Republic of the Philippines
Sandiganbayan
Quezon City
***

SEVENTH DIVISION

MINUTES of the proceedings held on 10 November 2022.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ---------- Chairperson
Justice ZALDY V. TRESPESES ----------Associate Justice
Justice GEORGINA D. HIDALGO ----------Associate Justice

Crim. Case No. SB-16-CRM-0249 to 0251 - People vs. ROZZANO RUFINO B. BIAZON, et al.,

This resolves the following:

1. Accused Maria Rosalinda M. Lacsamana's "Motion for Leave of Court to File Demurrer to Evidence" dated 7 October 2022;[1]
2. Accused Dennis Cunanan's "Motion for Leave to File Demurrer to Evidence" dated 10 October 2022;[2]
3. Accused Mario L. Relampagos, Rosario S. Nunez, Lalaine N. Paule and Marilou D. Bare's "Joint Motion for Leave of Court to File Demurrer to Evidence" dated 10 October 2022;[3]
4. Accused Francisco Figura's "Manifestation with Motion for Leave to File Demurrer to Evidence" dated 21 October 2022;[4]
5. Accused Rozzano Rufino Biazon's "Motion for Leave of Court (To File Demurrer to Evidence)" dated 25 October 2022;[5] and
6. The prosecution's "Consolidated Comment/Opposition to the 1) Motion for Leave to File Demurrer to Evidence dated October 7, 2022 filed by accused Ma. Rosalinda M. Lacsamana (Lacsamana); 2) Motion for Leave to File Demurrer to Evidence dated October 10, 2022 filed by accused Dennis L. Cunanan (Cunanan); 3) Joint Motion for Leave of Court to File Demurrer to Evidence dated October 10, 2022 filed by accused Mario L. Relampagos (Relampagos), Rosario S. Nunez (Nunez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare); 4) Manifestation with Motion for Leave to File Demurrer to Evidence dated October 21, 2022 filed by accused Francisco B. Figura (Figura); and 5) Motion for Leave of Court (to file Demurrer to Evidence) filed by accused Rozzano Rufino B. Biazon (Blazon) dated October 25, 2022" dated 28 October, 2022.[6]

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[1] Record, Vol. 16, pp. 565-573.
[2] Id. at 531-638.
[3] Record, Vol. 17, pp. 19-39.
[4] Id. at 86-90.
[5] Id. at 91-101.
[6] Id. at 121-131.

TRESPESES, *J.*

Submitted for resolution are the motions for leave of court to file demurrers to evidence by accused Rosalinda M. Lacsamana ("Lacsamana"), Dennis Cunanan ("Cunanan"), Mario Relampagos, Rosario Nunez, Lalaine Paule and Marilou Bare ("Relampagos, et al."), Franciso Figura ("Figura") and Rozzano Rufino Biazon ("Biazon"), as well as the comment/opposition thereon by the prosecution.

ACCUSED LACSAMANA'S MOTION

In her motion, accused Lacsamana alleges that she did not commit any crime and the prosecution failed to prove her guilt beyond reasonable doubt.

She avers that her participation in these cases is founded on the following documents which she signed, to wit:

Exhibit A-70 / B-9 – Hand-written memorandum of Maria Rosalinda M. Lacsamana, Technology and Resource Center, addressed to Cash/MAV/Accounting

Exhibit A-75 / B-11 – Memorandum of Maria Rosalinda M. Lacsamana for Antonio Y. Ortiz dated 3 January 2008

Exhibit A-83 / B-20 – Disbursement Voucher No. 012008051355 for Philippine Social Development Foundation, Inc. ("PSDFI"), amounting to ₱300,000.00

Exhibit A-84 / B-21 – Memorandum of Maria Rosalinda M. Lacsamana for Dennis L. Cunanan dated 27 May 2008

Lacsamana claims that the tenor of her Release Memoranda was merely recommendatory. It cannot be interpreted as a command to Director General Antonio Ortiz, her superior at the Technology Resource Center ("TRC"), who has the final say as to which Non-Governmental Organization ("NGO") will be awarded the project. The Release Memoranda even state at the bottom thereof, "For your consideration," indicating that the choice of NGO rested with Ortiz.

She was only performing tasks which she was customarily doing at that time and signed the Memorandum as part of her official duties.

Lacsamana adds that, as may be gleaned from the tenor thereof, the first Release Memorandum she prepared came after the Memorandum of Agreement ("MOA") had already been concluded by the legislator, TRC and the NGO. It was supported by documents, such as Special Allotment Release Orders ("SAROs"), the Indorsement letter from the legislator, the MOA entered into by the legislator, TRC and the NGO, and the project proposal.

Lacsamana adds that she does not personally solicit Priority Development Assistance Fund ("PDAF") funded projects from legislators, as she does not even personally know any of them, their staff or the NGOs and their representatives. Neither was she charged with overseeing the processing of the PDAF releases to the NGO, nor assisting in the preparation/review of the MOA between TRC, Congressman Biazon and the concerned NGO, nor implementing and monitoring the project.

She alleges that while her act may be considered negligent, it falls short of bias, bad faith, dishonest intention, consciousness to commit a wrong, much less a crime.

More importantly, Lacsamana asserts that there was no evidence that she received any kickback or anything of value in consideration of her preparation of the Release Memoranda.

She avers that there is also no evidence to show she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take PDAF funds. She has nothing to do with the release of the checks to the NGO and could not be considered to have constructive possession and control of the money. The control thereof rests with the Director General, who, as head of the TRC, was immediately and primarily responsible for all government funds and property of the agency.

Further, she claims that there is no evidence to show that she unjustly enriched herself from commissions, gifts, or kickbacks from the PDAF funds.

Moreover, Lacsamana stresses that she is not a lawyer, as to be reasonably expected to know the existence of all the Commission on Audit ("COA") Circulars on the matter. Thus, while Lacsamana might have been ignorant of the circulars, she was not motivated by any bias, bad faith, dishonest intention, consciousness to commit a wrong, much less a crime.

Anent the allegation of conspiracy, Lacsamana notes that her link to the supposed conspiracy is her act of preparing and signing the Memoranda. However, the prosecution failed to introduce evidence to show that this act was in concurrence with a criminal design. No evidence was presented to show Lacsamana's conduct before, during or after the commission of the alleged

crime to suggest that she was acting in conspiracy with another. Hence, although she may have apparently played a role in the release of the PDAF by making the Release Memoranda and signing the Disbursement Voucher, these do not prove conspiracy because her acts were ministerial and without conscious and deliberate intent to be involved in the scheme.

Given that Lacsamana knows some of her co-accused from the TRC, the prosecution should have presented evidence to prove that their relationship was not merely that of a professional nature but more of a connection and a conspiracy to accomplish an anomalous transaction which involves a scheme to funnel the PDAF through the NGOs and misappropriate the same.

Lacsamana concludes that the prosecution's evidence did not meet the test of moral certainty in order to establish that she was part of a conspiracy to commit the offense.

ACCUSED CUNANAN'S MOTION

In his Motion, Cunanan seeks leave to file his Demurrer to Evidence on the ground that the evidence presented by the prosecution is insufficient to prove that he is guilty of the crimes charged beyond reasonable doubt.

Cunanan claims that the prosecution failed to prove the second and third elements of violation of Section 3(e) of R.A. No. 3019.

Cunanan asserts that no evidence was presented to show that he had any participation in selecting PSDFI as the NGO involved in Biazon's 2007 PDAF, or that he was, in any manner, part of PSDFI, or that he even knew any of the officers and/or directors of the said NGO for him to be partial to it, let alone make his partiality manifest. Thus, it is highly speculative to presume that Cunanan benefited from the execution of these documents.

Cunanan argues that while the prosecution hinges its argument on the supposed irregularities in the accreditation of the NGO, it did not sufficiently establish that he participated in these irregularities or that he consciously and fraudulently signed the subject disbursement voucher to pursue self-interest.

As for "undue injury" in the context of Section 3 (e) of R.A. 3019, its meaning is akin to the civil law concept of "actual damage."[7] Thus, causing undue injury means actual injury or damage and must be proven by evidence.[8]

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[7] *Virginia M. Guadines v. Sandiganbayan*, G.R. No. 164891, 6 June 2011.
[8] *Asian Aerospace Corporation Vs. Office of the Ombudsman, et al.*, G.R. No. 195821, 12 October 2020.

Cunanan contends in this regard that the alleged undue injury was also not present as the prosecution failed to prove that Biazon's PDAF-funded project was not implemented. None of the government's witnesses categorically stated, based on their personal knowledge, the lack of project implementation, contrary to Section 22 of Rule 130 of the Rules of Court.[9] Cunanan concludes that because the Government failed to prove that the projects were not implemented, it failed to prove the third element – undue injury.

Cunanan claims that the only overt act that the prosecution can link to him is his alleged signature in the TRC disbursement voucher. However, assuming this, the prosecution still failed to establish that his act of allegedly signing the disbursement voucher was made with criminal design.

As a public officer, the presumption of regularity in the performance of his functions is vested on him, citing *Republic vs. Hachero.*[10]

Accused avers that the evidence presented by the prosecution failed to overthrow this presumption.

Meanwhile, on the charge of malversation, Cunanan claims that the second element – i.e., that Cunanan is an accountable officer – was not even alleged in the Information, much less proven by the prosecution. Indeed, no evidence was presented to show that he had custody and control of the funds. There is also nothing in his personnel file or Job Description which indicates that the Deputy Director General of TRC is 1) in charge of keeping its accounts; or 2) is in custody or in control of its funds; or 3) is empowered to release the funds therefrom.

Cunanan claims that **Exhibits "A-74", "A-83" "B-10" and "B-20"** (TRC Disbursement Voucher) also do not prove that he performed his duties in an irregular manner when he allegedly signed the disbursement voucher. In fact, he was not even a signatory of the subject LBP check. Thus, there is no basis for the prosecution's claim that he authorized and caused its release.

He also argues that the last element is absent, as he neither used the funds for his personal benefit, nor consented to the taking thereof by another.

Cunanan theorizes that the prosecution alleged conspiracy because it only has his alleged signature on the disbursement voucher as evidence of his alleged participation in the crime, and this signature alone neither satisfies all the elements of the crime charged nor supports the required proof beyond reasonable doubt.

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[9] Section 22. Testimony confined to personal knowledge. – A witness can testify only to those facts which he or she knows of his or her personal knowledge; that is, which are derived from his or her own perception.
[10] 785 Phil. 784-800 (2016) quoting *Bustillo vs. People.* 634 Phil. 547-556 (2010).

He notes that none of the prosecution's testimonial and documentary evidence shows his conduct before, during and after the commission of the crime, that could even remotely be considered as indicating conspiracy.

Thus, Cunanan concludes that the prosecution failed to prove conspiracy when his sole act of signing the disbursement voucher is the very same act alleged by it as constitutive of the conspiracy to commit the crimes under Section 3(e), R.A. No. 3019.

He contends that this is contrary to the ruling in *Lecaroz, et al. vs. Sandiganbayan, et al.*,[11] where it was held that conspiracy must be proved by evidence independent of the very act complained of as a crime.

Cunanan then attaches a copy of his Demurrer to Evidence in his Motion.

ACCUSED RELAMPAGOS, ET AL.'S MOTION

In their joint motion for leave of court to file demurrer to evidence, accused Mario L. Relampagos, Rosario S. Nunez, Lalaine N. Paule and Marilou D. Bare ("Relampagos, et al.") begin their discussion by emphasizing that SARO No. ROCS-07-07433 was not even signed by accused Relampagos. Accused cite *People v. Sandiganbayan (First Division)*,[12] where the Supreme Court held:

> From these findings, it is clear that the supposed irregular processing and issuance of the SAROs could have probably been undertaken by Relampagos, et al., only with respect to the SAROs that were signed and issued by the Office of the Undersecretary for Operations. As the Ombudsman itself observed, Relampagos, et al., could not have feigned ignorance of the follows-up made by Luy for the expedited release of the SAROs and NCAs which were issued by the Office of the Undersecretary for Operations. The same conclusion, however, cannot be readily reached with respect to the SARO issued by then Secretary Andaya. The dearth of allegation or finding as to how Relampagos, et al., could have participated in or expedited the preparation and issuance of SAROs emanating from the Office of the Secretary itself renders their participation, insofar as SARO No. ROCS-07-05450 is concerned, highly improbable.
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> In view of the finding that Relampagos, et al., could not have participated in the preparation and processing of SARO No. ROCS-07-05450, there is no need to discuss, at this point, petitioner's contention that Relampagos, et al., failed to comply with the documentary requirements under DBM National Budget Circular No. 476 nor that of Relampagos, et al.'s counter-argument that the SAROs were not issued by their office based on the PDAF Process Flow.

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[11] 364 Phil. 890-911 (1999).
[12] G.R. Nos. 219824-25, 12 February 2019.

Relampagos, et al. moreover point out that they were neither mentioned nor recommended for indictment in all the prosecution's Exhibits, particularly, in **Exhibit A** and its attachments (NBI documents).

Meanwhile, DBM Notice of Cash Allocation ("NCA") No. 348840-2 dated 17 December 2007 (**Exhibit C-2**) and Department of Budget and Management ("DBM") Advice of NCA No. 348840-2 (**Exhibit C-3**) merely follow as a matter of course upon the issuance of a SARO. Hence, if ever these documents were signed by Relampagos, he did so as part of his ministerial duties, and after processing by the technical bureaus, as shown by the prosecution's evidence on DBM's structure. The processing of these documents by the technical bureaus were not shown to be irregular or illegal.

Further, prosecution witness, Benhur Luy, admitted during cross examination that his Daily Disbursement Reports never mentioned Relampagos, et al. as having received any kickback.[13]

Relampagos, et al. argue that the prosecution failed to establish the elements constituting the crime of violation of Section 3(e) of R.A. No. 3019.

In fact, the Information alleges only that Relampagos, et al. "facilitated the processing" of the SARO and corresponding NCA. However, the prosecution did not present the normal time frame for processing a SARO or NCA. Accused then question when the processing of these documents before the deadline set in the DBM Citizen's Charter can be considered "unduly fast" and whether or not efficiency is enjoined by law.

Also, Relampagos, et al. emphasize that the processing of the documents was not done at their office, but at the office of the Regional Operations Coordination Service (ROCS).

Moreover, they cite the dissenting opinion of Supreme Court Justice Presbiterio Velasco, Jr. in *Cambe v. Office of the Ombudsman*,[14] which reads in part:

> The dearth of any allegation as to any DBM employee's share in the PDAF renders their participation in the scheme to divert the fund highly unlikely and improbable.
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> The absurdity of dragging Relampagos, et al. in the PDAF scam becomes all the more obvious if one considers what DBM Director Carmencita Delantar told the Senate Blue Ribbon Committee, i.e., that it is her office, not petitioners', that processes the issuance of the SAROs. Some excerpts of that testimony:
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[13] Transcript of Stenographic Notes (TSN), 15 March 2022, p. 59.
[14] 802 Phil. 190-313 (2016).

> Petitioners Relampagos, et al. could, therefore, not be faulted let alone indicted for what the Ombudsman perceived to be hasty "processing" of the SAROs in question.
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> What is more, the allegation of "undue haste" was loosely hinged on the supposed lack of endorsement from the IAs before the issuance of the SAROs. However, the GAAs for FYs 2007, 2008, and 2009 already dispensed with this requirement, when they provided a menu of programs/projects as well as the list of IAs authorized to implement them. DBM Circular Letter No. 2015-1, s. 2015, in fact did away with the endorsement of the IA as a sine qua non requirement before a SARO issues. It provides:
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> As a related point, it bears to stress that the SAROs were issued and released only four (4) to nine (9) days following the DBM's receipt of the requests for their issuance. The DBM Citizens' Charter, however, provides that the total processing time of such request should be for less than 10 hours. Clearly then, if petitioners were to be censured, it should be for tardiness, not for acting with "undue haste."

Regarding the charge against them for Malversation of Public Funds or Property, the Information alleges that they "appropriated, took, misappropriated and/or allowed Napoles and her cohorts, through PSDFI, to take possession and thus misappropriate PDAF-drawn public funds."

Relampagos, et al. stress that Luy confirmed that they never received any kickback. He adds that this is consistent with the Sandiganbayan First Division's observation in its 28 August 2014 Resolution.

Moreover, the accused argue that the prosecution was not able to prove the first and third elements of Malversation, which are that: "a) the offender is an accountable officer; and (c) he has custody of and received such funds and property by reason of his office. In this connection, they quote *Panganiban v. People*,[15] where it was held that "(t)o have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner xxx was not accountable for any public funds or property simply because it never became his duty to collect money or property from the public. Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them."

[15] G.R. No. 211543, 9 December 2015.

They claim that, to connect them to the charges, the prosecution relies on its allegation of "conspiracy". Conspiracy, though, cannot be presumed, and must be proven by direct evidence or proof of overt acts indicating a common criminal design, unity of purpose, or join criminal objective.[16]

In this regard, Relampagos, et al. cite *Arias v. Sandiganbayan*,[17] where it was held that "there should be other grounds that the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction." They also cite *Medija, Jr. v. Sandiganbayan*,[18] where Medija was acquitted because his signature on the inspection report was too conjectural and presumptive to establish personal culpability.

They further allege that Relampagos, as then DBM Undersecretary for operations, was authorized to sign SAROs, NCAs, ANCAIs as substitute signatory in the absence of the DBM Secretary. However, he affixes his signature only after these documents pass several and rigorous reviews by other DBM officials from the technical operating bureaus.

Finally, Relampagos, et al. aver that they have in their favor the presumption of regularity in the performance of official duties, which the prosecution failed to rebut. Unless this presumption is rebutted, it becomes conclusive. In case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.[19]

ACCUSED FIGURA'S MOTION

In his Manifestation with Motion for Leave to File Demurrer to Evidence, accused Francisco B. Figura ("Figura") alleges that he received on the same date the court's 19 October 2022 Resolution, which denied accused Napoles' Motion for Reconsideration to the court's Resolutions dated 28 September and 3 October 2022, and accused Biazon's Motion for Reconsideration of its 3 October 2022 Resolution.

Figura avers that, with the court's denial of the motions for reconsideration of its resolution on the admissibility of the prosecution's documentary exhibits, it has resolved with finality the prosecution's formal offer of evidence and the prosecution is deemed to have rested its case.

He then asserts the timeliness of the filing of his motion, arguing that he has five (5) days from receipt of the final ruling on the admissibility of the prosecution's evidence within which to file a Motion for Leave to file demurrer to evidence.

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[16] *Rimando v. People*, G.R. No. 229701, 29 November 2017.
[17] 259 Phil. 794-820 (1989)
[18] G.R. No. 102685, 29 January 1993.
[19] *Bustillo v. People*, 634 Phil. 547-556 (2010).

Figura seeks leave of court to file demurrer to evidence on the ground that the totality of the evidence presented by the prosecution failed to prove his guilt beyond reasonable doubt.

He alleges that in both Informations for violation of Section 3 (e) of R.A. No. 3019 and Malversation of Public Funds, he was alleged to have, in conspiracy with the other accused, prepared and/or reviewed the MOA and signed the check together with accused Ortiz and Cunanan.

Figura contends that conspiracy was not proven by the prosecution. Conspiracy is not presumed but must be proven beyond reasonable doubt with the same quantum of evidence in proving the commission of the crime itself.

On the other hand, he claims that during trial, no evidence was presented to prove that he prepared the MOA. Only the checks were shown, which Figura admits that he counter-signed.

However, his act of counter-signing the check is part of his official functions and thus, cannot be considered as participation in a preconceived plan to commit a crime. The preparation and signing of a check are the last acts in any disbursement process. The disbursement voucher is signed by signatories and approved by the head of office who are all presumed to have regularly performed their functions.

Meanwhile, the MOA referred for review to the TRC Legal Division under Figura was complete and compliant with the requirements of a valid contract on its face. It clearly defined the responsibilities of the parties and its provisions were neither unlawful nor irregular.

Moreover, prosecution witness Benhur Luy testified that Figura's name was not listed in the DDR as having received kickbacks. Meanwhile, prosecution witness Marina Sula testified that she never saw Figura at JLN's office, meetings or parties and that she personally met or saw Figura for the first time only during the hearing.

Figura adds that both charges in these cases are considered "*malum in se*," requiring proof of criminal intent, which the prosecution also failed to prove. He reasons that he was virtually cleared of having received kickback or commission by the whistleblowers. Hence, criminal intent, which is intent to gain in this case, was not proven by the prosecution.

He points out that the prosecution concentrated on proving that the project funded by accused Biazon's PDAF was not implemented. However, he stresses that the prosecution did not show that he had a role in the project's implementation. On the contrary, the prosecution stated that Figura was the head of the Corporate Support Services of TRC, which, as the name implies,

is only a support group and not the group in charge of operations such as the implementation, or monitoring of the implementation, of the PDAF projects.

Figura asserts that the prosecution also failed to prove that the Notice of Disallowance issued by the Special Audit Group of COA was sent to and received by him. He claims that under COA Rules, a public official who receives a Notice of Disallowance ("ND") can appeal the same to the COA Central Office. He claims that he could have appealed said Notice of Disallowance to COA Head Office, who could still reconsider and set it aside after hearing Figura's explanations and justifications. Figura's right to due process will be violated if the COA SAO Report is used to indict him even when he did not receive any copy of the ND.

Finally, Figura avers that his arguments will be more comprehensively discussed if the court allows him to file a Demurrer to Evidence.

ACCUSED BIAZON'S MOTION

In his motion, accused Biazon avers that on 21 October 2022, his counsel received by email a copy of the court's 17 October 2022 Resolution denying his motion for reconsideration of the resolution on the prosecution's formal offer of evidence. He claims that, under the Rules, he has five (5) days therefrom, or until 25 October 2022 within which to file a motion for leave to file demurrer to evidence. Thus, the present motion, filed on even date, was timely filed.

Biazon alleges that the prosecution failed to prove the elements of violation of Section 3(e) of R.A. No. 3019, particularly focusing in on the second element of the offense.

Biazon extensively cites *Martel v. People,*[20] where the High Court discussed the second element of the offense as follows:

> It is settled in jurisprudence that evident bad faith "does not simply connote bad judgment or negligence" but of having a "palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes." Simply put, it partakes of the nature of fraud.
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> The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. It is not enough that the accused violated a provision of law or that the provision of law violated is clear,

[20] G.R. Nos. 224720-23 & 224765-68, 2 February 2021.

> unmistakable and elementary. To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.
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> As explained in *Sistoza*, "mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*."
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> To stress anew, evident bad faith "contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes." It connotes "a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will."
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> Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was "spurred by any corrupt motive." Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."
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> There is manifest partiality "when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another." It should be remembered that manifest partiality, similar to evident bad faith, is in the nature of *dolo*. Hence, it must be proven that the accused had *malicious and deliberate intent* to bestow unwarranted partiality xxx. (Italics in the original, footnotes omitted)

Applying the foregoing standards, Biazon asserts that there was neither testimonial nor documentary evidence presented to prove the particular act committed by him and how the said act may be characterized as constituting evident bad faith, manifest partiality and gross inexcusable negligence.

He concludes that this showed the particular ground for the motion, and the specific failure and precise weakness of the prosecution evidence which justifies the grant of leave of court to file demurrer to evidence.

Regarding the charge for malversation of public funds under Article 217 of the Revised Penal Code, Biazon claims that only the first element of the offense – i.e., being a public officer, was proven by the prosecution.

Biazon continues that the prosecution failed to prove that he had control or custody of the PDAF allocations for the Congressional District of Muntinlupa. He claims that the evidence presented by the prosecution, specifically the investigation by COA/NBI and the Office of the Ombudsman, showed that the PDAF funds were released from the DBM to the implementing agency, and that it never passed through his office. While he had been furnished a copy of the SARO as part of the usual procedure, this document

only proves the allotment of funds. It neither has monetary value, nor is it a negotiable document. Neither does the SARO give any authority to Biazon on how to use or disburse the funds as to make him an accountable officer in contemplation of law.

He reasons that because the prosecution was unable to prove that he had custody or control of the funds, it was likewise unable to prove that Biazon must be accountable therefor.

Biazon adds that, considering there was no evidence to prove that he had custody or control over the said funds, he could not have appropriated, taken, misappropriated or consented, whether by abandonment or negligence, permitted another person to take the same. In fact, there was no evidence to show that he received any amount of money in relation to the said funds.

At most, the records contain only the uncorroborated bare allegation of prosecution witness Benhur Luy that Luy gave money to Ducut, which was supposedly received by Biazon. In fact, Luy admitted that he had no other evidence to prove that Ducut was acting for and in behalf of Biazon. Indeed, there was no documentary evidence indicating that Ducut was authorized by Biazon with respect to the latter's PDAF allocation.

On the matter of the charge for direct bribery under Article 210 of the Revised Penal Code, Biazon similarly argues that the prosecution was only able to prove the first element of the offense (i.e., that accused was a public officer). The prosecution was not able to prove its allegation in the Information that he received the amount of One Million Nine Hundred Fifty Thousand Pesos (₱1,950,000.00) from Janet Lim Napoles. Accordingly, he concludes that he may be given leave of court to file demurrer to evidence in this case.

Finally, anent the allegation of conspiracy, Biazon underscores that the totality of the evidence presented by the prosecution failed to establish the allegation that Biazon conspired with his co-accused in the commission of the offenses charged.

He argues that there must be credible proof that links or gives unifying purpose to the respondents' individual acts, without which, it cannot be concluded with moral certainty that the accused conspired, connived and mutually held one another to commit the crime, as expounded in *People v. Sandiganbayan (2nd Division).*[21] He claims that, contrary thereto, the prosecution failed to adduce evidence of the required link by and between the acts supposedly performed by all of the accused to prove the supposed conspiracy being alleged against them.

[21] G.R. No. 197953, 5 August 2015.

Moreover, he cites *Rimando y Fernando v. People,*[22] where it was held that "(t)o establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose."

Biazon argues that in *Sistoza v. Desierto,*[23] it was even ruled that mere appearance of signature is not evidence of conspiracy, to wit:

> There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones.
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> Furthermore, even if the conspiracy were one of silence and inaction arising from gross inexcusable negligence, it is nonetheless essential to prove that the breach of duty borders on malice and is characterized by flagrant, palpable and willful indifference to consequences insofar as other persons may be affected. Anything less is insufferably deficient to establish probable cause. Thus, when at the outset the evidence offered at preliminary investigation proves nothing more than the signature of a public officer and his statements verifying the regularity of prior procedure on the basis of documents apparently reliable, the prosecution is duty-bound to dismiss the affidavit-complaint as a matter of law and spare the system meant to restore and propagate integrity in public service from the embarrassment of a careless accusation of crime as well as the unnecessary expense of a useless and expensive criminal trial.

Hence, Biazon seeks leave of court to file demurrer to evidence.

THE PROSECUTION'S COMMENT

After establishing the timeliness of the filing of its Consolidated Comment/Opposition, the prosecution argues that the motions filed by accused Lacsamana, Cunanan, Relampagos, Nunez, Paule, Bare, Figura and Biazon, should be denied for utter lack of merit and for failure to comply with the mandatory procedural and substantial requisites in filing the motion for leave to file demurrer to evidence.

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[22] G.R. No. 229701, 29 November 2017.
[23] 437 Phil. 117,130 (2002).

The prosecution avers that it is mandatory for accused-movants to state clearly and distinctly the supposed patent defect/s on the facts proved during the prosecution's presentation of evidence vis-à-vis the essential elements of the crimes as charged, which are lacking and should not have sustained their indictment for violation of Section 3(e), RA 3019, Art. 217 and 210, the Revised Penal Code, as amended.

The prosecution quotes *Lizarraga Hermanos v. Yap Tico*,[24] where the Supreme Court explained the rationale for the cited rule:

> **The demurrer must distinctly specify the grounds upon which any of the objections to the complaint, or to any of the causes of action therein stated, are taken.** When a demurrer is made to a complaint, whether upon one ground or another, it should set out distinctly the grounds upon which the objection is based. It cannot be couched simply in the language of the code. It must set forth distinctly the grounds upon which that language is founded. **The reason for this is plain. It is not fair to the plaintiff to interpose to a complaint the simple objection that it does not state facts sufficient to constitute a cause of action. Neither is it fair to the court. Neither the plaintiff nor the court should be left to make, possibly, a long and tiresome examination and investigation and then, perhaps, finally be compelled to guess. The grounds of the objection should be pointed out so that all may see. A demurrer was not invented to make useless work for a court, or to deceive or delude a plaintiff.** Its purpose was to clarify all ambiguities; to make certain all indefinite assertions; to bring the plaintiff to a clear and clean expression of the precise grievance which he has against the defendant; to aid in arriving at a real issue between the parties; to promote understanding and prevent surprise. To that end, a demurrer should specify, for the benefit of the plaintiff and the court as well, the very weakness which the demurrant believes he sees in the complaint, it should be so presented and handled as to bring to a quick determination the question whether the plaintiff has, at bottom, a legal claim against the defendant. **To attain this object, the demurrer should be clear, specific, definite, and certain as to the precise weakness of the complaint.** Being an instrument to cure imperfections, it should not itself be imperfect. (Emphasis supplied)

The prosecution points out that, instead of accomplishing the above, all of the accused-movants only prematurely argued in their respective motions their supposed affirmative defenses without first presenting their own respective evidence. Accused-movants also alleged therein such matters of interpretation of facts and laws which are best left to the sound judgment of the court at the final disposition of the case and after the presentation of their respective evidence.

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[24] *Hermanos v. Yap Tico*, 24 Phil. 504-548 (1913).

It stresses that the validity and merits of accused-movants' defenses, as well as the admissibility of the testimonies of their intended witnesses and documentary evidence, if any, are better ventilated during the presentation of evidence and not through this dilatory motion.

Without necessarily admitting that all of the accused-movants complied with the mandatory requisites for the filing of demurrer with leave of court, the prosecution summarily discusses the facts proved during the trial constituting the crimes committed by accused-movants as follows:

On the violation of Sec. 3(e), R.A. 3019
(SB-16-CRM-0249)

As to the first and second element, the prosecution notes that the parties already stipulated the fact that accused-movants are discharging official functions at the material time as public officers from the TRC, the DBM and the House of Representatives, particularly as Representative of the Lone District of Muntinlupa City. Additionally, the prosecution offered public documents proving their positions, duties and functions.

As regards the third element, the prosecution claims that it also proved beyond reasonable doubt that Biazon unilaterally chose and indorsed Philippine Social Development Foundation Inc. (PSDFI), a Napoles-controlled NGO (whose President on paper was De Leon), which initiated the release of the public funds. Biazon signed various documents in support of the bogus project sourced from his PDAF.

Meanwhile, accused DBM officials, Relampagos, Nunez, Paule, and Bare, unduly accommodated PSDFI in the facilitation, release and processing of the SARO and NCA. This resulted in the release of Biazon's PDAF to TRC, as testified by prosecution witness, Luy, who personally talked to the said DBM employees.

On the other hand, the TRC public officials, namely: Ortiz, Cunanan, Lacsamana, Espiritu, Jover, Dimaranan and Figura, performed various irregular acts by facilitating and processing DV Nos. 012008010024 and 012008051355 which resulted in the illegal disbursement of the ₱2.7 Million out of the ₱3 Million PDAF of Biazon in favor of PSDFI. This was clearly done without these accused carefully examining and verifying the accreditation under the law and qualification of the said private individual and/or entity that ultimately pocketed the subject PDAF.

All these acts of accused-movants were proven and these were shown to have been done through manifest partiality, evident bad faith, or gross inexcusable negligence.

As to the fourth element, the prosecution argued that it clearly and convincingly proved that Biazon's subject PDAF was systematically pocketed, stolen and callously shared by some accused-movants and nothing went to the intended beneficiaries of the PDAF project.

The prosecution adds that Biazon, thru accused Zenaida Ducut (Ducut), and other accused, also received commissions and/or kickbacks from Napoles in consideration of their participation in the commission of the crimes, as testified by Luy, based on the latter's personal knowledge of the transaction. Moreover, it stresses that the voluminous exhibits of the witnesses from the COA (B-series), the NBI (A-Series), the listed beneficiaries (F-series), the AMLC (G, H, and I-Series) and the positive and direct testimonies of the whistleblowers, among others, more than sufficiently proved that accused-movants, by their own acts as public officials, caused "undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference" to Napoles, through her controlled NGO, PSDFI.

On Art. 217, Illegal Use of Public Funds or Property, Revised Penal Code (SB-16-CRM-0250)

The prosecution avers that the first element was satisfied because accused-movants are public officers during the material time.

As for the second and third elements, the prosecution asserts that accused TRC officials had actual custody of the PDAF funds, as evidenced by the fund transfer from the National Treasury to the TRC, and the subsequent releases of the PDAF (**Exhibits B Series and C Series**).

It adds that Biazon had the control of the said PDAF, as evidenced by his indorsement and selection of PSDFI, the Napoles-controlled NGO, including his signatures on the liquidation of the funds released by the TRC.

The prosecution stresses that all the accused are charged as conspirators in the commission of all of these crimes. There is conspiracy when two or more persons agree to commit a crime and decide to commit it. What is important is that all participants performed specific acts with such cooperation and coordination bringing about the commission of the crime. "When conspiracy is present, the act of one is the act of all."[25]

The prosecution argues that accused TRC officials are accountable public officers because they had the actual or physical custody of the subject ₱3Million PDAF of accused Biazon. On the other hand, Biazon is the accountable public officer who exercised control over the said public fund

[25] *People vs. Miranda*, 463 Phil. 39-50 (2003).

because said PDAF was allocated, appropriated and released specifically for his legislative district. Meanwhile, accused DBM officials, Relampagos, Nunez, Paule, Bare, unduly accommodated PSDFI, in the facilitation, release and processing of the SARO and NCA, resulting in the release of Biazon's PDAF to TRC, as testified by Luy based on personal knowledge.

Anent the fourth element, the prosecution contends that it proved beyond reasonable doubt the specific acts of all the accused-movants who consented or, through abandonment or negligence, permitted their co-accused Napoles and the President of PSDFI, Evelyn De Leon, to take possession, and misappropriate the ₱2.7Million out of the ₱3Million PDAF of Biazon. Without the participation of each of the accused-movants to divert the public funds to PSDFI, the crime would not have been committed.

On Article 210 of the Revised Penal Code, as amended (SB-16-CRM-0250)

Regarding the first element, the prosecution argues that, as discussed earlier, accused Biazon is clearly a public officer.

As for the second element, Biazon received from Napoles the sum of money as alleged in the Information as his commission or kickbacks, through Ducut. The prosecution points out that this was categorically testified by Luy, who had personal knowledge of the transaction. It was also evidenced by the "JLN Cash/Check Daily Disbursement Report" (**Exhibit G series**).

Anent the third element, the prosecution insists that Biazon received said commission or kickbacks in consideration of his indorsement and selection, among others, of the PSDFI, in violation of various laws and regulations, as evidenced by **Exhibit B series**, among others.

As regards the fourth element, the prosecution emphasizes that Biazon agreed to indorse and select the PSDFI, to implement his PDAF project and this act is clearly connected with his duty as Representative of the Lone District of Muntinlupa City. The PDAF was allocated, appropriated by law, and released for his constituents as his intended beneficiaries. This was sufficiently substantiated by **Exhibits B series, C series and F series** and the testimonies of prosecution witnesses.

Additionally, as a matter of judicial notice, PDAF allocation, appropriation and release are all premised on the initiation and actions taken by the Congressional Representative for his/her legislative district. All activities relative to the allocation of the subject funds during the budget hearing, the passage of the appropriation bill up to its enactment into a law and

the release of the fund to the implementing agency – and later on to his selected the NGO – are all part of Biazon's duties and functions.

Thus, the prosecution concludes that the pieces of evidence it presented more than sufficiently substantiated each and every essential element of all the three crimes charged.

In sum, the prosecution underscores that it presented numerous documents and witnesses who testified on each and every detail and step taken how the illegal PDAF scheme was plotted, executed and covered-up by all the accused with their respective official participation. The transaction, in fact, is well documented, audited, validated and several government investigative bodies consistently affirmed and substantiated the relevant factual findings in support of the three crimes charged. Said evidence were authenticated and admitted as evidence for the prosecution.

The prosecution also presented to Court the former employees of Napoles and the listed beneficiaries whose names were used in the liquidation documents. If these remain unrebutted, all the pieces of evidence presented, as supported by the records, is, unmistakably, *prima facie* sufficient basis to sustain the verdict of guilt beyond reasonable doubt against all the accused for all the crime charged. Thus, the prosecution concludes that all the motions filed by accused-movants are patently without merit.

OUR RULING

I. *Procedural Aspect*

Under Section 23, Rule 119 of the Rules of Court, a motion for leave of court to file a demurrer to evidence is required to be filed within a non-extendible period of five (5) days after the prosecution rests its case, and to specifically state therein the grounds for claiming that there is insufficient evidence presented to warrant the accused's conviction, to wit:

> Section 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible

> period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)

In *BDO Unibank, Inc. v. Choa*,[26] the Supreme Court clarified:

> The prosecution is deemed to have rested its case xxx, when the trial court admitted its documentary evidence. In *Cabador v. People*, this Court held that "only after [the court ruled on the prosecution's formal offer of documentary evidence] could the prosecution be deemed to have rested its case." (Footnotes omitted)

However, in the case at bar, accused Napoles and Biazon timely moved for reconsideration of the court's resolution of the prosecution's formal offer of evidence. In view thereof, and as correctly reasoned by accused Figura, the prosecution may be deemed to have rested its case only after the court resolves the motion for reconsideration of its resolution on the prosecution's formal offer of evidence.

This is in accordance with the ruling of the High Court in *Reyes v. Sandiganbayan*,[27] to wit:

> The Court will now go into the question of whether or not the Sandiganbayan gravely abused its discretion in counting the period to file a motion for leave to file demurrer from the receipt of the Order admitting the prosecution's formal offer of evidence.
>
> Section 23, Rule 119 of the Rules of Criminal Procedure provides that a "motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case." This period runs, according to *Cabador v. People*, only after the court shall have ruled on the prosecution's formal offer for that is when it can be deemed to have rested its case.
>
> Here, Reyes filed a timely motion for reconsideration of the Sandiganbayan's ruling on the prosecution's formal offer, which is allowed, thus preventing the prosecution from resting its case. When the

[26] G.R. No. 237553, 10 July 2019.
[27] 694 Phil. 206-223(2012).

> Sandiganbayan denied Reyes' motion for reconsideration, she filed with it, within the required five days of her receipt of the order of denial, her motion for leave to file demurrer to evidence.
>
> Still, the Sandiganbayan's error in not allowing Reyes to ask for leave to file a demurrer to the evidence cannot be regarded as capricious and whimsical as to constitute grave abuse of discretion. Courts have wide latitude for denying the filing of demurrers to evidence. Indeed, an order denying a motion for leave of court to file demurrer to evidence or the demurrer itself is not subject to appeal or *certiorari* action before judgment. The remedy is to assign the order of denial as an error on appeal after judgment. (Footnotes omitted)

Thus, the court finds that accused Lacsamana, Cunanan, Relampagos, et al., Figura and Biazon all complied with the procedural aspect of filing a motion for leave of court to file demurrer to evidence. They were able to file their motions within the period allowed by the rules.[28]

II. *Substantive Aspect*

Demurrer to evidence in criminal cases is governed by Rule 119, Section 23 of the Revised Rules of Criminal Procedure as previously quoted.

In *Ricketts v. Sandiganbayan-Fourth Division*[29], citing *Go-Yu v. Yu,*[30] the Supreme Court explained the nature of a demurrer to evidence and the duty of the trial court in resolving the same as follows:

> A demurrer to evidence is defined as "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue." The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.

Meanwhile, in ruling on the sufficiency of the motion for leave to file demurrer to evidence, the Rules explicitly provide that, apart from the timeliness of its filing, the said motion should "specifically state its grounds" for claiming that there is insufficient evidence presented to warrant the accused's conviction.

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[28] All of the accused received the court's Resolution on the prosecution's formal offer of documentary evidence on 5 October 2022. Lacsamana electronically filed her motion for leave of court to file demurrer to evidence on 7 October 2022, Cunanan electronically filed his on 10 October 2022, and Relampagos, et al. filed theirs by registered mail on 10 October 2022.
[29] G.R. No. 236897 (Notice), 18 November 2021.
[30] G.R. No. 230443, 3 April 2019.

After reviewing the records and considering the points raised by the accused and the prosecution, we rule as follows:

A. *On the charge for violation of Section 3(e) of R.A. No. 3019*

The essential elements to prove the violation of Section 3 (e) of R.A. No. 3019 are as follows: (a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[31]

A.1) As for Lacsamana

The court finds no merit in Lacsamana's claim that the prosecution failed to adduce sufficient evidence to prove all the elements constituting her violation of Section 3(e) of R.A. No. 3019.

The Information alleges that Lacsamana's participation in the scheme was as follows:

> c) **Biazon** and TRC's **Ortiz** then entered into a Memorandum of Agreement (MOA) with PSDFI on the purported implementation of Biazon's PDAF-funded project, and which MOA was prepared and/or reviewed by **Lacsamana** and **Figura**;
> d) **Ortiz** and **Lacsamana** also facilitated and processed the disbursement of the subject PDAF release, and **Ortiz** approved the same by signing **Disbursement Vouchers No. 012008010024** and **012008051355** along with **Cunanan, Lacsamana, Espiritu, Jover** and **Dimaranan**, as well as the issuance of **Land Bank of the Philippines (LBP) Check No. 885642 signed by Ortiz and Figura and LBP Check No. 866743 signed by Cunanan and Figura**, in the aggregate amount of ₱ 2,700,000.00 to PSDFI without accused TRC Officers and employees having carefully examined and verified the accreditation and qualifications of PSDFI as well as the transactions' supporting documents; (Emphasis in the original)

There is no question about the existence of the first element.

As for the second and third elements, the court is not convinced by Lacsamana's claim that she signed the first Release Memorandum (**Exhibit A-75 / B-11**) only because the MOA had already been concluded.

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[31] *Marzan v. People*, G.R. No. 201942 (Notice), 12 February 2020.

Notably, Lacsamana issued her first Release Memorandum on 3 January 2008. In contrast, the tripartite MOA, upon which Lacsamana allegedly based her recommendation, shows on its face that it was executed/notarized only on 9 January 2008, or six (6) days *after* Lacsamana issued her Release Memorandum. Hence, the MOA could not have been the basis of Lacsamana's first Release Memorandum when the former had not yet been finalized when the latter was executed.

The court is likewise not persuaded that Lacsamana should not be held liable for the release of the funds to the PSDFI because her Release Memoranda were merely recommendatory.

Considering that, as Lacsamana alleges, signing the Release Memorandum was part of her official duties, then it was incumbent upon her to recommend the release of the funds only after being herself satisfied that the requirements therefor have been met. Accordingly, it would take more than a simple plea of ignorance (of the pertinent COA rules on the transfer of funds to the NGO) on her part to convince the court of her defense.

Moreover, Auditor Alfafaras explained in her Judicial Affidavit dated 2 April 2018 that based on their Special Audit, the Tripartite MOA was not compliant with the provision of COA Circular No. 2007-001, which provides for control and guidance on transfer, utilization and management of funds released to PSDFI, because the MOA did not include the required provisions on the systems and procedures to implement the project; time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion; visitorial audit by COA personnel, project description, beneficiaries, benefits and site location; and the required 20% equity of the project cost by the NGOs. Moreover, the NGO, PSDFI, could not be located at its given address and had no permit to operate from the City of Taguig, as per the reply letter of the Business and Licensing Office of the City Government of Taguig to the team's request for confirmation.

In particular, Auditor Alfafaras cited that, as Group Manager of the Technology and Livelihood Information Dissemination Services (TLIDS) and Legislative Liaison Officer of TRC, Lacsamana recommended the release of funds to PSDFI, although improper, as PSDFI's existence and the validity of transactions were questionable. Lacsamana also certified that expenses are necessary and lawful, although the fund transfer to PSDFI had no basis, because the latter's selection was not in accordance with laws and regulations, and the transaction was questionable.

Similarly, in signing the Disbursement Voucher for the release of ₱300,000 to PSDFI (**Exhibit A-83/B-20**) Lacsamana expressly "CERTIFIED: Expenses/Cash Advance necessary, lawful and incurred under my direct

supervision." Meanwhile, the prosecution's evidence puts in grave doubt the lawful nature of the said disbursement.

Moreover, the undue haste by which Lacsamana issued the first Release Memorandum and the cited basis thereof, and her signature on the Disbursement Voucher for the release of ₱300,000.00 to PSDFI notwithstanding the questionable transaction, may be taken as demonstrations of manifest partiality in favor of PSDFI, evident bad faith or gross inexcusable negligence at this point of the trial. Meanwhile, the resulting release of the PDAF funds to PSDFI caused undue injury to the government, or gave any private party unwarranted benefits, advantage or preference to co-accused private individuals.

The cited lack of evidence to show that Lacsamana benefited from the transaction is not essential in proving the elements for violation of Section 3(e) of R.A. No. 3019.

As for the allegation of conspiracy, suffice it to state that the prosecution was able to present sufficient evidence thereof as to warrant the continuation of the trial for the presentation of controverting evidence by the defense.

Hence, the court opines that it is in Lacsamana's best interest to continue with the trial of the case for the reception of her own evidence and defenses.

A.2) As for accused Cunanan

Likewise, the court rules that, as regards Cunanan, all the elements to prove a violation of Section 3(e) of R.A. No. 3019 were adequately shown by the prosecution.

The Information alleges the participation of Cunanan as follows:

> d) **Ortiz** and **Lacsamana** also facilitated and processed the disbursement of the subject PDAF release, and **Ortiz** approved the same by signing **Disbursement Vouchers No. 012008010024** and **012008051355** along with **Cunanan, Lacsamana, Espiritu, Jover** and **Dimaranan**, as well as the issuance of **Land Bank of the Philippines (LBP) Check No. 885642 signed by Ortiz and Figura and LBP Check No. 866743 signed by Cunanan and Figura**, in the aggregate amount of ₱ 2,700,000.00 to PSDFI without accused TRC Officers and employees having carefully examined and verified the accreditation and qualifications of PSDFI as well as the transactions' supporting documents; (Emphasis in the original)

The presence of the first element is not contested, and Cunanan does not deny being the TRC Deputy Director General during the material time.

Regarding the second element of the offense, prosecution witness, State Auditor Alfafaras testified that Cunanan signed in Box A of the disbursement voucher for the first tranche release of ₱2.4Million (**Exhibit A-74/B-10**), certifying that the expenditure is necessary and lawful, when in fact, there were no funds earmarked for implementation by the NGO.[32] Cunanan also approved the release of the second tranche to PSDFI by signing beside Box C of the second disbursement voucher (**Exhibit A-83/B-20**). The disbursements could not have been consummated without Cunanan's participation. When Cunanan affixed his signature to the documents, he assumed responsibility that what he was certifying was proper and in accordance with the rules.[33]

The prosecution was also able to adequately prove that Cunanan's signing the disbursement vouchers satisfied the third element of the offense. His action enabled PDAF funds to be transferred to PSDFI and/or his private co-accused, even when the latter's selection was not in accordance with the laws and regulations, and the transaction itself was questionable.

Thus, in order to controvert the evidence presented by the prosecution, Cunanan should present his own evidence.

A.3) As for accused Relampagos, et al.

Weighing the arguments of Relampagos, et al. in their motion and the prosecution's comment/opposition thereto, the court is inclined to grant leave to Relampagos, et al. to file their demurrer to evidence.

Their participation in the crime is alleged in the Information as follows:

> b) DBM's **Relampagos, Nunez, Paule** and **Bare**, unduly accommodating herein private individuals, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation, resulting in the release of the subject funds drawn from Biazon's PDAF to TRC, the agency chosen by Biazon through which to course his PDAF allocation; (Emphasis in the original)

It was incumbent on the prosecution to prove the alleged "undue accommodation" and "facilitation" allegedly committed by Relampagos, et al.

In substantiating this claim of "accommodation" and "facilitation" provided by Relampagos, et al., prosecution witness Benhur Luy testified in his 23 August 2021 Judicial Affidavit that, per instructions of Napoles, he called the office of Relampagos to follow up if the SARO pertaining to the

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[32] In her Judicial Affidavit, Alfafaras claimed that TRC (and not the NGO, PSDFI) should have implemented the project itself, as one of the identified IAs of PDAF-funded projects under the General Appropriations Act ("GAA") for that year. She explained that NGOs were not identified as IAs/parties to the PDAF projects under the GAA for that year.

[33] TSN, 3 July 2018, pp. 51-52.

project listing of Biazon was already released. He explained that after Ducut gave Napoles a copy of Biazon's SARO (which did not indicate the legislator's name), it was important to confirm that DBM already released it in order for Biazon to claim his kickback. To verify, Luy called Nunez, and told her the SARO number, amount indicated in the SARO and the Implementing Agency, and asked who the legislator for the SARO was.

However, Relampagos, et al. pointed out that the prosecution did not present the normal time frame for processing a SARO or NCA. Moreover, the prosecution was unable to establish whether the processing of these documents before the deadline set in the DBM Citizen's Charter can be considered "unduly fast" and whether or not efficiency is enjoined by law.

Moreover, Relampagos, et al.'s argument, that it is the Regional Operations Coordination Service (ROCS), and not their office, which processes the SARO, appears to be supported by one of the DBM issuances adduced by the prosecution.

As the court considers the foregoing arguments worth delving further into, it grants leave for Relampagos, et al. to file their demurrer to evidence.

A.4) As for accused Figura

The court finds that the prosecution was able to adduce sufficient evidence to prove all the elements constituting a violation of Section 3(e) of R.A. No. 3019 as regards Figura.

Figura's participation in the offense was alleged in the Information as follows:

> c) **Biazon** and TRC's **Ortiz** then entered into a Memorandum of Agreement (MOA) with PSDFI on the purported implementation of Biazon's PDAF-funded project, and which MOA was prepared and/or reviewed by **Lacsamana** and **Figura**;
> d) **Ortiz** and **Lacsamana** also facilitated and processed the disbursement of the subject PDAF release, and **Ortiz** approved the same by signing **Disbursement Vouchers No. 012008010024** and **012008051355** along with **Cunanan, Lacsamana, Espiritu, Jover** and **Dimaranan**, as well as the issuance of **Land Bank of the Philippines (LBP) Check No. 885642 signed by Ortiz and Figura and LBP Check No. 866743 signed by Cunanan and Figura**, in the aggregate amount of ₱ 2,700,000.00 to PSDFI without accused TRC Officers and employees having carefully examined and verified the accreditation and qualifications of PSDFI as well as the transactions' supporting documents; (Emphasis in the original)

Again, the first element is evidently present because accused Figura is admittedly the head of the Corporate Support Services Group of TRC, a government agency.

On the second element, the Information alleged that Figura prepared and/or reviewed the MOA. While there was no proof that Figura personally prepared/reviewed the MOA, it may be attributed to him. After all, Figura, headed the Corporate Support Services Group of TRC, to which Figura himself admits, the MOA was referred for review.

The court rules that, at the moment, Figura's bare allegation that there was nothing wrong with the MOA cannot stand in light of the testimony of prosecution witness, State Auditor Alfafaras.

As previously discussed, Alfafaras explained in her Judicial Affidavit dated 2 April 2018, that based on their Special Audit, the Tripartite MOA was not compliant with the provision of COA Circular No. 2007-001, which provides for control and guidance on transfer, utilization and management of funds released to PSDFI. She testified that the MOA did not include the required provisions on the systems and procedures to implement the project; time schedules for the periodic inspection/evaluation, reporting, monitoring requirements and date of completion; visitorial audit by COA personnel, project description, beneficiaries, benefits, and site location; and the required 20% equity of the project cost by the NGOs.

Moreover, the NGO, PSDFI, could not be located at its given address and had no permit to operate from the City of Taguig, as per the reply letter of the Business and Licensing Office of the City Government of Taguig to the team's request for confirmation.

The court further notes that accused Figura signed the two checks which enabled the PDAF fund of accused Biazon to be transferred from TRC to PSDFI. As testified by Auditor Alfafaras, they charged Figura in their Special Audit Report, because he countersigned the check disbursed through PSDFI, even when there is no fund earmarked for the implementation by the NGO.[34]

We are not impressed by Figura's contention that his signing of the checks was simply part of his duties. Neither are we swayed by his implied argument that he is entitled to the presumption that he regularly performed his functions because the preparation and signing of a check are the last acts in any disbursement process, which is preceded by the preparation of a disbursement voucher signed by signatories and approved by the head of office who are all presumed to have regularly performed their functions.

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[34] TSN, 3 July 2018, p. 62.

As explained by the Supreme Court in *Luspo v. People,*[35] the duty to sign a check is not a ministerial duty on the part of a public officer, but one which gives him the discretion, within the bounds of law, to review, scrutinize, or countercheck the supporting documents before facilitating the payment of public funds. He may be considered to have acted in bad faith for failure to require the submission of supporting documents for his review. Thus:

> Contrary to Duran's claim, affixing his signature on the checks is not a ministerial duty on his part. As he himself stated in his petition and in his present motion, his position as Chief of the Regional Finance Service Unit of the North CAPCOM imposed on him the duty "to be responsible for the management and disbursement and accounting of PNP funds." This duty evidently gives him the discretion, within the bounds of law, to review, scrutinize, or countercheck the supporting documents before facilitating the payment of public funds.
>
> His responsibility for the disbursement and accounting of public funds makes him an accountable officer. Section 106 of Presidential Decree No. 1445 requires an accountable officer, who acts under the direction of a superior officer, to notify the latter of the illegality of the payment in order to avoid liability. This duty to notify presupposes, however, that the accountable officer had duly exercised his duty in ensuring that funds are properly disbursed and accounted for by requiring the submission of the supporting documents for his review.
>
> By relying on the supposed assurances of his co-accused Montano that the supporting documents are all in order, contrary to what his duties mandate, Montano simply assumed that these documents exist and are regular on its face even if nothing in the records indicate that they do and they are. The nature of his duties is simply inconsistent with his "ministerial" argument. With Duran's failure to discharge the duties of his office and given the circumstances attending the making and issuance of the checks, his conviction must stand.
>
> We clarify that the Court's finding of bad faith is not premised on Duran's failure "to prepare and submit" the supporting documents but for his failure to *require their submission for his review*. While the preparation and submission of these documents are not part of his responsibilities, his failure to require their submission for his review, given the circumstances, amply establishes his bad faith in preparing and issuing checks that eventually caused undue injury to the government. (Footnotes omitted)

The court is not convinced by Figura's claim that the prosecution's failure to prove criminal intent on his part was fatal because the charges are considered "*malum in se*" and he was virtually cleared of having received kickbacks by the whistleblowers.

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[35] G.R. Nos. 188487, 188541 & 188556 (Resolution), 22 October 2014.

In this regard, it must be stressed that Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence.[36] Gross inexcusable negligence under Section 3 (e) of R.A. 3019, a culpable felony, does not require fraudulent intent or ill-will. A public officer is guilty of gross inexcusable negligence when there is a breach of duty that is committed flagrantly, palpably, and with willful indifference. Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under Section 3 (e) regardless of whether such breach of duty was done with malicious intent.[37]

Figura's asseveration that the prosecution was not able to show that he had a role in the implementation or monitoring of the implementation of the project is immaterial. The Information was clear in its allegation that his involvement pertained to the preparation/review of the MOA and the signing of the checks only, not the implementation of the project.

The court also finds no merit in Figura's assertion that the prosecution failed to prove that the Notice of Disallowance issued by COA's Special Audit Team was sent to and received by him, and that his right to due process will be violated if the COA SAO Report is used to indict him even when he did not receive any copy of the ND. As earlier noted, Figura was not alleged to have been involved in the implementation of the PDAF-funded project. Hence, the ND issued by SAO on 11 March 2014 did not include Figura's name therein. At any rate, the SAO Report is not the sole basis for his indictment herein.

Thus, with the continuation of the trial for reception of Figura's evidence, he may be able to counter the documentary and testimonial evidence adduced by the prosecution on this matter.

A.5) As for accused Biazon

The court finds that the prosecution was able to adduce sufficient evidence to prove all the elements constituting a violation of Section 3(e) of R.A. No. 3019 on the part of Biazon.

The Information alleges Biazon's participation in the crime as follows:

> a) **Biazon** unilaterally chose and indorsed Philippine Social Development foundation, Inc. (PSDFI), a non-government organization (NGO) operated and/or controlled by Napoles as "project partner" in implementing a livelihood project for barangays in the Lone District of Muntinlupa City, which was funded by Biazon's Priority Development

[36] *Uriarte v. People,* 540 Phil. 477-502 (2006).
[37] *Martel v. People,* G.R. Nos. 224720-23 & 224765-68, 2 February 2021.

> Assistance Fund (PDAF) in the total amount of THREE MILLION PEOSS (₱3,000,000.00) covered by **Special Allotment Release Order (SARO) No. ROCS -07-07433**, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding as required under Republic Act No. 9184 and its implementing rules and regulations, and with PSDFI being unaccredited and unqualified to undertake the project;
>
> b) Xxx
>
> c) **Biazon** and TRC's **Ortiz** then entered into a Memorandum of Agreement (MOA) with PSDFI on the purported implementation of Biazon's PDAF-funded project, and which MOA was prepared and/or reviewed by **Lacsamana** and **Figura**;
>
> d) Xxx
>
> Xxx
>
> g) Biazon, through Ducut, received commissions and/or "kickbacks" from Napoles in consideration of his participation and collaboration as described above. (Emphasis in the original)

To prove that Biazon chose and indorsed PSDFI to implement the livelihood project funded by his PDAF allocation, the prosecution presented the Indorsement signed by Speaker Jose de Venecia and Cong. Edcel Lagman with attached list of PDAF 2nd tranche release dated 4 September 2007 **(Exhibits C-4 and C-4-a),** the Letter of Biazon addressed to Speaker De Venecia through Cong. Edcel Lagman dated 3 September **2007 (Exhibits C-5 and C-5-a),** the 13 December 2007 letter of Biazon addressed to TRC's Ortiz, endorsing PSDFI as "lead project implementing agency" for the project **(Exhibit B-13),** as well as various other documents containing Biazon's signature submitted by PSDFI **(Exhibits B-14, B-22, B-23, B-24, B-25, B-26)**. The prosecution also presented the MOA among TRC, Biazon and PSDFI dated 9 January 2008 which contained Biazon's signature. **(Exhibit B-15)**

To prove that Biazon's choice of PSDFI disregarded the appropriation law and its implementing rules as the latter was neither accredited nor qualified to undertake the project, the prosecution presented, among others, various DBM Department/Office Orders and Circulars and their annexes **(Exhibits C-6 to C-9)**, as well as documents pertaining to PSDFI **(Exhibits D series, B-37, B-38)**.

In addition to these documents, various prosecution witnesses such as Auditor Alfafaras, Benhur Luy, Marina Sula and supposed beneficiaries of the project were also presented in support of the allegations in the Information.

As for Biazon's claim that the prosecution did not present evidence proving that he acted with malicious motive or intent or ill will, suffice it to reiterate that, as discussed in the immediately preceding section, Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused

committed gross inexcusable negligence.[38] Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under Section 3 (e) regardless of whether such breach of duty was done with malicious intent.[39]

Accordingly, we deny accused Biazon's motion for leave to file demurrer to evidence in this case.

B. *On the charge for violation of Article 217 of the Revised Penal Code*

Meanwhile, the following elements must be duly proven by the prosecution in order to warrant accused's conviction for the charge for violation of Article 217 of the Revised Penal Code: 1) that the offender is a public officer; 2) that he or she had custody or control of funds or property by reason of the duties of his or her office; 3) that those funds or property were funds or property for which he or she was accountable; and 4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[40]

To sustain a charge of malversation, there must either be criminal intent or criminal negligence on the part of the accused.[41]

B.1) As for accused Lacsamana, Cunanan, Figura and Biazon

After considering the evidence on record, as well as the arguments of the accused-movants and the prosecution, the court finds that all the elements of malversation were satisfactorily proven by the prosecution as to Lacsamana, Cunanan, Figura and Biazon.

The first element is not contested, as accused movants are admittedly public officers.

As argued by the prosecution, the second and third elements of this crime were satisfied when it showed, through **Exhibits B series** and **C series**, that accused TRC officials (Lacsamana, Cunanan and Figura) had actual custody of the ₱3Million PDAF funds, which was transferred from the Bureau of Treasury to TRC. Similarly, accused Biazon exercised control over the said PDAF funds, because this was allocated, appropriated and released specifically for his legislative district. His control of the funds was also shown

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[38] *Uriarte v. People,* 540 Phil. 477-502 (2006).
[39] *Martel v. People,* G.R. Nos. 224720-23 & 224765-68, 2 February 2021.
[40] *Corpuz v. People,* G.R. No. 241383, 8 June 2020.
[41] *Deloso v. Desierto,* 372 Phil. 805-815(1999).

by his indorsement and selection of PSDFI as implementer of the livelihood project and his signatures on various documents pertaining thereto.

The fourth element of the crime was established when the prosecution showed through various documentary and testimonial evidence, that said accused-movants consented or, through abandonment or negligence, permitted their co-accused Napoles and de Leon, to take possession and misappropriate Biazon's PDAF funds.

B.2) As for accused Relampagos, et al.

The first element of the crime is present, as Relampagos, et al. are public officers during the pertinent period.

As regards the second and third elements, Relampagos, et al. argue that the prosecution was not able to prove that they are accountable officers who had custody or control of funds or property by reason of the duties of their office. They claim, following *Panganiban v. People*,[42] that they are not accountable for any public funds or property simply because it never became their duty to collect money or property from the public.

In response, the prosecution claims that, similar to the charge under Section 3 (e) of R.A. No. 3019, Relampagos, et al. are charged in the Malversation case as co-conspirators together with their co-accused in the commission of the crime, in view of their act of unduly accommodating PSDFI in the facilitation, release and processing of the SARO and NCA, which resulted in the release of Biazon's PDAF to TRC.

In view of the same issue cropping up regarding the participation of Relampagos, et al. in the scheme alleged in SB-16-CRM-0249 for violation of Section 3(e) of R.A. No. 3019, the court deems it appropriate to likewise grant Relampagos, et al. leave to file their demurrer to evidence in the malversation charge in SB-16-CRM-0250.

C. *On the charge for violation of Article 210 of the Revised Penal Code*

In the Information for SB-16-CRM-0251, accused Biazon was alleged to have committed direct bribery in the following manner:

> In October 2007, or sometime prior or subsequent thereto, in Pasig City, Philippines, and within this Honorable Court's jurisdiction, accused **ROZZANO RUFINO BUNOAN BIAZON** (Biazon), a high-ranking

[42] G.R. No. 211543, 9 December 2015.

> public officer, while in the performance of his official functions as the ten Congressman of the Lone District of Muntinlupa City, did then and there willfully, unlawfully, and feloniously receive the amount of at least **ONE MILLION NINE HUNDRED FIFTY THOUSAND PESOS (₱1,950,000.00)** from Janet Lim Napoles, a private person affiliated with or exercising control over a non-government organization known as the Philippine Social Development Foundation, Inc. (PSDFI), with intent to gain and a view to committing an unjust act which constitutes a crime, that is, **Biazon**, in his capacity as a public officer, unilaterally chose and indorsed PSDFI to implement a livelihood project funded by his Priority Development Assistance Fund (PDAF) allocation in the amount of Three Million Pesos (₱3,000,000.00) and covered by Special Allotment Release Order No. RCS-07-07433, as well as caused the preparation and execution of an indorsement letter, Memorandum of Agreement, and other similar communication and documents relating to his PDAF disbursements, and helped facilitate the release of said public funds to PSDFI, in violation of Section 53.11 of the Implementing Rules and Regulations of Republic Act No. 9184 and National Budget Circular No. 476, as amended, despite the absence of public bidding and likewise bereft of any authorization under an appropriation law, ordinance, or regulation which PDAF-funded project assigned to PSDFI was not implemented because this was actually fictitious and./or nonexistent, thereby taking advantage of his office and unjustly enriching himself at the expense and to the prejudice of the Filipino people and the Republic of the Philippines.

The elements constituting Direct Bribery under Article 210 of the RPC are as follows: (1) the offender is a public officer; (2) the offender accepts an offer or a promise or receives a gift or present by himself or through another; (3) such offer or promise is accepted, or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an unjust act which does not constitute a crime, or to refrain from doing something which is his or her official duty to do; and (4) the crime or act relates to the exercise of his or her functions as a public officer.[43]

Biazon argues that there is insufficient evidence to prove the second element of the offense – i.e., that the offender accepts an offer or a promise or receives a gift or present by himself or through another.

In its comment/opposition, the prosecution claims that the second element was satisfied because Biazon's receipt of at least ₱1,950,000.00 (as his commission from Napoles through Ducut) was categorically testified by Luy, who has personal knowledge thereof. Also, this was evidenced by the JLN Cash/Check Daily Disbursement Report (**Exhibit G series**).

However, Biazon argues that, during cross-examination, Luy himself admitted that he did not have any evidence to prove that the money which he gave to Ducut was indeed received by Biazon.

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[43] *Remolano y Caluscusan v. People,* G.R. No. 248682, 6 October 2021.

Moreover, the court notes after reviewing the records that, as testified by AMLC's Atty. Leigh Vhon G. Santos, the AMLC Bank Inquiry Report states that "(a)s for Biazon, no bank record was found to convincingly support the alleged transfer of the illegally tainted PDAF funds in his favor."

Accordingly, the court rules that there is sufficient basis to grant leave to Biazon to file demurrer to evidence in SB-16-CRM-0251 where he is charged with direct bribery.

In sum, all the elements of the crime under Section 3(e) of R.A. No. 3019 (for SB-16-CRM-0249) and under Article 217 of the Revised Penal Code (for SB-16-CRM-0250) were satisfactorily established by the prosecution at this point of the proceedings as regards accused Lacsamana, Cunanan, Figura and Biazon. Hence, the court deems that accused-movants will benefit from the presentation of their respective evidence in their defense.

However, considering the arguments presented by Relampagos, Nunez, Paule and Bare in their motion, and the prosecution's comment thereon, the court deems it appropriate to grant leave of court to Relampagos, et al. to file their demurrer to evidence in SB-16-CRM-0249 and SB-16-CRM-0250.

Similarly, after looking into the initial arguments of accused Biazon and the prosecution regarding the charge for Direct Bribery, the court finds it *apropos* to grant leave of court to Biazon to file his demurrer to evidence on the direct bribery charge.

WHEREFORE, premises considered, the respective motions for leave of court to file demurrers to evidence filed by accused Rosalinda Lacsamana, Dennis Cunanan, Francisco Figura and Rozzano Rufino Biazon in **SB-16-CRM-0249** and **SB-16-CRM-250** are **DENIED** for lack of merit.

Nonetheless, said accused-movants are not precluded from filing their respective Demurrers to Evidence without leave of court, subject to the conditions in paragraph two of Section 23, Rule 119 of the Rules of Court.[44]

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[44] Sec. 23. Demurrer to evidence. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

Meanwhile the motion for leave of court to file demurrer to evidence filed by Relampagos, Nunez, Paule and Bare in **SB-16-CRM-0249** and **SB-16-CRM-250** are **GRANTED**.

Similarly, the motion for leave to file demurrer to evidence filed by Biazon in **SB-CRM-0251** is **GRANTED**.

Accordingly, Biazon and Relampagos, Nunez, Paule and Bare are given leave of court to file their respective demurrers to evidence for the said cases within a non-extendible period of ten (10) days from notice hereof. The prosecution is given the same period of ten (10) days, from receipt of the copy of the demurrers to evidence, within which to file its comment. Thereafter, accused Biazon and Relampagos, Nunez, Paule and Bare's demurrers to evidence shall be considered submitted for resolution.

SO ORDERED.

ZALDY V. TRESPESES
Associate Justice

WE CONCUR:

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

GEORGINA D. HIDALGO
Associate Justice

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (Underscoring supplied.)