



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE No. SB-16-
CRM-0316

For: Malversation of
Public Funds (Article 217 of the
Revised Penal Code)

-versus-

JOSE ANTONIO LEVISTE and
PHILIP JOHN B. MORENO,
Accused.

Present:

Lagos, J., Chairperson,
Mendoza-Arcega, J., and
Cruz, J. *

Promulgated:

July 17, 2017 *led*

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RESOLUTION

MENDOZA-ARCEGA, J.:

Before Us is a Motion for Reconsideration¹ filed by the prosecution on April 5, 2017 seeking to reverse the Court's Resolution² dated March 20, 2017.

*As per Administrative Order No. 025-2017 dated February 1, 2017.

¹ Records, pp. 399-406.

² Ibid., pp. 385-394.

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In its motion, the prosecution vigorously maintained that the Court erred in granting the Motion to Dismiss³ filed by Philip John B. Moreno's ("Moreno") since the latter can still be held liable under the original Information⁴.

It was asseverated that Moreno is an accountable officer as the public funds would not have been released to accused Jose Antonio Leviste ("Leviste") if not for the certification of the former. Moreno, as the Chief of the Financial Planning and Control Division, should have issued a Notice of Unliquidated Cash Advance to Leviste. In repeatedly processing, allowing and/or facilitating the cash advances of Leviste, Moreno must be held accountable for malversation of public funds.

Furthermore, the prosecution insisted that the dismissal of the criminal charge against Leviste⁵ does not warrant the quashal of the Information as regards accused Moreno since the Motion to Dismiss⁶ was only filed after the latter's arraignment. The said motion, which was considered by this Court as a motion to quash, should have been denied for the reason that the ground raised is not one of the exceptions laid down in Section 9, Rule 117⁷ of the Rules of Court. It is the prosecution's view that conspiracy is not an element of malversation; hence, the Information⁸ still charges an offense.

By way of opposition, Moreno filed a Reply and Opposition to the Reconsideration.⁹ It is Moreno's submission that there are no new matters raised in the Motion for Reconsideration¹⁰ that would necessitate the reversal of the earlier ruling of the Court granting his Motion to Dismiss¹¹. With the discharge of accused Leviste from the present case, the conspiracy theory of the prosecution has no more leg to stand on since conspiracy can only be committed by two or more persons.

THE COURT'S RULING

³ Ibid., pp. 362-365

⁴ Ibid., pp. 1-3.

⁵ Ibid., pp. 246-251.

⁶ Supra note 3.

⁷ Section 9, Rule 117 of the Rules of Court states:

"Section 9. Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule." (Emphasis supplied.)

⁸ Ibid., pp. 1-3.

⁹ Ibid., pp. 413-414.

¹⁰ Supra note 1.

¹¹ Supra note 3.

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After a conscientious evaluation of the records and a second hard look on the averments raised by the prosecution, the Court discerns no compelling reason to depart from its earlier ruling.

Invoking the case of *Tan, Jr. v. Sandiganbayan*,¹² the prosecution postulated that Moreno's Motion to Dismiss is not an exception to Section 9, Rule 117 of the Rules of Court because the Information still charges an offense since conspiracy is not an element of malversation.¹³

The argument must necessarily fail.

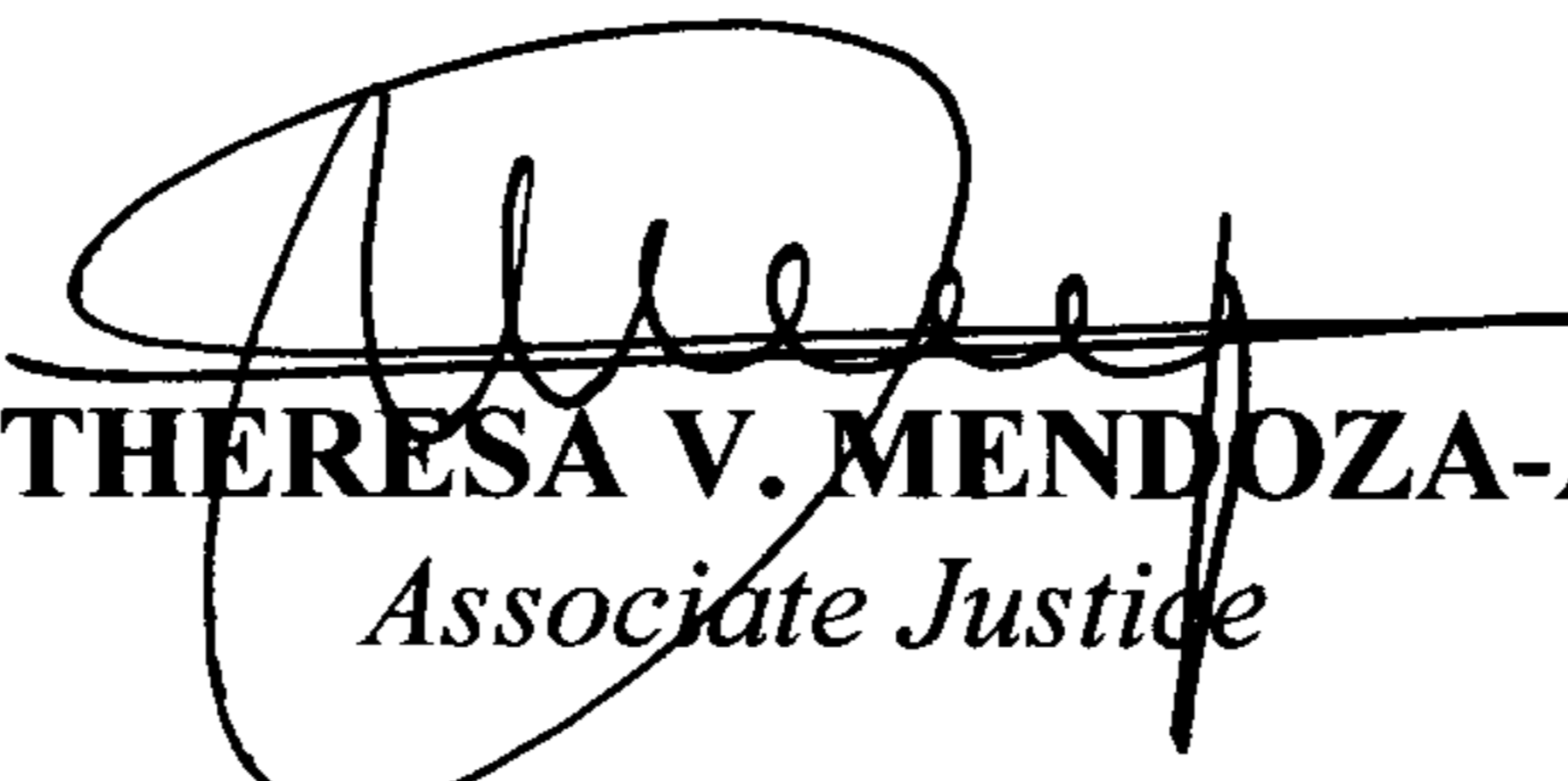
To begin with, the Court is not unaware that conspiracy is not an element of the felony of malversation of public funds. Emphasis must be made, however, that the Information indicting accused Moreno for malversation is hinged on the premise that Leviste is an accountable officer. As already ruled by this Court in its Resolution¹⁴ dated September 30, 2016, Leviste is not an accountable officer within the purview of the law since it was never his duty to collect money or property from the public; thus, he is not liable for malversation. To Our mind, Moreno would not have been charged in the present case if not for the alleged criminal liability of Leviste.

Above and beyond, there is no need to belabor on the matter as We have already discussed the same in the assailed resolution. The issues raised by the prosecution are mere rehash of its previous allegations and no new substantial matters have been asserted.

IN LIGHT OF ALL THE FOREGOING, the *Motion for Reconsideration* filed by the prosecution on April 5, 2017 is **DENIED** for utter lack of merit.

Accordingly, the Resolution dated March 20, 2017 hereby **STANDS**.

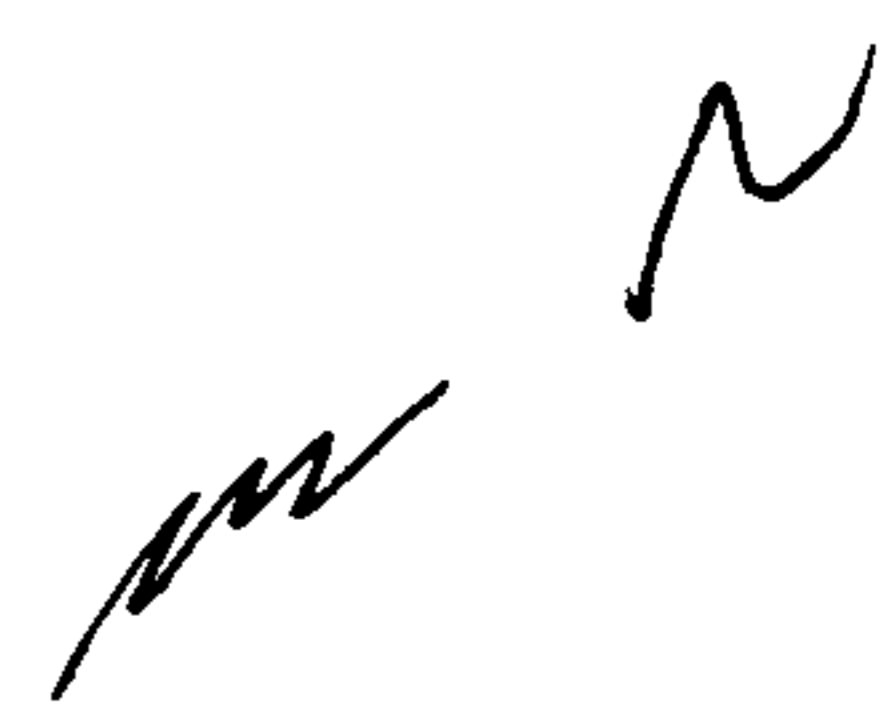
SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹² G.R. No. 128764, July 10, 1998.

¹³ *Supra* note 1, pp. 402-403.

¹⁴ *Ibid.*, p. 354.



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WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice

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