



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**MAJOR JOEL G. CANTOS,**  
Petitioner,

**G.R. No. 184908**

Present:

- versus -

SERENO, C.J.,  
*Chairperson,*  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

Promulgated:

**JUL 03 2013**

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**DECISION**

**VILLARAMA, JR., J.:**

Petitioner Major Joel G. Cantos appeals the Decision<sup>1</sup> of the Sandiganbayan in Criminal Case No. SB-07-A/R-0008, which affirmed with modification the judgment<sup>2</sup> of the Regional Trial Court (RTC) of Manila, Branch 47, convicting him of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended.

In an Information<sup>3</sup> dated February 19, 2003, Major Cantos was charged as follows:

That on or about December 21, 2002 or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Commanding Officer of the 22<sup>nd</sup> Finance Service Center, based in the Presidential Security Group, Malacañang Park, Manila and as such is accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and

<sup>1</sup> Rollo, pp. 10-21. Penned by Presiding Justice Diosdado M. Peralta (now a member of this Court) with Associate Justices Rodolfo A. Ponferrada and Alexander G. Gesmundo concurring. The assailed decision was promulgated on July 31, 2008.

<sup>2</sup> Records, Vol. II, pp. 606-616. Penned by Presiding Judge Augusto T. Gutierrez.

<sup>3</sup> Records, Vol. I, pp. 1-2.

taking advantage of the same, did then and there, wi[l]lfully, unlawfully and feloniously take, misappropriate and convert to his personal use and benefit the amount of THREE MILLION TWO HUNDRED SEVENTY THOUSAND PESOS (P3,270,000.00), Philippine Currency, from such public funds received by him by reason of his Office to the damage and prejudice of the Government in the aforestated amount.

CONTRARY TO LAW.

Upon motion by the prosecution, the trial court issued an Order<sup>4</sup> granting the amendment of the date of the commission of the offense from December 21, 2002 to December 21, 2000, the error being merely clerical. When arraigned, Major Cantos entered a plea of not guilty.<sup>5</sup>

At the trial, the prosecution presented as witness Major Eligio T. Balao, Jr.<sup>6</sup> He testified that on December 21, 2000, he reported for duty as Disbursing Officer at the 22<sup>nd</sup> Finance Service Unit (FSU), Presidential Security Group (PSG), Malacañang Park, Manila. At that time, he did not notice any unusual incident in the office. He picked up some Bureau of Internal Revenue (BIR) forms which he filed with the BIR Office at the Port Area, Manila. He returned to the office at around 10:00 a.m. At around 12:00 noon, his commanding officer, Major Cantos, called him to his office and informed him that the money he (Major Cantos) was handling, the Special Duty Allowance for the month of December, and other Maintenance Operating Expenses in the amount of more or less ₱3 Million was missing from his custody. Shocked, he asked Major Cantos where he kept the money, to which the latter replied that he placed it in the steel cabinet inside his room. He then inquired why Major Cantos did not use the safety vault, but Major Cantos did not reply.<sup>7</sup>

Major Balao further testified that Major Cantos asked him to get a screwdriver so he went out of the office and got one from his vehicle. He gave the screwdriver to Major Cantos, who used it to unscrew the safety vault. Then, he left the office and handed the screwdriver to Sgt. Tumabcao. After a few minutes, Major Cantos instructed him to go to the house of Major Conrado Mendoza in Taguig to get the safety vault's combination number. However, Major Mendoza was not around. When he returned to the office at around 4:00 p.m., the National Bureau of Investigation (NBI) personnel took his fingerprints. He learned that all the personnel of the 22<sup>nd</sup> FSU were subjected to fingerprinting. Thereafter, Col. Espinelli tried to

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<sup>4</sup> Records, Vol. II, pp. 571-573.

<sup>5</sup> Records, Vol. I, p. 141.

<sup>6</sup> The prosecution also presented Lt. Col. Al I. Perreras, Gilda Genguyon, Imelda Pabilan and Federico Tumabcao. However, the oral testimonies of Gilda Genguyon, Imelda Pabilan and Federico Tumabcao were dispensed with after Atty. Teodoro Jumamil, counsel for the accused, offered to stipulate, which offer was accepted by Assistant City Prosecutor Elen Tumaliuan "that if the witnesses will testify, they will testify in accordance with their affidavits attached to the records of this case all dated January 3, 2001, and that he will no longer cross-examine them; thus there is no more need for the witnesses to be placed in the witness stand". (*Rollo*, p. 74.)

<sup>7</sup> TSN, May 31, 2005, pp. 7-12; records, Vol. I, pp. 272-277.

force him to admit that he took the money, but he maintained that he was not the one who took it.<sup>8</sup>

In his defense, Major Cantos testified that on July 2000, he was assigned as the Commanding Officer of the 22<sup>nd</sup> FSU of the PSG, Malacañang Park, Manila. His duty was to supervise the disbursement of funds for the PSG personnel and to perform other finance duties as requested by the PSG Commander, Gen. Rodolfo Diaz. On December 19, 2000, he received a check from Director Aguas in the amount of ₱1,975,000 representing the Special Allowance of PSG personnel. Accompanied by two personnel, he went to the Land Bank branch just across Pasig River and encashed the check. He placed the money in a duffel bag and kept it inside the steel cabinet in his office together with the ₱1,295,000 that was earlier also entrusted to him by Gen. Diaz. Major Cantos added that as far as he knows, he is the only one with the keys to his office. Although there was a safety vault in his office, he opted to place the money inside the steel cabinet because he was allegedly previously informed by his predecessor, Major Conrado Mendoza, that the safety vault was defective. He was also aware that all personnel of the 22<sup>nd</sup> FSU had unrestricted access to his office during office hours.<sup>9</sup>

Major Cantos also narrated that on December 20, 2000, he arrived at the office at around 9:00 a.m. and checked the steel filing cabinet. He saw that the money was still there. He left the office at around 4:00 p.m. to celebrate with his wife because it was their wedding anniversary. On the following day, December 21, 2000, he reported for work around 8:30 a.m. and proceeded with his task of signing vouchers and documents. Between 9:00 a.m. to 10:00 a.m., he inspected the steel cabinet and discovered that the duffel bag which contained the money was missing. He immediately called then Capt. Balao to his office and asked if the latter saw someone enter the room. Capt. Balao replied that he noticed a person going inside the room, but advised him not to worry because he is bonded as Disbursing Officer.<sup>10</sup>

In a state of panic, Major Cantos asked for Capt. Balao's help in finding the money. Capt. Balao asked him how the money was lost and why was it not in the vault, to which he replied that he could not put it there because the vault was defective. Capt. Balao then suggested that they should make it appear that the money was lost in the safety vault. In pursuit of this plan, Capt. Balao went out of the office and returned with a pair of pliers and a screwdriver. Upon his return, Capt. Balao went directly to the vault to unscrew it. At this point, Major Cantos told him not to continue anymore as he will just inform Gen. Diaz about the missing funds. Major Cantos was able to contact Gen. Diaz through his mobile phone and was

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<sup>8</sup> Id. at 12-18; id. at 277-282.

<sup>9</sup> TSN, November 17, 2005, pp. 4-21; records, Vol. II, pp. 408-426; TSN, February 21, 2006, pp. 4-11; records, vol. II, pp. 470-477.

<sup>10</sup> Id. at 22-31; id. at 427-436.

advised to just wait for Col. Espinelli. When Col. Espinelli arrived at the office, Col. Espinelli conducted an investigation of the incident.<sup>11</sup>

Lt. Col. Al I. Perreras, Executive Officer of the Judge Advocate General Office (JAGO), likewise conducted an investigation of the incident. His testimony was however dispensed with as the counsels stipulated that he prepared the Investigation Report, and that if presented, the same would be admitted by defense counsel.<sup>12</sup> It likewise appears from the evidence that Police Inspector Jesus S. Bacani of the Philippine National Police (PNP) administered a polygraph examination on Major Cantos and the result showed that he was telling the truth.<sup>13</sup>

On April 27, 2007, the RTC rendered a decision convicting Major Cantos of the crime charged, to wit:

WHEREFORE, in view of the foregoing premises, the Court finds the accused Major Joel G. Cantos GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds, under paragraph 4 of Article 217 of the Revised Penal Code, and, there being no mitigating or aggravating circumstance present, hereby sentences him to an indeterminate penalty of imprisonment for a period of ten (10) years and one (1) day of Prision Mayor, as minimum, to Eighteen (18) Years, eight (8) months and one (1) day of Reclusion Temporal, as maximum; to reimburse the AFP Finance Service Center, Presidential Security Group, Armed Forces of the Philippines the amount of Three Million Two Hundred Seventy Thousand Pesos (P3,270,000.00); to pay a fine of Three Million Two Hundred Seventy Thousand Pesos (P3,270,000.00); to suffer perpetual special disqualification from holding any public office; and to pay the costs.

SO ORDERED.<sup>14</sup>

In rendering a judgment of conviction, the RTC explained that although there was no direct proof that Major Cantos appropriated the money for his own benefit, Article 217 of the Revised Penal Code, as amended, provides that 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. The RTC concluded that Major Cantos failed to rebut this presumption.

Aggrieved, Major Cantos appealed to the Sandiganbayan questioning his conviction by the trial court.

On July 31, 2008, the Sandiganbayan promulgated the assailed Decision, the dispositive portion of which reads as follows:

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<sup>11</sup> Id. at 32-40; id. at 437-445.

<sup>12</sup> Records, Vol. I, p. 200.

<sup>13</sup> Sandiganbayan records, p. 32.

<sup>14</sup> Records, Vol. II, p. 616.

**IN VIEW OF THE FOREGOING**, the Decision promulgated on May 3, 2007 in Criminal Case No. 03-212248 of the Regional Trial Court, National Capital Judicial Region, Branch 47, Manila finding the accused-appellant Major Joel G. Cantos **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code is hereby **AFFIRMED**, with the modification that instead of being convicted of malversation through negligence, the Court hereby convicts the accused of malversation through misappropriation. The penalty imposed by the lower court is also likewise **AFFIRMED**.

**SO ORDERED.**<sup>15</sup>

The Sandiganbayan sustained the ruling of the RTC. It held that in the crime of malversation, all that is necessary for conviction is proof that the accountable officer had received public funds and that he did not have them in his possession when demand therefor was made. There is even no need of direct evidence of personal misappropriation as long as there is a shortage in his account and petitioner cannot satisfactorily explain the same. In this case, the Sandiganbayan found petitioner liable for malversation through misappropriation because he failed to dispute the presumption against him. The Sandiganbayan noted that petitioner's claim that the money was taken by robbery or theft has not been supported by sufficient evidence, and is at most, self-serving.

Contending that the Sandiganbayan Decision erred in affirming his convicting, Major Cantos filed a motion for reconsideration. In its Resolution<sup>16</sup> dated October 6, 2008, however, the Sandiganbayan denied the motion.

Hence, the present petition for review on certiorari. Petitioner assails the Decision of the Sandiganbayan based on the following grounds:

I.

THE HONORABLE SANDIGANBAYAN ERRED IN AFFIRMING PETITIONER'S CONVICTION FOR MALVERSATION DESPITE ABSENCE OF EVIDENCE SHOWING THAT THE FUNDS WERE CONVERTED TO THE PERSONAL USE OF PETITIONER.

II.

THE HONORABLE SANDIGANBAYAN ERRED IN AFFIRMING PETITIONER'S CONVICTION ON THE BASIS OF THE MERE PRESUMPTION CREATED BY ARTICLE 217, PARAGRAPH 4, OF THE REVISED PENAL CODE IN VIEW OF THE ATTENDANT CIRCUMSTANCES IN THE PRESENT CASE.<sup>17</sup>

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<sup>15</sup> *Rollo*, p. 20.

<sup>16</sup> *Id.* at 23.

<sup>17</sup> *Id.* at 36.

Essentially, the basic issue for our resolution is: Did the Sandiganbayan err in finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds?

Petitioner argues that mere absence of funds is not sufficient proof of misappropriation which would warrant his conviction. He stresses that the prosecution has the burden of establishing his guilt beyond reasonable doubt. In this case, petitioner contends that the prosecution failed to prove that he appropriated, took, or misappropriated, or that he consented or, through abandonment or negligence, permitted another person to take the public funds.

On the other hand, the People, represented by the Office of the Special Prosecutor (OSP), argues that petitioner, as an accountable officer, may be convicted of malversation of public funds even if there is no direct evidence of misappropriation. The OSP asserts that the only evidence required is that there is a shortage in the officer's account which he has not been able to explain satisfactorily.

The petition must fail.

The Sandiganbayan did not commit a reversible error in its decision convicting petitioner of malversation of public funds, which is defined and penalized under Article 217 of the Revised Penal Code, as amended, as follows:

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:

x x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

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 by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.** (Emphasis and underscoring supplied.)

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

1. that the offender is a public officer;
2. that he had the custody or control of funds or property by reason of the duties of his office;
3. that those funds or property were public funds or property for which he was accountable; and
4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.<sup>18</sup>

We note that all the above-mentioned elements are here present. Petitioner was a public officer occupying the position of Commanding Officer of the 22<sup>nd</sup> FSU of the AFP Finance Center, PSG. By reason of his position, he was tasked to supervise the disbursement of the Special Duty Allowances and other Maintenance Operating Funds of the PSG personnel, which are indubitably public funds for which he was accountable. Petitioner in fact admitted in his testimony that he had complete control and custody of these funds. As to the element of misappropriation, indeed petitioner failed to rebut the legal presumption that he had misappropriated the fees to his personal use.

In convicting petitioner, the Sandiganbayan cites the presumption in Article 217 of the Revised Penal Code, as amended, which states that 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, is prima facie evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if petitioner is able to present adequate evidence that can nullify any likelihood that he put the funds or property to personal use, then that presumption would be at an end and the prima facie case is effectively negated.

In this case, however, petitioner failed to overcome this prima facie evidence of guilt. He failed to explain the missing funds in his account and to reconstitute the amount upon demand. His claim that the money was taken by robbery or theft is self-serving and has not been supported by evidence. In fact, petitioner even tried to unscrew the safety vault to make it appear that the money was forcibly taken. Moreover, petitioner's explanation that there is a possibility that the money was taken by another is belied by the fact that there was no sign that the steel cabinet was forcibly opened. We also take note of the fact that it was only petitioner who had the keys to the steel cabinet.<sup>19</sup> Thus, the explanation set forth by petitioner is unsatisfactory

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<sup>18</sup> *Ocampo III v. People*, G.R. Nos. 156547-51 & 156384-85, February 4, 2008, 543 SCRA 487, 505-506.

<sup>19</sup> TSN, February 21, 2006, p. 10; records, Vol. II, p. 476.

and does not overcome the presumption that he has put the missing funds to personal use.

Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper.<sup>20</sup> All that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.<sup>21</sup> To our mind, the evidence in this case is thoroughly inconsistent with petitioner's claim of innocence. Thus, we sustain the Sandiganbayan's finding that petitioner's guilt has been proven beyond reasonable doubt.

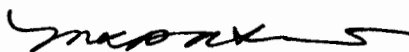
**WHEREFORE**, the petition is **DENIED**. The Decision dated July 31, 2008 of the Sandiganbayan in Criminal Case No. SB-07-A/R-0008 convicting Major Joel G. Cantos of the crime of Malversation of Public Funds is **AFFIRMED and UPHELD**.

With costs against the petitioner.

**SO ORDERED.**

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

WE CONCUR:

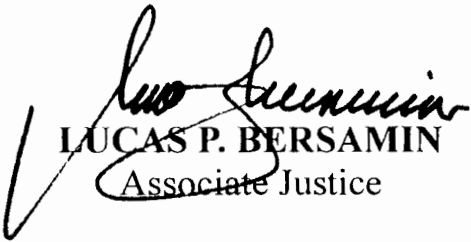
  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


<sup>20</sup> *Cabello v. Sandiganbayan, et al.*, 274 Phil. 369, 378 (1991).

<sup>21</sup> *Davalos, Sr. v. People*, 522 Phil. 63, 71 (2006).



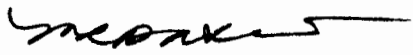
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice