



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SPECIAL FOURTH DIVISION

PEOPLE OF THE PHILIPPINES, **Crim. Case No. SB-11-CRM-0032**
Plaintiff, For: Violation of Sec. 3(e) of R.A.
No. 3019

Crim. Case No. SB-11-CRM-0034
For: Malversation of Public Funds
under Art. 217, RPC

- versus -

Present:

QUIROZ, J. *Chairperson*
CRUZ, J.
JACINTO, J.
CABOTAJE-TANG, P.J.*
DELA CRUZ, J.**

LAURO L. BAJA, JR.,

Promulgated on:

Accused.

October 12, 2018 *unt*

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RESOLUTION

JACINTO, J.:

This resolves the Motion for Reconsideration¹ of the *Decision* promulgated on 13 April 2018² (*Motion*) and the *Supplemental Motion for Reconsideration [Re: Decision dated 13 April 2018]*³ (*Supplemental Motion*) filed by accused Ambassador Lauro L. Baja, Jr.

The dispositive portion of the *Decision* reads –

WHEREFORE, premises considered, judgment is hereby rendered as follows:

* Designated as Special Member of a Special Division of Five Justices in the Fourth Division pursuant to Administrative Order (A.O.) No. 16-C-2018 dated 3 September 2018.

** Designated as Special Member of a Special Division of Five Justices in the Fourth Division pursuant to Administrative Order (A.O.) No. 16-C-2018 dated 3 September 2018.

¹ Dated 30 April 2018, Records, Vol. III, pp. 438-458.

² *Id.*, pp. 346-370.

³ Attached to the *Motion for Leave*, dated 24 September 2018 and filed on 25 September 2018, *id.*, pp. 489-518.

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1. In **Criminal Case No. SB-11-CRM-0032**, accused Lauro L. Baja, Jr., is found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019 and, pursuant to Section 9 thereof, is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, to ten (10) years as maximum, with perpetual disqualification from holding public office.
2. In **Criminal Case No. SB-11-CRM-0034**, accused Lauro L. Baja, Jr., is found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of ten (10) years and one (1) day as minimum, to seventeen (17) years and four (4) months, as maximum, and a fine equal to Seventeen Thousand Five Hundred Forty-Seven and 27/100 US Dollars (\$17,547.27) or its pesos equivalent, with perpetual special disqualification from holding public office.

SO ORDERED.

The Ambassador's *Motion* is anchored on the following grounds:

- A. THE PROSECUTION'S EVIDENCE FAILED TO PROVE BEYOND REASONABLE DOUBT THE PRESENCE OF ALL THE ELEMENTS OF A VIOLATION OF SECTION 3(e) OF REPUBLIC ACT NO. 3019.
- B. THE PROSECUTION'S EVIDENCE FAILED TO PROVE BEYOND REASONABLE DOUBT THE PRESENCE OF ALL THE ELEMENTS OF MALVERSATION OF PUBLIC FUNDS UNDER ARTICLE 217 OF THE REVISED PENAL CODE.
- C. THE INSURANCE PROCEEDS FROM THE LOST/STOLEN JEWELRY OF MRS. BAJA ARE PRIVATE FUNDS WHICH SHOULD NOT EVEN BE CONSIDERED IN THE PRESENT CASE.

SB-11-CRM-0032

Violation of Sec. 3(e), R.A. No. 3019

Ambassador Baja argues that all his actions show that he was in good faith: he opened PNB Account No. 2815 upon the recommendation of Finance Officer (F.O.) Valerio, Jr. who also co-signed the withdrawal slips thereof; and, he used the insurance payment he received to pay for the repairs of the Official Residence. He claims that "these actions do not show bad judgment or a palpable and patently fraudulent and dishonest purpose to

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do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Neither do these actions show a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose.”

The prosecution filed its *Comment/Opposition*, claiming that the arguments raised in the Ambassador’s Motion have already been passed upon by the Court in its assailed *Decision*.

After going over the arguments raised by both parties, the Court cannot subscribe to the Ambassador’s claim that he acted in good faith and full transparency. On the contrary, his actions reveal that, right from the outset, he treated the funds subject of these cases as his own and disbursed the same in complete disregard of government procedures designed to ensure accountability and full transparency, as shown by the following:

Public funds were not deposited in an official bank account:




The funds subject of these cases are public funds, being proceeds from the checks issued by Lexington Insurance Company payable to the Philippine Mission to the United Nations (Philippine Mission). Instead of depositing the checks with the official bank account of the Philippine Mission, the Ambassador opened a separate account – PNB Account No. 2815 - in the name of the “Philippine Mission to the UN– Renovation of Townhouse.”

PNB Account No. 2815 was opened without prior approval from the DFA:

Account No. 2815 was opened without prior approval from the Department of Foreign Affairs (DFA). Thus, even if it is true that insurance proceeds cannot be comingled with the regular funds of the Philippine Mission, the Ambassador should have first obtained approval from the DFA before opening said account,⁴ as was required by its processes.

The Ambassador’s claim that Account No. 2815 was opened upon the advice or suggestion of Finance Officer (F.O.) Valerio, Jr. because said checks represented insurance proceeds that could not be comingled with the

⁴ Testimony of Crescente R. Relacion, as cited in p. 5 of the Decision.



regular funds of the Philippine Mission is only partly correct. F.O. Valerio, Jr. testified that “he made that suggestion to expedite the transactions because accused Baja insisted that the insurance proceeds are his money and that the latter engaged contractors for the repairs.”⁵ This reveals that, from the very start, the Ambassador treated the funds as his own, especially when taken together with the fact that no official receipt was issued by the Philippine Mission for the receipt of said checks.

Funds were disbursed through cash withdrawals and not through the issuance of checks:

Prosecution witness Mario Lopez De Leon, Jr., Consul General of the Philippine Consulate General in New York, testified that “in accordance with Sec. 5 of the Special Provisions of the General Appropriations Act on the ‘Use of Insurance Proceeds,’ the insurance proceeds should have been withdrawn through the issuance of official checks, and not through cash withdrawals as done by accused Baja.”⁶ Then Acting Assistant Secretary of the DFA’s Office of Financial Management, Crescente R. Relacion, likewise testified that the DFA required that disbursement be made *via* checks. This would have allowed the DFA to keep better track of disbursements made by its officials.

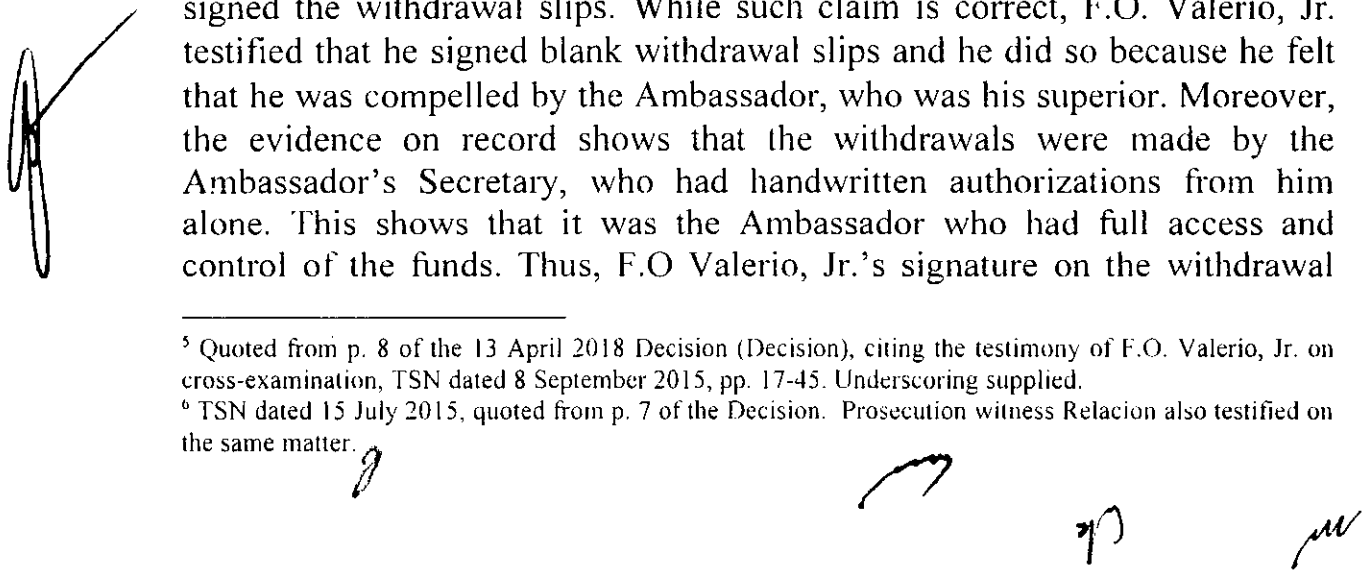
Thus, by opting instead to make direct cash withdrawals, the Ambassador made it pronouncedly difficult, if not virtually impossible, for the DFA to keep track of the disbursements of the insurance proceeds.

Accused alone had access to Account No. 2815:

In an effort to prove that he was transparent, the Ambassador points out that F.O. Valerio, Jr. was a co-signatory to Account No. 2815 and co-signed the withdrawal slips. While such claim is correct, F.O. Valerio, Jr. testified that he signed blank withdrawal slips and he did so because he felt that he was compelled by the Ambassador, who was his superior. Moreover, the evidence on record shows that the withdrawals were made by the Ambassador’s Secretary, who had handwritten authorizations from him alone. This shows that it was the Ambassador who had full access and control of the funds. Thus, F.O. Valerio, Jr.’s signature on the withdrawal

⁵ Quoted from p. 8 of the 13 April 2018 Decision (Decision), citing the testimony of F.O. Valerio, Jr. on cross-examination, TSN dated 8 September 2015, pp. 17-45. Underscoring supplied.

⁶ TSN dated 15 July 2015, quoted from p. 7 of the Decision. Prosecution witness Relacion also testified on the same matter.



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mentioned by the Ambassador in his Urgent Request and could not have been affected by the flooding in the second floor of the Official Residence.

Second, the Ambassador merely submitted a photocopy of James McDonnell's quotation, and it does not even contain his conformity thereto. As for the receipts he submitted, they are mere photocopies and bear no semblance of official receipts. The name "James McDonnell" appears to be merely stamped thereon. More importantly, they do not contain particulars indicating the purpose of the payment.

Otherwise stated, at most, the receipts can only be considered as evidence of payment to a certain James McDonnell, but not for the underlying reason for such payments since the receipts contain no indication that they were for the repairs done on the dining area located at the first floor of the Official Residence.

In this connection, the Ambassador cannot feign ignorance of, or lack of familiarity with, the forms of receipts issued by establishments in the U.S. As a public official of his stature and experience, he should be aware that for purposes of liquidation of public funds, our Government requires an Official Receipt.

Third, the sums withdrawn from Account No. 2815 do not tally with the payments indicated in the receipts submitted by the Ambassador:

Date of Withdrawals	Amount Withdrawn	Date in James McDonnell's Receipts	Amount of Payment
15 July 2005	\$3,200.00	16 July 2005	\$3,200.00
29 July 2005	\$3,910.00	29 July 2005	\$3,900.00
17 Aug. 2005	\$5,000.00	18 Aug. 2005	\$5,000.00
22 Sept. 2005	\$2,000.00	22 Sept. 2005	\$2,000.00
23 Nov. 2005	\$ 500.00	23 Nov. 2005	\$ 500.00
30 Jan. 2006	\$2,000.00	3 April 2006	\$ 490.00
3 April 2006	\$ 909.66	-----	-----
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	\$17,519.66		\$15,090.00

On 29 July 2005, for instance, the amount of \$3,910.00 was withdrawn from the said account. Yet, the payment made to James McDonnell was only \$3,900.00. No explanation was given as to the extra \$10.00 withdrawn. Also, on 30 January 2006, the amount of \$2,000 was withdrawn yet payment was made only on 3 April 2006 and only for the

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amount of \$490.00. Further, it may be recalled that James McDonnell submitted a quotation for \$15,000.00, but the receipts presented by the Ambassador total to \$15,090.00. Finally, after the last payment of \$490.00 to James McDonnell, the account still had a balance of \$909.66, which the Ambassador withdrew but did not account for. All these circumstances militate against the credibility of the Ambassador's version of events.

Fourth, the DFA's approval for the repairs of the damaged portion of the Official Residence was relayed to the Ambassador *via* a Memorandum dated 7 June 2005 from Administrative Officer Arturo V. Romua and F.O. Valerio, Jr. The Memorandum clearly indicated that Burda Construction was to undertake the repairs as recommended by the Ambassador in his earlier Urgent Request, and that the approved budget was limited to \$12,504.77. Thus, even if the Ambassador's claim that he contracted with James McDonnell is to be considered, it only shows that he completely and consistently disregarded the procedures of, and instructions from, the DFA.

Fifth, when asked by DFA Assistant Secretary Fernandez on 17 May 2006 about the insurance proceeds – which was almost a year since the alleged payment for the repairs – the Ambassador replied through a Memorandum stating as follows: –

In connection with your fax message MS 277-OFM-06, following information is submitted:

- I. NYPM filed a claim for losses/damages against C & M First Services Inc. (insurance broker) as a consequence of the flooding in the first floor dining room and basement of the Permanent Representative's residence due to ruptured water pipe of the heating system located at the second floor of the building.
- II. Per report of the insurance adjuster of York Claims Service, Inc., following is the summary of expenses for the replacement/repair of the damage properties, subject to the approval of the insurance company. (Annex I):

Building -	\$ 13,543.13
Personal Property -	\$ 975.00

- III. Upon the invitation of the Mission, the following construction firms submitted their quotation for the repair of the property (Annex II):

Burda Construction -	\$ 15,289.00
Central Construction -	16,200.00
Hot n Cold Contractors-	17,009.00

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- IV. Lexington Insurance Company issued checks to the Mission on various dates for the repair of the damage (sic) property and refund of claim payment "holdback" as follows: (Annex III)

\$14,431.27 - issued on 6/16/2005

\$ 1,739.51 - issued on 8/25/2005

- V. NYPM deposited the following insurance proceeds at PNB-New York (Account Number 2815 Philippine Mission to the U.N. Renovation of the Townhouse) on various dates: (Annex V)

6/29/05 - \$13,284.76

9/6/05 - \$ 1,739.51

For the Department's information.⁸

The Ambassador made no mention of the payments made to James McDonnell for the repair of the Official Residence that were sourced from the insurance proceeds.

All these circumstances greatly diminish the weight that the Court can accord to the Ambassador's evidence. To recall, these are precisely the same factors that led the Court to conclude in the assailed *Decision* that he actively concealed the "use and disposal of the insurance proceeds he received on behalf of the NYPM."⁹

The release of the "hold-back value" does not prove that the repairs were done by James McDonnell:

Prosecution witness Relacion testified that the "hold-back value" is released by the insurance company after inspection and upon confirmation by the latter that repairs were actually made.

In these cases, the records show that the check representing the "hold-back value" was released sometime in September 2005 and was credited to Account No. 2815 on 7 September 2005.¹⁰

⁸ Annex 16 of Exhibit E.

⁹ P. 6, *Decision*.

¹⁰ Annexes 1 and 9 of Exhibit E.

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However, the receipts presented by the Ambassador show that he was still making payments on 22 September 2005, 23 November 2005, and 3 April 2006.

Thus, the claim that the payment of the “hold-back value” stands as evidence that repair work on the first-floor dining area of the Official Residence was completed cannot be sustained. On the contrary, it proves that the documents submitted by the Ambassador evidencing payment to James McDonnell pertains to a different set of repairs – if indeed repairs were made at all.


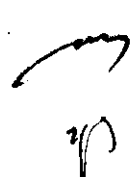


The disbursement made in favor of the Ambassador’s wife was not proper:

As pointed out in the 13 April 2018 *Decision*, the \$2,500.00 representing the insurance proceeds for the alleged theft of the money and jewelry belonging to the Ambassador’s wife were public funds. To quote the Court’s earlier pronouncement:

Since the amount of \$2,500.00 is considered government funds, there is no legal justification, much less authority, for accused Baja to convert the same into his wife’s personal fund. Stated differently, even if it were true that the insurance company paid the amount of \$2,500.00 to the NYPM as indemnification for Mrs. Baja’s lost/stolen jewelry and cash, the said amount was not paid to reimburse Mrs. Baja *per se*; rather, it was given to indemnify the NYPM for the possible claim Mrs. Baja may file against the latter in connection with the lost/stolen items. This would require Mrs. Baja to first file a claim against the NYPM for the lost/stolen property before the NYPM pays her for her loss. But this procedure was by-passed when accused Baja took the said amount, deposited the same in the separate PNB account and authorized the withdrawal thereof, treating it as if the said amount was already his wife’s personal fund.¹¹

The Ambassador’s claim that he acted in good faith in believing that his wife owned the insurance proceeds cannot absolve him of liability. In the first place, he could not have been unaware that neither he nor his wife paid for the insurance premiums; and that the check issued by the insurance company was not payable to him or to his wife. Even absent further knowledge of accounting procedures, this serves as a clear indication that the funds belonged to the Government.

¹¹ Pp. 22-23 of *Decision*, citations omitted.



In other words, what the Ambassador did was to give his wife undue benefit by by-passing the proper processes by which she can be indemnified for the loss of her personal belongings. He was able to do this because of the position that he held.





Apart from this, regardless of the fact that the supposed loss or larceny was reported to the local authorities, reporting itself does not translate to absolute proof of loss. The receipt of \$2,500.00 by way of insurance does not take away the Government's right to determine the extent of its liability for the damage said to have been incurred by the Ambassador's wife. The Ambassador's circumvention of the rules and proper process for the sake of convenience is antithetical to good faith.

The Ambassador acted in total disregard of official processes and protocols:

The Ambassador's repeated disregard of DFA protocols and procedures are clear indications of his lack of good faith and transparency in his handling of the subject funds. These processes required him to deposit the checks his office received with the official bank account of the Philippine Mission; to request for approval to open such third account (considering that the Philippine Mission already had two accounts); and to disburse such funds in accordance with government auditing and accounting procedures. These procedures are there to ensure accountability and transparency in the use of government funds and cannot be set aside by mere whim or any claim of expediency. In this connection, it is *apropos* to mention that in *Victoriano v. People*,¹² the accused bank manager was convicted of Violation of Sec. 3(e) of R.A. No. 3019 for allowing the encashment of checks without following the usual banking procedure. The same can be said for the Ambassador's failure to safeguard the Government's funds.

The Court cannot absolve the Ambassador of liability by pinning the blame on F.O. Valerio, Jr. That the opening of the Account No. 2815 was upon F.O. Valerio Jr.'s suggestion, that he was remiss in his duties to monitor the use of said insurance proceeds, and that he failed to report the same to the DFA are separate matters of concern, although F.O. Valerio, Jr. precisely did not make any report regarding said account because it was never considered or treated as an official account of the Philippine Mission.

¹² G.R. No. 171322-24, 30 November 2006.




The present cases are about the Ambassador's use of the said funds rather than F.O Valerio Jr.'s failure to monitor the same. For one, as a career diplomat who has risen from the ranks of the foreign service, the Ambassador is presumed to possess the experience and expertise required of a Philippine ambassador, and to be familiar with the policies, procedures, and protocols in carrying out the mandate of his post.


Otherwise stated, the Court was correct when it held as follows:



xxxx In this case, it was duly proven that accused Baja received on behalf of NYPM the checks of insurance proceeds amounting to \$17,524.27. After isolating the funds by depositing the said amount in a separate PNB account, accused Baja gained easier access thereto and authorized the withdrawal of the amount, without properly accounting for and explaining how the same was disposed of. As a result, the government suffered undue injury equivalent to \$17,524.27 for the unexplained use of the amount of the insurance proceeds received by accused Baja on behalf of NYPM.¹³

To reiterate, the Ambassador's act of opening a separate bank account in the name of the "Philippine Mission to the U.N. – Renovation of Townhouse" allowed the deposit of the insurance checks, which were drawn in the name of "Philippine Mission to the U.N.," to an alternative account. Rather than being a badge of good faith, this can be treated as a utility for diverting the said funds from the proper government account to a different one. Likewise, the total non-disclosure of the disbursement of \$ 2,500.00 to a private individual – regardless of reasons presented - admits of evident bad faith. There simply are insufficient sound legal or administrative justifications as to why the Ambassador refused to undertake the usual processes and chose to bypass the proper channels and safeguards for government disbursements. Thus, for lack of controverting proof that the intentionally-diverted funds were used for the Government's benefit, the Court was correct to hold the Ambassador guilty of the charge.

SB-11-CRM-0034
Malversation of Public Funds

 A *prima facie* case of malversation exists when a public officer accountable for public funds fails to produce or explain the disposition of such funds upon demand by a duly authorized officer. Thus, a conviction for malversation may be sustained even if there is no direct evidence of personal misappropriation as long as the public officer failed to explain satisfactorily

¹³ Decision, p. 19; Records, Vol. III, p. 364. 

the absence of the public funds involved.¹⁴ In this case, the Court discussed the Ambassador's liability for Malversation in its assailed Decision, to wit:

In this case, all of the above elements are established. It is already settled that accused Baja is a public officer. As then the Permanent Representative, accused Baja admits that he headed the Philippine Mission to the UN. Being the Head of the Philippine Missions to the UN, accused Baja is an accountable public officer, who is primarily responsible for all government funds and property pertaining to his agency. As an accountable public officer, accused Baja likewise had custody and control over government funds when he received the insurance proceeds on behalf of the NYPM. The more apparent illustration of accused Baja's control over the funds is fact that the withdrawal of the said insurance proceeds was allowed with his authority.

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Here, the conviction of accused Baja hinges on the presumption provided for under Article 217. In effect, accused Baja is presumed to have used the insurance proceeds for his personal benefit when he did not give a clear report to the OFM Assistant Secretary Fernandez, after the latter inquired about the said insurance proceeds. Since the presumption has arisen, the burden now shifts to accused Baja to present his countervailing evidence. Unfortunately, accused Baja's evidence failed to negate the presumption. Case in point, the Court cannot take accused Baja's bare allegation that he used the insurance proceeds to pay for the repairs of the water-damaged property in the absence of any evidence to corroborate his claim. In this regard, the Court already rejected the authenticity of the photocopied receipts accused Baja presented as proof of payment. Without the presentation of any competent evidence to prove the fact of payment, the statement of accused Baja becomes self-serving, and thus, it deserves scant consideration. Certainly, accused Baja's failure to adduce any competent and credible evidence that would exonerate him and contradict the *prima facie* presumption of malversation warrants a verdict of conviction.

In the same vein, it is improper for accused Baja to appropriate a portion of the insurance proceeds, amounting to \$2,500.00, as a direct reimbursement for the alleged lost/stolen jewelry and cash of his wife. It is worth emphasizing that the said amount which accused Baja received on behalf of the NYPM is still government funds. This is clear from the provision of Section 63 of P.D. No. 1445, which states:

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Since the amount of \$2,500.00 is considered government funds, there is no legal justification, much less authority, for accused Baja to convert the same into his wife's personal funds. Stated differently, even if it were true that the insurance company paid the amount of \$2,500.00 to the NYPM as indemnification for Mrs. Baja's lost/stolen jewelry and cash,

¹⁴ *People v. Sandiganbayan*, G.R. No. 198199, 27 September 2017.

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the said amount was not paid to reimburse Mrs. Baja *per se*; rather, it was given to indemnify the NYPM for the possible claim Mrs. Baja may file against the latter in connection with the lost/stolen items. This would require Mrs. Baja to first file a claim against the NYPM for the lost/stolen property before the NYPM pays her for her loss. But, this procedure was by-passed when accused Baja took the said amount, deposited the same in the separate PNB account and authorized the withdrawal thereof, treating it as if the said amount was already his wife's personal fund.

In his *Motion*, the Ambassador argues that no demand for accounting was made upon him, thus, the presumption that he misappropriated public funds does not apply. This is incorrect.

However, even granting that insufficient demand was made upon the Ambassador to settle the funds subject of these cases and that the presumption under Art. 217 does not apply against him, this does not mean that the Court erred in finding him guilty of Malversation.

There is no dispute that: (i) the Ambassador deposited the funds involved in an unofficial bank account; (ii) he opened said account without approval from the DFA; (iii) he had full control and access to the account; and (iv) he unduly disbursed the funds from the said account. Thus, even if the presumption does not operate against him, these serve as direct evidence of misappropriation of the insurance proceeds.

He repeats in his *Motion* that the funds were disbursed for the repairs made on the Official Residence and to reimburse his wife for the loss of her personal properties. But, as discussed earlier, said claim is not supported by the evidence on record. He failed to prove that the funds were used for a public purpose. In addition, the payment of \$2,500.00 to his wife was unjustified. To add to the discussion made above, even if the jewelry lost or stolen belonged to his wife, the Government was the insured party in whose favor the check was paid. This is precisely because it was the Philippine Government who paid for the insurance premiums for the coverage of any loss or liability that may occur in, or attach to, the Official Residence.

Art. 217 of the RPC is designed to protect the Government and to penalize erring public officials for the loss of public funds and property by reason of corrupt motives or neglect or disregard of duty.¹⁵ The established facts, which the Court had duly ruled upon in the assailed *Decision*, show that the manner by which the Ambassador handled and disbursed the public

¹⁵ See *Quiñon v. People*, G.R. No. 136462, 19 September 2001.

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funds subject of these cases was attended by, at the very least, neglect or disregard of duty.



Ambassador Baja's *Supplemental Motion* essentially raises the same issues as those in his original Motion, with the additional allegations that "the COA itself did not issue any audit Observation Memorandum ("AOM"), or Notice of Disallowance in connection with the subject insurance proceeds" and that "the prosecution's evidence failed to prove beyond reasonable doubt that the alleged actions of the accused were committed while in the exercise and discharge of his function as ambassador to the United Nations."

*Dimayuga v. Office of the Ombudsman*¹⁶ instructs that the COA's functions are administrative, and while its findings may have evidentiary value, they do not serve to foreclose an independent finding of criminal liability that can attach to an accused.

In these cases, an AOM and/or Notice of Disallowance are neither conditions *sine qua non* to charging Ambassador Baja before this Court. Nor are they necessary to prove his culpability. It is squarely within the OMB's jurisdiction to determine probable cause to hold him for trial, and for the Court to adjudge his culpability. No law requires otherwise. Moreover, as discussed above and as admitted by Ambassador Baja himself, the separate account he opened was not reflected in the DFA's books of account. Thus, the COA could not have been expected to render the necessary post-audit in the usual course of its duties. What is important is that in the course of the trial of these cases, and as earlier discussed, the prosecution was able to prove the following beyond reasonable doubt: (i) the Ambassador deposited the funds involved in an unofficial bank account; (ii) he opened said account without approval from the DFA; (iii) he had full control and access to the account; and (iv) he unduly disbursed the funds from the said account.

The Ambassador's claim that the prosecution failed to prove that he committed the acts while in the discharge of his official functions deserves scant consideration. During the entire course of the trial for these cases, it has never been disputed that the Ambassador Baja was a public officer at the time the acts complained of took place; being an ambassador with a salary grade of 29 employed by the Philippine Government through the DFA and assigned to the Permanent Mission to the United Nations. He was the Head of Office for his post, and thus the Head of the Procuring Entity. He had consistently claimed that he signed in behalf of the Philippine Mission when

¹⁶ G.R. No. 129099, 20 July 2006.



he claimed the insurance proceeds, he opened the subject bank account as per the “dual signatory requirement” of the DFA,¹⁷ and he contracted with the supposed contractors in his public capacity. Apart from these admissions, sufficient evidence was presented to prove his identity as such.

In view of the foregoing, the Court finds no reason to reconsider its earlier judgment finding accused Ambassador Baja guilty of both charges.

However, in line with R.A. No. 10951¹⁸ which lowered the impossible penalties for violation of Art. 217 of the RPC, there is a need to modify the penalty imposed in SB-11-CRM-0034. The relevant provision of R.A. No. 10951 provides:

SECTION 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:

"ART. 217. *Malversation of public funds or property. — Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

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"2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

Art. 22 of the RPC and Art. 100 of R.A. No. 10951 both provide for the law’s retroactive application if doing so would be favorable to the accused.

The penalty impossible for the felony of Malversation if the amount involved is more than PhP 40,000.00 but does not exceed PhP 1,200,000.00 is *prisión mayor* in its Minimum and Medium Periods.¹⁹ Applying the

¹⁷ Ambassador Baja’s *Memorandum* dated 29 August 2017, Records, Vol. III, pp. 158-218.

¹⁸ Entitled: “An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, amending for the Purpose Act No. 3815, otherwise known as ‘The Revised Penal Code,’ as Amended.”

¹⁹ 6 years and 1 day to 10 years.

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Indeterminate Sentence Law (ISL), the minimum imposable penalty should be “within the range of the penalty next lower” – which is *prision correccional* in its medium and maximum periods.²⁰ The maximum penalty, on the other hand, in the absence of any mitigating or aggravating circumstance, shall be taken from the medium period of original imposable penalty.

WHEREFORE, in view of the foregoing, the *Motion for Reconsideration* filed by accused Ambassador Lauro L. Baja, Jr. is **DENIED** for lack of merit.

In view, however, of the amendment introduced by R.A. No. 10951, the dispositive portion of the 13 April 2018 *Decision* is hereby **MODIFIED** to read as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In **Criminal Case No. SB-11-CRM-0032**, accused Lauro L. Baja, Jr., is found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019 and, pursuant to Section 9 thereof, is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, to ten (10) years as maximum, with perpetual disqualification from holding public office.

2. In **Criminal Case No. SB-11-CRM-0034**, accused Lauro L. Baja, Jr., is found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to seven (7) years, four (4) months and one (1) day of *prision mayor*, as maximum, and a fine equal to Seventeen Thousand Five Hundred Forty-Seven and 27/100 US Dollars (\$17,547.27), or its equivalent in pesos, with perpetual special disqualification from holding public office.

3. Considering that there is no showing that accused Ambassador Baja has already refunded to the Government the amount of \$17,547.27, or its equivalent in pesos, he is likewise ordered to return the said amount in accordance with Section 2 (4), Rule 120 of the Revised Rules of Criminal Procedure.

SO ORDERED.

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²⁰ 2 years, 4 months and 1 day to 6 years.

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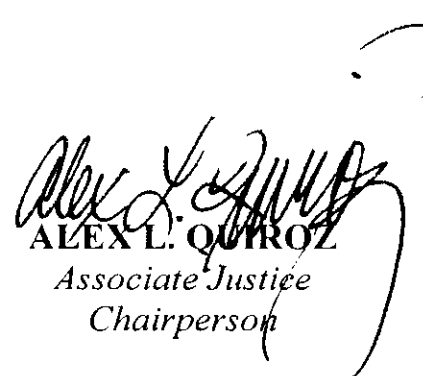
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BAYANI H. JACINTO
Associate Justice

WE CONCUR:



ALEX L. QUIROZ
Associate Justice
Chairperson



AMPARO M. CABOTAJE-TANG
Presiding Justice



EFREN N. DELA CRUZ
Associate Justice

I DISSENT:



REYNALDO P. CRUZ
Associate Justice



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SPECIAL FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**Crim. Case Nos. SB-11-CRM-0032 &
0034**

For: (1) Violation of Section 3 (e) of R. A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended; and (2) Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC).

-versus-

LAURO L. BAJA, JR.,
Accused.

X-----X

DISSENTING OPINION

CRUZ, J.:

I respectfully dissent to the denial of accused Lauro L. Baja's Motion for Reconsideration dated 30 April 2018, based on the following discussions:

The constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt, that is, that degree of proof that produces conviction in an unprejudiced mind.¹ In all criminal cases, the burden of proof lies with the prosecution who has the duty to establish the guilt of the accused beyond reasonable doubt.² In discharging this burden, the prosecution is tasked to prove, among others, each and every element of the crime charged to warrant a conviction for that crime.³ In order to do this, the prosecution must rely on the strength of its evidence and not anchor its success upon the weakness of the evidence of the accused.⁴

¹ Zenaida P. Maamo and Juliet O. Silor vs. People of the Philippines (G. R. No. 201917, December 01, 2016)

² *Id.*

³ *Id.*

⁴ *Id.*

x ----- x

Initially, for his conviction under Criminal Case No. **SB-11-CRM-0032**, evident bad faith⁵ is ascribed against accused Baja for failing to abide by the prescribed procedures, and for his apparent lack of transparency in the handling and disposal of the checks of insurance proceeds he received on behalf of the Philippine Mission to the UN. However, a reassessment of the testimonies of the prosecution witnesses shows that the proximate cause of the apparent misunderstanding came from the suggestion of FO Valerio who recommended the opening of the separate PNB account to accused Baja.⁶ In this case, a reading of the records reveals that FO Valerio did confirm that he suggested the opening of the separate PNB account to accused Baja for the purpose of expediting the transactions.⁷ From this admission, it appears that the recommendation made by FO Valerio was prompted by the urgency of the repairs needed at the official residence, but at the same time it also caused the mix-up on what procedures to follow in handling the said checks. Aside from this, it was discovered that FO Valerio was remiss in giving the DFA information about the disposal of the said insurance proceeds. To note, during his cross-examination, FO Valerio admitted that his duties included the monitoring of the use of the said insurance proceeds but he did not make a report nor reported the disposition thereof with the DFA.⁸ Essentially, the belated information that the DFA received regarding the disposal of the said insurance proceeds was not entirely because of accused Baja's lack of transparency, but also due to FO Valerio's non-fulfillment of his duty.

From the foregoing, it is understandable why accused Baja believed that he was acting in good faith when he handled and disposed of the said insurance proceeds. Concomitantly, there are other instances that reinforces accused Baja's allegation of good faith. Here, it must be pointed out that although the prescribed procedures were not followed, the subsequent action of accused Baja shows that such deviation was remedied by ensuring that the checks of insurance proceeds were still deposited with the PNB, which is the Philippine Mission's depository bank. Moreover, the identity of the account was preserved when it was specifically opened for the Philippine Mission, under the name "Philippine

⁵ The case of *Silverina E. Consigna vs. People of the Philippines*, [720 SCRA 350, p. 368 (April 02, 2014)], defines "evident bad faith" as something that connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoings for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose.

⁶ Records, Vol. III, p. 353; TSN dated 08 September 2015, pp. 17-45

⁷ *Id.*

⁸ Records, Vol. III, p. 353; TSN dated 08 September 2015, pp. 17-45

x ----- x

Mission to the UN-Renovation of Townhouse.” And, despite the deposit of said insurance proceeds in a separate PNB account, the monitoring of the said account was safeguarded by requiring FO Valerio’s signature for every withdrawal therefrom. All of these create reasonable doubt in the mind of the undersigned that accused Baja intended to defraud the government when he did not follow the protocol for the handling and disposal of the said insurance proceeds. Rather, the felonious intent ascribed to the accused is refuted by the efforts he took to assure that the proceeds of insurance policy were duly accounted for and used exclusively for their intended purpose. In fact, the totality of his actions indicates that he only saw an “alternative solution” to expedite the release of the funds necessary for the urgent repairs at the official residence. Viewed in this context, the imputation of evident bad faith against the said accused is negated.

In the same vein, there is scarcity of evidence to prove that accused Baja did use the insurance proceeds for his personal benefit when he allowed the withdrawals thereof from the separate PNB account. In this case, accused Baja denies causing injury to the government, declaring that the insurance proceeds withdrawn were actually used as payment for the urgent repairs at the official residence. As proof of payment, accused Baja presented photocopies of receipts issued by the alleged contractor. These receipts, however, have not been given much probative weight because they lacked the proper authentication required under the rules.⁹ Nevertheless, it must be reiterated that it is the prosecution, and not the accused, who bears the burden of proving each of the elements of the crime, with the strength of its own evidence.¹⁰ Here, the prosecution’s evidence was weakened by the admission of prosecution witness Crescente R. Relacion (“Relacion” for brevity) that the “hold-back value” has been released.¹¹ According to Relacion, the “hold-back value” will only be released by the insurance company after inspection and upon confirmation by the latter that repairs were actually made.¹² Such confirmation that there were actual repairs done at the official residence, more or less, corroborates the claim of accused Baja that he hired and paid a contractor for such repairs. This fact, in turn, contradicts the notion that accused Baja used the insurance proceeds for another purpose other than payment of the said repairs. Corollary, jurisprudence declares that suspicion, no matter how strong, must never sway

⁹ Records, Vol. III, p. 363

¹⁰ *Supra*, footnotes 6 and 7

¹¹ Records, Vol. III, p. 350, TSN dated 01 June 2015, pp. 15-57

¹² *Id.*

x ----- x

judgment.¹³ As such, it is important in every criminal case to evaluate the evidence for the prosecution against the required quantum of proof.¹⁴ Hence, when there is reasonable doubt, the evidence must be interpreted in favor of the accused.¹⁵ This follows the equipoise rule, which states that if the evidence admits of two interpretations – one of which is consistent with guilt, and the other with innocence – the accused must be given the benefit of the doubt and should be acquitted.¹⁶

Consequently, the prosecution's inability to establish that accused Baja used the said insurance proceeds for another purpose likewise generates reasonable doubt as to his culpability for the crime of malversation of public funds in Criminal Case No. **SB-11-CRM-0034**. In this case, the undersigned revisited the records and found that the inquiry made by Assistant Secretary Armando B. Fernandez, Jr. ("Fernandez" for brevity), in his "Extremely Urgent" Letter¹⁷ dated 17 May 2006, may not have constituted the demand contemplated under the law¹⁸ that would give rise to the *prima facie* evidence of malversation. Nonetheless, jurisprudence emphasizes that such demand is not an element of the crime of malversation, but merely a requisite for the presumption of malversation to arise.¹⁹ Therefore, even without such presumption, an accused may still be held liable for the crime of Malversation if the prosecution presents direct evidence which clearly shows that there has been misappropriation of public funds.²⁰

Here, other than implying that accused Baja defied protocol to isolate the checks representing the insurance proceeds in a separate PNB account to allow easy access thereto, the prosecution did not adduce any other evidence to show that the said insurance proceeds were indeed misappropriated after their withdrawal from the separate PNB account. On the contrary, the admissions derived from the prosecution's evidence aided the defense of the herein

¹³ People of the Philippines vs. Willington Rodriguez y Hermosa (G. R. No. 211721, September 20, 2017)

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Records, Vol II, p. 163

¹⁸ The last paragraph of Article 217 of the Revised Penal Code (RPC) states:

"The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use."

¹⁹ Zenaida P. Maamo and Juliet O. Silor vs. People of the Philippines (G. R. No. 201917, December 01, 2016)

²⁰ *Id.*

x-----x

accused. As already discussed, the explanation given by accused Baja that he used the insurance proceeds to pay the necessary repairs at the official residence gains more credence after prosecution witness Relacion affirmed the release of the hold-back value. The release of the "hold-back" value verifies the allegation of accused Baja that he hired a contractor and that payment was made for the repairs. This inference finds support under the equipoise rule and is more consistent with the presumption of good faith,²¹ that accused Baja intended to use the said insurance proceeds for no purpose other than payment of the urgent repairs at the official residence.

Similarly, there is no conclusive evidence that accused Baja intended to perpetrate the crime of Malversation when he received the check for insurance proceeds corresponding to the lost/stolen jewelries of his wife. In this case, it was never disputed that the lost/stolen jewelries belong to accused Baja's wife. Believing that his wife is the owner of the said insurance proceeds, accused Baja then deposited and allowed the withdrawal thereof as payment for his wife's rightful claim. Seen in this light, accused Baja's action cannot be considered as specious. It is doctrinal that evil intent must unite with unlawful act for a crime to exist.²² Otherwise, there can be no crime when the criminal mind is wanting.²³

Under the circumstances, the evidence provided by the prosecution confirms that there is reasonable doubt as to the guilt of the herein accused. Verily, the Court must always be satisfied that in its conviction of the accused, its factual findings and conclusions have met the exacting standard of proof beyond reasonable doubt. This is because the accused is protected by the constitutional presumption of innocence which the prosecution must overcome with contrary proof beyond reasonable doubt.²⁴ Accordingly, if the Court entertains a reasonable doubt as to the guilt of the accused, it is not only the right of the accused to be freed; it also becomes the Court's constitutional duty to acquit him.²⁵

²¹ The case of Flavio S. Suarez, Jr., et al., vs. National Steel Corporation, [569 SCRA 331, p. 345, (October 17, 2008)], provides that:

"It is elementary that bad faith is never presumed while good faith is always presumed."

²² Violeta Bahilidad vs. People of the Philippines [615 SCRA 597, p. 608, (March 17, 2010)]

²³ *Id.*

²⁴ Zenaida P. Maamo and Juliet O. Sitor vs. People of the Philippines (G. R. No. 201917, December 01, 2016)

²⁵ *Id.*



x-----x

IN VIEW OF THE FOREGOING, I vote to **GRANT** accused Lauro L. Baja's Motion for Reconsideration dated 30 April 2018. Accordingly, said accused should be **ACQUITTED** of the charge of violation of Section 3 (e) of R. A. No. 3019 and of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code, on the ground of reasonable doubt.


REYNALDO P. CRUZ
Associate Justice

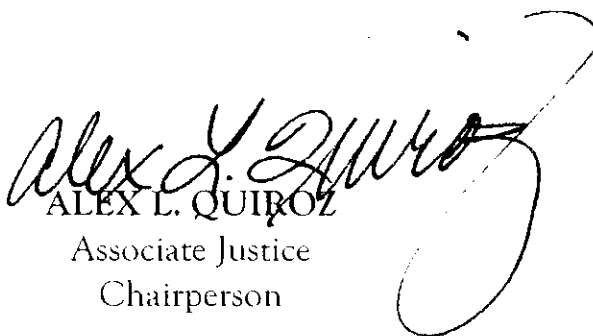
SEPARATE CONCURRING OPINION

I respectfully concur, the assailed Decision of the Court having exhaustively addressed the issues raised by accused-movant Lauro L. Baja, Jr. and having conclusively established that herein accused was a public official at the time relevant to the case, being then the Permanent Representative of the New York Philippine Mission (NYPM); that in the discharge of his official functions, and on behalf of NYPM, he received insurance claim proceeds from Lexington Insurance Company in the total amount of USD17,524.27, on June 18, 2005; that instead of depositing the insurance proceeds in the official Philippine National Bank (PNB) account, as advised by Finance Officer (FO) Tomas A. Valerio, Jr., he refused and instead opted to open an account in PNB on June 29, 2005; that the special account bears PNB Account No. 2815 under the account name "*Philippine Mission to the UN - Renovation of Townhouse*;" that on the same day that PNB Account No. 2815 was opened, the accused deposited therein the amount of USD12,504.76 and USD780.00 in insurance proceeds; that, eventually, the checks for the payment of the "holdback" and the proceeds of the insurance claim due to the lost jewelry and cash of his wife, in the amount of USD1,739.51 and USD2,500.00, respectively, were deposited in the same special account; that several withdrawals were made by accused Baja from the special account, until its closure on April 3, 2006; that FO Valerio also signed the withdrawal slips for PNB Account No. 2815 despite the fact that these were blank withdrawal slips, as he felt compelled by accused Baja who was his superior; that there was no means of monitoring PNB Account No. 2815 because it was not reported and was, in fact, opened without official authorization from the Department of Foreign Affairs (DFA); that because PNB Account No. 2815 was opened without proper authorization, there was no bank reconciliation statement prepared for the insurance proceeds deposited therein and were therefore not reflected in the balance of accounts of NYPM; that if it were not for the May 17, 2006 request of Office of Fiscal Management (OFM) Assistant Secretary Armando B. Fernandez, Jr. from the NYPM to render a complete damage report and to submit all the pertinent documents relative to its insurance claim, the disposition of the insurance proceeds received by the accused would not have been discovered; and that accused Baja, in the *Memorandum* he submitted on June 1, 2006, as a response to Asst. Sec. Fernandez's request, omitted to disclose that he made withdrawals from PNB Account No. 2815 and that the said account was actually closed on April 3, 2006, making it appear that the proceeds deposited therein are intact and still deposited in the said account. Aptly so, the Court then punctuated its disquisition of the guilt of the accused in this wise:



All told, it is a fundamental rule that government funds need to be disposed in the manner prescribed by laws and regulations, and the procedure relative to its disposal are in place to ensure that the funds are used accordingly. This is in line with the declared policy of the State that all resources of the government should be managed, expended or utilized in accordance with law and regulations, in order to safeguard the same against loss or wastage through illegal or improper disposition. (Citation omitted)

In view of the foregoing, the Undersigned sees no cogent reason to revisit the judgment of the Court in SB-11-CRM-0032 and SB-11-CRM-0034, promulgated on April 13, 2018, and hereby votes to DENY the *Motion for Reconsideration (of the Decision dated 13 April 2018)* of accused Laura L. Baja, Jr.


ALEX L. QUIROZ
Associate Justice
Chairperson