



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. Nos. 258182 and
259950

- versus -

Present:

CAGUIOA, *Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

ROMEO CHAN REALES,
Accused-Appellant.

Promulgated:

January 22, 2024

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DECISION

DIMAAMPAO, J.:

Before this Court is an ordinary appeal filed by accused-appellant Romeo Chan Reales (Robles) pursuant to Section 1(a), Rule XI¹ of the 2018 Revised Internal Rules of the Sandiganbayan,² assailing the Decision³ and the Resolution⁴ of the Sandiganbayan, in SB-17-CRM-2197 to 2198.

¹ *Section 1. Methods of Review.* –

(a) *In General.* – The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by notice of appeal filed with the Sandiganbayan and by serving a copy thereof upon the adverse party.

The appeal to the Supreme Court in criminal cases decided by the *SBN* in the exercise of its appellate jurisdiction, and in civil cases shall be by petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure.

² A.M. No. 13-07-05-SB (2018).

³ *Rollo*, pp. 6–69. The Decision dated June 25, 2021 was penned by Associate Justice Kevin Narce B. Vivero, with the concurrence of Associate Justices Sarah Jane T. Fernandez and Karl B. Miranda.

⁴ *Id.* at 192–195. Dated November 9, 2021.

J

In the impugned Decision, the Sandiganbayan convicted Reales of: (1) violation of Section 3(e),⁵ Republic Act No. 3019⁶ and (2) malversation through falsification of public documents under Article 217,⁷ in relation to Article 48⁸ and 171⁹ of the Revised Penal Code (RPC). The challenged Resolution, on the other hand, denied his motion for reconsideration¹⁰ thereof.

The material operative facts follow.

In 2001, then Governor Milagrosa T. Tan (Governor Tan) of the Province of Samar designated Reales as the Officer-in-Charge of the Office of the Provincial Administrator, in addition to his duties as Provincial Accountant.¹¹ His authority to sign or approve papers and documents as officer-in-charge was limited to the following:

⁵ **Section 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:

....

(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.

⁶ ANTI-GRAFT AND CORRUPT PRACTICES ACT (1960).

⁷ **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:

....

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine ranging from one-half to the total value of the funds or property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

⁸ **ART. 48. Penalty for Complex Crimes.** — When a single act constitutes two or more crimes, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

⁹ **ART. 171. Falsification by Public Officer, Employee or Notary or Ecclesiastical Minister.** — The penalty of *prisión mayor* and a fine not to exceed One million pesos (P1,000,000) shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

¹⁰ SBN *rollo*, vol. 2, pp. 190–198.

¹¹ *Rollo*, pp. 17–18. SBN Decision.

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1. Payroll for salaries and wages;
2. Disbursement vouchers for payments of light, water, telephone[,] and internet subscription; and
3. Personnel remittances to GSIS, PhilHealth, BIR, PAG-IBIG, Land Bank of the Philippines[,] and Philippine National Bank.

All other documents and pertinent papers for signature of the Governor shall be forwarded to this office for appropriate action.¹²

As it turned out, Reales created and enrolled fictitious job order workers in the payrolls and took possession of the public monies earmarked for their wages. He particularly facilitated the disbursement of public funds amounting to PHP 76,500.00 for 25 job order workers. He likewise approved the Summary of Payrolls,¹³ the Daily Time Records,¹⁴ and the Time Book and Payroll¹⁵ of the job order workers in Catbalogan, Samar covering the periods October 1-31, 2005 and November 1-30, 2005, which gave the green light to Winifreda A. Estremera (Estremera), the Municipal Treasurer, who was also the Special Disbursing Officer/Paymaster, to release the wages of the said workers.¹⁶

Reales also affixed his signature above the names “Milagrosa T. Tan, Governor” and “Romeo C. Reales, Provincial Accountant” on the Summary of Payrolls as well as the names “Milagrosa T. Tan, Foreman or Timekeeper” and “Milagrosa T. Tan, Superintendent or Foreman-in-Charge” on the Time Book and Payroll. He signed each of the 25 Daily Time Records of the job order workers. By doing so, he certified as to the services rendered by the employees concerned and the correctness of the payroll, thus approving their wages. However, none of the 25 job order personnel named in the Daily Time Records and the Time Book and Payroll truly reported for work, and yet their wages were released. The foregoing caused pecuniary damage to the government, to the Province of Samar, in particular.¹⁷

Eventually, Aurelio A. Bardaje, Jr. (Bardaje) of the Provincial Health Office, instituted an Affidavit/Complaint¹⁸ against Reales’s purported “illegal transactions of disbursing public money in the guise of Contract of Services of employees.”¹⁹

After investigation, the Field Investigation Group of the Office of the Ombudsman-Visayas filed a complaint against him and Bienvenido Sabenecio, the Provincial Treasurer, in violation of Section 3(e) of Republic

¹² *Id.* at 18.

¹³ *SBN rollo*, vol. 1, pp. 317 and 323.

¹⁴ *Id.* at 318–322 and 325–327.

¹⁵ *Id.* at 318 and 324.

¹⁶ *Rollo*, pp. 18–20. *SBN Decision*.

¹⁷ *Id.* at 19–20.

¹⁸ *SBN rollo*, vol. 1, pp. 20–30.

¹⁹ *Id.* at 28.

Act No. 3019 and malversation through falsification of public documents under Article 217, in relation to Article 48 and 171 of the RPC. The investigation revealed the salary payment scam which was presumably perpetrated by the said provincial officials.²⁰

Expostulating against the accusations hurled against him,²¹ Reales averred that the subject wages were actually received by the respective employees according to the Summary of Payrolls, and that he relied in good faith that the Daily Time Records and payrolls underwent scrutiny by the officers concerned. He maintained his innocence, arguing that he was not charged with the responsibility of ascertaining the correctness of all the details in the approval of the payroll, and that there was no direct proof that he falsified public documents.²²

With the finding of probable cause against him for the crimes of (1) malversation of public funds through falsification of public/officials documents, defined and penalized under Article 217, in relation to Articles 48 and 171 of the RPC, and (2) violation of Section 3(e) of Republic Act No. 3019,²³ the Office of the Ombudsman filed two separate Informations²⁴ before the Sandiganbayan, docketed as SB-17-CRM-197 and SB-17-CRM-198. The inculpatory averments thereof state:

SB-17-CRM-2197

[for violation of Section 3(e) of RA No. 3019, as amended]

That for the period from 1 October 2005 to 30 November 2005, or sometime prior or subsequent thereto, in the Province of Samar, Philippines and within the jurisdiction of this Honorable Court, **accused ROMEO CHAN REALES**, a high-ranking *public officer*, being the Provincial Accountant/OIC Provincial Administrator and a Provincial Department Head of the Province of Samar, while *in the performance of his administrative and/or official function and committing the crime in relation to [his] office, acting with evident bad faith, manifest partiality[,] and/or gross inexcusable negligence*, did then and there willfully, unlawfully[,] and criminally *cause injury to the government* in the amount of [PHP] 76,5000.00, by causing or approving the disbursement of said funds supposedly intended for the wages of the job order employees of the province for the period of (sic) 1 October 2005 to 30 November 2005, when in truth they had not rendered such services, and by making it appear that they had received the said wages, when in fact such amount was misappropriated by the accused himself, to the damage and prejudice of the government.

²⁰ *Id.*

²¹ SBN *rollo*, vol. 1, pp. 74–88. Counter-Affidavit of accused-appellant.

²² *Rollo*, pp. 11–12. SBN Decision.

²³ SBN *rollo*, vol. 1, pp. 8–19. The OMB Resolution dated June 26, 2015 was prepared by Maria Bernadeth S. Andal-Subaan, Graft Investigation and Prosecution Officer I, with the approval of Ombudsman Conchita Carpio Morales.

²⁴ *Id.* at 1–6.

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CONTRARY TO LAW.²⁵

SB-17-CRM-2198

[for malversation through falsification of public documents]

That for the period from 1 October 2005 to 30 November 2005, or sometimes prior or subsequent thereto, in the Province of Samar, Philippines and within the jurisdiction of this Honorable Court, **accused ROMEO CHAN REALES**, a high-ranking public officer, being the Provincial Accountant/ OIC Provincial Administrator and a Provincial Department Head of the Province of Samar, in such capacities and committing the offense in relation to [his] office, taking advantage of his official positions, did then and there, willfully, unlawfully, and feloniously ***appropriate, take, misappropriate, embezzle, and/or convert to his own personal use and benefit*** the total amount of [PHP] 76,500.00, in ***public funds***, and under his custody and control by reason of his office, and for which he was accountable, ***by falsifying or causing to be falsified the Timebook and Payrolls and the Daily Time Records of the supposed job order employees of the province*** for the period of 1 October 2005 to 30 November 2005, which are public/ official documents, thereby making it appear therein that the rolls are correct and that the job order employees appearing thereon rendered actual services during the said period and received their respective wages as indicated therein, when in truth and in fact, as accused fully well knew, that the supposed job order employees did not participate in, neither did they render such services nor received their wages, thereby facilitating the release of said public funds which accused subsequently misappropriated for his own benefit, to the damage and prejudice of the government in the aforesaid sum.

CONTRARY TO LAW.²⁶

During his arraignment, Reales pled not guilty to the offense charged. After the pre-trial conference, trial on the merits forthwith ensued.²⁷

The prosecution presented six witnesses, whose testimonies are summarized below.

Myrgie D. Ko, the provincial budget officer since 2018, issued a Certification²⁸ to the effect that the documents relating to the payment of the 25 emergency laborers employed by the provincial government for the periods covering October 1-31, 2005 and November 1-30, 2005 were no longer available. Aside from these being eaten by termites, their office retained documents issued within the last five years only.

Tommy Roger M. Ragaodao, Jr., who was the provincial accountant since 2018, attested that despite diligent efforts, his office failed to locate documents pertinent to the hiring of the 25 emergency laborers employed by

²⁵ *Id.* at 1-2. (Emphasis supplied)

²⁶ *Id.* at 4-5. (Emphasis supplied)

²⁷ *Rollo*, p. 13. SBN Decision.

²⁸ SBN *rollo*, vol. 1, p. 277.

the provincial government for the subject periods as these were no longer in its possession.²⁹

As the Officer-in-Charge of the Human Resource Management Office since 2014, Juliet T. Dayap (Dayap) testified that she verified, issued, and submitted certified true copies of the documents pertaining to the employment history of Reales, including those regarding his designation as the officer-in-charge of the Provincial Administrator's office.³⁰ However, she failed to retrieve documents relative to the hiring of emergency laborers during the relevant period.³¹

Atty. Helen O. Fabra, a State Auditor of the Commission on Audit assigned as the Audit Team Leader for the province since 2018, avouched that despite diligent efforts, she failed to obtain the obligation requests, disbursement vouchers, and journal entry vouchers in regard to the hiring of the 25 emergency laborers employed for the subject periods.³²

Estremera, Supervising Administrative Officer – Cashier IV assigned at the Provincial Treasurer's office completed her testimony *via* a Judicial Affidavit.³³ During the re-direct and re-cross examinations, she affirmed that she personally handed the wages/salaries of the job order workers to their authorized representative every 15th and 30th of each month, upon presentment of a special of attorney along with the worker's identification card. This practice had been supposedly sanctioned since 2005.³⁴ Being the disbursing officer, Estremera was familiar with the Time Book and Payroll. The signature of Reales, which appeared thereon as the officer-in-charge, constituted as approval for the release of the monies.³⁵

Finally, Julius N. Oballo, Associate Graft Investigation Officer I of the Office of the Ombudsman avowed, among others, that the signatures appearing on the Daily Time Records; the Summary of Payrolls; the Time Book and Payroll; and the papers evincing approval for release of the monies were alike, *i.e.*, Reales was the signatory in every phase of the payroll process.³⁶

For its part, the Public Attorney's Office presented Reales as its lone witness. He denied the charges hurled against him and claimed that he had forgotten signing any Daily Time Records from October 1 to 31, 2005 and from November 1 to 30, 2005. The voluminous papers he had to sign did not

²⁹ *Id.* at 278–282 (Judicial Affidavit of Tommy Roger M. Ragaodao, Jr.) and 284 (Certification dated September 19, 2018).

³⁰ *Id.* at 290–291. Judicial Affidavit of Juliet T. Dayap.

³¹ *Id.* at 305. Certification.

³² *Id.* at 342–345. Certification of Under Oath.

³³ *Id.* at 306–315.

³⁴ TSN, Wenifreda Estremera, August 7, 2019, pp. 30–47.

³⁵ *Rollo*, p. 26. SBN Decision.

³⁶ *Id.* at 27–28.



give him the chance anymore to review every single one. With respect to the verification of the accuracy of data in the documents, for as long as the respective department heads had signed the payrolls, he signed them as well.³⁷

In addition to the foregoing testimonies, both parties adduced various documentary exhibits, e.g., the disputatious Summary of Payrolls, Time Book and Payroll, and Daily Time Records of the emergency laborers.³⁸

In due course, the Sandiganbayan rendered the impugned Decision, adjudging Reales guilty of violation of: 1) Section 3(e) of Republic Act No. 3019, in Criminal Case No. SB-17-CRM-2197; and 2) malversation through falsification of public documents under Article 217, in relation to Article 48 and 171 of the Revised Penal Code, in Criminal Case No. SB-17-CRM-2198, but appreciated the mitigating circumstance of voluntary surrender.³⁹ It disposed in this prose—

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In **Criminal Case No. SB-17-CRM-2197, accused ROMEO CHAN REALES** is hereby found **GUILTY** beyond reasonable doubt of **violation of Section 3(e) of Republic Act No. 3019, as amended**, and sentence to suffer the penalty of—
 - 1.1. imprisonment of six (6) years and one (1) month as *minimum*, to ten (10) years as *maximum*, in accordance with the Indeterminate Sentence Law; and
 - 1.2. perpetual disqualification from public office.
2. In **Criminal Case No. SB-17-CRM-2198, accused ROMEO CHAN REALES** is hereby found **GUILTY** beyond reasonable doubt of the complex crime of **Malversation through Falsification of Public Documents** under Article 217, in relation to Articles 48 and 171 of the Revised Penal Code, and sentenced to suffer the penalty of—
 - 2.1. imprisonment of two (2) years, four (4) months and one (1) day of ***prision correccional***, as minimum, to eight (8) years of ***prision mayor***, as maximum;
 - 2.2. perpetual disqualification from holding any public office; and
 - 2.3. fine of Seventy-Six Thousand Five Hundred Pesos ([PHP] 76,500.00).

As **civil liability**, Reales shall further pay to the Provincial Government of Samar the amount of Seventy-Six Thousand, Five Hundred Pesos ([PHP] 76,500.00), plus interest thereon at the rate of six percent (6%)

³⁷ *Id.* at 33–35.

³⁸ *Id.* at 28–33 and 35–36.

³⁹ *Id.* at 52 and 63–65.

per annum, reckoned from the finality of this Decision until the amount malversed is fully paid.

SO ORDERED.⁴⁰

In ruling so, the Sandiganbayan found that the elements to justify an indictment under Section 3(e) of Republic Act No. 3019 obtained in the case at bench. *First*, Reales was a public officer who discharged administrative functions through which the crime was committed. *Second*, the Office of the Ombudsman proved its negative allegation that the job order workers had not actually rendered work. Correlatively, Reales's signature on the Daily Time Records, Summary of Payrolls, and Time Book and Payroll for the periods covering October 1-31, 2005 and November 1-30, 2005 point to him as the perpetrator of the crime, thereby demonstrating evident bad faith. *Third*, since payroll fraud entailed fiscal losses, the provincial government of Samar took a hit in the amount of PHP 76,500.00 by reason of the ghost employees.⁴¹

Likewise, the Sandiganbayan ruled that granting Reales did not personally gain from the fraudulent transaction, this was immaterial since personal gain is not an element of the crime. Pertinently, Republic Act No. 3019 is *malum prohibitum*. Moreover, he should have placed himself on guard given that the documents pertained to job order workers and not mere regular workers. Instead, he turned a blind eye to the red flags spotted on such documents. His duty as the officer-in-charge, therefore, was not only ministerial, but discretionary as he had the prerogative to approve or disapprove the entries in the Daily Time Records.⁴²

As regards the second charge, the Sandiganbayan similarly found all the elements of malversation of public funds attendant to the instant case. *One*, Reales was a public officer. *Two*, under the Local Government Code,⁴³ he, as the officer-in-charge, was a public officer accountable for public funds and property. He also approved the Summary of Payrolls under the authority of his position as the provincial accountant. *Three*, the funds, belonging to the Province of Samar, are public in character. *Four*, his signature on the Summary of Payrolls and Time Book and Payroll illustrated that, in his three-fold capacity as provincial accountant, officer-in-charge, and *de facto* alter ego of Governor Tan, he had unobstructed control and responsibility over the disputed public funds. Verily, his failure to satisfactorily explain the shortage in the subject accounts made him presumptively guilty. Regardless, he committed falsification by tampering with public documents to make it appear that the 25 fictitious job order workers rendered service, signed on the Time Book and Payroll, and personally received their salaries from the disbursing officers.⁴⁴

⁴⁰ *Id.* at 67–68.

⁴¹ *Id.* at 37–52.

⁴² *Id.* at 44–48.

⁴³ REPUBLIC ACT NO. 7160 (1991).

⁴⁴ *Rollo*, pp. 53–63.

Aggrieved, Reales moved for the reconsideration⁴⁵ of the guilty verdict against him, maintaining his innocence and good faith. He averred that fraudulent intent was not proven, and that the testimonies presented by the Office of the Ombudsman failed to establish the existence of ghost employees or the fact that the job order workers did not render service.⁴⁶ Still and all, appellant's motion was denied in the assailed Resolution.⁴⁷

In the appeal⁴⁸ at bench, Reales prays that this Court reverse and set aside the judgment of guilty beyond reasonable doubt and thus acquit him of the charges filed for violation of Section 3(e) of Republic Act No. 3019 and malversation through falsification of public documents under Articles 217, in relation to Articles 48 and 171 of the RPC.

After a series of extensions, the Office of the Ombudsman filed its Appellee's Brief.⁴⁹

The Court's Ruling

The Appeal carries weight and conviction.

*Criminal Case No.
SB-17-CRM-2197*

At the outset, it is settled that in criminal cases, the burden is on the prosecution to prove an accused's guilt beyond reasonable doubt. This is demanded by the due process clause of the Constitution, which protects an accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he or she is charged. Unless the prosecution can discharge its burden, the accused need not even offer evidence on his or her behalf, and he or she would be entitled to an acquittal.⁵⁰

An evaluation of the Information in Criminal Case No. SB-17-CRM-2197 readily shows that accused-appellant Reales was charged with violating Section 3(e) of Republic Act No. 3019 for "acting with evident bad faith, manifest partiality, and/or gross inexcusable negligence,"⁵¹ with the undermentioned overt acts imputed against him:

1. Causing or approving the disbursement of Php76,500.00 supposedly intended for the wages of the job order employees of the province for the period October 1, 2005 to November 30, 2005, when in truth they **had not rendered such services**;

⁴⁵ SBN *rollo*, vol. 2, pp. 190–198.

⁴⁶ *Id.* at 192–193.

⁴⁷ *Rollo*, pp. 192–195.

⁴⁸ *Id.* at 91–125.

⁴⁹ *Id.* at 212–238.

⁵⁰ See *People v. Castillo*, G.R. No. 252173, March 15, 2022 [Per J. Gaerlan, First Division].

⁵¹ *Rollo*, p. 8. SBN Decision.

2. Making it appear that they had received the said wages, when in truth and in fact such amount was misappropriated by the accused himself, to the damage and prejudice of the government.⁵²

Evidently, the charges against accused-appellant ultimately hinge on the existence of the purported “ghost” employees, and whether they had indeed failed to render services. Yet, a review of the evidence on record evinces that the Office of the Ombudsman failed to prove beyond reasonable doubt that the job order workers did not render work, or that it was accused-appellant who misappropriated the wages supposedly due them.

In convicting him, the Sandiganbayan concluded that the prosecution was successful in proving its claim that the 25 job order workers failed to render work, thus:

Clearly, the Information (SB-CRM-17-2197) shows that the Prosecution anchors its theory on the *negative allegation* that the job order personnel “*had not rendered*” any work. The Court must perforce begin with a determination of this issue as its resolution is decisive for both cases.

....

By all accounts, the Prosecution had proven its *negative allegation* that twenty-five (25) job order workers never actually worked. A “*smoking gun*” was revealed in the form of documents formally offered by the Prosecution. The *Summary of Payrolls*, the *Daily Time Records (DTRs)* for the periods October 1–31, 2005, and November 1–30, 2005, as well as the *Time Book and Payroll* for job order workers (i.e., emergency laborers) at [sic] Catbalogan, Samar, for said periods, as certified by Wenifreda A. Estremera, the Special Disbursing Officer/ Paymaster, point to [accused-appellant] as the fraudster who perpetrated the white-collar crime. Further, OIC-HRMO Juliet T. Dayap attested that [accused-appellant] was –

“... authorized to sign payrolls, purchase requests, daily time records of personnel and other vouchers for the operation of the Office of the Provincial Agriculturist.” (Emphasis and Underscoring Supplied.)

Notably, however, said authorization took effect on March 13, 2006, not in 2005. Curiously, Ms. Dayap cannot find, despite diligent search, Personal Data Sheets (PDS), Contracts of Services[,] or any document relative to the hiring of emergency workers for CY 2005.

Furthermore, Julius N. Oballo, the investigator, is cocksure about [accused-appellant’s] culpability. Oballo’s certitude is manifest in his testimony, viz[.]:

“JUSTICE MIRANDA:

[H]ow do you know that it was he (accused) who signed or falsified the signatures?

⁵² See *id.* Emphasis supplied.

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A: Because, Your Honor, in **ALL THE DTRS** except I think in one DTR, it's all **SIGNED BY THE SAME SIGNATURE AS THAT OF THE AUHTORIZED PERSON APPROVING THE SUMMARY OF PAYROLLS, THE TIME BOOK AND PAYROLLS[,] AND THE APPROVAL OF RELEASE FOR AND IN BEHALF OF GOVERNOR MILAGROSA B. TAN,** Your Honor.

....

THE CHAIRPERSON:

[I]t is the same signature.

A: Yes, Your Honor, and almost all of the DTRs.

THE CHAIRPERSON:

It is the same signature, meaning **THERE WAS NO ATTEMPT TO MAKE IT APPEAR THAT IT WAS SOMEONE ELSE'S SIGNATURE.**

A: Yes, Your Honor. (Emphasis and Capitalization Supplied.)

The testimony of Mr. Oballo is supported by the documentary exhibits. Having established its *negative allegation* that none of the twenty-five job order workers in question really earned their keep, **the Prosecution has effectively shifted to the [accused-appellant] the burden of proof to show otherwise.** [Accused-appellant] adduced no rebuttal evidence in this regard. Instead, he obstinately relied on the regularity of the payroll process, which in the end, echoes a self-serving declaration. His undoing cost him dearly.⁵³

....

Whether or not [accused-appellant] acted in good or bad faith in effecting what, at bottom, are unauthorized payments, addresses a question of credibility. As a general proposition, the determination of credibility is the domain of the trial court – in this case, this Court. Clearly, [accused-appellant] has acted with malice afterthought, a disposition which is evident from his pseudolegal signatures and *imprimatur* in the following documents:

1. Daily Time Records (DTRs) relative to the period: October 1–31, 2005;
2. Daily Time Records (DTRs) relative to the period: November 1–30, 2005;
3. Summary of Payrolls (SoP); and
4. Time Book and Payroll (TBP).

⁵³ *Id.* at 39–41.

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Quod per recordum probatum, non debet esse negatum (What is proved by record, ought not be denied.). His *imprimatur* to the above documents is testament of [sic] the “*evident bad faith*” contemplated by Section 3(e) of R.A. No. 3019. It uncloaks [accused-appellant’s] “**palpably and patently fraudulent and dishonest purpose** to do moral obliquity or conscious wrongdoing for some **perverse motive or ill will.**” Absent foolproof segregation of authorities from the hiring to the payment phase, wages, as a collective whole, are easy pickings for the [accused-appellant]. By and large, this well-thought-out payroll fraud materialized due largely to the shrewd participation and brash intervention of [accused-appellant] in the following phases:

- 1) the ghost must be added to the payroll;
- 2) timekeeping and wage rate information must be collected;
- 3) a paycheck must be issued to the ghost; and
- 4) the check must be delivered to the perpetrator or accomplice.⁵⁴

Dissecting the discussion above, palpably wanting is the Sandiganbayan’s seminal basis for concluding that the 25 job order workers were “ghost” employees as they did not actually render compensable work. Pertinently, instead of requiring proof of this assertion from the prosecution, it pronounced that such claim was a negative allegation. In effect, the Sandiganbayan excused the prosecution from presenting evidence to prove accused-appellant’s guilt beyond reasonable doubt for the criminal charges filed against him. It ratiocinated that the charge of failure to render work is a negative averment which did not permit direct proof. As such, the burden of proof shifted to the accused-appellant to prove that the job order workers truly rendered service to the provincial government. Using the above as a yardstick, the Sandiganbayan found that he failed to discharge the burden of proving the same.

The Court begs to differ.

In *People v. Manalo*,⁵⁵ the Court elucidated on the nature of a negative averment:

The general rule is that **if a criminal charge is predicated on a negative allegation, or a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge.** However, this rule admits of exceptions. **Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him.** Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily

⁵⁴ *Id.* at 49–50.

⁵⁵ 300 Phil. 317 (1994) [Per J. Puno, Second Division].

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be disproved by the production of documents or other evidence within the defendant's knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar, where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarly within his knowledge and he must establish that fact or suffer conviction. Even in the case of Pajenado, this Court categorically ruled that although the prosecution has the burden of proving a negative averment which is an essential element of a crime, the prosecution, in view of the difficulty of proving a negative allegation, 'need only establish a prima facie case from the best evidence obtainable.' In fact, Pajenado was acquitted of the charge of illegal possession of firearm for the Court found that, in said case, the prosecution was not able to establish even a prima facie case upon which to hold him guilty of the crime charged.⁵⁶

In the case at bench, the exceptions to the rule on negative allegation do not apply since what was sought to be proven by the purported negative averment was an essential element of the crime. In sooth, a violation of Section 3(e) of Republic Act No. 3019 consists of the following elements:

- a. The accused must be a public officer discharging administrative, judicial, or official functions;
- b. He or she must have acted with manifest partiality, or evident bad faith or gross inexcusable negligence; and
- c. His or her action caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his [or her] functions.⁵⁷

In the pivotal case of *People v. Pajenado*,⁵⁸ the Court decreed that the burden of proof as to the offense charged in criminal cases lies on the prosecution and that a negative fact it asserts must be duly proven if it is an essential ingredient of the offense charged.⁵⁹ Accordingly, the burden lay on the prosecution to prove that the crime was indeed committed with evident bad faith by establishing, at the inception, that no job order workers actually rendered any form of service.

It is readily apparent that the factual assertion that the job order workers failed to render work is the fulcrum which sets off the second element of a violation of Section 3(e) of Republic Act No. 3019. Otherwise stated, it is part and parcel of the overt act which directly establishes whether or not accused-appellant was guilty of evident bad faith as an element of the crime. The subject Information itself specifically averred that the job order employees

⁵⁶ *Id.* at 329. (Emphasis in the original)

⁵⁷ *See Baya v. Sandiganbayan (2nd Division)*, 876 Phil. 57, 111 (2020) [Per J. Leonen, Third Division].

⁵⁸ 142 Phil. 702 (1970) [Per J. Dizon].

⁵⁹ *See id.* at 706.

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“had not rendered such services.”⁶⁰ Irrefragably, it was the prosecution’s duty not merely to claim that negative fact, but, more importantly, to prove it. Besides, the prosecution missed the mark in asserting that the fact of rendition of work was within the knowledge of the accused-appellant. On the contrary, he retorted that the disputed workers did not report to him directly.⁶¹

In any event, the Office of the Ombudsman failed to establish even a *prima facie* determination of the workers’ failure to render work. The evidence presented would show that the prosecution heavily relied on the public documents, i.e., the Daily Time Records, the Summary of Payrolls, and the Time Book and Payroll, as well as the alleged certainty in Oballo’s testimony to deduce such a fact. By no means, these pieces of documents are a “smoking gun”⁶² as construed by the Sandiganbayan.

Particularly, an examination of the Daily Time Records divulges that **none of the 25 job order workers signed the same.** Moreover, the Office of the Ombudsman found it highly unlikely that all the employees came and left the office at the same time. Notwithstanding these circumstances which signaled supposed irregularities, accused-appellant still signed them. His signing of the Daily Time Records, when coupled with his imprimatur on the Summary of Payrolls and the Time Book and Payroll, indicate the commission of falsification and indubitably established the existence of ghost employees.

The foregoing, however, begs for a rash and illogical conclusion. By accused-appellant’s signatures on the Daily Time Records, upon which Oballo’s testimony centered as well, there can be no other conclusion apart from the fact that accused-appellant merely verified them as to the prescribed office hours, as one who was supposedly in-charge to do so. Relatedly, if it were his intention to falsify the Daily Time Records by making it appear that the job order workers had signed the same, he would not have signed all of them using the same signature which he himself used. **Consequently, the absence of the employees’ signatures on the Daily Time Records and accused-appellant’s subsequent signing thereof do not demonstrate anything other than that the job order workers appear to have failed to sign them, and that accused-appellant signed without their signatures, or even without authority, as held by the Sandiganbayan.**⁶³

The Sandiganbayan gave prodigious credence to Oballo’s testimony for his certitude and for being “cocksure about [accused-appellant’s] culpability.”⁶⁴ Quite the reverse, however, the Court finds multiple gaps and contradictions in Oballo’s assertions. Specifically, it did not bolster the criminal charge that his testimony was perplexing as to the nature of the

⁶⁰ SBN *rollo*, vol. 1, p. 1. Information for Criminal Case No. SB-17-CRM-2197.

⁶¹ *Id.*, vol. 2, p. 11. Judicial Affidavit of accused-appellant.

⁶² *Rollo*, p. 40. SBN Decision.

⁶³ *Id.* at 41–42.

⁶⁴ *Id.* at 40.

falsification committed on the Daily Time Records. On cross-examination, he attested that there was falsification because the Daily Time Records were signed for verification by the accused-appellant despite the absence of the supposed employees' signatures.⁶⁵ This is antithetical to his initial assertion in the same instance that accused-appellant's signatures were not for verification purposes but a direct falsification of the laborers' signatures, viz.:

THE CHAIRPERSON:

....

Q: x x x Below that signature you pointed, it is actually marked as Exhibit H-1. It says here verified below the signature Exhibit H-1. We'll go first here – verified as to prescribe[d] office hours. Would you agree with me that the signature is a mere verification?

....

Q: [I] will reform my question. Below that signature[,] please read that, Mr. Witness. Ano nakasulat?

A: Verified as to prescribe[d] office hours[.]

Q: So, that signature for all intents and purposes is a mere verification, am I correct sir, or you do not agree?

A: I am sorry, sir. I could not agree.

Q: . . . You said that the accused falsified the signature of the payees or the laborers, am I correct, sir?

A: Yes, sir.⁶⁶

Succinctly, the foregoing facts do not sufficiently evince a presumption that ghost employees were hired and did not render work for the provincial government.

Apart from the preceding pieces of evidence, the Office of the Ombudsman also offered the Affidavit/Complaint⁶⁷ of Bardaje and the Affidavit⁶⁸ of one Rondita Ordoña (Ordoña), a witness interviewed during investigation, to prove that no work was rendered by the job order workers.

⁶⁵ TSN, Julius N. Oballo, August 14, 2019, pp. 33–34. The relevant portion thereof reads:

THE CHAIRPERSON:

Let him answer the question. Where is the falsification that you are referring to?

A: Your Honor, I said there is falsification because all the [DTRs] of the supposed employees before the signature of verification[,] there should have been normally, Your Honors, the signature of the employee *before the signature of the one appearing now*. (Emphasis supplied)

Q: And, you're basing that answer with what rule, Mr. Witness please, that normally there should be a signature of the employee? What is the basis of that statement of yours? What rule?

....

A: As a government employee, we fill up also [DTRs] and before the same is verified by our immediate superior, we should first affix our signature.

⁶⁶ *Id.* at 31–32.

⁶⁷ SBN *rollo*, vol. 1, pp. 20–30.

⁶⁸ *Id.* at 424–425.

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Oddly enough, neither of them was presented in court despite the subpoenas⁶⁹ issued them. **Without their testimony in open court, their affidavits are considered hearsay evidence, wanting of any evidentiary weight.** It is well-established that it is necessary that the affiant is placed on the witness stand to attest to the truths of the contents of his or her affidavit and to give the defense the opportunity to confront and cross-examine him or her.⁷⁰ The exclusion of hearsay evidence is anchored on three reasons: (1) absence of cross-examination; (2) absence of demeanor evidence; and (3) absence of oath.⁷¹ Together with these, contrary to the pronouncement of the Sandiganbayan as well as the contentions of the Office of the Ombudsman,⁷² the objections of accused-appellant to Ordoña's Affidavit is not premised on probative value, but on its admissibility, being hearsay evidence.

Assuming that they were admissible, still, they do not sway the Court. Bardaje's assertions simply harp on the absence of the signatures of the employees on the Daily Time Records, which was already shown to be unmeritorious. Meanwhile, Ordoña did not positively avow that the job order employees were inexistent. Instead, her Affidavit merely maintained that, being "familiar with *almost* ALL the employees including casuals of the province,"⁷³ she "could not recall of Job Order employees nor employees covered by Contract of Services that reported to the Office of the Governor or in any of the offices of the LGU – Province of Samar, for the period from January 2004 to December 2006."⁷⁴ Nowhere in her Affidavit did she state that the job order workers failed to render actual work. Far from it, her statement simply pointed to the fact that she had "not seen"⁷⁵ those employees enumerated in the Daily Time Records and the Time Book and Payroll.

By the same token, Dayap's failure to locate the Job Order, Contracts of Services, or any other document with respect to the hiring of emergency workers for the relevant years despite diligent search⁷⁶ does not convincingly prove the non-existence of such employees, but only that such files could be found and therefore were unavailable to be presented in trial.

All in all, the burden did not shift to the accused-appellant to prove that the job order workers neither reported for work nor rendered services.

As regards the second overt act supposedly committed by accused-appellant, i.e., malversation through falsification of public documents, equally lacking in support is the claim of the Office of the Ombudsman that it was he himself who misappropriated the same. To recall, the prosecution depended

⁶⁹ *Id.* at 358–359.

⁷⁰ *See Rep. of the Phils. v. Marcos-Manotok*, 681 Phil. 380, 405 (2012) [Per J. Sereno, Second Division].

⁷¹ *Lim v. People*, 797 Phil. 215, 231 (2016) [Per J. Velasco, Jr., Third Division].

⁷² *Rollo*, p. 223. Appellee's Brief.

⁷³ *SBN rollo*, vol. 1, p. 424.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 430.



on his signatures on the Daily Time Records, Summary of Payrolls, and Time Book and Payroll to surmise that he made it appear that *the employees received the wages*. To this end, the Court finds it imperative and compelling to describe and detail the nature and contents of the vital documentary exhibits of the prosecution alleged to have been falsified by him.

As appearing on the face of these public documents, the act or participation of accused-appellant thereon are indicated as follows:

1. In the Daily Time Records, his signature appears between the following words:

I CERTIFY on my honor that the above is a true and correct report of the hours of work performed, record of which was made daily at the time of arrival at and departure from Office.

(SGD.)

Verified as to the prescribed office hours.

In-Charge⁷⁷

2. In the Summary of Payrolls, for October 1-31, 2005 and November 1-30, 2005, his signatures supposedly appear above his own name as well as above the name "MILAGROSA T. TAN"—

APPROVED:

(SGD.)
MILAGROSA T. TAN
Governor

APPROVED FOR PAYMENT:

(SGD.)
ROMEO C. REALES
PROVINCIAL ACCOUNTANT⁷⁸

3. In the Time Book and Payment for October 1-31, 2005 and November 1-30, 2005, he affixed on the printed certifications his signatures above the name "MILAGROSA T. TAN" read thus:

1. I HEREBY CERTIFY that each person whose name appears on this roll rendered service as indicated for the time stated

(SGD.)
MILAGROSA T. TAN
Foreman or Timekeeper

⁷⁷ *Id.* at 319–322 and 325–327.

⁷⁸ *Id.* at 317 and 323.



2. I certify that this roll is correct; every person whose name appears hereon rendered service for the time and at the rates stated under my general supervision, and I approve payment of this roll.

(SGD.)
MILAGROSA T. TAN
Superintendent or Foreman In-Charge⁷⁹

The enumerated documents fail to exhibit how accused-appellant's acts and participation therein had made it appear that non-existent employees received the disputatious wages. On the face of the Daily Time Records and the Time Book and Payroll, his liability as head of the office and representative of the governor who signed the certification and verification printed thereon must be limited to the contents of the said verification and certification. For signing the same, he does not necessarily incur criminal responsibility if the entries, data, or statements certified and verified turn out not to be true in which case the employee or personnel who prepared the entries, data, or statements as to his services and attendance is solely and separately responsible therefor.⁸⁰ At most, his liability is restricted to misrepresentations in the certifications and verifications, *sans* conclusive proof that he was involved in any pretense of receipt of the wages.

In the same breath, a study of the Time Book and Payroll would reveal that the Special Disbursing Officer, Paymaster, or Municipal Treasurer released the sums of money. Pertinently, the certification of Estremera reads:

3. I CERTIFY on my official oath that I have this ____ day of _____, 20__ paid in cash to each man whose name appears on the above roll, the amount set opposite his name, he having presented himself, establish his identity, and affixed his signature or thumb mark on the space provided therefore Unpaid services are indicated by red ink through the column "Amount Paid"[.]⁸¹

Based on the above certification, Estremera attested that to be able to receive the cash amounts, the job order workers presented themselves to her and established their identity. She supposedly witnessed the affixation of each of their signatures on the Time Book and Payroll upon receipt thereof. This is corroborated by her testimony in her Judicial Affidavit⁸² and on cross-examination that the signature on the third certification on the Time Book and Payroll belonged to her. She likewise affirmed that employees would go to the window by her office to collect their salaries or wages, and that she personally attended to them to release the subject amounts.⁸³

⁷⁹ *Id.* at 318 and 324.

⁸⁰ *See Borje v. Sandiganbayan*, 211 Phil. 106, 117 (1983) [Per J. Guerrero, *En Banc*].

⁸¹ *SBN rollo*, vol. 1, pp. 318 and 324.

⁸² *Id.* at 310 and TSN, Wenifreda Estremera, August 7, 2019, p. 20.

⁸³ TSN, Wenifreda Estremera, August 7, 2019, p. 13-14.

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With the foregoing discourse, Estremera's testimony is contradictory and conflicting, and therefore unreliable and unworthy. Speaking about the collection of wages by the subject job order workers, she suddenly made a turn-about and mentioned that a special power of attorney may have been used to collect the wages through a representative.⁸⁴ Nonetheless, a copy thereof, the identity of the representative, or a statement in the Time Book and Payroll stating the use of a special power of attorney were not established. Besides, a cursory inspection of the Time Book and Payroll discloses that the signatures of the claimants, written in different penmanships, correspond to the names of the workers, and not of a single person supposedly authorized to collect their wages.

Withal, the Supplemental Affidavit⁸⁵ of Bardaje implicated Estremera as having direct participation in the anomalous transactions and should thus be included as one on the respondents in his complaint.⁸⁶ Strangely, Oballo opted not to investigate Estremera, for the reason that she was not included in the original complaint.

Taken altogether, none of the proffered public documents exhibited the receipt by accused-appellant of the sums, or did they show that he facilitated the receipt of the wages of the non-existent workers. If at all, his participation is circumscribed within the certifications and approvals he had made and on behalf of the governor. In contrast, the Time Book and Payroll, on its face, presumably shows that the wages were received by the respective job order workers, as signed received by 25 different employees and as certified by Estremera.

Therewithal, the illegal disbursement is ultimately premised on the non-existence of the job order workers, or the non-performance of their work, a fact which, as adumbrated above, was not duly proven in the first place.

Lastly, with the failure of the Sandiganbayan to establish the overt acts of the crime, the elements of a violation of Section 3(e) of Republic Act No. 3019 likewise remain unestablished. Section 3(e) of the said law provides:

Section 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:

....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits,

⁸⁴ *Id.* at 30.

⁸⁵ SBN *rollo*, vol. 1, p. 421.

⁸⁶ *Id.*

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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.

To reverberate, the following elements must be proven beyond reasonable doubt to sustain a conviction under Section 3(e) –

1. The accused must be a public officer discharging administrative, judicial, or official functions;
2. He or she must have acted with manifest partiality, or evident bad faith or gross inexcusable negligence; and
3. His or her action caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his [or her] functions.⁸⁷

The second element provides for the three distinct modes of committing such violation under the said Section 3(e), that is, through “manifest partiality,” or with “evident bad faith,” or through “gross inexcusable negligence.” Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) is enough to convict.⁸⁸

The Sandiganbayan convicted accused-appellant based on evident bad faith as shown by his imprimatur on the Daily Time records, the Summary of Payrolls, and the Time Book and Payroll. Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was “spurred by any corrupt motive.” **Mistake[s], no matter how patently clear, committed by a public officer are not actionable “absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.”**⁸⁹

From the foregoing, while there may have been lapses in accused-appellant’s judgment, and while it is true that he should have placed himself on guard when signing the public documents, his errors were not proven to be fraudulent and with malicious intent. The Court cannot agree with the finding of the Sandiganbayan that he acted in evident bad faith when he signed the Daily Time Records, Summary of Payrolls and the Time Book and Payroll. There is reasonable doubt that he consciously and intentionally did so in order to commit fraud, to purposely commit a crime, or to gain profit for himself so as to amount to fraud.

⁸⁷ See *Baya v. Sandiganbayan (2nd Division)*, *supra* note 57.

⁸⁸ See *People v. Castillo*, *supra* note 50.

⁸⁹ See *People v. Pallasigue*, G.R. Nos. 248653–54, July 14, 2021 [Per J. Carandang, First Division]. (Emphasis in the original)

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Albeit the competence of the testimonies of the prosecution's witnesses to demonstrate accused-appellant's breaches of the: (a) Local Government Code, (b) Administrative Code, or (c) authority granted to him as officer-in-charge, all they are capable of proving were such purported violations; but not a morsel of evidence was adduced to prove that he was animated by fraudulent motives, that the "ghost" employees did not render work, or that he caused it to appear that they received their respective wages.

Anent the contested Daily Time Records, accused-appellant satisfactorily explained that he signed the same under the authority of the Office of the Governor, which designated him as the officer-in-charge to verify as to the prescribed office hours, among other functions.⁹⁰ The blunder he committed, to which he admitted, was that he signed the certification portion thereof instead of the verification portion.⁹¹ Similarly, the Time Book and Payroll he approved showed that the sums of wages were eventually received by the employees. Plain as day, his actions do not necessarily reflect fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It is hornbook doctrine that if what was proven is mere judgmental error on the part of the person committing an act, no malice or criminal intent can be rightfully imputed to him.⁹²

In précis, this Court rules and so holds that the prosecution utterly failed to prove accused-appellant's guilt beyond reasonable doubt for the crime charged, thereby warranting his acquittal. While it is true that a court cannot dictate what particular evidence the parties must present in order to prove their respective cases, the fact remains that the prosecution is still bound to present evidence that will support a finding of guilt beyond reasonable doubt.⁹³ This, the prosecution ineluctably failed to do so.

Criminal Case No.
SB-17-CRM-2198

After a perspicacious review of the records and the submissions of the accused-appellant and the Office of the Ombudsman, the Court decrees that the Sandiganbayan committed error in convicting him of malversation of funds through falsification.

The crime of malversation of public funds is punished under Article 217 of the RPC:

⁹⁰ SBN *rollo*, vol. 1, p. 16.

⁹¹ *Id.* at 16–17.

⁹² See *People v. Palma Gil-Roflo*, G.R. Nos. 249564 & 249568–76, March 21, 2022 [Per J. Hernando, Second Division].

⁹³ *Id.*

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Article 217. *Malversation of public funds or property — Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, 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:

....

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

Upon the other hand, falsification by a public officer is punished under Article 171 of the same law:

Article 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

....

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

....

4. Making untruthful statements in a narration of facts;

Consequently, to be found guilty of malversation, the prosecution possesses the burden to prove the following essential elements:

- (a) The offender is a public officer;
- (b) The offender has custody or control of funds or property by reason of the duties of his office;
- (c) The funds or property involved are public funds or property for which the offender is accountable; and
- (d) The offender has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.⁹⁴

In a nutshell, it is indispensable to show sufficient proof: (i) that the accountable officer had received public funds; (ii) that he did not have them

⁹⁴ See *Maamo v. People*, 801 Phil. 627, 653–654 (2016) [Per J. Caguioa, First Division].

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in his possession when demand therefor was made; (iii) and that he could not satisfactorily explain his failure to do so.⁹⁵

Appositely, Article 217 of the RPC provides that the failure of a public officer to have duly forthcoming any public funds with which he is chargeable upon demand by any duly authorized officer gives rise to the presumption that he has put such missing funds to personal use. In this wise, while demand is not an element of malversation, it is a requisite for the application of the presumption. Hence, absent such presumption, the accused may still be proven guilty, albeit based on direct evidence of malversation. Otherwise stated, to support a conviction for the crime, the prosecution must nonetheless present evidence clearly evincing misappropriation of public funds.⁹⁶

Here, while it may be conceded that the first three elements of the crime were present, the Court nevertheless finds that the Office of the Ombudsman was unable to satisfactorily prove the fourth element.

It appears that the Office of the Ombudsman solely relied on the following facts to hold the accused-appellant liable: (i) his signatures on the Summary of Payrolls and the Time Book and Payroll disbursing the public funds to non-existent persons, (ii) the affidavits of Bardaje and Ordoña; and (iii) the “poorly controlled environment at Samar’s Provincial Capitol”⁹⁷ allowing appellant to commit the crime.⁹⁸

To the Court’s mind, the evidence is deficient and unconvincing to prove the guilt of the accused-appellant.

Contrary to the Sandiganbayan’s ruling that the presumption of malversation arose, nowhere was the fact of demand shown in any of the documentary exhibits or testimonies of the witnesses presented by the Office of the Ombudsman. Considering that the prosecution never established such material fact, the burden of evidence was never shifted to accused-appellant to prove his innocence, there being no *prima facie* presumption of misappropriation under the facts obtaining. Thus, the additional burden to prove malversation by direct evidence fell upon the Office of the Ombudsman, which failed to do so.

As exhaustively assayed, the non-existence of “ghost” employees was not duly proven. The presence of appellant’s signatures on the Daily Time Records, the Summary of Payrolls, and the Time Book Payroll does not conclusively show that the job order workers did not render any work. Meanwhile, the sworn statements of Bardaje and Ordoña were shown as

⁹⁵ *Id.* at 654.

⁹⁶ *Id.*

⁹⁷ *Rollo*, p. 57. SBN Decision.

⁹⁸ *Id.* at 56–57.

inadmissible in evidence. Outside of these facts, the Sandiganbayan resorted to surmises so as to arrive at its conclusions.

In any case, assuming, as the Sandiganbayan had decreed, that the defenses raised by the accused-appellant were unsatisfactory, such fact did not lessen his burden to prove malversation through falsification through competent and conclusive evidence. His conviction must rest not on the weakness of the defense but on the strength of the prosecution.⁹⁹ Mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused.¹⁰⁰

In synthesis, this Court cannot subscribe to the disposition of the Sandiganbayan that the signatures of accused-appellant on the public documents are, by themselves alone, enough to prove that he committed malversation through falsification by feigning the said signatures. His certifications and approvals thereon failed to establish his tampering with the Daily Time Records, the Summary of Payrolls, and the Time Book Payroll, with the end of making it appear that 25 fictitious job order workers, duly rendered service, signed on the Time Book Payroll, and personally received their salaries from the disbursing officer. The Court could not tolerate accused-appellant's deprivation of liberty with finality simply on the basis of superficial deficiencies.

In criminal cases, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to his or her guilt. If there exists even one iota of doubt, the Court is under a longstanding legal injunction to resolve the doubt in favor of the accused.¹⁰¹ Hence, when inculpatory facts are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused, the evidence does not fulfill or hurdle the test of moral certainty required for conviction.¹⁰²

ACCORDINGLY, finding the evidence insufficient to establish guilt beyond reasonable doubt, the Court hereby **GRANTS** the Appeal. The Decision dated June 25, 2021 and the Resolution dated November 9, 2021 of the Sandiganbayan in SB-17-CRM-2197 to 2198 are **REVERSED** and **SET ASIDE** in that accused-appellant Romeo Chan Reales is **ACQUITTED** of the charges hurled against him.

Let entry of final judgment be issued immediately.

SO ORDERED.”

⁹⁹ See *People v. PO1 Lumikid*, 875 Phil. 467, 481 (2020) [Per C.J. Peralta, First Division].

¹⁰⁰ See *Maamo v. People*, *supra* note 94 at 663.

¹⁰¹ See *People v. Maglinas*, G.R. No. 255496, August 10, 2022 [Per C.J. Gesmundo, First Division].

¹⁰² See *People v. XXX*, G.R. No. 218087, July 6, 2021 [Per J. Gaerlan, First Division].

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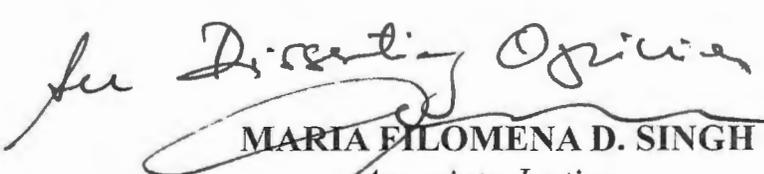

JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

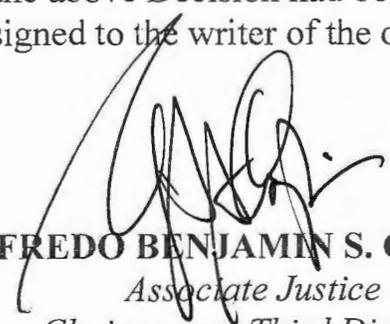

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

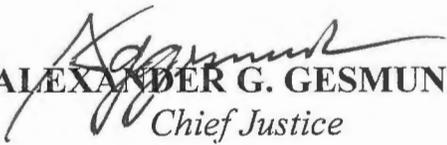
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of this Court.



ALEXANDER G. GESMUNDO
Chief Justice