

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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Second Division

People of the Philippines,  
Plaintiff,

Crim. Case No. SB-17-CRI 1-1583

*For: Violation of Article 220 of the  
Revised Penal Code*

-versus-

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

Dante Datu Torres,  
Accused.

Promulgated:  
October 25, 2017

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**RESOLUTION**

***HERRERA, JR., J:***

This resolves the ***Omnibus Motion To Quash Information And For Judicial Determination Of Probable Cause With Prayer To Defer Arraignment***<sup>1</sup> dated September 25, 2017, filed by accused Dante Datu Torres (Torres for short), through counsel, to which the prosecution, through the Office of the Special Prosecutor, Office of the Ombudsman, filed an ***Opposition (To Accused Omnibus Motion To Quash Information And For Judicial Determination Of Probable Cause With Prayer To Defer Arraignment Dated September 25, 2017)***<sup>2</sup> dated October 4, 2017.

Accused Torres is charged with the offense of ***Illegal Use of Public Funds***, defined and penalized in ***Article 220 of the Revised Penal Code (RPC)***, under an ***Information***<sup>3</sup> dated June 7, 2017.

To begin with, the prayer for judicial determination of probable cause has already been denied by the Court in the ***Resolution***<sup>4</sup> given in open court on September 29, 2017, it being prohibited under A.M. No. 15-06-10-

<sup>1</sup> Record, pp. 253-263

<sup>2</sup> Id, pp. 267-272

<sup>3</sup> Id, pp. 1-3

<sup>4</sup> Id, p. 266



SC, or the **Revised Guidelines For Continuous Trial Of Criminal Cases**.

On the **Motion To Quash Information**, accused Torres invokes **Section 3(a), Rule 117 of the Rules of Court** and contends that the facts charged do not constitute an offense.

After a careful study, the Court finds the contention of accused Torres to be devoid of merit.

It is settled that a motion to quash on the ground that the facts alleged in the information do not constitute an offense should be resolved on the basis alone of said allegation, whose truth and veracity are hypothetically admitted.<sup>5</sup> The fundamental test is whether or not the facts alleged in the information, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.<sup>6</sup>

**Article 220 of the RPC on Illegal Use of Public Funds**, also known as **Technical Malversation**, reads:

“Art. 220. *Illegal use of public funds or property*. — Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

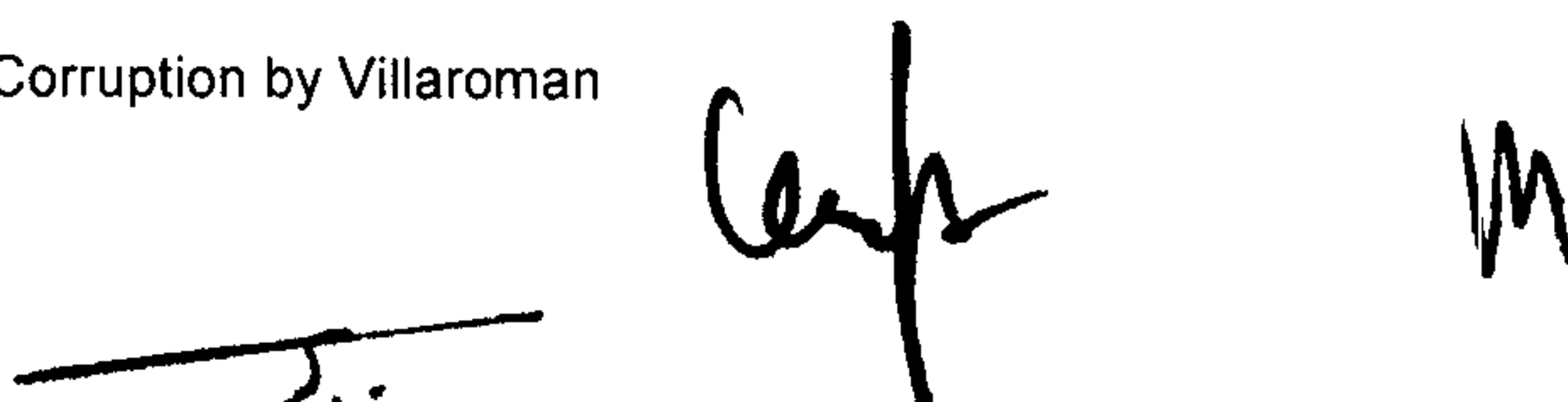
If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.”

The elements<sup>7</sup> of the crime are as follows:

<sup>5</sup> People v. Ferrer, 101 Phil. 234

<sup>6</sup> Lazarte v. Sandiganbayan, 581 SCRA 432

<sup>7</sup> p. 105, Laws and Jurisprudence on Graft and Corruption by Villaroman

The bottom of the page features three handwritten marks. On the left is a horizontal line with a small mark underneath. In the center is a large, stylized signature that appears to be 'Carp'. On the right is a smaller, blocky signature that appears to be 'M'.

1. The offender is any public officer who has any public funds or property under his administration;
2. He applies such public funds or property to some public use; and
3. The public use for which the public funds or property were applied is *different* from the public use for which they were originally appropriated by law or ordinance.

The **Information** dated June 7, 2017 reads:

“That on 1 July 2014, or sometime prior or subsequent thereto, in Guagua, Pampanga, Philippines and within the jurisdiction of this Honorable Court, accused **DANTE DATU TORRES**, a high-ranking public officer, being the Municipal Mayor of Guagua, Pampanga, who, in such capacity and by reason of his position and duties was accountable for public funds under his administration, did then and there willfully unlawfully and feloniously, without lawful authority, apply, use, disburse or cause the disbursement of the amount of TWO MILLION AND SEVEN HUNDRED SIXTY THOUSAND PESOS (Php2,760,000.00) for the payment of the expenses incurred in the Upgrading/Rehabilitation of the Manuel P. Santiago Park, a purpose other than that for which said fund was appropriated by law/ordinance, since the same amount was appropriated and intended for the Rehabilitation of Aurelio Tolentino Frontage Area, the Purchase of Refrigerator Van and the Purchase/Rehabilitation of the Heavy Equipment, to the damage and prejudice of public service.

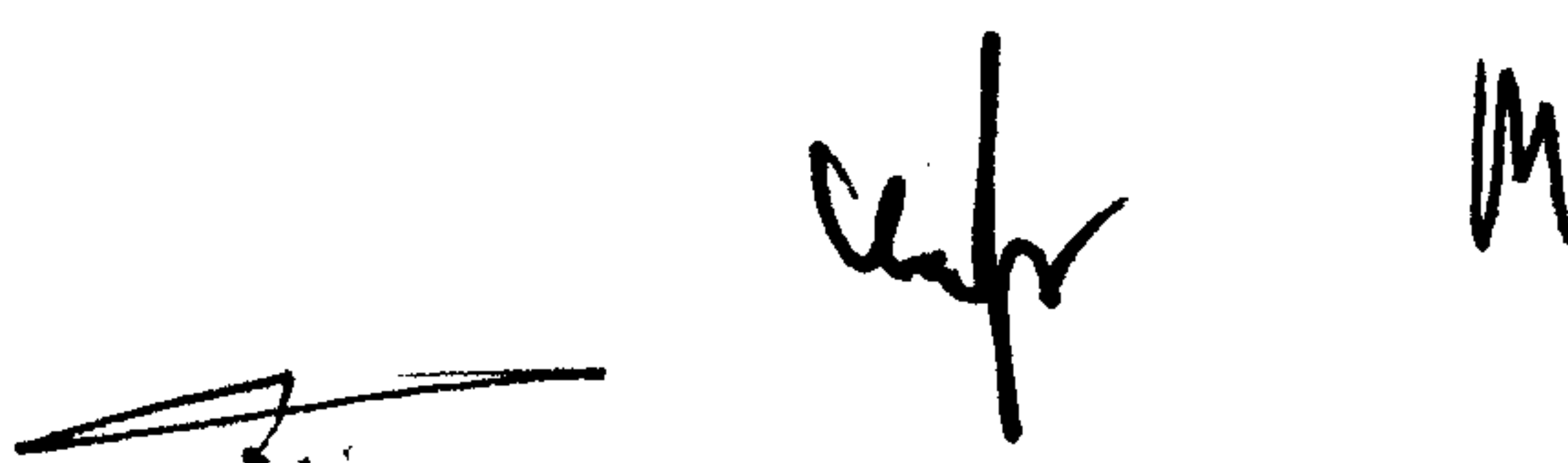
**CONTRARY TO LAW.”<sup>8</sup>**

The Court finds that the above-quoted averments in the **Information** are sufficient. They contain all the elements of **Violation of Article 220 of the Revised Penal Code**. The **Information** alleges facts and circumstances that necessarily constitute the offense charged.

Upon the other hand, facts which constitute the defense of accused Torres against the charge in the **Information** must be proved during the trial. They do not constitute proper grounds for a motion to quash the **Information**.<sup>9</sup>

<sup>8</sup> Record, p. 1

<sup>9</sup> Soriano v. People, 591 SCRA 257-258



WHEREFORE, premises considered, the ***Omnibus Motion To Quash Information and For Judicial Determination Of Probable Cause With Prayer To Defer Arraignment*** dated September 25, 2017, filed by accused Dante Datu Torres, through counsel, is hereby denied.

SO ORDERED.

  
OSCAR C. HERRERA, JR.  
Chairperson

*We concur:*

  
MICHAEL FREDERICK L. MUSNGI  
Associate Justice

  
LORIFEL L. PAHIMNA  
Associate Justice