



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-18-CRM-0589 to 0592

**For: Violation of
Article 217 of the
Revised Penal Code
(Malversation)**

-vs-

MELVIN L. CUEVAS

Accused.

Present:

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

Promulgated:

November 16, 2018 *jea*

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RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves the Motion for Leave to File Demurrer to Evidence¹, filed by accused, through counsel, on October 30, 2018 and the Comment/ Opposition², filed by the prosecution, through the Office of the Special Prosecutor, on November 5, 2018.

¹ Record, Vol. 2, pp. 329 to 333.

² Record, Vol. 2, pp. 335 to 342.

The accused in his motion, asserts that the evidence presented by the prosecution is insufficient to establish that he committed the offense of Malversation as charged in the Informations. Specifically, the accused allege that: 1) the prosecution failed to establish beyond reasonable doubt that the accused indeed has unliquidated cash advances; 2) assuming that he did not liquidate, the prosecution failed to prove that the same was attended by bad faith or criminal intent to personally benefit from the money; and 3) if the accused promptly received a demand letter, he would have been similarly situated with Elvira Nolasco and Roel Tamayo who were spared from prosecution, as they were given the opportunity to settle their accounts and submit their liquidation documents.

The prosecution in opposition, claims that the present motion was filed out of time and in utter disregard to the provisions of Section 23, Rule 119 of the Rules on Criminal Procedure. Moreover, the prosecution asserts that it has presented sufficient and overwhelming evidence to establish the elements of malversation of public funds.

Hence, this resolution.

First, the Court will resolve the issue of whether or not the present motion (Motion for Leave to File Demurrer to Evidence) was filed on time.

Section 23, Rule 119 of the Rules on Criminal Procedure states:

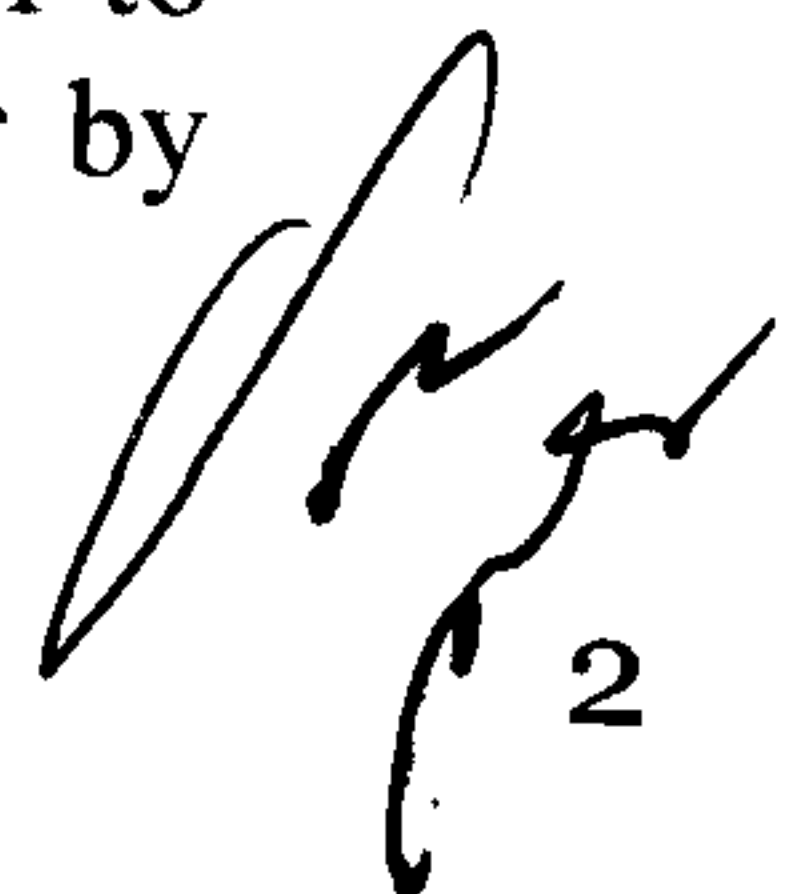
Section 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment. (Emphasis supplied)



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The prosecution in its Comment/Opposition posits that the present motion should be denied outright for being filed out of time, specifically for being in utter disregard of the abovementioned provision, which explicitly states that a motion for leave of court to file demurrer to evidence shall be filed within a non-extendible period of five (5) days after the prosecution rests its case.

The Court is not convinced.

In order to count properly the non-extendible period of five (5) days, it is important to identify when the prosecution is deemed to have rested its case and according to the Supreme Court, citing the case of Cabador v. People,³ the five (5) day period runs only after the Court shall have ruled on the prosecution's formal offer of evidence, for it is when it can be deemed to have rested its case. Applying it to the present case means that the motion for reconsideration (To the Resolution dated September 4, 2018)⁴ filed by the accused, effectively prevented the prosecution from resting its case. In effect, the counting of the non-extendible period of five (5) days commenced from accused's receipt of the Court's denial of his motion for reconsideration, or on October 26, 2018⁵, thus when the accused filed the subject motion on October 30, 2018, it is well within the prescribed period for filing a motion for leave to file demurrer to evidence.

After ruling on its timeliness, the Court shall proceed to examine its substance.

One of the arguments raised by the accused is the absence of a demand letter, to inform the accused of his obligation to settle his accounts and to submit liquidation documents. The accused also claims that he already paid and settled the account, thus his liability should be extinguished.

The Court is not persuaded.

Article 217 of the Revised Penal Code states:

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 shall consent, or 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..xxx

From the above provision, the essential elements of malversation of public funds or property are: 1) the offender is a public officer; 2) by reason of his duties he is accountable for public funds and property; and 3) he appropriates, takes, or misappropriates, takes, or misappropriates, or permits other persons to take such

³ G.R. No. 186001, October 2, 2009, 602 SCRA 760, 768

⁴ Record, Vol. 2, pp. 297 to 300.

⁵ As evidenced by the Sheriff's Return dated October 26, 2018, as attached to the records of the case. Records, Vol. 2, p. 334.

public funds or property, or otherwise is guilty of misappropriation or malversation of such funds or property.

Contrary to the accused's position, a demand letter is not necessary for the prosecution of the offense charged. The Supreme Court, in the early case of *People v. Tolentino*⁶ explained that previous demand is not necessary for violation of Article 217 in spite of the last paragraph of the said provision.⁷ The last paragraph of Article 217 provides only for a rule of procedural law. More recently, in the case of *Nizurtado vs. Sandiganbayan*⁸, the Court stated in this regard that demand merely raises a *prima facie* presumption that missing funds have been put to personal use. The demand itself, however, is not an element of, and not indispensable to constitute, malversation.

To establish the elements of malversation, the prosecution has only to prove that the accused received public funds or property; and that he could not account for them, did not have them in his possession, and could not give a reasonable excuse for the disappearance of the same.⁹

In the present case, the accused, as per Certification of the City Government of Malabon¹⁰, deliberately incurred absences without leave (AWOL) or went AWOL, without securing clearances being an accountable officer and without liquidating the subject cash advances which have come to his hand, as evidenced by Demand Letters issued by the Commission on Audit (COA).

As to the accused's defense of payment or settlement of accounts, the Supreme Court, in the case of *People v. Miranda*¹¹, held that in malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime affects only the civil liability of the offender but does not extinguish his criminal liability. The fact of payment before the accused went AWOL remains as a mere allegation without evidence, which needs to be proven during trial. While the accused's alleged second (2nd) settlement of the account after the commencement of the above entitled case may be received as evidence of implied admission of guilt under the rules¹².

To the mind of the Court, the prosecution, presented sufficient evidence to establish the elements of the offense charged.

⁶ 69 Phil. 715,

⁷ "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 uses."

⁸ 239 SCRA 33, G.R. No. 107383 December 7, 1994.

⁹ *De Guzman v. People*, 119 SCRA 337.

¹⁰ Exhibit "R", Certification of the City Human Resource Management and Development Department dated April 6, 2018 and marked May 2, 2018.

¹¹ 2 SCRA 262.

¹² Rule 130, Section 27 (2)

"In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromised by the accused may be received in evidence as an implied admission of guilt."

First. It is beyond dispute that accused, during the time relative to the case, was a public officer, as he was then the Secretariat of the Sangguniang Panlungsod of the City of Malabon.

Second. He was an accountable officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office, specifically, relative to his position, he receives public money, which he is bound to account for. In this case, the accused received cash advances as evidenced by allotment disbursement vouchers and checks under his name, which he had the obligation to safeguard and account for. In fact, the COA in its demand letters,¹³ mentioned that the latter is an accountable officer, under Section 5.1, COA Circular No. 97-002 and requires him to liquidate his cash advances.

Third. There is also no dispute that the cash advances, subject of these cases, are public funds for which the accused has the duty to account and liquidate.

Fourth. The Supreme Court in numerous cases held that to justify a conviction for malversation of public funds or property, the prosecution has only to prove that the accused received public funds or property, and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for their disappearance. Although the prosecution did not present direct evidence of accused's misappropriation, the fact that it was established that he received the cash advances and that he failed to liquidate the same despite demand from COA is sufficient to hold him liable for the offense charged. The accused's failure to liquidate or offer any satisfactory explanation for his failure is sufficient proof of misappropriation.

Finally, all other matters raised by the accused in is motion are evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.

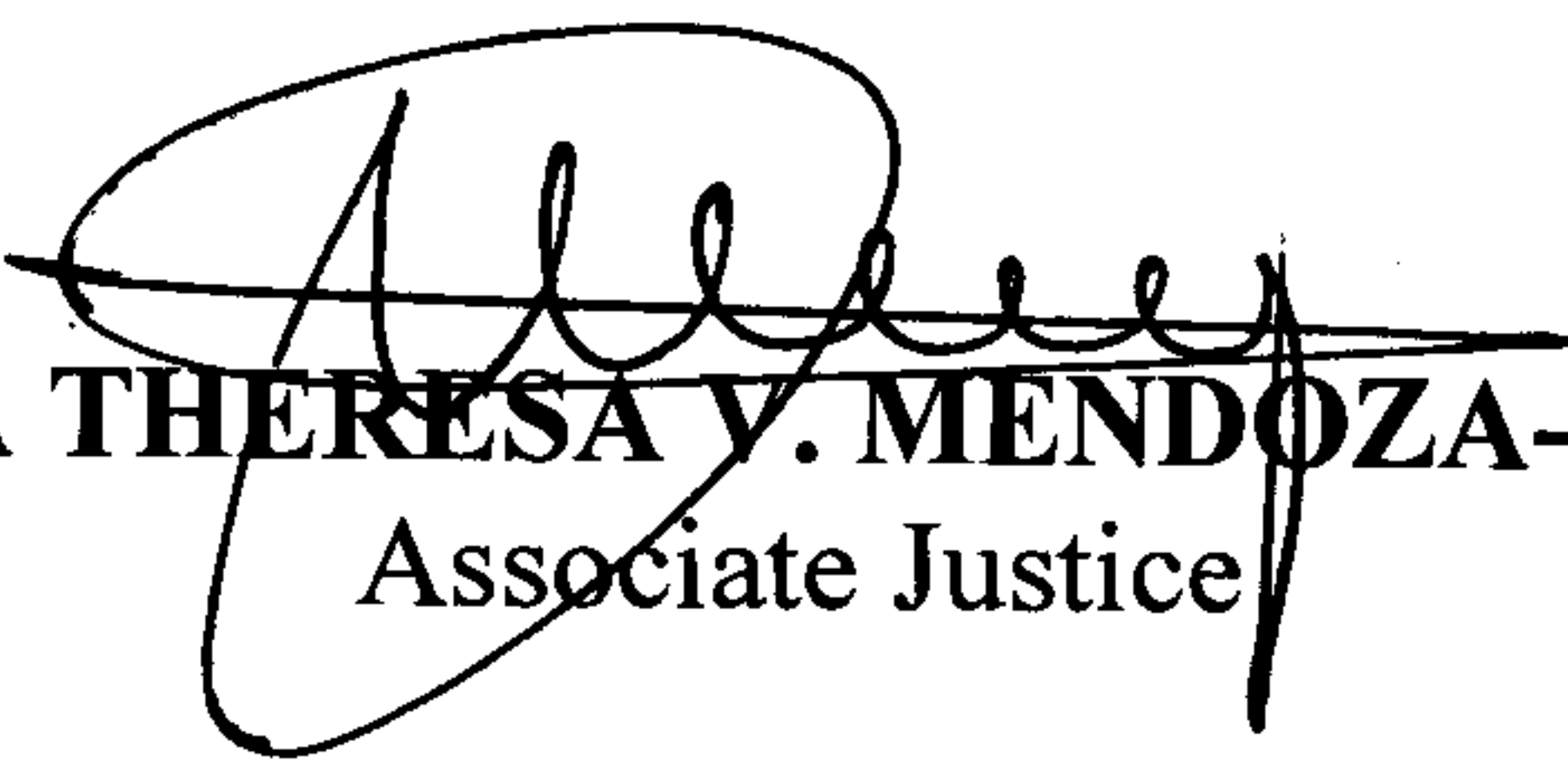
WHEREFORE, in view of the foregoing, the Motion for Leave of Court to File Demurrer to Evidence is hereby **DENIED**.

Accused, is nevertheless not precluded from filing his Demurrer to Evidence without leave of court within a non-extendible period of ten (10) days from receipt hereof, pursuant to Section 23, Rule 119 of the Revised Rules of Criminal Procedure and subject to the condition provided under paragraph 2 thereof.

The tentative date for the initial presentation of the defense evidence is set on February 14, 2019 at 1:30 in the afternoon as previously scheduled.

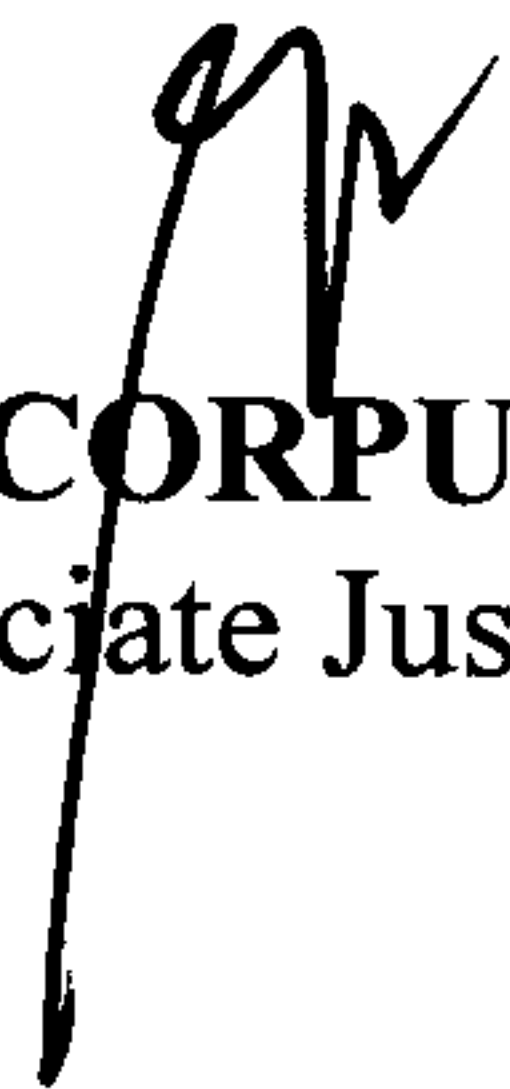
SO ORDERED.

¹³ Demand Letters by Commission on Audit dated November 30, 2011 and April 27, 2011.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson


MARYANN E. CORPUS-MAÑALAC
Associate Justice