



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

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**SEVENTH DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**  
Plaintiff,

**Case No. SB-19-CRM-0113**  
For violation of Sec. 3(e), R.A. No.  
3019

-versus -

**DIARANGAN RINGKA  
DIPATUAN and RASAD GUBAT  
DUMARPA.<sup>1</sup>**

Accused.

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**PEOPLE OF THE  
PHILIPPINES,**  
Plaintiff,

**Case No. SB-19-CRM-0114 to  
0125**

For violation of Section 6(b) in relation  
to Section 52(g) of Republic Act No.  
8291

-versus -

**DIARANGAN RINGKA  
DIPATUAN and RASAD GUBAT  
DUMARPA.<sup>2</sup>**

Accused.

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Present:

Gomez-Estoesta, J., *Chairperson*  
Trespeses, J. and  
Hidalgo, J.

Promulgated:

*December 2, 2019* *UP*

**DECISION**

**TRESPESSES, J.:**

Complainant Habib B. Tarosan ("Tarosan"), then a member of the Sangguniang Bayan of Bacolod-Kalawi, Province of Lanao del Sur,

<sup>1</sup> Per Order of the Court dated 16 August 2019, the cases against accused Dumarpa were dismissed in view of his death. Record, Vol. 1, pp. 379-380.

<sup>2</sup> *Supra*.

1

7

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 2 of 31

X-----X

complained that his 2012 premium contributions to the Government Service Insurance System ("GSIS") were not properly remitted by then Municipal Mayor, accused Diarangan Dipatuan ("Dipatuan"), and then Municipal Treasurer, accused Rasad Gubat Dumarpa ("Dumarpa"), from March 2012 to February 2013.

On 17 May 2019, the following Informations dated 7 March 2018 were filed with the Sandiganbayan, the bodies of which read:

*In SB-19-CRM-0113 for violation of  
Section 3(e) of Republic Act No. 3019*

That for the period from March 2012 to February 2013, or sometime prior or subsequent thereto, in the Municipality of Bacolod-Kalawi, Province of Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **DIARINGAN RINGKA DIPATUAN** and **RASAD GUBAT DUMARPA**, all public officers being then the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipal Government of Bacolod-Kalawi, in such capacities and committing the crime in relation to office, taking advantage of their official positions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally cause undue injury to Habid B. Tarosan, who was then a member of the Sangguniang Bayan of the said municipality, by causing the under-remittances of the Government Service Insurance System (GSIS) compulsory premium contributions of the latter for the whole year of 2012, to the damage and prejudice of the said employee in the amount equivalent to the unremitted portion of the correct GSIS premium contributions.<sup>3</sup>

*In SB-19-CRM-0114 for violation of  
Section 6(b) in relation to Section  
52(g) of Republic Act No. 8291*

That on 10 March 2012, or sometime prior or subsequent thereto, in the Municipality of Bacolod-Kalawi, Province of Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **DIARINGAN RINGKA DIPATUAN** and **RASAD GUBAT DUMARPA**, all public officers being then the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipal Government of Bacolod-Kalawi, and as such were duty-bound to pay, remit, turn-over or deliver and/or cause the payment, remittance, remittance (sic) or delivery to the Government Service Insurance System (GSIS) the correct compulsory premium contributions of the employees of the said municipality, within the first ten (10) days following the month which the contribution apply pursuant to Section 6(b) of R.A. No. 8291, conspiring with each other and

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<sup>3</sup> Record, Vol. 1, pp. 1-4.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 3 of 31

X-----X

committing the crime charged in relation to their office and in the performance of their official and administrative functions, did then and there willfully, unlawfully and criminally fail, refuse or delay to pay, remit, turn-over or deliver and/or to cause the payment, remittance turn-over or delivery to GSIS, the correct GSIS premium contribution of Habib B. Tarosan, then a member of the Sangguniang Bayan of Bacolod-Kalawi, for the month of January 2012, within thirty (30) days from the time it became due and demandable, to the damage and prejudice of the said employee, the GSIS and the government service.<sup>4</sup>

The Informations in SB-19-CRM-0115 to 0125<sup>5</sup> are similarly worded as that in SB-19-CRM-0114, save for the alleged dates of commission of the offense and the months the premiums were due, which are tabulated below:

Case No.	Date of commission	Premium Due on
SB19-CRM-0114	10 March 2012	January 2012
SB19-CRM-0115	10 April 2012	February 2012
SB19-CRM-0116	10 May 2012	March 2012
SB19-CRM-0117	10 June 2012	April 2012
SB19-CRM-0118	10 July 2012	May 2012
SB19-CRM-0119	10 August 2012	June 2012
SB19-CRM-0120	10 September 2012	July 2012
SB19-CRM-0121	10 October 2012	August 2012
SB19-CRM-0122	10 November 2012	September 2012
SB19-CRM-0123	10 December 2012	October 2012
SB19-CRM-0124	10 January 2012	November 2012
SB19-CRM-0125	10 February 2012	December 2012

The cases were raffled to the Sandiganbayan's Seventh Division, which, after finding the existence of probable cause upon assessment of the documents and evidence submitted with the Information, issued against the accused Hold Departure Orders dated 27 May 2019<sup>6</sup> and warrants of arrest dated 28 May 2019.<sup>7</sup>

In its Resolution dated 4 July 2019,<sup>8</sup> the court noted the cash bond documents of accused Dipatuan forwarded by the Regional Trial Court of Lanao del Sur, Marawi City, which it approved. It also noted the Certification submitted by the National Bureau of Investigation ("NBI"), Iligan City, which indicated that accused Dipatuan voluntarily surrendered to the NBI.

<sup>4</sup> Record, Vol. 2, pp. 4-6.

<sup>5</sup> Id. at 7-39.

<sup>6</sup> Record, Vol. 1, pp. 50-51.

<sup>7</sup> Id. at 53-54.

<sup>8</sup> Id. at 335-336.

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 4 of 31

X-----X

During the hearing on 12 August 2019, the Death Certificate<sup>9</sup> and Birth Certificate<sup>10</sup> of accused Dumarpa were brought to court by counsel for accused Dipatuan. These certificates were confirmed authentic by the prosecution. On the basis thereof, and in accordance with Article 89 of the Revised Penal Code,<sup>11</sup> the cases against accused Dumarpa were dismissed.<sup>12</sup>

On 11 October 2019, accused Dipatuan, duly assisted by his counsels, Atty. Roland B. Galvan and Atty. Bantuas M. Lucman, pleaded not guilty to the charges against him.<sup>13</sup>

The parties participated in pre-trial conferences and filed their respective Pre-Trial Briefs.<sup>14</sup> Thereafter, they submitted a Joint Stipulation of Facts and Issues with List of Documentary Exhibits and Witnesses.<sup>15</sup>

The Pre-Trial Order dated 5 January 2021<sup>16</sup> showed that the parties entered into the following stipulations:

1. That whenever referred to orally or in writing by the Court or witnesses in the course of the trial, the accused admits that he is the same person accused in this case: [sic]
2. That accused Diarangan R. Dipatuan was the Municipal Mayor of the Municipality of Bacolod-Kalawi, Province of Lanao del Sur at the time material to this case: [sic]
3. That accused Rasad G. Dumarpa was the Municipal Treasurer of the Municipality of Bacolod-Kalawi, Province of Lanao del Sur at the time material to this case: [sic] and
4. That the Municipality of Bacolod-Kalawi, Province of Lanao Del Sur is a third-class municipality at the time material to this case (according to Department of Finance Order No. 23-08 dated 29 July 2008).

On 13 August 2019, accused filed a Motion to Quash,<sup>17</sup> on the ground that the court has no jurisdiction over the offense charged and that the facts

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<sup>9</sup> Record, Vol. 1, pp. 372-373.

<sup>10</sup> Record, Vol. 1, pp. 374-375.

<sup>11</sup> Art. 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

<sup>12</sup> Record, Vol. 1, p. 380.

<sup>13</sup> Id. at 423-424.

<sup>14</sup> Prosecution's Pre-Trial Brief was filed on 2 October 2019 (Record, Vol. 1, pp. 414-418) while accused's Pre-Trial Brief was filed on 14 October 2019 (Record, Vol. 1, pp. 425-427).

<sup>15</sup> Record, Vol. 1, pp. 507-518.

<sup>16</sup> Id. at 526-535.

<sup>17</sup> Id. at 363-369.

charged do not constitute an offense. This motion was denied for lack of merit in the Resolution dated 6 September 2019.<sup>18</sup>

### WITNESSES FOR THE PROSECUTION

The prosecution presented the following witnesses:

#### 1. Glynn E. Osin

In her Judicial Affidavit dated 28 February 2020,<sup>19</sup> Glynn E. Osin (“Osin”) identified herself as the Division Chief of Billing, Collection and Reconciliation Division of GSIS-Iligan Branch Office since 2012. As such, she supervises the whole division of billing, collection and remittance of GSIS contributions from different government agencies and Local Government Units (“LGUs”) for the provinces of Lanao del Sur and Norte, Iligan City and Marawi City, including municipalities and barangays therein.

Osin declared that every month, the Municipal Government of Bacolod Kalawi remits to their office GSIS contributions of the latter’s employees. However, its remittance is “incomplete” as to the number of employees and amount of remittance.

Bacolod-Kalawi’s under-remittance (which started in 1997) in 2012 and 2013 is shown by the remittance lists,<sup>20</sup> which are submitted to GSIS together with its check payments for the total contribution.<sup>21</sup>

In view of Bacolod-Kalawi’s insufficient remittances, Osin’s office sent to it Statements of Accounts, demand letters, and correspondence to discuss how to settle its outstanding obligations and inform it of its new office policies.<sup>22</sup> Osin identified proofs of receipt of their letters as **Exhibits JJ, MM and NN**.

<sup>18</sup> Record, Vol. 1, pp. 401-412.

<sup>19</sup> JA Folder, pp. 4-50.

<sup>20</sup> The consecutive Remittance Lists for January 2012 (except February 2012) through February 2013 identified by Osin were respectively marked Exhibits F-1, G-1, H-1, I-1, J-1, K-1, L-1, M-1, N-1, O-1, P-1, Q-1 and R-1.

<sup>21</sup> The corresponding GSIS Official Receipts identified by Osin were respectively marked Exhibits F, G, H, I, J, K, L, M, N, O, P, Q and R.

<sup>22</sup> Osin also identified the following communications:

Exh	Description
GG	Statement of Account of Compulsory Premiums from July 1997-December 2012, dated 7 January 2013
HH	Letter Request or Reconciliation Letter addressed to Mayor Diarangan R. Dipatuan dated 15 January 2013
II	Reconciliation/Demand Letter addressed to Mayor Diarangan R. Dipatuan dated 1 April 2013
KK	Statement of Account for Suspended Agencies covering the period of 1997 to June 2013
LL	Reconciliation/Demand letter addressed to Mayor Diarangan R. Dipatuan dated 1 July 2013
OO	Letter of Information addressed to Mayor Abdulmoahimen L. Dipatuan dated 20 December 2013 re: GSIS Board Resolution No. 39 dated April 2013

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 6 of 31

X-----X

Osin's Judicial Affidavit was admitted in lieu of her direct examination when she was presented in court on 14 January 2021.

On cross-examination by Atty. Galvan, Osin confirmed that **Exhibit GG** is a statement of account for Bacolod-Kalawi billing, which is for ₱3,763,000.00 and covers the period July 1997 to December 2012. She admitted that the bulk of this amount is interest.<sup>23</sup>

Osin agreed that from 2012 to 2014, GSIS did not file a case because Bacolod-Kalawi was suspended (as regards loan privileges) at the time. GSIS directed Bacolod-Kalawi to execute a Memorandum of Undertaking to settle all unpaid obligations and the latter complied with this directive.<sup>24</sup>

As she is not the custodian of **Exhibit GG** (Statement of Account from 1997 to 2012), Osin could no longer remember if it was received by accused Dipatuan himself.<sup>25</sup> She clarified that demand letters or notices of default (collections notices) are addressed to the mayor of the municipality. Receipt of **Exhibit GG** was made by the Office of the Mayor.<sup>26</sup>

Later, Osin testified that **Exhibits II, KK, LL, OO, PP and JJ** were all received by Treasurer Sam Dumarpa on 23 June 2012, but not by accused Mayor. Nonetheless, the Treasurer is under the Mayor's Office so the mayor's staff can receive letters on his behalf.<sup>27</sup>

Defense counsel manifested that **Exhibit OO** showed that it was received by Abdulmohaimen Dipatuan, the Municipal Mayor of Bacolod-Kalawi on 18 January 2014. This person is different from accused Diarangan Dipatuan.<sup>28</sup>

Osin stated that many municipalities in Lanao del Sur were suspended because they already had a humongous amount of unpaid obligation with GSIS. She explained that the affected agencies do not state the correct remittances or reflect the full or complete list of their personnel/employees. The agencies submitted their list of employees to GSIS but when remittance time comes, not all of the personnel/employees in the list have remittances from the agency. This was true of Bacolod-Kalawi LGU.<sup>29</sup>

<b>PP</b>	Invitation Letters addressed to Mayor Abdulmoahimen L. Dipatuan and Agency-Authorized Officers (AAOs) dated 20 December 2013 re: Presentation of PPG 227-13
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<sup>23</sup> TSN, 14 January 2021, p. 15.

<sup>24</sup> Id. at 16.

<sup>25</sup> Id. at 17.

<sup>26</sup> Id. at 18.

<sup>27</sup> Id. at 26-27.

<sup>28</sup> Id. at 28.

<sup>29</sup> Id. at 34.

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 7 of 31

X-----X

By “suspended,” Osin meant that the LGU could not avail of any loan privileges. However, its suspension does not stop the LGU from paying or remitting its employees’ contributions.<sup>30</sup>

GSIS requested to first reconcile their records with that of Bacolod-Kalawi LGU in order to establish the exact amount to collect from the latter.<sup>31</sup> On re-direct, Osin clarified that the term “reconciling/reconciliation,” means reconciling the list of employees that the agency has with the list that GSIS has in its office. Before 1997, GSIS itself conducted a survey of all employees of Lanao del Sur LGUs. Hence, GSIS has to check what happened to the other employees it has in its database against the LGU’s remittance list whenever GSIS’s billing is bigger than the remittance the LGU is paying.<sup>32</sup>

Osin said that LGU Bacolod-Kalawi’s remittance list is incomplete because LGU Bacolod-Kalawi signified that they do not want to pay remittances on behalf of three LGU employees. In fact, Osin recalled Mrs. Dumarpa telling her that the mayor and other staff did not want to remit GSIS contributions for these employees, though they were then doing their jobs in the LGU. No explanation was offered for the refusal to pay these employees’ GSIS contributions. That was why there was no reconciliation reached – the service record of the three employees were lacking.<sup>33</sup>

Osin confirmed that she remembers the name “Habib” (referring to Habib Torosan), a former councilor/ member of the Sangguniang Bayan (“SB”) as among the said three employees, but there were two others whose service records they requested the LGU to submit. Both the personal share and the government share in the GSIS contribution of these three employees were not remitted by the LGU.<sup>34</sup>

This is the obligation of the municipality, through the head of the agency, to actually make the remittances. Osin is not aware of any remittances of contributions coming from Habib Tarosan himself<sup>35</sup>

When Bacolod-Kalawi entered into the memorandum of undertaking with GSIS, the former signified that it is willing to pay for the arrears as far back as 1997. Supposedly, after the memorandum of undertaking, the reconciliation will begin, and will result in a memorandum of agreement. However, until now, GSIS and the LGU have not reconciled their records. Neither have they entered into a memorandum of agreement. Also, the LGU still has not paid GSIS.<sup>36</sup>

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<sup>30</sup> TSN, 14 January 2021, p. 19.

<sup>31</sup> Id. at 34.

<sup>32</sup> Id. at 40.

<sup>33</sup> Id. at 40.

<sup>34</sup> Id. at 43.

<sup>35</sup> Id. at 44-45.

<sup>36</sup> Id. at 41-42.

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Diputuan, et al.*

Page 8 of 31

X-----X

Osin clarified that GSIS received no response from the Municipality of Bacolod-Kalawi to the Statement of Account and other correspondence sent to the latter in 2013. No one from Bacolod-Kalawi LGU showed up at GSIS from the time she started with GSIS Iligan Branch Office, and despite several invitations to reconcile or submit requirements for reconciliation. However, in 2017, there was a reconciliation initiated between GSIS and the subject LGU, when GSIS dealt with Mrs. Dumarpa.<sup>37</sup>

Mrs. Dumarpa, wife of the municipal treasurer, was the only person whom GSIS was able to talk to, and in fact, facilitated the mayor's approval/agreement to sign the memorandum of undertaking so that the LGU's suspension can be lifted. Though not part of the LGU, Mrs. Dumarpa was requested by her husband to facilitate the remittances, and the submission of documents from LGU Bacolod-Kalawi. She is a registrar from Mindanao State University – Iligan Institute of Technology.<sup>38</sup>

GSIS accommodated Mrs. Dumarpa, as the latter was also the agency's authorized officer of MSU-IIT; although there was no written authority for Mrs. Dumarpa to transact on behalf of her husband on the matter.<sup>39</sup>

On re-cross, Osin confirmed that she did not deal with the accused Mayor during the reconciliation.<sup>40</sup>

The witness explained that GSIS did not issue any letters or collection notices to Mrs. Dumarpa. GSIS always addressed the letters/notices to the mayor and to the treasurer, who did not give any official response thereto. Although GSIS heard of accused's responses as relayed to it by Mrs. Dumarpa, it did not act thereon because as far as it is concerned, the LGU has not submitted the requirements.<sup>41</sup>

Regarding **Exhibit F-1**, Osin elucidated that the "GS" portion is "government share" in the amount of ₱1,701.48 which Bacolod-Kalawi LGU has to shoulder. "PS" amounting to ₱1,276.11 is "personal share," which is a percentage of the salary being deducted from the employee as his share in the GSIS contribution. Meanwhile, "EC" amounting to ₱100, is a uniform amount which is the contribution to "Employees' Compensation" fund.<sup>42</sup>

Osin confirmed that GSIS did not make a statement of account specifically for Habib Tarosan. She clarified that there were remittances made, but there was underpayment, and not only as regards Tarosan, but also as to the rest of the LGU employees. Osin confirmed that there was under-

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<sup>37</sup> TSN. 14 January 2021, p. 35.

<sup>38</sup> Id. at 36.

<sup>39</sup> Id. at 39.

<sup>40</sup> Id. at p. 46.

<sup>41</sup> Id. at 49.

<sup>42</sup> Id. at 53, 60-61.



**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 9 of 31

X-----X

remittance because the amount of the supposed salary given to the councilors was different from the amount of the salary upon which the remittance was computed.<sup>43</sup>

Noting that GSIS did not file cases immediately after, the court asked what GSIS's recourse was, aside from the demand letters, when under-remittances are made. Witness said that GSIS is now premium-based. As a result, if the concerned agency does not make the correct remittances, its employees will be affected. The premium-based policy started in 2003.<sup>44</sup>

The Remittance List was "certified correct" by "Honorable Diarangan Dipatuan, Municipal Mayor" (signed). It shows amounts that the LGU wanted and, in fact, remitted to GSIS. But Osin claimed that the amount so indicated is less than that reflected in the service record of Habib in particular. Because the Remittance List reflects lesser salary on the part of Habib, there is underpayment.<sup>45</sup>

## **2. Gina Nicolasin Burnea**

In her Judicial Affidavit dated 28 February 2020,<sup>46</sup> Gina Burnea ("Burnea"), Technical Assistant and Records Custodian of GSIS Iligan Branch Office, stated that she is the official custodian of records and documents submitted and remitted to GSIS Iligan Branch Office, as well as of official issuances of the office. She is authorized to certify them as true copies when requested by proper parties or authorities.

In response to subpoenas received on different dates, Burnea brought to court and identified the compliance letters thereto, which were marked as **Exhibits "E," "I," "S" and "FF"** signed by their GSIS Branch Manager Alexis D. Arumpac. She also brought to court and identified the subpoenaed GSIS documents and her signature thereon, certifying them as true copies.<sup>47</sup>

Burnea's Judicial Affidavit was admitted as her direct examination after **Exhibits U and E-1** were deleted from it. No cross-examination questions were asked of her.<sup>48</sup>

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<sup>43</sup> TSN, 14 January 2021, pp. 55-56.

<sup>44</sup> Id. at 57-58.

<sup>45</sup> Id. at 62-63.

<sup>46</sup> JA Folder, pp. 54-105.

<sup>47</sup> Burnea brought and certified the following documents as true copies: Exhibits E to R with submarkings, GG, HH, II, JJ, LL, LL, MM with attachments, NN, OO and PP.

<sup>48</sup> Record, Vol. 2, pp. 66-67.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 10 of 31

X-----X

**2. Vilma Villegas**

The presentation of Vilma Villegas, Statistician III, Records and Statistics Division, Comelec Main, Intramuros, Manila, was dispensed with after the parties stipulated that she can certify as to the authenticity and truthfulness of **Exhibit "V."**<sup>49</sup> This refers to the Certificate of Canvas and Proclamation for Bacolod-Kalawi, Lanao del Sur issued on 15 May 2010 showing that Habib Tarosan was one of the "winning candidates for the position of Member, Sangguniang Bayan, Bacolod-Kalawi, Lanao del Sur."<sup>50</sup>

**3. Marissa A. Santos**

In its Order dated 11 March 2021,<sup>51</sup> the Court dispensed with the presentation of Marissa A. Santos after the parties stipulated as follows:

- (1) That the witness is the Chief Administrative Officer at the Central Records Division of the Department of Budget and Management (DBM);
- (2) That she has official custody of the official records on file at the Central Records Division of the DBM;
- (3) That she certified as true copies (1) DBM Local Budget Circular No. 97 dated May 11, 2011 with annexes and (2) DBM local Budget circular No. 99 dated May 25, 2021 with annexes,<sup>52</sup> and that she submitted these to the Office of the Ombudsman as compliance to a subpoena; and
- (4) That she can identify her Judicial Affidavit and the attachments thereto.

The parties also stipulated that the witness has no personal knowledge as to the implementation of the said budget circulars.

The prosecution thereafter rested its case and filed its Formal Offer of Documentary Evidence.<sup>53</sup> In response, the accused filed his comment/opposition thereto.<sup>54</sup> In its Resolution dated 25 August 2021,<sup>55</sup> the Court admitted in evidence the following documentary exhibits of the prosecution: **Exhibits C, C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, C-12, C-13, E, E-1, F, F-1, G, G-1, H, H-1, I, I-1, J, J-1, K, K-1, L, L-1, M, M-1, N, N-1, O, O-1, P, P-1, Q, Q-1, R, R-1, S, T, V, FF, GG, HH,**

<sup>49</sup> TSN, 28 January 2021, p. 19.

<sup>50</sup> Record, Vol. 2, pp. 66-67.

<sup>51</sup> Id. at 90-92.

<sup>52</sup> The certified true copy of DBM Local Budget Circular No. 97 dated May 11, 2011 was marked **Exhibits SS to SS-14**, while the certified true copy of DBM Budget Circular No. 99 was marked **Exhibits C to C-14**.

<sup>53</sup> Record, Vol. 2, pp. 137-189.

<sup>54</sup> Id. at 190-194.

<sup>55</sup> Id. at 195-198.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringku Dipatuan, et al.*

Page 11 of 31

x-----x

**II, JJ, KK, LL, MM with attachments, NN, OO, PP, SS, SS-1, SS-2, SS-3, SS-4, SS-5, SS-6, SS-7, SS-8, SS-9, SS-10, SS-11, SS-12, SS-13, and SS-14.**

The accused filed a Motion for Leave to File Demurrer to Evidence<sup>56</sup> which the Court denied in its Resolution dated 27 July 2021.<sup>57</sup>

**WITNESSES FOR THE DEFENSE**

Accused Dipatuan presented his witnesses as follows:

**A. Mohamad M. Dimasangkay**

In his Judicial Affidavit dated 13 February 2022,<sup>58</sup> Mohamad M. Dimasangkay, presently the Secretary of the Sangguniang Bayan ("SB") of the Municipality of Bacolod-Kalawi, Lanao del Sur from 2007 up to the present, stated that his duties and functions include preparing the agenda of SB meetings, preparing the minutes therefor and supervising SB employees.

Dimasangkay knew Habib Tarosan, a former SB member and political adversary of former mayor Diarangan Dipatuan who filed several unfounded cases against Dipatuan, including the present case. Both Dipatuan and Tarosan ran for Vice Mayor in the 2016 elections. They had a grave and serious rivalry because when Tarosan's term ended, he had no choice but to vie for a higher position against Dipatuan.

Dimasangkay knew that this case is about the alleged 2012 under remittances of GSIS contributions of Habib Tarosan. However, there was no under remittance because there was no salary increase in 2011 and 2012 for all Bacolod-Kalawi LGU employees and SB members. He knew that there was no increase in salaries because, as SB secretary, he remembered that the SB did not pass any appropriation ordinance or resolution increasing the allocation for salary increases of employees and SB members in 2011 and 2012. He added that salary increase of LGU employees is the duty of the SB because it approves appropriations for salary increases.

He knew that Tarosan was elected as a member of the SB in 2007 and 2010 and that the latter did nothing to question the alleged under remittance back then. All ten councilors did nothing because, in the first place, it was their duty to legislate the increase. Dimasangkay said that Tarosan raised the matter only in January 2016 when he filed the complaint. The case is just the result of confusion regarding the implementation of the salary increase of SB members, which included Tarosan.

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<sup>56</sup> Record, Vol. 2, pp. 204-215.

<sup>57</sup> Id. at 221-234.

<sup>58</sup> JA Folder, pp. 152-156.

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 12 of 31

X-----X

Dimasangkay's Judicial Affidavit was admitted in lieu of his direct examination.<sup>59</sup>

On cross examination, he confirmed that, as SB secretary, he has no part in the computation or review of remittances or contributions to GSIS; that there was no under remittance because there was no salary increase in 2011 and 2012; and that the SB did not pass a resolution for the increase in salary in 2011 to 2012.<sup>60</sup>

Dimasangkay does not have a document of SB in his possession stating that there was no under-remittance because "*naalis na sa amin, ..., matagal na yon.*" ("It was removed from us, ..., it was a long time ago.") Still, he concluded that they had no under remittance of GSIS contributions because he remembered as SB secretary then that there was no increase in salaries.<sup>61</sup>

He nodded his head when asked by the court if SB prepares the appropriation ordinance. He also confirmed that SB already allocates a budget for personal services which includes salaries of every member of the SB. He clarified that when SB prepared the appropriation ordinance, the salaries of SB members remained the same.<sup>62</sup>

There was no salary increase from 2011 to 2012. But from 2013 to 2014, there was an increase in the salary of the Sangguniang Bayan members. As this happened a long time ago, he no longer has the records to show this.<sup>63</sup>

The Court then noted that as SB secretary, Dimasangkay would only be able to identify the appropriation ordinance, which is just a listing of total personnel service, MOOE and capital outlay. He will not be able to know the particular salary of an SB member.<sup>64</sup>

Dimasangkay confirmed that Tarosan was also elected for his third term as SB member in 2013 and that he was able to assume the position of SB member for the full three-year term.

Based on witness's Identification Card, it appears that the current mayor is Nora L. Dipatuan, who is the wife of accused mayor Diarangan Ringka Dipatuan.<sup>65</sup>

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<sup>59</sup> TSN, 23 February 2022, p. 9.

<sup>60</sup> Id. at 10.

<sup>61</sup> Id. at 13.

<sup>62</sup> Id. at 14-15.

<sup>63</sup> Id. at 16.

<sup>64</sup> Id. at 17.

<sup>65</sup> Id. at 21.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 13 of 31

X-----X

**B. Samad Basingan Sultan**

In his Judicial Affidavit dated 13 February 2022,<sup>66</sup> Samad B. Sultan, presently the Budget Officer of the Municipality of Bacolod-Kalawi, Lanao del Sur since 01 June 2016, declared that his duties, functions and responsibilities are preparing the budget of municipality for each fiscal year, attesting to the availability of funds for disbursements and others.

He expounded that in preparing the budget, he first puts into writing the budget of the municipality for personal services, MOOE, capital outlay, etc. as a draft. This draft is thereafter submitted to the SB as their guide.

He added that the SB will finalize the municipality's budget for everything, including MOOE, personnel expense, expense for salary increase, if any, capital outlay, etc. The SB will thereafter pass an appropriations ordinance approving the final budget of the municipality, which will be the basis of its disbursement of funds.

Sultan stated that the office of the mayor's participation in the preparation of the budget is to instruct the Budget office to prepare the budget for the following year. The municipality's budget for next year is done and approved in the current year.

Sultan's Judicial Affidavit was admitted in lieu of his direct examination.<sup>67</sup>

On cross examination, Sultan confirmed that in 2012 and 2013, he was then not the Budget Officer and was not yet connected with the government, having applied for the position only in 2016. This notwithstanding, the records of the yearly budget of Bacolod-Kalawi for 2012 and 2013 were turned over to him.<sup>68</sup>

He also confirmed that there is now a separate column in PS (Personnel Services) corresponding to GSIS remittances.<sup>69</sup>

**C. Bongbong Lucman Batua**

In his Judicial Affidavit dated 13 February 2022,<sup>70</sup> Bongbong Lucman Batua, presently the Municipal Accountant of Bacolod-Kalawi LGU since 2017, stated that his duties, functions and responsibilities are preparing the financial statements of the municipality, certifying that the disbursement is

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<sup>66</sup> JA Folder, pp.146-151.

<sup>67</sup> TSN, 23 February 2022, p. 27.

<sup>68</sup> Id. at 38-39.

<sup>69</sup> Id. at 54.

<sup>70</sup> JA Folder, pp. 157-161.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 14 of 31

X-----X

proper, computing the government share and personal share to be remitted to the GSIS of the employees, among others.

He explained that the current salary of the employees is the basis for computing government and personal shares to be remitted to GSIS. From this, they compute the percentage to be deducted from the salary. They thereafter forward the computation to the Treasurer's Office. The Treasurer's Office will prepare a transmittal letter to GSIS and will pay or transmit the money to the GSIS representing the shares of the government and employees.

Batua emphasized that the Office of the Mayor has no participation in the computation of the employees' GSIS contribution for remittance to GSIS.

When presented in court, Batua's Judicial Affidavit was admitted in lieu of his direct testimony.<sup>71</sup>

On cross examination, Batua denied knowing accused Rasad Gubat Dumarpa personally and that the latter was the previous Municipal Accountant of Bacolod-Kalawi.<sup>72</sup>

Batua confirmed that the transmittal letter to GSIS does not need his signature and that he does not sign it. Still, he claimed that he has seen the transmittal to GSIS after it was prepared by the Municipal Treasurer.

On further cross, Batua further confirmed that after the municipal treasurer has prepared the transmittal, it is forwarded to the mayor for signature and then filed with GSIS. It is not returned to him.<sup>73</sup>

**D. Mayaman I. Sumbi**

In his Judicial Affidavit dated 2 April 2022,<sup>74</sup> Mayaman I. Sumbi, presently a member/councilor of SB of the Municipality of Bacolod-Kalawi, Lanao Del Sur from 2007 to 2013 and 2016 up to the present, declared that his duties and functions include preparing and proposing municipal ordinances, budget ordinances and resolutions, among other things.

Sumbi explained that a budget ordinance will be the basis for the disbursements of funds of the municipality, including personnel expenditures, capital outlays, purchase of equipment and supplies, etc. Meanwhile, the budget for personnel expenditures include the salaries of employees, increase in salaries, if any, and other benefits due to the employees.

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<sup>71</sup> TSN, 23 February 2022, p. 64.

<sup>72</sup> Id. at 65.

<sup>73</sup> Id. at 66-67.

<sup>74</sup> JA Folder, pp. 181-186.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 15 of 31

X-----X

He stated that the steps taken in passing a budget are as follows: the Municipal Budget Office will submit first a draft of the budget for the entire municipality. The SB will consider the draft as a guide, and it will thereafter finalize the municipal budget and submit the proposed budget ordinance to a vote. The budget ordinance is approved if it garners the majority vote.

Sumbi knew former SB member Habib Tarosan, who filed several cases against former mayor Diarangan Dipatuan, including the present case. He also knew that this case is about the alleged 2012 and early 2013 under remittance of GSIS contributions of Habib Tarosan.

He claimed that there was no under remittance because there was no salary increase for all employees and SB members in 2012 up to the early part of 2013. As an SB member, he remembered that they did not pass any appropriation ordinance or resolution increasing the allocation for the salary increases of the employees and SB members in 2012. In fact, even in 2013, he remembered that the increase took effect in the later part of 2013.

Sumbi averred that it is the duty of the SB to cause the salary increases because it has the power to decide whether to implement salary increases and benefits in accordance with the capacity of the municipality's budget.

He asserted that Tarosan became an SB member in 2007, 2010 and June 2016. During that period, Tarosan did not raise any question regarding the alleged under remittance. In fact, no one among the councilors questioned the alleged under remittance. He claimed that the present case is just a result of confusion on the implementation of the salary increases of the SB members, which included Tarosan, who has been ambitioning to be a mayor.

Sumbi's Judicial Affidavit was admitted in lieu of his direct examination.<sup>75</sup>

On cross examination, Sumbi testified that he was a councilor in 2007 with a monthly salary of ₱14,000.00. In 2011, he was also a councilor, with the same salary of ₱14,000.00. This salary did not change in 2012. He also had the same salary in 2013.<sup>76</sup>

He does not know how GSIS remittances are computed. Still, he said that there was no under remittance because during their sessions, they also discussed GSIS contributions,<sup>77</sup> particularly when they made the appropriation ordinance. However, they did not discuss that, and for years,

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<sup>75</sup> Sumbi, who uses the Maranao dialect only, required an interpreter from the National Commission on Muslim Filipinos (NCMF- Lanao). Atty. Raihana Madum, who was also present during the court hearing. Atty. Madum's expertise as interpreter was stipulated by the parties. She confirmed that she read Sumbi's Judicial Affidavit and that the questions and answers therein were faithfully translated by Atty. Bantuas Lucman. (TSN, 26 May 2022, pp. 10-17.)

<sup>76</sup> TSN, 26 May 2022, pp. 18-19.

<sup>77</sup> Id. at 26.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 16 of 31

X-----X

GSIS has been trying to collect arrears and deficiencies in their GSIS contributions.<sup>78</sup>

Sumbi knew about Tarosan's complaint, but was unaware that there were two other councilors (Tamim C. Amanoddin and Sihabudden D. Abdulmanan) who complained about the GSIS contribution.<sup>79</sup>

Upon the court's clarification, Sumbi said that there was a salary increase during the first month of 2013. Later, he stated that they had an increase in salary in the later part of 2013, probably October. What he was saying was that, there was no salary increase enacted by Congress in the year 2012, so there can be no under remittance because the salary remained the same. Thereafter, Sumbi stated that the SB did not pass a resolution in 2012 for the increase of salary in 2013. He also claimed that, as councilors, they have the power to increase their salary.<sup>80</sup>

**E. Diarangan Ringka Dipatuan**

In his Judicial Affidavit dated 21 June 2022,<sup>81</sup> accused Diarangan Ringka Dipatuan, currently a private citizen with no position in government, confirmed that he was the Mayor of Bacolod-Kalawi from 2007 to 2013.

His duties, functions and responsibilities as mayor were purely executive. He executed laws and policies passed by the SB and supervised and ran the day-to-day functions of the municipality, among others.

He is aware of the charges against him, which is about the alleged under remittance of GSIS contributions of Habib Tarosan and alleged undue injury to the latter as a result thereof. However, he alleged that there was no under remittance because in 2012 and until the last quarter of 2013, there was no increase in the salaries of employees of the municipality, including him and the members of the SB. There was also no injury to Tarosan because there was no under remittance.

He elucidated that there was no increase in salaries because the SB did not pass an appropriation ordinance which would allow the increase in the employees' salaries. Hence, they had no budget allocated for salary increase.

Dipatuan added that his role in the passage of an appropriations ordinance is to instruct the Budget Office to prepare a proposal of the budget. Then, upon Dipatuan's instruction, they will submit the proposal to the SB. During his time, the computation of GSIS contributions of Habib Tarosan was

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<sup>78</sup> TSN. 26 May 2022, p. 27.

<sup>79</sup> Id. at 27-28.

<sup>80</sup> Id. at 29-31

<sup>81</sup> JA Folder. pp. 203-206.



**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 17 of 31

X-----X

the responsibility of the Municipal Accountant and the remittance thereof to GSIS was delegated to the Municipal Treasurer.

He noted that Habib Tarosan was his political adversary (both of them ran as Vice Mayor) during the 2013 elections, which explained why the latter filed complaints against him.

Dipatuan's Judicial Affidavit was admitted in lieu of his direct examination.<sup>82</sup>

On cross examination, accused confirmed that, during preliminary investigation, he neither raised the defense that there was no increase in appropriation passed by SB, nor attached the budget of the municipality from 2011, 2012, 2013 to prove there was no increase in salary.<sup>83</sup>

Responding to the question from the Court, accused said he does not have proof of his allegation that during his time, collection of GSIS contributions was the responsibility of the Municipal Accountant, while its remittance was delegated to the Municipal Treasurer.<sup>84</sup>

He admitted that he does not know about the law passed by congress, but what he knows is that the SB passes the budget appropriation every year.<sup>85</sup>

During the same hearing on 1 September 2022, the defense orally offered its sole exhibit, **Exhibit 1 (with sub-markings)**, which refers to the Local Budget Circular No. 99 dated 25 May 2012. This is a common exhibit, being **Exhibit C** for the prosecution.

The defense offered **Exhibit 1** to prove: (1) that the salary increase effectivity was in 2013; (2) that the salary increase effected by the Municipality of Bacolod-Kalawi, Lanao del Sur, should be covered by a Notice of Salary Adjustment to be issued by the Personnel of Bacolod-Kalawi; and (3) that it is the Sangguniang Bayan of the Municipality of Bacolod-Kalawi, Lanao del Sur, which has the power to legislate the salary increase, and not the Municipal Mayor himself.<sup>86</sup>

With no objection on the part of the prosecution, the Court admitted defense's **Exhibit 1** in evidence. It also enjoined the parties to file their respective memoranda within 30 days and set the promulgation of judgment on 2 December 2022.<sup>87</sup>

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<sup>82</sup> TSN, 1 September 2022, p. 9.

<sup>83</sup> Id. at 10-12.

<sup>84</sup> Id. at 16-17.

<sup>85</sup> Id. at 18.

<sup>86</sup> Id. at 20.

<sup>87</sup> Order dated 1 September 2022. Record. Vol. 2, pp. 358-359.

DECISION

SB-19-CRM-0113 to 0125

People v. Diarangan Ringka Dipatuan, et al.

Page 18 of 31

X-----X

MEMORANDA OF THE PARTIES

Memorandum for the Prosecution

In its Memorandum dated 21 September 2022,<sup>88</sup> the prosecution argues that it presented sufficient evidence to prove accused's violation of Section 6 (b) in relation to Section 52 (g) of the GSIS Law.

The prosecution cites Section 447(b)<sup>89</sup> of Republic Act No. 7160 ("R.A. No. 7160" or the Local Government Code), which states that *sangguniang bayan* members shall receive a minimum monthly compensation corresponding to Salary Grade twenty-four (24). Meanwhile, this salary is subject to adjustment according to DBM Local Budget Circular No. 99 dated 25 May 2012. It is further subject to the additional consideration that Bacolod-Kalawi is a third-class municipality, as per the parties' stipulation.<sup>90</sup> Per Annex A3 of this Budget Circular, the prosecution concludes that the monthly salary equivalent of Salary Grade 24 is ₱44,775.00 (step 1).

Taking the foregoing in relation to Section 5<sup>91</sup> of the GSIS Law, which mandates how the monthly GSIS contribution is computed, the prosecution alleges that the supposed minimum GSIS contribution of Tarosan (a Sanggunian member of Bacolod-Kalawi during the pertinent period) should be computed as follows:

Member share	=	₱44,775 x 0.09 = ₱4,029.75
Employer share	=	₱44,775 x 0.12 = ₱5,373.00
Total		= ₱9,402.75

<sup>88</sup> Record, Vol. 2, pp. 387-391.

<sup>89</sup>SECTION 447. Powers, Duties, Functions and Compensation. — (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall: xxx

(b) The members of the sangguniang bayan shall receive a minimum monthly compensation corresponding to Salary Grade twenty-four (24) as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto: *Provided, That, in municipalities in Metropolitan Manila Area and other metropolitan political subdivisions, members of the sangguniang bayan shall receive a minimum monthly compensation corresponding to Salary Grade twenty-five (25).*

<sup>90</sup> Pre Trial Order

<sup>91</sup> SECTION 5. Contributions. — (a) It shall be mandatory for the member and the employer to pay the monthly contributions specified in the following schedule:

Monthly Compensation		Percentage of Monthly Compensation Payable by	
		Member	Employer
I.	Maximum Average Monthly Compensation (AMC) Limit and Below	9.0%	12.0%
II.	Over the Maximum AMC Limit		
	— Up to the Maximum AMC Limit	9.0%	12.0%
	— In Excess of the AMC Limit	2.0%	12.0%

Xxx

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringku Dipatuan, et al.*

Page 19 of 31

X-----X

It points out that, on the other hand, the remittance sheets submitted by Bacolod-Kalawi to the GSIS for the year 2012, as well as for January and February 2013, uniformly reflected its remittance of only ₱1,276.11 as member share and ₱1,701.48 as employer share for Tarosan's monthly GSIS contribution. The prosecution notes that these remittance sheets showed accused's culpability as these were prepared and signed by him.

It adds that the under-remittance was further bolstered by the various demand letters and Statements of Account issued by GSIS detailing Bacolod-Kalawi's outstanding obligation from 1997 to 2013.

The prosecution notes that accused never denied remitting incorrect/insufficient contributions. His defense, i.e., that no appropriation ordinance was passed in 2012 and 2013, is unavailing. The effect of such omission to the correct amount that must be remitted to the GSIS was not adequately explained.

Citing *People v. Talaue*,<sup>92</sup> the prosecution stresses that ensuring the remittance to GSIS is as much the responsibility of the mayor as it is of those personnel involved in the collection of premium contributions.

It further contends that accused's failure to remit the correct GSIS contribution gives rise to a violation of Section 3(e) of R.A. No. 3019. Despite accused being the mayor from 2007 to 2013, there was no evidence that he did anything to address the GSIS under-remittance, which started as far back as 1997. His inaction shows his evident bad faith.

Finally, the prosecution avers that this under-remittance prejudiced not only Habib Tarosan, but the GSIS itself. Insufficient contributions in Tarosan's name means that he cannot fully avail and enjoy the benefits granted to GSIS members. The same insufficient GSIS contributions also threatens the actuarial solvency of the fund.

***Memorandum for Accused Diarangan R. Dipatuan***

In his Memorandum dated 26 September 2022,<sup>93</sup> accused Dipatuan argues that the prosecution failed to prove his violation of Section 3(e) of R.A. No. 3019.

He claims that the prosecution failed to present evidence of Dipatuan's bad faith, manifest partiality or gross inexcusable negligence. On the contrary, accused Dipatuan claims that he can validly claim good faith as he has no participation in the matter of GSIS remittance.

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<sup>92</sup> G.R. No. 248652. 12 January 2021.

<sup>93</sup> Record, Vol. 2, pp. 402-415.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 20 of 31

X-----X

Dipatuan also asserts that neither has the prosecution presented proof that accused Dipatuan participated in the under-remittance of Tarosan's GSIS contributions. Meanwhile, prosecution witness, Ms. Osin, testified that it was the Treasurer, Mr. Dumarpa, who was the agency-authorized officer of Bacolod-Kalawi.

Accused further avers that the prosecution failed to prove the under remittance. He reasons that none of the evidence proves the under remittance of Tarosan's GSIS contributions for 2012 because **the prosecution did not present proof of Tarosan's actual monthly salary for 2012**, which will be the basis of the percentage deduction to be remitted to the GSIS. What the prosecution presented was the remittance that Bacolod-Kalawi made to GSIS and a Certification of specific remittance for Tarosan for 2012.

Dipatuan also claims that the prosecution failed to prove undue injury on the part of Tarosan. Jurisprudence requires that undue injury be specified, quantified and proven to the point of moral certainty. On the other hand, the Information did not even present proof that Tarosan suffered actual damage. Tarosan himself was not presented to prove this fact.

While the prosecution attempted to prove that Tarosan had a bigger salary in 2012 by presenting DBM Memorandum Circular No. 99 dated 25 May 2012, the said MC was effective 1 January 2013. Hence, since this case covers remittances for the year 2012, the said MC does not apply herein.

Accused moreover asserts that the prosecution failed to prove that MC 99 was implemented by Bacolod-Kalawi LGU. Meanwhile, the MC itself provides that it is the *Sanggunian* of the LGU that shall determine the implementation of the salary adjustment, thus:

- 5.0 Determining the Fourth Tranche Monthly Salary Schedule to be Implemented. In view of the authority of the Sangguniang Panlalawigan/Panlungsod/Bayan under the pertinent provisions of Republic Act (RA.) No. 7160 "Local Government Code of 1991," the fourth tranche monthly Salary Schedule to be implemented shall be determined by the Sanggunian.
- 5.1 If funds are sufficient and sustainable, the salary rates in accordance with the "Fourth Tranche Salary Schedule for Local Government Personnel Effective January 1, 2013," corresponding to the LGU level and income class in Annexes "A1 to AS" may be implemented.

Accused reasons that there is no basis for the alleged non-remittance of the correct premium contributions of Tarosan because there was no proof that the salary adjustment was implemented.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 21 of 31

X-----X

In contrast, Dipatuan maintains that the testimonial evidence he presented shows that the supposed salary increase was not implemented in 2012. He asserts that the testimony of defense witness Dimasangkay, the Sangguniang Bayan Secretary at the pertinent time, should be given credence, especially because it was corroborated by other witnesses.

Dipatuan argues that the GSIS's demand for reconciliation of Bacolod-Kalawi's accounts are too general and does not specifically refer to the alleged "correct premium contributions" of Tarosan. Accused notes that in the Statement of Account prepared by GSIS dated 7 January 2013, (Exh. "GG"), the alleged Personal Share Balance of Bacolod Kalawi was only ₱295,690.65 over the fifteen-year period from 1997 to 2012 and the rest of the alleged amount due is interest. This evidence is too general to be used and taken against accused Dipatuan. There is also no evidence that Dipatuan has seen this Statement of Account or any of the demand letters.

Dipatuan also contends that the charge of under or incorrect remittance is not punished by the provisions he is charged with. Citing Sections 6 (b)<sup>94</sup> and 52(g)<sup>95</sup> of R.A. No. 8291, he argues that said provisions punish only the delay, refusal or failure to deliver the contributions in time, but does not specifically punish incorrect remittance. He claims that incorrect or under-remittance can be administratively settled.

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<sup>94</sup> SEC. 6. Collection and Remittance of Contributions. - (a) The employer shall report to the GSIS the names of all its employees, their corresponding employment status, positions, salaries and such other pertinent information, including subsequent changes therein, if any, as may be required by the GSIS; the employer shall deduct each month from the monthly salary or compensation of each employee the contribution payable by him in accordance with the schedule prescribed in the rules and regulations implementing this Act.

"(b) Each employer shall remit directly to the GSIS the employee's and employer's contributions within the first ten (10) days of the calendar month following the month to which the contributions apply. The remittance by the employer of the contribution to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees.

<sup>95</sup> SEC. 52. Penalty. - (a) Any person found to have participated directly or indirectly in the commission of fraud, collusion, falsification, or misrepresentation in any transaction with the GSIS, whether for him or for some other persons, shall suffer the penalties provided for in Article 172 of the Revised Penal Code.

Xxx

(g) The heads of the offices of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable shall, upon conviction by final judgment, suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (P10,000.00) nor more than Twenty thousand pesos (P20,000.00), and in addition, shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government."

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarungan Ringku Diputuan, et al.*

Page 22 of 31

x-----x

**ISSUES**

1. Whether accused is guilty of violation of Section 6 (b) in relation to Section 52 (g) of R.A. No. 8291;
2. Whether accused is guilty of violation of Section 3(e) of R.A. No. 3019, as amended

**OUR RULING**

**I. SB-19-CRM-0114 to 0125  
(Violation of Section 6 (b) in  
relation to Section 52 (g) of R.A.  
No. 8291**

Accused is charged with violation of Section 6 (b) in relation to Section 52 (g) of R.A. No. 8291, which read:

SECTION 6. Collection and Remittance of Contributions. — (a) The employer shall report to the GSIS the names of all its employees, their corresponding employment status, positions, salaries and such other pertinent information, including subsequent changes therein, if any, as may be required by the GSIS; the employer shall deduct each month from the monthly salary or compensation of each employee the contribution payable by him in accordance with the schedule prescribed in the rules and regulations implementing this Act.

(b) Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month following the month to which the contributions apply. The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees.

xxx

SECTION 52. Penalty. — (a) xxx

(g) The heads of the offices of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable shall, upon conviction by final judgment, suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 23 of 31

X-----X

Ten thousand pesos (P10,000.00) nor more than Twenty thousand pesos (P20,000.00), and in addition shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

(h) The officers and/or personnel referred to in paragraph (g) of this section shall be liable not only criminally but also civilly to the GSIS or to the employee or member concerned in the form of damages, including surcharges and interests.

(i) For the charges or complaints referred to in paragraph (g) of this Section, the liabilities therein set forth shall be construed as waiver of the State of its immunity from suit, hence, the above-mentioned officials and/or personnel may not invoke the defense of non-suability of the State.

(j) Failure of the Members of the GSIS Board, including the chairman and the vice-chairman, to comply with the provisions of paragraph (w) of Section 41 hereof, shall subject them to imprisonment of not less than six (6) months nor more than one (1) year or a fine of not less than Five thousand pesos (P5,000.00) nor more than Ten thousand pesos (P10,000.00) without prejudice to any civil or administrative liability which may also arise therefrom.

Criminal actions arising from violations of the provisions of this Act may be commenced by the GSIS or by the aggrieved member, either under this Act or, in appropriate cases, under the Revised Penal Code.

In the Information, the charge against accused is that he conspired with then co-accused Municipal Treasurer Rasad Dumarpa (whose death constrained the court to dismiss the case against him) to “willfully, unlawfully and criminally fail, refuse or delay to pay, remit, turn-over or deliver and/or cause the payment, remittance, turn-over or deliver to GSIS the correct GSIS premium contribution of Habib B. Tarosan xxx.” (Underscoring supplied)

Thus, Section 6 (b) in relation to Section 52 (g) of R.A. No. 8291 punishes the heads of offices of the political subdivisions of the national government “who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable.”

*A. Section 52(g) of R.A. No. 8291 not only penalizes delay or failure to remit GSIS contributions. It also penalizes “failure to remit the accurate/exact amount of contributions on time.”*

In his Memorandum, accused argues that the charge of under-remittance or incorrect remittance is not punished by the provisions he is charged with. He claims that said provisions punish only the delay, refusal or failure to deliver the contributions in time, but does not specifically punish incorrect remittance. He adds that incorrect or under-remittance can be administratively settled.

We disagree.

When R.A. 8291 speaks of “contribution,” it does not denote just any random amount which the employer might remit to the GSIS. Section 2 (j)<sup>96</sup> specifies that the word “contribution,” as used therein, refers to “the amount payable to the GSIS by the member and the employer in accordance with Section 5” thereof.

Meanwhile, Section 5<sup>97</sup> pertains to the proper computation of the contribution in relation to the employee’s monthly compensation. Section 5(c) emphasizes that penal sanctions shall be imposed on employers who “fail to remit the accurate/exact amount of contributions on time.”

Clearly, when Section 6(b) of R.A No. 8291 mandates the employer to “remit directly to the GSIS the employee’s and employer’s contributions within the first ten days of the calendar month following the month to which the contributions apply,” it enjoins the employer to remit the “accurate/exact amount of contribution” as computed in accordance with Section 5.

<sup>96</sup> SECTION 2. *Definition of Terms.* — Unless the context otherwise indicates, the following terms shall mean:

(a) xxx  
xxx;

(j) *Contribution* — The amount payable to the GSIS by the member and the employer in accordance with Section 5 of this Act;

(k) xxx

<sup>97</sup> SECTION 5. *Contributions.* — (a) It shall be mandatory for the member and the employer to pay the monthly contributions specified in the following schedule:

Monthly Compensation		Percentage of Monthly Compensation Payable by	
		Member	Employer
I.	Maximum Average Monthly Compensation (AMC) Limit and Below	9.0%	12.0%
II.	Over the Maximum AMC Limit		
	— Up to the Maximum AMC Limit	9.0%	12.0%
	— In Excess of the AMC Limit	2.0%	12.0%

Members of the judiciary and constitutional commissioners shall pay three percent (3%) of their monthly compensation as personal share, and their employers a corresponding three percent (3%) share for their life insurance coverage.

(b) The employer shall include in its annual appropriation the necessary amounts for its share of the contributions indicated above, plus any additional premiums that may be required on account of the hazards or risks of its employees' occupation.

(c) It shall be mandatory and compulsory for all employers to include the payment of contributions in their annual appropriations. Penal sanctions shall be imposed upon employers who fail to include the payment of contributions in their annual appropriations or otherwise fail to remit the accurate/exact amount of contributions on time. or delay the remittance of premium contributions to the GSIS. The heads of offices and agencies shall be administratively liable for non-remittance or delayed remittance of premium contributions to the GSIS. (Underscoring supplied.)



**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 25 of 31

X-----X

*B. The GSIS contributions should be computed based on the ACTUAL salary of the employee.*

To prove the under-remittance of Tarosan's GSIS contributions, the prosecution presented DBM Memorandum Circulars which showed that Tarosan's salary is higher than the figure used by Bacolod-Kalawi LGU in computing his GSIS contribution.

Meanwhile, the defense presented witnesses who testified that no appropriation ordinance implementing the supposed salary increase described in the said DBM Memorandum Circulars were made in 2012.

The court finds remarkable that the prosecution chose to present evidence of complainant Tarosan's *supposed* salary based on the said DBM Circulars, instead of presenting evidence of his *actual* salary. Complainant Tarosan's actual salary could have been proven by easily obtainable documentary evidence such as his pay slip and/or his own testimonial evidence. The prosecution's failure to adduce such evidence brings to mind the disputable presumption that evidence willfully suppressed will be adverse if produced.

We understand that there might be valid concerns about whether Bacolod-Kalawi was able to comply with the DBM Memorandum Circulars which set guidelines for the mandated increase in salary of LGU personnel for the given period. In fact, the said Circulars provide sanctions against local chief executives who fail to implement its mandate.<sup>98</sup>

However, any failure on the part of the LGU to implement the increase in salary based on the cited DBM Circulars should not be confused with the present charge.

The present charge concerns the alleged failure of accused Dipatuan to remit the proper amount of Tarosan's GSIS contributions.

Under Rule III, Section 11 of the Revised Implementing Rules of R.A. No. 8291 (approved on June 23, 2010 under Board Resolution No. 88),<sup>99</sup> the

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<sup>98</sup>Section 12 of DBM Local Budget Circular No. 99 dated 25 May 2012 provides that (t)he Local Chief Executive shall be responsible for the implementation of the provisions of this Circular. He / She shall be held personally liable for any payment of salary/honoraria adjustments not in accordance with the provisions of this Circular.

<sup>99</sup> RULE III

COLLECTION AND REMITTANCE OF CONTRIBUTIONS AND OTHER AMOUNTS

Section 11 Amounts of Contribution.

11.1 For Regular Members

XXX

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 26 of 31

X-----X

rate of contribution payable by the member and government agency should be “based on the **actual** monthly salary of the member.” (Emphasis supplied)

Hence, the proper GSIS contribution that must be remitted for Tarosan should be computed based on his actual salary, not his supposed salary.

*C. The prosecution failed to prove the LGU's under-remittance of Tarosan's GSIS contributions for the subject period.*

The court may determine whether there was, indeed, under-remittance of Tarosan's GSIS contributions only after comparing Tarosan's proper GSIS contribution with the actual GSIS contributions remitted by the LGU on his behalf. If the actual GSIS contribution is less than the proper GSIS contribution, then there is under-remittance.

However, the court notes that there is no evidence on record indicating complainant Tarosan's actual salary, from which the proper GSIS contributions for Tarosan may be computed

There are only monthly Remittance Sheets submitted by Bacolod-Kalawi LGU to GSIS, which were “prepared by” Rasad Dumarpa and “certified correct” by accused Dipatuan (**Exhibits F-1, G-1, H-1, I-1, J-1, K-1, L-1, M-1, N-1, O-1, P-1, Q-1 and R-1**). Bacolod-Kalawi's actual 2012 monthly GSIS remittances for Tarosan was invariably pegged at ₱ 2,977.59 (₱1,276.11 as personal share + ₱1,701.48 as government share). These amounts are apparently computed based on a ₱14,179.00 salary.

Evidently, no under-remittance can be demonstrated if there is no computation of the proper GSIS contribution (which should have been based on evidence of Tarosan's actual salary) that may be compared with the actual GSIS contribution remitted by the LGU on behalf of Tarosan,

Accordingly, the court holds that the prosecution was not able to prove the under-remittance of Tarosan's GSIS contributions for the subject period.

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**11.1 For Regular Members**

xxx

However, effective January 1, 2003, the rate of contribution payable by the member and government agency shall be 9% and 12% respectively. based on the actual monthly salary of the member. (Underscoring supplied)

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 27 of 31

x-----x

**II. SB-19-CRM-0113 (Violation of  
Section 3(e) of R.A. No. 3019, as  
amended)**

In order to sustain a conviction under Section 3(e) of R.A. No. 3019, the prosecution must sufficiently establish the following elements:

- (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.<sup>100</sup>

Guided by the foregoing, we rule as follows:

*A. On whether the accused is a public officer*

The first element of the offense is that accused must be a public officer. This is satisfied by the stipulation of the parties that “accused Diarangan R. Dipatuan was the Municipal Mayor of the Municipality of Bacolod-Kalawi, Province of Lanao del Sur at the time material to this case.”<sup>101</sup>

*B. On whether the act was done in the  
discharge of accused's  
administrative, judicial or official  
functions*

The second element of the offense is that the act was done in the discharge of accused's administrative, judicial or official functions.

As Municipal Mayor of Bacolod-Kalawi during the pertinent period, accused Dipatuan is charged with the mandatory and compulsory and timely remittance of the accurate/exact amount of GSIS Contributions.

Indeed, Section 52 (g) and (h) of R.A. 8291<sup>102</sup> expressly makes the “heads of the offices of the national government (and) its political

<sup>100</sup> *People v. Gelacio*, G.R. Nos. 250951 & 250958, 10 August 2022.

<sup>101</sup> Record, Vol. 1, p. 527.

<sup>102</sup> SECTION 52. Penalty. — (a) xxx

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatnam, et al.*

Page 28 of 31

x-----x

subdivisions” liable civilly and criminally for failure, refusal or delay in the payment, turnover, remittance or delivery of premium contributions to GSIS.

Thus, the Supreme Court concluded that “(t)he task of ensuring the remittance of accounts due the GSIS is, therefore, as much a burden and responsibility of the mayor as it is the burden and responsibility of those personnel who are involved in the collection of premium contributions. Congress purposely included heads of office in the list of those liable in order to create a sense of urgency on their part and deter them from passing the blame to their subordinates.”<sup>103</sup>

Clearly, it was accused’s duty as mayor to ensure the proper remittance of the GSIS premium contributions of the LGU’s employees. Simply put, accused mayor may be held liable under the law, if there was improper remittance of GSIS contributions.

*C. On whether accused’s act was done  
with manifest partiality, evident bad  
faith or gross inexcusable negligence*

The third element of the offense is that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence.

The Information alleges that accused acted “with evident bad faith, manifest partiality and/or gross inexcusable negligence ... by causing the under-remittances of the Government Service Insurance System (GSIS) compulsory premiums of [Habib B. Tarosan] for the whole year of 2012.”

We find that the prosecution failed to prove the third element of the offense because this is premised on the existence of the “act” of under-remittance, which was not established, as discussed in the section pertaining to the violation of Section 6 (b) in relation to Section 52(g) of R.A. No. 8291.

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(g) The heads of the offices of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable shall, upon conviction by final judgment, suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (P10,000.00) nor more than Twenty thousand pesos (P20,000.00), and in addition shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

(h) The officers and/or personnel referred to in paragraph (g) of this section shall be liable not only criminally but also civilly to the GSIS or to the employee or member concerned in the form of damages, including surcharges and interests.

<sup>103</sup> *People v. Talame*, G.R. No. 248652, 12 January 2021.

DECISION

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 29 of 31

X-----X

*D. On whether accused's act caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions*

Similarly, we rule that the prosecution failed to prove the fourth element of the offense, i.e., that accused “willfully, unlawfully and criminally cause(d) undue injury to “Habi(b) B. Tarosan, who was then a member of the Sangguniang Bayan of the said municipality, by causing the under-remittances of the Government Service Insurance System (GSIS) compulsory premium contributions of the latter for the whole year of 2012, to the damage and prejudice of the said employee in the amount equivalent to the unremitted portion of the correct GSIS premium contributions.”

Once again, this element of the offense is premised on the existence of the act of “under-remittance.” However, as discussed in the preceding discussion on the charge of violation of Section 6 (b) in relation to Section 52 (g) of R.A. No. 8291, the prosecution failed to establish that there was under-remittance of Tarosan’s GSIS contributions when it failed to adduce evidence of the latter’s actual salary.

Thus, the prosecution’s failure to prove all the elements necessary to convict accused Dipatuan of violation of Section 3(e) of R.A. No. 3019 results in the latter’s acquittal.

In sum, the constitutional presumption that Dipatuan is innocent of the crimes charged, stands, in view of the prosecution’s failure to discharge its burden of proving that he committed the said crimes.

As underscored by the Supreme Court in *People v. Luna*:<sup>104</sup>

The cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent. By this presumption, the Constitution places the *onus probandi* on the prosecution to prove the guilt of the accused on the strength of its own evidence, not on the weakness of the defense. Hence, the accused need not offer evidence on his behalf and may rely on the presumption entirely, should the prosecution fail to overcome its burden of proof.

In this respect, the presumption of innocence is overturned if and only if the prosecution has successfully discharged its duty, that is, proving the guilt of the accused beyond reasonable doubt — to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. To

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<sup>104</sup> G.R. No. 219164, 21 March 2018.

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 30 of 31

X-----X

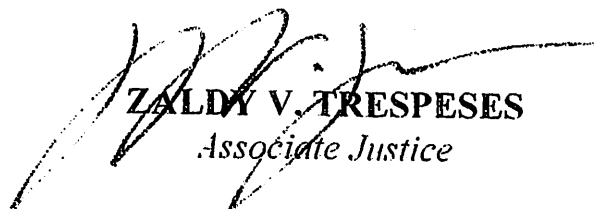
be sure, the concept of moral certainty is subjective. What remains certain, however, is that the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt. (Footnotes and emphasis omitted)

**WHEREFORE**, premises considered, for failure of the prosecution to prove his guilt beyond reasonable doubt, accused Diarangan Ringka Dipatuan is hereby **ACQUITTED** of the charges for violation of Section 3(e) of R.A. No. 3019 in SB-19-CRM-0113 and of Section 6(b) in relation to Section 52(g) of Republic Act No. 8291 in SB-19-CRM-0114 to 0125.


Let the Hold Departure Orders previously issued in this case be **LIFTED** and **SET ASIDE**, and let a copy of this Decision be furnished the Bureau of Immigration and Deportation for its immediate implementation and compliance.

The cash bond posted by the accused for his provisional liberty is ordered **CANCELLED** and **RETURNED** to him upon proper compliance with all pertinent rules and regulations.

**SO ORDERED.**

  
**ZALDY V. TRESPESES**  
*Associate Justice*

WE CONCUR:

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

  
**GEORGINA D. HIDALGO**  
*Associate Justice*

**DECISION**

SB-19-CRM-0113 to 0125

*People v. Diarangan Ringka Dipatuan, et al.*

Page 31 of 31

X-----X

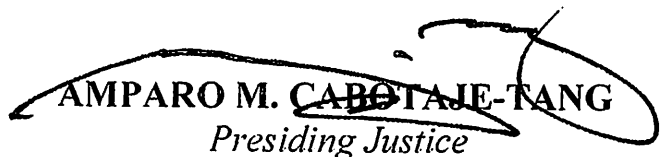
**A T T E S T A T I O N**

I attest that the conclusions in the above Decision were reached in consultation, after deliberations were held in compliance with Section 1, Rule IX of the 2018 Internal Rules of the Sandiganbayan, before the case was assigned to the writer of the opinion of the Court's Division.

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

**C E R T I F I C A T I O N**

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

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