



Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

TITO S. SARION,  
 Petitioner,

G.R. Nos. 243029-30

Present:

- versus -

PERALTA, *Chief Justice*,  
 CAGUIOA,  
 CARANDANG,  
 ZALAMEDA, *and*  
 GAERLAN, *JJ.*

PEOPLE OF THE PHILIPPINES,  
 Respondent.

Promulgated:

MAR 18 2021 *mthabala*

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DECISION

GAERLAN, *J.*:

Before this Court is a Petition for Review on *certiorari*<sup>1</sup> filed by petitioner Tito S. Sarion (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision<sup>2</sup> dated September 29, 2017 and Resolution<sup>3</sup> dated November 8, 2018 of the Sandiganbayan in SB-11-CRM-0256 to 0257. The assailed rulings adjudged the petitioner guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act; and Malversation of Public Funds or Property under Article 217 of the Revised Penal Code (RPC).

The Antecedent Facts

The instant controversy arose from a *Contract Agreement*<sup>4</sup> entered into on December 29, 2003 by herein petitioner, in his capacity as Municipal Mayor for the Municipal Government of Daet, Camarines Norte, and Billy Acheron (Acheron), General Manager of Markbilt Construction (Markbilt), represented by his attorney-in-fact, Architect Romeo B. Itturalde. The

<sup>1</sup> *Rollo*, pp. 11-90.

<sup>2</sup> *Id.* at 95-119b; penned by Associate Justice Sarah Jane T. Fernandez, with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez.

<sup>3</sup> *Id.* at 121-130.

<sup>4</sup> *Id.* at 169-172.

agreement had for its purpose the Phase II construction of the Daet Public Market for the amount of ₱71,499,875.29, which must be completed within a period of 365 calendar days.<sup>5</sup>

On January 5, 2005, the petitioner approved a *Notice to Commence Work*<sup>6</sup> authorizing Markbilt to commence with the construction project on the 10<sup>th</sup> day from receipt of the said Notice. Thereafter, construction works proceeded.<sup>7</sup>

Meanwhile, the petitioner's term ended and Elmer E. Panotes (Mayor Panotes) was elected as Municipal Mayor of Daet, Camarines Norte, during the May 2004 national and local elections.<sup>8</sup>

On December 4, 2005 Markbilt, through its engineer Carlito A. Torero, wrote a letter to Mayor Panotes, requesting the verification and proper evaluation of therein attached monthly computation of variation in the prices of materials.<sup>9</sup>

The construction of the Daet Public Market was completed sometime in 2006.<sup>10</sup>

On November 13, 2006, the Office of Mayor Panotes received a letter from Markbilt, requesting the processing and payment of contract price escalation in the amount of ₱5,222,903.75, in relation to the Daet Public Market (Phase II) project. Mayor Panotes, refused to act on the demand.<sup>11</sup>

During the local elections held in 2007, the petitioner was re-elected as Mayor of the Municipality of Daet.<sup>12</sup>

On January 21, 2008, in a letter addressed to the petitioner, Markbilt reiterated its request for payment of the contract price escalation. A similar demand was made by Markbilt in a letter dated February 7, 2008, this time with the information that it will impose 15% interest *per annum* on their claim.<sup>13</sup>

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<sup>5</sup> Id. at 107b-108.

<sup>6</sup> Id. at 173.

<sup>7</sup> Id. at 108.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 108-108b.

<sup>12</sup> Id.

<sup>13</sup> Id. at 108b.

With this, the petitioner instructed Municipal Administrator Elmer Nagera (Administrator Nagera) to look for sources of fund to satisfy Markbilt's claim. This gave rise to the creation of Supplemental Budget No. 1. After the same was signed by Municipal Budget Officer Amelia P. Laborte (Budget Officer Laborte) and approved by Administrator Nagera, by authority of the petitioner, Supplemental Budget No. 1 was submitted to the Sangguniang Bayan.<sup>14</sup>

On March 6, 2008, the Sangguniang Bayan passed Resolution No. 063<sup>15</sup> unanimously approving Supplemental Budget No. 1-2008 and appropriating the amount of ₱11,222,088.00 of the municipality's internal revenue allotment; of such amount, designated under the *Special Account*, ₱4,400,000.00 was allotted for the *Construction of Market*.<sup>16</sup> Resolution No. 063 was later approved by the petitioner.<sup>17</sup>

In another letter dated April 14, 2008, Markbilt reiterated its demand for payment of contract price escalation.<sup>18</sup>

After Budget Officer Laborte certified the existence of available appropriation, Administrator Nagera prepared Obligation Request No. 100-08-03-402 certifying that "the charges to appropriation/allotment are necessary, lawful and under his direct supervision" and that "the supporting documents are valid, proper and legal."<sup>19</sup>

Subsequently, administrator Nagera issued Disbursement Voucher No. 08041239 in the amount of ₱1,000,000.00, payable to Markbilt, in partial satisfaction of its demand for price escalation.<sup>20</sup>

Concerned with the applicability of R.A. No. 9184, Municipal Accountant Caroline Maisie Robles (Accountant Robles) consulted the Commission on Audit Auditor assigned to the municipality, who in turn, advised him to seek the opinion of the Municipal Legal Officer.<sup>21</sup>

In his opinion, Municipal Legal Officer Edmundo Deveza II (Legal Officer Deveza) found, on the basis of Presidential Decree (P.D.) No. 1594, that there was no reason to refuse the payment of obligation in favor of

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<sup>14</sup> Id.

<sup>15</sup> Id. at 174-176.

<sup>16</sup> Id. at 108b, 176.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 109.

<sup>20</sup> Id.

<sup>21</sup> Id.

Markbilt.<sup>22</sup> Thus, on April 21, 2008, Accountant Robles certified the supporting documents complete and the allotment for partial payment of Markbilt. After Municipal Treasurer Arlyn O. Aberia certified that funds were available, the petitioner approved the release of the funds for payment.<sup>23</sup>

On April 24, 2008, Markbilt received payment of ₱1,000,000.00 made through Landbank Check No. 0272388, and evidenced by Official Receipt No. 1156 dated April 24, 2008.<sup>24</sup>

On June 17, 2008, the Sangguniang Panlalawigan of Camarines Norte approved Resolution No. 229-2008 declaring as operative Supplemental Budget No. 1-2008 of the Municipality of Daet.<sup>25</sup>

On November 27, 2008, Zenaida Baluca, a resident of Daet, Camarines Norte, filed a Complaint<sup>26</sup> against the petitioner before the Deputy Ombudsman for Luzon (Omb-Luzon). The complainant charged the petitioner for violation of Section 3(e) of R.A. No. 3019 relative to the payment of price escalation in the Daet Public Market (Phase II) Project.

After investigation, Graft Investigation and Prosecution officer Judy Anne Doctor-Escalona found merit in the complaint and charged the petitioner with violation of Section 3(e) of R.A. No. 3019, as amended and Malversation, in two separate Informations, the accusatory portions of which read:

#### SB-11-CRM-0256

That on 24 April 2008 or sometime prior or subsequent thereto, in Daet, a first class municipality in the Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the accused, Tito S. Sarion, a public officer, being the Mayor of the Municipality of Daet, committing the crime in the discharge of his official functions, through manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the government in the gross amount of One Million Pesos, Philippine Currency (PhP1,000,000.00), by then and there approving the disbursement in the absence of certificate of availability of funds, of public funds in said gross amount in favor of Markbilt Construction, the contractor for the construction of Daet Public Market (Phase II), as partial payment for its claim for price escalation which it is not entitled to so

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<sup>22</sup> Id. at 109-109b.

<sup>23</sup> Id. at 109b.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id. at 181-191.

receive but which it received nevertheless per its Official Receipt No. 1156 dated 24 April 2008 through the approval of the disbursement voucher by the accused even without the approval from the Government Procurement Policy Board (GPPB) and the determination by the National Economic Development Authority (NEDA) as to the propriety of the claim for price escalation in violation of the GPPB Guidelines for Contract price Escalation to the prejudice of the Municipality of Daet in said amount.

CONTRARY TO LAW.<sup>27</sup>

SB-11-CRM-0257

That on 24 April 2008, or sometime prior or subsequent thereto, in Daet, a first class municipality in the Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the accused, Tito S. Sarion, a public officer, being the Mayor of the Municipality of Daet, while in the performance of his official functions, committing the offense in relation to his office, and taking advantage of his official position, and in grave abuse thereof, having control of public funds in the gross amount of One Million Pesos, Philippine Currency (PhP1,000,000.00), which was placed under his administration by reason of the duties of his office, and is accountable for said amount of public funds pursuant to Section 340 of the Local Government Code, did then and there willfully, unlawfully and feloniously consent, or through abandonment or negligence, permit Markbilt Construction, the contractor for the construction of Daet Public Market (Phase II), to take such amount of public funds which it is not entitled to receive but which it received nevertheless per its Official Receipt No. 1156 dated 24 April 2008, by then and there allowing the disbursement through his approval of the disbursement voucher even in the absence of certificate of availability of funds in said gross amount in favor of Markbilt Construction as partial payment for its claim for the price escalation even without the approval from the Government Procurement Policy Board (GPPB) and the determination by the National Economic Development Authority (NEDA) as to the propriety of the claim for price escalation in violation of the GPPB Guidelines for Contract price Escalation.

CONTRARY TO LAW.<sup>28</sup>

The petitioner was conditionally arraigned on September 2, 2011, and assisted by counsel, entered a plea of “not guilty.”<sup>29</sup>

After trial, the Third Division of the Sandiganbayan rendered the herein assailed Decision<sup>30</sup> on September 29, 2017, the dispositive portion of which reads:

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<sup>27</sup> Id. at 135-136.

<sup>28</sup> Id. at 132-133.

<sup>29</sup> Id. at 96.

<sup>30</sup> Id. at 95-119b.

WHEREFORE, this Court finds accused TITO SARION:

1. Guilty beyond reasonable doubt of Violation of Section 3(e) of Republic Act No. 3019, and he is accordingly sentenced to:
  - a. Suffer an indeterminate penalty of imprisonment of Six (6) years and One (1) month, as minimum, to Eight (8) years, as maximum, and,
  - b. Suffer the penalty of perpetual special disqualification from holding public office; and,
2. Guilty beyond reasonable doubt of *Malversation of Public Funds or Property* under Article 217 of the Revised Penal Code, and he is accordingly sentenced to:
  - a) Suffer an indeterminate penalty of imprisonment of Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to Six (6) years and One (1) day of *prision mayor*, as maximum;
  - b) Pay a fine in the amount of One Million pesos (PhP1,000,000.00); and,
  - c) Suffer the penalty of perpetual special disqualification from holding public office.

Accused Sarion shall indemnify the Municipality of Daet the amount of One Million Pesos (PhP1,000,000.00) as actual damages, plus interest at the rate of 6% per annum to be reckoned from the date of finality of the Decision until its full satisfaction.

SO ORDERED.<sup>31</sup>

Foremost, the Sandiganbayan found that the prosecution was able to establish the elements of Malversation. Mainly, it held that the petitioner erred in approving Disbursement Voucher No. 08041239 which facilitated the partial payment of contract price escalation in favor of Markbilt although the latter is not entitled to be compensated. The Sandiganbayan ruled that the certificates attesting to the availability of funds and appropriation issued by the municipal officials were irregular and that Appropriation Ordinance No. 1 did not allocate funds for the payment of contract price escalation.<sup>32</sup>

Furthermore, the Sandiganbayan made it clear that under Section 81 of R.A. No. 9184, contract price escalation during the implementation of the contract is expressly prohibited except under extraordinary circumstances as determined by the National Economic Development Authority (NEDA) and upon prior approval of the Government Procurement Policy Board

<sup>31</sup> Id. at 118b-119.

<sup>32</sup> Id. at 111-112.

(GPPB).<sup>33</sup> In this case, the Sandiganbayan noted that no such determination and approval were obtained prior to the approval of payment and release of the funds to Markbilt.<sup>34</sup> The petitioner's act of authorizing the release of partial payment to Markbilt without personally confirming compliance with supporting documents is tantamount to gross negligence which subjects him to liability for the crime of Malversation of Public Funds.<sup>35</sup>

With respect to violation of Section 3(e) of R.A. No. 3019, the Sandiganbayan equally found the petitioner guilty of the offense. It held that the same act of approving the release without complying with the provisions of R.A. No. 9184, constitute gross inexcusable negligence; whereas the payment of contract price escalation in the amount of ₱1,000,000.00 is an unwarranted benefit in favor of Markbilt and, correspondingly the amount of undue injury caused to the Municipality of Daet.<sup>36</sup>

The petitioner filed a Motion for Reconsideration, but the same was denied by the Sandiganbayan in its Resolution<sup>37</sup> dated November 8, 2018, viz.:

WHEREFORE, accused Tito S. Sarion's *Motion for Reconsideration Re: Decision dated September 29, 2017* is DENIED for lack of merit.

SO ORDERED.<sup>38</sup>

Thus, this petition for review on *certiorari* whereby the petitioner raises the following arguments in support thereof:

1. The Sandiganbayan seriously erred in convicting him of Malversation of Public Funds under Article 217 of the Revised Penal Code when not all the elements thereof were proved by the plaintiff, through prosecution, beyond reasonable doubt.
2. The Sandiganbayan seriously erred in convicting him of Violation of Section 3(e) of Republic Act No. 3019 when not all the elements thereof were proved by the plaintiff, through the prosecution, beyond reasonable doubt.<sup>39</sup>

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<sup>33</sup> Id. at 112b-113.

<sup>34</sup> Id. at 113b-114.

<sup>35</sup> Id. at 114-115b.

<sup>36</sup> Id. at 115b-118.

<sup>37</sup> Id. at 121-130.

<sup>38</sup> Id. at 119.

<sup>39</sup> Id. at 39.

### Ruling of the Court

The petition is *not meritorious*.

Petitioner, in this appeal, alleges that the Sandiganbayan erred in convicting him of the crime of Malversation under Article 217 of the RPC, and for violation of Section 3(e) of R.A. No. 3019, submitting that not all the elements thereof have been proven by the prosecution beyond reasonable doubt.

On this score, it is imperative to point out at the outset that this appeal is in the nature of a petition for review on *certiorari*. In the exercise of the Court's appellate jurisdiction over the decision of the Sandiganbayan, it is settled that this mode of review is limited only to questions of law. The factual findings of the Sandiganbayan are, as a general rule, conclusive upon the Court.<sup>40</sup>

The difference between a question of law and a question of fact has been settled. A question of law exists when there is doubt or controversy as to what the law is on a certain set of facts. In contrast, what is involved is a question of fact when the resolution of the same demands the calibration of evidence, the determination of the credibility of witnesses, the existence and the relevance of the attendant circumstances, and the probability of specific situations.<sup>41</sup> Thus, the issues of "whether the prosecution's evidence proved the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was properly accorded the accused, x x x or whether the defense of good faith was correctly appreciated," submitted herein by the petitioner, are all, albeit in varying degrees, questions of fact.<sup>42</sup>

The petitioner, in arguing the absence of elements of the crimes with which he is charged, in effect seeks a re-evaluation of the Sandiganbayan's appreciation of the sufficiency of evidence presented. The general rule is that these factual findings of the Sandiganbayan are conclusive upon the Court, save for certain exceptions, *viz.*:

- (1) the conclusion is a finding grounded entirely on speculations, surmise[s], and conjectures;
- (2) the inference made is manifestly mistaken;
- (3) there is grave abuse of discretion;
- (4) the judgment is based on misapprehension of facts; and
- [(5)] the findings of fact of the

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<sup>40</sup> *Zoleta v. Sandiganbayan (Fourth Div.), et al.*, 765 Phil. 39, 52 (2015).

<sup>41</sup> *Id.*

<sup>42</sup> *Jaca v. People, et al.*, 702 Phil. 210, 238 (2013).



Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.<sup>43</sup>

None of these exceptions obtains in this case. Thus, there is no reason to deviate from the factual findings of the Sandiganbayan.

With respect to the crime of malversation, the petitioner posits that he cannot be convicted of the offense as the elements of official custody of funds and accountability therefor, and the act of misappropriation are missing.<sup>44</sup>

He claims that contrary to the findings of the Sandiganbayan, there were prior certifications for availability of funds before he signed the disbursement voucher. These certifications were not irregular as Supplemental Budget No. 1, which was approved by the Sangguniang Bayan, provided for appropriation in the amount of ₱1,000,000.00 in favor of Markbilt.<sup>45</sup> Petitioner asserts that he has no custody or control over such amount paid to Markbilt.<sup>46</sup>

Moreover, petitioner argues that the responsibility of ensuring that the requirements of Section 61 of R.A. No. 9184 are met does not belong to him but to Markbilt. At any rate, even claiming such responsibility, petitioner suggests that failure to comply with the said requirements should not be penalized as the law does not provide any penal sanctions.<sup>47</sup>

Finally, petitioner submits that he had the right to rely upon the legal opinion of the Municipal Legal Officer, which is presumed regular; and that he acted in good faith, a valid defense in malversation as it indicates the absence of criminal intent.<sup>48</sup>

The elements common to all acts of malversation under Article 217 of the Revised Penal Code, as amended, are the following: (a) that the offender is a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.<sup>49</sup>

<sup>43</sup> *Pareño v. Sandiganbayan*, 326 Phil. 255, 279 (1996).

<sup>44</sup> *Rollo*, p. 41.

<sup>45</sup> *Id.* at 43, 47-48.

<sup>46</sup> *Id.* at 54-55.

<sup>47</sup> *Id.* at 52-54.

<sup>48</sup> *Id.* at 60-62, 64.

<sup>49</sup> *Zoleta v. Sandiganbayan (Fourth Div.)*, *et al.*, *supra* note 40 at 53.

Applied in this case, it is undisputed that the petitioner is a public officer, being then elected Municipal Mayor of Daet and that the funds involved are public in character, as they belong to the Municipality of Daet.

Contrary to his allegation, petitioner is by reason of his office, an accountable officer. Section 340 of the Local Government Code (LGC) provides:

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

Based on the foregoing provision, local government officials are accountable public officers either because of the nature of their functions, or on account of their participation in the use or application of public funds. In this case, the funds paid to Markbilt form part of the internal revenue allotment of the Municipality of Daet and are by virtue thereof, “under the collective custody of the municipal officials who had to act together to disburse the funds for their intended municipal use.”<sup>50</sup> Consequently, they are public funds for which the petitioner as Municipal Mayor is accountable.<sup>51</sup>

More unequivocal, Presidential Decree (P.D.) No. 1445 or the Government Auditing Code of the Philippines states that municipal mayors are immediately and primarily responsible for all government funds and property pertaining to their municipality.<sup>52</sup>

As a required standard procedure,<sup>53</sup> and evidently from petitioner’s own narration, any disbursement or release of funds requires his approval as

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<sup>50</sup> *Manuel, et al. v. Sandiganbayan, et al.*, 681 Phil. 273, 292 (2012).

<sup>51</sup> *Id.*

<sup>52</sup> See Section 444 (a), Local Government Code in relation to Section 102 (1), P.D. No. 1445:

Sec. 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* (a) The municipal mayor, as chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws. x x x

Section 102. *Primary and secondary responsibility.* –(1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

<sup>53</sup> Section 39 of the Manual on the New Government Accounting System for Local Government Units

Sec. 39. *Approval of Disbursements.* – Approval of disbursements by the Local Chief Executive (LCE) himself shall be required whenever local funds are disbursed, except for regularly recurring administrative expenses such as: payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, BIR, PHILHEALTH, LBP, DBP, NPO, PS of the DBM and others, where the authority to approve

Mayor. In this case, payment in favor of Markbilt was released only after petitioner's signature in the disbursement voucher and the corresponding Landbank check. This signifies that petitioner, in his capacity as Municipal Mayor, had control and responsibility over the subject funds<sup>54</sup> and thus satisfies the second and third elements of the offense.

Finally, on the last element, the Court agrees with the Sandiganbayan that the petitioner, through gross inexcusable negligence, permitted Markbilt to receive partial payment of price escalation despite not being entitled thereto. A disbursement voucher "shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued to payment."<sup>55</sup> Thus, when petitioner signed the disbursement voucher in favor of Markbilt, in effect, he certified to the correctness of the entries therein; and warranted that the expenses incurred were necessary and lawful, the supporting documents were complete, and the availability of cash therefor.<sup>56</sup> By approving the disbursement voucher and signing the Landbank check payable to Markbilt, despite the absence of funding and failure to comply with the requirements of Section 61, R.A. No. 9184, he permitted Markbilt to received public funds to which it is not entitled. Otherwise, the petitioner's approval and signature in respect facilitated the illegal release of funds, constitutive of the act of malversation.

Malversation may be committed intentionally (*dolo*) or by means of negligence (*culpa*). The crime is committed by means of *dolo* when the act is accompanied by criminal intent as when the offender misappropriated or converted public funds of property to one's personal use.<sup>57</sup> Malversation may also be committed by means of *culpa* or by such negligence or indifference to duty or to consequences as, in law is equivalent to criminal intent,<sup>58</sup> as when the offender knowingly allowed another or others to make use of or misappropriate public funds or property.<sup>59</sup>

It is a basic principle that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor which is sufficient to cover the proposed expenditure.<sup>60</sup> Correspondingly, no revenue funds shall be paid out of the public treasury except in pursuance of

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may be delegated. Disbursement vouchers for expenditures appropriated for the operation of the Sanggunian shall be approved by the provincial Vice Governor, the city Vice-Mayor or the municipal Vice-Mayor, as the case may be.

<sup>54</sup> Cf. *Zoleta v. Sandiganbayan (Fourth Div.)*, et al., supra note 40 at 54.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> *Felicilda v. Justice Grospe*, 286 Phil. 384, 389 (1992).

<sup>58</sup> *Tabuena v. Sandiganbayan*, 335 Phil. 795, 822 (1997), citing *United States v. Catolico*, 18 Phil. 504, 506-507 (1911) and *United States v. Elviña*, 24 Phil. 230, 231-232 (1913).

<sup>59</sup> *Felicilda v. Justice Grospe*, supra, citing *People v. Miranda*, 112 Phil. 197, 200 (1961).

<sup>60</sup> PRESIDENTIAL DECREE NO. 1445, Section 85, Government Auditing Code of the Philippines.

an appropriation law or specific statutory authority.<sup>61</sup> The act of petitioner in approving Disbursement voucher No. 08041239 and signing Landbank check No. 0272388 in violation of the said elementary principles is a flagrant and palpable breach of duty tantamount to gross negligence.<sup>62</sup>

In this case, as correctly ruled by the Sandiganbayan, the payment of price escalation is not supported by an appropriation. Pursuant to the *Contract Agreement*<sup>63</sup> dated December 29, 2003, relative to the Phase II construction of the Daet Public Market, petitioner and Markbilt agreed for the construction to be completed within a period of 365 calendar days for the amount of ₱71,499,875.29. The statement of such amount constitutes the specific appropriation required by law for a specific expenditure, that is, the entirety of the Daet Public Market (Phase II) construction project.

The basis of Markbilt's claim for price escalation is based on the same contract, particularly, clause no. 4, which states:

4. The Implementing Rules and Guidelines regarding Adjustment of contract prices adopted and approved by the Government will be applied in this contract.<sup>64</sup>

The provision authorizes the claim for price escalation, without any reference as to the source of funds for its satisfaction. To the Court, it is a vague recognition of Markbilt's right to collect over and beyond the contract price. A cursory reading thereof shows that it does not provide additional rights in favor of Markbilt. It merely mentions what is evident and otherwise impliedly included in the contract, *i.e.*, that pertinent laws and rules apply in the event of the need to adjust contract price arises. As the Court sees it, the invocation of this clause in the *Contract Agreement* is a vain attempt to circumvent the requirement that there be a specific appropriation for any disbursement.

What is crucial is that in the absence of appropriation or designation of source of funds, the aforesaid clause cannot be considered as a source of an enforceable right in favor of Markbilt. Section 85 in relation to Section 86 of P.D. No. 1445, requires the existence of a prior sufficient appropriation, as certified by the proper accounting official, before any contract for expenditure of public funds is authorized, *viz.*:

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<sup>61</sup> CONSTITUTION, Article VI, Section 29(1); REPUBLIC ACT NO. 7160, Section 305(a), Local Government Code; PRESIDENTIAL DECREE NO. 1445, Section 84, Government Auditing Code of the Philippines.

<sup>62</sup> *Diego v. Sandiganbayan*, 394 Phil. 88, 101 (2000).

<sup>63</sup> *Rollo*, pp. 169-172.

<sup>64</sup> *Id.* at 170.

**Section 85. Appropriation before entering into contract.**

(1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.

x x x x

**Section 86. Certificate showing appropriation to meet contract.** Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate, signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Underscoring supplied)

The only appropriation in this case is the original contract price of ₱71,499,875.29. Consequently, no payment can be made beyond such amount. In the same way, as there is no funding to support the price escalation clause in the said *Contract Agreement*, no public funds can be disbursed in payment thereof. The clause is void and of no effect.<sup>65</sup> It cannot be enforced and the public officer who entered into the contract without such appropriation and certification shall be liable for any resulting damage to the government.<sup>66</sup>

For the sake of argument, even assuming the validity of the contract clause authorizing price escalation, the Court nonetheless finds that the additional budget certified and approved does not provide for payment of price escalation in favor of Markbilt.

Petitioner argues that Supplemental Budget No. 1 signed by the Municipal Budget Officer Laborte and approved by Municipal Administrator Nagera, on his authority, and of the Sangguniang Bayan,

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<sup>65</sup> **Section 87. Void contract and liability of officer.** Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

<sup>66</sup> Id.

provided for appropriation in the amount of P1M in favor of Markbilt Construction.<sup>67</sup>

Appropriation Ordinance No. 1 passed by the Sangguniang Bayan on March 6, 2008, which approved Supplemental Budget No. 1, provides:

AN ORDINANCE APPROVING THE SUPPLEMENTAL BUDGET NO. 01 FOR CY 2008 FOR THE MUNICIPALITY OF DAET APPROPRIATING x x x FOR SPECIAL ACCOUNT (MARKET) – CONSTRUCTION OF PUBLIC MARKET AMOUNTING TO FOUR MILLION FOUR HUNDRED THOUSAND PESOS (P4,400,000.00) x x x

**SECTION 1.** The amount of P11,222,088.00 is hereby appropriated as follows:

x x x x

**Special Account (market)**

Construction of Market

**4,400,000.00**

**TOTAL SUPPLEMENTAL APPROPRIATIONS P11,222,088.00**

**SECTION 2.** The Municipal Treasurer, Municipal Accountant and the Municipal Budget Officer are hereby authorized to effect payment and corresponding adjustments be made in the book of accounts.

**SECTION 3.** This appropriation ordinance shall take effect upon approval.<sup>68</sup>

Contrary to the submission of the petitioner, a cursory reading of the appropriation ordinance clearly shows that it does not cover the payment for price escalation. Understood by its plain and ordinary meaning,<sup>69</sup> the supplemental budget refers to the further construction of the Daet public market. It pertains to future works to be done, and not of past work performed. Had it been the intention of the Sangguniang Bayan to pay for the price escalation on completed works, it could have employed a more direct language than that employed, such as “works done.” In the absence of evidence showing legislative intent of the Sangguniang Bayan to the contrary, the Court cannot stretch the meaning of the law. An appropriation

<sup>67</sup> *Rollo*, pp. 47-48.

<sup>68</sup> *Id.* at 174-176.

<sup>69</sup> In *Funa v. Chairman Villar*, 686 Phil. 571, 591-592 (2012) the Court held that “if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.”

may be used only for the specific purpose for which they are appropriated.<sup>70</sup> The Court quotes with approval the Sandiganbayan's elucidation:

Appropriation Ordinance No. 1 contained no appropriation for the payment of the amount of Php1,000,000.00 to Markbilt. Appropriation Ordinance No. 1 shows that the appropriation was for the construction of the public market. There was no appropriation to pay for the contract price escalation, an obligation supposedly incurred in the already completed construction of the Daet Public Market.

Accused Sarion and his witnesses point to the deliberations of the Sangguniang Bayan. But the intent to pay the alleged contract price escalation allegedly manifested during the deliberations are not reflected in Appropriation Ordinance No. 1. Notably, no documentary evidence was offered to prove the alleged deliberations.<sup>71</sup>

In the herein assailed ruling of the Sandiganbayan, it held that despite the issue with respect to funding, the petitioner cannot be held culpable as "the Information alleges the absence of, not the infirmity in, the certificate of availability of funds."<sup>72</sup>

The Court does not agree.

An Information is sufficient when it states the designation of the offense and the acts or omissions which constitute the offense charged. The crime must be described in ordinary and concise language and with such particularity and reasonable certainty that the accused is duly informed of the offense charged and able to adequately prepare for his defense.<sup>73</sup> "In particular, whether an Information validly charges an offense depends on whether the material facts alleged in the complaint or information shall establish the essential elements of the offense charged as defined in the law."<sup>74</sup>

To recapitulate, Section 86 of P.D. No. 1445 requires the existence of a prior specific appropriation, as certified by the proper accounting official, before any contract for expenditure of public funds is authorized. In this sense, therefore, it is the absence of certification as to the availability of or source of funds *pertaining specifically to the payment of price escalation*, that rendered the clause void and the subsequent approval by the petitioner of the disbursement voucher invalid. It is this irregularity which rendered the

<sup>70</sup> Local Government Code, Sections 306 (b) and 336.

<sup>71</sup> *Rollo*, p. 112.

<sup>72</sup> *Id.*

<sup>73</sup> REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, Sections 6 and 9. *Jaca v. People, et al.*, supra note 42 at 238-239.

<sup>74</sup> *Jaca v. People, et al.*, *id.*

payment in favor of Markbilt illegal. In turn, it is the transgression of the same basic principle in disbursement of public funds which translates to gross negligence on the part of the petitioner. With this, the elements of the offense sufficiently alleged and proven in the Information, there is no obstacle in convicting the petitioner of the crime of malversation.

At any rate, granting for the sake of argument that the failure of the Information to specifically employ the word “irregularity” instead of “absence” constitutes a violation of the petitioner’s right to Information and as such may not be considered in determining the offenses charged, the petitioner may nonetheless be still be convicted of the crime of malversation and for violation of Section 3(e) of R.A. No. 3019 “through [his] approval of the disbursement voucher x x x even without the approval from the Government Procurement Policy Board (GPPB) and the determination by the National Economic Development Authority (NEDA) as to the propriety of the claim for price escalation in violation of the GPPB Guidelines for Contract price Escalation,”<sup>75</sup> clearly stated and alleged in the two (2) Informations filed against him. As will further be illustrated hereunder, this fact establishes the elements of the subject offenses as defined by law.

As correctly ruled by the Sandiganbayan, in addition to the requirement of appropriation and certification of availability of funds, price escalation during the implementation of a contract must comply with the requirements of R.A. No. 9184 or the Government Procurement Reform Act.

It is a basic rule that the laws in force at the time the contract was made governs its interpretation and application.<sup>76</sup> In this case, the *Contract Agreement* between the parties was executed on December 29, 2003. At that time, the law in effect is R.A. No. 9184. By express repeal, the Act, which took effect on January 26, 2003, superseded P.D. No. 1594.<sup>77</sup>

Section 61<sup>78</sup> of R.A. No. 9184 explicitly provides that any given scope of work in the contract as awarded shall be for the fixed price specified therein. Any increase in the contract price is subject to prior determination by the NEDA of the existence of an extraordinary circumstance and

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<sup>75</sup> *Rollo*, pp. 135-136.

<sup>76</sup> *Banco Filipino Savings and Mortgage Bank v. Ybañez*, 486 Phil. 1148, 1156 (2004).

<sup>77</sup> PRESIDENTIAL DECREE NO. 1594, Section 76.

<sup>78</sup> SEC. 61. *Contract Prices*. - For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB.

For purposes of this Section, “extraordinary circumstances” shall refer to events that may be determined by the National Economic and Development Authority in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.



approval of the GPPB. It is only after which that contract price escalation may be authorized and paid.<sup>79</sup>

The provision is clarified by the rules implementing R.A. No. 9184<sup>80</sup> which was then in effect at the time of the contract, *viz.*:

#### **Section 61. Contract Prices**

x x x x

61.2. Any request for price escalation under extraordinary circumstances shall be submitted by the concerned entity to the National Economic and Development Authority (NEDA) with the endorsement of the procuring entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

61.3. For purposes of this Section, “extraordinary circumstances” shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.

Evidently, price escalation in a contract for public works is not immediately executory by mere specification in contract. There is a procedure to be followed. A recommendation must first be made by the procuring entity of the existence of an extraordinary circumstance. Then, the NEDA would make a determination confirming the justification offered by the procuring entity. After finding that an extraordinary circumstance exists thus justifying the payment of price escalation, the request would have to be forwarded to the GPPB for approval.<sup>81</sup> It is only after the GPPB signifies its approval of the price escalation claim that the payment can be processed and released by the government entity concerned to the contractor.

In this case, it is not contested that the petitioner failed to observe the foregoing procedure prior to his approval of the disbursement voucher and signing of the Landbank check in favor of Markbilt. This is supported by a Certification<sup>82</sup> dated July 25, 2012 issued by the NEDA to the effect that it

<sup>79</sup> Id., Guidelines for Contract Price Escalation, GPPB Resolution No. 07-2004, October 19, 2004.

<sup>80</sup> Approved through Memorandum Order No. 119 dated September 18, 2003 and took effect fifteen (15) days after its publication or on October 8, 2003.

<sup>81</sup> 5.6, Guidelines for Contract Price Escalation, GPPB Resolution No. 07-2004, October 19, 2004.

5.6 Recommendation/Approval. NEDA shall, upon completion of its review pursuant to Section 5.2 hereof, submit its recommendations to the GPPB for appropriate action. The GPPB shall then approve/act upon the request for price escalation during one of its meetings, to be attended by the Head of the Procuring Entity concerned or his duly authorized representative/s.

<sup>82</sup> *Rollo*, p. 260.

had not received any request from the Municipality of Daet for exemption and/or approval for the payment of escalation price.

In justifying the failure to comply with the requirements of R.A. No. 9184, the petitioner posits that it had the right to rely upon the legal opinion of Legal Officer Deveza that there was no reason to refuse the payment of obligation to Markbilt. He argues that the same is complete, adequately supported by sufficient legal principles, and has in its favor the presumption of regularity which the prosecution herein failed to rebut.<sup>83</sup>

The petitioner also raised the defense of good faith to negate criminal intent in the charge for malversation. Succinctly, he claims that the doctrine in *Arias v. Sandiganbayan*<sup>84</sup> is applicable to him. Petitioner claims that in approving the payment of price escalation in favor of Markbilt, he merely relied in good faith on the opinion of Legal Officer Deveza, the certifications and approval of Budget Officer Laborte and other local officials, and the presumed validity of Appropriation No. 1.<sup>85</sup>

The ruling in *Arias* does not apply; it cannot exculpate petitioner from liability. In *Arias*, the Court held that “[a]ll heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.”<sup>86</sup> In subsequent cases, it was made clear nonetheless that “the *Arias* doctrine is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.”<sup>87</sup> When there are circumstances that should have alerted heads of offices to exercise a higher degree of circumspection in the performance of their duties, they cannot invoke the doctrine to escape liability. In this scenario, heads of offices are expected to exercise more diligence and go beyond what their subordinates have prepared.<sup>88</sup>

In the same vein, the presumption of regularity “obtains only when there is no deviation from the regular performance of duty. Where the official act in question is irregular on its face, no presumption of regularity can arise.”<sup>89</sup>

In this case, the Court finds the existence of such circumstances which could have alerted the petitioner to inquire further prior to his approval of

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<sup>83</sup> Id. at 64.

<sup>84</sup> 259 Phil. 794 (1989).

<sup>85</sup> *Rollo*, p. 61.

<sup>86</sup> *Arias v. Sandiganbayan*, *supra* at 796.

<sup>87</sup> *Rivera v. People*, 749 Phil. 124, 151-152 (2014).

<sup>88</sup> Id.

<sup>89</sup> *People v. Alejandro*, 671 Phil. 33, 54 (2011).

the disbursement voucher, beyond the certifications and documents issued by municipal officials.

To recall, the *Contract Agreement* for the construction of the Daet Public Market (Phase II) was entered into on December 29, 2003, during the petitioner's term as Municipal Mayor. Actual construction commenced in January 2005.<sup>90</sup> Months thereafter or in December 2005, allegedly on account of spiraling costs of materials during the construction period, Markbilt filed a claim for the adjustment of contract price pursuant to the price escalation clause of the *Contract Agreement*.<sup>91</sup> This was followed by successive requests for price escalation,<sup>92</sup> viz.:

<b>Billing Date</b>	<b>Amount</b>	<b>Period Covered</b>
April 25, 2004	P 76,282.99	February 19, 2004-April 16, 2004
July 15, 2004	2,041,842.15	April 17, 2004-July 13, 2004
September 26, 2004	1,647,087.36	July 14, 2004-September 23, 2004
February 28, 2005	1,457,700.24	September 24, 2004-February 23, 2005
<b>Total</b>	<b>P 5,222,903.74</b>	

During the intervening period or in May 2004, Mayor Panotes was elected as Municipal Mayor of Daet. It was sometime in June 2005, during his term, that the Phase II construction project was completed. Thereafter, Markbilt continued to file several letter-requests reiterating its claim for price escalation. However, then Mayor Panotes refused to act upon the claims until the end of his term in June 2007. It was when the petitioner was re-elected that Markbilt's claim was processed and eventually paid in May 2008.<sup>93</sup>

Considering that two years had passed since the project's completion and more than three years since the first demand for payment of price escalation was made by Markbilt, the petitioner could have inquired into the circumstances attending the demand and the construction project and why the same was unacted upon by his predecessor. Instead of immediately instructing Administrator Nagera to look for sources of funds, he should have sought the opinion of the Municipal Engineer. Petitioner should have at the very least referred the documents relative to construction project to the appropriate municipal officials for study in order to verify the basis of Markbilt's claim. This is particularly relevant as majority of the project was undertaken and ultimately completed prior to his term. As well, the amount appropriated for the Daet Public Market (Phase II) construction project has already been fully released. Markbilt's demand is over and beyond the

<sup>90</sup> *Rollo*, pp. 108, 173.

<sup>91</sup> *Id.* at 244.

<sup>92</sup> *Id.* at 255.

<sup>93</sup> *Id.* at 244-245.

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contract price and dependent upon the cost of materials almost three years passed. Simply, the propriety of Markbilt's additional claim depends upon the prevailing market prices at the time they were purchased vis-à-vis the costs when the contract was entered into. In this regard, prudence dictates that further verification be conducted as to the veracity of the amount claimed by Markbilt. The amount involved is by no means trivial; it involves millions of pesos of public funds. Petitioner, as head of office, should have taken this precaution in order to safeguard the government funds for which he is responsible<sup>94</sup> and to protect the interests of the municipality.

In this case, after receiving Markbilt's demand, petitioner immediately referred the same to Administrator Nageta and instructed him to look for sources of funds in order to satisfy the same, without taking steps first in order to verify the propriety of Markbilt's additional claim for payment. It is this act which set the process in motion. Ultimately, it was the petitioner's signature on the disbursement voucher and Landbank check that allowed Markbilt to encash the ₱1,000,000.00 partial payment for contract price escalation, despite not being entitled thereto. This satisfied the last element of the offense and rendered the crime of malversation complete.

The petitioner was also charged with violation of Section 3(e) of R.A. No. 3019,<sup>95</sup> the elements of which are the following:

- a) The accused must be a public officer discharging administrative, judicial or official functions;
- b) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- c) 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.<sup>96</sup>

As defined and applied in this case, the offense has common elements with the crime of malversation, in particular, the first and second elements. Having previously elucidated on the same, the Court need not discuss the same in detail.

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<sup>94</sup> PRESIDENTIAL DECREE NO. 1445, Section 102(b).

<sup>95</sup> Sec. 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

<sup>96</sup> *Consigna v. People, et al.*, 731 Phil. 108, 123-124 (2014).

In approving the release of payment in favor of Markbilt, it is no contest that the petitioner acted in the performance of his administrative and official functions.

Moving on to the second element, for a successful prosecution under Section 3(e) of R.A. No. 3019, it is not enough that undue injury was caused, the act must be performed through manifest partiality, evident bad faith, or gross inexcusable negligence.<sup>97</sup> Pertinent to the issue at hand, “gross inexcusable negligence” has been defined as –

[t]he want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.<sup>98</sup>

The Court affirms that the petitioner is guilty of gross inexcusable negligence amounting to bad faith. From the stated definition, there is gross inexcusable negligence when a public officer commits a breach of duty in a blatant and extremely careless manner; or when the violation of law is serious, flagrant, palpable, or there is willful indifference in complying with the same.

As previously discussed, the petitioner was remiss in his duty when he failed to exercise diligence in ensuring compliance with basic requirements demanded by the law, rules, and regulations in the disbursement of public funds. First, as the signatory in the *Contract Agreement* with Markbilt, he is presumed to know the contents thereof. On its face, the instrument only provides for a single appropriation for the construction project; there is no separate funding to support the contract price escalation clause therein. In the statement of the said clause, the parties covenant to comply with relevant rules and regulations with respect to the same. Albeit unnecessary, they explicitly incorporated the relevant guidelines with respect to adjustment of contract prices. Thus, upon receipt of Markbilt’s demand for price escalation, prudence dictates for the petitioner to first verify the propriety of the said claim and whether the said claim satisfies the requirements of applicable laws. It is only then that the possibility of satisfying the claim can even be entertained. It is highly irregular and unusual to rely merely on the representation of the contractor as to the amount due, without validating whether the amount so claimed is accurate and correct. Likewise, it must be noted that petitioner was already confronted with Markbilt’s demands for price escalation as early as January 21, 2008. Even so, there was no evidence

<sup>97</sup> *Rivera v. People*, 749 Phil. 124, 141-142 (2014).

<sup>98</sup> *Coloma, Jr. v. Sandiganbayan, et al.*, 744 Phil. 214, 229 (2014), citing *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693-694 (1994).

on record of any effort on the part of the petitioner to direct municipal officials to inquire on the basis of Markbilt's claims vis-à-vis the Contract Agreement which is cited as basis therefor, when he had every opportunity to do so prior to release of Legal Officer Deveza's opinion and the preparation of the Supplemental Budget. This step could have easily alerted the petitioner or the municipal officials of the requirements of price escalation under the law, particularly that provided for under Sec. 61 of R.A. No. 9184.

Had the petitioner undertaken these steps, he would have realized, for reasons previously stated in this decision, that Markbilt's claim should be denied. The petitioner's failure to observe sufficient diligence under these circumstances, which led to violation of the law and the rules relating to disbursement of public funds amounts to gross inexcusable negligence.

Finally, the Court likewise finds that the prosecution was able to prove the element of undue injury. Jurisprudence defined "undue injury" as actual damage established by evidence as caused by the questioned conduct by the offender.<sup>99</sup>

The petitioner's approval of the disbursement voucher and signature in the Landbank check in favor of Markbilt facilitated the unauthorized release of ₱1,000,000.00 of public funds which belong to the Municipality of Daet. As it is established that Markbilt is not entitled to such payment, the Sandiganbayan was correct in ruling that the petitioner caused undue injury in this amount, which then petitioner must return.

With respect to the penalty, the Court finds the penalties imposed by the Sandiganbayan to be in order and should not be disturbed.

Article 217 of the RPC, as amended by R.A. No. 10951,<sup>100</sup> provides that a person guilty of malversation shall suffer the penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than ₱40,000.00 but does not exceed ₱1,200,000.00.<sup>101</sup> Applying the Indeterminate Sentence Law (ISL),<sup>102</sup> the imposable minimum penalty shall

<sup>99</sup> *Bacamas v. Sanidganbayan, et al.*, 713 Phil. 639, 663 (2013).

<sup>100</sup> AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED. Approved on August 29, 2017.

Section 100. *Retroactive Effect.*- This act shall have retroactive effect to the extent that it is favorable to the accused or person serving the sentence by final judgment.

<sup>101</sup> REPUBLIC ACT NO. 10951, Section 40(2).

<sup>102</sup> REPUBLIC ACT NO. 4103, Section 1 reads:

**Section 1.** Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the

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be anywhere within *prision correccional* in its medium and maximum periods or 2 years, 4 months and 1 day to 6 years. In view of the mitigating circumstance of voluntary surrender, the maximum penalty, on the other hand, shall be within the minimum period of *prision mayor* in its minimum and medium periods or 6 years and 1 day to 7 years and 4 months.<sup>103</sup> The indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum; imposed by the *Sandiganbayan* which is within the stated range, is hereby affirmed. In addition, as adjudged, likewise by virtue of Article 217 of the RPC, petitioner must also be meted with the accessory penalty of perpetual disqualification from holding public office and ordered to pay a fine equal to the amount of funds malversed, herein equivalent to ₱1,000,000.00 plus interest thereon at the rate of six percent (6%) *per annum*, reckoned from the finality of this Decision until fully paid.<sup>104</sup>

Whereas, under Section 9(a)<sup>105</sup> of R.A. No. 3019, a person found guilty of violating Section 3(e) of the same law is punishable with imprisonment for not less than six (6) years and one (1) month nor more than fifteen (15) years, and perpetual disqualification from public office. Applying the ISL, the penalty shall not be less than the minimum term nor exceed the maximum term fixed by the law.<sup>106</sup> Thus, the penalty imposed by the *Sandiganbayan* which is indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, is in accord with law.

**WHEREFORE**, in view of the foregoing, the instant petition for review on *certiorari* is hereby **DENIED**. The Decision dated September 29, 2017 and the Resolution dated November 8, 2018 of the *Sandiganbayan* in SB-11-CRM-0256 to 0257, finding petitioner Tito S. Sarion **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code and of violating Section 3(e) of Republic Act No. 3019, are hereby **AFFIRMED**.

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maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

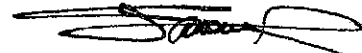
<sup>103</sup> REVISED PENAL CODE, Article 63(3).

<sup>104</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).


<sup>105</sup> **Sec. 9. Penalties for violations.** - (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

<sup>106</sup> *Supra* note 95.

**SO ORDERED.**

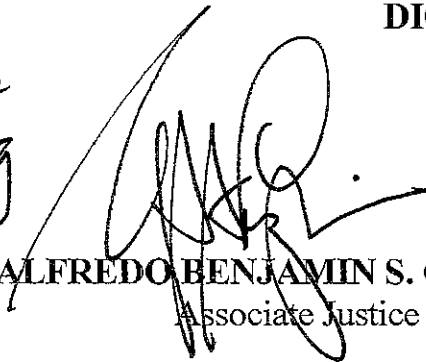
  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

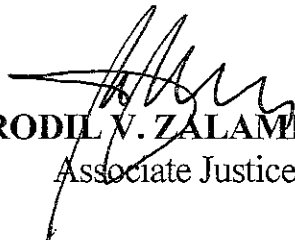
*I join the dissent of J. Caguioa*  


**DIOSDADO M. PERALTA**  
Chief Justice

*Please See  
Dissenting  
Opinion.*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**ROSMARIE B. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

**CERTIFICATION**

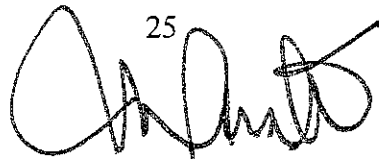
Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



Decision

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G.R. Nos. 243029-30



**DIOSDADO M. PERALTA**  
Chief Justice