



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Case No.

SB-15-CRM-0130

For: Violation of Sec. 3
(e) of R. A. 3019, as
amended

Crim. Case No.

SB-15-CRM-0131

For: Malversation of
Public Funds

ANGEL VIRAY PELIGLORIO, JR.
and CEDRIC CUA LEE,
Accused.

X-----X

Present:

CABOTAJE-TANG, A.M.,
P.J./Chairperson

FERNANDEZ, B. R., J. &
MORENO, R. B., J.

Promulgated:

June 3, 2022 *jb*

X-----X

D E C I S I O N

FERNANDEZ, B. R., J.

Accused Angel Viray Peliglorio, Jr. and accused Cedric Cua Lee stand charged before this Court for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and

for malversation, defined and penalized under Article 217 of the Revised Penal Code, as amended.

The accusatory portions of the Informations successively read, as follows - -

Criminal Case No. SB-15-CRM-0130

On 27 March 2005, or thereabout, in Mariveles, Bataan, and within this Honorable Court's jurisdiction, above-named accused ANGEL V. PELIGLORIO, JR., a high-ranking public officer, being then the Municipal Mayor (SG 27) of Mariveles, Bataan, while in the performance of his official functions, conspiring with CEDRIC C. LEE, President and Chief Executive Officer of Izumo Contractors, Inc., acting with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the Municipality of Mariveles, Bataan, in the amount of Php14,056,084.43, more or less, by authorizing the release of the said Municipality's bank loan proceeds to accused LEE's Izumo Contractors, Inc., upon LEE's request, even without procedural safeguards, guarantee of performance, and in violation of Commission on Audit rules, as advance payment for the construction of the Mariveles Public Market, which construction never commenced; the amount of Php14,056,084.43 was thereafter debited from the Municipality's Internal Revenue Allotment account, in payment of the said loan.

CONTRARY TO LAW.

Criminal Case No. SB-15-CRM-0131

On 27 March 2005, or thereabout, in Mariveles, Bataan, and within this Honorable Court's jurisdiction, above-named accused ANGEL V. PELIGLORIO, JR., a high-ranking public officer, being then the Municipal Mayor (SG 27) of Mariveles, Bataan, and as such has custody and control over public funds by reason of his office and for which he is accountable, while in the



performance of his official functions, conspiring with CEDRIC C. LEE, President and Chief Executive Officer of Izumo Contractors, Inc. did then and there willfully, unlawfully, and feloniously consent to, or permit, the taking by accused LEE of said public funds in the amount of Php23,470,500.00 by authorizing the release of the said funds representing the Municipality's bank loan proceeds, to accused LEE's Izumo Contractors, Inc., upon LEE's request, without procedural safeguards, guarantee or performance, and in violation of Commission on Audit rules, as advance payment for the construction of the Mariveles Public Market, which construction never commenced.

CONTRARY TO LAW.

Initially, the Informations were amended to reflect the middle names of accused Peliglorio Jr. as "Viray" (Order, August 27, 2015) and accused Lee as "Cua" (Order, April 4, 2016).

Thereafter, both accused, assisted by their respective counsels, pleaded not guilty to both charges (Orders, August 27, 2015; April 4, 2016).

During the pre-trial, the parties agreed to stipulate on the following - -

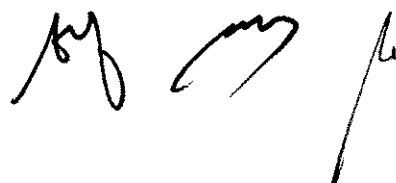
With accused Angel V. Peliglorio, Jr. - -

(1) That at all times relevant to the above-entitled cases, accused Angel V. Peliglorio, Jr. (Peliglorio, Jr.) is a public officer being the Mayor of the Municipality of Mariveles;

(2) That accused Peliglorio, Jr. admits his personal identity in the Information filed in criminal cases SB-15-CRM-0130-0131;

(3) That on March 22, 2007, the Municipality of Mariveles through accused Peliglorio, Jr. contracted a loan with the Union Bank of the Philippines in the amount of P120,000,000.00;

(4) The Landbank of the Philippines was designated as the trustee of the loan proceeds amounting to P120,000,000.00



With accused Cedric C. Lee - -

(1) That accused Cedric Lee admits his personal identity in the Information filed in criminal cases SB-15-CRM-0130-0131.

(2) That Izumo Contractors, Inc. entered into a contract with the Municipality of Mariveles to construct the Mariveles Public Market/Arcade;

(3) That on March 29, 2007, the Landbank of the Philippines released the requested amount of P 23,470,500 to Izumo Contractors, Inc. (Amended Pre-Trial Order, January 31, 2017).

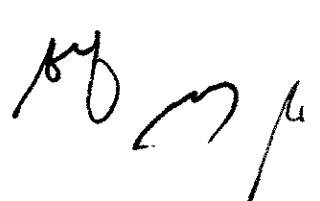
Trial ensued.

The prosecution presented **Jesse I. Concepcion**, the Mayor of the Municipality of Mariveles, Bataan (Mariveles) from July 2007 to June 30, 2016.

Witness Concepcion testified that, as part of his duties, he filed a Complaint-Affidavit dated October 21, 2009 (Exh. "A") before the Office of the Ombudsman against both accused.

This Complaint stems from a P120 million loan secured by accused Peliglorio, Jr., on behalf of Mariveles, with the Union Bank of the Philippines (Union Bank) and, the subsequent release of the amount of P23,470,500.00 to Izumo Contractors, Inc. (Izumo), despite the latter not having commenced the construction of the Mariveles Public Market project (Project). Also, for the deductions from the Internal Revenue Allotment (IRA) of Mariveles amounting to P14,056,084.43.

Attached to the said Complaint-Affidavit (Exh. "A") and identified by witness Concepcion are the following: (1) a certified true copy of a Trust Agreement dated March 22, 2007 (Exhs. "E" - "E-28") between Mariveles, the Landbank of the Philippines (Landbank) and Union Bank, concerning a P120 million loan; (2) a photocopy of a Loan Agreement executed on March 22, 2007 (Exh. "B") between Mariveles and Union Bank in the amount of P120 million; (3) a Deed of Undertaking to Mortgage executed on March 22, 2007 (Exh. "C") between Mariveles and Union Bank in the amount of P120 million; (4) a Deed of Assignment of Rental Income



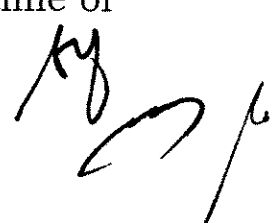
executed on March 22, 2007 (Exh. "D") between Mariveles and Union Bank in the amount of P120 million; (5) a certified true copy of a Deed of Assignment of Deposit of Internal Revenue Allotment (IRA) dated March 22, 2007 (Exhs. "F" to "F-6") between Mariveles and Landbank concerning the P120 million; (6) a certified true copy of a Letter dated March 26, 2007 (Exh. "G") from accused Lee to accused Peliglorio, Jr.; (7) a Certification dated January 10, 2008 (Exh. "K") from Emilio Cabigao, Department Manager of Landbank; and (8) a certified true copy of a Certification dated January 8, 2008 (Exh. "M") from Onofre Dioco of the Office of the Municipal Treasurer of Mariveles.

Witness Concepcion further testified that he learned of the said P120 million loan from Onofre Dioco, the Mariveles Municipal Treasurer, who issued a Certification dated January 8, 2008 (Exh. "M") indicating that no proceeds were received by Mariveles.

He also learned from Municipal Treasurer Dioco that the amount of P14,056,084.43 was deducted from the IRA of Mariveles from May to December 2007, as confirmed by a Certification dated January 10, 2008 (Exh. "K") issued by Emilio Cabigao, the Branch Manager of Landbank, Mariveles. He further secured a Deed of Assignment of Deposit of IRA dated March 22, 2007 (Exhs. "F" to "F-6") entered into by accused Peliglorio, Jr. with Landbank, relative to the said deducted IRA from the records of a civil case before the Regional Trial Court of Bataan seeking the nullification of the same P120 million loan.

Additionally, witness Concepcion, in his Complaint-Affidavit, stated that the release of the amount of P23,470,500.00 was authorized by accused Peliglorio, Jr. In support of this, he attached and identified the following documents: (1) a certified true copy of the Letter-request dated March 26, 2007 (Exh. "G") from accused Lee to accused Peliglorio, Jr. for the release of P23,470,500.00; (2) a certified true copy of the Authorization Letter dated March 27, 2007 (Exh. "H") issued by accused Peliglorio, Jr. to Landbank for the release of P23,470,500.00; and, (3) a certified true copy of a Letter dated March 28, 2007 (Exh. "NN") addressed to Landbank from Izumo Contractors, Inc.

He also knew that the construction of the Project never started from the time of his site inspection up to the time of



his testimony. He added that the amount of P23,470,500.00 released to Izumo was never returned by accused Lee. Neither was the amount of P14,056,084.43 deducted from the IRA of Mariveles returned by Land Bank.

When cross-examined, witness Concepcion testified that he, as the then Mariveles Vice-Mayor, was aware of the Loan Agreement dated March 22, 2007 (Exh. "B") and the Trust Agreement dated March 22, 2007 (Exh. "E") entered into by Mariveles with Union Bank and Landbank, respectively. He added that he opposed the said Loan Agreement and even as Mayor, together with Gov. Enrique Garcia, wrote Union Bank requesting to suspend the loan.

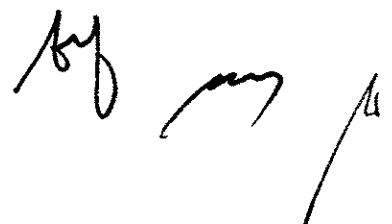
Although he filed a civil case against Landbank and Union Bank to have the said Agreements nullified, the parties, however, entered into a Compromise Agreement dated September 2, 2009 (Exh. "25-Peliglorio"), thus, withdrawing the inclusion of the Bank officials from his Complaint. He further testified that the 2007 Mariveles budget already included the amount of P120 million but this did not indicate that Mariveles will borrow the same amount.

On re-direct examination, witness Concepcion testified that he wanted to stop the deductions from the IRA of Mariveles and that he was forced to enter into the Compromise Agreement. While on re-cross examination, he reiterated that the coffers of Mariveles were drained by the former administration and that Mariveles had to borrow money from the Office of the Governor.

Witness Concepcion likewise affirmed that, after entering into the Compromise Agreement dated September 2, 2009 (Exh. "25-Peliglorio"), he secured a P185 million loan and that, on April 13, 2009, the Mariveles *Sangguniang Bayan* passed Resolution No. 046-2009 authorizing him to secure a P200 million loan.

When queried by the Court, witness Concepcion explained that, before the Compromise Agreement, the deductions from the IRA of Mariveles were more than P14 million out of P23 million.

The second prosecution witness was **Danilo Bautista Cejalvo**, the Municipal Accountant of Mariveles.

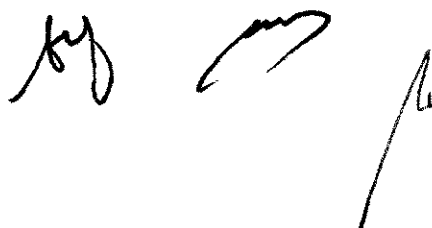


His testimony was dispensed with after both parties agreed to stipulate on the following: (1) That since April 2008, the witness is the Municipal Accountant of the Municipality of Mariveles and, as such, is the custodian of the Financial Records, Books of Accounts and other documents in the Office of the Municipal Accountant; (2) That in the course of the performance of his official duties, he issued certified documents marked as Exhibits "U", "V", "W", "X", "Y", "Z", "AA", "BB", and "CC", which are faithful reproductions of photocopied documents in his custody pursuant to the subpoena by the Office of the Special Prosecutor; (3) That he could identify the signatures appearing on said documents as his signature; and, (4) That, in the course of the discharge of his official functions, he likewise submitted to the Office of the Special Prosecutor certified true copies of Landbank Bank Statements marked as Exhibits. "S to S-12", "R to R-7" and "T to T-3" (Order, May 24, 2017).

The third prosecution witness was **Lamelita Aquino**, the former Asst. Vice President and Head, Trust Operations of Landbank, having retired therefrom on October 16, 2016.

She testified that she had direct supervision over her Department including maintaining and keeping financial records of their clients and safekeeping documents of the assets of Landbank Trust.

After receiving a subpoena from the Office of the Ombudsman in September 2015, witness Aquino retrieved the requested documents and certified them as "true copies". She thereafter submitted and identified the documents, as follows - - (1) the Trust Agreement dated March 22, 2007 (Exh. "E"); (2) the Deed of Assignment of Deposit of Internal Revenue Allotment dated March 22, 2007 (Exhs. "F" to "F-6"); (3) a Letter dated March 27, 2007 (Exhs. "H" and "H-3") of accused Peliglorio, Jr. to Land Bank (Attn: Mr. Eduardo B. Chavez, Vice-President, Trust Officer, Trust Banking Group); (4) a Landbank Fund Transfer for Izumo Contractors, Inc. in the amount of P19,442,267.48 (Exhs. "I" and "I-1"); and, (5) a Fund Transfer dated March 29, 2007 from Landbank in the amount of P1,033,781.25 (Exhs. "J" and "J-1"). She added that all the originals of the submitted documents are in the possession and custody of the Trust Operations Department of Landbank.



Prosecution witness Aquino likewise identified a certified true copy of a Letter dated March 28, 2009 (Exh. "OO") addressed to Landbank, *Attention: Mr. Eduardo B. Chavez* from Cedric Lee, President, CEO. She also identified a Letter dated March 28, 2007 addressed to the Landbank of the Philippines, *Attention: Mr. Eduardo B. Chavez* from Cedric Lee, President, CEO with an attached Summary of Account (Exh. "NN"). The latter Letter contained the details for the withdrawal which was used as the basis of Landbank to credit the municipality's account as mobilization cost payment for the finance charges to Union Bank and to the BIR.

She admitted approving the Landbank Fund Transfer dated March 29, 2007 (Exh. "J") in the amount of P1,033,781.25 based on two (2) Letters from accused Peliglorio, Jr. and accused Lee. This amount was for the payment to the BIR, hence, debited from the trust account of Mariveles while the fund transfer of P19,442,267.48 was also debited from the trust account of Mariveles for the payment to Izumo.

When cross examined, witness Aquino denied any participation in the Trust Agreement (Exhs. "E" to "E-28") entered into with Mariveles. Neither did she read the contents of this Agreement, as her role was only limited to accepting and safekeeping the same document for the Landbank Trust Marketing Department.

She added that, aside from receiving two (2) Letters respectively dated March 28, 2007 (Exhs. "NN"; "OO") from accused Lee with attachments, indicating the amount due him and a Letter from accused Peliglorio, Jr. dated March 22, 2007 (Exh. "H"), her Department also received a Trust Banking Group Inter-Department Instruction Sheet containing her signature and that of accused Peliglorio, Jr. and two (2) Union Bank officers.

Witness Aquino further testified that, although required by the Trust Agreement dated March 22, 2007 (Exhs. "E" to "E-28"; Exh. "4-Peliglorio"), there was no written confirmation from a works engineer and that she was unaware of any monitoring board.

She also reiterated that she authorized three (3) fund transfers in the total amount of over P20 million. Of these fund transfers, only the amount of P19,442,267.48 was paid

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to Izumo. She likewise insists that the fund transfers were based on their Bank procedures as provided for in their Manual of Operations and that the Trust Operations Department only implements financial transactions, as instructed.

The next prosecution witness was **Emilio Cabigao**, the Branch Manager of Landbank, Mariveles, Bataan in 2008. He is tasked to manage branch operations, solicit new deposit accounts, maintain existing accounts, and ensure the increase of placements from clients.

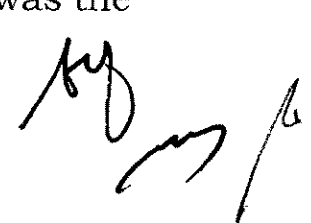
He identified his Landbank Certification dated January 10, 2008 (Exhs. "K" and "K-1"), issued, upon the request of the authorized signatories of Mariveles, reflecting the total amount of P14,056,084.43 deducted from the account of Mariveles covering a series of debits using Debit Advices (Exh. "U", V, "W", "X" and "Y") with different dates and amounts.

The certified true copies of these Debit Advices were identified as follows: (1) Landbank Debit Advice dated June 8, 2007 (Exh. "W") in the amount of P2,448,438.00; (2) Landbank Debit Advice dated June 27, 2007 (Exh. "X") in the amount of P403,719.48; (3) Landbank Debit Advice dated June 28, 2007 (Exh. "Y") in the amount of P18,516.27; and, (4) Landbank Debit Advice dated May 24, 2007 (Exh. "U") in the amount of P4,415,373.91 and (5) Landbank Debit Advice dated May 24, 2007 in the amount of P1, 270,036.68 (Exh. "V").

On cross-examination, witness Cabigao testified that he only approved the Debit Advices and neither knew the specific transactions referred therein nor the contract entered into by Mariveles and the Landbank Treasury Operations Group.

He further testified that the electronically mailed (e-mail) instructions to debit from accounts came from the Landbank head office, through its Trust Operations Group. Once this email instruction was received by the Landbank, Mariveles branch, witness Cabigao instructed Josephine Alanis, the former cashier of the Mariveles branch and co-signatory to documents, to confirm the same.

Justino P. Zamora was the next prosecution witness. His testimony was dispensed with after both parties agreed to stipulate on the following - - (1) That witness Zamora was the



Branch Manager of Landbank of the Philippines, Mariveles, Bataan from the period January 1, 2015 to June 30, 2016; (2) That in the course of the performance of his duties, he issued certified true copies of Bank Statements marked as Exhibits "R" to "R-7", "S" to "S-12" and "T" to "T-3", which were printouts of the Bank Statements of the Landbank of the Philippines, Mariveles, Branch, over which he exercises supervision and custodianship; and, (3) That he could identify his signature appearing on the Certification dated September 21, 2015, pursuant to the subpoena of the Office of the Special Prosecutor, certifying that the Certification dated January 10, 2008 issued by the Landbank of the Philippines Department Manager Emilio Cabigao is no longer available because it was already disposed and that he could identify his signature appearing in Exhibit "L" of the prosecution (Order, July 25, 2017).

Thereafter, prosecution witness **Analiza M. Vasco** was called to the stand. She testified that, in 2016, she was the Asst. Vice President/OIC of the Trust Operations Department of the Landbank Trust Banking Group. Her duties and responsibilities include having custody of documents and certifying to the same, when requested by proper authorities, and processing requests for fund transfer.

She recalls retrieving certain documents requested by the Office of the Special Prosecutor through a subpoena. After photocopying these documents and comparing them with the originals, she certified them as true copies of the originals.

These documents are as follows- - (1) a two-page Letter dated March 28, 2007 (Exh. "NN") from accused Lee of Izumo Contractors Inc. (Izumo) to Landbank, *Attention: Mr. Eduardo Chavez*; (2) a Letter dated March 28, 2007 (Exh. "OO") from accused Lee of Izumo addressed to Landbank with Subject: Proposed New Mariveles Public Market; (3) a certified true copy of Official Receipt No. 00505 dated March 29, 2007 (Exh. "PP") from Izumo; (4) a certified true copy of an Application for Manager's Check, Demand Draft, Electronic Money Transfer, Traveler's Check, Gift Check dated March 28, 2007 from Landbank (Exh. "QQ"); and, (5) the Transaction Reference dated March 28, 2007 of Landbank (Exh. "RR").



She, however, testified that the originals of these documents are now in the vault of the Trust Operations Department of Landbank.

When cross-examined, witness Vasco, although confirming her personal knowledge of the documents (i.e. Electronic Fund Transfer, Application for Manager's Check, Demand Draft Electronic Money Transfer) testified that she did not know what these documents represent or what transpired between Mariveles and Landbank.

The next prosecution witness was **Sherly A. Gallardo**.

The prosecution offered the following matters for stipulation to the defense counsel- - (1) That witness is an employee of Land Bank of the Philippines since March 1991 and the Branch Manager of Bataan Landbank of the Philippines since October 2016; (2) That in the course of the performance of her duties, she received a subpoena from the Office of the Special Prosecutor requiring her to submit certified true copies of Debit Advices marked as Exhs. "U", "V", "W", "X", "Y" and other Landbank documents marked as Exhs. "Z", "AA", "BB" and "CC"; (3) That part of her duties as Branch Manager of Landbank, Mariveles are custodianship of the bank documents and issuance of certifications; (4) That in response to the subpoena she received from the Office of the Special Prosecutor, she issued a Notarized Certification subscribed on August 8, 2017 with the attached documents described as follows: Landbank of the Philippines Letter dated April 25, 2007 addressed to the Municipal Government of Mariveles, Attn: Hon. Angel V. Peliglorio, Jr. Debit Advice dated May 24, 2007 in the amount of Php 4, 415, 373.91, Debit Advice dated May 24, 2007 in the amount of Php 1, 217, 036.68, Debit Advice dated June 8, 2007 in the amount of Php 2,448,438.09, Debit Advice dated June 27, 2007 in the amount of P403,719.48, Debit Advice dated June 28, 2007 in the amount of Php 18, 516.27, Memorandum dated December 12, 2007, and Letter dated December 12, 2007 addressed to the Municipality of Mariveles, Attn : Hon. Jesse Concepcion, Municipal Mayor; (5) That the witness issued a Certification and subscribed on August 8, 2017 pursuant to the subpoena issued by the Office of the Special Prosecutor, stating that despite diligent efforts, the original copies of said documents no longer exists; and, (6) That the witness could identify her signature in the Certification marked as Exhibit "TT".



The prosecution marked the subpoena issued by the Office of the Special Prosecutor and the certification issued by the witness as Exhibits SS and TT respectively. (Order, 24 August 2017).

After the defense admitted the said matters, it proceeded to cross-examine witness Gallardo.

Upon cross examination, witness Gallardo clarified that she issued a Certification dated August 8, 2017 (Exh. "TT") not on July 26, 2017, pertaining to the 2007 Debit Advices, when she was not yet the Branch manager.

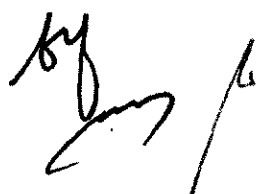
When queried by the Court, witness Gallardo testified that the documents attached to her Certification were all photocopies from the files of the Branch.

Thereafter, the prosecution informed the Court that it intended to present **Atty. Daniel Gabuyo** of the Securities and Exchange Commission (SEC). It manifested that, if presented, Atty. Gabuyo will testify that his Office is the official custodian of the Certificate of Incorporation, Articles of Incorporation and the Certificate of Amended Articles of Incorporation, all of Izumo Contractors, Inc.

For his part, accused Lee admitted the authenticity and due execution of the cited documents while accused Peliglorio, Jr. manifested that, should Atty. Gabuyo testify, he will not cross-examine said witness.

With these manifestations and stipulations from the parties, the prosecution dispensed presenting Atty. Gabuyo (Order, October 18, 2017).

The testimony of prosecution witness, **Felicidad I. Cruz**, was likewise dispensed with after both parties agreed to stipulate on the following - - (1) the witness is the Officer-In-Charge of the Office of the Municipal Treasurer at the Municipality of Mariveles, Bataan since March 3, 2015; (2) as such, she has custody of the original copy of the Certification dated January 8, 2008, marked as Exhibit "M" for the prosecution; (3) in the course of the performance of her duties, she issued a certified true copy of the Certification dated January 8, 2008, marked as Exhibit "M" for the prosecution,; and, (4) she could identify her signature on top of the name of Felicidad Cruz appearing on the Certification



dated January 8, 2008, marked as Exhibit "M" for the prosecution (Order, October 19, 2017).

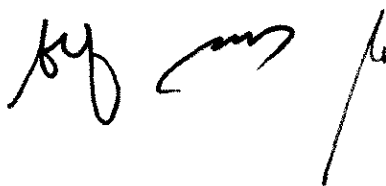
Similarly, the testimony of the next prosecution witness, **Atty. Minerva A. Jimenez-Ines**, was also dispensed with after the following stipulations were agreed upon by both parties, namely - - (1) the witness is the Clerk of Court of Branch 4 of the Regional Trial Court in Balanga, Bataan since July 2015; (2) she has custody of a copy of the Letter dated March 26, 2007, marked as Exhibit "G" for the prosecution; (3) in the course of the performance of her duties, she issued a certified photocopy of a letter dated March 26, 2007 marked as Exhibit "G" for the prosecution, which is a faithful reproduction from a photocopy in her custody; and, (4) she could identify her signature appearing on the letter dated March 26, 2007, marked as Annex G for the prosecution (Order, October 19, 2017).

Thereafter, prosecution witness **Onofre B. Diuco**, the Municipal Treasurer of Mariveles, Bataan from 2007 to March 2, 2015, was called to testify.

Testifying on direct examination through his sworn Judicial Affidavit dated October 13, 2017 (Exh. "UU"), witness Diuco, after enumerating his duties, recalled issuing a Certification dated January 8, 2008 (Exhs. "M" and "M-1"), indicating that his Office did not receive the proceeds of the P120 million loan secured by Mariveles from Union Bank. He added that his Office retained the duplicate original of the said Certification while the original was given to Mayor Jesse Concepcion.

Witness Diuco knew of the P120 million loan because his Office prepared the loan requirements needed by Union Bank. However, the proceeds therefrom were not credited to the account of Mariveles because his Office did not receive a credit advice from the Landbank, Mariveles branch

When cross-examined, witness Diuco testified that he became aware that deductions from the IRA of Mariveles were already made by Landbank when the checks issued by Mariveles were dishonored. He was also informed by the Branch Manager of Landbank Mariveles that the deductions started and released to accused Lee. However, he (witness Diuco) was not informed of the particular transaction covered by the deductions.



He reiterated that he was unaware of the Trust Agreement entered into by Union Bank, Landbank and Mariveles or that Mayor Jesse Concepcion subsequently entered into a Compromise Agreement with Union Bank. Neither did the Debit Advices specify for what loan was the deductions for.

The next prosecution witness was **Dianne S. Magboo**, the Acting Department Manager, Trust Operations Department (TOD) of Landbank.

Testifying on direct examination through her sworn Judicial Affidavit dated November 6, 2017 (Exh. "VV"), witness Magboo testified that, aside from supervising the TOD, she also approves transactions therefrom and is the overall custodian of the trust records or transaction documents and certifies them when requested by proper authorities or parties.

She recalled having certified documents pursuant to a subpoena from the Office of the Special Prosecutor, namely - (1) a Letter dated March 26, 2007 (Exhs. "G", "G-1") from accused Lee, President/CEO of Izumo to accused Peliglorio, Jr.; (2) a Landbank Letter dated April 25, 2007 (Exhs. "CC", "CC-1") from Eduardo B. Chaves, Landbank Vice-President/Trust Officer and Susan Dr. Halili, Landbank Executive Officer to Mariveles, *Attention: Hon. Angel V. Peliglorio, Jr. (accused), Municipal Mayor* (Exhs. "CC", "CC-1"); (3) a Memorandum dated December 12, 2007 (Exhs. "AA", "AA-1") addressed to the Head, Mariveles branch; and, (4) a Landbank Letter dated December 12, 2007 (Exh. "BB") from Susan Dr. Halili to Mariveles, *Attention: Hon. Jesse I. Concepcion, Municipal Mayor*.

Witness Magboo further testified that the originals of these documents are in an Office vault which she has sole access. However, she clarified that her Office only had certified copies, not originals, of the Landbank Letter dated December 12, 2007 (Exh. "BB") from Susan Dr. Halili to Mariveles, *Attention: Hon. Jesse I. Concepcion, Municipal Mayor*; the Memorandum dated December 12, 2007 (Exhs. "AA", "AA-1") addressed to the Head, Mariveles branch; and, the Letter dated April 25, 2007 (Exh. "CC") addressed to Mariveles.

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On cross examination, witness Magboo explained that the documents submitted are certified copies of copies filed in her Office and that she was unaware as to where the originals were.


She testified that only the Letter dated March 26, 2007 (Exh. "G") of accused Lee had an original, as there was no reference or transaction number, unlike the other exhibits. She added that, although the said documents are with the Trust Banking Group, she was neither aware of the details thereof nor as to how the documents were included in the loan file of Mariveles.

Witness Magboo admitted that, as the Acting Department Manager of the Trust Operations Department of Landbank, her duties included overseeing the documents already on file and providing them if requested.

The next prosecution witness was **Ali G. Minsalan**, the Securities Vault Custodian of Union Bank main office.

Testifying through his sworn Judicial Affidavit dated November 20, 2017, he, aside from testifying on his duties, recalls receiving a subpoena from the Office of the Special Prosecutor in November 2017 (Exh. "GG"), requiring him to submit the following documents - - (1) Loan Agreement executed on March 22, 2007 (Exh. "B") between Mariveles and Union Bank in the amount of P120 million; (2) Deed of Undertaking to Mortgage executed on March 22, 2007 (Exh. "C") between the Municipal Trial Court of Mariveles and Union Bank; and, (3) Deed of Assignment of Rental Income executed on March 22, 2007 (Exh. "D") between Mariveles and Union Bank in the amount of P120 million.

However, after verifying from his computer database of documents stored in their vault and physically searching for them, he discovered that the requested documents were already released to the Asset Recovery Group (ARG) as of September 2009. After coordinating with Edzel Babas, the Head of the ARG, it turns out that the requested documents were no longer in the ARG records storage. Hence, Edzel Babas issued a Certification dated November 17, 2017 (Exhs. "HH", "HH-1"). For his part, witness Minsalan likewise issued his own Certification dated November 17, 2017 (Exh. "II").



Subsequently, the prosecution filed its Formal Offer of Evidence dated December 14, 2017. Only accused Peliglorio, Jr. filed his Opposition thereto, received by this Court on January 25, 2018. Accused Lee did not submit any comment or opposition.

Thereafter, the Court ruled - -

x x x the Court hereby resolves to *ADMIT* Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, GG, HH, II, MM, NN, OO, PP, QQ, RR, SS, TT, UU and VV, together with the sub-markings, considering that the objections of accused Peliglorio, Jr. through counsel, refer more to the probative value than their admissibility. (Minutes, February 20, 2018).

x x x

Prior to presenting their respective witnesses, both accused sought leave to file their demurrer to evidence, respectively dated March 23, 2018 and March 25, 2018. However, after the prosecution filed its Oppositions dated April 3, 2018 and April 16, 2018, this Court ruled to separately deny the Motions of both accused (Minutes, April 3, 2018 and April 17, 2018).

Although accused Peliglorio, Jr. filed a Motion for Reconsideration dated May 21, 2018, this Court denied the same (Minutes, July 26, 2018).

The defense thus proceeded to present its evidence.

The first witness for the defense was **Atty. Desiderio A. Pagui**, a licensed documents and handwriting examiner.

On direct examination, through his sworn Judicial Affidavit dated January 4, 2019, witness Atty. Pagui testified that he is a lawyer and a licensed document examiner. He thereafter detailed, at length, his qualifications and experiences as a documents examiner, including his stint with the National Bureau of Investigation (NBI).

When asked by the Court, the defense confirmed that Atty. Pagui is being presented as an expert witness and the



prosecution agreed that Atty. Pagui is an expert witness based on his qualifications stated in his Judicial Affidavit.

Based on his Report dated December 3, 2015 (Exh. "27-Peliglorio") and his undated Comparison Chart (Exh. "29-Peliglorio"), witness Atty. Pagui concluded that the signature of accused Peliglorio, Jr., appearing on the photocopy of the Letter dated March 27, 2007 (Exh. "28-Peliglorio"; "H") addressed to Landbank, Attention: Mr. Eduardo B. Chaves, Vice-president/Trust Officer, Trust Banking Group, from accused Peliglorio, Jr. and approved by Union Bank, authorizing the release/payment of the amount of P23,470,500.00 to Izumo Contractors, Inc. was not authentic. He added that accused Peliglorio, Jr. does not have the original of the document and that the original is no longer available and could not be produced by Landbank.

Quoted from witness Atty. Pagui's Report dated December 3, 2015 (Exh. "27-Peliglorio") are the following findings- -

SCIENTIFIC CONCLUSION:

In view of the foregoing the scientific findings, assuming the questioned and standard signatures are faithful reproductions of the originals, it is respectfully submitted that the standard signatures Angel V. Peliglorio, Jr. marked for identification purposes as S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-9, and S-10, in one hand, and the questioned signature "Angel V. Peliglorio, Jr." on the other, marked for purposes of identification as "Q", were NOT written/affixed by one and the same person. In other words the said questioned signature was affixed by different person but not Angel V. Peliglorio, Jr. whose standard signatures were those used in this scientific comparative examination.

Witness Atty. Pagui explained that while the original of the alleged falsified document could not be produced, it is still possible to examine it especially if the copy is clear enough.

In comparing these documents, witness Atty. Pagui used his standard trade tools and prepared enlarged copies of the questioned and standard signatures and a comparison chart for the same. He added that there were too many significant



differences in habit writing characteristics, quality and direction of writing strokes that point towards his conclusion. He likewise discussed these discrepancies and described them in detail in his Report dated December 3, 2015 (Exh. "27-Peliglorio").

From his Report dated December 3, 2015 (Exh. "27-Peliglorio"), witness Atty. Pagui discussed the following- -

Scientific Findings:

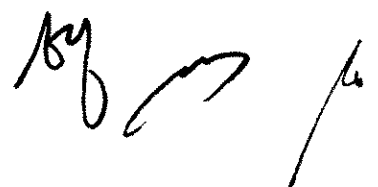
Scientific comparative examination with the aid hand lens and stereoscope microscope and enlarged photographs of the subject questioned and standard signatures mentioned above, assuming the said questioned signatures are faithful reproductions of the originals, reveals the following:

Similarities:

1. Generally there exists similarities in pictorial effects or form between the questioned and standard signatures, which consist of three (3) parallel line strokes (lines 1,2 and 3 marked in the photographs [both questioned and standards]) and the direction of downward terminal strokes (lines 12 [questioned] and 9 [standards] marked in the photographs).
2. The presence and direction of lines Nos. 11 and 12 (marked in the photograph, questioned) are similar in the construction of lines Nos. 8 and 9 (marked in the photographs, standards).

Significant differences in habit writing characteristics, quality, and direction of writing strokes:

1. In the questioned signature, the flow of the lines of strokes tends in upward direction; unlike in the standard signatures they maintained steady straight horizontal lines of strokes.
2. In the questioned signature, the presence of the loop within the signature (lines Nos. 5,6 &7 marked in the photograph); such construction of loop is its apparent absence in the series of standard signatures;

A handwritten signature in black ink, appearing to be 'By' followed by a stylized flourish and a vertical line.

3. In the questioned signature at the terminus of lines 5,6 and 7, is the presence of bloated stroke (line 8 marked in the photograph) which is an indication of conscious slow and careful writing due to unfamiliarity of habitual normal writing before it proceeds further to write; and the absence of such bloated line in the series of standard signatures; likewise line No. 10 marked in the photograph of questioned signature does not appear in the series of standards; and
4. In the questioned signature, line No. 13 (marked in the photograph) its initial preceding stroke far from line Nos. 9 and 10 (marked in the photograph, questioned); unlike in the series of standard signatures corresponding to line No.10 (marked in the photographs), their pen lifts are evident which started close and most often on lines Nos. 6 and 7 (marked in the photographs, standards).

When cross-examined, witness Atty. Pagui explained that it is essential that the style of the specimen signature is the same as the style of the questioned signature and that the sample or specimen signature should be written contemporaneously with the date of the questioned signature. He likewise agreed that, ideally, there must be a contemporaneous document containing five (5) specimen signatures with the questioned document.

Admitting further that when examining from mere photocopies, witness Atty. Pagui testified that aside from the habitual handwriting characteristics, other factors may be considered, such as the condition of the surface of the paper where the questioned signature appears, the position of the writer, the kind of pen used, as well as whether the one signing is either left or right-handed. However, it is a necessary requirement that the writings be made by an earmark writing instrument because this will determine whether the position of the instrument by the writer is inclined or vertical.

He also testified that, when his services were engaged by accused Peliglorio, Jr., he neither personally knew him nor was he familiar with his signature or signatures, if there were any. He merely relied on the signatures submitted to him and



those he requested accused Peliglorio Jr. to write, noting using his right hand.

Witness Atty. Pagui noted that the questioned signature came from a document dated March 2007 while his services were secured on October 2015 and that other documents may reflect other signatures but were not submitted to him.

He reiterated that the documents provided by accused Peliglorio, Jr. in 2015 were photocopies and that he never saw the originals. He maintains that the submitted photocopies may be photocopies of photocopies. However, he states that the submitted Loan Agreement, the Trust Agreement and the Deed of Assignment were originals.

Likewise, witness Atty. Pagui testified that the qualities and features of an original handwriting from a clear copy may be faithfully reproduced by any recent photocopying machine. However, he would not know the specific photocopying machine used on the document containing the specimen signature. Nevertheless, a photocopying machine could not detect and reproduce the embossing caused by a heavy or soft writing pressure.

Furthermore, he testified that the author of a questioned signature may deliberately sign his signature in a very slow manner, thus making bloated strokes, some loops, and pen lifts, different from his standard signature, in order to deny it if questioned.

On re-direct examination, witness Atty. Pagui testified that the pen pressure against the surface of paper and the weight applied by the writer can produce a light canal along the line of stroke to determine whether a signature is authentic or not. He also reiterated that before a conclusion may be made for photocopies, the copy and the writing strokes should be clear as that of the original.

He further explained, pointing to his comparison chart, that the Questioned Signatures showed "widely or spaciouly a hole" while the Standard Signatures are compact and close. He also noted that the Questioned Signatures has a hole which tends to go upwards while the Standard Signatures also has a hole but goes straight to the right in a horizontal manner. Furthermore, the loop in the Questioned Signature (lines 5, 6, and 7) is bigger and the loop in the middle portion

A handwritten signature in black ink, appearing to be 'Atty. Pagui', with a stylized flourish at the end.

of the Questioned Signature does not appear in any of the Standard Signature.

Witness Atty. Pagui further narrated that the posture of the stroke with a tail (line 13) starts from a far distance from the portion of strokes of the signature (line 9) while the elongated sidewise loop does not appear in any of the Standard Signature. These written strokes with a tail (line 13) straightens to a far distance from lines 9 and 8, whereas in the Standard Signatures, the initial stroke (lines 7 and 6) starts right at the line almost on the line southern in all of the Standard Signatures. Unlike in the Questioned Signature, the stroke with a tail (line 13) is elongated (lines 9 and 8). Likewise, the elongated portion of the stroke with a tail (line 12) stays below the last line of the Questioned Signature, (line 10). Such stroke (line 6) below the last line written horizontally in the Questioned Signature does not appear in any of the Standard Signatures or the series of standard signatures.

He noted that these are the most significant differences between the Questioned and Standard signatures which led him to arrive at a scientific conclusion that the Questioned Document was not signed or written by the person who wrote the Standard Signatures.

Witness Atty. Pagui identified a document dated October 12, 2015 (Exh. "36-Peliglorio") containing four sets of signatures of accused Peliglorio, Jr. This document was signed by accused Peliglorio, Jr. in the presence of witness Atty. Pagui and upon his request, which were used in the examination.

On re-cross examination, witness Atty. Pagui admitted that his Report did not indicate that the photocopies were clear and that his findings were based on the assumption that the questioned and the standard signatures are faithful reproductions of the originals.

He also agreed that the signature of a person may somehow vary as to strokes or handwriting due to the passage of time and that no two signatures of a person are identical. On the specimen signatures, as standard signatures, provided by accused Peliglorio, Jr., witness Atty. Pagui testified that these may contain variations but not differences. There may be natural variations between the specimen



signatures on the documents, the loan agreements, and even the signatures made before.

When queried by the Court, witness Atty. Pagui admitted that by comparing the original signatures on the questioned documents with the original signatures as standards is the best way of arriving at a scientific conclusion on a handwriting comparative examination. However, if the questioned and the standard signatures came from photocopies, a scientific conclusion may be reached if they carry the same or exactly the same nature and characteristics. There are certain variables which can be considered because there are photocopies that are as clear as originals.

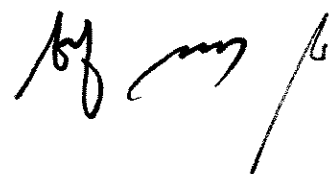
He further confirmed that he noted bloated strokes and pen lifts. He added that there was not much difference in the signatures of accused Pelogloiro, Jr. even if the 2007 signatures were compared with his 2015 signatures. On the reliability of his findings, witness Atty. Pagui maintains that he was 100% sure.

The next witness is **Joseph T. Pereyra**. He testified on direct examination, through his sworn Judicial Affidavit dated February 28, 2019.

Witness Pereyra testified that he was a Municipal Councilor of Mariveles, Bataan when Mariveles entered into a loan agreement with Union Bank and Landbank in 2007. He claims that, under this Loan Agreement dated March 22, 2007 (Exh. "34-Peliglorio"), Landbank will hold the money under a trust agreement, with the Bank, administering the money and its release. He added that no portion of the loan proceeds went to Mariveles and emphasized that there was no loan transaction with Union Bank in 2005.

After the 2007 elections, he learned from the contractor that the then Gov. Enrique Garcia and the new Mayor then, Jesse Concepcion, wrote Union Bank and Landbank not to release the proceeds of the loan. However, there was no response from the banks, despite their demand.

To prevent further violation of the Agreements, the Mariveles *Sangguniang Bayan* passed a Resolution rescinding the loan agreement. However, he no longer knew what happened as his term ended on June 30, 2007.



He only learned thereafter that Mariveles, through the new Mayor, Jesse Concepcion, entered into a Compromise Agreement dated September 2, 2009 (Exh. "25-Peliglorio") in exchange for bigger loans from the banks. Witness Pereyra further testified that the act of Mayor Jesse Concepcion prejudiced Mariveles because the latter paid for something without any benefit gained.

On cross-examination, witness Pereyra confirmed that in November 2005, the Mariveles *Sangguniang Bayan* enacted Municipal Ordinance No. 46-05 authorizing a bond flotation scheme to raise the amount of P120 million pesos for the construction of the Mariveles Public Market (Project). However, there were no interested investors.

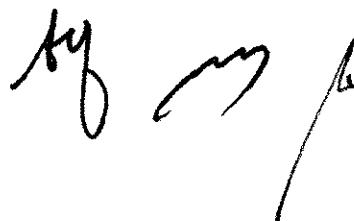
He further confirmed that, on March 22, 2007, Mariveles, through accused Peliglorio, Jr., secured a loan from Union Bank, as trustee, in the amount of P120 million, although there was no ordinance or resolution authorized him to do so. Subsequently or on March 23, 2007, the Mariveles *Sangguniang Bayan* adopted Resolution No. 059-S-2007 ratifying the loan agreement and revising the financing scheme for the Project from a bond flotation to a term loan.

On re-direct examination, witness Pereyra explained that the bond flotation scheme was the original plan, however, Mariveles could not get investors. Hence, Mariveles opted to secure a loan instead, as suggested by the banks.

The next defense witness was accused **Angel V. Peliglorio, Jr.** himself.

On direct testimony, through his sworn Judicial Affidavit dated January 7, 2019 he testified that, during the time material to this case, he was the Municipal Mayor of Mariveles, Bataan until June 30, 2007.

He denied being in possession of the proceeds of a loan secured from Union Bank either in 2005 or 2007, presenting a Certification dated January 8, 2008 (Exh. "11-Peliglorio"; Exh. "M"), issued by Onofre Diuco, concerning the supposed loan obtained from Union Bank in 2007. He also denied having transferred any money to Mariveles or any loan transaction with Union Bank in 2005.



Witness-accused Peliglorio, Jr. argued that, if the cases pertain to the proceeds of the loan with Union Bank on March 22, 2007, Landbank had control or possession of the loan proceeds because this is a condition in the Loan Agreement dated March 22, 2007, particularly Sec. 1.12 (Exh. "1-Peliglorio"; Exh. "B") thereof.

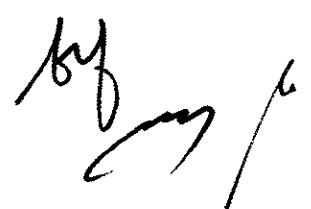
He likewise admitted entering into a Trust Agreement with Landbank to administer the proceeds of the loan as a requirement of Union Bank.

Witness-accused Peliglorio, Jr. further confirmed that the Loan Agreement dated March 22, 2007 (Exh. "B"; Exh. "1-Peliglorio"); the Trust Agreement dated March 22, 2007 (Exh. "E"; Exh. "4-Peliglorio"); the Deed of Undertaking to Mortgage dated March 22, 2007 (Exh. "C"; Exh. "2-Peliglorio"); the Deed of Assignment of Rental Income dated March 22, 2007 (Exh. "D"; Exh. "3-Peliglorio"); and the Deed of Assignment of Deposit of Internal Revenue Allotment (Exhs. "F" to "F-6"; Exh. "5-Peliglorio") were all executed on March 22, 2007.

Under the Agreement, Union Bank can start collecting interest after the transfer of the money to Landbank. However, neither Union Bank nor Landbank informed Mariveles that the amount of the loan has already transferred to Landbank, thus, Mariveles was unaware that Union Bank was already collecting interest prior to June 22, 2007.

This was only discovered after Landbank already deducted interest from the loan obtained in 2007 when they passed a Resolution rescinding the Loan Agreement. Although a Letter dated March 22, 2007 (Exh. "28-Peliglorio") was sent to Union Bank requesting for the release of the loan in order for them to immediately compute the accruing interest, Union Bank did not reply.

Witness-accused Peliglorio, Jr. further testified that after the 2007 elections, Union Bank and Landbank refuse to release money because of a Letter dated May 25, 2007 (Exh. "12-Peliglorio") from then Gov. Enrique Garcia and the private complainant Jesse Concepcion, who won the elections. Although witness-accused Peliglorio, Jr. wrote Union Bank (Exhs. "23-Peliglorio" and "24-Peliglorio") for clarification, there was no reply. Hence, the Mariveles *Sangguniang Bayan* passed Resolution No. 084-S-2007 dated June 22, 2007 (Exh.



“22-Peliglorio”), rescinding the Loan Agreement dated March 22, 2007 (Exh. “1-Peliglorio”; Exh. “B”).

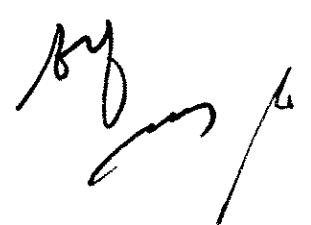
After his term as mayor, witness-accused Peliglorio, Jr. learned that Mariveles filed a case against him, Landbank and Union Bank. During the hearing of the said case, he realized that funds were released to Izumo and the Bank representatives based on his Letter-request dated March 27, 2007 (Exh. “7-Peliglorio”, Jr.; Exh. “H”). He, however, insists that he never saw the original of this document. Nevertheless, he had this document as well as the relevant agreements containing his signatures examined.

Witness-accused Peliglorio, Jr. further testified that a Compromise Agreement dated September 2, 2009 (Exh. “25-Peliglorio”) was entered into by Mariveles with Union Bank and Landbank, in exchange for the dropping of the case against the Banks and their officials and for Mariveles to secure a P185 million loan. However, he could not secure a copy of the said Compromise Agreement.

This same Compromise Agreement was implemented through a Mariveles *Sangguniang Bayan* Resolution 036-2009 dated March 30, 2009 (Exh. “14-Peliglorio”) authorizing its execution and to eventually secure loans for their development projects. Thereafter, Mariveles *Sangguniang Bayan* Resolutions No. 044-2009, 045-2009 and 046-2009 (Exhs. “15”, “16”, and “17”-Peliglorio”, respectively) authorized private complainant Jesse Concepcion, the new Mayor, to enter into a series of loans and transactions with Landbank.

He adds that the alleged release of the money to Izumo by Landbank on the basis of an alleged letter request from his office is not a requirement in both the Loan Agreement and the Trust Agreement, citing Sec. 2.4 of the latter requiring a Project Monitoring Board and a Board-appointed Works Engineer.

Witness-accused Peliglorio Jr. insists that the operative act that will put the repayment scheme in motion is not the release of money to the contractor but the actual release of the loan from Union Bank to Landbank. This is shown in a Letter (Exh. “CC”) confirming that the interest on the Loan Agreement will be due on May 21, 2007. Also, Exhibit “DD”

A handwritten signature in black ink, appearing to be a stylized 'M' followed by a long horizontal stroke and a diagonal line.

itemizes the Debit Advices from the Landbank debiting the various charges and fees from the IRA of Mariveles.

There are two (2) separate loans referred to in Exh. "CC" – a P120 million loan and a P35.77 million loan (Exhs. "34-Peliglorio" and "35-Peliglorio"). The amount involved herein does not totally pertain to the construction of the Public Market project, hence, has nothing to do with accused Lee or Izumo.

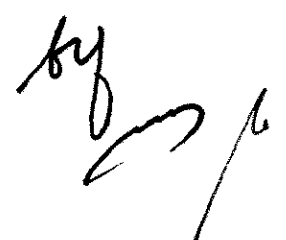
He further claims that a portion of the Project already started even prior to the approval of the banks and the Philippine Reclamation Authority. This included the completed feasibility studies, soil testing, environmental impact assessment on the reclamation and other geodetic, and scientific works, architectural design, program of works and other studies. It was private complainant Concepcion who did not want it to proceed (Exh. "12-Peliglorio").

After witness-accused Peliglorio, Jr. learned of the alleged authorization letter for the release of the money to Izumo, he was told in a meeting with Izumo that it came from the Municipal Planning and Development Office (MPDO) formerly headed by Engr. Floro Roco. He added that he did not sign the said letter but found nothing wrong with it as it is a Trust Agreement requirement.

He further averred that private complainant Concepcion wanted to include the Bank representatives in the criminal case as shown in his Reply-Affidavit (Exh. "31-Peliglorio"). However, when he (Concepcion) entered into a compromise agreement with the banks and after securing loans from them, private complainant Concepcion dropped the charged against the bank officials (Exh. "32-Peliglorio").

Witness-accused Peliglorio, Jr. cited the COA Audit Report (Exhs. "38-Peliglorio" and "38-a-Peliglorio"; Exh. "EE") where it indicated that the Union Bank and Landbank refuse to provide details of the fund releases and the passage of a resolution rescinding the Loan Agreement with Landbank and Union Bank.

He added that the COA also acknowledged the existence of the loan proceeds from the Union Bank in the amount of P35 million, representing the proceeds of the take-out loan,

A handwritten signature in black ink, appearing to be 'by [illegible]' followed by a flourish.

which proceeds was used to be paid directly to Landbank for an existing loan secured by Mariveles from Land Bank.

Witness-accused Peliglorio, Jr. further claims that private complainant Concepcion misrepresented to this Court that the deductions made by Landbank from the IRA of Mariveles came exclusively from the P120 million loan representing the cost of the Project with Izumo as the contractor. In truth, he adds that the entire deductions made by Landbank from the IRA of Mariveles, included payments for a take-out loan and not from the P120 million loan alone.

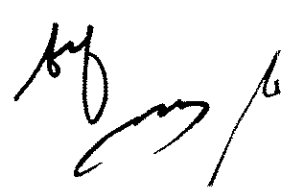
Furthermore, private complainant Concepcion knew, even prior to the execution of the Compromise Agreement (Exh. "25-Peliglorio") between Mariveles and the banks, that the deductions made against Mariveles do not only pertain to the P120 million loan alone but to other loans which has nothing to do with accused Lee.

On the take-out loan, witness-accused Peliglorio, Jr. explained that this is an existing loan with Landbank secured prior to the signing of Loan Agreement for the Project. By virtue of the take-out loan, Union Bank will pay for the loan of Mariveles with Landbank and the latter will in turn pay the former, thus, paying only one bank instead of two.

Witness-accused Peliglorio, Jr. also claims that he neither dealt with Landbank relative to the P120 million loan from Union Bank, held in trust by Landbank, nor communicated with them on the same. He only met the Bank representatives during the signing of the Loan Agreement (Exh. "1-Peliglorio"; Exh. "B"), the Trust Agreement (Exh. "4-Peliglorio"; Exh. "E"), and other ancillary agreements on March 22, 2007.

When cross-examined, witness-accused Peliglorio, Jr. confirmed that on November 8, 2005, the Mariveles *Sangguniang Bayan* enacted Municipal Ordinance No. 46-05 authorizing a bank flotation in the amount of P120 million to fund the construction of the Project, however, there were no investors.

Witness-accused Peliglorio, Jr. added that, on March 22, 2007, he, on behalf of Mariveles, entered into a loan agreement (Exh. "1-Peliglorio"; Exh. "B") with Union Bank in the amount of P120 million to fund the Mariveles Public



Market and that on the next day, March 23, 2007, the Mariveles *Sangguniang Bayan* enacted a Resolution revising the financing scheme from bank flotation to credit expense.

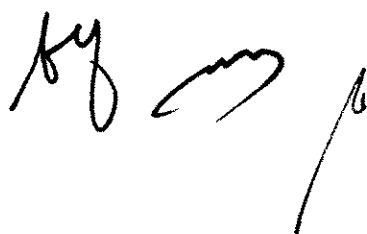
He further confirmed that, under the terms of the Loan Agreement, the proceeds from the same will be released to Landbank, as trustee.

He likewise testified that the Trust Agreement was executed and signed by him on March 22, 2007 and that he agreed that the proceeds of the loan secured may be released directly to the contractor by the Landbank, provided certain conditions are met. Some of the conditions included a written instruction from the trustor, represented by witness-accused Peliglorio, Jr.; a Union Bank approval; and, the submission of the contractor's progress billings duly certified by the engineer. Without these conditions, particularly his written consent or approval, Landbank, as trustee, will not release any amount.

Witness-accused Peliglorio, Jr. further agreed that the parties to the Loan Agreement are required to constitute and maintain a Project Monitoring Board to monitor the Project, advise on matters on policy, and appoint and maintain an independent works engineer. On the other hand, the independent works engineer will monitor the accomplished physical or actual construction work and the implementation of the Project in accordance with the schedule in the contract.

He added that a portion of the Project actually started and that feasibility studies, testing, environmental assessments of the reclamation area and other geodetic and scientific works were already conducted. Although he wrote Union Bank (Exh. "28-Peliglorio") requesting for the release of the proceeds of the loan, the Bank never replied. He likewise did not find it necessary to enter the Loan Agreement in the books of Mariveles.

Witness-accused Peliglorio, Jr. confirmed the filing of a civil case for the annulment of the Loan Agreement and the execution of a Compromise Agreement with the Banks, ratified by the *Sangguniang Bayan* of Mariveles and approved by the Regional Trial Court. He also confirmed that accused Lee or Izumo Construction rendered service for the construction of the Project.

A handwritten signature in black ink, appearing to be 'Jy' followed by a stylized flourish and a long diagonal stroke.

On re-direct testimony, witness-accused Peliglorio Jr. testified that the Loan Agreement entered in 2007 had no relation to the bank flotation scheme entered sometime in 2005 and the ratification of the *Sangguniang Bayan* in November 8, 2005.

He further testified that the Union Bank suggested to secure a loan in 2007 instead of a bank flotation scheme. He also asked that he be informed of the release of the loan but the banks did not and that, on June 22, 2007, David Bunevacz, their financial advisor, and Izumo informed him that the banks do not want to release the money anymore because of the letter coming from Mayor-elect Jesse Concepcion and the Governor.

The next defense witness was accused **Cedric C. Lee** himself.

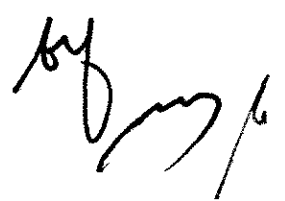
On direct examination made through his sworn Judicial Affidavit dated September 4, 2019, witness-accused Lee testified that he is the President and CEO of Izumo Contractors, Inc. (Izumo) and was contracted to design and construct the Mariveles Public Market (Project).

He explained that the Project involved two (2) portions, namely: the design and the actual construction.

The design portion includes the hydrological study, geological and geodetic study, master planning, detailed engineering design, architectural design and a bankable comprehensive feasibility study, all of which were completed and delivered by Izumo.

Izumo outsourced the architectural design and detailed engineering requirements to Arch. Joel Lopez, who likewise completed them and submitted them to Mariveles. He presented a copy of the transmittal letter (Exh. "5-Lee") dated May 18, 2006, showing receipt by the Mayor of Mariveles.

On the other hand, the comprehensive feasibility study was undertaken by Izumo and turned over to Mariveles. It was then given to the Strategic and Comprehensive Consultants, Inc., who arranged for the loan with the bank. The Environmental Impact Statement was done by Geo Environmental Consultancy, Inc. and purchased by Izumo and eventually submitted to Mariveles (Exhs. "1-Lee", "2-Lee"



and "3-Lee"). These studies were paid by Izumo for the preparation of the detailed engineering plans by its design and engineering consultants.

All the other required studies were undertaken by the resident experts of Izumo and submitted to Mariveles. These were in turn forwarded to the Department of Environment and Natural Resources (DENR) for the issuance of the corresponding Environmental Compliance Certificate (Exh. "4-Lee").

Witness-accused Lee likewise cited the Memorandum of Agreement (Exh. "8-Lee") dated March 24, 2004 and its Supplemental Agreement (Exh. "9-Lee") dated May 17, 2006, executed between Izumo and Mariveles.

Under the Memorandum of Agreement (MOA), Izumo was contracted to construct the New Mariveles Public Market with Bus Terminal (Project) for a contract price of P161,650,000.00. However, this MOA was superseded by a Supplemental Agreement. It was necessary to execute a Supplemental Agreement because Mariveles was only able to provide P120,000,000.00, hence, adjustment had to be made.

The provisions of the Supplemental Agreement included site development and reclamation works as well as feasibility studies, among others. It also provided for a contract price of P110,270,000.00, with the amount of P24 million to be paid to Izumo to cover the cost of conducting the various studies required for reclamation and construction and payment for the architectural and engineering designs. These were already conducted, completed, and submitted to Mariveles under the same Supplemental Agreement. The balance of the contract price will be paid upon the commencement of the actual construction of the Project.

Witness-accused Lee further testified that, of the P24 million, due to Izumo, Mariveles partially paid Izumo P19,442,267.48, with the remaining balance still unpaid, despite submitting to Mariveles all the completed preliminary studies required under the Supplemental Agreement.

He explained that the construction portion of the Project did not proceed because it was overtaken by an election and the newly elected mayor, private complainant Jesse Concepcion, refused to issue a notice to proceed. Instead,



Mayor (private complainant) Concepcion vetoed the ordinance effectively cancelling the contract of accused Lee.

Witness-accused Lee testified that his company, Izumo, has a good track record and a triple-A construction company. He is running a legitimate business until he was dragged into this case (Exh. "10-Lee").

When cross-examined, witness-accused Lee reiterated entering into a MOA with Mariveles for the construction of the New Mariveles Public Market (Project) for the contract price of P161,650,000.00 and that he provided the detailed design for the site development plan and the structural design of the Project, although Mariveles committed to provide these as shown in the MOA particularly Sec. 5.3, p. 6 thereof.


He knew that the contract amount of P161,650,000.00 will be sourced from the proceeds of bonds to be floated by Mariveles and that 15% thereof will be released to Izumo upon the issuance of a notice to proceed as advance payment or mobilization fund.

Witness-accused Lee reiterated entering into a Supplemental Agreement (Exh. "9-Lee") dated May 17, 2006 with Mariveles because the latter was only able to secure a loan in the amount of P120 million from Union Bank in 2007, among other reasons and that the same Agreement was entered into in 2006 without Mariveles conducting a public bidding.

He added that the fee of Arch. Lopez of P8 million was for the preparation of the architectural design and detailed engineering of the Project while the Environmental Impact Statement was prepared by Geo Environmental Consultancy, Inc. However, he has no copies of their contracts and that they have been paid.

On re-direct examination, witness-accused Lee further stated that he has submitted all his contractual deliverables pertaining to the design, feasibility, the geo study, the detailed engineering, and architectural design, and has paid all the experts except Arch. Joel Lopez for the architectural and detailed engineering design.

Witness-accused Lee presented a deposit slip or credit slip as proof that Izumo received the amount of P19 million.

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. Lopez", written in the bottom right corner of the page.

On queries from the Court, witness-accused Lee clarified that the amount of P14,056,084.43 was not an advance payment but as partial payment for services already rendered. Further, since he already turned over to Mariveles all the engineering studies and designs he completed, he is entitled to be paid the amount of P24 million as agreed in the Supplemental Agreement.

He also cited his written request for payment sent to accused Peliglorio Jr. but received by Engr. Floro Roco, as the designated Chairman of the Bids and Awards Committee and the person in charge of the Project. However, he remembers verbally informing accused Peliglorio, Jr. of his letter request but the latter told the former to coordinate with Engr. Roco.

Witness-accused Lee substantially reiterated his testimony on further queries made by the Court.

The last witness for the defense was **Joel R. Lopez**, a licensed architect for more than twenty years. Testifying on direct examination through his Judicial Affidavit dated June 20, 2019, he alleges that he knows accused Lee when the latter obtained his services in 2005 to create a comprehensive architecture and engineering design for the Mariveles Intermodal Market Facility (Project).

Although he was able to complete the design for the Project, witness Arch. Lopez declared that he was not fully paid despite several attempts to collect the same. He added that under his contract with accused Lee, witness Arch. Lopez will only be fully paid when he (accused Lee) will be paid by Mariveles.

When cross-examined, witness Arch. Lopez testified that he was not involved in the Project itself. He was only contracted by accused Lee to undertake a comprehensive architecture and engineering design of the Project for a fee of P7 million.

He added that he prepared the partial design plans in 2005 and submitted them in the first quarter of 2006. However, he no longer has copies of the same. He also confirmed that he billed accused Lee several times but no longer had copies of his billing statements or demand letters. Neither did he file any collection case against accused Lee or Izumo.



Witness Arch. Lopez further testified that he agreed to prepare the designs based on assumptions or previous information that the Project will be constructed on reclaimed land. He also received engineering studies and soil tests as well as an environmental impact study.

Thereafter, accused Lee filed his Formal Offer dated November 18, 2019 while accused Peliglorio Jr. filed his Formal Offer of Exhibits dated January 18, 2021. A consolidated Comment/Opposition dated February 26, 2021 was subsequently filed by the prosecution.

This Court then resolved to admit the following documentary exhibits (Minutes, February 26, 2021)- -

For Accused **Angel V. Peliglorio, Jr.:**

Exhibit/s 1 (Exhibit B), 1-a, 1-b, 1-c, 1-d, 1-e, 1-f, 1-g, 1-h, 2 (Exhibit C), 3 (Exhibit D), 4 (Exhibit E), 4-a, 4-b, 4-c, 4-d, 4-e, 4-f, 4-g, 4-h, 4-I, 4-j, 4-k, 4-l, 4-m, 4-n, 4-o, 5 (Exhibit F), 5-A, 6 (Exhibit G), 7 (Exhibit H), 8 (Exhibit I), 9 (Exhibit J), 10 (Exhibit L), 11 (Exhibit M), 12, 14, 14-A, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 28-a, b, c, d, e, 29, 29-a, 29-b, 29-c, 29-d, 29-e, 29-f, 29-g, 29-h, 29-I, 29-j, 29-k, 31, 32, 33, 34, 35, 36, 38 (Exhibit EE), 38-a, 38-b, 39, 43 (Exhibit CC), 44 (Exhibit DD), 45 (Exhibit 1-accused Lee), 46 (Exhibit 2-accused Lee), 47 (Exhibit 3-accused Lee) and 48 (Exhibit 4- accused Lee); and

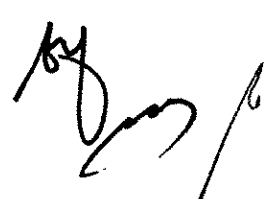
For Accused **Cedric C. Lee:**

Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

We now rule.

As could be culled from the records, the following is the factual milieu of the case - -

A Complaint dated October 21, 2009 (Exh. "A") was filed by Jesse Concepcion against accused Angel V. Peliglorio, Jr. (accused Peliglorio, Jr.), the former Mayor of the Municipality of Mariveles, Bataan (Mariveles) and former members of its *Sangguniang Bayan*, together with accused Cedric C. Lee



(accused Lee), President and Chief Executive Officer (CEO) of Izumo Contractors, Inc. (Izumo) for malversation, as defined in Article 217 of the Revised Penal Code, as amended, and for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, regarding the proposed construction of the Mariveles Public Market (Project).

On November 8, 2005, the *Sangguniang Bayan* of Mariveles enacted Municipal Ordinance No. 46-05 entitled *Authorizing the Bond Flotation of the Municipal Government of Mariveles in the amount of One Hundred Twenty Million (P120,000,000.00) under the terms and conditions herein set, to fund the construction of the Mariveles Public Market, and further authorizing the Mayor to negotiate, sign and execute contracts as agreements pertinent thereto; thus amending in part Municipal Ordinance No. 36-04.*

However, on March 22, 2007, accused Peliglorio Jr., on behalf of Mariveles, obtained a loan in the amount of P120 million from the Union Bank of the Philippines (Union Bank), with the Landbank of the Philippines (Landbank), designated as trustee. The proceeds of the loan were supposed to be used for the construction of the Project while the loan will be paid from the Internal Revenue Allotment (IRA) of Mariveles and the real mortgage and rental incomes, which were all assigned to the lender bank.

Complainant Concepcion alleges that the act of accused Peliglorio, Jr. of obtaining a loan from Union Bank was without legal basis and authority since the approved mode of financing the Project was through bond flotation in accordance with Municipal Ordinance No. 46-05.

On March 23, 2007, or a day after accused Peliglorio, Jr. signed the loan on behalf of Mariveles, the members of the *Sangguniang Bayan* adopted Municipal Resolution No. 059-S-2007, changing the financing scheme from bond flotation to a term loan to fund the reclamation, development, and construction of the Project.

Aside from allegedly securing a loan without legal authority, private complainant Concepcion also accuses Peliglorio, Jr. of conniving with the private contractor of the Project. He averred that accused Peliglorio, Jr., without prior or subsequent authority from the *Sangguniang Bayan*,



entered into a Supplemental Agreement dated May 17, 2006 (Exh. "9-Lee") with accused Lee. Under the terms of the Supplemental Agreement, the conditions for the release of the proceeds of the loan were allegedly modified to allow the withdrawal in advance of amounts from the trust account of Mariveles prior to the completion of the works and this can be paid directly to the contractor.

Private complainant Concepcion points out that, in an alleged Letter dated March 26, 2007 (Exh. "G"), accused Lee requested accused Peliglorio, Jr. to authorize the release from the trust account of Mariveles the amount P23,470,500.00 as advance mobilization funds/down payment and financial charges.

Acting on the letter request of accused Lee, accused Peliglorio, Jr. invoked the terms of the Supplemental Agreement and directed Landbank to release the same amount in a separate letter dated March 27, 2007 (Exh. "H-Peliglorio"). Upon accused Peliglorio's instructions, the same amount should be released directly to accused Lee's company, Izumo Contractors, Inc., as the contractor of the Project. The same March 27, 2007 Letter purportedly bears the signature of accused Peliglorio, Jr. and the *conforme* of the First Vice-President and the Executive Vice-President of Union Bank.

According to private complainant Concepcion, the connivance between accused Peliglorio, Jr. and accused Lee prejudiced Mariveles because no work on the Project has started, despite the advance release of a portion of the loan proceeds. He presented a Certification dated January 8, 2008 (Exh. "M") issued by Onofre B. Diuco, the Municipal Treasurer of Mariveles, attesting that the latter's Office had not received any proceeds from the P120 million loan agreement entered into by Mariveles and Union Bank.

However, despite the fact that no benefit was derived from the loan, private complainant Concepcion maintains that, as of December 31, 2007, the total amount of P14,056,084.43 was deducted from the IRA account of Mariveles (Exh. "K"; Exh. "7-Lee"). This deduction was pursuant to the terms of the loan contract and the Deed of Assignment Deposit of the IRA dated March 22, 2007 (Exhs. "F" to "F-6"), executed to secure the payment of the loan proceeds.

The block contains three handwritten marks. On the left is a signature that appears to be 'Mf'. In the center is a stylized signature or set of initials. On the right is a long, vertical, slightly curved line, possibly a signature or a checkmark.

Private complainant Concepcion further alleges that the direct release of the advance payment to Izumo as authorized by accused Peliglorio Jr., was anomalous and violative of the law. He points out that under the Government Auditing Code of the Philippines, public funds cannot be released in advance and without a certification that the purpose for their disbursement was already met. He likewise avers that the haste with which the alleged unauthorized loan contract was entered into and the subsequent advance release of its partial proceeds are suspicious - the alleged anomalous acts were done on the eve of the election period. He bemoans that the IRA of Mariveles, which could have been used for social services, had to be sacrificed to pay a loan whose proceeds did not yield any benefit to the people of Mariveles.

Meanwhile, the Union Bank loan was sought to be rescinded by Mariveles by private complainant Concepcion as the then incoming Mayor.

For his part, accused Peliglorio, Jr. denies signing the March 27, 2007 Letter (Exh. "H") addressed to Landbank, authorizing the advance release of the payment to Izumo. He claims that he never signed the Letter directing Land Bank to release the amount of P23,470,500.00 to Izumo and even denies receiving the Letter dated March 26, 2007 (Exh. "G") from accused Lee, requesting for the release of the amount by virtue of a Supplemental Agreement. Accused Peliglorio, Jr. further claims that he had no knowledge of the release of the said amount and maintains that the terms of the loan agreement are very specific regarding the procedure for any release. Hence, he posits, if any part of the loan proceeds was indeed released to Izumo, despite non-compliance with required process, it could only be the result of a conspiracy between accused Lee and certain Bank employees.

With the foregoing background, let us consider the charges separately.

In **Criminal Case No. SB-15-CRM-0130**, both accused are charged for violation of Sec. 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

The relevant provision is cited hereunder as - -

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Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements necessary to find an accused criminally liable for the crime charged, are as follows - -(1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference (Tiongco vs. People, G. R. Nos. 218709-10, November 14, 2018).

On the first element, it is undisputed that accused Peliglorio, Jr., being then the Mayor of the Municipality of Mariveles, Bataan, is a public officer at the time material to these cases.

As for accused Lee, it is a settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R. A. No. 3019.

Anent the second element, accused Peliglorio's act of authorizing the release the proceeds of a bank loan of the Mariveles to accused Lee in advance was done while he (accused Peliglorio, Jr.) was in the discharge of his official function as Mayor of Mariveles.

Accused Lee, as the direct beneficiary of the unlawfully released advance payment of P23,470,000.00, and, as signatory of the letters dated March 26, 2007 (Exh. "G") and



March 29, 2007 (Exh. "NN") which facilitated such release, was in conspiracy with accused Peliglorio, Jr.

Furthermore, the third element provides the modalities by which a violation of Section 3 (e) of R. A. No. 3019 may be committed. The Supreme Court in *Cabrera vs. People* (G. R. No. 191611-14, July 29, 2019) explained these terms under the Section concerned, as follows- -

x x x. There is "manifest partiality" when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. X x x

As stressed by the Supreme Court, these three (3) modes, namely: manifest partiality, evident bad faith, or gross inexcusable negligence are not separate offenses, and proof of the existence of any of these three (3) in connection with the prohibited acts committed, is sufficient to convict (*ibid*).

Herein, the supposed violation of accused Peliglorio, Jr. and accused Lee of the crime charged hinges on the alleged act of accused Peliglorio, Jr. of authorizing the release of the proceeds of a bank loan (from the P120million loan) secured by Mariveles, as advance payment, to Izumo Contractors, Inc. of accused Lee. This release was made upon the request of accused Lee, without the corresponding procedural safeguards, guarantees of performance, and in violation of Commission on Audit (COA) rules.

Further, the advance payment was authorized even if the construction of the Mariveles Public Market (Project) has not even commenced. As a consequence, the amount of P14,056,084.43 was deducted from the Internal Revenue Allotment (IRA) account of Mariveles to pay the loan.

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This Court notes that, in the year 2007, the amount of P14,056,084.43 was deducted by Landbank from the General Fund Account (Current Account No. 2152-1000-11) of Mariveles as payment for its outstanding loan with Union Bank in accordance with the Deed of Assignment of Deposit of Internal Revenue Allotment executed on March 22, 2007 (Exhs. "F" to "F6").

The breakdown of these deductions is shown in the Summary of Debit Advice/Fund Transfers, itemized by Danilo B. Cejalvo, the Municipal Accountant, in a Letter dated March 1, 2016 (Exh. "DD"), as follows- -

Date	Amount
May 24, 2007	P4,415,373.91
May 24, 2007	P1,270,036.68
June 8, 2007	P2,448,438.09
June 27, 2007	P403,719.48
June 28, 2007	P18,516.27
December 12, 2007	P5,500,000.00
Total	P14,056,984.43

From the foregoing, it appears that Landbank, purporting to implement the terms of the Loan Agreement and Trust Agreement between and among itself, Mariveles and Union Bank, deducted the total amount of P14,056,984.43, as supposed payments for the said loan.

However, it is uncertain whether these Debit Advices represent or specifically refer to as principal, interests, penalties, and other financial charges accruing from the Loan Agreements. The Summary of Debit Advice/ Fund Transfers prepared by Municipal Accountant Danilo Cejalvo (Exh. "DD") only shows entries culled from amounts given by Justino Zamora, the former Landbank Branch Manager (Exhs. "S-11", "S-10-a", "R-2-a", "R-7-a", "R-7-b", and "T-1") and certified photocopies of Landbank Debit Advices (Exhs. "U", "V", "W", "X", "Y", "AA", and "BB") submitted by Landbank Branch Manager Sherly Gallardo.

It is, thus, unclear whether these deductions or Debit Advices even pertain entirely to the P120 million loan secured by Mariveles, through accused Peliglorio, Jr., to finance the reclamation, development, and construction of the Project.

This Court also noted that the COA Annual Audit Report for the year ending December 2007 (Exhs. "EE"; "38-



Peliglorio, Jr.") indicates that on March 22, 2007 accused Peliglorio, Jr. entered into two (2) term loan agreements with the Union Bank, as follows - -

(1) P35,777,777.77 - the loan proceeds were released directly by Union Bank to Landbank through the Landbank Trust Banking Group for the full payment and take-out of all loan obligations of the Municipality of Mariveles with Landbank; and,

(2) P120,000,000.00 - the loan proceeds were intended to finance the reclamation, development, and construction of Mariveles Public Market/Arcade.

Provisions of the Trust Agreement dated March 22, 2007 (Exhs. "E" to "E-28") entered into by Mariveles, as trustor; Landbank as trustee; and, Union Bank as lender, were also considered, to wit - -

Section 2.1 Creation of the Trust Fund. -The Trustor hereby creates and establishes with the Trustee, a trust fund consisting of an initial deposit of One Hundred Twenty Million (P 120,000,000.00) Pesos, Philippine Currency, representing the proceeds of a loan the Trustor has obtained from UBP, including such sums of money and other properties as shall from time to time may be paid or delivered to the Trustee, from time to time, and such earnings, profits, increments and accruals thereon.

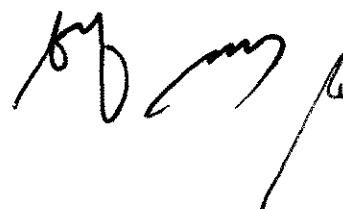
All money and other properties, investments and reinvestments, the proceeds, earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustee as authorized herein, are referred to herein as the "Trust Fund".

2.2 Conveyance of Assets/Funds. -The Trustor, pursuant to this Agreement, hereby, deliver and convey in trust to the Trustee all its rights and interests in the assets, values and improvements identified hereunder and hereinafter referred to as the "Trust Fund". All the muniments and certificates of title covering the project shall be safekept by UBP.

2.3 Composition- The Trust Fund shall consist of the following:

2.3.1. Loan Proceeds from UBP- Initial deposit of One Hundred Twenty Million (P 120,000,000.00) Pesos, representing the proceeds of a loan the Trustor has obtained from UBP.

a. The Trust Fund shall be used primarily to finance the construction and development of the Project and for the following purposes:



(i) The Trustee is hereby instructed and authorized to initially deduct directly from the deposit the following (1) Financial Advisory Fee; (2) Documentary Stamp Taxes and other taxes; (3) Trustee's Fees; (4) Lender's Loan Arrangement and Other Fees; (5) Fees of Legal Counsel; (7) other reasonable Project Expenses as may be determined by the Project Monitoring Board referred to in section 13.

(ii) During the construction phase of the Project and until all Project related expense has been paid and settled, the Trustee shall be authorized to pay from the Trust Fund the following: (1) expenses for the Project Monitoring Board; (2) Work's Engineer's Fee; (3) Taxes; (4) Other reasonable project expenses as may be determined by the parties.

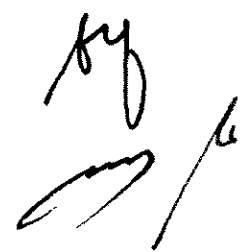
Any and all taxes due and required to be withheld pursuant to Philippine laws on the transactions or services mentioned above shall be properly withheld by the Trustor or otherwise for the account of the Trustor.

A cursory reading of the foregoing provisions clearly reveals that it was Landbank as Trustee that actually pays or releases the payment as authorized under the Agreement and not accused Peliglorio, Jr..

Section 2.3.1 also specifically shows that Landbank as Trustee may deduct fees and other expenses from the Trust Fund. It would thus be unfair to presume that the whole deduction of P14,056,984.43, that appears to pertain to the amortization of the loan with Union Bank, was based entirely on the amount allegedly released to accused Lee as advance payment.

Even prosecution witness, Landbank Manager Emilio Cabigao, on cross examination, confirmed that the deduction from the accounts was made only upon an email instruction from the Trust Operations Group at the Landbank head office. He also admitted, on re-cross examination, that the Debit Advices did not indicate any information on the transactions covered by the deductions. Likewise, he further testified that prosecution witness Cabigao merely relied on the email instructions before preparing the Debit Advices.

Finally, there is no sufficient evidence linking accused Lee to the amount of P14,056,084.43, which purports to be

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the amortization from the loan secured between Mariveles as trustor, Union Bank as creditor, and Landbank as trustee.

On the other hand, **Criminal Case No. SB-15-CRM-013** charges both accused for malversation as defined and described in Article 217 of the Revised Penal Code, as amended.

The elements common to all acts of malversation under Article 217 of the Revised Penal Code, as amended, are the following: (a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and, (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them (*Zoleta vs. Sandiganbayan*, G. R. No. 185224, July 29, 2015).

As already discussed earlier, there is no dispute that accused Peliglorio, Jr. is a public officer, being the Mayor of the Municipality of Mariveles at the time material to these cases while accused Lee, although a private person, is alleged to be in conspiracy with the former.

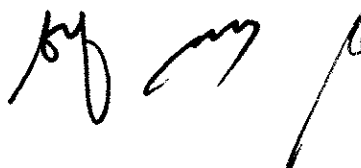
Likewise, the funds alleged to have been misappropriated are public in character as they pertain to funds belonging to the Municipality of Mariveles.

Furthermore, accused Peliglorio, Jr. is also an accountable public officer.

Under the Government Auditing Code of the Philippines, an accountable public officer is a public officer who, by reason of his office, is accountable for public funds or property.

This definition has been expanded with regard to local government officials by the Local Government Code, particularly in Section 340 thereof, which reads- -

Section 340. Persons Accountable for Local Government Funds.
- Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.



Local government officials are accountable public officers either (1) because of the nature of their functions; or (2) on account of their participation in the use or application of public funds (Frias vs. People, G. R. No. 171437, October 4, 2007).

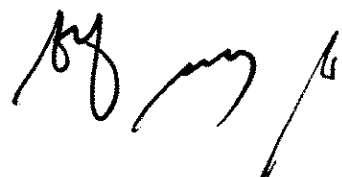
It is significant to note that in Item 2.4, Section 2 of the Supplemental Agreement dated March 22, 2007 (Exhs. "E" to "E-28"), the Landbank, as trustee of the loaned amount of Mariveles could pay the contractor of the Project only upon compliance with certain safeguards.

Thus, before the Landbank, as trustee of the funds of Mariveles, could release payments to Izumo, the contractor of the Project, the following must be complied with: (1) a written instruction from the Trustor (*in this case, accused Peliglorio, Jr., as the representative of Mariveles*); (2) the submission of the appropriate billing statements as certified to be true and correct by the Trustor; (3) the request must be approved by the Union Bank of the Philippines; and, (4) the Trustor will provide the Trustee with a copy of all the necessary documents and construction plans and schedules, duly certified to be true and correct by it and the contractor, developer or supplier.

Records reveal that none of the aforesaid safeguards were complied with before the amount of P23,470,500.00 was released to Izumo. The release of this amount was supported solely by the Letter dated March 27, 2007 (Exh. "H") of accused Peliglorio, Jr. to Landbank. Hence, the release of the said amount was "*without any procedural safeguards, guarantee of performance and in violation of Commission on Audit rules*". Likewise, despite the release of the advance payment, the construction of the Project never commenced.

Further reference was made to the 2006 Supplemental Agreement dated May 17, 2006 (Exh. "9-Lee") entered into by accused Peliglorio, Jr. and accused Lee. Of significance are Sections 2.3 and 2.4 of Article II (Contract Price and Mode of Payment) thereof, it states - -

2.3 Advance payment/mobilization, representing fifteen percent (15%) of the construction budget amount including taxes of **ONE HUNDRED TEN MILLION TWO HUNDRED SEVENTY THOUSAND PESOS (Php110,270,000.00)** for infrastructure, i.e. building construction and site development, in the amount of



SIXTEEN MILLION FIVE HUNDRED FORTY THOUSAND FIVE HUNDRED PESOS (Php16,540,500.00) shall be released to the **CONTRACTOR** upon issuance of the Notice to Proceed. This amount also covers partial payment to the **CONTRACTOR** for hydrological study, geological study, detailed engineering design, soil sampling, topography profiling, bankable comprehensive feasibility study and other related expenses which will cost **TWENTY FOUR MILLION PESOS (Php24,000,000.00)**, and, the balance shall be recoup from the construction budget of the project.

2.4. The advance payment shall be made only upon the **CONTRACTOR's** submission to and acceptance by the **OWNER** of a surety payment bond, callable on demand and issued by a surety or insurance company with an official certification currently issued by the Insurance Commission approving its capacity to undertake bonds, like performance bonds, etc. The surety bond shall cover the amount of **SIXTEEN MILLION FIVE HUNDRED FORTY THOUSAND FIVE HUNDRED PESOS (PhP 16, 540,500)**. The recoupment of the advance mobilization fund should be deducted to the **CONTRACTOR's** progress billing prorated to the amount of accomplishment.

Verily, even though Section 2.3 of the Supplemental Agreement dated May 17, 2007 (Exh. "Exh. 9-Lee") allows advance payment/mobilization fees, the release or payment of the said amount must still comply with Section 2.4 of the Supplemental Agreement and Section 2.4 of the Trust Agreement. Based on the evidence presented, these requisites were not complied with.

The Court noted the Letter dated March 26, 2007 (Exh. "G") of accused Lee requesting for the advance mobilization funds/downpayment, and financial charges from accused Peliglorio, Jr., which reads- -

March 26, 2007

HON. ANGEL V. PELIGLORIO JR.

Mariveles, Municipal Hall
Municipality of Mariveles,
Bataan

Project: **PROPOSED NEW MARIVELES PUBLIC MARKET**

Location: Roman Blvd., Municipality of Mariveles,
Bataan

Subject: **REQUEST FOR PAYMENT**

The Honorable Mayor:



In connection with the construction of the above-mentioned project, we wish to request for the advance mobilization funds/downpayment and financial charges in the amount of **PESOS: TWENTY THREE MILLION FOUR HUNDRED SEVENTY THOUSAND FIVE HUNDRED (P 23, 470, 500.00) ONLY**. Please refer to attached computation of our summary of account.

Attached are the copy of our **Notice To Proceed, Performance Bond, Surety Bond and Contractor's All Risk Insurance** your easy reference.

Hoping everything is in order.

Very Truly Yours,

CEDRIC C. LEE
President/ CEO

This Court further considered the Letter dated March 27, 2007 (Exhs. "H"; "7-Peliglorio") from accused Peliglorio, Jr. to Landbank (Attention: Mr. Eduardo B. Chaves, Vice President/Trust Officer, Trust Banking Group), and approved by Union Bank, authorizing the release/payment of P23,470,500.00. Quoting the Letter *verbatim*, it reads - -

Gentlemen:

This refers to the disbursement of the proceeds of the New Mariveles Public Market pursuant to Section 2.4. of Article II of the supplemental agreement for the construction of the New Mariveles Public Market located at the shoreline along Roman Boulevard Barangay Poblacion, Municipality of Mariveles, Bataan, executed by and between the Municipality of Mariveles and Izumo Contractors Inc.

Relative thereto, the undersigned hereby respectfully instructs you as Trustees of the said funds to pay and/or release to Izumo Contractors Inc., contractor for the project, the amount of **TWENTY THREE MILLION FOUR HUNDRED SEVENTY THOUSAND FIVE HUNDRED PESOS (P23,470,500.00)**, representing the advance mobilization funds and financial charges for the project.

Thank you.

Very Truly Yours,

HON. ANGEL V. PELIGLORIO Jr.

Municipal Mayor

Approved by Union Bank of the Philippines

RAFAEL OLIVER M. ABANO, JR.

GUIA C. LIM



First Vice President/Executive Vice President

This Court also considered as well the Letter dated March 28, 2007 (Exh. "NN") of accused Lee to Landbank (Attention: Mr. Eduardo Chaves, with the subject: (Advance Mobilization Funds/Financial Charges) Breakdown of Payment). This Letter reads - -

Dear Sir:

With regards to the advance mobilization funds, please make the payment to the following breakdown:

Union Bank of the Philippines	P2,994,451.27
Landbank (Bataan Export Processing Zone) FAO BIR	P 1,033,781.25
Izumo Contractors Inc.	<u>P19,442,267.48</u>
	P23,470,500.00

Thank you for your consideration.

Very truly yours,

Cedric C. Lee
President/CEO

Of note likewise is the Summary of Account prepared by Izumo Contractors Inc. dated March 26, 2007 (Exh. "NN-1"). It reads- -

Subject: Downpayment & Financial Charges
Date: March 26, 2007

1.0 Total Contract Amount	P117,200,000.00
2.0 Financial Charges	P 6,930,000.00
3.0 Contract Amount less Financial Charges	P110, 270,000.00

4.0 This Billing	
a) Advance Mobilization Funds (15.000% of Item 3.0)	P16, 540,500.00
b) Financial Charges	<u>P 6,930,000.00</u>
TOTAL	<u>P23,470,500.00</u>

5.0 Less	
a) Union Bank of the Philippines Fees	P2,994,451.27
b) VAT (5%) of Item 4. a	P 738,415.18
c) Withholding Tax (2%) of Item 4.0	P 295,366.07
	(P4,028,232.52)

TOTAL AMOUNT DUE	<u>P 19,442, 267.48</u>
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Notable also is Official Receipt No. 00505 dated March 29, 2007 (Exh. "PP") clearly confirming receipt of the amount of P19,442,267.48 from Landbank representing payment for the advance mobilization funds of the Project. This was never disputed by accused Lee. In fact, he even presented a Credit Slip dated March 29, 2007 (Exh. "7-Lee") admitting receipt.

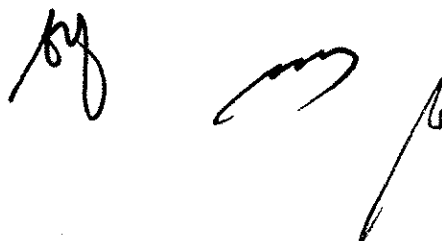
Although accused Lee never disputed writing the Letters dated March 27, 2007 (Exh. "G") and March 28, 2007 (Exh. "NN"), accused Peliglorio, Jr., denies writing the Letter dated March 27, 2007 (Exh. "H") and even claims that his signature appearing thereon was forged.

This Court is reminded of the case of Pontaoe vs. Pontaoe (G. R. No. 159585, April 22, 2008) where the Supreme Court held that –

A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. The opinions of handwriting experts are not binding upon courts, especially when the question involved is mere handwriting similarity or dissimilarity, which can be determined by a visual comparison of specimens of the questioned signatures with those of the currently existing ones. Moreover, Section 22 of Rule 132 of the Rules of Court likewise explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting "with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

Guided by the foregoing, this Court, after a thorough visual comparison of the questioned signatures, finds that the signatures of accused Peliglorio, Jr. are his, notwithstanding the findings of the expert witness he presented.

Moreover, Section 2.4 of the Trust Agreement dated March 22, 2007 (Exhs. "E" to "E-28") between Mariveles and Landbank requires a written instruction, among others, from the Trustor before the Trustee can release funds from the Project Construction Fund directly to the contractor, subcontractors, developers or suppliers of the Project. In other words, any disbursement and release of public funds requires the approval of the Trustor.

Three handwritten signatures in black ink are shown at the bottom of the page. The first signature on the left is a stylized, cursive 'M'. The middle signature is a more fluid, cursive 'M'. The signature on the right is a long, sweeping, cursive 'M' that extends further to the right than the others.

Thus, accused Peliglorio, Jr., in his capacity as Mayor of the Municipality of Mariveles, had control and was responsible for the subject funds.

Clearly, accused Peliglorio, Jr. consented, or through abandonment or negligence, permitted another person to take the public funds when he wrote the Letter dated March 27, 2007 (Exh. "H"), instructing Landbank, as Trustee, to pay and/or release to Izumo the amount of P23,470,500.00 as advance mobilization funds for the Project and as financial charges.

For his part, accused Lee conspired with accused Peliglorio, Jr., when the former wrote a Letter dated March 26, 2007 (Exh. "G") to the latter requesting for the advance mobilization funds/downpayment and financial charges in the amount of P23,470,500.00.

This coordinated acts became evident when a day after accused Peliglorio, Jr. wrote the Letter dated March 27, 2007 (Exh. "H") to Landbank, accused Lee immediately wrote Landbank a Letter dated March 28, 2007 (Exhs. "NN" - "NN-1"), requesting for the payment of P23,470,500.00.

These same Letters allowed accused Lee to encash the amount of P19,442,267.48.

Although accused Lee maintains that the amount he initially received was for the services he already rendered to Mariveles, such as the detailed architectural design, the detailed engineering design, the geo-technical study, a comprehensive feasibility study, an environmental compliance, and the billings of Arch. Joel Lopez, all submitted to Mariveles to support the advance payment, We are not persuaded.

Nothing in the documents he submitted could prove that Izumo is entitled to a lump-sum payment of P19,442,267.48. Apart from his self-serving statements, there was no breakdown of the designs and studies he enumerated nor were there any contracts that would prove that he outsourced and paid the other services. Likewise, in the Letter-requests sent to accused Peliglorio, Jr. and the Landbank, accused Lee could have easily detailed at the onset the services already performed to support his claim for an advance payment.

Handwritten signature and initials in the bottom right corner of the page.

Instead, he merely mentioned a general term - *advance mobilization* - as justification.

Conveniently, accused Lee, on cross examination, admitted that he had no contract with any of the individuals or groups he outsourced the services he mentioned, thus - -

PROS. NUÑEZ:

Q: So, you have no copy of the contract evidencing the terms and conditions of the preparation of the architectural design and detailed engineering by Architect Lopez. You have no written contract?

A: I have a contract with him. Actually, he submitted a billing statement to me recently.

Q: Yeah, but the contract itself, Sir, containing the terms and conditions of the outsourcing as well as the deliverables to Architect Lopez, you have no copy?

A: I don't recall possessing the contract anymore.

x x x

PROS. NUÑEZ:

Q: You mentioned therein that the Environmental Impact Statement was prepared by Geo Environmental Consultancy Incorporated. Do you confirm them?

WITNESS:

A: Yes. Ma'am.

Q: Okay. You have no copy of your contract with Geo Environmental Consultancy?

A: Ma'am, Geo Consultant was initially engaged by the Municipality even way before I had a contract with the Municipality for the project but when the---(Interrupted)

Q: Okay, Sir. Thank you, Sir. With respect to your Answer to Question No. 29, you mentioned, Sir, that you had to pay people?

A: Question what?

Q: Page 7, Sir.

A: Number what?

Atty. Rimban:

29.


PROS. NUÑEZ:

Q: That you still owe them, Sir, money relative to the preparation of your deliverables under the MOA?

WITNESS:

A: Yes, ma'am.

PROS. NUÑEZ:

The block contains three handwritten marks. On the left is a signature that appears to be 'ky'. In the center is a stylized, cursive signature. On the right is a signature that appears to be 'G' or 'u' with a long, sweeping stroke extending downwards.

Q: So, you have no copies of your contracts identifying who these people are as well as their respective deliverables?

WITNESS:

A: The bulk of the cost just went to---(*Interrupted*)

Q: "Yes" or "no", Sir.

A: Ha?

Q: "Yes" or "no", Sir. No copy?

A: No copy.

Q: Neither you have copies of their billings showing how much actually you owe them, Sir, and how much you paid them?

A: I do have the billing statement of Architect Joel Lopez.

Q: Only Architect Joel Lopez?

A: The others, I was fully paid already.

It is well-established that conspiracy may be inferred. The Supreme Court in *Escobar vs. People* (G. R. No. 205576, November 20, 2017, citing *Alvizo vs. Sandiganbayan*) held that - -

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.

Thus, the totality of the facts arising from the evidence undoubtedly shows conspiracy between accused Lee and accused Peliglorio, Jr..

Accused Peliglorio Jr. even went farther by denying entering into any loan agreement with Landbank, Union Bank



or accused Lee on March 27, 2005, as alleged in the Informations. However, evidence clearly shows that a Loan Agreement dated March 22, 2007 (Exh. "B"; Exh. "1-Peliglorio") and several documents all dated 2007 existed with his name on it.

In crimes where the date of commission is not a material element, like murder, it is not necessary to allege such date with absolute specificity or certainty in the information (People vs. Delfin, G. R. No. 201572, July 9, 2014).

Also, the Rules of Court merely require, for the sake of properly informing an accused, that the date of commission be approximated, to wit - -


Section 6. *Sufficiency of complaint or information.*— A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

Further, Section 11 of the Revised Rules of Court provides - -

Section 11. *Date of commission of the offense.* — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

An information is thus sufficient if it states the approximate date of the commission of the offense. This applies in cases where the accusatory portion of the information which alleges that the accused committed the offense of malversation and violation of Section 3 (e) of R.A. No. 3019 "*on March 2005 or thereabout*".

After a careful scrutiny of the records and thorough evaluation of the evidence adduced by the parties, this Court is convinced, beyond a reasonable doubt, that accused Peliglorio, Jr. and accused Lee committed malversation, punished under Article 217 of the Revised Penal Code, as amended.



As to the imposable penalty, We note that the crime of malversation under Article 217 of the Revised Penal Code was amended by Republic Act No. 10951 dated July 24, 2017. The amendment increased the threshold amounts and the corresponding penalties for the said crime when the amount involved is more than Eight Million Eight Hundred Thousand Pesos. Considering that the amendatory law was enacted after the commission of the acts complained of in the instant criminal cases, its provisions may not be applied retroactively as the same are clearly prejudicial and not advantageous to the accused (Section 100, Republic Act No. 10951). Hence, the penalties provided for in Article 217 of the Revised Penal Code shall be applicable herein.

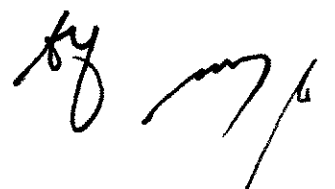
WHEREFORE, premises considered, judgment is hereby rendered as follows - -

In **Criminal Case No. SB-15-CRM-130**, this Court hereby **ACQUITS** accused Angel Viray Peliglorio, Jr. and accused Cedric Cua Lee of violation of Sec. 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt.

Consequently, let the bail bonds secured by both acquitted accused for the foregoing **Criminal Case No. SB-15-CRM-130** be **RELEASED** subject to the usual accounting and auditing procedures.

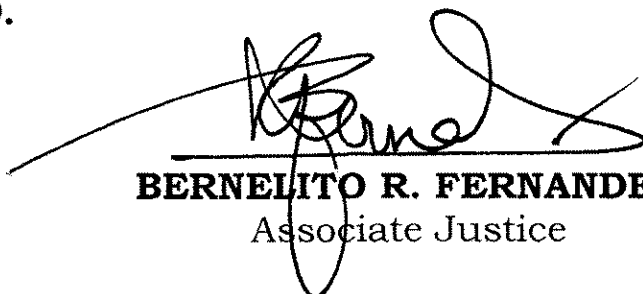
Further, for **Criminal Case No. SB-15-CRM-130**, the Hold Departure Orders issued against both acquitted accused are hereby ordered **RECALLED** and **SET ASIDE**. Send copy of this Decision to the Bureau of Immigration for appropriate action

On the other hand, in **Criminal Case No. SB-15-CRM-131**, this Court finds accused Angel Viray Peliglorio, Jr. and accused Cedric Cua Lee **GUILTY** beyond reasonable doubt of the crime of malversation, as defined and penalized under paragraph 4 of Article 217 of the Revised Penal Code, as amended. There being no modifying circumstance in attendance and after applying the Indeterminate Sentence Law, each of them is hereby sentenced to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day of *reclusion temporal* as minimum to Eighteen (18) Years, Eight (8) Months and One (1) Day of *reclusion temporal* as



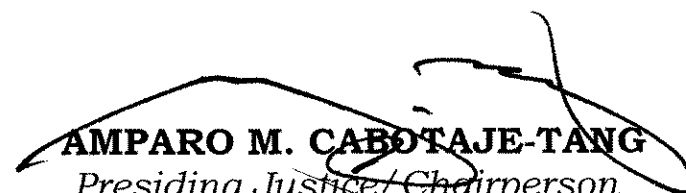
maximum. This Court further imposes a penalty of absolute perpetual disqualification to hold public office and a fine of Twenty Three Million Four Hundred Seventy Thousand Five Hundred Pesos (P23,470,500.00), equal to the funds malversed.

SO ORDERED.

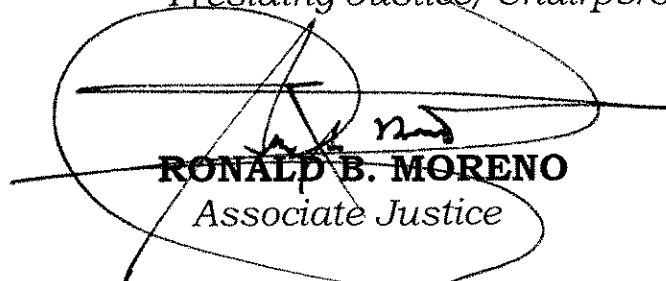


BERNELITO R. FERNANDEZ
Associate Justice

We concur:



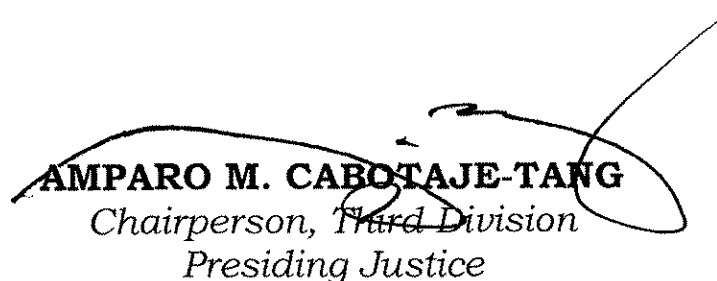
AMPARO M. CABOTAJE-TANG
Presiding Justice/Chairperson



RONALD B. MORENO
Associate Justice

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
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.



AMPARO M. CABOTAJE-TANG

Presiding Justice

