

RESOLUTION

People vs. Villegas

Criminal Case No. SB-16-CRM-0528

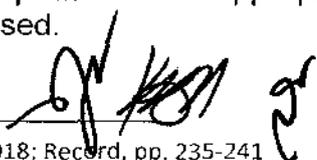
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- a. He entrusted the liquidation of the cash advance to his staff who performed the same as part of their duties.
- b. He already returned the money in two (2) installments.
4. He did not derive personal benefit from the use of the money.
 - a. He used the money to buy clothes for his intended travel to the United States of America (USA).
 - b. He had to buy clothes because the climate in the USA is different from that in the Philippines.
 - c. The intended travel to the USA did not proceed because his application for a US visa was denied.
5. Prior to the subject cash advance, he had no record of having failed to render an account of any property within his control.
6. The complaint against him was unauthorized.
 - a. Then Governor Miguel Luis R. Villafuerte caused the filing of the complaint. However, said complaint was signed by Leticia D. Aliorde, Provincial Accountant of Camarines Sur.
 - b. Aliorde was not an offended party, peace officer or public officer charged with the enforcement of the law. Therefore, she had no authority to sign the complaint.
 - c. The complaint is defective and without legal effect because it was signed by a person who had no authority to do so.

In its *Opposition (Re: Accused's Motion for Reconsideration dated 09 August 2018)*,³ the prosecution counters:

1. The fourth element of Malversation of Public Funds or Property was established beyond reasonable doubt.
2. The failure of an accountable public officer to produce public funds that came into his or her custody upon demand gives rise to a *prima facie* presumption that such funds were put to personal use. The burden of proving that there was no appropriation or misappropriation of said funds then shifts to the accused.


³ Dated August 15, 2018; Record, pp. 235-241

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3. The accused failed to overturn such presumption. He even admitted that he used the subject cash advance to buy clothes, and to pay for his medical expenses.
4. It is too late for the accused to contest the validity of the complaint that triggered the preliminary investigation in the present case. His failure to assert any of the grounds for a Motion to Quash before arraignment is deemed a waiver of his objection.
5. The offense charged may be prosecuted *de officio*. The complaint for purposes of preliminary investigation may be filed by any person.

THE COURT'S RULING

Accused Villegas' *Motion for Reconsideration* is devoid of merit and should be denied.

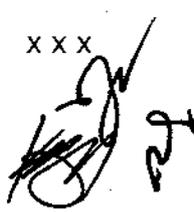
The accused argues that the fourth element of Malversation of Public Funds or Property is not present because he acted in good faith, and because he did not derive any personal benefit from the use of the subject cash advance. This is a mere reiteration or rehash of his previous arguments, which had already been considered and found to be without merit in the assailed Decision. Hence, there is no need to discuss the same anew. The pertinent portion⁴ of the assailed Decision is hereunder quoted for convenience:

The remaining issue that must be resolved is the presence of the fourth element, *i.e.*, the offender must have taken, misappropriated, or consented, or through abandonment or negligence, permitted another person to take public funds or property. This Court rules that the fourth element of Malversation of Public Funds or Property is present.

Commission on Audit (COA) Circular No. 96-004 dated April 19, 1996 was issued to implement Sec. 16 of Executive Order No. 248 (E.O. No. 248). Said circular specifically provides that the cash advance for travel shall be liquidated strictly within sixty (60) days after returning to the Philippines. In case the trip is cancelled, the amount paid in advance shall be returned in full. The pertinent portion of the circular reads:

⁴ pp. 10-14; Record, pp. 214-218

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The COA circular is silent as to the period within which the public official or employee should refund the amount paid in advance in the event that the trip is cancelled. However, considering that a public official or employee who completed the trip is given sixty (60) days after returning to the Philippines to liquidate the cash advance, then a reasonable period for refunding the cash advance in case of a cancelled trip should not exceed sixty (60) days from such cancellation.

Here, the accused failed to return the ₱150,104.70 he received as cash advance within a reasonable period. Worse, he failed to comply with the demand letter sent by the Provincial Legal Officer around eleven (11) years from the date he received said amount. Instead of returning the full amount within five (5) days, as directed by said letter, he returned ₱100,000.00 on December 29, 2011, or around three (3) years from his receipt of the demand letter, and the remaining ₱50,104.70 only on December 6, 2012, or almost one year thereafter.

His failure to comply with the demand letter is *prima facie* evidence that he put the subject funds to his personal use. This is further supported by the accused' admission during his testimony that he used a part of the funds to buy clothes and to pay for his medical expenses. The pertinent portions of the TSN are hereunder quoted:

(on cross-examination)

Q: You mentioned that when I asked you a while ago why did you make two (2) installments, you answered that you do not have money?

A: Yes, sir.

Q: So do you agree with me that when you first made the installment in December 29, 2011, the cash advance that you received in 1997 was no longer intact?

A: Yes, Sir. "Wala na po."

Q: Because you used the cash advance Mr. Witness that you received in 1997?

A: Yes, Sir. Because when we prepare the travel we would spent. We already bought things, Sir.

Q: All those Php150,000.00 plus?

A: Not necessary, Sir.

Q: Then what did you do with the remaining amount Mr. Witness?

A: We spent it, Sir.



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Q: Where did you use it?

A: I could no longer remember, Sir because I got sick.

Q: So probably you use it for your medical expenses?

A: "Yung iba po."

x x x

(on re-direct examination)

Q: Mr. Witness can you again tell this Honorable Court what did you do with the cash advance that you have received?

x x x

A: When we were given the cash advance, we went to Manila to complete our requirements there, and to get the approval from Malacañan. After we went to Malacañan, we went to the Embassy to get our visas. Then, of course we had the belief that we were travelling, so we bought clothing for ourselves, Sir.

Q: Mr. Witness during the period that you have not liquidated the said amount, what did you do with the money?

A: As I mentioned earlier I got sick, so I spent the money for myself, Sir. "Practice naman don po pagnakaganon, ka-cash advance ka, wala namang nag-aano sa amin so, hanggat naubos yung pera."

(emphasis underscoring supplied)

The accused contends that good faith negates criminal intent on his part. According to him, he had no intention to convert the funds for his personal benefit. He prioritized his health issues and entrusted the liquidation of the cash advance to his staff. Moreover, he eventually returned the amount he received as cash advance in full.

His contention does not persuade. The aforequoted portion of the TSN clearly shows that the accused intended, and actually converted public funds for his personal benefit.

Furthermore, the fact that he eventually returned the amount received as cash advance in full will not exonerate him from criminal liability. The felony was consummated when he used the public funds entrusted to him for his own benefit. The return of the funds, in the case at bar, cannot even be considered a mitigating circumstance, considering that it took the accused around fourteen (14) years to return ₱100,000.00, and the balance of ₱50,104.70, almost a year thereafter, without any valid explanation as to why he could not have liquidated the same within a more reasonable period.

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(citations omitted)

Not only did the accused fail to overturn the *prima facie* presumption that he converted the subject cash advance for his personal use. His own admissions contradict his claim that he did not use the subject cash advance for his personal benefit.

Next, the accused assails the validity of the *Complaint-Affidavit* filed by Leticia Aliorde.⁵ According to him, said *Complaint-Affidavit* was defective because the complainant had no authority to sign the complaint. This contention deserves scant consideration.

First, it is too late for the accused to assail the validity of the Information, or for that matter, the *Complaint-Affidavit* filed for the purpose of the preliminary investigation. Rule 117, Sec. 9 of the Rules of Court provides:

Sec. 9. Failure to move to quash or to allege any ground therefor. – The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of Section 3 of this Rule.

The ground being invoked by the accused does not fall under paragraphs (a), (b), (g) or (i) of Sec. 3 of Rule 117 of the Rules of Court. Thus, he is deemed to have waived any objection to the Information after he entered his plea.

Second, whether or not Leticia Aliorde had the authority to file the complaint against him is of no importance. Under Republic Act No. 6770 (R.A. No. 6770), the Office of the Ombudsman has the power to investigate and prosecute criminal cases cognizable by the Sandiganbayan. Sec. 15 (1) of R.A. No. 6770 reads:

Sec. 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases

⁵ Exhibit E

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cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(underscoring supplied)

Without doubt, the Office of the Ombudsman could have filed the Information against the accused upon a complaint by any person—whether authorized to represent the local government unit or not—or after its own investigation.

The Court finds no reason to warrant the reversal of the assailed Decision.

WHEREFORE, accused Villegas' *Motion for Reconsideration* is hereby denied for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice