



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-20-CRM-0068 to 0073

-versus-

Present:

ERWIN KRISHNA SANTOS,
GIOVANNI MANUEL C. GAERLAN,
MYRNA B. BAYUCAN,
SALVADOR J. GAERLAN (+)¹
Accused.

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

Promulgated:

March 13, 2024 *JP*

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DECISION

GOMEZ-ESTOESTA, J.:

In her capacity as Treasurer and Member of the Board of Trustees of Focus on Development of Goals Foundation, Inc. (FOCUS) at the time of the alleged commission of the offense charged, private accused **MYRNA B. BAYUCAN** ("accused Bayucan"), among others, was charged with Violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and Malversation of Public Funds under Article 217 of the Revised Penal Code, under the following Informations:

SB-20-CRM-0068

The undersigned Graft Investigation and Prosecution Officer II of the Office of the Ombudsman accuses **ERWIN KRISHNA NAKPIL SANTOS, GIOVANNI MANUEL CORTEZ GAERLAN, MYRNA B. BAYUCAN AND SALVADOR J. GAERLAN**, of violating Section 3 (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, committed as follows:

In July 2011, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers then President **ERWIN KRISHNA NAKPIL SANTOS** (Santos) of Philippine Forest Corporation (PFC), while in the performance of his administrative and/or official functions and conspiring with private individuals President **GIOVANNI MANUEL CORTEZ**

¹ Dismissed due to death per Minute Resolution dated March 27, 2023. (pp.503-504)

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GAERLAN (G. Gaerlan), Treasurer MYRNA B. BAYUCAN (Bayucan) and Corporate Secretary SALVADOR J. GAERLAN (S. Gaerlan), all of Focus on Development Goals Foundation, Inc. (FOCUS), acting with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to G. Gaerlan, Bayucan, S. Gaerlan and FOCUS in the amount of at least THREE MILLION FIVE HUNDRED THOUSAND PESOS (P 3,500,000.00) sourced from the Priority Assistance Development Fund (PDAF) of Senator Manuel M. Lapid through a scheme described as follows:

(a) Santos, S. Gaerlan and G. Gaerlan entered into two (2) Memoranda of Agreement (MOA) for implementation by FOCUS of Lapid's PDAF-funded projects amounting to P5,000,000.00 covered by SARO No. F-11-00989;

(b) Santos facilitated, processed, and approved the disbursement of the first tranche of the subject PDAF covered by Disbursement Voucher (DV) No. 11 07-0012 in the amount of P3,500,00.00, thus certifying that the documents are complete and proper, and signing the Landbank Check No. 347712, with Bayucan then receiving and depositing said check in the said amount to FOCUS' accounts and eventually issuing a receipt for the same;

(c) S. Gaerlan, Bayucan and G. Gaerlan prepared and signed the project proposals, work and financial plan, project physical report, and other liquidation documents;

(d) Accused committed the above acts without PFC conducting the public bidding required under Republic Act No. 9184 and its implementing rules and regulations, and with FOCUS being unqualified to undertake the projects and failing to actually implement the same, with accused not liquidating the disbursed amount.

CONTRARY TO LAW.

SB-20-CRM-0069

The undersigned Graft Investigation and Prosecution Officer II of the Office of the Ombudsman accuses ERWIN KRISHNA NAKPIL SANTOS, ALBERT MANIBOG RASALAN, GIOVANNI MANUEL CORTEZ GAERLAN, MYRNA B. BAYUCAN AND SALVADOR J. GAERLAN, of violating Section 3 (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), committed as follows:

In March 2012, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers then President ERWIN KRISHNA NAKPIL SANTOS (Santos), then Department Manager ALBERT MANIBOG RASALAN, both of Philippine Forest Corporation (PFC), while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals President GIOVANNI MANUEL CORTEZ GAERLAN (G. Gaerlan), Treasurer MYRNA B. BAYUCAN and Corporate Secretary SALVADOR J. GAERLAN (S. Gaerlan), all of Focus on Development Goals Foundation, Inc. (FOCUS), acting with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to G. Gaerlan, Bayucan, S. Gaerlan and FOCUS in the amount of at least THREE HUNDRED FIFTY THOUSAND PESOS (P 350,000.00) sourced from the Priority Assistance Development Fund (PDAF) of then Senator Manuel M. Lapid through a scheme described as follows:

(a) Santos, S. Gaerlan and G. Gaerlan entered into two (2) Memoranda of Agreement (MOA) for implementation by FOCUS of Lapid's PDAF-funded projects amounting to P5,000,000.00 covered by SARO No. F-11-00989;

(b) Santos, along with Rasalan, facilitated, processed, and approved the disbursement of the second tranche of the subject PDAF covered by unnumbered and undated Disbursement Voucher (DV) in the amount of P350,00.00, thus certifying that the documents are complete and proper, and signing the Landbank Check No. 347774, with S. Gaerlan then receiving and depositing said check in the said amount to FOCUS' accounts and eventually issuing a receipt for the same;

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(c) S. Gaerlan, Bayucan and G. Gaerlan prepared and signed the project proposals, work and financial plan, project physical report, and other liquidation documents;

(d) Accused committed the above acts without PFC conducting the public bidding required under Republic Act No. 9184 and its implementing rules and regulations, and with FOCUS being unqualified to undertake the projects and failing to actually implement the same, with accused not liquidating the disbursed amount.

CONTRARY TO LAW.

SB-20-CRM-0070

The undersigned Graft Investigation and Prosecution Officer II of the Office of the Ombudsman accuses ERWIN KRISHNA NAKPIL SANTOS, ALBERT MANIBOG RASALAN, GIOVANNI MANUEL CORTEZ GAERLAN, MYRNA B. BAYUCAN AND SALVADOR J. GAERLAN, of violating Section 3 (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, committed as follows:

In March 2012, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers then President ERWIN KRISHNA NAKPIL SANTOS (Santos), then Department Manager ALBERT MANIBOG RASALAN, both of Philippine Forest Corporation (PFC), while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals President GIOVANNI MANUEL CORTEZ GAERLAN (G. Gaerlan), Treasurer MYRNA B. BAYUCAN and Corporate Secretary SALVADOR J. GAERLAN (S. Gaerlan), all of Focus on Development Goals Foundation, Inc. (FOCUS), acting with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to G. Gaerlan, Bayucan, S. Gaerlan and FOCUS in the amount of at least SEVEN HUNDRED FIFTY THOUSAND PESOS (P 750,000.00) sourced from the Priority Assistance Development Fund (PDAF) of then Senator Manuel M. Lapid (Lapid) through a scheme described as follows:

(a) Santos, S. Gaerlan and G. Gaerlan entered into two (2) Memoranda of Agreement (MOA) for the implementation by FOCUS of Lapid's PDAF funded projects amounting to P5,000,000.00 covered by SARO No. F-11-00989;

(b) Santos, along with Rasalan, facilitated, processed, and approved the disbursement of the second tranche of the subject PDAF covered by Disbursement Voucher (DV) No. 12-03-0072 in the amount of P750,000.00, thus certifying that the documents are complete and proper, and both Santos and Rasalan signing the Landbank Check No. 347772, with S. Gaerlan then receiving and depositing said check in the said amount to FOCUS' accounts and eventually issuing a receipt for the same;

(c) S. Gaerlan, Bayucan and G. Gaerlan prepared and signed project proposals, work and financial plan, project physical report, and other liquidation documents;

(d) Accused committed above acts without PFC conducting the public bidding required under Republic Act No. 9184 and its implementing rules and regulations, and with FOCUS being unqualified to undertake the projects, with accused not liquidating the disbursed amount.

CONTRARY TO LAW.

SB-20-CRM0-0071

The undersigned Graft Investigation and Prosecution Officer II of the Office of the Ombudsman accuses ERWIN KRISHNA NAKPIL SANTOS, GIOVANNI MANUEL CORTEZ GAERLAN, MYRNA B. BAYUCAN AND SALVADOR J. GAERLAN, of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) committed as follows:

In July 2011, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers then

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President ERWIN KRISHNA NAKPIL SANTOS (Santos) of Philippine Forest Corporation (PFC), while in the performance of his administrative and/or official functions, having in his custody public funds in the amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P 3,500,000.00) sourced from Senator Manuel M. Lapid's PDAF, for which amount he was accountable, and conspiring with private individuals President GIOVANNI MANUEL CORTEZ GAERLAN (G. Gaerlan), Treasurer MYRNA B. BAYUCAN and Corporate Secretary SALVADOR J. GAERLAN (S. Gaerlan), all of Focus on Development Goals Foundation, Inc. (FOCUS), did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent or, through abandonment or negligence, allow G. Gaerlan, Bayucan, S. Gaerlan and FOCUS to take said public funds through the following scheme:

(a) Santos, S. Gaerlan and G. Gaerlan entered into two (2) Memoranda of Agreement (MOA) for implementation by FOCUS of Lapid's PDAF-funded projects amounting to P5,000,000.00 covered by SARO No. F-11-00989;

(b) Santos facilitated, processed, and approved the disbursement of the first tranche of the subject PDAF covered by Disbursement Voucher (DV) No. 11-07-0012 in the amount of P3,500,00.00, thus certifying that the documents are complete and proper, and signing the Landbank Check No. 347712, with Bayucan then receiving and depositing said check in the said amount to FOCUS' accounts and eventually issuing a receipt for the same;

(c) S. Gaerlan, Bayucan and G. Gaerlan prepared and signed the project proposals, work and financial plan, project physical report, and other liquidation documents;

(d) Accused committed the above acts without PFC conducting the public bidding required under Republic Act No. 9184 and its implementing rules and regulations, and with FOCUS being unqualified to undertake the projects and failing to actually implement the same, with accused not liquidating the disbursed amount.

CONTRARY TO LAW.

SB-20-CRM-0072

The undersigned Graft Investigation and Prosecution Officer II of the Office of the Ombudsman accuses ERWIN KRISHNA NAKPIL SANTOS, ALBERT M. RASALAN, GIOVANNI MANUEL CORTEZ GAERLAN, MYRNA B. BAYUCAN AND SALVADOR J. GAERLAN, of Malversation of Public Funds through Falsification defined and penalize under Article 217 in relation to Article 171 of the Revised Penal Code (RFC) committed as follows:

In March 2012, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers President ERWIN KRISHNA NAKPIL SANTOS (Santos), and Department Manager ALBERT M. RASALAN (Rasalan), both of Philippine Forest Corporation (PFC), while in the performance of their administrative and/or official functions, having in their custody public funds in the amount of SEVEN HUNDRED FIFTY THOUSAND PESOS (P 750,000.00) sourced from Senator Manuel M. Lapid's PDAF, for which amount they were accountable, and conspiring with one another and with private individuals President GIOVANNI MANUEL CORTEZ GAERLAN (G. Gaerlan), Treasurer MYRNA B. BAYUCAN and Corporate Secretary SALVADOR J. GAERLAN (S. Gaerlan), all of Focus on Development Goals Foundation, Inc. (FOCUS), did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent or, through abandonment or negligence, allow said private individuals to take said public funds by falsifying Official Receipts, Project Physical Report and other liquidating documents to falsely make it appear that PFC undertook and completed the livelihood projects funded by the first tranche release of Senator Lapid's PDAF to secure the release of the second tranche of funds in the aforesaid amount under DV No. 12-03-0072 (covered by SARO No. F-11-00989) through a scheme described as follows:

(a) Santos, S. Gaerlan and G. Gaerlan entered into two (2) Memoranda of Agreement (MOA) for the implementation by FOCUS of Lapid's PDAF funded projects amounting to P5,000,000.00 covered by SARO No. F-11-00989;

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(b) Santos, along with Rasalan, facilitated, processed, and approved the disbursement of the second tranche of the subject PDAF covered by Disbursement Voucher (DV) No. 12-03-0072 in the amount of P750,000.00, thus certifying that the documents are complete and proper, and both Santos and Rasalan signing the Landbank Check No. 347772, with S. Gaerlan then receiving and depositing said check in the said amount to FOCUS' accounts and eventually issuing a receipt for the same;

(c) S. Gaerlan, Bayucan and G. Gaerlan prepared and signed project proposals, work and financial plan, project physical report, and other liquidation documents;

(d) Accused committed above acts without PFC conducting the public bidding required under Republic Act No. 9184 and its implementing rules and regulations, and with FOCUS being unqualified to undertake the projects and failing to actually implement the project, with accused not liquidating the disbursed amount.

CONTRARY TO LAW.

SB-20-CRM-0073

The undersigned Graft Investigation and Prosecution Officer II of the Office of the Ombudsman accuses ERWIN KRISHNA NAKPIL SANTOS, ALBERT M. RASALAN, GIOVANNI MANUEL CORTEZ GAERLAN, MYRNA B. BAYUCAN AND SALVADOR J. GAERLAN, of Malversation of Public Funds through Falsification defined and penalize under Article 217 in relation to Article 171 of the Revised Penal Code (RFC) committed as follows:

In March 2012, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction, accused public officers President ERWIN KRISHNA NAKPIL SANTOS (Santos), and Department Manager ALBERT RASALAN (Rasalan), both of Philippine Forest Corporation (PFC), while in the performance of their administrative and/or official functions, having in their custody public funds in the amount of THREE HUNDRED FIFTY THOUSAND PESOS (P 350,000.00) sourced from Senator Manuel M. Lapid's PDAF, for which amount they were accountable, and conspiring with one another and with private individuals President GIOVANNI MANUEL CORTEZ GAERLAN (G. Gaerlan), Treasurer MYRNA B. BAYUCAN and Corporate Secretary SALVADOR J. GAERLAN (S. Gaerlan), all of Focus on Development Goals Foundation, Inc. (FOCUS), did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent or, through abandonment or negligence, allow said private individuals to take said public funds by falsifying Official Receipts, Project Physical Report and other liquidating documents to falsely make it appear that PFC undertook and completed the livelihood projects funded by the first and second tranche release of Senator Lapid's PDAF to secure the release of the third tranche funds in the aforesaid amount under an unnumbered and undated DV (covered by SARO No. F-11-00989) through a scheme described as follows:

(a) Santos, S. Gaerlan and G. Gaerlan entered into two (2) Memoranda of Agreement (MOA) for the implementation by FOCUS of Lapid's PDAF funded projects amounting to P5,000,000.00 covered by SARO No. F-11-00989;

(b) Santos, along with Rasalan, facilitated, processed, and approved the disbursement of the third tranche of the subject PDAF covered by an unnumbered and undated Disbursement Voucher (DV) in the amount of P350,000.00, thus certifying that the documents are complete and proper, and both Santos and Rasalan signing the Landbank Check No. 347774, with S. Gaerlan then receiving and depositing said check in the said amount to FOCUS' accounts and eventually issuing a receipt for the same;

(c) S. Gaerlan, Bayucan and G. Gaerlan prepared and signed project proposals, work and financial plan, project physical report, and other liquidation documents;

(d) Accused committed above acts without PFC conducting the public bidding required under Republic Act No. 9184 and its implementing rules and regulations, and with FOCUS being unqualified to undertake the projects and failing to actually implement them, with accused not liquidating the disbursed amount.

CONTRARY TO LAW.

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ANTECEDENTS

While the other accused in these cases were arrested, arraigned, and subjected to trial on earlier dates, it was only on November 29, 2022 that private accused Myrna B. Bayucan voluntarily surrendered to the jurisdiction of this court.²

On January 19, 2023, accused Bayucan was arraigned and pleaded NOT GUILTY to the charges read to her.³ At this time, her name was amended in the Informations to reveal her middle name, "Balmaceda".

On February 01, 2023, accused Bayucan submitted her Pre-Trial Brief⁴ where she already indicated her intention to enter into a plea bargaining agreement with the Ombudsman. In the court's Minute Resolution dated February 16, 2023,⁵ the court again noted accused Bayucan's intention to apply for a plea-bargaining agreement with the prosecution during its pre-trial conference.

To allot time for her application, the court set the continuation of her pre-trial conference on April 25, 2023. The same, however, was cancelled pursuant to the court's out of town hearing per Resolution dated March 27, 2023.⁶ Meanwhile, Atty. Castro, the counsel of accused Bayucan, was directed to appear on May 10, 2023 to apprise the court of the status of the plea bargaining agreement.

On May 8, 2023, accused Bayucan expressed her intention to apply for a plea bargaining agreement in writing through a letter addressed to the Ombudsman.⁷ Finally, during the pre-trial conference between the prosecution and accused Bayucan on February 15, 2024, the prosecution, through Prosecutor Joshua Tan, manifested that the Ombudsman has approved the plea bargain application of accused Bayucan.⁸

Without prejudice to the court's appreciation of the plea bargain agreement reached by the parties, the court set accused Bayucan's re-arraignment on March 13, 2024.⁹

² Records, Volume 3, p. 330.

³ Id. at pp. 444-445.

⁴ Id. at p. 459. Hard copy was received on Feb. 03, 2023.

⁵ Id. at p. 470.

⁶ Id. at p. 503-504.

⁷ Id. at p. 518.

⁸ Resolution dated February 16, 2024; Records, Volume 4, p. 350.

⁹ Records, Vol. 4, p. 350.

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THE PLEA BARGAINING AGREEMENT

Under Section 2 of Rule 116 of the Revised Rules on Criminal Procedure, the stages when plea bargaining is allowed are stated, thus:

SEC. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. **After arraignment but before trial**, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. [emphasis supplied]

Hence, the court finds that the present intention of accused Bayucan to enter into a plea bargaining agreement with the prosecution, while these cases are still at the pre-trial stage, is proper.

In open court, accused Bayucan manifested that her intended plea is to the lesser offenses of *Section 89* in relation to *Section 128 of Presidential Decree No. 1445* for the charges of *Section 3(e) of R.A. No. 3019* and *Article 218 of the Revised Penal Code* for the charges of *Article 217 of the Revised Penal Code*. Accused Bayucan was fully apprised of the consequences of a plea of guilty to a lesser offense.

In clear terms, she was asked, and thereafter stated in the affirmative, that she understood the nature of the plea, and that it is inevitably a judgement of conviction; that if she pleaded guilty to the charge, she is deemed to have admitted all the accusations alleged in the Information, and that the consequent penalties may be imposed, inclusive of her civil liability.

The prosecution, on the other hand, is in full support of the plea bargaining as it no longer intends to present evidence against said accused. As manifested in open court, the Ombudsman has given his approval to the plea bargain agreement.

THE RULING OF THE COURT

The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter that is addressed entirely to the sound discretion of the trial court.¹⁰

In this case, the plea bargain agreement is summarized, as follows:

¹⁰ *People v. Villarama*, G.R. No. 99287, June 23, 1992, citing *Manuel v. Velasco*, G.R. No. 94732, February 26, 1991.

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Criminal Case Nos.	Original Offenses	Lesser Offenses
SB-20-CRM-0068 SB-20-CRM-0069 SB-20-CRM-0070	Sec. 3(e) of R.A. No. 3019	Sec. 89 in relation to Sec. 128 of P.D. 1445
SB-20-CRM-0071	Art. 217 of the RPC (Malversation of Public Funds)	Art. 218 of the RPC
SB-20-CRM-0072 SB-20-CRM-0073	Art. 217 of the RPC in relation to Article 171 of the Revised Penal Code (Malversation of Public Funds through Falsification)	Art. 218 of the RPC

Section 3(e) of R.A. No. 3019 provides:

Sec. 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 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.

Meanwhile, Section 89 in relation to Section 128 of P.D. No. 1445 (State Audit Code of the Philippines) states:

Section 89. *Limitations on cash advance.* No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

XXX XXX XXX

Section 128. *Penal provision.* Any violation of the provisions of Sections 67, 68, 89, 106, and 108 of this Code or any regulation issued by the Commission implementing these sections, shall be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

A matrix of the elements of the offense charged, which is *Violation of Sec. 3(e) of R.A. 3019* and, the lesser plea of *Section 89 in relation to Section 128 of P.D. No. 1445* would show the following notable variances:

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Sec. 3(e) of RA 3019	Sec. 128 of PD 1445
(1) That the accused is a public officer or private person charged in conspiracy with the former	1. Accused is a public officer or private individual having acted in concert with the public officer
(2) That said public officer commits the prohibited acts during the performances of his or her official duties or in relation to his or her public positions	2. Accused is the accountable officer for the public funds by virtue of their position
(3) That he or she causes undue injury to any party, whether the government or a private party	
(4) That such injury is caused by giving unwarranted benefits, advantage or preference to such parties	
(5) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence	
	3. Accused is required to liquidate the said public funds and failed to properly account for the same

The common elements are only found in the position of the accused – who, being a private person, is charged with having acted in conspiracy with the public officer, and that the accused committed the prohibited act in relation to her position. The variance lies in the manner with which the offense is committed.

For both offenses, it is an inherent element that the accused be a public officer or conspired with one and that the offense be committed during the performance of his or her official duties or in relation to his or her public position. On the other hand, the element of manifest partiality, evident bad faith, or gross inexcusable negligence resulting in undue injury or giving another unwarranted benefits, advantage, or preference is different from the element of being required by law or regulation to liquidate and properly account the said public funds.

Article 217 of the Revised Penal Code provides:

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

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In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

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

Meanwhile, Article 218 of the Revised Penal Code provides:

Article 218. Failure of accountable officer to render accounts. -
Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by *prision correccional* in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both.

Again, a matrix of the elements of the offense charged, which is *Article 217 the Revised Penal Code*, and the lesser plea of *Article 218* of the same Code would show the following notable variances:

Malversation of Public Funds SB-20-CRM-0071 (Art. 217 of RPC)	Failure of Accountable Officer to Render Accounts (Art. 218 of RPC)
(1) Accused is a public officer	1. Accused is a public officer
(2) By reason of the duties of his office, accused is accountable for public funds	
(3) Accused appropriates the public funds; or misappropriates or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, wholly or partially;	
	2. Accused is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor
	3. Accused fails to do so for a period of two months after such accounts should be rendered
Through Falsification SB-20-CRM-0072/0073 (Article 217 of the RPC)	
(4) Accused falsifies a document by committing any of the acts mentioned in Article 171 of the Revised Penal Code	

12. f

Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made: (1) that it should be with the consent of the offended party and the prosecutor; and (2) that the plea of guilt should be to a lesser offense which is necessarily included in the offense charged.

The fact that the plea bargaining is presented by both the prosecution and the accused Bayucan satisfies the first requisite.

For the second requisite, a reading of Section 2 of Rule 116 does not require that the existence of the elements be met exactly head-on, for which reason, a plea of guilty is allowed to a lesser offense which is necessarily included in the offense charged. Section 2 is quoted, thus:

Section 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

That the lesser offense be necessarily included in the offense charged only meant that some, if not few, of its elements be included.

At this instance, in the cases for *Violation Sec. 3(e) of R.A. No. 3019*, when the element of the public office or one who conspires with a public officer and that the accused is accountable of the public funds by virtue of their position is present in both offenses. The act of failing to liquidate and/or not having properly accounted public funds can also be seen as tantamount to causing undue injury to the Government. It can be said that the offense of *Sec. 128 of P.D. 1445* is necessarily included in the offense of *Section 3 (e) of R.A. 3019*.

On the other hand, in the cases for *Malversation of Public Funds*, when the element of the public office is present in both offenses and considering that failure to properly render an account may also be a means to malverse public funds, it can be said that the offense of *Article 218 of the Revised Penal Code* is necessarily included in the offense of *Article 217 of the Revised Penal Code*. This applies in the same way even if the crime of malversation is complexed with falsification of public documents.

Whether such plea bargaining be approved, the case of *Daan v. Sandiganbayan*¹¹ has significantly reiterated:

Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case

¹¹ G.R. Nos. 163972-77, March 28, 2008.

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subject to court approval. It usually involves the defendants pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.

XXX . XXX XXX.

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court, require plea bargaining to be considered by the trial court at the pre-trial conference, viz:

SEC. 1. *Pre-trial; mandatory in criminal cases.* In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) **plea bargaining;**
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

SEC. 2. *Pre-trial agreement.* All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in Section 1 of this Rule shall be approved by the court.

But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case. Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.

At this instance, all the requisites of a valid plea bargain have been met.

Undeniably, plea bargaining in criminal cases is an essential component of the administration of justice. An accused enters into a plea bargaining agreement by admitting his/her guilt with the hope of securing a more lenient punishment, and possibly probation, should the offer be accepted and approved by the court. As such, the tedious process and protracted trial is shortened, and the accused is promptly given a chance at rehabilitation, redemption and reintegration to society. In the same way, plea bargaining benefits the State as the prosecution secures a final conviction with very minimal to nil use of its time and resources. Plea bargaining in criminal cases

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is clearly a procedural mechanism geared towards promoting an efficient, inexpensive and speedy disposition of cases.¹²

By virtue of the plea bargain agreement, accused Bayucan can be allowed to plea bargain to a lesser offense. The plea bargaining agreement is thus considered **APPROVED**.

Pursuant to Section 2 of Rule 116 of the Revised Rules on Criminal Procedure, no amendment of the Information is necessary.

Accused Bayucan is thus subjected to re-arraignment.

Upon re-arraignment of the Informations under SB-20-CRM-0068, SB-20-CRM-0069, and SB-20-CRM-0070 for *Violation of Section 89 in relation to Section 128 of Presidential Decree 1445*, accused Bayucan willingly entered a plea of **GUILTY**.

Upon re-arraignment of the Informations under SB-20-CRM-0071, SB-20-CRM-0072, and SB-20-CRM-0073 for *Failure of Accountable Officer to Render Accounts* under Article 217 of the Revised Penal Code, accused Bayucan likewise willingly entered the plea of **GUILTY**.

Let the respective plea of **GUILTY** in each Information be entered into the records of the case.

WHEREFORE, judgement is hereby rendered, as follows:

1. In SB-20-CRM-0068, SB-20-CRM-0069, and SB-20-CRM-0070, accused **MYRNA BALMACEDA BAYUCAN** is found **GUILTY** beyond reasonable doubt of the lesser offense of **Violation of Section 89 in relation to Section 128 of Presidential Decree 1445** and is hereby imposed to pay a fine of **ONE THOUSAND PESOS (PHP 1,000.00)** in each count, with subsidiary imprisonment in case of insolvency.

2. In SB-20-CRM-0071, SB-20-CRM-0072, and SB-20-CRM-0073, accused **MYRNA BALMACEDA BAYUCAN** is found **GUILTY** beyond reasonable doubt of the lesser offense of **Failure of Accountable Officer to Render Accounts** defined and penalized under Article 218 of the Revised Penal Code and is hereby imposed to pay a fine of **ONE THOUSAND PESOS (PHP 1,000.00)** in each count, with subsidiary imprisonment in case of insolvency.

¹² *People v. Montierro y Ventocilla*, G.R. Nos. 254564, 254974, A.M. No. 21-07-16-SC & A.M. No. 18-03-16-SC, July 26, 2022.

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Every person criminally liable for a felony is also civilly liable.¹³

Since admission of the allegations in the Informations are part of the plea bargain agreement, the amount of damages alleged in the Informations are deemed incorporated as part of the penalty to be imposed, to wit:

Criminal Case No.	Amount of Damage Alleged
SB-20-CRM-0068/SB-20-CRM-0071	PHP 3,500,000.00
SB-20-CRM-0069/ SB-20-CRM-0072	PHP 350,000.00
SB-20-CRM-0070/ SB-20-CRM-0073	PHP 750,000.00

Accused Bayucan is thus found civilly liable to pay said amounts to the government, through the National Treasury, without prejudice to a finding, if any, that the same be made solidary with the other accused.

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

¹³ Article 100, Revised Penal Code.

ATTESTATION

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


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

CERTIFICATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

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REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Seventh Division

March 7, 2024

IN RE: **PP vs. ERWIN KRISHNA SANTOS, et al.,**
for: **Accused Myrna B. Bayucan**

Criminal Case No. **SB-20-CRM-0068 to 0072**

The Honorable Presiding Justice:

We hereby transmit pursuant to Article VIII, Section 13 of the 1987 Constitution, the attestation and certification (page 15) of the **Decision** in the above-entitled case, which is due for promulgation. We attest that the conclusions in the said Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Very truly yours,


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


ZALDY V. TRESPES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice