



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIO L. RELAMPAGOS, G.R. Nos. 231161 and 231584
ROSARIO S. NUÑEZ, LALAINÉ
N. PAULE, AND MARILOU D.
BARE,

Petitioners,

-versus-

OFFICE OF THE OMBUDSMAN,
Respondent.

X-----X
JANET LIM NAPOLES,
Petitioner,

X-----X
G.R. Nos. 230849-51

Present:

-versus-

CONCHITA CARPIO MORALES
in her official capacity as
OMBUDSMAN, PEOPLE OF THE
PHILIPPINES, and
SANDIGANBAYAN, SECOND
DIVISION,

Respondents.

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

Promulgated:
DEC 07 2022

X-----X

DECISION

LEONEN, J.:

The judicial policy of non-intervention with the Ombudsman's finding of probable cause can only be set aside upon a clear showing of grave abuse of discretion. Matters of defense and admissibility of evidence are irrelevant for purposes of preliminary investigation.

The consolidated Petitions for *Certiorari* were filed by Janet Lim Napoles (Napoles) and officers of the Department of Budget and Management (DBM), namely Undersecretary for Operations Mario L. Relampagos, Chief Budget and Management Specialist Rosario S. Nuñez (Nuñez), and Administrative Assistants VI Lalaine N. Paule (Paule) and Marilou D. Bare (Bare) (collectively, Relampagos et al.). They jointly assail the Consolidated Resolution¹ and Consolidated Order² of the Office of the Ombudsman finding probable cause for violation of Section 3(e) of Republic Act No. 3019 and malversation under Article 217 of the Revised Penal Code against Relampagos et al. and Napoles; and corruption of public officials under Article 212 of the Revised Penal Code against Napoles in relation to the fund releases of former Davao del Sur Representative Douglas R. Cagas's (Cagas) allocation in the Priority Development Assistance Fund (PDAF) under Special Allotment Release Order Nos. ROCS-07-00046 and ROCS-07-03351.

The present case involves the 2007 PDAF of Cagas amounting to PHP 16 million, which was diverted through Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc., both alleged nongovernment organizations (NGOs). The funds were diverted from the DBM to Technology Resource Center, the implementing agency of the ghost projects.

The scheme was discovered after whistleblower Benhur Luy (Luy) was rescued from the Pacific Plaza Tower in Taguig City. He claimed that he was illegally detained because of his responsibilities as "lead employee" of Janet Lim Corporation.³ He, along with Janet Lim Corporation employees, namely Marina Sula (Sula) and Merlina Suñas (Suñas) (collectively referred to as the whistleblowers), revealed the Napoles pork barrel scam.

The whistleblowers alleged that several NGOs were created for the pork barrel scam, including Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development

¹ The Consolidated Resolution dated June 2, 2016 was issued by the Task Force PDAF as investigated by Graft Investigation and Prosecution Officer III Anjuli Larla A. Tan-Eneran, reviewed by Acting Director, PIAB-F Ruth Laura A. Mella, recommended for approval by Graft Investigation and Prosecution Officer IV M.A. Christian O. Uy, and approved by Ombudsman Conchita Carpio Morales.

² The Consolidated Order dated November 17, 2016 was issued by the Task Force PDAF as investigated by Graft Investigation and Prosecution Officer III Anjuli Larla A. Tan-Eneran, reviewed by Acting Director, PIAB-F Ruth Laura A. Mella, recommended for approval by Graft Investigation and Prosecution Officer IV M.A. Christian O. Uy, and approved by Ombudsman Conchita Carpio Morales.

³ *Rollo* (G.R. Nos. 230849-51), p. 37.

Foundation, Inc. The incorporators, officers, and members of these NGOs were household helpers, relatives, employees, and friends of Napoles. Some incorporators were unaware of their involvement, and their signatures in the corporate documents were forged. They operated these dummy NGOs at the Janet Lim Corporation Office at Unit 2502, Discovery Center Suites, Ortigas Center, Pasig City.⁴

The pork barrel scam is as follows:

Napoles would first negotiate with a lawmaker on what projects to prioritize, which government agency would implement the project, the project cost, and the amount of the lawmaker's commission or kickback, ranging from 40% to 60% of the project cost.⁵

Depending on which House of Congress the lawmaker belongs, the lawmaker would write the Senate President or House Speaker and the Chairperson of the Finance Committee or the Appropriations Committee to request for the release of their allocation in the PDAF. The Senate President or House Speaker would then endorse the written request to the DBM.⁶ The first tranche of a lawmaker's commission is released after transmittal of the request to Napoles.⁷

Janet Lim Corporation employees would follow up with the DBM for the release of the Special Allotment Release Order. Upon the order's release and transmittal to Napoles, the second tranche of commission is released to the lawmaker. In return, the lawmaker signs the endorsement of Napoles-controlled NGOs to the implementing agency.⁸ The authorized representative of the lawmaker who receives the commission gets 1% to 5% of the total project cost.⁹

Consequently, the implementing agency would enter into a Memorandum of Agreement with the lawmaker and the Napoles-controlled NGO. Thereafter, Janet Lim Corporation employees would follow up again with the DBM for the release of the Notice of Cash Allocation addressed to the implementing government agency. Upon the release of the Notice of Cash Allocation, the implementing agency would issue check payments to the selected NGOs. The agency's head usually gets 10% of the project cost as commission. The implementing agency does not check the veracity of the documents submitted by the selected NGOs.¹⁰

⁴ *Id.* at 39.

⁵ *Id.* at 38.

⁶ *Id.*

⁷ *Id.* at 122-123.

⁸ *Id.* at 123.

⁹ *Id.* at 124.

¹⁰ *Id.*

However, no project is implemented. Instead, Napoles would pocket the remainder of the funding of the “project,” after deducting the commissions of the lawmaker and other government officials involved.

Napoles allegedly implemented the scheme in 2007 through Cagas’s endorsement of his PDAF livelihood projects amounting to PHP 16 million. The livelihood projects for the municipalities in the 1st District of Davao del Sur involve financial assistance for farm tools and implements, and technical assistance through video courses and printed materials. For the said projects, Cagas allegedly received a total of PHP 9.3 million through Zenaida G. Cruz-Ducut (Cruz-Ducut), his authorized representative.¹¹

Through contacts of Napoles in the DBM, namely Relampagos, Nuñez, Paule, and Bare, Special Allotment Release Order Nos. ROCS-07-0046 and ROCS-07-03351 were released on January 10, 2007 and February 15, 2007, respectively. Each Special Allotment Release Order is for PHP 8 million, for a total of PHP 16 million, to finance Cagas’s projects. Cagas then wrote letters to the head of Technology Resource Center, Antonio Y. Ortiz (Ortiz), identifying the agency as project implementor, with Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc. as project partners. Both of the NGOs were allegedly controlled by Napoles.¹² For his part, Ortiz allegedly received commissions amounting to 10% of the project or equivalent to PHP 1.6 million.¹³

Technology Resource Center executed separate Memorandums of Agreement with the said NGOs. Disbursement Voucher Nos. 012007040604 and 012007040596 were issued for Check Nos. 850421 and 850438, respectively, amounting to PHP 7.68 million each, or a total of PHP 15.36 million. However, no financial assistance for farm implements, livelihood materials, and training were delivered to the supposed beneficiaries.¹⁴ Technology Resource Center relied on the endorsements of Cagas in allowing the negotiated procurement, signing of the Memorandum of Agreement, the disbursement vouchers, and other documents related to the transaction.¹⁵

The Commission on Audit issued Special Audits Office Report No. 2012-03 on the PDAF allocations of lawmakers from 2007 to 2009, including Cagas’s livelihood projects in 2007. The Report confirmed the whistleblowers’ accounts on the existence of the pork barrel scam. The Commission observed that the implementing agencies, including Technology Resource Center, did not actually implement the PDAF projects.

¹¹ *Id.* at 39–40.

¹² *Id.* at 40.

¹³ *Id.* at 46.

¹⁴ *Id.* at 41.

¹⁵ *Id.* at 46.

The direct releasing of funds to the NGOs solely upon the instructions of the sponsoring lawmaker violates DBM regulations requiring executive endorsements from supervising departments. The NGOs were also selected as partners in the PDAF projects without public bidding. The supposed organizations have dubious addresses and no track record in executing government projects. Some suppliers identified by the NGOs denied having transacted with them. Their reported beneficiaries were unknown or cannot be located at their given addresses. The NGOs provided nonexistent addresses and other questionable documents. The disbursements from the Special Allotment Release Orders issued in relation to Cagas's 2007 PDAF amounting to PHP 15.36 million were unliquidated.¹⁶

On November 29, 2013, the National Bureau of Investigation filed a Complaint before the Ombudsman recommending the prosecution of Cagas, Napoles, Cruz-Ducut, Ortiz, former Technology Resource Center Deputy Director General Dennis L. Cunanan (Cunanan), Technology Resource Center employees Francisco B. Figura (Figura) and Marivic V. Jover (Jover), Philippine Social Development Foundation, Inc. President Evelyn de Leon (de Leon), Countrywide Agri and Rural Economic and Development Foundation, Inc. President Mylene T. Encarnacion (Encarnacion), and Commission on Audit State Auditors Jerry A. Calayan (Calayan) and Sylvia Montes (Montes) for the following crimes: malversation of public funds, direct bribery, and violations of Section 3(b), (e), (g), and (j) of Republic Act No. 3019 and Republic Act No. 6713. Napoles, De Leon, Encarnacion, and Cruz-Ducut were additionally recommended for prosecution for corruption of public officials and violation of Section 4 of Republic Act No. 3019.¹⁷

On February 2, 2015, the Field Investigation Office of the Ombudsman filed a Complaint against Cagas, Cruz-Ducut, Ortiz, Ortiz's assistant Maria Rosalinda M. Lacsamana (Lacsamana), Cunanan, Technology Resource Center Sales and Promotion Supervisor V Belina A. Concepcion (Concepcion), Jover, Napoles, de Leon, Encarnacion, and Representative Eulogio D. Rodriguez (Rodriguez) for direct bribery and malversation of public funds and violation of Section 3(e) of Republic Act No. 3019. The Field Investigation Office also filed a Complaint against Cagas, Ortiz, and Napoles for violation of Section 3(b) of Republic Act No. 3019.¹⁸

The Ombudsman directed those charged to file their counter-affidavits.¹⁹

¹⁶ *Id.* at 43–44.

¹⁷ *Id.* at 118–119.

¹⁸ *Id.* at 35–36. The FIO Complaints are mentioned in the assailed Consolidated Resolution but were not attached in the records before the Court.

¹⁹ *Id.* at 48–49.

In his Counter-Affidavit, Cagas denied the accusations against him. He argued that his role was only recommendatory, and it was Technology Resource Center as the implementing agency who was accountable for the use and disbursement of the funding in his PDAF project. Cagas alleged that there was no evidence showing his conspiracy with those charged. He denied having received any commission from Napoles. He also claimed that his signatures in the Special Allotment Release Orders were forged.²⁰

Cruz-Ducut assailed Luy's credibility, invoking the inadmissibility of his testimony due to the *res inter alios acta* rule. She claimed that the entries in Luy's daily financial records and his hard drive were not assured to be truthful or accurate. She insisted that the Complaints against her should be dismissed because there was no allegation that she was being sued in her official capacity.²¹

The Technology Resource Center officers disclaimed liability and alleged that they had no direct dealings with Cagas or with Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc. Cunanan denied his involvement in the scheme since it was Ortiz, his former superior, and his assistant, Lacsamana, who dealt with the project and supervised the processing of the PDAF. As for the other officers in Technology Resource Center, they assumed that the projects were regular and legitimate. Cunanan signed the disbursement vouchers in his ministerial duties as officer-in-charge when Ortiz was on leave. He contended that he did not receive any commission, and when he assumed the Director General position, he initiated the investigation of all PDAF-funded projects of Technology Resource Center.²²

Figura claimed that he signed the checks issued to the NGOs as part of his ministerial duties. He claimed that he was pressured by Ortiz and Cunanan to expedite the issuance of the Memorandum of Agreement and processing of the papers.²³ Meanwhile, Jover contended that the disbursement vouchers passed through her office for proper coding of account. She claimed that her duty to approve disbursement vouchers was ministerial, and that her certification on the adequacy of funds did not state that the expenses were authorized and lawful.²⁴

Lacsamana alleged that there was no evidence showing her participation in the conspiracy. She said her ministerial duties were limited to checking the proper signing of supporting documents of the project. She also denied involvement in the selection, endorsement, and approval of the project and its partners. She claimed that her signature in the disbursement

²⁰ *Id.* at 49–50.

²¹ *Id.* at 50.

²² *Id.* at 51.

²³ *Id.* at 52.

²⁴ *Id.* at 52–53.

voucher is dispensable.²⁵ For her part, Concepcion stated that she relied on the endorsement of the Office of the Director General that the documents were facially complete. She said her internal memorandum recommending the release of the funds was also endorsed for approval by Technology Resource Center's legal department.²⁶

Commission on Audit State Auditor Montes claimed that she was not the supervising auditor of Technology Resource in 2007 and 2009. Meanwhile, Auditor Calayan claimed his responsibility was limited to supervising and monitoring the progress of the audit work in Technology Resource Center. He alleged that he was not remiss in his duties since he issued a management letter seeking action on the Commission on Audit findings on PDAF.²⁷

As regards DBM officials, Relampagos et al., in their Joint Counter-Affidavit, denied any participation in the release of public funds to the Napoles-controlled NGOs. They claimed that it was the Budget and Management Bureau that issued the subject Special Allotment Release Orders and not Relampagos's office. They alleged that they had no means of expediting the processing and release of the Special Allotment Release Orders and Notice of Cash Allocations, which go through several offices before finally arriving to Relampagos. They also denied talking directly to Napoles or Luy. They admitted to entertaining follow-up calls from all stakeholders in government on the status of budget releases, but denied expediting its release.²⁸

For her part, Napoles contended that the Complaints were insufficient in form and substance because the time, place, and the specific acts constituting the offense were unspecified. She claimed that the testimonies of whistleblowers were not credible and full of inconsistencies. She denied instructing the whistleblowers to create bogus foundations and to enter into anomalous projects. She alleged that her signatures were forged by the whistleblowers.²⁹

After further exchange of pleadings from those charged, the Ombudsman issued the June 2, 2016 Consolidated Resolution,³⁰ finding probable cause against Cagas, Ortiz, Cunanan, Figura, Concepcion, Jover, Technology Resource Center Internal Auditor Maurine E. Dimaranan, Cruz-Ducut, Relampagos, Nuñez, Paule, Bare, Napoles, and Encarnacion for two

²⁵ *Id.* at 53.

²⁶ *Id.* at 54.

²⁷ *Id.* at 55.

²⁸ *Id.* at 56.

²⁹ *Id.* at 57.

³⁰ The Resolution was penned by Graft Investigation and Prosecution Officer Anjuli Larla A. Tan-Eneran and reviewed by Acting Director of the Preliminary Investigation and Adjudication Board Ruth Laura A. Mella. The Resolution was recommended approved by Graft Investigation and Prosecution Officer M. A. Christian O. Uy and was approved by Ombudsman Conchita Carpio Morales.

counts each of malversation under Article 217 of the Revised Penal Code and violation of Section 3(e) of Republic Act No. 3019. It also indicted Cagas and Ortiz for two counts of direct bribery, and Napoles for two counts of corruption of public officials under Article 212 of the Revised Penal Code. The dispositive portion reads:

WHEREFORE, this Office, through the undersigned:

(a) FINDS **PROBABLE CAUSE** to indict the following respondents who appear to have conspired in the commission of the following:

[VIOLATION OF SECTION 3(E) OF RA 3019 – 2 counts]

i. Douglas RA. Cagas, Antonio Y. Ortiz, Dennis L. Cunanan, Francisco B. Figura, Belina A. Concepcion, Marivic V. Jover, Maurine E. Dimaranan, Zenaida G. Cruz-Ducut, Mario L. Relampagos, Rosario S. Nuñez, Lalaine N. Paule, Marilou D. Bare, Janet L. Napoles and Mylene T. Encarnacion, acting in conspiracy with one another, for VIOLATION OF SECTION 3(E) OF RA 3019 in relation to the fund releases amounting to at least ₱7,680,000.00 drawn from Congressman Cagas' PDAF under SARO No. ROCS-07-00046 and coursed through the Technology Resource Center as reflected in Disbursement Voucher No. 012007040604 and LBP Check No. 850421;

ii. Douglas RA. Cagas, Antonio Y. Ortiz, Dennis L. Cunanan, Francisco B. Figura, Maria Rosalinda M. Lacsamana, Marivic V. Jover, Maurine E. Dimaranan, Zenaida G. Cruz-Ducut, Mario L. Rclampagos, Rosario S. Nuñez, Lalaine N. Paule, Marilou D. Bare, Janet L. Napoles, Evelyn D. de Leon and Eulogio D. Rodriguez, acting in conspiracy with one another, for VIOLATION OF SECTION 3(E) OF RA 3019 in relation to the fund releases amounting to at least ₱7,680,000.00 drawn from Congressman Cagas' PDAF under SARO No. ROCS-0703351 and coursed through the Technology Resource Center as reflected in Disbursement Voucher No. 012007040596 and LBP Check No. 850438;

[MALVERSATION – 2 counts]

i. Douglas RA. Cagas, Antonio Y. Ortiz, Dennis L. Cunanan, Francisco B. Figura, Belina A. Concepcion, Marivic V. Jover, Maurine E. Dimaranan, Zenaida G. Cruz-Ducut, Mario L. Relampagos, Rosario S. Nunez, Lalaine N. Paule, Marilou D. Bare, Janet L. Napoles and Mylene T. Encarnacion, acting in conspiracy with one another, for MALVERSATION in relation to the misuse/misappropriation of fund releases amounting to at least ₱7,680,000.00 drawn from Congressman Cagas' PDAF under SARO No. ROCS-07-00046 and coursed through the Technology Resource Center as reflected in Disbursement Voucher No. 012007040604 and LBP Check No. 850421.

ii. Douglas RA. Cagas, Antonio Y. Ortiz, Dennis L. Cunanan, Francisco B. Figura, Maria Rosalinda M. Lacsamana, Marivic V. Jover, Maurine E. Dimaranan, Zenaida G. Cruz-Ducut, Mario L. Relampagos, Rosario S. Nunez, Lalaine N. Paule, Marilou D. Bare, Janet L. Napoles, Evelyn D. de Leon and Eulogio D. Rodriguez, acting in conspiracy with one another, for MALVERSATION in relation to

the misuse/misappropriation of fund releases amounting to at least ₱7,680,000.00 drawn from Congressman Cagas' PDAF under SARO No. ROCS-07-03351 and coursed through the Technology Resource Center as reflected in Disbursement Voucher No. 012007040596 and LBP Check No. 850438;

[DIRECT BRIBERY UNDER ARTICLE 210 OF THE RPC – 2 counts]

- i. Douglas RA. Cagas, for DIRECT BRIBERY UNDER ARTICLE 210 OF THE RPC in relation to the commissions/kickbacks amounting to at least ₱9,300,000.00 which he received from Napoles in connection with the implementation of his PDAF-funded government projects under SARO Nos. ROCS-07-00046 and ROCS-07-03351 and coursed through the Technology Resource Center, and by reason of his office or position;
- ii. Antonio Y. Ortiz, for DIRECT BRIBERY UNDER ARTICLE 210 OF THE RPC in relation to the commissions/kickbacks amounting to at least ₱1,600,000.00 which he received from Napoles in connection with the implementation of Congressman Cagas' PDAF-funded government projects under SARO Nos. ROCS-07-00046 and ROCS-07-03351 and coursed through the Technology Resource Center, and by reason of his office or position;

[CORRUPTION OF PUBLIC OFFICIALS UNDER ARTICLE 212 OF THE RPC – 2 counts]

- i. Janet L. Napoles, for CORRUPTION OF PUBLIC OFFICIALS UNDER ARTICLE 212 OF THE RPC in relation to the commissions/kickbacks amounting to at least ₱9,300,000.00 which she gave Congressman Cagas in connection with the implementation of his PDAF-funded government projects under SARO Nos. ROCS-07-00046 and ROCS-07-03351 and coursed through the Technology Resource Center;
- ii. Janet L. Napoles, for CORRUPTION OF PUBLIC OFFICIALS UNDER ARTICLE 212 OF THE RPC in relation to the commissions/kickbacks amounting to at least ₱1,600,000.00 which she gave Director General Ortiz in connection with the implementation of Congressman Cagas' PDAF-funded government projects under SARO Nos. ROCS-07-00046 and ROCS-07-03351 and coursed through the Technology Resource Center;

and accordingly RECOMMENDS the immediate filing of the corresponding Informations against them in court;

(b) **DISMISSES** the criminal charges filed against Sylvia P. Montes, Jerry A. Calayan and Consuelo Lilian R. Espiritu for insufficiency of evidence;

(c) **DISMISSES** the criminal charges for violation of Section 3(b), (g), and (j) and Section 4 of RA 3019 and RA 6713 against ALL RESPONDENTS;

(d) **FURNISHES** copies of this Resolution to the Anti-Money Laundering Council for its immediate action on the possible violations by the indicted respondents of the Anti-Money Laundering Act, considering that



violations of Section 3(e) of RA 3019 are considered unlawful activities under this statute; and

(e) **DIRECTS** the Field Investigation Office to conduct further fact-finding on the criminal and/or administrative liabilities of Dennis L. Cunanan, Francisco B. Figura, Maria Rosalinda M. Laacsamana, Belina A. Concepcion, Marivic V. Jover, Maurine E. Dimaranan, Zenaida G. Cruz-Ducut, Mario L. Relampagos, Rosario S. Nuñez Lalaine N. Paule and Marilou D. Bare, who may have received commissions and/or kickbacks from Napoles in relation to their participation in the scheme subject of these proceedings.

SO ORDERED.³¹ (Emphasis in the original)

The Ombudsman found *prima facie* evidence as regards the existence of the pork barrel scheme involving legislators, government agencies, and NGOs under Napoles's control, acting in concert to systematically divert a legislator's PDAF through nonexistent or ghost projects implemented by Napoles-controlled NGOs.³² The *modus operandi* was evident from the Commission on Audit Report of the disbursement vouchers, checks, memorandum of agreement, letters, and other evidence such as Luy's ledger, and the sworn statements of Luy, Suñas, Sula, and Simonette Briones, all former employees and dummies of Napoles attesting to the scheme.³³

The Ombudsman found probable cause for violation of Section 3(e) of Republic Act No. 3019 against those who were involved in the processing and release of the PDAF disbursement. It held that Cagas and officers from Technology Resource Center and the DBM acted in conspiracy with Napoles and the officers of her controlled NGOs.³⁴ The Ombudsman believed that Relampagos et al. were contacts of Napoles in the DBM who expedited the release of the Special Allotment Release Orders and Notice of Cash Allocations for Cagas's PDAF-funded project.³⁵ The Ombudsman found that these public officers were manifestly partial to Napoles and extended undue favor to her controlled NGOs. Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc. were selected without the benefit of public bidding.³⁶ Moreover, there was unusual accommodation in the examination, processing, and approval of Technology Resource Center officers of payment to the NGOs. Disbursement Voucher Nos. 012007040604 and 012007040596 were accomplished, signed, and approved all in the same day.³⁷ No prior due diligence was conducted and Technology Resource Center failed to monitor the obligations of the NGOs after the funding was released to them.³⁸

³¹ *Id.* at 87–90.

³² *Id.* at 62.

³³ *Id.* at 65, 85.

³⁴ *Id.* at 67.

³⁵ *Id.* at 66.

³⁶ *Id.* at 68.

³⁷ *Id.* at 70.

³⁸ *Id.*

The Ombudsman held that there was evident bad faith with several public officers benefitting from the PDAF's diversion. It caused undue injury to the government amounting to PHP 15.36 million, which remains unliquidated. There was also no evidence that the said amount was spent on the alleged livelihood projects of Cagas. Through Napoles's directive, her employees fabricated documents and a list of fictitious beneficiaries to make it appear that the projects were implemented.³⁹ Unwarranted benefits were extended to Napoles and her NGOs which, despite having no capacity to implement the livelihood projects, were given funding with "indecent haste."⁴⁰

The Ombudsman also found probable cause for malversation. Citing *Belgica v. Executive Secretary Ochoa*,⁴¹ the Ombudsman held that it was the lawmaker who exercised actual control and custody of the PDAF, which allowed him or her to participate in the release of the funds to implement their PDAF project.⁴² Thus, the Ombudsman held that Cagas was an accountable public officer for his PDAF.⁴³ Relampagos et al. from the DBM facilitated the transfer of funds to Ortiz et al. in Technology Resource Center, which served as a conduit for the diversion of funds to Napoles-controlled NGOs.⁴⁴

The Ombudsman held that there is also probable cause for direct bribery based on Luy's testimony that Cagas received the PHP 9.3 million through Cruz-Ducut. Luy also stated that he saw Ortiz receive 10% of the amounts in the subject Special Allotment Release Orders, or PHP 1.6 million in total.⁴⁵ These commissions were given to divert the funding of the PDAF to Napoles-controlled NGOs.⁴⁶ As regards Napoles, the Ombudsman also found probable cause for corruption of public officials.⁴⁷

The Ombudsman directed its Field Investigation Office to further conduct fact-finding on the criminal and administrative liabilities of Relampagos et al., who "may have received commissions and/or kickbacks from Napoles[.]"⁴⁸

³⁹ *Id.* at 71–72.

⁴⁰ *Id.* at 73.

⁴¹ 721 Phil. 419 (2013) [Per J. Perlas-Bernabe, *En Banc*].

⁴² *Id.* at 75.

⁴³ *Id.* at 76.

⁴⁴ *Id.* at 77.

⁴⁵ *Id.* at 78–79.

⁴⁶ *Id.* at 79.

⁴⁷ *Id.* at 80.

⁴⁸ *Id.* at 126.

Conspiracy was also found to be present among those charged in the Complaints. The roles that each played were indispensable to divert the PDAF. Without the facilitation of DBM officials, and the certifications, approvals, and signatures of the responsible officers in Technology Resource Center, the funds would not have been transferred to Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc.⁴⁹ The defenses of those charged, such as good faith and regularity in the performance of duties, are matters for trial.⁵⁰ The Ombudsman did not appreciate their denials and held them to be weak against the categorical accusations of the whistleblowers.⁵¹

The charges against Montes and Technology Resource Center Budget Officer IV Consuelo Lilian Espiritu were dropped because they have no participation in the transactions.⁵² Calayan was also not charged because he issued several Audit Observation Memoranda against Technology Resource Center.⁵³ Moreover, the Ombudsman dropped the charges of violation of Section 3(b), (g), and (j) and Section 4 of Republic Act No. 3019, and Republic Act No. 6713, for these were modalities of committing Section 3(e) for which probable cause had been determined.⁵⁴

Relampagos et al. filed a Motion for Reconsideration, which the Office of the Ombudsman denied in the Consolidated Order dated November 17, 2016.⁵⁵

On April 21, 2017, Napoles filed her Petition docketed as G.R. Nos. 230849-51.⁵⁶

On May 15, 2017, Relampagos et al. filed their Joint Petition docketed as G.R. Nos. 231161 and 231584.⁵⁷

On June 5, 2017, the Petitions were consolidated and the respondents were required to file their respective Comments.⁵⁸

On October 13, 2017, the Office of Solicitor General filed a Manifestation and Motion to refer the Petitions to the Office of the Special Prosecutor of the Office of the Ombudsman and to allow the Office of the

⁴⁹ *Id.* at 82.

⁵⁰ *Id.* at 84–86.

⁵¹ *Id.*

⁵² *Id.* at 86.

⁵³ *Id.*

⁵⁴ *Id.* at 87.

⁵⁵ *Id.* at 94–117.

⁵⁶ *Id.* at 3–30.

⁵⁷ *Rollo* (G.R. Nos. 231161 and 231584), pp. 21–58.

⁵⁸ *Rollo* (G.R. Nos. 230849-51), pp. 253–254.

Special Prosecutor to file the Comment for the respondents.⁵⁹ This was granted on November 22, 2017.⁶⁰

On April 13, 2018, the Office of the Special Prosecutor filed its Consolidated Comment.⁶¹

On October 8, 2018, Napoles filed a Motion to Admit her Reply⁶² which was noted on April 8, 2019. Other petitioners were also directed to file their Reply.⁶³

On December 2, 2019, Atty. Arnold M. Caga of De Guzman Dionido Caga Jacuban & Associates Law Offices was directed to show cause for failing to file a reply for Relampagos et al.⁶⁴

On February 4, 2020, Relampagos et al. filed their Reply and compliance to the show cause.⁶⁵

In G.R. Nos. 230849-51, Napoles contends that the Complaints are insufficient in form and substance because the allegations are too sweeping and general. She claims that there is no statement on the particular time, place, and specific acts for which she is being charged. Napoles alleges that the testimonies of the whistleblowers are self-serving and inadmissible for being hearsay. She claims that the Ombudsman gravely abused its discretion in accepting the testimonies as “gospel truth” when the whistleblowers are also supposedly guilty themselves.⁶⁶

Napoles argues that the Ombudsman should not have charged her with violation of Section 3(e) of Republic Act No. 3019 and malversation of public funds because she is not a public officer. She insists that there was no specific acts showing her supposed planning and preparation in the diversion of the PDAF. For conspiracy to exist, there must be proof and not mere conjectures or assumptions.⁶⁷ Napoles adds that there was also no allegation as regards the specific act or omission for corruption of public officers.⁶⁸

Napoles also claims that the charge of malversation was misplaced and has no basis because Cagas is not the accountable officer for his PDAF. According to her, Cagas’s role was merely recommendatory. Napoles

⁵⁹ *Id.* at 271–275.

⁶⁰ *Id.* at 300–303.

⁶¹ *Id.* at 320–339.

⁶² *Id.* at 341–352.

⁶³ *Id.* at 353.

⁶⁴ *Id.* at 361–362.

⁶⁵ *Id.* at 382–397.

⁶⁶ *Id.* at 11–12.

⁶⁷ *Id.* at 15.

⁶⁸ *Id.* at 15–18.

contends that it is the implementing agency that actually designates the NGOs, and that the agency has the custody of the funding and the responsibility to account for it.⁶⁹

Napoles alleges that the Complaints are founded on self-serving Affidavits intending to destroy her reputation. She argues that they do not satisfy the requirement of clear and convincing evidence required to establish the presence of conspiracy.⁷⁰ She insists that the Ombudsman's finding of probable cause was based on hearsay, self-serving, incredible, and inadmissible testimonies of the whistleblowers.⁷¹ According to Napoles, the Ombudsman should have been more cautious in relying on the statements of the co-conspirators given that they come from "polluted sources."⁷² She also invokes the *res inter alios acta* rule, which requires independent evidence of the conspiracy proving its existence, which she argues to be absent in this case.⁷³

In G.R. Nos. 231161 and 231584, Relampagos et al. insist that they have no participation in the scheme because it is the Budget and Management Bureau-G in the DBM who is responsible for preparing, processing, and reviewing Special Allotment Release Orders and Notice of Cash Allocations. Relampagos only signed SARO No. ROCS-07-003351 as the DBM Secretary's alternate but he did not sign SARO No. ROCS-07-00046.⁷⁴ Relampagos et al. refer to PDAF proceedings of other legislators where DBM Budget and Management Bureau-G Director Carmencita N. Delantar allegedly testified that Relampagos's office has no participation in the issuance of Special Allotment Release Orders.⁷⁵ The Special Allotment Release Orders were allegedly hand-carried by Director Delantar to the office of Relampagos for him to sign when the DBM Secretary is absent.⁷⁶

Relampagos et al. contend that the Special Allotment Release Orders were released beyond the prescribed period in the DBM Charter, negating the claim that their processing was expedited.⁷⁷ They argue that there was no recital of facts as to how they facilitated the processing and issuance of the Special Allotment Release Orders and Notice of Cash Allocations. They insist that the Ombudsman did not state its criteria for saying that these documents were released with undue haste.⁷⁸ Moreover, they also stress that no portion of the PDAF went to the DBM.⁷⁹

⁶⁹ *Id.* at 15-17.

⁷⁰ *Id.* at 19.

⁷¹ *Id.* at 21-26.

⁷² *Id.* at 25.

⁷³ *Id.* at 25-26.

⁷⁴ *Rollo* (G.R. Nos. 231161 and 231584), pp. 30-31.

⁷⁵ *Id.* at 31-40.

⁷⁶ *Id.* at 30, 45.

⁷⁷ *Id.* at 46.

⁷⁸ *Id.* at 47.

⁷⁹ *Id.* at 49.

Relampagos et al. argue that they could not have committed malversation because they are not the accountable officers. According to them, the DBM has no control of the funds of property released to the agency. The Department is charged with allotment of budget through the issuance of either a Comprehensive Agency Budget Matrix or a Special Allotment Release Order. These allotments authorize agencies to enter into obligations. It is the agency's application of the budget which gives rise to the charge of malversation, and not the issuance of Special Allotment Release Order *per se*.⁸⁰

Relampagos et al. contend that the mere signing of the Special Allotment Release Orders and Notice of Cash Allocations is not indicative of conspiracy,⁸¹ as held in *Arias v. Sandiganbayan*.⁸² They assert that the presumption of regularity of the performance of their duties applies.⁸³

In its Consolidated Comment, the Office of the Special Prosecutor contends that G.R. Nos. 231161 and 231584 should be dismissed outright because Relampagos jumped bail and failed to return after being granted leave to attend an international consortium.⁸⁴ The Office of the Special Prosecutor holds that his act of being a fugitive from justice is a waiver of his right to seek relief from the Court.⁸⁵ They assert that both Petitions failed to prove that the Ombudsman gravely abused its discretion in finding probable cause against them.⁸⁶ They also insist that there is no reason why the Court should interfere with the Ombudsman's determination of probable cause.⁸⁷ The Joint Resolution was supported by substantial evidence, and the Ombudsman discussed each element of the charges against Relampagos et al.

The Office of the Special Prosecutor argues that direct proof is not required to establish the existence of conspiracy. Its existence can be inferred from the conduct of the those involved acting in concert for a common objective, which in this case is the diversion of Cagas's PDAF to Napoles-controlled organizations.⁸⁸ The complex scheme and the role and participation of each individual were painstakingly described and identified by the Ombudsman.⁸⁹ The Office of the Special Prosecutor underscores that there were corroborating accounts from whistleblowers that Relampagos et al. were Napoles's contacts in the DBM, to whom they followed up the release of the Special Allotment Release Orders and Notice of Cash

⁸⁰ *Id.* at 50.

⁸¹ *Id.* at 50-51.

⁸² 259 Phil. 794 (1989) [Per J. Gutierrez, *En Banc*].

⁸³ *Rollo* (G.R. Nos. 231161 and 231584), p. 51.

⁸⁴ *Id.* at 301.

⁸⁵ *Id.* at 301-303.

⁸⁶ *Rollo* (G.R. Nos. 230849-51), p. 325.

⁸⁷ *Id.* at 332-333.

⁸⁸ *Id.* at 329.

⁸⁹ *Id.* at 327.

Allocations to the implementing agency and eventually to the NGOs.⁹⁰ They add that matters of defense and other factual allegations raised in the Petitions should be decided on a full-blown trial on the merits and not during the preliminary investigation.⁹¹

Napoles rebuts the Office of the Special Prosecutor's submission, arguing that there was no mention of any overt act showing her participation in the charges against her.⁹² She argues that while conspiracy may be implied, it must be established with positive and convincing evidence showing the "concurrence of wills, a common intent or design to commit a crime."⁹³ Napoles maintains that there was no paper trail to establish probable cause against her.⁹⁴ She contends that the rule on non-interference may be set aside because the Ombudsman allegedly violated her constitutional right to be informed of the accusations against her.⁹⁵

Relampagos and Bare⁹⁶ filed their Reply separately from Nuñez and Paule.⁹⁷ Their pleadings were similarly worded. They raise the granting of the Sandiganbayan of the demurrer in *People v. Constantino Jaraula* (Jaraula Case) in Criminal Cases No. SB-15-CRM-0016 to SB-15-CRM-0021.⁹⁸ The Jaraula Case, which allegedly has the same facts and allegations against them, was dismissed for failure of the prosecution to prove their guilt beyond reasonable doubt. The dismissal of the Jaraula Case was upheld by the Court in *People v. Sandiganbayan*,⁹⁹ which supposedly did not find probable cause to indict Relampagos et al. in the said case.¹⁰⁰

Allegedly, the Sandiganbayan found in that case that the mere act of signing the Special Allotment Release Orders and Notice of Cash Allocations without other proof showing unlawful intent or evil motive cannot be considered evident bad faith or display of manifest partiality.¹⁰¹ Supposedly, the Sandiganbayan appreciated Relampagos's defense that the delegated signing of Special Allotment Release Order No. ROCS-0705450 was only by chance and not in furtherance of the conspiracy.¹⁰² Moreover, they raise the findings of the Court in *People v. Sandiganbayan*,¹⁰³ where conspiracy was not established through follow-up calls to the DBM. These acts were held to be part of the ordinary dealings with the government.¹⁰⁴

⁹⁰ *Id.* at 328.

⁹¹ *Id.* at 331–332.

⁹² *Id.* at 345.

⁹³ *Id.* at 346–347.

⁹⁴ *Id.* at 347.

⁹⁵ *Id.* at 348.

⁹⁶ *Id.* at 736–751.

⁹⁷ *Id.* at 382–397.

⁹⁸ *Id.* at 738.

⁹⁹ G.R. Nos. 219824-25, February 12, 2019 [Per J. J.C. Reyes, Jr., *En Banc*].

¹⁰⁰ *Rollo* (G.R. Nos. 230849-51), p. 742.

¹⁰¹ *Id.* at 741.

¹⁰² *Id.*

¹⁰³ G.R. Nos. 219824-25, February 12, 2019 [Per J. J.C. Reyes, Jr., *En Banc*].

¹⁰⁴ *Rollo* (G.R. Nos. 230849-51), p. 745.

The issue before us is whether the Ombudsman gravely abused its discretion in its finding of probable cause against petitioners Mario L. Relampagos, Rosario S. Nuñez, Lalaine N. Paule, Marilou D. Bare, and Janet Lim Napoles, which warrants setting aside the judicial policy of non-interference.

We do not find grave abuse of discretion. The Petitions are dismissed.

I

The Constitution mandates the Office of the Ombudsman to act promptly on complaints against erring public officials and employees.¹⁰⁵ This is rooted on the foundational principle that “public office is a public trust.”¹⁰⁶ By law, the Ombudsman and its deputies are mandated to enforce the “criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.”¹⁰⁷ The Office of the Special Prosecutor is charged with the conduct of preliminary investigation and prosecution of criminal cases within the jurisdiction of the Sandiganbayan.¹⁰⁸

As an independent constitutional body, the Ombudsman enjoys wide latitude in its investigation and prosecution of cases falling within its jurisdiction. Its executive determination of probable cause is a highly factual matter which the Court cannot ordinarily review. Our deferral and non-interference with the Ombudsman’s exercise of its functions is well-established in jurisprudence.¹⁰⁹ This policy is founded on practicality where the Court is able to focus on cases of significant public importance, instead of acting on petitions relating to the Ombudsman’s exercise of discretion.¹¹⁰ It is only when there is a clear showing of grave abuse of discretion in the Ombudsman’s conduct of preliminary investigation “amounting to a virtual refusal to perform a duty under the law” that the Court decides to exercise its power of judicial review.¹¹¹ Ordinarily, mere disagreement with the Ombudsman’s findings is not enough to constitute grave abuse of discretion.¹¹²

Here, petitioners commonly invoke grave abuse of discretion in the Ombudsman’s finding of probable cause. Petitioners Relampagos et al. in G.R. No. 231161 and 231584 primarily assail the Ombudsman’s factual

¹⁰⁵ CONST. art. XI, sec. 12.

¹⁰⁶ Republic Act No. 6770 (1989), sec. 2.

¹⁰⁷ Republic Act No. 6770 (1989), sec. 13.

¹⁰⁸ Republic Act No. 6770 (1989), sec. 11, subpar. 4.

¹⁰⁹ *Dichaves v. Ombudsman*, 802 Phil 564, 589 (2016) [Per J. Leonen, Second Division].

¹¹⁰ *Ciron v. Gutierrez*, 758 Phil. 354, 363 (2015) [Per J. Perlas-Bernabe, First Division].

¹¹¹ *Arroyo v. Sandiganbayan Fifth Division*, G.R. No. 210488, January 27, 2020 [Per J. Leonen, Third Division], citing *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017) [Per J. Leonen, Second Division].

¹¹² *Beltran v. Sandiganbayan*, G.R. No. 201117, January 22, 2020 [Per J. Leonen, Third Division].

findings as regards their participation in the pork barrel scam. Petitioner Napoles in G.R. Nos. 230849-51 assails the sufficiency of the Complaints for their failure to allege and substantiate in particularity all the elements of the offenses for which she is being charged. Moreover, she assails the admissibility and evidentiary value of the testimonies of the whistleblowers for supposedly being inaccurate, hearsay, and self-serving.

We are not convinced.

We find that the present Petitions are moot. The Sandiganbayan found probable cause and issued warrants of arrest against those involved in the diversion of the PHP 16-million PDAF of Cagas. We upheld this in *Relampagos v. Sandiganbayan*.¹¹³ It involved the same petitioners in G.R. Nos. 231161 and 231584 and the same Special Allotment Release Order Nos. ROCS-07-03351 and ROCS-07-00046 as in the present case. In that case, petitioner Relampagos filed a joint omnibus motion to dismiss the case, hold the warrants of arrest in abeyance, and issue a bill of particulars. The Sandiganbayan denied the motion, which prompted the filing of the petition in *Relampagos*. In denying the petition, the Court held:

In this case, the Sandiganbayan determined the existence of probable cause based on the resolution of the prosecution and its supporting evidence. As found by the Sandiganbayan, the records revealed the participation of each petitioner in the elaborate scheme of guiding or channeling Cagas' PDAF allocations to inexistent or ghost projects and consequently enabled them to misappropriate Cagas' PDAF.

Thus, having found probable cause against all petitioners, Sandiganbayan properly issued warrants of arrest against them.

The Court hereby quotes the Sandiganbayan, viz.:

The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. What is merely required is "probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits. Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.

It is also important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense or on the admissibility or veracity of testimonies presented.¹¹⁴

¹¹³ *Relampagos v. Sandiganbayan*, G.R. No. 235480, January 27, 2021 [Per J. Inting, Third Division].

¹¹⁴ *Id.*

In *Estrada v. Ombudsman*,¹¹⁵ the Court *En Banc* reiterated the doctrine in *De Lima v. Reyes*¹¹⁶ that “once the trial court finds probable cause, which results in the issuance of a warrant of arrest, such as the Sandiganbayan in this case, with respect to Estrada, any question on the prosecution's conduct of preliminary investigation becomes moot.”¹¹⁷

Given that there was already a judicial determination of probable cause of the Sandiganbayan involving the PHP 16-million PDAF of Cagas diverted through Special Allotment Release Order Nos. ROCS-07-03351 and ROCS-07-00046, the instant Petition assailing the Ombudsman's determination of probable cause has already been mooted.

II

Nevertheless, the Petitions still fail as there is no grave abuse of discretion on the part of the Ombudsman. There was nothing arbitrary in its finding of probable cause, and its findings are supported by substantial evidence.

The Ombudsman's finding of probable cause to file an information against a public official or employee is not a determination of guilt or innocence.¹¹⁸ In *Jalandoni v. Ombudsman*:¹¹⁹

Probable cause is defined as “the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.” In *Galario v. Office of the Ombudsman*, this Court expounded:

[A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean “actual and positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable

¹¹⁵ 837 Phil. 913 (2018) [Per J.Carpio, *En Banc*].

¹¹⁶ 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

¹¹⁷ *Estrada v. Ombudsman*, 837 Phil. 913, 957 (2018) [Per J.Carpio, *En Banc*].

¹¹⁸ *Arroyo v. Sandiganbayan Fifth Division*, G.R. No. 210488, January 27, 2020 [Per J. Leonen, Third Division].

¹¹⁹ G.R. Nos. 211751, 217212-80, 244467-535 & 245546-614, May 10, 2021 [Per J. Leonen, Third Division].

belief[.] Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction[.]

The Office of the Ombudsman's determination of probable cause "does not rule on the issue of guilt or innocence of the accused." It is only bound to "evaluate the evidence presented by the prosecution and the accused, and then determine if there is enough reason to believe that a crime has been committed and that the accused is probably guilty of committing the crime."

The determination of probable cause is "made in reference to the elements of the crime charged." However, considering the nature and purpose of a preliminary investigation, the elements of the crime are not required to be definitively established. It is sufficient that the elements are reasonably apparent. Whether they are present is a matter of evidence, which may only be passed upon in a full-blown trial on the merits. There is no full and exhaustive display of the prosecution's evidence in a preliminary investigation. Instead, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence," are better threshed out during trial.¹²⁰ (Citations omitted)

In G.R. Nos. 231161 and 231584, petitioners Relampagos et al. heavily rely on the proceedings in *People v. Ramon "Bong" Revilla* in the First Division of the Sandiganbayan docketed as Crim. Cases No. SB-14-CRM-0267 to 0282.¹²¹ They also cited the transcript of stenographic notes of the testimony of DBM Director Delantar in Senator Revilla's plunder case bail hearing in Crim. Case No. SB-14-CRM-0240, which supposedly establish their lack of participation in the preparation of Special Allotment Release Orders and their facilitation.¹²² In their Reply, they also raise the Sandiganbayan's granting of Relampagos's demurrer in *People v. Jaraula*, docketed as Crim. Case Nos. SB-15-CRM-0016-21.¹²³ They also rely on a portion of the ruling in *People v. Sandiganbayan*, docketed as G.R. Nos. 219824-25,¹²⁴ where the Court *En Banc* sustained the dismissal by the Sandiganbayan of the charges against petitioners Relampagos et al. in relation to Special Allotment Release Order No. ROCS-07-05450 for the release of the PDAF of Congressman Constantino G. Jaraula.¹²⁵

We cannot take the findings in these cases and apply them to the presents Petitions. Aside from being purely factual, these are evidentiary matters that should be ventilated during trial. In addition, the proceedings to which they draw their defense of lack of involvement pertain to the PDAF of other legislators, which were diverted through different Special Allotment Release Orders. These have no bearing to the present case, which pertain to Special Allotment Release Order Nos. ROCS-07-03351 and ROCS-07-

¹²⁰ *Id.*

¹²¹ *Rollo* (G.R. Nos. 231161 and 231584), pp. 59–66.

¹²² *Id.* at 31–40.

¹²³ *Id.* at 727–761.

¹²⁴ G.R. Nos. 219824-25, February 12, 2019 [Per J. J.C. Reyes, *En Banc*].

¹²⁵ *Rollo*, (G.R. Nos. 231161 and 231584), pp. 717–718.

00046 issued in relation to Cagas's 2007 PDAF amounting to PHP 16 million.

On the other hand, petitioner Napoles contends that the Ombudsman gravely abused its discretion in finding probable cause despite the insufficiency in form and substance of the Complaints. Supposedly, there was no statement on the approximate time and place when the crimes were committed, nor were the specific acts or omissions constituting the offense alleged.¹²⁶ Her supposed participation in the scheme as narrated by the whistleblowers were "general and sweeping allegations unjustly depriving [her] the right to know with exactitude, the crimes being leveled against her."¹²⁷ Moreover, the allegations were supposedly founded on self-serving and hearsay testimonies from polluted sources. According to Napoles, the Ombudsman gravely abused its discretion in failing to carefully scrutinize the whistleblowers' testimonies since they were guilty themselves and were implicating her to evade liability.¹²⁸

We are not convinced. Although the Complaint from the Ombudsman's Field Investigation Office is not attached in the records, we find that the Complaint from the National Bureau of Investigation filed against petitioners is sufficient in form and substance.

Rule 110, Section 6¹²⁹ of the Rules on Criminal Procedure requiring specific allegations in the Complaint yields to the more specific Rules of Procedure of the Ombudsman. It provides that a complaint may be in any form, preferably written, with a disclosure of the complainant's identity and sufficient leads:

SECTION 3. Form of complaints, grievances or requests for assistance. Complaints may be in any form, either verbal or in writing. For a speedier disposition of the complaint, however, it is preferable that it be in writing and under oath. A complaint which does not disclose the identity of the complainant will be acted upon only if it merits appropriate consideration, or contains sufficient leads or particulars to enable the taking of further action.¹³⁰

¹²⁶ *Rollo* (G.R. Nos. 230849-51), pp. 9-11.

¹²⁷ *Id.* at 11.

¹²⁸ *Id.* at 11-12.

¹²⁹ RULES OF COURT, Rule 110, sec. 6

SECTION 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

¹³⁰ Rules of Procedure of the Office of the Ombudsman or Administrative Order No. 07 series of April 10, 1990, Rule 1, sec. 3.

The rationale for the ease in which complaints may be filed in the Ombudsman is explained in *Department of Justice v. Liwag*:¹³¹

The Office of the Ombudsman was likewise envisioned by the Constitution to serve as the principal and primary complaints and action center for the aggrieved layman baffled by the bureaucratic maze of procedures. For this purpose, it was granted more than the usual powers given to prosecutors. It was vested with the power to investigate complaints against a public office or officer on its own initiative, even without a formal complaint lodged before it. It can inquire into acts of government agencies and public servants based on reports in the media and those which come to his attention through sources other than a complaint. *The method of filing a complaint with the Ombudsman is direct, informal, speedy and inexpensive. All that may be required from a complainant is sufficient information detailing the illegal or improper acts complained of. The ordinary citizen, who has become increasingly dependent on public agencies, is put to minimal expense and difficulty in getting his complaint acted on by the Office of the Ombudsman. Vis-à-vis other prosecutors, the exercise by the Ombudsman of its power to investigate public officials is given preference over other bodies.*¹³² (Emphasis supplied, citations omitted)

While it may be true that the Complaints do not state the approximate time and place where the transactions happened, they contain “sufficient leads or particulars to enable the taking of further action” as required under the Rules of Procedure of the Office of the Ombudsman. A reading of the Complaint from the National Bureau of Investigation shows that the pork barrel scam was sufficiently described, naming those who participated in the scheme and the documentary evidence supporting the Complaint.¹³³ Moreover, the fact that petitioners were able to file their responsive pleadings during the preliminary investigation shows that the charges against them were clear to allow them to file their respective refutations on the Complaints.

Moreover, the objections on the evidentiary value and admissibility of the evidence assessed by the Ombudsman are matters relevant in trial and not during the preliminary investigation:

A preliminary investigation, as its name suggests, is a preparatory step in the prosecutorial process, where the prosecutor determines whether there is probable cause to file an Information in court. Its purpose is two (2)-fold. In *Salonga v. Cruz-Paño*:

The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety

¹³¹ 491 Phil. 270 (2005) [Per J. Azcuna, *En Banc*].

¹³² *Id.* at 283-284.

¹³³ *Rollo* (G.R. Nos. 230849-51), pp. 118-134.

of a public trial, and also to protect the state from useless and expensive trials.

....

Preliminary investigations conducted by the Office of the Ombudsman are done in the same manner outlined above subject to the provisions under Section 4 of its Rules of Procedure.

The investigating prosecutor may rely on the affidavits and supporting documents submitted by the parties. A hearing is not even mandatory. The prosecutor is given the discretion whether to set a hearing between the parties but only if certain facts or issues need to be clarified.

A preliminary investigation, therefore, is "merely inquisitorial." It is neither an occasion for an exhaustive display of evidence nor "the venue for the full exercise of the rights of the parties." *Whether the parties' evidence would pass the threshold of admissibility is not a matter that the prosecution should be concerned with at this stage.* The prosecution needs only satisfy itself that *there is reasonable belief to hold a person liable for a crime.* Neither absolute nor moral certainty is required:

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an *honest and strong suspicion that the person charged is guilty of the crime subject of the investigation.* Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.

Given the exploratory nature of a preliminary investigation, the technical rules of evidence would not apply. For instance, the invocation of the res inter alios acta rule under Rule 130, Section 28 of the Rules of Court in the context of a preliminary investigation has been considered as improper. In *Cambe v. Office of the Ombudsman*:

It should be borne in mind that probable cause is determined during the context of a preliminary investigation which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it." It "is not the occasion for the full and exhaustive display of the prosecution's evidence." Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."

A finding of probable cause can even rest on hearsay evidence. In *Estrada v. Office of the Ombudsman*:

[P]robable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay. Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties. However, in administrative cases, where rights and obligations are finally adjudicated, what is required is “substantial evidence” which cannot rest entirely or even partially on hearsay evidence. Substantial basis is not the same as substantial evidence because substantial evidence excludes hearsay evidence while substantial basis can include hearsay evidence.¹³⁴ (Citations omitted)

Thus, petitioners’ objections on the admissibility of the statements of the whistleblowers are irrelevant for purposes of preliminary investigation. During this exploratory stage, the Ombudsman sufficiently established its reasonable basis to file criminal charges against petitioners. The whistleblowers categorically identified petitioner Napoles’s involvement in the scheme. She was not only a participant, but the mastermind and at the center of the *modus operandi*. The accounts of the whistleblowers clearly show Napoles’s connection to all those implicated in the scam, including petitioners Relampagos et al., whom Luy categorically identified to be their DBM contacts.

The Commission on Audit findings confirm the accounts of the whistleblowers. Moreover, both the National Bureau of Investigation and the Ombudsman’s Field Investigation Office conducted their own investigations and validated the evidence attached to their respective Complaints. Thus, we see no grave abuse of discretion that will allow us to interfere with the Ombudsman’s finding of probable cause. As will be discussed below, all the elements of the offense charged, together with the existence of conspiracy, have likewise been reasonably established.

III

We first discuss the common allegation of petitioners as regards the existence of conspiracy. They contend that the Ombudsman found conspiracy based on mere conjectures without clear and convincing evidence.¹³⁵ Petitioner Napoles argues that there being no conspiracy, she could not be held liable from crimes which can only be committed by public officers. Citing *Arias v. Sandiganbayan*, petitioners Relampagos et al. contend that the mere signing of the Special Allotment Release Orders or Notice of Cash Allocations is not a “concrete and overt act” sufficient to

¹³⁴ J. Leonen, Concurring Opinion in *Estrada v. Ombudsman*, 837 Phil. 913, 972, 974-976 (2018) [Per J. Carpio, *En Banc*].

¹³⁵ *Rollo* (G.R. Nos. 230849-51), p. 17.

establish the existence of conspiracy.¹³⁶ Instead, they argue that the Ombudsman should have applied the unrebutted presumption of regularity of the performance of official duties.¹³⁷

It is settled that the existence of conspiracy need not be established by clear and convincing evidence for purposes of the Ombudsman's determination of probable cause. In its preliminary investigation, the standard of reasonable belief as to its existence is satisfied upon showing substantial probability of an accused's participation in the offense, as held in *BDO Life Assurance, Inc. v. Palad*:¹³⁸

Likewise, the Court finds that Palad is mistaken in his argument that the lower courts rightfully excluded him from the charge, solely because of his allegation that there was no direct evidence that linked him to the crime committed. *Direct proof of conspiracy is not indispensable and the same may be inferred from the acts of the perpetrators.* As explained in *Marasigan v. Fuentes, et al.*:

Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be 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. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.

However, the mere fact that *a lesser scintilla of proof is necessary in order to find probable cause as to a suspect's involvement does not take away the fact that the burden is on the part of the accuser to show a substantial probability that an accused's actions or lack thereof constitute participation in the offense.* Any finding should still be grounded on reasonable evidence, and not mere conjectures or speculation...[.]¹³⁹ (Emphasis supplied, citations omitted)

Here, the presence of conspiracy can be inferred from the coordinated actions of petitioners—from the project identification of Cagas to its

¹³⁶ *Rollo* (G.R. Nos. 231161 and 231584), pp. 50–51.

¹³⁷ *Id.* at 51.

¹³⁸ G.R. No. 237845, October 16, 2019 [Per J. A.B. Reyes, Third Division].

¹³⁹ *Id.*



endorsement for funding in the DBM, to the allotment of budget by Technology Resource Center and its subsequent release of checks to Napoles-controlled NGOs. We see no grave abuse of discretion in the Ombudsman's finding of conspiracy:

As extensively discussed above, the presence of conspiracy among Cagas, Ortiz, Cunanan, Lacsamana, Concepcion, Jover, Dimaranan, Figura, Relampagos, Nuñez, Paule, Bare, Ducut, Napoles, De Leon, Encarnacion and Rodriguez is manifest.

To be able to repeatedly divert substantial funds from the PDAF, access thereto must be made available, and this was made possible by Cagas, who chose [Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc.], which were affiliated with or controlled by Napoles, to implement his PDAF-related undertakings. He signed the requisite indorsement letters and similar documentation addressed to DBM and TRC which were necessary to ensure that the chosen NGOs would be awarded the projects.

Relampagos, Nuñez, Paule and Bare, as DBM officers, were in regular contact with Napoles and her staff, who persistently followed up the release of the coveted SAROs and NCAs with TRC.

In turn, Ortiz, Cunanan, Lacsamana, Concepcion, Jover, Dimaranan and Figura, as TRC officers, prepared, reviewed and entered into the MOAs governing the implementation of the projects and participated in the processing and approval of the PDAF disbursements to [Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc.]. The funds in question could not have been transferred to [Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc.] if not for their certifications, approvals and signatures found in the relevant documents and corresponding DVs and checks.

Once the fund releases were processed by TRC, Napoles and their cohorts, in behalf of [Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc.] and under the direction of Napoles, would pick up the corresponding checks and deposit them in accounts under the names of [Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc.]. The proceeds of the checks would later be withdrawn from the banks and brought to the offices of Napoles, who would then proceed to exercise full control and possession over the funds.

Napoles and her staff, again on orders of Napoles, would prepare the fictitious beneficiaries list and other similar documents for liquidation purposes, to make it appear that the projects were implemented.

For their participation in the above-described scheme, Cagas, Ortiz and Cunanan received portions of the subject PDAF disbursements from Napoles, with Ducut acting as the agent of Cagas and receiving the latter's kickbacks from Napoles.



ALL TOLD, there is *cohesion and interconnection in the abovenamed respondents, intent and purpose that cannot be logically interpreted other than to mean the attainment of the same end that runs through the entire gamut of acts they perpetrated separately. The role played by each of them was so indispensable to the success of their scheme that, without any of them, the same would have failed.*¹⁴⁰ (Emphasis supplied)

Petitioners Relampagos et al. cannot rely on *Arias v. Sandiganbayan*. Generally, heads of office can rely on the work of his or her subordinates, and that there must be some other grounds aside from signature or approval to sustain the presence of conspiracy.¹⁴¹ However, it is settled that the doctrine in *Arias* is not absolute:

The *Arias* doctrine is not some magic cloak that can be used as a shield by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability. In fact, the Court has had numerous occasions to reject this defense in light of *circumstances that should have prompted the government officials to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared.*

Such is the case here. As duly observed by the Sandiganbayan, it is *unacceptable that petitioner blindly signed the subject documents despite the fact that the absence of public bidding was readily ascertainable on their face, being as they were, mere “one-paged documents.”* As a high-ranking DILG official, moreover, the first thing he should have determined was the mode of procurement employed in the transactions. Instead, he testified in court that his primary act as regional director, on his very first day, was to sign the checks for the araro procurement, simply because the accountant told him that the transactions were in order. According to him, he “just relied so much on my [his] staff that I [he] do [did] not even know persons who entered into these transactions.” Had petitioner exerted the necessary precaution, he would have discovered that, as testified by the president of Revelstone, said company was never even involved in the production of medicines, araro tools, and drug testing kits. Regrettably, and with no valid reason, he failed to pay due attention to the glaring illegality of the subject contracts.¹⁴²

Here, it is not the mere signature of petitioner Relampagos in Special Allotment Release Order No. ROCS-07-003351 for which they were impleaded in the Complaints. Rather, they were included in the charges because petitioner Relampagos et al. were alleged to be the “contacts of petitioner Napoles within DBM who helped expedite the release of [Special Allotment Release Orders] and [Notice of Cash Allocations] relating to the PDAF.”¹⁴³ Thus, their citation of *Arias* is misplaced. Matters of their actual involvement in the processing and release of the Special Allotment Release

¹⁴⁰ *Rollo* (G.R. Nos. 230849-51), pp. 81–82.

¹⁴¹ *Arias v. Sandiganbayan*, 259 Phil. 794, 801–802 (1989) [Per J. Gutierrez, *En Banc*].

¹⁴² *Libunao v. People*, G.R. Nos. 214336-37, February 15, 2022 [Per J. J.Y. Lopez, First Division].

¹⁴³ *Rollo* (G.R. Nos. 230849-51), pp. 60–61.

Orders require the presentation of evidence and thus should be reserved for trial.

IV

We uphold the finding of probable cause for all the charges that the Ombudsman sustained against petitioners.

The Ombudsman found probable cause for violation of Republic Act No. 3019, Section 3(e). The elements of the offense, the modes of its commission, and the acts punished are as follows:

In *Cabrera v. Sandiganbayan*, the Court laid down the essential elements of the crime, viz. :

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or [gross] inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The first element need not be explained. In this case, there is no doubt that petitioners are public officers of Taal, Batangas, during the material time and date of the commission of the alleged violation. Librado was the mayor from January 30, 1998 to June 30, 1998 and his wife, Fe, was the incumbent Mayor from July 28, 1998 to July 6, 1999.

The second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. It must be stressed that these three modes, namely "manifest partiality," "evident bad faith," or "gross inexcusable negligence" are not separate offenses, and proof of the existence of any of these three in connection with the prohibited acts committed, is sufficient to convict. As explained by this Court:

x x x. There is "manifest partiality" when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally,



with conscious indifference to consequences insofar as other persons may be affected.

The third element refers to two (2) separate acts that qualify as a violation of Section 3(e) of R.A. No. 3019. An accused may be charged with the commission of either or both. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.

The first punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be “some reasonable basis by which the court can measure it.” Aside from this, the loss or damage must be substantial. It must be “more than necessary, excessive, improper or illegal.”

The second punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or quantum of damage is not thus essential. It is sufficient that the accused has given “unjustified favor or benefit to another.”¹⁴⁴

Here, the Ombudsman found manifest partiality in the direct selection of Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc., in blatant disregard of public bidding requirements.¹⁴⁵ There was no prior due diligence on these NGOs or on their suppliers. Moreover, Technology Resource Center failed to require the submission of progress reports in the NGOs’ implementation of projects.¹⁴⁶ The Ombudsman also found evident bad faith from Cagas’s and Ortiz’s receipt of wrongfully diverted public funds. Luy narrated that Cagas received PHP 9.3 million through Cruz-Ducut, while Ortiz received PHP 1.6 million representing 10% of the project cost.¹⁴⁷

In *Cabrera v. People*,¹⁴⁸ the Court affirmed the conviction of a municipal mayor and councilor for violation of Section 3(e) of Republic Act No. 3019 for failing to conduct public bidding on the direct purchase of medicines. There was manifest partiality in giving unwarranted benefits to the supplier who was selected without justification.¹⁴⁹ As in this case, the NGOs were selected outside public bidding. This constitutes *prima facie* manifest partiality, violating Section 3(e) of Republic Act No. 3019.

We also agree with the Ombudsman that there was evident bad faith in petitioners’ extension of these undue benefits to Countrywide Agri and

¹⁴⁴ *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019 [Per J. J.C. Reyes, Second Division].

¹⁴⁵ *Rollo* (G.R. Nos. 230849-51), pp. 68–70.

¹⁴⁶ *Id.* at 69–70.

¹⁴⁷ *Id.* at 71.

¹⁴⁸ *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019 [Per J. J.C. Reyes, Second Division].

¹⁴⁹ *Id.*

Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc. The motivation behind the scheme was certainly evil. Public officers profit from their ghost projects at the expense of the marginalized and oppressed beneficiaries. There was blatant disregard of public bidding requirements since Cagas directly endorsed the NGOs to Technology Resource Center solely for petitioner Napoles's control over them. Moreover, there was "unusual accommodation in the examination, processing and approval by the concerned [Technology Resource Center] officers of the PDAF release to the NGOs."¹⁵⁰ After the award of the funding, Technology Resource Center did not monitor the implementation of the project, thus leading to its failure to liquidate for the same. This resulted in undue injury to the government amounting to PHP 15.36 million, which the Commission on Audit flagged as unliquidated.


With the foregoing, we do not find any grave abuse of discretion from the Ombudsman's finding of probable cause for violation of Section 3(e) of Republic Act No. 3019. There being substantial evidence of conspiracy, petitioners who were involved in the pork barrel scam were properly included in the charges.

V

Petitioner Napoles contends that the charge of malversation against her is misplaced since Cagas neither received the public money as part of his duties, nor has he custody or control over it. Napoles argues that Cagas only recommends the project, and it is the implementing agency who designates the NGOs and who has custody, control, and accountability over the public funds released to the agency.¹⁵¹

We are not convinced.

The crime of malversation has the following elements:

- (a) The offender is a public officer;
 - (b) He has the custody or control of funds or property by reason of the duties of his office;
 - (c) The funds or property involved are public funds or property for which he is accountable; and
 - (d) He has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.¹⁵²
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¹⁵⁰ *Rollo* (G.R. Nos. 230849-51), p. 70.

¹⁵¹ *Id.* at 15-17.

¹⁵² *Barriga v. Sandiganbayan*, 496 Phil 764, 774 (2005) [Per J. Callejo, Second Division].

An accountable officer under Article 217 is determined based on the nature of his or her duties and not by title or importance of the position:

An accountable public officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office. To be liable for malversation, an accountable officer need not be a bonded official. The name or relative importance of the office or employment is not the controlling factor. What is decisive is the nature of the duties that he performs and that as part of, and by reason of said duties, he receives public money or property which he is bound to account.¹⁵³

Here, while it is true that public funds are released to Technology Resource Center as the implementing agency who accounts for the same, the PDAF system entangles the legislators not only in the budgetary process, but also in the implementation of the program.

In *Belgica v. Ochoa*,¹⁵⁴ the Court discussed the long-standing practice of the pork barrel system. It is defined as a “collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government, including its members.”¹⁵⁵ This includes the congressional pork barrel system or PDAF, a lump sum and discretionary fund under the effective control of legislators.¹⁵⁶ Under this system, the legislators play an indispensable role in the identification of projects and fund release:

As may be observed from its legal history, the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.

*At its core, legislators — may it be through project lists, prior consultations or program menus have been consistently accorded post-enactment authority to **identify the projects** they desire to be funded through various Congressional Pork Barrel allocations. Under the 2013 PDAF Article, the statutory authority of legislators to identify projects post-GAA may be construed from the import of Special Provisions 1 to 3 as well as the second paragraph of Special Provision 4. To elucidate, Special Provision 1 embodies the program menu feature which, as evinced from past PDAF Articles, allows individual legislators to identify PDAF projects for as long as the identified project falls under a general program listed in the said menu. Relatedly, Special Provision 2 provides that the implementing agencies shall, within 90 days from the GAA is passed, submit to Congress a more detailed priority list, standard or design prepared and submitted by implementing agencies from which the legislator may make his choice. The same provision further authorizes*

¹⁵³ *Quiñon v. People*, 438 Phil 146, 154 (2002) [Per J. Ynares-Santiago, First Division].

¹⁵⁴ 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].


¹⁵⁵ *Id.* at 533.

¹⁵⁶ *Id.*

legislators to identify PDAF projects outside his district for as long as the representative of the district concerned concurs in writing. Meanwhile, Special Provision 3 clarifies that PDAF projects refer to “projects to be identified by legislators” and thereunder provides the allocation limit for the total amount of projects identified by each legislator. Finally, paragraph 2 of Special Provision 4 requires that any modification and revision of the project identification “shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be.” From the foregoing special provisions, it cannot be seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects.

*Aside from the area of project identification, legislators have also been accorded post-enactment authority in the areas of **fund release and realignment**.* Under the 2013 PDAF Article, the statutory authority of legislators to participate in the area of fund release through congressional committees is contained in Special Provision 5 which explicitly states that “[a]ll request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by House Committee on Appropriations and the Senate Committee on Finance, as the case may be”; while their statutory authority to participate in the area of fund realignment is contained in: first, paragraph 2, Special Provision 41 which explicitly states, among others, that “[a]ny realignment [of funds] shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be”; and, second, paragraph 1, also of Special Provision 4 which authorizes the “Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry. . . to approve realignment from one project/scope to another within the allotment received from this Fund, subject to [among others] (iii) the request is with the concurrence of the legislator concerned.”

Clearly, these post-enactment measures which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, **legislators have been, in one form or another, authorized to participate in — as Guingona, Jr. puts it — “the various operational aspects of budgeting,” including “the evaluation of work and financial plans for individual activities” and the “regulation and release of funds” in violation of the separation of powers principle.** The fundamental rule, as categorically articulated in *Abakada*, cannot be overstated — from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional. That the said authority is treated as merely recommendatory in nature does not alter its unconstitutional tenor since the prohibition, to repeat, covers any role in the implementation or enforcement of the law. Towards this end, the Court must therefore abandon its ruling in *Philconsa* which sanctioned the conduct of legislator identification on the guise that the same is merely recommendatory and, as such, respondents' reliance on the same falters altogether.



Besides, it must be pointed out that respondents have nonetheless failed to substantiate their position that the identification authority of legislators is only of recommendatory import. Quite the contrary, respondents — through the statements of the Solicitor General during the Oral Arguments — have admitted that the identification of the legislator constitutes a mandatory requirement before his PDAF can be tapped as a funding source, thereby highlighting the indispensability of the said act to the entire budget execution process:

....

Thus, for all the foregoing reasons, the Court hereby declares the 2013 PDAF Article as well as all other provisions of law which similarly allow legislators to wield any form of post-enactment authority in the implementation or enforcement of the budget, unrelated to congressional oversight, as violative of the separation of powers principle and thus unconstitutional. *Corollary thereto, informal practices, through which legislators have effectively intruded into the proper phases of budget execution, must be deemed as acts of grave abuse of discretion amounting to lack or excess of jurisdiction and, hence, accorded the same unconstitutional treatment.* That such informal practices do exist and have, in fact, been constantly observed throughout the years has not been substantially disputed here.

....

Ultimately, legislators cannot exercise powers which they do not have, whether through formal measures written into the law or informal practices institutionalized in government agencies, else the Executive department be deprived of what the Constitution has vested as its own.

....

Notwithstanding these declarations, the Court, however, finds an inherent defect in the system which actually belies the avowed intention of “making equal the unequal.” In particular, the Court observes that the gauge of PDAF and CDF allocation/division is based solely on the fact of office, without taking into account the specific interests and peculiarities of the district the legislator represents. In this regard, the allocation/division limits are clearly not based on genuine parameters of equality, wherein economic or geographic indicators have been taken into consideration. As a result, a district representative of a highly-urbanized metropolis gets the same amount of funding as a district representative of a far-flung rural province which would be relatively “underdeveloped” compared to the former. To add, what rouses graver scrutiny is that even Senators and Party-List Representatives — and in some years, even the Vice-President — who do not represent any locality, receive funding from the Congressional Pork Barrel as well. These certainly are anathema to the Congressional Pork Barrel’s original intent which is “to make equal the unequal.” *Ultimately, the PDAF and CDF had become personal funds under the effective control of each legislator and given unto them on the sole account of their office.*¹⁵⁷ (Emphasis supplied, citations omitted)

¹⁵⁷ *Id.* at 538–545, 561–562.

Petitioner Napoles cannot insist that Cagas was not accountable for his PDAF.¹⁵⁸ The PDAF existed by virtue of the office that he held. The discretion and authority for its use fall on Cagas and not on the implementing agency. He identified the project, the implementing agency, and partner NGOs—without which, the funding would not have been released and its diversion to Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc. would not have been possible. Thus, Cagas is an accountable officer for his PDAF, which is under his effective control, and he may be held liable for malversation under Article 217 of the Revised Penal Code.

Similarly, the Ombudsman found probable cause for the indictment of Cagas and Technology Resource Center Head Ortiz for direct bribery, there being substantial evidence that they received kickbacks from Napoles. The Ombudsman considered Cagas's endorsement of Countrywide Agri and Rural Economic and Development Foundation, Inc. and Philippine Social Development Foundation, Inc. to Technology Resource Center, and Ortiz's facilitation of the transactions and release of funds to the said NGOs.¹⁵⁹

We see no error in the Ombudsman's finding of probable cause on corruption of public officers. The elements of violation of Article 212 of the Revised Penal Code are as follows:

1. That the offender makes offers or promises, or gives gifts or presents to a public officer; and
2. That the offers or promises are made or the gifts or presents are given to a public officer under circumstances that will make the public officer liable for direct bribery or indirect bribery.¹⁶⁰

Here, the Ombudsman had ample basis in finding probable cause that petitioner Napoles gave kickbacks to Cagas through a representative. Similarly, Luy also stated that he saw Ortiz receive a 10% commission.

There being a substantial probability that petitioner Napoles corrupted Cagas and Technology Resource Center Head Ortiz in the diversion of the PDAF through the pork barrel scam, the Ombudsman did not err in finding probable cause for malversation and corruption of public officers under Article 217 and 212 of the Revised Penal Code, respectively.

ACCORDINGLY, the Petitions for *Certiorari* in G.R. Nos. 231161, 231584, and 230849-51 are **DISMISSED**. The Ombudsman June 2, 2016

¹⁵⁸ *Rollo* (G.R. Nos. 230849-51), pp. 15–17.

¹⁵⁹ *Id.* at 78–80.

¹⁶⁰ *Disini v. Sandiganbayan*, 717 Phil. 638 (2013) [Per J.Bersamin, First Division].



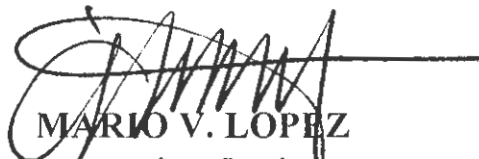
Consolidated Resolution and November 17, 2016 Consolidated Order in relation to OMB-C-C-13-0411, OMB-C-C-15-0030, and OMB-C-C-15-0031 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice