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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

FEB 15 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MIGUEL D. ESCOBAR, EUGENE L. ALZATE, PERLA C. MAGLINTE, CESAR M. CAGANG, and VIVENCIA S. TELESFORO,

Petitioners,

Present:

CARPIO, J.,*
VELASCO, JR.,**
BERSAMIN,**
LEONEN,
JARDELEZA,**** JJ.,

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
November 20, 2017

Wilfredo V. Lapitan

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DECISION

LEONEN, J.:

Except with respect to civil cases impliedly instituted, the rule of conclusiveness of judgment has no application in criminal law proceedings. For criminal procedure, it is not *res judicata* under Rule 39, Section 47 of the Rules of Court, but *res judicata* in prison grey as double jeopardy, under Rule 117, Section 7.

This is a Consolidated Petition for Review on Certiorari¹ assailing the August 22, 2012 Decision² and January 8, 2013 Resolution³ of the

* Designated additional member per Raffle dated October 2, 2017.

** On official leave.

*** Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

**** Designated additional member per Raffle dated October 11, 2017.

¹ *Rollo*, pp. 96-251.

² Id. at 252-314. The Decision was penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Presiding Justice Efren N. De La Cruz and Associate Justice Rafael R. Lagos of the First Division, Sandiganbayan, Quezon City.

³ Id. at 13-27. The Resolution was penned by Associate Justice Rodolfo A. Ponferrada and concurred in

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Sandiganbayan in Criminal Case No. 28293. The Sandiganbayan found petitioners Perla C. Maglinte (Maglinte), Eugene L. Alzate (Alzate), together with Amelia Carmela C. Zoleta (Zoleta), guilty of the crime of estafa through falsification of public documents, and petitioners Miguel D. Escobar (Escobar), Vivencia S. Telesforo (Telesforo), and Cesar M. Cagang (Cagang), guilty of malversation.⁴

An Information filed before the Sandiganbayan against petitioners read:

That on May 27, 2002, or prior or subsequent thereto in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused public officers Miguel Draculan Escobar and Felipe Katu Constantino, being then the Governor and Vice-Governor, respectively, of the Province of Sarangani, Margie Purisima Rudes and Eugene Lariza Alzate, Provincial Board Members, Perla Cabilin Maglinte, Provincial Administrator, Cesar Matas Cagang, Provincial Treasurer, Vivencia Sasam Telesforo, Management and Audit Analyst III, and Amelia Carmela Constantino Zoleta, and Executive Assistant, all accountable public officials of the Provincial Government of Sarangani, by reason of the duties of their office[s], conspiring and confederating with one another, while committing the offense in relation to office, taking advantage of their respective positions, did then and there willfully, unlawfully and feloniously take, convert, and misappropriate the amount of THREE HUNDRED THOUSAND PESOS (P300,000.00), Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified the corresponding Disbursement Voucher dated May 27, 2002 and its supporting documents, making it appear that financial assistance had been sought by Nema Tamayo, the alleged Team Leader of Malungon Market Vendors Association, Malungon, Sarangani, when in truth and in fact, the accused knew fully well that no financial assistance had been requested by Nema Tamayo and her association, nor did said Nema Tamayo and her association receive the aforementioned amount, thereby facilitating the release of the above-mentioned public funds in the amount of THREE HUNDRED THOUSAND PESOS (P300,000.00), through the encashment by the accused of Development Bank of the Philippines (DBP) Check No. 282390 dated May 27, 2002, which amount they subsequently misappropriated to their personal use and benefit, and despite demand, the said accused failed to return the said amount to the damage and prejudice of the government and the public interest in the aforesaid sum.

CONTRARY TO LAW.⁵

During arraignment, petitioners Cagang, Telesforo, Escobar, Alzate, and Maglinte, and their co-accused Felipe Katu Constantino (Constantino) and Zoleta pleaded not guilty to the offense charged.⁶ Co-accused Board

by Associate Justices Efren N. De La Cruz and Rafael R. Lagos of the First Division, Sandiganbayan, Quezon City.

⁴ Id. at 313-314.

⁵ Id. at 253.

⁶ Id. at 253.

Member Margie P. Rudes (Rudes) was still-at-large.⁷ Constantino passed away on April 25, 2006; thus, the Sandiganbayan granted the motion to dismiss his case.⁸

After pre-trial,⁹ trial commenced.

The prosecution's version of the events was as follows:

Commission on Audit State Auditor IV Helen M. Cailing (Auditor Cailing), the Team Leader of a Special Audit Team in Sarangani Province, discovered irregularities in Sarangani Province's grant of financial assistance, violating COA Circular No. 96-003 dated February 27, 1996.¹⁰ An Audit and Observation Memorandum dated June 26, 2003 containing the team's findings was sent to then Sarangani Governor Escobar, Provincial Accountant Maria D. Camanay, Provincial Treasurer Cagang, Provincial Engineer Mahmod Panayaman, and Provincial Agriculturist Romeo Miole. Cagang replied that the transaction was treated as a cash advance; thus, the issuance of official receipt by the Non-Government Organizations (NGOs) and People's Organizations (POs) was unnecessary.¹¹ The team found that the supporting documents for financial assistance to the Malungon Market Vendors Association lacked the approval of Governor Escobar, in violation of COA Circular No. 96-003. However, Governor Escobar certified on the disbursement voucher that the expense was "necessary, lawful and incurred under his direct supervision."¹² Also on the disbursement voucher was a certification from Telesforo that the supporting documents were complete, and from Provincial Treasurer Cagang that there were available funds. The team also found that the disbursement voucher was not received by the Malungon Market Vendors Association.¹³ It was signed received by a "Tita P. Sariño," for whom the team searched, but failed to locate, in Barangay Malungon.¹⁴ This was in violation of COA Circular No. 96-003 because it should have been deposited to the account of the Malungon Market Vendors Association. Further, Auditor Cailing testified that upon verification with the bank, she was told that the check had been deposited to the account of the beneficiary but that the amount was withdrawn the next day.¹⁵ The funds for the financial assistance were sourced from the Countrywide Development Fund (CDF), which was intended for livelihood projects of Sarangani Province.¹⁶

⁷ Id.

⁸ Id. at 255.

⁹ Id. at 253.

¹⁰ Id. at 255-256.

¹¹ Id. at 256-257.

¹² Id. at 257.

¹³ Id. at 257-258.

¹⁴ Id. at 258.

¹⁵ Id.

¹⁶ Id.

Juanilio V. Vegafria (Vegafria) testified that he was the President of the Malungon Market Vendors Association from 2001 to 2004.¹⁷ With the help of the vice-mayor and the Department of Social Welfare and Development, he was able to obtain financial assistance from the municipal government of Malungon for their recovery from a fire that burned down the Malungon public market in 2001.¹⁸ He received Commission on Audit's letter dated July 15, 2003, addressed to "Tita P. Sariño, Treasurer of the Market Vendors Association of Malungon," seeking verification on the financial assistance of ₱300,000.00 for the association.¹⁹ He executed an affidavit that their association did not receive this amount. He stated that he received the letter as it was addressed to the association but there was no officer or member by that name. When he was shown a document dated May 20, 2002 and a Project Proposal, both signed by a "Nema Tamayo," purportedly a team leader of the Malungon Market Vendors Association, Vegafria testified that there was no association member or officer by that name.²⁰

Mary Ann G. Gadian (Gadian) testified that she was employed in the Office of then Vice Governor Constantino as a Computer Operator and was supervised by Vice Governor Constantino's daughter, Amelia Carmela Zoleta (Zoleta). Zoleta had her make fake documents, requests, and proposals to make money.²¹ In May 2002, she received instructions from Vice Governor Constantino, Board Member Juanito Purisima, and Zoleta to prepare supporting documents for the disbursement of funds to be used for the wedding of Board Member Alzate,²² and to use the name "Tita P. Sariño" in the fictitious documents.²³ Thus, Zoleta told her to go to the office of Provincial Administrator Maglinte who, upon Gadian's arrival, immediately told her to ask Zoleta whether or not "another ₱10,000.00 for the . . . department heads could be added to the amount to be disbursed."²⁴ Upon hearing this, Zoleta instructed Gadian to "double the amount so that the processing will be expedited."²⁵ Thereafter, Maglinte told Gadian to source the ₱300,000.00 from the ₱1,000,000.00 CDF of Malungon.²⁶ Thus, Gadian prepared the fictitious letter dated May 20, 2002 and the fictitious Project Proposal under the fictitious name of "Nema Tamayo."²⁷ She asked her co-worker Eleanor Tablani (Tablani) to sign above the name "Nema Tamayo."²⁸ After Zoleta reviewed the fictitious documents, she submitted them to Maglinte, who reviewed them and immediately affixed her initials under the name of Governor Escobar. She and Maglinte then delivered the

¹⁷ Id.

¹⁸ Id. at 258–259.

¹⁹ Id. at 259.

²⁰ Id.

²¹ Id.

²² Id. at 259–260.

²³ Id. at 262.

²⁴ Id. at 260.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

disbursement voucher and supporting documents to the office of Governor Escobar. Gadian waited outside. When Maglinte emerged from Governor Escobar's office, she handed Gadian the disbursement voucher bearing Governor Escobar's signature and they returned to Maglinte's office.²⁹ Maglinte imprinted the rubber stamp signature of Governor Escobar in the duplicate copies of the voucher³⁰ then gave the documents to a clerk at the office of the Provincial Accountant for logging and processing. Since Provincial Accountant Maria Camanay (Camanay) was in General Santos City, Telesforo signed over the former's name in the disbursement voucher and in the Journal Entry Voucher. Thereafter, Maglinte handed the documents to a clerk in the office of the Provincial Treasurer who wrote "RCI#1/TFMAY2002" on the voucher and then went to the room of Provincial Treasurer Cagang. While Provincial Treasurer Cagang reviewed the documents, "he looked at her shaking his head."³¹ He signed the voucher. Then, Gadian went to the cashier, who prepared the check. Thereafter, she presented the check to Cagang, who signed it. She went back to the office of Maglinte, who also signed it. Then, Gadian returned all the documents to the Provincial Treasurer's Office. She called Sheryl Desiree Jane Tangan, also known as Joy Tangan (Tangan), of the Office of the Vice Governor to advise the status of the transaction and to receive further instructions from Zoleta. Pursuant to Zoleta's instructions, Tangan accompanied a woman, who acted as a "dummy," to claim the check from the office of the Provincial Treasurer and to encash it at the bank. Tangan gave Gadian the ₱300,000.00, which she delivered to Zoleta. Zoleta gave Gadian ₱100,000.00 and called Alzate to go to her office.³² When Alzate arrived, Tatang Purisima (Purisima) gave him ₱200,000.00 for the wedding. Gadian placed the ₱100,000.00 from Zoleta in five (5) envelopes with ₱20,000.00 each and brought them to the office of Maglinte, where she saw Camanay, Lea Duhay Lungsod, Mariter Saison, Sitiwa Maruhom Sali, and Rose Concon, who were awaiting their shares.

Tangan testified that in 2002, she worked as Local Legislative Assistant Staff I at the Office of then Vice Governor Constantino.³³ She corroborated Gadian's testimony.³⁴

The version of the defense was as follows:

Cagang testified that when the disbursement voucher was brought to his office by Gadian, it was already signed by Provincial Governor Escobar, "certif[ying] that the expenses or cash advances covered by the voucher were necessary, lawful and incurred under his direct supervision," and by

²⁹ Id. at 260–261.

³⁰ Id. at 261.

³¹ Id.

³² Id.

³³ Id. at 262.

³⁴ Id. at 262–264.



Telesforo, signifying the completeness of the supporting documents.³⁵

Maglinte denied Gadian's allegations regarding her participation in the facilitation of the transaction. She testified that she had no participation in the falsification of the letter request or the Project Proposal, or that they had been forwarded to her office. She claimed that Vice Governor Constantino had informed her over the phone that these documents from the Malungon Market Vendors Association would be brought to her office. She verified the letter request and Project Proposal before signing the disbursement voucher. Thereafter, separate investigations were initiated for the reported anomaly. While the transactions were being investigated, former Sarangani Governor Priscilla Chiongbian ordered for her to come to her residence, where Maglinte met Congressman Erwin Chiongbian (Congressman Chiongbian). They discussed the issue of the anomalous financial assistance that had been granted to several People's Organizations in Sarangani, but Maglinte said she had no knowledge of them. This enraged Congressman Chiongbian, who said that she would suffer the consequences of withholding the situation from him.³⁶ She said she was not aware of COA Circular No. 96-003 and was not furnished with a copy of the COA Audit Observation Memorandum, as it was not addressed to her.³⁷

Renante L. Dialawi, a casual clerk at the office of Board Member Rudes, testified that Gadian also used to be a staff in that office and that Gadian was in the office of Board Member Rudes in the morning of May 27, 2002,³⁸ and did not leave the whole afternoon.³⁹

Escobar denied knowledge of and participation in the crime.⁴⁰ His only participation in the transaction was signing the disbursement voucher. However, after he learned of the anomalies when it was discussed on a radio show, he created a Fact Finding or Investigation Committee, whose report was included in the report of the Commission on Audit Special Audit Team. He did not receive any notice of disallowance or demand to return the ₱300,000.00 and was not asked to explain why he signed the disbursement voucher before the case against him was instituted.⁴¹

Telesforo testified that she signed the disbursement voucher only after verifying that the supporting documents were complete and in order.⁴²

[S]he affixed her signature on the voucher after she has verified that the

³⁵ Id. at 43.

³⁶ Id. at 45-47.

³⁷ Id. at 47.

³⁸ Id. at 48.

³⁹ Id. at 52.

⁴⁰ Id. at 47-48.

⁴¹ Id. at 48.

⁴² Id. at 53.

attachments consisting of – (1) the Certificate of Registration issued by the Cooperative Development Authority, (2) machine copy of the Certificate of Accreditation issued by the Provincial Board of Sarangani, (3) the Letter Request of the Malungon Market Vendors Association, (4) Project Proposal of the Malungon Market Vendors Association, (5) machine copy of the memorandum of agreement executed by and between the Province of Sarangani and the Malungon Market Vendors Association, and (6) the Board Resolution issued by the Malungon Market Vendors Association authorizing its treasurer to receive and encash the check, were complete and in order; that since some of the attached documents were photo/machine copies, she called Ms. Banderado to go to the office of the Governor to check the originals of the photo/machine copied documents; and that it was only after Ms. Banderado informed her that the original documents are on file in the office of the Governor that she affixed her signature in Box B of the Disbursement Voucher[.]⁴³

Alzate denied receiving ₱200,000.00 from Zoleta and having participation in the anomalous transaction.⁴⁴ He said that the day the check was encashed was on May 29, 2002 and not on May 27, 2002, as shown by the machine validation on the check. He claimed that on May 29, 2002, he was in Cebu City for the Second Quarter National Board Meeting of the Provincial Board Members League of the Philippines, held from May 28, 2002 to May 31, 2002.⁴⁵ His attendance in this event was attested to by the Agenda of the League, the Allotment and Obligation Slip for his travel expenses reimbursement, the disbursement voucher for his reimbursement, his plane tickets, and the Certificate of Appearance issued by the Department of Interior and Local Government. Additionally, the Minutes of the First Special Session of the Sangguniang Panlalawigan of Sarangani on May 29, 2002 indicated that he was absent on official business.⁴⁶ He claimed that the case was politically motivated because he refused the late Congressman James Chiongbian's offer to run as the Vice Governor of a certain Governor Dominguez against former Vice Governor Constantino and Governor Escobar.⁴⁷ His wedding expenses were defrayed by his relatives, not by the illegal disbursement.⁴⁸ During additional direct examination, Alzate testified that his observation on the date of the machine validation of the check was confirmed by a Development Bank of the Philippines (DBP) Teller. He also stated that he sent a letter dated April 30, 2009 to the DBP General Santos City Branch requesting a certification on the encashment date of the check, but the bank refused to issue one without a subpoena.⁴⁹

Zoleta denied Gadian's testimony against her.⁵⁰ She denied seeing Alzate in their office on May 27, 2002.⁵¹ She testified that she did not

⁴³ Id.

⁴⁴ Id. at 54.

⁴⁵ Id.

⁴⁶ Id. at 54–55.

⁴⁷ Id at 55.

⁴⁸ Id.

⁴⁹ Id. at 56.

⁵⁰ Id.

⁵¹ Id at 57.

participate in preparing disbursement vouchers because the budget of the Office of the Vice Governor was controlled by a certain Mr. Dela Cruz.⁵²

In its assailed Decision, the Sandiganbayan found that the documents had been falsified which led to the disbursement of public funds, supposedly to be given as financial assistance for the Malungon Market Vendors Association, which neither prepared the documents nor received the financial assistance. It found that all the accused were public officers at the time material to the case and that Escobar, Telesforo, and Cagang had custody of the funds which constituted the source of the financial assistance granted to the Malungon Market Vendors Association.⁵³ The funds were public since they were withdrawn from the account of the Province of Sarangani.⁵⁴ Escobar, Telesforo, and Cagang signed the disbursement voucher and the funds were received by the payee.⁵⁵ The Sandiganbayan found that Zoleta, Maglinte, and Alzate acted in conspiracy in the falsification of the letter request dated May 20, 2002 and the Project Proposal, which were the supporting documents for the disbursement voucher.⁵⁶ These falsified documents “led to the malversation of public funds.”⁵⁷

The Sandiganbayan held that petitioners Escobar, Telesforo, and Cagang approved the disbursement voucher despite the fact that it lacked the documentation required under COA Circular No. 96-003 dated February 27, 1996:

However, COA Auditor Cailing stated that the said accused approved the disbursement despite the lack of the needed documentation as provided in COA Circular No. 96-003 dated February 27, 1996, because – (1) the disbursement was not included in the work and financial plan of the provincial government of Sarangani; (2) the market vendors association was not accredited by the provincial government of Sarangani; (3) there was no memorandum of agreement between the market vendors association and the provincial government of Sarangani; (4) the beneficiary did not submit its financial statement for a period of at least three (3) years and Certificate of Registration with the Securities and Exchange Commission (SEC); (5) the letter request for the grant dated May 20, 2002, and the accompanying Project Proposal were not approved by the provincial Governor; (6) DBP Check No. 282390 dated May 27, 2002, was issued in the name of the alleged Treasurer Tita P. Sariño instead of the Malungon Market Vendors Association and it was encashed when it should have been for deposit only; (7) there was no official receipt attached to the voucher evidencing receipt by the payee or recipient of the payment; and (8) there was no listing of the officials and members of the association who will benefit from the financial assistance. Auditor Cailing

⁵² Id.

⁵³ Id. at 292.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id. at 293.

testified that the only documents attached to the voucher were the said letter request dated May 20, 2002, and the Project Proposal that was signed by Nema Tamayo which did not bear the approval of the Provincial Governor; and that because of said violations, the financial assistance given to the Malungon Market Vendors Association was illegally and fraudulently made.⁵⁸

The Sandiganbayan found that petitioners Escobar, Telesforo, and Cagang should have asked for documents to show the members' names who would avail of financial assistance and the authority of "Tita P. Sariño" to act as the treasurer of Malungon Market Vendors Association.⁵⁹ Further, they allowed the misappropriation considering that when the Commission on Audit Special Audit Team conducted its audit, petitioners Escobar, Telesforo, and Cagang "failed to account or liquidate the disbursement or to give reasonable explanation of its disappearance."⁶⁰ Having failed to observe the necessary care under the circumstances, they were criminally negligent and liable for malversation.⁶¹

On the issue of conclusiveness of judgment, the Sandiganbayan held that the issue in Criminal Case No. 28331 was different from the issue in this case. The issue there was the malversation of ₱375,000.00 as financial assistance to the Kanlaong Fishermen's Group and covered by Disbursement Voucher No. 101-2002-7-10376 and DBP Check No. 11521401.⁶²

The dispositive portion of the Sandiganbayan Decision read:

WHEREFORE, judgment is hereby rendered as follows –

1. finding accused PERLA C. MAGLINTE, AMELIA CARMELA C. ZOLETA, and EUGENE ALZATE, **GUILTY** as principals of the complex crime of estafa through falsification of public documents defined and penalized under the provisions of Articles 315 and 171 in relation to Article 48 of the Revised Penal Code and applying the Indeterminate Sentence Law sentencing each of them to suffer indeterminate penalty of ten (10) years as minimum, to eleven (11) years and four (4) months of *prision mayor* as maximum, with the accessories provided by law, and to pay a fine of PhP5,000.00;
2. finding accused MIGUEL D. ESCOBAR, VIVENCIA S. TELESFORO and CESAR M. CAGANG **GUILTY** of malversation and applying the Indeterminate Sentence Law sentencing each of them to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum, to eighteen (18) years, eight (8) months and one (1) day of

⁵⁸ Id. at 82–83.

⁵⁹ Id. at 306.

⁶⁰ Id.

⁶¹ Id.

⁶² Id. at 311.

reclusion temporal as maximum, and to pay a fine of PhP300,000.00 and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law; and

3. ordering all the accused, jointly and severally, to indemnify the Provincial Government of Sarangani the defrauded/malversed amount of PhP300,000.00, and to pay the cost.

As for accused MARGIE P. RUDES, who is at-large and beyond the jurisdiction of the Court, this case is ordered **ARCHIVED**.

SO ORDERED.⁶³ (Emphasis in the original)

Petitioners filed their respective Motions for Reconsideration, which were denied by the Sandiganbayan in its January 8, 2013 Resolution. The dispositive portion of the Resolution read:

IN VIEW OF ALL THE FOREGOING, the respective *Motions for Reconsideration* of accused-movants Zoleta, Maglinte, Escobar, Telesforo and Cagang, and the *Motion for New Trial* of accused-movant Alzate, are **DENIED**.

SO ORDERED.⁶⁴ (Emphasis in the original)

Thus, petitioners filed this petition on March 14, 2013⁶⁵ before this Court. On June 20, 2013, respondent, through the Office of the Ombudsman, filed its Comment.⁶⁶ On March 3, 2014, petitioners filed their Reply. On July 7, 2017, petitioner Maglinte filed a Motion to Travel, which this Court denied.

Petitioners claim that the Sandiganbayan erred in convicting petitioners Maglinte and Alzate of the crime of Estafa through Falsification of Public Documents, considering that it was not shown that they acquired juridical possession of the money subject of the case.⁶⁷ Even assuming they acquired juridical possession, it was not received “in trust, or on commission or for administration or under any other obligation involving the duty to make delivery of or to return the same.”⁶⁸ Likewise, there was no prior demand made upon petitioners Maglinte or Alzate.⁶⁹

Respondent argues that all the accused were charged with conspiracy to commit malversation of public funds through falsification of public

⁶³ Id. at 313–314.

⁶⁴ Id. at 27.

⁶⁵ Id. at 96.

⁶⁶ Id. at 1570–1606.

⁶⁷ Id. at 156–157.

⁶⁸ Id. at 160.

⁶⁹ Id. at 161.

documents. However, since the accountable public officials were convicted only of malversation through negligence, those who were not accountable for the funds were liable for estafa through falsification of public documents, a charge that is “necessarily included in a charge of malversation of public funds through falsification of public documents.”⁷⁰

There was no proof that petitioners Maglinte and Alzate participated in the falsification of the fictitious documents.⁷¹ The Sandiganbayan misinterpreted Gadian’s testimony when she said petitioner Maglinte “advised Gadian in the preparation of the voucher and the falsified supporting documents.”⁷² Gadian did not testify that she informed Maglinte that she was about to falsify the fictitious documents, or that Maglinte told her to falsify them, or agreed to the falsification. It was only conjecture on the part of Gadian that Maglinte was aware of the falsification.⁷³ Petitioners quote Gadian’s testimony:

ATTY. LARGO:

Q: Now, be candid to the Court, Ms. Witness. Prior to the giving of instruction to you by accused Zoleta, you have no knowledge at all of whether accused Zoleta had any discussion with any of the accused her[e] with respect to this transaction?

A: I am no longer concerned with that, sir, but I am just told what to do.

Q: Am I correct to say that your answer to my last question is “yes”? That you had no knowledge at all if they had any conversation, discussion with respect to this transaction?

A: Yes, sir.

Q: Prior to Zoleta’s giving of instruction to you?

A: Yes, sir. That is none of my business.⁷⁴

Similarly, there was no testimony showing that petitioner Alzate was aware of the falsification. Tangan testified regarding petitioner Alzate’s participation:

Q - What did Mary Ann Gadian do with the money that you gave her?

A - She separated the P200,000.00, then the P100,000.00, then the P200,000.00 was given to Amelia Carmela Zoleta, Ma’am.

⁷⁰ Id. at 1594.

⁷¹ Id. at 165.

⁷² Id. at 166.

⁷³ Id.

⁷⁴ Id. at 166–167.

Q - After Ms. Gadian gave the P200,000.00 to Amelia Carmela Zoleta, what happened to that amount?

A - She gave it to her father. Then Amelia Carmela Zoleta called up Board Member Alzate that the money is ready. Then Board Member Alzate went to our office, Ma'am.

Q - You stated that after receiving the P200,000.00 from Mary Ann Gadian, Ms. Zoleta gave this P200,000.00 to the Vice Governor, her father?

A - Yes[,] Ma'am.

Q - And after she gave the P200,000.00 to the Vice Governor, she then made a phone call to Board Member Alzate. What happened after she made this phone call to Board Member Alzate?

A - Board Member Alzate went to our office, Ma'am.

Q - What happened when Board Member Alzate arrived in that office?

A - Sinabihan sya ni Vice Governor, "To, akin na ang kwarta mo, To."

INTERPRETATION:

He was told by the Vice Governor, "To . . . (discontinued)[]"

WITNESS:

This is your money.

INTERPRETATION:

To, this is your money, To.

PROSEC. HIDALGO:

Q - After the Vice Governor informed Board Member Alzate that this money was there, what was the Board Member's response?

A - He said thank you, smiled and went out, Ma'am.⁷⁵

Petitioner's claim on Gadian's testimony conflicts with this:

Q - What did you do with the money given to you by Joy Tangan?

A - I gave it to Amelia Carmela Zoleta.

Q - You gave the money to Amelia Carmela Zoleta in the amount of?

A - P300,000.00. She placed it in her drawer first.

Q - What happened after Amelia Carmela Zoleta placed the cash of P300,000.00 in her drawer?

⁷⁵ Id. at 168-169.

- A - She gave me a bundle of P100,000.00.
- Q - What happened to the other P200,000.00?
- A - She called through the intercom Eugene Alzate to come up.
- Q - After accused Zoleta called up accused Alzate to go up to her office, what happened afterwards, if any?
- A - Eugene Alzate arrived with Tatang Purisima.
- Q - What did both of them do afterwards, if any?
- A - They entered the computer room.
- Q - What transpired inside [the] computer room?
- A - Tatang gave the money to Eugene.
- Q - What is that money that Tatang gave to Eugene?
- A - The amount of P200,000.00 for wedding expenses.
- Q - Why do you know that, that incident transpired in the computer room?
- A - Because the place is very near and you can see what they are doing.⁷⁶

Petitioners argue that to be considered a conspirator, an accused must have performed an overt act that contributed to the execution of the crime.⁷⁷ There must be evidence of actual cooperation in the crime and approval of an illegal act is not sufficient to establish conspiracy.⁷⁸ Respondent contends that petitioner Maglinte's complicity to the crime is evident from her conduct before, during, and after its commission.⁷⁹ She instructed Gadian to ask Zoleta whether or not a total of ₱10,000.00 could be added to the amount to be disbursed for distribution to several provincial employees and to source the fund from the CDF allocated to the municipality of Malungon.⁸⁰ Both Maglinte and Alzate shared in the proceeds.⁸¹ After the encashment of the check issued pursuant to the falsified documents, Alzate quickly arrived to receive the ₱200,000.00 from Constantino after being informed by Zoleta that the money was ready.⁸²

Petitioners assert that the Sandiganbayan erred in convicting petitioners based on the uncorroborated testimonies of witnesses who

⁷⁶ Id. at 169–170.

⁷⁷ Id. at 171.

⁷⁸ Id. at 172.

⁷⁹ Id. at 1595–1596.

⁸⁰ Id. at 1595.

⁸¹ Id. at 1596.

⁸² Id.

participated in the crime, appeared to be the most guilty,⁸³ and were motivated to lie by their desire to be made state witnesses.⁸⁴ Respondent argues that petitioners are the ones who controlled and directed the commission of the crime.⁸⁵

Petitioners claim that petitioner Alzate's constitutional rights were violated when the Sandiganbayan denied his motion for new trial and motion to allow him to present additional witnesses.⁸⁶ Respondent points out that petitioner Alzate was still not ready to present evidence in his defense despite having four (4) years to prepare for it.⁸⁷ He only asked for the opportunity to present additional evidence via a motion for reconsideration after the Sandiganbayan had already admitted all the formal offers of evidence of the petitioners.⁸⁸ His Motion to Allow Accused Alzate to Present Additional Witnesses or Motion to Allow Accused Alzate to Enter into Stipulation of Facts with the Prosecution was filed two (2) years after he testified. It was also a year and a half after manifesting that he was not presenting any additional evidence, and a year and two (2) months after the Sandiganbayan had already ruled on the admissibility of his exhibits.⁸⁹

Petitioners also argue that petitioners Escobar and Telesforo are not accountable officers under Article 217 of the Revised Penal Code.⁹⁰ To be accountable officers, they must receive, by reason of their office, government funds or property over which they acquire custody and for which they are held responsible.⁹¹ Under the Local Government Code, only the Provincial Treasurer is accountable for the funds of a province in relation to Article 217 of the Revised Penal Code.⁹² Further, petitioners insist that based on the Government Auditing Code of the Philippines and *Arriola and Radan v. Sandiganbayan*,⁹³ what dictates whether or not officers are accountable are their duties and functions which allow them to receive public property for which they are required to account.⁹⁴ Respondent argues that the funds were in the nature of a trust fund, which was in "the possession of the local government as trustee and for the management of the local government officials as administrators."⁹⁵ As a trust fund in their possession, petitioner "Escobar had . . . to certify and approve the validity, propriety and legality of expenditures to be charged [to the fund]."⁹⁶ As a trust fund, petitioner Telesforo also had to certify and approve the

⁸³ Id. at 187–188.

⁸⁴ Id. at 189.

⁸⁵ Id. at 1597–1598.

⁸⁶ Id. at 192–193.

⁸⁷ Id. at 1584.

⁸⁸ Id. at 1584–1585.

⁸⁹ Id. at 1585.

⁹⁰ Id. at 197.

⁹¹ Id. at 198.

⁹² Id. at 199.

⁹³ 526 Phil. 822 (2006) [Per J. Ynares-Santiago, First Division].

⁹⁴ *Rollo*, pp. 1624–1625.

⁹⁵ Id. at 1587.

⁹⁶ Id.

completeness and propriety of the supporting documents.⁹⁷

In *Arias v. Sandiganbayan*,⁹⁸ this Court held that a head of office can rely on their subordinates to a reasonable extent, and there has to be some reason shown why any particular voucher must be examined in detail. Petitioners argue that this case can be invoked to refute negligence on the part of petitioner Escobar, who relied in good faith that his subordinates would perform their functions in accordance with the law.⁹⁹ The voucher presented to petitioner Escobar for signature appeared to have been prepared with regularity, and nobody called his attention to any anomalies in the request for fund assistance. Gadian made sure that her falsification of the fictitious documents would be undetectable.¹⁰⁰ Likewise, in *Magsuci v. Sandiganbayan*,¹⁰¹ this Court held that if there is no evidence of conspiracy, the head of an office is not negligent for relying on misplaced good faith on a subordinate primarily responsible for a particular matter.¹⁰² Respondent argues that the cases of *Arias* and *Magsuci* do not apply, considering there were reasons for petitioner Escobar to closely examine the transaction. The letter request and Project Proposal were signed by “Nema Tamayo,” yet the disbursement voucher was payable to “Tita P. Sariño/Treasurer Market Vendors Assoc.”¹⁰³ Escobar did not make any attempt to ensure the implementation and completion of the project for which the funds were disbursed, monitor the funds after it was released, make an attempt to accredit the organization, or enter into a Memorandum of Agreement. This was reckless imprudence on his part. Petitioner Escobar disputes this and says there was no discrepancy, as both the check and the disbursement voucher were payable to “Tita P. Sariño/Treasurer Market Vendors Association.”¹⁰⁴ Petitioners further argue that the duty to accredit and enter into a Memorandum of Agreement does not belong to petitioner Escobar, but generally, to the government office concerned.¹⁰⁵ Moreover, when the transaction was being investigated, petitioner Escobar lost his bid for governor and stepped down in 2004. He lost track of the investigation, which he later learned had been discontinued by the elected officials of Sarangani province.¹⁰⁶

In Criminal Case No. 28331, which arose from the same COA Audit Report and Ombudsman Resolution dated August 11, 2004,¹⁰⁷ the Sandiganbayan relied on the testimonies of Gadian and Cailing¹⁰⁸ and held

⁹⁷ Id.

⁹⁸ 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., En Banc].

⁹⁹ Id. at 202.

¹⁰⁰ Id. at 204.

¹⁰¹ 310 Phil. 14 (1995) [Per J. Vitug, En Banc].

¹⁰² *Rollo*, p. 207.

¹⁰³ Id. at 1588–1589.

¹⁰⁴ Id. at 1627.

¹⁰⁵ Id. at 1628.

¹⁰⁶ Id.

¹⁰⁷ Id. at 209.

¹⁰⁸ Id.

that petitioner Escobar is not an accountable officer for purposes of Article 217 of the Revised Penal Code.¹⁰⁹ It also held that there is nothing that shows that petitioner Escobar was aware of the anomalies in the transaction or that he participated in the falsification of the fictitious documents.¹¹⁰ The Sandiganbayan also found that petitioner Escobar could not be liable based only on signing the disbursement voucher and the project proposal after petitioner Maglinte certified the legal assistance as legitimate and lawful.¹¹¹ Thus, as quoted by petitioners, the Sandiganbayan held:

As for accused Escobar, the prosecution evidence does not even attempt to link him to the anomalous transaction. There is absolutely nothing that would show knowledge on his part about it. The most that the prosecution did was to rely merely on his signatures appearing in the project proposal and the disbursement voucher. However, this alone would not suffice, especially taking into consideration his testimony, which the court similarly observes, that the documents, taken at face value, do not show any irregularity. Moreover, the initials of accused Provincial Administrator Maglinte, as the prior reviewing authority, appear in the disbursement voucher, which is an accepted common practice or control measure before the approving authority affixes his signature and expresses his conformity. What is more is that accused Escobar did not even sign the check. And finally, as Provincial Governor, he does not have custody of the funds, and neither is he accountable therefor. Instead, as pointed out above, it is accused Cagang, as the Provincial Treasurer, who has custody and who is accountable for the public funds of the province.

Accordingly, except for the fact that accused Escobar is a public officer, none of the elements essential to support a charge for malversation are present. Neither is there anything to connect him to the fabrication or falsification of the supporting documents submitted to justify the release of the funds. Similarly, therefore, there is no legal and factual basis to sustain the position of the prosecution as to his alleged guilt. Again, unless it can be shown that there was conspiracy, and there is none on record, such essential elements cannot be deemed to have been established with respect to accused Escobar.¹¹²

Petitioners argue that conclusiveness of judgment bars these determinations of the Sandiganbayan on material facts from being litigated again.¹¹³ Respondent argues that the principle of conclusiveness of judgment is inapplicable because this case is not a continuation of Criminal Case No. 28331.¹¹⁴ Petitioners rely on *Hacienda Bigaa, Inc. v. Chavez*¹¹⁵ to argue that the rule can be raised under different claims or causes of action and that it only requires identity of parties and issues to be invoked.¹¹⁶

¹⁰⁹ Id. at 210.

¹¹⁰ Id.

¹¹¹ Id. at 210–211.

¹¹² Id. at 211–212.

¹¹³ Id. at 212.

¹¹⁴ Id. at 1591.

¹¹⁵ 632 Phil. 574 (2010) [Per J. Brion, Second Division].

¹¹⁶ *Rollo*, p. 1629.

Petitioners argue that COA Circular No. 96-003 does not apply to fund assistance to NGOs or POs funded out of a CDF of a congressman¹¹⁷ and that it was not sufficiently established that the supporting documents for the disbursement were deficient or incomplete.¹¹⁸ According to petitioners, the disposition of a trust fund is subject to the provisions of the Special Allotment Release Order (SARO), and not the COA Circular No. 96-003.¹¹⁹

Respondent argues that COA Circular No. 96-003 applies to all releases of fund as financial assistance to NGOs or POs, based on its text:

1. The subject of the circular is described as a restatement of COA Circular No. 95-003 prescribing accounting and auditing guidelines on the release of fund assistance to NGOs/POs.
2. In its definition of terms, it defines fund assistance as “government funds entrusted to the NGO/PO to cover the implementation of a project which is included in the Work and Financial Plan (WFP) and Budget of the GO release of which is not necessarily limited to Maintenance and Other Operating Expenses (MODE), ‘Grants, Subsid[i]es and Contributions (3-10-000).’ This may be in the form of training packages, livelihood projects, interest-free loans, etc.”
3. In its guidelines, it states that “. . . if the fund assistance will be charged to savings or trust receipts received for the purpose, such utilization shall be approved by proper authorities.”¹²⁰

This Court resolves the following issues:

First, whether or not the Sandiganbayan erred in convicting petitioners Eugene L. Alzate and Perla C. Maglinte of estafa through conspiracy;

Second, whether or not the Sandiganbayan erred in not applying the case of *Arias v. Sandiganbayan*¹²¹ to find that petitioner Miguel D. Escobar properly relied on good faith that his subordinates would perform their functions in accordance with the law;

Third, whether or not the Sandiganbayan denied petitioner Eugene L. Alzate due process when it denied his motion for new trial and did not allow his presentation of additional witnesses based on technicalities;

¹¹⁷ Id. at 212–213.

¹¹⁸ Id.

¹¹⁹ Id. at 1631.

¹²⁰ Id. at 1592.

¹²¹ 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., En Banc].

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Fourth, whether or not petitioners Miguel D. Escobar and Vivencia S. Telesforo are accountable public officers;

Fifth, whether or not the Sandiganbayan erred in convicting Miguel D. Escobar, Eugene L. Alzate, Perla C. Maglinte, Cesar M. Cagang, and Vivencia S. Telesforo based primarily on the testimony of participants in the commission of the crime; and

Finally, whether or not the principle of conclusiveness of judgment in Criminal Case No. 28331 binds the Sandiganbayan in this case.

This Court denies the Petition.

I

Although not expressly stated by the Sandiganbayan, petitioners Alzate, Maglinte, and co-accused Zoleta were convicted of estafa under Article 315, paragraph 2(a), and not 1(b) of the Revised Penal Code as claimed by petitioners. Article 315, paragraph 2(a) provides that estafa may be committed:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

Thus, the elements of estafa by means of deceit are:

- a. That there must be a *false pretense, fraudulent act or fraudulent means*.
- b. That such false pretense, fraudulent act or fraudulent means must be made or executed *prior to or simultaneously with the commission* of the fraud.
- c. That the offended party *must have relied* on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.
- d. That as a result thereof, the offended party suffered damage.¹²² (Emphasis in the original)

¹²² *Paredes v. Calilung*, 546 Phil. 198, 223 (2007) [Per J. Chico-Nazario, Third Division].

The elements of the crime were proved. That the documents were falsified was amply established by the evidence. The documents were falsified before the disbursement, which was allowed based on the falsified documents.

The conspiracy among petitioners Alzate, Maglinte, and co-accused Zoleta to commit the crime was also sufficiently established. Under the Revised Penal Code, there is a conspiracy “when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.”¹²³

It is well established that conspiracy may be inferred. In *Alvizo v. Sandiganbayan*,¹²⁴

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.¹²⁵ (Citations omitted)

In *People v. Romualdez*,¹²⁶ this Court explained:

It is alleged in the information that the accused conspired together and acted in common accord in the commission of the crime. As the Attorney-General says, a conspiracy can seldom be proved except by circumstantial evidence, but once it is proved, the acts of one of the conspirators are the acts of all. (U.S. vs. Ipil, 27 Phil., 530.)

“The existence of the assent of minds which is involved in a conspiracy may be, from the secrecy of the crime, usually must be, inferred by the jury from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole.

¹²³ REV. PEN. CODE, art. 8.

¹²⁴ 454 Phil. 34 (2003) [Per J. Austria-Martinez, En Banc].

¹²⁵ Id. at 106.

¹²⁶ 57 Phil. 148 (1932) [Per J. Vickers, En Banc].

If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. Evidence of actual participation, rather than of passive acquiescence, is desirable. But proof of acquiescence in, or consent to, the actions of others is relevant to show the criminal intention of the passive party, and generally the smallest degree of consent or collusion among parties lets in the act or words of one against the others.” (Underhill on Criminal Evidence, pp. 795, 796.)

For the foregoing reasons, we find that the conclusions of the trial court are fully justified by the evidence.¹²⁷

Petitioners claim that the Sandiganbayan only surmised petitioner Maglinte’s involvement based on her advising witness Gadian to source the funds from the CDF of then Congressman Chiongbian.¹²⁸ To the contrary, the records amply support the conclusion that petitioner Maglinte conspired in the scheme in ways in addition to the instruction regarding the CDF of then Congressman Chiongbian. Gadian testified that Maglinte instructed for additional money to be requested and given to other officials, called “suso,” to facilitate the approval of the request:

A Madame Perla told me to add P10,000.00 each for the “suso”.

Q When she said that, what did you reply to her, if any?

A “Okey, I wil[l] tell Ate Beng.”

Q Having given that answer, what did you do afterwards?

A I went back to Ate Beng and informed her that Mam Perla requested for additional amount of P10,000.00 each for the “suso”.

Q What was the answer of accused Zoleta, if any?

A “Make it double so that the processing will be expedited.”¹²⁹

Gadian’s testimony also shows that petitioner Maglinte checked and reviewed the falsified documents, then accompanied witness Gadian to bring the falsified documents to the office of the Vice Governor,¹³⁰ and that after the disbursed check was signed by Cagang,¹³¹ it was brought to Maglinte’s

¹²⁷ Id. at 183–184.

¹²⁸ *Rollo*, p. 173.

¹²⁹ Id. at 1272.

¹³⁰ Id. at 1277–1278.

¹³¹ Id. at 1282.

office.¹³²

Likewise, petitioners claim that the Sandiganbayan only surmised petitioner Alzate's participation because he received most of the illegally disbursed funds.¹³³ To the contrary, the Sandiganbayan's finding was based on the fact that the illegal disbursement was set into motion specifically for Alzate's wedding:

Q You mentioned you make fictitious documents, could you inform us why you made those fake letter requests, fake proposals and fake disbursement vouchers?

A Because I was called by Tatang Purisima to go inside the room where Felipe Constantino, Juanito Purisima including Amelia Carmela Zoleta were. When I entered the room, Tatang Purisima said, "anak, magprepare ka ng documents para sa kasal ni Eugene."

Q Who is this "Eugene" that you mentioned?

A Eugene, the ex-board member of the province, mam."¹³⁴

Further, Alzate received the ₱200,000.00 without hesitation:

[W]hile there is no direct evidence to show that accused Alzate participated in the preparation and planning of the illegal/fictitious disbursement, the records, however, showed that when accused Zoleta called up and informed accused Alzate of the availability of the money, the latter immediately proceeded to the vice governor's office and there and then, without any hesitation, received the PhP200,000.00 from the late Vice Governor Constantino, in the presence of Gadian, Tangan, accused Zoleta and Board Member Purisima. This act of accused Alzate receiving his share in the misappropriation, is a clear indication that, true to the plan of the late vice governor, he was part of the conspiracy in the anomalous transaction for the purpose of financing accused Alzate's forthcoming wedding and hence, the "biggest" beneficiary thereof.¹³⁵

As for Zoleta, the prosecution established that she regularly instructed Gadian to make fictitious documents¹³⁶ and that she directed Gadian and Tangan to falsify the documents.¹³⁷ She gave instructions throughout the process of obtaining the disbursed cash, such as directing that the amounts to be given to the other officials or "suso" be doubled for faster processing of the disbursement.¹³⁸ She reviewed the falsified documents before they were

¹³² Id. at 1283.

¹³³ Id. at 173.

¹³⁴ Id. at 1270.

¹³⁵ Id. at 75-76.

¹³⁶ Id. at 1266-1267.

¹³⁷ Id. at 78.

¹³⁸ Id. at 1272.

given to Maglinte.¹³⁹ She instructed Tangan to accompany a dummy payee to receive and encash the disbursed check.¹⁴⁰ Once the cash was obtained, Zoleta received it from Gadian.¹⁴¹

The foregoing is sufficient to establish the participation of petitioners Alzate and Maglinte in the conspiracy.

II

Where there are circumstances that should have alerted heads of offices to exercise more diligence in the performance of their duties, they cannot escape liability by claiming that they relied on good faith on the submissions of their subordinates. In such cases, this Court's ruling in *Arias v. Sandiganbayan* does not apply. In *Rivera v. People*,¹⁴² this Court held:

Arias v. Sandiganbayan is not applicable in the present case

Perez invokes the *Arias* doctrine which states 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.” He contends that he merely relied on the vouchers and reports prepared by his subordinates and released the payments in good faith.

To clarify, 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. Thus, this ruling cannot be applied to exculpate the petitioners in view of the peculiar circumstances in this case which should have prompted them, as heads of offices, to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared.

The case of *Cruz v. Sandiganbayan* carved out an exception to the *Arias* doctrine, stating that:

Unlike in *Arias*, however, there exists in the present case an exceptional circumstance which should have prodded petitioner, if he were out to protect the interest of the municipality he swore to serve, to be curious and go beyond what his subordinates prepared or recommended. In fine, the added reason contemplated in *Arias* which would have put petitioner on his guard and examine the check/s and vouchers with some degree of circumspection before signing the same was obtaining in this case.¹⁴³
(Citations omitted)

¹³⁹ Id. at 1276.

¹⁴⁰ Id. at 78.

¹⁴¹ Id. at 1285.

¹⁴² 749 Phil. 124 (2014) [Per J. Mendoza, Second Division].

¹⁴³ Id. at 151–152.

In *Cruz v. Sandiganbayan*,¹⁴⁴ discrepancy between the names indicated in the checks and in the disbursement vouchers should have alerted petitioner:

We refer to the unusual fact that the checks issued as payment for construction materials purchased by the municipality were not made payable to the supplier, *Kelly Lumber*, but to petitioner himself even as the disbursement vouchers attached thereto were in the name of *Kelly Lumber*. The discrepancy between the names indicated in the checks, on one hand, and those in the disbursement vouchers, on the other, should have alerted petitioner — if he were conscientious of his duties as he purports to be — that something was definitely amiss. The fact that the checks for the municipality's purchases were made payable upon his order should, without more, have prompted petitioner to examine the same further together with the supporting documents attached to them, and not rely heavily on the recommendations of his subordinates.¹⁴⁵

Here, there were discrepancies in the voucher and the check, which should have prodded petitioners Escobar, Telesforo, and Cagang to examine the supporting documents for the fund disbursement. Thus, as properly held by the Sandiganbayan, *Arias* is not applicable, and petitioners Escobar, Telesforo, and Cagang were properly found guilty of malversation through negligence.

III

This Court has repeatedly held that the essence of due process is an opportunity to be heard.¹⁴⁶

As pointed out by respondent, petitioner Alzate had four (4) years to prepare to present evidence, yet he only asked for the opportunity to present additional evidence via a motion for reconsideration after the Sandiganbayan had already admitted all the formal offers of evidence of the accused.¹⁴⁷ Thus, the Sandiganbayan properly held:

It should be pointed out that inasmuch as accused-movant Alzate invoked the significance of said entry and even testified and marked it as his Exhibit "2-A", the burden of proof is shifted to him to establish the interpretation thereof that he wants to be appreciated by the Court through the presentation of the said DBP lady teller. Thusly, his failure to present said DBP lady teller as his witness through the compulsory process of *subpoena*, during all the time that he testified for his defense from

¹⁴⁴ 504 Phil. 321 (2005) [Per J. Garcia, Third Division].

¹⁴⁵ *Id.* at 335.

¹⁴⁶ See *Resurreccion v. People*, 738 Phil. 704 (2014) [Per J. Brion, Second Division].

¹⁴⁷ *Rollo*, pp. 1584–1585.

September 6, 2010, until March 7, 2011, or for a period of six (6) months, militates against his prayer for a new trial just to present and produce evidence relating to the date of subject check's encashment. While the records show that accused-movant Alzate filed a *Motion to Allow Accused Alzate to Present Additional Witnesses (With Request for Issuance of Subpoena or Motion to Allow Accused Alzate to Enter into Stipulation of Facts with the Prosecution)* dated September 16, 2011, this motion was, however, denied by the Court in its Resolution of October 17, 2011, on the ground that the motion failed to comply with the requirement under Sections 4 and 5 of Rule 15 of the Rules of Court on notice and hearing of motions because the motion was not set for hearing.

Moreover, the said machine validated entry appearing on the subject check, marked as Exhibit "Q", is not a newly discovered evidence considering that said evidence was already presented by the prosecution and accused-movant Alzate, at the time he took the witness stand, was already aware of the existence thereof and even marked it as his Exhibit "2-A" and hence, he is not entitled to the remedy of a new trial pursuant to the provision of Section 2, Rule 122 of the Rules of [C]ourt which provides as follows—

“SEC. 2. Grounds for a new trial. – The court shall grant a new trial on any of the following grounds:

- (a) That errors of law or irregularities prejudicial to the substantive rights of the accused have been committed during the trial;
- (b) That new and material evidence has been discovered which accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change its judgment.”¹⁴⁸

Petitioners do not refute the foregoing circumstances and fail to establish that petitioner Alzate was not afforded ample opportunity to be heard. Thus, the claim that the Sandiganbayan violated his constitutional right to due process has no legal or factual basis and must be rejected.

IV

The Local Government Code provides that local officials, other than those considered accountable officers by reason of their duties, may be held accountable for local government funds:

Section 340. *Persons Accountable for Local Government Funds.*
— Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not

¹⁴⁸ Id. at 26–27.

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.

Thus, local government officials, such as petitioners Escobar and Telesforo, may become accountable officers by reason of their participation in the application of public funds.

Petitioners claim that to be accountable officers, they must receive and acquire custody or control over government funds or property by reason of their office and they must be required to account for them.¹⁴⁹ Thus, only the Provincial Treasurer is an accountable officer over the funds disbursed under the Local Government Code. However, this argument is unmeritorious. In *Zoleta v. Sandiganbayan*,¹⁵⁰ this Court applied Section 340 of the Local Government Code and held officials whose signatures were necessary for disbursement of funds as accountable officers:

Third, Vice-Governor Constantino and Camanay were accountable public officers. Under the Government Auditing Code of the Philippines, an accountable public officer is a public officer who, by reason of his office, is accountable for public funds or property. The Local Government Code expanded this definition with regard to local government officials. Section 340 of the [Local Government Code] reads:

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.** (Emphasis ours.)

Local government officials become accountable public officers either (1) because of the nature of their functions; or (2) on account of their participation in the use or application of public funds.

As a required standard procedure, the signatures of, among others, the Vice-Governor and the Provincial Accountant are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. Thus, Constantino and Camanay, in their capacities as Vice-Governor and Provincial Accountant, had control and responsibility over the subject funds.¹⁵¹ (Citation omitted)

¹⁴⁹ Id. at 198.

¹⁵⁰ 765 Phil. 39 (2015) [Per J. Brion, Second Division].

¹⁵¹ Id. at 53–54.

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In this case, as in *Zoleta*, as part of standard procedure, it was required that petitioner Telesforo certify that the supporting documents were complete, and that petitioner Escobar sign them before a check could be approved for disbursement. Thus, as in *Zoleta*, petitioners Escobar and Telesforo are accountable officers.

V

Well aware of the possibility that the testimonies of Gadian and Tangan would be impugned, the Sandiganbayan took it upon itself to exercise extreme caution in evaluating them. Thus, this Court quotes with affirmation the finding of the Sandiganbayan:

Of course, cognizant that the versions threshed out by the admissions made by Gadian and Tangan who were *particeps criminis* or participants in the commission of the crime charged may be said to emanate from polluted sources, the Court, extra-careful and exercising extreme caution in assaying their stories, finds no reason to shun or set aside the said admissions as wholly unbelievable. In fact, their candor in coming forward to own their complicity in the commission of the crime here charged is, in a way, a guarantee of their truthfulness. Thus, in *People v. Bayona*[,] it was stated that –

“ . . . As a matter of fact, the candid admission of an accused, of his participation in a crime, is a guaranty that if he will testify in court he will testify truthfully; so that even if an accused actually participated in the offense charged in the information, he may still be made a witness. **Individuals who are candid enough to admit their guilt are expected to testify truthfully and it is from that circumstance that all the facts involved shall be expected to be truthfully disclosed by him.**”

Moreover, the fact that Gadian and Tangan had participated in the commission of the crime charged in the information and as such equally guilty thereof, does not disqualify them to testify in the proceeding or to render their testimony ineffectual if competent and admissible. Apropos is the ruling of the Supreme Court in *People v. Binsol, et al.* –

“The fact that a person has not been previously charged or included in the information even if he appears to have taken part in the commission of the crime does not, and cannot, prevent the government prosecutor from utilizing him as a witness if he believes that he is the best witness that can testify as to the commission of the crime. In the discharge of his duties, a government prosecutor is free to choose the witness or witnesses he deems more qualified or competent to testify for the prosecution and there is nothing either in the law or in the rules that would require him to first include him in the information and then later secure his discharge before he could present him as a

government witness. The rule therefore relative to the right of the government prosecutor to utilize a person who has participated in the commission of a crime as a witness for the prosecution, is as follows: (1) when an offense is committed by more than one person, it is the duty of the fiscal to include all of them in the complaint or information . . . (2) if the fiscal desires to utilize one of those charged with the offense as a government witness, the fiscal may ask the court to discharge one of them after complying with the conditions prescribed by law. . . (3) there is nothing in the rule from which it can be inferred that before a person can be presented as a government witness in the information that he be first included as a co-accused in the information, for the fiscal is free to produce as a witness anyone whom he believes can testify to the truth of the crime charged . . . and (4) the failure to follow the requirements of the rule relative to the use of a person, himself a *particeps criminis*, as a government witness does not violate the due process clause of the [C]onstitution, nor render his testimony ineffectual if otherwise competent and admissible[.]”¹⁵² (Emphasis in the original, citations omitted)

Petitioners have not presented any cogent reason to reverse the Sandiganbayan’s appreciation of Gadian’s and Tangan’s testimonies. In any case, the issue of the credibility of witnesses Gadian and Tangan are matters of evidence, not proper for a petition for review on certiorari.

VI

The principle of conclusiveness has no application in criminal cases such as this.

This Court has held that conclusiveness of judgment bars the relitigation of issues already litigated and settled in litigation between identical parties in different causes of action,¹⁵³ and on occasion, has applied this principle in criminal cases.¹⁵⁴ However, this Court takes this occasion to reiterate that the concept of *res judicata* is a civil law doctrine, not to be applied in criminal proceedings, except with respect to civil cases impliedly instituted. This is not novel.

In *Tecson v. Sandiganbayan*,¹⁵⁵ the petitioner maintained that considering the rule prohibiting the relitigation of matters resolved by competent judicial authority, the dismissal of an administrative case against

¹⁵² *Rollo*, pp. 79–80.

¹⁵³ *See Tan v. Court of Appeals*, 415 Phil. 675 (2001) [Per J. Panganiban, Third Division].

¹⁵⁴ *See Co v. People*, 610 Phil. 60 (2009) [Per J. Corona, First Division].

¹⁵⁵ 376 Phil. 191 (1999) [Per J. Quisumbing, Second Division].

him was conclusive and binding upon the parties. This Court rejected this contention:

[R]es judicata is a doctrine of civil law. It thus has no bearing in the criminal proceedings before the Sandiganbayan. Second, it is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. Thus, the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts, which were the subject of the administrative complaint.¹⁵⁶

In *Asistio y Consino v. People*,¹⁵⁷ the petitioner invoked *res judicata* as a bar for her from being prosecuted for violation of Section 46 of Republic Act No. 6938, or the Liability of Directors, Officers and Committee Members, because she had been previously acquitted in a criminal case for falsification of a private document. This Court held:

The Court also finds no merit in petitioner's new argument that the prosecution of her case before the RTC for violation of Section 46 of RA 6938 in Criminal Case No. 07-197750 is barred by *res judicata* because the MeTC of Manila, Branch 22, in a Resolution dated August 13, 2012, granted her demurrer to evidence and acquitted her in a criminal case for falsification of private document in Criminal Case No. 370119-20-CR. In support of her flawed argument, petitioner points out that the private complainants [officers and directors of the Cooperative] and the subject matter [unreported sales profits of Coca-Cola products] of both cases are the same, and that the case for violation of Section 46 of RA 6938 is actually and necessarily included in the case for falsification of private documents.

At the outset, *res judicata* is a doctrine of civil law and thus has no bearing on criminal proceedings. At any rate, petitioner's argument is incidentally related to double jeopardy which embraces a prohibition against being tried for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.¹⁵⁸ (Emphasis supplied, citations omitted)

Likewise, in *Trinidad v. Marcelo*,¹⁵⁹ this Court reiterated that *res judicata* is a civil law doctrine and has no application in criminal

¹⁵⁶ Id. at 198–199.

¹⁵⁷ 758 Phil. 485 (2015) [Per J. Peralta, Third Division].

¹⁵⁸ Id. at 505–506.

¹⁵⁹ 564 Phil. 382 (2007) [Per J. Carpio-Morales, En Banc].

proceedings. In that case, this Court rejected the argument that since the Ombudsman had twice found there was no sufficient basis to indict petitioner in earlier, similar cases, *res judicata* barred the reinvestigation.

It may be argued that these cases are not on all fours with the case at hand. Nonetheless, except with respect to civil cases impliedly instituted, *res judicata* is not applicable in criminal proceedings. This Court has expressly stated this rule multiple times. At most, the applicable concept of *res judicata* is that of *res judicata* in prison grey as double jeopardy under Rule 117, Section 7, which is not in question here.

Indeed, if this Court accepts the argument that conclusiveness of judgment bars this case considering that the Sandiganbayan already found that Escobar is not an accountable officer, which was an error of law in light of *Zoleta v. Sandiganbayan*, it will lead to an absurd effect. Once a person has been acquitted of a crime, despite the ground being a question of law resolved erroneously, once that decision is final, that person can commit the exact same crime against the same party with impunity, under the claim that even where the subject matter differs, the erroneous application of the law is forever binding on those parties. Thus, this argument cannot be countenanced.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Sandiganbayan August 22, 2012 Decision and January 8, 2013 Resolution in Criminal Case No. 28293 are hereby **AFFIRMED**.

SO ORDERED.



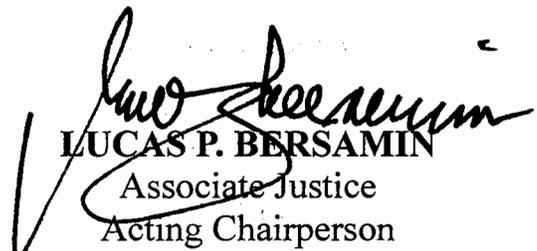
MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice

On official leave
PRESBITERO J. VELASCO, JR.
Associate Justice

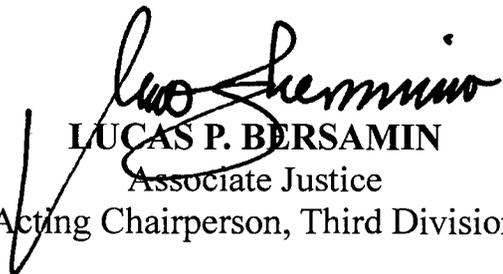


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson


FRANCIS H. JARDELEZA
 Associate Justice

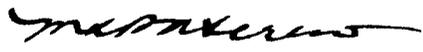
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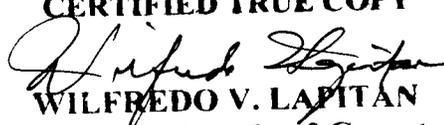
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
 Associate Justice
 Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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.


MARIA LOURDES P. A. SERENO
 Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 FEB 15 2018