



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

Crim. Case No. SB-23-A/R-0021
FOR: Malversation of Public
Funds

– versus –

Present:

LAGOS, J., *Chairperson*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

ELIZALDE G. GABALEÑO,
Accused-Appellant.

Promulgated:

January 29, 2024

x-----
[Signature] x

RESOLUTION

LAGOS, J.:

This resolves the *Motion for Reconsideration*¹ dated December 12, 2023 filed on December 13, 2023 by accused-appellant Elizalde G. Gabaleño seeking to reverse and set aside the *Decision*² of the Court promulgated on November 23, 2023 which affirmed the decision of the Regional Trial Court, 4th Judicial Region, Branch 28 of Sta. Cruz, Laguna finding him guilty beyond reasonable doubt of the crime Malversation of Public Funds defined and penalized under Article 217 of the Revised Penal Code and sentencing him to suffer the penalty of imprisonment for an

¹ Records, pp. 130-133.

² Id., pp. 110-126.

indeterminate period of four(4) years, nine(9) months and eleven (11) days of *prision correccional*, as minimum, to seven (7) years, four(4) months and one (1) day *prision mayor*, as maximum. In addition, Elizalde G.Gabaleño was ordered to pay a fine of P483,529.31, with legal interest of six percent (6%) *per annum*, reckoned from the finality of this Judgment until full satisfaction, and to suffer the penalty of perpetual special disqualification from holding any public office.

Contending that all the elements of malversation are not present in the instant case, accused-appellant argues in his *Motion for Reconsideration* that the alleged shortage and misappropriation was not proven beyond reasonable doubt by the prosecution because the veracity of the audit reports by State Auditors Ciriaco and Federizo is doubtful. He asserts that although there were receipts submitted by the prosecution, these documents are not sufficient, and all the pertinent documents examined by the auditors were not presented in court. He then concludes that the COA auditors merely alleged in their respective testimonies that they used all available financial records without even stating as to what particular documents were used during their examination.

Accused-appellant further contends that his designation as OIC of the Municipal Treasurer's Office does not prove automatically that he actually received the amounts involved. He adds that the COA auditors' findings of shortage are inconsistent with Certification as of June 15, 2005 of Melanie Galema, Municipal Accountant which, as accused-appellant concludes, means that there was no shortage on his accountability. He points out that the *prima facie* presumption of malversation arises only if there is no issue as to the accuracy, correctness and regularity of the audit findings and if the fact that funds are missing is indubitably established, citing the case of *Agullo vs. Sandiganbayan*.³ Arguing that there is no sufficient proof that he actually received the amounts subject of this case, hence, he argues that the presumption of malversation cannot apply.

The Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), on the other hand, counters in its *Comment* that accused-appellant's *Motion for Reconsideration* raises no new arguments. The issues he raised on the nature of the missing money as public funds, and the lack of proof that he received the questioned funds, and the inconsistencies in the COA reports and the Certification issued by Melanie Galema, the Municipal Accountant of Pagsanjan, Laguna have already been satisfactorily addressed by the Court.

The OSP also asserts that accused-appellant had admitted impliedly his cash shortage in his *Panghukuman Salaysay* dated 10 June 2021 alleging therein the loss of Php 290,000.00 cash when he was held-up on March 5,

³ G.R. No. 132926, July 20, 2001

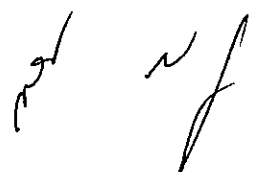
2005, between 9:00 to 10:00 in the morning on his way to deposit his collections at Landbank branch in, Sta Cruz, Laguna, as well as in his *Counter-Affidavit* dated 27 June 2007 alleging therein that the remaining balance reported by COA auditors as undeposited collections were cash advances (*vales*) by some officials and employees of the municipality which he had collected and some were deposited to the account of the municipality until his resignation on 16 December 2006; that he will deposit to the account of the municipality his terminal pay and the balance of his shortages will be paid as soon as his house acquired through GSIS loan and the lot given to him by his mother had been sold, and; that he will settle his obligation, but asked for ample time of 12 months within which to pay his obligation. The OSP contends that he, however, failed to do so notwithstanding several letters of demand for him to comply.

Accused-appellant's claim of inconsistencies by the COA in their reports, according to the OSP, is baseless. The COA reports based on cashbooks and reports of collections and deposits initially showed that the COA audit team found him short of cash accountabilities in the amount of Php 483,529.31 which was the same amount which appeared in the complaint before the OMB office. It was accused-appellant who was, in fact, inconsistent with his statements on the dates he was help-up. In his *Panghukuman Salaysay*, he stated that he was help-up on March 5, 2005 between 9:00 to 10:00 o'clock in the morning, whereas in his *Counter-Affidavit*, the date of hold-up was March 29, 2005 at around 1:00 o'clock in the afternoon.

DISCUSSION AND RULING

After a thorough evaluation of the allegations, issues and arguments adduced by accused-appellant Gabaleño in his *Motion for Reconsideration* and the *Comment* thereon by the Office of the Ombudsman, through the OSP, the Court finds that the issues raised on the veracity and probative value of the audit reports as testified to in court by the COA State Auditors in support of their audit findings, and the application of the *prima facie* presumption of malversation in the instant case are a mere rehash and a repetition of the same issues and arguments raised in his *Appeal*, and which have already been exhaustively passed upon and duly resolved by the Court.

Specifically, accused-appellant questions anew the veracity and probative value of the audit findings contained in the Final Report (Exhibit "E") and the documents in support thereof. The testimonies in court by the prosecution witnesses, State Auditor Rebecca Ciriaco and Nora Federizo on May 14, 2019 and on September 24, 2019, respectively, negate the rehashed contention of accused-appellant. Contrary to his contention, the Final Report and its supporting documents were all presented and identified in court,



more particularly, the Report of Cash Examination,⁴ dated June 15, 2005 (Exhibits “N”), indicating therein on page 2 or at the reverse side of the form that accused-appellant’s accountability as of June 15, 2005 at the time of audit is Php 519,584.56, and after the “*inventory of cash and/or allowed cash items*” by the State Auditors, he was found to have a shortage of Php 483,529.31.

Nature of Funds	Gen. Fund	SEF	Trust Fund	Total
Balance of Accountability as of June 15, 2005	PhP 493,443.42	Php 16,141.14	Php 10,000.00	PhP 519,584.56
Inventory of Cash and allowed Cash Items	PhP 34,725.84	Php 1,329.41	-	Php 36,055.25
Shortage (Overage)	PhP 458,717.58	Php 14,881.73	Php 10,000.00	PhP 483,529.31

In his attempt to point out the alleged inconsistency in the Final Report to discredit its veracity and probative value, accused-appellant cites the Certification⁵ (Exhibit “P”) issued by the Municipal Accountant, Ms. Melanie Galema, that his accountability as of June 15, 2005 is Php 516,584.56. It was erroneous on his part to conclude that because of the Municipal Accountant’s certification of his accountability as of date of audit on June 15, 2005, he has no shortage in his accountability. Accused-appellant failed to take into account that Municipal Accountant Melanie Galema, as accountable officer of the records of municipal funds, has to certify to the COA auditors at the time of audit or before the conduct of “*inventory of cash and/or allowed cash items*” the balance of accountability at the time of audit, or on June 15, 2005, of the Municipal Treasurer who is subject of the audit. After the inventory of “*cash and/or allowed cash items*” by the COA State auditors, accused-appellant was found to have a cash shortage of Php 483,529.31.

The relevant documents, more specifically the COA Final Report, among others, presented and identified by prosecution witnesses, COA State Auditors Ciriaco and Federizo, during their testimonies on May 14, 2019 and September 24, 2019, respectively, fall within the meaning of public documents under Section 19(a)⁶ in relation to Section 23⁷ of Rule

⁴ Records, p. 40

⁵ Id., p. 42

⁶ “SEC. 19. *Classes of documents.*- xxx

“Public Documents are:

“(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and public officers, whether of the Philippines, or of a foreign country.”

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⁷ “SEC. 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 stated therein.

132 of the Revised Rules of Court under the category of written official acts, or records of the official acts of the official bodies and public officers of the Philippines or entries in public records made in the performance of a duty by a public officer.

Being a public document, it enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome the presumption, there must be clear and convincing evidence. Absent such evidence, the presumption must be upheld.⁸

The pronouncements of the Supreme Court in *Edna J. Jaca vs. People and Sandiganbayan*⁹ is instructive on the weight and sufficiency accorded to the audit findings of the Commission on Audit, thus:

“Most importantly, the COA’s findings are accorded great weight and respect, unless they are clearly shown to be tainted with grave abuse of discretion; the COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to, the government. It has the exclusive authority to define the scope of its audit and examination, and to establish the required techniques and methods. An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with the official guidelines and regulations. Under the Rules on Evidence and considering the COA’s expertise on the matter, the presumption is that official duty has been regularly performed unless there is evidence to the contrary.”

We need not belabor any further on the application of *prima facie* presumption of malversation under Article 217 of the Revised Penal Code in the instant case as it was discussed exhaustively in the *Decision* sought to be reconsidered. The law and jurisprudence is clear that when the Revised Penal Code provided a presumption, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that he has appropriated or misappropriated for himself the missing funds. Here, accused-appellant’s explanation of his cash shortage failed to rebut and overturn the presumption of malversation. Aside from the fact that his explanation relating to a robbery-hold-up as justification for his failure to deposit at Landbank Sta.

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”.

⁸ Tomas Chua vs. Westmont Bank and Register of Deeds of Paranaque, et. al. G.R. No. 182650, February 27, 2012


⁹ G.R. Nos. 166967, January 28, 2013

Cruz branch his alleged collections of the *vales* of the employees of the municipality of Pagsanjan, Laguna is self-serving, no evidence was presented to substantiate both his explanation on the *vales* and the hold-up incident. There was no documentary evidence of the alleged *vales*. Neither there was a police blotter or police report of the purported robbery-hold-up incident.


All things considered, there being no new or additional arguments or compelling reason raised by accused-appellant Gabaleño to warrant a reconsideration of the assailed *Decision* of the Court denying his appeal from the judgment of conviction rendered by the trial court against him, the denial of his *Motion for Reconsideration* for lack of merit is in order.


WHEREFORE, in view of the foregoing, the accused-appellant Elizalde Gabaleño's *Motion for Reconsideration* dated December 12, 2023 is **DENIED** for lack of merit.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E.
CORPUS-MAÑALAC**
Associate Justice