Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **August 17, 2022** *which reads as follows:*

"G.R. Nos. 250202 & 250222-85 ***(People of the Philippines v. Datu Sajid Islam U. Ampatuan and Datuali Kanakan Abpi, Al Haj).*** — This is an appeal[1] from the March 22, 2019 Decision[2] rendered by the Sandiganbayan convicting accused-appellants Datu Sajid Islam U. Ampatuan (Ampatuan) and Datuali Kanakan Abpi, Al Haj (Abpi) for violating Section 3(e) of Republic Act No. (RA) 3019,[3] Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC), and Ampatuan for an additional 63 counts of Falsification of Public Documents under Article 171 of the RPC.

The Factual Antecedents

The facts, as lifted from the Sandiganbayan Decision, are as follows:

In Special Audits Office (SAO) Report No. 2010-02 dated July 1, 2011 (SAO Report),[4] the Commission on Audit (COA) found that between January 2008 to September 2009, several irregular cash advances were made from the funds of the Province of Maguindanao. Of these cash advances, a sum amounting to ₱85,721,000.00 was paid to Abo Lumberyard and Construction Supply (Abo Lumberyard) for purported purchases of construction materials intended for the repair of school buildings. The audit team discovered that despite the

- over – twenty-nine (29) pages ...

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1 *Rollo*, p. 76.
2 Id. at 35-70. Penned by Associate Justice Bayani H. Jacinto and concurred in by Associate Justices Alex L. Quiroz and Reynaldo P. Cruz.
3 Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT" Approved: August 17, 1960.
4 Id. at 36.

disbursements, no actual purchases were made. It was further discovered that Abo Lumberyard did not exist as a business entity as it had no business permit, no records with the Bureau of Internal Revenue (BIR), and could not be found at its given address.[5]

Thus, pursuant to the SAO Report, COA filed a complaint[6] on March 27, 2014 for "Malversation, Fraud Against the Public Treasury, Failure to Render Accounts, Illegal Use of Public Funds and Property, Violations of Government Auditing Code, Section 3(g) of RA 3019, RA 9184,[7] Falsification by Public Officers, and Falsification by Private Individuals and Use of Falsified Documents" before the Office of the Ombudsman. The following persons were charged:

Public Respondents	**Position**
Datu Andal S. Ampatuan, Sr.[8]	Governor
Datu Sajid Islam U. Ampatuan	Governor
John Estelito G. Dollosa, Jr.	Provincial Accountant, Bids and Awards Committee (BAC) member
Osmeña M. Bandila	Provincial Treasurer, BAC member
Norie K. Unas	Provincial Administrator, BAC member
Kasan I. Macapendeg	Provincial Budget Officer, BAC member
Datuali K. Abpi, Al Haj	Provincial Budget Officer, BAC member
Landap Guinaid	Officer-in-Charge (OIC) - Provincial Engineer, BAC member
Private Respondent	
John/Jane Doe	Abo Lumberyard and Construction Supply

After preliminary investigation, the Ombudsman found probable cause to indict the above-named officials, except for Datu Andal S. Ampatuan, Sr. who died on July 17, 2015, for one count of

5 Id. at 36-37.
6 Id. at 36.
7 Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES [GOVERNMENT PROCUREMENT REFORM ACT]" Approved: January 10, 2003.
8 Erroneously identified in the Sandiganbayan Decision as Datu Andal S. Ampatuan, Jr.

Violation of Sec. 3(e) of RA 3019, one count of Malversation under Article 217 of the RPC, and 73 counts of Falsification of Public Documents under Art. 171 of the RPC, for transactions amounting to ₱38,129,117.00.[9] Meanwhile, some of the officials charged, namely: Norie K. Unas, Kasan I. Macapendeg, and Landap Guinaid, died during the pendency of the case. Thus, the charges against them were dismissed.[10] On the other hand, Osmeña M. Bandila and John Estelito G. Dollosa, Jr. remain at-large. Accordingly, only Ampatuan and Abpi were left to stand trial.[11]

During the course of the proceedings, the parties filed a Joint Narration and Stipulation of Facts and On Admission of Documentary Evidence[12] (Joint Stipulation). The following admitted facts are lifted from the Joint Stipulation:

1. Ampatuan served as OIC-Governor of Maguindanao from January 16, 2009 to October 15, 2009. Abpi, on the other hand, served as the Provincial Budget Officer and was a member of the province's BAC.[13]

2. During his tenure, Ampatuan signed and approved several purchase requests (PR), purchase orders (PO), and disbursement vouchers (DV) pertaining to the procurement of construction materials from Abo Lumberyard for the repair of school buildings in the province upon "certification by John Estelito G. Dollosa, Jr., Provincial Accountant, that funds are available and the documents supporting payments are complete and proper" – except for 10 DVs and their corresponding PRs and POs.[14]

3. Ampatuan claimed that he was out of the country from April 28, 2009 to May 15, 2009, but this claim is conditioned on the presentation of his passport.[15]

4. Abpi signed "several" Abstracts of Bids as member of the BAC but denied that the signatures appearing on some are his.[16]

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9 *Rollo*, p. 37.
10 Id.
11 Id.
12 Id. at 37-38.
13 Id. at 39.
14 Id.
15 Id.
16 Id.

5. The COA conducted a special audit of the Province of Maguindanao to assess, among others, the province's utilization of its Internal Revenue Allotment (IRA) funds for the period of January 2008 to September 2009. The COA's findings are contained in the SAO Report.[17]

6. The DVs subject of these cases were later the subject of a COA-SAO's Notice of Disallowance, which Ampatuan failed to receive.[18]

After the submission of the relevant pleadings, the Sandiganbayan proceeded to rule on the matter.

Ruling of the Sandiganbayan

In its Decision[19] dated March 22, 2019, the Sandiganbayan convicted Ampatuan and Abpi. The dispositive portion of the Decision reads:

> **WHEREFORE**, in light of the foregoing, the Court hereby renders judgment as follows:
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> 1. In Criminal Case No. **SB-17-CRM-1023**, the Court finds accused DATU SAJID ISLAM U. AMPATUAN and DATUALI K. ABPI, AL HAJ **GUILTY** beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019. They are accordingly sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) month as minimum to twelve (12) years as maximum, with perpetual disqualification from holding public office.
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> 2. In Criminal Case No. **SB-17-CRM-1024**, the Court finds accused DATU SAJID ISLAM U. AMPATUAN and DATUALI K. ABPI, AL HAJ **GUILTY** beyond reasonable doubt of the felony of Malversation of Public Funds under Art. 217 of the Revised Penal Code. They are accordingly sentenced to suffer the penalties of *reclusion perpetua* and perpetual special disqualification from holding public office. In addition, accused are ordered to pay, jointly and severally, a fine of Thirty-Five Million Seven Hundred Forty-Seven Thousand Four Hundred Ninety-Three Pesos (PhP 35,747,493.00), which is equivalent to the total amount malversed.
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> 3. In Criminal Case Nos. **SB-17-CRM-1025 to SB-17-CRM-1080, SB-17-CRM-1090** and **SB-17-CRM-1092 to SB-17-CRM-1097**, the Court finds accused DATU SAJID ISLAM U.

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[17] Id.
[18] Id.
[19] Id. at 35-70.

AMPATUAN **GUILTY** beyond reasonable doubt of sixty-three (63) counts of Falsification of Public Documents, under Art. 171 of the Revised Penal Code. In accordance with the Indeterminate Sentence Law, he is sentenced to suffer the penalty of six (6) months and 1 day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum for each of the 63 counts.

However, accused Ampatuan is **ACQUITTED** in Criminal Case Nos. **SB-17-CRM-1081 to SB-17-CRM-1089 and SB-17-CRM-1091**, in view of the prosecution's failure to prove his guilt beyond reasonable doubt.

Accused DATUALI K. ABPI, AL HAJ is hereby **ACQUITTED** for all counts of Falsification under Criminal Case Nos. **SB-17-CRM-1025 to SB-17-CRM-1097**, in view of the prosecution's failure to prove his guilt beyond reasonable doubt. The surety bond posted for his provisional liberty in the said cases is hereby CANCELLED and the Hold Departure Order issued against him only insofar as the said cases are concerned is therefore LIFTED.

4. Considering that no return of the warrant of arrest previously issued against accused JOHN ESTELITO G. DOLLOSA, JR. and OSMEÑA M. BANDILA has been made, let the cases against them be **ARCHIVED**, pending their arrest, subject to the reinstatement of their cases once they are brought into custody.

The Director of the National Bureau of Investigation (NBI), Taft Avenue, Manila, the Chief of the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG), Camp Crame, Quezon City; the Chiefs of Police of Cotabato City and the Municipality of Sultan Kudarat, Maguindanao; and the Provincial Director of Maguindanao PPO, Camp Datu Akila to whom the Warrant of Arrest was assigned for execution are hereby commanded to effect the **ARREST** of the said accused as ordered in the Warrant of Arrest.

SO ORDERED.[20]

In so ruling, the Sandiganbayan found that all the elements of the crimes charged have been established. Further, the anti-graft court held that there was a "unity in purpose among the accused to consciously defraud the Government,"[21] considering that the entire

[20] Id. at 68-69.
[21] Id. at 49.

process, which involved several departments within the LGU, could not have been possibly accomplished by a single person alone; and that "there was an overall scheme to perpetuate the crimes x x x,"[22] belying the claim of good faith by accused-appellants.

However, the Sandiganbayan noted that Ampatuan's signature does not appear in ten of the DVs, while Abpi's signature does not appear at all on any of the DVs. Accordingly, Ampatuan was cleared of 10 counts, while Abpi, of all the charges, of Falsification of Public Documents.[23]

In sum, accused-appellants were convicted of violating Section 3(e) of RA 3019, and one count of Malversation of Public Funds under Art. 217 of the RPC. Meanwhile, Ampatuan was further convicted of 63 counts of Falsification of Public Documents under Art. 171 of the RPC.[24]

Accused-appellants filed their respective Motions for Reconsideration.[25] The Sandiganbayan however denied these in a Resolution[26] dated September 4, 2019.

Aggrieved, accused-appellants elevated the case before this Court via their respective Notices of Appeal.[27]

Issue

The sole issue for Our resolution is whether the Sandiganbayan erred in convicting accused-appellants.

Our Ruling

The appeals are dismissed.

As to accused-appellant Datu Sajid Islam U. Ampatuan

Preliminarily, Ampatuan argues in his Supplemental Brief[28] that he was denied due process due to the negligence of his former counsel. Specifically, Ampatuan claims that he neither signed nor

[22] Id. at 65.
[23] Id. at 59-65.
[24] Id. at 68-69.
[25] Id. at 313.
[26] Id. at 311-324.
[27] Id. at 325-329 and 610-611.
[28] Id. at 742-769.

conformed to the Joint Stipulation entered into by the parties and relied upon by the Sandiganbayan. Thus, he concludes that this violated his right against self-incrimination for having been compelled to testify against himself, and his right to due process for having been denied to produce evidence in his defense. In his vivid expression of this perceived negligence, Ampatuan employed the phrases "recklessly negligent,"[29] "glaringly displays her negligence,"[30] and "counsel's gross negligence,"[31] among others.

Even the Sandiganbayan was not spared by the bad-mouthing and negative insinuations made by Ampatuan's counsels, Atty. Manuel R. Castro and Atty. Marisol M. Boiser, when they stated:

> 10. The Fourth Division of the Sandiganbayan had no testimonial evidence to consider, both from the Prosecution and from the Accused Appellant since neither, as stated earlier, presented any witness to support their respective charges and defenses. The Fourth Division of the Sandiganbayan **did not even make any attempt to protect the right of the Accused-Appellant in light of the unusual proceedings that were unfolding before its eyes. It too was swayed by the admission and stipulation of facts made by Accused-Appellant's counsel to the Prosecution's *Joint Narration and Stipulation of Facts and On Admission of Documentary Evidence*, as if it was deciding a civil case on a motion or summary judgment or judgment on the pleadings.**[32]

In all, Ampatuan and his present counsels essentially blame the former counsel and the Sandiganbayan for the former's conviction.

Initially, while the present case does not involve issues on legal ethics, the Court deems it necessary to **sternly remind** Ampatuan's counsels, Atty. Manuel R. Castro and Atty. Marisol M. Boiser, of the respect and courtesy due to their fellow practitioners, and especially the courts of which they are officers. The Code of Professional Responsibility provides:

> Canon 8 – A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against opposing counsel.

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[29] Id. at 763.
[30] Id.
[31] Id. at 764.
[32] Id. at 756. Emphasis supplied.

> Rule 8.01 – A lawyer shall not, in his professional dealings, **use language which is abusive, offensive or otherwise improper**. (Emphasis supplied.)

In *Saberon v. Larong*,[33] the Court held:

> To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients.
>
> However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. **Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive**.[34] (Emphasis supplied.)

To be sure, the Court is not merely being overly sensitive in interpreting Ampatuan's and his counsels' language. However, when the Judiciary as an institution or its branches, and members of the Bar are the subject of unreasonable and suggestive remarks by no less than lawyers themselves, the Court cannot remain apathetic and just simply let such comments slide.

Moving on, We find Ampatuan's arguments erroneous. The Joint Stipulation is valid.

As found by the Sandiganbayan:

> In the course of the Pre-trial Conference, the parties filed a *Joint Narration and Stipulation of Facts and On Admission of Documentary Evidence* (Joint Stipulation) and thereafter, upon agreement, the Court terminated Pre-trial on 19 February 2019. Upon manifestation of all parties that with the admission of each other's documentary exhibits they would dispense with the presentation of witnesses.[35]

Contrary to Ampatuan's assertions that he did not sign or agree to the Joint Stipulation, the Sandiganbayan found that the parties were in agreement in filing the Joint Stipulation and dispensing with the presentation of witnesses. In fact, despite the alleged defect in procedure, Ampatuan himself participated in the succeeding incidents

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[33] 574 Phil. 510 (2008).
[34] Id. at 516-517.
[35] *Rollo*, pp. 37-38.

by filing his Formal Offer of Exhibits[36] and Memorandum[37] without raising any objection. Moreover, from the time that the pre-trial was terminated on February 19, 2019, not once did Ampatuan raise these issues, until only now. To us, these circumstances reveal the true nature of these arguments: mere afterthoughts, which deserve no consideration. Moreover, Ampatuan cannot assail the validity of the Joint Stipulation and its contents as he does now, and then cite the same when it suits his favor.[38] Such act betrays fairness.

From the foregoing, it follows that Ampatuan's claim of a violation of his right against self-incrimination is likewise erroneous simply because he failed to demonstrate compulsion. Besides, even if the admitted facts contained in the Joint Stipulation which Ampatuan claims are damning to him are disregarded, the same may easily be established from the pieces of documentary evidence such as receipts, bidding documents, appointment papers submitted to the Sandiganbayan, and other publicly available records, and the result will be the same.

Neither is there merit in his contention that he was deprived of his right of confrontation. Again, the validity of the Joint Stipulation as found by the Sandiganbayan amounts to a waiver of this right. In any case, the findings of fact of the Sandiganbayan are generally accorded finality by this Court.[39]

a. As to the charge of violation of Sec. 3(e) of RA 3019

On this matter, Ampatuan firstly argues that the Information is defective for failing to identify what acts or omissions were allegedly committed.[40] To recap, the Information for the charge of violation of Sec. 3(e) of RA 3019 states:

> That for the period from 1 January 2008 to 30 September 2009 or sometime prior or subsequent thereto in the Province of Maguindanao, Autonomous Region in Muslim Mindanao (ARMM), Philippines and within the jurisdiction of this Honorable Court, accused DATU SAJID ISLAM UY AMPATUAN, a high ranking public officer being then the Provincial Governor, and JOHN ESTELITO G. DOLLOSA, JR. Provincial Accountant,

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[36] Id. at 38.
[37] Id.
[38] *See rollo*, p. 370.
[39] *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 227 (2014).
[40] *Rollo*, p. 191.

> OSMENA M. BANDILA, Provincial Treasurer and Member, Bids and Awards Committee (BAC), KASAN I. MACAPENDEG, Provincial General Services and Chairman, BAC, Engr. NORIE K. UNAS, Provincial Administrator and Member, BAC, DATUALI K. ABPI, AL HAJ, Officer-in-Charge, Provincial Budget Officer and Member, BAC, and LANDAP GUINAID, Officer-In-Charge, Provincial Engineer and Member, BAC, all public officials from the Provincial Government of Maguindanao in the Autonomous Region in Muslim Mindanao (ARMM), committing the offense in relation to their position, conspiring, confederating and mutually aiding each other, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the Government in the aggregate amount of Thirty Eight Million One Hundred Twenty Nine Thousand and One Hundred Seventeen Pesos (P38,129,117.00) which accused made to appear to have been disbursed for the purchase of various construction and lumber materials for the repair of school building within the Province of Mindanao from Abo Lumberyard and Construction Supply, when in truth and in fact, the accused fully knew that no such purchase was made as the purported supplier Abo Lumberyard and Construction Supply, is fictitious and/or non-existent, resulting to the damage and prejudice to the government in the aforesaid amount.
>
> CONTRARY TO LAW.[41]

Ampatuan's argument is wrong.

A reading of the Information will reveal that the acts or omissions constituting the charge of violation of Sec. 3(e) of RA 3019 are clearly expressed: that the accused, including Ampatuan, who were all officials of Maguindanao province, acted together in disbursing the stated amount for the alleged purchase of construction materials when in truth, no such purchase was made, thereby causing undue injury to the government.

Sec. 9, Rule 110 of the Revised Rules of Criminal Procedure states:

> **Section 9.** *Cause of the accusation.* – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to

[41] Id.

> know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

In *People v. Dasmariñas*,[42] this provision was further expounded:

> The text of the rule requires that the acts or omissions complained of as constituting the offense must be stated "in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances." In other words, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated but by the facts stated in the indictment, *that is*, the actual recital of facts in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law. Indeed, the facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.[43]

Clearly, what is required is not an extensive and in-depth narration of every bit of act or omission alleged, but rather only "terms sufficient to enable a person of common understanding to know what offense is being charged."[44] Guided by the foregoing, We find that the Information is sufficient.

Second, Ampatuan claims that he was appointed as OIC-Governor of Maguindanao only on January 26, 2009, and that he was a private individual prior to his appointment. He asserts:

> 100. As categorically admitted by the prosecution, the accused-appellant was only appointed as the Officer-in-Charge only on 26 January 2009, or more than a year from the commencement date stated in the above Information, which is 1 January 2008. Clearly, **Accused was not yet a public officer from 1 January 2008 to 25 January 2009**.
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[42] 819 Phil. 357 (2017).
[43] Id. at 373-374.
[44] RULES OF COURT, RULE 110, SEC. 9.

> 102. Besides the absurdity in attributing acts that can only be committed by a public officer to the accused-appellant when he was **ostensibly a private individual**, the great length of time involved in the Information does not sufficiently inform the accused-appellant of what act or omission is involved. (Emphasis supplied.)[45]

Considering that the Information alleges the anomalous transactions to have happened between January 1, 2008 and September 30, 2009, Ampatuan argues that he cannot be convicted of violating Sec. 3(e) of RA 3019, which requires that the accused be a public officer, because he was a private individual for more than half of the period – from January 1, 2008 up to January 25, 2009 – during which the anomalous transactions allegedly happened.

We are not convinced. As it shows, Ampatuan's claims are nothing but deliberate lies and deception, designed to mislead this Court.

The Court takes judicial notice of the fact that in the 2007 national and local elections, Ampatuan ran unopposed for the position of Vice-Governor of Maguindanao. This is further corroborated by a document[46] hosted online indicating that Ampatuan was the proclaimed Vice-Governor in the 2007 elections. Meanwhile, in another online news article[47] dated February 8, 2010 published by the Philippine Center for Investigative Journalism, it is stated:

> Ampatuan Sr., and **Sajid (Ampatuan) were unopposed when they ran for governor and vice governor in 2007**. But Ampatuan Sr., resigned in January 2009 following the Supreme Court decision declaring unconstitutional the creation by the ARMM's Regional Legislative Assembly, of the province of Shariff Kabunsuan which was earlier carved out of Maguindanao.

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[45] *Rollo*, p. 193.

[46] Comelec Special Action Center Proclaimed Governor and Vice Governor as of 5/22/07 4:00pm. *Accessible at*: <https://web.archive.org/web/20070704031508/http://www.inquirer.net/verbatim/SAC_523-local-posts.pdf>. Last accessed: August 14, 2022.

[47] Arguillas, C. O. (2010, February 08). 68 Ampatuans, 15 Mangudadatus dominate Maguindanao elections. *Philippine Center for Investigative Journalism*. https://pcij.org/article/3695/68-ampatuans-15-mangudadatus-brdominate-maguindanao-elections Last accessed: August 4, 2022.

> Andal Sr. claimed he had no mandate from Shariff Kabunsuan voters. A "New Maguindanao" was how the reconstituted Maguindanao was called. ARMM Governor Datu Zaldy Ampatuan **named Sajid as OIC Maguindanao governor** and his brother in-law Akmad, mayor of Mamasapano town, as OIC vice governor.[48] (Emphases, underscoring supplied.)

Further, another news source[49] published on January 27, 2009 reveals:

> Appointed Officers-in-Charge (OIC) for Governor and Vice-Governor are **Vice-Governor Datu Sajid Islam Uy Ampatuan** and Mamasapano Mayor Datu Akmad Ampatuan. x x x (Emphasis, underscoring supplied).

Obviously, it is impossible for Ampatuan to not know information publicly available such as this. Unless it can be proven that he, for some reason, vacated his post as Vice-Governor after running unopposed and presumably winning in the 2007 elections, this Court remains perfectly within reason to infer that Ampatuan indeed served as Vice-Governor until January 25, 2009. In all, his claim that he was a private individual prior to his appointment as OIC Governor of Maguindanao would appear to be nothing but a conscious falsehood advanced before no less than this Honorable Court, to which We take serious insult.

Third and last, Ampatuan claims that the prosecution failed to prove one of the elements of the charge: that of undue injury to the government, due to lack of proof of non-delivery of the construction materials. He asserts:

> 228. Considering these factual allegations, it is undeniable that the lack of eligibility of Abo Lumberyard and Construction Supply and the non-delivery of the procured items are negative facts which must be proven by the prosecution. These are essential to establishing the elements of the offense charged.
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> 229. When a negative is averred or a plaintiff's case depends upon the establishment of a negative, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative.

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[48] Id.

[49] (2009, January 27). ARMM Gov names OIC officials for "New Maguindanao". <*MindaNews*. https://www.mindanews.com/c3-news/2009/01/armm-gov-names-oic-officials-for-qnew-maguindanaoq/> Last accessed: August 4, 2022.

> 230. Here, the prosecution alleged that Abo Lumberyard and Construction Supply is non-existent and not qualified as a bidder and that the procured items were not delivered. The prosecution therefore had the burden of proving these negatives.[50]

To support his position, Ampatuan contends that the prosecution likewise failed to prove that Abo Lumberyard did not exist. At most, as Ampatuan states, the prosecution only proved Abo Lumberyard's noncompliance with governmental regulations and bidding qualifications, but not its *non-existence*. He further maintains:

> 237. The prosecution attempted to circumvent its failure on this point by trying to show that Abo Lumberyard and Construction Supply did not exist. With respect to the accused-appellant, this fails for at least two reasons.
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> 238. *First*, the evidence it presented, such as the alleged lack of business registration and of tax registration, are only circumstantial. They are not conclusive as to the non-existence of the bidder and whether or not it participated in the bidding process. It could have, as a matter of fact, existed and lacked these documents. It may be held liable for other offenses, yet it could still have participated in the bidding.
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> 239. Again, the lack of evidence on the participation of the other accused is causing problems. The supposed evidence on the non-existence of the bidder should be taken with the details surrounding their appreciation by the BAC. But there is no evidence on this point. That is, it cannot be determined what the BAC did or how it treated the bid of Abo Lumberyard and Construction Supply.
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> x x x x
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> 241. All the prosecution had to offer, and on which the Honorable Sandiganbayan unfortunately and erroneously relied upon, are not enough to warrant a finding that Abo Lumberyard and Construction Supply is not a qualified bidder. The finding that it is non-existent was speculative and did not rest of [sic] incontrovertible evidence.[51]

It doesn't take much for one to see that these arguments forwarded by Ampatuan are, at best, a stretch, and unworthy of even the slightest consideration. To the mind of the Court, Ampatuan's habit of deflecting the allegations against him, instead of answering them head-on, only further proves his guilt.

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[50] *Rollo*, p. 218.
[51] Id. at 219-220.

First, to conclude that something *may* exist simply because its *non-existence* has not been proven is downright illogical and absurd. Do We now conclude that aliens exist simply because we cannot conclusively prove that they do not? Surely not. Instead of subscribing to Ampatuan's silly mental gymnastics, a simpler and more logical way of thinking, to which the Court adheres, is that when the existence of something has not been proven, it is presumed to be inexistent.

In any case, even if We entertain Ampatuan's argument on the basis of a possibility of reasonable doubt, it still fails to convince. It must not be forgotten that as the Sandiganbayan found, aside from the lack of regulatory filings of Abo Lumberyard, it cannot also be located at its given address. As noted by the anti-graft court:

> More importantly, the prosecution's evidence shows that no certificate of business registration was issued to Abo Lumberyard for the years 2008 to 2010. In addition, the BIR has no record of the latter as a taxpayer, and COA-SAO Report No. 2012-02 states that per records of the Municipal Treasurer of Parang, Maguindanao, Abo Lumberyard "including the named owners, have never been in existence in the locality" and that the "team's inquiry with some person (sic) within the vicinity such as bystanders, drivers and policemen and ocular inspection of the entire Poblacion Parang (sic) affirmed that" Abo Lumberyard did not exist. It was also found, among others, that the authority to print indicated in the receipts purportedly issued by Abo Lumberyard were actually issued by the BIR to Ismael Lumberyard and Construction Supply and Usman Lumberyard and Construction Supply for the printing of its Credit Invoices, and to Andong Lumberyard and Construction Supply and Nasser Lumberyard and Construction Supply for its O.R.s. Such authority is issued to a single business entity and could therefore not be used by Abo Lumberyard. In other words, the O.R.s purportedly issued by Abo Lumberyard were spurious.[52]

Given all the foregoing, any indication as to the possible existence of Abo Lumberyard has certainly been erased.

As to Ampatuan's claim that the prosecution failed to prove *non-delivery* of the construction materials and therefore, injury to the government – which is the element of the offense – the same discussion applies. To further add, while Ampatuan is correct in

[52] *Rollo*, pp. 45-46.

saying that the prosecution has the burden to prove a charge predicated on a negative allegation, such rule admits of exceptions. In *People v. Manalo*,[53] the Court held:

> The general rule is that if a criminal charge is predicated on a negative allegation, or a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule admits of exceptions. **Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him.** *Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, it untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control.* For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar, where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarly within his knowledge and he must establish that fact or suffer conviction. Even in the case of *Pajenado*, this Court categorically ruled that *although the prosecution has the burden of proving a negative averment which is an essential element of a crime, the prosecution, in view of the difficulty of proving a negative allegation, "need only establish a prima facie case from the best evidence obtainable."* In fact, Pajenado was acquitted of the charge of illegal possession of firearm for the Court found that, in said case, the prosecution was not able to establish even a *prima facie* case upon which to hold him guilty of the crime charged.[54] (Emphasis supplied.)

Former Chief Justice Moran likewise upholds the same view and further explains:

> The mere fact that the adverse party has the control of the better means of proof of the fact alleged, should not relieve the party making the averment of the burden of proving it. This is so, because a party who alleges a fact must be assumed to have acquired some knowledge thereof, otherwise he could not have alleged it. Familiar instance of this is the case of a person prosecuted for doing an act or carrying on a business, such as, the sale of liquor without a license. How could the prosecution aver the want of a license if it had acquired no knowledge of that fact? Accordingly, although proof of the existence or non-existence of

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[53] 300 Phil. 317 (1994).
[54] Id. at 329.

> such license can, with more facility, be adduced by the defendant, it is, nevertheless, incumbent upon the party alleging the want of the license to prove the allegation. Naturally, as the subject matter of the averment is one which lies peculiarly within the control or knowledge of the accused *prima facie* evidence thereof on the part of the prosecution shall suffice to cast the onus upon him.[55]

In the present case, it is undeniable that at the very least, a *prima facie* case has been established against Ampatuan, owing to the findings of the Sandiganbayan. Further, it is likewise unquestionable that the existence of Abo Lumberyard and the delivery of the construction materials are matters within Ampatuan's control and which he could have readily disproved, if untrue, by the production of documents or other evidence. Unfortunately, he failed to discharge such burden. This only leads to only one conclusion: that the prosecution's allegations are true and correct.

As to Ampatuan's invocation of the *Arias* doctrine, we quote at length and with approval the Sandiganbayan's discussion on such matter:

> The overwhelming number of irregularities in the documents, all of which constitute red flags, accentuated by the fact that almost all of the same were replicated in all the transactions spread over nine months without any attempt by any of the accused to inquire or verify the legitimacy of the procurements negates "good faith" within the contemplation of *Arias*. As clarified in *Abubakar v. People*, the application of the *Arias* doctrine –
>
> > [x x x]is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. In a number of cases, this Court refused to apply the Arias doctrine considering that there were circumstances that should have prompted the official to inquire further. (Citations omitted)
>
> In addition to the earlier observations, the prosecution's evidence show that accused Ampatuan signed eight P.R.s and P.O.s that were dated even before he assumed office. A closer scrutiny of these documents reveals that: (i) the name of the signatory was intercalated in eight documents to make it appear that it was accused Ampatuan who signed them; (ii) these insertions appear to have been made after the documents were

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[55] *People v. Pajenado*, 142 Phil. 702, 707 (1970), *citing* 6 Moran, Comments on the Rules of Court, 1963 edition, p. 8.

> signed; and (iii) the signatures on Exhibits "J-3," "Q-4" and "M-3" look different from accused's signature on other admitted documents. These observations, when considered *vis-à-vis* the fact that the accused never denied having signed the eight documents, lead the Court to believe that accused Ampatuan allowed the execution of these documents under his name, even when he did not have the authority to do so.
>
> Finally, contrary to accused Ampatuan's claim that he relied in good faith on the certifications made by accused Dollosa, Jr., it appears that he signed four D.V.s that do not bear any certification as to the propriety and completeness of supporting documents, as well as availability of funds. All these additional circumstances simply militate against the grant of liberality that he prays for in order to accommodate his plea of innocence and lack of knowledge.[56]

In sum, the Court finds that the Sandiganbayan correctly convicted Ampatuan of violating Sec. 3(e) of RA 3019.

b. As to the charge of Malversation of Public Funds under Article 217 of the Revised Penal Code

First, Ampatuan argues that the Information is defective for failing to allege the particular acts or omissions constituting the offense. He states:

> 107. The Information in this case practically dispensed with the requirement of alleging acts or omission constituting an offense. There is no allegation as to how any of the accused took, misappropriated or appropriated public funds. There was not even any mention of what fund was involved.
>
> 108. The Information here is too generic. Under this Information as it is worded, the accused could be charged with involvement in practically any public funds. No public fund was mentioned. No project or beneficiary was stated. There is literally no mention of any factual allegation beside the amount allegedly malversed.[57]

Ampatuan's contentions are simply baseless. Again, the Information for the charge of Malversation reads:

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[56] *Rollo*, pp. 50-51.
[57] Id. at 195-196.

> That for the period from 17 February to 30 September 2009 or sometime prior or subsequent thereto in the Province of Maguindanao, Autonomous Region in Muslim Mindanao (ARMM), Philippines and within the jurisdiction of this Honorable Court, accused DATU SAJID ISLAM U. AMPATUAN, Provincial Governor, accused JOHN ESTELITO G. DOLLOSA, JR., Provincial Accountant, KASAN I. MACAPENDEG, Provincial Services Officer and Chairman, BAC, OSMEÑA M. BANDILA, Provincial Treasurer and Member, Bids and Awards Committee (BAC), NORIE K. UNAS, Provincial Administrator [and] Member, BAC, DATUALI K. ABPI, AL HAJ, Provincial Budget Officer and Member, BAC and LANDAP GUINAID, Officer-In-Charge, Provincial Engineer and Member, BAC Officers with accused Ampatuan, Dollosa, Jr., and Bandila being accountable for public funds and properties under their custody or control by reason of their office, while in the performance of their official functions and acting in conspiracy with one another did then and there willfully, unlawfully and feloniously take, misappropriate or appropriate into themselves public funds in the aggregate amount of Thirty Eight Million One Hundred Twenty Nine Thousand One Hundred Seventeen (Php38,129,117.00) resulting to the damage and prejudice of the government.
>
> CONTRARY TO LAW.[58]

Ampatuan's arguments are mere general claims, sorely lacking legal and jurisprudential basis. Indeed, he miserably failed to present compelling arguments as to the alleged defect of the Information. On the contrary, We find that the recitals in the Information sufficiently make out a charge for Malversation of Public Funds. Specifically, the Information clearly laid out that the accused-appellants "take, misappropriate or appropriate into themselves public funds." Moreover, as opposed to Ampatuan's contention, there is no need to specify as to what fund was involved, as long as there is an allegation that what was misappropriated were public funds. Whether the funds involved are public or not is an issue better threshed out in trial. In this case however, Ampatuan failed to overturn the Sandiganbayan's finding that the funds involved are public in nature.[59]

Second, he asserts that the second and third elements of the crime have not been proven. He declares:

[58] Id. at 54.
[59] Id. at 56.

> 288. Also, while it is on record that the accused-appellant was the Office[r]-In-Charge (OIC) Governor at the time material to this malversation case, it is not his inherent function to take custody of and exercise proper management of the local government's funds. Coupled with the fact that no specific fund was identified, it cannot be presumed that he is immediately responsible for whatever fund is involved. Hence, the second and third elements of the crime of Malversation were not met.[60]

To recap, the elements of the Malversation of Public Funds under Art. 217 of the RPC are as follows: (a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[61]

Ampatuan essentially argues that since the identity of the funds were not particularly determined, it cannot be proven that he had custody or control of such funds and that the same were public in nature.

That the funds involved are public funds is an undisputed fact. As correctly found by the Sandiganbayan:

> As to the identity of the funds subject of these cases, it is worthy to note that COA-SAO Report No. 2010-02 was actually a special audit "on the utilization of Internal Revenue Allotment (IRA)" of Maguindanao. Moreover, accused Ampatuan also admits having "signed and approved several Disbursement Vouchers xxx" when he was the OIC-Governor of Maguindanao. Thus, there is no question that the subject funds are those pertaining to the IRA of the Province of Maguindanao.[62] (Citations omitted.)

Again, despite this finding, Ampatuan failed to adduce contrary evidence and instead relies on nothing but his bare claims.

Having established the nature of the funds involved, it is quite surprising that Ampatuan, who previously served as Vice Governor and Governor, does not know that he is an accountable public officer with respect to the province's funds. Nevertheless, for the sake of clarity, the Court shall indulge.

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[60] Id. at 230.
[61] *Zoleta v. Sandiganbayan*, 765 Phil. 39, 53 (2015).
[62] *Rollo*, p. 56.

Sec. 340 of the RA 7160,[63] or the Local Government Code of 1991 provides:

> SECTION 340. *Persons Accountable for Local Government Funds.* – Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In *Zoleta v. Sandiganbayan*[64] (*Zoleta*) the Court had the occasion to further expound and illustrate this provision:

> Local government officials become accountable public officers either (1) because of the nature of their functions; or (2) on account of their participation in the use or application of public funds.
>
> As a required standard procedure, the signatures of, among others, the Vice-Governor and the Provincial Accountant are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. x x x[65]

As in *Zoleta*, the payments made in the present case could not have been made without Ampatuan's signature. This circumstance puts him in the second category of accountable public officers: those public officers who participate in the use or application of the public funds. Thus, applying the foregoing to the present case, We hold that Ampatuan, as OIC Governor, was an accountable public officer who had custody or control of the public funds malversed. Accordingly, the third element of the crime is satisfied.

As to the last element, Ampatuan similarly argues that the non-delivery of the construction materials was not proven. He maintains:

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[63] Entitled: "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991 [LOCAL GOVERNMENT CODE OF 1991]" Approved: October 10, 1991.

[64] Supra note 61.

[65] Id. at 54.

> 293. As explained above, there was no evidence that the procured items were not delivered. The prosecution therefore failed to prove that the amount disbursed was used for anything other than the procurement of the items.
>
> 294. This alone dispels the notion that there was appropriation, misappropriation, or abandonment of funds. This shows that the provincial funds were lawfully used for the procurement of the items.[66]

Once more, the Court reiterates the absurdity of this line of reasoning for reasons already stated. Further, it is peculiar that despite Ampatuan's insistence that non-delivery was not proven, neither did he make an effort to prove that delivery was indeed made. Applying our earlier discussion on this point, Ampatuan could easily disprove the prosecution's claim of delivery by simply presenting the purchased construction materials. Obviously, he refused to do such, which leads to but one conclusion: there really was no delivery and the purchases were all a sham.

In fine, We sustain the ruling of the Sandiganbayan convicting Ampatuan of the crime of Malversation of Public Funds under Art. 217 of the RPC.

c. As to the charge of Falsification of Public Documents under Article 171 of the Revised Penal Code

As to the charge of Falsification, Ampatuan mainly argues that his signatures were forged. He professes that he could not have signed the documents involved in the anomalous transactions considering that he was abroad at that time. He states:

> 306. The accused-appellant was convicted of 63 counts of falsification of documents in which his supposed signatures were questionable in the first place. At this juncture, it is important to mention that there are Disbursement Vouchers, Purchase Orders, and Purchase Requests pertaining to the purchase from Abo Lumberyard and Construction Supply of construction materials intended for the repair of school buildings in the Province of

[66] *Rollo*, pp. 230-231.

> Maguindanao, which bear the accused-appellant's signature notwithstanding the fact that he was out of the country from 28 April 2009 to 15 May 2009 per his Passport No. TT147901.[67] (Citations omitted)

In support of his position, Ampatuan presented a Certification[68] issued by the Bureau of Immigration disclosing that a person named "DATU SAJID ISLAM UY AMPATUAN," born on October 5, 1982, departed the Philippines on April 28, 2009 and returned on May 15, 2009. In light of this, Ampatuan claims that he could not have signed eight DVs dated May 5, 2009 attributed to him.

The Court is not convinced.

In making these claims, Ampatuan essentially claims forgery. However, forgery cannot be presumed and must be clearly proven. As held in *Gepulle-Garbo v. Spouses Garabato*:[69]

> As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[70]

In the present case, not only did Ampatuan fail to present his original passport, there was likewise no comparison made between the alleged forged signatures and his authentic signatures. As aptly found by the Sandiganbayan:

> In the same manner, the Court could not give credence to the claim that he was abroad on the dates indicted [sic] in some vouchers. For one, and as discussed above, funds were actually released or disbursed by the Province. Second, he did not present his original passport, but merely submitted a photocopy to prove that he was indeed outside the country on the dates indicated in these vouchers. Third, and most importantly, he failed to prove that the signatures appearing on the subject vouchers are not his. Forgery as a defense must be proven by clear and convincing evidence, and the burden of proof lies on the party alleging forgery.[71] (Citations omitted.)

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67 *Rollo*, pp. 233-234.
68 Id. at 307-309.
69 750 Phil. 846 (2015).
70 Id. at 855-856.
71 *Rollo*, pp. 51-52.

Clearly, this Court cannot overturn this finding made by the Sandiganbayan on the basis of a single certification.

In addition, Ampatuan once again relies on the *Arias* doctrine to hopefully exculpate himself from the charges of falsification. Further, he claims that the facts allegedly falsified were not proven to be true.

Again, the Court wishes to highlight that there is no merit in Ampatuan's invocation of the *Arias* doctrine, and his habit of deflecting the allegations against him, as already extensively discussed. Moreover, We quote with approval the pronouncement of the Sandiganbayan:

> Accused Ampatuan and Abpi's functions or duties have been discussed earlier. As the OIC-Governor, accused Ampatuan's duty included that of signing or approving D.V.s. In these cases, the D.V.s state that payments were due Abo Lumberyard for the supply and delivery of construction materials. These statements are false on two aspects: (i) Abo Lumberyard does not exist, and as such the Province could not have entered into any transaction with it; and (ii) there were no deliveries of the materials itemized in the D.V.s.[72]

Given all the foregoing, We find no reason to reverse the ruling of the Sandiganbayan. In fine, We sustain Ampatuan's conviction of 63 counts of falsification of public documents under Art. 171 of the RPC.

As to accused-appellant Datuali Kanakan Apbi, Al Haj

a. As to the charge of violation of Sec. 3(e) of RA 3019

Abpi attempts to exculpate himself by arguing that the prosecution allegedly failed to prove some of the elements of the crime. He states:

> As Provincial Budget Officer, herein appellant's duties were limited to assisting the Local Chief Executive in the preparation of the Annual General Appropriation for the Province, and to perform such other functions as may be legally assigned to him by the Governor.

[72] Id. at 64.

> As Member of the Bids and Awards Committee, Appellant's function was merely to look at the completeness of the requirements set forth by the Government Procurement Act. He had no participation in the actual canvas nor in the award to bidders nor in the inspection of deliveries. He also had no role in the actual payment to the supplier Abo Lumberyard or to other suppliers as such payment was made by the Provincial Treasurer as supported by the official receipts presented during the trial by the Prosecution. The payment was made from the twenty (20) percent Development Fund allotted to the Province.
>
> x x x x
>
> It would appear therefore that herein Appellant is being held responsible and liable for any act or negligence committed by other concerned officials of Maguindanao such as the Chairman of the **BAC** and other Provincial Officers.[73]

More specifically, Abpi claims that the nature of his duties reveals that there was no opportunity for him to have acted with manifest partiality, evident bad faith, or gross inexcusable negligence. He diminishes his participation as Provincial Budget Officer and BAC member in the hopes of clearing his name. Moreover, he echoes Ampatuan's argument that since non-delivery was not proven, injury to the government was likewise not proven.

Abpi's arguments fail to persuade.

As correctly found by the Sandiganbayan, Abpi, as Provincial Budget Officer and BAC member, recommended 73 emergency purchases from Abo Lumberyard despite numerous irregularities attending the relevant documents. To quote:

> In all, accused Abpi, as member of the BAC, recommended 73 emergency purchases from Abo Lumberyard, cumulatively worth P35,747,493.00. Considering the number of purchases made within a period of nine months, all for the same items – white lawaan boards and plywood with different sizes but noticeably for the same price – and, as noted by the COA in its findings, "there were no documents to prove that the eligibility of the supplier and, the submitted quotations were evaluated," the Court is convinced that accused Abpi acted with evident bad faith.[74]

Evidently, as BAC member, Abpi's duties include the assessment of the qualifications of the bidder and securing that the bid documents are in order. In the present case, however, despite the

[73] Id. at 520.
[74] Id. at 46.

irregularities attending the purchase and the non-existence of Abo Lumberyard, Abpi still made the recommendation. Thus, as correctly held by the Sandiganbayan, evident bad faith attended Abpi's actions. Alternatively, and at the very least, there was gross inexcusable negligence for which he may still be held liable. On the other hand, as to his contention that non-delivery was not proven, such has already been discussed extensively and need not be repeated.

In fine, We find no error in the Sandiganbayan's finding of guilt on the part of Abpi for violating Sec. 3(e) of RA 3019.

b. As to the charge of Malversation of Public Funds under Article 217 of the Revised Penal Code

With regard to the charge of Malversation, Abpi reasons that the prosecution failed to prove his participation in the commission of the crime. Further, he laments how the Sandiganbayan failed to detail in the assailed Decision how he committed the offense. In all, he contends that aside from the finding of conspiracy, there is no hard proof as to his participation in the commission of the offense.

The Court sustains the finding of conspiracy and consequently, Abpi's liability for Malversation of public funds.

In *People v. Jesalva*,[75] the concept of conspiracy was broadly discussed:

> Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. We explained the reason for the rule, thus:
>
> > As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle of criminal law requiring proof beyond reasonable doubt before conviction. x x x

[75] 811 Phil. 299 (2017).

> Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime. It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose. We held:
>
> > To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act x x x. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[76] (Citations omitted)

Applied to the present case, the acts and omissions of accused-appellants clearly show unity in purpose: to appropriate unto themselves the province's funds.

First, as early as during the procurement process, no one bothered to thoroughly check the legitimacy of the supposed winning bidder – Abo Lumberyard. Despite the glaring anomalies in both government regulatory compliances and qualifications of Abo Lumberyard as a bidder, neither Ampatuan, the OIC Governor, nor Abpi, the Provincial Budget Officer and BAC member, cared to take a second look. Unbelievably, Abo Lumberyard did not even exist at its declared location and yet it was selected as the supplier of construction materials for the province.

Second, as found by the Sandiganbayan, the procurement did not undergo proper bidding process. It was learned that "in all the purchases subject of these cases, the Abstract of Bids indicate that negotiated procurements were resorted to by the BAC due to **unspecified emergencies**."[77] In other words, no other bidders were invited to participate without justification, in clear violation of the relevant procurement laws.

Third, despite these irregularities, Abpi still recommended 73 emergency purchases from Abo Lumberyard.

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[76] Id. at 307-308.
[77] *Rollo*, p. 45. Emphasis supplied.

Fourth, acting on Abpi's recommendation, Ampatuan signed the POs and eventually, the DVs, paving the way for the illegal disbursement of funds.

From these facts, it becomes clear that accused-appellants could not have acted individually. Indeed, they were in-charge of separate and different tasks which appear unrelated at first, but in fact, constitute a whole collective effort to consummate their criminal intent of malversing the province's funds. Thus, contrary to Abpi's assertions, conspiracy was present.

Even granting that Abpi was not an accountable public officer within the context of the present case, he may still be held liable for the crime. This concept has been eloquently explained in *Barriga v. Sandiganbayan*,[78] thus:

> It must be stressed that a public officer who is not in charge of public funds or property by virtue of [their] official position, or even a private individual, may be liable for malversation or illegal use of public funds or property if such public officer or private individual conspires with an accountable public officer to commit malversation or illegal use of public funds or property.[79]

Given the foregoing, the Court sees no reason to overturn the Sandiganbayan's ruling on Abpi's conviction for Malversation of public funds.

Ampatuan's Extremely Urgent Motion for Review[80] seeking for the reversal of the Sandiganbayan order cancelling his bail and ordering his arrest is hereby denied for having been rendered moot.

WHEREFORE, the appeals of accused-appellants Datu Sajid Islam U. Ampatuan and Datuali Kanakan Abpi, Al Haj are hereby **DISMISSED** for lack of merit. Accordingly, the Sandiganbayan Decision dated March 22, 2019 is **AFFIRMED.**

Accused-appellant Datu Sajid Islam U. Ampatuan's Extremely Urgent Motion for Review is hereby likewise **DENIED** for having been rendered moot.

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78 496 Phil. 764 (2005).
79 Id. at 775.
80 *Rollo*, pp. 81-93.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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CASTRO CASTRO & ASSOCIATES
Counsel for Accused-Appellants Datu Sajid Islam U. Ampatuan & Datuali Kanakan Abpi, Al Haj
12D Mabuhay Street, Brgy Central
1100 Quezon City

PARAOAN NUESTRO & ASSOCIATES LAW OFFICES
Counsel for Accused-Appellant Datu Sajid Islam U. Ampatuan
Penthouse II, FSS Building I
No. 89 Scout Castor 1100 Quezon City

Atty. Marisol M. Boiser
Collaborating Counsel for Accused-Appellant Datu Sajid Islam U. Ampatuan
Suite 408, Prestige Tower
F. Ortigas, Jr. Road, Ortigas Center
1605 Pasig City

SANDIGANBAYAN
Centennial Building
Commonwealth Avenue cor. Batasan Road
1126 Quezon City
(Crim. Case Nos. SB-17-CRM-1023 to 1097)

4thdiv.sb@judiciary.gov.ph
sbjrd2020@gmail.com

OFFICE OF THE SPECIAL PROSECUTOR
4th Floor, Ombudsman Building
Agham Road, Diliman
1101 Quezon City

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