

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

CERTIFIED TRUE COPY

ATTY. DENNIS E. PULMAY
EXECUTIVE CLERK OF COURT
THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **Criminal Case No. SB-10-CRM-0111**
Plaintiff, For: Violation of Section 3(e), Republic Act No.
3019

- versus -

Criminal Case No. SB-12-CRM-0064
For: Violation of Article 217, Revised Penal
Code (Malversation of Public Funds)

ROBERTO M. LUNA, JR., et al., **Criminal Case No. SB-12-CRM-0065**
Accused. For: Violation of Article 171, Par. 2, Revised
Penal Code (Falsification of Public
Document)

Present:

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B, J. * and
FERNANDEZ, SJ, J.**

Promulgated:

June 24 2019 jf

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DECISION

FERNANDEZ, SJ, J.

For their individual and collective acts towards the disbursement of PhP1,610,800.00 as payment for the honoraria and *per diems* of 101 *job order workers*, for the period of January to April 2004, despite the absence of appropriation, deficiencies in the supporting documents and irregularities in the procedure, and when there were allegedly no job workers who were actually hired, who rendered service, and who received the payments, accused Roberto M. Luna, Jr., Jethro P. Lindo, Venus M. Carlos, Ebrencio Fijo Indoyon, Jr., Antonio Casuerga Saligumba and Nilda T. Ferrando, all officials and

* Justice Bernelito R. Fernandez, as the regular member of the Third Division, replaced Justice Samuel R. Martires, who was appointed to the Supreme Court.

** Justice Sarah Jane T. Fernandez was a member of the Third Division at the time the case was submitted for Decision.

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employees of the Municipality of Lingig, Surigao del Sur, were charged as follows:

Criminal Case No.	Name and Position	Crime
SB-10-CRM-0111	Roberto M. Luna, Jr. (Municipal Mayor) Jethro P. Lindo (Executive Assistant IV) Venus M. Carlos (Municipal Accountant) Ebrencio Fijo Indoyon, Jr. (Municipal Treasurer) Antonio Consuerga Saligumba (Municipal Budget Officer) Nilda T. Ferrando (Cash Clerk I)	Violation of Section 3(e), Republic Act No. 3019
SB-12-CRM-0064	Roberto M. Luna, Jr., (Municipal Mayor) Jethro P. Lindo (Executive Assistant IV) Venus M. Carlos (Municipal Accountant)	Violation of Article 217, Revised Penal Code (Malversation of Public Funds)
SB-12-CRM-0065	Roberto M. Luna, Jr., (Municipal Mayor) Jethro P. Lindo (Executive Assistant IV) Venus M. Carlos (Municipal Accountant)	Violation of Article 171, Par. 2, Revised Penal Code (Falsification of Public Document)

RELEVANT ANTECEDENTS

On July 8, 2010, an Information for *Violation of Section 3(e) of R.A. No. 3019* was filed against accused Luna, Lindo, Carlos, Indoyon, Saligumba and Ferrando. The Information, docketed as SB-10-CRM-0111, reads:

That in April 2004, and sometime prior or subsequent thereto, in the Municipality of Lingig, Surigao del Sur, and within the jurisdiction of this Honorable Court, accused **ROBERTO M. LUNA, JR.**, a public officer, being the Municipal Mayor, **JETHRO P. LINDO**, also a public officer being the Executive Assistant IV, **VENUS M. CARLOS**, likewise a public officer being the Municipal Accountant, **EBRENCIO FIJO INDOYON, JR.**, also a public officer being the Municipal Treasurer, **ANTONIO CONSUERGA**

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SALIGUMBA, also a public officer being the Municipal Budget Officer and **NILDA T. FERRANDO**, likewise a government employee, being the Cash Clerk I, all of the Municipality of Lingig, Surigao del Sur, while in the performance of their respective duties, committing the offense in relation to their respective offices, conniving and conspiring with each other, with evident bad faith, or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, disburse public funds of the Local Government Unit of Lingig, Surigao del Sur, in the amount of **P1,610,800.00** by way of Cash Advance Disbursement Voucher No. **100-2004-04-1271**, which was duly certified by accused JETHRO P. LINDO in behalf of accused Municipal Mayor ROBERTO M. LUNA as to the legality and the necessity of the cash advance and incurred under his direct supervision and of which he approved for payment in behalf of accused Municipal Mayor Roberto M. Luna, Jr.; while accused Municipal Accountant Venus M. Carlos certified on the cash advance voucher as to the completeness and propriety of supporting documents; and accused Municipal Treasurer EBRENCIO FIJO INDOYON, JR. certified on the cash advance voucher as to "cash availability" and which amount of P1,610,800.00 was received by accused NILDA T. FERRANDO as payment of the honoraria and *per diems* of one hundred one (101) workers hired through Job Order Contracts covering the value of their services rendered from January to April 2004, despite the (fact that) accused knew fully well that: 1) there was no appropriation ordinance or law authorizing the release of said funds; 2) the check covering the amount of the cash advance of P1,610,800.00 was released on April 12, 2004, two days ahead of the approval of the cash advance; 3) the cash advance was not obligated at the time of its approval; 4) job order contracts were not submitted to the Civil Service Commission for its review pursuant to CSC Memorandum Circular No. 17, series of 2002, also known as the "Policy Guidelines for Contracts of Service" and CSC Memorandum Circular No. 24, series of 2002, also known as the "Clarification on Policy Guidelines for Contracts of Service; 5) that the workers hired through Job Order Contracts were "designated" as Community Aide, Informant and Confidential Employee Assistant with the names of the workers as appearing in the Job Order Contracts and Time Book Payrolls being "assumed names"; 6) there were no Daily Time Records submitted to evince that the job order employees rendered services for the period January to April 2004; 7) the Time Book and Payroll shows that the job order employees were paid different rates of monthly compensation instead of daily or hourly wages; 8) that the job order employees were paid for services rendered despite that the column for "Residence Certificate" in the Time Book



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and Payrolls were not filled up with any entry as to "Number", "Date", "Place of Issue" and "Signature of Witnesses"; 9) funds utilized for the payment of the honoraria and per diems of the 101 job order employees were taken out of the 20% Development Fund allocated for Peace and Order and Public Safety and National Security Mission Projects and Initiatives in the amounts of **P344,000.00** and **P648,000.00.00**, respectively, as well the appropriated funds intended for Administrative Support Services in the Office of the Municipal Mayor in the amount of **P80,000.00** and against the appropriated funds intended for Other Services in the Office of the Municipal Mayor in the amount of **P90,000.00** and against the appropriated funds intended for Other Services in the Office of the Municipal Treasurer in the amount of **P100,000.00**, adversely affecting the execution of other budgetary services and/or programmed activities of the local government unit of Lingig and caused undue injury to the Local Government Unit of Lingig as well as the government in the amount of P1,610,800.00 as the transaction is void for want of necessary authority from the Sangguniang Bayan of Lingig or appropriation ordinance.

CONTRARY TO LAW.¹

On even date, six (6) Informations, docketed as SB-10-CRM-0112 to 0117, for *Violation of Section 220 of the Revised Penal Code* were filed against accused Luna, Lindo and Carlos.

On August 27, 2010, accused Saligumba was arraigned in SB-10-CRM-0111.² Pre-trial proceeded as to accused Saligumba on May 25, 2011.³

On July 26, 2011, accused Luna, Lindo, Carlos and Indoyon were arraigned in SB-10-CRM-0111.⁴ Pre-trial as to said accused proceeded on January 27, 2012.

In its Resolution dated September 22, 2011, this Court granted the prosecution's *Motion to Withdraw* SB-10-CRM-0112 to 0117.

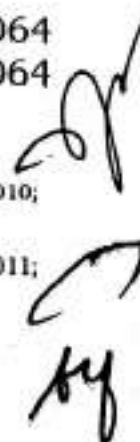
On March 23, 2012, the Information in SB-12-CRM-0064 and 0065 were filed. The Information in SB-12-CRM-0064

¹ Information dated January 30, 2009, pp. 1-3; Record, Vol. I, pp. 1-3.

² Certificate of Arraignment dated August 27, 2010; Record, Vol. I, p. 198; Order dated August 27, 2010; Record, Vol. I, p. 200.

³ Order dated May 25, 2011; Record, Vol. II, p. 102.

⁴ Certificates of Arraignment all dated July 26, 2011; Record, Vol. II, pp. 219-222; Order dated July 26, 2011; Record Vol. II, pp. 224-225.



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charging accused Luna, Lindo and Carlos of *Malversation of Public Funds* reads:

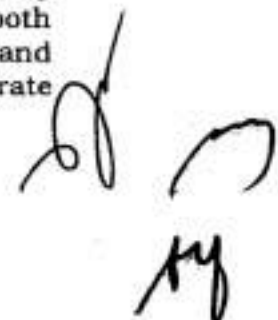
That on or about 12 April 2004, or sometime prior to or subsequent thereto, at the Municipality of Lingig, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused ROBERTO LUNA, JR. *y* MALLJAO, a high ranking public officer, being then the Municipal Mayor of Lingig, Surigao del Sur, and as such is accountable for the public funds amounting to ONE MILLION SIX HUNDRED TEN THOUSAND EIGHT HUNDRED PESOS (P1,610,800.00) received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, conniving and confederating with accused JETHRO LINDO *y* PABALATE and VENUS CARLOS *y* MAGALLANO, both public officers being then the Executive Assistant IV and Municipal Accountant respectively, who are both signatories to the disbursement voucher, payrolls and job orders among others, relative to the purported payment of salaries of 101 job order workers for the period January 2004 to April 2004, did then and there, willfully, unlawfully and feloniously take, misappropriate to their personal use and benefit and/or through abandonment or negligence permit other persons to take the amount of ONE MILLION SIX HUNDRED TEN THOUSAND EIGHT HUNDRED PESOS (P1,610,800.00) from such public funds which is part of the proceeds of the cash advance drawn by Nilda Ferrando under DV No. 100-2004-04-1271, to the damage of the government in the aforestated amount.

CONTRARY TO LAW.⁵

The Information in SB-12-CRM-0065 charging accused Luna, Lindo and Carlos with *Falsification of Public Document* reads:

That on or about August 2004, or sometime prior or subsequent thereto, at the Municipality of Lingig, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused ROBERTO LUNA, JR. *y* MALLJAO, a high ranking public officer being then the Municipal Mayor of Lingig, Surigao del Sur, acting in relation to his office and taking advantage of his position, conniving and confederating with accused JETHRO LINDO *y* PABALATE and VENUS CARLOS *y* MAGALLANO, both public officers being then Executive Assistant IV and Municipal Accountant respectively, with deliberate

⁵ Information dated March 1, 2012, pp. 1-2; SB-12-CRM-0064, pp. 1-2.



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intent, did then and there willfully, unlawfully and feloniously falsify public documents consisting of job order contracts and payrolls among others, by making it appear that 101 job order workers rendered service as informants and community aide to the Municipality of Lingig, Surigao Del Sur in the period January 2004 to April 2004 and allegedly received salaries in the total amount of ONE MILLION SIX HUNDRED TEN THOUSAND EIGHT HUNDRED PESOS (P1,610,800.00), the sum of which is part of the proceeds of the cash advance drawn under DV No. 100-2004-04-1271, when in truth and in fact, accused knew fully well that there were no 101 job orders who rendered service for the said period and did not actually receive the salaries covered by the disbursement voucher, to the damage and prejudice of the Municipality of Lingig, Surigao del Sur.

CONTRARY TO LAW.⁶

On July 25, 2012, accused Luna, Lindo and Carlos were arraigned in SB-12-CRM-0064 to 0065.⁷ Pre-trial proceeded on September 13, 2012.⁸

During the separate pre-trial proceedings, the prosecution and accused Luna, Lindo, Carlos, Saligumba and Indoyon stipulated as follows:

SB-10-CRM-0111

1. The prosecution and accused Saligumba:
 - a. Accused Antonio Saligumba *y* Consuegra is the same Antonio Saligumba *y* Consuegra who was arraigned on August 27, 2010.⁹

2. The prosecution and accused Luna, Lindo, Carlos, and Indoyon:
 - a. Accused Roberto Luna, Jr. *y* Malijao, Jethro Lindo *y* Pabalate and Venus Carlos *y* Magallano are the same Roberto Luna, Jr. *y* Malijao, Jethro Lindo *y* Pabalate and Venus Carlos *y* Magallano, who were arraigned on July 26, 2011.

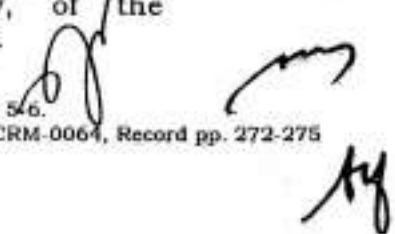
 - b. At all times material and relevant to this case, accused Roberto Luna, Jr. *y* Malijao, Jethro Lindo *y* Pabalate and Venus Carlos *y* Magallano were the Municipal Mayor, Executive Assistant and Municipal Accountant, respectively, of the Municipality of Lingig, Surigao del Sur.

⁶ Information dated March 1, 2012, pp. 1-2; SB-12-CRM-0064, Record, pp. 546.

⁷ Certificates of Arraignment and Order, both dated July 25, 2012; SB-12-CRM-0064, Record pp. 272-275

⁸ Resolution dated October 22, 2012, p. 401; Record, Vol. IV, p. 12.

⁹ Pre-Trial Order dated May 26, 2011, p. 2; Record, Vol. II, p. 132.



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- c. Accused Ebrencio Indoyon, Jr. admits that he is the same Ebrencio Fijo Indoyon, Jr. who was arraigned on 26 July 2011.¹⁰

SB-12-CRM-0064 to 0065

The prosecution and accused Luna, Lindo and Carlos:

- a. Accused Roberto Luna, Jr. y Malijao, Jethro Lindo y Pabalate and Venus Carlos y Magallano are the same Roberto Luna, Jr. y Malijao, Jethro Lindo y Pabalate and Venus Carlos y Magallano who were arraigned on July 25, 2012.
- b. At all times material and relevant to this case, accused Roberto Luna, Jr. y Malijao, Jethro Lindo y Pabalate and Venus Carlos y Magallano were the Municipal Mayor, Executive Assistant and Municipal Accountant respectively of the Municipality of Lingig, Surigao del Sur.¹¹

Upon Motion of accused Carlos, the three (3) cases were consolidated.¹²

On July 30, 2013, accused Ferrando was arraigned.¹³ The prosecution and accused Ferrando agreed to adopt the *Pre-Trial Order* dated January 27, 2012, and all the evidence presented by the prosecution.¹⁴

The prosecution presented the following witnesses: 1) Erbito Peñanueva; 2) Leonor M. Otagan, Jr.; 3) Marah M. Mendoza; 4) Aurelia A. Alledo; 5) Gilda F. Laureno; 6) Harold P. Pareja; 7) Luzviminda Basañez; and, 8) Rosalia Naranjo.

Erbito T. Peñanueva, Local Assessment Operations Officer II of Lingig Municipal Assessor's Office,¹⁵ testified:

1. On September 6, 2010, pursuant to Office Order No. 07-2010, he was designated as the Human Resource Management Officer (HRMO) of Lingig. He is still holding said position.¹⁶

¹⁰ Pre-Trial Order dated January 27, 2012, pp. 2-3; Record, Vol. III, pp. 54-55.

¹¹ Joint Manifestation of the Prosecution and Accused Roberto Luna, Jr., Jethro Lindo and Venus Carlos dated September 4, 2012, p. 2; SB-12-CRM-0064 Record, p. 370; Pre-Trial Order dated January 27, 2012; Record, Vol. III, p. 53.

¹² Resolution dated April 4, 2013, p. 5; Record Vol. I, SB-12-CRM-0064, p. 409.

¹³ Certificate of Arraignment dated July 30, 2013; Record, Vol. IV, p. 185; Order dated July 30, 2013; Record, Vol. IV, p. 186.

¹⁴ Order dated September 4, 2013; Record, Vol. IV, p. 208; Joint Manifestation dated August 30, 2013, p. 2, 2013; Record, Vol. IV, p. 202.

¹⁵ TSN dated July 26, 2011, p. 6.

¹⁶ Exhibit JJJ; TSN dated July 26, 2011, pp. 11-13 and 16-17; TSN dated July 27, 2011, p. 5.

2. Among his duties and functions as HRMO are:
 - a. Act as custodian of the Form 201 files of the present and former employees of the Municipality;
 - b. Issue certified true copies of documents when directed through a *subpoena* or when ordered by competent authorities;
 - c. Issue Service Records of employees of the Municipality.¹⁷

3. He received a *subpoena duces tecum* directing him to submit certified true copies of the *Personal Data Sheets, Oaths of Office, Appointment Papers, and Service Records* of:

a. Antonio Saligumba	d. Jethro P. Lindo
b. Roberto M. Luna, Jr.	e. Venus M. Carlos
c. Ebrencio F. Indoyon, Jr.	f. Nilda T. Ferrando ¹⁸

4. He retrieved the requested 201 files, and certified the photocopies of the same, except that of accused Indoyon. The 201 file of Indoyon was missing. He also issued the *Service Records* requested. He sent the certified copies of the documents, together with a letter informing Prosecutor Funclas that he did not find the record of employment of Indoyon, to the Office of the Special Prosecutor.¹⁹

5. Accused Indoyon was the Municipal Treasurer from 2002-2004. They were co-employees. Leonor M. Otagan, Jr., was Lingig's HRMO Designate from 1992-2004.²⁰

Leonor M. Otagan, Jr., complainant and former Human Resource Management Officer Designate of LGU Lingig,²¹ testified:

1. He was the designated HRMO of Lingig from August 1992 until May 17, 2004 when, pursuant to *Memorandum Order dated May 17, 2004*, he was transferred by accused Luna to the Office of the Municipal Planning and Development Coordinator. His official position was Municipal Government Assistant Department Head at the Office of the Municipal Mayor.²²

2. He was dismissed from service because of the *Falsification of Public Document* case filed against him by the Office of the Ombudsman.²³

¹⁷ TSN dated July 26, 2011, pp. 17-18; TSN dated July 27, 2011, p. 6.

¹⁸ TSN dated July 26, 2011, p. 18.

¹⁹ TSN dated July 26, 2011, pp. 19-22.

²⁰ TSN dated July 26, 2011, pp. 54, 56.

²¹ TSN dated July 27, 2011, p. 3.

²² Exhibits MMM and OOO; TSN dated July 27, 2011, pp. 6-12, 21-23, 25-27, 32; TSN dated July 30, 2013, p. 17.

²³ TSN dated July 30, 2013, pp. 9-10, 16-17 and 26.

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3. His functions as HRMO designate include:
 - a. Recruiting applicants or workers to be hired by the municipality;
 - b. Preparing and signing job orders for workers;
 - c. Processing appointments;
 - d. Acting on leave applications of employees.²⁴
4. Sometime in the second week of June 2004, he went to the office of accused Carlos to follow up his transportation expenses. Accused Carlos asked him if he has signed the job orders for January to April 2004, as he was the HRMO designate during the said period, for the liquidation of the cash advances for the honoraria or *per diems*.²⁵
5. Immediately afterwards, he proceeded to the office of accused Indoyon, then Municipal Treasurer. Accused Ferrando, who was assigned at said office, told him that she will just approach him after she completes the documents for the job orders. Accused Ferrando showed him the job orders, which were already filled up, and signed in the *Acknowledgment* portions, and also signed by accused Saligumba and Luna. The workers were described as confidential agents, assigned to the Office of the Mayor. The stated salaries were PhP5,000.00 per month. He was supposed to sign approximately 25 job orders.²⁶
6. He expressed interest in signing the job orders because he wanted to know if the job order workers indeed rendered service from January to April 2004.²⁷
7. On the third week of June 2004, Ms. Adlawan, a job order employee assigned at the Treasurer's Office, asked him to go to the office of accused Ferrando. He told Ms. Adlawan to inform accused Ferrando that he will sign the job orders at his office after he examines and reviews the attachments, and, determines that the job order workers submitted all supporting papers. The job orders were not forwarded to his office that afternoon and even until he left the municipal government in 2006.²⁸
8. Sometime in September 2004, he learned that the job orders for January to April 2004 intended for his

²⁴ Exhibit 58-Carlos; TSN dated July 27, 2011, pp. 13, 34.

²⁵ TSNs dated July 27, 2011, pp. 24-25, 30-31; TSN dated January 27, 2013, p. 31.

²⁶ TSN dated July 27, 2011, pp. 28-30, pp. 80-82.

²⁷ TSN dated July 27, 2011, p. 46.

²⁸ TSN dated July 27, 2011, pp. 31-33.



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signature were replaced by job orders that were signed by accused Lindo, as HRMO. He was shown copies of both sets of job orders by his source. The two (2) sets of job orders contained the same names and number of employees. Some of those whose names appear in the job order visited his office. When he asked them, Senando Anon, Edwin Adlawan, and Angelina Abelgas were among those who were not aware that they were job order employees. Among others, Angelina Abelgas, Senando Anon, Policarpio Orencio, Archie Daylo, Edwin Adlawan, and Edison Torres are ghost employees. He did not see them report to the office. He cannot remember the names of all the workers.²⁹

9. When he learned that the subject cash advance was liquidated even when he did not sign the job orders, he filed a complaint before the Civil Service Commission (CSC) alleging that the job order workers are ghost employees.³⁰
10. Atty. Legaspi, Director of the Regional RLAO CARAGA 13, COA, informed him that the CSC forwarded his letter-complaint to the Office of the Ombudsman (OMB), which, in turn, directed the Commission on Audit (COA) to conduct an audit. As requested by COA, he executed an affidavit. He did not participate in the audit. The CSC wrote to inform him that they forwarded his letter-complaint to the OMB.³¹
11. The Municipality hired skilled job order workers every year, from 1992 to 2004. They were assigned to the different offices and programs of the municipality.³²
12. A job order worker is hired based on a special skill. The mayor determines who are hired under job order. A job order worker is funded by the 20% Development Fund.³³
13. A job order contract is prepared, as follows:
 - a. The worker submits his Personal Data Sheet;
 - b. The necessary information is encoded in the job order;
 - c. He affixes his signature under the words "Prepared by";
 - d. The worker is asked to affix his signature on the job order contract;
 - e. The job order contract is processed in the following chronological order:

²⁹ TSN dated July 27, 2011, pp. 33-35, 61, 67-68.

³⁰ Exhibits PPP to PPP-4; TSN dated July 27, 2011, pp. 39-42, 57-60, 70.

³¹ TSN dated July 27, 2011, pp. 42-45; Exhibits FF to FF-5.

³² TSN dated July 30, 2013, p. 25.

³³ TSN dated July 27, 2011, p. 19; 74-76; TSN dated July 30, 2013, pp. 22-23.

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- i. The Municipal Budget Officer certifies as to the existence of the appropriation;
 - ii. The Municipal Accountant certifies that there is an existing obligation;
 - iii. The Office of the Municipal Mayor approves the job order;
 - iv. The head of department where the worker is to be assigned also signs the job order; and,
 - v. The job order is returned to the HRMO for record keeping and to notify the worker to report for work.³⁴

14. The job order is prepared in six (6) copies for distribution or submission to:
 - a. Office of the Municipal Accountant;
 - b. Human Resource Management Office;
 - c. Office of the Mayor; and,
 - d. Civil Service Commission [two (2) copies].³⁵

15. The job orders³⁶ he prepared complied with the requirements and standards of the CSC. The job orders subject of the present cases were not submitted to him for liquidation. The job orders signed by accused Lindo, Saligumba, and Luna, did not have supporting documents.³⁷

16. The amount of Php1,610,000.00, more or less, was disbursed for the payment of honoraria of job order workers for January to April 2004, and was liquidated. The job orders, the *Time Book and Payroll*, and the disbursement voucher were submitted as supporting documents for liquidation of the cash advance.³⁸

17. On August 31, 2004, the *Report of Disbursement* prepared by accused Ferrando for the payment of honoraria was recorded in the *Books of Accounts*. The liquidation of cash advances, which were submitted to the Office of the Municipal Accountant, are the same as those in Journal Entry Voucher No. 100-01-04-08 dated August 31, 2004 and Journal Book Entry No. 100-02-08 prepared and signed by Loreta Edukawan, and, signed by accused Carlos.³⁹

18. When he first saw the disbursement voucher, he was not in the position to know that it listed fictitious employees. But when he saw the *Time Book and Payroll*, he knew that the job order workers were fictitious. Even before conducting, in September 2004, his investigation and random verification of the job order workers, he was

³⁴ TSN dated July 27, 2011, pp. 13-16, 20; TSN dated July 30, 2013, pp. 13-14, 19.

³⁵ TSN dated July 27, 2011, pp. 17, 20-21.

³⁶ Exhibit FFF

³⁷ TSN dated July 27, 2011, pp. 73-77.

³⁸ TSN dated July 27, 2011, p. 38.

³⁹ TSN dated July 27, 2011, pp. 38-39.



already certain that said employees were fictitious. He talked to some workers in the list.⁴⁰

19. He had no participation in the preparation of the subject job orders. He had no participation in the preparation of the budget of the municipality. His complaint was based on the ghost workers. The complaint was part of the inquiry on the job order.⁴¹

Marah M. Mendoza, State Auditor II, Commission on Audit, Region 13,⁴² testified:

1. She is a State Auditor II of COA, Region 13 since November 2004.⁴³
2. In 2005, she was assigned to the *Regional Legal and Adjudication Office* (RLAO). The regional office received from COA Central Office, an order directing them to conduct an audit investigation on the disbursement by the LGU of Lingig of PhP1,610,800.00, for the *per diem* and honoraria of job order workers in 2004.⁴⁴
3. The investigation was requested by OMB-Mindanao. OMB-Mindanao's request was based on Rito Orillo's complaint.⁴⁵
4. The complaint of Orillo pertained to the cash advance of accused Ferrando under Disbursement Voucher (DV) No. 100-2004-04-1271 amounting to PhP2,327,000.00. The documents submitted with the Complaint include:
 - a. Original copy of the duplicate copy of Check No. 231481;
 - b. Original copies of the *Allotment and Obligation Slips*;
 - c. Original copies of the *Job Orders*;
 - d. Original copies of the *Time Book and Payrolls*;
 - e. Copy of the Transmittal Letter dated September 22, 2004, addressed to the Provincial Auditor, signed by Venus Carlos, forwarding the disbursement voucher and the payrolls.⁴⁶

⁴⁰ TSN dated July 27, 2011, pp. 57-60.

⁴¹ Exhibits FFF to FFF-17; TSN dated July 30, 2013, pp. 31-33, 35-36.

⁴² TSN dated October 12, 2011, p. 3.

⁴³ TSN dated October 12, 2011, p. 6; TSN dated May 22, 2012, p. 12.

⁴⁴ Exhibits RRR and VVV; TSN dated October 12, 2011, pp. 12-13; TSN dated May 22, 2012, pp. 19, 24-25, 28; Second Indorsement dated February 7, 2005 signed by a certain Elizabeth Zosa, Director IV of the Commission on Audit Central Office, Exhibit QQQ; Complaint attached to the Indorsement, Exhibit RRR.

⁴⁵ TSN dated October 12, 2011, pp. 6, 9-11; TSN dated May 22, 2012, pp. 12, 18, 20-22; Office Order No. 2005-13-002 dated April 27, 2005 signed by Atty. Marisol E. Legaspi, Regional Cluster Director, Exhibit A; Office Order No. 2005-13-002-A dated August 5, 2005, also signed by a Atty. Legaspi, Exhibit B.

⁴⁶ Exhibit Q; TSN dated October 12, 2011, pp. 14-21; TSN dated May 22, 2012, pp. 29-36, 39-40.

5. The audit team was composed of:
- a. Mr. Bucong, who was later dropped from the team by Atty. Marisol Legaspi;
 - b. Ms. Sally Ladaga; and,
 - c. herself as co-team leader.

She was later made team leader through an Office Order.⁴⁷

6. The audit team evaluated Ortillo's complaint together with the attached documents, then prepared an Audit Program. They requested the LGU of Lingig for a list of its regular and job order workers. The letter-request dated May 5, 2005 was received by accused Lindo.⁴⁸
7. There are two (2) particulars in the Disbursement Voucher: (i) salaries of regular employees (PhP716,491.15); and, (ii) job order workers' honorarium and per diems (PhP1,610,800.00). The audit team focused on the job order workers hired from January to April 2004.⁴⁹
8. Based on the ALOBS, the PhP716,491.15 for the salaries of the regular employees was charged against the appropriate funds.⁵⁰
9. When they were about to leave for Lingig on June 2005, accused Luna called and talked to Bucong through mobile phone. Bucong informed the audit team that accused Luna admitted that the names in the *Time Book and Payroll* were dummies and the payment was taken from his Intelligence Fund. Bucong requested accused Luna to submit a certification containing said admission. She was in another room when the conversation between Bucong and accused Luna took place.⁵¹
10. Pursuant to their request, accused Luna submitted a Certification dated June 16, 2005 together with a *List* of 107 job order workers for January to April 2004. The Certificate partly reads: "This certifies that the following persons listed below are just dummies who received the amount out of my intelligence funds." The *List* was

⁴⁷ TSN dated October 12, 2011, p. 14; TSN dated May 22, 2012, pp. 22-23.

⁴⁸ TSN dated October 12, 2011, pp. 22-23, 26; TSN dated May 22, 2012, p. 29, 40-41, 43, 45-46; Letter dated May 5, 2005, Exhibit SSS and SSS-1.

⁴⁹ TSN dated December 7, 2011, pp. 7-8; TSN dated August 28, 2012, pp. 73-74, 77-78.

⁵⁰ TSN dated August 28, 2012, pp. 76-77;

⁵¹ TSN dated October 12, 2011, p. 29; TSN dated May 22, 2012, pp. 49-50; TSN dated August 28, 2012, pp. 69-71; TSN dated September 25, 2012, p. 17.

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prepared by accused Lindo and certified correct by accused Luna.⁵²

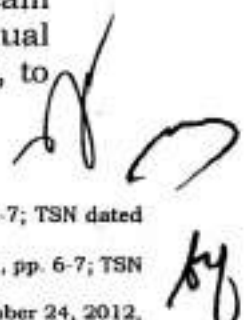
11. The audit team prepared a list of the names in the *Time Book and Payroll*. They compared the 101 names in the *Time Book and Payroll* with the 107 names in the *List*. Four (4) of the names in the *List* were listed twice and two (2) of the names therein were not in the *Time Book and Payroll*. The audit team treated the Certification dated June 16, 2005 as an admission by accused Luna that the amount was sourced from his Intelligence Fund.⁵³
12. They proceeded to Lingig to pay a courtesy call to accused Luna. But since accused Luna was not around, they met with accused Lindo and Carlos, and other municipal personnel. They interviewed some of them, including accused Lindo, about the *List* that the municipality submitted. The audit team was not able to confirm from the individuals in the payroll if they were paid. LGU Lingig did not comply with the audit team's request for the postal addresses of the job order workers. It was difficult for them to penetrate the Municipality because of the peace and order situation. They did not go to the Civil Registrar to check on the listed persons.⁵⁴
13. Thereafter, the audit team received *Indorsement dated June 24, 2005* from Elizabeth Zosa, Director IV, Legal and Adjudication Office, COA, together with the complaint of Leonor Otagan. Mr. Otagan's complaint was similar to Orillo's; both pertain to the payment of ghost job order workers under the same disbursement voucher. Orillo used the word "dummy" while Otagan used "ghost". Upon the team's request, Otagan submitted a Sworn Affidavit.⁵⁵
14. Since Luna claimed that the payment was taken from his Intelligence Fund and that the assignment of the job order workers is confidential in nature, and in view of accused Carlos' declaration that the charges were taken from the 20% Development Fund, the audit team requested for a copy of the 2004 Budget, the Annual Investment Plan (AIP), and, the Development Fund, to

⁵² Exhibits J to J-10; TSN dated October 12, 2011, p. 25; TSN dated October 13, 2011, pp. 6-7; TSN dated May 22, 2012, pp. 46-47, 63-65; TSN dated May 23, 2012, pp. 35-36.

⁵³ Exhibits J to J-10, T, U; TSN dated October 12, 2011, pp. 26-28; TSN dated October 13, 2011, pp. 6-7; TSN dated May 22, 2012, pp. 48-49, 63-65, 67-69; TSN dated May 23, 2012, pp. 33-36

⁵⁴ TSN dated October 12, 2011, pp. 30-31; TSN dated May 22, 2012, pp. 52-53; TSN dated October 24, 2012, pp. 20-21.

⁵⁵ TSN dated October 12, 2011, p. 40; TSN dated October 13, 2011, pp. 10-11; TSN dated May 22, 2012, pp. 72-73; TSN dated September 25, 2012, p. 19.



determine if there were appropriations for said items. They gave the letter request to accused Carlos.⁵⁶

15. Accused Luna submitted copies of the Annual Budget and the AIP of 2004. There is no intelligence fund in the Municipality's Annual Budget. Under the AIP, there was an appropriation for *Peace and Order and National Security Mission Project*.⁵⁷

16. They evaluated the documents that they gathered, including:

- a. DV No. 2004-04-1271 dated April 14, 2004;
- b. Duplicate copy of Check No. 231481 dated April 12, 2004;
- c. Original copies of the *Time Book and Payroll*;
- d. Original copies of the *Job Orders*;
- e. Original copies of the *Allotment and Obligation Slips (ALOBS)*;
- f. Annual Budget for the year 2004;
- g. Annual Investment Plan for 2004;
- h. Certification dated June 16, 2005;
- i. 2nd Indorsement dated June 24, 2005 from Elizabeth Zosa, Director IV, Legal and Adjudication Office, COA, with the attached complaint of Leonor Otagan, Jr. and,
- j. Affidavit of Leonor Otagan, Jr.

17. The audit team concluded that:

- a. The municipality paid per diems and honoraria to 101 Job Orders who were dummies or ghost workers;
- b. The municipality paid PhP1,610,800.00 for confidential expenses even if there was no appropriation for confidential and intelligence fund. Said amount was paid a month prior to the 2004 May elections, and the CSC requirements on the hiring of job order employees were not complied with, i.e., the contracts were not submitted to the CSC;
- c. The corresponding check was issued on April 12, 2004 or two (2) days before the date of the Disbursement Voucher; Other documents, such as the job orders, and the ALOBS were prepared after the check was issued; and,
- d. Municipal officials including accused Luna, Lindo, Saligumba, Indoyon and Carlos participated in the assailed transaction.⁵⁸

18. The audit team concluded that the subject workers are dummies for the following reasons:

⁵⁶ Exhibits R and TTT; TSN dated October 12, 2011, pp. 32-37; TSN dated May 22, 2012, pp. 54-55, and 87.
⁵⁷ TSN dated October 12, 2011, p. 35; TSN dated December 7, 2011, p. 20; TSN dated May 22, 2012, pp. 59-62; TSN dated August 28, 2012, pp. 7, 17-18; TSN dated August 29, 2012, p. 10.
⁵⁸ TSN dated October 13, 2011, pp. 23-24; TSN dated June 26, 2012, pp. 11-13.

- a. Inconsistencies between the list of workers submitted by the Municipality and the workers as appearing in the payroll;
 - b. The job order contracts were signed by accused Lindo even when the same is beyond his authority; Otagan was the HRMO designate;
 - c. Otagan claimed that he did not see the job order workers;
 - d. The checks were prepared ahead of the supporting documents, *i.e.*, the ALOBS, the *Payroll and Job Order Contracts*; and,
 - e. The admissions of accused Luna in his phone call, in the certification he issued, and in the management comments.⁵⁹
19. She prepared Audit Observation Memorandum (AOM) dated July 28, 2005. On July 28, 2005, the audit team furnished accused Luna and Carlos with a copy of the AOM.⁶⁰
20. They did not conduct an exit conference in the Municipality of Lingig because of the peace and order problem. The AOM served the purpose of an exit conference - to inform the concerned persons of their findings.⁶¹
21. After receiving accused Luna and Carlos' separate comments, the audit team prepared an *Audit Report* and the *Notice of Disallowance* (ND).⁶²
22. The Notice of Disallowance, signed by Atty. Marisol Legaspi, was issued on November 29, 2005. Copies of the ND were addressed and sent to accused Luna, Lindo, Carlos, Ferrando, Indoyon and Saligumba, to formally inform them. They issued a Notice of Disallowance because the Municipality paid per diems or honorarium on April 2004 in the amount of PhP1,610,800.00 to 101 job order workers who were dummies, per accused Luna's admission.⁶³
23. Accused Luna and the other persons found liable filed a *Motion for Reconsideration* before the Legal and Adjudication Office.⁶⁴
24. After preparing the *Audit Report*, she and Sally Ladaga executed a *Joint Affidavit*.⁶⁵ They submitted the *Joint Affidavit*, together with the *Audit Report*, to OMB-

⁵⁹ TSN dated October 24, 2012, pp. 21-22.

⁶⁰ Exhibit C; TSN dated June 26, 2012, p. 21; TSN dated August 28, 2012, p. 63; TSN dated September 25, 2012, p. 23.

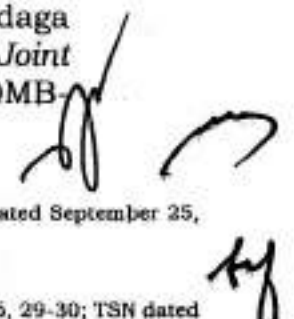
⁶¹ TSN dated July 25, 2012, pp. 16-17; TSN dated September 25, 2012, p. 8.

⁶² TSN dated October 13, 2011, p. 30; Exhibit C.

⁶³ TSN dated October 13, 2011, pp. 36-39 and 42-43; TSN dated June 26, 2012, pp. 24, 26, 29-30; TSN dated August 28, 2012, p. 68.

⁶⁴ TSN dated October 13, 2011, p. 41.

⁶⁵ Exhibit X



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Mindanao and to the COA-Central Office, in compliance with the OMB's order to include their final observation in said affidavit.

25. The Audit Report was released on December 1, 2005. The Audit Report is presumed to have been approved by the approving authority of COA on November 16, 2005.⁶⁶
26. The OMB conducted a preliminary investigation and directed the audit team to file Joint Reply Affidavits.⁶⁷
27. Subsequently, he was informed by Atty. Marisol Legaspi that the subject amount was fully refunded by accused Luna.⁶⁸
28. Based on CSC Memorandum Circulars (MC) No. 17 and 24, series of 2002, only positions with special or technical skills not available in the municipality can be hired through a Job Order. The basic monthly salary of such employees should be on a daily or hourly rate. A Confidential agent does not fall under this definition; hence, confidential agents are not entitled to honoraria or per diems.⁶⁹
29. Under CSC MC No. 17, job order workers are not government personnel and are not covered by the Civil Service Law. Job Orders cover piece of work or intermittent jobs of short duration, not exceeding six (6) months and, paid on a daily basis.⁷⁰
30. Sections 5 and 6 of CSC MC No. 17 require the submission of the Job Order Contract to the CSC for review. The general rule is that there should be no rendition of services pending review of said contracts. The Job Order personnel cannot render service until the CSC reviews the Job Order Contract. The Job Order Contracts may only be implemented after its review by the CSC. The review is undertaken to stop the practice of government agencies on the 45/55% limitations on Personnel Services.⁷¹
31. Under Section 6, MC No. 17, Series of 2002, the Head of the Agency, in the exigency of public service or if

⁶⁶ Exhibit C; TSN dated December 7, 2011, pp. 14-15.

⁶⁷ Exhibit Y; TSN dated October 13, 2011, pp. 42-43; TSN dated June 26, 2012, p. 24 and 29-30.

⁶⁸ TSN dated October 13, 2011, pp. 34-36; TSN dated June 26, 2012, pp. 28-29; Official Receipt No. 2539239 dated September 7, 2010 (PhP1,500,000.00), Exhibit GGG; Official Receipt No. 2925302 dated September 21, 2010 (PhP110,800.00), Exhibit HHH.

⁶⁹ TSN dated October 13, 2011, pp. 22-23; TSN dated May 23, 2012, p. 24; TSN dated July 25, 2012, p. 9.

⁷⁰ TSN dated August 28, 2012, p. 58.

⁷¹ TSN dated May 23, 2012, pp. 21-23; TSN dated June 26, 2012, pp. 4-6 and 8; TSN dated July 25, 2012, p. 11; TSN dated August 28, 2012, pp. 44-45, 48, 56-57.

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public welfare or safety requires, may allow the person hired to render service and receive compensation during the pendency of the review by the CSC. The Job Order contract is valid even if not reviewed by the CSC. Even job order contracts not submitted to the CSC are subject to COA Rules and Regulations.⁷²

32. The certification appearing in the job orders are not irregular. The *Job Orders* were not submitted to the CSC for its review, in violation of *CSC-MC No. 17, Series of 2002* and *CSC-MC No. 24, Series of 2002*. The alleged hiring of 101 Job Order workers does not fall under the exceptions under CSC Memorandum Circular No. 24. The exceptions pertain only to exigencies of service. There was an irregularity not merely on the basis of non-submission of the contracts to the CSC.⁷³
33. Their findings in relation to CSC MC No. 17 and 24 were not included in the *Fact Finding Audit Report* because those are minute detail observations that lead them to conclude that no job order workers were hired. The audit team saw no need to include it in the report since the report already states their conclusion. The observations regarding the CSC circulars do not directly address the complaints of Otagan and Orillo. The same were mentioned in their Joint Reply Affidavit. Other issues not included in the audit report were clarified in the affidavit complaint.⁷⁴
34. The audit team looked into the following DILG issuances to identify the projects that can be funded by the 20% Development Fund and to know how the Intelligence and Confidential Fund can be utilized:

M.C. No. 99-65 dated April 23, 1999	<i>Amending M.C. No. 98-136 dated July 24, 1998, entitled "Revised Guidelines Relative to the Utilization of Funds for Intelligence or Confidential Purposes"</i>
MC No. 99-66 dated April 23, 1999	<i>Reiterating or Further Amending the Provisions of M.C. No. 95-216 dated December 14, 1995, entitled "Policies and Guidelines on the Utilization of the 20% Development Fund and Related Matters as Amended"</i>

⁷² Exhibit BBBB; TSN dated August 28, 2012, pp. 56-57, 59-61; TSN dated October 23, 2012, p. 44-46, 52-53; TSN dated October 24, 2012, pp. 10-11.

⁷³ Exhibits BBBB and CCCC; TSN dated August 29, 2012, p. 7; TSN dated October 24, 2012, pp. 10-11; TSN dated October 23, 2012, p. 43-46, 52-53.

⁷⁴ TSN dated August 28, 2012, pp. 61-62; TSN dated September 25, 2012, p. 30; TSN dated October 24, 2012, pp. 17-20 and 55-56.

M.C. No. 99-144 dated August 11, 1999	<i>Further Amending M.C. No. 95-216 entitled "Policies and Guidelines on the Utilization of the 20% Development Fund and Related Matters"</i> ⁷⁵
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35. The AIP is funded by the annual budget. It lists the projects that can be funded through the 20% Development Fund. The 20% Development Fund cannot be used to fund personnel services. It can be used for economic services and social services. This is for the programs and projects of the municipality.⁷⁶
36. LGU Lingig's AIP has an appropriation for *Peace and Order* and *National Security Mission Project*.⁷⁷
37. The DILG Circulars did not list the *National Security Mission Project* as a component of the 20% Development Fund.⁷⁸ The National Security Mission Project includes cost of services that are confidential in nature, to carry on administrative activities. It may be used to fund Peace and Order Project, and, in the course of implementing this project, the Mayor may hire Job Order workers.⁷⁹
38. DILG MC No. 99-144 allows provision of funds, from the Development Funds, for *Peace and Order* and *Public Safety*; the amount under *Peace and Order* must not exceed 10% of 80% of the 20% Development Fund. Only certain expenses are allowed under Peace and Order, per DILG Memorandum Circular 99-65.⁸⁰ The Peace and Order and Public Safety can be funded from, but should not be more than 10% of, the 80% of the 20% Development Fund.⁸¹
39. The Fund may be used to purchase firearms and equipment, and pay for the maintenance and other operating expenses of the PNP, DSP, and BJMP.⁸² It may also be used for the administration of the *Peace and Order Council*, relative to the Council's conduct of its regular meetings.⁸³ *Peace and Order and Public Safety* covers the administration of the Peace and Order Council in the conduct of its regular meeting and the administration of the Law Enforcement Board.⁸⁴

⁷⁵ Exhibits Z, AA and BB; TSN dated October 13, 2011, pp. 18-20; TSN dated May 22, 2012, pp. 43-44; TSN dated May 23, 2012, p. 53.

⁷⁶ TSN dated May 23, 2012, p. 27.

⁷⁷ TSN dated October 12, 2011, p. 35; TSN dated December 7, 2011, p. 20; TSN dated May 22, 2012, pp. 59-62; TSN dated August 28, 2012, pp. 7, 17-18; TSN dated August 29, 2012, p. 10.

⁷⁸ TSN dated October 24, 2012, pp. 36-37.

⁷⁹ TSN dated August 28, 2012, pp. 34-38.

⁸⁰ Exhibit BB; TSN dated August 28, 2012, p. 24.

⁸¹ TSN dated June 26, 2012, p. 4.

⁸² TSN dated July 25, 2012, pp. 32-33.

⁸³ TSN dated August 29, 2012, p. 13.

⁸⁴ TSN dated October 13, 2011, p. 5; TSN dated May 23, 2012, pp. 36-37; TSN dated August 28, 2012, pp. 11-12; TSN dated August 29, 2012, pp. 11-12.

40. Under *the Manual of the National Government Accounting System*, confidential and intelligence pertain to the same fund.⁸⁵
41. The Annual Budget for the year 2004 for the Municipality of Lingig did not provide for an appropriation for the Confidential and Intelligence Fund.⁸⁶
42. As shown in Table III of the Audit Report,⁸⁷ none of the six (6) funding charges were charged to the *Intelligence Fund* or the *Confidential and Intelligence Fund*. The certification of the Budget Officer in the Disbursement Voucher states that the payment was charged against the *Peace and Order Funds*.⁸⁸
43. LGU of Lingig's AIP for the year 2004 provides for (i) *National Security Mission Project and Initiative* (PhP1,000,000.00), and, (ii) *Peace and Order and Public Safety* (PhP450,000.00).
44. *Peace and Order* cannot be used to fund the payment for job order workers because the same does not fall under the allowable expenses under M.C. No. 99-65. Likewise, the National Security Mission Project is not among the projects which can be funded under the 20% Development Fund.⁸⁹
45. The National Security Mission Projects can be taken as part of the Confidential and Intelligence Fund. *Peace and Order* is not part of said fund.⁹⁰
46. The audit team considered the *National Security Mission Projects* as part of the 20% Development Fund.⁹¹ The amount of PhP450,000.00 was allocated for Maintenance of the Peace and Order project.
- The amount of PhP450,000.00 (Peace and Order) and PhP1,000,000.00 (National Security Mission) exceeded the limitations under the Circulars.⁹²
47. The obligations were charged against the Peace and Order and 20% Development Fund intended for National Security Mission; some were charged to the

⁸⁵ TSN dated July 25, 2012, p. 32.⁸⁶ TSN dated August 29, 2012, p. 5; Audit Report dated November 16, 2005, Exhibit C.⁸⁷ Exhibit C⁸⁸ TSN dated August 29, 2012, pp. 28, 30-32.⁸⁹ TSN dated October 23, 2012, p. 30.⁹⁰ TSN dated July 25, 2012, p. 32.⁹¹ TSN dated August 29, 2012, p. 12.⁹² TSN dated August 29, 2012, pp. 15, 17-19.

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appropriation of the Office of the Mayor and the Office of the Municipal Treasurer.⁹³

48. The Statement of Statutory and Contractual Obligation is part of the Annual Budget. This may have been one of the bases of the Municipal Budget Officer in determining whether there was an appropriation for Peace and Order Fund.⁹⁴
49. DBM Circular No. 62 or the "Guidelines on the Grant of Honoraria in the Local Government Units" provides that government officials and employees are allowed to receive honoraria. Job Order workers are not considered government employees.⁹⁵ There is no employer-employee relationship between the Job Order workers and the Municipality of Lingig.⁹⁶
50. The Local Chief Executive's Office is in charge of implementing the projects under the AIP.⁹⁷
51. There can be an appropriation for confidential and intelligence fund if the priority concern of the municipality is peace and order; it can only be used for the payment of rewards, purchase of information or food and medical aid, supplies, ammunition, and travelling expenses incurred for the purpose of confidential and intelligence operation. The Confidential and Intelligence Fund should not exceed 3% of the total appropriation, or 30% of the *Peace and Order*, whichever is lower.⁹⁸
52. The salary of the informants (Job Order workers, confidential in nature) may be taken from the Confidential and Intelligence Fund. In the present case, however, there was no appropriation for Intelligence Fund in the 2004 approved budget.⁹⁹
53. The audit team referred to *COA Circular No. 2003-003* for the audit and liquidation of confidential and intelligence expenses.¹⁰⁰
54. The liquidation of confidential and intelligence fund is directly submitted to the Office of the Chairman, COA. The liquidation voucher must be duly signed

⁹³ TSN dated October 12, 2011, pp. 47-48; TSN dated May 23, 2012, pp. 26-27; TSN dated July 26, 2012, p. 19.

⁹⁴ Exhibit UUU; TSN dated August 29, 2012, pp. 9-10.

⁹⁵ Exhibit BBB; TSN dated May 23, 2012, pp. 10-11.

⁹⁶ TSN dated July 25, 2012, p. 9.

⁹⁷ TSN dated August 29, 2012, pp. 12-13.

⁹⁸ TSN dated October 13, 2011, p. 20; TSN dated May 23, 2012, pp. 45-46; DILG Memorandum Circular No. 99-65 dated April 23, 1999, Exhibit Z.

⁹⁹ 2004 Annual Budget, Exhibit UUU; TSN dated October 13, 2011, p. 5; TSN dated May 22, 2012, p. 66; TSN dated May 23, 2012, pp. 29-31; TSN dated July 25, 2012, p. 33; TSN dated September 25, 2012, pp. 17-18.

¹⁰⁰ Exhibit CC; TSN dated October 13, 2011, pp. 12-14; TSN dated May 23, 2012, pp. 38-39.

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by the authorized signatory and supported by the following documents:

- a. Certified Xerox copy of the Disbursement Voucher of the cash advance being liquidated;
- b. Certification of the Mayor and LGU concerned of the utilization of the Intelligence and Confidential expense. Any disbursement from the Intelligence or Confidential Fund shall be accounted solely on the certification of the Head of LGU responsible for intelligence, confidential, and national security mission project;
- c. Copy of approved budget of the Sangguniang Bayan;
- d. Copy of the Minutes of the Meeting showing the two-third (2/3) votes of the council for the release of the Intelligence and Confidential Fund;
- e. PNP Certification regarding peace and order problem in the area for the use of confidential and intelligence fund;
- f. Allocations for Intelligence and Confidential funds approved by the Secretary of the DILG; and,
- g. Approval from the President of the Philippines.¹⁰¹

55. Here, the *Job Orders*, and *Time Book and Payroll* submitted for the liquidation of the disbursement are unnecessary for the liquidation of intelligence funds. No copy of the approved budget was submitted for liquidation.¹⁰²

56. She is aware that there is a peace and order problem in Lingig. The management invoked the insurgency and the presence of groups in the Municipality of Lingig to justify the disbursement of funds for Peace and Order and the National Security Mission Project.¹⁰³

57. The *Job Orders* must be prepared prior to the payment. The *Job Orders* serve as proof that the Municipality hired workers. The issuance of the check should be the last act. Here, the check was issued before the job orders, disbursement vouchers and Allotment Obligation Slips were prepared.¹⁰⁴

58. The Allotment and Obligation Slip for the 20% Development Fund was prepared after the cash advance has been consummated.¹⁰⁵

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¹⁰¹ TSN dated October 13, 2011, pp. 15-17; TSN dated May 22, 2012, pp. 41-42.

¹⁰² TSN dated May 23, 2012, pp. 42, 55-56; TSN dated October 13, 2011, p. 17.

¹⁰³ TSN dated July 25, 2012, p. 12; TSN dated August 29, 2012, p. 36.

¹⁰⁴ TSN dated September 25, 2012, pp. 21-22, and 29.

¹⁰⁵ TSN dated May 23, 2012, p. 28.

59. Accused Ferrando is considered an accountable officer because she is a Cash Clerk.¹⁰⁶
60. Accused Carlos is accountable because she signed the disbursement voucher even without the supporting documents; she also signed the ALOBS for the Job Orders after the check was issued.
61. Accused Lindo signed the check and the disbursement voucher even if there were no supporting documents.
62. Accused Indoyon signed the check and the payroll in the absence of supporting documents. Accused Indoyon was included in the Disallowance because he signed the *Time Book and Payroll*. The signature of accused Indoyon is also found in the Disbursement Voucher.¹⁰⁷ He should sign the Disbursement Voucher only after the Municipal Accountant and the Mayor have signed the same.¹⁰⁸
63. The Allotment and Obligation Slip is filled up by the requesting officer. Thereafter, the request is forwarded to the Municipal Budget Officer. The latter shall check the Annual Budget and verify whether there is an appropriation; he shall sign the Slip to certify that there is an appropriation. The Municipal Accountant certified the Obligation of Allotment. The documents (slips) passed from the requestor (Office of the Municipal Mayor), then to the Municipal Budget Officer, and to the Municipal Accountant. The Slips will be attached to the payroll for the preparation of the Disbursement Voucher. Accused Luna requested the allotment. Accused Saligumba first checked the budget, whether there is an appropriation in relation to the funding charged.¹⁰⁹
64. The Municipal Budget Officer signs the Allotment and Obligation Slips. Such act is not an independent or specific responsibility of the Municipal Budget Officer.¹¹⁰ The Municipal Budget Officer is also the one who writes the numbers on the Allotment and Obligation Slips; said officer identifies the allotment and states whether the account is closed.¹¹¹
65. The Municipal Budget Officer is the one who certifies the existence of appropriation of *Peace and Order*

¹⁰⁶ TSN dated October 23, 2012, p. 10.

¹⁰⁷ TSN dated September 26, 2012, pp. 8-10.

¹⁰⁸ TSN dated September 25, 2012, pp. 26-27.

¹⁰⁹ TSN dated August 29, 2012, pp. 38-40.

¹¹⁰ Exhibits H to H-32; TSN dated August 29, 2012, pp. 36-38.

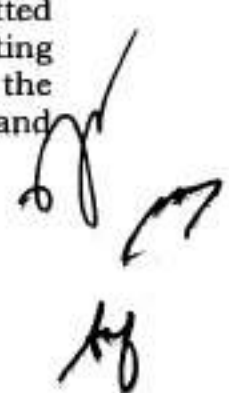
¹¹¹ TSN dated August 29, 2012, p. 40.

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Funds; accused Saligumba (Municipal Budget Officer) certified the existence of appropriation.

- 66. It is the job of accused Carlos, as Municipal Accountant, to look into the existence of the obligation. Accused Carlos may only certify as to the existence of an obligation after the existence of an appropriation has been certified.¹¹²
- 67. The certification by accused Saligumba must have been done prior to the issuance of the check.¹¹³ Accused Carlos certified as to the existence of appropriation after the issuance of the check.¹¹⁴
- 68. The audit team disallowed the disbursement because no workers were actually hired, hence, there were merely "ghost workers". The Job Orders are the best proof that no workers were hired because the contracts were issued late, or after the check was released.¹¹⁵ Based on the payroll, the workers hired under the subject Job Orders were not paid on a daily basis. Majority of the workers were paid on a monthly basis.¹¹⁶
- 69. The disbursement is irregular because there was no project undertaken. There was irregular charging. As admitted by accused Luna himself, the payment was made and intended for confidential and intelligence expenses. Hence, it should have been charged to the confidential and intelligence fund. But no appropriation was made. Thus, the same was charged to the 20% Development fund and other funds.¹¹⁷
- 70. The Job Order should have been signed prior to the issuance of the check on April 12, 2004. The Job Orders¹¹⁸ were signed by the Municipal Accountant after the check was issued.¹¹⁹
- 71. There are supporting documents that need to be attached to the disbursement voucher and there are also supporting documents that may be submitted later.¹²⁰ In a cash advance, the supporting documents of the Disbursement Voucher are the Allotment and Obligation Slip, unsigned payroll and

¹¹² TSN dated August 29, 2012, pp. 3-4.
¹¹³ TSN dated October 23, 2012, pp. 22-23 & 24.
¹¹⁴ TSN dated October 24, 2012, pp. 26-27.
¹¹⁵ TSN dated October 23, 2012, pp. 35-37.
¹¹⁶ TSN dated October 24, 2012, pp. 15-16.
¹¹⁷ TSN dated October 24, 2012, pp. 38-39.
¹¹⁸ Exhibit G to G-30
¹¹⁹ TSN dated October 24, 2012, pp. 24-25.
¹²⁰ TSN dated November 20, 2012, pp. 25-26.



Job Order Contracts. For liquidation, the signed payroll and the liquidation report are submitted. The payroll is a liquidation document. The payrolls are proof that there was already an encashment. Otherwise, there is nothing to be liquidated if no check was encashed. The check encashed by accused Ferrando was not submitted to the audit team.¹²¹

72. Under normal procedure, box A and box B in the Disbursement Voucher must first be signed prior to box C.¹²²
73. There were no workers who were paid because from the very start, the Job Order contract of these workers were void.¹²³
74. Based on the Job Orders,¹²⁴ the Job Order workers were hired either as community aides, confidential employees, and informants, who were paid on a monthly basis or daily basis, during the period January to April 2004. The material particulars, i.e., funding, charges, office assignments, were not stated in the Job Orders. The acknowledgment portion for the Job Order workers were not duly signed by some of the workers. The Job Order does not bear a stamp of Civil Service compliance.¹²⁵
75. The audit team did not verify the date of the actual encashment of the check from Land Bank. They investigated why the check was issued two (2) days ahead of the Disbursement Voucher. These matters were not in the AOM nor in the Audit Investigation Report, since they only addressed the issues raised in the complaint.¹²⁶ The team made several observations during the conduct of their investigation.¹²⁷ The AOM does not contain any findings on non-compliance with CSC MC No. 17 and 24, nor on the date of *Allotment and Obligation Slips* and the date of their submission.¹²⁸
76. The Fact Finding Audit Report is a product of their investigation. Since there is no Special Audit Division

¹²¹ TSN dated October 24, 2012, pp. 48-52, 56.

¹²² TSN dated November 20, 2012, p. 36.

¹²³ TSN dated October 13, 2011, p. 12.

¹²⁴ Exhibits G to G-30

¹²⁵ TSN dated October 12, 2011, pp. 44-46; TSN dated May 23, 2012, pp. 11-12, 18-21; TSN dated June 26, 2012, p. 19.

¹²⁶ TSN dated September 25, 2012, pp. 10-11, 29.

¹²⁷ TSN dated May 23, 2012, p. 51; TSN dated June 26, 2012, pp. 14-15.

¹²⁸ TSN dated August 28, 2012, p. 63; TSN dated August 29, 2012, p. 41; TSN dated September 25, 2012, p. 23

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at the Regional Level, the investigation is undertaken by the Regional Legal Adjudication.

77. The basis of the Notice of Disallowance is the Audit Report, which contains the final findings with the management comment of the officials concerned.¹²⁹
78. She does not know where complainant Otagan was connected, nor that the latter was dismissed by the OMB for dishonesty and charged by said Office for falsification of Transcript of Record. The team did not conduct an investigation of Otagan since it is not their duty to do so.¹³⁰
79. She does not know why Mr. Jeremias Bucong was removed from the audit team.¹³¹
80. The signature of accused Indoyon appears in the Annual Budget of 2004.¹³² Based on the *Manual of Local Budgeting*, the Municipal Treasurer is a member of the Finance Committee, and he/she participates in the preparation of the budget.

The testimony of **Aurelia A. Alledo**, Registration Officer III at the National Statistics Office,¹³³ was dispensed with after the parties stipulated:

1. She holds the position of Registration Officer III at the National Statistics Office;
2. It is her duty to pull out vital documents from the database of the NSO including death certificates;
3. She received a subpoena from the Office of the Special Prosecutor directing her to submit the Death Certificate of a certain Edna C. Badang.
4. In compliance with the directive, she generated from the database the death certificate of a certain Edna C. Badang and submitted the same to the Office of the Special Prosecutor.¹³⁴

¹²⁹ Exhibit V; TSN dated October 13, 2011, pp. 26-27; TSN dated December 7, 2011, pp. 11-12; TSN dated June 26, 2012, p. 23; TSN dated August 29, 2012, p. 41.

¹³⁰ TSN dated July 25, 2012, p. 28.

¹³¹ TSN dated September 25, 2012, pp. 11-12.

¹³² Exhibit UUU; TSN dated September 26, 2012, pp. 7-10.

¹³³ TSN dated December 3, 2012, p. 2.

¹³⁴ Exhibit AAA; TSN dated December 3, 2012, pp. 5-7; Order dated December 3, 2012; Record, Vol. IV, p. 26.

The testimony of **Gilda F. Lauren**, Chief of the Central Records of the DILG,¹³⁵ was dispensed with after the parties stipulated on the authenticity and existence of the following:

1. DILG MC No. 99-65 dated April 23, 1999;
2. DILG MC No. 99-66 dated April 23, 1999;
3. DILG MC No. 99-144 dated August 11, 1999.¹³⁶

Harold P. Pareja, Director II of the Civil Service Commission,¹³⁷ testified:

1. He is the Director of the CSC Field Office, Tandag, Surigao del Sur, since April 2006.¹³⁸
2. He received three (3) subpoenas. The first required him to submit Office Orders issued by accused Luna to accused Lindo and Otagan; The second directed him to submit LGU Lingig's Job Orders from January to April 2004; The third directed him to submit Memorandum Circulars of the CSC related to Job Orders.¹³⁹
3. His staff retrieved the office orders for Otagan and accused Lindo, and CSC MCs No. 17 and 24. He issued certified true copies of the same. They did not find the 101 job orders for January to April 2004. He issued the Certification dated August 22, 2011. He sent the certified documents and the certification to the Office of the Special Prosecutor.¹⁴⁰
4. CSC-MC No. 17 and 24 were repealed sometime in 2007. Non-submission of job orders and contracts of service to the CSC would no longer invalidate them.¹⁴¹
5. Government agencies under the province, including Lingig, were required to submit job orders to the Field Office in Tandag, Surigao del Sur. He was not the Provincial Director of CSC, Surigao del Sur from January to April 2004. He has no personal knowledge on the submission of the subject job orders to the CSC Regional Office.¹⁴²

Luzviminda Basañez, a resident of Lingig,¹⁴³ testified:

¹³⁵ TSN dated December 3, 2012, p. 9.

¹³⁶ Exhibits, 2, AA and BB; TSN dated December 3, 2012, pp. 10-12; Order dated December 3, 2012; Record, Vol. IV, p. 26.

¹³⁷ TSN dated January 22, 2013, p. 4.

¹³⁸ TSN dated January 22, 2013, p. 6.

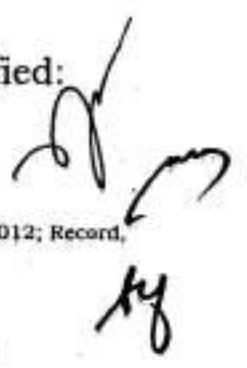
¹³⁹ TSN dated January 22, 2013, p. 7.

¹⁴⁰ TSN dated January 22, 2013, pp. 16-17; TSN dated January 23, 2013, pp. 8-9; Exhibit AAAA

¹⁴¹ TSN dated January 22, 2013, pp. 18-19.

¹⁴² TSN dated January 22, 2013, pp. 18-20.

¹⁴³ TSN dated February 26, 2013, p. 3.



1. She has been a resident of Brgy. Sabang, Lingig for 46 years. There are about 2,000 residents in their barangay. She does not know the names of all residents, but she knows them by their faces, because she sees them in the barangay.¹⁴⁴
2. In January 2013, Otagan went to her house and showed her the *Time Book and Payroll* for January to April 2004. She was surprised that her name appeared thereon even when she did not work, nor did she receive money for the said period.¹⁴⁵
3. She did not work as a Community Aide on January, March and April 2004, nor did she receive the PhP1,500.00 (January), PhP4,000.00 (March), and PhP5,000.00 (April) indicated in the *Time Book and Payroll*. She did not work as Informant on February 2004, nor did she receive PhP4,760.00 for the period. The signatures appearing next to her names in the *Time Book and Payrolls* are not hers. She agreed to execute an affidavit and to testify because she wanted to tell the truth, *i.e.*, she did not work and she did not receive any amount.¹⁴⁶
4. She knows Emma Linaza, Demetila Ebramo, Wilmar Seraspe, Farah Abelgas, Randy Linaza, Rusmen Biaco, and Ramonita Badang, all of whom are residents of *Barangay Sabang*. Emma Linaza and Demetila Ebramo are her sisters and her neighbors. The other individuals in the payrolls live in other barangays.¹⁴⁷
5. She, Emma Linaza, Wilmar Seraspe and Otagan went to Atty. Alciso at Mangagoy, Bislig. Emma Linaza's and Wilmar Seraspe's name were also in the *Time Book and Payroll*. Otagan brought the *Time Book and Payroll* to Atty. Alciso. After confirming to Atty. Alciso that she did not work for the Municipality of Lingig, Atty. Alciso drafted an affidavit. She signed the *Joint Affidavit* dated January 21, 2013 with Wilmar Cutamora Seraspe and Emma Veroy Linaza. She was beside them when they signed.¹⁴⁸
6. Theirs is the only "Basañez" family in Lingig. They are five in the family; she is the only one in her family and in Lingig named "Luzviminda Basañez". She has only been to two *barangays*, *i.e.* Sabang and Mandos.¹⁴⁹

¹⁴⁴ TSN dated February 26, 2013, pp. 8 and 11-12; TSN dated February 27, 2013, pp. 3-4.

¹⁴⁵ TSN dated February 26, 2013, pp. 24-26.

¹⁴⁶ Exhibits F, F-7, F-7-b, F-21, F-21-a, F-23, F-23-b, F-30, F-30-b, F-33; TSN dated February 26, 2013, pp. 34-35, 37, 41-43, 47-50.

¹⁴⁷ TSN dated February 26, 2013, pp. 11-13; February 27, 2013, pp. 28-29.

¹⁴⁸ TSN dated February 26, 2013, pp. 22-23, 28-29.

¹⁴⁹ TSN dated February 26, 2013, pp. 13-14; TSN dated February 27, pp. 8-9, 14.

7. Gerry Dano is the incumbent mayor and a resident of Lingig; Amalia Dano is a resident of Lingig and is connected with the LGU of Lingig. She does not know all the employees of the LGU of Lingig.¹⁵⁰
8. Her middle initial (V) stands for "Veroy".¹⁵¹
9. She knows that Otagan was previously connected with the Municipality of Lingig.¹⁵²
10. She had no employment from January to April 2004.¹⁵³

Rosalia Naranjo, Administrative Officer III at the Bureau of Local Government Finance (BLGF),¹⁵⁴ testified:

- a. On April 20, 2013, she issued a certified true copy from the original of the *Confirmation* of the designation of Benilda Gutang as OIC Municipal Treasurer of Lingig, vice Ebrencio Indoyon, who was detailed at the Surigao del Sur Provincial Treasurer's Office.¹⁵⁵
- b. Said document is with the BLGF, which exercises administrative and technical supervision over the LGU treasurers.¹⁵⁶

This Court admitted the following exhibits offered by the prosecution:¹⁵⁷

Exhibit	Document
A	Original Copy of Office Order No. 2005-XIII-002 directing the conduct of a fact finding audit investigation concerning the complaint of Rito Orillo against accused Luna, Jr. on the transaction subject of Disbursement Voucher 100-2004-04-1271.
B	Original Copy of Office Order No. 2005-XIII-002-A, designating Ms. Marah Mendoza as team leader.
C	Original Copy of Report dated November 16, 2005 of the Fact-Finding Audit Team on the complaint of Rito Orillo against accused Luna.
D	Original copy of Disbursement Voucher No. 100-2004-04-1271 dated April 14, 2004 of the

¹⁵⁰ TSN dated February 27, 2013, pp. 21-22.

¹⁵¹ TSN dated February 27, 2013, p. 7-8, 16, 19, 26-28.

¹⁵² TSN dated February 27, 2013, pp. 17-18.

¹⁵³ TSN dated February 26, 2013, pp. 7-8.

¹⁵⁴ TSN dated May 28, 2013, p. 5; Criminal Case No. SB-10-CRM-0111

¹⁵⁵ TSN May 28, 2013, pp. 20-21; First Indorsement dated October 5, 2005, Exhibit 0000.

¹⁵⁶ TSN dated May 28, 2013, p. 23.

¹⁵⁷ Resolution dated February 24, 2014; Record, Vol. V, p. 12; Prosecution's Formal Offer of Evidence dated September 16, 2013; Record, Vol. IV, pp. 218-243.

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	Municipality of Lingig for the amount of PhP2,327,291.32, signed by accused Lindo, Carlos, Indoyon, and Ferrando,
E	Original copy of Landbank Check No. 231481, in the amount of PhP2,327,291.32, signed by accused Lindo and Indoyon.
F and F-2	Original copy of <i>Time Book and Payroll</i> for Honorarium for April 2004 signed by accused Lindo, Luna and Ferrando.
F-3	Original copy of the <i>Time Book and Payroll</i> for Honorarium for April 2004 signed by accused Lindo, Luna and Ferrando.
F-4 to F-10	Original Copy of <i>Time Book and Payroll</i> for Honorarium for March 2004 signed by accused Lindo, Luna and Ferrando.
F-11	Original copy of <i>Time Book and Payroll</i> for Honorarium for April 2004, signed by accused Lindo, Luna and Ferrando.
F-12	Original copies of <i>Time Book and Payroll</i> for Honorarium for March 2004, signed by accused Lindo, Luna and Ferrando.
F-22 to F-24	Original copies of <i>Time Book and Payroll</i> for Per Diems for January 2004, signed by accused Lindo, Luna and Ferrando.
F-25 to F-32	Original copies of <i>Time Book and Payroll</i> for Honorarium for January 2004, signed by accused Lindo, Luna and Ferrando.
G, G-2 to G-3	Original copies of Job Orders for April 2004 signed by accused Lindo, Luna, Saligumba and Carlos.
G-4 to G-10	Original copies of Job Orders for April 2004 for the position of community aide, signed by accused Lindo, Luna, Saligumba and Carlos.
G-11	Original copies of Job Order for April 2004 for the position of community aide, signed by accused Lindo, Luna, Saligumba and Carlos.
G-12	Original copies of Job Orders for January and March 2004 for the position of community aide signed by accused Lindo, Luna, Saligumba and Carlos.
G-13 to G-19	Original copies of Job Orders for February 2004 for the position of Informant signed by accused Lindo, Luna, Saligumba and Carlos.
G-20	Original copies of Job Orders for February 2004 for the position of confidential employee assistant, signed by Leonor Otagan, Jr., accused Lindo, Luna, Saligumba and Carlos.
G-21 and G-22	Original copies of the Job Orders for February 2004 for the position of confidential employee assistant, signed by accused Lindo, Luna, Saligumba and Carlos.
G-23 to G-30	Original copies of Job Orders for January and March 2004 for the position of community aide.
H	Original copy of Allotment and Obligations No. 100-2004-06-0831 for Honorarium for April 2004, in the amount of PhP100,000.00.

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H-2	Original Copy of Allotment and Obligations No. 100-2004-06-0833 for Honorarium for April 2004, in the amount of PhP100,000.00.
H-3	Original Copy of Allotment and Obligations No. 100-2004-06-0832 for Honorarium for April 2004, in the amount of PhP100,000.00.
H-4	Original Copy of Allotment and Obligations No. 100-2004-06-0811 for Honorarium for March 2004, in the amount of PhP24,000.00.
H-5	Original Copy of Allotment and Obligations No. 100-2004-06-0809 for Honorarium for March 2004, in the amount of PhP32,000.00.
H-6	Original Copy of Allotment and Obligations No. 100-2004-06-0812 for Honorarium for March 2004, in the amount of PhP36,000.00.
H-7	Original Copy of Allotment and Obligations No. 100-2004-06-0813 for Honorarium for March 2004, in the amount of PhP60,000.00.
H-8	Original Copy of Allotment and Obligations No. 100-2004-06-0814 for Honorarium for March 2004, in the amount of PhP24,000.00.
H-9	Original Copy of Allotment and Obligations No. 100-2004-06-0810 for Honorarium for March 2004, in the amount of PhP60,000.00.
H-10	Original Copy of Allotment and Obligations No. 100-2004-06-0808 for Honorarium for March 2004, in the amount of PhP24,000.00.
H-11	Original Copy of Allotment and Obligations No. 100-2004-06-0834 for Honorarium for April 2004, in the amount of PhP100,000.00.
H-12	Original Copy of Allotment and Obligations No. 100-2004-06-0807 for Honorarium for March 2004, in the amount of PhP60,000.00.
H-13	Original Copy of Allotment and Obligations No. 100-2004-06-0819 for Honorarium for February 2004, in the amount of PhP28,560.00.
H-14	Original Copy of Allotment and Obligations No. 100-2004-06-0820 for Honorarium for February 2004, in the amount of PhP38,080.00.
H-15	Original Copy of Allotment and Obligations No. 100-2004-06-0818 for Honorarium for February 2004, in the amount of PhP71,400.00.
H-16	Original Copy of Allotment and Obligations No. 100-2004-06-0817 for Honorarium for February 2004, in the amount of PhP28,560.00.
H-17	Original Copy of Allotment and Obligations No. 100-2004-06-0822 for Honorarium for February 2004, in the amount of PhP28,560.00.
H-18	Original Copy of Allotment and Obligations No. 100-2004-06-0816 for Honorarium for February 2004, in the amount of PhP71,400.00.
H-19	Original Copy of Allotment and Obligations No. 100-2004-06-0815 for Honorarium for February 2004, in the amount of PhP42,840.00.

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H-20	Original Copy of Allotment and Obligations No. 100-2004-04-005 dated April 5, 2004, for Honorarium for February 2004, in the amount of PhP100,000.00.
H-21	Original Copy of Allotment and Obligations No. 100-2004-06-0821 for Honorarium for February 2004, in the amount of PhP71,400.00.
H-22	Original Copy of Allotment and Obligations No. 100-2004-06-0562, dated April 21, 2004, for Per Diems for January 2004, in the amount of PhP30,000.00.
H-23	Original Copy of Allotment and Obligations No. 100-2004-06-0561, dated April 29, 2004, for Per Diems for January 2004, in the amount of PhP30,000.00.
H-24	Original Copy of Allotment and Obligations No. 100-2004-06-0560, dated April 27, 2004, for Per Diems for January 2004, in the amount of PhP30,000.00.
H-25	Original Copy of Allotment and Obligations No. 100-2004-06-0823, for Honorarium for January 2004, in the amount of PhP36,000.00.
H-26	Original Copy of Allotment and Obligations No. 100-2004-06-0827, for Honorarium for January 2004, in the amount of PhP24,000.00.
H-27	Original Copy of Allotment and Obligations No. 100-2004-06-0828, for Honorarium for the period January 2004, in the amount of PhP60,000.00.
H-28	Original Copy of Allotment and Obligations No. 100-2004-06-0824, for Honorarium for January, 2004, in the amount of PhP60,000.00.
H-29	Original Copy of Allotment and Obligations No. 100-2004-06-0825, for Honorarium for January 2004, in the amount of PhP24,000.00.
H-30	Original Copy of Allotment and Obligations No. 100-2004-06-0829, for Honorarium for January 2004, in the amount of PhP60,000.00.
H-32	Original Copy of Allotment and Obligations No. 100-2004-06-0826, for Honorarium for January 2004, in the amount of PhP24,000.00.
I	Original Copy of Summary Allotment and Obligations of the Municipality of Lingig from January to April 2004.
J, J-2 to J- 10	Original copy of List of Municipal Officials and Employees Including Job Orders for January-April 2004, signed by accused Luna and Lindo.
K	Program Appropriation and Obligation by Object signed by Lindo, Saligumba and Luna.
Q	Letter dated September 22, 2004 addressed to the Provincial Auditor of Tandag, Surigao del Sur signed by accused Carlos.
R	Annual Investment Plan of the Municipality of Lingig for the Year 2004 signed by accused Luna.
T	Original Copy of Notarized Certification dated 16 June 2005 signed by accused Luna.
U	Summary List of Job Order Employees per Payroll prepared by State Auditor II Marah Mendoza.
V	Original Copy of Audit Observation Memorandum No 2005-001 dated July 28, 2005 addressed to accused Luna.

W	Original copy of Notice of Disallowances dated November 16, 2005 signed by Atty. Marisol D. Legaspi.
X	Original copy of Joint Affidavit of Marah Mendoza and Sally Ladaga subscribed on 19 November 2005.
Y	Original copy of Joint Reply Affidavit of Marah Mendoza and Sally Ladaga dated July 23, 2008.
Z	Certified true copy of Department of Interior and Local Government Memorandum Circular No. 99-66 dated April 23, 1999.
AA	Certified true copy of Department of Interior and Local Government Memorandum Circular No. 99-144 dated August 11, 1999.
BB	Certified true copy of Department of Interior and Local Government Memorandum Circular No. 99-65 dated April 23, 1999.
CC	Commission on Audit Circular No. 2003-003 dated July 30, 2003 with Subject "Audit And Liquidation of Intelligence And Confidential Funds of Local Government Units".
FF	Original copy of Affidavit of Leonor Otagan, Jr. dated 21 September 2005, with attachments.
HH	Original copy of the Certification dated 24 February 2011 signed by Atty. Nilda B. Plaras, Director IV, Head of the Intelligence/Confidential Fund Audit Unit, Commission on Audit.
II	Certified Correct copy of Service Record of accused Antonio Saligumba.
JJ	Appointment Paper of accused Antonio Saligumba.
KK	Oath of Office of accused Antonio Saligumba.
LL	Personal Data Sheet of accused Antonio Saligumba.
MM	Service Record of accused Roberto Luna, Jr.
NN	Service Record of accused Jethro Lindo.
OO	Personal Data Sheet of accused Jethro Lindo.
PP	Service Record of accused Venus Carlos.
QQ	Appointment Paper of accused Venus.
RR	Oath of Office of accused Venus Carlos.
SS	Personal Data Sheet of accused Venus Carlos.
TT	Service Record of accused Nilda Ferrando.
UU	Appointment Paper of accused Nilda Ferrando.
VV	Oath of Office of accused Nilda Ferrando.
WW	Personal Data Sheet of accused Nilda Ferrando.
ZZ	Office Order date May 17, 2004 addressed to Leonor Otagan, Jr. informing him of his termination as HRMO-Designate of the Municipality of Lingig.
AAA	Certified true copy of NSO Death Certificate of Edna Badang
BBB	Local Budget Circular No. 62 setting the Guidelines On The Grant of Honoraria In The Local Government Units.
FFF to FFF-12	Original copies of Job Orders signed by Leonor Otagan as HRMO of the Municipality of Lingig for January, February to March 2004.
GGG	Official Receipt No. 2539239 dated September 7, 2010 of the Office of the Provincial Treasurer,

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	Surigao del Sur in the name of accused Roberto M. Luna, Jr. in the amount of P1,500,000.00.
HHH	Official Receipt No. 2925302 dated September 21, 2010. of the Office of the Provincial Treasurer, Surigao del Sur in the name of accused Roberto M. Luna, Jr. in the amount of P110,800.00.
III	Certification dated September 30, 2010.
JJJ	Original copy of Office Order No. 07-2012 dated September 2010 signed by Mayor Henry Dano designating Mr. Erbito Penanueva as Human Resource Management Officer.
MMM	Original copy of Appointment Paper of Leonor Otagan, Jr. as Human Resource Management Officer on August 3, 1992 signed by Amerosin Onsing
NNN	Office Order No. 2 dated May 20, 2004 designating Jethro Lindo as HRMO of the Municipality of Lingig.
OOO	Original copy of Office Order dated May 17, 2004 to Leonor Otagan, Jr. terminating the designation of the HRMO.
PPP	Original copy of Letter complaint of Leonor Otagan, Jr. dated October 25, 2004 addressed to the Chairman, Civil Service Commission.
QQQ	Original copy of 2 nd Indorsement letter dated February 7, 2005 from Elizabeth Zosa, Commission on Audit Central Office pertaining to the complaint of Mr. Rito Orillo and the request of the Office of the Ombudsman Mindanao to conduct audit investigation with attached complaint of Rito Orillo.
RRR	Letter complaint of Rito Orillo dated October 21, 2004 addressed to Antonio Valenzuela, Deputy Ombudsman for Mindanao.
SSS	Original copy of Letter request dated May 5, 2005 addressed to Roberto Luna, Jr. signed by Jeremias Bucong.
TTT	Original copy of Letter dated June 8, 2005 addressed to Roberto Luna, Jr. signed by Jeremias Bucong.
UUU	Original copy of Folder of the Annual Budget for the year 2004 of the Municipality of Lingig.
VVV	Original copy of 2 nd Indorsement letter dated June 24, 2005 from Elizabeth Zosa, Commission on Audit, Central Office pertaining to the complaint of Mr. Leonor Otagan, Jr. and the request of the Office of the Ombudsman, Mindanao to conduct an audit investigation with attached complaint of Leonor Otagan, Jr.
VVV-1	Original copy of Letter complaint of Mr. Leonor Otagan, Jr. with attachments.
WWW	Letter dated September 21, 2005 of Leonor Otagan, Jr. addressed to Atty. Marisol Legaspi.
WWW-1	Attached Affidavit dated 21 September 2005 of Leonor Otagan, Jr. including the attachments.
XXX-XXX-1	Submission of Joint Reply Affidavit dated August 8, 2008 pertaining to OMB-Mindanao Case No. OMB-M-C-0109-B with attached Joint Reply affidavit dated August 8, 2008.

AAAA	Original copy of Certification dated August 22, 2011 issued by Director II Harold Pareja stating that no copies of the job orders for January to April 2004 are available in their Office.
BBBB	Certified Machine Copy of Civil Service Commission Memorandum Circular No. 24, series of 2002 pertaining to the Policy Guidelines for Contract of Services.
CCCC	Civil Service Commission Memorandum Circular No. 17, series of 2002 on the Policy Guidelines for Contract of Services.
HHHH	Sworn Affidavit of Luzviminda V. Basañez, Wilmar C. Seraspe and Emma Linaza.
OOOO	Certified Duplicate Copy of 1 st Indorsement, October 5, 2005 of the Bureau of Local Government Finance, Department of Finance, Central Office.

In its Resolutions dated March 24, 2014 and April 25, 2014, the Court denied¹⁵⁸ the *Motions for Leave of Court to File Demurrer to Evidence* separately filed by accused Luna and Lindo, and accused Carlos and Ferrando.¹⁵⁹

In its Resolution promulgated on July 15, 2015, this Court dismissed the case against accused Saligumba, after the prosecution confirmed his death on September 15, 2014.¹⁶⁰

The defense presented the following witnesses: 1) accused Jethro P. Lindo, 2) Leody C. Enriquez, 3) Marlo Lanuza, 4) accused Venus M. Carlos, 5) Lolita D. Dapitanon, 6) Ruth C. Beniga, 7) Jose Judilla, Jr., 8) accused Nilda T. Ferrando, 9) Herbert E. Luna, 10) Teofilo Q. Macatiog Jr., 11) accused Ebrencio F. Indoyon, Jr., and, 12) accused Roberto M. Luna, Jr.

Accused **Jethro P. Lindo**, Secretary to the Sangguniang Bayan of Lingig,¹⁶¹ testified:

1. In 2004, he was the Executive Assistant IV at the Office of the Mayor. He served as the private secretary of accused Luna, before he was promoted as Executive Assistant.¹⁶²
2. As Executive Assistant IV, he served as the alter ego of Mayor Luna. He acted on documents

¹⁵⁸ Resolution dated March 24, 2014; Record, Vol. V, p. 37; Resolution dated April 25, 2014; Record, Vol. V, p. 83.

¹⁵⁹ Record, Vol. V, pp. 26-29, 48-55.

¹⁶⁰ Record, Vol. V, p. 345; Certificate of Death, Record, Vol. V, p. 344.

¹⁶¹ Lindo's Judicial Affidavit dated June 3, 2014, p. 2; TSN dated October 22, 2013, p. 9.

¹⁶² TSN dated August 26, 2014, pp. 30-31.

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submitted to the Office of the Mayor and signed documents on behalf of Mayor Luna, including the regular transactions, *i.e.*, documents regarding claims; vouchers for payrolls/salaries and wages, including those of job order employees, and checks.¹⁶³

3. Accused Luna, through Office Order No. 2 dated May 20, 2004, designated him as HRMO. His duties as HRMO include interviewing applicants, preparing job orders, and certifying the *Time Book and Payroll* of job order employees. He was performing the duties of HRMO, upon the directive of accused Luna, even before Office Order No. 2 was issued. There is no plantilla position of HRMO. The Municipal Mayor is in charge of the Human Resource Management in the Municipality.¹⁶⁴
4. He is familiar with the names of the job order employees but could no longer recall their faces. He could not recall if Edna C. Badang was one of them.¹⁶⁵
5. He interviewed each applicant and prepared the job orders, subject of the present case. Job order employees were required to submit their biodata with their photo. Since job order employees were not regular, their work would last, sometimes, for only three (3) months.¹⁶⁶
6. Only residents of the Municipality of Lingig can be hired as Job Order employees. The Certification of the *Punong Barangay* serves as proof of residency. The job order workers personally applied for the job. Some were recommended by barangay officials and other informal leaders in the municipality. The individuals in the Job Orders are "warm bodies."
7. The hiring is done by the Office of the Mayor but the mayor is not involved in the preparation of Job Orders.¹⁶⁷
8. He forwarded the job orders to the budget officer and accountant for their certification as to the

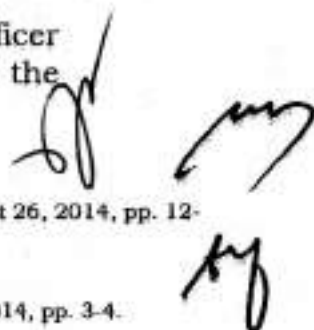
¹⁶³ TSN dated August 26, 2014, pp. 16-17 and 27.

¹⁶⁴ Exhibit NNN; Lindo's Judicial Affidavit dated June 3, 2014, p. 2; TSN dated August 26, 2014, pp. 12-15 and 38.

¹⁶⁵ TSN dated August 26, 2014, pp. 18, 20 and 28.

¹⁶⁶ TSN dated August 26, 2014, p. 33.

¹⁶⁷ TSN dated August 26, 2014, pp. 33-34, 39. Lindo's Judicial Affidavit dated June 3, 2014, pp. 3-4.



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existence of appropriation and completeness of documents, and to the Mayor for his approval.¹⁶⁸

9. He reviewed and signed the *Time Book and Payrolls* in good faith. He checked and confirmed that the persons listed therein rendered the service indicated in the job order.¹⁶⁹
10. He prepared a *List of Municipal Official/Employees Including Job Order Employees*, for the months of January to April 2004 and submitted the same to the COA Auditor in relation to a special audit investigation.¹⁷⁰ The list was certified as correct by accused Luna. He is not aware that said list did not jibe with that in the subject job orders.¹⁷¹
11. He provided an ambulance for the COA auditors' conduct of verification in the barangays. He was informed by the assigned driver that the COA auditors asked him to bring them back to the city.¹⁷²
12. COA did not conduct an exit conference. The Audit Team sent the Notice of Disallowance via registered mail on November 29, 2005; He received the Notice of Disallowance on December 5, 2005.¹⁷³
13. He was surprised to have been included in the instant case for signing the *Time Book and Payroll* and for preparing the job orders.¹⁷⁴ His participation in the disbursement of the subject PhP1,610,800.00 was limited to the preparation of the Job Orders.
14. There is nothing irregular with the disbursement of PhP1,610,800.00. The *Sangguniang Bayan* of Lingig approved Resolution No. 229, series of 2003, adopting the Annual Budget of the LGU for Calendar Year 2004. Accused Luna approved the Resolution. The *Statement of Statutory and Contractual Obligations* and the *Program Appropriation and Obligation by Object* prove that the charging of the amount is not irregular.¹⁷⁵

¹⁶⁸ Lindo's Judicial Affidavit dated June 3, 2014, pp. 3-4.

¹⁶⁹ Lindo's Judicial Affidavit dated June 3, 2014, p. 3; TSN dated August 26, 2014, pp. 21, 24-25.

¹⁷⁰ TSN dated August 26, 2014, pp. 28-29.

¹⁷¹ Exhibits G to G-30; TSN dated August 26, 2014, pp. 28-29.

¹⁷² TSN dated August 26, 2014, pp. 41-42.

¹⁷³ Lindo's Judicial Affidavit dated June 3, 2014, p. 5.

¹⁷⁴ Lindo's Judicial Affidavit dated June 3, 2014, p. 3;

¹⁷⁵ Lindo's Judicial Affidavit dated June 3, 2014, p. 6.

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15. The Municipal Budget Office determines the sources of funds for the honorarium or *per diems* of the job order workers. The Municipal Budget Officer is the one in charge of budgeting, *i.e.*, charging the salaries.¹⁷⁶
16. He is not aware that the audit team did not verify the lists in the Job Orders and in the *Time Book and Payroll* after accused Luna told them that the names listed therein are just dummies.¹⁷⁷
17. When he talked to some of the job order workers, they told him that nobody interviewed them.¹⁷⁸
18. In 2004, peace and order was part of the program of the Municipality. The peace and order condition in the municipality was and still is very volatile. Most of the barangays in the Municipality are mountain or mountainous barangays. Many CPP-NPAs are operating in Lingig. There are a number of clashes between the NPA and government forces in these areas.¹⁷⁹
19. Accused Luna was abducted twice while former Mayor Henry Dano was abducted once, both by the New People's Army. The Municipal Police Station was also attacked by the NPA. The attackers divested the local police of their firearms. They also went to accused Luna's house and took all the firearms of accused Luna's bodyguards.¹⁸⁰
20. In view of the peace and order situation in the Municipality, the government needed to intensify its peace and order effort by hiring informants and confidential persons who would monitor the movement of enemy forces.¹⁸¹
21. He was appointed as the Secretary to the Sangguniang Bayan by former Municipal Vice-Mayor Henry Dano.
22. He was not aware that Leonor Otagan was the designated HRMO before May 20, 2004. The appointment of Mr. Otagan was for Municipal Government Assistant Department Head.¹⁸²

¹⁷⁶ TSN dated August 27, 2014, p. 5.

¹⁷⁷ Exhibit G; TSN dated August 26, 2014, pp. 42-43.

¹⁷⁸ Lindo's Judicial Affidavit dated June 3, 2014, p. 5.

¹⁷⁹ TSN dated August 26, 2014, pp. 35-38.

¹⁸⁰ TSN dated August 26, 2014, p. 36.

¹⁸¹ TSN dated August 26, 2014, p. 37.

¹⁸² TSN dated August 26, 2014, p. 15.



Leody C. Enriquez, resident of Poblacion, Lingig,¹⁸³ testified:

1. He is a security guard at the house of the Municipal Mayor.
2. In 2004, he and several others were hired as job order workers by LGU Lingig. His functions included, "*maghanap ng mga impormasyon sa mga taga barangay tungkol sa aktibidad ng mga NPA sa Lingig.*" The others were assigned in different *barangays* but he does not know where.¹⁸⁴
3. He was recommended by *Barangay Kagawad* Leticia Delagiron. He was employed only for February 2004. He and accused Lindo know each other. Accused Lindo interviewed him and explained to him his duties and functions as a job order worker.¹⁸⁵
4. He was not required to accomplish a Daily Time Record for his attendance. After rendering service as an informant, he went to the Treasurer's Office to get his salary for one month. He signed the payroll as proof of receipt of his salary. He was not required to go to the Municipal Accountant's Office when he applied and even until he was hired.¹⁸⁶
5. He was not required to submit an identification card prior to the release of his honorarium or compensation. He was not hired again as a Job Order worker.¹⁸⁷
6. He had no issue that his compensation was paid monthly. What is important is that he was compensated for his services.¹⁸⁸
7. There are many NPA members in Lingig. They are active in *Barangays* San Roque and Bugak. Accused Luna was kidnapped twice by the NPA, but he was released. Former Mayor Henry Dano was also kidnapped by the NPA.¹⁸⁹

¹⁸³ TSN dated September 29, 2014, p. 6.

¹⁸⁴ Enriquez's Judicial Affidavit dated September 23, 2014, p. 2; TSN dated September 29, 2014, pp. 10-11, 25.

¹⁸⁵ TSN dated September 29, 2014, p. 15.

¹⁸⁶ Exhibit F-20; Enriquez's Judicial Affidavit dated September 23, 2014, pp. 2-3; TSN dated September 29, 2014, pp. 12-13 & 23-24.

¹⁸⁷ TSN dated September 29, 2014, p. 24.

¹⁸⁸ Enriquez's Judicial Affidavit dated September 23, 2014, p. 3.

¹⁸⁹ Enriquez's Judicial Affidavit dated September 23, 2014, p. 2; TSN dated September 29, 2014, pp. 20-22.

8. He does not recall being interviewed by an auditor or a group from COA, regarding his employment as a job order worker.¹⁹⁰
9. He does not know if he is the only Leody Enriquez in their municipality. He is the Leody Enriquez referred to in the payroll and in the Job Order.¹⁹¹

Marlo Lanuza, caretaker and resident of Poblacion, Lingig,¹⁹² testified:

1. He works at the Municipal Mayor's residence as a *bantay*.
2. In 2004, he was hired, for one month, as a job order worker and as community aide informant by the Municipality of Lingig; He was tasked to observe people who were not from Lingig, and report any suspicious activities. He was recommended by his neighbor, Elmer Villamucho.¹⁹³
3. He and accused Lindo know each other; Accused Lindo interviewed him and explained his duties and functions as job order worker. Accused Luna and Lindo know that he is one of the job order workers of the Municipality of Lingig for February 2004.¹⁹⁴
4. He was not required to go to the Office of the Municipal Accountant when he was applying as job order worker; he went to the office of accused Lindo.¹⁹⁵
5. He was not required to accomplish any Daily Time Record for attendance when he was employed. He went to the Treasurer's Office to get his salary for one month. He signed the *Time Book and Payroll* for February 2004, as proof of receipt of his salary. Accused Ferrando did not require him to submit an identification card or a Community Tax Certificate before he was given his salary. His salary was based on a daily rate, but it was released to him at the end of the month.¹⁹⁶

¹⁹⁰ Enriquez's Judicial Affidavit dated September 23, 2014, p. 3; TSN dated September 29, 2014, p. 25.

¹⁹¹ Exhibit 2-Indoyon; TSN dated September 29, 2014, p. 26.

¹⁹² Judicial Affidavit dated September 23, 2014; TSN dated September 29, 2014, pp. 28-30.

¹⁹³ Lanuza's Judicial Affidavit dated September 23, 2014, p. 2; TSN dated September 29, 2014, pp. 30-31, 39.

¹⁹⁴ TSN dated September 29, 2014, p. 31, 35.

¹⁹⁵ TSN dated September 29, 2014, p. 47.

¹⁹⁶ Lindo's Judicial Affidavit dated June 3, 2014, p. 4.

6. He had no participation in the preparation of the *Time Book and Payroll*. He did not read the other entries in said document; he only signed opposite his name upon receiving his pay.¹⁹⁷
7. His name does not appear on the list containing the names of municipal employees and officials prepared by accused Mayor Lindo and certified correct by accused Luna. His name does not appear in the job orders for January, March and April 2004.¹⁹⁸
8. He is not aware if Disbursement Voucher No. 100-2004-04-1271 was actually processed by the Municipal Accountant.¹⁹⁹
9. He was not interviewed by the COA Audit Team.²⁰⁰

Accused **Venus M. Carlos**, Municipal Accountant of Lingig,²⁰¹ testified:

1. The payment of honoraria and per diems of 101 Job Order workers, for the period January to April 2004, passed through a regular process before the funds were released.²⁰²
2. Under the Local Government Code, the Municipal Accountant performs two (2) functions: i) accounting; and, ii) internal audit services of the LGU. Her official duties and functions include:
 - a. Prepare and submit financial statements to the Municipal Mayor and the Sangguniang Bayan;
 - b. Apprise the Sangguniang Bayan and other local government officials on the financial condition and operations of the LGU;
 - c. Certify the availability of budgetary allotment to which expenditures and obligations may be properly charged;
 - d. Prepare statements of cash advances, liquidations, salaries, allowances, etc.;
 - e. prepare statements and liquidation of journal vouchers;
 - f. Maintain internal audit system;

¹⁹⁷ Exhibit F-20; Lanuza's Judicial Affidavit dated September 23, 2014, p. 3; TSN dated September 29, 2014, pp. 43-44.

¹⁹⁸ Exhibits G to G-10; TSN dated September 29, 2014, pp. 38-39.

¹⁹⁹ TSN dated September 29, 2014, p. 47.

²⁰⁰ Lanuza's Judicial Affidavit dated September 23, 2014, p. 3; TSN dated September 29, 2014, pp. 31-32, 34, 46; Exhibit F-20.

²⁰¹ TSN dated January 26, 2015, pp. 6-7; Carlos' Judicial Affidavit dated January 19, 2015, Exhibit 62, p. 1.

²⁰² Carlos' Judicial Affidavit dated January 19, 2015, pp. 14-15.

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- g. Maintain individual ledgers for officials and employees of the LGU pertaining to payrolls and deductions;
 - h. Prepare journals and the analysis of obligations and maintain and keep all records and reports related thereto; and,
 - i. Exercise such other duties and functions as may be required by law.²⁰³
- 3. The ALOBS for DV No. 100-2004-04-1271 was prepared by the Office of the Municipal Mayor; the requesting official was the Mayor himself. All the ALOBS were duly signed by the Municipal Mayor. The Office of the Municipal Budget Officer reviewed the ALOBS, together with its supporting documents. The ALOBS were duly signed by accused Saligumba. Thereafter, the ALOBS were forwarded to the Municipal Accountant's Office.²⁰⁴
 - 4. Ms. Lolita Delageron-Dapitanon, the bookkeeper at the Office of the Municipal Accountant, forwarded the subject ALOBS to her, together with the supporting documents.
 - 5. She reviewed, checked and confirmed that the ALOBS were signed by accused Luna and accused Saligumba, certifying as to the existence of appropriation. She also relied on the review and evaluation conducted by Ms. Dapitanon; She signed all the ALOBS, certifying as to the obligation of allotment.²⁰⁵
 - 6. After reviewing the documents and certifying the completeness and propriety of the attached supporting documents, she signed DV No. 100-2004-04-1271 dated April 14, 2004. There was no report of any irregularity as to the salaries of the regular employees.²⁰⁶
 - 7. The cash advance pertained to the (i) salaries for the regular employees in the amount of PhP716,491.12; and, (ii) honorarium for the job order employees in the amount of PhP1,610,800. The Audit Team did not find any irregularity in the cash advance for the salaries of the regular employees of Lingig for April 2004. She certified the completeness of the documents for both salaries of job order workers and regular employees.²⁰⁷

²⁰³ Carlos' Judicial Affidavit dated January 19, 2015, p. 2.

²⁰⁴ Carlos' Judicial Affidavit dated January 19, 2015, p. 5.

²⁰⁵ Carlos' Judicial Affidavit dated January 19, 2015, pp. 6-7.

²⁰⁶ Carlos' Judicial Affidavit dated January 19, 2015, pp. 7-8; TSN dated January 27, 2015, p. 14.

²⁰⁷ TSN dated January 27, 2015, p. 21; Judicial Affidavit, p. 7.

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8. She signed the Job Orders for the 101 job order employees in her capacity as Municipal Accountant.²⁰⁸

9. Since the cash advance pertained to the honorarium and per diems of Job Order employees hired under the Office of the Municipal Mayor, the following charges were made:
 - i. 20% Peace and Order Funds, PhP344,000.00;
 - ii. 20% National Security Mission Funds, 648,000.00;
 - iii. 1011 Other Expenses, 348,000.00;
 - iv. 1011 Administrative Support, 80,000.00;
 - v. 1091 100,000.00;
 - vi. 1011 90,000.00.²⁰⁹

10. The findings of the COA Audit Team refer to the need of a provision in the Annual Budget for 2004 for Confidential/Intelligence Funds; the cash advance was for intelligence expenses. The Disbursement Voucher and the ALOBS will readily show that the cash advance pertains to the payment of honorarium of Job Order employees. The Fact-Finding Audit Report indicates to which funds the amount of PhP1,610,800.00 was charged. There were provisions for Peace and Order and National Security Mission Programs in the 20% Development Fund. There was no charge made to the Confidential or Intelligence Fund.²¹⁰

11. The hiring of the Job Order employees was directly initiated by the Office of the Mayor, in line with the Peace and Order and Public Safety Programs of the LGU of Lingig.

12. The Mayor has the power to implement peace and order programs for the Municipality to ensure the security and general welfare of the residents. The AIP, CY 2004 of Lingig provides for *Peace and Order Programs*, and *National Security Mission Programs* in the 20% Development Fund. The cash advance for the honorarium of the Job Order employees can be properly charged to the Peace and Order Funds, and the National Security Mission Project Funds.²¹¹

13. The Job Orders were considered maintenance and other operating expenses. They are not considered personal services.²¹²

²⁰⁸ Carlos' Judicial Affidavit dated January 19, 2015, p. 13.

²⁰⁹ Carlos' Judicial Affidavit dated January 19, 2015, p. 8.

²¹⁰ Carlos' Judicial Affidavit dated January 19, 2015, p. 9.

²¹¹ Carlos' Judicial Affidavit dated January 19, 2015, pp. 9-10 & 13.

²¹² TSN dated January 27, 2015, p. 16.



14. The municipal accountant has the authority to determine how an allotment to an expenditure or obligation would be charged, pursuant to Section 157 of the Government Accounting and Auditing Manual, Vol. 1. A municipal accountant cannot certify an obligation of allotment until a certification as to the existence of an appropriation (based on appropriation ordinance) is made by the municipal budget officer.
15. The LGU faithfully observed and complied with the mandate of Section 344 of R.A. No. 7160 in the certification and approval of vouchers.²¹³
16. Pursuant to the *Manual on the New Government Accounting System for Local Government Units*, the requesting department/office shall prepare the ALOBS for every obligation. The same shall be signed by the department or office head as requesting official, based on the disbursement voucher and supporting documents. The department or office head shall forward the ALOBS and its supporting documents to the Office of the Municipal Budget Officer. The municipal budget officer certifies the existence of appropriation in the appropriation ordinance for the purpose.²¹⁴
17. Under the *Manual*, obligations refer to the amounts committed to be paid by the LGU for any lawful act by an accountable officer for and in behalf of the LGU. Reviewing, evaluating appraising, examining and analyzing are all part of her internal audit service functions.²¹⁵
18. It is the duty and responsibility of the Municipal Budget Officer to certify the existence of appropriation legally made for the purpose, based on appropriation ordinance. Prior to certifying the ALOBS, the municipal budget officer is mandated to verify the existence of such appropriation in the appropriation ordinance.²¹⁶
19. The department or office head, as requesting official, forwards the ALOBS and its supporting documents to the Municipal Budget Officer who shall certify the existence of appropriation legally made for the purpose.

²¹³ Carlos' Judicial Affidavit dated January 19, 2015, pp. 2-3.

²¹⁴ Carlos' Judicial Affidavit dated January 19, 2015, p. 3; TSN dated January 27, 2015, pp. 11-12, 15.

²¹⁵ Carlos' Judicial Affidavit dated January 19, 2015, p. 3; TSN dated January 27, 2015, p. 15.

²¹⁶ Carlos' Judicial Affidavit dated January 19, 2015, p. 3; TSN dated January 27, 2015, pp. 11-12.

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20. Thereafter, the Municipal Budget Officer forwards the ALOBS and its supporting documents to the Office of the Municipal Accountant.²¹⁷
21. The Office of the Municipal Accountant reviews the ALOBS and the supporting documents and certifies as to obligation of allotment by signing the appropriate box in the ALOBS. It is her function to obligate funds for the purpose for which any cash advance shall be drawn.²¹⁸ She would first check if the Municipal Budget Officer had already certified as to the existence of appropriation and had signed the ALOBS.
22. Without the certification as to the completeness and accuracy of the payrolls, the documents will not proceed to the next approving authority, i.e., municipal treasurer.²¹⁹
23. It was the Sangguniang Bayan of Lingig, which approved and passed the appropriation ordinance, through Resolution No. 229, Series of 2003. Hence, the alleged violation of DILG MC No. 99-144 dated August 11, 1999, when the amount of PhP450,000.00 from the Peace and Order Funds was combined with the PhP1,000,000.00, is better addressed to the Sanguniang Bayan of Lingig.²²⁰
24. The COA Audit Report states that the AIP for Calendar Year 2004, includes the Peace and Order Public Safety Fund amounting to PhP450,000.00 and the National Security Mission Project amounting to PhP1,000,000.00.²²¹
25. The release of PhP1,610,800.00 went through the regular, normal and standard process. First, the HRMO in the Office of the Municipal Mayor prepared the Job Order and signed the same as requesting officer, thereafter the Municipal Treasurer as disbursing officer, the Municipal Accountant and the Municipal Mayor signed the same. She was a signatory of said request.²²²
26. The Budget Office has a logbook to keep track of the charges made to various appropriations; the Obligation Request is numbered accordingly for records purposes. As Municipal Accountant, she

²¹⁷ Carlos' Judicial Affidavit dated January 19, 2015, pp. 3-4; TSN dated January 27, 2015, pp. 12-13.

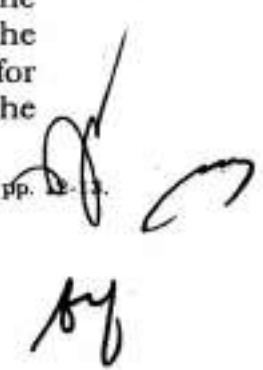
²¹⁸ Carlos' Judicial Affidavit dated January 19, 2015, p. 4 and 12.

²¹⁹ TSN dated January 26, 2015, pp. 17-18.

²²⁰ Exhibit UUU-19; Carlos' Judicial Affidavit dated January 19, 2015, p. 13.

²²¹ Carlos' Judicial Affidavit dated January 19, 2015, pp.12-13.

²²² Carlos' Judicial Affidavit dated January 19, 2015, pp. 15-16.



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also has a logbook to keep track of the appropriations she signed after ascertaining the existence of allotment.²²³

After checking the payrolls as to their completeness and accuracy, the Municipal Treasurer's Office prepared the Disbursement Voucher for the withdrawal of the net payroll amount. The Disbursement Voucher was signed by the Municipal Treasurer and the Municipal Mayor. She signed the Disbursement Voucher in her capacity as Municipal Accountant.

27. The check, in the name of the Disbursement Officer, was prepared based on the approved disbursement voucher. The check was signed by the Municipal Treasurer and the Municipal Mayor; the same was presented to the bank for encashment. The Disbursing Officer had custody of the cash before pay-out.²²⁴
28. The payroll was signed by the concerned Job Order employee upon receiving his/her wage for the period covered. As a general rule, daily time records are attached to the payroll. However, the COA did not require submission of the DTRs in the case of the 101 Job Order employees.²²⁵
29. She was not furnished a copy of the Fact-Finding Audit Report by the COA. She only learned about the COA's findings when the Office of the Ombudsman-Mindanao furnished her with a copy in relation to the conduct of a preliminary investigation against them.²²⁶
30. The ALOBS of Disbursement Voucher No. 100-2004-04-1271 were supported by job orders and payrolls for the honorarium of the Job Order employees, and the Payrolls for the regular employees.²²⁷
31. The salaries of the regular employees is under the allotment for personal services. The honorarium of job order employees is charged to the maintenance and other operating expense (MOOE).²²⁸

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²²³ Carlos' Judicial Affidavit dated January 19, 2015, p. 16.

²²⁴ Carlos' Judicial Affidavit dated January 19, 2015, p. 16.

²²⁵ Carlos' Judicial Affidavit dated January 19, 2015, p. 16.

²²⁶ Carlos' Judicial Affidavit dated January 19, 2015, p. 7.

²²⁷ TSN dated January 27, 2015, p. 14.

²²⁸ TSN dated January 27, 2015, p. 16.

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32. She certified the completeness of the documents for both salaries of job order employees and regular employees.²²⁹
33. Ms. Dapitanon is in charge of checking, evaluating and verifying the ALOBS and its supporting documents, and reviewing and recording the same in their logbook.²³⁰
34. The Accounting Office checks the completeness and accuracy of the payrolls. In particular, the bookkeeper, Ms. Dapitanon, initially reviews all the payrolls and job orders. After checking these documents, she will forward the same to her (accused Carlos) for final approval and checking.²³¹
35. One of the biggest problems in their Municipality in 2004, and, even prior thereto, is the threat of communist insurgency and terrorism in the different barangays. Their barangay hall was attacked by the NPA and their Mayor was twice abducted by said group. The Mayor who succeeded accused Luna was also abducted by the NPA. The constant presence and harassments committed by the NPA had caused so much fear and panic to the residents.²³²
36. Accused Luna did not talk to her regarding the present case or the performance of her functions in relation to the present case.²³³

Lolita D. Dapitanon, Cashier III, former Bookkeeper assigned at the Office of the Municipal Accountant of Lingig,²³⁴ testified:

1. In 2004, she was a bookkeeper at the Office of the Municipal Accountant of Lingig. She assists the Municipal Accountant in reviewing, checking, and evaluating the documents submitted to their Office, and verifying and checking the existence of an allotment before certifying as to obligation allotment.
2. Sometime in 2004, she reviewed DV No. 100-2004-04-1271 dated April 14, 2004 and its supporting documents, *i.e.*, payrolls for the regular employees

²²⁹ TSN dated January 27, 2015, p. 21.

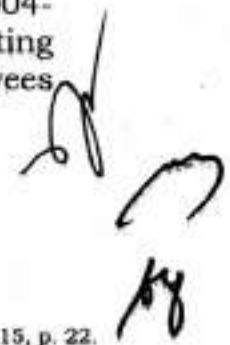
²³⁰ Carlos' Judicial Affidavit dated January 19, 2015, p. 5.

²³¹ TSN dated January 26, 2015, p. 17; TSN dated January 27, 2015, pp. 16-17

²³² Carlos' Judicial Affidavit dated January 19, 2015, pp. 9-10.

²³³ TSN dated January 26, 2015, p. 16.

²³⁴ Dapitanon's Judicial Affidavit dated January 19, 2015, p. 1; TSN dated January 26, 2015, p. 22.



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and *Time Book and Payrolls* for the Job Order workers.²³⁵

3. DV No. 100-2004-04-1271 pertains to two particulars: (i) salaries for the regular employees (PhP716,491.12); and, (ii) honorarium for the job order workers (PhP1,610,800).²³⁶
4. After reviewing and verifying the completeness of the supporting documents and signatures, she recorded the same in their Control Book and wrote the number in the disbursement voucher. She also made the necessary accounting entries. Afterwards, she forwarded DV No. 100-2004-04-1271 to Municipal Accountant Carlos.²³⁷
5. Her signature does not appear on the DV No. 100-2004-04-1271; it was accused Carlos, as the Municipal Accountant, who certified the completeness and propriety of the supporting documents.²³⁸
6. She saw accused Carlos review and check said Disbursement Voucher and the supporting documents and sign box B of said Disbursement Voucher.²³⁹
7. Disbursement Vouchers were prepared at the Municipal Treasurer's Office, Disbursement Voucher No. 100-2004-04-1271 dated April 14, 2004 shows that accused Ferrando (Cash Clerk, Municipal Treasurer's Office) prepared said voucher, being the claimant thereof.²⁴⁰ After preparing the check, the Office of the Municipal Treasurer returns the Disbursement Voucher to the Accounting Office.²⁴¹
8. The Office of the Municipal Accountant of Lingig has a Control Book for all appropriations to ascertain if there is available funding for any transaction or obligation.²⁴²
9. The ALOBS and its supporting documents are first checked by the Municipal Budget Officer, then forwarded to the Municipal Accountant, for the certification as to obligation of allotment.

²³⁵ Dapitanon's Judicial Affidavit dated January 19, 2015, pp. 3-4.

²³⁶ Dapitanon's Judicial Affidavit dated January 19, 2015, p. 4.

²³⁷ Dapitanon's Judicial Affidavit dated January 19, 2015, pp. 2-4.

²³⁸ TSN dated January 27, 2015, pp. 7-8.

²³⁹ Dapitanon's Judicial Affidavit dated January 19, 2015, p. 5.

²⁴⁰ Dapitanon's Judicial Affidavit dated January 19, 2015, p. 5; TSN dated January 26, 2015, p. 27.

²⁴¹ TSN dated January 26, 2015, p. 27.

²⁴² Dapitanon's Judicial Affidavit dated January 19, 2015, pp. 1-2; TSN dated January 27, 2015, pp. 6-7.

10. It appears that only the requesting officer and the Municipal Budget Officer signed the Obligation Request.²⁴³

Ruth C. Beniga, Director II, Civil Service Commission, CARAGA Region,²⁴⁴ testified:

1. Their Office does not have any records of job orders of LGU of Lingig from January to June 2004.²⁴⁵
2. In her capacity as Provincial Director of the CSC, Field Office of Surigao del Sur, she issued a Certification²⁴⁶ as to the non-availability of the Job Orders of the Municipality of Lingig for the periods June to December 2003 and January to June 2004,²⁴⁷ after they inspected the records.
3. Harold P. Pareja, PPA, was the Director of the CSC, Surigao del Sur. He assumed his position on January 29, 2010. Mr. Pareja issued a Certification that there is no record as to the 101 Job Order workers from June to December 2003.²⁴⁸
4. She is aware of Civil Service Memorandum Circular No. 24, Series of 2002, Subject: *Clarifications on Policy Guidelines for Contract of Services* which requires the submission of Job Orders to the CSC. The validity of the job order is not affected by its non-submission. The submission is for recording purposes and for consideration of the job order workers as government employees. Said requirement was subsequently amended. The LGUs are no longer required to submit copies of the job order to the CSC.²⁴⁹

Jose D. Judilla, Jr., Municipal Planning and Development Coordinator of the Municipality of Lingig,²⁵⁰ testified:

1. In 2004, he was an Information System Analyst at the Office of the Municipal Planning Development Office. He is familiar with some of the items in the

²⁴³ Dapitanon's Judicial Affidavit dated January 19, 2015, p. 2.

²⁴⁴ TSN dated February 23, 2015, p. 3.

²⁴⁵ TSN dated February 23, 2015, p. 6.

²⁴⁶ Exhibit 65; Exhibit 12 for accused Indoyon.

²⁴⁷ TSN dated February 23, 2015, p. 6.

²⁴⁸ TSN dated February 23, 2015, pp. 8-9.

²⁴⁹ Exhibit BBBB; TSN dated February 23, 2015, pp. 7, 13, 15-16.

²⁵⁰ TSN dated August 5, 2015, p. 5.



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AIP because he was the one who encoded the same in 2004.²⁵¹

2. As a System Analyst, he had the following duties:
 - a. Serves as the technical staff of the office;
 - b. Handles the data bank of the office;
 - c. Encodes documents like the annual implementation plan; and,
 - d. Perform other tasks assigned by the supervisor.²⁵²
3. His position is permanent. He is familiar with the rules, standard operating procedures for tasks related to the Municipal Planning Office, including circulars of the DILG pertaining to allocations.²⁵³
4. The Municipal Planning and Development Office prepares the AIP every year together with the Annual Implementation Plan for the 20% Development Fund as it is the secretariat of the Municipal Development Council.²⁵⁴
5. In 2004, the form for the AIP did not specify personnel services, MOOE and capital outlay; however, personnel services may be charged thereto. In the AIP present form, personnel services, MOOE and capital outlay are included.²⁵⁵
6. Sometime in 2004, there was an insurgency problem in their town. In fact, then Mayor Luna was twice abducted. Mayor Henry Dano was also abducted by the CPP-NPA.²⁵⁶ He could not tell whether the communists are still there; some people say that they are in the mountains.²⁵⁷

The parties stipulated on the following entries in the *Annual Investment Plan for Calendar Year 2004* of the Municipality of Lingig:²⁵⁸

- a. There are two (2) projects identified in the social part of the project or title: *first*, the National Security Issued Projects and Initiative, which includes the cost of services which are confidential in nature to carry on administrative activities and, *second*, other national security

²⁵¹ TSN dated August 5, 2015, p. 19.

²⁵² TSN dated August 5, 2015, p. 11.

²⁵³ TSN dated August 5, 2015, pp. 21-22.

²⁵⁴ TSN dated August 5, 2015, p. 13.

²⁵⁵ TSN dated August 5, 2015, p. 15.

²⁵⁶ TSN dated August 5, 2015, pp. 15-17.

²⁵⁷ TSN dated August 5, 2015, p. 18.

²⁵⁸ Exhibit R

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mission projects in the amount of PhP1,000,000.00 [Item No. 11];

- b. Item No. 14 refers to Peace and Order and Public Safety Funds, allocated under the 20% Development Fund for Calendar Year 2004, the purpose of which is for the maintenance of the peace and order condition and public safety of the municipality; it also covers the peace and order council's conduct of its regular meeting, including the administration of the People's Law Enforcement Board in the amount of PhP450,000.00; and,
- c. Items No. 11 and 14 indicates that the location is "Municipal Wide".²⁵⁹

Accused **Nilda T. Ferrando**, Cash Clerk I at the Municipal Treasurer's Office of Lingig,²⁶⁰ testified:

1. She is a Cash Clerk I at the Municipality of Lingig. Her basic functions as Cash Clerk include:
 - a. Receive check payments for payrolls from the Municipal Treasurer's Office;
 - b. Facilitate the encashment of check payments;
 - c. Disburse/release cash payments of salaries, wages and honoraria to municipal government officials and employees, including job order workers; and,
 - d. Liquidate the foregoing expenses.²⁶¹
2. On April 14, 2004, she received, from the Municipal Treasurer's Office, LBP Check No. 231481, in the amount of PhP2,327,291.32, for the payment of salaries of the regular (April 2004) and Job Order (January to April 2004) employees. She was the payee. She signed Box E of DV No. 100-2004-04-1271.²⁶²
3. On even date, she personally encashed LBP Check No. 231481 in the amount of PhP2,327,291.32 at the LBP, Bislig Branch.²⁶³

²⁵⁹ TSN dated August 5, 2015, pp. 7-10.

²⁶⁰ Ferrando's Judicial Affidavit dated August 29, 2015; Exhibit 1-Ferrando, p. 2; TSN dated September 15, 2015, p. 6; Criminal Case No. SB-10-CRM-0111

²⁶¹ Ferrando's Judicial Affidavit dated August 29, 2015, p. 3; TSN dated September 15, 2015, p. 18.

²⁶² Ferrando's Judicial Affidavit dated August 29, 2015, pp. 8-9.

²⁶³ Ferrando's Judicial Affidavit dated August 29, 2015, p. 9.

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4. In the afternoon of April 14, 2004, she started releasing the salaries of the regular employees for April 2004 and the honoraria and per diems of the job order employees. She did not ask the employees to submit photocopies of their IDs. Nothing in the *Time Book and Payrolls* will show that valid IDs were presented to her.²⁶⁴
5. She did not ask the regular employees to present an ID when she paid them their salary since she knows all of them.²⁶⁵
6. As standard procedure of the Municipal Treasurer's Office, job order employees should personally present themselves and present their valid identification cards to receive their honoraria and per diems.

She only released the payments after ascertaining the employees' personal identity. She required them to present their IDs with photos and compared their signatures thereon with their signatures on the payroll. She signed the required certifications on the payrolls.²⁶⁶
7. She liquidated said expense only in August 2004 because she delivered her second child, through caesarian section, in May 2004.²⁶⁷
8. The COA team did not interview her about the honoraria and *per diems* of the 101 Job Order employees.
9. She had no part in the preparation of the *Time Book and Payrolls*. The payrolls for the job order employees for January to April 2004 were submitted by the Mayor's Office to the Municipal Treasurer's Office.²⁶⁸
10. She first saw the Job Orders when they were submitted to the Municipal Treasurer's Office. They were already verified and signed by accused Lindo, the Municipal Budget Officer, Accountant, and Mayor.²⁶⁹
11. She did not prepare nor is she a signatory to the check. Marga P. Adlawan and Cynthia Cruz Coset

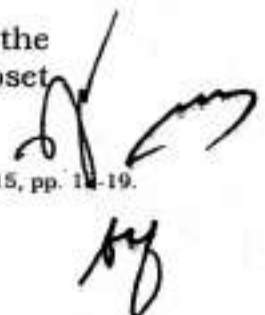
²⁶⁵ Ferrando's Judicial Affidavit dated August 29, 2015, p. 8; TSN dated September 15, 2015, pp. 18-19.

²⁶⁶ Ferrando's Judicial Affidavit dated August 29, 2015, pp. 7-8.

²⁶⁷ Ferrando's Judicial Affidavit dated August 29, 2015, pp. 9-10.

²⁶⁸ Exhibits F to F-32; Ferrando's Judicial Affidavit dated August 29, 2015, p. 5.

²⁶⁹ Ferrando's Judicial Affidavit dated August 29, 2015, p. 11.



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were assigned to prepare the voucher and the check. The municipal mayor and the municipal treasurer are the signatories of the checks.²⁷⁰

12. She was designated as the *claimant* in the disbursement voucher since she was the Cash Clerk. It was her duty to release payment and to liquidate the cash advance, right after payment.²⁷¹
13. Accused Luna has restituted the PhP1,610,800.00.²⁷²
14. The COA Audit report included her as Cash Clerk I, who received the cash advance for the salaries of regular employees and honoraria of the job order employees under Disbursement Voucher No. 100-2004-04-1271 dated April 14, 2004 and because of the certifications she made on the payrolls.²⁷³

Herbert Estrada Luna, Branch Manager of LandBank, Bislig Branch,²⁷⁴ testified:

1. He was assigned to LandBank, Bislig Branch from 2002 to 2004. He became its Branch Head on September 7, 2015. It is his duty to oversee all the transactions involving the branch.²⁷⁵
2. He brought a photocopy of LandBank Check No. 231481, including its validation. The check was signed by accused Lindo and Indoyon. The check was verified by the bank verifier, and approved for payment by the bank cashier. The front part of the check was stamped *paid* by the teller who paid the check.²⁷⁶
3. He brought a photocopy and a duplicate copy of the bank statement for Account Number 2162000104 in the name of the Municipality of Lingig. The bank statement shows that the amount of PhP2,327,291.32 was debited from said account on April 14, 2004.²⁷⁷

²⁷⁰ TSN dated September 15, 2015, p. 31.

²⁷¹ TSN dated September 15, 2015, pp. 23-24.

²⁷² Ferrando's Judicial Affidavit dated August 29, 2015, p. 11.

²⁷³ Exhibit 4; Ferrando's Judicial Affidavit dated August 29, 2015, pp. 3-4.

²⁷⁴ TSN dated January 27, 2016, pp. 5-6.

²⁷⁵ TSN dated January 27, 2016, pp. 8-9.

²⁷⁶ TSN dated January 27, 2016, p. 14.

²⁷⁷ TSN dated January 27, 2016, p. 17.

Teofilo Q. Macatiog, Jr., Records Officer III, Administrative Officer V of the Office of the Ombudsman, Mindanao,²⁷⁸ testified:

1. He is a Records Officer at the Office of the Deputy Ombudsman, Mindanao since 1993.²⁷⁹
2. He received a subpoena requiring him to come to Court.²⁸⁰

The parties stipulated on the due existence of:

- i. Decision dated August 14, 2008 of the Office of the Ombudsman-Mindanao in Case No. OMB-M-A-06-339-J, entitled "Luna vs. Otagan."²⁸¹
- ii. The Resolution dated September 24, 2007 of the Office of the Ombudsman-Mindanao in Case No. OMB-C-06-0465.²⁸²

Accused **Ebrencio F. Indoyon, Jr.**, former Municipal Treasurer of Lingig,²⁸³ testified:

1. He was the Municipal Treasurer of Lingig from 1999 until 2009.²⁸⁴ As such, he was a signatory of its checks.²⁸⁵
2. He knows his co-accused and the positions that they held.²⁸⁶
3. As Municipal Treasurer, his duties and responsibilities were:
 - a. Take charge of the Treasurer's Office;
 - b. Advise the Mayor, the Sanggunian and other local government officials concerned regarding disposition of local government funds and on such other matters relative to public finance;
 - c. Take custody and exercise proper management of the funds of the local government unit concerned;
 - d. Take charge of the disbursement of all local government funds the custody of which may be

²⁷⁸ TSN dated January 27, 2016, p. 22.

²⁷⁹ TSN dated January 27, 2016, p. 26.

²⁸⁰ TSN dated January 27, 2016, p. 30.

²⁸¹ Exhibit 53 to 53-H for Luna, Lindo, Carlos and Ferrando; Exhibit 28 to 28-1 for accused Indoyon; TSN dated January 27, 2016, pp. 36-37; Order dated January 27, 2016, p. 1; Record, Vol. V, p. 412.

²⁸² Exhibit 44 to 44-H for accused Luna, Lindo, Carlos and Ferrando; Exhibit 10 for accused Indoyon.

²⁸³ TSN dated February 24, 2016, p. 22. Criminal Case No. SB-10-CRM-0111]

²⁸⁴ TSN dated February 24, 2016, p. 24.

²⁸⁵ Indoyon's Judicial Affidavit dated February 10, 2016, p. 3; Record, Vol. V, p. 419; TSN dated February 24, 2016, p. 25.

²⁸⁶ Indoyon's Judicial Affidavit dated February 10, 2016, p. 3; Record, Vol. V, p. 419.

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- entrusted to him by law or other competent authority;
- e. Inspect private commercial and industrial establishments within the jurisdiction of the LGU in relation to the implementation of tax ordinances, pursuant to the provision under Book III of the Local Government Code;
 - f. Maintain and update the tax information system of the local government unit;
 - g. Exercise such other powers and perform such other duties and functions as may be prescribed by ordinances.²⁸⁷
4. As the Municipal Treasurer, he signed Box C of the subject disbursement voucher and certified that there was cash available in the amount of PhP2,327,291.32. The disbursement voucher was for the salaries and honorarium of regular and job order workers of the Municipality.²⁸⁸ The names of 101 workers who were paid honorarium and per diems are listed in Exhibit 1-Indoyon.²⁸⁹
5. He certified that cash was available on the basis of financial statements. He certified that funds were available for the Job Order workers based on the recommendation of the Budget Officer and the Municipal Accountant. The Municipal Budget Officer certifies as to the appropriation of account.²⁹⁰
6. He signed the disbursement voucher because it has been signed by the other signatories.²⁹¹
- It is not his duty to obligate. His duty is to disburse and collect. It is the Municipal Accountant who obligates the charges to any appropriation in the LGU only when there is a signature of the head of office.²⁹²
7. There is an appropriation for the regular salaries of the employees. PhP716,491.12 went to the salaries of the regular employees. The subject matter of this case refers to the salaries of the job order workers in the amount of PhP1,610,800.00. The amount was received by accused Ferrando - Cash Clerk.²⁹³
8. The Municipality sourced the amount of PhP1,610,800.00 from different offices and funds.

²⁸⁷ Indoyon's Judicial Affidavit dated February 10, 2016, p. 4; Record, Vol. V, p. 420.

²⁸⁸ TSN dated February 24, 2016, p. 26.

²⁸⁹ Indoyon's Judicial Affidavit dated February 10, 2016, p. 4; Record, Vol. V, p. 420.

²⁹⁰ TSN dated February 24, 2016, p. 30.

²⁹¹ Indoyon's Judicial Affidavit dated February 10, 2016, p. 8; Record, Vol. V, p. 424; TSN dated February 24, 2016, pp. 32 and 38.

²⁹² TSN dated February 24, 2016, p. 37.

²⁹³ TSN dated February 24, 2016, pp. 27-28.

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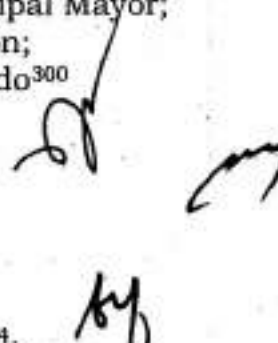
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including the Office of the Mayor and the Office of the Treasurer.²⁹⁴

9. There were available funds for the Job Order workers when the Municipal Accountant obligated as to the amount of the voucher.
10. The Municipal Accountant told him that there was a letter from the Municipal Mayor requesting for augmentation from the appropriation for the Office of the Municipal Treasurer. The Mayor would, therefore, be using the fund allotted for the Office of the Municipal Treasurer classified as *Other Services*. The Mayor requested for the amount of PhP100,000.00 from the appropriation of the Office of the Municipal Treasurer in order to augment the funding for Job Order workers.²⁹⁵
11. He did not know nor did he inquire where the amount will be used by the mayor for the requested augmentation. He did not inquire where the other funds came from.²⁹⁶
12. He does not know whether the Job Order workers who were paid from their office' fund actually rendered service. He does not know where said amount was spent for.²⁹⁷
13. He signed based on his belief that there is nothing wrong in sourcing funds for job order workers from the *Other Services* appropriation of the Office of the Municipal Treasurer.²⁹⁸
14. Accused Ferrando disbursed the payment as cash clerk in the payroll.²⁹⁹

The signatories in the payroll sign in the following order:

- a) Foreman;
- b) Municipal Mayor;
- c. Indoyon;
- d. Ferrando³⁰⁰



²⁹⁴ TSN dated February 24, 2016, p. 28.

²⁹⁵ TSN dated February 24, 2016, p. 40.

²⁹⁶ TSN dated February 24, 2016, p. 39.

²⁹⁷ TSN dated February 24, 2016, pp. 33-34.

²⁹⁸ TSN dated February 24, 2016, pp. 41-44.

²⁹⁹ TSN dated February 24, 2016, p. 48.

³⁰⁰ TSN dated February 24, 2016, pp. 46-48.

15. In a Decision dated July 2006, COA Regional Office No. XIII denied his Motions for Reconsideration to the Notice of Disallowance. Their appeal to COA Main Office was denied on June 4, 2007. He also filed a Motion for Reconsideration and a Comment before the Office of the Ombudsman-Mindanao.³⁰¹
16. Accused Luna reimbursed the subject PhP1,610,800.00, in two installments:
 - a. P1,500,000.00 on September 7, 2010;
 - b. P 110,800.00 on September 21, 2010.³⁰²

Roberto M. Luna, Jr., then Municipal Mayor of Lingig,³⁰³ testified:

1. During his 1st term as Mayor in 2004, upon the suggestion of the military to look into NPA activities in the barangays, he hired job order employees as informants to determine if the NPA is recruiting members.
2. The job order workers were recommended by *barangay* chairpersons and officials and other informal community leaders in Lingig. The identities of the Job Order workers are confidential. They are known to him and to those who recommended them.³⁰⁴
3. The informants verbally reported to him. Sometimes, the informants also report about drug syndicates. There were no written reports. The information gathered are confidential.³⁰⁵
4. Job Order workers were hired from January to April 2004; they were not re-hired after. The informants were able to gather the necessary information during the period of their employment. The peace and order situation in Lingig improved.
5. The salaries of the Job Order workers were also charged to the appropriation for Peace and Order Funds and other charges of the LGU of Lingig. Their salaries were charged to the *National Security and Mission* under the *20% Development Fund*.

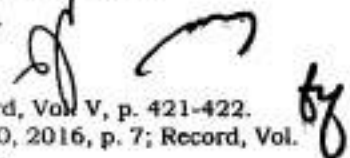
³⁰¹ Indoyon's Judicial Affidavit dated February 10, 2016, pp. 5-6; Record, Vol. V, p. 421-422.

³⁰² Exhibits 3-5, Indoyon; Indoyon's Judicial Affidavit dated February 10, 2016, p. 7; Record, Vol. V, p. 423; Certification dated September 30, 2010, Exhibit 5-Indoyon.

³⁰³ TSN dated July 12, 2016.

³⁰⁴ Luna's Judicial Affidavit dated July 4, 2016, p. 4; TSN dated July 12, 2016, p. 23.

³⁰⁵ TSN dated July 12, 2016, pp. 20-22.



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6. The check representing the cash advance in the amount of PhP2,237,291.12 under Disbursement Voucher No. 100-2004-1271 dated April 14, 2004, passed through regular procedure. The check was properly liquidated; the payrolls are intact and the supporting documents were complied with.³⁰⁶
7. He submitted the Certification because of the COA audit; The Certification listed names of persons interviewed by accused Lindo and who rendered service as informants. He used the word "dummy" in the Certification, in good faith, to protect the job order employees, who are confidential employees. He understands the meaning of the word "dummy". It was unfortunate that accused Lindo used the word "dummies" instead of "confidential employees".³⁰⁷
8. The Certification was prepared by accused Lindo pursuant to his instructions; the same was submitted to and signed by him. Accused Lindo is a law graduate, but not a member of the Bar.³⁰⁸
9. He signed the Disbursement Voucher, certifying that the expenditure is lawful.³⁰⁹
10. The COA issued a Notice of Disallowance in relation to the abovementioned transaction. He was expecting an exit conference but the COA did not schedule one.
11. He filed a Motion for Reconsideration of the Disallowance. However, believing that the same would be denied, he paid the amount of PhP1,610,800.00. He did not immediately pay said amount because he was waiting for COA to conduct an exit conference. The amount was paid before the cases were filed with the Sandiganbayan. He is uncertain if he would have returned the amount if the instant cases were not filed.³¹⁰
12. The COA did not verify whether the individuals actually rendered services.³¹¹
13. Almost all the municipalities of Surigao del Sur, and in the country hire job order workers.³¹²

³⁰⁶ Luna's Judicial Affidavit dated July 4, 2016, pp. 5 & 7.

³⁰⁷ TSN dated July 12, 2016, pp. 26-29, 31, 33-34; Luna's Judicial Affidavit dated July 4, 2016, pp. 6-7.

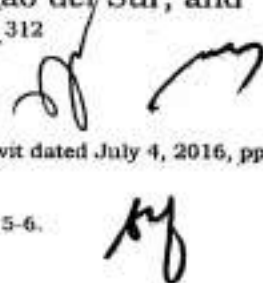
³⁰⁸ Exhibit T; TSN dated July 12, 2016, pp. 30-31.

³⁰⁹ Luna's Judicial Affidavit dated July 4, 2016, p. 6.

³¹⁰ Exhibit 50 and 50-A; Luna's Judicial Affidavit dated July 4, 2016, pp. 5-6.

³¹¹ Luna's Judicial Affidavit dated July 4, 2016, p. 8.

³¹² Luna's Judicial Affidavit dated July 4, 2016, p. 4.

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- 14. He sees to it that the Municipal Budget is implemented in accordance with the intent and spirit of the law.³¹³
- 15. He approved the Annual Investment Plan and Municipal Budget for the year 2004. The Municipal Budget contained provisions for Peace and Order in the 20% Development Fund and for the National Security Mission programs.³¹⁴
- 16. He knows Mr. Otagan, a former employee of the Office of the Mayor of Lingig. Mr. Otagan filed the instant case against him for revenge.³¹⁵
- 17. The Municipality of Lingig is heavily infested with NPAs. He was abducted on May 10, 2010.³¹⁶
- 18. The Job Orders were signed by the Municipal Budget Officer and Municipal Accountant, certifying as to the existence of appropriation/obligation. He signed the job orders certifying that the same were prepared by the Executive Assistant at the time of the hiring of the employees. Accused Lindo was in charge of preparing the Job Orders and the corresponding payrolls.³¹⁷
- 19. He ran for re-election and won in the May 2004 election.³¹⁸
- 20. This case was filed against him in January 30, 2006.³¹⁹

The Court admitted the following exhibits:³²⁰

For accused Luna and Lindo:

Exhibit ³²¹	Document
6 (UUU)	Annual Budget of Municipality of Lingig, CY 2004
7 (R)	Annual Investment Plan of Municipality of Lingig, CY 2004

³¹³ Luna's Judicial Affidavit dated July 4, 2016, p. 3.
³¹⁴ Exhibits 6-10; Luna's Judicial Affidavit dated July 4, 2016, pp. 3-4.
³¹⁵ Luna's Judicial Affidavit dated July 4, 2016, p. 3.
³¹⁶ Luna's Judicial Affidavit dated July 4, 2016, p. 3.
³¹⁷ Luna's Judicial Affidavit dated July 4, 2016, p. 8.
³¹⁸ TSN dated July 12, 2016, pp. 37-39.
³¹⁹ Luna's Judicial Affidavit dated July 4, 2016, pp. 8-9.
³²⁰ Resolution dated August 8, 2016; Record, Vol. VI, pp. 692-693.
³²¹ Formal Offer of Evidence (For accused Roberto M. Luna, Jr. and Jethro Lindo) dated July 15, 2016; Record, Vol. VI, pp. 159-164.

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8	Resolution No. 229, series of 2003 of the Sangguniang Bayan of Municipality of Lingig.
9	Statement of Statutory and Contractual Obligations.
10	Program Appropriation and Obligation by Object.
11	Consolidated Report of the Chief of Police of Municipality of Lingig, narrating the peace and order condition of the Municipality.
12	Intelligence Assessment in Lingig.
44	Resolution of the Office of the Ombudsman for "Falsification of Public Documents & Violation of RA 3019" in the case entitled <i>Roberto Luna, Jr. vs. Leonor M. Otagan, Jr.</i>
45	Motion for Reconsideration.
50 (GGG)	Official Receipt No. 2539239 for the amount of PhP1,500,000.00.
50-A (HHH)	Official Receipt No. 2539202 for the amount of PhP110,800.00.
53 (53-Carlos, et al.	Decision of the Office of the Ombudsman for "Grave Misconduct" in the case entitled <i>Roberto Luna, Jr. vs. Leonor M. Otagan, Jr.</i>
59	Judicial Affidavit of accused Jethro Lindo together with its attachments

For accused Indoyon

Exhibit ³²²	Document
1 (I)	Certification dated June 16, 2015 from the Office of the Mayor of Lingig.
2 (F-20)	Time Book and Payroll for Honorarium for February 2004 in the amount of PhP100,000.00.
3 (50-Luna and Lindo)	Official Receipt No. 2539239 dated September 7, 2010, for PhP1,500,000.00.
4 (50-A-Luna and Lindo)	Official Receipt No. 2925302 dated September 21, 2010 for the amount of PhP110,800.00.
5	Certification of Donato P. Salabao, OIC-Municipal Treasurer of Lingig.
6 (E); 59 Carlos, et al.	Land Bank Check No. 231481 signed by accused Lindo and Indoyon.
7 (D; Carlos and Ferrando)	Disbursement Voucher No. 100-2004-04-1271 dated April 14, 2004 for PhP2,327,291.32.
8	Motion for Reconsideration filed by accused Indoyon, Jr. before the Office of the Ombudsman, Mindanao on August 12, 2010
9	Comment of accused Indoyon, Jr. submitted to the Office of the Ombudsman, Mindanao
10 to 27 (66 to 79 Carlos and Ferrando) ³²³	Judicial Affidavit dated January 19, 2015 of accused Venus M. Carlos, Municipal Accountant of the Municipality of Lingig, Surigao del Sur.

³²² Formal Offer of Documentary Exhibits dated July 18, 2016; Record, Vol. VI, pp. 321-326.

³²³ Exhibits 66 to 79 were not offered by accused Carlos and Ferrando in their Formal Offer of Documentary Exhibits.

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	<p>Judicial Affidavit dated January 19, 2015 of witness Lolita D. Dapitanon, Bookkeeper assigned at the Office of the Municipal Accountant, Lingig, Surigao del Sur.</p> <p>Reply Letter of Ruth Cabilogan-Beniga, MPSM, Director II, Provincial Director of the Civil Service Commission, Surigao del Sur Field Office.</p> <p>Certification dated February 20, 2015 signed and issued by Ruth Cabilogan-Beniga, MPSM, Director II, Provincial Director of the Civil Service Commission, Surigao del Sur Field Office.</p>
27 W	Original Copy of Notice of Disallowances dated November 16, 2005 signed by Atty. Marisol D. Legaspi of the Commission on Audit consisting of two (2) pages.
28	Decision promulgated on July 17, 2006 by the COA Regional Office No. XIII Butuan City, Regional Legal and Adjudication
29	Decision promulgated on June 4, 2007 by COA Head Office
30	LandBank Certification dated August 11, 2010 issued by Branch Manager Centina P. Lumpay.

For accused Carlos and Ferrando

Exhibit³²⁴	Document
1	Judicial Affidavit dated August 29, 2015 of Nilda T. Ferrando
2	Counter-Affidavit of accused Venus M. Carlos and its Submission.
4 (D)	Disbursement Voucher No. 100-2004-04-1211 dated April 14, 2004.
5 (M)	Journal Entry Voucher No. 100-04-08 dated August 8, 2004.
5-A (L)	Journal Entry Voucher No. 100-04-08 dated August 31, 2004.
6 (UUU)	Original copy of the Annual Budget of Lingig for CY 2004.
7	Annual Investment Plan for CY 2004 of Lingig, Surigao del Sur.
8	Resolution No. 229, Series of 2003 of the Sangguniang Bayan of the Municipality of Lingig.
9 (UUU)	Statement of Statutory and Contractual Obligations.
10 (UUU)	Program Appropriation and Obligation by Object.
13-40	Allotment and Obligations Slip No. 100-2004-06-0807 to 0834
41	Allotment and Obligations Slip No. 100-2004-04-0862.
42-43	Allotment and Obligations Slip No. 100-2004-06-0560 to 0561.
44	Resolution dated September 24, 2007 issued by the Office of the Ombudsman for Mindanao in OMB-M-C-06-0465 entitled: " <i>Roberto M Luna, Jr. vs. Leonor vs. Otagan, et al.</i> "
45 (45-Luna)	Motion for Reconsideration.
46	Motion for Reconsideration with Motion for Exclusion from Liability for the Disallowance.

³²⁴ Formal Offer of Documentary Exhibits in Evidence dated July 15, 2016; Record, Vol. VI, pp. 376-396.

53 (53-Luna and Lindo)	Decision dated August 14, 2008 promulgated by the Office of the Ombudsman for Mindanao in OMB-M-A-06-339-J entitled: " <i>Roberto M. Luna, Jr. vs. Leonor M. Otagan Jr.</i> " For Grave Misconduct
59 (6 Indoyon)	LandBank Check No. 0000231481 dated August 12, 2004 in the amount of PhP2,327,291.12 issued in the name of accused Nilda T. Ferrando.
60	LandBank, Bislig City Branch, Bank Statement of Transaction Slip for the Period Covered March 31, 2004 to April 30, 2004
62	Judicial Affidavit dated January 19, 2015 of Venus M. Carlos
63	Judicial Affidavit dated January 19, 2015 of Lolita D. Dapitanon
64	Reply-Letter of Ruth Cabilogan-Beniga, Provincial Director of the Civil Service Commission, Surigao del Sur Field Office.
65	Certification dated February 20, 2015 signed and issued by Ruth Cabilogan-Beniga, Provincial Director of the Civil Service Commission, Surigao del Sur Field Office.

The prosecution,³²⁵ and accused Carlos and Ferrando³²⁶ filed their respective memoranda. Accused Indoyon filed a Manifestation that he will not file his memorandum³²⁷ while accused Luna and Lindo failed to file their respective memoranda.³²⁸

THE COURT'S FINDINGS OF FACT

Accused Roberto M. Luna, Jr., Jethro P. Lindo, Venus M. Carlos, Ebrencio F. Indoyon Jr. and Nilda T. Ferrando were public officers and employees of the Municipality of Lingig, during the period relevant to the instant cases. Accused Luna was the Municipal Mayor; accused Lindo was an Executive Assistant IV assigned to the Office of the Mayor; accused Carlos was the Municipal Accountant; accused Indoyon was the Municipal Treasurer; and accused Nilda T. Ferrando was a Cash Clerk at the Municipal Treasurer's Office.³²⁹

On April 14, 2004, LGU Lingig released Land Bank Check No. 0000231481 dated April 12, 2004, in the amount of PhP2,327,291.32, and payable to accused Ferrando. The check was signed by accused Lindo, as Executive Assistant, Office of the Mayor, and accused Indoyon, as Municipal Treasurer. The amount was intended for the: (i) salaries of

³²⁵ Memorandum for the Plaintiff dated December 13, 2016; Record, Vol. VII, pp. 73-114.

³²⁶ Memorandum for Accused Venus M. Carlos and Nilda T. Ferrando dated October 17, 2016; Record, Vol. VII, pp. 14-58.

³²⁷ Manifestation dated December 23, 2016; Record, Vol. VII, p. 119.

³²⁸ Resolution dated January 24, 2017; Record, Vol. VII, p. 123.

³²⁹ Pre-Trial Order dated January 27, 2012, p. 3; Record, Vol. III, p. 54-55.

regular employees (PhP716,491.12) for April 2004; and, (ii) honoraria and *per diems* of job order workers (PhP1,610,800.00) from January to April 2004.³³⁰

On even date, accused Ferrando received and encashed the said check.³³¹

Disbursement Voucher DV No. 100-2004-04-1271 dated April 14, 2004,³³² covering the check, shows the participation of the accused, as follows:

Officer	Participation
1. Jethro Lindo (Executive Assistant) signed on behalf of Roberto M. Luna, Jr. (Mayor)	a. Certified that the <i>Expenses/Cash Advances necessary, lawful, and incurred under his direct supervision</i> ; b. Approved the expense for payment
2. Venus M. Carlos (Municipal Accountant)	a. Certified to the <i>Completeness and propriety of supporting documents/previous cash advance</i>
3. Ebrencio F. Indoyon, Jr. (Municipal Treasurer)	a. Certified that <i>Cash is available</i>
4. Nilda T. Ferrando (Cash Clerk)	a. Claimant and received payment

The amount of PhP1,610,800.00, for the honoraria and *per diems* of the job order workers for the period January to April 2004, was charged against the following funds:

Fund	Amount
1. Administrative Support (1011; Office of the Mayor)	80,000.00
2. Other Expense (1011; Office of the Mayor):	348,000.00
3. 20% Peace and Order	344,000.00
4. 20% National Security Mission	648,000.00
5. 1091 (Office of the Treasurer)	100,000.00
6. 1011	90,000.00
Total:	P1,610,800.00³³³

In April and June 2004, several *Allotment and Obligations Slips*,³³⁴ were issued to fund the amount disbursed:

³³⁰ Exhibit E; TSN dated January 27, 2015, p. 20; Carlos' Judicial Affidavit dated January 19, 2015, p. 6, Exhibit 62

³³¹ Ferrando's Judicial Affidavit dated August 29, 2015, p. 9; LBP Bislig City Branch Statement of Transaction Slip for the period March 31 to April 1, 2004, Exhibit 60-Ferrando.

³³² Exhibit D.

³³³ TSN dated February 24, 2016, p. 28; Carlos' Judicial Affidavit dated January 19, 2015, p. 8, Exhibit 62; Luna's Judicial Affidavit dated July 4, 2016, p. 4, Record, Vol. VI, p. 21; Audit Observation Memorandum No. 2005-001 dated July 28, 2005, Exhibit V; ALOBS marked as Exhibits H to H-32; Summary of Allotment and Obligations for the period January to April 2004, Municipality of Lingig, Surigao del Sur, Exhibit I.

³³⁴ Exhibits H to H-32.

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ALOBS	Job Order (Exhibit)	Payroll (Exhibit)	Period (2004)	Fund	Allotment Class	Amount
100-2004-02-0822	G-17	F-17	February	Other Expense (1011)	MOOE	28,560.00
100-2004-04-0512	G-20 G-21	F-20	February	1091	MOOE	100,000.00
100-2004-04-0560 (per diem)		F-24	January	Administrative Support (1011)		30,000.00
100-2004-04-0561 (per diems)		F-23	January	1011		30,000.00
100-2004-04-0562 (per diems)		F-22	January	1011		30,000.00
100-2004-06-0807	G-12	F-12	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0808	G-10	F-10	January to March	20% National Security Mission	MOOE	24,000.00
100-2004-06-0809	G-5	F-5	January to March	20% National Security Mission	MOOE	32,000.00
100-2004-06-0810	G-9	F-9	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0811	G-4	F-4	January to March	20% National Security Mission	MOOE	24,000.00
100-2004-06-0812	G-6	F-6	January to March	20% National Security Mission	MOOE	36,000.00
100-2004-06-0813	G-7	F-7	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0814	G-8	F-8	January to March	20% National Security Mission	MOOE	24,000.00
100-2004-06-0815	G-19	F-19	February	Other Expense (1011)	MOOE	42,840.00
100-2004-06-0816	G-18	F-18	February	Other Expense (1011)	MOOE	71,400.00
100-2004-06-0817	G-16	F-16	February	Other Expense (1011)	MOOE	28,560.00
100-2004-06-0818	G-15	F-15	February	Other Expense (1011)	MOOE	71,400.00
100-2004-06-0819	G-13	F-13	February	Other Expense (1011)	MOOE	28,560.00
100-2004-06-0820	G-14	F-14	February	Other Expense (1011)	MOOE	38,080.00
100-2004-06-0821	G-21	F-21	February	Administrative Support (1011); Other Expense (1011)	MOOE	71,400.00
100-2004-06-0823	G-25	F-25	January to March	20% National Security Mission	MOOE	36,000.00
100-2004-06-0824	G-26	F-28	January to March	20% National Security Mission	MOOE	32,000.00
100-2004-06-0825	G-27	F-29	January to March	Other Expense (1011)	MOOE	24,000.00
100-2004-06-0826	G-30	F-32	January to March	Administrative Support (1011); Other Expense (1011)	MOOE	24,000.00
100-2004-06-0827	G-26	F-26	January to March	20% Peace and Order	MOOE	24,000.00
100-2004-06-0828	G-27	F-27	January to March	20% Peace and Order	MOOE	60,000.00
100-2004-06-0829	G-29	F-31	January to March	20% Peace and Order	MOOE	60,000.00
100-2004-06-0830	G-28	F-30	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0832	G-3	F-3	April	20% National Security Mission	MOOE	100,000.00
100-2004-06-0833	G-2	F-2	April	20% Peace and Order	MOOE	100,000.00
100-2004-06-0834	G-11	F-11	April	20% National Security Mission		100,000.00
100-2004-06-0891	G	F	April	20% Peace and Order	MOOE	100,000.00
					Total	1,610,800.00

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The ALOBS show the participation of the accused as follows:

Officer	Participation
1. Roberto M. Luna, Jr. - Mayor	a. Signed as Department Head b. Requested for allotment for the items stated in the ALOBS
2. Antonio C. Saligumba - Municipal Budget Officer	Certified as to the existence of appropriation.
3. Venus M. Carlos - Municipal Accountant	Certified as to obligation of allotment.

The *Time Book and Payrolls* listed a total of 101 workers assigned as community aides,³³⁵ informants,³³⁶ or confidential employees³³⁷ in LGU Lingig, paid on daily or monthly basis.

The *Time Book and Payrolls* shows the participation of the accused, as follows:

Officer	Participation
1. Roberto M. Luna, Jr. (Mayor)	Certified that the payroll is correct; every person whose name appears thereon rendered service for the time and at the rate stated, under his general supervision and he approved payment for the payrolls.
2. Jethro Lindo (Exec. Asst. IV)	Certified that each person whose name appears on the payroll rendered service as indicated and for the time stated.
3. Nilda T. Ferrando (Cash Clerk)	Certified that she paid in cash to each man whose name appears on the payroll, the amount set opposite their names, they having presented themselves, established their identity, and affixed their signatures or thumbmarks on the space provided therefore.

Sometime in June 2004, Leonor Otagan, Jr., the HRMO-designate of LGU Lingig from August 1992 to May 17, 2004, went to the Office of the Municipal Accountant to follow up on his travel expenses. Accused Carlos reminded him of the need to sign the job orders for the period January to April 2004, when he was still the HRMO-designate, as the job orders were necessary for the liquidation of the cash advance.³³⁸

Otagan immediately proceeded to the Municipal Treasurer's Office. But accused Ferrando said that she will just

³³⁵ Exhibits F to F-12 and F-22 to F-32.

³³⁶ Exhibits F-13 to F-19 and F-21.

³³⁷ Exhibit F-20.

³³⁸ Office Order dated May 17, 2004, Exhibit ZZ; Appointment Paper of Leonor M. Otagan as HRMO, Exhibit MMM.

approach him when she has completed the necessary documents.³³⁹

One week after, Otagan was informed that the job orders are ready for his signature. He replied that he would sign them in his Office after he confirms the completeness of the supporting documents. But the job orders for January to April 2004 were not forwarded to him that day and even until he left the service.³⁴⁰

Sometime in September 2004, Mr. Otagan filed a complaint with the Civil Service Commission, based on the information provided by his source that the P1,610,800.00 was liquidated and that the job orders were signed by accused Lindo, and after concluding, based on his own investigation, that the job order workers were not actually hired and paid. He questioned the payment to job order workers under DV No. 100-2004-04-1271 and claimed that no such workers were hired by LGU Lingig and no individuals rendered service as community aides, informants, or confidential employees.³⁴¹

The participation of the accused in the execution of the job orders are as follows:

Officer	Participation
1. Roberto M. Luna, Jr. (Mayor)	Approved the job order.
2. Antonio C. Saligumba (Municipal Budget Officer)	Certified as to the existence of appropriation/obligation.
3. Venus M. Carlos (Municipal Accountant)	Certified as to the existence of appropriation/obligation.
4. Jethro P. Lindo (Executive Assistant)	Prepared the job order.

Sometime in May 2005, upon the request of the Office of the Ombudsman, a COA Team was created and tasked to conduct an audit on the disbursement of P1,610,800.00 for dummy employees. The Ombudsman's directive was based on the Complaint of Rico Ortila, a Sangguniang Bayan member of the Municipality of Lingig. The team was composed of Jeremias Bucong, Sally Ladaga, and Marah Mendoza. The Audit team studied the documents and requested LGU Lingig for a list of its job order workers from January to April 2004. LGU Lingig complied by submitting a *List of Municipal Officials and*

³³⁹ TSN dated July 27, 2011, pp. 28-29.

³⁴⁰ TSN dated July 27, 2011, pp. 31-33.

³⁴¹ TSN dated July 27, 2011, pp. 57-60, 70.

*Employees Including Job Orders for the month of January-April 2004, Local Government Unit, Lingig.*³⁴²

Sometime in June 2005, when the Audit team was about to leave for the Municipality of Lingig to conduct their investigation, Mr. Bucong received a call from accused Luna. Accused Luna told Mr. Bucong that the employees listed in the payrolls were dummies. Upon the request of Mr. Bucong, accused Luna committed to submit a certification to such effect.³⁴³

In a *Certification* dated June 16, 2005,³⁴⁴ submitted by LGU Lingig to the RLAO 13 COA Audit Team, accused Luna declared:

To Whom it may Concern:

This certifies that the following persons listed below are just dummies who received the amount out of my intelligence fund.

xxx xxx xxx

107 names were listed thereunder.

The audit team proceeded to Lingig to pay a courtesy call to Mayor Luna but he was not around. Instead, they interviewed the other LGU officials including accused Lindo. The team requested the municipality for the addresses of the job order workers but they were not provided with the same.³⁴⁵

Sometime in July 2005, the Audit team received a request to conduct an audit on the same transaction based on the Complaint of Leonor Otagan.³⁴⁶

On July 28, 2005, the audit team furnished, *via* registered mail, accused Luna and Carlos with a copy of the Audit Observation Memorandum³⁴⁷ of even date. The COA Audit

³⁴² Exhibit A; TSN dated October 12, 2011, pp. 6, 9-13; TSN dated May 22, 2012, pp. 12, 18-22, 24-25, 28.
³⁴³ TSN dated October 12, 2011, p. 29; TSN dated May 22, 2012, pp. 49-50; TSN dated August 28, 2012, pp. 69-71; TSN dated September 25, 2012, p. 17.
³⁴⁴ Exhibit T
³⁴⁵ TSN dated October 12, 2011, pp. 30-31; TSN dated May 22, 2012, pp. 52-53; TSN dated October 24, 2012, pp. 20-21.
³⁴⁶ Exhibit VVV; TSN dated October 12, 2011, p. 40; TSN dated October 13, 2011, pp. 10-11; TSN dated May 22, 2011, pp. 72-73; TSN dated September 25, 2012, p. 19.
³⁴⁷ Exhibit C

Team did not conduct an exit conference because of the peace and order situation in the municipality.³⁴⁸

On November 16, 2005, COA issued *Notice of Disallowance No. 2005-001(2004)*,³⁴⁹ for the *per diems* and honoraria in the amount of PhP1,610,800.00 paid by LGU Lingig to job order workers. The Notice of Disallowance found accused Roberto M. Luna, Jethro P. Lindo, Venus M. Carlos, Nilda T. Ferrando, Ebrencio F. Indoyon and Antonio C. Saligumba to be liable for the disbursement. The Audit Investigation Report was released on December 1, 2005.³⁵⁰

On September 7, 2010 and September 21, 2010, accused Luna paid to the Office of the Treasurer of Surigao del Sur the amounts of PhP1,500,000.00 and PhP110,800.00.³⁵¹

The Civil Service Commission Regional Office did not receive copies of any job order contract for January to April 2004 from LGU Lingig.³⁵²

Luzviminda Basañez, whose name appears on the *job order* and *Time Book and Payroll*³⁵³ for February 2004³⁵⁴ denied having been hired as a job order worker for LGU Lingig. She also denied receiving compensation from January to April 2004.³⁵⁵ Death Certificate No. 1805 (F-79) shows that a certain Edna Badang of Barangay Sabang passed away on June 23, 1979.³⁵⁶ The name Edna Badang of Barangay Sabang is included in the List submitted by LGU Lingig to COA. The name Edna Badang is listed as a job order worker in the *Time Book and Payrolls*³⁵⁷ and *job orders*.³⁵⁸

Leody Enriquez and Marlo Lanuza testified that they were hired as confidential agent and community aide informant, respectively for February 2004 and that they worked and received compensation as such at the end of the month.³⁵⁹

³⁴⁸ TSN dated June 26, 2012, p. 21; TSN dated August 28, 2012, p.63; TSN dated September 25, 2012, pp. 8, 23; TSN dated July 25, 2012, pp. 16-17.

³⁴⁹ Exhibit W

³⁵⁰ TSN dated December 7, 2011, pp. 14-15.

³⁵¹ Exhibits 50 and 50-a

³⁵² Exhibit FFF-6; TSN dated February 23, 2015, pp. 10-11.

³⁵³ Exhibits F, F-7, F-21, F-23 and F-30.

³⁵⁴ Exhibits G, G-7, G-22 and G-28.

³⁵⁵ TSN dated February 26, 2013, pp. 42-43; Sworn Affidavit dated January 21, 2013 of Basañez, Seraspe and Lanuza, Exhibit HHHH.

³⁵⁶ Certificate of Death of Edna Badang; Exhibit AAA.

³⁵⁷ Exhibits F, F-7, F-21, F-23 and F-30.

³⁵⁸ Exhibits G, G-7, G-22 and G-28.

³⁵⁹ Enriquez' Judicial Affidavit dated September 23, 2014, p 2; Lanuza's Judicial Affidavit dated September 23, 2014; TSN dated September 29, 2014, pp. 10-11, 15, 30-31, 35, 39.

Accused Luna testified that the names listed in his certification are actual names of real persons.³⁶⁰

DISCUSSION

To avoid repetition, the order of discussion will be as follows:

- a) **Falsification of Public Document** (SB-12-CRM-0065);
- b) **Malversation of Public Funds** (SB-12-CRM-0064); and
- c) **Violation of Section 3(e), R.A. No. 3019** (SB-10-CRM-0111).

Falsification of Public Document

The Information in SB-12-CRM-0065 charges accused Luna, Lindo and Carlos of falsifying the *job orders* and *time book* and *payrolls*, by making it appear that 101 job order workers rendered service as informants and community aide of the Municipality of Lingig from January to April 2004 and received salaries in the total amount of P1,610,800.00, from the cash advance drawn under DV No. 100-2004-04-1271, when there were no such job order workers who worked and who received salaries during said period.

Article 171, Paragraph 2 of the **Revised Penal Code** reads:

Article 171. *Falsification by public officer, employee or notary or ecclesiastical minister.* The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

XXX XXX XXX

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

XXX XXX XXX

The elements thereof are:

³⁶⁰ Luna's Judicial Affidavit dated July 4, 2016, pp. 6-7; TSN dated July 12, 2016, pp. 26-29, 31, 33-34.

x-----x

1. The offender is a public officer, employee, or notary public;
2. He takes advantage of his official position; and,
3. He falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not in fact so participate.³⁶¹

The offender is a public officer, employee, or notary public.

The first element is present.

Accused Roberto M. Luna, Jr., Jethro P. Lindo, and Venus M. Carlos admit that they were public officers of LGU Lingig and were occupying the following positions, during the period relevant to the instant case:

	Accused	Position
1	Luna	Municipal Mayor
2	Lindo	Executive Assistant IV
3	Carlos	Municipal Accountant ³⁶²

He takes advantage of his official position.

In *People vs. Sandiganbayan*,³⁶³ the Supreme Court held that the offender is considered to have taken advantage of his official position when:

1. He has the duty to make or prepare or otherwise to intervene in the preparation of a document; or
2. He has the official custody of the document which he falsifies.

Accused Luna and Carlos had the duty to, and accused Lindo was tasked by accused Luna to, prepare and intervene in the preparation of the *job orders* subject of the case. Accused Luna had

³⁶¹ Tan vs. Matsuura, 688 SCRA 263, 285 [2013].

³⁶² Pre-Trial Order dated January 27, 2012, p. 3; Record, Vol. III, p. 54-55.

³⁶³ 765 SCRA 321, 338 [2015].

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the duty to, and he tasked accused Lindo, to prepare and intervene in the preparation of the subject *Time Book and Payrolls*.

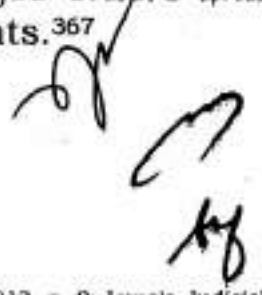
Under **Section 77** of the **Local Government Code**, the Local Chief Executive is responsible for human resources and development including the employment of job order workers, viz:

Section 77. Responsibility for Human Resources and Development. - The chief executive of every local government unit shall be responsible for human resources and development in his unit and shall take all personnel actions in accordance with the Constitutional provisions on civil service, pertinent laws, and rules and regulations thereon, including such policies, guidelines and standards as the Civil Service Commission may establish: Provided, That the local chief executive may employ emergency or casual employees or laborers paid on a daily wage or piecework basis and hired through job orders for local projects authorized by the sanggunian concerned, without need of approval or attestation by the Civil Service Commission: Provided, further, that the period of employment of emergency or casual laborers as provided in this Section shall not exceed six (6) months.³⁶⁴

Accused Luna signed the *job orders*³⁶⁵ as Municipal Mayor, and the *Time Book and Payrolls* for January to April 2004,³⁶⁶ in his capacity as Municipal Mayor, Superintendent/Foreman in Charge, certifying that:

“the roll is correct; every person whose name appears (hereon) rendered service for the time and at the rate stated, under (my) general supervision and I approved payment for this roll.”

He also tasked accused Lindo to perform the functions of HRMO, which includes the preparation of the *job orders and timebook and payrolls* and signing said documents.³⁶⁷



³⁶⁴ Emphasis and underscoring supplied.

³⁶⁵ Exhibits G to G-30.

³⁶⁶ Exhibits F to F-32.

³⁶⁷ Lindo's Judicial Affidavit dated June 3, 2014, p. 2; TSN dated October 22, 2013, p. 9; Luna's Judicial Affidavit dated July 4, 2016, p. 3.

ACCUSED LINDO

Accused Lindo, as Executive Assistant at the Office of the Mayor, prepared the *job orders* and *Time Book and Payrolls*.³⁶⁸ He claims that he performed the functions of an HRMO upon the directive of accused Lindo during the period relevant to the present cases. He admits that he prepared the *job orders* and claims to have reviewed and certified the *Time Book and Payrolls* pertaining to the job order workers.³⁶⁹

ACCUSED CARLOS

Accused Carlos signed the *job orders* for January to April 2004.³⁷⁰ As Municipal Accountant, she certified as to the "obligation of allotment" for the wages of the job order workers, pursuant to her functions under Section 474 of the **Local Government Code**, viz:

Section 474. Qualifications, Powers and Duties.

XXX XXX XXX

- (b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

XXX XXX XXX

- (4) Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged;
- (5) Review supporting documents before preparation of vouchers to determine completeness of requirements.

Accused Carlos did not sign the *Time Book and Payrolls*. But she submitted and endorsed the same together with DV No. 100-2004-04-1271 to the Provincial Auditor of Surigao del Sur.³⁷¹

Clearly, accused Luna, Lindo and Carlos took advantage of their respective positions when they prepared, certified, approved and signed the *job orders* and *time book and payrolls*.

³⁶⁸ TSN dated August 27, 2104, p. 5; Lindo's Judicial Affidavit dated June 3, 2014, pp. 3-4; Exhibits G to G-30.

³⁶⁹ Exhibits G to G-30; Exhibits F to F-32; TSN dated August 27, 2104, p. 5; Lindo's Judicial Affidavit dated June 3, 2014, pp. 3-4;

³⁷⁰ Exhibits G to G-30

³⁷¹ Exhibit Q

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He falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not, in fact, so participate.

To determine if the accused falsified the *job orders* and *Timebook and Payrolls*, it is first necessary to determine if job order workers were indeed hired, and if hired, indeed worked and received compensation.

First. The testimony of Luzviminda Basañez supports a conclusion that not all persons listed in the January to April 2004 *Time Book and Payrolls* actually received payment, and that not all of them were actually hired by and worked for LGU Lingig.

Luzviminda Basañez,³⁷² whose name together with a signature, appeared in the *job order* and *TimeBook and Payroll* for February 2004 denied that she was hired by, or that she worked for, and received any compensation from, LGU Lingig from January to April 2004.³⁷³ She disowns the signature beside her name in the *job order* and the *time book and payroll* for the period of February 2004. The defense did not present any evidence to show that a different Luzviminda Basañez was actually hired and paid by the municipality.

Second. Death Certificate No. 1805-(F-79) of one Edna Badang, who passed away on June 23, 1979, proves that contrary to what was certified by accused Luna and Lindo in the *job orders* and *Time Book and Payrolls*, Edna Badang was not hired, nor did she work for and receive compensation from LGU Lingig from January to April 2004.³⁷⁴

The accused did not present evidence to refute the authenticity of the death certificate of Edna Badang, nor the truthfulness of the facts stated therein. There is also no evidence to show that the *Edna Badang* listed in the *job orders* and *timebook and payroll* is not the *Edna Badang* referred to in the death certificate.

³⁷² Time Book and Payrolls marked as Exhibits F, F-7, F-21, F-23 and F-30; Job Orders marked as Exhibits G, G-7, G-22 and G-28.

³⁷³ TSN dated February 26, 2013, pp. 42-43; Sworn Affidavit dated January 21, 2013 of Basañez, Seraspe and Linaza, Exhibit HHHH.

³⁷⁴ Certificate of Death of Edna Badang, Exhibit AAA. Exhibits F, F-7, F-21, F-23 and F-30; Exhibits G, G-7, G-22 and G-28.

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Third. This Court concludes that those who received payment did not perform work for LGU Lingig. The following circumstances led the Court to its conclusion:

1. The supposed honoraria were released on April 14, 2004 even before the alleged job order workers for April were supposed to complete their tasks on April 30, and months after the alleged job order workers from January and February 2004 had performed their functions.³⁷⁵
2. There was no proof that the job order workers actually performed work for LGU Lingig. There were no *daily time records*, and no documents to corroborate the claim of accused Luna that the job order workers reported directly to him. There were no written reports that the peace and order situation improved because of the work of the confidential job order workers. Even accused Luna's claim that there was improvement in the peace and order situation in Lingig is negated by the testimonies of the prosecution and defense witnesses that there continues to be peace and order problem in Lingig in 2005 and even until 2010 when accused Luna was abducted by the NPA.³⁷⁶

Fourth. The Court concludes that there were no job order workers actually hired to perform work for LGU Lingig. The Court arrived at its conclusion after considering the following circumstances:

1. Accused Luna initially claimed, when he called Mr. Bucong and later through his certification, that the names of the workers are "dummies" allegedly to protect their identities. Later he testified that those listed are real names of the job order workers and that he only said they were dummies to protect them.³⁷⁷

The Court finds it incredulous that accused Luna needed to hide the identities of the job order workers from the COA audit team for the job order workers' safety and security.

Accused Luna gave no reason why the COA Audit Team's knowledge of the real identities of the job

³⁷⁵ DV No. 100-2004-04-1271 dated April 14, 2004, Exhibit D; Time Book and Payrolls marked as Exhibits F to F3, F-11, F-22 to F-30-e; F-21-d to F-21-e.

³⁷⁶ TSN dated July 25, 2012, pp. 12, 16-17; TSN dated September 25, 2012, p. 8; TSN dated August 26, 2014, p. 36.

³⁷⁷ TSN dated August 26, 2014, pp. 35-38.



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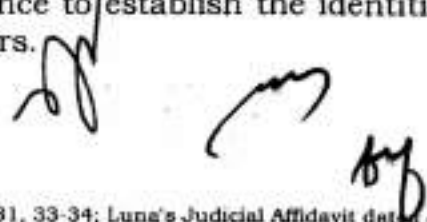
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order workers will place the job order workers' lives and security in danger. The Court finds no reason to conclude that the life and security of the supposed job order workers will be placed in jeopardy if their identities are made known to the COA audit team. Accused Luna tried to distance himself from the use of the word "dummies" in the Certification dated June 16, 2005³⁷⁸ by pointing to accused Lindo, who he said had unfortunately erroneously used the word "dummies". He explained that he meant to use the word "confidential employees."³⁷⁹ It appears that Luna told the COA Audit team that the names are dummies to prevent the COA audit team, who were about to leave for Lingig, from investigating and interviewing the listed job order workers.

2. The job orders (from January to April 2004) did not bear the signatures of several of the alleged job order workers.³⁸⁰ The number of signatories are as follows:

Job Order (Exhibit)	Period of work	No. of Names	No. of signatures
G	April 1-30, 2004	20	9
G-2	April 1-30, 2004	20	0
G-6	January 1-31,2004 and March 1-31, 2004	9	0
G-7	January 1-31,2004 and March 1-31, 2004	15	0
G-12	January 1-31,2004 and March 1-31, 2004	15	14
G-18	February 1-29, 2004	15	13
G-19	February 1-29, 2004	9	0
G-20	February 1-29, 2004	6	5
G-21	February 1-29, 2004	14	14
G-22	February 1-29, 2004	15	13
G-23	January 1-31,2004 and March 1-31, 2004	9	0
G-28	January 1-31,2004 and March 1-31, 2004	15	13

3. Accused Lindo testified that job order workers were required to submit their biodata with photo.³⁸¹ But LGU Lingig did not submit said documents to the COA Audit team to justify the disbursement of the job orders' salaries. Notably, the audit was conducted just one year from the date of the disbursement of funds. Neither were said documents offered in evidence to establish the identities of the job order workers.



³⁷⁸ Exhibit T

³⁷⁹ TSN dated July 12, 2016, pp. 26-29, 31, 33-34; Luna's Judicial Affidavit dated July 4, 2016, pp. 6-7.

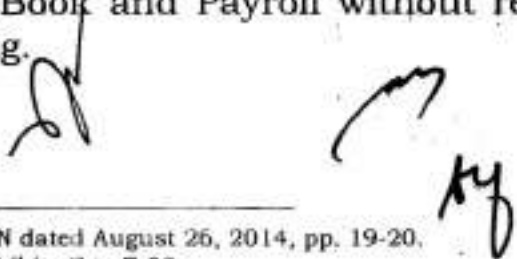
³⁸⁰ Exhibit G and G-2, G-6 to G-7, G-19 and G-21.

³⁸¹ TSN dated August 26, 2014, p. 19.

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4. Accused Lindo claims that only residents of the Municipality of Lingig can be hired as Job Order workers,³⁸² but *the Time Book and Payrolls* do not indicate the addresses of the job order workers.³⁸³ The biodata were not attached to the job orders even when accused Lindo claimed that it is a requirement for hiring of the workers.³⁸⁴
5. The job orders were prepared and signed after LBP Check No. 0000231481 was issued and encashed, and after the proceeds thereof were distributed. The job orders for January to April 2004 were prepared and signed by accused Lindo as HRMO designate, when his designation was only effective on May 20, 2004. Otagan testified that he was asked to sign the job order contracts in June 2004, two (2) months after the check was encashed.³⁸⁵
6. Even the testimonies of defense witnesses Leody Enriquez and Marlo Lanuza that they applied for and worked as job order workers are not worthy of belief. They testified that they received their salaries and signed the *Time Book and Payroll* upon receipt of their salaries, at the end of the month.³⁸⁶ But LBP Check No. 231481 was encashed only on April 14, 2004, a month and a half, after they claim to have rendered their services on February 2004 to LGU Lingig. There was no mention that there was delay in the release of their salaries. There were no daily time record to show that the job order workers reported for work.

From the foregoing, the Court concludes that: a) Luzviminda Basanez and Edna Badang were not hired, did not work for and did not receive any compensation from LGU Lingig from January to April 2004; b) the other persons listed including Enriquez and Lanuza and who signed in the TimeBook and Payroll, and in the job orders, may have received the money, but were not hired as job order workers, did not work as job order workers and received the monies listed in the TimeBook and Payroll without rendering any service for LGU Lingig.



³⁸² TSN dated August 26, 2014, pp. 19-20.

³⁸³ Exhibits F to F-32

³⁸⁴ TSN dated August 26, 2014, p. 19.

³⁸⁵ Exhibit E; Exhibit NNN; TSN dated July 27, 2011, pp. 24-25, 30-31; TSN dated January 27, 2013, p. 31.

³⁸⁶ Enriquez' Judicial Affidavit dated September 23, 2014, pp. 2-3; TSN dated September 29, 2014, pp. 12-13, 23-24, 31-32, 34; Exhibit F-20.

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The *job orders* and the *time book and payrolls* contained several false statements, including: a) the names and signatures of Edna Badang and Luzviminda Basanez as persons who were hired, who worked and who received payment, in the *job orders*, and *timebook and payrolls*;

As discussed, accused Lindo prepared the *job orders*. Accused Luna signed the *job orders* and approved the same.

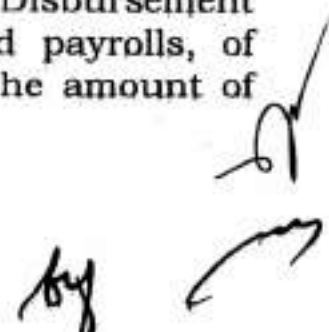
Accused Lindo also signed the time book and payrolls and certified that "each person whose name appears on this roll rendered service as indicated and for the time stated." While accused Luna signed the *timebook and payrolls* and certified that "...this roll is correct; every person whose name appears hereon rendered service for the time and at the rate stated, under my general supervision and I approved payment for this roll."

Clearly, Luna and Lindo made false statements in the *job orders* and the *Timebook and Payrolls*, by making it appear that job order workers were hired and rendered services, when such were not the truth. All the elements for Falsification of Public Documents are, therefore, present as to accused Luna and Lindo. The evidence established their guilt beyond reasonable doubt.

On the other hand, accused Carlos signed the job orders to "certify" as to the appropriation/obligation" on the availability of obligation. The said statement, as will be discussed later, is a falsity. However, the Information in SB-12-CRM-0065 did not charge the accused of committing such falsification. Hence, accused Carlos cannot be convicted for said false statement. Accused Carlos did not perform any overt acts towards the objective of showing that 101 job order workers worked and received compensation for the period from January to April 2004. Hence, she cannot be held liable for falsification, by her personal individual action, nor in conspiracy with accused Luna and Lindo, as charged in the Information.

Malversation of Public Funds.

The Information in SB-12-CRM-0064 charges accused Luna, Lindo and Carlos, as signatories of the: a) Disbursement Voucher; b) job orders; and, c) timebook and payrolls, of misappropriating or permitting others to take the amount of



P1,610,800.00, part of the proceeds of the cash advance received by Nilda Ferrando under DV No. 100-2004-04-1271.³⁸⁷

Malversation of Public Funds under Article 217 of the **Revised Penal Code** is committed as follows:

Article 217. Malversation of public funds or property; Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

xxx xxx xxx

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.

The elements of *Malversation of Public Funds* under Article 217 of the Revised Penal Code are:

1. The offender is a public officer;
2. He had custody or control of funds or property by reason of the duties of his office;
3. Those funds or property were public funds or property for which he was accountable; and,
4. He appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

The Offender is a public officer.



³⁸⁷ Information dated March 1, 2012, pp. 1-2; Record, SB-12-CRM-0064, pp. 1-2.

As above discussed, accused Luna, Lindo and Carlos admitted that they were public officials at the time material to this case.

Accused had custody or control of funds or property by reason of the duties of his office.

The funds or property were public funds or property for which the accused was accountable.

ACCUSED LUNA

It is settled that municipal mayors have custody, control and responsibility over the funds of the municipality. In **People vs. Pantaleon**,³⁸⁸ the Supreme Court held:

As a required standard procedure, the signatures of the mayor and the treasurer 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. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos.³⁸⁹

Here, accused Luna, as Municipal Mayor, gave accused Lindo the authority, and, the latter signed DV No. 100-2004-04-1271,³⁹⁰ certifying that the cash advance was necessary, lawful, and incurred under his direct supervision. Accused Luna also signed to approve the release of the amount of PhP2,327,291.32, which included the P1,610,800.00 for the honorarium and per diems of job order workers from January to April 2004. Without his authority, approval and signature in the disbursement voucher, PhP1,610,800.00 of the requested PhP2,327,291.32 would not have been released.

³⁸⁸ 581 SCRA 140 [2009].
³⁸⁹ At p. 161. Underscoring supplied
³⁹⁰ Exhibit D

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The amount of PhP1,610,800.00 was sourced from the funds of the Municipality of Lingig. Hence, the same are in the nature of public funds, for which accused Luna was accountable.

Clearly, accused Luna, by reason of his position as the Municipal Mayor of Lingig, had control over and was accountable for the public funds subject of this case.

Accused Carlos and Lindo.

Accused Carlos, as Municipal Accountant, and accused Lindo, as Executive Assistant of the Mayor are not accountable for public funds. However, they may still be held liable for *Malversation of Public Funds* if they are proven to have conspired with an accountable public officer.

In *Barriga vs. Sandiganbayan*,³⁹¹ the Supreme Court stressed that "a public officer who is not in charge of public funds or property by virtue of her official position, or even a private individual, may be liable for malversation or illegal use of public funds or property if such public officer or private individual conspires with an accountable public officer to commit malversation or illegal use of public funds or property."

Accused appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Accused Luna, Lindo and Carlos acted in conspiracy.

Accused Luna, Lindo and Carlos, through their overt actions, conspired to allow other persons who were not entitled thereto, to take and misappropriate public funds.

³⁹¹ 457 SCRA 301, 314 (2005).

Accused Luna

As previously discussed, the evidence supports a conclusion that there were no job order workers who were hired, who worked and who received compensation for work performed. Yet, accused Luna acquiesced to accused Lindo's preparation of the job orders and payrolls.³⁹² Accused Luna signed the job orders long after the money were released by accused Ferrando. He signed the time book and payrolls even when no such workers were hired by and worked for LGU Lingig.

He also allowed the release of PhP1,610,800.00 as payment for the honoraria and per diems of non-existing job order workers under DV 100-2004-04-1271 even when the supporting documents were not complete. Without his directive and approval, P1,610,800.00 in public monies would not have been disbursed to persons who were not entitled thereto. His belated approval and signing of the *Time Book and Payrolls* to serve as supporting documents to the disbursement voucher show that he knew that the supporting documents were incomplete at the time of the disbursement.³⁹³

The Court finds that accused Carlos and Lindo performed overt acts, and acted in conspiracy with accused Luna, towards the unlawful disbursement of P1,610,800.00.

ACCUSED LINDO

Accused Lindo prepared and signed the *timebook and payrolls, job orders* and DV No. 100-2004-04-127 upon the directive and on behalf of accused Luna.³⁹⁴

The amount of PhP1,610,800.00 for payment of the honorarium and per diems of the fictitious workers would not have been released without the participation of Lindo. He belatedly prepared the *Time Book and Payrolls*, as supporting documents for Disbursement Voucher No. 100-2004-04-1271.³⁹⁵ Accused Lindo, in obedience to the order of accused Luna, approved the *job orders, the payroll and the disbursement voucher*. Accused Lindo performed the

³⁹² Exhibits F to F-32; Exhibits G to G-30.

³⁹³ Exhibits F-F-32.

³⁹⁴ TSN dated August 26, 2014, p. 15 and 28.

³⁹⁵ TSN dated August 26, 2014, pp. 21, 33; TSN dated August 27, 2014, p. 5.

foregoing acts knowing fully well that there were no job workers who were hired and who worked, and that those who received payment did not work for LGU Lingig. Accused Lindo claims that he interviewed each of the job order workers before they were hired. But his bare claims were not supported by any credible evidence.

ACCUSED CARLOS

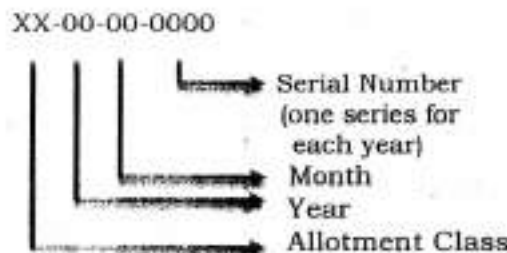
Accused Carlos, as Municipal Accountant, signed Box B of DV No. 100-2004-04-1271 and certified to the “completeness and propriety of supporting documents/previous cash advance.”³⁹⁶

Under Section 474(b)(4) and (5) of the **Local Government Code**, the powers and duties of the accountant, includes:

- (1) Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged;
- (2) Review supporting documents before preparation of vouchers to determine completeness of requirements;

The evidence shows that when accused Carlos signed DV No. 100-2004-04-1271, the available budgetary allotment was not sufficient and the supporting documents were not complete.

First. The evidence shows that several of the ALOBS transferring the funds from the budget of various offices to the Office of the Mayor for the honorarium of job order workers were prepared and approved only in June 2004.³⁹⁷ State Auditor Mendoza testified that the number 06 in the ALOBS refers to the month of June.³⁹⁸ The New Government Accounting System Manual states that the numbering for the ALOBS is as follows:



³⁹⁶ Exhibit D; TSN dated January 27, 2015, p. 21.

³⁹⁷ Exhibits H to H-19, H-21, H-25 to H-32.

³⁹⁸ TSN dated May 23, 2012, p. 26; Manual on the New Government Accounting System (for National Government Agencies), Vol. I, Chapter 3, Section 12.

Second. Not all the *job orders* bore the signatures of the supposed job order workers.³⁹⁹ The acknowledgment portion of the job orders for January, February and April 2004 remain unsigned.⁴⁰⁰ Further, several of the *job orders* and the *time book and payrolls* were not signed by then HRMO designate Otagan, but by accused Lindo. In fact, the *timebook and payrolls* and *job orders* were not yet signed by the HRMO at the time the funds were disbursed.

Even with the said deficiencies, accused Carlos signed DV No 100-2004-04-1271. The funds would not have been released to accused Ferrando and to the recipients, if accused Luna, Lindo and Carlos did not sign the *disbursement voucher* and the *time book and payrolls*.

That accused Luna returned the total amount of P1,610,800.00 on September 7, 2010 and September 21, 2010, after the Information for violation of Section 3(e), R.A. No. 3019 was filed and more than 4 years and 9 months after the issuance of Notice of Disallowance dated November 16, 2005,⁴⁰¹ is not a valid defense and will not exempt the accused from, nor will it extinguish their criminal liability. Neither can the belated return of the funds be appreciated as a mitigating circumstance.

In *Cimafranca, Jr. vs. Sandiganbayan*,⁴⁰² the Supreme Court held:

This Court has made the consistent pronouncement that the return of the funds malversed is not a defense and will not be an exempting circumstance nor a ground for extinguishing the criminal liability of the accused. At best, it can be a mitigating circumstance.

The same principle should apply when the subject matter of the malversation is public property. However, when as in this case, it took the petitioner several years before he returned the government property, such circumstance cannot be considered a special mitigating circumstance analogous to voluntary surrender, as the trial court did credit to the petitioner. Said government property appear to be under the control and possession of petitioner all the time. There was no reason why he could not return the same promptly if not soonest to the government. The much delayed return of the property

³⁹⁹ Exhibits G to G-2, G-6 to G-7, G-19, G-27.

⁴⁰⁰ Exhibit G, G-2, G-6, G-7, G-19 and G-21

⁴⁰¹ Exhibit W

⁴⁰² 194 SCRA 107 [1991].

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must be a desperate act and afterthought of petitioner when he realized that all possible hope of exoneration was lost during the trial.⁴⁰³

Hence, the accused are not entitled to an acquittal, nor to a mitigating circumstance akin to voluntary surrender.

Violation of Section 3(e), Republic Act No. 3019

The Information in SB-10-CRM-0111 charges accused Luna, Lindo, Carlos, Indoyon, Saligumba and Ferrando of causing undue injury to the Municipality of Lingig by disbursing public funds in the amount of **P1,610,800.00**, by way of Cash Advance through Disbursement Voucher No. **100-2004-04-1271**, as payment for the honoraria and *per diems* of one hundred one (101) job order workers from January to April 2004 despite the following deficiencies and irregularities:

- 1) There was no appropriation ordinance or law authorizing the release of said funds;
- 2) The funds utilized for the payment of the honoraria and *per diems* of the 101 job order employees were taken out of the following:

a. 20% Development Fund allocated for:

- | | |
|--|----------------------|
| i. Peace and Order and Public Safety- P | 344,000.00 |
| ii. National Security Mission Projects and Initiatives - | 648,000.00.00 |

b. The appropriated funds intended for:

- | | |
|---|-------------------|
| i. Administrative Support Services in the Office of the Municipal Mayor | 80,000.00 |
| ii. Other Services in the Office of the Municipal Mayor | 90,000.00 |
| iii. Other Services in the Office of the Municipal Treasurer | 100,000.00 |

adversely affecting the execution of other budgetary services and/or programmed activities of LGU Lingig, as the transaction is void for want of necessary authority from the Sangguniang Bayan of Lingig or appropriation ordinance.⁴⁰⁴

- 3) The cash advance was not obligated at the time of its approval;
- 4) The check covering the amount of the cash advance of P1,610,800.00 was released on April 12, 2004, two days ahead of the approval of the cash advance;
- 5) The workers hired through Job Order Contracts were "designated" as Community Aide, Informant and

⁴⁰³ At p. 113. Underscoring supplied.

⁴⁰⁴ Information dated January 30, 2009, pp. 2-3; Record, Vol. II, pp. 2-3.



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Confidential Employee Assistant with the names of the workers as appearing in the Job Order Contracts and Time Book Payrolls being "assumed names";

- 6) There were no Daily Time Records submitted to show that the job order employees rendered services for the period January to April 2004;
- 7) The Time Book and Payroll shows that the job order employees were paid different rates of monthly compensation instead of daily or hourly wages;
- 8) The job order employees were paid despite the incomplete entries in the *Time Book and Payrolls* pertaining to the number, date, place of issue of the residence certificates and the absence of the signatures of witnesses;
- 9) The job order contracts were not submitted to the Civil Service Commission for its review pursuant to CSC Memorandum Circular No. 17, series of 2002, or also known as the *Policy Guidelines for Contracts of Service* and CSC Memorandum Circular No. 24, series of 2002, or the *Clarification on Policy Guidelines for Contracts of Service*.

Section 3(e) of R.A. No. 3019 provides:

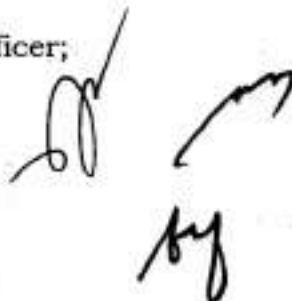
Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

XXX XXX XXX

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

The elements of violation of Section 3(e), R.A. No. 3019 are:

1. The offender is a public officer;

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- 2. The act was done in the discharge of the public officer's official, administrative or judicial functions;
- 3. The act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and,
- 4. The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.⁴⁰⁵

All the elements of violation of Section 3(e), R.A. No. 3019 are present.

The offender is a public officer.

As previously discussed, accused Luna, Lindo and Carlos admitted that they were public officials during the time material to this case.

Disbursement Voucher No. 100-2004-04-1271 and the subject check show that accused Indoyon signed as Municipal Treasurer.⁴⁰⁶

On the other hand, accused Nilda T. Ferrando's Service Record shows that she was a Cash Clerk at the Municipal Treasurer's Office of Lingig, from March 20, 2002 until September 30, 2010.⁴⁰⁷

The act was done in the discharge of the public officer's official, administrative or judicial functions.

The accused were charged for performing the following acts:

Lindo	Certifying on behalf of Luna DV No. 100-2004-04-1271 as to the legality and veracity of the cash advance incurred under his direct supervision and approving payment therefor also on behalf of accused Luna.
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⁴⁰⁵ Zapanta vs. People, 757 SCRA 172, 189 (2015).
⁴⁰⁶ Record, Vol. III, p. 55.
⁴⁰⁷ Service Record, Exhibit TT.

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Carlos	certified on the cash advance voucher as to the completeness and propriety of supporting documents.
Indoyon	Certified on cash advance voucher as to cash availability.
Ferrando	Receiving the amount of P1,610,800.00 as payment of the honorarium and per diem of 101 workers hired through job order contracts from January to April 2004.

ACCUSED LUNA, LINDO AND CARLOS.

As previously discussed accused Luna, Lindo and Carlos signed the disbursement voucher and the job orders in the performance of their official functions as Mayor, Executive Assistant and Municipal Accountant respectively. Accused Luna and Lindo also signed the *timebook and payroll* as mayor and executive assistant, respectively. Accused Luna directed accused Lindo to act as HRMO.

ACCUSED INDOYON

Accused Indoyon is the Municipal Treasurer. The functions of a Municipal Treasurer include:

ARTICLE II
THE TREASURER

Section 470. *Appointment, Qualifications, Powers and Duties.* - xxx

xxx xxx xxx

(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody and exercise proper management of the funds of the local government unit concerned.

(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;

XXX

XXX

XXX

(c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

Accused Indoyon certified as to the availability of cash in DV No. 100-2004-04-1271. He also signed LBP Check No. 0000231481.⁴⁰⁸

ACCUSED FERRANDO

Accused Ferrando, a cash clerk at LGU Lingig from March 20, 2002 to September 30, 2010,⁴⁰⁹ performed the functions of a *disbursing officer*. She received and encashed the subject check as a disbursing officer.⁴¹⁰

Under the ***New Government Accounting System Manual for LGUs***, the duties of a disbursing officer include:

- i. Preparation of the Report of Disbursements and submit the original and duplicate copy with vouchers/payrolls/petty cash vouchers to the Accountant;
- ii. Encashment of check and payment to claimants;
- iii. Record disbursement in Cashbook – Cash Advances;
- iv. Return of unused cash to the Treasurer/Cashier; and,
- v. Preparation of Report of Disbursement, attach paid payrolls/ supporting documents and copy of OR for unused cash advance returned to Treasurer/Cashier; signing "Certified Correct" portion of Report of Disbursement and submit to Accounting Unit.

Here, accused Ferrando received LBP Check No. 0000231481⁴¹¹ in the amount of PhP2,327,291.32 payable to her. She encashed said check and claimed to have released the amounts to the names listed in the *timebook and payroll*.⁴¹²

⁴⁰⁸ Exhibit E

⁴⁰⁹ Ferrando's Service Record, Exhibit TT.

⁴¹⁰ Ferrando's Judicial Affidavit August 29, 2015, p. 3.

⁴¹¹ Exhibit E

⁴¹² Ferrando's Judicial Affidavit dated August 29, 2015, p. 9.

She signed the 32 *Time Book and Payrolls* certifying that she "paid cash to each man whose name appears on the above roll, the amount set opposite his name, he having presented himself, established his identity, and affixed his signature or thumbmark on the space provided therefore. xxx"⁴¹³

Clearly, accused Luna, Lindo, Indoyon, Carlos and Ferrando acted in the performance of their respective administrative and official functions.

The accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence.

In *Albert vs. Sandiganbayan*,⁴¹⁴ the Supreme Court explained the three modes, i.e., manifest partiality, evident bad faith and gross inexcusable negligence, through which violation of Section 3(e), R.A. No. 3019 may be committed:

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In *Uriarte v. People*, this Court explained that Section 3(e) of RA 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with

⁴¹³ Exhibits 7-A to 38-A

⁴¹⁴ 580 SCRA 379 (2009)

conscious indifference to consequences insofar as other persons may be affected.⁴¹⁵

Proof of *any* of the three modes is sufficient to sustain a conviction.⁴¹⁶

a. Improper and illegal charging of public funds to appropriations not intended for the purpose.

The Information charged accused for certifying and approving DV No. 100-2004-04-1271 despite the following irregularities:

- 1) There was no appropriation ordinance or law authorizing the release of said funds;
- 2) The funds utilized for the payment of the honoraria and per diems of the 101 job order employees were taken out of the following:
 - a. 20% Development Fund allocated for Peace and Order and Public Safety- **P344,000.00** and National Security Mission Projects and Initiatives - **P648,000.00.00**; and
 - b. The appropriated funds intended for:
 - i. Administrative Support Services in the Office of the Municipal Mayor (**P80,000.00**);
 - ii. Other Services in the Office of the Municipal Mayor (**P90,000.00**);
 - iii. Other Services in the Office of the Municipal Treasurer (**P100,000.00**);

adversely affecting the execution of other budgetary services and/or programmed activities of the LGU of Lingig as the transaction is void for want of necessary authority from the Sangguniang Bayan of Lingig or appropriation ordinance.⁴¹⁷

- 3) The cash advance was not obligated at the time of its approval;

Section 336 of the **Local Government Code** expressly provides:

⁴¹⁵ at p. 290. Underlining supplied.

⁴¹⁶ Sison vs. People, 614 SCRA 670, 679 [2010]

⁴¹⁷ Information dated January 30, 2009, pp. 2-3; Record Vol. II, pp. 2-3.

Decision

People vs. Luna, et al.
 SB-10-CRM-0111, etc.

x-----x

Section 336. Use of Appropriated Funds and Savings. - Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

The evidence shows that the P1,610,800.00 was charged from the following:

ALOBS	Job Order (Exhibit)	Payroll (Exhibit)	Period (2004)	Fund	Allotment Class	Amount
100-2004-02-0822	G-17	F-17	February	Other Expense (1011)	MOOE	28,560.00
100-2004-04-0512	G-20 G-21	F-20	February	1091	MOOE	100,000.00
100-2004-04-0560 (per diem)		F-24	January	Administrative Support (1011)		30,000.00
100-2004-04-0561 (per diems)		F-23	January	1011		30,000.00
100-2004-04-0562 (per diems)		F-22	January	1011		30,000.00
100-2004-06-0807	G-12	F-12	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0808	G-10	F-10	January to March	20% National Security Mission	MOOE	24,000.00
100-2004-06-0809	G-5	F-5	January to March	20% National Security Mission	MOOE	32,000.00
100-2004-06-0810	G-9	F-9	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0811	G-4	F-4	January to March	20% National Security Mission	MOOE	24,000.00
100-2004-06-0812	G-6	F-6	January to March	20% National Security Mission	MOOE	36,000.00
100-2004-06-0813	G-7	F-7	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0814	G-8	F-8	January to March	20% National Security Mission	MOOE	24,000.00
100-2004-06-0815	G-19	F-19	February	Other Expense (1011)	MOOE	42,840.00
100-2004-06-0816	G-18	F-18	February	Other Expense (1011)	MOOE	71,400.00
100-2004-06-0817	G-16	F-16	February	Other Expense (1011)	MOOE	28,560.00
100-2004-06-0818	G-15	F-15	February	Other Expense (1011)	MOOE	71,400.00
100-2004-06-0819	G-13	F-13	February	Other Expense (1011)	MOOE	28,560.00
100-2004-06-0820	G-14	F-14	February	Other Expense (1011)	MOOE	38,080.00
100-2004-06-0821	G-21	F-21	February	Administrative Support (1011); Other Expense (1011)	MOOE	71,400.00
100-2004-06-0823	G-25	F-25	January to March	20% National Security Mission	MOOE	36,000.00
100-2004-06-0824	G-26	F-28	January to March	20% National Security Mission	MOOE	32,000.00
100-2004-06-0825	G-27	F-29	January to March	Other Expense (1011)	MOOE	24,000.00
100-2004-06-0826	G-30	F-32	January to March	Administrative Support (1011); Other Expense (1011)	MOOE	24,000.00
100-2004-06-0827	G-26	F-26	January to March	20% Peace and Order	MOOE	24,000.00
100-2004-06-0828	G-27	F-27	January to March	20% Peace and Order	MOOE	60,000.00
100-2004-06-0829	G-29	F-31	January to March	20% Peace and Order	MOOE	60,000.00

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x-----x

100-2004-06-0830	G-28	F-30	January to March	20% National Security Mission	MOOE	60,000.00
100-2004-06-0832	G-3	F-3	April	20% National Security Mission	MOOE	100,000.00
100-2004-06-0833	G-2	F-2	April	20% Peace and Order	MOOE	100,000.00
100-2004-06-0834	G-11	F-11	April	20% National Security Mission		100,000.00
100-2004-06-0891	G	F	April	20% Peace and Order	MOOE	100,000.00
					Total	1,610,800.00

The honoraria and *per diems* for job orders are not properly chargeable against the (i) 20% Development Fund.

DILG Memorandum Circular (MC) No. 99-66 dated April 23, 1999⁴¹⁸ provides an exclusive list of the programs, projects and activities chargeable to the 20% Development Fund. The list is composed of 3 main categories:

- a. Social Development;
- b. Economic Development; and,
- c. Infrastructure Development.

For obvious reasons, the *per diems* for confidential job order workers cannot fall within the 2nd and 3rd categories.

On the other hand, the social development aspect is composed of the following:

Program, Project and Activity Coverage

Expenditures from out of the 20% Development Fund shall be limited to the following sectoral programs, projects or activities:

1. Social Development

- (a) Human and Ecological Security Initiatives (20% of the 20% Development Fund) which shall include, but not limited to the following:
 - (i) Comprehensive solid waste management, including the purchase of brand new equipment, such as garbage trucks and garbage compactor trucks, as well as, the purchase of land for sanitary landfill purposes;
 - (ii) Purchase of lot for hospitals, health centers, day care centers and similar facilities, including their construction, maintenance or repair;
 - (iii) Purchase of lot for the resettlement of squatters, including the construction of housing units and facilities;
 - (iv) Purchase of lot for public parks, including maintenance, as well as, labor-intensive cleaning

⁴¹⁸ Exhibit Z; amending DILG MC No. 95-216 dated December 14, 1995.

- and greening of built-up areas, and community reforestation projects;
- (v) Purchase of medicines and other medical supplies and equipment, and basic commodities⁴¹⁹ assistance for the displaced and the needy in times of disasters and calamities; and
- (vi) Youth Welfare and Development Programs, e.g., drug abuse prevention, control and rehabilitation, out-of-school youth education, job placement and referrals, community-based physical fitness and sports development, and other related projects or activities;
- (b) Purchase of fire trucks, patrol cars, patrol jeeps, and other relevant equipment for purposes of maintaining law and order and public safety;
- (c) Tourism Development and Promotion; and
- (d) Other social development undertakings which are highly supportive of job generation and livelihood opportunities.

DILG MC No. 99-144 dated August 11, 1999 amended *DILG MC No. 99-66* and added *Peace and Order Council (POC)* programs, projects and activities, including the *Barangay at Pulisya Laban sa Krimen*, to the *Social Development Sector*.⁴¹⁹
Viz:

In addition to the sectoral programs, projects or activities provided under Memorandum Circular No. 95-216, as amended, the following concerns may also be funded from out of the 20% Development Fund, namely:

- I. Peace and Order Council (POC) programs, projects and activities, to include the Barangay at Pulisya Laban sa Krimen under the Social Development Sector;

A careful reading of DILG MC No. 99-66 would easily reveal that the expenditures allowed under the 20% Development Fund pertain to the purchase, construction, maintenance or repair of properties, facilities, equipment and supplies or the funding of the programs enumerated thereunder. There is no indication that funds for job order employees for purposes other than those listed are included as an authorized expenditure.

Similarly, DILG MC No. 99-144 only allows expenditure to support the programs and initiatives of the local peace and order council including their operational requirements. There

⁴¹⁹ Exhibit AA

is no indication that job orders hired by the local chief executive for intelligence purposes is an authorized expenditure.

Even if we were to consider the amount as properly chargeable against the 20% Development Fund, the appropriation was still insufficient at the time of the disbursement. The record show that only P992,000.00 was charged against the development fund. The rest were belatedly charged against various MOOE funds under *administrative support and other expenses*.⁴²⁰

Moreover, the evidence also shows that the ALOBS were belatedly issued as shown by the number "06", in the ALOBS which represents the Month of June.

In short, at the time DV No. 100-2004-04-1271 was prepared and approved, and at the time LBP Check No. 0000231481 was issued and encashed, there was insufficient allotment, if at all, for the honorarium and per diem of job order workers.

This expenditure of funds without or insufficient appropriation constitutes evident bad faith, and at the very least, gross inexcusable negligence.

- 4. The check covering the amount of the cash advance of P1,610,800.00 was released on April 12, 2004, two (2) days ahead of the approval of the cash advance.

LBP Check No. 0000231481 was dated April 12, 2004, or 2 days earlier than the April 14, 2004 date of DV No. 100-2004-04-1271. The Court, however, notes that the date of a check is not necessarily the date that it was issued or released.

Accused Ferrando testified that she encashed LBP Check No. 0000231481 on the same day that it was released to her.⁴²¹ The Court notes that said check was encashed on April 14, 2004. There was no evidence to show that the check was released or issued on April 12, 2004, or at any time prior to the approval date (April 14, 2004) of DV No. 100-2004-04-1271. Hence, accused cannot be said to have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

⁴²⁰ Audit Observation Memorandum No. 2005-001 dated July 28, 2005, Exhibit V; ALOBS marked as Exhibit H-H-32; Summary of Allotment and Obligations for the period January to April 2004, Municipality of Lingig, Surigao del Sur, Exhibit I.

⁴²¹ Ferrando's Judicial Affidavit dated August 29, 2015, p. 9.

Handwritten signatures and initials are present at the bottom right of the page, including a large signature and the initials 'by'.

Deficiencies and irregularities in the supporting documents

- 5) The workers hired through Job Order Contracts were "designated" as Community Aide, Informant and Confidential Employee Assistant with the names of the workers as appearing in the Job Order Contracts and Time Book Payrolls being "assumed names";
- 6) There were no Daily Time Records submitted to show that the job order employees rendered services for the period January to April 2004.
- 7) The Time Book and Payroll shows that the job order employees were paid different rates of monthly compensation instead of daily or hourly wages;
- 8) The job order employees were paid despite the incomplete entries in the *Time Book and Payrolls* pertaining to the residence certificate, i.e., number, date, place of issue and the absence of the signatures of witnesses;
- 9) The job order contracts were not submitted to the Civil Service Commission for its review pursuant to CSC Memorandum Circular No. 17, series of 2002, also known as the "Policy Guidelines for Contracts of Service" and CSC Memorandum Circular No. 24, series of 2002, also known as the "Clarification on Policy Guidelines for Contracts of Service";

The use of assumed names in the time book and payroll constitutes evident bad faith.

While accused Luna stated in the Certification dated June 16, 2005 that the names appearing on the *Time Book and Payrolls* are dummies or "assumed names," he testified that the names are the actual or real names of persons.⁴²² Accused Lindo also testified that the names are actual names of job order workers.⁴²³

Luzviminda Basanez testified that she was not hired, she did not work for and was not paid by LGU Lingig. Hence, while actual names of persons are used, their names are not necessarily the names of the persons who received the payment.

⁴²² Exhibit T.

⁴²³ Lindo's Judicial Affidavit dated June 3, 2014, p. 3; TSN dated August 26, 2014, pp. 21, 24-25.

Next, there were indeed no Daily Time Records to show that the job order workers actually reported for work. Likewise, the evidence confirms that the time book and payrolls were not completely filled up as to the details of the residence certificates of the job orders and the signature of witnesses.

As previously discussed, the Court finds that there is no proof that the recipients of the payments actually rendered services to LGU Lingig.

That payment was made even when there was no proof of work accomplished or at least physical attendance constitutes evident bad faith and at the very least, gross inexcusable negligence.

In ***Office of the Ombudsman vs. Torres***,⁴²⁴ the Supreme Court said that the DTR is primarily, if not solely, intended to prevent damage or loss to the government as would result in instances where it pays an employee for no work done, viz:

xxx The evident purpose of requiring government employees to keep a time record is to show their attendance in office to work and to be paid accordingly. Closely adhering to the policy of no work-no pay, a DTR is primarily, if not solely, intended to prevent damage or loss to the government as would result in instances where it pays an employee for no work done.

xxx

xxx

xxx

But it cannot even be said that no damage was suffered by the government. When respondents collected their salaries on the basis of falsified DTRs, they caused injury to the government. The falsification of one's DTR to cover up one's absences or tardiness automatically results in financial losses to the government because it enables the employee concerned to be paid salaries and to earn leave credits for services which were never rendered. Undeniably, the falsification of a DTR foists a fraud involving government funds.

The *time book and payrolls* confirm that the job order employees were paid by a monthly rate, instead of a daily or hourly rate. However, this, by itself, will not justify the non-

⁴²⁴ 543 SCRA 46 (2008)

payment of the salaries of the job workers, if work was indeed performed. Nor would it constitute evident bad faith.

Finally, it was proven that the subject job orders were not submitted to the Civil Service Commission Regional Office for Review. The Certification dated August 22, 2011⁴²⁵ issued by Surigao del Sur, Director II, Harold P. Pareja of the Civil Service Field Office, Tandag City, states that "there are no available copies of Job Orders for the period January 2004 to April 2004 of 101 Job Order workers hired by the Municipality of Lingig, Surigao del Sur in our office after inspection of our office record and files."

The accused did not present any evidence to show otherwise.

CSC Resolution No. 020790 mandates the submission of *job orders* to the Civil Service Commission Regional Office (CSCRO) for review, within 30 days from its execution. The same Resolution provides that no services shall be rendered pending review by the CSCRO of the job orders. Nonetheless, non-submission of the contract shall not invalidate the same. The pertinent provisions read:

Section 5. Submission of Contract/MOA or Job Order for Review. - The contract of service, MOA or job order shall be submitted to the CSC Regional Office (CSCRO) having jurisdiction over the government agency for review of its stipulations within thirty (30) days from the execution and signing of the contract of service, MOA or job order which shall be the date indicated on the said instrument.

Section 6. No Rendition of Services - No service shall be rendered under the contract of services, MOA or job order pending its review by the CSCRO.

Section 8. Effect of Non-Submission of Contract / MOA- Failure of submission of the contract or MOA for review by the CSCRO shall not invalidate the same. However, this would be without prejudice to the filing of the charge for Neglect of Duty against the HRMO of the hiring



agency and the officer who signed the same. Furthermore, services rendered under said contract or MOA shall not be accredited as government service.

This must be so because Section 77 of the Local Government Code itself allows the hiring by the LGU of job order workers without need of CSC approval or attestation. Perforce, since the non-submission does not invalidate the job orders, such would not justify non-payment of services rendered under a job contract. The possible administrative consequence of non-submission of the job order contracts is provided for under CSC Resolution No. 020790, i.e., possibility of charge of neglect of duty against the HRMO and such service rendered shall not be credited as government service. Such payment despite failure to submit the job order contracts to the CSC therefore does not constitute evident bad faith, manifest partiality or gross inexcusable negligence.

In sum, the acts of accused Luna, Lindo, Indoyon and Carlos in certifying, approving and signing DV No. 100-2004-04-1271, despite insufficient appropriation constitutes evident bad faith and gross inexcusable negligence. On the other hand, by their act of certifying the disbursement voucher without the necessary supporting documents, and cash allotment, accused Carlos and Indoyon acted with evident bad faith and gross inexcusable negligence. Accused Ferrando, in releasing the funds even when there was no proof of identity, also acted with gross inexcusable negligence.

The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference

In *Llorente vs. Sandiganbayan*,⁴²⁶ the Supreme Court held that undue injury is interpreted as actual damage, and should be proven as an element of the offense. To wit:

x x x. Unlike in actions for torts, undue injury in Sec. 3[e] cannot be presumed even after a wrong or violation of a right has been established. Its

⁴²⁶ 287 SCRA 382, 399 [1998]

existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

In jurisprudence, "undue injury" is consistently interpreted as "actual damage". Undue has been defined as "more than necessary, not proper, [or] illegal;" and injury as "any wrong or damage done to another, either in his person, rights, reputation or property[; that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

As explained by the Supreme Court in **Cabrera vs. Sandiganbayan**,⁴²⁷ proof of either undue injury or the giving of unwarranted benefits, advantage or preference, or both is sufficient. To wit:

In fine, the delictual act of the accused may give rise to or cause either an undue injury to any party, including the government; or the giving to any private party unwarranted benefits, advantage or preference, or both undue injury and unwarranted benefits, advantage or preference. As explained by the Court in *Bautista v. Sandiganbayan*:

Indeed, Sec. 3, par. (e), RA 3019, as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3, par. (e), or as aptly held in *Santiago*, as two (2) different modes of committing the offense. This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.

⁴²⁷ 441 SCRA 377, 386-387 (2004), citing *Bautista vs. Sandiganbayan*, 332 SCRA 126 (2000).

agency and the officer who signed the same. Furthermore, services rendered under said contract or MOA shall not be accredited as government service.

This must be so because Section 77 of the Local Government Code itself allows the hiring by the LGU of job order workers without need of CSC approval or attestation. Perforce, since the non-submission does not invalidate the job orders, such would not justify non-payment of services rendered under a job contract. The possible administrative consequence of non-submission of the job order contracts is provided for under CSC Resolution No. 020790, i.e., possibility of charge of neglect of duty against the HRMO and such service rendered shall not be credited as government service. Such payment despite failure to submit the job order contracts to the CSC therefore does not constitute evident bad faith, manifest partiality or gross inexcusable negligence.

In sum, the acts of accused Luna, Lindo, Indoyon and Carlos in certifying, approving and signing DV No. 100-2004-04-1271, despite insufficient appropriation constitutes evident bad faith and gross inexcusable negligence. On the other hand, by their act of certifying the disbursement voucher without the necessary supporting documents, and cash allotment, accused Carlos and Indoyon acted with evident bad faith and gross inexcusable negligence. Accused Ferrando, in releasing the funds even when there was no proof of identity, also acted with gross inexcusable negligence.

The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference

In *Llorente vs. Sandiganbayan*,⁴²⁶ the Supreme Court held that undue injury is interpreted as actual damage, and should be proven as an element of the offense. To wit:

x x x. Unlike in actions for torts, undue injury in Sec. 3[e] cannot be presumed even after a wrong or violation of a right has been established. Its

⁴²⁶ 287 SCRA 382, 399 [1998]



In *Cruz vs. Sandiganbayan*,⁴²⁸ the Supreme Court quoted with approval the Sandiganbayan's explanation that damage is caused to the government' when money from its coffers was used by someone else without paying interest and without authority for its use. The Supreme Court also stressed that the refund of the amount subject of the prosecution for violation of Section 3(e) of R.A. No. 3019 is not one of the modes enumerated under Article 89 of the Revised Penal Code that would totally extinguish criminal liability, viz:

Finally, it is puerile for petitioner to contend that Kelly Lumber's act of refunding the amount subject of double payment argues against the idea of the government suffering damages. The injury suffered by the government is beyond cavil. This conclusion was aptly explained by the Sandiganbayan in the following wise:

Damage to the government in that instance [referring to the alleged double payment] is inevitable for the simple reason that money taken from the coffers was used by someone else for about two years and without paying interest and without authority for its use (N.B. 19 March 1997 is only two months short of two years from filing of this case).

Moreover, refund of the amount subject of the prosecution is not one of those enumerated under Article 89 of the Revised Penal Code which would totally extinguish criminal liability. Article 89 of the Revised Penal Code applies in a suppletory character as provided for under Article 10 of the same Code.⁴²⁹

Accused Luna returned the amount of PhP1,610,800.00 in September 2010, or almost 5 years after the amount was encashed and disbursed without basis. The illegal disbursement of said amount deprived the LGU of Lingig of the use of the foregoing amount. This constitute undue injury to the Municipality of Lingig. Likewise, the release of the funds to persons who did not perform any work for the Municipality constitutes giving of unwarranted benefit.

Conspiracy

To hold an accused guilty of conspiracy, he must have participated in the transaction with a view to the furtherance of

⁴²⁸ 467 SCRA 52, 67-68 (2005)

⁴²⁹ at pp. 67-68.

the common design and purpose; he must be shown to have performed an overt act in pursuance or furtherance of the complicity. The Supreme Court ruled:

To reiterate, in order to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Conspiracy can be inferred from, and established by, the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. What is determinative is proof establishing that the accused were animated by one and the same purpose. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Conspiracy must, like the crime itself, be proven beyond reasonable doubt for it is a facile device by which an accused may be ensnared and kept within the penal fold. Suppositions based on mere presumptions and not on solid facts do not constitute proof beyond reasonable doubt.⁴³⁰

Here, the acts of accused Luna, Lindo, Carlos, Indoyon and Ferrando pointed to a common purpose, disbursement of the amount of PhP1,610,800.00 even when there was no basis therefor. Their individual and concerted acts resulted to the unlawful disbursement of the amount of PhP1,610,800.00 from the Municipality's Funds to the damage and prejudice of LGU Lingig.

By directing the disbursement of the funds and affixing their signatures on Disbursement Voucher No. 100-2004-04-1271 to signify their certification or approval in relation to the performance of their duties, accused Executive Assistant Lindo, Municipal Accountant Carlos and Municipal Treasurer Indoyon gave the assailed disbursement voucher a semblance of legality and regularity. For his part, accused Luna was fully aware of the disbursement and gave his acquiescence thereto. Accused Lindo signed LBP Check No. 231481, which was subsequently encashed and released by accused Ferrando to persons whose identities she failed to verify, and who did not actually perform work for LGU Lingig.



⁴³⁰ Zapanta vs. People, *Supra*, at pp. 192-193.



Penalty

On May 22, 2012, accused Luna, Lindo and Carlos voluntarily surrendered to the Tagum City Police Station and each posted their respective bail bond with the Regional Trial Court in Tagum City.⁴³¹ Accused Indoyon and Ferrando surrendered to the Sandiganbayan on February 10, 2011 and June 19, 2013, respectively and each posted bail on even date. Hence, said accused are entitled to the mitigating circumstance of voluntary surrender.

The Supreme Court, in ***Valle vs. Sandiganbayan***,⁴³² held that the trial court properly appreciated voluntary surrender as a mitigating circumstance since nothing in the records show that therein accused had been arrested prior to his posting of a cash bailbond.

SB-12-CRM-0065 - FALSIFICATION

The penalty for *Falsification of Public Document* under Article 171 of the Revised Penal Code, is *Prision Mayor* and a fine not to exceed PhP5,000.00. The Court will not apply the penalty of a fine not to exceed PhP1,000,000.00, under R.A. No. 10951 since the same would not benefit the accused.

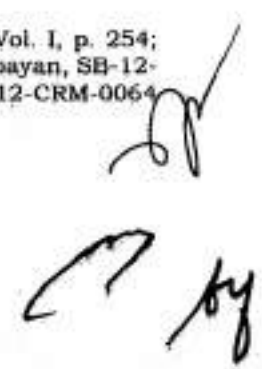
With one mitigating circumstance in their favor, the penalty imposable upon accused Luna and Lindo is 6 years and 1 day to 8 years of *Prision Mayor*. Applying the Indeterminate Sentence Law, accused Luna and Lindo can each be meted the minimum penalty ranging anywhere from 6 months and 1 day to 2 years and 4 months of *Prision Correccional*.

SB-12-CRM-0064 - MALVERSATION

The penalty for *Malversation of Public Funds*, under Article 217 of the Revised Penal Code, is *Reclusion Temporal* in its maximum period to *reclusion perpetua*, if the amount involved is more than P22,000.00. As amended by R.A. No. 10951, where the amount involved is more than PhP1,200,000.00 but does not exceed PhP2,400,000.00, the prescribed penalty is

⁴³¹ Return of Warrant of Arrest dated May 22, 2012, SB-12-CRM-0064 Record, Vol. I, p. 254; Letter dated May 24, 2012 addressed to the Executive Clerk of Court, Sandiganbayan, SB-12-CRM-0064 Record, Vol. I, p. 210; RTC Orders all dated May 22, 2012, SB-12-CRM-0064 Record, Vol. I, pp. 211, 220 and 228.

⁴³² 214 SCRA 532 (1992).



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Prision Mayor in its maximum period to *Reclusion Temporal* in its minimum period.

In all cases, a person guilty of malversation should also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed.

With one mitigating circumstance in their favor, the penalty imposable upon the accused is 10 years and 1 day to 11 years, 6 months and 20 days of *Prision Mayor*, maximum. Applying the Indeterminate Sentence Law, the minimum penalty is anywhere from 6 years and 1 day of *prision mayor*, minimum, to 10 years of *Prision Mayor*, medium.

SB-10-CRM-0111 - Section 3(e) of Republic Act No. 3019

The penalty for *violation of Section 3(e), R.A. No. 3019* is imprisonment for 6 years and 1 month to 15 years. Under the Indeterminate Sentence Law, an accused can be meted a minimum penalty not lower than the minimum penalty and a maximum penalty not higher than the maximum penalty imposed by law.

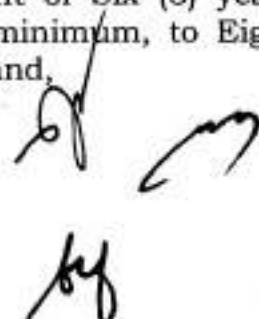
The accused shall also be meted the accessory penalty of special disqualification from holding public office.

WHEREFORE, this Court resolves as follows:

1. SB-10-CRM-0111:

Accused ROBERTO M. LUNA, JR., JETHRO P. LINDO, VENUS M. CARLOS, EBRENCIO F. INDOYON, JR., and, NILDA T. FERRANDO, are found **GUILTY** beyond reasonable doubt of *Violation of Section 3(e) of Republic Act No. 3019*, and each of them is sentenced to:

- a. Suffer an indeterminate penalty of imprisonment of Six (6) years and One (1) month, as minimum, to Eight (8) years, as maximum; and,



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- b. Suffer the accessory penalty of perpetual special disqualification from holding public office.

2. SB-12-CRM-0064:

Accused ROBERTO M. LUNA, JR., JETHRO P. LINDO, and VENUS M. CARLOS, are found **GUILTY** beyond reasonable doubt of *Malversation of Public Funds* under Article 217 of the Revised Penal Code, and each of them is sentenced to:

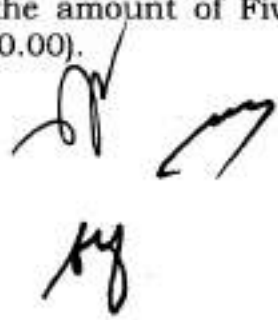
- a. Six (6) years and One (1) day of *Prision Mayor*, as minimum, to Ten (10) years and One (1) day of *Prision Mayor*, as maximum;
- b. Pay a fine in the amount of One Million Six Hundred Ten Thousand Eight Hundred Pesos (PhP1,610,800.00); and,
- c. Suffer the accessory penalty of perpetual special disqualification from holding public office.

Since accused Luna has returned the full amount of P1,610,800.00, no civil liability is imposed.

3. SB-12-CRM-0465:

Accused ROBERTO M. LUNA, JR. and JETHRO P. LINDO are found **GUILTY** beyond reasonable doubt of *Falsification of Public Documents*, under Article 171, Paragraph 2 of the Revised Penal Code, and each of them is sentenced to:

- i. Six (6) months and One (1) day of *Prision Correccional*, as minimum, to Six (6) years and One (1) day of *Prision Mayor*, as maximum; and,
- ii. Pay a fine in the amount of Five Thousand Pesos (PhP5,000.00).



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Accused VENUS M. CARLOS is **ACQUITTED**
for failure of the prosecution to prove her
guilt beyond reasonable doubt for the
offense of Falsification of Public Documents.


SO ORDERED.

Quezon City, Metro Manila.


SARAH JANE T. FERNANDEZ
Associate Justice

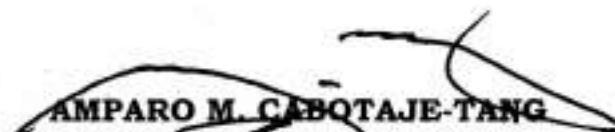
WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


BERNELITO R. FERNANDEZ
Associate Justice

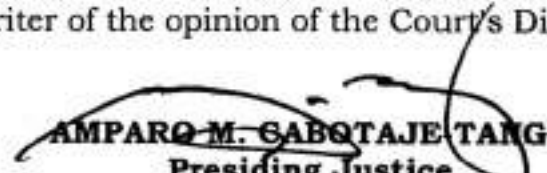
ATTESTATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the
Division Chairperson's Attestation, it is hereby certified that the
conclusions in the above decision were reached in consultation before the
case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson