

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANGEL A. ENFERMO, APPELLANT.*G.R. NOS. 148682-85. November 30, 2005*

Ponente: AZCUNA, J.

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This case was certified to this Court, pursuant to Section 13, paragraph 2 of Rule 124 of the Revised Rules of Criminal Procedure, by the Court of Appeals after reviewing the case on appeal[1] and affirming with modification the decision of the Regional Trial Court of Pasig City, Branch 158, which found appellant guilty of two counts of Malversation through Falsification of Public Documents and two counts of Malversation.[2]

On October 25, 1996, the Office of the Ombudsman filed with the Regional Trial Court of Pasig City, Metro Manila twelve informations against appellant, Angel A. Enfermo, and Ferdinand C. Entienza, both former employees of the National Research Council of the Philippines (NRCP).[3] Several of the cases filed were dismissed for repeated failure of the prosecution to present evidence.[4] The motion for reconsideration of the order of dismissal was denied.[5] The NRCP through the Government Corporate Counsel filed a petition for certiorari[6] with the Court of Appeals questioning the dismissal and the denial of the motion for reconsideration, which petition was denied by the Court of Appeals in a resolution dated November 18, 1998.[7] As a result of the dismissal of those cases, the only ones that survived and were tried in the Regional Trial Court were Criminal Cases Nos. 111086 and 111087 for Malversation through Falsification of Public Documents and Criminal Cases Nos. 111089 and 111091 for Estafa through Falsification of Public Documents, in which only appellant, Angel A. Enfermo, was charged.

The prosecution, in support of its charges, presented evidence, as follows:

Alejandro Rodanilla, Administrative Officer of the NRCP, testified that appellant, Angel A. Enfermo, held the position of Disbursing Officer II, Accounting Section, Finance and Administrative Division of the NRCP. His duties and responsibilities as a disbursing officer are the following: "He assist[s] the cashier in the preparation and the release of the checks covering the financial transaction of the NRCP. He also assist[s] the cashier in encashing the checks for salaries of the employees of NRCP." [8]

As testified to by Luz Acosta Aramil, Accountant III of NRCP, sometime in 1993, it was discovered that the debit and credit records of the checks issued and paid by its depository bank, Land Bank of the Philippines (LBP), did not balance. The bank reconciliation showed overstatements of P80,000, P60,000 and P60,000 for the months of June, July and November, respectively. An investigation disclosed that there were double issuances of checks, which were covered by only one disbursement voucher each.

In Criminal Case No. 111086, the charge originated from the double issuance of checks intended for Aurora Dacanay, a researcher who was doing a study on pine shoot moth and tip moth in the Benguet pine forest in the Cordillera. On February 26, 1993, the NRCP issued an LBP check with Check No. 0000163230-BB to Dacanay in the amount of P38,446.13.[9] This check was duly supported by Disbursement Voucher No. 93-02-95. The sum

was the final release of an outright grant in connection with an NRCP-assisted research project E-181, entitled "Population Dynamics of Pine Shoot Moth and Tip Moth in Benguet Pine Forest in the Cordillera." [10] The check was received and encashed by Dacanay in Baguio City. [11] However, on May 19, 1993, a second check with Check No. 0000026186-CC was issued to Aurora Dacanay for the same amount of P38,446.13 and supported by the same voucher as the first check. This second check was encashed by appellant in the Parañaque branch of the Land Bank of the Philippines by supposedly forging the signature of the payee and signing his own name as an acknowledgement of receipt of payment. [12] Appellant received and misappropriated the proceeds of the check.

In Criminal Case No. 111087, again, the charge stemmed from a double issuance of a check intended for Jose M. Bernaldez, a Mathematics professor based in Mindanao State University (MSU), Iligan City. Check No. 0000096515-CC in the amount of P30,000 was issued by the NRCP to Bernaldez, on August 13, 1993. [13] The check was supported by Disbursement Voucher No. 93-5-591. The amount paid was for an outright grant in connection with the NRCP-assisted research project No. B-78, entitled "On Regular Cyclically K-Complementary Graphs." [14] The check was received and encashed by Bernaldez in Iligan City. [15] Again, as in the case of Aurora Dacanay, another check was issued in the name of Jose M. Bernaldez with Check No. 0000026624-CC, which was not supported by a disbursement voucher. [16] Like the case of Dacanay, appellant encashed the check at the Parañaque branch of the Land Bank of the Philippines, by supposedly forging the signature of Bernaldez, and signing his own name to acknowledge receipt of payment. [17] Appellant received and misappropriated the proceeds of the check.

The resident auditor of the Commission on Audit assigned to the NRCP, Ma. Eugenia Rodil, testified to an audit report which she prepared and submitted pursuant to the detection of the anomalous transactions at the NRCP. After her cash examination revealed that there was a shortage, a fraud audit in the NRCP was performed. Rodil testified on the documentary evidence gathered relating to the double issuance of checks to Dacanay and Bernaldez. In her investigation she discovered that the bank statement did not tally with the Journal of Checks Issued, which was prepared by Accountant III Aramil and the Report of Checks Issued (RCI), which was prepared by the cashier. [18]

With regard to Criminal Cases Nos. 111089 and 111091, the prosecution presented Mary Christine Avanzado and Lanie P. Manalo, employees of the NRCP, who both executed affidavits. [19] Avanzado testified that when she was claiming her salary as Clerk I for the period of January 1–15, 1994, she was informed by appellant that he had spent the money and would just pay her back. [20] In the case of Manalo, she did not receive her productivity incentive pay in the amount of P2,000. She then confronted appellant regarding the amount, and the latter replied that he had used it to pay a debt. [21] Both Avanzado and Manalo signed the payroll upon the promise of appellant that he would return the money. [22]

Appellant was convicted by the Regional Trial Court on all four charges. On appeal, the Court of Appeals affirmed the RTC decision with modification, as follows:

Appellant contended that the prosecution failed to prove that he falsified the signature of the payee in LBP [Checks] Nos. 0000026186 (Dacanay) and 0000026624 (Bernaldez) in Criminal Case[s] Nos. 111086 and 111087 as it did not present the testimony of the NBI officer or handwriting expert who prepared the handwriting examination report. Moreover, argued the appellant, if he really committed such forgery, then he should have at least imitated the signature of the payee; and since it was his signature which appeared on the dorsal portion of the questioned checks, he could not have forged his own signature. Appellant also pointed out that the prosecution presented mere photocopies of the questioned checks, the originals thereof were not submitted in evidence. The trial court thus erred in convicting the accused in the absence of evidence that he misappropriated the proceeds of the subject checks.

Such contentions are untenable.

The crime charged in Criminal Case[s] Nos. 111086 and 111087 is malversation committed by means of falsification of public documents, the checks considered as public documents evidencing payment of obligation by the government out of public funds

The crime of malversation of public funds is defined and penalized 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....

...

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 elements of malversation, essential for the conviction of an accused, under the above penal provision are that:

(a)

the offender is a public officer;

(b)

he has the 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 he is accountable; and

(d)

he 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. (Rueda, Jr. v. Sandiganbayan, G.R. No. 129064, November 29, 2000.)

Anent the last element, our Supreme Court has ruled that to justify conviction for malversation of public funds, the prosecution has only to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same. (Estrada v. Sandiganbayan, G.R. No. 125160, June 20, 2000, citing People v. Pepito, 267 SCRA 358,368, See also Felicilda v. Grospe, 211 SCRA 285.) An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily. (Navallo v. Sandiganbayan, 234 SCRA 175, 185; Villanueva v. Sandiganbayan, 200 SCRA 722, 734.) Such conversion of public funds must be affirmatively proved, whether by direct evidence or by the production of facts from which conversion necessarily follows. (Bugayong v. People, 202 SCRA 762.)

In the case at bar, We find that the prosecution has satisfactorily proved all the elements of the crime of malversation under Art. 217 of the Revised Penal Code.

Appellant did not give any explanation as to the shortage in the funds which have been traced to the double issuance of checks, the responsibility for which fell on the cashier (Entienza) and the disbursing officer (appellant). His defense consisted of a mere denial that the signature appearing on the dorsal portion of the questioned checks was not his. In his testimony, however, appellant did not categorically deny that said signature was his but that he could not remember whether it was his signature because it was a long time ago. As to the authenticity of his signature appearing on said checks, upon the request of the NRCP, the NBI conducted a handwriting examination of appellant's signature appearing on the questioned checks together with specimen signatures of appellant taken from daily time records, and submitted a report thereon confirming that indeed, the same were written by (1) one and the same person. While it is true that the prosecution did not present the testimony of the NBI officer or handwriting expert who conducted said examination, the signature of appellant appearing on the questioned checks was sufficiently established by the testimony of Luz Aramil who has sufficient familiarity with appellant's signature, having worked with appellant who was under her supervision and had seen documents signed by him. Such opinion of a non-expert on handwriting is authorized under Sec. 22, Rule 132 of the Rules of Court to prove genuineness of a handwriting. A person is deemed to be acquainted with the handwriting of another where it is shown that, in the ordinary course of business, documents purporting to be written by that person have frequently come into his possession or under his scrutiny or have been habitually submitted to him. (Oscar M. Herrera, Remedial Law, Vol. VI, 1999 ed., p. 279, citing 3 Jones, p. 311.) In *Court Administrator v. Villanueva* (223 SCRA 41), our Supreme Court has ruled that resort to handwriting experts, while probably useful, is not mandatory nor indispensable in examining or comparing handwriting. This is so since under Sec. 22, Rule 132, the handwriting of a person may be proved by any witness who believes it to be the handwriting of such person, because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. In view of the foregoing, it is clear that the testimony of the NBI handwriting expert who conducted the examination and submitted the report questioned by the appellant, is not indispensable in proving the authenticity of appellant's signature on the questioned checks.

Appellant also claimed that the prosecution failed to indubitably establish that it was he who actually falsified the signature of Aurora Dacanay and Jose M. Bernaldez and referred to the testimony of Aramil on cross-examination where the latter could not definitely point to him as the one who signed the name of said payees on the checks. Aramil's testimony, however, only emphasized the point that such act of falsification committed by appellant can be conclusively presumed from the undisputed fact that he was the one who encashed the checks and received the proceeds thereof as evidenced by his signature acknowledging receipt of payment of said checks. It has been held that in the absence of a satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification. (*Maliwat v. CA*, 256 SCRA 718.) Since it is obvious that the purported signatures of the payees in the questioned checks were not genuine signatures on the basis of visual comparison alone, it goes without saying that the person who encashed the same and received payment thereof is presumed to be the forger of said signatures. Taken together with the circumstances that as disbursing officer, appellant was the one in charge of preparation, encashment and delivery of checks issued by the NRCP, the conclusion is inevitable that no other person other than appellant could have falsified the payees' signature, encashed the questioned checks and misappropriated the proceeds thereof. Being a public officer who had taken advantage of his official position and falsified the signature of the payees of the questioned checks, appellant has committed falsification of public document defined and penalized under Art. 171, paragraph 1 of the Revised Penal Code.

The totality of evidence indeed points to the appellant as the one responsible for the encashment of the questioned checks found to be irregularly issued. His objection as to the documentary exhibits being mere photocopies is of no significance since during the hearings below, appellant's counsel, upon request by the prosecution, had admitted that these are faithful reproduction[s] of the originals thereof, which original copies, however, have not been submitted to the trial court as they were being kept in custody by the Commission on Audit which had conducted its own investigation on the matter. Besides, no such objection was raised by appellant in his "Comments/Objections to Prosecution[']s Formal Offer of Evidence."

Coming now to the charges against the appellant in Criminal Case[s] Nos. 111089 and 111091, the respective information reads –

Criminal Case No. 111089

The undersigned Graft Investigation Officer I, Office of the Ombudsman accuses Angel A. Enfermo of the Crime of Estafa through Falsification of Public Document, defined and penalized under Article 315 paragraph 1 (b) in relation to Article 171 paragraph 1 and Article 48 of the Revised Penal Code committed as follows:

That on or about January 15, 1994, and for sometime prior or subsequent thereto, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused Angel A. Enfermo a public officer being then a Disbursing Officer of National Research Council of the Philippines (NRCP), Taguig, Metro Manila, taking advantage of his official position, did then and there, willfully, unlawfully and feloniously falsify NRCP Salary Payroll for the period January 1 to 15, 1994 by forging the signature of Marie Christine T. Avanzado, NRCP Accounting Clerk; and thereafter, with grave abuse of confidence, embezzle, misappropriate and convert to his personal use and benefit the salary in the amount of P978.24 pertaining to Ms. Avanzado, to the damage and prejudice of public interest and Marie Christine T. Avanzado.

CONTRARY TO LAW.

Criminal Case No. 111091

The undersigned Graft Investigation Officer I, Office of the Ombudsman accuses Angel A. Enfermo of the Crime of Estafa through Falsification of Public Document, defined and penalized under Article 315 paragraph 1 (b) in relation to Article 171 and Article 48 of the Revised Penal Code committed as follows:

That on or about January 17, 1994, and for sometime prior or subsequent thereto, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused Angel A. Enfermo a public officer being then a Disbursing Officer of National Research Council of the Philippines (NRCP), Taguig, Metro Manila, taking advantage of his official position, did then and there, willfully, unlawfully and feloniously falsify Productivity Incentive Payroll of NRCP for the year 1993 by forging the signature of Lanie P. Manalo, an employee of the NRCP; and thereafter, with grave abuse of confidence, misappropriate and convert to his personal use and benefit the said Productivity Incentive of Ms. Manalo in the amount of P2,000.00 to the damage and prejudice of Lanie Manalo.

CONTRARY TO LAW.

As shown above, the prosecuting officer designated the offense as Estafa Through Falsification of Public Document under Art. 315 paragraph 1(b) in relation to Art. 171, paragraph 1 and Art. 48 of the Revised Penal Code. After evaluating the evidence adduced during the trial however, the lower court convicted the appellant of the crime of malversation defined and penalized under Art. 217 of the Revised Penal Code, stating that there was no falsification of public document involved as the appellant did not falsify the signatures of Avanzado and Manalo in the payroll since the latter two (2) themselves signed the same after appellant promised to return the

money. The lower court reasoned that said funds remain as public funds prior to their release to and receipt by the personnel entitled thereto, and hence by admitting that he had used the money representing the salary and productivity incentive bonus, respectively, of Avanzado and Manalo for his own benefit, appellant clearly committed an act of malversation in both cases.

Appellant, on the other hand, argued that he could not be convicted of the crime charged in Criminal Case Nos. 111089 and 111091 since both Avanzado and Manalo testified that their signatures in the payroll were not falsified by the appellant. Their signature on the payroll thus constitutes undeniable proof that there was transfer of ownership of said money from the government to the said employees. Such money thereby became subject to the control of the said employees and it is perfectly within their rights to lend it and allow somebody to use their money. In fact, appellant averred, it is a recognized practice among government employees and even in the private sector to just sign the payroll without actually receiving their money because others have borrowed it. No money or property was taken from the government and hence no element of damage to the government was present.

Appellant's arguments are without merit.

First, We shall pass upon the matter of the crime charged in the information and subsequent conviction of the appellant for a crime other than that designated by the prosecuting officer in said information.

Although the caption or preamble of the information(s) charged the accused-appellant with estafa through falsification of public document, the crime committed was malversation. It is settled that what controls is not the designation of the offense but the description thereof as alleged in the information. (*Santos v. People*, 181 SCRA 487, 492, citing early cases *People v. Maravilla*, 165 SCRA 392; *Socrates v. Sandiganbayan*, 253 SCRA 773; *People v. Sandoval*, 254 SCRA 436, 452; *People v. Aczon*, 225 SCRA 237.) The technical name given by the fiscal appearing in the title of the information does not determine the character of the crime but the facts alleged in the body of the information. (*People v. Diaz*, 320 SCRA 168, 175, citing *Socrates v. Sandiganbayan*, 253 SCRA 773, citing *Reyes v. Camillon, et al.*, 192 SCRA 445.) The real nature of the criminal charge cannot be determined from the caption or preamble of the information or from the mere reference to a particular provision of law alleged to have been violated because they are conclusions of law. On the contrary, it is determined by the actual recital of facts in the complaint or information. (*Ibid.*; See also *Pecho v. People*, 262 SCRA 518, 528, citing *Matilde v. Jabson*, 68 SCRA 456.) Thus, an incorrect caption is not a fatal mistake. (*Ibid.*, citing *U.S. v. Lim San*, 17 Phil. 273.) For the rule is settled that it is ultimately the court which determines the nomenclature of the crime after the trial and following its own ascertainment of the facts needed to constitute the elements of the crime attributed to the accused. (*Cinco v. Sandiganbayan*, 202 SCRA 726, 733, citing *People v. Eleuterio*, 173 SCRA 243, 251.)

As described in the information, the offense imputed to appellant Enfermo contains all the essential elements of malversation, to wit: (1) the offender is a public officer; (2) he has the custody or control of funds or property by reason of the duties of his office; (3) the funds or property involved are public funds or property for which he is accountable; and (4) he 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. So that even if appellant is correct in saying, and which was also the ruling of the trial court, that he had not committed falsification of public document since he did not falsify the signature of Avanzado and Manalo in the payroll, still he cannot escape criminal liability for the act of malversation committed by him in taking, appropriating or misappropriating the payroll money intended for Avanzado and Manalo, for his own personal use and benefit. Contrary to appellant's theory, such funds remain as public funds prior to their release to and receipt by said Avanzado and Manalo, the persons entitled to receive the same. His asseveration that it is a recognized practice among government employees and even in the private sector for employees to just sign the payroll without actually receiving the

money because others have borrowed it, has no basis and does not justify his highly improper act. Besides, in no way can it be considered that appellant had "borrowed" the questioned funds intended for Avanzado and Manalo when he had not first sought the permission of the two (2) before taking the money and using it for his personal benefit, as said employees even had to confront him for their non-receipt of said payroll money. And even granting that he had priorly (sic) secured permission from said employees, it will not change the character of the payroll funds as public funds for as long as these have not yet been received by or released to the said employees.

Clearly then, upon the foregoing facts and circumstances, the guilt of the accused-appellant for the crime of malversation in Criminal Case Nos. 111089 and 111091 has been proven beyond reasonable doubt.

As to the penalties imposed by the trial court, We believe that the trial court erred in imposing the penalty of eighteen (18) years, eight (8) months and one (1) day of reclusion temporal minimum to reclusion perpetua maximum in Criminal Case Nos. 111086 and 111087. Art. 217, paragraph 4 of the Revised Penal Code, prescribes the penalty of reclusion temporal in its maximum period to reclusion perpetua. In the light of Article 48 which provides that the penalty for a complex crime is the penalty for the most serious crime, the same to be applied in its maximum period, the proper penalty in this case is therefore reclusion perpetua, which remains as an indivisible penalty having no minimum, medium and maximum periods. (People v. Quitlong, 292 SCRA 360, 382, citing the Supreme Court's Resolution of January 9, 1995 clarifying its decision in People v. Lucas, 310 Phil 77.) Consequently, the Indeterminate Sentence Law (Act No. 4103, as amended) does not apply in this case in view of Section 2 thereof. On the other hand, the penalty imposed in Criminal Case Nos. 111089 and 111091 should also be modified from eight (8) years and one (1) day to nine (9) years and four (4) months and one (1) day of prision mayor, to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum, for each in accordance with Article 217 paragraph 2, the amount involved (P978.24 and P2,000.00) being more than P200.00 but does not exceed P6,000.00.

WHEREFORE, premises considered, the present appeal is hereby PARTLY GRANTED. The appealed Decision in Criminal Case Nos. 111086, 111087, 111089, and 111091 is hereby MODIFIED as follows:

- 1) In Criminal Case No. 111086, accused Angel A. Enfermo is hereby sentenced to suffer the penalty of reclusion perpetua together with the accessory penalties and to indemnify the National Research Council of the Philippines (NRCP) the amount of P38,446.13;
- 2) In Criminal Case No. 111087, accused Angel A. Enfermo is hereby sentenced to suffer the penalty of reclusion perpetua, together with the accessory penalties and to indemnify the National Research Council of the Philippines (NRCP) the amount of P30,000.00;
- 3) In Criminal Case No. 111089, accused Angel A. Enfermo is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum, together with its accessory penalties and to indemnify Christine Avanzado the amount of P978.24; and
- 4) In Criminal Case No. 111091, accused Angel A. Enfermo is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum together with its accessory penalties and to indemnify Lanie P. Manalo the amount of P2,000.00.[23]

As mentioned above, the case was certified to this Court pursuant to Section 13, paragraph 2 of Rule 124 of the Revised Rules of Criminal Procedure. In a Supplemental Appellant's Brief, appellant raised the following

Assignment of Error:

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT IN CRIMINAL CASE[S] NOS. 111086 AND 111087 AND IN IMPOSING THE PENALTY OF RECLUSION PERPETUA.[24]

Appellant also adopted the arguments presented in Appellant's Brief[25] and the Supplemental Appellant's Brief[26] filed before the Court of Appeals. The errors assigned in these briefs are as follows:

Appellant's Brief

- THE TRIAL COURT ERRED IN APPRECIATING THE EVIDENCE OF THE PROSECUTION BUT DISREGARDED BASIC FACTS THAT WOULD HAVE BEEN SUFFICIENT TO ACQUIT THE APPELLANT.
- THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT CONSIDERING THAT THERE WAS NO EVIDENCE THAT HE MISAPPROPRIATED THE PROCEEDS OF THE CHECKS.

Supplemental Appellant's Brief

I

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT IN CRIMINAL CASES NOS. 111086 AND 111087 HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT IN CRIMINAL CASE No. 111089.

III

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT IN CRIMINAL CASE NO. 111091.

IV

THE COURT A QUO ERRED IN IMPOSING THE PENALTY OF RECLUSION [TEMPORAL MINIMUM TO RECLUSION] PERPETUA MAXIMUM IN CRIMINAL CASES NUMBERS 111086 AND 111087 ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED.

V

THE COURT A QUO ERRED IN IMPOSING THE PENALTY OF EIGHT (8) YEARS AND ONE (1) DAY TO NINE (9) YEARS AND FOUR (4) MONTHS AND ONE (1) DAY OF PRISION MAYOR IN CRIMINAL CASES NUMBERS 111089 AND 111091 ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED.

For clarity, the issues as culled from the arguments of appellant in the briefs filed before this Court and the Court of Appeals may be restated thus:

- IN CRIMINAL CASES NOS. 111086 AND 111087, WHETHER THE CHECKS WERE ACTUALLY IN THE POSSESSION OF APPELLANT.
- IN CRIMINAL CASES NOS. 111086 AND 111087, WHETHER IT WAS PROVEN THAT THE SIGNATURES ON THE TWO CHECKS WERE THOSE OF APPELLANT.

- IN CRIMINAL CASES NOS. 111086 AND 111087, WHETHER APPELLANT FALSIFIED THE SIGNATURES OF DACANAY AND BERNALDEZ.
- IN CRIMINAL CASES NOS. 111086 AND 111087, WHETHER PHOTOCOPIES OF THE CHECKS ARE ADMISSIBLE AS EVIDENCE.
- IN CRIMINAL CASES NOS. 111089 AND 111091, WHETHER THE FUNDS TAKEN BY APPELLANT WERE PUBLIC FUNDS.
- IN CRIMINAL CASES NOS. 111086 AND 111087, WHETHER THE TRIAL COURT WAS CORRECT IN IMPOSING THE PENALTY OF RECLUSION TEMPORAL MINIMUM TO RECLUSION PERPETUA MAXIMUM.
- IN CRIMINAL CASES NOS. 111089 AND 111091, WHETHER THE TRIAL COURT WAS CORRECT IN IMPOSING THE PENALTY OF EIGHT (8) YEARS AND ONE (1) DAY TO NINE (9) YEARS AND FOUR (4) MONTHS AND ONE (1) DAY OF PRISION MAYOR.

The first, second, and third issues will be discussed together. Although it is true that the prosecution did not present any direct evidence that appellant effected the falsification, such is a disputable presumption arising from the facts of the case. In *Maliwat v. CA*, cited by the Court of Appeals, this Court said –

The settled rule is that in the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification. (*Pecho v. Sandiganbayan*, 238 SCRA 116 citing *Alarcon v. CA*, 125 Phil. 1110 [1967], *People v. Cu Unjieng*, 61 Phil 906 [1935]; *People v. Lotegro*, 50 O.G. No. 2632; *People v. Dala*, 50 O.G. 612675; *People v. Manansala*, L-13142, 30 June 1959; *People v. Caragao*, 30 SCRA 993; *Caubong v. People*, 210 SCRA 377).

If a person had in his possession a falsified document and he made use of it (uttered it), taking advantage of it and profiting thereby, the clear presumption is that he is the material author of the falsification. (*U.S. v. Castillo*, 6 Phil. 453; *People v. de Lara*, 45 Phil. 754 ; *People v. Domingo*, 49 Phil. 28; *People v. Astudillo*, 60 Phil. 338; *People v. Manansala*, cited in *People v. Sandaydiego*, 81 SCRA 120 [1978]).[27]

By mere comparison with the signatures of Dacanay and Bernaldez in the checks that they had actually signed, Check No. 00000163230-BB[28] and Check No. 0000096515-CC[29], it was proven that the signatures in the other two checks, Check No. 0000026186-CC[30] and Check No. 0000026624-CC[31], were falsified. Furthermore, it is indisputable that said checks were in the possession of appellant, as proven by the fact that he was the Disbursing Officer; and that possession of such checks was within his functions. Also, the fact that his signatures appeared at the back of the checks further proves that he was in possession of them, that he was the one who presented them for payment, and that he received their proceeds and therefore used and profited by such checks. Since he could not adequately explain the foregoing facts, the presumption defined in *Maliwat v. CA* applies. He is therefore presumed to be the forger of the signatures of Dacanay and Bernaldez.

Appellant's contention that the NBI report on the signature of appellant is not admissible since the officer who prepared the report was not presented to testify on the report's authenticity or contents need not be resolved because the authenticity of appellant's signature on the two checks does not depend upon it since such was proven by the testimony of Luz Aramil, who was familiar with the signature of appellant.[32]

As to the fourth issue, regarding the admissibility of the photocopies of the checks in Criminal Cases Nos. 111086 and 111087, this Court finds that they are admissible because appellant did not raise this question in his Comments/Objections to Prosecution's Formal Offer of Evidence.[33] Appellant is therefore deemed to have accepted the photocopies as admissible.

With regard to the fifth issue, the funds taken by appellant in Criminal Cases Nos. 111089 and 111091 are public in nature. He claims that Avanzado and Manalo signed their names, which signified that they had already received the money and therefore the money had already become private in character. From the testimony of Avanzado and Manalo, it is plain that appellant took the money prior to their signing the payrolls. In *Director of Commerce and Industry v. Concepcion*, a case penned by Justice Malcolm, this Court held:

A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that money sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.

The United States Supreme Court, in the leading case of *Buchanan vs. Alexander* ([1846], 4 How., 19), in speaking of the right of creditors of seamen, by process of attachment, to divert the public money from its legitimate and appropriate object, said:

"To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service. . . . So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects." (See, further, 12 R. C. L., p. 841; *Keene vs. Smith* [1904], 44 Ore., 525; *Wild vs. Ferguson* [1871], 23 La. Ann., 752; *Bank of Tennessee vs. Dibrell* [1855], 3 Sneed [Tenn.], 379.) [34]

Hence, the money was public in nature since it had not yet been received by Avanzado and Manalo when appellant took it.

As to the sixth issue, the penalty imposed by the RTC is wrong. Article 217, paragraph 4 of the Revised Penal Code imposes the penalty of reclusion temporal in its maximum period to reclusion perpetua when the amount malversed is greater than P22,000. Since appellant committed a complex crime, the penalty for the most serious crime shall be imposed in its maximum period, pursuant to Article 48 of the Revised Penal Code. In this case the penalty imposed should be reclusion perpetua. Since the Indeterminate Sentence Law does not apply to indivisible penalties,[35] and reclusion perpetua is an indivisible penalty,[36] the Indeterminate Sentence Law cannot be applied to the penalty in Criminal Cases Nos. 111086 and 111087.

For the seventh and last issue, Article 217, paragraph 2 of the Revised Penal Code[37] applies to the penalties in Criminal Cases Nos. 111089 and 111091 since the amounts malversed were P978.24 and P2,000. Since there are no aggravating or mitigating circumstances, the medium range of the penalty prescribed in Article 217, paragraph 2 of the Revised Penal Code (the penalty prescribed is prision mayor in its minimum and medium periods) is where the maximum of the indeterminate sentence can be placed. The minimum penalty should be taken from the penalty next lower to that prescribed by the Code.[38] No error was committed on this point. The court a quo placed the minimum and maximum of the indeterminate sentence well within the ranges prescribed.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. No. 23001 is AFFIRMED in toto, as follows:

1) In Criminal Case No 111086, appellant Angel A. Enfermo is hereby sentenced to suffer the penalty of reclusion perpetua together with the accessory penalties, and to indemnify the National Research Council of the Philippines (NRCP) in the amount of P38,446.13;

2) In Criminal Case No. 111087, appellant Angel A. Enfermo is hereby sentenced to suffer the penalty of reclusion perpetua, together with the accessory penalties, and to indemnify the National Research Council of the Philippines (NRCP) in the amount of P30,000;

3) In Criminal Case No. 111089, appellant Angel A. Enfermo is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum, together with its accessory penalties and to indemnify Christine Avanzado in the amount of P978.24; and

4) In Criminal Case No. 111091, accused Angel A. Enfermo is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to seven (7) years, four (4) months and one (1) day of prision mayor, as maximum, together with its accessory penalties, and to indemnify Lanie P. Manalo in the amount of P2,000.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.

[1] CA-G.R. CR No. 23001, decided by Justice Martin S. Villarama, Jr. and concurred in by Justices Conrado M. Vasquez, Jr. and Sergio L. Pestaño.

[2] Criminal Cases Nos. 111086, 111087, 111089 and 111091.

[3] Records, pp. 1 – 37.

[4] Records, p. 180.

[5] Records, p. 233.

[6] CA-G.R. SP 47923, Records, pp. 250-263.

[7] Records, pp. 316-318.

[8] TSN, August 20, 1997, pp. 2-4.

[9] Exhibit "D-2-a," Folder of Exhibits, p. 34.

[10] Exhibits "D-2-e," "D-2-g," "D-2-h" and "D-2-I," Folder of Exhibits, pp. 36- 39.

[11] Exhibit "D-2-b," Folder of Exhibits, p. 34.

[12] Exhibits "A," "A-1" and "A-2," Folder of Exhibits , pp. 12 -13.

[13] Exhibit "C" ("D-1-c"), Folder of Exhibits, p. 16 (19).

[14] Exhibits "D-1-g," "D-1-h," "D-1-i" and "D-1-l," Folder of Exhibits, pp. 22-24 and 27.

[15] Exhibit "D-1-d," Folder for Exhibits, p. 19.

[16] Exhibit "B" ("D-1-a"), Folder of Exhibits, p. 14 (18).

[17] Exhibit "B-1" ("D-1-b"), Folder of Exhibits, p. 15 (18).

[18] TSNs, September 17, 1997, pp. 2-15; November 10, 1997, pp. 4-5.

- [19] Exhibits "A" and "B," Folder of Exhibits, pp. 50-51.
- [20] TSN, August 13, 1997, pp. 19 and 22.
- [21] Id. at 25-26.
- [22] Id. at 28-29.
- [23] CA Decision, Rollo, pp. 36-42. Emphasis supplied.
- [24] Rollo, p. 13.
- [25] CA Rollo, pp. 50-67.
- [26] CA Rollo, pp. 101-113.
- [27] G.R. Nos. 107041-42, 326 Phil. 732, 749-750 (1996).
- [28] Exhibits "A," "A-1" and "A-2," Folder of Exhibits, pp. 12-13.
- [29] Exhibit "D-1-c," Folder of Exhibits, p. 19.
- [30] Exhibits "A," "A-1" and "A-2," Folder of Exhibits, pp. 12-13.
- [31] Exhibits "D-1-a" and "D-1-b," Folder of Exhibits, p. 18.

[32] ATTY. IBAY

Q-And you mentioned Mr. Enfermo signed the checks. Why do you know the signature of Mr. Enfermo? Are you familiar with the signature of Mr. Enfermo?

A-Yes, sir.

Q-Why are you familiar with the signature of Mr. Enfermo?

A- Because he was our disbursing officer, [S]ir. (Witness Luz Aramil, TSN, August 13, 1997, p. 12.)

[33] Records, pp. 238-243.

[34] 43 Phil. 384, 386-387 (1922); emphasis supplied.

[35] People v. Roque, G.R. No. 53470, 192 Phil. 398 (1981).

[36] People v. Quitlong, G.R. No. 121562, 354 Phil. 372 (1998)

[37] Article 217. Malversation of public funds or property. --

- The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.

[38] Indeterminate Sentence Law, Section 1 (Act No 4103). In this case, prision correccional in its medium and maximum periods, or from 2 years, 4 months and 1 day to 6 years, is the range where the minimum penalty can be placed.

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