



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,  
Petitioner,

G.R. Nos. 219824-25

Present:

BERSAMIN, C.J.,  
CARPIO,  
PERALTA,  
DEL CASTILLO,  
PERLAS-BERNABE,  
LEONEN,  
JARDELEZA,  
CAGUIOA,\*  
REYES, A. JR.,  
GESMUNDO,  
REYES, J. JR.,  
HERNANDO, and  
CARANDANG, JJ.

- versus -

HONORABLE SANDIGANBAYAN  
(First Division), MARIO L.  
RELAMPAGOS, MARILOU D.  
BARE, ROSARIO S. NUÑEZ and  
LALAINÉ N. PAULE,

Respondents.

Promulgated:

February 12, 2019

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DECISION

REYES, J. JR., J.:

Through a Petition for *Certiorari*<sup>1</sup> under Rule 65 of the Rules of Court, petitioner People of the Philippines, represented by the Office of the Ombudsman (Ombudsman) through the Office of the Special Prosecutor, seeks to partially nullify the (1) Resolution<sup>2</sup> dated May 13, 2015 of the

\* No part.

<sup>1</sup> Dated September 8, 2015; *rollo*, pp. 3-34.

<sup>2</sup> Case Nos. SB-15-CRM-0016 to SB-15-CRM-0024; id at 35-40.

Sandiganbayan (First Division) in Criminal Case Nos. SB-15-CRM-0017 for violation of Section 3(e) of Republic Act (R.A.) No. 3019 and SB-15-CRM-0020 for violation of Article 217 of the Revised Penal Code (RPC), or malversation of public funds, insofar as it dismissed the said criminal cases against herein respondents; and (2) Resolution<sup>3</sup> dated July 9, 2015 insofar as it denied petitioner's motion for partial reconsideration.<sup>4</sup>

### The Facts

Following the disclosure by Benhur Luy (Luy) of the “pork barrel scam” or “PDAF scam” perpetrated through a scheme that utilizes the Priority Development Assistance Fund (PDAF) allocated to the members of the Congress, the National Bureau of Investigation (NBI) filed a complaint against then Congressman Constantino G. Jaraula (Jaraula) and several other public officers, which included Mario L. Relampagos (Relampagos) as then Undersecretary for Operations, Rosario S. Nuñez (Nuñez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare) (collectively, Relampagos, *et al.*), assigned to the Office of the Undersecretary for Operations, all of the Department of Budget and Management (DBM), for malversation of public funds, direct bribery, corruption of public officials and violation of Section 3, paragraphs (b), (e), (g) and (j), and Section 4 of R.A. No. 3019.

As uncovered by the NBI, the scheme begins with either the lawmaker or Janet Lim Napoles (Napoles) commencing negotiations for the use of the PDAF. They would then agree on the projects, the Napoles-controlled non-governmental organization (NGO) which would implement the project and the implementing agency through which the project shall be coursed.<sup>5</sup>

Luy would then prepare a “listing” containing the list of projects to be implemented by the NGO, the implementing agency and the project cost. The lawmaker would then adopt the “listing” and shall then request the Senate President and the Finance Committee Chairperson (in case of a Senator), or to the House Speaker and Chair of the Appropriations Committee (in case of a Congressman), for the release of his allocation. The request shall then be endorsed by the Senate President or the Speaker, as the case may be, to the DBM.<sup>6</sup>

The DBM shall then issue a Special Allotment Release Order (SARO), and later, a Notice of Cash Allocation (NCA), to the implementing agency. Thereafter, the lawmaker shall endorse the Napoles-controlled NGO to the implementing agency. A memorandum of agreement covering the project to be undertaken shall then be executed between the lawmaker, the implementing agency and the Napoles-controlled NGO. The implementing

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<sup>3</sup> Id. at 41-44.

<sup>4</sup> Id. at 45-54.

<sup>5</sup> Id. at 61.

<sup>6</sup> Id.

agency then releases the check to the NGO, the proceeds of which shall thereafter be withdrawn by Napoles.<sup>7</sup>

Among the implementing agencies mentioned by Luy was the Technology Resource Center (TRC), which allegedly transferred funds to Countrywide Agri and Rural Economic Development Foundation, Inc. (CARED), a Napoles-controlled “dummy” NGO.<sup>8</sup>

The NBI also presented records from the Commission on Audit (COA) showing that in 2007, an aggregate amount of ₱30,000,000.00 covered by three SAROs, *i.e.*, SARO No. ROCS-07-00580, SARO No. ROCS-07-00861 and SARO No. ROCS-07-05450, were taken from Jaraula’s PDAF and then transferred from TRC to CARED. The COA also conducted a special audit on the PDAF allocations and disbursements of Jaraula from 2007 to 2009, the results of which were contained in the COA Special Audits Office (SAO) Report No. 2012-03.<sup>9</sup>

Meantime, the Field Investigation Office (FIO) of the Ombudsman also filed a complaint against Jaraula and other public officers, including Relampagos, *et al.*, for malversation of public funds and violation of Section 3(e) of R.A. No. 3019.<sup>10</sup> The FIO complaint alleged, among others, that Jaraula and Napoles conspired with each other in misappropriating the PDAF allocation and converting it to their personal use and benefit, and that Jaraula acted with manifest partiality and evident bad faith in endorsing CARED, thus, giving Napoles unwarranted benefits causing undue injury to the government.<sup>11</sup>

### **The Ombudsman’s Resolution**

The NBI and the FIO complaints were jointly resolved by the Ombudsman in its Joint Resolution<sup>12</sup> dated September 26, 2014.

Based on the testimonies of Luy, Marina Sula (Sula) and Merlina Suñas (Suñas), all employees of the Janet Lim Napoles Corporation, COA Report No. 2012-03 and the FIO verification, the Ombudsman found probable cause against therein respondents, including Relampagos, *et al.*, for three counts of violation of Section 3(e) of R.A. No. 3019, covering SARO No. ROCS-07-00580, SARO No. ROCS-07-00861 and SARO No. ROCS-07-05450.

Insofar as respondents Relampagos, *et al.* were concerned, the Ombudsman held that they were the ones who processed the SAROs and the

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<sup>7</sup> Id. at 61-62.

<sup>8</sup> Id. at 63.

<sup>9</sup> Id. at 67-68.

<sup>10</sup> Id. at 59.

<sup>11</sup> Id. at 73.

<sup>12</sup> Id. at 55-122.

NCA's pertaining to Jaraula's PDAF projects. They also exhibited manifest partiality in favor of Napoles when they expedited the processing of the SAROs and NCA's.

The Ombudsman also found probable cause to indict therein respondents, including Relampagos, *et al.*, for three counts of malversation of public funds for having conspired with Jaraula and Napoles to misappropriate public funds drawn from Jaraula's PDAF.

Respondents Relampagos, *et al.* filed a consolidated motion for reconsideration, arguing that the PDAF Process Flow adopted by the DBM for 2007 to 2009 shows that they had no means of expediting the release of the SAROs and NCA's of Jaraula.<sup>13</sup>

Relampagos claimed that his participation was limited to the signing of the SAROs only in the absence of the DBM Secretary and that out of the three SAROs, he signed only two: SARO No. ROCS-07-00580 and SARO No. ROCS-07-00861. He claimed that he had no participation in the preparation of the SAROs nor the NCA's because the evaluation and recommendation for the release of such were not done by his office.<sup>14</sup>

Similarly, Nuñez, Paule and Bare claimed that they had no participation in the release of the PDAF from 2007 to 2009 and that Luy's follow-up of the status of the release of the SAROs is not at all extraordinary as it was a regular practice in their office. Luy also did not accuse them of having participated in the PDAF scam nor having received any portion of the PDAF allocations.<sup>15</sup>

The Ombudsman, however, denied Relampagos, *et al.*'s consolidated motion for reconsideration in its Joint Order<sup>16</sup> dated November 26, 2014.

### **The Information**

Consequently, three Information for violation of Section 3(e) of R.A. No. 3019 were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB-15-CRM-0016, SB-15-CRM-0017 and SB-15-CRM-0018. As well, three Information for malversation of public funds were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB-15-CRM-0019, SB-15-CRM-0020 and SB-15-CRM-0021.

The subject matter of Criminal Case Nos. SB-15-CRM-0017 and SB-CRM-15-0020 was the PDAF allocation covered by SARO No. ROCS-07-

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<sup>13</sup> Id. at 133.

<sup>14</sup> Id.

<sup>15</sup> Id. at 134.

<sup>16</sup> Id. at 123-163.

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05450. The accusatory portions of the Information covering SARO No. ROCS-07-05450 read:

[A.] In Criminal Case No. SB-15-CRM-0017 (For violation of Section 3(e) of R.A. [No.] 3019):

In January 2007, or sometime prior or subsequent thereto, in Quezon City, and within this Honorable Court's jurisdiction, accused public officers CONSTANTINO GALAGNARA JARULA (Jaraula), the then Congressman of the lone district of Cagayan de Oro City; MARIO LOQUELLANO RELAMPAGOS (Relampagos), Undersecretary for Operations, ROSARIO SALAMIDA NUÑEZ (Nuñez), LALAINE NARAG PAULE (Paule) and MARILOU DIALINO BARE (Bare), assigned to the Office of the Undersecretary for Operations, all of the DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); ANTONIO YRIGON ORTIZ (Ortiz), Director General, DENNIS LACSON CUNANAN (Cunanan), Deputy Director General, FRANCISCO B. FIGURA (Figura), Group Manager, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), Group Manager, MARIVIC V. JOVER (Jover), Chief Accountant, and MAURINE E. DIMARANAN (Dimaranan), Internal Auditor V/Division Chief, all of the TECHNOLOGY RESOURCE CENTER (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals JANET LIM NAPOLES (Napoles) and MYLENE T. ENCARNACION (Encarnacion); acting with manifest partiality and/or evident bad faith; did then and there [willfully], unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individuals in the amount of at least NINE MILLION AND SIX HUNDRED THOUSAND PESOS (₱9,600,000.00), through a scheme described as follows:

- a. Jaraula unilaterally chose and indorsed COUNTRYWIDE AGRI AND RURAL ECONOMIC DEVELOPMENT FOUNDATION, INC. (CARED), a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Jaraula's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-05450, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with CARED being unaccredited and unqualified to undertake projects;
- b. **DBM's Relampagos, Nuñez, Paule and Bare, unduly accommodating herein private individuals, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Jaraula's PDAF to TRC, the agency chosen by Jaraula through which to course his PDAF allocations;** (Emphasis supplied)
- c. Jaraula and TRC's Ortiz then entered into a Memorandum of Agreement (MOA) with CARED on the purported implementation of

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Jaraula's PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;

- d. Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher No. 12007040660 along with Cunanan and Jover, with Dimaranan verifying that the supporting documents were attached, as well as causing the issuance of Landbank Check No. 850453 in the amount of [P]9,600,000.00 to CARED which was signed by Ortiz and Figura, without accused TRC officers and employees having carefully examined and verified the accreditation and qualifications of CARED as well as the transaction's supporting documents;
- e. Encarnacion, acting for and in behalf of Napoles and CARED, received the above-described check from TRC and remitted the proceeds to Napoles;
- f. The above acts by the accused public officials[,] thus[,] allowed CARED to divert said PDAF-drawn public funds to Napoles' control and benefit instead of implementing the PDAF-funded projects which turned out to be non-existent, while Napoles and Encarnacion caused/participated in the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction; and
- g. Jaraula, personally and/or thru his representatives, as well as the other accused public officers and employees, received commissions and/or "kickbacks" from Napoles, in consideration of their participation and collaboration as described above.

CONTRARY TO LAW.<sup>17</sup>

[B.] In Criminal Case No. SB-15-CRM-0020 (For violation of Article 217, RPC):

In January 2007, or sometime prior or subsequent thereto, in Makati City, and within this Honorable Court's jurisdiction, accused public officers CONSTANTINO GALAGNARA JARAULA (Jaraula), the then Congressman of the lone district of Cagayan de Oro City; MARIO LOQUELLANO RELAMPAGOS (Relampagos), Undersecretary for Operations, ROSARIO SALAMIDA NUÑEZ (Nuñez), LALAINÉ NARAG PAULE (Paule) and MARILOU DIALINO BARE (Bare), assigned to the Office of the Undersecretary for Operations, all of the DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); ANTONIO YRIGON ORTIZ (Ortiz), Director General, DENNIS LACSON CUNANAN (Cunanan), Deputy Director General, FRANCISCO B. FIGURA (Figura), Group Manager, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), Group Manager, MARIVIC V. JOVER (Jover), Chief Accountatnt, and MAURINE E. DIMARANAN (Dimaranan), Internal Auditor V/Division Chief, all of the TECHNOLOGY RESOURCE CENTER (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals JANET LIM NAPOLES (Napoles)

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<sup>17</sup> Id. at 10-12.

and MYLENE T. ENCARNACION (Encarnacion); did then and there [willfully], unlawfully and criminally allow private individuals to take public funds amounting to at least NINE MILLION AND SIX HUNDRED THOUSAND PESOS ([P]9,600,000.00), through a scheme described as follows:

- a. Jaraula, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2007, unilaterally chose and indorsed COUNTRYWIDE AGRI AND RURAL ECONOMIC DEVELOPMENT FOUNDATION, INC. (CARED), a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Jaraula's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-05450, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with CARED being unaccredited and unqualified to undertake projects;
- b. **DBM's Relampagos, Nuñez, Paule and Bare, unduly accommodating herein private individuals, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Jaraula's PDAF to TRC, the agency chosen by Jaraula through which to course his PDAF allocations;** (Emphasis supplied)
- c. Jaraula and TRC's Ortiz then entered into a Memorandum of Agreement (MOA) with CARED on the purported implementation of Jaraula's PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;
- d. Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher No. 12007040660 along with Cunanan and Jover, with Dimaranan verifying that the supporting documents were attached, as well as causing the issuance of Landbank Check No. 850453 in the amount of [P]9,600,000.00 to CARED which was signed by Ortiz and Figura, without accused TRC officers and employees having carefully examined and verified the accreditation and qualifications of CARED as well as the transaction's supporting documents;
- e. Encarnacion, acting for and in behalf of Napoles and CARED, received the above-described check from TRC and remitted the proceeds to Napoles;
- f. By their above acts, Jaraula and the above-named TRC officials allowed Napoles and her cohorts, through CARED, to take possession and[,] thus[,] misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while Napoles and Encarnacion caused/participated in the preparation and signing of the acceptance and delivery reports,

disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.<sup>18</sup>

### The Sandiganbayan's Resolutions

Except for these two criminal cases, *i.e.*, Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020, the Sandiganbayan found probable cause for the issuance of warrants of arrest against all the accused.<sup>19</sup>

As regards Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020, the Sandiganbayan deferred the determination of probable cause against Relampagos, Nuñez, Paule and Bare, noting that while Relampagos readily admitted having signed two SAROs (subject of Criminal Case Nos. SB-15-CRM-0016, SB-15-CRM-0018, SB-15-CRM-0019, and SB-15-CRM-0021), he denied having signed SARO No. ROCS-07-05450 (subject of Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020). Thus, the Sandiganbayan ordered the prosecution to produce a copy of the said SARO before it rules on the existence of probable cause against Relampagos, *et al.*<sup>20</sup>

Meanwhile, Relampagos, *et al.* jointly filed an omnibus motion for judicial re-determination of probable cause and to defer arraignment.<sup>21</sup>

Partially granting the said motion, the Sandiganbayan in its presently assailed Resolution<sup>22</sup> dated May 13, 2015 dismissed Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020 against respondents Relampagos, *et al.* for lack of probable cause.

In so dismissing, the Sandiganbayan noted:

The Court, in its February 18, 2015 Resolution, directed the Office of the Ombudsman to submit a copy of SARO No. ROCS-07-05450, subject of Criminal Cases No. SB-15-CRM-0017 and No. SB-15-CRM-0020, involving accused Relampagos, Nuñez, Paule and Bare. Pending submission of a copy of the said SARO, the Court held in abeyance the determination of probable cause in the said cases. By way of compliance, dated March 12, 2015, the Office of the Special Prosecutor submitted a certified true copy of SARO No. ROCS-07-05450. **After a careful examination of the said SARO, the Court finds that it was signed by DBM Secretary Rolando G. Andaya, Jr., and that apparently, accused Relampagos, Nuñez, Paule and Bare had no participation therein. Considering that the basis for the indictment of the aforementioned**

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<sup>18</sup> Id. at 12-14.

<sup>19</sup> Id. at 164.

<sup>20</sup> Id.

<sup>21</sup> Id. at 35.

<sup>22</sup> *Supra* note 2.



accused in the two criminal cases was their participation in the preparation and issuance of the said SARO, the Court, therefore, rules that there is no sufficient ground to find the existence of probable cause for the issuance of warrants of arrest against accused Relampagos, Nuñez, Paule and Bare in these cases. Thus, Criminal Case No. SB-15-CRM-0017 and No. SB-15-CRM-0020 against accused Relampagos, Nuñez, Paule and Bare should be dismissed.<sup>23</sup> (Emphasis supplied)

The Sandiganbayan, thus, disposed:

**WHEREFORE**, in light of all the foregoing, the Court resolves:

1. To **PARTIALLY GRANT** the Urgent Consolidated Omnibus Motion, dated March 2, 2015, of accused Relampagos, Nuñez, Paule and Bare, by **DISMISSING** Criminal Cases No. SB-15-CRM-0017 and No. SB-15-CRM-0020 against accused Relampagos, Nuñez, Paule and Bare, for lack of probable cause; (Emphasis supplied)

2. To **DENY** accused Jaraula's *Ex-Parte Motion to Expunge Plaintiff's Comment/Opposition (to accused Jaraula's Urgent Consolidated Motion to Quash Informations with Motion to Defer Arraignment)*, dated April 6, 2015; and

3. To **DENY** accused Jaraula's Urgent Consolidated Motion to Quash Informations with Motion to Defer Arraignment, dated March 6, 2015.

Accordingly, the arraignment of the accused scheduled on **June 1, 2015 at 8:30 in the morning** will proceed as scheduled.

**SO ORDERED.**<sup>24</sup>

Both petitioner and Relampagos, *et al.* moved for a partial reconsideration but were similarly denied by the Sandiganbayan in its Resolution<sup>25</sup> dated July 9, 2015.

### **The Issues**

Hence, the instant petition imputing grave abuse of discretion on the part of the Sandiganbayan, when it:

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[D]ismissed these cases for lack of probable cause considering that the executive function of determining the existence of probable cause for the filing of an information is vested solely in the prosecution.

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<sup>23</sup> Id. at 37-38.

<sup>24</sup> Id. at 39-40.

<sup>25</sup> Supra note 3.

## B

[S]ummarily dismissed these cases based on a single piece of evidence and wantonly disregarded the other evidence for the Prosecution.<sup>26</sup>

Essentially, the issue to be resolved is whether the Sandiganbayan gravely abused its discretion when it reversed the finding of probable cause by the Ombudsman and consequently dismissed the criminal cases against Relampagos, *et al.* insofar as the PDAF allocation covered by SARO No. ROCS-07-05450 is concerned.

By way of Consolidated Comment,<sup>27</sup> Relampagos, *et al.* contend that the Sandiganbayan properly dismissed the criminal cases by virtue of its own power to judicially determine probable cause and that the SARO itself controverted petitioner's allegations against them. In its Reply,<sup>28</sup> petitioner reiterated that the Sandiganbayan gravely abused its discretion when it failed to consider the other pieces of evidence, *i.e.*, the affidavit of Luy and the findings of the COA in COA SAO Report No. 2012-03, which show probable cause against Relampagos, *et al.*

### The Ruling of the Court

We dismiss the petition.

## I

### *Certiorari* is not the proper remedy

The assailed Resolutions of the Sandiganbayan which dismissed Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020 against Relampagos, *et al.* for lack of probable cause was a final order which finally disposed of said criminal cases insofar as herein respondents Relampagos, *et al.* are concerned.<sup>29</sup>

Section 1, Rule 122 of the Revised Rules of Criminal Procedure provides that: "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy." Relampagos, *et al.* moved for the judicial determination of probable cause and the Sandiganbayan dismissed the criminal cases before they were arraigned, thus, the prohibition against an appeal from a dismissal of a criminal case when the accused will be twice put in jeopardy does not apply.<sup>30</sup>

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<sup>26</sup> Id. at 15.

<sup>27</sup> Id. at 170-183.

<sup>28</sup> Id. at 199-212.

<sup>29</sup> See *Fuentes v. Sandiganbayan* (Second Division), 528 Phil. 388 (2006).

<sup>30</sup> *First Women's Credit Corp. v. Judge Baybay*, 542 Phil. 607, 616 (2007).

Further, Section 7 of Presidential Decree No. 1606, as amended by Section 3 of R.A. No. 7975 provides that decisions and final orders of the Sandiganbayan shall be appealable to the Court by a petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. This is in harmony with the procedural rule that the provisions of Rules 42, 44, 45, 46 and 48 to 56 relating to the procedure in original and appealed civil cases shall also be applied to criminal cases.<sup>31</sup>

Section 1, Rule 45 of the Rules of Court expressly states:

**SEC. 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. x x x (Emphasis supplied)**

Thus, the proper remedy from the Sandiganbayan Resolutions dismissing the criminal cases is an appeal by *certiorari* under Rule 45 and not under Rule 65 of the Rules of Court. The availability of appeal, it being speedy and adequate, proscribes a *certiorari* petition under Rule 65.

Subject to certain exceptions,<sup>32</sup> the use of an erroneous mode of appeal is cause for dismissal of the petition following the basic rule that *certiorari*, being an independent action, is not a substitute for a lost appeal. None of the allowable exceptions are present in the instant case, thus, the general rule must be applied.

Too, while the Court may consider a petition for *certiorari* as a petition for review under Rule 45 of the Rules of Court in exceptional cases, Section 2<sup>33</sup> provides that such petition must be filed within the prescribed period. Here, petitioner received the Sandiganbayan's Resolution dated July

<sup>31</sup> Rule 124, Section 18 of the Rules of Criminal Procedure states:

SEC. 18. *Application of certain rules in civil procedure to criminal cases.* — The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

<sup>32</sup> As held in *Department of Education v. Cuanan*, 594 Phil. 451, 460 (2008):

(a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In *Tanenglian v. Lorenzo*, 573 Phil. 472, 488-489 (2008), the Court added other grounds: (a) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; or (b) in other meritorious cases.

<sup>33</sup> SEC. 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

9, 2015 denying its partial motion for reconsideration on July 10, 2015 and filed the instant petition only on September 8, 2015. At the time petitioner filed the instant petition, the period to appeal had clearly expired.

Petitioner also assails the Sandiganbayan's finding of lack of probable cause as it was allegedly attended by a failure to consider and weigh all the evidence. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.<sup>34</sup> Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion.<sup>35</sup> Similarly, the mere fact that a court erroneously decides a case does not necessarily deprive it of jurisdiction. Such are errors of judgment that cannot be corrected by an extraordinary writ of *certiorari*.<sup>36</sup>

Nevertheless, to pursue judicial economy,<sup>37</sup> the Court reviewed the petition and its attachments and find that even on the merits, the instant petition must still fail.

## II

### **The Sandiganbayan has the authority to determine whether or not to dismiss the case.**

Petitioner essentially attacks the Sandiganbayan's reversal of the Ombudsman's finding of probable cause, contending that the function of determining whether or not probable cause exists is executive in nature that is lodged within the competence of the Ombudsman.

The executive determination of probable cause is not to be confused with the judicial determination of probable cause. In a criminal prosecution, probable cause is determined at two stages: *first*, the executive level where probable cause is determined by the prosecutor during the preliminary investigation and before the filing of the criminal information; and *second*, the judicial level where probable cause is determined by the judge before the issuance of a warrant of arrest.<sup>38</sup>

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<sup>34</sup> Grave abuse of discretion is defined in *Ysidoro v. Justice Leonardo-De Castro*, 681 Phil. 1, 18 (2012), citing *Ganaden v. Hon. Office of the Ombudsman*, 665, Phil. 224, 232 (2011), as "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."

<sup>35</sup> *People of the Philippines v. Sandiganbayan*, G.R. Nos. 228494-96, March 21, 2018.

<sup>36</sup> *Id.*

<sup>37</sup> In *Personal Collection Direct Selling, Inc. v. Carandang*, G.R. No. 206958, November 8, 2017, the Court proceeded to decide the issues despite the use of an improper remedy on the ground of "judicial economy" or when "the prospective opportunity cost that may be expended by the parties and the courts far outweigh the likelihood of success of the aggrieved party, Court resources will be more efficiently expended by this Court's discussion of the merits of the case."

<sup>38</sup> *Spouses Hao v. People*, 743 Phil. 204, 214 (2014).

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Thus, while it is true that the Ombudsman retains full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, the latter gains full control as soon as the case has been filed before it.<sup>39</sup> This must necessarily be so considering that when an information is filed in court, the court acquires jurisdiction over the case and the concomitant authority to determine whether or not the case should be dismissed being the “best and sole judge” thereof.<sup>40</sup> Consequently, absent a showing of grave abuse of discretion, the Court will not interfere with the Sandiganbayan’s jurisdiction and control over a case properly filed before it.<sup>41</sup>

As to the manner by which a court is expected to determine the existence or non-existence of probable cause for the arrest of the accused, the same is spelled under the Constitution<sup>42</sup> and the Rules of Criminal Procedure.<sup>43</sup> A judge is mandated to personally determine the existence of probable cause after his personal evaluation of the prosecutor’s resolution and the supporting evidence for the crime charged.

Specifically, under Section 5(a), Rule 112 of the Rules of Criminal Procedure, the court has three options upon the filing of a criminal complaint or information: a) immediately dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.<sup>44</sup>

Thus, when the Sandiganbayan chose to issue the corresponding warrants of arrest over the other criminal cases, ordered the prosecution to present the subject SARO which Relampagos, *et al.* denied having signed and processed, and thereafter, upon examination of the subject SARO, dismissed the criminal cases for lack of probable cause, the Sandiganbayan,

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<sup>39</sup> *Nava v. National Bureau of Investigation*, 495 Phil. 354, 370 (2005).

<sup>40</sup> *Yambot v. Armovit*, 586 Phil. 735, 738 (2008), citing *Crespo v. Judge Mogul*, 235 Phil. 465, 474 (1987).

<sup>41</sup> *Brig. Gen. (Ret.) Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69, 83 (2010), citing *Atty. Serapio v. Sandiganbayan*, 444 Phil. 499, 528 (2003).

<sup>42</sup> Article III, Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

<sup>43</sup> Rule 112, Section 5. *When warrant of arrest may issue.* — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (As revised by A.M. No. 05-8-26-SC, August 30, 2005)

<sup>44</sup> See also *People v. Judge. Dela Torre-Yadao*, 698 Phil. 471, 492 (2012).

in fact acted well-within its competence and jurisdiction. There is therefore no reason to ascribe grave abuse of discretion on the part of the Sandiganbayan for having reversed the Ombudsman's earlier determination of probable cause.

That the Sandiganbayan issued the assailed Resolution only upon compliance with the requirement that probable cause was personally determined by the court is evident from its examination of the subject SARO and noting that it was signed by a person other than Relampagos, *et al.* This examination, in turn, led the Sandiganbayan to conclude that Relampagos, *et al.* probably did not participate in the preparation and issuance of said SARO. To emphasize, when the court judicially determines probable cause, it is tasked to determine the probability of the guilt of the accused by personally reviewing the prosecutor's initial determination and seeing if it is supported by substantial evidence.<sup>45</sup> In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge.<sup>46</sup> In this case, the Sandiganbayan reached the conclusion that there was no probable cause for Relampagos, *et al.* to commit the crimes charged insofar as the subject SARO was concerned, only upon application of the basic precepts of criminal law to the facts, allegations and evidence on record.

### III

#### **The Sandiganbayan did not err in finding that no probable cause existed to indict Relampagos, *et al.***

In arguing that the Sandiganbayan erred in dismissing the criminal cases relative to SARO No. ROCS-07-05450 against Relampagos, *et al.*, petitioner invites attention to other pieces of evidence that the Sandiganbayan had allegedly failed to consider: (a) Luy's affidavit identifying Relampagos, *et al.* as his "contacts" within the DBM that helped expedited the release of the SAROs and the NCAs; and (b) COA SAO Report No. 2012-03 which found, among others, that the SAROs and NCAs were hastily released by DBM despite the absence of documents<sup>47</sup> required under DBM National Budget Circular No. 476.

It is worthy to emphasize that petitioner itself admits<sup>48</sup> that the basis for the inclusion of Relampagos, *et al.* in the criminal cases were their *participation in the preparation and issuance* of the SAROs. Contravening such allegation is the subject SARO itself which was factually found to have been *signed and issued* by then DBM Secretary Andaya, and not by Relampagos, *et al.* In fact, in *Cambe v. Office of the*

<sup>45</sup> *People v. Court of Appeals*, 361 Phil. 401, 411 (1999).

<sup>46</sup> *Baltazar v. People*, 582 Phil. 275, 290 (2008).

<sup>47</sup> These documents, according to petitioner, are the Project Profile and endorsement that must be submitted by the implementing agency to the DBM.

<sup>48</sup> See petitioner's Reply, *rollo*, p. 206.

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*Ombudsman*<sup>49</sup> and its consolidated cases,<sup>50</sup> the Court gave value to these pieces of evidence or circumstances only with respect to the SAROs and NCAs which were found to have been issued by the Office of Relampagos as DBM Undersecretary where Nuñez, Paule, and Bare were all working.<sup>51</sup>

Moreover, a perusal of the Ombudsman's Resolution and Joint Order shows a painfully limited demonstration as to how Relampagos, *et al.* probably expedited the preparation and release of SARO No. ROCS-07-05450.

In finding probable cause for violation of Section 3(e) of R.A. No. 3019, the Ombudsman merely held that (1) Relampagos, *et al.* processed the SAROs and NCAs pertaining to Jaraula's PDAF projects;<sup>52</sup> and (2) their partiality was manifest because the processing of the requisite SAROs and NCAs in Relampagos's office were expedited through the assistance provided by Nuñez, Paule, and Bare.<sup>53</sup> Less definite was the Ombudsman's ratiocination for indicting Relampagos, *et al.* for the crime of malversation of public funds as it loosely held that DBM transferred funds to the implementing agency so as to facilitate the release of said funds to the Napoles-controlled NGO.<sup>54</sup>

From these findings, it is clear that the supposed irregular processing and issuance of the SAROs could have probably been undertaken by Relampagos, *et al.* only with respect to the SAROs that were signed and issued by the Office of the Undersecretary for Operations. As the Ombudsman itself observed, Relampagos, *et al.* could not have feigned ignorance of the follows-up made by Luy for the expedited release of the SAROs and NCAs which were issued by the Office of the Undersecretary for Operations. The same conclusion, however, cannot be readily reached with respect to the SARO issued by then Secretary Andaya. The dearth of allegation or finding as to how Relampagos, *et al.* could have participated in or expedited the preparation and issuance of SAROs emanating from the

<sup>49</sup> 802 Phil. 190 (2016).

<sup>50</sup> G.R. Nos. 212427-28; G.R. Nos. 212694-95; G.R. Nos. 212794-95; G.R. Nos. 213477-78; G.R. Nos. 213532-33; G.R. Nos. 213536-37 and G.R. Nos. 218744-59.

<sup>51</sup> In *Cambe v. Office of the Ombudsman* (supra note 49, at 238) and the consolidated cases (supra note 50), the Court held:

x x x x

As pointed out by the Ombudsman and the Sandiganbayan, **some of the SAROs and NCAs issued in the perpetuation of the PDAF scam were issued by the Office of Relampagos as DBM Undersecretary, where Nuñez, Paule, and Bare are all working** - a finding that they themselves did not dispute. More significantly: (a) whistleblower Luy positively identified Relampagos, *et al.* as Napoles's "contact persons" in the DBM; and (b) the COA Report found irregularities in their issuances of the aforesaid SAROs and NCAs. Ostensibly, these circumstances show Relampagos *et al.*'s manifest partiality and bad faith in favor of Napoles and her cohorts that evidently caused undue prejudice to the Government. Thus, they must stand trial for violation of Section [3(e)] of [R.A. No.] 3019.

x x x x (Emphasis and underscoring supplied)

<sup>52</sup> See Ombudsman's Joint Resolution, *rollo*, pp. 61-68.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*



Office of the Secretary itself renders their participation, insofar as SARO No. ROCS-07-05450 is concerned, highly improbable.

In view of the finding that Relampagos, *et al.* could not have participated in the preparation and processing of SARO No. ROCS-07-05450, there is no need to discuss, at this point, petitioner's contention that Relampagos, *et al.* failed to comply with the documentary requirements under DBM National Budget Circular No. 476 nor that of Relampagos, *et al.*'s counter-argument that the SAROs were not issued by their office based on the PDAF Process Flow.

It is also opportune to emphasize that the purpose of requiring the courts to determine probable cause is to insulate from the very beginning those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.<sup>55</sup> We recognize in *Principio v. Judge Barrientos*,<sup>56</sup> the Court's policy of non-interference in the Ombudsman's exercise of its constitutionally-mandated powers, or the Sandiganbayan's, as in this case, and the delicate task of balancing such with the purpose of preliminary investigation to secure the innocent against hasty, malicious, and oppressive prosecution, and to protect the State from useless and expensive trials. Thus, we caution that "where the evidence patently demonstrates the innocence of the accused, x x x [there is] no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result."<sup>57</sup> We, thus, affirm the Sandiganbayan's temperance of the Ombudsman's authority to prosecute for want of probable cause not only to save herein respondents from the expense, rigors and embarrassment of trial, but also to prevent needless wastage of the court's limited time and resources.

All told, the Court finds that the Sandiganbayan did not err in finding that no probable cause existed to indict Relampagos, *et al.* for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds insofar as the funds covered by SARO No. ROCS-07-05450 is concerned. Neither do we find that the Sandiganbayan gravely abused its discretion in reaching such conclusion. No hint of whimsicality, nor of gross and patent abuse of discretion as would amount to an evasion of a positive duty, or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law can be discerned on the part of the Sandiganbayan.

<sup>55</sup> *Okabe v. Hon. Gutierrez*, 473 Phil. 758, 780 (2004).

<sup>56</sup> 514 Phil. 799, 811-813 (2005), citing *Venus v. Hon. Desierto*, 358 Phil. 675, 699-700 (1998) and *Fernando v. Sandiganbayan*, 287 Phil. 753, 764 (1992).

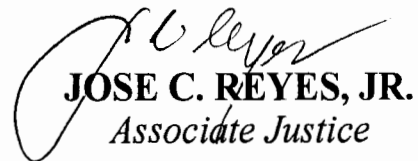
<sup>57</sup> *Principio v. Judge Barrientos*, *id.* at 813.

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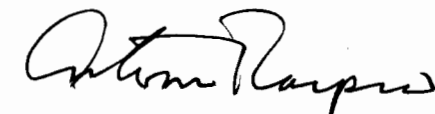
**WHEREFORE**, the instant petition for *certiorari* is **DISMISSED**. The Resolutions dated May 13, 2015 and July 9, 2015<sup>58</sup> of the Sandiganbayan in Criminal Case Nos. SB-15-CRM-0017 for violation of Section 3(e) of Republic Act No. 3019 and SB-15-CRM-0020 for violation of Article 217 of the Revised Penal Code, insofar as said Resolutions dismissed the criminal cases against herein respondents Mario L. Relampagos, Marilou D. Bare, Rosario S. Nuñez and Lalaine N. Paule, are **AFFIRMED**.

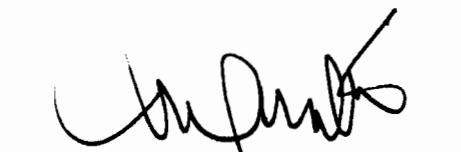
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*


**WE CONCUR:**

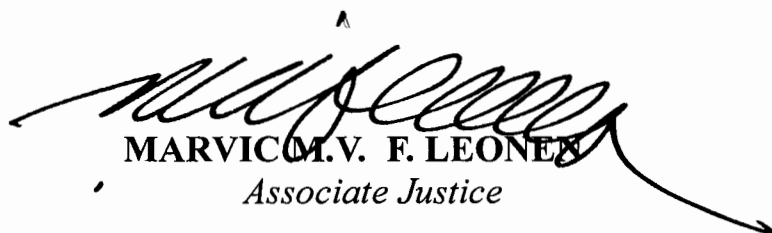
  
**LUCAS P. BERSAMIN**  
*Chief Justice*

  
**ANTONIO T. CARPIO**  
*Associate Justice*

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC M. V. F. LEONEN**  
*Associate Justice*

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*


<sup>58</sup> Supra note 2.

(NO PART)

**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

<sup>Reyes</sup>  
**ANDRES B. REYES, JR.**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

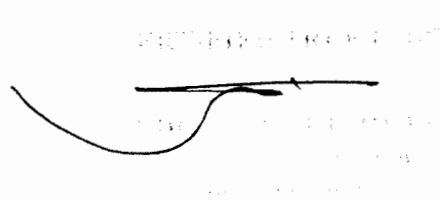
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSMARI D. CARANDANG**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*



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