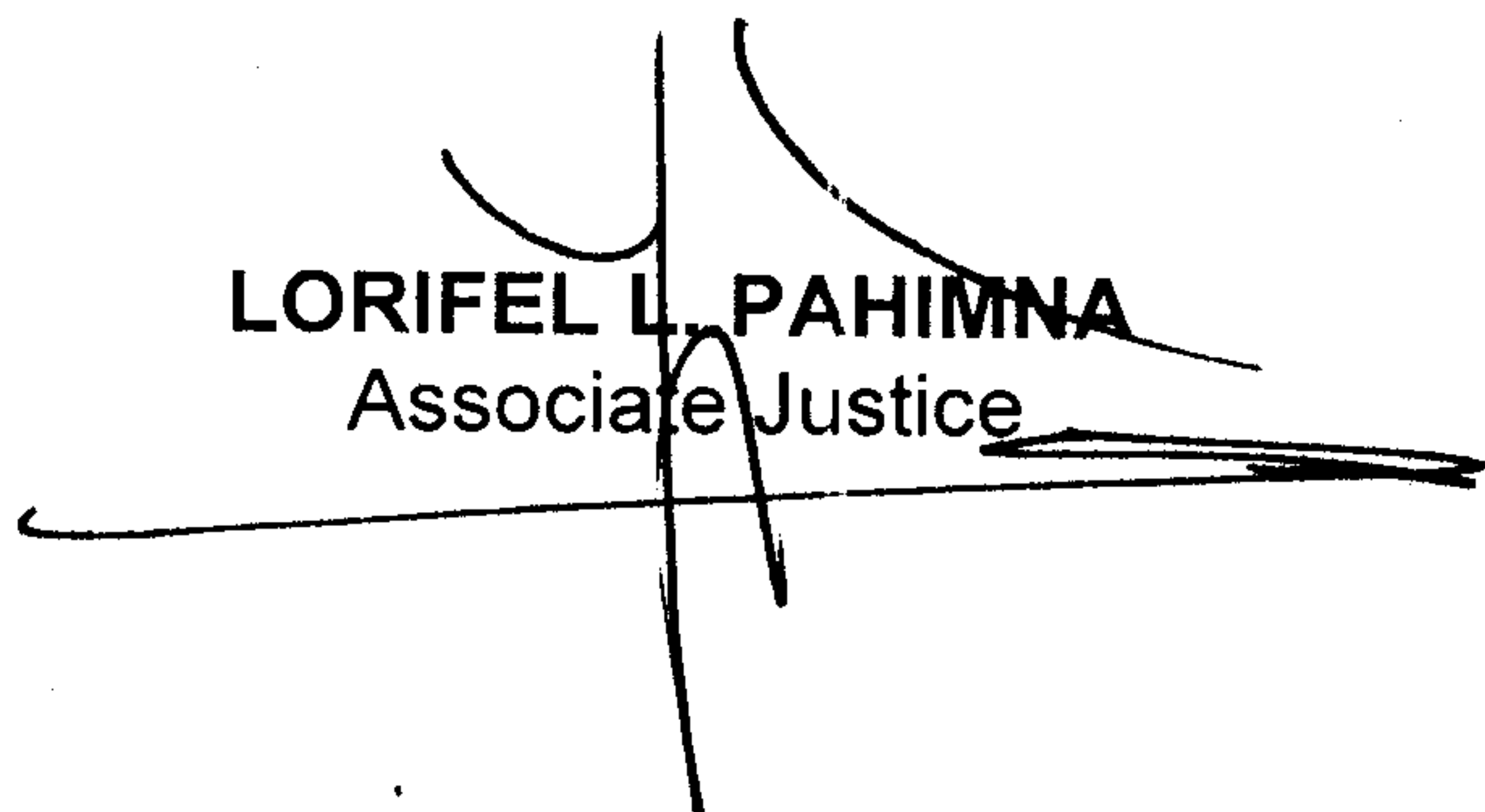
- 2) To hereby deny the ***Demurrer To Evidence (With Prior Leave of Court as per hearing on 22 August 2016)*** dated August 20, 2016 filed by accused Bernardo P. Quipit, Jr., through counsel.

SO ORDERED.


OSCAR CHERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice