REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **Plaintiff-Appellee,**	**CASE NO. SB 22-A/ R-0003** **For: Malversation of Public Funds**
-versus-	
MARITES F. LOPEZ, **Accused-Appellant.** **x----------x**	Present: **CABOTAJE-TANG, P.J.,** *Chairperson* **FERNANDEZ, B., J and** **MORENO, R., J.**
	PROMULGATED: FEBRUARY 27, 2023

x----------x

DECISION

CABOTAJE-TANG, P.J.:

This is an appeal from the Decision[1] dated January 10, 2020 of the Regional Trial Court (RTC), Valenzuela City,

[1] pp. 16-23, Record, Vol. 1

Branch 75 in Criminal Case No. 647-V-14 entitled "People of the Philippines versus Marites Francisco Lopez," finding the appellant guilty beyond reasonable doubt of malversation of public funds. The dispositive portion of the said decision reads:

> *WHEREFORE, premises considered, judgment is hereby rendered finding the accused MARITES FRANCISCO LOPEZ GUILTY BEYOND REASONABLE DOUBT of the crime of Malversation of Public Funds, and is ordered to suffer the indeterminate penalty of eleven (11) years, six (6) months and twenty one (21) days of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal, as maximum.*
>
> *She is further ordered to suffer the penalty of perpetual special disqualification and to pay a fine of Php3,077,392.03 with subsidiary imprisonment in case of non-payment thereof.*
>
> *SO ORDERED.*

THE CASE

Appellant Marites F. Lopez was charged with the crime of malversation of public funds, defined and penalized under Article 217 of the Revised Penal Code, in an Information dated December 03, 2013, which reads:

> *That on or about the period covering from January 2009 to October 2010, or sometime prior or subsequent thereto, in Valenzuela City, Philippines and within the jurisdiction of this Honorable Court, accused MARITES F. LOPEZ, a low-ranking public officer, being the Acting Cashier of the Land Transportation Office-Valenzuela District Office, and having custody*

or control of and accountable for the public funds collected and received by her by reason of her duties, did then and there willfully, unlawfully and feloniously and with abuse of confidence, take, appropriate and convert to her own personal use and benefit the amount of THREE MILLION SEVENTY SEVEN THOUSAND THREE HUNDRED NINETY TWO PESOS and THREE CENTAVOS (Php3,077,392.03), which amount she failed to restitute despite demand, to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW. [2]

Upon arraignment on July 11, 2014, the appellant entered a plea of not guilty to the crime charged.[3]

At the pre-trial, the parties stipulated on the identity of the appellant as the same person charged in the Information and the jurisdiction of the trial court over her person.[4] Trial then ensued.

The prosecution presented its lone witness, Lorna Sanchez de Leon, Management Audit Analyst III of the Land Transportation Office (LTO). On September 28, 2018, it filed its formal offer of documentary evidence consisting of Exhibits B to P with sub-markings[5] which were admitted by the trial court in its Order dated October 04, 2018.[6]

On October 25, 2018, the appellant filed a Motion to Dismiss (By Way of Demurrer to Evidence) dated October 24, 2018 on the ground that the prosecution allegedly failed to present evidence to establish that she took and appropriated any public funds.[7] The prosecution filed its Comment and/or Opposition dated November 12, 2018, to the said demurrer

[2] pp. 71-72, Record, Vol. 1
[3] pp. 136-138, *ibid*
[4] pp. 144-152, *ibid*
[5] pp. 598-611, *ibid*
[6] p. 616, *ibid.*
[7] pp. 617-625, *ibid.*

to evidence alleging that the same was filed beyond the reglementary period prescribed under the Rules of Court.[8]

In an Order dated November 22, 2018, the trial court denied the appellant's demurrer to evidence for having been filed out of time. Thus, the hearing for the presentation of defense evidence was set.[9]

The defense presented the appellant as its lone witness. On October 15, 2019, the defense filed its formal offer of evidence consisting of Exhibits 1-4.[10] In its Order dated December 04, 2019, the trial court admitted Exhibit 1 but denied the admission of Exhibits 2 to 4 because the original copies thereof were not submitted to the trial court.[11] In the same order, the trial court declared the case submitted for decision considering the prosecution's failure to file its comment/opposition to the defense's formal offer of evidence.[12]

In its Decision dated January 10, 2020, the court *a quo* convicted the appellant of malversation of public funds as charged.[13]

Consequently, the appellant filed a notice of appeal praying that the records of this case be elevated to the Court of Appeals.[14] The court *a quo* granted the said notice of appeal and ordered that the entire records of the case be forwarded to the Court of Appeals.[15]

On March 09, 2021, the Public Attorney's Office-Special Appealed Cases Service (PAO-SACS) filed a *Motion to Endorse Case to the Sandiganbayan* after realizing that the appeal was erroneously filed with the Court of Appeals.[16] In the Court of Appeals' Resolution dated November 15, 2021, it granted the

[8] pp. 631-634, *ibid.*
[9] pp. 635-636, *ibid.*
[10] pp. 653-654, *ibid.*
[11] p. 675, *ibid.*
[12] p. 675, *ibid.*
[13] pp. 680-687, *ibid.*
[14] pp. 691-692, *ibid.*
[15] p. 693, *ibid.*
[16] CA's Resolution dated November 15, 2021; p. 66-67, Record

said PAO-SACS's motion and directed the transmittal of the entire records of this case to the Sandiganbayan.[17] The Sandiganbayan received the records of this case on March 07, 2022. Consequently, in a Resolution dated March 14, 2022, the Court required the appellant to file her appellant's brief within thirty (30) days from receipt thereof and for the appellee to file its brief within thirty (30) days from receipt of a copy of the appellant's brief.[18]

On May 30, 2022, the appellant filed her Compliance and Manifestation with attached Appellant's Brief dated May 30, 2022[19] which the Court admitted in its Resolution dated June 29, 2022.[20] On the other hand, the appellee filed its brief on August 10, 2022.[21]

THE PROSECUTION EVIDENCE

The lone prosecution witness, Lorna S. De Leon, testified as follows:

She is a government employee assigned at the Land Transportation Office (LTO). She has been with the LTO since 1978 up to the present. She was assigned at the LTO, National Capital Region (NCR) from 1980 to 2013. Thereafter, she was assigned at the LTO, Region 1, where she works up to the present. When she was assigned at the LTO-NCR, her position was Management Audit Analyst. Her duties and responsibilities as such were to check and audit all cashiers. She conducted an operation audit and property accountability of accountable officers. She was likewise a member of the Regional Internal Audit Staff (RIAS) of the LTO-NCR. She was appointed as such in 2010, through Memorandum Order No. CTC-2010 dated February 26, 2010 (Exhibit O). The RIAS was composed of three (3) teams. She was assigned in Team 1 tasked to conduct an audit of the LTO – Valenzuela City pursuant to Memorandum Order dated

[17] pp. 66-71, Record
[18] p. 1168, *ibid.*
[19] pp. 1196-1204, *ibid.*
[20] p. 1206, *Ibid.*
[21] pp. 11-28, Record, Vol. 2

May 10, 2010 (Exhibit O-1). The primary task of a member of the RIAS was to conduct an audit of all accountable officers. In the audit of accountable officers, they followed the procedure contained in the Regional Internal Audit Program CY-2011 (Exhibit N).[22]

During her audit of LTO – Valenzuela City from 2003 to 2010, the financial accountable officers were the appellant, a certain Ms. Hantoc and Ms. Barbieto. From 2008 to 2010, the appellant was the accountable officer being the Acting Cashier of LTO - Valenzuela City by virtue of Regional Office Order No. RLT-2008 dated November 25, 2008 (Exhibits B) designating her as such effective December 02, 2008. As an accountable officer, the appellant was bonded from June 29, 2010 to June 28, 2011, based on the letter dated June 29, 2010 (Exhibit K) from the Bureau of Treasury (BTr).[23]

Being the cashier of LTO – Valenzuela City for the said period, the appellant's duties and responsibilities were to (i) accept or receive money for the payment of vehicle registrations, issuance of driver's licenses and taxes; (ii) make a report of the total collection or payments she received in a day; (iii) prepare the collection report; and (iv) remit her collection the following day. If there is a shortage of the total collection, it is the cashier's responsibility to pay the amount of the shortage pursuant to Treasury Circular No. 02-2009 dated August 06, 2009 (Exhibit M) from the BTr.[24]

When asked if she knew the appellant, she pointed to the appellant in open court as the cashier assigned at the LTO – Valenzuela City from 2008 to 2010.[25]

In the conduct of her audit, she examined the Monthly Reports of Collections (MRCs) for the years 2008, 2009 and 2010 (Exhibits G-1 to G-12, H-1 to H-12 and I-1 to I-12) prepared by the appellant and the receipts used in the collection of payments. Appellant signed the said MRCs

[22] pp.4-8, TSN, September 16, 2016; pp. 1049-1053, Record, Vol. 1
[23] pp. 8-10, *ibid.*; pp. 1053-1055, *ibid.*
[24] pp. 10-11, TSN, September 16, 2016; pp. 1055-1056, Record, Vol. 1
[25] pp. 11-12, *ibid*; pp. 1056-1057, *ibid.*

(Exhibits G-1-a, G-12-a, H-1-a to H-12-a and I-1-a to I-12-a). Her signatures on the said MRCs are the same signatures appearing on the "documents" submitted by the appellant to their office. Based on the MRCs for the years 2008, 2009 and 2010 prepared by the appellant, De Leon prepared a schedule of collection and then summarized them. She came up with Summaries of Collections and Deposits (SCDs) for the period December 18, 2008 to December 30, 2010 (Exhibits G and F) then signed (Exhibit F-1) them. In the said SCDs, there are three [3] columns, namely: (1) Total Collection (TC); (2) Total Remittance (TR); and (3) Difference (D). The TC referred to the total collections that appellant received during the said period, which was based on the MRCs prepared by the appellant while the TR referred to the remittances made by the appellant during the same period. The said TR was confirmed by the Certifications all dated January 15, 2016 (Exhibits L toL-235). These certifications were given to her by the BTr. De Leon prepared the SCDs for each year (December 18, 2008 to December 24, 2008 [Exhibit G], January 2009 to December 2009 [Exhibit H] and January 2010 to December 2010 [Exhibit I]).[26]

After her analysis of the documents (MRCs and SCDs), she discovered that the appellant had a shortage in the total amount of Three Million Seventy-Seven Thousand Three Hundred Ninety-Two Pesos and 03/100 (Php3,077,392.03) in her remittances. De Leon further testified that the appellant had the duty to pay and/or return to the government the total amount of the shortage pursuant to Treasury Circular dated August 06, 2009 (Exhibit M). She thus sent a Demand Letter dated January 06, 2011 (Exhibit E), which she signed (Exhibit E-1), to the appellant informing her that she had a shortage in the total amount of Php3,077,392.03 and demanding her to produce the missing funds immediately. The appellant received the said letter as evidenced by her signature (Exhibit E-2) appearing on top of her name therein. De Leon then prepared an official report denominated as Memorandum dated January 11, 2011 (Exhibit P) which she signed (Exhibit P-1) addressed to the Regional Director of the LTO-NCR informing him of the appellant's shortage in her

[26] pp. 12-17, *ibid*; pp. 1057-1062, *ibid*.

remittances when she was the acting cashier of LTO – Valenzuela City.[27]

The appellant made a reply (Exhibit P-2) to De Leon's demand letter asking for extension of time to answer and explain the alleged shortage in the remittance of her collections. The Regional Director of LTO-NCR, Atty. Teofilo E. Guadiz III, likewise sent two (2) Demand Letters dated January 11, 2011 and November 17, 2011 (Exhibits D and J) to the appellant directing her to restitute the total amount of the shortage within the period indicated in the said letters (thirty [30] and ten [10] days, respectively). De Leon testified that she was furnished copies of the two (2) demand letters issued by the Regional Director of the LTO-NCR, Atty. Guadiz III.[28]

On September 28, 2018, the prosecution filed it Formal Offer of Documentary Evidence dated September 26, 2018,[29] to which the appellant filed her Comment dated October 01, 2018 registering her objections to the admission of the prosecution's documentary evidence.[30]

In an Order dated October 04, 2018, the trial court admitted the documentary evidence offered by the prosecution.[31]

THE DEFENSE EVIDENCE

The defense presented its lone witness, the appellant herself.

Before the appellant testified, the parties stipulated that the appellant will testify based on the tenor of her (i) Counter-Affidavit dated February 03, 2012 (Exbibit 1) and she will be able to identify it; (ii) she can identify the Letter dated January 10, 2011, from Lorna De Leon, Management and

[27] pp. 11, 17-20, *ibid.*; pp. 1056, 1062-1065; *ibid.*
[28] pp. 20-22, *ibid.*; pp. 1065-1067, *ibid.*
[29] pp. 598-613, Records, Vol. 1
[30] pp. 614-615, *ibid.*
[31] p. 616, *ibid.*

Audit Analyst of LTO – Valenzuela City (Exhibit 2), the appellant's Letter dated January 19, 2012, and Motion for Reconsideration, filed by the appellant with the OMB on March 13, 2014.[32]

She testified that in 2001, she was designated as Clerk II at the LTO – Valenzuela City. In 2008, she was designated as the cashier of the same office. She was informed of the missing funds at the LTO – Valenzuela City through a "letter." She requested for ample time to reconcile her documents regarding the missing funds. However, she was not able to do so because she was transferred to the Driver's License Renewal Section of Megamall, Mandaluyong City as the acting cashier. She testified that she did not take any further steps to explain the missing funds because she had no more time to prepare the necessary documents because of her transfer.[33]

On cross-examination, the appellant testified that she was the designated acting cashier from December 2008 until January 2011 of the LTO - Valenzuela City. As the acting cashier of said LTO office, she confirmed that her responsibility was to receive payments for the license fees. When receiving the said payments, she merely entered the names of the people securing licenses. It was the computer that determined the amount to be paid by the people securing licenses. Every month, she was obliged to generate or prepare a monthly report of her collections using the computerized system of the LTO. She signed the monthly report she generated from the computer.[34]

The appellant confirmed that she signed the monthly reports she generated from the computer which were marked as prosecution's Exhibits G to H with sub-markings. She testified that the details found in the said monthly reports were based on the input she indicated when she collected the payments. Aside from collection of payments, she was obliged to remit or deposit her collections to the Land Bank of the

[32] pp. 3-4, TSN, June 26, 2019; pp. 1080-1081, Record, Vol. 1
[33] pp. 4-6, TSN, June 26, 2019; pp. 1081-1083, Records, Vol. 1
[34] pp. 3-6, TSN, July 26, 2019; pp. 1087-1090, Records, Vol. 1

Philippines (LBP) every day. She testified that she deposited her collections and submitted the deposit slips to the LTO. Apart from the deposit slips, there were confirmations from the BTr of the said deposits but sometimes the confirmation was not complete.[35]

Continuing with her cross-examination, the appellant testified that she asked for time to reconcile her documents after she received the demand letter from Lorna De Leon. However, she does not remember any more if she received a memorandum from Atty. Teofilo Guadiz since she left her files in LTO- Valenzuela City. When she tried to retrieve her files, she was informed that her files were already "de-clogged." When shown Exhibit T-2 of the prosecution, she identified the document as her reply to the demand letter of Lorna De Leon asking for time to make a reconciliation. She was not able to do her reconciliation because she waited for the Commission on Audit's (COA's) post-audit. She testified that she had no documents to reconcile because the COA's post audit never came and she had no documents to reconcile. She asked for a certification or confirmation from the BTr of her deposits but she did not receive any.[36]

The appellant further testified on cross-examination that from the time she received the notice of the missing funds from De Leon in January 2011 up to December 2011, she requested the LBP and BTr for documents but she did not receive any. She allegedly wrote the LBP and BTr but she could no longer find the said letter.[37]

She also testified on cross-examination that after her transfer to the LTO - Megamall, she was again transferred to the NCR Regional Office in the "Admin" office. She was transferred to the "Admin" office because of the alleged shortage she incurred at the Megamall office. Her service with the LTO was terminated in February 2014 because an administrative case was filed against her.[38]

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[35] pp. 5-6, TSN, September 13, 2019; pp. 1094-1096, Records, Vol. 1
[36] pp. 5--6, TSN, September 13, 2019; pp. 1095-1096, Records, Vol. 1
[37] pp. 7-8, TSN, September 13, 2019; pp. 101098-1099, Records, Vol. 1
[38] pp. 9-11, TSN, September 13, 2019; pp. 1101-1103, Records, Vol. 1

THE APPELLANT'S SUBMISSION

In her Brief dated May 30, 2022, the appellant argues that the court *a quo* erred in convicting her of the crime charged because there is no sufficient evidence to establish all the elements of the crime of malversation of public funds. Allegedly, the testimony of the lone witness for the prosecution is not enough to establish her guilt.[39]

THE APPELLEE'S TRAVERSE

The appellee, on the other hand, argues that the court *a quo* properly convicted appellant of the crime charged since the prosecution sufficiently established beyond reasonable doubt all the elements of the crime of malversation of public funds.[40]

THE COURT'S RULING

The appeal is devoid of merit.

Appellant is charged with the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code, as amended by Section 40 of Republic Act (R.A.) No. 10951, which reads:

> ***Art. 217. Malversation of public funds or property. Presumption of malversation*** – *Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or*

[39] Appellant's Brief dated May 30, 2022; pp. 1189-1193; Records, Vol. 1
[40] Appellee's Brief dated July 29, 2022, pp. 21-26, Records, Vol. 2

partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

... ...

4. *The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than Two million for hundred thousand pesos (Php2,400,000.00) but does not exceed Four million four hundred thousand pesos (Php4,400,000.00).*

... ...

The failure of the public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.

The elements common to all acts of malversation under Article 217 are: (1) that the offenders are public officers; (2) that they had custody or control of funds or property by reason of the duties of their office; (3) these funds were public funds or property for which they were accountable; and (4) that they appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.[41]

1. The first element

The presence of the said first element of the crime charged is undisputed in this case.

Appellant herself admitted that she was the acting cashier of the LTO – Valenzuela City from December 2008 up to January 2011, or the dates material to this case. Her duties were to receive payments for the license fees and deposit the same every day to the LBP.[42] Plainly, appellant was a public officer discharging administrative functions at

[41] Wa-Acon v. People, 539 Phil. 485 (2006)
[42] pp. 3-6, TSN, July 26, 2019; pp. 1087-1096, Records, Vol.1

the time material to this case and an accountable officer at that having been bonded (Exhibit K) as a cashier.[43]

2. The second and third elements

The presence of the second and third elements of the crime was also proved with moral certainty.

The appellant was an accountable officer within the contemplation of Article 217 of the Revised Penal Code. By virtue of her position as the acting cashier of LTO – Valenzuela City, she exercised control over the subject public funds that came into her possession.

3. The fourth element

As to the fourth element, the appellant failed to rebut or overcome the *prima facie* presumption that she put the missing funds to her personal use.

In ***Wa-Acon v. People,***[44] the Supreme Court declared:

> *Article 217, as amended by R. A. No. 1060, no longer requires proof by the State that the accused actually appropriated, took, or misappropriated public funds or property. Instead, a presumption, though disputable and rebuttable, was installed that upon demand by any duly authorized officer, the failure of public officers to have duly forthcoming any public funds or property— with which said officers are accountable—should be prima facie evidence that they had put such missing funds or properties to personal use. When these circumstances are present, a "presumption of law" arises that there was malversation of public funds or properties as decreed by Article 217. A "presumption of law" is*

[43] pp. pp. 8-10, TSN, September 16, 2016; pp. 1053-1055, Records, Vol. 1
[44] *supra*

> *sanctioned by a statute prescribing that "a certain inference must be made whenever facts appear which furnish the basis of the interference." This is to be set apart from a "presumption of fact" which is a "[conclusion] drawn from particular circumstances, the connection between them and the sought for fact having received such a sanction in experience as to have become recognized as justifying the assumption.[45]" When there is a presumption of law, the onus probandi (burden of proof), generally imposed upon the State, is now shifted to the party against whom the interference is made to adduce satisfactory evidence to rebut the presumption and hence, to demolish the prima facie case.*

The *prima facie* evidence is defined as:

> Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. **Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence**.[46]

In this case, when prosecution witness De Leon discovered the missing funds after her audit, she sent a demand letter (Exhibit E) to the appellant for the restitution thereof. Likewise, Atty. Guadiz, III sent two (2) demand letters (Exhibits D and J) similarly directing her to restitute the amount of shortage. While the appellant replied to De Leon's letter asking for time to do her alleged reconciliation,[47] she did not submit her purported reconciliation. On the other hand, she never responded to the demand letters of Atty. Guadiz, III.

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[45] Wa-Acon v. People, *supra* citing III V. Francisco, Criminal Evidence 1448 (1947), citation omitted
[46] Wa-Acon v. People, *supra* citing H. Black, et al., Black's Law Dictionary 1190 (6th ed.,1990); emphasis supplied
[47] pp. 5-6, September 16, 2019; pp, 1101-1103, Records, Vol. 1

The Court notes that after the appellant received the said demand letter from De Leon on January 07, 2011 (Exhibit E-2), until the filing of this case against her on December 02, 2011, with the Office of the Ombudsman, eleven (11) months had elapsed. [48] Despite this significant amount of time, the appellant never submitted her reconciliation. All she could offer was the feeble excuse that she had no documents to enable her to prepare a reconciliation.[49] Such a lackadaisical attitude plainly evinces that the appellant had nothing to reconcile.

With the appellant's utter failure to offer any satisfactory explanation why there was a shortage or discrepancy in her collections, she thereby failed to overcome the *prima facie* presumption that she misappropriated the missing funds.

The appellant points out that the testimony of De Leon, the lone prosecution witness, is uncorroborated; hence, the figures of De Leon in the SCDs for the period of December 18, 2008 to December 30, 2010 are questionable especially considering that the "total remittance" was only supplied by the RIAS to the BTr which only certified the figures therein. Allegedly, the certifications from the BTr cannot be relied upon since nobody from the BTr testified on the total remittances.[50]

The claim deserves scant consideration.

Obviously, the appellant conveniently overlooks the axiom that truth is established not by the number of witnesses but by the quality of their testimonies.[51] In the determination of the sufficiency of evidence, what matters is not the number of witnesses but their credibility and the nature and quality of their testimonies.[52] Indeed, the testimony of a lone witness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the

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[48] pp. 79-82, Records, Vol. 1
[49] p. 7, TSN, September 13, 2019; p. 1098, Records, Vol. 1
[50] p. 7, Appellant's Brief dated May 30, 2022; p. 1202, Records, Vol. 1
[51] People v. Ramos, 427 SCRA 299 (2004)
[52] Cariaga v. Court of Appeals, 411 Phil. 214 (2001)

earmarks of truth and sincerity. While the number of witnesses may be considered a factor in the appreciation of evidence, proof beyond reasonable doubt is not necessarily with the greatest number.[53]

In this case, while the prosecution presented only a single witness in the person of Lorna S. De Leon, the Court finds her testimony more than credible to sustain the appellant's conviction.

It must be stressed that De Leon testified as Management Audit Analyst of the LTO-NCR and a member of the RIAS of the same office. Her testimony was duly supported by documentary evidence consisting of the (1) MRCs (Exhibits G-1 to H with sub-markings) admittedly prepared and signed by the appellant, which reflect the total amount of the collections she received for the subject years, (2) BTr Certifications (Exhibits L to L-235) reflecting the deposits made by the appellant, (3) the SCDs (Exhibits F and G) showing the difference between the collections and deposits made indicating the total amount of shortage and (4) demand letters (Exhibits D, E and J) received by the appellant directing her to restitute the total amount of the difference between her total collections and total deposits.

Lastly, the appellant argues that the prosecution failed to present proof that she appropriated, took or misappropriated any public funds. The audit of the missing funds was allegedly incomplete because the BTr Certifications were not corroborated by any witness; hence, the *prima facie* presumption of misappropriation should not have been applied.[54]

The argument is not correct.

[53] People v. Mallari, 369 Phil. 872 (1999)
[54] p. 8, Appellant's Brief dated May 30, 2022; p. 1203, Records, Vol. 1

To be sure, the BTr Certifications merely confirmed the remittances made by the appellant herself during the period relevant to this case.

As pointed out earlier, the *prima facie* presumption of malversation was duly established by the aforesaid pieces of evidence presented by the prosecution. It was the appellant's burden to rebut the said presumption which she failed to do. Appellant did not even exert a modicum of effort to produce copies of the deposit slips she made to counter the finding of missing funds. Indeed, she could have availed of the compulsory process to secure the presentation of the said documents to rebut the said presumption if her claim of non-shortage were true.

It must be stressed that it was the appellant's duty to deposit her collections the day following the said collection. This was demanded by the very nature of her work as a cashier. Thus, the data regarding the shortage in her remittances were extracted from her own MRCs and the actual deposits or remittances she made. Indeed, appellant could have easily presented other deposit slips to evidence her remittances of any amount not reflected in the BTr Certifications to counter the finding of the shortage of funds in her custody. This she failed to do. Her claim that she failed to do a reconciliation because of the alleged "de-clogging" of her files is lame. To be sure, she was fully aware of this adverse finding against her when she was transferred to another unit as a result of the same finding. Thus, she should have exerted genuine efforts to preserve the documents which she claims would exculpate her. Again, she failed in this regard.

Moreover, the entries made in the said BTr Certifications are entries in official records made in the performance of official duty pursuant to Section 23, Rule 132 of the 1989 Revised Rules of Court which provides:

> ***Section 23.*** *Public documents as evidence. – Documents consisting of entries in public records made in the performance of a*

> *duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.*

Since the notarial documents or public documents have in their favor the presumption of regularity, to contradict the facts stated therein there must be evidence that is clear, convincing and more than merely preponderant.[55] Here, except for her bare denial, the appellant did not present even an iota of countervailing evidence.

In fine, the Court finds that the prosecution was able to establish all the elements of the crime of malversation of public funds, through the documentary and testimonial evidence on record. The appellant's conviction for the said crime must therefore be sustained.

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The assailed Decision dated January 10, 2020, is **AFFIRMED**, *in toto.*

SO ORDERED.

Quezon City, Metro Manila

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

[55] Rodirguez v. YOHDC, G.R. No. 199451, August 15, 2018

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice

RONALD B. MORENO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson, Third Division

CERTIFICATION

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

AMPARO M. CABOTAJE-TANG
Presiding Justice