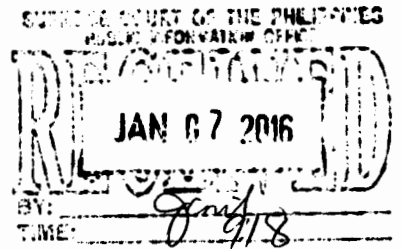




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



DOMINGO G. PANGANIBAN,
Petitioner,

G.R. No. 211543

Present:

SERENO, C.J.,
Chairman,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

-versus-

PEOPLE OF THE PHILIPPINES.
Respondent.

Promulgated:

DEC 09 2015

X ----- X

DECISION

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari*¹ of the 18 November 2013 Decision² rendered by the Fifth Division of public respondent Sandiganbayan in Criminal Case No. SB-08-CRM-0031, entitled *People of the Philippines v. Domingo G. Panganiban*, the decretal portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding accused DOMINGO G. PANGANIBAN GUILTY beyond reasonable doubt of malversation of public funds, and considering the mitigating circumstance of restitution of the amount malversed, he is

¹ Rollo, pp. 53-104.

² Id. at 106-130; penned by Associate Justice Amparo M. Cabotaje-Tang with Associate Justices Roland B. Jurado and Alexander G. Gesmundo, concurring.

hereby sentenced to suffer the indeterminate penalty of imprisonment [of] ten (10) years and one (1) day to twelve (12) years, five (5) months and ten (10) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of *reclusion temporal*, as maximum.

Accused Domingo G. Panganiban is further ordered to pay a fine equal to the amount malversed or ₱463,931.78, and, to suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.³

The following factual and procedural antecedents may be gleaned from the records:

Having already previously served as mayor of the Municipality of Sta. Cruz, Laguna from 2004 to 2007, petitioner Domingo G. Panganiban was once again elected to said position in the May 2013 elections. Sometime in May 2006 or during his previous term, petitioner obtained a cash advance in the sum of Php500,000.00 from the municipality, ostensibly for the purpose of defraying the projected expenses⁴ of a planned official travel to the City of Onkaparinga, Adelaide, South Australia, to study and research said city's sustainable environmental projects.⁵ The availment of the cash advance is evidenced by, among others, the following documents: (a) Disbursement Voucher (DV) No. 05-372 dated 17 May 2006 signed by Caridad P. Lorenzo (Lorenzo), the Municipal Accountant; (b) an Obligation Slip dated 16 May 2006; (c) a copy of the 17 May 2006 check in the sum of Php500,000.00 prepared by Ronaldo O. Valles (Valles), the Officer-in-Charge of the Municipal Treasurer's Office; and (d) a Promissory Note executed by petitioner.⁶ Although scheduled for 9 June to 9 July 2006, the official travel of petitioner did not push through for undisclosed reasons.⁷

His attention called to the unliquidated cash advance, petitioner instructed Lorenzo to withhold his salaries which the latter started doing in July 2006 and recorded and posted the payments in the journal and subsidiary ledger, respectively.⁸ Assigned in 2006 as audit team leader for the local government units of the Province of Laguna, on the other hand, Commission on Audit (COA) State Auditor Rebecca C. Ciriaco (Ciriaco) examined the financial records of the municipality of Sta. Cruz and discovered that the aforesaid cash advance had not yet been liquidated. In addition to submitting her reports in accordance with COA regulations,

³ Id. at 129.

⁴ Records, Vol. I, p. 221; Exhibit "A."

⁵ Exhibits "A-3," "A-4," "A-5," "A-8," and "A-9", folder of exhibits.

⁶ Exhibits "A," "A-1," "A-2" and "A-6", id.

⁷ TSN, 20 October 2009, pp. 13-14.

⁸ TSN, 15 September 2010, pp. 17-20.

Ciriaco consequently served a letter dated 15 August 2006, demanding petitioner's liquidation of the cash advance. On the basis of the documents on hand, however, Ciriaco noted that petitioner had an unliquidated cash advance of Php463,931.78 as of 31 August 2006, a fact she reflected in the quarterly report she submitted to the COA Regional Cluster Director.⁹

As a consequence, an investigation of the non-liquidation of the cash advance was subsequently conducted by the Office of the Deputy Ombudsman for Luzon. During the pendency thereof, petitioner's salary deductions continued such that, by the expiration of his term in June 2007, the remaining unliquidated amount was reduced to Php256,318.45.¹⁰ Prior to her assignment to other units, Ciriaco submitted a report stating that, as of 30 September 2007, said latter sum remained unliquidated from the time the cash advance was granted on 17 May 2006.¹¹ Assigned to the municipality in October 2007, on the other hand State Auditor Augusto Franco Tria (Tria) came across said outstanding cash advance while preparing his quarterly report and, not receiving the records from Lorenzo, wrote a demand letter dated 10 October 2007 to petitioner.¹² In an explanation dated 16 October 2007, the latter apprised Tria of the arrangement to have the cash advance liquidated by means of salary deductions.¹³

On 9 November 2007, petitioner was issued a certification signed by, among others, Lorenzo and Valles, to the effect that the unliquidated balance of the subject cash advance will be deducted from his terminal leave pay.¹⁴ The record shows that, on 19 November 2007, the Office of the Deputy Ombudsman for Luzon issued a resolution, finding probable cause to charge petitioner with the crime of malversation of public funds. Although an information charging him for malversation of the full sum of Php500,000.00 was subsequently filed and docketed as Criminal Case No. SB-08-CRM-0031 before public respondent,¹⁵ petitioner paid the unliquidated balance by

⁹ Exhibits "C-3," and "C-3-A", folder of exhibits.

¹⁰ Exhibits "2" and "2-A", id.

¹¹ Exhibit "E", id.

¹² Exhibit "7", id.

¹³ Exhibit "8", id.

¹⁴ Exhibit "5," "5-A" and "5-A-2", id.

¹⁵ Records, Vol. I, p. 1.

The accusative portion of the Information reads as follows:

That on May 17, 2006, or sometime prior or subsequent thereto, in Santa Cruz, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Domingo G. Panganiban, a public officer, being then the Municipal Mayor of Sta. Cruz, Laguna and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, obtained cash advances in the total amount of Php500,000.00 from the Municipal Treasury of Sta. Cruz, Laguna to finance his projected travel to Adelaide, South Australia but said accused once in possession of said amount of money did not undertake his official travel and from complying with his obligation did then and there willfully, unlawfully and feloniously take, misappropriate and convert to his

causing the same to be deducted from his terminal leave pay. The payment is evidenced by DV No. 100-2007-11-1152 dated 22 November 2007 which shows that the sum of Php256,318.45 was deducted from his terminal leave pay of Php359,947.98.¹⁶ When the COA Regional Office called him about petitioner's unliquidated cash advance in December 2007, Tria consequently reported that the amount was already paid in full by means of the aforesaid deduction.¹⁷

With the issuance of the warrant for his arrest pursuant to public respondent's Resolution dated 21 February 2008, petitioner posted bail in the reduced sum fixed in the order granting his motion for reduction of the recommended bail. Acting on petitioner's motion for reconsideration of its 19 November 2007 Resolution, the Office of the Deputy Ombudsman for Luzon, in turn, issued a Memorandum dated 28 September 2008 which, while denying said motion for lack of merit, recommended the filing of an amended information to correct the amount subject of the charge. The accusative portion of the amended information subsequently filed states:

That on May 17, 2006, or sometime prior or subsequent thereto, in Santa Cruz, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Domingo G. Panganiban, a public officer, being then the Municipal Mayor of Sta. Cruz, Laguna and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, obtained cash advances in the total amount of Php500,000.00 from the Municipal Treasury of Sta. Cruz, Laguna to finance his projected travel to Adelaide, South Australia but said accused once in possession of said amount of money did not undertake his official travel and **was only able to return the amount of Php36,068.22 upon demand by a duly authorized officer and therefore has willfully, unlawfully and feloniously taken, misappropriated and converted to his own personal use and benefit the amount of Php463,931.78,** to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW.¹⁸

Arraigned with the assistance of counsel, petitioner entered a "Not Guilty" plea on 26 June 2009. The preliminary and pre-trial conferences subsequently terminated, public respondent went on to conduct the trial of the case on the merits. To prove the accusation, the prosecution called Lorenzo, Ciriaco, Valles and Leilani T. Penarroyo (Penarroyo), a Clerk

own personal use and benefit the said amount of Php500,000.00, to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW.

¹⁶ Exhibit "4", folder of exhibits.

¹⁷ TSN, 11 November 2010, p. 9.

¹⁸ Records, Vol. I, pp. 120-121.

assigned at petitioner's office who acknowledged receiving and turning over to petitioner the 15 August 2006 demand letter from the COA.¹⁹ Marked in the course of the testimonies of the above-named witnesses, the following documents were admitted in evidence by public respondent when formally offered by the prosecution: (a) DV No. 05-372; (b) Obligation Slip; (c) Duplicate Copy of the Check; (d) documents pertaining to petitioner's planned official travel to Adelaide, South Australia; (e) report, letter, indorsement and documents regarding the unliquidated cash advance as of 31 August 2006; (f) COA's 15 August 2006 demand letter to petitioner; and (g) the list of officials with unliquidated advances as of 30 September 2007 prepared by Ciriaco.²⁰

Its Demurrer to Evidence denied in public respondent's (Minute) Resolution dated 28 June 2010,²¹ the Defense proceeded to present the testimonies of Lorenzo and Tria.²² In lieu of the testimonies of Farra T. Salvador (Salvador), the Municipal Human Resource Manager, the parties stipulated that said witness would be able to testify on petitioner's earned leave record.²³ The parties likewise dispensed with the testimony of Valles whose signatures on the 9 November 2007 certification and DV No. 100-2007-11-1152 were, instead, admitted.²⁴ The following documents were, upon being formally offered by the Defense, further admitted in evidence by public respondent, to wit: (a) subsidiary ledger of the municipality; (b) petitioner's statement of leave credits, leave record and application for terminal leave; (c) DV No. 100-2007-11-1152, together with the journal entry voucher and petitioner's obligation request for the payment of terminal leave; (d) the 9 November 2007 Certification; (e) a 9 July 2009 Certification clearing petitioner of money and property accountabilities; (f) COA's 10 October 2007 demand letter; and (g) petitioner's 16 October 2007 explanation.²⁵

On 18 November 2013, public respondent rendered the herein assailed Decision²⁶ finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds, upon the following ratiocinations: (a) the defense of good faith is unavailing since petitioner was legally obliged to return the money immediately after the period of his intended travel lapsed; (b) the cash advance released in his favor was fully returned by petitioner by way of deductions from his salaries and terminal leave pay more than a year after COA's demand for the settlement thereof and long after his last term of

¹⁹ TSNs, 20 October 2009, pp. 14-16; 28 October 2009, pp. 6-9; and 2 February 2010, pp. 36-39.

²⁰ Exhibits "A," "B," "C," "D," "E" and sub-markings, folder of exhibits.

²¹ Records, Vol. I, p. 275. (Original copy of the MINUTES in the records); Copies of Notice of Minute Resolution without the attached Minute Resolution are attached in the records (pp. 276-281).

²² TSNs, 15-16 September 2010 and 11 November 2010.

²³ *Rollo*, p. 118.

²⁴ *Id.* at 118-119.

²⁵ Exhibits "2," "3," "4," "5," "6," "7," "8" and sub-markings, folder of exhibits.

²⁶ *Rollo*, pp. 106-130.

office expired; (c) payment not being a cause for extinction of criminal liability, the full restitution of the amount alleged to have been malversed does not exculpate petitioner therefrom; and (d) at most, restitution of the malversed amount is a mitigating circumstance that entitles petitioner to a reduction of the imposable penalty. Duly opposed by the Prosecution, petitioner's motion to reopen the case anchored on the supposed negligence of his previous counsel was denied in public respondent's Resolution dated 5 March 2014,²⁷ hence, this petition.

Petitioner urges the grant of his petition and the reversal of the assailed decision on the following grounds:

A.

THE SANDIGANBAYAN GRAVELY ERRED IN CONVICTING THE PETITIONER IN ITS APPEALED DECISION.

B.

THE SANDIGANBAYAN ERRED IN ITS APPEALED DECISION WHEN IT IMPOSED A PRISON SENTENCE THAT IS NOT IN ACCORDANCE WITH THE INDETERMINATE SENTENCE LAW.²⁸

The petition is impressed with merit.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.²⁹ For a prosecution of the crime to prosper, concurrence of the following elements must be satisfactorily proved: (a) the offender is a public officer, (b) he has custody or control of the funds or property by reason of the duties of his office, (c) the funds or property are public funds or property for which he is accountable, and, most importantly, (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.³⁰ Article 217 of the *Revised Penal Code* pertinently provides as follows:

²⁷ Id. at 298-304.

²⁸ Id. at 67.

²⁹ *Pondevida v. Sandiganbayan*, 504 Phil. 489, 507 (2005).

³⁰ *People v. Pantaleon, Jr., et al.*, 600 Phil. 186, 208 (2009); *Diaz v. Sandiganbayan*, 361 Phil. 789, 803 (1999).

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

x x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

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 missing funds or property to personal uses.

Public respondent correctly ruled that petitioner was a public officer, satisfying the first element of the crime of malversation of public funds or property. However, public respondent erroneously ruled that petitioner had custody or control of the funds or property by reason of the duties of his office; that the funds or property are public funds or property for which he was accountable; and that he had appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. Needless to say, he was not accountable for any public funds or property simply because it never became

his duty to collect money or property from the public.³¹ Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

The confusion in this case arose from the start, when the Office of the Deputy Ombudsman for Luzon accused petitioner with the crime of malversation of public funds, notwithstanding the fact that what he received from the Municipality of Sta. Cruz Laguna was a cash advance – a cash advance which was not shown to have been fraudulently taken by petitioner from the municipality, either by himself or in cahoots with the treasurer, cashier or any other accountable officer. In fact, said cash advance was shown to have been properly acquired by documentary proof.

As narrated, petitioner was granted a cash advance in the sum of Php500,000.00 for an intended official travel to Adelaide, Australia from 9 June to 9 July 2006 which did not push through. His attention called to his obligation to liquidate the aforesaid sum, petitioner entered into an agreement with Lorenzo for the sum to be liquidated by means of salary deductions which was, accordingly, implemented. That the agreement was already in place within the 60-day period for liquidation provided under COA Circular 97-002 is evident from the fact that, by the time Ciriaco caused the 15 August 2006 demand letter to be served upon petitioner, the amount to be liquidated had already been reduced to Php463,931.78. The practice was continued until the end of petitioner's term, with the remaining balance of the unliquidated cash advance eventually satisfied by deducting the sum of Php256,308.45 from his terminal leave pay of Php359,947.98 on 22 November 2007.

Had the Office of the Deputy Ombudsman for Luzon made the correct information and subsequent amended information, the charge should have been failure of accountable officer to render accounts under Art. 218 of the Revised Penal Code, not malversation of public funds or property under Art. 217.

Article 218 provides as follows:

Art. 218. *Failure of accountable officer to render accounts.* — Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor,³² or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall

³¹ See also *Salamera v. Sandiganbayan*, 362 Phil. 556, 566 (1999), citing Chief Justice Ramon C. Aquino, *The Revised Penal Code*, 1987 ed., Vol. II, p. 447.

³² Now Commission on Audit. (Citation supplied.)

be punished by prision correccional in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both.

The erroneous information against the accused was exacerbated when the public respondent went on to convict the accused for malversation under Article 217 despite the contrary documentary proof and the testimonies of witnesses both of the prosecution and defense during trial, showing a properly issued cash advance.

Even before he was required by the COA to account for the unliquidated cash advance, petitioner had already instructed Lorenzo to withhold his Php18,000.00 monthly salary. Because Lorenzo started to withhold petitioner's salary starting July 2006 or even before Ciriaco's 15 August 2006 demand letter, the latter reported the corresponding reduction of the amount to be liquidated to the COA Regional Cluster Director. Questioned whether such an agreement was an allowed practice, Ciriaco's successor, Tria, significantly testified as follows:

Q. Mr. Witness, during your assignment as State Auditor in the Municipality of Sta. Cruz[,] Laguna, what matter, if any, did you come across relating to accused Domingo Panganiban?

A. Since I assumed back in October of 2007 and since we are required to submit a quarterly report of outstanding cash advances, I came across the cash advance in the amount of ₱256,000.00 plus of the municipal mayor and inquired about the said transaction from the accountant.

Q. Relative to this amount that you mentioned, what action or did you do about it, if any, at that time?

A. Since we assumed in October 2007 and there was [no] record turned over to us, and we have observed that there was an outstanding balance of ₱200,000.00, I issued a demand letter to the former Mayor to determine the status of the said cash advance and also to determine whether it was acknowledged by the former mayor.

x x x x

Q. After you sent that demand letter, what happened next, if any?

A. I received an explanation from the former Municipal Mayor on October 6, 2007.

Q. When you received an explanation, was it in writing, Mr. Witness?

A. Yes, sir.

x x x x

Q. What happened next, if any, Mr. Witness, after you received this explanation from the accused, Panganiban?

A. In December of 2007, our Regional Office called my attention regarding the said cash advance. I reported that the cash advance was already paid in full because the terminal pay of the former Municipal Mayor was already paid and it was already deducted from the proceeds of the terminal pay.

Q. How did you communicate this matter?

A. They called me at our office in Sta. Cruz Laguna, Provincial Office, sir.

ATTY. VISTAN

Q. Was there any written documentation of this report?

A. I cannot recall any written documentation. All I know is that they called me and I informed them that the said cash advance was already paid and on the following year – already, the status of [the] cash advances were reported to our office.

x x x x

Q. Based on the explanation, Mr. Witness, what were your findings since you issued a demand letter asking the accused to liquidate the amount of ₱256,318.45 within thirty (30) days from receipt of the demand letter?

A. Upon reading the explanation of the former Municipal Mayor, I came to know that there was [an] agreement between the Municipal Mayor and the former Auditor for the original cash advance of ₱500,000.00 and as agreed upon, it was deducted from the salary of the Mayor.

ATTY. VISTAN

Q. Based on your experience as State Auditor for 24 years, Mr. Witness, have you come across any other matter wherein cash advance was liquidated in this manner that you found in relation to the case of Domingo Panganiban?

A. Yes, sir.

Q. Can you recall how many cases of such nature or how many liquidations of such nature you encountered in your career as State Auditor?

A. There are certain cash advances particularly in the Municipality of Mayhay wherein there are unliquidated cash advances but the persons liable arranged for the payment by instalment. It was an agreement between the person and the municipality and we just respect the agreement and allow it that way.

ATTY. VISTAN

Q. In addition to that matter, is there anything else that comes to your mind, any other cash advance and/or liquidation thereof?

A. I think that particular case of the Mayor.

Q. Do you know if there were any charges or cases that arose because of that matter?

A. No particular case, sir.

JUSTICE GESMUNDO

Q. So what you are telling us, Mr. Witness, is that this is an allowed practice?

A. Yes, your Honor, we allowed that practice.³³

The practice of liquidating cash advances by means thereof being one that is allowed, the withholding of petitioner's salaries continued until the expiration of his term of office. With the remaining balance satisfied from his terminal leave pay, petitioner was eventually cleared of financial and property liabilities to the municipality. Long before petitioner was arraigned under the amended Information on 26 June 2009, Tria had, in fact, already reported to the COA Regional Office in December 2007 that the cash advance had already been fully paid. To the mind of the Court, the confluence of these circumstances serves to negate the factual and legal bases for Petitioner's liability for failure to render accounts, even if it was this correct charge which was made against him. The manner by which he liquidated the cash advance was, after all, admitted as an allowed practice and was permitted to continue until the full amount was satisfied. At this point, the Court reiterates the finding in *Yong Chan Kim v. People*,³⁴ a case for swindling (estafa), but which in principle is applicable in this case. Therein, it was ruled, thus:

X X X X

Liquidation simply means the settling of an indebtedness. An employee, such as herein petitioner, who liquidates a cash advance is in fact paying back his debt in the form of a loan of money advanced to him by his employer, as per diems and allowances. Similarly, as stated in the assailed decision of the lower court, "if the amount of the cash advance he received is less than the amount he spent for actual travel x x x he has the right to demand reimbursement from his employer the amount he spent coming from his personal funds." In other words, the money advanced by either party is actually a loan to the other. Hence, petitioner was under no legal obligation to return the same cash or money, i.e., the bills or coins, which he received from the private respondent.

X X X X

The Court further declared in that case, thus:

X X X X

The ruling of the trial judge that ownership of the cash advanced to the petitioner by private respondent was not transferred to the latter is erroneous. Ownership of the money was transferred to the petitioner. Even the prosecution witness, Virgilio Hierro, testified thus:

³³ TSN, 11 November 2010, pp. 6-12

³⁴ G.R. No. 84719, January 25, 1991, 193 SCRA 344; citing *Yam v. Malic*, G.R. No. L-50550-52, October 31, 1979, 94 SCRA 30.

Q When you gave cash advance to the accused in this Travel Order No. 2222 subject to liquidation, who owns the funds, accused or SEAFDEC? How do you consider the funds in the possession of the accused at the time when there is an actual transfer of cash? x x x

A *The one drawing cash advance already owns the money* but subject to liquidation. If he will not liquidate, he is obliged to return the amount.

Q x x x x x x x x x.
So why do you treat the itinerary of travel temporary when in fact as of that time the accused owned already the cash advance. You said the cash advance given to the accused is his own money. In other words, at the time you departed with the money it belongs already to the accused?

A Yes, but subject for liquidation. He will be only entitled for that credence if he liquidates.

Q [In] other words, it is a transfer of ownership subject to a suspensive condition that he liquidates the amount of cash advance upon return to station and completion of the travel?

A Yes, sir.

x x x x³⁵

In addition, on the matter of liquidation of cash advance, Commission on Audit Circular No. 96-004 dated April 19, 1996 pertinently states:

x x x x

3.2.2 LIQUIDATION OF CASH ADVANCE

3.2.2.1 The cash advance for travel shall be liquidated by the official/employee concerned strictly within sixty (60) days after his return to the Philippines as required under Section 16, of EO 248, as amended otherwise, payment of his salary shall be suspended until he complies therewith.

3.2.2.2 The official/employee concerned shall draw a liquidation voucher to be supported by the following:

- a. Certificate of travel completed (Appendix B):
- b. Plane or boat tickets covering actual transportation fare from the point of embarkation in the Philippines to the place of destination and back, provided, that the presentation of a certification or affidavit of loss

³⁵

Id. at 353.

- executed by the official or employee concerned shall not be considered as appropriate replacement for the required transportation tickets;
- c. Bills and receipts covering representation expenses incurred, if the official concerned has been authorized to incur the same;
 - d. Hotel room bills with official receipts, regardless of whether or not the amount exceeds the prescribed rate of Two Hundred United States Dollars per day, provided that for this purpose, no certification of affidavit of loss shall be considered or accepted;
 - e. Where the actual travel expenses exceeds the prescribed rate of Three Hundred United States Dollars per day, The certification of the head of the agency concerned as to its absolute necessity shall also be required in addition to the presentation of the hotel room bills with official receipts.

3.2.2.3 Where a trip is cancelled, the amount paid in advance shall be refunded in full. In cases where the trip is cut short or terminated in advance of the itinerary, the excess payment shall likewise be refunded. The head of the agency shall see to it such refunds are enforced promptly.

In all, Petitioner's full liquidation of his cash advance by means of an arrangement allowed by the COA ultimately translated into a legal avoidance of violation of Art. 218.

And even granting that it was malversation which petitioner was alleged to have committed, it has been ruled that good faith is a valid defense in a prosecution for malversation of public funds as it would negate criminal intent on the part of the accused.³⁶ Petitioner's full liquidation of his cash advance by means of an arrangement allowed by the COA ultimately translated into the good faith he interposed as a defense.

The felony of malversation of public funds being one which involves breach of the public trust that is uniformly punished whether committed through *dolo* or *culpa*,³⁷ defenses relative thereto are to be rightfully accorded strict and close scrutiny. Reviewing relevant jurisprudence on the matter, however, the Court handed down the following pronouncements in *Cabello v. Sandiganbayan*,³⁸ to wit:

[I]n *Villacorta*³⁹ this court found that the cash in the possession of the accused therein was found short because of the disallowance by the audit team. The items comprising the shortage were paid to government

³⁶ *Tabuena v. Sandiganbayan*, G.R. Nos. 103501-03, February 17, 1997, 268 SCRA 332.

³⁷ *Diaz v. Sandiganbayan*, supra note 30 at 802.

³⁸ 274 Phil. 369 (1991).

³⁹ *Villacorta v. People*, 229 Phil. 422 (1986).

personnel either as wages, travelling expenses, salaries, living allowances, commutations of leave, terminal leaves and for supplies. The accused therein did not put the missing funds to personal use; in fact, when he demanded payment from said personnel, they redeemed their chits and made restitution. Furthermore, at the time of the audit, the accused had an actual balance deposit with the provincial treasurer in the sum of ₱64,661.75.

In *Quizo*,⁴⁰ the therein accused incurred a shortage in the total sum of ₱17,421.74 because the audit team disallowed ₱16,720.00 in cash advances he granted to some employees, ₱700.00 representing accommodated private checks, and an actual cash shortage of ₱1.74. On the same day when the audit was conducted, ₱406.18 was reimbursed by the accused, ₱10,515.56 three days thereafter and the balance of ₱6,500.00 another three days later. This Court, in a spirit of leniency, held that the accused had successfully overthrown the presumption of guilt. None of the funds was used by him for his personal interest. The reported shortage represented cash advances given in good faith and out of goodwill to co-employees, the itemized list of which cash advances was verified to be correct by the audit examiner. There was no negligence, malice or intent to defraud; and the actual cash shortage was only ₱1.74 which, together with the disallowed items, was fully restituted within a reasonable time.

While we do not wish it to appear that the mere fact of restitution suffices to exculpate an accountable public officer, as each case should be decided on the basis of the facts thereof, it appears that the Court was of the persuasion that the confluence of the circumstances in the *Villacorta* and *Quizo* cases destroyed the *prima facie* presumption of peculation and criminal intent provided for in said Article 217.

The factual and legal bases for petitioner's criminal liability thus discounted, the Court will no longer dwell on great length on the propriety of the penalty handed down by public respondent. On the theory that he was guilty as charged, petitioner was imposed the "indeterminate penalty of imprisonment [for] ten (10) years and one day to twelve (12) years, five (5) months and ten (10) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of *reclusion temporal*, as maximum."⁴¹ While the *Indeterminate Sentence Law* mandates the imposition of an indeterminate sentence with minimum and maximum periods for the benefit of the accused, it goes without saying that the minimum and maximum penalties to be imposed should, themselves, be determinate.


WHEREFORE, premises considered, judgment is hereby rendered **REVERSING** and **SETTING ASIDE** Sandiganbayan's assailed 18 November 2013 Decision. In lieu thereof, another is entered **ACQUITTING** Domingo G. Panganiban.

⁴⁰ *Quizo v. Sandiganbayan*, 233 Phil. 103 (1987).


⁴¹ *Rollo*, p. 129.

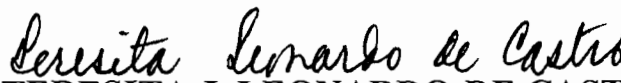
The Court orders the public respondent to forthwith cancel the cash bail of the petitioner and immediately reimburse the amount to him.

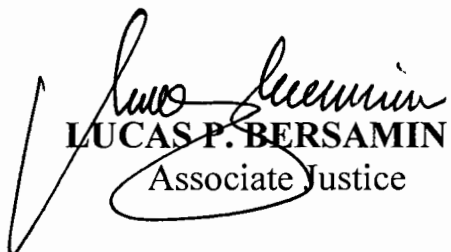
SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

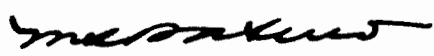

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice