

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

**PEOPLE OF THE
PHILIPPINES,**
Plaintiff,

CRIM. CASE NO. SB-06-CRM-0385
*For: Violation of Sec. 3(e) of RA 3019
and Art. 217 of the RPC*

CRIM. CASE NO. SB-06-CRM-0385
*For: Violation of Article 217 of the
Revised Penal Code*

-versus-

NELLIE R. APOLONIO,
Accused.

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

Promulgated:

September 18, 2017

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RESOLUTION

PAHIMNA, J.:

For resolution of this Court is the ***Motion for Reconsideration***¹ filed by plaintiff, through Assistant Special Prosecutor Michael Paul B. Israel of the Office of the Special Prosecutor on August 30, 2016. Relative to the said ***Motion*** is the ***Comment/Opposition (On Plaintiff's Motion for Extension dated 24 August 2016 and Motion to Admit Motion for Reconsideration dated 30 August 2016)***² filed by accused, through counsel, Atty. Leonil Anthony S. Bacay on November 9, 2016.

The plaintiff in the subject ***motion*** seeks reconsideration of the ***Resolution***³ of this Court promulgated on 21 July 2016 granting the

¹ Records, pp. 186-193

² Records, pp. 207-212

³ Records, pp. 159-174



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Motion to Quash Information⁴ filed by the Accused thereby dismissing the instant cases against her.

Plaintiff alleges that the ground of conclusiveness of Judgment or *Res Judicata* is misplaced. The Court sustained Apolonio's argument that there is no basis to prosecute her on the criminal charges against her because she was already exonerated in the administrative case arising from the same set of facts and circumstances referring to **Office of the Ombudsman vs. Nellie Apolonio⁵**, for which she was exculpated from the administrative charges of Grave Misconduct and Dishonesty and found liable only for Simple Misconduct. According to the plaintiff, the dismissal of an administrative case does not necessarily prevent a criminal prosecution from proceeding as the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint.

It also argues that assuming that the accused did not act with willful intent in the charged crimes of malversation and violation of Sec. 3(e) of R.A. 3019, these offenses can verily be committed through negligence, which mode of commission need not be alleged in the Information being constitutive of the said crimes or being absorbed in the said crimes.

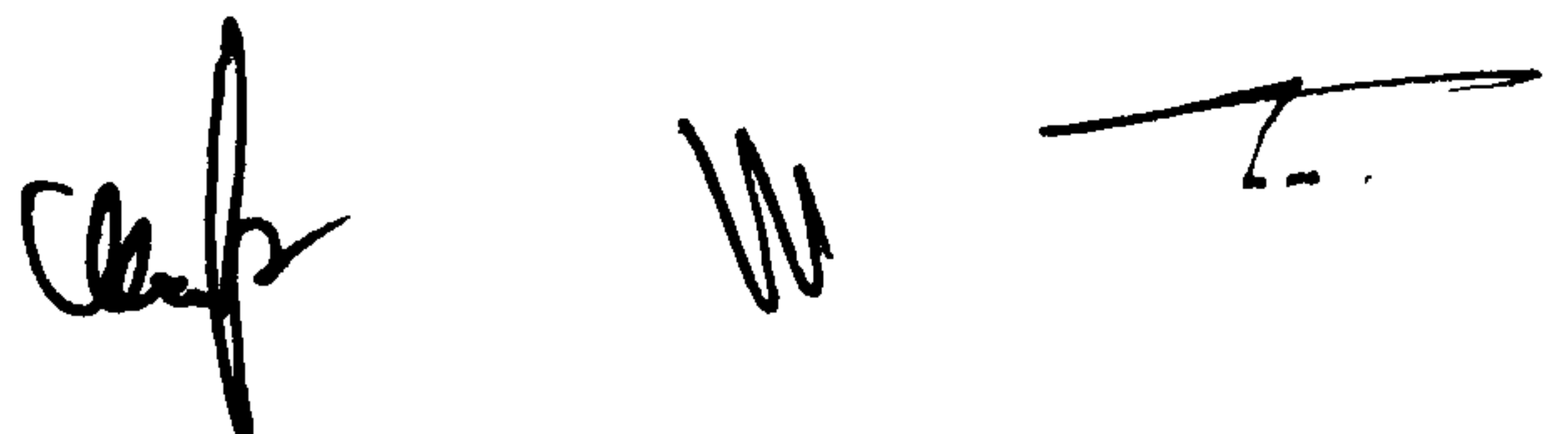
Plaintiff also contends that the Court erred in downplaying the charged acts of the accused in unilaterally deciding to spend the excess of the office fund meant for team building workshop to a purpose that personally benefited the participant including herself without prior Board Approval or Resolution from the Bids and Awards Committee (BAC).

Further, the Informations are sufficient in form and substance and contain all the essential elements of the crimes charged. This Court therefore erred in quashing the Informations relying on matters that are best presented during trial on the merits.

By way of **Comment/Opposition**, the accused alleged that the filing of a motion for extension to file a motion for reconsideration did not toll the 15-day before a judgment becomes final and executory given that the Supreme Court has categorically declared that such 15-day period is non-extendible. Accused likewise aver that the ruling in the said *Office of the Ombudsman v. Nellie R. Apolonio*, was decided by the Supreme Court

⁴ Records, pp. 97-104

⁵ G.R. No. 165132, March 7, 2012



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and pursuant to Rule 129 of the Rules of Court, this Court can take judicial notice of the findings of the Supreme Court in the said case. Accused maintains that she could not be held criminal (*sic*) liable in this case, as it will violate the basic rule on quantum of evidences applicable to criminal and administrative cases.

RULING

After a careful study of the instant case, the Court rules to grant the subject ***Motion for Reconsideration***.

In the instant case, Accused relied on the pronouncement of the Supreme Court in her administrative case where she was found guilty merely of ***simple misconduct***, thus:

First. Dr. Apolonio's actions were not attended by a willful intent to violate the law or to disregard established rules. Although the Court agrees that Dr. Apolonio's acts contravene the clear provisions of Section 89 of PD 1445, otherwise known as the Government Auditing Code of the Philippines, such was not attended by a clear intent to violate the law or a flagrant disregard of established rules. Several circumstances militate in favor of this conclusion.

Dr. Apolonio merely responded to the employees clamor to utilize a portion of the workshop budget as a form of Christmas allowance. To ensure that she was not violating any law, Dr. Apolonio even consulted Mr. Montealto, then Finance and Administrative Chief of the NBDB, on the possible legal repercussions of the proposal. Likewise, aside from receiving the same benefit, there is no evidence in the record that Dr. Apolonio unlawfully appropriated in her favor any amount from the approved workshop budget. Therefore, we see no willful intent in Dr. Apolonio's actions.

*Second, we disagree with the Ombudsmans insinuations that Dr. Apolonio's acts may be considered technical malversation and, therefore, constitute a crime. In *Parungao v. Sandiganbayan, et al.*, the Court held that in the absence of a law or ordinance appropriating the public fund allegedly technically malversed for another public purpose, an accused did not commit technical malversation as set out in Article 220 of the Revised Penal Code. In that case, the Court acquitted Oscar P. Parungao (then a municipal treasurer) of the charges of technical malversation even though he used funds allotted (by a Department of Environment and Natural Resources circular) for the construction of a road project and re-allocated it to the labor payroll of different barangays in the municipality. The Court held that since the budget for the construction of the road was not appropriated by a law or by an ordinance for that*



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specified public purpose, the re-allocation of the budget for use as payroll was not technical malversation.

Similarly, in this case, the budget allocation for the workshop was neither appropriated by law nor by ordinance since DBM National Budget Circular No. 442 is not a law or an ordinance. Even if it had been, however, it must be noted that DBM National Budget Circular No. 442 only prescribed the amounts to be used for any workshop, conference or seminar. It did not appropriate the specific amounts to be used in the event in question.

Therefore, when Dr. Apolonio approved the purchase of the gift cheques using a portion of the workshops budget, her act did not amount to technical malversation. Moreover, if her acts did, in fact, constitute technical malversation, the Ombudsman ought to have filed a criminal case against her for violation of Article 220 of the Revised Penal Code.

We cannot likewise agree with the CAs findings that Dr. Apolonios (sic) acts constitute merely as conduct prejudicial to the best interest of the service. In *Manuel v. Judge Calimag, Jr.*, we held, viz.:

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x [...] It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x [...] More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.

Therefore, if a nexus between the public officials acts and functions is established, such act is properly referred to as misconduct. In Dr. Apolonios (sic) case, this nexus is clear since the approval of the cash advance was well within her functions as NBDBs executive officer.

Contrast her situation, for example with the case of *Cabalitan v. Department of Agrarian Reform*, where we held that the offense committed by the employee in selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours was not grave misconduct, but conduct prejudicial to the best interest of the service. Further contrast Dr. Apolonios (sic) case with *Mariano v. Roxas*, where the Court held that the offense committed by a [CA] employee in forging some receipts to avoid her private contractual obligations, was not misconduct but conduct prejudicial to the best



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interest of the service because her acts had no direct relation to or connection with the performance of her official duties.

CONCLUSION

Thus, we hold that Dr. Apolonio is guilty of simple misconduct. Although her actions do not amount to technical malversation, she did violate Section 89 of PD 1445 when she approved the cash advance that was not authorized by the NBDBs Governing Board. Further, since the approval of the cash advance was an act done pursuant to her functions as executive officer, she is not merely guilty of conduct prejudicial to the best interest of the service.

WHEREFORE, we PARTIALLY GRANT the Office of the Ombudsmans petition for review on certiorari, and MODIFY the decision of the Court of Appeals in CA-G.R. SP No. 73357. We find Dr. Nellie R. Apolonio GUILTY of SIMPLE MISCONDUCT. In the absence of any showing that this is her second offense for simple misconduct, we impose the penalty of SUSPENSION for SIX MONTHS against Dr. Apolonio but due to her retirement from the service, we order the amount corresponding to her six-month salary to be deducted from her retirement benefits.

No pronouncement as to costs.

SO ORDERED.”⁶ [citations excluded]

Accused argues that due to the aforesaid ruling, her actions were not attended by a willful intent to violate the law or disregard established rules and so she could not have committed the offenses charged. However, this argument by the Accused is misplaced.

In ***Brigido Paredes vs. Court of Appeals, et al.***,⁷ the Supreme Court held that:

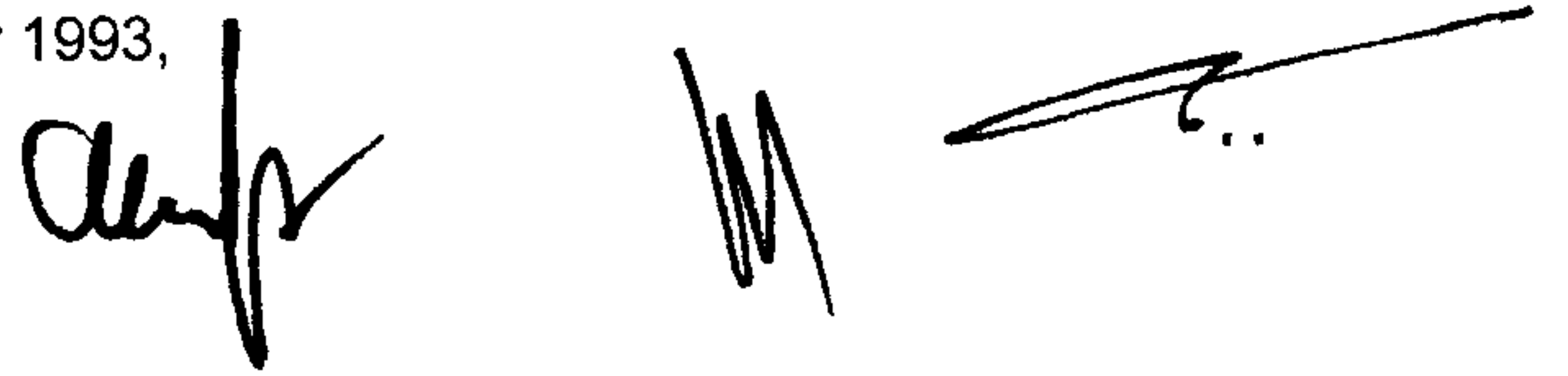
“It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa. One thing is administrative liability; quite another thing is the criminal liability for the same act.”

Primarily, the quantum of evidence required in an administrative case is less than that required in a criminal case.⁸ Criminal and administrative proceedings may involve similar operative facts; but each

⁶ Office of the Ombudsman vs. Nellie APostol, GR No. 165132, March 7, 2012

⁷ G.R. No. 169534, July 30, 2007

⁸ Carlos v. Civil Service Commission, G.R. No. 105293, 7 December 1993,



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requires a different quantum of evidence. Administrative cases require only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁹ In contrast, prosecution is required to proffer proof beyond reasonable doubt to secure conviction.

Rule 133 of the Revised Rules on Evidence provides:

Sec. 2. Proof beyond reasonable doubt. - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other.¹⁰

Secondly, it is well settled that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability. As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense.¹¹

People vs. Sandiganbayan¹² is instructive, thus:

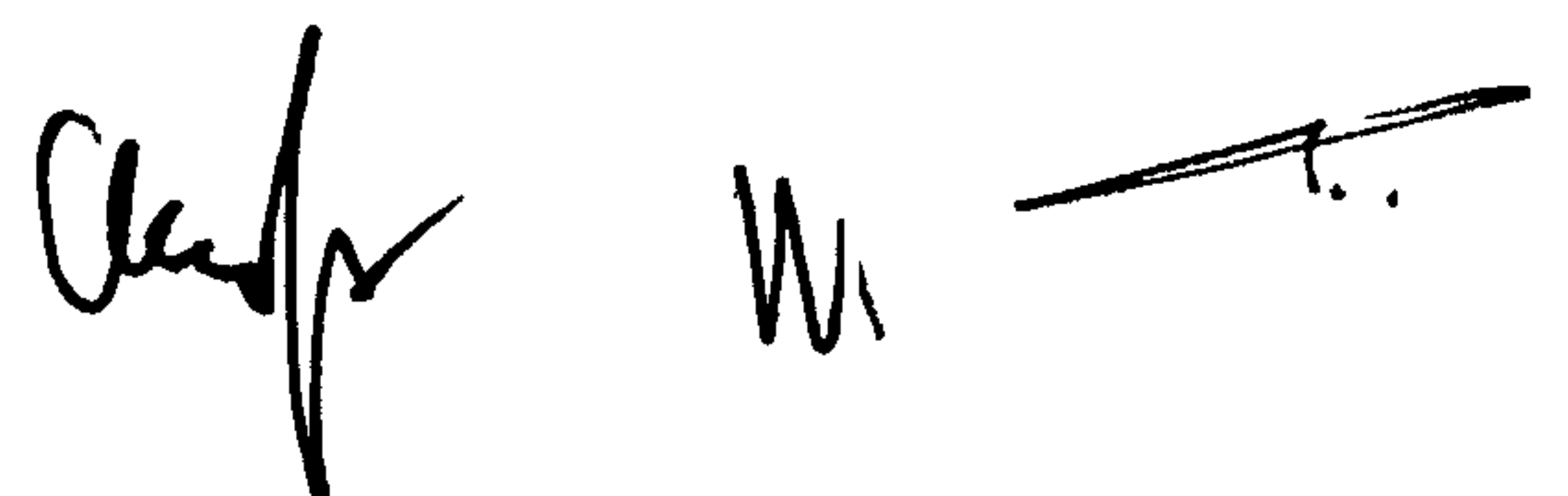
“Although the dismissal of the criminal case cannot be pleaded to abate the administrative proceedings primarily on the ground that the quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal actions, the same does not hold true if it were the other way around, that is, the dismissal of the administrative case is being invoked to abate the criminal case. The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases.”

⁹ Lumiqued v. Exevea, 346 Phil. 807, 829 (1997); Office of the Court Administrator v. Sumilang, 338 Phil. 28, 38 (1997); Mariano v. Roxas, 434 Phil. 742, 749 (2002).

¹⁰ De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region, 464 Phil. 1033, 1050 (2004), citing Ocampo v. Office of the Ombudsman, G.R. No. 114683, 18 January 2000, 322 SCRA 7, 22.

¹¹ Paredes, Jr. v. Sandiganbayan, 322 Phil. 709, 730 (1996).

¹² G.R. No. 164577, July 5, 2010



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Likewise, to sustain the accused is to require this Court to merely await for, and adopt the results of administrative proceedings. Verily, such could not have been the intent of the Constitution and the laws governing public officers. This was further explained in **Ferrer vs. Sandiganbayan**¹³ when the Supreme Court stated:

“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.”

Furthermore, Accused stands charged of two separate crimes, one for violation of Sec. 3(e) of R.A. 3019 and Article 217 of the Revised Penal Code where prosecution as earlier pointed out, is not precluded from adducing evidence to discharge the burden of proof required in criminal cases.

In order to secure conviction for violation of Sec. 3(e) of R.A. 3019, the following elements must be proven by the prosecution, to wit:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹⁴

However, in order to show whether or not the accused has acted with manifest partiality, evident bad faith and/or gross inexcusable negligence, these matters are considerably evidentiary in nature and which should be threshed out in a full blown trial.

WHEREFORE, the Court hereby **GRANTS** the **Motion for Reconsideration and the Resolution** dated August 2, 2016 is hereby **RECALLED and/or SET ASIDE**.

¹³ G.R. No. 161067, March 14, 2008

¹⁴ Cabrera v. Sandiganbayan, 484 Phil. 350, 360 (2004), citing Jacinto v. Sandiganbayan, 387 Phil. 872, 881 (2000).



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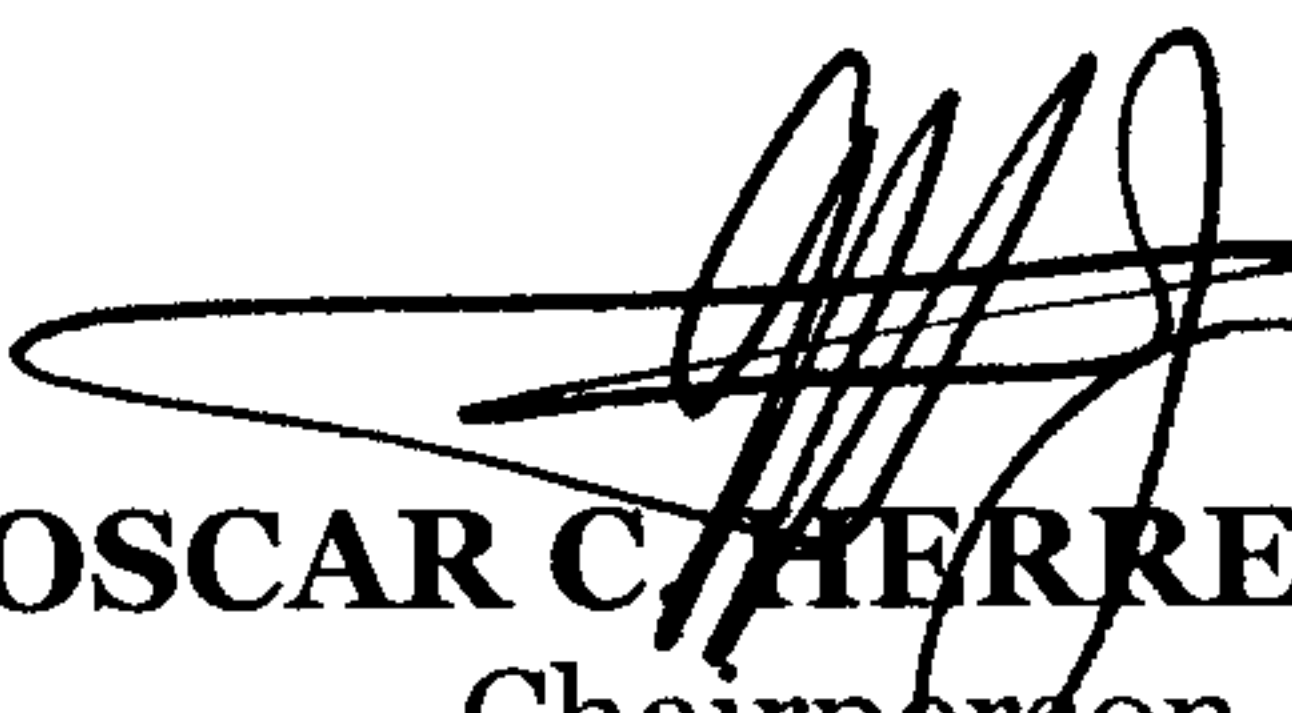
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Consequently, let the instant cases against the accused be **REINSTATED** in the active dockets of this Court.

SO ORDERED.


LORIFEL I. PAHIMNA
Associate Justice

We concur:


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice


MICHAEL FREDERICK M. MUSNGI
Associate Justice