



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**  
QUEZON CITY

\*\*\*

**SEVENTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

SB-23-A/R-0001

- versus -

For: Violation of Section 3(e) of  
Republic Act 3019

**ARTHUR B. LONTOC, JR.,**  
*Accused.*

---

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

SB-23-A/R-0002

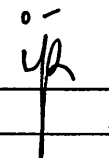
- versus -

For: Malversation of Public Funds  
under Article 217 Paragraph 4 of  
the Revised Penal Code

**ARTHUR B. LONTOC, JR.,**  
*Accused.*

Present:  
Gomez-Estoesta, J., *Chairperson,*  
Trespeses, J. and  
Hidalgo, J.

Promulgated:

*September 19, 2023* 

---

**DECISION**

**TRESPESES, J.:**

This resolves the appeal<sup>1</sup> filed by accused-appellant Arthur B. Lontoc, Jr. (“Lontoc”) from a Decision dated August 19, 2022 penned by Judge Retrina E. Fuentes, Assisting Presiding Judge of the Regional Trial Court

---

<sup>1</sup> Under Section 1, Rule XII of the 2018 Revised Internal Rules of the Sandiganbayan, the appeal to the Sandiganbayan from a decision rendered by the Regional Trial Court in the exercise of its original jurisdiction shall be by Rules 122 and 124 of the Rules of Criminal Procedure as amended, in criminal cases.

1      2

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 2 of 37

x-----x

(“RTC”) Branch 1, Tagum City, Davao del Norte, finding him guilty beyond reasonable doubt for violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, and for the violation of Art. 217 paragraph 2 of the Revised Penal Code, as amended.

**THE FACTS OF THE CASE**

The cases arose from the complaint filed by some members of the Barangay Council of Barangay Pag-asa, Kapalong, Davao del Norte. The complainants consist of *Kagawad* Roger M. Maata, *Kagawad* Samson Dupra, *Kagawad* Wilson Galaura, and other concerned citizens. Complainants alleged that their barangay acquired an ISUZU dump truck covered by Official Receipt No. 96063772 and Certificate of Registration No. 64162530. They claimed that accused Lontoc, the Barangay Captain of Barangay Pag-asa, Kapalong, sold the said dump truck to the Barangay Captain of Barangay Sua-on, Kapalong, without proper authority and without complying with the procedure in the disposal of government property as mandated by law. They further alleged that due to the sale, they have been deprived of the use of the said vehicle, which is detrimental to their interest.

The pertinent timeline as culled from the RTC Decision is as follows:<sup>2</sup>

When the case was first filed with the Office of the Provincial Prosecutor, the charge against Mr. Lontoc was Falsification of Public Documents/Malversation of Public Funds, but it was initially dismissed “for insufficiency of evidence against respondents...x x x without prejudice to re-filing the same if the additional evidence so warrants”.

On 4 June 2007, complainants filed a Motion for Reconsideration of the Resolution dated 8 May 2007 dismissing their complaint and submitted additional documents and argument in support of their complaint.

Meanwhile, the Office of the Ombudsman-Mindanao which reviewed the Provincial Prosecutor’s Resolution in OMB-M-C-8-0013-A, “ROGER M. MAATA, ET AL. vs. ARTHUR B. LONTOC, JR., through then Assistant Ombudsman Rodolfo M. Elman, CESO III, sustained the filing of a case for Malversation of Public Funds against the accused as defined under Article 217 of the Revised Penal Code and likewise sustained the earlier dismissal of the case for Falsification of Public Documents for lack of evidence.

The Ombudsman found instead probable cause to hold respondent for trial for Violation of Section 3(e) of R.A. No. 3019 (Anti-Graft and Practices Act).

The Information dated 17 January 2008 was filed on 10 June 2010, signed by MARILOU B. UNABIA, Graft Investigation and Prosecution Officer I of the Office of the Ombudsman-Mindanao . . . x x x

---

<sup>2</sup> Records, p. 38

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 3 of 37

X-----X

X X X

Criminal Case No. 17365 was filed on 18 August 2010. Mr. Lontoc was charged with Malversation of Public Funds as defined under Article 217, Paragraph 4 of the Revised Penal Code in an Information dated 23 November 2007 ... x x x

The Informations read as follows:

**SB-23-AR-0001 (from Case No. 17262)**

“Undersigned Ombudsman Prosecutor accuses ARTHUR B. LONTOC, JR., Barangay captain of Barangay Pag-asa, Kapalong, Davao del Norte, of violation of Section 3(e) of R.A. No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about November-December 2006, in the Municipality of Kapalong, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused, a low-ranking public officer, being the Barangay Captain of Barangay Pag-asa, Kapalong, Davao del Norte, in the discharge of his official functions, committing the offense in relation to [*sic*] office with evident bad faith, did then and there willfully, unlawfully and criminally sell without authority from the Barangay Council of Pag-asa or the Municipal Council of Kapalong one unit dump truck with Plate Number SFR-946 and thereafter misappropriate, embezzle and malverse the proceeds of the sale in the amount of SEVENTY-SEVEN THOUSAND PESOS (P77,000.00), Philippine Currency, thus causing undue injury to Barangay Pag-asa, Kapalong, Davao del Norte in the aforesaid amount.

CONTRARY TO LAW.

**SB-23-AR-0002 (from Case No.17365)**

The undersigned accused BARANGAY CAPTAIN ARTHUR LONTOC, JR. of the crime of Malversation of Public Funds under Article 217, paragraph 4 of the Revised Penal Code, committed as follows:

That sometime in the months of November to December 2006, in the Municipality of Kapalong, Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the duly elected Barangay Captain of Barangay Pag-asa, Kapalong, Davao del Norte, and by reason of his duties, his Barangay was issued a one (1) unit Isuzu dump truck covered by Certificate of Registration No. 64162530 and Official Receipt No. 96063772 with an estimated value of Php295,000.00, and as such was responsible and accountable for the said property, did then and there willfully, unlawfully and feloniously sell the said dump truck in the amount of Seventy Seven Thousand (P77,000.00) Pesos, Philippine Currency, without appropriate corresponding authority from the Barangay Council of Pag-asa or Municipal Council of Kapalong, and thereafter, misappropriate, embezzle and malverse the proceeds of the sale to his personal use and benefit to the damage and prejudice of the Government of

the aforesaid property or its monetary equivalent.

CONTRARY TO LAW.

Below is a table which summarizes pertinent incidents regarding both cases:

Case No.	Date of Commission	Date of Information	Date of Warrant of Arrest	Date of Bail Bond	Date of Order Lifting the Warrant of Arrest	Date of Arraignment
17262 <sup>3</sup>	November to December 2006 <sup>4</sup>	January 18, 2008 <sup>5</sup>	June 17, 2010 <sup>6</sup>	June 29, 2010 <sup>7</sup>	June 29, 2010 <sup>8</sup>	August 18, 2010 <sup>9</sup>
17365 <sup>10</sup>	November to December 2006 <sup>11</sup>	November 23, 2007 <sup>12</sup>	August 23, 2010 <sup>13</sup>	September 8, 2010 <sup>14</sup>	September 8, 2010 <sup>15</sup>	September 23, 2010 <sup>16</sup>

These two cases were initially raffled to different courts but were later consolidated upon motion of the defense counsel.<sup>17</sup>

The prosecution presented the following witnesses:

- A. **Former Barangay Kagawad Roger Maata** – He identified the complaint affidavit he filed against accused-appellant, and an Invoice Receipt of the mini dump truck. He also testified as to the circumstances indicated in the complaint.
- B. **State Auditor II Herminda Bontor** – She testified that she is a State Auditor of COA and that on the dates material to the information, she, together with another COA Auditor, conducted an audit on the cash account and property of Barangay Pag-asa, Kapitalong, Davao del Norte. She further identified documents relevant to the case and her audit.

<sup>3</sup> Records, pp. 3-4

<sup>4</sup> RTC Records, Vol I, pp. 2-3

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at p. 72

<sup>7</sup> *Id.* pp. 76-77 (Inadvertently dated as "Sept. 8, 2010" in the Case Diary in RTC Records, Vol I, p. 00)

<sup>8</sup> *Id.* at p. 79

<sup>9</sup> *Id.* at p. 92

<sup>10</sup> Records, pp. 5-6

<sup>11</sup> RTC Records, Vol I, pp. 13-14

<sup>12</sup> *Id.*

<sup>13</sup> RTC Records, Vol III, p. 68-69

<sup>14</sup> *Id.* at p. 75

<sup>15</sup> *Id.* at p. 74

<sup>16</sup> *Id.* at p. 82

<sup>17</sup> Records, p. 37

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 5 of 37

X-----X

**C. Former Barangay Captain of Sua-on Felix Sibonga** – He testified that Arthur Lontoc, Jr. sold to him the dump truck which is the subject of this case sometime in November of 2006. He testified on the details of the transaction and identified documents pertinent thereto.

**D. Former Treasurer of Barangay Pag-asa Marcelina Saligumba** – She testified on the incident involving her receipt of forty-five thousand pesos (₱45,000.00) from a certain Elmer Sibonga, on the instance of accused-appellant Arthur Lontoc, Jr., allegedly for safekeeping. She also testified about her discovery of the loss of the original copy of the receipt subject of this case. Lastly, she identified documents subject of this case.

The defense presented three witnesses:

- 1. Accused-appellant Arthur Lontoc, Jr.** – He denied the commission of both crimes and testified that the cases were politically motivated. He also testified that the Barangay Council approved the resolution to continue the process of perfecting the sale of the subject dump truck. Further, he testified that his act of selling the mini dump truck was pursuant to the advice of Department of Interior and Local Government (“DILG”) Municipal Officer Konakon Madali.
- 2. Retired DILG Municipal Officer Konakon Madali** – He corroborated the testimony of accused-appellant and admitted that he advised that accused may negotiate to sell the dump truck after the two scheduled biddings failed.
- 3. Former Kagawad Wilson Galaura** – He testified that he is no longer interested in prosecuting the accused.

### TIMELINE OF EVENTS

At the outset, it is essential to establish a timeline of events supported by documents and testimonies submitted as evidence in the lower court.

In an Invoice Receipt for Property dated November 5, 2001,<sup>18</sup> the Municipality of Kapalong donated to Barangay Pag-asa a mini dump truck valued at ₱295,000.00. The mini dump truck is covered by Certificate of Registration No. 64162530<sup>19</sup> and Official Receipt No. 96063772.<sup>20</sup> The donation was in response to Resolution No. 121 dated August 29, 2001,<sup>21</sup> by the Office of the Sangguniang Bayan of the Municipality of Kapalong

<sup>18</sup> RTC Records, Vol. I, p. 234

<sup>19</sup> Exh. U, RTC Records, Vol I, p. 255

<sup>20</sup> Exh V. RTC Records, Vol I, p. 255

<sup>21</sup> Exh. Q, RTC Records, Vol. I, pp. 251-252

7 7 |

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 6 of 37

X-----X

requesting the then Mayor Dominador P. Cruda, Sr. to transfer the ownership of all 18 units mini-dump truck to the concerned barangays without cost.

On June 2, 2006, the Barangay Council held a regular session where they approved the selling via auction of the subject mini dump truck.<sup>22</sup> The council appraised the value of the dump truck at ₱45,000.00.<sup>23</sup>

In a handwritten receipt dated November 30, 2006,<sup>24</sup> accused-appellant Lontoc Jr. confirmed that he received the amount of ₱77,000.00 from one Elmer Sibonga. Felix Sibonga testified that he prepared the amount of ₱77,000.00 to be paid by his son, Elmer, to accused-appellant in consideration of the purchase of the mini dump truck.<sup>25</sup>

However, Felix claimed to have only received an official receipt belatedly.<sup>26</sup> This official receipt is numbered 0751773 and dated December 27, 2006 in the amount of ₱45,000.00 for the payment of one mini dump truck signed by one "M. Saligumba", Barangay Kapalong's Treasurer.<sup>27</sup> It is noted that there is a discrepancy of ₱32,000.00 between the handwritten receipt and O.R. No. 0751773.

Suspiciously, both the duplicate and triplicate copies of the like-numbered receipt only show the amount of twenty pesos (₱20.00) as payment for a barangay certificate, also signed by "M. Saligumba".<sup>28</sup>

In her testimony on March 7, 2012, then Barangay Treasurer Marcelina Saligumba admitted to receiving the amount of ₱45,000.00 from both Accused-appellant and Elmer Sibonga for safekeeping.<sup>29</sup> She claims that on January 3, 2007, she discovered that the original receipt was detached from the stubs and upon asking her officemates of its whereabouts, no one can answer her.<sup>30</sup>

In Resolution No. 001 series of 2007 dated January 21, 2007,<sup>31</sup> the Bids and Awards Committee ("BAC") of Barangay Kapalong requested Mrs. Arcenia A. Sta. Lucia of the Commission on Audit to investigate the sale of the dump truck among other transactions.

---

<sup>22</sup> RTC Records Vol III, pp. 343-345

<sup>23</sup> Exh.2, RTC Records Vol III pp. 343-345

<sup>24</sup> RTC Records Vol III, p.151

<sup>25</sup> TSN dated August 24, 2011, pp. 9-12

<sup>26</sup> *Id.* at p. 14

<sup>27</sup> RTC Records Vol III, p. 152

<sup>28</sup> *Id.* at p. 153

<sup>29</sup> TSN dated March 7, 2012, pp. 9-11

<sup>30</sup> *Id.* at pp. 13-16

<sup>31</sup> RTC Records, Vol III, p. 162

**Decision**

*People vs. Lontoc, Jr.*  
SB-23-AR-0001 and 0002  
Page 7 of 37

X-----X

In Resolution No. 002 series of 2007 dated February 12, 2007,<sup>32</sup> the BAC of Barangay Kapalong endorsed the complaint filed against Lontoc to the Fiscal Office.

On February 22, 2007, Barangay Kagawads Roger Maata, Wilson L. Galaura, Samson S. Dupra, Jesusa A. Quitoras, SK Chairman Charlene M. Sabay-sabay, and concerned citizen Constancio P. Sabay-sabay filed the complaint alleging anomalies in the sale of the mini dump truck.<sup>33</sup>

On May 25, 2007, accused-appellant called for an Emergency Barangay Council Session where the council resolved to authorize Captain Arthur B. Lontoc, Jr. to go on a direct negotiated sale of the mini dump truck, as well as to sign the contract of sale in behalf of the barangay.<sup>34</sup>

On June 10, 2010, the Information dated January 17, 2008 accusing accused-appellant of violating Section 3(e) of R.A. No. 3019 was filed.<sup>35</sup>

A few months later, on August 18, 2010, the Information dated November 23, 2007 charging accused-appellant with Malversation of Public Funds as defined under Article 217, Paragraph 4 of the Revised Penal Code was filed.<sup>36</sup>

While the case was pending with the RTC, on May 3, 2011, accused-appellant paid back to Felix Sibonga the amount of ₱40,000.00 for the repairs the latter made on the dump truck.<sup>37</sup>

On May 31, 2011, accused-appellant executed a promissory note<sup>38</sup> wherein he promised to pay Felix Sibonga the amount of ₱110,000.00 on installment basis with ₱60,000.00 payable on June 30, 2011, while ₱50,000.00 is due by the end of August 2011 for the dump truck and the cost of repairs. This is with a caveat that should the case filed against accused-appellant be resolved earlier, the full amount shall be paid on or before the end of July 2011.

**RTC RULING**

The case was given due course and resolved by the RTC, which found the accused-appellant guilty. On August 19, 2022, the RTC rendered its Decision,<sup>39</sup> the dispositive portion of which reads:

---

<sup>32</sup> RTC Records Vol III, p. 163

<sup>33</sup> *Id.* at pp. 158-160

<sup>34</sup> *Id.* at pp. 346-351

<sup>35</sup> Records, p. 38

<sup>36</sup> *Id.*

<sup>37</sup> Exh. DD, RTC Records Vol III, p. 187

<sup>38</sup> Exh. CC, RTC Records Vol III, p. 186

<sup>39</sup> Records, pp. 37-82

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 8 of 37

x-----x

**WHEREFORE, Judgment is hereby rendered as follows:**

1. In Criminal Case No. 17262 for Violation of Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, the Court hereby finds accused ARTHUR B. LONTOC, JR [*sic*] GUILTY beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019 [*sic*] entitled the "Anti-Graft and Corrupt Practices Act" and accordingly, he is sentenced to suffer the penalty of imprisonment for six years and one month, as minimum to seven years, as maximum with perpetual disqualification from public office;
2. 2. [*sic*] In Criminal Case No. 17365, the Court hereby finds accused ARTHUR B. LONTOC, JR [*sic*] GUILTY beyond reasonable doubt of violating Article 217 paragraph 2 of the Revised Penal Code as amended by RA. No. 1060 and as further amended by RA. No. 10951 entitled Malversation of Public Funds and accordingly sentenced to suffer the penalty of imprisonment for an indeterminate period of three years, six months and 21 days as minimum penalty to six (6) years and one (1) day as maximum with perpetual special disqualification and to pay a fine of ₱77,000.00 without subsidiary imprisonment in case of insolvency.

**SO ORDERED.**

Given this 19<sup>th</sup> day of August, 2022, at Tagum City, Davao del Norte, Philippines.<sup>40</sup>

Accused filed a Notice of Appeal on August 23, 2022.<sup>41</sup> Finding the Notice of Appeal to be sufficient in form and substance, the RTC, in an Order dated September 23, 2022,<sup>42</sup> gave it due course and directed that the records of the case be forwarded to the Sandiganbayan.

The case was thereafter docketed as SB-23-A/R-0001 and SB-23-A/R-002 and raffled to the Sandiganbayan's Seventh Division, which, on February 22, 2023, notified<sup>43</sup> the parties of the availability of the records of the case for the preparation of their respective briefs.

**ACCUSED-APPELLANT'S BRIEF**

In accused-appellant's Brief dated April 24, 2023,<sup>44</sup> he alleges that the RTC committed the following errors:

<sup>40</sup> As regards the malversation case, the second paragraph of the dispositive portion of the RTC Decision inadvertently tagged the violation as that for paragraph 2, Article 217 of the Revised Penal Code. However, a perusal of the discussion in the body of the said decision, as well as the Information would show that the offense being referred to is for violation of paragraph 4, Article 217. Note that none of the parties in this case raised this as an issue in their respective Briefs.

<sup>41</sup> Records, pp. 86-134

<sup>42</sup> *Id.* at pp. 138-139

<sup>43</sup> *Id.* at pp. 140-141

<sup>44</sup> *Id.* at pp. 160-245

*[Handwritten marks]*



**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 9 of 37

X-----X

1.

THE LOWER COURT COMMITTED A GROSS REVERSIBLE ERROR IN HOLDING THAT THE ACCUSED IS GUILTY OF VIOLATING SEC (e) OF REPUBLIC ACT 3019 SINCE THE GUILT OF THE ACCUSED FOR THE CRIME CHARGED HAS NOT BEEN ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT.

2.

THE LOWER COURT COMMITTED A GROSS REVERSIBLE ERROR IN HOLDING THAT THE THAT THE [sic] ELEMENT OF UNWARRANTED BENEFITS TO FAVOR AN INDIVIDUAL OR INJURY TO THE GOVERNMENT IS PRESENT.

3.

THE LOWER COURT COMMITTED A GROSS REVERSIBLE ERROR IN HOLDING THAT THE ACCUSED IS GUILTY OF MALVERSATION OF PUBLIC FUNDS AS DEFINED UNDER ARTICLE 217, PAR. 4 OF THE REVISED PENAL CODE SINCE THE GUILT OF THE ACCUSED FOR THE CRIME CHARGED HAS NOT BEEN ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT.

4.

THE LOWER COURT COMMITTED A GROSS REVERSIBLE ERROR IN HOLDING THAT THE ACCUSED VIOLATED SEC. 217 (par. 4) OF THE REVISED PENAL CODE IN THE ABSENCE OF CLEAR AND CONVINCING PROOF THAT THERE WAS A MISAPPROPRIATION OF FUNDS AND THAT A DEMAND LETTER FOR THE RETURN OF THE FUNDS HAD BEEN SERVED UPON THE ACCUSED.

On the first and second assignments of error, accused-appellant alleges that there is no clear showing that he acted with manifest partiality, evident bad faith or gross inexcusable negligence, an essential element in the violation of Sec. 3(e) of R.A. 3019, in disposing of the mini dump truck. On the contrary, accused-appellant claims good faith as the auction sale of the dump truck was approved by the Barangay Council on June 2, 2006.

He further alleged that in an emergency meeting of the Barangay Council held on May 26, 2007, the resolution approving the direct negotiated sale of the subject dump truck is reflected in the Minutes of the said meeting. He avers that he sought the assistance of the Commission on Audit ("COA") to conduct an inspection of the dump truck preparatory to its disposition which had been used for more than five years and was found to be unserviceable. However, these letters sent to COA were not made available as evidence due to the passage of time.

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 10 of 37

X-----X

Accused-appellant claims to be a mere low-ranking officer who referred the matter by way of consultation with a Municipal Officer of the Department of Interior and Local Government (“DILG”), Konakon Madali.

Accused-appellant maintains that his act was based on his reliance on DILG Municipal Officer Madali’s advice that a negotiated sale may be done due to the failure of two biddings, despite the lack of reply from the COA.

As to manifest partiality, accused-appellant posits that there is none in this case. He opines that the failure of the two earlier bidding processes reinforces the fact that there were no persons who might be minded to submit their bids. In the words of accused-appellant, “the fact that it was a direct negotiated sale and in the absence of any interested buyer pressing their claim against the buyer, the preference or ‘favor’ cannot be presumed.”<sup>45</sup>

Anent the third and fourth assignments of error, accused-appellant avers that there was no clear and convincing evidence to show that he misappropriated any amount representing the proceeds from the sale of the motor vehicle, as the amount of ₱45,000.00 had been remitted to Barangay Treasurer Marcelina Saligumba in December 2006. He claims that as of that date, the amount ceased to be his accountability.

He submits that from the testimony of prosecution witness, Marcelina Saligumba, the following are evident:

1. The amount of ₱45,000.00 was received and receipted by Marcelina Saligumba and for which she issued a temporary receipt.
2. From that time on, the said amount ceased to be an accountability of the accused since it became the responsibility of Marcelina Saligumba to remit the amount to government treasury.
3. it [*sic*] was not the accused who took back the amount of ₱45,000.00 from her but it was Rudy Mirafuentes and Felix Catubig, the Barangay Technician, who took back the money from her.

Accused-appellant questions the credibility of Saligumba claiming that she is a “polluted witness” since as Barangay Treasurer, she is considered to be “saving her skin.” Further, her testimony where she claimed that the accused took back the amount of ₱45,000.00 from her should be deemed as hearsay since the statements came only from Rudy Mirafuentes and Felix Catubig and uncorroborated by other witnesses.

According to accused-appellant, there was no demand served upon him for the return of the alleged misappropriated amount. The demand letter made was to produce the dump truck, and the receipt of the letter by the accused

---

<sup>45</sup> Records, p. 172

1 2 1

**Decision**

*People vs. Lontoc, Jr.*  
SB-23-AR-0001 and 0002  
Page 11 of 37

x-----x

was not established. In sum, he avers that the essential elements of misappropriation and demand for the crime of violation of Article 217 (4) of the Revised Penal Code do not exist in this case.

**APPELLEE'S BRIEF**

In its Appellee's Brief dated July 5, 2023, the prosecution argues that:

THE RTC CORRECTLY CONVICTED ACCUSED-APPELLANTS OF VIOLATION OF SECTION 3(E) OF RA 3019 AND MALVERSATION OF PUBLIC FUNDS DEFINED AND PENALIZED UNDER ARTICLE 217 OF THE REVISED PENAL CODE, CONSIDERING THAT ALL THE ELEMENTS OF BOTH CRIMES WERE SUFFICIENTLY PROVEN BY THE PROSECUTION WITH MORAL CERTAINTY. THE ARGUMENTS RAISED BY APPELLANT AGAINST THE RTC'S JOINT DECISION ARE WITHOUT MERIT.

The prosecution posits that the findings of fact of the trial court should be accorded great weight and respect, citing *People v. Gelacio*.<sup>46</sup> Given the fact that the RTC had taken into consideration the evidence of both parties, applicable laws, and COA Circular in rendering the decision, the assailed RTC Joint Decision has factual and legal bases.

Appellee narrates how the dump truck was sold as follows:

27.1 By virtue of Sangguniang Bayan Resolution No. 121 dated 29 August 2001 of the Municipality of Kapalong, Davao del Norte, an Isuzu Dump Truck with Plate Number SFR 946, Chassis No. NKR58E-7106896 and Motor No. 4BEI-88474 valued at ₱295,000.00 was turned over without cost to Barangay Pag-asa, Kapalong, Davao del Norte. It was received by Barangay Kagawad Galaura on 5 November 2001. The dump truck was covered by OR No. 96063772 and CR No. 64162530. Hence, the dump truck became the responsibility and property of Barangay Pag-asa, which was headed by appellant at the time material to the case. For more than five (5) years the dump truck was used by the barangay until it became unserviceable due to wear and tear.

27.2 By reason of the dilapidated condition of the dump truck, the Barangay Council decided to sell it through public auction as per 02 June 2006 Resolution. The dump truck was appraised by the Barangay Committee on Appraisal and determined that the appraisal value of the vehicle is the amount of ₱45,000.00. Appellant also requested COA to conduct inspection and appraisal of the dump truck.

27.3 On 01 September 2006, inspection and appraisal on the dump truck was conducted by Engr. Roldan A. Sabanal, Technical Audit Specialist of COA, Regional Technical Service Office, Region XI, Davao

---

<sup>46</sup> G.R. No. 250951 and 250958, August 10, 2022

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 12 of 37

X-----X

City and recommended for its disposal at an appraisal value of ₱67,500.00. Based on said COA Appraisal Report, the barangay scheduled a public auction on 17 October 2006. No bidder participated on said date, and so it was rescheduled on 13 November 2006. But no bidder participated again.

27.4 Because of the failed public auctions, appellant sought advice from the DILG Officer Madali who was assigned in their Municipality at that time. Madali advised appellant that if two failed biddings of the dump truck transpired, appellant could negotiate for the sale of the dump truck. Madali also advised appellant to consult with COA regarding the sale.

27.5 Appellant then informed COA about the failed public auctions and requested the state auditor to allow appellant to make a negotiated sale of the dump truck. But COA failed to respond within one month. Unable to wait further, appellant looked for a buyer and found Sibonga. Thereafter, appellant proceeded to negotiate for the sale of the dump truck with Sibonga. Appellant showed Sibonga the dump truck and Sibonga agreed to buy it at an agreed price of ₱77,000.00

27.6 On 30 November 2006, Sibonga, through his son Elmer Sibonga, paid the amount of ₱77,000.00 to appellant who issued a handwritten temporary receipt. Appellant thereafter turned-over ₱45,000.00 to Barangay Treasurer Saligumba for safekeeping. Thereafter, Elmer Sibonga was issued a temporary receipt dated 1 December 2006, signed by both appellant and Saligumba, in the amount of ₱45,000.00. Another receipt was however issued by appellant to Ledinila Sibonga, wife of Felix Sibonga, bearing OR No. 0751773 dated 27 December 2006, in the amount of ₱45,000.00.

27.7 The ₱45,000.00 turned over by appellant to Saligumba was, however, eventually withdrawn from the latter on three (3) occasions. First, appellant and one Rudy Mirafuentes went to Saligumba's house to borrow ₱3,000.00 because the child of Mirafuentes got sick. Appelleant assured Saligumba that he would pay it back immediately. Second, Barangay Technical Felix Getubig (Getubig) also came and withdrew another ₱3,000.00 upon the instructions of appellant. Third, on 02 January 2007, Getubig took the remaining amount of ₱39,000.00 from Saligumba per instruction of appellant. Getubig issued a handwritten acknowledgement receipt bearing the same date.

The prosecution claims that they have sufficiently proven the elements of both crimes with moral certainty. As to the element of evident bad faith for violation of Section 3(e) of R.A. No. 3019, such is supported by the fact that the subject dump truck was sold through negotiated sale without authority either from the Sangguniang Barangay of Barangay Pag-asa, Kapitalong, Davao del Norte or the Municipal Council of Kapitalong. Hence, accused-appellant misappropriated the proceeds of the sale.

The prosecution insists that accused-appellant cannot validly invoke the June 2, 2006 Minutes of Regular Session of the Barangay Council as basis of his authority to sell the dump truck because the authority given therein was sale by auction and not through negotiated sale.

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 13 of 37

X-----X

Further, the authority conferred in the Minutes of the Emergency Session on May 26, 2007 cannot serve as basis for accused-appellant's authority because the negotiated sale between the latter and Sibonga was already completed in 2006, months before the emergency session.

Anent the authority or responsibility for property disposal/divestment, the prosecution cites COA Circular No. 89-296 which confers the sole authority and responsibility for the divestment or disposal of property and other assets owned by local government units shall be lodged in the heads of the local government units. However, the prosecution contends that the same circular did not authorize the appellant to conduct the property disposal on his own. The accused-appellant was mandated to constitute the appropriate committee or body to undertake the same.

In this case, accused-appellant disposed of the dump truck through negotiated sale with Sibonga on his own and not through any committee or body.

Moreover, accused-appellant did not follow the guidelines of the Circular requiring that a record of the proceedings of the negotiation must be maintained. This now leads to conflicting claims as to the amount actually paid to accused-appellant. Accused-appellant claims that Sibonga only paid ₱45,000.00 for the dump truck, in contrast with the straightforward testimony of Sibonga that he paid ₱77,000.00 through his son, claiming that the difference of ₱32,000.00 was for "Standard Operating Procedure."<sup>47</sup>

The prosecution claims that the advice of DILG Officer Madali that if two (2) failed biddings of the dump truck transpired appellant could negotiate for the sale of the dump truck, did not give him a free pass. Further, despite writing a letter to COA regarding the matter, he did not wait for a response and instead proceeded on his own with the negotiated sale.

The prosecution summarizes the incident as follows:

47. At all events, the testimonial and documentary evidence presented by the prosecution are sufficient to prove that appellant received ₱77,000.00 from Sibonga through his son Elmer Sibonga and that he did not remit the whole amount of ₱77,000.00 to the barangay treasury. Appellant kept ₱32,000.00 thereof as so-called Standard Operating Procedure (SOP) and remitted only ₱45,000.00 to Barangay Treasurer Saligumba. Appellant never specifically or categorically denied that he kept the ₱32,000.00 as his SOP. Further, appellant subsequently withdrew the said ₱45,000.00 gradually, by borrowing ₱3,000.00 twice - for a total of ₱6,000.00, and then ordering Barangay Technician Getubig to borrow for him from Saligumba remaining amount of ₱39,000.00, as testified by Saligumba. Appellant himself admitted that he caused the withdrawal of the ₱45,000.00 from Saligumba. This will be shown in this Appellee's Brief

---

<sup>47</sup> Records, p. 276

7

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 14 of 37

X-----X

later.

XXX

51. That the amount of ₱45,000.00 turned-over by appellant to Barangay Treasurer Saligumba was eventually withdrawn from the latter upon the instructions of appellant cannot be disputed. As earlier intimated, appellant himself admitted that he caused the withdrawal of the said amount from Saligumba, thus:

COURT:

(To the witness)

Q: You paid Sibonga three (3) times: first, P50,000.00; next is P40,000.00; the third P60,000.00; total of P150,000.00 and he is claiming P200,000.00 for the repair of the dump truck. But you also said that you also refunded him of the P45,000.00, the initial payment by Sibonga.

My question is - was the P45,000.00 returned by the barangay treasurer to you because you were the one who returned the money?

A: I requested our barangay technician to get the money from our barangay treasurer so I can return it to Mr. Sibonga.

Q: What happened? Was It [sic] returned?

A: I was able to return It, [sic] including the first payment of P50,000.00.

Q: Meaning to say, the P45,000.00 that you refunded to Mr. Sibonga, it is not your money but it is the money paid by Sibonga to the barangay treasurer and was refunded to Sibonga thru the barangay technician and you yourself got the money and returned it to Sibonga but Sibonga would not release the dump truck if the entire amount of P200,000.00 will not be paid; the P200,000.00 that he used to repair that dump truck?

A: Yes, Your Honor.

52. At this juncture, it must be stressed that appellant was able to withdraw the whole amount of ₱45,000 [sic] from Saligumba from December 2006 to 02 January 2007. There is no evidence however as to when appellant made the first payment in the amount of ₱50,000.00 to Sibonga, as the latter could not recall the date of payment and appellant failed to present evidence in that regard. Nevertheless, the payment of P50,000.00 to Sibonga could not have been made on or before 17 April 2007, when Sibonga executed his Affidavit. It is clear from the said affidavit that at the time of its execution on 17 April 2007, or more than three (3) months after the P45,000.00 was fully withdrawn from Saligumba on 02 January 2007, Sibonga was not yet paid by appellant the amount of P50,000.00 - the supposed first payment, in order to get back the dump truck sold. So the P45,000.00 was at the disposal of appellant for at least three (3) months.

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 15 of 37

X-----X

53. Also, based on the testimony of appellant, his second payment to Sibonga was in the amount of P40,000.00, and based on the receipt signed by Sibonga the payment of P40,000.00 was made by appellant on 31 May 2011. As the payment for the dump truck in the amount of P77,000.00 was received by appellant on 30 November 2006 and he supposedly paid Sibonga the amount of P50,000.00 on an unknown date but before 31 May 2011, it is clear that appellant had P27,000.00 at his disposal and for his personal use from 30 November 2006 to 31 May 2011, or for more than four (4) years, said amount not having been turned-over by appellant to the barangay treasury during the said period. (*Citations omitted*).

As to the claim of accused-appellant that he paid Sibonga P150,000.00, the same does not negate his guilt as it was made after the negotiated sale had already been consummated.

With regard to the element of undue injury to the government, the prosecution claims to have proved this beyond reasonable doubt. They claim that the P72,000.00 did not go to the government; P32,000.00 of which was kept by accused-appellant, while the P45,000.00 initially turned-over to Barangay Treasurer Saligumba, was eventually withdrawn by him.

The prosecution posits that there was already a perfected negotiated sale when appellant agreed to sell the dump truck to Sibonga for P77,000.00 and Sibonga agreed to buy the subject vehicle for the said amount. Further, the dump truck was already delivered to Sibonga and the latter had already paid the P77,000.00 purchase price to the accused-appellant. With this, the parties have already fulfilled or performed their respective obligations in the sale, culminating in the extinguishment thereof.

As regards the charge of Malversation under Article 217 of the Revised Penal Code, the prosecution claims to have proven all elements of the crime beyond reasonable doubt.

The prosecution contends that accused-appellant is an accountable officer, as he is the Barangay Chairman of the unit which owned the dump truck sold. Further, it is argued that there is no need for a demand because when the amount was turned over to the accused-appellant, unofficially, the presumption is that it was misappropriated.

The prosecution concludes that the instant appeal is devoid of any merit and prays that this court dismiss the appeal and affirm *in toto* the joint decision of the RTC dated August 19, 2022.

7 7 1

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 16 of 37

X-----X

**ACCUSED-APPELLANT'S REPLY BRIEF**

In accused-appellant's Reply Brief dated September 5, 2023,<sup>48</sup> he contends that the evidence of the prosecution cannot sustain the argument that the sale of the dump truck was attended with evident bad faith. He reiterates the same arguments stated in his brief.

Accused-appellant claims that the fourth element of causing undue injury to the government or any party is wanting as there was no evidence that other buyers who were interested in buying the dump truck. He concludes that the result of a direct negotiated sale does not favor any party.

Further, accused-appellant alleges that no sale was actually consummated as the dump truck was returned to the custody of the Barangay and there was no conveyance of the same to Felix Sibonga. He claims that the absence of a deed of conveyance and the subsequent return of the vehicle to the custody of the barangay negates the existence of the consummated sale and therefore cast a serious and reasonable doubt on the existence of the undue injury to the government.

Anent the charge of malversation, accused-appellant posits that the prosecution was not able to present any countervailing evidence to prove that the amount of ₱77,000.00 was not intended as a deposit. Moreover, he insists that the amount of ₱45,000.00 was received by the Barangay Treasurer and not him. He argues that the demand of the COA is crucial to the case of the prosecution against him.

Lastly, he concludes that the prosecution failed to prove his guilt beyond reasonable doubt for violations of Sec. 3(e) of Republic Act No. 3019 and Art. 217 of the Revised Penal Code, as amended, and therefore, he must be acquitted.

**ISSUES**

1. Whether or not the RTC erred in finding accused-appellant guilty beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019.
2. Whether or not the RTC erred in finding accused-appellant guilty beyond reasonable doubt of malversation under Article 217, paragraph (4), of the Revised Penal Code.

---

<sup>48</sup> Record, pp. 292-299

7      ?      |



## OUR RULING

The appeal is bereft of merit.

### I. SB-23-A/R-0001 - For violation of Section 3(e) of R.A. No. 3019

-----

In the first information, the accused-appellant is charged with the violation of Section 3(e) of R.A. No. 3019, which states that:

**Sec. 3. Corrupt practices of public officers.** — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith, or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Truya v. People*<sup>49</sup>, the Supreme Court was clear that to convict an accused for the violation of the above provision, the following elements must be present:

1. the accused must be a public officer discharging administrative, judicial, or official functions;
2. he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and
3. his action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

*Accused-appellant is a public officer.*

Anent the first element, there is no doubt that accused-appellant is a public official at the time relevant to this case. He was serving his fourth term as the Barangay Captain of Barangay Pag-asa, Kapalong, Davao del Norte.<sup>50</sup>

<sup>49</sup> G.R. No. 193222, July 26, 2021

<sup>50</sup> TSN June 3, 2015, p. 6.

7 7

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 18 of 37

X-----X

The fact of his public position as the barangay captain of Barangay Pag-asa, Kapalong was stipulated in the Pre-Trial Order dated February 9, 2011 issued by the lower court.<sup>51</sup>

*Accused-appellant's act of selling the mini-dump truck was attended by evident bad faith.*

There are three ways by which Section 3(e) of R.A. 3019 may be violated - through *manifest partiality, evident bad faith, and gross inexcusable negligence*. Any of the three, if proven, would be enough to convict the accused.

In this case, only evident bad faith was alleged in the Information,<sup>52</sup> hence, it will be the only mode considered in determining accused-appellant's guilt pursuant to the right of the accused to be informed of the nature and cause of the accusation against him.<sup>53</sup>

Evident bad faith connotes a palpable and patently dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.<sup>54</sup>

Section 389(b) of the Local Government Code [LGC] authorizes the Punong Barangay to negotiate, enter into, and sign contracts for and on behalf of the Barangay, upon authorization of the Sangguniang Barangay.<sup>55</sup> The prosecution argues that the act of accused-appellant in selling the dump truck donated to the Barangay without such authority is proof of bad faith.

Accused-appellant does not dispute the fact that he entered into a negotiated sale after two failed biddings, following the advice of Municipal LGU Officer Madali, without securing the proper authority from the Sangguniang Barangay.

The two failed biddings are shown in the resolutions by the Barangay Secretary dated October 17, 2006 to the effect that no bidder appeared for the auction sale of the dump truck. The RTC discussed these facts as follows:<sup>56</sup>

It is an admitted fact that two biddings failed as shown by the resolution issued by the Barangay Secretary showing that on October 17, 2006, no bidder appeared for the auction sale of the said dump truck. A

---

<sup>51</sup> RTC Records, Vol I, pp. 111-114

<sup>52</sup> *Id.* at pp. 2-3

<sup>53</sup> The 1987 Constitution, Article III, Section 14(2)

<sup>54</sup> *Feliciano v. People*, G.R. Nos. 219681-82 & 219747, March 18, 2021

<sup>55</sup> Chief Executive: Powers, Duties, and Functions - Negotiate, enter into, and sign contracts for and in behalf of the Barangay, upon authorization of the Sangguniang Barangay;

<sup>56</sup> Records, pp.58-59

g      i |

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 19 of 37

X-----X

second bidding was scheduled on November 13, 2006 and for this reason, a letter was sent by the accused to the State Auditor, Arcenia A. Sta. Lucia dated November 8, 2006 to witness the conduct of the auction sale on November 13, 2006 at 9:00 in the morning at Pag-asa Barangay Hall.

Another letter was sent by the accused to Ms. Sta [sic] Lucia dated November 15, 2006 informing her of the failed bidding and requested the State auditor to allow the accused to make a negotiated sale of the useless vehicle as the same has no use to the barangay considering its worthless state or value.

With no reply received from the COA, the accused proceeded to negotiate for the sale of the barangay property.

The COA also admitted that it inspected and appraised the dump truck in the amount of P67,000.00. These are undisputed facts stated in the Joint Affidavit of Herminda B. Bontor and Villarosa M. Abapo, some portions of which show:

**Paragraph 4.** Barangay Chairman Arthur B. Lontoc, in his letter dated August 7, 2006, requested for a Commission on Audit (COA) personnel to conduct inspection on the dump truck as the barangay council decided to have it sold for public auction due to its unserviceability (Annex D). The item was appraised by the Barangay Committee on Appraisal at P45,000 (Annex E – Equipment Appraisal Report).

**Paragraph 5.** On September 1, 2003, inspection and appraisal on the dump truck was conducted by Engr. Roldan A. Sabanal, Technical Audit Specialist of the Commission on Audit, Regional Technical Service Office, Region XI, Davao City and recommended for its disposal at an appraised value of P67,000. (See Annexes F1, F2 – transmittal letter and COA Appraisal Report).

**Paragraph 6.** Accordingly based on the COA Appraisal Report, the barangay scheduled for a public auction of the dump truck on October 17, 2006 per letter of invitation dated October 11, 2006 (Annex G). No bidders had participated in the first public auction conducted by the barangay on October 17, 2006, (Annex H – Minutes of Bidding) and so with the second public auction conducted on October 23, 2006.

The accused said that he followed the requirements necessary for the disposal of the unserviceable government property. First, the accused requested in his letter dated August 7, 2006 for inspection of the said vehicle for the purpose of having it sold at public auction. Second, an inspection was conducted and the property was valued at P67,000.00. Third, after its valuation, public biddings followed with letters informing the COA about it. Fourth, a letter was likewise sent by the accused, informing the COA about the failed biddings. Despite the issuance of said letter, the COA failed to respond.

If the negotiated sale pushed through without the knowledge of the barangay council or the Municipal council [sic], this was due, according to the accused, upon the advice of Mr. Madali.

r        ;        |

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 20 of 37

X-----X

The accused further said that he honestly believed, although mistakenly, that he can proceed to negotiate the property on his own without the authority of the council. He may not have acted in bad faith when he mistakenly relied on the advice of Mr. Madali, being the designated Municipal Government Officer-in-charge on barangay concerns.

The reliance by accused-appellant on the advice of Madali cannot constitute good faith. In his testimony, he admitted that Madali's advice was that if the two biddings failed, he can revert to direct negotiated sale.<sup>57</sup>

To be clear, accused-appellant could have followed the said advice while still complying with pertinent provisions of COA Circular No. 89-296 on the responsibility for property disposal or divestment, as follows:

**V. MODE OF DISPOSAL/DIVESTMENT:**

This Commission recognizes the following modes of disposal/divestment of assets and property of national government agencies, local government units and government-owned or controlled corporations and their subsidiaries, aside from other such modes as may be provided for by law.

**1. Public Auction**

Conformably to existing state policy, the divestment or disposal of government property as contemplated herein shall be undertaken primarily through public auction. Such mode of divestment or disposal shall observe and adhere to established mechanics and procedures in public bidding, viz:

- a. adequate publicity and notification so as to attract the greatest number of interested parties; (vide, Sec. 79, P.D. 1445)
- b. sufficient time frame between publication and date of auction;
- c. opportunity afforded to interested parties to inspect the property or assets to be disposed of;
- d. confidentiality of sealed proposals;
- e. bond and other prequalification requirements to guarantee performance; and
- f. fair evaluation of tenders and proper notification of award.

It is understood that the Government reserves the right to reject any or all of the tenders.

**2. Sale Thru Negotiation**

For justifiable reasons and as demanded by the exigencies of the service, disposal thru negotiated sale may be resorted to and undertaken by

---

<sup>57</sup> TSN dated September 14, 2018, pp. 13-14

1      2      3

the proper committee or body in the agency or entity concerned taking into consideration the following factors:

a. There was a failure of public auction. As envisioned in this Circular, there is failure of public auction in any of the following instances:

1. if there is only one offeror.

In this case, the offer or bid, if sealed, shall not be opened.

2. if all the offers/tenders are non-complying or unacceptable.

A tender is non-complying or unacceptable when it does not comply with the prescribed legal, technical and financial requirements for pre-qualification.

b. The negotiation may be conducted singly, i.e., on a one-on-one basis, or in group, provided that due communication between the offerors and the government is established with a view to ensuring that the government gets the best price.

c. To avert possible confabulation among unscrupulous parties, a record of the proceedings of the negotiation must be maintained.

d. It is understood that the price agreed upon at the negotiation shall not be lower than the floor price as fixed by the government or the highest offer submitted at the failed public auction whichever is higher.

Conformably to existing law and regulation, in the case of local government units, the Office of the Treasurer shall undertake the negotiated sale subject to approval by the proper Committee on Award. Where the acquisition or transfer cost of the property exceeds P5,000.00 in the case of provinces and cities, the approval of this Commission is required. In the case of municipalities, where the acquisition or transfer cost of the property is more than P3,000.00, the approval of the Provincial Auditor is required.

However, the lower court held that accused-appellant did not follow the legitimate 'Standard Operating Procedure' as embodied in the Commission on Audit's circular in the divestment or disposal of government property.<sup>58</sup>

The lower court reasoned:<sup>59</sup>

While other agencies of the government come up with their own procedure of divestment or disposal of unserviceable property, these procedures must conform with the procedures and requirements set forth by the Commission on Audit (COA). While sale by auction and negotiated sale are both allowed, agencies must still conform with the procedures with these modes of disposal. In all instances, the procedure must conform with COA

<sup>58</sup> Records, p. 62

<sup>59</sup> *Id.*

y 7.1

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 22 of 37

X-----X

procedures and approval.

The fact of failed bidding did not automatically give the said accused the blanket authority to sell the dump truck the way he did. The accused as a Barangay Captain for several years, knows or should have known that a barangay resolution **specifically granting him that authority for a negotiated sale** was necessary considering that what was subject for disposal was a government property. The approval of the Commission on Audit is also indispensable.

The Commission on Audit Circular No. 89-296 dated 27 January 1989 (Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries) provides for guidelines to local government units on how to dispose unserviceable property.

There is no question as to the unserviceability of the dump truck. Both parties had even stipulated on the two instances when bidding failed; hence, there would have been no complications had the procedure of putting into record the details, or at least, some kind of information of what was done to comply – even minimum compliance of the requirements of COA in the disposal of unserviceable property, is sufficient.

There is no cogent reason why accused-appellant should deviate from the process laid out in the COA Circular. Accused-appellant himself admitted during trial that the incident happened during his fourth term as barangay captain.<sup>60</sup> With his long-term experience as head of the barangay, this court presumes him to be familiar with the COA Circular.

He should have known that resorting to a negotiated sale necessitates a series of preparatory acts to support such mode of disposal. According to the COA Circular, a negotiated sale “may be conducted singly, i.e., on a one-on-one basis, or in group, provided that due communication between the offerors and the government is established with a view to ensuring that the government gets the best price.”<sup>61</sup>

Further, the said circular mandates that a record of the proceedings must be maintained to avert possible confabulation among unscrupulous parties.<sup>62</sup> However, accused-appellant, in this case was not able to show any record of the proceedings. As held by the lower court:<sup>63</sup>

In the instant cases, there was no record whatsoever that the accused complied with the Commission on Audit procedure in the disposal of property. After the communication he sent to the COA about the failed biddings, he went on with the sale but did not follow COA procedures which raised strong doubts on the regularity of the sale of the said barangay

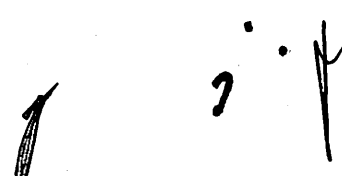
---

<sup>60</sup> TSN dated June 3, 205 p. 6504

<sup>61</sup> COA Circular 89-296, V (2)(b)

<sup>62</sup> COA Circular 89-296, V (2)(c)

<sup>63</sup> Records, pp. 63-64



**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 23 of 37

X-----X

property.

In the Audit Investigation Report submitted by the State Auditors of the investigation they conducted on 24-25 January 2007, it was duly established that on 7 August 2006, the accused sent a letter-request requesting the Commission on Audit to conduct inspection on the dump truck as the barangay council agreed during their session to have the said dump truck sold in a public auction because it was unserviceable. The barangay appraisal was at P45,000.00. On 1 September 2006, an inspection and appraisal was conducted by Technical Audit Specialist I of the Commission on Audit through Engr. Roldan A. Sabanal. The dump truck was appraised at P67,500.00.

**Exhibit 2** of accused Lontoc is the minutes of the 2 June 2006 Regular Session of the Barangay Council of Pag-asa where Item No. 9 in the agenda was about the auction sale of the dump truck. There were no details recorded but only that the auction sale was approved by the body present (**Records, Criminal Case No. 17262, Defense's Exhibit "2", page 520**). It can be inferred that this was the basis for the two biddings that were scheduled as mentioned earlier. But records showed that both biddings were declared a failure because no one submitted a bid for the dump truck. In open court, the accused admitted that after the failed biddings, he informed the field office of the COA in Davao del Norte (**Records, Criminal Case No. 17365, Letter to Ms. Sta. Lucia dated 15 November 2006, page 48**) and waited about a month before he looked for a buyer.

The minutes of the emergency barangay session dated **25 May 2007 (Exhibit 3)** was also offered and duly identified in open court. In said emergency session, the first item in the agenda was "A Resolution of Authority, Authorizing Brgy. Captain Arthur B. Lontoc, Jr. To Go on Direct Negotiated Sale and Signed (sic) Contract of Sale for and in behalf of Barangay Pag-asa." It was offered to prove that there was authority of the Barangay Council to sell the mini-dump truck on negotiated sale after the scheduled bidding failed.

The record shows however that the sale happened sometime in **November to December 2006**, just about a month after the failed biddings. The audit investigation took place sometime on **24-25 January 2007**. It can be gleaned from this sequence of events that the dump truck was already sold without the necessary authority to sell from the Barangay Council. The emergency barangay session dated **25 May 2007 (Exhibit 3)** which authorized the sale, came months after the complaint was filed with the Ombudsman and long after the sale was made. In other words, the emergency session was an afterthought after things got out of hand, meant to belatedly justify the action of the accused in order to exculpate him from his previous acts. (Citations omitted)

It is undeniable from the sequence of events as formed by the trial court that any attempt to secure the authority of the barangay council was only done to justify accused-appellant's resort to a negotiated sale after the fact.

Additionally fatal to his case is the fact that the emergency barangay meeting for the issuance of the authority to enter a negotiated sale was only

y . . f

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 24 of 37

x-----x

called after the case was already filed with the Ombudsman. Clearly, the negotiated sale of the dump truck was a *fait accompli* at that point in time.

Even how the sale was consummated shows a patently dishonest purpose on the part of accused-appellant. As the lower court found:<sup>64</sup>

Again, reviewing the testimony of Accused, as well as the documentary evidences [*sic*] of the Prosecution, there is no doubt that the accused sold the dump truck without authority with dubious manner in which the transaction was carried out based on the following:

- (1) issuance of a temporary receipt in the amount of P77,000.00;
- (2) the issuance of Official Receipt No. 0571773 which was questionably detached from the stub and was issued in the amount P45,000.00 with Ledinila Sibonga as payor for one (1) unit dump truck and dated 1 December 2006;
- (3) the duplicate and triplicate copies of the Official Receipt No. 0571773 dated 30 December 2006 but with the amount of P20.00 written on it with Josue Lontoc as payor for a barangay clearance.

Not only was a cash audit conducted. [*sic*] The State Auditors also looked into the allegation that the dump truck turned over to the barangay was no longer in the barangay; hence as a result of the audit, the accused, being the barangay captain has the overall responsibility to oversee and takes good care of its funds and property, was directed to explain the whereabouts of the dump truck.

It is clear therefore that evident bad faith attended in the negotiations and sale of the property without authority from the Council or from the COA.

Given the above findings, the sale of the dump truck was clearly attended with evident bad faith.

*Accused-appellant caused undue injury to the government.*

In *People v. Castillo*,<sup>65</sup> the Supreme Court held:

The third element refers to the two separate acts that qualify as violation of Section 3 (e) of R.A. No. 3019. The *first* punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The *second* punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of

<sup>64</sup> Records, p. 65

<sup>65</sup> G.R. No. 252173, March 15, 2022



**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 25 of 37

X-----X

the extent or *quantum* of damage is not thus essential. It is sufficient that the accused has given "unjustified favor or benefit to another."

xxx

A finding of "undue injury" in the context of Section 3 (e) of R.A. No. 3019 requires that the injury must be specified, quantified, and proven to the point of moral certainty.

In this case, the court notes that only having caused undue injury to the barangay was alleged in the information.

Jurisprudence defines "undue injury" as "actual damage."<sup>66</sup> The High Court further elaborated this in *People v. Villoria*,<sup>67</sup> as follows:

*Undue* has been defined as "more than necessary, not proper, or illegal"; and *injury* as "any wrong or damage done to another, either in his person, rights, reputation[,] or property; that is, the invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

The lower court found that accused-appellant caused undue injury to the government when he treated the proceeds of the sale as his private funds, to wit:<sup>68</sup>

It is undisputed that the accused through the Barangay Treasurer, received the money derived from the sale of the property, hence, the said proceeds for are part of public funds. The accused however, appropriated the proceeds for himself without depositing the same in the barangay funds.

The Investigation report of the COA reveals the following:

Accordingly, Marcelina Saligumba, Barangay Treasurer of Barangay Pag-asa, stated that sometime on [*sic*] December 2006, Barangay Chairman Arthur B. Lontoc [*sic*] Jr. gave her P45,000 representing the proceeds on the sale of the dump truck which she was hesitant and/or would not accept, but Barangay Chairman Lontoc insisted that it is only for safekeeping purposes. Barangay Chairman Lontoc told her not to issue an official receipt until the sale is approved by the COA. That Barangay Chairman Lontoc personally borrowed from her P3,000 twice or a total of P6,000 out from the P45,000. On January 2, 2007, Mr. Felixberto Getubig, Barangay Technician took the remaining amount of P39,000 from her as per instruction of Barangay Chairman Lontoc (Annex I – Acknowledgement Receipt). She further said that when she reported to office on January 3, 2007, she discovered that the original copy of Official

<sup>66</sup> *Llorente, Jr. v. Sandiganbayan*, G.R. No. 122166, March 11, 1998

<sup>67</sup> G.R. Nos. 247563 & 250517, February 8, 2023

<sup>68</sup> Records, pp. 65-67

**Decision**

*People vs. Lontoc, Jr.*  
SB-23-AR-0001 and 0002  
Page 26 of 37

X-----X

Receipt (AF 51) No. 0751773 was already detached from the stub and only the duplicate and triplicate copies of the receipt remained. That she inquired from her officemates regarding the matter but nobody replied. Mr. Lontoc got the stub and readily filled-up the duplicate and triplicate copies of the receipt indicating collection of barangay clearance amounting to P20.00 (Annex J – Affidavit and Annex K & L – duplicate and triplicate copies of Official Receipt No. 0751773)

Ms. Marcelina Saligumba reiterated in her testimony in Court admitting the receipt of P45,000.00 as payment for the dump truck sold to Mr. Sibonga.

xxx

In his affidavit dated 17 April 2007, which he identified in the course of his testimony, Mr. Sibonga said that the difference of P32,000.00 (between the P77,000.00 he paid to accused and the P45,000.00 in the official receipt) was given as “Standard Operating Procedure.”

Such transaction entered into by the accused is grossly disadvantageous to the government as the same was appraised by the COA in the amount of P67,000 but only P45,000.00 was given to the Barangay Treasurer. The said amount was even improperly withdrawn by the accused for his personal whims and caprices as testified by the Barangay Treasurer causing undue injury to the government.

Notwithstanding the fact that the dump truck which used to be unserviceable has been repaired and is still in the possession of the barangay, cannot in anyway exonerate the accused from the crime charged.

The undue injury caused to the government in this case is palpable in the fact that the **full price** for which the dump truck was sold was not remitted to the coffers of the barangay. As proved by the handwritten receipt, the dump truck was sold for P77,000.00, however only P45,000.00 was officially recorded.

In addition, after remitting the amount of P45,000.00 to the Barangay Treasurer, accused-appellant later withdrew the same twice. Barangay Treasurer Saligumba testified as follows:<sup>69</sup>

Q: After receiving that P45,000.00, what happened to that P45,000.00?

A: I kept it, sir.

Q: Where is the P45,000.00 now?

A: It was withdrawn, sir.

Q: Who withdrew it?

---

<sup>69</sup> TSN dated March 7, 2012, pp. 10-13

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 27 of 37

X-----X

A: Barangay captain [*sic*] Lontoc, sir.

Q: The accused in this case?

A: Yes, sir.

Q: Kindly inform the Honorable Court how P45,000.00 was withdrawn?

A: At first sir, barangay captain Arthur B. Lontoc and Rudy Mirafuentes went to the house and borrowed P3,000.00 because according to him the child of Rudy got sick and he wanted to borrow P3,000.00. And according to him he will just pay it immediately.

Q: Did you release the money to the accused?

A: Yes, sir.

Q: After that what happened?

A: Felix Getubig, our barangay technician went to see me and borrowed P3,000.00.

COURT:

(To the witness)

Q: Who went to you? Felix Getubig or the accused Lontoc?

A: It was Felix Getubig, Your Honor.

Q: How much was released?

A: P3,000.00.

Q: What was the purpose?

A: According to Felix Getubig, the barangay captain will use the money.

COURT:

(To Atty. Tiu)

Proceed

ATTY. TIU:

Q: After that what happened next?

A: On January 2, 2007, it was the burial of my grandmother. Felix Getubig went to the cemetery to see me.

Q: What was the purpose?

A: To borrow money, sir.

1 2 1

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 28 of 37

X-----X

COURT:  
(To the witness)

Q: Who borrowed the money?

A: Felix Getubig, Your Honor.

Q: How much was borrowed?

A: I gave the remaining P39,000.00 to Felix Getubig because my husband is angry because Felix Getubig kept on bothering seeing [*sic*] me to borrow money.

ATTY. TIU:

Q: What was the purpose of Felix Getubig in borrowing money from you?

A: According to Getubig, he was ordered or requested by Arthur Lontoc.

The above testimony of Barangay Treasurer Saligumba was not disputed by accused-appellant based on the ruling of the lower court, as follows:<sup>70</sup>

The accused failed to rebut the testimonies of the [*sic*] Ms. Marcelina R. Saligumba, the Barangay Treasurer of the Barangay Pag-asa that such money was taken by the Barangay Captain and appropriated it for personal reasons and Mr. Felix N. Sibonga who testified that he in fact paid the amount of P77,000.00. The accused insists that he merely received the amount of P45,000.00 which he received together with Ms. Saligumba. Notwithstanding the same, he cannot explain why he had to refund Mr. Sibonga the amount of P150,000.00 if indeed he received only the amount P45,000.00. He can just return the amount of P45,000.00 deposited by him and Mr. Sibonga with the Barangay Treasurer. Why go to the extent of paying from his own pocket the amount of P150,000.00?

It was established that the proceeds from the sale of the dump truck were never remitted to the barangay, thereby causing undue injury to it. Even assuming *arguendo* that P45,000.00 was remitted to the barangay by virtue of giving the same to the barangay treasurer, such price is lower than that appraised by the COA, which is P67,000.00. The amount remitted to the barangay was clearly disadvantageous to the government.

In *People v. Crisologo*, undue injury was found when the accused sold spare parts at a lower price, to wit:<sup>71</sup>

There is no denying that Wingtips unduly benefited from the questioned transactions. It procured the subject spare parts at much lower prices than warranted. To put it bluntly, the spare parts were sold to Wingtips for a song. These sale transactions undoubtedly caused undue injury to the government. Again, the government could have

---

<sup>70</sup> Records, pp. 71

<sup>71</sup> G.R. No. 253327, June 27, 2022

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 29 of 37

X-----X

earned millions — P7,489,868.50 — from these transactions, yet, because of Crisologo and Manlavi's evident bad faith, manifest partiality, and gross negligence, the government was made to settle for a measly sum of P849,510.22 way below the sum paid by the government for the purchase of these brand new items.

From the foregoing, having found all elements of the crime present, this court finds that the conviction of accused-appellant by the lower court for violating Section 3(e) of R.A. 3019 was warranted.

**II. SB-23-A/R-0002 – For  
Malversation under Article  
217 paragraph 4 of the  
Revised Penal Code**

-----

Accused-appellant was also charged with Malversation. The essential elements common to all acts of malversation under Article 217 of the RPC are the following:<sup>72</sup>

- (a) That the offender be a public officer;
- (b) That he had the custody or control of funds or property by reason of the duties of his office;
- (c) That those funds or property were public funds or property for which he was accountable; and
- (d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

*Accused-appellant Lontoc was  
barangay captain at the time the  
crime was committed.*

Accused-appellant was a public officer at the time the crime was committed. This was also stated by the RTC, thus:<sup>73</sup>

Again, there is no doubt that accused Arthur B. Lontoc, Jr. is a public officer. Records show that accused was the Barangay Captain when the instant cases filed.

*Lontoc had custody of the dump  
truck and by virtue of his office  
was accountable therefor.*

An accountable officer is one who, by reason of the duties of his office, is accountable for public funds or property.<sup>74</sup> In *Arriola v. Sandiganbayan*, the

<sup>72</sup> *People v. Pimentel*, G.R. Nos. 251587-88, June 15, 2022

<sup>73</sup> Records, p. 70

<sup>74</sup> *Magaso v. Commission on Audit*, G.R. No. 219425, January 10, 2023

1  
2  
1

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 30 of 37

X-----X

Supreme Court, in ruling that a barangay captain is an accountable officer held that:<sup>75</sup>

An accountable officer under Article 217 is a public officer who, by reason of his office is accountable for public funds or property. Sec. 101 (1) of the Government Auditing Code of the Philippines (PD No. 1445) defines accountable officer to be every officer of any government agency whose duties permit or require the possession or custody of government funds or property and who shall be accountable therefor and for the safekeeping thereof in conformity with law.

In the determination of who is an accountable officer, it is the nature of the duties which he performs — and not the nomenclature or the relative importance the position held — which is the controlling factor.

As Barangay Captain, Lontoc is responsible for properties, including the dump truck - acquired by the barangay, and the ₱77,000.00 he received as proceeds from its sale.

Accused-appellant was accountable for the donated dump truck that was turned over to the barangay. This accountability was thoroughly considered by the court of origin in its decision:<sup>76</sup>

xxx... In his testimony, he also admitted that he was the barangay captain of Barangay Pag-asa, Kapalong, Davao del Norte, when the cases were filed and when he testified. In fact, he was on his fourth term as Barangay Captain of Barangay Pag-asa. As such, he is an accountable officer as defined in the Local Government Code. By reason of his being the head of the barangay, he is accountable and responsible for barangay funds/property because of his participation in the use or application thereof.

By virtue of Sangguniang Bayan Resolution No. 121 dated 29 August 2001 (**Records, Criminal Case No. 17365, Prosecution's Exhibit "Q", page 240**), a dump truck was transferred without cost to Barangay Pag-asa, Kapalong, Davao del Norte. It was received on **5 November 2001** by Wilson L. Galaura, as Receiving Accountable Officer (**Records, Criminal Case No. 17365, Prosecution's Exhibit "F", page 223**). While it was Kagawad Galaura who was recorded as receiving accountable officer, the dump truck has become the responsibility of the barangay, and as head of the barangay, the barangay captain's responsibility.

Here the accused failed to fully account for the money derived from the sale of the vehicle at the time of the incident. The law creates a presumption that mere failure on the part of an accountable officer to produce the funds which have come into his hand on demand by an officer duly authorized to examine his account is prima facie evidence of conversion.

---

<sup>75</sup> G.R. No. 165711, June 30, 2006

<sup>76</sup> Records, p. 70

Handwritten marks at the bottom right of the page, including a large '7' and other scribbles.

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 31 of 37

X-----X

*Lontoc sold the dump truck and misappropriated the proceeds therefrom.*

Through documentary evidence, particularly a handwritten receipt – Exh. A, the prosecution was able to establish that accused-appellant received ₱77,000.00 from Elmer Sibonga as payment for the dump truck. However, only ₱45,000.00 was remitted to the barangay treasurer.

In his brief, accused-appellant claims that this remittance negates the claim that he misappropriated such funds. His argument fails to persuade because it was also established that the proceeds were also withdrawn in a staggard manner from the barangay treasurer. The barangay treasurer's testimony<sup>77</sup> on the matter was quoted in the discussion above. Thus, we agree with the RTC when it held that:<sup>78</sup>

The accused failed to rebut the testimonies of the Ms. Marcelina R. Saligumba, the Barangay Treasurer of the Barangay Pag-asa that such money was taken by the Barangay Captain and appropriated it for personal reasons and Mr. Felix N. Sibonga who testified that he in fact paid the amount of P77,000.00. The accused insists that he merely received the amount of P45,000.00 which he received together with Ms. Saligumba. Notwithstanding the same, he cannot explain why he had to refund Mr. Sibonga the amount of P150,000.00 if indeed he received only the amount P45,000.00. He can just return the amount of P45,000.00 deposited by him and Mr. Sibonga with the Barangay Treasurer. Why go to the extent of paying from his own pocket the amount of P150,000.00?

Clearly, the proceeds of the sale were never put under the control of the barangay. Unrebutted testimonial and documentary evidence duly support the conclusion of the RTC that the same was misappropriated for personal use by herein accused-appellant.

*Demand is not necessary in malversation.*

Accused-appellant claims that there was no demand for the return of the alleged misappropriated amount. He believes that the demand letter made by COA was only to produce the dump truck. Further, he points out that the receipt of the letter by him was not established. Thus, he concludes that the essential elements of misappropriation and demand letter for the crime of violation of Article 217(4) of the Revised Penal Code do not exist in this case.

The argument of accused-appellant is misplaced.

---

<sup>77</sup> TSN dated March 7, 2012

<sup>78</sup> Records, p. 71

j i f

The last paragraph of Article 217 of the Revised Penal Code reads:

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.

From the above, it is clear that non-compliance with the demand only gives rise to a *prima facie* evidence of malversation. It is not, however, a requisite in the commission of such. The Supreme Court in *Venezuela v. People*<sup>79</sup> clearly stated that:

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.** 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 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. (Emphasis supplied)

In this case, there is no merit in accused-appellant's argument that demand is necessary and the lack thereof exculpates him from the crime of malversation. From the above quoted case, the requirement that COA should make the demand and for him to receive such to establish his culpability has no basis in law and jurisprudence.

Thus, we find that all elements of the crime of malversation were found to have been established by the prosecution and supported by evidence. Accused-appellant's guilt was indeed proven beyond reasonable doubt.

*Restitution is not a ground for acquittal.*

Accused-appellant contends that since he returned the dump truck to the barangay, he should not have been found criminally liable. He states that he refunded the amount of ₱150,000.00 to Felix Sibonga, which represents the value of the repairs made on the dump truck. Thus, accused-appellant concludes that the sale did not materialize and the dump truck was returned to the possession of the barangay.

---

<sup>79</sup> G.R. No. 205693, February 14, 2018

7



**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 33 of 37

X-----X

These arguments by accused-appellant are vain attempts to exculpate himself from criminal liability. We agree with the RTC when it held that:<sup>80</sup>

In his desperation, the accused said that the dump truck, duly repaired, was returned to the Barangay after he refunded Mr. Sibonga the amount of One Hundred Fifty Thousand (P150,000.00) out of his own money. The Barangay was even benefitted from the return of the vehicle barangay.

The Supreme Court, however, in one case said that full restitution of the property is not a ground to acquit the accused from the crime charged simple because payment does not extinguish criminal liability. (*Citations omitted.*)

In *Manuel v. Sandiganbayan*,<sup>81</sup> the Supreme Court had the opportunity to clarify that restitution in malversation does not exculpate an accused, thus:

It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. At most, then, payment of the amount malversed will only serve as a mitigating circumstances akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code.

We recognize, however, that possession of the dump truck was returned to the barangay, as found by the RTC.<sup>82</sup> Even Felix Sibonga in his testimony admitted that accused-appellant already paid him P90,000.00, as partial payment for the return of the dump truck and reimbursement for expenses incurred for its repair.

Nevertheless, the payment, indemnification, or reimbursement of, or compromise on the amounts or funds malversed or misappropriated, after the commission of the crime may be credited in his favor as a mitigating circumstance analogous to voluntary surrender.<sup>83</sup>

Hence, since it cannot be denied that the dump truck was indeed returned to the barangay, we can consider this fact as a mitigating circumstance in favor of accused-appellant.

---

<sup>80</sup> Records, pp. 72

<sup>81</sup> G.R. Nos. 158413 & 161133, February 8, 2012

<sup>82</sup> Records, p. 75

<sup>83</sup> *People v. Dapitan*, G.R. No. 253975, September 27, 2021

J i y

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 34 of 37

X-----X

**Penalty**

After thorough review of the records of this case, the evidence presented in the lower court, and the arguments put forth by the parties in their respective briefs, this court resolved to **affirm** the RTC's conviction of the accused-appellant for violation of section 3(e) of R.A. No. 3019 in Criminal Case No. 17262 and for malversation in Criminal Case No, 17365.

Having no deviation from the RTC's ruling, we quote the lower court's discussion of the penalty meted to accused-appellant:<sup>84</sup>

As to the penalty for REPUBLIC ACT NO. 3019 or the ANTI-GRAFT AND CORRUPT PRACTICES ACT, as amended, the penalty under Section 9 of the same law provides:

Section 9. Penalties for violations. – (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

On the other hand, Article 217 of the Revised Penal Code reads:

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:

xxx

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. (Emphasis supplied)

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. (As amended by RA 1060).

With the advent of RA 10951, the penalty for Malversation reads:

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

---

<sup>84</sup> Records, pp. 80-81

1 2 |

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002

Page 35 of 37

X-----X

“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 misappropriate  
or shall consent, through abandonment or negligence, shall permit  
any other person to take such public or property, wholly or  
partially, or shall otherwise be guilty of the misappropriation or  
malversation of such funds or property, shall suffer:

XXXX

“2. The penalty prison 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

Since the amount involved herein is ₱77,000.00, the  
penalty that should be imposed is *prison mayor* in its minimum  
and medium periods, or a prison term of six years and one day to  
ten (10) years. There being no aggravating circumstance and  
taking restitution as a mitigating circumstance in the instant case,  
and applying the indeterminate Sentence Law, the prescribed  
penalty is within the range of prison mayor in its minimum and  
medium periods or 6 years and one (1) day to 10 years.  
Considering that there is only one mitigating circumstance present  
in the commission of the act, the imposable penalty is in the  
minimum period or 6 years and 1 day to 7 years and 4 months.  
Applying the Indeterminate Sentence Law, the minimum should  
be within the range of *prison correccional* in its medium and  
maximum periods or 2 years, four months and 1 day to six years.

The RTC correctly imposed the penalty of imprisonment for six years  
and one month, as minimum to seven years, as maximum with perpetual  
disqualification from public office for violation of Sec. 3(e) of R.A. 3019.

As to the crime of malversation, the lower court correctly considered  
Sec. 40 of R.A. No. 10951, which amended Art. 217 of the Revised Penal  
Code, as amended further by R.A. No. 1060. The RTC imposed the penalty  
of imprisonment of three years, six months, and 21 days, as minimum, to six  
years and one day, as maximum. The court also correctly imposed a fine of  
₱77,000.00, which is the amount malversed pursuant to R.A. No. 10951.

This court notes though that the RTC failed to mention the accurate  
indeterminate penalty imposed under the RPC. However, a review of the  
sentence imposed reveals that the lower court imposed the correct range of  
penalty, which is *prison mayor* in its minimum period, as minimum, and  
*prison mayor* in its medium period, as maximum, in accordance with Sec. 40  
of R.A. No. 10951. Thus, we find no error in the imposition of the penalty by  
the RTC.

1      2      1

**Decision**

*People vs. Lontoc, Jr.*

SB-23-AR-0001 and 0002


Page 36 of 37

X-----X


**WHEREFORE** the appeal is **DENIED** for lack of merit. The August 19, 2022 Decision of the RTC (Branch 1), Tagum City, Davao del Norte, finding accused-appellant **Arthur B. Lontoc, Jr. GUILTY** beyond reasonable doubt of the violation of section 3(e) of R.A. No. 3019 in **Criminal Case No. 17262** and for malversation in **Criminal Case No. 17365** is hereby **AFFIRMED in toto**.


**SO ORDERED.**

Quezon City, Philippines.

  
**ZALDY V. TRESPESES**  
*Associate Justice*

WE CONCUR:

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

  
**GEORGINA D. HIDALGO**  
*Associate Justice*

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation, after deliberations were held in compliance with Section 1, Rule IX of the 2018 Internal Rules of the Sandiganbayan, before the case was assigned to the writer of the opinion of the Court's Division.

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
*Associate Justice, Chairperson*

## CERTIFICATION

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

7.

1