

DECISION**MARQUEZ, J.:**

Before the Court are three consolidated Petitions for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² and Resolution³ of the Sandiganbayan holding petitioners Adriano A. Arcelo (Arcelo), Rosa Anna Duavit-Santiago (Duavit-Santiago), and Roberto T. Borromeo (Borromeo), (collectively Arcelo et al.), guilty of violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and malversation under Article 217 of the Revised Penal Code.

On November 5, 1968, then President Ferdinand E. Marcos, Sr. issued Executive Order No. 156, series of 1968,⁴ constituting the Fund for Assistance to Private Education (FAPE) to provide a permanent trust fund and finance various programs of assistance for private education. The principal amount of the fund in the sum of USD 6,154,000.00 was part of the war damage compensation. Executive Order No. 156 also created the Private Education Assistance Committee (PEAC), which served as the trustee of FAPE and administered, managed, and supervised the operations of FAPE. Executive Order No. 156 was later amended by Executive Order No. 163, series of 1968, and Executive Order No. 150, series of 1994. FAPE financed programs or provided assistance to private education through grants and/or loans for faculty training and development in the forms of scholarships, projects, and other programs of benefit to private education, but excluding any support for religious worship or instruction. Executive Order No. 156 also set guidelines for PEAC as the trustee of the fund to handle individual project applications for grants, loans, or other forms of financing from FAPE, which were all related to the pursuit of education in the country.⁵

PEAC was composed of the Secretary of Education, Culture and Sports or a representative, as Chairperson, and representatives from the National Economic Development Authority (NEDA), Catholic Educational Association of the Philippines, Association of Christian Schools and Colleges, and Philippine Association of Colleges and Universities, as members. Among its functions was to make all decisions on the use of FAPE's income and capital gains, including final action on individual applications for grants

¹ *Rollo* (G.R. No. 235870), pp. 3-44; *rollo* (G.R. No. 235877), pp. 92-135; *rollo* (G.R. Nos. 235922-27), pp. 3-56.

² *Rollo* (G.R. No. 235877), pp. 11-67. The January 26, 2017 Decision in Criminal Case Nos. SB-12-CRM-0134-0145 was penned by Associate Justice Reynaldo P. Cruz and concurred in by Associate Justices Efren N. Dela Cruz and Michael Frederick L. Musngi of the Special First Division, Sandiganbayan, Quezon City.

³ *Id.* at 68-89. The December 7, 2017 Resolution in Criminal Case Nos. SB-12-CRM-0134-0145 was penned by Associate Justice Efren N. Dela Cruz and concurred in by Associate Justices Rafael R. Lagos and Geraldine Faith A. Econg; with concurring and dissenting opinion of Associate Justice Reynaldo P. Cruz; with dissenting opinion of Associate Justice Michael Frederick L. Musngi of the Special First Division, Sandiganbayan, Quezon City.

⁴ *Id.* at 322-330.

⁵ *Id.* at 35.

and/or loans. Such decision shall be made by a majority of the members of PEAC.⁶

On the other hand, FAPE had its own set of officers. Arcelo et al. were appointed as follows: Arcelo as president, Borromeo as vice-president, and Duavit-Santiago as investment director.⁷ Apart from its original budget and earnings, FAPE's funds came from grants, contributions, donations, loans, and other lawful transfers from government or private entities. Eventually, FAPE accepted investments from private educational institutions. As such, it issued an Investment Manual⁸ to set the guidelines for managing investments.⁹

To manage the fund, several accounts were created and one of them was FAPE Account 1003, which consisted of commingled funds or funds belonging to educational institutions or earmarked by non-educational institutions for educational purposes.¹⁰

On or about the following dates, Arcelo applied for five personal loans in the total principal amount of PHP 6,554,500.00,¹¹ as follows:

Date of Loan	Amount
February 3, 1994	PHP 1,269,000.00
March 14, 1994	PHP 4,428,000.00
June 9, 1994	PHP 260,000.00
October 21, 1994	PHP 480,000.00
January 30, 1995	PHP 117,500.00
TOTAL	PHP 6,554,500.00 ¹²

The proceeds of the personal loans of Arcelo were sourced from FAPE Account 1003. FAPE Account 1003 was also the source of the PHP 50,500,000.00 loan of Juan B. Lacson Colleges Foundation (JBLCF), whose chairperson at the time of the loan transaction was Arcelo's spouse, Mary Lou Lacson-Arcelo (Lacson-Arcelo). To secure the payment of his personal loans, Arcelo executed documents denominated as Hold-Out Promissory Notes with Hold-Out Agreements involving hold-outs on his dollar accounts. On the other hand, JBLCF turned over two certificates of title to secure its loan transaction.¹³

In 1999, then Department of Education, Culture and Sports (DECS) Secretary Andrew Gonzalez formed a committee to look into the financial transactions of FAPE. The committee discovered that FAPE made unauthorized and unlawful releases of money amounting to at least PHP 56

⁶ *Id.* at 36.

⁷ *Id.*

⁸ *Id.* at 630-726.

⁹ *Id.* at 36-37.

¹⁰ *Id.* at 37.

¹¹ *Id.* at 36.

¹² *Id.* at 36-37.

¹³ *Id.* at 37.

million to Arcelo and to JBLCF whose Board of Trustees chairperson was Lacson-Arcelo.¹⁴

Eventually, PEAC, the trustee of FAPE, filed a complaint before the Office of the Ombudsman for plunder, violation of Republic Act No. 3019, and recovery of the ill-gotten wealth, among others, against FAPE officers including Arcelo et al.¹⁵

On May 9, 2012, the Office of the Special Prosecutor filed the following indictments against Arcelo et al. and Corazon M. Nera (Nera): (1) five indictments for violation of Section 3(e) of Republic Act No. 3019¹⁶ and five indictments for the crime of malversation defined and penalized under Article 217 of the Revised Penal Code on the five personal loans given to Arcelo; (2) one indictment for violation of Section 3(e) of Republic Act No. 3019 on the PHP 50 million loan given to JBLCF;¹⁷ and (3) one indictment for violation of Section 3(h) of Republic Act No. 3019 against Arcelo.¹⁸

A total of 12 Informations were filed against Arcelo et al., which read as follows:

1. SB Criminal Case No. SB-12-CRM-0134 (for violation of Section 3[e], Republic Act No. 3019):

That on February 3, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, Accused **Dr. Adriano Arcelo**, a high ranking public officer, being then the President appointed [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of the Department of Education Culture and Sports (DECS) in financing the program of assistance to private education, together with the members and officers of PEAC, namely, **Dr. Roberto Borromeo**, then Vice-President, **Ms. Rosa Anna Duavit**, then Investment Director and **Ms. Corazon Nera**, then Officer-in-Charge of FAPE's programs, co-accused members and officers of the FAPE namely, all of whom were tasked, in their respective capacities, with the day-to-day management of the FAPE funds, and which funds were therefore under their administration, committing the crime in relation to their office, and while in the performance of official duties and taking advantage of their official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally cause or facilitate the release of FAPE funds in the amount of [PHP 1,269,000.00] as personal loan in favor of accused Arcelo, which is different from the purpose for which the fund was intended and despite the absence of the required approval of the majority of all members of [PEAC], the body authorized to finally act on all grants utilizing the FAPE funds, thus giving unwarranted benefit to accused Arcelo and/or causing damage and prejudice to the Government in the aforesaid amount.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Republic Act No. 3019 (1960), Anti-Graft and Corrupt Practices Act.

¹⁷ *Rollo* (G.R. Nos. 235922-27), p. 7.

¹⁸ *Rollo* (G.R. No. 235877), pp. 14-15.

CONTRARY TO LAW.¹⁹ (Emphasis in the original)

2. SB Criminal Case No. SB-12-CRM-0135 (for malversation):

That on February 3, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of the Honorable Court, Accused Dr. Adriano Arcelo, a high ranking public officer, being then the President appointed by [PEAC] to [manage the FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely, Dr. Roberto Borromeo, then Vice-President, Ms. Rosa Anna Duavit, then Investment Director and Ms. Corazon Nera, then Officer-in-Charge of FAPE's programs, and as such are accountable officers entrusted with the management of the funds of FAPE, which funds were under their administration, while in the performance of official function and committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other, did then and there, willfully, unlawfully and feloniously misappropriate the said public fund by causing or facilitating the release of a part thereof in the form of a personal loan in favor of accused Arcelo in the amount of [PHP 1,269,000.00], contrary to the mandate or purpose for which the aforesaid fund was created, and absent the approval of [PEAC], the body which shall finally act on all grants and loans using FAPE Funds, to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.²⁰ (Emphasis in the original)

3. SB Criminal Case No. SB-12-CRM-0136 (for violation of Section 3[e], Republic Act No. 3019):

That on March 14, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, Accused **Dr. Adriano Arcelo**, a high ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely **Dr. Roberto Borromeo**, then Vice-President, **Ms. Rosa Anna Duavit**, then Investment [Director] and **Ms. Corazon Nera**, then Officer-in-Charge of FAPE's programs, all of whom were tasked, in their respective capacities, with the day-to-day management of the FAPE funds, which funds were therefore under their administration, and committing the crime in relation to their office, and while in the performance of official duties and taking advantage of their official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally cause or facilitate the release of FAPE funds in the amount of [PHP 4,428,000.00] as personal loan in favor of accused Arcelo, which is different from the purpose which the fund was intended and despite the absence of the required approval of the majority of all members of [PEAC], the body

¹⁹ *Id.* at 15-16.

²⁰ *Id.* at 16.

authorized to finally act on all grants utilizing the FAPE funds, thus giving unwarranted benefit to accused Arcelo and/or causing damage and prejudice to the Government in the aforesaid amount.

CONTRARY TO LAW.²¹ (Emphasis in the original)

4. SB Criminal Case No. SB-12-CRM-0137 (for malversation):

That on March 14, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of the Honorable Court, Accused Dr. Adriano Arcelo, a high ranking public officer, being then the President appointed by [PEAC], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely Dr. Roberto Borromeo, then Vice-President, Rosa Anna Duavit, then Investment Director, and Corazon Nera, then Officer-in-Charge of FAPE's programs, and as such are accountable officers entrusted with the day-to-day management of the funds of FAPE, which public funds were under their administration, while in the performance of official function and committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other, did then and there, willfully, unlawfully and feloniously misappropriate the said public fund by causing or facilitating the release of a part thereof in the form of a personal loan in favor of accused Arcelo in the amount of [PHP 4,428,000.00], contrary to the mandate or purpose for which the aforesaid fund was created, and absent the approval of [PEAC], the body which shall finally act on all grants and loans using FAPE Funds, to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.²² (Emphasis in the original)

5. SB Criminal Case No. SB-12-CRM-0138 (for violation of Section 3[e], Republic Act No. 3019):

That on June 9, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, accused **Dr. Adriano Arcelo**, a high ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of the PEAC, namely, **Dr. Roberto Borromeo**, then Vice-President, **Ms. Rosa Anna Duavit**, then Investment Director and **Ms. Corazon Nera**, then Officer-in-Charge of FAPE's programs, all of whom were tasked, in their respective capacities, with the day-to-day management of the FAPE funds, and which funds were therefore under their administration, committing the crime in relation to their office, and while in the performance of official duties and taking advantage of their official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally cause or facilitate the release of FAPE funds in the amount of [PHP

²¹ *Id.* at 16-17.

²² *Id.* at 17-18.

260,000.00] as personal loan in favor of accused Arcelo, which is different from the purpose for which the fund was intended and despite the absence of the required approval of the majority of all members of [PEAC], the body authorized to finally act on all grants utilizing the FAPE funds, thus giving unwarranted benefit to accused Arcelo and/or causing damage and prejudice to the Government in the aforesaid amount.

CONTRARY TO LAW.²³ (Emphasis in the original)

6. SB Criminal Case No. SB-12-CRM-0139 (for malversation):

That on June 9, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of the Honorable Court, accused Dr. Adriano Arcelo, a high ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with members and officers of FAPE, namely, Dr. Roberto Borromeo, then Vice-President, Ms. Rosa Anna Duavit, then Investment Director and Ms. Corazon Nera, then Officer-in-Charge of FAPE's programs, and as such are accountable officers entrusted with the management of the funds of FAPE, and which funds were under their administration, while in the performance of official function and committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other, did then and there, willfully, unlawfully and feloniously misappropriate the said public fund by causing or facilitating the release of a part thereof in the form of a personal loan in favor of accused Arcelo in the amount of [PHP 260,000.00], contrary to the mandate or purpose for which the aforesaid fund was created, and absent the approval [PEAC], the body which shall finally act on all grants and loans using FAPE Funds, to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.²⁴ (Emphasis in the original)

7. SB Criminal Case No. SB-12-CRM-0140 (for violation of Section 3[e], Republic Act No. 3019):

That on October 21, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, accused **Dr. Adriano Arcelo**, a high ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely, **Dr. Roberto Borromeo**, then Vice-President, **Ms. Rosa Anna Duavit**, then Investment Director, **Mr. Cipriano Garcia**, then Investment Director, and **Ms. Corazon Nera**, then Officer-in-Charge of FAPE's programs, all of whom were tasked, in their respective capacities, with the day-to-day management of the FAPE funds, and which funds were therefore under their administration, committing the crime in relation to their office, and while in the performance of official duties and taking advantage of their official positions, through manifest

²³ *Id.* at 18.

²⁴ *Id.* at 18–19.

partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally cause or facilitate the release of FAPE funds in the amount of [PHP 480,000.00] as personal loan in favor of Dr. Adriano A. Arcelo, which was different from the purpose for which the fund is intended and despite the absence of the required approval of the majority of all members of [PEAC], the body authorized to finally act on all grants utilizing the FAPE funds, thus giving unwarranted benefit to Dr. Adriano A. Arcelo and/or causing damage and prejudice of [sic] the Government in the aforesaid amount.

CONTRARY TO LAW.²⁵ (Emphasis in the original)

8. SB Criminal Case No. SB-12-CRM-0141 (for malversation):

That on October 21, 1994, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of the Honorable Court, accused Dr. Adriano Arcelo, a high ranking public officer, being then the President appointed by [PEAC], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely Dr. Roberto Borromeo, then Vice[-]President, Rosa Anna Duavit, then Investment Director, and Corazon Nera, then Officer-in-Charge of FAPE's programs, and as such are accountable officers entrusted with the day-to-day management of the funds of FAPE, which public funds were under their administration, while in the performance of official function and committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other, did then and there, willfully, unlawfully and feloniously misappropriate the said public fund by causing or facilitating the release of a part thereof in the form of a personal loan in favor of accused Arcelo in the amount of [PHP 480,000.00], contrary to the mandate or purpose for which the aforesaid fund was created, and absent the approval of [PEAC], the body which shall finally act on all grants and loans using FAPE Funds, to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.²⁶ (Emphasis in the original)

9. SB Criminal Case No. SB-12-CRM-0142 (for violation of Section 3[e], Republic Act No. 3019):

That on January 30, 1995, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, accused **Dr. Adriano Arcelo**, a high ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely Dr. Roberto Borromeo, then Vice-President, Rosa Anna Duavit, then Investment Director, and Corazon Nera, then Officer-in-Charge of FAPE's programs, all of whom were tasked, in their respective capacities, with the day-to-day

²⁵ *Id.* at 19-20.

²⁶ *Id.* at 20.

management of the FAPE funds, which public funds were therefore under their administration, committing the crime in relation to their office, and while in the performance of official duties and taking advantage of their official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally cause or facilitate the release of FAPE funds in the amount of [PHP 117,500.00] as personal loan in favor of accused Arcelo, which is different from the purpose for which the fund was intended despite the absence of the required approval of the majority of all members of [PEAC], the body authorized to finally act on all grants utilizing the FAPE funds, thus giving unwarranted benefit to accused Arcelo and/or causing damage and prejudice to the Government in the aforesaid amount.

CONTRARY TO LAW.²⁷ (Emphasis in the original)

10. SB Criminal Case No. SB-12-CRM-0143 (for malversation):

That on January 30, 1995, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of the Honorable Court, accused Dr. Adriano Arcelo, a high ranking public officer, being then the President appointed by [PEAC], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely Dr. Roberto Borromeo, then Vice-President, Rosa Anna Duavit, then Investment Director, and Corazon Nera, then Officer-in-Charge of FAPE's programs, and as such are accountable officers entrusted with the day-to-day management of the funds of FAPE, which public funds were under their administration, while in the performance of official function and committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other, did then and there, willfully, unlawfully and feloniously misappropriate the said public fund by causing or facilitating the release of a part thereof in the form of a personal loan in favor of accused Arcelo in the amount of [PHP 117,500.00], contrary to the mandate or purpose for which the aforesaid fund was created, and absent the approval of [PEAC], the body which shall finally act on all grants and loans using FAPE Funds, to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW.²⁸ (Emphasis in the original)

11. SB Criminal Case No. SB-12-CRM-0144 (for violation of Section 3[h], Republic Act No. 3019):

That on or about February 18, 1997, or sometime prior or subsequent thereto, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, accused **Dr. Adriano A. Arcelo**, a high-ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE], which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private

²⁷ *Id.* at 20-21.

²⁸ *Id.* at 21.

education, committing the crime in relation to his office, in that he is charged with the administration and management of FAPE funds, a trust fund created by virtue of Executive Order No. 156 for the purpose of providing assistance to private education, and while in the performance and taking advantage of his official position, did then and there, willfully, unlawfully and criminally grant and facilitate a loan agreement amounting [PHP 50,000,000.00], in favor of John B. Lacson Colleges Foundation (JBLCF), a foundation the Executive Committee of which is chaired by accused Arcelo's spouse Mary Lou Lacson-Arcelo, and which is owned and controlled, directly or indirectly, by accused Arcelo and his spouse Mary Lou Lacson-Arcelo, absent the required approval of the majority of all the members of [PEAC], the body which shall finally act on all grants and loans using FAPE funds, thereby having financial or pecuniary interest in the said loan transaction in connection with which accused Arcelo intervened or took part in his official capacity as President of FAPE, [in which accused] is prohibited under the law from having any interest.

CONTRARY TO LAW.²⁹ (Emphasis in the original)

12. SB Criminal Case No. SB-12-CRM-0145 (for violation of Section 3[e], Republic Act No. 3019):

That from February 1997 to July 1998, or sometime prior or subsequent thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, accused **Dr. Adriano Arcelo**, a high ranking public officer, being then the President appointed by [PEAC] to manage the [FAPE] which committee was created by virtue of Executive Order No. 156, Series of 1968, as amended, to operate as the supporting arm of [DECS] in financing the program of assistance to private education, together with the members and officers of PEAC, namely, Dr. Roberto Borromeo, then Vice-President, Rosa Anna Duavit and Mr. Cipriano Garcia, then Investment Directors, and Corazon Nera, then Officer-in-Charge of FAPE's programs, all of whom were tasked, in their respective capacities, with the day-to-day management of the FAPE funds, and which funds were therefore under their administration, committing the crime in relation to their office, and while in the performance of official duties and taking advantage of their official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally cause or facilitate the release of FAPE funds in the amount of [PHP 50,000,000.00] in favor of John B. Lacson Colleges Foundation (JBLCF), a foundation the Executive Committee of which is chaired by accused Arcelo's spouse Mary Lou Lacson-Arcelo, and which is owned and controlled, directly or indirectly, by accused Arcelo and his spouse Mary Lou Lacson-Arcelo, despite the absence of the required approval of the majority of all members of the PEAC, the body authorized to finally act on all grants utilizing the FAPE funds, thus giving unwarranted benefit to JBLCF and/or causing damage and prejudice to the Government in the aforesaid amount.

CONTRARY TO LAW.³⁰ (Emphasis in the original)

²⁹ *Id.* at 22.

³⁰ *Id.* at 22-23.

X

Arcelo et al.'s respective participations in these indictments are summarized as follows:³¹

SB Criminal Case No.	Documents	Participation of Accused
SB-12-CRM-0134 (for violation of Section 3[e] of Republic Act No. 3019) and SB-12-CRM-0135 (for malversation)	Hold-Out Promissory Note with Hold-Out Agreement dated February 3, 1994 for the amount of PHP 1,269,00.00	Arcelo signed as Assignor; Borromeo signed as Assignee's representative; and Duavit-Santiago signed as witness
	Check Voucher No. 0982 dated February 3, 1994 for the amount of PHP 1,269,000.00	Duavit-Santiago signed under "Approved by: "; Arcelo signed under "Received by: "
	Rizal Commercial Banking Corporation (RCBC) Check No. 069324 dated February 3, 1994 in the amount of PHP 1,269,000.00	Duavit-Santiago signed as authorized signatory of FAPE; Borromeo signed as authorized signatory of FAPE; and Arcelo signed as payee/endorser (dorsal side)
	Hold-Out Promissory Note with Hold-Out Agreement dated January 30, 1995 for the amount of PHP 1,386,500.00	Arcelo signed as Assignor; Borromeo signed as Assignee's representative; and Duavit-Santiago signed as witness
SB-12-CRM-0136 (for violation of Section 3[e] of Republic Act No. 3019) and SB-12-CRM-0137 (for malversation)	Hold-Out Promissory Note with Hold-Out Agreement dated March 14, 1994 for the amount of PHP 4,428,000.00	Arcelo signed as Assignor; Borromeo signed as Assignee; and Duavit-Santiago signed as witness
	Authorization to Transfer From Savings to Current Account or Vice-Versa (case-to-case Basis) involving the amount of PHP 4,428,000.00	Duavit-Santiago signed as authorized signatory; and Borromeo signed as authorized signatory
SB-12-CRM-0138 (for violation of Section 3[e] of Republic Act No. 3019) and SB-12-CRM-0139 (for malversation)	Hold-Out Promissory Note with Hold-Out Agreement dated June 9, 1994 for the amount of PHP 260,000.00	Arcelo signed as Assignor; Borromeo signed as Assignee's representative; and Duavit-Santiago signed as witness
	Letter to RCBC Salcedo Branch, Legaspi Village, Makati, to effect transfer of the amount of PHP	Duavit-Santiago signed as authorized signatory; and Borromeo signed as authorized signatory

³¹ *Id.* at 44-47.

	260,000.00 from current account of FAPE 1003 to savings account of Arcelo	
SB-12-CRM-0140 (for violation of Section 3[e] of Republic Act No. 3019) and SB-12-CRM-0141 (for malversation)	Memorandum dated October 21, 1994 for Atty. Jose D. Baltazar, Finance Chairperson, PEAC, presenting for confirmation the loan to Arcelo in the amount of PHP 480,000.00	Duavit-Santiago was the signatory
	Check Voucher No. 1156 dated October 25, 1994 for the amount of PHP 480,000.00	Duavit-Santiago signed under "Approved by:"; and Arcelo signed under "Received by:"
	RCBC Check No. 134302 dated October 25, 1994 in the amount of PHP 480,000.00	Duavit-Santiago signed as authorized signatory of FAPE; and Arcelo signed as payee/endorser (dorsal side)
SB-12-CRM-0142 (for violation of Section 3[e] of Republic Act No. 3019) and SB-12-CRM-0143 (for malversation)	Check Voucher No. 1247 dated January 30, 1995 for the amount of PHP 117,500.00	Duavit-Santiago signed under "Approved by:"; and Arcelo signed under "Received by:"
	RCBC Check No. 134395 dated January 30, 1995 in the amount of PHP 117,500.00 payable to Arcelo	Duavit-Santiago signed as authorized signatory of FAPE; and Arcelo signed as authorized signatory of FAPE and as payee/endorser (dorsal side)
SB-12-CRM-0144 (for violation of Section 3[h] of Republic Act No. 3019) and SB-12-CRM-0145 (for violation of Section 3[e] of Republic Act No. 3019)	Check Voucher No. 2423 dated February 10, 1997 for the amount of PHP 10,000,000.00 as Advances of JBLCF re: securitization	Arcelo signed under "Received by:"
	RCBC Check No. 0000482197 dated February 10, 1997 in the amount of PHP 10,000,000.00 payable to JBLCF	Arcelo signed as authorized signatory of FAPE
	Check Voucher No. 2516 dated April 10, 1997 for the amount of PHP 500,000.00 as withdrawal of JBLCF as per request (part of JBLCF securitization)	Arcelo signed under "Received by:"
	RCBC Check No. 0000482290 dated April 10,	Arcelo signed as authorized signatory of FAPE

	1997 in the amount of PHP 500,000.00 payable to JBLCF	
	Check Voucher No. 2517 dated April 14, 1997 for the amount of PHP 10,000,000.00 as withdrawal of JBLCF (part of securitization)	Arcelo signed under "Received by:"
	RCBC Check No. 0000482291 dated April 14, 1997 in the amount of PHP 10,000,000.00 payable to JBLCF	Arcelo signed as authorized signatory of FAPE
	Check Voucher No. 2754 dated September 5, 1997 for the amount of PHP 500,000.00 as "Underwriting fee of ECC re JBLCF Securitization" ³²	
	Far East Bank Check No. 0001328007 dated April 14, 1997 in the amount of PHP 10,000,000.00 payable to JBLCF	Arcelo signed as authorized signatory of FAPE ³³

Upon arraignment, Arcelo et al. pleaded not guilty to the respective Informations filed against them.³⁴

They asserted that the source of the personal loans of Arcelo, FAPE Account 1003, is a private fund. However, the Sandiganbayan ruled that FAPE funds are public funds³⁵ and in all Informations relating to violation of Section 3(e) of Republic Act No. 3019, the participation of Arcelo was indubitable. He was not only the recipient of various amounts released out of FAPE funds as his personal loans, but he also benefited from it. Thus, he should be found guilty of all counts of violation of Section 3(e) of Republic Act No. 3019.³⁶

As to Borromeo, the Sandiganbayan ruled that the prosecution successfully established his participation in the transactions relating to the personal loans of Arcelo in SB Criminal Case Nos. 12-CRM-0134, 12-CRM-0136, and 12-CRM-0138. Funds could not have been released in favor of Arcelo without Borromeo's signature on the documents.³⁷

³² *Id.* at 305.

³³ *Id.* at 44-47.

³⁴ *Id.* at 23.

³⁵ *Id.* at 40.

³⁶ *Id.* at 53.

³⁷ *Id.* at 54.

As to Duavit-Santiago, the Sandiganbayan ruled that the personal loans of Arcelo with FAPE would not have been granted without her favorable recommendation. However, she could not have participated in the loans granted to JBLCF (subject of SB Criminal Case Nos. SB-12-CRM-0144 and SB-12-CRM-0145) because the prosecution failed to present evidence that she was still employed with FAPE when the loan transactions for JBLCF occurred. In sum, Duavit-Santiago was found guilty of all counts of violation of Section 3(e) of Republic Act No. 3019, except in SB Criminal Case No. SB-12-CRM-0145.³⁸

Arcelo was held liable for all counts of malversation.³⁹ On the other hand, Borromeo and Duavit-Santiago were held liable as follows:

1. In SB Criminal Case Nos. SB-12-CRM-0137 and SB-12-CRM-0139, Borromeo was held liable for signing Hold-Out Promissory Notes with Hold-Out Agreements as assignee or representative of FAPE, and for signing the Authorizations to Transfer From Savings to Current Account or vice-versa to the savings account of Arcelo. On the other hand, Duavit-Santiago was held liable for signing the said authorizations.⁴⁰
2. In SB Criminal Case No. SB-12-CRM-0135, Borromeo was held liable for signing RCBC Check No. 069324 as an authorized signatory of FAPE, while Duavit-Santiago was held liable for approving Check Voucher No. 0982 and for signing RCBC Check No. 069324 as authorized signatory of FAPE.⁴¹
3. In SB Criminal Case No. SB-12-CRM-0141, Duavit-Santiago was held liable for signing the Memorandum for Atty. Baltazar and approving Check Voucher No. 1156 and RCBC Check No. 134302.⁴²
4. In SB Criminal Case No. SB-12-CRM-0143, Duavit-Santiago was held liable for approving Check Voucher No. 1247 and RCBC Check No. 134395 payable to Arcelo.⁴³

The dispositive portion of the January 26, 2017 Decision⁴⁴ of the Sandiganbayan reads:

WHEREFORE, the Court renders judgment:

1. In Criminal Case No. SB-12-CRM-0134, finding Accused ADRIANO A. ARCELO and ROBERTO BORROMEO,

³⁸ *Id.* at 53-54.

³⁹ *Id.* at 56-58.

⁴⁰ *Id.* at 61.

⁴¹ *Id.*

⁴² *Id.* at 60.

⁴³ *Id.*

⁴⁴ *Id.* at 11-67.

GUILTY beyond reasonable doubt of Violation of [Section] 3(e) of [Republic Act No.] 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, sentencing them to suffer indeterminate sentence of imprisonment for a period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office, and **ACQUITTING** Accused ROSA ANNA DUAVIT-SANTIAGO and CORAZON NERA due to insufficiency of evidence;

2. In Criminal Case No. SB-12-CRM-0135, finding Accused ADRIANO A. ARCELO, ROBERTO BORRAMEO and ROSA ANNA DUAVIT-SANTIAGO, **GUILTY** beyond reasonable doubt of Malversation, sentencing them to suffer the indeterminate penalty of imprisonment for [10 years] and [one day] of prison mayor as minimum to [18 years, eight months,] and [one day] of reclusion temporal as maximum, perpetual special disqualification and to pay a fine of [PHP] 1,269,000.00 and **ACQUITTING** Accused CORAZON NERA due to insufficiency of evidence;
3. In Criminal Case No. SB-12-CRM-0136, finding Accused ADRIANO A. ARCELO, ROBERTO BORRAMEO and ROSA ANNA DUAVIT-SANTIAGO, **GUILTY** beyond reasonable doubt of Violation of [Section] 3(e) of [Republic Act No.] 3019, sentencing them to suffer the indeterminate sentence of imprisonment for a period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office, and **ACQUITTING** Accused CORAZON NERA due to insufficiency of evidence;
4. In Criminal Case No. SB-12-CRM-0137, finding Accused ADRIANO A. ARCELO, ROBERTO BORRAMEO and ROSA ANNA DUAVIT-SANTIAGO, **GUILTY** beyond reasonable doubt of Malversation, sentencing them to suffer the indeterminate penalty of imprisonment for [10 years] and [one day] of prison mayor as minimum to [18 years, eight months,] and [one day] of reclusion temporal as maximum, perpetual special disqualification and to pay a fine of [PHP] 4,428,000.00 and **ACQUITTING** Accused CORAZON NERA due to insufficiency of evidence;
5. In Criminal Case No. SB-12-CRM-0138, finding Accused ADRIANO A. ARCELO, ROBERTO BORRAMEO and ROSA ANNA DUAVIT-SANTIAGO, **GUILTY** beyond reasonable doubt of Violation of [Section] 3(e) of [Republic Act No.] 3019, sentencing them to suffer the indeterminate sentence of imprisonment for a period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office, and **ACQUITTING** Accused CORAZON NERA due to insufficiency of evidence;
6. In Criminal Case No. SB-12-CRM-0139, finding Accused ADRIANO A. ARCELO, ROBERTO BORRAMEO and ROSA

ANNA DUAVIT-SANTIAGO, **GUILTY** beyond reasonable doubt of Malversation, sentencing them to suffer the indeterminate penalty of imprisonment for [10 years] and [one day] of prision mayor as minimum to [18 years, eight months,] and [one day] of reclusion temporal as maximum, perpetual special disqualification and to pay the fine of [PHP] 260,000.00 and **ACQUITTING** Accused CORAZON NERA due to insufficiency of evidence;

7. In Criminal Case No. SB-12-CRM-0140, finding Accused ADRIANO A. ARCELO, ROSA ANNA DUAVIT-SANTIAGO and CORAZON NERA, **GUILTY** beyond reasonable doubt of Violation of [Section] 3(e) of [Republic Act No.] 3019, sentencing them to suffer an indeterminate sentence of imprisonment for a period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office, and **ACQUITTING** Accused ROBERTO BORROMEO due to insufficiency of evidence;
8. In Criminal Case No. SB-12-CRM-0141, finding Accused ADRIANO A. ARCELO, ROSA ANNA DUAVIT-SANTIAGO and CORAZON NERA, **GUILTY** beyond reasonable doubt of Malversation, sentencing them to suffer the indeterminate penalty of imprisonment for [10 years] and [one day] of prision mayor as minimum to [18 years, eight months,] and [one day] of reclusion temporal as maximum, perpetual special disqualification and to pay the fine of [PHP] 480,000.00 and **ACQUITTING** Accused ROBERTO BORROMEO due to insufficiency of evidence;
9. In Criminal Case No. SB-12-CRM-0142, finding Accused ADRIANO A. ARCELO and ROSA ANNA DUAVIT-SANTIAGO **GUILTY** beyond reasonable doubt of Violation of [Section] 3(e) of [Republic Act No.] 3019, sentencing them to suffer the indeterminate sentence of imprisonment for a period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office, and **ACQUITTING** Accused ROBERTO BORROMEO and CORAZON NERA due to insufficiency of evidence;
10. In Criminal Case No. SB-12-CRM-0143, finding Accused ADRIANO A. ARCELO and ROSA ANNA DUAVIT-SANTIAGO, **GUILTY** beyond reasonable doubt of Malversation, sentencing them to suffer the indeterminate penalty of imprisonment for [10 years] and [one day] of prision mayor as minimum to [18 years, eight months,] and [one day] of reclusion temporal as maximum, perpetual special disqualification and to pay the fine of [PHP] 117,500.00 and **ACQUITTING** Accused ROBERTO BORROMEO and CORAZON NERA due to insufficiency of evidence;
11. In Criminal Case No. SB-12-CRM-0144, finding Accused ADRIANO A. ARCELO **GUILTY** beyond reasonable doubt of Violation of [Section] 3(h) of [Republic Act No.] 3019, sentencing him to suffer an indeterminate sentence of imprisonment for a

period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office; and

12. In Criminal Case No. SB-12-CRM-0145, finding Accused ADRIANO A. ARCELO **GUILTY** beyond reasonable doubt of Violation of [Section] 3(e) of [Republic Act No.] 3019, sentencing him to suffer an indeterminate sentence of imprisonment for a period of [six years] and [one month] as minimum to [10 years] as maximum, with perpetual disqualification from holding any public office, and **ACQUITTING** Accused ROSA ANNA DUAVIT-SANTIAGO, ROBERTO BORROMEO and CORAZON NERA due to insufficiency of evidence.

Since the Court did not acquire jurisdiction over the person of accused CIPRIANO GARCIA in Criminal Case Nos. SB-12-CRM-0140 and SB-12-CRM-0145, let the cases against him be, in the meantime, archived, the same to be revived upon his arrest. Let an alias warrant of arrest be issued then against accused CIPRIANO GARCIA.

SO ORDERED.⁴⁵ (Emphasis in the original)

Arcelo et al. filed their respective Motions for Reconsideration.⁴⁶ In a Resolution⁴⁷ dated December 7, 2017, the Sandiganbayan ruled that there was no cogent reason to reverse and set aside the conviction of Arcelo et al. It reiterated that FAPE funds are public funds. The loans were the benefit or gain received by Arcelo, made possible by the manifest partiality and/or gross inexcusable negligence of Borromeo and Duavit-Santiago. However, Nera was eventually acquitted by the Sandiganbayan for lack of evidence that her role in Arcelo's personal loans involved the exercise of discretion. The dispositive portion of the December 7, 2017 Resolution provides:

WHEREFORE, in light of all the foregoing, the Court hereby resolves to **DENY** the separate motions for reconsideration of Adriano A. Arcelo, Roberto Borromeo, and Rosa Anna Duavit-Santiago, but **GRANTS** the motion for reconsideration of accused Corazon Nera. Thus, accused Nera is hereby **ACQUITTED** of the charges against her.

As the act or omission from which civil liability might arise did not exist, no civil liability is imposed against Nera.

The hold departure order issued against Nera by reason of these cases are hereby ordered **LIFTED** and **SET ASIDE**, and the bond she posted for her temporary liberty is **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.⁴⁸ (Emphasis in the original)

⁴⁵ *Id.* at 63–66.

⁴⁶ *Rollo* (G.R. No. 235870), pp. 68–85; *rollo* (G.R. No. 235877), pp. 730–751; *rollo* (G.R. Nos. 235922–27), pp. 593–621.

⁴⁷ *Rollo* (G.R. No. 235877), pp. 68–84.

⁴⁸ *Id.* at 73.

In his Dissenting and Concurring Opinion, Sandiganbayan Associate Justice Reynaldo P. Cruz (Justice Cruz)⁴⁹ concurred with the decision to acquit Nera and consider FAPE Account 1003 as a public fund. However, he opined that the prosecution failed to establish that Duavit-Santiago, Borromeo, and Nera acted with manifest partiality in approving Arcelo's applications for personal loans, viz:

I concur with Honorable Justice Efren N. Dela Cruz's *ponencia* on the acquittal of accused Corazon Nera (hereinafter, "Nera") and the denial of accused Adriano A. Arcelo's (Arcelo) *Motion for Reconsideration*.

....

I still maintain the ruling of the Court in the assailed Decision that FAPE Account 1003 is a public fund and that the [FAPE] created by virtue of Executive Order No. 156, s. 1968, as amended, is a government-owned educational foundation. . . .

....

Taking a second look at the evidence at hand in the light of the foregoing definition of "manifest partiality," I now find that Duavit-Santiago, Borromeo and Nera's act of processing, approving and releasing Arcelo's loans out of FAPE Account 1003 and signing on documents pertaining thereto do not convincingly show "manifest partiality" on their part. No evidence was presented that unmistakably indicated that Duavit-Santiago, Borromeo and Nera displayed "clear, notorious, or plain inclination or predilection to favor one side or one person rather than another." Carefully going over the records anew, I did not find any evidence of any other individual who applied for personal loan out of FAPE Account 1003 aside from Arcelo. The prosecution did not present convincing evidence of the existence of such application from another individual which was denied approval by the accused. At most, Duavit-Santiago's testimony quoted in the *Decision* reveals that she did not know of any instance in which FAPE extended personal loan to other borrowers. This statement, however, does not mean that there was a previous application submitted by an individual for his/her personal loan that was later disapproved by FAPE. On this point, the prosecution should have presented evidence that another person's application for personal loan was rejected or disapproved by FAPE, to show that Arcelo was clearly favored over other applicants for personal loans. Existence of the element of "manifest partiality" should not be left to conjectures or probabilities, but on hard facts duly established.⁵⁰ (Emphasis in the original)

On the other hand, Sandiganbayan Associate Justice Michael Frederick L. Musngi opined in his Dissenting Opinion⁵¹ that:

As clarified by the [Department of Justice] in the foregoing opinion, there was no definite and legally-recognized act from the State which could have made FAPE a public entity. Hence, the only possible conclusion is that FAPE is neither an instrumentality of the State nor a [government-owned

⁴⁹ *Id.* at 75-84.

⁵⁰ *Id.* at 75-79.

⁵¹ *Id.* at 85-89.

or -controlled corporation (GOCC)], notwithstanding its declared purposes and method of creation.

At any rate, the accused were in good faith when they committed the acts imputed against them. Evidently, the status of FAPE as public or private entity is concededly a difficult question of law, which entitles the accused to their defense of good faith. . . .

. . . .

Again, considering the difficult question of law involved in the case at bar, the accused cannot be made criminally liable for their individual acts because they believed in good faith that FAPE is a private entity.

Therefore, after circumspect review, it appears that accused Duavit-Santiago's participation in the alleged acts have not been established beyond reasonable doubt. The said accused has maintained fidelity to her duties. As borne by the testimonial and documentary evidence, the acts complained of cover periods when she was no longer employed and/or connected with FAPE.

The burden of proving the guilt of the accused beyond reasonable doubt rests on the prosecution. In this case, the prosecution failed to discharge the same because it was not able to hurdle the quantum of proof necessary to establish that FAPE is a public entity. Hence, I find reasonable doubt.⁵²

Hence, the present consolidated Petitions raising the issue of whether the guilt of Arcelo et al. has been proven beyond reasonable doubt.

Arcelo et al. maintain that FAPE is not under the control or supervision of the government or any government agency. It is controlled and supervised by the PEAC, which in turn is controlled by the private sector. In addition, FAPE Account 1003 is not a public fund. It is a commingled account of the Investment Unit similar to that of a mutual fund that is private in nature, separate and distinct from the original FAPE Fund or its earnings. It is a separate and distinct enterprise whose existence neither depends upon nor impairs the original FAPE Fund.⁵³

After a careful study of applicable laws and taking into consideration the history of FAPE, this Court finds that FAPE is a government instrumentality.

Section 2(10) of the Introductory Provisions of the Administrative Code⁵⁴ defines a government "instrumentality" as follows:

⁵² *Id.* at 86-88.

⁵³ *Rollo* (G.R. No. 235870), p. 26; *rollo* (G.R. No. 235877), pp. 110; *rollo* (G.R. Nos. 235922-27), pp. 32-33.

⁵⁴ Executive Order No. 292 (1987), Administrative Code of 1987.

Section 2. General Terms Defined. - Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

....

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

Clearly, FAPE has its own set of officers and exercises corporate powers. Through PEAC, it administers a special fund and enjoys operational autonomy. These functions emanate from Executive Order No. 156, series of 1968, as amended, which is its charter that guides their day-to-day operations.

The true criterion to determine whether a corporation is public or private is the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private.⁵⁵

To further determine the nature of the functions of FAPE, a closer look at Executive Order No. 156, series of 1968,⁵⁶ as amended, is in order:

SECTION 2. Purpose of the Fund. The Fund shall be established for the purpose of financing programs of assistance to private education utilizing only the earnings thereof, whether in the form of interests, dividends or capital gains, through grants and/or loans for faculty training and development in the forms of scholarships, research grants, faculty incentives, inter-institutional cooperative projects; and other programs of benefit to private education, but excluding any support of religious worship or instruction.⁵⁷ (Emphasis in the original)

Based on the foregoing, the function of FAPE is to finance programs of assistance to private education. This assistance can be in the form of grants and loans. This function is consistent with public purpose geared towards the promotion of private education. Moreover, FAPE is maintained by the government through PEAC.

Section 3 of Executive Order No. 156,⁵⁸ provides the composition of PEAC; thus:

⁵⁵ *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*, 560 Phil. 385, 408 (2007) [Per J. Austria-Martinez, *En Banc*].

⁵⁶ *Rollo* (G.R. No. 235877), pp. 322-330.

⁵⁷ *Id.* at 323.

⁵⁸ *Id.* at 331-333.

SECTION 3. Composition of Private Education Assistance Committee. A committee which will serve as the trustee of the Fund and in the capacity shall administer, manage and supervise the operations of the Fund, which shall be known as the "Private Education Assistance Committee" (hereinafter called the "Trustee"), is hereby created and shall be composed of:

- a) The Secretary of Education or [a] representative, as [Chairperson];
- b) A representative from the National Economic Development Authority, as member;
- c) A representative of the Catholic Educational Association of the Philippines, as member;
- d) A representative of the Association of Christian Schools and Colleges, as member; and
- e) A representative of the Philippine Association of Colleges and Universities, as member.

The members of this committee shall serve without compensation.⁵⁹
(Emphasis in the original)

Likewise, Executive Order No. 156 provides the relationship of FAPE and PEAC with the government:

SECTION 11. Cooperation with Trustee. The trustee may call upon any department, bureau, office, agency or instrumentality of the Government of the Republic of the Philippines, including government-owned or controlled corporations, for such assistance as it may desire and need in the pursuit of the purposes and objectives of the trust fund and the discharge of its function and responsibilities.

SECTION 12. Meeting and Annual Report. The Trustee shall meet at such time as may be determined by the [Chairperson] and shall render to the President of the Philippines an annual report of its activities. A copy of the annual report shall be furnished the Government of the United States of America, as provided in the aforementioned "Project Agreement" and "Exchange of Notes."⁶⁰ (Emphasis in the original)

With these, it is apparent that a semblance of government control over FAPE is present. PEAC is composed of the Secretary of Department of Education or a representative acting as its chairperson, while a representative from NEDA acts as a member. Further, Executive Order No. 156 gives PEAC the power to ask for assistance from any department, bureau, office, agency, or instrumentality of the Government of the Republic of the Philippines. PEAC shall also render its annual report to the President of the Philippines.⁶¹

⁵⁹ *Id.* at 332.

⁶⁰ *Id.* at 330.

⁶¹ *Id.*

Ascertaining whether FAPE is a government entity or a private institution is not as simple as comparing it to a bank, a private school, or a university as a private corporation rendering public service. *First*, FAPE was constituted through an Executive Order and intended to be administered, managed, and supervised with the concurrence of the Secretary of Education as Chairperson of PEAC. It bears stressing that before its amendment, Section 10 of Executive Order No. 156 states:

SECTION 10. Concurrence of the [Chairperson]. Decisions of the Trustee shall be made with the concurrence of the [Chairperson]. The Trustee shall, when necessary, consult with the Philippine Manpower Development Council.⁶² (Emphasis in the original)

It was only later, after the amendment of Executive Order No. 156 that decisions of PEAC “shall be made by majority of all its members,” which include private associations.⁶³ Section 4 of Executive Order No. 150, series of 1994, provides:

SECTION 4. *Substitution of the Provisions of Section 10.* – The provisions of Section 10 thereof is hereby amended to read as follows:

“SECTION 10. **Decision by Majority Vote.** A decision of the Trustee shall be made by majority of all its members.”⁶⁴ (Emphasis in the original)

But does this mean that FAPE has been converted to a private entity since government control was reduced by the said amendment? Not quite.

The case of *Boy Scouts of the Philippines v. Commission on Audit*⁶⁵ (BSP case) is instructive. Thus:

Therefore, even though the amended [Boy Scouts of the Philippines (BSP)] charter did away with most of the governmental presence in the BSP Board, this was done to more strongly promote the BSP’s objectives, which were not supported under Presidential Decree No. 460. The BSP objectives, as pointed out earlier, are consistent with the **public purpose** of the promotion of the well-being of the youth, the future leaders of the country. The amendments were **not** done with the view of changing the character of the BSP into a privatized corporation. The BSP remains an agency attached to a department of the government, the [Department of Education], and it was not at all stripped of its public character.⁶⁶ (Emphasis in the original)

Second, the creation of FAPE is evidently for a public purpose, that is, to finance programs of assistance to private education that are imbued with public interest.⁶⁷

⁶² *Id.* at 329.

⁶³ Executive Order No. 150 (1994), sec. 4.

⁶⁴ *Rollo* (G.R. No. 235877), p. 333.

⁶⁵ 666 Phil. 140, 184–185 (2011) [Per J. Leonardo-De Castro, *En Banc*].

⁶⁶ *Id.*

⁶⁷ Executive Order No. 156 (1968), sec. 1.

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Third, the nature of FAPE as a fund is public. Looking back, the USD 6,154,000.00 was given by the United States Government as a fund for assistance to private education to the Philippine Government.⁶⁸ Such fund, which was received and placed under the official custody of the Philippine Government, is obviously a public fund.

In the BSP case, the Court ruled that an entity created by law and for a public purpose, regardless of the amount of governmental control or ownership, is regarded as an instrumentality of the government:

....

Evidently, the BSP, which was created by a special law to serve a public purpose in pursuit of a constitutional mandate, comes within the class of “public corporations” defined by paragraph 2, Article 44 of the Civil Code and governed by the law which creates it, pursuant to Article 45 of the same Code.

....

The BSP is a public corporation or a government agency or instrumentality with juridical personality, which does not fall within the constitutional prohibition in Article XII, Section 16, notwithstanding the amendments to its charter. Not all corporations, which are **not** government-owned-controlled, are *ipso facto* to be considered private corporations as there exists another distinct class of corporations or chartered institutions which are otherwise known as “public corporations.” These corporations are treated by law as agencies or instrumentalities of the government which are not subject to the tests of ownership or control and economic viability but to different criteria relating to their public purposes/interests or constitutional policies and objectives and their administrative relationship to the government or any of its Departments or Offices.⁷⁰ (Emphasis in the original)

Applying the discussions above, it can be concluded that FAPE is a government instrumentality. Hence, its officials are public officers who are under the jurisdiction of the Sandiganbayan. According to Republic Act No. 3019⁷¹ the term “public officer” includes “elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government.”⁷²

This Court agrees with the ruling of the Sandiganbayan that since FAPE is a government instrumentality and its officials are public officers, the latter are bound by Book V, Title I, Subtitle B, Section 42 of the Administrative Code of 1987 that states:

⁶⁸ Executive Order No. 156 (1968), First Whereas Clause.

⁷⁰ *Boy Scouts of the Philippines v. Commission on Audit*, 666 Phil. 140, 170, 173 (2011) [Per J. Leonardo-De Castro, *En Banc*].

⁷¹ Republic Act No. 3019 (1960), Anti-Graft and Corrupt Practices Act.

⁷² Republic Act No. 3019 (1960), sec 2(b).

Section 42. Accounting for Money and Property Received by Public Officials. - Except as may otherwise be specifically provided by law or competent authority, all moneys and property officially received by a public officer in any capacity or upon any occasion must be accounted for as government funds and government property. Government property shall be taken up in the books of the agency concerned at acquisition cost or an appraised value.

Arcelo et al. argue that FAPE Account 1003 where the loan investments were taken from consists of external and private funds. These are placements, investments, and contributions of different private institutions to leverage existing market opportunities at the time for the benefit of these private institutions. It is separate and distinct from the original FAPE Fund or its earnings.⁷³

The argument lacks merit.

The Sandiganbayan is correct in ruling that the commingled funds from investments of private educational institutions, the moment they are received by FAPE officers, are considered as government funds. Funds coming from private sources become impressed with the characteristics of public funds when they are under official custody.⁷⁴

In *Fernando v. Commission on Audit*,⁷⁵ the Court held that funds from private sources do not convert the same to private funds:

The Executive Committee has two sources of funds:

1. The donations from the local government units comprising the Metropolitan Manila covering the period of holding the [Metro Manila Film Festival (MMFF)] from December 25 to January 3; and
2. The non-tax revenues that come in the form of donations from private entities.

As a committee under [Metropolitan Manila Development Authority (MMDA)], a public office, this Court finds that both sources of funds can properly be subject of [Commission on Audit (COA)]'s audit jurisdiction.

That the Executive Committee of the MMFF administers funds from the government is apparent in the following portion of Proclamation No. 1459:

The Executive Committee is authorized to engage in fund raising campaign among all sectors of society including the local governments concerned which may donate their amusement tax shares to the MOWELFUND during the period of the celebration to make it a success. . . .

⁷³ Rollo (G.R. No. 235870), p. 26; rollo (G.R. No. 235877), p. 110; rollo (G.R. Nos. 235922–27), pp. 32–33.

⁷⁴ *Land Bank of the Philippines v. Cacayuran*, 709 Phil. 819, 828 (2013) [Per J. Perlas-Bernabe, Second Division].

⁷⁵ 844 Phil. 664, 693–695 (2018) [Per J. Tijam, *En Banc*].

Verily, if non-governmental entities may be audited by the COA as long as its funds are partly coming from the government, with more reason should this principle apply to the Executive Committee.

As to the committee's funds coming from non-tax revenues, the fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, which is the management of the MMFF. In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.*, reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*:

Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In Cocofed v. PCGG, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship . . . with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly. The Court continued:" . . . It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability.

In *The Veterans Federation of the Phils. represented by Esmeraldo R. Acordo v. Hon. Reyes*, this Court also declared as public funds contributions from affiliate organizations of the [Veterans Federation of the Philippines (VFP)]:

. . . In the case at bar, some of the funds were raised by even more special means, as the contributions from affiliate organizations of the VFP can hardly be regarded as enforced contributions as to be considered taxes. They are more in the nature of donations which have always been recognized as a source of public funding.

Furthermore, despite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and COA rules and regulations. Thus, upon donation to the government, the funds became public in character.⁷⁶ (Emphasis in the original, citations omitted)

Applying this to the present case, it is settled that the United States Government's grant that created FAPE is a public fund. On the other hand, although FAPE Account 1003 allegedly came from private funds by way of

⁷⁶ *Id.*

investments, it is still viewed in the context of public purpose. Moreover, the fact that these investments are being handled by public officers makes the said fund public in nature. The Court agrees with the following pronouncement made by the Sandiganbayan in its Decision:

Notwithstanding the fact that FAPE Account 1003 comes from external sources, i.e., investments of private educational institutions, the accused, as officers of FAPE, still have the obligation to see to it that said funds are invested in a prudent and judicious manner and always for the purpose of advancing the interests of private education.⁷⁷

The circumstance that FAPE Account 1003 is a fund representing the investments and contributions of different private educational entities that were commingled together does not affect its nature as a public fund. To reiterate, the officials of FAPE are public officers who were given custody of funds from private sources. As custodians of the fund, the nature of their functions changed the nature of the funds as public in character. Moreover, the fact that funding came from private origin does not give public officers the unbridled discretion on how to handle such fund. FAPE, as a government instrumentality, has control over FAPE Account 1003, which makes it a public fund that should be properly utilized for public purposes.

On the matter of the alleged conspiracy among Arcelo et al., this Court agrees with the Sandiganbayan that the allegation of conspiracy imputed against them has to be proven beyond reasonable doubt.

In *Bahilidad v. People*,⁷⁸ this Court summarized the basic principles in determining whether conspiracy exists:

There is conspiracy “when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of

⁷⁷ *Rollo* (G.R. No. 235877), p. 40.

⁷⁸ 629 Phil. 567, 575 (2010) [Per J. Nachura, Third Division]. (Citations omitted)

it, without any active participation in the same, is not enough for purposes of conviction.⁷⁹

In the present case, there appears to be reasonable doubt on the existence of conspiracy among Arcelo et al. Their respective participations in the processing of the subject loans do not *ipso facto* show that they intentionally participated in the transaction with a view to further their common criminal design and purpose. Their liabilities should therefore be separate and individual. Thus, we proceed to discuss their individual liabilities.

VIOLATION OF SECTION 3, REPUBLIC ACT NO. 3019

Liability of Adriano A. Arcelo

In SB Criminal Case Nos. SB-12-CRM-0134, SB-12-CRM-0136, SB-12-CRM-0138, SB-12-CRM-0140, SB-12-CRM-0142, and SB-12-CRM-0145, Arcelo was convicted of violation of Section 3(e) of Republic Act No. 3019, which specifically 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:

....

(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.

The elements of the offense are: (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.⁸⁰

As to the *first element*, it is settled that FAPE is a government instrumentality. Arcelo, being the President of FAPE at the time of the questioned loan transactions, was a public officer.

As to the *second element*, Arcelo, as President of FAPE, was discharging official functions at the time the loans were granted to him. As an official of FAPE, he was tasked with the management of the FAPE funds.

⁷⁹ *Id.* at 575.

⁸⁰ *Sabalдан v. Ombudsman for Mindanao*, 874 Phil. 144, 152 (2020) [Per J. J. Reyes, Jr., First Division].

As to the *third element*, Arcelo acted with manifest partiality, evident bad faith, or gross inexcusable negligence.

The offense under Section 3(e) may be committed in three ways. There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Partiality” is synonymous with “bias,” which “excites a disposition to see and report matters as they are wished for rather than as they are.”⁸¹ Evident bad faith, on the other hand, pertains to bad judgment as well as palpably and patently fraudulent and dishonest purposes to do moral obliquity or conscious wrongdoing for some perverse or ill will. Gross inexcusable negligence is that 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.⁸²

It is clear that the acts of Arcelo in applying for personal loans and receiving the proceeds from FAPE funds, knowing the same to be public funds to be used for assistance to private education and related matters and without the approval of the PEAC, show his evident bad faith. In addition, as FAPE President, Arcelo personally intervened and facilitated the release of FAPE funds despite the lack of authorization and approval from PEAC by executing a loan agreement amounting to PHP 50 million in favor of JBLCF, a foundation that was chaired by his wife, Lacson-Arcelo. Evidence also shows that at the time of the execution of the loan, Arcelo was a member of the Board of Directors of JBLCF. On this alone, it is clear that there was conflict of interest. There is no question that Arcelo acted with evident bad faith in procuring the personal loans for himself and the loan granted in favor of JBLCF that benefited his family, particularly his wife.

As to the *fourth element*, Arcelo caused undue injury to the Government and, through his position as a public officer, gave himself and his wife unwarranted benefits, advantage, or preference.

To hold a person liable for violation of Section 3(e) of Republic Act No. 3019, it is required that the act constituting the offense consists of either (1) causing undue injury to any party, including the Government; or (2) giving any private party any unwarranted benefit, advantage, or preference in the discharge of official, administrative, or judicial functions.⁸³ We agree with the Sandiganbayan that Arcelo may be held liable under either mode or both.

The word “unwarranted” means lacking adequate or official support, unjustified, unauthorized or without justification, or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit, or gain of any kind; or benefit from some course of action.

⁸¹ *Id.* at 153.

⁸² *Id.*

⁸³ *Villarosa v. People*, 875 Phil. 270, 304–305 (2020) [Per C.J. Peralta, *En Banc*].

“Preference” signifies priority or higher evaluation or desirability, choice or estimation above another.⁸⁴

As to the first mode, FAPE funds are public funds intended for the advancement of private education. Instead of being used for education-related programs or activities, the FAPE funds were used for a personal loan in favor of Arcelo who, as FAPE President, was tasked to ensure that the funds were managed prudently and judiciously. As regards the second mode, Arcelo gained for himself unwarranted benefits, advantages, and preferences when his personal loans were approved and released without the approval of a majority of PEAC members and despite said loans not being related to any education-related program. Moreover, Arcelo extended unwarranted benefits to JBLCF when the PHP 50 million loan was granted to it, with his wife as the chairperson of JBLCF.

Considering that all the foregoing elements are present, Arcelo is guilty of violation of Section 3(e) of Republic Act No. 3019. The ruling of the Sandiganbayan finding Arcelo guilty in SB Criminal Case Nos. SB-12-CRM-0134, SB-12-CRM-0136, SB-12-CRM-0138, SB-12-CRM-0140, SB-12-CRM-0142, and SB-12-CRM-0145 is affirmed.

In SB Criminal Case Nos. SB-12-CRM-0144, Arcelo was convicted of violation of Section 3(h) of Republic Act No. 3019, which provides:

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The essential elements of the crime of violation of Section 3(h) of Republic Act No. 3019 are as follows:

1. The accused is a public officer;
2. [The public officer] has a direct or indirect financial or pecuniary interest in any business, contract, or transaction;
3. [The public officer] either:
 - a. intervenes or takes part in [an] official capacity in connection with such interest; or
 - b. is prohibited from having such interest by the Constitution or by any law.⁸⁵

Regarding the *first element*, it is settled that FAPE is a government instrumentality and Arcelo was a public officer.

⁸⁴ *Id.* at 305.

⁸⁵ *Teves v. Sandiganbayan*, 488 Phil. 311, 326 (2004) [Per C.J. Davide, Jr., *En Banc*].

Regarding the *second element*, this Court agrees with the pronouncement of the Sandiganbayan that Arcelo had a financial or pecuniary interest in the loan agreement between FAPE and JBLCF. His wife, Lacson-Arcelo, was the chairperson and authorized signatory of JBLCF at the time of the execution of such agreement. It is also clear that at the time of the execution of the loan agreement Arcelo was a member of the Board of Directors of JBLCF, which issued a resolution authorizing certain officials of JBLCF to enter into, execute, deliver, and sign all documents relating to the loan application of JBLCF with FAPE as part of its Securitization Program. Among the signatories of this Board Resolution was Arcelo himself.⁸⁶

Regarding the *third element*, Arcelo intervened and took part in an official capacity in connection with the loan granted by FAPE to JBLFC. He actively participated in the release of this loan, and records show that he personally received some of the loan proceeds. Arcelo's participation in these transactions is summarized as follows: (1) in Check Voucher No. 2423 dated February 10, 1997 for the amount of PHP 10 million as advances of JBLCF re: Securitization, Arcelo signed under "received by"; and (2) in RCBC Check No. 0000482197 dated February 10, 1997 in the amount of PHP 10 million payable to JBLCF, Arcelo signed as the authorized signatory of FAPE.⁸⁷

Indubitably, Arcelo's active involvement in the loan transaction between FAPE and JBLFC cannot be denied. The mere fact that he was the President of FAPE, as well a member of the Board of Directors of JBLFC, are enough proof that Arcelo had financial and pecuniary interest in the loan transaction in favor of JBLFC. Thus, the Sandiganbayan correctly held Arcelo guilty of violating Section 3(h) of Republic Act No. 3019. The ruling in SB Criminal Case Nos. SB-12-CRM-0144 is affirmed.

Liability of Roberto T. Borromeo

In SB Criminal Case Nos. SB-12-CRM-0134, SB-12-CRM-0136, and SB-12-CRM-0138, the Sandiganbayan convicted Borromeo of violation of Section 3(e) of Republic Act No. 3019.

Akin to Arcelo, the presence of the first and second elements of Section 3(e) of Republic Act No. 3019 is undisputed. Since FAPE is a government instrumentality, Borromeo, being a FAPE official, is a public officer. Also, the subject loan transactions were executed in his capacity as FAPE vice-president. For the fourth element, the granting of loans to Arcelo caused undue injury to the Government as it was sourced from FAPE funds which is public in character.

Let us focus on the *third element*.

⁸⁶ *Rollo* (G.R. No. 235877), p. 187.

⁸⁷ *Id.* at 188.

X

The Sandiganbayan ruled that Borromeo is liable for manifest partiality and gross inexcusable negligence in approving and causing the release of personal loans to Arcelo out of FAPE funds.

We reiterate that there is manifest partiality “when there is a clear, notorious[,] or plain inclination or predilection to favor one side or person rather than another.”⁸⁸ It should be remembered that manifest partiality, similar to evident bad faith, is in the nature of *dolo*. Hence, it must be proven that the accused had malicious and deliberate intent to bestow unwarranted partiality.⁸⁹

Gross inexcusable negligence under Section 3(e) of Republic Act No. 3019, a culpable felony, does not require fraudulent intent or ill will. It is 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 willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless persons never fail to take on their own property.⁹⁰

This Court disagrees and adopts the dissenting and concurring opinion of Justice Cruz. There was no manifest partiality on Borromeo’s part in signing the hold-out promissory notes, hold-out agreements, and checks. The FAPE Investment Manual provides:

7. Scope of Authority of Investment Managers

Within the limitations specified in the investment contract, the investment managers of FAPE have the authority to do and perform any or all of the following:

....

7.2 To grant [loans and/or] affect placements in debt or other investment instruments[.]⁹¹

Under the FAPE Investment Manual, it is the investment manager who has the authority to grant loans. It only goes to show that the mere fact of signing the hold-out promissory notes, hold-out agreements, and checks does not mean that the signatories are the ones who granted the loan. In addition, a judicious reading of the subject hold-out promissory note⁹² reveals that it is the security to the personal loan stated therein, while the subject of the hold-out agreement⁹³ is the terms and conditions of the security.

⁸⁸ *Martel v. People*, 895 Phil. 270, 287 (2021) [Per J. Caguioa, *En Banc*].

⁸⁹ *Id.*

⁹⁰ *Roy v. Ombudsman Carpio Morales*, 872 Phil. 267, 275 (2020) [Per J.A. Reyes, Jr., Second Division].

⁹¹ *Rollo* (G.R. No. 235877), p. 650.

⁹² *Id.* at 474.

⁹³ *Id.* at 475.

In the hold-out promissory note, Arcelo was the assignor while Borromeo was the assignee. Arcelo was the obligor and Borromeo was the obligee. By these designations, Borromeo protected the interest of FAPE and his participation should not be construed as an approval of Arcelo's personal loan. The same goes with Borromeo's signature on RCBC Check No. 069324 and Authorization to Transfer From Savings to Current Account or Vice-Versa (Case to Case Basis) involving the amount of PHP 4,428,000.00. His signature only appears on the subject documents because he is one of the authorized signatories and the loan had already been approved prior to his signature.

On the allegation of gross inexcusable neglect, Borromeo is also not liable. Borromeo merely relied on the checking, reviewing, and approval of responsible FAPE personnel following the procedure laid down in the Investment Manual for cash disbursements.

The demand for accountability should not be at the expense of public officials who may have erred while performing their duties without a criminal mind. Our penal laws against corruption in the government are meant to enhance, rather than stifle, public service. If every mistake, error, or oversight is met or even threatened with criminal punishment, then qualified individuals would be hindered from serving the government. To reiterate, while public office is a public trust, the constitutionally-enshrined right to presumption of innocence encompasses all persons—private individuals and public servants alike.⁹⁴

The alleged manifest partiality and gross inexcusable negligence not having been duly proved beyond reasonable doubt by the prosecution, Borromeo should be acquitted of violation of Section 3(e) of Republic Act No. 3019. Hence, the ruling in SB Criminal Case Nos. SB-12-CRM-0134, SB-12-CRM-0136, and SB-12-CRM-0138 as to the liability of Borromeo must be reversed and he must be acquitted.

Liability of Rosa Anna Duavit-Santiago

In SB Criminal Case Nos. SB-12-CRM-0136, SB-12-CRM-0138, SB-12-CRM-0140, and SB-12-CRM-0142, the Sandiganbayan convicted Duavit-Santiago of violation of Section 3(e) of Republic Act No. 3019.

The conclusion on the liability of Borromeo equally applies to Duavit-Santiago. Akin to Borromeo, the presence of the first and second elements of Section 3(e) of Republic Act No. 3019 is undisputed. Taking into consideration that FAPE is a government instrumentality, it follows that being a FAPE official, Duavit-Santiago is a public officer. Also, the subject loan transactions were executed in the discharge of Duavit-Santiago's official function as an investment director. As an official of FAPE, she was likewise tasked with the management of the FAPE funds. It, thus, satisfies the second

⁹⁴ *Soriano v. People*, 922 Phil. 726, 741 (2022) [Per J. Inting, First Division].

element of the offense. For the fourth element, it is clear that the granting of loans to Arcelo caused undue injury to the Government as FAPE funds are public funds.

We again turn our attention on the *third element*.

In convicting Duavit-Santiago of violating Section 3(e) of Republic Act No. 3019, the Sandiganbayan ruled that the third element was present because Duavit-Santiago acted with manifest partiality in causing the release of personal loans in favor of Arcelo out of FAPE funds, or at the very least, acted with gross inexcusable negligence in causing the same. In the assailed Decision, the Sandiganbayan ruled:

....

Their respective participation in the personal loan agreements having been established, the Court finds that accused, in reviewing, evaluating and approving the personal loans of accused Arcelo, had favored accused Arcelo over other private individuals who did not have access to such personal loans courtesy of FAPE funds, thus committing manifest partiality. When asked by the Court if, aside from accused Arcelo, FAPE extended personal loans to other borrowers, accused Duavit-Santiago answered in the negative. As Investment Director, she knew beforehand if there were similar personal loans extended and/or released but her answer was that none that she knew of.

....

At the very least, accused Duavit-Santiago, Borromeo and Nera are liable for gross inexcusable negligence in approving and causing the release of personal loans of accused Arcelo out of FAPE funds.⁹⁵

Let us re-evaluate the circumstances.

The acts of Duavit-Santiago in processing and signing documents pertaining to Arcelo's loans out of FAPE Account 1003 do not convincingly show her manifest partiality. There is no evidence clearly indicating that Duavit-Santiago acted in a clear, notorious, or plain inclination or predilection to favor Arcelo.

As noted by Justice Cruz in his dissenting and concurring opinion, Duavit-Santiago even asked for confirmation from her superior, Atty. Jose D. Baltazar (Atty. Baltazar), Finance Chairperson of PEAC, concerning Arcelo's application for personal loans. In her Memorandum⁹⁶ for Atty. Baltazar dated March 1, 1994, Duavit-Santiago wrote:

I am presenting for confirmation the loan to be extended to Dr. Adriano A. Arcelo, President of the Fund for Assistance to Private Education under the following terms and conditions:

⁹⁵ *Rollo* (G.R. No. 235877), pp. 48-51.

⁹⁶ *Id.* at 535.

Principal Amount : [PHP] 4,428,000.00

Term : [One] year

Rate : [17%]

Interest Payment : Quarterly in arrears

Security : Hold-out on a [USD 164,000.00] Deposit with Security Bank and Trust Company.

Dollar/Peso Conversion Rate : [USD 1.00] to [PHP 27.00]

For Confirmation.

(Sgd.)
ROSANNE Y. DUAVIT

C O N F O R M E:

(Sgd.)
JOSE D. BALTAZAR

Another Memorandum⁹⁷ dated October 21, 1994 by Duavit-Santiago for Atty. Baltazar provides the following:

I am presenting for confirmation the loan to be extended to Dr. Adriano A. Arcelo, President of the Fund for Assistance to Private Education under the following terms and conditions:

Principal Amount : [PHP] 480,000.00

Term : [One] year

Rate : [14.5%]

Interest Payment : Quarterly in arrears

Security : Hold-out on a [USD 20,000.00] Time Deposit with Citibank

Dollar/Peso Conversion Rate : [USD 1.00] to [PHP 24.00]

For Confirmation.

⁹⁷ *Id.* at 589.

(Sgd.)
ROSANNE Y. DUAVIT

CONFORME:

(Sgd.)
JOSE D. BALTAZAR

Given the foregoing, the fact that Duavit-Santiago sought approval of the loan application of Arcelo from her superior, Atty. Baltazar, shows her good faith in the transaction. She went thru the proper channels before proceeding with the loan transaction. To stress, manifest partiality is in the nature of *dolo*—an offense committed with wrongful or malicious intent. The same cannot be said of Duavit-Santiago who believed in good faith that with the confirmation/approval of her superior, Atty. Baltazar, the transaction was legal and aboveboard.

Regarding the allegation of gross inexcusable neglect, this Court believes that Duavit-Santiago did not commit the same.

Duavit-Santiago obtained the confirmation or approval of Atty. Baltazar through the above-cited memoranda on Arcelo's personal loan applications. Duavit-Santiago's act of securing the prior confirmation or approval of Atty. Baltazar cannot be characterized as lacking even in slight care and willfully and intentionally with conscious indifference to the consequences of her failure to act under the law. As earlier discussed, Duavit-Santiago had a basis to believe that what she was doing was legal as her memoranda had the conforme of Atty. Baltazar, her superior.

Mistakes, no matter how patently clear, committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.⁹⁸

It should be stressed at this point that there is no such thing as presumption of bad faith in cases involving violations of the Anti-Graft and Corrupt Practices Act. On the contrary, the law presumes that the accused is 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 and not on the accused to prove their innocence. The administration of justice is not a matter of guesswork. Since a person's liberty is at stake, all measures must be taken to ensure the protection of one's fundamental rights.⁹⁹

For failure of the prosecution to prove Duavit-Santiago's guilt beyond reasonable doubt for each of the charges under Section 3(e) of Republic Act

⁹⁸ *Collantes v. Hon. Marcelo*, 556 Phil. 794, 806 (2007) [Per J. Nachura, Third Division].

⁹⁹ *Suba v. Sandiganbayan (First Division)*, 897 Phil. 874, 884 (2021) [Per C.J. Peralta, First Division].

No. 3019, her conviction for the crimes charged must be set aside. Thus, the ruling in SB Criminal Case Nos. SB-12-CRM-0136, SB-12-CRM-0138, SB-12-CRM-0140, and SB-12-CRM-0142 as to the liability of Duavit-Santiago must be reversed and she must be acquitted.

CHARGES OF MALVERSATION UNDER ARTICLE 217 OF THE REVISED PENAL CODE

Again, since the prosecution failed to prove that there was conspiracy among Arcelo et al. to commit the crimes charged, We delve into their individual liabilities.

Malversation of public funds is defined and penalized in Article 217 of the Revised Penal Code, as follows:

[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, or 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 [PHP 200.00].

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than [PHP 200.00] but does not exceed [PHP 6,000.00].

3. The penalty of *prision mayor* in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than [PHP 6,000.00] pesos but is less than [PHP 12,000.00].

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than [PHP 12,000.00] but is less than [PHP 22,000.00]. 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.

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. (Emphasis in the original)

The elements of malversation are: (1) the offender is a public officer; (2) the offender has custody or control of the funds or property by reason of the duties of their office; (3) the funds or property are public funds or property for which the offender is accountable; and, most importantly, (4) the offender

has appropriated, taken, misappropriated, or consented, or through abandonment or negligence, permitted another person to take them.¹⁰⁰

Liability of Adriano A. Arcelo

The Sandiganbayan convicted Arcelo of malversation in Sandiganbayan Criminal Case Nos. SB-12-CRM-0135, SB-12-CRM-0137, SB-12-CRM-0139, SB-12-CRM-0141, and SB-12-CRM-0143.

As previously explained, Arcelo is a public officer, being the then president of FAPE. This satisfies the *first element* of malversation.

Further, as president of FAPE, Arcelo had custody and control of FAPE Account 1003. Section 15 of the Guidelines for the Management of External Funds states:

SECTION 15. The President and the Vice[-]President for Administration of FAPE shall be authorized to sign and endorse, jointly, for and in behalf of the Board of Trustees of each external fund; in the absence of the Vice[-]President for Administration, the Investment Officer shall be authorized to sign and endorse, jointly, with the President; and in the absence of the President, the Vice[-Chairperson] of the PEAC shall be authorized to sign and endorse, jointly, with the Vice President for Administration or the Investment Officer, all debt instruments, checks, and other forms of withdrawal advices. Any and all checks and other negotiable instruments payable to the entity creating the external fund may be endorsed by anyone of the foregoing signatories for deposit only to the credit of the external fund.¹⁰¹

The position of Arcelo as president carried with it the responsibility over FAPE Account 1003 from which the personal loans and loan to JBLFC were sourced. This satisfies the *second element*.

As previously discussed, FAPE Account 1003 is a public fund, and as the president and by virtue of Section 15 of the Guidelines for the Management of External Funds, Arcelo is accountable. This satisfies the *third element*.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.¹⁰²

As found out by the Sandiganbayan, Arcelo misappropriated FAPE funds when he caused the release of such funds for his personal loans and that of JBLCF of which he was a member of the Board of Trustees and his wife

¹⁰⁰ *People v. Asuncion*, 922 Phil. 251, 277 (2022) [Per J. Rosario, Second Division].

¹⁰¹ *Rollo* (G.R. No. 235877), p. 715.

¹⁰² *Zoleta v. Sandiganbayan*, 765 Phil. 39, 53 (2015) [Per J. Brion, Second Division].

was the chairperson. Knowing the same to be public funds that were to be used for assistance to private education and related matters, Arcelo misapplied the same for his personal benefit. This satisfies the *fourth element*.

All the elements for the crime of malversation being present, the findings of Sandiganbayan regarding Arcelo's liability in SB Criminal Case Nos. SB-12-CRM-0135, SB-12-CRM-0137, SB-12-CRM-0139, SB-12-CRM-0141, and SB-12-CRM-0143 are affirmed.

Liability of Roberto T. Borromeo and Rosa Anna Duavit-Santiago

Let us discuss the cases against Borromeo and Duavit-Santiago jointly as they were both found guilty of malversation through negligence.

Borromeo and Duavit-Santiago are in the same standing as Arcelo. They are all public officers as they are officials of FAPE. Likewise, they had custody and control of FAPE Account 1003 under Section 15 of the Guidelines for the Management of External Funds. Although for Borromeo, even if he did not have a hand in granting the loans to Arcelo, it can be said that in his role as FAPE vice-president, he still had custody and control of FAPE Account 1003. As to the nature of FAPE Account 1003, it must be reiterated that it is a public fund. Thus, the officials of FAPE are necessarily accountable for it. Given the foregoing, the first three elements of malversation have been established.

Let us focus on the *fourth element*.

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 or property to one's personal use. 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 as when the offender knowingly allowed another or others to make use of or misappropriate public funds or property.¹⁰³

The Sandiganbayan found Borromeo and Duavit-Santiago guilty of malversation committed through consent and/or negligence. By affixing their signatures on various documents which paved the way for the release of personal loans in favor of accused Arcelo sourced from FAPE funds, they consented or negligently allowed accused Arcelo to draw his personal loans from public funds.¹⁰⁴

Negligence is defined in our jurisdiction as an omission to do an act which a reasonable person would do, guided by those considerations which ordinarily regulate the conduct of human affairs, or the "failure to observe that

¹⁰³ *People v. Asuncion*, 922 Phil. 251, 277 (2022) [Per J. Rosario, Second Division].

¹⁰⁴ *Rollo* (G.R. No. 235877), p. 185.

degree of care, precaution[,] and vigilance that the circumstances justly demand.”¹⁰⁵

Mere allegation of negligence will not suffice. The fact of negligence must be proven and supported by evidence. As to Borromeo, he merely relied on the checking, reviewing, and approval of responsible FAPE personnel following the procedure laid down in the Investment Manual for cash disbursements. On the other hand, as discussed earlier, Duavit-Santiago obtained the confirmation/approval of Atty. Baltazar through a series of memoranda on Arcelo’s personal loan applications. Duavit-Santiago’s act of securing the prior confirmation/approval of Atty. Baltazar cannot be characterized as failure to observe that degree of care, precaution, and vigilance that the circumstance justly demands. The impression that both Borromeo and Duavit-Santiago acted in good faith in the transactions involving the loans extended to Arcelo has not been disputed.

In *Tabuena v. Sandiganbayan*,¹⁰⁶ the Court held that good faith is a valid defense in a prosecution for malversation:

Going now to the defense of good faith, it is settled that this is a valid defense in a prosecution for malversation for it would negate criminal intent on the part of the accused. Thus, in the [two] vintage, but significant malversation cases of *US v. Catolico* and *US v. Elviña*, the Court stressed that:

To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences as, in law, is equivalent to criminal intent. The maxim is *actus non facit reum, nisi mens sit rea* — a crime is not committed if the mind of the person performing the act complained of is innocent.¹⁰⁷ (Emphasis in the original, citations omitted)

Similarly, in *Villacorta v. People*,¹⁰⁸ although the accused made payments that ran counter to auditing rules and regulations, it was found that the payments were made in good faith to government personnel, including those working at the offices of the provincial auditor and treasurer. No negligence was attributed to Villacorta because even if the payments made were wrong, they were made in good faith.¹⁰⁹

As the prosecution did not establish negligence on the part of Borromeo, he should also be acquitted in SB Criminal Case Nos. SB-12-CRM-0135, SB-12-CRM-0137, and SB-12-CRM-0139. Likewise, there being no malversation through negligence committed by Duavit-Santiago, she

¹⁰⁵ *Sanggacala v. National Power Corporation*, 907 Phil. 344, 365 (2021) [Per J. Leonen, Third Division].

¹⁰⁶ *Tabuena v. Sandiganbayan*, 335 Phil. 795 (1997) [Per J. Francisco, *En Banc*].

¹⁰⁷ *Id.*

¹⁰⁸ 229 Phil. 422 (1986) [Per J. Melencio-Herrera, *En Banc*].

¹⁰⁹ *Id.*

should be acquitted in SB Criminal Case Nos. SB-12-CRM-0135, SB-12-CRM-0137, SB-12-CRM-0139, SB-12-CRM-0141, and SB-12-CRM-0143.

In *Suba v. Sandiganbayan (First Division)*,¹¹⁰ the Court emphasized that judgment of conviction must be supported by proof beyond reasonable doubt, otherwise the accused must be acquitted:

The consistent teaching in our jurisprudence is that evidence adduced must be closely examined under the lens of judicial scrutiny and that conviction must flow only from the moral certainty that guilt has been established beyond reasonable doubt. The presumption of innocence of an accused is a basic constitutional principle fleshed out by procedural rules, which place on the prosecution the burden of proving that an accused is guilty of the offense charged beyond reasonable doubt. Conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged. Short of these constitutional mandate and statutory safeguard—that a person is presumed innocent until the contrary is proved—the Court is left without discretion and is duty-bound to render a judgment of acquittal.¹¹¹

ACCORDINGLY, the Court resolves the present consolidated Petitions as follows:

1. In G.R. No. 235870, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated January 26, 2017 of the Sandiganbayan in (a) Criminal Case Nos. SB-12-CRM-0134, SB-12-CRM-0136, SB-12-CRM-0138, SB-12-CRM-0140, SB-12-CRM-0142, and SB-12-CRM-0145 finding petitioner **Adriano A. Arcelo** guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019; (b) SB-12-CRM-0144 finding petitioner **Adriano A. Arcelo** guilty beyond reasonable doubt of violation of Section 3(h) of Republic Act No. 3019; and (c) SB-12-CRM-0135, SB-12-CRM-0137, SB-12-CRM-0139, SB-12-CRM-0141, and SB-12-CRM-0143 finding petitioner **Adriano A. Arcelo** guilty beyond reasonable doubt of malversation, is **AFFIRMED in toto**;
2. In G.R. Nos. 235922–27, the Petition for Review on *Certiorari* is **GRANTED**. The assailed Decision dated January 26, 2017 of the Sandiganbayan in (a) SB-12-CRM-0134, SB-12-CRM-0136, and SB-12-CRM-0138 finding petitioner **Roberto T. Borromeo** guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019; and (b) SB-12-CRM-0135, SB-12-CRM-0137, and SB-12-CRM-0139 finding petitioner **Roberto T. Borromeo** guilty beyond reasonable doubt of malversation, is **REVERSED**. Petitioner **Roberto T. Borromeo** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt of the crimes of violation of Section 3(e) of Republic Act No. 3019 and of malversation under Article 217 of the Revised Penal Code; and

¹¹⁰ 897 Phil. 874 (2021) [Per C.J. Peralta, First Division].

¹¹¹ *Id.* at 885.

3. In G.R. No. 235877, the Petition for Review on *Certiorari* is **GRANTED**. The assailed Decision dated January 26, 2017 of the Sandiganbayan in (a) SB-12-CRM-0136, 12-CRM-0138, SB-12-CRM-0140, and SB-12-CRM-0142 finding petitioner **Rosa Anna Duavit-Santiago** guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019; and (b) SB-12-CRM-0135, SB-12-CRM-0137, SB-12-CRM-0139, SB-12-CRM-0141, and SB-12-CRM-0143 finding petitioner **Rosa Anna Duavit-Santiago** guilty beyond reasonable doubt of malversation, is **REVERSED**. Petitioner **Rosa Anna Duavit-Santiago** is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt of the crimes of violation of Section 3(e) of Republic Act No. 3019 and of malversation under Article 217 of the Revised Penal Code.

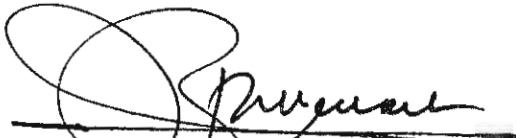
Let entry of final judgment be issued immediately with respect to petitioners Roberto T. Borromeo and Rosa Anna Duavit-Santiago.

SO ORDERED.


JOSE MIDAS P. MARQUEZ
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

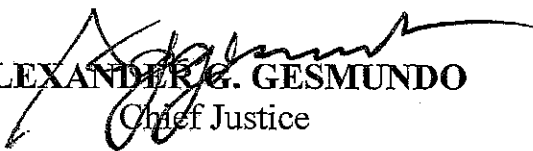

RAMON PAUL L. HERNANDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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