REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

– versus –

RUBEN D. GARCIA,
Accused-Appellant,

SB-17-A/R-0040

FOR: Malversation of Public Funds under Article 217 of the Revised Penal Code

Present:
LAGOS, J., *Chairperson*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:
September 04, 2018

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RESOLUTION

LAGOS, J.:

This resolves the *Motion for Reconsideration*[1] dated August 15, 2018 filed by accused-appellant Ruben D. Garcia from the *Decision* of this Court promulgated on July 27, 2018 which dismissed, for lack of merit, his appeal from the Decision of the Regional Trial Court (RTC) of Daet, Camarines Norte, Branch 224, in Criminal Case No. 12416,

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[1] Records, pp. 124-128

finding him guilty beyond reasonable doubt of the crime of *Malversation of Public Funds* defined and penalized under Article 217 of the Revised Penal Code.

The prosecution filed its *Comment*[2] on accused-appellant's *Motion for Reconsideration* on August 23, 2018.

Accused-appellant seeks in his *Motion for Reconsideration* to reconsider the assailed *Decision* of this Court and prays that a decision be issued acquitting him for failure to establish the guilt of the accused beyond reasonable doubt.

Anchoring his motion on the argument that the prosecution failed to prove the guilt of the accused-appellant with moral certainty, accused-appellant contends that: (1) "the bank statement which was the basis used in computing the alleged deficiency which is material in determining the imposable *(sic)* should not be given probative value" because it was not identified by any of the witnesses for the prosecution; (2) "accused-appellant timely objected to the bank statement when it *(sic)* opposed the admission of said documents during his comment/opposition to the formal offer of evidence by the prosecution"; (3) Section 43, Rule 130 of the Rules of Court is not applicable in this case.

The prosecution debunks as untenable the arguments raised by accused-appellant, claiming on the main, that the *Motion for Reconsideration* contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. The prosecution adds that issues raised by accused-appellant have been considered, passed upon and sufficiently discussed by the Court in its decision promulgated on July 27, 2018. It emphasizes that the accused-appellant has only himself to blame for his failure to present his own evidence during the trial in the court *a quo*.

DISCUSSION AND RULING

The *Motion for Reconsideration* is bereft of merit.

An assiduous review of the records of the case, as aptly observed by the prosecution, reveals that the issues raised by accused-appellant have already been discussed and squarely passed upon by the Court in the assailed *Decision*. The Court finds no new

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[2] Record, pp. 129-132

circumstance or compelling reason that warrants the reversal and setting aside of the said *Decision.*

The motion contains merely a reiteration or rehash of arguments already submitted to and considered, weighed and resolved by the Court in its *Decision*. The basic issues have already been passed upon, and the motion discloses no substantial argument or cogent reason to warrant reconsideration of the judgment of conviction.

There is therefore no necessity to exhaustively discuss and rule again on the arguments raised since "this would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant." [3]

It is well to note, however, that the complete reliance of accused-appellant on the merits of his argument on the inadmissibility of the bank statements to exonerate him from the judgment of conviction rendered by the trial court against him fails to convince this Court.

The prosecution witness, Elmer C. Nagera, who in his official capacity as Municipal Accountant verified and audited the collections of the accused-appellant during the questioned period (January 1, 2001 to May 23, 2002), testified on the contents of the bank statements[4] as well as the Summary of Collections[5], which in the course of the proceedings, were admitted as part of his testimony on record before the trial court. Strangely though, there was no objection at all from accused-appellant's counsel on the competence of Mr. Nagera, as a witness, and the admissibility of his testimony relative to the bank statements.[6] To recall, Mr. Nagera testified on the discrepancy between the total collections indicated in the Summary of Collections and the amounts deposited by accused-appellant, as recorded by the depositary bank, DBP, in its bank statements for 2001 and 2002. The bank statements were issued, upon request, to the Municipality of Daet, Camarines Norte in the regular course of business.

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[3] Ortigas and Company Limited Partnership vs. Judge Tirso Velasco and Dolores V. Molina, G.R. No. 109645, March 4, 1996, and Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Branch 105 and Manila Banking Corporation, G.R. No. 112564, March 4, 1996.
[4] Exhibits "G" and "H"
[5] Exhibit "C"
[6] Section 36, Rule 132, Rules of Court provides: " x x x Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent. x x x"

Well-settled is the rule that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[7] This doctrine holds true even if, by its nature, the evidence is inadmissible and would have surely been rejected if it has been challenged at the proper time.[8] There is abundance of authority in our jurisprudence that where no objection is made to the question propounded to the witness until after the question is answered, the objectionable feature of the evidence is deemed waived.[9]

As pointed out in the assailed *Decision* of this Court, the conviction of accused-appellant was not the result alone of the audit findings based on the bank statements, but on all other prosecution's evidence as well, which clearly prove the existence of the deficiency or shortage in accused-appellant's account. Records show that the guilt of accused-appellant was proved beyond reasonable doubt by other circumstantial evidence not only from the testimony of the Municipal Accountant, but from the credible testimonies of the other prosecution witnesses. When accused-appellant was asked by a witness for the prosecution, Eduardo C. Casiao, the newly-elected Punong Barangay, to account for the shortage of PhP 60, 360.00, he promised to return the shortage amount but eventually failed to do so[10]. Also, accused-appellant did not respond or act on the letter of demand, dated August 20, 2002, sent by the Daet Municipal Legal Officer Omar E. Manlapaz[11]. When accused-appellant was invited on three(3) occasions to appear and explain before the Barangay Committee on Finance and Appropriation chaired by Kagawad Emelita Laureles, a prosecution witness, he failed to appear.[12]

While the rules of procedure[13] provides the accused-appellant the right to present his own evidence in defense of his cause after the prosecution rested its case, he opted not to present his own evidence in court. By not presenting his own evidence, he lost his right to dispute or rebut the presumption of law installed under the last paragraph of Article 217 of the Revised Penal Code that there was malversation of public funds or properties. In short, he lost his right to present his own evidence that he has fully accounted for the alleged cash shortage.

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[7] Interpacific Transit,Inc. vs. Rufo Aviles,et. al., 186 SCRA 385 (1990), citing Marella vs. Reyes, G.R. No. L-4389, November 10, 1908, 12 Phil.1
[8] Id., citing U.S. vs. Ong Shin, 12 Phil 242; Hodges vs. Salas, 63 Phil.567
[9] Corazon Dezoller-Tison vs. Court of Appeals, G.R. No. 121027, July 31, 1997; Chua Soco vs. Veloso, G.R. No. 116, November 2, 1903, 2 Phil.658
[10] TSN, September 27, 2011, pp.3-5
[11] Id., September 27, 2011, p. 6
[12] Id., October 2, 2012, pp. 3-5
[13] Section 11, Rule 119, Revised Rules of Criminal Procedure

Undoubtedly, when accused-appellant opted not to present countervailing evidence to overcome the presumption, by merely manifesting that he will no longer present his case, he in effect impliedly admitted the truth of such fact. Accused-appellant overlooked the evidential rule that presumptions like judicial notice and admissions, relieve the prosecution from presenting evidence on the facts it alleged and such facts are thereby considered as duly proved.

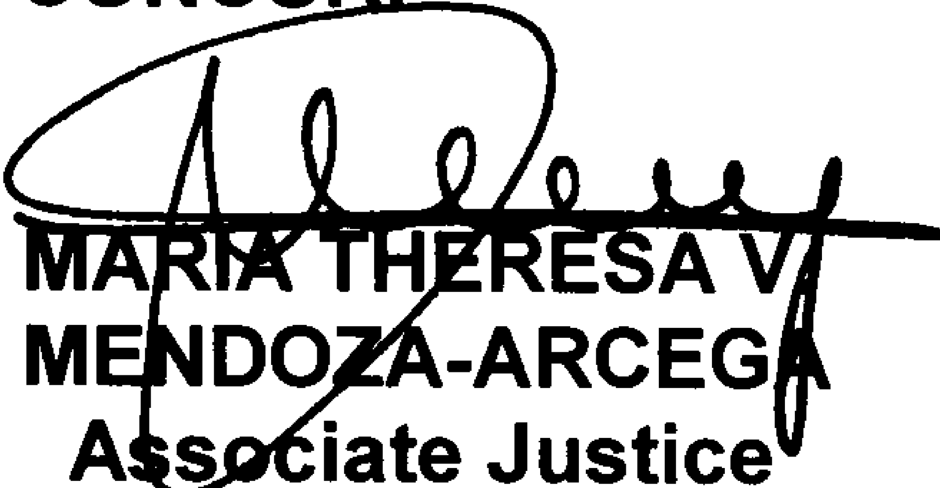
Considering that the issues raised and the arguments invoked by accused-appellant, as adverted to earlier, have been exhaustively discussed and resolved in the assailed *Decision,* there is no plausible and cogent reason found in his *Motion for Reconsideration* which would persuade this Court to reconsider, reverse or set aside the *Decision* sought to be reconsidered.

WHEREFORE, in light of the foregoing, the accused-appellant's Motion for Reconsideration is **DENIED** for lack of merit.

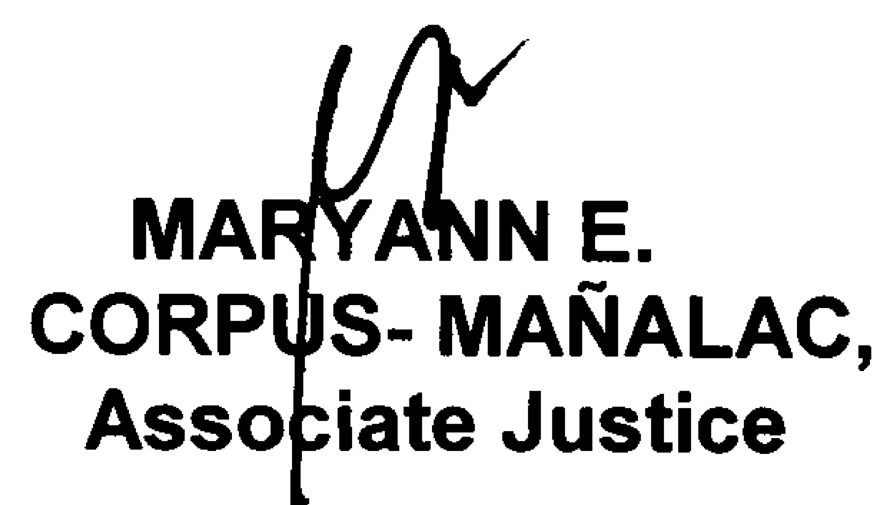
SO ORDERED.

RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice



MARYANN E. CORPUS- MAÑALAC,
Associate Justice