



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SILVINO C. EVANGELISTA,
Petitioner,

G.R. No. 241587

Present:

-versus-

GESMUNDO, C.J., Chairperson,
HERNANDO,
ZALAMEDA,*
ROSARIO, and
MARQUEZ,** JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

AUG 06 2025

X ----- X

DECISION

ROSARIO, J.:

For a charge of malversation of public funds through negligence to prosper, mere negligence is not sufficient. The negligence must be positively and clearly shown to be inexcusable, approximating malice or fraud.

This Petition for Review on *Certiorari*¹ under Rule 45, Rules of Court assails the Sandiganbayan Decision² and Resolution,³ which convicted Silvino C. Evangelista (Evangelista) of malversation of public funds through negligence as defined and penalized under Article 217, Revised Penal Code.

* On official business.

** On official business.

¹ *Rollo*, pp. 12–55.

² *Id.* at 56–70. The June 29, 2018 Decision in SB-14-CRM-0232 to 0237 was penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Reynaldo P. Cruz and Bayani H. Jacinto of the Fourth Division, Sandiganbayan.

³ *Id.* at 71. The August 15, 2018 Resolution in SB-14-CRM-0232 to 0237 was signed by Associate Justices Alex L. Quiroz, Reynaldo P. Cruz, and Bayani H. Jacinto of the Fourth Division, Sandiganbayan.

I

During the incumbency of Evangelista as municipal mayor of the Municipality of San Miguel, Bohol (the Municipality), the following six checks were issued without the necessary supporting documents:⁴

| Date | Check No. | Amount |
|--------------------|--------------|----------------|
| September 11, 1998 | FCB-5644 | PHP 255,148.00 |
| October 26, 1998 | FCB-5655 | PHP 88,000.00 |
| April 8, 1999 | FCB-81203 | PHP 50,000.00 |
| November 24, 1999 | FCB-81284 | PHP 50,000.00 |
| March 31, 2000 | LBP-27405199 | PHP 60,000.00 |
| June 1, 2000 | LBP-6593803 | PHP 50,000.00 |
| TOTAL | | PHP 553,148.00 |

Municipal Accountant Hedeliza L. Carcueva (Carcueva) made the discovery sometime in 2002 when she performed bank reconciliation upon the directive of the Commission on Audit (COA). Subsequently, COA State Auditor II Lorna Piezas (Piezas) issued Audit Observation Memorandum (AOM) No. 2002-001⁵ dated September 17, 2002 addressed to Evangelista, Municipal Treasurer Trinidad Millare (Millare), and Carcueva, with the subject “Verification of the Bank Reconciliation Statements as of June 30, 2002,” apprising them of the check disbursements and bank credits at First Consolidated Bank (FCB) that were not taken up in the books due to lack of supporting documents, and recommending that Evangelista instruct the municipal treasurer and/or municipal accountant to immediately submit said documents and verify the amount.⁶ The pertinent audit observation states:

| AUDIT OBSERVATIONS | MANAGEMENT COMMENTS |
|--|---|
| GENERAL FUND 1. Check disbursements amounting to [PHP] 133,148.00 were not taken up in the books due to lack of supporting documents in violation of Section 138 of the Government Accounting Manual (GAAM) Volume I. (see Annex A-demand letter) | The Municipal Treasurer has exerted efforts to gather the supporting documents and even went to PNB, Tagbilaran Branch to request for Photocopy of deposit slips of the FCB checks deposited in the bank but the PNB Management told the Municipal Treasurer that it will take time to locate/produce. . . ⁷ |

On February 28, 2006, COA State Auditor III Ernesto Pala (Pala) submitted the Annual Audit Report⁸ on the accounts and operations of the

⁴ *Id.* at 66.
⁵ *Id.* at 143.
⁶ *Id.* at 66.
⁷ *Id.* at 143.
⁸ *Id.* at 90-142.

Municipality for the year ended December 31, 2005 to the Cluster Director, COA Cluster IV-Visayas, reflecting therein that no action was taken by the Municipality with respect to the cash shortage of PHP 733,148.00 incurred by Millare arising from unrecorded checks from 1998 to 2001.⁹

On May 18, 2006, COA Cluster IV Regional Cluster Director Charlita Leopoldo furnished Evangelista a copy of the annual audit report and requested him to take the necessary action on the comments and observations contained therein and to inform the COA, through its auditor, of the actions taken within one month from receipt of the annual audit report.¹⁰ It appearing, however, that no action was taken by Evangelista, Pala issued a Notice of Disallowance (ND) dated February 12, 2007 involving the subject checks, which Evangelista, Millare, and Carcueva received on March 23, 2007.¹¹

Meanwhile, on February 21, 2007, Resolution No. 25, series of 2007¹² was passed by the Sangguniang Bayan of San Miguel and approved by Evangelista, observing that the accountabilities of Millare have been in the Municipality's books for more than five years, and requesting her to settle the same. On April 30, 2007, Evangelista issued Millare a Memorandum¹³ directing her to comply with the COA AOMs by depositing her collections and remittances intact with the Municipality's depository bank, submitting daily reports of collections and deposits, fully settling her cash advance, and strictly monitoring treasury operations to prevent loss of government funds. When Evangelista was about to retire, he spoke with Millare, who informed him that she would issue a waiver in favor of the Municipality to settle her accountabilities.¹⁴

On September 8, 2008, an administrative complaint was filed before the Office of the Ombudsman (OMB) against Millare, former Municipal Mayor Segundinio M. Hencianos (Hencianos), and Evangelista with respect to the cash shortage incurred by Millare.

On March 12, 2009, Millare issued an Affidavit of Undertaking¹⁵ where she acknowledged her monetary obligation to the Municipality in the total amount of PHP 1,003,960.19 and undertook to pay said obligation. She also offered her vehicle and housing unit as security to guarantee payment. A year later, she executed an Affidavit of Waiver¹⁶ where she waived her rights to her housing unit in favor of the Municipality.

⁹ *Id.* at 66.

¹⁰ *Id.* at 62.

¹¹ *Id.*

¹² *Id.* at 144-145.

¹³ *Id.* at 146.

¹⁴ *Id.* at 65.

¹⁵ *Id.* at 88.

¹⁶ *Id.* at 87.

In its March 15, 2012 Decision,¹⁷ the OMB found Millare administratively liable for dishonesty and meted the penalty of dismissal, forfeiture of retirement benefits, and disqualification from reemployment in government service, but dismissed the case as to Hencianos on account of his death before he was given an opportunity to be heard, as well as to Evangelista due to insufficiency of evidence. The relevant portions thereof read:

Before Mr. Evangelista assumed the position of [m]unicipal [m]ayor on July 1, 1998, the practice of transferring funds from one bank to the other was done through checks issued by the municipal treasurer, which in the instant case is [Millare], without supporting vouchers. The treasurer encashes the check in one depository bank and deposits the cash to the other depository bank. When [Evangelista] assumed office on July 1, 1998, the practice continued. Believing in good faith that there was nothing illegal in such practice, [Evangelista] signed the checks presented to him by the treasurer without any reservation and knowledge that he was being used as a tool to defraud the LGU. [Evangelista] inquired from [Carcueva] about the dynamics in the transfer of funds and was informed that if a check is issued for transfer of funds from one bank to another, no disbursement voucher is attached to the check. [Millare] should accordingly attach the check issued to a Form 123 to make an entry for the transaction. Supposedly, an entry should be made debiting Cash in Bank to the bank where the check was deposited to record the deposit made, and crediting Cash in Bank to the bank [where] the check was withdrawn to record the withdrawal or issuance of the said check. [Evangelista] surmised that the proper procedure was not followed and that [Millare] manipulated the issuance of the checks under the pretext of fund transfer so that she can pocket the cash proceeds and to avoid detection, she did not record the transactions in the books of LGU San Miguel as the same was not supported with vouchers. The anomaly was later discovered by [Piezas].

[Evangelista] continued that when he learned of the cash shortage through the [ND], he immediately confronted [Millare] on the matter to which the latter admitted [having] misappropriated the amount of [PHP] 1,003,960.19. [Millare] then issued an Affidavit of Undertaking . . . acknowledging that she incurred monetary obligations as [t]reasurer of LGU San Miguel in the amount of [PHP] 1,003,960.19.

....

With regards to [Evangelista], who also happens to be a former mayor of LGU San Miguel, the records will bear it out that the anomalous practice of [Millare] of withdrawing cash from one depository bank and making it appear that the same will be transferred to another depository bank, was already happening before the term of [Evangelista]. The sworn statement of [Piezas] will show [that] FCB Checks bearing the numbers 261504 in the amount of [PHP] 20,000.00 and 261532 in the amount of [PHP] 80,000.00 are among those issued without supporting documents and were not recorded in the books of the municipality. Such checks dated

¹⁷ SBN *rollo* (SB-14-CRM-0232), pp. 123-132. The March 15, 2012 Decision in OMB-V-A-08-0349-J was penned by Graft Investigation and Prosecution Officer II Pio R. Dargantes and approved by Ombudsman Conchita Carpio-Morales of the Office of the Ombudsman, Quezon City.

October 1997 and March 1998 were issued before [Evangelista] assumed office as [m]unicipal [m]ayor on July 1, 1998. This fact tends to support the defenses raised by [Evangelista] that he did not willfully conspire with [Millare] to misappropriate funds of LGU San Miguel that amounted to a total of [PHP] 653,148.00.

We would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence—is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

Moreover, in the Affidavit of Undertaking issued by [Millare] dated March 12, 2009, she categorically admitted that prior to her retirement, she incurred monetary obligations in her capacity as treasurer of LGU San Miguel and undertook to fully pay the same within six months from the execution thereof. Under the same undertaking, [Millare] offered a Suzuki motor vehicle . . . and housing unit . . . [as] security to guarantee the payment of the obligation. *Under the situation, there is no legal basis to drag [Evangelista] to the anomaly and indict him before the courts.* In fact, [Millare] did not bother to file her counter-affidavit to the charges.

....

The complaint against the former mayor **Silvino C. Evangelista** is likewise **DISMISSED** for *insufficiency of evidence*.

SO DECIDED.¹⁸ (Emphasis supplied)

However, in a September 12, 2013 Resolution,¹⁹ the OMB found probable cause to indict Evangelista before the Sandiganbayan for six counts of malversation in relation to the six checks subject of this case, and eight counts of malversation against Millare before the Regional Trial Court of Bohol. The six separate Informations filed by the OMB against Evangelista are all similarly worded—except for the dates and amounts allegedly malversated—as the Information presented in Criminal Case No. SB-14-CRM-0232, the accusatory portion of which reads:

[Criminal Case No. SB-14-CRM-0232]

Sometime in September 1998 or prior or subsequent thereto, in the Municipality of San Miguel, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, accused **SILVINO C. EVANGELISTA**, a public officer being then the [m]unicipal [m]ayor of the Municipality of San Miguel, Province of Bohol, and by reason of the duties of his office, is an accountable officer for public funds or property of the municipal government of San Miguel, Bohol, committing the offense in

¹⁸ *Id.* at 124–129.

¹⁹ *Id.* at 7–17. The September 12, 2013 Resolution in OMB-V-C-08-0398-J was penned by Graft Investigation and Prosecution Officer II Jemmellee Rose V. Villanueva and approved by Ombudsman Conchita Carpio-Morales of the Office of the Ombudsman, Quezon City.

relation to his office and in the discharge of his official functions, did then and there willfully, unlawfully[,] and feloniously, consent and[/]or permit through abandonment or negligence[,] accused Trinidad R. Millare, then [m]unicipal [t]reasurer of San Miguel, Bohol to misappropriate, appropriate, take, and embezzle the amount of [PHP 255,148.00], public funds belonging to the Municipality of San Miguel, Bohol by approving and/or causing the disbursement amounting to [PHP 255,148.00], to the damage and prejudice of the Municipality of San Miguel, Bohol in the aforestated amount.

CONTRARY TO LAW.²⁰

The respective dates of the commission of the offense and the respective amounts involved in the other five Informations, are as follows:

| Criminal Case No. | Date | Amount |
|-------------------|----------------|-----------------------------|
| SB-14-CRM-0233 | October 1998 | PHP 88,000.00 ²¹ |
| SB-14-CRM-0234 | April 1999 | PHP 50,000.00 ²² |
| SB-14-CRM-0235 | November 1999 | PHP 50,000.00 ²³ |
| SB-14-CRM-0236 | March 31, 2000 | PHP 60,000.00 ²⁴ |
| SB-14-CRM-0237 | June 1, 2000 | PHP 50,000.00 ²⁵ |

Upon arraignment, Evangelista pleaded *not guilty* to all the charges.²⁶ After trial on the merits, the Sandiganbayan promulgated its Decision,²⁷ the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds SILVINO C. EVANGELISTA GUILTY beyond reasonable doubt of Malversation of Public Funds Through Negligence and is hereby sentenced to suffer the indeterminate penalty of [six] years and [one] day of *prision mayor*, as *minimum*, to [eight] years of *prision mayor*, as *maximum*, with the accessories of the law, with the additional penalty of perpetual special disqualification and of a fine of [PHP 553,148.00].

SO ORDERED.²⁸

The Sandiganbayan likewise denied Evangelista’s Motion for Reconsideration²⁹ in its assailed Resolution.³⁰

²⁰ SBN *rollo* (SB-14-CRM-0232), pp. 1–2.
²¹ SBN *rollo* (SB-14-CRM-0233), pp. 1–2.
²² SBN *rollo* (SB-14-CRM-0234), pp. 1–2.
²³ SBN *rollo* (SB-14-CRM-0235), pp. 1–2.
²⁴ SBN *rollo* (SB-14-CRM-0236), pp. 1–2.
²⁵ SBN *rollo* (SB-14-CRM-0237), pp. 1–2.
²⁶ *Rollo*, p. 57.
²⁷ *Id.* at 56–70.
²⁸ *Id.* at 69.
²⁹ SBN *rollo* (SB-14-CRM-0232), pp. 294–335.
³⁰ *Rollo*, p. 71.

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Hence, this Petition, arguing among others that: (1) petitioner was not duly notified of the unrecorded checks; (2) he is not an accountable officer with regard to the accountabilities pertaining to the municipal treasurer; (3) there is no evidence to show that he allowed the latter to misappropriate funds through abandonment or negligence; and (4) it is erroneous to put the burden on him to produce documents in the custody of the municipal treasurer.

In their Comment,³¹ the People, through the Office of the Special Prosecutor, counter that: (1) petitioner was duly notified of the unrecorded checks since 2002 up to 2007; (2) the prosecution has sufficiently established his guilt beyond reasonable doubt for malversation of public funds through negligence; (3) petitioner failed to present any evidence to contradict the fact that all the checks were encashed; and (4) he never questioned the authenticity of his signatures despite knowledge of the existence of the unrecorded checks.

II

At the outset, the Petition not only assigns errors of law but also of fact despite the rule that only questions of law may be raised in a Rule 45 petition. It is aphoristic that, save for certain exceptions, a re-examination of factual findings cannot be done through a Rule 45 petition because this Court is not a trier of facts.³² Generally, the factual findings of the Sandiganbayan are conclusive upon this Court but there are established exceptions to that rule, such as, without preclusion, when: (1) the conclusion is a finding grounded entirely on speculation, surmise, and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record.³³ In these instances, this Court is bound to review the facts in order to avoid a miscarriage of justice. Here, We find that the Sandiganbayan misapprehended the facts and made inferences that were manifestly mistaken, which warrant a factual review by this Court.

Article 217 of the Revised Penal Code, as amended by Republic Act No. 10951,³⁴ defines and penalizes malversation as follows:

Art. 217. *Malversation of public funds or property. — Presumption of malversation.* — Any public officer who, by reason of the duties of [their] office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or

³¹ *Id.* at 168–188.

³² *Miro v. Vda. de Edereros*, 721 Phil. 772, 785–787 (2013) [Per J. Brion, Second Division].

³³ *Diaz v. Sandiganbayan*, 361 Phil. 789, 809 (1999) [Per J. Vitug, Third Division].

³⁴ Republic Act No. 10951 (2017), 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.

property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

....

2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than [PHP 40,000.00] but does not exceed [PHP 1,200,000.00].

....

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 [they are] chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that [they have] put such missing funds or property to personal uses.

To establish the guilt of the accused, the following elements must concur: (1) the offender is a public officer; (2) they had custody or control of funds or property by reason of the duties of their office; (3) those funds or property were funds or property for which they were accountable; and (4) they appropriated, took, misappropriated, or consented or, through abandonment or negligence, permitted another person to take them.³⁵

The Sandiganbayan correctly found that the presence of the first three elements is beyond dispute. Pursuant to Section 102(1) of Presidential Decree No. 1445 or the Government Auditing Code, petitioner, as head of the Municipality, is immediately and primarily responsible for all government funds pertaining to said municipality. Section 340 of Republic Act No. 7160, or the Local Government Code of 1991, likewise charges him with the responsibility of safekeeping such public funds. Further, since any disbursement and release of such funds require his approval, he had control and responsibility over the same.³⁶

The only remaining issue is whether petitioner permitted another person to take such funds through negligence.

Petitioner counters that he cannot be held liable because the administrative case arising from the same facts had been dismissed as against him. He relies on Our ruling in *Constantino v. Sandiganbayan*,³⁷ where We held that the dismissal of the administrative case based on the same subject matter and after examining the same crucial evidence, operates to dismiss the

³⁵ *Venezuela v. People*, 826 Phil. 11, 25 (2018) [Per J. Reyes, Jr., Second Division].

³⁶ *People v. Pantaleon, Jr.*, 600 Phil. 186, 209 (2009) [Per J. Brion, Second Division].

³⁷ 559 Phil. 622 (2007) [Per J. Tinga, Second Division].

criminal case because of the precise finding that the act from which liability is anchored does not exist.³⁸ His argument is bereft of merit.

While petitioner's administrative case may have involved the same set of facts, subject matter, and pieces of evidence, the same was dismissed as to him merely for insufficiency of evidence, which is different from a finding that the act from which liability is anchored does not exist. The finding that "there is no legal basis to drag [petitioner] to the anomaly and indict him"³⁹ is not incompatible with a dismissal for insufficiency of evidence because, precisely, the evidence presented in the administrative case was found insufficient to serve as basis for his indictment. In *Pahkiat v. Office of the Ombudsman-Mindanao*,⁴⁰ We ruled that a finding that petitioners did not commit anything at all which can potentially incriminate them criminally or administratively, is *much more* than a finding that there was "insufficient evidence."⁴¹ In *Paredes, Jr. v. Sandiganbayan*,⁴² We denied the prayer for dismissal of the parallel criminal case despite dismissal of the administrative case because the dismissal was based only on insufficiency of evidence.⁴³

It is a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, absolution from a criminal charge is not a bar to an administrative prosecution, and vice versa.⁴⁴ Only when there is a finding that the act from which liability is anchored does not exist will the dismissal of the administrative case based on the same subject matter and the same crucial evidence operate to dismiss the criminal case.⁴⁵ If the dismissal is only because the quantum of evidence had not been met, the defendant or respondent is not completely absolved in all remaining proceedings.⁴⁶ The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal case.⁴⁷

III

As jurisprudence consistently holds, public officers may be held liable for malversation even if they do not use public property or funds under their custody for their personal benefit, but consent to the taking thereof by another

³⁸ *Id.* at 645.

³⁹ *Rollo*, p. 151.

⁴⁰ 888 Phil. 611 (2020) [Per J. Caguioa, *En Banc*].

⁴¹ *Id.* at 641.

⁴² 322 Phil. 709 (1996) [Per J. Mendoza, *En Banc*].

⁴³ *Id.* at 730-731.

⁴⁴ *Paredes v. Court of Appeals*, 555 Phil. 538, 549 (2007) [Per J. Chico-Nazario, Third Division].

⁴⁵ *Mayor Constantino v. Sandiganbayan*, 559 Phil. 622, 645 (2007) [Per J. Tinga, Second Division].

⁴⁶ *Pahkiat v. Office of the Ombudsman-Mindanao*, 888 Phil. 611, 636 (2020) [Per J. Caguioa, *En Banc*].

⁴⁷ *Id.*

person, or, through abandonment or negligence, permitted such taking.⁴⁸ The same penalty is imposed regardless of whether malversation is committed by *dolo* or *culpa*. However, if it is committed through negligence, it must be in the nature of *reckless negligence*.⁴⁹ The negligence must be positively and clearly shown to be inexcusable, approximating malice or fraud.⁵⁰ Our pronouncement in the early case of *United States v. Católico*⁵¹ is instructive:

To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, *or by such negligence or indifference to duty or to consequences, as, in law, is equivalent to criminal intent*. The maxim is, *actus non facit reum, nisi mens rea*—a crime is not committed if the mind of the person performing the act complained of be innocent.⁵² (Emphasis supplied)

Articles 390 and 391 of the *Código Penal* in force in the Philippines in 1884, from where Article 217 of the Revised Penal Code originated, read:

Art. 390. *El funcionario público que por razón de sus funciones, teniendo a su cargo caudales o efectos públicos, los sustrajere o consintiere que otros los sustraigan, será castigado:*

....

Art. 391. *El funcionario público que por abandono o negligencia inexcusables diere ocasión á que se efectúare por otra persona la sustracción de caudales o efectos públicos de que se trata en los núms. 2.º, 3.º y 4.º del artículo anterior, incurrirá en la pena de multa equivalente al valor de los caudales o efectos sustraídos.*⁵³ (Emphasis supplied)

In his commentary on the *Código Penal*, Viada remarks that the public officer must be *so negligent* as to permit another to use the public funds.⁵⁴ Hence, simple negligence will not suffice to warrant a conviction.

There has been much discussion on the steps petitioner took to rectify the situation created by Millare's acts or omissions, such as his approval of a Sangguniang Bayan Resolution requesting her to settle her accountabilities and his issuance of a Memorandum directing her to comply with the COA AOMs. However, such actions are irrelevant to a charge of malversation since

⁴⁸ *Hernan v. Sandiganbayan*, 822 Phil. 148, 172 (2017) [Per J. Peralta, *En Banc*].

⁴⁹ REGALADO, CRIMINAL LAW CONSPECTUS 534 (4th ed., 2009).

⁵⁰ 2 LUIS B. REYES, THE REVISED PENAL CODE 330 (6th ed., 1965).

⁵¹ 18 Phil. 504 (1911) [Per J. Moreland, *En Banc*].

⁵² *Id.* at 507.

⁵³ The Spanish text is translated as follows:

Art. 390. The public official who by reason of [their] duties has in [their] charge public funds or property, and who should take or consent that others should take the same, shall be punished:

....

Art. 391. The public official who, through *inexcusable abandonment or negligence*, should enable the peculation of public funds or property referred to in numbers 2, 3, and 4, of the foregoing article, by another person, shall incur the penalty of a fine equivalent to the value of the money or property misappropriated. (Emphasis supplied)

⁵⁴ 2 VIADA, CÓDIGO PENAL REFORMADO DE 1870 661 (*Cuarta Edición*, 1890).

they were performed *after* Millare took the funds. In malversation through negligence, what characterizes the negligence is not what the offender did after the public funds or property were taken by another person but what the offender did or omitted to do which permitted the taking thereof.

In determining whether petitioner's negligence was reckless, inexcusable, and approximated malice or fraud, We need only look at his alleged act or omission that permitted Millare to take the public funds. To recall, the basis for the malversation charges against petitioner were the six checks that he purportedly signed. Petitioner contends, however, that said checks were never presented by the prosecution and that he was not able to examine whether in fact he was the one who signed the questioned checks.

As testified by prosecution witness Atty. Johnness P. Batoy, FCB Vice-President for Legal, while FCB no longer had in its possession the microfilm copy of FCB Check Nos. 5644, 5655, 81203, and 81284, nor the specimen signature cards, its records and ledgers reflected that the signatories are petitioner and Millare. Further, the fact that the subject checks were encashed and cleared shows that the signatures were verified to be genuine, viz.:

Atty. Mortel

Q: And you issued the certification based solely on the basis of your position as Vice-President for Legal is that correct?

Atty. Johnness P. Batoy

A: Yes, and based on ledgers, sir.

Atty. Mortel

Q: You also testified that you also certified that the signature on the checks are genuine and authentic would be correct to state that?

Atty. Johnness P. Batoy

A: Yes, sir.

Atty. Mortel

Q: And what would be the basis considering that your certification also said that the check is not anymore available for viewing? What is the reason for you to certify that the signature of Mr. Evangelista is genuine and authentic?

Atty. Johnness P. Batoy


A: Because the checks were encashed and cleared. So, the signatures were verified genuine and authentic.

Atty. Mortel

Q: So you are testifying on the basis of the occurrence of that statement made, encashment of the check? So, that is your only basis in saying that the signature was authentic and genuine, is that correct?

Atty. Johnness P. Batoy

A: Yes sir.



Atty. Mortel

Q: So, you do not have personal knowledge as to the real authenticity and genuineness of the signature?

Atty. Johnness P. Batoy

A: No sir.

....

AJ HERRERA

Q: You say bank records and ledgers as the basis. What do you mean by bank records and ledgers?

....

Atty. Johnness P. Batoy

A: Yes bank records. We have our system in the bank, our data base and, of course the ledger, your honor.

CHAIRPERSON

Q: What about the signature cards? Where are they?

....

Atty. Johnness P. Batoy

A: They are no longer available, your Honor, because for me it is the regulation where banks are directed to retain documents for [five] years but FCB has even a policy of retaining documents for [10] years but since the checks were transacted more than 15 years, your Honor, so they are no longer available.⁵⁵

As regards the Land Bank of the Philippines (LBP) checks, LBP-Talibon Branch Manager Ma. Cerelina D. Tan (Tan) likewise testified that said checks were no longer available. Nonetheless, she was able to identify the microfilm of LBP Check No. 27405199 during trial, the microfilm of LBP Check No. 6593803 having been damaged.

AJ QUIROZ

Q: [W]hat is the date of the check?

C. Tan

A: It is March 31, 2000, your honor.

....

C. Tan

A: During this time I was the Loans and Administration Unit Head of Cebu Lending Center.

AJ QUIROZ

⁵⁵ TSN, Johnness P. Batoy, January 19, 2016, p. 33.

Q: Now, being in that position, is there any chance for you to observe it that time when that check was transacted in your bank?

....

C. Tan

A: I have no knowledge of this transaction when this transaction took place, your honor.⁵⁶

....

PROS. Medez

Q: The [OMB] required you to submit [two] checks and you identified a while ago the microfilm of Check No. 27405199. How about your compliance to the directive. . . to submit LBP Check No. 6593803

C. Tan

A: I was required to submit the original or certified photocopy but I was not able to print because upon viewing the microfilm, I learned that the microfilm was damaged ma'am.

AJ QUIROZ

Q: The microfilm was damaged?

C. Tan

A: I mean, the data, the check, was damaged, your honor.

AJ QUIROZ

Q: The check but not the microfilm?

C. Tan

A: We still have the microfilm but upon viewing, I saw the content of the microfilm was damaged your Honor.

AJ QUIROZ

Q: So, therefore the integrity of that microfilm is questionable now.

C. Tan

A: I could not identify which of the checks. . .

AJ QUIROZ

Q: Yes. So it does not possess its integrity supposed to be?

C. Tan

A: Yes your honor.⁵⁷

From the foregoing testimonies, it is clear that the four FCB checks allegedly signed by petitioner were not presented in court and that the only basis for the FCB official to say that petitioner signed them were bank records and ledgers which were likewise not presented in court. Moreover, the only basis for the FCB official to say that the signatures were authentic was the fact

⁵⁶ TSN, Cerelina D. Tan, January 19, 2016, p. 48.

⁵⁷ *Id.* at 51.

that the checks were cleared and encashed, since he did not have personal knowledge as to the genuineness of the signatures.

The negligence of the accountable officer must not only be clearly but also positively shown.⁵⁸ Positive proof is not merely an inference drawn more or less logically from a hypothetical fact. It is proof beyond reasonable doubt. Absent positive proof, mere presumptions and inferences, no matter how logical and probable, are insufficient.⁵⁹ Thus, the prosecution had the burden of proving that petitioner signed the checks without supporting documents that would have prevented the misappropriation. Piezas's testimony⁶⁰ that petitioner, in one verbal communication, "admitted that there were times that he was able to sign a check without the corresponding voucher" does not prove that said checks refer to the checks subject of this case. Clearly, the prosecution failed to positively show that petitioner committed a recklessly negligent act.

As regards the two LBP checks, while neither LBP Check No. 6593803 nor the microfilm thereof were presented, the same being damaged, LBP-Talibon Branch Manager Tan was able to identify the microfilm of LBP Check No. 27405199. Petitioner did not question said microfilm despite an opportunity to do so. Hence, We can safely conclude that petitioner indeed signed said check. His act of signing the same, without the proper supporting documents as testified by Carcueva, made it possible for Millare to conceal them from the Municipality's book of accounts and misappropriate the funds.

We now turn to petitioner's claim of good faith. According to him, he relied in good faith on the expertise of Millare, who assured him that checks for transfers of funds need not be accompanied by a disbursement voucher and that only a Form 123 with her signature was needed. Further, he claimed that he was assured by the municipal treasurer and accountant that these transactions were in accordance with usual accounting principles.⁶¹

In *Villacorta v. People*,⁶² We acquitted the accused of malversation on ground that his having allowed others to freely participate of the chits or vouchers was a practice which seemed to have been tolerated even during the time of his predecessor, and that there was no negligence approximating malice or fraud because the wrong payments were made in good faith. Moreover, the items comprising the alleged shortage were paid to government personnel as wages, *et cetera*, and were not used for the accused's personal affairs. Similarly, in *Quizo v. Sandiganbayan*,⁶³ We acquitted the accused of malversation because the granting of cash advances was done in good faith,

⁵⁸ LUIS B. REYES, THE REVISED PENAL CODE, BOOK II 330 (6th ed., 1965).

⁵⁹ *People v. Agaton*, 880 Phil. 447, 461 (2020) [Per C.J. Peralta, First Division].

⁶⁰ *Rollo*, p. 69.

⁶¹ *Id.* at 35.

⁶² 229 Phil. 422 (1986) [Per J. Melencio-Herrera, *En Banc*].

⁶³ 233 Phil. 103 (1987) [Per J. Fernan, *En Banc*].

with no intent to gain, and borne out of goodwill considering that it was a practice tolerated in the office.⁶⁴ However, in *Cabello v. Sandiganbayan*,⁶⁵ We cautioned that while the confluence of circumstances obtaining in *Villacorta* and *Quizo* warranted the application of the doctrine established therein, each case should still be decided based on the facts thereof to determine whether the accused's alleged good faith is exculpatory.⁶⁶

It is not disputed that the transfer of funds between the accounts of the Municipality through checks supported only by a so-called Form 123 was a practice tolerated even during the time of petitioner's predecessor. Petitioner also relied in good faith on the advice of the municipal treasurer that checks for transfer of funds between the accounts of the Municipality did not require disbursement vouchers. While such practice did not relieve petitioner of his duty to safekeep such public funds and ensure that practices involving the funds of the Municipality, whether long-standing or recent, are compliant with the pertinent laws, rules, and regulations, We find that his negligence did not approximate malice or fraud, thus warranting his acquittal. Nonetheless, it is hornbook doctrine that an acquittal will not necessarily extinguish civil liability unless the court declares in a final judgment that the fact from which the civil liability might arise did not exist.⁶⁷ Here, We do not find that the act from which his civil liability may arise did not exist. Thus, We find him civilly liable in the amount of PHP 553,148.00.

ACCORDINGLY, the Petition is **GRANTED**. The June 29, 2018 Decision and August 15, 2018 Resolution of the Sandiganbayan in Criminal Case Nos. SB-14-CRM-0232 to 0237 are **REVERSED and SET ASIDE**. Petitioner Silvino C. Evangelista is **ACQUITTED** of malversation of public funds for failure of the prosecution to prove his guilt beyond reasonable doubt. Nonetheless, he is **ORDERED** to pay the Government the total amount of PHP 553,148.00 as civil liability, subject to interest at 6% per annum from the finality of this Decision until full payment.

SO ORDERED.

RICARDO R. ROSARIO
Associate Justice

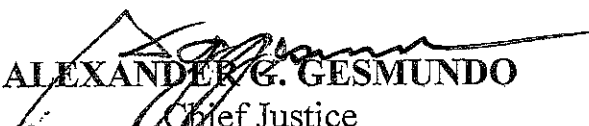
⁶⁴ *Id.* at 109.

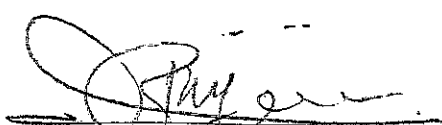
⁶⁵ 274 Phil. 369 (1991) [Per J. Regalado, *En Banc*].

⁶⁶ *Id.* at 376.

⁶⁷ *Romero v. People*, 610 Phil. 615, 620 (2009) [Per J. Corona, First Division].

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

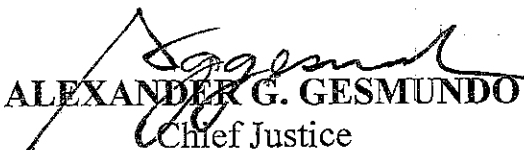

RAMON PAUL L. HERNANDO
Associate Justice

(On official business)
RODIL V. ZALAMEDA
Associate Justice

(On official business)
JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the 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.


ALEXANDER G. GESMUNDO
Chief Justice