REPUBLIC OF THE PHILIPPINES
**Sandiganbayan**
QUEZON CITY

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**SEVENTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

**Case No. SB-16-CRM-0249**
*For violation of Sec. 3(e), R.A. No. 3019*

*-versus -*

**ROZZANO RUFINO BUNOAN BIAZON, ZENAIDA GARCIA CRUZ-DUCUT, MARIO LOQUELLANO RELAMPAGOS, ROSARIO SALAMIDA NUÑEZ, LALAINE NARAG PAULE, MARILOU DIALINO BARE, ANTONIO YRIGON ORTIZ, DENNIS LACSON CUNANAN, FRANCISO BALDOZA FIGURA, MARIA ROSALINDA MASONGSONG LACSAMANA, MARIVIC VILLALUZ JOVER, MAURINE E. DIMARANAN, CONSUELO LILIAN REYES ESPIRITU, JANET LIM NAPOLES and EVELYN DITCHON DE LEON,**
*Accused.*

x----------x

**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

**Case No. SB-16-CRM-0250**
*For Malversation (Article 217, RPC)*

*-versus -*

**ROZZANO RUFINO BUNOAN BIAZON, ZENAIDA GARCIA CRUZ-DUCUT, MARIO LOQUELLANO RELAMPAGOS, ROSARIO SALAMIDA NUÑEZ, LALAINE NARAG PAULE, MARILOU DIALINO BARE, ANTONIO YRIGON ORTIZ, DENNIS LACSON CUNANAN, FRANCISO BALDOZA FIGURA, MARIA ROSALINDA MASONGSONG**

**LACSAMANA, MARIVIC VILLALUZ JOVER, MAURINE E. DIMARANAN, CONSUELO LILIAN REYES ESPIRITU, JANET LIM NAPOLES and EVELYN DITCHON DE LEON,**
*Accused.*
x----------x

**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

*-versus -*

**ROZZANO RUFINO BUNOAN BIAZON,**
*Accused.*
x----------x

**Case No. SB-16-CRM-0251**
*For Direct Bribery (Article 210, RPC)*

Present:

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

Promulgated:
January 31, 2023

# RESOLUTION

**TRESPESES, *J.*:**

Submitted for the court's resolution are the following:

1. Accused Mario L. Relampagos, Rosario S. Nuñez, Lalaine N. Paule and Marilou D. Bare's "JOINT DEMURRER TO EVIDENCE (with Leave of Court)" dated 23 November 2022;[1]

2. Accused Rozzano Rufino B. Biazon's "DEMURRER TO EVIDENCE" dated 28 November 2022;[2]

3. The prosecution's "OPPOSITION to the Joint Demurrer to Evidence (with Leave of Court) dated November 23,

[1] Record, Vol. 17, pp. 204-340.
[2] Id. at 341-349.

2022 filed by accused Mario L. Relampagos, Rosario S. Nuñez, Lalaine N. Paule and Marilou D. Bare" dated 1 December 2022;[3] and

4. The prosecution's "OPPOSITION (to the Joint Demurrer to Evidence dated November 28, 2022 filed by accused Rozzano Rufino B. Biazon)" dated 7 December 2022.[4]

## 1. CRIMINAL CASE NOS. SB-CRM-0249 TO 0250

### 1.1. Accused Relampagos, et al.'s Demurrer

In their Joint Demurrer to Evidence, accused Mario L. Relampagos, Rosario S. Nuñez, Lalaine Paule and Marilou D. Bare (hereafter collectively referred to as "Relampagos, et al.") argue as follows:

*1.1.1. On the violation of Section 3(e) of R.A. No. 3019 / SB-16-CRM-02-0249*

Accused Relampagos, et al. aver that the prosecution failed to establish the elements of graft as far as they are concerned.

They characterize as baseless the allegation in the Information that Relampagos, et al. "facilitated the processing" of the Special Allotment Release Order ("SARO") and the corresponding Notice of Cash Allocation ("NCA").

Accused Relampagos, et al. stress that the prosecution did not present the normal time frame for processing the SARO and NCA. Hence, there is no benchmark against which to appreciate the alleged facilitation. Notably, the subject ROCS-07-07433 was released 30 days after receipt of request for its issuance. Meanwhile, the Department of Budget and Management (DBM) Citizen's Charter prescribed 11 hours and 15 minutes for this processing.

Moreover, the pertinent SARO in this case – SARO No. ROCS-07-07433 – was not even signed by accused Mario Relampagos.

Relampagos, et al. further cite *People v. Sandiganbayan (First Division)*[5] where the Supreme Court held that the Sandiganbayan did not err in finding that no probable cause existed to indict Relampagos, et al. as regards SAROs not signed by accused Relampagos, thus:

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[3] Record, Vol. 17, pp. 372-383.
[4] Id. at 385-395.
[5] G.R. Nos. 219824-25, 12 February 2019.

> 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.
>
> 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.

Further, Relampagos, et al. contend that the issuance of NCA No. 348840-2 dated 17 December 2007[6] and DBM Advice of NCA ("ANCAI") for NCA No. 348840-2[7] merely follows as a matter of course upon the issuance of a SARO.

More importantly, they insist that the processing of these documents was not undertaken by the office of Relampagos, et al. Rather, it was conducted by the Regional Operations Coordination Service ("ROCS"). This was shown by the prosecution evidence on the DBM structure regarding the Priority Development Assistance Fund (PDAF). Meanwhile, processing by the technical bureaus of the NCA and ANCAIs were not shown by the prosecution to have been tainted by any irregularity or illegality.

They also cite Supreme Court Associate Justice Presbiterio Velasco, Jr.'s Concurring and Dissenting Opinion in *Cambe v. Office of the Ombudsman*,[8] where he opined that there was no probable cause to indict Relampagos, et al., to wit:

> I submit that the issues raised by the parties are ripe for adjudication and easily verifiable by the submissions of the parties. To wait for trial will only unnecessarily prolong the disposition of the case. On this note, Sec. 6, Rule 112 of the Rules of Criminal Procedure provides that a judge "may

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[6] Exhibit C-2
[7] Exhibit C-3
[8] 802 Phil. 190-313 (2016).

immediately dismiss the case if the evidence on record clearly fails to establish probable cause."

xxx

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.

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:

xxx

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.

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:

xxx

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."

### *1.1.2. On the violation of Art. 217 of the Revised Penal Code / SB-16-CRM-0250*

Relampagos, et al. note that the Information in SB-16-CRM-0250 alleges that, by facilitating the processing of the subject SARO and its corresponding NCA, they "appropriated, took, misappropriated and/or allowed Napoles and her cohorts, through PSDFI, to take possession and thus misappropriate PDAF-drawn public funds instead of implementing the PDAF-funded project, which turned out to be non-existent, while Napoles and De Leon caused/participated in the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals, and

other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines."

They counter that the elements to prove malversation are absent insofar as they are concerned.

Relampagos, et al. underscore that they were not recommended for prosecution in all the prosecution's exhibits.

Also, on cross examination, Benhur Luy (Luy) explained that disbursements/kickbacks remitted by JLN Corporation and by accused Napoles were recorded in the Daily Disbursement Reports ("DDRs") through Cash Vouchers.[9] Thereafter, he admitted that none of the accused movants was mentioned in the 2007 to 2009 DDRs.[10]

Moreover, accused DBM officers cite Justice Velasco's similar observation in his Concurring and Dissenting Opinion in *Cambe v. Office of the Ombudsman*:[11]

> As borne by the records, the Ombudsman initially found probable cause to charge petitioners Relampagos, *et al.* for sixteen (16) counts of violation of Sec. 3 (e), RA 3019 on account of Luy's testimony that petitioners are Napoles' contact in the DBM. Yet, even Luy himself twice admitted during the September 12, 2013 Senate Blue Ribbon Committee that petitioners did not receive any part of the PDAF, *viz.*:
>
> > *The Chairman: So, ang hatian — sa legislator, sa line agency na nag-implement. Mr Luy: Yes, Po.*
> >
> > *The Chairman: **DBM mayroon ba**? Mr. Luy: **'Yan ang hindi ko po alam, ang DBM**.*
> >
> > xxx xxx xxx
> >
> > *Sen. Cayetano: So far ang sinabi mo, congressman, senador, head of agency. **Sa DBM, may ibinibigay din**? Mr. Luy: **Wala po akong maalala na — o wala po akong nakita na** —*
>
> The fact that DBM officers and employees did not partake in the PDAF is likewise shown by Suñas' testimony when she alleged the following breakdown of the supposed "kickbacks" on the PDAF Scam:
>
> > T: *Maaari mo bang ipaliwanag ang ibig mong sabihin na ang pondo na sa halip napunta sa dapat na beneficiaries ay napunta kay Madame Jenny at sa mga senador?*
> >
> > S: *Dahil sa ang pondo mula sa PDAF na dapat mapunta sa mga proyekto ay pinaghahatian. Limampung porsyento (50%) sa mambabatas, limang porsyento (5%) sa Chief*

[9] TSN, 15 March 2022, pp. 94-95.
[10] Id. at p. 59.
[11] Supra. note 8.

> *of Staff ng mambabatas, sampung porsyento (10%) sa implementing agency at ang natitirang tatlumpu't limang porsyento (35%) ay napupunta kay Madame Jenny.* (Footnotes omitted, underscoring and emphasis in the original.)

Thus, they conclude, they are not responsible for misappropriation of public funds, whether through intent or negligence.

Relampagos, et al. also point out that the elements of being an "accountable officer" who has "custody of and received such funds and property by reason of his office" are missing. To substantiate this argument, they cite *Panganiban v. People*,[12] where the Supreme Court reversed the Sandiganbayan conviction of a mayor on the ground that the latter was not an accountable person and hence, could not commit malversation.

They contend that the expanded definition of malversation applies only to local government officials who, though not accountable by the nature of their duties, may likewise be similarly held accountable for local government funds through their participation in the use or application thereof.

Relampagos, et al. further argue that Luy's testimony that he supposedly made follow ups at their office did not establish anything irregular or illegal.[13]

Meanwhile, they assert that Luy's reference to dealings with DBM since 2002, 2003, 2004[14] should be dismissed for apparently not referring to the SARO herein which is dated 2007.

*1.1.3. On the charge of conspiracy*

Relampagos, et al. claim that the prosecution is relying on its conspiracy allegation to connect the accused-movants to the charges.

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[12] G.R. No. 211543, 9 December 2015.
[13] In TSN, 15 March 2022, p. 64. Luy testified as follows:

Q. And the reason why you made follow-ups with the Office of Usec. Mario Relampagos was that Usec Relampagos was known to Mrs. Napoles?
A. They are friends kasi Bisaya po si Usec Mario Relampagos.

Q. And that was the only reason why you made follow-ups with the Office of Usec. Relampagos?
A. Magkakilala na po sila in 2004 ... (interrupted)

Q. Yes or no, Mr. Witness?
A. Yes, that's the only reason, because they already made a transaction since then 2004... (interrupted)

[14] TSN, 15 March 2022, p. 63.

However, they point out that conspiracy cannot be presumed. The elements thereof must also be proven beyond reasonable doubt. It may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together.

The evidence must be strong enough to show the community of criminal design. It is also necessary that some overt act should have been performed by a conspirator as a direct or indirect contribution to the execution of the crime committed. "The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy even approval of it, without any active participation in the same, is not enough for purposes of conviction."[15]

## 1.2. The Prosecution's Comment/Opposition

In its Opposition to Relampagos, et al.'s Joint Demurrer to Evidence, the prosecution presents the following arguments:

### *1.2.1. Having absconded, Relampagos is deemed to have waived his right to seek judicial relief until he surrenders or submits to the court's jurisdiction.*

The prosecution points out that accused Mario Relampagos jumped bail after his arraignment, when the court already acquired jurisdiction over his person and after he posted bail for his conditional liberty. He sought legal authority to travel abroad but had planned to escape. His flight exhibited contempt of the authority of the court, so the court should not accord him leniency as to grant him the demurrer to evidence he prays for.

It avers that, at the very least, Relampagos should first resurface and submit himself to the court's jurisdiction. He should not be allowed to avail of the legal remedy of demurrer to evidence while he is outside this court's jurisdiction. Accordingly, it prays for the outright denial of Relampagos's demurrer to evidence for want of legal basis.

The prosecution adds that it has, in fact, been ruled that:

> Well-established in our jurisdiction is the principle that the appellate court may, upon motion or *motu proprio*, dismiss an appeal during its

[15] *Rimando v. People*, G.R. No. 229701, 29 November 2017.

pendency if the accused jumps bail. The second paragraph of Section 8 of Rule 124 of the 2000 Revised Rules of Criminal Procedure provides:

> The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.
>
> This rule is based on the rationale that appellants lose their standing in court when they abscond. Unless they surrender or submit to the court's jurisdiction, they are deemed to have waived their right to seek judicial relief.
>
> Moreover, this doctrine applies not only to the accused who jumps bail during the appeal, but also to one who does so during the trial. Justice Florenz D. Regalado succinctly explains the principle in this wise:
>
> > xxx. When, as in this case, the accused escaped after his arraignment and during the trial, but the trial in absentia proceeded resulting in the promulgation of a judgment against him and his counsel appealed, since he nonetheless remained at large his appeal must be dismissed by analogy with the aforesaid provision of this Rule [Rule 124, §8 of the Rules on Criminal Procedure].[16]
>
> xxx (Emphasis supplied.)

*1.2.2. On the charge of conspiracy*

In addition to the specific acts attributed to the accused in the Information, the prosecution asserts that all the accused herein were charged to have conspired – with each other and with their other co-accused/co-conspirators – in the commission of the crimes for SB-16-CRM 0249 and 0250.

In this regard, it cites *People v. De Jesus*,[17] where the Supreme Court clearly defined and explained the concept of conspiracy between and among the co-accused in criminal cases, to wit:

> Under Article 8 of the Revised Penal Code, there is conspiracy when two or more offenders agree to commit a felony and decide to commit it. Conspiracy may be proved by direct evidence or by circumstantial evidence. Conspiracy must be shown as distinctly and conclusively as the crime itself. It may be declared from the acts of the suspect before, during and after the commission of the felony which are indicative of a joint purpose, concocted action and concurrence of sentiments.

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[16] *Philippine Rabbit Bus Liners, Inc. v. People*, 471 Phil. 415-440 (2004).
[17] 473 Phil. 405-445 (2004).

> To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators.
>
> The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof.

Applying the foregoing, the prosecution avers that all the criminal acts and individual participation of each accused, specifically that of Relampagos, Nuñez, Paule and Bare, were proven beyond reasonable doubt by the prosecution with the presentation of actual evidence.

The actual PDAF fund release documents from DBM relating to these criminal cases, such as the SARO, NCA, and the like, were undisputed and admitted as evidence for the prosecution. Exhibits C-1, C-2 and C-3 for the prosecution clearly confirmed the release of ₱3 Million of public funds from the National Treasury to the Technology Resource Center (TRC)[18] and to the Philippine Social Development Foundation Inc. (PSDFI), through its President Evelyn De Leon (De Leon), which is a Non-Governmental Organization (NGO) controlled by Janet Lim Napoles (Napoles).

It emphasizes that, as conspirators in the PDAF scam, accused Relampagos, et al. were "assigned and tasked" to "accommodate the employees of the PSDFI thru De Leon, which is the Napoles controlled NGO, in the facilitation and/or processing of the SARO and NCA" for the release of the funds drawn from Biazon's PDAF. Clearly, the said accused performed such act as conspirators to achieve their common criminal objective – to assure that PSDFI's bank account is the ultimate destination of Biazon's PDAF. Without the participation of herein accused from DBM, the crime would not have been committed or may have been prevented.

The prosecution summarizes that Relampagos, et al. were assigned and tasked as conspirators of the PDAF scam and they, undoubtedly, performed such assigned task. While it may appear unrelated to the other acts of their conspirators, it constituted a whole collective effort to achieve their common criminal objective, which is the release of the subject PDAF funds of accused Biazon to the TRC, and ultimately, to PSDFI. Thus, the charge in the two

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[18] The Technology Resource Center (TRC) was formerly known as the Technology and Livelihood Resource Center (TLRC).

Informations against them as to their criminal participation were fully substantiated with direct evidence by the prosecution.

*1.2.3. The prosecution did not allege that accused Relampagos, et al.'s office was tasked with the release of the SAROs and NCAs so it need not prove such allegation.*

The prosecution asserts that it need not prove what it did not allege. Hence, Relampagos, et al.'s numerous assertions as to what the prosecution allegedly failed to prove is illogical.

It adds that if Relampagos, et al. claim that the release of SAROs and NCAs is assigned to another office, and not to theirs, then it they is who must present evidence of such fact.

*1.2.4. Luy categorically testified that he followed up the release of the SARO and NCA with the office of Relampagos, per Napoles's instruction.*

The prosecution asserts that Luy testified that he followed up with the office of accused Relampagos the release of the SARO and NCA, as instructed by accused Napoles. Luy further testified on the circumstances of the association between accused Relampagos and Napoles. Moreover, in his Judicial Affidavit dated August 23, 2021, specifically in Question-and-Answer Nos. 76 to 79, Luy provided a detailed and categorical narration of facts as to his personal dealings with each accused DBM official.

Additionally, it points out that Marina Cortes Sula likewise testified that Napoles instructed JLN employees "to follow up with the various government agency (sic) for the release of the PDAF allocation."

It further cites Exhibit C-7, which specifically provides that accused Relampagos is the authorized signatory of the NCA for PDAF releases. It then asserts that the subject NCA (Exhibit C-2) and Advice of NCA (Exhibit C-3) for these cases evidently show the signatures of accused Relampagos. These signatures of accused Relampagos can easily be compared with those of the administering officer in the SALNs filed by accused Nuñez, Paule and Bare (Exhibits E to E-25).

Thus, the prosecution contends, the allegations in the Informations that accused Relampagos, et al. unduly accommodated and facilitated the release of the PDAF funds to PSDFI, as alleged in the Informations, are clearly well substantiated.

*1.2.5. The prosecution need not prove the timeline for the release of the SARO/NCA as these are irrelevant and not among the allegations in the Informations.*

The prosecution claims that the timeline of the release of the SARO/NCA is completely irrelevant, as it is not among the allegations in the two Informations which the prosecution must prove.

What the prosecution alleged in the Informations was that accused Relampagos, et al. "unduly accommodated and facilitated" the release of SARO and NCA to PSDFI. The prosecution underscores that it proved this allegation with the above-mentioned pieces of evidence.

The prosecution also avers that the indispensable participation of accused Relampagos, et al. in the facilitation of SARO and NCA in the release of PDAF was extensively discussed in the landmark case of *Belgica, et. al, vs. Executive Secretary, et. al..,*[19] the pertinent portion of which reads:

> -XXX-
> Justice Bernabe: Now, without the individual legislator's identification of the project, can the PDAF of the legislator be utilized?
> Solicitor General Jardeleza: No, Your Honor.
> Justice Bernabe: It cannot?
> Solicitor General Jardeleza: It cannot... (interrupted)
> Justice Bernabe: So meaning you should have the identification of the project by the individual legislator?
> Solicitor General Jardeleza: Yes, Your Honor.
> XXXX
> Justice Bernabe: In short, the act of identification is mandatory?
> Soliclor General Jardeleza: Yes, Your Honor. In the sense that if it is not done and then there is no Identification.
> XXXX
>
> Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?
> Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much. Your Honor,

[19] 721 Phil. 416-732 (2013).

because to implement there is a need [for] a SARO and the NCA. And the SARO and the NCA are triggered by an identification from the legislator.

XXX X
Solictor General Jardeleza: What we mean by mandatory, Your Honor, is we were replying to a question, "How can a legislator make sure that he is able to get PDAF Funds?" It is mandatory in the sense that he must identify, in that sense, Your Honor. Otherwise, if he does not identify, he cannot avail of the PDAF Funds and his district would not be able to have PDAF Funds, only in that sense, Your Honor. (Emphases supplied)
-XXX-

A SARO, as defined by the DBM itself in its website, is "[a] specific authority issued to Identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or is subject to separate approval or clearance by competent authority." Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. Practically speaking, the SARO does not have the direct and immediate effect of placing public funds beyond the control of the disbursing authority. In fact, a SARO may even be withdrawn under certain circumstances which will prevent the actual release of funds. On the other hand, the actual release of funds is brought about by the issuance of the NCA, which is subsequent to the issuance of a SARO. As may be determined from the statements of the DBM representative during the Oral Arguments:

Justice Bernabe: Is the notice of allocation issued simultaneously with the SARO?
X X X
Atty. Ruiz: It comes after. The SARO, Your Honor, is only the go signal for the agencies to obligate or to enter into commitments. The NCA, Your Honor, is already the go signal to the treasury for us to be able to pay or to liquidate the amounts obligated in the SARO; so it comes after, x x x The NCA, Your Honor, is the go signal for the MDS for the authorized government-disbursing banks to, therefore, pay the payees depending on the projects or projects covered by the SARO and the NCA.
Justice Bernabe: Are there instances that SAROs are cancelled or revoked?
Atty. Ruiz: Your Honor, I would like to instead submit that there are instances that the SAROs issued are withdrawn by the DBM.
Justice Bernabe: They are withdrawn?
Atty. Ruiz: Yes, Your Honor x x x. (Emphases and underscoring supplied)
-XXX

Hence, the prosecution concludes that the role of Relampagos, et al. and their co-accused legislator in the release of PDAF cannot simply be downplayed as limited to ministerial acts of "dispensing paperwork." Their acts triggered the release of public funds to individuals, through bogus NGOs, that embezzled all the proceeds of the subject PDAF.

*1.2.7. Regarding the violation of Art. 217, Illegal Use of Public Funds or Property, Revised Penal Code / SB-16-CRM-0250*

The prosecution avers that in the case at bar, it proved beyond reasonable doubt the existence of all the elements for the crime of malversation, which are: (i) that the offender is a public officer, (ii) that he had custody or control of funds or property by reason of the duties of his office, (iii) that those funds or property were public funds or property for which he was accountable, and (iv) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[21]

The prosecution argues that, regarding the first element, as discussed earlier, Relampagos, et al. are public officers at the time material to these criminal cases.

As regards the second and third elements, the prosecution stresses that accused DBM officers are co-conspirators of accused TRC officials, who had the actual custody of the subject ₱3Million PDAF funds, and of accused Biazon, who had the control of the said funds.

All the accused in these cases are charged as co-conspirators in the commission of all 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.[22] Accused Relampagos, et al. – with all the evidence presented by the prosecution as earlier stated – evidently unduly accommodated PSDFI in the facilitation, release and processing of the SARO and NCA. This resulted in the release of Biazon's PDAF to the TRC, and ultimately, to the said NGO which embezzled the subject public funds.

Anent the fourth element, the prosecution claims that it was able to prove beyond reasonable doubt the specific acts of Relampagos, et al. who consented or, through abandonment or negligence, permitted their co-accused and co-conspirators (Napoles and PSDFI through De Leon) to take possession, and misappropriate the ₱2.7 Million out of the ₱3 Million PDAF of accused Biazon. Without the participation of Relampagos, et al., who initiated the release of the subject PDAF, which was ultimately diverted to PSDFI, the crimes would not have been committed or may have been prevented.

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[21] *Venezuela v. People*, G.R. No. 205693, 14 February 2018.
[22] *People v. Miranda*, 463 Phil. 39-50 (2003).

*1.2.6. Regarding the Violation of Sec. 3(e), R.A. 3019 / SB-16-CRM-0249*

To be found guilty of violating Section 3 (e), Republic Act No. 3019, the following elements must concur: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[20]

The prosecution argues that the first and second elements have been established because the parties already stipulated the fact that Relampagos, et al. are all public officers from the DBM discharging official functions at the time material to these criminal cases. Moreover, the prosecution offered public documents that proved their positions, duties and functions.

Anent the third element, the prosecution claims that it was able to adduce sufficient evidence that Relampagos, et al. unduly accommodated De Leon and PSDFI (the Napoles-controlled NGO) in the facilitation, release and processing of the SARO and NCA, resulting in the release of Biazon's PDAF to the TRC and ultimately to PSDFI. This was testified by Luy, who personally talked to Relampagos, et al., and whose testimony was materially corroborated on relevant facts by Sula.

It insists that the acts of Relampagos, et al., and all their co-accused, were substantially proven and were accomplished with manifest partiality, evident bad faith, and/or gross inexcusable negligence.

Regarding the fourth element, the prosecution stresses that it clearly and convincingly proved that the subject PDAF of Biazon was systematically pocketed, stolen and callously shared by Relampagos, et al.'s co-conspirators. It is undisputed that not a single centavo of the ₱2.7Million out of the ₱3Million went to the intended beneficiaries of Biazon's PDAF project. This fund was released by Relampagos, et al. through the subject SARO and NCA that emanated from their office in the DBM. There is more than sufficient evidence presented during the trial that Relampagos, et al., with their co-accused, and 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 the Napoles-controlled NGO, PSDFI, thru its President, De Leon.

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[20] *Sison v. People*, 628 Phil. 573-586 (2010).

Lastly, the prosecution alleges that the records reflect that it presented numerous documents and witnesses who testified as to each and all details and steps taken on how the illegal PDAF scam was plotted, executed and covered-up by all the accused with their respective official participation. It stresses that the transaction was documented, audited, and validated and that several government investigative bodies consistently affirmed and substantiated the relevant factual findings in support of the crimes charged herein.

The prosecution summarizes that it presented to the court the complete documentary evidence on how the crime was committed and supported it with direct evidence from the former employees of accused Napoles and the listed beneficiaries whose names were used in the liquidation documents. Said evidence were duly authenticated and admitted as evidence for the prosecution. If these remain unrebutted – specifically as to the participation of herein accused Relampagos, et al. – all the evidence presented, as supported by the records, is, unmistakably, sufficient basis to sustain the verdict of guilt beyond reasonable doubt against all the accused for violation of Sec. 3(e) of RA3019 and Art. 217 of the Revised Penal Code, as amended.

Thus, the prosecution prays that the present motions be denied by the court for lack of merit.

## 1.3. OUR RULING IN CRIMINAL CASE NOS. SB-CRM-0249 TO 0250

### *1.3.1. On the Procedural Aspect*

We find merit in the prosecution's argument that the court should deny accused Relampagos's demurrer to evidence because the latter is a fugitive from justice.

A review of the records shows that in a Manifestation dated 10 January 2018,[23] counsel for accused Relampagos informed the court that the latter is no longer returning to the country.

Acting thereon, the court issued a Resolution dated 15 January 2018[24] declaring accused Relampagos as a fugitive from justice and ordering the cancellation of his passport and forfeiture of his cash and travel bond in favor of the government. The court also ordered the issuance of a warrant for Relampagos's arrest. It further instructed the prosecution to initiate steps for Relapagos's extradition from the United States of America and directed his counsels to show cause why no administrative charges should be initiated against them for failure to comply with their affidavit of undertaking.

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[23] Record, Vol. 8, pp. 62-64.
[24] Id. at 68-70.

Hence, the prosecution correctly pointed out that Relampagos is a fugitive from justice.

However, contrary to the prosecution's claim, the fact that Relampagos is currently a fugitive from justice does not mean that "he is outside the jurisdiction of the court."

As explained by the Supreme Court in *Gimenez vs. Nazareno*,[25] jurisdiction over the person of the accused is acquired either by his arrest or voluntary appearance in court. Once acquired, this jurisdiction is not lost upon the instance of the parties, but continues until the case is terminated, notwithstanding his escape from the custody of the law:

> First of all, it is not disputed that the lower court acquired jurisdiction over the person of the accused-private respondent when he appeared during the arraignment on August 22, 1973 and pleaded not guilty to the crime charged. In criminal cases, jurisdiction over the person of the accused is acquired either by his arrest or voluntary appearance in court. Such voluntary appearance is accomplished by appearing for arraignment as what accused-private respondent did in this case.
>
> But the question is this—was that jurisdiction lost when the accused escaped from the custody of the law and failed to appear during the trial? We answer this question in the negative. As We have consistently ruled in several earlier cases, jurisdiction once acquired is not lost upon the instance of parties but continues until the case is terminated.
>
> To capsulize the foregoing discussion, suffice it to say that where the accused appears at the arraignment and pleads not guilty to the crime charged, jurisdiction is acquired by the court over his person and this continues until the termination of the case, notwithstanding his escape from the custody of the law. (Underscoring supplied.)

Nonetheless, In *Estrada v. People*,[26] the Supreme Court had occasion to declare that by escaping, fugitives from justice placed themselves beyond the pale and protection of the law. They therefore lose their standing in court and unless they surrender, they are deemed to have waived any right to seek relief from the court. Still, trial against fugitives from justice who have already been arraigned should continue. Thereafter, judgment should be rendered upon the trial's termination, notwithstanding their absence. Thus:

> The holding of trial *in absentia* is authorized under Section 14 (2), Article III of the 1987 Constitution which provides that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." In fact,

[25] 243 Phil. 274-281 (1988).
[26] 505 Phil. 339-360 (2005).

in *People vs. Tabag,* the Court even admonished the trial court for failing to proceed with the trial of some accused who escaped from preventive detention to wit:

> Finally, the trial court also erred in not proceeding with the case against Laureño Awod and Artemio Awod after their successful escape on 19 October 1989 while in preventive detention. They had already been arraigned. **Therefore, pursuant to the last sentence of paragraph (2), Section 14, Article III of the Constitution, trial against them should continue and upon its termination, judgment should be rendered against them notwithstanding their absence unless, of course, both accused have died and the fact of such death is sufficiently established. Conformably with our decision in People *v. Salas, their escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were to be deemed to have received notice.*** The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. This being so, then pursuant to *Gimenez v. Nazareno*, the trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion. **Thereafter, the trial court had the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives' re-appearance or re-arrest. They were deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.**
>
> It is obvious that the trial court forgot our rulings in Salas and Nazareno. We thus take this opportunity to admonish trial judges to abandon any cavalier stance against accused who escaped after arraignment, thereby allowing the latter to make a mockery of our laws and the judicial process. Judges must always keep in mind Salas and Nazareno and apply without hesitation the principles therein laid down, otherwise they would court disciplinary action. (Emphasis supplied)

From the foregoing pronouncement, it is quite clear that all of petitioner's protestations that she was denied due process because neither she nor her counsel received notices of the trial court's orders are all to naught, as by the mere fact that she jumped bail and could no longer be found, petitioner is considered to have waived her right to be present at the trial, and she and her counsel were to be deemed to have received notice.

Moreover, in the earlier case of *People vs. Magpalao*, the Court already ruled that:

> . . . once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he

> loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court. (Footnotes omitted. Emphasis in the original. Underscoring supplied.)

In the earlier case of *Philippine Rabbit Bus Lines, Inc. v. People,*[27] and later, in the case of *People v. Piad y Bori,*[28] the High Court similarly pronounced that unless they surrender or submit to the court's jurisdiction, fugitives from justice are deemed to have waived their right to seek judicial relief.

Applying all the foregoing to the instant case, reception of evidence for the prosecution continued – albeit a trial *in absentia* – because accused Relampagos had already been duly arraigned before he jumped bail and was declared a fugitive from justice, [29]

In accordance with the ruling in *Estrada*, the court is duty-bound to render judgment *after* this trial *in absentia* concludes. *At this moment,* however, the court may not be compelled to render judgment regarding accused Relampagos because trial has not yet concluded. Evidently, other accused in these cases have yet to present their evidence.

While the Rules provide a procedure for questioning the sufficiency of prosecution evidence before the conclusion of trial via a demurrer to evidence, Relampagos cannot avail thereof because he lost his standing in court after becoming a fugitive from justice. Thus, until he surrenders, he is deemed to have waived his right to seek judicial relief – including the grant of his demurrer to evidence.

### *1.3.2. On the substantive aspect*

*On Nuñez, Paule and Bare's alleged facilitation of the processing of the subject SARO and NCA*

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[27] 471 Phil. 415-440 (2004).
[28] 779 Phil. 136-150 (2016).
[29] Section 14 (2), Article III of the 1987 Constitution provides:
Section 14. (1) xxx
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Underscoring supplied.)

In view of the above ruling on Relampagos's disentitlement to judicial reliefs while he remains a fugitive from justice, the court shall hereafter exclude him in the discussion and resolution of the Joint Demurrer to Evidence filed by him together with his co-accused DBM officers, Nuñez, Paule and Bare.

Nuñez, Paule and Bare argue that the prosecution failed to prove that they facilitated the processing of the subject SARO and corresponding NCA. This is because their office does not process the SAROs and NCAs, as shown by the documents the prosecution itself adduced in evidence. Hence, they conclude that they were in no position to expedite or participate in the preparation and issuance of the SARO and NCA.

On the other hand, the prosecution counters that it did not allege that the office of Nuñez, Paule and Bare is tasked with the release of the SAROs and NCAs. Hence, it did not have to prove this point.

We find for the accused Nuñez, Paule and Bare.

The Information in Criminal Case No. SB-16-CRM-0249 accuses Nuñez, Paule and Bare with violation of Section 3 (e) of R.A. No. 3019 allegedly committed as follows:

> b) DBM's Relampagos, Nuñez, 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;

Similarly, the Information in Criminal Case No. SB-16-CRM-0250 for Malversation under Article 217 of the RPC alleges that they committed the crime in this manner:

> b) DBM's Relampagos, Nuñez, 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;

Thus, the allegation which the prosecution must prove in Criminal Case Nos. SB-16-CRM-0249 and SB-16-CRM-0250 with respect to accused Nuñez, Paule and Bare is that the latter unduly accommodated accused Napoles and De Leon by *facilitating* the *processing* of SARO No. ROCS-07-07433 and its corresponding NCA.

In this regard, the court finds that the prosecution was unable to adduce sufficient proof to support its allegation in the Information that Nuñez, Paule and Bare unduly accommodated Napoles and De Leon by facilitating the processing of SARO No. ROCS-07-07433 and its corresponding NCA.

*First*, we find that the allegation of facilitation was not duly substantiated.

Exhibit C-4, which is a copy of the First Indorsement by the House of Representatives of the list of projects for the second tranche of FY 2007 chargeable against the PDAF (including that allotted to accused Biazon), was dated 4 September 2007. It was received by the DBM Liaison Office on 7 September 2007 and by the ROCS on 10 September 2007.

On the other hand, Exhibit C-1 is the agency copy of the SARO. It showed that the SARO was issued on 10 October 2007. This means that it took ROCS a month to release the SARO.

Whether the month-long processing of the SARO was usual or made with undue haste ("facilitated") has not been established because the records do not contain prosecution evidence of the prescribed period or average time when SAROs are supposed to be released. While accused cite the DBM's Citizen's Charter, the court notes that there have been several iterations of the DBM Citizen's Charter, such that the present one currently posted in the DBM official site may or may not have been applicable during the pertinent time.

In fine, the prosecution failed to show the prescribed or normal time frame for processing the SARO. Without a standard with which to compare the processing of the instant SARO, then it could not be adjudged that this SARO's processing was facilitated.

*Second*, contrary to the prosecution's allegation, a simple perusal of Exhibits C-1 and C-2 will yield that neither the subject SARO, nor its corresponding NCA, was signed by accused Nuñez, Paule or Bare. Exhibit C-1 (agency copy of the subject SARO) shows that SARO No. ROCS-07-07433 was signed by DBM Secretary Rolando Andaya Jr.

Exhibit C-7 (DBM Department Order No. 2000-122 or Operational Procedures for the Regional Operations and Coordination Service [ROCS]) dated 29 March 2000 expressly reiterates in Section 1 thereof that the ROCS "shall operate as a one-stop shop where transactions pertaining to Special Purpose Funds (SPFs) namely Priority Development Assistance Fund (PDAF), xxx are processed and completed." Exhibit C-7 indicates that the signatory for PDAF fund/concerns and its SARO was the DBM Secretary.

In accordance therewith, Exhibit C-1 (SARO No. ROCS-07-07433) shows on its face that it was approved/signed by DBM Secretary Rolando Andaya, Jr.

As for its corresponding NCA, Exhibit C-2 (NCA No. 348840-2 dated 17 December 2007) shows that the recommending approval was signed by Director IV Carmencita N. Delantar, while the approval was signed by DBM Secretary Andaya.

Thus, the signatures of Nuñez, Paule and Bare do not appear in either the subject SARO or its corresponding NCA.

*Third*, the court notes that, based on the documents adduced by the prosecution itself, the SAROs do not appear to be processed by the office of Nuñez, Paule and Bare.

As argued by the DBM officers, they can only accomplish the alleged facilitation of the processing of the subject SARO and NCA if their office was the one responsible therefor.

On this score, DBM DO No. 2000-03 (Initial Implementation of Executive Order No. 95, Ensuring Effective Operational Processes and Structural Arrangements for Budgeting and Management Functions) dated 11 February 2000,[30] particularly Annex B thereof (Agency/Fund Coverage of the BMBs and the ROCS) clearly indicates that the processing of the Priority Development Assistance Fund (PDAF), among others, is assigned to the Regional Operations and Coordination Service (ROCS). Section 3.4 of DBM DO No. 2000-03 names ROCS as among the bureaus/services under the direct supervision of the DBM Secretary.

Meanwhile, Annex A thereof (DBM Organizational Chart) illustrates that ROCS is separate and distinct from the Operations Group to which Nuñez, Paule and Bare admittedly belong.

*Fourth*, prosecution witness Benhur Luy's testimony that Relampagos was a friend of Napoles and that he was then "following up" the SARO's release with Relampagos's office staff, Nuñez, Paule and Bare (who had been introduced to Luy by Napoles as the latter's contacts in DBM) is insufficient to prove that Nuñez, Paule and Bare actually facilitated the processing of the instant SARO.

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[30] Exhibit C-6.

*On the charge of conspiracy*

The prosecution alleges that in view of the conspiracy among all the accused, then the act of one is the act of all. It adds that, as conspirators in the PDAF scam, Nuñez, Paule and Bare were tasked to facilitate the processing of the SARO and NCA for the release of the funds drawn from accused Biazon's PDAF and that, without their participation, the crime would not have been committed or the crime may have been prevented.

We are not persuaded.

In *People v. Lababo, et al.*[31] citing *Bahilidad v. People*,[32] the Supreme Court reiterated the basic principles in determining whether conspiracy exists or not:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

Applying the foregoing to the present cases, we hold that the prosecution was unable to amply prove that accused Nuñez, Paule and Bare performed some overt act as a direct or indirect contribution to the execution of the crime committed.

In the Informations, the prosecution alleged that Nuñez, Paule and Bare's participation in the crimes charged consists of unduly accommodating their other co-accused by facilitating the processing of the subject SARO and its corresponding NCA.

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[31] G.R. No. 234651, 6 June 2018.
[32] 629 Phil. 567-578 (2010).

However, as discussed in the preceding sections, the prosecution was unable to sufficiently substantiate this allegation with the evidence they presented. It failed to present evidence demonstrating that the processing of the subject SARO and NCA was facilitated, let alone facilitated by accused Nuñez, Paule and Bare. Furthermore, contrary to the prosecution's claim, its Exhibits C-1, C-2, C-6 and C-7 unequivocally show that Nuñez, Paule and Bare did not sign the SARO and corresponding NCA and that their office did not process the subject SARO and NCA.

While prosecution witness Luy claimed to have followed up the release of the subject SARO from Nuñez, Paule and Bare, whom he identified as Napoles's contacts in the DBM, the documents showed that the latter had no participation in its processing. Hence, the prosecution failed to establish with certainty their participation in the crime.

*On the elements constituting a violation of Section 3(e) of R.A. 3019*

In order to secure a conviction for violation of Section 3(e) of R.A. No. 3019, the following elements must be satisfied:

1. The accused must be a public officer discharging administrative, judicial or official functions;

2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and

3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[33]

The existence of the first element is undisputed, as, during the material time, accused Nuñez, Paule and Bare were officers and employees of the Department of Budget and Management holding various positions as alleged in the Informations.[34]

Considering that the act imputed on Nuñez, Paule and Bare in the Informations were not duly proven (i.e., that they facilitated the processing of the SARO and its corresponding NCA), then neither could the

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[33] *Cabrera v. People*, G.R. No. 191611-14, 29 July 2019.

[34] The Information alleges that during the material time, these accused were then occupying the following positions at the DBM: Mario Loquellano Relampagos – Undersecretary for Operations, Rosalinda Salamida Nuñez – Chief, Budget and Management Specialists, Lalaine Narag Paule – Administrative Assistant VI, and Marilou Dialino Bare, Administrative Assistant VI.

characterization of the imputed act (corresponding to the second element) nor its supposed effect (corresponding to the third element) be considered present in the instant cases.

Finding that the prosecution failed to adduce sufficient evidence to prove the existence of all the elements of the offense constituting a violation of Section 3(e) of R.A. 3019, accused Nuñez, Paule and Bare's joint demurrer to evidence in this case must be granted.

*On the elements constituting a violation of Art. 217 of the RPC*

The following elements are necessary to prove the violation of malversation under Article 217 of the Revised Penal Code: (i) that the offender is a public officer, (ii) that he had custody or control of funds or property by reason of the duties of his office, (iii) that those funds or property were public funds or property for which he was accountable, and (iv) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[35]

Again, the first element, i.e., that accused Nuñez, Paule and Bare are public officers, is not disputed.

The second element of the offense, however, is not present. This element requires that the offender be an accountable officer, i.e., had custody or control of funds or property by reason of the duties of his office.

In *Alejo v. People*,[36] the Supreme Court explained this element of the offense under Article 217 (RPC):

> An accountable public officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office. To be liable for malversation, an accountable officer need not be a bonded official. The name or relative importance of the office or employment is not the controlling factor. What is decisive is the nature of the duties that he performs and that as part of, and by reason of, said duties, he receives public money or property, which he is bound to account for.

Notably, another section of this Resolution explained the court's holding that Nuñez, Paule and Bare had no participation in the processing of the subject SARO and NCA. In view thereof, they cannot be considered to have had custody or control thereof by reason of the duties of their office.

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[35] *Venezuela v. People*, G.R. No. 205693, 14 February 2018.
[36] 573 Phil. 451-471 (2008).

The third element is that the funds which the public officer had control or custody of are public funds.

Considering that Nuñez, Paula and Bare were not found to have had custody or control of the subject PDAF funds or the SARO/NCA that triggered its release, then the fact that PDAF funds are admittedly public funds still does not satisfy the third element of the offense.

The fourth element is that the offender appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take the accountable funds.

Once again, the court finds that this last element was neither established. Nuñez, Paule and Bare were not shown to have had control or custody of the SARO/NCA and the PDAF funds. Hence, they could not have appropriated, taken, misappropriated, or consented or through abandonment or negligence, permitted another person to take these.

For this reason, the court holds that the malversation charge be dismissed against accused Nuñez, Paule and Bare.

## 2. CRIMINAL CASE NO. SB-CRM-16-CRM-0251

### 2.1. Accused Biazon's Demurrer

In his demurrer to evidence, accused Biazon cites *Tad-y y Babor v. People*,[37] where the Supreme Court held:

> The essential ingredient of indirect bribery as defined in Article 211 of the Revised Penal Code is that the public officer concerned must have accepted the gift material consideration. There must be a clear intention on the part of the public officer to take the gift so offered and consider the same as his own property from then on, such as putting away the gift for safekeeping or pocketing the same. Xxx The foregoing ruling of this Court applies not only to charges of indirect bribery but also to direct bribery.

Relating this ruling to the present case, Biazon notes that, other than the testimony of Luy and Atty. Leigh Vhon Santos (Atty. Santos), the prosecution had not presented evidence of his receipt of the ₱1,950,000.00 as alleged in the Information.

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[37] 504 Phil. 51-83 (2005).

Biazon avers that when presented in court, Luy admitted that he did not see accused Zenaida Cruz-Ducut (Ducut) present any authority to act on Biazon's behalf during their meeting which he attended. Luy believed that Ducut represented Biazon because she immediately brought to their office the documents executed by Biazon. However, Luy never saw Biazon sign or execute the said documents.[38]

Further, accused emphasizes that Luy testified that he did not personally hand the money to Biazon. Instead, Luy handed over to Ducut the money intended for Biazon. Although Luy did not see Ducut hand over the money to Biazon, he was sure that Biazon received it. This is because, as agreed upon, the document was submitted to their office and their NGO was endorsed.[39]

Meanwhile, Biazon notes that Atty. Santos of the Anti-Money Laundering Council (AMLC) cleared Biazon's name when his report stated that "as for Biazon, no bank record was found to convincingly support the alleged transfer of the illegally tainted PDAF funds in his favor."

Considering the above testimonies, Biazon argues that the prosecution failed to establish the essential element of Direct Bribery that the offender received directly or through another, some gift or present.

Biazon claims that Luy's testimony also failed to prove the alleged link between accused Biazon and accused Ducut.

Moreover, he argues that the Information specifically alleged that Biazon received the amount of ₱1,950,000.00 from accused Napoles, and not from any other person. Hence, the prosecution was obliged to present evidence that Napoles gave the money to Biazon. Similarly, the prosecution was required to present evidence that Biazon received the said amount from Napoles.

In *Catubao v. Sandiganbayan*,[40] it was held that:

> The Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his

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[38] TSN, 15 March 2022, pp. 8-9.
[39] Id. at 34-35.
[40] G.R. No. 227371, 2 October 2019.

> innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor.

Biazon reasons that the absence of one essential element shall result in the accused's acquittal because the prosecution must prove beyond reasonable doubt all the essential elements of the crime charged in order to secure a conviction.

Accordingly, Biazon prays for the dismissal of the case against him for Direct Bribery.

## 2.2. The Prosecution's Comment/Opposition

In its Opposition to accused Biazon's demurrer to evidence, the prosecution argues as follows:

### *2.2.1. The First element of the crime is undisputed.*

The prosecution alleges that the first element is present because the fact that accused Biazon is a public officer is undisputed.

### *2.2.2. The second element of the crime was proven with the establishment of the fact that Biazon received kickbacks through Ducut*

As to the second element, the prosecution avers that it presented testimonial and documentary evidence that accused Biazon received the sum of ₱1,950,000.00, through another, as his commission or kickback for the illegal transaction with Napoles. The prosecution claims that this was categorically testified by Luy, the whistleblower who has personal knowledge of the transaction. It was also evidenced by the "JLN Cash/Check Daily Disbursement Report"[41], which Luy himself prepared upon the instruction of accused Napoles, his employer at that time.[42]

The prosecution explains that the "JLN Cash/Check Daily Disbursement Report" (Exhibit G-series) is the detailed recording of the transactions of Napoles with several legislators (including accused Biazon) relevant to the commissions/kickbacks/rebates[43] shared with them, or through

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[41] Exhibit G-series.
[42] Judicial Affidavit dated August 23, 2021.
[43] Page 10, JA of Luy dated August 23, 2021.

their respective agents, in consideration for their selection of Napoles-controlled NGOs as implementing entity of their respective PDAFs.

It underscores that Luy categorically testified that he personally "handed the money/commission to former Congresswoman Ducut – one of the co-accused of Biazon and Napoles in SB-16-CRM-0249 and 0250 – because Ducut was introduced to him as the person who was acting as "go-between or agent for accused Biazon."[44] Luy also testified that the money given was in consideration of Biazon's act of choosing the Napoles controlled NGO, PSDFI, to implement Biazon's PDAF.

*2.2.3. Luy's failure to ask for written authority from Ducut as agent of Biazon is not an issue.*

The prosecution argues that the second element of direct bribery speaks of the criminal act of receiving money or commission either by himself or through another. The prosecution claims that it proved with sufficient evidence that Biazon received his kickbacks or commission through another – i.e., through Ducut. This is the other mode of receiving bribes, which is equally punishable under the same provision of the penal law. Thus, the charge in the Information against Biazon was fully substantiated with direct and corroborative evidence by the prosecution.

The prosecution insists that it need not prove what it did not allege. Also, it need not prematurely validate probable defenses that Biazon may interpose, if he wishes to subsequently present evidence.

It argues as irrational Biazon's argument that Luy did not ask for written authority from Ducut as his "go-between or agent" who will, essentially, receive his kickbacks or commission, among others.

The prosecution claims that Luy's omission did not prove any inconsistency (or disprove the facts) he testified to. On the contrary, this showed Luy's testimony to be consistent, logical and genuine. It is expected that Ducut – a lawyer, former congresswoman and chairperson/head of the Energy Regulatory Commission – obviously will neither execute a written agreement that will implicate her for any crime nor give nor show a copy of it to Luy, if any. Similarly, accused Biazon, will also probably not put in writing the commission of an illegal transaction.

Moreover, it argues that Luy was the finance officer of Napoles at that time, so he had no reason to question Ducut's authority as agent for Biazon. Hence, the presentation of a written authority is not an issue.

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[44] Q and A Nos. 50 to 56, JA of Benhur Luy dated August 23, 2021.

The prosecution adds that if Biazon wants to pursue this issue, he should present evidence to support it.

More importantly, the prosecution claims that it was able to prove with sufficient evidence the *corpus delicti*. The factual basis for this case was proven in SB-16-CRM-0249 and 0250, which accused Biazon attempted, but failed, to have dismissed.

*2.2.4. On the application of the Doctrine of Apparent Authority*

The prosecution avers that, as "go-between or agent" for Biazon, Ducut submitted numerous documents to Luy and/or Napoles on different dates bearing Biazon's signatures. One document was even printed on Biazon's official paper as Congressman of Muntinlupa City (Exhibit C-5). All are authentic copies which were the basis for the release of the subject PDAF, such as Exhibits C, C-1, C-2, C-3, C-5, B-5, B-13, B-14, B-15, B-18, B-23, B-24, B-25, B-26, B-27, B-28, B-29 and B-30.[45] These submissions were the condition *sine qua non* for the payments of kickbacks, in tranches, by Napoles to Biazon in consideration for his selection of PSDFI as the lead implementing entity of his PDAF. These documents were all offered as evidence for the prosecution against Biazon in this direct bribery case. All the said evidence of the prosecution and the testimony of Luy reasonably and conclusively proves that Ducut is the "go-between or agent" of Biazon in transacting with Napoles for his PDAF.

The prosecution contends that the doctrine of apparent authority can be applied herein by analogy. It cites *Calubad v. Ricarcen*,[46] where the Supreme Court, citing various cases, explained that liability should be attributed to principals who are in *estoppel* to deny the apparent authority granted to "agents" in their dealings, and who profited from the said implied agency.

The prosecution then asserts that Biazon cannot self-servingly, conveniently, and belatedly deny now that he did not authorize Ducut to deal with Napoles on his behalf relating to his PDAF. He failed to deny or dispute at the earliest possible time why his signatures were affixed in all the said documents that Ducut submitted to Napoles. He also failed to explain this matter to the COA auditors when he was required to confirm or deny the same.[47] Biazon is already *in estoppel* to *deny the apparent authority* of Ducut to transact on his behalf.

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[45] Q and A Nos. 81 to 113, JA of Luy dated August 23, 2021.
[46] 817 Phil. 509-533 (2017).
[47] Testimony of COA Resident Auditor, Exhibit B and series.

Moreover, the prosecution argues that Biazon nitpicked the wrong evidence as to his direct bribery charge. As stated in its formal offer of evidence, the prosecution's Exhibit H-1 and series (AMLC-Bank Inquiry Report) is offered to prove that "disbursement of funds on the PDAF of accused Biazon was confirmed to have been transferred to the NGOs controlled by accused Napoles" or the PSDFI. This bank inquiry report is not the direct evidence which proves that Biazon received kickbacks or commissions from Napoles. Biazon's kickbacks and commissions were given to his agent-Ducut *in cash* by tranches.

Necessarily, as the transfer of money from Napoles to Biazon was through Ducut was in cash, it will not appear in the bank records.

Biazon's kickbacks and/or commissions were recorded in the "JLN Cash/Check Daily Disbursement Report (Exhibit G-series)", specifically in Exhibits G-326, G-326-a, G-329, G-329-a, G-350, G-350-a, G-366 and G-366-a. As stated earlier, the AMLC-Bank Inquiry Report proved another fact, i.e., that the proceeds of Biazon's PDAF was transferred to TRC and then to PSDFI, the Napoles controlled NGO, in order to "legitimize" the release of public funds, among others.

The prosecution reiterates that Biazon unilaterally selected PSDFI (the Napoles-controlled NGO) to implement his PDAF. Also, while Biazon's PDAF fund was released from the government coffers, it was distributed to Biazon, Napoles and Ducut, among others, based on the percentage agreed upon. As to Biazon, his share was ₱1,950,000.00, or 65% out of the ₱3 Million of his PDAF.

Citing *Alicia O. Fernandez, et al. v. People of the Philippines,*[48] the prosecution argues that while the burden of proof always lies with the prosecution in criminal proceedings, the burden of evidence shifts when an affirmative defense is raised by the accused.

Thus, if accused Biazon raises an affirmative defense as to the alleged fact that he did not authorize Ducut to receive commissions or kickbacks on his behalf, among others, he must present sufficient evidence thereof. Otherwise, the *prima facie* case built by the prosecution through its own evidence – that he received the commission or kickback through another amounting to ₱1,950,000.00 – stands as a fact.

As to the third element, the prosecution underscores that it adduced adequate evidence to prove that Biazon received the said commissions or kickbacks (as supported by Exhibits G-326, G-326-a, G~329, G-329-a, G-350, G-350-a, G-366 and G-366-a) in consideration of his indorsement and selection of the PSDFI, in violation of various laws and regulations. This is

[48] G.R. No. 249606, 6 July 2022.

evidenced by documentary evidence (Exhibit B-series, among others) and the testimonies from the COA auditor and the NBI investigator.

As to the fourth element, the prosecution contends that Biazon's agreement to indorse and select the PSDFI to implement his PDAF project is undoubtedly connected with his duty as Congressman of the Lone District of Muntinlupa City. Again, the subject 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 by the testimony of Luy, which was also materially corroborated by Marina Cortez Sula.

The prosecution emphasizes that accused Biazon's indispensable participation as legislator in the release of his PDAF was extensively discussed in the landmark case of *Belgica, et. al., vs. Honorable Executive Secretary, et. al.*[49] All activities relative to the allocation of the subject fund during the budget hearing, the passage of the appropriation bill, up to its enactment into law, the release of the fund to the implementing agency, and his selection of NGO as lead implementing entity are all part of the duties and functions of accused Biazon. Without his participation, the subject PDAF and its release and utilization would not exist at all. Thus, Biazon agreed to perform, or he executed an act, connected with the performance of his official duties as Congressman of Muntinlupa City sometime in CY2007.

In sum, the prosecution concludes that it firmly established all the elements of the crime under Article 210 of the Revised Penal Code with sufficient evidence. If unrebutted, all the said pieces of evidence presented, as supported by the records, are, *prima facie* sufficient basis to sustain the verdict of guilt beyond reasonable doubt. No other logical explanation can be derived from the facts established except that accused Biazon committed the crime of direct bribery, thereby overcoming the presumption that a person is innocent until proven guilty.

In *People v. Camannong*,[50] the Supreme Court ruled that "proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty, for only moral certainty is required." The moral certainty required in criminal cases to sustain a conviction has been clearly satisfied. Thus, the prosecution prays that the motion filed by accused Biazon be denied for lack of merit.

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[49] 721 Phil. 416-732 (2013).
[50] G.R. No. 199497, 24 August 2016.

## 2.3. OUR RULING IN CRIMINAL CASE NO. SB-CRM-0251

The Information in Criminal Case No. SB-16-CRM-0251 accuses Biazon with the crime of Direct Bribery allegedly committed as follows:

> 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 public officer, while in the performance of his official functions as the then 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 (P3,000,000.00) 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 communications 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.

Direct Bribery is defined and penalized under Article 210 of the RPC, as amended, as follows:

> Article 210. Direct Bribery. - Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

As may be gleaned from above, the elements of the crime are as follows: (a) the offender is a public officer; (b) he accepts an offer or promise or receives a gift or present by himself or through another: (c) such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act

which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and (d) the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.[51]

*2.3.1. The first element of the offense is present.*

The first element of the offense is present as there is no dispute that accused Biazon was a public officer during the time material to the charge.

*2.3.2. The second element of the offense was not sufficiently proven.*

The second element of the crime of direct bribery is that the offender accepts an offer of promise, or receives by himself or through another, some gift or present.

The prosecution alleges in the Information that Biazon received the sum of ₱1,950,000.00 from Napoles.

During the course of the trial, it established that, upon instructions from Napoles, Luy personally gave to Ducut the commission that was supposedly earmarked for Biazon. Apart from Luy's testimony that he personally handed this money to Ducut, Luy also made a recording thereof in the JLN Cash/Check Daily Disbursement Report.

However, Luy admitted that he has never seen any written authorization letter coming from Biazon in favor of Ducut. Neither has he ever spoken to Biazon to confirm from the latter if he really authorized Ducut to transact regarding his PDAF. He has also never heard or seen Napoles personally talk with Biazon. While he handed Biazon's commission to Ducut, Luy did not see Ducut hand the money over to Biazon.[52]

Thus, the parties argue over whether the prosecution was able to prove that Ducut acted as agent of Biazon when she negotiated and received the said commissions allegedly on the latter's behalf.

Accused Biazon asserts that the prosecution failed to adduce evidence that Biazon designated Ducut as his agent in the transaction.

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[51] *Mangulabnan vs. People.* G.R. No. 236848, 8 June 2020.
[52] TSN, 15 March 2022, pp. 54-55.

On the other hand, the prosecution counters that it would be illogical to expect either Biazon or Ducut to execute written evidence of the supposed agency in view of the illegality of the transaction.

While the prosecution's argument is well-taken, it still does not dispense with the need to present proof of the supposed agency between Biazon and Ducut, to establish Biazon's receipt of commission from Napoles through another person.

*2.3.3. The doctrine of apparent authority cannot be invoked to establish the agency between Ducut and Biazon.*

The prosecution invokes the doctrine of apparent authority to establish that Ducut was Biazon's agent.

The prosecution's reliance on the doctrine of apparent authority is misplaced.

To begin with, the doctrine of apparent authority is applied in transactions involving a corporation, its corporate agent and a third person dealing with the latter. In fact, apparent authority is one of the two (2) types of authorities conferred upon a **corporate** officer or agent in dealing with third persons.[53]

The Supreme Court explains the essence of the doctrine of apparent authority in this manner:

> Since a corporation, such as the private respondent, can act only through its officers and agents, "all acts within the powers of said corporation may be performed by agents of its selection; and, except so far as limitations or restrictions may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents when once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons." Moreover, " . . . a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.

[53] *Calubad v. Ricarcen*, 817 Phil. 509-533 (2017).

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> The rule is of course settled that "[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time." Also, "if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority in real, *as to innocent third persons dealing in good faith with such officers or agents*." This "apparent authority may result from (1) the general manner, by which the corporation holds out an officer or agent as having power to act or, in other words, the apparent authority with which it clothes him to act in general or (2) acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his ordinary powers. [54] (Footnotes omitted.) (Underscoring and emphasis supplied.)

Hence, this doctrine cannot be applied to Biazon and Ducut, who are neither corporations nor corporate agents.

Moreover, the doctrine of apparent authority is based on the principle of *estoppel*:

> The rule on apparent authority is based on the principle of estoppel.xxx
>
> A corporation is estopped by its silence and acts of recognition because we recognize that there is information asymmetry between third persons who have little to no information as to what happens during corporate meetings, and the corporate officers, directors, and representatives who are insiders to corporate affairs.[55]

Under Article 1431 of the Civil Code, "(t)hrough estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." (Underscoring supplied.)

Thus, the doctrine of apparent authority cannot properly be invoked by the prosecution under the circumstances.

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[54] *Yao Ka Sin Trading v. Court of Appeals*, 285 Phil. 345 (1992).
[55] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401-455 (2016).

Considering that Ducut was not proven to be Biazon's agent, Luy's testimony that he personally handed to Ducut the supposed commission allegedly intended for Biazon (as well as his recording thereof in the JLN Cash/Check Daily Disbursement Report) does not necessarily imply that Biazon agreed to the arrangement or received the said commission.

*2.3.4. The AMLC Bank Inquiry Report stated that it found no bank record to convincingly support the alleged transfer of the funds in Biazon's favor.*

In addition, the Anti-Money Laundering Council Bank Inquiry Report (File/Ref. No. AMLC-CIG-16-1230) dated 19 October 2016,[56] which was issued after accessing and analyzing voluminous documents and bank records,[57] including the documents and testimonies provided by whistleblowers related to this case, concluded in page 16 thereof that:

> 1. As for Biazon, no bank record was found to convincingly support the alleged transfer of the illegally tainted PDAF funds in his favor.

During cross examination, AMLC's Atty. Vhon Leigh Santos further explained this finding in their Report. He stated that while there were numerous covered and suspicious transaction reports involving Biazon, none of the covered transaction reports exactly matched the amount and the time that Biazon allegedly received the commission based on the testimony of whistleblowers and Luy's ledger. They did not find any bank record, deposit slip fund transfer or check deposit of that amount allegedly received by Biazon and placed in his bank account or in any account of his family.[58]

In its Comment/Opposition, the prosecution counters that the transfer of money from Napoles to Biazon through Ducut will not appear in the bank records because it was made in *cash*.

The court does not lose sight of the fact that the Bank Inquiry Report only delved into bank transactions, which did not cover any other possible manner by which the alleged kickback/commission (gift or present) could have supposedly been transmitted by Ducut to Biazon.

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[56] Exhibit H-1.
[57] According to Atty. Santos, all bank accounts of all the accused in this case was the subject of the investigation, and for this case, the accounts of Biazon, Ducut, PSDFI, Napoles and other NGOs and Corporations related to her were also subject to the bank inquiry. (TSN, 7 May 2019, p. 77)
[58] TSN, 7 May 2019, pp. 38-39.

In fact, Atty. Santos plainly admitted that based on their investigation, they do not know whether any money that Biazon might have received was in his possession or placed somewhere else, or whether Biazon even actually received it at all.[59]

This is where the dearth of evidence on the part of the prosecution becomes apparent. If, as the prosecution asserts, the money given by Napoles to Biazon through Ducut was in cash, this detail should have informed its strategy on how to prove Biazon's alleged receipt of the commission from Ducut.

Hence, the second element of direct bribery – i.e., that the offender received directly or through another, some gift or present – was not established.

*2.3.5. By itself, Biazon's apparent accomplishment of the documents proves only his selection of PSDFI as implementor of his PDAF project but does not prove receipt of commission from Napoles through Ducut.*

The third element of the offense is that the offer/promise was accepted, or the gift/present was received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do.

In support of its contention that the third element of the offense was duly proven by it, the prosecution highlights that Biazon must have received the commission that was handed to Ducut because in exchange for receipt of the commission, Biazon, through Ducut, submitted documents signed by Biazon as part of the agreement for Napoles's NGO (PSDFI) to be endorsed.[60] It therefore appears that the prosecution advances the argument that the submission of the documents apparently executed by Biazon satisfies both the second and third elements of the offense.

After reviewing the evidence, we rule that Luy/Napoles's receipt from Ducut of documents signed by Biazon may be interpreted as evidence of Biazon's endorsement of PSDFI *only*. By itself, it does not establish that Biazon received "some gift or present" in exchange for this endorsement.

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[59] TSN, 7 May 2019, p. 41.
[60] TSN, 15 March 2022, p. 34.

It is, of course, within the realm of possibilities that Biazon indorsed PSDFI in consideration of the alleged commission which he supposedly received from Napoles, through Ducut. However, considering that there was no actual proof that Biazon received this commission, it is equally possible that Biazon indorsed PSDFI due to other unknown reasons which may or may not be considered unjust.

The court will only rely on what the pieces of evidence establish. At this point of the trial, what is clear to the court is that the prosecution was not able to establish with certainty the reason behind Biazon's endorsement and whether such was tainted with a purpose that is linked to the crime charged.

*2.3.6. The fourth element of the offense was sufficiently established.*

The fourth element of the offense is that the act which the offender agrees to perform or which he executes relates to the performance of his official duties.

We find that this element has been satisfied.

As correctly argued by the prosecution, Biazon's endorsement of PSDFI was connected with his duty as Representative of the Lone District of Muntinlupa City.

Exhibits B-series, C-series and F-series and related testimonies of various prosecution witnesses showed that the subject PDAF was allocated, appropriated by law, and released for Biazon's constituents as his intended beneficiaries.

Moreover, the prosecution correctly underscored that all activities relative to the allocation of the subject fund during the budget hearing, the passage of the appropriation bill, up to its enactment into law, the release of the fund to the implementing agency, and his selection of NGO as lead implementing entity are part of the performance of Biazon's official duties as Muntinlupa City Representative sometime in 2007. A legislator's participation in the release of his PDAF was, indeed, extensively discussed in the landmark case of *Belgica, et. at., vs. Honorable Executive Secretary, et. al.*[61]

[61] 721 Phil. 416-732 (2013).

*2.3.7. With the prosecution's failure to amply prove the second element of the offense, there can be no conviction. Hence, the demurrer to evidence must be granted.*

In summary, a demurrer to evidence "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.[62]

Meanwhile, every criminal conviction requires the prosecution to prove the fact of the crime, i.e., the presence of all the elements of the crime for which the accused stands charged.[63] Hence, if one of the elements of the crime is not satisfied, then there can be no conviction.

In the present case, we find that the quantum of evidence necessary to secure the conviction of accused Biazon at this juncture of the proceedings was not met because the prosecution was unable to satisfactorily discharge the burden of proving the existence of the second element of the offense. Hence, the court is duty-bound to uphold the presumption of innocence enshrined in no less than the 1987 Constitution.

Given that every reasonable doubt of his guilt entitles an accused to an acquittal, the court is compelled to grant accused Biazon's Demurrer to Evidence in the case for Direct Bribery.

**WHEREFORE**, in view of all the foregoing, the court rules as follows:

1. the Demurrer to Evidence of accused **Mario L. Relampagos** is **DENIED** on the ground that he is not entitled to reliefs from the court while he remains a fugitive from justice;

2. the Joint Demurrer to Evidence of accused **Rosario S. Nuñez, Lalaine N. Paule and Marilou D. Bare** is **GRANTED** and the charges against them in **Criminal Case Nos. SB-CRM-16-0249 and SB-CRM-16-0250** are ordered **DISMISSED**; and

3. the Demurrer to Evidence of accused **Rozzano Rufino B. Biazon** is **GRANTED** and the charge against him in **Criminal Case No. SB-16-CRM-0251** is ordered **DISMISSED**.

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[62] *Ricketts v. Sandiganbayan-Fourth Division,* G.R. No. 236897 (Notice), 18 November 2021, citing *Go-Yu v. Yu,* G.R. No. 230443, 3 April 2019.
[63] G.R. No. 233199, 5 November 2018.

Let the Hold Departure Orders previously issued for accused **Rosario S. Nuñez, Lalaine N. Paule and Marilou D. Bare** in **Criminal Case Nos. SB-CRM-16-0249 and SB-CRM-16-0250** and for accused **Rozzano Rufino B. Biazon** in **Criminal Case No. SB-16-CRM-0251** be **LIFTED** and **SET ASIDE.** Let a copy of this Resolution be furnished the Bureau of Immigration and Deportation for its immediate implementation and compliance.

The respective cash bonds posted by accused **Rosario S. Nuñez, Lalaine N. Paule and Marilou D. Bare** in **Criminal Case Nos. SB-CRM-16-0249 and SB-CRM-16-0250** and by accused **Rozzano Rufino B. Biazon** in **Criminal Case No. SB-16-CRM-0251** are ordered **CANCELLED** and **RETURNED** to them upon proper compliance with all pertinent rules and regulations.

As to the remaining accused in **Criminal Case Nos. SB-CRM-16-0249 and SB-CRM-16-0250**, namely: **Rozzano Rufino B. Biazon, Mario L. Relampagos, Antonio Yrigon Ortiz, Dennis Lacson Cunanan, Francisco Baldoza Figura, Maria Rosalinda Masongsong Lacsamana, Marivic Villaluz Jover, Maurine E. Dimaranan, Consuelo Lilian Reyes Espiritu, Janet Lim Napoles and Evelyn Ditchon De Leon,** let the trial of the cases for the reception of defense evidence continue as previously set on **14 February 2023 at 8:30 in the morning.**

**SO ORDERED.**

**ZALDY V. TRESPESES**
*Associate Justice*

WE CONCUR:

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

**GEORGINA D. HIDALGO**
*Associate Justice*

# ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

# CERTIFICATION

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

**AMPARO M. CABOTAJE-TANG**
*Presiding Justice*