



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

Criminal Case No.:
SB-23-AR-0009 to 0020
*For: Malversation of
Public Funds*

- versus -

ESTHER S. PAGANO
Accused-Appellant.

Present:
Lagos, J., Chairperson,
Mendoza –Arcega, and
Corpus-Mañalac, JJ.

Promulgated:

March 05, 2024
Gezyl P. Sison

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RESOLUTION

MENDOZA-ARCEGA, J.:

Before this Court for resolution is the *Motion for Reconsideration*¹ filed by accused-appellant Esther S. Pagano (accused-appellant) dated January 22, 2024 and the Prosecution's *Comment (on Accused-Appellant Esther S. Pagano's Motion for Reconsideration dated January 22, 2024)*² dated February 6, 2024.

In her motion, Pagano alleges that the prosecution failed to prove the act of misappropriation or conversion of public funds. Accordingly, Pagano raises the fact that all manager's checks representing interest payments were deposited. Thus, she could not have collected the said funds for her personal gain. She further asserts that her disputed task merely involved the issuance of an official receipt for each check she received, and she was required to

¹ Records, Vol. I, pages 357 to 369.

² Records, Vol. I, pages 395 to 402.

J. / n

indicate the official receipt number at the back of each check. Furthermore, Pagano raises the fact that she did not allow any person to misappropriate nor convert the funds since she acted under the control of her supervisor.

Finally, she asserts that the irregularities in the conduct of the audit raise doubts on the guilt of the accused beyond reasonable doubt. For one, the audit conducted by Provincial Treasurer Ambanloc is dubious for being personally conducted, and without the consent, presence, and knowledge of the accused. She also questions the audit conducted by the Commission on Audit (COA) since Resolution No. 1996-305 provides that a Supervision scheme wherein the authority to create an Audit Team for the conduct of a special audit belongs to the Central Office Director and/or Regional Director through an assignment order. For Pagano, the said resolution was dispensed with in the selection and conduct of the audit.

By way of a comment, the prosecution alleges that the arguments raised by accused-appellant Pagano were mere repetitions of her previous arguments, thus no new compelling arguments were presented.

THE COURT'S RULING

The Court finds the present motion devoid of merit.

The motion for reconsideration merely reiterates the arguments raised by the accused-appellant in her Brief. If only to emphasize the absolute lack of merit, then the Court must dwell on the arguments propounded by the accused-appellant.

The accused-appellant is not correct in claiming that there was no sufficient evidence to prove the malversation or conversion of public funds, that in fact all manager's checks representing the interest were deposited and said funds could have not been collected for her personal gain.

The Court reiterates its findings in the assailed Decision as to the observations of Cabanlong on the eleven checks that were deposited, the said observations were further included in the Audit Examination Report by Calgo and Javier, and in the Notice of Charges issued to the accused-appellant, thus:

“The accused-appellant’s contention that the eleven checks subject of Criminal Case Nos. 99-CR-3544 to 99-CR-3554 were duly deposited to the account of the Province of Benguet cannot be accepted as conclusive proof that no misappropriation was committed. In fact, in her Judicial Affidavit, Cabanlong stated the following observations:

Q: In your examination of the cash book of Ms. Pagano, what were your observations, if any?

A: I have observed that (1) **Ms. Pagano does not deposit intact all her cash collections daily or at the next working day, thus, resulting to large outstanding cash balances on hand daily;** (2) **that Ms. Pagano has larger amount of check deposits as compared to the amount of check she collected for a certain date;** and (3) **Ms. Pagano has lesser amount of cash deposits as compared to the amount of cash that she collected for certain date.**³

It was also emphasized that the complaints originated from the complaints filed by the Provincial Treasurer who has the authority to examine, audit and settle the accounts of accountable officers under their respective jurisdiction. Thus, her contention that the Provincial Treasurer's audit was dubious is misplaced.

Furthermore, accused-appellant was not able to satisfactorily explain the shortage incurred, thus, giving rise to the prima facie presumption that she put the funds into personal use. To reiterate that the foregoing arguments were explained in the assailed Decision, portion of it reads as follows:

“To begin with, these cases were consolidated because the accountabilities of herein accused-appellant for the years 1996 and 1997 are the subject of one demand letter finding the total amount of P4,175,915.12 not properly accounted for by the accused-appellant. Part of the said amount is the shortage amounting to P1,051,124.17 in the eleven charges for malversation which originated from the complaint filed by the Provincial Treasurer Ambanloc. The said shortage was also subject of a demand letter issued to the accused-appellant. Both demands were properly issued to the accused-appellant. In fact, she submitted her explanation for both demands. However, both COA and Ambanloc found the separate explanations unsatisfactory. It was not necessary to issue another demand letter after the adjustment of the total accountability was determined since it was necessarily included in the former demand. **Since a valid demand has been made by duly authorized officers, and accused-appellant cannot satisfactorily explain such shortage, then the prima facie**

³ Emphasis supplied. Records, Vol. 1, page 350.

presumption that accused-appellant put the questioned funds into personal use arises.”⁴

We cannot also agree that the fact that the creation of the Audit Team was not in accordance with Resolution 1996-305 will taint the great weight and respect accorded to the COA’s findings. It is still appropriate to adhere with the findings of COA considering their expertise on the matter.

Finally, this Court is not persuaded that the accused-appellant did not allow another person to misappropriate the funds since she merely acted under the control of her supervisor. The said assertion wields against her favor, thus the assailed Decision expounded:

“From the outset, the accused-appellant was unable to satisfactorily explain the shortage she incurred during the period January 1, 1996 to December 31, 1997. Instead, she deliberately asserted that she acted in good faith when she encashed the checks from her cash-on hand as per instruction of her supervisor, Ambanloc. According to her, she believed in good faith that Ambanloc will liquidate the checks he asked for encashment.

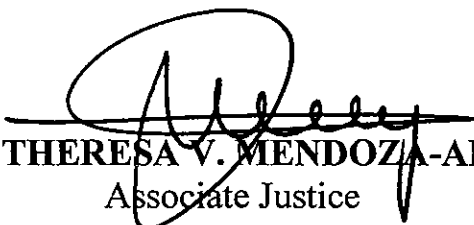
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Here, the defense only presented the accused-appellant herself to prove that she acted in good faith. The Court is not convinced. If in all honesty, she acted in good faith, she would not have kept photocopies of the typewritten notes/instructions of Ambanloc, and she would not hesitate in performing the directives of her immediate supervisor. x x x”⁵

In sum, no compelling reason exists to depart from our previous Decision.

WHEREFORE, the Court **DENIES** accused-appellant Esther S. Pagano’s *Motion for Reconsideration dated January 22, 2024* of the Court’s Decision promulgated on December 20, 2023, for utter lack of merit.

SO ORDERED.



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


⁴ Emphasis supplied. Records, Vol. I, page 349.

⁵ Records, Vol. I, page 351.

RESOLUTION
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WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice