REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee, **SB-22-A/R-003**

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:

JUNE 23 2023

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused-appellant Marites F. Lopez's *Motion for Leave of Court to Admit Motion for Reconsideration dated April 24, 2023* with the attached *Motion for Reconsideration dated April 25, 2023.*[1]

[1] pp. 104-112, Record, Volume 2

In her aforesaid motion, the accused-appellant prays that in the "higher interest of justice," the attached motion for reconsideration be admitted and be given due course[2] even if the same was filed out of time. Accused-appellant's counsel received the Court's Decision promulgated on February 27, 2023 dismissing the appeal for lack of merit on March 02, 2023 while the aforesaid motion for reconsideration was filed only on April 28, 2023. More than one (1) month had elapsed from the time the assailed decision was received by the accused-appellant's counsel.

Accused-appellant's counsel attributed the delay in the filing of the subject motion for reconsideration to the accused-appellant herself. Allegedly, the accused-appellant refused to receive the letter sent to her through the private courier and she failed to answer his calls. It was only on April 17, 2023 that the accused-appellant made efforts to call her counsel and intimated her desire to file a motion for reconsideration.[3]

The accused-appellant's motion for reconsideration, if admitted, hinges on the ground that the prosecution's evidence was insufficient to prove the alleged shortages in her remittances because the same was built only on an alleged hearsay evidence.[4]

The prosecution, on the other hand, opposes the subject motion allegedly because the assailed decision had already become final and executory. Thus, it can no longer be disturbed invoking Section 10,[5] Rule 51 and Section 1,[6] Rule 52 of the Revised Rules of Court.[7]

[2] pp. 99-100, ibid.
[3] pp. 1-2, Motion for Leave of Court to Admit Motion for Reconsideration at pp. 98-99, Record, Volume 2
[4] pp. 4-8, Motion for Reconsideration dated April 25, 2023 at pp. 107-111, record, Volume 2
[5] Sec. 10. *Entry of judgments and final resolutions.* – If no appeal or motion for new trial or reconsideration is filed within the time provided by these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments.
[6] Sec. 1. *Period for filing.* – A party may file a motion for reconsideration of a judgement or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.
[7] pp. 2-3, Comment/Opposition dated May 12, 2023 at pp 121-122, Record, Volume, 2

THE RULING OF THE COURT

The Court finds the subject motion devoid of merit.

I. The motion for reconsideration was filed out of time.

There is no dispute that the subject motion for reconsideration was filed out of time.

In ***Testate Estate of Maria Manuel vs. Biascan***,[8] the Supreme Court ruled:

> *It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. Thus,* ***finality of a judgment becomes a fact upon the lapse of the reglementary period*** *of appeal if no appeal is perfected or* ***motion for reconsideration or new trial is filed.***[9] *The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration filed after the lapse of the period for taking an appeal. As such, it is of no moment that the opposing party failed to object to the timeliness of the motion for reconsideration or that the court denied the same on grounds other than timeliness considering that at the time the motion was filed, the Order dated April 2, 1981 had already become final and executory.* ***Being final and executory, the trial court can no longer alter, modify, or reverse the questioned order. The subsequent filing of the motion for***

[8] 401 Phil. 49 (2000)
[9] Emphasis supplied

reconsideration cannot disturb the finality of the judgment or order.[10]

Thus, the decision of this Court convicting the accused-appellant of malversation of public funds had already become final and executory.

The Court notes the accused-appellant's counsel's representation that the former refused to receive the letter from the latter which was sent to her through the private courier.[11] The accused-appellant likewise did not even bother to answer her counsel's telephone calls which were the causes of the delay in the filing of the subject motion for reconsideration.[12]

Thus, it is difficult for this Court to relax the rules of procedure in favor of the accused-appellant considering her apparent lack of interest to defend her case. The Court cannot grant equity where it is clearly undeserved by a grossly negligent party.[13]

II. The motion for reconsideration is pro-forma since it merely reiterates the grounds raised by the accused-appellant in her Brief.
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At any rate, even if the said motion were admitted by the Court, the same nevertheless should be denied for being pro-forma and/or lack of merit.

To begin with, the arguments raised in the present motion for reconsideration are mere rehash of the accused-appellant's previous claims articulated in her Brief. They have been duly considered, squarely addressed, and found to be without merit

[10] Emphasis supplied
[11] pp. 1-2, Motion for Leave of Court to Admit Motion for Reconsideration
[12] Ibid.
[13] V.C. Ponce Company, Inc. vs. Municipality of Parañaque, 98 Phil. 338, 351 (2012)

in the Court's *Decision*, subject of the present *motion for reconsideration.*[14] However, if only to show their absolute lack of merit, the Court shall again dwell on the arguments raised by the accused-appellant.

Accused-appellant Lopez argues that the prosecution was not able to prove her guilt beyond reasonable doubt allegedly because there is no evidence to show that she had actual shortages in her remittances; that the certifications issued by the Bureau of Treasury (BTr) should not likewise be relied upon to prove the said shortages considering that they are considered as hearsay evidence.[15]

The argument is not correct.

As emphasized in the assailed *Decision*, the shortages incurred by the accused-appellant in her remittances were clearly proven by the documents she actually prepared and signed reflecting the total amount of her collections and the total of actual deposits she made. By simply analyzing these documents which were the Monthly Reports of Collections (MRCs), the total amount of the shortages were uncovered. Moreover, the BTr certifications merely confirmed the total amount of the shortages in the remittances made by the accused-appellant:

> *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)***

[14] pp. 13-18, Decision promulgated on February 27, 2023 at pp. 87-92, Record, Volume 2
[15] pp. 4-8, Motion for Reconsideration at pp.107-111, ibid.

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.[16]

The argument is not correct.

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

[16] p. 8, Appellant's Brief dated May 30, 2022; p. 1203, Records, Vol. 1

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.[17] *Here, except for her bare denial, the appellant did not present even an iota of countervailing evidence.*[18]

WHEREFORE, the Court **DENIES** accused-appellant Marites F. Lopez's *Motion for Leave of Court to Admit Motion for Reconsideration dated April 24, 2023* and the attached *Motion for Reconsideration dated April 25, 2023*, of the Court's Decision promulgated on February 27, 2023, for being pro-forma and for utter lack of merit.

SO ORDERED.

Quezon City, Metro Manila

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice

RONALD B. MORENO
Associate Justice

[17] Rodirguez v. YOHDC, G.R. No. 199451, August 15, 2018
[18] pp. 13-18, Decision promulgated on February 27, 2023 at pp. 87-92, Record, Volume 2