



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **Appealed Case No.**
Plaintiff- Appellee, **SB-22-A/R-0015**

Baguio City Regional Trial Court
Branch 6
RE: RTC Criminal Case No. 42052-R

- versus -

*For: Malversation under Art. 217 of the
RPC, as amended by RA No. 10951*

NILA ESGUERRA CARIÑO,
Accused-Appellant.

Present:
HERRERA, JR., J., Chairperson
CALDONA, J., Associate Justice
MALABAGUIO, J., Associate Justice

October 16, 2023 anh

Promulgated

RESOLUTION

MALABAGUIO, J.:

Before the Court is a *Motion for Reconsideration*¹ filed by Accused-Appellant Nila E. Cariño (Cariño), through the Public Attorney's Office on 16 June 2023, seeking the reversal of the Court's 05 June 2023 *Decision*² where it ruled to affirm Baguio City Regional Trial Court Branch 6's 28 June 2022 *Decision*,³ convicting her of the crime of Malversation, *in toto*.

To date, the Court has not received any opposition nor comment from the Plaintiff-Appellee, represented by the Office of the Ombudsman – Office of the Special Prosecutor.

¹ Rollo, pp. 111-118.

² Rollo, pp. 78-106.

³ Records, pp. 313-319.

In her instant motion, Cariño submits that she begs to disagree with the Court's ruling that in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that the accountable officer had received the public funds and that she failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.⁴

She further argues that the prosecution failed to prove beyond reasonable doubt that the accused-appellant appropriated, took or misappropriated any public funds of property for her personal use,⁵ that the Court still found Cariño guilty despite the lack of evidence,⁶ and that none of the prosecution witnesses have established that Cariño actually received the funds, or that it was in her possession, as there was no proper cash count and turn-over.⁷

Cariño also posits that with the absence of a report from prosecution witness Atty. Sheldon Saclag regarding the missing or shortage or discrepancy in her accountabilities, there already exists a presumption that there was no shortage attributable to her.⁸

Ultimately, Cariño invokes the Revised Cash Examination Manual which supposedly prohibits incomplete examinations of accountable officer, citing the prosecution's supposed failure to follow the rules of audit as there was no cash exam and that there was no report on discrepancies or shortage submitted by the next accountable officer.⁹

The Court is not convinced.

Cariño's contention that the Court was mistaken in ruling that "all that is necessary for conviction is proof that the accountable officer had received the public funds and that the accountable officer had received the public funds and that she failed to account for the said funds upon demand without offering a justifiable explanation for the shortage" deserves no consideration. The Court has already lengthily discussed that in a plethora of cases, no less than the Supreme Court

⁴ Motion for Reconsideration, par. 3-4, Rollo pp. 111-118.

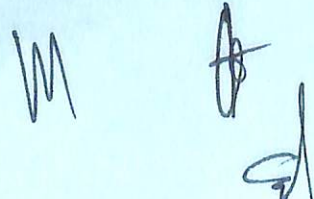
⁵ Id., par. 6.

⁶ Id., par. 7.

⁷ Id., par. 8-11.

⁸ Id., par. 13-15.

⁹ Id., par. 18-19.



has consistently held that the same is sufficient to establish guilt of the crime of malversation.

As the Court has previously held:¹⁰

[a]n accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his account which he is unable to explain.¹¹ In addition, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that such officer failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.¹²

There is no denying that Cariño received government funds, in the form of rental payments, relative to her position as cashier. As cashier, it was part of her responsibilities to take custody of those funds and immediately cause their deposit to the agency's bank accounts. Upon being audited, a shortage was discovered. When she was asked to explain the shortage, she did not offer any justification to the shortage and immediately offered to reconstitute the full amount albeit in installments.

Cariño's submission that none of the prosecution witnesses presented evidence that she actually received the funds which she supposedly misappropriated is misleading. The prosecution's witnesses consist of the auditor whose team found the shortage, and the acting cashier who immediately replaced Cariño during her suspension. Admittedly, they were not there when Cariño received the funds but Apilis unequivocally testified that the amounts were collected by her and upon audit, the same were found to not have been deposited to the agency's bank accounts.

As regards the allegation that there was no turnover report, the same has already been refuted in the now assailed decision, thus:

Atty. Saclag testified that she was with Cariño when he opened the vault and filing cabinet and all that he found were post-dated checks representing advance payments

¹⁰ Decision dated 05 June 2023, p. 20.

¹¹ *People v. Dapitan*, G.R. No. 253975, 27 September 2021.

¹² *Corpus v. People*, G.R. No. 241383, 08 June 2020.

made by the tenants, and other forms. When asked by the trial court, Atty. Saclag mentioned that he did not see cash in any form inside the vaults. The existence of Exhibit "G," the *Turnover Accountable Forms*,¹³ signed by both Cariño¹⁴ and Atty. Saclag,¹⁵ also immediately negates Cariño's argument that there was no proper turnover.

Cariño's invocation of the Revised Cash Examination Manual is likewise misplaced. As she herself submitted, what the manual prohibits is the incomplete examination of accountable officers. She again cites the alleged lack of cash examination and turnover of accountabilities as an error on the part of the prosecution.

It is worth reiterating that this entire case stemmed from the 01 June 2018 cash examination on the cash accountabilities of Cariño before the start of transactions for that day conducted by Shirley T. Valdez, State Auditor III and Audit Team Member, working under Apilis. In that cash examination, Valdez was able to establish Cariño's balance in the amount of Four Hundred Forty-Seven Thousand Nine Hundred Twenty and 27/100 Pesos (PHP 447,920.27), where Three Hundred Ninety-Six Thousand Nine Hundred Twenty and 27/100 Pesos (PHP 396,920.27) of which was in cash and the remaining Fifty-One Thousand Pesos (PHP 51,000.00) was in the form of a check.¹⁶

Further, it was none other than the defense who established that before Cariño was called to join the 23 July 2018 meeting with HSDC General Manager Raffy Panagan, Assistant Manager Renator Leal, and two (2) other officers from the HSDC main office in Manila, Cariño was instructed to deposit all the collections in her possession immediately. She then went to Land Bank, Marcos Highway Branch to make the deposit.¹⁷ Following this deposit, no cash collection of any amount was supposed to be in Cariño's possession.

As also previously mentioned, Cariño was present with Atty. Saclag when the vault assigned to her was opened and no cash was therein found. They then executed the already mentioned Turnover Accountable Forms.

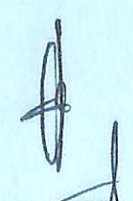
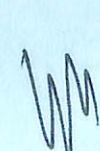
¹³ Exhibit "G," Records p. 50.

¹⁴ Exhibit "G-1," Records p. 50.

¹⁵ Exhibit "G-2," Records p. 50.

¹⁶ Exhibit "C" – *Report of Cash Examination*, Records pp. 31-32.

¹⁷ TSN dated 08 June 2021, p. 15.



It is likewise worth noting that Cariño is highlighting what are supposed to be lapses on the part of Atty. Sheldon Saclag as the next accountable officer who took over the position from her. With Atty. Saclag not being on trial, whether or not he had lapses in his supposed duties or responsibilities will not be discussed.

Be that as it may, clearly, the items of the invoked manual which are alleged to have been missing have clearly been established as present. Cariño's invocation of an error due to the same must necessarily fail.

As can be gleaned from accused – appellant's averments in her attempt to persuade the Court to deviate from its previous findings, no new argument was presented which the Court has not already carefully perused, considered, and dissected. All arguments herein raised have already been exhaustively discussed in the now assailed ruling.

A perusal of the Court's twenty-nine page *Decision* would immediately reveal that the Court was not amiss in its duty to open the entire case for review, as if deciding the case anew. There was no nook or cranny that was not submitted to the Court's scrutiny.

The Court stands behind its original pronouncement, and will not depart from its previous ruling that the evidence presented by the prosecution is sufficient to prove accused – appellant's guilt beyond reasonable doubt, and ultimately that the *court a quo* did not err in finding the existence of all the elements of Malversation as defined by Article 217 of the Revised Penal Code, and in implementing the appropriate penalty of imprisonment and fine in accordance with the amendments introduced by Republic Act 10951.

WHEREFORE, premises considered, accused - appellant Nila E. Cariño's *Motion for Reconsideration* is hereby **DENIED**.

SO ORDERED.

Quezon City, Philippines.

ARTHUR O. MALABAGUIO
Associate Justice

M
J

RESOLUTION – MOTION FOR RECONSIDERATION


People of the Philippines vs Cariño.

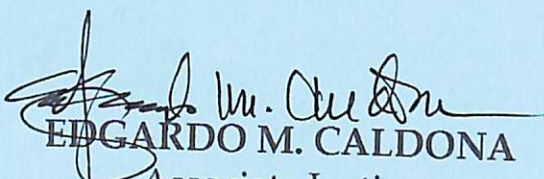
Appealed Case No. SB-22A/R-0015

Page 6 of 6

X-----X

We concur:


OSCAR C. HERRERA, JR.
Associate Justice
Chairperson


EDGARDO M. CALDONA
Associate Justice

