



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**Fifth Division**

**PEOPLE OF THE PHILIPPINES,**

*Plaintiff-Appellee,*

**Crim. Case Nos. SB-23-A/R-003**

**FOR: Malversation of Public  
Funds**

**— versus —**

**Present:**

**LAGOS, J., Chairperson**

**MENDOZA-ARCEGA, and**

**CORPUS-MAÑALAC, JJ.**

**REINAFLO M. SALES,**

*Accused-Appellant.*

**Promulgated:**

September 15, 2023

x-----*Gregorio E. Santos*-----x

**DECISION**

**LAGOS, J.:**

This resolves the appeal from the *Decision*<sup>1</sup> dated September 20, 2022 of the Regional Trial Court (RTC) of Villasis, Pangasinan, First Judicial Region, Branch 50, in Criminal Case No.V-1729, filed by accused-appellant Reinaflor M. Sales finding her guilty beyond reasonable doubt of the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, the dispositive portion of which reads as follows:

“**WHEREFORE**, premises considered, the Court finds the accused Reinaflor M. Sales guilty beyond reasonable doubt of the crime of malversation of public funds and she is hereby sentenced to suffer imprisonment consisting of indeterminate penalty of six (6) years and eight (8) months of *prision mayor* in its minimum period, as *minimum*, to

<sup>1</sup> Records, Vol. 2, pp.916-925; see also SB-A/R-003 Records, pp.16-25

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eight (8) years and eight(8) months and one(1) day of *prision mayor* in its medium period, as *maximum*.

“She is further ordered to pay a fine of Php 480,627.58 with legal interest of six percent (6%) per annum reckoned from the finality of this Decision until full satisfaction. She shall also suffer the penalty of perpetual disqualification from holding public office.

“With cost against the accused.

“SO ORDERED.”

**THE ANTECEDENTS**

Accused-appellant Sales was charged on October 15, 2012 of the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code before the Regional Trial Court, First Judicial Region, Branch 50, Villasis, Pangasinan in an *Information*, the accusatory portion of which reads as follows:

“That within the period from January 10, 2010 to March 29, 2011 in Villasis, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the said accused who was duly appointed Office Bill Collector of the Villasis Water District, Villasis, Pangasinan and as such was an accountable public officer for public funds that were in her official custody by reason of her official position, did then and there, willfully, unlawfully and feloniously, with grave abuse of confidence misappropriate and convert to her own personal use and benefit the amount of FOUR HUNDRED EIGHTY THOUSAND SIX HUNDRED TWENTY SEVEN PESOS AND FIFTY EIGHT CENTAVOS (PHP 480,627.58) to the damage and prejudice of the government.

“CONTRARY TO LAW.”

After a careful evaluation of the *Resolution*<sup>2</sup> of Assistant Regional Prosecutor Maribelle C. Uminga, Regional Prosecution Office (RPO), San Fernando City, La Union, and its supporting evidence, the trial court found probable cause in an *Order*<sup>3</sup> dated October 17, 2012 to hold accused Sales, now appellant, for trial. A *warrant of arrest*<sup>4</sup> was thereafter issued, and upon voluntary surrender and posting cash bail in the amount of Php 100,000.00, she was accordingly granted provisional liberty in an *Order*<sup>5</sup> of even date. The arraignment was set on November 7, 2012.

On October 30, 2012, accused Sales filed an *Urgent Motion to Defer Arraignment and Suspend Proceedings*,<sup>6</sup> dated October 29, 2012, on the grounds of prejudicial question and pendency of a motion for

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<sup>2</sup> Records, Vol. 1, pp. 2-7

<sup>3</sup> Id., p. 207

<sup>4</sup> Id., p. 208

<sup>5</sup> Id., p. 215

<sup>6</sup> Id., pp. 217-221



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reconsideration of the Resolution of Acting Provincial Prosecutor of Pangasinan before the RPO. The arraignment set on November 7, 2012 was deferred to December 12, 2012 at 8:30 o'clock A.M. in its *Order*<sup>7</sup> of even date. The accused's *urgent motion* was deemed submitted for resolution.

On November 14, 2012, the trial court in its *Order*<sup>8</sup> denied for lack of merit accused's *urgent motion* on the ground that the suspension by reason of prejudicial question under Section 7 of the Rule 111 of the Revised Rules of Court (RRC) is a civil action that precedes the criminal action, hence, unavailing considering that Criminal Case No. V-1729 (malversation) was filed on October 15, 2012, or before Civil Case No. V-0797 (collection of sum of money) which was filed on October 29, 2012. A mere motion for reconsideration of the Resolution of the Regional Prosecutor is not a ground for suspension under Section 11, Rule 116 of the RRC.

The arraignment set on December 12, 2012 was reset to January 16, 2013, and thereafter suspended for 60 days from the date of filing of the accused's petition for review with the Department of Justice (DOJ). The arraignment was reset to August 19, 2013.<sup>9</sup>

At the arraignment on August 19, 2013, accused Sales, assisted by counsel, pleaded "not guilty" to the criminal charge against her.<sup>10</sup> The pre-trial conference was thereafter set on September 25, 2013 at 8:30 o'clock in the morning.

In an *Order*<sup>11</sup> dated May 6, 2015, the trial court adopted the result of the preliminary conference<sup>12</sup> before the Clerk of Court on February 16, 2015 as part of the pre-trial proper where both parties marked their respective documentary evidence and the prosecution made the following proposals for stipulation, as follows:

1. The identity of the accused Reinaflor Sales;
2. That the accused was a former employee of the Villasis Water District who was designated as Office Bill Collector sometime on February 20, 2010; and
3. That before she was designated as Office Bill Collector she was designated as Cash Service Assistant.

The defense, on the other hand, has no proposal for admission. The pre-trial conference was thereafter deemed terminated and presentation of prosecution evidence ensued thereafter.

## EVIDENCE FOR THE PROSECUTION

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<sup>7</sup> Records, Vol. 1, p. 242

<sup>8</sup> Id., pp. 245-246

<sup>9</sup> Records, Vol. 2, p. 446

<sup>10</sup> Id., p. 449

<sup>11</sup> Id., 494

<sup>12</sup> Id., pp. 483-486

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The prosecution presented two(2) witnesses, namely: (1) Atty. Robert V. Ocampo, Sr. State Auditor, COA; and (2) Lydio Raguindin, the former General Manager (GM) of the Villasis Water District (VWD).

**Atty. Robert V. Ocampo, Sr.**

The direct testimony of witness Atty. Robert V. Ocampo, Sr., State Auditor IV, COA, on November 7, 2016 is summarized as follows:

Witness Atty. Ocampo was assigned as COA audit team leader of VWD, one of his auditing stations in 2010, 2011, and 2012. Together with his two (2) other team members<sup>13</sup>, they conducted an audit of VWD in 2011, specifically starting March 9, 2011, pursuant to COA Region 1 Office Order No. 2011-02-002<sup>14</sup> dated February 2, 2011 (Exh. "W") signed by Region 1 Director Sabiniano Cabatuan.<sup>15</sup> As COA auditors, they conduct the post-audit of all accounts of government agencies where they are assigned and one of which is the cash examination on the accounts of the accountable officers where they are assigned.<sup>16</sup> During the March 2011 audit, the accountable officers were the cashier Jesus Chan, bill collector Reinaflor Sales, and Joy Manangan, also a collector.<sup>17</sup>

After audit, several lapses committed by the management were found because the accounting and auditing procedures were not followed, namely: (1) cash shortage by the accountable officer, and delayed remittance of the collections; (2) non-remittance of the collections on a daily basis; (3) the receipt issued during collections was not recorded in the individual ledger of the concessionaire as well as in the computer of the accountable officer; and (4) instead of three(3) copies required by the rules, the official receipt issued during collection has only two(2) copies, one (1) for the payor, and the retained copy by the accountable officer (which according to her were lost) while COA was not provided with a copy.<sup>18</sup>

As to why a shortage occurred, witness Ocampo stated that the General Manager, the Board of Directors are making cash advances out of the collections of the bill collectors which are not allowed because collections should be deposited in the bank.<sup>19</sup> He explained that in case of travel outside Villasis, the cash advance has to undergo a legal process, that is, a travel order has to be prepared, a voucher approved and signed by approving officer (General Manager), and before the cash advance is

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<sup>13</sup> The other two(2) members of the Audit Team were: Rosario T. Amansec, State Auditor III, and Amalia A. Reyes, State Auditor II

<sup>14</sup> Exhibit "W", Records, Vol. 2, pp. 750-753

<sup>15</sup> TSN, November 7, 2016, p.4, Records, Vol. 2, pp.524-543

<sup>16</sup> Id., p.4

<sup>17</sup> Id., p. 7

<sup>18</sup> Id., p. 8

<sup>19</sup> Id., p. 8

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withdrawn, a check is issued. If cash advance is made out of his/her collections, that would be her/his accountability. In case of cash examination audit, and if she/he cannot produce, if requested, the cash in her possession, then there is a shortage and it becomes her accountability.<sup>20</sup> Among the accountable officers of VWD, Atty. Ocampo identified Bill Collector Reinaflor Sales as the one who committed the three(3) lapses.<sup>21</sup>

Atty. Ocampo presented the Report on Cash Examination dated May 25, 2011,<sup>22</sup> but, according to him, they dated the Report March 9, 2011 (Exhibit "X")<sup>23</sup> showing the Php 909,455.88 cash shortage of the bill collector, Reinaflor Sales, excluding that of Mr. Jesus Chan(cashier) in the amount of Php446.11 and Joy Manangan (the other bill collector) in the amount of Php 20,288.85, or a total shortage of Php921,000.00 plus, for all the accountable officers. At the latter portion of Exhibit "X", the team incorporated the partial settlement of accused Sales' cash shortage and the full settlement of the other two(2) collectors, thus leaving a total shortage in the final report the amount of Php486, 110.41. At the time of audit, the cash shortage of the cashier, Mr.Jesus Chan (Php446.11) and (Php 5,036.17) were not yet fully restituted.<sup>24</sup>

Thereafter, Atty. Ocampo wrote the accountable officers on April 14, 2011 about their shortage and demanded restitution (Exh. "E").<sup>25</sup> He acknowledged his signature on the said letter.<sup>26</sup> According to him, accused Sales claimed in her answer dated April 27, 2011(Exh. "Y")<sup>27</sup>, that the shortage of Php 480,627.58 (after partial restitution) for which COA audit team found her responsible consisted of penalties amounting to Php 87,241.27. Part of the said penalties, the amount of Php 34,856.75 was already paid and accounted for by accused Sales. At the last part of her answer, she stated that the amount of Php 313,233.00 were the cash advances of the Board of Directors, employees, officers and the General Manager.<sup>28</sup>

Atty. Ocampo, as audit team leader, responded in his letter dated May 4, 2011 ( Exh. "Z")<sup>29</sup>, that accused Sales' justification cannot be given due course because in the audit of her accountability as of March 1, 2011 (*sic*), she was found to have an unremitted collections in the total amount of

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<sup>20</sup> TSN, November 7, 2016, pp. 8-9

<sup>21</sup> Id., p. 9-10

<sup>22</sup> The date appearing in the Report on Cash Examination is May 25, 2010. It is not clear from the witness whether the date May 25, 2010 appearing in the Report is the date referred to in his testimony or the date May 25, 2010 is the effective date of the Bond No. 09-101338R/09-101340R of Cashier Chan/Collector Sales because of the year 2010.

<sup>23</sup> Records. Vol. 2, pp. 754-755

<sup>24</sup> TSN, November 7, 2016, p.10-11

<sup>25</sup> Records, Vol 1.p. 48

<sup>26</sup> TSN, November 7,2016, p.12;

<sup>27</sup> Records, Vol. 2, p. 756

<sup>28</sup> TSN, November 7,2016, p. 14

<sup>29</sup> Records, Vol 2, p. 758

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Php 909,455.88.<sup>30</sup> Accused Sales did not respond to his May 4, 2011 letter. Thereafter, a joint affidavit was executed by team members Amalia A. Reyes and Rosario T. Amansec (Exh. "AA"). However, upon learning that there was already a complaint for malversation before this court, he informed his office that they should not furnish the Ombudsman with a copy anymore.<sup>31</sup>

He confirmed that he conducted an exit conference to discuss with the management, general manager and board of directors about their audit procedure and findings.

Witness Ocampo then identified the official receipts issued for the amounts restituted/paid by accused Sales marked as Exh. "C" and series,<sup>32</sup> the unremitted collections marked as Exh. "D" and series,<sup>33</sup> the two(2)-page Joint Affidavit (Exh. "CC") they executed, his signature thereon and that of Amalia Reyes, and Rosario Amansec, and confirmed the truthfulness of their statements in the said joint affidavit.<sup>34</sup>

In his **cross-examination**, he confirmed his direct testimony that there were cash advances made by the board of directors, general manager and employees which had been a practice upon accused's assumption of office as collector.<sup>35</sup> He added that it is not possible that the missing amounts were incurred before she assumed office as collector in 2008 because she showed and attached the listing of cash advances in her reply to COA's demand letter. As per Atty. Ocampo's findings, most of the shortage came from the cash advances but some were part of the unremitted collections.<sup>36</sup>

Atty. Ocampo confirmed that the accountable officers higher in rank than accused Sales, namely: the cashier (Mr. Chan) and the accountant (Ms. Cabading) are all aware of the questioned transactions on cash advances, and not only the cashier, but almost everybody, including the board of directors and the manager. Under the rules, the bill collector should remit to the cashier the daily collections but the collected money from the concessionaires were not intact remitted to the cashier, and even if the cashier is aware, she(*sic*) allowed the transactions, as the superior of the bill collector, the cashier must force the collector to remit her collection within the day.<sup>37</sup>

On the reports submitted by COA audit team, Atty. Ocampo explained

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<sup>30</sup> TSN, November 7, 2016, p. 14

<sup>31</sup> Id., p. 15

<sup>32</sup> Records, Vol. 2, pp. 639-650

<sup>33</sup> Id., pp. 651-673

<sup>34</sup> TSN, April 26, 2017, pp. 3-4

<sup>35</sup> TSN, February 12, 2018, p.2

<sup>36</sup> Id., pp. 2-3

<sup>37</sup> TSN, February 12, 2018, p.3

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that accused Sales was furnished the first report (cash examination) indicating her cash shortage of Php 909,000 plus, and after she was requested to explain, demand was made and she was able to restitute Php 120,000 plus (should be Php 420,000 plus) leaving a balance of Php 480,000 plus. The report was submitted to the COA Regional Office. When asked where the restituted amount came from, he said that he was told by accused in his office in Urdaneta City that most of the money came from the board of directors, but not all of them. Except for the Board Chairman (Atty. Joseph L. Limos) and the brother of the former mayor who was the barangay captain, all of them made cash advances, including the cashier and the general manager, out of the collections of accused Sales.<sup>38</sup>

Upon query why only accused Sales was indicted in the criminal case, he replied that he has no knowledge because it was not their office (COA) who filed the criminal case. It was the VWD Board of Directors who directly filed the criminal case, so, he was forced to be a witness in this criminal case. But in so far as their office is concerned, the cash examination report was not forwarded to the Ombudsman who is supposed to be the office to file the criminal case.

Knowing that part of the missing money went to the cash advances of the general manager, board of directors and some employees, as told to him by accused Sales, Atty. Ocampo testified that he did not make any demand to these persons who got the cash advances because accused Sales is the only accountable officer who has to account for all the funds in her possession. He added that although the missing funds are with the board of directors, general manager and the cashier, still that funds is her accountability.<sup>39</sup>

Atty. Ocampo further added that there was no need for an investigation to verify the claim of accused Sales that some of the amount embezzled were indeed cash advances made by some of the board of directors because those funds were supposedly to be in her possession, the same being collections from the concessionaires. Since the funds were missing or were not in her possession, she is accountable for the said funds being the accountable officer. She cannot release the funds despite the request of the board of directors or her superiors for a cash advances because she is not allowed by law to loan that money to any person, for, her only obligation after collection is to remit the money in the bank or to the cashier and for the cashier to deposit the same in the bank. Atty. Ocampo stated that the cash advances made by the board of directors did not undergo the usual procedure or without complying with the formal or documentary procedure.<sup>40</sup>

He added that the cashier, as immediate superior of accused Sales,

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<sup>38</sup> TSN, February 12, 2018, p. 4

<sup>39</sup> Id., p. 6

<sup>40</sup> Id.

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was also found short and demand was made because some of the collections remitted to him was not deposited in the bank, but the shortage of accused Sales is separate from the shortage of the cashier. Accused Sales was singled out because, according to Atty. Ocampo, there was no transfer yet of funds from her possession to her superior (cashier).<sup>41</sup> He confirmed that the giving cash advances had been in practice in VWD and known to the Board of Directors and immediate superiors of accused Sales.<sup>42</sup>

In his **re-direct examination**, Atty. Ocampo explained that the practice on cash advances was illegal because when the collector receives money from the concessionaire, her duty is to remit the collection to the cashier who will deposit later the money in the bank. The collector is not authorized by law to make or get cash advances out of her collection. He averred that the total amount of missing collection amounted to Php 909,000 plus, and she gave to him half of that amount which represent the cash advances made by the board of directors while the other half which she cannot produce which Atty. Ocampo presumed to have been consumed for herself.<sup>43</sup>

Asked to give the exact figure for the guidance of the court, Atty. Ocampo stated that the accused was short by Php 909, 455.88, then she restituted the amount of Php 428,828.30, thereby leaving a balance of the shortage amounting to Php 480,627.58. The missing or unreplenished amount in the amount of Php 480,627.58, as stated in the *Information*, is confirmed by the defense. He said that it is in her possession but she could not produced the same.<sup>44</sup>

During the **re-cross examination** by the defense, Atty. Ocampo said he did not ask the accused to make an accounting of the missing money. Instead, she was asked to explain why the funds were missing in his demand letter to her. In her reply, she attached the xerox copies of those cash advances made by the board of directors and other persons which were only listing, meaning, the list of the names, the amount of cash advance, without signature and no official documents accompanying the list. He cannot, however, categorically answer if those money restituted came from the board of directors. The audit team did not ask accused Sales to execute an affidavit, instead, she was asked to explain the missing funds.

### Lydio Reguindin

Lydio Reguindin, former General Manager of Villasis Water District (VWD) testified on November 21, 2018 through his complaint- affidavit (Exh. "A"). The court allowed additional questions from the prosecution.

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<sup>41</sup> TSN, February 12, 2018, pp. 7-8

<sup>42</sup> Id., p.8

<sup>43</sup> Id., pp. 8-9

<sup>44</sup> Id., p. 10



He testified that he was authorized by the VWD Board of Directors (Exh. "V") to file a criminal complaint against Reinaflor Sales because she was found during cash examination audit on March 16, 2011 to have an unremitted collections in the amount of Php 909,455.58. He identified the Audited Financial Statements and Status of Implementation of Prior Year's Audit Recommendations as Exh. "G" and Exh. "N", respectively.<sup>45</sup>

During his cross-examination on April 10, 2019, he said that prior to Reinaflor Sales, the position of bill collector was temporarily occupied by his sister-in-law, Mrs. Gavina, who later resigned. He confirmed that after collecting the money, the teller/collector will remit her collection to her superior, the cashier, who will deposit the same to the bank while the accountant will make a report.<sup>46</sup>

He claimed that he was not aware that cash advances were made by the employees, officers, including him, and the Board of Directors which, as testified by Atty. Ocampo, was a practice in the VWD. He also did not know that only one member of the Board, Atty. Joseph Limos, did not make any cash advance.<sup>47</sup> He only came to know about it in the audit report and during the exit conference where accused-appellant talked about the cash advances. He did not, however, make an inquiry as to who made the cash advances. He denied that he made a cash advance.<sup>48</sup>

The court inquired from him on how the cash advance practice is being done, Raguindin replied that accused-appellant did not let them sign any receipt, confirming that, instead of depositing the money in the bank, she just gave it in advance to the party requesting for the cash advance. Although he admitted that he does not have personal knowledge about the transaction, he learned about it when Sales submitted a list of those who made the cash advances which included his name.<sup>49</sup>

No re-direct was conducted by the prosecution on Lydio Raguindin.

On July 22, 2019, the prosecution filed its *Formal Offer of Exhibits*.<sup>50</sup>

Exhibit	Description
"A"	Complaint-affidavit of Lydio S. Raguindin
"B"	Villas Water District Letter dated February 22, 2008

<sup>45</sup> TSN, November 21, 2018, pp. 4-6  
<sup>46</sup> TSN, April 10, 2019, pp. 2-4  
<sup>47</sup> Id., p. 4  
<sup>48</sup> Id., pp. 5-6  
<sup>49</sup> TSN, April 10, 2019, p. 6  
<sup>50</sup> Records, Vol 2, pp. 626-760

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<b>"C" and series</b>	<b>Rep. of the Phil. O.R. No.</b>	<b>Amount</b>	<b>Date</b>	<b>In the name of:</b>
"C" Annex B	0582820	P93,903.30	March 9, 2011	Joy Manangan
"C-1" Annex B-2	0582849	P57,023.35	March 16, 2011	Reinaflor Sales
"C-2" Annex B-8	0582852	P34,843.60	March 17, 2011	Reinaflor Sales
"C-3" Annex B-11	0582860	P48,438.15	March 18, 2011	Reinaflor Sales
"C-4" Annex B-14	0582866	P45,042.55	March 21, 2011	Reinaflor Sales
"C-5" Annex B-17	0582873	P40,671.10	March 22, 2011	Reinaflor Sales
"C-6" Annex B-12	0582878	P35,519.00	March 23, 2011	Reinaflor Sales
"C-7" Annex B-24	0582883	P30,836.25	March 24, 2011	Reinaflor Sales
"C-8" Annex B-27	0582890	P22,983.55	March 25, 2011	Reinaflor Sales
"C-9" Annex B-30	0582895	P12,814.60	March 28, 2011	Reinaflor Sales
"C-10" Annex B-32	0582902	P15,029.55	March 29, 2011	Reinaflor Sales
"C-11" Annex B-34	0582907	P29,187.65	March 30, 2011	Reinaflor Sales
"D" & series	List of Unremitted Collection (Annexes B-3 to B-7, B-9 to B-10, B-12 to B-13, B-15 to B-16, B-18 to B-20, B-22 to B-23, B-25 to B-28, B-29, B-31 and B-35)			
"E" and submarkings	Letter of Atty. Robert V. Ocampo, Sr. dated April 14, 2011 to Ms. Reinaflor Sales;			
"F"	Letter of COA Regional Director Sabiano G. Cabatuan addressed to the General Manager of the Villasis Water District dated May 23, 2011			
"F-1"	Letter of COA Regional Director Sabiano G. Cabatuan addressed to the Board of Directors of the Villasis Water District dated May 23, 2011			
"G"	COA Region I Part I Audited Financial Statements (Independent Auditor's Report)			
"H"	Condensed Balance Sheet as of December 31, 2010 (with comparative figures for CY 2009)			
"I"	Comparative Condensed Statement of Income and Expenses for the year ended December 31, 2010 (with comparative figures for CY 2009)			
"J"	Comparative Cash Flows Statement for the year ended December 31, 2010 (with comparative figures for CY 2009)			
"K"	Statement of Changes in Equity for the year ended December 31, 2010 (with comparative figures for CY 2009)			
"L"	Notes to Financial Statements as of December 31, 2010 (with comparative figures for CY 2009)			
"M"	Detailed Findings and Recommendations (Part II)			
"N"	Part III Status of Implementation of Prior Year's Audit Recommendations			
"O"	Part IV Annexes Villasis Water District Schedule of Unremitted Collections as of March 1, 2011			
"Q"	Unauthorized Employee's Benefits December 31, 2010			
"R"	Unauthorized Board of Director's Benefits December 31, 2010			
"S"	Villasis Water District List of Vouchers with Deficiencies as of January to December 31, 2010			
"U"	Affidavit of Reinaflor Sales			
"V"	Villasis Water District Board Resolution No. 20 Series 2011 authorizing the General Manager to file a criminal case against Reinaflor M. Sales for her failure to remit her collections to the Villasis Water District			
"W" and markings	COA Region I Office Order No. 20111-02002 dated February 2, 2011;			
"X"	Cash Examination Report dated May 25, 2011;			

"Y" and "Y-1"	Reply-letter of accused Reinaflor Sales to COA dated May 4, 2011
"Z" and "Z-1"	COA Region I answer dated May 4, 2011 to the Reply-letter of Reinaflor Sales
"Z-2"	Signature of accused on COA Region I Letter dated May 4, 2011; and
"AA" and "AA-1"	Joint Affidavit of Robert Ocampo, Sr., Amalia A. Reyes ad Rosario T. Amansec, the COA team who conducted the audit

The trial court, acting on the prosecution’s *Formal Offer of Exhibits* and the *Comments/Opposition* thereon by the defense<sup>51</sup> filed on September 10, 2019, admitted the prosecution’s Exhibits “A” to “AA” in its Order<sup>52</sup> dated November 18, 2019.

On December 6, 2019, after the oral motion for leave to file demurrer to evidence was granted by the trial court on November 27, 2019, there being objection from the prosecution, accused Sales filed her *Demurrer to Evidence*, dated December 6, 2019.<sup>53</sup> The prosecution filed its *Comment*<sup>54</sup> thereon on February 5, 2020.

On March 4, 2020, the trial court denied accused’s *Demurrer to Evidence* for lack of merit and set the presentation of defense’ evidence on June 3, 2020.<sup>55</sup>

EVIDENCE FOR THE DEFENSE

Reinaflor Sales

Accused, now appellant, testified on direct examination on February 3, 2021 and July 14, 2021, then cross-examined by the prosecution. On July 27, 2022, the defense conducted its re-direct examination. Her testimony is summarized as follows:

Reinaflor Sales, at the time she testified, was a former employee of VWD. She started as a Billing and Posting Clerk sometime in January 2000 until May 2003, and thereafter promoted as Office Bill Collector in February 22, 2008. She was tasked to receive payments of the consumers which she remitted at 4:00 o’clock cut-off time to the cashier, Mr. Jesus Chan, together with the duplicate copies of the original receipts issued to the consumers.<sup>56</sup> The cashier kept the collections and the receipts in the vault for safekeeping after which, together with the accountant, they would then do the reconciliation and balancing.

<sup>51</sup> Records, Vol. 2, pp.763-766  
<sup>52</sup> Id., p.769  
<sup>53</sup> Id., pp. 772-787  
<sup>54</sup> Id.,Vol. 2, pp.790-791  
<sup>55</sup> Id., pp. 792-793  
<sup>56</sup> TSN, February 3,2021, pp. 3-5

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Sometime in March 2011, she was assigned to a man's job as one of the disconnection team along with plumbers and meter readers because, according to her, she was the whistleblower of the anomalies going on inside the VWD involving the use of the collections as cash advances by the officers and the board of directors. She named them as board directors Cynthia Dela Cruz, Maria Lolita Sison, General Manager Lydio S. Raguindin, accountant Maria Conchita Cabading and cashier Jesus Chan. She came to know of the said anomaly when, in one occasion, a consumer asked her why the paid monthly bill still appeared in the next month's billing. When she asked her immediate superior (Mr. Chan), he replied that the billing was indeed paid and it is for the posting officer/clerk to reconcile the difference. As per her knowledge, there was no reconciliation of the differences since the complaints lasted up to 8 to 10 months.<sup>57</sup>

She also found later that Mr. Chan (cashier) does not transmit all the receipts for the day to the accountant (Cabading). He transmitted only a portion of the receipts while retaining the other receipts together with the cash equivalent to the amount of the retained receipts. She came to know about the cashier's non-transmittal of the receipts to the accountant when a bunch of receipts, around five (5) or six (6) months old, was given to her one morning, and told to hold them and to return the same to him at the end of the day. She does not know the actual date of transmittal to the accountant for her custody under the rules because both, cashier and the accountant, were the only persons talking about the matter.<sup>58</sup>

Asked if she had a chance to know where they(*sic*) brought the money, she testified that Mr. Chan told her that he sometimes used the money in his gambling activities and as cash advances of the officers and board of directors of the VWD. In Ilocano dialect he said: "[A]y nanagdakkel manen tibay dak ditoy kahan kasi naabak manen." (I got to pay a lot again in this vault because I lost again).<sup>59</sup>

When she went home, she told her husband, a bank employee, about the bunch of the five(5) to six(6) months old receipts handed to her by Mr. Chan (cashier) which were already paid but not transmitted to the accountant. She urged her to call the attention of the authorities. She went to ex-Mayor Nonato Abrenica, a Financial Consultant of VWD at that time, who made a call to COA Urdaneta City, specifically Atty. Ocampo, for them to conduct an immediate audit. The following day, the audit team arrived at the VMD. She did not report for work on that day as the officers of VWD were very furious with her because of her revelation of the anomaly. After the audit, she was told by Atty. Ocampo that the audit team found that there were large missing funds, and she was asked to prepare an affidavit as he will utilize her as a witness when a case will be filed against

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<sup>57</sup> TSN, February 3, 2021, pp. 5-6

<sup>58</sup> Id., pp. 6-7

<sup>59</sup> Id., p. 8

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the officers of VWD. She executed an affidavit with the assistance of Atty. Rillera of San Manuel, Tarlac, which she gave to Atty. Ocampo.<sup>60</sup>

On April 1, 2011, an exit conference called by Atty. Ocampo was held at the municipal hall of Villasis, Pangasinan. In attendance during the exit conference, aside from her, were ex-Mayor Nonato Abrenica, Board Directors Maria Lolita Sison, Cynthia Dela Cruz, Atty. Joseph Limos, David M. Obedoza, Manager Raguindin, Jesus Chan (cashier), Maria Conchita Cabading (accountant), and the Board Secretary.<sup>61</sup> Atty. Ocampo distributed the document on the *Audit Highlights of the Financial Audit for Calendar Year 2010* captioned STRICTLY CONFIDENTIAL marked as Exhibit "1 and series "<sup>62</sup> by the defense.

Atty. Ocampo discussed the contents of Exhibit "1" on the missing total amount (Php909,455.88) and the liable officers (collecting officer, two(2) board of directors and other personnel).<sup>63</sup> Ex-Mayor Abrenica commented that they (liable officers) better resign if that is what they are doing inside their office. She said the liable officers referred to were the two(2) board members, collecting officers, cashier, general manager and accountant. Altercation followed and some of them walked out one by one while some were left behind.<sup>64</sup>

She said that Exhibit "1" was not a certified true copy because changes were made in the final report, [Financial Audit Report]<sup>65</sup> earlier marked as Exhibit "F" and [Part I, Audited Financial Statements]<sup>66</sup> marked Exhibit "G" by the prosecution.<sup>67</sup> She said changes were made on the recommendations and findings in Part II of the Audited Financial Statements.<sup>68</sup> Accused Sales explained that Exhibit "1" stated that some of them returned the amount, but it is not indicated in the said Final Audit Report those who returned/remitted the amount. In Exhibit "1", the filing of appropriate charges was recommended against the collecting officer and other personnel of VWD for violation of Article 217 of the Revised Penal Code (malversation of public funds), but in the final Report (Part II on detailed findings and recommendations), it was only her (Sales) who was mentioned as liable. The reference to Article 217 of RPC was deleted or removed in the final Report.

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<sup>60</sup> TSN, February 3, 2021 Id., pp. 7-11

<sup>61</sup> Id., p.11; TSN, July 14, 2021, p.2

<sup>62</sup> Records, Vol. 2, pp. 902-908

<sup>63</sup> TSN, July 14, 2021, p. 2

<sup>64</sup> Id., p. 3

<sup>65</sup> Records, Vol. 2, p.674

<sup>66</sup> Id., p. 681

<sup>67</sup> TSN, July 14, 2021, pp.2-4

<sup>68</sup> Id., (see Part II, Detailed Findings and Recommendations [Exh. "M"-prosecution], Records, Vol. 2, pp. 690-691)

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She came to know that after the exit conference on April 1, 2011, the Board of Directors and officers of VWD<sup>69</sup> met at Garitone, a venue owned by Bebot Villar, an influential politician. Two(2) days thereafter, she was summoned by GM Raguindin to inform her that it was agreed at Garitone that the unremitted amount of Php480,000.00 plus will be deducted from her salary so that she will not be terminated from work. Shocked in disbelief, explaining that she was not the one liable but the cashier (Mr. Chan), she was told that he (Raguindin) cannot do anything since it was what was agreed upon at the Garitoni meeting. When she refused as she insisted that she was not the one liable, GM Raguindin tried later to convinced her husband but the latter also refused.<sup>70</sup>

Thereafter, the VWD Board of Directors issued a Resolution authorizing the filing of criminal case of malversation of public funds under Article 217 of the RPC against her. Then, she inquired from Atty. Ocampo in COA-Urdaneta, Pangasinan why she was singled out, and she was told to prepare her letter-request for re-audit which she identified and marked as Exhibit "2-defense"<sup>71</sup> so that the names of those who returned the money will be reflected in the final report.<sup>72</sup>

In her letter-request for re-audit dated November 21, 2012 (Exhibit "2"), she requested that the persons who returned the money be reflected in the final audit report. She identified them during her testimony as the general manager (Raguindin), the accountant (Ma. Conchita Cabading) and the cashier (Jesus Chan) who returned the biggest amount as shown by the receipts earlier presented by the prosecution as Exhibit "C and series " during the direct examination of Atty. Ocampo.<sup>73</sup>

On clarificatory questions from the court, the defense counsel stated that Atty. Ocampo testified that accused Sales returned several amounts to him under her name and the receipts were issued by the COA audit team; however, he did not categorically say that it was the payment of accused Sales. It was accused Sales who actually gave the money to Atty. Ocampo who told him that the money came from cashier Jesus Chan, Manager Raguindin and accountant Cabading. The money was coursed through her, that is why she requested for re-audit.<sup>74</sup>

Atty. Ocampo endorsed the request for re-audit in a Memorandum to the Regional Director of COA (Exh. "3")<sup>75</sup> When there was no action from

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<sup>69</sup> Five Board Directors, General Manager Raguindin, cashier Jesus Chan, accountant Maria Conchita Cabading, the Board Secretary, and Bebot Villar.

<sup>70</sup> TSN, July 14, 2021, pp. 4-5

<sup>71</sup> Records, Vol. 2, p. 6. Previously marked at the pre-trial as Exh. "5" and re-marked during trial as Exh. "2"

<sup>72</sup> Records, Vol. 2, p.

<sup>73</sup> TSN, July 14, 2021, pp. 6-7

<sup>74</sup> TSN, July 14, 2021, pp 6-9

<sup>75</sup> Records, Vol. 2, pp. 912-913. Previously marked at the pre-trial as Exh. "6" and re-marked during trial as Exh. "3"

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COA Regional Director, she was given a third endorsement letter by Atty. Ocampo (Exh. "4").<sup>76</sup> In the third endorsement letter, Atty. Ocampo stated that there was a disparity in the audit, meaning that there was a mistake in the conduct of the audit. The mistake refers to the penalties which were included in the computation when it should be excluded since the consumers have paid on time, hence, the total amount indicated in the report was erroneous. Even Atty. Ocampo does not know the exact amount that is missing, thus, he is asking for a re-audit. Atty. Ocampo said that the amount is not the one indicated in the final audit report and it might be lower. However, there was no action by the COA Regional Director on the third endorsement.<sup>77</sup>

During her **cross-examination** on July 27, 2022, accused-appellant Sales denied the accusations against her. She said that when the exit conference was about to end, Atty. Ocampo asked her why there were unremitted collections. She replied that it was the cash advances of the board of directors and some employees. Atty. Ocampo remarked: *"I don't believe that only one person can do that with this big amount. It can't be done by one collector only."* Then, she was asked to execute an affidavit and told that she will be his state witness. She confirmed that she executed an affidavit (Exh. "U") which she gave to Atty. Ocampo, but admitted that she did not present the same to the court.<sup>78</sup>

Cross-examined on a letter she sent to Atty. Ocampo which was identified by the prosecution as Exh. "2" of the defense [actually referring to Exh. "Y"-prosecution] and Exh. "F" of the prosecution [actually referring to Exh. "Z"-prosecution] for the prosecution, accused Sales did not deny that she gave cash advances to the officers and employees of the VMD, but qualified her answer, that it is "upon the orders of the cashier."<sup>79</sup>

Responding to the clarificatory questions from the court on her admission (Sales) that she gave cash advances to officers and employees of VMD, accused-appellant stated that the giving of cash advances had been a tolerated practice in VMD through the years and have been long in place before she assumed office as Office Bill Collector,<sup>80</sup> and the cash is released upon verbal order of her superior (Mr. Chan) and just written in a notebook with no forms to be filled up.<sup>81</sup> As Office Bill Collector, she said that every day before going home, she remitted her collections to the cashier. She added that it was not part of her job to release cash advances, but if ordered by her superior (cashier), that is the time she will release the cash advances.<sup>82</sup>

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<sup>76</sup> TSN, July 14, 2021, pp.10-11

<sup>77</sup> Id., pp. 9-11

<sup>78</sup> TSN, July 27, 2021, pp. 2-3

<sup>79</sup> Id., pp.5-6

<sup>80</sup> TSN, July 27, 2021, p.6

<sup>81</sup> Id., pp. 6-7

<sup>82</sup> Id., p. 7



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The prosecution rhetorically interjected that despite her knowledge that said system is not allowed under the law, she said that she gave cash advances to the officers and employees upon the order of the cashier (Mr. Chan) and her superiors.<sup>83</sup> When asked by the court as to the source of the cash advances she released when she earlier said that she religiously remitted her collections to the cashier every day, she explained that actually the money for the cash advance is taken from the payments of the consumers (collections) in her possession because Mr. Chan (cashier) will tell her to take the money for the cash advance from her collections as they (Sales and Mr. Chan) will have a reconciliation and balancing later.<sup>84</sup> Then Mr. Chan will ask her: *"Are the lacking amount represents the cash advances that I have told you"*, and she will reply in the affirmative and he will then say; *"okay, I will take charge of this anyway. I have the petty cash voucher which is supposed to be the one to be released."*<sup>85</sup>

As to what was the standard operating procedure in VWD if she was not able to actually remit her daily collections to the cashier even just for one(1) day, she told the court that the non-remittance of her collections for one(1) day cannot be done because the cashier and the bill collector should have a balance at the end of the day. She confirmed that in so far as her documents are concerned, everything was properly balanced. She further confirmed that based on the office practice, there is no missing amounts because the papers were already read (*sic*) by the cashier making it appear that he (cashier) had already received her remittances of collection but in truth and in fact he did not.

After the confusion on what letter the prosecution was referring to in his cross-examination was clarified as the letter of Atty. Ocampo dated May 4, 2011(Exh. "Z") where he replied to her that her explanation/justification could not be given due course, the trial court, upon query to the prosecution, was informed that the total unremitted collection mentioned in the letter referred by the prosecution (May 4, 2011 letter) is Php 909,455.88 and there was the reinstituted amount of Php 428,828.30, leaving the remaining amount of Php 480,627.58. The court, however, acknowledged that the total amount of Php 909,455.88 stated by Atty. Ocampo as unremitted collection was a generalization without mentioning the amount of unauthorized cash advances.<sup>86</sup> The prosecution added that based on the COA investigation, out of the total amount of Php 909,455.88, a part of which consists of unremitted collections and another part, the unauthorized cash advances.<sup>87</sup>

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<sup>83</sup> TSN, July 27, 2021, p. 9

<sup>84</sup> Id., p.8

<sup>85</sup> Id., p. 7

<sup>86</sup> Id., p. 18

<sup>87</sup> Id., p. 19



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When the court asked for a breakdown of the total amount of Php909,455.88, both the prosecution and the defense cannot provide the breakdown. The defense counsel said that the total amount was made to appear as unremitted collection because accused Sales testified during her direct examination that the cashier kept several receipts which he(Chan) did not turned over to the accountant (Cabading). The defense counsel added that the unremitted collection was the equivalent of the receipts not turned over by the cashier to the accountant.<sup>88</sup>

The prosecution confirmed to the court that their theory is that the Php 909,455.88 is divided into two parts. *One*, is unremitted collections, and *two*, unauthorized advances. The prosecution admitted that the claim of the defense that part of the Php 909,455.88 were cash advances. The prosecution added that Atty. Ocampo also testified that part of the unremitted collections were used as cash advances.<sup>89</sup>

Accused Sales confirmed that her letter-request for re-audit which was endorsed by Atty. Ocampo was not acted upon by the COA Regional Office, but denied that she abandoned her request for re-audit because she made a follow-up with Atty. Ocampo who issued another endorsement letter to the COA Regional Office. No follow-up was thereafter made because there was already a case filed against her. Notwithstanding the need for re-audit as per Atty. Ocampo, she said that he maintained the contents of the audit report when he testified in court.<sup>90</sup>

Confirming in **re-direct examination** her remittance of the collections for the day to the cashier, accused Sales testified on clarificatory questions from the court, that the largest amount she could dispose as cash advance is Php 5,000.00 out of her daily average collection of PhP 35,000.00 to Php 40,000.00 a day. In cases where Mr. Chan (cashier) has not withdrawn from the bank for the petty cash to disburse as cash advance, or has no cash on his possession, or he is busy, he will order her to get the money for cash advances from her cash collections to disburse to the people making cash advances. As to her daily remittance of collections to the cashier which has to be balanced with the receipts issued, she explained that the process done to balance is that Mr. Chan (cashier) will bring out the petty cash in his possession, and then replenish the amount of cash lacking from her cash remitted to him so that the amount of the receipts is always equivalent (or equal) to the cash she remitted to the cashier. Then, the cashier will issue receipts and the next process is up to him and the accountant to talk about since the receipts and cash are with the cashier. She added that there was no instance in her tenure that she was not able to balance the receipts and cash.<sup>91</sup>

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<sup>88</sup> TSN, July 27, 2021, p. 23, 24

<sup>89</sup> Id., p. 25, 26

<sup>90</sup> Id., pp.20, 27-28

<sup>91</sup> Id., pp. 28-31

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As regards the reinstituted amount of Php 400,000.00 plus which the COA claims was reinstituted by her, accused Sales told the court that it was Mr. Chan (cashier) who issued the receipts in her name during the time the board of directors and general manager who made cash advances went to the office to pay the cashier. The eleven (11) receipts dated March 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, and 30, 2022 issued in the name of accused Sales, all in original copies<sup>92</sup> and no stamp of dates received, as pointed out by the defense counsel, were given by Mr. Chan to Atty. Ocampo, COA audit team leader, during the audit period in 2011. There is no copy given to the payor because what is attached to the records is the original. The prosecution admitted that Mr. Chan gave the receipts to Atty. Ocampo.<sup>93</sup> The prosecution also confirmed that it was not accused Sales who handed the receipts to Atty. Ocampo because she was not the issuer of the receipts.<sup>94</sup> The prosecution, however, explained that the originals of the receipts were retained because the payment was made during the audit.<sup>95</sup>

Accused Sales stated that Atty. Ocampo was aware that the money did not come from her. When she asked Atty. Ocampo why she was impleaded when she was not the one who returned the money, he replied that is the reason why he requested a re-audit to determine who actually returned the money.<sup>96</sup> At the time of the exit conference with the COA audit team, there was no news circulating that a malversation case will be filed against her because Atty. Ocampo conferred with her that she will be a state witness. The prosecution also admitted that there is no indication in the final audit report that the VWD will file a malversation case against her.<sup>97</sup>

On the matter of penalties which she mentioned are to be excluded in the total amount of unremitted collections in her letter-request for re-audit, accused Sales explained that the penalties should not be included because the consumers paid on time. There is nothing in the final report stating that the balance excludes interest. The actual balance is not the actual money missing and that is why she was requesting for re-audit.<sup>98</sup>

No re-cross from the prosecution.

### **Hamilito Sales**

Hamilton Sales, husband of accused Reinaflor Sales, a bank employee, was presented on the same day, July 27, 2022, as a corroborative witness to her testimony, but his oral testimony was dispensed with after

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<sup>92</sup> TSN, July 27, 2021, p.38

<sup>93</sup> Id., p. 35

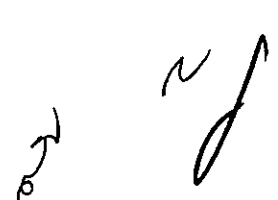
<sup>94</sup> Id., p. 35,36

<sup>95</sup> Id., p. 38

<sup>96</sup> Id., p. 38,39

<sup>97</sup> Id., p. 39,40

<sup>98</sup> Id., p. 40

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the prosecution admitted the purposes of his testimony that he was told by his wife about the anomaly regarding the receipts Mr. Jesus Chan asked her to keep which they reported to former Mayor Nonato Abrenica, the Financial Adviser of VWD at that time, and witnessed that he called by phone Atty. Ocampo of the COA; that he was summoned by GM Raguindin to convince his wife that the unremitted amount shall be deducted from her salary to avoid her termination from employment which he refused because his wife has nothing to do with the missing funds; that he was with his wife when they asked Atty. Ocampo after the meeting in Garitoni why his wife was singled out and his wife was required by Atty. Ocampo to prepare a request for re-audit; and that accused submitted a request for re-audit.

On September 12, 2022, accused Sales submitted her *Formal Offer of Documentary Exhibits*.

Exhibit	Description
"1" and series	Villasis Water District Audit Highlights, Financial Audit for Calendar Year 2010 (Strictly confidential)
"2"	Letter of Reinaflor M. Sales dated November 21, 2012
"3"	Memorandum of Atty. Robert V. Ocampo to the Regional Director of the Commission on Audit dated November 21, 2012
"4"	Third (3 <sup>rd</sup> ) Indorsement of Atty. Robert V. Ocampo to the Regional Director of COA dated January 28, 2013
"C" and series	Several Receipts issued under the name of the accused

The records of the case do not show that the trial court acted on the *Formal Offer of Documentary Exhibits* filed by the defense.

On September 20, 2022, the Regional Trial Court (RTC) of Villasis, Pangasinan, First Judicial Region, Branch 50, promulgated its *Decision* finding accused Sales guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the RPC.

On October 4, 2022, accused Sales moved to reconsider<sup>99</sup> the trial court's *Decision* and prayed that a new one be rendered acquitting her, citing as main reason that the COA audit team leader, Atty. Robert Ocampo, had recommended to the COA Regional Office for a re-audit and re-examination in his letter dated November 21, 2012 on the accountability of the accused Sales on the ground of material and newly discovered evidence, *first*, to determine who made the restitution and for what purpose the restitution was made considering that it was not accused Sales who made the restitution of the amount of Php 428,838.30; and *second*, to certify a new balance considering that the missing funds should not include the penalty in the computation for the amount unremitted. Accused Sales argued that to convict her on the basis of such incomplete and erroneous audit report

<sup>99</sup> Records, Vol. 2, pp. 928-942

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violates her right to due process of law and to be informed of the accusations against her.

On November 23, 2022, the trial court, acting on the accused Sales' *Motion for Reconsideration* and the *Comment*<sup>100</sup> thereon by the prosecution dated October 21, 2022, denied reconsideration of the *Decision* dated September 20, 2022 in a *Resolution*<sup>101</sup> promulgated on November 23, 2022.

On February 17, 2023, accused Sales file a *Notice of Appeal* dated January 18, 2023.

On February 28, 2023, appellant or her counsel was notified that within thirty(30) days from receipt of said notice, the appellant shall file with the Court the *Appellant's Brief*, and within thirty(30) days from receipt of the Appellant's Brief, the Appellee shall file its *Appellee's Brief*.

**ACCUSED-APPELLANT'S BRIEF**

On May 3, 2023, accused-appellant Sales filed her *Appellant' Brief* assigning the following errors committed by the trial court, thus:

I

The court *a quo* erred in convicting accused-appellant Sales of malversation as the prosecution failed to r prove all the elements of the crime, specifically that the accused had custody or control of the funds by reason of the duties of her office.

II

The court *a quo* erred in convicting accused-appellant Sales of malversation as the fourth element of the crime was not established.

- A. The court *a quo* erred in convicting accused-appellant Sales of malversation based solely on the presumption of malversation since the facts from which the inference of malversation will arise were based in (*sic*) an irregular, inaccurate and incomplete audit.
- B. As the presumption of malversation did not arise, the court *a quo* erred in convicting accused-appellant Sales as the prosecution failed to prove that accused misappropriated or put to personal use subject funds; conversely, assuming that the presumption applies, accused-appellant was able to rebut the same with

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<sup>100</sup> Records, Vol. 2, pp. 946-949

<sup>101</sup> Id., 2, pp. 951-954

proof that she did not put the missing funds to personal use.

- C. The court *a quo* erred in convicting accused-appellant Sales as the prosecution likewise failed to prove that she, through abandonment or negligence, permitted other persons to take subject funds.

### III

The court *a quo* erred in convicting accused-appellant Sales of the crime charged as the same was based on an incomplete assessment of the evidence.

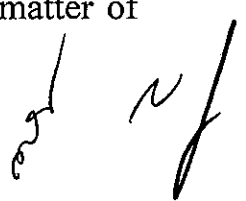
### IV

The court *a quo* erred in ruling that it had no choice but to convict accused-appellant despite the injustice caused her since justice, law and evidence all support her acquittal.

On the whole, the assigned errors imputed by accused-appellant Sales on the trial court essentially hinge on the alleged failure of the prosecution to prove and establish the *third* and *fourth elements* of the crime of malversation of public funds.

Accused-appellant disputes the presence of the *third element* that she has custody or control of the funds by reason of her office. It is her theory that since her duty as Bill Collector was to remit all her collections daily to the cashier, the only funds for which she is bound to keep safe are the cash collections of the day which are yet to be remitted to the cashier at the end of the day. Thus, on any given day, if a cash examination will be conducted, she will only have in her possession and control the cash of the day which are yet to be remitted to the cashier at the end of the day, and on the days prior thereto, she will have zero cash balance. The prosecution did not present any evidence of accused-appellant's accountability during the day that the cash examination was allegedly conducted. Such failure is fatal in cases of malversation where the penalty to be imposed is based on the amount allegedly malversed.

In stressing that the prosecution failed to prove and establish the *fourth element* of the crime, accused-appellant points out, quoting the last six(6) paragraphs of the decision, that the trial court no longer discussed in its decision whether there is evidence of accused-appellant having actually appropriated, taken, misappropriated or consented or, through abandonment or negligence, permitted another person to take the funds subject matter of



the charge. Instead, the trial court relied merely on the presumption of malversation in the discussion of the *fourth element* of the crime which, she claims in her appeal to be misplaced on the following grounds: (i) the facts from which the inference of malversation will arise were based on an irregular, inaccurate and incomplete audit; and (ii) that she was able to rebut the same with proof that she did not put the missing funds to private use.

Accused-appellant further contends that it was error to convict her of the crime charged based on an incomplete assessment of the evidence because her formal offer evidence was not acted upon and the documentary evidence offered were not considered by the court *a quo*, and finally, in ruling that the court *a quo* had no choice but to convict her despite injustice caused her since justice, law and evidence all support her acquittal.

### PLANTIFF-APPELLEE'S BRIEF

The *Office of the Special Prosecutor*, on the other hand, counters in its *Plaintiff-Appellee's Brief* filed on July 3, 2023 that the trial court correctly gave credence to the testimonies of the prosecution witnesses which were supported by documentary evidence on the record, and found accused-appellant guilty beyond reasonable doubt for the crime of malversation of public funds.

Elucidating on its reliance on the credence of the testimonies of COA Audit Team Leader, Atty. Robert Ocampo and VWD General Manager Lydio Raguindin, and the documentary evidence to support the same, the OSP argues that the prosecution sufficiently established beyond reasonable doubt the existence of all the elements of the crime of malversation. Citing *Perez vs. People*<sup>102</sup> the OSP contends that in malversation, all that is necessary to prove is that the defendant received in his possession public funds; that he could not account for them and did not have them in his possession; and that he could not give a reasonable excuse for its disappearance.

Based on the audit conducted by the COA, accused-appellant Sales had a shortage in her collections amounting to Php 909,455.88. Upon demand by the COA Audit Team, she was able to retribute the amount of Php 428,828.30. Thereafter, Atty. Ocampo wrote her a letter demanding her to retribute her remaining shortage amounting to Php 480,627.58. However, despite the said demand, she failed to retribute the said amount. An accountable officer may be convicted of malversation even if there is no direct evidence of malversation and the only evidence is shortage in his accounts which he has not been able to explain satisfactorily. His failure to produce the public funds which have come into his hands on demand by an officer duly authorized to examine his accounts is *prima facie case* of

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conversion. However, the presumption is disputable and rebuttable by evidence showing that the public officer had fully accounted for the alleged cash shortage. In the present case, accused-appellant failed to rebut the *prima facie* presumption. On the contrary, she admitted in her reply-letter that the unreturned amount totalling Php 313,233.00 pertained to the cash advances made by the Board of Directors, General Manager, the employees and officers of the VWD.

### ACCUSED-APPELLANT'S REPLY BRIEF

On July 26, 2023, accused-appellant filed her *Reply Brief* summarizing the undisputed facts from OSP's own arguments, narration of facts and evidence cited in its *Plaintiff-Appellee's Brief* which, accused-appellant submits, would grant her appeal by applying thereto the pertinent laws, rules and regulations and jurisprudence invoked by accused-appellant in her *Accused-appellant's Brief*.

### DISCUSSION AND RULING

The criminal charge of malversation of public funds filed against the herein accused-appellant Sales, an office bill collector of water bill payments of the concessionaires of Villas Water District (VWD), stemmed from the COA Regional Office 1 Audit Report<sup>103</sup> for year 2010 that her unremitted collections to the cashier for the period January 10, 2010 to March 29, 2011 amounted to Php 909,455.88. After further finding that the amount of Php 428,828.30 was remitted, she was reported to have still an unremitted collections of Php 480,627.58. COA recommended that VWD management require her to remit the Php 480,627.58 and to undertake appropriate action on the irregularity committed by the accountable officer. Unable to remit the remaining Php 480,627.58 and finding her explanation that the said amounts were the cash advances made by the employees, officers and members of the Board of Directors of VWD which she claimed to be an office practice long before she assumed office as collector cannot be given due course, Lydio Raguindin, general manager of VWD, upon the authority of the Board of Directors of VWD, filed the complaint-affidavit before the Office of the Provincial Prosecutor of Pangasinan. Upon a finding of probable cause, an *Information* was filed charging her of the crime of malversation of public funds.

After trial, she was convicted by the trial court of the crime of malversation of public funds under Article 217 of the RPC. Although the trial court was inclined to give credence to her claim about the cash advances, she was convicted because, as ruled by the trial court, only she

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<sup>103</sup>

Financial Audit Report, Part II, Detailed Findings and Recommendations, Records, 691



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(accused-appellant) is the accountable officer insofar as the shortage is concerned, so she has to account all the funds in her possession, thus:

“While the Court is inclined to give credence to her claim about cash advances considering that the court believes that her superiors could not successfully feign ignorance of her failure to daily remit her collections, as aptly pointed out by Atty. Ocampo in his answer when he was asked why his demand letter (re shortage restitution) was addressed /sent to her and not to those high ranking officials of the VWD against whom she accused of taking the public funds in her custody by way of cash advances, only the accused is the accountable officer insofar as the shortage is concerned, so she has to account all the funds in her possession. x x x.”

The aforequoted *Decision* of the trial court is now before this Court on ordinary appeal proceedings under Rule 124 of the Revised Rules of Criminal Procedure.

Malversation of public funds is defined and penalized under Article 217 of the Revised Penal Code, thus:

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, or 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:

xxx

xxx

xxx

The failure of a public officer to have duly forth coming 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 order to have a judgment of conviction against the accused charged of the crime of malversation, the prosecution has the burden to prove the following elements: (1) The offender is a public officer; (2) The offender has custody or control of funds or property by reason of the duties of his office; (3) The funds or property involved are public funds or property for which the offender is accountable; and (4) The offender has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.

*First Element*

It is undisputed that accused-appellant Sales is a public officer, being then Office Bill Collector of the Villasis Water District (VWD), a government-owned or controlled corporation created pursuant to a special



law-Presidential Decree No. 198, as amended, otherwise known as "Provincial Water Utilities Act of 1973."<sup>104</sup> A public officer, as defined in the Revised Penal Code, is "any person who, by direct provision of 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.

### *Second and Third Elements*

Accused-appellant disputes the prosecution's claim that accused-appellant had custody or control of the funds in question. She argues that as Office Bill Collector of water bills payments, she remits on a daily basis her collections to the cashier, Mr. Jesus Chan. Thus, if a cash examination was conducted on a given day, she will only have the cash for the day which are yet to be remitted to the cashier at the end of the day, and on the days prior thereto, she will have zero cash balance. She insists that it was the cashier, Mr. Chan, who is duty bound to take custody and safe-keep of the collections at the end of the day. The said duty and accountability of the cashier subsisted and continued even if the cashier did not take physical and actual possession of the cash collections since it was the cashier himself who ordered accused-appellant to release the funds in her possession as cash advances to the concerned employees, and her superiors and members of the Board.

The argument is devoid of merit. In the first place, accused-appellant is an accountable public officer as defined under Section 101 of the Government Auditing Code of the Philippines.<sup>105</sup> An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property.<sup>106</sup> As Office Bill Collector, she receives monthly bill payments from the water concessionaires and remits on a daily basis the collections to the cashier whose duty is to deposit the same to the bank on a daily basis. What is decisive is the nature of the duties that he/she performs and that as part of, and by reason of said duties, he/she receives public money or property which he/she is bound to account.<sup>107</sup>

To have custody or control of the funds or property by reason of the duties of his office, a public officer must be cashier, treasurer, collector, property officer or any other officer or employees who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property deposited in official depository banks or similar entities; or until they shall have endorsed such

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<sup>104</sup> Davao City Water District vs. Civil Service Commission (CSC), G.R. No. 95237-38, September 13, 1991; Tanjay Water District vs. Gabaton, G.R. No. 63742, April 17, 1989; Baguio Water District vs. Trajano, et. al., G.R. No. 65428, February 20, 1984.

<sup>105</sup> Presidential Decree No. 1445 (June 11, 1978)

<sup>106</sup> Zoleta vs. Sandiganbayan, G.R. No. 185224, July 29, 2015, 765 Phil 39 (2015)

<sup>107</sup> Quion vs. People, G.R. No. 136462, September 19, 2002

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money or property to other accountable officer or concerned officer.<sup>108</sup> In the absence of a justifiable reason, when she failed to remit the said collections to the cashier in any given day, she is accountable for such collections in her possession.

### *Fourth Element*

In convicting accused-appellant Sales, the trial court gave credence to the narrative of the prosecution witness from COA, Atty. Robert Ocampo Sr., that after a financial audit on March 9, 2011 for the period January 2010 to March 11, 2011, she was found, as shown by Report of Cash Examination (Exh. "X"), to have an unremitted collection of Php 909,455.88, out of which amount, she reportedly restituted Php 428,828.30 on several dates starting March 9, 2011, then successively from March 16 to March 30, 2011.<sup>109</sup> Upon demand to produce the balance of Php 480,627.58, she failed to retribute the said amount. The prosecution, upon whom lies the burden under the law and jurisprudence to establish by proof beyond reasonable doubt that accused-appellant had committed the offense charged, however, failed to present any substantial piece of evidence to indicate that accused-appellant had used the missing funds for personal gain, thus, the trial court applied the statutory presumption of malversation of public funds under the penultimate paragraph of Article 217 of the RPC which provides, as follows:

"The failure of a public officer to have duly forth coming 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."

By law and jurisprudence, the statutory presumption is disputable and rebuttable by evidence showing that the public officer had fully accounted for the alleged cash shortage.<sup>110</sup> When Article 217 of the RPC provided a presumption, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that he has appropriated or misappropriated for himself the missing funds.

The issue that confronts this Court now under the *fourth element* of the crime is whether or not on the bases of the facts and circumstances of the COA cash examination audit and the documentary evidence presented by the prosecution, the *prima facie* presumption of malversation of public funds under Article 217 of the RPC applies.

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<sup>108</sup> Panganiban vs. People, G.R. No. 211543, December 9, 2015

<sup>109</sup> Exhibit "C" and series, Records, Vo. 2, pp. 639-650

<sup>110</sup> Quiso vs. Sandiganbayan, G.R. No. 77120, April 6, 1987, citing U.S. vs. Catolico, G.R. L-6486, March 2, 2011, 18 Phil. 504

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Accused-appellant argues that the *prima facie* presumption of malversation cannot arise in this case because the facts from which the inference of the statutory presumption were based on an irregular, inaccurate and incomplete audit. She points out that the cash examination was not conducted in the manner prescribed by rules and regulations provided under Manual of Cash Examination,<sup>111</sup> COA Circular No. 97-002 on the grant, utilization and liquidation of cash advances in relation to Section 102 of Presidential Decree 1445, otherwise known as the Government Auditing Code of the Philippines, as there were other accountable officers primarily and secondarily accountable and responsible for government funds and property, thus:

“Section 102. Primary and secondary responsibility.

“1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

“2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.”

The COA audit team leader, Atty. Ocampo, was not even sure of the exact cash accountability of accused-appellant as he endorsed the request for re-audit or re-examination pursuant to Section 52, par. 2. of P.D. 1445 on the opening of settled and certification of new balance, but the same was not acted upon by the COA Region 1 Director Cabatuan. The total amount of alleged missing funds of Php 480,627.58 which, as per confirmation of Atty. Ocampo, consisted partly of the cash advances of the officers, employees and members Board of Directors and partly the unremitted collections of accused-appellant.<sup>112</sup> However, the trial court observed that Atty. Ocampo merely gave a generalization that all were “unremitted collections” without mentioning the exact amount of unauthorized cash advances.<sup>113</sup> The exact amount of each component of the total amount were not clearly established in the final audit report and by the prosecution during the trial. Charging accused-appellant in an *Information* for an inaccurate and erroneous amount and convicting her thereafter denies her of her constitutional right to due process of law<sup>114</sup> and the right to be informed of the nature and cause of the accusation against her.<sup>115</sup>

We find the appeal meritorious.

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<sup>111</sup> COA Memorandum No. 84-373, January 23, 1984, now the Revised Cash Examination Manual under COA Memorandum No. 2013-004

<sup>112</sup> TSN, February 12, 2018, pp.2-3

<sup>113</sup> TSN, July 27, 2022, p. 18

<sup>114</sup> Section 14(1), Article III, 1987 Constitution.

<sup>115</sup> Section 14(2), Article III, 1987 Constitution

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A careful evaluation of the records show that in accused-appellant's letter-reply dated April 27, 2011<sup>116</sup> to the demand letter dated April 14, 2011<sup>117</sup> of COA audit team to produce immediately the missing funds and submit within 72 hours a written explanation why the shortage of Php 480,627.58 (reported by COA as "unremitted collections") occurred, she attributed the cash shortage to cash advances, explaining in her affidavit<sup>118</sup> submitted to the COA audit team, that the making of cash advances by certain employees, officers and the Board of Directors from the water bill collections was already an old practice in the office when she assumed office in June 2008. Instead of the petty cash fund under the control of the cashier, the bill collections were used for the daily office expenses.

She added that the alleged missing funds of Php 480,627.58 stated in the Report of Cash Examination<sup>119</sup> included penalties in the total amount of Php 87,241.27 (out of which Php 34,856.75 was already paid and accounted for), which should not have been included because the consumers paid on time. By deducting the unaccounted penalties of Php 52,384.52, the missing funds still amounted to Php 428, 243.06 which, according to her, Php 313,233.00 of the said total amount which were listed in "Annex B and series" attached in her affidavit and the amount of Php 115,010.06 recorded in the entries in one of her notebook which was lost inside her office, pertain to cash advances of the board of directors, employees, officers and the general manager.

The letter-reply of accused-appellant raised areas of audit concerns that should have been the subject of a thorough audit examination pursuant to COA Circular 97-002, Manual of Cash Examination and P.D. 1445, as follows: (1) the cash advances to employees, officers, General Manager and the Board of Directors of VWD which, she claimed, was the reason why the alleged cash shortage occurred; and (2) the inaccuracy and incompleteness of the audit as it included penalties which should not have been included in the alleged cash accountability of accused-appellant.

The prosecution witness, Atty. Ocampo, COA audit team leader, himself admitted on direct examination and confirmed on cross-examination that the cash shortage was due to the cash advances made by the General Manager and the Board of Directors out of the collections of the bill collectors which, according to him, are not allowed because collections should be deposited in the bank.<sup>120</sup> He testified that the cashier, accountant and almost everybody in the VWD, including the Board of Directors, were aware of the cash advances as they were active participants in the practice of releasing cash advances from the cash collections of the Office Bill

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<sup>116</sup> Exhibit "Y"-Prosecution, Records, Vol 2, p. 756

<sup>117</sup> Exhibit "E"-Prosecution, Records, Vol. 2, p. 326

<sup>118</sup> Exhibit "U"-Prosecution, Records, Vol. 1, pp.114-117

<sup>119</sup> Exhibit "X"-Prosecution, Records, Vol.2, pp.754-755

<sup>120</sup> TSN, November 7, 2016, p. 8

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Collector.<sup>121</sup> He even categorized them as liable officers in the initial audit findings during the exit conference.<sup>122</sup> He was also informed by accused-appellant that most of the restituted amount of Php 480,000 + came from the Board of Directors, except the Board Chairman, Atty. Limos, and the brother of the former mayor who was a barangay captain.<sup>123</sup>

Yet, despite Atty. Ocampo's knowledge of the unauthorized cash advances during the cash examination audit of VWD, he did not require the cashier (disbursing officer) and the General Manager (the approving authority of the cash advances) to explain why they allowed such practice and never required those who availed of the cash advances (officers, members of the Board and employees) to liquidate the same, or if unable to liquidate within the prescribed period, to explain its non-liquidation, all in clear violation of COA Circular 97-002 in relation to Section 102 of P.D. 1445.

There were other accountable officers that should have been subject to a regular audit, however, despite his confirmation that missing funds came partly from cash advances and partly from unremitted collections of accused-appellant,<sup>124</sup> the demand letter was addressed to Sales alone and not to the cashier (Mr. Jesus Chan), the General Manager (Mr. Lydio Raguindin), and those employees and members of the Board of Directors who did not liquidate the cash advances. Failing to inquire further on the facts and circumstances of the tolerated office practice of cash advances to the employees, officers and members of the Board of Directors which resulted to the alleged cash shortage, and take steps to identify the accountable persons who did not liquidate their cash advances during audit fall short of the required compliance with the strict requirements of COA Circular No. 97-002,<sup>125</sup> the Manual of Cash Examination, and Government Auditing Code of the Philippines (PD 1445). The evident silence of COA audit team is highly irregular, more so, when the complaint for malversation was filed upon approval and authority of the Board of Directors whose members, except for two(2) members, were recipients of the unauthorized cash advances.

The cashier (Chan), accountant (Cabading), General Manager (Raguindin), employees and members of the Board who failed to liquidate their cash advances are all accountable officers of the public funds of VWD under the aforequoted Section 102 of P.D. 1445. As head of the agency, VWD General Manager Raguindin, is the approving authority of the grant of cash advance as he has the responsibility to ensure the proper granting,

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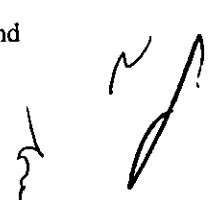
<sup>121</sup> TSN, February 12, 2018, p. 2- 3

<sup>122</sup> TSN, July 14, 2021, p. 2

<sup>123</sup> TSN, February 12, 2018, p. 4

<sup>124</sup> Id., p2

<sup>125</sup> Restatement with amendments of the rules and regulations on the granting, utilization and liquidation of cash advances provided under COA Circular No. 90-331 dated May 3, 1990



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utilization and liquidation of all cash advances in accordance with rules and regulations under Section 8 of COA Circular No. 97-002, thus:

“8. RESPONSIBILITY OF THE AGENCY HEAD

“It shall be the responsibility of the Head of the Agency to ensure the proper granting, utilization and liquidation of all cash advances in accordance with these rules and regulations.”

However, the COA audit team blamed the wrongdoing in the release of cash advances on accused-appellant Sales alone on the ground that she was the only accountable officer insofar as the shortage is concerned, so she has to account all the funds in her possession. She was not even the approving authority of the petty cash advance of VWD. She released the cash in her possession as cash advance upon order and authority of the cashier, Mr. Chan, on his representations and assurance that it will be reconciled and balanced at the end of the day out of the petty cash vouchers in his possession and replenishments from the Petty Cash Fund. In his direct examination on November 7, 2016,<sup>126</sup> Atty. Ocampo testified on the legal process in availing of the cash advances, thus:

PROS. BELTRAN:

Q: What are these cash advances all about, Mr. Witness?

ATTY. OCAMPO:

A: It has to be their personal or official transaction, like, if they want to travel outside Villasis, they make cash advances for their travel out of the collections, which should not be the case.

Q: Why not?

A: Because collections should be deposited in (the) bank. If they want to make cash advance, it has to done in legal process, sir.

Q: Will you tell us what is the legal process, Mr. Witness?

A: The usual process or legal process must be, they will draw a voucher and there must be a travel order and the voucher must be signed by the approving officer before the cash will be withdrawn and a check also will be issued, sir.

Q: Who should be the approving officer, Mr. Witness.

A: The General Manager, sir.

During his cross-examination by the defense counsel on February 12, 2018,<sup>127</sup> Atty. Ocampo testified that the necessary documents are prepared by the cashier or the accountant, thus:

ATTY. ABAS:

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<sup>126</sup> TSN, November 7, 2017, pp. 8-9

<sup>127</sup> TSN, February 12, 2018,

Q: In case of cash advances who is supposed to release that?

ATTY. OCAMPO (witness):

A: Supposed to be when a cash advance is made they have to prepare a voucher and then the cashier or the accountant will prepare the necessary documents for the cash advance if there is a valid purpose. But what happened was (that) the collection in the possession of the collecting officer was (released) as cash advance personally by (*sic*) the board of directors. [words in brackets supplied]

Accused-appellant explained upon clarificatory questions from the court during her cross-examination on July 27, 2022 that, upon orders of the cashier, Mr. Jesus Chan, her superior being the disbursing officer of VWD, she released portions of her collections as cash advances to officers and employees of VWD.<sup>128</sup> At the end of the day, or when she remitted to the cashier the collections of the day, he confirmed that part of the collections that were not turned over consisted of those that he had instructed to be released as cash advances earlier in the day.<sup>129</sup> He then informed accused-appellant that he would reconcile the remitted cash with the report of cash collection by declaring that the difference or what is lacking in the cash remittance will be covered by the petty cash vouchers from accused-appellant collections during those time that he had not yet withdrawn from the bank for petty cash; when he had no money in his possession; or when he was busy.<sup>130</sup>

PROS. BELTRAN

Q: Now, we will go to that affidavit, that affidavit although you mentioned that you executed that but you did not present to the court, however, you identified during your testimony a letter which you sent to Atty. Ocampo, is that correct?

A: Yes, sir.

x x x

x x x

x x x

Q: And in this affidavit you did not deny that you gave cash advances to the officers and employees of the Villasis Water District, is that correct?

A: Yes, sir but it is upon order of the cashier.

x x x

x x x x x x

Q: You admitted in fact in your letter about this giving of cash advances to the officers and employees of the Villasis Water District and also stated in your letter that you gave cash advances because that has been a tolerated practice through the years and have long been in place before you assume office?

A: Yes, sir.

Q: Now, am I also correct to state that in your letter which you were seeking for re-audit you did not actually deny having remitted your collection to the cashier, am I correct?

A: Yes, sir.

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<sup>128</sup> TSN, July 27, 2022, p. 6-7  
<sup>129</sup> Id., p.7  
<sup>130</sup> Id., 7,8

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COURT

Q: What is your position again in the Villasis Water district during that period?

A: Office Bill Collector, you honor.

Q: You mean to say she is the first/front in line whenever clients will pay their bills she will accepts payment.

PROS. BELTRAN

Yes, your honor and she will receive the payment.

COURT:

Q: Based on your job description, correct me if I'm wrong, any of you, that everyday before going home you must remit your collection to the cashier, is that it?

A: Yes, you honor.

Q: So, is releasing cash advances still part of your job as a collector?

A: No, your honor but if it is the order from my superior, that is the time that I will release.

Q: Of course this amounts that you have released they were collected not on a single day but for several days, correct?

A: Yes, sir.

Q: And the cashier did not even bother to ask you why the non-remittance each day of your collection, correct?

A: Because at the end of the day we will have the balancing and reconciliation so, it's not possible that my collection and that of his will not be balanced. He will ask me, "*are the lacking amount represents the cash advances that I have told you*", and then I will say, yes and he said "*okay, I will take charge of this anyway, I have petty cash vouchers which is supposed to be the one to be released.*" [italics and quotation marks supplied]

Q: That's it. It has balanced the figure but not your actual remittance that you turn over to him, correct?

A: Yes, sir, the money does not tally the amount of the receipts but the cashier will say that he will be the one to take charge because petty cash voucher is with him.

Q: Yes, there is no question on those documents but the question is there were no proper balancing of the amounts but the cash which you turn over remains in you, correct? He did not take it from you.

A: I turn over it every day, you honor. It can't be that it's not balanced.

Q: If you turned it over every day, what cash advances are you giving to the employees and officers?

A: From the money that I have collected or in my possession because the cashier will say, "*you take that money for the cash advances from the money that is with you.*" [italics and quotation marks supplied]





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Q: I thought you are remitting to the cashier everyday so where did you get the money for cash advance?

A: The money that is with me that is supposed to be remitted to Mr. Jesus Chan, the cashier, he will say that I will release that money for cash advances.

Q: Why, you are the one handling the petty cash?

A: No, your honor.

Q: So, what cash advances that you are releasing now?

A: The money that is with me I remitted to Mr. Chan, that's what I mean in that we had a balanced or tally at the end of the day.

Q: My question now is this, where the money came from, the money that you are releasing because you said you are remitting everyday to the cashier?

A: From my collection, your honor.

Q: You said every day you are remitting that to the cashier?

A: Because the cashier will say, *"the cash advances will be taken from you Reina and we will just tally later and then at the end of the day we will have a tally"*, and that's the time he will give me the petty cash voucher. [italics and quotation marks supplied]

Q: Did you religiously remit your collections everyday to the cashier?

A: Yes, your honor.

Q: Where do you get the money that you will give as cash advances?

A: The money for cash advance is taken from the payment made by the consumers that's within me and the cashier will tell me, *"you just take the cash advance money from your collection and that we will have a reconciliation or balancing later."* [italics and quotation marks supplied]

Q: So therefore you are not qualifying your answer a while back that you actually remitted your collections everyday.....maybe that was only your conclusion but not really true that you were remitting everyday your collections to the cashier because the cashier gives you instruction when all remittance because you will use that to pay the cash advances of the officials and employees, is that correct?

A: Yes, your honor.

COURT:

Proceed fiscal.

PROS. BELTRAN:

Q: Madam witness, you know for a fact that that system is not allowed under the law?

A: Yes, sir.

Q: But despite that knowledge you still give cash advances to the officers and employees of the water district?

A: Because that is the order of the cashier and my superiors, sir.

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COURT:

Q: What is the SOP or the standard operating procedure in your office whenever you were not able to actually remit your daily collections to the cashier, just for one day? What should be done by your superiors?

A: That can't be your honor because the cashier and the bill collector should have a balance at the end of the day.

Q: In other words, in so far as your documents are concerned everything was properly balanced, correct?

A: Yes, your honor.

Q: You are saying now that based on your practice there is no missing amount because the papers were already read by your cashier making it appear that he has already received your remittance but in truth and in fact he did not, correct,

A: Yes, your honor.

It must be noted that the cashier, Mr. Jesus Chan, under COA Circular 97-002, is the disbursing officer of VWD. However, upon orders of Mr. Chan, accused-appellant released the cash advance to the employees, officers and members of the Board when the cashier has not yet withdrawn from the bank for the petty cash, when he has no money in his possession or when he is busy.<sup>131</sup> Accused-appellant testified on re-direct examination, thus:

ATTY. ABAS:

Q: You mentioned a while ago that whenever you are ordered by Mr. Jesus Chan, why did he do that, does he have no cash for him to disburse to these people making cash advance?

A: If he has not yet withdrawn from the bank for the petty cash, he has no money in his possession or when he is busy, sir.

Q: You mentioned that at the end of the day, you remit the collections?

A: Yes, sir to the cashier.

Q: If you will remit the collections, of course, the receipt will not tally with your cash on hand, right?

A: Yes, sir.

Q: What is the process done by Mr. Chan to balance, you said that balance it, what is done to balance that.

A: He will bring out the petty cash from him and then he will replenish the amount lacking from my remittance.

Q: So, that's why the amount of the receipts collected is always equivalent to the cash remitted to the cashier?

A: Yes, sir.

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<sup>131</sup>

TSN, July 27, 2022, pp. 30-31

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Q: And then after it was received by the cashier, what is he going to do with those collections that you remitted to him?

A: He will issue receipts and it's up to him and the accountant to talk, the cash and the receipts are with him already.

Q: Was there any chance in your tenure there that you were not able to balance the receipt and the cash?

A: None, sir. It is always balanced.

The cash advance subject of the testimonies of Atty. Ocampo of COA audit team and the accused-appellant involves "regular cash advance" under COA Circular No. 97-002, more specifically, petty cash advances consisting of small payments for maintenance and operating expenses which cannot be paid conveniently by check or are required to be paid immediately. Regular cash advances are those granted to cashiers, disbursing officers, paymasters, and/or property/supply officers for salaries and wages, commutable allowances, honoraria and other similar payments to officials and employees and petty cash advances.

Accused-appellant's proffered explanation for the alleged cash shortage in her reply letter dated April 27, 2011 refers to the grant of regular cash advance, more specifically cash advance for "petty operating expenses." In *Meneses vs. Sandiganbayan, et. al.*,<sup>132</sup> it was held by the Supreme Court, reiterating its earlier ruling in *Cabello vs. Sandiganbayan*,<sup>133</sup> that the grant of loans through the "vale" system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons which is punishable by law. To tolerate such practice is to give a license to every disbursing officer to conduct a lending operations with the use of public funds.

However, the cases of *Meneses* and *Cabello* cannot be applied to the instant case. The factual circumstances in both cited cases are not present in the instant case. It was not the accused-appellant herein who granted the cash advances to the concerned employees, officers and members of the Board of Directors of VWD for office operational expenses, travel expenses, advances in per diems of the Directors, or in some instances, for personal use. As testified to during trial, accused-appellant merely released the cash in her possession (collections of the day) as "cash advances" upon orders of her superior, Mr. Jesus Chan, the cashier, who is the disbursing officer of VWD of petty cash fund in his possession under COA Circular No. 97-002. On the strength of the representations of Mr. Chan that the purported "cash advances" were apparently for valid purposes as per his instructions, that is, for office expenses, travel expenses, *per diems* advances for the members of the Board, among others, she released the cash in her possession to its recipients.

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<sup>132</sup> G.R. No. 100625, May 20, 1994

<sup>133</sup> G.R. No. 93885, May 14, 1991

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Accused-appellant released the funds in her possession in good faith under the belief that she was acting by virtue of the authority of the cashier, Mr. Chan, who is the disbursing officer of the petty cash fund of VWD. She was under the honest belief that the amount released as "cash advances", as expressed to her by Mr. Chan, will be balanced, reconciled or tallied later at the end of the day with the petty cash vouchers in his possession as well as with the remitted cash and receipts of her daily collections. In case of difference/discrepancy or lacking in the amounts remitted with the receipts turned over to him, the same will be replenished by Mr. Jesus Chan from the Petty Cash Fund in his possession. Thus, in so far as she is concerned, everything was properly balanced although in reality, as observed by the court during the trial, there was no actual transfer of cash to the cashier, Mr. Chan, because it was earlier released as cash advances during the day.

In the case of *Villacorta vs. People*,<sup>134</sup> the Supreme Court acquitted Felix Villacorta, the municipal treasurer of Pandan, Catanduanes, of the crime of malversation of public funds on the grounds that he did not put the missing funds to personal uses, that his having "allowed others to freely participate of the chits/vouchers" was a practice which seemed to have been tolerated even during the time of his predecessor and there was no negligence approximating malice or fraud because the wrong payments were made in good faith.

In *Quizo vs. Sandiganbayan*,<sup>135</sup> accused Arturo Quizo, a Money Order Teller of Cagayan de Oro Post Office, successfully overthrew the statutory presumption of malversation. He satisfactorily proved that not a single centavo of the missing funds (Php17,421.74) was used by him for his personal interest considering that the reported shortage actually referred to disallowed items by the Audit Team representing cash advances. He explained that the granting of cash advances was done in good faith, with no intent to gain and borne out of good will considering that it was a practice tolerated in the office. It was ruled that negligence evidentiary of malice or intent to defraud the government cannot be imputed to him; and the actual cash shortage was only Php 1.74 which, together with the disallowed items, was fully restituted within a reasonable time from date of audit.

The case of *Rueda vs. Sandiganbayan*, is instructive although, as in the cases of *Quizo* and *Villacorta*, the same is not on all fours with the case of accused-appellant Sales. Juan A. Rueda, Jr., municipal treasurer of Tigaon, Quezon, was found, after a cash examination audit, to have a shortage of Php 107,299.02 which consisted of "chits" and "vales" [Php 41,234.71] evidencing cash advances from the cash collection of the municipal collectors before they were turned over to him; the legitimate expenses of the municipality [Php 53,700.00], and; the unsettled cash collections [Php12,384.06] of the municipal collectors. Upon demand, he

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<sup>134</sup> G.R. No. 68268, November 12, 1986

<sup>135</sup> G.R. No. 129064, November 29, 2000

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failed to have the amount forthcoming or to render his written explanation why the shortage occurred. When charged with malversation of public funds, he disclaimed criminal liability on the ground that the assumed “shortage “ was the result of unliquidated cash advances made by several municipal officials and employees covering the period of audit as evidenced by various “chits” or “vales”, and expenses of the municipal government as evidenced by several disbursement vouchers. The cash advances were taken from the cash collections of the municipal collectors before the cash collections in the amount of Php 41,234.71 were turned over to him as municipal treasurer. What the collectors turned over to him were the “chits” and “vales” evidencing such cash advances. The cash advances were made with the consent of the municipal mayor, and had been the practice in the municipality long before he assumed office as municipal treasurer. He would later deduct the cash advances made from their respective salaries and turned over to the Office of the Municipal Treasurer. After trial, the Sandiganbayan found him guilty as charged.

On appeal to the Supreme Court, *Rueda* was acquitted on reasonable doubt. It was ruled that under the accounting principles, there was no shortage on Rueda’s cash accountability. The auditors mistakenly included as cash items collectibles in the form of “vales” and “chits” and the “disbursement vouchers” for legitimate expenses of the municipalities. By definition under Article 217 of RPC, to be held accountable, the public officer must receive the money or property, and later fails to account for it. When asked to account for the cash in his accountability, this necessarily means that he has to produce the cash in bills and coins and other cash items that he received. It does not include collectibles and receivables or even promissory notes. With respect to cash advances (Php41,234.71) in the form “chits” and “vales”, he did not receive the cash nor gave cash advances for they were taken from the cash collections of the municipal collectors before they were turned over to him; he was able to present the supporting documents for the expenses of the municipality[Php 53,700.00] after audit, and; the unsettled cash collections of Php 12,384.06 of municipal collectors had been turned over to the invoicing officer of the treasury. He was found by the Supreme Court to have satisfactorily explained the cash “shortage” in his accountability at the time of audit. No portion of his cash accountability has been malversed by him or put to his personal use.

In the instant case accused-appellant collects the monthly water bills of the concessionaires/consumers of the VWD and remits her collections on a daily basis to the cashier, Mr. Chan, at the end of the day. Upon query from the court, she testified that she has a daily average collections of Php 35,000.00 to Php 40,000.00 a day.<sup>136</sup> Before remitting the cash collections in her possession to the cashier, certain amounts in cash are released as cash advances, upon orders of the cashier, to certain employees, officers,

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<sup>136</sup>

TSN, July 27, 2022, pp. 28-31

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and members of the board of directors who availed of the cash advances. The practice then prior to her appointment as collector in 2008 was to list their names and amount in a notebook for record purposes. She said that the largest amount she could release as cash advance is Php 5,000.00. The cashier will tell her: “[Y]ou just take the cash advance money from your collections and that we will have a reconciliation or balancing later.”<sup>137</sup>

Because of the authority and ascendancy of Mr. Chan (cashier), Ms. Cabading(accountant), Raguindin (General Manager) as well as the members of the Board (who availed of the cash advances) over her as a subordinate employee, accused-appellant’s control and custody of her collections of the day was significantly diluted when she obeyed the order of the cashier, Mr. Chan, to release part of her collections as cash advances. She was of the honest belief that it was upon the authority of the cashier. She relied on his assurance that cash released were supported by petty cash vouchers or will be replenished by the Petty Cash Fund and accordingly balanced and reconciled at the end of the day.

Accused-appellant may have crossed the boundaries of his assigned duties and functions as bill collector, it was, however, to our mind, in so far as revealed from the records, at most a pure mistake of judgment, an error of the mind operating upon the belief that as a subordinate employee she has to obey to the orders of his superiors, Mr. Jesus Chan (cashier), the General Manager Raguindin and the members of the Board, as the case maybe. She acted in good faith in the honest belief that “cash advances” were all for valid purposes, and not to enrich herself or another by criminal misappropriation. It was a mistake or error in judgment, not a crime. It may well be that said mistake or error may be categorized as a serious mistake which would subject her to reprimand, suspension, or dismissal from the service when so warranted. However, from the facts on records, it was not criminal. Consequently, no presumption of criminal intention arises from the act of releasing the cash out of her collections upon orders of her superior as cash advances.

While it is true that statutory presumption of malversation arises when she failed to have duly forth coming any public funds or property with which she is chargeable, upon demand by any duly authorized officer constituting a *prima facie* evidence that she has put such missing funds or property to personal uses.<sup>138</sup> However, the presumption is rebuttable. If she presents evidence showing that, in fact, she has not put said funds to personal uses, then that presumption is destroyed.<sup>139</sup>

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<sup>137</sup> Id., p. 8.

<sup>138</sup> Article 217, Revised Penal Code of the Philippines

<sup>139</sup> Diaz vs. Sandiganbayan, G.R. No. 125213, January 26, 1999, citing U.S. vs. Catolico, G.R. L-6486; 18 Phil. 504, U.S. Elvina, G.R. L-7280, 24 Phil 230

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Here, the amount of Php 480,627.58 which was reported as the cash shortage of accused-appellant were given as "cash advances" from her collections upon order of the cashier (Mr. Chan), the disbursing officer of the petty cash fund of VWD. Her explanation, as evidenced by her reply-letter dated April 27, 2011 and her testimony in court, was not contradicted nor discredited by the prosecution. The COA audit team leader, Atty. Ocampo, himself confirmed that cash advances were given to the employees, officers and member of the Board, but admitted that he did not find it necessary to require them to explain or liquidate them on the ground that only accused-appellant is accountable for the said funds.

The retention of receipts by the Mr. Chan (cashier) which should have been turned over to the accountant (Cabading) as evidenced by a bunch of five(5) to six(6) month old receipts entrusted to accused-appellant but were returned to the cashier at the end of the day<sup>140</sup> casts serious doubt on the COA findings that some of missing amounts were reported as unremitted collections of accused-appellant<sup>141</sup> while the other collections, as admitted by Atty. Ocampo, were used as cash advances.<sup>142</sup> The said testimony of accused-appellant was not challenged nor controverted by direct evidence by the prosecution. In view of the absence of complete, accurate and thorough conduct of audit, it was unclear whether or not the said retained receipts correspond to the unremitted collections of accused-appellant or cash advances to officers, employees and board members.

The prosecution failed to prove by direct evidence that the absence of funds in question was due to her personal use, thus completely negating the statutory presumption which arises from the absence of funds. There was no negligence approximating malice or fraud because the erroneous release of funds were made in good faith. Neither can she be held liable for malversation by negligence as she was of the honest belief that it had the official approval of her superior, the cashier, and the general manager, as approving authority of the cash advance under COA Circular No. 97-002.

Moreover, the statutory presumption applied by the trial court is completely negated by the inaccuracy and incompleteness of the audit as shown by the Financial Audit Report which, on its face, did not report and identify the personnel who remitted the restituted the total amount of Php 428,828.30 on several dates of March 2011 and for what purpose they were remitted. The total amount of unremitted collections reported by COA as "cash shortage" erroneously included the amount of penalties which should not be included in the first place considering that the water consumers paid on time, hence there should be no penalties imposed on them.

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<sup>140</sup> TSN, February 3, 2021, pp. 6-7; TSN, July 27, 2022, pp. 23, 24

<sup>141</sup> TSN, February 12, 2018, pp.2-3

<sup>142</sup> TSN, November 7, 2016, p.8



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When accused-appellant came to know about the VWD Board Resolution<sup>143</sup> authorizing the filing of malversation case against her, she inquired from Atty. Ocampo in COA Regional Office in Urdaneta, Pangasinan why she was singled out in the criminal case filed by the GM Raguindin against her, she was told to prepare her letter-request for re-audit which she did on November 21, 2012.<sup>144</sup> Acting favorably on her letter-request for re-audit of her cash accountability, Atty. Robert Ocampo endorsed in his letter, dated November 21, 2012<sup>145</sup> to the COA Regional Director, Region 1, explaining that the Schedule of Remittances of Unremitted Collections as of March 2011 (Annex "B" of the Financial Audit Report), does not show who remitted these funds and for what purpose they were remitted. Atty. Ocampo acknowledged her constitutional right to be fully heard before the charge was filed against her, citing the case of *Tinga vs. People, G.R. L-57650, April 15, 1988*, and Section 52, par. 2. of PD 1445 on opening of settled and certification of new balance.

"When any settled account appears to be tainted with fraud, collusion, or error of calculation, or when new and material evidence is discovered, the Commission may, within three years after the original settlement, open the account, and after a reasonable time for reply or appearance of the party concerned, may certify thereon a new balance. An auditor may exercise the same power with respect to settled accounts pertaining to the agencies under his jurisdiction."

When it was not acted upon by the COA Regional Director, she was given a third endorsement letter by Atty. Ocampo, dated January 28, 2013<sup>146</sup> where he reiterated that Reinaflor Sales was not the one who made the restitution on the amount of Php 428,828.30, and that further evaluation showed that the total amount of unremitted collections included the amount of penalty. Considering that the shortage should not include the penalty for the amount unremitted, the Atty. Ocampo need to certify a new balance.

"As to our recommendation for the re-opening of the accounts, we already stated in our memorandum dated November 21, 2012 that according to the Accountable Officer, she was not the one made the restitution on the amount of P428,828.30. In addition, when we evaluated further the total amount of unremitted collections, we noticed that we included the amount of penalty thereof. Hence, granting that the Accountable Officer incurred a shortage for failure to remit the same, the shortage should not include the penalty for the amount remitted. If we are to consider the forgoing, we need to certify a new balance.

The error or mistakes, as admitted by Atty. Ocampo himself, raised the strong probability that had accused-appellant's request for re-audit or re-examination been granted by the COA Regional Director, and

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<sup>143</sup> Exhibit "V"-prosecution, Records, Vol. 2, pp. 748-749

<sup>144</sup> Exhibit "2", Records, Vol. 2, p. 911

<sup>145</sup> Exhibit "3", Records, Vol. 2, pp. 912-913

<sup>146</sup> Exhibit "4", Records, Vol 2, p. 914



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consequently, a thorough, complete and accurate audit of the old office practice of grant of cash advances to employees, officers, General Manager and members of the Board of VWD was conducted, the remaining balance could have been satisfactorily accounted for. The COA audit team could have held responsible the other accountable officers who were privy to the practice of cash advances out of the collections of accused-appellant herein.

The error or mistake in the Financial Audit Report is remarkably highlighted when Atty. Ocampo gave credence to accused-appellant's manifestation in his first letter-endorsement to the COA Regional Director for re-audit that she was not the one who made the payment on several dates in March 2011 as evidenced by receipts which were marked as Exhibit "C" and series for the prosecution. She testified on July 27, 2022 that while the receipts were apparently issued under her name, she was not the one who made the payments thereon; that it was the cashier, Mr. Chan, who made most of the restitution and the one who issued the receipts under her name (Reinaflor Sales) and made it appear that the accused-appellant was the one who made the restitution. It must be noted that the receipts in the possession of COA which were presented as evidence by the prosecution were all in original copies contrary to the customary practice in the course of business that the original copy of the receipt should be given to the payor. If it was accused-appellant who made all the payments, the original copies of the receipt should have been in her possession and custody. Notably, all the original copies were in the possession of the COA and prosecution.

The argument of the prosecution in its *Comment* to the accused-appellant's *Motion for Reconsideration* of the trial court's judgment of conviction that Exhibits "3" and "4" were not timely formally offered, hence, cannot be considered evidence is misplaced. The general rule under Section 34, Rule 132 of the Revised Rules of Evidence that evidence not formally offered cannot be considered by the court as evidence admits of an exception. The instant case where Exhibit "3" (Atty. Ocampo's first endorsement for re-audit) and Exhibit "4" (the third endorsement for re-audit) had been identified by testimony, duly recorded during trial on July 14, 2021,<sup>147</sup> and had been incorporated in the records<sup>148</sup> of the case is an exception to the rule.<sup>149</sup> It was grave error for the trial court to have ignored accused-appellant Exhibits "3" and "4" in the assailed decision.

In *People vs. Tinga*,<sup>150</sup> the Supreme Court acquitted on reasonable doubt Catalino Tinga, a Municipal Treasurer of Bogo, Cebu, of the charge of malversation of public funds in the amount of Php 70,879.72 out of original alleged shortage of Php 144,094.98 because the audit examination

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<sup>147</sup> TSN, July 14, 2021, pp. 10-11

<sup>148</sup> Records, Vol. 2, pp. m912-914

<sup>149</sup> Heirs of Roque F. Tabuena vs. Land Bank of the Philippines, G.R. No. 180557, September 26, 2008, cited in Star Two (SPV-AMC), Inc. vs. Howard Ko, Min Min See Ko, Jimmy Ong and Grace Ng Ong, G.R. No. 185454, March 23, 2011

<sup>150</sup> G.R. L-57650, April 15, 1988

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conducted left much to be desired in terms of thoroughness and completeness as disclosed by the errors that surfaced subsequently. Even the assailed decision of the Sandiganbayan in *Tinga* case found many errors in the audit made of *Tinga's* accountability, e.g., certain amounts (Php 12,654.80) were not credited in *Tinga's* favor as deductible from his alleged shortage; the defense that he was a victim of robbery was fully supported, but the audit team ought to have credited the loss of Php10,708.14 in his total accountability for he never pocketed for his benefit the said amount; the collection in the amount of Php7,398.30 which was not turned over to him by a certain Laurencio Masongsong for which he was charged and convicted was included in the accountability of *Tinga*; the inclusion of the sum of Php 30,000.00 to *Tinga's* accountability appears to be honestly disputed, among other errors in audit. The said errors in audit served as basis for *Tinga* to insist on a review or re-audit. In acquitting *Catalino Tinga*, the Supreme Court made the following pronouncements:

“At this juncture, it may not be amiss that considering the gravity of the offense of Malversation of Public Funds, just as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. Accounts should be examined carefully and thoroughly “to the last detail”, “with absolute certainty” in strict compliance with the Manual of Instructions. Special note should be taken of the fact that disallowances of lack of pre-audit are not necessarily tantamount to malversation in law. Imperative it is likewise that sufficient time be given examined officers to reconstruct their accounts audit and refute the charge that they had put government funds to their personal uses. Access to records must be afforded them within a reasonable time after audit when disbursements are still fresh in their minds and not years after when relevant official records may.”

In *Querijero vs. People*,<sup>151</sup> accused Flordeliza F. Querijero, cashier of Integrated Provincial Health Office, Lucena City, Quezon, was acquitted by the Supreme Court of the charge of malversation for public funds because her guilt has not been proved beyond reasonable doubt for the shortage of Php165,722.78. The audit conducted was incomplete, irregular and inaccurate when other accountable officers in the office were excluded from the audit examination and the other safes in the office were not opened by the audit team. In restating the pronouncements in *Tinga vs. People*, supra, the Supreme Court stated that had the audit team been more thorough and complete in its examination by including all the accountable officers and inspecting all the safes and cash receptacles in their possession, the report would have been more credible and accurate.

Verily, the pronouncements of the Supreme Court in the 1971 case of *People vs. Dramayo*<sup>152</sup> that accusation is not, according to the fundamental

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<sup>151</sup> G.R. No. 153483, February 14, 2003

<sup>152</sup> G.R. No. L-21325, October 29, 1971

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law, synonymous with guilt applies in the instant case. It is incumbent on the prosecution to demonstrate that culpability lies. The guilt of the accused must be shown beyond reasonable doubt. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should sentence be one of conviction. It is thus required that circumstance favoring his innocence be duly taken into count. The proof against him must survive the reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrated the act but it amounted to a crime. What is required then is moral certainty.

Here, the fact that Atty. Ocampo, the head of the COA audit team, favorably recommended the need for a re-audit of the cash accountability of accused-appellant to certify a new balance manifests that the audit was not complete and conducted with sufficient thoroughness. The audit was inaccurate. The shortage which was reported as "unremitted collections" included the amount of penalties. There is likewise a need to report or identify the persons who allegedly paid several amounts and the purpose of payment in a span of 12 days starting March 9, then sequentially on March 16 to March 30, 2011 or a total amount of Php 480, 828. 30, all in the name of the accused-appellant Sales in the official receipts (O.R.) which she denied because the payments were made by other persons. The O.Rs. in the possession of the audit team were all in their original copies as found by the trial court as contrary to the customary business practice that original copy goes to the payor and the cashier retains only the duplicate copy.


Notably, the audit report stated that accused-appellant has a balance of accountability as of March 9, 2011 in the amount of Php 480,627.58 (amount stated in the *Information*) out of her original Php 909,455.88 cash shortage after audit on March 9, 2011, but all the reported restitutions started only on March 9, 2011, then sequentially from March 16, 2011 until March 30, 2011. In its entirety, the statutory presumption of malversation cannot arise from such unusual circumstances more characterized as irregular, incomplete and inaccurate audit under the Manual of Cash Examination, COA Circular No. 97-002 on the grant, utilization and liquidation of cash advances in relation to Section 102 of Presidential Decree 1445, otherwise known as the Government Auditing Code of the Philippines.

**WHEREFORE**, in view of the foregoing, the decision of the Regional Trial Court of Villasis, Pangasinan, Branch 50, in Criminal Case No.V-1729 is hereby **REVERSED** and **SET ASIDE** and accused-appellant Reinaflor Sales is **ACQUITTED** of the crime of malversation of public




funds for failure of the prosecution to prove her guilt beyond reasonable doubt.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice


**WE CONCUR:**

  
**MARIA THERESA V.  
MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E.  
CORPUS-MAÑALAC**  
Associate Justice

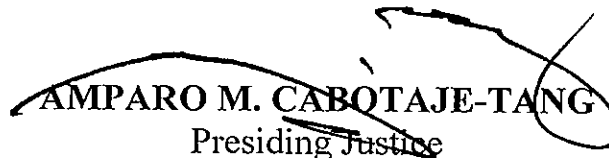
**ATTESTATION**

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.

  
**RAFAEL R. LAGOS**  
Chairperson, Fifth Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is 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