



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**Fifth Division**

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

Crim. Case Nos. SB-23-A/R-0021  
**FOR: Malversation of Public  
Funds**

– versus –

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

**ELIZALDE G. GABALEÑO,**  
*Accused-Appellant.*

Promulgated:

November 23, 2023

*[Handwritten signature]*

X-----X

**DECISION**

**LAGOS, J.:**

Accused Elizalde G. Gabaleño, an Assistant Municipal Treasurer designated as Officer-in-Charge of the Office of the Treasurer of the Municipality of Pagsanjan, Laguna appeals from the *Decision*<sup>1</sup> dated December 16, 2021<sup>2</sup> by the Regional Trial Court, 4<sup>th</sup> Judicial Region, Branch 28 of Sta. Cruz, Laguna convicting him of the crime Malversation of Public Funds defined and penalized under Article 217 of the Revised Penal Code, the dispositive portion of which reads as follows:

**WHEREFORE,** premises considered, judgment is hereby rendered finding the accused **ELIZALDE G. GABALEÑO GUILTY BEYOND**

<sup>1</sup> Records, pp.225-232

<sup>2</sup> Promulgated on March 1, 2022. Due to suspension of work in all courts pursuant to SC Memo Order No. 10-22 due to COVID-19, promulgation earlier set on January 14, 2022 was cancelled and reset to March 1, 2022.

*[Handwritten initials]*

REASONABLE DOUBT OF MALVERSATION defined and penalized under Article 217 of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from four(4) years, nine(9) months and eleven (11) days of *prision correccional*, as minimum, to seven (7) years, four(4) months and one (1) day *prision mayor*, as maximum. In addition, Gabaleno is hereby ordered to pay a fine of P483,529.31, with legal interest of six percent (6%) *per annum*, reckoned from the finality of this Judgment until full satisfaction. Gabaleno shall also suffer the penalty of perpetual special disqualification from holding any public office.

### **RELEVANT ANTECEDENTS**

On September 15, 2008, an *Information* charging Elizalde G. Gabaleño of the crime of malversation of public funds was filed before the Regional Trial Court, 4<sup>th</sup> Judicial Region, Branch 28, Sta. Cruz, Laguna (hereinafter referred to as “court *a quo*”) docketed as Criminal Case No. SC-133076, the accusatory portion of which reads:

“That on June 15, 2005 and for sometime prior or subsequent thereto, in Pagsanjan, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the said accused, an employee of the Municipal Government of Pagsanjan, Laguna, and acting as Officer-in-Charge of the Municipal Treasury of Pagsanjan, Laguna, and as such accountable for the public funds collected, received and entrusted to him by reason of his position, with grave abuse of confidence and taking advantage of his position as such, did then and there willfully, unlawfully and feloniously misappropriate, embezzle and convert to his own personal use and benefit from said public funds, the total amount of Four Hundred Eighty Three Thousand Five Hundred Twenty Nine Pesos and 31/100 (P483,529.31) and despite repeated demands for the return of said amount, accused failed to do so, to the damage and prejudice of the government in the aforestated amount.

“CONTRARY TO LAW.

“Quezon City, Philippines, October 22, 2007”

Criminal Case No. SC-133076 stemmed from the *Joint Affidavit* executed by the three(3) COA State Auditors<sup>3</sup> led by Rebecca Ciriaco in support of their *COA Final Report on Cash and Accounts* of Elizalde G. Gabaleño, Asst. Municipal Treasurer designated Officer-in-Charge (“OIC”) of the Treasurer’s Office of Pagsanjan, Laguna, finding him, after cash and account examination for the period November 23, 2004 to June 15, 2005, to have a cash shortage of *Four Hundred Eighty-Three Thousand Five Hundred Twenty-Nine Pesos and Thirty-One Centavos (Php 483,529.31)*. After a fact-finding investigation, the Office of Deputy Ombudsman for Luzon, thru the Public Assistance Corruption and Prevention Office (PACPO), recommended in its *Fact-Finding Report* dated

---

<sup>3</sup> The three(3) State Auditors who executed the Joint Affidavit are Rebecca Ciriaco, Lorna P. Paraiso, and Nora Federizo

March 27, 2007 the filing of a criminal case for malversation of public funds and an administrative case against accused Gabaleño, later docketed as OMB-L-C-07-0354-D and OMB-LA-07-0289-D, respectively. The OMB, after preliminary investigation, issued its *Resolution*<sup>4</sup> dated October 22, 2007 recommending the indictment of accused Gabaleño for malversation of public funds.

Hence, the above-quoted criminal *Information* was filed on September 15, 2008 before the RTC, 4<sup>th</sup> Judicial Region, Branch 28, Sta. Cruz, Laguna.

After a finding of probable cause, a warrant of arrest<sup>5</sup> was issued on October 2, 2008 by the court *a quo* for the apprehension of accused Gabaleño<sup>6</sup> with bail fixed at Php 40,000.00, but the same was returned<sup>7</sup> unserved by police authorities on January 29, 2009 with the information that he cannot be located at the given address as evidenced by the certifications<sup>8</sup> issued by both Brgy. Maulawin and Pinagsanjan, Pagsanjan, Laguna. The case was ordered archived subject to retrieval upon apprehension of the accused.

On December 24, 2017, or after nine(9) years, accused Gabaleño was arrested at Sitio Parang, Brgy. D Del Mundo, Mansalay, Oriental Mindoro by the Intel and Warrant Operatives of Mansalay MPS, Mansalay, Oriental Mindoro.<sup>9</sup> He was thereafter endorsed and detained since December 30, 2017 at Pagsanjan Custodial Facility, Pagsanjan, Laguna.<sup>10</sup>

On January 8, 2018, Criminal Case No. SC-13307 was revived/reinstated by the court *a quo* in its *Order*<sup>11</sup> of even date and set the arraignment of the accused on February 22, 2008. Upon motion to reduce bail bond, accused posted on January 9, 2018 a cash bond of Php 20,000.00 for his provisional liberty and accordingly released from detention.<sup>12</sup>

During arraignment set on February 22, 2018, accused, assisted by counsel, pleaded not guilty to the crime of malversation of public funds.

Trial ensued with the prosecution and the defense presenting their respective version of the case.

### ***EVIDENCE FOR THE PROSECUTION***

The prosecution presented two(2) witnesses, Rebecca Ciriaco and Nora Federizo, both COA State Auditors assigned at City Auditor's Office, Calamba

---

<sup>4</sup> Records, pp. 4-11  
<sup>5</sup> Id., p.117  
<sup>6</sup> Id., p.113  
<sup>7</sup> Id., p. 118  
<sup>8</sup> Id., pp. 119-120  
<sup>9</sup> Id., pp. 125-126  
<sup>10</sup> Id., p. 128  
<sup>11</sup> Id., p. 129  
<sup>12</sup> Id., p. 132

**DECISION**

*People vs. Gabaleño*

SB-23-A/R-0021

Page 4 of 17

---

City, Laguna. During their separate testimony, they identified the *Joint Affidavit* executed together with State Auditor Lorna P. Paraiso which the prosecution<sup>13</sup> adopted to form part of their respective direct testimony. They also identified in the course of the proceedings the documents relevant to the case against accused Gabaleño.

**Rebecca Ciriaco**

Rebecca Ciriaco (“Ciriaco”) testified on May 14, 2019 that as State Auditor, she was formerly assigned as head of Auditing Team created pursuant to Audit Assignment Order No. 2004-029 dated August 18, 2004<sup>14</sup> which was tasked to audit four (4) municipalities, including Pagsanjan, Laguna. Together with two(2) other members: Nora Federizo and Lorna P. Paraiso, they conducted on June 15, 2005 a cash and account examination of Elizalde G. Gabaleño, Assistant Municipal Treasurer,<sup>15</sup> designated as OIC,<sup>16</sup> Municipal Treasurer’s Office, Pagsanjan, Laguna covering the period November 23, 2004 to June 15, 2005. Alleging to have applied all the necessary audit procedure during the cash examination, and made use of all available financial records in the office, such as cashbooks, collection and deposit reports to establish the total money accountability of Gabaleño, the Team found him short of cash from various accounts by *Four Hundred Eighty-Three Thousand Five Hundred Twenty-Nine and 31/100 Pesos (P483,529.31)*.

A demand letter<sup>17</sup> was sent to him by State Auditor Ciriaco on June 21, 2005 to reconstitute the amount of shortage and to explain how the shortage occurred, but no restitution was made, instead, he explained in his letter<sup>18</sup> dated June 23, 2005 (received on June 30, 2005) that the vouchers were in process and the *vales* would be deducted in the payroll to cover the shortages which will be deposited as soon as possible. The COA audit team responded in its letter<sup>19</sup> July 4, 2005 that his explanation was not acceptable and to settle the shortage to avoid possible filing of a malversation case, after which, on July 26, 2005, in view of his failure to immediately reconstitute the cash shortage, a letter was sent to Pagsanjan Municipal Mayor Ramon P. Ejercito III recommending the immediate relief of Elizalde G. Gabaleño from his post as OIC-Municipal Treasurer. Mayor Ejercito III was also served with Audit Observation Memorandum (AOM) No. 2005-009 (August 15, 2005) inviting attention to OIC-Treasurer Gabaleño who was required to deposit the full amount of the undeposited collections as of June 15, 2005. Despite all the letters, no restitution was made.

She added that there being no restitution made of the cash shortage, the Team prepared a Final Report<sup>20</sup> for submission to the COA Regional Office and

---

<sup>13</sup> TSN, May 14, 2019, p.13

<sup>14</sup> Exhibit “G”, Records, pp. 32-33

<sup>15</sup> Appointment as Asst. Municipal Treasurer, dated December 22, 1998), Exhibit I”, Records, p.35

<sup>16</sup> Designation as OIC, dated September 10, 2002 , Exhibit “K”, Records, 37

<sup>17</sup> Exhibit “H”, Records, p. 34; TSN, May 14, 2019, pp.7-8

<sup>18</sup> Exhibit “AA”, Id., p. 192; TSN, Id., p. 8

<sup>19</sup> Exhibit “BB”, Id., p. 193, TSN, Id., pp.8-9

<sup>20</sup> Exhibit “E”, Id., pp. 23-25; TSN, Id., p. 9

**DECISION**

*People vs. Gabaleño*

SB-23-A/R-0021

Page 5 of 17

---

review by its Legal Office. The supporting documents of the Final Report which she identified are: the Memorandum of the Treasurer of the Philippines dated July 1, 2004 on the record of Pagsanjan, Laguna bonded official and employees,<sup>21</sup> the Report of Cash Examination, dated June 15, 2005,<sup>22</sup> the Schedule of Verified Debits and Credits Cash in Vault as of June 15, 2005,<sup>23</sup> Certification dated June 30, 2005 issued by Municipal Accountant Melanie Galema;<sup>24</sup> the Report of Cash Examination as of November 23, 2004,<sup>25</sup> the Statement of Accountability Cash in Bank dated June 15, 2005,<sup>26</sup> the Inventory of Accountable Forms without Money Value dated June 15, 2005,<sup>27</sup> the Certification issued by Gabaleño on the Statement of Accountability for Accountable Forms Without Money Value as of June 15, 2005,<sup>28</sup> the Trust Fund Code 300,<sup>29</sup> the Special Education Fund Code 200,<sup>30</sup> the General Fund Code 100,<sup>31</sup> the Reconciliation Statement of Accountability of various funds as of June 15, 2005,<sup>32</sup> COA letter to Land Bank, dated October 17, 2005,<sup>33</sup> the COA Initial Report dated July 25, 2005,<sup>34</sup> and the COA letter addressed to Gabaleño dated July 4, 2005.<sup>35</sup>

She said that the Final Report and its supporting documents were sent to the COA Regional Office which required the Audit Team to execute a *Joint Affidavit*<sup>36</sup>. After identifying the said document, she confirmed her signature and that of her team members.<sup>37</sup> The prosecution moved that the said *Joint Affidavit* be adopted to form part of her testimony.<sup>38</sup> The Regional Office forwarded the Final Report, including the *Joint Affidavit* and supporting documents, to the Office of the Ombudsman for Luzon, recommending the filing of administrative and criminal charges against Gabaleño.<sup>39</sup> A fact-finding investigation was conducted thereafter and she was able to secure a copy of the Fact-Finding Report<sup>40</sup> of the Ombudsman. A Resolution was thereafter issued by the OMB for Luzon.<sup>41</sup>

---

<sup>21</sup> Exhibit "M", Records, p. 39

<sup>22</sup> Exhibit "N", Id., p 40

<sup>23</sup> Exhibit "O", Id., p. 41

<sup>24</sup> Exhibit "P", Id., p. 42

<sup>25</sup> Exhibit "Q", Id., p.43

<sup>26</sup> Exhibit "R", Id., p. 44

<sup>27</sup> Exhibit "S", Id., p. 46

<sup>28</sup> Exhibit "T", Id., pp. 47-50

<sup>29</sup> Exhibit "U", Id., p. 51

<sup>30</sup> Exhibit "V", Id., p. 52

<sup>31</sup> Exhibit "W", Id., p. 53

<sup>32</sup> Exhibit "X", "X-1 to X-5", Id., pp.54-59

<sup>33</sup> Exhibit "Y", Id., p. 60

<sup>34</sup> Exhibit "Z", Id., pp. 194-196

<sup>35</sup> Exhibit "BB", Id., p. 193

<sup>36</sup> Exhibit "F", Id., pp. 26-28

<sup>37</sup> TSN, May 14, 2019, pp. 10-13

<sup>38</sup> TSN, Id., p. 13

<sup>39</sup> COA Regional Office letter to Deputy Ombudsman for Luzon dated November 7, 2006, Exhibit "D", Records, p. 20; TSN, May 14, p.11

<sup>40</sup> Fact-Finding Report issued by Associate Graft Investigation Office III, OMB for Luzon, dated March 27, 2007, Exhibit "B", Records, pp. 15-16

<sup>41</sup> Resolution issued by OMB for Luzon Graft Investigation and Prosecution Officer II Cacho-Calicdan, dated October 22, 2007, Exhibit "A", Records, pp. 4-11

*nf*

On cross-examination, Ciriaco confirmed that she had no knowledge of the hold-up incident involving accused Gabaleño because in his reply to the demand letter, he said that he made advances to the other employees. She came to know about the hold-up incident in the *Fact-Finding Report* of the Ombudsman where it was stated as his alibi. He promised to return the money but she was not aware that he was able to do so.

### Nora Federizo

At the time of her testimony on September 24, 2019, Federizo was assigned as COA Auditor at the Philippine Naval Base, Sangley Point, Cavite. On manifestation of the prosecution, the *Joint Affidavit* she and two(2) other State Auditors executed was adopted to form part of her direct testimony.<sup>42</sup> She corroborated the testimony of Rebecca Ciriaco on the cash and account examination of accused Gabaleño on June 15, 2005 which she said is conducted twice a year, and also identified documents in support of their audit findings that Gabaleño has a cash shortage of *Four Hundred Eighty-Three Thousand Five Hundred Twenty-Nine Pesos and Thirty-One Centavos* (Php 483,529.31).<sup>43</sup>

She added that in Gabaleño's response to the demand letter to restitute the cash shortage, he replied that the vouchers are in process and the "vales" or the money he took from his collection which he gave to the employees will be deducted on the payroll. She pointed out, however, that the said practice of lending money out of the collection ("bale") is prohibited.<sup>44</sup>

On cross-examination, Federizo asserted that the shortage on the accountabilities of accused Gabaleño was based on official receipts which were recorded in the cash book and his remittances in the Land Bank were verified.<sup>45</sup>

On October 29, 2019, the court *a quo*, upon manifestation that no additional evidence and witnesses are to be presented by the prosecution, issued an *Order*<sup>46</sup> granting the prosecution a period of 30 days within which to submit its formal offer of evidence, and the same period of 30 days from receipt for the defense to file its comment/opposition.

On January 6, 2020, the prosecution filed its *Formal Offer of Exhibits (with Motion to Remark)*, enumerating the following exhibits with its respective sub-markings:

<i>Exhibit</i>	<i>Description</i>
A	Resolution of the Office of the Ombudsman for Luzon, dated October 22, 2007
B	Fact-Finding Report of the Office of the Ombudsman for Luzon dated March 27,

<sup>42</sup> TSN, September 24, 2019, pp. 3-4

<sup>43</sup> Id., pp. 4-12

<sup>44</sup> Id., pp. 12-13

<sup>45</sup> Id., pp. 14-15

<sup>46</sup> Records, p. 188

	2007
C	Complaint-Affidavit of Lorna T. Sitjar, Associate Graft Investigator III dated March 27, 2007
D	Letter of Eden T. Rafanan, Regional Legal Adjudication Office, Region IV, COA, dated November 7, 2006,
E	Final Report of COA State Auditor III Rebecca C. Ciriaco, Team Leader, dated November 11, 2005
F	Joint Affidavit of State Auditors Rebecca C. Ciriaco, Lorna P. Paraiso and Nora C. Federizo, dated August 25, 2006
G	Office Order No. 2004-029, dated August 18 2004, issued by COA-Local Government Sector, Cluster III-Southern Luzon
H	Demand Letter, dated June 21, 2005
I	Appointment of Elizalde G. Gabaleño as Asst. Municipal Treasurer of Pagsanjan, Laguna, dated December 22, 1998
J	Appointment of Elizalde G. Gabaleño as Local Treasury Officer IV-SG-22 dated March 3, 1995
K	Designation of Elizalde G. Gabaleño as OIC, Municipal Treasurer's Office, Pagsanjan, Laguna, dated September 10, 2002
L	Letter of Mayor Ramon P. Ejercito III, Pagsanjan, Laguna, dated June 6, 2005
M	Memorandum of Bureau of Treasury, DOF, San Pablo City, dated July 1, 2004
N	COA Report of Cash Examination of Elizalde G. Gabaleño, dated June 15, 2005
O	Schedule of Verified Credits Cash in Vault as of June 15, 2005
P	Certification issued by Municipal Accountant, dated June 30, 2005
Q	COA Report of Cash Examination of Virginia G. Baroro, dated November 23, 2004
R	Statement of Accountability Cash in Bank dated June 15, 2005
S	Inventory of Accountable Forms without Money Value dated June 15, 2005
T	Certification issued by E. G. Gabaleño on the Statement of Accountability for Accountable Forms Without Money Value as of June 15, 2005
U	Trust Fund Code 300
V	Special Education Fund Code 200
W	General Fund Code 100
X	Reconciliation Statement of Accountability of various funds as of June 15, 2005
Y	COA letter to Land Bank, dated October 17, 2005,
Z	COA Initial Report dated July 25, 2005
AA	Letter-reply of Elizalde G. Gabaleño addressed to COA, dated June 23, 2005
BB	COA letter-response addressed to Gabaleño dated July 4, 2005

On July 7, 2020, the court *a quo*, acting on the *Formal Offer of Exhibits of the prosecution*, admitted its Exhibits "A" to "B", "D" to "K", "M" to "BB", together with the sub-markings, for the purpose/s they were respectively offered.

***EVIDENCE FOR THE DEFENSE***

The defense presented as its sole witness, accused-appellant Elizalde G. Gabaleño, who identified his *Panghukuman Salaysay* in connection with the instant case which was marked as Exhibit "1" and adopted by the defense to form part of his testimony on June 10, 2021.

Accused-appellant denied in his *Panghukuman Salaysay* the accusation against him, alleging that he only failed to remit the amount of Two Hundred Ninety Thousand Pesos (Php 290,000) and he did not steal or use the money of the municipality for his own benefit. Failing to deposit the said amount in the bank, he narrated how he was accosted by two(2) men, one of whom was carrying a gun, to alight the passenger jeepney he rode on the way to Sta. Cruz, Laguna on March 5, 2005, between 9:00 and 10:00 o'clock A.M., to deposit the said amount at Land Bank. He said while the passenger jeep was in Brgy. Sta Cruz, a man embarked on the jeep and upon reaching Brgy. Biñan, Pagsanjan, the man beside him put his arms around his shoulder and threatened that if he does not want to die, they will alight at Brgy. Pagsawitan to board a tricycle. The other man sitting in front showed his gun to him. After passing San Luis Sport Complex on board the tricycle, he was blindfolded and for about 10 minutes, the tricycle stopped where he was ordered to disembark. At the said place, he pleaded for his life telling them that he would not report the matter to the police authorities as he overheard their conversation to finish him off. But all of the sudden, he was hit at his nape by a hard object and he lost consciousness. Upon regaining consciousness, he saw several documents and the checks for deposits scattered around him, while the money to be deposited was gone. He did not report the incident to the police out of fear of retaliation nor report the matter to his office because he suspected that the men behind the incident had cohorts in his office. He informed his officemates only after one(1) month who reported the matter to Ernesto Caballes, a Pagsanjan police. In December 2006, he resigned from his work for the purpose of replacing the lost money with his separation benefits. Considering that the separation benefits were not released upon order of then Municipal Mayor Ejercito, he was not able to return the cash shortage.

On cross-examination, Gabaleño confirmed and admitted that he was the OIC of the Municipal Treasurer's Office of Pagsanjan, Laguna on June 15, 2005 and an accountable officer of the public funds collected, received and transferred by reason of his position.<sup>47</sup> While he denied that he failed to return the total demanded amount of Php 483,529.31, he admitted, however, that he only failed to return the amount of Php290,000, more or less. He admitted that he has no documentary proof of the robbery incident stated in his judicial affidavit involving him as it was never recorded in any blotter book on any police station. He also confirmed that with the intention of paying the amount demanded of him out of the expected separation benefits, he resigned from his position but the benefits was not given to him. Nevertheless, he admitted to have never returned the demanded amount to the municipality.<sup>48</sup>

On November 16, 2021, after its lone witness Gabaleño was presented, and his judicial affidavit offered as its Exhibit "1", the defense rested its case there

---

<sup>47</sup> TSN, June 10,2021, p.4

<sup>48</sup> Id.,p.5-6



being no other witness to present and documentary exhibit to offer, the trial court submitted the case for decision in an *Order*<sup>49</sup> of even date.

On December 16, 2021, the RTC, Branch 28, Sta. Cruz, Laguna rendered its *Decision*, as stated above, finding accused Gabaleño guilty beyond reasonable doubt of the crime Malversation of Public Funds under Article 217 of the Revised Penal Code and sentenced him to suffer the indeterminate penalty of imprisonment ranging from four(4) years, nine(9) months and eleven (11) days of *prision coreccional*, as minimum, to seven (7) years, four(4) months and one (1) day *prision mayor*, as maximum. In addition, he was ordered to pay a fine of P483,529.31, with legal interest of six percent (6%) per annum, reckoned from the finality of the Judgment until full satisfaction, and shall also suffer the penalty of perpetual special disqualification from holding any public office.

On March 3, 2022, the RTC, Branch 28, Sta. Cruz, Laguna gave due course to the *Notice of Appeal*<sup>50</sup> filed by accused-appellant Gabaleño on March 2, 2022 but the original records were erroneously forwarded to the Court of Appeals in its *Order* of even date.<sup>51</sup>

The Court of Appeals, upon motion of accused-appellant to endorse case to the Sandiganbayan, directed the immediate transmittal of the original records of the case to the Sandiganbayan in its *Minute Resolution* dated March 27, 2023.<sup>52</sup>

On May 23, 2023, the Sandiganbayan required accused-appellant to file his Accused-Appellant's Brief within 30 days from notice, and Plaintiff-Appellee to file its Plaintiff-Appellee's Brief within 30 days from receipt of Accused-Appellan'st Brief.

Accused-Appellant Gabaleño filed his *Accused-Appellant's Brief* on July 14, 2023 while the Ombudsman, Office of the Special Prosecutor filed its *Plaintiff-Appellee's Brief* on September 12, 2023.

### ***ACCUSED-APPELLANT'S BRIEF***

Pleading for his acquittal of the criminal charge and the sentence imposed upon him, accused-appellant Gabaleño imputed three(3) reversible errors committed by the court *a quo*, arguing that the court *a quo* committed reversible errors in convicting him of malversation under Article 217 of the Revised Penal Code despite the lack of evidence: (1) that the amount involved are public funds; (2) that he received the funds subject of this case; and (3) the insufficiency of

---

<sup>49</sup> Records, p. 221

<sup>50</sup> Id., pp.216-217

<sup>51</sup> Id., p.238

<sup>52</sup> Id., p.240

evidence of the prosecution to prove the guilt of the accused beyond reasonable doubt.

Accused-appellant contends that in convicting him, the court *a quo* relied heavily on the testimonies of State Auditors Ciriaco and Federizo on their findings in their *Cash Examination Report* <sup>53</sup> that accused-appellant incurred shortages in the General Fund, Special Education Fund and Trust Fund in the total amount of Php 483,529.31. However, he asserts that the prosecution did not present any proof to show that there were indeed such amount existing under those funds, thus putting in doubt the veracity of the COA audit reports. The pertinent documents examined by the auditors were not presented in court. The COA auditors merely stated in their reports and testimony that they found shortages, but there was no proof to show that these funds are indeed public in character, and that these funds were received by accused-appellant.

He disputes the ruling of the court *a quo* that the *prima facie* presumption of malversation of public funds applies in the instant case for his failure to return the amount of Php 483,529.31 audited cash shortage, and to rebut and overturn the said *prima facie* presumption. Accused-appellant contends, however, that evidence of shortage is necessary before there could be any taking, appropriation, conversion, or loss of public funds that would amount to malversation. In this case, according to accused-appellant, there is no sufficient proof to establish that he actually received the amounts subject of this case. Hence, the presumption of malversation cannot apply.

#### ***PLAINTIFF-APPELLEE'S BRIEF***

Plaintiff-Appellee, represented by the Office of the Ombudsman (OMB) through the Office of the Special Prosecutor ("OSP"), counters in its *Brief* that the court *a quo* correctly found accused-appellant guilty beyond reasonable doubt of the criminal offense of malversation of public funds defined and penalized under Article 217 of the RPC considering that the prosecution was able to prove the attendance of all the elements constituting the said offense in the subject case.

The OSP argues that it is not disputed that accused-appellant was a public officer, being the Assistant Treasurer and the designated OIC of the Office of the Municipal Treasurer of Pagsanjan, Laguna at the time material in this case. He was an accountable officer for the subject funds under his custody and control by reason of the duties of his office as contemplated under P.D. 1445 in relation to Section 340 of the R.A. 7160 (Local Government Code of 1991). As OIC of the Municipal Treasurer's Office, he was accountable for his collections, including the cash shortage in the amount of Php483,529.31. He failed to return the audited cash shortage in the amount of Php 463,529.31 upon demand without justifiable reason when asked to explain, and for such failure, the *prima facie* presumption that

---

<sup>53</sup> Exhibit "N", Records, p. 40

public funds were put to his personal use applies which he failed to rebut and overturn.

### DISCUSSION AND RULING

After a thorough review of the records of this case, the evidence presented in the court *a quo*, and the arguments put forth by the parties in their respective *Briefs* in accordance with the well-settled rule<sup>54</sup> that the *appeal* confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law, the Court resolves to affirm the RTC's judgment of conviction of accused-appellant beyond reasonable doubt of the crime of malversation of public funds.

The crime of malversation for which accused-appellant has been indicted is defined and penalized under Article 217 of the Revised Penal Code, as amended, thus:

“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 guilty of the misappropriation or malversation of such funds or property, shall suffer:

Xxx                      xxx                      xxx

“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).

xxx                      xxx                      xxx

“The failure of a public officer to have duly forth coming 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.”

To sustain a criminal conviction for the crime of malversation of public funds under Article 217 of the RPC, as amended, the prosecution has the burden to prove the following elements: (1) The offender is a public officer; (2) The offender has custody or control of funds or property by reason of the duties of his office;(3) The funds or property involved are public funds or property for which the offender is accountable; and (4) The offender has appropriated, taken or misappropriated,

---

<sup>54</sup> People vs. Zaldy Bernardo, et. al., G.R. No. 242696, November 11, 2020

or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.<sup>55</sup>

The felony involves breach of public trust, and whether it is committed through *dolo* or *culpa*, the law makes it punishable and prescribed a uniform penalty therefor. The intent (*dolo*) or the negligence (*culpa*) present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. 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. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.<sup>56</sup>

### ***First Element***

There is no dispute that accused-appellant is a public officer. A public officer, as defined under Article 203 of the RPC, as amended, is “any person who, by direct provision of 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>57</sup> Accused-appellant was the Assistant Municipal Treasurer of Pagsanjan, Laguna since December 22, 1998 by virtue of appointment,<sup>58</sup> and subsequently designated on September 10, 2002 as Officer-in-Charge (OIC) of the said office.<sup>59</sup> At the time of cash and account examination conducted by COA State Auditors on June 15, 2005, he was the OIC of the Municipal Treasurer’s Office of Pagsanjan, Laguna.

### ***Second and Third Element***

Assailing the nature of his audited cash shortage of Php 483,529.31, accused-appellant contends that the COA State Auditors merely stated in their reports and testimony that they found shortages but no explanation was proffered on whether these amounts were public funds of the municipality. He adds that considering that there was no proof that these funds are indeed public in character, it follows that there was likewise no proof that these were received by accused-appellant.<sup>60</sup>

---

<sup>55</sup> *Salamera vs. Sandiganbayan*, G.R. No. 121099, February 17, 1999; *Diaz vs. Sandiganbayan*, G.R. No. 125213, January 26, 1999; *Nizurtado vs. Sandiganbayan*, G.R. No. 107838, December 7, 1994; *Agbanlog vs. People*, G.R. No. 105907, May 24, 1993; *Corpuz v s. People*, G.R. No. 241383, June 8, 2020

<sup>56</sup> *Zoleta vs. Sandiganbayan*, G.R. No. 185224, July 29, 2015; citing *Cantos vs. Sandiganbayan*, G.R. No. 184908, July 3, 2013; *Kimpo vs. Sandiganbayan*, 232 SCRA 53

<sup>57</sup> *Corpuz vs. People*, G.R. No. 241383, June 8, 2020

<sup>58</sup> Appointment as Asst. Municipal Treasurer, dated December 22, 1998, Exhibit I”, Records, p.35

<sup>59</sup> Designation as OIC, dated September 10, 2002, Exhibit “K”, Records, 37

<sup>60</sup> Accused-Appellant’s Brief, p.7

The contention lacks merit.

Accused-appellant Gabaleño is an accountable public officer who, as defined under Section 101 of the Government Auditing Code of the Philippines<sup>61</sup> refers to “every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall accountable therefor and for the safekeeping thereof in conformity with law.” Specifically, Section 4.3 of COA Circular No. 2009-006 defines an accountable officer as the “officer of any government agency who by nature of his duties and responsibilities or participation in the collection/receipt and expenditure /use of government funds, is required by law or regulation to render accounts to the Commission on Audit (COA). In short, an “accountable officer” is a public officer who, by reason of his or her office, is accountable for public funds or property.<sup>62</sup>

As confirmed by accused-appellant in his testimony on June 10, 2021, he was the OIC of the Municipal Treasurer’s Office of Pagsanjan, Laguna on June 15, 2005, or during the time material in this case. He was appointed as Assistant Treasurer on December 22, 1998, and later designated on September 10, 2002 as OIC of the said office. As an OIC of the Municipal Treasurer’s Office of Pagsanjan, Laguna since 2002, or for about three(3) years before the period covered by the cash and account examination from November 23, 2004 to June 15, 2005, he has custody or control of funds by reason of the duties of his office under Section 470 of the Local Government Code of 1991<sup>63</sup>, which include, among others, “to take charge of the treasury office, perform the duties provided for under Book II <sup>64</sup>of the Local Government Code of 1991” under paragraph 1 thereof; “to take custody and exercise proper management of the funds of the local government unit concerned” under paragraph (2) thereof; “to take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority” under paragraph (3) thereof.

It was held in *Panganiban vs. People*<sup>65</sup> that “to have custody or control of the funds or property by reason of the duties of his office, a public officer must be 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 deposited in official depositary banks or similar entities; or until they shall have endorsed such money or property to other accountable officer or concerned officer.” By reason of the duties of his office as OIC-Municipal Treasurer’s Office, accused-appellant cannot escape public accountability by invoking such flimsy argument that the missing funds are not public funds because the prosecution did not present evidence that

---

<sup>61</sup> Presidential Decree No. 1445 (June 11, 1978)

<sup>62</sup> *Zoleta vs. Sandiganbayan*, G.R. No. 185224, July 29, 2015, 765 Phil 39 (2015)

<sup>63</sup> Republic Act No. 7160

<sup>64</sup> Local Taxation and Fiscal Matter

<sup>65</sup> G.R. No. 211543, December 9, 2015

**DECISION**

*People vs. Gabaleño*

SB-23-A/R-0021

Page 14 of 17

---

the questioned funds are public in character and that no proof that these funds were received by him, specifically referring to the *General Fund, Special Education Fund and Trust Fund*. Evidence on records show, as testified to by State Auditor Federizo, that the shortage on the accountabilities of accused Gabaleño was based on official receipts which were recorded in the cash book and his remittances in the Land Bank were verified.<sup>66</sup>

Every local government unit (LGU) shall maintain a *General Fund* which shall be used to account for such monies and resources as may be received and disbursed from the local treasury. The *General Fund*, as defined under Section 308 of the Local Government Code of 1991 (“LGC of 1991”), consist of monies and resources of the LGU which are available for the payment of expenditures, obligations or purposes not specifically declared by law as accruing and chargeable to, or payable from, any other fund. Section 309 of the LGC of 1991, on the other hand, defines the following *Special Funds* which shall be maintained in every provincial, city or municipal treasury, as follows:

“(a) *Special Education Fund* which shall consist of the respective shares of provinces, cities, municipalities and barangays in the proceeds of the additional tax on real property to be appropriated for purposes prescribed in Section 272<sup>67</sup> of the LGC of 1991; and

“(b) *Trusts Funds* which shall consist of private and public monies which have officially come into the possession of the LGU or of a LG official as trustee, agent or administrator, or which have been received as a guaranty for the fulfillment of some obligation. It shall only be used for the specific purpose for which it was created or for which it came into the possession of the LGU.”

***Fourth Element***

The fourth element of the crime of malversation of public funds is attendant in the instant case. In convicting accused-appellant, the court *a quo* cites the presumption in Article 217 of the RPC that “the failure of a public officer to have duly forthcoming any public funds with which he is chargeable, upon demand by any authorized officer, shall be *prima facie* evidence that he has put the funds or property to personal uses.” The presumption is, of course, rebuttable. If the accused is able to present adequate evidence that can nullify any likelihood that he had put the funds or property to personal use, then that presumption would be an end and the *prima facie case* is effectively negated. Well-settled is the rule that when the absence of funds is not due to the personal use thereof by the accused,

---

<sup>66</sup> TSN, September 24, 2019, pp. 14-15

<sup>67</sup> The proceeds from the additional one percent (1%) tax on real property accruing to the SEF shall be allocated for the operation and maintenance of public schools, construction and repair of school building, facilities and equipment, educational research, purchase of books and periodicals, and sport development as determined and approved by the local school board.

the presumption is completely destroyed; in fact , the presumption is deemed never to have existed at all.<sup>68</sup>

In this case, the prosecution was able to establish and prove that accused-appellant failed to return the audited cash shortage in the amount of Php 483,529.31, upon demand on June 21, 2005. As correctly ruled by the court *a quo*, the *prima facie* presumption of malversation under Article 217 of the RPC applies. When the law provided a presumption, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that he has appropriated or misappropriated for himself the missing funds.

Here, accused-appellant dismally failed to rebut and overturn the presumption. His explanation that the cash shortage was due to the *vales* of the employees and the incident that he was allegedly held-up by two(2) men on his way to Landbank, Sta. Cruz, Laguna on March 5, 2005 is without merit, unsatisfactory and does not overcome the presumption that he has put the audited cash shortage to personal use. Aside from its being self-serving, no evidence was presented to substantiate and prove both his explanation. He admitted that he did not report to the police authorities the alleged robbery-hold up involving him on March 5, 2005, hence, there was no police report on the matter. The matter was invoked only as a defense in his *Panghukuman Salaysay* executed on June 21, 2021 which he reiterated as part of his testimony on the same day of his trial.<sup>69</sup> If at all, it was a mere after-thought. Assuming that he was indeed robbed on March 5, 2005, he could have reported immediately the incident to the Municipal Treasurer's Office. As an accountable public officer, prudence dictates that he should have reported the matter immediately to the Municipal Treasurer's Office and to the COA State Auditors on the date of examination of his cash and accounts on June 15, 2005, or during the time he was asked to explain<sup>70</sup> on June 21, 2005 the audited cash shortage. He did not . It took him one(1) month to report the alleged-robbery-hold-up to the Office of the Municipal Treasurer of Pagsanjan, Laguna.<sup>71</sup>

Accused-appellant's culpability of the crime charged is further buttressed by his implied admission of misappropriation of the missing funds, *first*, by his reply-letter<sup>72</sup> dated June 23, 2005 to the demand letter of June 21, 2005 where he informed COA, without offering, however, any documentary evidence of the names of recipients and amounts of *vales* (cash advances), that "vouchers were in process and others were deducted and will be deducted in the payroll so that shortages will be deposited as soon as possible;" and *second*, by his testimony<sup>73</sup>

---

<sup>68</sup> U.S. vs. Catolico, G.R. No.L-6486, March 2, 1911, 18 Phil. 504, cited in U.S. Elviña, G.R. No. L-7280, February 13, 1913, 24 Phil 230; Quizo vs. Sandiganbayan, G.R. No. 77120, April 6, 1987, 149 SCRA 108

<sup>69</sup> Records, pp. 210-215; TSN, June 10, 2012, p.5

<sup>70</sup> Demand Letter, dated June 21, 2005 (Exh. "H"); see Records, p. 34

<sup>71</sup> Panghukuman Salaysay, p. 4; see Records, pp. 210-215

<sup>72</sup> Exhibit "AA", REocrds, p. 192

<sup>73</sup> TSN, June 10,2021, p.5

on cross-examination that he resigned from his position so that he can pay the amount demanded out of his benefits which he failed to do so because it was not released to him. In the case of *Doldol vs. People*<sup>74</sup>, the Supreme Court held, citing Section 27, Rule 130 of the Revised Rules on Evidence,<sup>75</sup> that [partial] payment, particularly taken in conjunction with appellant's commitment to gradually pay the remainder of the missing funds, is a clear offer of compromise which must be treated as an implied admission of appellant's guilt that he embezzled or converted the missing funds to his personal use.

### The Imposable Penalty

On August 29, 2017, Congress passed R.A. 10951, amending Article 217 of the RPC, increasing the thresholds of the amount malversed, and amending the penalties or fines corresponding thereto.

Under the old law, the proper penalty for the amount of Php 483,529.31 malversed by accused-appellant, is *reclusion temporal* in its maximum period to *reclusion perpetua*. However, with the amendments introduced by R.A. 10951 to the RPC on August 29, 2017, the penalty of *prision mayor* in its minimum and medium periods, is to be imposed upon a person found guilty of malversation if the amount involved is more than Forty Thousand Pesos (Php40,000) but does not exceed One Million Two Hundred Thousand Pesos PhP1,200,000. Although the law adjusting the penalties for malversation was not yet in force at the time of the commission of the crime in 2005, 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 pursuant to Article 22 of the RPC which mandates that "penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal."

There being no mitigating or aggravating circumstances, accused-appellant Gabaleño was correctly sentenced by the court *a quo* to the indeterminate penalty<sup>76</sup> of four (4) years, nine(9) months and eleven (11) days of *prision correccional*, as minimum, to seven (7) years, four (4) months and one(1) day of *prision mayor*.

**WHEREFORE**, premises considered, the instant Appeal is **DENIED** for lack of merit. The Decision dated December 16, 2021 of Regional Trial Court, 4<sup>th</sup> Judicial Region, Branch 28 of Sta. Cruz, Laguna convicting accused-appellant Elizalde G. Gabaleño beyond reasonable doubt of the crime Malversation of Public Funds defined and penalized under Article 217 of the Revised Penal Code is **AFFIRMED** *in toto*.

---

<sup>74</sup> G.R. No. 164481, September 20, 2005

<sup>75</sup> Section 27, Rule 130 of the Revised Rules on Evidence provides in part: x x x

"In Criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt"

<sup>76</sup> Section 1, Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law" (December 5, 1933




In addition, accused-appellant Gabaleño is hereby ordered to pay a fine of Php 483,529.31, with legal interest of six(6%) percent *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.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice


**WE CONCUR:**

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

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

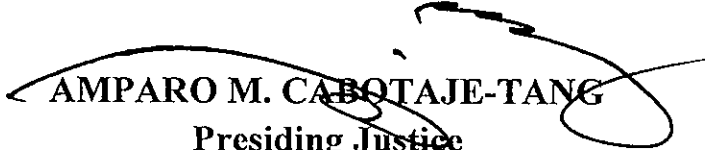
**ATTESTATION**

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**RAFAEL R. LAGOS**  
Chairperson, Fifth Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice