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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOSE T. VILLAROSA, CARLITO
T. CAJAYON and PABLO I.
ALVARO,

Petitioners,

- versus -

THE HONORABLE OMBUDSMAN
and ROLANDO C. BASILIO,

Respondents.

G.R. No. 221418

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
GESMUNDO,* and
HERNANDO, JJ.

Promulgated:

January 23, 2019

Wilverdo V. Lapitan

X-----X

DECISION

PERALTA, J.:

For this Court's consideration is the Petition for *Certiorari* under Rule 65 of the Rules of Court dated December 1, 2015 of petitioners Jose T. Villarosa, Carlito T. Cajayon and Pablo I. Alvaro that seeks to reverse and set aside the Joint Resolution¹ dated March 23, 2015 and the Order² dated July 29, 2015 of the Office of the Ombudsman (*Ombudsman*) in OMB-L-C-11-0652-J finding probable cause against petitioners for the crime of Technical Malversation and violation of Section 3 (e) of Republic Act (R.A.) No. 3019.

* Designated as additional member, in lieu of Associate Justice Rosmari D. Carandang, who recused from the subject case due to prior participation in the Court of Appeals, per Special Order No. 2624-H dated January 21, 2019.

¹ *Rollo*, pp. 225-244.

² *Id.* at 267-273.

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Private respondent Rolando C. Basilio filed criminal and administrative complaints dated September 23, 2011 with the Ombudsman against petitioners Villarosa, Municipal Mayor; Alvaro, Municipal Accountant; and Cajayon, Municipal Treasurer; all of San Jose, Occidental Mindoro, for Malversation of Public Funds defined and penalized under Article 220 of the Revised Penal Code (*RPC*); violation of Section 3 (a), (e), (g) and (i) of R.A. No. 3019; violation of R.A. No. 8240; grave abuse of authority; grave misconduct; dishonesty; and conduct prejudicial to the best interest of the service.

According to private respondent Basilio, petitioner Villarosa, together with petitioners Alvaro and Cajayon, approved the use of the municipality's "Trust Fund" derived from tobacco excise taxes (*Tobacco Fund*) under R.A. No. 8240³ to finance the regular operations of the municipality. It was also alleged that the expenses of the municipality which the Tobacco Fund was made to account for were not within the purpose for which said fund was created. Petitioner Villarosa was further alleged to have procured ten (10) "reconditioned" multi-cab vehicles amounting to ₱2,115,000.00, but the invitation to bid and the contracts executed therefor did not indicate that said vehicles were "reconditioned." Private respondent Basilio, thus, theorized that conspiracy attended the commission of the acts complained of because the disbursements lacked prior budgetary authorization and showed that petitioners misappropriated the funds to the damage and prejudice of the intended beneficiaries.

The Ombudsman, on December 28, 2011, issued an Order directing petitioners to submit their counter-affidavits and other controverting documents in support of their defense in the criminal case.

In their counter-affidavits, petitioners denied having committed the charges against them. Petitioner Alvaro argued that his participation was ministerial in nature considering his lack of discretion in disallowing purchases that passed through the required procedure. He also claimed that the use of the Tobacco Fund did not constitute a violation of any law and that the bulk of the said fund came from Representative Amelita Villarosa (*Rep. Villarosa*), who issued an authority delegating the power to determine how to spend said funds to the Office of the Municipal Mayor of San Jose, Occidental Mindoro. According to petitioner Alvaro, given the due delegation of authority and the absence of any prohibition in R.A. No. 8240 regarding the treatment of funds derived from the Tobacco Fund as part of the "General Fund," the issue is already moot.

Petitioner Cajayon also claimed that his act was ministerial considering that he signed the disbursement vouchers after confirming that

³ An Act Amending Sections 138, 140, & 142 Of the National Internal Revenue Code.



the supporting documents were complete, and the municipality had funds available. He also argued that his certification of the availability of funds was based on the existence of “allotment for the requisitioned purchases”⁴ since said funds were already apportioned by the *Sangguniang Bayan* in Resolutions allowing the appropriations.

For his defense, petitioner Villarosa asserted that the Tobacco Fund came from Rep. Villarosa as Occidental Mindoro’s congressional share in the Tobacco Fund, pursuant to R.A. No. 8240, and that the municipality possessed the prerogative to appropriate or use such fund “based on the authority given by Congresswoman Ma. Amelita Villarosa.”⁵ Thus, according to petitioner Villarosa, given that the statute contained no prohibition for treating funds derived therefrom as part of the “General Fund,” there was no violation to speak of. He also justified the purchase of ten (10) multi-cab vehicles, as necessitated by the clamor of different agricultural sectors, for the use of farmers attending seminars and conventions inside and outside the province.

Another Order was also issued on October 1, 2012, directing the parties to submit their position papers for the administrative case. Private respondent Basilio complied while petitioners separately moved for additional time to file their position papers.

In his position paper, private respondent Basilio, aside from reiterating his previous position, also averred that the administrative case filed before the *Sangguniang Panlalawigan* was already the subject of a Petition for Prohibition to enjoin the *Sanggunian* from proceeding with its investigation. The Ombudsman opted to take cognizance of the administrative complaint and informed the *Sanggunian* of such action considering the corroboration given by the *Sanggunian* of the fact that its investigation had been suspended by virtue of the prohibition case before the Regional Trial Court of Occidental Mindoro.

Another Order was issued by the Ombudsman directing petitioner Villarosa to submit a certified copy of the Escrow Agreement, dated June 10, 2010, mentioned in Annex “G” of his counter-affidavit, which petitioner Alvaro complied with by attaching a copy of Rep. Villarosa’s letter to Land Bank of the Philippines (*LBP*) – Trust Banking Group dated February 22, 2010 and the municipality’s Subscription Agreement with *LBP*.

Petitioners failed to file their position papers after a lapse of a reasonable time; hence, the Ombudsman deemed the case submitted for decision.

⁴ *Rollo*, p. 101.

⁵ *Id.* at 68.



In its Joint Resolution⁶ dated March 23, 2015, the Ombudsman found probable cause to indict petitioners for Technical Malversation and violation of Section 3 (e) of R.A. No. 3019. It also found petitioners guilty of grave misconduct, dishonesty and conduct prejudicial to the best interest of the service. The dispositive portion of the resolution reads, as follows:

WHEREFORE, it is respectfully recommended that JOSE T. VILLAROSA, PABLO I. ALVARO and CARLITO T. CAJAYON be charged with Technical Malversation and violation of Section 3(e) of Republic Act No. 3019; and that accordingly, the attached Informations be APPROVED for filing before the Sandiganbayan.

It is respectfully recommended, moreover, that the criminal charges for violation of Section 3(a), (g) and (i) of Republic Act No. 3019 against the same respondents be DISMISSED for lack of probable cause.

Furthermore, finding substantial evidence against respondents, they are hereby found GUILTY of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service and are each meted the penalty of DISMISSAL FROM THE SERVICE, with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification from re-employment in the Government Service.

Let copies of this Joint Resolution be furnished the Honorable Secretary of the Department of Interior and Local Government for his information and for the implementation of the same.

In the event that the penalty of Dismissal can no longer be enforced due to a respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from his/her office.

It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

SO RESOLVED.⁷

Petitioners filed their motion for reconsideration, but it was denied in the Order dated July 29, 2015 of the Ombudsman.

Hence, the present petition.

In their petition, petitioners relied on the following grounds:

I. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction and/or without jurisdiction in

⁶ *Supra* note 1.

⁷ *Id.* at 243.



issuing the questioned Joint Resolution dated 23 March 2015 (Annex "C"), which finds probable cause against the petitioners, and the Order dated 29 July 2015 (Annex "E"), which denied their Motion for Reconsideration.

II. There is no appeal or any plain and speedy remedy in the ordinary course of law other than the instant petition.⁸

It is the contention of the petitioners that they duly explained in their respective counter-affidavits that there was no technical malversation nor was there any violation of the provisions of R.A. No. 3019. Petitioners also claim that their actions were duly supported by public documents and that the expenses incurred are for the constituents of the Municipality of San Jose, Occidental Mindoro's public purpose. They further argue that there was no law or ordinance which earmarked the public funds for a specific purpose and that the provision of Section 8 of R.A. No. 8240 cannot be used as justification in order for them to be held criminally liable. They also assert that their action did not cause any undue injury to any party, including the government, or give any private party unwarranted benefits, advantage or preference in the discharge of their functions.

In its Comment dated June 22, 2016, the Office of the Solicitor General maintains that the Ombudsman did not commit grave abuse of discretion in finding probable cause to indict petitioners of the crime of Technical Malversation and violation of Section 3 (e) of R.A. No. 3019.

The petition is partly meritorious.

"Both the Constitution⁹ and [R.A. No.] 6770,¹⁰ or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. As an independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service."¹¹

"This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.

⁸ Rollo, p. 9.

⁹ 1987 CONSTITUTION, Article XI. Section 12 provides: "The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof."

¹⁰ An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989).

¹¹ Senator *Jinggoy Ejercito Estrada v. Office of the Ombudsman, et al.*, G.R. Nos. 212761-62, *John Raymund de Asis v. Conchita Carpio Morales*, G.R. Nos. 213473-74, *Janet Lim Napoles v. Conchita Carpio Morales*, G.R. Nos. 213538-39, July 31, 2018, citing *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017, 825 SCRA 436, 446.

Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.”¹²

“This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant.”¹³

“Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.¹⁴ Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law.”¹⁵

For the present petition to prosper, petitioners must show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty mandated by law, which petitioners have failed to do. “A preliminary investigation is only for the determination of probable cause.”¹⁶ Probable cause is “the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty.¹⁷ Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.”¹⁸

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, citing *Soriano v. Deputy Ombudsman Fernandez, et al.*, 767 Phil. 226, 240 (2015); *Reyes v. Hon. Ombudsman*, 783 Phil. 304, 332 (2016); and *Ciron v. Ombudsman Gutierrez, et al.*, 758 Phil. 354, 362 (2015).

¹⁵ *Id.*, citing *Duque v. Ombudsman*, G.R. Nos. 224648 and 224806-07, March 29, 2017 (Minute Resolution); and *Dichaves v. Office of the Ombudsman, et al.*, 802 Phil. 564, 591 (2016).

¹⁶ *Reyes v. Office of the Ombudsman, supra* note 11, at 448, citing *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 863 (2015).

¹⁷ *Chan v. Formaran III, et al.*, 572 Phil. 112, 122 (2008), citing *Ilusorio v. Ilusorio*, 564 Phil. 746 (2007).

¹⁸ *Id.*, citing *Ching v. The Secretary of Justice*, 517 Phil. 151, 171 (2006).

This Court finds no grave abuse of discretion on the part of the Ombudsman when it found probable cause to indict petitioners of the crime of Technical Malversation.

In finding probable cause for the crime of Technical Malversation, the Ombudsman based its findings on the strength of the evidence submitted by the private complainant, as well as the weak defense of the petitioners, thus:

Respondents were **public officers** who received from Occidental Mindoro's Congressional Representative a portion of the province's share in the revenue from the tobacco excise tax for proper administration. **Pursuant to RA 8240, the local government unit's share in the proceeds should be used solely for cooperative, livelihood and/or agro-industrial projects** that enhance the quality of agricultural products, develop alternative farming systems, or enable tobacco farmers to manage and own post-harvest enterprises like cigarette manufacturing and by-product utilization. The clear intention to limit the use of such proceeds to the above-mentioned specific purposes was further made known to and disseminated among Governors, Municipal and City Mayors, *Sanggunian* Members and all other concerned officials through Joint Circular No. 2009-1 dated 3 November 2009 entitled "Guidelines and Procedure on the Release of the Share of Local Government Units Producing Burley and Native Tobacco Products from the Fifteen Percent (15%) of the Incremental Revenue Collected from the Excise Tax on Tobacco Products."

Notwithstanding the mandate of the law and the circular, respondents **applied the fund to the purchase of vehicles, Christmas lights, meals and snacks of newly-elected Barangay Captains and SK Chairpersons, medicines, and gravel and sand. They also used said fund for the maintenance of a PNP vehicle and other service vehicle, for bus rentals, and various other municipal activities.**

No genius is required to discern the disparity between the Legislature's declared policy and respondents' actual expenditures. The former unequivocally intended the revenue from the tax on tobacco products to benefit local farmers through projects aimed at maximizing agricultural production and tobacco-product utilization. The latter, on the other hand, unabashedly spent a significant portion of said fund for local officials, religious groups, and community matters.

It bears mentioning further that respondents' claim of delegated authority from Representative Amelita Villarosa found no support from the case records. The supposed "Letters of Authority" pertained to the Representative's letters to the Landbank of the Philippines (LBP) requesting the release and transfer of funds from the municipality's escrow account to its regular account. And contrary to respondents' representation, the letters specified the projects for which the funds may be disbursed; none of which covered the expenditures that the funds were actually used for, x x x[.]

x x x x



Moreover, each of the Representative's letters bore confirmation of compliance with RA 8240 and Joint Circular No. 2009-1 in the following or similar words preceding the enumeration of authorized programs: "This letter is being issued to confirm that the disbursement of the fund is in accordance with Republic Act No. 8240 and Joint Circular No. 2009-1 xxx, more particularly for the following projects." Clearly, respondents' assertion that the municipality was given unbridled authority to spend the Tobacco Fund "for whatever purpose [it] may deem proper" is more imagined than real.

Consequently, Alvaro's and Cajayon's defense of merely performing ministerial duties is unavailing. Both were not unaware of the expenses the municipality charged against the Tobacco Fund. As Accountant and Treasurer, both are expected to possess special knowledge of the nature of the different funds under a local government unit's administration, as well as the purposes and limitations for their use. In this instance, both would have known the mandate of RA 8240 and even Joint Circular No. 2009-1; and should have been adamant against using the Tobacco Fund for purposes not conforming therewith.

Stated differently, patent on the face of each disbursement voucher was the preceding code number "300" representing trust funds. Alvaro and Cajayon knew that the Tobacco Fund, as a trust fund ear-marked for specific purposes, was not to be used for regular expenditures of the municipality. They were under obligation to know the proscription against the commingling and indiscriminate use of public funds. As Municipal Accountant, Alvaro's duty called for more than ascertainment of the physical existence of trust funds. His duty included the determination of the availability of a budgetary allotment to which the expenditure may be properly charged, and the review of supporting documents before the preparation of vouchers. As Municipal Treasurer, Cajayon's duty involved the exercise of proper management and disbursement of the municipality's funds. In addition, it is expressly provided that no money shall be disbursed without the accountant obligating the appropriation for such purpose, the treasurer certifying the availability of the appropriate fund, and the administrator of the fund approving the disbursement.

Therefore, respondents' participation in the processing and disbursement of the Tobacco Fund for the purposes in question contravened their duties. Their acts in defiance of basic duties enjoined by law, as shown by the chain of circumstances, reveal a community of criminal design indicative of conspiracy. As accountable officers, there is probable cause to believe that respondents are guilty of technical Malversation and are personally liable therefor.¹⁹ (Emphasis supplied; citations omitted.)

Article 220 of the RPC reads as follows:

ARTICLE 220. *Illegal Use of Public Funds or Property.* – Any public officer who shall apply any public fund or property under his administration to any public use other than [that] for which such fund or property were appropriated by law or ordinance shall suffer the penalty of

¹⁹ *Supra* note 1, at 231-236.



prision correccional in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any [damage] or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 [percent] of the sum misapplied.

The crime of Technical Malversation has three (3) elements: “(a) that the offender is an accountable public officer; (b) that he applies public funds or property under his administration to some public use; and (c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.”²⁰

Clearly, from the findings of the Ombudsman, the elements of the crime are present in this case. It must be remembered that owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is enough that their presence becomes reasonably apparent. This is because probable cause - the determinative matter in a preliminary investigation - implies mere probability of guilt; thus, a finding based on more than bare suspicion, but less than evidence that would justify a conviction, would suffice.²¹

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and was committed by the suspects.²² Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and, definitely, not on evidence establishing absolute certainty of guilt.²³ As well put in *Brinegar v. United States*,²⁴ while probable cause demands more than “bare suspicion,” it requires “less than evidence which would justify . . . conviction.”²⁵ A finding of probable cause merely binds over the suspect to stand trial.²⁶ It is not a pronouncement of guilt.²⁷

In the case of *Unilever Philippines, Inc. v. Tan*,²⁸ this Court ruled that:

The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed

²⁰ *Ysidoro v. People*, 698 Phil. 813, 817 (2012).

²¹ *Reyes v. Hon. Ombudsman*, *supra* note 14, at 336.

²² *Sen. Estrada v. Office of the Ombudsman, et al.*, 751 Phil. 821, 868 (2015).

²³ *Id.*

²⁴ 338 U.S. 160, 175-176 (1949).

²⁵ *Sen. Estrada v. Office of the Ombudsman, et al.*, *supra* note 22, at 868.

²⁶ *Id.*

²⁷ *Id.*

²⁸ 725 Phil. 486 (2014).

and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. What is merely required is "probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits. Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.²⁹ (Citations omitted.)

In this case, the ends of justice will be better served through the conduct of a full-blown trial as there is no evidence that the Ombudsman acted in a capricious and whimsical exercise of judgment amounting to lack or excess of jurisdiction in its finding of probable cause. The Ombudsman's finding of probable cause to indict petitioners with the crime of Technical Malversation prevails over their bare allegations of grave abuse of discretion. Accordingly, this Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the same.

This Court, however, finds no probable cause to charge petitioners with violation of Section 3 (e) of R.A. No. 3019.

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

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.

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

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;



²⁹ *Id.* at 497-498.

(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.³⁰

The Ombudsman, in this regard, found the following:

The Office also finds probable cause for violation of Sec. 3 (e), RA 3019. Respondents were public officers who acted in evident bad faith by openly defying the mandate of RA 8240 and Joint Circular No. 2009-1. **Their act of expending the Tobacco Fund in favor of local officials and various municipal obligations falls squarely under the definition of manifest partiality, if not gross inexcusable negligence. Naturally, the diversion of funds resulted in the deprivation of farmers who were the intended beneficiaries.**

Far from addressing serious concerns in agriculture and enhancing, as envisioned, opportunities for the farming sectors, the Tobacco Fund catered instead to the gastronomical pleasures of newly elected barangay officials; the commuting convenience of police authorities, local officials, and religious groups; the reveling requirements of unknown constituents, and the pharmacological programs of politicians, among other mundane things. In sum, **the farmers suffered undue injury when their fund was unceremoniously and undeservedly used for parties, politics and public relations.**

It must be noted, however, that not all respondents took part in all the twelve disbursements complained of. The disbursement vouchers attached to the complaints and the Notices of Disallowance annexed to complainant's Position Paper demonstrate who among the respondents participated in each of the transactions. Hence, each of them shall only be indicted for such transactions as they conspired to involve themselves in.³¹ (Emphasis supplied; citations omitted.)

According to the Ombudsman, the very act of technical malversation falls under the definition of manifest partiality, if not gross inexcusable negligence. This Court rules otherwise.

For an act to be considered as exhibiting "manifest partiality," there must be a showing of a clear, notorious or plain inclination or predilection to favor one side rather than the other.³² "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."³³ "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting

³⁰ *Ampil v. Office of the Ombudsman, et al.*, 715 Phil. 733, 755 (2013), citing *Sison v. People*, 628 Phil. 573, 583 (2010).

³¹ *Rollo*, pp. 236-237.

³² *People v. The Hon. Sandiganbayan (4th Div.) et al.*, 642 Phil. 640, 651 (2010).

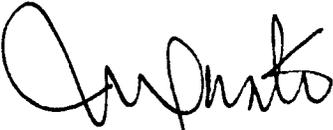
³³ *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994).

to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.”³⁴

In this case, the finding of the Ombudsman falls short of that quantum of proof necessary to establish the fact that petitioners acted with manifest partiality or there was a failure to show that there was a clear, notorious or plain inclination or predilection on the part of the petitioners to favor one side rather than the other. Contrary to the view of the Ombudsman, the mere act of using government money to fund a project which is different from what the law states you have to spend it for does not fall under the definition of manifest partiality nor gross inexcusable negligence. It must always be remembered that manifest partiality and gross inexcusable negligence are not elements in the crime of Technical Malversation and simply alleging one or both modes would not suffice to establish probable cause for violation of Section 3 (e) of R.A. No. 3019, for it is well-settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioners as with any other person is presumed.³⁵ The facts themselves must demonstrate evident bad faith which 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.³⁶

WHEREFORE, the Petition for *Certiorari* under Rule 65 of the Rules of Court dated December 1, 2015 of petitioners Jose T. Villarosa, Carlito T. Cajayon and Pablo I. Alvaro is **PARTLY GRANTED**. The Joint Resolution dated March 23, 2015 and Order dated July 29, 2015 of the Office of the Ombudsman are **AFFIRMED** only insofar as its finding of probable cause against petitioners for the crime of Technical Malversation.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

³⁴ *Id.* at 693-694.

³⁵ *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

³⁶ *Id.*, citing *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820 (1998).

WE CONCUR:


MARVIC M.V.F. LEONEN
 Associate Justice


ANDRES B. REYES, JR.
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice

ATTESTATION

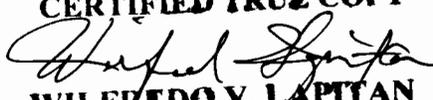
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

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


LUCAS P. BERSAMIN
 Chief Justice

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WILFREDO V. LAPATAN
 Division Clerk of Court
 Third Division
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