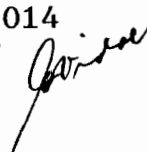


EN BANC

A.M. No. SB-14-21-J **Re: Allegations Made Under Oath at the Senate
Blue Ribbon Committee Hearing Held on
September 26, 2013 Against Associate Justice
Gregory S. Ong, Sandiganbayan**

Promulgated: September 23, 2014



CONCURRING AND DISSENTING OPINION

I dissent in part with the majority decision.

The Charge


Justice Gregory S. Ong (Justice Ong) of the Sandiganbayan stands administratively charged with misconduct in relation to two (2) criminal cases decided by the fourth division of the anti-graft court in 2010—Criminal Cases No. 26768 and 26769.¹

Criminal Cases No. 26768 and 26769 are referred to as the *Kevlar Cases* because they dealt with the prosecution of seventeen (17) persons—ten (10) military officials and seven (7) private individuals—thought to be involved in what was alleged to be an anomalous acquisition by the government of five hundred (500) Kevlar helmets in 1998 and 2000. Criminal Case No. 26768 charged all seventeen with *malversation of public funds through falsification of public documents*, whereas Criminal Case No. 26769 charged them with *violation of Section 3(e) of Republic Act No. 3019*.

The *Kevlar Cases* were decided on 28 October 2010. The decision was penned by Justice Jose R. Hernandez and was concurred in by Justice Maria Cristina J. Cornejo and division chair Justice Ong. It handed out no convictions either for malversation or for violation of Section 3(e) of Republic Act No. 3019. The results:

1. In Criminal Case No. 26768, seven (7) of the accused were acquitted while ten (10) were convicted albeit only for the lesser offense of *falsification of public documents*;

¹ Entitled *People of the Philippines vs. Espinosa et al.*



2. In Criminal Case No. 26769, all seventeen of the accused were acquitted.

It is alleged that Justice Ong accepted bribes in exchange for the relatively tempered decision in the *Kevlar Cases*. In particular, he is suspected of acting as “*contact*” and “*fixer*” for one of the accused who ended up being acquitted in the two cases. That accused is Ms. Janet Lim Napoles (Napoles).

Events Leading to the Instant Administrative Case

The following chain of events precipitated the allegations of bribery against Justice Ong:

A. Pork Barrel Scam

In 2013, Napoles was implicated in a corruption scam that allegedly involved diversion of billions and billions of pesos worth of *pork barrel* funds² into bogus Non-Government Organizations (NGOs) and kickbacks for certain legislators. Details of the scam and Napoles’ involvement therein were revealed in sworn statements executed before the National Bureau of Investigation (NBI) by six (6) “*whistleblowers*” who were former employees of Napoles in the JLN Corporation.

The Napoles pork barrel scam was highly publicized in the media. News of the scam was met with intense outrage by the public and catapulted numerous protest actions all over the country. Napoles, in her own right, became a well-known public figure in the country *albeit* one of disrepute.

On 29 August 2013, the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee) began a probe, *in aid of legislation*, into the Napoles pork barrel scam.

B. 30 August 2013 Rappler Report and Photograph

² Formally known as the Priority Development Assistance Fund.



On 30 August 2013, the news website *Rappler* published a report written by one Aries Rufo (Rufo) entitled “*Exclusive: Napoles Parties with Anti-Graft Court Justice*” that featured a photograph of Justice Ong, Napoles and Senator Jinggoy Estrada (Senator Estrada) posing and standing beside each other at some gathering.³ The report contains excerpts of Rufo’s interview with Justice Ong regarding, among others, the circumstances of the featured photograph and the truth behind anonymous “*information*” that he (Justice Ong) gave advice to Napoles during the pendency of the *Kevlar Cases*.

According to the report, Justice Ong acknowledged his presence with Napoles in the featured photograph but clarified that, at that time the same was taken, he did not know who Napoles was, much less know that he was with a former litigant of his.⁴ The report also stated that Justice Ong denied being an adviser to Napoles during the pendency of the *Kevlar Cases*.⁵

After the publication of the *Rappler* report and photograph, Justice Ong sent to Chief Justice Maria Lourdes P. A. Sereno a *Letter dated 26 September 2013*. In the letter, Justice Ong explained to the Chief Justice that the photograph featured in the *Rappler* report could have been taken during the birthday of Senator Estrada either in the year 2012 or 2013, but definitely after the *Kevlar Cases* have been decided. Justice Ong, in the same letter, also categorically denied having attended any party or social event hosted by Napoles before, during or after the decision in the *Kevlar Cases*.

C. 26 September 2013 Senate Blue Ribbon Committee Hearing

On the same day Justice Ong wrote his *Letter* to the Chief Justice, the Senate Blue Ribbon Committee held one of its hearings on the pork barrel scam. Interrogated in this hearing were two (2) of the scam’s whistleblowers—a certain Benhur Luy (Luy) and one Marina Sula (Sula).

Among the questions asked of Luy during the Blue Ribbon Committee hearing was the occurrence, if any, of bribery in the *Kevlar Cases*. Luy answered that the *Kevlar Cases* were *fixed* because Napoles had a “*connect*” with the Sandiganbayan:

³ Accessed at <http://www.rappler.com/newsbreak/37673-napoles-anti-graft-court-justice> on 30 July 2014.

⁴ Id.

⁵ Id.

Senator Angara: *Baka alam ng ibang whistleblowers kung nagkaka-ayusan sa kaso na iyon [Kevlar Cases]. Sige huwag ka matakot Benhur [Luy].*

Luy: *Alam ko inayos ni Ms. Napoles iyon dahil may connect nga siya sa Sandiganbayan.*

On the other hand, Sula was asked during the same hearing whether Napoles knew any of the justices of the Sandiganbayan. Sula testified that Napoles knew Justice Ong:

Chairman (Senator Guingona III): *Sinabi ninyo na may tinawagan si [Napoles] at sinabi niya, malapit nang lumabas yung TRO galing sa korte. May kilala pa ba si [Napoles] na huwes sa korte sa Sandiganbayan?*

x x x x

Sula: *Si Mr. Ong po. Justice Ong po.*

Q: Gregory Ong?

A: *Opo.*

Q: *Sa Sandiganbayan?*

A: *Opo.*

The Administrative Investigation and the Evidence

Amidst the foregoing events, the Chief Justice, on 7 October 2013, requested the Court *En Banc* to conduct a *motu proprio* investigation to shed light on the allegations that Justice Ong acted as *liaison* and *fixer* for Napoles in the *Kevlar Cases*.

On 17 October 2013, the Court *En Banc* required Justice Ong to submit his *Comment*. Justice Ong submitted his *Comment* on 21 November 2013.

On 21 January 2014, the Court *En Banc* then assigned the matter to retired Supreme Court Justice Angelina Sandoval-Gutierrez (Justice Sandoval-Gutierrez) for investigation, report and recommendation.



In compliance with the Court's directive for investigation, Justice Sandoval-Gutierrez conducted hearings on 12 February, 7 March and 21 March 2014.

A. Evidence Against Justice Ong

The evidence against Justice Ong, as culled from the hearings, comprise of the statements of Luy, Sula and Rufo as well as the 30 August 2013 *Rappler* report and photograph.

Luy Testimony.⁶ Luy is a cousin and former employee of Napoles in the JLN Corporation. Luy testified that, on numerous occasions, he was told by Napoles that she has a "*connect*" in the Sandiganbayan *i.e.*, Justice Ong. Luy recalled that, even during the pendency of the *Kevlar Cases*, Napoles confided to him that she was already communicating with Justice Ong.

Luy also testified that, just before the decision of the *Kevlar Cases* went out, Napoles told him that she paid money to Justice Ong; although Napoles did not disclose how much. Luy said that he used to keep a ledger where he records all payments made by Napoles in relation to the *Kevlar Cases* as disclosed to him by the latter.

Luy likewise recounted two (2) instances in 2012, when Justice Ong visited the offices of Napoles at the Discovery Suites Center in Pasig City:

1. On Justice Ong's first visit, Luy recalled—

- a. He saw Justice Ong and Napoles talking in Unit 2501 of the Discovery Suites. He was then staying at Unit 2502.
- b. After a while, Napoles went to him at Unit 2502. Napoles told him that Justice Ong was interested in depositing a ₱25 million Banco De Oro (BDO) check with Armed Forces of the Philippines and Police Savings and Loan Association, Inc. (AFPSLAI) that offers 13% annual interest.
- c. Napoles, however, told him that instead of depositing the BDO check with the AFPSLAI she would deposit the same

⁶

TSN, 12 February 2014, pp. 1-60.

in her account and would just advance interest payments to Justice Ong.

d. Napoles then told him to prepare eleven (11) checks for Justice Ong. So he prepared the eleven checks.

e. After preparing the eleven checks, he handed them to Napoles who then went back to Unit 2501.

2. On Justice Ong's second visit, Luy said that Justice Ong and Napoles ate Chinese food at the office.

Sula Testimony.⁷ Sula is likewise a former employee of Napoles in the JLN Corporation. Like Luy, Sula testified that she had been told by Napoles in the past that Justice Ong fixed the *Kevlar Cases* for her.

Sula also testified that she *once* saw Justice Ong visit Napoles' office in 2012.

Rufo Testimony.⁸ Rufo was the author of the 30 August 2013 *Rappler* report that featured the photograph of Justice Ong, Napoles and Senator Estrada. Rufo testified that he interviewed Justice Ong prior to the publication of the 30 August 2013 *Rappler* report. Rufo said that Justice Ong looked surprised and shocked when presented with the photograph of him with Napoles and Senator Estrada.

Rufo, however, refused to reveal who gave him the photograph featured in his report based on his privilege as a journalist to protect the identity of his sources.

B. Evidence for Justice Ong

Justice Ong testified in his defense.⁹ At the stand, Justice Ong denied acting as liaison and fixer for Napoles in the *Kevlar Cases*. He said that he neither met with Napoles nor was familiar with the latter during the pendency of the *Kevlar Cases*. Justice Ong, however, admitted to associating with Napoles *after* the *Kevlar Cases* were decided.

⁷ TSN, 12 February 2014, pp. 60-144.

⁸ TSN dated 7 March 2014.

⁹ TSN dated 21 March 2014.

Justice Ong said that his personal encounters with Napoles began only in 2012, during the birthday party of Senator Estrada. It was there, Justice Ong claimed, that he was first introduced to Napoles. Justice Ong said that, during the said party, he was able to converse with Napoles about the Black Nazarene and to exchange cellphone numbers with the latter. Justice Ong also admitted to eventually asking for Napoles' help in gaining access to the robe of the Black Nazarene.

Justice Ong further recounted that, sometime after the birthday of Senator Estrada, he received a call from Napoles asking him to go to the Adoracion Chapel in Makati. Justice Ong said that when he went to the Adoracion Chapel, he was picked up by a car that brought him to a house in a posh subdivision. Inside the house, Justice Ong recalled meeting up with Napoles and one Monsignor Ramirez—the parish priest of Quiapo Church. There, Justice Ong said, arrangements were made for him to wear the robe of the Black Nazarene. Weeks after, Justice Ong said he was able to wear the robe of the Black Nazarene and to receive fragrant cotton balls from the image.

Justice Ong also conceded going to Napoles' office twice. Contrary to Luy's account, however, Justice Ong said he never, in any of his visits, asked Napoles to make a deposit on his behalf with the AFPSLAI. Justice Ong maintained that, in his first visit to Napoles, he merely thanked the latter for giving him access to the robe of the Black Nazarene. Anent visiting Napoles' office for the second time, Justice Ong claimed that he did so only to accede to Napoles' incessant calls inviting him back to her office. At any rate, Justice Ong said, he only had coffee with Napoles during his second visit to the latter's office.

Report and Recommendation

On 15 May 2014, Justice Sandoval-Gutierrez submitted to this Court her *Report and Recommendation*.

In her *Report and Recommendation*, Justice Sandoval-Gutierrez found Luy and Sula to be credible witnesses; taking note of the candid, straightforward, categorical and consistent manner by which both Luy and Sula testified during the investigation.¹⁰ Hence, the investigating justice gave full faith and credence to Luy and Sula's testimonies and held as an

¹⁰ *Report and Recommendation*, p. 22.

established fact that Justice Ong acted as liaison and fixer for Napoles in the *Kevlar Cases*.

Justice Sandoval-Gutierrez moreover noted that despite the fact that Luy and Sula's statements of bribery against Justice Ong are technically *hearsay* in nature, they still qualify as competent evidence since only substantial evidence is required in administrative proceedings.¹¹ For the investigating justice, the statements of Luy and Sula satisfies the standard of substantial evidence because they inspire reasonable conclusion that Justice Ong accepted bribes in relation to the *Kevlar Cases*, and both witnesses were found to be credible.¹²

Verily, Justice Sandoval-Gutierrez recommended that Justice Ong be found guilty of gross misconduct, dishonesty and impropriety and be meted the ultimate penalty of dismissal from service.

Majority Decision

The majority adopted the recommendation of the investigating justice that Justice Ong be dismissed from the service.¹³

Contrary to the findings of Justice Sandoval-Gutierrez, however, the majority held that the evidence yielded by the instant administrative investigation was insufficient to establish that Justice Ong acted as liaison and fixer for Napoles in the *Kevlar Cases*.¹⁴ For the majority, the evidence on record only establishes that Justice Ong associated with Napoles two (2) years after the *Kevlar Cases* were decided.¹⁵

Be that as it may, the majority characterized such association as *Grossly Improper*, as is equivalent to *Gross Misconduct*, on the part of Justice Ong.¹⁶

Moreover, the majority found Justice Ong to be guilty of *Dishonesty* before this Court.¹⁷

¹¹ Id. at 23-25.

¹² Id. at 25.

¹³ *Per Curiam* Decision.

¹⁴ Id. at 25.

¹⁵ Id.

¹⁶ Id. at 28.

¹⁷ Id. at 34.

Separate Opinions

The majority decision is supported by the separate opinions of Justice Arturo D. Brion, Justice Marvic Mario Victor F. Leonen's and Justice Francis H. Jardeleza's. The three opinions raised different points that tend to justify the dismissal from the service of Justice Ong.

DISCUSSION

I agree with the majority in finding the evidence yielded by the instant administrative investigation as insufficient to establish that Justice Ong of the Sandiganbayan acted as liaison and fixer for Napoles in the *Kevlar Cases*. I also agree that, at most, the evidence only shows that Justice Ong associated with Napoles two (2) years after the *Kevlar Cases* were decided.

I, however, disagree with the majority in characterizing such association as *Gross Misconduct* on the part of Justice Ong. Such association merely constitutes the offense *Simple Misconduct* which, under Rule 140 of the Rules of Court, is only a less serious charge.¹⁸

I also disagree with the finding that Justice Ong was guilty of *Dishonesty* before this Court. The basis of this finding was the result of taking statements of Justice Ong out of context.

Hence, I disagree with the ruling of the majority to dismiss Justice Ong from the service. I opine that, even with due consideration of the fact that he was already previously sanctioned by this Court,¹⁹ Justice Ong only ought to be suspended from office for three (3) months without salary and other benefits.

I

My first objection with the majority decision is that while it found the evidence on record as insufficient to support the conclusion that Justice Ong accepted bribes in relation to the *Kevlar Cases*, it nevertheless imposed a penalty *as if such bribery was, in fact, established*. The majority considered the act of Justice Ong in associating with Napoles two (2) years after the promulgation of the *Kevlar Cases* as gross misconduct, even though the

¹⁸ Rules of Court, Rule 140, Section 9.

¹⁹ *Jasmani v. Ong*, A.M. No. 08-19-SB-J, 24 August 2010.

evidence does not establish that Justice Ong did so out of any corrupt or malicious motive. The decision, therefore, sets a very dangerous precedent because it removes the distinction between what could otherwise constitute as bribery or gross misconduct on one hand and mere simple misconduct on the other.

The root cause of this discrepancy, it appears to me, is the majority's half-hearted position as to whether the evidence on record do in fact establish bribery or not.

Thus, in the first part of its discussion, the majority recognized the insufficiency of the evidence on record to establish bribery on the part of Justice Ong:²⁰

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an accusation. **Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the quantum of proof required should be more than substantial. Concededly, the evidence in this case is insufficient to sustain bribery and corruption charges against the [Justice Ong]. Both Luy and Sula have not witnessed [Justice Ong] actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent. (Emphasis supplied).**

However, in a later part of its discussion, the majority *insinuated* that such bribery was established by virtue of Justice Ong's "*financial deal*" with Napoles regarding "*advance interest for APFSLAI deposit*" during one of the former's visit to the latter in 2012:²¹

Justice Sandoval-Gutierrez stated that the eleven checks of P282,000 supposed advance interest for respondent's check deposit to APFSLAI were given to respondent as consideration for the favorable ruling in the [Kevlar Cases]. Such finding is consistent with Luy's testimony that Napoles spent a staggering P100 million just to "*fix*" the said case. Under the circumstances, it is difficult to believe that [Justice Ong] went to Napoles' office the second time just to have coffee. Respondent's act of again visiting Napoles at her office, after he had supposedly merely thanked her during the first visit, tends to support Luy's claim that respondent had a financial deal with Napoles regarding advance interest for APFSLAI deposit. The question inevitably arises as to why would Napoles extend such an accommodation to [Justice Ong] if not as consideration for her

²⁰ *Per Curiam* Decision, p. 25.

²¹ *Id.* at 33-34.

acquittal in the [Kevlar Cases]? [Justice Ong's] controversial photograph alone had raised adverse public opinion, with the media speculating on pay-offs taking place in the courts. (Emphasis supplied).

If the real intent of the majority was to say that Justice Ong's "*financial deal*" with Napoles was enough to support *reasonable conclusion* that there was bribery in the *Kevlar Cases*, then I must register my dissent to this point as well.

***"Financial Deal" Involving
APFSLAI Deposits Was Not Proven.***

To begin with, the existence of such financial deal was never really established in this case. Justice Ong's purported financial deal with Napoles rests merely on the *hearsay* account of Luy, viz:²²

Justice Gutierrez

Q: With respect to the Kevlar case, what participation did you have, if there was any?

Witness Luy:

A: *Noong 2012 po kasi, si Justice Gregory Ong po nasa unit...office din po ng JNL Corporation, Unit 2501, yung office; so kami ni Ms. Janet Lim Napoles nandito sa 2502 kasi yun po ang office talaga namin. Si Ms. Napoles po sinabi niya sa akin, Ben, kasi si Ms. Napoles, may pera siyang madami na pine-place niya po sa AFSLAI [sic] at yung AFSLAI [sic] po ay nagbibigay po sa kanya o nago-offer ng 13% interest annually po. So, ang nangyari po doon, sabi po ni Janet Napoles, si Justice Ong ho raw, gustong magkaroon din ng interest parang ganoon. So tutulungan niya. So, ang ginawa po namin...*

Justice Gutierrez

Q: Meaning to say, Justice Ong would like to deposit money...

A: *Opo.*

Q: So he could get 13% interest?

A: *Opo kasi tapos madam ang nangyari po pumunta napo si Ms. Napoles sa opisina niya. Tinawag niya ako kasi pinapasulat na niya sa akin doon sa checke. So, ang ginawa po [ni] Ms. Napoles, yung checke ni...BDO check po kasi yun. Ang sabi sa akin ni Ms. Napoles, checke*



daw po yun ni Justice Gregory Ong. So, BDO. So, di ko din po naman po nakita yung nakalagay sa...

Q: So, it is the check of Justice Ong not the check of Ms. Napoles?

A: *Opo, Ang amount po ng check madam ay P25.5 million ang amount noong BDO check na inissue...*

Q: That belongs to Justice Ong?

A: *Opo. Tapos madam, so ang ginawa po naming ni Ms. Napoles, after po noon madam, dahil 13% interest ang ino-offer ng AFSLAI, [sic] sabi ni madam, ganito na lang Ben, ipasok na lang muna natin yung checke niya sa personal account ko. Ako na lang muna for the meantime, mag-issue ng checke sa kanyapara ma-avail ni Justice Ong yung interest. So, ang ginawa naming madam, P25.5 million times 13% interest, tapos divided by 12, lumalabas na P282 or 283,000.00 or 281 po madam kasi nag-round off kami sa P282,000.00. So ginawa ni madam, бага monthly. So, eleven (11) checks ang prinepare namin. x x x.*

The flaws in Luy's account was revealed during his cross-examination:²³

Atty. Geronilla

Q: Where were you at the office at that time?

Witness Luy

A: *Yung alin po?*

Q: When you saw Justice Ong?

A: *Andun lang po ako sa office niya sa cubicle.*

Q: Did Ms. Napoles talk to Justice Ong?

A: Yes po.

Q: But you did not know what they talked about.

A: *Hindi ko po alam kung ano pinag-uusapan.*

Q: Now, when... I am interested in this check which as you said P25 million or so?

A: *Opo, P25.5 million po.*



²³

Id. at 49-52 and 56-57.

Q: Whose check was that?

A: BDO check from Gregory Ong po.

Q: How do you know it was from Gregory Ong?

A: *Sinabi po ni Ms. Napoles sa akin.*

Q: Ah, it was she who told you?

A: Yes po.

x x x x

Justice Gutierrez

Q: By the way Mr. Luy, were you the one who delivered the check to Mr. Gregory Ong?

Witness Luy:

Q: *Hindi na po.*

Q: Who delivered the check to him?

A: *Si Ms. Napoles na po.*

Q: How did you come to know that it was Ms. Napoles? Did you see?

A: *Opo, kasi dalawa po kami na nag-prepare. Bago kasi... tinanong ko kasi madam siya kung sino ang payee. Ilalagay ko po ba dito madam Gregory Ong? Sabi niya, Hindi. Teka lang. Umalis siya. Pumunta sa kabila, sa 2501. Tapos tumuloy siya at sabi "Pay to cash na lang." So inilagay naming ni madam na cash. Tapos, pinirmahan niya yung checke na prinepare ko. So, bitbit na niya yung check. Dinala niya.*

Q: Ah, she brought the check to the other room but you did not see the person to whom it was delivered right?

x x x x

A: Ah, you mean *na si Ms. Napoles na binigay niya mismo yung checke kay Gregory Ong? Hindi po.*

Q: You did not see?

A: *Hindi po. Hindi ko po nakita.*

x x x x

Atty. Geronilla



Q: You also said that there were eleven (11) checks issued to somebody whom you do not know which you gave to Janet Napoles.

Witness Luy

A: *Checke po yun ni Ms. Janet Lim Napoles.*

Q: Yes. Now, do you have a copy or record of those checks?

A: *Wala na po.*

Q: You know that if you deposit a check, it will return to you, right?

A: *Babalik po iyon sa office.*

Q: Do you have the return checks? Any return checks?

A: *Wala na po.*

Q: So you have no personal knowledge as to whom these checks were paid or who deposited these checks if they deposited it at all?

Justice Gutierrez

Q: Of your own knowledge, where are those checks now?

Witness Luy

A: *Hindi ko po alam kung nasaan. Basta ang sabi ni Ms. Napoles sa akin madam, after na pagkakuha ng checke, noon inihatid po yung checke, inihatid lang po yung checke kay Justice Gregory Ong sa kabilang office sa 2501. Pero hindi ko na po inalam kasi personal checke na po niya yon e.*

Q: I am asking about the return checks?

A: *Wala na po, ma'am.*

Q: You have no knowledge where they are?

A: *Wala po.*

What is clear from the statements of Luy regarding the financial deal was that it is only based on what Napoles actually relayed to him. Luy had no personal knowledge about the conversation between Napoles and Justice Ong during the latter's visit; about whether Justice Ong assented to an arrangement with Napoles; and about whether Justice Ong did issue a BDO check. The only thing Luy was competent to testify about is his preparation of eleven (11) checks, purportedly for Justice Ong, at the direction of

Napoles. **But, just the same, Luy does not have any personal knowledge whether the eleven (11) checks were indeed given to Justice Ong or whether Justice Ong received and accepted such checks.**

Justice Leonen, in his *Reflections*, however, opined that we ought to consider as established Justice Ong's receipt of the eleven (11) checks because "*even if Luy was not in Unit 2501 when Napoles handed the checks to Justice Ong, there could be no other conclusion to be derived from the facts.*"²⁴ I respectfully disagree with Justice Leonen's analysis.

In my opinion, it is precisely the fact that **no one was able to see and observe Justice Ong receiving the eleven (11) checks** that a contrary conclusion *i.e.*, that Justice Ong never received any checks from Napoles, finds reason. And this conclusion becomes all the more reasonable if we consider that no one, neither Luy nor Sula, was able to testify regarding the existence of any returned checks and that no such checks were ever submitted in evidence.

Hence, I opine that the existence of a so-called "*financial deal*" between Justice Ong and Napoles was not established in this case.

***Even Assuming The Existence of
The Financial Deal, Evidence Still
Does Not Support Finding of
Bribery in the Kevlar Cases***

Moreover, even assuming *arguendo* that the statements of Luy suffice to establish the existence of a financial deal between Justice Ong and Napoles, the same cannot still establish that there had been bribery in the *Kevlar Cases*. To conclude that the consideration for the financial deal was Napoles' acquittal in the *Kevlar Cases* is equivalent to mere speculation:

First. There is no direct evidence establishing that the financial deal was a bribe. Even Luy himself does not say so. Hence, any conclusion of bribery can only be inferred from circumstantial evidence.

Second. There is, however, no circumstantial evidence on record from which the conclusion of bribery may be inferred. At the very least, there should have been evidence to show that Justice Ong and Napoles had

²⁴

Justice Leonen's *Reflections*, p. 17.

been communicating during the pendency of the *Kevlar Cases*. There is no evidence of such communication in this case—*except*, the *hearsay* testimonies of Luy and Sula.

Third. The conclusion of bribery cannot be inferred from the financial deal itself. The deal, it must be emphasized, was entered into two (2) years after the decision in the *Kevlar Cases* was promulgated. While not impossible, the likelihood that the financial deal was a bribe becomes remote given the considerable amount of time that passed between Napoles' acquittal and the purported pay-off.

Fourth. The conclusion of bribery cannot be inferred from the accommodating nature of the financial deal. Indeed, if Luy's statements as to the existence of the financial deal were to be believed as the truth, then the deal itself cannot really be considered as an "*accommodation*." Justice Ong, as Luy recounted, had to issue a check of his own in exchange of the eleven (11) checks of Napoles. The implication is that Justice Ong was not issued the eleven (11) checks out of thin air or as a pay-off; rather, Justice Ong allowed the use of his own money as consideration for the checks he allegedly received. Hence, the financial deal can stand as a transaction away from bribery.

Since there is neither direct nor circumstantial evidence to support a finding of bribery, concluding still that there was such bribery would be mere speculation. It would not be a "*reasonable*" conclusion warranted by substantial evidence. From Luy's own story, bribery is plainly and simply speculative.

II

My second objection with the majority decision is the characterization of Justice Ong's association with Napoles as gross misconduct. I opine that the same is merely a simple misconduct.

*Extent of Justice Ong's Association
with Napoles*

As established by the evidence, Justice Ong began associating with Napoles two (2) years after *Kevlar Cases* were decided. Justice Ong himself admitted the entire breadth of this “association.”²⁵

First. At the birthday party of Senator Estrada in 2012, where Justice Ong was first formally introduced to Napoles. The two talked about the Black Nazarene. They exchanged cellphone numbers. It was also here that Justice Ong requested the help of Napoles in gaining access to the robe of the Black Nazarene.

Second. Sometime after the birthday of Senator Estrada, Justice Ong received a call from Napoles asking him to go the Adoracion Chapel in Makati. Justice Ong went to the Adoracion Chapel and was picked up by a car that brought him to a house in a posh subdivision. Inside the house, Justice Ong was able to meet up with Napoles and one Monsignor Ramirez—the parish priest of Quiapo Church. Here, arrangements were made for Justice Ong to wear the robe of the Black Nazarene. Weeks after, Justice Ong was able to wear the robe of the Black Nazarene and he received fragrant cotton balls from the image.

Third. Sometime after that, Justice Ong went to Napoles’ office twice.

The above are the only instances of Justice Ong’s association with Napoles that have been duly supported and established by competent evidence.

***Justice Ong’s Association with
Napoles is Mere Simple
Misconduct***

It is my considered opinion that Justice Ong’s association with Napoles only constitutes simple misconduct.

Unlike the case of fraternization between judges and litigants with still pending cases, there is no rule of ethics that categorically prohibits and sanctions fraternization between judges and their *former* litigants.²⁶ Be that as it may, cases of fraternization between judges and their former litigants may still be held unethical *if found to be done for a corrupt purpose or in*

²⁵ TSN, 21 March 2014, p. 29.

²⁶ See Rules of Court, Rule 140, Section 10.

such manner that violates any of the norms of propriety and integrity that every member of the bench ought to possess. The ethical implications of fraternizations between judges and their former litigants, therefore, must be evaluated on a case-to-case basis.

The case of Justice Ong and his association with Napoles, though done years after the *Kevlar Cases* have been decided and not for any proven corrupt purpose, remain unethical because theirs was not a case of simple fraternization. Aside from socializing with Napoles, Justice Ong—by his own admission no less—received ***favours*** (*i.e.*, the arrangements made by Napoles providing access to the robe of the Black Nazarene) from the former that, though innocent, could nonetheless be mistaken by the public as related to his judgeship. Justice Ong's receipt of such favours from Napoles, therefore, had the effect of compromising his image of impartiality and integrity as it has indeed given the story of bribery the appearance of reality. As it has affected the judgeship of Justice Ong, so has it affected the court to which he belongs.

For such indiscretion, Justice Ong undoubtedly committed violations of Section 1 of Canon 2 and Section 1 of Canon 4 of the New Code of Judicial Conduct:

CANON 2: INTEGRITY

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

CANON 4: PROPRIETY

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

These violations of Justice Ong, however, cannot be considered as gross misconduct but mere *simple misconduct*. Gross misconduct means a transgression of some established and definite rule of action that is willful, flagrant or animated by corrupt motives.²⁷ Gross misconduct implies the existence of malice or gross negligence, which reflects the corrupt character of the actor. Malice or corruption, however, has not been established on the part of Justice Ong.

²⁷

Camus v. Civil Service Board of Appeals, 112 Phil. 301, 306 (1961).

Justice Ong, therefore, is only accountable for simple misconduct, *i.e.*, a plain transgression of established norms but without the elements of willfulness, malice or corruption.

No Flagrant Disregard of Rules

In his *Reflections*, however, Justice Leonen opined that Justice Ong's association with Napoles is still a gross misconduct despite absence of any evidence that taints such association with corruption.²⁸ He claims that even *sans* the element of corruption, Justice Ong's violations of ethical standards may still be considered gross misconduct because they constitute "*flagrant disregard of rules*."²⁹

I agree that "*flagrant disregard of rules*" may qualify an otherwise simple misconduct into a gross one but I discount its existence in this case. In my view, Justice Ong's receipt of arrangements regarding the robe of the Black Nazarene and his visits to Napoles thereafter does not show a "*propensity to disregard the rules*"³⁰ on his part.

Flagrant disregard of rules may indeed exist outside the concept of corruption but it does require more than the mere act of violating an ethical norm. I submit that in order to consider a violation of an ethical norm as a "*flagrant disregard*" we must consider the circumstances under which such violation was committed. **The circumstances must show precisely a "*propensity to disregard the rules*" on the part of the actor—something that is deliberate or malicious and which relates to the very moral fibre of the actor; not the result of a mere simple indiscretion.**

Justice Ong's receipt of arrangements regarding the robe of the Black Nazarene and his visits to Napoles thereafter undoubtedly resulted in a violation of our ethical norms but it is not a flagrant violation. We may consider perhaps the following circumstances: the acts were committed two (2) years after the Kevlar cases were decided; the receipt by Justice Ong of the arrangements regarding the Black Nazarene were motivated not by anything illicit but by an all too human religious devotion; such arrangements were of no significant pecuniary value; the subsequent visits to Napoles' office were not shown to have been made for any purpose other than to extend thanks to Napoles for the religious favor. **These circumstances, though certainly not justifying, nonetheless speak that the actuations by Justice Ong was motivated not by any malicious intent**

²⁸ Justice Leonen's *Reflections*, p. 31-32.

²⁹ *Id.*

³⁰ *Imperial vs. Government Service Insurance System*, G.R. No. 91224, 4 October 2011.

to violate the established rules judicial ethics but more reasonably was the result of a mere momentary lapse of discretion.

Hence, I discount the existence of a “*flagrant disregard of rules*” on the part of Justice Ong.

III

I also object to the majority’s finding that Justice Ong had been dishonest with this Court.

Findings of Dishonesty Has No Basis

In finding the existence of dishonesty on the part of Justice Ong, the majority pointed to the former’s somewhat deliberate attempt to conceal his visits to Napoles’ office as inferred from the following circumstances:³¹

1. In his *Letter dated 26 September 2013* to the Chief Justice, Justice Ong never mentioned that he visited Napoles’ office twice in 2012.
2. In his *Comment*, Justice Ong mentioned of only one instance he visited Napoles’ office, *i.e.*, the single occasion referred to by witness Sula in her supplemental affidavit.

I respectfully disagree. The instances, from which the inference of concealment was drawn, were taken out of context.

First. Justice Ong’s *Letter dated 26 September 2013* came at the heels of the 30 August 2013 *Rappler* report that depicted him as having “*partied*” with the Napoleses and which featured a controversial photograph of him, Napoles and Senator Estrada in some gathering. Verily, as confirmed by Justice Ong, his main purpose in writing the said letter was for it to serve as a direct response to the impression created by the said report and photograph that he had attended a *party* or *social event* that was *hosted by Napoles*.³²

³¹ *Per Curiam* Decision, p. 34.

³² TSN, 21 March 2014, pp. 27-28.

Given the purpose of the *Letter*, it becomes understandable why Justice Ong's statements therein were only limited to rebutting the *Rappler* report and explaining the context and circumstance of the photograph. Justice Ong could not be expected to mention therein anything about his subsequent *private visits* to Napoles' office because those matters were not, in the first place, brought up by the *Rappler* report and photograph. Hence, Justice Ong's silence in the *Letter* with respect to his visits to Napoles' office cannot be taken against him.

Second. In his *Comment*, Justice Ong never stated that he only visited Napoles' office once. Justice Ong mentioned and described only one occasion of his visit to Napoles' office because he was, by then, responding to the sole instance in which he was seen by Sula in Napoles' office. Hence, the use by Justice Ong of the phrase: "*This is the single occasion that Sula was talking about in her supplemental affidavit...*"³³ Justice Ong never made any representations that he only visited the office of Napoles once.

At any rate, when asked during the investigation as to how many times he had visited Napoles' office, Justice Ong candidly admitted doing so twice:³⁴

Justice Gutierrez

Q: Did you go there?

Justice Ong

A: Yes, your honor.

Q: The second time as claimed by the whistleblowers?

A: Yes, I went there **twice**, your honor. (Emphasis supplied).

Hence, I find no cause in holding Justice Ong accountable for dishonesty.

Findings of Dishonesty By Justice Leonen

In addition to those pointed out by the majority, Justice Leonen further cites the following instances purportedly indicative of Justice Ong's dishonesty:³⁵

³³ Id. at 41.

³⁴ Id. at 29.

1. In the *Rappler* article, Justice Ong was documented as saying that he did not know who Napoles was or that the latter was a former litigant of his at the time the photograph featured in the article was taken. However, Justice Ong contradicted this fact during the investigation when he revealed that on the occasion when such photograph was taken, Napoles thanked him for her acquittal in the *Kevlar Cases*.
2. Justice Ong, in his *Comment*, stated that he never attended a social event hosted by Napoles. However, during the investigation, Justice Ong admitted to having attended a Eucharistic mass arranged by Napoles.
3. Justice Ong had the propensity to conceal his association with Napoles as much as possible and he only accommodated more details into his story as he was confronted with more facts about such association. Thus, when confronted only with a picture of him and Napoles in some gathering, Justice Ong limited his association with Napoles to their attendance in Senator Estrada's party. But later, when confronted with the testimony of Marina Sula who recounted having seen him visit the office of Napoles once, Justice Ong explained in his *Comment* only the circumstances of that one visit. And still later on, when confronted by Luy's statement during the investigation to the effect that he visited Napoles' office twice, Justice Ong's story evolved so as to accommodate that second visit as well.

Again, I respectfully disagree. The cited instances of dishonesty may be explained otherwise:

First. The first cited instance of dishonesty is premised on the fact that the photograph featuring Napoles with Justice Ong was taken *after* the two were formally introduced to each other. But such fact had never been established. It could have been otherwise.

Second. The second instance of dishonesty may be explained by the fact that when Justice Ong mentioned the word "*social event*" in his *Comment* he was basically referring to events such as parties or any social gatherings similar to that of a birthday party. This is likely so because Justice Ong used the word "*social event*" primarily as a response to the impression created by the photograph featured in the *Rappler* article—which



depicts a party or a similar event. Under those terms, it is understandable that Justice Ong may not have considered a Eucharistic mass as a “*social event*.”

Third. The third instance of dishonesty just stretches reasonable appreciation of Justice Ong’s statements. Justice Ong, of course, can only be expected to reveal so much as is required by the subject of inquiry at any given time. When the subject of inquiry, however, shifted to the entire gamut of his association with Napoles, like what happened during the investigation stage, Justice Ong was candid enough to reveal them in its entirety. To assume that the reason why Justice Ong revealed his association with Napoles piece by piece was because he was trying to avoid disclosure of his entire association with Napoles is to presume bad faith without any corroboration whatsoever.

Hence, I maintain that there remains no categorical indication that Justice Ong attempted to be dishonest with this Court.

IV

Justice Ong then was shown liable only for simple misconduct which, under Section 9 of Rule 140 of the Rules of Court, is merely a less serious charge. Under Section 11 of the same rule, the sanction for committing a less serious charge could either be suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months *or* a fine not exceeding ₱10,000.00 but not exceeding ₱20,000.00.

It must also be considered, however, that Justice Ong was already previously fined ₱15,000.00 by this Court in the administrative case *Jamsani-Rodriguez v. Ong*.³⁶

This being his second offense, I deem it proper to sanction Justice Ong with the maximum period of suspension from office allowable for less serious charges.


IN VIEW WHEREOF, I cast my vote in favor of finding Associate Justice Gregory S. Ong of the Sandiganbayan guilty of **SIMPLE MISCONDUCT**, for which he must suffer **SUSPENSION FROM OFFICE**, without salary or other benefits, for a period of **THREE (3) MONTHS**. Associate Justice Gregory S. Ong is also **STERNLY**

³⁶ A.M. No. 08-19-SB-J, 24 August 2010, 628 SCRA 626.



WARNED that a repetition of the same or similar offenses shall be dealt with more severely.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice