

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION


PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-11-CRM-0451
For: Malversation (Article 217 of
the Revised Penal Code)

- versus -

CLEMENTE G. SANDIGAN, JR.,
Accused.

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

October 25, 2017
Promulgated 

RESOLUTION

MUSNGI, J:

The Court Resolves the following:



- (1) *Motion for Reconsideration of the Honorable Court's Resolution dated 23 August 2017*¹ filed by the prosecution on 13 September 2017; and
- (2) *Comment/Opposition To Prosecution's Motion for Reconsideration of the Court's August 23, 2017 Decision*² filed by accused Clemente G. Sandigan, Jr. ("**SANDIGAN**") on 27 September 2017.

At the outset, the Court notes that the assailed *Decision*³ was promulgated on 22 August 2017 and not on 23 August 2017. The dispositive portion thereof reads, thus:

¹ Sandiganbayan Records Vol. II, pp. 752-764.

² *Ibid.*, pp. 768-769.

³ *Ibid.*, pp. 712-738.



“WHEREFORE, premises considered, the Court finds accused Clemente G. Sandigan, Jr. **NOT GUILTY** of the offense charged in Criminal Case No. SB-11-CRM-0451, for insufficiency of evidence. No civil liability is adjudged against him as the act or omission on which it can be based does not exist. The cash bond posted by the accused for his provisional liberty is ordered returned, subject to the usual accounting and auditing procedures of the Court, and the Hold Departure Order issued against him is ordered **LIFTED** and **SET ASIDE.**’

‘SO ORDERED.’

In its *Motion for Reconsideration*, the prosecution prays for the Court to set aside the above-cited *Decision* and to hold accused Sandigan guilty of Malversation of Public Funds under Article 217 of the Revised Penal Code. It asserts that the *Decision* was rendered based on an erroneous application of law and appreciation of evidence.

According to the prosecution, its evidence overwhelmingly proved the accused’s guilt beyond reasonable doubt. It posits that the defense evidence consists only of alibis and mere denials.

First, it reiterates that the totality of the prosecution evidence established the following: (a) the Municipality of Malimono, Surigao del Norte received the amount of P700,000.00 from the Priority Development Assistance Fund (“**PDAF**”) of then Senator Robert Z. Barbers (“**Senator Barbers**”); (b) accused Sandigan did not release the said fund to the Barangay Chairmen of the municipality and, hence, did not implement the barangay projects for which the said fund was allocated; and (c) accused Sandigan failed to account for the fund.

Second, the prosecution again argues that it is highly unbelievable and legally untenable for the accused to have mistaken the amount of P700,000.00 as part of the municipality’s General Fund because: (a) the said fund was already allocated for the various barangay projects of the municipality; (b) the law clearly provides the procedure for the procurement involving the implementation of these projects which includes, among others, the attachment to the Invitation to Bid of the Approved Budget for the Contract (“**ABC**”) to be bid and the source of funds. Hence, the prosecution claims that when the municipality published the invitation to bid for the rehabilitation of Barangay Hanagdong’s farm-to-market road, accused Sandigan was already aware that the source of fund therefor was not the Internal Revenue Allotment (“**IRA**”); and (c) there is an account code for each and every kind of government fund to be used but, in this case, the supporting documents for the rehabilitation of the farm-to-market road

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did not specifically indicate the account code of the fund from which it was sourced and, yet, the check to pay Alnor Construction was drawn from the fund under the municipality's Account No. 0982-1093-37.

Third, the prosecution maintains that the accused should be held liable for malversation because he failed to account for the amount of P700,000.00 which was received by the municipality from the PDAF of Senator Barbers. It disagrees with the Court's finding that the *prima facie* presumption under Article 217 of the RPC does not apply in this case. In support thereof, the prosecution cites the case of *Lumauig vs. People of the Philippines*⁴ wherein the Supreme Court held that prior demand is not necessary for conviction under Article 218 of the RPC. Nevertheless, the prosecution also maintains that when the Commission on Audit (COA) conducted a special audit on the financial transactions of the municipality, the demand to liquidate and to explain the nature of the said fund was already made. The failure of accused Sandigan to satisfactorily explain where the fund was used led to the filing of the instant case.

Lastly, the prosecution points out that the assailed *Decision* is contrary to the *Resolution*⁵ issued by the Court on 06 March 2014 which denied the accused's *Motion for Leave of Court to File Attached Demurrer to Evidence*⁶ because the prosecution evidence appears sufficient to convict the accused of the offense charged.

In his *Comment/Opposition*, accused Sandigan, through counsel, prays for the Court to deny the prosecution's *Motion for Reconsideration* based on the following grounds: (a) a judgment of acquittal cannot be modified because it is final upon promulgation, hence, the Court already lost jurisdiction over the instant case; and (b) double jeopardy has already set in.

Ruling

The instant *Motion* lacks merit.

In the case of *People of the Philippines vs. Tria-Tirona and Muyot*,⁷ the Supreme Court reiterated its pronouncement in *People of the Philippines vs. Velasco*⁸ that, in this jurisdiction, a judgment of

⁴ G.R. No. 166680, 07 July 2014.

⁵ *Supra* note 1, pp. 509-511.

⁶ Sandiganbayan Records Vol. I, p. 474.

⁷ G.R. No. 130106, 15 July 2005.

⁸ G.R. No. 127444, 13 September 2000.



acquittal after trial on the merits is immediately final and unappealable on the ground of double jeopardy.

Thus, a reconsideration of the assailed *Decision* acquitting the accused would constitute a violation of the constitutional proscription against double jeopardy. All its elements⁹ are attendant in this case. First, the *Information* filed against the accused is sufficient in form and substance to sustain a conviction. Second, it has already been established that the Court has jurisdiction over the instant case. Third, the accused, with the assistance of his counsel, entered a plea of not guilty upon arraignment on 31 July 2012. Lastly, the accused was acquitted for failure of the prosecution to prove beyond reasonable doubt all the elements of the offense charged.

“In order to give life to the rule on double jeopardy, our rules on criminal proceedings require that a judgment of acquittal, whether ordered by the trial or appellate court, is final, unappealable, and immediately executory upon its promulgation. This is referred to as the ‘finality-of-acquittal’ rule.”¹⁰

Moreover, a careful review of the records of and the evidence of both parties in the instant case supports the conclusion that there are no cogent reasons to set aside the Court’s *Decision* dated 22 August 2017 because the arguments advanced by the prosecution in its *Motion* have already been judiciously considered and passed upon therein.

It has been held time and again that a Motion for Reconsideration should be denied when the same only rehashes issues previously put forward.¹¹

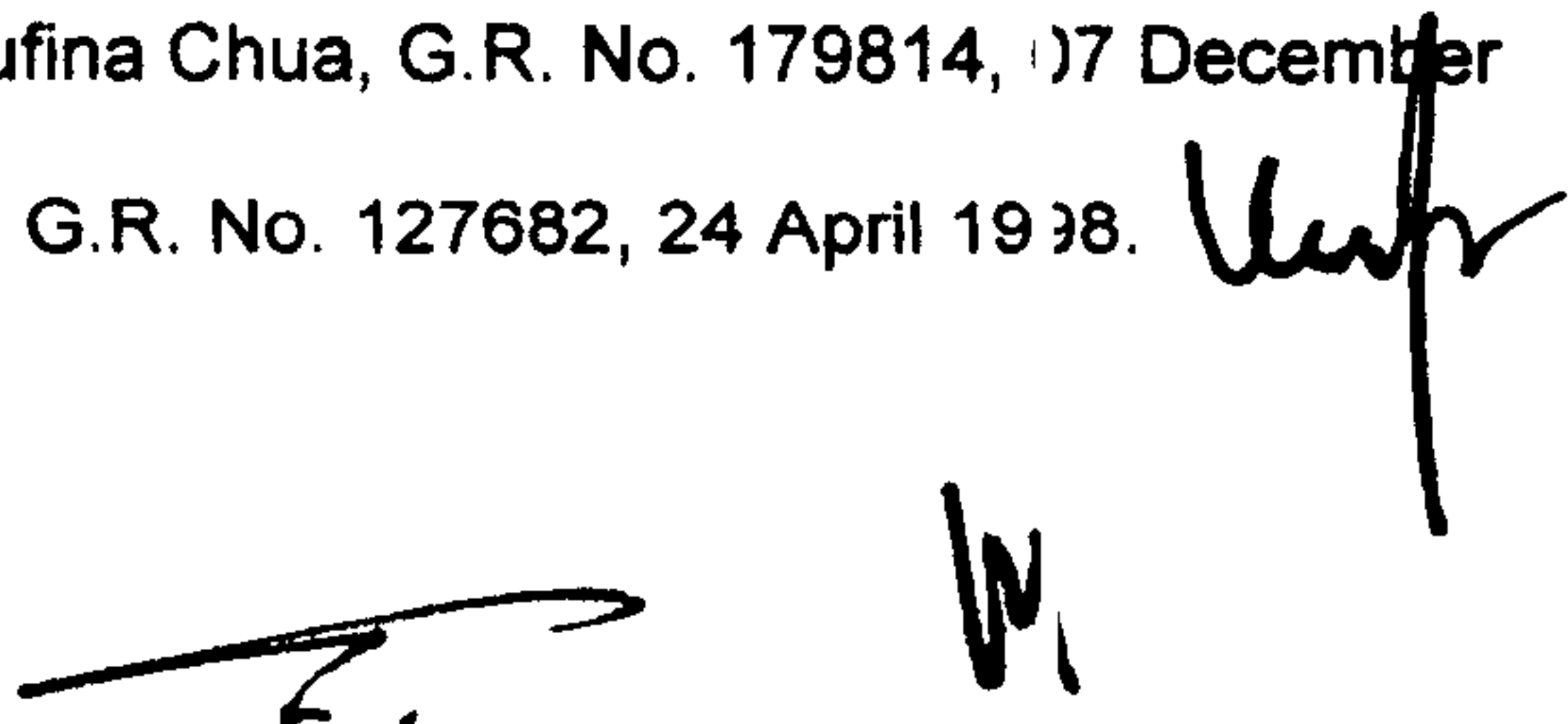
Lastly, the prosecution’s assertion that the assailed *Decision* should be set aside for being contrary to the Court’s earlier *Resolution* which found the prosecution evidence sufficient to convict the accused of the offense charged deserves scant consideration.

After due consideration of the evidence presented by the prosecution vis-à-vis the accused’s *Motion for Leave of Court to File Attached Demurrer to Evidence*, the Court categorically ruled therein, thus, **“Without defense evidence contradicting the prosecution evidence, the latter appears sufficient to convict the accused of the crime charged, and not that of Technical Malversation.”**

⁹ Sec. 7, Rule 117 of the Revised Rules of Criminal Procedure.

¹⁰ Wilfred N. Chiok vs. People of the Philippines and Rufina Chua, G.R. No. 179814, 07 December 2017.

¹¹ *Komatsu Industries (Phils.), Inc. v. Court of Appeals*, G.R. No. 127682, 24 April 1998.

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Verily, a Court's pronouncement denying a Demurrer because there is *prima facie* sufficient evidence to sustain a conviction for the offense charged does not guarantee the conviction of the accused. Such finding merely shifts the burden of evidence to the accused, but not the burden of proof which still remains with the prosecution. As the Supreme Court held in the case of *Bautista and Corpus vs. Sarmiento and the People of the Philippines*,¹²

'When a prima facie case is established by the prosecution in a criminal case, as in the case at bar, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed—the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.'

'A prima facie case need not be countered by a preponderance of evidence nor by evidence of greater weight. Defendant's evidence which equalizes the weight of plaintiff's evidence or puts the case in equipoise is sufficient. As a result, plaintiff will have to go forward with the proof. Should it happen that at the trial the weight of evidence is equally balanced or at equilibrium and presumptions operate against plaintiff who has the burden of proof, he cannot prevail.' (citation omitted)

WHEREFORE, in light of the foregoing, the *Motion for Reconsideration of the Honorable Court's Resolution dated 23 August 2017* filed by the prosecution on 13 September 2017 in Criminal Case No. SB-11-CRM-0451 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

¹² G.R. No. L-45137, 23 September 1985.