



**REPUBLIC OF THE PHILIPPINES**  
**SANDIGANBAYAN**  
**Quezon City**

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**Seventh Division**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff,

Criminal Case Nos. **SB-13-CRM-0912 to 0917**

-versus-

Present:  
 Gomez-Estoesta, J., *Chairperson*  
 Trespeses, J. and  
 Jacinto, J.\*\*

**AUNNIELYNE A. CASTILLO and**  
**JEWELYN L. NARCISO,\***

Accused.

Promulgated:

May 10, 2018 *yp*

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## RESOLUTION

**GOMEZ-ESTOESTA, J.:**

This resolves (a) prosecution’s *Motion for Partial Reconsideration (of the Decision dated January 19, 2018)*<sup>1</sup> dated January 29, 2018, insofar as it “excluded Exhibits “H”, “I”, and “K” in evaluating the evidence against the accused”, and (b) accused Aunnielyne A. Castillo’s [“accused”] *Motion for Reconsideration*<sup>2</sup> dated February 2, 2018, insofar as it convicted her of three (3) counts of Malversation of Public Funds under *Criminal Case Nos. SB-13-CRM-0912, 0913, and 0916*.

A. In the prosecution’s *Motion for Partial Reconsideration*, it argues that the Court erred in excluding in evidence the cash advances covered by Disbursement Voucher (“DV”) Nos. 0406, 01-04121, and 01-412 (Exhibits “H”, “I”, and “K”), since the existence and execution of the original DVs, and their subsequent loss, have already been established by witnesses COA Auditor Lorelie Adona Ballesta and COA Administrative Aide Loreta A. Belandes. It then justifies the introduction of secondary evidence, where photocopies of certified true copies of said DVs were offered in evidence. On

\* Deceased, per Certificate of Death issued by the Philippine Statistics Authority (Records, Vol. 1, p. 318)

\*\* Per Administrative Order No. 284-2017 dated August 18, 2017

<sup>1</sup> Records, Vol. 3, pp. 168-174

<sup>2</sup> *Id.* at 176-195

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this premise, the prosecution thus prays that the Court's Decision dated January 19, 2018 be set aside to consider Exhibits "H", "I", and "K".

By way of *Comment/Opposition (to Prosecution's Motion for Partial Reconsideration)*, accused advances that the points raised by the prosecution are already moot. Accused highlights that Exhibits "H", "I", and "K" were excluded in the Court's Resolution dated October 3, 2016, and that the prosecution's motion seeking the reconsideration of said ruling was subsequently denied in a Minute Resolution dated October 26, 2016.

**B.** In her *Motion for Reconsideration*, accused insists that the Court erred in adjudging her guilty of malversation of public funds in *Criminal Case Nos. SB-13-CRM-0912, 0913, and 0916*, mainly for the following reasons:

*Firstly*, accused avers that the Court erred in applying *People v. Pantaleon, Jr.*,<sup>3</sup> where the Supreme Court held that a municipal mayor is an accountable officer for the funds pertaining to his or her municipality. This case has been superseded by *Panganiban v. People*,<sup>4</sup> where it was pronounced that accountable officers only encompass cashiers, treasurers, collectors, property officers, or any employees who are tasked with the taking of public money in a temporary capacity until such money is properly deposited in banks or until they shall have endorsed such money or property to other accountable officers or concerned offices. Since accused was then Municipal Mayor, she therefore did not have custody or control of the funds or property by reason of the duties of her office.

*Secondly*, while accused concedes that demand is not an element of malversation, she nonetheless contends that the absence of demand made upon her negates the presumption that she had put missing funds or property to her personal use. Without such presumption, accused essentially maintains that her credibility remained intact, and that the defenses she has raised should be given credence. Accused should not be faulted for the actions, or failure of her co-accused, Jewelyn Narciso ["Narciso"], for failing to pay the Municipality's obligations and liquidating the cash advances precisely because it was the latter's duty to do so under their internal arrangement.

*Thirdly*, accused acted in good faith, which is a valid defense, in entrusting the funds to Narciso with the expectation that the latter would liquidate the cash advances of the Municipality. After all, Narciso was a government official and, therefore, worthy of trust and confidence.

Based on the reasons aforecited, accused thus prays that her conviction be set aside.

<sup>3</sup> *Vide*: G.R. Nos. 158694-96, March 13, 2009

<sup>4</sup> G.R. No. 211543, December 9, 2015

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## The Court's Ruling

*Prosecution's Motion essentially amounts to a challenge of accused's acquittal in Criminal Case Nos. SB-13-CRM-0914, 0915, and 0917, and as such, is no longer a proper subject of review.*

The points raised by the prosecution in its *Motion* are not novel.

To repeat, prosecution's Exhibits "H", "I", and "K" (which respectively pertains to DV Nos. 01-0406, 01-04121, and 01-0412) have already been denied admission in the Court's Resolution dated October 3, 2016<sup>5</sup> for violation of the best evidence rule. Moreover, it bears stressing that said Exhibits are mere machine copies as they consist of *photocopies of certified xerox copies*, and consequently, they have no probative value as proof of their contents.<sup>6</sup>

In any event, the prosecution's *Motion* cannot be granted as it essentially assails the judgment of acquittal rendered in *Criminal Case Nos. SB-13-CRM-0914, 0915, and 0917*.

In *People v. Nazareno, et al.*, the Supreme Court explained the nature and effect of a judgment of acquittal:<sup>7</sup>

Section 21, Article III of the Constitution provides that "*no person shall be twice put in jeopardy of punishment for the same offense.*" Section 7, Rule 117 of the Rules of Court, which implements this particular constitutional right, reads:

**SEC. 7. Former conviction or acquittal; double jeopardy.** — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has

<sup>5</sup> Records, Vol. 2, pp. 309-314

<sup>6</sup> *Vide: Commissioner of Internal Revenue v. Hantex Trading Co.*, G.R. No. 136975, March 31, 2005

<sup>7</sup> G.R. No. 168982, August 5, 2009

*J. G.*

been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.

**A judgment of acquittal is final and is no longer reviewable. It is also immediately executory and the State may not seek its review without placing the accused in double jeopardy. xxx”** (Boldface supplied; italics in the original)

In *Lejano v. People*,<sup>8</sup> it was held:

**But, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy.**

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Of course, on occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of certiorari under Rule 65.

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**Ultimately, what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, et al.'s conviction. The judgment acquitting Webb, et al. is final and can no longer be disturbed. (Emphases supplied)**

Considering the foregoing jurisprudence, the accused's right against double jeopardy prevents this Court from revisiting *evidence it may or may not have inadvertently misappreciated*. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*.<sup>9</sup> The exception to the double jeopardy rule attaches only when the trial court commits grave abuse of discretion due to a violation of due process, i.e., that the prosecution was denied the opportunity to present its case or that the trial was sham.<sup>10</sup> However, the prosecution has not alleged that it was denied due process, or that this Court had no jurisdiction to render the Decision sought to be reconsidered.

The prosecution's *Motion*, therefore, should be denied.

<sup>8</sup> *Resolution on Motion for Reconsideration*, G.R. Nos. 176389 and 176864, January 18, 2011

<sup>9</sup> *People v. Judge Hernando*, G.R. No. L-55213, October 9, 1981

<sup>10</sup> *Metropolitan Bank and Trust Company v. Veridiano, et al.*, G.R. No. 118251, June 29, 2001

*The essential elements of malversation of public funds were sufficiently established by the prosecution by the requisite proof required, which thus justifies accused's conviction.*

The prosecution has indubitably established the essential elements of malversation of public funds under Article 217 of the *Revised Penal Code*, which are:

- (1) that the offender is a public officer;
- (2) that he or she had the custody or control of funds or property by reason of the duties of his or her office;
- (3) that those funds or property were public funds or property for which he or she was accountable; and
- (4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

To state again, accused was a public officer in that she was formerly the Municipal Mayor of Baay-Licuan. By reason of her official position, accused had control or custody of municipal funds, as in fact, it has been recognized in *People v. Pantaleon, Jr.* that the approval of the mayor and the treasurer are required before any disbursement of public funds may be made.<sup>11</sup> As Municipal Mayor, and under the circumstances then prevailing, accused was accountable for the funds covered by the cash advances. While she had control or possession of said cash advances, however, accused disregarded Commission on Audit ("COA") regulations governing the usage of cash advances. The Court's observations are reiterated, viz:<sup>12</sup>

It is palpable that accused committed irregularities in the usage and issuance of the cash advances drawn from municipal funds in violation of Section 339 of the *Local Government Code of 1991* and *COA Circular Nos. 92-382* and *97-002*. In particular, no legally specified purpose was given for the issuance of the cash advances. Also, accused was not a permanently appointed official like a municipal accountant or municipal treasurer to be designated as disbursing officer. Instead, she was an elected official with a short tenure of office who could only avail of a cash advance for an official traveling expense. None was presented in these cases.

Then again, by oddly varying the tenor of the afore-quoted laws to her own convenience, the cash advances were granted or issued in accused's own name, which by gratuitous means she purportedly transferred to Narciso. It was as if the cash advances were now the private funds of the accused, blindly given to Narciso to allegedly dispose of the same pursuant to her instructions. The tenor of these instructions was never specified, in the same way that the municipality's obligations remained undisclosed. As

<sup>11</sup> *People v. Pantaleon, Jr.*, G.R. Nos. 158694-96, March 13, 2009

<sup>12</sup> Decision dated January 19, 2018 rendered by this Court, p. 27

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it appeared, the municipality's cash books were completely bereft of any documents, such as receipts or invoices, which would show that the cash advances were applied in payment of the municipality's obligations for which they had been granted. In fact, to date, the cash advances remained unliquidated and unaccounted for.

Accused did not adduce any basis which would have justified the grant of the cash advances in the form of LBP Checks Nos. 7017 and 7018. Notably, said checks remained unsupported by any disbursement voucher or similar document stating the specific legal purpose for which they were issued; nor was there any showing that same were granted to cover the accused's official traveling expense as per *COA Circular No. 97-002*. Absent such purpose, and considering that the accused named herself as payee, the municipal funds essentially became her personal piggy bank from which she could easily obtain cash and then utilize the same with unfettered discretion.

Worst, it is also observed that most of the cash advances, save for that covered by DV No. 01-0406, exceeded the limit of Ten Thousand Pesos provided by *COA Circular No. 92-382*, to be allowed discretionary withdrawal from the municipality's coffers. Yet, accused made withdrawals at will.

The doctrine that a municipal mayor is accountable for public funds of his or her respective municipality was espoused by the Supreme Court in *People v. Pantaleon, Jr.* ("*Pantaleon, Jr.*"), viz:<sup>13</sup>

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government [Code], which 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 officials, 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.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

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.

While accused contends that the case of *Pantaleon, Jr.* has been superseded by *Panganiban v. People* ("*Panganiban*"), this argument is bereft of merit. It is underscored that the factual circumstances which occurred in *Panganiban* are not synonymous with those that obtain in the present.

<sup>13</sup> G.R. Nos. 158694-96, March 13, 2009

In the *Panganiban* case, petitioner Domingo G. Panganiban (“petitioner”) obtained a cash advance during one of his terms as Municipal Mayor of Sta. Cruz, Laguna, in the sum of P500,000.00 from said Municipality in connection with a planned official travel to the City of Onkaparinga, Adelaide, South Australia, for the purpose of studying sustainable environmental projects. For undisclosed reasons, the official travel of petitioner did not push through. When petitioner learned that he had an unliquidated cash advance, he instructed the municipal accountant to withhold his salaries and apply the same to the payment of said cash advance. Eventually, the unliquidated cash advance was reduced to P256,318.45 by the expiration of petitioner’s term. He was then charged by the Office of the Ombudsman for malversation of public funds or property, and thereafter convicted of said offense. However, on appeal to the Supreme Court, petitioner’s conviction was set aside, in this wise:<sup>14</sup>

To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. Needless to say, he was not accountable for any public funds or property simply because it never became his duty to collect money or property from the public. Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

The confusion in this case arose from the start, when the Office of the Deputy Ombudsman for Luzon accused petitioner with the crime of malversation of public funds, notwithstanding the fact that what he received from the Municipality of Sta. Cruz Laguna was a cash advance — a cash advance which was not shown to have been fraudulently taken by petitioner from the municipality, either by himself or in cahoots with the treasurer, cashier or any other accountable officer. In fact, said cash advance was shown to have been properly acquired by documentary proof.

As narrated, petitioner was granted a cash advance in the sum of Php500,000.00 for an intended official travel to Adelaide, Australia from 9 June to 9 July 2006 which did not push through. His attention called to his obligation to liquidate the aforesaid sum, petitioner entered into an agreement with Lorenzo for the sum to be liquidated by means of salary deductions which was, accordingly, implemented. That the agreement was already in place within the 60-day period for liquidation provided under COA Circular 97-002 is evident from the fact that, by the time Ciriaco caused the 15 August 2006 demand letter to be served upon petitioner, the amount to be liquidated had already been reduced to Php463,931.78. The

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<sup>14</sup> G.R. No. 211543, December 9, 2015

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practice was continued until the end of petitioner's term, with the remaining balance of the unliquidated cash advance eventually satisfied by deducting the sum of Php256,308.45 from his terminal leave pay of Php359,947.98 on 22 November 2007.

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Even before he was required by the COA to account for the unliquidated cash advance, petitioner had already instructed Lorenzo to withhold his Php18,000.00 monthly salary. Because Lorenzo started to withhold petitioner's salary starting July 2006 or even before Ciriaco's 15 August 2006 demand letter, the latter reported the corresponding reduction of the amount to be liquidated to the COA Regional Cluster Director.

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The practice of liquidating cash advances by means thereof being one that is allowed, the withholding of petitioner's salaries continued until the expiration of his term of office. With the remaining balance satisfied from his terminal leave pay, petitioner was eventually cleared of financial and property liabilities to the municipality. Long before petitioner was arraigned under the amended Information on 26 June 2009, Tria had, in fact, already reported to the COA Regional Office in December 2007 that the cash advance had already been fully paid. To the mind of the Court, the confluence of these circumstances serves to negate the factual and legal bases for Petitioner's liability for failure to render accounts, even if it was this correct charge which was made against him. The manner by which he liquidated the cash advance was, after all, admitted as an allowed practice and was permitted to continue until the full amount was satisfied.

As can be gleaned from the case of *Panganiban*, the key circumstances appreciated by the Supreme Court in acquitting petitioner are: (1) in addition to his duties as municipal mayor, petitioner did not act, even in a temporary capacity, as a cashier, treasurer, collector, property officer or any other similar officer who is duty-bound to collect money or property from the public and to keep the same temporarily until it has been deposited in the official depository or endorsed to the proper office; (2) documentary proof showed that the cash advance in question was properly acquired by petitioner; and (3) the manner by which petitioner liquidated the cash advance, via salary deductions, was an allowed practice, and the full amount was eventually satisfied.

In stark contrast, the abovementioned factors or circumstances which occurred in *Panganiban* are absent in the present cases. Accused actually had custody of the cash advances subject of these cases, and in fact, she did not even deny having received the same. She was named payee in two (2) Land Bank of the Philippines Checks Nos. 7018 (P1,250,000.00) and 7017 (P260,000.00), marked as Exhs. "F" and "G", respectively,<sup>15</sup> which checks she personally encashed at said Bank.<sup>16</sup> To date, accused never liquidated the cash advances and the same remained unaccounted for. The doctrine espoused

<sup>15</sup> Judicial Affidavit of accused (Records, Vol. 2, pp. 380-381)

<sup>16</sup> TSN dated May 25, 2017, pp. 24-28

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by the Supreme Court in *Panganiban*, therefore, is inapplicable to accused's case.

The logical inference from the fact that the cash advances remained unaccounted for gives rise to the presumption that accused misappropriated the said cash advances, which she has never sufficiently rebutted.

Although accused insists that Narciso should be faulted due to the existence of an internal arrangement where accused would encash checks drawn from municipal funds which she would then turnover to Narciso with the expectation that the latter will be responsible for liquidating the encashed amount, this defense fails to persuade because: (a) such arrangement violates the rules of the COA which govern the grant and usage of cash advances;<sup>17</sup> (b) malversation of public funds is punishable if it is committed willfully or through negligence;<sup>18</sup> hence, accused's alibi actually serves to amplify the presence of her own negligence; and (c) whether or not demand was made upon accused to settle the unliquidated cash advances is beside the point, and this is because jurisprudence holds that an accused may still be proven guilty of malversation absent such demand.<sup>19</sup>

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<sup>17</sup> Section 48 of *COA Circular No. 92-382* (dated July 3, 1992) states:

(a) only permanently appointed officials and employees shall be granted cash advances.

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(d) transfer of cash advance from one accountable officer to another shall not be allowed.

(e) the cash advance shall be used solely for the specific legal purpose for which it was granted, under no circumstance shall it be used for encashment of checks or for liquidation of a previous cash advance.

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(j) payments out of the cash advance shall be allowed only for amounts not exceeding P10,000.00 for each transaction, except when a higher amount is allowed by law and/or specific authority by the Commission on Audit. Splitting of transactions to avoid exceeding the ceiling shall not be allowed.

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(o) all cash advances shall be fully liquidated at the end of each year. The accountable officer shall refund any unexpected balance to the cashier/collecting officer who shall issue the necessary official receipt.

Section 4 of *COA Circular No. 97-002* (dated February 10, 1997) provides:

4.1.1 No cash advance shall be given unless for a legally specific purpose.

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4.1.4 Only permanently appointed officials shall be designated as disbursing officers. Elected officials may be granted a cash advance only for their official traveling expenses.

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4.1.6 Transfer of cash advance from one Accountable Officer (AO) to another shall not be allowed.

<sup>18</sup> *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015

<sup>19</sup> *Maamo v. People*, G.R. No. 201917, December 1, 2016

J. J. g

From the foregoing, the presence of all the elements of malversation of public funds justified accused's conviction. Absent any strong or cogent reason advanced by her, no deviation from the Court's previous legal stand is warranted.

**WHEREFORE**, prosecution's *Motion for Partial Reconsideration (of the Decision dated January 19, 2018)* dated January 29, 2018, and accused Aunnielyne A. Castillo's *Motion for Reconsideration* dated February 2, 2018, are both **DENIED** for lack of merit.

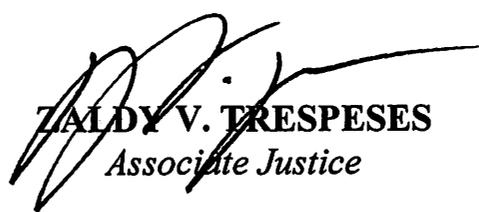
**SO ORDERED.**

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**

*Associate Justice*

*Chairperson*

WE CONCUR:

  
**ZALDY V. TRESPESES**

*Associate Justice*

  
**BAYANI H. JACINTO**

*Associate Justice*