



Republic of the Philippines

**Sandiganbayan**

Quezon City

\*\*\*

**SEVENTH DIVISION**

*MINUTES of the proceedings held on 22 November 2023.*

*Present:*

*Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson*

*Justice ZALDY V. TRESPESES ----- Member*

*Justice EDGARDO M. CALDONA\* ----- Member*

*The following resolution was adopted:*

***Crim. Case No. SB-23-A/R-0001 and SB-23-A/R-0002 - People vs. ARTHUR B. LONTOC, JR.***

*This resolves the following:*

1. Accused Arthur B. Lontoc, Jr.'s "MOTION FOR RECONSIDERATION" dated October 9, 2023;<sup>1</sup>
2. Prosecution's "COMMENT (ON ACCUSED-APPELLANT LONTOC'S MOTION FOR RECONSIDERATION DATED 09 OCTOBER 2023)" dated October 27, 2023.<sup>2</sup>

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**TRESPESES, J.**

This resolves the Motion for Reconsideration filed by accused-appellant Arthur B. Lontoc, Jr. ("accused-appellant"), and the Prosecution's Comment/Opposition thereto.

**ACCUSED-APPELLANT'S MOTION**

Accused-appellant asks for this court to reconsider its Decision dated 19 September 2023<sup>3</sup> affirming the RTC Decision dated August 19, 2022 finding him guilty of violating Section 3(e) of R.A. No. 3019, and violation of paragraph 4 of Article 217 of the Revised Penal Code.

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\*Per AO No. 287-2023 dated November 13, 2023.

<sup>1</sup> Record, pp. 348-359

<sup>2</sup> *Id.* pp. 364-374

<sup>3</sup> *Id.* pp. 300-336

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It is argued that the third and fourth elements of the violation of Section 3(e) of R.A. 3019<sup>4</sup> are lacking.

Accused-appellant cites the case of *Suba v. Sandiganbayan*,<sup>5</sup> where the finding of bad faith was negated by the fact that the accused only acted with verbal assurance from his superior, in supporting his position that evident bad faith is lacking in this case. He reiterates that his decision to proceed with a negotiated sale was due to the advice of then Department of Interior and Local Government (“DILG”) Municipal Officer Konakon Madali.

To recall, Madali orally advised herein accused-appellant to proceed with a direct negotiated sale after two failed biddings. Accused-appellant then sent a letter to the Commission on Audit (“COA”) informing them of the decision to resort to a negotiated sale. Accused-appellant claims not to have received a reply from the COA. Copies of all these communications could no longer be found.

Accused-appellant emphasizes that it was due to the advice of Madali and the lack of reply from the COA that prodded him to proceed with the sale.

He also claims that the belated resolution of the Barangay Council dated May 25, 2007 authorizing him to enter into a negotiated sale is not a mere afterthought, but signifies the Council’s confirmation and ratification of the approval of the June 2, 2006 negotiated sale. Accused-appellant proffers the presumption of regularity in its execution.

As to the charge of malversation under Paragraph 4, Section 217 of the Revised Penal Code, accused-appellant contends that there is no sufficient evidence to show that he misappropriated, embezzled, and malversed the proceeds of the sale in the amount of ₱77,000.00.

Accused-appellant asserts that his action is not predicated on ill motive or bad faith and that there is no injury to the barangay because the dump truck was eventually returned to the barangay.

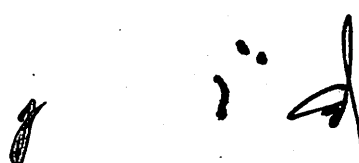
Lastly, accused-appellant insists that demand is an essential element of malversation. As it is lacking in this case, it is concluded that Lontoc could not have been found guilty of malversation.

Accused-appellant therefore prays that the assailed decision be set aside and a new one be entered acquitting him for both Violation of Sec 3(e) of R.A.

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<sup>4</sup> In his Motion for Reconsideration, accused only mentioned an “offense charged” instead of the specific violation. It can be gleaned from further perusal of the pleading that accused was referring to the violation of Section 3(e) of R.A. 3019. It should be noted that accused is charged with violating two offenses, the other is Malversation under paragraph 4 or Article 217 of the Revised Penal Code.

<sup>5</sup> G.R. No. 235418, March 3, 2021



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3019 and Malversation of Public Funds under Paragraph 4, of Article 217 of the Revised Penal Code.

**THE PROSECUTION'S OPPOSITION**

The prosecution opines that accused-appellant's Motion for Reconsideration has no merit as it did not raise any novel argument or issue of substance.

It reiterated that accused-appellant did not have any authority from the Barangay Council when he entered into a negotiated sale of the dump truck. The Minutes of the Emergency Session on 26 May 2007 cannot serve as the basis of accused Lontoc's authority.

The prosecution believes that while accused-appellant did report to COA the fact of the two failed public auctions, he did not wait for COA's action relative thereto. The fact that COA did not respond to his letter within one month did not justify his action to proceed on his own with the negotiated sale. The prosecution posits that accused-appellant should have made a follow-up with COA as there was no urgency for the sale of the dump truck to necessitate its hasty disposal.

The prosecution also points out that the resort to negotiated sale must comply with COA Circular No. 89-296, or the "Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned and Controlled Corporations and their Subsidiaries" dated 27 January 1989. Accused-appellant was not able to show any record of the proceedings in compliance with the Circular.

The prosecution insists that accused-appellant acted with evident bad faith, emphasizing the RTC's finding that the sale was conducted in a dubious manner.

As to undue injury to the government, the prosecution asserts that the government suffered undue injury in the amount of ₱77,000.00 – the amount accused-appellant received from the buyer, or at least ₱67,500.00 – the appraised value of the dump truck by COA. The prosecution posits that the return of the dump truck to the Barangay is irrelevant.

The prosecution stresses that there was already a perfected negotiated sale when accused-appellant agreed to sell the dump truck to Sibonga for ₱77,000.00 and the latter agreed to buy the subject vehicle for the said amount. The contract became fully-executed when the price was paid and delivery of the dump truck was made.

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On the charge of malversation, the prosecution points out that accused-appellant had no basis to take physical custody of the ₱45,000.00 after the same was turned-over to the barangay treasurer. Thus, it is presumed that the same was misappropriated. Being government funds, the ₱45,000.00 could not and should not be withdrawn from the barangay treasury without proper and public purpose, even by the accused-appellant, who was then a Barangay Captain. Accused-appellant did not even present evidence that the amount was withdrawn to immediately pay Sibonga to get back the dump truck sold.

As to the issues of demand, the return of the dump truck, and the refund of the proceeds of the negotiated sale, the prosecution quoted portions of the decision of this court which states that it is not an essential element of malversation under Par. 4, Art. 217, of the Revised Penal Code.

Hence, the prosecution concludes that as accused's motion for reconsideration has not put forward any significant and substantial arguments to warrant the reconsideration sought, accused-appellant's plea for the reversal of the 19 September 2023 Decision of this court should be denied.

**OUR RULING**

We **deny** the motion for reconsideration for lack of merit.

**I. SB-23-A/R-0001 – For  
violation of Section 3(e) of  
R.A. No. 3019**

On the charge of violation of Sec. 3(e) R.A. 3019, accused-appellant argues that evident bad faith is lacking in this case. It has long been established that *evident bad faith* connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.<sup>6</sup> Evident bad faith contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.<sup>7</sup>

*The consummation of the sale of the mini dump truck showed accused-appellant's patently dishonest purpose.*

<sup>6</sup> *Limbo v. People*, G.R. Nos. 204568-83 & 207028-30, April 26, 2023

<sup>7</sup> *Id.*



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The patently dishonest purpose on the part of the accused-appellant is clear in the following: (1) how the sale was consummated; and (2) when the authority to enter a negotiated sale was conferred.

As stated by the court of origin:<sup>8</sup>

Again, reviewing the testimony of Accused, as well as the documentary evidences [*sic*] of the Prosecution, there is no doubt that the accused sold the dump truck without authority with dubious manner in which the transaction was carried out based on the following:

- (1) issuance of a temporary receipt in the amount of P77,000.00;
- (2) the issuance of Official Receipt No. 0571773 which was questionably detached from the stub and was issued in the amount P45,000.00 with Ledinila Sibonga as payor for one (1) unit dump truck and dated 1 December 2006;
- (3) the duplicate and triplicate copies of the Official Receipt No. 0571773 dated 30 December 2006 but with the amount of P20.00 written on it with Josue Lontoc as payor for a barangay clearance.

Not only was a cash audit conducted, [*sic*] The State Auditors also looked into the allegation that the dump truck turned over to the barangay was no longer in the barangay; hence as a result of the audit, the accused, being the barangay captain has the overall responsibility to oversee and takes good care of its funds and property, was directed to explain the whereabouts of the dump truck.

It is clear therefore that evident bad faith attended in the negotiations and sale of the property without authority from the Council or from the COA.

Aside from the discrepancy in the received amount, the remitted amount, and the amount stated in the receipt, accused-appellant also failed to follow the requirements of COA Circular 89-296. This issue was already threshed out in the assailed decision, thus:

There is no cogent reason why accused-appellant should deviate from the process laid out in the COA Circular. Accused-appellant himself admitted during trial that the incident happened during his fourth term as barangay captain. With his long-term experience as head of the barangay, this court presumes him to be familiar with the COA Circular.

He should have known that resorting to a negotiated sale necessitates a series of preparatory acts to support such mode of disposal. According to the COA Circular, a negotiated sale "may be conducted singly, i.e., on a one-on-one basis, or in group, provided that due communication between the offerors and the government is established with a view to ensuring that the government gets the best price"

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<sup>8</sup> Records, p. 65

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Further, the said circular mandates that a record of the proceedings must be maintained to avert possible confabulation among unscrupulous parties. However, accused-appellant, in this case was not able to show any record of the proceedings. (Citations omitted)

There is not even a scintilla of evidence presented to show that accused-appellant tried to conform to the Circular.

*The belated issuance of the authority to enter into a negotiated sale does not exculpate accused-appellant from criminal liability.*

It is well-noted that the authority to enter into a negotiated sale was only executed by the barangay after the same was consummated, and more incriminatingly - after the complaint against accused-appellant was already endorsed to the Prosecutor's Office.

Instead of showing how the negotiated sale was consummated within the legal bounds, accused-appellant invokes the presumption of regularity in the execution of the barangay resolution conferring him with the authority to enter into a negotiated sale.

A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof, where the official act is irregular on its face, the presumption cannot arise.<sup>9</sup>

Even assuming *arguendo* that the presumption applies to the Barangay Council Resolution dated May 25, 2007 and that the same acts as a confirmation or ratification of the act of selling the subject dump truck, it does not exculpate accused-appellant from criminal liability.

In *Office of the Deputy Ombudsman for Luzon v. Dionisio*,<sup>10</sup> the Supreme Court held that:

In this relation, while the Sangguniang Panlalawigan ng Bulacan passed Resolution No. 298-S'13 ratifying the MOA between the complainants and the Teachers' Association, it must nevertheless be pointed out that the same was issued only on December 17, 2013 — more than four (4) years since the MOA was executed and after the Ombudsman already promulgated its August 2, 2013 Order finding respondents guilty of Grave Misconduct. In this light, the Court cannot help but conclude that

<sup>9</sup> *People v. Banding*, G.R. No. 233470, August 14, 2019.

<sup>10</sup> G.R. No. 220700, July 10, 2017.

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**such ratification was sought as a mere afterthought** and was issued after perhaps much lobbying from the respondents. In any case, **the issuance of the said resolution does not change the fact that respondents had no authority to enter into the MOA when the same was executed in May 2009.** (Emphasis supplied)

The same conclusion is reached in this case. The fact that an emergency meeting was held six months after the sale, three months after the complaint was already endorsed to the prosecutor's office shows that it is a mere afterthought; sought to correct procedural and legal errors arising from the negotiated sale.

The belated issuance of the resolution on May 25, 2007 authorizing accused-appellant to enter into a negotiated sale does not negate the glaring absence of authority to do so when the sale was consummated in November 30, 2006.

Consequently, there is no reason to modify this court's earlier ruling affirming the trial court's conviction of accused-appellant for violating Sec. 3(e) of R.A. 3019.

**II. SB-23-A/R-0002 – For  
Malversation under Article  
217 paragraph 4 of the  
Revised Penal Code.**

*Demand is not an essential element of  
malversation.*

Accused-appellant argues that demand is an essential element of malversation and cites the case of *Zambrano vs. Sandiganbayan*, to wit:


In the case of Lucilyn T. Zambrano vs. Sandiganbayan and the People of the Philippines (G.R. No. 82067, April 10, 1992), the Supreme Court had categorically stated:

“In the crime of malversation, all that is necessary for conviction, is proof that the accountable officer had received the public funds and that he did not have them in his possession when demand therefor was made and he could not satisfactorily explain the failure so to account”.

Accused-appellant, however, failed to include the succeeding paragraph of the case it cited which states that:<sup>11</sup>

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<sup>11</sup> *Zambrano v. Sandiganbayan*, G.R. No. 82067, April 10, 1992



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Under Article 217 of the Revised Penal Code, there is **prima facie evidence of malversation where the accountable public officer fails to have duly forthcoming any public funds with which he is chargeable upon demand by duly authorized officer**. As this Court has pointed out, this presumption *juris tantum* is founded upon human experience (*Estepa v. Sandiganbayan*, 182 SCRA 269 [1990]) and shall be prima facie evidence that he/she has put such missing funds or property to personal use (*Corpuz v. People*, 194 SCRA 73 [1991]). (Emphasis supplied)

From the above, demand is clearly not an essential element of the crime of malversation. When a public officer fails to account for funds upon demand, *prima facie* evidence of malversation arises. This was discussed in the assailed decision thus:

The Supreme Court in *Venezuela v. People*<sup>12</sup> clearly stated that:

Suffice it to say, demand is not necessary in malversation. Demand merely raises a prima facie presumption that the missing funds have been put to personal use. **The demand itself, however, is not an element of, and is not indispensable to constitute malversation.** Malversation is committed from the very moment the accountable officer misappropriates public funds and fails to satisfactorily explain his inability to produce the public funds he received. Thus, even assuming for the sake of argument that Venezuela received the demand after his term of office, this does not in any way affect his criminal liability. The fact remains that he misappropriated the funds under his control and custody while he was the municipal mayor. To claim that the demand should have been received during the incumbency of the public officer, is to add an element that is not required in any of the laws or jurisprudence. (Emphasis supplied)

In this case, there is no merit in accused-appellant's argument that demand is necessary and the lack thereof exculpates him from the crime of malversation. From the above quoted case, the requirement that COA should make the demand and for him to receive such to establish his culpability has no basis in law and jurisprudence.

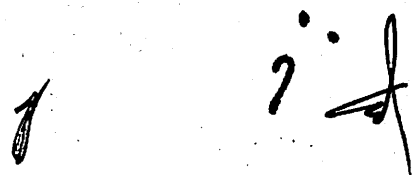
Accused-appellant himself cited *Fajardo v. People*,<sup>13</sup> as follows:

The failure of a 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 funds or property to personal uses.

The above citation also leads to the same conclusion – that demand is not an essential element of malversation, demand only raises a *prima facie* presumption that the funds were used for personal use when accounting for such cannot be made. The contention of accused-appellant on this matter is

<sup>12</sup> G.R. No. 205693, February 14, 2018

<sup>13</sup> G.R. No. 239823, September 25, 2019





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clearly bereft of any support under existing jurisprudence.

Thus, even without demand from the COA, accused-appellant may be convicted of malversation so long as all other elements of the crime are present.

*Accused-appellant already admitted to receiving the amount of ₱77,000.00.*

Accused-appellant also raises the argument that receipt by him of the amount of ₱77,000.00 is uncorroborated.

This allegation is belied by accused-appellant's Comment on the Prosecution's Formal Offer of Exhibits in Evidence dated 20 June 2012<sup>14</sup> submitted in the lower court, where he admitted to having received the amount of ₱77,000.00 from Sibonga not as payment for the dump truck but only as a deposit.

The fact remains, however, that the dump truck was already received by Felix Sibonga right before paying the amount of ₱77,000.00.<sup>15</sup> These circumstances only lead to the conclusion that the amount of ₱77,000.00 is received as payment for the dump truck.

In sum, this court is not persuaded by accused-appellants' arguments in its motion for reconsideration. All arguments therein have already been thoroughly discussed in the assailed Decision, hence, we do not see any compelling reason to modify or reverse our Decision dated 19 September 2023.

**WHEREFORE**, premises considered, the Motion for Reconsideration filed by accused-appellant Arthur B. Lontoc, Jr. dated 09 October 2023 is **DENIED** for lack of merit.

**SO ORDERED.**

Quezon City, Philippines.

<sup>14</sup> RTC Records, Vol 1, pp. 271-272

<sup>15</sup> TSN dated 24 August 2011, pp. 7-9

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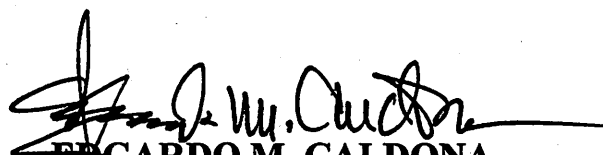
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**ZALDY V. TRESPESES**  
*Associate Justice*

WE CONCUR:

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

  
**EDGARDO M. CALDONA**  
*Associate Justice*