



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**Fifth (5<sup>th</sup>) Division**

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

—versus—

**OSMEÑA M. BANDILA, ET AL.**  
*Accused.*

**Crim. Case Nos. SB-19-  
CRM- 0053 and 0055**

For: Violation of Section 3(e) of  
R.A. No. 3019, as amended

**Crim. Case Nos. SB-19-  
CRM-0054 and 0056**

For: Malversation under Article 217  
of the Revised Penal Code

*Present:*

**LAGOS, J., Chairperson,  
MENDOZA-ARCEGA, and  
MAÑALAC, JJ.**

*Promulgated:*

September 30, 2022

X-----*Jose L. Gutierrez*-----X

**DECISION**

**LAGOS, J.:**

On 11 December 2017, *Informations* charging accused Osmeña M. Bandila ("Bandila"), John Estrelito G. Dollosa, Jr. ("Dollosa, Jr."), Roger M. Chio ("Chio"), Mariflor S. Garcia ("Garcia"), and Carlos P. Mendoza ("Mendoza") for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act and Malversation under Article 217 the Revised Penal Code were filed and read as follows:

Criminal Case No. SB-19-CRM-0053

*On 14 April 2004, or thereabout, in the Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the accused officials of the Department of Agriculture-Regional Field Office XI (DA-RFO XI) ROGER C. CHIO, Regional Executive Director, and MARIFLOR S. GARCIA, Regional Accountant, while in the performance and taking advantage of their official and administrative functions, confederating with co-accused officials of the Provincial Government of Maguindanao, OSMEÑA M. BANDILA, Provincial Treasurer, and JOHN ESTRELITO G. DOLLOSA JR., Provincial Accountant, with evident bad faith, manifest partiality and/or gross inexcusable negligence did then and there willfully, unlawfully and criminally, cause undue injury to the government when they processed and approved the transfer/release of Php3,250,000.00 fertilizer fund to the Provincial Government of Maguindanao through accused Bandila as evidenced by OR No. 2424976 dated 19 April 2004, despite its failure to submit the required liquidation report and periodic accomplishment report; while accused DOLLOSA and BANDILA as Provincial Accountant and Acting Provincial Treasurer, respectively and being the province's accountable officers at that time, permitted or authorized said fund to be paid or disbursed to IMB Agri-Supplies for a fictitious transaction, to the damage and prejudice of the government in the said amount.*

CONTRARY TO LAW.

Criminal Case No. SB-19-CRM-0054

*On 14 April 2004, or thereabout, in the Province of Maguindanao, Philippines, and with [sic] the jurisdiction of this Honorable court, the accused officials of the Department of Agriculture-Regional Field Office XI (DA-RFO XI) ROGER C. CHIO, Regional Executive Director, and MARIFLOR S. GARCIA, Regional Accountant, while in the performance and taking advantage of their official and administrative functions, confederating with co-accused officials of the Provincial Government of Maguindanao OSMEÑA M. BANDILA, Provincial Treasurer, and JOHN ESTRELITO G. DOLLOSA JR., Provincial Accountant, did then and there willfully, unlawfully and feloniously, appropriate, take or misappropriate, or with great carelessness and unjustifiable negligence permit any other person to take wholly or partially public funds by processing and approving the release of the Php3,250,000.00 fertilizer fund to the Provincial Government of Maguindanao through accused Bandila as evidenced by OR No. 2424976 dated 19 April 2004, despite its failure to submit the required liquidation report and periodic accomplishment report; while accused DOLLOSA and BANDILA as Provincial Accountant and Acting Provincial Treasurer, respectively, and being the province's accountable officers at that time, failed to exercise their fiscal responsibility to safely keep and disburse said funds in accordance with standard procedure, when they allowed the said fund to [sic] paid or disbursed to IMB Agri-Supplies of a fictitious transaction, to the damage and prejudice of the government.*

CONTRARY TO LAW.

Criminal Case No. SB-19-CRM-0055

*On 29 October 2004, or thereabout, in the Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the accused officials of the Department of Agriculture, Regional Field Office XI (DA-RFO XI) ROGER C. CHIO, Regional Executive Director, CARLOS B. MENDOZA, Regional Technical Director and MARIFLOR S. GARCIA, Regional Accountant, while in the performance and taking advantage of their official and administrative functions, confederating with co-accused officials of the Provincial Government of Maguindanao, OSMENA M. BANDILA, Provincial Treasurer, and JOHN ESTRELITO G. DOLLOSA JR., Provincial Accountant, with evident bad faith, manifest partiality and/or gross inexcusable negligence did then and there willfully, unlawfully and criminally, cause undue injury to the government when they processed and approved the transfer/release of Php1,750,000.00 fertilizer fund to the Provincial Government of Maguindanao through accused Bandila as evidenced by OR No. 2424981 dated 29 October 2004, despite its failure to submit the required liquidation report and periodic accomplishment report; while accused Dollosa and Bandila as Provincial Accountant and Acting Provincial Treasurer, respectively, and being the province's accountable officers at that time, permitted or authorized said fund to be paid or disbursed to Golden Kabir Marketing for a fictitious transaction, to the damage and prejudice of the government in the said amount.*

CONTRARY TO LAW.

Criminal Case No. SB-19-CRM-0056

*On 29 October 2004, or thereabout, in the Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the accused officials of the Department of Agriculture, Regional Field Office XI (DA-RFO XI) ROGER C. CHIO, CARLOS B. MENDOZA, and MARIFLOR S. GARCIA while in the performance and taking advantage of their official and administrative functions, confederating with co-accused officials of the Provincial Government of Maguindanao OSMENA M. BANDILA, and JOHN ESTRELITO G. DOLLOSA JR., did then and there willfully, unlawfully and feloniously, appropriate, take or misappropriate, or with great carelessness and unjustifiable negligence permit any other person to take wholly or partially public funds by processing and approving the release of the PhP1,750,000.00 fertilizer fund to the Provincial Government of Maguindanao through accused Bandila as evidenced by OR No. 2424981 dated 29 October 2004, despite its failure to submit the required liquidation report and periodic accomplishment report; while accused DOLLOSA and BANDILA as Provincial Accountant and Acting Provincial Treasurer, respectively, and being the province's accountable officers at that time, failed to exercise their fiscal responsibility to safely keep and disburse said funds in accordance with standard procedure, when they allowed the said fund to be paid*

*or disbursed to Golden Kabir Marketing of a fictitious transaction, to the damage and prejudice of the government.*

CONTRARY TO LAW.

To note, accused Mendoza is included only in Criminal Case Nos. SB-19-CRM-0055 and SB-19-CRM-0056.

The Court issued a *Hold Departure Order* dated 30 April 2019<sup>1</sup> and a *Warrant of Arrest* dated 07 May 2019.<sup>2</sup> On 09 May 2019, accused Mendoza personally appeared before the Court to post bail in cash amounting to Thirty Five Thousand Pesos (₱35,000.00).<sup>3</sup> Law enforcement agencies were furnished a copy of the *Warrant of Arrest* (dated 10 May 2019) commanding the arrest of accused Bandila, Dollosa, Jr., Chio, and Garcia.<sup>4</sup> On 22 May 2019, accused Garcia personally appeared before the Court to post bail in cash amounting to One Hundred Thirty Thousand Pesos (₱130,000.00).<sup>5</sup> And on 18 June 2019, accused Chio posted bail bond in cash amounting to Sixty Five Thousand Pesos (₱65,000.00) before Office of the Executive Judge of Davao City.<sup>6</sup>

Accused Mendoza,<sup>7</sup> Garcia,<sup>8</sup> and Chio<sup>9</sup> filed their respective *Motions to Dismiss* on the ground of inordinate delay which the Prosecution opposed.<sup>10</sup> In separate *Resolutions*, the Court denied all of the accused's *Motions to Dismiss* for lack of merit.<sup>11</sup> Accused Garcia and Chio filed their *Motions for Reconsideration*<sup>12</sup> which were likewise denied by the Court. Accused Chio filed a *Petition for Certiorari*<sup>13</sup> before the Supreme Court assailing the Court's *Resolutions* that denied his motions, arguing that his constitutional right to the speedy disposition of cases was violated.

Upon arraignment,<sup>14</sup> accused Mendoza, Garcia and Chio pleaded "not guilty" to the charges against them.

On 11 December 2019, the counsel for accused Mendoza filed a *Manifestation with Motion to Dismiss Case Against Accused Mendoza and to Release Cash Bond*<sup>15</sup> informing the Court that accused

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<sup>1</sup> Records, Vol. I, p. 353.

<sup>2</sup> Records, Vol. I, p. 375.

<sup>3</sup> Records, Vol. I, p. 382.

<sup>4</sup> Records, Vol. I, p. 390.

<sup>5</sup> Records, Vol. I, p. 405.

<sup>6</sup> Records, Vol. I, pp. 544-545.

<sup>7</sup> Records, Vol. I, pp. 428-437.

<sup>8</sup> Records, Vol. I, pp. 490-495.

<sup>9</sup> Records, Vol. I, pp. 574-591.

<sup>10</sup> Records, Vol. I, pp. 446-451, 501-505 and Records, Vol. II, pp. 38-42.

<sup>11</sup> Records, Vol. II, pp. 5-16, pp. 18-36, and pp. 100-105.

<sup>12</sup> Records, Vol. II, pp. 192-200.

<sup>13</sup> Records, Vol. II, pp. 244-276.

<sup>14</sup> Records, Vol. II, p. 93 and p. 214. (Court Orders dated 26 July 2019 and 27 September 2019)

<sup>15</sup> Records, Vol. II, pp. 744-746.

Mendoza passed away on 08 September 2019 and praying for the dismissal of the case against the accused and the release of his cash bond to his surviving spouse. The Court granted the motion and dismissed the case as against accused Mendoza and released the cash bail bond in favor of his spouse.<sup>16</sup>

The Preliminary Conference was held on 23 September 2019, 18 October 2019, 11 November 2019, and 22 January 2020. In the *Pre-Trial Order*<sup>17</sup> issued by the Court, aside from the identities of accused Chio and Garcia, and jurisdiction of the Court, the only stipulation agreed upon by the parties was: "Accused Roger C. Chio, at the time material to the Information was a public officer, being the Regional Executive Director of the Department of Agriculture, Regional Field Office XI".<sup>18</sup>

On 02 September 2020, the counsel for accused Chio filed a *Manifestation* informing the Court that accused Chio passed away on 11 August 2020.<sup>19</sup> This was followed by a *Manifestation with Motion to Dismiss* in view of accused Chio's death. The Court granted the motion and dismissed the case as against accused Chio.<sup>20</sup> Accused Chio's pending *Petition for Certiorari* was dismissed by the Supreme Court for being moot and academic due to accused Chio's death.<sup>21</sup>

Thereafter, trial ensued. In this case, only accused Garcia participated in the trial and presented evidence since the case against accused Mendoza and Chio was already dismissed by reason of their deaths and the Court had yet to acquire jurisdiction over accused Bandila and Dollosa, Jr. since they remain at large.

### **FACTUAL ANTECEDENTS**

Republic Act No. 8435 or the "Agriculture and Fisheries Modernization Act of 1997" was enacted to promote, develop, and modernize the country's agricultural and fisheries sector to be spearheaded by the Department of Agriculture ("DA"). The *Ginintuang Masaganang Ani* ("GMA") Program was DA's banner program for effecting R.A. No. 8435 which aims to generate employment, increase farmers' income, and achieve food security with the DA Regional Field Units ("DA RFUs") and Local Government Units ("LGUs") as implementing agencies. In line with the GMA Program, the DA initiated its Farm Inputs and Farm Implements Program ("FIFIP") for the

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<sup>16</sup> Records, Vol. II, p. 9 (Court *Resolution* dated 14 January 2020).

<sup>17</sup> Records, Vol. III, pp. 212-225 (Pre-Trial Order dated 13 March 2020).

<sup>18</sup> *Id.*, p. 214.

<sup>19</sup> Records, Vol. III, p. 112.

<sup>20</sup> Records, Vol. IV, p. 14 (Court *Resolution* dated 05 July 2021).

<sup>21</sup> Records, Vol. IV, p. 243.

purchase of farm inputs and implements for the beneficiaries. On 03 February 2004, the Department of Budget and Management ("DBM") issued *Special Allotment Release Order ("SARO")* No. E-04-00164<sup>22</sup> releasing a total of Seven Hundred Twenty Eight Million Pesos (₱728,000,000.00) to DA for the implementation of the FIFIP.

On 24 March 2004, the Department of Agriculture – Region XI, represented by its Regional Executive Director Roger C. Chio, and the Office of the Provincial Governor of Maguindanao province, represented by Governor Andal S. Ampatuan, Sr., entered into a Memorandum of Agreement ("MOA")<sup>23</sup> wherein the former will transfer to the latter the amount of ₱5,000,000.00 in support to various agricultural and development programs to be implemented by the local government. The agreement was signed by Chio and Ampatuan and signed in the presence of Mariflor S. Garcia, Regional Accountant, and Engr. Norie K. Unas, Maguindanao's Provincial Administrator.<sup>24</sup> The MOA also stated that the Office of the Provincial Governor shall submit a Report of Disbursement duly attested by the Provincial Auditor and an Accomplishment Report supported with photos, and certificate of receipt-acceptance by the target beneficiaries.<sup>25</sup> The Department of Agriculture in turn, shall conduct periodic monitoring of funded programs, proper fund utilization and compliance thereof, and to intervene and undertake corrective measures in the event of misappropriation of funds.<sup>26</sup>

The ₱5,000,000.00 fund, covered by an Allotment and Obligation Slip ("ALOBS") dated 14 April 2004<sup>27</sup>, was split into two (2) tranches: the amount of Three Million Two Hundred Fifty Thousand pesos (₱3,250,000.00) was initially disbursed to the local government via Philippine Veterans Bank check no. 0000110667 dated 15 April 2004<sup>28</sup> and covered by a Disbursement Voucher ("DV") on even date.<sup>29</sup> On this DV, accused Chio certified that the expenses/advances were necessary, lawful and incurred under his direct supervision, while accused Garcia certified that the supporting documents were complete and proper. The check was signed by accused Chio and Rita R. Retino, Regional Cashier. The province, through Osmeña M. Bandila, issued Official Receipt No. 2424976 dated 19 April 2004<sup>30</sup> signifying its acceptance.

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<sup>22</sup> Exhibit "P"

<sup>23</sup> Exhibit "B"

<sup>24</sup> Exhibit "B-1"

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Exhibit "C"

<sup>28</sup> Exhibit "E"

<sup>29</sup> Exhibit "D"

<sup>30</sup> Exhibit "F"

The second disbursement in favor of the local government amounted to One Million Seven Hundred Fifty Thousand pesos (₱1,750,000.00) via Philippine Veterans Bank check no. 0000128394 dated 29 October 2004<sup>31</sup> and covered by Disbursement Voucher (DV) on even date.<sup>32</sup> On this DV, accused Chio approved for payment the amount of ₱1,750,000.00, accused Mendoza certified that the expenses/advances were necessary, lawful and incurred under his direct supervision, and accused Garcia certified that the supporting documents were complete and proper. The check was signed by accused Chio and Corzon M. Ebrero, Cashier. The province, issued Official Receipt No. 2424981 dated 29 October 2004<sup>33</sup> signifying that it has been accepted by a certain Engr. Unas, a Collecting Officer, whose signature appears thereon.

State Auditor IV Romeo G. Banante wrote a *Confirmation Request* dated 19 October 2004<sup>34</sup> addressed to the Governor of Maguindanao Province (through the Provincial Auditor) to request confirmation on the status of the ₱3,250,000.00 fertilizer fund transferred by DA RFU XI. It also brought the LGU-beneficiary's attention on the rules and regulations on the grant, utilization, and liquidation of funds transferred to Implementing Agencies pursuant to COA Circular No. 94-013. The Provincial Government of Maguindanao failed to comply with this request. As a consequence thereof, it was reflected on the *2004 Annual Audit Report of DA RFU XI* that the LGU-beneficiary "xxx...failed to render a report on the utilization of the fund...xxx" in the amount of ₱3,250,000.00.<sup>35</sup> It was recommended that the Provincial Government of Maguindanao be required to submit its Liquidation Report and Status of Utilization of Funds Transferred concerning the subject amount. No *Confirmation Request* was issued regarding the remaining ₱1,750,000.00 because State Auditor Banante was not aware of it so it was not incorporated in the annual audit report.<sup>36</sup>

On 08 February 2005, State Auditor Banante wrote a *1<sup>st</sup> Tracer*<sup>37</sup> addressed to the Governor of Maguindanao Province (through the Provincial Auditor) to follow up on his *Confirmation Request*. In compliance<sup>38</sup> thereto, accused Dollosa, Jr., the Provincial Accountant, submitted a *Report with Disbursement* in relation to the ₱3,250,000.00 fertilizer fund. Attached to the compliance was *Certification No. 01*<sup>39</sup> certifying on the status of the cash advance given by the DA that the

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<sup>31</sup> Exhibit "H"

<sup>32</sup> Exhibit "G"

<sup>33</sup> Exhibit "I"

<sup>34</sup> Exhibit "J"

<sup>35</sup> Exhibit "K-30" and "K-31"

<sup>36</sup> Records, Vol. I, p. 51.

<sup>37</sup> Exhibit "M"

<sup>38</sup> Exhibit "N"

<sup>39</sup> Exhibit "N-1"

amount of ₱3,250,000.00, which was broken down into ₱1,640,625.00 and ₱1,609,375.00, appears to have been disbursed on 16 June 2004 in favor a certain IMB-Agri. Supplies. *Certification No. 1* was certified correct by accused Dollosa, Jr, Verified and found correct by Provincial Auditor Tapa B. Datukan, and approved by Governor Datu Andal S. Ampatuan, Sr.

On 16 June 2005, State Auditor Datukan indorsed<sup>40</sup> to State Auditor Banante the disbursement certificates in connection with the ₱3,250,000.00 and ₱1,750,000.00 fertilizer fund transferred to the Province of Maguindanao by the DA RFU XI. Aside from *Certification No. 1*, which was once again submitted,<sup>41</sup> likewise attached was *Certification No. 02*<sup>42</sup> certifying the status of the cash advance given by the DA that the amount of ₱1,750,000.00, which was broken down into ₱961,750.00 and ₱788,250.00, appears to have been disbursed on 01 November 2004 in favor a certain Golden Kabir, Mktg. *Certification No. 2* was certified correct by accused Dollosa, Jr, Verified and found correct by Provincial Auditor Datukan, and approved by Governor Ampatuan, Sr.

Eventually, the subject transaction became part of the investigation involving the alleged misuse of the fertilizer funds of the Ginintuang Masagana Ani program. In the course thereof, it was found out that no liquidation report or supporting documents were attached to the disbursement certificates earlier submitted by the Provincial Government of Maguindanao.<sup>43</sup> As a result of the investigation, these criminal cases were filed by the Ombudsman against the above-named accused.

### **Evidence for the Prosecution**

The Prosecution presented Gerhard G. Basco, Romeo G. Banante, Julieta B. Lansangan, and Tweety T. Tuazon as witnesses.

#### **Gerhard G. Basco**<sup>44</sup>

Witness Gerhard G. Basco ("Basco") is presently employed as Associate Graft Investigation Officer III of the Field Investigation Office II, Office of the Ombudsman. His duties include: 1) evaluation of complaint assigned to him; 2) conducting fact-finding investigation; 3) preparation of legal process/es to be issued relative to the investigation; 4) evaluation of documents gathered; 5) conducting

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<sup>40</sup> Exhibit "O"

<sup>41</sup> Exhibit "O-1"

<sup>42</sup> Exhibit "O-2"

<sup>43</sup> Records, Vol. I, p. 13 (Ombudsman's *Resolution* dated 07 February 2017).

<sup>44</sup> Testified on 15 June 2021



interviews, ocular inspection and/or surveillance, if necessary; 6) preparing Investigation Reports and Complaints; and 7) testifying in court in complaints filed. Additionally, witness was also designated as Group Coordinator for Fertilizer Scam investigations. He reviewed the reports and complaints submitted to him, including investigation of the case at bar, before submitting the same to his superiors for their review and approval.

Basco was assigned to review the fact-finding investigation conducted on the anomalous disbursement made by the Department of Agriculture-Region XI and the Office of the Provincial Government of Maguindanao, of the Five Million Pesos charged against the ₱728 million fertilizer fund. In the process of conducting the fact-finding investigation, relevant documents were obtained through the issuance of Subpoena from the Department of Agriculture, Provincial Government of Maguindanao, Commission on Audit, Securities and Exchange Commission, Department of Trade and Industry and the Fertilizer and Pesticides Authority, among others, including the Sworn Statements of State Auditors Romeo G. Banante and Danny T. Calib. The 201 Files of the Respondents were also secured from the Human Resource Office of the Provincial Government of Maguindanao and Department of Agriculture.

According to witness Basco, the following were the relevant findings on the investigation:

- The DA-RFU XI released PhP3,250,000.00 to the Provincial Government of Maguindanao
- Another fund was released by DA-RFU XI to the Provincial Government of Maguindanao in the amount of PhP1,750,000.00
- The Provincial Government of Maguindanao failed to provide the status of fund transfer in the amount of PhP3,250,000.00, including the Report of Check Issued and Report of Disbursement
- That the disbursement of PhP3,250,000.00 for IMB-Agri Supplies and PhP1,750,000 for Golden Kabir, Mktg. is tainted with anomalies. There is no proof that the said amounts were indeed disbursed
- No documents were found that would show that a public bidding was conducted either by the DA-RFU XI or the Provincial Government of Maguindanao and awarding the contracts to IMB Agri Supplies and Golden Kabir, Mktg

- There are no liquidation report and other supporting documents regarding the disbursement of PhP3,250,000.00 and PhP1,750,000.00
- There are no documents that would show that the Provincial Government of Maguindanao procured goods from IMB Agri Supplies and Golden Kabir, Mktg
- That based on the records from Fertilizer and Pesticide Authority, Golden Kabir, Mktg. is not among the licensed distributor/manufacturer of agricultural fertilizers and pesticides for the years 2004 and 2005 in Region XI

After conducting the fact-finding investigation, Basco reviewed the documents and the Investigation Report. After, the approval of the Investigation Report, he prepared/submitted the Complaint as nominal complaint.

On cross-examination,<sup>45</sup> the witness confirmed that he was the Group Coordinator of the 3-person team who conducted the fact-finding investigation in these cases. He stated that they issued legal processes to government agencies, evaluated the records submitted to them and prepared the report for submission to their supervisor. He also averred that the Investigation Report was submitted along with the Complaint.

Basco confirmed that during his investigation, he came across the *Memorandum of Agreement (MOA)* between the Department of Agriculture (DA) Region XI and the Office of the Provincial Governor of Maguindanao. He also confirmed that under the said MOA, the Office of the Provincial Governor submitted the *Report of Disbursement* thirty (30) days after the completion of the project. The witness further stated that per the *Certification* submitted by the Provincial Government of Maguindanao, there only appears the balance or the incurred balance as of June 2004 and November 2004. He also affirmed that the documents to be submitted by the Provincial Governor were only submitted after the completion of the disbursement, pursuant to the MOA.

**Romeo G. Banate**<sup>46</sup>

Witness Romeo G. Banate ("Banate") is a Certified Public Accountant and currently a State Auditor IV of the National Commission on Indigenous People, Region XI, Commission on Audit. He was a State Auditor for Department of Agriculture for the years 2002

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<sup>45</sup> TSN, dated 15 June 2021.

<sup>46</sup> Testified on 22 July 2021.

to 2005. He acted as a team leader of the DA RFU XI- Davao City. He audited, examined and settled accounts of the expenditures of the DA RFU XI. He rendered annual audit reports and recommended measures to improve the operations of the DA.

While serving as a State Auditor for the DA from 2002 to 2005, he remembered having audited the transfer of funds from DA RFU XI to the Provincial Government of Maguindanao amounting to ₱5 million for the purchase of farm inputs since said transaction was subject of Annual Audit Report of DA RFU XI resulting from the audit conducted for 2004. Said payment was made in two tranches – ₱3,250,000.00 and ₱1,750,000.00. As proof, he presented the following documents: the MOA, *Allotment and Obligation Slip (ALOPS)*, *Disbursement Vouchers*, *Checks*, *Official Receipts*, *NTAs* and the *Indorsement* from Tapa B. Dakutan, Provincial Auditor forwarding to him the *Certificates of Disbursement 01 and 02* in the amount of ₱3,250,000.00 and ₱1,750,000.00, respectively, among other documents pertaining to the transfer of the subject funds.

Based from the audit conducted, and as reflected in the *Annual Audit Report of DA RFU XI for 2004*, it was found that the DA did not conduct periodic monitoring of funded programs, proper fund utilization and compliance with the provisions stated in the MOA. DA RFU XI did not coordinate with the Provincial Government of Maguindanao on the program's implementation. It was stated in Article II, Section 3 of the MOA that the DA shall "conduct periodic monitoring of funded programs, proper fund utilization and compliance with the provisions stated in this Agreement".

Further, the implementing agency (the Provincial Government of Maguindanao), failed to render a report on the utilization of funds transferred. This is contrary to the MOA provision that the recipient of the fund shall take the lead role in facilitating the implementation of the program.

During the cross-examination,<sup>47</sup> witness Banate affirmed that the Provincial Governor is responsible for the implementation of the program and at the same time, the witness stated that the Regional Accountant has a way of knowing the implementation of said program since the MOA is not only the basis in the transfer of funds to the implementing agency. As cited by the witness, there is COA Circular No. 94-013 which comprise the Rules and Regulations in the Grant, Utilization and Liquidation of Funds Transferred to Implementing Agencies and the said circular contains the duties of the accountant.

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<sup>47</sup> TSN, dated 22 July 2021

In the Allotment and Obligation Slip (Exhibit "C"), the witness confirmed that said document mentioned only the amount of Five Million Pesos and that the only participation of the Regional Accountant (accused Mariflor Garcia) is the presence of her signature. Banate also affirmed that Garcia merely certified as to the truthfulness that there was availability of fund when the said document was signed on April 14, 2004.

In the Disbursement Voucher (Exhibit "D"), the witness confirmed that the certification made by the Regional Accountant is only to the effect that the supporting documents are complete, proper and there is availability of cash.

For the check involved (Exhibit "E") and the receipt which proves that ₱3,250,000.00 was received by the Provincial Treasurer of Maguindanao (Exhibit "F"), Banate affirmed that the Regional Accountant has no participation in the preparation of the former and the receipt of the latter.

For the Disbursement Voucher dated October 29, 2004 (Exhibit "G"), the witness confirmed that the signature of accused Garcia merely certifies that the supporting documents were complete, proper and there is availability of cash.

Banate believes that the submission of the report of disbursement by the Provincial Accountant and the Auditor is only a partial liquidation because under the abovementioned COA Circular, there are other documents needed as such the copy of the *Certificate of Settlement and Balances* ("CSB") and the copy of the Credit Notice which the former COA auditor Tapa B. Datukan failed to furnish a copy to the herein witness. The witness affirmed that he did not write a letter addressed to Datukan about the lacking documents such as the CSB and Credit Notice.

Banate attested that the duty of the Regional Accountant is the requirement of notation and not liquidation. He also confirmed that accused Garcia has no hand in the preparation of the *Certificate* showing that the Provincial Government of Maguindanao had actually liquidated the amounts of ₱3,250,000.00 and ₱1,750,000.00.

The witness admitted that the Regional Accountant has no business interfering or including herself with the business and operations of the Provincial Government of Maguindanao. He also affirmed that the Regional Accountant has no personal dealings with the Provincial Government of Maguindanao. Banate also confirmed that he has no personal knowledge whether or not the Regional

Accountant had meetings with the Provincial Government of Maguindanao for the project involved.

During the re-direct examination, Banate cited the particular duties of the Regional Accountant under the subject COA Circular. He also confirmed that there are no other documents attached to the *Certificate of Disbursement*. He also presumed that the implementing agency submitted the supporting documents since it is the latter's responsibility for the safe keeping of the documents. He also cited that it is the duty of the Implementing Auditor to verify the authenticity, correctness and legality of the documents in possession.

For his failure to write a letter to Datukan, the witness explained that a letter from Datukan was received in July and he was re-assigned already in August so he was not able to write back about the requirement of the CSB and Credit Notice.

Upon re-cross examination, Banate confirmed that the liquidation conducted by the Provincial Government of Maguindanao was never the obligation of the Regional Accountant of the Department of Agriculture.

**Julieta B. Lansangan**<sup>48</sup>

The witness is currently the Chief of Fertilizer Regulations Division (FRD) of the Fertilizer and Pesticide Authority (FPA). She supervises day to day operation of the FRD; she is the overall custodian of all records and documents in the custody of FRD.

She confirmed that she issued a *Certification* to the effect that Golden Kabir was not licensed by the FDA as a manufacturer for fertilizers for the years 2004 and 2005. According to her, without the License to Operate as a manufacturer, Golden Kabir has no valid license with their office as fertilizer manufacturer and therefore, Golden Kabir is not allowed to sell or distribute fertilizers.

On cross-examination,<sup>49</sup> the witness stated that the Fertilizer Regulations Division issues operating license to manufacturers, importers and distributors while the dealers are issued licenses by the regional offices on a renewal basis. She further explained that all new applications are processed by their division at the Central Office. Lansangan also explained that if the bidding requirement requires licenses of handlers such as manufacturers and distributors, then it is applicable for purposes of bidding. On the other hand, she clarified that

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<sup>48</sup> Testified on 26 October 2021

<sup>49</sup> TSN, dated 26 October 2021

for bidding purposes other than what she explained earlier, then it will depend on the procuring entity.

**Atty. Tweety T. Tuazon**<sup>50</sup>

The witness is currently employed as Securities Counsel of the Company Registration and Monitoring Department ("CRMD") of the Securities and Exchange Commission ("SEC"). As Securities Counsel, one of her functions is to verify the registration status of a corporation, partnership or a one person corporation with the SEC. She is primarily tasked to handle and act on petitions and administrative cases filed before their department, attend to legal queries, conduct legal research, and in connection therewith, verify the registration status of a corporation, partnership and one person corporation.

She testified that the *Certification* from their agency states that the records of the Commission do not show the registration of Golden Kabir Marketing as a corporation or partnership. A *Certification of Non-Registration of Company* means that there is no record of registration of a corporation or partnership.

The witness also verified with their database whether any record of registration exists under the name "Golden Kabir" and based on records, it is not registered with the Commission as a corporation nor as a partnership. Since it's not registered with the SEC, it does not have juridical personality. Thus, Golden Kabir cannot transact and commit acts expressly authorized by law to corporations and partnerships.

However, considering that the defense counsel was willing to stipulate on the witness being able to identify her Judicial Affidavit and her being employed with the SEC since February 2021 and that there is a Certification from the SEC showing that Golden Kabir Marketing is not a registered corporation or partnership, her testimony was dispensed with. Nonetheless, the counter-stipulation of the defense counsel that the Certification from the SEC was not issued by Atty. Tuazon was also admitted by the prosecution.

Thereafter, the prosecution manifested that their last witness is an official from the Department of Trade and Industry ("DTI") who would identify a Certification (Exhibit "R") certifying that Golden Kabir Marketing is also not registered with the DTI. On the other hand, the defense counsel was willing to stipulate on the existence of said Certification and therefore, the prosecution manifested that they will no longer present another witness for the purpose of identifying the DTI Certification.

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<sup>50</sup> Testified on 07 December 2021

After presentation of evidence, the Prosecution filed their formal offer of exhibits.<sup>51</sup> All exhibits offered by the prosecution were admitted<sup>52</sup> in an *Order* dated 23 February 2022.<sup>53</sup>

### **Evidence for the Defense**

The defense presented accused Mariflor S. Garcia as the lone witness.

#### **Mariflor S. Garcia**<sup>54</sup>

Witness Mariflor S. Garcia was employed as Regional Accountant of the Department of Agriculture, Regional Field Unit XI (DA RFU XI), Davao City until her retirement on September 2013. As Regional Accountant, she was tasked to supervise the accounting section, control obligation of allotments and certify as to the availability of funds and allotments, review, verify and sign vouchers, financial statements and supporting documents, among others.

The witness was aware of the transaction between DA RFU XI and the Provincial Government of Maguindanao regarding the release of ₱5,000,000.00 under SARO No. E-04-00164 dated 03 February 2004. Based on the SARO and Memorandum for the Undersecretary dated 20 March 2004<sup>55</sup>, the Provincial Government of Maguindanao was allocated a fund of ₱5 million pesos for various agricultural development programs which would be released through DA RFU XI, even if the Province of Maguindanao was not covered by DA RFU XI's administrative jurisdiction. Witness claimed that she does not know why DA RFU XI was tasked to release said funds to the Province of Maguindanao since it was the initiative of the central office. Other provinces outside Region XI, such as Sultan Kudarat, were given the same funding but since the money was coursed through their Regional Office, they had no choice but to process the transfer of funds to the intended implementing agency.

Her participation in the transaction was, as Regional Accountant, she served as one of the witnesses to the MOA which document was required for the transfer of funds. She also signed disbursement vouchers to transfer the funds to the Provincial Government of Maguindanao in accordance with the MOA.

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<sup>51</sup> Records, Vol. IV., pp. 97-105.

<sup>52</sup> Specifically, Exhibits "A" to "A-13", "B" to "B-12", "C", "D", "E", "F", "G", "H", "I", "J" to "J-1", "K" to "K-55", "L" to "L-3", "M", "N" to "N-1", "O" to "O-2", "P", "Q", "T" to "T-21", "U", "V", "W", and "Y".

<sup>53</sup> Records, Vol. IV, pp. 233-234.

<sup>54</sup> Testified on 21 June 2022.

<sup>55</sup> Exhibit "U"

Witness claimed she only signed as one of the witnesses in the MOA. The principal party is the Regional Office headed by the Regional Director. Her participation as witness was only to attest that the MOA exists and was duly executed. Thus, the principal parties, DA RFU XI and the Provincial Government of Maguindanao were the ones bound to perform the terms and conditions of the MOA. Witness was not obliged to perform the obligations of DA RFU XI except for functions that involved the Accounting Section.

The Regional Accountant's obligation at that time was that under the MOA, the accounting section would be involved in Item No. 2, Section 1, Article II pertaining to the "transfer of Five Million Pesos to the Provincial Government of Maguindanao".<sup>56</sup> Said obligation was complied with since the ₱5 million was transferred to the provincial government as shown in the ALOBS dated 14 April 2004.

The amount of 5 million was supposed to be released right away in a single tranche transfer according to the MOA but at that time, the cash allocation was not sufficient. Of the 5 million, only ₱3,250,000.00 was made available. This was duly received by the LGU. Thereafter, the remaining ₱1,750,000.00 was transferred.

Other than the release of the ₱5 million pesos, the accounting section was no longer obliged with any other responsibilities under the MOA since these no longer involve accounting and auditing procedures. Hence, witness had no personal knowledge re: section 3, Art II of the MOA which requires the DA to "conduct periodic monitoring of funded programs, proper fund utilization and compliance...". The obligation to do so rested on the Regional Director and field personnel of DA RFU XI

Witness reiterated she had no personal knowledge on the implementation of the programs covered by the MOA especially the bidding and procurement procedures undertaken by the Provincial Government of Maguindanao. Also, considering the distance of Maguindanao from Davao City, witness do not know any of the officials or personnel there. She does not even know her co-accused in the cases except for the DA RFU XI personnel.

During cross-examination,<sup>57</sup> Garcia confirmed that she signed the Memorandum of Agreement (MOA) as a witness and it was the Regional Director who directed her to sign as a witness to the MOA. She explained that it was already a practice that the Regional Accountant signs as a witness in a MOA to attest to its veracity and

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<sup>56</sup> Records, Vol. IV, p. 275 (Mariflor Garcia's *Judicial Affidavit* p. 3)

<sup>57</sup> TSN, dated 21 June 2022



that there is availability of funds that came from the Head Office (Department of Agriculture or DA head office). She also stated that her participation in the MOA is nothing more than a witness.

The witness expounded that before she signed the disbursement vouchers, she checks that there was an Obligation made (Allotment and Obligation Slip or ALOBS) and that there were available funds, and that the MOA was properly signed and notarized. Furthermore, she explained that the transfer of funds to the Provincial Government of Maguindanao (PGM) was regular, proper and in accordance with the MOA because it is stated in the ALOBS that PGM be given Five Million Pesos for the implementation of the agricultural projects, and this was her basis and that there was cash allocation for said obligation. Garcia stated that it is the responsibility of the PGM to liquidate the amount and it is the responsibility of the DA to release the funds, coursed through DA RFU-XI. She also explained that she has no participation in the implementation of the project since it was not related to an accounting procedure.

The defense formally offered its exhibits<sup>58</sup> and the same were admitted for the purposes they were offered in an *Order* given in open court on 21 June 2022.<sup>59</sup> Thereafter, the cases were deemed submitted for decision.

### **DISCUSSION/RULING**

A perusal of the case records show that accused Mariflor S. Garcia cannot be held guilty of the charges against her for violation of R.A. 3019, Section 3(e) and for the crime of Malversation under Article 217 of the Revised Penal Code since the Prosecution was not able to establish her culpability beyond reasonable doubt in these cases.

**The Prosecution failed to establish beyond doubt that accused Garcia is guilty of violation of R.A. 3019, Section 3(e). The third and fourth elements of the offense were not established.**

Section 3 (e) of the Anti-Graft and Corrupt Practices Act or R.A. 3019 states thus:

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<sup>58</sup> Exhibits "1" and "2"

<sup>59</sup> Records, Vol. IV, p. 284.

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:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, 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 essential elements of violation of R.A. No. 3019, Section 3(e)<sup>60</sup> are the following: (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.

Mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*, respectively, while the negligent deed should both be *gross* and *inexcusable*.<sup>61</sup> It is further required that any or all of these modalities ought to result in undue injury to a specified party. Such undue injury must be specified, quantified and proven to the point of moral certainty.<sup>62</sup>

In *Uriarte v. People of the Philippines*,<sup>63</sup> the High Court's definition of what constitutes manifest partiality, evident bad faith or gross inexcusable negligence is enlightening:

Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. There is **manifest partiality** when there is a 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. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill

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<sup>60</sup> Rolando E. Sison v. People of the Philippines, G.R. Nos. 170339-170398-403, March 9, 2010.

<sup>61</sup> Sistoza v. Desierto, G.R. No. 144784, September 3, 2002.

<sup>62</sup> Cresente Y. Llorente, Jr. v. Sandiganbayan, et al., G.R. No. 122166, March 11, 1998.

<sup>63</sup> Uriarte v. People of the Philippines, G.R. No. 169251, December 20, 2006.

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 willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. (*Emphasis and underscoring supplied*)

The *Informations* for violation of R.A. No. 3019, Section 3(e) alleged that accused Garcia conspired with her co-accused to process and approve the transfer/release of the ₱5,000,000.00 pesos fertilizer funds to the Province of Maguindanao despite failure to submit the required liquidation report and periodic accomplishment report thereby causing undue injury to the Government in the same amount.

Aside from the fact that accused Garcia was a public officer at the time of the commission of the offense, being the Regional Accountant for the Department of Agriculture at that time, and that the act imputed against her was done in the discharge of her duties as Regional Accountant, the third and fourth elements of the offense were not established beyond reasonable doubt. The Prosecution failed to prove that the imputed act was done through manifest partiality, evident bad faith, or gross inexcusable negligence, and the accused's actions caused undue injury to the Government. There is absolutely no evidence that accused Garcia acted with manifest partiality, evident bad faith or gross inexcusable negligence.

Accused Garcia's participation in the alleged anomalous transaction was that she served as one of the witnesses to the MOA. She however, claimed that she only attested that the document exists and was duly executed by the parties involved. Hence, her participation to the transaction was limited to signing as a mere witness to the MOA wherein the principal party of for the Department of Agriculture was the Regional Office which was represented by the Regional Director.

Upon cross-examination, accused Garcia reiterated that her only participation in the transaction was signing the MOA as a witness, thus:<sup>64</sup>

PROSECUTOR BOCO: (to the witness)

Q According to your Judicial Affidavit, you said that you signed the Memorandum of Agreement as a witness?

A Yes sir.

Q Who directed you to sign as a witness in this Memorandum of Agreement?

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<sup>64</sup> TSN, dated 21 June 2022, pp. 10-11.

- A The Regional Director. It was already a practice that when there is a MOA, the Regional Accountant signs as a witness to attest to its veracity and that there is funds available for that matter.
- Q Okay. You said that you attested to the veracity of the MOA?
- A Of the availability of funds.
- Q Ah, the availability of funds. And, funds were in fact available?
- A Yes sir.
- Q At that time?
- A Yes sir.
- Q And where would these funds come from?
- A It came from our Central Office. DA Central Office.
- Q Other than that, what is your participation in the MOA?
- A Nothing more.

There was nothing irregular in her act of signing *per se* as witness in the MOA executed between the DA RFU XI and the Province of Maguindanao. There was no evidence presented to refute accused's testimony – that her act of signing the document was marred with manifest partiality, evident bad faith or gross inexcusable negligence. Hence, there is no undue injury suffered by the government by reason of such act.

Additionally, accused also participated in the transaction as a signatory for the Disbursement Vouchers relating to the transfer, on two (2) separate occasions, of the fertilizer funds to the Provincial Government of Maguindanao, in accordance with the terms of the MOA.

In so far as accused Garcia was concerned, as Regional Accountant, her duty at that time pertained to the "transfer of five million pesos to the provincial government of Maguindanao" and said obligation was complied with since the 5 million pesos was transferred to the Provincial Government of Maguindanao as shown in the ALOBS dated 14 April 2004. Specifically, she certified to the "correctness and validity of obligations, and availability of fund"<sup>65</sup> to be transferred to the Office of the Provincial Governor of Maguindanao Province "in support to various agricultural development programs for Agriculture and

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<sup>65</sup> Exhibit "C"

N/g

Fisheries Modernization Act (AFMA)".<sup>66</sup> No evidence was proffered to show that accused Garcia's act of certifying as to the correctness and validity of obligations, and availability of the said funds was tainted with manifest partiality, evident bad faith or gross inexcusable negligence.

Once the fertilizer funds had been transferred to the LGU-beneficiary, responsibility falls upon it to account for and liquidate the same. Accused Garcia testified on this matter, viz:<sup>67</sup>

PROSECUTOR BOCO: (to the witness)

Q Okay. You said that the transfer of funds was regular, proper and in accordance with the MOA. Why do you say so?

A Because it said that the Province of Maguindanao be given Five Million for the implementation of the agricultural projects, and that was my basis and there was cash allocated for that obligation.

Q Whose responsibility is it to liquidate this amount?

A Actually, that was a... The Five Million was given by the Central Office. It was the Central Office that provided the amount for the Province of Maguindanao.

Q Yes. But whose responsibility, whose agency is it that is supposed to liquidate it?

A Liquidate?

Q Yes.

A The Province of Maguindanao.

Q The Province of Maguindanao?

A Yes.

Q How about the DA? What is the obligation of the DA?

A The DA was to release the funds

Q To release the funds?

A Because it was coursed through the DA RFU-XI

Q How about the implementation of the project? What was your participation?

A I have no participation in the implementation of the project because that was not related to an accounting procedure.

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<sup>66</sup> *Id.*

<sup>67</sup> TSN, dated 21 June 2022, pp. 13-14.

**That was supposed to be the work of some technical people in our department.**

Q Some technical people in your department?

A Yes.

Q Who are these people?

A Those assigned in the field. It is up to the Regional Director who would be assigned for that matter. (*Emphasis supplied*)

Upon certifying that the funds are available, the same were transferred by the central office, through the regional office, to the LGU-beneficiary which is the Provincial Government of Maguindanao. As someone who was only tasked to do the same, it is out of her control on what the recipient-beneficiary will do with the funds it received and how such funds will be appropriated. In this case, the Provincial Government of Maguindanao allegedly bought goods from IMB Agri Supplies and Golden Kabir, Mktg. However, whether or not the companies or dealers of the fertilizers contracted by the implementing agency existed or were compliant with the requirements to do business and sell their product is an issue that is outside the scope of the accused's knowledge, duties and responsibilities as Regional Accountant.

Accused Garcia's testimony was supported by witness Banante's in this regard:<sup>68</sup>

Q Here in the third obligation "conduct periodic monitoring of funded programs *[sic]* proper fund utilization and compliance with the provisions stated in this agreement", this is the obligation also of the Regional Director, correct?

A Yes, Sir.

Q The fourth obligation is "intervene and undertake corrective measures in the event of misappropriation of funds as setforth in Agreement", this is also the responsibility of the Regional Executive Director of the Department of Agriculture, correct?

A Yes, Sir.

Q Now, insofar as submission of Disbursements and submission of Accomplishment Reports, these are the obligations according to the Memorandum of Agreement, Office of the Provincial Governor, correct?

A Yes, Sir.

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<sup>68</sup> TSN, dated 22 July 2021, pp. 28-31.

- Q** Certainly not the Regional Accountant, correct?
- A** Yes, Sir.
- Q** Now, let us go to the Exhibit "C", which you also identified as the Allotment and Obligation Slip, did you see that already, Sir?
- A** I have seen it already, Sir.
- Q** Now, the ALOBS also mentioned one amount, P5 Million, correct?
- A** Yes, Sir.
- Q** It does not fall that it should be P3,250,000 or P1,750,000, it's just one amount P5 Million, correct?
- A** Yes, Sir.
- Q** And the only participation of the Regional Accountant here is the middle portion of the signature of Mariflor S. Garcia, correct?
- A** Yes, Sir.
- Q** **Now, she certified correctness and validity of obligations and availability of funds, that's her certification in this document, correct?**
- A** **Yes, Sir.**
- Q** The date is April 14, 2004, I will ask you Sir Bonante, April 14, 2004 in the upper right portion of this, now would you agree with me that on that date it was indeed correct and there was a valid obligation and there was also fund ... (*inaudible*) at that time, correct?
- A** Yes, Sir.
- Q** **My client therefore, the Regional Accountant, merely certifies as to the truthfulness that there was availability of fund during that time, correct?**
- A** **Yes, Sir. (*Emphasis supplied*)**

Furthermore, witness Banante also admitted that accused Garcia had no participation in whatsoever in the preparation of the checks drawn in favor of the Office of the Provincial Governor of the Province of Maguindanao.<sup>69</sup>

Verily, the principal parties, Department of Agriculture RFU XI and the Provincial Government of Maguindanao were the ones bound

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<sup>69</sup> TSN, dated 22 July 2021, p. 32



by the terms and conditions of the MOA. With respect to the DA, responsibility is incumbent on the Regional Director to ensure performance of the agency's obligations under the MOA. The Regional Director was also the public official designated to coordinate with the Office of the Provincial Governor for the implementation of the program.<sup>70</sup> Accused Garcia, as the Regional Accountant, was not the public official tasked to perform such obligations except for matters that involved the Accounting Section. From the foregoing, the government had not suffered any undue injury by reason of accused Garcia's acts nor was it proven that such acts were performed with manifest partiality, evident bad faith, or gross inexcusable negligence.

**The Prosecution failed to prove beyond doubt that accused Garcia is guilty of the crime of Malversation under Article 217 of the Revised Penal Code. Aside from the accused being a public officer, the rest of the elements of the crime were not sufficiently established.**

The crime of Malversation of Public Funds or Property under Article 217 of the Revised Penal Code states thus:

ARTICLE 217. Malversation of Public Funds or Property — Presumption of Malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

XXX XXX

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.

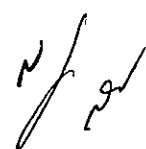
The elements of Malversation<sup>71</sup> are the following:

1. That the offender is a public officer;
2. That they had the custody or control of funds or property by reason of the duties of their office;

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<sup>70</sup> TSN, dated 22 July 2021, p. 25.

<sup>71</sup> Nida P. Corpuz v. People of the Philippines, G.R. No. 241383, June 8, 2020.





3. That those funds or property were funds or property for which they were accountable; and
4. That they appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

The Supreme Court held that: In the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that they failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.<sup>72</sup> Therefore, the prosecution is burdened to prove beyond reasonable doubt, either by direct or circumstantial evidence, that the public officer appropriated, misappropriated or consented or through abandonment or negligence, permitted another person to take public property or public funds under their custody. Absent such evidence, the public officer cannot be held criminally liable for malversation.<sup>73</sup>

However, there is a need to ascertain first whether or not the accused public official is an accountable officer in-charge with public funds or property, as contemplated under Article 217 of the Revised Penal Code. In *Barriga v. Saniganbayan (4<sup>th</sup> Division), et al.*,<sup>74</sup> an accountable public officer, is one who has actual control of public funds or property by reason of the duties of his office. The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee.

In this case, aside from the first element i.e. that accused Garcia was a public officer at the time of the alleged commission of the crime, she was not considered as an accountable officer for purposes of determining culpability under the law. Moreover, evidence showed that she never had custody or control of the funds involved in these cases.

For instance, in the *Notice To Transfer Allocation No. 04-03-171* dated 30 March 2004 and signed by then DA Undersecretary Jocelyn Bolante and OIC of Cash and Disbursement Section Emma Gonzales, it authorized Landbank of the Philippines to "*debit the above MDS Account in the amount of Three Million Two Hundred Fifty Thousand Pesos (P3,250,000.00) Only covering for the implementation of the Farm Inputs/Farm Implements Program in the Province of Maguindanao with ASA No. 101-2004-269 dated 03/30/04 to be*

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<sup>72</sup> Manual M. Valenzuela v. People of the Philippines, G.R. No. 205693, February 14, 2018.

<sup>73</sup> Rene P. Pondevida v. The Hon. Sandiganbayan (3<sup>rd</sup> Division), et al., G.R. Nos. 160929-31, August 16, 2005.

<sup>74</sup> Dinah C. Barriga v. The Honorable Sandiganbayan (4<sup>th</sup> Division) and People of the Philippines, G.R. Nos. 161784-86, April 26, 2005.

transferred to MDS Account No. 2016-90136-3 of DA RFU XI, Davao City chargeable to NCA No.222447-1 dated February 03, 2004.”<sup>75</sup> If at all, accused Garcia simply certified in the corresponding *Disbursement Voucher* that the above-mentioned funds were available for its eventual transfer to the LGU-beneficiary. In fact, the entire ₱5,000,000.00 was eventually transferred to the Provincial Government of Maguindanao in two (2) separate tranches. The allotted fertilizer funds were received by the Province of Maguindanao as evidenced by the official receipts it issued. Hence, just because she certified in the *Disbursement Vouchers* that the said funds were available does not mean that she had custody or control over it and had to account for the same. The Prosecution failed adduce evidence that accused Garcia had control or custody of the funds; and accused’s and other witnesses’ testimonies proved otherwise.

Furthermore, once the funds were already transferred to the LGU-beneficiary, the Department of Agriculture, specifically, accused Garcia was no longer accountable because as stated in the MOA, although the DA were to conduct periodic monitoring of funded programs, proper fund utilization and compliance with the provisions stated therein,<sup>76</sup> accused Garcia was not the designated public official to do so. More importantly, based from the MOA, accountability of the funds falls upon the Office of the Provincial Governor of Maguindanao since it was agreed upon that it “takes the lead role in facilitating the implementation of the program”,<sup>77</sup> and it shall submit “a Report of Disbursement duly attested by the Provincial Auditor, thirty (30) days after completion”<sup>78</sup> and “Accomplishment Report supported with photos, and certificate of Receipt-Acceptance by target beneficiaries”.<sup>79</sup> Witness Basco testified that Office of the Provincial Governor was tasked with the submission of the disbursement report on the funds’ utilization and that the same was submitted, to wit:<sup>80</sup>

ATTY. LOZARE

Q Now, then you conducted your investigation, you came across to the Memorandum of Agreement between the Department of Agriculture Region 11 and the Office of the Provincial Governor, correct?

A Yes, Sir.

Q And under this Memorandum of Agreement, the Office of the Provincial Governor of Maguindanao is the one who will submit

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<sup>75</sup> Exhibit “W”

<sup>76</sup> Exhibit “B-1” (MOA, Article 11, Section 1)

<sup>77</sup> Exhibit “B” (MOA, Article 1, Section 2)

<sup>78</sup> (MOA, Article 11, Section 2)

<sup>79</sup> *Id.*

<sup>80</sup> TSN, dated 15 June 2021, pp. 14-15.

the Report of Disbursement, thirty (30) days after the completion of the project, correct?

A Yes, Sir.

Q In this particular case, did they submit the necessary report thirty (30) days after the completion of the project?

A Sir? Can you repeat the question, Sir.

Q Under Section 2, paragraph 2, it stipulates here, that the Office of the Provincial Governor of Maguindanao will submit the Report of Disbursement duly attested by the Provincial Auditor, thirty (30) days after completion of the project. Did they submit the Report of Disbursement?

A Can I refer to my records, Sir?

THE COURT INTERPRETOR:

Witness is going over his own records.

THE WITNESS:

A For the documents submitted by the Commission on Audit was, there appears that they submitted the Report of Disbursement for this particular transaction, Sir.

Similarly, witness Banante admitted during his cross-examination that the Provincial Governor is responsible for the program's implementation.<sup>81</sup> He also corroborated witness Basco's testimony that the Provincial Government of Maguindanao submitted *Certifications* on the status of the ₱3,250,000 and ₱1,750,000 fertilizer funds, thus:<sup>82</sup>

ATTY TORREON

Q Now, you would agree with me, that the liquidation of the amount is not the job of the Regional Accountant of the Department of Agriculture, correct?

A Sir, it is also the requirement of the Accountant under Item 5.4 of COA Circular 94-013 which stated, can I read? "The responsibility of the source agency, the DA RFU XI, 5.4 Can you hear me Sir?

HON. CHAIRPERSON LAGOS

Yes, continue.

ATTY. TORREON

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<sup>81</sup> TSN, dated 22 July, 2021, p. 24.

<sup>82</sup> TSN, dated 22 July 2021, pp. 41-43.

Yes, yes.

A "Require the IA, the Implementing Agency, to submit the reports and furnish the IA, the Implementing Agency, a copy of the journal voucher taking up the expenditures. Upon receipt of the copy of the Certificate of Settlement and Balances and the Credit Notice issued by the IA Auditor, the Accountant shall draw a journal voucher restoring." So, the work of the Accounting is only the recording, the recording only, Sir, as to the requirement of having them liquidate is not her duty *bali* recording *lang*.

Q Very good, thank you very much. It is clear that the liquidation is not her duty, there is only a requirement of notation, correct?

A Yes, Sir, and the drawing of the Journal Voucher to liquidate the fund transfer.

Q You would agree with me that in this case, the Provincial Government of Maguindanao, in fairness to them also as shown on Exhibit "10-a" or Exhibit "O-1" and Exhibit "O-2", they submitted this Certificate for the month of June 2004, showing that they had actually liquidated the amount of P3,250,000 and P1,750,000, correct?

A Yes, Sir.

Q They submitted these documents to you, correct?

A Yes, Sir.

Q Now, in the preparation of these documents, you would agree with me that the Regional Accountant also has no hand on this, correct?

A Yes, Sir.

Q Now, let us go to your observation, Question No. 22, I objected to this but my objection was overruled. You said that "the DA shall conduct period monitoring of funded programs, proper fund utilization and compliance with the provisions stated in this Agreement", correct?

A Yes, Sir.

Q That is Section 3, Article 2 of the Memorandum of Agreement, correct?

A Yes, Sir.

Q Would you agree with me that the signatory of the Memorandum of Agreement is the Regional Executive Director, correct?

A Yes, Sir.

Q So this is the obligation of the Regional Executive Director?

A Yes, Sir.

Q In Question No. 23, you said that the Implementing Agency, which is the Provincial Government of Maguindanao in this case, failed to render a report on the utilization of funds transferred, correct?

A Yes, Sir.

Q Now, you would agree with me that the Regional Accountant has no business interfering with the operations and the duties of the Provincial Government of Maguindanao, correct?

A Again, sir, again.

Q **You would agree with me that the Regional Accountant has no business interfering or including herself with the business and operations and the duties of the Provincial Government of Maguindanao, correct?**

A **Yes, Sir. (*Emphasis supplied*)**

From the foregoing, it is evident that accused Garcia never had custody of the fertilizer funds in this transaction. As such, she cannot be held liable for the crime of malversation. Assuming *arguendo* that she, at some point, had custody or possession of the funds, the entire amount of ₱5,000,000.00 was later on transferred to the Provincial Government of Maguindanao and thus, the obligation to account for and liquidate the same falls on the latter.

**The Prosecution failed to adduce evidence that accused Garcia conspired with her co-accused in this transaction.**

To establish conspiracy, there must be proof that two or more persons agreed to commit the crime. However, mere knowledge, acquiescence or agreement to cooperate is not enough to constitute one as a conspirator, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose. And to be the basis for a conviction, conspiracy must be proved in the same manner as any element of the criminal act itself. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.<sup>83</sup> In short, The existence of conspiracy is never

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<sup>83</sup> People vs. Primitiva Dizon GR 130742 July 18, 2000

presumed; the prosecution must establish conspiracy beyond reasonable doubt.<sup>84</sup>

In this case, the prosecution failed to establish beyond reasonable doubt that accused Garcia conspired with her co-accused in releasing the funds to the Provincial Government of Maguindanao. As previously discussed, her acts of signing the MOA as a witness to prove that it was executed and certifying in the Disbursement Vouchers that the fertilizer funds were available only attested to the fact that there was money available for transfer to the LGU-beneficiary. Moreover, she claimed that she did not personally know her other co-accused in these cases aside from the Department of Agriculture RFU XI officials and the Prosecution did not present any evidence to show otherwise.

The constitutional mandate of innocence prevails, unless the prosecution succeeds in proving by satisfactory evidence the guilt beyond reasonable doubt of the accused.<sup>85</sup> Well-entrenched in jurisprudence is the rule that accused's conviction must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.<sup>86</sup>

**WHEREFORE**, premises considered, the Court finds accused Mariflor S. Garcia NOT GUILTY of the charges in all of these cases: Criminal Case Nos. SB-19-CRM-0053, SB-19-CRM-0054, SB-19-CRM-0055, and SB-19-CRM-0056, where she is included as an accused in the *Informations*, for failure of the Prosecution to prove her guilt beyond reasonable doubt. There being no act or omission on which civil liability may arise, no such liability may be adjudged against her.

Let the bail bond secured by accused Garcia for these cases be released, subject to the usual accounting and auditing procedures. The Hold Departure Order issued against her is ordered lifted and set aside.

Since the Court did not acquire jurisdiction over the person of accused Osmeña M. Bandila and John Estrelito G. Dollosa, Jr., let the cases against them, in the meantime, be archived, the same to be revived upon their arrest. Let an alias warrant of arrest be issued against accused Osmeña M. Bandila and John Estrelito G. Dollosa, Jr.

**SO ORDERED.**

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<sup>84</sup> People vs. Rolando Cardel GR No. 105582 July 19, 2000

<sup>85</sup> Reynaldo Baylon y Ramos v. People of the Philippines, G.R. No. 168627, July 2, 2010.

<sup>86</sup> Macayan, Jr. v. People of the Philippines, G.R. No. 175842, March 18, 2015.

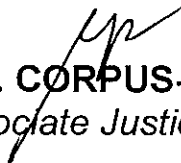


**RAFAEL R. LAGOS**  
*Associate Justice/Chairperson*

WE CONCUR:



**MARIA THERESA V. MENDOZA-ARCEGA**  
*Associate Justice*



**MARYANN E. CORPUS-MAÑALAC**  
*Associate Justice*

**ATTESTATION**

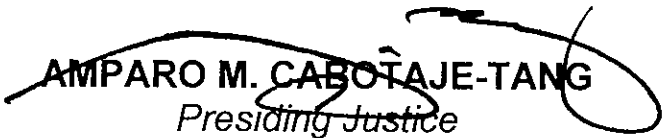
I attest that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**RAFAEL R. LAGOS**  
*Chairperson, Fifth (5<sup>th</sup>) Division*

**CERTIFICATION**

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



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