



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Seventh Division

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

SB-21-AR0054

-versus-

For: Malversation of Public Funds
under Article 217 of the Revised Penal
Code, as amended.

**P/SR. INSPECTOR MERCITA P.
EYA,**

Accused-Appellant.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

SB-21-AR0055

-versus-

For: Malversation of Public Funds
under Article 217 of the Revised Penal
Code, as amended.

**P/SR. INSPECTOR MERCITA P.
EYA,**

Accused-Appellant.

Present:

Trespeses, J., *Acting Chairperson*
Hidalgo, J.
Malabaguio*, J.

Promulgated on:

September 5, 2023 *UP*

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DECISION

HIDALGO, J.:

THE CASE

This is an appeal from a Joint Decision¹ of the Regional Trial Court of Quezon City, Branch 88 (RTC Br. 88) in two Criminal Cases docketed as RTC-Q-95-63659 and RTC-Q-95-63660, finding accused-appellant Police Senior Inspector Mercita P. Eya (accused-appellant Eya) guilty beyond reasonable doubt for two (2) counts of Malversation of Public Funds defined and penalized under Article 217 of the Revised Penal Code, as amended.

After trial, RTC Br. 88 found accused-appellant Eya guilty beyond reasonable doubt of the two (2) crimes charged in the two Informations. The dispositive portion of the Joint Decision² reads:

“WHEREFORE, premises considered,
judgment is hereby rendered:

1. In Criminal Case No. Q-95-63659, finding accused **MERCITA P. EYA GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, and she is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of *prision mayor* maximum as minimum, to eighteen (18) years two (2) months and twenty (20) days of *reclusion temporal* maximum as maximum, and to pay a fine of ₱ 4,918,755.47; and,
2. In Criminal Case No. Q-95-63660, finding accused **MERCITA P. EYA GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, and she is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from six (6) years of *prision correccional* maximum as minimum to eleven (11) years, six (6) months and twenty-one (21) days of *prision mayor* maximum as maximum, and to pay a fine of ₱ 2,341,256.93.

¹ Record, Vol. 2 pp. 1027 to 1061, Decision dated January 20, 2022, penned by Hon. Rosanna Fe Romero-Maglaya, Presiding Judge, Regional Trial Court of Quezon City, Branch 88.

*Per A. O. No. 137-2022 dated June 20, 2022

² dated January 20, 2021

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In both cases, she shall suffer the penalty of perpetual special disqualification from holding any public office.

Cost against the accused.

SO ORDERED.”

PROCEEDINGS IN THE LOWER COURT

Accused-appellant Eya was arraigned on February 5, 1997. She pleaded not guilty to the offenses charged. After Pre-Trial was terminated, joint trial on the merits of the two cases ensued.

THE CASE

Verily, to establish its case, the prosecution presented the testimonies of two (2) Philippine National Police (PNP) Personnel, namely, Adelaida Dumag and Susana Santos and one (1) witness from the Commission on Audit (COA) in the person of State Auditor Eugenia M. Constantino.

FACTS OF THE CASE AS FOUND BY THE LOWER COURT

Sometime in April 1993, when one Adelaida Dumag, then Branch Supervisor of the Reconciliation Department of the Philippine National Police Accounting Division made a reconciliation of the Philippine National Police (PNP) bank accounts, she discovered that that the amount of P 2,341,256.93 was not deposited to PNP Landbank Bank Account Number 552-1000-18 while the amount of P 4,918,755.47 was also not deposited to the PNP Landbank Account Number 552-1000-69 by accused-appellant Eya, who was then the Collecting Officer and Fund Custodian of various PNP Current Accounts of the 14th Finance Service Unit of the Philippine National Police Finance Center, Camp Crame, Quezon City. The amounts of P 2,341,256.93 and P 4,918,755.47 are accountabilities of accused-appellant as per Journal Voucher No. 5067975 dated April 28, 1994³. To prove the total undeposited amount, List of Deposits-in-Transit as of December 1993⁴ for PNP Landbank Account Number 552-1000-18 and List of Deposits-in-Transit as of January 1994⁵ for PNP Landbank Account Number 552-1000-69 were presented as evidence.


Two (2) Bank Reconciliation Statements⁶ for both PNP accounts were prepared. Based on the two Bank Reconciliation Statements, it was found

³ Exhibit A

⁴ Record, Exhibit B

⁵ Record, Exhibit C

⁶ Exhibits D and E

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out that the amounts of ₱ 2,341,256.93 and ₱ 4,918,755.47 were indeed not deposited in the accounts under the name of the PNP. That because of these findings, the two Bank Reconciliation Statements were submitted to the Commission on Audit (COA) and upon evaluation, the latter eventually recommended the conduct of investigation, adjustments of entries and institution of proper administrative and legal sanctions.⁷

On November 25, 1993, one Eugenia M. Constantino (Miss Constantino), a State Auditor assigned at the PNP, Camp Crame, Quezon City conducted a cash count of the money in the vault of accused-appellant Eya. Thereafter, a team composed of Ms. Constantino, Angelito Diccon, Adolfo Acunin and Rucelle Sano prepared a report and reconciliation of the collections and deposits of accused-appellant Eya in the bank. They secured certified true copies of the bank statements and deposit slips of accused-appellant Eya from the bank, reconciled them and verified if the deposits indicated in her cash book were reflected in the bank statements. Upon examination, it was found out that accused-appellant Eya had a cash shortage in the amount of ₱ 12,157,619.95. The group also found out that accused-appellant Eya had encashed checks out of the collections. And as per her Statement of Accountability as of November 25, 1993⁸, she had an adjusted balance of accountability in the amount of ₱ 12,157,619.95.⁹ The notable adjustments were:

1. Deposits with unvalidated deposit slips were not reflected in Bank Statements;
2. Credit Memo of the same date;
3. Deposits made but not recorded in the cashbook;
4. Deposits made in previous cash exam but taken up by the bank;
5. Returned checks by the bank;
6. Under deposits which means lacking in amount or short of such amount;
7. Underfooting in the total amount recorded which means that the record of the total amount is lacking or there is a discrepancy
8. Overfooting, which means that the accused increased the total of a certain amount;
9. Under recording of deposits, which means that the amount of deposit was recorded to a lower amount; and
10. Unrecorded Official Receipts, which means that there was a collection of a certain amount but the same was not recorded in the cash book.

⁷ Page 5, Decision dated January 20, 2021

⁸ Exhibit L

⁹ Page 6, Decision



It was clarified though that, the above report was not yet completed at the time when the case was filed but based solely on the bank reconciliation statements of the Accounting Division of the PNP.¹⁰ It was also found out upon verification that there were deposit slips with the amounts indicated therein not reflected in the bank statements which led to the conclusion that such amounts were not deposited by the accused-appellant Eya. One document, Schedule 5¹¹ also shows that a third entry (in the amount of ₱ 4,500, dated November 5, 1992), was not covered by a deposit slip but the said amount was reported by accused-appellant Eya as “deposited” based on the report of Collections and Deposits.¹²

That because of these observations, Miss Constantino on October 12, 1995¹³ wrote a letter to PNP-COA State Auditor IV, Marilou L. Carag, which contains the following observations:¹⁴

1. Collecting Officer P/INSP. Mercita P. Eya has a shortage in her accountabilities in the amount of ₱ 12,157,619.95 covering the period from December 22, 1992 to November 25, 1993;
2. Numerous IOUs totalling ₱ 985,883.00 are still unliquidated and all of these are presented as part of cash items;
3. Private checks were being encashed out of collections that resulted to checks returned by the bank due to insufficient funds;
4. Collections were not deposited regularly which resulted to numerous undeposited collections;
5. Deposit slips were prepared by the Accountable Officer and presented to the Accounting Department as basis of deduction to her accountability but no corresponding deposits were made to the bank; and
6. Transactions are not recorded daily in the cash book.

The above findings were based on the breakdown of the accountability of accused-appellant Eya as summarized in her Statement of Accountability as of November 25, 1993.¹⁵

Sometime in December 1993, PNP Administrative Officer II received the accumulated Report of Collections and Deposits (ROC) of accused-appellant for the PNP Account Number 552-1000-18 and noticed that some of the deposit slips were not reflected in the bank statements. She then examined eighteen (18) deposits reported by accused-appellant in the total amount of ₱ 2,341,258.93 with their corresponding deposit slips but were

¹⁰ *id*

¹¹ Exhibit C

¹² *id*

¹³ Exhibit J

¹⁴ Page 7, Decision

¹⁵ Exhibit L

not reflected in the bank statements and were not validated by the bank. Thus, she prepared a Journal Voucher¹⁶ showing the unreconciled amounts which were transferred to the accountability of accused-appellant Eya.

She also received an Report of Collections and Deposits (ROC) for the period covering August 6, 1992 to November 12, 1993 of the PNP Scholarship Fund under PNP Landbank Account Number 552-1000-69 and also found out that while there were official receipts and deposit slips reported as collections, the same were neither reflected in the bank statements nor validated by the bank.¹⁷

Meanwhile, on November 30, 1994 and upon receipt of the report on the cash examination conducted on the account of the accused-appellant Eya, PNP Management met and decided to relieve her as a collecting officer. They sent her a letter dated February 22, 1994¹⁸ informing her of the findings on her account. In the same letter, she was required to submit in writing her reasons/ justifications on the findings within seventy-two (72) hours from receipt and to sign a certification in the cash books which came into the custody of the Office of the Auditor of the PNP on January 24, 1994. On March 16, 1994, accused-appellant submitted her Letter-Compliance.¹⁹

Thereafter, the PNP Management concluded that since accused-appellant Eya admitted some of the findings of the Audit Team and upon the Audit Team's recommendation, the PNP Management filed the instant cases against accused-appellant Eya before the Office of the Ombudsman.²⁰

Accordingly, accused-appellant was charged before the Regional Trial Court of Quezon City, Branch 88, in two Informations, the accusatory portions of which read:

For Criminal Case No. RTC-Q-95-63659

"That on or about the period covering August 6, 1992 to November 29, 1993, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an accountable public officer, being then the duly designated Collecting Officer and Fund Custodian of various PNP Current Accounts of the 14th Finance Service Unit, PNP Finance Center, Camp

¹⁶ Exhibit A

¹⁷ TSN dated October 19, 2011, pp. 8 to 10

¹⁸ Exhibit P

¹⁹ Exhibit Q

²⁰ Pages 9 to 10, Decision

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Crame, Quezon City and, hence, responsible for all public funds she collects and (receives) by reason of her office with the corresponding duty to account for the same upon demand, committing the crime herein charged in relation to, while in the performance and taking advantage of her official functions, did then and there willfully, unlawfully and feloniously misappropriate, embezzle and convert to her personal use and benefit such funds in the aggregate amount of Four Million Nine Hundred Eighteen Thousand Seven Hundred Fifty Five and 47/100 (₱ 4,918,755.47) and, despite demand, fail or refuse to account for the same, to the damage and prejudice of the Government in the aforestated sum.

CONTRARY TO LAW.”

For Criminal Case No. RTC-Q-95-63660

“That on or about the period covering December 10, 1992 up to November 26, 1993, or sometime prior or subsequent thereto, in Quezon City City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an accountable public officer, being then the duly designated Collecting Officer and Fund Custodian of various PNP Current Accounts of the 14th Finance Service Unit, PNP Finance Center, Camp Crame, Quezon City and hence, responsible for all public funds she collects and (receives) by reason of her office with the corresponding duty to account for the same upon demand, committing the crime herein charged in relation to, while in the performance and taking advantage of her official functions, did then and there willfully, unlawfully and feloniously misappropriate, embezzle and convert (to) her personal use and benefit such funds in the aggregate amount of Two Million Three Hundred Forty One Thousand Two Hundred Fifty Six and 93/100 Pesos (₱ 2,341,256.93) and, despite demand, fail or refuse to account for the same, to the damage and prejudice of the Government in the aforestated sum.

CONTRARY TO LAW.”

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In response to the evidence of the prosecution, the defense presented the lone testimony of accused-appellant Eya. Stripped of non-essentials, the facts according to her, can be summarized as follows:

She was the former Collecting Officer assigned at the Philippine National Police (PNP) Finance Service Office 14, Camp Crame from May 1991 to November 1993. As such, one of her key duties includes to maintain an accountable Cashbook/ Record Book of all the transactions pursuant to the Audit Code of the Philippines under Presidential Decree No. 45.²¹

During her stint as Chief Collecting Officer, the Collection Section of the PNP had four (4) to six (6) collection tellers depending on the volume of collections per day. Each teller was assigned to collect a particular fee. At the end of the day, each collection teller is required to remit to accused-appellant Eya the total daily collections, both in cash and in checks, by filling up the Daily Record Book indicating the total daily collections including the series numbers (*sic*) of the official receipts used and the cash breakdown of check collections. Landbank "On-Us" check as well as local checks and regional checks issued to the PNP as the payee must be separated. The Daily Record Book must be signed by the tellers and the Collection Officer to signify that the process is in order.

She testified that the Daily Record Book was her basis in preparing several deposit slips to cover the daily collection deposits with Landbank. She affirmed that indeed, the PNP has two (2) major accounts with Landbank, namely: PNP Scholarship Fund under Account Number 0552-1000-69 and PNP Trust Receipts Fund under Account Number 0552-1000-18.

She likewise testified that she prepared deposit slips immediately the following morning and deposits the collection to the LBP Greenhills Branch after lunch, usually at 2:00 o'clock in the afternoon. Since daily check deposits for various PNP Accounts were numerous, the Bank Teller receives from her only cash deposits. Check deposits and their corresponding deposit slips were left to the teller which she will pick up the following day. Consequently, check deposits which were late for clearing would be validated by the bank teller the following day. This was her usual daily routine.²²

In denying all the accusations against her, she argued that the deposits enumerated in the "List of Deposits-in-Transit as of January 1994"²³ under

²¹ Decision, Page 17

²² Decision, page 18

²³ Exhibit C

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PNP Account Number 0552-1000-69 were ultimately reflected in the Bank Statement a month after they were deposited with the cash deposits to be deposited to PNP Account Number 0552-1000-18. She claimed that if all PNP collections were deposited on subsequent days and not on the day itself, she has no control over it. Lastly, accused-appellant claimed that the results of the audit findings and audit examinations conducted by the Accounting Division of the PNP and the COA were never discussed with her.²⁴

PROCEEDINGS BEFORE THE SANDIGANBAYAN

Feeling aggrieved by the Decision convicting her of these cases filed against her, accused-appellant Eya came to this court on Appeal invoking the following arguments:²⁵

I.

THE LOWER COURT ERRED IN HOLDING THAT THERE IS EVIDENCE OF "SHORTAGES" IN THE ALLEGED ACCOUNT OF THE ACCUSED-APPELLANT;

II.

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT.

Arguments of accused-appellant in support of her Appeal

1. The Lower Court Erred in Holding that there is Evidence of "Shortages" in the Alleged Account of the Accused-Appellant

Accused-Appellant posits that the prosecution failed to prove that there were shortages in the PNP accounts because the primary evidence adduced by the prosecution, *i.e.* Journal Voucher,²⁶ was made without the COA Auditor making a comparison with the cash books. She adds that these cash books were not updated until they were lost. Since the cash books were lost, the same were neither produced nor presented during the trial as admitted by the prosecution. She adds that the only document available in the accounting office is the Journal of Collections and Deposits, contents of which were inaccurate because there were no original documents to support the same. She also underscores the fact that she was not informed when the

²⁴ Decision, Page 19

²⁵ Brief for the Appellant

²⁶ Exhibit A

examination of the cash books were made. This being the case, the prosecution failed to prove the accuracy of the said documents.

She likewise emphasizes that as per Certification dated October 20, 2015²⁷ issued by the Branch Head of the Landbank, that microfilm of the bank statements for the years 1993 to 1994 both under the name of the PNP, were no longer available. Furthermore, the photocopy of the bank statement presented in court was not eventually identified by any of the bank representatives. Thus, because of the non-production in court of the bank statements, there can be no source of reliable information as to the contents of the bank reconciliation statements.

In sum, accused-appellant contends that since the contents of the cash books, report of collections and deposits, deposit slips, and bank statements were the facts in issue, the best evidence to show her culpability are the said documents. Since the prosecution was only able to present secondary evidence, much more that the prosecution failed to show that earnest search was made for the original documents but to no avail, the same cannot be used to convict her of the crimes charged. Thus, the “finding of shortages” in the funds cannot be substantiated and ultimately, cannot support the finding of conviction.

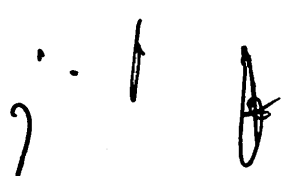
2. The Lower Court Erred in not Acquitting Accused-Appellant.

In trying to convince this Court to grant her appeal, accused-appellant Eya asserts that the allegation in the two Informations *i.e.* “*committing the crimes, taking advantage of her official functions, unlawfully misappropriate, embezzle and convert to her personal use and benefits such funds*” is a sweeping statement because none of the witnesses has explicitly mentioned that she stole, transformed or dishonestly used to her benefit and personal use the amounts involved.

In support of this argument, she invokes **Section 9, Rule 110 of the Revised Rules of Criminal Procedure** which mandates that the acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances for the court to pronounce a judgment. To support her assertion, she cites the ruling of the Supreme Court in *People vs. Manalili*²⁸ that an accused cannot be convicted of an offense that is not clearly charged in the complaint or information.

²⁷ Exhibit CC

²⁸ *People vs. Apolinario Manalili*, GR No. 191253, August 28, 2013

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She alleges that since she did not perform the acts alleged in the two Informations, there can be no basis for her conviction. To be precise, accused-appellant reiterates that since the alleged “shortages” in the PNP Landbank Accounts were not proven, RTC Br. 88 cannot conclude that the amount being claimed was put to her personal use. In fact, she theorizes that “deposits in transit” mean that the amounts were deposited but not yet reflected in the bank statement. She adds that while it may be true that the COA Auditor earlier inspected and probed documents and records, unfortunately, her report came out only in 1995 when the these cases were already filed before the Office of the Ombudsman.

Lastly, she argues that the prosecution should not rely on the weakness of the evidence she presented but instead should rely on the strength of its own evidence following the ruling in the case of *People vs. Gallo*.²⁹


Meanwhile, on June 2, 2022, accused-appellant’s counsel Romeo B. Ligot (Atty. Ligot) as a collaborating counsel, filed a Manifestation with Motion to Resolve Accused-Appellant’s Appeal grounded on the fact that plaintiff-appellee has not filed its Brief despite being given a period of until May 19, 2022 to file the same which was denied by the court in a Resolution dated June 21, 2022. The court explained that records of the case show that plaintiff-appellee filed its Brief on May 25, 2022 which was served to Atty Enrique F. Lacerna (Atty. Lacerna), who continues to be accused-appellant’s lead counsel.

In not agreeing with the said Resolution, accused-appellant Eya through Atty. Ligot filed an Omnibus Motion dated July 11, 2022 which was subsequently amended on July 22, 2022. He insisted that the *Brief* should not be considered because the same was served not to him but was instead served to Atty. Lacerna. He likewise argued that when the Appellee’s Brief was filed on May 25, 2022, it constituted an unauthorized extension which violated **Section 5, Rule 124 of the Rules of Court**. On August 31, 2022, this court issued a Resolution which denied the same for lack of merit.

Accused-appellant then went to the Supreme Court and filed a Petition for Certiorari imputing grave abuse of discretion on the part of this court in denying her Omnibus Motion dated July 11, 2022 and her Amended Omnibus Motion dated July 22, 2022. In a Notice dated December 7, 2022³⁰, the Supreme Court dismissed the petition “for failure to sufficiently show that the questioned resolutions are tainted with grave abuse of discretion.”

²⁹ GR No. 187730, June 29, 2010

³⁰ Record, Vol. 5, pp. 431 to 432



Arguments of the prosecution to dismiss the Appeal³¹

1. The Regional Trial Court correctly found accused-appellant guilty beyond reasonable doubt for two (2) counts of Malversation of Public Funds.

In sum, the plaintiff-appellee contends that all the elements of the crime of Malversation of Public Funds were successfully proven.

Specifically, as to the ***first, second and third elements***, evidence shows that accused-appellant was a public officer at the time material to the cases being then the Collecting Officer assigned at the FSO4 of the PNP. As the collecting officer, her function was to collect the income and fees derived from PNP activities, and her duty includes to deposit them to the bank accounts of the PNP. That because her duties include the collection of the income of the PNP and to deposit them by reason of her office, she is deemed to have control over the same and further makes her the custodian of such funds collected. Undeniably, the funds are indeed public in character since the same were derived from Firearm Security License Fees, Firearm License Renewal Fees, Security Agency Fees, Motor Vehicles Clearance Fees and other miscellaneous fees and collections. Thus, all the first three elements were present.

As to the ***fourth element***, plaintiff-appellee adds that this element was also successfully proven since it appears from the records of these cases that accused-appellant Eya has taken or misappropriated the funds of the PNP she collected. She should have deposited those collections to various PNP accounts but she failed to do so. Plaintiff-appellee likewise emphasizes that upon conduct of the audit and cash examination on various PNP accounts, as well as the reconciliation of bank accounts and bank statements, the following were established, thus:

(a) Accused-appellant had a shortage in her accountabilities in the amount of ₱ 12, 157,619.95 from the December 22, 1992 to November 25, 1993;

(b) The IOUs amounting to ₱ 985,883.00 were still unliquidated and presented as part of cash items;

(c) Private checks were being encashed for collections that resulted to their return by the bank due to “insufficient funds”;

(d) Collections were not deposited regularly which resulted to numerous undeposited collections;

³¹ Record, Vol. 3, pp. 176 to 210-A, Appellee's Brief, dated April 22, 2022.

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(e) Deposit slips were prepared by the accountable officer and were presented to the Accounting Department but no corresponding deposits were made to the bank; and,

(f) Transactions were not recorded daily in the cash book.

2. Notwithstanding the non-presentation of original copies of the documentary exhibits, the prosecution was able to present secondary evidence.

Plaintiff-appellee contends that although the cash books were neither produced nor presented during the trial because the same were declared as lost, the RTC-Br. 88 was still correct in convicting accused-appellant Eya on the basis of other pieces of evidence, although photocopy, because the prosecution complied with the requirements on the presentation of secondary evidence.

To prove that the prosecution was able to comply with the requirements of secondary evidence, plaintiff-appellee reiterates the testimonies of prosecution witnesses Dumag, Santos and Constantino as cited in the questioned Decision. Lastly, plaintiff-appellee avers that the failure of accused-appellant to comment on the prosecution's Motion to Allow the Prosecution to Substitute Marked Document and to Establish Secondary Evidence dated October 28, 2016 despite being ordered by RTC Br. 88, effectively allows the prosecution to substitute and mark the Journal Voucher No. 5067975 (*Exhibit A*) and to present secondary evidence marked as Exhibits "B" to "E."

After both parties submitted their respective *Appeal Briefs*, the court submitted the case for decision. Hence, this Decision.

FINDINGS AND RULING OF THE COURT

As a preliminary, it is well-settled that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.³²

Prescinding from this premise, the court now resolves the Appeal filed by accused-appellant Eya.

³² *People of the Philippines vs. Zaldy Bernardo, et al.*, GR No. 242696, November 11, 2020



On the matter that the two Informations do not clearly charge the acts complained of.

Accused-appellant asserts that the allegation in the two Informations, i.e. *“committing the crimes, taking advantage of her official functions, unlawfully misappropriate, embezzle and convert to her personal use and benefits such funds”* is too sweeping a statement considering that none of the witnesses had explicitly mentioned that she stole, transformed or dishonestly used to her benefit and personal use such funds. This allegation, according to accused -appellant Eya is a violation of **Section 9, Rule 110 of the Revised Rules of Criminal Procedure**. This being so, she cannot be convicted of an offense that is not clearly charged in the complaint or information.

The argument is misplaced.

The sufficiency of the Information is judged by the rule applicable at the time of its filing.³³ In the present cases, **Sections 6 and 9, Rule 110 of the Revised Rules of Criminal Procedure** are applicable.

Section 6, Rule 110 of the Revised Rules of Criminal Procedure outlines the test of sufficiency of a complaint or information. It reads:

“Section 6. Sufficiency of complaint or information.
— A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.”

An information is deemed sufficient if the acts or omissions complained of are alleged in a way that enables a person of common understanding to know what offense is intended to be charged, allows them to prepare their defense, and equips the court to render proper judgment. Thus, an information must clearly and accurately allege the elements of the crime and the circumstances constituting the charge.³⁴

In alleging the acts or omissions, the wordings of the Information need not be an exact reproduction of the law.³⁵ **Section 9, Rule 110 of the Revised Rules of Criminal Procedure** provides guidance:

³³ *Mark E. Jalandoni vs. Office of the Ombudsman, et al.*, GR No. 211751, 217212-80, 244467-535 and 245546-614, May 10, 2021

³⁴ *Felicitimo F. Lazarte vs. Sandiganbayan*, GR No. 180122, March 13, 2009

³⁵ *Id*



“Section 9. Cause of the accusations. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.” (emphasis supplied)

The purpose of an Information is to afford an accused his right to be informed of the nature and cause of the accusation against him. It is in pursuit of this purpose that **the Rules of Court require that the Information allege the ultimate facts constituting the elements of the crime charged. Details that do not go into the core of the crime need not be included in the Information, but may be presented during trial. The rule that evidence must be presented to establish the existence of the elements of a crime to the point of moral certainty is only for purposes of conviction.** It finds no application in the determination of whether or not an Information is sufficient to warrant the trial of an accused.³⁶ (emphasis supplied)

A cursory reading of the two Informations in these cases, side by side with the provisions of **Sections 6 and 9 of Rule 110 of the Revised Rules of Criminal Procedure**, led the court to conclude that the allegations in the two Informations are sufficient because they narrate all material facts pertaining to the elements of the crime charged against accused-appellant Eya. The allegations being clear and sufficient, undeniably, accused-appellant Eya was able to squarely prepare for her defense and was able to present controverting pieces of evidence.

Allow the court to explain.

A plain reading of the two Informations will reveal that the same contain the basic requisites of sufficiency as required by Section 6, Rule 110 of the Revised Rules of Criminal Procedure namely: (a) name of the accused; (b) the designation of the offense given by the statute; (c) the acts or omissions complained of as constituting the offense; (d) the name of the offended party; (e) the approximate date of the commission of the offense; and (f) the place where the offense was committed. The two Informations having shown to be compliant with Sections 6 and 9, Rule 110 of the Revised Rules of Court, this court finds no defect in the same.

³⁶ *People vs. Sandiganbayan (4th Division)*, et al. GR No. 160619, September 9, 2015

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To reiterate, a verbatim reiteration of the law is not required in averments in an information. The allegations of basic facts that constitute the crimes will suffice.³⁷

Clearly, this is the case here. This can be gleaned from the wordings of the Information,³⁸ *“that on or about the period covering August 6, 1992 to November 29, 1993, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an accountable public officer, being then the duly designated Collecting Officer and Fund Custodian of various PNP Current Accounts of the 14th Finance Service Unit, PNP Finance Center, Camp Crame, Quezon City and, hence, responsible for all public funds she collects and (receives) by reason of her office with the corresponding duty to account for the same upon demand, committing the crime herein charged in relation to, while in the performance and taking advantage of her official functions, did then and there willfully, unlawfully and feloniously misappropriate, embezzle and convert to her personal use and benefit such funds in the aggregate amount of Four Million Nine Hundred Eighteen Thousand Seven Hundred Fifty Five and 47/100 (P 4,918,755.47) and, despite demand, fail or refuse to account for the same, to the damage and prejudice of the Government in the aforestated sum.”*

For Criminal Case No. RTC-Q-95-63660, the Information states that *“on or about the period covering December 10, 1992 up to November 26, 1993, or sometime prior or subsequent thereto, in Quezon City City, Philippines, and within the jurisdiction of this Honorable Court, accused, an accountable public officer, being then the duly designated Collecting Officer and Fund Custodian of various PNP Current Accounts of the 14th Finance Service Unit, PNP Finance Center, Camp Crame, Quezon City and hence, responsible for all public funds she collects and (receives) by reason of her office with the corresponding duty to account for the same upon demand, committing the crime herein charged in relation to, while in the performance and taking advantage of her official functions, did then and there willfully, unlawfully and feloniously misappropriate, embezzle and convert to her personal use and benefit such funds in the aggregate amount of Two Million Three Hundred Forty One Thousand Two Hundred Fifty Six and 93/100 Pesos (P 2,341,256.93) and, despite demand, fail or refuse to account for the same, to the damage and prejudice of the Government in the aforestated sum.”*

To the extent of being repetitive, the allegation in the two Informations “committing the crimes, taking advantage of her official

³⁷ *supra* at Note 34

³⁸ Information for Criminal Case No. RTC-Q-95-63659



functions, unlawfully misappropriate, embezzle and convert to her personal use and benefits such funds” is sufficient to describe how accused-appellant Eya committed the crime charged. As far as this court is concerned, this allegation, although basic, is sufficient to show how the crime of Malversation of Public Funds was committed. Verily, this phrase demonstrates the modality on how the crime of Malversation of Public Funds was committed by accused-appellant Eya. Accused-appellant Eya cannot deny that she drew her defenses for this allegation. Otherwise, how come she was able to present evidence – testimonial as well as documentary, though controverted, denying the commission of the crime of Malversation of Public Funds. To be clear, the crime of Malversation of Public Fund is committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.³⁹

Anent the argument of accused-appellant Eya that none of the witnesses had explicitly mentioned that she stole, transformed or dishonestly used to her benefit and personal use the funds under her custody, this will be addressed in the discussion related to the existence or non-existence of the elements of the crime in the latter portion of this decision.

On the matter that primary evidence (cash books) were not presented in court because the same were lost and she was not informed when the audit and examination of the cash books and other documents were conducted

On this matter, accused-appellant Eya argues that the cash books which were used as basis for the preparation of the Journal Voucher (the primary evidence of the prosecution) were not updated until these cash books were lost. That because these documents were lost, the same were not presented in court during the trial of these cases. She adds that since the only available document was the Journal of Collection and Deposit, the contents of which are inaccurate, the charges against her must fail. Lastly, she argues that since the microfilm of the Bank Statements of the PNP for the years 1993 to 1994 were no longer available as per Certification dated October 20, 2015 issued by the Head of the Landbank, there could be no source of reliable information as to the contents of these bank statements.

To counter the arguments cited by accused-appellant Eya, plaintiff-appellee contends that although the cash books were lost and were not presented in court, it was still proper for the court to appreciate the pieces of evidence presented by prosecution in the final disposition of these cases. The non-production by the prosecution of the original copies of the cash books,

³⁹ *Cecilia Legrama vs. Sandiganbayan and People of the Philippines*, GR No. 178626, June 13, 2012

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notwithstanding, it successfully presented secondary evidence after complying with the requirements for the presentation of secondary evidence.

We find the argument of plaintiff-appellee more plausible.

Section 5, Rule 130 of the Revised Rules on Evidence reads:

“Section 5. When original document is unavailable. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on part, may prove its contents by a copy, or by recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.”

The above-mentioned provision was subsequently amended in 2019 and was thus, reworded as follows:

“Section 5. When original document is unavailable. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his or her part, may prove its contents by a copy, or by recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.”

Notwithstanding the amendment introduced in 2019, the legal concept of secondary evidence remains the same. The 2019 amended rules only inserted the words “or her” to make the Rules on Evidence gender sensitive.

Secondary evidence of the contents of a document refers to evidence other than the original document itself. A party may introduce secondary evidence of the contents of a written instrument not only when the original is lost or destroyed, but also when it cannot be produced in court, provided there is no bad faith on the part of the offeror. However, a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument. The correct order of proof is as follows: existence, execution, loss, contents, although the court in its discretion may change this order if necessary. It is clear, therefore, that before secondary evidence as to the contents of a document may be admitted in evidence, the existence of [the]

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document must first be proved, likewise, its execution and its subsequent loss.⁴⁰

Guided by these legal norms and contrary to the claim of the accused-appellant Eya, the court finds that the prosecution during the trial of these cases, was able to adduce evidence to prove the existence, execution and subsequent loss of the cash books which were claimed by accused-appellant Eya as the primary evidence. In lieu thereof, the prosecution presented other pertinent and supporting documents that showed the culpability of accused-appellant Eya.

On this score, the argument of accused-appellant Eya that the cash books were not presented in court, therefore, she could not be convicted must fail. Fact is, the prosecution did not just rely on the said cash books to prove her criminal propensity but at the same time, relied on other pertinent and supporting documents. In fact, as testified by witness Dumag, for both PNP accountants, two (2) Bank Reconciliation Statements⁴¹ were prepared and based on those bank reconciliation statements, the amounts of ₱ 2,341,256.93 and ₱ 4,918,755.47 were indeed not deposited in the accounts under the name of the PNP. Witness Constantino likewise testified that in the course of the examination made on the two PNP Accounts, she, together with her team secured certified true copies of the bank statements and deposit slips of accused-appellant Eya from the bank, reconciled them and verified if the deposits indicated in her cash book were reflected in the bank statements.

To make things clear and as observed by the court, indeed the prosecution during the trial of these cases was not able to present the cash books which to the mind of accused-appellant Eya are the supposed primary evidence of the prosecution. Be that as it may, the court recognizes the fact that instead of the cash books, the prosecution was able to present Journal Voucher (*Exhibit "A"*) and its supporting documents namely, Schedule 1, 5, 10 (*Exhibit "D-1" to "D-11", "C", and "E-1" to "E-12", respectively*), Landbank Deposit Slips (*Exhibits "B-1" to "B-18", "C-1" to "C-26"*), Statements of Bank Conciliation (*Exhibits "D" and "E"*), all geared to prove the culpability of accused-appellant Eya.

As testified by the prosecution witness Dumag⁴², the original copies of the following exhibits were left in the custody of the Accounting Office which relate to the existence and execution of these documents:

1. Journal Voucher (*Exhibit "A"*)
2. Schedule 10 (*Exhibit "B"*) with sub-markings

⁴⁰ *Department of Education Culture and Sports (DECS) vs. Del Rosario*, GR No. 146586, January 26, 2005

⁴¹ Exhibits D and E

⁴² TSN dated March 22, 2017

3. Schedule 5 (*Exhibit "C"*) with sub-markings
4. Statement of Bank Reconciliation under Savings Account No. 0552-1000-69 (*Exhibit "D"*)
5. Statement of Bank Reconciliation under Savings Account No. 0552-1000-18 (*Exhibit "E"*)

Said witness also testified that when she transferred to another work station in La Trinidad, Benguet, she lost track of the whereabouts of Exhibits "A" to "E". She also mentioned the office policy that public documents after being kept for five (5) years, documents will then be sent to the Archives Office and after ten (10) years, will then be transferred to the National Archives. To make matters worse, their office burned down sometime in the year 2000. These explanations of witness Dumag relate to the fact of the loss. Thus, witness Dumag was able to demonstrate the existence, execution and fact of loss of the documents used by the court in deciding these cases against accused-appellant Eya.

More, not only witness Dumag was able to establish the existence, execution and fact of loss of those documents. When prosecution witness Santos was placed on the witness stand⁴³, she identified Journal Voucher (*Exhibit "A"*). She testified that she was the one who prepared it and affixed her signature therein which explains why she was able to identify her signature appearing on said exhibit.

She also identified photocopies of Schedule 10 (*Exhibit "B"*) with sub-markings, Schedule 5 (*Exhibit "C"*) with sub-markings, Statement of Bank Reconciliation under Savings Account No. 0552-1000-69 (*Exhibit "D"*) and Statement of Bank Reconciliation under Savings Account No. 0552-1000-18 (*Exhibit "E"*). She attested that despite several efforts to locate the originals of these documents, they could no longer be found which can be attributed to the transfer of their office from one location to another. Lastly, she testified that Report of Collections and Deposits (ROCs) for 1992 to 1993 was no longer available at the Accounting Division but the contents thereof can still be verified from other sources such as the Journal and deposits slips attached to it. With this, the integrity of the cash books although subsequently destroyed by fire⁴⁴ cannot be questioned. No less than witness Constantino testified⁴⁵ that the permanent record of Report of Collections and Deposits, which were all based on accused-appellant Eya's cash book, remain intact and was actually presented as *Exhibit "H" to "H-19."*

Lastly, accused-appellant Eya contends that she was not informed when the examination of the cash books and other documents were made.

⁴³ TSN dated March 22, 2017

⁴⁴ TSN dated October 2, 2007, p. 42

⁴⁵ TSN dated December 5, 2007

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She attempts to downplay her role in the case by saying that she had no access to the bank records such that she was not able to verify all the questioned deposits.

The court is not persuaded by said arguments.

It should be emphasized that accused-appellant Eya is a **Certified Public Accountant (CPA)**⁴⁶ and was the former Chief Collecting Officer assigned at the PNP Finance Service Office 14, Camp Crame from May 1991 to November 1993. She was a key official at the PNP and not a mere employee. As the collecting officer, one of her key duties include to maintain Cashbook/ Record Book of all the transactions pursuant to the Audit Code of the Philippines under Presidential Decree No. 45.

Verily, accused-appellant Eya as a certified public accountant by profession and who has at least two (2) years in government service as a Chief Collecting Officer of the PNP. She cannot feign ignorance on the basic provisions, concepts and tenets of government accounting. Her position is not just an ordinary post but one that imposes greater responsibility, accountability and knowledge.

Anent her argument that she was not informed when the examination of the cash books and other documents was conducted, such failure to inform accused-appellant Eya as to when the conduct of examination is immaterial as this does not affect the accuracy of the documents to be examined especially so when there was no showing of bad faith on the part of the examining officers. Nonetheless, accused-appellant Eya should be reminded that as an accountable public officer who is expected to master Audit Code of the Philippines under Presidential Decree No. 45 as her principal rule book, she is expected at all times to discharge public functions attached to her position as Chief Collecting Officer with utmost fidelity and care. It is expected from her to be mindful of the proper, accurate, efficient and lawful recording of public funds and make all documents readily available at any time within the reasonable business day for examination by any officer authorized by the law to conduct the same with or without her presence. The need to inform an accountable public officer of the schedule when an audit or examination of the financial documents will be made, is to rattle the antiquated bones of the constitutionally enshrined principle of public accountability.

Guided by the foregoing considerations, and as will be explained hereunder, the court shall now discuss accused-appellant Eya's criminal liability raised in the appeal.

⁴⁶ TSN dated September 13, 2017, p. 2

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Malversation is defined and penalized under **Article 217 of the Revised Penal Code**, as amended by **Republic Act (R.A) No. 10951**, which reads:

“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:

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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."

The elements of malversation⁴⁷ under said provision of law are:

- 1) that the offender is a public officer;
- 2) that he or she had custody or control of funds or property by reason of the duties of his or her office;
- 3) that those funds or property were funds or property for which he or she was accountable; and

⁴⁷ *Manuel Vanezuela vs. People of the Philippines*, GR No. 205693, February 14, 2018.



- 4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

In addition, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that such officer failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.⁴⁸ (emphasis supplied)

A judicious review of the records of these cases and after a careful evaluation of the evidence presented by both the prosecution and accused-appellant during the trial of these cases as well as the arguments raised in the this appeal, the Court finds no reason to disturb the findings of RTC Br. 88 as contained in its questioned Joint Decision

Allow the Court to discuss.

The First Element- The offender is a public officer.

A public officer is defined as any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class.⁴⁹

As the correctly pointed out by RTC Br. 88, accused-appellant Eya is a public officer because she was the Collecting Officer and Fund Custodian of various PNP Current Accounts of the 14th Finance Service Unit (FSO14) of the Philippine National Police Finance Center, Camp Crame, Quezon City with the rank of Police Senior Inspector during the date and time material to these two cases.

The Second Element- The offender had custody or control of funds or property by reason of the duties of his office.

An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property.⁵⁰

As correctly ruled by RTC Br. 88, accused-appellant was the Collection Officer of the PNP Finance Service Unit (FSO14). By virtue of

⁴⁸ *Nida Corpuz vs. People of the Philippines*, GR No. 241383, June 8, 2020

⁴⁹ Article 203, Revised Penal Code, as amended

⁵⁰ *supra* at Note 48

her position, her duties, among others, include the duty to collect income and fees derived from the PNP activities that are required to be duly recorded and deposited to the two (2) Landbank accounts of the PNP. This being so, accused-appellant Eya had custody and control of the funds of the PNP by reason of her duties including the amounts Four Million Nine Hundred Eighteen Thousand Seven Hundred Fifty Five and 47/100 (₱ 4,918,755.47) and Two Million Three Hundred Forty One Thousand Two Hundred Fifty Six and 93/100 Pesos (₱ 2,341,256.93), both of which, she failed to account.

The Third Element- The funds or property were public funds or properties for which the offender is accountable.

Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations.⁵¹

The Court agrees with the findings of RTC Br. 88 that the funds involved herein are public funds since the funds involved herein are daily collections of PNP derived, among others, from the Firearm Security Licenses Fees, Firearm Licenses Renewal Fees, Security Agency Fees, Motor Vehicle Clearance Fees, and other fees such as light and water from PNP concessionaires. The money that will be collected will then be deposited either to its Scholarship Funds Account or Trust Receipts Funds Account of the Philippine National Police.⁵² These amounts will ultimately be remitted to the Government.

The Fourth Element- The offender appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.

In convicting accused-appellant Eya, RTC Br. 88 opined that, it found evidence which shows that accused-appellant Eya took, misappropriated and consented to the taking of the PNP funds by another person. RTC Br. 88 adds that, the pieces of evidence show that upon audit and cash examination conducted on the accounts of the Philippine National Police, particularly Trust Receipt Fund under Account Number 0552-1000-18 and Scholarship Fund under Account Number 055201000-69 and after the reconciliation of said accounts, the following were discovered:

1. Collecting Officer Mercita P. Eya has a shortage in her accountabilities in the amount of ₱ 12, 157,619.95 for the period from December 22, 1992 to November 25, 1993;

⁵¹ *Confederation of Coconut Farmers Organization of the Philippines, Inc. vs. Aquino, et al.*, GR No. 217965, August 8, 2017

⁵² *supra* at Note 48

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2. Numerous IOUs totalling ₱ 985,883.00 are still unliquidated and all of these are presented as part of cash items;
3. Private checks were being encashed out of collections that resulted to checks returned by the bank due to insufficient funds;
4. Collections were not deposited regularly and intact which resulted to numerous undeposited collections;
5. Deposit slips were prepared by the Accountable Officer and presented to the Accounting Department as basis of deduction to her accountability, but no corresponding deposits were made to the bank;
6. Transactions are not recorded daily in the cashbook.

These findings were supported by the Statement of Accountability as of November 25, 1993 (Exhibit "L"), Schedule of Deposits with Unvalidated Deposit Slips Not Reflected in the Bank Statement from December 22, 1992 to November 25, 1993 (Exhibit "M") and Schedule of Deposits with Unvalidated Deposit Slips and Credit Memo of the same Date and Amount from December 22, 1992 to November 25, 1993 (Exhibit "M-1").

In addition thereto, RTC Br. 88 also considers the following findings as testified by witness Constantino:

1. The accused had a cash shortage of ₱ 12,157,619.95;
2. The accused had encashed checks out of collections;
3. The accused prepared and submitted deposit slips with amount not reflected in the bank statements thus showing that there were no such amounts deposited as listed under Exhibit "M"; and
4. The accused issued deposit slips of the same amount as the Credit Memos which are in fact collections from other regions as listed under Exhibit "M-1."

In trying to convince this court to reverse the findings of RTC Br. 88, accused-appellant Eya argues that since the alleged "shortages" in the PNP Landbank Accounts were not proven due to the non-presentation of the original copies of the cash books, the RTC Br. 88 cannot conclude that the amount being claimed was put to her personal use.

The argument of accused-appellant Eya is misplaced.

Article 217 of the Revised Penal Code, as amended, which states that 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, is *prima facie* evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if accused is able to present adequate evidence that can nullify any likelihood

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that she put the funds or property to personal use, then that presumption would be at an end and the *prima facie* case is effectively negated.⁵³

Additionally, direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts. **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 possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so.**⁵⁴ (emphasis supplied)

Allow the court to discuss.

Records reveal that after the discoveries and reports of the Accounting Divisions of both the PNP and COA, a Letter Demand dated February 22, 1994 (*Exhibit "P"*) containing a directive to submit her explanation in writing within seventy-two (72) hours, was sent to accused-appellant Eya informing her of their findings on the accounts that she is required to maintain after a cash examination was made. By way of compliance, accused-appellant Eya submitted an explanation and some of the notable explanations include that her transactions with the Land Bank made in the afternoon were processed the following day; that there were errors in the listing of checks on some deposit slips thus, the same was deposited anew on a Friday but bank acceptance was made only on the following Monday. She explained that the balance of ₱ 2,645,712.18 as of November 30, 1993 represents the LTO Collections of ₱ 460,536.50 which was turned over to the Collection Officer for deposit to a separate account but until the time she was relieved as Collection Officer, no separate account was opened for the purpose. Thus, upon instruction, she temporarily deposited said amount to the account of the PNP Trust Receipts. She further stated in her explanation that the remaining amount of ₱ 2,185,175.68 represents her last collections at the time of the audit and the Memorandum Receipts (Emergency Cash Advances) granted foreign / local travel of PNP personnel as approved by the previous Director and Chief FSO-14. She likewise stated that she continuously exerted effort to collect the remaining unliquidated cash advance and lastly, her cash books remained unsigned because of the delay in the recording of Official Receipts and preparation of the corresponding monthly report.

Unfortunately, these explanations do not convince this court to warrant the reversal of the ruling of RTC Br. 88 based on the following observations:

⁵³ *Joel Cantos vs. People of the Philippines*, GR No. 184908, July 3, 2013

⁵⁴ *id*

1. A single local check deposit slip (*Exhibit "C-1"*) as correctly pointed out by RTC Br. 88 was reflected in the bank statement as two (2) check deposits, *i.e.* as local check and another as a regional check in different amounts (*Exhibit "2"*). A question now arises, why would a single transaction result to two different transactions?
2. The amounts reflected in the questioned deposit slips were reflected and credited only several months after the dates of their alleged deposits (*Exhibit "C-7"*; *Exhibit "4"*);
3. Accused-appellant Eya claimed that the bank teller modified the amounts in the deposit slip but she failed to identify who effected the alleged modification. Common banking practice prohibits a bank teller from modifying the amount in the deposit slip since the contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan or mutuum, with the bank as the debtor and the depositor as the creditor.⁵⁵ The business of banking is one imbued with public interest. As such, banking institutions are obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions.⁵⁶
4. Accused-appellant Eya did not submit to the trial court during the trial any justification or at least, the alleged modified deposit slip despite her admission of having received the same the following day;⁵⁷
5. Accused-appellant Eya did not rebut the testimony of prosecution witness Santos that the transactions referred to in the bank statements are different from the alleged deposits made by accused-appellant Eya through the questioned deposit slips (*Exhibits "B-2"*, *"B-5"*, *"B-8"* to *"B-11"*, *"C-8"*, *"C-17"* to *"C-18"* and *"C-22"*) supported by Journal of Collections and Deposits (*Exhibits "X-23"*, *"X-27"*, *"X-29"*, *"X-37"*, *"X-41"*, *"X-36"*, *"X-30"* and *"X-24"*)
6. In the Report of Collections (ROC) for the period covering August 6, 1992 to November 12, 1993 of the PNP Scholarship Fund under PNP Landbank Account Number 552-1000-69 as explained by witness Constantino, it was established that that while there were official receipts and deposit slips reported as collections, the same were not reflected in the bank statements and not validated by the bank;⁵⁸ and
7. Philippine National Police Schedule of Deposit with Unvalidated Deposit Slips (*Exhibit "M-1"*) were not reflected in the Bank

⁵⁵ Article 1980, Civil Code. Art. 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.

⁵⁶ *Citystate Savings Bank vs. Tobias and Valdez*, GR No. 227990, March 7, 2018

⁵⁷ TSN dated September 6, 2018, pp. 19-21

⁵⁸ TSN dated October 19, 2011, pp. 8 to 10

Statement covering the period from December 22, 1992 to November 25, 1993 of the PNP.

These observations clearly show that accused-appellant Eya failed to satisfactorily explain to the satisfaction of this court why she should be exonerated despite the shortages in the account put to her custody for deposit and proper accounting. For this reason, the presumption enshrined under the last paragraph of Article 217 of the Revised Penal Code, as amended, stands.

Also, RTC Br. 88 ruled that accused-appellant Eya consented to the taking of the PNP funds. Thus, exposing herself to criminal liability under Article 217 of the Revised Penal Code, as amended.

This court agrees to this findings. As correctly pointed out by RTC Br. 88, the prosecution through the testimony of its witness Constantino⁵⁹ was able to prove that as a practice, accused-appellant Eya routinely leaves the deposit slips, some cash and checks to be deposited with the bank teller. A reading likewise of accused-appellant Eya's Judicial Affidavit⁶⁰ shows that she herself admitted this practice. This practice, to the mind of this court does more harm as this creates an opportunity for misappropriation.

Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. **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 possession when demand therefor 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 as long as the accused cannot explain satisfactorily the shortage in his accounts.⁶¹ (emphasis supplied)

In these cases, and as earlier discussed, accused-appellant Eya was not able to overthrow the presumption created by Article 217 of the Revised Penal Code, as amended. To conclude, accused-appellant Eya failed to overcome this *prima facie* evidence of guilt. She failed to explain the missing funds in her account and to restitute the amount upon demand.

The impossible penalty

As to the penalty to be imposed on accused-appellant Eya, it is well to stress that prior to the decision of the RTC Br. 88 in these cases, Republic

⁵⁹ TSN dated February 13, 2008, p., 14

⁶⁰ Exhibit 23

⁶¹ Constantino Zoleta vs. Sandiganbayan (Fourth), GR No. 185224, July 29, 2015

Act No. 10951⁶² was enacted into law. The court stresses that R.A. No. 10951 amended Article 217 of the RPC, which increased the thresholds of the amounts malversed, and amended the penalties of fines it corresponds to. As currently worded, Article 217 of the RPC, now provides that the penalties for malversation shall be as follows:

“ART. 217. Malversation of public funds or property. — Presumption of malversation.

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8. 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.”

Incidentally, as partly stated under **Article 22 of the Revised Penal Code, as amended**, penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal without prejudice to the application of the Indeterminate Sentence Law.

Thus, pursuant thereto, the court affirms the penalty imposed by RTC Br. 88 against accused-appellant Eya in Criminal Case No. Q-95-63659 involving the amount of ₱ 4,918,755.47, which is an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of *prision mayor* maximum as minimum, to eighteen (18) years two (2) months and twenty (20) days of *reclusion temporal* maximum as maximum and to pay the fine of ₱ 4,918,755.47 with the accessory penalty of perpetual special disqualification from holding any public office.

Also, the court likewise affirms the penalty imposed by RTC Br. 88 against the accused in Criminal Case No. Q-95-63660 which is an indeterminate penalty of imprisonment ranging from six (6) years of *prision correccional* maximum as minimum to eleven (11) years, six (6) months and twenty-one (21) days *prision mayor* maximum as maximum and to pay a

⁶² 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.

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fine of ₱ 2,341,256.93 with the accessory penalty of perpetual special disqualification from holding any public office.

WHEREFORE, on the basis of the disquisitions above, the appeal is **DENIED**. The Joint Decision dated January 20, 2021 of the Regional Trial Court of Quezon City Branch 88 is **AFFIRMED**.

SO ORDERED.



GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:



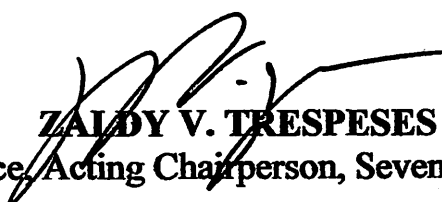
ZALDY V. TRESPESES
Associate Justice, Acting Chairperson



ARTHUR O. MALABAGUIO
Associate Justice


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.


ZALDY V. TRESPESES
Associate Justice, Acting Chairperson, Seventh 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 Resolution 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

