

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **CRIM. CASE NOS. SB-16-CRM-**
Plaintiff, **0242 to 0244**

*For: Violation of Section 3 (e) of
R.A. No. 3019*

- versus -

CRIM. CASE NOS. SB-16-CRM-
0245 to 0247

*For: Violation of Article 217 of the
Revised Penal Code (Malversation)*

ARREL REYES OLAÑO, ET AL.
Accused.

Present:
HERRERA, JR., Chairperson
MUSNGI, Associate Justice
PAHIMNA, Associate Justice

June 5, 2017

Promulgated 

RESOLUTION

MUSNGI, J.:

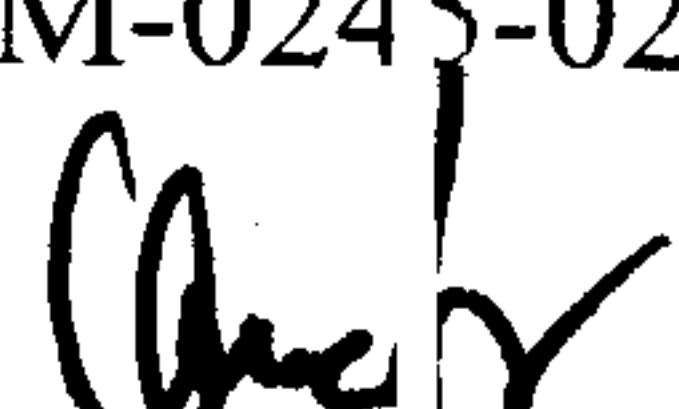

This Court resolves the following:

1. *Consolidated Motion for Judicial Determination of Probable Cause with Urgent Motion to Suspend Proceedings*¹ filed by accused Janet Lim Napoles on 04 May 2016; and
2. *Joint Omnibus Motion [1. Motion for Judicial Determination of Probable Cause; 2. Motion for a Bill of Particulars; and 3. Motion for Reduction of Bail]*² filed by accused Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, and Marilou Bare on 13 May 2016.

Accused Janet Lim Napoles ("Napoles"), Mario L. Relampagos ("Relampagos"), Rosario Nuñez ("Nuñez"), Lalaine Paule ("Paule"), and Marilou Bare ("Bare") are charged with three (3) violations of Section 3 (e) of Republic Act No. 3019 ("R.A. No. 3019") or the *Anti-Graft and Corrupt Practices Act* for SB-16-CRM-0242-0244, and three (3) violations of Article 217 of the Revised Penal Code (Malversation) for SB-16-CRM-0245-0247.

¹ Sandiganbayan Records, Vol 2, p. 134.

² *Ibid*, p. 352.

The accused claim that the six (6) *Informations* filed against them should be dismissed for lack of probable cause.

Accused Janet Lim Napoles

Accused Napoles seeks the dismissal of her cases based on the following grounds:

- a. The *Informations* were based on a *Resolution* and an *Order* that are insufficient both in form and in substance;
- b. The *Informations* were based on a *Resolution* and an *Order* that failed to allege and substantiate the elements for violation of Section 3 (e) of R.A. No. 3019;
- c. The *Informations* were based on a *Resolution* and an *Order* that failed to allege and substantiate the elements for violation of Section 217 of the Revised Penal Code (Malversation) and
- d. The allegations in the *Informations* are insufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme of conspiracy.

First, accused Napoles claims that her right to be informed of the accusations against her has been violated because the *Informations* did not state the approximate time of the commission of the offense, the particular place where the offense was committed, and the specific acts or omissions constituting the offense.

Second, accused Napoles argues that she cannot be held liable for the crimes charged because she is not a public officer. She claims that she cannot be held liable for violation of Section 3 (e) of R.A. No. 3019 because as a private person, she cannot give unwarranted benefits, advantage, or preference to any parties having transactions with the government. She also maintains that she cannot be held liable for Malversation because she is not an accountable public officer having custody of public funds.

Lastly, accused Napoles alleges that the *Informations* merely contain sweeping generalizations of conspiracy which are unsubstantiated by evidence. Accused adds that the *Informations* failed to mention the acts committed by the accused in the alleged conspiracy.

On 27 May 2017, the prosecution filed its *Comment/Opposition*³ describing the accused's *Motion* as superfluous since the Court is already duty-bound to determine the existence or non-existence of probable cause for

³ *Ibid*, Vol 3, p. 62.

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the arrest of the accused immediately upon the filing of the information. Moreover, the prosecution countered the arguments of the accused as follows:

First, the prosecution asserts that the determination of the existence of probable cause lies within the full discretion of the Office of the Ombudsman. Since accused Napoles presented no evidence of any irregularity in the proceedings of the Office of the Ombudsman, then the latter's finding of probable cause must stand.

Second, the prosecution argues that the inclusion of the precise time and place of the commission of the crime in the *Informations* is unnecessary unless it is an essential element thereof. In this case, the date of the commission of the offense is not an essential element of Section 3 (e) of R.A. No. 3019 and Malversation. As regards the place where the offense was committed, the prosecution argues that an allegation of the same is sufficient if it can be understood that the offense was committed or some of the essential ingredients thereof occurred at some place within the jurisdiction of the court. Therefore, the prosecution asserts that the allegations in the *Informations*, which state, "In January/February/October 2007 and sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction," are sufficient to apprise accused Napoles of the crimes charged.

Third, the prosecution avers that the details of the specific acts constituting the offense need not be stated in the *Informations* as long as the offense is described with sufficient particularity to ensure that the accused fully understands what is being charged. In this case, the prosecution claims that all the essential elements of the crimes charged are alleged in the *Informations* based on the *Resolution* of the Office of the Ombudsman dated 22 June 2015.

Lastly, the prosecution maintains that a private person may be held liable together with the public officer when there is an allegation of conspiracy. The prosecution cited the case of *Lazarte vs. Sandiganbayan* (G.R. No. 180122, 13 March 2009) where the Supreme Court held that "an allegation of conspiracy in the Information should not be confused with the adequacy of evidence required to prove it," thus, "a statement of the evidence on the conspiracy is not necessary in the Information."

On 27 June 2016, accused Napoles filed her *Reply*⁴ reiterating her claims in the *Motion*. The prosecution then filed the corresponding *Rejoinder*⁵ on 08 July 2016.

⁴ *Ibid*, Vol 3, p. 462.

⁵ *Ibid*, Vol 4, p. 53.

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Accused Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, and Marilou Bare

On the other hand, accused Relampagos, Nuñez, Paule and Bare also seek the dismissal of their cases for lack of probable cause based on the following reasons:

First, the element of “unwarranted benefit, advantage or preference” in violation of Section 3 (e) of R.A. No. 3019 is absent because the release of the Special Allotment Release Orders (“SAROs”) and the Notice of Cash Allocations (“NCAs”) for accused Arrel Reyes Olaño’s PDAF projects were never expedited. As employees of the Department of Budget and Management (“DBM”), the accused allege that the DBM Citizen’s Charter prescribes the duration of time for the release of the SAROs and the NCAs counted from the time of receipt of the request of the government agency until their release. In this case, the accused claim that the subject SAROs and NCAs were processed way beyond the prescribed period.

Second, the accused claim that Benhur Luy was mistaken in saying that accused Relampagos, as DBM Undersecretary for Operations, prepares the SARO and can expedite the same. Accused allege that accused Relampagos only signs the SARO on behalf of the DBM Secretary when the latter is absent. Several bureaus within the DBM are also involved in the preparation of the SAROs. Moreover, accused Nuñez, Paule, and Bare claim that they have no participation in the preparation and issuance of the SAROs and NCAs since the same were hand-carried by Director Delantar to accused Relampagos’ office for signature.

Third, the accused claim that it is impossible for them to commit Malversation because the DBM has no control over the subject funds. While it is the DBM who issues the SAROs, it is the implementing agencies who make the actual disbursement of the government funds.

Lastly, accused argue that the allegation of conspiracy has no basis.

Concerning their *Motion for a Bill of Particulars*,⁶ the accused state that the *Informations* merely mention that they “facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation.” The accused claim that this matter is not averred with sufficient definiteness or particularity as to enable the accused to properly prepare their defense.

Lastly, with regard to their *Motion for Reduction of Bail*,⁷ the accused seek the reduction of their bail to at least one-half of the recommended bail

⁶ *Ibid*, Vol 2, p. 352.

⁷ *Ibid*.







for each information filed since the total amount of Two Hundred Ten Thousand Pesos (PhP210,000.00) for each accused is grossly excessive considering their pecuniary circumstances.

On 20 May 2016, the prosecution filed their *Comment/Opposition*.⁸ First, the prosecution argues that the determination of the existence of probable cause is within the full discretion of the Office of the Ombudsman. Since the accused in this case presented no evidence of any irregularity in the proceedings before the Office of the Ombudsman, then the Court cannot intervene in the former's determination of probable cause.

Second, the prosecution argues that the object of a preliminary investigation is to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. Therefore, the prosecution asserts that preliminary investigation is not the occasion for the full and exhaustive display of evidence. The claims of the accused that the prosecution did not prove their participation in the PDAF scam are matters of defense which are better appreciated in a full-blown trial.

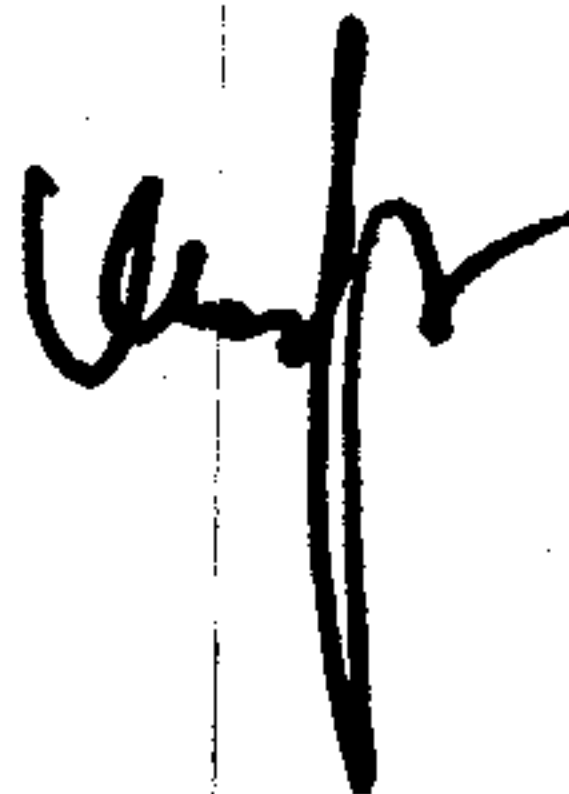
Third, the prosecution maintains that a bill of particulars is superfluous since an information only needs to state the ultimate facts. The prosecution argues that the Rules of Court merely requires the information to describe the offense with sufficient particularity as to apprise the accused of what they are being charged with, thus, evidentiary matters need not be alleged in the information. In this case, the prosecution claims that all the elements of the crime are clearly stated in the *Informations*.

Lastly, the prosecution maintains that the recommended bail is not unreasonable, excessive and unjust. The recommended bail is within the standards provided in the DOJ Bail Bond Guide of 2010.

On 08 June 2016, the accused filed a *Joint Reply*.⁹ They aver that the Court's judicial determination of probable cause is necessary in order to protect their constitutional rights. The accused reiterate that there is no probable cause against them, and that the allegation of conspiracy is baseless. The accused argue that the signing of the SARO and NCA is not indicative of a common design in order to sustain a conspiracy charge. Accused restate that as DBM Undersecretary for Operations, accused Relampagos was authorized to sign the SARO and NCA in the absence of the DBM Secretary. One of the SAROs (SARO No. ROCS-07-07940) was not even signed by accused Relampagos. Also, the SARO and the NCA passed several reviews by officials of the DBM. Accused add that they have in their favor the

⁸ *Ibid*, Vol. 2, p. 413.

⁹ *Ibid*, Vol. 3, p. 98.



presumption of regularity of performance of official duties. Moreover, there is nothing else on record to show any single concrete or overt act done by the accused. Accused claim that during the 12 September 2013 hearing, Benhur Luy admitted twice that no kickbacks went to the DBM.

As regards the *Motion for Bill of Particulars*, accused reiterate that the *Informations* failed to apprise the accused of what they are being charged with. With reference to the *Motion for Reduction of Bail*, accused restate their pecuniary circumstances and the absence of probable cause in this case to warrant the reduction of the bail.

On 22 June 2016, the prosecution filed its *Rejoinder*.¹⁰ The prosecution argues that public officials must not be allowed to shield themselves from accountability for the reason that they act for and in behalf of another high official. In this case, the prosecution claims that the accused unduly accommodated Napoles and facilitated the release of the SAROs and NCAs despite their knowledge of the irregularities and violations of the requirements of R.A. No. 9184, its IRRs, Government Procurement Policy Board regulations, as well as National Budget Circulars.

Moreover, while they claim that they cannot be held liable for Malversation because they are not accountable officers in custody of funds, the prosecution argues that the same is immaterial since the accused are charged for their conspiracy with one another.

Ruling

On the existence of probable cause

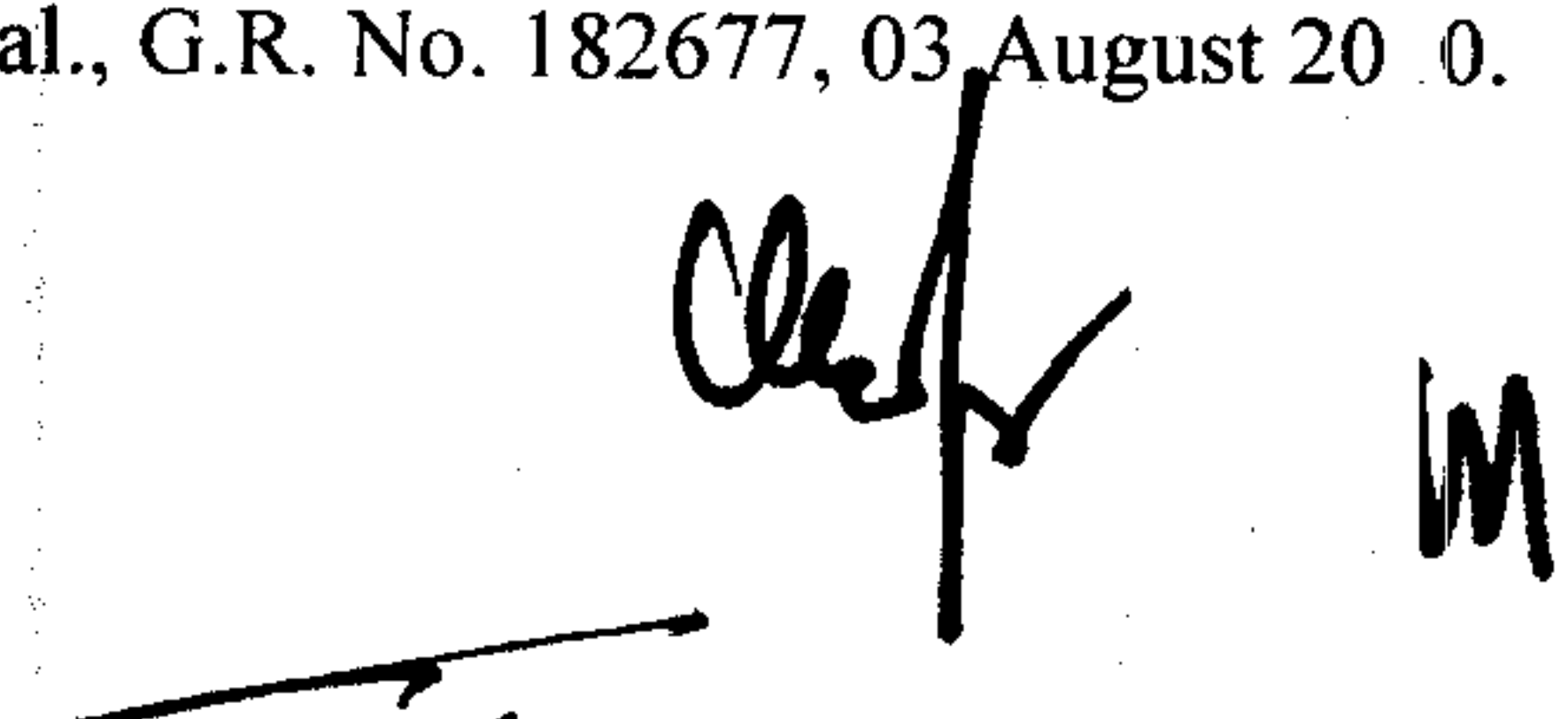
Section 2, Article III of the 1987 Constitution provides that no warrant of arrest shall issue "except upon probable cause to be determined personally by the judge." A judge "must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice."¹¹ Hence, since the judge is already duty-bound to personally evaluate the existence or non-existence of probable cause prior to the issuance of the warrant of arrest, then to move the court to conduct a judicial determination of probable cause is a mere superfluity.¹²

There are two kinds of determination of probable cause namely, executive and judicial. The Supreme Court differentiated the two kinds as follows:

¹⁰ *Ibid*, Vol. 3, p. 436.

¹¹ Jose Antonio C. Leviste vs. Hon. Elmo M. Alameda, et al., G.R. No. 182677, 03 August 2010.

¹² *Ibid*.

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The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.¹³

The Supreme Court also ruled that the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court.¹⁴ Thus, the court must respect such exercise of discretion when the information filed is "valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor."¹⁵ Moreover, a judge must only determine the probability, not the certainty, of guilt of the accused based on his/her review of the prosecutor's initial determination of the existence of probable cause.¹⁶

Jurisprudence defines probable cause for the issuance of a warrant of arrest as "the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense was committed by the person sought to be arrested."¹⁷

In its *Resolution* dated 22 June 2015, the Office of the Ombudsman found probable cause to indict the accused for the abovementioned crimes. The *Resolution* clearly explained the scheme allegedly employed by the accused in conspiracy with one another based on the sworn statements of Benhur Luy, Marina Sula and Merlina Suña. Their testimonies reveal that in 2007, accused Olaño, then a member of the House of Representatives, endorsed the implementation in his legislative district of his PDAF-funded livelihood projects in the amount of PhP8,500,000.00 to Philippine Social Development Foundation, Inc. ("PSDFI") and Countrywide Agri and Rural Economic and Development Foundation, Inc. ("CARED"), which were NGOs allegedly associated with accused Napoles. According to Luy, Sula, and

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Ma. Gracia Hao and Danny Hao vs. People of the Philippines, G.R. No. 183345, 17 September 2014.

¹⁷ *Ibid.*



