



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case Nos. **SB-16-CRM-0173 to 0175**

-versus-

For: Violation of Section 3 (e) of
R.A. 3019

RODOLFO G. VALENCIA, ANTONIO
Y. ORTIZ, DENNIS L. CUNANAN,
MARIA ROSALINDA M.
LACSAMANA, CONSUELO LILIAN
R. ESPIRITU, FRANCISCO B.
FIGURA, MARIVIC V. JOVER,
MARIO L. RELAMPAGOS,
ROSARIO S. NUÑEZ, MARILOU D.
BARE, LALAINE N. PAULE,
CECILIA C. CUASAY AND JANET L.
NAPOLES,

Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case Nos. **SB-16-CRM-0176 to 0178**

-versus-

For: Malversation of Public Funds

RODOLFO G. VALENCIA, ANTONIO
Y. ORTIZ, DENNIS L. CUNANAN,
MARIA ROSALINDA M.
LACSAMANA, CONSUELO LILIAN
R. ESPIRITU, FRANCISCO B.
FIGURA, MARIVIC V. JOVER,
MARIO L. RELAMPAGOS,
ROSARIO S. NUÑEZ, MARILOU D.
BARE, LALAINE N. PAULE,
CECILIA C. CUASAY AND JANET L.
NAPOLES,

Accused.

X ----- X

Promulgated on February 14, 2013 ipa

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RESOLUTION

GOMEZ-ESTOESTA, J.:

Accused Mario Relampagos, Rosario Nuñez, Lalaine Paule, and Marilou D. Bare, all from the Department of Budget and Management (DBM), have been implicated in a scheme involving the Priority Development Assistance Fund (PDAF) allotted for Congressman Rodolfo Valencia, and for which the following twin *Informations* for Violation of Sec. 3(e) of R.A. 3019 and Malversation of Public Funds have been filed:

SB-16-CRM-0173 for Violation of Section 3(e) of R.A. 3019

For the period between January 2008 to June 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction; accused **RODOLFO GARONG VALENCIA** (Valencia), being then Representative of the First District of Oriental Mindoro, **ANTONIO YRIGON ORTIZ** (Ortiz), being then Director General, **DENNIS LACSON CUNANAN** (Cunanan), being then Deputy Director General, **MARIA ROSALINDA MASONGSONG LACSAMANA** (Lacsamana), being then Group Manager, **CONSUELO LILIAN REYES ESPIRITU** (Espiritu), being then Budget Officer, **FRANCISCO BALDOZA FIGURA** (Figura), being then Group Manager, **MARIVIC VILLALUZ JOVER** (Jover), being then Chief Accountant, all of Technology Resource Center (TRC); **MARIO LOQUELLANO RELAMPAGOS** (Relampagos), being then Department of Budget and Management (DBM) Undersecretary for Operations, **ROSARIO SALAMIDA NUÑEZ** (Nuñez), **MARILOU DIALINO BARE** (Bare), **LALAIN NARAG PAULE** (Paule), all being then under the Office of the Undersecretary for Operations-DBM; all public officers and while in the performance of their administrative and/or official functions, conspiring with one another and with private individuals **CELIA CANONO CUASAY** (Cuasay) and **JANET LIM NAPOLES** (Napoles); acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits and advantage to said private individuals in the amount of at least **ONE MILLION EIGHT HUNDRED THOUSAND PESOS (Php1,800,000.00)**, through the following acts:

- (a) **Valencia** unilaterally chose and indorsed **Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI)**, a non-government organization operated and/or controlled by **Napoles**, as "project partner" in the implementation of livelihood projects in the First District of Oriental Mindoro which were funded by Valencia's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. 08-00576 in disregard of the appropriation law and its implementing rules, and/or without benefit of public bidding, as required under Republic Act No. 91 84 and its

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implementing rules and regulations, and with MAMFI being unaccredited and unqualified undertake the projects;

- (b) DBM's Relampagos, Nuñez, Paule and Bare, unduly accommodating Napoles, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Valencia's PDAF to TRC, the agency chosen by Valencia through which to course his PDAF allocations;
- (c) Valencia and TRC's Ortiz then entered into a Memorandum of Agreement (MOA) with MAMFI on the purported implementation of Valencia's PDAF-funded projects;
- (d) Lacsamana recommended to Ortiz the release of Valencia's PDAF to MAMFI;
- (e) Ortiz also facilitated, processed and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) Nos. 012009040927 and 012009010008 along with Cunanan, Espiritu and Jover verifying that the supporting documents were attached, as well as causing the issuance of Land Bank of the Philippines (LBP) checks with numbers 890034 and 917028 covering the total amount of Php1,800,000.00 to MAMFI which were signed by Ortiz, Cunanan and Figura, without accused TRC officers and employees having carefully examined and verified the accreditation and qualification of MAMFI as well as the transaction's supporting documents;
- (f) MAMFI received the above-described checks from TRC and remitted the proceeds thereof to Napoles; and
- (g) By their above acts, Valencia and the other accused public officials allowed Napoles and themselves, through MAMFI, to take possession and thus misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, with Cuasay submitting indorsement letter signed by Valencia to the office of Napoles and receiving from Napoles and/or her cohorts kickbacks or commissions for Valencia and for herself, while Napoles 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.

CONTRARY TO LAW.

SB-16-CRM-0176 for Malversation of Public Funds

For the period between January 2008 to June 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within this Honorable Court's jurisdiction; accused **RODOLFO GARONG VALENCIA** (Valencia), being then Representative of the First District of Oriental Mindoro and accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law, **ANTONIO YRIGON ORTIZ** (Ortiz), being then the Director General of Technology Resource Center (TRC) and also

72' 1

accountable for the PDAF allocations coursed through TRC, **DENNIS LACSON CUNANAN** (Cunanan), being then Deputy Director General, **MARIA ROSALINDA MASONGSONG LACSAMANA** (Lacsamana), being then Group Manager, **CONSUELO LILIAN REYES ESPIRITU** (Espiritu), being then a Budget Officer, **FRANCISCO BALDOZA FIGURA** (Figura), being then a Group Manager, **MARIVIC VILLALUZ JOVER** (Jover), being then Chief Accountant, all of TRC; **MARIO LOQUELLANO RELAMPAGOS** (Relampagos), being then the Department of Budget and Management (DBM) Undersecretary for Operations, **ROSARIO SALAMIDA NUÑEZ** (Nuñez), **MARILOU DIALINO BARE** (Bare), **LALAINÉ NARAG PAULE** (Paule), all being then under the Office of the Undersecretary for Operations-DBM; all public officers and while in the performance of their administrative and/or official functions, committing the offense in relation to office, conspiring with one another and with private individuals **CELIA CANONO CUASAY** (Cuasay) and **JANET LIM NAPOLES** (Napoles); did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent or, through abandonment or negligence, allow private individuals to take public funds amounting to at least **ONE MILLION EIGHT HUNDRED THOUSAND PESOS (Php1,800,000.00)**, through the following acts:

- (a) **Valencia** unilaterally chose and indorsed **Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI)**, a non-government organization operated and/or controlled by **Napoles** as "project partner" in the implementation of livelihood projects in the First District of Oriental Mindoro which were funded by Valencia's PDAF allocation covered by Special Allotment Release Order (SARO) No. 08-00576, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 91 84 and its implementing rules and regulations, and with MAMFI being unaccredited and unqualified to undertake the projects;
- (b) **DBM's Relampagos, Nuñez, Paule and Bare, unduly accommodating Napoles, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Valencia's PDAF to TRC, the agency chosen by Valencia through which to course his PDAF allocations;**
- (c) **Valencia** and TRC's **Ortiz** then entered into a Memorandum of Agreement (MOA) with MAMFI on the purported implementation of Valencia's PDAF-funded projects;
- (d) **Lacsamana** recommended to Ortiz the release of Valencia's PDAF to MAMFI;
- (e) **Ortiz** also facilitated, processed and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) Nos. 012009040927 and 012009010008 along with **Cunanan, Espiritu and Jover** verifying that the supporting documents were attached, as well as causing the issuance of Land Bank of the Philippines (LBP) check with numbers 890034 and 917028 covering the total amount of Php1,800,000.00 to MAMFI which were signed by **Ortiz, Cunanan and Figura**, without accused TRC officers and employees having carefully examined and verified the accreditation and qualification of MAMFI as well as the transaction's supporting documents;

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- (f) MAMFI received the above-described checks from TRC and remitted the proceeds thereof to Napoles;
- (g) By their above acts, **Valencia** and the other accused public officials allowed Napoles and themselves, through MAMFI, to take possession and thus misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, with Cuasay submitting indorsement letter signed by **Valencia** to the office of Napoles and receiving from Napoles and/or her cohorts kickbacks or commissions for **Valencia** and for herself, while **Napoles** 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.

CONTRARY TO LAW.

The same act has been attributed to accused Relampagos, Nuñez, Bare and Paule in two (2) other counts of Violation of Sec. 3(e) of R.A. 3019 and their corresponding charges for Malversation of Public Funds, where the accusations differ only in the following details:

Case Nos.	Date	Implementing Agency	SARO No.	DV Nos.	Check Nos.	Amount
0174/ 0177	February 2008 to June 2009	TRC	07-07842	012008041052 012009040928	LBP 885791 917027	₱1,800,000.00
0175/ 0178	May 2008 to October 2008	National Agribusiness Corp. (NABCOR)	08-03854	08-09-03199 08-10-04037	UCPB 437076 437422	₱2,910,000.00

Accused Relampagos, Nuñez, Bare and Paule posted their respective cash bonds even before warrants of arrest could be issued against them.¹ When arraigned, all accused Relampagos, Nuñez, Bare and Paule pleaded not guilty to the charges.²

In the course of the proceedings, on October 10, 2017, accused Relampagos filed a *Consolidated Motion for Permit to Travel*³ to the USA from December 2, 2017 to January 1, 2018, to attend the annual meeting of the International Consortium on Governmental Financial Management (ICGFM) and the ICGFM Winter Training Conference, and to likewise visit his daughter and grandchildren. This was granted in a *Resolution* dated November 10, 2017.⁴

¹ Bare – Cash Bond dated April 21, 2016, *Records*, Vol. 2, pp. 51-56; Paule – Cash Bond dated April 21, 2016, *Records*, Vol. 2, pp. 58-63; Nuñez – Cash Bond dated April 26, 2016, *Records*, Vol. 2, pp. 140-145; Relampagos – Cash Bond dated April 26, 2016, *Records*, Vol. 2, pp. 146-151.

² Arraigned on September 6, 2016 (*Records*, Vol. 2, pp. 151-158).

³ *Records*, Vol. 8, pp. 48-82.

⁴ *Records*, Vol. 8, pp. 122-123.

72.1

On January 10, 2018, counsel for accused Relampagos filed a *Manifestation*⁵ that accused Relampagos has advised them that he was still in the USA, that he could no longer carry on with all the cases filed against him, which have drained him psychologically and financially, and that he has lost all faith in the justice system. In a *Resolution* dated January 15, 2018,⁶ this court ordered the forfeiture of accused Relampagos's cash and travel bonds, the cancellation of his passport, and the issuance of a warrant of arrest and the commencement of extradition proceedings against him as a fugitive from justice.

Despite having eluded trial, the prosecution proceeded with the presentation of its evidence against accused Relampagos and the rest of the accused. Witnesses Benhur Luy and Marina Sula, both employees of JLN Corp. and accused Janet Lim Napoles, related how the PDAF funds were diverted to accused Napoles' NGOs, and how they participated in the scheme.

EVIDENCE AGAINST THE ACCUSED

Extracted from the volume of evidence presented by the prosecution, it was only witnesses Benhur Luy and Marina Sula who alluded to the participation of accused Relampagos, Nuñez, Bare and Paule in the charges. The testimonies of the other witnesses did not touch upon the purported participation of said accused.

Benhur Luy was accused Napoles's second cousin and employee since 2002.⁷ As financial officer of JLN Corp., he kept track and record of all financial transactions of accused Napoles's corporations, NGOs, and other businesses.⁸ **Marina Sula**, on the other hand, was accused Napoles's employee since 1997.⁹ As finance clerk of JLN Corp., she prepared and signed documents and performed bank transactions incidental to accused Napoles's dealings.¹⁰ Both Luy and Sula were aware of how accused Napoles's "business" operated.

Luy and Sula related that on paper, JLN Corporation was engaged in the business of trading goods such as construction materials and marine supplies,¹¹ but its actual business was dealing with the PDAF of senators and congressmen, through transactions that made it appear that their PDAF was used for government projects when they were really diverted to accused Napoles's NGOs as purported implementer of projects, in exchange for

⁵ Records, Vol. 8, pp. 157-159.

⁶ Records, Vol. 8, pp. 166-168.

⁷ Transcript of Stenographic Notes dated January 14, 2020, pp. 13-14.

⁸ TSN dated January 14, 2020, p. 22.

⁹ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A No. 6.

¹⁰ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A Nos. 12-13.

¹¹ TSN dated January 14, 2020, p. 29; Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A No. 15.

72

commissions, kickbacks or rebates.¹² Accused Napoles had 20 NGOs for this purpose, which she had full control of.¹³

Sula related that these PDAF transactions started with accused Napoles reaching out to legislators, or their chiefs of staff or agents, to strike an agreement on the lawmaker's PDAF allocation. Accused Napoles would offer to implement the PDAF project in exchange for rebates or commissions, and if the lawmaker agreed, accused Napoles would instruct her employees to prepare the documents supporting a particular PDAF transaction.¹⁴ Among the legislators who transacted with accused Napoles was accused Cong. Valencia, representative of the First District of Oriental Mindoro. Luy was present during the meetings with Celia Cuasay, the agent for Cong. Valencia.¹⁵ He also saw her in their office with Nico Valencia, son and chief-of-staff of accused Valencia.¹⁶

MAMFI was the NGO used for the PDAF transactions of accused Valencia, particularly those covered under ROCS Nos. 08-00576, 07-07842, and 08-03854, which SARO Numbers are indicated in the MOA that Sula signed as president of MAMFI.¹⁷ Luy related that he prepared draft project listings for each of the three SAROs, then submitted them to accused Valencia through accused Cuasay for inclusion in the list of priority projects. Accused Cuasay then furnished them a copy of accused Valencia's finalized letter to the Committee on Appropriations with the project listings and attachments,¹⁸ prompting an instruction from accused Napoles to pay advance commissions to accused Valencia through accused Cuasay, as agreed upon.¹⁹

Also upon instruction from accused Napoles, Luy called the DBM office, particularly that of accused Relampagos, to follow up on the issuance of the SAROs pertaining to accused Valencia's project listings. He talked to accused Nuñez, Bare and Paule, who were introduced to him by accused Napoles as her contacts with the DBM.²⁰ Sula also recalled seeing "Leah, Malou, and Lalaine" in the JLN Office.²¹ On occasions, accused Napoles would give them gifts and pocket money, and they also attended the parties of JLN Corp. Luy also made follow-ups with accused Relampagos using accused Napoles's phone. Napoles hosted accused Relampagos's birthday party at one time.²²

¹² TSN dated January 14, 2020, pp. 20-21; Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A No. 15.

¹³ TSN dated January 14, 2020, pp. 36-38.

¹⁴ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A Nos. 46-49.

¹⁵ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 7-8.

¹⁶ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A No. 11.

¹⁷ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A Nos. 51-54.

¹⁸ Exhs. "C-5", "C-3", "C-4", "C-11", "C-9", "C-10", "C-17", "C-15", "C-16"; Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 20-25.

¹⁹ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A No. 33.

²⁰ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 35-37.

²¹ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A Nos. 64-65.

²² Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 37-38.

72 |

Upon issuance of the SAROs, accused Cuasay furnished Luy copies thereof, which meant that accused Valencia could already claim the balance of his kickback.²³ Upon verification of the SAROs²⁴ with accused Nuñez, Luy proceeded to draft the endorsement letter, memorandum of agreement for TLRC, and the project proposal and activities, and forwarded them to accused Valencia through accused Cuasay.²⁵ After these documents were finalized and signed, they were sent back to JLN Corp. for verification of contents including the indorsement of MAMFI, and consequently, the full payment of the commissions of accused Valencia, through accused Cuasay.²⁶

Accused Napoles' office thereafter forwarded these documents to the implementing agencies TRC / NABCOR for processing and check payment to MAMFI.²⁷ Meanwhile, accused Cuasay likewise furnished them copies of the NCAs and ANCAIs once issued,²⁸ which they also forwarded to TRC / NABCOR, prompting the release by the implementing agencies of the PDAF fund in check payments.²⁹ Upon instruction by accused Napoles, a trusted employee picked up the checks from TLRC/NABCOR, for which official receipts³⁰ were issued by MAMFI.³¹ The checks were deposited to MAMFI's Landbank Greenhills Branch account, to be withdrawn and delivered to accused Napoles.³² Luy placed the money in the vault, made the necessary disbursements like commissions, kickback and rebates, and recorded the payments in the JLN Cash/Check Disbursement Reports.³³ He and other JLN employees then prepared the liquidation documents,³⁴ some of which they forged.³⁵ Before surrendering to the authorities in January 2013, accused Napoles ordered the shredding of all documents used in the PDAF transactions and instructed Sula to close the NGOs' accounts with Landbank and Metrobank, and to withdraw the funds therefrom.³⁶

The following documents were offered by the prosecution:

- A. Exhibits "A"; "A-1" to "A-63" – NBI Complaint dated November 29, 2013 and its annexes;
- B. Exhibits "B", "B-1" to "B-205" – Special Audits Office Report No. 2012-03 and its supporting documents
- C. Exhibits "C" to "C-23" – DBM Documents

²³ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A No. 41.

²⁴ Exhs. "C", "C-6", "C-12".

²⁵ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 42-45, 49, 52.

²⁶ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 54-56, 65.

²⁷ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 59-60.

²⁸ Exhs. "C-2", "C-1", "C-8", "C-7", "C-14", "C-13".

²⁹ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 66, 68.

³⁰ Exhs. "B-6", "B-130", "B-51".

³¹ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A No. 71.

³² Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A No. 76.

³³ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46, Q&A Nos. 77-78.

³⁴ Exhs. "B-26", "B-27", "B-28", "B-30", to "B-44"; "B-69", "B-71" to "B-88"; "B-131" to "B-146".

³⁵ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A Nos. 50-51.

³⁶ Judicial Affidavit dated September 2, 2019, *Judicial Affidavit Folder*, Vol. 1, pp. 276-483, Q&A Nos. 74-75.

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- D. Exhibits “D” to “D-26”; “D-27” to “D-31” – *Sinumpaang Salaysay* and photographs of objects received from the office of accused Valencia
- E. Exhibits “E”, “F”, and “G” – JLN Cash/Check Daily Disbursement Reports;
Exhibits “P”, “P-1” to “P-77” – EnCase Examination Report
- F. Exhibits “H” to “H-25”, “H-26” to “H-531” – Joint Complaint-Affidavit of AMLC-Secretariat and Annexes
- G. Exhibits “I”, “I-1” to “I-312” – AMLC Bank Inquiry Report dated October 19, 2016, AMLC Secretariat Documents, Bank Records
- H. Exhibits “J” to “J-9” – Service Record of Nico Valencia;
- I. Exhibits “L”; “L-1” to “L-8” – Incorporation Documents of JLN Corporation
- J. Exhibits “M” to “M-4” – SSS Documents
- K. Exhibits “N” to “N-19”; “O” to “O-19” – Health Insurance Documents – JLN Corp.

After the prosecution rested its case, accused Cunanan; Lacsamana; and Relampagos, Nuñez, Bare and Paule, filed their respective *Motions for Leave to File Demurrer to Evidence*.³⁷ It is only the motion for leave jointly filed by accused Relampagos, Nuñez, Bare and Paule from DBM that was granted by the court in its Resolution dated December 9, 2022.³⁸

ACCUSED’S DEMURRER TO EVIDENCE

In their *Joint Demurrer to Evidence*,³⁹ accused Relampagos, Nuñez, Bare and Paule underscore the following allegation in the *Informations* charging against them, thus:

(b) DBM’s Relampagos, Nuñez, Paule and Bare, unduly accommodating herein Napoles, **facilitated the processing** of the aforementioned SARO and the corresponding Notice of Cash Allocation, resulting in the release of the subject funds drawn from Valencia’s PDAF to [TRC/NABCOR], the agency chosen by Valencia through which to course his PDAF allocations;

Accused Relampagos, Nuñez, Bare and Paule assert that the prosecution provided no benchmark with which to appreciate the allegation of facilitation. ROCS-08-03854 was processed in 33 days; ROCS-07-07842 in 20 days; and ROCS-08-00576 in 49 days. These SAROs were not processed in their office, but by the Regional Operations Coordination Service (ROCS), which found no irregularity therewith. Accused Relampagos did not even sign these SAROs.

³⁷ Records, Vol. 17, pp. 249-266; 267-286; 287-299.

³⁸ Records, Vol. 345-352.

³⁹ Records, Vol. 17, pp. 362-390.

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A cross-reference was thereafter made to the First Division of this court which dismissed Criminal Case Nos. SB-14-0267, 0270, 0271, 0274, 0277, 0278, 0281 and 0282, involving SAROs that were likewise not signed by accused Relampagos, and which ordered the prosecution to present additional evidence to establish probable cause against accused Relampagos, Nuñez, Bare and Paule. The First Division observed that the allegations against them were hinged merely on Benhur Luy's statement that per his knowledge, the SAROs were prepared in the office of accused Relampagos, and that they followed up with accused Nuñez, Bare and Paule the issuance of the SAROs.

In the same tenor, the Concurring and Dissenting Opinion of Justice Presbitero Velasco, Jr in *Cambe v. Office of the Ombudsman*⁴⁰ was quoted, which stated that no probable cause was found against accused Relampagos, Nuñez, Bare and Paule, which considered the discussions before the Senate Blue Ribbon Committee where DBM Director Carmencita Delantar stated that it was not their office which processed the issuance of the SAROs; that DBM Circular Letter No. 2015-1, s. 2015 has done away with the endorsement of the implementing agency as a *sine qua non* requirement before a SARO issues; and that under the DBM Citizen's charter, the processing time should be for less than ten (10) hours; thus, there was no undue haste.

As to the charges for Malversation, accused Relampagos, Nuñez, Bare and Paule aver that Benhur Luy testified that they never received any kickbacks. Also in the Concurring and Dissenting Opinion of Justice Velasco in *Cambe v. Office of the Ombudsman*,⁴¹ he took note of the testimonies of Benhur Luy and Merlina Suñas to this effect, as did the First Division of this court in its Resolution dated August 28, 2014. Thus, they are not responsible for any misappropriation of funds and property. Moreover, they are not accountable officers under Article 217 of the Revised Penal Code.

The prosecution likewise failed to establish any irregularity in the follow-ups supposedly made with the DBM. On the other hand, Benhur did not state when gifts were given to accused Relampagos, Nuñez, Bare and Paule. In a prior testimony, Benhur mentioned that these were given in 2002, 2003, and 2004, or way before the issuance of the subject SAROs in 2007 and 2008.

Finally, conspiracy was not proven against accused Relampagos, Nuñez, Bare and Paule. The mere signing of the SARO and its corresponding NCA or ANCAI is not an overt act indicative of a common criminal design, as this was done in the performance of their duties, which are presumed to have been done regularly. In *Arias v. Sandiganbayan*,⁴² it was held that there should be other grounds than the mere signature or approval to sustain a

⁴⁰ G.R. No. 212014-15, December 6, 2016.

⁴¹ *Ibid.*

⁴² 180 SCRA 309 (1989).

12 |

conspiracy charge. More so in these cases when accused Relampagos did not even sign the SAROs.

In granting the demurrer to evidence filed by the accused in *People v. Revilla*⁴³ and *People v. Jaraula*⁴⁴, the First Division of this court found that there was no undue haste in the issuance of the SAROs; that the mere signing of the SAROs and ANCAIs cannot be considered acts attended with evident bad faith or manifest partiality; and that there was no proof that they received kickbacks representing portions of the PDAF.

PROSECUTION'S OPPOSITION

In its *Opposition*,⁴⁵ the prosecution emphasized that accused Relampagos is a fugitive from justice who was without standing to seek relief from this court, and to avail of a demurrer, he should at least resurface and submit himself to this court's jurisdiction. An analogous case would be an appellant jumping bail, in which case the appeal should be dismissed.

In any event, the demurrer to evidence filed by accused Relampagos, Nunez, Paule and Bare has no merit. Their attachments are alien to the case and could not be given credence, and their allegations are matters of defense that should be threshed out during trial. The prosecution was able to prove the commission of the crime and accused Relampagos, Nuñez, Bare and Paule's participation therein.

Accused Relampagos, Nuñez, Bare and Paule are charged with accommodating the private accused and facilitating the processing of the SAROs and NCAs, resulting in the release of the funds to TRC/NABCOR. They were charged in conspiracy with their co-accused, making the act of one the act of all. Exhibits "C-1", "C-2", "C-3", "C-6", "C-7", "C-8", "C-12", "C-13", and "C-14" confirmed the release of funds from the National Treasury to the TLRC and NABCOR, and ultimately to MAMFI, accused Napoles's NGO. They were tasked to accommodate the employees of MAMFI in the facilitation and processing of the SAROs and NCAs, making them one in the criminal objective to guarantee that the funds end up with MAMFI. While they acted within the mandate of their office, their participation was part of the collective effort to release the funds to MAMFI. The supposed timeline of release is not relevant, not having been alleged in the Informations.

Benhur Luy testified on his own dealings, and those of accused Napoles, with accused Relampagos, Nuñez, Bare and Paule. Luy testified that he called the office of accused Relampagos to follow up on the release of the

⁴³ Crim Case Nos. SB-14-CRM-0258, 0269, 2072, 0273, 0275, 0276, 0279 & 0280.

⁴⁴ Crim Case Nos. SB-15-CRM-0016 to 0018.

⁴⁵ *Records*, Vol. 17, pp. 515-530.

87.1

SARO, while Marina Sula testified that Napoles instructed JLN employees to make these follow-ups.

Accused Relampagos was the authorized signatory of the NCAs and Advice of NCAs, which were necessary to release the PDAF funds. The participation of DBM officials in the facilitation of the SAROs and NCAs was discussed in *Belgica v. Executive Secretary*,⁴⁶ debunking accused Relampagos, Nuñez, Bare and Paule's assertion that their acts were merely ministerial. During the interpellations for said case, it was made clear that the issuance of NCAs triggered the actual release of funds.

THE COURT'S RULING

A demurrer to the evidence is "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict."⁴⁷

While the position of accused Relampagos, Nuñez, Bare and Paule would have been treated in the same way, the fact that accused Relampagos has long eluded the processes of this court placed him in a different footing than the others.

Accused Relampagos is a fugitive who has no standing to seek relief from this court.

In its *Opposition*, the prosecution underscored that accused Relampagos is a fugitive from justice, having been granted permission to travel abroad, only to renege on his undertaking to return and face the charges against him. In *People v. Prades*,⁴⁸ the Supreme Court explained:

Flight is the evasion of the course of justice by voluntarily withdrawing oneself in order to avoid arrest, detention or the institution or continuance of criminal proceedings. It is considered an indication of guilt. A "fugitive from justice," on the other hand, is one who flees after conviction to avoid punishment, as well as one who, after being charged, flees to avoid prosecution. By his flight and thereafter becoming a fugitive, appellant waived his right to adduce evidence and consequently denied himself the opportunity to dispute the charge against him.

⁴⁶ G.R. Nos. 208566, 208493, 209251 & L-20768, November 19, 2013.

⁴⁷ *People v. Go*, G.R. No. 191015, August 6, 2014.

⁴⁸ G.R. No. 127569, July 30, 1998.

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The prosecution echoed the rule in *Philippine Rabbit Bus Lines, Inc. v. People*⁴⁹ providing for the dismissal of the appeal of an accused who jumps bail. By analogy, this should also apply to an accused who jumps bail during trial.⁵⁰ Under Rule 128:

SECTION 8. Dismissal of appeal for abandonment or failure to prosecute. — The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except in case the appellant is represented by a counsel de oficio.

The court may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal.

The parallelism for this rule was explained in *People v. Mapalao*,⁵¹ where the accused escaped from confinement after arraignment and during trial:

Parenthetically, the appeal of appellant Rex Magumnang should be struck down. After arraignment and during the trial, he escaped from confinement and had not been apprehended since then. Accordingly, as to him the trial *in absentia* proceeded and thereafter the judgment of conviction was promulgated.

Nevertheless, through counsel, he appealed to this Court. Under Section 8, Rule 122 of the 1985 Rules of Criminal Procedure, the Court, may "upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal." In this case, appellant Magumnang remained at large even as his appeal was pending. Hence, by analogy his appeal must be dismissed.

The reason for this rule is because 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.

Thus when as in this case he escaped from confinement during the trial on the merits and after his arraignment, and so the trial *in absentia* proceeded and the judgment against him was promulgated in accordance with Section 14(2) Article III of the 1987 Constitution, nonetheless, as he remained at large, he should not be afforded the right to appeal therefrom unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested, within fifteen (15) days from the notice of the judgment against him. **While at large as above stated he cannot seek relief from the Court as he is deemed to have waived the same and he has no standing in court.** (emphases supplied)

⁴⁹ G.R. No. 147703, April 14, 2003.

⁵⁰ *Id.*

⁵¹ G.R. No. 92415, 14 May 1991.

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Accused Relampagos cannot thus seek relief from this court as he is deemed to have waived the same and has no standing in court.

A demurrer to evidence is a **motion to dismiss** on the ground of insufficiency of evidence. It is a **remedy** available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue.⁵² While there is no *particular* rule prohibiting an accused who is at large, through counsel, from filing a demurrer to evidence, the rationale for the rule proscribing an appeal leaves no doubt that accused Relampagos, who has absconded from this jurisdiction, has waived his right to seek relief from this court where he has no standing. Simply put, accused Relampagos, while he remains a fugitive, cannot seek redress from this court when he has put himself out of its reach.

Accordingly, this court denies accused Relampagos's demurrer to evidence outright.

Accused Nuñez, Paule, and Bare's demurrer gains ground for insufficiency of evidence to convict them of the charge.

The same situation does not hold true for accused Nuñez, Paule and Bare.

In their demurrer, accused Nuñez, Paule and Bare emphasize that the **only** accusation against them in the *Informations*, is:

- (b) DBM's **Relampagos, Nuñez, Paule and Bare**, unduly accommodating Napoles, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Valencia's PDAF to TRC/NABCOR, the agency chosen by Valencia through which to course his PDAF allocations;

According to said accused, the prosecution did not present evidence establishing the normal time frame for the processing of SAROs and NCAs, leaving no basis for the accusation that they facilitated the processing of these documents. Likewise, there is no proof that they were the ones who processed the subject SAROs and NCAs, as in fact, they were processed by the Regional Operations Coordination Service (ROCS), and not their office.

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial

⁵² Republic v. De Borja, G.R. No. 187448, January 9, 2017.

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or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused. Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt.⁵³

Evidence against accused Nuñez, Paule and Bare

Only two (2) witnesses testified against Nuñez, Paule and Bare, and their testimony is quoted *in toto* as follows:

(a) Benhur Luy⁵⁴

35. Q. After Ms. Cuasay submitted the finalized and signed project listing and after the payment of advance commissions/kickbacks, what happened next, if any?

A. For our part in the JLN Corporation, Madam Napoles instructed me to call the DBM office, particularly to the office of USec. Mario Relampagos, and **follow-up** the status of each of the SARO pertaining to the project listings of Cong. Valencia.

36. Q. To whom did you talk to and make follow up in the DBM?

A. I talked to the DBM employees who are also the **contacts** of Madam Napoles, **namely Ma'am Rosario Nuñez, Malou Bare and Lalaine Paule. Most of the time it's Ma'am Lea (Rosario Nuñez).**

37. Q. You said that Rosario Nuñez, Malou Bare and Lalaine Paule are the contacts of Ms. Napoles, what made you say that?

A.

a) They were **personally introduced to me by Madam Napoles** as contacts from DBM aside from USec. Relampagos **in 2004** when accompanied Madam Napoles in DBM to bring food during the birthday of USec. Relampagos.

b) There were also occasions like every Christmas and JLN Office anniversary that **we gave gifts, such as bags, tray of fruits and personalized gift basket and others to Ma'am Nuñez, Bare and Paule.**

c) **In 2005 or 2006, Madam Napoles gave money to Ma'am Rosario Nuñez (Lea), Marilou Bare (Malou) and Lalaine Paule (Lalaine) as pocket money for their tip to Hongkong.**

d) **Ma'am Lea, Malou and Lalaine attended JLN Corporation parties like death anniversaries of Madam Janet Napoles' mother and Christmas parties.**

⁵³ People v. Go, G.R. No. 191015, August 6, 2014.

⁵⁴ Judicial Affidavit dated March 2, 2020, *Judicial Affidavit Folder*, Vol. 3, pp. 8-46.

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42. Q. After Ms. Cuasay furnished the JLN Corp. a copy of Cong. Valencia's SARO, what did you do next, if any?

A. As instructed by Madam Janet Lim Napoles I verified from the DBM particularly from Rosario Nuñez (Lea) the copy of the SARO which was furnished to us by Ma'am Cuasay.

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44. Q. How did you verify from the DBM the SARO of Cong. Valencia which was submitted by Cuasay?

A. I called Ma'am Lea and told her that I have the SARO number, the amount indicated in the SARO and the Implementing Agency. Then I asked under whose legislator the SARO is.

45. Q: What was the result of your verification?

A: The DBM confirmed that the copy of the SARO submitted by Ma'am Cuasay to the JLN Corp. correspond to the SARO of PDAF of Congressman Valencia that was released by the DBM to TRC/DANABCOR.

(b) Marina Sula⁵⁵

Q64. You said you have seen lawmakers and their staff, agents, government officials and employees and other personalities in the JLN office, could you please tell this Court the names of these individuals?

Answer: I have personally seen Senator Jinggoy Estrada, Congressman Edgar Valdez, Constantino Jaraula, Rodolfo Plaza, among other lawmakers in the JLN Office. I have also personally seen Atty. Cambe, Senator Bong Revilla's chief of staff, Pauline Labayen, Jinggoy's chief of staff, Joy Sumalpong, chief of staff of Congresswoman Rizalina Lanete, Ruby Tuason who was Madame's agent for Jinggoy and Enrile's PDAF. I have also seen Gondelina Amata of NLDC, Bel Concepcion of TRC, Rhodora Mendoza of NABCOR, certain Leah, Malou and Lalaine, of the DBM and Celia Cuasay, among others.

In sum, Benhur Luy testified that (a) accused Nuñez, Paule and Bare were introduced to him in 2004 by accused Napoles as her contacts at the DBM; (b) accused Napoles gave gifts to accused Nuñez, Paule and Bare on some occasions, and had them as guests in some of her parties; (c) accused Napoles gave accused Nuñez, Paule and Bare pocket money for their Hongkong Trip in 2005 or 2006; and (d) upon accused Napoles's instruction, he called accused Nuñez, Paule and Bare to follow up on the SARO pertaining to the project listings of accused Valencia; and (e) he verified from accused Nuñez the copies of the SARO that accused Cuasay furnished them.

⁵⁵ Judicial Affidavit dated September 2, 2019, Judicial Affidavit Folder, Vol. 1, pp. 276-483.

Meanwhile, Marina Sula testified having seen accused Nuñez, Paule and Bare at the JLN Office.

No evidence was presented that accused Nuñez, Paule and Bare facilitated the processing of the issued SAROs and NCAs.

Notably, there is no allegation that the SAROs and NCAs were irregularly issued; only that accused Nuñez, Paule and Bare ***“facilitated the processing of the aforementioned SARO[s] and the corresponding Notice[s] of Cash Allocation resulting in the release of the subject funds drawn from Valencia's PDAF to TRC/NABCOR”***.

A SARO, as issued by the DBM, is an authority, much like a "green light," given to government agencies to enter into contracts with private individuals or entities pursuant to the purpose or purposes indicated in the SARO.⁵⁶ The actual release of funds is brought about by the issuance of the NCA, which is subsequent to the issuance of a SARO.⁵⁷ While indeed, the SAROs and NCAs are necessary in the release of accused Valencia's PDAF, what concerns this court at this instance is whether or not the prosecution has proven the culpability of accused Nuñez, Paule and Bare for the issuance of the SAROs and NCAs.

For these transactions, there is only the testimony from Benhur Luy that he **followed up on the status of the SAROs** with accused Nuñez, Paule and Bare, and later on **verified** them with accused Nuñez. To track the status of the SAROs is **not** the same as to facilitate the processing of these SAROs, as alleged in the *Informations*. **To facilitate is to make the commission of the crime easier.**⁵⁸

However, there is no evidence, documentary or testimonial, as to **how** accused Nuñez, Paule and Bare **aided** accused Napoles in the issuance of the SAROs and NCAs. None of the documents offered established accused Nuñez, Paule and Bare's job descriptions, let alone that they had a hand in the processing, or the facilitation of the processing, of the SAROs and NCAs. Neither is there testimony on accused Nuñez, Paule and Bare's particular actions to facilitate the issuance of the SAROs and NCAs, whether or not authorized to do so.

Accused Nuñez, Paule and Bare also properly pointed out that there is no evidence that the SAROs and NCAs were issued with undue haste, considering another acceptance of "facilitation", which is *to expedite*. The prosecution's Exhibit "C" is summarized below:

⁵⁶ *Mifao v. Office of the Ombudsman (Mindanao)*, G.R. No. 231042, February 23, 2022.

⁵⁷ *Belgica v. Ochoa*, G.R. Nos. 208566, 208493, 209251 & L-20768, November 19, 2013.

⁵⁸ *Black's Law Dictionary* (9th Ed., 2009).

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SARO Number	Date			
	Valencia's Letter Re: Priority Projects	Indorsement letter to the DBM	SARO	NCA / ANCAI
ROCS-07-07842 ("C")	September 10, 2007 ("C-5")	September 14, 2007 ("C-3" to "C-4")	October 10, 2007 ("C")	February 7, 2008 ("C-1", "C-2")
ROCS-08-00576 ("C-6")	November 13, 2007 ("C-11")	November 15, 2007 ("C-9" to "C-10")	January 10, 2008 ("C-6")	October 30, 2008 ("C-7", "C-8")
ROCS-08-03854 ("C-12")	March 25, 2008 ("C-17")	April 3, 2008 ("C-15" to "C-16")	May 7, 2008 ("C-12")	June 13, 2008 ("C-13", "C-14")

The issuance of the SAROs from the date of indorsement ranges from one to two months, while the issuance of the NCAs from the date of issuance of the SAROs ranges from one to nine months. Since, as properly pointed out by accused Nuñez, Bare and Paule, the prosecution did not present evidence on the prescribed period to process and issue the SAROs and NCAs, this court has no basis to determine whether the subject SAROs and NCAs were indeed issued with unreasonable dispatch.

If the commission of the crime should further be probed with the elements thereof, these leave much to be desired.

The elements⁵⁹ of Violation of Section 3 (e) of RA 3019 are:

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 gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

While the first element has been a stipulated fact, the dearth in proving the second and third element is at once apparent. In the issuance of the SAROs, accused Nuñez, Paule and Bare may have brooked easy access to Luy in the latter's frequent follow-ups in the issuance of the SAROs. However, how this could amount to "manifest partiality", "evident bad faith", or "gross inexcusable negligence" is all too presumptuous. The meaning of "manifest partiality", "evident bad faith", or "gross inexcusable negligence" within the context of R.A. 3019 requires much more. Before these modalities may even be considered, the transgression must be certain and specific. Thus:

x x x There is "manifest partiality" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence

⁵⁹ Cruz v. People, G.R. No. 197142, October 9, 2019.

82.1

characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.⁶⁰

Stated otherwise, if accused Nuñez, Paule, and Bare indeed favored accused Janet Lim Napoles, through Benhur Luy, with manifest partiality, how was the inclination or predilection notorious? Certainly, it is not just with giving gifts or baskets of fruits or cash money for a foreign trip to them. If it was with evident bad faith, how are their acts perceived as that exercising bad judgment or one with a palpably or patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will? In the same way, would the purported nonfeasance of gross inexcusable negligence be seen as an inadvertent act willfully and intentionally made? In the scheme of things, there even existed prosecution evidence that the issuance of the SARO was never a function of the office of accused Nuñez, Bare and Paule. For a “follow-up” to be made through them, how this should amount to “*moral obliquity or conscious wrongdoing for some perverse motive or ill will*” remains speculative.

The facts themselves, therefore, must demonstrate either of the modalities. The allegations in the Informations on manifest partiality”, “evident bad faith”, or “gross inexcusable negligence”, however, never translated to proof.

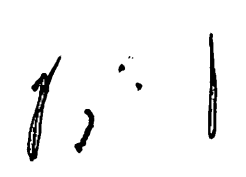
On the other hand, a discussion of the elements of Malversation are far too off-tangent for accused Nuñez, Bare and Paule. The elements⁶¹ are:

1. That the offender is a public officer;
2. That he had custody or control of funds or property by reason of the duties of his office;
3. That those funds or property were public funds or property for which he was accountable, and
4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

The prosecution has not even ventured on proof of how accused Nuñez, Paule and Bare are accountable officers who appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take funds or property under their custody or control. These charges, therefore, cannot be considered against them.

⁶⁰ *Id.*

⁶¹ *Venezuela v. People*, G.R. No. 205693, February 14, 2018.



No evidence was likewise presented to prove the necessity of accused Nuñez, Paule and Bare's participation in the processing of the SAROs and NCAs.

The prosecution argues in its *Opposition* that “[w]ithout the participation of herein accused-demurrants officials of the DBM, the crime would not have been committed or the crime may have been prevented as the public funds amounting to P7million from the three funds released (by accused-demurrants) would not have been stolen or pocketed by their co-accused conspirators.”⁶²

Exhibit “C”, as tabulated above, illustrates the process flow for the issuance of the subject SAROs and NCAs, thus: (a) accused Valencia writes a letter to the Speaker of the House of Representatives presenting his priority projects;⁶³ (b) the Speaker of the House of Representatives and the Chairperson of the Committee on Appropriation endorses the list of projects to the Secretary of the DBM;⁶⁴ and (c) the Secretary of the DBM issues the SARO⁶⁵ and NCA.⁶⁶ Notably, nowhere in this process do the names of accused Nuñez, Paule and Bare appear.

Benhur Luy has testified that not only did he know accused Nuñez, Paule and Bare, having been introduced to him by accused Napoles as her “contacts” with the DBP, but they likewise attended events hosted by accused Napoles and received gifts from her, both in cash and in kind. This association, coupled with Luy’s testimony that his follow-ups on purely government-to-government transactions were entertained by accused Nuñez, Paule and Bare, indeed hints at some level of involvement on the part of said accused that goes beyond what is written in the documents. However, not only has the prosecution failed to prove the extent of accused Nuñez, Paule and Bare’s involvement, it has also failed to show how this involvement, subsumed under the *Informations* in the allegation of “facilitation”, was **instrumental** to the commission of the crimes charged.

Conspiracy transcends companionship.⁶⁷ To establish conspiracy, evidence of **actual cooperation** rather than mere cognizance or approval of an illegal act is required. Nevertheless, **mere knowledge, acquiescence or approval of the act**, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be **intentional participation** in the transaction with a view to the furtherance of the common design and purpose. In order to hold an accused liable as co-principal by reason of conspiracy, he or she must be shown to have performed

⁶² Par. 11, p. 5.

⁶³ Exhibits “C-5”, “C-11” and “C-17”.

⁶⁴ Exhibits “C-3” to “C-4”; “C-9” to “C-10”, and “C-15” to “C-16”.

⁶⁵ Exhibits “C”, “C-6”, and “C-12”.

⁶⁶ Exhibits “C-1”, “C-7”, and “C-13”.

⁶⁷ *Cruz v. People*, G.R. Nos. 197142 & 197153, October 9, 2019.

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an overt act in pursuance or in furtherance of conspiracy.⁶⁸ It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It must have an **immediate and necessary relation to the offense.**⁶⁹

In these cases, there is no indication that the SAROs and NCAs were issued on bases other than the indorsement of Chairperson of the Committee on Appropriation and the Speaker of the House of Representatives. There is no proof that any sort of intervention was necessary for the issuance of the subject SAROs and NCAs; neither was it proven that time was of the essence, such that the SAROs and NCAs would be rendered useless if issued later than the date they were issued. Thus, even assuming that accused Nuñez, Paule and Bare were, one way or another, involved in the processing of the SAROs and NCAs, this does not make them conspirators in these cases, there being no showing of how such involvement contributed to the issuance of the SAROs and NCAs, and ultimately the consummation of the crimes charged.

As this court is merely tasked with the determination of whether the prosecution adduced sufficient evidence to warrant the conviction of accused Nuñez, Paule and Bare, this court finds no reason to look beyond the prosecution evidence and take guidance from the quoted findings of the Supreme Court and the other divisions of this court in the **other** PDAF cases, which have their own sets of evidence to consider.

While the Constitution exacts a higher standard of accountability with respect to public officers, as indeed public office is a public trust, the constitutional right of presumption of innocence in criminal prosecutions is likewise enjoyed by public officers who stand accused. Therefore, in order to justify conviction, their guilt must be proven beyond reasonable doubt, as with any other person who stands accused.⁷⁰

WHEREFORE, the *Demurrer to Evidence* filed by accused **Mario L. Relampagos**, who remains a *fugitive* to this very day, is **DENIED**.

The *Demurrer to Evidence* jointly filed by accused **Rosario S. Nuñez, Marilou D. Bare, and Lalaine N. Paule** is **GRANTED** for lack of sufficient evidence against them. They are thus **ACQUITTED** of the crimes charged under SB-16-CRM-0173 to 0178.

The following cash bonds are **RELEASED**, subject to the usual auditing and accounting procedure:

Accused	Date	Amount
Rosario S. Nuñez	April 26, 2016	₱210,000.00

⁶⁸ *Rimando y Fernando v. People*, G.R. No. 229701, November 29, 2017.


⁶⁹ *Cruz v. People*, G.R. Nos. 197142 & 197153, October 9, 2019.

⁷⁰ *People v. Ricketts*, G.R. No. 250867, March 16, 2022, citing *Martel v. People*, G.R. Nos. 224720-23, February 2, 2021.

[Handwritten signature]

Marilou D. Bare	April 21, 2016	P210,000.00
Lalaine N. Paule	April 21, 2016	P210,000.00

SO ORDERED.


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

WE CONCUR:


ZALDY V. TRESPES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution 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
Chairperson, Seventh Division

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 Resolution 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

71

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