



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASE NO. 16236
For: Malversation of Public Funds

CELSO TAN FUENTES, ET AL.
Accused.

Present:

DE LA CRUZ, J., *Chairperson*
ECONG, J.
CALDONA, J.

Promulgated on:

November 16, 2018 *BC*

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DECISION

DE LA CRUZ, J.

Accused Celso Tan Fuentes stands charged for Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code. The accusatory portion of the Amended Information against him reads:

That on or about November 24, 1989 or subsequent thereto, in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, accused Celso Fuentes y Tan, a public officer, being then a Disbursing Officer II of the Probation Administration, assigned at Regional Office No. X thereof, located at Cagayan de Oro City, who, by reason of his duties as such, was accountable for public funds entrusted to his official custody, with grave abuse of confidence and conspiring with Maximo C. Bernal, Jr., Director of the Regional Office aforesaid, did then and there wilfully, unlawfully and feloniously take away, embezzle and misappropriate the sum of FIFTY ONE THOUSAND FOUR HUNDRED EIGHTY-ONE PESOS AND NINETY-NINE CENTAVOS (P51,481.99), Philippine Currency,

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from said funds, which the two accused, pursuant to their conspiracy, converted to their personal use and benefit to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.

THE ANTECEDENTS

This case stemmed from an (original) Information filed by the Office of the Ombudsman (OMB) on November 5, 1990, against the accused for Malversation of Public Funds.

On November 21, 1991, the accused entered a plea of "Not Guilty" to the charge against him. Subsequently, he moved for a reinvestigation implicating his then co-accused Regional Director Maximo C. Bernal in a *Counter-Affidavit*, dated September 20, 1991, and further prayed that his previous plea of "Not Guilty" be set aside. With the concurrence of the prosecution and in order to shed light on the alleged complicity of Bernal, the Court granted the motion for reinvestigation in an Order, dated March 12, 1991.¹ Later, pursuant to the reinvestigation, the OMB filed the present Amended Information, impleading Bernal.

On December 2, 1992, Bernal filed a Motion for Reinvestigation, citing an *Affidavit* said to have been executed by the accused on November 12, 1992, repudiating the accused's earlier statements against Bernal. In its Resolution, dated December 15, 1992, the Court did not allow further reinvestigation, "[u]nless the Ombudsman himself shall consider relevant the alleged recantation by accused Fuentes that accused Bernal had nothing to do with the malversation for which both accused are charged."² Bernal was then arraigned on February 8, 1993 pleading "Not Guilty" to the charge under the Amended Information.³

In an Order, dated November 22, 1993, this case as against accused Fuentes was ordered archived for his continued failure to appear at the arraignment.⁴

¹ Records, Vol. 1, p. 79

² Id., p. 197

³ Id., pp. 210-211

⁴ Id., p. 319

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On March 28, 1994, the Court discharged Bernal from the instant Information in view of the recantation of accused Fuentes, and the prosecution's Motion to Dismiss, dated March 17, 1994.⁵

On March 28, 2017, accused Fuentes appeared in Court and the present case was ordered revived.⁶

Upon arraignment on April 20, 2017, the accused entered a plea of "Not Guilty" to the Amended Information against him.⁷

At the pre-trial,⁸ the parties stipulated on the following facts:

1. Accused Fuentes was the Disbursing Officer II of the Probation Administration Office, Regional X, Cagayan de Oro City, at the time material to this case.

2. Disbursing Officer II is classified as a position lower than Salary Grade "27" under the Compensation and Classification Act of 1989 (R.A. 6758).

3. The parties also stipulated on the tenor of the testimonies of the prosecution's intended witnesses, as appearing on page 7⁹ of the Court's Pre-Trial Order.¹⁰

The parties likewise agreed that the issues to be resolved are:

⁵ *Id.*, p. 340

⁶ *Id.*, p. 363

⁷ *Id.*, p. 376

⁸ Pre-trial Order, dated June 5, 2017, Records, Vol. 1, pp. 398-405

⁹ The testimonies of the following prosecution witnesses were dispensed with in view of the stipulation made by the defense on the tenor of their testimonies, to wit:

i. Records Officer, Parole and Probation Administration (PPA), Regional Office X, Cagayan de Oro City – dispensed with in view of the stipulation of the defense on the existence of the documents coming from their office, which are mere photocopies.

j. Virgilio L. Mendez (NBI) – dispensed with in view of the stipulation of the defense that this witness administered the oath of Robin Aban and the accused in the documents respectively marked as Exhibits D and F

k. Atty. Virgilio Galarita – dispense with in view of the stipulation of the defense that this witness was the counsel who assisted the accused in the execution of Exhibits E and F

l. Atty. Noel Beja – dispensed with in view of the stipulation of the defense that this witness was the counsel who assisted the accused in the preparation of his affidavit marked as Exhibit Y

m. Representative, Civil Service Commission (CSC) – dispensed with in view of the stipulation of the defense that this witness can identify the decision in the administrative case against the accused, marked as Exhibit U, and the defense's stipulation on the authenticity and due execution of the document mentioned

n. Ricardo Dolfo (PPA) – dispensed with in view of the stipulation as to the genuineness and due execution of Exhibit I and J.

¹⁰ Please see Note 8, Records, Vol. 1, p. 404

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As proposed by the plaintiff

- Whether the accused is liable for violation of Article 217 (Malversation of Public Funds) of the Revised Penal Code, as alleged in the information.

As proposed by the accused

- Whether the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code was committed; and
- Whether accused Fuentes committed the crime of Malversation of Public Funds as charged.

Thereafter, trial on the merits ensued.

EVIDENCE FOR THE PROSECUTION

The prosecution presented its lone witness, Virgilio Mendez, whose testimony on direct was summarized in the Court's Resolution, dated February 26, 2018,¹¹ in this wise:

[A]t the time material to the case, he was an Agent of the NBI Regional Office No. X in Cagayan de Oro City. Sometime in December 1989, the NBI conducted an investigation regarding the missing amount of more or less ₱51,000.00 from the Probation Administration Regional Office No. X. The investigation was prompted by a request from its Regional Director. The NBI recommended the prosecution of Celso Fuentes for malversation to the Office of the City Prosecutor. Mendez testified that he assisted in the investigation. Specifically, the sworn statement of Robin Aban, and the supplementary sworn statement of accused Celso Fuentes were subscribed and sworn to personally by affiant Aban and accused Fuentes before witness Mendez, as the administering officer. According to Mendez, he was present when the accused made an admission in the NBI office that he was the one who took the missing money. Mendez likewise testified that he witnessed the turnover of the missing funds by the accused, with the first partial turnover of ₱34,000.00 made on January 23, 1990, and the second turnover on February 14, 1990 in the amount of ₱17,482.00. It was during the first turnover that the accused subscribed and swore to his Supplementary Sworn Statement

¹¹ *Id.*, pp. 515-524

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before Mendez, while on the second turnover, Mendez was the one who signed the receipt for and in behalf of NBI Director Chan.¹²

After the completion of Mendez' testimony on January 9, 2018, the prosecution formally offered in open court its documentary exhibits, all of which the Court admitted in evidence.¹³ The accused moved for leave to file demurrer to evidence which was granted by this Court.

On January 18, 2018, the accused filed a *Demurrer to Evidence*, dated January 16, 2018. In a Resolution of February 26, 2018,¹⁴ the Court denied the accused's demurrer to evidence. The accused moved for the reconsideration of the denial of his demurrer to evidence, but the same was denied in the Court's Resolution, dated May 28, 2018.¹⁵

With the denial of his motion for reconsideration of the Court's February 26, 2018 Resolution, the accused proceeded to present evidence on his behalf.

EVIDENCE FOR THE DEFENSE

The defense presented the accused as its only witness.

By way of a Judicial Affidavit,¹⁶ the accused testified that in December 1986, he was hired as a Disbursing Officer of the Regional Probation Office X in Cagayan de Oro City. As such, he processed the voucher claims for rental, telephone bills and other operational expenses of the 14 field offices of Regional Probation Office X before they were submitted to the Central Office for payment. The payment for operational expenses were directly mailed to the respective field offices.

In 1987, vouchers for payment of salaries were also processed by the Regional Office and submitted to the Central Office in Manila for payment. At this time, he was still the Disbursing Officer of the Regional Probation Office X, but he applied for the position of Probation Inspector so that he could be

¹² *Id.*, Judicial Affidavit, dated October 4, 2017, pp. 442-476

¹³ Records, Vol. I, p. 485

¹⁴ *Id.*, pp. 515-524

¹⁵ Records, Vol. II, pp. 23-26

¹⁶ Dated July 19, 2018, Records, Vol. II, pp. 40-56

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assigned in Misamis Oriental which was nearer to his family. He was only renting a room in Cagayan de Oro City and would usually go home during weekends and payday to Clarin, Misamis Oriental, to be with his wife and children who were then living with his parents. The Central Office, however, denied his application.

In his desire to be with his family, he requested Regional Probation Officer Maximo C. Bernal, who was his relative by affinity (the elder brother of his brother-in-law is married to the sister of Bernal), to designate him to perform functions other than as a Disbursing Officer. His request was approved, and Bernal designated him as Technical Property Inspector.¹⁷ As Technical Inspector, he was tasked to conduct inspection of typewriters needed for repairs, and the PLDT concerns of the field offices. It would take him almost a week to do his additional task before he could report back to his work station at the Regional Office.

In 1988, salaries of the field and regional offices were already paid at the Regional Office through checks. With this new payment scheme, the volume of transactions of the finance section of the Regional Office increased and hence, the preparation of checks for each employee every 15th and 30th of the month was added to the workload of the Regional staffs. Thus, upon the recommendation of Resident COA Auditor of the Regional Office, it was decided that the payment of salaries would be done through cash advance either by the Regional Probation Officer, the Assistant Regional Probation Officer, or the Disbursing Officer. The corresponding vouchers and payrolls would be prepared every salary period.

He was the one who disbursed the salaries. In the case of the field offices, the employees would go to the Regional Office to get and sign the payroll, and these employees would be the one to give the salaries to their co-employees. As to the 4 field offices in Misamis Oriental, he was authorized to personally bring the salaries to the employees there. He would let the employees sign an acknowledgment receipt which would be attached to the liquidation reports of the cash advances. The unclaimed salaries would be left with the Regional Office through Bernal. After all the employees had received their respective salaries, the liquidation voucher would then be prepared to liquidate the cash advances.

¹⁷ Exhibit 1 (Special Order No. 19, 5, '88, dated March 14, 1988)

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On November 23, 1989, a Thursday, after preparing the payroll and voucher in Cagayan de Oro City for the salary and COLA of the employees of the regional and field offices for the period November 16-30, 1989, a cash advance check for ₱114,000.00 was drawn in his name, as disbursing officer.

After encashing the check in the morning, he gathered the pay envelopes containing the salaries and COLA of the employees of the 4 field offices of Misamis Oriental, to be delivered by him to the said employees. The salaries and COLA of the Regional Office and other field offices were left with Bernal so that they could be claimed by the employees concerned.

The accused arrived at the Ozamis City Probation Office in Misamis Oriental at almost 5:00 in the afternoon. Some of the employees were waiting for him being informed ahead through telephone that he would be coming to bring their salaries. After distributing the salaries to the employees and having them signed the acknowledgment receipt, he immediately went home.

The next day, November 24, 1989, a Friday, he went to Oroquieta City Probation Office and Misamis Occidental Probation Office to inspect their typewriters, and get the employees' claim vouchers for their telephone bills and travelling expenses.

During the weekend, he, with his family, went to the beach. It was then that he got sick, so, he went to Bernal's residence to inform the latter that he could not report for work the following Monday, November 27, 1989. Bernal approved his request for sick leave.¹⁸

At about lunch time of November 27, 1989, an employee from Ozamis City Probation Office went to his residence, informing him that Bernal had called up by long distance to tell him that the Regional Office in Cagayan de Oro was burglarized by an unknown person for an undetermined amount. He immediately went to the Ozamis Probation Office and called Bernal, who confirmed what the employee told him, and who asked him to report to the Regional Office the following day, Tuesday, so he could help in determining how much money was taken.

¹⁸ Exhibit 2

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Although unwell, he went to the Regional Office at around 11:00 in the morning. He was told by his co-staff that when they reported for work the day before (Monday), they observed that the accused's table was very messy and in disarray, and the safe of the steel cabinet was already opened. He was also told that the incident was already reported to the Cagayan de Oro City Police Station, and the same was investigated and the police was on follow-up operations.

Upon checking, he found that the salaries and COLA for the 6 field offices, namely: Surigao City Probation Office, Surigao del Norte Probation Office, Agusan del Norte Probation Office, Butuan City Probation Office, and Gingoog City Probation Office, had not yet been claimed. From his examination, the total unclaimed amount was ₱51,481.99.

The COA Resident Auditor told him to make a report that the amount was lost through burglary so that another cash advance could be drawn to pay the salaries and the COLA of the said 6 field offices. The Auditor likewise said that the amount of ₱51,481.99 would remain as his outstanding cash advance, subject to liquidation because the same was drawn in his name, until the investigation had been completed. Since it appeared that he had an unliquidated cash advance, the succeeding cash advance would be drawn in the name of either Bernal or the Assistant Regional Probation Officer.

In the early part of January 1990, he heard that there was a recruitment for Patrolman and Fireman for the different police stations and fire stations in Region X. Wanting to work near his family, he applied as fireman for Ozamis City Fire Station. In order that he could transfer, he tendered his resignation as Disbursing Officer.

He could not be cleared by the Regional Office X because of the pending investigation regarding the burglary that happened. Thus, upon the advice of Bernal and the Auditor, he returned the money to the NBI office in two tranches—on January 23, 1990 and February 14, 1990. The accused had to borrow from Bernal, his in-law, and his parents to come up with the amount. After that, he prepared the liquidation papers for his cash advance. Thereafter, his resignation as Disbursing Officer was approved effective

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January 31, 1989, and he was given a Certification and Clearance Certificate¹⁹ showing that he was free of any accountabilities in relation to his position as Disbursing Officer.

After he was cleared, his application for Fireman was approved and his name was included in the list of newly absorbed/appointed Patrolman/Fireman of Regional Command 10 effective April 18, 1990.²⁰

In November 1990, he learned from his previous co-employees that there was a pending case against him at the Sandiganbayan, First Division, for Malversation of Public Funds. After personally verifying the matter, he posted a bail and later, was arraigned.

The accused resigned from his work as a Fireman in January 1991, in order to take care of his late mother and his three young children in the absence of his wife who left to work abroad.

In September 1992, Bernal went to his house in Clarin and told him that his case in the Sandiganbayan had not been dismissed yet, and that Bernal was included as an accused in an Amended Information. But, Bernal told him not to worry because he had some connections in the OMB. Bernal also told him that if he would receive a subpoena, he should just ignore it because Bernal would settle the case and it would be eventually archived and dismissed.

In November 1992, Bernal gave him a photocopy of an Order of the First Division of this Court archiving this case. Bernal likewise assured him that he would take care of the alias warrant issued against him (the accused). Believing Bernal, he thanked him for helping with his case.

On March 22, 2017, he went to the Sandiganbayan to check on the status of his case as he was planning to take the bar examinations. He learned that his case was still pending and he had a standing warrant of arrest. Thus, he posted a bail for his provisional liberty.

¹⁹ Exhibits 3 and 3-A

²⁰ Exhibits 4 and 5 (Special Orders)

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He denied that he appropriated or misappropriated the money of ₱51,481.99, claiming that he entrusted the money to Bernal on November 24, 1989. He likewise denied having executed, or at least having read the January 9, 1990 and January 23, 1990 sworn statements when he signed them. He may have turned over the money to the NBI not because he took it, but for the reason that he wanted to be cleared of accountabilities to facilitate his transfer from the Probation Office to the Ozamis City Fire Department.

He recalled that he was invited to go to the NBI on January 9, 1989 to shed light on the burglary incident. While in the NBI office, he was surprised to be told by an NBI personnel that he was a suspect for the loss of the money. He was further told to just turn over the money and sign a statement so that the NBI would not pursue any criminal action against him. The statement would show his sincerity on his commitment to reimburse the amount. About an hour later, he was presented with a document and he signed it without reading, believing that it did not contain anything against him.

On January 23, 1990 and February 14, 1990, he went to the NBI office to reimburse the money. On the former date, he was again presented with another document which he signed without reading. He did not bother to read it anymore because he believed that the document did not contain anything against him as he already promised to reimburse the full amount, aside from the fact that it was pointless, with the assurance that he would not be criminally charged.

THE FACTS

From the admissions and stipulations made by the parties, and their testimonial and documentary evidence, the Court finds the relevant facts narrated below.

Accused Fuentes was the Disbursing Officer II of the Probation Administration Regional Office (PARO) X, Cagayan de Oro City, at the time material to this case. His duties include disbursing of salaries of the employees of the PARO and its field offices.

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On November 23, 1989, a Thursday, a check²¹ payable to the accused in the amount of ₱114,203.55, and covered by a corresponding voucher,²² was drawn for the payment of the salaries of the employees of PARO X and its field offices for the period November 16-30, 1989.

On November 27, 1989, a Monday, an employee of the PARO X (located at 9 Eschem St., Cagayan de Oro City), discovered that the safety vault where office money was supposedly kept was forcibly opened. The accused confirmed that ₱51,481.99, representing unclaimed salaries, was missing.

On January 9, 1990,²³ the accused executed an affidavit before the NBI Regional Office in Cagayan de Oro City, admitting that the subject money was not actually lost, but was taken by him. He likewise expressed his willingness to return the money he embezzled.

The accused went back to the NBI Regional Office on January 23, 1990 and handed over the amount of ₱34,000.00 as partial payment of the money he took, with a promise that he would retribute the remaining balance of ₱17,481.99 on or before February 15, 1990.²⁴ True to his undertaking, the accused remitted the balance with the NBI Regional Office on February 14, 1990.²⁵

The Court admitted in evidence the defense's Exhibits 4, 5 and 6, as well as Exhibits 1, 2, 3 and 3-A as parts of the testimony of the accused. The Court likewise admitted the prosecution's Exhibits R and T-1 as rebuttal evidence.²⁶

DISCUSSION

In its Resolution, dated February 26, 2018, the Court denied the accused's demurrer to evidence, finding *prima facie* evidence to sustain a verdict of conviction for Malversation of Public Funds against him, unless rebutted by the defense. The Court ratiocinated that:

²¹ Exhibit M

²² Exhibit L

²³ Exhibit E

²⁴ Exhibit F (Supplementary Sworn Statement signed by the accused); Exhibit O (Receipt)

²⁵ Exhibit BB (Receipt)

²⁶ Order, dated August 6, 2018, Records, Vol. II, p. 69

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With respect to the sufficiency of the evidence of the prosecution, this Court finds, and so holds, that all the elements of the crime charged against the accused were proved.

The elements of malversation of public funds under Article 217 of the Revised Penal Code are:

1. that the offender is a public officer;
2. that he had the custody or control of funds or property by reason of the duties of his office;
3. that those funds or property were public funds or property for which he was accountable; and
4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.²⁷

The first element is admitted. The accused-movant is a Disbursing Officer II of the Probation Administration Office, Regional Office X, Cagayan de Oro City, at the time material to the case.

The second and third elements are likewise sufficiently proved. By reason of his duties as Disbursing Officer, the accused-movant had custody of funds of the Probation Administration Office over which he was accountable, with said funds being public funds.

As regards the fourth element, this Court finds that it was sufficiently proved by the prosecution. The accused argues in the main that the letter of recommendation of then NBI Director Chan and the attachments thereto are hearsay evidence as they are not identified by the persons who prepared and executed them. While this Court agrees that some of the affidavits submitted by the prosecution are inadmissible for being hearsay, it takes exception to the Supplementary Sworn Statement, dated January 23, 1990,²⁸ of the accused, and the Receipt, dated February 14, 1990,²⁹ acknowledging receipt of the amount of P17,482.00 from the accused as full restitution.

A reading of the Supplementary Sworn Statement executed by the accused on January 23, 1990, subscribed and sworn to before witness Mendez, will show that it is in the nature of an extra-judicial confession. As defined, a confession is an acknowledgment, in express terms, of the guilt of the accused of

²⁷ *Tello v. People*, June 5, 2009, 606 Phil. 514-524

²⁸ Exhibit F, Records, p. 461

²⁹ Exhibit BB, Records, p. 476

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the crime charged.³⁰ The relevant portions of the accused's statement are quoted hereunder:

"Agent Parras: Are you the same CELSO FUENTES Y TAN, Disbursing Officer II of the Probation Administration Regional Office X, Cagayan de Oro City who executed a sworn statement dated January 9, 1990 at the NBI Regional Office, Cagayan de Oro City?

Accused Fuentes: Yes sir. I am the same person.

Q: Why are you now here at the NBI Office, Cagayan de Oro City?

A: I am now here at your office xxx for the purpose of personally turning over to you the amount of P34,000.00 as partial restitution of the government fund of the Probation Administration that I have used or malversed in the total amount of P51,481.99.³¹ At this juncture sir, I am now personally turning over to you the amount of P34,000.00 xxx.

Q: Is this amount of P34,000.00 still part of the amount that you have malversed from your office?

A: Only the amount of P4,700.00 is still part of the amount I have malversed and the remaining amount is my personal money.

Q: How about the remaining amount of P17,481.99, the balance that you have malversed from the original amount of P51,481.99, are you still going to retribute it?

A: Yes sir. I promised to retribute said amount and turn it over to you on or before February 15, 1990. xxx"

In unequivocal terms, the accused confessed to having used or malversed the government fund of his office, the Probation Administration, in the amount of P51,481.99. The sworn statement likewise contained the accused's act of partially restituting the fund in the amount of P34,000.00, and his promise to turn over the balance of P17,481.99 on or before February 15, 1990. To the mind of this Court, the accused's confession leaves no room for doubt as to his guilt of the crime charged against him.

³⁰ *People v. Buntag*, April 14, 2004, 427 SCRA 180

³¹ Emphasis and underscoring supplied



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As to the sworn statement's admissibility, the accused stipulated that it was witness Mendez who served as the administering officer thereof. Indeed, Mendez testified that he witnessed the first partial turnover of P34,000.00 by the accused to the NBI, which was on the same day that the accused subscribed and swore before him. During trial, the accused had opportunity to cross-examine Mendez before whom he swore to the truthfulness of his statement.

Confession to be admissible must be (a) voluntary; (b) made with the assistance of a competent and independent counsel; (c) express; and (d) in writing.³² All the requisites are satisfied here. There is no allegation that the sworn statement was made involuntarily or under coercion or duress. The accused stipulated that he was assisted by Atty. Virgilio Galarita, a counsel of his own choice, in the preparation and execution of said sworn statement. The statement was express and in writing, and even subscribed and sworn to before a competent authority.

Rule 133, Section 3 of the Rules of Court provides that an extra-judicial confession shall not be a sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*. *Corpus delicti* has been defined as the body, foundation, or substance of a crime.³³ In the present case, the taking or malversation of the missing amount of P51,481.99 by the accused as the *corpus delicti* was sufficiently proved by the following corroborating evidence:

1. Mendez, who assisted in the investigation by the NBI, categorically testified that he was present when the accused made an admission in their office that he was the one who took the missing money;

2. Mendez's testimony that he personally witnessed the accused turn over in two (2) separate instances the funds representing restitution of the missing government money of P51,481.99; and

3. The Receipt, dated February 14, 1990,³⁴ acknowledging receipt of the amount of P17,482.00 from the accused, signed by Mendez in behalf of NBI Acting Regional Director Chan. Said receipt expressly states that the amount of P17,482.00 was turned over by the accused "as his full restitution of the original amount of P51,481.99 of the government payroll money he had taken".

³² *People v. Aleman*, January 19, 2010, E10 SCRA 350

³³ *Ibid*

³⁴ Exhibit BB, Records, p. 476

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The existence of the *corpus delicti* and the legality of accused-movant's extra-judicial confession having been duly proven by the State, the Court sees no cogent reason to grant the demurrer.

Has the defense controverted the *prima facie* evidence of the prosecution pointing to the guilt of the accused beyond reasonable doubt?

The Court answers in the negative.

The accused's defense essentially consists of denial, alibi, and different versions of the incident, which all fail to inspire belief from the Court.

The probative weight of the accused's extra-judicial confession that he took for his personal benefit the subject money was not overcome by his bare denial that he either did not execute the January 9, 1990 and January 23, 1990 sworn statements, or at least read them before signing. How can the Court accord value to the accused's denial when he himself is even unsure whether or not he executed the affidavits?

At any rate, the Court believes that the accused executed the sworn statements confessing to the embezzlement, and he did so freely and voluntarily. This conclusion is more consonant with logic, given the premises of this case. The accused admitted that he restituted the entire amount of P51,481.99. There is no other sensible basis for his act of returning the money than the precursors stated in his own sworn statements done before the NBI Office. If the restitution was simply prompted by his desire to be cleared of his accountabilities so that he could transfer to a new job at the Ozamis City Fire Department to be nearer to his family, then, he could have just paid the money without, as he tried to impress, blindly admitting to a crime he did not commit. He could have stood his ground that he was innocent, and still get that clearance. It is highly improbable that the accused's job prospect takes precedence over his liberty.

To the Court's mind, the accused's admission is true. But he was moved, not by his aspired new job at the Fire Department, but because of the assurance that he would not be criminally charged. With the NBI findings that the burglary was most likely an inside

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job, there being no indication that the front and back doors or any part of the office was forcibly opened, the accused must have realized that the truth was forthcoming. With the reassurance that his dilemma would end upon his confession, he did admit the crime. Unfortunately for him, that promise was not fulfilled and the accused cannot use that assurance to prevent his prosecution.

Suffice it to state that the Court sees no compelling reason why the accused would confess to a malversation he did not commit, when he was neither threatened nor confronted with a consideration more precious than his life or liberty.

A confession, whether judicial or extrajudicial, if voluntarily and freely made, constitutes evidence of a high order since it is supported by the strong presumption that no sane person or one of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime, unless prompted by truth and conscience. The admissibility and validity of a confession, thus hinges on its voluntariness, a condition vividly present in this case.³⁵

The accused is an incredible witness. He made palpably inconsistent and materially different narrations of what purported to be the facts, casting serious doubt as to his credibility.

The accused's *Counter-Affidavit*, dated September 20, 1991,³⁶ presented a more detailed account of the circumstances surrounding the loss of the subject money. It can be gathered from the accused's statement that the money was not actually taken when their office was robbed because the unclaimed salaries were kept in the accused's drawer and not in the safe which was forcibly opened. However, Bernal told the accused to maintain that the money was stolen as reported. Bernal then instructed the accused to redeposit the amount of ₱42,575.65 to cover for the office check, which part of its proceeds was personally used by Bernal sometime in October 1989, with the knowledge and participation of the accused.

The accused went on that sometime in December 1989, Bernal told him that a certain Virgilio Madlos (of the Probation Office of Misamis Oriental) was filing a case against Bernal. For

³⁵ *Frontieras v. People*, 776 SCRA 152, 169

³⁶ Exhibit R

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fear that Bernal might be prosecuted or convicted, Bernal convinced the accused to make it appear that the robbery incident was due to negligence and to own up to it. The accused's admission would just be used by Bernal to quash the charges against him (Bernal), and the latter would take care of everything for the accused as the NBI people were Bernal's friends. Bernal then solicited the accused to tender his resignation guaranteeing that he (Bernal) would help the accused look for another job. Subsequently, the accused returned the money after Bernal persuaded the accused's father that no charges would be filed against his son if the accused would make good his promise before the NBI to pay the money.

On the other hand, the accused's simpler Judicial Affidavit made no mention about a check previously borrowed by Bernal for his personal use that was then paid out of the money they pretended to have been stolen. In fact, there was no intimation in the Judicial Affidavit that the subject money was not robbed at all. On the contrary, the accused claimed that the money was indeed stolen and he had nothing to do about it. He hinted that it was Bernal who had the last touch on the money because the accused left the salary and COLA of the regional and field offices with Bernal. This is in stark contrast to his declaration in the Counter-Affidavit that he left the money in his drawer.

There is likewise a contradiction as to the circumstances which led the accused to admit the crime and retribute the money. In his Judicial Affidavit, the accused's reason for confessing was his desire to be cleared of his accountabilities so he could transfer to the Ozamis Fire Department. Conversely, in his Counter-Affidavit, he acknowledged guilt to bail out Bernal from the cases filed against the latter. Moreover, while in the Judicial Affidavit the accused's further consideration for confessing was an impending new employment, it was, in his Counter-Affidavit, a mere assurance of a new job from Bernal at the cost of a possible deprivation of liberty. His assertions just do not add up.

The accused expressed some statements, which by themselves, are not worthy of credence.

Testimonial evidence to be credible should not only come from the mouth of a credible witness but should also be credible,

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reasonable and in accord with human experience, failing in which, it should be rejected.³⁷

Aside from the implausibility that the accused would trade his name, his life or liberty, for a clearance to get a new job, the Court has noted incredulous accounts made by the accused.

It can be understood in the accused's Judicial Affidavit,³⁸ that on November 26, 1989, he was in Clarin, Ozamis City, where he got sick. So, he needed to file an application for sick leave as he would be unable to report to work the following day, November 27 (the day the robbery was discovered). What baffles the Court is the accused's testimony that he went to Bernal's residence to inform the latter that he could not go to work on November 27.³⁹ It is well to note that at that time, Bernal was in Cagayan de Oro City which was about 4 to 5 hours travel from Ozamis City. This was disclosed upon query of the Court.

(JUSTICE ECONG)

Q When for the first time did you know that there was burglary?

A When I was summoned to the Ozamis City Probation Office by the City Probation Officer because Director Bernal called up that there was a burglary.

Q When was this that you were summoned?

A It was about lunch time, your Honor.

Q Lunch time of what day?

A November 27, your Honor.

Q Which is what day?

A Monday, but I was at home. Somebody from the Ozamis City Probation Office came to our house at Dinacla-an (sic),⁴⁰ Clarin.

Q Just for the record how far is Dinacla-an⁴¹ Clarin to Cagayan de Oro City? Although I personally know how far.

³⁷ *Aradillos v. Court of Appeals*, 419 SCRA 514, 525

³⁸ *supra*

³⁹ *Id.*, paragraph 34

⁴⁰ Supposed to be Tinaccla-an

⁴¹ *Id.*

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A From Dinaclaan,⁴² we will ride a ferry boat during that time. Then, going to Kulambogan, from Kulambogan, Lanao del Norte, it would be about 3 to 4 hours travel, your Honor, by bus.

Q So in other words, more or less 4 hours and half?

A Including the ferry ride 4 to 5 hours maybe, your Honor.

Q 4-5 hours. And how accessible is the ferry going to Kolambogan from Ozamis City?

A As far as I can remember because today there is no ferry boat, it is a barge before, every hour or 2 hours, depending upon the volume of passengers.

Q In other words, its frequent?

A More or less, your Honor.

Q How frequent are the buses from Kolambogan to Cagayan de Oro City?

A There are many buses, your Honors.

Q So, it is possible to go to Cagayan de Oro from Ozamis City and return within one day?

A It would take the whole day.

Q But it is possible to return in one day?

A It might be, your Honor.

Q Given the time difference, you said 4 to 5 hours, so you can make a return in one day?

A If you will take the early trip, your Honor.⁴³

Since the accused returned to Ozamis City after seeing Bernal in Cagayan de Oro City for the accused's sick leave, it means that he devoted at least 10 hours in travel time. From the foregoing interpellation, it was possible to go to Cagayan de Oro City from Ozamis City and be back on the same day if one would take the early trip. However, it can be inferred from the testimony of

⁴² *Id.*

⁴³ *TSN, August 6, 2018 P.M., pp. 50-52*



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the accused that he could not have taken the early trip on November 26 because he was at the beach with his family. He made this declaration in his Judicial Affidavit:

34. Q: What happened during the weekend, if any?

A: I and my family went on a picnic at a beach, sir. It was then that I got sick so I went to the residence of RPO Bernal and informed him that I cannot report back to work on the following Monday, November 27, sir. He approved my request for sick leave, sir.

35. Q: What proof do you have showing that you applied for leave for 27 November 1989.

A: My application for leave, sir.⁴⁴

It is inconceivable that the accused could have gone to the beach, went to Cagayan de Oro City and was backed to Ozamis City, on the same day. Besides, the Court finds it preposterous that the accused would bother to travel that far, sick at that, just to ask permission from Bernal that he could not report the next day. The accused could just have called Bernal over the phone and file his application for sick leave when he reports back to the office.

Another assertion of the accused which the Court finds hard to believe is his reliance on the assurances of Bernal. It is contrary to human experience that a person of the accused's educational attainment would trust another with one's name, life or liberty, based on some irrational proposition.

The accused is a graduate of Bachelor of Science in Pre-Medicine, Bachelor of Science in Accounting, and Bachelor of Laws. The Court finds it unbelievable that he was beguiled by Bernal into confessing to a crime he did not commit, on Bernal's representation that the accused's confession would just be used by Bernal to dismiss the charges against him (Bernal), and for the accused not to worry because Bernal would help him;⁴⁵ or that he would be issued a clearance and would not be criminally charged.⁴⁶ What is more, despite Bernal's non-fulfillment of his promises, the accused allegedly again believed Bernal to ignore a subpoena from this Court because Bernal would just settle their case. True

⁴⁴ At p. 7 (Records, Vol. II, p. 45)

⁴⁵ Exhibit R (Counter-Affidavit)

⁴⁶ Accused's Judicial Affidavit, *supra*

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enough, said the accused, in November, 1992, Bernal handed him a photocopy of an order from the First Division of this Court archiving the case.

The Court examined the records of the case and found no such order issued in November, 1992 which archived the case against the accused. The only Order of the Court directing the archiving of the case is that, dated November 22, 1993, which reads:

ORDER

Considering the continued failure of accused Celso Tan Fuentes to appear despite various settings herein, **the alias warrant of arrest heretofore issued shall remain in force.** In the meantime the case against Celso Tan Fuentes is ordered archived.

The proceedings herein as against the other accused will continue as scheduled.

SO ORDERED.

Given in open Court this 22nd day of November, 1993 at Manila, Philippines.⁴⁷

Indeed, the Court's aforesaid Order shows that the present case was ordered archived only due to the continued absence of the accused at the scheduled arraignment, and it further states that the alias warrant of arrest issued against him for his failure to appear shall remain in force.⁴⁸ The Court does not buy the accused's pretention of ignorance about the true import of its November 22, 1993 Order.

In fine, the Court, after a solicitous assessment of the evidence on record, is convinced that the accused committed the crime of Malversation of Public Funds beyond reasonable doubt.

Proof beyond reasonable doubt does not mean that which produces absolute certainty. Only moral certainty is required or "that degree of proof which produces conviction in an unprejudiced mind."⁴⁹

⁴⁷ Records, Vol. I, p. 319

⁴⁸ Order of Arrest, dated February 10, 1993; *Id.*, p.224

⁴⁹ *People v. Carizo*, 278 SCRA 263, 270

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WHEREFORE, in light of all the foregoing, accused Celso Tan Fuentes is found **GUILTY** beyond reasonable doubt of the charge of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, and is hereby sentenced to suffer the indeterminate prison term of **two (2) years, four (4) months and one (1) day of *prision correccional* minimum, as minimum, to seven (7) years four (4) months and one (1) day of *prision mayor* medium, as maximum.**⁵⁰

Considering that the accused had already restituted the full amount of ₱51,481.99, no civil liability is assessed against him.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson Associate Justice

WE CONCUR:


GERALDINE FAITH A. ECONG
Associate Justice


EDGARDO M. CALDONA
Associate Justice

⁵⁰ Pursuant to Republic Act No. 10951 "An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended"

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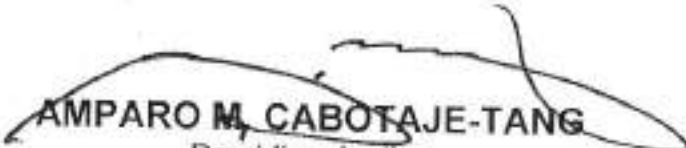
ATTESTATION

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.


EFREN N. DE LA CRUZ
Chairperson, First Division

CERTIFICATION

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

