REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CANDIDO PIOS PANCRUDO, JR., ALAN ALUNAN JAVELLANA*, RHODORA BULATAO MENDOZA, MARIA NINEZ PAREDES GUAÑIZO, VICTOR ROMAN COJAMCO CACAL, and MARK BENETUA ESPINOSA,
Accused.

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CANDIDO PIOS PANCRUDO, JR., et. al.,
Accused.

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CRIM. CASE Nos. SB-16-CRM-0114 and 0116
*For: **Violation of Sec. 3 (e), R.A. No. 3019, as amended***

CRIM. CASE No. SB-16-CRM-0115
*For: **Malversation of Public Funds***

CRIM. CASE No. SB-16-CRM-0117
*For: **Malversation of Public Funds through Falsification of Public Documents***

* At-large.

CANDIDO PIOS PANCRUDO, JR., et. al.,	**Present:**
	Lagos, *J.*, Chairperson, **Mendoza-Arcega, *J.***, and **Corpus-Mañalac, *J.***
Accused.	
x - x	*Promulgated*:
	March 15, 2023

x - x

RESOLUTION

MENDOZA-ARCEGA, *J.*:

Before this Court for resolution are the following:

1. *Motion for Reconsideration (of the Decision dated October 21, 2022)* dated November 7, 2022[1] filed by accused Victor Roman Cojamco Cacal, Rhodora Bulatao Mendoza, and Maria Ninez Paredes Guañizo;

2. *Motion for Reconsideration (of the Decision dated October 21, 2022)* dated November 7, 2022[2] filed by accused Candido Pios Pancrudo, Jr.;

3. *Motion for Reconsideration (of the Decision dated October 21, 2022)* dated November 21, 2022[3] filed by accused Mark Benetua Espinosa;

4. *Motion to Admit Attached Consolidated Comment and Opposition* dated January 9, 2023[4] filed by the Prosecution; and

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[1] *Records*, Vol. 11, p. 59.
[2] *Id.*, at 72.
[3] *Id.*, at 100.
[4] *Id.*, at 130.

5. *Comment and Opposition (to the Prosecution's Motion to Admit Consolidated Comment and Opposition)* dated January 18, 2023 filed by accused Mark B. Espinosa.

On October 21, 2022, the Court promulgated its Decision finding accused Candido Pios Pancrudo, Jr. and Mark Benetua Espinosa guilty beyond reasonable doubt in SB-16-CRM-0114, SB-16-CRM-0115, SB-16-CRM-0116, and SB-16-CRM-0117; further finding accused Victor Roman Cojamco Cacal, Rhodora Bulatao Mendoza, and Maria Ninez Paredes Guañizo guilty beyond reasonable doubt in SB-16-CRM-0115 and SB-16-CRM-0117; and acquitting accused Victor Roman Cojamco Cacal, Rhodora Bulatao Mendoza, and Maria Ninez Paredes Guañizo in SB-16-CRM-0114 and SB-16-CRM-0116 for failure of the prosecution to prove their guilt beyond reasonable doubt. The dispositive portion of the Decision reads thus:

> **WHEREFORE,** premises considered, the Court renders judgment as follows:
>
> 1. In **Criminal Case No. SB-16-CRM-0114**, this Court finds the accused **CANDIDO PANCRUDO, JR.** and **MARK ESPINOSA** GUILTY beyond reasonable doubt of the offense of violation of Section 3 (e) of Republic Act No. 3019, as amended, and sentences each of them to suffer the penalty of imprisonment for an indeterminate period of six **(6) years and one (1) month as minimum** to **ten (10) years as maximum**; and to suffer perpetual disqualification from public office.
>
> Accused **RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO** and **VICTOR ROMAN C. CACAL** are **ACQUITTED** for violation of Section 3 (e) of R.A. No. 3019, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt.
>
> 2. In **Criminal Case No. SB-16-CRM-0116**, this Court finds the accused **CANDIDO PANCRUDO, JR.** and **MARK ESPINOSA** GUILTY beyond reasonable doubt of the offense of violation of Section 3 (e) of Republic Act No. 3019, as amended, and sentences each of them to suffer the penalty of imprisonment for an indeterminate period of six **(6) years and one (1) month as minimum** to **ten (10) years as maximum**; and to suffer perpetual disqualification from public office.
>
> Accused **RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO** and **VICTOR ROMAN C. CACAL** are **ACQUITTED** for violation of Section

3 (e) of R.A. No. 3019, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt.

3. In **Criminal Case No. SB-16-CRM-0115**, this Court finds the accused **CANDIDO PANCRUDO, JR., RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO, VICTOR ROMAN C. CACAL**, and **MARK ESPINOSA** GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, and sentences **CANDIDO PANCRUDO, JR.** and **MARK ESPINOSA** to suffer the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and the accessory penalty of perpetual special disqualification from holding any public office, taking into consideration the attendance of the mitigating circumstance of voluntary surrender. **RHODORA B. MENDOZA, VICTOR ROMAN C. CACAL** and **MARIA NINEZ P. GUAÑIZO** are sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and the accessory penalty of perpetual special disqualification from holding any public office. Further, each accused is herein ordered to pay a fine of PhP1,193,100. They are also held jointly and severally liable to return and to reimburse the government, through the Bureau of Treasury, the amount of PhP1,193,100.00 representing the amount malversed, and the costs, with interest computed from the finality of this decision until paid.

4. In **Criminal Case No. SB-16-CRM-0117**, this Court finds the accused **CANDIDO PANCRUDO, JR., RHODORA B. MENDOZA, MARIA NINEZ P. GUAÑIZO, VICTOR ROMAN C. CACAL**, and **MARK ESPINOSA** GUILTY beyond reasonable doubt of the complex crime of malversation of public funds through falsification of a public document under Articles 217 and 171 in relation to Article 48 of the Revised Penal Code, as amended, and sentences **CANDIDO PANCRUDO, JR.** and **MARK ESPINOSA** to suffer the penalty of imprisonment for an indeterminate period of fourteen (14) years, eight (8) months and (1) day, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law, taking into consideration the attendance of the mitigating circumstance of voluntary surrender. **RHODORA B. MENDOZA, VICTOR ROMAN C. CACAL** and **MARIA NINEZ P. GUAÑIZO** are sentenced to suffer the penalty of imprisonment for

an indeterminate period of sixteen (16) years, five (5) months and 10 days, as minimum, to seventeen (17) years, four (4) months and 1 day of *reclusion temporal*, as maximum, and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law. Further, each accused is herein ordered to pay a fine of PhP6,760,900.00. They are also held jointly and severally liable to return and to reimburse the government, through the Bureau of Treasury, the amount of PhP6,760,900.00 representing the amount malversed, and the costs, with interest computed from the finality of this decision until paid.

With respect to accused Alan A. Javellana, considering that he remained at large and jurisdiction over his person had yet to be acquired, let the cases against him be archived, and let an alias warrant of arrest issue against him.

SO ORDERED.

Accused Pancrudo, Mendoza, Cacal, and Guañizo timely filed their respective Motions for Reconsideration on November 7, 2022, while accused Espinosa filed his on a separate date, or on November 21, 2022 after his Motion for Additional Time to File his Motion for Reconsideration was granted by this Court. The prosecution, however, was only able to file its Comment/Opposition to the respective motions of the accused on January 9, 2022, despite being given a period of ten (10) days from notice of this Court's Resolutions, dated November 8, 2022 and November 22, 2022, within which to file its Comment/Opposition. Accused Espinosa thus prays that the Prosecution's Motion to Admit its Consolidated Comment and Opposition be denied, and the corresponding Comment and Opposition to the accused's Motions for Reconsideration be excluded in the resolution of the herein accused's motions.

While the Prosecution's Consolidated Comment and Opposition was indeed filed out of time, the Court, in the interest of justice, resolves to admit the same. The relaxation of the application of procedural rules is neither novel nor unusual, for the Supreme Court held in one case[5]:

"[T]he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. [x x x] The power to suspend or

[5] *Sanchez vs. Court of Appeals*, 404 SCRA 540, G.R. No. 152766, 20 June 2003.

> even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final [x x x] The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice." *(Citations omitted.)*

We believe the suspension of the Rules is warranted in the present case in order to afford the prosecution the right to an opportunity to be heard. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.[6]

Accused's arguments

That being said, we now look at the arguments laid out by the accused, and the prosecution's comment and/or opposition thereto.

Accused Cacal, Mendoza and Guañizo

Aggrieved, accused Cacal, Mendoza and Guañizo move for the reconsideration of this Court's Decision, and raise these assignment of errors: (1) the Court erred in finding that accused Cacal, Mendoza and Guañizo acted with gross inexcusable negligence in the performance of their respective duties; and (2) the Court erred in finding that accused Cacal, Mendoza and Guañizo acted in conspiracy with all other accused in committing the crimes charged in Criminal Case Nos. SB-16-CRM-0115 and SB-16-CRM-0117 despite the prosecution's failure to prove beyond reasonable doubt the presence of conspiracy.

The three accused insist that they did not have the authority and capacity to assess and examine the accreditation and qualification of Uswag Pilipinas Foundation, Inc. (UPFI), and the prosecution did not allege, much less prove that Cacal, Mendoza and Guañizo had the duty to (1) select and accredit NGOs, (2) ensure and determine the

[6] *Latogan v. People of the Philippines*, G.R. No. 238298, 22 January 2020.

capability of the chosen NGO, (3) verify or monitor the implementation of the subject project, and (4) conduct public bidding and awarding of the project.[7] They argue that because all the documents submitted to them appeared regular and proper on its face, they had no recourse but to affix their respective signatures on the DVs and checks. They also insist that they cannot question the wisdom behind the MOA and subsequent disbursement to UPFI since the power to do so was not within their scope of authority. Thus, they argue that presumption of regularity should have been accorded to them.[8]

The three accused also question the finding of conspiracy among them and the other co-accused, i.e. Pancrudo and Espinosa. They insist that the only overt act imputed against them is the mere presence of their respective signatures in the disbursement vouchers and checks.[9] They argue that the mere act of signing the vouchers and checks, absent any other proof that it was done in furtherance of the conspiracy or with an unlawful intent, is not sufficient to tag them as co-conspirators.[10] According to them, the prosecution failed to establish the fact that Cacal, Mendoza, and Guañizo knew that the supporting documents to the vouchers and checks submitted to them were in fact falsified, and that they were not privy to the falsification. They also claim that no evidence was presented to prove their direct participation in the falsification or knowledge thereof.[11]

Accused Pancrudo

Meanwhile, accused Pancrudo seeks this Court's reconsideration of its Decision and hinges his arguments on the following grounds: (1) he did not choose and indorse UPFI as the supposed project partner in the implementation of the PDAF funded project in his legislative district, and he did not enter into a Memorandum of Agreement with UPFI; (2) the primary responsibility in the disbursement of the funds covered by the SARO in this case lies with the Department of Agriculture (DA); and (3) there is no evidence sufficient to prove the supposed conspiracy among the accused.

[7] Id. at 48.
[8] Id. at 49.
[9] Id. at 51.
[10] Id.
[11] Id. at 53.

Accused Pancrudo insists that this Court disregarded his consistent claims that he did not allocate a single centavo of his PDAF to fund a project implemented by NABCOR and UPFI; that he did not participate, sign, and/or issue the documents used in the implementation of his PDAF-funded project by NABCOR and UPFI; and that the signatures appearing on the incriminating documents adduced by the prosecution were not written by him, as the same were forged.[12]

As to the crime of malversation, accused Pancrudo claims he cannot be convicted as charged because he is not the person accountable for the disbursement of his PDAF, because it is the department chosen as implementing agency that has the primary responsibility over the disbursement of the funds covered by the SARO. In this case, the Department of Agriculture, which was the implementing agency chosen, shoulders the said responsibility.[13]

Accused Pancrudo also insists that there exists no conspiracy among them (accused) because the prosecution has not shown any positive and convincing evidence to prove the existence of the supposed conspiracy, which should not rest on mere assumption. He claims that his signature in the Memorandum of Agreement (MOA) dated February 20, 2009 (Exhibit "**B-18-h**") was forged, and therefore cannot be validly used as basis to prove conspiracy involving him in the criminal acts, if any, of his co-accused.[14] Accused Pancrudo also brings up the testimony of his co-accused from NABCOR that they do not personally know him, and that they had not seen him sign the assailed documents.[15]

Accused Espinosa

Finally, accused Espinosa also seeks the reconsideration of this Court's Decision finding him guilty beyond reasonable doubt by conspiring with the other accused to commit the crimes charged in these cases. He anchors his motion on the following grounds: (1) the Court decided questions of substance in a way that is not in accord with the Constitution, the law, and applicable decision of the Supreme

[12] Id. at 82.
[13] Id. at 83.
[14] Id. at 84.
[15] Id. at 85.

Court; and (2) the Court erred in finding that he acted in conspiracy with the other accused.[16]

Accused Espinosa claims that it is erroneous for this Court to conclude that his act of signing the MOA as representative of UPFI is sufficient proof of his conscious design to commit the offenses charged in these cases because he was only participating in the execution of the said MOA as the authorized representative of UPFI.[17] While he was the Corporate Secretary of UPFI at the time material to these cases, he insists he is not UPFI, and as such, he did not stand to benefit from the subject transactions. Accused Espinosa argues that to rule otherwise would lead to the conclusion that he "is to be blamed for being chosen by UPFI as its authorized representative [x x x]" and because he was the appointed representative of UPFI, "all his actions are now automatically tainted with bad faith despite the absence of proof thereof."[18]

Accused Espinosa also claims that his right to equal protection has been violated because this Court considered the lack of bad faith on the part of the accused NABCOR officers (i.e., Cacal, Mendoza and Guañizo), but failed to extend the same consideration to him.[19] He cites the ruling in *Liwanag v. Commission on Audit,*[20] saying that the special audit conducted relevant to the subject PDAF of accused Pancrudo was "irregular and should be declared invalid for violation of due process of law."[21] He also cites COA Circular 2009-006 which mandated that the results of the special audit be "preliminarily" discussed by the audit team with the previous auditors pursuant to Section 15.3 thereof, and by failing to submit the findings of the special audit team with the NABCOR Resident Auditor concerned, the special audit team infringed on the right to due process of the auditees, which, in these cases, is NABCOR.[22]

Furthermore, accused Espinosa insinuates that this Court's Decision violated Art. VIII Sec. 14 of the Constitution because the factual and legal bases to support the conclusion of guilt beyond reasonable doubt are wanting in the crimes charged, i.e. violation of

[16] Id. at 102.
[17] Id. at 112.
[18] Id. at 112-113.
[19] Id. at 113.
[20] G.R. No. 218241, 06 August 2019.
[21] Records, Vol. 11, pp. 114-117.
[22] Id. at 117-118.

Sec. 3 (e) of R.A. No. 3019, Malversation of Public Funds under Art. 217 of the RPC, and the complex crime of Malversation of Public Funds through Falsification of Public Documents, because the elements of each crime are clearly different.[23] He maintains that in the absence of proof to the contrary, the evidence available clearly establish the implementation by UPFI of the livelihood projects in the First District of Bukidnon, funded by the PDAF allocation of accused Pancrudo.

In sum, Espinosa strongly asserts that the prosecution's cases are unable to stand on its own merits, as the latter failed to prove that Espinosa conspired with the other accused to commit the alleged criminal acts amounting to the violation of Sec. 3 (e) of R.A. No. 3019, Malversation of Public Funds, and the complex crime of Malversation of Public Funds through Falsification.

Prosecution's Comment/Opposition

The prosecution opposes the separate motions filed by the accused based on the following grounds:

On Cacal, Mendoza and Guañizo's arguments:

The prosecution counters the three accused's claim that they should have been accorded the presumption of regularity in the performance of official function by saying that they have established beyond reasonable doubt that they were given possession of the PDAF allocation of Pancrudo, which they illegally released to UPFI through Espinosa.[24] The prosecution stated:

> "As shown in DV No. 09-02-0592, NABCOR paid UPFI the amount of P1,193,100.00 representing 15% payment for the Integrated Livelihood Program endorsed by Pancrudo. Cacal certified that the expenses/advances are necessary and incurred under his direct supervision, while Guañizo certified that the supporting documents are complete and proper. Check No. 455530 in the amount of P1,193,100.00 was issued on the same day, February 20, 2009, when the DV and the MOA was signed. Espinosa prepared the Work and Financial Plan and Project Proposal, noted

[23] Id. at 118.
[24] *Id.* at 10.

by Pancrudo, Mendoza and Javellana, which was used as a supporting document of DV No. 09-02-0592."[25]

The prosecution however states that "based on field verification and validation by the Ombudsman's investigating team, these projects were never implemented. Thereafter, the check was co-signed by Mendoza and Javellana and received by UPFI through Espinosa, issuing Official Receipt No. 001, also dated February 20, 2009.[26]

As to the accused NABCOR officers' argument that they had no authority or capacity to exercise their own judgment or discretion in, among others, examining UPFI's accreditation and qualification, monitoring the implementation of the subject project, or conducting public bidding, the prosecution maintains that said argument was untenable. The prosecution points out that as testified to by COA, the livelihood project sourced from the PDAF of Pancrudo was not within the mandated functions of NABCOR, since it has no capability to implement it. Evidence also revealed that UPFI had no business permit to operate from the City Government of Iloilo. According to the prosecution, it was too negligent of the accused officers to not consider the same in releasing public funds amounting to millions of pesos, and the release of public funds is always subject to existing government rules on accounting; thus, the signing of vouchers was not only a ministerial act.[27]

The prosecution also points out that under the Tripartite MOA, NABCOR's responsibilities and obligation include the "right to intervene and institute corrective measures in case of, but not limited to, misappropriations of the fund by the proponent and non-compliance with the provisions stipulated in the agreement." The accused NABCOR officers failed to prove that they conducted monitoring, or in a way intervened or took steps to institute corrective measures. According to the prosecution, had accused diligently performed their responsibilities under the Tripartite MOA, they would know that no project was delivered or implemented at all, but instead, they facilitated the illegal release of the funds. In fine, their acts and omissions allowed UPFI, through Espinosa, to take/misappropriate the public funds.[28]

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[25] *Id.*
[26] *Id.*
[27] *Id.* at 10-11.
[28] *Id.*

On Pancrudo's arguments:

Pancrudo chose and indorsed UPFI in the implementation of his PDAF project by entering into a Tripartite Memorandum of Agreement ("Tripartite MOA") dated February 20, 2009, with him as a party and signatory, together with NABCOR and UPFI. The prosecution cites Article II of the said Tripartite MOA as proof thereof,[29] and argues that it is clear from the terms of the Tripartite MOA that accused Pancrudo recognizes UPFI as the proponent of the PDAF-funded project, and by signing the same, Pancrudo assented to its terms, i.e., he would assist the PROPONENT and/or facilitate the submission of documentary requirements [x x x], approve the project proposal submitted by the PROPONENT including the acceptance of the Physical and Financial Report of the Proponent.[30] Pancrudo's knowledge, recognition and approval of UPFI can also be seen in several public documents, including the Work and Financial Plans, Accomplishment Report, Certificate of Acceptance, and the Lists of Livelihood Training Beneficiaries. Pancrudo also confirmed the authenticity of his signature in all the documents submitted by UPFI in a letter dated June 8, 2012 (Exhibit **"B-20-a"**).[31] The prosecution posits that Pancrudo's claim of forgery is implausible because he failed to take any steps to investigate and prove the alleged forgery, and he should have known that the original documents subject of these cases are with the Commission on Audit and could have easily been accessed for examination of an expert anytime.[32] Finally, the prosecution points out that Pancrudo failed to take any steps to investigate what happened to his PDAF allocation that he knew was released to NABCOR, and such conduct shows his negligence in the performance of his duties.[33]

On Espinosa's arguments:

The prosecution argues that the Decision rendered by this Court was based on specific documents and actions indicating his participation, not on mere speculations and probabilities. The prosecution quoted specific parts of the Decision, which clearly showed that there was no basis for accused Espinosa to claim that his

[29] *Prosecution's Comment/Opposition* dated 09 January 2023, p. 3.
[30] *Id.* at 4.
[31] *Id.*
[32] *Id.* at 4-5.
[33] *Id.* at 5.

liability is based on pure speculations or probabilities. It pointed out that these facts remain undisputed: (a) a Tripartite MOA was executed between Pancrudo, NABCOR, and UPFI, represented by Espinosa; (b) funds amounting to P1,193,100.00 and P6,760,900.00 were transferred to UPFI by reason of the MOA; (c) evidence presented by the prosecution established that there was no project implementation; and (e) funds were received by UPFI, through accused Espinosa.[34]

The prosecution also points out that this Court appreciated the lack of malice on the part of the NABCOR officers because it considered the participation of said accused as signatories to the Disbursement Vouchers, inasmuch as with respect to the Violation of the Anti-Graft Law, their respective acts of signing were not attended with malice but with gross inexcusable negligence. The same cannot be said as to accused Espinosa who participated in these transactions in his capacity as authorized representative of UPFI. As to Espinosa's claim that the special audit of the COA is irregular, the prosecution countered that the said issue was never raised during the trial such that there is no point raising it at this stage of the proceedings.

RULING

This Court is mindful of the established rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for the prosecution.[35] Likewise, it is a well-settled doctrine that when inculpatory facts are susceptible to two or more interpretations, one of which is consistent with the innocence of the accused, the evidence does not fulfill or hurdle the test of moral certainty required for conviction.[36] Thus, in keeping with these pronouncements from the Supreme Court, we will essentially address the arguments pertaining to the sufficiency of the prosecution's evidence in resolving the accused's Motions for Reconsideration.

The grounds relied upon in accused Cacal, Guañizo and Mendoza's motion for reconsideration nudged us to take a second look at the totality of the evidence presented by the prosecution and the corresponding defenses of the accused during trial.

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[34] *Id.* at 9.
[35] *Suba v. Sandiganbayan*, G.R. No. 235418, 03 March 2021.
[36] *Marcos v. Sandiganbayan*, G.R. No. 126995, 06 October 1998.

In finding the three accused guilty beyond reasonable doubt for Malversation of Public Funds (SB-16-CRM-0115), this Court held that all four elements were successfully proven by the prosecution with the quantum of proof needed to warrant their conviction. As contained in this Court's *Decision*, the "accused [NABCOR officers'] control or custody of the PDAF-drawn funds was factually established by the prosecution, since as signatories to the disbursement vouchers (Cacal and Guañizo) and checks (Mendoza), the three officers from NABCOR allowed or could not have allowed the release of the funds that were supposed to be for the benefit of Pancrudo's constituents in the 1st District of Bukidnon."[37]

Likewise, the Decision contained a finding of guilt beyond reasonable doubt of the accused for the complex crime of Malversation of Public Funds through Falsification of Public Document (SB-16-CRM-0117), wherein this Court ruled that "[t]aken together with the circumstances that as grantee of the PDAF, Pancrudo was given the discretion to choose the implementing agency of his priority project, and that as disbursing officers of NABCOR, Cacal and Guañizo were in charge of certifying and signing the DV, and Mendoza was the one in charge of preparation and delivery of check issued by NABCOR, the conclusion is inevitable that all accused had a united purpose, that is, to allow UPFI, through Espinosa, to receive the check and misappropriated the proceeds thereof. Time and time again, the Supreme Court has ruled that when conspiracy is proven, the act of one is the act of all."[38]

Since every one of the accused passionately argued that the prosecution failed to prove the existence of conspiracy among them, we shall settle the issue of conspiracy once and for all.

In *Macapagal-Arroyo v. People*,[39] the Supreme Court explained that there is conspiracy when two or more persons agree to commit a crime, and decide to commit it. It was further explained that there are two forms of conspiracy—express and implied. Conspiracy in the express form is proved by an actual agreement among the co-conspirators. On the other hand, there is implied conspiracy when two or more persons are shown to have aimed by their acts towards the

[37] *Decision dated October 21, 2022*, p. 88.
[38] *Id.* at 93.
[39] G.R. Nos. 220598 & 220953, 19 July 2016, 790 PHIL 367-556.

accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. It is proved through the mode and manner of the commission of the offense, or from the accused's acts indubitably pointing to a joint purpose, a concert of action and a community of interest.

The NABCOR officers claimed that the only overt act imputed to them that would tie them into the web of conspiracy was the mere presence of their signatures on the subject DVs and checks; that they had no authority to exercise their own judgment in examining UPFI's accreditation and qualification, and that they had no capacity to monitor the implementation of the subject project or conduct public bidding. The prosecution, however, did not comment on their participation in the conspiracy but merely reiterated that it was too negligent for the three accused to not consider that NABCOR had no capability to implement the livelihood project, and that UPFI had no business permit to operate from the City Government of Iloilo when the accused officers signed the DVs and checks, thereby allowing the release of the funds.

Pancrudo claimed he cannot be convicted of malversation because he is not the person accountable for the disbursement of his PDAF, because it is the department chosen, i.e., Department of Agriculture, as implementing agency that has the primary responsibility over the disbursement of the funds covered by the SARO. He also reiterated that the prosecution failed to prove the allegation of conspiracy as testified to under oath by his co-accused from NABCOR that they do not personally know him, and that they had not seen him sign the assailed documents. The prosecution, however, chiefly relied on the presence of Pancrudo's signature on the tripartite MOA and the other public documents submitted by UPFI to NABCOR, and argued that Pancrudo's claim of forgery should be proven by him and that he should have accessed the documents bearing his forged signature and submitted the same to an expert for examination.

Espinosa also questioned this Court's finding of conspiracy based solely on the presence of his signatures (as representative of UPFI) on the tripartite MOA and the other documents related to the implementation of the livelihood program project that UPFI submitted

to NABCOR, when the prosecution evidence failed to show that he truly conspired with the accused public officers, and that he personally benefitted from the subject transactions. The prosecution merely reiterated portions of this Court's Decision without citing any direct evidence (testimonial or documentary) that would actually lead to a fair and reasonable conclusion pointing to Espinosa as the guilty person, to the exclusion of all others.

No conspiracy in SB-16-CRM-0115 (Malversation) & SB-16-CRM-0117 (Malversation through Falsification) among the accused

We find merit in the arguments raised by the accused that consequently warrant the reversal our judgment.

In *Bahilidad v. People*[40] the Supreme Court summarized the basic principles in determining whether there exists conspiracy or not, to wit:

> 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.

[40] G.R. No. 185195, 629 Phil. 567, 17 March 2010.

Also, in *Sistoza v. Desierto*,[41] the Supreme Court held that for implied conspiracy or a conspiracy of silence and inaction to exist, there must be conscious criminal design evinced by circumstances where the silence of the accused is tantamount to tacit approval of the crime.

In the cases before us, it is important to evaluate whether the evidence presented support the conclusion that the accused NABCOR officers' acts constitute the kind of abandonment or negligence contemplated and punished under Art. 217 of the Revised Penal Code, or acts done with manifest partiality, evident bad faith and/or gross inexcusable negligence punished under Sec. 3 (e) of R.A. No. 3019. While this Court does not excuse the NABCOR officers' (Cacal, Guañizo, and Mendoza) manner of reviewing the supporting documents before they affixed their corresponding signatures on the DVs and checks, it is our discerned opinion that their actions were not of such nature and degree as to be considered brazen, flagrant and palpable to merit a criminal prosecution for violation of Sec. 3 (e) of R.A. No. 3019, and Malversation of Public Funds.

Their acts might have been lax and administratively remiss in placing too much reliance on the official documents and assessments of their colleagues, but for conspiracy of silence and inaction to exist it is essential that there must be patent and conscious criminal design, not merely inadvertence, under circumstances that would have pricked curiosity and prompted inquiries into the transaction because of obvious and definite defects in its execution and substance.[42] Here, we find that the prosecution failed to prove the actual existence of such patent and conscious criminal design on the part of the three accused NABCOR officers at the time they were reviewing the documents that would have made their silence tantamount to tacit approval of the irregularity.[43]

Additionally, reasonable doubt exists as to accused NABCOR officer's knowing participation in the charged offenses, particularly for Malversation of Public Funds, and Malversation of Public Funds through Falsification. Their mere signatures to the disbursement

[41] G.R. No. 144784, 437 Phil. 117, 132, 3 September 2002.
[42] People v. Castillo (citing Magsuci v. Sandiganbayan), G.R. No. 252173, 15 March 2022.
[43] Sistoza v. Desierto, ibid.

vouchers and checks do not automatically show that they intentionally participated in the transaction with a view to the furtherance of a common criminal design and purpose, *i.e.*, to collectively malverse or misappropriate public funds through UPFI, represented by accused Espinosa. As borne by the records, the three accused NABCOR officers testified under oath that they never actually knew or met accused Espinosa or Pancrudo.[44] The "collaboration" necessary to facilitate the release of funds for the execution of the purported livelihood program project does not rise to the level of criminal collaboration or a conspiracy to commit a crime, especially in this case where there is absence of any evidence that Cacal, Guañizo and Mendoza allowed the release of funds, certified the disbursement vouchers, and signed the checks with knowledge that the supporting documents submitted to them were defective and/or falsified, or should have known that the same were defective and/or falsified.[45]

The fact that Cacal and Guañizo certified Box "A" and Box "B", respectively, of DV Nos. 09-02-0592 and 09-04-1133, and Mendoza signed UCPB Check Nos. 455530 and 455721 cannot be considered as sufficient to prove conspiracy considering the absence of any evidence that graft and corruption, or criminal intent attended the same. To be sure, the record is indeed bereft of any finding that: (a) the three accused NABCOR officers had the authority to select and accredit NGOs, in this case UPFI, or ensure and determine the capability of the chosen NGO; (b) the three accused NABCOR officers conspired with accused Pancrudo such that a particular NGO, in this case UPFI, be chosen and given the PDAF allocation of Pancrudo to implement the livelihood development program project in the 1st District of Bukidnon; and (c) accused Espinosa of UPFI converted the PDAF to his personal use. It must be stressed that a conviction premised on a finding of conspiracy must be founded on facts, not on mere inferences and presumptions.[46]

It is settled that when conspiracy is a means to commit a crime, it is indispensable that the agreement to commit the crime among all the conspirators, or their community of criminal design must be alleged and completely shown, and that the community of design to commit an

[44] Decision dated 21 October 2022, pp. 48, 50 & 53.
[45] People v. Castillo, ibid.
[46] *People v. Jesalva*, 811 Phil. 299, 311 (2017).

offense must be a **conscious** one.[47] It is a hornbook doctrine that conspiracy need not be proved by direct evidence but may be inferred from the acts of the accused, before, during and after the commission of the crime.[48]

In the *Decision* dated October 21, 2022, we found the following facts that apply to all charges involved in these cases, to wit: a) Pancrudo's PDAF is to be charged for the Livelihood Development Program worth PhP8,200,000.00 for the 1st District of Bukidnon; b) the Department of Agriculture transferred Pancrudo's fund to NABCOR, per Pancrudo's request; c) Pancrudo, Javellana (on behalf of NABCOR), and Espinosa (on behalf of UPFI), entered into a MOA for the implementation of the Livelihood Development Project in Bukidnon; d) accused Cacal and Guañizo, together with Javellana, facilitated the release of Pancrudo's funds totaling PhP7,954,000 by certifying and signing the Disbursement Vouchers; and e) UPFI, through Espinosa, received the funds from NABCOR, without actually implementing the project as agreed upon.

After evaluating the foregoing circumstances, we hold that the evidence available was not sufficient to support a finding of conspiracy to commit the crimes of Malversation of Public Funds, and Malversation of Public Funds through Falsification among all the accused. Indeed, the prosecution failed to prove that Cacal, Guañizo and Mendoza were privy or conscious of any plan to give unwarranted benefits to UPFI, or to misappropriate the PDAF allocation of Pancrudo. As contained in this Court's *Decision*:

> "The key piece of document revealing the conspiracy link between Pancrudo and UPFI was the tripartite MOA[49] executed on February 20, 2009, because by virtue of this MOA, the P8.2M fund (less 3%) was deposited into the UCPB account of UPFI in Pasig City.[50] The records show that the parties stipulated as to the MOA's existence, but **the prosecution presented no witness to testify as to its authenticity and due execution**. In addition, a close look at the said MOA would reveal that **no other person, apart from Javellana, appeared before the Notary Public who allegedly notarized the said document**."[51]

[47] Bahilidad v. People, G.R. No. 148965, 26 February 2002.
[48] People v. Escobal, et. al., G.R. No. 206292, 11 October 2017.
[49] Exh. "A-15"; "B-18-l".
[50] Exh. "A-17-C" and "B-18-i"; "A-18-A" and "B-18-o".
[51] October 21, 2022, pp. 67-68.

Notably, Cacal, Guañizo and Mendoza were not involved in the execution of the tripartite MOA, as the prosecution failed to prove their participation thereto with documentary or testimonial evidence.

As for the charge of Malversation of Public Funds through Falsification, we find no direct and sufficient proof that the three NABCOR officers participated in the falsification of the supporting documents, nor did they conspire with the other accused to commit the same. The Supreme Court ruled thus:

> To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act xxx. 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.[52] *(Citations omitted.)*

Failure to establish the existence of the conspiracy renders each accused only liable for his or her own specific acts. Thus, for failure to establish that a conspiracy existed among the accused in the cases *a quo*, Cacal, Guañizo and Mendoza could only be held liable for their own specific acts, *i.e.*, their acts of signing of the disbursement vouchers and UCPB checks, and the fulfillment of their functions as NABCOR officers, which clearly is not a criminal act. In the same wise, Pancrudo and Espinosa could only be held liable for their own specific acts.

Aside from failing to establish that a conspiracy existed among the three NABCOR officers themselves, and among the NABCOR officers, Pancrudo and Espinosa, the prosecution likewise failed to establish with moral certainty the concurrence of all elements of the crimes charged against Cacal, Guañizo and Mendoza.

The Supreme Court held that a public officer is liable for malversation even if he does not use public property or funds under his custody for his personal benefit, if he allows another to take the

[52] People v. Jesalva, G.R. No. 227306, 19 June 2017.

funds, or through abandonment or negligence, allow such taking. In other words, the felony may be committed, not only through the misappropriation or the conversion of public funds or property to one's personal use, but also by knowingly allowing others to make use of or misappropriate the funds.[53] However, in the cases before us, the NABCOR officers cannot be held liable for both charges of malversation (SB-16-CRM-0115 & SB-16-CRM-0117) because the prosecution failed to present proof beyond reasonable doubt that they appropriated, took, or misappropriated, or permitted another through abandonment or negligence to take the PDAF. As far as the NABCOR officers were concerned, they were merely signing the disbursement vouchers and checks in the performance of their duties, and not in furtherance of a conscious design to misappropriate or allow UPFI to misappropriate the PDAF. We agree with accused NABCOR officers that they have in their favor the presumption of regularity in the performance of official duties which were not rebutted by affirmative evidence of irregularity or failure to perform their duties. Here, the prosecution failed to provide any evidence showing that each of the accused did not perform their regular official duties. The charges against them were indeed chiefly based on their signatures in the disbursement vouchers and the checks, nothing else. The prosecution must prove the existence of factual circumstances that point to fraudulent or criminal intent, and unfortunately, they failed to do so during trial.

Mistakes committed by public officials, no matter how patently clear, are not actionable absent any clear showing that they were motived by malice or gross negligence amounting to bad faith.[54] Necessarily, a judgment of conviction will not lie against them because the same cannot be grounded on mere speculations and probabilities. The proof required in establishing the guilt of an accused in a criminal case is always proof beyond reasonable doubt.[55]

Besides, it is a basic principle that no contract or agreement involving the expenditure of public funds shall be entered into unless there is an appropriation therefor which is sufficient to cover the proposed expenditure. Correspondingly, no revenue funds shall be paid out of the public treasury except in

[53] People v. Pantaleon, Jr., G.R. Nos. 158694-96, 13 March 2009, 600 PHIL 186-229.
[54] *Suba v. Sandiganbayan*, G.R. No. 235418, 03 March 2021.
[55] *Arriola vs. People*, G.R. No. 217680, 30 May 2016.

pursuance of an appropriation law or specific statutory authority.[56] In this case, the NABCOR officers cannot be faulted for certifying/signing off on the release of the PDAF-drawn fund for the implementation of the livelihood project in Pancrudo's district in Bukidnon because it was justified pursuant to Special Allotment and Release Order (SARO) **ROCS-08-05200**, dated 11 June 2008, in the amount of **Php8,200,000.00**[57], and they relied on the face of the documents attached thereto.

Since the prosecution failed to prove the existence of conspiracy, we shall now discuss the culpability of the remaining accused, Pancrudo and Espinosa, with regard to their own specific acts that allegedly constitute the crimes of Malversation (SB-16-CRM-0115) and Malversation through Falsification (SB-16-CRM-0117).

Accused Pancrudo

As to accused Pancrudo, the conviction, which was anchored on the presence of his signatures on the tripartite MOA and the other documents offered by the prosecution to prove his criminal intent, must be reevaluated.

To recap, the elements common to all acts of malversation under Article 217 of the Revised Penal Code, as amended, are the following: (a) that the offender is a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[58]

The first element remains undisputed. Furthermore, we maintain our finding that the prosecution proved the second and third elements, despite Pancrudo's defense that the DA, not him, had custody or control of the funds, thus:

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[56] *Sarion v. People*, G.R. Nos. 243029-30, 18 March 2021 (Citing PRESIDENTIAL DECREE NO. 1445, Section 85, Government Auditing Code of the Philippines; CONSTITUTION, Article VI, Section 29 (1); REPUBLIC ACT NO. 7160, Section 305 (a), Local Government Code; PRESIDENTIAL DECREE NO. 1445, Section 84, Government Auditing Code of the Philippines.).
[57] Exhibit "C".
[58] *Sarion v. People*, G.R. Nos. 243029-30, 18 March 2021.

> Before the landmark decision of the Supreme Court to declare PDAF Articles unconstitutional in *Belgica,* the term "Pork Barrel" has been typically associated with lump-sum, discretionary funds of Members of Congress. Hence, at the time material to this case, the PDAF allocation of Pancrudo earmarked for the implementation of livelihood programs and projects in the 1st District of Bukidnon formed part of our **public funds** since its direct source or legal basis for disbursement was the 2008 GAA. The said PDAF allocation does not shed off its character as public funds even after its release and distribution to different implementing agencies that will use the funds for the programs/projects identified by the lawmaker.
>
> In this case, we can safely conclude that **Pancrudo, as a duly elected member of 14th Congress from 2007-2010, had control over and accountability for the lump-sum, discretionary fund or "Pork Barrel" fund in the amount of P8,200,000.00**. This amount necessarily includes the P1,193,100.00 worth of public funds subject of this particular case. Granted that Pancrudo had no physical custody of the subject PDAF, he could, however, dictate and identify projects and programs, as well as implementing agencies, to where such fund may be allocated. This was exactly what happened when he wrote the letters to then House Speaker Nograles, to the DBM Secretary, and to the DA Secretary, for the transfer of his PDAF.[59] *(Citation omitted; emphasis supplied.)*

As the Supreme Court stated in the *Belgica* case, the endorsements of legislators for the use of their PDAF have become a widely recognized and accepted practice, thus:

> As may be observed from its legal history, **the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation**.
>
> At its core, **legislators – may it be through project lists, prior consultations or program menus – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations**. Under the 2013 PDAF Article, the statutory authority of legislators to identify projects post-GAA may be construed from the import of Special Provisions 1 to 3 as well as the second paragraph of Special Provision 4. To elucidate, Special Provision 1 embodies the program menu feature which, as evinced from past PDAF Articles, allows individual legislators to identify PDAF projects for as long as the identified project falls under

[59] *Decision* dated October 21, 2022, pp. 87-88.

> a general program listed in the said menu. Relatedly, Special Provision 2 provides that the implementing agencies shall, within 90 days from the GAA is passed, submit to Congress a more detailed priority list, standard or design prepared and submitted by implementing agencies from which the legislator may make his choice. The same provision further authorizes legislators to identify PDAF projects outside his district for as long as the representative of the district concerned concurs in writing. Meanwhile, Special Provision 3 clarifies that PDAF projects refer to "projects to be identified by legislators" and thereunder provides the allocation limit for the total amount of projects identified by each legislator. Finally, paragraph 2 of Special Provision 4 requires that any modification and revision of the project identification "shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be." From the foregoing special provisions, **it cannot be seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects**.
>
> **Aside from the area of project identification, legislators have also been accorded <u>post-enactment authority in the areas of fund release and realignment</u>**. x x x x x *(Emphasis supplied.)*

Ergo, any act by Pancrudo prior to the promulgation of the *Belgica* case, or before November 19, 2013, shall be deemed valid and constitutional because the doctrine of operative fact recognizes that any legislative or executive act, prior to its invalidity, is considered to be in force,[60] and thus, the effects of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play.[61] Consequently, accused Pancrudo exercised control over the public funds for which he was accountable by reason of his office.

On the last element, this Court, after careful review of the records, finds that accused Pancrudo in Crim. Case No. SB-16-CRM-0115, knowingly permitted UPFI to take public funds worth **One Million One Hundred Ninety-Three Thousand and One Hundred Pesos (P1,193,000.00)** despite not being entitled thereto. We replicate relevant portions of this Court's *Decision* dated October 21, 2022, to wit:[62]

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[60] *Santos v. Gabaen*, G.R. No. 195638, 22 March 2022.
[61] Manila International Ports Terminal, Inc. v. Philippine Ports Authority, G.R. Nos. 196199 & 196252, 7 December 2021.
[62] *Decision* dated October 21, 2022, pp. 89-90.

As alleged in the Information, Pancrudo's acts of unilaterally choosing and indorsing UPFI in implementing livelihood projects to farmers in his legislative district, and of entering into the MOA with UPFI on the implementation of the projects meant that he misappropriated or consented, or, through abandonment or negligence, permitted another person to take P1,193,100.00 worth of public funds.

To prove these acts, the prosecution presented its chief witness, State Auditor Alfafaras who made an in-depth narration of the results of their audit of the funds allocated to Pancrudo. As previously discussed, the existence of the subject MOA was duly proven and stipulated. The existence of the Indorsement Letters/Letter Requests were also sufficiently established by the prosecution. The supposed beneficiaries of the livelihood projects were also proven to be non-existent.

Pancrudo, on the other hand, denied funding any project allegedly implemented by NABCOR and UPFI, and participating in the implementation of the livelihood project. His defense predominantly rests on the following asseverations, which, if proven, would necessitate his acquittal in this case: (1) that his signatures were forged, and (2) that his staff was doing all the work for him. Were these sufficiently proven? This Court rules in the negative.

Pancrudo merely denied the charges against him and alleged that his signatures were forged without offering any piece of proof. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.[63] Thus, applying the presumption in Art. 217, the prosecution only had to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same.[64] An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily.[65] Hence, in the absence of substantial defense to refute the charges against him, we hold Pancrudo liable for the misappropriation of the PDAF-drawn funds by allowing UPFI, through its representative Espinosa, to take or misappropriate the said public funds.

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[63] Eduarte v. Ibay, A.M. No. P-12-3100, November 12, 2013, 721 PHIL 2-11.
[64] Estrada v. Sandiganbayan, G.R. No. 125160, June 20, 2000, citing People v. Pepito, 267 SCRA 358,368, See also Felicilda v. Grospe, 211 SCRA 285.
[65] Navallo v. Sandiganbayan, 234 SCRA 175, 185; Villanueva v. Sandiganbayan, 200 SCRA 722, 734.

We uphold our previous finding that accused Pancrudo's defense of forgery lacks merit. Again, he merely stated that he was "planning to subject [his] signature to an expert," and he "asked [his] lawyer to make a request,"[66] but when these cases were filed, he failed to do those things. We reiterate the rule that the issue on the forgery of signatures is essentially a question of fact.[67] Forgery cannot be presumed and must be proved by clear, positive and convincing evidence; thus, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his/her case by a preponderance of evidence.[68] The best evidence of a forged signature in the instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged.[69] Here, accused Pancrudo did not overcome the burden to present clear and convincing evidence to prove his claim of forgery, as his defense consisted of mere denials. Besides, the tripartite MOA serves as prima facie evidence of the facts stated therein.

The Supreme Court ruled in the case of *Sps. Alfarero v. Sps. Sevilla* "that a public document executed and attested through the intervention of a notary public is evidence of the facts in a clear, unequivocal manner therein expressed. Otherwise stated, **public or notarial documents, or those instruments duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved.** In order to contradict the presumption of regularity of a public document evidence must be clear, convincing, and more than merely preponderant. Such evidence is wanting in this case."[70] *(Citations omitted; emphasis supplied.)*

Given that Pancrudo failed to prove the existence of forgery, this Court is inclined to rule that the subject MOA contains his authentic signature. Indeed, the prosecution sufficiently established through the

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[66] *TSN* dated 19 November 2019, p. 51.
[67] Spouses Coronel v. Quesada, G.R. No. 237465, October 7, 2019.
[68] Gepulle-Garbo v. Spouses Garabato, G.R. No. 200013. January 14, 2015.
[69] *Reyes v. Ombudsman*, G.R. Nos. 212593-94, 213163-78, 213540-41, 213542-43, 215880-94 & 213475-76, 15 March 2016.
[70] *Spouses Alfarero v. Spouses Sevilla*, G.R. No. 142974, 22 September 2003, 458 PHIL 255-264.

tripartite MOA[71] that accused Pancrudo, "identified [UPFI] as having the capability to implement livelihood projects that would improve and sustain the economic development of the rural areas in the said district." As stated in the tripartite MOA, it was the responsibility and obligation of then Congressman Pancrudo to:[72]

x x x

ARTICLE II
Responsibilities and Obligations of the Parties

A. The OFFICE OF THE REPRESENTATIVE shall:

1. Identify the Non-Government Organization/People's Organization that will implement the project, the target area and beneficiaries/recipients;

2. Allocate the amount of EIGHT MILLION PESOS (Php 8,200,000.00) to finance the project hereto as Annex "A";

3. Assist PROPONENT [UPFI] and/or facilitate the submission of documentary requirements to NABCOR necessary to effect FUND release;

4. Assist NABCOR in the monitoring and evaluation of the project to ascertain the status of the project, proper utilization of the FUND as compliance with the provisions stipulated in this agreement; [and]

5. Approve the project proposal submitted by the PROPONENT [UPFI] including the acceptance of the Physical and Financial Report of the Proponent.

x x x

When accused Pancrudo signed the tripartite MOA, in effect, he agreed and bound himself (and his office) to the terms, including the responsibilities and obligations stated therein. By signing the MOA, despite the absence of accreditation required under *COA Circular No. 2007-001 dated October 25, 2007*, he permitted UPFI to receive public funds to which it was not entitled. Otherwise stated, accused Pancrudo's choice of UPFI and acquiescence to the terms of the MOA facilitated the illegal release of funds, constitutive of the act of

[71] Exhibit "B-18-l".
[72] Id. at p. 2.

malversation. In conclusion, we hold accused Pancrudo guilty beyond reasonable doubt of the charge for Malversation in Crim. Case No. SB-16-CRM-0115.

As for the complex crime of Malversation through Falsification in Crim. Case No. SB-16-CRM-0117, we hold that the prosecution's evidence was not sufficient to prove accused Pancrudo's guilt beyond reasonable doubt. Since conspiracy was not proved, Pancrudo cannot be held liable for the falsification of the supporting documents submitted which was necessary to effect the release of the second payment of the PDAF allocation under SARO No. ROCS-08-05200 amounting to **Six Million Seven Hundred Sixty Thousand Nine Hundred Pesos (P6,760,900.00)**. A conviction for a complex crime of Malversation through Falsification of Public Documents requires the prosecution to prove beyond reasonable doubt that the accused committed one offense (Falsification of Public Documents) as a necessary means of committing the main offense, which in this case is Malversation of Public Funds. As held in one case, the information should charge each element of the complex offense with the same precision as if the two (2) constituent offenses were the subject of separate prosecutions; thus, where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the offense proven.[73]

Here, a careful reevaluation of the evidence on record showed that there is reasonable doubt that accused Pancrudo falsified, or caused or had knowledge of the falsification of the documents required to be submitted to effect the release of the second payment.

As held in the case of *People v. Claro:*[74]

> Reasonable doubt – x x x is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that **state of the case which**, after the entire comparison and consideration of all the evidence, **leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.** The burden of proof is upon the prosecutor. **All the presumptions of law independent of**

[73] *People v. Domondon y Echalar*, G.R. No. 103497, 23 February 1994, 300 PHIL 231-242.
[74] G.R. No. 199894, 5 April 2017.

> **evidence are in favor of innocence**; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether. *(Emphasis supplied.)*

As provided under the tripartite MOA, the obligation to "prepare a report of disbursement attested by an independent Certified Public Accountant with dry seal and submit the same to NABCOR immediately upon project completion as liquidation of the funds utilized in the implementation of the project" and to submit the accomplishment and disbursement reports[75] fell upon the proponent, UPFI in this case. Other than the fact of his signatures on the documents, which accused Pancrudo claimed were forged, the prosecution failed to prove that Pancrudo "caused/participated in the preparation and signing of the acceptance and delivery reports, disbursement reports and other liquidation documents, which were all falsified and used as supporting documents of the disbursement", since such acts were imputed to accused Espinosa in the *Information.* Again, the burden is on the prosecution to prove and establish the guilt of the accused beyond reasonable doubt because the accused has in their favor the presumption of innocence guaranteed by our Constitution.

Thus, the nature and extent of participation of Pancrudo in the preparation and/or issuance of the fake/spurious supporting documents, i.e., Liquidation Report, Accomplishment Report, Certificate of Acceptance, and List of Beneficiaries, in question was not clearly established. Nevertheless, the prosecution was able to prove to the point of moral certainty that accused Pancrudo, through abandonment or negligence, had permitted UPFI to take the PDAF-drawn funds worth Php6,760,900.00, as evidenced by the UCPB check

[75] Exhibit "B-18-I", p. 3.

issued to UPFI (Exh. **"B-18-o"**), and the Official Receipt issued by UPFI to acknowledge the receipt of such payment (Exh. **"B-18-q"**). As we have previously discussed, accused Pancrudo failed to substantiate his claim of forgery, and by virtue of the tripartite MOA, Pancrudo identified and indorsed UPFI, represented by the Espinosa, as "project partner" in implementing livelihood projects to farmers in his legislative district, thus permitting UPFI to take public funds which it was not entitled to receive.

In sum, we find accused Pancrudo guilty beyond reasonable doubt of Malversation of Public Funds only in Crim. Case No. SB-16-CRM-0117, because the prosecution failed to prove that charge of Falsification of Public Documents.

Civil liability of accused Pancrudo in SB-16-CRM-0115 and SB-16-CRM-0117

With regard to accused Pancrudo's civil liability, Article 100 of the Revised Penal Code provides that every person criminally liable for a felony is also civilly liable. Corollary, R.A. No. 10660 provides that recovery of civil liability shall be simultaneously instituted with, and jointly determined in, the same proceeding. Thus, the Court holds that accused Pancrudo shall be liable to reimburse the whole of the amount malversed, or a total of **Seven Million Nine Hundred Fifty-Four Thousand Pesos (P7,954,000.00)**.

Accused Espinosa

As to accused Espinosa, the conviction which was anchored on the finding of conspiracy to commit Malversation of Public Funds (SB-16-CRM-0115) and Malversation of Public Funds through Falsification (SB-16-CRM-0117) must also be revisited. Since conspiracy was not proved, he can only be held liable for his own specific acts. In his motion, Espinosa claimed that if there is no finding of conspiracy, he cannot be held liable for malversation of public funds because one its essential elements is that the "offender is a public officer or employee". We disagree.

A private individual, who entered into an agreement with the government as the authorized representative of non-stock/non-profit

organization or corporation, can still be held liable for Malversation through his independent acts under Art. 222 of the Revised Penal Code.[76] In one case, the Supreme Court held:

> "Petitioner Flores, as executive director of LTFI, was charged with malversation of public funds in connivance with a public officer. However, the Sandiganbayan found that there was no conspiracy between the petitioners and held petitioner Flores guilty of malversation through his independent acts under Art. 222 of the Revised Penal Code, since the purpose of Art. 222 is to extend the provisions of the Penal Code on malversation to private individuals. According to the Sandiganbayan, petitioner Flores bound himself, as a signatory of the MOA representing LTFI, to receive NALGU funds from the province of Tarlac. In such capacity, he had charge of these funds."[77] *(Citation omitted.)*

Nevertheless, the prosecution still was not able to prove with the quantum of proof required that accused Espinosa was indeed the person responsible for misappropriating the PDAF allocation of Pancrudo given to UPFI for the implementation of the livelihood program in the 1st District of Bukidnon. We agree with his contention that although he was the authorized representative of UPFI, "he is not UPFI." To be sure, accused Espinosa is bound by the admissions made by UPFI's President Salvacion Balista during trial, and by the defense evidence offered to prove that UPFI implemented the livelihood project of Pancrudo in the 1st District of Bukidnon—that he, as authorized representative of USWAG Pilipinas Foundation, Inc., was authorized to (1) enter into a Memorandum of Agreement on behalf of UPFI, (2) go to Bukidnon to implement the project, (3) enter into transactions for the implementation of the project, and (4) sign the Accomplishment Reports[78] and Certificate of Acceptance[79] on behalf of UPFI. However, the evidence offered by the prosecution was insufficient to prove the concurrence of the fourth element of Malversation under Art. 217, RPC—that the Espinosa has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.[80]

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[76] Art. 222. *Officers included in the preceding provisions.* — The provision of this chapter shall apply to private individuals who, in any capacity whatever, have charge of any insular, provincial or municipal funds, revenues, or property attached, seized, or deposited by public authority even if such property belongs to a private individual.
[77] *Ocampo III v. People*, G.R. Nos. 156547-51 & 156384-85, 4 February 2008, 567 PHIL 461-486.
[78] Exh. "8-a-Espinosa"; Exh. "A-19-a" for the prosecution.
[79] Exh. "8-c-Espinosa"; Exh. "A-19-C" for the prosecution.
[80] *People v. Asuncion*, G.R. Nos. 250366 & 250388-98, 6 April 2022.

To recall, the prosecution accused Espinosa in SB-16-CRM-0115 as the one who caused/participated in the preparation and/or signing of the Work and Financial Plan and Project Proposal, which were used as supporting documents of Disbursement Voucher No. 09-02-0592, and thereafter, acting for and in behalf of UPFI, Espinosa received the corresponding check from NABCOR, which then allowed Espinosa and UPFI to take or misappropriate PDAF-drawn public funds. As in the case of accused Pancrudo, the criminal acts allegedly committed by accused Espinosa stemmed from the presence of his signatures on the Work and Financial Plan and Project Proposal, but other than the fact of his signatures appearing on the said documents, reasonable doubt exists as to whether Espinosa personally took or misappropriated or converted Pancrudo's PDAF allocation amounting to P1,193,100.00[81] to his personal use.[82] In fact, evidence on record shows that the UCPB check worth P1,193,100.00 was deposited not the personal account of accused Espinosa, but to the account of "Uswag Pilipinas, Inc." [UPFI]. Thus, we cannot convict him for Malversation of Public Funds under Art. 217, RPC. Consequently, Espinosa is acquitted of Malversation of Public Funds in SB-16-CRM-0115.

Likewise, the prosecution failed to present any witness in court that could have verified or testified that it was accused Espinosa himself and not any other person who prepared or could have intervened in the preparation of the allegedly falsified documents submitted to NABCOR to facilitate the release of the second payment worth P6,760,900.00[83]. There was also no witness presented who testified as to the signatures of accused Espinosa in the said documents, including the Accomplishment Report[84], List of Beneficiaries[85], and requests for quotation,[86] among others. In fact, the contents of these documents were not properly authenticated during trial but were only identified as the documents reviewed by the state auditors from COA. Hence, we cannot be certain as to the person or individual who perpetrated the act of falsification of these documents. Notably, the records bore that the receipts[87], sales invoice[88] and

[81] Exhibit "B-18-i".
[82] *Sarion v. People*, G.R. Nos. 243029-30, 18 March 2021.
[83] Exhibit "B-18-o".
[84] Exhibit "B-18-s".
[85] Exhibit "B-18-oo".
[86] Exhibits "B-18-bb", "B-18-cc", "B-18-dd".
[87] Exhibits "B-18-x" and "B-18-z".
[88] Exhibit "B-18-y".

purchase order[89] issued by Screenmark Printing and Advertising were denied by prosecution witness Elizabeth Ferrer, and the official receipt[90] and Contract of Service[91] of Grayline Enterprises were never authenticated.

Again, reasonable doubt exists as to whether accused Espinosa, and not any other person from UPFI, was the author of the falsified documents, and whether he misappropriated or benefitted from the transaction involving P6,760,900.00[92] from Pancrudo's PDAF allocation by reason of such falsification, especially since the UCPB check worth P6,760,900.00 was again deposited to the account of "Uswag Pilipinas, Inc." [UPFI] and not to the personal account of accused Espinosa.[93] Necessarily, Espinosa must be acquitted of Malversation through Falsification in SB-16-CRM-0117.

In criminal cases, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. If there exists even one iota of doubt, the Court is under a longstanding legal injunction to resolve the doubt in favor of the accused.[94]

No conspiracy in SB-16-CRM-0114 and SB-16-CRM-016 among the accused

The prosecution likewise failed to establish the existence of conspiracy among accused Pancrudo, Espinosa, Cacal, Guañizo and Mendoza to commit acts that constitute a violation of Section 3 (e) of R.A. No. 3019. A careful review of the records revealed that there was no sufficient evidence to support a conclusion that accused Pancrudo directly or impliedly conspired with accused Espinosa, Cacal, Guañizo and Mendoza so that the said accused can unlawfully and criminally allow or give unwarranted benefits, advantage or preference to UPFI, through accused Espinosa, and/or cause damage or injury to the constituents of Pancrudo in the 1st District of Bukidnon, instead of

[89] Exhibit "B-18-aa".
[90] Exhibit "B-18-ff".
[91] Exhibit "B-18-ee".
[92] Exhibit "B-18-o".
[93] *Decision* dated October 21, 2022, p. 45; see testimony of prosecution witness Rodrigo Pada.
[94] *Suarez v. People*, G.R. No. 253429, 6 October 2021.

implementing the projects which turned out to be non-existent, to the damage and prejudice of the government.

Similar to the criminal charges for Malversation (SB-16-CRM-0115) and Malversation through Falsification (SB-16-CRM-0117), the prosecution grounded the conspiracy charge in SB-16-CRM-0114 and SB-16-CRM-0116 from the signatures of accused Pancrudo and accused Espinosa appearing on the tripartite MOA, the Work and Financial Plan, Project Proposal, and the other supporting and liquidation documents supposedly signed by accused Pancrudo, which were submitted by Espinosa to NABCOR. As previously discussed, accused Pancrudo's mere denial of his signature and the allegation of forgery without presenting clear and convincing evidence in support thereof are not enough to rebut the prima facie evidence of the due execution of the tripartite MOA, and necessarily, his signature therein. Nevertheless, the tripartite MOA alone is not sufficient to prove that a conspiracy existed between accused Pancrudo and accused Espinosa.

There is no question that a conspiracy may be deduced from the mode and manner by which the offense was perpetrated, however, a conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact. Moreover, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[95]

The tripartite MOA is only prima facie evidence of the terms therein, and it cannot be deduced or inferred from the contents thereof that USWAG Pilipinas, Inc. (or UPFI) was actually unqualified or unaccredited to undertake the implementation of the livelihood project, or that the signatories, namely Pancrudo, Espinosa and Javellana, conspired and planned to give unwarranted benefits to UPFI. We have reexamined the records and found that there is nothing therein to show or indicate that accused Pancrudo personally knew Espinosa or anyone from USWAG Pilipinas, Inc. and vice-versa, and that the two accused acted in concert so UPFI can be chosen as the proponent NGO without the benefit of public bidding in violation of R.A. No. 9184 and its IRR, COA circulars, and GPPB regulations.

[95] *De la Peña v. Sandiganbayan*, G.R. Nos. 89700-22, 1 October 1999, 374 PHIL 368-387.

Likewise, we cannot ascribe to accused Cacal, Guañizo, and Mendoza the act of conspiring to give unwarranted benefits, advantage or preference to UPFI and/or to cause undue injury to the Government because the prosecution failed to prove that: *first*, they were parties and/or signatories to the tripartite MOA; *second*, they knew accused Espinosa, or anyone from UPFI for that matter, as to give them unwarranted benefits, advantage or preference; and *third*, they acted in furtherance of a conscious design to cause injury to the government and/or give unwarranted benefits, advantage or preference to a particular NGO, UPFI in this case.

Since the prosecution was not able to establish the existence of conspiracy among the accused, each of the accused can only be held liable for their own specific acts.

At the outset, we reiterate our ruling in the Decision dated October 21, 2022 that the prosecution failed to satisfactorily prove the criminal liability of accused NABCOR officers Cacal, Guañizo and Mendoza in facilitating the two disbursement vouchers and releasing the two checks so as to find them guilty of a violation of Sec. 3 (e) of R.A. No. 3019. Again, the mere signature appearing on a disbursement voucher is not enough to sustain a conspiracy charge or conviction.[96]

We further rule that the prosecution failed to prove the existence of manifest partiality, evident bad faith and/or gross inexcusable negligence in these cases (SB-16-CRM-0114 and -0116) because the accused NABCOR officers have in their favor the presumption of regularity in the performance of official duties which were not rebutted by affirmative evidence of irregularity or failure to perform their duties. A meticulous review of the records revealed that the prosecution in these cases failed to provide any evidence to show that each of the accused failed to perform their duties.

Accordingly, accused Cacal, accused Guañizo, and accused Mendoza are acquitted of the charge of Violation of Section 3 (e) of R.A. No. 3019.

[96] *Cruz vs. Sandiganbayan*, G.R. No. 134493, 16 August 2005.

As to accused Pancrudo, the first and second elements of the violation of Sec. 3 (e) of R.A. No. 3019 are undisputed. We now reassess our finding on the concurrence of the third and fourth elements of the offense.

Pancrudo acted with manifest partiality, evident bad faith and/or gross inexcusable negligence, and gave unwarranted benefits to UPFI and/or caused undue injury to the Government

After careful review of the records and the Decision dated October 21, 2022, we find that Pancrudo is guilty of violating Sec. 3 (e) of R.A. No. 3019. As already explained in the Decision, the prosecution duly proved the existence of all the elements of the offense charged, and the mere denials of Pancrudo and the claim of forgery would not tilt the totality of evidence in favor of the accused. This portion of the Decision is quoted below:[97]

> The prosecution accused Pancrudo of **unilaterally** choosing and indorsing UPFI, an unaccredited and unqualified non-government organization represented by Espinosa, as "project partner" in implementing livelihood projects in the 1st District of Bukidnon, using his PDAF allocation covered by SARO No. ROCS-08-05200 to fund the implementation—in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding required under Republic Act No. 9184 and its implementing rules and regulations. Pancrudo requested the DA to transfer the fund covered by SARO No. ROCS-08-05200 to NABCOR, despite the fact that it was not identified under the 2008 GAA as an implementing agency of PDAF projects. NABCOR and Pancrudo then entered into an agreement with UPFI for the latter to implement the livelihood projects in Bukidnon, pursuant to the "whereas" clause in the tripartite MOA[98], to wit:
>
> > "**WHEREAS**, the **OFFICE OF CONG. PANCRUDO**, has properly identified **USWAG PILIPINAS, INC.**, having the capacity to implement livelihood projects that would improve and sustain the economic development of the rural areas in the said district."

[97] *Decision* dated October 21, 2022; pp. 70-74.
[98] Exh. **"A-15"**.

[x x x] Moreover, this Court is convinced that Pancrudo acted with evident bad faith and/or manifest partiality the from moment he initiated the release of his PDAF allocation under SARO No. ROCS-08-05200 to NABCOR. Such an act runs contrary to the principle of separation of powers enshrined in the 1987 Constitution. The *Belgica*[99] case tells us what **separation of powers** means, to wit:

> "[I]t means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government." To the **legislative branch** of government, through Congress, belongs the **power to make laws**; to the **executive branch** of government, through the President, belongs the **power to enforce laws**; and to the **judicial branch** of government, through the Court, belongs the **power to interpret laws**. Because the three great powers have been, by constitutional design, ordained in this respect, "[e]ach department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere." Thus, "the **legislature has no authority to execute or construe the law**, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." The principle of separation of powers and its concepts of autonomy and independence stem from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. **Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.**" *(Citations omitted; emphasis supplied.)*

In the same case, the Supreme Court opined that "[u]pon approval and passage of the GAA, Congress' law-making role necessarily comes to an end and from there the Executive's role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress **must not concern itself with details for implementation by the Executive."** The case also reiterated that the ruling in *Abakada Guro Party List v. Purisima*[100] that "from the moment the law becomes effective, **any provision of law that empowers Congress or <u>any of its members to play any role in the implementation or enforcement of the law</u>**

[99] Belgica v. Ochoa, G.R. Nos. 208566, 208493, 209251 & L-20768, [November 19, 2013], 721 PHIL 416-732.
[100] G.R. No. 166715, August 14, 2008, 562 SCRA 251.

violates the principle of separation of powers and is thus unconstitutional. *(Emphasis and underscoring supplied.)*

Pancrudo played a role in the implementation or enforcement of the law when he requested for the transfer of the P8.2M fund covered by SARO No. ROCS-08-05200 to NABCOR, and eventually, to UPFI. Pancrudo keenly insisted that he did not allocate any single centavo of his PDAF allocation to NABCOR or UPFI, but if we examine the facts carefully, NABCOR would not have had custody over the P8.2M fund if it weren't for the Letter Request (Exh. **"B-18-g"**) dated August 11, 2008 addressed to DA Secretary Yap. Pancrudo's claim that he "cannot remember participating, signing or issuing" the documents that facilitated the transfer of the P8.2M fund from the DA to NABCOR and UPFI deserves scant consideration. Pancrudo knew and admitted in open court that he was accountable for the P8.2M fund and the implementation of the projects in his district that was supposed to be funded, to wit:[101]

> DIR. MA. CHRISTINA T. MARALLAG-BATACAN
> Q x x x [M]y question is you know that you are accountable for this fund and it is your look out that the project covered by this fund are properly implemented or the funds were properly utilized?
>
> WITNESS (PANCRUDO)
> A **Yes, ma'am**
> (Objection was raised)
>
> AJ ARCEGA
> A He knows that; he was the congressman. [x x x]

Pancrudo tried to prove that he did not fund the projects subject of these cases by denying the signatures in the documents[102] implicating him in the scheme. However, he admitted[103] in open court that he did not conduct any investigation to find out who affixed the signatures above his printed name (Candido Pancrudo) on the documents even if he very well knew that involved the utilization of P8.2M, and made it appear that he caused the implementation of the project. Additionally, Pancrudo failed to substantiate his claim of forgery. He merely stated that he was "planning to subject [his] signature to an expert," and he "asked [his] lawyer to make a request,"[104] but when these cases were filed, he failed to do those things. The fact of forgery can only be established by a comparison

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[101] *TSN* dated 19 November 2019, p. 46.
[102] MOA dated February 20, 2009; Work and Financial Plan and Project Proposal; and Liquidation Report, Accomplishment Report, Certificate of Acceptance, Registration Form/List of Beneficiaries and Independent Audit Report.
[103] *TSN* dated 19 November 2019, p.48-50
[104] *TSN* dated 19 November 2019, p. 51.

between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[105] Settled is the rule that the issue on the forgery of signatures is essentially a question of fact.[106] Forgery cannot be presumed and must be proved by clear, positive and convincing evidence; thus, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his/her case by a preponderance of evidence.[107] Given that Pancrudo failed to prove the existence of forgery, this Court is inclined to rule that subject documents contain his signature.

The denials of Pancrudo of the allegations against him, vis-à-vis the clear and consistent testimonial evidence, cannot convince this Court to believe his innocence. Denial is inherently a weak defense.[108] Furthermore, unsubstantiated denial cannot be given credence as it is self-serving.[109] The records, coupled with the findings in the *Belgica*[110] case, show that the "identification of the legislator," Pancrudo in this case, "constitutes a mandatory requirement before his PDAF can be tapped as a funding source, thereby highlighting the indispensability of the said act to the entire budget execution process." After the transfer of fund from the DBM to the DA, Pancrudo should not have had any control over the money, but somehow, NABCOR was able to come into possession of the fund, and by virtue of the MOA dated February 20, 2009, UPFI was able to receive about 97% of the fund as evidenced by the receipts it issued.

Alfafaras, the prosecution witness from COA, told a story similar to the findings in *Napoles v. Sandiganbayan*[111] regarding the elaborate scheme perpetuated by lawmakers to divert funds from our national budget to their own or someone else's private coffers. In *Napoles,* the scheme "began through a letter originating from the office of former Senator Enrile being sent to the concerned implementing agency, informing the latter that the office of former Senator Enrile designated Jose Antonio Evangelista (Evangelista) as its representative in the implementation of the PDAF-funded project. Evangelista, who was likewise the Deputy Chief of Staff of former Senator Enrile and acting in representative capacity, then sends another letter to the implementing agency designating a specific NGO to implement the PDAF-funded project. Thereafter, the NGO that was endorsed by Evangelista submits a project proposal to the implementing agency, and proceeds to enter into a memorandum of

[105] *Supra* at note 297 (Gepulle).
[106] Spouses Coronel v. Quesada, G.R. No. 237465, October 7, 2019.
[107] Gepulle-Garbo v. Spouses Garabato, G.R. No. 200013. January 14, 2015.
[108] Loreño v. Office of the Ombudsman, G.R. No. 242901, September 14, 2020.
[109] Villanueva v. People, G.R. No. 237864, July 8, 2020.
[110] *Supra* at note 291 (Belgica).
[111] Napoles v. Sandiganbayan (Third Division), G.R. No. 224162, November 7, 2017.

agreement (MOA) with the implementing agency and former Senator Enrile as the parties." Similarly, Pancrudo triggered the same scheme by writing a letter to the Secretary of the DA for the transfer of his PDAF allocation supposedly for the implementation of livelihood projects in the 1st District of Bukidnon to NABCOR. In fact, he admitted during cross-examination, thus:[112]

> DIR. MA. CHRISTINA T. MARALLAG-BATACAN
> Q And in fact you wrote the Department of Agriculture a letter so that the funds will be coursed through NABCOR?
>
> WITNESS (PANCRUDO)
> A **Yes,** I was informed by my staff that **in order to implement it, it will re-channel to NABCOR,** ma'am *(emphasis supplied)* [x x x]

As borne by the records, the DA transferred Pancrudo's P8.2M PDAF allocation to NABCOR, and by virtue of the tripartite MOA, 97% of the said fund was eventually received by UPFI. UPFI, through its authorized representative Espinosa, allegedly completed the implementation of Pancrudo's livelihood projects as evidenced by the liquidation documents they submitted to NABCOR, including the registration forms containing the names of the supposed "beneficiaries" of the livelihood project. However, such completion only appears to be on paper because not a single one of these "beneficiaries" have been found by the prosecution witnesses, the NBI investigating team or the COA State Auditors, nor have any of them claimed to be recipients of "livelihood training kits" printed by Screenmark Printing, or participants in the "training programs" led by Grayline Enterprise.

In light of the foregoing, this Court is morally certain that evident bad faith on the part of accused Pancrudo existed when he requested for the release of his PDAF to NABCOR, in violation of appropriation laws, and the principle of separation of powers.

Consequently, this Court finds no cogent or compelling reason to warrant a reconsideration of its ruling in Crim. Case Nos. SB-16-CRM-0114 and SB-16-CRM-0116 with respect to the finding of guilt beyond reasonable doubt as to accused Candido Pios Pancrudo, Jr.

As to accused Espinosa, the core in determining culpability of a private person is collusion with a public officer in committing an act declared unlawful by R.A. No. 3019. In the cases at hand, the

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[112] *TSN* dated 19 November 2019, p. 42-43.

Informations sufficiently alleged that all the accused, including Espinosa, committed unlawful acts "**in the performance of their administrative and/or official functions and conspiring with one another.**" The well-settled rule is that "private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto."[113]

At the outset, we maintain our ruling that the prosecution was able to prove for a fact that a total of P7,954,000.00 of Pancrudo's P8.2 Million PDAF allocation was eventually released to and received by a non-government organization known as Uswag Pilipinas Foundation, Incorporated (UPFI), through its Corporate Secretary Mark B. Espinosa. At this juncture, we shall replicate relevant parts of the ruling in this Court's Decision dated October 21, 2022, to wit:

> In order to determine whether manifest partiality or evident bad faith tainted the three accused's act of signing, we must first resolve two pressing issues: (1) the validity of contracting an NGO to implement the PDAF-funded project; and (2) UPFI's capability to implement the livelihood projects and to comply with terms of the MOA.
>
> **Validity of contracting an NGO to implement PDAF projects**
>
> The prosecution contended that NABCOR's release of funds to UPFI did not comply with the guidelines prescribed under GPPB Resolution No. 12-2007[114] and COA Circular No. 2007-001[115]; hence, such release was irregular and illegal.[116]
>
> The pertinent provisions of GPPB Resolution No. 12-2007 and COA Circular No. 2007-001 that would address the issue of whether or not NABCOR was legally allowed to further transfer the responsibility of implementing the livelihood project to non-governmental organizations are as follows:
>
> ***GPPB Resolution No. 12-2007***
> AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND

[113] *Canlas v. People*, G.R. Nos. 236308-09, 17 February 2020 (citing Uyboco v. People, 749 Phil. 987, 993-994 (2014)).
[114] Dated 29 June 2007.
[115] Dated 25 October 2007.
[116] Prosecution's *Memorandum*, p. 11.

REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT

x x x

Section 53. Negotiated Procurement
Negotiated Procurement is a method of procurement of goods, infrastructure projects, and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x

(j) **When an appropriation law** or ordinance **earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs)**, the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB. *(Emphasis supplied.)*

x x x

COA CIRCULAR No. 2007-001 dated October 25, 2007
REVISED GUIDELINES IN THE GRANTING, UTILIZATION, ACCOUNTING AND AUDITING OF THE FUNDS RELEASED TO NON-GOVERNMENTAL ORGANIZATIONS/PEOPLE'S ORGANIZATIONS (NGOS/POS)

x x x

4.2 Types of Projects which may be granted government funds

x x x

4.3.1 Livelihood development

x x x

4.5 Procedure for the Availment, Release and Utilization of Funds

The following procedures shall be **strictly complied with**:

4.5.1 The [government organization (GO)] shall **identify the priority projects** under its [Work and Financial Plan] which may be implemented by the NGO/PO, their **purpose/s**, **specifications** and **intended beneficiaries** as well as the **time frame within which the projects are to be undertaken. To ensure transparency, the foregoing information shall be made public** via newspapers, agency websites, bulletin boards and the like, **at least three**

months prior to the target date of commencement of the identified projects.

4.5.2 For each project proposal, the GO shall **accredit the NGO/PO project partners through the Bids and Awards Committee (BAC),** or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO.

4.5.3 Upon proper evaluation, the GO, thru the Committee, shall award the project to the NGO/PO which **meets the minimum qualification requirements and the specifications for the project** and which can satisfactorily undertake the project at terms most advantageous to the beneficiaries, taking into consideration the cost effectiveness of the project. x x x *(Emphases supplied.)*

Based on the above-mentioned provisions, NABCOR had **no legal basis** to further transfer the responsibility of implementing the livelihood project to non-governmental organizations. As uncovered by the State Auditor Alfafaras and their team during the conduct of their audit, the 2008 GAA did not earmark the PDAF to be specifically contracted out to NGOs.[117] Neither were NGOs included among the implementing agencies of PDAF. Even assuming *arguendo* that the appropriation law of that year earmarked funds to be specifically contracted out to NGOs, the selection of UPFI still failed to meet the strict requirements under 4.5.1, 4.5.2, and 4.5.3 of COA Circular No. 2007-001. Thus, we are convinced that NABCOR irregularly contracted out the implementation of the livelihood project to UPFI.

UPFI's capability to implement the project and comply with the terms of the MOA

A careful examination of the records revealed that UPFI at the time material to these cases was **neither equipped, accredited nor qualified** to undertake the livelihood projects for the 1st District of Bukidnon. As stated under the terms of the MOA, UPFI was to "provide equity to the project not less than twenty percent (20%) of the total project cost or the amount of, which may be in the form of labor, land for the project sites, facilities, equipment [x x x] to be used in the project." The SEC documents, however, exposed that UPFI's

[117] *Records*, Vol. 5, pp. 69-70.

total assets and equity as of yearend 2007 only amounted to P100,000.00, and P99,728.00, respectively.[118] The terms of the MOA required UPFI to provide not less than 20% of the total project cost, or at least P1,590,800.00, in the form of labor, land, facilities, equipment, etc. By this alone, UPFI could not have possibly been qualified, let alone chosen, if an actual public bidding pursuant to R.A. No. 9184 was conducted.

Additionally, the NBI investigation revealed that UPFI's office could not be located at its registered address. Furthermore, as Alfafaras testified, "UPFI had no business permits from the City Government of Iloilo at the time of project implementation, and UPFI did not submit any written confirmation on these transactions and additional documents requested by the Audit Team." The audit investigation, coupled with the admissions of herein accused, point to the fact that UPFI was only chosen as the project partner for the implementation of the livelihood projects because (a) it was identified by the Office of Cong. Pancrudo, and (b) it had already been transacting with NABCOR before. To our mind, the selection of UPFI, despite its dubious and questionable existence at the time of the project implementation, is highly indicative of manifest partiality and/or evident bad faith.[119]

Given the foregoing, it is evident that the disbursement of funds from the PDAF to UPFI was highly irregular, if not illegal. Case law instructs that there are two ways by which a public official violates Section 3 (e) of R.A. No. 3019. As to the first punishable act, jurisprudence explains that undue injury, in the context of Section 3 (e) of R.A. No. 3019, is akin to the civil law concept of actual damage: [120]

"Undue injury in the context of Section 3(e) of R.A. No. 3019 should be equated with that civil law concept of "actual damage." Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty."

[118] Exh. "A-16-i" series.
[119] Decision dated October 21, 2022, pp. 75-79.
[120] *Acosta v. People*, G.R. Nos. 225154-57, 24 November 2021.

Meanwhile, in *Cabrera v. People*,[121] the second punishable act — giving unwarranted benefits, advantage, or preference — was explained as follows:

> As can be read from the Information, petitioners are charged of violation of Section 3(e) of R.A. No. 3019 under the *second* punishable act which is giving unwarranted benefits, advantage, or preference to a private party, through manifest partiality, bad faith and gross inexcusable negligence. x x x The words "unwarranted," "advantage" and "preference" were defined by the court in this wise:
>
> "[U]nwarranted" means **lacking adequate or official support; unjustified; unauthorized or without justification or adequate reasons**. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. *(Emphasis supplied; citations omitted)*

Applying the foregoing to the instant case, it cannot be denied that undue injury was caused, and there were unwarranted benefits given to UPFI. Despite this, however, the prosecution failed to prove beyond reasonable doubt that it was accused Espinosa, and not any other person from UPFI, who conspired with public officials from NABCOR, the Department of Agriculture, and/or the Office of Congressman Pancrudo so that unwarranted benefits, advantage or preference would be given to UPFI, or that undue injury to any party, including the Government would be caused.

Considering the insufficiency of the evidence to prove all the elements of the crime and offense as discussed above, there is reasonable doubt as to the culpability of Espinosa. It is well-settled that conviction in criminal actions demands proof beyond reasonable doubt. As expressed in the case of *People of the Philippines vs. Ong,*[122] proving the guilt of the accused with moral certainty upon examination of the evidence of the prosecution is of utmost importance, to wit:

> In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and

[121] G.R. Nos. 191611-14, 29 July 2019.
[122] G.R. No. 175940, 06 February 2008.

> prove the guilt of appellants with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the evidence of the defense. Suffice it to say, a slightest doubt should be resolved in favor of the accused.

All things considered, this Court finds that the prosecution did not prove all the elements of Section 3 (e) of R.A. No. 3019 beyond a reasonable doubt. Thus, the conviction of accused Espinosa in Criminal Case Nos. SB-16-CRM-0014 and SB-16-CRM-0116 must be overturned.

Civil liability of Accused Espinosa, as Corporate Secretary and authorized representative of USWAG Pilipinas Foundation, Inc. (UPFI)

The acquittal of the accused does not necessarily mean his absolution from civil liability.[123] While the evidence of the prosecution failed to prove guilt beyond reasonable doubt leading to the accused's acquittal, we must still determine if the acts or omissions from which the civil liability might arise did or did not exist. Although the prosecution failed to prove the criminal participation of accused Pancrudo, Espinosa, Cacal, Guañizo, and Mendoza in SB-16-CRM-0115 & SB-16-CRM-0117, the prosecution nonetheless preponderantly proved that UPFI, through accused Espinosa, indeed received the amounts of P1,193,100.00 and P6,760,900.00 to implement the livelihood program in the 1st District of Bukidnon, but failed to properly and legally account for the utilization of the said amounts from NABCOR, upon audit by the Commission on Audit.

As to settling the issue of civil liability arising from criminal acts, the Supreme Court in *Lumantas v. Calapiz* was instructive, to wit:

[123] *Lumantas v. Calapiz*, G.R. No. 163753, 15 January 15, 2014, 724 PHIL 248-256.

It is axiomatic that every person criminally liable for a felony is also civilly liable. Nevertheless, the acquittal of an accused of the crime charged does not necessarily extinguish his civil liability. In *Manantan v. Court of Appeals*, the Court elucidates on the two kinds of acquittal recognized by our law as well as on the different effects of acquittal on the civil liability of the accused, *viz.*:

Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no *delict*, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only.

The *Rules of Court* requires that in case of an acquittal, the judgment shall state "whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist."

Conformably with the foregoing, therefore, the acquittal of an accused does not prevent a judgment from still being rendered against him on the civil aspect of the criminal case unless the court finds and declares that the fact from which the civil liability might arise did not exist.

Although it found the Prosecution's evidence insufficient to sustain a judgment of conviction against the petitioner for the crime charged, the RTC did not err in determining and adjudging his civil liability for the same act complained of based on mere preponderance of evidence. In this connection, the Court reminds that the acquittal for insufficiency of the evidence did not require that the complainant's recovery of civil liability should be through the institution of a separate civil action for that purpose.[124] *(Citations omitted.)*

[124] *Ibid.*, citing *Manantan v. CA* (G.R. No. 107125, January 29, 2001, 350 SCRA 387, 397), and *Romero v. People* (G.R. No. 167546, July 17, 2009, 593 SCRA 202, 206).

As contained in the Notice of Disallowance SAO ND No. NAB-2014-061-PDAF(07-09)[125] and testified to by prosecution witness State Auditor Alfafaras:

(a) the purported procurement of 2,005 of 5-volume Livelihood Technology Kits from Screenmark Printing & Advertising is questionable as this supplier denied having transacted business with UPFI and claimed that the receipt allegedly issued to UPFI in the amount of P7,017,500 was actually issued to Z-zone on 11 June 2009 in the amount of only P1,473.21 and the amount of P7,107,500 was apparently paid in cash which is unlikely and questionable;

(b) the purported payment of training services conducted by Grayline Enterprises is also questionable as this supplier cannot be located at its given address and the amount of P936,500 was apparently paid in cash which is unlikely and questionable; and

(c) the purported procurement and training were reportedly conducted on January 16 to 27, 2009 which were made even before the execution of the MOA and the release of the first check, which were both dated 20 February 2009.

As also stated in the Decision dated October 21, 2022, defense witness Balista of UPFI admitted that "during the transaction subject of these cases took place, she was the President of UPFI, and she could confirm that UPFI received funds from NABCOR in connection with the implementation of the PDAF projects of accused Pancrudo. She authorized Mark Espinosa to enter into a MOA with NABCOR for said purpose. The project involved the holding training programs in Bukidnon, and the purchase and distribution of livelihood and training kits amounting to more or less seven million pesos (P7,000,000.00)."[126] Thus, there is no question that UPFI, through accused Espinosa, received the funds. However, as contained in the records, the utilization of the funds transferred to UPFI was disallowed as the same was undertaken without due regard to existing laws and regulations and is thus considered illegal and irregular as defined under OCA

[125] Exhibit "B-19-a".
[126] *Decision* dated October 21, 2022, p. 56.

Circular No. 85-55A, as amended by COA Circular No. 2012-dated October 29, 2012.[127]

As held in the case of *Jaca v. People,*[128] "COA's findings are accorded great weight and respect, unless they are clearly shown to be tainted with grave abuse of discretion; the COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to, the government. [x x x] An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with official guidelines and regulations. Under the Rules on Evidence and considering the COA's expertise on the matter, the presumption is that official duty has been regularly performed unless there is evidence to the contrary." *(Citations omitted.)*

Thus, accused Espinosa, as the authorized representative of UPFI, had the burden to prove that the funds it received on UPFI's behalf was actually and fully utilized for the implementation of the livelihood program in the 1st District of Bukidnon. However, Espinosa failed to rebut the evidence of the prosecution showing that the PDAF redounded to the benefit of the constituents of accused Pancrudo in the 1st District of Bukidnon, because (a) no written confirmation and additional documents on the said transactions were submitted by UPFI to the Audit Team of COA as required by law; (b) the suppliers of UPFI (Screenmark Printing & Advertising, and Grayline Enterprises) either denied the transaction or cannot be located;[129] and (c) accused Espinosa, on behalf of UPFI, failed to offer any original copy of documents pertaining to the certified or bona fide list of beneficiaries or the official receipts reflecting their purchase of the livelihood training kits, or even a copy of one livelihood training kit used in the project. All that was offered to prove the implementation of the project were COA's copies of the documents (Certificate of Acceptance, Accomplishment Report, Inspection Report, and list of beneficiaries), and suppliers' receipts and invoices that were never authenticated.

Notably, the tripartite MOA (Exh. "**B-18-I**") mandates:

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[127] Exhibit "B-19-a".
[128] G.R. Nos. 166967, 166974 & 167167, [January 28, 2013], 702 PHIL 210-262.
[129] Exhibit "B-19-a".

x x x

ARTICLE II
Responsibilities and Obligations of the Parties

x x x

5. The PROPONENT shall:

x x x

10. Return to NABCOR any disallowed amounts after the financial audit.

x x x
(Emphasis supplied.)

Verily, preponderant evidence exists to hold accused Espinosa, being the Corporate Secretary and as authorized representative of UPFI charged in these cases, civilly liable for the amounts transferred to it for the procurement of the training kits and the conduct of services under the Livelihood Development Program Project. As the records bore no evidence as to the indemnification, reimbursement or compromise as to the amount or funds involved in these cases, i.e., a total of Seven Million Nine Hundred Fifty-Four Thousand Pesos (P7,954,000.00), the civil liability of accused Espinosa, as representative of UPFI who received the subject public funds, has not been extinguished. Consequently and conformably with Republic Act No. 10660,[130] we hold that the facts and surrounding circumstances in these two cases (SB-16-CRM-0115 and SB-16-CRM-0117) warrant indemnity in favor of the Government in the amount of **Seven Million Nine Hundred Fifty-Four Thousand Pesos (P7,954,000.00)**.

WHEREFORE, in light of the foregoing, the motions for reconsideration filed by accused **Victor Roman Cojamco Cacal, Rhodora Bulatao Mendoza, Maria Ninez Paredes Guañizo,** and **Mark Benetua Espinosa** are **GRANTED**. On the other hand, the motion for reconsideration filed by accused **Candido Pios Pancrudo, Jr.** is **DENIED**. Accordingly, the Court's *Decision dated October 21, 2022* finding herein accused Cacal, Mendoza, Guañizo, and Espinosa

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[130] Approved on April 16, 2015;
"Section 2. x x x
Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized [x x x]."

guilty beyond reasonable doubt is hereby **VACATED** and **SET ASIDE**, and a new one is hereby rendered as follows:

1. Accused Victor Roman Cojamco Cacal, Rhodora Bulatao Mendoza, Maria Ninez Paredes Guañizo, and Mark Benetua Espinosa are hereby **ACQUITTED** of the crimes charged in Criminal Case Nos. **SB-16-CRM-0114, SB-16-CRM-0115, SB-16-CRM-0116,** and **SB-16-CRM-0117**, for failure of the prosecution to prove their guilt beyond reasonable doubt. The surety bonds posted for their provisional liberty in the said cases are hereby **CANCELLED** and the Hold Departure Order issued against them insofar as these cases are concerned are therefore **LIFTED**.

2. In **Criminal Case No. SB-16-CRM-0114**, this Court affirms that accused Candido Pancrudo, Jr. is **GUILTY** beyond reasonable doubt of violating Section 3 (e) of Republic Act No. 3019, as amended, and sentences him to suffer the penalty of imprisonment for an indeterminate period of six **(6) years and one (1) month as minimum** to **ten (10) years as maximum**; and to suffer perpetual disqualification from public office.

3. In **Criminal Case No. SB-16-CRM-0116**, this Court affirms that accused Candido Pancrudo, Jr. is **GUILTY** beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, as amended, and sentences him to suffer the penalty of imprisonment for an indeterminate period of six **(6) years and one (1) month as minimum** to **ten (10) years as maximum**; and to suffer perpetual disqualification from public office.

4. In **Criminal Case No. SB-16-CRM-0115**, this Court affirms that accused Candido Pancrudo, Jr. is **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, and sentences him to suffer the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and the accessory penalty of perpetual special disqualification

from holding any public office, taking into consideration the attendance of the mitigating circumstance of voluntary surrender.

Further, he is ordered to pay a fine of PhP1,193,100.00 equivalent to the amount malversed, with legal interest of six percent (6%) per annum reckoned from the finality of Decision until full satisfaction.

5. In **Criminal Case No. SB-16-CRM-0117**, this Court affirms that accused Candido Pancrudo, Jr. is **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, and sentences him to suffer the penalty of imprisonment for an indeterminate period of fourteen (14) years, eight (8) months and (1) day, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law, taking into consideration the attendance of the mitigating circumstance of voluntary surrender.

   Further, he is ordered to pay a fine of PhP6,760,900.00 equivalent to the amount malversed, with legal interest of six percent (6%) per annum reckoned from the finality of Decision until full satisfaction.

6. By way of civil liability, accused Candido Pancrudo, Jr. and accused Mark Benetua Espinosa, as Corporate Secretary and authorized representative of USWAG Pilipinas Foundation, Inc. (UPFI), are held jointly and severally liable to return and to reimburse the government, through the Bureau of Treasury, the amount of **SEVEN MILLION NINE HUNDRED FIFTY FOUR THOUSAND PESOS and 0/100 (PhP7,954,000.00)** equivalent to the total amount disallowed under SAO ND No. NAB-2014-061-PDAF(07-09), with legal interest until its full satisfaction.

7. With respect to accused Alan A. Javellana, considering that he remains at large and jurisdiction over his person had yet to be acquired, let the cases against him be archived, and let an alias warrant of arrest issue against him.

8. The Court authorizes the release to **VICTOR ROMAN COJAMCO CACAL, RHODORA BULATAO MENDOZA, MARIA NINEZ PAREDES GUAÑIZO,** and **MARK BENETUA ESPINOSA** of the amounts they deposited as bail for their provisional liberty in these cases, subject to the usual accounting and auditing procedures.

SO ORDERED.

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:

RAFAEL R. LAGOS
Associate Justice
Chairperson

MARYANN E. CORPUS-MAÑALAC
Associate Justice