



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

THIRD DIVISION

**PEOPLE
OF THE
PHILIPPINES**

OF THE

Plaintiff,

- versus -

EFRAIM C. GENUINO, et al.,
Accused.

**Criminal Cases Nos. SB-13-
CRM-0605, 0608, 0610,
0612, 0614, 0616, 0618,
0620, 0622, 0624, 0626,
0628, 0630, 0632, 0634,
0636, 0638, 0640, 0642**

*For: Violation of Section 3 (e), in
relation to Section 3 (g), of
Republic Act No. 3019*

**Criminal Cases Nos. SB-13-
CRM-0606, 0607, 0609,
0611, 0613, 0615, 0617,
0619, 0621, 0623, 0625,
0627, 0629, 0631, 0633,
0635, 0637, 0639, 0641,
0643**

*For: Malversation of Public
Funds or Property
Defined and Penalized
Under Article 217 of the
Revised Penal Code*

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, B., J. and
MORENO, J.

Promulgated:

JANUARY 19, 2023

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RESOLUTION

CABOTAJE-TANG, PJ:

For resolution are accused Efraim C. Genuino's [1] *Manifestation and Motion* (Criminal Cases Nos. SB-13-CRM-0605 to 0606) dated February 7, 2022,¹ and [2] *Manifestation and Motion* (Criminal Cases Nos. SB-13-CRM-0608 to 0643) dated February 7, 2022.²

MANIFESTATION AND MOTION (0605 to 0606)

Accused-movant Genuino prays that [1] the Court note and consider the Supreme Court *en banc* Decisions promulgated on April 27, 2021, and June 15, 2021, both entitled "*Genuino v. Commission on Audit, et al.*," in G.R. Nos 213655 and 230818, and [2] acquit him of the crimes charged against him in these cases.³

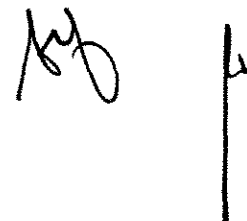
He submits that contrary to the allegations in the *Informations* of these cases, the Philippine Amusement and Gaming Corporation's (PAGCOR's) income is not considered as "*public funds*" which can only be disbursed pursuant to "*government auditing and accounting rules and regulations*;" the funds subject of these cases are not subject to the Commission on Audit's (COA's) limited audit jurisdiction; hence, the subject funds are considered as PAGCOR's private corporate funds within the control of the PAGCOR's Board of Directors (Board);⁴ the Supreme Court held in the above-mentioned cases that all other PAGCOR funds, including the subject PAGCOR Operating Expense Fund (OPEX Fund), is part of PAGCOR's private corporate funds, hence, it is outside the audit

¹ pp. 490-543, Vol. XXI, Record

² *Id.*, at p. 544-598

³ *Id.*, at p. 505

⁴ *Id.*, at p. 492

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jurisdiction of COA; and, the purchase of the *Baler* movie tickets did not result in any undue injury to the government or any private entity, nor did it give unwarranted advantage or benefit to any person.⁵

The said accused-movant further points out that in its Decision promulgated on April 27, 2021, the Supreme Court *en banc* held that [1] the funds disbursed by PAGCOR for the “*Baler transaction*,” which was sourced from PAGCOR’s OPEX Fund, is separate and distinct from the five percent (5%) franchise tax and the fifty percent (50%) share of the government; [2] the disbursement of the PAGCOR OPEX Fund merely requires the approval of the PAGCOR Board; [3] the PAGCOR Board acted within its powers under Section 7 of Presidential Decree (P.D.) No. 1869, or the “*PAGCOR Charter*,” when it approved the disbursement of the amount of Php26,700,000.00 for the purchase of *Baler* movie tickets because the *Baler* transaction is socio-civic in nature; and, [4] the subject disallowance which found liability against the accused is bereft of any factual and legal basis. Thus, he argues that there is nothing illegal or irregular in the disbursement of the subject PAGCOR funds which were drawn against the PAGCOR OPEX Fund for the purchase of *Baler* movie tickets.⁶

Moreover, accused-movant Genuino avers that the COA’s limited audit jurisdiction over the PAGCOR funds was reiterated by the Supreme Court in its above-mentioned Decision.⁷ According to him, in G.R. No. 230818, the Supreme Court *en banc* ruled that the COA is neither authorized nor empowered to conduct a sweeping or general audit on all of PAGCOR’s funds since the COA’s audit jurisdiction over the PAGCOR is limited to the 5% franchise tax and the 50% share of the government in its gross earnings.⁸

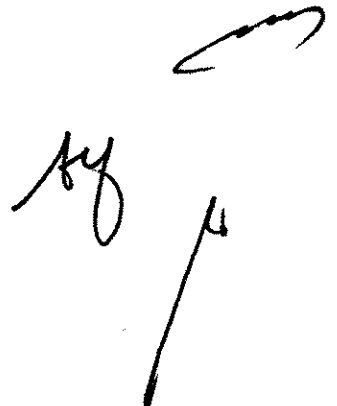
On another point, accused-movant Genuino submits that the subject funds disbursed by the PAGCOR Board for the *Baler*

⁵ *Id.*, at p. 500

⁶ *Id.*, at pp.492-497

⁷ *Id.*, at p. 497

⁸ *Id.*, at p. 498

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transaction are part of the PAGCOR's private corporate funds which were used for a socio-civic purpose. Thus, he cannot be held liable for the crimes charged against him in these cases.⁹

Also, accused-movant Genuino points out that the prosecution witnesses admitted that [1] PAGCOR does not receive funding from government and generates its own income revenue; [2] PAGCOR's OPEX Fund is sourced from its own revenue; [3] all expenses for PAGCOR's projects, including the *Baler* transaction, were charged against the OPEX Fund; and, [4] PAGCOR's OPEX Fund is separate and distinct from the funds remitted to the government representing 50% of PAGCOR's gross earnings.¹⁰ Thus, the disbursement of the funds for the *Baler* transaction did not cause any undue injury to the government since the funds were sourced from the PAGCOR's private corporate funds, which do not belong to the government.¹¹

Accused-movant Genuino also avers that there was no unwarranted benefit, advantage or preference given to BIDA Foundation or to any party because the PAGCOR's disbursement of funds for the purchase of the subject movie tickets was aimed towards "*raising awareness in the public of a part of important history, not for the purpose of earning profit for these entities.*" He mentions that the Supreme Court held in the above-mentioned Decisions held that the *Baler* transaction was a socio-civic project which was within the authority of the PAGCOR Board to approve.¹²

Moreover, he reiterates that the subject funds were sourced from the PAGCOR's OPEX Fund which is not part of the income remitted to the government and is not considered as government funds or property. Thus, there is no basis to hold him criminally liable for the crime of *malversation* because there is no proof that he was an accountable public officer.¹³

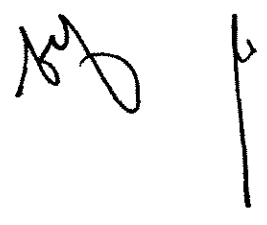
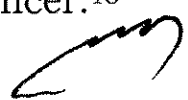
⁹ *Id.*, at p. 500

¹⁰ *Id.*, at p. 501

¹¹ *Id.*, at p. 502

¹² *Id.*, at p. 503

¹³ *Id.*, at p. 504



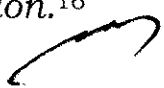
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Lastly, accused-movant Genuino stresses that the above-mentioned Supreme Court Decisions prove that the PAGCOR Board acted in good faith when it approved the disbursement of PAGCOR funds for the *Baler transaction*.¹⁴

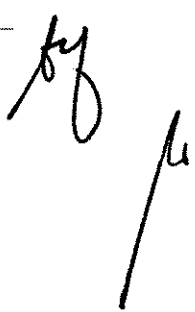
MANIFESTATION AND MOTION (0608 to 0643)

In the said *motion*, accused-movant Genuino similarly prays that the Court acquit him of the crimes charged against him in these cases based on the Decisions of the Supreme Court in G.R. Nos. 213655 and 230818.¹⁵

In support of his prayer, he reiterates the arguments he submitted in his above-mentioned "*Manifestation and Motion*," namely: [1] that the funds used for these projects were also sourced from the PAGCOR OPEX Fund; [2] contrary to the allegations in the subject *Informations*, the PAGCOR's income is not considered as "*public funds*;" [3] in G.R. Nos. 213655 and 230818, the Supreme Court *en banc* held that the funds disbursed by PAGCOR, which were sourced from the PAGCOR's OPEX Fund, are separate and distinct from the 5% franchise tax and the 50% of the government's share in PAGCOR's gross earnings; [4] the Supreme Court further ruled in the said cases that the disbursement of the PAGCOR OPEX Fund only requires the approval of the PAGCOR Board; [5] the PAGCOR Board acted within its powers under Section 7 of P.D. No. 1869; [6] the COA only has limited jurisdiction with respect to the audit of PAGCOR funds; and, [7] the funds subject of these cases formed part of the PAGCOR's private corporate funds, and were used as part of PAGCOR's CSR projects; hence, he cannot be held liable for Violation of Section 3 (e) of R.A. No. 3019 and the crime of *malversation*.¹⁶



¹⁴ *Id.*, at p. 504
¹⁵ *Id.*, at p.560
¹⁶ *Id.*, at pp. 546-559



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THE PROSECUTION'S MOTION TO ADMIT ATTACHED COMMENT/OPPOSITION

In its *Resolution* promulgated on February 8, 2022, the prosecution was given a non-extendible period of ten (10) days from notice of the said *resolution* within which to file its consolidated comment/opposition to the present *motions*.¹⁷

Notably, the prosecution failed to file its comment/opposition within the prescribed period.

In its *Resolution* promulgated on December 12, 2022, the present *motions* were submitted for resolution after it appeared from the records of these cases that the prosecution has not filed its consolidated *comment/opposition* to the present *motions*.¹⁸

Thereafter, or on January 6, 2023, the prosecution filed its "*Motion to Admit [Attached Comment/Opposition to the Manifestation and Motion Filed by Accused Genuino]*" stating among other things that its failure to file its *comment/opposition* "*was purely due to the inadvertence that the plaintiff neglected to attend [sic] to the same.*" In its *Resolution* promulgated on even date, the Court denied the said *motion to admit* considering that the same was filed after the present incidents were already submitted for resolution on December 12, 2022.¹⁹

THE RULING OF THE COURT

The Court finds the subject *motions* bereft of merit.

Essentially, accused-movant Genuino prays that the Court [1] apply the doctrines laid down by the Supreme Court *en banc* in its

¹⁷ *Id.*, at p. 600

¹⁸ Vol. XXIII, Record

¹⁹ Vol. XXIII, Record

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Decisions in G.R. Nos. 213655 and 230818 to these cases; [2] dismiss the said cases; and, [3] acquit him of the crimes charged against him.

To begin with, jurisprudence provides that the *doctrine of the case* means that whatever has once been irrevocably established as the controlling legal rule of a decision **between the same parties in the same case** continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be facts of the case before the court.²⁰

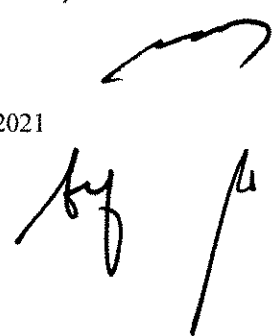
Evidently, the above-mentioned *doctrine* applies only in the proceedings involving the same case and the same parties. Stated otherwise, it cannot bind the proceedings involving another case even if it involves the same parties.

A reading of the Decision in G.R. No. 230818, entitled “*Genuino v. Commission on Audit, et al.*,” shows that the Supreme Court resolved petitioner Genuino’s “*Petition for Certiorari with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*” assailing COA Decision No. 2015-420 dated December 28, 2015, and Resolution dated March 21, 2017. To be sure, the factual backdrop thereof relates to the financial assistance given by PAGCOR to Pleasant Village Homeowners Association (PHVA), a private entity, for the construction of a flood control and drainage system within the Pleasant Village Subdivision.²¹

On the other hand, in G.R. No. 213655, entitled “*Genuino v. Commission on Audit, et al.*,” the Supreme Court resolved the same petitioner’s three (3) consolidated *petitions for certiorari* assailing COA Decision No. 2013-191 dated November 20, 2013, and Decision No. 2014-115 dated June 18 2014, which affirmed Notice of Disallowance (N.D.) No. 2011-002(08) dated June 30, 2011. The

²⁰ See *Garcia v. Santos*, 904 SCRA 205 (2019)

²¹ p. 2, Decision, *Genuino v. Commission on Audit, et al.*, G.R. No. 230818, June 15, 2021

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said ND disallowed the PAGCOR's release of funds amounting to Php26,700,000.00 as purchase price for the eighty-nine thousand (89,000) tickets to the movie *Baler*, in favor of *Batang Iwas Droga* (BIDA) Foundation, Inc.²² Clearly, the issues involved in the said cases are materially different from the issues in these cases.

Moreover, while the factual antecedents of G.R. No. 213655 are related to the present cases, it must be underscored that the issues resolved by the High Tribunal in G.R. No. 213655, *i.e.*, the jurisdiction of COA to conduct a governmental audit over PAGCOR funds, is unassociated with the criminal charges against the accused herein. To be clear, the present cases stemmed from the criminal *Informations* filed by the Office of the Ombudsman with this Court on May 27, 2013,²³ and not on the said NDs issued by the COA. Thus, the guilt or innocence of the accused may only be determined by the Court after a consideration of the totality of evidence submitted by the parties.

Also, the Court notes that the principle of *stare decisis* finds no application to these cases.

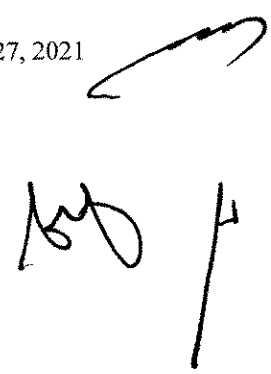
Jurisprudence teaches that the principle of *stare decisis* enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.²⁴

To stress, the Decisions promulgated by the Supreme Court in the said cases relate only to the grave abuse of discretion committed by the COA in conducting an audit of PAGCOR's accounts beyond the 5% franchise tax and 50% of the government's share in its gross earnings as stated in Section 15 of P.D. No. 1869.

²² p. 2, Decision, *Genuino v. Commission on Audit, et al.*, G.R. No. 213655, April 27, 2021

²³ pp. 1-4, Vol. I, Record

²⁴ See *Lazatin, et al., v. Desierto and the Sandiganbayan*, 588 SCRA 285 (2009)

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To be sure, the Supreme Court made no pronouncement as to the guilt or innocence of the accused in relation to the criminal charges filed against them in these cases.

Lastly, in support of his prayer for the dismissal of these cases, accused-movant Genuino raises the following arguments: [1] contrary to the allegations in the *Informations*, the PAGCOR's income is not considered as "*public funds*;"²⁵ [2] there is nothing illegal or irregular in the disbursement of the PAGCOR funds, drawn against the OPEX Fund for the purchase of the *Baler* movie tickets;²⁶ [3] there was no unwarranted benefits, advantage or preference given to BIDA Foundation or to any party since the PAGCOR's disbursement of funds for the purchase of the said movie tickets was aimed towards raising awareness in the public of a part of important history, not for the purpose of earning profit for these entities;²⁷ [4] he cannot be held liable for *malversation* considering that the Supreme Court ruled that these funds are not part of the government's share in the PAGCOR's income;²⁸ there is no basis to hold him liable for *malversation* since there is absolutely no proof that (a) he was an accountable public officer as regards to the subject funds, and (b) there was damage to the government;²⁹ and, [5] the PAGCOR Board acted in good faith when it approved the disbursement of PAGCOR funds for the *Baler* transaction.³⁰

Jurisprudence teaches that in every criminal case, the determination of guilt of an accused hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense.³¹

Applying settled jurisprudence, the Court holds that the evaluation of the above-mentioned assertions of the accused-movant in his *motions*, and the purported admissions of the

²⁵ *Id.*, at p. 492

²⁶ *Id.*, at p. 497

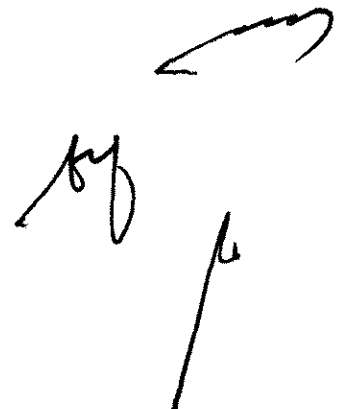
²⁷ *Id.*, at p. 502

²⁸ *Id.*, at p. 503

²⁹ *Id.*, at pp. 503-504

³⁰ *Id.*, at p. 504

³¹ *Macayan v. People*, 753 SCRA 445 (2015)

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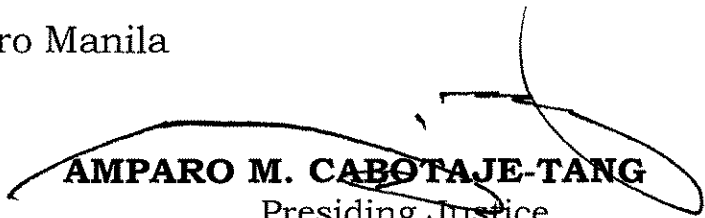
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prosecution witnesses should be properly threshed out by the Court after the present cases are submitted for decision.

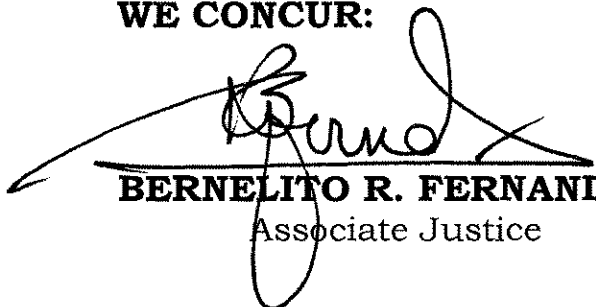
WHEREFORE, the Court [1] **DENIES** accused-movant Efraim C. Genuino's prayer for acquittal in Criminal Cases Nos. SB-13-CRM-0605, 0608, 0610, 0612, 0614, 0616, 0618, 0620, 0622, 0624, 0626, 0628, 0630, 0632, 0634, 0636, 0638, 0640, 0642, for Violation of Section 3 (e) of R.A. No. 3019, and in Criminal Cases Nos. Criminal Cases Nos. SB-13-CRM-0606, 0607, 0609, 0611, 0613, 0615, 0617, 0619, 0621, 0623, 0625, 0627, 0629, 0631, 0633, 0635, 0637, 0639, 0641, 0643, for the crime of *malversation of public funds or property*, for lack of merit; and [2] **NOTES** the same accused-movant's *manifestations* and the attachments to his *motions*.

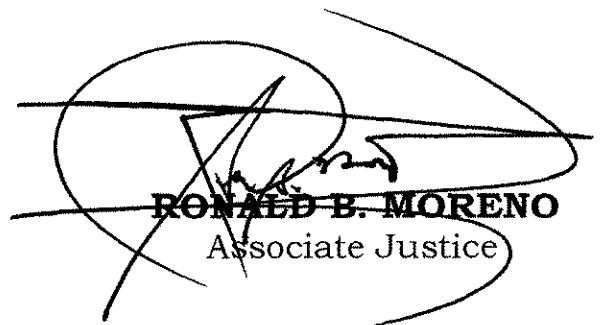
SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice