



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

SIXTH DIVISION

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

- versus -

DARWIN C. VILORIA,  
Accused-Appellant.

*Present*

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

*Promulgated:*

*August 20, 2022*

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RESOLUTION

**FERNANDEZ, SJ, J.**

This resolves the *Motion for Reconsideration (For Accused Viloría)*,<sup>1</sup> and plaintiff-appellee's *Opposition (to Accused-Appellant's Motion for Reconsideration dated 01 June 2022)*.<sup>2</sup>

In the Decision dated May 18, 2022,<sup>3</sup> this Court affirmed with modification the RTC's Decision dated February 22, 2021 in Criminal Case No. V-1575, finding accused-appellant Darwin C. Viloría guilty beyond reasonable doubt of the crime charged. The dispositive portion<sup>4</sup> of this Court's Decision reads:

**WHEREFORE**, there being no reversible error, the Court **AFFIRMS** the RTC's Decision dated February 22, 2021 in Criminal Case No. V-1575, finding accused-appellant DARWIN C. VILORIA

<sup>1</sup> Dated June 1, 2022; Record, pp. 178-184

<sup>2</sup> Dated August 17, 2022; Record, pp. 192-197

<sup>3</sup> Record, pp. 149-173

<sup>4</sup> Decision dated May 18, 2022, p. 24; Record, p. 172

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guilty beyond reasonable doubt of Malversation of Public Funds with the following MODIFICATIONS:

- 1) He shall pay a fine in the amount of the malversed funds, as alleged in the Information, or One Hundred Sixty-Three Thousand Four Hundred Thirty-Six Pesos and Fifty-Three Centavos (P163,436.53).
- 2) He shall further pay Alcala Water District the amount of One Hundred Fifty-Five Thousand Two Hundred Thirty-Nine Pesos and Thirteen Centavos (P155,239.13) plus interest of 6% *per annum*, to be reckoned from the date of finality of this Decision until full payment, by way of his civil liability.

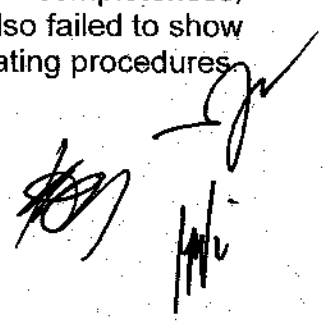
SO ORDERED.

In his *Motion for Reconsideration*, accused-appellant now prays that this Court reconsider its Decision, and issue a new one acquitting him of the crime charged. He avers:

1. The shortage of funds that was attributed to him was not indubitably established because the audit was incomplete, irregular, and inaccurate, and did not follow standard auditing procedures.
2. He did not receive the demand letter issued by Auditor Quinto, and hence, such letter cannot be the basis of the *prima facie* evidence of conversion.
3. Antero's Memorandum dated January 9, 2007, likewise, cannot be considered as giving him ample opportunity to explain the unremitted collections because the amount therein, *i.e.*, P95,864.30, pertained to the unremitted collections from 1997 to 1999, while the amount in the Information, *i.e.*, P163,436.53, was from the period 2000 to 2006.

In its *Opposition*, plaintiff-appellee counters:

1. Accused-appellant's MR raises no novel question of substance. Neither has he shown that the Court decided the appeal contrary to law or applicable decisions of the Supreme Court.
2. Accused-appellant failed to explain the alleged incompleteness, irregularity, and inaccuracy of the audit. He also failed to show that the audit did not follow the standard operating procedures.



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3. The Court had already addressed the matter of the demand letter issued by Auditor Virgilio Quinto.
4. Accused-appellant cannot accurately assert that the period covered in Antero's Memorandum refers to a period different from that alleged in the Information because the Information states "between the period from 2000 to 2006 or sometime prior or subsequent thereto," which may include the years 1997 to 1999.
5. The variance in the amounts in Antero's Memorandum and in the Information will have no effect on accused-appellant's conviction. Although the Court found that the total amount malversed, which considered the amounts from 1996-1999, was ₱221,935.98, accused-appellant was held liable only for ₱163,436.53, or that alleged in the Information.

### THE COURT'S RULING

Accused-appellant's *Motion for Reconsideration* is bereft of merit, and should be denied.

First, accused-appellant failed to substantiate his bare claim that the audit—whether that conducted by LWUA auditors or that conducted by a COA auditor—was incomplete, irregular, and inaccurate, and did not follow standard auditing procedures.

Second, the Court already addressed the matter of the demand which gave rise to the *prima facie* presumption of conversion. For convenience, the pertinent portion<sup>5</sup> of the assailed Decision is hereunder quoted:

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

We agree with Pescadera that this is not the demand contemplated by law. The demand to account for public funds must be addressed to the accountable officer. The above-cited letter was made by the Provincial Auditor recommending to the Chairperson of the COA to "require the Provincial Treasurer of Sulu to remit all trust liabilities such as GSIS premiums/loans, repayments/state insurance, Medicare and Pag-ibig." Nowhere in the pleadings did the Special Prosecutor refute the lack of a formal demand upon Pescadera to account for the GSIS premiums.

<sup>5</sup> Decision dated May 18, 2022, pp. 14-16; Record, pp. 162-164

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Pescadera even denies being informed of the conduct of the audit, an assertion which was not refuted by the prosecution. It can be concluded that Pescadera was not given an opportunity to explain why the GSIS premiums were not remitted. Without a formal demand, the *prima facie* presumption of conversion under Art. 217 cannot be applied.

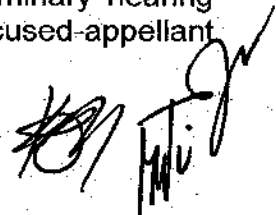
A closer look at the ruling in the said case would, however, show that it does not apply to the present case because the facts and circumstances herein are different from those in *Estino*. In that case, the *prima facie* presumption of conversion did not arise, not because there was no formal demand,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

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

x x x

Complying with the said Memorandum, accused-appellant submitted the *Sworn Statement* dated January 12, 2007, wherein he explained that he drew money from the cash collections from 1991 to 1999 for advances to the officers and Board Members of the AWD upon the instruction of then General Manager Sacayanan. Thereafter, accused-appellant submitted another *Sworn Statement* dated January 18, 2007, wherein he explained that he gave cash advances to Sacayanan, upon the latter's instructions, taken from the collections in 2000 to 2006.

Subsequently, accused-appellant was formally charged for the unremitted collections from 2000 to 2006, in the amount of One Hundred Sixty-Three Thousand Four Hundred Thirty-Six Pesos and Fifty-Three Centavos (P163,436.53), and was again, given the opportunity to explain the said amount in the preliminary hearing conference scheduled on February 19, 2007. Accused-appellant



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attended the said preliminary hearing conference, where he admitted to committing the charges and offered to pay the amount he acknowledged. Accused-appellant was then allowed to pay the same in two (2) installments. His *Promisory* [sic] Note dated March 12, 2007 reads:

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

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

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

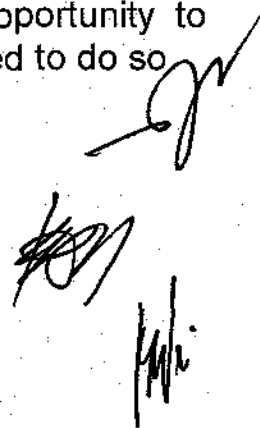
Because a demand was made upon accused-appellant and he failed to provide a satisfactory explanation for the unremitted collections, he was *prima facie* presumed to have converted the same to his personal use. It was then incumbent upon him [to] rebut such *prima facie* presumption by presenting evidence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

Simply put, Antero's Memorandum dated January 9, 2007,<sup>6</sup> directing the accountable officers, including accused-appellant, to submit their sworn statements to explain the unremitted collections in the amount of ₱95,864.30 from 1997 to 1999, was merely the starting point. The said Memorandum led to accused-appellant's submission of his two (2) *Sworn Statements*,<sup>7</sup> and eventually led to the administrative charges<sup>8</sup> against him, where he was directed to attend the preliminary hearing conference on February 19, 2007 to explain the unremitted collections in the amount of ₱163,436.53 from 2000 to 2006. Clearly, accused-appellant was given ample opportunity to explain the amount alleged in the Information, but he failed to do so

<sup>6</sup> Exhibit M

<sup>7</sup> Exhibits N and O

<sup>8</sup> Exhibit C



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In fine, there is nothing in accused-appellant's *Motion for Reconsideration* that would warrant the reversal of the assailed Decision.

**WHEREFORE**, accused-appellant's *Motion for Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.

  
SARAH JANE T. FERNANDEZ  
Associate Justice  
Chairperson

**We Concur:**

  
KARL B. MIRANDA  
Associate Justice

  
KEVIN NARCE B. VIVERO  
Associate Justice