



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
QUEZON CITY

**SPECIAL THIRD DIVISION**

**PEOPLE  
OF THE  
PHILIPPINES,**

**OF**

**THE**

**Plaintiff,**

**Criminal Case No. SB-13-  
CRM-0296**

*For: Violation of Article 217 of  
the Revised Penal Code*

**- versus -**

**DIONISIO L. TORRES,**

**Accused.**

*Present:*

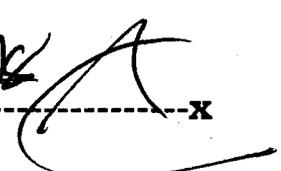
**CABOTAJE-TANG, P.J.,**

Chairperson,

**FERNANDEZ, B., J. and**

**FERNANDEZ, S., J.<sup>1</sup>**

*Promulgated on:*

*MAY 22, 2018* 

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

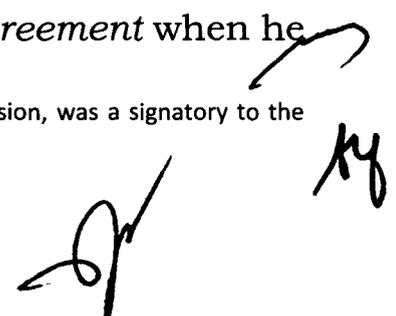
For resolution is accused Dionisio L. Torres' "*Motion for Reconsideration*" dated February 23, 2018.<sup>2</sup> Therein, accused-movant Torres pray that the Court reconsider its *Decision* promulgated on February 9, 2018,<sup>3</sup> convicting him of the crime of *malversation of public funds* under Article 217 of the Revised Penal Code.

Accused-movant Torres submits that the Court erred in ruling that he entered into a *memorandum of agreement* when he

<sup>1</sup> Associate Justice Sarah Jane T. Fernandez, now Chairperson of the Sixth Division, was a signatory to the assailed *Decision* promulgated on February 9, 2018.

<sup>2</sup> pp. 246-267, Vol. II, Record

<sup>3</sup> *Id*



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received the *One Town, One Product, One Million* (OTOP-P1M) check without any authority from the *Sangguniang Bayan*. He insists that his receipt thereof was not by virtue of any contract but was under unexpected and confusing circumstances because the said check was distributed as a “*surprise Christmas gift*” during a gathering at the Malacañang Palace wherein he was an “*accidental attendee*.”<sup>4</sup>

The accused-movant also points out that he, together with the rest of the recipients of the Php1,000,000.00 checks, was confused because the subject check was distributed without any law or guidelines on how to keep or use the same.<sup>5</sup> He adds that during distribution thereof, there was a general notion that the disputed fund will ultimately redound to the benefit of the municipality which prompted him to accept the same.<sup>6</sup>

Moreover, the accused-movant claims that he could not have secured any prior resolution from the *Sangguniang Bayan* due to the manner by which the said check was received. He stresses that the distribution thereof was unexpected and there was simply no opportunity for him to consult the *Sangguniang Bayan* nor seek authority to accept it.<sup>7</sup>

He further contends that Executive Order (E.O.) No. 176, which implemented the OTOP-P1M Project, [1] did not require a prior *Sangguniang Bayan* resolution as a requisite for the release of the Php1,000,000.00 OTOP fund;<sup>8</sup> [2] it designated the Department of Trade and Industry (DTI) to be the lead agency for the implementation of the said project; [3] declared that the small and medium-sized enterprises (SMEs) are the borrowers and beneficiaries; and, [4] the local governments merely coordinates with the DTI.<sup>9</sup> He explains that there is nothing in E.O. No. 176 which identifies and/or classifies the fund in issue as a loan to the municipality.<sup>10</sup>

<sup>4</sup> p. 247, *Id*

<sup>5</sup> p. 247, *Id*

<sup>6</sup> p. 247, *Id*

<sup>7</sup> p. 248, *Id*

<sup>8</sup> p. 248, *Id*

<sup>9</sup> p. 248, *Id*

<sup>10</sup> p. 251, *Id*



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Accused-movant Torres also avers that although he did not formally report his receipt of the subject check to the *Sanggunian*, he nevertheless informed the Vice-Mayor about the matter. He argues that due to the unique nature of the fund and the circumstances by which it was given, "*it is basic that by law and jurisprudence, a mistake upon a difficult question of law may properly be the basis of good faith.*"<sup>11</sup>

Furthermore, the accused-movant asserts that he lawfully turned over Check No. 161477 to Teresita Vales in her capacity as Municipal Treasurer pursuant to Section 7 of Commission on Audit (COA) Circular No. 92-382.<sup>12</sup> In support of his claim, he cites certain portions of his oral testimony before this Court and contends that the recommendation and explanation given to him by Vales regarding the custody of the OTOP-P1M check appeared to be sound and consistent with the aforesaid COA Circular. He maintains that it is within the power of the municipal treasurer to advise him in his capacity as municipal mayor on matters regarding the disposition of local government funds and other issues relating to public finance.<sup>13</sup>

According to the accused-movant, his consent regarding the opening of a separate bank account for the deposit of the OTOP-P1M check and his act of signing the subject *withdrawal slips* rest on good faith and the prosecution failed to prove that he committed reckless negligence.<sup>14</sup>

In his attempt to explain his receipt of the funds in issue, the accused-movant maintains that he was not aware that the subject OTOP-P1M funds were already used by Teresita Vales at the time he assigned Municipal Planning Officers Efren Criman and Mark Alfaro to conduct a feasibility study for the operation of an Iodized Salt Manufacturing plant in the municipality.<sup>15</sup>

He further points out that there is absolutely no proof that he took possession of the proceeds of the subject check. Relying

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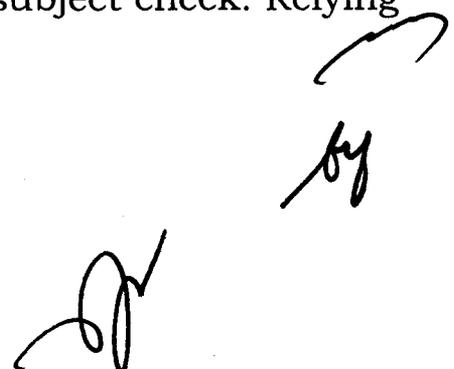
<sup>11</sup> p. 252, *Id*; Emphasis supplied by the accused-movant

<sup>12</sup> p. 253, *Id*

<sup>13</sup> p. 255, *Id*

<sup>14</sup> p. 255, *Id*

<sup>15</sup> p. 248, *Id*

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on the cases of **Agullo v. Sandiganbayan**<sup>16</sup> and **Madarang v. Sandiganbayan**,<sup>17</sup> the accused-movant contends that the presumption of *malversation* is defeated by proof of non-conversion by the accused of the money for his personal gain.<sup>18</sup>

Furthermore, the accused-movant emphasizes that from the time he was elected as a municipal councilor of *Noveleta* in 1980 up to the end of his term as municipal mayor in 2004, he was never subjected to any investigation for any offense or infraction which involves the taking, misappropriation or misuse of public money.<sup>19</sup>

The accused-movant also mentions that Teresita Vales also faced criminal charges during the disappearance of the subject fund. He submits that Vales and a certain Vicky Nicanor should have been indicted with him in this case. However, the selective prosecution of his political rivals singled him out.<sup>20</sup>

In the same vein, the accused-movant points to the fact that after the present case was submitted for *decision*, the Office of the Ombudsman received a *complaint-affidavit* from its Field Investigation Office (FIO), which among others, charged Teresita Vales with *malversation of public funds* for the same transactions in this case.<sup>21</sup> The accused-movant argues that the pending investigation against Vales is "*a lingering question*" as to whether his guilt can be proven beyond reasonable doubt given the fact that the investigation conducted by the *Sangguniang Bayan* in this case was incomplete, irregular and selective.<sup>22</sup>

Lastly, accused-movant Torres avers that the Court failed to appreciate the mitigating circumstance of *voluntary surrender* in imposing the penalty against him.<sup>23</sup> He recounts that he posted his cash bond and voluntarily submitted himself to the jurisdiction of the Court on July 3, 2013, or just fourteen (14)

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<sup>16</sup> 361 SCRA 556 (2001)

<sup>17</sup> 355 SCRA 525 (2001)

<sup>18</sup> pp. 258-259, Vol. II, Record

<sup>19</sup> p. 256, *Id*

<sup>20</sup> p. 256, *Id*

<sup>21</sup> p. 258, *Id*

<sup>22</sup> p. 258, *Id*

<sup>23</sup> p. 261, *Id*

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days after it issued a warrant of arrest against him on June 19, 2013.<sup>24</sup>

In its "*Opposition*" dated March 9, 2018,<sup>25</sup> the prosecution contends that the arguments raised by the accused-movant in his present *motion* had already been passed upon by the Court in its challenged *Decision*. According to the prosecution, the accused-movant failed to identify any serious irregularities that would warrant the reversal of the subject *Decision*.<sup>26</sup> It likewise maintains that it had duly established all the elements of the crime of *malversation*, particularly the fourth element, i.e., that the accused-movant misappropriated or, through abandonment or negligence, permitted another person to take public funds.

The prosecution stresses that the accused-movant practically admitted all the facts constituting the elements of the offense charged against him. Thus, the Court judiciously convicted him beyond reasonable doubt.<sup>27</sup>

**THE RULING OF THE COURT**

After another review of the records of this case, together with an assiduous assessment of the arguments raised by the parties, the Court finds the subject *motion* unmeritorious.

To begin with, the accused-movant stands charged of the crime of *malversation of public funds* under Article 217 of the Revised Penal Code. In its assailed *Decision* promulgated on February 9, 2018, the Court ruled that all of the elements of the crime of *malversation* under the said article were duly established by the prosecution during trial, to wit:

The accused is charged with the crime of *malversation of public funds* under Article 217 of the Revised Penal Code. To sustain a conviction for this

<sup>24</sup> p. 260-261, *Id*

<sup>25</sup> pp. 272-276, *Id*

<sup>26</sup> p. 272, *Id*

<sup>27</sup> pp. 274-275, *Id*



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crime, the prosecution must establish the presence of all the following elements:

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.<sup>28</sup>

In this case, it is undisputed that for calendar years 1995-2004, the accused was a public officer, having been elected for three (3) consecutive terms as mayor of the Municipality of *Noveleta*, Cavite in the 1995, 1998 and 2001 elections.<sup>29</sup>

It is likewise indisputable that due to the nature of his functions at the time material to this case, the accused was an accountable public officer within the purview of Article 217 of the Revised Penal Code.

Thus, Section 340 of the Local Government Code of 1991 reads:

Section 340. *Persons Accountable for Local Government Funds.* - 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.

<sup>28</sup> *Cantos v. People*, 700 SCRA 535 (2013)

<sup>29</sup> pp. 12-13, TSN, April, 18, 2016

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and Section 102 of the Government Auditing Code of the Philippines provides:

Section 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.
- (2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him without prejudice to the liability of either party to the government.

Also, the funds alleged to have been misappropriated are undoubtedly public funds since they were part of the "*Isang Bayan, Isang Produkto, Isang Milyong Piso*" program of former President Gloria Macapagal-Arroyo.<sup>30</sup>

Thus, the only issue left for the determination of the Court is whether or not the accused *appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take the public funds in issue.*<sup>31</sup>

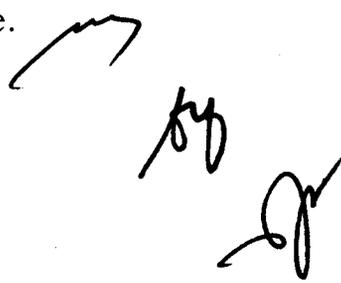
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Anent the fourth element, the Court found that the accused-movant was palpably negligent when he [1] affixed his signatures in the subject *Landbank Specimen Signature Cards* without the prior authorization of the *Sangguniang Bayan*, and [2] signed in blank the unaccomplished *Landbank Withdrawal Slips* which were unaccompanied by any supporting documents, thus:

Indeed, the Court finds that the accused was palpably negligent in the handling of the subject amount of Php1,000,000.00 which he received for the Municipality of *Noveleta*, Cavite.

<sup>30</sup> Exhibit A-3; p. 14, TSN, April 18, 2016

<sup>31</sup> pp. 23-25, *Decision*; pp. 221-226, Vol. II, Record



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As hereinbefore discussed, the acts of the accused in signing the Landbank Specimen Signature Card and the subject *withdrawal slips*, without the prior authority of the *Sangguniang Bayan* and without any supporting documents, were highly irregular and violated the standard procedures prescribed by law. As then municipal mayor, the accused had a sworn duty to safely keep public funds and disburse the same in accordance with standard procedure because the subject funds belong to the municipality and must only be used for the benefit of the same.<sup>32</sup>

Jurisprudence defines “*negligence*” to be the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.<sup>33</sup>

In the landmark case of *Picart v. Smith, Jr.*,<sup>34</sup> the Supreme Court laid down the test to determine the existence of negligence in a particular case, *viz*:

*Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, he is guilty of negligence.*

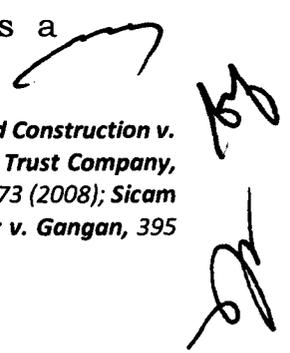
Applying the above-mentioned test to the present case, the acts of the accused in affixing his signatures on the Landbank Specimen Signature Card (without prior authorization from the *Sangguniang Bayan*) and signing in blank the unaccomplished *withdrawal slips* unquestionably demonstrate his negligence in the subject transactions. Worse, he admitted that the subject four (4) Landbank *Withdrawal Slips*<sup>35</sup> were not accompanied by any relevant documents, such as a

<sup>32</sup> See *Manuel, et al., v. Sandiganbayan*, 665 SCRA 266 (2012)

<sup>33</sup> See *Bindutan v. Commission on Audit*, G.R. No. 211937, March 21, 2017; *Ruks Konsult and Construction v. Adworld Sign and Advertising Corp.*, 746 SCRA 622 (2015); *Marques v. Far East Bank and Trust Company*, 639 SCRA 10 (2011); *Bank of the Philippine Islands v. Lifetime Marketing Corp.*, 555 SCRA 373 (2008); *Sicam v. Jorge*, 529 SCRA 443 (2007); *Culaba v. Court of Appeals*, 427 SCRA 721 (2004); and *Cruz v. Gangan*, 395 SCRA 711 (2003)

<sup>34</sup> 37 Phil. 809 (1918)

<sup>35</sup> Exhibits D-2, D-3, D-4, D-5

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disbursement voucher, at the time he affixed his signatures thereto, to wit:

Pros. Ferrer: May I move to strike out the answer of the witness, Your Honor, it is not responsive to my question.

The question is, at that time you signed these four withdrawal slips, there were no supporting documents?

Accused Torres: No, sir.

Atty. Lomangaya: Your Honor, may we object to the motion to the striking out because it was the explanation of the witness.

PJ Cabotaje-Tang: Let the answer remain on record. But earlier the witness answered your question. Actually, the Court heard him say that 'none, wala po.' But later on that was the time that these supporting documents were supplied.

If those withdrawal slips were utilized, correct?

Accused Torres: Yes, Your Honor.<sup>36</sup>

...

Pros. Ferrer: Mayor Torres would you being a Mechanical Engineer and three times Mayor of *Noveleta*, you certainly know that a withdrawal of government funds such as funds of the municipality a municipal government of *Noveleta* are to supported by disbursement vouchers?

Accused Torres: Yes, sir.

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<sup>36</sup> pp. 20-21, TSN, April 18, 2016



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Q: In fact the disbursement vouchers they have to be approved by the head of office such as Mayor of the municipality?

A: Yes, sir.

Q: Withdrawal of government funds are also to be supported by other relevant documents such as Cash Disbursement Report and Certificate of Acceptance?

A: Yes, sir.<sup>37</sup>

. . . .

The accused's signatures<sup>38</sup> on the subject *withdrawal slips* paved the way for the eventual withdrawal of the amounts of Php200,000.00 on December 20, 2002, Php150,000.00 on January 2, 2003, Php322,262.00 on April 30, 2003, and Php330,362.41 on August 29, 2003. For, the standard practice in the disbursement of public funds is that they cannot be released and disbursed without the signatures of the mayor and the treasurer.<sup>39</sup> In fact, the accused himself admitted that without his signatures on the subject *withdrawal slips*, the amounts stated thereon could not have been withdrawn.<sup>40</sup>

Neither can the Court accord credence to the accused's claim that he was merely induced and/or forced<sup>41</sup> by Vales to sign several blank *withdrawal slips* each time before he is scheduled to go on a trip;<sup>42</sup> and that he agreed to sign the said *withdrawal slips* out of necessity because certain supplies of the municipality would likely run out while he was away.<sup>43</sup> It defies human

<sup>37</sup> pp. 21-22, TSN, April 18, 2016

<sup>38</sup> Exhibits D-2-a, D-3-a, D-4-a, D-5-a

<sup>39</sup> See *Manuel, et al., v. Sandiganbayan*, 665 SCRA 266 (2012); COA Memorandum Circular No. 90-328 which took effect on March 22, 1990

<sup>40</sup> pp. 22-23, TSN, April 18, 2016

<sup>41</sup> p. 20, *Id*

<sup>42</sup> p. 20, *Id*

<sup>43</sup> p. 466, Vol. I, Record

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credulity that the accused, being then the mayor, would allow himself to be coerced by his treasurer despite a gross disregard of existing law, rules and regulations.

Furthermore, the accused's claim that he intended Vales to draw funds from the general fund of the municipality, and not from the OTOP-P1M account, when he affixed his signatures on the subject *withdrawal slips* and that he required the return of the unused *withdrawal slips* as soon as he got back from his trip<sup>44</sup> is feeble.

The evidence presented by the parties reveal that the accused left to the sole discretion of Vales the determination of the fund account from which the withdrawal would be made, the purpose of the withdrawal, the date when the withdrawal is to be made, the amount to be withdrawn and, more importantly, the application of the public funds withdrawn. Moreover, the accused conceded that none of the subject *withdrawal slips* was ever returned to him and he eventually forgot about them.<sup>45</sup>

Indeed, if his claim were to be believed, the accused could have specified in the *withdrawal slips* the exact account number and account name where Vales should draw the funds, or gave written specific instructions bearing thereon as a genuine precautionary measure. His failure to do so reinforces his palpable negligence.<sup>46</sup>

It must be remembered that a public officer is still liable for *malversation* even if he/she does not use public property or funds under his/her custody for his/her personal benefit, if he/she allows another to take the funds, or through abandonment or negligence allows such taking.<sup>47</sup> Notably, criminal intent is not necessary in *malversation through negligence*.<sup>48</sup> It is enough that through the abandonment or negligence of the accused, another person had the opportunity to convert public funds or property

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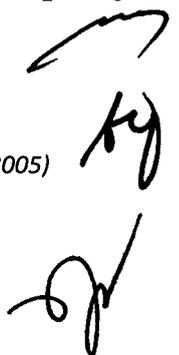
<sup>44</sup> p. 467, Vol. I, Record

<sup>45</sup> p. 467, Vol. I, Record

<sup>46</sup> pp. 29-33, *Decision*; pp. 230-234, Vol. II, Record

<sup>47</sup> *People v. Pantaleon, Jr.*, 581 SCRA 140 (2009), *Pondevida v. Sandiganbayan*, 467 SCRA 219 (2005)

<sup>48</sup> p. 490, Ramon C. Aquino and Carolina C. Griño-Aquino, *The Revised Penal Code Vol. II*, (1997)



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entrusted to the accused.<sup>49</sup> The negligence itself constitutes an offense and no other intent may be shown.<sup>50</sup> It is not even necessary that the accused should have derived any benefit from the *malversation*.<sup>51</sup> In its challenged *Decision* promulgated on February 9, 2018, the Court passed upon the same issue, *viz*:

Thus, assuming *arguendo* that the funds in issue were received by Vales and Nicanor, and the accused did not personally benefit therefrom, the accused may still be convicted of the crime of malversation. For, it is jurisprudentially settled that the crime of malversation is committed not only through the misappropriation or the conversion of public funds or property to one's personal use, but also by knowingly allowing others to make use of or misappropriate the funds.<sup>52</sup> The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence.<sup>53</sup>

To be clear, the Court found that the gradual withdrawal of the subject OTOP-P1M fund was due to the reckless negligence of the accused-movant. Undeniably, this was done despite the fact of the accused-movant's familiarity with existing laws, rules and regulations in relation to the release of funds of the municipality. Furthermore, during his cross-examination on April 18, 2016, the accused-movant himself admitted that [1] his acts of signing the said *Landbank Withdrawal Slips* in blank were irregular,<sup>54</sup> and [2] without his signatures on the subject *withdrawal slips*, the amounts in issue could not have been withdrawn.<sup>55</sup> Plainly, the accused-movant, being then the municipal mayor, and having served as municipal councilor of the same municipality since 1980 was completely aware of the consequences of his deviation from the standard procedures in

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<sup>49</sup> *Id*

<sup>50</sup> *Id*

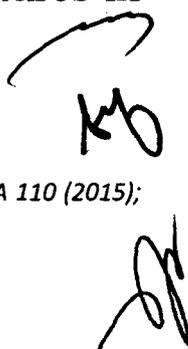
<sup>51</sup> *Id*

<sup>52</sup> *People v. Pantaleon, Jr.*, 581 SCRA 140 (2009); See also *Zoleta v. Sandiganbayan*, 764 SCRA 110 (2015); Emphasis supplied

<sup>53</sup> Footnote omitted; pp. 33-34, *Decision*; pp. 234-235, Vol. II, Record

<sup>54</sup> p. 20, TSN, April 18, 2016

<sup>55</sup> pp. 18-19, TSN, April 18, 2016



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the handling of government funds. His blatant recklessness inevitably negates his claim of good faith.

Moreover, the accused-movant's assertion that he cannot be held liable for the crime of *malversation* because there is absolutely no proof that he took possession of the proceeds of the subject check fails to persuade.

As hereinbefore discussed, the negligence displayed by the accused-movant in the handling of government funds simply created the opportunity for Teresita Vales and Vicky Nicanor to purportedly take the funds in issue. Indeed, his consent to the opening of a separate bank account in the name of the municipality without the authority of the *Sanggunian* for the deposit of the OTOP-P1M funds, as well as his act of signing in blank the unaccomplished *Landbank Withdrawal Slips* which were unaccompanied by any supporting documents, constitutes flagrant recklessness and utter disregard of the necessary precautions and evidently amounts to inexcusable negligence.

On another point, the accused-movant points out that there is a pending investigation against Teresita Vales regarding the same transactions in these cases. He argues that said investigation poses a "*lingering question*" as to whether his guilt can be proven beyond reasonable doubt because the investigation conducted by the *Sangguniang Bayan* against him was incomplete, irregular and selective.

The Court disagrees.

It must be noted that the accused-movant was arraigned and tried under a valid *Information*. After trial, the Court appreciated the evidence submitted by the parties and found that the prosecution indubitably established all the elements of the crime of *malversation* under Article 217 of the Revised Penal Code. Plainly, the alleged pendency of the investigation against Teresita Vales, which purportedly involves the same transaction in this case, cannot adversely affect the findings of the Court. To repeat, all the elements of the crime of *malversation* were duly established during trial; hence, the conviction of the accused-movant of the crime herein charged is in order.



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Lastly, the Court agrees that the mitigating circumstance of voluntary surrender should be appreciated in favor of the accused-movant in view of his posting of the required cash bond for his provisional liberty on July 3, 2013, and without having been arrested.

In sum, the accused-movant failed to raise any new or substantial matter that would warrant the reconsideration of the Court's *Decision* promulgated on February 9, 2018.

**WHEREFORE**, the Court [1] **DENIES** accused-movant Dionisio L. Torres' "*Motion for Reconsideration*" dated February 28, 2018, and [2] **MODIFIES** the penalty imposed against him taking into consideration the presence of one (1) mitigating circumstance.

Thus, the accused-movant is hereby sentenced to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum.

Moreover, accused Dionisio L. Torres is further ordered [1] to pay a fine of Php1,000,000.00, which is the amount malversed, plus interest at the rate of six percent (6%) *per annum* reckoned from the date of finality of the decision in this case until full payment by the accused, and, [2] to suffer the penalty of perpetual special disqualification from holding any public office.

**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson



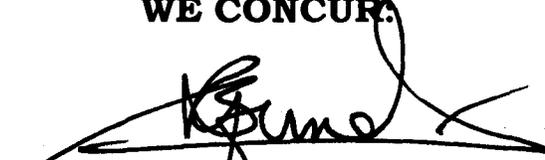
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**WE CONCUR:**

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice

