

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIPE A. LIVARA, DEFENDANT AND APPELLANT.***G.R. No. L-6201. April 20, 1954*

Ponente: BENGZON, J.

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After the corresponding trial in the Court of First Instance of Romblon, Felipe A. Livara, was found guilty of malversation of public funds and sentenced to imprisonment from four (4) years, two (2) months and one (1) day of prison correccional to ten (10) years of prison mayor, with perpetual special disqualification, to pay a fine of P5,000, to indemnify the government in the sum of P9,597, without subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment he appealed on time. Because he assailed the constitutionality of Article 217 of the Revised Penal Code, the expediente was forwarded to this Court.

Appellant was from January, 1947 to July 22, 1948, provincial disbursing officer of the Philippine Constabulary in Romblon. As finance and accountable officer, he took charge of paying the salaries and subsistence of the PC officers and enlisted men of that region. On July 22, 1948, he came to Manila carrying some money, and, having secured a Treasury Warrant from the finance officer at Camp Crame for more than P8,000, he cashed the same in the Finance Building at Taft Avenue. In November, 1948, an examination of his accounts was conducted by Major Emilio Baldia, Chief of the Cash Examination and Inspection Branch of the Finance Service, who found him with a net shortage of P9,597 unaccounted for. Major Baldia submitted a report of his findings to the Adjutant General of the PC. Days afterwards, a board of officers was created formally to investigate the appellant. That board found him accountable for P9,597, and recommended his prosecution before the civil courts for malversation of public funds. An information for the crime of malversation of public funds was consequently filed in the Court of First Instance of Romblon September, 10, 1949.

Major Emilio Baldia, testified in the Romblon court that sometime in November 6, 1948, he examined the accountability of Lieutenant Felipe A. Livara and found he had incurred a net shortage of P9,597; and that in answer to his question, appellant admitted his financial liability but asserted he had lost the money in Manila on his way to North Harbor to board a vessel for Romblon.

Capt. Teofilo V. Dayao, Zone Finance Officer, testified that in the month of August, 1948, he was dispatched to Romblon to pay the salaries and subsistence of the officers and enlisted men of the PC stationed in said province; that he inquired into the whereabouts of Lt. Livara but was informed that he had left for Manila in July 23, 1948, to submit for approval the disbursement he had made and get the return of the same from the PC headquarters; that finding the safe of the accused locked, he sealed it in the presence of Capt. Diaz and Lt. Tanedo and brought it to Manila where it was opened in the presence of eleven officers including the appellant; and that no cash was found in the safe.

Provincial Auditor Aproniano S. Celajes, last prosecution witness, declared that on July 16, 1948, he examined and verified the books of account and money accountability of the appellant and found a balance of P14,984,

represented by cash of P6,330.10, actually found on hand and vouchers in the amount of P8,654.

The appellant Felipe A. Livara was the lone witness for the defense. He declared that on July 22, 1948, he came to Manila and submitted his abstract to the Auditor of the PC; that a treasury warrant was issued to him in the amount of more than P8,000; that he proceeded to the Finance Building at Taft Avenue and cashed the same; that while riding a public utility jeepney bound for the North Harbor to embark on the S. S. Elena for Romblon, he lost his portfolio containing the said money plus about P1,000 more, and other public documents. He swore to having made efforts to recover the portfolio but the jeepney was nowhere to be found.

There is no doubt about the shortage. It constitutes prima facie evidence that the accused made personal use of the money, unless he gives a satisfactory explanation (Art. 217, Rev. Penal Code). His account of the loss of the portfolio was not believed by the board officers that investigated him, and by the court below. It is really an incredible story. With about ten thousand pesos in it, the portfolio could not have been forgotten for one moment by any passenger, especially a finance officer like the accused. The alleged loss was obviously a ruse to conceal his defalcations. As a matter of fact, even before the Manila trip he was already in the red, as shown by the testimonies of Lt. Bernabe Cadiz, commanding officer of the 83rd PC company and Lt. Damaso C. Quiao, adjutant, supply and finance officer of Romblon.

If the portfolio had actually been lost as recounted by appellant, he would not be responsible for the money. Yet he admitted his liability, made efforts to pay it, even used for that purpose a false check payable to Colonel Selga of the Constabulary.

Counsel for the appellant contends that the Court of First Instance of Romblon had no jurisdiction over the case, arguing that the alleged crime of malversation of public funds occurred during the incumbency of the accused as an officer of the Philippine Constabulary. Such contention is without merit. The civil courts and courts-martial have concurrent jurisdiction over offenses committed by a member of the Armed Forces in violation of military law and the public law. The first court to take cognizance of the case does so to the exclusion of the other (*Grafton vs. U. S.*, 11 Phil., 776; *Valdez vs. Lucero*, 42 Off. Gaz., No. 112835). The accused-appellant having been first tried and convicted of the crime by the Court of First Instance of Romblon he cannot now claim that the criminal action should have been brought before a court-martial.

The constitutionality of the last paragraph of Article 217 of the Revised Penal Code is likewise assailed. It reads:

"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."

Defense counsel maintains the view that this provision is contrary to the constitutional directive that in criminal prosecutions the accused shall be presumed innocent until the contrary is proven.

This contention deserves no merit, inasmuch as the validity of the said article has already been discussed and upheld in *People vs. Mingoa*, 92 Phil., 856, wherein this court through Mr. Justice Reyes declared: "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence."

Wherefore, as this appellant is guilty of malversation of public funds and as the penalty imposed on him accords with the law, we hereby affirm the judgment with costs against him. So ordered.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and Diokno, JJ., concur.

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