



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY  
  
**FIFTH DIVISION**

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**PEOPLE OF THE PHILIPPINES,**  
**Plaintiff-Appellee,**

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

**- versus -**

**ESTHER S. PAGANO**  
**Accused-Appellant.**

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

*Promulgated:*  
*December 20, 2023*

X-----*Guillermo J. Sison*-----X

**DECISION**

***MENDOZA-ARCEGA, J.:***

The present case is an Appeal<sup>1</sup> from the Joint Decision<sup>2</sup> of the Regional Trial Court (RTC) Branch 10 of La Trinidad, Benguet finding accused-appellant, Esther S. Pagano (herein referred to as accused-appellant), guilty beyond reasonable doubt of twelve (12) counts of Malversation of Public Funds as defined under Article 217 of the Revised Penal Code (RPC).

This case originated from the (1) complaint<sup>3</sup> filed by Mauricio B. Ambanloc (Ambanloc), Provincial Treasurer of Benguet alleging therein that accused-appellant incurred a cash shortage in the amount of One Million Fifty-One Thousand One-Hundred Twenty-Four Pesos and Seventeen Centavos (P1,051,124.17); and (2) complaint filed by the Commission on Audit (COA), for one (1) count of Malversation of Public Funds also against

<sup>1</sup> Dated March 7, 2023; SB 23 AR 0009-0020, pages 69-70.

<sup>2</sup> Dated February 28, 2023, penned by Presiding Judge Jorge S. Manaois, Jr.

<sup>3</sup> Affidavit Complaint, dated January 20, 1998; Criminal Case No. 99-CR-3544, Rollo 1, pages 4-5.

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accused-appellant in the amount of Three Million Twenty-Nine Thousand Six Hundred Seventy-Five Pesos and Forty Centavos (P3,029,675.40). In total, the alleged amount malversed is Four Million Eighty Thousand Seven Hundred Ninety-Nine Pesos and Fifty Centavos (P4,080,799.57).

Accused-appellant is the Cashier IV of the Provincial Treasurer's Office, La Trinidad, Benguet and as such, her duties and functions include collection of cash and checks under the General Fund and to deposit the same with the depositary banks maintained by the Province of Benguet. The latter maintains savings and current accounts (combination) and time deposits with the Development Bank of the Philippines (DBP) – Baguio City Branch, Land Bank of the Philippines (LBP) – La Trinidad Branch, and the Philippine National Bank (PNB) – La Trinidad Branch. Interest on time deposits is treated as collections in the book of accounts of the Provincial Government of Benguet.

In January 1998, Ambanloc conducted an investigation on the accounts of herein accused-appellant and discovered that there is a shortage amounting to P1,051,124.17. Allegedly this shortage was caused by her failure to issue official receipts for the purpose of acknowledging the following checks intended as interest payments under the accounts of the Province of Benguet with DBP – Baguio, to wit:

DBP Check Nos.	Date Issued	Amount
004189	January 6, 1997	P 33,250.00
004319	February 20, 1997	171,000.00
004460	April 25, 1997	102,755.56
004506	May 27, 1997	99,733.31
004550	June 1, 1997	112,388.87
004596	July 31, 1997	96,333.31
004629	August 25, 1997	69,676.06
004681	September 24, 1997	69,878.61
004745	October 24, 1997	75,955.00
004762	November 5, 1997	141,666.62
004792	November 24, 1997	78,486.83
TOTAL		1,051,124.17

Accused-appellant was later on informed of said findings and submitted her explanation with the corresponding receipts relative to the DBP checks she received as payments for interest. Ambanloc then gave his comment, stating therein that the official receipts indicated by the accused-appellant were not the actual receipts covering the shortage but rather, these were issued on account of other checks or transactions.

In February 1998, an audit team consisting of Marjorie J. Calgo and Artemio L. Javier, conducted an examination on the cash and accounts of appellant for period January 1, 1996 to December 31, 1997. Their findings

show that the accused-appellant incurred a shortage amounting to P4,175,915.12. This was later on the subject of two notice of charges (NC), (1) NC No. 98-002-101(96) dated March 4, 1998 representing the unaccounted balance for the period January 1 to December 31, 1996 in the amount of P1,370,422.23; and (2) NC No. 98-001-101(97) dated February 18, 1998 representing the unaccounted balance for the period January 1 to December 31, 1997 in the amount of P2,805,472.89. Subsequently, a demand letter dated July 27, 1998, for the corresponding notice of charges, was issued to accused-appellant.

It was later on discovered that: one check amounting to P10,893.33 issued within January 1 to December 1996 which was initially reported to be unreceipted, was actually receipted; and two checks issued within January 1 to December 1997 amounting to P84,221.66 which were initially reported as unreceipted, was also receipted. This resulted to an adjusted shortage amounting to P4,080,799.57.

Upon review of the Graft Investigation and Prosecution Officer (GIPO) Maritess Fabila, the resolution of the provincial prosecution to file eleven counts of Malversation of Public Funds against herein accused-appellant in the total amount of P1,051,124.17 was affirmed. Correspondingly, GIPO Fabila issued a Resolution recommending that one count of Malversation of Public Funds in the amount of P3,029,675.40 be filed against the appellant. Hence, the consolidation of these cases.

### ANTECEDENTS

Herein accused-appellant, Esther S. Pagano, the Cashier IV of the Municipality of La Trinidad, Benguet, was charged under the foregoing Informations:

#### **CASE NO. 99-CR-3544**

"That in the month of January 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of THIRTY THREE THOUSAND TWO HUNDRED FIFTY PESOS (P33,250.00), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the government in the total sum aforesaid.<sup>4</sup>

#### **CASE NO. 99-CR-3545**



<sup>4</sup> Criminal Case No. 99-CR-3544, Rollo I, page 1.

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"That in the month of February 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of ONE HUNDRED SEVENTY ONE THOUSAND PESOS (P171,000.00), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3546**

"That in the month of April 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of ONE HUNDRED TWO THOUSAND SEVEN HUNDRED FIFTY FIVE PESOS AND FIFTY SIX CENTAVOS (P102,755.56), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3547**

"That in the month of May 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of NINETY NINE THOUSAND SEVEN HUNDRED THIRTY PESOS AND THIRTY ONE CENTAVOS (P99,733.31), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3548**

"That in the month of June 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of ONE HUNDRED TWELVE THOUSAND THREE HUNDRED EIGHTY EIGHT PESOS AND EIGHTY SEVEN CENTAVOS (P112,388.87), Philippine Currency, belonging to the

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Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3549**

"That in the month of July 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of NINETY SIX THOUSAND THREE HUNDRED THIRTY THREE PESOS AND THIRTY ONE CENTAVOS (P96,333.31), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3550**

"That in the month of August 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of SIXTY NINETY (sic) THOUSAND SIX HUNDRED SEVENTY SIX PESOS AND SIX CENTAVOS (P69, 676.06), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3551**

"That in the month of September 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of SIXTY NINETY (sic) THOUSAND EIGHT HUNDRED SEVENTY EIGHT PESOS AND SIXTY ONE CENTAVOS (P69,878.61), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3552**

"That in the month of October 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of

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Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of SEVENTY FIVE THOUSAND NINE HUNDRED FIFTY FIVE PESOS (P75,955.00), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3553**

"That in the month of November 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of ONE HUNDRED FORTY ONE THOUSAND SIX HUNDRED SIXTY SIX PESOS AND SIXTY TWO CENTAVOS (P141,666.62), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3554**

"That in the month of November 1997, and sometime prior or subsequent thereto, in the Municipality of La Trinidad, Province of Benguet, Philippines and within

894567io; the jurisdiction of this Honorable Court, the above-named accused, being then a public officer and accountable for public funds occupying the position of Cashier IV with Salary Grade 22 at the Benguet Provincial Treasurer's Office of the Provincial Government of Benguet, and as such accountable for her official position, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, misapply, embezzle, and take away from public funds the total sum of SEVENTY EIGHT THOUSAND FOUR HUNDRED EIGHTY SIX PESOS AND EIGHTY THREE CENTAVOS (P78,486.83), Philippine Currency, belonging to the Provincial Government of Benguet, Republic of the Philippines, which she appropriated and converted to her own personal use and benefit, to the great detriment of the Government in the total sum aforesaid.

**CASE NO. 99-CR-3590**

"That on or about February 1998, or sometime prior or subsequent thereto in the municipality of La Trinidad, Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the cashier IV, Provincial Treasurer's Office, La Trinidad, Benguet, and as such accountable for public funds received and/or entrusted to her by reason of her office, taking advantage of her official position and committing the offense in relation to her office, did then and there willfully, unlawfully, and feloniously take, misappropriate and convert to her personal use and benefit the amount of Three Million Twenty Nine Thousand Six Hundred Seventy Five Pesos and Forty Centavos (P3,029,675.40) from such public funds received by her by reason of her office, to the damage and prejudice of the government in the amount aforesaid."

Before arraignment, herein accused-appellant filed a Petition for Review with Temporary Restraining Order and Writ of Preliminary Injunction before the Court of Appeals<sup>5</sup> seeking to review the resolution<sup>6</sup> of the Ombudsman for Luzon which is the basis of all the Informations filed against her.

In the absence of any restraining order or writ of preliminary injunction, the RTC ordered<sup>7</sup> the issuance of Warrants of Arrest against herein accused-appellant. Thereafter, a hold-departure order<sup>8</sup> was issued against her. Despite issuance of warrant of arrest, accused-appellant remained at large nor has she submitted herself to the jurisdiction of the RTC. Thus, the court issued an alias warrant of arrest.<sup>9</sup>

Herein accused-appellant was arrested on June 9, 2015<sup>10</sup>, a commitment order<sup>11</sup> was thereafter issued by the court. She was provisionally released upon bail. Upon arraignment,<sup>12</sup> accused-appellant pleaded not guilty in all the crime charged.

At the pre-trial, the parties stipulated on the following facts<sup>13</sup>:

- (1) that accused was appointed Cashier IV at the Office of the Provincial Treasurer, Provincial Government of Benguet, on August 1, 1993 until her resignation on January 16, 1998;
- (2) that as Cashier IV at the Provincial Treasurer's Office, the accused is an accountable officer charged with the collection of cash and checks under the General Fund and deposit the same with depositary banks maintained by the Province of Benguet, and custody of Certificates of time deposits under the General Fund, Trust Fund and Special Education Fund;
- (3) that, at the time the subject checks were issued and even prior thereto, the Province of Benguet maintains time deposits with the Development Bank of the Philippines (DBP) Baguio City Branch, Land Bank of the Philippines (LBP) La Trinidad Branch, and Philippine National Bank (PNB) La Trinidad Branch;
- (4) that she supervises the personnel in their duties and maintains discipline;
- (5) that she receives collection accruing to general fund and deposits, cash and checks;
- (6) that Ms. Esther Pagano is of legal age, Filipino, married and a resident of No. 30 Cariño Subdivision, Camp 7, Kennon Road, Baguio City;
- (7) that since 1993, accused acted as the Cashier IV of the Cash Division of the Provincial Treasury of the Province of Benguet;

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<sup>5</sup> Dated August 2, 1999; Criminal Case No. 99-CR-3544, Rollo I, pages 51-56.

<sup>6</sup> OMB Case No. 1-98-1850, dated June 9, 1999. Id., pages 9-14.

<sup>7</sup> Order dated October 14, 1999; Id., page 127.

<sup>8</sup> Order dated October 28, 1999; Id., page 137.

<sup>9</sup> Id., page 173.

<sup>10</sup> Order dated June 9, 2015; Rollo, Criminal Case No. 99-CR-3544, Rollo I, page 202.

<sup>11</sup> Id., page 205.

<sup>12</sup> Order dated August 27, 2015. Id., page 266.

<sup>13</sup> Criminal Case No. 99-CR-3544, Rollo II, page 499.

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(8) that as Cashier IV, accused is under the direct and immediate control and supervision of Mr. Mauricio B. Ambanloc, the Provincial Treasurer of the Province of Benguet;

(9) that the Province of Benguet maintains Savings and Current Accounts (combination) and Time Deposits with the Development Bank of the Philippines (DBP) Baguio Branch, Land Bank of the Philippines (LBP) La Trinidad Branch, and the Philippine National Bank (PNB) La Trinidad Branch;

(10) that said interests on time deposits are treated as collections in the books of account of the Province of Benguet; and

(11) that her duties and functions included (a) the collection of cash and checks under the General Fund, and the deposit of said cash and checks with the depository banks maintained by the Province of Benguet; (b) the disbursement of checks to business establishments and creditors of the Province of Benguet; and (c) the custody of certificates of time deposits under the General Fund, Trust Fund, and Special Education Fund.

Thereafter, trial ensued.

**EVIDENCE FOR THE PROSECUTION**

The prosecution presented the following witnesses: (1) Hedeliza Cabanlong; (2) Artemio L. Javier; (3) Imelda I. Macanes; (4) Atty. Josephine A. Tilan; (5) Erma Libayan; (6) Alexander Fagyan; (7) Olivia Lora; (8) Patricia Kao Tambuyat; and (9) Ignacio P. Jasmin, Jr.

**Hedeliza Cabanlong<sup>14</sup> (Cabanlong)**, State Auditor IV of the Commission on Audit – Cordillera Administrative Region (COA-CAR). She personally identified the Judicial Affidavit which she executed on May 8, 2018 including the annexes attached thereto and properly marked during the pre-trial, except for two documents. In said affidavit she stated that: as an auditor, she post-audited financial transactions of the Provincial Accounts of the Province of Benguet, performed value-for-money audit and cash examinations of accountable officers of the Province of Benguet, prepared audit communications and Annual Audit Reports, and performed other audit functions. She also acted as the Assistant of the Provincial Auditor for the Provincial Accounts, reviewed and supervised the outputs of other audit staffs in the Provincial Accounts in the Provincial Auditor's Office of Benguet.

Cabanlong personally know the accused-appellant, Esther Pagano, being the Cashier IV of the Province of Benguet and thus, an accountable officer. She admitted that sometime in 1998, she participated in the detailed audit and examination of the cash and accounts of Pagano. Upon receiving information that there were

<sup>14</sup> Judicial affidavit of Hedeliza Cabanlong, dated June 1, 2018.



anomalies involving the interest income of the time deposit accounts of the Province of Benguet, she informed then Provincial Auditor, Getulio B. Santos. Thereafter, Santos instructed Marjorie Calgo and Artemio Javier to conduct a detailed audit and examination of the cash and accounts of Pagano. Witness Cabanlong also assisted and supervised the audit and review conducted.

According to Cabanlong, the detailed audit and examination of the cash and accounts of Pagano which specifically covers the period of January 1, 1996 to December 31, 1997. The said audit and examination were conducted to establish Pagano's total money accountability as Cashier IV for the said period.

She stated that in her examination of the cash book of Pagano comprises of cash and check collections. Cash collections remittances of collections of other revenue collecting officers to Pagano, refund or return of cash advances and cash collections from various creditors. Check collections include various municipalities of the share of the province of the real property tax and other income and interests income from all the time deposit accounts of the Province of Benguet. Accordingly, the interest incomes mentioned refer to the earnings of the time deposit accounts. These accounts are paid by the depository banks to the Province of Benguet thru the issuance of checks. She admitted that for year 1996, the Province of Benguet maintains time deposit accounts with the (1) Development Bank of the Philippines – Baguio Branch; (2) Landbank of the Philippines – La Trinidad Branch; and the (3) Philippine National Bank – La Trinidad Branch. For year 1997, it maintains time deposit accounts with the (1) Development Bank of the Philippines – Baguio Branch; (2) Landbank of the Philippines – La Trinidad Branch.

She also admitted that she personally prepared two records, (1) Record of Collection, Deposits and Balances of Pagano, former Cashier IV, as appearing in her official cash book for the period January 1 to December 31, 1996<sup>15</sup>; and (2) Record of Collection, Deposits and Balances of Pagano, former Cashier IV, as appearing in her official cash book for the period January 1, 1997 to January 12, 1998<sup>16</sup>. In said reports, the beginning balance as of January 1, 1996 of the cash accountability of Pagano as recorded in her official cash book amounts to P1,868,501.57<sup>17</sup> and the ending balance as of December 27, 1996 of the cash accountability as recorded in her official cash book amounts

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<sup>15</sup> Exhibits "Q" to "Q-5".

<sup>16</sup> Exhibits "R" to "R-8".

<sup>17</sup> Exhibit "Q".

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to P1,299,927.48<sup>18</sup>. Accordingly, the amount of P1,299,927.49<sup>19</sup> is the beginning balance as of January 1, 1997 of the cash accountability of Pagano as recorded in her official cash book and the ending balance amounts to P2,127,782.66<sup>20</sup> as of December 29, 1997.

With the said reports, Witness Cabanlong observed the following: (1) Pagano does not deposit intact all her cash collections daily or at the next working day, resulting to large outstanding cash balances on hand daily; (2) that Pagano has larger amount of check deposits as compared to the amount of check she collected for a certain date; and (3) Pagano has lesser amount of cash deposits as compared to the amount of cash that she collected for a certain date. All of these observations were incorporated in the Report on the Audit Examination of the Collection Accounts of Pagano submitted by Marjorie Calgo and Artemio Javier, as well as the Notice of Charge<sup>21</sup> (NC) issued to Pagano after the conduct of the audit. According to Cabanlong, two NCs were issued to Pagano, to wit: (1) NC No. 98-002-101(96) dated March 4, 1998<sup>22</sup>; and (2) NC No. 98-001-101(97) dated February 18, 1998<sup>23</sup>.

She reported that: in support of NC No. 98-002-101(96), Calgo and Javier attached the following working papers/schedules: (1) Statement of Accountability, January 1 to December 31, 1996<sup>24</sup>; (2) Unreceipted and Unrecorded Interest of Time Deposits, January 1 to December 31, 1996<sup>25</sup>; (3) Statement of Accountability on Interest of Time Deposits, DBP, January 1 to December 31, 1996<sup>26</sup>; (4) Statement of Accountability on Interest of Time Deposits, LBP, January to December 31, 1996<sup>27</sup>; and (5) Statement of Accountability on Interest of Time Deposits, PNB, January to September 3, 1996<sup>28</sup>. The Statement of Accountability on Interest of Time Deposits refer to the list of unreceipted and unrecorded interest income on time deposits with the DBP, LBP, and PNB and the Unreceipted and Unrecorded Interest of Time Deposits from January 1 to December 31, 1996 shows the total accountability of Pagano.

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<sup>18</sup> Exhibit "Q-5".

<sup>19</sup> Exhibit "R".

<sup>20</sup> Exhibit "R-8".

<sup>21</sup> A Notice of Charge or NC is used and issued as often as charges are made by the Auditor to notify the agency head, accountable officer concerned and other persons liable for the deficiencies noted in the audit of revenues and receipts. It indicated the amount charged as well as the reasons thereof.

<sup>22</sup> Exhibit "U".

<sup>23</sup> Exhibit "V".

<sup>24</sup> Exhibit "HH".

<sup>25</sup> Exhibit "II".

<sup>26</sup> Exhibits "JJ" to "JJ-3".

<sup>27</sup> Exhibits "KK" to "KK-3".

<sup>28</sup> Exhibits "LL" to "LL-2".

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She further reported that: the total interest income on time deposits with the DBP amounted to P603,511.05 covering the period of January 1 to December 31, 1996. Also, the total interest income with the LBP amounted to P473,589.41 within January 1 to December 31, 1996. Finally, the total interest income on time deposit with the PNB amounted to P293,341.77 covering the period of January 1, 1996 to September 3, 1996. All of these amounts were not acknowledged by Pagano thru the issuance of official receipts and were not recorded in her cash books. The total of the unreceipted and unrecorded interest incomes from the three banks amounted to P1,370,442.23<sup>29</sup>. Accordingly, the total amount of P1,370,442.23 is also stated in NC No. 98-002-101(96) as the total underdeposited cash collections and the amount of unreceipted interest income on the time deposits both for the period covering January 1 to December 31, 1996. According to Cabanlong, the handwritten figures in NC No. 98-002-101(96), indicating "*Settled - refund of salary loan inadvertently classified as interest of time deposit*" has been adjusted and the new adjusted cash shortage of Pagano for the period of January 1 to December 31, 1996 is P1,359,548.34<sup>30</sup>.

For NC No. 98-001-101(97), Cabanlong reported that: the total amount charged reported was P2,805,472.89, this is charged and included in the accountability of Pagano for the period of January 1 to December 31, 1997. According to Cabanlong, the NC is supported by the following working papers/schedules, to wit: (1) Statement of Accountability on Interest of Time Deposits, DBP for January 1, to December 31, 1997<sup>31</sup>; (2) Statement of Accountability on Interest of Time Deposits, LBP for January 1, to December 31, 1997<sup>32</sup>; and (3) Statement of Accountability for January 1, 1997 to January 13, 1998<sup>33</sup>; and (4) Cashier's Checks (Interest on Time Deposits not Receipted and Not Recorded in the Books), January 1 to December 31, 1997<sup>34</sup>.

According to Cabanlong, the total interest income not receipted in the DBP amounted to P1,127,635.84 and the total interest income not receipted in the LBP amounted to P1,677,836.88. Said amounts were not acknowledged by Pagano thru the issuance of official receipts and were not recorded in the books. The total of all of the said interest incomes on time deposits from DBP and LBP amounted to

<sup>29</sup> Exhibit "II" and Exhibit "HH".

<sup>30</sup> Exhibit "U-6".

<sup>31</sup> Exhibit "DD".

<sup>32</sup> Exhibit "EE".

<sup>33</sup> Exhibit "CC".

<sup>34</sup> Exhibit "CC-1".

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P2,805,472.72 as indicated in the Statement of Accountability of Pagano for the period of January 1, 1997 to January 13, 1998.

Cabanlong also reported the handwritten amounts of P75,955.00 and P8,266.66 and below these amounts is P84,221.66 which were all appearing on NC No. 98-001-101(97) with a remark beside it "receipted on January, 1998". According to Cabanlong, the amount P84,221.66 is the total of P75,955.00 and P8,266.66. The said total is adjusted from the total accountability of P2,805,472.89, thus, the new adjusted total amount of cash shortage of Pagano for the period of January 1 to December 31, 1997 amounts to P2,721,251.23.

On cross<sup>35</sup>, Cabanlong admitted that she was only verbally designated as assistant to the Provincial Auditor to handle Provincial Accounts. Accordingly, the directive of the Provincial Auditor to conduct a detailed examination on the accounts of Pagano was also made verbally. The said directive was based on the anomalies involving the interest income of the time deposits accounts of the Province of Benguet, which reached the witness through verbal information. According to Cabanlong, being informed of an anomaly is a red flag on the parts of the auditors, so she relayed such information to the Provincial Auditor. The latter, then, instructed Calgo and Javier to conduct the detailed audit. She admitted that most of the process in the investigation were handled by Calgo and Javier but the witness also examined certain financial records.

She further admitted that the Cashier's/Treasurer's Report of Daily Collection and Deposits (CTRDCD) were being signed by the accountable officers, in this case, Pagano. However, all the CTRDCDs were carefully examined by Calgo and Javier, thus, the information that all of the CTRDCDs were signed were relayed by the Calgo and Javier. Accordingly, the Certification of these CTRDCDs were also signed by Pagano. And such information was also relayed by Calgo and Javier. As for Cabanlong, all the samples given to her were all signed by the accountable officer.

Cabanlong further stated that: she personally examined the Cash Book of Pagano as presented in the Record of Collections and Deposits.<sup>36</sup> The said report is the summary of the daily collections and deposits; it is based on the entries personally made by Pagano in her official cash book. Said entries are certified by the accountable officer, in this case Pagano.

<sup>35</sup> Transcript of Stenographic Notes dated July 3, 2018, pages 10-31.

<sup>36</sup> Exhibit "Q".

Cabanlong further clarified that: the check collections represent, among others, interest on time deposits under the account of the Province of Benguet. And she recalled that she was able to scrutinize the sample of the checks, that is, addressed to the Provincial Treasurer and not the cashier, Pagano. Meaning, only the provincial treasurer can be a signatory in the encashment of the check. It has only become the liability of the accountable officer by nature of her position. It was one of her functions to receive any receipts accruing to the Province of Benguet including checks. According to Cabanlong, as a rule, all collections should be deposited.

She further stated that: the checks were deposited but they were not acknowledged and that the accountable officer did not issue any receipt as an acknowledgement of the receipt of the income. In effect, there is money missing because if it is unreceipted or there is no official receipt issued by the accountable officer upon receipt of any payment, it will not be recorded in the CTRDCD and consequently, it will not be recorded in the cash book and eventually it will not be recorded in the Books of Accounts of the Province of Benguet.

Cabanlong admitted that Provincial Treasurer Ambanloc was initially included as one of the persons liable, as a supervisor, he should be liable on all actions as the accountable officer.

On re-direct, Cabanlong stated that: if the collection is unreceipted, it means that it will not be recorded in the CTRDCD and eventually it will not be recorded in the cash book and correspondingly in the Books of Accounts of the Province of Benguet and therefore, not accounted for.

On re-cross, Cabanlong clarified that: based on the CTRDCD Pagano deposited the said checks since the CTRDCD were signed by Pagano under oath, certifying the trueness and correctness of the amount of collections and deposits.

**Artemio L. Javier<sup>37</sup> (Javier)**, State Auditor I of the COA-CAR. From 1994 to 2012, he was assigned at the Office of the Provincial Auditor of the Province of Benguet and its municipalities as State Auditing Examiner I. Holding said position, he assisted in the audit of Provincial Accounts of the Province of Benguet, helped in the post-audit of transactions, the conduct of cash examinations, verification

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<sup>37</sup> Judicial Affidavit of Artemio L. Javier dated June 1, 2018.

and examination of accounts of accountable officers and monitoring and inspection of projects.

Javier admitted that at the time he was in the Provincial Auditor's Office of Benguet, he know that appellant Pagano holds the position of Cashier IV, and therefore an accountable officer of the Province of Benguet. He also admitted that at the time, the Provincial Auditor received an information on the anomalies involving the interest incomes of the time deposit accounts of the Province of Benguet which were under the collection function of Pagano. He was part of the team that was instructed by the Provincial Auditor to conduct the audit and examination of the cash accounts of Pagano.

Javier stated that as part of the audit team, he examined the list of interest incomes for the time deposits paid by the depositary banks and traced these amounts if they were received by the Province of Benguet. Together with the team, he determined the receipts and recording of the interest income by examining the cash book, reports of daily collections and deposits of Pagano, the duplicate receipts and ledgers. He determined the deposits of Pagano by verifying the deposit slips as against the bank statements and confirmation with the depositary banks of interest incomes due to the Province of Benguet. And finally, the team determined the accountability of Pagano from January 1, 1996 to December 31, 1997.

As part of their examination, the following documents were gathered and some of the documents were personally identified by Javier: (1) Cash Books of Pagano; (2) List of interest income paid by the LBP, DBP, and PNB on the time deposits of the Province of Benguet for the years 1996 and 1997<sup>38</sup>; (3) Cashier's/Treasurer's Report of Daily Collections of Pagano from 1996 to January 1998<sup>39</sup>; (4) Duplicate original copies of official receipts issued from 1996 to 1997; (5) Ledgers pertaining to the period<sup>40</sup>; (6) Deposit slips from 1996 to 1998. These documents were material for their audit and examination and to establish the total money accountability of Pagano as Cashier IV.

<sup>38</sup> Exhibits "NNNN" to "NNNN9"; "OOOO" to "OOOO-12"; "PPPP" to "PPPP-7"; and "QQQQ" to "QQQQ-12"

<sup>39</sup> Exhibits "TTTT" to "TTTT-20"; "UUUU" to "UUUU-19"; "VVVV" to "VVVV-18"; "WWWW" to "WWWW-20"; "XXXX" to "XXXX-19"; "YYYY" to "YYYY-19"; "ZZZZ" to "ZZZZ-21"; "AAAAA" to "AAAAA-20"; "BBBBB" to "BBBBB-21"; "CCCCC" to "CCCCC-22"; "DDDDD" to "DDDDD-20"; "EEEE" to "EEEE-27"; "GGGGG" to "GGGGG-21"; "HHHHH" to "HHHHH-19"; "IIIII" to "IIIII-20"; "JJJJ" to "JJJJ-18"; "KKKKK" to "KKKKK-20"; "LLLLL" to "LLLLL-17"; "MMMMM" to "MMMMM-18"; "NNNNN" to "NNNNN-21"; "OOOOO" to "OOOOO-17"; "PPPPP" to "PPPPP-20"; "QQQQQ" to "QQQQQ-15"; and "RRRRR" to "RRRRR-15".

<sup>40</sup> Exhibit "S" and "T".

Accordingly, Javier stated that two Notice of Charges (NC) were issued to the Provincial Governor, the Provincial Treasurer, the Provincial Accountant and a copy was also sent thru registered mail to Pagano. NC No. 98-001-101(97) dated February 18, 1998<sup>41</sup> showing the initial amount of P2,805,472.89 which was the unreceipted interest income on the time deposits and undeposited cash collection. According to Javier, two figures appear in the said NC, P75,955.00 and P8,266.66, these amounts represent receipted checks of interest income on January 1998 that were inadvertently included in the total. The said amounts were subsequently discovered to be receipted by Pagano. Thus, the adjusted total for the period of January 1 to December 31, 1997 is P2,721,251.23.

Accordingly, NC No. 98-002-101(96) dated March 11, 1998<sup>42</sup> was issued to the office of the Governor, the Office of the Provincial Treasurer. The amount initially charged is P1,370,442.23 which is the total of all interest of time deposit which were not duly receipted or acknowledged by Pagano for the period January 1, 1996 to December 31, 1996. Javier admitted that a handwritten figure of 10,893.89 appears on the said NC and this pertains to a salary loan inadvertently classified as interest on time deposit. The said amount was misclassified as interest income and must not be included in the total interest on time deposit. Thus, the adjusted total of interest income for January 1, 1996 to December 31, 1996 which were not receipted by Pagano is P1,359,548.34.

According to Javier, their audit and examination on the cash and accounts of Pagano in 1998 showed that as of December 31, 1997, Esther S. Pagano incurred an initial cash shortage of P4,175,915.1. The said amount was decreased by the adjustments as shown in the NC and their joint affidavit<sup>43</sup>. After the adjustments, the total amount of P4,080,799.57 is the final adjusted amount of cash shortage or unaccounted balance of accountability of Pagano as of December 31, 1997.

On cross examination,<sup>44</sup> Javier admitted that he, together with Marjorie Calvo and Hedeliza Cabanlong, were verbally instructed by the Provincial Auditor to conduct an audit and examination on Pagano based on the anomaly involving the interest on income on time deposits of the Province of Benguet. As part of the team, he gathered

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<sup>41</sup> Exhibit "V".

<sup>42</sup> Exhibit "U".

<sup>43</sup> Exhibit "FF".

<sup>44</sup> Transcript of Stenographic Notes (TSN) dated July 17, 2018, pages 5-12.

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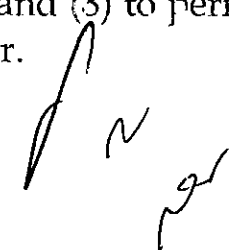
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the official receipts, and his teammates gathered the interests of time deposits at the bank in order to conduct the said audit. He further clarified that in his joint affidavit<sup>45</sup> with Calgo, referred to a Demand Letter dated July 27, 1998<sup>46</sup> which as stated in the said joint affidavit was likewise issued to Pagano. Javier admitted, that this demand letter was based on the report and examination and supporting such document are the NCs. He also categorically admitted that the amount appearing on the said demand letter was P4,175,915.12 as the total initial amount appearing on NC Nos. 98-001-101(97) and 98-002-101(96). He also admitted that the demand letter was signed by then Provincial Auditor, Getulio Santos, and the adjustments appearing on the NCs were signed by Marjorie Calgo. He then denied having knowledge of a subsequent demand letter issued to Pagano.

On re-direct,<sup>47</sup> Javier reiterated that even though Calgo and Cabanlong had specific tasks during the audit, he knew the conduct and the result of the audit, for in fact he signed the joint affidavit regarding the audit. Thus, he understood the statement of accountability and their audit findings.

**Imelda I. Macanes<sup>48</sup> (Macanes)**, is the current Provincial Treasurer of the Province of Benguet, she started working at the Provincial Treasurer's Office sometime in 1982 and she has been promoted to several positions in the same office. At the time of the incident, she was appointed as Local Revenue Collection Officer III.

Macanes stated that the duties of Pagano based on the Position Description Form (PDF), as the Cashier IV include the following: (1) to verify, post and balance daily the credited vouchers and payrolls in the General Fund cash books to cash count and prepare daily reports; (2) to withdraw and deposit checks under the General Fund at PNB La Trinidad and DBP Baguio City; (3) to prepare checks for payments to various creditors; (4) to issue official receipts for allotments, collection from Municipal Treasurers, Hospital Cashiers, Fiscal Office, Revenue Division and various creditors; (5) to supervise works and maintain discipline of personnel; (6) to prepare reports for collection and deposit checks issued and balance the accounts; (7) to prepare report of Accountable Forms at the end of the month; and (8) to perform other functions assigned by the Provincial Treasurer.



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<sup>45</sup> Exhibit "FF".

<sup>46</sup> Exhibit "X".

<sup>47</sup> TSN dated July 17, 2018, page 13.

<sup>48</sup> Judicial Affidavit of Imelda I. Macanes dated June 23, 2018.



In relation to the Certificates of Time Deposits, Macanes stated that the Provincial Government of Benguet maintains such accounts in PNB, DBP, and LBP. The said banks issued the checks for payment of the interests earned on such accounts. These check payments were issued under the name "Provincial Treasurer - Benguet". The practice was allowed under the Government Accounting and Auditing Manual published by the COA that checks in payment for indebtedness to the government must be made payable to the agency or head or treasurer of agency. As to the treasurer, the official title or designation shall be stated as payee.

Macanes stated that as verified with the bank, and based on the joint affidavit of Ema Libayan, Delia Dalidis and Alexander Fagyan, they were tasked by Pagano to collect the check payment from the bank. Thereafter, the collecting officer, who is the Cashier IV, would immediately issue an official receipt in acknowledgement of the check payment. The Collecting Officer would then indicate the number and the date of the official receipt at the back of the check. The Cashier IV would then deposit the checks to the bank after having it signed by the Provincial Treasurer. Finally the Cashier IV on the Cashier's Report of Daily Collections & Deposits and also posts transactions on the Cash Book, which must be on a daily basis or not later than the next banking day. According to Macanes, the foregoing procedure was only practiced until 1998.

According to Macanes, then Provincial Governor issued an Executive Order creating a committee composed of then Assistant Provincial Treasurer, Alejandra Gomez as the chairperson, Cynthis Capuya, Sergio Cosalan, and witness Javier, as members. The committee submitted a compliance report to the Provincial Governor upon verification of the Statement of Interest on Deposits issued by the LBP in favor of the Province of Benguet covering the period January to December 1997. Macanes also admitted that forty (40) checks with the corresponding total amount of P1,669,570.22 were not receipted. The committee further observed that the official receipt number written at the back of the checks that were not receipted were official receipts for different collections. Accordingly, as part of the committee she verified the official receipts at the back of the checks and discovered that they were issued for different collection.

On cross,<sup>49</sup> Javier admitted that in 1996-1997 she is with the Revenue and Land Tax Division, that is separate from the Cash Division from which Pagano was assigned. However, as part of the

<sup>49</sup> TSN dated August 7, 2018, pages 10 to 15.

Provincial Treasury Office, she has personal knowledge of the functions of the different divisions.

On redirect,<sup>50</sup> Javier reiterated that the committee was interested in verifying the official receipts written at the back of the checks issued because of the allegation of the Provincial Treasurer Ambanloc.

**Atty. Josephine A. Tilan**<sup>51</sup> (Tilan) is the Chief of the Legal Services Sector at the COA-CAR since 2000.

Tilan identified the pertinent documents relating to the present case, meaning all the working papers or schedules by the audit team which conducted the audit of the cash accountability of Pagano in 1998. She identified the following documents: (1) Affidavit of Ms. Hedeliza F. Cabanlong<sup>52</sup>; (2) Records of Collections, Deposits and Balances of Ms. Esther Pagano, Cashier IV, as appearing in her official cash book for January 1 to December 31, 1996<sup>53</sup> and for January 1, 1997 to January 12, 1998<sup>54</sup>; (3) General Ledger, Cash-in Treasury (CY 1996)<sup>55</sup> and (CY1997)<sup>56</sup>; (4) Notice of Charge No. 98-002-101(96) dated March 4, 1998<sup>57</sup> and its Registry Return Receipt and Registry Receipt<sup>58</sup> (sent to Pagano); (5) Notice of Charge No. 98-001-101(97) dated February 18, 1998<sup>59</sup> and its Registry Return Receipt and Registry Receipt<sup>60</sup> (sent to Pagano); (6) Letter dated July 25, 1998 of Pagano to Auditor Getulio B. Santos<sup>61</sup>; (7) Memorandum dated July 27, 1998 of Auditor Getulio B. Santos to Pagano requiring submission of explanation on the deliberate manipulation of reports<sup>62</sup>; (8) Letter dated August 9, 1998 of Pagano to Auditor Santos requesting extension of 7 days to file Answer<sup>63</sup>; (9) Answer of Pagano dated August 17, 1998 to Santos<sup>64</sup>; (10) Officer Order No. 95-04 dated June 23, 1995 issued by Provincial Treasurer Mauricio B. Ambanloc<sup>65</sup>; (11) Office Order No. 95-05 dated September 13, 1995 issued by Provincial Treasurer Mauricio B.

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<sup>50</sup> Id., pages 15 to 20.

<sup>51</sup> Judicial Affidavit of Atty. Josephine A. Tilan dated June 1, 2018.

<sup>52</sup> Exhibit "P".

<sup>53</sup> Exhibits "Q" to "Q-5".

<sup>54</sup> Exhibits "R" to "R-8".

<sup>55</sup> Exhibit "S".

<sup>56</sup> Exhibit "T".

<sup>57</sup> Exhibit "U".

<sup>58</sup> Exhibits "U-1" to "U-3".

<sup>59</sup> Exhibit "V".

<sup>60</sup> Exhibits "V-1" to "V-3".

<sup>61</sup> Exhibit "W".

<sup>62</sup> Exhibit "X".

<sup>63</sup> Exhibit "Y".

<sup>64</sup> Exhibit "Y-1" to "Y-12".

<sup>65</sup> Exhibit "Z".

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Ambanloc<sup>66</sup>; (12) Report of Audit Examination of the Collection Accounts of Ms. Pagano<sup>67</sup>; (13) Statements of Pagano's Accountability for the period January 1, 1997 to January 13, 1998 and Appendix A prepared by Auditor Calgo<sup>68</sup>; (14) DBP Schedule 2-Statement of Accountability on Interest of Time Deposits for the period January 1 to December 31, 1997<sup>69</sup>; (15) LBO Schedule 1-Statement of Accountability on Interest of Time Deposits for the period January 1 to December 31, 1997<sup>70</sup>; (16) Joint Affidavit of Calgo and Javier dated September 1, 1998<sup>71</sup>; (17) Statement of Pagano's Accountability for the period January 1 to December 31, 1996<sup>72</sup>; (18) Unreceipted and Unrecorded Interest of Time Deposits for the period January 1 to December 31, 1996<sup>73</sup>; (19) Schedule 1-DBP Statement of Accountability on Interest on Time Deposits for the period January 1 to December 31, 1996<sup>74</sup>; (20) LBP Statement of Accountability on Interest of Time Deposits for the period of January 1 to December 31, 1996<sup>75</sup>; (21) Schedule 3 - PNB Statement of Accountability on Time Deposits for the period January 1 to September 1996<sup>76</sup>; (22) 4<sup>th</sup> Indorsement dated July 2, 1998 of Auditor Santos<sup>77</sup>; (23) DBP List of Interest Income for covering the period January 3, 1996 to November 5, 1996<sup>78</sup> and the period November 21, 1996 to November 24, 1997<sup>79</sup>; (24) LBP Summary of High-Yield Savings Deposits of the Provincial Government of Benguet: January to December 1996<sup>80</sup> and January to December 1997<sup>81</sup>; (25) Revenue Subsidiary Ledger Account Code 1-57-300 for the period January to December 1996<sup>82</sup> and for the period January to December 1997<sup>83</sup>; and (26) Letter dated July 17, 1998 of Getulio Santos to COA-CAR Regional Director<sup>84</sup>.

Tilan testified on the existence of the said documents and its original copies are with the custody of COA-CAR Legal Services Sector, except for the original copies of the following documents: (1)

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<sup>66</sup> Exhibit "AA"

<sup>67</sup> Exhibit "BB".

<sup>68</sup> Exhibit "CC".

<sup>69</sup> Exhibit "DD".

<sup>70</sup> Exhibit "EE".

<sup>71</sup> Exhibit "FF".

<sup>72</sup> Exhibit "HH".

<sup>73</sup> Exhibits "II".

<sup>74</sup> Exhibits "JJ" to "JJ-3".

<sup>75</sup> Exhibits "KK" to "KK-3".

<sup>76</sup> Exhibits "LL" to "LL-2".

<sup>77</sup> Exhibit "MM".

<sup>78</sup> Exhibits "NNNN" to "NNNN-9".

<sup>79</sup> Exhibits "OOOO" to "OOOO-12".

<sup>80</sup> Exhibits "PPPP" to "PPPP-7".

<sup>81</sup> Exhibits "QQQQ" to "QQQQ-12".

<sup>82</sup> Exhibits "RRRR" to "RRRR-2".

<sup>83</sup> Exhibits "SSSS" to "SSSS-3".

<sup>84</sup> Exhibits "SSSSS" to "SSSSS-1".

General Ledger, Cash-in Treasury (CY 1996)<sup>85</sup> and (CY1997)<sup>86</sup>; (2) Answer of Pagano dated August 17, 1998 to Santos<sup>87</sup>; (3) Officer Order No. 95-04 dated June 23, 1995 issued by Provincial Treasurer Mauricio B. Ambanloc<sup>88</sup>; (4) Office Order No. 95-05 dated September 13, 1995 issued by Provincial Treasurer Mauricio B. Ambanloc<sup>89</sup>; (5) 4<sup>th</sup> Indorsement dated July 2, 1998 of Auditor Santos<sup>90</sup>; and (6) Revenue Subsidiary Ledger Account Code 1-57-300 for the period January to December 1996<sup>91</sup> and for the period January to December 1997<sup>92</sup>.

**Erma Libayan<sup>93</sup> (Libayan)**, retired Local Treasury Operations Officer IV of the Provincial Treasurer's Office, Provincial Government of Benguet. Prior to her position as Local Treasury Operations Officer IV, she was a Cashier III at the Office of the Provincial Treasurer for eight years.

Libayan stated that as Cashier III, she was directly under the supervision of Pagano. As a Cashier III she handled accounts under the Trust Fund, Special Education Fund, and sometimes assigned to pay various payrolls.

Libayan identified the Joint Affidavit<sup>94</sup> she executed together with Alexander Fagyan and Delia Dalislis. In said Joint Affidavit, it is alleged that sometime in the years 1995, 1996 and 1997, they were separately directed by Pagano to renew Certificate of Time Deposits and receive the checks as proceeds and interests from the depository banks, namely DBP Baguio, LBP La Trinidad, and PNB La Trinidad.

According to Libayan they are directed to renew the Certificates of Time Deposits when they mature, and they are supposed to collect the interest earned therein. The interest payment will be in the form of manager's check. Upon collection of the checks, she would then hand the same to Pagano and the latter is supposed to issue an official receipt in acknowledgement of those checks. The process of acknowledging receipt is necessary to account that the monies were entered to the Province's General Fund. Based on Libayan's knowledge, in a booklet, one receipt has 3 pages, the original goes to

<sup>85</sup> Exhibit "S".

<sup>86</sup> Exhibit "T".

<sup>87</sup> Exhibit "Y-1" to "Y-12".

<sup>88</sup> Exhibit "Z".

<sup>89</sup> Exhibit "AA".

<sup>90</sup> Exhibit "MM".

<sup>91</sup> Exhibits "RRRR" to "RRRR-2".

<sup>92</sup> Exhibits "SSSS" to "SSSS-3".

<sup>93</sup> Transcript of Stenographic Notes (TSN) dated September 4, 2018, pages 3-15.

<sup>94</sup> Exhibit "GG".

the one who issued the check and the duplicate will be the COA's copy, and the triplicate will be the copy of the Provincial Treasurer's Office. Upon issuing a receipt, the Cashier IV should prepare a report of collection and deposit stating therein those collections and it will be attached to the official receipt and forwarded to the Accounting Office and the COA.

Finally, Libayan admitted that she cannot recall nor can she identify the specific checks she collected as deposit payments for the interest on time deposits since these were separate occasions in the years 1995, 1996, and 1997.

**Alexander Fagyan<sup>95</sup> (Fagyan)**, retired Disbursement Officer of the Provincial Treasurer's Office of the Province of Benguet. He was under the direct supervision of herein appellant, Pagano.

Fagyan affirmed and confirmed the truthfulness of the contents of the Joint Affidavit<sup>96</sup> that he executed together with Irma Libayan and Delia Dalislis. In said joint affidavit, he stated that on various dates in the year 1995, 1996, and 1997, they were separately directed by Pagano to renew certificates of time deposits and received the check as proceeds of interest from LBP and DBP Baguio. He confirmed upon collecting the checks from the depositary banks, he will hand over the same to Pagano. The foregoing task is different from his usual function as a disbursing officer where he would encash the check and prepare the voucher or claims. Fagyan recalled their task of collecting the checks from the depositary banks as payment of interest earned. The said checks were thereafter remitted to Pagano and the latter will then prepare the deposits. After preparing the deposits, Pagano will give it back to Fagyan for the latter to transmit back to the bank the following day. He further admitted that the deposits were brought to the bank, in a small bag, which he hands over to the bank teller. According to Fagyan, he had no chance to scrutinize or investigate what was inside the bag. But in their next bank visit, they will receive the bank deposit slips which will be directly handed to Pagano.

On cross<sup>97</sup>, Fagyan reiterated that the checks which he received as interest payments, were made payable to the Province of Benguet.

<sup>95</sup> Transcript of Stenographic Notes (TSN) dated November 6, 2018, pages 2-7.

<sup>96</sup> Exhibit "GG".

<sup>97</sup> Transcript of Stenographic Notes (TSN) dated November 6, 2018, pages 8.

**Olivia Lora<sup>98</sup> (Lora)** is the Branch Head of the Development Bank of the Philippines (DBP) Baguio City Branch. She affirmed and confirmed the truthfulness of the Certification<sup>99</sup> she executed stating that the documents required to be produced, specifically: (1) DBP checks bearing the No. 003529 in the amount of P238,500.00; (2) check dated June 17, 1996 bearing the No. 003769 in the amount of P91,311.11; and (3) check dated July 8, 1996 bearing the No. 003801 in the amount of P273,699.94, can no longer be produced and presented, because they were already disposed in accordance with existing bank policies.

**Patricia Kao Tambuyat<sup>100</sup> (Tambuyat)**, Branch Manager of Philippine National Bank (PNB), La Trinidad Branch. She affirmed and confirmed the truthfulness of Certification<sup>101</sup> she issued dated September 6, 2018 relative to the present case. The same certifies that check bearing the number: 845702-Q, 845638-Q, 845819-Q, 845874-Q, 845896, 845910, 845995-Q, 846069-Q, 846087-Q, 267527-R, 267634-R, and 268069-R were all issued by the PNB La Trinidad. She confirmed the certification since after scrutiny of the copies of the checks, she admits that it bears the logo of the bank, it has the stamp which the bank used in issuing the check and it followed a series of accounting for the accountable form of the bank.

Tambuyat further confirmed that the checks were issued to the Province of Benguet, Provincial Treasurer of Benguet. The said checks being manager's checks, these can only be encashed or deposited to the account of the payee specified on the check.

On cross<sup>102</sup>, Tambuyat admitted that she was merely furnished by the prosecution of the photocopies of the check. As per her certification, she certified that those photocopies were faithful reproduction of the manager's checks issued by the branch because of the markings, logos of the branch and the stamp which is used to mark an issued check. She further admitted that she relied on mere photocopies and not originals. Accordingly, Fagyan admitted that since it is a payment of interest of time deposit, then the payee would be the account holder, in this case the Provincial Treasurer of Benguet.

On re-direct<sup>103</sup>, Fagyan reiterated that based on banking procedures, a personal account would be under the name of the person

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<sup>98</sup> Id., pages 9-13.

<sup>99</sup> Exhibit "SSSSS".

<sup>100</sup> Transcript of Stenographic Notes (TSN) dated November 20, 2018, pages 2-9.

<sup>101</sup> Exhibit "TTTTT".

<sup>102</sup> TSN dated November 20, 2018, pages 10 to 13.

<sup>103</sup> Id., page 14.

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holding the personal account. However, if it is the company's account or the account of an office, then it would be under the name of the office and whoever the signatories authorized by said office, said authorization must be evidenced by a document submitted by the office.

On re-cross<sup>104</sup>, Fagyan clarified that the Provincial Treasurer of Benguet is the payee indicated in the check, it is not specifically the name of the Provincial Treasurer. She reiterated that when the Provincial Treasurer is indicated as payee of the check it means that it is for the account of the office represented by the Provincial Treasurer and not for his/her personal account.

**Ignacio P. Jasmin, Jr.**<sup>105</sup> (Jasmin), State Auditor IV of COA-CAR and the current Audit Team Leader (ATL) of the Audit Team for COA-CAR who oversees the audit of the cash and accounts of the Provincial Government of Benguet. He also supervises the custodial function of the office over documents transmitted to it by their management, other persons, and other entities by reason of their audit functions. This means that the said Office has the duty to secure and safe keep the documents within their custody and to produce such documents when needed. Accordingly, Jasmin was aware of the present case and Atty. Josephine Tilan also requested the documents related to this case. Jasmin affirmed the existence the following document which are also within the custody of the COA-CAR: photocopies of the Manager's Checks for the year 1996 issued by the depositary banks of the Provincial Government of Benguet; the audit reports pertaining to this case; and the official receipts pertaining to the collection of the Province of Benguet which have been issued by accused-appellant, among others.

On cross,<sup>106</sup> Jasmin confirmed that the managers checks in the possession of his office are photocopies and the original are with the branch that issued the managers checks.

On January 10, 2019, the prosecution submitted its formal offer of documentary evidence which were all admitted by the court *a quo*.<sup>107</sup> It can be gleaned from the records that most of the prosecution's documentary evidence were not formally offered; however, they were

<sup>104</sup> Transcript of Stenographic Notes (TSN) dated November 20, 2018, page 15.

<sup>105</sup> Judicial Affidavit of Ignacio P Jasmin Jr. dated September 6, 2018.

<sup>106</sup> TSN dated November 20, 2018, page 19.

<sup>107</sup> Order dated March 21, 2019; Criminal Case No. 99-CR-3544, Rollo II, page 696.

properly marked as Exhibits during the Pre-Trial Conference and properly identified by the witnesses in their testimony.

On June 8, 2019, accused-appellant then filed her demurrer to evidence<sup>108</sup> with leave of court<sup>109</sup>. The court *a quo* denied the said demurrer to evidence in its Joint Resolution<sup>110</sup> dated November 28, 2019.

### EVIDENCE FOR THE DEFENSE

The defense presented its sole witness, herein accused-appellant Esther S. Pagano.

**Esther S. Pagano<sup>111</sup> (Pagano)**, former Cashier IV of the Cash Division of the Provincial Treasury of the Province of Benguet, and the accused in Criminal Case Nos. 99-C-3544 to 99-CR-3554 and 99-CR-3590. And as Cashier IV, she was under the direct supervision of the Provincial Treasurer Ambanloc.

Pagano stated that her duties and responsibilities as Cashier IV of the Provincial Treasurer, include the following: 1) collection of cash and checks under the General Fund and the deposit of said cash and checks with the depositary banks maintained by the Province of Benguet; 2) prepares checks for payment to various creditor; 3) custodian of Certificate of Time Deposits under the General Fund, Trust Fund, and Special Education Fund; and 4) performs other duties as maybe assigned from time to time by the Provincial Treasurer.

Pertaining to her duty to collect cash and checks, including its deposits, under the General Fund, Pagano admitted that the Province of Benguet maintains savings and current saving accounts and time deposits with the DBP Baguio, LBP La Trinidad, and PNB La Trinidad. She further admitted that the checks concerning these accounts were always issued/payable under the name of the Provincial Treasurer.

As to the procedure observed on collection of checks representing the interest on time deposits, Pagano affirmed that after receiving such checks, she records the same in her cash book and thereafter, issues an acknowledgement receipt. Then, she deposits the same to the depositary banks who issued the checks. An official cash

<sup>108</sup> Criminal Case No. 99-CR-3544, Rollo II, pages 709-769.

<sup>109</sup> Motion to File Leave of Court to File Demurrer to Evidence and Order of the RTC granting said motion; Criminal Case No. 99-CR-3544, Rollo II, pages 702-706 and page 708, respectively.

<sup>110</sup> Criminal Case No. 99-CR-3544, Rollo II, pages 788-802.

<sup>111</sup> Judicial Affidavit of Esther S. Pagano dated June 18, 2018.



book is a record of all transactions relative to her position as Cashier IV. After recording the receipt of the checks, she confirmed that all the checks are turned over and delivered to the Provincial Treasurer, Ambanloc. Thereafter, he would choose which check to encash and return the same to Pagano accompanied with a note, for encashment. She further admitted that the note would sometime contain special instructions to encash the said check, using her cash-on-hand. She further identified and affirmed the existence of some of the photocopies of these written notes/instructions<sup>112</sup>.

As per the instructions to encash the checks using the cash-on-hand, Pagano admitted that she complied since as Cashier IV, she was under Ambanloc's immediate control and supervision. She admitted that this implies said encashment was used for official purposes. She further admitted that, upon encashment from the cash-on-hand, she assumed that Ambanloc will liquidate the same. Accordingly, Ambanloc signed the corresponding receipt in consideration of the encashment. Pagano affirmed that this has been a regular practice, such that, sometimes a note is attached to the manager's check, instructing her to encash the same. According to her, she was also instructed by Ambanloc to indicate the number of the latest official receipt issued at the back of the encashed check. She further confirmed that she believed in good faith that the said amounts would be utilized for official purpose and disbursement.

According to Pagano, Ambanloc conducted a personal examination and verification of her book of accounts, without her knowledge and presence. After said investigation, it was discovered that she allegedly had a cash shortage of P1,424,289.99 which were allegedly due to unaccounted interests on time deposits. Thereafter, Ambanloc issued a Memorandum dated January 4, 1998 directing her to explain why no administrative complaint be charged against her, to which she complied by submitting her Explanation-Letter.<sup>113</sup> Unsatisfied, Ambanloc filed an Affidavit-Complaint against Pagano for Dishonesty and Grave Misconduct involving the P1,051,124.17 and Malversation of Funds under the RPC at the Provincial Prosecutor's Office, La Trinidad, Benguet. To which Pagano filed an Answer with Countercharge and Counterclaim,<sup>114</sup> stating the following: that she was acting under the express direction of the Head of Office, Provincial Treasurer Ambanloc, as such she could not question his motives nor countermand his orders; that Ambanloc has been in bad faith from the

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<sup>112</sup> Exhibit "6" to "6-G".

<sup>113</sup> Exhibit "3".

<sup>114</sup> Exhibit "2".

start, pursuant to the Principle of Command Responsibility, with this he cannot claim that her actions were without authority and direction from the former. She also admitted that she filed another Answer dated February 16, 1998<sup>115</sup> with the Office of the Provincial Prosecutor. Thereafter, the Provincial Prosecutor found that the total cash shortage was P2,805,472.89, because of this, Ambanloc filed a supplemental-complaint to which Pagano filed a Counter-Affidavit<sup>116</sup> on March 27, 1998 with the attached Notice of Charges issued by the Commission on Audit stating that the primary liable person is Mauricio Ambanloc.

Pagano attested that the COA conducted an investigation and verification and recommended the filing of criminal case of Malversation of Public Funds against her and Ambanloc. Upon the filing of the case, she then filed her counter-affidavit on August 9, 1999<sup>117</sup> where she adopted her defenses contained in her March 27, 1998 Counter Affidavit, thereafter she filed her Supplemental Counter-Affidavit dated September 21, 1999<sup>118</sup>

Lastly, Pagano categorically and vehemently declared that she did not receive any benefit, pecuniary or otherwise, from the acts of Ambanloc. Neither did she appropriate any public funds for her personal use. She further stated that Ambanloc covered up the cash shortage as he benefited from and was responsible for them. Ambanloc found some other person to take the blame for him and on whom he can wrongly impute liability, and she was his convenient excuse.

On cross,<sup>119</sup> Pagano admitted that with regard to the interest from time deposits, she was the one who signs the official receipts and in her absence, anyone of the disbursing officers can issue the official receipt. She also admitted that as Cashier IV, she has direct supervision over the following Disbursing Officers: Erma Libayan, Delia Dalisdis, and Alexander Fagyan. She further clarified that the said employees were authorized to renew certificate of time deposits and receive the checks representing the proceeds or interest of time deposits, upon her direct instruction or the Provincial Treasurer's instruction.

She recalled that she is required to indicate at the back of the check the Official Receipt Number, and she cannot delegate this task

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<sup>115</sup> Exhibit "1".

<sup>116</sup> Exhibit "7".

<sup>117</sup> Exhibit "4".

<sup>118</sup> Exhibit "5".

<sup>119</sup> Transcript of Stenographic Notes (TSN) dated September 2, 2021, pages 3 to 8; and TSN dated December 14, 2021, pages 4 to 18.

since it was merely delegated to her as the Cashier IV, by the Provincial Treasurer.

When asked whether she reported the matters relating to her statement that Ambanloc instructs her to use the cash on hand to encash a check, she categorically admitted that on her mind, Ambanloc was doing it in good faith and that it was for an official purpose, subject to his liquidation. Accordingly, when presented with the typewritten notes, she affirmed that these were instructions given to her by Ambanloc as shown by his initials in each note. She further stated that Ambanloc prepares the typewritten notes and hand it to her with the corresponding check to be encashed. She admitted that she was not able to indicate the check involved in each note since she thought that Ambanloc will liquidate the same immediately or as soon as possible.

Finally, Pagano admitted that she knew that by the nature of her function, as Cashier IV, she was supposed to deposit the checks. However, she failed to do so, claiming that the amounts representing the checks were received by Ambanloc. And said practice were actually evidenced by a copy of a handwritten note<sup>120</sup> acknowledging the receipt of certain amounts from Esther Pagano, which the latter claims to be her handwriting but signed and received by Ambanloc.

On December 29, 2021, accused-appellant filed her formal offer<sup>121</sup> of documentary evidence and there being no objection from the prosecution, all documentary evidence were admitted by the court *a quo* in its Order dated February 8, 2022.<sup>122</sup>

#### RULING OF THE RTC

After trial, the RTC found accused-appellant guilty of the crime charged and sentenced her accordingly:

WHEREFORE, judgment is hereby rendered finding the accused ESTHER PAGANO y SISON guilty beyond reasonable doubt for twelve (12) counts of Malversation of Public Funds, and is hereby sentenced as follows:

- a. in Criminal Case No. 99-CR-3544, the indeterminate penalty of one (1) year and one (1) day of imprisonment, as minimum, to three (3) years six (6) months and twenty-one (sic) days of maximum, and a fine amounting to P33,250.00;
- b. in Criminal Case No. 99-CR-3545, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7)

<sup>120</sup> Exhibits "6-e" to "6-g".

<sup>121</sup> Criminal Case No. 99-CR-3544, Rollo II, pages 913 to 916.

<sup>122</sup> Criminal Case No. 99-CR-3544, Rollo II, page 922.

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- years four (4) months and one (1) day as maximum, and a fine amounting to P171,000.00;
- c. in Criminal Case No. 99-CR-3546, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P102,755.56;
  - d. in Criminal Case No. 99-CR-3547, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P99,733.31;
  - e. in Criminal Case No. 99-CR-3548, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P112,388.87;
  - f. in Criminal Case No. 99-CR-3549, the indeterminate penalty of two (2) years four months and one day of imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P94,331.31;
  - g. in Criminal Case No. 99-CR-3550, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P69,676.06;
  - h. in Criminal Case No. 99-CR-3551, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P69,878.61;
  - i. in Criminal Case No. 99-CR-3552, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P75,955.00;
  - j. in Criminal Case No. 99-CR-3553, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P141,666.62;
  - k. in Criminal Case No. 99-CR-3554, the indeterminate penalty of two (2) years four months and one day imprisonment, as minimum, to seven (7) years four (4) months and one (1) day as maximum, and a fine amounting to P78,486.83;
  - l. in Criminal Case No. 99-CR-3590, the indeterminate penalty of ten (10) years and one day imprisonment, as minimum, to 16 years 5 months and 11 days as maximum, and a fine amounting to P3,029,675.40.

MOREOVER, the accused is also directed to pay the provincial government of Benguet the amount of P4,080,799.57, plus 6% interest reckoned from the finality of this *Joint Decision*, until fully paid.

ACCORDINGLY, the accused is imposed the accessory penalty of perpetual special disqualification to hold public office.

The court *a quo* ruled that the prosecution had sufficiently proved that all the elements of malversation of public funds were present in these cases. Additionally, based on the testimonies of the COA audit team, the court *a quo* inferred that accused Pagano did not deposit all her cash collections on the same day or the following working day, this resulted to outstanding balances which she failed to account for during the fiscal years 1996 and 1997.

Finally, the court *a quo* ruled that accused failed to account on the cash shortages found and demanded by the COA, and thereby arises the

presumption that these unaccounted funds and property were put to personal use. However, Pagano was not able to rebut such presumption.

Aggrieved, the accused-appellant assailed the Joint Decision dated February 28, 2023<sup>123</sup> through a Notice of Appeal, and thereafter the court *a quo* gave due course thereto.

Hence, this appeal.

*Appellant's Brief*

Accused-appellant assailed her conviction and now claims that the RTC erred in its ruling. Thus, the accused-appellant submits to this Court the following assignment of errors:

- (1) The RTC erred in finding that the prosecution has proven that the accused committed malversation of public funds as charged in the Informations. The vital and mandatory element of misappropriation or conversion is absent in the instant cases<sup>124</sup>;
- (2) The RTC erred in finding that the COA's Audit findings on the existence of shortage is conclusive without considering the failure of the COA to reconcile the separate audit findings. Further, the adjusted accountability by mere handwritten intercalation takes away alleged finality and conclusiveness of audit findings and inarguably violated the right of the accused to due process<sup>125</sup>;
- (3) The RTC erred in finding that the accused expressly admitted on misappropriation and failed to account for the cash shortage in her collections without considering that the accused-appellant acted in good faith as she acted under the direct control and supervision of the provincial treasurer, Mauricio B. Ambanloc<sup>126</sup>;
- (4) The RTC erred in not considering that the material evidences (sic) offered by the prosecution consists of documentary exhibits which are mere photocopies, hence, lacked substantial probative value<sup>127</sup>;
- (5) The RTC erred in not considering that the checks, made payable to the provincial treasurer, and the maintenance of LGU bank accounts not under the name of LGU itself, are gross violations of the Local Government Code and COA Circular No. 1992-382<sup>128</sup>;
- (6) The RTC erred in not considering that the documentary exhibits belatedly presented and marked only during trial merit exclusion as evidence<sup>129</sup>;
- (7) The RTC erred in not considering that several documentary exhibits adduced by the prosecution cannot be deciphered: incomplete, erased, altered, undated and unsigned, hence, must be declared inadmissible as evidence for being irrelevant, immaterial, and incompetent<sup>130</sup>;
- (8) The RTC erred in not considering that Provincial Treasurer Ambanloc has no legal authority to prosecute, much less to initiate the eleven (11) cases subject of Criminal Cases Nos. 99-CR-3544 to 99-CR-3554<sup>131</sup>.

Under the first assignment of error, the accused appellant specifically avers: that no exact amount of accountable funds has been proven, and assuming that there was an exact amount of funds arrived at after audit, she

<sup>123</sup> Criminal Case No. 99-CR-3544, Rollo li, pages 983-1011.

<sup>124</sup> Record, pages 193-194; Appellant's Brief, pages 21.

<sup>125</sup> Id., pages 203-204; Id., pages 30-31.

<sup>126</sup> Id., pages 219; Id., pages 46.

<sup>127</sup> Id., pages 221; Id., page 48.

<sup>128</sup> Appellant's Brief page 55.

<sup>129</sup> Id., page 230; Id., page 57.

<sup>130</sup> Id., page 239; Id., page 66.

<sup>131</sup> Id., page 243; Id., page 70.

was not informed of the final amount; that no amended or subsequent notice of charge was issued reflecting the final amount after the adjustments, thus no demand has been made as to the amount alleged to have been unaccounted or misappropriated; that as to the eleven counts of malversation, all the unreceipted checks were deposited to the account of the Province, hence no conversion or misappropriation was committed.

Under the second assignment of error, the accused-appellant hinges her argument on the following: that as regards to Criminal Cases Nos. 99-CR-3544 to 99-CR-3554, Provincial Treasurer Ambanloc has no authority to conduct the audit, and therefore no authority to file the complaint; that only the COA, which is specifically tasked by the Constitution to conduct such audit, can examine her accountabilities; that the creation of the COA audit team which is the basis of Criminal Case No. 99-CR-3590, since the verbal designation of the audit team is contrary to the provisions of COA Resolution No. 1996-305; and that after the audit examination errors have been discovered, no subsequent audit report and notice of charges were issued.

#### *Appellee's Counter-Arguments*

The plaintiff-appellee contends that accused-appellant's arguments are misplaced and misleading. It avers that contrary to the contention of the accused-appellant, there was no need to issue another demand letter for the corrected amount since the latter was within the original amount previously demanded by COA. Additionally, the accused-appellant's contention that she did not misappropriate nor convert the subject missing funds are not valid defenses and will not at all exculpate her from criminal liability. As to the alleged incomplete, irregular and inaccuracy of the audit examination, the plaintiff-appellee asserts that the COA, consisting of public officials, enjoy the presumption of regularity in the discharge of their official duties and functions.

#### *The Court's Ruling*

The Court finds the present appeal bereft of merit

***The prosecution proved all  
the elements of malversation  
beyond reasonable doubt***

The elements of Art. 217 of the RPC are as follows: (1) the offender is a public officer, (2) he or she has custody or control of the funds or property by reason of the duties of his/her office, (3) the funds or property are public funds or property for which the offender is accountable, and most importantly; (4) the offender has appropriated, taken misappropriated or consented, or through abandonment or negligence, permitted another person to take them.

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All of the foregoing elements were sufficiently proved in the present case.

The presence of the **first**, **second** and **third** elements are undisputed. It has been stipulated that accused-appellant is an accountable public officer, being the Cashier IV of the Provincial Treasurer's Office, and she is in charge with the collection of cash and checks under the General Fund and deposit the same with depositary banks maintained by the Province of Benguet. She also holds custody of Certificates of time deposits under the General Fund, Trust Fund and Special Education Fund.

As to the **fourth** element, it is well-settled that malversation may be committed intentionally (*dolo*) or by means of negligence (*culpa*). The crime is committed by means of *dolo* when the act is accompanied by criminal intent as when the offender misappropriated or converted public funds or property to one's personal use. Malversation may also be committed by means of *culpa* or by such negligence or indifference to duty or to consequences as, in law is equivalent to criminal intent; as when the offender knowingly allowed another or other to make use of or misappropriate public funds or property.<sup>132</sup> Furthermore, the failure of a public officer to have duty forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he/she has put such missing funds or property to personal use.

Time and again, the Supreme Court has emphasized that an accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his/her accounts which he/she has not been able to explain satisfactorily.<sup>133</sup>

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

<sup>132</sup> People v. Asuncion, G.R. Nos. 250366 & 250388-98, April 6, 2002

<sup>133</sup> Estrella v. Sandiganbayan, G.R. No. 123160, June 20, 2000, citing Navalle v. Sandiganbayan, 234 SCRA 175, 185 (1994), and Villanueva v. Sandiganbayan, 200 SCRA 722, 724.

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

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

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

The said observation were incorporated in the Audit Examination Report submitted by Calgo and Javier, and in the two Notice of Charge issued to the accused-appellant.

***Presumption of regularity  
of the COA's findings***

The court *a quo* correctly ruled that the COA audit findings were conclusive on the existence of the shortage. Public officials are accorded the presumption of regularity in the discharge of their official duties and functions. Thus the ruling of the Supreme Court is emphatic on the great weight and respect accorded to the findings of COA, to wit:

"Most importantly, the COA's findings are accorded great weight and respect, unless they are clearly shown to be tainted with grave abuse of discretion; the COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to, the government. It has the exclusive authority to define the scope of its audit and examination, and to establish the required techniques and methods. An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with official guidelines and regulations. Under the Rules on Evidence and considering the COA's expertise on the matter, the presumption is that official duty has been regularly performed unless there is evidence to the contrary."<sup>134</sup>

<sup>134</sup> *Jaca v. People*, G.R. Nos. 166967, 166974, & 167167, January 28, 2018, 702 Phil 210-262.



The court *a quo* found the audit findings of Atty. Cabanlong's audit team, and gave credence to the actual amount of shortage incurred by accused-appellant, to wit:

"Atty. Cabanlong's audit team significantly found that accused Pagano had under-deposited cash collections in the total amount of P1,370,442.23 for the period January 1 to December 31, 1996, and unreceipted interest on time deposits and under-deposited cash collections in the amount of P2,805,472.89 for the period January 1 to December 31, 1997. This evidently resulted to Pagano's total cash collection shortage of P4,080,799.57. She attempted to cover up the discrepancies by indicating official receipt numbers on the checks, which came from different collections."

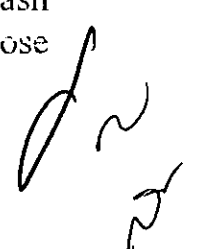
***Failure of the accused-appellant  
to rebut the prima facie  
presumption under Art. 217***

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

It has been settled that good faith is a state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.'<sup>135</sup>

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

"Q23: Madam (sic) Witness, you mentioned earlier that Mr. Ambanloc would sometimes casually instruct you to encash the check using the cash-on-hand. How did you react to those instructions?"



<sup>135</sup> Razalan v. Commission on Audit, G.R. No. 255366 (Notice), November 9, 2021.

A23: I complied but hesitatingly, sir. As Cashier IV, I am under his immediate control and supervision.

Q24: What is the implication if the cash-on hand was used?

A24: It implies that it was used for Official Purpose, Sir.

Q25: So you encashed the checks using the cash-on-hand. What did you think would Mr. Ambanloc do afterward?

A25: I encashed the check from my cash-on-hand and assumed that Mr. Ambanloc will just liquidate the same later.

Q26: Did Ms. Ambanloc sign any document when the check was encashed?

A26: In consideration of the encashment, I let Mr. Ambanloc sign a Receipt, which he did.

Q28 (sic): How long has the encashment by Mr. Ambanloc been going on?

A28 (sic): The encashment by Mr. Ambanloc became a regular practice such that sometime, he would just attach a note to the Manager's Check he wanted me to encash.

Q29 (sic): What can you say about this practice of the Provincial Treasurer?

A29 (sic): I had some doubts regarding the legality of the practice. However, these doubts were dispelled when Mr. Ambanloc said that his encashment was under the discretion of then Benguet Provincial Governor and allowed by the Provincial Auditor.

Q29: Did you believe this explanation?

A29: Yes, Sir, I believed in good faith that the said amounts would be utilized for some official purposes or disbursement. It was only later that I discovered that the amounts had not been treated as public funds but have been expended for his personal purposes."

Clearly, the accused-appellant was not in good faith when she allowed the encashment of the said checks from her cash-on-hand.

All other assignment of errors propounded by the accused-appellant were misplaced and irrelevant. Thus, there is no cogent reason to discuss the same.


All told, it is proper to emphasize that courts are not generally inclined to review the findings of fact of the trial court unless its findings are erroneous, absurd, speculative, conjectural, conflicting, or tainted with grave abuse of discretion.<sup>136</sup> It has also been settled that the appellate court will not disturb the factual findings of the trial court as the latter is in a better position to decide on the credibility of the witnesses, having heard the witnesses themselves and having observed their demeanor and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.<sup>137</sup> Therefore, this Court do not find any reason to disturb the trial court's factual findings in the present appeal.

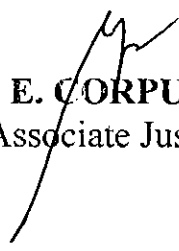
**WHEREFORE**, premises considered, the appeal of accused-appellant Esther S. Pagano is hereby **DENIED** for lack of merit. The Joint Decision dated February 28, 2023 by the Regional Trial Court of La Trinidad, Benguet, Branch 10, is hereby **AFFIRMED**.

**SO ORDERED.**

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

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

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

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<sup>136</sup> *Concepcion v. Court of Appeals*, G.R. No. 120706, January 31, 2000, 381 Phil 90-101 citing *Congregation of the Religious of the Virgin Mary v. CA*, G.R. No. 126363, 26 June 1998, 281 SCRA 385 and *Sarmiento v. CA*, G.R. No. 110871, 2 July 1998, 291 SCRA 656.

<sup>137</sup> *Cantos y Desuloc v. Court of Appeals*, G.R. No. 109644, July 21, 1994, 304 Phil 538-550.

### 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  
Associate Justice

### CERTIFICATION

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



**AMPARO M. CABOTAJE-TANG**  
Presiding Justice