



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff-Appellee,

- versus -

CRIM. CASE NO. SB-19-A/R-0007

LILIA S. MANUEL,

Municipal Treasurer,

San Agustin, Isabela,

accused-Appellant.

Present:

DE LA CRUZ, J., *Chaiperson*

ECONG, J.,

CALDONA, J.

Promulgated on:

FEB 17 2020

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DECISION

DE LA CRUZ, J.:

On appeal¹ before this Court is the *Decision*,² dated April 26, 2019, of the Regional Trial Court (RTC), Branch 24, of Echague, Isabela, convicting the accused-appellant in Criminal Case No. 24-1587, of the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, as amended by Republic Act No. 10951.³ The RTC sentenced her to suffer imprisonment ranging from six (6) years as minimum to ten (10) years and one (1) day as maximum, and to pay the Local Government of San Agustin, Isabela the amount of ₱1,458,438.00. The RTC likewise imposed upon her the penalty of perpetual special disqualification from holding public office.

¹ RTC Records, p. 429

² RTC Records, pp. 405-416

³ *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as amended. Signed: August 29, 2017.*

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ANTECEDENT FACTS

On September 15, 2009, the Office of the Ombudsman (OMB) issued a *Joint Resolution*⁴ in OMB-L-C-05-0404-D and OMB-L-C-08-0066-A, directing the filing of an *Information* before the proper court, charging the accused-appellant with the crime of Malversation of Public Funds under Article 217 of the RPC, the accusatory portion of which reads:

That for the period between January 01, 1998 to February 01, 2006, or sometime prior or subsequent thereto, in the Municipality of San Agustin, Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Treasurer of San Agustin, Isabela and as such is accountable for public funds received and/or entrusted to her by reason of her office, acting in relation to her office and taking advantage of the same, did then and there, willfully, unlawfully, and feloniously take, misappropriate and convert to her personal use and benefit public funds in the amount of Two Million One Hundred Two Thousand Seventy Six Pesos and Twenty Nine Centavos (P2,102,076.29) received by her by reason of her office, to the damage and prejudice of the government in the amount aforestated.⁵

CONTRARY TO LAW.

During the arraignment on November 4, 2010, the accused-appellant pleaded not guilty to the crime charged.⁶ After the termination of the pre-trial on July 17, 2012,⁷ trial ensued.

PROSECUTION'S VERSION

The prosecution presented the following witnesses, namely: State Auditor III Juliet K. Macato (Macato)⁸ and State Auditor IV Beatris A. Pataueg (Pataueg).⁹

Macato's Direct Testimony:

⁴ RTC Records, pp. 5-16.

⁵ RTC Records, pp. 1-4.

⁶ RTC Records, pp. 60-62.

⁷ RTC Records, pp. 118-122.

⁸ TSN dated December 11, 2012; April 25, 2013; July 3, 2013; October 23, 2013, December 3, 2013; February 5, 2014, April 8, 2014; July 16, 2014; and September 24, 2014

⁹ TSN dated September 28, 2016.

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Macato testified that on February 1, 2006, she was a member of a team that audited the money accountability of the accused-appellant during the latter's incumbency as the Municipal Treasurer of San Agustin. The audit was part of their duties as members of the Commission on Audit (COA). The audit examination covered the period July 2, 2004 to February 1, 2006. The team conducted a verification and audit on the money accountabilities of the accused-appellant, including cash advances, collections, disbursements, and deposits, by checking several vouchers certified to by the accused-appellant. These documents were contained in the Cash Book,¹⁰ which they secured from the accused-appellant.

The examination¹¹ revealed that the total cash accountability of the accused-appellant for the period July 2, 2004 to February 1, 2006 is ₱35,292,733.57, representing her collections and withdrawals. She made deposits and disbursements in the total amount of ₱32,047,267.28, leaving a balance of ₱3,245,466.29. The examination also revealed that the accused had cash items or advances in favor of several officials and employees in the total amount of ₱1,143,390.00,¹² and this was allowed to be deducted and was credited to her cash accountability. But what the audit team found to be irregular is that the accused-appellant still had a cash accountability of ₱2,102,076.29. Macato later notified OIC-Municipal Treasurer Leovigilda P. Mateo (Ms. Mateo) regarding the matter.

The accused-appellant went to the COA Regional Sub-Cluster II in Santiago City and was given a copy of the Report of Cash Examination¹³ for her to review. Thereafter, the accused-appellant was issued a Letter of Demand,¹⁴ dated February 8, 2007, requiring her to immediately produce the missing funds in the amount of ₱2,102,076.29 and to submit, within seventy-two (72) hours, a written explanation why the shortage occurred. The accused-appellant received¹⁵ the said letter on May 7, 2007. However, she failed to return the stated amount and failed to offer any explanation for the shortage.

¹⁰ Exhibit "CC" and series.

¹¹ See attachments to Exhibit "KK" particularly Annexes "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q" and "R".

¹² See attachment Annex "A" of Exhibit "KK".

¹³ See attachment (Annex "A") of Exhibit "KK".

¹⁴ Exhibit "EE-1".

¹⁵ Exhibit "EE-1-c".

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The audit team finalized the Report of Cash Examination¹⁶ and thereafter, submitted the same to the COA Regional Office for legal action.¹⁷ Attached to the report is the accused-appellant's cash book and the bank statements and accounting books which were examined. In verifying the cash shortage of the accused-appellant, the team compared the cash voucher report of cash examination with the accounting record and bank statements. Macato, together with Pataueg and State Audit Examiner II Orvelita M. Palattao (Palattao) executed a Joint Affidavit,¹⁸ dated December 5, 2007, in connection with their audit examination on the accused-appellant.

Macato's Cross Examination:

Macato testified that the disbursing officer and the liquidating officer in the Treasurer's Office are accountable officers, like the accused-appellant. These revenue clerks are primarily and directly accountable to the Municipal Treasurer, she being their supervisor. They were no longer subjected to audit since their collections and disbursements are already recorded in the Cash Book of the Municipal Treasurer.

Macato confirmed that during the examination, they made a "carry over" from the last audit appearing in the Cash Examination Report¹⁹ submitted by State Auditor II Marie Dee B. Belagan (Belagan) and State Audit Examiner I Ernesto L. Nario (Nario) of the COA Regional Sub-Cluster II. She emphasized that the "ending balance" of the last cash examination in the amount of ₱2,293,214.61 was forwarded as the "beginning balance". The "beginning balance" was then added to the collections and withdrawals from July 2004 to February 1, 2006 to arrive at the total cash transaction. From this amount, the deposits and disbursements were deducted, resulting to a deficit or shortage of ₱2,102,076.29.

The team examined three (3) accounts maintained by the accused-appellant, *i.e.*, the *General Funds Account*, *Special Education Funds Account*, and *Trust Fund Account*. She reiterated that they did not audit other accountable employees in the Treasurer's Office, since these employees are directly accountable

¹⁶ See attachment (Annex "A") of Exhibit "KK".

¹⁷ See Exhibit "DD".

¹⁸ Exhibits "KK", "KK-1", "KK-2", "KK-2-a", and "KK-2-b".

¹⁹ Exhibits "B", "C", "D", "E", "F", "G", "H", "I", and "J".

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to the accused-appellant, who has control and supervision over their collections.

Pataueg's Direct Testimony:

Pataueg corroborated Macato's testimony. She narrated that on February 1, 2006, she, together with Macato and Palattao audited the cash and accounts of the accused-appellant after the latter's accountabilities were transferred to Mateo. Macato counted the "cash-on-hand"; conducted an inventory of the cash items on hand; and verified and reconciled the accounts of the accused-appellant. The audit team found that the accused-appellant had a shortage in the amount of ₱2,102,076.29. The team sent a demand letter to the accused-appellant for her to return the missing funds and explain how she incurred the same. She reviewed the examination report on the accused-appellant's accounts dated August 24, 2007 that was prepared by Macato.²⁰ Thereafter, their office drafted the final report and submitted the same to the COA Regional Office on September 12, 2007.

Pataueg, together with Macato and Palattao executed a Joint Affidavit,²¹ dated December 5, 2007, narrating the audit examination on the accused-appellant's account.

Pataueg's Cross Examination:

She confirmed that she was the one who reviewed the report prepared by Macato who personally conducted the audit on the accused-appellant.

Based on their manual on cash examination, the team verified the book of accounts and tried to reconcile and analyze the contents thereof. Macato followed the manual in conducting the audit examination on the accused-appellant. The audit team forwarded the "beginning balance" from the "latest" cash examination on July 2, 2004 which was conducted by Belagan. After that, they added the debits to the accountabilities then deducted the credits of accountabilities. The team took the balance of the accused-appellant's accountabilities by adding the "beginning balance" of the "forwarded balance". The team arrived at the total cash accountability of ₱3,245,466.29—this was the

²⁰ See Exhibit "DD".

²¹ Exhibits "KK", "KK-1", "KK-2", "KK-2-a", and "KK-2-b".

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accused-appellant's accountability that should have been "on-hand" during the cash examination. Then they deducted the inventoried cash items of ₱1,143,390.00 and arrived at a difference of ₱2,102,076.29—which is the accused-appellant's cash shortage.²²

Prosecution's Formal Offer of Evidence and
Defense's Demurrer to Evidence

Meanwhile, the RTC issued an Order,²³ dated October 2, 2017, directing the prosecution to submit its formal offer of documentary evidence within ten (10) days from receipt of the said Order. The RTC likewise issued an Order,²⁴ dated November 22, 2017, giving the prosecution another ten (10) days within which to file the said pieces of documentary evidence.

On December 20, 2017, the accused-appellant filed her Demurrer to Evidence,²⁵ invoking the presumption of innocence. She contended that the prosecution presented only two witnesses, namely, Macato and Pataueg, who validated the audit balance forwarded by Belagan (who was not presented as witness). She likewise contended that the prosecution had rested its case but it had not yet offered its exhibits despite the trial court's directive to submit the same.

On January 8, 2018, the prosecution filed a Motion to Admit Formal Offer of Evidence with Formal Offer of Documentary Exhibits²⁶ and averred that: (1) as early as November 27, 2017, the prosecution had already prepared its written formal offer of evidence; (2) it was impossible for the prosecution to comply with the court's order to submit formal offer of evidence because it was discovered that the accompanying exhibits were nowhere to be found as the same were misplaced when their office had undergone renovation during the last quarter of the year; and (3) it was only on January 5, 2018, after diligent efforts, that the misplaced exhibits were located. The prosecution, thus, formally offered Exhibits "A" to "M", Exhibits "CC", "DD", "FF", "GG", "HH", "II", "JJ" and "KK", including their respective "series", for the purpose that they shall form part of the prosecution witnesses'

²² See TSN dated September 28, 2016; p. 16.

²³ RTC Records, p. 255.

²⁴ RTC Records, p. 258.

²⁵ RTC Records, pp. 261-264.

²⁶ RTC Records, pp. 267-270.

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direct testimonies to prove all the allegations in the criminal information.

On February 19, 2018, the RTC issued an Order²⁷ granting the prosecution's *motion* to admit formal offer of evidence taking into consideration the prosecution's explanation for the delay.

On February 22, 2018, the accused-appellant filed her Comments/Objections to the Offer of Exhibits,²⁸ insisting that the prosecution's offer of evidence should be denied.

On March 8, 2018, the RTC issued an Order,²⁹ admitting the prosecution's Formal Offer of Documentary Exhibits based on the ground stated in its Motion to Admit Formal Offer of Evidence. The RTC observed that Macato identified the following: (1) *Exhibit "H", which is also Exhibit "DD" (Report of Cash Examination)*; (2) *Exhibit "CC" and series (certified true copy of the Cashbook)*; (3) *Exhibit "II" and series (Land Bank of the Philippines Statements)*; (4) *Exhibit "FF" and series (certified photocopies of the Bank Ledger)*; (5) *Exhibit "GG" and series (certified photocopy of the Statement of Account)*; (6) *Exhibit "HH" and series (certified photocopy of the Cash Disbursement Journals)*; and (7) *Exhibit "KK" and series (original copy of the Joint Affidavit of Pataueg and Macato)*. The dispositive portion of the RTC Order reads, thus:

WHEREFORE, Exhibit "H" which is the same as Exhibit "DD", "CC" and series, "II" and series, "FF" and series, "GG" and series, "HH" and series, and "KK" are admitted as part of the testimonies of the prosecution witnesses.

x x x x

SO ORDERED.³⁰

On July 2, 2018, the RTC issued an Order,³¹ denying the accused-appellant's Demurrer to Evidence; and admitting the prosecution's Exhibit "JJ", explaining that:

It is true that the prosecution presented only two witnesses to prove their case. However, they identified document(s) which the court believes would show that there was shortage in the cash and accounts of the accused in the amount

²⁷ RTC Records, pp. 274-275.

²⁸ RTC Records, pp. 278-281.

²⁹ RTC Records, pp. 288-290.

³⁰ RTC Records, pp. 288-290.

³¹ RTC Records, pp. 328-329.

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of ₱2,102,076.29 as reflected in the evidence which were admitted in the Order dated March 8, 2018, as follows: ‘

- Exhibit "CC to CC-58-b": Cashbook
- Exhibit "DD and series" : Report of Cash Examinations
- Exhibit "GG to GG-34": Statement of Account
- Exhibit "HH to HH-52": Cash Disbursement Journal
- Exhibit "JJ to JJ-296" : Copy of Report of Collection/Deposits
- Exhibit "KK and series": Joint Affidavit of Beatris A. Pataueg, Juliet Macato and Orvelita Palattao

In fact, said Exhibits "CC", "DD", "GG", "HH", "JJ" and "KK" are probably relevant evidence to show the said shortages incurred by the accused when she was Treasurer of the LGU, San Agustin, Isabela.

Likewise, the Demurrer to Evidence do not show any specific explanations or reasons why the accused is not liable for the shortage shown in the above documentary evidence which were offered and admitted.

Consequently, the Court committed an error when it denied admission of Exhibits "JJ" the Report of collection/deposits. Said Exhibit "JJ" was duly identified by witness Juliet Macato of COA and therefore the Order dated March 8, 2018 is hereby amended to include Exhibit "JJ", a copy of the Report of collections/deposits as one of those exhibits admitted ad part of the testimony of the prosecution witnesses.

x x x x

SO ORDERED.³²

Thereafter, the RTC allowed the defense to present its evidence. Thus:

DEFENSE'S VERSION

The Defense evidence consisted of the testimonies of the accused-appellant,³³ and Municipal Assessor Winnie Caibigan (Caibigan).³⁴

**The Accused-Appellant's
Direct Testimony:**

³² RTC Records, pp. 328-329.

³³ TSN dated January 21, 2019,

³⁴ TSN dated February 4, 2019.

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The accused-appellant testified that she was the Municipal Treasurer of San Agustin, Isabela from January 15, 1994 to June 16, 2010. Her official functions include receiving and accepting remittances of collections from employees in the Treasurer's Office; signing important papers and documents necessary to the operation of the office; making disbursements of salaries of employees; paying of office supplies/materials to creditors; and serving as custodian of the collections of the Treasurer's Office.

She admitted that she was a "bonded" official. Other "bonded" employees in the Treasurer's Office were authorized to collect, such as: Caibigan, then the Local Treasury Operations Officer 1; Gemma Aquino, Designated Disbursing Officer; Elmer B. Miguel, Revenue Collection Clerk 1; and Erlinda B. Basug (Basug), Revenue Collection Clerk 2.

The team of Belagan conducted an audit examination³⁵ on her cash and accounts covering the period January 1, 1998 to January 10, 2002, to January 11, 2002 to July 2, 2004. The audit team found that she incurred a cash shortage of ₱2,293,214.61. Basug incurred an accountability in the amount of ₱1,074,002.48. This prompted her to write a letter, dated March 7, 2005,³⁶ addressed to the Regional Director of the COA, requesting the latter to make a revalidation "*segregating*" her accountability with that of Basug. Later she found that Basug's total liability was reduced to ₱643,637.60, thereby increasing the accused-appellant's shortage to ₱1,649,577.01, arriving at a total balance of ₱2,293,214.61. The accused-appellant sent another letter, dated April 11, 2005,³⁷ to the COA Regional Director attaching documents in support of the computation of Basug's "unliquidated collections". The accused-appellant, however, did not receive any response to her letters.

Thereafter, the audit team led by Macato conducted an examination on the cash and accounts of the accused-appellant covering the period July 2, 2004 to February 1, 2006. Macato's audit team allegedly included the cash shortages of Basug to the accused-appellant's own accountabilities. The result was a cash shortage of ₱2,102,076.29. This, according to the accused-appellant, shows that there is a "discrepancy" between the first

³⁵ See Exhibit "H".

³⁶ See Annex "11-a" of Accused-appellant's Counter-Affidavit with Motion to Dismiss dated May 26, 2005.

³⁷ See Annex "11-b" of Accused-appellant's Counter-Affidavit with Motion to Dismiss dated May 26, 2005.

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audit examination conducted by Belagan's team and the second audit examination carried out by Macato's team. Had the audit team of Belagan and Macato examined the accounts of Basug and the other "bonded" employees of the Treasurer's Office, she should not have incurred liabilities.

The Accused-Appellant's
Cross Examination:

The accused-appellant confirmed that after two audits were conducted, the COA sent her a demand letter to produce the missing amount. Instead of complying, she sent two "letter-request" for the COA to conduct examination on the accounts of Basug, but the same was not acted upon. The amount of ₱643,637.68 and ₱1,074,002.48 are in the accounts of Basug and this should have been deducted from her (accused-appellant) cash accountability.

The audit was performed in her presence and in the presence of other accountable employees of the Treasurer's Office. The "bonded" employees report their daily collections and disbursements to her. She is responsible for her employees' actions and the shortages they may incur, since she was their superior.

The Accused-Appellant's
Re-Direct Examination:

The accused-appellant only learned about her cash shortage after the audit was performed. After she requested the COA for revalidation of the accounts of Basug, the latter allegedly confessed and admitted to her that she incurred accountabilities amounting to ₱1,074,002.48 and ₱643, 637.68.

Caibigan's Direct Testimony

Caibigan testified that she was the Local Operations Officer of the Local Government Unit of San Agustin, Isabela from May 6, 1996 to July 31, 2011. She was tasked to collect real property tax and other fees, and to issue receipts relative thereto. She prepared the "Statement of Unliquidated Collection"³⁸ of Basug, the then Revenue Collection Clerk II and Liquidating Officer of the

³⁸ See attachments in Annex "11-a" and Annex "11-b" of Accused-appellant's Counter-Affidavit with Motion to Dismiss dated May 26, 2005.

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Treasurer's Office. She knew that Basug has unliquidated collections, which was reduced from ₱1,000,000.00 plus to ₱643,637.68, based on the deposit slips and vouchers of Basug. She prepared the said "Statement of Unliquidated Collection" to show that Basug had unliquidated or unremitted collections that were added to the cash accountability of the accused-appellant. She reported this matter to the accused-appellant but she did not know if this was considered by the audit examiners. She has no knowledge whether the deposit slips and vouchers of Basug were part of the audit. She does not know whether the auditors were able to find out that Basug incurred unliquidated collections amounting to ₱600,000.00 plus.

The accused-appellant, being the Treasurer, should be accountable to Basug's unliquidated collections.

Defense's Formal Offer of Evidence and Position Paper

On February 8, 2019, the accused-appellant filed her Formal Offer of Exhibits,³⁹ as follows: (1) *Accused-appellant's Letter dated March 7, 2005 to the COA Regional Cluster Director Teresita Rios (Exhibit "1")*; (2) *Accused-appellant's Letter dated April 11, 2005 to the COA Director of Tuguegarao City, Cagayan (Exhibit "2")*; and (3) *Statements of Unliquidated Collections as of March 31, 2003 (Exhibits "3" and "4")*. The RTC, in its Order, dated February 28, 2019,⁴⁰ admitted these pieces of documentary evidence.

On April 2, 2019, the accused-appellant filed her Position Paper,⁴¹ arguing among others that: (1) the purpose provided by the prosecution for the presentation of all the documentary exhibits, were insufficient because there were witnesses who were not presented in Court; (2) *Exhibits "A" to "M"* were not identified by Belagan and Nario who first examined her accountabilities; and (3) the prosecution presented only two witnesses who were the auditors who validated the audit balance forwarded by Belagan.

RTC's Decision

³⁹ RTC Records, pp. 354-356.

⁴⁰ RTC Records, p. 363.

⁴¹ RTC Records, pp. 364-369.

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On May 20, 2019, in the absence of the accused-appellant and her counsel who both failed to appear, the RTC promulgated its *Decision*, dated April 26, 2019, convicting the accused, the dispositive portion of which reads, thus:

WHEREFORE, finding the accused, LILIA S. MANUEL, guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, in relation to Section 40 of R.A. No. 10951, is hereby sentenced to suffer imprisonment ranging from six (6) YEARS, as minimum to TEN (10) YEARS and ONE (1) DAY as maximum, and to pay the Local Government of San Agustin, Isabela the amount of ₱1,458,438.00.

A perpetual special disqualification from holding public office is also imposed upon accused Lillia Manuel.

SO ORDERED.⁴²

On the same date, the RTC issued an *Order*,⁴³ directing the issuance of a warrant of arrest against the accused-appellant in view of her absence.

On May 27, 2019, the accused-appellant filed an *Omnibus Motion for Reconsideration and With Leave of Court to Avail the Remedies Provided for in Section 6, Rule 120 of the Rules of Criminal Procedure*,⁴⁴ praying that the RTC's *Order*, dated May 20, 2019, be reconsidered, that the warrant of arrest issued against her be recalled, and that she be allowed to avail of all the remedies provided under Section 6, Rule 120 of the Revised Rules of Criminal Procedure. Finding the omnibus motion meritorious, in its *Order*, dated May 27, 2019, the RTC granted the same.

Hence, this appeal.⁴⁵

THE APPEAL

In her appeal,⁴⁶ the accused-appellant argues that:

1. Basug is one of the employees of the Treasurer's Office. She has an accountability in the amount of ₱1,074,002.16 and

⁴² RTC Records, p. 416.

⁴³ RTC Records, pp. 403-404

⁴⁴ RTC Records, pp. 420-423.

⁴⁵ *Notice of Appeal*, RTC Records, pp. 426-427.

⁴⁶ Records, pp. 70-85.

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₱643,637.60, which were not deducted from the accused-appellant's account. If these amounts had been deducted from accused-appellant's accountabilities, she should not have incurred cash shortages.

2. Caibigan testified that she prepared the "Statements of Unliquidated Collections" of Basug as of March 31, 2003 and identified the two (2) Statements of Unliquidated Collections attached as Annexes "7" and "8" (*Exhibits "3" and "4" for the defense*). The RTC, however, failed to give weight and due credence to the said documents. As such, the accountabilities as found by the RTC are incomplete, and the audit result erroneous. There is an incomplete audit which resulted to a cash shortage that was attributed solely to the accused-appellant's accountability. The audit is susceptible to errors and inaccuracies.

3. The *prima facie* presumption that an accountable officer converted the fund to his own use arises only when there is indubitable proof that the thing unaccounted for exists. Audit must be complete and trustworthy. If there is doubt, the presumption does not arise. Since the accused-appellant's request for revalidation audit on Basug's accountability was not granted, the cash examination report of auditors Belagan and Nario remain incomplete, irregular, incorrect and untrustworthy.

4. The RTC erred in appreciating the pieces of evidence against the accused-appellant considering that the prosecution failed to identify the documentary exhibits offered; to offer its evidence and its purposes on time; and to present the auditors who came up with the audit balance that was validated by Macato and Pataueg.

By way of response, the prosecution argues that:⁴⁷

1. The prosecution has established all the elements common to all acts of malversation under Article 217 of the RPC. Specifically, the accused-appellant did not dispute the existence of the first three elements of the crime when she admitted that she was the Municipal Treasurer of San Agustin, Isabela from January 1994 to June 2010, and she was a "bonded" employee and thus, accountable for public funds pursuant to Section 101⁴⁸ of Presidential Decree No. 1445.⁴⁹

⁴⁷ Records, pp. 159-179.

⁴⁸ Section 101. Accountable officers; bond requirement.

1. Every officer of any government agency whose duties permit or require the possession or custody of

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2. The prosecution's evidence shows that the accused-appellant incurred shortages. Upon demand to produce the missing funds, the accused-appellant failed to produce the same, giving no satisfactory explanation for the shortage. She failed to rebut the presumption that malversation has been committed when the public official could not account for the public funds in her custody after a demand has been made.

3. In contending that Basug's accountabilities should have been deducted from accused-appellant's, the latter had implicitly admitted that she was accountable for the missing funds or whatever was left of the funds after deducting Basug's accountabilities. Notably, the two Statements of Unliquidated Collections (as of March 2003) offered by the accused-appellant had not been authenticated by Basug—the one who allegedly signed and certified the said statements. It was not categorically stated in the said statements that the unliquidated collections pertain to Basug's accountabilities as her only participation was her alleged certification that the said statements were correct. The accused-appellant's claim that Basug admitted her accountabilities is hearsay and thus, inadmissible.

4. The accused-appellant's claim that she was in good faith when she requested a revalidation from the COA to determine Basug's accountabilities lacks merit. She was accountable for the public funds, including Basug's accountabilities since she has control and supervision over Basug. Even if the Court should consider the accused-appellant's contention that the shortages belong solely to Basug, malversation still exists. The accused-appellant created an opportunity for Basug to misappropriate when she incurred her shortages.

5. The accused-appellant's sole defense was to blame Basug, which was not even supported by clear and convincing evidence. Thus, the RTC correctly adjudged her to be guilty of malversation since she still incurred the final shortage amounting to ₱1,458,438.00.

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.

2. Every accountable officer shall be properly bonded in accordance with law.

⁴⁹ Ordaining and Instituting a Government Auditing Code of the Philippines. (1978)

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6. The RTC correctly admitted the prosecution's evidence in its Order, dated March 8, 2018. This is no longer an issue. The RTC considered the prosecution's meritorious reason as procedural technicalities which should not hamper the administration of justice.

ISSUE

Essentially, the issue for the Court's resolution is whether or not the accused-appellant's conviction for the crime of malversation of public funds under Article 217 of the RPC was proper.

RULING OF THE COURT

The appeal has no merit.

I. The accused-appellant's guilt has been proven beyond reasonable doubt.

The RTC did not commit a reversible error in its Decision convicting the accused-appellant of Malversation of public funds, defined and penalized under Article 217 of the Revised Penal Code, as amended. Thus:

Article 217. *Malversation of public funds or property. - Presumption of malversation.* - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

x x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

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The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by R.A. No. 1060) [Boldface supplied.]

The crime of malversation of public funds has the following elements: (a) that the offender is a public officer; (b) that he had the custody or control of funds or property by reason of the duties of his office; (c) that the funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁵⁰

The elements of the crime charged were duly established against the accused-appellant.

First, it is undisputed that the accused-appellant was the Municipal Treasurer of San Agustin, Isabela from January 1994 to June 2010 or at the time material to this case.

Second, it is the inherent function of accused-appellant, by reason of her position as the Municipal Treasurer, to take custody of and exercise proper management of the local government's funds as embodied in Section 470(d)(2)⁵¹ of Republic Act No. 7160.⁵² During her direct examination, the accused-appellant testified that:

[DIRECT EXAMINATION]
ATTY. BETGUEN

Q: And as the treasurer of that municipality, what were your functions?

A: My main function is to receive and accept remittances of collections from employees in the treasurer's office and sign important papers and documents that are necessary in the operation of the office, make disbursements of salaries of the

⁵⁰ *Ocampo III v. People*, G.R. Nos. 156547-51 & 156384-85, February 4, 2008, 543 SCRA 487, 505-506.

⁵¹ (d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall: x x x (2) Take custody and exercise proper management of the funds of the local government unit concerned. x x x

⁵² Local Government Code of 1991.

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employees and laborers and payment of office supplies/materials to creditors and serve as custodian of our collections in the office.⁵³

Third, the funds from her collections as treasurer were unquestionably public funds for which she was accountable. As correctly pointed out by the prosecution, the accused-appellant was a “bonded” employee and as such, accountable for public funds pursuant to Section 101⁵⁴ of Presidential Decree No. 1445.⁵⁵

As to the *fourth* element, the accused-appellant failed to rebut the *prima facie* presumption that she has converted the missing funds representing a cash shortage of ₱2,102,076.29 to her own personal use.

The records disclosed that the accused-appellant, indeed, incurred shortages in her collections based on the documents presented by the prosecution, such as: (1) *Cash Book* duly signed by the accused-appellant;⁵⁶ (2) *General Ledger*;⁵⁷ (3) *Statement of Accounts*;⁵⁸ (4) *Cash Disbursement Journal*;⁵⁹ (5) *Copy of Land Bank of the Philippines Bank Statements*;⁶⁰ and (6) *Copy of the Report of Collections*.⁶¹ The RTC aptly explained that:

X X X X

According to prosecution witness Juliet Macato, the above documents/records show that the total cash accountability is ₱35,292,733.57 which represent all the money received by the accused but she deposited only the amount of ₱32,047,267.28 leaving a cash shortage of ₱3,245,466.29.

The said amount of ₱35,292,733.57 was the amount of all the monthly transactions as reflected in the cash book (Exh. “CC” to “CC-58”) for the period above-mentioned. Thus, as testified to by prosecution witness Juliet Macato:

⁵³ TSN dated January 21, 2019.

⁵⁴ Section 101. Accountable officers; bond requirement.

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.

2. Every accountable officer shall be properly bonded in accordance with law.

⁵⁵ Ordaining and Instituting a Government Auditing Code of the Philippines. (1978)

⁵⁶ Exhibits “CC”, “CC-1” to “CC-58”.

⁵⁷ Exhibits “FF” to “FF-14”

⁵⁸ Exhibits “GG” to “GG-34”.

⁵⁹ Exhibits “HH” to “HH-52”. v

⁶⁰ Exhibits “II” to “II-124”.

⁶¹ Exhibits “JJ” to “JJ-296”.

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PROSECUTOR:

Q: During the actual cash examination, how much all in all was the fund for the Municipality of San Agustin if you can still remember?

x x x x

A: In our examination, the total cash accountability which we totaled is ₱35,292,733.57 all the money received by her and she deposited ₱32,047,267.28 leaving the cash accountability of ₱3,245,466.29.

PROSECUTOR:

Q: So you found out during your actual cash examination that Lilia Manuel has a total cash accountability of ₱3,245,466.29.

A: Yes, Sir.

Q: You made mentioned (sic) of the amount of ₱35,292,733.57, where did you derive that?

A: We verified it and summarized all the monthly transactions for that period.

Q: Do you have any personal knowledge based on your actual cash examination on the source of this amount?

A: Yes, it is in the cash book. And these cash book (sic) were taken from the original documents vouchers, official receipts and everything.

(TSN, July 3, 2013, pp.7-8)

Juliet Macato explained further that from the shortage of ₱3,245,466.29, the amount of ₱1,143,390.00, representing cash advances received by several employees (TSN, July 16, 2014, p.9) was deducted, leaving the amount of ₱2,102,076.29 as actual shortage incurred by the accused during the above period from July 2, 2004 up to February 1, 2006.

Again, the audit team relied on the above records (Exh. "CC" and series, "FF" and series, "GG" and series, "II" and series, and "JJ" and series) to arrive at the amount of ₱35,292,733.57, as the money received by the accused from July 2, 2004 to February 1, 2006. Such amount includes the beginning balance of ₱2,293,214.61 which is actually the ending balance of the last audit undertaken by another COA team. Likewise, the amount of ₱32,047,267.28 as cash deposited were supported by said records. At the end of their audit, the COA team arrived at the

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conclusion that there was a shortage, which may be considered as misappropriated amount of ₱2,102,076.29.

x x x x⁶²

Records likewise disclosed that the COA Regional Office sent a "Letter of Demand," dated February 8, 2007, addressed to the accused-appellant which the latter received on May 7, 2007. The accused-appellant was immediately asked to produce the missing funds amounting to ₱2,102,076.29 within seventy-two (72) hours with a written explanation why the shortage has occurred.⁶³

The accused-appellant, however, was unable to return the missing funds and proffer a satisfactory explanation therefor, notwithstanding the prosecution's evidence of shortage on her account. Her failure to account for the missing funds gave rise to the presumption in Article 217 of the RPC, as amended, that "[t]he failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, is prima facie evidence that she has put such missing funds or property to personal uses." The accused-appellant failed to dispute or rebut this presumption. She did not present adequate evidence that could have nullified any likelihood that she put the missing funds to personal use, or evidence showing that she had fully accounted for the alleged cash shortage.

Instead, she relied on the defense of denial, and shifted the blame on someone else, *i.e.*, Erlinda Basug, who was then the Revenue Collection Clerk II and Liquidating Officer of the Treasurer's Office.

This is unavailing.

Indeed, a denial is essentially a negation of a fact, that does not prevail over an affirmative assertion of the fact.⁶⁴ Thus, courts—both trial and appellate—have generally viewed the defense of denial in criminal cases with considerable caution, if not with outright rejection.⁶⁵ Such judicial attitude comes from the recognition that denial is inherently weak and unreliable by virtue of

⁶² RTC Records, pp. 411-412.

⁶³ See Exhibits "EE", "EE-1", "EE-1-a", "EE-1-b", and "EE-1-c".

⁶⁴ *People v. Velasco, et.al.*, G.R. No. 195668, June 25, 2014, 722 SCRA 257.

⁶⁵ *Id.* [Velasco Case.]

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its being an excuse too easy and too convenient for the guilty to make.⁶⁶

It is erroneous for the accused-appellant to insist that had the accountabilities of Basug been deducted from her account, she should no longer be held liable for the missing funds.

In her brief, the accused-appellant erroneously theorized that Basug had the accountabilities of ₱1,074,002.16 and ₱643,637.60, or a total amount of ₱1,727,639.76, which should have been deducted from the accused-appellant's total cash shortage of ₱2,102,076.29.

However, the accused-appellant herself in her letter, dated April 11, 2005 (Exhibit "2"), to The Director, RLAO of the Commission on Audit, admitted and clarified that Basug's accountability in the amount of ₱1,074,002.16 mentioned in her letter, dated March 7, 2005 (Exhibit "1"), should already be disregarded, because "due to further verification and analysis, it turned out that her (Basug's) total accountability was reduced to Six Hundred Forty Three Thousand Six Hundred Thirty Seven & 60/100 (₱643,637.60)." The accused-appellant's letter, dated April 11, 2005 reads:

April 11, 2005

The Director
RLAO
Commission on Audit
Region 02
Tuguegarao City, Cagayan

Sir:

This has reference to the letter of Regional Cluster Director, Dir. Teresita R. Rios dated March 18, 2005 which was received on April 7, 2005.

In compliance, I am respectfully submitting your good office valid documents in support to the computation of the accountability of the Liquidating Officer, Mrs. Erlinda B. Basug.

As reported earlier, the accountability of Mrs. Erlinda B. Basug amounted to ₱1,074,002.48. But due to further verification and analysis, it turned out that her total

⁶⁶ Id. [Velasco Case.]

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accountability was reduced to Six Hundred Forty Three Thousand Six Hundred Thirty Seven & 60/100 (₱643,637.60) thereby increasing my shortage to One Million Six Hundred Forty Nine Thousand Five Hundred Seventy Seven & 01/100 (₱1,649,577.01) to arrive at a total shortage of Two Million Two Hundred Ninety Three Thousand Two Hundred Fourteen & 61/100 (₱2,293,214.61).⁶⁷ Please find attached supporting documents.

For your information and appropriate action.

Thank you.

Very respectfully yours,

(Signed)
LILIA S. MANUEL
Municipal Treasurer

Thus, the court *a quo* correctly observed from the testimony of the accused-appellant and defense witness Caibigan, that the accused-appellant still incurred a shortage of ₱1,458,438.69. This amount was derived by deducting the amount of ₱643,637.60 which was Basug's personal accountability from accused-appellant's ₱2,102,076.29 accountability based on the findings of the audit team. In short, this Court sustains the finding of the court *a quo* that the final shortage of accused-appellant is ₱1,458,438.69. Thus:

xxx [T]he accused pointed out that there were other accountable employees in her office, who are also bonded, namely: x x x Erlinda Basug, Revenue Collection Clerk 2 x x x accountable and incurred a shortage in the final amount of ₱643,637.60 which represents the unliquidated collection.

Defense witness Winnie Caibigan corroborated the existence of the said shortage of Mrs. Erlinda Basug in the amount of ₱643,637.60. In fact, said witness was the one who prepared the final Statement of Unliquidated Collections of Erlinda Basug (Exh. "4") showing that the amount of ₱643,637.60 is the total unliquidated collection of Erlinda Basug. Said letter dated April 11, 2005 (Exh. "2") of Lilia Manuel would show that she stated therein that she incurred a shortage in the amount of ₱1,649,577.01 after deducting the said amount of ₱643,637.60.

⁶⁷ Boldface supplied for emphasis.

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Consequently, giving the benefit of the doubt and appreciating the evidence presented by the accused and her witness Winnie Caibigan that the sum of ₱643,637.60 is the personal obligation of Erlinda Basug, being her unliquidated collection, still the accused incurred a shortage in the amount of ₱1,458,438.69 (₱2,102,076.29-₱643,637.60).

Likewise, the accused claimed that Erlinda Basug have (sic) another unliquidated collection in the amount of ₱1,074,002.48. Unfortunately, there is no convincing evidence to prove that really Erlinda Basug incurred said unliquidated collection. She even stated that only the amount of ₱643,637.60 was the subject of her letter addressed to the COA, thus:

“FISCAL ERCILLA:

Q: And you also mentioned a while ago that in your two letters addressed to the COA, you mentioned in both letters that those aforesaid amounts should be deducted from your accounts, right?

A: The later one, the 643.

Q: The ₱643,637.60?

A: Yes.

Q: Only?

A: Yes.

(TSN, dated January 21, 2019, p. 18).

Hence, the Court is inclined to consider the amount of ₱643,637.60 the unliquidated collection of Erlinda Basug as not [sic] part of the shortage of herein accused and therefore must be deducted from the amount of ₱2,102,076.29 leaving a balance of ₱1,458,438.69 as the final shortage of herein accused.⁶⁸

Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is still committed; hence, a conviction is proper.⁶⁹ Indeed, in the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that she did not have them in her possession when demand therefor was made, and that she could not satisfactorily explain her failure to do so.⁷⁰

Accordingly, with the evidence adduced by the People being

⁶⁸ RTC Records, pp. 412-413.

⁶⁹ *Cabello v. Sandiganbayan*, G.R. No. 93885, May 14, 1991, 197 SCRA 94, 103, cited in *Cantos v. People*, G.R. No. 184908, July 3, 2013, 700 SCRA 535, 545.

⁷⁰ *Sarigumba vs. Sandiganbayan*, G.R. No. 154239-41, February 16, 2005, 451 SCRA 533, 554.

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entirely incompatible with the accused-appellant's claim of innocence, this Court hereby upholds and affirms the court *a quo*'s judgment of conviction. Indeed, the evidence presented to establish the accused-appellant's guilt passed the test of moral certainty.

II. The RTC correctly admitted the
Prosecution's Formal Offer of Evidence.

We give a short shrift to the accused-appellant's submission that the prosecution had "*failed many times to file their offer of evidence despite several extensions*", implying that the RTC acted improperly. It is a matter of record that the RTC issued an Order,⁷¹ dated October 2, 2017, directing the prosecution to submit its formal offer of documentary evidence within ten (10) days from receipt of the Order. Although the prosecution failed to comply with the directive, the RTC, in its Order⁷² dated November 22, 2017, gave the prosecution another ten (10) days within which to file the said pieces of documentary evidence. Thereafter, or on January 20, 2018, the prosecution filed a Motion to Admit Formal Offer of Evidence, explaining that as early as November 27, 2017, it had already prepared its formal offer of evidence but the accompanying exhibits were misplaced due to the renovation of its office.⁷³ In its Order,⁷⁴ dated February 19, 2018, the RTC admitted the prosecution's Formal Offer of Documentary Evidence which was attached to the said motion, taking into consideration the prosecution's explanation for the delay. It should be mentioned that the accused-appellant was given the opportunity, and in fact, it was able, to file her Comments/Objections to the Offer of Exhibits.

The sequence of events can hardly amount to any procedural irregularity. It appears that there was, indeed, a valid and justifiable reason for the prosecution's failure to formally offer its evidence,⁷⁵ *i.e., the accompanying exhibits were misplaced due to the renovation of its office.*

Significantly, the rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence

⁷¹ RTC Records, p. 255.

⁷² RTC Records, p. 258.

⁷³ See "*Motion to Admit Formal Offer of Evidence*", RTC Records, pp. 267-270.

⁷⁴ RTC Records, pp. 274-275.

⁷⁵ See *Benares v. Lim*, December 14, 2006.

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submitted against them and take the necessary actions to secure their case.⁷⁶

It bears stressing that the present case does not involve an instance where there is absolute failure on the part of the prosecution to file its formal offer of evidence. Contrariwise, the prosecution *actually* filed its formal offer of evidence (albeit not on time), giving the accused-appellant an opportunity to evaluate the evidence against her. The constitutional right of due process was, thus, observed.

III. The Penalty.

As mentioned earlier, the final shortage that the accused-appellant owed the State is ₱1,458,438.69. Under paragraph 4, Article 217 of the RPC, the penalty to be imposed if the amount involved is more than ₱22,000.00 is *reclusion temporal* in its maximum period to *reclusion perpetua*.

In view, however, of the passage of RA 10951 on August 29, 2017, which amended Article 217 of the Revised Penal Code, reducing the penalty to be imposed against that accused-appellant, and considering that pursuant to Article 22 of the Revised Penal Code that the law shall be given retroactive application if it is favorable to the accused, the imposable penalty is subject to modification. Thus:

Art. 217. *Malversation of public funds or property. — Presumption of malversation. —* Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or *malversation* of such funds or property, shall suffer:

1. The penalty of *prision correctional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty

⁷⁶ *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 543 (2006), citing *Pigao v. Rabanillo*, 522 Phil. 506, 517-518 (2006).

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thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

3. The penalty of *prisión mayor* in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

5. The penalty of *reclusion temporal* in its maximum period if the amount involved is more than Four million (₱4,000,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use. (As amended by RA 10951)

Based on the foregoing, since the accused-appellant misappropriated the amount of ₱1,458,438.69, she shall suffer the penalty of *prisión mayor* in its maximum period to *reclusion temporal* in its minimum period, which ranges from ten (10) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law,⁷⁷ the RTC correctly ruled that the imposable penalty is six (6) years of *prisión correccional*, as minimum to ten (10) years and one (1) day of *prisión mayor*, as maximum.

Since every crime gives rise to (1) a criminal action for the punishment of the guilty party and (2) a civil action for the

⁷⁷ The relevant portion of the Indeterminate Sentence Law provides:

Section 1. x x x in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

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restitution of the thing, repair of the damage, and indemnification for the losses,⁷⁸ the accused-appellant is ordered to pay the Local Government of San Agustin, Isabela the amount of ₱1,458,438.69.

In addition, as provided under the penultimate paragraph of Article 217 of the Revised Penal Code, as amended, the accused-appellant shall also suffer the accessory penalty of perpetual special disqualification from holding public office, and will be imposed a fine equivalent to the amount of funds malversed.

WHEREFORE, the appeal is **DENIED**. The Decision, dated April 26, 2019, of the Regional Trial Court of Echague, Isabela, Branch 24, convicting accused-appellant Lilia S. Manuel of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended by RA No. 10951, is hereby **AFFIRMED**, except for the penalty imposed.

The accused-appellant is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of *prision correccional*, as minimum to ten (10) years and one (1) day of *prision mayor*, as maximum, with perpetual disqualification from holding public office.

The accused-appellant is directed to retribute the amount of ₱1,458,438.69 to the Local Government of San Agustin, Isabela.

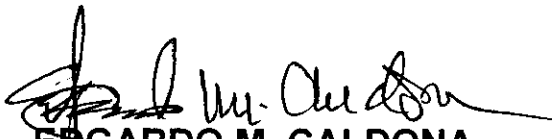
Finally, a fine in the amount of ₱1,458,438.69 is hereby imposed against the accused-appellant.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson/Associate Justice

We Concur:


GERALDINE FAITH A. ECONG
Associate Justice


EDGARDO M. CALDONA
Associate Justice

⁷⁸ See *Romero v. People, et.al.*, G.R. No. 167546, July 17, 2009.

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ATTESTATION

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


EFREN N. DE LA CRUZ
Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

