



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

Criminal Case No. SB-20
-AR-0037

FOR: Malversation of Public
Funds

-versus-

REYNALDA D. MARISCAL,
Municipal Treasurer,
Calabanga, Camarines Sur,
Accused-Appellant.

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

Promulgated:

08 September 2021 Jcd

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DECISION

MENDOZA-ARCEGA, J.:

This is an appeal from the *Decision*¹ of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, finding accused-appellant, Reynalda D. Mariscal (Mariscal) guilty beyond reasonable doubt of Malversation of Public Funds in violation of Article 217 of the Revised Penal Code.

This court notes that an *Information*² was filed against accused-appellant, Reynalda D. Mariscal with the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 (RTC), for Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code (RPC). The Information reads as follows:

That on or about November 7, 2001 or sometime prior or subsequent thereto, in the Municipality of Calabanga, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, REYNALDA D. MARISCAL,

¹ Dated 30 September 2015, Records, pages 463 to 482.

² Records, pages 1-2.

DECISION

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a public officer, being the Municipal Treasurer of Calabanga, Camarines Sur, and as such accountable for public funds received and/or entrusted to her by reason of her office, taking advantage of her official position and committing the offense in relation to her office, did then and there willfully, unlawfully and feloniously take, misappropriate and convert to her personal use and benefit the amount of Four Hundred One Thousand Three Hundred Thirty Four Pesos and Eighty Six Centavos (P401,334.86), to the damage and prejudice of the government in the amount aforesated.

CONTRARY TO LAW.

Upon arraignment³, Mariscal pleaded not guilty to the crime charged and thereafter, faced trial. In its *Decision*⁴, the RTC convicted Mariscal of Malversation of Public Funds under Article 217 of the RPC, the dispositive portion of the Decision reads as follows:

“WHEREFORE, premises considered, accused Reynalda Mariscal is hereby declared guilty beyond reasonable doubt for(sic) the offense charged of malversation of public funds in the amount of Php401,334.86 and penalized as follows:

1. To suffer the indeterminate penalty of ten years (10) years and (1) day of prision mayor, as the minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as the maximum;
2. To suffer perpetual special disqualification;
3. To pay the fine of Php401,334.86;
4. To indemnify the Government in the amount of Php401,334.86 with legal interest thereon until its full payment and;(sic)
5. To pay exemplary damages in the amount of Php100,000.00

SO ORDERED.”

Mariscal sought the reversal of the said Decision and filed a Notice of Appeal⁵ where she erroneously designated the Court of Appeals (CA) to review her conviction. Despite this error and albeit the RTC’s duty to forward the records of the case to the proper forum⁶, the trial court issued an *Order*⁷ giving due course to the same and ordered the transmittal of the records of the

³ Order dated 21 June 2006, Record, page 180.

⁴ Decision dated 30 September 2015, Record, page 463.

⁵ Records, page 484.

⁶ Dizon vs. People, G.R. No. 227577, January 24, 2018.

⁷ Order dated 14 April 2006, Record, page 485.

DECISION

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case to the CA. The CA further remanded⁸ the case to the RTC of Calabanga, Camarines Sur, and directed the transmittal of the complete records to the Sandiganbayan for proper appellate proceedings. To reiterate the Sandiganbayan's exclusive appellate jurisdiction over the case, the CA ruled⁹ in this manner:

“Sec. 4. Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violation of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense;

x x x

x x x

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

Provided, that the Regional Trial Court shall have exclusive original jurisdiction where the Information: (a) does not allege any damage to the government or bribery arising from the same or closely related transactions or acts in amount not exceeding One million pesos (P1,000,000.00).

x x x

x x x

In cases where none of the accused are occupying position corresponding to Salary Grade No. '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, and municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions, or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

⁸ Decision dated 16 April 2019, Records, page 70.

⁹ Id.



The CA further explained that the accused filed an erroneous appeal, as enunciated by the Supreme Court in the case of *Quileste v. People*¹⁰, to wit:

“It may be recalled that this case involves malversation of public funds, punishable under Article 217 of the Revised Penal Code, committed by a low-ranking public officer (with salary grade below SG 27). Thus, the case was correctly filed with and tried by, the RTC, the court that has exclusive original jurisdiction over the case. Upon Quileste’s conviction by the RTC, his remedy should have been an appeal to the Sandiganbayan, pursuant to Presidential Decree (PD) No. 1606, as amended by Republic Act (R.A.) No. 7975 and R.A. No. 8249, specifically Section 4 thereof[,] x x x”

The review of Mariscal’s conviction falls within the exclusive appellate jurisdiction of this court, hence, this appeal.

The Factual Antecedents

On 7 November 2001, a Confidential Office Order¹¹ was issued by Jose R. Conjares, directing Alice Bolivar Lorenzo (Lorenzo), State Auditor II and Marichu Pado (Pado), State Audit Examiner II to conduct a cash and account examination on Mariscal, as the Municipal Treasurer of the Local Government Unit (LGU) of Calabanga, Camarines Sur covering the period of June 14, 2001 to November 7, 2001.

On 21 November 2001, Lorenzo and Pado were able to finish the cash and account examination and thereafter released a “Letter of Demand¹²” addressed to Mariscal. In said letter, the auditors informed her of her total accountability amounting to Php966,743.53. However, at the time of examination, Mariscal only presented cash and cash items amounting to Php565,408.67. This reveals a shortage of Php401,334.86, leading Lorenzo to issue an initial letter of demand to accused Mariscal.

Mariscal did not submit the appropriate explanation as to why such shortage occurred, instead on 26 March 2002, she presented a copy of an Official Receipt¹³ amounting to Php401,334.86 as restitution. For failure to account the amount of Php401,334.86 during the audit examination, an affidavit-complaint¹⁴ has been filed against her for Malversation of Public Funds.

Prosecution’s Evidence During Trial

¹⁰ G.R. No. 180334, 18 February 2009.

¹¹ Exhibit B-13, Records, page 37.

¹² Exhibit C (10 to 10-B1), Records, page 9.

¹³ Official Receipt No. 1217402, Exhibit D/Exhibit 14, Records, page 81.

¹⁴ Affidavit-Complaint dated 23 September 2004.

The prosecution presented State Auditor II, Alice B. Lorenzo, as its sole witness. Below is the summary of her testimony¹⁵:

1. On direct examination, Lorenzo testified that she, together with Pado, conducted a cash and account examination in the Municipality of Calabanga on 7 November 2001. During such examination Lorenzo demanded all the cash and accountable forms from Mariscal. Pado, on the other hand, made the inventory and counted the accountable forms as well as the cash presented. Lorenzo was the one who prepared the report based on the records of the Municipal Treasurer's Office and the Accounting Office. Thereafter, Lorenzo witnessed Mariscal personally receiving and signing the said report.

2. Lorenzo admitted that they were unable to obtain all the documents they needed from Mariscal since her books were not updated. This is due to her failure to record the Municipality's transactions on a daily basis. Consequently, there were accounting backlogs in the records of transactions. Mariscal updated her journal only on 21 November 2001.

3. Upon completion of her journal, Lorenzo was able to arrive at Mariscal's total accountability amounting to Php966,743.53. Mariscal only presented the amount of Php565,408.67. On even date, 21 November 2001, Lorenzo personally delivered the Letter of Demand¹⁶ to Mariscal and witnessed Mariscal affix her signature¹⁷ thereon.

4. According to Lorenzo, it was on 26 November 2001 when Mariscal presented her an Official Receipt amounting to Php401,334.86 as restitution. Despite the directive stated in the Letter of Demand to submit an explanation within seventy (72) hours, Mariscal failed to submit her written explanation and instead furnished Lorenzo with a copy of the Official Receipt No. 1217402¹⁸ on 26 March 2002, acknowledging collection of the shortage amount of Php401,334.86.

5. Upon scrutiny of the said Official Receipt, Lorenzo admitted that there were four (4) deposit slips¹⁹ attached therein. The deposit slips had a total amount of Php324,781.63.

6. Lorenzo clarified that as of 07 November 2001, Mariscal had a total accountability of Php966,743.53, however, she only presented the

¹⁵ TSN dated July 10, 2007; TSN dated July 31, 2007; TSN dated May 15, 2012; TSN dated September 18, 2012.

¹⁶ Exhibit C, Records, page 9.

¹⁷ Exhibit C-1, Id.

¹⁸ Exhibit D, Records, page 81.

¹⁹ Exhibit 14.

amount of Php565,408.67 as cash items. The shortage of Php401,334.86 was thereafter deposited to the bank using the same cash and cash items which Mariscal presented. This act gave the impression that Mariscal deposited the shortage but in truth and in fact, the money deposited was the same cash and cash items that were presented to Lorenzo on 07 November 2001, during the Cash and Account Examination. Lorenzo further clarified that the cash and cash items presented to them on 07 November 2001 were never deposited since Mariscal did not present any deposit slips.

7. On cross-examination, Lorenzo admitted that it was only at that time when she realized that the actual amount that was unaccounted for was Php565,408.67 because Mariscal only deposited Php401,334.86. However, as of the 07 November 2001, the actual shortage, as indicated in the initial demand, was Php401,334.86. It appeared that the deposit made was not considered in the Letter of Demand since Mariscal submitted the deposit slips only in March 2002.

8. On redirect examination, Lorenzo testified that Mariscal presented to her cash and cash items; she also presented a list of checks on hand and several check numbers. She also testified that the same serial number of checks that were deposited on 12 November 2001 were also the same cash items that were presented on 07 November 2001. The said checks which amounted to Php197,791.63 were disallowed by Lorenzo for being part of the Php565,408.67 cash items presented by Mariscal during the Cash and Account Examination.

Accused-Appellant's Evidence During Trial

In the course of the trial, the defense presented the testimony of Mariscal²⁰; Eden Borromeo²¹ (Borromeo), Municipal Treasurer of Calabanga, Camarines Sur; Johanson Disuanco²² (Disuanco), Commission on Audit (COA) State Auditor IV; and Jude Anthony Hilado²³ (Hilado). They testified on the following material points:

Accused-appellant Mariscal

1. On direct examination, Mariscal testified that there was indeed a cash shortage of Php401,334.86, although she did not personally benefit from

²⁰ TSN dated April 22, 2008; TSN dated June 17, 2008; TSN dated May 20, 2009; TSN dated July 28, 2009; TSN dated May 14, 2014.

²¹ TSN dated October 7, 2008; TSN dated October 6, 2009.

²² TSN dated October 7, 2008; TSN dated October 6, 2009.

²³ TSN dated February 2, 2011; TSN dated September 20, 2011.

it. She reiterates that the shortage was given to certain municipal employees as evidenced by the Joint Affidavit²⁴ dated 26 March 2002.

2. She further testified that these cash advances referred to in the Joint Affidavit was given by the Cashier of the Municipal Office. Mariscal, as well as the Cashier, demanded the payment of the amount taken.

3. Within eight (8) days from receipt of the Letter of Demand dated 21 November 2001, she made total deposit of Php401,334.86, as specified in the Official Receipt which she issued.

4. On cross-examination, she clarified that the Cashier was assigned in the Office of the Municipal Treasurer and therefore, under her direct supervision and control. She also explained that the Joint Affidavit which includes the cash advances made by certain municipal employees was prepared only on 27 August 2005.

Borromeo

As the incumbent Municipal Treasurer, Borromeo testified that the cash books presented show lack of shortage upon Mariscal's turnover of accountabilities covering the period of January 2002 to May 2002. Borromeo clarified that the Cash Books did not cover the period of year 2001.

Disuanco

To explain the Certificate which he issued as State Auditor IV, Disuanco testified that it covered cash in bank and did not include cash in treasury since there were balances in the ledger. At that time, the books of the municipality were not yet reconciled with the cash book balance of accused-appellant. Lastly, his certification merely covered cash in bank evidenced by the bank reconciliation statement.

Hilado

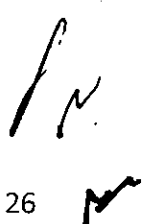
Hilado testified that he was one of the affiants in the Joint Affidavit dated 26 August 2005 together with other municipal employees. In said Joint Affidavit, he admitted that (1) he made a cash advance as evidenced by a cash advance voucher which he signed and gave to the accused-appellant; (2) the cash advance shall be deducted from his salary; and (3) that on or before 29 November 2021, he settled the cash advance.

The Issue on Appeal

Accused-appellant, Mariscal, assigns the sole error to the RTC, to wit:

“With due respect, the appellant submit that the Court *a quo* committed correctible error in convicting her for

²⁴ Exhibit 11, Records, pages 106 to 108.



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malversation of public funds for the reason that sufficient evidence submitted here showing that she did not appropriate or convert to her personal use the amount of Php401,334.86 since it was the cashier, not her, who committed the advances/vales of the employees of the LGU of Calabanga, Camarines Sur coupled with her timely liquidation of the amount of Php401,334.86, within a short period of eight (8) days upon receipt of the written demand of the commission on audit to liquidate the said amount of Php 401,334.86.”²⁵

Accused-appellant now questions her conviction based on the following grounds:

1. Mariscal argues that she did not commit, misappropriated, or converted to her personal use and benefit the amount in question as cash shortage of Php401,344.86 having duly liquidated the same within eight (8) days from receipt of the Demand Letter.²⁶

2. She further argues that it was the Cashier of the Treasurer’s Office of the LGU of Calabanga, Camarines Sur that accommodated the subject cash advances in favor of the employees of the LGU of Calabanga, Camarines Sur. However, said employees reimbursed the said cash advances amounting to Php401,344.86 to the accused-appellant after urgent demands.²⁷

3. Accused-appellant cites the case of *Milagros L. Diaz vs. Sandiganbayan*²⁸ where the presumption under Art. 217 of the RPC has been explained, thus: “the failure of a public officer to have duly forthcoming any public funds with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses”. Accordingly, if the accused is able to present adequate evidence that can nullify any likelihood that he had put the fund or property to personal use, then the presumption is effectively negated. The accused-appellant underscored that 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.²⁹

4. She further points out that the Letter of Demand dated November 21, 2001 show that the subject COA Audit done on November 7, 2001 is **incomplete** as it merely stated:

²⁵ Appellant’s Brief dated 26 January 2021, Records, page 84 to 85.

²⁶ Id.

²⁷ Id.

²⁸ G.R. No. 125213, January 26, 1999.

²⁹ Appellant’s Brief, Records, page 96.

“The above amount excludes further shortage (which may be uncovered) on account of missing accountable forms and undeposited collections pending preparation of the Bank Reconciliation Statement.

In view of the foregoing initial demand is hereby made of you to produce immediately the missing funds and accountable forms stated above. Also, please submit within seventy-two (72) hours a written explanation why this shortage occurred”³⁰. (emphasis not ours)

5. The testimony of Lorenzo³¹ refers to an imaginary unaccounted amount of Php565,408.67 by the accused-appellant during the November 7, 2001 audit and not the cash shortage amounting to Php401,334.86 considering that the latter amount was already liquidated by the accused back in November 29, 2001.³²

Plaintiff-Appellee’s Refutation on Appeal

Plaintiff-appellee seeks the dismissal of the present appeal and argues that the RTC correctly convicted accused-appellant of Malversation of Public Funds based on the following grounds:

1. The RTC’s Decision dated 30 September 2015 is already final and executory, thus, immutable and unalterable. The accused-appellant’s failure to appeal within the reglementary period with the Sandiganbayan, the proper court having jurisdiction over the criminal case, resulted in the finality of her conviction.

The plaintiff-appellee submits that the remand by the CA to the RTC of the case records for transmission to the Sandiganbayan did not cure the jurisdictional infirmity of the appeal as it was accused-appellant herself who erroneously chose the CA to be the reviewing court. For the plaintiff-appellee, the present case is not on all-fours with that of *Dizon vs. People*³³ and *Ulep vs. People*³⁴ where the appellants did not expressly state the court to which they were appealing, in which case, it became the lower court’s duty to determine the proper appellate court.³⁵

2. Assuming that this Court still entertains this appeal, the plaintiff-appellee submits that the RTC correctly found sufficient evidence to convict accused-appellant.

³⁰ Appellant’s Brief, Records, pages 97 to 98

³¹ TSN dated 10 July 2007.

³² Appellant’s Brief, Records, page 101.

³³ G.R. No. 227577, January 24, 2018.

³⁴ G.R. No. 183373, January 30, 2009.

³⁵ Appellee’s Brief dated 05 March 2021, Records, pages 174 to 197.

For its part, plaintiff-appellee submits that the accused-appellant made judicial admissions and admissions against her interests which need no further proof. She admitted in her *Appellant's Brief*³⁶ that the first three elements of Malversation were present. Thus, what is lacking in this case is the last element of the crime, *i.e.*, she appropriated or consented, or through abandonment or negligence, permitted another person to take them.

The plaintiff-appellee posits that the accused-appellant as an accountable officer, had the duty to safekeep the public funds in her custody. Despite this duty, she did not deny the fact that cash advances were made by municipal employees without proper documentation and approval by appropriate authorities. For the plaintiff-appellee, these cash advances were in effect tantamount to unauthorized loans incurred by the municipal employees, thus, public funds were unduly incurred for them, upon which the accused-appellant consented to while in the performance of her official duty.³⁷

3. As to the appellant's defense that it was the Cashier who made the cash advances to the municipal employees, this claim was not supported by adequate evidence, moreover, the Cashier was not even presented as a witness. For the plaintiff-appellee, the Cashier was an accountable officer under accused-appellant's control and supervision, whose accountabilities are also her accountabilities.³⁸

4. Lastly, there was no restitution made by the accused-appellant. The money evidenced by the deposit slips already formed part of the Php565,408.67, said amount formed part of the cash and cash items that were previously presented to Lorenzo during the Cash and Account Examination.

The Ruling of the Court

Before discussing the material points of the present appeal, this Court acknowledges that the accused-appellant filed her notice of appeal within the reglementary period prescribed by the Rules, albeit directing the review to the CA. The RTC's Decision dated 30 September 2015 was promulgated on 30 March 2016, then the accused-appellant filed her Notice of Appeal on 11 April 2016. She was able to file her appeal within fifteen (15) days from notice of the judgment, thereby perfecting an appeal. On the issue of filing an erroneous appeal to the CA, we reiterate the CA's justification in reviewing the present case:

³⁶ Appellant's Brief dated 26 January 2021, Records, pages 81 to 142.

³⁷ Appellee's Brief dated 05 March 2021, Records, pages 174 to 197.

³⁸ *Id.*

“While the Court recognized the importance of procedural rules in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice, the Court must likewise give equal consideration to the fact that at stake in this case is the fundamental right to liberty of Mariscal.

The court’s primary duty is to render and dispense justice. While it is true that the rules of procedure are intended to promote rather than frustrate the ends of justice, it nevertheless must not be met at the expense of substantial justice.

The Supreme Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

It is far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice.”³⁹
(citations deleted)

Accused-appellant, Mariscal, as the Municipal Treasurer of the Municipality of Calabanga, Camarines Sur did not deny the fact that on 07 November 2001, State Auditor Lorenzo and Audit Examiner Pado conducted the Cash and Account Examination covering the period from 14 June 2001 to 07 November 2001. There was also no dispute as to her total accountability of Php966,743.53 and the shortage of Php401,334.86 as reflected on the Letter of Demand dated 21 November 2001. However, Mariscal contends that the shortage was due to the unpaid cash advances that were granted by the Cashier to certain employees of the LGU. She further claims that the said shortage has been restituted as evidenced by the Official Receipt which she presented to Lorenzo on 26 March 2002. The trial court appreciated the prosecution’s evidence and discounted Mariscal’s defense. Thus:

“Auditor Lorenzo thus sent an initial demand letter dated November 21, 2001 to Mrs. Mariscal to produce the missing

³⁹ Decision of the CA promulgated on 16 April 2019. Records, pages 71 to 72.

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funds and accountable forms and to explain within 72 hours why the shortage occurred. Mrs. Mariscal however did not submit any explanation. Instead, on March 26, 2002 she issued an official receipt in the amount of Php401,334.86 which she herself issued as Municipal Treasurer. She admitted that there was no cash that was actually received when she issued the receipt. Upon verification by State Auditor Lorenzo, it was found out that Mrs. Mariscal presented for the amount of Php565,408.67 during the cash and account examination on November 7, 2001.

x x x

x x x

Her defense that the shortage was due to unpaid cash advances given by the cashier to employees and officials is a desperate attempt to explain the shortage. In the first place, she did not surrender any cash. The deposit slips for the official receipt she issued where the same deposit slips which she presented during the audit examination on November 7, 2001.

The defense stated that said funds were given as cash advances is unavailing. In the case of *Meneses v. Sandiganbayan, et al.*, G.R. No. 100625, May 20, 1994, the Supreme Court ruled as follows:

‘Petitioner’s defense, relying on *Quiza v. Sandiganbayan* 149 SCRA 108 (1987) is that she had not benefitted a single centavo from the missing funds; rather, said funds were disbursed as cash advances to her co-employees in good faith and in continuance of a practice tolerated in her office.

Petitioner’s theory need not detain us. The practice of disbursing public funds, under the ‘vale’ system as a defense in malversation cases, was advanced, briefed and argued in *Cabello v. Sandiganbayan*, 197 SCRA 94 (1971), and found not meritorious.

x x x

x x x

The grant of loans through the ‘vale’ system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by the (sic) law. To tolerate a (sic) such practice is to give a license to every

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disbursing officer to conduct a lending operation with the use of public funds.

There is no law or regulation allowing accountable officers to extend loans to anyone against 'vales' or chits given in exchange by the borrowers. On the other hand, the General Auditing Office (now the Commission on Audit) time and again, through repeated office memoranda and rulings had warned against acceptance of 'vales' or chits by any disbursing officer because such transactions are really forms of loans (Memorandum Circular No. 570, June 24, 1968, General Auditing Office).

x x x

x x x

Claiming that the receipt was in restitution of the amount of shortage is clearly an obvious attempt to mislead this Court. The evidence shows that she failed to account for the entire amount she was accountable for and the Official Receipt she presented as proof of restitution was actually for the cash and cash items she had on hand during the cash count and audit examination on November 7, 2001. She cannot therefore be credited with the mitigating circumstance of having made restitution as equivalent to a plea of guilty.'

Upon careful examination of the records on appeal, this Court finds no reason to disturb the trial court's ruling of conviction of the accused for Malversation of Public Funds. It is most appropriate for us to discuss some material points in arriving at this decision.

The amendment introduced by Republic Act No. 10951 provided for a favorable effect as to the prescribed penalty of the crime, thus, Art. 217 of the RPC now states:

ART. 217. *Malversation of public funds or property*
– Presumption of malversation. – Any public officer who, by reason of the duties of his office, is accountable for public funds and property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:



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1. The penalty of *prision correctional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

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, shall be prima facie evidence that he has put such missing funds or property to personal uses.

Accordingly, the elements of malversation are as follows:

1. The offender is a public officer;
2. He or she had the custody or control of funds or property by reason of the duties of his or her office;

x-----x

3. The funds or property were public funds or property for which he or she was accountable; and

4. He or she appropriated, took, misappropriated, or consented, or, through abandonment or negligence, permitted another person to take them.

The first three elements were judicially admitted by accused-appellant. This discussion is now confined to the fourth element, i.e., whether she appropriated, took, misappropriated, or consented, or, through abandonment or negligence, permitted another person to take the shortage of Php401,334.86 of the Municipal funds of Calabanga, Camarines Sur.

Mariscal appropriated, took, misappropriated or consented or, permitted another person to take them

Upon completion of the cash and account examination on 21 November 2001, State Auditor II Lorenzo, through the *Letter of Demand*, instructed accused-appellant to submit a written explanation within seventy (72) hours, citing the reasons why the shortage occurred. Mariscal failed to submit the required written explanation to the COA. However, she was able to write a Compliance/Written Explanation⁴⁰ to the Office of the Municipal Mayor, by way of compliance with the latter's Office Memorandum No. 041102-84, thus in said Compliance/Written Explanation, Mariscal clarified:

“VI. On findings that the municipal treasurer failed to render her accounts and submit the required reports within the time prescribed by the Commission on Audit.

The undersigned has submitted partial reports she has already prepared. A complete report was not made possible considering that she has to reconcile with the accounting clerk their records before she enters the balance on her cashbook, so that if the accounting clerk is not around, she cannot prepare her report. The job of the municipal treasurer is dependent on the performance of the accounting clerk who has to prepare the journal of cash disbursements journal of checks issued and report of collections and disbursements. Delay in the preparation of the reports and reconciliation will necessarily cause delay in the submission of reports by the undersigned.”

The Supreme Court has repeatedly enunciated that “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

⁴⁰ Exhibit B-15-b, Records, page 22.

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possession when demand thereof 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 in malversation cases"⁴¹. The rule that the presumption of malversation under Art. 217 is merely *prima facie* and thus, rebuttable. This presumption is destroyed once the accountable officer satisfactorily proves that not a single centavo of the funds was used by him for his personal interest. Here, accused-appellant has not shown any proof that the funds were actually extended to the municipal employees as cash advances.

The accused-appellant's contention that the shortage was due to unpaid cash advances given by the cashier to certain municipal employees was a mere afterthought. As a matter of fact, Mariscal's explanation submitted to the Office of the Mayor did not include this position, she only admitted this fact during trial. Additionally, the Joint Affidavit, indicating that certain municipal employees obtained cash advances from the Municipal Cashier, was prepared only on 26 August 2005. These were all admitted by Mariscal during her testimony⁴².

x x x

x x x

PROS. CABRAL: It appears also from your testimony that the amount of P401,334.86 is what you call cash advances from employees of the municipality?

A: Yes, sir.

Q: Is that your testimony?

A: Yes, sir.

Q: And those cash advances were obtained from the cashier?

A: From the cashier. She is the one holding the cash. I am just holding the check.

Q: Is the cashier within the Treasurer's Office?

A: Yes, sir.

Q: And that cashier is under your supervision and control?

A: Yes, sir.

Q: Considering that from 1995 up to 2004 you had been the treasurer of Calabanga, Camarines Sur, is that your usual practice to issue that chit or vales in obtaining cash advances?

A: I learned that from the previous municipal treasurer giving cash advances.

Q: There is no question about cash advances. Is that the usual procedure by just signing vales or chits, is that okay for an employee to obtain cash advances in that way?

A: No, Sir.

Q: There was this disbursement?

⁴¹ Zacaria A. Candao v. People, G.R. Nos. 186659-710, October 19, 2011 cited in Manuel v. Sandiganbayan (Fourth Division), G.R. No. 158413, February 8, 2012.

⁴² TSN dated May 20, 2009.

DECISION

x-----x

A: The other amount, cash advances.

Q: You are telling us that P401,334.86 that you were being made accountable was for cash advances of the employees. Could you possibly give a disbursement voucher insofar as this cash advances are concerned, if there is any?

A: The cashier is the one who cashed advanced to defray expenses.

Q: You received a demand letter dated November 21, 2001 and from your exhibits that were submitted before this court there were some cash or checks that were already deposited or accounted as early as November 12, 2001, did you immediately answer that demand letter considering that as early as November 12, 2001, according to you you have already satisfied portion of your accountability?

A: I have not answered the demand letter that the amount were cash advances. We answered that I already entered in the cashbook as deposited.

Q: Assuming that because you deposited on November 12 and November 29, 2001 are all your accountabilities, why did you report that matter or issue a receipt only on March 26, 2002?

A: I issued that receipt sometime in the first week of April but I asked the auditor that the last date of the receipt in our office is March 26 so she said that you just date it March 26, 2002.

x x x

x x x

Q: Are you telling us that there were no affidavits prepared in November of 2001 insofar as those cash advances are concerned?

A: I told them to make joint affidavit to explain the shortage.

Q: Another one, let us go to the official receipt, the same found on page 81 that you have deposited amount of P101,334.86 in the form of checks to the Land Bank of the Philippines. On page 45 of the record, there is here list of checks on hand and this is dated as of November 7, 2001. There is here a signature over the printed name of Reynaldo (sic) D. Mariscal, could you still recall if this is your signature?

A: Yes, sir.

Q: As the municipal treasurer of Calabanga, then what do you understand by list of checks on hand on November 7, 2001?

A: Those are checks, some of them are checks but were not given to the payees and the other they exchange it for cash.

Q: But simply these checks were in your possession as of November 7, 2001?

A: Yes, Sir.

Q: Meaning these checks were all accounted for?

A: Yes, sir.

Q: Nevertheless, you submitted as Exhibit 1, Land Bank of the Philippines check dated November 12, 2001, would you please go over this and tell us what was the purpose by these checks where you have shown this, because it would seem that these were deposited on November 12, 2001?

A: These are deposit slips of the one stated in that official receipt.

x-----x

In her aim to rebut the *prima facie* presumption under Art. 217, Mariscal made it appear that she restituted the shortage of Php 401,334.86 by depositing the cash and cash items she had shown Lorenzo during the 07 November 2001 cash and account examination. Worse, she issued an Official Receipt to herself, bearing the said amount, knowing that she did not receive any cash or payment. Such fact was clarified during cross-examination⁴³.

x x x

x x x

PROS. CABRAL: But the records show that it was only on March 26, 2002 that you were able to submit that official receipt fund on page 81 of the records, this is marked Exhibit B for the prosecution and Exhibit 14 for the defense?

A: I issued that receipt sir, because Mrs. Lorenzo instructed me to issue that receipt.

Q: Are you sure of that?

A: Yes, sir.

Q: There is also a signature in that receipt, is this your signature?

A: Yes, sir.

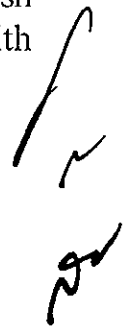
Q: Are you telling us that you are the one accountable and yet you issued that receipt absolving you from your accountability?

A: Yes, sir, because I was instructed by the auditor. She said that to finish the shortage that's why I was instructed to issue that receipt.

x x x

x x x

Lorenzo determined that some of the cash items presented to them on 7 November 2001 or later, were actually deposited by Mariscal to make it appear that the shortage has been paid. In fact, the deposit slips attached to the Official Receipt bear the same check numbers as those in the report of cash and cash items presented on even date. Cross-reference should be made with the following Exhibits⁴⁴:



⁴³ TSN dated May 20, 2009.

⁴⁴ Exhibits B-22-a-1, Exhibit 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 5-C, 6-C, and 9-A.

DECISION

X-----X

Republic of the Philippines
Province of Camarines Sur
Municipality of Calabanga

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LIST OF CHECKS ON HAND
As of November 7, 2001

41

Schedule 1
B-22-9
Exh. "B-21" 10/21/07
9/15/06

PAYEE	DEPOSITORY BANK	CHECK NO.	AMOUNT
Ramon Romero	LBP	0000414938	21,000.00
Antonio Falcon	-do-	0000414940	4,000.00
Clarence Escobar	-do-	0000414941	1,708.80
Daisy Morifio	-do-	0000414958	18,751.00
Agustine De Leon	-do-	0000414957	8,240.00
Zenaida A. Falcon	-do-	0000414988	5,040.00
Agustine De Leon	-do-	0000414971	2,360.00
Dk Trading	-do-	0000414975	8,380.00
Nimfa Sañarez	-do-	0000414976	9,170.00
Ruben B. Medroso	-do-	0000414977	2,200.00
Ruben B. Medroso	-do-	0000414981	1,400.00
Ruben B. Medroso	-do-	0000414982	29,850.04
Carfio De La Cruz	-do-	0000414984	2,180.00
Evelyn Buendia	-do-	0000414980	1,270.00
Julio B. Dulce Jr	-do-	0000414988	1,500.00
CHS/Z. Ablaza	-do-	0000415005	1,500.00
Danilo Campil	-do-	0000415008	1,884.00
Ruben B. Medroso	-do-	0000415007	2,873.20
Julio B. Dulce Jr.	-do-	0000400731	2,000.00
Julio B. Dulce Jr.	-do-	0000400732	2,000.00
Ramon Romero	-do-	0000400733	5,000.00
Samson Andrada	-do-	0000400742	1,500.00
Ramon Romero	-do-	0000400746	6,000.00
Gil Gabriel Bordado	-do-	0000400747	1,989.00
Alice B. Lorenzo	-do-	0000400749	2,200.00
Daisy Campo	-do-	0000400762	3,250.00
Ma. Nenita Mandoza	-do-	0000400772	2,000.00
Ma. Nenita Mandoza	-do-	0000400773	5,751.95
Elmer Asis	-do-	0000400780	1,908.82
Elhora Segundo	-do-	0000400791	8,910.00
Aida's Furniture	-do-	0000400793	7,968.00
Zenaida Falcon	-do-	0000400794	5,346.00
Corazon Tandog	-do-	0000400788	6,800.00
Daisy D. Morifio	-do-	0000400798	8,055.86
The Municipal Treasurer	DBP	0009879916	3,000.00
Zenaida A. Falcon	-do-	0010593711	3,300.00
The Municipal Treasurer	Metrobank	0441634102	403.74
The Municipal Treasurer	-do-	0441634103	888.74
The Municipal Treasurer	-do-	0441634192	403.74
The Municipal Treasurer	-do-	0441634193	888.74
Ruben B. Medroso	DBP	0008447388	7,200.00
Ruben B. Medroso	-do-	0008447390	1,479.83
Constancio Salvador	-do-	10593701	1,500.00
Florencio Palomares	-do-	0008447400	13,250.00

B-22a-1
10/21/07
Exh. "B-21-a-1"
7/21/07

TOTAL P 227,521.46

Certified Correct:

REYNALDA D. MARISCAL
Municipal Treasurer

98116

00040

[Handwritten signature]

X-----X

Exh-1
Annex "B"

LANDBANK "ON-US" CHECKS
 Regular Cashier Manager's
 Checks/Drafts drawn on This Branch Only

Nov. 12, 2001

ACCOUNT NAME: _____
 BRANCH: _____
 SIGNATURE OF DEPOSITOR: _____
 ACCOUNT NUMBER: _____

ACCOUNT NO	CHECK NO	RES
0042-1188-00	400780	1,200.00
-do-	-91	2,200.00
-do-	-93	7,900.00
-do-	-94	5,350.00
-do-	-98	3,000.00
-do-	-99	3,000.00
TOTAL CHECK DEPOSIT		22,050.00

LANDBANK "ON-US" CHECKS
 Regular Cashier Manager's
 Checks/Drafts drawn on This Branch Only

Nov. 12, 2001

ACCOUNT NAME: _____
 BRANCH: _____
 SIGNATURE OF DEPOSITOR: _____
 ACCOUNT NUMBER: _____

ACCOUNT NO	CHECK NO	RES
0042-1188-00	414975	9,300.00
-do-	-76	2,200.00
-do-	-77	2,200.00
-do-	-81	1,400.00
-do-	-82	29,950.00
-do-	-84	2,100.00
-do-	-90	3,000.00
TOTAL CHECK DEPOSIT		52,150.00

LANDBANK "ON-US" CHECKS
 Regular Cashier Manager's
 Checks/Drafts drawn on This Branch Only

Nov. 12, 2001

ACCOUNT NAME: _____
 BRANCH: _____
 SIGNATURE OF DEPOSITOR: _____
 ACCOUNT NUMBER: _____

ACCOUNT NO	CHECK NO	RES
0042-1188-00	400740	1,000.00
-do-	-46	6,000.00
-do-	-47	1,000.00
-do-	-40	2,200.00
-do-	-62	3,000.00
-do-	-77	2,000.00
-do-	-73	5,750.00
TOTAL CHECK DEPOSIT		22,950.00

[Handwritten signature]

X-----X

REGIONAL CLEARING CHECKS
 Drafts drawn against Banks and Land Bank branches with CB Regional Clearing

Exh 2-A
 Nov. 12, 2001
 LGU, Calabanga, Cam. Sur
 REYNALDA P. MARISCAL

2/2/17 Annex "13"

BANK NAME/ BRANCH	CHECK NO	PESOS	CTVS
MB - Hla.	0441634102	403.74	
-do-	0441634105	669.74	
-do-	0441634193	403.74	
-do-	0441634193	669.74	
TOTAL CHECK DEPOSIT		2,144.96	

LANDBANK "ON-US" CHECKS
 Regular Cashiers Manager's
 Checks/Drafts drawn on This Branch Only

Nov. 12, 2001
 LGU, Calabanga, Cam. Sur
 REYNALDA D. MARISCAL

Exh 2-B

ACCOUNT NO.	CHECK NO.	PESOS	CTVS
0042-1188-00	414936	21,000.00	
-do-	-40	4,000.00	
-do-	-41	1,708.80	
-do-	-56	18,751.00	
-do-	-57	8,240.00	
-do-	-68	5,040.00	
-do-	-63	2,356.00	
TOTAL CHECK DEPOSIT		60,095.80	

LANDBANK "ON-US" CHECKS
 Regular Cashiers Manager's
 Checks/Drafts drawn on This Branch Only

Nov. 12, 2001
 LGU, Calabanga, Cam. Sur
 REYNALDA D. MARISCAL

Exh 2-C

ACCOUNT NO.	CHECK NO.	PESOS	CTVS
0042-1188-00	414998	1,500.00	
-do-	415005	1,500.00	
-do-	-06	1,684.00	
-do-	-07	2,673.20	
-do-	400731	2,000.00	
-do-	-32	2,000.00	
-do-	-33	5,000.00	
TOTAL CHECK DEPOSIT		16,357.20	

CERTIFIED MACHINE COPY
 DAISY D. MORINO
 MUNICIPAL ACCOUNTANT
 CALABANGA, CAM. SUR

DECISION

X-----X

LANDBANK "ON-US" CHECKS
Regular | Cashiers | Manager's
Checks/Drafts drawn on This Branch Only

November 29, 20 01

ACCOUNT NAME: LDU, Calabanga, Cam. Sur

SIGNATURE OF DEPOSITOR: REYNALDA D. MARISCAL

ACCOUNT NUMBER: 0042-1188-00

TELLERS VALIDATION: 1109

ACCOUNT NO.	CHECK NO.	PESOS	CTVS
0042-1188-00	422882	2,000.00	
TOTAL CHECK DEPOSIT		2,000.00	

POSTED
LEP-NAGA BRANCH
TELLER 5

Exh. 5-2
11/2/07

CERTIFIED MACHINE COPY
DAISY D. MURINO
MUNICIPAL ACCOUNTANT
CALABANGA, CAM.

LOCAL CLEARING CHECKS
Checks/Drafts drawn against Other Banks
and LANDBANK branches in Metro Manila

November 29 19 01

ACCOUNT NAME: LDU, Calabanga, Cam. Sur

SIGNATURE OF DEPOSITOR: REYNALDA D. MARISCAL

ACCOUNT NUMBER: 0042-1188-00

BANK NAME/ BRANCH	CHECK NUMBER	PESOS	CTVS
FB - naga	0196681	4,342.68	
PB - naga	0196682	923.52	
dbp - naga	10594431	218.00	
landbank	1060746	115.00	
TOTAL CHECK DEPOSIT		5,600.20	

POSTED
LEP-NAGA BRANCH
TELLER 5

Exh. 6-2
11/2/07

Development Bank of the Philippines DEPOSIT SLIP

Account Name: LDU, Calabanga, Cam. Sur

Account No: 0000146300

Date: 11 29 01

Amount Deposited: 2,500.25

SIGNATURE OF DEPOSITOR: REYNALDA D. MARISCAL

CASH DEPOSIT				CHECK DEPOSIT			
Denomination	No of	Amount		Bank Initial	Branch	Check Number	Amount
	Pcs	Pesos	Ctvs				
1000.00				1b	REG NAGA	011324267	2510.25
500.00							
100.00							
50.00							
20.00							
10.00							
5.00							
Coins							
Total Cash Deposit P=				Total Check Deposit P=			
				2,500.25			

POSTED
LEP-NAGA BRANCH
TELLER 5

Exh. 7-1
11/2/07

Member: PDIC

x-----x

The municipal fund shall be in the collective custody of its officials, its use should be directed only to its intended purpose. Therefore, they must act together to disburse the funds according to its intended municipal use. The Supreme Court made this clear in the case of *People v. Pantaleon, Jr.*⁴⁵:

“As a required standard procedure, the signature of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval.”

With this arrangement, accused-appellant was not able to show that the employees paid their cash advances when she demanded payments. This Court is inclined to believe that the shortage of Php401,334.86 was not extended to certain employees as cash advances, relying on the Joint Affidavit to prove this matter would be insufficient. Consequently, Mariscal has not nullified the inference posed under Art. 217 for not being able to show satisfactory proof that the missing funds were not used for her personal interest.

Her claim that the demand made by the Commission on Audit on 07 November 2001 was incomplete for being merely an initial demand is untenable. In malversation of public funds, previous demand is not necessary.⁴⁶ Demand merely raises a *prima facie* presumption that missing funds have been put to personal use. The demand itself, however, is not an element of, and not indispensable to constitute malversation.⁴⁷

Persistently, the Supreme Court has ruled that the felony defined under Art. 217 “consists not only in misappropriating or converting public funds or property to one’s personal use but also by knowingly allowing others to make use of or misappropriate the same. The felony may thus be committed by *dolo* or by *culpa*. The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence. An accountable officer may thus be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in the officer’s account which he has not been able to explain satisfactorily. All that is essential is proof that the accountable officer has received public funds but that when demand thereof is made, he is unable to satisfactorily account for the same. The law declares that the failure of the public officer to account for such public funds or property upon demand

⁴⁵ G.R. Nos. 158694-96, March 13, 2009, 581 SCRA 140.

⁴⁶ *People vs. Tolentino*, 69 Phil. 715.

⁴⁷ *Morong Water District v. Office of the Deputy Ombudsman*, G.R. No. 116754, March 17, 200, citing *Nizurtada v. Sandiganbayan*, 239 SCRA 33.

DECISION

x-----x

by any duly authorized officer shall be *prima facie* evidence that he has appropriated the same for his personal use.”⁴⁸

As to the imposable penalty, Art. 217 of the RPC, as amended by R.A. No. 10951 prescribes the penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000). The said amendment shall have a retroactive effect and must be appreciated in the present appeal since it is favorable to herein accused-appellant⁴⁹. Based on Section 1 of the Indeterminate Sentence Law, an indeterminate sentence shall be imposed upon the offender consisting of a maximum term and a minimum term. Since the court cannot consider the deposit of Php401,334.86 as restitution, the accused-appellant is not entitled to any mitigating or aggravating circumstances. Thus, the maximum term shall be the penalty properly imposed under the RPC, while the minimum term is within the range of the penalty next lower than that prescribed by the RPC. The imposable maximum term is *prision mayor* in its minimum and medium periods, ranging from six (6) years and one (1) day to ten (10) years, and the minimum term, or the penalty next lower to that prescribed, is *prision correccional* in its medium and maximum periods, ranging from two (2) years, four (4) months and one (1) day to six (6) years. Furthermore, she is directed to pay a fine of Php401,334.86, constituting to the actual funds malversed. With regards to her civil liability, the accused-appellant is sentenced to pay the Municipality of Calabanga, Camarines Sur of the amount misappropriated, and to indemnify the latter for damages by way of legal interest of 6% *per annum*, reckoned from the finality of this decision until full payment.

Finally, the trial court erred in imposing exemplary damages upon the accused-appellant. Essentially, exemplary damages are imposed upon the wrongdoer as a deterrent in the commission of similar acts in the future, since accused-appellant is also sentenced to the penalty of perpetual special disqualification for public office, she is now disqualified to hold similar offices or employments perpetually or during the term of her sentence⁵⁰. Moreover, exemplary damages may be imposed when the crime is committed with one or more aggravating circumstance⁵¹, since there is no aggravating circumstance present in this case, thus, we should omit the imposition of exemplary damages.

⁴⁸ Sarigumba vs. Sandiganbayan, G.R. No. 154239-41, February 16, 2005.

⁴⁹ Art. 22. Retroactive effect of penal laws. – Penal laws shall have retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

⁵⁰ Art. 31, RPC.

⁵¹ Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

With the foregoing, the trial court correctly ruled that accused-appellant Mariscal committed the crime of Malversation of Public Funds as defined and penalized under Art. 217 of the Revised Penal Code. Hence, she must be held civilly and criminally liable therefor.

WHEREFORE, in the light of all the foregoing, the appeal is hereby **DENIED**. The Decision, dated 30 September 2015, of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, convicting accused-appellant **REYNALDA D. MARISCAL** of Malversation of Public Funds in Criminal Case No. RTC 05-1063, is **AFFIRMED with MODIFICATION** as to the penalty. The assailed Decision is hereby **AMENDED**, in conformity with R.A. 10951, to wit:


WHEREFORE, premises considered, accused Reynalda Mariscal is hereby declared **GUILTY** beyond reasonable doubt of malversation of public funds in the amount of Php401,334.86 and penalized as follows:

1. To suffer the indeterminate penalty of six (6) years of *prision correccional*, as the minimum to seven (7) years, four (4) months and one (1) day of *prision mayor*, as the maximum;
2. To suffer perpetual special disqualification;
3. To pay a fine of Php401,334.86; and
4. To indemnify the Government in the amount of Php401,334.86 plus interest of 6% *per annum*, to be reckoned from the date of finality of this Decision until full payment, by way of her civil liability.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

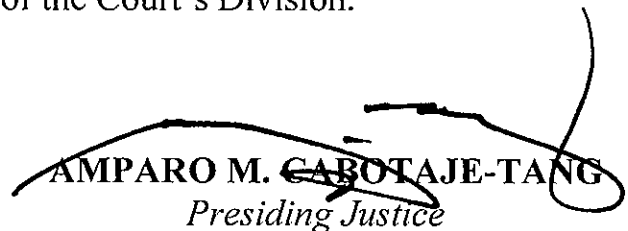
ATTESTATION

I attest that the conclusion in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Decision.


RAFAEL R. LAGOS
Associate Justice
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice