

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NO. SB-12-CRM-0150
*For: Violation of Article 217 of the
Revised Penal Code (Malversation)*

- versus -

OSCAR P. PARUNGAO,
Accused.

Present:
HERRERA, Jr., J., Chairperson
MUSNGI, J., Associate Justice
PAHIMNA, J., Associate Justice

June 8, 2017

Promulgated *AF*

RESOLUTION

MUSNGI, J.:

The Court resolves the *Demurrer to Evidence*¹ filed by accused Oscar P. Parungao (“Parungao”) on 09 September 2016, the *Omnibus Motion*² filed by the prosecution on 21 September 2016, the *Comment/Opposition (Omnibus Motion & Ad Cautelam)*³ filed by accused Parungao on 25 October 2016, and the *Reply (Comment/Opposition)*⁴ filed by the prosecution on 14 November 2016.

In his *Demurrer to Evidence*, the accused relies on the Commission on Audit (“COA”) Rules and Regulations, which require State Auditors to conduct a regular cash examination on the books of local government units every six (6) months.⁵ He claims that State Auditor Constantino R. Gatchalian’s conduct of the cash examination only after two (2) years made the audit findings inaccurate, incorrect, and irregular. Accused Parungao assails the accuracy of the Reconciliation Statement of Balance because it did not use the form required by the COA Manual on Cash Examination. He also questions the failure of the prosecution to present the cashbooks and subsidiary ledgers.

¹ Records, pp. 276-280

² *Ibid.*, pp. 283-294.

³ *Ibid.*, pp. 302-320.

⁴ *Ibid.*, pp. 321-323.

⁵ *Ibid.*, p. 277.

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In its *Omnibus Motion*, the prosecution maintains that the *Demurrer to Evidence* was filed by the accused four (4) days beyond the period allowed by the Revised Rules on Criminal Procedure. It alleges that the grounds cited by the accused in his *Demurrer to Evidence* are all evidentiary in nature and must still be proven during trial. It contends that the testimonies of State Auditor Gatchalian, Cluster Director Danilo Lagason, and Chief Legal Officer Atty. Horacio Oida disprove the accused's claim of inaccuracy, incorrectness, and irregularity.

In his *Comment/Opposition (Omnibus Motion & Ad Cautelam)*, accused Parungao asserts that the *Demurrer to Evidence* was filed through registered mail within the reglementary period of ten (10) days pursuant to the order of the Court. He reiterates that the shortage of funds which was attributed to him was not indubitably established considering that the audit conducted was incomplete, irregular, and inaccurate and did not follow standard auditing procedures by excluding from the examination the other unrecorded deposit slips. According to him, this casts doubt on the accuracy and reliability of the audit conducted by State Auditor Gatchalian. He also argues that the conduct of special audit only after two (2) years was a blatant violation of the COA rules and regulations to his prejudice.

In its *Reply (Comment/Opposition)*, the prosecution maintains that State Auditor Gatchalian already testified that the audit report is valid, which was confirmed by Director Lagason and Atty. Oida when they testified in open court. It also advances the presumption of regularity of the acts of the said public officers.

RULING

The accused's *Demurrer to Evidence* is denied for lack of merit.

Timeliness

On 24 August 2014, the Court gave the accused ten (10) days, or until 03 September 2016, within which to file a *Demurrer to Evidence*.⁶ As the said date falls on a Saturday, the deadline for filing should be 05 September 2016. The Registry Receipt attached as Annex 1⁷ to the accused's *Comment/Opposition* shows that the *Demurrer to Evidence* was filed on 05 September 2016. Therefore, it was filed on time.

⁶ Records, pp. 272-273.

⁷ *Ibid.*, p. 319.

Handwritten signatures and initials.

Presumption of Malversation

The last paragraph of Article 217 of the Revised Penal Code provides: "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."⁸ The Supreme Court explained such presumption of law as follows:

Under Article 217, a presumption was installed that upon demand by any duly authorized officer, **the failure of a public officer to have duly forthcoming any public funds or property with which said officer is accountable should be prima facie evidence that he had put such missing funds or properties to personal use.** When these circumstances are present, a presumption of law arises that there was malversation of public funds or properties as decreed by Article 217. To be sure, this presumption is **disputable and rebuttable by evidence showing that the public officer had fully accounted for the alleged cash shortage.**⁹

In the instant case, there was a cash shortage amounting to PhP3,933,213.08 in the cash collection of the accused as City Treasurer of San Fernando, Pampanga. Such shortage was supported by the *Report of Cash Examination* (Exhibits "P to P-5"), *Affidavit of State Auditor Gatchalian* (Exhibit "D"), *Letter from Legal and Adjudication Office of COA* dated 17 June 2008 (Exhibit "C"), *Demand Letter* dated 29 February 2008 from State Auditor Gatchalian addressed to accused Parungao (Exhibit "G"), *Reply Letter* of accused Parungao dated 24 March 2008 (Exhibit "H"), *Letter* dated 12 February 2008 addressed to COA Cluster Director Leonardo J. Jamoralin (Exhibit "O"), *Due from Officers and Employees-123 Account of accused Parungao* as of 31 March 2016 (Exhibit "Y"), *Summary of Due from Officers and Employees* as of 31 March 2016 (Exhibit "Z"), *Complaint Affidavit* dated 24 October 2007 (Exhibit "A"), and *Fact-Finding Report* dated 24 October 2008 (Exhibit "B").

It was established that State Auditor Gatchalian, a duly authorized officer, demanded from accused the return of the amount of cash shortage. Accused Parungao neither returned such amount nor explained its whereabouts satisfactorily. Hence, there is a presumption that he has put the missing funds to personal use.

⁸ An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 217 (1930).

⁹ *Legrama v. Sandiganbayan*, G.R. No. 178626, 13 June 2012 (citation omitted) (emphasis supplied).

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While the presumption of malversation is still disputable, the accused has not yet presented his evidence at this stage of the proceedings. Accordingly, the presumption of malversation should stand.

Existence of the Elements of Malversation

The accused is charged with malversation under Article 217 of the Revised Penal Code, the elements of which are as follows:

1. that the offender is a public officer;
2. that he had the custody or control of funds or property by reason of the duties of his office;
3. that those funds or property were public funds or property for which he was accountable; and
4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.¹⁰

As borne by the record of this case, the first element of the alleged offense is present. The *Pre-Trial Order* dated 01 December 2014¹¹ shows that the parties have stipulated that the accused was a public officer, specifically the City Treasurer of San Fernando, Pampanga, at the time of the commission of the alleged offense.

The *second and third elements* are likewise present. Accused Parungao, as City Treasurer, had the duty to have custody and the obligation to exercise proper management of the city funds of San Fernando, Pampanga. His duties include advising the mayor, the *sanggunian*, and other local government officials regarding disposition of local government funds, and on such other matters relative to public finance, taking custody of and exercising proper management of the funds of the city, taking charge of the disbursement of all city and such other funds the custody of which may be entrusted to him by law or other competent authority, inspecting private commercial and industrial establishments within the jurisdiction of the city, and maintaining and updating the tax information system of the city, among others.¹²

Anent the *fourth element*, the prosecution presented evidence showing that the accused appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take the subject

¹⁰ Tello v. People of the Philippines, G.R. No. 165781, 05 June 2009.

¹¹ Records, p. 165.

¹² An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE], Republic Act No. 7160, sec. 470 (1991).

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public funds. The following exhibits show that a shortage exists as regards the funds under the custody of accused Parungao:

1. *Report of Cash Examination* (Exhibits "P to P-5");
2. *Affidavit of State Auditor Gatchalian* (Exhibit "D");
3. *Letter from Legal and Adjudication Office of COA* dated 17 June 2008 (Exhibit "C");
4. *Demand Letter* dated 29 February 2008 from State Auditor Gatchalian Addressed to accused Parungao (Exhibit "G");
5. *Reply Letter* of accused Parungao dated 24 March 2008 (Exhibit "H");
6. *Letter* dated 12 February 2008 Addressed to COA Cluster Director Leonardo J. Jamoralin (Exhibit "O");
7. *Due from Officers and Employees-123 Account of accused Parungao* as of 31 March 2016 (Exhibit "Y");
8. *Summary of Due from Officers and Employees* as of 31 March 2016 (Exhibit "Z");
9. *Complaint Affidavit* dated 24 October 2007 (Exhibit "A"); and
10. *Fact-Finding Report* dated 24 October 2008 (Exhibit "B").

In *Cabarlo v. People of the Philippines*,¹³ the Supreme Court has explained the evidence required to prove the existence of the fourth element of malversation, to wit:

Thus, what remains to be resolved is whether petitioner has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property.

Pursuant to Article 217 of the Revised Penal Code, the failure of the petitioner to have duly forthcoming such public funds or property upon demand, is prima facie evidence that he has put such missing funds to personal use. **Being an accountable officer, petitioner may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his accounts which he is unable to explain.**¹⁴

The existence of cash shortage is not in doubt. What the accused assails are the methods used by COA officials and employees in conducting the audit, and consequently in coming up with the finding of the said shortage.

¹³ G.R. No. 172274, 16 Nov. 2006.

¹⁴ *Id.* (emphasis supplied).

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The auditors are presumed to have regularly performed their official duties.¹⁵ The accused cited *Ombudsman v. Zaldarriaga* (G.R. No. 175349, 22 June 2010) in questioning the alleged irregularities conducted by the auditors. However, the said case involved a different set of facts. In *Zaldarriaga*, there were two audit reports, one of which showed zero balance.¹⁶ In the present case, there was no audit that showed zero cash shortage.

In the instant case, the adjustment in the amount of the cash shortage was made when the auditors discovered that some items in the cash and account of the accused were not recorded in the cashbooks and subsidiary ledgers.¹⁷ The Court deems such explanation sufficient and reasonable, considering that it is not the auditors' duty to make entries in the cashbooks and subsidiary ledgers.

Section 26, Rule 130 of the Revised Rules on Evidence provides: "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."¹⁸ In this case, the cash shortage was even impliedly admitted by the accused when he stated the following in his *Counter-Affidavit* dated 12 February 2009:

11. In support of my defense that I did not malverse funds in my custody, I have explained in my letter of March 24, 2008 to the state auditor that the amounts subject of the audit 'were given as cash advances to employees while some being paid vouchers, were lacking in supporting documents because they were not considered by the present dispensation' and that the same were 'unliquidated cash advances and IOUs extended to some city officials and employees by reason of pressure, and almost all the time due to false concern of a soft hearted person to the pleas for help from some city officials and employees.' The fact that the same were of the foregoing nature does not mean that I malversed the funds and converted them to my personal use.¹⁹

In the preceding declaration, accused Parungao impliedly admitted the shortage. While he attempted to explain the same, he provided no proof at all to support it. Furthermore, assuming that his reasons for the shortage were true, he failed to explain that such expenses are legal, especially the "unliquidated cash advances and IOUs extended to some city officials and employees by reason of pressure, and almost all the time due to false concern


¹⁵ REVISED RULES ON EVIDENCE, Rule 131, Sec. 3 (m).

¹⁶ *Ombudsman v. Zaldarriaga*, G.R. No. 175349, 22 June 2010.

¹⁷ Records, p. 14.

¹⁸ REVISED RULES ON EVIDENCE, Rule 130, Sec. 26.

¹⁹ Records, p. 27.

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of a soft hearted person to the pleas for help from some city officials and employees.”²⁰


Clearly, the accused has yet to prove that he was able to settle and liquidate the alleged cash advances. Hence, the presentation of defense evidence to dispute the presumption of law against accused Parungao is in order.

WHEREFORE, in light of the foregoing, the *Demurrer to Evidence* filed by accused Oscar P. Parungao on 09 September 2016 is hereby **DENIED** for lack of merit.

SO ORDERED.


MICHAEL FREDERICK L. MUSNGI
Associate Justice

WE CONCUR:


OSCAR C. HERRERA, JR.
Associate Justice
Chairperson


LORIFEL L. PAHIMNA
Associate Justice

²⁰ Records, p. 27.