



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-10-CRM-0238**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019, as amended

SB-10-CRM-0239
For: Malversation of Public Funds
(Art. 217 of the Revised Penal Code)

Present

- versus -

ALFREDO D. LLOREN, ET AL.
Accused.

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B, J. and
FERNANDEZ, SJ,* J.

Promulgated:

JULY 27, 2018


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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

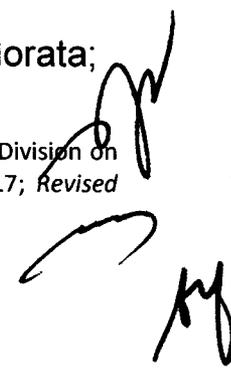
1. *Motion for Reconsideration [For Accused Eriberta C. Palo]*¹ filed by accused Eriberta C. Palo;
2. *Motion for Reconsideration of the November 17, 2017*² filed by accused Alfredo D. Lloren; and
3. *Motion for Reconsideration*³ filed by accused Sergio T. Morata;

* J. Fernandez, SJ, the *Ponente* of the assailed Decision, became the Chairperson of the Sixth Division on September 13, 2017. (As per Administrative Order No. 314-2017 dated September 13, 2017; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

¹ Dated November 29, 2017; pp. 386-425, Record, Vol. 3

² Dated November 30, 2017; pp. 426-436, Record, Vol. 3

³ Dated December 1, 2017; pp. 437-444, Record, Vol. 3



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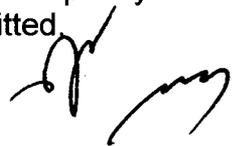
Criminal Cases No. SB-10-CRM-0238 and 0239

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In her Motion for Reconsideration, accused Palo prays that this Court reconsider the Decision dated November 17, 2017⁴ and acquit her of Malversation of Public Funds or Property under Art. 217 of the Revised Penal Code.⁵ She avers:

1. In *People v. Sandiganbayan*,⁶ it was held that good faith is a valid defense for it negates criminal intent on the part of the accused.
2. Accused Lloren and the Liga ng mga Barangay agreed to put up a fund for the down payment for the backhoe. She acted in good faith when she processed the transaction in connection with said agreement.
3. She should not be faulted for accused Lloren's failure to pay the balance of the purchase price of the backhoe.
4. The prosecution never presented any evidence showing that she appropriated for herself the amount subject of the malversation charge.
5. Her right to be informed of the nature and cause of the accusation against her was violated when she was convicted for acts not particularly alleged in the Information.
6. The Information alleged that the accused acted with deliberate intent to defraud. The prosecution's failure to prove such allegation should have resulted in her acquittal.
7. In the Information, it was also alleged that demands were made on the accused to make an account for the subject public funds. However, the prosecution failed to prove that such demands were in fact made.
8. The amount of ₱380,000.00 was released for the purpose intended by the barangays, *i.e.*, the down payment for the backhoe.
9. The prosecution failed to prove that there was conspiracy among the accused. Therefore, she should be acquitted.



⁴ pp. 316-366, Record, Vol. 3

⁵ Crim. Case No. SB-10-CRM-0239

⁶ G.R. Nos. 168188-89, June 16, 2006

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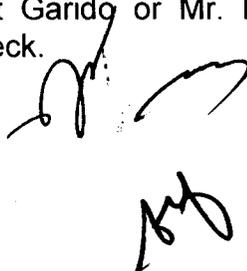
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Accused Morata, in his *Motion for Reconsideration*, also prays that this Court reverse the assailed Decision and issue a new one acquitting him. He contends:

1. His act of signing the disbursement voucher was done in good faith. The prosecution did not even attempt to prove that the accused obtained personal gain from the release of the subject funds.
2. He could not have insisted on being furnished the certificate of acceptance or inspection report before he signed the voucher because doing so would be tantamount to varying the specific purpose of the trust fund.
3. There is no prohibition against the acquisition of second-hand vehicles by government entities. Under Department of Budget and Management Circular No. 446-A dated January 30, 1998, the acquisition of second-hand vehicles is allowed as a more economical alternative to the purchase of brand new equipment and vehicles.
4. The trust fund in the amount of ₱380,000.00 was intended as a deposit for the backhoe.
5. Accused Palo issued a check in said amount to Eufricina Trading when Garido presented Official Receipt No. 672. Said check was deposited in PNB San Fernando Account No. 470-563136-6, and was approved for deposit/payment by PNB Baybay (Leyte) branch as the depository bank of the account against which the check was drawn.
6. Eufricina Trading received the proceeds of the check. Garido, on the other hand, received money coming from accused Lloren's private funds.
7. Assuming that he was negligent, such negligence cannot be characterized as criminal negligence.
8. The barangays of Inopacan, Leyte had been deprived of the use of the subject funds. However, the remedy for its recovery is not the conviction of the accused but in proceeding against the bidder's bond posted in behalf of Eufricina Trading, or by proceeding against Garido or Mr. Musni, who received the proceeds of the check.

The image shows two handwritten signatures in black ink. The top signature is a cursive signature that appears to be 'Garido'. The bottom signature is a more stylized, blocky signature that appears to be 'Musni'.

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The prosecution, however, proved malversation by negligence.

Be that as it may, the conviction of the accused for malversation has support from the ruling in *Cabello v. Sandiganbayan*.¹⁰ Therein accused claimed that he could not be convicted of malversation through negligence as he was charged with intentional malversation. But the High Court did not agree with him and explained the modes of committing malversation in the following manner:

x x x. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said due process was denied by deluding the accused into an erroneous comprehension of the charge against him. x x x

The exception mentioned in the aforecited case does not obtain in the present case. The Information alleges that the accused allowed or permitted another person to take public funds by causing the release of the same in payment of a backhoe, despite non-delivery of the said backhoe. The prosecution proved its allegation. Whether the accused acted deliberately or through negligence, the fact remains that they caused the release of the funds.

Next, the defense of good faith. All three accused claim that they should be acquitted because they acted in good faith when they caused the release of public funds despite non-delivery of the backhoe. This Court is not persuaded.

Indeed, in several cases cited by the accused,¹¹ the Supreme Court recognized that good faith is a valid defense in a malversation charge, and would negate criminal intent on the part of the accused. In *Tabuena v. Sandiganbayan*, it was held:

Going now to the defense of good faith, it is settled that this is a valid defense in a prosecution for malversation for it would negate criminal intent on the part of the accused. Thus, in the two (2) vintage, but significant malversation cases of "US v. Catolico" and "US v. Elviña," the Court stressed that:

¹⁰ G.R. No. 93885, May 14, 1991

¹¹ *US v. Elviña*, G.R. No. L-7280, February 13, 1913; *Villacorta v. People*, G.R. No. L-68268, November 12, 1986; and *Tabuena v. Sandiganbayan*, G.R. Nos. 103501-03 and 103507, February 17, 1997

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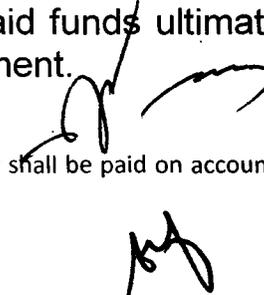
Similar circumstances obtain in *U.S. v. Elviña* and *Villacorta v. People*. In *Elviña*, it was found that there was no misappropriation because the accused Municipal Treasurer, who, under the resolutions of the municipal council, was authorized to make certain payments, paid in good faith public funds to persons who have rendered services to the municipality. On the other hand, in *Villacorta*, although the accused made payments that ran counter to auditing rules and regulations, it was found that the payments were made in good faith to government personnel, including those working at the provincial auditor's and treasurer's offices.

The circumstances in the present case are not similar to those in the aforementioned cases. In those cases, it appeared that there was no misappropriation on the part of therein accused, and that while there may have been some procedural lapses, payments were made for services already rendered or in the honest belief that there was an existing indebtedness. Here, misappropriation on the part of the accused is irrelevant for the reason that they are charged with consenting, allowing or permitting another person to take public funds. Furthermore, they caused the release of the subject public funds prior to the delivery of the backhoe.

The accused' claim that the payment was made in good faith because the transaction was an installment sale likewise deserves scant consideration. The accused never presented the contract between the municipality and Eufricina Trading, or for that matter, anything that would show the terms of payment.

At any rate, as discussed in the assailed Decision, there is a prohibition against advance payments¹² in Republic Act No. 7160 (R.A. No. 7160). The accused, by reason of their respective positions, knew, or should have known that R.A. No. 7160 prohibits advance payments, yet they proceeded, without valid justification, to release the check in the amount of ₱380,000.00 to Garido as partial payment for a backhoe which has yet to be delivered at the time. The individual and collective acts of the accused allowed another person to take public funds in the amount of ₱380,000.00. The accused' acts were done with "such negligence or indifference to duty or to consequences as, in law, is equivalent to criminal intent." Whether said funds ultimately went to Garido or to Eufricina Trading is of no moment.

¹² Sec. 338. *Prohibition Against Advance Payments.* – No money shall be paid on account of any contract under which no services have been rendered or goods delivered.



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In his *Motion for Reconsideration*, accused Lloren similarly prays for the reconsideration of the assailed Decision and for his acquittal. He avers:

1. There was no negligence on his part. He facilitated the procurement of the backhoe pursuant to the agreement between the municipality and the nineteen (19) barangays. The 19 barangay captains should have been charged with malversation since they were the first to disburse the amount of ₱20,000.00 each from the public funds in their custody.
2. He did not use the subject amount for his personal benefit. He even used his personal funds and borrowed from his friends to pay for the balance.
3. The subject transaction was a sale on installment. He expected that the backhoe would be delivered after payment in the amount of ₱776,000.00 was made to the supplier. However, Eufricina Trading expected full payment of the price before it would deliver the unit.
4. It was erroneous to charge and convict the accused for Malversation because the subject transaction is a contract to sell the backhoe on installment. The matter is civil in nature, governed by Articles 1478 and 1479 of the Civil Code.
5. He is aware of the prohibition against advance payments. However, such prohibition is not a ground for conviction. He may be held administratively liable, but not criminally liable.
6. He suffered pecuniary damage when he used his private funds to help the 19 barangays to acquire a backhoe. He did his best to help said barangays but the supplier and its agents reneged on their obligation to deliver the backhoe despite the payment of a substantial amount.

In his *Supplemental Motion for Reconsideration of the November 17, 2017 Decision and Reply to the Prosecution's Consolidated Comment/Opposition*,⁷ accused Lloren reiterates that he acted in good faith, and further avers that he is entitled to the mitigating circumstance of voluntary surrender because he immediately surrendered and posted his bail in the Sandiganbayan when he learned that a case was filed against him.

⁷ Dated December 22, 2017; pp. 474-477, Record, Vol. 3

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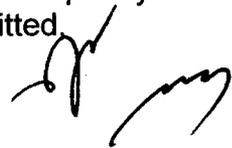
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In her Motion for Reconsideration, accused Palo prays that this Court reconsider the Decision dated November 17, 2017⁴ and acquit her of Malversation of Public Funds or Property under Art. 217 of the Revised Penal Code.⁵ She avers:

1. In *People v. Sandiganbayan*,⁶ it was held that good faith is a valid defense for it negates criminal intent on the part of the accused.
2. Accused Lloren and the Liga ng mga Barangay agreed to put up a fund for the down payment for the backhoe. She acted in good faith when she processed the transaction in connection with said agreement.
3. She should not be faulted for accused Lloren's failure to pay the balance of the purchase price of the backhoe.
4. The prosecution never presented any evidence showing that she appropriated for herself the amount subject of the malversation charge.
5. Her right to be informed of the nature and cause of the accusation against her was violated when she was convicted for acts not particularly alleged in the Information.
6. The Information alleged that the accused acted with deliberate intent to defraud. The prosecution's failure to prove such allegation should have resulted in her acquittal.
7. In the Information, it was also alleged that demands were made on the accused to make an account for the subject public funds. However, the prosecution failed to prove that such demands were in fact made.
8. The amount of ₱380,000.00 was released for the purpose intended by the barangays, *i.e.*, the down payment for the backhoe.
9. The prosecution failed to prove that there was conspiracy among the accused. Therefore, she should be acquitted.



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In its Consolidated Comment/Opposition (To Accused/Movants' Respective Motions For Reconsideration Re: Decision dated November 17, 2017),⁸ the prosecution counters:

1. Contrary to the allegations of the accused in their respective motions for reconsideration, it was able to prove all the elements of Malversation of Public Funds under Art. 217 of the Revised Penal Code.
2. When a criminal action is instituted without any reservation as to the civil liability, civil action is impliedly instituted with the criminal action. Thus, the accused' claim that they can be held only civilly liable is devoid of merit.
3. Accused Lloren's claim of having suffered pecuniary damage does not exculpate him from criminal liability.
4. The lack of any prohibition from acquiring second-hand vehicles and the remedy of proceeding against the bidders bond are irrelevant to the issues in the present case.

THE COURT'S RULING

The Court resolves to deny the respective motions for reconsideration of accused Lloren, Palo and Morata.

First. Accused Palo contends that her right to be informed of the nature and cause of the accusation against her was violated because she was convicted for malversation by negligence but the Information alleges intentional malversation. This contention is untenable. This issue was already addressed in the assailed Decision, the pertinent portion⁹ of which is hereunder quoted for convenience:

Intentional malversation includes malversation by negligence

The Information charges the accused with intentional malversation. viz.:

x x x conniving, confederating and mutually helping each other, with mutual and deliberate intent to defraud, did then and there willfully, unlawfully, and feloniously, consent, allow or permit another person to take said public funds, x x x

⁸ Dated December 13, 2017, pp. 451-464, Record, Vol. 3

⁹ pp. 39-40, Decision dated November 17, 2017; pp. 354-355, Record, Vol. 3

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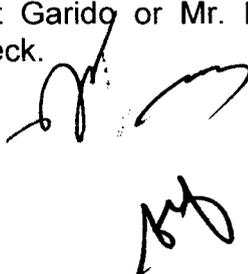
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6. Eufricina Trading received the proceeds of the check. Garido, on the other hand, received money coming from accused Lloren's private funds.
7. Assuming that he was negligent, such negligence cannot be characterized as criminal negligence.
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To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences as, in law, is equivalent to criminal intent. The maxim is *actus non facit reum, nisi mens sit rea* – a crime is not committed if the mind of the person performing the act complained of is innocent.

The rule was reiterated in “People v. Pacana,” although this case involved falsification of public documents and estafa:

Ordinarily, evil intent must unite with an unlawful act for there to be a crime. *Actus non facit reum, nisi mens sit rea*. There can be no crime when the criminal mind is wanting.

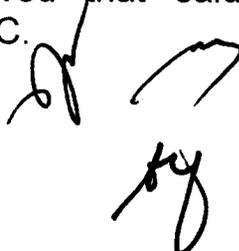
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But this Court must point out that the Supreme Court, in the same case, declared that reliance thereon will not necessarily result in the acquittal of the accused. Peculiar circumstances, similar to those in *Tabuena*, should be present. *Viz.:*

We are well aware of the fear entertained by some that this decision may set a dangerous precedent in that those guilty of enriching themselves at the expense of the public would be able to escape criminal liability by the mere expedient of invoking “good faith”. It must never be forgotten, however, that we render justice on a case to case basis, always in consideration of the evidence that is presented. Thus, where the evidence warrants an acquittal, as in this case, we are mandated not only by the dictates of law but likewise of conscience to grant the same. On the other hand, it does not follow that all those similarly accused will necessarily be acquitted upon reliance on this case as a precedent. For the decision in this case to be a precedent, the peculiar circumstances and the evidence that led to the petitioner’s acquittal must also be present in subsequent cases.

(underscoring supplied)

There, the Supreme Court found that Tabuena acted in good faith, notwithstanding his failure to comply with auditing rules and regulations, because he acted pursuant to a Presidential Memorandum dated January 8, 1986, directing him to pay Philippine National Construction Corporation (PNCC) the sum of fifty-five million pesos (P55 million) in cash. Said Memorandum was patently legal and Tabuena honestly believed that said amount was a due and demandable debt to PNCC.

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Be that as it may, the conviction of the accused for malversation has support from the ruling in *Cabello v. Sandiganbayan*.¹⁰ Therein accused claimed that he could not be convicted of malversation through negligence as he was charged with intentional malversation. But the High Court did not agree with him and explained the modes of committing malversation in the following manner:

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The exception mentioned in the aforecited case does not obtain in the present case. The Information alleges that the accused allowed or permitted another person to take public funds by causing the release of the same in payment of a backhoe, despite non-delivery of the said backhoe. The prosecution proved its allegation. Whether the accused acted deliberately or through negligence, the fact remains that they caused the release of the funds.

Next, the defense of good faith. All three accused claim that they should be acquitted because they acted in good faith when they caused the release of public funds despite non-delivery of the backhoe. This Court is not persuaded.

Indeed, in several cases cited by the accused,¹¹ the Supreme Court recognized that good faith is a valid defense in a malversation charge, and would negate criminal intent on the part of the accused. In *Tabuena v. Sandiganbayan*, it was held:

Going now to the defense of good faith, it is settled that this is a valid defense in a prosecution for malversation for it would negate criminal intent on the part of the accused. Thus, in the two (2) vintage, but significant malversation cases of "US v. Catolico" and "US v. Elviña," the Court stressed that:

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As for accused Lloren's averment that he is entitled to the mitigating circumstance of voluntary surrender, this Court, in the assailed Decision, already considered¹³ the mitigating circumstance of voluntary surrender in his favor when it determined the proper penalty to be imposed on the accused.

In fine, accused Lloren, Palo and Morata have failed to convince this Court that reversal of the assailed Decision as to Crim. Case No. SB-10-CRM-0239 is warranted.

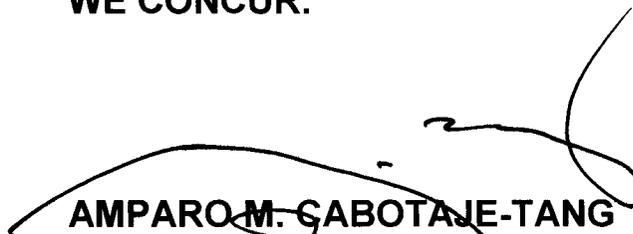
WHEREFORE, the Court rules as follows:

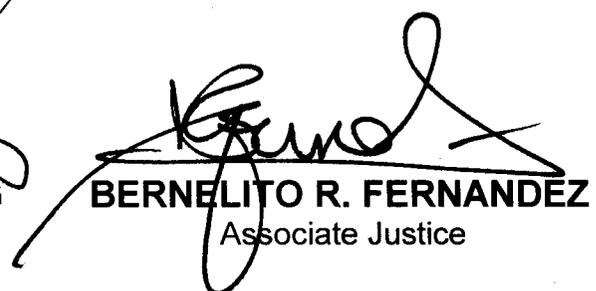
1. The *Motion for Reconsideration* of accused Palo is hereby DENIED for lack of merit.
2. The *Motion for Reconsideration* of accused Lloren is hereby DENIED for lack of merit.
3. The *Motion for Reconsideration* of accused Morata is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. GABOTAJE-TANG
Presiding Justice
Chairperson


BERNELITO R. FERNANDEZ
Associate Justice

¹³ p. 42, Decision dated November 17, 2017; p. 357 Record, Vol. 3

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Similar circumstances obtain in *U.S. v. Elviña* and *Villacorta v. People*. In *Elviña*, it was found that there was no misappropriation because the accused Municipal Treasurer, who, under the resolutions of the municipal council, was authorized to make certain payments, paid in good faith public funds to persons who have rendered services to the municipality. On the other hand, in *Villacorta*, although the accused made payments that ran counter to auditing rules and regulations, it was found that the payments were made in good faith to government personnel, including those working at the provincial auditor's and treasurer's offices.

The circumstances in the present case are not similar to those in the aforementioned cases. In those cases, it appeared that there was no misappropriation on the part of therein accused, and that while there may have been some procedural lapses, payments were made for services already rendered or in the honest belief that there was an existing indebtedness. Here, misappropriation on the part of the accused is irrelevant for the reason that they are charged with consenting, allowing or permitting another person to take public funds. Furthermore, they caused the release of the subject public funds prior to the delivery of the backhoe.

The accused' claim that the payment was made in good faith because the transaction was an installment sale likewise deserves scant consideration. The accused never presented the contract between the municipality and Euficina Trading, or for that matter, anything that would show the terms of payment.

At any rate, as discussed in the assailed Decision, there is a prohibition against advance payments¹² in Republic Act No. 7160 (R.A. No. 7160). The accused, by reason of their respective positions, knew, or should have known that R.A. No. 7160 prohibits advance payments, yet they proceeded, without valid justification, to release the check in the amount of ₱380,000.00 to Garido as partial payment for a backhoe which has yet to be delivered at the time. The individual and collective acts of the accused allowed another person to take public funds in the amount of ₱380,000.00. The accused' acts were done with "such negligence or indifference to duty or to consequences as, in law, is equivalent to criminal intent." Whether said funds ultimately went to Garido or to Euficina Trading is of no moment.

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