



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB-16-CRM-0189
FOR: Malversation (Art. 217
of the Revised Penal Code)

JUSIE CABIGQUIEZ ROXAS,
Accused.

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB- 16-CRM-0190
FOR: Malversation (Art.217
of the Revised Penal Code)

ANTONIO P. CALINGIN and JUSIE
CABIGQUIEZ ROXAS,
Accused.

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

Promulgated:

March 25, 2019 mca

X-----X

RESOLUTION

LAGOS, J.:

This resolves the *Motion for Reconsideration* filed by accused Jusie Cabigquiez Roxas on December 10, 2018 praying that the denial by this

RESOLUTION

People vs. Roxas, et al.

SB-16-CRM-0189 to 0190

Page 2 of 3

X-----X

Court of his Motion for Leave to File a Demurrer, be reconsidered. The prosecution, despite being given an opportunity to oppose the same, did not submit any comment and/or opposition. Hence this resolution.

Briefly, accused-movant argues that he is not an “accountable” officer as he did not receive the cash advance nor did he have custody and control over the monies involved, in connection with his usual and regular duties as Misamis Oriental Telephone System (MISORTEL) Manager.

Based on the evidence, the amounts which Roxas requested for cash advances were for the purpose of a seminar and to defray expenses to legitimize the corporate existence of MISORTEL. MISORTEL had to be registered with the Securities and Exchange Commission (SEC) because of the passage of the Privatization Act which required that government-owned and controlled corporations or GOCCs engaged in telecommunications be sold to private entities. To continue with MISORTEL’s corporate existence and to function as a telecommunication company, it had to be first registered with the SEC and offered for sale to the private sector.

Needless to state, the purpose of the cash advances he drew from the public coffers were closely related and part of his expected duties as MISORTEL Manager. The “seminar” and “privatization” purposes of the cash advances, which he does not deny to have drawn, are germane to his expected duties as these were in connection with MISORTEL’S corporate function, and would lead to preserving its corporate existence. These were not merely some isolated and incidental acts performed by him.

In *Icdang v. Sandiganbayan*¹, the Supreme Court ruled:

There is no dispute on the existence of the first three elements; petitioner admitted having received the cash advances for which he is accountable. As to the element of misappropriation, indeed petitioner failed to rebut the legal presumption that he had misappropriated the said public funds to his personal use, notwithstanding his unsubstantiated claim that he has in his possession liquidation documents. The SB therefore committed neither reversible error nor grave abuse of discretion in convicting the petitioner of malversation for failure to explain or account for his cash shortage by any liquidation or supporting documents. As this Court similarly ruled in one case:

In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts. In convicting petitioner, the Sandiganbayan cites the

¹ G.R. No. 185960, January 25, 2012.

RESOLUTION

People vs. Roxas, et al.

SB-16-CRM-0189 to 0190

Page 3 of 3

X-----X


presumption in Article 217, supra, of the Revised Penal Code, i.e., 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, is prima facie evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if the accused is able to present adequate evidence that can nullify any likelihood that he had put the funds or property to personal use, then that presumption would be at an end and the prima facie case is effectively negated. This Court has repeatedly said that when the absence of funds is not due to the personal use thereof by the accused, the presumption is completely destroyed; in fact, the presumption is never deemed to have existed at all. In this case, however, petitioner failed to overcome this *prima facie* evidence of guilt.

In *Icdang*, the petitioner was a Regional Director of the Office for Southern Cultural Communities, Region XII based in Cotabato City. The cash advances involved therein were for socio-economic projects which were related to or germane to petitioner's functions and duties.

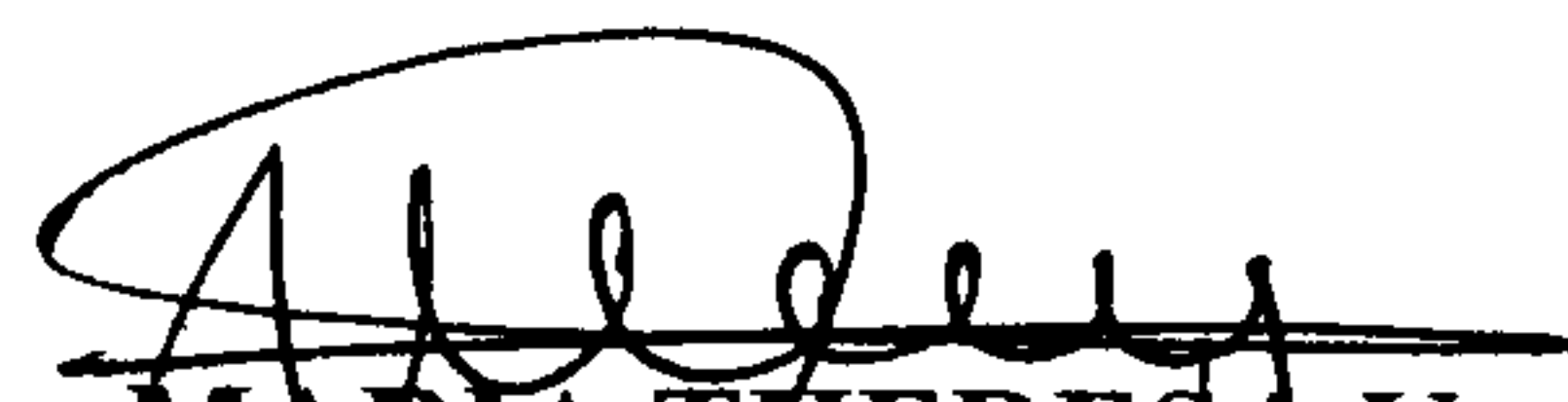
Therefore, the legal presumption that Roxas misappropriated these funds apply and his claim, which remains unsubstantiated, that he liquidated the same should be established by his own evidence.


WHEREFORE, the accused-movant's *Motion for Reconsideration* is **DENIED** for lack of merit. The presentation of defense evidence on April 24, 2019 at 1:30 P.M. shall proceed.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E.
CORPUS-MAÑALAC**
Associate Justice