



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

MANUEL M. VENEZUELA,  
Petitioner,

G.R. No. 205693

Present:

CARPIO, J.,  
Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA,\* and  
REYES, JR., JJ.

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

14 FEB 2010

*Handwritten signature: J. Reyes*

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DECISION

REYES, JR., J.:

This treats of the Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision<sup>2</sup> dated May 10, 2012, and Resolution<sup>3</sup> dated February 4, 2013, rendered by the Sandiganbayan Third Division in Criminal Case No. 25963, which convicted petitioner Manuel M. Venezuela (Venezuela) of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC), as amended.

The Antecedents

Venezuela was the Municipal Mayor of Pozorrubio, Pangasinan from 1986 to June 30, 1998.<sup>4</sup>

\* On official business.

<sup>1</sup> *Rollo*, pp. 7-18.

<sup>2</sup> Penned by Associate Justice Samuel R. Martires (now a Member of this Court), with Associate Justices Francisco H. Villaruz, Jr. and Alex L. Quiroz, concurring; *id.* at 53-71.

<sup>3</sup> *Id.* at 83-88.

<sup>4</sup> *Id.* at 63.

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On June 10, 1998, a team of auditors composed of State Auditors II Ramon Ruiz (Ruiz), Rosario Llarenas, and Pedro Austria conducted an investigation on the cash and accounts of Pacita Costes (Costes), then Municipal Treasurer of Pozorrubio, Pangasinan, for the period covering December 4, 1997 to June 10, 1998.<sup>5</sup>

In the course of the investigation, the Audit Team discovered a shortage of Php 2,872,808.00 on the joint accounts of Costes and Venezuela. Likewise, it noticed that the 17 cash advances made by Venezuela were illegal, due to the absence of the following essential requirements: (i) a public or official purpose indicated in the disbursement vouchers; (ii) required supporting documents; (iii) request for obligation of allotment; (iv) accomplishment or purchase request; (v) order or delivery made; (vi) charge invoice; (vii) approved *Sangguniang Bayan* resolution; and (viii) Certification issued by the Municipal Accountant.<sup>6</sup> Moreover, the Audit Team found out that Venezuela was neither bonded nor authorized to receive cash advances.<sup>7</sup> Finally, the Audit Team noted that most of the vouchers were paid in cash, notwithstanding the fact that the amounts covered by such vouchers were in excess of Php 1,000.00, in violation of the rules of the Commission on Audit (COA) which mandate payment in checks for amounts over Php 1,000.00.<sup>8</sup>

Consequently, team member Ruiz issued three demand letters to Venezuela, ordering him to liquidate his cash advances. In response, Venezuela sent an explanation letter acknowledging his accountability for the cash advances amounting to Php 943,200.00, while denying the remainder of the cash advances.<sup>9</sup>

An audit report was thereafter submitted by the Team. Venezuela denied the truth of the contents thereof.<sup>10</sup>

Meanwhile, on March 20, 2000, an Information<sup>11</sup> was filed by the Office of the Deputy Ombudsman for Luzon, accusing Venezuela of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the RPC, and committed as follows:

That for the period from December 4, 1997 to June 10, 1998, or sometime prior or subsequent thereto, in the municipality of Pozorrubio, Province of Pangasinan, Philippines, and within the jurisdiction of this

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<sup>5</sup> Id. at 95.

<sup>6</sup> Id. at 56.

<sup>7</sup> Id.

<sup>8</sup> Id. at 96.

<sup>9</sup> Id. at 56.

<sup>10</sup> Id. at 95.

<sup>11</sup> Id. at 19-20.

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Honorable Court, [VENEZUELA], a public officer being then the Municipal Mayor of Pozorrubio, Pangasinan, and as such is 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, conniving and confederating with [COSTES], also a public officer being then the Municipal Treasurer of Pozorrubio, Pangasinan, did then and there, wilfully, unlawfully and feloniously take, misappropriate, and convert to his personal use and benefit the amount of TWO MILLION EIGHT HUNDRED SEVENTY[-]TWO THOUSAND EIGHT HUNDRED EIGHT PESOS (P2,872,808.00) from such public funds received by him as unauthorized cash advances to the damage of the government in the aforestated amount.

**CONTRARY TO LAW.**<sup>12</sup>

On May 3, 2000, the Sandiganbayan issued a warrant of arrest for the immediate apprehension of Venezuela.<sup>13</sup>

On May 11, 2000, Venezuela voluntarily surrendered, and posted bail. However, Costes remained at large.<sup>14</sup>

Venezuela moved for reconsideration and reinvestigation of the case, which was denied by the Office of the Special Prosecutor in a Memorandum dated January 14, 2001.<sup>15</sup>

Thereafter, the trial of the case proceeded, but only with respect to Venezuela.

In the course of the trial, the prosecution presented witnesses, in the persons of Ruiz, State Auditor II of the COA and Unit Head of the Municipal Audit Team of Binalonan, Pangasinan;<sup>16</sup> and Marita Laquerta (Laquerta), Municipal Accountant of Pozorrubio, Pangasinan.<sup>17</sup>

Ruiz affirmed that on June 10, 1998, he, together with other state auditors, conducted an investigation on the cash and accounts of Costes, for the period of December 4, 1997 until June 10, 1998.<sup>18</sup> The investigation unraveled a shortage of Php 2,872,808.00, in the same account of Costes and Venezuela, as well as illegal cash advances. They likewise discovered that Venezuela was not bonded or authorized to receive cash advances.<sup>19</sup> Ruiz further confirmed that they issued demand letters to

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<sup>12</sup> Id. at 19.  
<sup>13</sup> Id. at 54.  
<sup>14</sup> Id.  
<sup>15</sup> Id. at 95.  
<sup>16</sup> Id. at 55.  
<sup>17</sup> Id. at 57.  
<sup>18</sup> Id. at 55-56.  
<sup>19</sup> Id. at 56.

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Venezuela, who admitted accountability for the cash advances amounting to Php 943,200.00.<sup>20</sup>

On the other hand, Laquerta confirmed that the signatures appearing on 16 of the 17 illegal disbursement vouchers belonged to Venezuela, who was the claimant under the said vouchers.<sup>21</sup>

Upon cross-examination, Laquerta related that Venezuela remitted the amount of Php 300,000.00 on November 6, 1998.<sup>22</sup> This reduced the total amount of Venezuela's unliquidated cash advances to Php 2,572,808.00, as reflected in the Final Demand Letter sent by the COA Auditors to Venezuela.<sup>23</sup>

On the other hand, Venezuela vehemently denied the charge leveled against him. To corroborate his claim of innocence, he testified, alongside his other witnesses, namely, Arthur C. Caparas (Caparas), Venezuela's Executive Assistant I; and Manuel D. Ferrer (Ferrer), Senior Bookkeeper of Pozorrubio from 1994 to 2004, among others.

Venezuela declared that he submitted to then Municipal Treasurer Costes all the supporting documents to liquidate his cash advances before the end of his term in June 1998. Further, he asserted that he remitted the amount of Php 2,572,808.00, in installments to Costes. In fact, he asserted that his payment was evidenced by official receipts bearing the following serial numbers and dates, to wit: (i) 5063309J dated November 8, 1999; (ii) 5063313J dated November 18, 1999; (iii) 5063321J dated November 26, 1999; (iv) 5063324J dated December 8, 1999; and (v) 5063330J dated December 15, 1999.<sup>24</sup>

Supporting the claim of liquidation, Caparas affirmed that Venezuela liquidated his cash advances through his private secretary who submitted the same to the Municipal Treasurer.<sup>25</sup>

Likewise, Ferrer related that he saw Venezuela going to the Office of the Municipal Treasurer to submit the liquidation of his cash advances. However, on cross-examination, Ferrer admitted that he did not actually see Venezuela liquidating his cash advances.<sup>26</sup>

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<sup>20</sup> Id.

<sup>21</sup> Id. at 57.

<sup>22</sup> The witness likewise testified that Venezuela remitted other amounts, such as: (i) Php 420,000.00 on June 1997; and (ii) Php 43,000.00 on September 1997. Although these amounts were mentioned in the Sandiganbayan decision, it must be noted that these amounts do not pertain to the accounting period of December 1997 to June 1998, which is the period pertinent to the instant charge of malversation.

<sup>23</sup> *Rollo*, p. 57.

<sup>24</sup> Id. at 60.

<sup>25</sup> Id. at 59-60.

<sup>26</sup> Id. at 59.

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On rebuttal by the prosecution, Zoraida Costales (Costales), Officer in Charge in the Municipal Treasurer's Office of Pozorrubio, testified that as per records of the Municipal Treasurer's Office, the receipts presented by Venezuela, which purportedly evidence his payment of the unliquidated cash advances, did not actually reflect the payments so claimed by Venezuela. Rather, the receipts were issued to different persons, in different amounts and for different purposes. Moreover, during the period shown in the official receipts presented by Venezuela, Costes, the alleged issuer of the receipts, was no longer holding office at the Municipal Treasurer's Office.<sup>27</sup>

Similarly, Laquerta attested that she never encountered the receipts presented by Venezuela, and that as per records, the last cash liquidation made by Venezuela was in November 1998, in the amount of Php 300,000.00.<sup>28</sup>

### **Ruling of the Sandiganbayan**

On May 10, 2012, the Sandiganbayan promulgated the assailed Decision<sup>29</sup> convicting Venezuela of the crime of Malversation of Public Funds. The Sandiganbayan held that the prosecution proved all the elements of the crime beyond reasonable doubt.

The Sandiganbayan observed that during the period material to the case, Venezuela was a public officer, being the Municipal Mayor of Pozorrubio from 1986 to 1998.<sup>30</sup> While Municipal Mayor, Venezuela received public funds, by reason of the duties of his office. Venezuela, along with then Municipal Treasurer Costes had a joint shortage of Php 2,872,808.00, which he could not account for upon demand by the COA Audit Team.<sup>31</sup> His failure to have duly forthcoming the public funds with which he was chargeable, served as *prima facie* evidence that he has put such missing funds to his personal use.<sup>32</sup>

Furthermore, the Sandiganbayan opined that Venezuela's defense of payment was unsubstantiated.<sup>33</sup> The serial numbers in the receipts he presented as proof of his purported payment revealed that they were issued to other payees and for different purposes. Moreover, Costes, to whom Venezuela allegedly remitted his payments, was no longer the Municipal Treasurer of Pozorrubio during the dates when the supposed payments were made.<sup>34</sup> There are no documents in the official records of the Municipality

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<sup>27</sup> Id. at 61.

<sup>28</sup> Id. at 62.

<sup>29</sup> Id. at 53-71.

<sup>30</sup> Id. at 62.

<sup>31</sup> Id. at 64.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id. at 66.

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of Pozorrubio that would corroborate Venezuela's claim of payment.<sup>35</sup> Furthermore, the Sandiganbayan emphasized that even assuming that Venezuela had indeed reimbursed his cash advances, payment is not a defense in malversation.<sup>36</sup>

However, the Sandiganbayan acknowledged that Venezuela made a partial refund of his liabilities, thereby reducing his unliquidated cash advances to Php 2,572,808.00. The Sandiganbayan considered such refund as a mitigating circumstance akin to voluntary surrender. Thus, Venezuela was sentenced as follows:

**WHEREFORE**, premises considered, [VENEZUELA] is hereby found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds defined and penalized under Article 217 of the [RPC] and is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE DAY of *reclusion temporal*, as maximum; to pay a fine of Two Million Five Hundred Seventy Two Thousand Eight Hundred Eight Pesos (Php 2,572,808.00); and to suffer the penalty of perpetual special disqualification from holding any public office.

Considering that the other accused, [COSTES], is still at large, let the herein case against her be archived.

SO ORDERED.<sup>37</sup>

Aggrieved, Venezuela filed a Motion for Reconsideration,<sup>38</sup> which was denied in the Sandiganbayan Resolution<sup>39</sup> dated February 4, 2013.

Undeterred, Venezuela filed the instant Petition for Review on *Certiorari*<sup>40</sup> under Rule 45 of the Revised Rules of Court, praying for the reversal of the assailed Sandiganbayan decision and resolution.

### The Issue

Essentially, the main issue presented for the Court's resolution is whether or not the prosecution failed to establish Venezuela's guilt beyond reasonable doubt.

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<sup>35</sup> Id.  
<sup>36</sup> Id. at 67.  
<sup>37</sup> Id. at 69-70.  
<sup>38</sup> Id. at 72-82.  
<sup>39</sup> Id. at 83-88.  
<sup>40</sup> Id. at 7-18.



Venezuela maintains that the Sandiganbayan erred in convicting him of the crime of malversation of public funds. Venezuela avers that he had fully liquidated his cash advances to Costes.<sup>41</sup> In fact, he presented receipts proving his payments. In this regard, Venezuela bewails that the Sandiganbayan erroneously discredited his receipts, adopting the prosecution's version.<sup>42</sup> He points out that his receipts were issued in 1999, whereas those presented by the prosecution were issued in the year 2007.<sup>43</sup> Moreover, Venezuela alleges that the charge of conspiracy with Costes was not sufficiently proven. In particular, Venezuela assails that the amount of Php 2,872,808.00, as charged in the Information was alleged to be his joint accountability with Costes. As such, pending the arrest of the latter, the case should have first been provisionally dismissed.<sup>44</sup> It was unfair for him to solely bear the charge, while Costes was "absolved" from liability.<sup>45</sup> Finally, Venezuela points out that the COA auditors sent the demand letters ordering the liquidation of his cash advances at a time when he was no longer the Mayor of Pozorrubio. He ceased to hold office on June 30, 1998. Consequently, if he should be charged of any offense under the RPC, it should have been Article 218 thereof, or Failure of Accountable Officer to Render Accounts.<sup>46</sup>

On the other hand, the People, through the Office of the Ombudsman, counter that the prosecution proved all the elements for the crime of Malversation beyond reasonable doubt.<sup>47</sup> The evidence showed that Venezuela indeed received the amount subject of the case by way of cash advances. Venezuela's purported claim of payment was a mere afterthought. The fact of payment was not proven, and even if established, would not exonerate him from the crime.<sup>48</sup> The receipts Venezuela presented were sufficiently overthrown by the prosecution witness who proved that the serial numbers in the receipts show that they were issued in 2007, and not in 1999, as claimed by the former. Likewise, it was established during the trial that Costes was no longer holding office as the Municipal Treasurer, notwithstanding the fact that her name appeared on the purported receipts. Worse, the Municipal Accountant confirmed the absence of such purported payment in the books of the municipality.<sup>49</sup> Neither did the COA, the complainant in the instant case, encounter such payments. Moreover, anent the issue of conspiracy, the People emphasize that the subject matter of the instant case are the cash advances granted to Venezuela, not those pertaining to Costes. Finally, the People maintain that Venezuela was properly charged and convicted of Malversation of Public Funds. Demand is not necessary for the charge of malversation to arise.<sup>50</sup>

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<sup>41</sup> Id. at 13.

<sup>42</sup> Id. at 15.

<sup>43</sup> Id.

<sup>44</sup> Id. at 12.

<sup>45</sup> Id.

<sup>46</sup> Id. at 15.

<sup>47</sup> Id. at 117.

<sup>48</sup> Id. at 118.

<sup>49</sup> Id. at 119.

<sup>50</sup> Id. at 120.

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The crime is committed from the moment the accountable officer is unable to satisfactorily explain his failure to produce the public funds he received.<sup>51</sup>

### **Ruling of the Court**

#### **The instant petition is bereft of merit.**

It must be noted at the outset that the appellate jurisdiction of the Court over the decisions and final orders of the Sandiganbayan is limited to questions of law. As a general rule, the Court does not review the factual findings of the Sandiganbayan, which are conclusive upon the Court.<sup>52</sup> Parenthetically, “a question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, a question of fact exists when the doubt or controversy arises as to the truth or falsity of the alleged facts.”<sup>53</sup>

The resolution of the issues raised in the instant case, which pertains to the finding of guilt rendered by the Sandiganbayan, involves a calibration of the evidence, the credibility of the witnesses, and the existence and the relevance of surrounding circumstances,<sup>54</sup> which are beyond the province of a petition for review on *certiorari*.

At any rate, the Sandiganbayan did not commit any reversible error in convicting Venezuela of Malversation of Public Funds.

#### ***Venezuela is Guilty Beyond Reasonable Doubt for the Crime of Malversation of Public Funds***

Malversation is defined and penalized under Article 217 of the RPC, as amended by Republic Act (R.A.) No. 10951,<sup>55</sup> as follows:

**Art. 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

<sup>51</sup> Id.

<sup>52</sup> *Zoleta v. Sandiganbayan (Fourth Division) and People*, 765 Phil. 39, 52 (2015), citing *Cabaron, et al. v. People, et al.*, 618 Phil. 1, 6 (2009).

<sup>53</sup> *Zoleta v. Sandiganbayan (Fourth Division) and People*, id., citing *Cabaron v. People*, id. at 6-7.

<sup>54</sup> *Felipe v. MGM Motor Trading Corporation and Ayala General Insurance Corporation*, G.R. No. 191849.

<sup>55</sup> AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS “THE REVISED PENAL CODE”, AS AMENDED. Approved on August 29, 2017.

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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 Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

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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 use.

Parenthetically, the elements of malversation are (i) that the offender is a public officer, (ii) that he had custody or control of funds or property by reason of the duties of his office, (iii) that those funds or property were public funds or property for which he was accountable, and (iv) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.<sup>56</sup>

Verily, 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 he failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.<sup>57</sup>

In the case at bar, all the elements for the crime were sufficiently proven by the prosecution beyond reasonable doubt.

Venezuela was a public officer, being then the Municipal Mayor of Pozorrubio, Pangasinan from 1997 to 1998, the period relevant to the time of the crime charged. Notably, he falls within the definition of a public officer, stated in the RPC as “any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class.”<sup>58</sup>

<sup>56</sup> *Major Cantos v. People*, 713 Phil. 344, 353-354 (2013), citing *Ocampo III v. People*, G.R. Nos. 156547-51, February 4, 2008.

<sup>57</sup> *Cantos v. People*, id. at 352-353, citing *Davalos, Sr. v. People*, 522 Phil. 63, 71 (2006).

<sup>58</sup> REVISED PENAL CODE, Article 203.

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Likewise, during Venezuela's tenure as the municipal mayor, he incurred unliquidated cash advances amounting to Php 2,872,808.00.<sup>59</sup> These unliquidated cash advances constituted funds belonging to the Municipality of Pozorrubio, and earmarked for use by the said municipality.

Incidentally, in *People v. Pantaleon, Jr., et al.*,<sup>60</sup> the Court held that a municipal mayor, being the chief executive of his respective municipality, is deemed an accountable officer, and is thus responsible for all the government funds within his jurisdiction.<sup>61</sup> The Court explained that:

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government [Code,] which reads:

Section 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

Section 102. *Primary and secondary responsibility.* — (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.<sup>62</sup>

Undoubtedly, as the municipal mayor, Venezuela had control of the subject funds, and was accountable therefor.

Finally, anent the last element for the crime of malversation of public funds, Venezuela failed to return the amount of Php 2,572,808.00, upon demand. His failure or inability to return the shortage upon demand created a *prima facie* evidence that the funds were put to his personal use, which Venezuela failed to overturn.

Seeking to be exonerated from the crime charged, Venezuela claims that he had fully paid the amount of the unliquidated cash advances.

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<sup>59</sup> The total amount without considering the Php 300,000.00 partial payment made by Venezuela.

<sup>60</sup> 600 Phil. 186 (2009).

<sup>61</sup> Id. at 210.

<sup>62</sup> Id.



This contention does not hold water.

To begin with, it bears stressing that payment or reimbursement is not a defense in malversation.<sup>63</sup> The payment, indemnification, or reimbursement of, or compromise on the amounts or funds malversed or misappropriated, after the commission of the crime, does not extinguish the accused's criminal liability or relieve the accused from the penalty prescribed by the law. At best, such acts of reimbursement may only affect the offender's civil liability, and may be credited in his favor as a mitigating circumstance analogous to voluntary surrender.<sup>64</sup>

Moreover, the Court observed that Venezuela did not fully prove his defense of payment. Although Venezuela presented official receipts, which purportedly prove his payment of the cash advances, the following circumstances easily cast serious doubt on the validity of the same receipts: (i) the receipts bore serial numbers pertaining to slips issued in 2007, and were actually issued to different payees and for different purposes; (ii) Costes, who supposedly received the payments and issued the receipts was no longer working as the municipal treasurer on the dates indicated in the receipts; (iii) there are no records in the Municipality of Pozorrubio that confirm the fact of payment; (iv) the defense of payment was never raised during the start of the COA investigation; and (v) the COA has no record or information regarding the supposed payments. All these circumstances easily belie the fact of payment. The only payment proven to have been made was the amount of Php 300,000.00. This shall be credited in Venezuela's favor in reducing the fine that shall be imposed against him.

As for his other defenses, Venezuela claims that he was incorrectly charged for Malversation of Public Funds under Article 217. He points out that he had ceased to hold office as municipal mayor on June 30, 1998, when the COA auditors sent the demand letter ordering him to liquidate his cash advances. Thus, the offense that must be charged against him should fall under Article 218 of the RPC or Failure of Accountable Officer to Render Accounts, which punishes an officer (incumbent or retired) who fails to render an account of his funds.<sup>65</sup>

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.<sup>66</sup> 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

<sup>63</sup> *Perez v. People*, 568 Phil. 491, 520 (2008).

<sup>64</sup> *Id.* at 522-523.

<sup>65</sup> *Rollo*, p. 15.

<sup>66</sup> *Nizurtado v. Sandiganbayan*, 309 Phil. 30, 40 (1994).



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.

The Court likewise finds no basis in Venezuela's argument that the case against him should have been dismissed considering that Costes, his alleged co-conspirator is at large. Neither is there any truth to Venezuela's allegation that the Sandiganbayan allowed Costes to go scot-free, while letting him take the blame for the offense.

A perusal of the Sandiganbayan decision shows that the said tribunal did not in any way absolve Costes. The Sandiganbayan ordered the case to be archived pending the apprehension of Costes.<sup>67</sup> Moreover, the funds subject matter of the case for malversation were those for which Venezuela was responsible for.

Needless to say, in *People v. Dumlao, et al.*,<sup>68</sup> the Court emphasized that the death, acquittal or failure to charge the co-conspirators does not in any way affect the accused's criminal liability, to wit:

His [accused-respondent's] assumption that he can no longer be charged because he was left alone -- since the co-conspirators have either died, have been acquitted or were not charged -- is wrong. A conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more person[s]. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.<sup>69</sup>

Thus, it is not necessary to join all the alleged co-conspirators in an indictment for a crime committed through conspiracy. If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor.<sup>70</sup> "This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial."<sup>71</sup>

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<sup>67</sup> Rollo, p. 70.

<sup>68</sup> 599 Phil. 565 (2009).

<sup>69</sup> Id. at 586, citing Aquino, *The Revised Penal Code* (1997 Edition), Vol. 1, p. 125.

<sup>70</sup> *People v. Go*, 730 Phil. 362, 370-371 (2014).

<sup>71</sup> *People v. Go*, id. at 371.

*Meyer*

Thus, based on all the foregoing facts and circumstances, it becomes all too apparent that the Sandiganbayan did not commit any reversible error in convicting Venezuela of the crime charged.

***The Proper Penalty for the Crime of Malversation***

On August 29, 2017, Congress passed R.A. No. 10951, amending Article 217 of the RPC, increasing the thresholds of the amounts malversed, and amending the penalties or fines corresponding thereto.

Thus, as currently worded, Article 217 of the RPC, now provides that the penalties for malversation shall be as follows:

Art. 217. *Malversation of public funds or property.— Presumption of malversation.— x x x*

1. The penalty of *prisión correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).

2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

3. The penalty of *prisión mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

**4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).**

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *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.<sup>72</sup>

<sup>72</sup>

Republic Act No. 10951.

*Meyer*

Although the law adjusting the penalties for malversation was not yet in force at the time of the commission of the offense, the Court shall give the new law a retroactive effect, insofar as it favors the accused by reducing the penalty that shall be imposed against him. Essentially, "penal laws shall have, a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal."<sup>73</sup>

Under the old law, the proper penalty for the amount Venezuela malversed is *reclusion temporal* in its maximum period to *reclusion perpetua*. However, with the amendment introduced under R.A. No. 10951, the proper imposable penalty corresponding to the amount Venezuela malversed, is the lighter sentence of *reclusion temporal* in its medium and maximum periods.

Additionally, Venezuela enjoys the mitigating circumstance of voluntary surrender, due to his partial restitution of the amount malversed. Following the rule in Article 64 of the RPC, if a mitigating circumstance is present in the commission of the act, the Court shall impose the penalty in the minimum period.<sup>74</sup>

Furthermore, applying the Indeterminate Sentence Law, an indeterminate sentence shall be imposed, consisting of a maximum term, which is the penalty under the RPC properly imposed after considering any attending circumstance; while the minimum term is within the range of the penalty next lower than that prescribed by the RPC for the offense committed.<sup>75</sup> Accordingly, Venezuela shall be sentenced to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

Finally, under the second paragraph of Article 217, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification, and a fine equal to the amount of funds malversed, which in this case is Php 2,572,808.00.

**WHEREFORE**, premises considered, the instant appeal is **DENIED for lack of merit**. Consequently, the Decision dated May 10, 2012, and Resolution dated February 4, 2013, of the Sandiganbayan in Criminal Case No. 25963, are **AFFIRMED with MODIFICATION** in that the penalty imposed shall be the indeterminate penalty of imprisonment ranging from **ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum**. In addition, petitioner Manuel M. Venezuela is hereby ordered

<sup>73</sup> REVISED PENAL CODE, Article 22.


<sup>74</sup> REVISED PENAL CODE, Article 64.

<sup>75</sup> Act No. 4103, Section 1.

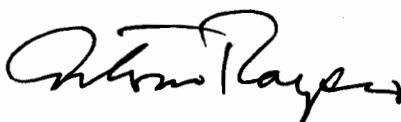
*Mejias*


to pay a fine of Php 2,572,808.00, with legal interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full satisfaction. He shall also suffer the penalty of perpetual special disqualification from holding any public office.


**SO ORDERED.**

  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson


  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

(On official business)  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

### ATTESTATION

I attest 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.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

