



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

SIXTH DIVISION

**PEOPLE OF THE PHILIPPINES,** **SB-16-CRM-0528**  
Plaintiff, For: Violation of Art. 217  
of the Revised Penal Code

- versus -

*Present*

**NESTOR A. VILLEGAS,**  
Accused.

**FERNANDEZ, SJ, J.,**  
Chairperson  
**MIRANDA, J. and**  
**CORPUS-MAÑALAC,\* J.**

*Promulgated:*

**JUL 27 2018** 

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**DECISION**

**FERNANDEZ, SJ, J.**

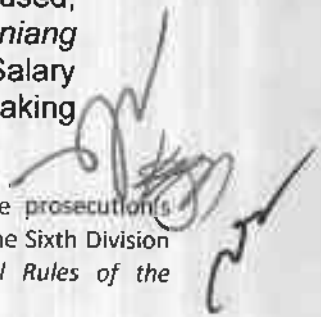
Accused Nestor A. Villegas is charged with Malversation of Public Funds or Property<sup>1</sup> for allegedly misappropriating or converting for his own use, and failing to liquidate when demand was made upon him, the amount of ₱150,104.70 he received as cash advance for his official travel.

The accusatory portion of the Information reads:

That on 01 July 1997, or sometime prior or subsequent thereto, in the Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **NESTOR VILLEGAS**, a public officer, being then a *Sangguniang Panlalawigan* Member of the Province of Camarines Sur with Salary Grade 27, committing the offense in relation to his office and taking

\* The case was submitted for decision on January 26, 2018, upon the filing of the prosecution's Memorandum (Order dated January 3, 2018; Record, p. 180); in view of the vacancy in the Sixth Division (Per Administrative Order No. 040-2018 dated January 24, 2018; Revised Internal Rules of the Sandiganbayan, Rule XII, Sec. 3)

<sup>1</sup> Art. 217 of the Revised Penal Code



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advantage thereof, did then and there, willfully, unlawfully and feloniously take, misappropriate, embezzle or convert for his own public funds in the amount of One Hundred Fifty Thousand One Hundred Four Pesos and Seventy Centavos (P150,104.70) for which he is accountable having been granted to him by the Provincial Government as cash advance for his official travel, and which amount he failed to liquidate or account for despite the demand made upon him.

CONTRARY TO LAW.

When arraigned, the accused entered his plea of "Not Guilty".<sup>2</sup>

During the Pre-trial,<sup>3</sup> the parties stipulated as follows:

- (1) At the time material to the allegation in the Information, accused was a public officer, being then a Sangguniang Panlalawigan member of the province of Camarines Sur.
- (2) At the time material to the allegations in the Information, accused received the amount of Php 150,104.70 for his official travel from the provincial government of Camarines Sur, with the qualification that the amount was cash advance;
- (3) Accused reimbursed the amount of Php 100,000 on December 29, 2011 as evidenced by O.R. No. 0985969;
- (4) Accused reimbursed the amount of Php 50,104.70 on December 6, 2012 as evidenced by O.R. No. 1065669; and
- (5) The existence of receipts proving reimbursement of the amount, pertaining to Exhibits "F" and "G" of the prosecution and "1" and "2" of the accused.<sup>4</sup>

The parties also agreed that the issue to be resolved is whether the accused violated the provisions of Article 217 of the Revised Penal Code.<sup>5</sup>



<sup>2</sup> Record, pp. 61-64

<sup>3</sup> Pre-Trial Order dated February 17, 2017; Record, pp. 82-A to 82-E

<sup>4</sup> Record, p. 82-A (Pre-trial Order, p. 1)

<sup>5</sup> Record, p. 82-B (Pre-trial Order, p. 2)

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EVIDENCE FOR THE PROSECUTION

The prosecution presented as witnesses **Janis Ian B. Regaspi-Cleofe**<sup>6</sup> and **Leticia D. Aliorde**.<sup>7</sup>

**Janis Ian B. Regaspi-Cleofe**, Provincial Legal Officer of Camarines Sur, testified as follows:

1. In 2008, she held the position of Legal Officer IV and was designated as officer-in-charge of the Provincial Legal Office.<sup>8</sup>
2. As officer-in-charge, she prepared demand letters and complaints in cases involving the province.<sup>9</sup>
3. She prepared a demand letter dated October 24, 2008 (Exhibit "B"), addressed to Mr. Nestor Villegas.<sup>10</sup>
4. Said demand letter was based on a list of officers with unliquidated cash advances, provided by the Office of the Provincial Accountant.<sup>11</sup>
5. Said letter was sent to Mr. Nestor Villegas by registered mail on October 28, 2008. She does not know who received it but from the Registry Return Receipt (Exhibit "B-1"), it appears that it was received on October 30, 2008.<sup>12</sup>
6. She did not verify if the signature appearing on the Registry Return Receipt was the signature of the accused.<sup>13</sup>
7. Sometime after her office received the Registry Return Card, Ms. Leticia L. Aliorde, the Provincial Accountant, indorsed the Certification (Exhibit "D") stating that the accused had an unliquidated balance in the amount of ₱50,104.70.<sup>14</sup>
8. Thereafter, she prepared a Complaint-Affidavit dated December 6, 2012 (Exhibit "E") for Malversation against Nestor Villegas.<sup>15</sup>
9. When she prepared the draft of the Complaint-Affidavit, former Governor Luis Raymond F. Villafuerte, Jr. was indicated as the

<sup>6</sup> TSN, March 8, 2017

<sup>7</sup> TSN, April 24, 2017

<sup>8</sup> TSN, March 8, 2017, p. 7

<sup>9</sup> TSN, March 8, 2017, p. 8

<sup>10</sup> *Ibid.*

<sup>11</sup> TSN, March 8, 2017, p. 24

<sup>12</sup> TSN, March 8, 2017, pp. 8-9

<sup>13</sup> TSN, March 8, 2017, p. 26

<sup>14</sup> TSN, March 8, 2017, p. 19

<sup>15</sup> TSN, March 8, 2017, pp. 21-22, 28

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complainant. She later changed her mind and thought that Aliorde should have been the complainant. She inadvertently failed to replace the name of Villafuerte with Aliorde's name in the first page of the Complaint-Affidavit.<sup>16</sup>

10. Under COA Circular No. 96-004, cash advances for travel should be liquidated within thirty (30) days.<sup>17</sup>

### **Leticia D. Aliorde testified as follows:**

1. She has been the Provincial Accountant of Camarines Sur since July 1, 1994.<sup>18</sup>
2. As Provincial Accountant, she is in charge of the assessment and evaluation of the financial transactions of the Province, including the audit and regular monitoring of cash advances.<sup>19</sup>
3. In the performance of her functions, she encountered the cash advance for foreign travel availed of by accused Nestor Villegas on July 1, 1997, in the amount of ₱150,104.70.<sup>20</sup>
4. Cash advances must be liquidated within thirty (30) days from return for local travel, and within sixty (60) days from return for foreign travel. In case the travel is cancelled, the cash advance must be refunded immediately.<sup>21</sup>
5. Notwithstanding the lapse of said prescribed periods, provincial employees are usually given time to liquidate cash advances to avoid litigation in court.<sup>22</sup>
6. The accused was already given several years within which to liquidate his cash advance, yet he still failed to liquidate the same.<sup>23</sup>
7. Nestor Villegas failed to liquidate his cash advance within the prescribed period, as shown by the subsidiary ledger for overdue unliquidated cash advances (Exhibit "K").<sup>24</sup>

<sup>16</sup> TSN, March 8, 2017, p. 32

<sup>17</sup> TSN, March 8, 2017, p. 22

<sup>18</sup> TSN, April 24, 2017, pp. 6-7

<sup>19</sup> TSN, April 24, 2017, p. 7

<sup>20</sup> TSN, April 24, 2017, pp. 7-8

<sup>21</sup> TSN, April 24, 2017, p. 9

<sup>22</sup> TSN, April 24, 2017, p. 31

<sup>23</sup> TSN, April 24, 2017, pp. 34-35

<sup>24</sup> TSN, April 24, 2017, pp. 9-10

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8. She forwarded the matter to the Office of the Legal Officer to enforce collection or settlement of the account.<sup>25</sup>
9. The Legal Officer furnished the Provincial Accountant's Office a copy of the demand letter (Exhibit "B") dated October 24, 2008, addressed to Nestor Villegas.<sup>26</sup>
10. Nestor Villegas failed to comply with said demand letter because his unliquidated cash advance still appeared in their records.<sup>27</sup>
11. The Provincial Legal Officer informed her of the necessity of filing a complaint against the accused.<sup>28</sup>
12. After verifying from the records that the cash advance was still unliquidated, she issued the Certification dated December 3, 2012 (Exhibit "D") stating that the accused paid the amount of ₱100,000.00 on December 29, 2011 and had an unliquidated balance of ₱50,104.70.<sup>29</sup>
13. The Provincial Legal Officer drafted the Complaint-Affidavit dated December 6, 2012 (Exhibit "E") filed against the accused.<sup>30</sup> She only signed said Complaint-Affidavit.<sup>31</sup>
14. She noticed that Governor Luis Raymund F. Villafuerte, Jr. was indicated as the complainant in the first page of the Complaint-Affidavit. She nonetheless signed the same because she was in a hurry to leave at the time it was brought to her for her signature. After signing, she instructed the employee of the Provincial Legal Office who brought the complaint to change the name indicated as the complainant to her name.<sup>32</sup>
15. The next time she saw the Complaint-Affidavit was when she was summoned to appear as witness in court.<sup>33</sup>
16. The accused returned the unliquidated balance on the same day said Complaint-Affidavit was filed with the Provincial Prosecutor's Office of Camarines Sur.<sup>34</sup>

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<sup>25</sup> TSN, April 24, 2017, p. 11

<sup>26</sup> TSN, April 24, 2017, pp. 11-13

<sup>27</sup> TSN, April 24, 2017, pp. 13-14

<sup>28</sup> TSN, April 24, 2017, p. 14

<sup>29</sup> TSN, April 24, 2017, pp. 14-16

<sup>30</sup> TSN, April 24, 2017, pp. 16-20

<sup>31</sup> TSN, April 24, 2017, p. 41

<sup>32</sup> TSN, April 24, 2017, pp. 33-34

<sup>33</sup> TSN, April 24, 2017, pp. 36-37

<sup>34</sup> TSN, April 24, 2017, p. 19

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17. She does not know the exact time the accused paid the unliquidated balance.<sup>35</sup> She learned of such payment only several weeks after the fact from the Treasurer's Report of Daily Collection.<sup>36</sup>

The following exhibits offered by the prosecution were admitted in evidence.<sup>37</sup>

<b>Exhibit</b>	<b>Document</b>
B	Letter dated October 24, 2008 of the Office of the Provincial Legal Officer, addressed to Nestor Villegas
D	<i>Certification</i> dated December 3, 2012 issued by Leticia L. Aliorde
E	<i>Complaint-Affidavit</i> dated December 6, 2012 of Leticia L. Aliorde
K	Subsidiary ledger of the Provincial Government of Camarines Sur for other receivables for the year 2011

**EVIDENCE FOR THE DEFENSE**

Accused **Nestor A. Villegas**<sup>38</sup> was the sole witness for the defense. He testified as follows:

1. In 1997, he was a Municipal Councilor, and at the same time, an Ex-Officio Member of the Sangguniang Panlalawigan.<sup>39</sup>
2. He was a member of the Sangguniang Panlalawigan for six (6) years, from 1992 to 1998.<sup>40</sup>
3. Sometime before July 1, 1997, he received an invitation to attend a convention in the United States of America (USA).<sup>41</sup>

<sup>35</sup> TSN, April 24, 2017, p. 40

<sup>36</sup> *Ibid.*

<sup>37</sup> Record, p. 133 (Resolution dated August 31, 2017)

<sup>38</sup> TSN, September 18, 2017

<sup>39</sup> TSN, September 18, 2017, p. 7

<sup>40</sup> TSN, September 18, 2017, p. 8

<sup>41</sup> *Ibid.*

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4. On July 1, 1997 he submitted an application for travel and received the amount of around ₱150,000.00 as cash advance for said travel.<sup>42</sup>
5. He applied for a US visa. However, his application was denied. Thus, his travel did not push through.<sup>43</sup>
6. He failed to liquidate the cash advance within his term as member of the Sangguniang Panlalawigan because he suffered from hypertension and because no one reminded him to return the amount advanced to him.<sup>44</sup>
7. He had availed of another cash advance prior to the subject cash advance. He does not remember how long it took to liquidate the same. He gave all documents to his staff and assumed that the amount was already liquidated since he was not given notice of any fact to the contrary.<sup>45</sup>
8. He was prompted to return the money after receiving a demand letter from the Provincial Accountant.<sup>46</sup>
9. He returned ₱100,000.00 to the Provincial Government of Camarines Sur on December 29, 2011, as shown in Official Receipt No. 0985969 (Exhibit "1").<sup>47</sup>
10. He paid the balance in the amount of ₱50,104.70 on December 6, 2012, as shown in Official Receipt No. 1065669 (Exhibit "2").<sup>48</sup>
11. He had to return the amount advanced to him in two (2) installments because he had no money. After receiving the amount, he bought clothes in preparation for his travel and also used a portion of said cash advance for his medical expenses.<sup>49</sup> It was already an established practice for them to use the cash advance for whatever purpose until the same was exhausted.<sup>50</sup>
12. He learned that a complaint was filed against him in the afternoon of December 6, 2012 when a friend asked him if he had already paid the balance of the cash advance.<sup>51</sup>

<sup>42</sup> TSN, September 18, 2017, pp. 8-9

<sup>43</sup> TSN, September 18, 2017, p. 9

<sup>44</sup> TSN, September 18, 2017, pp. 10-11

<sup>45</sup> TSN, September 18, 2017, pp. 22-23

<sup>46</sup> TSN, September 18, 2017, p. 27

<sup>47</sup> TSN, September 18, 2017, pp. 12, 17

<sup>48</sup> TSN, September 18, 2017, pp. 18-20

<sup>49</sup> TSN, September 18, 2017, pp. 25-26, 28-29

<sup>50</sup> TSN, September 18, 2017, p. 29

<sup>51</sup> TSN, September 18, 2017, pp. 19-20

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The following exhibits offered by the defense were admitted in evidence.<sup>52</sup>

Exhibit	Document
1	Official Receipt No. 0985969 dated December 29, 2011
2	Official Receipt No. 1065669 dated December 6, 2012

### THE FINDINGS OF FACTS

The facts are undisputed. Sometime in 1997, the accused, a member of the Sangguniang Panlalawigan of Camarines Sur, received an invitation to attend a convention to be held in the United States of America (USA). In connection with said invitation, he submitted an application for official travel and was granted a cash advance in the amount of ₱150,104.70 on July 1, 1997. However, his travel did not push through because his application for a US visa was denied.<sup>53</sup>

Sometime thereafter, the Provincial Accountant noticed that the accused had an unliquidated cash advance in the amount of ₱150,104.70 and forwarded the matter to the Office of the Provincial Legal Officer.<sup>54</sup> On October 28, 2008, the Provincial Legal Officer of Camarines Sur sent a letter dated October 24, 2008 addressed to the accused, directing him to render accounts in connection with the amount of ₱150,104.70 he received as cash advance within five (5) days from receipt of the letter.<sup>55</sup> Having already spent the amount advanced to him, the accused was not able to return the same immediately.<sup>56</sup> He returned ₱100,000.00 on December 29, 2011<sup>57</sup> and the remaining balance of ₱50,104.70 on December 6, 2012.<sup>58</sup>

On December 6, 2012, the same day the accused returned the remaining balance, the Complaint-Affidavit dated December 6, 2012<sup>59</sup> of Leticia L. Aliorde was filed with the Office of the Provincial Prosecutor of Camarines Sur. The Complaint-Affidavit was

<sup>52</sup> Record, p. 133 (Resolution dated August 31, 2017)

<sup>53</sup> TSN, September 18, 2017, pp. 8-9

<sup>54</sup> TSN, April 24, 2017, pp. 9-11

<sup>55</sup> Exhibit B; TSN, March 8, 2017, pp. 8-9

<sup>56</sup> TSN, September 18, 2017, pp. 25-26, 28-29

<sup>57</sup> Exhibit 1

<sup>58</sup> Exhibit 2

<sup>59</sup> Exhibit E



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subsequently forwarded to the Office of the Ombudsman<sup>60</sup> and led to the filing of the present Information charging the accused with Malversation of Public Funds or Property under Art. 217 of the Revised Penal Code (RPC).

DISCUSSION

Malversation of Public Funds or Property is punished under Art. 217 of the RPC. The provision, as amended by Republic Act No. 10951,<sup>61</sup> 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, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

- 1. x x x
- 2. The penalty of *prisión 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).
- 3. x x x
- 4. x x x
- 5. x x x

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand

<sup>60</sup> Record, p. 5

<sup>61</sup> An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended; **Sec. 100. Retroactive Effect. –** This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

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by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

The elements of Malversation of Public Funds or Property are as follows:

1. The offender is a public officer;
2. The offender had custody or control of funds or property by reason of the duties of his or her office;
3. The funds or property were public funds or property for which the offender was accountable; and
4. The offender appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.<sup>62</sup>

Indubitably, the first three (3) elements are present. At the time material to the case, the accused was a public officer, then being a member of the Sangguniang Panlalawigan of Camarines Sur. He received the amount of ₱150,104.70 as cash advance for his planned official travel to the USA, and thus, he was bound to account for the same. There is no question that said funds received as cash advance from the Provincial Government of Camarines Sur are public funds.

The remaining issue that must be resolved is the presence of the fourth element, *i.e.*, the offender must have taken, misappropriated, or consented, or through abandonment or negligence, permitted another person to take public funds or property. This Court rules that the fourth element of Malversation of Public Funds or Property is present.

Commission on Audit (COA) Circular No. 96-004<sup>63</sup> dated April 19, 1996 was issued to implement Sec. 16<sup>64</sup> of Executive Order No. 248 (E.O. No. 248). Said circular specifically provides that the cash

<sup>62</sup> *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015

<sup>63</sup> Guidelines to implement Section 16 of Executive Order No. 248 as amended by Executive Order No. 248-A which prescribes regulations and new rates of allowance for official local and foreign travels of government personnel

<sup>64</sup> Section 16. **Rendition of Account on Cash Advances.** – Within sixty (60) days after his return to the Philippines, in the case of official travel abroad, or within thirty (30) days of his return to his permanent official station in the case of official local travel, every official or employee shall render an account of the cash advance received by him in accordance with existing applicable rules and regulations and/or such rules and regulations as may be promulgated by the Commission on Audit for the purpose. Payment of the salary of any official or employee who fails to comply with the provisions of this Section shall be suspended until he complies therewith.

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advance for travel shall be liquidated strictly within sixty (60) days after returning to the Philippines. In case the trip is cancelled, the amount paid in advance shall be returned in full. The pertinent portion of the circular reads:

3.2.2. LIQUIDATION OF CASH ADVANCE

3.2.2.1 The cash advance for travel shall be liquidated by the official/employee concerned strictly within sixty (60) days after his return to the Philippines as required under Section 16, of EO 248, as amended. Otherwise, payment of his salary shall be suspended until he complies therewith.

3.2.2.2. The official/employee concerned shall draw a liquidation voucher to be supported by the following:

- a. Certificate of travel completed (Appendix B);
- b. Plane or boat tickets covering actual transportation fare from the point of embarkation in the Philippines to the place of destination and back, provided, that the presentation of a certification or affidavit of loss executed by the official or employee concerned shall not be considered as appropriate replacement for the required transportation tickets;
- c. Bills and receipts covering representation expenses incurred, if the official concerned has been authorized to incur the same;
- d. Hotel room bills with official receipts, regardless of whether or not the amount exceeds the prescribed rate of Two Hundred United States Dollars per day, provided that for this purpose, no certification or affidavit of loss shall be considered or accepted;
- e. Where the actual travel expenses exceed the prescribed rate of Three Hundred United States Dollars per day, the certification of the head of the agency concerned as to its absolute necessity shall also be required in addition to the presentation of the hotel room bills with official receipts.

3.2.2.3 Where a trip is cancelled, the amount paid in advance shall be refunded in full. In cases where the trip is cut short or terminated in advance of the itinerary, the excess payment shall likewise be refunded. The head of the agency shall see to it that such refunds are enforced promptly.

(underscoring supplied)



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The COA circular is silent as to the period within which the public official or employee should refund the amount paid in advance in the event that the trip is cancelled. However, considering that a public official or employee who completed the trip is given sixty (60) days after returning to the Philippines to liquidate the cash advance, then a reasonable period for refunding the cash advance in case of a cancelled trip should not exceed sixty (60) days from such cancellation.

Here, the accused failed to return the ₱150,104.70 he received as cash advance within a reasonable period. Worse, he failed to comply with the demand letter sent by the Provincial Legal Officer around eleven (11) years from the date he received said amount. Instead of returning the full amount within five (5) days, as directed by said letter, he returned ₱100,000.00 on December 29, 2011, or around three (3) years from his receipt of the demand letter, and the remaining ₱50,104.70 only on December 6, 2012, or almost one year thereafter.

His failure to comply with the demand letter is *prima facie* evidence that he put the subject funds to his personal use. This is further supported by the accused' admission during his testimony that he used a part of the funds to buy clothes and to pay for his medical expenses. The pertinent portions of the TSN are hereunder quoted.<sup>65</sup>

(on cross-examination)

Q: You mentioned that when I asked you a while ago why did you make two (2) installments, you answered that you do not have money?

A: Yes, sir.

Q: So do you agree with me that when you first made the installment in December 29, 2011, the cash advance that you received in 1997 was no longer intact?

A: Yes, Sir. "Wala na po."

Q: Because you used the cash advance Mr. Witness that you received in 1997?

A: Yes, Sir. Because when we prepare the travel we would spent. We already bought things, Sir.

Q: All those Php150,000.00 plus?

<sup>65</sup> TSN, September 18, 2017, pp. 25-26, 28-29

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A: Not necessary, Sir.

Q: Then what did you do with the remaining amount Mr. Witness?

A: We spent it, Sir.

Q: Where did you use it?

A: I could no longer remember, Sir because I got sick.

Q: So probably you use it for your medical expenses?

A: "Yung iba po."

x x x

(on re-direct examination)

Q: Mr. Witness can you again tell this Honorable Court what did you do with the cash advance that you have received?

x x x

A: When we were given the cash advance, we went to Manila to complete our requirements there, and to get the approval from Malacañan. After we went to Malacañan, we went to the Embassy to get our visas. Then, of course we had the belief that we were travelling, so we bought clothing for ourselves, Sir.

Q: Mr. Witness during the period that you have not liquidated the said amount, what did you do with the money?

A: As I mentioned earlier I got sick, so I spent the money for myself, Sir. "Practice naman don po pagnakaganon, ka-cash advance ka, wala namang nag-aano sa amin so, hanggat naubos yung pera."

(emphasis underscoring supplied)

The accused contends that good faith negates criminal intent on his part. According to him, he had no intention to convert the funds for his personal benefit. He prioritized his health issues and entrusted the liquidation of the cash advance to his staff. Moreover, he eventually returned the amount he received as cash advance in full.<sup>66</sup>

<sup>66</sup> Record, pp. 161, 163-164 (Memorandum for the Accused, pp. 6, 8-9)

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His contention does not persuade. The aforementioned portion of the TSN clearly shows that the accused intended, and actually converted public funds for his personal benefit.

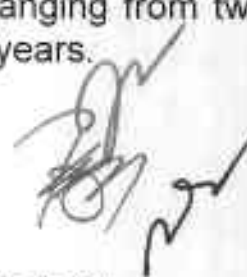
Furthermore, the fact that he eventually returned the amount received as cash advance in full will not exonerate him from criminal liability. The felony was consummated when he used the public funds entrusted to him for his own benefit. The return of the funds, in the case at bar, cannot even be considered a mitigating circumstance, considering that it took the accused around fourteen (14) years to return ₱100,000.00, and the balance of ₱50,104.70, almost a year thereafter, without any valid explanation as to why he could not have liquidated the same within a more reasonable period.<sup>67</sup>

### Penalty

Under Art. 217, as amended by Republic Act No. 10951, the penalty prescribed for Malversation of Public Funds or Property when the amount involved is more than Forty Thousand Pesos (₱40,000.00) but does not exceed One Million Two Hundred Thousand Pesos (₱1,200,000.00), is *prisión mayor* in its minimum and medium periods.

This Court appreciates the mitigating circumstance of voluntary surrender in favor of the accused. The records show that he posted his bail bond prior to the service of the warrant of arrest issued against him.<sup>68</sup>

Applying Sec. 1 of the Indeterminate Sentence Law,<sup>69</sup> the maximum term is *prisión mayor*, ranging from six (6) years and one (1) day to seven (7) years and four (4) months, and the minimum term, or the penalty next lower to that prescribed, is *prisión correccional* in its medium and maximum periods, ranging from two (2) years, four (4) months and one (1) day to six (6) years.



<sup>67</sup> Please see *Davalos v. People*, G.R. No. 145229, April 20, 2006

<sup>68</sup> Record, p. 56; Please see *Valle v. Sandiganbayan*, G.R. No. 97651, October 13, 1992

<sup>69</sup> **Sec. 1.** Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

**DECISION**

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**CONCLUSION**

The prosecution proved beyond reasonable doubt all the elements of Malversation of Public Funds or Property.

**WHEREFORE**, accused NESTOR A. VILLEGAS is found **GUILTY** beyond reasonable doubt of Malversation of Public Funds or Property under Art. 217 of the Revised Penal Code, and is accordingly sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prisión correccional*, as minimum, to six (6) years and one (1) day of *prisión mayor*, as maximum. The accused shall likewise suffer the penalty of perpetual special disqualification and a fine in the amount of the malversed funds or ₱150,104.70.<sup>70</sup>

The amount malversed having been restituted in full, no civil liability is imposed upon the accused.

SO ORDERED.

  
**SARAH JANE T. FERNANDEZ**

Associate Justice  
Chairperson

**We Concur:**

  
**KARL B. MIRANDA**

Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**

Associate Justice

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<sup>70</sup> Revised Penal Code, Art. 217

**DECISION**

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x-----x

**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.

  
**SARAH JANE T. FERNANDEZ**  
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. GABOTAJE-TANG**  
Presiding Justice

