



REPUBLIC OF THE PHILIPPINES  
*Sandiganbayan*  
QUEZON CITY

**FOURTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**SB-14-CRM-0232 to 0237**

- versus -

**FOR:** Malversation of Public Funds  
under Article 217 of the Revised  
Penal Code, as amended

**SILVINO C. EVANGELISTA,**  
Municipal Mayor  
Municipality of San Miguel  
Province of Bohol

*Accused.*

**PRESENT:**

Quiroz, J., Chairperson  
Cruz, J.  
Jacinto, J.

**Promulgation:**

June 29, 2018 ant

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**DECISION**

**QUIROZ, J.:**

Before this Court is an indictment for **Malversation of Public Funds**, as defined and penalized under Article 217 of the Revised Penal Code, against **SILVINO C. EVANGELISTA**, the Municipal Mayor of the Municipality of San Miguel, Province of Bohol.

The six (6) separate Informations which were couched in similar language, except for the date and the amounts alleged to have been malversed, were filed on May 22, 2014 and charged the accused in this wise:

Sometime in [September 1998; October 1998; April 1999; November 1999; March 31, 2000; June 1, 2000, or prior or subsequent thereto], in the Municipality of San Miguel, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, accused **SILVINO CRESIAO EVANGELISTA**, a public officer being then the Municipal Mayor of the Municipality of San Miguel, Province of Bohol, and by reason of the duties of his office, is an accountable officer for public funds or property of the municipal government of San Miguel, Bohol, committing the offense in relation to his office and in the discharge of his official functions, did then and there willfully, unlawfully and feloniously, consent and or (sic) permit through abandonment or negligence, accused Trinidad R. Millare, then Municipal Treasurer of San Miguel, Bohol to misappropriate, appropriate, take, and embezzle the amount of [Two Hundred Fifty-Five Thousand One Hundred Forty-Eight Pesos (P255,148.00); Eighty-Eight Thousand Pesos (P88,000.00); Fifty Thousand Pesos (P50,000.00); Fifty Thousand Pesos (P50,000.00); Sixty Thousand Pesos (P60,000.00); Fifty Thousand Pesos (P50,000.00)], public funds belonging to the Municipality of San Miguel,

Bohol by approving and/or causing the disbursement amounting to (P255,148.00; P88,000.00; P50,000.00; P50,000.00; P60,000.00; P50,000.00), to the damage and prejudice of the Municipality of San Miguel, Bohol in the aforestated amount.

**CONTRARY TO LAW.**

On May 23, 2014, the Court issued a Hold Departure Order against Evangelista.<sup>1</sup>

A month later, on June 24, 2014, the Court directed the Office of the Special Prosecutor to grant the accused the opportunity to file a motion for reconsideration against the Office of the Ombudsman's adverse Resolution.<sup>2</sup> The prosecution filed its compliance thereto on September 11, 2014 and moved for the arraignment of the accused.<sup>3</sup>

On January 14, 2015, the Court ordered the issuance of a warrant of arrest against Evangelista.<sup>4</sup>

For his provisional liberty, the accused posted bail on February 17, 2015.<sup>5</sup>

On May 6, 2015, Evangelista was arraigned and entered a plea of Not Guilty.<sup>6</sup>

On May 29, 2015<sup>7</sup> and June 8, 2015<sup>8</sup>, the prosecution filed its *Consolidated Pre-Trial Brief* and *Supplemental Consolidated Pre-Trial Brief*, respectively. The defense, on the other hand, filed its *Pre-Trial Brief* on June 15, 2015.<sup>9</sup> On July 31, 2015, the parties submitted their *Joint Stipulation*.<sup>10</sup>

The Pre-Trial Order was issued on July 31, 2015<sup>11</sup> and amended on August 14, 2015.<sup>12</sup>

Trial ensued thereafter.

The prosecution presented its witnesses from October 26, 2015 to April 26, 2016 and formally rested its case on May 13, 2016 with the filing of its *Consolidated Formal Offer of Documentary Evidence*.<sup>13</sup> Over the objection interposed by the accused on August 9, 2016,<sup>14</sup> the Court admitted into evidence all the exhibits of the prosecution.<sup>15</sup>

<sup>1</sup> Records, Volume 1, p. 99.  
<sup>2</sup> Records, Volume 1, pp. 101 - 102.  
<sup>3</sup> Records, Volume 1, pp. 162 - 174.  
<sup>4</sup> Records, Volume 1, p. 175.  
<sup>5</sup> Records, Volume 1, p. 198.  
<sup>6</sup> Records, Volume 1, p. 240.  
<sup>7</sup> Records, Volume 1, pp. 252 - 258.  
<sup>8</sup> Records, Volume 1, pp. 259 - 262.  
<sup>9</sup> Records, Volume 1, pp. 265 - 267.  
<sup>10</sup> Records, Volume 1, pp. 275 - 277.  
<sup>11</sup> Records, Volume 1, pp. 278 - 284.  
<sup>12</sup> Records, Volume 1, pp. 293 - 294.  
<sup>13</sup> Records, Volume 1, pp. 346 - 589.  
<sup>14</sup> Records, Volume 1, pp. 607 - 613.  
<sup>15</sup> Records, Volume 1, p. 614.

The defense submitted the judicial affidavit of its lone witness, accused Evangelista himself, on May 15, 2017.<sup>16</sup> He was presented on the witness stand on August 14, 2017.<sup>17</sup> Thereafter, on September 4, 2017, the accused filed his *Formal Offer of Documentary Evidence/Exhibits*.<sup>18</sup> The prosecution filed its comment and/or opposition thereto on September 26, 2017.<sup>19</sup>

On October 23, 2017, the Court admitted Exhibits "1" to "9," including its sub-markings, subject to the following observations: Exhibits "1," "1-a," "2," "2-b," "3," to "3-b," "4-a," to "4-d," "5-a," are photocopies and do not bear the official marking of the Court; Exhibits "4" and "5," although common exhibits (Exhibits "B" and "L" for the prosecution, are mere photocopies of the marked documents; Exhibits "6" and "7," although original copies, were not marked; Exhibit "8," although certified machine copy, was not marked; Exhibits "9" and "9-a" are mere photocopies of the marked documents.<sup>20</sup>

In view of the October 23, 2017 Resolution of the Court, the accused filed a *Manifestation of Compliance* on November 29, 2017, submitting Exhibits "1," "1-a," "2," "2-a," "3," and "3-a," as officially marked by the Court.<sup>21</sup>

The accused and the prosecution filed their respective memoranda on November 29, 2017<sup>22</sup> and December 5, 2017.<sup>23</sup>

## THE EVIDENCE

### PROSECUTION EVIDENCE

#### A. Testimonial

The prosecution presented the testimony of seven (7) witnesses, namely, Marcela P. Palma, Lorna S. Piezas, Jeremia A. Lagunda, Nilo C. Pala, Johness B. Batoy, Ma. Cerelina D. Tan, and Hedeliza L. Carcueva.

The testimony of **MARCELA P. PALMA**,<sup>24</sup> the OIC, Human Resource Management Division (HRMD) of the Municipality of San Miguel, Province of Bohol, was dispensed with, as the parties stipulated on the authenticity of the Service Record of Trinidad R. Millare dated October 16, 2015.

The other witnesses testified as follows:

<sup>16</sup> Records, Volume 2, pp. 1 - 82.  
<sup>17</sup> Records, Volume 2, p. 95.  
<sup>18</sup> Records, Volume 2, pp. 98 - 187.  
<sup>19</sup> Records, Volume 2, pp. 189 - 192.  
<sup>20</sup> Records, Volume 2, p. 193.  
<sup>21</sup> Records, Volume 2, pp. 199 - 239.  
<sup>22</sup> *ibid.*  
<sup>23</sup> Records, Volume 2, pp. 241 - 252.  
<sup>24</sup> TSN dated October 26, 2015, pp. 6 - 10.

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**(RET.) LORNA S. PIEZAS<sup>25</sup>**  
**State Auditor III**  
**Commission on Audit (COA)**

From 2001 to 2004, she was assigned as Resident Auditor at the Municipality of San Miguel ("Municipality"), Province of Bohol.

She audited the books of the Municipality in 2002 and discovered that the Municipality issued checks in the total amount of P1,333,148.00 that were therefore not taken up in the books of the Municipality due to the absence of the required supporting documents, *i.e.*, disbursement vouchers. She traced the checks to the account of the Municipality with First Consolidated Bank (FCB) and the Land Bank of the Philippines (LBP). Her audit findings are contained in the Audit Observation Memorandum.

When she brought the matter to the attention of Mayor Silvino Evangelista, the Municipal Mayor of the Municipality, he admitted that there were times when he signed checks without the required supporting documents. She noted however that Check Nos. FCB 261504, in the amount of Twenty Thousand Pesos, and FCB 261532, in the amount of Eighty Thousand Pesos, drawn on October 1997 and 1998 were issued during the incumbency of Mayor Evangelista's predecessor, Municipal Mayor Hencianos.

Mayor Evangelista personally received the Audit Observation Memorandum and mistakenly signed the portion bearing his name that was supposed to be signed only upon submission of the required comment. Nonetheless, the Mayor submitted a *Management Comment*, requesting for more time to submit the required documents. She verbally granted a one-month extension. Mayor Evangelista failed to comply with the submission required, notwithstanding the extension granted. It was then that she forwarded the Audit Observation Memorandum to the COA-Region VII, for appropriate action of the Regional Cluster Director.

**JEREMIA A. LAGUNDA<sup>26</sup>**  
**State Auditor IV**  
**Commission on Audit (COA)**

She is presently the Resident Auditor of Tagbilaran City and OIC, Supervising Auditor of the Local Government Sector, Bohol 1 & 2 Audit Group.

She was assigned at the Municipality of San Miguel ("Municipality"), Province of Bohol in 2005 to 2006 and headed the team that audited the Municipality. Their audit findings are contained in the Annual Audit Report ("Report") for December 31, 2005. She submitted the Report to the Supervising Auditor for review. Included in the Annual Audit Report is the Audit Observation Memorandum ("Memorandum").

Upon return, she finalized the Report and furnished Mayor Evangelista, the Municipal Mayor of the Municipality, with the Memorandum, for his action. The Memorandum contains recommendations.

The document prepared by Lorna S. Piezas contained therein, as signed by Mayor Evangelista, was intended for Municipal Treasurer Trinidad Millare and the Municipal Accountant.

<sup>25</sup> TSN dated October 26, 2015, pp. 11 - 55.

<sup>26</sup> TSN dated October 26, 2015, pp. 58 - 76; TSN dated October 27, 2015, pp. 6 - 12.

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Observation No. 1 (*sic*) and Item No. 3 of the *Status Implementation of Prior Years' Recommendation* of the Report on the Municipality of San Miguel, Province of Bohol pertain to the check disbursements of the Municipality of San Miguel, Bohol amounting to P1,333,148.00. The amount was booked up in 2005, but since there had been adjustments accordingly made by the Municipal Accountant, it was already reduced to P733,148.00. The Regional Office issued a Notice of Disallowance on February 12, 2007.

She is no longer aware of the actions taken by Mayor Evangelista subsequent to receipt of the Report.

**(RET.) ERNESTO C. PALA<sup>27</sup>**  
**Attorney VI**

**Office of the Regional Cluster Director - Legal Adjudication Sector  
Commission on Audit (COA) – Region VII**

She joined the Commission on Audit (COA) on September 25, 1975 and retired from the service on December 2012.

In 2007, he was the OIC at the Office of Regional Cluster Director of the Legal and Adjudication Sector of the COA-Region VII. Among his functions is the evaluation of the Audit Observation Memorandum submitted by auditors. Subsequent to such evaluation is the determination if there is basis for the issuance of a Notice of Disallowance.

A Notice of Disallowance is a notice issued to an Accountable Officer whenever a transaction involving public funds is without legal basis. Its issuance is for purposes of giving said Accountable Officer the opportunity to answer and justify the transaction.

He reviewed the Audit Observation Memorandum prepared by Mrs. Lorna Piezas involving the Municipality of San Miguel ("Municipality"), Province of Bohol. In connection therewith, he also issued a Notice of Disallowance on February 12, 2007 involving Checks Nos. FCB-5644, FCB-5655, FCB-81203, FCB-81284, LBP 27405199, and LBP 6593803 issued by the Municipality without any supporting document. Liability thereon falls upon the Municipal Mayor and the Municipal Treasurer who, in this case, are Mayor Silvino Evangelista and Municipal Treasurer Trinidad Millari (*sic*), as signatories to the check.

Check No. FCB 261504 dated October 19, 1997, in the amount of P20,000.00, as well as Check No. FCB 261532, in the amount of Eighty Thousand Pesos, had already been settled. A Notice of Disallowance was issued on these two checks because they were issued without supporting documents. Subsequent to the issuance of the Notice of Disallowance, he does not have any updates on these accounts.

As only auditors take part in exit conferences, he is not aware whether an exit conference was held by Auditor Lorna Piezas, or, if ever one was held, whether the Minutes thereof had been submitted to their office. Based on his experience, however, the submission by the assigned Auditor of the Minutes of the exit conference is not mandatory.

<sup>27</sup> TSN dated January 19, 2016, pp. 4 - 23.

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**JOHNESS O. PASILBAS-BATOY<sup>28</sup>**  
**Vice-President for Legal**  
**First Consolidated Bank**

She is in-charge of the over-all operation of the bank's Legal Department.

The Municipality of San Miguel ("Municipality"), Province of Bohol has a checking account and savings account with First Consolidated Bank (FCB). She issued a Certification on September 24, 2015 for the details of these accounts - that the signatories to Checking Account No. 22-0103-01765-7, as well as Savings Account No. 038-0203-000010-8, are Silvino Evangelista and Trinidad Millare.

Against the FCB accounts of the Municipality were drawn Check No. 5644 dated September 1998; Check No. 5655 dated October 1998; Check No. 81203 dated April 1999; Check No. 81284 dated November 1999. FCB no longer has in its possession the microfilm copy of these checks, but the bank records and the ledgers reflect that the signatories are Evangelista and Millare and attest to the genuineness and authenticity of their signatures, aside from the fact that the checks were encashed and cleared. The specimen signature cards are also no longer available because banks are only required to retain bank documents for five (5) years. The checks in question are more than fifteen (15) years old.

NOTE: The parties stipulated that the Municipality of San Miguel, Bohol maintains an account with the First Consolidated Bank.

**HEDELIZA L. CARCUEVA<sup>29</sup>**  
**Municipal Accountant**  
**Municipality of San Miguel**  
**Province of Bohol**

She is the Municipal Accountant of the Municipality of San Miguel ("Municipality"), Province of Bohol.

In 2002, she was directed by the Commission on Audit (COA) to itemize the amounts indicated in the *Bank Reconciliation Statement* attached to the financial statement that had been submitted by the Municipality to the COA. It was then that she conducted bank reconciliation of the general fund accounts of the Municipality.

Using the *Journal of Checks Issued*, current account ledger, and statements of account, she discovered six (6) checks that were not listed for being issued without the required supporting documents. Four (4) of these checks were drawn against the account of the Municipality with First Consolidated Bank (FCB), while two (2) checks were drawn against the account of the Municipality with the Land Bank of the Philippines (LBP). The FCB checks are Check No. 5644 in the amount of P255,158.00; Check No. 5655 in the amount of P88,000.00; Check No. 81203 in the amount of P50,000.00; and Check No. 81284 in the amount of P50,000.00. The LBP checks are Check No. 27405199 in the amount of P60,000.00 and Check No. 659803 in the amount of P50,000.00.

The subject checks were cleared because they were issued by the Municipal Treasurer and countersigned by the Municipal Mayor. They are the authorized signatories to the accounts of the Municipality with FCB and LBP. At the time, the Municipal Mayor is Silvino Evangelista and the Municipal Treasurer is Trinidad Millare.

<sup>28</sup> TSN dated January 19, 2016, pp. 24 - 35.

<sup>29</sup> TSN dated April 26, 2016, pp. 5 - 42.

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The subject checks, as negotiated, are not in her custody because she was appointed only in October 2000. They were temporarily forwarded instead to the Municipal Treasurer, but could not be located anymore.

Her findings are contained in the *Statement of Bank Reconciliation on the General Fund of the Municipality of San Miguel, Bohol as of June 30, 2002*. Also, the subsidiary ledger of the municipality reflects a balance pertaining to the amount disallowed by the COA.

Subsequent to her report, Commission on Audit (COA) Auditor Piezas issued an *Audit Observation Memorandum* on September 17, 2002. Thereafter, she, together with Municipal Mayor Silvino C. Evangelista, Municipal Treasurer Trinidad Millare, auditors, and other department heads, attended an exit conference during which conference Municipal Treasurer Millare asked for extension of time to find the required supporting documents of the checks mentioned in the Audit Observation Memorandum. Although COA Auditor Piezas granted the request of Municipal Treasurer Millare, the latter did not submit any document to support the questioned transactions. Hence, a Notice of Disallowance was subsequently issued and she was requested to direct Mayor Evangelista and Municipal Treasurer Millare to immediately settle the amount disallowed. She communicated the directive to Evangelista and Millare, but the two did not comply.

For SB-14-CRM-0236 and 0237:

**CERELINA LETRERO D. TAN<sup>30</sup>**  
**Bank Manager**  
**Land Bank of the Philippines (LBP) -Talibon Branch**

Based on the specimen signature cards, the photocopy of the checks, and the microfilm, in 2000, the authorized signatory to the general fund account of the Municipality of San Miguel ("Municipality"), Province of Bohol is Mayor Silvino Evangelista.


LBP Check Nos. 6593803 and 27405199 (dated March 31, 2000) had been drawn from the general fund account. The checks were transacted in another bank and it was forwarded to LBP-Talibon Branch for clearing (incoming clearing check). The content of the microfilm for LBP Check No. 6593803 was damaged. Based on their record, however, the check was negotiated. At the time, she had no knowledge of the transaction, as she was then the Loans and Administration Unit Head of Cebu Lending Center.



### B. Documentary

The prosecution adduced the following documentary evidence: Personal Data Sheet of Silvino C. Evangelista (**Exhibit "A"**); Annual Audit Report on the Municipality of San Miguel Province of Bohol for the year ending December 31, 2005 (**Exhibit "B"**); Notice of Disallowance/s (For Audit Expenditures) No. 2002-001-101-(2000) dated February 12, 2007 (**Exhibit "C"**); Sworn Statement of Lorna S. Piezas, State Auditor III dated 17 April 2008 (**Exhibit "D"**); Letter of Lorna S. Piezas, State Auditor III dated August 23, 2013 to the Ombudsman with Annexes (**Exhibit "H"**); Service Record of Trinidad Reyes Millare (**Exhibit "I"**); Certification dated 23 May 2015 issued by Hedeliza L. Carcueva, Municipal Accountant, San Miguel, Bohol (**Exhibit "J"**); Certification dated September 24,

<sup>30</sup> TSN dated January 19, 2016, pp. 35 - 54.



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2015 issued by Atty. Johness O. Pasilbas-Batoy, Legal Department, First Consolidated Bank (**Exhibit "K"**); Audit Observation Memorandum (AOM) No. 2002-001 dated September 17, 2002 with management comments (**Exhibit "L"**); Check Disbursement Journals of the Municipality of San Miguel, Bohol containing a list of issued checks from 1998 until 2000 (**Exhibit "M"**); 1<sup>st</sup> Indorsement dated 21 October 2002 issued by Lorna S. Piezas, State Auditor II (**Exhibit "O"**); Certification dated 22 February 2016 issued by Hedeliza L. Carcueva, Municipal Accountant (**Exhibit "P"**), together with their sub-markings.

**DEFENSE EVIDENCE**

**A. Testimonial Evidence**

**(RET.) SILVINO C. EVANGELISTA<sup>31</sup>**  
**Municipal Mayor**  
**Municipality of San Miguel**  
**Province of Bohol**

He served as Vice-Mayor of the Municipality of San Miguel ("Municipality"), Province of Bohol from 1992 to 1998 and then later as Municipal Mayor of the same Municipality from July 1998 to June 2007.

When he assumed the position as Municipal Mayor, the Municipality had no Municipal Accountant. Later on, when he realized the necessity for one, he appointed Ms. Carcueva.

Carcueva conducted a reconciliation of the past transactions of the Municipality with the bank *vis-à-vis* the journal of accounts of the municipality and found out that there were checks issued by the local government that have not been recorded by Millare, the Municipal Treasurer, in the books of the Municipality.

As a result of Carcueva's findings, the Commission on Audit (COA) issued Audit Observation Memorandum dated September 17, 2002.

Municipal Treasurer Millare acknowledged that the checks pertained to her and undertook the responsibility of producing the necessary supporting documents thereto. During the preparation of the *Annual Audit Report for the Municipality of San Miguel for 2005*, however, he discovered that Municipal Treasurer Millare has still not submitted the supporting documents in her custody. When he confronted Municipal Treasurer Millare and Municipal Accountant Carcueva, Millare pleaded for extension of time to recover the documents required. He then informed the *Sangguniang Bayan* of the situation. He also asked them to conduct a hearing thereon and assist in the possible legal action that may be taken against Municipal Treasurer Millare.

As requested, the *Sangguniang Bayan* conducted several hearings. On February 21, 2007, and with his approval, the *Sangguniang Bayan* issued a Resolution requiring Municipal Treasurer Millare to settle her accountabilities.

On March 23, 2007, he received a Notice of Disallowance from COA respecting the unrecorded checks. He immediately called Municipal Treasurer Millare and Municipal Accountant Carcueva. They both assured him that the transactions were in accordance with usual accounting principles. Millare further explained that disbursement vouchers are not

<sup>31</sup> Records, Volume II, pp. 1 - 82.



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required for checks for transfer of funds. Despite Millare's explanation, he told her that she has to settle her accountabilities because of the COA disallowance. He then issued a Memorandum dated April 30, 2007 stating his demand for Municipal Treasurer Millare to settle her accountability with COA.

The Reconciliation Report and the Notice of Disallowance show that the accountability of Municipal Treasurer Millare with respect to the unrecorded checks dates as far back as October 1997 and March 1998, during the term of his predecessor, Municipal Mayor Hencianos.

On June 2007, before he retired, he spoke again with Municipal Treasurer Millare to reiterate that she needs to settle her accountabilities. Millare informed him that she would issue a waiver of her retirement benefits in favor of the Municipality, so she can settle her accountabilities. She also executed an *Affidavit of Undertaking* wherein she admitted her monetary obligation to the Municipality.

After his retirement, he learned that Municipal Treasurer Millare was charged with administrative and criminal cases before the Office of the Ombudsman. Later on, he was impleaded. The administrative case against him was dismissed due to insufficiency of evidence.

As the local chief executive, he is accountable for all the properties and funds of the Municipality. Together with the Municipal Treasurer, he is an authorized signatory to the checks pertaining to the account of the Municipality in LBP and First Consolidated Bank (FCB). Save for certain exceptions, no funds shall be disbursed, released or transferred of the accounts of the municipality without his approval. He signed the checks in question even without the required supporting documents because Municipal Treasurer Millare told him that there are fund transfers that do not need any supporting document, only Form 123 of the Treasurer.

### B. Documentary Evidence

On September 4, 2017,<sup>32</sup> the defense offered the following exhibits: Affidavit of Waiver by Trinidad Mallare (**Exhibits "1"**); Affidavit of Undertaking (**Exhibit "2"**); Sworn Statements of Lorna S. Piezas, State Auditor III, COA (**Exhibit "3"**); Annual Audit Report of San Miguel Province of Bohol for the year ending December 31, 2005 (**Exhibit "4"**); Audit Observation Memorandum dated September 17, 2002 (**Exhibit "5"**); *Sangguniang Bayan* of San Miguel Bohol Resolution No. 25 dated February 21, 2007 (**Exhibit "6"**); Memorandum dated April 30, 2007 directing the Municipal Treasurer to settle her accountability and submit proof of settlement (**Exhibit "7"**); Decision OMB-V-A-08-0349-J approved by Ombudsman Conchita Carpio Morales dated March 15, 2012 (**Exhibit "8"**), and Judicial Affidavit of Silvino C. Evangelista (**Exhibit "9"**), together with their sub-markings.

<sup>32</sup> Records, Volume II, pp. 98 - 107.

## DISCUSSION

The undisputed facts are as follows:

Accused Silvino C. Evangelista is a three-term Municipal Mayor of the Municipality of San Miguel, Bohol ("Municipality"), with service rendered in such capacity spanning July 1, 1998 to June 30, 2007.<sup>33</sup>

During his incumbency, six (6) checks in the total amount of P533,148.00 were issued without the necessary supporting documents. The following are the details of the checks:

DATE	CHECK NO.	AMOUNT
September 11, 1998 <sup>34</sup>	FCB-5644	P255,148.00
October 26, 1998 <sup>35</sup>	FCB-5655	P88,000.00
April 8, 1999 <sup>36</sup>	FCB-81203	P50,000.00
November 24, 1999 <sup>37</sup>	FCB-81284	P50,000.00
March 31, 2000 <sup>38</sup>	LBP-27405199	P60,000.00
June 1, 2000 <sup>39</sup>	LBP-6593803	P50,000.00

Municipal Accountant Hedeliza L. Carcueva made the discovery sometime in 2002 when she undertook bank reconciliation,<sup>40</sup> upon the directive of the Commission on Audit (COA).<sup>41</sup>

Subsequent to the bank reconciliation made by Municipal Accountant Carcueva, COA State Auditor II Lorna S. Piezas issued an *Audit Observation Memorandum* dated September 17, 2002 addressed to accused Evangelista, apprising him of the check disbursements and the bank credits at First Consolidated Bank (FCB) that were not taken up in the books due to lack of supporting documents and recommending for him to instruct the Municipal Treasurer and/or the Municipal Treasurer and the Municipal Accountant to immediately submit the supporting documents thereto and verify the validity of the amount.<sup>42</sup> Accused Evangelista, Municipal Treasurer Trinidad R. Millare, and Municipal Accountant Carcueva received a copy of the *Audit Observation Memorandum* on September 26, 2002.<sup>43</sup>

On February 28, 2006, COA State Auditor III Ernesto C. Pala submitted the *Annual Audit Report on the Municipality of San Miguel, Province of Bohol For the Year Ended December 31, 2005* to the Cluster Director, COA Cluster IV-Visayas, reflecting therein that there was no action taken by the Municipality with respect to the cash shortage incurred by Municipal Treasurer Millare in the amount of P733,148.00 arising from unrecorded checks from 1998 to 2001.<sup>44</sup>

<sup>33</sup> Exhibit "A-1".

<sup>34</sup> Exhibit "H-3".

<sup>35</sup> Exhibit "H-4".

<sup>36</sup> Exhibit "H-5".

<sup>37</sup> Exhibit "H-6".

<sup>38</sup> Exhibit "H-7".

<sup>39</sup> Exhibit "H-8".

<sup>40</sup> Exhibit "H-9".

<sup>41</sup> TSN dated April 26, 2016, pp. 5 - 42.

<sup>42</sup> Exhibit "O-1".

<sup>43</sup> *ibid.*

<sup>44</sup> Exhibit "B".

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On May 18, 2006, COA Cluster IV Regional Cluster Director Charlita R. Leopoldo furnished accused Evangelista a copy of the annual audit report and requested for him to take the necessary action on the comments and observations contained in the report and to inform the COA, through its auditor, of the actions taken thereon within one (1) months from receipt of the annual audit report.<sup>45</sup>

It appearing, however, that no action was taken by accused Evangelista, a *Notice of Disallowance/s* dated February 12, 2007 was issued by Atty. Nilo C. Pala, OIC, Legal and Adjudication Sector of the Office of the Regional Cluster Director, COA-Region VII.<sup>46</sup> Accused Evangelista, Municipal Treasurer Millare, and Municipal Accountant Carcueva received a copy of the *Notice of Disallowance/s* on March 23, 2007.<sup>47</sup>

**MALVERSATION OF PUBLIC FUNDS** under Article 217 of the Revised Penal Code is committed when any public officer who, by reason of the duties of his office, is accountable for public funds, (a) appropriates, takes, or misappropriates, or (b) consents or permits, through abandonment or negligence, any other person to take such public funds, wholly or partially.

To establish the guilt of the accused, the following elements must concur: that the offender is an accountable public officer; that he/she has custody of and received such funds by reason of his/her office; and that he/she is responsible for the misappropriation of the public funds through intent or negligence.<sup>48</sup>

**THAT THE OFFENDER IS AN ACCOUNTABLE PUBLIC OFFICER, and THAT HE HAS CUSTODY OF AND RECEIVED SUCH FUNDS BY REASON OF HIS OFFICE**

The existence of the first two elements is beyond dispute.

The accused is the Municipal Mayor of the Municipality of San Miguel, Province of Bohol, during the time relevant to the case. Under Section 102 (1) of Presidential Decree No. 1445, otherwise known as the *Government Auditing Code of the Philippines*, "the head of any agency of the government is immediately and primarily responsible for all government funds pertaining to his agency." Further, under Section 340 of Republic Act No. 7160,<sup>49</sup> otherwise known as the *Local Government Code of 1991*, the accused, as Municipal Mayor, is responsible for the safekeeping of such public funds.

In *People v. Pantaleon, Jr, et.al.*,<sup>50</sup> the Supreme Court also emphasized that both the signatures of the mayor and the treasurer are necessary before public

<sup>45</sup> *ibid.*

<sup>46</sup> Exhibit "C"

<sup>47</sup> *ibid.*

<sup>48</sup> *Arroyo v. People*, G.R. No. 220598, April 18, 2017.

**Section 340. Persons Accountable for Local Government Funds.** - Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

<sup>50</sup> G.R. No. 158694-96, March 13, 2009.

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funds could be disbursed. They have to sign not only the check, but its supporting documents as well. The observance of this standard procedure establishes the custody and control that the mayor and the treasurer have over public funds.

**THAT HE/SHE IS RESPONSIBLE  
FOR THE MISAPPROPRIATION  
OF THE PUBLIC FUNDS  
THROUGH INTENT OR  
NEGLIGENCE**

The presence of the third element is the only remaining issue in this case.

It is the position of the prosecution that the accused committed malversation through negligence.

For his defense, accused Evangelista countered that he cannot be held liable because the administrative case arising from the same facts had been dismissed as against him<sup>51</sup> and that the prosecution failed to adduce any evidence to show that he was negligent or that he permitted Municipal Treasurer Millare to take the public funds.

**First**, it is jurisprudentially established that an administrative case is separate and distinct from a criminal case, although arising from the same act or omission.

In *Paredes v. Court of Appeals, et al.*,<sup>52</sup> the Supreme Court reiterated this fundamental principle and underscored that administrative cases are separate and distinct from criminal actions, viz -

It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*. One thing is administrative liability; quite another thing is the criminal liability for the same act. (citations omitted)

**Second**, contrary to the assertion of the accused, the totality of the evidence presented by the prosecution showed that the accused not only failed to adduce any supporting document for the checks drawn against the account of the Municipality, but also failed to take immediate action despite several notices sent by the Commission on Audit (COA).

To prove good faith and that he took action on the report submitted by the COA, the accused presented Municipal Treasurer Trinidad Millare's *Affidavit of Undertaking*<sup>53</sup> and *Affidavit of Waiver*,<sup>54</sup> both stating that she is responsible for the monetary obligation incurred and offered guarantees for such obligation.

<sup>51</sup> Exhibit "8"

<sup>52</sup> G.R. No. 169534, July 30, 2007.

<sup>53</sup> Exhibit "2"

<sup>54</sup> Exhibit "1"

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The accused also offered in evidence Resolution No. 25, Series of 2007,<sup>55</sup> entitled *A Resolution Requesting Mrs. Trinidad R. Millare, Municipal Treasurer of the Municipality of San Miguel, Bohol, To Settle and/or Liquidate Her Accountabilities with the Municipality of San Miguel, Bohol* as well as the Memorandum he issued to Municipal Treasurer Millare,<sup>56</sup> with the subject *Compliance with Audit Observation Memorandum (AOM) No. 2007-01 and AOM No. 2007-02 (Copy attached from the Commission on Audit)*.

These pieces of documentary evidence, however, achieved a contrary effect for they clearly pointed out that the accused took no action from the time the COA notified him of the subject checks that were not taken up in the books on **September 26, 2002**, until the issuance by the COA of the *Notice of Disallowance/s* on **February 12, 2007**.


For more than four (4) years, accused Evangelista, in his capacity as the Municipal Mayor of San Miguel, Bohol, failed to take any action necessary for the recovery of the monies that could have been used for the benefit of his constituents in the locality. The Court notes that Resolution No. 25, Series of 2007 was adopted on **February 21, 2007** only, while the Memorandum of accused Evangelista to Municipal Treasurer Millare was issued only on **April 30, 2007**.

The negligence becomes more apparent as the Court has observed that Municipal Treasurer Millare's *Affidavit of Undertaking* dated **March 12, 2009**, supplemented by her *Affidavit of Waiver* executed on **March 2, 2010**, shows that she was able to retire from government service without incurring any obligation despite COA's recommendation in its *Annual Audit Report on the Municipality of San Miguel, Province of Bohol For the Year Ended December 31, 2005* for the enforcement of Section 37 of P.D. No. 1445 as against her, viz -

Recommendation:



Please require Ms. Millare to settle her accountability. Otherwise, please enforce retention of money for satisfaction of indebtedness to the government as provided for in Section 37 of PD 1445, to wit:

*"When any person is indebted to any government agency, xxx, direct the proper officer to withhold the payment of any money due such person or his estate to be applied in satisfaction of the indebtedness."*



**Finally**, the testimony of COA State Auditor II Lorna S. Piezas establishing the negligence of the accused has not been refuted. The testimony of Piezas on this point was straightforward, viz -

<sup>55</sup> Exhibit "6"  
<sup>56</sup> Exhibit "7"



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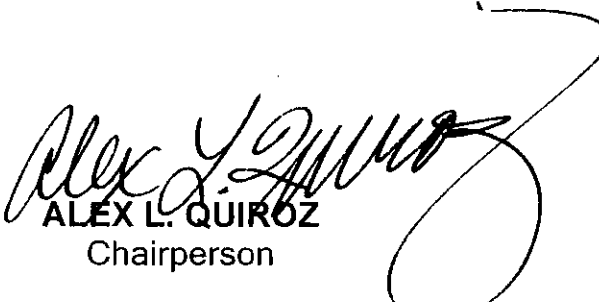
- Q By the way, Madam Witness, before issuing this Audit Observation Memorandum, Exhibit "O-1" for the prosecution, what action or steps did you take, if any?
- A When I found the deficiency in the unrecorded checks, I find time to talk with the mayor and when I talk with the mayor, when I have the chance to talk with the mayor, I asked the mayor if there were times that he was able to sign the checks without the vouchers, sir.
- Q What was the reply of - by the way, who was the mayor you are referring to?
- A Mayor Silvino Evangelista, sir.
- Q And what was his reply, if any?
- A His reply was, he said to me that "yes, ma'am."
- Q What do you mean yes, ma'am?
- A He admitted that there were times that he was able to sign a check without the corresponding voucher, sir.

In sum, the evidence adduced by the prosecution, both documentary and testimonial, positively and clearly showed that the accused was negligent and that the degree of such negligence approximates malice or fraud, contrary to accused's insistence.

**WHEREFORE**, in view of the foregoing, the Court finds **SILVINO C. EVANGELISTA GUILTY beyond reasonable doubt** of Malversation of Public Funds Through Negligence and is hereby sentenced to suffer the indeterminate penalty of 6 years and 1 day of *prision mayor*, as *minimum*, to 8 years of *prision mayor*, as *maximum*, with the accessories of the law, with the additional penalty of perpetual special disqualification and of a fine of P553,148.00, Philippine Currency.

**SO ORDERED.**

Quezon City, Philippines.

  
**ALEX L. QUIROZ**  
Chairperson

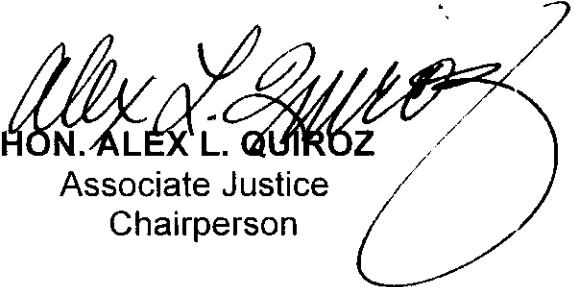
**WE CONCUR:**

  
**REYNALDO P. CRUZ**  
Associate Justice

  
**BAYANI H. JACINTO**  
Associate Justice

**ATTESTATION**

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

  
**HON. ALEX L. QUIROZ**  
Associate Justice  
Chairperson

**CERTIFICATION**

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

  
**HON. AMPARO M. CABOTAJE-TANG**  
Presiding Justice