



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 10, 2022** which reads as follows:*

“**G.R. No. 247831 (People of the Philippines v. Alfredo Y. Po)**. – This resolves the appeal filed by accused-appellant Alfredo Y. Po (*Po*) assailing the Decision dated March 22, 2019¹ and the Resolution dated June 10, 2019² of the Sandiganbayan in SB-13-CRM-0791, which found him guilty beyond reasonable doubt of estafa with abuse of confidence under Article 315(1)(b) of the Revised Penal Code (*RPC*).

In an Information dated June 28, 2013,³ the Assistant Special Prosecutor charged Po as follows:

That in November 2005, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **ALFREDO PO y YAP**, a high ranking public officer, being the Chairman of the Board of Mechanical Engineering (BME, for brevity), committing the offense in relation to his office, and taking advantage of the public office, with deliberate intent, did then and there willfully, unlawfully and feloniously defraud the Philippine Society of Mechanical Engineers (PSME, for brevity), an integrated accredited professional organization of Mechanical Engineers as follows: accused then Chairman of the BME received in trust from PSME the amount of **SEVEN HUNDRED TWENTY EIGHT THOUSAND FIVE HUNDRED THIRTY NINE PESOS and FIFTY NINE CENTAVOS (P728,539.59)** representing the total collection from the sales of tickets and PSME membership dues during the November 2005 Oath-Taking Ceremony of the new Mechanical Engineers, the said amount having been remitted to him by Ofelia D. Dichoso, then Secretary of the BME from Eric Agcamaran, then designated PSME collector, pursuant to his directive, which is part of the changes he implemented when he became the Chairman of the BME in May 2005, though outside the scope of his functions, power and authority since this fund is private in nature, and which receipt gives accused an obligation to turn over this amount to PSME being its owner; However, accused once in possession of the said amount, contrary to his obligation to remit the same

¹ Penned by Associate Justice Oscar C. Herrera, Jr., with Associate Justices Michael Frederick L. Musngi and Lorifel L. Pahimna, concurring; *rollo*, pp. 3-23.

² Approved by Associate Justices Oscar C. Herrera, Jr., Michael Frederick L. Musngi, and Kevin Narce B. Vivero; *rollo*, p. 130.

³ Sandiganbayan (*SB*) *rollo*, pp. 446-448.

to PSME, with unfaithfulness and abuse of confidence willfully, unlawfully, and feloniously misapplied, misappropriated and converted to his own personal use and benefit the amount of [P]728,539.59 that caused PSME to utilize part of its operating funds to defray the cost of printing of the souvenir program, plaques for the Speakers and Top Schools and medals for Topnotchers among others during the said Oath-Taking Ceremony, and despite demand to turn over and remit the said amount, accused failed, refused and denied receipt of this money to the damage of PSME in the aforestated amount.

CONTRARY TO LAW.⁴

Prosecution witness Ofelia D. Dichoso (*Dichoso*) served as secretary for various boards of the Professional Regulation Commission (*PRC*), among which is the Board of Mechanical Engineering (*BME*).⁵ As part of her functions, Dichoso would arrange the oathtaking ceremonies for successful examinees of the mechanical engineering board examinations.⁶

To fund the ceremonies, the Philippine Society of Mechanical Engineers (*PSME*) took charge of collecting payments for ceremony tickets, meals, pins, and membership fees from the board passers.⁷ The usual practice, according to Dichoso and PSME liaison officer, Eriberto A. Agcamaran (*Agcamaran*), was that the latter would collect the fees, issue receipts to the inductees, and take his collections back to the PSME office for deposit with its bank.⁸ PSME bookkeeper and prosecution witness Aida F. Gabito (*Gabito*) confirmed this practice, adding that it was to her that Agcamaran would remit such amounts and from her that he would replenish the forms for official receipts.⁹

Following the results of the 2005 mechanical engineering board examinations, Po, who was then BME Chairperson, summoned Dichoso to the library of the old Philippine Association of Board Examiners (*PABE*) building and verbally instructed that she was to receive the PSME payments directly from Agcamaran.¹⁰ Then, after defraying the necessary expenses for the ceremonies, Dichoso was to remit the remainder to Po. Po assured Dichoso that PSME President Vic De Guzman sanctioned such arrangement.

Thus, Agcamaran delivered his cash collections to Dichoso, who remitted the monies to Po on two occasions. Gabito confirmed that Agcamaran did not remit the collections to her for deposit with PSME's bank, only furnishing her the examinees' official receipts and Dichoso's

⁴ *Id.* at 446.

⁵ Sworn Statement, November 20, 2006; *id.* at 47-49.

⁶ *Id.*

⁷ *Id.*

⁸ Sworn Statement, November 21, 2006; *rollo*, pp. 59-60.

⁹ Sworn Statement, September 26, 2006; *id.* at 62-65.

¹⁰ Sworn Statement, January 25, 2007; *id.* at 50-51.

acknowledgement receipt.¹¹ On November 10, 2005, at the PABE library, Dichoso handed over ₱319,150.00 in ticket collections and ₱139,500.00 in membership fees to Po. After the ceremonies, on November 21, 2005, she again remitted to Po the amounts of ₱75,789.59 for remaining ticket collections and ₱194,100.00 for remaining membership fees.¹²

Po, on the other hand, denied having instructed Dichoso as such, and having received any amounts from her. He disowned the signatures, supposedly evidencing his receipt of the payments, appearing on Dichoso's inventories and breakdowns.¹³ Moreover, to prove that no funds went missing, Po presented: (1) the minutes of a PSME meeting,¹⁴ certified by the corporate secretary,¹⁵ and published in the *Philippine Daily Inquirer*¹⁶ (*PDI*), showing that all fees relative to the oathtaking ceremonies had been remitted to PSME, and (2) defense witness and PSME Director Ramon F. Solis¹⁷ (*Solis*), who attended the supposed PSME board meeting and attested to the absence of collectibles from Po.

After due proceedings, the Sandiganbayan rendered a Decision dated March 22, 2019,¹⁸ finding Po guilty as charged. The Sandiganbayan found present all the elements of estafa with abuse of confidence, considering that: the prosecution established Po's receipt of the oathtaking ceremony collections, and that his failure to account for these constituted misappropriation or conversion to the prejudice of PSME. Thus, the Sandiganbayan disposed:

WHEREFORE, premises considered, the Court finds accused ALFREDO YAP PO guilty beyond reasonable doubt of the crime of *Estafa*, as described in the *Information* dated June 28, 2013, and as defined and penalized under *Article 315 of the Revised Penal Code*, as amended by Republic Act No. 10950.

Pursuant to the directive of the Supreme Court in *Hernan vs. The Honorable Sandiganbayan* mandating the application of the said new legislation to the benefit of an accused and taking into consideration the following: the absence of any aggravating circumstance and the presence of a mitigating circumstance, [*i.e.*], accused's voluntary surrender, and considering further the provisions of the *Indeterminate Sentence Law*, he is hereby sentenced to suffer the penalty of imprisonment two (2) months and one (1) day of *arresto mayor* medium, as minimum, to four (4) months and one (1) day of *arresto mayor* maximum, as maximum.

¹¹ Sworn Statement, September 26, 2006; *id.* at 62-65.

¹² Sworn Statement dated January 25, 2007; *id.* at 50-51; Daily Inventory of Tickets Disposal (Exhibit D), Report of Collection of Oathtaking Tickets (Exhibit E), Report of Collection of PSME Membership Fees (Exhibit F), and Details of Expenses of the Oathtaking Ceremonies (Exhibit G).

¹³ Judicial Affidavit; *id.* at 159-170.

¹⁴ Exhibit 22.

¹⁵ Exhibit 21.

¹⁶ Exhibit 20.

¹⁷ TSN, January 29, 2018, pp. 1-24.

¹⁸ *Rollo*, pp. 3-23.

As to the accused's civil obligation, he is ordered to reconstitute the amount of Seven Hundred Twenty Eight Thousand Five Hundred Thirty Nine Pesos and Fifty Nine Centavos ([P]728,539.59) to the PSME, representing the money he misappropriated, subject to legal interest until its full satisfaction.

SO ORDERED.¹⁹

Failing his motion for reconsideration,²⁰ Po filed a Notice to Appeal,²¹ to which the Sandiganbayan gave due course.²² Upon receipt of the records, this Court advised the parties to file their respective briefs.²³

Po argues that the Sandiganbayan erred in finding that damage was inflicted, as PSME itself certified that no funds were missing; that Po received money belonging to PSME; and that he misappropriated the same.²⁴ The Sandiganbayan, on the other hand, maintains the correctness of its decision and adds that Po wrongfully filed a notice of appeal when the appropriate mode of review is a petition for review on *certiorari*.²⁵ In his Reply,²⁶ Po points out that the Office of the Special Prosecutor (*OSP*) has no personality to represent the People in appellate proceedings of criminal cases, the same pertaining to the Office of the Solicitor General (*OSG*).

Issues

Procedurally: (1) whether accused-appellant availed of the proper mode of appeal; and (2) whether the *OSP* can represent the People in the instant proceedings.

Substantively, whether Po is guilty beyond reasonable doubt of estafa with abuse of confidence.

Our Ruling

The Court denies the appeal and affirms Po's conviction.

¹⁹ *Id.* at 21-22.

²⁰ *Id.* at 130.

²¹ *Id.* at 24-26.

²² Resolution dated July 3, 2019; *id.* at 7.

²³ Resolution dated August 28, 2019; *id.* at 31.

²⁴ Appellant's Brief; *id.* at 38-105.

²⁵ Appellee's Brief; *id.* at 202-233.

²⁶ *Id.* at 235-292.

Sandiganbayan decisions rendered in exercise of its original jurisdiction shall be appealed to the Supreme Court by notice of appeal

Po correctly points out that, under A.M. No. 13-7-05-SB, or the 2018 Revised Internal Rules of the Sandiganbayan (*2018 Sandiganbayan Rules*), already in effect at the time he appealed the Sandiganbayan decision, criminal cases decided by the Sandiganbayan in its original jurisdiction shall be elevated to this Court by notice of appeal. In fact, this Court has, in several instances, already sanctioned this procedure.²⁷ Specifically, Rule XI, Section 1(a) of the 2018 Sandiganbayan Rules provides:

(a) In General. — The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by notice of appeal filed with the Sandiganbayan and by serving a copy thereof upon the adverse party.

The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its appellate jurisdiction, and in civil cases shall be by petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.

Clearly, the 2018 Sandiganbayan Rules distinguishes between criminal cases decided in exercise of the Sandiganbayan's original jurisdiction, which shall be elevated to this Court by notice of appeal; and those decided in exercise of its appellate jurisdiction, which shall be appealed to this Court by petition for review on *certiorari* pursuant to Rule 45 of the Rules of Court.

As the charge against Po was filed with and cognizable before the Sandiganbayan at the first instance, then he properly sought review of its decision by filing a notice of appeal thereat. Thereafter, the Sandiganbayan gave due course to the appeal and forwarded the records of SB-13-CRM-0791 to this Court, for which the parties were then required to submit their respective briefs.

The Office of the Special Prosecutor represents the People in cases elevated from the Sandiganbayan to the Supreme Court

Po contends that only the OSG can represent the People in these proceedings, but the law provides otherwise. Under paragraph 7 of Section

²⁷ See *People v. Hemedes, Jr.*, G.R. No. 246203 (Notice), November 23, 2021; *People v. Dapitan*, G.R. No. 253975, September 27, 2021; *People v. Pallasigue*, G.R. Nos. 248653-54, July 14, 2021; *People v. Suba*, G.R. No. 249945, June 23, 2021.

4(c) of Presidential Decree No. 1606, as amended:²⁸

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. **In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines**, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.²⁹

Executive Order No. 243 created the Office of the Ombudsman, while Executive Order No. 244 created the OSP, which inherited the powers exercised by the Tanodbayan prior to the 1987 Constitution. The Ombudsman Act of 1989³⁰ eventually placed the OSP under the Ombudsman's supervision and control.³¹ Section 11(4) thereof provides:

SEC. 11. Structural Organization. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

X X X X

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b) To enter into plea bargaining agreements; and

(c) To perform such other duties assigned to it by the Ombudsman.³²

To be sure, the prosecution of criminal offenses does not end in the filing of charges in court. The effective discharge of the OSP's duty and power

²⁸ By Republic Act (R.A.) Nos. 8249 and 10660.

²⁹ Emphasis supplied.

³⁰ R.A. No. 6770.

³¹ *Republic v. Sandiganbayan (Special Second Division)*, G.R. Nos. 207340 & 207349, September 16, 2020.

³² Emphasis supplied.

to investigate and prosecute criminal cases within the jurisdiction of the Sandiganbayan carries with it the duty to pursue all legal means in connection with its investigation and prosecution.³³ That duty consists herein of representing the People in Po's appeal of his conviction.

*Po is guilty beyond reasonable doubt
of estafa with abuse of confidence*

The elements of estafa with abuse of confidence under Article 315(1)(b) of the RPC are:

- (1) that money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
- (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
- (3) that such misappropriation or conversion or denial is to the prejudice of another; and
- (4) that there is a demand made by the offended party to the offender.³⁴

The prosecution established the fact of receipt through Dichoso's clear and positive testimony that following the instructions given by Po, she handed over to him ₱319,150.00 in ticket collections and ₱139,500.00 in membership fees at the PABE library on November 10, 2005. This happened again, on November 21, 2005, when she gave him ₱75,789.59 and ₱194,100.00 which represented the remainder of the ticket collections and membership fees, respectively.³⁵ She had carried out these remittances upon Po's instructions. Also, the prosecution presented the Daily Inventory of Tickets Disposal, Report of Collection of Oathtaking Tickets, Report of Collection of PSME Membership Fees, and Details of Expenses of the Oathtaking ceremonies, all of which Po had signed when Dichoso handed him the funds.

As against Dichoso's clear and categorical statements, Po merely denied having received any monies, a defense which is negative and self-serving, undeserving of weight because it is inherently weak, unreliable, and also easily fabricated and concocted.³⁶ With Po's denial of receipt, the second element of estafa with abuse of confidence obtains.

The defense criticizes the form of the documentary evidence, pointing out that these are more in the form of inventories and breakdowns, rather than acknowledgement receipts.³⁷ They insist that the accused would never have given himself away by signing documents explicitly evidencing receipts of

³³ *Sy v. People*, G.R. No. 243617 (Notice), May 5, 2021.

³⁴ *People v. Go*, 740 Phil. 583, 604-605 (2014).

³⁵ Sworn Statement, January 25, 2007; SB rollo, pp. 50-51.

³⁶ *People v. Ocdan*, 665 Phil. 268, 289 (2011).

³⁷ TSN, March 31, 2014, pp. 29-30.

payments.

Po also testified that the signatures appearing on the documentary evidence were not his.³⁸ Still, Dichoso is a witness competent to testify on the authenticity of his signature, considering that Po had signed these documents in front of her, and since she serves as secretary to the BME and would certainly have come across documents containing his signature.³⁹ The defense points out that the signatures on these documents appear with some discrepancies,⁴⁰ but these alone do not discount their evidentiary value. For one, the supposed discrepancies can be attributed to the fact that some of these documents were signed at around the time of the oath-taking ceremonies, when, amid the festivities, Po would have been in a rush while signing. Considering the foregoing, mere variance of signatures cannot be considered conclusive proof of inauthenticity.⁴¹

Dichoso had initially testified that a certain Anthony A. Cristobal (*Cristobal*), then the Chairperson of the Board of Customs Brokers, had also witnessed her hand over some monies to Po at the old PABE library. Cristobal later testified that he never witnessed such incident as he was not in the PRC premises at the time.⁴² Nevertheless, Cristobal's absence at such occurrence does not refute Dichoso's testimony that she had, indeed, turned over some monies to Po. At the very least, the erroneous detail renders inaccurate some portion of Dichoso's narrative, but nothing that touches directly upon the elements of the crime charged.⁴³

To be clear, Po's receipt of the monies was in such nature as to constitute both material and juridical possession. Mere material possession, which debunks a charge of estafa, means possession held on behalf of another, whereas juridical possession gives the transferee a right to set up even as against the apparent owner.⁴⁴ Dichoso testified that Po had verbally instructed her to remit the collections, after defraying the ceremony expenses, directly to him. Evidently, such remittance marked the end of the money trail, with no indication that Po was merely holding the monies in behalf of another. In short, the same remained unaccounted for.

³⁸ Judicial Affidavit; SB *rollo*, pp. 159-170.

³⁹ Rules of Court, Rule 132, Section 22. *How genuineness of handwriting proved.* — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. x x x

⁴⁰ TSN, March 31, 2014, pp. 30-32.

⁴¹ *Rivera v. Turiano*, 546 Phil. 495, 501 (2007); *JN Development Corp. v. Philippine Export and Foreign Loan Guarantee Corp.*, 505 Phil. 636, 649 (2005); *Veloso v. Court of Appeals*, 329 Phil. 398, 406 (1996).

⁴² Judicial Affidavit; SB *rollo*, pp. 249-253; TSN, October 10, 2017, pp. 1-19.

⁴³ *People v. Blanco* 716 Phil. 408, 415 (2013): "Inconsistencies in the testimonies of the prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, its veracity or the weight of their testimonies."

⁴⁴ *Libunao v. People*, G.R. No. 194359, September 2, 2020.

Apart from Po's bare denials, the defense sought to establish the absence of prejudice to PSME, considering that it had not brought the complaint before the Ombudsman,⁴⁵ and that PSME itself had reported no missing funds.⁴⁶ Still, these contentions do not persuade.

To begin with, the State is the offended party in criminal cases.⁴⁷ Especially in crimes of malfeasance, private complainants like Dichoso, Gahito, and Agcamaran, may very well be the ones to initiate the complaint, as well as provide evidence, which the prosecution, through herein OSP, will see to completion.

More crucially, the defense failed to negate prejudice to PSME. Among the defense's evidence are the minutes of a PSME board meeting, attested to by defense witness and PSME Director Solis, where the members agreed that no PSME funds went missing. However, during his cross-examination, Solis admitted that he had not seen any financial reports, and that the persons who supposedly prepared these were absent:

CHAIRPERSON

Did you, or did you not see if there was a financial statement?

A No, Sir.

CHAIRPERSON

No.

PROS. PLAZO

Q And there was also no bank statement presented in that meeting, correct?

A I don't remember.

Q You don't remember, and there was no deposit slip shown in that meeting that indeed the Three Hundred Thirty-Six Thousand (336,000.00) was indeed deposited in the bank account of PSME, correct?

A Yeah.

Q Yes, and Engineer Alex Pamplona and Serge Balolong were not present in the meeting, correct?

A I think Serge Balolong was present.

¹⁵ *Rollo*, pp. 68-70.

⁴⁶ *Id.* at 62-68.

⁴⁷ *Yokohama Tire Philippines, Inc. v. Reyes*, G.R. No. 236686. February 5, 2020.

x x x x

PROS. PLAZO

Yes, your Honors, he testified that Engineer Balolong was there, that's why I'm confronting him with the Minutes.

A I did not say that Engineer Balolong was there.

Q How about the National Treasurer Alex Pamplona, was he there during that meeting?

A No.⁴⁸

Indeed, even the very minutes presented by the defense do not list Alex Pamplona and Serge Balolong, who supposedly prepared the financial reports, as among the attendees.

In contrast, Gabito's and Agcamaran's testimonies demonstrated that, due to deviations from standard procedure, certain amounts of funds had never reached PSME. Gabito, PSME's bookkeeper, testified that she usually provided blank official receipts to Agcamaran, who would issue the same to the payors upon his collection of fees. Thereafter, he would return to the PSME office and hand over the collections to Gabito for deposit. For the 2005 oath-taking ceremonies, Agcamaran had not remitted any collections to Gabito, only furnishing her the passers' official receipts and Dichoso's acknowledgement receipt. From these circumstances, monies were clearly collected on behalf of PSME, but never reached its accounts.

Finally, demand is not a condition precedent for a charge of estafa with abuse of confidence to prosper.⁴⁹ In any case, demand would have been futile under the circumstances considering that Po denied ever having received the monies from Dichoso. From the language of Article 315(1)(b) of the RPC, and as interpreted by jurisprudence, such denial already constitutes estafa.⁵⁰

All told, through the course of the proceedings in SB-13-CRM-0791, the prosecution managed to establish a *prima facie* case for estafa with abuse of confidence. The burden of evidence then shifted to the defense to disprove the charge,⁵¹ but the defense failed in this regard. Hence, the Court finds accused-appellant Po guilty beyond reasonable doubt.

⁴⁸ TSN, January 29, 2018, pp. 14-17. (Emphasis supplied)

⁴⁹ *People v. Go*, *supra* note 32, at 607 (2014).

⁵⁰ *Ceniza-Manantan v. People*, 558 Phil. 104, 120 (2007), citing *United States v. Yap Tian Jong*, 34 Phil. 10, 12-13 (1916); and Luis B. Reyes, *The Revised Penal Code, Criminal Law* (14th Ed.), pp. 745-746: "Estafa may also be committed by denying untruthfully that the thing was received. Manantan denied having received jewelries from Carilla. However, as we have already determined, such denial is unsubstantiated and therefore cannot prevail over the categorical declarations of Carilla that the jewelries were turned over in trust to Manantan. Hence, Manantan's denial of the receipt of jewelries also constitutes estafa." (Emphasis supplied)

⁵¹ *People v. Udang, Sr.*, 823 Phil. 411, 441 (2018).

As to accused's criminal and civil penalties, the Court finds that the Sandiganbayan properly imposed these.

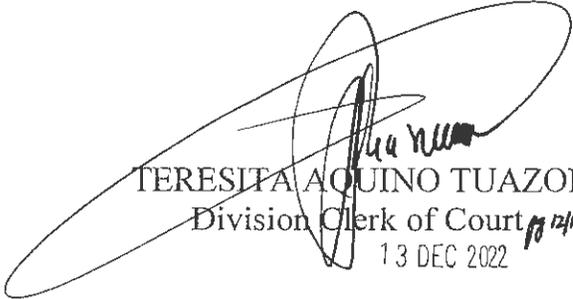
FOR THESE REASONS, accused-appellant Alfredo Y. Po's appeal is **DISMISSED**. The Sandiganbayan's Decision dated March 22, 2019 and Resolution dated June 10, 2019 in SB-13-CRM-0791 are **AFFIRMED**.

Accused-appellant Po is found **GUILTY** beyond reasonable doubt of estafa with abuse of confidence under Article 315(1)(b) of the RPC and is hereby sentenced to suffer the penalty of imprisonment from two (2) months and one (1) day of *arresto mayor* medium, as minimum, to four (4) months and one (1) day of *arresto mayor* maximum, as maximum.

As to his civil liability, accused-appellant Po is ordered to reconstitute the amount of Seven Hundred Twenty Eight Thousand Five Hundred Thirty Nine Pesos and Fifty Nine Centavos (₱728,539.59) to the Philippine Society of Mechanical Engineers, representing the money he misappropriated, subject to legal interest of six percent (6%) *per annum* from the finality of this Resolution until its full satisfaction.

SO ORDERED." (J. Lopez, M., on official leave.)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
13 DEC 2022

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