

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**CRIM. CASE NO. SB-11-CRM-0090**  
*For: Violation of Section 3(e) of  
Republic Act No. 3019*

- versus -

**LEO P. CAÑEDA,**

*Accused.*

X-----X

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**CRIM. CASE NO. SB-11-CRM-0092**  
*For: Violation of Section 3(e) of  
Republic Act No. 3019*

- versus -

**OSCAR O. PARAWAN,**

*Accused.*

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

*July 3, 2017*  
Promulgated

**RESOLUTION**

**MUSNGI, J.:**

The Court resolves the following:

- (1) *Motion to Dismiss*<sup>1</sup> filed by the accused Leo P. Cañeda (“**Cañeda**”) and accused Oscar O. Parawan (“**Parawan**”) on 10 June 2016;
- (2) *Opposition (To Accused Motion for Leave of Court to File Motion to Dismiss dated May 30, 2016)*<sup>2</sup> filed by the prosecution on 07 July 2016;
- (3) *Reply to Opposition*<sup>3</sup> filed by the accused on 21 July 2016; and

<sup>1</sup> Sandiganbayan Records, SB-11-CRM-0090, Vol 2, pp. 320-618.

<sup>2</sup> *Ibid.*, Vol. 3, pp. 1293-1299.

<sup>3</sup> *Ibid.*, Vol. 3, pp. 1300-1306.

(4) *Rejoinder (To Accused Reply to Opposition dated 22 July 2016)*<sup>4</sup> filed by the prosecution on 05 August 2016.

The Court also notes the *Manifestation with Reiterative Prayer*<sup>5</sup> filed by the prosecution on 06 January 2016, adopting the abovementioned *Opposition and Rejoinder*.

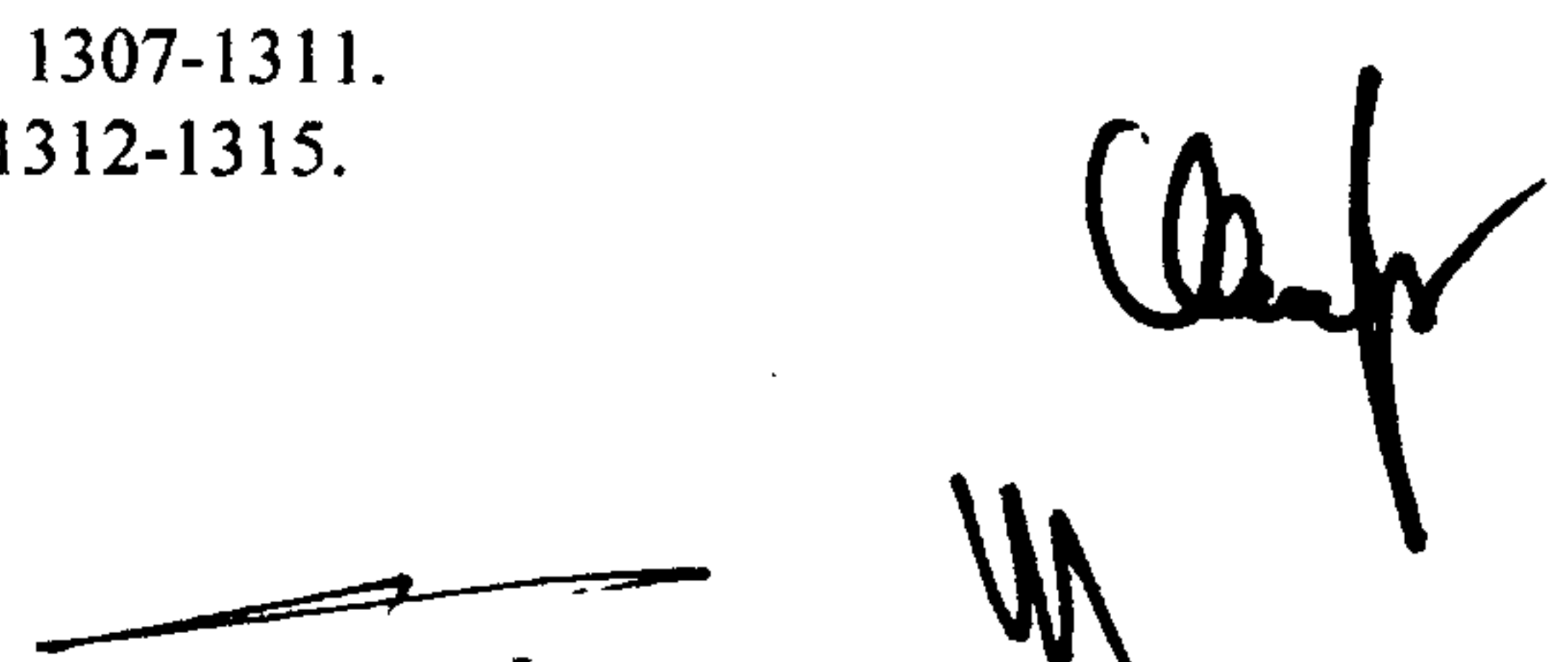
The accused are charged with violation of Section 3(e) of Republic Act No. 3019 (“**R.A. No. 3019**”) under two (2) separate *Amended Informations*, to wit:

**Criminal Case No. SB-11-CRM-0090**

“That in or about March 2004, or sometime prior or subsequent thereto, in Tacloban City, Philippines and within the jurisdiction of this Honorable Court, accused LEO P. CAÑEDA, a high ranking public officer, with Salary Grade 28, being then the Regional Executive Director, Regional Field Unit No. 8, Department of Agriculture (DA), while in the performance of his official action, and committing the offense in relation to his office, and taking advantage of his official position as such, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally, cause undue injury to the government in the amount of Php4,000,000.00, more or less, representing the unliquidated portion of Php49,000,000.00 fertilizer funds received by DA-RFU 8 and which came under his custody and administration as per Sub-Allotment Advice Nos. 101-2004-186; 101-2004-191; 101-2004-246; 101-2004-328; 101-2004-335; 101-2004-344; 101-2004-446; 101-2004-476; 101-2004-1031; for the implementation of the Farm Inputs and Farm Implements Project (FIFIP), of the Department of Agriculture in line with the Ginintuang Masaganang Ani Program (GMA) of the DA under Republic Act 8435, by failing to conduct prior consultation with the beneficiaries and/or proponents for the formulation of a plan for the rational use of the fund as required under Republic Act 8435 and Executive Order No. 338 dated January 10, 2001; by failing to observe General Memorandum Order No. 2, Series of 2001, issued by then DA Secretary Leonardo Q. Montemayor by transferring the Php49,000,000.00 fertilizer funds to beneficiaries, proponents and/or suppliers, without authority; by splitting the transfer of the fund to beneficiaries, proponents and/or supplier in violation of COA Circular No. 76-41; by transferring the fund to beneficiaries, proponents and/or suppliers of dubious existence/legitimacy; and upon turn-over of the said amount fail to take the necessary measures and precautions to secure, safeguard and monitor the disbursement and/or use thereof, as responsible/accountable officer and/or in accordance with the Memorandum of Agreement which he entered into with the beneficiaries, proponents and/or suppliers, thereby giving them unwarranted benefits, advantage or preference and which resulted in the misuse, loss, misappropriation, and embezzlement in the amount of Php4,000,000.00, more or less, in the damage and prejudice of the government in the amount of Php4,000,000.00.”

<sup>4</sup> *Ibid.*, Vol. 3, pp. 1307-1311.

<sup>5</sup> *Ibid.*, Vol 3, pp. 1312-1315.

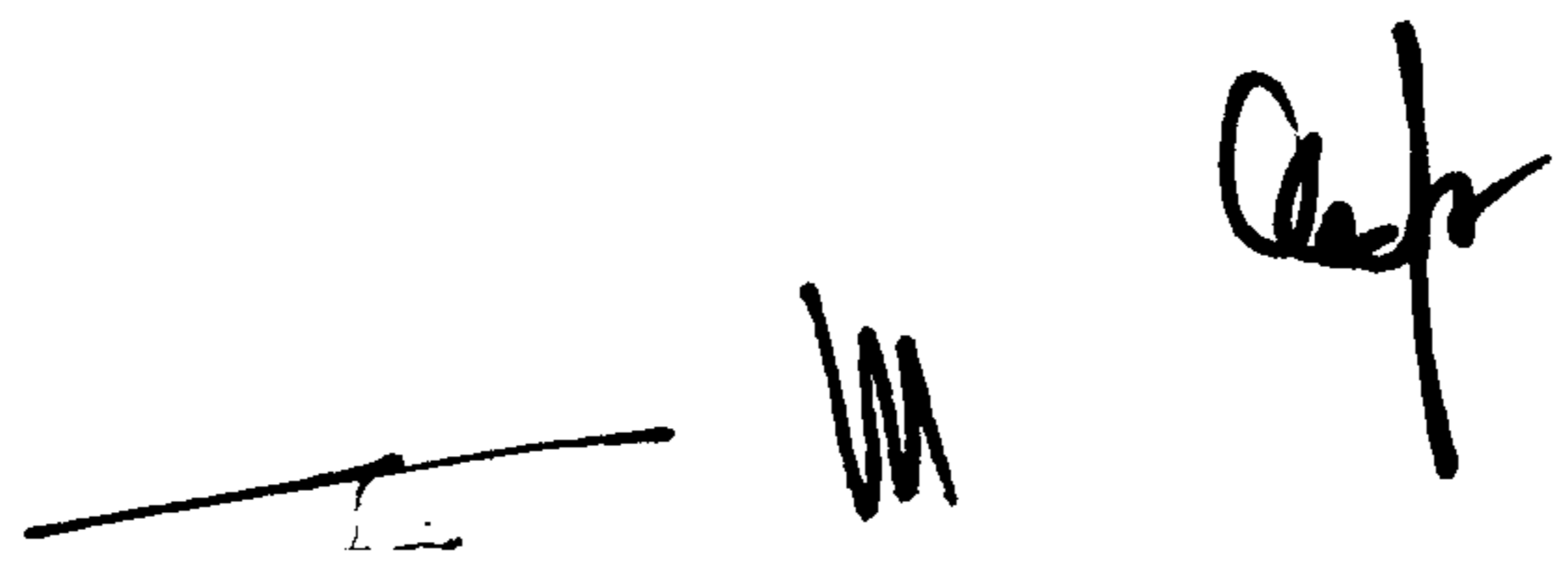
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**Criminal Case No. SB-11-CRM-0092**

“That in or about March 2004, or sometime prior or subsequent thereto, in Zamboanga City, Philippines and within the jurisdiction of this Honorable Court, accused OSCAR O. PARAWAN, a high ranking public officer, with Salary Grade 28, being then the Regional Executive Director, Regional Field Unit No. 9, Department of Agriculture (DA), while in the performance of his official action, and committing the offense in relation to his office, and taking advantage of his official position as such, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally, cause undue injury to the government in the amount of Php8,502,000.00, more or less, representing the unliquidated portion of Php54,000,000.00 fertilizer funds received by DA-RFU 9 and which came under his custody and administration as per Sub-Allotment Advice Nos. 101-2004-195; 101-2004-247; 101-2004-268; 101-2004-329; 101-2004-336; 101-2004-367; 101-2004-387; 101-2004-383; 101-2004-394; 101-2004-445; and 101-2004-501, for the implementation of the Farm Inputs and Farm Implements Project (FIFIP), of the Department of Agriculture in line with the Ginintuang Masaganang Ani Program (GMA) of the DA under Republic Act 8435, (1) by failing to conduct prior consultation with the beneficiaries and/or proponents for the formulation of a plan for the rational use of the fund as required under Republic Act 8435 and Executive Order No. 338 dated January 10, 2001; (2) by failing to observe General Memorandum Order No. 2, Series of 2001, issued by then DA Secretary Leonardo Q. Montemayor by transferring the Php54,000,000.00 fertilizer funds to beneficiaries, proponents and/or suppliers, without authority; (3) by splitting the transfer of the fund to beneficiaries, proponents and/or supplier in violation of COA Circular No. 76-41; (4) by transferring the fund to beneficiaries, proponents and/or suppliers of dubious existence/legitimacy; and upon turn-over of the said amount (5) fail to take the necessary measures and precautions to secure, safeguard and monitor the disbursement and/or use thereof, as responsible/accountable officer and/or in accordance with the Memorandum of Agreement which he entered into with the beneficiaries, proponents and/or suppliers, thereby giving them unwarranted benefits, advantage or preference and which resulted in the misuse, loss, misappropriation, and embezzlement in the amount of Php8,502,000.00, more or less, in the damage and prejudice of the government in the amount of Php8,502,000.00, more or less.”

Accused Cañeda and Parawan filed a *Motion to Dismiss* alleging the following grounds:

- a. There is no evidence to support the charge that accused Cañeda and accused Parawan violated Section 3(e) of R.A. No. 3019;
- b. The Ombudsman violated the constitutional right of the accused to due process of law when they included in the *Information* allegations which were not contained in the *Joint Resolution* (OMB-C-C-08-0448-I); and

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- c. The action of both accused in following the legal order of the Secretary of the Department of Agriculture (“DA”) constitutes a justifying circumstance under Article 11, Paragraphs 5 and 6 of the Revised Penal Code.

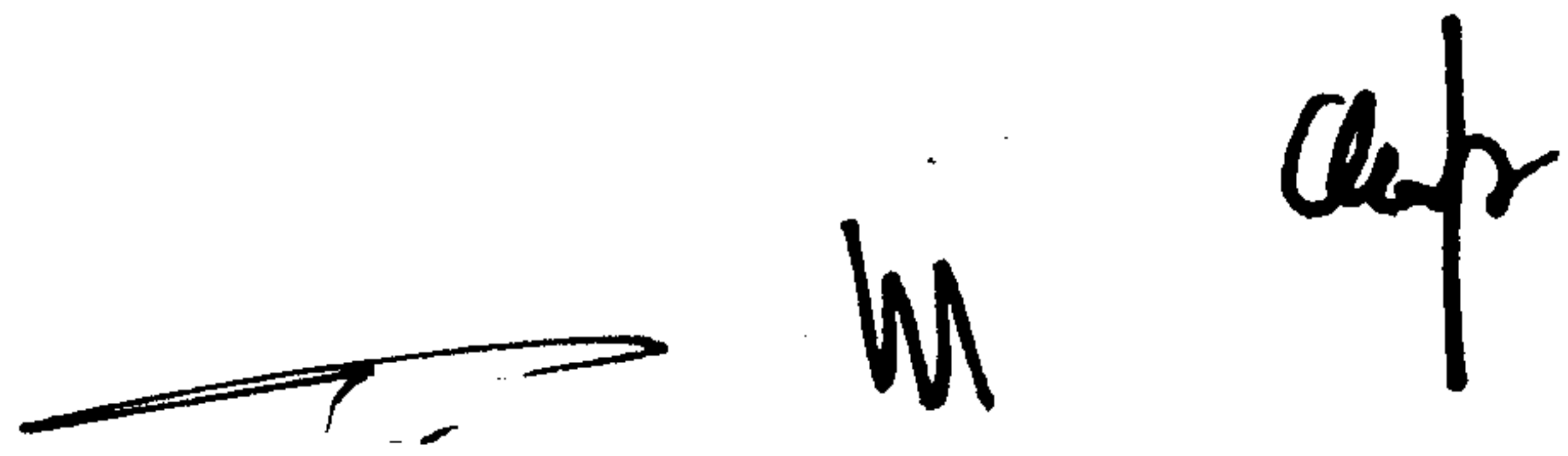
They claim that based on the stipulation of facts in the *Pre-Trial Orders*<sup>6</sup> as well as the judicial admissions in the pleadings, there are no more controversial factual issues to be heard and tried on the merits. Both of the accused assert that what remains to be done is the judicial determination as to whether the admitted facts and pieces of evidence will be sufficient to establish the guilt of the accused beyond reasonable doubt.

Accused Cañeda and Parawan argue that the facts stipulated and the evidence admitted by the parties are not sufficient to prove their guilt for violation of Section 3(e) of R.A. No. 3019. The *Joint Resolution* of the Office of the Ombudsman allegedly only states that the accused, as Regional Executive Directors in their respective Regional Field Units, only received money from the DA and transferred it to the different recipients/proponents designated by the said department and the Department of Budget and Management (“DBM”). They claim that they merely followed the order of the DA Secretary to transfer said funds, and add that the *Decision* of the Court of Appeals on their administrative case is very clear that accounting and auditing rules were complied with in the transfer of the subject funds. They also mention that the prosecution failed to specify the suppliers of dubious existence or legitimacy. Therefore, the evidence of the prosecution do not show that the accused took advantage of their position or acted with manifest partiality, evident bad faith or gross inexcusable negligence.

As regards their claim that the Ombudsman violated their right to due process, accused Cañeda and Parawan allege that they were not informed of the crime charged against them nor were they given the opportunity to submit their Counter-Affidavit. They also maintain that the Court of Appeals has already decided that they are not guilty of dishonesty, neglect of duty, grave misconduct, conduct prejudicial to the best interest of service and violation of office rules and regulation. Hence, the Office of the Ombudsman should not have charged them with violation of Section 3(e) of R.A. No. 3019.

Lastly, the accused argue that their acts in following the orders of the DA Secretary constitute justifying circumstances under Paragraphs 5 and 6 of Article 11 of the Revised Penal Code. The accused assert that they only acted in the performance of their duty as Regional Directors and that they were exercising a lawful right by virtue of their office or position, with no fault, negligence, and/or criminal intent on their part.

<sup>6</sup> Sandiganbayan Records, SB-11-CRM-0090, Vol 2, pp. 268-302 and Sandiganbayan Records, SB-11-CRM-0092, Vol 3, pp. 1251-1262.

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On the other hand, the prosecution adopts its *Opposition* and *Rejoinder* to the *Motion for Leave to File Motion to Dismiss*. The prosecution contends that the *Motion to Dismiss* is premature and argues that the cases are still on its pre-trial stage in which it has yet to present its documentary and testimonial evidence. The prosecution avers that the evidentiary value of the documentary evidence can only be weighed and appreciated by the court if the same has been testified, identified and offered in evidence before the court.

The prosecution likewise argues that the dismissal of the administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint. The two proceedings are independent from each other. Moreover, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is also not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases.

The prosecution adds in their *Manifestation with Reiterative Prayer* that there is sufficient evidence to support the charge against both accused for violation of Section 3(e) of R.A. No. 3019 as found by the Office of the Ombudsman. As regards the claim of the accused that there is a justifying circumstance which supports their exoneration, the prosecution argues that this assertion alone requires the conduct of a full-blown trial because matters of defense necessarily call for a trial to warrant their appreciation.

### **Ruling**

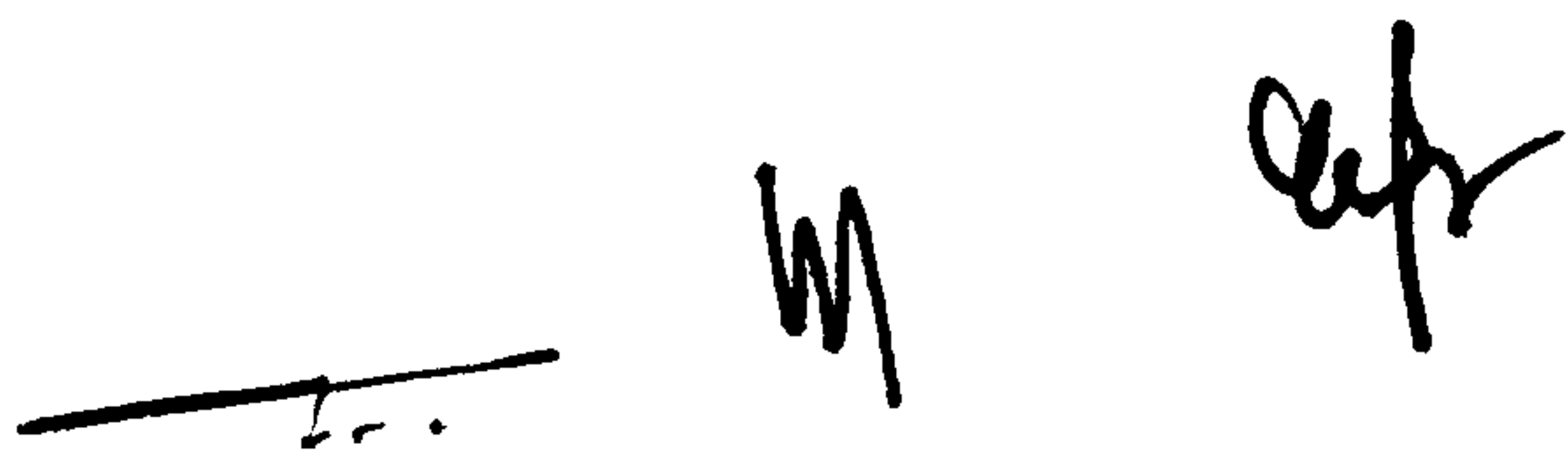
The instant motion is denied for lack of merit.

The accused essentially seek the dismissal of these cases based on alleged insufficient evidence presented by the prosecution during the pre-trial stage of the proceedings. According to the accused, what remains to be done is the judicial determination as to whether the admitted facts and pieces of evidence will be sufficient to establish the guilt of the accused beyond reasonable doubt.

However, insufficiency of evidence is a ground for dismissal of an action only after the prosecution rests its case.<sup>7</sup> These cases are still on the pre-trial stage of the proceedings and the prosecution has yet to present its documentary and testimonial evidence. In the case of *People of the Philippines vs. Hermenegildo Dumlao and Emilio La'o*,<sup>8</sup> the Supreme Court reversed the resolution of the Sandiganbayan in granting the Motion to Dismiss/Quash of the accused and in dismissing the criminal case only after

<sup>7</sup> *People of the Philippines vs. Hermenegildo Dumlao and Emilio La'o*, G.R. No. 168918, 02 March 2009.

<sup>8</sup> *Ibid.*

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the pre-trial and before the prosecution could present its witnesses and formally offer its exhibits. The Supreme Court held that:

**“Insufficiency of evidence is a ground for dismissal of an action only after the prosecution rests its case. Section 23, Rule 119 of the Revised Rules of Criminal Procedure provides:”**

‘Sec. 23. Demurrer to evidence. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.’

**‘In the case under consideration, the Sandiganbayan dismissed the case against respondent for insufficiency of evidence, even without giving the prosecution the opportunity to present its evidence. In so doing, it violated the prosecution’s right to due process. It deprived the prosecution of its opportunity to prosecute its case and to prove the accused’s culpability.’**

‘It was therefore erroneous for the Sandiganbayan to dismiss the case under the premises. Not only did it not consider the ground invoked by respondent Dumlao; it even dismissed the case on a ground not raised by him, and not at the appropriate time. **The dismissal was thus without basis and untimely.**’<sup>9</sup> (Emphasis added)

Clearly, a dismissal of these cases based merely on the stipulations by the parties and the evidence presented during pre-trial would be premature. The Supreme Court has held that “a purely capricious dismissal of an information deprives the State of a fair opportunity to prosecute and convict.” Accordingly, the Court will not deprive the prosecution of its day in court to prove its case.

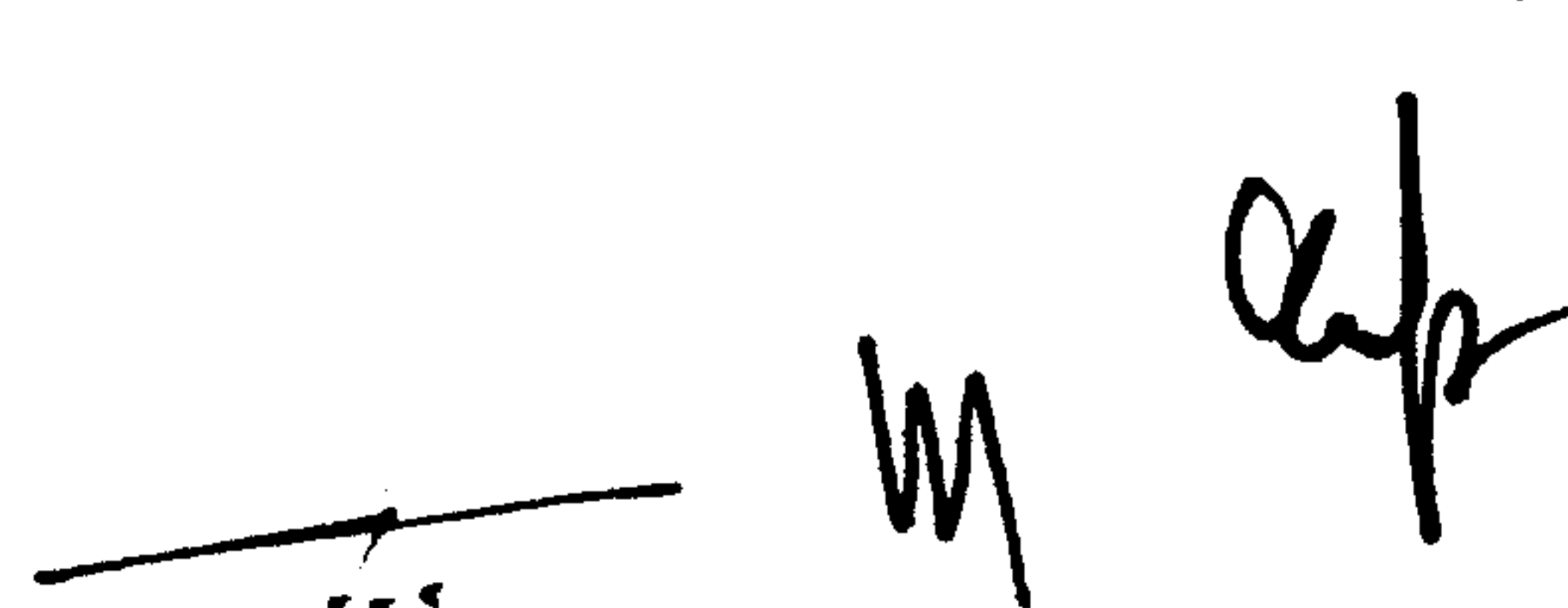
The accused repeatedly argue that the Court of Appeals has already decided that they are not guilty of dishonesty, neglect of duty, grave misconduct, conduct prejudicial to the best interest of service and violation of office rules and regulation, and therefore, the Office of the Ombudsman should not have charged them with violation of Section 3(e) of R.A. No. 3019.

The accused is mistaken. Well-settled is the rule that administrative liability is separate and distinct from penal and civil liabilities.<sup>10</sup> In the case of *Dominador C. Ferrer, Jr. vs. Sandiganbayan, et al.*,<sup>11</sup> the Supreme Court held that the dismissal of an administrative case does not necessarily bar the

<sup>9</sup> *Ibid.*

<sup>10</sup> *Dominador C. Ferrer, Jr. vs. Sandiganbayan, et al.*, G.R. No. 161067, 14 March 2008, citing *Tecson vs. Sandiganbayan*, 376 Phil. 191, 199 (1999).

<sup>11</sup> G.R. No. 161067, 14 March 2008.

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filing of a criminal prosecution for the same or similar acts which were the subject of an administrative complaint,<sup>12</sup> to wit:

“There is, thus, no reason for the Sandiganbayan to quash the Information against petitioners on the basis solely of the dismissal of the administrative complaint against them.’

**‘To sustain petitioner's arguments will be to require the Sandiganbayan and the Ombudsman to merely adopt the results of administrative investigations which would not only diminish the powers and duties of these constitutional offices, but also violate the independent nature of criminal and administrative cases against public officials.** This will also amount to untold delays in criminal proceedings before the Sandiganbayan and Ombudsman, as every criminal trial and investigation before these bodies will be made to await the results of pending administrative investigations. Such is not the intent of the framers of the Constitution and the laws governing public officers.’

XXX

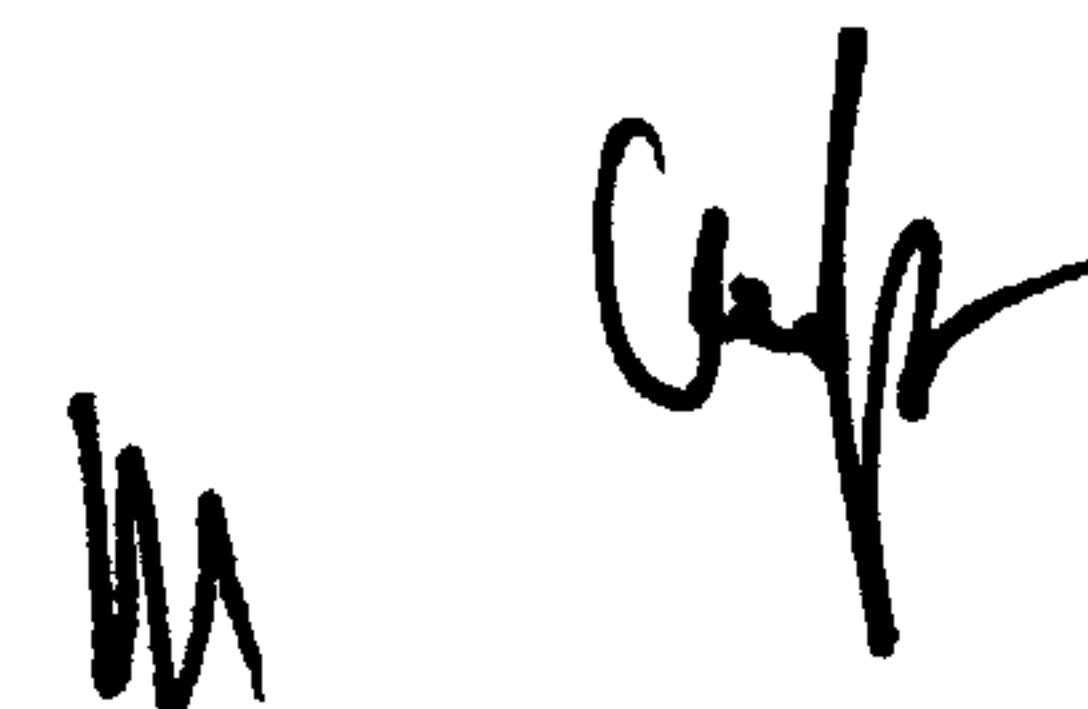
**‘The independent nature of a criminal prosecution dictates that the Sandiganbayan must determine petitioner's criminal liability without its hands being tied by what transpired in the administrative case. The court is duty-bound to exercise its independent judgment. It is not ousted of its jurisdiction by the ruling in the administrative proceeding.** It is axiomatic that when the court obtains jurisdiction over a case, it continues to retain it until the case is terminated.”<sup>13</sup> (Citations omitted, emphasis added)

Hence, the Court is not bound by the Decision of the Court of Appeals in the administrative case. The Court will make its own independent finding on whether a violation of Section 3(e) of R.A. No. 3019 was committed by the accused based on the evidence to be presented by both parties.

With regard to the argument of the accused that their acts constitute justifying circumstance, the same must not only be alleged by the accused, but should be proven by them based on clear and convincing evidence in a full-blown trial.

<sup>12</sup> *Ibid.*, citing *Tan v. Comelec*, 322 Phil. 709 (1996).

<sup>13</sup> G.R. No. 161067, 14 March 2008.

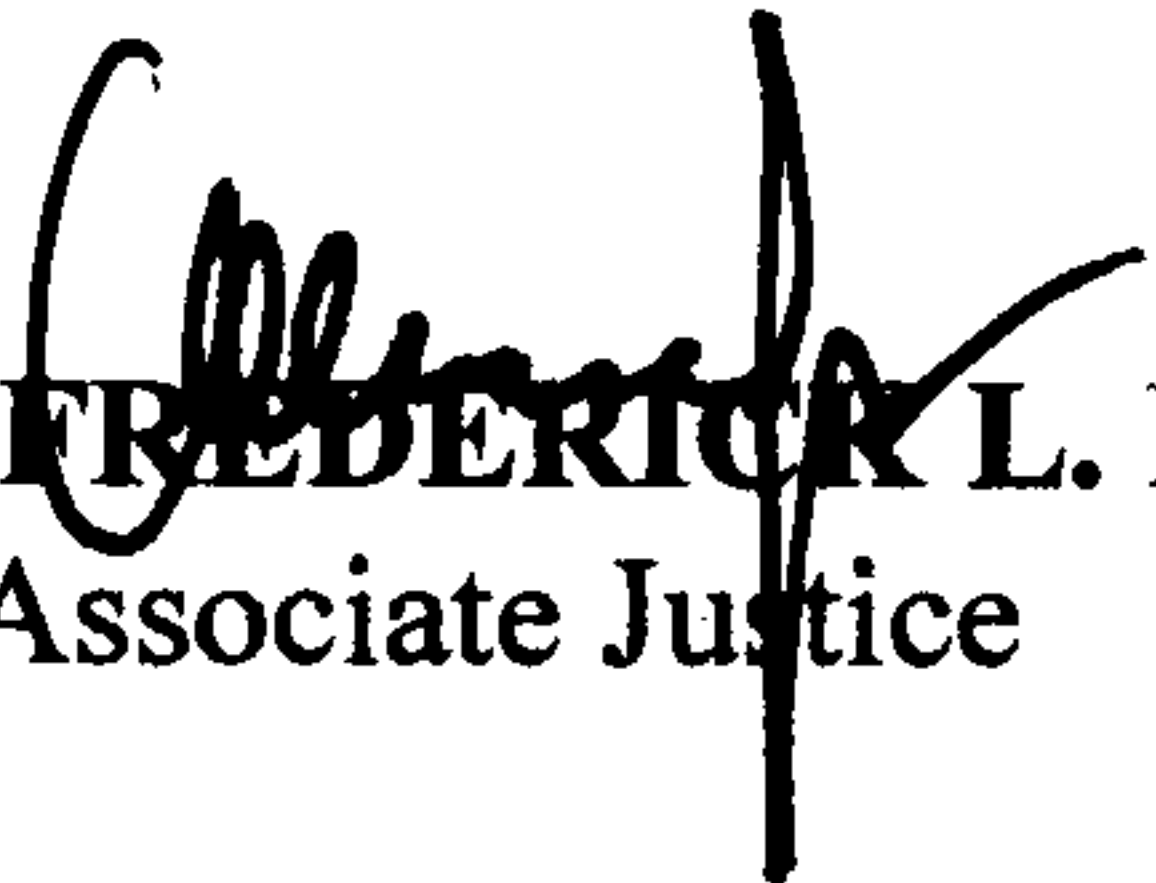
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**WHEREFORE**, in light of the foregoing, the *Motion to Dismiss* jointly filed by accused Leo P. Cañeda and accused Oscar O. Parawan is hereby **DENIED** for lack of merit.

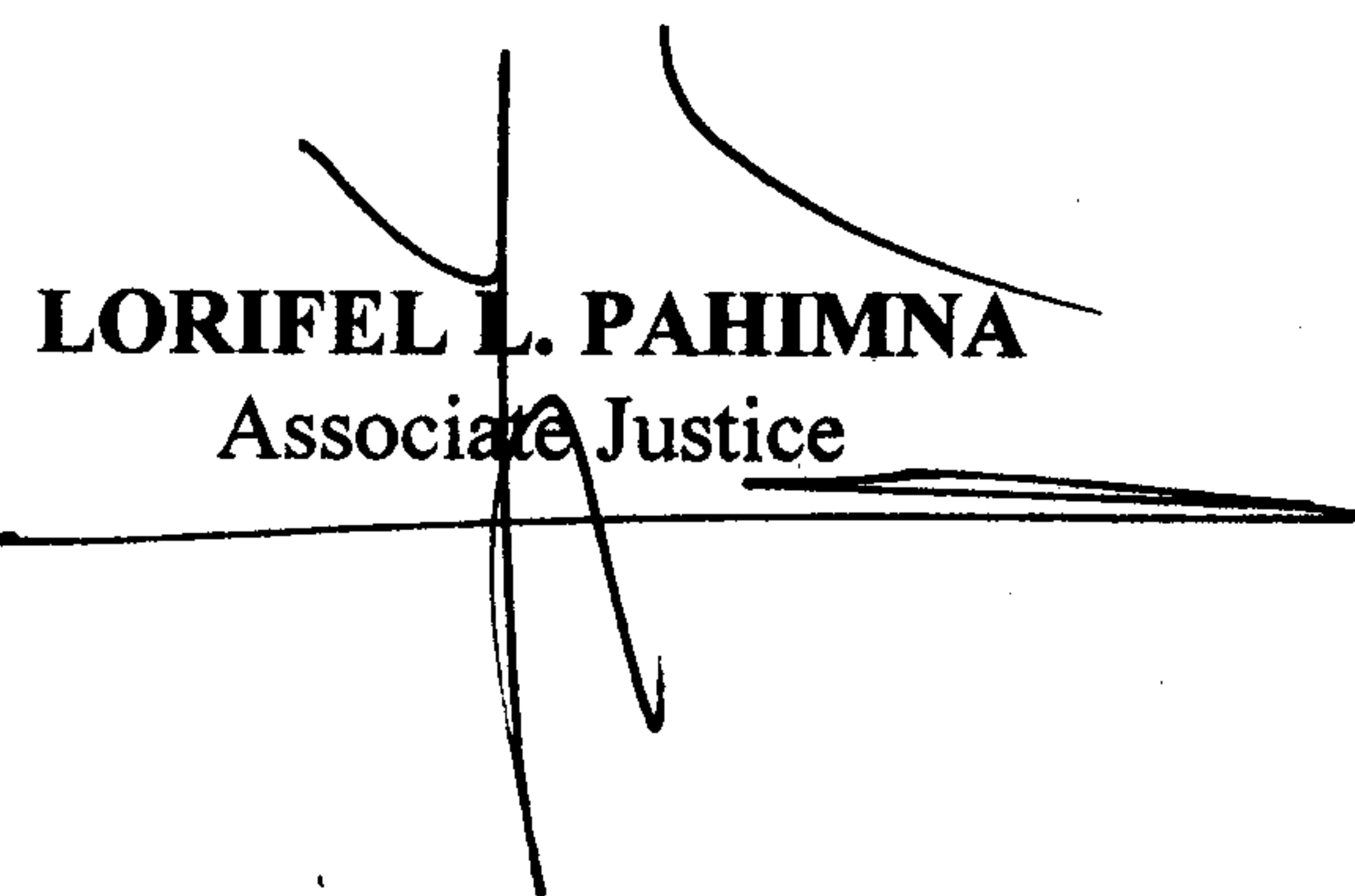
**SO ORDERED.**

Quezon City, Philippines.

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

**WE CONCUR:**

  
**OSCAR C. HERRERA, JR.**  
Associate Justice  
Chairperson

  
**LORIFEL L. PAHIMNA**  
Associate Justice