Republic of the Philippines
Sandiganbayan
Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASE No. SB-14-CRM-0425
For: Violation of Article 218 of the Revised Penal Code

ANTONIO MARTINEZ SUBA,
Accused.

Present:

FERNANDEZ, SJ., *J.*
Chairperson
JACINTO,* *J.* and
VIVERO, *J.*

Promulgated:

OCT 29 2019

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RESOLUTION

VIVERO, J.:

This resolves the following incidents:

1. The *Motion for Reconsideration* filed on August 14, 2019

* Per Administrative Order No. 382-2017, Justice Bayani H. Jacinto has been designated Special Member of the Sixth Division in lieu of Justice Karl B. Miranda who inhibited himself from the above-entitled case.

by accused Antonio M. Suba;[1] and

2. The *Comment/Opposition (To Accused Suba's Motion for Reconsideration Re: Decision[2] of the Honorable Court date[d] 31 July 2019)* filed on September 6, 2019 by the prosecution.[3]

Accused-movant assails the Court's verdict on the following grounds, to wit:

1. The cash advances were utilized for its intended purpose, official travel and stay in Beijing, China from October 11 – 14, 2006 to attend the 4th Biennial International Aircraft Conversion & Maintenance Conference, and accused submitted official receipts and supporting documents as part of the requirements for the liquidation of cash advances. Hence, mere failure to produce the travel authority from the Secretary of Transportation and Communications should not, without more, make him criminally liable. [4]

2. The Commission on Audit's reliance on E.O. No. 298 and COA Circular No. 96-004 sans consideration of the Manual on Settlement of Balances is violative of due process.[5]

3. The Court's failure to ascribe probative value to accused's tendered exhibits[6] was violative of his right to due process of law.[7]

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[1] Records, Vol. 2, p. 261 – 290.

[2] Id. at pp. 193 – 248.

[3] Id. at pp. 298 – 303.

[4] *Motion for Reconsideration* dated August 14, 2019, pp. 2 – 8 (Records, Vol. 2, pp. 262 – 268).

[5] Id. at pp. 4 – 8 (Records, Vol. 2, pp. 264 - 267

[6] The admissibility of **EXHIBIT '1' (EXHIBIT 'P')** was denied because it was **not offered by the prosecution**, and thus, its existence and due execution have not been established nor testified to and identified by any witness. Also, **EXHIBITS '7', '8', '9', '10', '11', '12', '14', '16', '17', '18', '19', '20',** and **'21'** were excluded because their existence and due execution had not been established by the accused nor testified to and identified by his witness (Minute Resolution dated May 15, 2018, pp. 1 - 2 [Records, Vol. 2, p. 133 – 134]).

[7] *Motion for Reconsideration* dated August 14, 2019, pp. 18 – 22 (Records, Vol. 2, pp. 278 – 282).

4. The Court's failure to apply the Supreme Court's ruling in *Domingo G. Panganiban v. People*[8] (G.R. No. 211543, December 9, 2015) is a reversible error.[9]

5. The prosecution failed to discharge its burden of proving the guilt of the accused beyond reasonable doubt, and its sheer reliance on the Notice of Disallowance issued by the Commission on Audit (COA), plus the lack of travel authority should not result in a judgment of conviction.[10]

The Prosecution counters that:

1. The Court's judgment was anchored on the mandatory provisions of Executive Order No. 298, Series of 2004,[11] and Commission on Audit (COA) Circular No. 96-004 dated April 19, 1996;[12] hence, the accountable officer must strictly comply with the requirements for liquidation of cash advances.

2. The Court cannot be faulted for lending credence to the findings of the Commission on Audit.[13]

3. The Court's exclusion of fourteen (14) documents formally offered by the accused is in accordance with the Rules of Evidence.[14]

4. The case of *Domingo G. Panganiban v. People,*[15] which is not on all fours with the facts in the instant case, cannot be applied as a jurisprudential precedent.[16]

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[8] 777 SCRA 467 – 489.

[9] Id. at p. 10 – 16 (Records, Vol. 2, pp. 270 - 276).

[10] Id. at pp. 25 – 28 (Records, Vol. 2, pp. 285 – 288).

[11] Issued by President Gloria Macapagal-Arroyo on March 23, 2004.

[12] *Comment/ Opposition* dated September 6, 2019, p. 2 (Records, Vol. 2, p. 299).

[13] Id. at p. 2 – 3 (Records, Vol. 2, pp. 299 – 300).

[14] Id. at p. 4 (Records, Vol. 2, p. 301).

[15] Supra, Note 8.

[16] *Comment/ Opposition* dated September 6, 2019, p. 4 (Records, Vol. 2, p. 301).

5. For the accused to castigate the Court and cast doubt on its impartiality on account of its exclusion of fourteen (14) documentary evidence he had proferred is foolhardy.[17]

THE COURT'S RULING

The Constitution vests the Commission on Audit (COA), as guardian of public funds, with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.[18] The COA is generally accorded complete discretion in the exercise of its constitutional duty and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.[19]

Actual damage to the government arising from the non-liquidation of the cash advance is not an essential element of the offense punished under Article 218 of the Revised Penal Code and COA Circular No. 96-004. Instead, the mere failure to timely liquidate the cash advance is the gravamen of the offense. Verily, the law seeks to compel the accountable officer, by penal provision, to promptly render an account of the funds which he has received by reason of his office.[20]

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[17] *Ibid.*

[18] The 1987 Constitution, Article IX-D, Section 2 provides:

> x x x
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> 2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

[19] *Nazareth v. Villar*, G.R. No. 188635, January 29, 2013 (689 SCRA 385); *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010 (619 SCRA154); *Sanchez v. Commission on Audit*, 575 Phil. 428 (2008).

[20] In ***People v. Sandiganbayan (Third Division) and Manuel G. Barcenas*, G.R. No. 174504, March 21, 2011,** the Supreme Court held:

> The rationale is similar to that of Article 218 (Failure of Accountable Officer to Render Accounts) of the Revised Penal Code where misappropriation is not an essential element of said felony (Luis B. Reyes, The Revised Penal Code, Book II [2001] at 409). In *United States v. Saberon* (19 Phil. 391 [1911] cited in Reyes at 409), Section 1 of Act No. 1740 punished, among others, the failure to render an account by an accountable public officer. In construing this penal provision, we ruled—
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> Section 1 of Act No. 1740, a violation of which is charged against the defendant, literally provides as follows:

The record showed that accused arrived on October 14, 2006 from Beijing, China. Thence, he had until December 23, 2006 to submit completely the documentary requirements under E.O. No. 298 and COA Circular No. 96-004. His inaction was reflected in the Statement of Cash Advances and Liquidations as of March 31, 2007.[21] On June 29, 2007, State Auditor V Arsenio S. Rayos, Jr. issued Notice of Suspension/s (NS) No. 2007-001-(2006).[22] Suba had ninety (90) days following receipt[23] of said NS to settle the matter, but he failed to do so. Instead, he requested for reconsideration,[24] but to no avail. Accordingly, State Auditor V Rayos, Jr. issued Notice of Disallowance/s[25] (ND) No. 2008-001-(2006) on March 17, 2008. Aggrieved, Suba filed a Request for Reconsideration with the Cluster B Director of the COA, Divinia M. Alagon, but this was denied for lack of merit.[26] Thence, State Auditor

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'Any bonded officer or employee of the Insular Government, or of any provincial or municipal government, or of the city of Manila, and any other person who, having charge, by reason of his office or employment, of Insular, provincial, or municipal funds or property, or of funds or property of the city of Manila, or of trust or other funds by law required to be kept or deposited by or with such officer, employee, or other person, or by or with any public office, treasury, or other depositary, fails or refuses to account for the same, or makes personal use of such funds or property, or of any part thereof, or abstracts or misappropriates the same or any part thereof, or is guilty of any malversation with reference to such funds or property, or through his abandonment, fault, or negligence permits any other person to abstract, misappropriate, or make personal use of the same, shall, upon conviction, be punished by imprisonment for not less than two months nor more than ten years and, in the discretion of the court, by a fine of not more than the amount of such funds and the value of such property.'

"x x x [T]rue it is that the unjustified refusal to render an account may produce a suspicion that there are at least irregularities in the officer's bookkeeping, but neither is this in itself conclusive proof of misappropriation, nor does the law in imposing punishment in any wise take into account the more or less correct condition of the funds which may be in his charge. The law makes the mere fact of that refusal a crime and punishes it as such, in absolute distinction from the other fact, entirely immaterial to the case, as to whether or not the funds in the safe entrusted to the officer are intact. So true is this that, although such funds are found to be intact and the official having them in charge is found not to have committed the smallest or most insignificant defalcation, still he would not be exempt from the criminal liability established by law if he refused or failed to render an account of said funds on being requested to do so by competent authority. The reason for this is that Act No. 1740, in so far as its provisions bearing on this point are concerned, does not so much contemplate the possibility of malversation as the need of enforcing by a penal provision the performance of the duty incumbent upon every public employee who handles government funds, as well as every depositary or administrator of another's property, to render an account of all he receives or has in his charge by reason of his employment. x x x" (Id. at 394-396).

[21] **EXHIBIT "A-25".**

[22] **EXHIBIT "A-16" ("22");** TSN dated February 8, 2017, pp. 35, 38 - 39.

[23] A. M. Suba received the Notice of Suspension/s on June 29, 2007; so, he had until September 29, 2007 within which to settle the matter.

[24] TSN dated December 6, 2016, p. 36.

[25] **EXHIBITS "A-17" ("23"); "A-17-A";** TSN dated February 8, 2017, p. 36.

[26] **EXHIBITS "A-22", "A-22-B", "A-22-C";** TSN dated December 6, 2016, pp. 44 - 48.

V Rayos, Jr. issued the Notice of Finality of Decision (NFD).[27] Suba requested for reconsideration of the NFD to the Office of the General Counsel of the COA, but no persuasive grounds warranted its modification, much less its reversal.[28] The COA, thru Assistant Commissioner Elizabeth S. Zosa, explained thus:

> "x x x [Y]ou requested that your liability be limited to P133,083.40, the amount actually spent for your travel, while the remaining P108,395.40 should be settled by Mr. Navida representing the portion of the cash advance actually spent for his travel.
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> "After a circumspect evaluation, this Office . . . regrets to deny your request. The nature of **the liability of the persons liable for expenditures incurred in violation of [the] law has always been held by the Commission to be SOLIDARY or JOINT AND SEVERAL**, pursuant to Section 30.1.2 of the 1993 Manual on the Certificate of Settlement and Balances, reiterating Book VI, Chapter V, Section 43 of the 1987 Revised Administrative Code, which states, to wit:
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> > '30.1.2 Every expenditure or obligation authorized or incurred in violation of law or of the annual budgetary measure shall be void. Every payment made in violation thereof shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable for the full amount so paid or received.
> >
> > 'x x x.'
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> "Accordingly, insofar as the government is concerned, **THE ENTIRE OBLIGATION CAN BE ENFORCED AGAINST ANY OF THE SOLIDARY DEBTORS**, who in turn are liable not only for a potion (sic) thereof but for its entirety. x x x
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> "x x x." [29] (Capitalization Supplied.)

On June 28, 2010, Director Alagon issued the COA Order of Execution (COE).[30] Thenceforth, Suba got hold of said document,[31]

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[27] **EXHIBITS "A-18", "A-18-A", "V".**

[28] **EXHIBIT "A-21";** TSN dated December 6, 2016, pp. 51 – 52.

[29] Memorandum dated June 1, 2010, of the Office of General Counsel, COA, to Antonio M. Suba, p. 2.

[30] **EXHIBIT "A-20" ("24").**

yet the cash advances in question remained unpaid till the end of the assignment of State Auditor V Rayos, Jr. at PADC (i.e. 2010).[32]

There is no gainsaying that the accused was accorded due process by the COA. Still, he remained recalcitrant.

To be sure, prior notice or demand to liquidate is not a condition *sine qua non* before an accountable officer may be held criminally liable for such nonfeasance.[33] It behooves accused to adhere to the applicable law. In this regard, the Supreme Court *en banc* in ***Development Bank of the Philippines v. Commission on Audit and Janel D. Nacion,***[34] held:

> **"EO No. 248, as amended by EO No. 298, is clear and precise and leaves no room for interpretation.** x x x
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> "Indeed, where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[35] Thus, EO No. 248, as amended by EO No. 298, should be applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. x x x."
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> "x x x
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> "x x x **[N]ot only are senior government officials, such as the ... concerned officials herein, expected to update their knowledge on laws that may affect the performance of their functions, but the laws subject of this case are of such clarity** . . .
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> "Understanding the subject EO No. 248, as amended by EO No. 298, does not require a highly specialized knowledge of

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[31] **EXHIBIT "A-20-B".**

[32] TSN dated December 6, 2016, pp. 10 – 11; 53 – 55; A. S. Rayos, Jr. was the Audit Team Leader (ATL) assigned at the PADC from 2006 to December 2010.

[33] *Manlangit v. Sandiganbayan,* G.R. No. 158014, August 28, 2007 (558 Phil. 166, 174); *Lumauig v. People,* G.R. No. 166680, July 7, 2014.

[34] G.R. No. 202733, September 30, 2014 (737 SCRA 237).

[35] *Vicencio v. Hon. Villar,* G.R. No. 182069, July 03, 2012 (675 SCRA 468, 480), citing *National Federation of Labor v. National Labor Relations Commission,* 383 Phil. 910 (2000).

> the law. x x x **Had petitioner exerted some effort and diligence in reading the applicable law in full, it would not have missed the requirement imposed on foreign travels**. We find it rather difficult to believe that officials holding positions of such rank and stature . . . would fail to comply with a plain and uncomplicated order, which has long been in effect as early as 1995, almost a decade before their respective travels." (Emphasis and Underscoring Supplied.)

Curiously, accused paid the amount ***eight (8) years later***,[36] as shown in the **Notice of Settlement of Suspension/ Disallowance/ Charge**[37] **(NSSDC)** No. 14-002 dated December 31, 2014. Squaring accounts[38] at this juncture does **not** *ipso facto* absolve him. ***Praetextu liciti non debet admitti illicitum*** (Under pretext of legality, what is illegal ought not to be permitted).

This is an opportune time to correct the penalty imposed in the assailed Decision. Consistent with the Supreme Court's ruling in ***Davalos, Sr. v. People,***[39] restitution must be for the full amount. In addition, it must be done within a reasonable period. Salient excerpts from said ruling are quoted below, *viz:*

> "Petitioner's attempt at rationalization for his failure to liquidate is unacceptable. x x x As it is, **petitioner failed to liquidate and return his cash advance despite repeated demands.** He was able to return the said amount only on January 27, 1995, that is, after almost seven (7) years from the last demand. His declaration about making a down payment of P11,000.00 for the alleged purchase of some tools pursuant to the requisition of the local government is gratuitous at best. There is nothing on record to support his claim and there is nothing to show that he turned over the possession of the said tools to the government. Moreover, he admitted retaining or keeping the balance of P7,000.00 (or P12,500.00 as he later claimed). The only logical conclusion then is that he misappropriated and personally benefited from the cash advance of P18,000.00. x x x

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[36] TSN dated January 23, 2018, pp. 12 – 15, 21.

[37] **EXHIBIT "15".**

[38] *Ibid;* TSN dated January 23, 2018, pp. 12 – 15, 21.

[39] G.R. No. 145229, April 20, 2006 (488 SCRA 85 [Per. J. Cancio C. Garcia, Second Division]).

"x x x

"Here, **THE RETURN OF THE SAID AMOUNT CANNOT BE CONSIDERED A MITIGATING CIRCUMSTANCE ANALOGOUS TO VOLUNTARY SURRENDER CONSIDERING THAT IT TOOK PETITIONER ALMOST SEVEN (7) YEARS TO RETURN THE AMOUNT.** Petitioner has not advanced a plausible reason why he could not liquidate his cash advance which was in his possession for several years." [40] (Emphasis and Capitalization Supplied.)

Conformably with ***Davalos, Sr.,*** restitution of the subject cash advances after eight (8) years despite repeated notices ***cannot*** be credited as a special mitigating circumstance analogous to voluntary surrender.[41] Thence, **voluntary surrender** remains as the ***sole mitigating circumstance*** that may be appreciated in favor of accused Suba.

More. The Court and the accused saw eye to eye that **"[t]he issue thereon is not his failure to submit [the] travel authority but rather, whether or not he is guilty of failure to render accounts."**[42] Accused harps on the assailed Decision's mooring that it was the lack of travel authority that did him in. It is a major factor, but not the sole proof. Notably, neither the Disbursement Voucher[43] nor the Budget Utilization Slip[44] were signed by Josefa R. Cabangangan,[45] the Comptroller, due to the lack of an Authority to Travel.[46]

The Court relied on the COA's findings for good measure. In ***Yap v. Commission on Audit***,[47] the Supreme Court explained that the Commission on Audit has the duty to make its own assessment of the merits of the disallowance and need not be limited to a review of the grounds relied upon by the auditor of the agency concerned:

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[40] *Ibid.*

[41] *Cimafranca v. Sandiganbayan*, G.R. No. 94408, February 14, 1991 (194 SCRA 107).

[42] *Motion for Reconsideration* dated August 14, 2019, p. 25.

[43] **EXHIBITS "C", "C-1".**

[44] **EXHIBITS "E", "E-1".**

[45] Then-Accounting Manager for Planning and General Accounting.

[46] Id. at p. 35.

[47] G.R. No. 158562, April 23, 2010, 619 SCRA 154 [Per J. Leonardo-De Castro, En Banc].

> "x x x [I]n resolving cases brought before it on appeal, respondent COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective." [48]

In ***Development Bank of the Philippines v. Commission on Audit,***[49] the High Tribunal had occasion to rule that the COA is not estopped from questioning, in the process of post-audit, the previous acts of its officials considering the well-established principle that estoppel does not lie against the government; more so if the acts of its officials are erroneous, let alone irregular. Moreover, it is the general policy of the Supreme Court to sustain the decisions of administrative authorities "not only on the basis of the doctrine of separation of powers but also for their presumed knowledgeability and even expertise in the laws they are entrusted to enforce.[50] In ***Beautifont Inc. and Aura Laboratories, Inc. v. Court of Appeals, et. al.***[51] the Supreme Court articulated:

> "... The legal presumption is that official duty has been duly performed; and it is 'particularly strong as regards administrative agencies ... vested with powers said to be quasi-judicial in nature, in connection with the enforcement of laws affecting particular fields of activity, the proper regulations and/or promotion of which requires a technical or special training, aside from a good knowledge and grasp of the overall conditions, relevant to said field, obtaining in the nation (Pangasinan Transportation vs. Public Utility Commission, 70 Phil. 221). The consequent policy and practice underlying our Administrative Law is that courts of justice should respect the

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[48] Id. at 169.

[49] G.R. No. 107016, March 11, 1994 (231 SCRA 202, 207).

[50] *Tagum Doctors Enterprises v. Gregorio Apsay, et al.,* G.R. No. 81188, August 30, 1988.

[51] G.R. No. 50141, January 29, 1988, cited in *Blue Bar Coconut Philippine et al. v. The Hon. Francisco S. Tantuico, Jr.,* G.R. No. 47051, July 29, 1988.

findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial (Heacock vs. NLU 95 Phil. 553). Hence, '**(C)OURTS OF JUSTICE WILL NOT GENERALLY INTERFERE WITH PURELY ADMINISTRATIVE MATTERS WHICH ARE ADDRESSED TO THE SOUND DISCRETION OF GOVERNMENT AGENCIES** unless there is a clear showing that the latter acted arbitrarily or with grave abuse of discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess or lack of jurisdiction." (Capitalization Supplied.)

Most importantly, the COA's findings are accorded great weight and respect.[52] The COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to, the government. It has the exclusive authority to define the scope of its audit and examination, and to establish the required techniques and methods. An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with official guidelines and regulations.[53] Under the Rules on Evidence and considering the COA's expertise on the matter, the presumption is that official duty has been regularly performed unless there is evidence to the contrary.

Accused claims that:

"x x x The tendered Exhibits show that all foreign travels for that year were allowed by the PADC Board, where the DOTC Secretary, the person from whom the travel authority would be formally secured sits as one of the members;

"x x x."[54]

The Court's ruling on the non-admissibilty of the fourteen (14) documents formally offered by the accused was consistent with the

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[52] *Cuerdo v. Commission on Audit*, G.R. No. 84592, October 27, 1988 (166 SCRA 657); *Villanueva v. Commission on Audit*, G.R. No. 151987, March 18, 2005 (453 SCRA 782).

[53] *Jaca v. People and Sandiganbayan*, G.R. Nos. 166967, 166974, 167167, January 28, 2013.

[54] *Motion for Reconsideration* dated August 14, 2019, p. 8.

Rules on Evidence. Exclusion, not expunction, resulted. Section 40, Rule 132 provides:

> **Sec. 40. Tender of excluded evidence.**—If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

Assuming *in gratia argumenti* that the fourteen (14) documents formally offered by the accused was admissible, the verdict would still be affirmed *in toto*. The explanation of Justice Eduardo B. Peralta, Jr.[55] is noteworthy, *viz:*

> "x x x [A]n erroneous admission or rejection of evidence by the trial court is not a ground for a new trial or a reversal of the decision if **there are other independent evidence to sustain the decision**, or if the rejected evidence, if it had been admitted, would not have changed the decision. Otherwise, a new trial is warranted by reason of such erroneous ruling which goes into the merits of the case and would have affected the decision. x x x."[56] (Emphasis and Underscoring Supplied.)

Accused pursued his challenge against the Court's judgment. He called into question the Court impartiality[57] for excluding documents whose existence and due execution were not established.

Accused's tirade is unfounded. In ***Republic v. Evangelista,***[58] the Supreme Court pronounced that:

> "x x x Bare allegations of partiality will not suffice in an absence of a clear showing that will overcome the presumption that the judge dispensed justice without fear or

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[55] Senior Member, Court of Appeals, Sixth Division.

[56] PERSPECTIVES OF EVIDENCE, 2005, p. 532, citing Justice Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, VOLUME II, Tenth Revised Edition [2004], p. 825; See also *Tinsay v. Yusay,* No. 23126, March 17, 1925 (47 Phil. 639 - 645); *People v. Bande,* March 3, 1927 (50 Phil. 37 – 42).

[57] *Motion for Reconsideration* dated August 14, 2019, p. 22.

[58] G.R. No. 156015, August 11, 2005 (466 SCRA 544, 555).

favor. It bears to stress again that **a judge's appreciation or misappreciation of the sufficiency of evidence adduced by the parties, or the correctness of a judge's orders or rulings on the objections of counsels during the hearing, without proof of malice on the part of respondent judge, is not sufficient to show bias or partiality**. x x x [I]t must be shown that the bias and prejudice stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as based on the evidence adduced, do not prove bias or prejudice. x x x." (Emphasis and Underscoring Supplied.)

More. Accused asks the Court to apply the Supreme Court's ruling in ***Panganiban v. People.***[59]

The Court is not persuaded.

Panganiban provides no refuge for the accused due to significant factual distinctions between the cited ruling and the instant case. In ***Panganiban,*** an *"agreement was already in place within the 60-day period for liquidation provided under COA Circular 97-002,"* and eventually, accused's *"full liquidation of his cash advance by means of an arrangement allowed by COA ultimately translated into a legal avoidance of violation of Art. 218".*[60] Contrariwise, accused Suba failed to liquidate his cash advances within the statutorily mandated period, or even within the period allowed by COA following receipt of the Notice of Suspension, the Notice of Disallowance, and orders of the Commission. Neither did he make any initiative towards a settlement.

The Court decided this case *secundum regulam* and *secundum aequum et bonum.* Contrary to the accused's specious argument, the constitutional rights of the accused were never waylaid. Perhaps, accused should be minded of the Supreme Court's *dictum* in ***People v. Manalo,***[61] which is quoted below:

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[59] Supra, Note 8; *Motion for Reconsideration* dated August 14, 2019, pp. 10 – 16.

[60] *Ibid.*

[61] G.R. No. 107623, February 23, 1994 (230 SCRA 309, 318 – 319).

> "The general rule is that if a criminal charge is predicated on a negative allegation, or a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule admits of exceptions. Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. *Stated otherwise, it is* ***NOT incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances*** *and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control.* For example, where a charge is made that a defendant carried on a certain business without a license, . . . the fact that he has a license is a matter which is peculiarly within his knowledge and he must establish that fact or suffer conviction. Even in the *case of Pajenado,* this Court categorically ruled that although the prosecution has the burden of proving a negative averment which is an essential element of a crime, the prosecution, in view of the difficulty of proving a negative allegation, "need only establish a *prima facie* case from the best evidence obtainable."[62] (Capitalization and Underscoring Supplied.)

In the case at bar, the negative averment that accused failed to render accounts within the prescribed period, has been deduced from and established peremptorily by the corroborative testimonies of the PADC and COA officials, including official (and certified) documents. On the other hand, it should be noted that, for his defense, accused relied solely on the uncorroborated testimony of Rolando B. Broas, Cashier at the PADC who issued PADC Non-VAT Acknowlegement Receipt No. 0093 dated September 12, 2014,[63] to accused Suba for the ₱241,478.68 that accused paid up for the cash advances that were paid out to him.[64] Concededly, the prosecution had discharged its *onus probandi,* while the evidence for the defense was sorely lacking.

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[62] *People v. Pajenado,* No. L-27680-81, February 27, 1970 (31 SCRA 812, 816 - 817); *Su Zhi Shan @ Alvin Ching So v. People,* G.R. No. 169933, March 9, 2007 (518 SCRA 48, 63 – 64).

[63] **EXHIBIT "13".**

[64] TSN dated January 23, 2018, pp. 4 – 10.

Further, accused's invocation of good faith or presumption of regularity in the performance of official duties deserve scant consideration. This presumption must fail in the presence of an explicit rule that was violated. For instance, in ***Reyna v. Commission on Audit,***[65] the Supreme Court *en banc* affirmed the liability of the public officers therein, notwithstanding their proffered claims of good faith, since their actions violated an explicit rule in the Land Bank of the Philippines' Manual on Lending Operations. In similar regard, the Supreme Court *en banc,* in ***Casal v. Commission on Audit,***[66] sustained the liability of certain officers of the National Museum who again, notwithstanding their good faith participated in approving and authorizing the incentive award granted to its officials and employees in violation of A.O. Nos. 268 and 29 which prohibit the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President. The High Tribunal held that, even if the grant of the incentive award was not for a dishonest purpose, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making the "approving officers" liable for the refund of the disallowed incentive award.[67]

COA's finding[68] negates accused's defense of good faith. It reads:

> *". . .* **[F]ROM THE VERY BEGINNING, MR. SUBA WAS AWARE OF THE ABSENCE OF AUTHORITY TO TRAVEL ABROAD YET THIS DID NOT DETER HIM FROM EXPENDING THE CASH ADVANCE for his and Col. Navida's travel abroad.** Mr. Suba, as an accountable public officer, is directly responsible for the use of the cash advance and should therefore be held primarily liable for the illegal and/or irregular use thereof. **He could not pass the blame and the corresponding liability solely to Col. Navida for approving the said cash advance.** Nevertheless, for having approved the cash advance and having benefited therefrom, Mr. Navida is **JOINTLY AND SEVERALLY LIABLE**

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[65] G.R. No. 167219, February 8, 2011 (657 Phil. 209, 225).

[66] G.R. No. 149633, November 30, 2006 (538 Phil. 634, 644).

[67] See *Dr. Velasco, et al. v. COA,* 695 Phil. 226, 242 (2012)

[68] **EXHIBIT "A-22":** 4th Indorsement dated January 9, 2008, from the Office of the Cluster Director (Corporate Government Sector, Cluster B), Commission on Audit, regarding the denial of the motion for reconsideration of the disallowance of the unliquidated cash advance for travel to Beijing, China, p. 2.

for the same in accordance with Section 104 of PD 1445." [69]
(Emphasis and Capitalization Supplied.)

Given COA's finding, express or implied, that accused (public officer) acted with bad faith or was guilty of gross negligence amounting to bad faith that resulted in the illegal disbursement of public funds, then the defense of presumption of good faith should be deemed completely rebutted.[70] Since this element of bad faith is established, then accused's mantle of immunity is removed because his act is considered to be outside the scope of his official duties.[71]

All things considered, the facts alleged and duly proven point to the inescapable conclusion that accused transgressed Article 218 of the Revised Penal Code in relation to Executive Order No. 298, Series of 2004 and COA Circular No. 96-004. After an assiduous assessment of accused's motion *vis a vis* the prosecution's comment, neither a compelling reason nor a reversible error warrants a modification or reversal of the Court's Decision. The Court need not belabor discussing the other points at the risk of being redundant.

A final note. As explained earlier, the imposable penalty in the assailed Decision must be rectified. Considering that only one (1) mitigating circumstance (i.e. voluntary surrender) is extant, the imposable penalty is *prisión correccional*, ranging from six (6) months and one (1) day to one (1) year, one (1) month and ten (10) days. The Court, however, following the Supreme Court's ruling in ***People v. Nang Kay,***[72] deems it just and equitable to impose a ***straight penalty*** of imprisonment for six (6) months and one (1) day.

WHEREFORE, premises considered, the Court ***DENIES*** the *Motion for Reconsideration* filed by accused **Antonio Martin Suba** for lack of merit.

The Decision dated July 31, 2019, in Criminal Case No. SB-14-CRM-0425, is hereby ***MODIFIED,*** that is, accused **Suba** is sentenced to suffer the penalty of imprisonment for six (6) months and one (1) day.

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[69] **EXHIBIT "A-22-A".**

[70] *Lumayna v. Commission on Audit,* G.R. No. 185001, September 25, 2009 (601 SCRA 163, 182-183); *Albert v. Gangan,* 406 Phil. 231, 245 - 246 (2001).

[71] *Meneses v. Court of Appeals,* G.R. Nos. 82220, 82251 and 83059, July 14, 1995 (246 SCRA 162, 174).

[72] G.R. No. L-3565, April 20, 1951, cited in *People v. Rolando Z. Tigas,* SB-07-CRM-0071, May 25, 2018.

No further pleadings or submissions by any party shall be entertained.

SO ORDERED.

KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:

pls. see Concurring Opinion.

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

BAYANI H. JACINTO
Associate Justice

People v. Suba (SB-14-CRM-0425)
Resolution on the accused' *Motion for Reconsideration* dated August 14, 2019

CONCURRING OPINION

I concur in the opinion in the *ponencia* of Hon. Kevin Narce B. Vivero, but I would like to add to the discussion therein to address certain points in the accused' *Motion for Reconsideration*.

The accused casts doubt on the impartiality of the Court because it denied the admission of certain documents he offered, and allegedly, in deciding the case, considered a document, *i.e.*, his Counter-Affidavit, which was not offered in evidence, and not admitted. But the accused did not explain how the consideration of said Counter-Affidavit prejudiced his defense.

Indeed, said Counter-Affidavit was mentioned in the assailed Decision. But a reading thereof would show that said Counter-Affidavit was mentioned only in the narration of antecedents. Nowhere was it mentioned in the Court's findings of fact, in the summary of evidence, or in the discussion of the elements of the offense, precisely, because it was not offered in evidence, or authenticated by any witness. In other words, it was not considered as evidence, and was not considered in determining the guilt of the accused.

The documents the accused offered in evidence, which had been denied admission, were given the same treatment. Still part of the narration of the antecedents in the assailed Decision, the Court mentioned that:[1]

> Only nine (9) out of the twenty-four (24) documentary exhibits that accused Suba formally offered were considered admissible by the Court. In particular, the Court resolved:
>
> - To **DENY** the admission of the following exhibits offered by the accused, to wit: ***Exhibit '1'***, considering that while the same is alleged to be a common exhibit, *i.e.*, ***Exhibit 'P'*** of the prosecution, it was **not offered by the prosecution**, and thus, its existence and due execution have not been established nor testified to and identified by any witness; and
>
> - To **DENY** the admission of the following exhibits offered by accused Suba, to wit: ***Exhibits '7', '8', '9', '10', '11', '12', '14', '16', '17', '18', '19', '20',*** and ***'21',*** **the existence and due execution of which have not been established by the said accused nor testified to and identified by his witness.**
>
> Incensed by the exclusion of his fourteen (14) exhibits, accused Suba filed a *Motion for Reconsideration of the Resolution Denying Admission of Defense Exhibits 1, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 21*, but to no avail. Still, the Court resolved to deny accused Suba's

[1] Assailed Decision, pp. 13-14

motion, without prejudice to his right to tender excluded evidence in accordance with Rule 132, Section 40 of the rules of Court.

For convenience, the aforementioned exhibits are as follows:

Exhibit	Description
1	Certification dated January 8, 2008 issued by Corazon T. Aguinaldo stating that Col. Navida instructed her to inform accused Suba of Navida's directive that accused Suba be the one to request for a cash advance
7	PADC Personnel Order No. 87 dated September 20, 2006 designating Mr. Antolin A. Flores as Officer-In-Charge for Operations while accused Suba was on official trip to China from October 10-14, 2006
8	Affidavit dated August 22, 2008 of Vilma S. Miane
9	Accused Suba's Motion for Reconsideration With Motion to Hold in Abeyance the Filing of the Information dated September 30, 2013 in connection with OMB-C-C-12-0171-D
10	Minutes of the Meeting of the PADC Board of Directors held on June 21, 2006 at the DOTC Conference Room, 16th Floor, Columbia Tower, Greenhills, San Juan, Metro Manila
11	Last Minutes Updated Agenda for The 4th International Aircraft Conversion Conference held in Beijing, China on October 11-13, 2006
12	Souvenir Program
14	Accused Suba's letter dated September 15, 2014 addressed to the Chairperson of the COA
16	Accused Suba's Motion for Reconsideration With Motion to Hold in Abeyance the Filing of Information for the Crime of Failure of Accountable Officers to Render Accounts dated August 11, 2014 in connection with OMB-C-C-11-0745-K
17	Accused Suba's Memo dated August 22, 2007
18	Accused Suba's letter dated July 20, 2009, addressed to the Secretary, Department of Transportation and Communication, requesting the latter to issue a Travel Authority post facto
19	Secretary's Certificate, certifying that PADC Board Resolution No. 02 Series of 2006 was approved by the PADC Board of Directors by referendum on January 10, 2006
20	Letter dated October 6, 2008 of Col. Roberto R. Navida (ret)
21	Letter dated January 23, 2009 of Col. Roberto R. Navida (ret)

The Court, in the assailed Decision, deemed it unnecessary to reiterate the reason for denying the accused' Motion for Reconsideration because the reason was already laid out in the Resolution denying the same.[2] Simply put, the aforementioned documents offered by the accused were mere copies, and had not been identified and authenticated by any witness. As in the Counter-Affidavit, the Court merely mentioned that, as

[2] Resolution dated August 14, 2018 (Record, Vol. 2, p. 167)

x----------x

part of the proceedings, the accused offered in evidence certain documents, but these were not admitted. Because the documents were not admitted, the Court did not consider the same in the determination of the accused' guilt.

Similarly, the Court's statement that the accused did not file a Demurrer to Evidence was merely part of the narration of the proceedings. For convenience, the portion of the assailed Decision reads:[3]

> On October 2, 2017, the Court denied the *Motion Requesting Leave to File Demurrer to Evidence* filed by accused Suba. Undaunted, accused moved for reconsideration of the Court's ruling. Nonetheless, the Court denied said motion, subject, however, to the following:
>
> > "x x x Accused Suba, through counsel, is given a non-extendible period of ten (10) days from notice within which to file, if he so desires, a Demurrer to Evidence without leave of court, subject to the legal consequences set forth in Section 23, Rule 119 of the Revised Rules of Criminal Procedure. x x x
>
> On December 27, 2017, accused Suba filed a *Manifestation with Motion to be Allowed to Present Evidence.* Thence, he opted to forego altogether the filing of a demurrer to evidence.
>
> (citations omitted)

Aside from the aforequoted narration, there was nary a mention of the matter in the assailed Decision. Such narration cannot in any way be construed as taking against the accused his decision to forego with the filing of a Demurrer to Evidence without leave of court.

SARAH JANE T. FERNANDEZ
Associate Justice

[3] Assailed Decision, p. 12