



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-1562 to 1564**
Plaintiff, For: Violation of Section 3(e)
of R.A. 3019, as amended

SB-17-CRM-1565 to 1566
For: Malversation under Art. 217
of the Revised Penal Code

- versus -

Present

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

RODOLFO V. VALDEZ, ET AL.
Accused.

Promulgated:

OCT 12 2022

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion for Partial Reconsideration* (For Accused Cynthia A. Puyat).¹

In her *Motion for Partial Reconsideration*, accused Ma. Cynthia A. Puyat prays that the Decision dated February 26, 2021, insofar as finding her guilty in SB-17-CRM-1563 and SB-17-CRM-1564 is concerned, be reconsidered, and that she be acquitted of the crimes charged in the said cases. She avers:

1. The judgment was based on inadmissible evidence or documents which were not duly authenticated and based on flawed certification.

¹ Dated March 15, 2021 and filed on even date

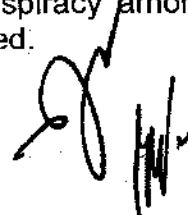
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- a. She and her co-accused were found guilty of the crimes charged in SB-17-CRM-1563 and 1564 based on documents allegedly executed by them or on which they affixed their alleged certifications. The prosecution did not present the originals of the said documents, and the ones presented were merely certified copies from the Office of the COA Auditor, but the certification did not show that the documents were certified copies of the originals.
 - b. The Disbursement Vouchers are merely stamped "Certified Xerox Copy" by a certain Alicia R. Aldea, who was not even presented as one of the witnesses for the prosecution.
 - c. None of the prosecution's documentary evidence complied with Sections 24 and 25, Rule 132 of the Rules of Court. Hence, the same cannot be given probative value for lack of authentication.
2. The testimonies of the prosecution's witnesses as to the contents of the documents are hearsay because they do not have personal knowledge of the preparation and execution of the same, and neither are they the custodians of the said documents.
3. Assuming that the prosecutions' documentary evidence and the testimony of its witnesses are admissible, her act of affixing her signatures on the subject disbursement vouchers cannot be equated to manifest partiality, giving undue advantage or gross inexcusable negligence.
- a. The accused are charged with conspiring with one another.
 - b. The conspiracy must be proven as the crime itself. When conspiracy is a means to commit a crime, it is indispensable that the agreement to commit the crime among all the conspirators, or their community of criminal design must be alleged and competently shown.
 - c. The prosecution cannot introduce evidence to show the culpability of the accused and any evidence solely to prove the individual liability of each accused cannot be accepted independently without showing the conspiracy.
 - d. The prosecution failed to show that all the accused conspired with each other. In the Decision, there was no finding on the existence of the conspiracy among the accused to commit the crimes charged.



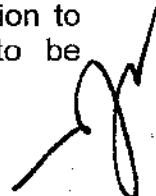
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- e. The prosecution must have proven that the accused participated in the entire procurement process. The procurement process does not begin and end with the disbursement stage of the transaction.
 - f. The prosecution failed to prove the conspiracy because it did not include all the public officials who participated in the transaction. The accused merely participated in the disbursement stage. Insofar as she is concerned, her role was to simply certify as to the availability of funds and completeness of documents.
 - g. Without all the participants in the subject transaction being impleaded, conspiracy cannot be established. The Court cannot convict the accused if the alleged conspiracy was not established.
 - h. In the Decision, the Court found that although the award of the contracts to the suppliers was unwarranted, it was held that the giving of such unwarranted benefit was not the result of accused Valdez's act of issuing his Certifications.
 - i. The BAC and the Head of the Procuring Entity (HoPE) are responsible for the recommendation and award of contracts. Had Gov. Marasigan acted with the requisite diligence, and did not approve the procurement solely on the basis of the Certifications issued by accused Valdez, she would not have certified as to the completeness of the documents submitted to her based on a direct contracting mode of procurement.
 - j. The Court's finding that the accused gave unwarranted benefits to the suppliers by processing the payments despite its recognition of the responsible officers involved in the procurement process is a drastic departure from the prosecution's theory of conspiracy.
4. She acted in good faith.
- a. Her duty was to evaluate the documents forwarded to her pursuant to the guidelines set under Sections 366, 370 and 371 of the Local Government Code. She followed the minimum requirements under the said provisions, considering that the HoPE had not yet implemented the procurement procedure under R.A. No. 9184.
 - b. She is not a lawyer, and she was not in a position to determine whether the procurement process to be



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followed was under R.A. No. 9184 or R.A. No. 7160. She was expected only to follow what was indicated in the documents submitted to her for her ratification.

- c. Such situation negates malice, ill-will or gross inexcusable negligence or bad faith on her part.

In its *Manifestation*,² the prosecution manifests that its *Comment/Opposition* dated March 23, 2021 is intended as its consolidated comment/opposition to accused Valdez, Fortunato and Puyat's respective *Motions for Partial Reconsideration*. In its *Comment/Opposition (Re: Motion for Partial Reconsideration of the Decision Promulgated on February 26, 2021)*,³ the prosecution counters:

1. The arguments in accused Valdez and Fortunato's Motion are mere reiterations or rehash of their contentions in their Memorandum and earlier submissions.
2. Contrary to the claim of accused Valdez and Fortunato, the evidence on record and the accused's admissions established the essential elements of Violation of Sec. 3(e) of R.A. No. 3019.
 - a. The first element is undisputed. During the pre-trial, the parties stipulated that at the time material to the cases, the accused were all public officers, and that their acts were committed in the performance of their official duties.
 - b. The second element is present. It was shown that the accused acted with manifest partiality, evident bad faith and/or gross inexcusable negligence when they repeatedly affixed their signatures in the pertinent documents to facilitate the disbursement of ₱3,250,000.00 to Exquisite, Chempro and SAKA, knowing fully well that there were irregularities in the procurement process.
 - c. The third element was also proved. The accused's acts resulted in extending unwarranted benefit to the suppliers. The official receipts issued by the suppliers would show that payments were made to them. The prosecution further showed that the supposed recipients did not actually receive the subject fertilizers.

² Dated September 9, 2022

³ Dated March 23, 2021 and filed by electronic mail on March 25, 2021

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3. As for the subject checks, the prosecution proved the loss or destruction or non-availability of the originals through the certifications issued by prosecution witnesses Audit Team Leader Emmerly Jane D. Masangkay, OIC-Provincial Accountant Segunda Daisy Reyes, and OIC-Provincial Treasurer Astronica G. Salcedo.
4. The prosecution presented Julieta B. Lansangan, Chief of the Fertilizer Regulations Division of the FPA, to identify and authenticate the Certifications issued by Wilfredo C. Roldan.
5. The Court's ruling that accused Valdez's act of issuing certifications in favor of Exquisite and Chempro did not result in giving unwarranted benefits to them pertains only to his said act, and not to the accused's acts in connection with the processing of the payments to the suppliers, which were also done with gross inexcusable negligence and resulted in extending unwarranted benefits to the suppliers.

THE COURT'S RULING

There is nothing in accused Puyat's *Motion for Partial Reconsideration* that would warrant the reversal of the Decision dated February 26, 2021, and hence, it should be denied.

Accused Puyat argues that the judgment against her was based on inadmissible evidence because the originals of the documents were not presented, and the documentary exhibits were merely stamped "CERTIFIED XEROX COPY" by a certain Alicia R. Aldea, who was not even presented as a witness for the prosecution. Furthermore, the prosecution's witnesses had no personal knowledge of the due preparation, execution and authenticity of the said documents, and neither were the said witnesses the custodian of the said documents.

While there is no question that the prosecution's documentary evidence, the Disbursement Vouchers⁴ pertaining to the transactions with Chempro and SAKA in particular, are mere copies, they are nevertheless admissible as secondary evidence. Sec. 5, Rule 130 of the Rules of Court⁵ provides:

⁴ Exhibits HH and SS

⁵ The Court ruled on the admissibility of the prosecution's exhibits in the Resolution dated February 18, 2019 (Record, Vol. 3, pp. 341-342), before the effectivity of the *2019 Amendments to the 1989 Revised Rules on Evidence*.



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Sec. 5. When original document unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Here, the loss or unavailability of the said Disbursement Vouchers was proved by the Certification dated July 4, 2018⁶ issued by Atty. Emmerly Jane D. Masangkay, Audit Team Leader, and the Certification dated August 2, 2018⁷ issued by Segunda Daisy C. Reyes, OIC-Provincial Accountant. The said Certifications read:

Exhibit QQQ

This is to certify that upon assumption to Office, pursuant to Office Order No. 2013-113 dated January 11, 2013 as Audit Team Leader of Team 1, Local Government Sector-Oriental Mindoro Province, the undersigned caused the inventory of all the stored documents and records of the Province submitted to the Commission on Audit; that it was discovered that substantial portion of the documents and records were destroyed by the series of flooding that devastated the City of Calapan and the Province of Oriental Mindoro in 2005 and ensuing years; and that the result of the inventory shows that there are no surviving records at the Commission on Audit, Local Government Sector, Audit Team No. R4B-01 pertaining to the Province of Oriental Mindoro's procurement of Exquisite soil conditioner, Exquisite Bio Organic Fertilizer, Orgamin DA and SAKA Organic Fertilizer in April 2004.

Exhibit UUU-3

This is to certify that to date, the documents subject of the SUBPOENA DUCES TECUM (SB-17-CRM-1562-1566) dated 27 July 2018 issued by the Office of the Special Prosecutor of the Office of the Ombudsman cannot be found and [sic] unavailable in the Office of the Provincial Accountant of the Provincial Government of Oriental Mindoro, viz:

1. Disbursement Voucher No. 2004-4-1243 dated 4/22/04 (3,250,000.00) and supporting documents;
2. Disbursement Voucher (1,750,000.00) & supporting documents;
3. Check No. 339375 dated 28 April 2004 (Exquisite Focus Phils., Inc.), DV and supporting documents;
4. Check No. 339376 dated 28 April 2004 (Chempro Sales), DV and supporting documents; and

⁶ Exhibit QQQ

⁷ Exhibit UUU-3



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5. Check No. 339377 (SAKA Agri Ventures, Inc.), DV and supporting documents;

On the other hand, the existence of the said documents is proved by the issuance of the checks. The *Report of Checks Issued* for the period April 2004,⁸ *Check Disbursement Journal* for the month of April 2004,⁹ and letter dated August 2, 2018 of Astronica G. Salcedo, OIC-Provincial Treasurer,¹⁰ all show that Check No. 339376 dated April 28, 2004 was issued to Chempro Sales, and Check No. 339377 dated April 28, 2004 was issued to SAKA Agri Ventures.

Sec. 344 of Republic Act No. 7160 (R.A. No. 7160) provides:

Sec. 344. Certification, and Approval of, Vouchers. – No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as the GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

x x x

The fact that funds were disbursed means that there was a corresponding disbursement voucher because in the ordinary course of procedure, before a disbursement can be made, the concerned officers, as provided in Sec. 344 of R.A. No. 7160, should make their respective certifications in the said disbursement voucher, and the same must be approved by the local chief executive, except if the disbursement involves regularly recurring administrative expenses.

The foregoing, alone, may prove accused Puyat's participation in the subject transactions. However, her own admissions erase any

⁸ Exhibit UUU-1

⁹ Exhibit UUU-2

¹⁰ Exhibit VVV

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lingering doubts as to her participation. In her Judicial Affidavit dated September 12, 2019,¹¹ she declared that she made the certifications in the subject Disbursement Vouchers. The pertinent portion¹² of the said Judicial Affidavit reads:

Q4: Miss Witness, do you know the nature and cause of the accusation in these cases?

A: Yes, Ma'am. I am being charged to have allegedly conspired with my co-accused for the following:

1. One (1) count for violation of Section 3 (e) RA 3019 for the procurement of 17 boxes/cartons of soil conditioner and 18 sachets of bio-organic fertilizers from Exquisite Focus Inc. valued at Php 999,992.00;
2. One (1) count for violation of Section 3 (e) RA 3019 and one (1) count for Malversation for the procurement of 1,000 liters of Orgamin DA from Chempro Sales valued at Php 1,000,000.00; and
3. One (1) count for violation of Section 3 (e) RA 3019 and one (1) count for Malversation for the procurement of 2,500 bags of SAKA organic fertilizers from SAKA Agriventures valued at PhP 1,250,000.00.

Q5: What can you say about the truthfulness or falsity of the accusations against you?

A: These accusations are false. I did not commit the crimes charged, Ma'am.

Q6: Now, in connection with the transactions mentioned which are the basis of the charges against you, what is your participation, if any?

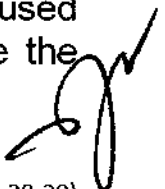
A: I merely certified the completeness, propriety of supporting documents, and availability of funds for the mentioned procurement transactions, Ma'am.

(underscoring supplied)

Next, accused Puyat argues that she cannot be convicted based on her individual acts because the Informations allege that the accused conspired with each other, and the prosecution failed to prove the

¹¹ Judicial Affidavit (Of Ma. Cynthia A. Puyat) dated September 12, 2019 (Record, Vol. 4, pp. 37-65)

¹² Judicial Affidavit (Of Ma. Cynthia A. Puyat) dated September 12, 2019, pp. 2-3 (Record, Vol. 4, pp. 38-39)



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existence of conspiracy. For conspiracy to exist, all persons who participated in the subject transactions, from the procurement stage to the disbursement stage, should have been impleaded. She could not have been a conspirator because she did not participate in the procurement stage.

Accused Puyat's argument fails to persuade. In *Macapagal-Arroyo v. People*,¹³ the Supreme Court explained that there is conspiracy when two or more persons agree to commit a crime, and decide to commit it. There are two forms of conspiracy—express and implied. Conspiracy in the express form is proved by an actual agreement among the co-conspirators. However, implied conspiracy is proved through the mode and manner of the commission of the offense, or from the accused's acts indubitably pointing to a joint purpose, a concert of action and a community of interest. *Viz.:*


Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it. In this jurisdiction, conspiracy is either a crime in itself or a mere means to commit a crime.

x x x

In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.

In *Jaca v. People*,¹⁴ it was held that there was conspiracy among therein petitioners when they processed the cash advances despite the irregularities in the voucher and the absence of supporting documents. *Viz.:*


¹³ G.R. Nos. 220598 and 220953, July 19, 2016

¹⁴ G.R. Nos. 166967, 166974 and 167167, January 28, 2013


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For emphasis, the petitioners are all heads of their respective offices that perform interdependent functions in the processing of cash advances. The petitioners' attitude of buck-passing in the face of the irregularities in the voucher (and the absence of supporting documents), as established by the prosecution, and their indifference to their individual and collective duties to ensure that laws and regulations are observed in the disbursement of the funds of the local government of Cebu can only lead to a finding of conspiracy of silence and inaction, contemplated in *Sistoza*. The Sandiganbayan correctly observed that—

Finally, it bears stressing that the separate acts or omissions of all the accused in the present case contributed in the end result of defrauding the government. Without anyone [sic] of these acts or omissions, the end result would not have been achieved. Suffice it to say that since each of the accused contributed to attain the end goal, it can be concluded that their acts, taken collectively, satisfactorily prove the existence of conspiracy among them.

While this Court, in the assailed Decision, did not explicitly hold that the accused conspired with each other, it discussed that under Sec. 344 of R.A. No. 7160, and Sections 101 and 102, Chapter 5 of *Manual on the New Government Accounting System For Local Government Units, Volume 1 (Manual on NGAS for LGUs, Vol. 1)*, the accused's respective certifications were necessary for disbursements from trust funds. The accused's acts in connection with the processing of the payments to the suppliers despite the irregularities in the procurement process constitute gross inexcusable negligence, which resulted in giving unwarranted benefits to the said suppliers. In other words, although there was no evidence showing the agreement among the accused, their respective acts, which were necessary for the disbursement of the subject funds, all contributed to giving unwarranted benefits to the suppliers, and prove the conspiracy among them.

At any rate, it cannot be said that an accused cannot be convicted on the basis of his or her individual acts if the Information alleges conspiracy. In *Quidet v. People*,¹⁵ the Supreme Court held that if the existence of conspiracy was not proved beyond reasonable doubt, an accused is criminally liable only for his or her individual acts. Assuming that the prosecution failed to prove the existence of conspiracy, the accused may still be held criminally liable on the basis of their individual acts. As explained in the assailed Decision, each of the accused's individual acts were done with gross inexcusable

¹⁵ G.R. No. 170289, April 8, 2010

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negligence and caused the giving of unwarranted benefits to the suppliers.

Finally, the Court already addressed accused Puyat's claim that she acted in good faith. For convenience, the pertinent portion¹⁶ of the assailed Decision is hereunder quoted:

Accused Puyat argues that she cannot be faulted for making her certifications in the Disbursement Vouchers because at the time of the subject transaction, she had not yet undergone a seminar on R.A. No. 9184, which was not yet being implemented in the province. According to her, she certified the completeness of the supporting documents because the transactions were in accordance with Sections 366, 370, 371. This Court is not persuaded.

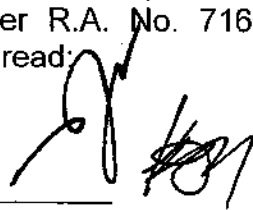
That the provincial officers had not yet undergone seminars on R.A. No. 9184 is not an excuse for not complying with its provisions. Ignorance of the law excuses no one from compliance therewith. Furthermore, R.A. No. 9184 took effect on January 26, 2003. At the time of the subject transactions, said law had already been in effect for around one (1) year and three (3) months. Finally, accused Puyat—as well as her co-accused—could have been excused for not strictly complying with R.A. No. 9184 had the subject transactions strictly complied with the provisions of R.A. No. 7160, showing that the accused performed their respective functions in good faith. However, this is not the case.

As in R.A. No. 9184, under R.A. No. 7160, the general rule is that acquisition of supplies by local government units shall be through competitive bidding. As an exception, the local government unit may procure supplies without public bidding when the conditions for the alternative modes of procurement under the pertinent provisions are met. Sec. 356 of R.A. No. 7160 reads:

Sec. 356. General Rule in Procurement or Disposal. – Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. Supplies which have become unserviceable or no longer needed shall be sold, whenever applicable, at public auction, subject to applicable rules and regulations.

(underscoring supplied)

The pertinent provisions on procurement without public bidding under R.A. No. 7160 and its Implementing Rules and Regulations read:



¹⁶ Decision dated February 26, 2021, pp. 59-61



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R.A. No. 7160

Sec. 370. Procurement from Duly Licensed Manufacturer. – Procurement may be made directly from duly licensed manufacturers in cases of supplies of Philippine manufacture or origin and in case there are two (2) or more manufacturers of the required supplies, canvass of the known manufacturers shall be conducted to obtain the lowest price for the quality of the said supplies.

Sec. 371. Procurement from Exclusive Philippine Agent or Distributors. – Procurement may, in the case of supplies of foreign origin, preferably be made directly from the exclusive or reputable Philippine distributors or agents, subject to the following conditions:

- (a) That the Philippine distributor has no subdealers selling at lower prices; and
- (b) That no suitable substitutes of substantially the same quality are available at lower prices.

Implementing Rules and Regulations

Art. 437. Procurement Without Public Bidding. – The procurement of supplies may be made without the benefit of public bidding under any of the following modes:

x x x

(d) Procurement from Duly Licensed Manufacturers – Procurement of supplies or property may be made directly from duly licensed manufacturers in cases of supplies of Philippine manufacture or origin. The manufacturer must be able to present proof showing that it is a duly licensed manufacturer of the desired product.

In case there are two (2) or more known manufacturers of the required supplies or property, canvass of prices of the known manufacturers shall be conducted to obtain the lowest price for the same quality of said supplies or property.

This award for the procurement of supplies or property from duly licensed manufacturers shall be made by the committee on awards.

(e) Procurement from Exclusive Philippine Agents or Distributors –

(1) Procurement of supplies or property of foreign origin may preferably be made directly from the exclusive or reputable Philippine agents or distributors under the following terms and conditions:

- (i) That the Philippine agent or distributor has no subagents or subdealers selling at lower prices; and
- (ii) That no suitable substitutes of substantially the same quality are available at lower prices.

(2) The award for the procurement of supplies from exclusive Philippine agents or distributors shall be made by the committee on awards.

(underscoring supplied)



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For the transaction with Exquisite Focus, as previously discussed, there was no basis for the determination that there were no subdealers selling at lower prices, and that there were no substitutes of substantially the same quality available at lower prices. For the transactions with Chempro and SAKA, there is no proof that said manufacturers were duly licensed; and no canvass of prices of the known manufacturers of fertilizers was conducted. For all transactions, the contracts were not awarded by the Committee on Awards, which, at the time, had not been convened. The accused cannot claim that they made their respective certifications in the Disbursement Vouchers in good faith.

Under Sec. 474 (b) (5)¹⁷ of R.A. No. 7160, and Sections 101 and 102, Chapter 5 of the *Manual on NGAS for LGUs, Vol. 1*, accused Puyat, as the Provincial Accountant, had the duty to check if the supporting documents attached to the Disbursement Vouchers are appropriate and complete. This is to ensure that public funds are disbursed and released only if the requirements under the law are complied with, as evidenced by the said supporting documents. Even if she had no participation in the determination of the mode of procurement, her duty was to require the concerned office to provide the necessary supporting documents, or at the very least, inform the concerned office that the supporting documents were incomplete, before making her certification in the disbursement voucher. Her act of making her certification in the subject Disbursement Vouchers despite the irregularities in the procurement process and incompleteness of the supporting documents as a result of such irregularities constitutes gross inexcusable negligence.¹⁸

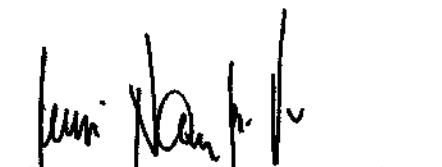
WHEREFORE, accused Puyat's *Motion for Partial Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁷ Sec. 474. *Qualifications, Powers and Duties.* – (a) x x x (b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall: x x x (5) Review supporting documents before preparation of vouchers to determine completeness of requirements; x x x

¹⁸ Please see *Tio v. People*, G.R. Nos. 230132 and 230252, January 19, 2021