



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:

OCT 01 2019

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RESOLUTION

FERNANDEZ, SJ, J.

For resolution are the following:

1. *Motion for Reconsideration (of the Resolution dated July 24, 2019) filed by Brendo C. Elegio and Richard T. Dahildahil;*¹
2. *Motion and Manifestation to Adopt and Join the Motion for Reconsideration from the Denial of the Motion for Leave to File Demurrer to Evidence filed by Luzviminda S. Valdez;*² and,

¹ Dated August 22, 2019, received by the Court on August 24, 2019.

² Dated August 26, 2019, filed on August 28, 2019.

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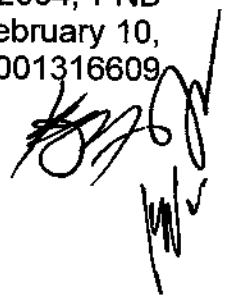
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3. Consolidated Comment/Opposition (To Accused Elegio and Dahildahil's Motion for Recosideration dated 22 August 2019 and Accused Valdez's Motion and Manifestation to Adopt and Join the Motion for Reconsideration dated 26 August 2019) filed by the prosecution.³

In their *Motion for Reconsideration*, accused Eligio and Dahildahil claim that the prosecution failed to establish the elements of the crime and their actual participation in committing the same. They argue:

1. The plaintiff failed to prove conspiracy.
 - a. The only evidence presented by the plaintiff to prove conspiracy are the Disbursement Vouchers and its supporting documents which contain accused' signatures. Such, however, is not enough to prove conspiracy.
 - b. There is no direct and strong evidence that they participated or conspired with their co-accused in committing the alleged fraudulent act/transaction.
 - c. The prosecution failed to overcome the legal presumption of good faith and the presumption of regularity in the performance of their official functions.
2. The *Motion for Leave to File Demurrer to Evidence* should have been granted so that accused can further elaborate and explain in their Demurer to Evidence why the cases against them should be dismissed.
3. In Criminal Cases No. SB-12-CRM-0274, SB-12-CRM-0275, SB-12-CRM-0276 and SB-12-CRM-0278, the prosecution failed to present any evidence to prove that public funds were released to accused Valdez.
 - a. PNB Check No. 0000026067 dated February 20, 2004, PNB Check No. 0000009912 dated February 3, 2004, PNB Check No. 0000025614 dated February 10, 2004, and, PNB Check No. 0001316609

³ Dated September 6, 2019, filed on September 9, 2019.



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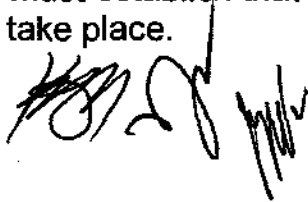
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dated March 23, 2004 were all deposited to the account of the City Government.

- b. Auditor Sheila Portal made a confusing explanation of how the funds were released to accused Valdez.
 - c. Aside from the testimony of Auditor Portal, no evidence was presented to prove that the checks were encashed or that any of the accused received the cash equivalent of the checks.
 - d. The annotation "For deposit to the credit of the CTO-Bacolod City" appearing on the face of the checks clearly indicates that the checks were deposited to the account of the City Government of Bacolod. The prosecution failed to produce evidence to the contrary.
 - e. There is no proof of that the checks were encashed. Thus the fourth element of Malversation is absent.
4. There was no evidence to prove that accused Elegio and Dahildahil benefited from the transactions, thus the presumption that they authored the falsification do not apply to them.
 5. The Cash Slips have no probative value because its original copies or its duplicate original copies were not presented in court.
 6. The persons who actually and personally issued the Cash Slips were never presented in court. Accused were deprived of their right to cross-examine them.
 7. The person who certified the photocopies was also not presented.
 8. Malversation cannot be established by simply showing that there is a discrepancy between the Cash Slips. In order to prove that Malversation was committed, the prosecution must establish that the activities involved did not actually take place.



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9. COA did not even conduct any investigation to determine whether the activities involved in the transaction did not actually take place.
10. The discrepancies in the Cash Slips may have been brought about by the establishments, for them to pay less tax, or by the political enemies of former Mayor Luzviminda Valdez, to implicate her and prevent her from running as mayor.
11. Accused cannot be convicted because the charge of Malversation through Falsification was based on a presumption that the Cash Slips were falsified. Assumptions, speculations, surmises or conjectures cannot be the basis of convicting a person.

Accused Valdez, in her *Motion and Manifestation*, moved to adopt and join the *Motion for Reconsideration* filed by accused Elegio and Dahildahil.

In its Consolidated *Comment/Opposition*, the prosecution argues:

1. The *Motion for Reconsideration* filed by accused Elegio and Dahildahil, and adopted by accused Valdez, should be denied outright as it was filed out of time.
 - a. Accused expressly stated that they received a copy of the Court's *Resolution* dated July 24, 2019, denying their *Motion for Leave of Court to File Demurrer to Evidence*, on 07 August 2019. Following the *Revised Rules for Continuous Trial of Criminal Cases*, they only had five (5) days or until August 12, 2019 within which to file their *Motion for Reconsideration*. They filed their *Motion for Reconsideration* on August 23, 2019.
 - b. Even on the assumption that the period to file a *Motion for Reconsideration* is Fifteen (15) days, accused Elegio and Dahildahil only had until 22 August 2019 to file the same. Records show that they filed and served their *Motion for Reconsideration* through private courier, LBC-Express, on 23 August 2019.



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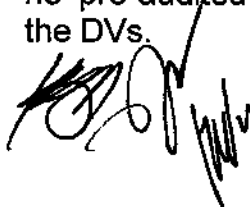
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2. Accused Elegio, Dahildahil, and Valdez failed to raise any new matter and/or issue that warrants reconsideration or reversal of the assailed *Resolution*. The arguments raised by accused in their *Motion for Reconsideration* are mere reiterations or rehashed versions of their contentions in their *Motions for Leave*.
3. The prosecution sufficiently established conspiracy among the accused in committing the crime charged.
 - a. Without the individual act of all the accused in the preparation, signing, and/or approval of the Disbursement Vouchers, its supporting documents, and/or the corresponding checks, which led to the payment of the aggregate amount of Three Hundred Sixty Four Thousand Seven Hundred Seventy Eight Pesos (P364,778.00) in favor of accused Valdez, the complex crime of *Malversation of Public Funds through Falsification of Public/ Official* document would not have been accomplished.
 - b. Accused Elegio, as Secretary to the Mayor:(1) issued the purchase requests; (2) requested the obligation of public funds; (3) certified that the expenses were necessary, lawful, and incurred under his direct supervision; and/or (4) issued the checks despite the irregularities and/or apparent alterations in the Cash Slips attached to the DVs.
 - c. Accused Dahildahil, as the OIC of the Management and Audit Service Office: (1) made it appear in the Inspection and Acceptance Reports that the items purchased were inspected, verified and found okay as to quantity and specifications, when in fact, the amounts indicated in the cash slips were patently altered or falsified; and, (2) certified that he pre-audited the purchases subject of the DVs.



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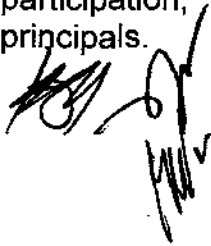
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- d. Accused Valdez, as Mayor of the Local Government Unit (LGU) of Bacolod City: (1) encashed the checks; and/or (2) received payments from LGU-Bacolod City by way of reimbursement in the total amount P364,778.00, which should have been P2,091.60 only, as per certified true copies of the duplicate originals of the Cash Slips.
- e. Accused Ortega as a crafts and trade helper of LGU-Bacolod City: (1) made it appear in the Request for Quotation that canvass was made, when in fact no real canvass was conducted; (2) made it appear in the IARs that the items purchased were complete when in fact the amounts indicated in the Cash Slips were patently altered or falsified.
- f. Accused Villalava, as Clerk II of LGU-Bacolod City: (1) made it appear in the Request Quotation that a canvass was made to procure meals, when in truth there was none; and/or (2) certified in the AIR that meals in the amount of P38,000.00 were "complete" when the amount indicated in Cash Slip No. 143644 is only P80.00.
- g. Accused Ravena as the Accountant IV of LGU-Bacolod City certified the correctness and the propriety of the supporting documents despite the apparent alteration in the Cash Slips attached to the Disbursement Vouchers.
- h. Accused Elegio, Dahildahil, Ravena, Ortega, and Villalva are liable with accused Valdez, who is presumed to be the material author of the falsification in the present cases. Since conspiracy among the accused exists, regardless of the extent and character of their participation, they are all liable as principals.



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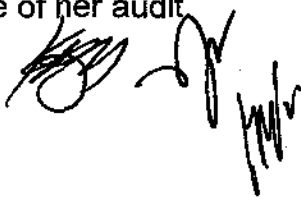
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4. Accused took, appropriated, misappropriated or consented or through abandonment or negligence permitted another to take public funds. Auditor Portal clearly explained how money was released to accused Valdez.
5. Plaintiff presented the original copies of the falsified Cash Slips and/or the certified true copies of the duplicate originals thereof as secondary evidence.
 - a. Auditor Portal categorically testified that, in the course of her audit, she went to the establishments which issued or purportedly issued the Cash Slips involved in these cases and was able to examine the duplicate originals thereof. She likewise testified that after she saw and examined the duplicate originals of the cash slips, she requested the same but was instead given certified true copies.
 - b. The Certifications dated 06 October 2015 and 09 October 2015 issued by Alexander Chua of Foodman Industries Corporation and Jane D. Guevarra of KB Food products, Inc./D'Baker's Cakes and Pastries, reveal that the duplicate originals of Cash Slips No. 2185 and 143644, respectively, are no longer available inasmuch as more than ten (10) years have already lapsed since their issuance.
6. Accused were not deprived of their right to cross-examine the witnesses against them.
 - a. Auditor Portal testified on the alterations in the amounts appearing in the original copies of the subject Cash Slips vis-à-vis its duplicate originals, and on the fact that Cash Slip No. 33803 dated March 28, 2004 was not issued by Aboy's Restaurant. Her findings were based on the duplicate originals of said Cash Slips that she personally saw and examined in the course of her audit.



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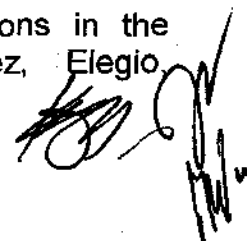
- b. The testimony of Auditor Portal was corroborated by Nestor Evaristo, owner of Aboy's Restaurant, Jane Guevarra of KB Food Products, Inc./D'Baker's Cakes & Pastries, and Alexander Chua of Foodman Industries Corporation.

7. The crime of *Malversation of Public Funds through Falsification of Public Document* was committed by all the accused regardless of whether the activities covered by the subject Disbursement Vouchers took place or not.

- a. The issue in the present case is whether or not the aggregate amount of Three Hundred Sixty Four Thousand Seven Hundred Seventy Eight Pesos (P364,778.00) claimed by accused Valdez for reimbursement corresponds to the amount she actually spent or incurred. Thus, regardless of whether the activities covered by the DVs actually took place or not, the evidence of the plaintiff is sufficient to support a verdict of guilt against all accused for the complex crime of *Malversation of Public Funds through Falsification of Public Document*.
- b. The charge against accused is not based on presumptions, speculations, surmises, or conjectures as the same was based on the findings of COA.
- c. The contention of the accused that the difference of the original copies of the Cash Slips and their duplicate originals may be caused by the establishments to pay less tax or by accused Valdez's political enemies are highly speculative.

8. The evidence adduced by the plaintiff sufficiently established all the elements of the complex crime of *Malversation of Public Funds through Falsification of Public Documents*.

- a. *First element.* It is undisputed that at the time material to the allegations in the Information, accused Valdez, Elegio



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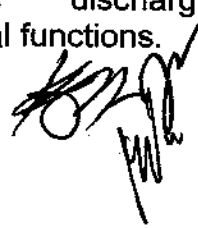
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Information, accused Valdez, Elegio, Dahildahil, Ortega, Ravena and Villaiva were public officers.

- b. *Second element.* Accused Valdez and Ravena, being then the City Mayor and Accountant IV of the City Government of Bacolod, respectively, are public officers responsible and accountable for public funds under their custody and control. Their signatures are necessary in the disbursement of public funds. 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 belong 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 facilitated accused Valdez's claims for reimbursement in the aggregate amount of Three Hundred Sixty Four Thousand Seven Hundred Seventy Eight Pesos (P364,778.00) despite the apparent and obvious alterations in the subject Cash Slips and the falsification of Aboy's Restaurant's Cash Slip.
9. 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.



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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 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 established that accused Valdez, in conspiracy with the other co-accused, falsified the cash slips by falsifying, intercalating, adding into said receipts items, amounts, or numbers, thus making it appear that the items paid for by accused Valdez were in the aggregate amount of 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).

RULING

The Court grants the *Motion* of accused Valdez to adopt and join the *Motion for Reconsideration* filed by her co-accused Elegio and Dahildahil.

However, the Court denies the *Motion for Reconsideration* filed by accused Valdez, Elegio and Dahildahil.

Under the *Revised Guidelines for Continuous Trial of Criminal Cases*, a *Motion for Reconsideration* of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution. The *Revised Guidelines* further provides that motions that do not conform to such requirement shall be considered unmeritorious and shall be denied outright.

Accused Elegio and Dahildahil's counsel received the Court's *Resolution* dated July 24, 2019, denying their *Motion for Leave to File Demurrer to Evidence*, on August 7, 2019. They had five days from August 7, 2019 or until August 12, 2019 within which to file their *Motion for Reconsideration*. Records confirm that they filed their *Motion for*

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Reconsideration through private courier (LBC) on August 23, 2019, or 16 days from their receipt of the *Resolution* dated July 24, 2019, and such was received by the Court on August 24, 2019. Clearly, their *Motion for Reconsideration* was filed out of time. In view thereof, their *Motion for Reconsideration* warrants an outright denial.

Nevertheless, after a careful reevaluation of the documentary and testimonial evidence presented by the prosecution, the Court maintains its conclusion that, if unrebutted, the same is *prima facie* sufficient to support a verdict of guilt against accused Valdez, Eligio and Dahildahil for *Malversation of Public Funds through Falsification of Public/Official Documents*.

The Court hereby **DENIES** the *Motion for Reconsideration* filed by accused Valdez, Eligio and Dahildahil, for being filed out of time and for lack of merit.

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 E. MIRANDA
Associate Justice


KEVIN MARCE B. VIVERO
Associate Justice