

NAOMI LOURDES A. HERRERA, PETITIONER, VS. SANDIGANBAYAN OF THE PHILIPPINES, RESPONDENT.*G.R. Nos. 217064-65. June 13, 2023*

Ponente: INTING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-217064-65/>**INTING, J.:**

Before the Court is a Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Court assailing the ruling of the Sandiganbayan, Fifth Division, in Criminal Case No. 24338 in its consolidated Decision[2] dated October 23, 2014, and the Resolution[3] dated February 10, 2015, in Criminal Case Nos. 24337 and 24338. In Criminal Case No. 24338, the Sandiganbayan found Naomi Lourdes A. Herrera (petitioner) and her co-accused Anecito P. Ambray (Anecito), Leonardo S. Calo (Calo), Leyminda[4] R. Violan (Violan), and Marlene B. Quinoñes (Quinoñes) guilty beyond reasonable doubt of Falsification of Public Documents under Article 171 of the Revised Penal Code (RPC) and sentenced each of them to suffer the indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with perpetual disqualification from holding public office.[5]

The Antecedents

The Information in Criminal Case No. 24338 states:

That on or about February 22, 1994, in Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, pursuant to R.A. 7975, the above-named, accused Leyminda R. Violan, a high ranking public officer, being then the Provincial Treasurer, Leonardo S. Calo, Anecito P. Ambray, Ma. Naomi L. Herrera and Marlene B. Quinoñes, all low ranking public officers, being then Executive Assistant III, General Services Officer, Management and Audit Analyst IV and Budget Officer IV, respectively, all of the Provincial Government of Surigao del Sur, Tandag, Surigao del Sur, while in the performance of their official functions, thus, committing the offense in relation to their offices, with evident bad faith and manifest partiality, taking advantage of the position as members of the Committee on Awards, did then and there willfully, unlawfully and feloniously falsify Resolution No. 007 dated 22 February 1994 of the Committee on Awards of the Provincial Government of Surigao del Sur on the purchase of Olympia typewriters, by making it appear therein that New Datche Philippines Traders Corporation of Cebu City and Olympia Business Machines Co. (Phils.), Inc. of Manila were among the bidders when, in truth and in fact, as the accused very well knew that only Family Part Center, Sunlight Marketing and Adelina Center participated, during the bidding at 10:00 o'clock in the morning on 31 January 1994 for seven (7) Olympia typewriters.

CONTRARY TO LAW.[6]

On January 6, 1994, the Provincial Government of Surigao del Sur (the Provincial Government) issued Invitation to Bid No. 034-A for the procurement, among others, of three units of 24-inch and four units of 18-inch Olympia Carriage typewriters.[7]

On January 31, 1994, Tandag General Hardware, Sunlight Marketing, and Adelina Center, participated in the bidding[8] wherein Adelina Center quoted the lowest price.[9]

On February 22, 1994, the Provincial Bids and Awards Committee (BAC), led by Anecito, the Provincial General Services Officer, held a meeting wherein numerous complaints against Adelina Center were raised and deliberated upon.[10] Among the complaints were (1) its lack of warranty over its products, and (2) its delivery of rebuilt typewriters instead of brand-new units, typewriters with detached keys, and those that did not tabulate.[11]

During the BAC meeting, Anecito informed the attendees that he conducted an open canvass in Cebu City on February 8, 1994 to solicit quotations from other suppliers of Olympia typewriters.[12] Anecito presented the price quotations submitted by New Datche Philippines Traders Corporation (New Datche), and Olympia Business Machines, and the respective Invitations to Bid which he furnished them.[13] Anecito also presented the Certification of New Datche that it was the exclusive distributor and authorized dealer of Olympia typewriters.[14]

The BAC resolved that in awarding procurement contracts, it is not always the bid price which should be considered but also the following factors: (1) the quality of the product; (2) the reliability of the supplier; and (3) the warranty given for the units. Hence, by virtue of Resolution No. 007 dated February 22, 1994, the BAC awarded the contract for the supply and procurement of Olympia typewriters to New Datche instead of Adelina Center.[15]

The pertinent portions of Resolution No. 007 state:

Whereas, there was a meeting on February 22, 1994 in the Provincial Governor's Office to decide the award for the purchase of Olympia typewriters[;][16]

x x x x

Whereas, among the bidders are: Family Parts Center, Adelina Center, Sunlight Marketing, all of Tandag, this Province, New Datche of Cebu City and Olympia Business Machines Co., Inc. of Manila.[17]

The signatories of Resolution No. 007 dated February 22, 1994, are the following: (1) Anecito; (2) Calo, the Assistant Provincial Administrator; (3) Violan, the Provincial Treasurer; (4) Quinoñes, Budget Officer IV, who signed on behalf of Susan Montero,[18] the Provincial Budget Officer; and (5) petitioner, Management Audit Analyst IV, who signed on behalf of Gracia Coletto (Coletto), the Acting Provincial Accountant.[19]

Meanwhile, the Commission on Audit (COA) created a Special Audit Team to examine the financial transactions and operations of the Provincial Government for calendar years 1992 and 1993 and the first half of calendar year 1994.[20] During the audit, they examined the documents pertaining to the procurement of 10 Olympia typewriters and determined the following: (1) the price per unit of the Olympia Carriage typewriter that New Datche quoted was higher than the bid of Adelina Center by P1,230.00 for the 24-inch typewriter and by P25.00 for the 18-inch typewriter, for a total cost difference of P8,233.00;[21] (2) the Provincial Government paid New Datche in advance through a check in the amount of P199,409.09 on February 28, 1994;[22] and (3) despite the delay of New Datche in the delivery of the typewriters, the Provincial Government did not impose liquidated damages against New Datche.[23]

Consequently, the Special Audit Team disallowed the amount of P8,233.00 which represented the total cost difference between the prices offered by Adelina Center and New Datche.[24]

Thereafter, the Office of the Ombudsman (Ombudsman) charged Anecito, Calo, Violan, Higinio C. Llaguno, Jr.[25] (Llaguno), Provincial Administrator, and Ma. Clara M. Ambray[26] (Clara), Executive Assistant IV, with violation of Section 3(e) and (g) of Republic Act No. (RA) 3019[27] in Criminal Case No. 24337.[28]

Likewise, the Ombudsman charged Violan, Anecito, Calo, Quinoñes, and petitioner, with the crime of Falsification of Public Documents under Article 171 of the RPC in Criminal Case No. 24338.[29]

In the Resolution dated May 19, 2010 in Criminal Case No. 24337, the Sandiganbayan granted the demurrer to evidence of Anecito, Calo, Violan, and Quinoñes insofar as the charge of violation of Section 3(g) of RA 3019 was concerned.[30]

The Sandiganbayan Ruling

In the Decision[31] dated October 23, 2014, the Sandiganbayan acquitted Clara, Anecito, Calo, and Llaguno as regards the charge for violation of Section 3(e) of RA 3019 in Criminal Case No. 24337.[32] The Sandiganbayan ratiocinated as follows:

The prosecution, x x x, did not offer any evidence to show that Adelina Center suffered actual damage due to the fact that it did not get the contract. No one from Adelina Center testified as to the damage that the company may have suffered. x x x Notably, Adelina Center did not even complain when it was not awarded the contract.

It was also not proven that the Provincial Government of Surigao del Sur suffered undue injury. The prosecution relied on the P3,865.00 price difference offered by Adelina Center and that of New Datche Philippines Traders Corporation. This specific element of the amount involved was, however, not alleged in the Information. In any case, the Court believes that said price difference is not substantial enough as to amount to undue injury. x x x. Moreover, the price difference and the liquidated damages of P4,368.00 were deducted and paid as early as 4 March 1997, before this case was filed with the Court, from the retirement benefits of Anecito Ambray x x x.

Neither was it shown that New Datche Philippines Traders Corporation was given unwarranted benefits. x x x it appears that it was subject to the same terms and conditions as the other suppliers and it complied with the specifications of the contract. x x x, all the units were delivered and upon inspection by the GSO, were found to be in good Condition. x x x.[33]

On the other hand, in the assailed ruling in Criminal Case No. 24338, the Sandiganbayan found petitioner, Anecito, Calo, and Quinoñes guilty beyond reasonable doubt of Falsification of Public Documents under Article 171 of the RPC.[34] It held:

With respect to accused Calo, [petitioner] and Quinoñes, they also admitted that they signed the document but they did so as representatives of their superiors who were the regular members of the BAC.

x x x Similarly, it was also part of the duties of [petitioner] as Management and Audit Analyst and as designated in-charge of the administrative division of the Provincial Accountant's Office to represent her immediate superior Mrs. Gracia Coletto, the Acting Provincial Accountant, whenever she is absent or on official leave. She testified that her authority to represent Coletto was by virtue of an office order and as such, she is authorized to attend conferences and meetings as well as sign certain documents. x x x.

From the foregoing, it is clear that accused Calo, [petitioner] and Quinoñes were armed with authority to participate in the deliberations of the BAC with respect to the procurement of the ten units of typewriters. The fact that they participated in the deliberations of the Committee in their official functions goes to show that they intervened in the preparation of Resolution No. 007. Ultimately, by signing the said Resolution, they certified that what were contained therein were true and correct.[35]

Thus, the instant Petition for Review on Certiorari.[36]

Proceedings Before the Court

Via a Resolution[37] dated December 4, 2019, the Court dismissed petitioner's Petition for Review on Certiorari on the ground that "the [a]ssailed Resolution [of] the Sandiganbayan [was] supported by factual and legal [basis]."[38] Aggrieved, petitioner filed a Motion for Reconsideration[39] of the dismissal of her petition, but the Court denied it with finality in a Minute Resolution[40] dated February 26, 2020.

Undaunted, petitioner filed an Urgent Supplemental Motion for Reconsideration[41] (Second Motion for Reconsideration) of the Resolution dated February 26, 2020. There being no action taken on the Second Motion for Reconsideration, petitioner filed the Urgent Additional Supplemental Manifestation and Motion with Leave of Court[42] to hold in abeyance the finality of the Resolution dated February 26, 2020, until the Second Motion for Reconsideration is resolved.

Meanwhile, an Entry of Judgment[43] was made on February 26, 2020. Thereafter, petitioner filed a Motion with Leave of Court to Refer Matter to the Court En Banc[44] dated August 26, 2020.

In the Resolution[45] dated July 27, 2021, the Court granted, among others, petitioner's Motion with Leave of Court to Refer Matter to the Court En Banc. The Court found that the Resolution dated December 4, 2019, which denied the Petition for Review on Certiorari, failed to expound on the facts upon which conclusions of law were made. For instance, it only made general deductions from petitioner's mere participation in the BAC deliberations without considering the peculiarity of her involvement in the meeting. Thus, in the Resolution dated July 27, 2021, the Court found that the petition ought to be reinstated in the higher interest of justice in view of the persuasive merit of petitioner's defense. The dispositive portion thereof, reads:

WHEREFORE, the Court resolves as follows:

1. PARTLY GRANT the Urgent Supplemental Motion for Reconsideration dated March 16, 2020 of petitioner Naomi Lourdes A. Herrera;
2. REINSTATE the Petition for Review on Certiorari dated April 7, 2015 of Petitioner Naomi Lourdes A. Herrera and DIRECT Office of the Special Prosecutor to file its Comment on the Petition for Review on Certiorari within ten (10) days from notice hereof;
3. RECALL the Entry of Judgment dated February 26, 2020;
4. GRANT the Urgent Additional Supplemental Manifestation and Motion with Leave of Court dated July 28, 2020 of petitioner Naomi Lourdes A. Herrera which seeks to hold in abeyance the finality of the Minute Resolution dated February 26, 2020;
5. NOTE the Urgent Supplemental Manifestation and Motion with Leave of Court dated July 20, 2020;
6. GRANT the Motion with Leave of Court to Refer Matter to the Court En Banc dated August 26, 2020;

x x x x[46]

The Issue

The issue to be resolved is whether the Sandiganbayan erred in finding petitioner guilty beyond reasonable doubt of the crime of Falsification of Public Documents under Article 171 of the RPC in Criminal Case No. 24338.

The Court's Ruling

The Court finds the petition meritorious.

At the outset, the Court underscores that among all the accused convicted of Falsification of Public Documents under Article 171 of the Revised Penal Code in Criminal Case No 24338, petitioner is the only one who filed the instant petition to assail the judgment of conviction.

Petitioner imputes error on the part of the Sandiganbayan in holding that all the elements of the crime of Falsification of Public Documents are present at bar. Petitioner contends that she could not have committed the crime charged as she was in good faith and did not take advantage of her official position in signing Resolution No. 007, the public document subject of the criminal charge for falsification.[47]

Notably, the errors that petitioner impute against the Sandiganbayan are personal and pertinent to her and do not apply to the rest of the accused. She specifically prays that the Court consider her situation during the BAC meeting held on February 22, 1994, which led her to sign Resolution No. 007.

Petitioner points out the peculiarity of her participation during the BAC meeting, as opposed to that of her co-accused, in view of the following circumstances: (1) it was her first and only attendance at a BAC meeting; (2) she was only a substitute of Coletto, the regular member of the BAC and the Acting Provincial Accountant; (3) it was unclear whether she had authority to attend the BAC meeting and consequently sign Resolution No. 007, considering that the Office Order that allegedly authorized her to attend meetings and sign documents on behalf of Coletto was not offered in evidence.[48]

Based on the attendant circumstances, the Court is convinced that there was a failure to establish petitioner's guilt beyond reasonable doubt for the crime of Falsification of Public Documents.

Paragraph 2, Article 171 of the RPC provides:

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

x x x x

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

x x x x

Thus, the crime of Falsification of Public Documents has the following elements: (1) the offender is a public officer, employee, or notary public; (2) the offender takes advantage of his or her official position; and (3) the offender falsifies a document by committing any of the acts enumerated in Article 171 of the RPC.[49]

That petitioner was a public officer at the time of the incident is undisputed.[50] Petitioner held the position of Management Audit Analyst IV under the Office of the Provincial Accountant when she signed Resolution No. 007.[51] Thus, the core issue is whether petitioner took advantage of her official function in signing Resolution No. 007.

For the crime of Falsification of Public Documents, public officers are considered to have taken advantage of their official position in making the falsification when (1) they have the duty to make or to prepare or otherwise intervene in the preparation of the document, or (2) they have the official custody of the document which they falsify.[52]

In the case, the document that petitioner allegedly falsified was Resolution No. 007, an official issuance of the BAC, wherein the contract for the supply and procurement of Olympia typewriters was awarded to New Datche instead of Adelina Center.

Under Section 33 of COA Circular No. 92-386,[53] which prescribes the rules and regulations on the supply and property management in the local governments, the act of deciding on the bids or questions of awards or signing committee resolutions is reserved for the regular members of the BAC, viz.:

SECTION 33. Attendance in Proceedings. — Every member of the Committee on Awards shall be present in all proceedings of the Committee unless prevented from doing so by sickness or other unavoidable circumstance, in which case he may authorize in writing a representative to attend in his behalf. Representatives of the

members of the Committee may deliberate on the bids for and in behalf of the Committee members. However, the Committee members shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions. (Italics supplied.)

Corollary thereto, Section 31 of the COA Circular No. 92-386 provides for the composition of the BAC, viz.:

SECTION 31. Composition of the Committee on Awards. — The Committee on Awards shall be composed of the local chief executive as chairman, the local treasurer, the local accountant, the local budget officer, the local general services officer (in case of provinces and cities), and the head of office or department for whose use the property or supplies are being procured, as members. In case a head of office or department would sit in a dual capacity, or when the requisitioning office is a national government agency located in the local government unit and which supply or property requirement is authorized by law to be augmented by said local government unit, member of the Sanggunian elected from among its members shall sit as a member.

x x x (Italics supplied.)

To emphasize, Section 31 of the COA Circular No. 92-386 enumerates the members of the BAC: (1) the local chief executive; (2) the local treasurer; (3) the local accountant; (4) the local budget officer; (5) the local general services officer (in case of provinces and cities); and (6) the head of the office for whose use the supplies will be procured, or the member of the Sanggunian, as the case may be. Indubitably, they are the only ones who "shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions." [54]

Petitioner's attendance in the BAC meeting was in the performance of her official function as a substitute of a regular member, but her signature in Resolution No. 007 is a surplusage as she was not a member of the BAC.

It bears stressing that petitioner only attended the BAC meeting on February 22, 1994, to substitute for her superior Coletto, the Acting Provincial Accountant, who was then on a brief official leave. In fact, the meeting was petitioner's first and last attendance at a BAC meeting. Not being a member of the Committee, petitioner was certainly not authorized, as Management and Audit Analyst IV, to decide on the bids and sign Resolution No. 007.

The purported Office Order which allegedly authorized petitioner to attend meetings and sign documents on behalf of Coletto could not have empowered petitioner to sign Resolution No. 007, because Section 33 of COA Circular No. 92-386 itself provided that only the Committee members shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions. In any case, the Court cannot use the purported Office Order as basis of petitioner's culpability because such document is not in the records of the case. [55] This lends credence to petitioner's averment that while the office order was testified to during the trial, it was never presented or offered by the prosecution as documentary evidence.

Apparently, the Committee merely made petitioner sign Resolution No. 007 as she represented Coletto during the BAC meeting. Considering that petitioner was not an authorized signatory to Resolution No. 007, her signature therein was a mere surplusage and, thus, inconsequential. Prosecution witness State Auditor Garcia shared this view:

Q:

x x x Therefore, not being a member of the committee and awards, insofar as accused Herrera is concerned her signature on the subject resolution number 007 which I believe is Exhibit F for the prosecution was invalid, was it not?

A:

Based on Section 33 that is invalid, it should be signed by the regular member, sir.

Q:

And, since the signature of accused Herrera on the subject resolution was invalid, therefore the same did not have any force and effect?

WITNESS:

A:

Well, it was considered by the bids and awards committee in awarding the contract for the purchase of the typewriter, sir.

Q:

I am not asking about the consideration given by the committee on awards, but what I am asking Mr. Witness is, [it] did not have any force and effect being an invalid signature in the document?

A:

As far as the signature of the representative, sir.

Q:

Meaning to say accused Herrera?

A:

Accused Herrera, sir.

Q:

It does not have any force and effect?

WITNESS

A:

Yes, sir.[56]

The element of "taking advantage of one's official position" in the crime of Falsification of Public Documents is absent in the case.

In *Department of Finance-Revenue Integrity Protection Service v. Office of the Ombudsman*,^[57] the Court explained when a public officer is considered to have taken advantage of his or her official position in falsifying public documents, viz.:

In this case, the element of taking advantage of one's position is patently lacking. There is no showing that private respondent had the duty to make or prepare, or otherwise, to intervene in the preparation of the SALNs, or he had the official custody of the same. Taking advantage of one's official position for the purpose of committing falsification of public document under Article 171 "is considered present when the offender falsifies a document in connection with the duties of his office which consist of either making or preparing or otherwise intervening in the preparation of a document." x x x (Emphasis omitted; italics supplied)

The following account given by petitioner reveals that the element of "taking advantage of one's official position" is absent in the case:

Q:

Now, relative to this decision of the committee to award New Datche Philippines, what document if any did the committee prepare?

A:

The resolution, Sir.

Q:

Resolution to award this contract to New Datche Philippines?

A:

Yes, Sir.

Q:

Now who prepared this resolution, Madame Witness?

A:

The regular members of the bids and awards committee, Sir.

Q:

Now, what happened to this resolution that was prepared by the committee?

A:

It was prepared already. Sir.

Q:

After it was prepared?

A:

It was routed to us for our signatures. For our respective signatures, Sir.

Q:

So, did you sign this resolution?

A:

Yes, I did, Sir.

Q:

When did you sign this resolution?

A:

When I saw the signatures already of the regular members. Some regular members and the other one who represented the office, Sir.

Q:

You mean to say when you signed these documents there were already others who signed this resolution?

A:

Yes, Sir.

Q:

And when did you sign this resolution in terms of date, you had a meeting on February 22, 1994? When did you sign it?

A:

Yes, Sir. It was after the meeting one or two days later, after the February 22 meeting, Sir.

Q:

Not on February 22?

A:

No, Sir.[58]

x x x x

Q:

So, why did you sign Resolution No. 007?

A:

I signed the resolution sir in good faith because it was based on supporting documents and I was confident and I rely on the knowledge and experience of the regular members of the committee who I know before they signed, before they affixed their respective signatures[,] I see to it that everything was in order, Sir.[59]

x x x x

Q:

Madam Witness, in that experience how many times have you had the opportunity to participate in the bidding process?

A:

That was my first only and the last experience, Sir.

Q:

That was the first and last experience that you participated in the bidding process?

A:

Yes, Sir.

Q:

That's why you relied on your other members especially the regular members?

A: Yes, sir. The regular members.

Q:

Prior to the committee meeting what opportunity did you have to discuss with the other members or representatives the subject of your typewriters?

A:

None, Sir.

Q:

Now, during the actual committee meeting, what conspiracy did you have with the other members or representatives to influence the right or the result of the bidding?

A:

None, Sir.

Q:

Prior to the subject meeting did you personally know of anybody connected with either New Datche Philippines, Adelina Center or Sunlight Marketing?

A:

None, Sir.

Q:

Prior to the meeting did you have any previous dealings with or have come across New Datche Philippines, Adelina Marketing or Sunlight Marketing?

A:

None, Sir.[60] (*Italics supplied.*)

x x x x

Q:

Finally, without saying that something was not in order in the subject procurement. However, considering that it was your first and last time to participate in the procurement process, what reason did you have not to believe and rely in good faith on the wisdom and experience of the members of the committee and on the subject Resolution no. 007 prepared by them?

A:

None, Sir.[61]

As can be gleaned from the foregoing, it was the regular members of the BAC who prepared Resolution No. 007, and they merely coursed the document to petitioner for her signature a day or two after the BAC meeting. In short, petitioner had no direct participation in the preparation of Resolution No. 007.

It can be deduced from petitioner's testimony that she only signed Resolution No. 007 because of her reliance on the knowledge and expertise of the regular members of the Committee who already signed it. It is worthy of note that it was not petitioner's duty to make or intervene in the preparation of Resolution No. 007. Moreover, she was not the one who had the official custody thereof.

Beyond doubt, the element of "taking advantage of one's official position" in the crime of Falsification of Public Documents is absent in the case. It bears stressing that petitioner signed not as a regular member of the BAC, but as a mere representative of a regular member who was on leave. There is even no showing that her appearance in the BAC meeting carried with it the authority to sign for and on behalf of the principal, Coletto, the regular member.

Petitioner Herrera believed in good faith that the award of the typewriter contract to New Datche Philippines was proper and allowed under procurement rules.

In the case of *People v. Palma Gil-Roflo*,^[62] the Court explained that the crime of Falsification of Public Documents is an intentional felony which requires that the act be committed with deliberate evil intent and malice, thus:

Settled is the rule that Falsification of Public Documents is an intentional felony committed by means of "dolo" or "malice" and could not result from imprudence, negligence, lack of foresight or lack of skill. Intentional felony requires the existence of *dolus malus*—that the act or omission be done willfully, maliciously, with deliberate evil intent, and with malice aforethought. This felony falls under the category of *mala in se* offenses that requires the attendance of criminal intent. In fine, criminal intent is required in order to incur criminal liability under Article 171 of the RPC.[63] (Underscoring supplied)

In the case, petitioner could not have signed Resolution No. 007 with criminal intent. To stress, during the BAC meeting on February 22, 1994, the members of the Committee raised and deliberated on the numerous complaints against Adelina Center. Among the complaints against the supplier were included the following: (1) its lack of warranty over its products; and (2) its delivery of rebuilt typewriters instead of brand-new units, typewriters with detached keys, and those which did not tabulate.[64]

Notably, the members of the BAC likewise explained to petitioner that the award of procurement contracts is not solely based on the bid price but also on the following factors: (1) the quality of the product; (2) the reliability of the supplier; and (3) the warranty given for the units. Anecito explained that although Adelina Center quoted the lowest price during the bidding on January 31, 1994, the complaints against it justified the award of the contract to New Datche.[65]

The Court notes that during the BAC meeting, Anecito informed the attendees that (1) he conducted an open canvass in Cebu City on February 8, 1994 to solicit quotations from other suppliers of Olympia typewriters;[66] (2) he presented the price quotations submitted by New Datche and Olympia Business Machines, and the respective Invitations to Bid which he furnished them;[67] and (3) he also presented the Certification of New Datche that it is the exclusive distributor and authorized dealer of Olympia typewriters.[68]

Considering that the meeting held on February 22, 1994 was petitioner's first and last attendance at a BAC meeting, the Court cannot fault her for relying on the representations of Anecito, who was the Provincial General Services Officer and an official member of the BAC. In fact, the statement of Anecito was confirmed by State Auditor Garcia, the lone prosecution witness, who testified on October 16, 2006 that the lowest bidder does not always get the procurement contract, especially when it has a record of unreliability, viz.:

Q:

By the way, in the course of your previous cross-examination, you said that the guidelines, there are guidelines for local government?

A:

Yes, Sir.

Q:

And this is Circular No. 92-386?

A:

Yes, Sir.

Q:

On the basis of that Circular you said that there are several modes of procurement of supplies allowed as far as LGUs are concerned?

A:

Yes, Sir.

Q:

And you said that there are alternative modes?

A:

Alternative modes, Sir.

Q:

But the primary mode was what?

A:

The public bidding, Sir.

Q:

If the public bidding fails then they may go to the other alternative mode, is that correct?

A:

Not necessarily[,] there is a failure of bidding but there are alternative modes which the agency can make without going to public bidding, Sir.

Q:

As a matter of fact, you agree with me that under the rules and guidelines if the public bidding fails then resort to other applicable modes, it is allowed, is it not?

A:

Yes, Sir.[69]

On October 17, 2006, Garcia continued to testify, viz.:

RET. JUSTICE FERNANDEZ

Q:

Mr. Garcia, you already testified that the Abstract of Bids was only a recommendation, is that right?

WITNESS

A:

Yes, Sir.

RET. JUSTICE FERNANDEZ

Q:

Which means that the award or the decision of the Committee on Awards is to come later on.

A:

Yes, Sir.

Q:

And according to your testimony, you also confirmed that in making that decision of award, Awards may consider certain factors on whether to approve that recommendation, is it not?

A:

Yes, Sir.

Q:

And one of these is the liability of a bidder as a supplier or contractor, you mentioned that also.

A:

Yes, Sir.

Q:

Which means also that before the award is finally issued, if grounds are shown which would indicate that the bidder recommended in the abstract is unreliable, that may be a consideration for the committee to deny the award.

A:

Yes, Sir.[70]

In fact, in Criminal Case No. 24337, the Sandiganbayan acquitted Anecito, Clara, Calo, and Llaguno, with respect to the charge for violation of Section 3(e) of RA 3019. The Sandiganbayan found that (1) the prosecution failed to prove that Adelina Center and the Provincial Government suffered any undue injury; (2) Anecito, Clara, Calo and Llaguno did not give unwarranted benefits to New Datche; and (3) the typewriters which New Datche delivered to the Provincial Government were in fact brand-new and quality units.[71]

Apparently, in relying upon the representations of Anecito and signing Resolution No. 007, petitioner only had in mind the interest of the Provincial Government that it may only procure fine and premium typewriters. As she was not motivated by any sense of partiality, evil intent, or malice in signing Resolution No. 007, petitioner could not be held criminally liable for Falsification of Public Document under Article 171 of the RPC.[72]

It must be stressed that under Section 2, Rule 133 of the Rules of Court, conviction in criminal cases requires proof beyond reasonable doubt.[73] This quantum of proof in criminal cases charges the prosecution with the great responsibility of proving moral certainty—a certainty that ultimately appeals to a person's very conscience.[74] Here, the Court finds such moral certainty to be lacking. The failure of the State to establish the guilt of petitioner beyond reasonable doubt warrants her acquittal.

WHEREFORE, the petition is GRANTED. The consolidated Sandiganbayan Decision dated October 23, 2014, and the Resolution dated February 10, 2015, in Criminal Case Nos. 24337 and 24338 are AFFIRMED with MODIFICATION in that petitioner Naomi Lourdes A. Herrera is ACQUITTED in Criminal Case No. 24338 for failure of the prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.

Leonen,[**] Acting C.J., Caguioa, Lazaro-Javier, M. Lopez, Gaerlan, Dimaampao, Kho, Jr., and Singh, JJ., concur.

Gesmundo,[*] C.J., no part and on official leave.

Hernando,[***] J., on official leave.

Zalameda, J., I join the dissenting opinion of J. Marquez

Rosario, J., see dissenting opinion.

J. Lopez,[****] J., on leave.

Marquez, J., see dissenting opinion.

[*] Took no part and on official leave.

[**] Acting Chief Justice per Special Order No. 2977 dated June 1, 2023.

[***] On official leave.

[****] On leave.

[1] Rollo, pp. 16-47.

[2] Id. at 80-110. Penned by Associate Justice Alexander G. Gesmundo (now Chief Justice of the Court) and concurred in by Associate Justices Roland B. Jurado and Ma. Theresa Dolores C. Gomez-Estoesta.

[3] Id. at 52-57.

[4] Referred to as "Leonida" in some parts of the rollo.

[5] Rollo, p. 109.

[6] Id. at 82. As culled from the Sandiganbayan Decision.

[7] Id. at 83 and 87.

[8] Id. at 87-88.

[9] Id.

[10] Id. at 91-92.

[11] Id.

[12] Id. at 88 and 93.

[13] Id. at 93.

[14] Id.

[15] Id. at 92-93.

[16] Id. at 21. As culled from the Petition for Review on Certiorari.

[17] Id.

[18] Referred to as "Susonte Montero" in some parts of the rollo; id. at 94.

[19] Id. at 95 and 101-102.

[20] Id. at 86-87.

[21] Id. at 85 and 88.

[22] Id. at 88.

[23] Id.

[24] Id. at 85, 89.

[25] Referred to as "Higino C. Llaguno" and erroneously designated as Executive Assistant IV in the Information; id. at 81, 90.

[26] Referred to as "Clara P. Ambray" and erroneously designated as Provincial Administrator in the Information; id. at 81, 96.

[27] Entitled "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.

[28] Rollo, p. 81.

- [29] Id. at 81-82.
- [30] Id. at 90.
- [31] Id. at 80-110.
- [32] Id. at 109.
- [33] Id. at 107-108.
- [34] Id. at 109.
- [35] Id. at 101-102.
- [36] Id. at 16-47.
- [37] Id. at 377-383.
- [38] Id. at 383.
- [39] Id. at 384-398.
- [40] Id. at 400-A.
- [41] Id. at 425-429.
- [42] Id. at 410-411.
- [43] Id. at 463.
- [44] Id. at 443-458.
- [45] Id. at 474-483.
- [46] Id. at 481-482.
- [47] Id. at 34.
- [48] See Prosecutor's Formal Offer of Exhibits, Records Volume 7, pp. 389-397.
- [49] Office of the Ombudsman v. Santidad, 867 Phil. 440, 467 (2019).
- [50] Rollo, p. 101.
- [51] Id. at 95.
- [52] Office of the Ombudsman v. Santidad, *supra* at 468, citing Galeos v. People, 657 Phil. 500, 521 (2011).
- [53] With the subject, "Prescribing Rules and Regulations on Supply and Property Management in the Local Governments," dated October 20, 1992.
- [54] See Section 33 of COA Circular No. 92-386.
- [55] See Prosecutor's Formal Offer of Exhibits, Records Volume 7, pp. 389-397.
- [56] TSN, April 1, 2008; rollo, p. 180.
- [57] G.R. No. 238660, February 3, 2021. Citations omitted.
- [58] TSN, September 9, 2013; rollo, pp. 238-239.

- [59] Id. at 244.
- [60] Id. at 244-245.
- [61] Id. at 246.
- [62] G.R. Nos. 249564 & 249568-76, March 21, 2022.
- [63] Id., citing *Fullero v. People*, 559 Phil. 524, 539 (2007) and *Villareal v. People*, 680 Phil. 527, 565 (2012).
- [64] Rollo, p. 91.
- [65] Id. at 92.
- [66] Id. at 88, 93.
- [67] Id. at 93.
- [68] Id.
- [69] TSN, October 16, 2006; id. at 257-258.
- [70] Id. at 291-292.
- [71] Id. at 108-109.
- [72] Id. at 41 and 44.
- [73] *People v. Adana*, G.R. No. 250445, March 29, 2022.
- [74] Id., citing *Daayata v. People*, 807 Phil. 102, 117-118 (2017).

DISSENTING OPINION

ROSARIO J.:

In a Resolution[1] dated December 4, 2019, the Court's Second Division resolved to dismiss the present Petition for Review and affirm petitioner's conviction for Falsification of Public Document. It later denied petitioner's Motion for Reconsideration (MR) with finality in a minute resolution[2] dated February 26, 2020. Unfazed, petitioner filed a second MR. Meanwhile, an Entry of Judgment was issued, prompting petitioner to move that the case be referred to the Court en banc. In an unexpected turn of events, the Court en banc, in a Resolution[3] dated July 27, 2021, granted the motion, recalled the Entry of Judgment, and held the finality of the denial of the Petition in abeyance. The majority now votes to acquit her.

Respectfully, I dissent.

I

While this is not the first time the Court has recalled an entry of judgment, the Court's basis for doing so here is unusual. As mentioned in the ponencia, the Court, in its July 27, 2021 Resolution, found that the December 4, 2019 Resolution which denied the Petition failed to expound on the facts upon which conclusions of law were made since, for instance, it only made general deductions from petitioner's mere participation without considering the peculiarity of her involvement. Hence, the Court found that the petition ought to be reinstated in the higher interest of justice in view of the persuasive merit of petitioner's defense.[4] However, for unsigned extended resolutions, the only requirement is that they state clearly and distinctly the facts and the law on which they are

based.[5] Since all rulings of the Court undergo thorough deliberation, without exception, a ruling expressed in concise language does not mean that the Court only made general deductions during its deliberations. More importantly, mere purported failure to expound on the facts is no reason to disregard the doctrine of immutability of final judgment. This is not to say that there are no truly meritorious cases which should merit the Court en banc's attention. However, this is hardly such a case, as will be discussed below.

II

Petitioner was employed at the Provincial Accountant's Office of the Province of Surigao del Sur as Management and Audit Analyst IV. In 1994, the provincial government issued an Invitation to Bid for the procurement of typewriters. On January 31, 1994, three bidders participated, with Adelina Center quoting the lowest price. However, due to numerous complaints against said lowest bidder, Anecito, the Provincial General Services Officer, held a Bids and Awards Committee (BAC) meeting on February 22, 1994 informing the attendees that he conducted an open canvass on February 8, 1994 to solicit quotations from other suppliers, among which, New Datche and Olympia Business Machines. Petitioner attended said meeting as representative of the Acting Provincial Accountant, Mrs. Gracia Coletto, who was on official leave. The BAC eventually awarded the contract to New Datche via Resolution No. 007, the pertinent portions of which state:

Whereas, there was a meeting on February 22, 1994 in the Provincial Governor's Office to decide the award for the purchase of Olympia typewriters[;]

xxx

Whereas, among the bidders are: Family Parts Center, Adelina Center, Sunlight Marketing, all of Tandag, this Province, New Datche of Cebu City and Olympia Business Machines Co., Inc. of Manila.

The Resolution was signed by all the BAC members, save for two whose representatives signed on their behalves, petitioner included. Said signatories, except one who remained at large, were eventually charged with Falsification of Public Documents under par. 2, Art. 171 of the Revised Penal Code (RPC) and convicted thereof by the Sandiganbayan for causing it to appear that persons participated in the bidding when they did not in fact so participate.

Fast forward to the ponencia subject of this Opinion, the Court en banc now votes to acquit petitioner for failure of the prosecution to prove her guilt beyond reasonable doubt, particularly on the following grounds:

- Petitioner's attendance in the BAC meeting was in the performance of her official function as a substitute of a regular member, but her signature in Resolution No. 007 is a surplusage as she was not a member of the BAC;[6]
- The element of "taking advantage of one's official position" in the crime of Falsification of Public Documents is absent in this case;[7] and
- Petitioner believed in good faith that the award of the contract to New Datche Philippines was proper and allowed under procurement rules.[8]

The crime of falsification of public document by public officer, employee, or notary, as penalized under Art. 171[9] of the RPC, has the following elements:

(1)

the offender is a public officer, employee, notary public;

(2)

the offender takes advantage of his or her official position; and

(3)

the offender falsifies a document by committing any of the acts enumerated in Art. 171 of the RPC.[10]

The presence of the first element is undisputed.

As regards the second element, public officers are considered to have taken advantage of their official position when (1) they have the duty to make or to prepare, or otherwise intervene in the preparation of the document, or (2) they have the official custody of the document which they falsify.[11]

While I agree with the ponencia that this element is absent, I disagree in part with its reasoning.

Petitioner testified that she was authorized to sign documents and attend meetings in the absence of her superior by virtue of an office order.[12] However, the ponencia states that the Court cannot use the purported office order as basis for petitioner's culpability because such document is not in the records of the case and was never presented or offered by the prosecution as documentary evidence.[13] On the contrary, I find that petitioner's testimony to that effect is a judicial admission of her authority to sign on behalf of her superior which dispenses with proof.[14] Hence, it was unnecessary to present and offer the purported office order in evidence.

That said, authority to sign a document is not synonymous with "duty to make or to prepare, or otherwise intervene in the preparation of the document" for one may be authorized despite not having the duty to perform an act.

Sec. 33[15] of Commission on Audit (COA) Circular No. 92-386 provides that while representatives of the members of the Committee may deliberate on the bids for and in behalf of the Committee members, only the Committee members shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions. Since the power and duty to sign Committee decisions belong exclusively to the regular Committee members, the authority that Mrs. Coletto granted to petitioner to sign in her absence was *ultra vires* insofar as Resolution No. 007 is concerned and did not confer upon petitioner any duty in relation thereto.

Anent the third element, there is no question that by signing Resolution No. 007, petitioner committed one of the acts enumerated in Art. 171, i.e., she caused it to appear that New Datche and Olympia Business Machines participated in the bidding on January 31, 1994 when they did not in fact so participate.

Whether petitioner's signature was a mere surplusage because she was not one of those authorized under COA Circular No. 92-386 to sign Committee decisions is irrelevant because the law punishes the act of causing it to appear that persons participated in any act or proceeding when they did not in fact so participate, regardless of the legal effect thereof. Verily, an unauthorized signatory can, just as much as an authorized one, cause it to appear that persons participated in an act when in fact they did not.

Does the absence of the second element mean that petitioner committed no crime? The answer is in the negative.

While petitioner cannot be held guilty of falsification under par. 2, Art. 171 of the RPC, she can be held guilty under Art. 172[16] in relation to par. 2, Art. 171.

Judge Guillermo Guevara, the father of Philippine criminology and member of the Committee that drafted the RPC, confirms this in his commentary on Art. 171 as follows:

It should be borne in mind that to constitute the crime of falsification of public documents by a public official, it is an indispensable requisite that the offender should have taken advantage of his office. Otherwise it will be a simple case of falsification of public documents by a private person. Thus, a court stenographer who deliberately and maliciously makes changes in the transcription of his notes on the statements of a witness

taken by him is guilty of falsification under this Article; while any other officer, say a chief of police, who happens to make the same changes or alterations in the same document, is guilty of falsification of a public document committed by a private person. It is because, in the former example, the stenographer misused his public office in committing the crime, while the policeman in the latter example, did not.[17] (Emphasis supplied)

Similarly, Justice Luis B. Reyes comments that "[e]ven if the offender was a public officer but if he did not take advantage of his official position, he would be guilty of falsification of a document by a private person under Art. 172." [18]

In *Garong v. Villanueva*, [19] a court interpreter, despite being a public employee, was held guilty of falsification by a private individual for simulating a court order. We explained:

The falsification by the petitioner could have been committed without taking advantage of his public position as the court interpreter. His work for the court that had supposedly issued Exhibit B was of no consequence to his criminal liability, for the crime could have been committed even by any other individual, including one who did not work in the court in any official capacity. In his case, the petitioner committed the simulation of Exhibit B despite his not having the duty to make, or prepare, or otherwise intervene in the preparation of court orders. (Emphases supplied)

Although the allegations in the Information describe a violation of par. 2, Art. 171 of the RPC, falsification of documents committed by public officers who take advantage of their official position under Art. 171 necessarily includes falsification by private persons punished by par. 1, Art. 172.[20] Since Art. 171 encompasses all the elements required in a conviction for falsification under par. 1, Art. 172, petitioner could still be convicted of the latter under the present Information.

Finally, I discuss petitioner's defense of good faith.

The crime of Falsification of Public Documents falls under the category of *mala in se* offenses that requires the attendance of criminal intent[21] which is presumed upon the consummation of the criminal act, i.e., the execution of the false document.[22] Failure of erring public officers to attain their objectives, if that really be the case, is not determinative of their guilt or innocence. In fine, the element of gain or benefit on the part of the offender or prejudice to a third party as a result of the falsification, or tarnishing of a document's integrity, is not essential to maintain a charge for falsification of public documents.[23]

Said the Supreme Court of Spain in an 1885 decision:

Considerando que aun cuando las falsedades cometidas en documentos públicos ú oficiales, lo mismo por funcionarios que por particulares, no requieren como elemento esencial ni la idea del lucro ni el ánimo de perjuicio á tercero, porque á diferencia de las que se realizan en documentos privados, en aquélla se castiga principalmente la violación de la fe pública y de la verdad solemnemente consignada x x x.[24] (Emphasis supplied)

Thus, in contradistinction to private documents, the principal thing punished in falsification of public documents is not the presence of gain or intent to injure a third person but the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[25]

Petitioner testified that she signed Resolution No. 007 in good faith because it was based on supporting documents and she merely relied on the knowledge and experience of the regular members of the BAC, not being familiar with procurement law. In believing her defense, the ponencia declares that it cannot fault her for relying on the representations of Anecito considering that it was her first and last attendance at a BAC meeting.[26] It adds that in relying upon the latter's representations and signing the resolution, petitioner apparently only had in

mind the interest of the provincial government that it may only procure fine and premium typewriters.[27]

While it was indeed petitioner's first and last time to attend a meeting in that particular bidding process, she confirmed on redirect examination that it was not her first and last time attending a bidding process.[28] Regardless, there is nothing that prevents even an inexperienced attendee from committing an act of falsification. Her testimony shows that she was fully aware of the falsity of the statement in the Whereas clauses and yet decided to sign anyway, to wit:

PROS. TORIBIO:

Q

Now prior to signing this Resolution No. 007 of course you read the contents of this Resolution, correct?

A

Before I signed, sir, yes.

Q

Before you signed you read the contents of the Resolution?

A

Yes, sir.

Q

Everything that was stated here, you read it and you understood it, correct?

A

Yes, sir.

x x x x

Q

So, there were three (3) bidders, but there were only two (2) who participated? Is that what you are saying?

A Yes, sir.

Q

And that those bidders are: Adelina?

A

Adelina Center and Sunlight Marketing.

Q

Now, kindly goes (sic) over again that second whereas clause does it states (sic) that fact that you just mentioned today?

A

No, sir.

Q

Now, despite that you still signed the Resolution, correct?

A

Yes, sir.

x x x x

PROS. TORIBIO:

Q

When did your boss, Provincial Accountant Gracia Coletto come back from her leave of absence?

A

I cannot remember again, but when I signed that she was still out.

Q

Did you not consult her about this Resolution?

A

She was not yet back, sir.

Q

Even after she came back?

A

No, sir.[29]

Obviously, petitioner did not need to be familiar with procurement law or have experience in bidding processes to determine whether certain suppliers did or did not participate in the bidding. Given the sheer importance of the document, the fact that petitioner did not even consult with her superior while the latter was on leave or after she returned betrays her lack of good faith.

As to her alleged noble interest that the provincial government may only procure quality typewriters, petitioner said nothing of the sort in her testimony and is a mere inference of the ponencia which cannot be appreciated in her favor. Even assuming arguendo that she intended it for good, the fact remains that she willfully made it appear that persons participated in an act or proceeding when in truth and in fact they did not. Again, the law is not concerned with the effect of the document, whether it be detrimental or beneficial to the provincial government. In our system of criminal justice, the end does not justify the means.[30]

Petitioner may not have intended to gain from what she did or injure a third person but the same is immaterial[31] as her act indubitably violated the public faith and destroyed the truth. Her claim of good faith, buttressed by nothing more than her self-serving testimony, must perforce fail.

In the final analysis, while I find that the December 4, 2019 Resolution erred in affirming petitioner's conviction for falsification under par. 2, Art. 171 of the RPC instead of par. 1, Art. 172 in relation to par. 2, Art. 171, such error did not justify disregarding the time-honored doctrine of immutability of final judgment.

[1] Rollo, pp. 377-383.

[2] Id. at 400-A.

[3] Id. at 474-483

[4] Ponencia, p. 7.

[5] A.M. No. 10-4-20-SC, Rule 13, Sec. 6(c).

[6] Ponencia, pp. 11-12.

[7] Id. at 12-15.

[8] Id. at 15-19.

[9] REVISED PENAL CODE, art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of prisión mayor and a fine not to exceed P5,000 pesos [amended to One million pesos (P1,000,000) by REP. Act No. 10951] 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

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

x x x

[10] Typoco, Jr. v. People, 816 Phil. 914, 929 (2017).

[11] Id. at 930.

[12] Rollo, p. 202. Transcript of Stenographic Notes (TSN) dated September 10, 2013 (Cross-Examination of Naomi Lourdes A. Herrera), p. 4.

[13] Ponencia, p. 11.

[14] RULES OF COURT, Rule 129, Sec. 4. Judicial admissions. – An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in

fact, made.

[15] COA Circular No. 92-386, Sec. 33. Attendance in Proceedings. — Every member of the Committee on Awards shall be present in all proceedings of the Committee unless prevented from doing so by sickness or other unavoidable circumstance, in which case he may authorize in writing a representative to attend in his behalf. Representatives of the members of the Committee may deliberate on the bids for and in behalf of the Committee members. However, the Committee members shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions. (Emphasis supplied)

[16] REVISED PENAL CODE, art. 172. Falsification by private individual and use of falsified documents. - The penalty of prisión correccional in its medium and maximum periods and a fine of not more than P5,000 pesos [amended to One million pesos (P1,000,000) by REP. ACT NO. 10951] shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; x x x

[17] GUILLERMO B. GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES, 5[th] ed. (1957), p. 251. See also LUIS B. REYES, THE REVISED PENAL CODE, Book Two, 6[th] ed. (1965), p. 184.

[18] LUIS B. REYES, THE REVISED PENAL CODE, Book Two, 6[th] ed. (1965), p. 184.

[19] 800 Phil. 18, 33-34 (2016).

[20] *Malabanan v. Sandiganbayan*, 815 Phil. 183, 199 (2017).

[21] *Office of the Ombudsman v. Santidad*, 867 Phil. 440, 468 (2019).

[22] *Goma v. Court of Appeals*, 596 Phil. 1, 12 (2009).

[23] *Id.*

[24] *Sentencia de 23 de Diciembre de 1885*, published in the *Gaceta* dated June 21, 1886, pp. 312-313. This was translated in *U.S. v. Mateo* (G.R. No. 8025, September 17, 1913) as follows: "Considering that even though in the falsification of public or official documents, whether by public official or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed xxx."

[25] *People v. Po Giok To*, 96 Phil. 913 (1955).

[26] *Ponencia*, pp. 16-17.

[27] *Id.* at 18.

[28] *Rollo*, p. 215. TSN dated September 10, 2013 (Redirect Examination of Naomi Lourdes A. Herrera), p. 17.

[29] *Id.* at 208-211. TSN dated September 10, 2013 (Cross-Examination of Naomi Lourdes A. Herrera), pp. 10-13.

[30] *Bagalihog v. Fernandez*, 275 Phil. 666 (1991).

[31] *Typoco, Jr. v. People*, *supra* note 22, at 934-935.

DISSENTING OPINION

MARQUEZ, J.:

This case was already closed and terminated more than three years ago when the Special Second Division of the Court on 26 February 2020 denied with finality[1] petitioner Herrera's motion for reconsideration[2] and ordered the issuance of an entry of judgment. This should have sent petitioner Herrera to prison for an indeterminate sentence of six months and one day of prision correccional, as minimum, to eight years and one day of prision mayor, as maximum, for falsifying a public document.

Petitioner Herrera however was unrelenting and continued to file numerous motions and manifestations, all seeking the reversal of her 23 October 2014 conviction[3] by the Sandiganbayan. On 2 June 2020, she filed an Urgent Manifestation[4] dated 16 March 2020 with attached Urgent Supplemental Motion for Reconsideration[5] of the same date. In its Resolution dated 17 June 2020, the Court noted without action the Urgent Manifestation and Urgent Supplemental Motion for Reconsideration.

On 29 July 2020, petitioner Herrera filed an Urgent Additional Supplemental Manifestation and Motion with Leave of Court dated 28 July 2020.[6] Almost a month later, on 27 August 2020, she filed a Motion with Leave of Court to Refer Matter to the Court En Banc[7] dated 26 August 2020. And, a day after, on 28 August 2020, she again filed an Urgent Supplemental Manifestation and Motion with Leave of Court dated 20 July 2020.[8]

In a highly unusual turn of events, on 22 June 2021, the Court en banc accepted the case,[9] and on 27 July 2021, resolved the motions filed before the Second Division, granting the Motion with Leave of Court to Refer Matter to the Court En Banc, reinstating the Petition, and recalling the entry of judgment,[10] breathing new life into petitioner Herrera's appeal and resurrecting her case.

Worse, the majority now reverses the Second Division[11] of this Court and acquits petitioner Herrera of Falsification of Documents under Article 171, Revised Penal Code (RPC), for failure of the prosecution to prove her guilt beyond reasonable doubt. The majority anchors petitioner Herrera's acquittal on two points: first, that she did not take advantage of her official position to falsify Resolution No. 007; and second, that she had no criminal intent.

I disagree.

In acceding to petitioner Herrera's repeated attempts to obtain further review of a judgment that has long become final and executory, the majority has encouraged litigants to disregard basic procedural tenets and appeal the decisions and resolutions of the Court in Division to the Court en banc until a favorable decision is obtained. This is simply repugnant to the doctrine of immutability of final judgments and to the principle that the Court en banc is not an appellate court to which decisions or resolutions of a Division may be appealed.[12]

But even if the Court en banc takes a hard look at this case, still, this is not a meritorious case that should warrant a reversal by the en banc.

The appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited to questions of law, and the Court does not review the factual findings of the Sandiganbayan which are generally conclusive upon the Court.[13] While there are exceptions to the foregoing rule,[14] none of the exceptions are present in this case. As such, there was no need to review the Sandiganbayan's factual findings.

In addition, it appears that the majority overlooked certain material facts in its review of the Sandiganbayan's Decision and Resolution.

According to the majority, petitioner Herrera could not have taken advantage of her official position as she did not have the duty to make or to prepare or otherwise intervene in the preparation of Resolution No. 007, nor did she have official custody of the document[15] as she is not a member of the Bids and Awards Committee (BAC) and only attended the 22 February 1994 meeting as Gracia Coletto's representative.[16] It was the regular members of the BAC who prepared Resolution No. 007, and petitioner Herrera only signed it because she relied on the knowledge and expertise of the former.[17]

The majority also makes much of the fact that the Office Order authorizing petitioner Herrera to represent Coletto and sign documents on her behalf is not in the records of the case. According to the majority, this precludes the Court from considering the contents of the Office Order in determining whether Herrera took advantage of her official position in falsifying Resolution No. 007.[18]

However, the majority's discussion on the element of "taking advantage of official position" is unduly limited and willfully ignores petitioner Herrera's testimony regarding her authority to represent Coletto and sign documents on the latter's behalf.

It is not disputed that petitioner Herrera is not a member of the BAC under Commission on Audit (COA) Circular No. 92-386. Accordingly, the relevant question is not whether she abused her authority as a member of the BAC, as this authority is non-existent. Instead, the relevant question is whether she took advantage of her authority to represent Coletto under the Office Order to falsify Resolution No. 007.

While the Office Order does not appear in the records, it must be emphasized that petitioner Herrera herself testified that she was authorized to attend the 22 February 1994 meeting and sign Resolution No. 007 by virtue of an Office Order. During her direct examination on 9 September 2013, she testified:

Q

Now, as Management and Analyst of the Provincial Government of Surigao Del Sur, what were your duties and responsibilities?

A

Excuse me, Sir. May I add to that. Even I was employed as management and audit analyst but was also designated in-charge of the administrative division of the provincial accountant's office, Sir.

Q

Being a management and audit analyst and being designated as the one here mentioned what were your duties and obligations?

A

Among others Sir, I represented my immediate boss then Acting Provincial Accountant, Mrs. Coletto whenever she went on official leave of absence, Mrs. Gracia Coletto our acting provincial accountant when she went on official leave, Sir.

Q

You mentioned that you represented your immediate superior, Mrs. Gracia Coletto, in her absence. Is that just mere representation or as a mere representative, Madam Witness?

A

Yes, Sir. I was. On the strength of the office order issued to me, I represented her, Sir.

Q

How about if you have to do anything in behalf of Mrs. Coletto are you also authorized?

A

Yes, Sir. Acting on signing, whatever documents that were to be signed, and attending conferences, meetings, Sir.

Q

Just to clarify Madam Witness. So, you are authorized to represent and act in behalf of your immediate superior, Mrs. Coletto?

A

Yes, Sir.

Q

In meetings

A

Yes, Sir.

Q

And signing of documents?

A

Yes, Sir.

Q

And, in [sic] those meetings that you were referring to did not include also the subject meeting of committee and awards?

A

Yes, Sir.

Q

Do you have any, was this authority in writing Madam Witness, this authority to represent Mrs. Coletto was it verbal?

A

Well, as I said earlier, it was an office order, Sir.

Q

So, there was a written office request?

A

There was, Sir.[19] (Emphasis supplied)

Later the same day, petitioner Herrera again testified:

ATTY. JOSEF

Q

You mentioned earlier that you signed in behalf of Mrs. Garcia Coletto, in what capacity did you sign it?

A

Like I mentioned earlier, it was based on the office order, Sir.[20] (Emphasis supplied)

On 10 September 2013, petitioner Herrera repeated her assertion that she was authorized to represent Coletto by virtue of an Office Order:

PROS. TORIBIO:

X X X X

Q

You testified yesterday during your direct testimony that you were authorized to sign documents and attend meetings in the absence of your boss?

A

Yes, sir.

Q

And your boss is the Acting Provincial Accountant, Mrs. Gracia M. Coletto, right?

A

Yes, sir.

Q

Now, when was this Office Order issued?

A

May I beg your pardon, sir.

Q

When was this Office Order issued to you?

A

Before Mrs. Coletto went on official travel, sir.

Q

When did Mrs. Coletto went [sic] on official travel?

A

I cannot recall anymore, sir.

x x x x

Q

What was the effectivity of this Office Order, the period?

A

That I cannot recall again anymore, sir.

Q

Do you have a copy of the Office Order?

A

I do not have it with me, sir.

x x x x

Q

So, despite this lack of experience and lack of knowledge about procurement law, why did you still participate?

A

I acted on the Office Order of my immediate superior, sir.

Q

Based on this Office Order?

A

Office Order, sir.[21] (Emphasis supplied)

Petitioner Herrera's statements, as quoted above, constitute judicial admissions[22] tending to prove the existence of the Office Order authorizing her to represent Gracia Coletto. Courts should "utilize all evidence presented, including admissions of the parties, to resolve the judicial controversy presented before it and not solely rely on the evidence laid by the prosecution,"[23] and I simply cannot turn a blind eye to her judicial admissions.

As noted by the majority, the BAC had petitioner Herrera sign Resolution No. 007 because she represented Coletto at the 22 February 1994 meeting pursuant to the Office Order,[24] and petitioner Herrera signed as Coletto's representative despite the fact that there was no clear showing that the Office Order authorized her to sign this particular document on Coletto's behalf.[25] It was the Office Order that enabled petitioner Herrera to attend the 22 February 1994 meeting and consequently, sign Resolution No. 007. The fact that her signature may have been

ultra vires because she is not an authorized signatory under the relevant rules of the COA is irrelevant, as the material question is whether she took advantage of her authority to sign documents on behalf of Coletto pursuant to the Office Order. In this regard, she believed she was authorized to sign Resolution No. 007, and, as will be discussed below, she signed the Resolution on the basis of such authority despite full knowledge that it contained false statements. In other words, it was her official position as granted and authorized by the Office Order that she took advantage of to falsify Resolution No. 007, not any form of membership in the BAC.

This conclusion is further reinforced by the fact that petitioner Herrera chose not to disclose her participation in the signing of Resolution No. 007 to Coletto once the latter returned. As testified by petitioner Herrera:

PROS. TORIBIO

Q

When did your boss, Provincial Accountant Gracia Coletto come back from her leave of absence?

A

I cannot remember again, but when I signed that she was still out.

Q

Did you not consult her about this Resolution?

A

She was not yet back, sir.

Q

Even after she came back?

A

No, sir.

x x x x

Q

You said that you were not familiar with the whole bidding process, the law bidding process, Mrs. Herrera, after the meeting on February 22, 1994, did you not call Miss Gracia Coletto, your boss and consult about what happened during that meeting?

A

No, sir.

Q

After she came back you said awhile ago, you did not also consult her, correct?

A

Yes, sir.

Q

So, you did not – you kept into [sic] yourself what transpired during that meeting on February 22, 1994, you did not anymore inform your boss about this?

A

Yes, I said, sir. She asked me what conferences I attended, and I told her about it, no details sir.

Q

No details?

A

No details, sir.

Q

That you just attended?

A

Regarding this meeting on Bids and Awards Committee, but no details, sir.[26] (Emphasis supplied)

Considering petitioner Herrera's repeated and explicit assertions that her official position pursuant to the Office Order included the authority to represent Coleto and sign documents on her behalf, and that she attended the 22 February 1994 meeting and signed Resolution No. 007 pursuant to this Office Order, there is proof on record to show that she had the duty to intervene in the preparation of Resolution No. 007, evidence that should not have been lightly set aside by the majority.

The foregoing notwithstanding, I am willing to concede that the above testimony may not be sufficient to

establish the element of taking advantage of official position beyond reasonable doubt. However, I agree with Justice Rosario that petitioner Herrera's conviction must still be upheld, albeit under Art. 172(1), RPC.

In *Malabanan v. Sandiganbayan*,^[27] the Court explained that falsification of documents committed by public officers who take advantage of their official position under Art. 171 necessarily includes falsification by private persons punished under par. 1, Art. 172, RPC. The elements of the latter offense are:

- That the offender is a private individual or a public officer or employee who did not take advantage of his or her official position.
- The falsification was committed in a public or official or commercial document.
- The offender falsifies a document by committing any of the acts of falsification under Art. 171.^[28]

In *Malabanan*, the Court found that the accused was a public officer who did not take advantage of his or her official position in committing the falsification. Since par. 1, Art. 172, RPC, is necessarily included in Art. 171, RPC, and the prosecution sufficiently alleged all the elements of par. 1, Art. 172, conviction for the lesser offense of falsification by a private person was proper.^[29]

Calderon v. People^[30] is of a similar tenor. In that case, the Court set aside the accused's conviction for violation of Art. 171(4), RPC, because the element of taking advantage of official position was absent. However, the Court convicted the accused for falsification under Art. 172(1), RPC, an offense that is necessarily included in Art. 171(4), RPC:

An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

That Article 172 (1) is necessarily included in a charge for Article 171 (4) of the RPC is settled. In *Tanenggee v. People*, the Court enunciated the elements of Article 172 (1) of the RPC in the following wise:

Falsification of documents under paragraph 1, Article 172 in relation to Article 171 of the Revised Penal Code (RPC) refers to falsification by a private individual or a public officer or employee, who did not take advantage of his official position, of public, private or commercial document. The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and, (3) that the falsification was committed in a public, official or commercial document.

Hence, even if petitioner did not take advantage of his official position, We still find him guilty for having made a false narration of facts in his PDS, which is a public document. ^[31] (Emphasis supplied)

Art. 172 prescribes the penalty of prision correccional in its medium and maximum periods with a duration of two (2) years, four (4) months and one (1) day to six (6) years. In *Terado v. People*,^[32] the Court calculated the penalty for falsification under Art. 172 as follows:

There being no aggravating or mitigating circumstances, the penalty should be imposed in its medium period, which is three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. Taking into consideration the Indeterminate Sentence Law, petitioner is entitled to an indeterminate penalty the minimum of which must be within the range of arresto mayor in its maximum period to prision correccional in its minimum period, or four (4) months and one (1) day to two (2) years and four (4) months. 12 Consequently, petitioner must be sentenced to suffer the penalty of imprisonment for the indeterminate period of six (6) months of arresto mayor, as minimum, to two (2) years, four (4) months, and one (1) day of

prision correccional, as maximum. [33] (Emphasis supplied)

Petitioner Herrera alleges that she is already of advanced age. In this regard, it bears noting that a conviction for falsification under Art. 172, instead of Art. 171, would allow her to apply for probation under Presidential Decree No. 968, as amended by Republic Act No. 10707.[34]

As to the element of intent, the record fully bears out petitioner Herrera's intent to falsify Resolution No. 007, and to my mind, the majority gravely erred in overruling the Sandiganbayan's factual finding on this matter.

The majority discusses petitioner Herrera's lack of intent as follows:

In the case, petitioner could not have signed Resolution No. 007 with criminal intent. To stress, during the BAC meeting on February 22, 1994, the members of the Committee raised and deliberated on the numerous complaints against Adelina Center. Among the complaints against the supplier included the following: (1) its lack of warranty over its products; and (2) its delivery of rebuilt typewriters instead of brand new units, typewriters with detached keys, and those which did not tabulate.

Notably, the members of the BAC likewise explained to petitioner that the award of procurement contracts is not solely based on the bid price but also on the following factors: (1) the quality of the product; (2) the reliability of the supplier; and (3) the warranty given for the units. Anecito explained that although Adelina Center quoted the lowest price during the bidding on January 31, 1994, the complaints against it justified the award of the contract to New Datche.

x x x x

In fact, in Criminal Case No. 24337, the Sandiganbayan acquitted Anecito, Clara, Calo, and Llaguno with respect to the charge for violation of Section 3(e) of RA 3019. The Sandiganbayan found that: (1) the prosecution failed to prove that Adelina Center and the Provincial Government suffered any undue injury; (2) Anecito, Clara, Calo, and Llaguno did not give unwarranted benefits to New Datche; and (3) the typewriters which New Datche delivered to the Provincial Government were in fact brand-new and quality units.

Apparently, in relying upon the representations of Anecito and signing Resolution No. 007, petitioner only had in mind the interest of the Provincial Government that it may only procure fine and premium typewriters. As she was not motivated by any sense of partiality, evil intent, or malice in signing Resolution No. 007, petitioner could not incur criminal liability for Falsification of Public Document under Article 171 of the RPC.[35]

In thereby acquitting petitioner Herrera based on its finding that she "only had in mind the interest of the Provincial Government" and was motivated simply by a desire to assist it in procuring "fine and premium typewriters," and emphasizing that no undue injury was caused to Adelina Center and the Provincial Government, the majority mistakenly: (1) conflates the concepts of intent and motive; and (2) implies that damage or injury is indicative of intent in cases involving falsification of public documents.

The Court defined motive in criminal cases in *People v. Pentecostes*: [36]

Motive pertains to the reason which prompts the accused to engage in a particular criminal activity. It is not an essential element of a crime and need not be proven by the State in criminal prosecutions. Hence, proof of motive alone will not establish guilt in the same way that the absence thereof cannot establish innocence. In previous occasions, the Court has held that the question of motive only becomes material when there is doubt as to the identity of the malefactor committing the offense charged.[37] (Emphasis supplied; citations omitted)

Petitioner Herrera's supposed purpose of helping the Provincial Government obtain high quality typewriters does not speak of her criminal intent or lack thereof; at most, it constitutes her motive in the sense that it may be the reason she engaged in a particular criminal activity, i.e., the falsification of Resolution No. 007.

However, proof of motive or absence thereof is not relevant to these proceedings, and petitioner Herrera's supposed goal, however noble, does not excuse her from liability. A conviction for falsification requires only proof of intent to falsify, and citing the alleged motive of the accused as basis to reverse the Sandiganbayan's factual findings on the presence of the element of intent is erroneous.

Camania v. People,[38] which also involved a criminal charge for falsification of public documents relating to a bidding conducted by a local government unit, is illuminating and bears quoting at length:

More importantly, by signing the bid documents which stated the names of Lotus Design and Construction Corporation, JTY Construction, and OQC Construction as well as their supposed bid proposals and bonds, Councilor Camania made it appear that the three construction firms participated in competitive public biddings even if none was duly conducted. The COA report and the Letters from JTY Construction and OQC Construction confirmed this fact. In the sworn statement of Councilor Camania, which forms part of the COA report, he even attested in signing the bid documents in the absence of actual biddings. To be sure, Councilor Camania admitted at the trial that no biddings were conducted on the projects and that the three firms neither appeared nor submitted any quotation or proposal, viz.:

x x x x

Q: Mr. Witness, why did Mayor Castillo, Jr., and Auditor Abad called (sic) you during that time?

A: During that time we were in Bayumbong, I am with Kagawad Perfecto Dela Cruz and all of a sudden our cellphone rang. It was Mayor Castillo and he said: "Uncle pumunta kayo dito sa CIMAU Office."

x x x x

Q: What do you think why you were being called at the CIMAU Office?

A: He would like us to sign some documents.

x x x x

Q: And upon arrival at the CIMAU Office, what did you do?

A: The mayor talked to us, Sir.

Q: And what was the conversation all about?

A: He said, "Uncle since you are already here in CIMAU, can you please sign the document?"

x x x x

Q: And what happened next?

A: The Auditor said, "Sige, pirmahan nyo, walang problema dyan. Ako bahala dyan." (Sign that, there will be no problem with that. I'll take care of that).

x x x x

Q: And what did you come up to do?

A: Since they said, "It is the project of our town, you must sign that because our townmate will benefit from that."

Q: After that, what did you do?

A: We were pressured that's why we signed, Sir.

x x x x

So, you signed the documents asked?

WITNESS:

We signed, Your Honor.

x x x x

ATTY. CARBONELL:

Q: In your honest opinion Mr. Witness, why did you sign those documents?

A: I signed the documents so that there will be a project in our town and our townmates will benefit [sic] from it.

x x x x

A: There was really no bidding conducted, Sir. We only signed the bidding documents because we were pressured by Mayor Castillo.

CROSS EXAMINATION

PROS. DAQUIS:

Q: And you also confirmed that there was no bidding conducted for the two projects namely: Five Span Gymnasium Project and Lublub-Dibilit Road project?

A: That is what I know Ma'am, there is none.

Q: You know it because you are a part of the PBAC, Sir?

A: Yes, Ma'am.

x x x x

Q: Now, my question is, when you affix[ed] your signature[s] on [these] Exhibits "G[.]" "H[.]" and "I[.]" Sir, [were] there entries already appearing on these documents?

A: Almost complete, Ma'am.

Q: And when you signed these documents, Sir, did Mayor Castillo and Severo Abad explain to you that the entries appearing on these three documents marked as Exhibits "I[.]" "H[.]" and "G[.]"

A: The only thing that I remember they said to me is that, "you sign that so that we commence with the project[.]"

Q: And you would agree with me, Sir, that DQC [sic] Construction, JTY Construction and Lotus Design [and] Construction [Corporation] never appear[ed] in the Municipality of Castañeda to submit their quotation or their proposal for the two Construction project[s] namely Five Span Gymnasium Project and Lublub Dibilit Road Project?

A: Yes, Ma'am.

x x x x

It is evident from the above testimony that Councilor Camania voluntarily and intelligently signed the bid documents. Under the rules of evidence, it is presumed that a person takes ordinary care of his or her concerns. In this case, Councilor Camania did not even attempt to overcome the presumption as no evidence was ever presented to show that he was in any way lacking in his mental faculties and, hence, could not have fully

understood the ramifications of signing the bid documents. Neither did Councilor Camania present any evidence that he had been defrauded, forced, intimidated, or threatened into affixing his signature on the documents. If Councilor Camania had any objections over the documents, he could have totally refrained from having any part in their execution. Finally, we reiterate that the presence of the idea of gain, or an intent to injure a third person is not essential in the falsification of public or official documents. The law punishes the violation of the public faith and the destruction of the truth in these documents. The public character of the document is controlling.[39] (Emphasis and underscoring supplied; citations omitted)

Similarly, petitioner Herrera testified that she read and understood the text of Resolution No. 007 before voluntarily signing it, that she was aware that Adelina Center was the lowest bidder, and that New Datche Philippines Traders Corporation (New Datche) did not participate in the bidding:

Q Now, prior to signing this Resolution No. 007, of course you read the contents of this Resolution, correct?

A Before I signed, sir, yes.

Q Before you signed you read the contents of the Resolution?

A Yes, sir.

Q Everything that was stated here, you read it and you understood it, correct?

A Yes, sir.

x x x x

Q Now, Mrs. Herrera, you stated during your direct testimony and you confirmed it awhile ago that according to you what transpired during that meeting was that you were informed that there were only two (2) bidders that was [sic] Adelina Center and Sunlight Marketing, correct?

A There, sir.

PROS. TORIBIO:

Q And in that whereas clause, it's stated there that there are four (4) bidders?

A May I correct my first statement, sir. I said, I meant that of the three (3) bidders only two (2) actually quoted of the three (3) required bidders, only two (2) quoted – actually quoted.

Q So, two (2) actually quoted?

A Yes, sir.

Q So, there were three (3) bidders, but there were only two (2) who participated? Is that what you are saying?

A Yes, sir.

Q And those bidders are: Adelina?

A Adelina Center and Sunlight Marketing.

Q Now, kindly go over again that second whereas clause does it states [sic] that fact that you just mentioned today?

A No, sir.

Q Now, despite that you still signed the Resolution, correct?

A Yes, sir.[40] (Emphasis supplied)

As in Camania, it is evident from the above testimony that petitioner Herrera voluntarily and intelligently signed Resolution No. 007 despite her avowed lack of familiarity with procurement law or instructions from her superior to sign this document. No evidence was presented to show that she was in any way lacking in mental faculties or forced to sign Resolution No. 007 under duress, and if she had any reservations about the contents of Resolution No. 007—which, by her own testimony, she read and understood—she could have refrained from signing it or at the very least immediately consulted with Coletto upon the latter's return.

Similar again to Camania, where the accused testified that he simply wanted his local government unit to benefit from a new project, petitioner Herrera's alleged motive of assisting the local government unit in acquiring high quality typewriters is irrelevant to the determination of her criminal liability for falsification. It cannot be stressed enough that the idea of gain, or intent to injure a third person, is not essential in the falsification of public or official documents, because what the law punishes is the violation of the public faith and the destruction of the truth in these documents.[41]

In fine, petitioner should not go scot-free simply because she has become an octogenarian. For the same reason, courts should not change their decisions which have become final and executory.

In view of the foregoing, I vote to MODIFY the Sandiganbayan's Decision dated 23 October 2014 and Resolution dated 10 February 2015. Petitioner Herrera's conviction for Falsification of Public Documents under Art. 171(4), RPC, should be set aside, and a new judgment be rendered convicting petitioner Herrera of the lesser crime of Falsification of Public Documents under Art. 172(1), RPC, with a penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum.

[1] Rollo, p. 400-A.

[2] *Id.* at 384-399.

[3] *Id.* at 109.

[4] *Id.* at 406-408.

[5] *Id.* at 437-441.

[6] *Id.* at 410-412.

[7] *Id.* at 443-458.

[8] *Id.* at 431-435.

[9] *Id.* at 472.

[10] *Id.* at 481. In the same Resolution, the Court en banc partly granted the Urgent Supplemental Motion for Reconsideration dated 16 March 2020 and the Urgent Additional Supplemental Manifestation and Motion with Leave of Court dated 28 July 2020 and noted the Urgent Supplemental Manifestation and Motion with Leave of Court dated 20 July 2020, the Letter dated 13 June 2021 of Appellate and Special Actions Bureau of the Office of the Special Prosecutor, and the Letter dated 12 January 2021 from the Office of the Ombudsman.

[11] The Resolution dated 26 February 2020 was issued by the Special Second Division of the Court.

[12] *Firestone Ceramics, Inc. v. Court of Appeals*, G.R. Nos. 127022 and 127245, 28 June 2000.

[13] *People v. Januto*, G.R. No. 252973, 1 March 2023.

[14] Namely, (1) the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension effects; and (5) the findings of fact of the Sandiganbayan are premised on a want of evidence and are contradicted by evidence on record (*People v. Adana*, G.R. No. 250445, 29 March 2022).

[15] Majority Opinion, p. 15.

[16] *Id.* at 11-12.

[17] *Id.* at 12-15.

[18] *Id.* at 11.

[19] Rollo, pp. 299-230.

[20] Id. at 243.

[21] Id. at 202-203 and 215.

[22] Under Sec. 4, Rule 129, Rules of Evidence, a judicial admission is "[a]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

[23] *People v. Padilla*, G.R. No. 247824, 23 February 2022.

[24] Majority Opinion, p. 11.

[25] Id. at 15.

[26] *Rollo*, pp. 211 and 219.

[27] G.R. No. 186329, 2 August 2017.

[28] Id., citing *Guillergan v. People*, 656 Phil. 527 (2011).

[29] Id.

[30] G.R. No. 258899, 25 April 2022.

[31] Id.

[32] G.R.No. 238951, 3 March 2021.

[33] Id.

[34] The penalty imposed by the Sandiganbayan on petitioner Herrera was the indeterminate penalty of (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with perpetual disqualification from holding public office. This penalty disqualified petitioner Herrera from applying for probation under Sec. 9(a) of Presidential Decree No. (PD) 968, which states that the benefit of probation shall not be extended to those sentenced to serve a maximum term of imprisonment of more than six years.

The modification of the penalty would allow petitioner Herrera to apply for probation under Section 4, PD 968. as amended, which provides:

SEC. 4. Grant of Probation. – x xx [W]hen a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

x x x x

[35] Decision, pp. 16 & 18.

[36] G.R. No. 226158, 8 November 2017.

[37] Id.

[38] G.R. No. 226647, 14 September 2021.

[39] Id.

[40] Rollo, pp. 208-210.

[41] *Camania v. People*, G.R. No. 226647, 14 September 2021.

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