



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

CONCHITA M. DELA CRUZ,  
Petitioner,

G.R. No. 236807

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

x-----x  
MAXIMO A. BORJE, *ET AL.*,  
Petitioners,

G.R. No. 236810

Present:

- versus -

PERALTA, *C.J.*, Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, *JJ.*

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:  
JAN 12 2021

x-----x

DECISION

PERALTA, *C.J.*:

Before this Court are consolidated Petitions for Review on *Certiorari*  
Under Rule 45 of the Rules of Court assailing the November 10, 2016

Decision<sup>1</sup> and the January 15, 2018 Resolution<sup>2</sup> of the Sandiganbayan in Criminal (*Crim.*) Case Nos. 28100 and 28253, finding petitioners guilty beyond reasonable doubt of Estafa through Falsification of Documents defined and penalized under Article 315, in relation to Article 171 and Article 48 of the Revised Penal Code (*RPC*) (Crim. Case No. 28100), and Violation of Section 3(e) of Republic Act No. 3019 (*R.A. No. 3019*) or the “Anti-Graft and Corrupt Practice Act”, as amended (Crim. Case No. 28253).

### Factual Antecedents

This controversy involves the alleged fictitious transactions in the Department of Public Works and Highways (*DPWH*) made during the period of March to December 2001. The accused in the criminal cases are high-ranking public officials and employees of the DPWH and private individuals, who allegedly forged and falsified documents to cause the payment of fictitious repairs and purchases of spare parts purportedly in the amount of ₱6,368,364.00 from public funds.<sup>3</sup> The accused and their positions during the relevant period are the following:<sup>4</sup>

|                                |  |
|--------------------------------|--|
| Julio T. Martinez (Martinez)   | Clerk III / Supply Officer, ADB Project Management Office            |
| Burt B. Favorito (Favorito)    | Director III, Administrative and Manpower Management Services (AMMS) |
| Florendo B. Arias (Arias)      | Assistant Director, Bureau of Equipment (BOE)                        |
| Violeta C. Amar (Amar)         | Accountant II, Claims, Processing and Documentation Station (CPDS)   |
| Napoleon S. Anas (Anas)        | Chief, Procurement Section   |
| Rogelio L. Beray (Beray)       | Chief, Facilities and Maintenance Division                           |
| Maximo A. Borje (Borje)        | Chief, Motorpool Section, BOE  |
| Rolando C. Castillo (Castillo) | Equipment Inspector, BOE   |

<sup>1</sup> Penned by Associate Justice Oscar C. Herrera, Jr., with the concurrence of Associate Justice Jose R. Hernandez and Associate Justice Alex L. Quiroz; *rollo* (G.R. No. 236810), pp. 49-108.

<sup>2</sup> Penned by Associate Justice Oscar C. Herrera, Jr., with the concurrence of Associate Justice Alex L. Quiroz and Associate Justice Bayani H. Jacinto; *id.* at 8-15.

<sup>3</sup> *Id.* at 51-52; 68.

<sup>4</sup> *Id.* at 51-52; 70-71.

|                                     |   |
|-------------------------------------|---|
| Jessica J. Catibayan<br>(Catibayan) | Accountant II, Subsidiary and Revenue Section               |
| Ma. Luisa T. Cruz (Cruz)            | Assistant Chief, Procurement Section, AMMS                  |
| Ricardo M. Juan, Jr. (Juan)         | Chief, Assets and Supplies, Management and Control Division |
| Agerico C. Palaypay<br>(Palaypay)   | Chief, Supply and Property Management Division              |
| Erdito Q. Quarto (Quarto)           | Chief, Central Equipment and Spare Parts Division           |
| Felipe A. San Jose (San Jose)       | Store Keeper, Central Equipment and Spare Parts Division    |
| Ronaldo G. Simbahan<br>(Simbahan)   | Senior Book Keeper, Subsidiary and Revenue Section          |
| Violeta R. Tadeo (Tadeo)            | Accountant III, Bookkeeping Section                         |
| Norma A. Villarmino<br>(Villarmino) | Chief, CPDS   |
| Jesus D. Capuz (Capuz)              | Owner of J-CAP Motorshop (supplier)                         |
| Conchita M. Dela Cruz (Dela Cruz)   | Owner of DEB Repair Shop and Parts Supply (supplier)        |

The amounts paid covered 409 transactions purportedly for the emergency repairs of 39 DPWH service vehicles, 274 of which were made in the name of accused Martinez, while others were made in the name of petitioner Maximo A. Borje (*Borje*) and other co-accused. The spare parts were purportedly supplied by J-CAP Motorshop (*J-CAP*) owned by accused Capuz, and DEB Repair Shop and Parts Supply (*DEB*) owned by petitioner Conchita Dela Cruz (*Dela Cruz*).

The transactions are covered by Disbursement Vouchers (*DV*) with the following supporting documents to justify the release of checks: Job Orders; Pre-Repair Inspection Reports; Requisitions for Supplies and Equipment (*RSE*); Accreditation Papers; Sales Invoices or Office Receipts; Certificates of Acceptance; Post-Repair Inspection Reports; Reports of Waste Materials; Requests for Obligation of Allotment (*ROA*); Certificates of Emergency Purchase; Certificates of Fair Wear and Tear; Canvas from three suppliers and Price Monitoring Sheets.<sup>5</sup>

<sup>5</sup> *Id.* at 71, 84.

On May 16, 2005, petitioners Borje and Dela Cruz, together with their co-accused, were arraigned in Crim. Case No. 28100<sup>6</sup> in an Information dated March 1, 2005 that reads as follows:

That during the period from March to December, 2001, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named high-ranking public officials and employees of the Department of Public Works and Highways (DPWH), Port Area, Manila, namely: JULIO T. MARTINEZ, then the Clerk/Supply Officer, BURT FAVORITO y BARBA, Director III, Administrative and Manpower Management Services (SG 27), FLORENDO ARIAS y BUÑAG, Assistant Director, Bureau of [E]quipment (SG 27), VIOLETA AMAR y CASTILLO, NAPOLEON ANAS y SEBASTIAN, ROGELIO BERAY y LAGANGA, MAXIMO BORJE JR. y AQUINO, ROLANDO CASTILLO y COMIA, JESSICA CATIBAYAN y JARDIEL, MA. LUISA CRUZ y TALAO, RICARDO JUAN, JR. y MACLANG, AGERICO PALAYPAY y CORTES, ERDITO QUARTO y QUIAOT, FELIPE A. SAN JOSE, RONALDO G. SIMBAHAN, VIOLETA TADEO y RAGASA, NORMA VILLARMINO y AGCAOILI and JOHN DOES, whose true names are not yet known, acting with unfaithfulness and abuse of confidence, committing the offense in relation to their office, and taking advantage of their official positions, and private individuals, namely: JESUS D. CAPUZ and CONCHITA M. DELA CRUZ and JOHN DOES, whose true names are not yet known, conspiring, confederating and mutually helping one another, with intent to defraud the government, did then and there, willfully[,] unlawfully and feloniously forge and falsify or cause to be forged and falsified documents, purportedly for emergency repairs of various DPWH vehicles and/or purchase of spare parts, with a total amount of SIX MILLION THREE HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED SIXTY-FOUR PESOS (₱6,368,364.00), and thereafter, cause the payment of said fictitious repairs and/or purchase of spare parts in the said total amount from funds held in trust and for administration by the said public officers, and which payments were made by the government on the basis of and relying on said forged and falsified documents, when in truth and in fact, the accused knew fully well that there were no emergency repairs of DPWH vehicles and/or purchases of spare parts, which said amount, accused, thereafter, willfully, unlawfully and criminally take, convert and misappropriate, to the personal use and benefit of person(s) not entitled to receive said funds, to the damage and prejudice of the government and the public interest in the aforesaid sum.

CONTRARY TO LAW.<sup>7</sup>

On July 20, 2005, petitioners Borje and Dela Cruz, together with their co-accused, were arraigned in Crim. Case No. 28253<sup>8</sup> in an Information dated June 8, 2005 that reads as follows:

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<sup>6</sup> *Id.* at 53.

<sup>7</sup> *Id.* at 51.

<sup>8</sup> *Id.* at 53.



That during the period from March to December, 2001, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named high-ranking public officials and employees of the Department of Public Works and Highways (DPWH), Port Area, Manila, namely: JULIO T. MARTINEZ, then the Clerk/Supply Officer, BURT FAVORITO y BARBA, Director III, Administrative and Manpower Management Services (SG 27), FLORENDO ARIAS y BUÑAG, Assistant Director, Bureau of [E]quipment (SG 27), VIOLETA AMAR y CASTILLO, NAPOLEON ANAS y SEBASTIAN, ROGELIO BERAY y LAGANGA, MAXIMO BORJE, [JR.] y AQUINO, ROLANDO CASTILLO y COMIA, JESSICA CATIBAYAN y JARDIEL, MA. LUISA CRUZ y TALAO, RICARDO JUAN, JR. y MACLANG, AGERICO PALAYPAY y CORTES, ERDITO QUARTO y QUIAOT, FELIPE A. SAN JOSE, RONALDO G. SIMBAHAN, VIOLETA TADEO y RAGASA, NORMA VILLARMINO y AGCAOILI, and JOHN DOES, whose true names are not yet known, committing the offense in relation to their office, and taking advantage of their official positions, and private individuals, namely: JESUS D. CAPUZ and CONCHITA M. DELA CRUZ and JOHN DOES, whose true names are not yet known, conspiring, confederating and mutually helping one another, acting with evident bad faith, manifest partiality or at the very least gross inexcusable negligence, did then and there, willfully, unlawfully and feloniously forge and falsify or cause to be forged and falsified documents purportedly for emergency repairs of various DPWH vehicles and/or purchase of spare parts, with a total amount of SIX MILLION THREE HUNDRED SIXTY EIGHT THOUSAND THREE HUNDRED SIXTY FOUR PESOS ([P]6,368,364.00), and which payments were made by the government on the basis of and relying on said forged and falsified documents, when in truth and in fact, as the accused fully well knew, that there were no emergency repairs of DPWH vehicles and/or purchases of spare parts, and these are ghost repairs in the total amount of SIX MILLION THREE HUNDRED SIXTY EIGHT THOUSAND THREE HUNDRED SIXTY FOUR PESOS (P6,368,364.00), thereby causing undue injury to the government in the aforesaid sum.

CONTRARY TO LAW.<sup>9</sup>

During trial, the prosecution presented documentary evidence including the DVs, the pertinent details of which were summarized by the Sandiganbayan.<sup>10</sup> Notably, petitioner Borje was identified as Payee even though he was not necessarily the end-user, and DEB, which petitioner Dela Cruz owns, was identified as Supplier in several of the DVs presented in relation to the emergency repairs and reimbursements of the following vehicles:

1. Mitsubishi L200 with Plate No. TSC-482 with petitioner Borje as Payee in thirty-three DVs, which indicate DEB as Supplier;<sup>11</sup>

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<sup>9</sup> *Id.* at 52.

<sup>10</sup> *Id.* at 71-84.

<sup>11</sup> *Id.* at 71-72.

2. Nissan Pick-up with Plate No. PLH-256 with petitioner Borje as Payee in two DVs, which indicate DEB as Supplier;<sup>12</sup>
3. Toyota Land Cruiser with Plate No. TNY-416 with petitioner Borje as Payee in four DVs, which indicate DEB as Supplier;<sup>13</sup>
4. Toyota Land Cruiser with Plate No. CEJ-514 with petitioner Borje as Payee in four DVs, which indicate DEB as Supplier;<sup>14</sup>
5. Mitsubishi L200 with Plate No. SFC-309 with petitioner Borje as Payee in five DVs, which indicate DEB as Supplier;<sup>15</sup>
6. Mitsubishi L200 with Plate No. SFG-346 with petitioner Borje as Payee in one DV, which indicates DEB as Supplier;<sup>16</sup>
7. Mitsubishi L200 with Plate No. SFG-455/H1-4231 with petitioner Borje as Payee in six DVs, which indicate DEB as Supplier;<sup>17</sup>
8. Mitsubishi L200 with Plate No. SFG-465 with petitioner Borje as Payee in one DV, which indicates J-CAP as Supplier;<sup>18</sup>
9. Mitsubishi L200 with Plate No. SFG-527 with petitioner Borje as Payee in one DV, which indicates DEB as Supplier;<sup>19</sup>
10. Mitsubishi L200 with Plate No. SFK-735 with petitioner Borje as Payee in one DV, which indicates DEB as Supplier;<sup>20</sup>
11. Mitsubishi L200 with Plate No. SED-732 with petitioner Borje as Payee in two DVs, which indicate DEB as Supplier;<sup>21</sup> and
12. Mitsubishi L200 with Plate No. SFG-485 with petitioner Borje as Payee in one DV, which indicates DEB as Supplier.<sup>22</sup>

In addition to the above DVs that have Borje named as Payee, DEB is also named as Supplier in several of the DVs presented in relation to the emergency repairs and reimbursements of the following vehicles:

1. Nissan Pathfinder with Plate No. PND-918;<sup>23</sup>
2. Nissan Pick-up with Plate No. PMY-110;<sup>24</sup>
3. Toyota Land Cruiser (Jeep) with Plate No. CEJ-591;<sup>25</sup>
4. Mitsubishi Pajero with Plate No. TKL-106;<sup>26</sup>
5. Nissan Pick-up with Plate No. PMB-631/HI-4148;<sup>27</sup>

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<sup>12</sup> *Id.* at 73.  
<sup>13</sup> *Id.* at 74.  
<sup>14</sup> *Id.* at 75.  
<sup>15</sup> *Id.* at 76-77.  
<sup>16</sup> *Id.* at 79.  
<sup>17</sup> *Id.* at 80.  
<sup>18</sup> *Id.*  
<sup>19</sup> *Id.* at 81.  
<sup>20</sup> *Id.* at 82.  
<sup>21</sup> *Id.*  
<sup>22</sup> *Id.* at 83.  
<sup>23</sup> *Id.* at 72.  
<sup>24</sup> *Id.* at 73.  
<sup>25</sup> *Id.* at 74.  
<sup>26</sup> *Id.* at 75.  
<sup>27</sup> *Id.* at 76.

6. Mitsubishi L200 with Plate No. SFG-496;<sup>28</sup>
7. Nissan Pick-up with Plate No. PME-676;<sup>29</sup>
8. Toyota Land Cruiser with Plate No. SFT-208;<sup>30</sup>
9. Toyota Land Cruiser with Plate No. SFT-308/HI-4398;<sup>31</sup>
10. Mitsubishi L200 with Plate No. SFG-417;<sup>32</sup>
11. Mitsubishi L200 with Plate No. SFT-272;<sup>33</sup>
12. Mitsubishi L200 with Plate No. SFT-282;<sup>34</sup>
13. Mitsubishi L200 with Plate No. SFT-715;<sup>35</sup>
14. Nissan Pick-up with Plate No. PME-687;<sup>36</sup>
15. Mitsubishi L200 with Plate No. SFT-732;<sup>37</sup>
16. Mitsubishi L200 with Plate No. SFG-407;<sup>38</sup>
17. Toyota Prado with Plate No. SFG-402;<sup>39</sup>
18. Mitsubishi L200 with Plate No. SFD-732;<sup>40</sup>
19. Mitsubishi L200 with Plate No. SFG-369;<sup>41</sup>
20. Toyota Land Cruiser with Plate No. SFD-302;<sup>42</sup> and
21. Toyota Prado with Plate No. SFT-207.<sup>43</sup>

Some of these vehicles were assigned to some of the prosecution's witnesses who were then DPWH officers and employees. The testimony of these witnesses similarly involved a narration of the assignment of a service vehicle, investigation by the Internal Audit Service (*IAS*) Office concerning repairs made on the said vehicle, and a statement denying, not recognizing and/or not authorizing some or all of the said repairs made as described in the DVs.<sup>44</sup>

Among the prosecution's witnesses was Ramoncito C. Jimenez (*Jimenez*), who testified that since 1999 up to present (*i.e.*, the time of his testimony), he was the Project Manager 1 at the ADB Project Monitoring Office of the DPWH. In 1999, he was issued a brand new service vehicle, a Mitsubishi L200 Pick-up with Plate No. SFG 496. This vehicle, under his directive, was previously subjected to maintenance service and repairs for four

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28 *Id.*  
 29 *Id.* at 77.  
 30 *Id.* at 78.  
 31 *Id.*  
 32 *Id.*  
 33 *Id.* at 81.  
 34 *Id.*  
 35 *Id.* at 82.  
 36 *Id.*  
 37 *Id.* at 83.  
 38 *Id.*  
 39 *Id.*  
 40 *Id.*  
 41 *Id.* at 84.  
 42 *Id.*  
 43 *Id.*  
 44 *Id.* at 58-61.



times. He was surprised when petitioner Dela Cruz, the owner of DEB, presented a DV and other documents for him to sign, allegedly for the payment of the repairs in the amount of ₱22,420.00. While he was at first hesitant because he did not give any advance payment for the service and repairs, he agreed to sign the DV. The IAS Office showed six DVs with six checks covering repairs on his service vehicle reportedly done by J-CAP, but the signatory in the DVs are co-accused Martinez and Arias, instead of witness Jimenez as end-user. In these alleged transactions, there were no actual repairs or services done on his service vehicle.<sup>45</sup>

The Sandiganbayan summarized the defenses raised by petitioners:

**MAXIMO A. BORJE** testified that in 2001, he was the Chief of Motor Pool at the Bureau of Equipment (BOE), DPWH. He is primarily in charge with the administration of the Motor Pool Office. A request for repair begins when the request is relayed to the secretary of the Motor Pool who then relays said request to the Special Inspectorate Team (SIT). The SIT conducts the pre-inspection repair and thereafter prepares the Job Order. The SIT will then inform him of the parts needed for repair. He recommends the approval of the Job Order. It is the Chief of the Central Equipment and Spare Parts Division, Erdito Quarto, who approves the same.<sup>46</sup>

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**CONCHITA M. DELA CRUZ** testified that she is the Treasurer of DEB Auto Repair Shop and Parts Supply Corporation. DEB was registered with the Securities and Exchange Commission on May 22, 2001 and is in the business of supplying spare parts, repair and maintenance of light vehicles with the DPWH since 2001. She was the owner of DEB before its registration with the SEC. It was a sole proprietorship then. DEB Corporation started doing business with DPWH when invited to submit prices regarding the repair and maintenance of light vehicles, particularly Toyota, Mitsubishi, Isuzu, Ford and Nissan. They submitted a quotation and canvass by giving prices on the parts required by the DPWH. Their liaison officer fills up, signs and submits the canvass forms to the DPWH. Thereafter, they would wait for the evaluation of award as to which vehicles will be assigned to them as the lowest bidder. She does not know who evaluates the canvass forms and determines the lowest bid because DEB's liaison officer is the one who goes to DPWH to attend the evaluation of the prices. A notice is given by the DPWH to the liaison officer when the project is awarded to them. It is their liaison officer who oversees their transactions with DPWH. She has no knowledge that the cash invoice that was being used by their liaison officer in transacting with DPWH was the cash invoice where her name was indicated as proprietress.<sup>47</sup>

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<sup>45</sup> *Id.* at 59-60.

<sup>46</sup> *Id.* at 65.

<sup>47</sup> *Id.* at 67.



### Ruling of the Sandiganbayan

On November 10, 2016, the Sandiganbayan promulgated its Decision finding petitioners Borje and Dela Cruz among those guilty beyond reasonable doubt of Estafa through Falsification of Documents and violation of Section 3(e) of R.A. No. 3019. The Sandiganbayan found the alleged emergency repairs on the 39 DPWH vehicles during the period March 2001 to December 2001 and subsequent thereto, covering 274 transactions that were the subject of the reimbursements claimed and paid to accused Martinez in the total sum of ₱5,166,539.00, to be fictitious and non-existent.<sup>48</sup>

The Sandiganbayan held that with the repeated participation of petitioners and their co-accused in falsifying the documents relating to the transactions, it was clear that they conspired with one another in deceiving the DPWH into paying the claims for the fictitious emergency repairs and/or purchases of spare parts, thereby causing damage to the government in the total amount of ₱5,166,539.00.<sup>49</sup>

The dispositive portion of the Decision reads, as follows:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1) In Criminal Case No. 28100, the Court finds accused Florendo Arias y Buñag, Maximo Borje y Aquino, Rolando Castillo y Comia, Burt Favorito y Barba, Erdito Quarto y Quiaot, Felipe A. San Jose and Conchita M. dela Cruz guilty beyond reasonable doubt of *Estafa through Falsification of Documents*, defined and penalized under *Article 315, in relation to Article 171 and Article 48, of the Revised Penal Code*, as charged in the *Information* dated March 1, 2005. Pursuant to the *Indeterminate Sentence Law*, all said accused are hereby sentenced to suffer imprisonment of ten (10) years and one (1) day of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, with perpetual absolute disqualification for public office.

The aforementioned accused are also hereby declared solidarily liable to pay the Department of Public Works and Highways civil indemnity in the sum of ₱5,166,539.00

For insufficiency of evidence, the following accused are hereby acquitted: Napoleon Anas y Sebastian, Rogelio Beray y Laganga, Jessica Catibayan y Jardial, Maria Luisa Cruz y Tagasa and Norma Villarmino y Agcaoili.

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<sup>48</sup> *Id.* at 85.

<sup>49</sup> *Id.* at 102.

By reason of their death, the case is dismissed as against accused Julio T. Martinez, Violeta Amar y Castillo, Agerico Palaypay y Cortez and Jesus N. Capuz by reason of their death.

-and-

2) In Criminal Case No. 28253, the Court finds accused Florendo Arias y Bu[ñ]ag, Maximo Borje y Aquino, Rolando Castillo y Comia, Burt Favorito y Barba, Erdito Quarto y Quiaot, Felipe A. San Jose and Conchita dela Cruz guilty beyond reasonable doubt of ***Violation of Section 3(e) of Republic Act No. 3019, as amended***, as charged in the Information dated June 8, 2005. All said accused are hereby sentenced to suffer imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum. They shall also suffer perpetual disqualification from public office.

For insufficiency of evidence, the following accused are hereby acquitted: Napoleon Anas y Sebastian, Rogelio B[e]ray y Laganga, Jessica Catibayan y Jardiel, Maria Luisa Cruz y Talao, Ricardo Juan, Jr. y Maclang, Ronaldo G. Simbahan, Violeta Tadeo y Ragasa and Norma Villarmino y Agcaoili.

By reason of their death, the case is dismissed as against Julio T. Martinez, Violeta Amar y Castillo, Agerico Palaypay y Cortez and Jesus N. Capuz.

SO ORDERED.<sup>50</sup> (Emphases and italics in the original)

On November 23, 2016, petitioner Borje filed a Motion for Reconsideration,<sup>51</sup> seeking to reverse and set aside the Sandiganbayan's Decision, and praying for a judgment of acquittal. Petitioner Dela Cruz also filed a Motion for Reconsideration (Of The Decision Dated November 10, 2016) dated November 24, 2016.<sup>52</sup>

In its Resolution dated January 15, 2018,<sup>53</sup> the Sandiganbayan denied the motions for reconsideration filed by some of the accused, including those filed by petitioners herein. The Sandiganbayan found no compelling reason to reconsider the Decision dated November 10, 2016, and stood by its earlier findings and conclusions that the prosecution was able to prove beyond reasonable doubt the guilt of petitioners and their co-accused.<sup>54</sup>

Aggrieved, petitioner Borje filed a petition for review on *certiorari*<sup>55</sup> before the Court docketed as G.R. No. 236810, on March 14, 2018. Petitioner

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<sup>50</sup> *Id.* at 106-107.

<sup>51</sup> *Id.* at 44-48.

<sup>52</sup> *Id.* at 36.

<sup>53</sup> *Id.* at 36-43.

<sup>54</sup> *Id.* at 42.

<sup>55</sup> *Id.* at 19-35.

Dela Cruz followed suit and filed a petition for review on *certiorari*<sup>56</sup> before this Court docketed as G.R. No. 236807, on May 29, 2018. In our Resolution<sup>57</sup> dated February 26, 2018, we ordered the consolidation of both petitions considering they assail the same Sandiganbayan decision and resolution in Crim. Case Nos. 28100 and 28253.

In G.R. No. 236810, petitioner Borje invokes the following grounds:

- I. WITH ALL DUE RESPECT, THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION, HAS COMMITTED A REVERSIBLE ERROR WHEN IT FOUND PETITIONER-APPELLANT MAXIMO A. BORJE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA AND VIOLATION OF SECTION 3(E) OF R.A. 3019, CONTRARY TO THE FACTUAL CIRCUMSTANCES OF THE CASE.
- II. WITH ALL DUE RESPECT, THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION, COMMITTED A REVERSIBLE ERROR WHEN IT GAVE DUE COURSE TO THE PROSECUTION'S EXHIBITS DESPITE FAILURE TO PRESENT ALL THE ORIGINAL DOCUMENTS ALLEGED TO HAVE BEEN FALSIFIED.<sup>58</sup>

In support of the above grounds, petitioner Borje cites a Sandiganbayan Decision dated November 17, 2016 entitled "*People of the Philippines v. Danilo Planta y Caluya, et. al.*,"<sup>59</sup> (*Planta* case) in Crim. Case Nos. 28098 and 28251, which were filed simultaneously together with the instant cases and raffled to the Fourth Division involving the same allegations.<sup>60</sup> Petitioner Borje quotes portions of the said Decision penned by Associate Justice Jose R. Hernandez:

*These violations are aplenty. At one point, the Court asked whether there were penalties for those observed violations; the prosecution's witness stated there was none in the rules. This could well be a reason why strict compliance was not observed. Yet the sheer volume of these occurrences easily incites suspicion that government funds may have been dissipated through these violations. This nagging question, however, cannot translate to evidence needed to prove the factual allegation that these were all ghost transactions.*

*It appears that the prosecution mainly hinges its case through a showing of these violations. It prescinds from the assumption that since there were violations in the documentation and processing, the transactions were*

<sup>56</sup> Rollo (G.R. No. 236807), pp. 10-32.

<sup>57</sup> Rollo (G.R. No. 236810), p. 16.

<sup>58</sup> *Id.* at 24.

<sup>59</sup> *Id.* at 109-193.

<sup>60</sup> *Id.* at 25.

*non-existent. While it may be true that these violations attended the processing of the disbursement vouchers, these by themselves do not prove that the transactions were ghost or non-existent. The prosecution failed to present proof to establish that there were no actual purchases and deliveries of spare parts despite the disbursement of the amounts to pay for them.*<sup>61</sup> (Emphases and underscoring in the original.)

Petitioner Borje argues that the above-quoted “observation by the Hon. Justice Hernandez applies four-square to the present case for without such proof to establish that there were no actual purchases and no deliveries, it would clearly appear that the Honorable Sandiganbayan, Fourth Division’s findings were based mainly on conjectures and surmises.”<sup>62</sup>

Moreover, petitioner Borje posits that the Sandiganbayan’s findings that the “services or spare parts purchased for the emergency repairs of the DPWH vehicles, the cost of which were reimbursed to accused Martinez, do not qualify as emergency purchases[.]” should not be imputed as his fault because this task was supposed to be the function of the SIT. In all the DVs and their supporting documents, the approval and assent of the members of the SIT are clearly affixed. Petitioner Borje argues that it can thus be concluded from the approval of the emergency repairs by the SIT that all the said transactions, subject matter of the instant cases, were aboveboard, legal and regular.<sup>63</sup>

Finally, petitioner Borje claims that it was an error on the part of the Sandiganbayan to give due course to the prosecution’s exhibits despite its failure to present the original documents alleged to have been falsified.<sup>64</sup>

In G.R. No. 236807, petitioner Dela Cruz raises the following issues:

- I. WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A GRAVE AND REVERSIBLE ERROR OF FACT AND LAW IN FINDING ACCUSED DELA CRUZ GUILTY OF THE CRIME OF ESTAFA THRU FALSIFICATION OF COMMERCIAL/OFFICIAL DOCUMENTS DESPITE THE CLEAR LACK OF EVIDENCE TO SHOW HER CULPABILITY
- II. WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A GRAVE AND REVERSIBLE ERROR OF FACT AND LAW IN FINDING ACCUSED DELA CRUZ GUILTY OF THE CRIME OF VIOLATION OF SECTION 3(E) OF RA 3019 DESPITE THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT TO SHOW THAT SHE ALLEGEDLY CONSPIRED WITH HER CO-ACCUSED PUBLIC OFFICERS<sup>65</sup>

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<sup>61</sup> *Id.* at 25-26.

<sup>62</sup> *Id.* at 29.

<sup>63</sup> *Id.* at 29-30.

<sup>64</sup> *Id.* at 30.

<sup>65</sup> *Rollo* (G.R. No. 236807), p. 15.

Petitioner Dela Cruz submits that the prosecution failed to overcome the presumption of innocence afforded to her as it did not prove her guilt for the crime of Estafa through Falsification of Documents beyond reasonable doubt.<sup>66</sup>

With respect to the crime of falsification, petitioner Dela Cruz argues that there is doubt on her actual participation in the alleged criminal scheme. All the prosecution has presented to support its charge against her are the Cash Invoices for auto parts supplies, which she allegedly falsified and submitted to the DPWH. Notably, the prosecution did not present any evidence that proves it was petitioner Dela Cruz who personally prepared, or filled-up the Cash Invoices that were submitted to the DPWH or that the same were prepared or filled-up upon her instructions.

Petitioner Dela Cruz emphasizes that she is not the one who oversees the transactions of her company with the DPWH, but it was her liaison officer that prepared the Cash Invoices. She claims to not have known that the Cash Invoices being used in transacting business with the DPWH were her company's old Cash Invoices where her name was indicated as proprietress.<sup>67</sup>

With respect to the crime of estafa, the prosecution has similarly failed to prove the existence of the elements of the said crime.<sup>68</sup>

As regards her conviction for the crime of Violation of Section 3(e) of R.A. No. 3019, petitioner Dela Cruz posits that none of the elements were proven by the prosecution. She stresses that she cannot be considered to have committed the said crime because she is not a public officer, but a mere private individual, and no conspiracy had been proven.<sup>69</sup>

In its Comment (On the Petition for Review dated March 12, 2018) dated August 13, 2018 (Comment),<sup>70</sup> the Office of the Ombudsman argues that all the elements of the crime of Estafa through Falsification of Documents were established beyond reasonable doubt by the prosecution, to *wit*:

*First*, petitioner and his co-accused utilized false pretense, fraudulent act or fraudulent means to make it appear that the DPWH service vehicles undergo emergency repairs or required purchase of spare parts and reimbursements due to Martinez using the falsified documents. *Second*, through the falsified

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<sup>66</sup> *Id.* at 22-23.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 28-29.

<sup>69</sup> *Id.* at 31.

<sup>70</sup> *Rollo* (G.R. No. 236810), pp. 212-229.



documents, petitioner and his co-accused employed fraudulent means in order to defraud the government in paying the claims for the fictitious emergency repairs/purchases of spare parts. *Third*, the government was prompted to pay the alleged claims for reimbursements through the falsified documents. *Fourth*, the government suffered undue injury or damages in the amount of ₱5,165,539.00.<sup>71</sup>

All the elements of Violation of Section 3(e) of R.A. No. 3019 were also established beyond reasonable doubt:

*First*, petitioner is a public officer, being then the Assistant Director of the Bureau of Equipment of DPWH, at the time material to the case, discharging administrative and official functions. *Second*, petitioner and his co-accused acted with evident bad faith by falsifying official documents to defraud the DPWH into paying the claims for fictitious emergency repairs/purchase of spare parts under the name of Martinez. *Third*, petitioner's act caused undue injury or damage to the government in the total amount of [₱]5,166,539.00.<sup>72</sup>

The Office of the Ombudsman submits that petitioner Borje's participation was proven as evidenced by his signature over the words "approved and/or recommending approval." That the falsified documents cover at least 274 transactions over a period of 10 months indicates the existence of conspiracy between petitioner Borje and the other co-accused.<sup>73</sup> Contrary to petitioner Borje's postulation, although there is no express agreement to commit the illegal act, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the very same unlawful objective of defrauding the government.<sup>74</sup>

As regards petitioner Borje's contention that the Sandiganbayan erred in giving due course to the prosecution's exhibits despite failure to present the original documents alleged to have been falsified, the Office of the Ombudsman counters that the Best Evidence Rule is not applicable because the subject of inquiry is not the contents of documents, but the existence thereof.<sup>75</sup>

Finally, the Office of the Ombudsman argues that only questions of law may be raised in a petition for review under Rule 45. Questions of fact cannot be the subject of this mode of appeal since the Supreme Court is not a trier of facts.<sup>76</sup>

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<sup>71</sup> *Id.* at 220.

<sup>72</sup> *Id.* at 225.

<sup>73</sup> *Id.* at 221.

<sup>74</sup> *Id.* at 226.

<sup>75</sup> *Id.* at 222-223.

<sup>76</sup> *Id.* at 227.

### The Issues

I. WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR WHEN IT FOUND PETITIONERS BORJE AND DELA CRUZ GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA

II. WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR WHEN IT FOUND PETITIONERS BORJE AND DELA CRUZ GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF SECTION 3(E) OF R.A. NO. 3019

### Our Ruling

The petitions have no merit.

It is a settled rule that the Court is not a trier of facts, and it is not its function to examine, review or evaluate the evidence all over again.<sup>77</sup> In petitions for review under Rule 45, the appellate jurisdiction of the Court is limited only to questions of law, and the Sandiganbayan's factual findings, as a rule, are conclusive upon it.<sup>78</sup>

Issues raised before the Court, as in the instant petitions filed, on whether the prosecution's evidence proved the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was properly accorded the accused, whether there was sufficient evidence to support a charge of conspiracy, or whether the defense of good faith was correctly appreciated, are all, in varying degrees, questions of fact.<sup>79</sup> While there are some exceptions,<sup>80</sup> we find none applicable in the instant cases. Thus, we shall not disturb the factual findings of the Sandiganbayan.

We adopt the findings and conclusions of the Sandiganbayan:

After a careful and meticulous scrutiny of the evidence on record, the Court finds that the alleged emergency repairs on the 39 DPWH vehicles during the period March 2001 to December 2001 and subsequent thereto, covering 274 transactions that were the subject of the reimbursements claimed and paid to accused Martinez in the total sum of ₱5,166,539.00, were indeed, fictitious and non-existent. They were actually false claims

<sup>77</sup> *Cedeño v. People, et al.*, 820 Phil. 575, 600 (2017).

<sup>78</sup> *Typoco, Jr. v. People*, 816 Phil. 914, 928 (2017).

<sup>79</sup> *Id.* at 929.

<sup>80</sup> *Supra* note 77, at 354.

that formed part of sinister schemes to steal government funds. This is clearly shown by the following:

First. Of the 39 vehicles in question, only one, the Mitsubishi L-200 with Plate No. SFG-361 / H1-4237, was assigned to accused Martinez. All the rest were assigned to other officials and agencies of the DPWH. There was no request from these officials and agencies for the emergency repairs that the vehicles assigned to them purportedly underwent during the period in question, which became the subject of the reimbursements claimed and paid in the name of accused Martinez.

Second. The justification given for the purchases of spare parts was emergency repairs, but they do not really qualify as such under existing DPWH regulation. They were falsely labeled as emergency repairs/purchases to avoid the requirement of public bidding.

x x x x

The table below,<sup>81</sup> prepared on the basis of evidence on record, shows that service or spare parts purchased for the emergency repairs of the DPWH vehicles, the costs of which were reimbursed to accused Martinez, do not qualify as emergency services or purchases. They are clearly not of the kind that can be considered "urgent or absolutely indispensable to prevent immediate danger to, or loss of, life and/or property, or avoid detriment to the public service."

x x x x

Third. A careful scrutiny of Disbursement Vouchers and supporting documents also yields that splitting of repairs and of purchases of spare parts was resorted to in order to circumvent prescribed limitations as well as the requirement of public bidding.

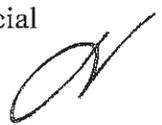
x x x x

In connection with the 274 transactions covering the alleged emergency repairs/purchases of spare parts of the 39 DPWH vehicles, the documents that were submitted to support the reimbursements claimed and paid in the name of accused Martinez, and attached to the Disbursement Vouchers, were the following: Certifications of Sealed Emergency Purchase/Repair; Abstracts of Canvass and corresponding written quotations; Requisitions for Supplies of Equipment (RSEs); Motor Vehicle Pre-repair Inspection Reports; Motor Vehicle Post-repair Inspection Reports and Certificates of Acceptance. These are among those referred to in paragraph D of DPWH Memorandum dated July 31, 1997 quoted above. The other documents submitted were following: Cash Invoices issued by the suppliers, Reports of Waste Material and Equipment Pre-Inspection and Job Orders.

The Court finds, and so holds, that all the aforementioned documents submitted were falsified. Except for the Cash Invoices issued by the suppliers, the documents were prepared, accomplished and/or executed and signed by public officers/employees taking advantage of their official

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<sup>81</sup> Intentionally not reproduced.



positions in making untruthful statements in the narration of facts. **Through these documents, it was made to appear, albeit untrue, that the 39 vehicles subject of reimbursements claimed and paid to accused Martinez in the total sum of ₱5,166,539.00 underwent emergency repairs that required purchases of spare parts. The Disbursement Vouchers were also falsified to justify the release of checks for payment of the reimbursements claimed. The Cash Invoices issued by the suppliers were also falsified because they pertain to fictitious or non-existent purchases of spare parts. As earlier stated, these falsified documents were all utilized in sinister schemes to steal government funds.**

x x x x

Accused **Borje**, as Chief of the Motorpool Section, affixed his signature recommending approval of the falsified Equipment Pre-Inspection and Job Orders and participating in the approval of the falsified Reports of Waste Material and Abstracts of Open Canvass.

x x x x

Accused **dela Cruz** was the owner of the DEB Repair Shop and Parts Supply that issued the falsified Sales Invoices for the fictitious supplies of spare parts for the non-existent emergency repairs.

**Clearly, with the repeated participation of the aforementioned accused in falsifying the documents relating to 274 separate transactions, the conclusion is inevitable that they conspired with one another in deceiving the DPWH into paying the claims for the fictitious emergency repairs/purchases of spare parts in the name of accused Martinez, thereby causing damage to the government in the total amount of ₱5,166,539.00.<sup>82</sup> (Citations and original emphases omitted; emphases and underscoring supplied.)**

A careful re-examination of the records also yields the same conclusion that there is no reversible error on the part of the Sandiganbayan in finding the petitioners guilty beyond reasonable doubt of the charges against them.

The Sandiganbayan found petitioners guilty beyond reasonable doubt of the complex crime of Estafa through Falsification of Documents.<sup>83</sup> In *Domingo v. People*,<sup>84</sup> we discussed that whenever a person commits falsification through any of the acts enumerated under Article 171 of the RPC as a necessary means to perpetrate another crime, such as estafa, a complex crime under Article 48 of the RPC is formed. We held:

The falsification of a public, official, or commercial document may be a means of committing estafa, because before the falsified document is

<sup>82</sup> *Rollo* (G.R. No. 236810), pp. 85-102.

<sup>83</sup> *Id.* at 106.

<sup>84</sup> 618 Phil. 499 (2009).

actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official, or commercial document. In other words, the crime of falsification has already existed. **Actually utilizing that falsified public, official, or commercial document to defraud another is estafa.** But the damage is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of the public, official, or commercial document is only a necessary means to commit estafa.<sup>85</sup> (Emphasis supplied.)

The elements of estafa under Article 315 paragraph 2(a) of the RPC are the following:

1. That there must be a false pretense, fraudulent act or fraudulent means;
2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and
4. That as a result thereof, the offended party suffered damage.<sup>86</sup>

In the instant cases, all the elements of estafa are present.

Estafa was committed through the falsification of public documents, under Article 171 paragraph 4 of the RPC, by the accused public officers/employees taking advantage of their official positions and making untruthful statements in a narration of facts. As held by the Sandiganbayan:

**First.** There were false pretenses, fraudulent acts or fraudulent means in that it was made to appear, through the use of the falsified documents, that the DPWH service vehicles in question underwent emergency repairs that required purchases of spare parts, and that reimbursements were due to accused Martinez;

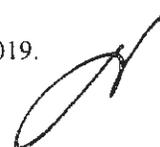
**Second.** The false pretenses, fraudulent acts or fraudulent means, in the form of falsification of documents, were employed prior to the commission of the fraud; that is to deceive the government in paying the claims for the fictitious emergency repairs/purchases of spare parts;

**Third.** The government was induced to pay the claims relying on the false pretenses, fraudulent acts or fraudulent means employed;

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<sup>85</sup> *Id.* at 517-518.

<sup>86</sup> *Florendo B. Arias v. People of the Philippines*, G.R. No. 237106-107, June 10, 2019.



-and-

**Fourth.** The government suffered damages in the total amount of ₱5,166,539.00, the sum total of the false claims paid.<sup>87</sup> (Emphasis in the original.)

Clearly, the falsification of the DVs and supporting documents was a necessary means to commit estafa. Without making it appear that there were emergency repairs and/or purchases of spare parts, the accused would not have been able to obtain ₱5,166,539.00 in reimbursements from the DPWH.

In G.R. No. 236810, petitioner Borje mistakenly relies on the Sandiganbayan's Decision in the *Planta* case which was filed together with the instant cases, involving the same allegations and underlying factual circumstances. In the *Planta* case, the Sandiganbayan found that while there were several violations attendant to the processing of the DVs, such did not prove that the transactions were ghost or non-existent. The prosecution therein failed to establish that there were no actual purchases and no deliveries of spare parts.<sup>88</sup>

It must be stressed that the principle of conclusiveness of judgment, which petitioner Borje seems to indirectly invoke, has no application in criminal cases.<sup>89</sup> Neither is the doctrine of "law of the case" applicable. The doctrine is defined as "that principle under which determinations of questions of law will generally be held to govern a case through all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort."<sup>90</sup> However, the doctrine of "law of the case" relates to questions of law and not of fact such as the determination of guilt beyond reasonable doubt, and is confined in its operation to subsequent proceedings in the same case.<sup>91</sup> Thus, the Sandiganbayan's findings in the *Planta* case are not conclusive now upon this Court or then upon the Sandiganbayan in the instant cases since these are distinct from the *Planta* case.

Contrary to petitioner Borje's argument, the prosecution was able to establish that there were fictitious emergency repairs and/or purchases of spare parts. The prosecution presented several witnesses that testified they were end-users of the subject service vehicles, and they had not authorized the emergency repairs and/or purchases of spare parts as described in the DVs and supporting documents prepared by the accused public officers and employees.

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<sup>87</sup> *Rollo* (G.R. No. 236810), pp. 99-100.

<sup>88</sup> *Id.* at 25-26.

<sup>89</sup> *Escobar, et al. v. People*, 820 Phil. 956, 994 (2017).

<sup>90</sup> *Villa v. Sandiganbayan*, 284 Phil. 410, 426 (1992).

<sup>91</sup> *Id.* at 426-427.



In cases such as *Marzan v. People*<sup>92</sup> and in *Fernan, Jr. v. People*,<sup>93</sup> testimonial evidence presented by the prosecution was sufficient to prove the existence of ghost purchases and repairs.

In its Comment,<sup>94</sup> the Office of the Ombudsman reiterated the testimonial evidence presented by the prosecution. The prosecution's main witness Melinda E. Magbuhos, then auditor of the IAS Office of the DPWH, testified that during the audit of various transactions involving DPWH assets, particularly service vehicles under the ADB Project Management Office for year 2001, it was discovered that the DPWH paid ₱6,368,364.99 for reimbursements in favor of Martinez, covering about 339 repairs and/or purchase of spare parts of 49 service vehicles for 2001. The transactions involved only two suppliers under the name DEB owned by petitioner Dela Cruz, and J-CAP owned by Capuz. The audit team noted several violations in the transactions. It was also discovered that the DVs and their supporting documents were in the name of Martinez.<sup>95</sup> The prosecution presented several witnesses to prove that the end-users did not authorize Martinez to sign DVs and other documents, and to prove that DEB and J-CAP were not legitimate entities.<sup>96</sup>

The absence of participation, and in several instances knowledge, on the part of the end-users is apparent on the face of the DVs and supporting documents as they are not named the payee in most, if not all, DVs and supporting documents pertaining to their respective service vehicles. Instead, the DVs and supporting documents were in the name of some of the accused public officers/employees, such as Martinez and petitioner Borje.

Petitioner Borje disowns liability by claiming that as Chief of the Motorpool Division, he merely relied on the SIT's approval of the emergency repairs, and made his recommendation based on the Job Order prepared by the SIT, which was tasked to conduct the pre-inspection of vehicles for repair. According to him, he was not duty bound to personally re-inspect or re-evaluate what was done and recommended by the SIT.<sup>97</sup>

This is similar to the defense raised by co-accused Arias, whose conviction in the instant cases had been confirmed by this Court in *Arias v. People*<sup>98</sup> when we denied a similar petition for review of the same

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<sup>92</sup> *Sr. Insp. Leo Marzan and PO3 Ramon Lihay-Lihay v. People*, G.R. No. 201942, February 12, 2020.

<sup>93</sup> 557 Phil. 555 (2007).

<sup>94</sup> *Rollo* (G.R. No. 236810), pp. 212-229.

<sup>95</sup> *Id.* at 215.

<sup>96</sup> *Id.* at 216.

<sup>97</sup> *Id.* at 70.

<sup>98</sup> *Supra* note 86.

Sandiganbayan Decision dated November 10, 2016 and Resolution issued on January 15, 2018. In *Arias*, we held:

At any rate, the records of this case show no reversible error to warrant a reversal of the assailed decision. It appears that petitioner did not impugn his signatures appearing in the Disbursement Vouchers, Reports of Waste Materials, Requisitions for Supplies and/or Equipment and Certificates of Emergency Purchase. **Furthermore, the repeated issuance and execution of these documents belies petitioner's claim that his participation was not necessary and that his function in signing documents is merely ministerial; on the contrary, these documents were necessary for the claims for payment of emergency repairs of DPWH service vehicles and/or purchases of spare parts which were found to be fictitious. Thus, petitioner's signatures on these documents were a clear manifestation of his assent and participation or complicity to the illegal transactions, and his assertion of lack of participation is without merit.**<sup>99</sup> (Emphasis and underscoring supplied)

Petitioner Borje, as Chief of the Motorpool Section, affixed his signature recommending approval of the falsified Equipment Pre-Inspection and Job Orders, and participating in the approval of the falsified Reports of Waste Material and Abstracts of Open Canvass. Without his signature, the scheme of the accused to defraud the government would not have come into fruition.

Moreover, we reject petitioner Borje's contention on having relied upon the SIT's approval of the emergency repairs and preparation of Job Orders. In the case of *Escobar v. People*,<sup>100</sup> we held that "[w]here there are circumstances that should have alerted heads of officers to exercise more diligence in the performance of their duties, they cannot escape liability by claiming they relied on good faith on the submissions of their subordinates."<sup>101</sup> The fact that the said documents were to be made payable to persons other than end-users and in many instances to petitioner Borje himself, should have prodded petitioner Borje to conduct a more cursory examination of the documents. "The absence of a certification and signature of the end-user which would justify the emergency repair and/or purchase is glaring."<sup>102</sup> Thus, petitioner Borje cannot claim that the subject transactions were above board, legal and regular, based on the mere fact that the same had also been approved by the SIT.

In G.R. No. 236807, petitioner Dela Cruz argues there is doubt as to her actual participation in the criminal scheme because the prosecution did not present any evidence to prove she prepared or filled-up the Cash Invoices that

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<sup>99</sup> *Id.*

<sup>100</sup> *Supra* note 89.

<sup>101</sup> *Id.* at 119.

<sup>102</sup> *Republic v. Arias*, 743 Phil. 266, 284 (2014).



were submitted to the DPWH. She claims it is her liaison officer that prepares the Cash Invoices.<sup>103</sup>

Contrary to petitioner Dela Cruz' assertions, there is sufficient evidence to prove her participation in the criminal scheme. As she herself admitted, she was the owner of DEB when it was a sole proprietorship and before the registration of DEB Auto Repair Shop and Parts Supply Corporation (*DEB Corporation*) with the Securities and Exchange Commission (*SEC*), and the Cash Invoices being used in transacting business with the DPWH was her company's old Cash Invoices where her name was indicated as proprietress. She, however, disavows the preparation and use of these Cash Invoices.<sup>104</sup> These self-serving allegations fail in light of the evidence presented. Her defense is weakened by the testimony of the prosecution's witness Jimenez that petitioner Dela Cruz, the owner of DEB, presented a DV and other documents for him to sign, allegedly for the payment of repairs, but he did not give any advance payment for the service and repairs. In these alleged transactions, there were no actual repairs or services done on his service vehicle.<sup>105</sup>

Under the law, in a sole proprietorship form of business, the sole proprietor is personally liable for all the debts and obligations of the business.<sup>106</sup> A sole proprietorship does not possess any juridical personality separate and apart from the personality of the owner of the enterprise.<sup>107</sup> Thus, petitioner Dela Cruz as the sole proprietress of DEB, is criminally liable for the issuance of falsified Cash Invoices in the criminal scheme.

Petitioner Dela Cruz claims that she is the Treasurer of DEB Corporation, which was registered with the Securities and Exchange Commission on May 22, 2001 and which has been in the business of supplying spare parts, repair and maintenance of light vehicles with the DPWH since 2001.<sup>108</sup> It must be clarified, however, that while DEB Corporation already existed at the time some of the subject transactions transpired, it was DEB's Cash Invoices indicating petitioner Dela Cruz as proprietress that were presented to support the claims for reimbursement in relation to the subject transactions. Notably, some of the checks issued pursuant to the DVs indicating DEB as "Supplier", are dated before the incorporation of DEB Corporation on May 22, 2001, or specifically from January 12, 2001 (*e.g.*, DV Nos. 102-00-12-31221; 102-00-12-15398; 102-00-12-15401; 102-00-12-15418; 102-00-12-15397; 102-00-12-31218; 102-

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<sup>103</sup> *Rollo* (G.R. No. 236807), pp. 22-29.

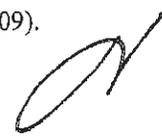
<sup>104</sup> *Rollo* (G.R. No. 236810), p. 67.

<sup>105</sup> *Id.* at 59-60.

<sup>106</sup> *Excellent Quality Apparel, Inc. v. Win Multi Rich Builders, Inc.*, 598 Phil. 94, 101 (2009).

<sup>107</sup> *Jariol, Jr. v. Sandiganbayan*, 266 Phil. 530, 546 (1990).

<sup>108</sup> *Rollo* (G.R. No. 236810), p. 67.



00-12-15612; 102-00-12-15395) to May 17, 2001 (e.g., DV No. 102-01-05-03683; 102-00-05-03682).<sup>109</sup>

As an additional defense, petitioner Dela Cruz argues that the crime of falsification under Article 171 of the RPC can only be committed by a public officer or employee, and the Sandiganbayan had itself acknowledged that the falsifiers of the DVs and supporting documents, other than the Cash Invoices, were the public officers/employees, thus negating her participation. Petitioner Dela Cruz further submits that the absence of proof that she benefitted or gained from the supposed conspiracy would show, following common sense, that she did not enter into one. Furthermore, the lack of any evidence showing that petitioner Dela Cruz had knowledge of the subject transactions with the DPWH leads to the conclusion that she could not have been part of the conspiracy alleged by the prosecution.<sup>110</sup>

The defenses raised by petitioners fail to absolve them from their criminal liability because the prosecution had successfully established conspiracy among the accused including petitioners Borje and Dela Cruz.

In *Fernan, Jr. v. People*,<sup>111</sup> we found that there was conspiracy among the accused therein in committing estafa through falsification of public documents. While there was no direct proof of the agreement among the accused, we found it sufficient that the prosecution therein had proven that the accused committed acts that were in furtherance of the objective of the conspiracy, which ultimately was to defraud the government in releasing public funds for ghost transactions. We held:

The State is not tasked to adduce direct proof of the agreement by petitioners with the other accused, for such requirement, in many cases, would border on near impossibility. The State needs to adduce proof only when the accused committed acts that constitute a **vital connection to the chain of conspiracy or in furtherance of the objective of the conspiracy**. In the case at bench, the signing of the fake tally sheets and/or delivery receipts, reports of inspection, and requests for supplies and materials by petitioners on separate occasions is vital to the success of the Mangubat Group in siphoning off government funds. **Without such fabricated documents, the general vouchers covering the supply of materials cannot be properly accomplished and submitted to the disbursing officer for the preparation of checks.**

x x x x

Thus, it is clear that without the tally sheets and delivery receipts, the general voucher cannot be prepared and completed. Without the

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<sup>109</sup> *Id.* at 71-84.

<sup>110</sup> *Rollo* (G.R. No. 236807), pp. 24-28.

<sup>111</sup> *Supra* note 93.

general voucher, the check for the payment of the supply cannot be made and issued to the supplier. Without the check payment, the defraudation cannot be committed and successfully consummated. **Thus, petitioners' acts in signing the false tally sheets and/or delivery receipts are indispensable to the consummation of the crime of estafa thru falsification of public documents.** Surely, there were ghost or false deliveries of supplies and materials as convincingly shown by the testimonies of the barangay captains, officials, and residents of the areas where the materials were allegedly used.<sup>112</sup> (Emphasis and underscoring supplied.)

Similarly, in the instant cases, the falsification by the accused of the DVs, supporting documents and Cash Invoices had a vital connection to the chain of conspiracy or were in furtherance of the objective of the conspiracy. Without the DVs, supporting documents and Cash Invoices, the government would not have released public funds for the reimbursement of the ghost emergency repairs and/or purchase of spare parts. Without the falsified Equipment Pre-Inspection Reports and Job Orders signed and the falsified Reports of Waste Material and Abstracts of Open Canvass approved by petitioner Borje, and without the falsified Cash Invoices issued by petitioner Dela Cruz through her sole proprietorship DEB, the objective of the conspiracy would not have been attained as these falsified documents were necessary to claim reimbursement for the ghost transactions. Thus, since the actions of the accused, including petitioners Borje and Dela Cruz, manifest their concurrence in the criminal design to facilitate the disbursement of public funds for the ghost emergency repairs and/or purchase of spare parts, the Sandiganbayan correctly found that there is conspiracy.

The conspiracy in this criminal scheme was correctly appreciated by the Sandiganbayan in its Decision:

Clearly, with the repeated participation of the aforementioned accused in falsifying the documents relating to 274 separate transactions, the conclusion is inevitable that they conspired with one another in deceiving the DPWH into paying the claims for the fictitious emergency repairs/purchases of spare parts in the name of accused Martinez, thereby causing damage to the government in the total amount of ₱5,166,539.00.<sup>113</sup>

This same conspiracy was also recognized by this Court in *Arias*<sup>114</sup> when we affirmed the Sandiganbayan's Decision dated 10 November 2016 and Resolution issued on 15 January 2018, which are also subject of the instant petitions. In *Arias*,<sup>115</sup> we quoted the said Sandiganbayan Decision

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<sup>112</sup> *Id.* at 602-604.

<sup>113</sup> *Rollo* (G.R. No. 236810), p. 102.

<sup>114</sup> *Supra* note 86.

<sup>115</sup> *Id.*

which found herein petitioners Borje and Dela Cruz and the other co-accused in conspiracy with therein petitioner Arias:

After a careful and meticulous scrutiny of the records, the Court finds, and so holds, that the prosecution evidence proved beyond reasonable doubt that the following accused are guilty of the offense charged, namely: Arias, Borja (sic), Castillo, Favorito, Quarto, San Jose and Dela Cruz. **These accused conspired with one another**, and with accused Martinez whose criminal liability has been extinguished by death.<sup>116</sup> (Emphasis supplied.)

We find no reason to disturb the findings of the Sandiganbayan that petitioners are in conspiracy with the other co-accused. This Court is not a trier of facts and in the absence of strong and compelling reasons, we accord finality to the factual findings of the Sandiganbayan.<sup>117</sup>

With regard to petitioner Borje's contention that it was an error on the part of the Sandiganbayan to give due course to the prosecution's exhibits despite its failure to present the original documents alleged to have been falsified, such is misplaced.<sup>118</sup> In *Arias*,<sup>119</sup> we found a similar contention on the Best Evidence Rule (now known as Original Document Rule under Section 3, Rule 130 of the Revised Rules on Evidence<sup>120</sup>) to be misplaced.<sup>121</sup>

The Original Document Rule provides: "When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself x x x."<sup>122</sup>

This revised version of the rule is similar to the previous recital of the rule under Section 3, Rule 130 of the recently amended 1989 Rules on Evidence: "When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x."<sup>123</sup>

Interpreting the amended provision under the 1989 Rules, we have held that the Best Evidence Rule (now known as Original Document Rule) does not apply to proof of facts collateral to the issues or when a party uses a document to prove the existence of an independent fact.<sup>124</sup>

116

*Id.*

117

*Fernan, Jr. v. People*, *supra* note 93, at 602.

118

*Rollo* (G.R. No. 236810), p. 30.

119

*Supra* note 86.

120

Section 3, Rule 130, Revised Rules on Evidence (A.M. No. 19-08-15-SC).

121

*Arias v. People*, *supra* note 86.

122

Section 3, Rule 130, Revised Rules on Evidence (A.M. No. 19-08-15-SC).

123

Section 3, Rule 130, 1989 Rules on Evidence.

124

*Lee v. People*, 483 Phil. 684, 704 (2004).

In this case, the subject of the inquiry was not the content of the documents. In *Arias*,<sup>125</sup> we reached a similar finding on the purpose for which the subject documents were being offered: “petitioner’s objection to the prosecution’s documentary evidence, as stated in his Comment/Objections to Formal Offer of Exhibits, essentially relates to the materiality, relevance or purpose for which the documents were offered which had nothing to do with the contents thereof.”<sup>126</sup> The documents were presented by the prosecution to prove the falsification thereof was a necessary means and an essential part of the criminal scheme in committing estafa. Thus, the Sandiganbayan did not commit reversible error in giving due course to the prosecution’s exhibits.

As to petitioners’ guilt for violation of Section 3(e) of R.A. No. 3019, such has also been established beyond reasonable doubt.

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:

x x x x

(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.

x x x x<sup>127</sup>

The elements of the above violation are:

(a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>128</sup>

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<sup>125</sup> *Supra* note 86.

<sup>126</sup> *Id.*

<sup>127</sup> Republic Act No. 3019 (1960), Sec. 3(e).

<sup>128</sup> *Sr. Insp. Leo Marzan and PO3 Ramon Lihay-Lihay v. People*, *supra* note 92.

The elements are present in this case. As held by the Sandiganbayan:

**First.** Accused Arias, Borje, Castillo, Favorito, Quarto and San Jose are undoubtedly public officers discharging administrative or official functions.

**Second.** All the aforementioned accused, in conspiracy with one another and with accused Dela Cruz, acted with evident bad faith in falsifying official documents to deceive the DPWH into paying the claims for the fictitious emergency repairs/purchases of spare parts in the name of deceased accused Martinez.

In *Sistoza v. Desierto*<sup>129</sup>, the Supreme Court explained the meaning of evident bad faith in this wise:

“xxx evident bad faith xxx 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.”

**Third.** The actions of the accused caused undue injury or damage to the government in the total amount of ₱5,166,539.00.<sup>130</sup> (Emphases in the original.)

Petitioner Dela Cruz argues that the elements of the above violation have not been proven in her case because she cannot be considered to have committed the crime as she is not a public officer, but a mere private individual. Moreover, she forwards that conspiracy was not proven.<sup>131</sup>

The issue on liability of private individuals under Section 3(e) of R.A. No. 3019 has already been settled, as in the case of *Balmadrid v. Sandiganbayan*,<sup>132</sup> where we found the petitioners who were suppliers, to be guilty along with their co-accused public officers as they were proven to be in conspiracy, to wit:

Since petitioners have been shown to have participated in the conspiracy, they must be held equally liable with co-accused Binos and Alcantara under section 3(e) of RA 3019. In a conspiracy, the act of one is the act of all (*People vs. Sendaydiego*, 81 SCRA 120). The fact that petitioners are private persons is of no consequence, considering that the rule of collective criminal responsibility includes even private individuals who participate with public officers in the perpetration of offenses

<sup>129</sup> *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

<sup>130</sup> *Rollo* (G.R. No. 236810), pp. 105-106.

<sup>131</sup> *Rollo* (G.R. No. 236807), p. 31.

<sup>132</sup> *Sps. Balmadrid v. Sandiganbayan*, 272-A Phil. 486 (1991).

ordinarily particularly applicable only to the latter (*United States v. Ponte*, 20 Phil. 379).<sup>133</sup>

As discussed above, petitioner Dela Cruz is in conspiracy with the other co-accused. Without the participation of petitioner Dela Cruz in the falsification of Cash Invoices through her sole proprietorship DEB, the reimbursements amounting to ₱5,166,539.00 would not have been facilitated. Thus, since petitioner Dela Cruz is in conspiracy with the other co-accused, it is of no moment that she is not a public officer. She is guilty beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019.

While the Court finds no reversible error in the conviction of petitioners Borje and Dela Cruz, we find it necessary to modify the penalty initially imposed upon them in Crim. Case No. 28100 for Estafa through Falsification of Documents in light of R.A. No. 10951 or “An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, amending for the Purpose Act No. 3815, otherwise known as ‘The Revised Penal Code,’” which adjusted the amounts of property and damage on which penalties are based.

Section 25 of R.A. No. 10951, which amended Article 171 of the RPC, provides:

SECTION 25. Article 171 of the same Act is hereby amended to read as follows:

“ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prisión mayor* and a fine not to exceed One million pesos (₱1,000,000) 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:

x x x

“4. Making untruthful statements in a narration of facts;

x x x<sup>134</sup>

Section 85 of R.A. No. 10951, which amended Article 315 of the RPC, provides:

SECTION 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

<sup>133</sup> *Id.* at 493-494.

<sup>134</sup> Republic Act No. 10951 (2017), Sec. 25.

“ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

“1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (P2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusion temporal*, as the case may be.

x x x x

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

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

x x x x<sup>135</sup> (Emphasis supplied)

Since the crime committed is a complex crime under Article 48 of the RPC the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. In this case, applying R.A. No. 10951 and considering the amount defrauded is ₱5,166,539.00, the penalty for Estafa which is *prisión mayor* in its minimum period is lighter than the penalty for Falsification of Public Documents which is *prisión mayor*.

Hence, the penalty for Falsification of Public Documents should be imposed in the maximum period, following Article 48 of the RPC. However, the penalty of fine of not more than ₱5,000.00 under the RPC should be imposed because this is more favorable than the penalty of fine of not more than ₱1,000,000.00 under R.A. No. 10951.<sup>136</sup>

Applying the Indeterminate Sentence Law, the minimum term of the penalty should be within the range of the penalty next lower in degree or *prisión correccional*, and the maximum term should be taken from the maximum period of *prisión mayor* in its maximum period.<sup>137</sup> Thus, an indeterminate penalty of six (6) months and one (1) day of *prisión*

<sup>135</sup> Republic Act No. 10951 (2017), Sec. 85.

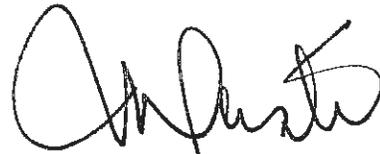
<sup>136</sup> *Macaraig v. People*, G.R. No. 230302, July 15, 2019.

<sup>137</sup> *Supra*.

*correccional*, as minimum, to ten (10) years and one (1) day of *prisión mayor*, as maximum, is appropriate.

**WHEREFORE**, premises considered, the consolidated petitions for review filed by petitioners Maximo A. Borje (*G.R. No. 236810*) and Conchita M. Dela Cruz (*G.R. No. 236807*), dated March 12, 2018, and March 9, 2018, respectively, are **DENIED** for lack of merit. Consequently, the Decision of the Sandiganbayan dated November 10, 2016, in the consolidated Criminal Case No. 28100 and Criminal Case No. 28253, and its Resolution dated January 15, 2018 are **AFFIRMED** with the **MODIFICATION** that in Criminal Case No. 28100 for Estafa through Falsification of Official/Commercial Documents, petitioners are sentenced to suffer imprisonment of from six (6) months and one (1) day of *prisión correccional*, as minimum, to ten (10) years and one (1) day of *prisión mayor*, as maximum, and to pay a **FINE** in the amount of ₱5,000.00, with subsidiary imprisonment in case of insolvency.

**SO ORDERED.**

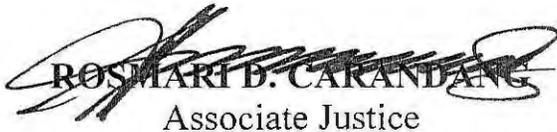


**DIOSDADO M. PERALTA**  
Chief Justice

**WE CONCUR:**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ROSMARIE B. CARANDANG**  
Associate Justice



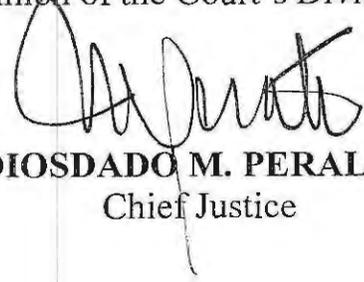
**RODIL V. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

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



**DIOSDADO M. PERALTA**  
Chief Justice