



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

Sixth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GREGORIO T. IPONG,
ANTONIO Y. ORTIZ,
DENNIS L. CUNANAN,
MARIVIC V. JOVER, and
ALFREDO A. RONQUILLO,
Accused.

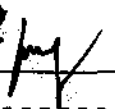
SB-17-CRM-1496-1497

For Violation of SECTION 3(e) of REPUBLIC
ACT NO. 3019 and MALVERSATION
(ARTICLE 217, REVISED PENAL CODE)

PRESENT:

FERNANDEZ, J., *Chairperson*
JACINTO, J.¹ and
VIVERO, J.

Promulgated:


NOV 18 2022 

X-----X


RESOLUTION

VIVERO, J.:

For resolution are the following:

- (a) 27 September 2022 *Motion for Reconsideration* filed by accused Gregorio T. Ipong (accused Ipong) assailing the Court's 13 September 2022 *Decision*;
 - (b) 06 October 2022 *Motion for Reconsideration* filed by accused Marivic V. Jover (accused Jover) likewise assailing the 13 September 2022 *Decision*; and,
- 

¹ Special Member in view of the inhibition of Associate Justice Karl B. Miranda per Administrative Order No. 276-A-2017 dated 14 August 2017.



- (c) 12 October 2022 **Consolidated Comment / Opposition (Re: Motions for Reconsideration filed by accused Ipong and Jover)** filed by the Office of the Special Prosecutor (prosecution).

Accused Ipong anchors his arguments on the following main points, viz:

- (i) The assailed *Decision* erroneously considered his endorsement of Aaron Foundation Philippines Inc. (AFPI) and participation in the execution of the Memorandum of Agreement (MOA) as acts of manifest partiality and gross inexcusable negligence.
- (ii) His so-called assent to the selection of AFPI through his participation in the execution of the MOA could not—by any stretch of imagination—signify manifest partiality or gross inexcusable negligence.
- (iii) He could not have followed any standards to endorse AFPI because there is simply no law or rule that requires him as legislator to do so. While COA Circular No. 96-003 sets the qualifications and accreditation of NGOs, the duty to verify and ensure compliance with the same rest not on him as legislator but on the government office tasked to implement the government project, *i.e.*, the Technology and Livelihood Resource Center (TLRC). Thus, he could not be considered as grossly and inexcusably negligent precisely because he had no duty to act on the accreditation of AFPI.
- (iv) His Letter-Endorsement (Exhibit "H") dated 28 March 2007 alone, without any direct evidence of his participation in the accreditation, qualification, and subsequent disbursement of funds in favor of AFPI falls short of the required proof to establish criminal liability demanded by Republic Act No. 3019.
- (v) Under COA Circular No. 96-003, it is the duty of TLRC to evaluate a particular NGO and accredit it if qualifications are met. The failure of TLRC to properly validate and evaluate the qualification of AFPI is beyond him and therefore he should not be faulted for unperformed duties that are not legally required of him.
- (vi) He did not cause undue injury to the government and give unwarranted benefit to Ortiz and TLRC.
- (vii) The endorsement letter and signing in the MOA cannot be considered as manifest partiality, evident bad faith and/or gross inexcusable negligence because when he performed all those acts, he was simply performing acts required for the release of the funds.



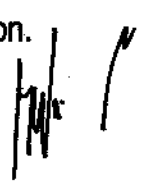
Accused Ipong further argues that the Court mistakenly found him criminally liable for malversation since the prosecution failed to prove the fourth element of the offense, *i.e.*, accused appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. Accused Ipong insists that there can be no legal presumption of misappropriation.

Too, Accused Ipong raises the question of the prosecution's failure to prove non-implementation of training and livelihood project in the second district of North Cotabato. Serious doubt exists as to whether or not the project funded by the subject PDAF was implemented in the whole constituency of the 2nd District of North Cotabato as the prosecution very curiously chose not to present other witnesses to testify on behalf of the other component cities/municipalities of the district.

Finally, Accused Ipong insists on the absence of proof beyond reasonable doubt that he acted in conspiracy with his co-accused. The prosecution clearly failed to prove that the acts attributed to him satisfied all the elements of the crimes charged and the requirements for conspiracy.

On the other hand, accused Jover's appeal for acquittal *via* reconsideration hinges on:

- (i) She was not in conspiracy with the other co-accused.
- (ii) There is a variance between the allegations in the *Informations* and the grounds for her conviction. Since conspiracy was alleged in the *Informations*, the prosecution must prove that the acts of accused Ipong, in disregarding the appropriation law, R.A. 9184, and its implementing rules and regulations closely intertwined with the purported acts of accused Jover in affixing her signature in Box B of DV No. 012007050821.
- (iii) Accused Jover claims that no reference was made to any violation of the COA Circular in the *Information*. The provisions of the COA Circulars, which the prosecution invoked and allegedly found to have been violated by her cannot be the bases of her conviction since the *Informations* specifically and exclusively refer to a conspiracy founded on alleged violation of the appropriation law, R.A. 9184 and its implementing rules and regulations.
- (iv) The Court erred in invoking the administrative case against her which was recently promulgated by the Supreme Court. Accused Jover maintains that the pronouncements of *Martel* that administrative cases should be viewed as it is and should not be the basis of establishing the elements of Section 3(e) of R.A. 3019.
- (v) The allegation of conspiracy was not proved by the prosecution.



- (vi) Lastly, 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 consequence insofar as other persons may be affected.

In its *Comment / Opposition*, the prosecution counters that:

- (i) The evidence on record irrefutably show that accused Ipong acted with evident bad faith, manifest partiality, and/or gross inexcusable negligence when he handpicked AFPI as the conduit-NGO implementor of his PDAF livelihood projects while accused Jover is similarly liable as she facilitated the processing, approval, and release of accused Ipong's PDAF to AFPI, in utter disregard of RA 9184 and its Implementing Rules and Regulations, National Budget Circular No. 476 and COA Circular No. 96-003.
- (ii) By his own admission, accused Ipong chose or designated AFPI as the conduit of his office in the implementation of his PDAF-funded project under SARO No. ROCS-07-05416 based on the recommendation of a person whose identify he could not recall. Further, he admitted that he merely relied on the recommendation of that person and did not bother to check the background of AFPI. He also confirmed that he did not observe any standard in selecting and appointing AFPI as the conduit of his office.
- (iii) Without accused Ipong's endorsement, TLRC could not have processed and released the funds to AFPI. His endorsement was necessary in order for TLRC to process the disbursement of his PDAF under SARO No. ROCS-07-05416 to AFPI.
- (iv) The prosecution claims that the evidence presented in these cases clearly established that the Php5 Million PDAF allocation of accused Ipong intended for livelihood projects in the Second District of North Cotabato was misappropriated.
- (v) The diversion or misuse of accused Ipong's PDAF was carried out through a scheme ostensibly designed to make it appear that his PDAF funds were regularly coursed through TLRC—a duly accredited IA of the government and implemented by a conduit-NGO, as project partner. However, the funds were instead diverted to AFPI, the dubious conduit-NGO whom accused Ipong personally endorsed to TLRC.
- (vi) The fact that indeed there were no projects or programs conducted in their locality was confirmed by prosecution witnesses City Planning and Development Coordinator Divina M. Fuentes and City



Social Welfare and Development Officer Lorna C. Morales of Kidapawan City who both confirmed and affirmed the certifications they issued that Kidapawan City has not been a recipient of any training or livelihood project conducted by AFPI thru TLRC from 2007 up to the present.

- (vii) Contrary to the claim of accused Jover, she was sufficiently informed of the nature and the cause of the accusations against her. The *Informations* in these cases clearly describe the acts constituting the crimes charged. A plain reading of the *Informations* show that the allegations stated therein sufficiently apprised her that the crimes charged against her were Section 3(e) of RA 3019 and *Malversation of Public Funds* under Article 217 of the Revised Penal Code. Her conviction which she alleged was based on her violation of COA Circular No. 96-003 is baseless as the said violation is merely a means described to commit the crimes charged against her.
- (viii) The role played by each of the accused were all indispensable that without any of them criminal charges would not have been committed. To be able to divert the funds from the PDAF, access thereto must be made available, and this was made possible by accused Ipong who endorsed AFPI to implement his PDAF-related project. His endorsement letter addressed to TLRC was necessary to ensure that AFPI—his chosen project partner, would be awarded the project.
- (ix) The Court committed no reversible error in finding accused Ipong and Jover guilty beyond reasonable doubt of violation of Sec. 3(e) of R.A. 3019 and *Malversation of Public Funds* under Article 217 of the Revised Penal Code.

RULING

After a careful evaluation of the arguments raised by accused Ipong, Jover, and the prosecution, the Court finds and so rules that the pending *Motion for Reconsideration* of accused Ipong and Jover are both bereft of merit and must be denied. The Court maintains its ruling holding that the prosecution was able to prove the criminal culpability of both accused beyond reasonable doubt. The discussions and contentions offered by both accused are mere rehash of their previous arguments, which have been considered by the Court in arriving at its 13 September 2022 *Decision*.

Accused Ipong and Jover failed to raise any new, substantial, and compelling arguments, which could have inspired the Court to render a judgment exonerating them from the charges. As held in *Social Justice Society (SJS) Officers, et al. v.*




Lim,² being mere reiterations of the issues already passed upon by the Court, there is no need to "cut and paste" pertinent portions of the decision or re-write the *ponencia* in accordance with the outline of the instant motion. Otherwise stated, it would be a useless ritual for the Court to reiterate itself.³

Indeed, the Court had already ruled that the evidence on record unequivocally established the elements of manifest partiality, evident bad faith, and gross inexcusable negligence on the part of accused Ipong. To be clear, the Court had discussed in length accused Ipong's specific acts leading to his conviction in its assailed ruling and to discuss it again here serves no purpose.

As for accused Jover, she claims that there was no mention of any COA circulars that could have been the basis of the charges against her under the twin *Informations* in these cases. Accused Jover insists that she cannot be convicted of an offense unless it is clearly charged in the *Information*. While this Court agrees with accused Jover that, indeed, she cannot be convicted of any offense unless and until she has been sufficiently apprised of the nature and cause for such charge, We must hasten to stress that both accused in these cases, Jover included, were fully informed of the charges against them.

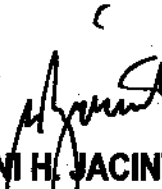
WHEREFORE, the *Motions for Reconsideration*, respectively filed by accused Gregorio T. Ipong and Marivic V. Jover, are hereby **DENIED** for lack of merit.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


BAYANI H. JACINTO
Associate Justice

² G.R. No. 187836, 10 March 2015.

³ *Mendoza-Ong v. Sandiganbayan*, G.R. No. 146368-69, 18 October 2004.