



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ERIC A. CABARIOS,
Petitioner,

G.R. Nos. 228097-103 & 228139-41

Members:

-versus-

GESMUNDO, C.J., *Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., *JJ.*

PEOPLE OF THE
PHILIPPINES,
Respondent.

Promulgated:

SEP 29 2021

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DECISION

LAZARO-JAVIER, J.:

The Cases

Petitioner Eric A. Cabarios assails the following dispositions of Sandiganbayan in Criminal Case Nos. SB-10-CRM-0186 thru SB-10-CRM-0195 entitled *People of the Philippines v. Eric A. Cabarios, Board Member, Michelle B. Navalta, James Ismael A. Revantad, Employees (All of) Sangguniang Panlalawigan, Province of Zamboanga Zibugay*.¹

¹ Sometimes spelled as Sibugay in the records.

- 1) **Decision**² dated August 30, 2016, which convicted him of five (5) counts of violation of Section 3(e) of Republic Act (RA) 3019, the Anti-Graft and Corrupt Practices Act, and five (5) counts of malversation of public funds through falsification of public documents under Article 217 of the Revised Penal Code (RPC), in relation to Articles 171 and 48 of the same Code; and
- 2) **Resolution**³ dated October 25, 2016, which denied his motion for reconsideration.

Antecedents

The Charges

Under separate Informations filed on September 22, 2010,⁴ petitioner Eric A. Cabarios, Board Member of Zamboanga Sibugay, together with Michelle B. Navalta (Navalta) and James Ismael A. Revantad (Revantad), both employees of the *Sangguniang Panlalawigan*, was charged with five (5) counts of violation of Section 3(e) of RA 3019⁵ and five (5) counts of malversation of public funds through falsification of public documents under Article 217 of the RPC,⁶ in relation to Articles 171 and 48 of the same Code, thus:

² Penned by Associate Justice Alex L. Quiroz, concurred in by Associate Justices Jose R. Hernandez and Oscar C. Herrera, Jr., *rollo*, pp. 68-108.

³ *Id.* at 109-113.

⁴ *Id.* at 472.

⁵ Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

⁶ Article 217. Malversation of public funds or property. – Presumption of malversation. – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

SB-10-CRM-0186

(For: Violation of Section 3(e), R.A No. 3019, as amended)

That on or about January 3, 2002, and for sometime prior or subsequent thereto, while performing their official functions, the said accused took advantage of their positions, conspired and committed the crime in relation to their offices, and willfully, unlawfully[,] and criminally caused undue injury to the government through evident bad faith by collecting TWENTY THOUSAND PESOS (P20,000.00) reimbursed through Disbursement Voucher No. 101-0201-56 and Check No. 75413 dated January 3, 2002[,] and made it appear in the supporting documents of the said voucher that the same amount was distributed as financial assistance to alleged beneficiaries of the Aid the Poor Program when they knew that no such financial assistance was granted because the alleged beneficiaries under the said program are fictitious or non-existent.

CONTRARY TO LAW.⁷**SB-10-CRM-0187**

(For: Malversation Thru Falsification of Public Documents)

That on or about January 3, 2002, and for sometime prior or subsequent thereto, while performing their official functions, the said accused took advantage of their positions, conspired and committed the crime in relation to their offices, with gross abuse of confidence, willfully, unlawfully and feloniously falsified Disbursement Voucher No. 101-0201-56 and its supporting documents by making it appear that Cabarios personally paid the beneficiaries named therein the total amount of TWENTY THOUSAND PESOS (P20,000.00), in order to effect the issuance and subsequent encashment of Check No. 75413 dated January 3, 2002[,] payable to Cabarios in the said amount which was taken from the funds of the Aid to the Poor appropriated for the office, and exclusive use, of Cabarios making him accountable therefor pursuant to Sec. 340 of R.A. No. 7160, when in truth and in fact, all the accused fully knew that no such payments to the beneficiaries were made; and that once in possession of the said check, accused encashed the same which cash equivalent and proceeds thereof all the accused willfully, unlawfully and feloniously appropriated for their personal use and benefit; thereby defrauding, damaging and prejudicing the government in the said amount.

CONTRARY TO LAW.⁸

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use. (*As amended by R.A. No. 1060*).

⁷ *Rollo*, pp. 66 and 472.

⁸ *Id.* at 67-68 and 472-473.

The other Informations were similarly worded, except for the amount, disbursement voucher, and check involved, viz.:

Violation of Section 3(e), RA 3019	Malversation of Public Funds	Amount	Disbursement Voucher Number	Check
SB-10-CRM-0188 ⁹	SB-10-CRM-0189 ¹⁰	₱21,628.00	101-0201-55	75412
SB-10-CRM-0190 ¹¹	SB-10-CRM-0191 ¹²	₱50,000.00	101-0201-120	75477
SB-10-CRM-0192 ¹³	SB-10-CRM-0193 ¹⁴	₱10,000.00	101-0109-477	59577
SB-10-CRM-0194 ¹⁵	SB-10-CRM-0195 ¹⁶	₱5,200.00	101-0110-1624	68424

These charges stemmed from the alleged irregularities in the implementation of the Aid to the Poor Program (Program) of the Province of Zamboanga Sibugay.

In 2001, the *Sangguniang Panlalawigan* of the newly created Province of Zamboanga Sibugay (previously the third district of Zamboanga del Sur) passed several resolutions to revert to the Program the savings from the budget of the Province for Personnel Services (PS) and Maintenance and Other Operating Expenses (MOOE). The reverted funds were placed under the budget of the Provincial Social Work and Development Office, albeit earmarked for the exclusive use of elective officials, including petitioner.¹⁷

In 2003, then Governor George T. Hofer filed a complaint¹⁸ before the Office of Ombudsman-Mindanao against Vice Governor Eugenio L. Famor (Vice Governor Famor), among others, relative to the disbursement of the funds of the Program for 2001 and 2002. Venancio C. Ferrer also filed a similar complaint against Vice Governor Famor, *et al.*¹⁹ Thereafter, the Local Government Sector-Mindanao of the Office of the Ombudsman requested the Commission on Audit (COA) to conduct a special audit²⁰ relative to these complaints.

The COA-Regional Office IX, Zamboanga City did the special audit, the results of which revealed that these funds got disbursed in such a way that the elective officials of the province themselves would advance from their own pocket the monetary aid intended to the alleged beneficiaries, after which, these officials would seek the reimbursement of their advances. The disbursement vouchers for the reimbursements were approved by either the

⁹ *Id.* at 66 and 473.

¹⁰ *Id.* at 68 and 474.

¹¹ *Id.* at 66 and 474-475.

¹² *Id.* at 68-69 and 475.

¹³ *Id.* at 67 and 475-476.

¹⁴ *Id.* at 69 and 476.

¹⁵ *Id.* at 67 and 476-477.

¹⁶ *Id.* at 69 and 477.

¹⁷ *Id.* at 470.

¹⁸ Docketed as OMB-M-C-02-0496-1 and OMB-M-A-02-239-1, *id.* at 70.

¹⁹ Docketed as OMB-M-C-03-0281-F and OMB-M-A-03-180-F, *id.*

²⁰ *Id.* at 70 and 426.

governor or vice-governor, depending on the tenor of the supporting resolution or ordinance.²¹ As for petitioner, twenty-nine (29) of his supposed beneficiaries were fictitious or non-existent while two (2) others denied receipt of any financial assistance from him.²²

By Resolution²³ dated July 10, 2006, the Office of the Ombudsman-Mindanao found that:

- (a) Petitioner was reimbursed the amount of ₱110,328.00 from the funds allocated for the Program through six (6) disbursement vouchers, albeit he was only indicted in relation to five (5) of these vouchers;
- (b) Social worker Navalta did the corresponding Brief Social Case Study Reports (BSCSRs) and screened the Application Forms of the supposed indigent clients/beneficiaries who allegedly received financial assistance from petitioner;
- (c) Revantad signed as a witness in the Reimbursement Expense Receipts (RERs) bearing the supposed receipt by alleged clients/beneficiaries of the amounts advanced by petitioner;
- (d) The BSCSRs, Application Forms, and RERs were used to support the six (6) disbursement vouchers which approved petitioner's claim for reimbursement of ₱110,328.00 from the Program;
- (e) Most of the clients/beneficiaries appearing in the BSCSRs, Application Forms and RERs were not residents of the municipalities indicated in the documents per certification of the Municipal Local Government Operations Officers (MLGOOs) of the province. In addition, Francisca C. Alvarez (Alvarez) and Antonio Dominado (Dominado), two (2) of the supposed beneficiaries denied receipt of any financial assistance from petitioner; and
- (f) Seven (7) out of the thirty (30) persons who supposedly executed affidavits of receipt of financial assistance from petitioner were nowhere to be found; thirteen (13) were non-residents of the supposed *barangay* they claimed to be residents of in their affidavits, and eleven (11) were not known to be residents in their given addresses. The statements of most of the affiants were inconsistent with the information found in the BSCSRs and Application Forms, while some of their signatures were inconsistent with those appearing in the BSCSRs and/or RERs.²⁴

²¹ *Id.* at 70.

²² *Id.* at 427.

²³ *Id.* at 71

²⁴ *Id.*

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Accordingly, the ten (10) aforementioned Informations were filed before the Sandiganbayan against petitioner, Navalta, and Revantad. Warrants of arrest were consequently issued on them.

On January 19, 2012, petitioner voluntarily surrendered²⁵ while Navalta and Revantad remained at large.²⁶ On arraignment, petitioner pleaded not guilty to all the charges. Trial ensued.

Atty. Bernardo Rubio Sumicad (Atty. Sumicad), Provincial Social Welfare and Development Officer (PSWDO) Cherlita Arnad Garate (Garate), Alicia Y. Alvarado (Alvarado) and Atty. Samuel P. Naungayan (Naungayan) testified for the prosecution.²⁷ On the other hand, petitioner, Indang Mohamad Garrido, Perry Boy Q. Baltazar (Baltazar), Maria Evelyn Austero T. Monasterio (Monasterio), *Barangay* Captain Dante Silva (*Barangay* Captain Silva), Ferdinand Maco Baylosis (Baylosis), and Allan Barnido Acas (Acas) testified for the defense.²⁸ Though listed as prosecution witness, Alvarez was not allowed to testify for the defense as she was not included as defense witness in the pre-trial order. The defense nevertheless tendered her testimony as excluded evidence.²⁹

Version of the Prosecution

Atty. Sumicad,³⁰ Team Leader of COA-Regional Office IX, testified that his audit team gathered the disbursement vouchers and attachments pertinent to petitioner's transactions under the Program. They, too, personally searched for the individual beneficiaries indicated in these documents but failed to locate them. Even the *barangay* officials from the reported addresses were not able to identify the supposed beneficiaries.

Meanwhile, confirmation letters sent to beneficiaries yielded only two (2) responses – from Alvarez and Dominado who both denied receiving any assistance under the Program. Two (2) other letters were returned with mark "Return to sender, Party unknown," while the rest did not merit a response or simply got lost. They also sent confirmation letters to the MLGOOs of the various municipalities where the beneficiaries allegedly resided.³¹ The MLGOOs though certified that the alleged beneficiaries are not residents of their assigned municipalities based on the voters' list.³² Thus, the audit team concluded that twenty-nine (29) out of thirty-one (31) of petitioner's supposed

²⁵ *Id.* at 478.

²⁶ *Id.* at 472.

²⁷ *Id.* at 75.

²⁸ *Id.* at 83.

²⁹ *Id.* at 90-91.

³⁰ *Id.* at 76-77.

³¹ *Id.* at 78.

³² *Id.* at 481.

beneficiaries were either fictitious or non-existent while two (2) others did not actually receive any financial aid.³³

All the vouchers were in the form of reimbursement to petitioner who claimed to have directly paid or advanced the corresponding financial assistance to the supposed beneficiaries. Notably, the vouchers were all signed by petitioner who attested that he certified that he paid personally the beneficiaries.³⁴ But the audit team did not believe this statement since they could not locate the alleged beneficiaries and, in two (2) cases, the alleged beneficiaries denied receiving any amount under the Program. Consequently, the audit team recommended the filing of appropriate criminal and administrative charges against petitioner, Navalta, and Revantad.³⁵

Garate³⁶ testified that their office implemented the Program. Except for Disbursement Voucher 101-0109-477,³⁷ she recalled that she signed all the other Disbursement Vouchers because she was under pressure from the Board Members to just sign them. In particular, petitioner sent his documents to her in bulk, with instruction that his staff would await their processing. Thus, as a control measure, she requested the Board Members to first certify that they had personally paid their beneficiaries before she signed the Disbursement Vouchers.

She did not personally assess the application forms of the beneficiaries. She merely reviewed these documents as soon as they were submitted to her together with the reimbursement documents. It was Navalta, a non-social worker, who interviewed the beneficiaries and processed their applications.³⁸

The process of disbursement done here was inappropriate as there was no proper governing guidelines in place. She drafted a policy for the implementation of the Program and submitted it to the *Sangguniang Panlalawigan* but she did not receive any reply. She also wrote Provincial Auditor Fermo Avila (Auditor Avila) requesting assistance and advice.

Though apparently, the Program was stopped in 2002, it actually continued in the form of Aid to Individual in Crisis Situation where actual social workers worked on the Program.³⁹

Alvarado,⁴⁰ MLGOO of Alicia, Zamboanga Sibugay, testified that she received a Letter dated July 15, 2003, from Atty. Sumicad requesting

³³ *Id.* at 78-79.

³⁴ *Id.* at 77.

³⁵ *Id.* at 79.

³⁶ *Id.*

³⁷ *Id.* at 81.

³⁸ *Id.*

³⁹ *Id.* at 81-82.

⁴⁰ *Id.* at 82.

confirmation of the residency of forty-six (46) persons. She replied that only five (5)⁴¹ of the persons named were registered voters in the municipality.⁴²

Naungayan,⁴³ Graft Investigation and Prosecution Officer II of the Office of the Ombudsman-Mindanao testified that he conducted the preliminary investigation and found probable cause against petitioner and his co-accused each for five (5) counts of violation of Section 3(e) of RA 3019⁴⁴ and malversation of public funds through falsification of public documents.

Version of the Defense

Petitioner denied all the charges against him.

He testified that he got elected as Board Member of Zamboanga Sibugay in 2001. As part of their mandate, they adopted the Aid to the Poor Program, then being implemented by Zamboanga del Sur.⁴⁵

The PSWDO was in charge of implementing the Program but the release of financial assistance to the beneficiaries took a lot of time due to documentary requirements.⁴⁶ Consequently, the provincial officials and PSWDO agreed on a procedure that will help expedite the process, *viz.*⁴⁷

- (a) The Board Members shall interview the prospective beneficiaries who are either referred by the PSWDO or walk-in applicants. These prospective beneficiaries are required to bring their letters, prescriptions, and requests for assistance from municipal and *barangay* officials.
- (b) The staff of the Board Member shall then gather relevant information from the beneficiaries and input the same in the BSCSR forms coming from PSWDO. The Board Member concerned shall sign the forms.

⁴¹ Abuhassan Abbu, Jubail Abduraman, Ariosa Asdali, Marcial Silud and Nicomedes Primacio. Orlando Villagantol was confirmed by the *barangay* secretary in Talusan, Zamboanga Sibugay, *id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

⁴⁵ *Rollo*, pp. 83-84.

⁴⁶ *Id.*

⁴⁷ *Id.* at 84-85.

- (c) The PSWDO shall validate, check, and approve the referral forms or BSCSRs, together with the attachments.
- (d) Once approved, the Board Member may advance the amount to be given to the beneficiaries. A corresponding RER shall be drawn as evidence of the advanced amount.
- (e) Referral forms or BSCSRs together with the attachments and the RERs will be forwarded to the PSWDO for processing of the reimbursements of the advanced amounts.

Whenever referred or “walk-in” beneficiaries came to his office, he always advanced the amounts they needed. The beneficiaries themselves attested to this when they affixed their respective signatures to the RERs. He then sought reimbursement upon compliance with the documentary requirements of the Office of the Provincial Accountant, acting as a pre-audit officer for the Program. Meantime, the Provincial Budget Officer would endorse the expenses, and the Provincial Treasurer would certify the availability of funds. Only then would his staff prepare and submit the Disbursement Vouchers to the PSWDO for signature. The next step consisted of forwarding the duly signed Disbursement Vouchers to the Provincial Accountant for validation and signature, and finally submitting them to the Office of the Governor for approval.⁴⁸

On February 21, 2002, Garate sent a letter complaint to Vice Governor Famor questioning the authority of the Board Members to directly extend financial assistance to the beneficiaries of the Program, furnishing them with a draft policy for its implementation. In turn, he and the other Board Members furnished Garate copies of the supplemental ordinances and resolutions aligning funds to the Program under their respective offices.⁴⁹ Thereafter, Garate wrote Auditor Avila, emphasizing that she had custody of the funds and her office was the one implementing the Program.⁵⁰

Petitioner received an Audit Observation Letter⁵¹ dated October 15, 2003 from Atty. Sumicad, requesting him to respond to the findings that the

⁴⁸ *Id.* at 85.

⁴⁹ *Id.* at 85-86: On October 24, 2001, the Board Members enacted Supplemental Appropriation Ordinance No. 2001-045 which authorized the reversion/realignment of fifteen thousand pesos (P15,000.00) as Additional Aid to the Poor for the Office of Cabarios. Subsequently, on November 21, 2001, they also enacted Supplemental Appropriation Ordinance No. 2001-078 which authorized the reversion/realignment of forty-one thousand six hundred twenty-eight pesos (P41,628.00) from travelling expenses, office rental, and supplies and materials/spare parts to the Program for the Office of petitioner. On December 5, 2001, the *Sangguniang Panlalawigan* passed Resolution No. 503-B-2001 which authorized the reversion/realignment of fifty thousand pesos (P50,000.00) from salaries and other benefits in the Office of the *Sangguniang Kabataan* to the Program for the Office of Cabarios. Eventually, the Board Members of the Province also enacted Ordinance No. 2002-106 regulating the disbursement and appropriation to the Program under the PSWDO.

⁵⁰ *Id.* at 86.

⁵¹ *Id.*

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beneficiaries listed in the Program could not be found, were fictitious, and unknown at their given addresses. Accordingly, he executed a Reply-Affidavit⁵² dated October 28, 2003, that he could neither affirm nor attest to the identities of these beneficiaries under the Audit Observation Letter because he was not furnished copies of the RERs signed by the beneficiaries or the BSCSRs. Too, he was only able to see the copies of the confirmation letters sent to the beneficiaries and MLGOOs in court.⁵³

Contrary to Atty. Sumicad's findings, his beneficiaries were real, not fictitious. He explained that most of the confirmation letters sent by COA-Regional Office IX were returned because the beneficiaries had either passed away or moved to another residence. In fact, his office managed to locate twelve (12) or thirteen (13) beneficiaries out of thirty-one (31). These beneficiaries would be able to present identification cards or certification or letter from the mayor or the *barangay* officials to establish their identities.⁵⁴

Baltazar⁵⁵ testified that his father Florentino Baltazar was one of the beneficiaries of the Program. In 2001, his father received medical and financial assistance from petitioner for his cataract problem. His father was given ₱2,000.00 for his operation and medicine as reflected in the RER. He was able to recognize his father's signature on the RER and the application form from the PSWDO. His father died on July 27, 2002. He could not present proof, however, that he was indeed the son of Florentino Baltazar.

Their family received the confirmation letter from COA after his father's death which explains why they no longer responded to the letter.⁵⁶

Monasterio⁵⁷ testified that she was the daughter of Ramon Monasterio (Ramon), one of the beneficiaries of the Program who died on August 26, 2001, and of Restituta Monasterio (Restituta) who died on February 22, 2005. Her mother Restituta informed her that she received ₱3,500.00 as financial aid from petitioner for the medical and burial expenses of Ramon. She identified the signature of her mother Restituta on the RER.

They received the confirmation letter from COA, asking if they indeed received ₱3,500.00 from petitioner after his father's death.⁵⁸

Barangay Captain Silva⁵⁹ of *Barangay* Baluno, Naga, Zamboanga Sibugay confirmed the certifications he issued on June 29, 2012, identifying the beneficiaries of the Program as he knew them personally: Baylosis, Isa Amilusa (Amilusa), Adela Calalang (Calalang), and Saute Muside (Muside).

⁵² *Id.*

⁵³ *Id.* at 86-87.

⁵⁴ *Id.* at 87.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 88.

⁵⁸ *Id.*

⁵⁹ *Id.*

Baylosis was a civic volunteer in Calaya and Bangan while Amilusa, Calalang and Muside were civic volunteers in *Barangay Baluno, Purok 4*. He personally saw petitioner hand them financial assistance.⁶⁰

Baylosis,⁶¹ a former resident of Baluno, Naga, Zamboanga Sibugay, testified that he knew petitioner to be a Board Member, department head of a factory, and the person to go to whenever they had a problem. On December 5, 2003, he went to petitioner to ask for assistance because a typhoon had damaged their farm and his child was confined in the hospital. Petitioner gave him ₱1,000.00 and instructed him to go to his office the following day. There, he filled out the application form for the Program and the corresponding BSCSR and submitted them to petitioner's staff who gave him another ₱2,000.00 after a review of his documents. He then signed three (3) receipts valued at ₱1,000.00 each.

He did not recall receiving any letter from COA.⁶² He admitted though that he had moved his residence elsewhere.

Acas⁶³ testified that he knew petitioner to be a Board Member of their Province as they are former neighbors in Lower Taway. On November 25, 2001, he had an accident and sustained scars on his right palm and right leg. His medical bill amounted to ₱4,000.00, thus, he requested assistance from petitioner through the Program. After conversing with petitioner, petitioner's staff prepared the necessary BSCSR. Thereafter, he was given ₱3,000.00 and made to sign three (3) RERs dated November 25, 2001. On cross, he identified Navalta as the one who prepared the BSCSR.

As-stated, **Alvarez** was not allowed to testify as she was not included as defense witness in the pre-trial order. The defense nevertheless tendered her desired testimony as excluded evidence, thus:⁶⁴

On December 8, 2001, she received ₱3,000.00 from the Program through petitioner's office and signed three (3) RERs therefor. Subsequently, in 2003, she received a confirmation letter from the COA so she immediately went to the COA office where she was asked whether she truly received ₱3,000.00 from petitioner. Because she only completed Grade IV, she did not fully understand the question. Her answer was "no" because she thought COA was asking if she received ₱3,000.00 in 2003, not in 2001. She clarified that she received the amount in 2001.

In March 2012, Garate called and asked her to go to Manila to receive aid from the Government. She was not able to go because Garate later told her that the meeting was postponed. She learned though that she was to testify on

⁶⁰ *Id.* at 89.

⁶¹ *Id.*

⁶² *Id.* at 89-90.

⁶³ *Id.* at 90.

⁶⁴ *Id.*

this transaction on the date of their supposed meeting. At that time, she was in Zamboanga del Sur. She was scared that leaving the place to go to Manila to testify for the prosecution would put her at risk of being kidnapped.⁶⁵

Ruling of the Sandiganbayan

By **Decision**⁶⁶ dated August 30, 2016, the Sandiganbayan found petitioner guilty as charged on all five counts, viz.:

WHEREFORE, the Court renders judgment finding Eric A. Cabarios:

1. In Criminal Case No. SB-10-CRM-0186, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from six (6) years and one (1) month to ten (10) years and perpetual disqualification from public office for violation of Section 3(e) of R.A. No. 3019;
2. In Criminal Case No. SB-10-CRM-0187, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from 10 years and 1 day to 18 years, two months and 21 days, the penalty of perpetual special disqualification, and to pay a fine of ₱20,000.00 for violation of Article 217 in relation to Article 171 of the Revised Penal Code;
3. In Criminal Case No. SB-10-CRM-0188, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from six (6) years and one (1) month to ten (10) years and perpetual disqualification from public office for violation of Section 3(e) of R.A. No. 3019;
4. In Criminal Case No. SB-10-CRM-0189, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from [ten] 10 years and [one] 1 day to [eighteen] 18 years, two [2] months and [twenty-one] 21 days, the penalty of perpetual special disqualification, and to pay a fine of ₱21,628.00 for violation of Article 217 in relation to Article 171 of the Revised Penal Code;
5. In Criminal Case No. SB-10-CRM-0190, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from six (6) years and one (1) month to ten (10) years and perpetual disqualification from public office for violation of Section 3(e) of R.A. No. 3019;
6. In Criminal Case No. SB-10-CRM-0191, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty of twelve years and one day of *reclusion temporal* minimum, as the minimum, to seventeen years [17], four [4]

⁶⁵ *Id.* at 90-91.

⁶⁶ *Id.* at 64-108.

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months and one [1] day of *reclusion temporal* maximum, as the maximum, the penalty of perpetual special disqualification, and to pay a fine of ₱50,000.00 for violation of Article 217 in relation to Article 171 of the Revised Penal Code;

7. In Criminal Case No. SB-10-CRM-0192, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from (sic) six (6) years and one (1) month to ten (10) years and perpetual disqualification from public office for violation of Section 3(e) of R.A. No. 3019;
8. In Criminal Case No. SB-10-CRM-0193, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from (sic) six (6) years and one (1) day to thirteen (13) years, one (1) month and eleven (11) days, the penalty of perpetual special disqualification, and to pay a fine of ₱10,000.00 for violation of Article 217 in relation to Article 171 of the Revised Penal Code;
9. In Criminal Case No. SB-10-CRM-0194, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from (sic) six (6) years and one (1) month to ten (10) years and perpetual disqualification from public office for violation of Section 3(e) of R.A. No. 3019; and
10. In Criminal Case No. SB-10-CRM-0195, **GUILTY** beyond reasonable doubt and, thus sentenced to suffer the indeterminate penalty from (sic) two (2) to ten (10) years and one (1) day, the penalty of perpetual special disqualification, and to pay a fine of ₱5,200.00 for violation of Article 217 in relation to Article 171 of the Revised Penal Code.

In the service of Cabarios's (sic) sentence, the duration of his total imprisonment shall not exceed forty (40) years.

As Navalta remains at large, let the case against her be sent to the Archives and an *alias* warrant be issued against her.

SO ORDERED.⁶⁷

The verdict of conviction was essentially hinged on the audit report of Atty. Sumicad and the testimony of Garate.

First, their testimonies revealed that there were irregularities in the disbursements of funds pertaining to the Program. The audit team observed that petitioner had "arrogated unto himself the duties and functions of the PSWDO personnel. Instead of the PSWDO personnel screening the clients first to determine whether or not they are qualified for aid before payment could be made directly to them, petitioner preempted the PSWDO personnel by allegedly advancing payment to the supposed clients, thus, depriving the former of the opportunity to perform their duties and functions. Worst, he

⁶⁷ *Id.* at 105-107.

instructed his unqualified personal staff to do the work of the social workers.”⁶⁸

Second, petitioner acted in bad faith when he granted financial aid without first seeking approval from the PSWDO, in violation of Section 4 of Ordinance No. 2002-106.⁶⁹ Petitioner’s disregard of the procedure was corroborated by his own witness Baylosis.⁷⁰

Third, the prosecution established that twenty-nine (29) of the beneficiaries of the Program indicated in petitioner’s disbursement vouchers were fictitious or non-existent because they could not be located. The audit team exhausted all possible means to locate them through personal searches, queries sent to *barangay* chairpersons, and letters sent to the MLGOOs, but it was all in vain.

The Sandiganbayan found it hard to believe that within such a short span of time, a significant number of the beneficiaries had already relocated. Though it may allow a margin of error in the statistics submitted by the audit team, the number of missing beneficiaries was too substantial to ignore. More, two of the named beneficiaries, Alvarez and Dominado, categorically denied receiving financial aid from petitioner. While they may not have been presented in court, a comparison between their signatures on the confirmation letters and their signatures on the RERs shows that these signatures are profoundly different, thus, considered falsified purposely to enable petitioner and his staff to facilitate the release of the funds. As for Alvarez’s testimony, it was excluded evidence, albeit the same still formed part of the records which may be examined on appeal.

Petitioner moved for reconsideration, which the Sandiganbayan denied through its assailed Resolution⁷¹ dated October 25, 2016.

⁶⁸ *Id.* at 96.

⁶⁹ *Id.* at 98-99: Section 4 of Ordinance No. 2002-106 (“An Ordinance Regulating the Disbursement of the Appropriation Entitled Aid to the Poor under the Provincial Social Welfare Development Office):

A. The client or poor as herein defined and who has with them a certification referral letters or notes coming from any of those mentioned in Section 3(b)(1) may approach the office of the PSWDO who shall issue referral slips addressed to the Provincial Governor, Provincial Vice Governor, and member of the *Sangguniang Panlalawigan*. After the officials above have written and signed in the referral slips issued to the clients the amount they wish to extend to any of these clients based on agreed allocation per official herein referred to the office of the PSWDO is hereby mandated to prepare all the appropriate documents for processing.

B. Clients referred under Section 3(b)(2) shall be required to sign a reimbursement expense receipt (RER) for any direct financial assistance that may be granted to them by the Provincial Governor, Provincial Vice Governor, or any member of the *Sangguniang Panlalawigan*. In addition to the RER, the staff of any of these officials concerned shall also prepare and accomplish the following documents:

1. Case Study Report
2. DSWD form 201 series 1990
3. Allotment and Obligation Slip (ALOBS)
4. Disbursement Voucher

The documents shall then be submitted to the office of the PSWDO for review and processing so that concerned officials would be reimbursed [for] the amount of the direct financial assistance that they extended to the poor.

⁷⁰ *Id.* at 96.

⁷¹ *Id.* at 109-113.

The Present Petition

Petitioner seeks affirmative relief from the Court and prays to reverse and set aside the verdict of conviction *via* Rule 45 of the Rules of Court.⁷²

He asserts that the Sandiganbayan appreciated several pieces of evidence which are patently hearsay. To recall, the Sandiganbayan ruled that the documents supporting the disbursements were falsified based on the difference between the signatures of Alvarez and Dominado on their RERs, on the one hand, and their signatures on their replies to the COA's confirmation letters, on the other. Essentially, the Sandiganbayan ruled that their signatures were forged even though they were never called to authenticate these documents. Worse, the Sandiganbayan never allowed Alvarez to testify despite her willingness to take the witness stand.

In any event, he claims to have sufficiently explained why the COA audit team was not able to locate his beneficiaries nor prove their existence – most of the beneficiaries had either passed away or transferred to another residence. In fact, his office managed to locate twelve (12) or thirteen (13) beneficiaries out of his thirty-one (31) beneficiaries. Some of them even testified why their families did not reply to the confirmation letters. Meanwhile, *Barangay* Captain Silva identified several beneficiaries as his relatives whom he personally saw receive financial assistance under the Program.

Further, he argues that he cannot be faulted for giving direct financial assistance to beneficiaries who were in dire need. The assistance was given in good faith and under the honest belief that his actions were above board. He simply had the welfare of the residents of his community in mind.

Finally, the Sandiganbayan should have taken judicial notice of the Resolution⁷³ dated June 19, 2014 in Criminal Case Nos. SB 10-CRM-0218 for Violation of Section 3(e) of RA 3019 and SB 10-CRM-0219 for malversation through falsification of public documents which acquitted another Board Member of Zamboanga Sibugay based on the finding of the Court that the search done by COA was inadequate to support the conclusion that the beneficiaries of the Program were either fictitious or non-existent.

In its Comment,⁷⁴ the Office of the Special Prosecutor (OSP) ripostes that Rule 45 of the Rules of Court only covers questions of law, not of fact. But petitioner implores the Court to “more carefully weigh” the “pros and cons” of the evidence on record, claiming that there were mistakes in appreciating the evidence. Surely, these matters fall outside the ambit of Rule

⁷² *Id.* at 3-63.

⁷³ Entitled *People v. Ma. Bella A. Chiong-Javier, et al.*, *id.* at 548-555.

⁷⁴ *Id.* at 574-616.

45 of the Rules of Court. In any event, the dispositions of the Sandiganbayan are in accord with law and jurisprudence.

In his Reply,⁷⁵ petitioner posits that the admission of the affidavits of Alvarez and Dominado in evidence despite the prosecution's failure to present them as witnesses is a violation of his constitutional right to confront the witnesses against him. More, the issue of whether petitioner is legally authorized to advance his own money for the beneficiaries is a question of law. In any case, questions of fact may be raised under Rule 45 of the Rules of Court when the Sandiganbayan overlooked certain facts of substance and value which, if considered, might affect the result of the case.

Our Ruling

We grant the petition.

Preliminarily, the Court notes that the core issue here – whether petitioner's beneficiaries under the program were fictitious or non-existent, is essentially a factual issue. It is basic, however, that petitions under Rule 45 of the Rules of Court may only raise pure questions of law⁷⁶ and that factual findings of the courts below are generally binding and conclusive on the Court. There are nevertheless recognized exceptions permitting the Court to overturn the factual findings with which it is confronted,⁷⁷ among them, when the judgment is based on misapprehension of facts and when the findings of fact are conclusions without citation of specific evidence on which they were based, as here.

⁷⁵ *Id.* at 619-643.

⁷⁶ See *Daayata, et al. v. People*, 807 Phil. 102, 111 (2017), citing Rules of Court, Rule 45, Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

⁷⁷ *Id.* at 111-112, citing *Marasigan y De Guzman v. Fuentes*, 776 Phil. 574, 582 (2016), citing *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 789-790 (2011) [Per J. Carpio-Morales, Third Division]:

These exceptions are:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
- (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

At any rate, the Court resolves to treat the present petition as an ordinary appeal – the mode of appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction as prescribed under Rule XI, Section 1 of the 2018 Revised Internal Rules of the Sandiganbayan. Although the Revised Rules took effect on November 16, 2018, it may nevertheless be given retroactive application as an exception to the rule on prospectivity. *Tan v. Court of Appeals*,⁷⁸ elucidates:

9.17. Procedural laws.

Procedural laws are adjective laws which prescribe rules and forms of procedure of enforcing rights or obtaining redress for their invasion; they refer to rules of procedure by which courts applying laws of all kinds can properly administer justice. They include rules of pleadings, practice and evidence. As applied to criminal law, they provide or regulate the steps by which one who commits a crime is to be punished.

The general rule that statutes are prospective and not retroactive does not ordinarily apply to procedural laws. It has been held that “a retroactive law, in a legal sense, is one which takes away or impairs vested rights acquired under laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. Hence, remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes.” The general rule against giving statutes retroactive operation whose effect is to impair the obligations of contract or to disturb vested rights does not prevent the application of statutes to proceedings pending at the time of their enactment where they neither create new nor take away vested rights. A new statute which deals with procedure only is presumptively applicable to all actions – those which have accrued or are pending.

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants’ rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws. It has been held that “a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure.”

X X X X

⁷⁸ 424 Phil. 556, 568-569 (2002).

Indeed, no litigant has vested right over the procedure to be undertaken by the courts in dealing with his or her case. Newly-promulgated rules, therefore, may retroactively be applied provided that the same rules do not expressly exclude pending litigation from their coverage and no vested right is impaired. These circumstances, however, do not obtain here.

On the contrary, rather than impair vested rights, the retroactive application of the Revised Rules would further promote justice as it provides those convicted in criminal cases by the Sandiganbayan in the exercise of original jurisdiction with a wider avenue to ventilate their causes and, at the same time, allow the Court to reassess factual findings more freely. *Villarosa v. People*,⁷⁹ explains:

x x x Notably, **the accused persons in cases cognizable by the Sandiganbayan in the exercise of its exclusive original jurisdiction** are high-ranking government officials or employees with Salary Grade 27 or higher, as well as other government officials and employees, not classified as such but because of the nature of the crimes committed fall under the jurisdiction of the Sandiganbayan. As correctly raised by Villarosa, citing *Formilleza v. Sandiganbayan*, **the Sandiganbayan is the first and last recourse of the accused before the case reaches the Supreme Court where findings of fact are generally conclusive and binding.** If the accused desires to appeal, the sole legal option is to file a petition for review on *certiorari* under Rule 45 of the Rules. **In stark contrast, lower[-]ranking government officials and employees are relatively privileged. As a matter of statutory right, they are entitled to appeal their conviction from the lower courts to the Sandiganbayan and up to the Supreme Court. Needless to state, they have wider opportunity to ventilate their cause and ensure their constitutionally (sic) protected rights as the reviewing court prior to Us has another chance to reassess the factual findings and legal conclusions of the lower court.** (Emphasis added)

x x x x

Indeed, the Court has now adopted the policy of permitting questions of fact in appeals from verdicts of conviction handed down by the Sandiganbayan in the exercise of its original jurisdiction. In line with this policy, we are treating the present petition as an ordinary appeal under Rule XI, Section 1 of the 2018 Revised Internal Rules of the Sandiganbayan. As such, the entire case is thrown open for review and even questions of fact may be entertained by this Court.

So must it be.

⁷⁹ See G.R. Nos. 233155-63, July 17, 2018.

We now resolve the case on the merits.

Petitioner did not violate Section 3(e) of RA 3019

Petitioner was charged with five (5) counts of violation of Section 3(e) of RA 3019, thus:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

Violation of Section 3(e) of RA 3019 requires the following elements:⁸⁰ 1) the accused is a public officer discharging administrative, judicial, or official functions; 2) he or she must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and 3) in the discharge of his or her functions, he or she had caused undue injury to any party, including the government, or gave any private party unwarranted benefit, advantage or preference.

As in all criminal cases, the prosecution has the burden of proving the presence of each of the foregoing elements beyond reasonable doubt. *People v. Claro*⁸¹ elucidated:

x x x 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 evidence are in

⁸⁰ See *Cabrera, et al. v. People*, G.R. No. 191611-14, July 29, 2017.

⁸¹ 808 Phil. 455, 464-468 (2017), citing *Shaw, C. J.*, in *Commonwealth v. Webster*, 5 Cush. (Mass.) 320, 52 Am. Dec. 711; cited in *Schmidt v. Ins. Co.*, 1 Gray (Mass.) 534; *Bethell v. Moore*, 19 N. C. 311; *State v. Goldsborough*, *Houst. Cr. Rep. (Del.)* 316 (Bold underscoring is supplied for emphasis).

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.

x x x x


Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be do herein, for he is entitled to nothing less.

Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*:

x x x in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.

x x x x

We focused on the third element. The Sandiganbayan held that the prosecution had successfully proven the presence of the third element – petitioner caused undue injury to the government when he claimed



reimbursement for the amount of financial assistance he allegedly extended to the beneficiaries of the Program who were either fictitious or non-existent.

Notably, in the related case of *People v. Ma. Bella A. Chiong-Javier, et al.*,⁸² the Sandiganbayan acquitted petitioner's fellow Board Member Ma. Bella A. Chiong-Javier and her staff who were also charged with the same offenses involving the same Program. There, Atty. Sumicad and his fellow auditors testified on the same method they used to verify the existence of the beneficiaries and confirm their receipt of financial assistance. In contrast with the rulings here, however, the Sandiganbayan in *Chiong-Javier* held that the testimonies of Atty. Sumicad, *et al.*, did **not** prove the guilt of *Chiong-Javier* to a moral certainty, thus:⁸³

To augment its cause, the Prosecution, during the trial of the case on the merits additionally presented:

Gregorio Anquillano Suaso, State Auditor II of the Commission on Audit in the province of Zamboanga Sibugay under Audit Team No. 30, Audit Group H. Suaso alleged that he is familiar with the Aid to the Poor Program of Zamboanga Sibugay as he was part of the Audit Team (he, Rolando Follero and Bernardo Sumicad).

They secured copies from the Provincial Auditor of various disbursement vouchers and supporting documents in connection with the Aid to the Poor Program. Chiong-Javier had 15 beneficiaries. After sorting the vouchers, they went (sic) on site verification. They went to each municipality and *barangay* under the Province of Sibugay based on information gathered from the supporting documents (Brief Social Case Study Reports, Reimbursement Expense Receipts (RER) and Form 200), to locate the beneficiaries.

They only found 3 beneficiaries of Chiong-Javier (sic) and failed to find the 12 others, so they considered the 12 fictitious or non-existent in their Audit Inspection Report.

With respect to beneficiary Narciso Topas: the information said that he is residing in Magdaup, Ipil but they failed to locate Topas because there was no Topas in *Barangay* Magdaup.

The same procedure was followed with respect to beneficiaries Conchita Narbaso; Armando Peligrino of Gubawang, Naga; Ronalyn Cabañero of Kabasalan; Jasmin Cardinas of Malubal, R.T. Lim; Janet Velasco of Kitabog, Titay; Amir Ahwid of Langon, Tungawan; Cristuto Cruz of Siay; Luzviminda Baygas of Cayamcam, Tungawan; Vicente Ferolino of Palinta, Kabasalan; Jun Camasora of Ipil Heights, Ipil; Rowena Dela Cerna of Pulidan, Titay.

⁸² Crim. Case No. SB 10-CRM-0218 For: Violation of Sec. 3(e), R.A. No. 3019, Crim. Case No. SB 10-CRM-0219 For: Malversation through Falsification of Public Documents, Decision dated June 19, 2014. Penned by Associate Justice Maria Cristina J. Cornejo, concurred in by Associate Justices Gregory S. Ong and Jose R. Hernandez, *rollo*, pp. 548-555

⁸³ *Id.* at 551-555.

They did not find those persons in their respective addresses and thus considered them as fictitious or non-existent. They also interviewed the residents of the *barangays*. It took them 3 months to verify and complete the actual site verification of the alleged beneficiaries.

Accused Chiong-Javier is the signatory to the Brief Social Case Study Report; accused Bustillo signed as a witness in the Reimbursement Expense Receipt (RER) of fictitious beneficiaries; accused Duran prepared the Brief Social Case Study Report.

They also found some documents lacking, like for medical assistance: a doctor's prescription and like for (sic) medical certificate, and for burial assistance death certificate. But there was none.

Also, the disbursement was not in accordance with the accounting and auditing rules and regulations which provide for 2 modes of disbursement, to wit: first is payment of check directly and second is payment of cash through cash advance. The funds of the Provincial Government of Zamboanga Sibugay were supposed to be received by the beneficiaries but were not, since there was a finding that there were fictitious and non-existent beneficiaries thus the reimbursement is fraudulent.

On cross-examination, Suaso said they searched the *Purok* and interviewed the residents from the *barangay* including the *barangay* officials and *purok* leaders. They conducted search but not house to house search.

On re-direct, Suaso said that it is very impossible for them to conduct house to house search but what they did was to interview the residents, *purok* leaders, if the person they were searching for is living in their *barangay*.

And on re-cross, Suaso said they interviewed *purok* leaders and *barangay* chairmen in 2003 whereas the disbursements were done in 2001.

The other additional witness is Rolando Azcarraga Follero, State Auditor II of COA, Ipil, Zamboanga Sibugay. Defense counsel entered into stipulation that his (Follero's) testimony is merely corroborative of Suaso's testimony in all its material points.

Evaluating the additional evidence presented by the Prosecution, the Court maintains its finding of insufficiency of evidence.

It is noted that nothing new was added to the Prosecution's case. Suaso substantially reiterated the testimony of Sumicad as to the alleged non-existence of the beneficiaries. He nevertheless admitted that they found 3 of the beneficiaries but did not find the 12 others, so the latter were considered fictitious or non-existent.

The search was inadequate. They did not conduct a house to house search but merely interviewed residents and *purok* leaders if the person they were searching is living in their *barangay*. It should be noted that the search was conducted at least 2 years from the questioned disbursements. Thus, the basis for their conclusion that the 12 other beneficiaries are fictitious and non-existent is weak, as it is

unconvincing. And, most telling is Suaso's admission on re-cross examination that they conducted the interview of the *purok* leaders and barangay chairmen in 2003 whereas the questioned disbursements were done in 2001. This raises a lot of possibilities, as pointed out by the Defense, with which the Court cannot but agree: that the named beneficiaries had either moved, relocated, or were no longer residing in Zamboanga Sibugay when the search was conducted. One, in fact, died even before the case started.

With the claim that the 12 beneficiaries of Chiong-Javier are fictitious or non-existent, as against the admitted fact that 3 of Chiong-Javier's beneficiaries were found, there cannot but be doubt on the Prosecution's stand that accused malversed the funds corresponding to the 12 beneficiaries. Had there been a more thorough search, the probability that the 12 beneficiaries exist or existed would arise, as it cannot be discounted.

And, as the alleged non-existence of the 12 beneficiaries is in doubt, the insufficiency of evidence with respect to the element of taking or misappropriation of public funds under the custody of Chiong-Javier, as noted in the resolution on the Petition for Bail, subsists.


For the same reason, namely, the non-existence of the beneficiaries being in doubt, the other charge of violation of Sec. 3(e) of RA 3019 likewise cannot prosper. The charge is anchored on the claim that accused caused undue injury to the government by making it appear that the fund was used for the Aid to the Poor Program of Zamboanga Sibugay, when in fact it was not, considering the fact that the alleged beneficiaries of the fund are fictitious or non-existent.

As in the Malversation charge, everything rests on the alleged non-existence of the beneficiaries. How can undue injury caused to the government be even presumed when the claimed non-existence of the beneficiaries of the fund remains in doubt? Given the fact that 3 of the beneficiaries were found, it is not impossible that the rest likewise exist had the search been thorough.

WHEREFORE, premises considered, the Demurrer to Evidence filed by the herein accused is **GRANTED**, and Crim. Case No. SB-10-CRM-0218 and Crim. Case No. SB-10-CRM-0219 are accordingly ordered dismissed. Accused Wilfredo L. Duran and Arnold S. Bustillo are hereby ordered released from custody unless held for some other lawful cause.

x x x x

Verily, the Sandiganbayan found that COA's personal search was inadequate as it merely interviewed select residents and *purok* leaders in the *barangay*, asking if the persons they were searching resided there. More, COA could not have validly concluded that the beneficiaries were fictitious based alone on the search it did in 2003, or two (2) years from when the questioned disbursements took place in 2001. This two-year gap raised a lot of possibilities: the named beneficiaries had either passed away or moved or



relocated to another place, hence, were no longer residing in Zamboanga Sibugay when the search was done. One in fact was confirmed to have already died even before the case started. In other words, the Sandiganbayan found that the accuracy and reliability of the search itself were doubtful, hence, it cannot reasonably support a conclusion that petitioner's named beneficiaries were indeed fictitious.

As in *Chiong-Javier*, Atty. Sumicad and his audit team undertook the same verification process as regards petitioner's beneficiaries:⁸⁴

The audit team also conducted personal searches for the individual beneficiaries and when it failed to locate the same, asked the *barangay* chairpersons if the latter knew the persons listed in the documents. If the *barangay* chairpersons did not know them, the audit team sent confirmation letters to the beneficiaries. The replies they received were from Francisca Alvarez and Antonio Dominado, who both denied having received assistance from Cabarios. With regard to the other beneficiaries[,] the audit team sent confirmation letters to, two of the letters were returned with the markings "Return to sender, party unknown" on them, while the other letters did not merit a response or were surmised to have been returned or lost. They likewise sent confirmation letters to municipal local government officials.

X X X X

Too, as in *Chiong-Javier*, COA did the search here only after two (2) years following the questioned disbursements. It, therefore, raises the same possibilities that the named beneficiaries had already moved, relocated, or even passed away. Yet, the Sandiganbayan here differently pronounced that it is "hard to believe that within a short span of time, a significant number of the beneficiaries had already relocated. While the Court may allow for a margin of error in the statistics submitted by the audit team, due to the difficulty of locating persons and other factors, the number of missing beneficiaries is still too substantial to ignore."⁸⁵

In criminal cases, we do not indulge in probabilities. As stated, we require the prosecution to establish its case beyond reasonable doubt. Such quantum of evidence, however, is absent here. In other words, as in *Chiong-Javier*, there is no moral certainty that petitioner's beneficiaries are fictitious or non-existent.

Although *Chiong-Javier* could hardly be considered *res judicata* here, it is nevertheless persuasive upon this Court. Our ruling in *Valencia v. Sandiganbayan*⁸⁶ is *apropos*. There, the Court reversed the denial of therein petitioner's demurrer to evidence on the ground that Valencia's co-accused

⁸⁴ *Id.* at 78.

⁸⁵ *Id.* at 102.

⁸⁶ See G.R. No. 220398, June 10, 2019.

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had already been acquitted on demurrer in the related Sandiganbayan case of *Macapagal-Arroyo v. People*,⁸⁷ thus:

One of the key issues behind the Court's disposition was: Even assuming that the elements of plunder were not proven beyond reasonable doubt, the evidence presented by the People established at least a case for malversation against Arroyo and Aguas.

In addressing the said issue in its April 18, 2017 Resolution, the Court ruled:

x x x x

In thereby averring the predicate act of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the insufficiency of the allegations. Consequently, the State's position is entirely unfounded.⁸⁸

x x x x

The Court judiciously believes that the foregoing ruling squarely applies in the instant petition since one of the issues raised in the latter is the denial of petitioner's constitutional right to due process. He asserts that he cannot be held liable for malversation in view of the insufficiency of the allegations of its elements in the information. It is well to note that the Information subject of the aforementioned cases of Arroyo and Aguas is the very same information under scrutiny in the present case wherein petitioner is their co-accused and where all the incidental matters stemmed and had their origin. Hence, there is no reason not to apply the afore-quoted ruling in the present petition since it has reached its finality, per Entry of Judgment, on May 30, 2017. **We are therefore not free to disregard it in any related case which involves closely similar factual evidence.** Otherwise, we would jettison the doctrine of immutability of final judgment and, further, obviate the possibility of rendering conflicting rulings on the same set of facts and circumstances in the same information. (Emphasis and underscoring added)

x x x x

It is indubitable that *Chiong-Javier* and the present case are closely related cases involving the same indictments, similar transactions, and the same factual evidence coming from COA. As what we did in *Valencia*, we cannot ignore here the verdict of acquittal handed down by the Sandiganbayan in favor of petitioner's fellow board member *Chiong-Javier* and her staff.

⁸⁷ 808 Phil. 1042, 1050 (2017).

⁸⁸ *Id.* at 1064.

At any rate, the verdict of acquittal in *Chiong-Javier* only shows that the prosecution's evidence is equivocal. It can be interpreted either for or against the accused and could either result in the dismissal of the charges on demurrer as in *Chiong-Javier* or in the denial thereof or even in the conviction of the accused. Between the two seemingly valid yet conflicting interpretations of the Sandiganbayan, however, we must uphold that which is more beneficial to the accused. *In dubio pro reo*.

In another vein, unlike *Chiong-Javier* where the criminal charges were dismissed on demurrer, petitioner here was able to present evidence that his beneficiaries were real and not fictitious. Consider:⁸⁹

1. **Baltazar** testified that his father Florentino Baltazar was one of the beneficiaries of the Program who received financial assistance of ₱2,000.00 in 2001 for his cataract problem;
2. **Monasterio** and her family received ₱3,500.00 as financial aid from petitioner for the medical and burial expenses of her father Ramon;
3. **Baylosis** also asked petitioner for financial assistance because a typhoon had affected their farm and his child was confined at the hospital. He received ₱3,000.00 under the Program;
4. **Acas** sought financial assistance from petitioner after he had an accident and sustained scars on his right palm and right leg which required stitches. He was given ₱3,000.00 and was made to sign receipts therefore; and
5. Finally, **Alvarez** who was not allowed to testify nevertheless executed an affidavit confirming that she in fact received ₱3,000.00 from the Program in 2001. Her earlier "denial" was simply because she misunderstood the question in the confirmation letter of COA – she thought COA was asking if she received ₱3,000.00 in the year she received said letter in 2003, not in 2001.

All told, it cannot be said that petitioner had caused undue injury to any party, including the government, or gave any private party unwarranted benefit, advantage or preference. Consequently, he cannot be guilty of violation of Section 3(e) of RA 3019.

⁸⁹ Rollo, pp. 87-91.

Petitioner is not guilty of Malversation of Public Funds through Falsification of Public Documents

Petitioner was also charged with five (5) counts of malversation of public funds through falsification of public documents under Article 217 of the RPC, in relation to Articles 171 and 48 of the same Code, thus:

Article 217. Malversation of public funds or property; Presumption of malversation. – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.
4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

Malversation of public funds through falsification of public documents under Article 217 of the RPC, in relation to Articles 171 and 48 of the same Code requires the following elements: (1) the offender is a public officer; (2) he or she had custody or control of funds or property by reason of the duties of his or her office; (3) those funds or property were public funds or property for which he or she was accountable; and (4) he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁹⁰

Notably, the charges for malversation against petitioner similarly rest on the allegation that the beneficiaries were fictitious or non-existent. But as discussed, the prosecution failed to prove this allegation to a moral certainty. It follows, therefore, that petitioner cannot likewise be convicted of Malversation of public funds through falsification of public documents under Article 217 of the RPC, in relation to Articles 171 and 48 of the same Code.

⁹⁰ See *Baya v. Sandiganbayan*, G.R. Nos. 204978-83, July 6, 2020, citing *See Cantos v. People*, 713 Phil. 344, 354 (2013) [Per J. Villarama, Jr., First Division].

In sum, for the failure of the prosecution to prove beyond reasonable doubt that petitioner's beneficiaries were either fictitious or non-existent, he should be rightfully acquitted of all the charges against him. This acquittal shall extend to petitioner's co-accused who, though still at large, may nonetheless benefit from this favorable ruling.⁹¹

ACCORDINGLY, the petition is **GRANTED**. The **Decision dated August 30, 2016** and **Resolution dated October 25, 2016** of the Sandiganbayan in Criminal Cases Nos. SB-10-CRM-0186 thru SB-10-CRM-0195 are **REVERSED** and **SET ASIDE**.

Petitioner **ERIC A. CABARIOS** is **ACQUITTED** of five (5) counts of Violation of Section 3(e) of Republic Act No. 3019 and five (5) counts of Malversation of Public Funds through Falsification of Public Documents under Article 217 of the Revised Penal Code, and is ordered immediately **RELEASED** from custody, unless he is being held for another lawful cause.

The charges against his co-accused **MICHELLE B. NAVALTA** and **JAMES ISMAEL A. REVANTAD** are **DISMISSED**, and the corresponding warrants of arrest on them are **LIFTED**.

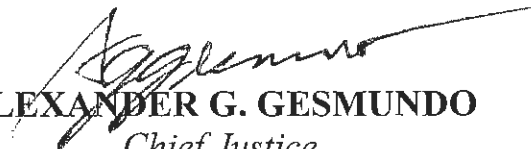
Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. He is further directed to report to this Court the action he has taken within five (5) days from notice.

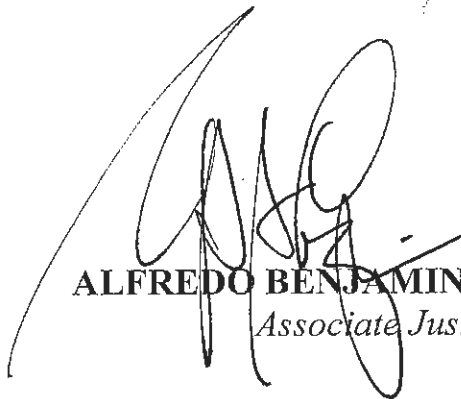
SO ORDERED.

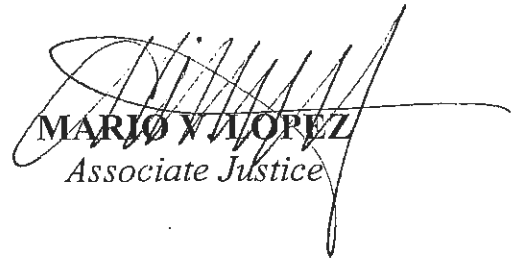

AMY C. LAZARO-JAVIER
Associate Justice

⁹¹ Rule 122, Section 11. *Effect of appeal by any of several accused.* — (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



MARIO V. LOPEZ
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson, First Division

CERTIFIED TRUE COPY

LIBRADA C. BUENA
 Division Clerk of Court
 First Division
 Supreme Court

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