



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

Crim. Cases Nos.

SB-06-CRM-0383

For: violation of Sec. 3
(e) of Republic Act No.
3019, as amended

SB-06-CRM-0384

For: Estafa under Art.
315, par. 2 (a) of the
Revised Penal Code, as
amended

**ANTONIO P. BELICENA (+),
ULDARICO P. ANDUTAN JR.,
RAUL C. DE VERA,
BRANDY L. MARZAN,
ELENITA C. MABABANGLOOB,
and JOSEPH A. CABOTAJE (+),**
Accused.

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Present:

CABOTAJE-TANG, A.M.,
P.J./Chairperson
FERNANDEZ, B. R., J.
and
MORENO, R.B., J.

Promulgated:

March 22, 2024 *JB*

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by
[Signature]

DECISION

FERNANDEZ, B. R., J.

Initially, it must be recalled that a Decision by this Court was promulgated on October 25, 2019 for these cases, the dispositive portion of which reads, as follows - -

WHEREFORE, in view of the foregoing, judgment is hereby rendered in the following manner - -

1) In **Criminal Case No. SB-06-CRM-0383**, this Court finds accused **Antonio P. Belicena, Uldarico P. Andutan Jr., Raul C. de Vera and Brandy L. Marzan** **GUILTY** of a violation of Section (3) (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and sentenced each of them to suffer an indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum with perpetual disqualification from holding any public office.

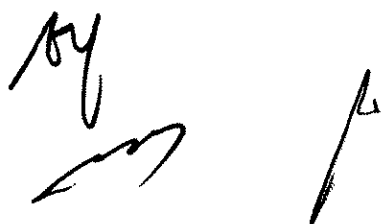
2) For **Criminal Case No. SB-06-CRM-0384**, judgment is likewise rendered **ACQUITTING** accused **Antonio P. Belicena, Uldarico P. Andutan Jr., Raul C. de Vera and Brandy L. Marzan** for estafa under Article 315 of the Revised Penal Code, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt. The bail bonds secured for their provisional liberty in this case are hereby ordered **RELEASED**, subject to the usual accounting and auditing procedures.

3) The cases against accused **Joseph A. Cabotaje** are hereby ordered **DISMISSED**, as this Court took judicial notice of his death as evidenced by his Certificate of Death submitted to this Court in People vs. Antonio P. Belicena, et al. (Crim. Cases Nos. SB-08-CRM-0379-80).

4) On the other hand, accused **Elenita C. Mababangloob** remains at-large despite posting bail. Hence, let these cases be sent to **ARCHIVES** subject to their revival upon her arrest. Her bail bond is hereby ordered **FORFEITED** in favor of the Government. In the meantime, let an alias warrant for the arrest of accused Mababangloob be **ISSUED**.

SO ORDERED.

On December 9, 2019, these cases were retrieved from the Archives and were deemed revived after accused Elenita C. Mababangloob was arrested by virtue of the alias warrant of arrest issued against her (Order, December 10, 2019).



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Hence, this Decision pertains only to accused Elenita C. Mababangloob (accused Mababangloob).

Accused Elenita C. Mababangloob is charged for violation of Sec. 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, (Crim. Case No. SB-06-CRM-0383) and for estafa under Art. 315, par. 2 (a) of the Revised Penal Code, as amended, (Crim. Case No. SB-06-CRM-0384), successively described as follows - -

Criminal Case No. SB-06-CRM-0383

That on or about December 29, 1997, and sometime prior to or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused Antonio Belicena y dela Pena, Uldarico Andutan, Jr. y Ponsaran, Raul de Vera y Clauren, Brandy L. Marzan, all public officer being then the Undersecretary/Executive Director, Deputy Executive Director, Officer-In-Charge of Net Local Content Division and Senior Tax Specialist respectively, of the One Stop Shop Tax Credit and Duty Drawback Center, Department of Finance (Center for brevity), while in the performance of their official duties and taking advantage of their public office, conspiring and confederating with each other and with accused Elenita C. Mababangloob and Joseph A. Cabotaje, General Manager and employee, respectively, of Juaymah-Maureen Transport Service (Juaymah for brevity), an operator of public utility buses registered with the Board of Investments (BOI) through evident bad faith and manifest partiality, did there and then wilfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Juaymah-Maureen Transport Service (Juaymah for brevity) for tax credit incentive from the government and issued and delivered to Juaymah Tax Credit Certificate No. 009267 in the amount of Php 9,167,447.00, despite knowledge that Juaymah was not so entitled not only because under the Certificate of Registration issued by the Board of Investments (BOI), Juaymah was not so entitled to such tax credit but also because the documents submitted by the accused Mababangloob in support of said claim was falsified and once in possession of said certificate, accused Cabotaje delivered said certificate to Mababangloob who thereupon misappropriated, misapplied and converted a part of the said tax credit certificate in the amount of Seven Hundred Forty Six Thousand Eight Hundred Sixty Seven and Seventy Centavos Php 746,867.70, Philippine Currency, to the use and benefit of said Juaymah, while the remaining Php 8,420,579.30 thereof remained unutilized in view of its being subsequently dishonoured by the Department of

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Finance, thereby causing undue injury and damage to the government in the aforesaid amount Php 746,867.70.
CONTRARY TO LAW.

Criminal Case No. SB-06-CRM-0384

That on or about December 29, 1997, and sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused Antonio P. Belicena y dela Pena, Uldarico Andutan Jr. y Ponsaran, Raul De Vera y Clauren, Brandy L. Marzan, all public officers being then the Undersecretary/Executive Director, Deputy Executive Director, Officer-In-Charge of Net Local Content Division and Senior Tax Specialist respectively, of the One Stop Shop Tax Credit and Duty Drawback Center, Department of Finance (Center for brevity), committing the offense in relation to their official duties and taking advantage of their public office conspiring, confederating and mutually aiding each other, and with accused Elenita Mababangloob and Joseph Cabotaje, General Manager and employee, respectively of Juaymah-Maureen Transport Service (Juaymah, for brevity), an operator of public utility buses registered with the Board of Investments (BOI), did there and then wilfully, unlawfully, feloniously defraud the government as follows, to wit: the said accused under false and fraudulent representation which they made to the government in Claimant Information Sheet (CIS) of Juaymah and in the Evaluation Report to the effect that Juaymah possessed the necessary qualification to be entitled to claim for tax credit incentive from the government and by means of similar deceit, which representations they knew were false and fraudulent and were only made to induce the government through the Center to issue and deliver, as in fact the Center issued and delivered to Juaymah, Tax Credit Certificate No. 009267 in the amount of Php 9,167,447.00; and once in the possession of the tax credit certificate, wilfully, unlawfully and feloniously misappropriated, misapplied and converted a part of the said credit certificate in the amount of Seven Hundred Forty Six Thousand Eight Hundred Sixty Seven Centavos or Php746,867.70 in Philippine Currency, to the use and benefit of said Juaymah while the remaining Php8,420, 579.30 thereof remained unutilized in view of its being subsequently dishonored by the Department of Finance, to the damage and prejudice of the government in the amount Php 746, 867.70.

CONTRARY TO LAW.

When arraigned on December 10, 2019, accused Mababangloob, assisted by her counsel, pleaded not guilty to

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both charges. She, thereafter, posted bail for her provisional liberty on the same day (Order, December 10, 2019).

Prior to pre-trial or on February 5, 2020, accused Mababangloob filed a Motion to Dismiss on the ground that her constitutional right to the speedy disposition of cases was violated. After the prosecution filed its Opposition dated February 24, 2020, this Court resolved to deny the Motion to Dismiss of accused Mababangloob for lack of merit (Resolution, June 22, 2020).

Although accused Mababangloob sought a reconsideration (Motion for Reconsideration, July 14, 2020), this Court denied that same for lack of merit (Resolution, October 28, 2020), after the prosecution filed its Opposition dated September 19, 2020.

In the interim, accused Mababangloob filed a Petition for Certiorari dated January 15, 2021 before the Supreme Court, praying for the annulment of the aforementioned Resolutions of this Court respectively dated June 22 and October 28, 2020.

Nevertheless, pre-trial proceeded in due course.

During the pre-trial, the prosecution manifested that it is adopting its previously marked documents, stipulations of facts and proposed issues in these cases. On the other hand, the counsel for accused Mababangloob manifested that they have additional documents to pre-mark.

Hence, pre-trial was declared terminated (Order, February 19, 2021) and the corresponding Pre-Trial Order for accused Mababangloob dated June 22, 2024 was issued. The only admission of accused Mababangloob was to her identity being the same person charged in the Informations.

Subsequently, trial proceeded.

When these cases were first heard, the prosecution presented six (6) witnesses, namely: Atty. Alma Cagat-Cagat, Frances Jeanne Sarmiento, Felipe Barroga, Nida Quibic, Elizabeth Cruz, and Dave Segunial.

Instead of calling these witnesses anew, the prosecution merely adopted their respective testimonies given earlier for these cases (Order, December 6, 2021).



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For easy reference, their respective testimonies, as quoted from the Decision promulgated on October 25, 2019, are now reiterated, as follows - -

For prosecution witness **Atty. Alma Cagat-Cagat** - -

Alma Cagat-Cagat, the Acting Records Officer of the Office of the Special Prosecutor, Ombudsman, was presented. She testified that she went to the Department of Finance to locate the original copy of the subject TCC No. 009267 but to no avail. This was despite her being supplied the vault combination by the Over-all Deputy Ombudsman, the then vault custodian, through an Office Order.

For prosecution witness **Frances Jeanne Sarmiento** - -

She testified that she was the acting Board Secretary of the Board of Investments (BOI) in 1998, responsible for attending Management Committee and Board meetings, preparing the minutes of these meeting and attesting to the certificates of registration of companies who applied for a BOI registration. She identified BOI Certificate of Registration No. 097341 (Exh. "Q"), used by applicant Juaymah in applying for tax credit.

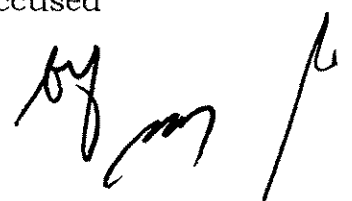
For prosecution witness **Felipe Barroga** - -

Felipe S. Barroga, the Asst. Vice President and Controller of Pilipinas Hino Inc. in February 2000. He testified that he received a Letter dated February 8, 2000 (Exh. "AA") from one Alberto Salanga of the Task Force sometime in February 2000. He responded through a Letter dated February 21, 2000 (Exh. "S"), stating that, after verifying their records, the subject buses were traced to different invoices with different invoice numbers with Pil-Hino Sales Corp. as the customer. He added that, based on their accounting records, the subject buses claimed to have been bought by applicant Juaymah from Pilipinas Hino Inc. were actually bought from a dealer, Pil-Hino Sales Corp.

On cross-examination, witness Barroga admitted that, as far as he was concerned, he never dealt with applicant Juaymah. He also confirmed that the subject TCC granted applicant Juaymah was, thereafter, transferred to Pilipinas Hino Inc., who used it as payment with the Bureau of Customs for importation.

For prosecution witness **Nida Quibic** - -

Nilda Quibic, the Chief, Management Information Division, LTFRB, whose Office has custody of LTFRB decisions involving the franchise applications of accused



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Mababangloob to operate public utility vehicles including the twenty-five (25) buses of applicant Juaymah, subject of TCC No. 009267 and the franchise verification data, among others. She testified that, as part of her functions and in compliance with the Subpoena of the Office of the Ombudsman, she issued three (3) certified true copies of the Decisions in LTFRB Cases Nos. 97-06557 (Exh. "XXXXX"); 96-14993 (Exh. "YYYYY"); and, 96-15732 (Exh. "ZZZZZ"), involving the buses owned by applicant Juaymah and used by the latter to claim tax credit. Witness Quibic, then the designated Asst. Chief, Management Information Division, also verified and submitted the franchise verification documents (Exhs. "CC" - "CC-4") of accused Mababangloob.

For prosecution witness **Elizabeth Cruz** - -

Elizabeth Cruz, the Head, Verification and Authentication Division of the One Stop Center was called next. She identified a copy of the subject TCC No. 009267, which she personally certified as being a photocopy of the original in their files. She added that she was able to certify the photocopy of the subject TCC because she saw the original of the same.

For prosecution witness **Dave Segunial** - -

Dave G. Segunial, a Senior Agent of the National Bureau of Investigation (NBI) and a member of the Special Presidential Task Force 156 (Task Force). He testified that, in 2000, he conducted an investigation regarding anomalies involving mass transport companies and textile firms which were granted tax credit certificates by the One Stop Center including the Application and issuance of subject TCC No. 009267 to applicant Juaymah and its subsequent transfer.

Witness Segunial explained that a tax credit is an incentive given by the Government to BOI-registered entities who apply for them under certain terms and conditions prescribed by law while a tax credit certificate is a document issued by the One Stop Center evidencing the amount of tax credit granted to the BOI-registered entities whose applications were processed, approved and issued by the One Stop Center. The One Stop Center was the agency tasked to process the tax credit incentive claim applications.

His investigation was conducted with investigator Calleja, upon a verbal directive from his immediate superior, Atty. Delimos. The investigation began by familiarizing himself with the process leading to the issuance of a tax credit certificate. This included securing, examining and verifying relevant documents submitted in support of a tax credit application and interviewing persons



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involved in the process, particularly, Jose Davis, Elizabeth Cruz and one Taneza of the audit team, as well as Deputy Director Ernest Hiansen of the One Stop Center and its former Records Custodian, Philip Santiago. Thereafter, witness Segunial prepared and submitted his Investigation Report dated April 3, 2000 (Exh. "XXXX-23").

From his investigation, witness Segunial learned that an entity to be entitled to a tax credit incentive on domestic capital equipment must, among others, be BOI-registered and that the machineries and equipment applied for tax credit were purchased after the said registration. It was also required that the machineries and equipment were purchased from a domestic manufacturer on or before December 31, 1997, if the business entity was located within the National Capital Region (NCR) or December 31, 1999, if the entity is outside the NCR. Herein, the applicable period for applicant Juaymah was December 31, 1997 because its address was in Las Piñas, within the NCR.

Witness Segunial added that the documents forwarded to the Task Force included the following, namely - - (1) the Client Information Sheet (CIS) (Exh. "C"); Six (6) Pilipinas Hino Inc. Sales Invoices (Exhs. "E" - "E-5") and Delivery Receipts (Exhs. "F" - "F-5"); Twenty-five (25) sets of LTO Certificates of Registration and Official Receipts (Exh. "L" - "L-24"); Five (5) LTFRB Decisions (Exhs. "K" - "K-4"); BOI Certificate of Registration with attached specific terms and conditions (Exh. "Q"); a Letter dated December 12, 1997 (Exh. "I") informing applicant Juaymah of the Board's approval of its Application for registration with the BOI subject to certain terms and conditions and pre-registration requirements; Schedule of Purchase (Exh. "J") with the description of the equipment subject of the claim; Order of Payment Slip (Exh. "G"); a Checklist of Requirements (Exh. "YYY"); undated Evaluation Report (Exh. "D"); Two (2) copies of Tax Credit Certificate No. 009267 (Exh. "N" and "TT"); Tax Debit Memorandum dated April 3, 1998 (Exh. "SS"); Letter from Pilipinas Hino Inc. dated March 23, 1998 (Exh. "RR") through Cesar Asuncion, requesting for the issuance of a tax credit memo; and, a Cancellation Memorandum dated January 17, 2000 (Exh. "P" to "P-4") from the One Stop Center. He also identified Personnel Order No. 51-92 dated April 28, 1992 (Exh "EE") and a Possession Description Form (Exh "GG").

He noted that the CIS (Exh. "C") submitted by applicant Juaymah and the Evaluation Report prepared by accused Marzan (Exh. "D"), both indicate Reference No. 26649 and Application No. 98D0017. It also is clear from the CIS that accused Mababangloob was fully aware of the subject Application for tax credit as her signature appears above her printed name. Further, the CIS reveals that the Application for tax credit of applicant Juaymah was filed on

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December 29, 1997 while the subject buses were made to appear to have been purchased before December 31, 1997.

Further, witness Segunial testified that the Checklist of Requirements (Exh. "YYY") attached to the claim was checked by a certain "BLM" representing the initials of accused Marzan. The same Checklist does not indicate that the BOI Certificate of Registration was among those initially submitted by applicant Juaymah for its Application for tax credit, noting that at the time of the Application, the BOI Certification was not yet available. However, it was further noted that when the BOI Certificate was eventually filed, it bears the No. 97341 and date January 8, 1998, showing that actual date of registration was not December 12, 1997, as indicated in the CIS and the Evaluation Report.

Witness Segunial also corroborated the testimony of prosecution witness Beverly Basman that the six (6) Sales Invoices (Exhs. "E" - "E-5") purportedly issued by Pilipinas Hino Inc. were undated and signed by accused Mababangloob; that in three (3) of these Sales Invoices, there were mathematical errors; and, that the photos submitted by applicant Juaymah reveal that the buses did not appear to be brand new contrary to what was stated in the Official Receipts (ORs) and Certificates of Registration (CRs) of the same buses.

He further noted that the supporting Delivery Receipts (Exhs. "F" - "F-5") purportedly issued by Pilipinas Hino Inc. had corresponding serial numbers and all were dated December 24, 1997, when in fact, the Certificates of Registration indicate the year 1998.

Witness Segunial also identified twenty-five (25) Official Receipts and LTO Certificates of Registration (Exhs. "L" to "L-24"). The Certificates of Registration were all dated December 26, 1997 with some indicating that some of the buses were not sourced from Pilipinas Hino Inc. but from Pil-Hino Sales Corp. He also discovered that the dates appearing in the Certificates of Registration and Official Receipts (Exhs. "U"- "U-24") provided by the LTO are different from the dates appearing on the documents supporting the Application of applicant Juaymah. Witness Segunial also identified a Letter dated February 8, 2000 (Exh. "W") sent to the LTO Commissioner requesting for the verification of the CRs and ORs (Exhs. "L" to "L-24"), submitted by applicant Juaymah and a Letter dated February 8, 2000 (Exhs. "DD" to "DD-16") addressed to the LTFRB Chairman and a Franchise Verification (Exhs. "CC" to "CC-4") also from the LTFRB.

Furthermore, witness Segunial learned that Pilipinas Hino Inc. denied having issued invoices attached by applicant Juaymah to its tax credit application and that the

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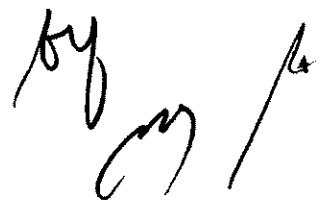
subject buses were actually invoiced by it (Pilipinas Hino Inc.) to its dealer from 1996 to 1997. These same documents clearly show that the subject buses were not purchased from Pilipinas Hino Inc. but from its dealer, Pil-Hino Sales Corporation. He added that, in response to a Letter by the Task Force, he sent a Letter dated February 21, 2000 (Exh. "X") and a Certification signed by Ernesto Ignacio dated February 21, 2000 (Exh. "Y"). A Letter dated April 4, 2000 (Exh. "PP") addressed to Roberto Garcia, VP Operations of Pil-Hino Sales Corp. was also sent to determine if the tax credit was indeed transferred to Pilipinas Hino Inc. and whether the full value of the tax credit was eventually applied for the account of applicant Juaymah in its subsequent purchases of buses from the dealer, Pil-Hino Sales Corp. This was confirmed in a Letter (Exhs. "QQ" to "QQ-1") signed by Roberto Garcia, sent to the Task Force.

Witness Segunial also testified that the photographs (Exhs. "M" to "M-24") of the subject buses showed dents, among others, which led him to believe that the subject buses were not brand new, corroborating the testimony of witness Beverly Basman.

He added that he requested Jose Felipe Davis, Ernesto Hiansen, Elizabeth Cruz and Beverly Taneza to execute Sworn Statements (Exhs. "T" to "T-3"; Exhs. "A" to "A-1"; Exh. "NN"; and, Exh. "O", respectively) as part of the investigation. The Task Force also sent letters to accused Mababangloob dated February 17, 2000 (Exh. "HH"); to accused Andutan Jr. dated March 13, 2000 (Exh. "KK"); to accused Belicena dated March 13, 2000 (Exh. "KK-1"); and, to accused de Vera dated March 13, 2000 (Exh. "KK-2"). He also identified another set of letter-invitations all dated March 6, 2000 (Exh "JJ" to "JJ-3"), respectively sent to accused Belicena, accused de Vera and accused Marzan.

However, only accused Mababangloob, in a Letter dated February 25, 2000 from the Ramos Law Office (Exh. "II"), responded and requested for documents. She, subsequently, submitted her Affidavit dated March 28, 2000 (Exhs. "OO" to "OO-2").

In summary, witness Segunial found that - - (1) Applicant Juaymah was not yet BOI-registered at the time it claimed for tax credit; (2) Despite its subsequent registration with the BOI, applicant Juaymah was not entitled to tax credit because its Certificate of Registration did not expressly grant it a tax credit privilege; (3) the subject buses that were used to claim for tax credit were old and purchased prior to the BOI registration; (4) the unit price of the subject buses was overpriced, hence, the tax credit given to applicant Juaymah was substantial; and, (5) the documents in support of the claim for tax credit by



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applicant Juaymah, particularly the Sales Invoices and Delivery Receipts, were either spurious or altered.

On cross-examination, witness Segunial admitted to the following, to wit - - (1) that there was no written assignment given to him by Atty. De Lemos to conduct the investigation; (2) that he only interviewed Jose Felipe Davis, Ernesto Hiansen, Elizabeth Cruz and Beverly Taneza, none of whose functions involved the actual evaluation of tax credit application; (3) that the docket folder turned over to him already contained photocopies of the documents for investigation; (4) that during investigation, he did not interview anyone from the Department of Finance, whose primary responsibility was to accept the CIS because the persons involved refused to cooperate in the investigation; (5) that the docket folder was only handed to him by the custodian of the Task Force, who in turn secured it from the One Stop Center; (6) that, after comparing the plate numbers of the subject buses as shown in the photographs with the plate numbers indicated in the Certificates of Registration, he concluded that they refer to the same units; (7) that he was not aware that plate numbers can be interchanged; (8) that his Investigation Report was not approved by any member of the Task Force but was merely submitted to his immediate superior, Atty. Medardo De Lemos; (9) that he had no knowledge of any additional documents submitted by applicant Juaymah other than those handed over to him for his investigation; and, (10) when queried by the Court, that applicant Juaymah benefited from the tax credit because its obligation from Pilipinas Hino was extinguished by virtue of the transfer of the subject TCC, and that Pilipinas Hino Inc., was benefited because it applied a portion of the tax credit to pay its duties and obligations to the Government and that the account of the dealer with respect to the manufacturer was also affected by the transfer, as it was credited in favor of the manufacturer.

During the trial of accused Mababangloob, additional testimonies were respectively given by prosecution witnesses, Frances Jeanne Sarmiento, Felipe Barroga, Nida Quibic, Elizabeth Cruz, and Dave Segunial, as follows - -

For prosecution witness **Frances Jeanne Sarmiento** -

On cross-examination, prosecution witness Sarmiento testified that her main task during Management Committee and Board of Governors meetings was to take the minutes thereof. She also elaborated the process of issuing certificates of registration by the Board of Investments (BOI) beginning with the preparation of documents by the Registration



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Division. She explained that in the case of transport companies, the frontliner is the BOI Transportation Department. The BOI Registration Division is involved after the BOI has approved the registration. Witness Sarmiento added that she does not receive the application documents.

Moreover, witness Sarmiento re-affirmed that she first saw the Letter dated December 12, 1997 (Exh. "I") during her initial testimony in 2014 and that the same may have come from the BOI Service Department, as the unit that initially processed the Application of Juaymah. It appears from the said document that the Application was already approved as of December 12, 1997. Furthermore, witness Sarmiento testified that she will be unable to determine the applicant for registration based on the actual documents submitted in these cases.

On re-direct examination, witness Sarmiento clarified that the Application of Juaymah was recommended to the Board of Governors for approval by the Management Committee on December 12, 1997. She further admitted that the official date of registration of Juaymah is not December 12, 1997 but the date of the approval by the Board appearing in the certificate of registration issued by the BOI.

When queried by the Court, witness Sarmiento explained that the Service Department initially prepares a memorandum to summarize the application of a company addressed to the Management Committee. The Management Committee, thereafter, evaluates the application and recommends for action to the Board of Governors. The Board of Governors will eventually decide on the application. When the Board of Governors approves the application, the company concerned becomes duly registered and the appropriate certificate of registration is issued, indicating therein the date of approval by the Board of Governors.

Herein, witness Sarmiento confirmed that, while the Application of Juaymah was filed on December 12, 1997, it was only approved by the Board of Governors on January 8, 1998.

For prosecution witness **Felipe Barroga** - -

On cross-examination, witness Barroga testified that he sent a Letter (Exh. "X") dated February 21, 2000 to Alberto



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Salanga without any attachments because the latter did not request for any. He clarified that Pilipinas Hino and Pil-Hino are two (2) separate entities with Pil-Hino being a mere dealer of Pilipinas Hino. He was also unaware if the incorporators of Pilipinas Hino are also incorporators of Pil-Hino.

Witness Barroga further testified that they relied on the information from the Marketing Division of Pilipinas Hino that Pil-Hino sold 25 bus units to Juaymah and that the invoices of Pilipinas Hino states that the buses were intended for Juaymah.

During re-direct examination, witness Barroga confirmed that the Invoices and Delivery Receipts (Exhs. "AA-2" to "AA-13") were not issued by his company. He also clarified that the invoices attached to the Letter of Alberto Salanga pertain to different customers, subject matters, and invoice numbers.

For prosecution witness **Nida Quibic** - -

On cross-examination, witness Quibic explained the procedure in requesting for certified true copies of decisions of the Land Transportation Franchising Regulatory Board (LTFRB). She added that, based on their records, accused Mababangloob is a legitimate franchise holder and that she does not know of a certain Joseph Cabotaje or if he requested for a copy of any LTFRB decision. Witness Quibic also identified the three (3) LTFRB Decisions pertaining to Juaymah in the name of accused Mababangloob, respectively dated July 30, 1997 (Exh. "X⁵"), January 6, 1997 (Exh. "Y⁵") and October 31, 1996 (Exh. "Z⁵"). She maintains that she does not have personal knowledge in the processing of tax credits.

For prosecution witness **Elizabeth Cruz** - -

On cross-examination, witness Cruz affirmed that she neither has personal knowledge in the preparation of tax credit certificates nor anyone who receives the tax credit certificate.

When questioned by the Court, witness Cruz reiterated her testimony in October 1, 2013 pertaining to the five (5) color-coded duplicate copies of Tax Credit Certificate No. 009267 (Exh. "NN-2") issued on February 4, 1998 but was unaware as to which division each copy was distributed to.

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For prosecution witness **Dave Segunial** - -

During cross-examination, witness Segunial saw a purported signature of accused Mababangloob but was unsure if it was actually her signature. He added that they conducted an investigation regarding this case sometime in 2000 and explained the procedure they used.

Regarding Juaymah, witness Segunial further testified that the claim was for a tax credit on domestic capital equipment using a BOI Certification (Exh. "Q") dated January 8, 1998, which was non-inclusive of the said tax credit. The said BOI Certification states that the entitlement of Juaymah is limited, and the tax credit on domestic capital is not one of the entitlement that was granted to Juaymah by the BOI. This is based on the Certificate issued by the BOI *vis-a-vis* the Claimant Information Sheet (CIS).

Witness Segunial also testified that they interviewed the personnel of the One-Stop Shop Center (OSS Center) of the Department of Finance, involved in the processing of tax credits, as well as its senior officers, the records custodian and personnel from manufacturers, dealers, and the BOI, particularly, Beverly Taniesa Busman, Ernesto Hyancen, Philip Santiago, Elizabeth Cruz, Felipe David, Ernesto Ignacio (Manager, Credit and Collection, Pilipinas Hino, Inc.) and Rey Rodriguez.

In so far as the processing of the Tax Credit Certificate (TCC) of Juaymah, witness Segunial claimed that he has no personal knowledge on the supporting documents attached to the CIS, submitted to the OSS Center, but he identified an entry in the logbook of the OSS Center, showing the name of accused Joseph Cabotaje as the one who received the subject TCC. He, however, does not have any personal knowledge if accused Cabotaje is related to accused Mababangloob.

Witness Segunial also elaborated that, during their investigation, they were able to establish that the tax credit claim was supported by invoices coming from a manufacturer and that the buses were purchased from Pil-Hino Sales, a dealer, however, Pilipinas Hino, the manufacturer, was the assignee of the subject TCC.

Their investigation also revealed that an inscription at the back of the subject TCC indicated that the amount of the

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tax credit was transferred to Pilipinas Hino but they were unable to identify a deed of assignment from Juaymah in favor of Pilipinas Hino Inc.

Witness Segunial further testified that they requested for pertinent documents from the Land Transportation Office, however, the documents of the same nature submitted to the OSS Center appear to have been altered.

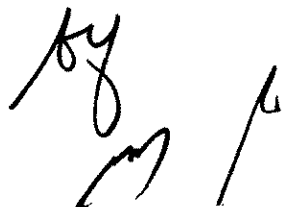
During re-direct examination, witness Segunial was certain that the signatures of accused Mababangloob was her signature after he compared the same to the signatures appearing on the documents submitted to the OSS Center (Exh. "A⁶-1") and in her Affidavit (Exh. "A⁶") dated March 28, 2000.

Thereafter, the prosecution also successively called to the witness stand the following: **Atty. Delia Esguerra, Rebecca Tugay, and Jesus Loreto.**

Of the additional witnesses, **Atty. Delia Esguerra** was first called to the witness stand. After stating her present position at the Bureau of Customs (BOC) and her duties thereat, witness Atty. Esguerra confirmed that she is also the custodian of tax credit certificates prior to their issuance to the importer, and is responsible for evaluating the tax credit utilization insofar as the tax credit authenticity.

Witness Atty. Esguerra produced and identified the original and certified true copy of the Monthly Report of Tax Credit Applied for the month of September 1998 (Exh. "KKK-a"), with BOC Official Receipt (OR) No. 70945716 dated September 15, 1998 and a photocopy of the Monthly Report of Tax Credit Applied for the month of October 1998 (Exh. "PPP"), with BOC OR Nos. 72042923 dated October 1, 1998 (Exh. "PPP-10-a") and 724044061 dated October 8, 1998 (Exh. "PPP-12-a"), all for the subject Tax Credit Certificate No. 009267.

She explained that the original copies have been submitted to the Commission on Audit (COA) on April 22, 1999. She added that she was unable to bring a copy of BOC OR No. 70945716 dated September 15, 1998 in the amount of P413,137.70 as a tax credit also for the same TCC because it was already submitted to the COA on November 17, 2000 (Exhs. "JJJ-3" to "JJJ-3-a") while only a photocopy of BOC OR

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No. 72042923 (Exh. "OOO") dated October 1, 1998 for P333,730.00 was available. These same documents were turned over to her by the previous custodian on November 15, 2017.

When cross-examined, witness Atty. Esguerra testified that, based on the ORs, Pilipinas Hino Inc. benefitted from the tax credit but she has no personal knowledge regarding the subject transaction.

Witness **Rebecca Q. Tugay** was next to be called. Her testimony was dispensed with after both parties agreed to stipulate on the following: (1) That witness Tugay is the State Auditor IV, Audit Team Leader of the Bureau of Customs Central Office, Port Area, Manila; (2) That as such, she is the custodian of, among others, monthly reports of tax credit applied and BOC official receipts, transmitted to her office by the BOC Accounting Division, with the qualification that she has no personal knowledge insofar as the transactions evidenced by these documents subject matter of these cases are concerned; (3) That despite due diligent efforts, she could not produce the following documents transmitted to her office and mentioned in the Subpoena issued to her by this Honorable Court; 3.1 Original copy of Monthly Report of Tax Credit Applied for the month of October 1998 showing entry on the utilization of Bureau of Customs (BOC) Official Receipt Nos. (a) 72042923 dated October 1, 1998 and (b) 72044061 dated October 8, 1998, both for Tax Credit Certificate No. 009267 relevant to these cases; and 3.2 Original copy of BOC Official Receipt No. 70945716 dated September 15, 1998 pertaining to the utilization of Tax Credit Certificate No. 009267, relevant to these cases with the qualification that she has no personal knowledge on whether the said documents actually existed on the dates mentioned in the said documents (Order, July 20, 2022).

The last prosecution witness is **Jesus Loreto**. His direct testimony was made through his sworn Judicial Affidavit dated September 22, 2022.

However, his testimony was dispensed with after the parties agreed to the stipulations respectively proposed by each of them, as follows - -

(1) That he is presently the Acting Records Officer of the Public Utility Registration Extension Center-Land Transportation Office Pasay Compound (LTO-PUV REC),

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Domestic Road, Pasay City; (2) That he executed a Judicial Affidavit dated September 22, 2022, which will be part of his testimony in relation to these cases; (3) That he had the occasion to receive a subpoena from the Office of the Special Prosecutor directing him to produce sales invoices, certificates of registration and official receipts relevant to these cases; (4) That he brought with him the original documents which he enumerated in Question and Answer No. 17 of his Judicial Affidavit and mentioned in the subpoena; (5) That he is the official custodian of the subject documents that he brought with him today in relation to these cases; (6) That the subject documents that he brought with him today were obtained from the files of his office, or specifically, the Public Utility Registration Extension Center-Land Transportation Office Pasay Compound; (7) That he can no longer produce the sales invoices mentioned in the subpoena of the Office of the Special Prosecutor as well as some certificates of registration and official receipts as stated in Questions and Answers Nos. 15 and 17 of his Judicial Affidavit despite due diligent efforts to locate the same; and, (8) That the certified true copies to be marked by the prosecution are faithful reproductions of the original copies as enumerated in Question and Answer No. 26 in the motion portion. These were all stipulated upon by the defense counsel with a counter-stipulation as to paragraph 4 that some of the documents are already missing and which was admitted by the prosecution. Thereafter, Atty. Barroga offered the following matters for counter-stipulation of the prosecution, namely: (1) That the witness has no personal knowledge insofar as the preparation of the documents certified to by Ronald Perez; and (2) That the witness has no personal knowledge insofar as the transactions regarding these cases are concerned that led to the issuance of the documents. These were also stipulated upon by the prosecution. With these stipulations and counter-stipulations, the prosecution dispensed with the testimony of Jesus T. Loreto (Order, October 12, 2022).

Thereafter, witness Loreto presented the following documents he brought to the Court, namely - -

Original Letter dated September 19, 2022 addressed to Pros. Joan Paulette Nunez from Records Officer Jesus T. Loreto, consisting of one page;

Original Certification dated September 19, 2022 issued by Acting Records Officer Jesus T. Loreto, certifying that sales invoices enumerated in the attached list of the Subpoena Duces Tecum and Ad testificandum dated August 7, 2022 could not be located;



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Certified True Copy of the Certificate of Registration No. 36927143 issued on July 26, 1996 and Official Receipt with MVRR No. 48366832 dated July 26, 1996 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 36926811 issued on July 18, 1996 and Official Receipt with MVRR No. 45970018 dated July 18, 1996 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 36927161 issued on July 26, 1996 and Official Receipt with MVRR No. 48366854 dated July 26, 1996 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 36926793 issued on July 18, 1996;

Certified True Copy of the Certificate of Registration No. 36926802 issued on July 18, 1996;

Certified True Copy of the Certificate of Registration No. 36936042 issued on December 20, 1996;

Certified True Copy of the Certificate of Registration No. 36936024 issued on December 20, 1996 and Official Receipt with MVRR No. 57891227 dated December 20, 1996 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 36936051 issued on December 20, 1996;

Certified True Copy of the Certificate of Registration No. 36936067 issued on December 20, 1996;

Certified True Copy of the Certificate of Registration No. 36936496 issued on January 08, 1997;

Certified True Copy of the Certificate of Registration No. 36936471 issued on January 08, 1997;



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Certified True Copy of the Certificate of Registration No. 36936487 issued on January 08, 1997;

Certified True Copy of the Certificate of Registration No. 43577458 issued on August 04, 1997;

Certified True Copy of the Certificate of Registration No. 43577471 issued on August 04, 1997;

Certified True Copy of the Certificate of Registration No. 43577460 issued on August 04, 1997 and Official Receipt with MVRN No. 51848190 dated August 04, 1997 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 43577482 issued on August 04, 1997;

Certified True Copy of the Certificate of Registration No. 36927152 issued on July 26, 1996;

Certified True Copy of the Certificate of Registration No. 43577403 issued on August 04, 1997;

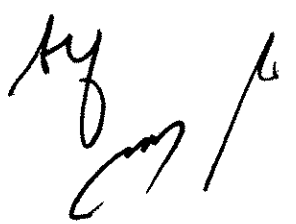
Certified True Copy of the Certificate of Registration No. 43577425 issued on August 04, 1997 and Official Receipt with MVRN No. 51848155 dated August 04, 1997 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 43577414 issued on August 04, 1997 and Official Receipt with MVRN No. 51848144 dated August 04, 1997 from the LTO Pilot Extension Office;

Certified True Copy of the Certificate of Registration No. 43577436 issued on August 04, 1997; and,

Certified True Copy of the Certificate of Registration No. 43577447 issued on August 04, 1997.

Thereafter, the prosecution filed its Formal Offer of Evidence dated November 7, 2022. After accused Mababangloob filed her Comments/Objections thereto dated

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December 7, 2022, this Court ruled in the following manner (Minutes, December 13, 2022) - -

Accordingly, the Court hereby ADMITS Exhibits "Q" to "Q-1" (with submarkings), "R" to "R-1", "R-1-a", "U" to "U-24" (with sub-markings), "U-1-g", "U-1-h", "U-1-i", "U-1-j", "U-2-c", "U-3-g", "U-4-g", "U-5-f", "U-6-c", "U-7-c", "U-9-g", "U-11-g", "U-12-b", "U-13-b", "U-15-2", "U-16-a", "U-17-a", "U-18-2", "U-19-b", "U-20-a", "U-21-a", "U-22-a", "U-23-a", "U-24-a", "U-24-b", "U-24-c", "NN" to "NN-1", "NN-1-a", "NN-1-b", "NN-2-a", "NN-2", "NN-2-b", "NN-2-c", "JJJ-3" to "JJJ-3-a", "JJJ-3-a-1", "KKK" to "KKK-12", "KKK-9-a", "OOO", "OOO-3", "PPP", "A⁶" and "A⁶-1", considering that the objections of the accused, through counsel, refer more to the probative value rather than their admissibility.

The prosecution further manifested that, in addition to the abovementioned exhibits, it is also adopting *in toto* the exhibits previously offered and admitted, as enumerated in its earlier Formal Offer of Documentary Evidence dated May 16, 2014 as against accused Mababangloob (Minutes, December 13, 2022).

Although accused Mababangloob sought leave to file a demurrer to the evidence (Motion, January 18, 2023), this Court ruled to deny the same (Minutes, January 24, 2023), after the prosecution filed its Opposition dated January 23, 2023.

Trial on the merits continued.

Accused **Elenita C. Mababangloob** was called to testify in her behalf. Her direct testimony was by way of her sworn Judicial Affidavit dated March 20, 2023.

Witness-accused Mababangloob testified that of her co-accused, she only knew accused Joseph Cabotaje whom she met twice in 1997 at the office of Eduardo Benipayo (Benipayo), when she was then dealing with Pil-Hino Sales Corporation.

She further narrated that she was engaged in the transportation business as an operator of buses and, in 1997, she had 29 buses. She was first introduced to accused Cabotaje in 1997, where he advised her to avail of tax credits from the Department of Finance (DOF). Accused Cabotaje showed her documents from Jam Liner Inc., AMA Transport Service, RA Rodriguez and Columbus Philippines Bus Company, whom he claimed to have assisted in securing tax



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credits and that the tax credits would be beneficial to her. Accused Cabotaje also represented to her that he will handle the processing of her tax credit and, once approved, will only be paid 20% of the value of the tax credit, as his professional fee. He even explained to her that he can secure the required documents as he already worked on tax credits for a long time and was familiar with issuing offices, like the LTO, and it would be important for her to remain in the background.

Although skeptical at first, witness-accused Mababangloob eventually agreed verbally since the DOF will still determine the entitlement of Juaymah. She added that she was familiar with Jam Liner Inc. because it is a famous bus company, while AMA Transport Services is owned by Homer Mercado, a known acquaintance and a member of their Association in Alabang, and Columbus Philippines Bus Company is owned by Amelia de Dios, who is the President of Integrated Metropolitan Bus Operators Association.

Witness-accused Mababangloob also stated that even Benipayo, the manager of Pil-Hino Sales Corporation encouraged her to avail of the tax credit.

She further recounted that she almost forgot about the tax credit until she was told by Benipayo that accused Cabotaje already processed the registration of her business with the BOI and secured the necessary papers for her tax credit application. She was also told that accused Cabotaje was looking for her because the subject Tax Credit Certificate No. 009267 (Exh. "NN-2") issued on February 4, 1998 was already approved. Although happy for this development, witness-accused Mababangloob, however, wondered how her Application for tax credit was processed without her participation.

In the same week, she remembered receiving a Letter from the DOF dated February 12, 1998, stating that her Application for tax credit was approved. She then returned to the office of Benipayo where she saw accused Cabotaje, who was then asking for his fee. She refused to pay accused Cabotaje because she had no money then and that she had not seen the subject approved TCC. Although accused Cabotaje promised to give accused-witness Mababangloob the subject TCC, she no longer saw him again.



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Subsequently, witness-accused Mababangloob received a subpoena from the Special Presidential Task Force (SPTF), regarding the subject Tax Credit Certificate (TCC) No. 009267. Upon advise of counsel, she executed an Affidavit (Exh. "A6") dated March 28, 2000.

Thereafter, she also received an invitation from the Department of Justice (DOJ) related to an investigation into the issuance of the subject TCC. In response, she submitted her earlier Affidavit, attached therewith a Supplemental Counter-Affidavit with annexes pertaining to undated Delivery Receipts. She attached these delivery receipts to prove that she only transacted with Pil-Hino Sales Corporation for the purchase of her buses, and not from Pilipinas Hino Inc. She also learned from a reading of the Investigation Report (Exh. "XXX-23") dated April 3, 2000, that Pilipinas Hino delivery receipts, and not Pil-Hino delivery receipts, were used in her Application. She was surprised because she did not transact with Pilipinas Hino in any capacity whatsoever, and, if indeed the same delivery receipts were used, she had no personal knowledge as to who submitted such documents.

Regarding the Claimant Information Sheet (CIS) (Exh. "C") dated December 29, 1997, which was allegedly submitted to the One Stop Shop Center (OSS Center), witness-accused Mababangloob insists that she neither submitted any CIS nor authorized someone to submit it for her. Moreover, witness-accused Mababangloob noticed that her signature on the CIS cannot be seen but maintains that she never signed such document, and, if indeed, there was a signature, this was forged.

Witness-accused Mababangloob consistently maintains her position in her previous sworn Statements that she does not have any personal knowledge about the submission of the CIS and all the supporting documents thereof, such as the BOI certificate. She further reiterates that she did not participate in the submission of what appears to be falsified documents including the Application itself and that she did not benefit from the issuance of the subject TCC.

She also noted that the subject TCC presented to her was a photocopy and that the same as well as the TCC of AMA Transport Service, were received by accused Cabotaje without

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any written authority, as shown in the logbook through Claim Stub No. 26649.

Relative to the two sets of Certificates of Registration (Exhs. "U" and series and "L" and series), witness-accused Mababangloob states, particular to the Certificates of Registration (Exhs. "U" and series) that they correspond to her actual Certificates of Registration while she only saw the Certificates of Registration (Exhs. "L" and series) when they were presented in Court. She testified that it appears that whoever was responsible, may have used her authentic Certificates of Registration secured from the LTO, altered them, before submitting them to the OSS Center.

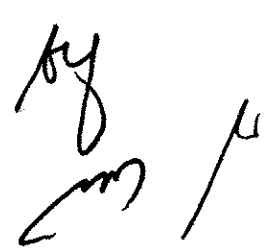
Lastly, witness-accused Mababangloob maintains that she neither benefitted from the subject TCC No. 009627 nor cause the transfer of the same in favor of Pilipinas Hino Inc.

When cross-examined, witness-accused Mababangloob understood the statement of accused Cabotaje that she "*stay at the background*" to mean that he will process everything until she may be needed to sign documents, however, the latter did not happen. She reiterated that she does not know anything about the preparation of bank statements or give any authority or agreement to this effect. Neither did she provide any information to enable accused Cabotaje to secure the necessary papers for her application of tax credit.

Relative to the alleged falsification of her signatures on the purported Pilipinas Hino Inc. invoices (Exhs. "E" - "E-5") attached to her Supplemental Counter-Affidavit dated January 20, 2000, witness-accused Mababangloob clarified that she did not request the NBI to immediately conduct an investigation to identify the persons responsible. She further affirmed that the issuance of the subject TCC was anomalous.

When examined on re-direct, accused-witness Mababangloob substantially reiterated her earlier testimony.

On queries from the Court, witness-accused Mababangloob testified that Juaymah is registered as a single proprietorship with the DTI and not with the BOI. She then repeated her narration particularly on the day when she was introduced to accused Cabotaje and the representations the latter made to her. She added that had it not for the

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endorsement of Benipayo about accused Cabotaje, she would not have been convinced.

Witness-accused Mababangloob further testified that she only met accused Cabotaje twice, once, when she was introduced to him and then, when she was informed that her tax credit Application was approved. Thereafter, witness-accused Mababangloob substantially reiterated her earlier testimony. She added that she was unable to see any BOI registration certificate pertaining to Juaymah and that she never gave accused Cabotaje any document, including an authority, to process her tax credit Application.

Although accused Mababangloob intended to call to the witness stand **Homer A. Mercado** as witness in her defense, his testimony was disallowed after the prosecution cited par. 1 of the Immunity Agreement dated September 4, 2023 entered between witness Mercado and the Office of the Ombudsman, which states - *"That in exchange for my immunity I agreed to undertake and produce all documents in my possession relative to the DOF tax credit scam and to testify in all pending criminal, civil and administrative cases against those personalities involved"* and the willingness of witness Mercado to maintain the Immunity Agreement he signed (Order, May 12, 2023).

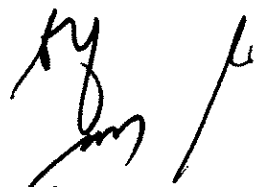
Thereafter, accused Mababangloob filed her Formal Offer of Evidence dated May 23, 2023. When given time (Order, May 12, 2023), the prosecution filed its Comment dated June 8, 2023. Subsequently, this Court ruled (Minutes, July 14, 2023) as follows - -

Exhibits "1" (Exh. A6), "2", "3" (Exh. "Z-4"), "3-A" (Exh. "Z-3"), "3-B" (Exh. "Z-18"), "3-C" (Exh. "Z-19"), "3-D" (Exh. "Z-20"), "3-E" (Exh. "Z-21"), "3-F" (Exh. "Z-22"), "3-G" (Exh. "Z-23"), "3-H" (Exh. "Z-24"), "3-I" (Exh. "Z-25"), "3-J" (Exh. "Z-26"), "3-K" (Exh. "Z-27"), "3-L" (Exh. "Z-28"), "3-M" (Exh. "Z-29"), "3-N" (Exh. "Z-30"), "3-O" (Exh. "Z-31"), and "4".

We now rule.

From the evidence respectively adopted and presented by, and stipulated upon by the prosecution and accused Mababangloob, this Court found the following relevant facts:

On April 7, 2000, a Complaint was filed before the Department of Justice (DOJ) by the Special Presidential Task



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Force 156 (SPTF) against accused Elenita C. Mababangloob for violation of Sec. 3 (e) of Republic Act No. 3019, as amended, and estafa under Art. 172, in relation to 171, of the Revised Penal Code, as amended.

The Complaint alleges that on December 29, 1997, accused Mababangloob, the General Manager of the Juaymah-Maureen Transport Service (Juaymah), submitted Claimant Information Sheet (CIS) No. 26649 (Exh. "C") dated December 29, 1997 with Application No. 98-D-0017, for a tax incentive with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center (OSS Center). The Application states that Juaymah was registered with the Board of Investments (BOI) on December 12, 1997, when in fact its BOI Certificate of Registration No. 97-341 (Exh. "Q") was dated January 8, 1998.

In a Letter dated February 12, 1998, accused Antonio P. Belicena, the former Department of Finance (DOF) Undersecretary, informed accused Mababangloob that Tax Credit Certificate (TCC) No. 009267 (Exh. "NN-2") issued on February 4, 1998 will be released to Juaymah. The subject TCC was received by accused Joseph A. Cabotaje on March 11, 1998, as shown in the logbook of the Tax Credit Certificate Releasing Unit of the OSS Center. Thereafter, Beverly Christine Taneza, a Tax Specialist of the OSS Center, in her Memorandum (Exh. "P" - "P-4") dated January 17, 2000, recommended for the immediate cancellation and recall of the subject TCC due to several irregularities and anomalies.

Hence, these cases.

The main theory of the prosecution is that Juaymah should not be entitled to a tax credit incentive on domestic capital equipment because it is not, among others, BOI registered. Likewise, Juaymah did not only comply with any of the necessary requirements but also filed spurious or altered documents in support of its claim for tax credit, particularly sales invoices and delivery receipts.

Moreover, the prosecution maintains that, based on the Claimant Information Sheet (CIS) (Exh. "C") dated December 29, 1997, accused Mababangloob was fully aware of her alleged Application for tax credit as her signature appears thereon above her printed name. Furthermore, several prosecution witnesses testified that they had no personal

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knowledge as to the existence of the supporting documents or the transactions that led to their issuance.

For her part, accused Mababangloob consistently asserts that she purchased the buses from Pil-Hino Sales, Inc. and not from Pilipinas Hino Inc.; that she only learned, from a reading of the Investigation Report (Exh. "XXXX-23") dated April 3, 2000, prepared by witness Segunial that the Delivery Receipts of Pilipinas Hino (Exhs. "F" - "F-5") were used in her alleged Application for tax credit which led to the issuance of the subject TCC; that she was surprised because she did not transact with Pilipinas Hino in any capacity whatsoever; that, if indeed the Delivery Receipts of Pilipinas Hino were used, she does not have any personal knowledge as to who submitted them; that she did not or authorize anyone to submit any Client Information Sheet (CIS) with the OSS Center; that her signature appearing on the CIS is a forgery; that she did not benefit from the issuance of the subject TCC No. 009267; that she never saw the subject TCC until cases were already filed against her; that the subject TCC presented is a mere photocopy; that the subject TCC was received by accused Cabotaje without any authority from her; and, that she denied causing the transfer of the subject TCC in favor of Pilipinas Hino Inc.

Let us now consider the cases *in seriatim*.

**Criminal Case No.
SB-06-CRM-0383**


Accused Mababangloob is indicted herein for a violation of Sec. 3 (e) of R. A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

This provision reads - -

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

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions



though 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.


As may be gleaned from the above, the elements of the offense are as follows - - (1) the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (2) that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and, (3) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions (Cambe vs. Ombudsman, G.R. No. 212014-15, December 6, 2016, citing Presidential Commission on Good Government vs. Navarro-Gutierrez, G.R. No. 194159, October 21, 2015).

The first element is present even if accused Mababangloob is a private individual. She is indicted in her capacity as the General Manager of Juaymah-Maureen Transport Service (Juaymah), and is alleged to have acted in conspiracy with the accused-public officers of the Department of Finance.

It is well-entrenched in jurisprudence that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, be held liable for the pertinent offenses under Sec. 3 of R. A. No. 3019, in consonance with the avowed policy of this Law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto (Canlas vs. People of the Philippines, *et al.*, G. R. Nos. 236308-09, February 17, 2020).

On the second element, the prosecution maintains that accused Mababangloob acted with evident bad faith and manifest partiality, in conspiracy with the accused-public officers, when unwarranted benefits, advantage or preference were extended to Juaymah for the tax credit incentive granted by the government, albeit the alleged non-existence of any legal basis and documentary requirements.

Likewise, Section 3 (e) of R. A. No. 3019 describes three modes of commission, namely: through (1) manifest partiality; (2) evident bad faith; or (3) gross inexcusable negligence.

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In *Fonacier vs. Sandiganbayan* (238 SCRA 655, 687 (1994)), the Supreme Court explained these three (3) modes, to wit -

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

Guided by the foregoing, this Court will now proceed to determine the guilt or innocence of accused Mababangloob in relation to the legal and factual issues raised in this particular case.

The principal position of the prosecution in indicting accused Mababangloob revolves around her conspiracy with the accused public officers, by signing the Claimant Information Sheet (CIS) (Exh. "C") dated December 29, 1997, seeking a tax credit incentive from the government and by submitting falsified documents to make it appear that Juaymah is entitled to the incentive, when it was not.

In *People vs. Lababo, et al.* (G. R. No. 234651, June 6, 2018) citing *Bahilidad vs. People* (629 Phil. 567-578, 2010), the Supreme Court reiterated the basic principles in determining whether conspiracy exists or not:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design



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to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed.

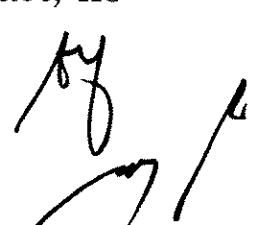
The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction. (bold ours)

Applying the foregoing to this case, this Court holds that the prosecution was unable to amply prove that accused Mababangloob performed some overt act that directly or even indirectly contribute to the commission of the offense.

From a reading of the Information concerned, it is alleged that accused Mababangloob, through evident bad faith and manifest partiality, gave unwarranted benefits, advantage or preference to Juaymah for the tax credit incentive granted by the government and that the documents submitted by her in support of said claim were falsified. It went on to state that once in possession of the said Certificate, accused Cabotaje delivered the same to accused Mababangloob, who, in turn, misappropriated, misapplied and converted a part of the value of the subject TCC in the amount of P746,867.70, for the use and benefit of Juaymah.

However, the prosecution was unable to sufficiently substantiate these allegations with the evidence it presented. It likewise failed to present evidence demonstrating that accused Mababangloob cause the processing of the subject Application for tax credit let alone facilitate the transfer of the tax credit in favor of Pilipinas Hino Inc. Neither was there even a shred of evidence showing that accused Cabotaje was an employee of Juaymah as alleged. In its effort to link accused Mababangloob to the conspiracy, much was relied upon only on a photocopy of a Claimant Information Sheet (Exh. "C") dated December 29, 1997 alleged to have been signed by accused Mababangloob.

Additionally, her position as General Manager of Juaymah is not sufficient to establish a deliberate intent on her part to participate in the alleged conspiracy. In fact, no

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evidence was shown to prove that she indeed authorized accused Cabotaje to process her application and claim the subject TCC No. 009267, to be used later by Pilipinas Hino Inc. as payment to BOC.

It would be absurd for accused Mababangloob to apply for a tax credit incentive, only to benefit someone who, neither she nor Juaymah, had any dealings with. Even prosecution witness Barroga, the Asst. Vice President and Controller of Pilipinas Hino Inc., admitted that Pilipinas Hino Inc. never dealt with Juaymah.

Furthermore, prosecution witness Segunial, the Senior Agent of the National Bureau of Investigation (NBI) and a member of the Special Presidential Task Force 156 (Task Force) testified (pp. 9-14, TSN, July 11, 2022) that he was unable to personally talk to accused Mababangloob and that he had no personal knowledge that accused Mababangloob signed the relevant documents subject of these cases.

ATTY. BARROGA:

Q: So Mr. Witness when you were able to read this part of the affidavit of the accused or the respondent at that time, you did not bother to talk to her personally, is that correct?

WITNESS

A: We tried Sir but actually the set-up at that time is that only the top executive officers of the task force were authorized to talk to witnesses and respondents as well, Sir.

Q: So even if you were the main investigator in this case, you were not able to speak personally with the then respondent Elenita Mababangloob, just to confirm?

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A: No, Your Honors.

CHAIRPERSON:

Q: During the investigation?

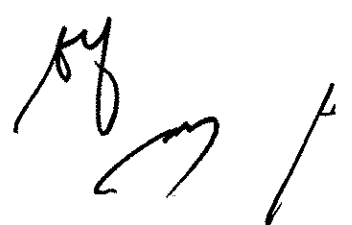
WITNESS:

A: No, Your Honors.

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ATTY. BARROGA:

Q: You mentioned that you saw the signature of accused Elenita Mababangloob among the documents



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submitted to you coming from the One Stop Center, is that correct?

A: Yes, Sir.

Q: In so far as those signatures, you admitted during the last hearing that you do not really have personal knowledge whether it's the accused who signed those documents, is that correct?

A: Yes, Sir.

x x x

Q: So in so far as the signature itself, you were not able to conclude that the signatures appearing on the document submitted to the One Stop Shop Center for the processing of the tax credit certificate is the same signature of the accused as appearing in the affidavit?

A: Sir what I'm stating is that I became familiar of the signature of the accused based on this document.

Q: But you are not a handwriting expert, am I correct?

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CHAIRPERSON:

Q: Are you a handwriting expert?

A: No, Your Honors.

Faulting accused Mababangloob for relying too much on the representations of accused Cabotaje, this, however, cannot be treated as the overt act that will hold her criminally liable or even as a party to a conspiracy. This cannot approximate evident bad faith or manifest partiality.

Sans positive and conclusive evidence that accused Mababangloob acted in furtherance of an unlawful common design or purpose, this Court is compelled to reject the theory of conspiracy. It must be stressed that a conviction premised on a finding of conspiracy must be founded on facts, not on mere inferences and presumption (*People of the Philippines vs. Lorenzo Cerezo, et al.*, G. R. No. 252173, March 15, 2022).

Aside from failing to prove the existence of a conspiracy, the prosecution likewise failed to establish with moral certainty the last two elements necessary for the offense charged.

In imputing accused Mababangloob to the alleged conspiracy, the prosecution contends that she caused the transfer or endorsement of the subject TCC to Pilipinas Hino

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Inc. as payment for its importation to the Bureau of Customs, thus, undue injury is caused on the Government.

Still, nothing on record supports this allegation. It will be remembered that the prosecution presented several witnesses who, in chorus, claim that they had no personal knowledge on whether the pertinent supporting documents actually existed on the dates mentioned or if the transactions themselves led to the issuance of these same documents.

Thus, with the foregoing, belaboring the existence of the second and third elements will only be a superfluity.

**Crim. Cases No.
SB-06-CRM-0384**

Article 315, paragraph 2 (a) of the Revised Penal Code, as amended, provides:

Article 315. *Swindling (Estafa)*. - Any person who shall defraud another by any of the means mentioned herein below shall be punished by:


x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of the crime are as follows - - (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and, (4) as a result thereof, the offended party suffered damage (*Gamaro vs. People*, G. R. No. 211917).

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to



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another, or by which an undue and unconscientious advantage is taken of another. On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury (People vs. Menil, 394 Phil. 433, 450 (2000)).

With the foregoing guidelines, this Court finds that the elements of estafa by means of deceit as aforementioned have not been satisfactorily met in this case.

As borne by the records, the prosecution failed to prove the specific element of defraudation because to sustain a charge and subsequent conviction for estafa, accused Mababangloob must have employed deceit, fraud or misrepresentation, either personally, physically and actually performed any false pretenses and/or fraudulent representations against the government.

Gleaned for this second Information, the prosecution insists that accused Mababangloob was included as an accused for the crime of estafa because, among others, of her signing the Claimant Information Sheet (CIS) (Exh. "C") dated December 29, 1997. This initiated the alleged defraudation.

This remained a mere allegation of the prosecution, uncorroborated by any other independent and credible documentary or testimonial evidence.

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. Otherwise, the constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties (People vs. Lumikid, G. R. No. 242695, June 23, 2020).

Moreover, deceit is an allegation of fact that demands clear and convincing proof. It is a serious accusation that can be so conveniently and casually invoked. That is why it is never presumed (People vs. Pagaduan, 607 SCRA 308 (2010)).

In the same vein as the first Information, nothing can support the allegations in this Information. Evidence of any deceit, fraud or misrepresentation that are alleged to have



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been committed by accused Mababangloob is insufficient to support a conviction for estafa.

Jurisprudence has consistently educated us that in all criminal prosecution, it is the prosecution who bears the burden of proving the guilt of accused beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each, and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The prosecution must further prove the participation of the accused in the commission of the offense (Patula vs. People, G. R. No. 164457, April 11, 2012).

Here, this burden was not attained.

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

In **Criminal Case No. SB-06-CRM-0383**, accused Elenita C. Mababangloob is hereby **ACQUITTED** of the charge of violation of Section 3 (e) of R. A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, for failure of the prosecution to prove her guilt beyond reasonable doubt; and

In **Criminal Case No. SB-06-CRM-0384**, accused Elenita C. Mababangloob is hereby **ACQUITTED** of the charge of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, as amended, for failure of the prosecution to prove her guilt beyond reasonable doubt.

The Hold Departure Orders issued by this Court against accused Elenita C. Mababangloob are hereby **RECALLED** and **SET ASIDE**. The bail bonds secured for her provisional liberty are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

Send copy of this Decision to the Bureau of Immigration for its appropriate action.

SO ORDERED.


BERNELITO R. FERNANDEZ
Associate Justice

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We concur:

AMPARO M. CABOTAJE-TANG

Presiding Justice/Chairperson

RONALD B. MORENO

Associate Justice

ATTESTATION

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

AMPARO M. CABOTAJE-TANG

*Chairperson, Third Division
Presiding Justice*

CERTIFICATION

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

AMPARO M. CABOTAJE-TANG

Presiding Justice

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