



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

SB-12-CRM-0274 to 0282

For: Malversation of Public Funds
through Falsification of
Public/Official Document

- versus -

LUZVIMINDA S. VALDEZ, ET AL., *Present :*
Accused.

FERNANDEZ, SJ, J., Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

JUL 24 2019

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RESOLUTION

FERNANDEZ, SJ, J.

For resolution are the following:

1. *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Eduardo H. Ravena on March 6, 2019;¹
2. *Motion for Leave to File Motion to Dismiss by way of Demurrer to Evidence* filed by accused Salvacion P. Ortega on March 6, 2019;²
3. *Motion and Manifestation to Adopt and Join the Motion for Leave to File Demurrer to Evidence* filed by

¹ Dated March 5, 2019, Record, Vol. 4, pp. 119-126.

² Dated March 5, 2019, Record, Vol. 4, pp. 127-131.

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Co-Accused filed by Luzviminda S. Valdez on May 6, 2019;³

4. *Motion for Leave of Court to File Demurrer to Evidence* filed by accused Brendo C. Eligio and Ricardo T. Dahildahil, received through mail on May 7, 2019;⁴
5. *Manifestation and Motion* filed by accused Lalaine Villalva, received through mail on May 22, 2019;⁵ and,
6. *Consolidated Comment/Opposition (To Accused's Motion for Leave to File Demurrer to Evidence)* filed by the prosecution on May 28, 2019.⁶

Accused similarly contend that the evidence of the prosecution are insufficient to establish their guilt beyond reasonable doubt for the crime of *Malversation of Public Funds through Falsification of Public/Official Document*.

Accused Ravena, in his *Motion for Leave of Court to File Demurrer to Evidence*, claims:

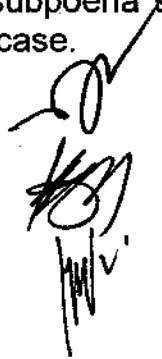
1. As held in *U.S. vs. Gregorio* and affirmed in *Borje vs. Sandiganbayan*, the presentation of the original of the document alleged to be falsified is indispensable in prosecuting the crime of forgery.
2. Since the duplicate original of Cash Slip No. 143644, dated February 15, 2004, issued by D' Baker's Cakes and Pastries, was not presented in evidence, the charge of falsification against him has no leg to stand on.
3. Ms. Jane Guevarra, who identified Cash Slip No. 143644, has no personal knowledge of the circumstances surrounding the issuance of the said cash slip and merely based her testimony on the photocopy attached to the subpoena she received in connection with the present case.

³ Dated May 5, 2019, Record, Vol. 4, pp. 185-187.

⁴ Dated May 6, 2019, Record, Vol. 4, pp. 188-198.

⁵ Dated May 8, 2019, Record, Vol. 4, p. 217.

⁶ Dated May 27, 2019, Record, Vol. 4.



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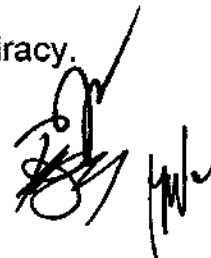
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4. Even if there are two (2) copies of Cash Slip No. 143644 showing different amounts, the prosecution failed to prove that Cash Slip No. 143644 (marked as Exhibit "F-8") was the document falsified and not Cash Slip No. 143644 (marked as Exhibit "F-10"). The person who issued Cash Slip No. 143644 was not presented in court to clarify which of the documents indicate the correct amount.
5. There is no evidence on record that he is the author of the alleged falsified document.
6. The prosecution presented an unauthenticated photocopy of the duplicate original of Cash Slip No. 143644, without any justification, in violation of Sec. 3, Rule 130 of the Revised Rules of Court.
7. The prosecution did not present evidence to prove the due execution and authenticity of the questioned cash slip. Absent any proof of authenticity, the photocopy of the original duplicate should be considered inadmissible and without probative value.
8. The prosecution failed to prove conspiracy.
9. The prosecution failed to establish, by direct evidence, his participation before, during and after commission of the crime.
10. His participation is only limited to the transaction covered by Disbursement Voucher No. 2055 and has nothing to do with Cash Slip No. 143644.

Accused Ortega, in her *Motion for Leave to File Motion to Dismiss by way of Demurrer to Evidence*, claims:

1. The prosecution failed to prove the commission of the crime because the original receipts purportedly falsified were not presented in court. The prosecution failed to comply with the conditions to warrant the presentation of secondary evidence.
2. The prosecution failed to prove beyond reasonable doubt her deliberate participation in the crime charged.
3. The prosecution failed to prove conspiracy.



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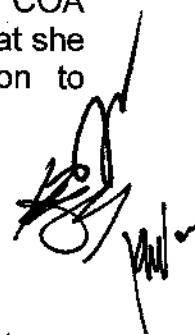
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Accused Valdez, by way of her *Motion and Manifestation to Adopt and Join the Motion for Leave to file Demurrer to Evidence*, adopted the motions for leave filed by accused Ravena and Ortega.

In their *Motion for Leave of Court to File Demurrer to Evidence*, accused Eligio and Dahildahil claims:

1. The prosecution's evidence is inherently weak, unsubstantiated and insufficient to prove their guilt beyond reasonable doubt.
2. As to criminal cases SB-12-CRM-0274 to 0276 and 0278, the prosecution failed to prove the fourth element of Malversation, that is that they appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.
 - a. No public funds were taken because the PNB checks involved in these cases (PNB Check No. 0000026067 dated February 20, 2004; PNB Check No. 0000009912 dated February 3, 2004; PNB Check No. 0000025614 dated February 10, 2004; PNB Check No. 0001316609 dated March 23, 2004) were deposited to the account of the City Government.
 - b. No evidence was presented to indicate that the funds were withdrawn after the checks were deposited to the bank.
 - c. No evidence was presented to prove that the checks were encashed or that any of the accused received the cash equivalent of the checks.
3. As to criminal cases SB-12-CRM-0277, SB-12-CRM-0279 to 0282, the prosecution failed to prove that the funds were not actually spent by the City Government for the purposes indicated in the disbursement vouchers.
 - a. During the cross-examination of COA Auditor Sheila Portal, she admitted that she did not conduct further investigation to



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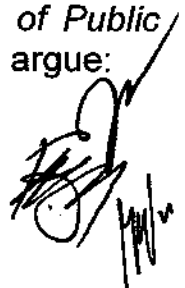
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confirm whether the activities really took place.

4. There was no evidence showing that any or all of the accused falsified the cash slips.
5. While it is true that in the audit observation of COA, they found that the receipts claimed by the City Mayor for reimbursement were tampered, they nevertheless had no conclusion that it was the City Mayor who caused the same.
6. The original and duplicate copies of the cash slips, which were the basis of the charges of the prosecution, are not reliable because there are details found in the duplicate but do not appear in the original and vice-versa.
7. The persons who signed the confirmation letters were not presented in court.
8. The prosecution did not present the persons who certified the documents as true or machine copies.
9. The prosecution failed to prove conspiracy.
 - a. There is no evidence to show that all the accused conspired, colluded and connived with each other to commit the crime charged other than the documents signed by them.
 - b. The fact that their signatures appear in the documents presented is not sufficient to prove conspiracy.
 - c. As public officers, they must be presumed to have acted in good faith in the performance of their duties.

Accused Villalva, in her *Manifestation and Motion*, moved to adopt all the motions for leave filed by her co-accused.

On the other hand, the prosecution contends that the evidence on record sufficiently establish all the elements of *Malversation of Public Funds through Falsification of Public/Official Documents*. They argue:



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1. All the elements of Malversation punishable under Article 217 of the Revised Penal Code are present in these cases.
 - a. *First element.* It is undisputed that at the time material to the allegations in the Information, accused Valdez, Elegio, Dahildahil, Ortega, Ravena and Villalva were public officers.
 - b. *Second element.* Accused Valdez and Ravena, being then the City Mayor and Accountant IV of the City Government of Bacolod, respectively, by the nature of their functions, are public officers responsible and accountable for public funds under their custody and control; their signatures are necessary in the disbursement of public funds. While accused Elegio, Dahildahil, Ortega and Villalva are accountable through their participation in the use or application of funds subject of these cases.
 - c. *Third element.* The funds misappropriated are public in character, as they are funds belonging to the City Government of Bacolod.
 - d. *Fourth element.* The evidence adduced by the prosecution undeniably prove that accused Valdez, in conspiracy with all her co-accused, appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another to take public funds when they signed the disbursement vouchers and the supporting documents subject of this action.
 - i. Accused Valdez was the claimant and the payee in the disbursement vouchers. She signed box "E" as well as the dorsal portion of the checks, indicating that she received the amount corresponding to the face value of the check.

Handwritten signatures and initials, including a large signature and several smaller initials or marks.

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- ii. The statement found in the check stating "For Deposit to the Credit of the CTO-Bacolod City" does not prove that the amount was in fact deposited thereto.
 - iii. The cash slips, which were used as basis for the amounts disbursed against public funds, are falsified.
2. The elements of *Falsification of Public Document* defined and penalized under Article 171 of the Revised Penal Code are present and have been established.
- a. *First element.* It is undisputed that at all times material to the allegations in the Informations, accused Valdez, Elegio, Dahildahil, Ortega, Ravena and Villalva were public officers discharging administrative and/or official functions.
 - b. *Second element.* All accused public officers had the duty to make, prepare, or otherwise intervene in the preparation of the disbursement vouchers, checks and all other supporting documents in relation to the disbursement of public funds, and took advantage of their respective positions when they falsified the cash slips subject of the instant cases.
 - c. *Third element.* The evidence of the prosecution sufficiently establish that accused Valdez, in conspiracy with other co-accused, falsified the cash slips by adding/intercalating the amounts indicated in the cash slips. Accused made it appear that the amount due and payable is Three Hundred Sixty Four Thousand Seven Hundred Seventy Eight Pesos (PhP364,778.00), when, based on the certified true copies of the duplicate originals of the cash slips, the amount payable is only Two Thousand Ninety One Pesos and 60/100 (PhP2,091.60).



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- d. Contrary to the claim of the accused, the original copies of the cash slips and the certified true copies of the duplicate originals of the cash slips were presented, identified and authenticated by Auditor Sheila Portal.
 - e. Accused had the opportunity to cross examine Auditor Portal, who presented the original of the cash slips and testified that she examined the original cash slips in the course of her audit.
 - f. An examination of the original copies vis-à-vis the certified true copies of the duplicate copies of the cash slips readily show that the former were tampered or falsified. Cash Slip No. 33803 dated March 23, 2004 was established to have not been issued by Aboy's Restaurant; Cash Slip No. 2185 was intercalated by adding "26" before the original price and "0" after the original price.
 - g. Accused Valdez, who stands to have benefited from the transactions, is presumed to be the material author of the falsification.
3. Conspiracy among the accused has been established. Without the individual acts of all the accused in the preparation, signing, and/or approval of the disbursement vouchers, supporting documents and checks, which led to the payment of the aggregate amount of PHP364,778.00, the crime of *Malversation of Public Funds through Falsification of Public Document* would not have been accomplished.

The Court grants the *Motion* of accused Valdez to adopt and join the motion for leave to file demurrer to evidence by her co-accused Ravena and Ortega. The Court likewise grants the *Motion* of accused Villalva to adopt all the motions for leave filed by her co-accused.

After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is *prima facie* sufficient to support a verdict of guilt against accused Ravena, Ortega, Valdez, Eligio, Dahildahil and Villalva for

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Malversation of Public Funds through Falsification of Public/Official Documents.

The Court hereby DENIES accused Ravena, Ortega, Valdez, Eligio, Dahildahil and Villalva's respective *Motions for Leave of Court to File Demurrer to Evidence*.

This is without prejudice to the filing by the accused of a *Demurrer to Evidence* without prior leave of court, but subject to the legal consequences provided under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, that is, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

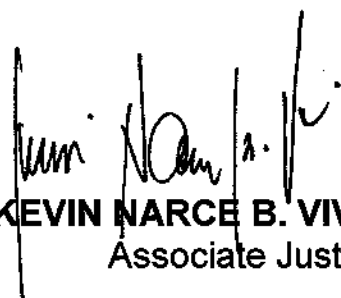
The accused are given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, their *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without leave of court.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice