



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on September 13, 2017

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
BAYANI H. JACINTO ----- Associate Justice*

The following resolution was adopted:

SB-12-CRM-0237 & 0238 – People v. Amelia R. De Pano, et al.

Before the Court is:

1. The Prosecution's "MOTION FOR PARTIAL RECONSIDERATION" dated July 26, 2017 (Records, pp. 36-44)

Taking exception to this Court's Resolution dated July 11, 2017 dismissing the Malversation charges against the accused, the Prosecution seeks a reconsideration of this Court's finding that the accused were not accountable officers within the purview of Art. 217 of the Revised Penal Code.

In its *Motion for Partial Reconsideration*, the Prosecution maintains that the accused, who are engineers, were accountable officers as expressly provided under Sec. 340 of the Local Government Code, through their participation in the use or application of government funds. Sec. 340 of the Local Government Code intended to expand the definition of "accountable officer" with regard to local government officials, and this purpose would be rendered nugatory if not interpreted in harmony with Art. 217 of the Revised Penal Code, which does not distinguish as to the kind of accountability necessary to make a public officer liable therefor. In any event, since the Certification executed by the accused was indispensable in the disbursement

* Per A.O. No. 284-2017 dated August 18, 2017

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/ payment to the contractor, they had, to a certain extent, custody or control over the funds paid to the contractor.

Despite having been given time to comment on the *Motion*, the accused failed to do so.

The *Motion* is bereft of merit.

Quoted side-by-side below are Art. 217 of the Revised Penal Code and Sec. 340 of the Local Government Code:

Article 217, Revised Penal Code	Section 340, Local Government Code
<p><i>Malversation of public funds or property; Presumption of malversation.</i> — 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: x x x</p>	<p><i>Persons Accountable for Local Government Funds.</i> — 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.</p>

Indeed, one of the elements of Malversation under Art. 217 of the Revised Penal Code is that the accused **must be accountable for public funds by reason of the duties of his office.**¹ The absence of this element is categorical in the portion of Sec. 340 relied on by the Prosecution, which pins accountability and responsibility on other local officers, who are **not accountable by the nature of their duties**, through their participation in the use or application of local government funds. Simply put, these local officers who are not accountable by the nature of their duties, may be **held accountable**, but such accountability does not **transform** them into accountable officers within the contemplation of Art. 217 of the Revised Penal Code, which is determined by the **nature** of an accused's duties. What is decisive in Malversation is the nature of the duties that the accused performs and that as part of, and by reason of said duties, such accused receives public money or property which he/she is bound to account.²

As already discussed in the assailed Resolution, none of the functions of the accused, who are engineers, relates to the custody or control of funds. While the accused issued the Certification that was indispensable in causing the disbursement of funds, they did so in the performance of their duties as engineers, and not as custodians of local funds. Thus, contrary to the Prosecution's contention, the accused had no custody or control over the funds paid to the contractor.

¹ *Tello v. People*, G.R. No. 165781, June 5, 2009


² *Quion v. People*, G.R. No. 136462, September 19, 2002

It would have been different had the persons held accountable for public funds by reason of the duties of their office been similarly charged in these cases, as the accused.

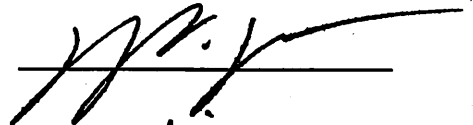
WHEREFORE, in view of the foregoing, the Prosecution's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

GOMEZ-ESTOESTA, J., Chairperson



TRESPESES, J.



JACINTO, J.

