



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-21-A/R-0051
Plaintiff-Appellee,

- versus -

DARWIN C. VILORIA,
Accused-Appellant.

Present

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

Promulgated:

MAY 18 2022

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DECISION

FERNANDEZ, SJ, J.

This appeal seeks to reverse the Decision dated February 22, 2021 of the Regional Trial Court (RTC), First Judicial Region, Branch 50, Villasis, Pangasinan, finding accused-appellant Darwin C. Viloria guilty beyond reasonable doubt of Malversation of Public Funds under Art. 217 of the Revised Penal Code.

RELEVANT ANTECEDENTS

In Crim. Case No. V-1575, accused-appellant, as Cashier D of Alcala Water District, was charged with Malversation of Public Funds under Art. 217 of the Revised Penal Code for allegedly appropriating and converting to his own use and benefit the amount of One Hundred Sixty-Three Thousand Four Hundred Thirty-Six Pesos and Fifty-Three Centavos (P163,436.53). The accusatory portion of the Information reads:

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That between the period from 2000 to 2006 or sometime prior or subsequent thereto, in Poblacion West, Alcala, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, DARWIN C. VILORIA, a public officer, being the then Cashier D of Alcala Water District, and as such an accountable public officer entrusted with the custody and/or control of public funds received and/or entrusted to him by reason of his office; taking advantage of his public position, did then and there willfully, unlawfully and feloniously appropriate and convert to his own use and benefit, the amount of **ONE HUNDRED SIXTY THREE THOUSAND FOUR HUNDRED THIRTY SIX PESOS and FIFTY THREE CENTAVOS** (₱163,436.53), to the damage and prejudice of Alcala Water District.

CONTRARY TO LAW.

During his arraignment, the accused entered his plea of "Not Guilty."¹

The prosecution presented the following witnesses:

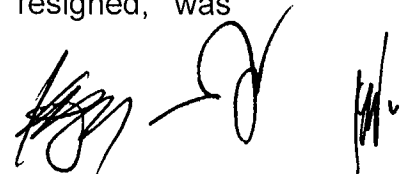
1. **Ruben Antero**,² Local Water Utilities Administration (LWUA) employee, testified that he was appointed as Interim General Manager of the Alcala Water District (AWD) after LWUA took over AWD sometime in July 2006. As Interim General Manager, he requested technical assistance from the LWUA's Commercial Practice System (CPS) Division. Thereafter, Nanding Ferrer, from the said Division, evaluated the collection and bookkeeping procedures of the AWD, and recommended the conduct of a special audit. Acureta Imperial and Josephine Simene then conducted an operation audit and issued a report (Exhibit B) recommending that disciplinary action be taken against three (3) employees, including Mr. Viloría, for unremitted collections.

After receiving the report, Antero directed the three (3) employees to submit their sworn statements (Exhibit M). Mr. Viloría submitted two (2) sworn statements—the first (Exhibit N) on January 12, and the second dated January 18, 2007 (Exhibit O). In the said sworn statements, Mr. Viloría denied getting the unremitted collections. Antero then issued the Memorandum (Exhibit P) formally charging Mr. Viloría administratively, and suspending him for ninety (90) days.

During the pre-hearing conference on February 19 (Exhibit Q), General Manager Elpidio Sacayanan and Darwin Viloría were present. Nora Lorenzo, who had already resigned, was

¹ *Rollo*, pp. 94-95

² TSNs, September 5, 2011, November 21, 2011, and February 8, 2012



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represented by her daughter. There, the three promised to pay the unremitted collections. Mr. Sacayanan and Nora Lorenzo eventually paid, but Mr. Viloría failed to do so. After Mr. Viloría failed to comply with his promissory note (Exhibit R), Antero wrote a letter (Exhibit S) informing Mr. Viloría that the investigation will continue because of the latter's failure to pay the unremitted collections.

Mr. Viloría failed to appear during the preliminary hearings on May 22 and 23, despite notice. The hearings on the said dates proceeded and the hearing committee issued a report recommending Mr. Viloría's dismissal from the service and the filing of criminal charges. Pursuant to the said recommendation, he submitted the *Complaint Affidavit* (Exhibit A) to the Ombudsman.

2. **Acureta Imperial**,³ Senior Control Officer of LWUA, Investment and Financial Services, testified that she and Josephine Simene conducted a financial audit of the AWD from September 25 to 29, 2006 and from October 3 to 6, 2006. During the audit, she interviewed the employees of AWD. Mr. Sacayanan, the General Manager, admitted that there was malpractice in the collections, while Mr. Viloría, the Cashier, admitted that there were irregularities, and claimed that the unremitted collections were used to accommodate the personal cash advances of the officers of the AWD. After conducting the audit, she prepared a report (Exhibit B) at the LWUA office in Manila.

She explained the findings in the said report, and identified Exhibits H to L and sub-markings.

On cross-examination, she testified that the posting of payments to the customer ledger cards was the responsibility of the Billing and Posting Clerk. Later, she explained that the payments were not posted because the same were not reported in the daily list of collections. The daily list of collections was supposed to be prepared by the field collectors. However, as an internal arrangement in the AWD, the collectors did not prepare the said list. Instead, it was the Cashier who prepared the same.

3. **Leonardo Justino Ferrer**,⁴ Management System Development Chief B of LWUA, testified that sometime in July 2006, he was assigned to review the existing systems in the AWD. He found that the records were not updated, there were delays in the reporting of financial reports, and there were missing funds. Thereafter, he submitted the CPS Report (Exhibit U) to Mr. Sua,

³ TSNs, June 13, 2012 and October 24, 2012

⁴ TSNs, May 20, 2013 and July 1, 2013

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his superior. In the said report, he recommended that the records be updated and that financial statements be regularly submitted.

Later, the Interim Board of Directors of the AWD created an Investigation Committee. He was a member of the said committee. The other members were Atty. Roberto San Andres and Noel Rodrigo Dacanay from the AWD. They formally charged (Exhibit C) Mr. Vilorio based on the LWUA special audit which found that the latter cannot account for the collections entrusted to him.

Mr. Vilorio received a copy of the formal complaint on February 8, 2007, as shown by his signature. During the preliminary conference hearing, the respondents attended without their counsels, and offered to pay the amount. He and Noel Rodrigo Dacanay joined the hearing to give way to a compromise agreement between the parties.


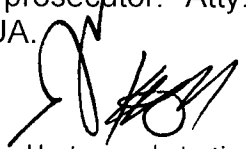
Mr. Vilorio manifested his willingness to settle the case. Instead of resetting the hearing for the compromise agreement, they prepared a report (Exhibit W) recommending that the respondents pay within two months. However, Mr. Vilorio did not fulfill his promise to pay, so hearings were conducted on May 22 and 23.

4. **Noel Rodrigo Dacanay**,⁵ General Manager of the Alcala Water District, testified that in June 2006, the LWUA Board of Trustees designated Ruben Antero as Interim General Manager of the AWD because the AWD failed to pay its loan amortizations amounting to ₱2.8 million. Acureta Imperial and Josephine Simene then conducted a special audit upon Mr. Antero's request. The audit disclosed that there were unremitted and accountable collections in the amount of ₱271,540.83 caused by fictitious official receipts and balances in the report of collections which were not forwarded to the customer ledger card. It was found that former General Manager Elpidio Sacayanan, Administrative Officer Nora Lorenzo and Cashier Darwin Vilorio were responsible for the unremitted collections.

After finding that there was *prima facie* evidence, Mr. Antero issued a formal charge (Exhibit C⁶) against the said accountable officers. The Interim Board of Directors issued a memorandum designating him and Mr. Leonardo Ferrer as hearing officers, and Atty. Roberto San Andres as prosecutor. Atty. San Andres and Mr. Ferrer were from the LWUA.

⁵ TSN, September 16, 2013

⁶ The *Formal Charge* dated February 8, 2007 was issued by Leonardo Justino P. Ferrer and witness Dacanay. The Alcala Water District, represented by Ruben D. Antero, Interim General Manager, was the complainant.



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Mr. Sacayanan, Nora Lorenzo and Mr. Viloría were present during the hearing on February 19, 2007. Atty. San Andres presented the accountabilities, and the accountable officers acknowledged (Exhibit R), and promised to settle, the same. Mr. Sacayanan and Mrs. Lorenzo paid their accountabilities. Mr. Viloría, however, failed to comply with his promissory note. Because of the said failure, they continued the formal investigation and recommended (Exhibit F) to the Interim Board of Directors to file a criminal case against Mr. Darwin Viloría, and to dismiss him as Cashier of the AWD.

5. **Virgilio Quinto**,⁷ Commission on Audit (COA) Auditor, testified that under Office Order No. 2007-100 dated October 5, 2007, an audit team was created to examine the cash and accounts of Mr. Darwin Viloría and Susan Cacatian, the former Cashier and Customer Service Assistant, respectively, of the AWD. He was the team leader and the other members were Merlita Ocampo and Eugene Bauzon.

They went to AWD on November 14, 2007, and after reviewing AWD's books of account, they found that collections in the total amount of ₱317,818.32 were not recorded and remitted, and instead, were borrowed by AWD's accountable officers and officials, *i.e.*, Darwin Viloría, Nora Lorenzo and Elpidio Sacayanan, for personal use.

After examining the books and finding irregularities, they issued a demand letter. On November 15, 2007, he asked Mr. Dacanay, the Acting General Manager, to serve the said demand letter upon Viloría, who was paralyzed at the time. He does not know what happened to the letter, but according to Mr. Dacanay, Viloría was informed. Thereafter, he prepared an audit report (Exhibit X), which their Regional Director transmitted to Mr. Dacanay.

The cash advances were legal, but should have been liquidated within certain periods. On the other hand, the IOUs and *va/es* are not legal. He did not have the opportunity to talk to the accused because the latter was paralyzed. He did not want to aggravate the accused's condition.

All documentary exhibits offered by the prosecution (Exhibits A to Z and sub-markings) were admitted in evidence.⁸

⁷ TSNs, November 11, 2013 and June 13, 2016

⁸ Order dated March 7, 2017 (*Rollo*, p. 354)

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Thereafter, from June 19, 2017 to October 5, 2020, the hearings for the trial were repeatedly reset due to various reasons,⁹ until eventually, in the Order dated November 23, 2020,¹⁰ the accused was deemed to have waived his right to present evidence because of his repeated failure to appear during the proceedings, and the case was submitted for decision.

In the Decision dated February 22, 2021,¹¹ promulgated on March 8, 2021, the RTC found that the prosecution sufficiently established the essential elements of Malversation under Art. 217 of the Revised Penal Code. It held that (1) the accused, as Cashier – D, was a public officer; (2) he received utility payments by reason of his position; (3) the funds he received from AWD's concessionaires as payment for water bills belonged to AWD, a government-owned or controlled corporation (GOCC), and are, thus, public funds; and (4) he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take the said funds.

According to the RTC, the missing funds were imputable to the accused's acts of issuing cash advances, not issuing official receipts, and issuing fictitious ones. Furthermore, the accused's promissory note supported the prosecution's theory that the accused misappropriated the funds. The RTC found that the accused was liable for the amount of Fifty-Five Thousand Eight Hundred Eighty-Six Pesos and Ten Centavos (P55,886.10) after deducting from the total amount of missing funds the amounts advanced to the other officials and employees of the AWD. The dispositive portion of the RTC's Decision reads:

WHEREFORE, premises considered, the Court finds the accused DARWIN VILORIA y CABANILLA **GUILTY** beyond reasonable doubt of the crime of Malversation punishable under the Revised Penal Code, as amended, and hereby sentences him to suffer **IMPRISONMENT** consisting of an indeterminate sentence ranging from FOUR (4) years, TWO (2) months and ONE (1) day of *prision correccional* in its maximum period, as MINIMUM to SEVEN (7) years, FOUR (4) months and ONE (1) day of *prision mayor* in its minimum period, as MAXIMUM; to pay a fine of Fifty Five Thousand Eight Hundred Eighty Six Pesos and Ten Centavos (P55,886.10):

⁹ Rollo, pp. 358, 362, 364, 366, 372, 374, 376, 378, 382, 386, 395, 399, 402, 405, 410, 412, 413, 583

¹⁰ Rollo, p. 585

¹¹ Rollo, pp. 589-595

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and to suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.

In his Notice of Appeal dated March 15, 2021,¹² accused-appellant manifested his intention to appeal the RTC's Decision dated February 22, 2021 to the Sandiganbayan, and in the Order dated March 22, 2021,¹³ the RTC gave due course to accused-appellant's appeal and ordered that the entire record of the case be forwarded to the Sandiganbayan.

In the Resolution dated June 24, 2021,¹⁴ this Court directed the parties to file their respective briefs.

In his *Brief for the Accused-Appellant*,¹⁵ he makes the following assignments of error:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MALVERSATION DESPITE THE LACK OF A PROPER FORMAL DEMAND AND PRIMA FACIE EVIDENCE OF MISSING FUNDS.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MALVERSATION DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE ACT OF TAKING OR MISAPPROPRIATION BY REASON OF THE DUTIES OF HIS OFFICE.

III

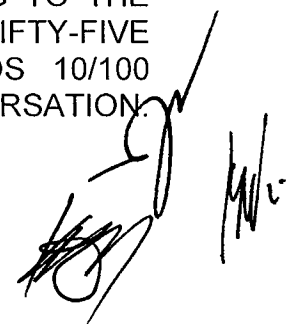
THE TRIAL COURT GRAVELY ERRED IN IMPUTING TO THE ACCUSED-APPELLANT THE TOTAL AMOUNT OF FIFTY-FIVE THOUSAND EIGHT HUNDRED EIGHTY-SIX PESOS 10/100 (PHP55,886.10) AS BASIS FOR THE CRIME OF MALVERSATION.

¹² Rollo, pp. 603-604

¹³ Rollo, p. 605

¹⁴ Record, p. 34

¹⁵ Dated August 12, 2021; Record, pp. 37-62



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On the other hand, in its *Plaintiff-Appellee's Brief*,¹⁶ plaintiff-appellee argues:

1. The RTC correctly found accused-appellant guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the RPC, the prosecution's evidence being sufficient to warrant conviction.
2. Formal demand is not a requirement to prove Malversation.
3. The prosecution has proven all the elements of Malversation beyond reasonable doubt.
4. Accused-appellant was not prejudiced when the RTC imputed to him unremitted collections in the total amount of ₱55,886.10 because such amount is included in that alleged in the Information, *i.e.*, ₱163,436.53. Furthermore, his conviction was not anchored on such amount alone, but to the amounts appropriated or misappropriated by the other accountable officers, which could not have been pilfered without his active participation.

THIS COURT'S FINDINGS OF FACTS

In July 2006, the Local Water Utilities Administration (LWUA) took over Alcala Water District (AWD) pursuant to Sec. 36¹⁷ of Presidential Decree No. 198 (P.D. No. 198), as amended. In connection with the takeover, LWUA appointed Ruben D. Antero as Interim General Manager of AWD effective July 1, 2006.¹⁸ As Interim General Manager, Antero requested technical assistance from LWUA. As requested, Leonardo Justino Ferrer of the LWUA's Commercial Practice System (CPS) Division was assigned to evaluate the procedures in AWD.¹⁹ In his *CPS Report on Alcala Water District*, one of the findings was the discrepancy in the amounts of receivables from customers in the general ledger and in the customer ledger cards. He

¹⁶ Dated November 11, 2021; Records, pp. 129-147

¹⁷ **Sec. 36. Default.** In the event of the default by the district in the payment of principal or interest on its outstanding bonds or other obligations, any bondholder or creditor shall have the right to bring an action before the appropriate court to compel the payment of such obligation. If the bondholder or creditor concerned is the Administration, it may, without the necessity of judicial process, take over and operate the entire facilities, systems or properties of the district. For this purpose, the Administration may designate its employees or any person or organization to assume all powers of policy-decision and the powers of management and administration, including but not limited to the establishment of water rates and charges, the dismissal and hiring of personnel, the purchase of supplies, equipment and materials and such other actions as may be necessary to operate the utility efficiently.

¹⁸ Exhibit Y; TSN, September 5, 2011, pp. 5-6

¹⁹ TSN, September 5, 2011, pp. 8-10

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recommended that a thorough analysis and examination of the account be conducted to determine the reason for the discrepancy.²⁰ Thereafter, a special audit was conducted on the said account.

From September 25 to 29, 2006, and from October 3 to 6, 2006, Acureta T. Imperial and Josephine P. Simene, both from the LWUA's Investment and Financial Services Division, conducted an audit of AWD's account. In the *Special Audit Report*,²¹ they found that the net accountability for unremitted collections as of July 31, 2006 was in the amount of ₱271,540.83, and recommended that disciplinary action be taken on the erring employees involved. Pursuant to the recommendation, Antero issued the Memorandum dated January 9, 2007,²² directing Elpidio C. Sacayanan (General Manager), accused-appellant Darwin C. Vilorio (Cashier D) and Nora L. Lorenzo (former Administrative Service Officer A) to submit their respective sworn statements to explain the unremitted collections from 1997 to 1999.

Complying with the said Memorandum, accused-appellant submitted his *Sworn Statement* dated January 12, 2007,²³ explaining that from 1991 to 1999, former General Manager Sacayanan instructed him to draw money from the AWD's cash collections for the latter's personal expenses and for cash advances of the Board Members and Administrative Officer. Later, accused-appellant submitted another *Sworn Statement* dated January 18, 2007,²⁴ similarly explaining that the unremitted collections from 2000 to January 2006 were given as cash advances to Sacayanan, upon the latter's instructions.

After receiving the accused's *Sworn Statements*, Antero issued Memorandum 01-07 dated February 8, 2007,²⁵ placing accused-appellant under preventive suspension for ninety (90) days. Accused-appellant was also charged administratively²⁶ for the unremitted collections in the amount of ₱163,436.53, and was directed to appear in the preliminary hearing conference scheduled on February 19, 2007.

Accused-appellant, former General Manager Sacayanan and Carol Lorenzo Fortes, representing her mother, Nora L. Lorenzo,

²⁰ Exhibit U; TSN, September 5, 2011, p. 10

²¹ Exhibit B

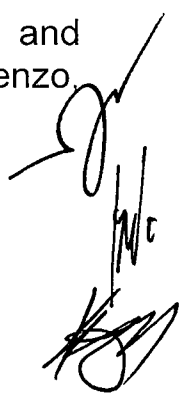
²² Exhibit M

²³ Exhibit N

²⁴ Exhibit O

²⁵ Exhibit P

²⁶ Exhibit C

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attended the pre-hearing conference held on February 19, 2007. There, the said respondents admitted to having committed the charges and offered to pay the amounts they individually acknowledged.²⁷ Accused-appellant was given two (2) months to reconstitute the amount he acknowledged, and he issued the *Promisory* [sic] Note dated March 12, 2007,²⁸ wherein he promised to pay the total amount of ₱155,239.13. Accused-appellant failed to pay the first installment of the amount on April 12, 2007. Consequently, in the letter dated April 16, 2007,²⁹ Antero informed accused-appellant, the addressee, that the investigation will continue for the latter's failure to comply with his promissory note.

Accused-appellant did not appear during the pre-hearing conference set on May 22 and 23, 2007, and thus, the proceedings were terminated, and Noel Rodrigo A. Dacanay, the hearing officer, recommended to management that accused-appellant be dismissed from the service, and that he be criminally charged.³⁰

On November 14, 2007, an audit team from the Commission on Audit (COA) conducted an examination on the cash and accounts of accused-appellant,³¹ who, at the time, appears to have no longer been connected with the AWD.³² After the examination, Virgilio C. Quinto, the audit team leader, prepared the letter dated November 14, 2007, demanding accused-appellant to produce the missing funds, and to explain the shortage in the amount of ₱317,818.22, of which ₱155,239.13 was imputable to accused-appellant.³³

On November 15, 2007, accused-appellant was paralyzed so Quinto requested Dacanay, who was then Acting General Manager, to serve the said demand letter upon accused-appellant.³⁴ This Court cannot determine if accused-appellant actually received the said letter.

On September 28, 2007, Antero filed his *Complaint Affidavit*³⁵ with the Office of the Ombudsman, and the Information charging accused-appellant with Malversation was eventually filed with the RTC.

²⁷ Exhibit Q; TSN, November 21, 2011, pp. 7-8; TSN, May 20, 2013, p. 8

²⁸ Exhibit R

²⁹ Exhibit S

³⁰ Exhibits F and F-1


³¹ TSN, November 11, 2013, p. 4

³² TSN, June 13, 2016, p. 2

³³ Exhibits X-43 to X-45

³⁴ TSN, November 11, 2013, p. 6

³⁵ Exhibit A



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THE COURT'S RULING

The Court finds no reversible error in the RTC's Decision dated August 10, 2018. However, the fine imposed by the RTC must be modified, and accused-appellant's civil liability must be determined.

Art. 217 of the Revised Penal Code, as amended by Republic Act No. 10951³⁶ (R.A. No. 10951), provides:

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 or 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:

x x x

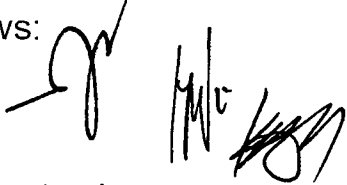
2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

x x x

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.

In *Venezuela v. People*,³⁷ the Supreme Court held that the elements of Malversation of Public Funds under Art. 217 of the Revised Penal Code are as follows:



³⁶ An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended (approved on August 29, 2017)

³⁷ G.R. No. 205693, February 14, 2018

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Parenthetically, the elements of malversation are (i) that the offender is a public officer, (ii) that [the offender] had custody or control of funds or property by reason of the duties of his [or her] office, (iii) that those funds or property were public funds or property for which [the offender] was accountable, and (iv) that [the offender] appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Accused-appellant does not dispute that the first element of Malversation is present, but he insists that the prosecution failed to establish the second, third, and fourth elements of Malversation.³⁸ This Court disagrees, and finds that the RTC correctly held that all the elements of Malversation are present.

As the RTC found, among accused-appellant's duties, as Cashier, was receiving utility payments and issuing receipts therefor.³⁹ The special audit conducted by Imperial and Simene, both from the LWUA's Investment and Financial Services Division, revealed that accused-appellant had unremitted collections from 1997 to 2006. When directed to explain such unremitted collections, accused-appellant, in his two (2) *Sworn Statements*, did not deny the same, but claimed that he took amounts therefrom and gave the same as cash advances to the officers and Board Members of AWD upon the instruction of then General Manager Sacayanan. Clearly, accused-appellant had custody and control of the said funds by reason of the duties of his office.

Next, the RTC correctly found that the subject funds were public funds for which accused-appellant was accountable. Water districts created pursuant to P.D. No. 198 are GOCCs with original charters.⁴⁰ The AWD's funds are, therefore, public funds.⁴¹ Sec. 101 of Presidential Decree No. 1445 (P.D. No. 1445), on accountable officers, provides:

Sec. 101. *Accountable officers; bond requirement.*

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.

³⁸ Brief for the Accused-Appellant dated August 12, 2021, p. 9; Record, p. 109

³⁹ Exhibit Z-4

⁴⁰ Please see *De Jesus v. Civil Service Commission*, G.R. No. 156559, September 30, 2005

⁴¹ Please see *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010

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2. x x x

As earlier discussed, accused-appellant, as Cashier, had custody of government funds by reason of the duties of his office. Under Sec. 101 of P.D. No. 1445, he was accountable for the said funds.

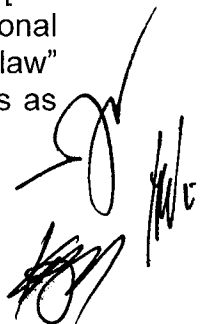
Finally, as to the elements of Malversation, the RTC correctly found that accused-appellant put the subject funds to his personal use because he failed to provide a justifiable explanation for the missing funds.

In *Legrama v. Sandiganbayan*,⁴² the Supreme Court explained that in Malversation, the prosecution has the burden to prove beyond reasonable doubt that the accused converted public funds or property under his or her custody. However, a *prima facie* presumption that an accountable officer put such public funds or property to personal use arises, and he or she may be convicted of Malversation even in the absence of direct proof of misappropriation, if the accountable officer fails, upon demand by a duly authorized officer, to explain a shortage in his or her account. *Viz.:*

More importantly, in malversation of public funds, the prosecution is burdened to prove beyond reasonable doubt, either by direct or circumstantial evidence, that the public officer appropriated, misappropriated or consented, or through abandonment or negligence, permitted another person to take public property or public funds under his [or her] custody. Absent such evidence, the public officer cannot be held criminally liable for malversation. Mere absence of funds is not sufficient proof of conversion; neither is the mere failure of the public officer to turn over the funds at any given time sufficient to make even the *prima facie* case. In fine, conversion must be proved. However, an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his [or her] account which he [or she] is unable to explain.

Under Article 217, a presumption was installed that upon demand by any duly authorized officer, the failure of a public officer to have duly forthcoming any public funds or property – with which said officer is accountable – should be *prima facie* evidence that [the public officer] had put such missing funds or properties to personal use. When these circumstances are present, a “presumption of law” arises that there was malversation of public funds or properties as

⁴² G.R. No. 178626, June 13, 2012



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decreed by Article 217. To be sure, this presumption is disputable and rebuttable by evidence showing that the public officer had fully accounted for the alleged cash shortage.

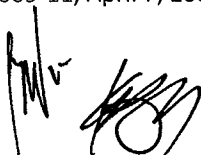
Accused-appellant, citing *Estino v. People*,⁴³ argues that the *prima facie* presumption that the funds were put to his personal use cannot arise because the prosecution failed to prove that there was a formal demand made upon him. This Court is not persuaded.

Indeed, as accused-appellant points out, the Supreme Court, in *Estino*, held that such *prima facie* presumption of conversion cannot apply to therein petitioner Pescadera because of the lack of formal demand upon him. *Viz.:*

We agree with Pescadera that this is not the demand contemplated by law. The demand to account for public funds must be addressed to the accountable officer. The above-cited letter was made by the Provincial Auditor recommending to the Chairperson of the COA to "require the Provincial Treasurer of Sulu to remit all trust liabilities such as GSIS premiums/loans, repayments/state insurance, Medicare and Pag-ibig." Nowhere in the pleadings did the Special Prosecutor refute the lack of a formal demand upon Pescadera to account for the GSIS premiums. Pescadera even denies being informed of the conduct of the audit, an assertion which was not refuted by the prosecution. It can be concluded that Pescadera was not given an opportunity to explain why the GSIS premiums were not remitted. Without a formal demand, the *prima facie* presumption of conversion under Art. 217 cannot be applied.

A closer look at the ruling in the said case would, however, show that it does not apply to the present case because the facts and circumstances herein are different from those in *Estino*. In that case, the *prima facie* presumption of conversion did not arise, not because there was no formal demand, but because it was not shown that there was any demand at all—whether formal or otherwise—made upon the accountable officer. There, the trial court's conclusion that there was demand was based solely on the auditor's recommendation, addressed to the Chairperson of COA, to "[r]equire the Provincial Treasurer to remit all trust liabilities such as GSIS premiums/loans repayments/state insurance, MEDICARE AND PAGIBIG." It was not shown that there was an actual demand addressed to the accountable officer, to give him/an opportunity to explain the failure to remit the GSIS premiums.


⁴³ G.R. Nos. 163957-58 and 164009-11, April 7, 2009



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In contrast, in the present case, it was shown that a demand was made upon accused-appellant. Although it was not shown that accused-appellant received auditor Quinto's letter dated November 14, 2007,⁴⁴ expressly demanding him to produce the missing funds and to explain the shortage, he was given ample opportunity to explain the unremitted collections when he was directed by then Interim General Manager Antero to submit a sworn statement explaining the same. Antero's Memorandum dated January 9, 2007,⁴⁵ addressed to the accountable officers, including accused-appellant, reads:

The Special Audit conducted on September 25 to October 6, 2006 established unaccounted and unremitted collections in the amount of P95,864.30. It also disclosed your involvement on [sic] the said irregularities and misappropriation of fund, to quote:

"The stated huge discrepancy above was mostly accounted to be unremitted collections since almost a decade ago. It can be recalled that in [the] February 1999 audit, a total of P95,864.30 in unremitted collection [sic] from 1997 to 1999 were uncovered, as evidenced by unposted copies of water bills in the Cashier's custody. Accountable people then were the General Manager, the Cashier, and a certain Nora Lorenzo who was the bookkeeper."

As such, with the authority vested in me by the Interim Board of Directors, you are all hereby directed to submit a sworn statement addressed to the undersigned within 72 hours upon receipt hereof, explaining why you should not be held severally and jointly liable for the said offense and be charged with dishonesty and/or grave misconduct.

For strict compliance.

Complying with the said Memorandum, accused-appellant submitted the *Sworn Statement* dated January 12, 2007,⁴⁶ wherein he explained that he drew money from the cash collections from 1991 to 1999 for advances to the officers and Board Members of the AWD upon the instruction of then General Manager Sacayanan. Thereafter, accused-appellant submitted another *Sworn Statement* dated January 18, 2007,⁴⁷ wherein he explained that he gave cash advances to

⁴⁴ Exhibits X-43 to X-45

⁴⁵ Exhibit M

⁴⁶ Exhibit N

⁴⁷ Exhibit O

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Sacayanan, upon the latter's instructions, taken from the collections in 2000 to 2006.

Subsequently, accused-appellant was formally charged⁴⁸ for the unremitted collections from 2000 to 2006, in the amount of One Hundred Sixty-Three Thousand Four Hundred Thirty-Six Pesos and Fifty-Three Centavos (P163,436.53), and was again, given the opportunity to explain the said amount in the preliminary hearing conference scheduled on February 19, 2007. Accused-appellant attended the said preliminary hearing conference, where he admitted to committing the charges and offered to pay the amount he acknowledged.⁴⁹ Accused-appellant was then allowed to pay the same in two (2) installments. His *Promisory* [sic] *Note*⁵⁰ dated March 12, 2007 reads:

I promised [sic] to pay Alcala Water District the amount of **P155,239.13** under the following schedule:

- a. 50% thereof or **P77,619.57** shall be paid on or before April 12, 2007; and
- b. Remaining balance of **P77,619.56** shall be paid on or before May 12, 2007.

There is no doubt that accused-appellant was given the opportunity to explain the unremitted collections. However, he failed to provide a satisfactory explanation for the same, and he even admitted his liability for the unremitted collections when he offered to pay the same, and when he issued his promissory note.

Because a demand was made upon accused-appellant and he failed to provide a satisfactory explanation for the unremitted collections, he was *prima facie* presumed to have converted the same to his personal use. It was then incumbent upon him rebut such *prima facie* presumption by presenting evidence to show that he had fully accounted for the same. However, accused-appellant did not present evidence in his defense. Thus, the presumption stands, and direct proof of misappropriation is not necessary.

⁴⁸ Exhibit C

⁴⁹ Exhibit Q

⁵⁰ Exhibit R

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The amount malversed

The RTC erroneously found that the amount malversed was only ₱55,886.10. In arriving at such amount, the RTC deducted the amounts advanced to Sacayanan and Lorenzo, and excluded from the computation the amounts not forwarded to the new customer ledger cards. The pertinent portion of the assailed Decision reads:

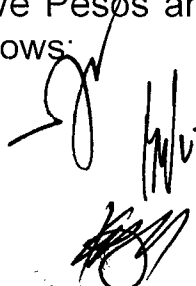
The missing funds are broken down as follows as reflected in the Cash Examination Report (Exh. "X-12") conducted by the auditors form [sic] Commission on Audit:

a	Unposted copies of water bills in the cashier's custody (1996-1999)	P95,864.30
	Amount from outstanding balances which were omitted on the new Customer Ledger Cards (2002-2003)	P99,353.03
	Total	P195,217.33
b	Amount from missing original copies of water bills and those stamped PAID but no OR issued (July 2005 – July 2006)	P81,905.50
c	From fictitious Official Receipts	P8,753.75
	Total	P285,876.58
	Less: Unreplenished working fund	P14,335.75
	Total	P271,540.83

Upon careful examination of the reports submitted, out of the P95,864.30, which were unposted but with the cashier's custody in 1996 – 1999, P66,698.85 was found to be advanced by Sacayanan and Lorenzo. The P99,953.03 was due to omitted outstanding balance to the new ledger cards, which as stated by LWUA auditor Acureta Imperial to be the job of the billing and posting clerk, thus this amount cannot be imputed to the accused. With all the deductions, this yields a difference of **P29,167.45**.

The accused is also liable for those collections but no official receipts issued in the amount of P81,905.50 and those issued fictitious official receipts in the amount of P8,753.75. This gives us the amount of P90,659.25. Out of this amount, P49,604.85 was advanced by the general manager and different directors, and the amount of P14,335.75 represents the unreplenished working fund (Exh. "X-7" to "X-8") which must be deducted. This gives us the difference of **P26,718.65** which the accused can be held accountable for. Hence, the accused is liable for the amount of **P55,886.10**.

The correct amount malversed, however, is Two Hundred Twenty-One Thousand Nine Hundred Thirty-Five Pesos and Ninety-Eight Centavos (₱221,935.98), computed as follows:



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Unremitted collections		
1996-1999 ⁵¹		₱95,864.30
2002-2003 ⁵²		99,353.03
2005-2006 ⁵³		81,905.50
Total unremitted collections		₱277,122.83
Fictitious official receipts 2005 ⁵⁴		8,753.75
Total		₱285,876.58
Less: Advances to GM and directors ⁵⁵	₱49,604.85	
Unreplenished working fund ⁵⁶	14,335.75	63,940.60
Amount malversed		₱221,935.98

The amount of ₱66,696.85,⁵⁷ pertaining to IOUs and *vales* given to Elpidio Sacayanan and Nora Lorenzo from 1996 to 1999 should not have been deducted from accused-appellant's accountability. In several cases,⁵⁸ the Supreme Court held that the giving of *vales* and IOUs is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, and is not a valid defense in Malversation cases.

Similarly, the RTC should not have excluded from accused-appellant's accountability the amount of ₱99,953.03, which it erroneously found as being the responsibility of the Billing and Posting Clerk. Although witness Imperial indeed testified that the Billing and Posting Clerk was responsible for posting the amounts to the customer ledger cards, she later clarified that the amounts posted to the said customer ledger cards were based on the daily list of collections prepared by accused-appellant, as Cashier. Field collectors remitted the amounts to the Cashier, but the amounts were not posted to the customer ledger cards because the Cashier did not report the same. The pertinent portions⁵⁹ of the TSN read:

Q You said in item 2.2 that this came from missing original copies of water bills or those whose copies on file were

⁵¹ Exhibit B-1, Item 1, par. 2; Exhibits X-7 and X-8

⁵² Exhibits X-7 (erroneously indicated as "P99,953.03") and X-8

⁵³ Exhibit B-2, Item 2.2; Exhibits X-7 and X-8

⁵⁴ Exhibit B-2, Item 2.3; Exhibits X-7 and X-8

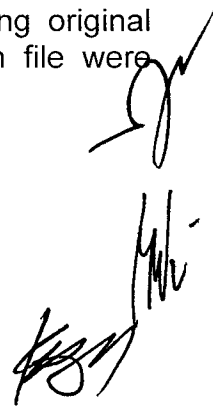
⁵⁵ Exhibits X-7 and X-8

⁵⁶ Exhibit B-2, Item 2.2, par. 3; Exhibits X-7 and X-8

⁵⁷ Exhibit X-7 (erroneously indicated as "P66,698.85")

⁵⁸ *Cabello v. Sandiganbayan*, G.R. No. 93885, May 14, 1991; *Meneses v. Sandiganbayan*, G.R. No. 100625, May 20, 1994; *Chan v. Sandiganbayan*, G.R. No. 149613, August 9, 2005; *Duero v. People*, G.R. No. 162212, January 30, 2007

⁵⁹ TSN, October 24, 2012, pp. 3-5, 7, 8



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stamped paid but no official receipts, it is possible Madam Witness that this came from the non-posting of payments?

A Yes sir it is definitely not posted from the customer ledger card.

Q Whose job is it to post the payments of the concessionaires?

A The billing and posting clerk.

Q So it is not the cashier?

A Yes, sir.

Q The billing and posting clerk here is Susan Cacatian?

A Yes, sir.

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Q So when you say one receipt was issued to a certain person with a certain amount and another receipt of the same serial OR number was issued to another concessionaire like the Alcala Elementary School is a valid receipt, is that correct?

A Yes sir. Actually we have a billing on that particular concessionaire but the payments are not among the reported collections and were not posted on the customer ledger card.

Q And again the posting on the ledger card is the job of Mrs. Susana Cacatian, is that correct?

A Yes sir but since it is not reported, therefore, it is not posted on the customer ledger card.

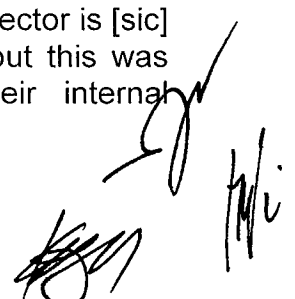
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Q And the reason again why you said it is fictitious because it was not reported and posted?

A Yes sir and also on the daily list of collections because every collection has report or daily list of accounts collected and since it was not included in the daily list of collections it was not posted by the billing and posting clerk.

Q Who prepares the daily list of collection?

A It is the collector but during that time the field collector is [sic] no longer prepared the daily collectors report but this was prepared by the former cashier. It is their internal



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arrangement that the cashier is the one who prepares the daily list of collection.

Q Is there a memorandum to that effect that it is the cashier who prepares the daily list of collection?

A I am not aware if there is a memorandum but under the LWUA commercial practices, it should be the field collector, however, the water district did not follow, did not comply with commercial practices system as prescribed by LWUA, so, that is one of the lapses in internal control system.

X X X

Q When you say they failed to report the same you are in fact saying it is their responsibility. It could be assumed that it was them who caused the outstanding balance of ₱195,000.00 from 1999 up to 2005?

A Actually it is not because the field collectors remitted their collections to the cashier and it is the cashier who prepares the daily list of collection.

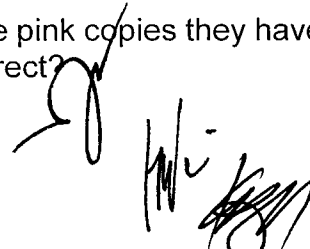
Q You said earlier they did not report they failed to report the collection that's why the water district incurred ₱195,000.00?

A Let me first give short background of commercial practices system. The field collectors are the ones who collect the water bills and under the CPS procedures they should prepare their own daily collectors report with the pink copy of the water bills attached therein and then the collections together with the daily collectors report should be remitted to the cashier, but in the district case the field collectors no longer prepare the daily list of collections instead it is the cashier who prepares such and during the time I can recall that we asked the cashier then if all the field collectors remitted their collections promptly and intact and the answer is in the affirmative. So during that time we already conducted the investigation and queries on the persons involved that is the collectors, the cashier and the billing and posting clerk.

Q You are saying Madam Witness that it is the cashier who prepared the daily list of collections on the basis of what document?

A Based on recovering pink copies or duplicate copies of official receipts.

Q But when the collectors turned over the pink copies they have summary of the collections, is that correct?

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- A The internal arrangement the field collectors are no longer required to prepare daily list of collections.

Although the amount malversed is ₱221,935.98, accused-appellant cannot be held liable for the entire amount because the amount alleged in the Information is only ₱163,436.53. Such amount is based on the amount indicated in the *Formal Charge*,⁶⁰ which is, in turn, based on the amounts pertaining to 2000 to 2006, and excluding the amounts pertaining to years prior.

Prior to the effectivity of R.A. No. 10951, the penalty prescribed for Malversation of Public Funds when the amount involved exceeds Twenty-Two Thousand Pesos (₱22,000.00) is *reclusion temporal* in its maximum period to *reclusion perpetua*. Without doubt, accused-appellant committed the felony way before the effectivity of said law, but the same shall have retroactive effect because it is favorable to him.⁶¹

Under Art. 217 of the Revised Penal Code, as amended by R.A. No. 10951, the penalty prescribed for Malversation of Public Funds when the amount involved is more than Forty Thousand Pesos (₱40,000.00) but does not exceed One Million Two Hundred Thousand Pesos (₱1,200,000.00), is *prisión mayor* in its minimum and medium periods.

Applying Sec. 1 of the Indeterminate Sentence Law,⁶² the maximum term is *prisión 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 *prisión correccional* in its medium and maximum periods, ranging from two (2) years, four (4) months and one (1) day to six (6) years.

The RTC imposed upon accused-appellant the penalty of imprisonment consisting of an indeterminate sentence from four (4) years, two (2) months and one (1) day of *prisión correccional* as

⁶⁰ Exhibit C

⁶¹ R.A. No. 10951. Sec. 100. *Retroactive Effect*. – This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

⁶² Sec. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

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minimum, to seven (7) years, four (4) months and one (1) day of *prisión mayor* as maximum. This penalty is within the range as discussed above, and is therefore, correct. However, the fine imposed by the trial court must be corrected, and accused-appellant must be directed to pay a fine in the amount of One Hundred Sixty-Three Thousand Four Hundred Thirty-Six Pesos and Fifty-Three Centavos (₱163,436.53).

Civil liability

As previously discussed, accused-appellant failed to comply with his promissory note. It does not appear that accused-appellant had already returned the amount of unremitted collections to the AWD, but in the Decision dated February 22, 2021, the RTC did not require accused-appellant to return the amount malversed to the AWD.

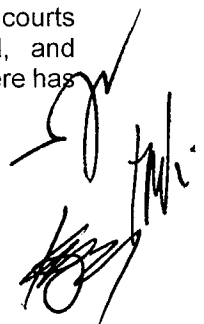
In *Mesina v. People*,⁶³ the Supreme Court held that both the RTC and the CA erred in not requiring therein petitioner to pay the amount subject of the malversation. Aside from prescribing the legal penalties, courts are also mandated to determine and set the accused's civil liability *ex delicto* unless enforcement of the civil liability by separate civil action has been reserved or waived. The Supreme Court explained:

In addition, the Court notes that both lower courts did not require the petitioner to pay the amount of ₱37,876.98 subject of the malversation. That omission was plain error that we should now likewise correct as a matter of course, for there is no denying that pursuant to Article 100 of the *Revised Penal Code*, every person criminally liable for a felony is also civilly liable. The omission, if unchecked and unrevised, would permanently deprive the City of Caloocan of the misappropriated amount. Such prejudice to the public coffers should be avoided.

The Court has justifiably bewailed the omissions by the lower courts in this respect, and has seen fit to point out in *Zafra v. People*:

One more omission by the CA and the RTC concerned a matter of law. This refers to their failure to decree in favor of the Government the return of the amounts criminally misappropriated by the accused. That he was already sentenced to pay the fine in each count was an element of the penalties imposed under the *Revised Penal Code*, and was not the same thing as finding him civilly liable for restitution, which the RTC and the CA should have included in the judgment. Indeed, as the Court emphasized in *Bacolod v. People*, it was "imperative that the courts prescribe the proper penalties when convicting the accused, and determine the civil liability to be imposed on the accused, unless there has

⁶³ G.R. No. 162489, June 17, 2015



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been a reservation of the action to recover civil liability or a waiver of its recovery," explaining the reason for doing so in the following manner:

It is not amiss to stress that both the RTC and the CA disregarded their express mandate under Section 2, Rule 120 of the *Rules of Court* to have the judgment, if it was of conviction, state: "(1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) **the penalty imposed upon the accused**; and (4) **the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.**" Their disregard compels us to act as we now do lest the Court be unreasonably seen as tolerant of their omission. That the Spouses Cogtas did not themselves seek the correction of the omission by an appeal is no hindrance to this action because the Court, as the final reviewing tribunal, has not only the authority but also the duty to correct at any time a matter of law and justice.

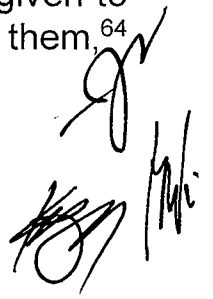
We also pointedly remind all trial and appellate courts to avoid omitting reliefs that the parties are properly entitled to by law or in equity under the established facts. Their judgments will not be worthy of the name unless they thereby fully determine the rights and obligations of the litigants. It cannot be otherwise, for only by a full determination of such rights and obligations would they be true to the judicial office of administering justice and equity for all. Courts should then be alert and cautious in their rendition of judgments of conviction in criminal cases. They should prescribe the legal penalties, which is what the Constitution and the law require and expect them to do. Their prescription of the wrong penalties will be invalid and ineffectual for being done without jurisdiction or in manifest grave abuse of discretion amounting to lack of jurisdiction. They should also determine and set the civil liability *ex delicto* of the accused, in order to do justice to the complaining victims who are always entitled to them. The *Rules of Court* mandates them to do so unless the enforcement of the civil liability by separate actions has been reserved or waived.

Under the law, the civil liability of the petitioner may involve restitution, reparation of the damage caused, and indemnification for consequential damages. Given that his obligation requires the payment of the amount misappropriated to the City of Caloocan, the indemnification for damages is through legal interest of 6% *per annum* on the amount malversed, reckoned from the finality of this decision until full payment.

Thus, this Court is mandated to correct the RTC's error by setting accused-appellant's civil liability.

As earlier discussed, the amount malversed was ₱221,935.98. After deducting ₱66,696.85, the amounts of *vales* and IOUs given to Sacayanan and Lorenzo, which had already been restituted by them,⁶⁴

⁶⁴ Exhibit X-9



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the amount that accused-appellant must return to AWD is ₱155,239.13, which is the same as the amount accused-appellant promised to pay in his promissory note.

CONCLUSION

This Court agrees with the RTC's conclusion that plaintiff-appellee proved accused-appellant's guilt of Malversation of Public Funds beyond reasonable doubt. However, the amount of the fine must be corrected and accused-appellant must be required to pay the amount malversed by way of civil liability.

WHEREFORE, there being no reversible error, the Court **AFFIRMS** the RTC's Decision dated February 22, 2021 in Criminal Case No. V-1575, finding accused-appellant DARWIN C. VILORIA guilty beyond reasonable doubt of Malversation of Public Funds with the following **MODIFICATIONS**:

- 1) He shall pay a fine in the amount of the malversed funds, as alleged in the Information, or One Hundred Sixty-Three Thousand Four Hundred Thirty-Six Pesos and Fifty-Three Centavos (₱163,436.53).
- 2) He shall further pay Alcala Water District the amount of One Hundred Fifty-Five Thousand Two Hundred Thirty-Nine Pesos and Thirteen Centavos (₱155,239.13) plus interest of 6% *per annum*, to be reckoned from the date of finality of this Decision until full payment, by way of his civil liability.

SO ORDERED.


SARAH JANE T. FERNANDEZ

Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA

Associate Justice


KEVIN NARCE B. VIVERO

Associate Justice

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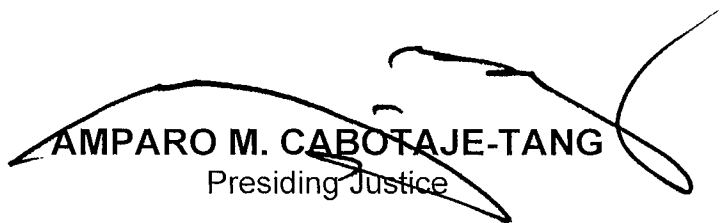
ATTESTATION

I attest 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.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

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

