



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-15-CRM-0131

-versus-

For: Malversation of
Public Funds


ANGEL VIRAY PELIGLORIO, JR.
And CEDRIC CUA LEE,
Accused.

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Present:

CABOTAJE-TANG, A.M.,
P.J./Chairperson
FERNANDEZ, B. R., J. and
MORENO, R. B., J.

Promulgated:

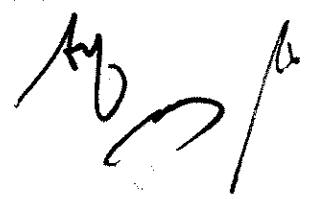
September 14, 2022 

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R E S O L U T I O N

FERNANDEZ, B. R., J.

For resolution are the following, namely - - (1) the Motion for Reconsideration dated June 15, 2022 of accused-movant Angel Viray Peliglorio, Jr.; (2) the Motion for Reconsideration dated June 17, 2022 of accused-movant Cedric C. Lee; and, (3) the Motion for Partial Reconsideration dated June 20, 2022 of the prosecution; and, (4) the



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Consolidated Opposition dated July 4, 2022 also of the prosecution.

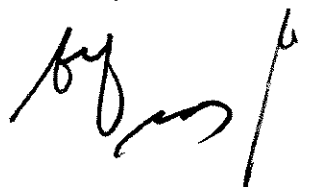
Let us first consider the two (2) Motion for Reconsideration individually filed by the accused-movants.

The Motion for Reconsideration
dated June 15, 2022 of accused-
movant Angel Viray Peliglorio, Jr.

Accused-movant Peliglorio, Jr., in praying that he be acquitted of the crime of malversation of public funds, maintains that - - (1) he was neither in custody of the money allegedly malversed nor in control of the subject funds as his written instruction to the Land Bank of the Philippines (Landbank) for the release of the loan proceeds is only in the nature of a request, subject to the approval of the Union Bank of the Philippines (Union Bank) and the submission of the documents required under the contract. Landbank, as trustee, is the custodian of the loan proceeds and is the one that actually pays or releases the payment; (2) no conspiracy was proven; (3) the findings of Atty. Desiderio A. Pagui, the handwriting expert commissioned by accused-movant Peliglorio, Jr., that the latter was not the one who signed the Letter dated March 27, 2007 (Exh. "H") instructing the Landbank to release the subject funds to Izumo, were never impugned; (4) the date of the loan as alleged in the Information is material to the case; (5) there is no basis for the fine of P23, 470,500.00; and, (6) he had no knowledge of the release of fund made by Landbank.

The Motion for Reconsideration
dated June 17, 2022 of accused-
movant Cedric C. Lee

Accused-movant Lee mainly focuses his arguments on the following: (1) the fourth element of malversation of public funds - that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them - is not present considering the absence of evidence which shows that the funds were converted to the personal use of the accused; (2) the project for the construction of the Mariveles Public Market consisted of two phases: the design and studies phase and the actual construction phase. The receipt of the partial payment pertains only to the comprehensive technical studies already



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undertaken by Izumo; (3) the prosecution failed to prove the existence of conspiracy between the accused Peliglorio, Jr. and Lee; (4) the advance payment or mobilization includes the partial payment/downpayment to the contractor for the studies made (design phase); (5) the subcontracts are governed by the agreement between the prime contractor and subcontractor. The Municipality is not privy to the contracts of Izumo with its subcontractors; and, (6) the Letter-Request of accused Lee was not solely addressed to accused Peliglorio, Jr.

When given time (Minutes, June 21, 2022), the prosecution filed its - -

Consolidated Opposition dated
July 4, 2022 to the Motions for
Reconsideration of accused-movants
Peliglorio, Jr. and Lee

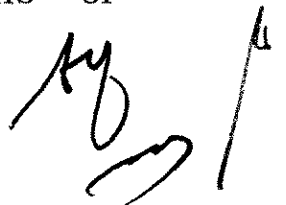
The prosecution maintains that the elements common to all acts of malversation of public funds punished under Article 217 of the Revised Penal Code are present.

It reiterates that accused-movant Peliglorio, Jr., as Municipal Mayor, was primarily responsible for and accountable to the subject public funds and had control of the same by reason of the duties of his office. Indubitably, the subject funds released to Izumo as advanced payment or mobilization in the amount of P23,470,500.00 were public funds as they are part of the proceeds of the loan obtained by accused-movant Peliglorio, Jr. from Union Bank, on behalf of the Municipality of Mariveles, for the subject construction project. Thus, the loan proceeds belonged to the Municipality to be used solely for its benefit.

Furthermore, the terms of the Trust Agreement are clear and leaves no doubt on the intentions of the contracting parties, the literal meaning of its stipulations shall control.

The prosecution likewise alleges that it has proven the existence of conspiracy. This can be deduced from the acts of both accused-movants that came in quick succession, or in only three days - March 26 to 28, 2007.

On the findings of the Atty. Pagui, the handwriting expert, the prosecution reiterates that opinions of



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handwriting experts are not binding upon the courts. Although accused-movant Peliglorio, Jr. claims that the findings of Atty. Pagui were never impugned and insists that the photocopy of the Letter dated March 27, 2007 sent to the Landbank (Exh. "H") should not be admitted, he, however, ignored the fact that the documents containing his standard signatures and used by Atty. Pagui in his examination, were executed on October 12, 2015 or more than eight (8) years after the issuance of the said Letter.

Furthermore, Atty. Pagui admitted, during cross-examination, that factors, such as the condition of the surface on the paper, the position of the writer, the kind of pen used as well as to whether the signer is left-handed or right-handed, may still be considered.

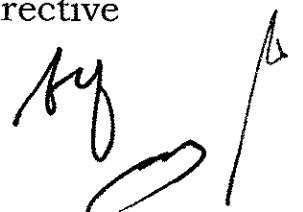
On the position of accused-movant Peliglorio, Jr. that only an approximate date appears in the Information, the prosecution counters that it is not necessary to state the precise date of the offense committed except when this is a material ingredient of the offense.

In rebutting the contention of accused-movant Lee, the prosecution insists that the heart of the violation of Sec. 3 (e) of R.A. No. 3019 in SB-15-CRM-0130 was the deductions from the Internal Revenue Allotment (IRA) of the Municipality of Mariveles in the amount of P14,056,084.43, which purports to be the amortization of the subject loan. While SB-15-CRM-0131 specifically pertains to the proceeds of the subject loan, in the amount of P23,470,500.00, released by Landbank to accused-movant Lee on a written instruction of accused-movant Peliglorio, Jr. Their coordinated acts became evident when, on March 28, 2007, a day after accused-movant Peliglorio, Jr. issued his written instruction to the Landbank, accused-movant Lee wrote (Exh. "NN") the same Bank to request for the payment of the advance mobilization funds described therein.

On the other hand, the prosecution likewise filed its - -

Motion for Partial Reconsideration
dated June 20, 2022

The focus of the Motion of the prosecution seeks a modification of the dispositive portion of the assailed Decision particularly on the civil liability of the accused and a directive

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for them to pay the Municipality of Mariveles the misappropriated amount of P23,470,500.00, plus interest thereon at the rate of six percent (6%) *per annum*, reckoned from the finality of the subject Decision until the amount is fully paid.

The prosecution argues that the civil action for the recovery of civil liability arising from the offense charged shall, at all times, be simultaneously instituted with and jointly determined in the same proceeding. It added, citing *Mesina vs. People* (G.R. No. 162489, June 17, 2015), that the Supreme Court reminded trial and appellate courts that, as provided for in Section 2, Rule 120 of the Revised Rules of Court, they should “determine and set the civil liability *ex delicto* of the accused in order to do justice to the complaining victims who are always entitled to them”.

It further maintains that civil liability arising from the criminal offense includes, among others, restitution, citing Articles 100 and 104, both of the Revised Penal Code (RPC).

Although time was granted (Minutes, June 20, 2022), both accused-movants Peliglorio, Jr. and Lee did not file any comment or opposition.

We now rule.

At the onset and particularly on the dual Motions for Reconsideration of both accused, it must be emphasized that there are no new matters that will prompt this Court to either amend, alter, modify or reverse the assailed Decision promulgated on June 3, 2022, except on two specific issues raised, namely: the inclusion of the taxes paid as part of the fine and the restitution and the civil liability of both accused.

Prior to considering these two issues, it would be worth reiterating certain points.

On the Motion for Reconsideration
dated June 15, 2022 of accused-
movant Peliglorio, Jr.

Local government officials become accountable public officers either (1) because of the nature of their functions or (2) on account of their participation in the use or application



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of public funds (Escobar vs. People, G.R. No. 205576, November 20, 2017).

Accused-movant Peliglorio, Jr., as Municipal Mayor, served as the chief executive of the Municipality of Mariveles and is, thus, immediately and primarily responsible for and accountable to the subject public funds, being in control of the same by reason of the duties of his office. He is also vested with the authority to exercise general supervision of all municipal programs and projects and exercised such powers and functions as provided for by the Local Government Code and the Government Auditing Code of the Philippines (P.D. No. 1445).

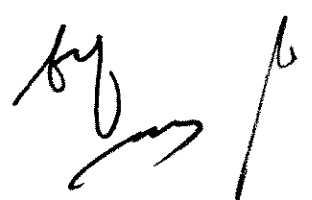
We are also reminded of the expanded definition in the Local Government Code, particularly Sec. 340 thereof, of an accountable public officer relative to local government funds, to wit - -

Section 340. Persons Accountable for Local Government Funds. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

With the foregoing mandate, the Landbank cannot release the loan proceeds to the contractor, Izumo, without the written instructions of accused-movant Peliglorio, Jr.

Aside from this accountability, this is specifically required in Section 2.4 of the Trust Agreement dated March 22, 2007 (Exh. "E"), to wit - -

Sec. 2.4. The Trustee, upon written instruction of the Trustor and upon submission of the appropriate billings as certified to be true and correct by the Trustor and upon approval of the UBP, shall release funds from the Project Construction Fund directly to the contractors, subcontractors, developers or supplier of the Project, in whole or in part, in payment of the cost or implementation and completion of the development and construction of the Project provided however that the Works Engineer referred to in Section 14 hereof duly confirms to the Trustee that



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each of the progress billing presented by the contractors for payment is in order.

Although accused-movant Peliglorio, Jr. asserts that his written instruction was in the nature of a mere request for the release of the subject funds, this Court finds that this position is unmeritorious. We can only quote the Letter dated March 27, 2007 (Exh. "H") of accused-movant Peliglorio, Jr. - -

Relative thereto, the undersigned hereby respectfully **instruct** you as Trustees of the said funds to pay and/or release to Izumo Contractors Inc., contractor for the project, the amount of TWENTY THREE MILLION FOUR HUNDRED SEVENTY THOUSAND FIVE HUNDRED PESOS (23, 470,500.00) representing the advance mobilization funds and financial charges for the project. (*bold ours*).

The use of the word "instruct" connotes a directive to perform, unlike a "request", where there can be room for movement.

Moreover, Landbank was designated merely as a "paying agent/disbursing agent" requiring a "written authorization" from accused-movant Peliglorio, Jr. as trustor, before any funds may be disburse, in compliance with Sections 4.2 and 4.2.2 of the Trust Agreement (Exh. "E").

This written authorization, as a requirement, is reiterated in Section 4.2.3 of the same Trust Agreement (Exh. E) before the Landbank, as paying agent, may release funds to the contractor.

On the issue on conspiracy, this Court reiterates its earlier finding that conspiracy may be inferred and that the totality of the facts arising from the evidence undoubtedly show conspiracy between accused-movant Lee and accused-movant Peliglorio, Jr.

To be a conspirator, one need not participate in every detail of the execution. Each conspirator may be assigned separate and different tasks.

Relative to the issue raised on the handwriting examination, this Court finds no merit to the claim of accused-movant Peliglorio, Jr. that the findings of Atty. Pagui, the handwriting expert, were never impugned and insisted that the photocopy of the Letter dated March 27, 2007 (Exh.



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“H”) to the Landbank should not have been admitted in evidence.

It should be noted that accused-movant Peliglorio, Jr. submitted to Atty. Pagui, his own handwriting expert, documents with his standard signatures dated October 12, 2015 or more than eight (8) years after the aforementioned Letter on March 27, 2007.

Furthermore, although Atty Pagui, in his Scientific Handwriting Examination Report dated December 3, 2015 (Exh. 27-Peliglorio, Jr.), maintains that the questioned signature of accused-movant Peliglorio, Jr. on the Landbank letter dated March 27, 2007 (Exh. “H”) was not the latter’s, still Atty. Pagui himself admitted that there are other factors that can alter a person’s signature.

Anent the contention of accused-movant Peliglorio, Jr. that the date of the loan as alleged in the Information is material to this case, this Court reiterates and underscores Section 6, Rule 110 of the Revised Rules of Court which provides that an information is sufficient if it states the approximate date of the commission of the offense. It is not necessary to state in the information the precise date of the offense committed except when it is a material ingredient of the offense. This applies to the accusatory portion of the Information alleging that the accused committed the offense *“on 27 March 2005, or thereabout.”*

Furthermore, accused-movant Peliglorio, Jr. argues that there is no basis for the imposition of P23,470,500.00 fine which is the same amount malversed. He avers that he should not be made to pay for something that the Government itself benefited from - the taxes withheld by the Bureau of Internal Revenue (BIR) and fees paid to Union Bank.

This Court, after revisiting the computations on the amounts paid, found that only the amount of P19,442,267.48 was acknowledged to have been received by accused-movant Lee, as shown in a Credit Slip dated March 29, 2007 (Exh. “7-Lee”).

Hence, this Court reduces the amount of the fine imposed to P19,442,267.48, the actual amount malversed.



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On the Motion for Reconsideration
dated June 17, 2022 of accused-
movant Cedric C. Lee

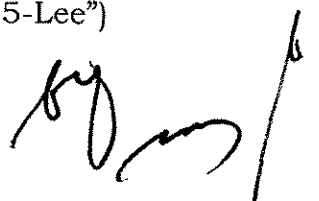
This Court notes the act of requesting made by accused-movant Lee and the subsequent and immediate written instruction of accused-movant Peliglorio, Jr. for the release of the advance mobilization funds/downpayment by Landbank, strongly indicates a conspiracy to misappropriate the subject funds.

Section 2.3 of the Supplemental Agreement dated May 17, 2006 (Exh. "9-Lee") provides that "advance payment/mobilization" may only be released to the contractor upon the issuance of a notice to proceed. However, the testimony of accused-movant Lee shows that, at the time he wrote and requested Peliglorio, Jr. for the advance of the mobilization funds on March 26, 2007 (Exh. "G"), a notice to proceed had yet to be issued. He even added that the new mayor, Jesse Concepcion, refused to issue a notice to proceed. Moreover, although he stated in his afore-mentioned Letter-Request to accused Peliglorio, Jr. (Exh. "G") that a supposed notice to proceed was one of its attachments, such documents was never presented nor offered by the accused.

If the intention of the accused-movant Lee was to have the subject funds released for purposes of paying Izumo for the services already rendered to the Municipality, there was nothing in his Letter-Request dated March 26, 2007 (Exh. "G") to accused-movant Peliglorio, Jr. indicative of this.

The absence of this indication strongly casts serious doubt on the validity of the alleged legitimate services performed by accused-movant Lee for the Municipality. Apart from his self-serving statements, he failed to provide a breakdown of the designs and studies he enumerated or any contract that would prove that he outsourced and paid for the other services. Neither did Architect Lopez presented a contract on his alleged comprehensive architecture engineering design.

We also find dubitable the argument of accused-movant Lee that there was no need for him to itemize anew the supposed studies in his Letter-Request dated March 26, 2007 (Exh. "G") to accused Peliglorio, Jr. because he had already itemized them in a transmittal document (Exh. "5-Lee")



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submitted to the Municipality. However, no reference was made of this in his Letter request dated March 26, 2007 for the payment of services rendered by Izumo.

Neither can this Court find merit in the assertion of accused-movant Lee that he and accused-movant Peliglorio, Jr. did not appropriate, take, or misappropriate public funds because the project was fully supported by documents as part of the Memorandum of Agreement dated March 24, 2004 (Exh. 8-Lee). There were no documents produced by them. Even the counsel of accused-movant Lee admitted that they did not have copies of the documents/annexes.

Furthermore, this Court does not find any solid ground to support the allegation of accused-movant Lee that he cannot be convicted for malversation of public funds in SB-15-CRM-0131 because of the Court's findings in SB-15-CRM-0130 that he and accused Peliglorio, Jr. did not cause undue injury to the government or give any unwarranted benefits, advantage, or preference.

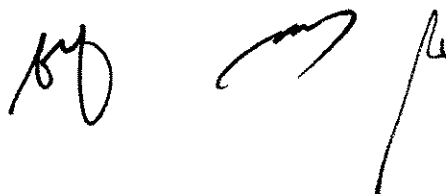
This is a *non sequitur*.

It must be remembered that the charge for violation of Section 3 (e) of R.A. No. 3019 in SB-15-CRM-0130 pertains to the deductions made from the Internal Revenue Allotment (IRA) of the Municipality of Mariveles in the amount of P14,056,084.43, which purports to be the amortization of the subject loan. On the other hand, SB-15-CRM-0131 relates to the proceeds of the subject loan, in the amount of P23,470,500.00, released by the Land Bank to accused-movant Lee upon the written instruction of accused-movant Peliglorio, Jr.

On the Motion for Partial
Reconsideration of the
prosecution dated June
20, 2022

After revisiting its previous posture and guided by the facts, the law and jurisprudence, this Court finds an imperative need to modify the assailed Decision promulgated on June 3, 2022.

Guided by *Zafra vs. Sandiganbayan* (G.R. No. 176317, July 23, 2014), to wit- -



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Indeed, as the Court emphasized in *Bacolod vs. People*, it was "imperative that the courts prescribe the proper penalties when convicting the accused, and determine the civil liability to be imposed on the accused, unless there has been a reservation of the action to recover civil liability or a waiver of its recovery, x x x

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "every man criminally liable is also civilly liable" (Art. 100, Revised Penal Code).

Likewise, under Section 2, Rule 120 of the Rules of Court, it is imperative to determine the civil liability *ex delicto* of the accused, unless the enforcement of the civil liability by separate actions has been reserved or waived.

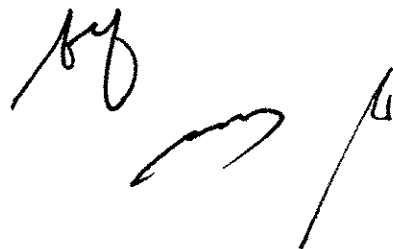
Furthermore, under Article 104 of the Revised Penal Code, the civil liability of the accused may involve restitution, reparation of the damage caused, and indemnification for consequential damages.

Given that the obligation of the accused-movants requires the payment of the amount misappropriated to the Municipality of Mariveles, the indemnification for damages is through legal interest of 6% *per annum* (see Article 2209, New Civil Code) on the amount malversed, reckoned from the finality of the assailed Decision until full payment.

While there are no reversible errors in finding both accused guilty of malversation of public funds described in Article 217 of the Revised Penal Code, as amended, this Court necessarily modifies the amount of fine imposed and to require both accused to pay the amount malversed by way of civil liability, to both conform to the law and jurisprudence.

WHEREFORE, this Court hereby rules in the following manner - -

On the Motions for Reconsideration of accused-movant Angel V. Peliglorio, Jr. and accused-movant Cedric C. Lee, respectively dated June 15, 2022 and June 17, 2022, the same are both **DENIED** for lack of merit.



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On the Motion for Partial Reconsideration of the prosecution dated June 20, 2022, the same is hereby **GRANTED**.

Consequently, the Decision promulgated on June 3, 2022 is hereby **AMENDED** to include the following **MODIFICATIONS**, to wit - -

(1) Accused Angel V. Peliglorio, Jr. and accused Cedric C. Lee shall pay a fine in the amount of nineteen million four hundred forty two thousand two hundred sixty seven pesos and forty eight centavos (P19,442,267.48), Philippine currency, representing the funds malversed;

(2) Accused Angel V. Peliglorio, Jr. and accused Cedric C. Lee shall, as restitution, pay, jointly and severally, to the Government, through the Bureau of Treasury, the amount of nineteen million four hundred forty two thousand two hundred sixty seven pesos and forty eight centavos (P19,442,267.48), with interest of six percent (6%) per *annum* from finality of this Decision until fully paid.

SO ORDERED.

Quezon City, Metro Manila.


BERNELITO R. FERNANDEZ
Associate Justice

We concur:


AMPARO M. CABOTAJE-TANG
Presiding Justice/ Chairperson


RONALD B. MORENO
Associate Justice