



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

QUEZON CITY

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**Plaintiff,**

**- versus -**

**MARK DOUGLAS CHAN  
CAGAS IV, et al.**

**Accused.**

**Criminal Case Nos. SB-16-  
CRM-0183 to 0184 and SB-  
17-CRM-0642 to 0643**

*For: Violation of Section 3 (e) of  
Republic Act No. 3019*

**Criminal Case Nos. SB-16-  
CRM-0185 to 186 and SB-  
17-CRM-0645**

*For: Malversation of Public Funds*


**Criminal Case No. SB-17-  
CRM-0644**

*For: Malversation of Public Funds  
Through Falsification*

*Present:*


**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J. and**  
**PAHIMNA, J.<sup>1</sup>**

*Promulgated:*

*May 13, 2022* 

**X-----X**

<sup>1</sup> Sitting as a special member of the Third Division as per Administrative Order No. 096-2022 dated May 12, 2022.



**Decision**

Criminal Case Nos. SB-16-CRM-0183-0184 and SB-17-CRM-0642-0643; SB-16-CRM-0185-0186 and SB-17-CRM-0645; SB-17-CRM-0644

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## DECISION

### **CABOTAJE-TANG, P.J.:**

Accused Mark Douglas Chan Cagas IV is charged with violation of Section 3 (e) of Republic Act No. 3019 on four (4) counts, malversation of public funds on three (3) counts and malversation of public funds through falsification.

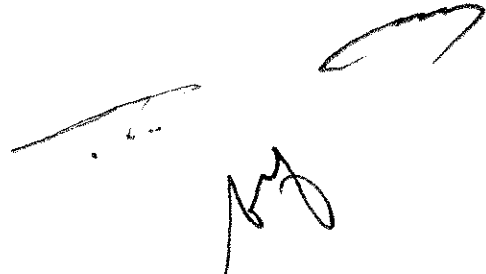
During his arraignment on January 26, 2018, accused Cagas entered a plea of “*Not Guilty*” to the *Informations* in all of the above-mentioned cases. Thereafter, the Court set the pre-trial of accused Cagas, Cunanan, Lacsamana and Espiritu on March 14, 2018.<sup>2</sup>

On May 19, 2021, accused Cagas filed a “*Consolidated Motion and Manifestation*” wherein he expressed his intention to enter into a plea-bargaining agreement with the prosecution. He also expressed his willingness to “*restitute the totality of the amounts alleged in the eight (8) [I]nformations or for a total amount of P12,950,000.00,*” to wit:

. . . .

9. Accused is offering to withdraw his pleas of not guilty to all charges filed against him in SB-16-CRM-0183 to 186 and SB-CRM-0642 to 0645, and to enter a plea of guilty to the lesser offense of Failure to Render Accounts under Article 218 of the Revised Penal Code in all eight (8) cases, and in addition accused will restitute not only the amounts of money stated in the criminal informations as allegedly received by him, but will restitute the totality of the amounts alleged in the eight (8) informations or for a total amount of P12,950,000.00. It is respectfully submitted that in all eight (8) criminal cases which the accused intends to be covered by a plea

<sup>2</sup> pp. 7-8, Vol. III, Record (SB-17-CRM-0642)



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bargaining agreement, the prosecution has not rested its case;<sup>3</sup>

Thus, the said accused prayed that [1] he be given time and opportunity to work out a mutually satisfactory disposition of the cases involved with the prosecution, [2] he be granted a period of thirty (30) days within which to apprise the Court of the result; and, [3] the proceedings in all eight (8) cases against him be suspended.<sup>4</sup>

In its *Resolution* promulgated on May 24, 2021, the Court gave the prosecution a period of ten (10) days from notice within which to file its comment/opposition to the “*Consolidated Motion and Manifestation*” filed by accused Cagas.<sup>5</sup>

On May 31, 2021, the prosecution manifested, among other things, that it does not interpose any objection to the *motion* of accused Cagas to suspend the proceedings in these cases to afford the parties the opportunity to work out a mutually satisfactory disposition of these cases.<sup>6</sup>

Accordingly, in its *Resolution* promulgated on June 16, 2021, the Court granted and noted the *Consolidated Motion* filed by accused Cagas. Thus, the Court suspended the proceedings in these cases pending the conduct of the said plea-bargaining negotiations.<sup>7</sup>

On March 1, 2022, accused Cagas and the prosecution filed a “*Joint Motion to Approve Attached Plea-Bargaining Agreement (together with the attached Plea-Bargaining Agreement)*.” The pertinent portions of the said *Agreement* read:

...

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<sup>3</sup> p. 172, Vol. X, Record

<sup>4</sup> p. 173, *Id*

<sup>5</sup> p. 176, *Id*

<sup>6</sup> p. 180, *Id*

<sup>7</sup> p. 215, *Id*

Handwritten signatures and initials in black ink, including a large signature and several smaller initials or marks.

**Decision**

Criminal Case Nos. SB-16-CRM-0183-0184 and SB-17-CRM-0642-0643; SB-16-CRM-0185-0186 and SB-17-CRM-0645; SB-17-CRM-0644

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5. The Office of the Special Prosecutor of the Office of the Ombudsman, as the office constitutionally mandated to prosecute the instant cases, and finding that:

. . .

hereby interposes NO OBJECTION and CONSENTS to the accused's entering a plea of guilty to:

- i. The lesser offense of **Frauds Against Public Treasury** under paragraph 1, Article 213 of the Revised Penal Code in **SB-16-CRM-0183** with the penalty of fine, subject to the sound discretion of the Honorable Court to impose the penalty it may deem proper and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;
- ii. The lesser offense of **Frauds Against Public Treasury** under paragraph 1, Article 213 of the Revised Penal Code in **SB-16-CRM-0184** with the penalty of fine, subject to the sound discretion of the Honorable Court to impose the penalty it may deem proper and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;
- iii. The lesser offense of **Failure of Accountable Officer to Render Accounts** under Article 218 of the Revised Penal Code in **SB-16-CRM-0185** and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;
- iv. The lesser offense of **Failure of Accountable Officer to Render Accounts** under Article 218 of the Revised Penal Code in **SB-16-CRM-0186** and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;



**Decision**


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and SB-17-CRM-0645; SB-17-CRM-0644

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- v. The lesser offense of **Frauds Against Public Treasury** under paragraph 1, Article 213 of the Revised Penal Code in **SB-17-CRM-0642** with the penalty of fine, subject to the sound discretion of the Honorable Court to impose the penalty it may deem proper and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;
- vi. The lesser offense of **Frauds Against Public Treasury** under paragraph 1, Article 213 of the Revised Penal Code in **SB-17-CRM-0643** with the penalty of fine, subject to the sound discretion of the Honorable Court to impose the penalty it may deem proper and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;
- vii. The lesser offense of **Falsification** under Article 172 (par. 2) of the Revised Penal Code in **SB-17-CRM-0644**, subject to the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;
- viii. The lesser offense of **Failure of Accountable Officer to Render Accounts** under Article 218 of the Revised Penal Code in **SB-17-CRM-0645** and to consider the absence of any aggravating circumstance and the presence of the mitigating circumstances of voluntary surrender and full restitution;

provided that accused Cagas IV shall fully retribute first the amounts alleged in the *Informations* in SB-16-CRM-0183 to 0185 and SB-17-CRM-0642 to 0645 totaling to **Php12,950,000.00** by paying the said amount to the cashier of the Sandiganbayan either in cash or Manager's Check payable to the Sandiganbayan and submit proof of payment to the Honorable Court before he shall be allowed to withdraw his earlier pleas of not guilty and



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enter anew a plea of guilty to the above-mentioned lesser offenses.

. . . .

7. It is understood that should a penalty of imprisonment be imposed in **SB-16-CRM-0183 to SB-16-CRM-0184 and SB-17-CRM-0642 to SB-17-CRM-0645**, the same shall be without prejudice to the right of the accused, after he has been convicted and sentenced by this Honorable Court, to pray for the suspension of the execution of his sentence and to be placed under probation under Presidential Decree No. 968, or the Probation Law of 1976, as amended, and other existing laws and regulations on the matter, to which the prosecution offers no objection.

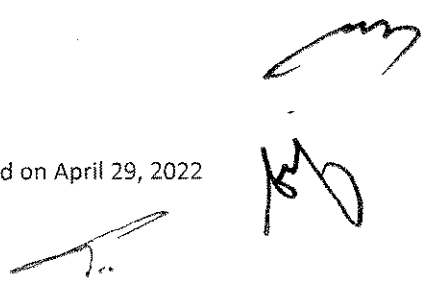
In its *Resolution* promulgated on March 29, 2022, the Court found the aforesaid “*Joint Motion to Approve Attached Plea-Bargaining Agreement (together with the attached Plea-Bargaining Agreement)*” meritorious. Nevertheless, the Court held in abeyance its approval because of the condition imposed by the prosecution therein, *i.e.*, **that accused Cagas IV retribute the amount of Twelve Million Nine Hundred Fifty Thousand Pesos (Php12,950,000.00) as full restitution of the amounts alleged in the Informations in SB-16-CRM-0183 to 0186 and SB-17-CRM-0642 to 0645.** Thus, the Court directed accused Cagas to retribute the said amount to be paid to the Court within five (5) days from notice of the said *Resolution*.<sup>8</sup>

On April 4, 2022, accused Cagas filed a “*Compliance/Manifestation*,” attaching therewith a certified true copy of Official Receipt No. 9700057 dated April 1, 2022, evidencing payment of the amount of Twelve Million Nine Hundred Fifty Thousand Pesos (Php12,950,000.00).<sup>9</sup>

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<sup>8</sup> pp. 317-327, Vol. XI, Record; Resolution promulgated on April 29, 2022

<sup>9</sup> pp. 338-340, *Id*



**Decision**

Criminal Case Nos. SB-16-CRM-0183-0184 and SB-17-CRM-0642-0643; SB-16-CRM-0185-0186 and SB-17-CRM-0645; SB-17-CRM-0644



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In its *Resolution* promulgated on April 29, 2022, the Court noted the *Compliance/Manifestation* filed by accused Cagas. Accordingly, the Court **approved** the same "*Joint Motion to Approve Attached Plea-Bargaining Agreement (together with the attached Plea-Bargaining Agreement)*," and set the re-arraignment of the said accused in these cases today.

In today's scheduled re-arraignment, accused Cagas, duly assisted by his counsel, pleaded *GUILTY* to the following lesser offenses:

1. *Frauds against public treasury* under paragraph 1, Article 213 of the Revised Penal Code in Criminal Case No. SB-16-CRM-0183;
2. *Frauds against public treasury* under paragraph 1, Article 213 of the Revised Penal Code in Criminal Case No. SB-16-CRM-0184;
3. *Failure of accountable officer to render accounts* under Article 218 of the Revised Penal Code in Criminal Case No. SB-16-CRM-0185;
4. *Failure of accountable officer to render accounts* under Article 218 of the Revised Penal Code in Criminal Case No. SB-16-CRM-0186;
5. *Frauds against public treasury* under paragraph 1, Article 213 of the Revised Penal Code in Criminal Case No. SB-17-CRM-0642;
6. *Frauds against public treasury* under paragraph 1, Article 213 of the Revised Penal Code in Criminal Case No. SB-17-CRM-0643;
7. *Falsification* under Article 172 (2) of the Revised Penal Code in Criminal Case No. SB-17-CRM-0644; and,
8. *Failure of Accountable Officer to render accounts* under Article 218 of the Revised Penal Code in Criminal Case No. SB-17-CRM-0645.

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Criminal Case Nos. SB-16-CRM-0183-0184 and SB-17-CRM-0642-0643; SB-16-CRM-0185-0186 and SB-17-CRM-0645; SB-17-CRM-0644

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On the propriety of appreciating the mitigating circumstance of full restitution of the amount involved in these cases as mentioned in the subject Plea-Bargaining Agreement, it must be underscored that in the case of **Duque v. Veloso**,<sup>10</sup> the Supreme Court rejected as mitigating circumstance the respondent's admission of culpability and the restitution of the amount involved based on the following grounds, namely: [1] *the respondent made use of the complainant's money in 2001 while the restitution was made only in 2003, during the pendency of the administrative case against him;* [2] *the restitution was half-hearted and was certainly neither purely voluntary nor made because of the exercise of good conscience; it was triggered, more than anything else, by his fear of possible administrative penalties;* [3] *the admission of guilt and restitution effected were clearly mere afterthoughts made two (2) years after the commission of the offense and after the administrative complaint against him was filed.*

Applying the aforesaid ruling of the Supreme Court to these cases, the Court holds that the *restitution* of the subject amount in these cases cannot be appreciated to mitigate the criminal liability of accused Cagas because just like the respondent in **Duque**, the said accused's restitution was a mere afterthought made fourteen (14) years after the commission of the offense. In fact, it was a pre-condition imposed by the prosecution to stamp its imprimatur to the Plea-Bargaining Agreement in these cases. **Thus, the restitution of the amount of Php12,950,000.00 by accused Cagas was not purely voluntary or in the exercise of his good conscience.**

Considering the plea of GUILTY of accused Mark Douglas Chan Cagas IV, judgment is hereby rendered as follows:

1. In **Criminal Cases Nos. SB-16-CRM-0183 to 0184, SB-17-CRM-0642 to 0643**, accused Cagas is hereby found **GUILTY** of *Frauds Against Public Treasury*, defined and penalized under paragraph 1, Article 213 of the Revised Penal Code. Accordingly, he is sentenced to pay a **FINE of Ten Thousand Pesos (Php10,000.00) in each case, or a total of**

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<sup>10</sup> 673 SCRA 676 (2012)





**Decision**

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**forty thousand pesos (Php40,000.00)**, with subsidiary imprisonment in case of insolvency, to be paid to the Court within ten (10) days from today;

2. In **Criminal Cases Nos. SB-16-CRM-185 to 186, and SB-17-CRM-0645**, accused Cagas is hereby found **GUILTY** of *Failure of Accountable Officer to Render Accounts*, defined and penalized under Article 218 of the Revised Penal Code. Accordingly, he is sentenced to pay a **FINE of Six Thousand Pesos (Php6,000.00) in each case, or a total of eighteen thousand pesos (Php18,000.00)**, with subsidiary imprisonment in case of insolvency, to be paid to the Court within ten (10) days from today; and,

3. In **Criminal Case No. SB-17-CRM-0644**, accused Cagas is hereby found **GUILTY** of *Falsification*, defined and penalized under Article 172 (2) of the Revised Penal Code. Appreciating in his favor the mitigating circumstance of voluntary surrender, he is accordingly sentenced to suffer the **indeterminate penalty of four (4) months and one (1) day of arresto mayor in its maximum period to prision correccional in its minimum period, as minimum, to two (2) years and four (4) months of prision correccional in its medium and maximum period, as maximum, and to pay a FINE of Five Thousand Pesos (Php5,000.00)**, with subsidiary imprisonment in case of insolvency, to be paid to the Court within ten (10) days from today.

**SO ORDERED.**

Given in open Court, Quezon City, May 13, 2022

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

  
**BERNELITO R. FERNANDEZ**

Associate Justice

  
**LORIFEL L. PAHIMNA**

Associate Justice

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**ATTESTATION**

I attest that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice

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