



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 253975
PHILIPPINES, Plaintiff-Appellee, Present:

- versus -

REX FUSINGAN DAPITAN,
Accused-Appellant.

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

Promulgated:

SEP 27 2021

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DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal¹ is the Decision² dated October 1, 2020 of the Sandiganbayan (SB) in Crim. Case No. SB-15-CRM-0147, which found accused-appellant Rex Fusingan Dapitan (Dapitan) guilty beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code (RPC), as amended.

¹ See Notice of Appeal dated October 14, 2020; *rollo*, pp. 52-54.

² Id. at 4-51. Penned by Associate Justice Zaldy V. Trespases with Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Georgina D. Hidalgo, concurring.

The Facts

The instant case stemmed from an Information filed before the SB charging Dapitan with the aforementioned crime, the accusatory portion of which reads:

That on October 27 up to October 29, 2010, or sometime prior or subsequent thereto, in the Province of Surigao del Sur, and within the jurisdiction of this Honorable Court, accused Rex Fusingan Dapitan, a high ranking public officer, being the Vice President for Finance, Administration and Resource Generation, Sultan Kudarat State University (SKSU), ACCESS, EJC Montilla, Tacurong City, Sultan Kudarat, and an accountable officer by virtue of his having received a cash advance of Seventy Thousand (Php 70,000.00) Pesos under Disbursement Voucher No. 10-10-186 dated October 26, 2010 from SKSU to defray expenses in connection with *Lakbay Aral* to Tandag City and Cantilan campuses of Surigao del Sur State University, Surigao del Sur, committing the offense in relation to office, did then and there, willfully, unlawfully, and feloniously appropriate, take and misappropriate, for his personal use and benefit, the amount of Php50,625.00 therefrom, to the damage and prejudice of the Philippine Government.³

The prosecution alleged that sometime in October 2010, Dapitan, then Vice President (VP) for Finance, Administration, and Resource Generation of Sultan Kudarat State University (SKSU), prepared a training design for the *Lakbay Aral* of the SKSU's key officials and employees to Surigao del Sur State University (SSSU), which was approved by SKSU President Teresita L. Cambel (Cambel). According to the training design, the *Lakbay Aral*'s purpose was to enrich the knowledge and understanding of the SKSU's employees as to how other state universities and colleges operate. The training design also states that expenses other than the transportation expenses, *i.e.*, food, accommodation, and other incidental expenses, shall be shouldered by the participating employees. Consequently, Dapitan requested for a cash advance in the amount of ₱70,000.00 to cover their transportation expenses. Subsequently, two (2) travel orders were issued authorizing a number of SKSU's employees to participate in the activity on October 27 to 29, 2010.⁴

It was alleged that the 27 participants visited the Tandag and Cantilan Campuses of SSSU and stayed at the Pacific View Resort in Carrascal, Surigao del Sur. However, on October 28, 2010, Dapitan and the other participants went on a side trip to attend the wedding of a co-employee held also in Carrascal, the reception of which was held in the aforesaid resort. On October 29, 2010, they failed to visit the Surigao del Norte College of Agriculture and Technology (SDNCAT), as suggested by Cambel, allegedly due to bad weather. Only ₱50,625.00 was spent for the transportation, food,

³ Id. at 6.

⁴ See id. at 4-5.

accommodation, and cellphone load, while the excess of ₱19,375.00 was returned by Dapitan to University State Auditor Jose Mercado (Mercado). In the Audit Observation Memorandum issued by Mercado, he stated that the expenses incurred in the activity were irregular and excessive since the training design was not followed. He also concluded that the educational tour was only used by the participants to facilitate their attendance in the wedding of their co-employee which was held in Carrascal. Accordingly, a Notice of Disallowance was issued disallowing the amount of ₱50,625.00. In view of the foregoing, a criminal complaint against Dapitan was filed before the Office of the Ombudsman, which in turn, found probable cause against him; hence, resulting in the filing of the instant case.⁵

In defense, while Dapitan admitted that he was among those who prepared the training design for the *Lakbay Aral*, he nevertheless denied being the proponent thereof. Pointing out that the *Lakbay Aral* has been a long-standing practice in order to update SKSU with the current best practices of other state universities, Dapitan claimed that: (a) it was the personnel of SKSU's Finance, Administration, and Resource Generation Division and the Information and Communication Technology Office who proposed that the *Lakbay Aral* participants visit SSSU; (b) SKSU President Cambel approved the proposal, and in addition, directed them to visit SDNCAT; (c) the participants opted to hold the *Lakbay Aral* on October 27 to 29, 2010, during the semestral break, in order to avoid the disruption of classes; (d) their trip to SDNCAT was cancelled due to bad weather, as advised by the school's Vocational School Superintendent; (e) he allowed the use of the money disbursed to them for the participants' food, accommodation, and other incidental expenses due to the honest belief that they were allowed to do so by virtue of Executive Order No. 248⁶ dated May 29, 1995, as amended; (f) after the trip, he duly submitted the required liquidation report, together with the receipts, sales invoices, and original copies of the certificates of appearance, to SKSU's internal auditor; and (g) if he intended to misappropriate the *Lakbay Aral* funds, then he would not have submitted the aforementioned liquidation report. Dapitan's statements were then corroborated by his colleagues, namely Cambel, Edwin Alido, Germin S. Umadhay, Elizabeth Dolor Barbosa, Rahmina K. Gayao, Jacqueline B. Candido, and Mohammad Abdul Bagumbayan.⁷

The SB Ruling

In a Decision⁸ dated October 1, 2020, the SB found Dapitan guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional*, as

⁵ See *id.* at 5 and 40.

⁶ Entitled "PRESCRIBING RULES AND REGULATIONS AND NEW RATES OF ALLOWANCES FOR OFFICIAL LOCAL AND FOREIGN TRAVELS OF GOVERNMENT PERSONNEL."

⁷ See *rollo*, pp. 23-27.

⁸ *Id.* at 4-51.

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minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and to pay a fine in the amount of ₱50,625.00, representing the total value of the amount malversed, although restituted, with legal interest at the rate of six percent (6%) interest per annum from the date of finality of this Decision until full payment. The SB likewise meted on Dapitan the accessory penalty of perpetual special disqualification from holding any public office, and ordered him to pay the costs.⁹

At the outset, the SB ruled that it has jurisdiction over the instant case since Dapitan's position as VP for Finance, Administration, and Resource Generation of SKSU can be placed in the same category or even higher as that of a manager mentioned under Section 4 (a)(1)(g) of Republic Act No. (RA) 8249.¹⁰ Moreover, it held that even if Dapitan was merely designated as VP for Finance, Administration, and Resource Generation of SKSU, Section 4 of the same Act provides that the SB has jurisdiction over officials occupying the positions, whether in acting or *interim* capacity, at the time of the commission of the offense.¹¹

On the merits, the SB held that the prosecution was able to prove beyond reasonable doubt all the elements of the crime charged since it was established that: (a) Dapitan was a public officer being a VP for Finance, Administration, and Resource Generation of SKSU; (b) he is accountable for public funds in his custody; (c) he appropriated, took, and misappropriated for his personal use the funds intended for the *Lakbay Aral*, which was public in nature; (d) the *Lakbay Aral* was deliberately scheduled to coincide with the date of the wedding of their co-employee to ensure their attendance on the said occasion; (e) he and his co-participants of the *Lakbay Aral* attended said wedding on official time and used public funds; and (f) he paid for the participants' food, accommodation, and other incidental expenses despite the provision in the training design to the contrary. In this regard, the SB noted that the defense failed to adequately prove that the *Lakbay Aral* was properly carried out based on its true objective since there was no travel and liquidation report submitted for the said educational tour. Finally, it pointed out that while Dapitan's restitution of the amount malversed does not exonerate him from criminal liability, it may nevertheless be appreciated as a mitigating circumstance in his favor.¹²

Hence, the instant appeal.

⁹ Id. at 50.

¹⁰ Entitled "AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREOR, AND FOR OTHER PURPOSES," approved on February 5, 1997.

¹¹ *Rollo*, pp. 28-31.

¹² Id. at 32-49.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Dapitan is guilty beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the RPC, as amended.

The Court's Ruling

The appeal is without merit.

At the outset, the Court notes that the SB correctly assumed jurisdiction over the instant criminal case for Malversation of Public Funds against Dapitan, pursuant to Section 4¹³ of RA 8249, the applicable law at the time of the commission of the offense.¹⁴ As aptly ratiocinated by the SB, Dapitan's function as VP for Finance, Administration, and Resource Generation of SKSU is to assist the University President in the general supervision of the fiscal and administrative affairs of the university, thereby placing his rank within the same category, or even higher, than that of a "manager" as explicitly mentioned in the aforesaid provision. In this regard, Dapitan's claim that he was merely designated in the foregoing position is of no moment, as Section 4 of RA 8249 covers all officials occupying positions in the government, whether in a permanent, acting, or *interim* capacity.¹⁵

¹³ Section 4. Section 4 of the same decree is hereby further amended to read as follows:

"Section 4. *Jurisdiction.* — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

A. **Violations** of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, **whether in a permanent, acting or interim capacity**, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x

(g) Presidents, directors or trustees, or **managers** of government-owned or -controlled corporations, **state universities** or educational institutions or foundations.

x x x x

B. **Other offenses or felonies** whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection A of this section in relation to their office.

x x x x" (Emphases supplied)

¹⁴ RA 8249 was enacted on February 5, 1997, while the further amendatory law, *i.e.*, RA 10660, was only enacted on April 16, 2015. Since the offense subject of this case was committed on October 27 to 29, 2010, RA 8249 is the applicable law.

¹⁵ See *rollo*, pp. 28-31.

Going to the merits of the case, Article 217 of the RPC, as amended, reads:

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, 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

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.

The elements of Malversation are as follows: (a) the offender is a public officer; (b) he has the custody or control of funds or property by reason of the duties of his office; (c) the funds or property involved are public funds or property for which he is accountable; and (d) he has appropriated, taken, or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of such funds or property.¹⁶ In this regard, case law instructs that in the prosecution of this crime, the prosecution is burdened to prove beyond reasonable doubt, either by direct or circumstantial evidence, that the public officer appropriated, misappropriated or consented, or through abandonment or negligence, permitted another person to take public property or public funds under his custody. Absent such evidence, the public officer cannot be held criminally liable therefor. Mere absence of funds is not sufficient proof of conversion; neither is the mere failure of the public officer to turn over the funds at any given time sufficient to make even the *prima facie* case. In fine, conversion must be proved. However, an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his account which he is unable to explain.¹⁷

After a judicious perusal of the records, and as will be explained hereunder, the Court is convinced that the SB correctly ruled that all the elements of the crime charged are present in this case.

Anent the first element, it is undisputed that Dapitan was a public officer at the time material to the case, being then the VP of Finance, Administration, and Resource Generation of the SKSU.

¹⁶ See *Manuel v. SB*, 681 Phil. 273, 291-292 (2012).

¹⁷ *Legrama v. SB*, 687 Phil. 253, 261 (2012).

As to the second and third elements, as SKSU's VP of Finance, Administration, and Resource Generation who admittedly received the funds intended for the *Lakbay Aral* amounting to ₱70,000.00, Dapitan is indeed an accountable officer who was in custody of public funds.

As to the fourth element, it has been established that Dapitan appropriated, took, and misappropriated for personal use the funds intended for the *Lakbay Aral* amounting to ₱50,625.00 when it was proven that: (a) the educational tour was deliberately scheduled to coincide with the date of the wedding of their co-employee to ensure their attendance; (b) they actually attended the wedding in Carrascal using public funds and on official time; and (c) Dapitan paid for the participants' food, accommodation, and other incidental expenses despite the provision in the training design to the contrary.

In an attempt to exonerate himself from criminal liability, Dapitan contends that: *first*, there is nothing wrong with scheduling an activity that would coincide with a personal activity as long as the official activity is conducted properly; and *second*, in any event, he returned the money purportedly malversed in the amount of ₱50,625.00.¹⁸

These contentions are untenable.

Anent the first contention, suffice it to say that the SB correctly pointed out that the defense failed to adequately prove that the *Lakbay Aral* was properly carried out based on its true objective. Records reveal that Dapitan failed to submit travel and liquidation reports of the *Lakbay Aral*, which if submitted, could effectively prove that the educational tour was conducted properly.¹⁹

As to the second contention, Dapitan's restitution of the amount malversed does not remove the fact that he committed the crime of Malversation when he used public funds for the *Lakbay Aral* for some other purpose, particularly, to ensure their attendance at their colleague's wedding.²⁰ In this regard, case law instructs that payment or reimbursement is not a defense for exoneration in malversation.²¹ 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

¹⁸ See *rollo*, pp. 36-37 and 47.

¹⁹ See *id.* at 42-46.

²⁰ See *id.* at 47-48.

²¹ *Perez v. People*, 568 Phil. 491, 520 (2008).

mitigating circumstance analogous to voluntary surrender.²² This is because damage is not an element of malversation.²³

In view of the foregoing, the Court finds no reason to overturn the SB's finding in relation to Dapitan's commission of the crime of Malversation of Public Funds, as there was no showing that the SB overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. It bears pointing out that the SB was in the best position to assess and determine the credibility of the witnesses by both parties.²⁴

As to the penalty to be imposed on Dapitan, it is well to stress that pending the final resolution of this case, RA 10951²⁵ was enacted into law. As may be gleaned from the law's title, it adjusted the value of the property and the amount of damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the RPC was enacted in 1932. While it is conceded that Dapitan committed the crime charged before the enactment of RA 10951, this law expressly provides for retroactive effect if it is favorable to the accused,²⁶ as in this case.²⁷

Section 40 of RA 10951 adjusted the graduated values where the penalties for Malversation are based, the pertinent portion of which reads:

Section 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read 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, 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

²² *Venezuela v. People*, 826 Phil. 11, 27 (2018).

²³ *Perez v. People*, supra.

²⁴ See *People v. Naciongayo*, G.R. No. 243897, June 8, 2020, citing *Cahulogan v. People*, 828 Phil. 742, 749 (2018).

²⁵ Entitled “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.

²⁶ See Section 100 of RA 10951 which provides:

Section 100. *Retroactive Effect.* - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

²⁷ See *People v. Manlao*, G.R. No. 234023, September 3, 2018.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

x x x x

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." (Emphases supplied)

Thus, applying the provisions of RA 10951, and the Indeterminate Sentence Law, and considering further Dapitan's restitution of the amount malversed which is analogous to the mitigating circumstance of voluntary surrender, the SB correctly imposed on Dapitan the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum. In the same vein, the SB was also correct in imposing on Dapitan the accessory penalty of perpetual special disqualification from holding any public office, and ordering him to pay a fine in the amount of P50,625.00. However, the Court deems it proper to delete the imposition of legal interest on the fine. This is considering that while fine is among the pecuniary liabilities which may be imposed against a convict,²⁸ it is not considered as a civil liability²⁹ from which an award of interest may spring.³⁰

WHEREFORE, the appeal is **DENIED**. The Decision dated October 1, 2020 of the Sandiganbayan in Crim. Case No. SB-15-CRM-0147 finding accused-appellant Rex Fusingan Dapitan (Dapitan) **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, as amended, is **AFFIRMED** with **MODIFICATION**, in that the imposition of legal interest on the fine is **DELETED**. Accordingly, Dapitan is sentenced to suffer the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and the accessory penalty of perpetual special disqualification from holding any public office. He is also ordered to pay a fine in the amount of P50,625.00 representing the amount malversed, and the costs.

²⁸ See Article 38 of the RPC.

²⁹ See Article 104 of the RPC.


³⁰ See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013); and *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236, 252-254 (1994).


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SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Senior Associate Justice

WE CONCUR:


RAMON PAUL L. HERNANDO
 Associate Justice



HENRI JEAN PAUL B. INTING
 Associate Justice


SAMUEL H. GAERLAN
 Associate Justice


JAPAR B. DIMAAMPAO
 Associate Justice

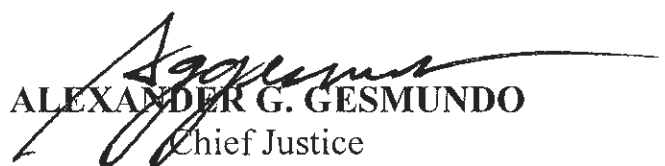
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
 Senior 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.


ALEXANDER G. GESMUNDO
 Chief Justice