



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**THIRD DIVISION**

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

-versus-

**CRIMINAL CASE NO.**  
**24639**

*For: Technical Malversation  
under Article 220 of the Revised  
Penal Code*

**RUFO C. PABELONIA;  
PERFECTO M. DIVINAGRACIA (+);  
PEDRO B. PABELONIA;  
ERNEST E. JARO;  
ROSARIO M. ARAÑEZ;  
EVELYN S. JUAN;  
NICOMEDES I. ABAD;  
FELIX M. JABAGATON, JR.;  
LEONCIO V. SERRANO, SR (+);  
LUCIO A. DOLORICON, SR (+);  
ILDEFONSO B. BERNALES (+);  
And LOURDES C. BERNAL.**

*Accused.*

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

-versus-

**CRIMINAL CASE NO.**  
**24640**

*For: Technical Malversation  
under Article 220 of the Revised  
Penal Code*

**RUFO C. PABELONIA;  
PERFECTO M. DIVINAGRACIA (+);  
PEDRO B. PABELONIA;  
ERNEST E. JARO;  
ROSARIO M. ARAÑEZ;**

*By*  

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**EVELYN S. JUAN;**  
**NICOMEDES I. ABAD;**  
**FELIX M. JABAGATON, JR.;**  
**LEONCIO V. SERRANO, SR (+);**  
**LUCIO A. DOLORICON, SR (+);**  
**ILDEFONSO B. BERNALES (+);**  
**And LOURDES C. BERNAL.**

*Accused.*

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

-versus-

**CRIMINAL CASE NO.**  
**24641**

*For: Violation of Sec 3(e),  
RA 3019, as amended*


**RUFO C. PABELONIA;**

*Accused.*

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*Present:*

**CABOTAJE-TANG, P.J.**  
*Chairperson*  
**FERNANDEZ, B. J. and**  
**MORENO, R. J.**  
*Promulgated:*

MAY 26, 2023 

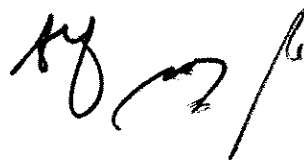
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## DECISION

**FERNANDEZ B. R., J.**

Previously, these three (3) consolidated cases were heard by the Court against some accused. After trial, the Court promulgated on November 22, 2011 its Decision, the dispositive portion of which reads as follows - -

**WHEREFORE, all premises considered,** the Court renders judgment finding accused **PEDRO B. PABELONIA,** **ERNEST E. JARO, ROSARIO M. ARAÑEZ, EVELYN S.**



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**JUAN, NICOMEDES I. ABAD, FELIX M. JABAGATON, JR. and LOURDES C. BERNAL NOT GUILTY** of the crime charged in Criminal Case No. 24639.

Accused **ERNEST E. JARO, ROSARIO M. ARAÑEZ, EVELYN S. JUAN, FELIX M. JABAGATON, JR, and LOURDES C. BERNAL** are also hereby **ACQUITTED** of the crime charged under Criminal Case No. 24641.

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Pursuant to Article 89 of the Revised Penal Code, the cases as against deceased accused **LEONCIO V. SERRANO, SR.** and **ILDEFONSO B. BERNALES** have been dismissed as per Resolution of the Court dated 8 January 2003. Likewise, Criminal Cases No. 24639 and 24640 as against deceased accused **PERFECTO M. DIVINAGRACIA** and **LUCIO A. DOLORICON, SR.** have been dismissed on 8 March 2011.

With respect to accused **RUFO C. PABELONIA** who remains at large, Criminal Case No. 24641 has been sent to the Judgment and Records Section for archive as per Order of the Court dated 21 April 2009. In like manner, Criminal Cases Nos. 24639 and 24640 as against him are hereby ordered archived, without prejudice on the part of the Special Prosecutor to prosecute the same as soon as the accused had been apprehended.

SO ORDERED.

On November 1, 2018, accused Rufo C. Pabelonia (Mayor Pabelonia) surrendered to the Criminal Investigation and Detection Group (CIDG), Davao City CFU Office (Return of Warrant of Arrest, November 5, 2018). When arraigned, accused Mayor Pabelonia, assisted by counsel, pleaded not guilty to all the charges (Order, November 7, 2018).

Hence, this Decision pertains only to accused Rufo C. Pabelonia.

Accused Mayor Pabelonia is charged before this Court, together with others, with two (2) counts of violation of Article 220 of the Revised Penal Code, as amended (Crim. Cases Nos. SB-CRM-24639 and SB-CRM-24640) and, solely, for a violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended (Crim. Case No. SB-CRM-24641).

The Informations successively reads as follows - -



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**Criminal Case No. SB-CRM-24639**

That on 05 February 1990 in Tagbina, Surigao del Sur, and within the jurisdiction of the Honorable Court, the above-named accused, all public officers, Rufo C. Pabelonia, being then the Municipal Mayor, Perfecto M. Divinagracia, being then the Municipal Vice-Mayor, Lourdes C. Bernal, being then the Municipal Treasurer, and all the rest being then members of the Municipal Council of Tagbina, Surigao del Sur, acting in concert, and while in the performance of their official functions, did then and there willfully, unlawfully, and feloniously, diverted the amount of Php 63,000.00 from the NALGU funds appropriated for the construction of the Tagbina Municipal Building, and used the same to pay for the cash gift of municipal officials and employees, including casuals.

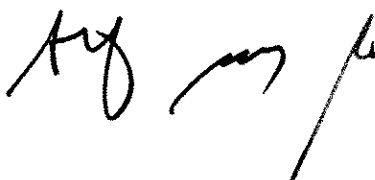
**Criminal Case No. SB-CRM- 24640**

That on 05 November 1990 in Tagbina, Surigao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, Rufo C. Pabelonia, being then the Municipal Mayor, Perfecto M. Divinagracia, being then the Municipal Vice-Mayor, Lourdes C. Bernal, being then the Municipal Treasurer and all the rest being then members of the then Municipal Council of Tagbina, Surigao del Sur, acting in concert and while in the performance of their official functions, did there and then willfully, unlawfully and feloniously diverted the amount of Php 151,642.70 from the funds intended for the construction of the Tagongon Barangay Gymnasium and used the same to pay for the claim of J&A Pimentel Construction, the municipal building contractor, with the active participation of the n Mayor Rufo C. Pabelonia, under whose administration the construction of the Tagongon Barangay Gymnasium was implemented.

**Criminal Case No. SB-CRM-24641**

That during the period from 1991 to 1993, in Tagbina, Surigao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused Rufo C. Pabelonia, a public officer, being then the Municipal Mayor of the said municipality, while in the performance of his official duties, with evident bad faith, did there and then willfully, unlawfully and feloniously incurred, upon audit, unexplained expenses in the amount of Php 54,849.15 in the construction of the Tagonon Barangay Gymnasium which was implemented under his administration, causing undue injury to the government to the extent of the said.

During pre-trial, the parties agreed to stipulate on the following (Pre-Trial Order, March 15, 2019) - -



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1) That accused Rufo Pabelonia was the duly-elected Municipal Mayor of Tagbina, Surigao Del Sur during the dates material to the instant cases;

2) That on 05 February 1990, the Municipality of Tagbina, Surigao Del Sur passed Resolution No.8 entitled "Granting Additional Cash Gifts to Local Officials and Employees of the Local Government Unit of Tagbina, Surigao Del Sur;"

3) That on November 5, 1990, the Municipal Council of Tagbina, Surigao Del Sur passed Resolution No. 65-A, entitled "Resolution to Borrow One Hundred Fifty One Thousand Six Hundred Forty Two Pesos 70/100 (Php 151,642.70) from the Tagongon Gym Fund for the Payment to J&A Pimentel Construction, Provided that the Priority of Repayment should be made to the said Gym Fund;

4) That on 13 December 1993, the Municipal Council of Tagbina, Surigao Del Sur, passed Resolution No. 62-A, entitled "Resolution to Acknowledge the Aforesaid Indebtedness and to Instruct the Municipal Treasurer to Cause the Enclosure of Said Liability in the Next Supplemental or Annual Budget Whichever Comes Earlier and Further Effect the Prompt Payment"; and

5) That accused Rufo Pabelonia approved Resolution No. 8 in his official capacity as Municipal Mayor (Pre-Trial Order, March 15, 2019).

Trial ensued.

For Criminal Cases No. SB-CRM-24639 and SB-CRM-24640, the prosecution adopted, with respect to accused Mayor Pabelonia, the direct examinations and, whenever applicable, the re-direct examinations of the following prosecution witnesses who testified on the dates indicated as follows: 1) Galileo M. Estose, who testified on April 21, 2009; 2) Alicia S. Villegas, who testified on February 16 and April 20, 2009; 3) Christopher Rivas, who testified on July 7, 2008; 4) Bregilda G. Amolata, who testified on April 21, 2008; and, 5) Gliceria G. Urquiza, who testified on January 28, 2008 (Pre-Trial Order, March 15, 2019).

With respect to Criminal Case No. SB-CRM-246241, there were no stipulations entered into with respect to the testimonies of the witnesses.

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Quoting from the Decision of this Court promulgated on November 22, 2011, the synopsis of the testimonies of the foregoing five (5) prosecution witnesses are as follows - -

For Glicería C. Urquiza:

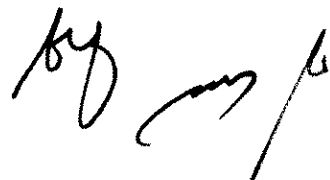
First to be presented was **GLICERIA C. URQUIZA**, who testified that she has been Sangguniang Bayan Secretary of the Municipality of Tagbina, Surigao Del Sur. In her capacity as such, she keeps in custody copies the legislative acts of the Sangguniang Bayan. One of the legislative acts is Resolution No. 8, series of 1990 which she has brought due to the *Subpoena Duces Tecum* and *Subpoena Ad Testificandum* dated January 9, 2008. As for the Minutes of the Regular Session of the Municipal Council of Tagbina, Surigao del Sur held on November 5, 1990 and Resolution No. 62-A Series of 1993 she and her staff cannot locate them despite diligent efforts.

For Bregilda G. Amolata:

Her predecessor, **BREGILDA G. AMOLATA**, next took the witness stand. Amolata served as Secretary to the Sangguniang Bayan of the Municipality of Tagbina, Surigao Del Sur from March 20, 1992 to December 31, 1994. She related that after her term of office, she turned over the now missing documents to her successor. She also recalls issuing certified true copies of the subject documents though she can no longer remember to whom.

For Christopher C. Rivas:

Third prosecution witness, State Auditor IV **CHRISTOPHER C. RIVAS** conducted the special audit investigation on the Tagongon Barangay Gymnasium together with the State Auditor Jeremias Bucong. Results of their investigation reveal that of the National Assistance to Local Government Unit (NALGU) fund in the total amount of Three Hundred Ninety Thousand Pesos (Php390,000.00) received by the Municipality of Tagbina, Eighty Seven Thousand (Php 87,000.00) is unaccounted for. When he required Municipal Accountant Alicia Villegas and the Municipal Treasurer to submit the vouchers therefor, they informed him that they cannot do so as these vouchers were already submitted to Circuit Municipal Audit Unit (CMAU) Auditor Galileo Estose. He then wrote Mr. Estose requiring the latter to submit the vouchers they need. Surprisingly, Mr. Estose told him that the vouchers may still be in the possession of the Municipal Treasurer and Municipal Accountant. It was then that the Municipal Accountant showed him the Resolution authorizing the use of the Php 87,000.00 NALGU Fund for the payment of the contractor of the municipal building of the Municipal Tagbina and for



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the bonuses of the employees. He also examined copies of Resolution No. 65-A, Series of 1990, Resolution No. 62-A Series of 1993, and the minutes of the Regular Session of the Municipal Council, Tagbina, Surigao del Sur held on November 5, 1990. Up to the present, however, no vouchers for the amount of Php 87,000.00 have been submitted and that it remains unaccounted for. On his re-direct examination, Rivas averred that it was the Municipal Auditor who informed him of the shortage in the amount of Eighty Seven Thousand Pesos (Php 87,000.00)

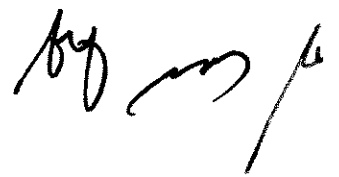
On clarificatory questioning, State Auditor Rivas informed the Court that there was a Notice of Suspension addressed to the Municipal Mayor with respect to the Php87,000.00. He is not however, certain if there is a Notice of Disallowance. He recounted that there was a resolution in the General Appropriations Act (GAA) authorizing the disbursement for the cash gifts and bonuses and that the source of the funding for these grants were specifically questioned – the Php 87,000.00 in question.

For Alicia S. Villegas - -

The Prosecution also presented the testimony of **Alicia S. Villegas** who was the Municipal Bookkeeper of the Municipality of Tagbina, Surigao del Sur in 1990. In her capacity as bookkeeper, she testified that she examined the ledgers and vouchers pertaining to the NALGU funds which were intended for the construction of the municipal building and for payment of the bonuses and wages. She submitted to the Circuit Municipal Audit Unit (CMAU) the ledgers and vouchers showing the disbursement of the said records. She also verified having a previous conversation with the then CMAU Auditor Christopher Rivas regarding the vouchers of the NALGU Funds in question as the latter want to see and examine the documents. On cross-examination, Villegas stressed that, on its face, there appeared nothing irregular with the ledgers and vouchers as the disbursements were supported by the required Sandiganbayan Resolution. She thus suspected nothing anomalous. It was only recently brought to her attention when the provincial On re-direct examination, she said that the subject NALGU funds came from the trust fund of the national government.

For Galileo Estose - -

**Galileo Estose**, the CMAU Auditor during the time material to the cases, remembered having received written communication from the State Auditor Christopher C. Rivas dated 30 September 1993 requesting for the production of vouchers in support of the funding in the total amount of One Hundred Forty Thousand (Php 140,000.00)



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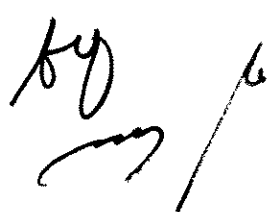
and Two Hundred Fifty Thousand (Php 250,000.00) under the NALGU Funds for the years 1991 and 1992. He however, recalled that he was unable to comply with such request because the room where the records are kept have been destroyed by flood. He was accompanied by Rivas himself and another named Mr. Boco when he went to the said room. On cross examination, witness Estose affirmed that there is no certification to the effect that the documents have been destroyed although Mr. Rivas may issue such certification.

Additionally, the prosecution recalled anew **Christopher Rivas**. His direct testimony was made through his sworn Judicial Affidavit dated March 26, 2019.

He substantially reiterated his earlier testimony and added that, after the special audit, he found, among others, that out of the P390,000.00 from the National Assistance to Local Government Units (NALGU) funds for the construction of the Tangonon Gymnasium (Gymnasium), only P302,351.00 was actually used, leaving a balance of P87,649.00. Although he required the Municipal officials of Tagbina to explain and account for the P87,649.00, he was instead given copies of resolutions passed by its Municipal Council, directing the use of the NALGU funds for purposes other than those for which such funds were intended. He also identified the following documents: (a) a copy of Office Order No. 93-019 (Exh "E") dated September 6, 1993; (b) a letter (Exh "F") dated September 30, 1993 addressed to Galileo Estose; (c) his Letter-Report (Exh "G") dated December 27, 1993 addressed to the Director of COA Regional Office XI; (d) Resolution No. 8, s.1990 (Exh "A") dated February 05, 1990; (e) Resolution No. 65-A s. 1990 (Exh "B") dated November 5, 1990; (f) Minutes of the Regular Session of the Municipal Council, Tagbina, Surigao del Sur (Exh "C") held at the Session Hall on November 5, 1990; and, (g) Resolution 62-A s of 1993 (Exh "D") dated December 13, 1993.

On cross-examination, witness Rivas admitted that the Municipality of Tagbina (Tagbina) received from the National Assistance to Local Government Units (NALGU) a budget aid of P250,000.00 and, in his perusal of the Program of Work, he learned that the amount was programmed by the Tagbina for the construction of the Gymnasium.

He further testified that he had no knowledge whether or not the construction of the Gymnasium was initially

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implemented by the Barangay Council of Tangonon. He likewise admitted that, even though his Letter-Report (Exh "G") dated December 27, 1993 mentioned a Resolution dated August 10, 1991, he could not remember if he actually saw the said Resolution.

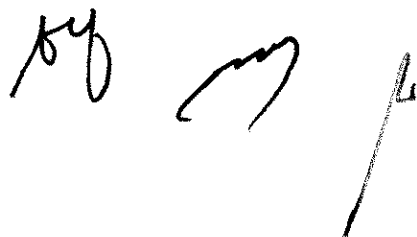
Witness Rivas disputed the testimony of witness Estose that no documents were submitted to him, in fact, vouchers and payrolls were given showing a discrepancy of P34,580.32, as computed by a technical audit specialist. He was then confronted with Resolution No. 62-A, series of 1993 (Exh "D") dated December 13, 1993, acknowledging that the amount of P87,649,00.00 was used and borrowed by Tagbina and paid from the general fund.

On re-direct examination, witness Rivas explained that the amount of P390,000.00 was not spent solely for the Gymnasium but also for other purposes. On re-cross examination, he reiterated the irregularities in the use of the P87,649,000.00 and disagreed with the proposition that Tagbina can re-use or re-program the same because these were national funds and only the national government can determine its appropriation. He admitted that he did not review the 1990 General Appropriations Act (GAA) to determine if indeed the amount was specifically allotted for the Gymnasium.

Thereafter, **Ariel A. Lagmay** was called to the witness stand. His direct testimony was made through his sworn Judicial Affidavit dated March 20, 2019.

He testified that he was formerly a State Auditor II of the Commission on Audit (COA) during the time material to the case. From 1993 to 1994, he, as State Auditor, inspected the Gymnasium and audited the financial documentation pertinent to its construction.

He said that, after his initial audit and inspection, he found that: (1) for the Program of Work with a project cost of P250,000.00, there was a variance of P35,250.15; (2) for the Program of Work with project cost of P140,000.00, there was a variance of P86,979.17. These results were contained in his initial findings submitted to the Provincial Auditor of Surigao del Sur.

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Witness Lagmay then identified the following documents, namely: (1) his Memorandum dated November 29, 1993 addressed to the Provincial Auditor (Exh. "I"); (2) Detailed Estimates of Materials Installed as of November 25, 1993 (Re: Project Cost of P250,000.00) (Exh. "J"); and, (3) Detailed Estimates of Materials Installed as of November 25, 1993 (Re: Project Cost of P140,000.00 (Exh. "K").

He further testified that, after a re-computation of the actual vouchers, purchase orders and payrolls, he found a variance of P54,849.15, computed from the reported total project disbursement of P302,351.00 and the actual cost of labor and materials of P247,501.85. He used the Disbursement Vouchers and their attachments as well as the Time Books and Payrolls and their attached Summary of Payrolls made available to COA, as basis for the reported total project disbursement. The results of his re-computation were reflected in a Report (Exh. "I") dated November 25, 1993.

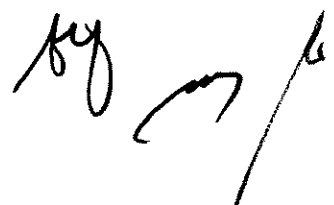
He also identified the following documents: Detailed Estimates of Materials Installed as of November 25, 1993 (Re: Total Project Disbursement of P302,351.00) previously marked as Exh "N" and its attachments; Official Receipt dated June 18, 1991 (Exh. "N-1"); Inspection Report dated June 18, 1991 (Exh. "N-2"); Disbursement Voucher No. 103-91-06-25 (Exh. "O") and its attachments; Duplicate Disbursement Voucher (Exh. "O-1"); Canvass dated May 29, 1991 (Exh. "O-2"); Canvas dated May 20, 1991 (Exh. "O-3"); Inspection Report dated June 5, 1991 (Exh. "O-4"); Duplicate of Inspection Report dated June 5, 1991 (Exh. "O-5"); Certification dated July 9, 1991 signed by Jose B. Fuentes (Exh. "O-6"); First Indorsement dated July 9, 1991 (Exh. "O-7").

Witness Lagmay also identified (1) Disbursement Voucher No. 103-92-03 (Exh. "P") dated March 16, 1992 and its attachments, as follows: (a) Duplicate Displacement Voucher (Exh. "P-1"), (b) Certification dated March 16, 1992 (Exh. "P-2"), (c) Sales Invoice No. 0666 dated March 16, 1992 (Exh. "P-3"), (d) Purchase Order dated March 11, 1992 (Exh. "P-4"), (e) Duplicate Purchase Order dated March 1, 1992 (Exh. "P-5"); (f) Inspection Report dated March 13, 1992 (Exh. "P-6"); (g) Duplicate of Inspection Report dated March 13, 1992 (Exh. "P-7"); (h) Triplicate of Inspection Report dated March 13, 1992 (Exh. "P-8"); (2) Disbursement Voucher No. 103-92-03-72 (Exh. "Q") dated March 16, 1992 and its attachments as follows: (a) Duplicate Disbursement Voucher (Exh. "Q-1"), (b) Certification



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dated March 16, 1992 (Exh. "Q-2"). (c) Sales Invoice No. 2552 dated March 16, 1992 (Exh. "Q-3"), (d) undated Program of Works (Exh. "Q-4"), (e) Duplicate Program of Works (Exh. "Q-5"), (f) Triplicate Program of Works (Exh. "Q-6"), (g) Purchase Request dated February 17, 1992 (Exh. "Q-7"), (h) Duplicate of Purchase Request (Exh. "Q-8"), (i) Canvass from Marson Hardware dated March 6, 1992 (Exh. "Q-9"), (j) Canvass from Jimson Hardware dated March 6, 1992 (Exh. "Q-10"), (k) Canvass from Mar Trade Hardware dated March 6, 1992 (Exh. "Q-11"), Purchase Order dated March 11, 1992 (Exh. "Q-12"), (l) Duplicate of Purchase Order dated March 11, 1992 (Exh. "Q-13"), (m) Inspection Report dated March 13, 1992 (Exh. "Q-14"), (n) Duplicate of Inspection Report (Exh. "Q-15"), (o) Abstract of Bidding dated March 11, 1992 (Exh. "Q-16"), (p) Duplicate of Abstract of Bidding dated March 11, 1992 (Exh. "Q-17") and (q) triplicate of the Abstract of Bidding dated March 11, 1992 (Exh. "Q-18"); (3) undated Disbursement Voucher No. 401-93-03-32 (Exh. "R") and its attachments as follows: (a) Duplicate of Disbursement Voucher (Exh. "R-1"), (b) Inspection Report dated February 1, 1993 (Exh. "R-2"), (c) Purchase Request dated January 20, 1993 (Exh. "R-3"), (d) Duplicate of Purchase Request dated January 20, 1993 (Exh. "R-4"), (e) Inspection Report dated February 1, 1993 (Exh. "R-5"), (f) Duplicate of Inspection Report dated February 1, 1993 (Exh. "R-6") and (g) Triplicate of Inspection Report dated February 1, 1993 (Exh. "R-7"); (3) Time Book and Payroll from March 1, 1991 to March 30, 1991 (Exh. "S") and Summary of Payrolls from March 1, 1991 to March 30, 1991 (Exh. "S-1"); (4) Time Book and Payroll from April 1, 1991 to April 30, 1991 (Exh. "T") and Summary of Payrolls from April 1, 1991 to April 30, 1991 (Exh. "T-1"); (5) Time Book and Payroll from May 1, 1991 to May 15, 1991 (Exh. "U") and Summary of Payrolls from May 1, 1991 to May 15, 1991 (Exh. "U-1"); (6) Time Book and Payroll from May 8, 1991 to May 28, 1991 (Exh. "V") and Summary of Payrolls from May 8, 1991 to May 28, 1991 (Exh. "V-1"); (7) Time Book and Payroll from June 3, 1991 to June 7, 1991 (Exh. "W") and Summary of Payrolls from June 3, 1991 to June 7, 1991 (Exh. "W-1"); (8) Time Book and Payroll from June 1, 1991 to June 15, 1991 (Exh. "X") and Summary of Payrolls from June 1, 1991 to June 15, 1991 (Exh. "X-15"); (9) Time Book and Payroll from June 17, 1991 to June 21, 1991 (Exh. "Y") and Summary of Payrolls from June 17, 1991 to June 21, 1991 (Exh. "Y-1"); and, (10) Time Book and Payroll from February 9, 1993 to February 18, 1993 (Exh. "Z") and Summary of Payrolls from February 9, 1993 to February 18, 1993 (Exh. "Z-1").



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When cross-examined, witness Lagmay admitted that, while working as State Auditor III on the dates material to the case, he was based in Tandag, Surigao del Sur and would travel to Tagbina, Surigao del Sur. He added that when he conducted his inspection, he saw the Gymnasium with its completed roof as well as the wooden posts mounted on concrete pedestals.

Further, witness Lagmay confirmed that the materials stated in the Program of Work were the same materials used in the roofing and the other parts of the Gymnasium. He submitted that he did not see them individually as he prepared the estimates. He admitted preparing three (3) estimates, namely: (1) Detailed Estimate of Materials installed as of November 25, 1993 (Re: Project Cost of P250,000.00) (Exh. "J"); (2) Detailed Estimate for Materials Used as of November 25, 1993 (Re: Project Cost of P140,000.00)" (Exh. "K"), and, Detailed Estimate of Materials Used as of November 25, 1993 (Re: Project Cost of P390,000.00) (Exh. "L").

Witness Lagmay was also confronted with the undated Disbursement Voucher No. 401-93-03-32 and its attachments (Exhs. "R" to "R-7") and the Time Book and Payroll from March 1, 1991 to March 30, 1991 (Exhs. "S" to "S-1"). He admitted that these payrolls can be distinguished from other payrolls because of the Certification at the back of the payroll by Jose Fuentes, the Municipal Planning and Development Coordinator, indicating that these were for the payment of lumber sawing. He was, however, unaware that, in 1993, local government units hire persons to saw lumber.

He was also confronted with Disbursement Voucher No 103-92-03 (Exh. "P") dated March 16, 1992 and its supporting document, the Inspection Report dated March 13, 1992 (Exh. "P-6"). He confirmed that this pertains to the purchase of lumber materials from J&A Pimentel in Tandag amounting to P15,727.50 while the Inspection Report dated March 13, 1992 (Exh. "P-6") indicates that the price per board feet of lumber at that time was P7.50, not P5.00, per board feet, as shown in his findings described in the Detailed Estimate of Materials Used as of November 25, 1993 (Re: Project Cost of P390,000.00) (Exh. "L"). Nevertheless, he still computed the price of lumber at P5.00 per board feet.

Witness Lagmay also admitted that there was nothing in his Detailed Estimates (Exhs. "J" "K" and "L") as well as in the

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Memorandum dated November 29, 1993 (Exh. "I") that would indicate that he conferred with the then Municipal Development Coordinator (MDC) Fuentes, regarding the payrolls (Exhs. "S," "S-1", "T" and "U") because during the preparation of his report on November 25, 1993, the payroll was still unavailable, thus, his basis of costing is only the prices indicated in the Program of Works. Also, in his Memorandum dated November 29, 1993, to the Provincial Auditor (Exh. "I"), he stated that adjustment on the cost must be conducted.

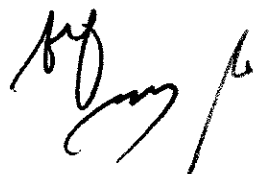
The Detailed Estimate of Materials Used as of November 25, 1993 (Re: Project Cost of P390,000.00) (Exh. "L") likewise does not indicate that he conferred with MDC Fuentes on his (Lagmay) findings on the lumber sawing payroll. Neither did he confer with accused Mayor Pabelonia on his (Lagmay) findings because he just recomputed the value of the Project based on the costings provided him.

The next prosecution witness was **Cesar F. Cruz**. His direct testimony was made through his sworn Judicial Affidavit dated March 20, 2019.

He testified that he was currently working as the Administrative Officer III of the Central Records Division of the Office of the Ombudsman tasked, among others, to conduct records searches and certify records and official files.

Witness Cruz confirmed receiving an Authorization (Exh. "HH") dated March 19, 2019 signed by Caroline de Leon for Natividad T. Abenir and a Subpoena (Exh. "II") dated March 19, 2019 from the Office of the Special Prosecutor, directing him to bring a certified copy from the official document on file of the Counter-Affidavit of Leoncio Serrano and to issue a certification, in case of the non-availability of the requested documents, explaining the efforts to locate the same and stating possible alternative locations thereof, if possible.

During the course of complying with the Subpoena, witness Cruz discovered that the Central Records Division did not have the originals or file copies of the preliminary investigation records for OMB-MIN-92-0071. He then verified from the records of the OSP and the Office of the Deputy Ombudsman for Mindanao (Ombudsman-Mindanao), being the originating office. However, he was informed that the concerned records were already transmitted to the Office of



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the Ombudsman-Main Office as the case was already classified "for filing" with the Sandiganbayan". Although a file copy was retained by the Ombudsman-Mindanao, this could no longer be located after they transferred to a new building. He also noted that the physical records of the preliminary investigation for the case of OMB-MIN-92-0071 were already with the handling prosecutor and that the OSP did not retain a file copy thereof.

Thereafter, witness Cruz submitted his Certification (Exh. "JJ") dated March 19, 2019 signed by Caroline de Leon for Natividad T. Abenir.

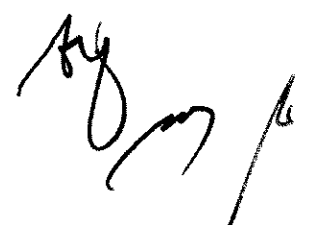
On cross-examination, witness Cruz testified that it was OIC Caroline de Leon who directed him to search for the requested records.

As its last witness, the prosecution recalled **Gliceria C. Urquiza**. Her direct testimony was made through her sworn Judicial Affidavit dated May 10, 2019.

Aside from substantially reiterating her previous testimony made in 2008, witness Urquiza further testified that, in compliance with the Subpoena issued by the Office of the Special Prosecutor (OSP), she found the original copies of Resolution No. 8 (Exh. "A") dated February 5, 1990 and Appropriation Ordinance No. 20 (Exh. "FF") dated May 20, 1994 and issued certified true copies of the same. However, the originals or copies of Resolution No. 65-A (Exh. "B") dated November 5, 1990 and Resolution No. 62-A (Exh. "D") dated December 13, 1993 can no longer be located in the official files of the *Sangguniang Bayan* of Tagbina, despite diligent efforts to locate them. She also prepared a Certification (Exh. "KK") dated March 7, 2019 to this effect.

There being no other witnesses to present, the prosecution filed its Formal Offer of Evidence dated July 10, 2019. Accused Mayor Pabelonia filed his Comment dated July 31, 2019. Subsequently this Court ruled (Minutes, August 5, 2019) as follows - -

X x x, the Court hereby resolves to **ADMIT** Exhibits A, B, B-1, C, D, D-1, D-2, E, F, F-1, G, G-1, G-2, I, J, K, L, N, N-1, N-2, O, O-1, O-2, O-3, O-4, O-5, O-6, O-7, P, P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, Q, Q-1, Q-2, Q-3, Q-4, Q-5, Q-6, Q-7, Q-8, Q-9, Q-10, Q-11, Q-12, Q-13, Q-14, Q-15, Q-16, Q-17, Q-18, R, R-1, R-2, R-3, R-4, R-5, R-6, R-7, S,



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S-1, T, T-1, U, U-1, V, V-1, W, W-1, X, X-1, Y, Y-1, Z, Z-1, FF, HH, II, II-1, II-2, JJ and KK, x x x.

Although accused Mayor Pabelonia filed, thereafter, his Motion seeking leave to file demurrer to evidence dated August 20, 2019, this was denied by this Court (Resolution, September 19, 2019) after the prosecution filed its Opposition dated September 17, 2019.

A Motion for Reconsideration dated September 30, 2019 was subsequently filed. However, after the prosecution filed its Opposition dated October 9, 2019, the same was denied (Minutes, October 14, 2019).

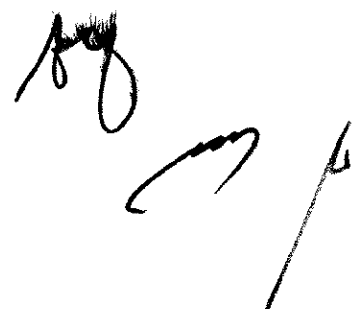
Subsequently, accused Mayor Pabelonia presented prosecution witnesses Bregilda G. Amolata and Alicia S. Villegas, who were both previously presented during the earlier trial (Decision, November 22, 2011).

For purposes of expediency, the prosecution agreed to stipulate that if these two witnesses were to testify, they can identify their respective Judicial Affidavits earlier filed and that they were cross-examined and their testimonies were terminated on the same day (Order, January 21, 2020).

First to be recalled was witness **Bregilda Amolata**. As could be gleaned from her earlier testimony on April 21, 2008 (Decision, November 22, 2011), she testified that - -

X x x Her predecessor, **BREGILDA G. AMOLATA**, next took the witness stand. Amolata served as Secretary to the Sangguniang Bayan of the Municipality of Tagbina, Surigao Del Sur from March 20, 1992 to December 31, 1994. She related that after her term of office, she turned over the now missing documents to her successor. She also recalls issuing certified true copies of the subject documents though she can no longer remember to whom.

Witness Amolata, on direct testimony made through her sworn Judicial Affidavit dated January 19, 2020, recalled that the originals of Resolutions No. 8 (Exh. "3") dated February 5, 1990 and 65-A (Exh. "3-C") dated November 5, 1990 were among the documents lost when their Office transferred to a new location sometime in 1991.

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Then, witness **Alicia Villegas** was also recalled. As quoted earlier, her first testimony made in February 16 and April 20, 2009 was:

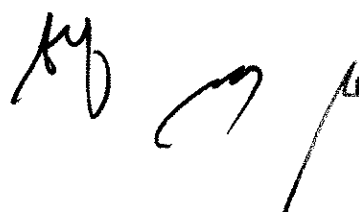
The Prosecution also presented the testimony of **Alicia S. Villegas** who was the Municipal Bookkeeper of the Municipality of Tagbina, Surigao del Sur in 1990. In her capacity as bookkeeper, she testified that she examined the ledgers and vouchers pertaining to the NALGU funds which were intended for the construction of the municipal building and for payment of the bonuses and wages. She submitted to the Circuit Municipal Audit Unit (CMAU) the ledgers and vouchers showing the disbursement of the said records. She also verified having a previous conversation with the then CMAU Auditor Christopher Rivas regarding the vouchers of the NALGU Funds in question as the latter want to see and examine the documents. On cross-examination, Villegas stressed that, on its face, there appeared nothing irregular with the ledgers and vouchers as the disbursements were supported by the required Sandiganbayan Resolution. She thus suspected nothing anomalous. It was only recently brought to her attention when the provincial On re-direct examination, she said that the subject NALGU funds came from the trust fund of the national government.

Aside from the foregoing, her sworn Judicial Affidavit dated January 19, 2020 substantially reiterated her previous testimony.

When cross-examined, witness Villegas confirmed that part of her job is to maintain accounting records and conduct a review of the disbursements of the Municipal Council. She further admitted that a Municipal Bookkeeper is not higher than a Municipal Council.

Upon queries from the Court, witness Villegas admitted that one of her principal function was to record any payments or transactions in the ledger should there be no signs of any anomaly or irregularity, like ghost deliveries and those without the proper receipts and supporting documents. Should she discover an anomaly or irregularity, she would ask the Municipal Treasurer to disallow the transaction concerned.

Thereafter, witness **Jose B. Fuentes** was presented. His direct testimony was made through his sworn Judicial Affidavit dated February 11, 2020.





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He testified that he was the Municipal Planning and Development Coordinator of Tagbina from 1979 to 1994. As such, his duties and functions were to implement infrastructure projects in Tagbina, including preparing the program of works, purchasing and receiving materials, supervision and control of workers. He also took over from the *Barangay* the implementation of actual construction works of the Gymnasium itself.

Witness Fuentes narrated that, initially, *Barangay* Tagongon, led by its *Barangay* Captain, implemented a project for the construction of a gymnasium. The Project involved the hiring and supervising workers, carpenters and the building of the frame of the gymnasium. However, during the construction, the Municipal Treasurer advised that this setup will be disallowed in audit, hence, witness Fuentes took over from the *Barangay* Captain until the Gymnasium was completed. He then turned over the Gymnasium, including its scrap and excess materials to the *Barangay*.

As Project implementor, he was unaware of any audit conducted on the Project and that no adverse findings were received from anyone including the Commission on Audit (COA). Neither had he received any notice of disallowance. He added that he signed some disbursement vouchers and claimed that accused Mayor Pabelonia had no substantial participation in the Project.

On cross-examination, witness Fuentes reiterated that he was unaware of any audit conducted on the Gymnasium project and that the Municipal Council of Tagbina passed a resolution acknowledging the instruction from COA to account for the amount of P87,649.00. He was also unaware that an appropriation ordinance was passed returning the amount of Php87,649.00 for the Gymnasium.

Witness Fuentes further testified that when he took over the construction of the *Barangay* Gymnasium, it was only around ten percent (10%) complete and that he prepared the Program of Works (Exh. "G-9") dated February 7, 1992 although he was not a licensed draftsman, engineer or architect.

When confronted with the Purchase Requests (Exh. "Q-7") dated February 7, 1992 and (Exh. "R-3") dated January 20, 1993, he identified his signature and that of accused Mayor

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Pabelonia. He also recalled signing undated payrolls (Exh. "S") covering the period March 1 to 30, 1990 and also identified the signature of accused Mayor Pabelonia thereon. He likewise identified his signature and the signature of accused Mayor Pabelonia on Disbursement Voucher No. 103-93-03-71 (Exh. "P") dated March 16, 1992.

The next witness was **Mario L. Albor**. His direct testimony was made through this sworn Judicial Affidavit dated March 3, 2020 and pertains only to Criminal Case No. SB-CRM-24641.

He testified that he was the *Barangay Kagawad* who was appointed by the *Barangay Captain* to manage the carpenters and workers during the construction of the Tangonon Gymnasium with Tagbina, paying for the construction materials and the wages of the workers. He identified Jose Fuentes as his contact person. He also admitted that he was unaware of any audit or inspection conducted on the said Gymnasium. He further testified that, aside from looking for funds for the Gymnasium, accused Mayor Pabelonia had no participation in its construction.

When cross-examined, witness Albor reiterated his direct testimony. On re-direct examination, witness Albor clarified that the Gymnasium was completed and was being used by the residents of the *Barangay* Tangonon and was unaware of any audit conducted on the same.

Upon queries from the Court, witness ALbor testified that the Gymnasium was a project of Tagbina, not a *barangay* project, as the funds and the construction materials came from Tagbina. He denied knowing any resolution pertaining to the construction of the Gymnasium nor any amount intended therefor. Although he confirmed supervising the construction carpenters and workers, he did not hire them. He also did not prepare the payroll but testified that the workers received their wages weekly from the house of the *barangay* captain.

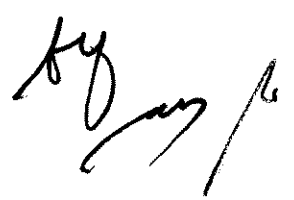
Finally, accused Mayor Rufo C. Pabelonia was then called to testify. His direct testimony was made through his sworn Judicial Affidavit dated July 17, 2021.

He testified that he was elected Mayor of the Municipality of Tagbina (Tagbina) from May 1988 to 1995;



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that the Municipal Council of Tagbina passed Resolution No. 8 (Exh. "3") dated February 5, 1990; that this Resolution was enacted to comply with the duty to provide cash gifts to local government officials and employees under Republic Act 6686; that Resolution No. 8 dated February 5, 1990 was unanimously passed by the Municipal Council; that, in Municipal Council meetings, he votes only to break a tie; that he did not note any irregularity in the proceedings at that time; that he understood the phrase "NALGU Funds intended for the Construction of the Municipal Funds" mentioned in said Resolution as the national aid for local government units (NALGU) funds in the General Appropriations Act (GAA) to assist local governments in their various projects and services; that there was no mention of the construction of the municipal building in the GAA; that there was no ordinance or law allocating the amount P63,000.00 of the NALGU funds for the construction of the municipal building; that it was Lourdes Bernal, the Municipal Treasurer, who granted the local government officials and employees cash gifts under Republic Act 6686; that he does not have any personal knowledge as to where the Municipal Treasurer actually sourced the funds for the cash gifts; that he has no intention of violating the law when Resolution No. 8 was approved because their intention was to comply with R.A. No. 6686; that the Municipal Treasurer paid J&A Pimentel Construction the amount of P151,642.70; that, in 1993, some government auditors investigated the payment of P63,000.00 as cash gifts for Tagbina and P151,642.70 to J&A Pimentel Construction; that there was no law or ordinance allotting the amount of P151,642.70 for the construction of the Tagongon Gymnasium; that the Municipal Planning and Development Coordinator (MPDC) then was Jose B. Fuentes; that MPDC Fuentes prepared the Program of Works (Exhs. "Q-4 to Q-6") and purchased the construction materials; that Tagbina took over from Tagongon the actual construction of the Gymnasium; and that initially, Tagongon implemented the said Project, by hiring and supervising the workers, the carpenters and building the frame of the Gymnasium; that, while the said Project was ongoing, the Municipal Treasurer advised that this setup will be disallowed in audit; that MPDC Fuentes took over the construction from the *Barangay* Captain; that, as Mayor, he was unaware of any audit conducted on the same Project; that he did not receive any adverse findings from the Commission on Audit (COA) or any government auditor; that he did not receive any notice of disallowance on the Gymnasium; that it was not true that the public funds



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spent for the construction of the Gymnasium in the amount of P54,849.15 was more than what it actually cost; that it was MPDC Fuentes and the *barangay* captain of Tagongon who actually implemented the Project; that he does not have any expertise in construction; and, that he only trusted the one in charge of the construction.

When cross-examined, witness-accused Mayor Pabelonia reiterated that he only votes on resolutions of the Municipal Council if there is a tie and that the General Appropriations Act (GAA) of 1990 allocated some budget for local government units.

He then cited R.A. No. 6686 (An Act authorizing annual Christmas bonus to national and local government officials and employees starting calendar year 1998) as the reason that compelled him to give cash gifts to local government officials and employees. However, he denied knowing if the payment of the cash gifts was only for the fiscal year 1998. Neither did not knew that Sec 32 of the 1990 GAA provided for the release of cash gifts pursuant to the cited R.A. No. 6686.

Witness-accused Mayor Pabelonia further admitted signing several documents related to the construction of the Gymnasium, namely: the Appropriation Ordinance No. 20, series of 1994, (Exh. "FF") dated May 20, 1994; the undated Disbursement Voucher No. 100-91-06-21 (Exh. "N"); the Inspection Report (Exh. "O-5") dated June 5, 1991; the undated Program of Works (Exh. "Q-4"); the Program of Works (Exh. "Q-16") dated March 6, 1992; the Payroll for the period May 1-15, 1991 (Exh. "U") and, the Summary of Payrolls for the period March 1-30, 1991 (Exh. "S-1"). He further admitted that the COA was the complainant in the case filed before the Office of the Ombudsman-Mindanao.

Thereafter, accused Mayor Pabelonia filed his Formal Offer of Evidence dated February 10, 2022, praying for the admission of Resolution No. 8 (Exh. "3") dated February 5, 1990, and Resolution No. 65-A (Exh. "3-C") dated November 5, 1990. After the prosecution filed its Comment dated March 10, 2022, this Court admitted the two requested exhibits (Minutes, March 11, 2022).

Let us treat the several Informations in the following manner - -



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For Criminal Cases  
Nos. SB-CRM-24639  
and SB-CRM-246340

Accused Mayor Pabelonia is charged with Article 220 of the Revised Penal Code, as amended.

It provides - -

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

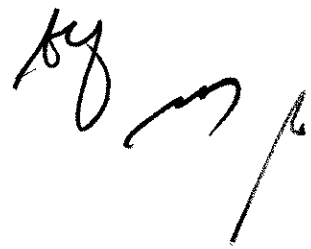
If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum applied.

More commonly known as technical malversation, the three (3) elements for this crime are, as follows: (1) that the offender is an accountable officer; (2) that he applies public funds or property under his administration to some public use; and, (3) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance (Ysidoro vs. People, G.R. No. 192330, [November 14, 2012], 698 Phil 813-821).

The first two elements of the crime are undisputed.

Accused Mayor Pabelonia admitted that he was the duly-elected Municipal Mayor of Tagbina, Surigaro del Sur during the time material to the instant cases. He also admitted that he approved Resolution No. 8 (Exh. "3") dated February 5, 1990, granting an annual cash gift for the local officials and employees of the local government unit in Tagbina, in his official capacity as Municipal Mayor thereof (Pre-Trial Order, March 15, 2019).

He is likewise an accountable public officer.

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An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property (Corpuz vs. People, G.R. No. 241383, [June 8, 2020]). In *People vs. Pantaleon, Jr.* (G.R. Nos. 158694-96, [March 13, 2009], 600 Phil 186-229), the Court held that a municipal mayor, being the chief executive of his respective municipality, is deemed an accountable officer, and is, thus, responsible for all the government funds within his jurisdiction.

However, the third element of technical malversation was not sufficiently proven.

Revisiting the two (2) Informations, the prosecution anchors its position, particularly in Criminal Case No. SB-CRM-24639, on the utilization of the National Aid for Local Government Unit (NALGU) funds allegedly appropriated for the construction of the Tagbina municipal building were diverted to pay the cash gift of municipal workers as evidenced by Resolution No. 8, series of 1990 (Exhs. "A"; "3") dated February 5, 1990. While in Criminal Case No. SB-CRM-24640, the prosecution alleges that the public funds intended for the construction of the Tagongon gymnasium (Gymnasium) were diverted to pay for the claim of J&A Construction, as evidenced by Resolution No. 65-A, series of 1990 (Exhs. "B"; "3-C") dated November 5, 1990. Both these Resolutions were passed by the *Sangguniang Bayan* of Tagbina.

For his part, accused Mayor Pabelonia countered that the NALGU funds, covered by the General Appropriations Act (GAA) of 1990, was primarily intended to assist local governments in their various projects and services and did not expressly earmark a definite amount for the construction of the Tagbina municipal building. Hence, he could not be liable for technical malversation.

With respect to the funds for the construction of the Gymnasium, accused Mayor Pabelonia, in refutation, maintains that there exists no law or ordinance allocating public funds for the construction of the Gymnasium. Thus, he cannot be held liable for technical malversation.

To emphasize, the third element of the crime of technical malversation is - - that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or




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ordinance (Ysidoro vs.. People, *supra*). The burden lies on the prosecution to prove not only that the specific funds were appropriated by a law or an ordinance but also that such appropriation was used for a different purpose.

During trial, the prosecution presented Resolution No. 8 series of 1990 (Exh. "A"; "3") dated February 5, 1990, clearly stating the intention to borrow a portion from the NALGU funds in order to comply with R.A. No. 6686 (An Act authorizing annual Christmas bonus to national and local government officials and employees starting with calendar year 1998), mandating the payment of cash gifts. As stated in Resolution No. 8, R.A. No. 6686 authorizes the grant of an annual Christmas bonus to national and local government employees starting with calendar year 1998 in an amount equivalent to one month salary and cash gifts for each employee. The same Resolution also mentioned the then financial difficulties of Tagbina to provide its Municipal officials and employees with cash gifts, as compliance with RA 6686. It further unanimously declared that the *Sangguniang Bayan (SB)* will borrow the amount of P63,000.00 from the NALGU funds intended for the construction of its Municipal building to be replenished from the expected BIR allotment for Tagbina. Thus, the *SB* resolved to direct the Municipal Treasurer to pay the amount of P63,000.00 for the payment of cash gift to municipal officials and employees including the casuals.

Also in evidence is Resolution No. 65-A, series of 1990, (Exhs. "B"; "3-C") dated November 5, 1990, which allowed the amount of P151,642.70 to be borrowed from the Tagongon Gymnasium fund to pay J&A Pimentel Construction. The same Resolution also stated that J&A Pimentel Construction already completed the construction of the Tagbina Municipal building and now claims full payment in the aforementioned amount. It further declared that the Municipal building fund had been depleted due to the payment of bonuses and other expenditures amounting to P63,000.00 and P24,647.70 respectively, which amounts were borrowed from the General Fund with the same replenishment condition dictated by Resolution No. 8, series of 1990. The same Resolution No. 65-A further mentioned that the existing amount of P250,000.00 in the Tagongon Gymnasium fund will not be used. The *SB*, thus, resolved to borrow the amount of P151,642.70 from the Tagongon Gymnasium fund to be paid to J&A Pimentel Construction, provided that the same amount will be the



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priority in repayments. It added that the payment will avert any possible damage suit from the construction firm and will allow Tagbina to already fully utilize its new Municipal building.


The prosecution now maintains that the two (2) aforementioned Resolutions should be sufficient to prove that the funds were used for a different purpose, not that intended. However, it failed miserably to present any law or ordinance specifically appropriating amounts for the construction of the Tagbina Municipal Building and the Tangonon *Barangay* Gymnasium.

We recall that the funds for the construction of the Tagbina Municipal building were sourced from NALGU funds, included as a provision in the General Appropriations Act (GAA) of 1990 or R.A. No. 6831 dated January 4, 1990. However, the GAA is not the appropriation law or ordinance within the purview of Article 220 of the Revised Penal Code, as amended.

In *Ocampo III vs. People* (GR Nos. 156547 and 156384-85 [February 4, 2008], 567 Phil 461-486), the NALGU fund was described as a fund set aside in the General Appropriation Act to assist local governments in their various projects and services. The distribution of this fund is entirely vested with the Secretary of the Department of Budget and Management (DBM). Hence, it cannot be said that the NALGU fund was exclusively allocated for the construction of the Tagbina Municipal building by virtue of the General Appropriations Act.

Furthermore, in *Office of the Ombudsman vs Apolinio G.R. No. 165132 [March 7, 2012]*, the Supreme Court stated clearly that there must be a law or ordinance which specifically cites the public purpose for which the development funds should be used, thus - -

We disagree with the Ombudsman's insinuations that Dr. Apolonio's acts may be considered technical malversation and, therefore, constitute a crime. In *Parungao v. Sandiganbayan, et al.*, the Court held that in the absence of a law or ordinance appropriating the public fund allegedly technically malversed for another public purpose, an accused did not commit technical malversation as set out in Article 220 of the Revised Penal Code. In that case, the Court acquitted Oscar P. Parungao (then a municipal treasurer) of the charges of technical





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malversation even though he used funds allotted (by a Department of Environment and Natural Resources circular) for the construction of a road project and re-allocated it to the labor payroll of different *barangays* in the municipality. The Court held that since the budget for the construction of the road was not appropriated by a law or by an ordinance for that specified public purpose, the re-allocation of the budget for use as payroll was not technical malversation. Similarly, in this case, the budget allocation for the workshop was neither appropriated by law nor by ordinance since DBM National Budget Circular No. 442 is not a law or an ordinance. Even if it had been, however, it must be noted that DBM National Budget Circular No. 442 only prescribed the amounts to be used for any workshop, conference or seminar. It did not appropriate the specific amounts to be used in the event in question.

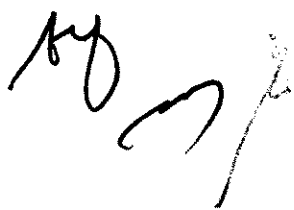
To be clear, Section 306 (b) of R.A. No. 7160 otherwise known as the Local Government Code, defines appropriation as referring to an *authorization made by ordinance*, directing the payment of goods and services from local government funds under specified conditions or for specific purposes (*itals. ours*).

Resolutions No. 8, series of 1990 (Exhs. "A"; "3") dated February 5, 1990 and Resolution No. 65-A, series of 1990 (Exhs. "B"; "3-C") dated November 5, 1990 are not laws nor ordinances.

Additionally, the prosecution presented Appropriation Ordinance No. 20, series of 1994 (Exh. "FF") dated May 20, 1994. A close perusal of this ordinance includes a provision allocating an amount of P87,649.00 as payment for the Tagongon Gymnasium fund as borrowed, per Resolution 62-A, series of 1993 (Exh. "D") dated December 13, 1993. However, this is also not the law or ordinance contemplated in Article 220 of the Revised Penal Code.

We remember *Abdulla vs. People*, (G.R. No. 150129, [April 6, 2005]), when the Supreme Court acquitted accused Abdulla who was accused of technical malversation when she applied the amount of P40,000.00 supposedly meant for the payment of wages of casual employees, as payment for the salary differentials of secondary school teachers.

In acquitting accused Abdulla, the Supreme Court emphasized the absence of a law appropriating the public fund, ruling that the authorization of the DBM for the use of



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the P40,000.00 allotment for the salary differentials of secondary school teachers is not an ordinance or law, to wit -

-

The third element of the crime of technical malversation which requires that the public fund used should have been appropriated by law, is therefore absent. The authorization given by the Department of Budget and Management for the use of the forty thousand pesos (P40,000.00) allotment for payment of salary differentials of 34 secondary school teachers is not an ordinance or law contemplated in Article 220 of the Revised Penal Code.

In sum, the prosecution failed to completely prove all the elements of the crime defined in Article 220 of the Revised Penal Code, as amended.

For Criminal Case No.  
SB-CRM-24641

Herein accused Mayor Pabelonia is also charged for violating Section 3 (e) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

It provides - -

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

x x x

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

In order to hold a person liable under this provision, the following elements must concur, namely: (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



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Government, or gave any unwarranted benefits, advantage or preference (Villarosa vs. People, G.R. Nos. 233155-63, [June 23, 2020])

As in the first two (2) cases, the presence of the first and second elements is not disputed.

Accused Mayor Pabelonia was the Mayor of Tagbina, Surigao del Sur during the dates material to the instant case (Pre-Trial Order, March 15, 2019), while the acts complained of were done in the performance of his official functions as Mayor.


On the third element, the prosecution maintains that accused Mayor Pabelonia acted with evident bad faith when he incurred, upon audit, unexplained expenses in the amount of P54,849.15 for the construction of the Tagongon *Barangay* Gymnasium (Gymnasium) thereby causing undue injury to the government. The prosecution supports its claim on a recomputation of the Disbursement Vouchers, Purchase Orders and payrolls, as shown in the undated Detailed Estimates of Materials Installed as of November 25, 1993 (Exh. "L").

Accused Mayor Pabelonia, for his part, insists that the prosecution was not able to prove any evident bad faith on his part. It was MPDC Jose Fuentes and the *barangay* captain who actually implemented the Gymnasium project as he (Mayor Pabelonia) had no expertise in construction and merely trusted the person in charge of the Project.

Reviewing closely the evidence introduced by both parties, this Court is convinced beyond a moral certainty that accused Mayor Pabelonia did not act with evident bad faith in the construction of the Gymnasium to the detriment of the government. Other than a mere mathematical computation showing discrepancies, no further evidence was presented to prove any indication of evident bad faith or ill will on his part.

In Chung vs. Office of the Ombudsman (G.R. No. 239871, March 18, 2021), the Supreme Court held:

By the very language of Section 3, paragraph (e) of RA 3019, which defines "corrupt practices of public officers," the elements of manifest partiality, evident bad faith, and gross inexcusable negligence and of giving unwarranted benefit, advantage or preference to another must go hand



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in hand with a showing of fraudulent intent and corrupt motives.

Evident bad faith "does not simply connote bad judgment or negligence" but of having a "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 will or for ulterior purposes." (Chung vs. Office of the Ombudsman, *ibid.*).

It cannot be argued that by signing pertinent documents relative to the construction of the Gymnasium would be enough indication that accused Mayor Pabelonia acted with evident bad faith.

Bad faith is never presumed, more so evident bad faith.

In criminal cases, the accused enjoys the presumption of innocence. Indeed, one is entitled to an acquittal unless his/her guilt is shown beyond reasonable doubt. The proof of guilt must amount to a moral certainty that the accused committed the crime and should be punished. Thus, an acquittal is called for whenever the State fails to establish an accused's guilt beyond reasonable doubt (Martel vs. People, G.R. Nos. 224720-23 and 224765-68, February 2, 2021).

Furthermore, the accused, in a criminal case, is entitled to acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind (People vs. Claro y Mahinay, G.R. No. 199894, April 5, 2017, 808 PHIL 455-469).

Lastly, the Court is guided by the pronouncements of the Supreme Court in People vs. Rapiz y Correa (G.R. No. 240662, September 16, 2020), to wit - -

Thus, its failure to discharge its burden in this case entitles appellant to an acquittal as a matter of right. Surely, where the evidence of the prosecution is concededly weak, even if the evidence for defense itself is equally weak, an accused must be duly accorded the benefit of the doubt



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in view of the constitutional presumption of innocence that an accused enjoys.

**WHEREFORE**, premises considered, judgment is hereby rendered in the following manner:

In **Criminal Case No. SB-CRM-24639**, this Court hereby **ACQUITS** accused Rufo C. Pabelonia for violation of Article 220 of the Revised Penal Code, as amended, for failure of the prosecution to prove his guilt beyond reasonable doubt;

In **Criminal Case No. SB-CRM-24640**, this Court hereby **ACQUITS** accused Rufo C. Pabelonia for violation of Article 220 of the Revised Penal Code, as amended, for failure of the prosecution to prove his guilt beyond reasonable doubt;

In **Criminal Case No. SB-CRM-24641**, this Court hereby **ACQUITS** accused Rufo C. Pabelonia for violation of Section 3 (e) of Republic Act. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, for failure of the prosecution to prove guilt beyond reasonable doubt.

The Hold-Departure Order issued against accused Mayor Pabelonia is ordered **RECALLED** and **SET ASIDE**. The bail bond he secured for his provisional liberty is ordered **RELEASED** subject to the usual auditing and accounting procedures.

**SO ORDERED.**



**BERNELITO R. FERNANDEZ**  
*Associate Justice*

We concur:



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




**RONALD MORENO**  
*Associate Justice*

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**ATTESTATION**

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

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

**CERTIFICATION**

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

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

