



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 18 October 2017.

Present:

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

The following resolution was adopted:

Crim. Case No. SB-09-CRM-0002 - People vs. ROGELIO C. BAQUERFO, SR.

This resolves the following:

1. Accused Rogelio C. Baquerfo, Sr.'s "MOTION TO RECONSIDER THE DECISION" dated August 24, 2017;¹
2. The prosecution's "COMMENT/OPPOSITION (RE: MOTION FOR RECONSIDERATION OF THE DECISION DATED 10 AUGUST 2017)" dated October 10, 2017.²

For resolution is accused Rogelio C. Baquerfo, Sr.'s Motion to Reconsider the Decision filed on 25 August 2017.

ACCUSED'S MOTION FOR RECONSIDERATION

Accused seeks to reconsider the Court's Decision promulgated on 10 August 2017, which found him guilty beyond reasonable doubt of the crime of Malversation defined and penalized under Art. 217 of the Revised Penal Code (RPC).

Accused alleges that there is no proof that he has custody or control of the property by reason of his office. He claims that the bags of cement were delivered to him not in his official capacity as mayor, but as creditor, he having lent 350 bags of cement to the municipality of Tudela.

*Sitting as Special Member per Administrative Order No. 284-2017 dated 18 August 2017.

¹ *Rollo*, Vol. 2, pp. 291-296.

² *Id.* at 307-310.

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He further alleges that if he had charge of the funds or property by reason of his office or employment or was accountable for the same, then the crime is malversation; if not, then the crime is estafa.³

Accused added that there is likewise no proof that the property subject of the case is a public property for which he is accountable. Accused further claims that it was Municipal Treasurer Angelita Roble who had official charge of the property since, she was the one who signed the delivery receipt.

Finally, accused prays that good faith should be considered in his favor alleging that the act cannot be criminal unless the mind is criminal. In here, there is good faith on the part of accused who just intended that the bags of cement he advanced be replaced.

PROSECUTION'S COMMENT/OPPOSITION

In its Comment/Opposition, the prosecution counters that the arguments advanced by accused have already been addressed by the Court in the assailed Decision

The prosecution also alleges that accused failed to show why good faith should favor him. Accused's admission during the clarificatory hearing clearly demonstrated his real intention to get back the 350 bags of cement he allegedly loaned to the municipality.

On the other hand, what was proven is that the clean and green project was not part of the Annual Procurement Plan of the municipality and there was no appropriation on the budget for the said project. Thus, the defense of accused that he merely loaned the bags of cement to the barangay captain is merely an alibi or an afterthought and cannot be construed as good faith.

Finally, the prosecution avers that the penalty imposed must be reconsidered in the light of the recent enactment of Republic Act No. 10951 (RA No. 10951).

RULING

We resolve to **deny** accused's Motion for Reconsideration.

The Court has supported its findings and conclusions in the assailed Decision based on the evidence on record. The movant has not raised new matters or arguments that would persuade this Court to reverse its previous finding of guilt. Thus, the Court necessarily stands by its Decision.

³ Id. at 293 (page 3 of the Motion for Reconsideration).

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In the instant case, accused insists that the second and third elements of Malversation under Art. 217 of the RPC were not established.⁴

To recall, accused initially denied that the bags of cement subject of this case were delivered to his private warehouse. However, the pieces of evidence apparently proved that accused had custody of the subject bags of cement.

In the assailed Decision, the Court has established accused's custody of the bags of cement. Accused's admission during the clarificatory hearing before the Ombudsman and the affidavits of Amelito Singcol and Cerelito Laguna showed that the cement bags were delivered to his private warehouse.

Accused's argument that it was Roble who had the official charge over the property because she was the one who signed the delivery receipt also lacks merit.

It bears stressing that Municipal Mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities.⁵ Under Sec. 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds and property pertaining to his agency.⁶ As such, accused, who was the municipal mayor at the time material to this case, is an accountable public officer within the purview of Art. 217 of the RPC.

However, accused is now changing his defense and argues that he received the bags of cement not in his official capacity as municipal mayor but as a creditor.

It should be noted that the bags of cement were procured for the clean and green project. If accused would insist in his claim that he took possession or custody thereof as replacement to the ones he lent to the municipality, it necessarily confirms accused's conversion of public property

⁴ Accused is charged with malversation under Art. 217 of the RPC, which has the following elements:

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

⁵ Local Government Code of the Philippines, Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensation.-

(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

⁶ Government Auditing Code of the Philippines, Sec. 102- Primary and secondary responsibility- (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

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to his personal use, thereby amounting to malversation. But such is not the case here.

Accused's claim of good faith is also unconvincing.

Accused allowed the procurement of the bags of cement for the clean and green project by signing the purchase request,⁷ abstract of proposal,⁸ purchase order,⁹ disbursement voucher¹⁰ and the check.¹¹ He is therefore aware that the bags of cement should be used only for the said project. This negates accused's defense of good faith. Thus, accused cannot claim that they were replacement of the ones he lent to the municipality, and that they were delivered to him in his capacity as creditor.

MODIFICATION OF ORIGINAL PENALTY IMPOSED

While the Court maintains its findings, We find it proper to reconsider the penalty in view of the enactment of RA No. 10951, which took effect on 16 September 2017.

Record shows that the Decision was promulgated on 10 August 2017,¹² or prior to the effectivity of RA No. 10951. However, Sec. 100 of the said Act provides that it shall "have *retroactive effect* to the extent that it is favourable to the accused or *person serving sentence by final judgment.*" Considering that the provision of the said Act would benefit herein accused, the same should be given a retroactive application.

In the computation of penalty, the maximum term is the penalty properly imposed under the RPC after considering the attending circumstance, while the minimum term is within the range of the penalty next lower than that prescribed by the RPC of the offense committed.¹³

Under RA No. 10951, particularly Sec. 40 thereof states:

Section 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

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

⁷ Exh. N.

⁸ Exh. I.

⁹ Exh. B.

¹⁰ Exh. K.

¹¹ Exh. J.

¹² *Rollo*, Vol. 2, pp. 258-283.

¹³ *Bernardo U. Mesina v. People of the Philippines*, G.R. No. 162489, 17 June 2015.

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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:

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2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

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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 uses.

In the instant case, accused embezzled public property amounting to ₱57,750.00. Since the amount involved is more than ₱ 40,000.00, pursuant to the provision of RA No. 10951, the imposable penalty is *prision mayor* in its minimum and medium period; that is from six years and one day to ten years. The minimum period of said penalty is six years, and one day to seven years, and four months; its medium period is seven years, four months, and one day to eight years, and eight months; and the maximum of which is eight years, eight months and one day to ten years.¹⁴

In the absence of any aggravating and mitigating circumstances in this case, the maximum of the penalty should be fixed in its medium period.¹⁵ Thus, applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower from the maximum imposable penalty, shall be within the range of *prision correccional* in its medium and maximum period; or two years, four months, and one day to six years.¹⁶

Accordingly, the indeterminate sentence for accused is modified to two (2) years, four (4) months, and one (1) day of *prision correccional* in its

¹⁴ Luis B. Reyes, *The Revised Penal Code, Criminal Law*, Book 2, 2001 (Fifth Edition), p. 1024.

¹⁵ Art. 64. Rules for the application of penalties which contain three periods. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

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¹⁶ Luis B. Reyes, *The Revised Penal Code, Criminal Law*, Book 2, 2001 (Fifth Edition), p. 1022.

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minimum period as minimum, to seven (7) years, four (4) months and one day (1) of *prision mayor* in its medium period, as maximum.

WHEREFORE, premises considered, accused Rogelio C. Baquerfo, Sr.'s Motion for Reconsideration of the Decision is **denied** for lack of merit.

However, in view of the recent enactment of RA No. 10951 which finds application in the instant case, the dispositive portion of the assailed Decision, is hereby amended to read as follows:

WHEREFORE, premises considered, the Court finds accused Rogelio Baquerfo, Sr. **GUILTY** beyond reasonable doubt of the crime of malversation of public property, punishable under Art. 217 of the Revised Penal Code.

Accused Baquerfo, Sr. is sentenced to suffer the indeterminate penalty ranging from two (2) years, and four (4) months, and one (1) day of *prision correccional* in its minimum period, as minimum to seven (7) years, and four (4) months and one day (1) of *prision mayor* in its medium period, as maximum; to pay a fine of ₱ 57,750.00 to the Municipality of Tudela, Cebu, plus interest thereon at the rate of 6% *per annum* reckoned from the finality of this decision until the amount is fully paid.

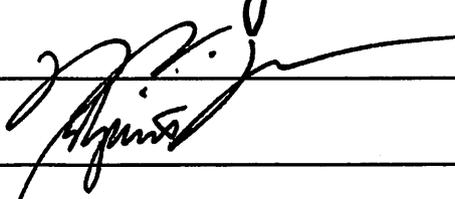
Accused Baquerfo, Sr. shall also suffer the penalty of **perpetual special disqualification from holding any public office** and to **pay the costs**.

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SO ORDERED.

Approved:

GOMEZ-ESTOESTA, J. Chairperson _____ 

TRESPESES, J. _____ 

JACINTO, J. _____