

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

**G.R. Nos. 250366 and
250388-98**

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

**CARLOS RACADIO ASUNCION,
MAMELFA R. AMONGOL,
GENOVEVA R. RAGASA,
ROSITA R. RAGUNJAN, and
VIRGINIA R. RAFANAN,**
Accused-Appellants.

Promulgated:

APR 06 2022

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DECISION

ROSARIO, J.:

This is an appeal from the Decision¹ dated May 17, 2019 of the Sandiganbayan (Fourth Division) in the following 12 consolidated cases: Case Nos. SB-17-CRM-1393, -94, -95 and -96, for Violation of Section (Sec.) 3(e) of Republic Act No. (RA) 3019 (*giving an unwarranted benefit through manifest partiality*); Case Nos. SB-17-CRM-1397, -98, -99 and -1400, for

¹ *Rollo*, pp. 9-41. Penned by Associate Justice Alex L. Quiroz, with Associate Justices Reynaldo P. Cruz and Bayani H. Jacinto, concurring.

Violation of Sec. 3(j) of RA 3019 (*knowingly granting a privilege to unqualified individuals*); and Case Nos. SB-17-CRM-1401, -02, -03 and -04, for *Malversation of Public Funds*. Also appealed is the Sandiganbayan's Resolution² dated August 14, 2019 denying reconsideration of the Decision³ dated May 17, 2019.

Finding the presence of conspiracy among the accused-appellants, the Sandiganbayan held that accused-appellant Mayor Carlos R. Asuncion (Asuncion) and accused-appellants Mamelfa Amongol (Amongol), Genoveva Ragasa (Ragasa), Rosita Rangunjan (Rangunjan) and Virginia Rafanan (Rafanan) are guilty beyond reasonable doubt of the three offenses charged.

For the charge of Violation of Sec. 3(e) of RA 3019 (*giving an unwarranted benefit through manifest partiality*), the Sandiganbayan sentenced each of the accused-appellants to suffer imprisonment from six (6) years and one (1) month as minimum to ten (10) years as maximum, with perpetual disqualification from holding public office; for the charge of Violation of Sec. 3(j) of RA 3019 (*knowingly granting a privilege to unqualified individuals*), the Sandiganbayan sentenced each of the accused-appellants to suffer imprisonment from six (6) years and one (1) month as minimum to ten (10) years as maximum, with perpetual disqualification from holding public office; and for the charge of *Malversation of Public Funds*, the Sandiganbayan sentenced each of the accused-appellants to suffer imprisonment from two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to six (6) years of *prision correccional* as maximum, with perpetual disqualification from holding public office. The Sandiganbayan also ordered each of the accused to pay a fine of ₱100 Thousand for each of the 4 counts of *Malversation*, or a total fine of ₱400 Thousand.⁴

ANTECEDENT FACTS

Asuncion was a public officer, being the Mayor of Sta. Catalina, Ilocos Sur for three consecutive terms from 2007 until 2016. He is married to Flora R. Asuncion (Flora), who was the Federated President of the *Bayanihan ng Kababaihan*, an organization of women rural workers.

Accused-appellants Amongol, Rangunjan, Rafanan, and Ragasa were the Presidents of their respective chapters of the *Bayanihan ng Kababaihan*, *i.e.*, the Cabittaogan, Subec, Paratong, and Sinabaan chapters, respectively, from 2007 until 2016.

² Id. at 248-260. Penned by Associate Justice Alex L. Quiroz, with Associate Justices Reynaldo P. Cruz and Bayani H. Jacinto, concurring.

³ Id. at 9-41.

⁴ Id. at 39-40.

The private complainant is Jonathan Amando R. Redoble (Redoble), a member of the opposition in the Municipality of Sta. Catalina, Ilocos Sur, who lost his bid for the Sangguniang Bayan in the May 2013 National and Local Elections. He is the son of Juan Robles, a mayoralty candidate during the 2007, 2010, and 2013 National and Local Elections, who lost three times to Asuncion.

The undisputed facts, as culled by the Sandiganbayan from the parties' admissions and joint statement of facts, are as follows:

On 20 September 2010, the Bayanihan ng Kababaihan was accredited by the Sangguniang Bayan of Sta. Catalina, Ilocos Sur. They were managed by the officers who were elected by the members.

On 04 June 2012, accused Asuncion approved four (4) undated project proposals and entered into four (4) Memoranda of Agreement (MOA) with: (1) accused Amongol in her capacity as the Bayanihan ng Kababaihan - Cabittaogan Chapter President; (2) accused Ragunjan in her capacity as the Bayanihan ng Kababaihan — Subec Chapter President; (3) accused Rafanan in her capacity as the Bayanihan ng Kababaihan Paratong Chapter President; and (4) accused Ragasa in her capacity as the Bayanihan ng Kababaihan - Sinabaan Chapter President.

Under the subject project proposals and MOA, the four (4) chapters of the Bayanihan ng Kababaihan each received the amount of Php 100,000.00 as financial assistance for livelihood projects. The recipient members of the chapters were required to pay the amount loaned to them within six (6) months plus interests.

Accused Asuncion, being the approving authority and the person who had control over the disbursements of funds of the municipality, approved the release of the funds in favor of the four (4) chapters of the Bayanihan ng Kababaihan.

Eventually, accused Amongol, Ragunjan, Rafanan, and Ragasa received and negotiated the checks with the following details:

Accused	Check Number	Date	Amount (in PhP)
Amongol	636184	June 15, 2012	100,000.00
Ragunjan	636186	June 15, 2012	100,000.00
Ragasa	636187	June 15, 2012	100,000.00
Rafanan	636185	June 15, 2012	100,000.00

The beneficiaries were the chapters of the federation of Bayanihan ng Kababaihan, and not the federation itself.

The subject funds released to the aforesaid chapters of Bayanihan ng Kababaihan were public funds, having been sourced from the share of the municipality of Sta. Catalina, Ilocos Sur in the Tobacco Excise Tax as provided in R.A. No. 7171 entitled An Act to Promote the Development of the Farmers in the Virginia Tobacco Producing Provinces.

On account of the foregoing, private complainant filed both administrative and criminal complaints against herein accused, claiming that the grant of financial assistance in favor of the said Bayanihan ng Kababaihan chapters was not authorized and that the said recipients were not legitimate organizations.

On 22 February 2016, the financial assistance, which was disallowed by the Commission on Audit (COA), was settled or returned (by Amongol, Ragonjan, Ragasa and Rafanan) as evidenced by a certification dated 14 April 2016.⁵

On February 8, 2013, private complainant Redoble filed a complaint-affidavit⁶ before the Office of the Ombudsman against accused-appellants Mayor Asuncion, Amongol, Ragonjan, Ragasa, Rafanan (and other John Does) for violations of Articles 217 and 220 of the Revised Penal Code and for violations of Sections 3(e), (h) and (j) of RA 3019.

In a Resolution⁷ dated August 29, 2014 and approved on June 13, 2016, the Ombudsman found probable cause to indict accused-appellants for violation of Sections 3(e) and (j), and for violation of Article 217 of the Revised Penal Code.

Thus, on July 3, 2017, the Special Prosecutor of the Office of the Ombudsman filed informations against the accused-appellants for *violation of Sec. 3(e) of RA 3019, violation of Sec. 3(j) of RA 3019, and malversation of public funds*, similarly worded as follows:

SB-17-CRM-1393 to1396
(violation of Sec. 3(e) of RA 3019)

That on 15 June 2012, or sometime prior or subsequent thereto, in Sta. Catalina, Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, Carlos Racadio Asuncion, a high-ranking public official being then the Municipal Mayor of Sta. Catalina, Ilocos Sur, in such capacity, committing the crime in relation to his office, acting through evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally, in conspiracy with accused xxx, caused undue injury to the Local Government of Sta. Catalina, Ilocos Sur, by granting despite the lack of authority from the Sangguniang Bayan of Sta. Catalina, lack of proper appropriation and non-compliance with Commission on Audit Circular No. 2007-01, financial assistance in the amount of ONE HUNDRED THOUSAND PESOS (Php 100,000.00) sourced from the municipality's 2010 share of the Tobacco Excise Tax to Bayanihan ng Kababaihan - xxx Chapter, through accused xxx, an entity unqualified to receive said financial assistance in view of its lack of legal personality and the fact that it is not an association of tobacco farmers, thus giving the latter unwarranted benefit, advantage or preference.⁸

⁵ Sandiganbayan Decision, pp. 6-7; *rollo*, pp. 14-15.

⁶ Sandiganbayan *rollo*, pp. 72-92.

⁷ Id. at 39-60. Penned by Zarnette E. Sanceda, Graft Investigation and Prosecution Officer II; reviewed by Director Joaquin F. Salazar, and approved by Ombudsman Conchita Carpio-Morales (Ret.).

⁸ Sandiganbayan *rollo*, pp. 1-12.

SB-17-CRM-1397 to 1400
(violation of Sec. 3(j) of RA 3019)

That on 15 June 2012, or sometime prior or subsequent thereto, in Sta. Catalina, Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, Carlos Racadio Asuncion, a high-ranking public official being then the Municipal Mayor of Sta. Catalina, Ilocos Sur, in such capacity, committing the crime in relation to his office, in conspiracy with accused xxx, did then and there willfully, unlawfully and criminally approve or grant a benefit in the form of a financial assistance in the amount of ONE HUNDRED THOUSAND PESOS (Php 100,000.00) sourced from the municipality's 2010 share of the Tobacco Excise Tax to Bayanihan ng Kababaihan - xxx Chapter, through accused xxx, knowing fully well that it is an entity not legally entitled to such benefit or advantage in view of its lack of legal personality and the fact that it is not an association of tobacco farmers.⁹

SB-17-CRM-1401 to 1404
(Malversation of Public Funds)

That on 15 June 2012, or sometime prior or subsequent thereto, in Sta. Catalina, Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, Carlos Racadio Asuncion, a public official, being then the Municipal Mayor of Sta. Catalina, Ilocos Sur, and as such is accountable for public funds under his administration, in conspiracy with accused xxx, did then and there willfully and feloniously appropriate, take or misappropriate, consent or permit the taking of public funds by granting financial assistance in the amount of ONE HUNDRED THOUSAND PESOS (Php 100,000.00) sourced from the municipality's 2010 share of the Tobacco Excise Tax to Bayanihan ng Kababaihan - xxx Chapter, through accused xxx, without the benefit of an appropriation ordinance, to the damage and prejudice of the Municipality of Sta. Catalina, Ilocos Sur in the said amount.¹⁰

The accused-appellants separately posted their bail bonds, which the Sandiganbayan subsequently approved. Upon arraignment on August 14, 2017 and September 14, 2017, the five accused-appellants pleaded "Not Guilty" to the three charges against them.

During pre-trial, the parties agreed to submit a *Joint Stipulation and Narration of Facts and Issues*, in lieu of the presentation of witnesses. After pre-trial, the Sandiganbayan ordered the parties to submit their respective formal offers of evidence and memoranda.

Evidence for the Prosecution

The prosecution endeavored to show that the Cabittaogan, Subec, Paratong and Sinabaan chapters of the *Bayanihan ng Kababaihan*, respectively headed by the accused-appellants Amongol, Ragonjan, Rafanan

⁹ Id. at 13-24.

¹⁰ Id. at 25-35.

and Ragasa, neither had the legal personality nor the qualifications to receive financial assistance sourced from the municipality's 2010 share of Tobacco Excise Taxes because: (1) they did not submit the documents required by COA Circular No. 2007-001; (2) they have no legal personality, as they were not registered with either the Securities and Exchange Commission (SEC) or the Department of Labor and Employment (DOLE), nor were they accredited by the Bids and Awards Committee; (3) they were not an association of tobacco farmers who are authorized to receive a portion of the municipality's share of the Tobacco Excise Taxes pursuant to RA 7171; (4) accused-appellant Asuncion was not authorized by the Sangguniang Bayan through an appropriation ordinance to enter into a *Memorandum of Agreement* with the subject chapters of the *Bayanihan ng Kababaihan* and to grant them financial assistance; and (5) there was a conspiracy between the accused-appellants.

To prove the foregoing, the prosecution submitted a *Certification* dated November 26, 2012 from the SEC, to the effect that the *Bayanihan ng Kababaihan* is not registered as a juridical person;¹¹ a *Certification* dated January 2, 2013 from the Cooperative Development Authority, to the effect that the *Bayanihan ng Kababaihan* is not registered as a cooperative;¹² and a letter dated January 15, 2013 to private complainant Jonathan Redoble from Region I DOLE, to the effect that the *Bayanihan ng Kababaihan* is not registered as a labor organization.¹³

Next, the prosecution tried to show that accused-appellant Mayor Asuncion acted with partiality toward the *Bayanihan ng Kababaihan* because his wife was the Federated President of the organization, as shown by their *Marriage Contract*¹⁴ and by the *Certification* signed by Mrs. Flora Asuncion attesting to the fact that she was the Federated President of *Bayanihan ng Kababaihan*.¹⁵

The disbursements were proved by the appurtenant Project Proposals,¹⁶ Memoranda of Agreement,¹⁷ Obligation Request Forms,¹⁸ Disbursement Vouchers,¹⁹ Checks²⁰ and Journal Entry Vouchers²¹ pertaining to a loan of ₱100,000.00 each given by the Municipality of Sta. Catalina, Ilocos Sur to the Cabittaogan, Subec, Paratong and Sinabaan chapters of the *Bayanihan ng Kababaihan*.

¹¹ Exhibit "D," folder of exhibits for the prosecution.

¹² Exhibit "E," id.

¹³ Exhibit "F," id.

¹⁴ Exhibit "A," id.

¹⁵ Exhibit "B," id.

¹⁶ Exhibits "N," "X," "HH" and "RR," id.

¹⁷ Exhibits "O," "Y," "II," and "SS," id.

¹⁸ Exhibits "S," "CC," "MM," and "WW," id.

¹⁹ Exhibits "T," "DD," "NN" and "XX," id.

²⁰ Exhibits "U," "EE," "OO," and "YY," id.

²¹ Exhibits "V," "FF," "PP" and "ZZ," id.

Evidence for the Defense

In his defense, accused-appellant Mayor Asuncion countered that (1) the *Bayanihan ng Kababaihan* and its Cabittaogan, Subec, Paratong and Sinabaan chapters possessed the necessary juridical personality at the time when they entered into their respective *Memorandum of Agreement* in 2012, as shown by various resolutions of the Sangguniang Bayan accrediting the *Bayanihan ng Kababaihan* as a community-based non-governmental organization and civil society organization since 2007;²² (2) as the Mayor of Sta. Catalina, he possessed the proper authorization from the Sangguniang Bayan to enter into the MOA with the other accused, as shown by Resolution No. 39, s. 2010, dated July 5, 2010,²³ authorizing him to represent the Municipality of Sta. Catalina in all of its official transactions, and to sign on its behalf all bonds, contracts and obligations and such other documents made pursuant to law or ordinance; (3) he acted in good faith upon his honest belief that the four chapters of the *Bayanihan ng Kababaihan* (who were rural workers or farmers, as certified by the DOLE in September 2013)²⁴ were qualified to avail of financial assistance under RA 7171 because said law speaks of giving special support to tobacco-producing provinces for the benefit of its farmers, without stating that non-tobacco farmers were specifically disallowed or excluded from also benefitting therefrom;²⁵ (4) the loans given to the accused-appellants were authorized by Appropriation Ordinance No. 01 series of 2010,²⁶ which was re-enacted in 2011 and 2012, pursuant to Section 323 of the Local Government Code;²⁷ and (5) there was

²² Resolution No. 57, s. 2007, dated 8 October 2007, Exhibit "4," Resolution No. 50, s. 2010, dated September 13, 2010, Exhibit "5," Resolution No. 36, s. 2013, dated September 16, 2013, and Exhibit "6," all in the folder of exhibits for the defense.

²³ Exhibit "2," id.

²⁴ Exhibits "11" to "14," id.

²⁵ SECTION 1. Declaration of Policy - It is hereby declared to be the policy of the government to extend special support to the farmers of the Virginia tobacco-producing provinces inasmuch as these farmers are the nucleus of the Virginia tobacco industry which generates a sizeable income, in terms of excise taxes from locally manufactured Virginia-type cigarettes and customs duties on imported blending tobacco, for the National Government. For the reason stated, it is hereby further declared that the special support for these provinces shall be in terms of financial assistance for developmental projects to be implemented by the local governments of the provinces concerned.

SECTION 2. Objective - The special support to the Virginia tobacco-producing provinces shall be utilized to advance the self-reliance of the tobacco farmers through:

Cooperative projects that will enhance better quality of products, increase productivity, guarantee the market and as a whole increase farmer's income;

Livelihood projects particularly the development of alternative farming systems to enhance farmers income;

Agro-industrial projects that will enable tobacco farmers in the Virginia tobacco producing provinces to be involved in the management and subsequent ownership of these projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization; and

Infrastructure projects such as farm-to-market roads.

²⁶ Exhibit "7," folder of exhibits for the defense.

²⁷ Section 323. Failure to Enact the Annual Appropriations. - In case the sanggunian concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, it shall

no undue injury to the Municipality and/or the government because – as admitted by private complainant and the prosecution in the *Joint Stipulation and Narration of Facts and Issues* – the four beneficiary chapters of the *Bayanihan ng Kababaihan* paid the loans on February 22, 2016, upon being informed of the COA disallowance and prior to the filing of the subject criminal cases.²⁸

For their part, accused-appellants Amongol, Rangunjan, Rafanan and Ragasa argued that they had the requisite legal personality to enter into a MOA and obtain loans from the Municipality of Sta. Catalina because they had been accredited as NGO (non-governmental organization) and CSO (civil society organization) by the Municipality itself since 2007.²⁹ Further, they contended that they can also be considered as an association of tobacco farmers because tobacco farmers reside within their respective chapters or barangays. Rafanan also maintained that albeit eventually and belatedly, the DOLE approved their application as an association of rural workers on September 30, 2013.³⁰ Thus, they believed in good faith that they were qualified to avail of the loans from the Municipality. Rafanan emphasized that the amounts they obtained from the Municipality are loans, not financial assistance or dole-outs. They were not recipients of a livelihood program and there was no conspiracy to commit any illegality because they simply became debtors of the Municipality. Finally, they denied the existence of a conspiracy between them.

DECISION OF THE SANDIGANBAYAN

After due proceedings, the Sandiganbayan rendered a *Decision*³¹ dated May 17, 2019 finding accused-appellants Mayor Asuncion, Amongol, Rangunjan, Rafanan and Ragasa, in conspiracy with one another, guilty beyond reasonable doubt of violations of Sections 3(e) and (j) of RA 3019 and Malversation of Public Funds. The dispositive portion of the Sandiganbayan decision reads, as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

continue to hold sessions, without additional remuneration for its members, until such ordinance is approved, and no other business may be taken up during such sessions. If the sanggunian still fails to enact such ordinance after ninety (90) days from the beginning of the fiscal year, the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect until the ordinance authorizing the proposed appropriations is passed by the sanggunian concerned. However, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith.

²⁸ Exhibits “9” & “10,” folder of exhibits for the defense.

²⁹ Exhibit “4,” “5,” & “6,” *id.*

³⁰ Exhibits “11” to “14,” *id.*

³¹ *Rollo*, pp. 9-41.

1. In Criminal Case Nos. SB-17-CRM-1393-1396, accused CARLOS RACADIO ASUNCION, MAMELFA AMONGOL y RABAGO, ROSITA R. RAGUNJAN, VIRGINIA RAFANAN y RABINO, and GENOVEVA RAGASA y REQUEZO are each found GUILTY beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, and are hereby imposed the indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) MONTH as minimum to TEN (10) YEARS as maximum for each count. Additionally, said accused are sentenced to suffer perpetual disqualification to hold public office.

2. In Criminal Case Nos. SB-17-CRM-1397-1400, accused CARLOS RACADIO ASUNCION, MAMELFA AMONGOL y RABAGO, ROSITA R. RAGUNJAN, VIRGINIA RAFANAN y RABINO, and GENOVEVA RAGASA y REQUEZO are each found GUILTY beyond reasonable doubt of violation of Section 3(j) of R.A. No. 3019, and are hereby imposed the indeterminate penalty of imprisonment of SIX YEARS and ONE (1) MONTH as minimum to TEN (10) YEARS as maximum for each count, and perpetual disqualification to hold public office.

3. In Criminal Case Nos. SB-17-CRM-1401-1404, accused CARLOS RACADIO ASUNCION, MAMELFA AMONGOL y RABAGO, ROSITA R. RAGUNJAN, VIRGINIA RAFANAN y RABINO, and GENOVEVA RAGASA y REQUEZO are each found GUILTY beyond reasonable doubt of malversation of public funds under Article 217 of the Revised Penal Code, as amended by R.A. No. 10951, and are hereby imposed the indeterminate penalty of imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS of prision correccional as maximum for each count, appreciating the total restitution of public funds as a mitigating circumstance. The penalty of perpetual disqualification to hold public office is likewise imposed upon said accused.

Further, the following accused are ordered to pay a fine equivalent to the amount malversed in each case: (1) accused CARLOS RACADIO ASUNCION and MAMELFA AMONGOL y RABAGO, the amount of Php 100,000.00 in SB-17-CRM-1401; (2) accused CARLOS RACADIO ASUNCION and ROSITA R. RAGUNJAN, Php 100,000.00 in SB-17-CRM-1402; (3) accused CARLOS RACADIO ASUNCION and VIRGINIA RAFANAN y RABINO, Php 100,000.00 in SB-17-CRM-1403, and (4) accused CARLOS RACADIO ASUNCION and GENOVEVA RAGASA y REQUEZO, Php 100,000.00 in SB-17-CRM-1404. No civil liability is adjudged, in view of the full restitution of the amounts involved.

SO ORDERED.³²

From this adverse decision, accused-appellant Mayor Asuncion (individually) and accused-appellants Amongol, Ragasa and Ragunjan (as a group) filed their respective motions for reconsideration, both of which the

³² Id. at 39-40.

Sandiganbayan denied in its *Resolution*³³ dated August 14, 2019. Rafanan opted not to file a motion for reconsideration.

Aggrieved, accused-appellants Mayor Asuncion (individually), and Amongol, Ragasa and Ragunjan (as a group), filed their separate appeals before the Court.

Rafanan separately and belatedly filed her appeal brief on March 9, 2022,³⁴ with the explanation that she was not aware that she was supposed to file her brief because the Court had not sent her a notice to do so. Rafanan, through counsel, alleges that she learned of the filing of the briefs only when she received a copy of the People's consolidated appellee's brief sometime in February 2022 and, consequently, now prays for the admission of her belated appellant's brief.

While it might be true that Rafanan's counsel was not furnished a notice to file appellant's brief, it can hardly be said that Rafanan's receipt of the People's appellee's brief was the very first time she learned that briefs on appeal were being filed in the case.

The record shows that way back in June 2021, the Court's Second Division had sent a *Notice* to all parties, including accused Rafanan, informing all of them that on June 16, 2021, the Court had resolved to note receipt of the supplemental appellant's brief filed by Amongol, Ragasa and Ragunjan; to grant the Office of the Special Prosecutor an extension of 30 days to file the People's brief; to grant the motion of accused Mayor Asuncion for an extension of 20 days to file his brief and to note subsequent receipt thereof on October 27, 2020; and to order the Office of the Special Prosecutor to file the People's brief within 10 days from notice.³⁵ Given this notice and even without a formal notice to file her appellant's brief, Rafanan and counsel should have exercised sufficient diligence to pursue her appeal.

Nevertheless, in the interest of substantial justice and in consideration of the fact that accused Rafanan and her counsel reside all the way in Ilocos Sur, and noting, further, the difficulty in filing pleadings due to the pandemic and consequent lockdowns, the Court notes the filing of Rafanan's appellant's brief and accepts the same.

ASUNCION'S APPEAL

In his brief, accused-appellant Mayor Asuncion raises the following grounds against the decision of the Sandiganbayan:

³³ Id. at 248-260.

³⁴ The brief is stamped as having been posted on November 2, 2021 and received by the Supreme Court on March 9, 2022.

³⁵ Notice of Resolution dated 16 June 2021, *rollo*, pp. 121-122.

THE SANDIGANBAYAN COMMITTED GRAVE REVERSIBLE ERROR:

I.

IN RENDERING A DECISION NOT (IN) ACCORD WITH THE FACTS OF THE CASE AND THE LAW AND JURISPRUDENCE APPLICABLE, AND IN NOT RECTIFYING THE SAME IN SPITE OF ACCUSED'S (*sic*) ASUNCION'S MOTION FOR RECONSIDERATION OF THE DECISION BASED ON SAID GROUNDS;

II.

IN MAKING, IN SAID DECISION, FINDINGS OF FACT NOT SUPPORTED BY THE EVIDENCE AND IN DRAWING ADVERSE CONCLUSIONS (*INTER ALIA*, ASUNCION ACTED IN EVIDENT BAD FAITH; ASUNCION HAD "GUILTY KNOWLEDGE" THAT HIS CO-ACCUSED WERE NOT ENTITLED TO "FINANCIAL ASSISTANCE" UNDER RA 7171; THE ACCUSED ACTED IN CONSPIRACY) FROM MERE PRESUMPTIONS OR FROM FACTS AND CIRCUMSTANCES WHICH COULD BE INTERPRETED IN FAVOR OF THE INNOCENCE OF THE ACCUSED;

III.

IN VERY RESTRICTIVELY LIMITING WHO MAY QUALIFY AS BENEFICIARIES OF ASSISTANCE FROM RA 7171 SHARES TO ORGANIZATIONS OF TOBACCO-PRODUCING FARMERS, WHEN THE LAW ITSELF MAKES NO SUCH RESTRICTION, THUS UNJUSTLY EXCLUDING FROM SUCH ASSISTANCE THE BARANGAY-BASED ORGANIZATIONS OF WOMEN RURAL WORKERS WHOSE CHAPTER PRESIDENTS WERE CHARGED AS ASUNCION'S CO-ACCUSED AND CONVICTED AS SUCH;

IV.

IN FINDING ALL THE ACCUSED GUILTY BEYOND REASONABLE DOUBT ON ALL CHARGES, WHEN IT WAS NOT PROVEN THAT THEY CONSPIRED; NO ACTUAL DAMAGE WAS CAUSED THE GOVERNMENT; THE ACCUSED ACTED IN GOOD FAITH, AND THE LOANED AMOUNTS WERE RETURNED TO THE LGU AFTER THE COMMISSION ON AUDIT ISSUED NOTICES OF DISALLOWANCE BUT BEFORE THE DISALLOWANCE COULD RIPEN INTO PROSECUTION.³⁶

APPEAL OF AMONGOL, RAGASA AND RAGUNJAN

For their part, Amongol, Ragasa and Ragunjan cite the following arguments in support of their appeal:

I.

³⁶ Id. at 95-96.

✓

THE PROSECUTION FAILED TO PROVE BEYOND REASONABLE DOUBT THAT ACCUSED AMONGOL, RAGUNJAN, RAFANAN AND RAGASA ACTED IN CONSPIRACY WITH ACCUSED ASUNCION.

II.

ACCUSED ASUNCION NEVER ACTED WITH EVIDENT BAD FAITH IN APPROVING THE SUBJECT "FINANCIAL ASSISTANCE" AND RELEASING PUBLIC FUNDS IN FAVOR OF THE BAYANIHAN NG KABABAIHAN CHAPTERS.

III.

PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF GOOD FAITH TO WHICH EVERY PUBLIC OFFICIAL, ACTING IN DISCHARGE OF HIS OFFICIAL DUTIES, IS ENTITLED.

IV.

GOOD FAITH IN THE PAYMENT OF PUBLIC FUNDS RELIEVES A PUBLIC OFFICER FROM THE CRIME OF MALVERSATION, IS APPLICABLE IN THIS CASE.³⁷

RAFANAN'S APPEAL

Finally, Rafanan assigns the following errors against the Sandiganbayan's decision:

I.

THE SANDIGANBAYAN GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT RAFANAN IN ALL THE CHARGES FILED AGAINST HER.

II.

THE SANDIGANBAYAN GRAVELY ERRED IN APPRECIATING THE ACT OF RESTITUTION ONLY AS A MITIGATING CIRCUMSTANCE.

III.

THE SANDIGANBAYAN GRAVELY ERRED IN CONCLUDING THAT CONSPIRACY EXISTS.

IV.

THE SANDIGANBAYAN GRAVELY ERRED IN NOT CONSIDERING THE GOOD FAITH OF ACCUSED-APPELLANT RAFANAN.

³⁷ Id. at 54, 60, 68 and 71.

V.

THE SANDIGANBAYAN ERRED IN CONSIDERING THE EXHIBITS WITHOUT THEM BEING VERIFIED BY WITNESSES.³⁸

The Special Prosecutor's Contentions

On the other hand, the People, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor, asserts that the Sandiganbayan did not commit reversible error in finding conspiracy between and among the accused, and in finding them guilty beyond reasonable doubt of violations of Sections 3(e) and (j) of RA 3019, and of malversation of public funds.

In particular, the Special Prosecutor argues that:

A.

THE SANDIGANBAYAN DID NOT COMMIT ANY REVERSIBLE ERROR IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 3(e) & (j) OF RA 3019, AS AMENDED, AND MALVERSATION OF PUBLIC FUNDS UNDER ARTICLE 217 OF THE RPC.

B.

THE ASSAILED 17 MAY 2019 SANDIGANBAYAN DECISION IS VALID AND SUPPORTED BY FACTS AND EVIDENCE ON RECORD.

C.

ACCUSED-APPELLANTS ACTED IN CONSPIRACY WITH ONE ANOTHER.

D.

THE ARIAS DOCTRINE IS NOT APPLICABLE IN THE PRESENT CASE.

E.

RESTITUTION OF THE AMOUNT MALVERSED WILL NOT IN ANY WAY EXONERATE AN ACCUSED, AS PAYMENT IS NOT ONE OF THE ELEMENTS OF EXTINCTION OF CRIMINAL LIABILITY.³⁹

Issues

Taking all the parties' briefs in consideration, the issues for the consideration of the Court are: (1) whether the Sandiganbayan erred in finding the existence of conspiracy between accused-appellant Mayor Asuncion and the accused-appellants Chapter Presidents of the *Bayanihan ng Kababaihan*;

³⁸ Id. at 174.

³⁹ Id. at 141.

and (2) whether the Sandiganbayan erred in holding that their guilt of the offenses charged had been proved beyond reasonable doubt.

RULING OF THE COURT

We find merit in the appeal of the accused.

As a rule, the findings of fact of the Sandiganbayan, as a trial court, are accorded great weight and respect. However, in cases where there is a misappreciation of facts, the Court will not hesitate to reverse the conclusions reached by the trial court. At all times, the Court must be satisfied that in convicting the accused, the factual findings and conclusions of the trial court meet the exacting standard of proof beyond reasonable doubt.⁴⁰ Otherwise, the presumption of innocence must be favored, and exoneration must be granted as a matter of right.⁴¹

After a judicious examination of the records and submissions of the parties in this case, the Court finds that the facts and evidence presented by the prosecution failed to prove the guilt of accused-appellants beyond reasonable doubt.

Accused-appellant Mayor Asuncion did not violate Sec. 3(e) of RA 3019 when he entered into the MOA with the other accused-appellants and granted them a loan of P100,000.00 per chapter.

Sec. 3(e) of RA 3019 states:

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.

⁴⁰ *Maamo v. People*, 801 Phil. 627, 652 (2016).

⁴¹ *Arriola v. Sandiganbayan*, 526 Phil. 822, 835-836 (2006).

To sustain a conviction for violation of Sec. 3(e) of RA 3019, the prosecution must sufficiently establish the following elements: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative, or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage or preference.⁴²

Here, the first and second elements are undisputed. Appellant was then the Mayor of Sta. Catalina, Ilocos Sur. As such mayor, he was performing his official functions when he entered into a *Memorandum of Agreement* with each of the *Bayanihan ng Kababaihan* chapter presidents, granting them a loan of ₱100,000.00 each.

However, the third element of committing the violation in one of three ways: manifest partiality, evident bad faith or gross inexcusable negligence is absent in the case.

In *People vs. Bacaltos*,⁴³ the Court expounded on the different modes of committing the offense penalized under Sec. 3(e), viz.:

Partiality is synonymous with 'bias' which 'excites a disposition to see and report matters as they are wished for rather than as they are.'

Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.

Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.

Here, the prosecution alleged that accused-appellant Mayor Asuncion acted with manifest partiality, evident bad faith, or gross inexcusable negligence when he granted a loan of ₱100,000.00 to each chapter president of the *Bayanihan*, sourced from the municipality's share in the tobacco excise taxes for 2010 pursuant to RA 7171 despite his supposed knowledge that they were not qualified to avail of the benefits under the law.

⁴² *People v. Bacaltos*, G.R. No. 248701, July 28, 2020.

⁴³ *Id.*

Sec. 2 of RA 7171⁴⁴ lists the projects that would advance the purpose of the law in granting the LGU a 15%-share in the tobacco excise taxes, to wit:

SECTION 2. Objective - The special support to the Virginia tobacco-producing provinces shall be utilized to advance the self-reliance of the tobacco farmers through:

- a. Cooperative projects that will enhance better quality of products, increase productivity, guarantee the market and as a whole increase farmer's income;
- b. Livelihood projects particularly the development of alternative farming systems to enhance farmers income;
- c. Agro-industrial projects that will enable tobacco farmers in the Virginia tobacco producing provinces to be involved in the management and subsequent ownership of these projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization; and
- d. Infrastructure projects such as farm-to-market roads.

Apparently, the fund was initially allocated for the benefit of tobacco farmers who may use the funds to enhance the quality of their products; develop alternative farming systems to increase their income; allow the farmers to engage in post-harvest and processing activities, such as cigarette manufacturing; and to fund infrastructure projects. Nevertheless, the law does not specifically exclude other farmers within the tobacco-producing province from benefitting from the fund.

In fact, when the State adopted the policy of discouraging tobacco use for health reasons, Sec. 14 of RA 11346 enlarged the purpose of the excise tax fund to include livelihood programs that would allow farmers to shift from tobacco production to the farming of other agricultural products.⁴⁵ Thus, the

⁴⁴ AN ACT TO PROMOTE THE DEVELOPMENT OF THE FARMER IN THE VIRGINIA TOBACCO PRODUCING PROVINCES.

⁴⁵ Section 14. xxxx

xxxx

The fund shall be exclusively utilized for programs to promote economically viable alternatives for tobacco farmers and workers such as:

- (a) Programs that will provide inputs, training, and other support for tobacco farmers who shift to production of agricultural products other than tobacco including, but not limited to, high-value crops, spices, rice, corn, sugarcane, coconut, livestock and fisheries;
- (b) Programs that will provide financial support for tobacco farmers who are displaced or who cease to produce tobacco;
- (c) Cooperative programs to assist tobacco farmers in planting alternative crops or implementing other livelihood projects;
- (d) Livelihood programs and projects that will promote, enhance, and develop the tourism potential of tobacco-growing provinces;

users of the fund were no longer limited to tobacco farmers, but might include farmers who are engaged in the production of other agricultural products.

While we see no reason to revisit the purpose or wisdom of the laws covering the use of the tobacco excise fund, the several memorandum circulars and guidelines on the utilization of the tobacco excise tax fund is an indication of how easily and how often local government executives make a mistake in its utilization.⁴⁶

Without an express provision in the laws indicating whether the fund must be used exclusively by current tobacco farmers, or also by former tobacco farmers, or by women farmers who are related to tobacco farmers, or by any other kind of farmer, accused-appellant Mayor Asuncion may be excused when he believed, albeit mistakenly, that the Cabittaogan, Subec, Paratong and Sinabaan chapters of the *Bayanihan ng Kababaihan*, headed by accused-appellants Amongol, Rangunjan, Rafanan and Ragasa, were entitled to borrow from the fund for their respective barangays' livelihood programs. As pointed out by the accused-appellants, they also have a number of tobacco farmers who live within their respective barangays or chapters and, therefore, the loan obtained also redounded to the benefit of these tobacco farmers.

All told, accused-appellant Mayor Asuncion acted in good faith when he authorized the disbursement of a loan of ₱100,000.00 for each of the subject chapters of the *Bayanihan*, anchored as it was on the honest belief that they were not excluded from the benefits granted by RA 7171. Otherwise stated, accused-appellant Mayor Asuncion did not act in bad faith when he mistakenly interpreted RA 7171.

In any event, bad faith *per se* is not enough for one to be held criminally liable for violation of Sec. 3(e) of RA 3019; bad faith must be evident. It must partake of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive or ill will for ulterior purposes.⁴⁷ In short, it is a manifest deliberate intent on the part of the accused to do wrong or to cause damage,⁴⁸ which is not the case here.

(e) Infrastructure projects such as farm-to-market roads, bridges, schools, hospitals, rural health facilities and irrigation systems; and

(f) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects, such as post-harvest and secondary processing like cigarette-manufacturing and by-product utilization.

⁴⁶ See for example, Joint Memorandum Circular of the Department of Agriculture, Department of Budget Management and the National Tobacco Authority (JMC No. 2020-1, 25 June 2020); Local Budget Memorandum No. 81 (4 November 2020); Local Budget Memorandum No. 71 (21 September 2015).

⁴⁷ See *Antonino v. Hon. Ombudsman Desierto*, 595 Phil. 18, 42 (2008).

⁴⁸ See *Republic v. Hon. Desierto*, 516 Phil. 509, 516 (2006).

As the Court held in *Ysidoro v. Leonardo-De Castro*,⁴⁹ an erroneous interpretation of a provision of law, absent any showing of some dishonest or wrongful purpose, does not constitute and does not necessarily amount to bad faith.

Neither did accused-appellant Mayor Asuncion's release of a loan to the four chapters of the *Bayanihan ng Kababaihan* amount to manifest partiality. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.⁵⁰ In the case at bar, even the prosecution makes no pretense that there were other borrowers who were unjustly set aside in order to favor the subject four chapters of the *Bayanihan*.

Lastly, accused-appellant Mayor Asuncion did not act with gross inexcusable negligence. Gross inexcusable negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.⁵¹

Here, gross inexcusable negligence cannot be imputed on accused-appellant Mayor Asuncion because he relied on various Sangguniang resolutions and ordinances as basis for his actions. When accused-appellant Mayor Asuncion approved the loans in favor of the Cabittaogan, Subec, Paratong and Sinabaan chapters of the *Bayanihan ng Kababaihan*, he relied on their accreditation as a community-based non-governmental organization and civil society organization by the Sangguniang Bayan since 2007.⁵² Accused-appellant Mayor also relied on Resolution No. 39, s. 2010, dated July 5, 2010,⁵³ authorizing him to represent the Municipality of Sta. Catalina in all of its official transactions, and to sign on its behalf all bonds, contracts and obligations and such other documents made pursuant to law or ordinance, as proper authorization for him to enter into the MOA with the other accused-appellants. He acted in good faith upon his honest belief that the four chapters of the *Bayanihan ng Kababaihan*, who were rural workers or farmers (belatedly certified as such by the DOLE in September 2013)⁵⁴ were qualified to avail of financial assistance under RA 7171. Accused-appellant Mayor also relied on Appropriation Ordinance No. 01 series of 2010,⁵⁵ which was re-

⁴⁹ 681 Phil. 1,19 (2012).

⁵⁰ See *Albert v. Sandiganbayan*, 599 Phil. 439, 450 (2009).

⁵¹ Id.

⁵² Resolution No. 57, s. 2007, dated October 8, 2007, Exhibit "4"; Resolution No. 50, s. 2010, dated September 13, 2010, Exhibit "5"; and Resolution No. 36, s. 2013, dated 16 September 2013, Exhibit "6." All in the folder of exhibits for the defense.

⁵³ Exhibit "2," id.

⁵⁴ Exhibits "11" to "14," id.

⁵⁵ Exhibit "7," id.

enacted in 2011 and 2012, pursuant to Sec. 323 of the Local Government Code, as authority for the disbursements.⁵⁶

Finally, as admitted by private complainant and the prosecution in the *Joint Stipulation and Narration of Facts and Issues*, the four beneficiary chapters of the *Bayanihan ng Kababaihan* paid the loans on February 22, 2016, upon being informed of the disallowance and prior to the filing of the subject criminal cases.⁵⁷ This payment or restitution is a badge of the parties' good faith in entering into the contracts of loan, and negates any allegation of bad faith.⁵⁸

In fine, accused-appellant Mayor Asuncion is acquitted for the following reasons: (1) absence of the third element on the modes of committing the offense under Sec. 3(e) of RA 3019, and (2) the exculpatory proof of good faith.

Accused-appellant Mayor Asuncion did not violate Sec. 3(j) of RA 3019 when he entered into the MOA with the other accused-appellants and granted them a loan of ₱100,000.00 per chapter.

Sec. 3(j) of RA 3019 provides:

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:

XXXX

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

⁵⁶ Section 323. Failure to Enact the Annual Appropriations. - In case the sanggunian concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, it shall continue to hold sessions, without additional remuneration for its members, until such ordinance is approved, and no other business may be taken up during such sessions. If the sanggunian still fails to enact such ordinance after ninety (90) days from the beginning of the fiscal year, the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect until the ordinance authorizing the proposed appropriations is passed by the sanggunian concerned. However, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith.

⁵⁷ Exhibits "9" & "10," folder of exhibits for the defense.

⁵⁸ *Ysidoro v. Leonardo-de Castro*, supra note 49. See also *Zamboanga City Water District v. Commission on Audit*, 779 Phil. 225 (2016).

The elements of violation of Sec. 3(j) of RA 3019 are: (1) knowingly approving or granting any (a) license, (b) permit, (c) privilege or (d) benefit; and (2) in favor of any person who is (a) not qualified for; or (b) not legally entitled to such license, permit, privilege or advantage; or (c) a mere representative or dummy of one who is not so qualified or entitled.

In this case, the first element of knowledge was not proved by the prosecution. In order for the accused-appellants to be liable, the prosecution should have shown that accused-appellant Mayor Asuncion knew that his co-accused-appellants were not qualified to obtain a loan from the Municipality, and despite that knowledge, still granted the loan.

When accused-appellant Mayor Asuncion approved the loans in favor of the Cabittaogan, Subec, Paratong and Sinabaan chapters of the *Bayanihan ng Kababaihan*, he relied on their accreditation as a community-based non-governmental organization and civil society organization by the Sangguniang Bayan since 2007.⁵⁹ With such accreditation conferred by the Sangguniang Bayan, and later by the DOLE, their supposed lack of qualification or entitlement to avail of the loans would not have been apparent to anyone, including accused-appellant Mayor. Knowledge of the grantee's lack of qualification is an essential element of the offense because it is the basis for the conclusion that the accused acted with bias or partiality, and, possibly, corruption. Without evidence of such knowledge, accused-appellant Mayor Asuncion should be acquitted of the charge of violation of Sec. 3(j) of RA 3019.

Violations of RA 3019 must be grounded on graft and corruption.

In the case of *Martel vs. People*,⁶⁰ the Court emphasized that a charge of violation of RA 3019 must be grounded on graft and corruption. There must be evidence of corruption and personal gain obtained through wrongful means in order for a charge of the violation to prosper. It is not enough that a government official violated some law, rule or regulation resulting in gain to a person and damage to the government, if the root of such gain and damage is mere mistake.

Citing Senator Arturo M. Tolentino, the Court in *Martel* explained, thus:

At this juncture, the Court emphasizes the spirit that animates R.A. 3019. As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the

⁵⁹ Resolution No. 57, s. 2007, dated October 8, 2007, Exhibit "4"; Resolution No. 50, s. 2010, dated September 13, 2010, Exhibit "5"; Resolution No. 36, s. 2013, dated September 16, 2013, Exhibit "6." All in the folder of exhibits for the defense.

⁶⁰ G.R. No. 224720-23, February 2, 2021.

heart of the acts punishable under R.A. 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, '[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized.' *Graft entails the acquisition of gain in dishonest ways.*

In the instant case, the grant of the loans to the subject *Bayanihan* chapters was based on accused-appellant Mayor Asuncion's mistaken belief in good faith that accused-appellant chapter presidents were qualified to obtain livelihood loans from the Municipality's share of tobacco excise taxes under RA 7171. What is more, the prosecution failed to establish that accused-appellants had taken and given a bribe in return for the loans granted. The record is absolutely bereft of any evidence showing how any of the accused-appellants had personally gained from the transaction.

To reiterate, when the COA disallowed the amounts disbursed for the loans to the *Bayanihan* chapters, the latter immediately paid their loans. This circumstance strengthens the conclusion that accused-appellants were not animated by any corrupt intent, dishonest design, or unethical interest.

We echo the Court's reminder in *Martel* that, "(i)ndeed, while public office is a public trust, the Court is called upon to refrain from interpreting the laws to effectively be a disincentive to individuals in joining the public service. It is simply absurd to criminally punish every minute mistake that incidentally caused a benefit to private parties *even when these acts were not done with corrupt intent.*"⁶¹

The charge of malversation likewise fails.

Article 217 of the Revised Penal Code provides:

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:

xxxx.

The elements of Art. 217 are: (1) the offender is a public officer, (2) he or she has custody or control of the funds or property by reason of the duties of his office, (3) the funds or property are public funds or property for which the offender is accountable, and, most importantly, (4) the offender has

⁶¹ Id.

appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

The last and most important element of malversation was not proved in this case. There is no proof that accused-appellant Mayor Asuncion had consented or permitted public funds to be taken either intentionally or through abandonment or negligence.

Malversation may be committed intentionally (*dolo*) or by means of negligence (*culpa*). The crime is committed by means of *dolo* when the act is accompanied by criminal intent as when the offender misappropriated or converted public funds of property to one's personal use.⁶² Malversation may also be committed by means of *culpa* or by such negligence or indifference to duty or to consequences as, in law is equivalent to criminal intent;⁶³ as when the offender knowingly allowed another or others to make use of or misappropriate public funds or property.⁶⁴

It is a basic principle that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor which is sufficient to cover the proposed expenditure.⁶⁵ In the case at bar, accused-appellant Mayor Asuncion granted the loans and entered into a *Memorandum of Agreement* with co-accused *Bayanihan* chapter presidents relying on Appropriation Ordinance No. 01 series of 2010,⁶⁶ which was re-enacted in 2011 and 2012, pursuant to Sec. 323 of the Local Government Code,⁶⁷ as authority for the disbursements. Since the disbursements were supported by the proper Appropriation Ordinances, there was no reason for accused-appellant Mayor not to enter into the loan agreements with his co-accused chapter presidents, and the charge of malversation must fail.

The prosecution failed to prove the existence of a conspiracy between the accused-appellants.

⁶² *Felicilda v. Justice Grospe*, 286 Phil. 384, 389 (1992).

⁶³ *Tabuena v. Sandiganbayan*, 335 Phil. 795, 822 (1997), citing *United States v. Catolico*, 18 Phil. 504, 506-507 (1911) and *United States v. Elviña*, 24 Phil. 230, 231-232 (1913).

⁶⁴ See *Sarion v. People*, G.R. Nos. 243029-30, March 18, 2021.

⁶⁵ PRESIDENTIAL DECREE No. 1445, Section 85, Government Auditing Code of the Philippines.

⁶⁶ Exhibit "7," folder of exhibits for the defense.

⁶⁷ Section 323. Failure to Enact the Annual Appropriations. - In case the sanggunian concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, it shall continue to hold sessions, without additional remuneration for its members, until such ordinance is approved, and no other business may be taken up during such sessions. If the sanggunian still fails to enact such ordinance after ninety (90) days from the beginning of the fiscal year, the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect until the ordinance authorizing the proposed appropriations is passed by the sanggunian concerned. However, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith.

The accused-appellants in the instant case were charged with allegedly conspiring and confederating with one another in order to obtain a loan from the Municipality of Sta. Catalina – when they are supposedly not qualified – to the damage and prejudice of the government.

The evidence of the prosecution to prove this so-called conspiracy consists solely of the marriage certificate of the Asuncions and Mrs. Asuncion's certification to the effect that she was the Federated President of the *Bayanihan*. There is no other evidence of a common design or purpose to commit a wrongful act.

We are not persuaded by the theory of the prosecution that because accused-appellant Mayor Asuncion is married to the Federated President of the *Bayanihan ng Kababaihan*, he and the other accused-appellants, who are the presidents of their respective chapters, must have conspired in bad faith to obtain the loans. Without more evidence showing how the accused acted in synchronicity to achieve a common malicious purpose, the presumption of bad faith and conspiracy put forward by the prosecution requires a big leap of the imagination, which the Court is not prepared to do.

It bears emphasis that there is no such thing as presumption of bad faith in cases involving violations of RA 3019, or the Anti-Graft and Corrupt Practices Act. On the contrary, the law presumes the accused innocent until proven guilty. Well entrenched in our jurisprudence is the 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. The burden is on the prosecution to prove the accused's guilt beyond reasonable doubt, not on the accused to prove his innocence. The administration of justice is not a matter of guesswork. Since a person's liberty is at stake here, all measures must be taken to ensure the protection of his fundamental rights.⁶⁸

In *Macairan vs. People*,⁶⁹ the Court had occasion to reiterate hornbook doctrine on conspiracy. Said the Court:

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. While direct proof is not necessary to establish a conspiracy, it is vital for the prosecution to show, at the very least, with the same degree of proof required to establish the crime – *proof beyond reasonable doubt*, that all participants performed overt acts with such closeness and coordination as to indicate a common purpose or design to commit the felony. 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 or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy. The Court further emphasizes that

⁶⁸ *Suba v. Sandiganbayan*, G.R. No. 235418, March 3, 2021.

⁶⁹ G.R. No. 215104, March 18, 2021.

the community of design to commit an offense must be a conscious one. Mere knowledge, acquiescence, or agreement to cooperate, mere presence at the scene of the crime at the time of its commission, and mere companionship, are insufficient to constitute one as part to a conspiracy.⁷⁰

Further, as pronounced by the Court in *Suba vs. Sandiganbayan*⁷¹ –

It is settled that the burden is on the prosecution to prove an accused's guilt beyond reasonable doubt. This is demanded by the due process clause of the Constitution, which protects an accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. Unless the prosecution is able to discharge its burden, the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal.

Thus, in order to rule on the presence of conspiracy, there must be positive and clear evidence showing each of the accused's conscious and intentional participation in the planning, preparation, and execution of the crime charged.⁷² However, from the evidence adduced by the prosecution, the Court finds that no clear nexus exists to prove a unity of action and purpose between and among accused-appellants to give unwarranted benefit or privilege to the accused chapter presidents of the *Bayanihan ng Kababaihan* resulting in damage to the government.

We again quote *Martel vs. People*,⁷³ –

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

There being no conspiracy between the accused-appellants, the acquittal of accused-appellant Mayor Asuncion carries with it the acquittal of his co-accused Amongol, Ragunjan, Ragasa and Rafanan in the absence of any other evidence proving their guilt of the offenses charged.

WHEREFORE, the appeal is **GRANTED** and the *Decision* dated May 17, 2019 of the Sandiganbayan (Fourth Division) in the following 12 consolidated cases: Case Nos. SB-17-CRM-1393, -94, -95 and -96, for Violation of Section 3(e) of Republic Act No. 3019; Case Nos. SB-17-CRM-1397, -98, -99 and -1400, for Violation of Section 3(j) of Republic Act No. 3019; and Case Nos. SB-17-CRM-1401, -02, -03 and -04, for *Malversation of*

⁷⁰ *Macairan v. People*, id.

⁷¹ *Suba v. Sandiganbayan*, supra.

⁷² *Macairan, v. People*, supra.

⁷³ *Martel v. People*, G.R. No. 224720-23, February 2, 2021.

Public Funds, and its *Resolution* dated August 14, 2019 denying reconsideration thereof, are **REVERSED and SET ASIDE**.

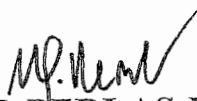
Accused-appellants Carlos R. Asuncion, Mamelfa R. Amongol, Genoveva R. Ragasa, Rosita Ragonjan and Virginia R. Rafanan are **ACQUITTED** for failure of the prosecution to prove their guilt of the offenses charged beyond reasonable doubt.


Let an **ENTRY OF JUDGMENT** be issued **IMMEDIATELY**.

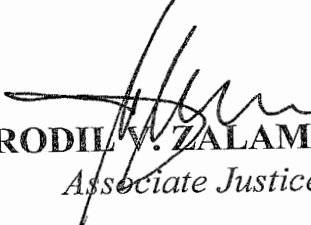
SO ORDERED.

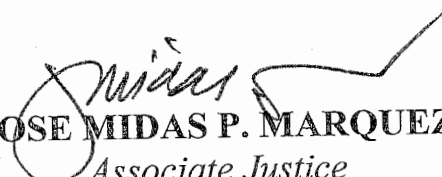

RICARDO R. ROSARIO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

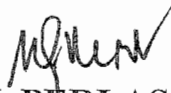

RAMON PAUL L. HERNANDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest 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.



ESTELA M. PERLAS-BERNABE

*Senior Associate Justice
Chairperson, Second Division*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified 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