

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
EFREN MIRANDA, DEFENDANT AND APPELLEE.***G.R. No. L-16122. May 30, 1961*

Ponente: REYES, J.B.L., J.

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On January 2, 1958, Efren A. Miranda, postmaster of the municipality of Cantillan, province of Surigao, was charged in the Court of First Instance of Surigao with the crime of malversation of public funds through falsification of public documents in that on five different occasions and dates, during the period from May 19, 1955 to February 29, 1956, the accused allegedly falsified and made alterations in his records of collections and payments and official cash books, to make it appear that more sums were paid out by him on telegraphic transfers and money orders to certain persons than those actually disbursed, and then misappropriated and converted the difference to his own use and benefit, to the damage and prejudice of the national government in the amount of P3,684.81 (Criminal Case No. 2379).

On August 21, 1959, the accused moved to dismiss the case on the ground that within 24 hours after the discovery of the supposed malversations, he reimbursed or made good the missing amounts, thereby negating criminal intent on his part, and furthermore, that whatever criminal liability he had incurred under the circumstances was extinguished by such reimbursements. The trial court sustained the motion and dismissed the case under the following order:

"ORDER

The accused is charged with malversation of public funds thru falsification of public documents. The attorney of the accused has filed a motion to dismiss on the ground that as the accused made good the amount supposed to have been lacking in his account even before the filing of the information, no crime was committed by the accused.

The Court was also informed that in a similar case, the accused was prevailed upon by the Auditor's Office to reimburse the amount found short in his account on the promise that he would not be prosecuted anymore. In this present case, the accused had also been promised by the Auditor's representative that if he made good the amount found short in his account, he would not be prosecuted anymore. As it turned out, he has been prosecuted but the other fellow was not. To say the least, this is unfair to the accused, as it shows favoritism for the other fellow and discrimination against this accused. This Court will not permit such actuation by any public official.

In the case of *People vs. Tolentino*, the Supreme Court has laid down the doctrine that the only difference between estafa and malversation is that in estafa, the object is private property whereas in malversation, it is public funds. In that case, the person who was accused returned to the respective owners the money that he had solicited before the information was filed. The Supreme Court held that there was no damages caused to the supposed offended parties because the corresponding amounts solicited were returned to them and the return of the money in that case was made during the investigation by the police agencies and before the information

against the accused was filed by the Provincial Fiscal.

Wherefore, for the foregoing, the Court hereby orders the dismissal of this case with costs de oficio. The bail bond filed by the accused for his provisional liberty is hereby ordered cancelled."

The assistant provincial fiscal moved to reconsider the above order of dismissal, arguing that granting that there was no malversation, there was still the charge of falsifications of public documents embodied in the same information wherein damage is not an essential element; but the lower court denied the motion to reconsider, hence this appeal by the government.

We agree with appellant that the information should not have been dismissed.

In the first place, it is too well-settled for any serious argument that whether in malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability or relieve him from the penalty prescribed by law for the offense committed, because both crimes are public offenses against the People that must be prosecuted and penalized by the Government on its own motion, though complete reparation should have been made of the damage suffered by the offended parties (U.S. vs. Mendezona, 2 Phil., 353; U.S. vs. Ongtengco, 4 Phil., 144; U.S. vs. Rodriguez, 9 Phil., 153; People vs. Leachen, 56 Phil., 737; Javier vs. People, 70 Phil., 550; Camus vs. C.A. and People, 92 Phil., 85; 48 Off. Gaz., No. 9, 3898; Bacsarpa, et al. vs. C.A., 99 Phil., 112; 53 Off. Gaz., [8] 3967; People vs. Gervacio, 102 Phil., 687; 54 Off. Gaz., [9] 2898; People vs. Benitez, 108 Phil., 921). Assuming, therefore, that the accused Miranda had indeed fully reimbursed or returned the amounts he is supposed to have malversed, still his criminal liability is not extinguished thereby and he must still account and be prosecuted for any malversations he has committed.

Secondly, while Miranda alleged in his motion to quash that his having returned the amounts missing in his accounts before the filing of this case negatives criminal intent on his part, and that the falsifications and malversations charged against him are actually nothing more than honest mistakes or errors in the entries or computations made by him in his books and records, such facts constitute at most a defense against the charges against him which he must prove at the trial; but does not constitute any valid ground for the dismissal of this case at a stage when trial has not even begun and the prosecution has not yet started presenting its evidence.

Thirdly, the lower court appears to have relied on a case decided by the Court of Appeals and cited in the motion to quash of the accused Miranda (People vs. Gatmaitan, C.A.-G.R. No. 14127-R, September 26, 1957, although in the order, the trial court erroneously attributes the doctrine to our ruling in People vs. Tolentino, 69 Phil., 715) as authority for the proposition that the return to the offended party of the amounts misappropriated before the filing of an information against the offender exculpates the latter from all criminal liability. Apart from the fact that this Court can not be bound by any decision rendered by a court of lower category, especially if such decision conflicts with the established rule laid down by us in similar cases, we have read the decision cited in its entirety and have verified therefrom that the Court of Appeals acquitted the accused therein, not because he returned the money he was supposed to have misappropriated before criminal action was taken against him, but because that Court found, on the whole of the evidence, that there was absolutely no criminal intent on the part of the accused, shown, among other things, by his voluntary return to the complainants of their money even before he was formally charged with the crime of estafa.

Fourthly, the trial court, in dismissing this case upon the motion to quash of the accused Miranda, also seems to have been greatly influenced by the fact that in a similar case, another government employee who was supposed to have committed the same offense as herein charged was not prosecuted after he had returned the funds

supposed to have been malversed by him, and the trial court considered it highly discriminatory and unjust that after the herein accused had made reimbursements of the amounts missing from his accounts because the same authorities had promised him that he would not be prosecuted any more if he made such reimbursements, the present case was still filed against him. Suffice it to say on this point that the neglect, laxity, or complacency of government officials in taking legal action against one erring employee does not justify the dismissal of any criminal action taken against another erring employee. If the court a quo had really wanted to equalize justice and avoid discrimination in the two cases, it should have ordered and directed the prosecution of the other government employee who is allegedly guilty of a similar offense, instead of dismissing the present case against the accused Efren A. Miranda.

Fifthly, as correctly pointed out by the assistant provincial fiscal in his motion for reconsideration of the order of dismissal, even assuming that the reimbursements made by the accused Miranda had extinguished any criminal liability he might have incurred for malversation, there is still the charge of falsification of public documents embodied in the same information. It is clear enough that even if Miranda is able to show that he committed no malversation, he may still be found guilty of the lesser crime of falsification of public documents, which is necessarily included in the complex crime of malversation through falsification of public documents charged in this case. This is another salient reason why the dismissal of the information against Miranda by the lower court before trial was improper and premature.

Wherefore, the order of dismissal appealed from is reversed and set aside, and the lower court is ordered to proceed with the trial of this case on the merits. Costs against the accused Efren A. Miranda.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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