

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFILO G. PANTALEON, JR. AND JAIME F. VALLEJOS, ACCUSED-APPELLANTS.*G.R. Nos. 158694-96. March 13, 2009*

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-158694-96/>**BRION, J.:**

We review in this appeal the February 4, 2003 decision of the Sandiganbayan in Criminal Case Nos. 25861-63[1] finding the appellants Teofilo G. Pantaleon, Jr. (Pantaleon) and Jaime F. Vallejos (Vallejos), former Municipal Mayor and Municipal Treasurer, respectively, of the Municipality of Castillejos, Zambales, guilty beyond reasonable doubt of three (3) counts of malversation of public funds through falsification of public documents, defined and penalized under Article 217, in relation with Articles 48 and 171 of the Revised Penal Code. The Sandiganbayan sentenced the appellants to suffer the penalties of reclusion perpetua and perpetual special disqualification for each count, and ordered them to pay a fine in the amounts of P166,242.72, P154,634.27, and P90,464.21, respectively, and to pay the costs.

ANTECEDENT FACTS

This case originated from the joint affidavit-complaints filed by Vice Mayor Wilma D. Billman (Vice Mayor Billman); Councilors Reynaldo V. Misa (Reynaldo), Dionisio F. Abinsay (Dionisio), Resty D. Vilorio (Resty), Ramon J. Tamera (Ramon), Aurelio M. Fastidio (Aurelio), Enrique C. Clarin (Enrique), and Raymundo V. Navarro (Raymundo), dated December 18, 1998; and Rodolfo J. Navalta (Rodolfo) dated December 22, 1998, before the Office of the Special Prosecutor of Zambales, for malversation of public funds through falsification of public documents, against the appellants, Ken Swan Tiu, and Engineer Rainier J. Ramos (Engr. Ramos).

The joint affidavit-complaints alleged that the appellants, Ken Swan Tiu, and Engr. Ramos conspired to illegally disburse and misappropriate the public funds of the Municipality of Castillejos, Zambales in the amounts of P166,242.72 (under Disbursement Voucher No. 101-9803-328), P154,634.27 (under Disbursement Voucher No. 101-9803-349), and P90,464.21 (under Disbursement Voucher No. 101-9804-415), by falsifying the supporting documents relating to three (3) fictitious or "ghost" construction projects, namely: (a) the upgrading of barangay roads in Barangays Looc, Nagbayan, Magsaysay, and San Pablo; (b) the upgrading of barangay roads in Barangays Looc proper-Casagatan, Nagbayan proper-Angeles, and San Pablo-Sitio San Isidro; and (c) the construction of market stalls at the public market of Castillejos.

The affidavit-complaints further alleged that the disbursement vouchers were not signed by the municipal accountant and budget officer; that the Sangguniang Bayan did not adopt a resolution authorizing Pantaleon to enter into a contract with La Paz Construction and/or Ken Swan Tiu; and that no projects were actually undertaken by the Municipality of Castillejos.

The Office of the Special Prosecutor (OSP) recommended the filing of an Information for Malversation of Public Funds through Falsification of Public Documents against the appellants and Ken Swan Tiu, and the dismissal of

the complaint against Engr. Ramos.[2]

The Office of the Deputy Ombudsman for Luzon approved the Joint Resolution of the OSP, with the modification that the complaint against Ken Swan Tiu be dismissed for lack of probable cause.[3] The Office of the Ombudsman approved the Review Action of the Office of the Deputy Ombudsman for Luzon.[4]

The Office of the Ombudsman filed on March 10, 2000 three (3) separate Informations for Malversation of Public Funds through Falsification of Public Documents against the appellants before the Sandiganbayan. The Informations were docketed as Criminal Case Nos. 25861-63. Criminal Case Nos. 25861-62 refer to the disbursement of public funds in the upgrading of various roads in the Municipality of Castillejos, while Criminal Case No. 25863 concerns the disbursement of funds for the construction of market stalls at the Castillejos Public Market. The accusatory portions of these Informations read:

Criminal Case No. 25861

That on or about 5 January 1998 and 20 February 1998, or sometime prior or subsequent thereto, in the Municipality of Castillejos, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipality of Castillejos, Zambales who by reason of their said respective office, are accountable for public funds or properties, committing the complex crime charged herein while in the performance of, in relation to and/or taking advantage of their official positions and functions as such, and conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate public funds of the Municipality of Castillejos, Zambales under their charge and custody in the amount of P166,242,72, Philippine currency, under the check dated 20 February 1998 intended for the simulated disbursement and payment thereof in favor of La Paz Construction (LPC) relative to the fictitious contract for the upgrading of the barangay roads in Barangay Looc, Nagbayan, Magsaysay and San Pablo, Castillejos, Zambales; by means of falsifying the corresponding disbursement voucher no. 101-9803-328, certificates of inspection and acceptance, contract between LPC and the Municipality of Castillejos, Zambales, price quotation, purchase order, and LPC official receipt number 000999 dated 5 January 1998, to falsely make it appear that LPC entered into, undertook and completed the said contract and received the aforesaid amount as payment therefor from the Municipality of Castillejos, Zambales, when in truth and in fact, LPC neither entered into, undertook and completed the aforesaid contract nor received from the Municipality of Castillejos, Zambales the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Castillejos, Zambales and the public interest in the aforesaid amount.

CONTRARY TO LAW.[5]

Criminal Case No. 25862

That on or about 23 February 1998, or sometime prior or subsequent thereto, in the Municipality of Castillejos, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipality of Castillejos, Zambales who by reason of their said respective office are accountable for public funds or properties, committing the complex crime charged herein while in the performance of, in relation to and/or taking advantage of their official positions and functions as such, and conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate public funds of the Municipality of Castillejos, Zambales under their charge and custody in the amount of P154,634.27 Philippine currency, under the check dated 23 February 1998 intended for the simulated disbursement and payment thereof in favor of La Paz Construction (LPC) relative to the fictitious contract for the upgrading of the barangay roads in Barangay Looc proper-Casagatan, Nagbayan proper-Angeles and San Pablo-Sitio Isidro, Castillejos, Zambales; by means of falsifying the corresponding

disbursement voucher no. 101-9803-349, certificates of inspection and acceptance, contract between LPC and the Municipality of Castillejos, Zambales, purchase order, and LPC official receipt, to falsely make it appear that LPC entered into, undertook and completed the said contract and received the aforesaid amount as payment therefor from the Municipality of Castillejos, Zambales, when in truth and in fact, LPC neither entered into, undertook and completed the aforesaid contract nor received from the Municipality of Castillejos, Zambales the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Castillejos, Zambales and the public interest in the aforestated amount.

CONTRARY TO LAW.[6]

Criminal Case No. 25863

That on or about 20 March 1998, or sometime prior or subsequent thereto, in the Municipality of Castillejos, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Municipal Mayor and Municipal Treasurer, respectively, both of the Municipality of Castillejos, Zambales who by reason of their said respective office are accountable for public funds or properties, committing the complex crime charged herein while in the performance of, in relation to and/or taking advantage of their official positions and functions as such, and conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously appropriate, take or misappropriate public funds of the Municipality of Castillejos, Zambales under their charge and custody in the amount of P90,464.21, Philippine currency, under the check dated 20 March 1998 intended for the simulated disbursement and payment thereof in favor of La Paz Construction (LPC) relative to the fictitious contract for the construction of market stalls at the public market of Castillejos, Zambales, by means of falsifying the corresponding disbursement voucher no. 101-9804-415, certificates of inspection and acceptance, contract between LPC and the Municipality of Castillejos, Zambales, price quotation, purchase order, and LPC official receipt number 000995 dated 20 March 1998, to falsely make it appear that LPC entered into, undertook and completed the said contract and received the aforesaid amount as payment therefor from the Municipality of Castillejos, Zambales, when in truth and in fact, LPC neither entered into, undertook and completed the aforesaid contract nor received from the Municipality of Castillejos, Zambales the said sum of money or any part thereof, to the damage and prejudice of the Municipality of Castillejos, Zambales and the public interest in the aforestated amount.

CONTRARY TO LAW.[7]

The appellants pleaded not guilty to the charges upon arraignment. The prosecution filed a motion to suspend the accused pendente lite after their arraignment.[8] The Sandiganbayan (Fourth Division) granted the motion and ordered the preventive suspension of the appellants for 90 days.[9] The appellants filed a motion for reconsideration[10] which the Sandiganbayan denied.[11] The appellants filed with this Court a petition for review on certiorari, docketed as G.R. No. 145030, assailing the Sandiganbayan Resolutions of August 16, 2000 and September 12, 2000, respectively. We denied the petition for lack of merit.[12]

In the trial on the merits of Criminal Cases Nos. 25861-63 that followed, the prosecution presented the following witnesses: Engr. Ramos, Aurelio, Nida Naman (Nida), Alberto Domingo (Alberto), Engineer Eduardo Soliven (Engr. Soliven), Simeon Amor Viloria (Simeon), Ken Swan Tiu, Resty, Vice Mayor Billman, Enrique, and Reynaldo. The appellants, Quirino Adolfo (Quirino), Ricardo Abaya (Ricardo), Crisanta Ancheta (Crisanta), and John Baquilat (Baquilat) took the witness stand for the defense.

Evidence for the Prosecution

Engr. Ramos testified that he was designated as acting municipal engineer of Castillejos, Zambales by Pantaleon in January 1998; and that he prepared three (3) programs of work upon the instructions of Vallejos. The first two (2) programs of work, dated January 5, 1998 and January 14, 1998, respectively, were for the upgrading of

barangay roads; the third, also dated January 5, 1998, was for the construction of market stalls. He confirmed that the three (3) signatures affixed in these programs of work belonged to him, to Pantaleon, and to Vallejos, respectively; and declared that he never implemented any of these projects. He later discovered that these projects had already been implemented by the previous municipal engineer; hence, the programs of work and subsequent disbursements were not really needed.[13]

On cross-examination, he stated that he was asked to prepare the programs of work in March 1998; that he submitted the programs upon completion to Vallejos who told him that he (Vallejos) would give them to Pantaleon for approval. He assumed the programs of work were disapproved because nobody coordinated with him regarding their implementation.[14]

On re-direct examination, Engr. Ramos explained that Pantaleon and Vallejos instructed him to place dates earlier than March 1998 in the three (3) programs of work, although he prepared them only in March 1998.[15]

Aurelio, a member of the Sangguniang Bayan of Castillejos, testified that the public market of Castillejos was built after the eruption of Mt. Pinatubo in 1991; and that it was renovated by Engr. Clarin during the incumbency of former mayor Enrique Magsaysay. He declared that no market stall was constructed in the public market in 1998 and 1999, and no upgrading, excavation, and back filling of any barangay road likewise took place in 1998 in Castillejos. He added that no infrastructure project could have been made in January 1998 because it was an election period.[16]

On cross-examination, Aurelio declared that he, together with other Sanggunian members, examined the disbursement vouchers and other documents related to the projects covered by the program of works after they learned that disbursements were made to La Paz Construction; that they (Sanggunian members) filed a case before the Provincial Prosecutor of Olongapo City after discovering that the purported transactions were anomalous. He stated that La Paz Construction never entered into a contract with the Municipality of Castillejos as confirmed by its proprietor, Ken Swan Lee Tiu. He added that the projects covered by the disbursement vouchers were not among those included in the approved development plan for the years 1996 to 1998; and that, surprisingly, the disbursement vouchers indicated that the funds used to cover these projects were charged from the 20% development fund.[17]

Nida, the senior bookkeeper of Castillejos, testified that Pantaleon designated her as municipal accountant in 1993, and that she occupied the position until July 1998; as a municipal accountant, she reviewed documents for the preparation of vouchers. She recalled that she reviewed Voucher Nos. 101-9804-415, 101-9803-328 and 101-9803-349 only after the indicated amounts had been paid.

She explained that a voucher is certified by the local budget officer and by the municipal accountant, and that without her signature, a voucher is defective for failure to comply with government auditing and accounting rules and regulations. She also revealed that the following irregularities attended the issuance of the vouchers:

(a)

Martin Pagaduan (Pagaduan), the present municipal accountant, signed Voucher No. 101-9803-328 (Exh. "A") above her (Nida's) name without her authority. Pagaduan was not yet the municipal accountant at the time of the issuance of the voucher; he was only designated as municipal accountant on January 1, 1999;

(b)

Pagaduan also similarly signed some of the documents attached to Voucher No. 101-9803-328, such as the purchase orders (Exh. "A-4 to A-6") and the request for obligation allotment (Exh. "A-9");

(c)

Vallejos wrote the voucher number and filled up the accounting entry of Disbursement Voucher No. 101-9803-328 (Exh. "A"). She should have filled up these entries in her capacity as municipal accountant. Some of the documents attached to Disbursement Voucher No. 101-9803-328 (Exh. "A"), such as the purchase request, purchase order, and request form, were not the documents required by the rules;

(d)

Disbursement Voucher Nos. 101-9803-349 (Exh. "B") and 101-9804-415 (Exh. "C") did not bear her (Nida's) signature. Their voucher numbers and accounting entries were written and filled up by Vallejos. In addition, the request for obligation of allotment (Exh. "B-9" and "C-5") attached to these disbursement vouchers were not signed by the municipal accountant and by the budget officer;

(e)

The contract agreement attached to Disbursement Voucher No. 101-9803-349 (Exh. "B") was not notarized. No abstract of bids and authority to enter into a negotiated contract were attached to the voucher; and

(f)

The certificate of acceptance (Exh. "C-7"), attached to Disbursement Voucher No. 101-9804-415 (Exh. "C"), was undated.

She reiterated that the vouchers were all approved by Pantaleon, although they did not pass through her office for pre-audit. She likewise explained that the certification of the accountant and the budget officer were necessary even if the funds were sourced from the development fund.[18]

Alberto testified that he had not seen any upgrading of roads in his area since he was elected barangay captain of Looc, Castillejos, Zambales in 1997. He also admitted that he signed a document before the Sangguniang Bayan attesting that Pantaleon did not have any project in his barangay.[19]

Engr. Soliven, the Municipal Engineer of Castillejos, narrated that Pantaleon appointed him municipal engineer on September 16, 1998 as replacement for Engr. Ramos. He stated that he did not know if there were projects implemented in the various barangays of Castillejos because he was not yet the municipal engineer when these projects were planned. He likewise maintained that he never implemented these projects.[20]

Simeon, the Municipal Planning Coordinator of Castillejos, testified that he prepared comprehensive plans and programs for the municipality, and that his tasks also included the formulation, integration and coordination of different municipal projects. He stated that he prepared the municipal development plans for the fiscal years 1997 and 1998, and these plans were approved by the Sangguniang Bayan. He clarified that the municipal engineer can implement projects that are not included in the municipal development plan.[21]

Ken Swan Tiu (also known as Sonny Tiu, Tiu Ken Swan and Ken Swan Lee Tiu), owner of the La Paz Construction, admitted that he executed an affidavit dated January 14, 1999 stating that he did not enter into any negotiated contract with the Municipality of Castillejos, and that his company never received any payment from the municipality. He stated that the signatures in the vouchers were not his, and reiterated that he did not have any transaction with the Municipality of Castillejos. He added that he has no agent to collect or enter into transactions in his behalf.[22]

Resty, a former Sangguniang Kabataan President and incumbent municipal councilor, declared on the witness stand that he is a resident of Barangay San Pablo, Castillejos, and that from 1998 to 2000, he did not see any road

project for the upgrading, compacting or improvements of roads in his barangay. He also stated that he was one of the complainants in the administrative case against the appellants before the Sangguniang Panlalawigan. Further, he said that the vouchers for these projects were not dated.[23]

Evidence for the Defense

Vallejos, testifying in his defense, narrated that he had been the municipal treasurer of Castillejos since 1987; and that his principal duties were to collect taxes and disburse funds. He explained that a disbursement voucher should first pass through the accounting office, then to the office of the budget officer, and from there, to the office of the municipal mayor, before going to his office. He confirmed that he is the last person to sign the voucher.

He clarified that after his office has prepared checks based on the forwarded vouchers, these vouchers are returned to the accounting office for the creation of an accounting entry and for the posting of the entry in the general and subsidiary ledgers. The accounting office then issues an advice that the checks are ready for encashment.

He refuted the statement of Nida that the disbursement vouchers did not go through the accounting office for pre-audit. He stated that the signature of the accountant did not appear in the three (3) vouchers because Nida simply refused to sign it. He also insisted that the budget officer's signature likewise did not appear in the vouchers because she was always out of her office. He explained that he paid the vouchers despite the absence of the accountant's signature because the projects were already completed and the sub-contractor was already demanding payment and was threatening to sue him if he would not pay.

He further recalled that the vouchers were suspended after they were submitted to the Commission on Audit (COA); he was given 90 days to complete the entries in the vouchers and produce the supporting papers.[24]

On cross-examination, he reiterated that he signed the vouchers because the municipal accountant and budget officer refused, without any valid or legal reason, to sign them.[25]

Quirino, the Barangay Captain of Nagbayan, Castillejos, Zambales, testified that he supervised numerous projects in his barangay during the incumbency of Pantaleon; that from January to February of 1998, he supervised the back filling and leveling of the roads in his barangay together with a certain Eduardo Escobar and Kagawads Lorenzo and Corpuz. He admitted to signing an affidavit dated July 2, 1999 stating that there were projects done in his barangay; he merely signed the certification on December 10, 1998 (stating that there were no projects done by the administration of Pantaleon in his area) because Kagawads Enrique Clarin and Reynaldo Misa were his compadres.[26]

Ricardo declared on the witness stand that he was the barangay captain of Nagbayan from 1971 to 1986 and subsequently served as councilor for three (3) terms; that from 1996 to 1998, he saw that there were back filling, grading, compacting and widening of roads in his area; and that it was Pantaleon and Baquilat - as mayor and contractor, respectively - who caused the repair of these roads.

On cross-examination, he admitted that Pantaleon employed him as a casual employee in 1999 and, as such, had no authority to sign vouchers.[27]

Pantaleon, mayor of Castillejos, Zambales, testified that he had served as mayor for eight and a half years before he was preventively suspended. He explained that a voucher originates from the accounting office and then goes to the budget office; from there, it goes to him for his signature, and, finally, to the treasurer for signature; he signed the vouchers and allowed the treasurer to pay the amounts stated because the accountant and the budget officer were reluctant to sign; the signatures of the accountant and budget officer were not important. He added that he approved the release of the money because the treasurer told him that there was an appropriation in the

approved annual budget. He also insisted that the owner of La Paz Construction entered into a contact with the municipality.

He maintained that he physically inspected the projects, and ordered the treasurer to pay because the project in Nagbayan road had been completed. He revealed that he received a notice from the Provincial Auditor stating that the disbursement of funds was irregular due to the lack of signatures of the accountant and budget officer, and that the vouchers were subsequently suspended. He then ordered the treasurer to rectify the deficiencies in the vouchers.[28]

On cross-examination, he admitted that the Sanggunian did not adopt a resolution authorizing him to enter into a negotiated contract with La Paz Construction in the municipality's behalf. He also stated that the treasurer told him that the municipal accountant and budget officer asked for a commission before signing the vouchers, but he did not confront them about the demanded commission because he did not want to embarrass them. He admitted that he signed the vouchers despite the absence of the signatures of the accountant and budget officer.

He also admitted that he entered into a contract with Baquilat without inquiring if Baquilat was authorized by the La Paz Construction to enter into a contract with the municipality. He explained that he gave more importance to the implementation of a project than to its documentation. Since the compacting and leveling of the road were finished, he believed the municipal accountant and budget officer would later sign the vouchers.

He confirmed that Baquilat had dealt with the municipality many times as the representative of La Paz Construction, and he does not know why La Paz Construction would now deny its link with Baquilat. He also stated that Baquilat, Aurelio, and the complainants have been his political supporters, but they now hold personal grudges against him.[29]

Crisanta, a market vendor in Castillejos, testified that there were market stalls and drainage constructed in 1998, although she did not know who constructed them.[30]

Baquilat declared on the witness stand that he put up a construction business in 1997 after resigning from the Benguit Corporation; and that he had various contracts with the province of Zambales. He recalled that he collected P400,000.00, more or less, from the municipality after completing construction projects in 1997 and 1998. These projects included the upgrading of the roads in Barangays Looc, Casagatan, Nagbayan, and San Pablo, as well as the repair of market stalls in Castillejos. He stated that the authority given to him by Sonny Tiu, the owner of La Paz Construction, to receive the money in behalf of La Paz Construction was merely verbal; contractors, as a usual practice, rely on verbal authority. He added that his license as a contractor had been used many times by other contractors even without his knowledge, and revealed that he had borrowed the license of Sonny Tiu when he had a contract with the Municipality of Castillejos. He acted as a subcontractor for the La Paz Construction, but failed to fully perform his duty as subcontractor because he did not see Sonny Tiu again. He paid his taxes as a subcontractor, but not Sonny Tiu's percentage.[31]

On cross-examination, he admitted that he received payments through his secretary from the municipality in behalf of La Paz Construction in 1998 to 1999; and that he received P400,000.00, more or less, for the three (3) projects he did for the municipality.[32]

The Prosecution's Rebuttal Evidence

The prosecution presented Vice Mayor Billman, Engr. Clarin, Reynaldo and Ken Swan Tiu as rebuttal witnesses.

Vice Mayor Billman, the acting Municipal Mayor of Castillejos, testified that there was no upgrading and improvement of roads in Barangay Nagbayan in 1998 when she was vice mayor.[33]

Engr. Clarin, an incumbent Municipal Councilor of Castillejos, denied that he forced Quirino to sign a certification that there were no projects undertaken by the municipality.[34]

Reynaldo, testified that he was a municipal councilor in 1998; he admitted that Quirino was his friend and compadre, but denied that he forced Quirino to sign any certification.[35]

Ken Swan Tiu, again testifying for the prosecution, denied that he: (a) lent his license as a contractor to Baquilat; (b) entered into a contract with the Municipality of Castillejos; (c) entered into a subcontracting agreement with Baquilat; and (d) lent official receipts issued to La Paz Construction to Baquilat.[36]

On cross-examination, he stated that he had been a contractor since 1992, but never transacted with the Municipality of Castillejos. He stated that La Paz Construction lost some receipts in 1994 during the flood; he discovered in 1999 that Baquilat had been using these receipts.[37]

After trial, the Sandiganbayan set the case for promulgation of decision on July 4, 2002, but later moved the promulgation to August 1, 2002.

Pantaleon and Vallejos filed their separate motions to reopen trial with urgent motion to defer the promulgation of the Sandiganbayan decision.[38] The Sandiganbayan denied these motions.[39] The Sandiganbayan similarly denied the omnibus motion for reconsideration that followed.[40]

The appellants filed an omnibus motion seeking the reconsideration of the December 14, 2002 Resolution, but the Sandiganbayan denied this motion in its Resolution dated January 20, 2003. The appellants later on questioned these resolutions through a petition for certiorari and prohibition filed with this Court, docketed as G.R. Nos. 156778-80. This Court, in our resolution dated February 17, 2003, dismissed the petition.

THE SANDIGANBAYAN RULING

The Sandiganbayan convicted the appellants of the crimes charged in Criminal Case Nos. 25861-63. It held that the testimonies of the prosecution witnesses, supported by the documentary evidence, established all the elements of the complex crime of malversation of public funds through falsification of public documents under Article 217, in relation with Articles 171 and 48 of the Revised Penal Code. It found unacceptable the testimonies of the appellants and characterized these as self-serving. The dispositive portion of this decision (dated February 2, 2003) reads:

WHEREFORE, the accused, TEOFILO G. PANTALEON, JR., and JAIME F. VALLEJOS, are hereby found GUILTY beyond reasonable doubt of the crime of MALVERSATION OF PUBLIC FUNDS THRU FALSIFICATION, in three counts, as defined and penalized under Article 217 in relation to Articles 48 and 171 of the Revised Penal Code, and each of said acc'd is hereby sentenced in Criminal Case Nos. 25861, 25862, and 25863, respectively, to suffer three times the penalty of reclusion perpetua, to suffer the penalty of perpetual special disqualification and to pay a fine in the amounts of P166,242.72, P154,634.27, and P90,464.21, respectively, and to pay the costs.

SO ORDERED.[41] [Emphasis in the original]

Post-Sandiganbayan Developments and the Appeal

Vallejos moved on February 17, 2003 to reconsider the decision.[42] Pantaleon, for his part, moved on February 18, 2003 for a new trial (with prayer to set aside judgment).[43] The Sandiganbayan denied these motions for lack of merit.[44]

The records of the case were forwarded to this Court after the appellants filed their respective notices of appeal. In our Resolution of September 13, 2004,[45] we transferred the case to the CA for appropriate action and disposition pursuant to *People v. Mateo*.^[46]

The records disclose that Pantaleon was granted a conditional pardon on June 8, 2006.^[47] Pantaleon filed on June 20, 2006 with the CA an urgent motion to withdraw appeal.^[48] The CA denied the motion in its Resolution of July 7, 2006.^[49] CA Associate Justice Arcangelita M. Ronilla-Lontok thereafter returned the entire records of the case to this Court reasoning out that the CA has no jurisdiction over the case pursuant to Sec.1[b] and [c], Rule X of the Revised Internal Rules of the Sandiganbayan.^[50] On September 24, 2007, this Court's First Division issued a Resolution reinstating the case in its docket.^[51]

Pantaleon filed with this Court on November 19, 2007 an urgent motion to withdraw his appeal.^[52] We granted this motion in our Resolution of December 5, 2007,^[53] and issued the corresponding entry of judgment on February 8, 2008.^[54] Thus, this Decision at this point relates solely to appellant Vallejos. In the discussions that follow, however, we shall still refer to the parties as "appellants" because of the linkages that exist between them as common perpetrators of the offenses charged.

In his brief, appellant Vallejos argued, among others, that the Sandiganbayan erred--

- in convicting him of the crime charged despite merely occupying a salary grade (SG) 24 position;
- in convicting him of the crime charged despite the absence of notice to restitute from the Provincial Auditor of Zambales;
- in convicting him of the crime charged despite merely acting ministerially on the disbursement vouchers in question; and
- in finding that a conspiracy existed between him and Pantaleon.

THE COURT'S RULING

We DENY the appeal for lack of merit.

Sufficiency of Prosecution Evidence

Malversation is defined and penalized under Article 217 of the Revised Penal Code, which reads:

Art. 217. Malversation of public funds or property -- Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall, otherwise, be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x x

4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such

missing funds or property to personal uses.

The essential elements common to all acts of malversation under Article 217 of the Revised Penal Code are the following:

(a)

That the offender be a public officer.

(b)

That he had the custody or control of funds or property by reason of the duties of his office.

(c)

That those funds or property were public funds or property for which he was accountable.

(d)

That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Appellants are public officers

A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class." [55] Pantaleon and Vallejos were the municipal mayor and municipal treasurer, respectively, of the Municipality of Castillejos at the time of the crimes charged. In short, they were public officers within the meaning of the term as defined above.

Appellants had the custody and control of funds
or property by reason of the duties of their office

As a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos.

The appellants were
accountable for public funds

The funds for which malversation the appellants stand charged were sourced from the development fund of the municipality. They were funds belonging to the municipality, for use by the municipality, and were under the collective custody of the municipality's officials who had to act together to disburse the funds for their intended municipal use. The funds were therefore public funds for which the appellants as mayor and municipal treasurer were accountable.

Vallejos, as municipal treasurer, was an accountable officer pursuant to Section 101(1) of P.D. No. 1445 which defines an accountable officer to be "every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law." Among the duties of Vallejos as treasurer under Section 470(d)(2) of Republic Act No. 7160 is "to take custody and exercise proper management of the funds of the local government unit

concerned."

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government, which reads:

Section 340. Persons Accountable for Local Government Funds. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

Section 102. Primary and secondary responsibility. - (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

The appellants appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take the public funds

We note at the outset that no less than the Sangguniang Panlalawigan of Zambales, in its decision of April 3, 2000, already made a finding that the projects subject of Disbursement Voucher Nos. 101-9803-328, 101-9803-349, and 101-9804-415 were never implemented in 1998.

This finding was corroborated by several witnesses during the trial. Engr. Ramos, in his testimony of August 22, 2000 and speaking as the municipal engineer in charge of municipal constructions, stated that the he never implemented the projects subject of the disbursement vouchers. To directly quote from the records:

PROSECUTOR JACQUELYN ONGPAUCO-CORTEL

Q:

Now, in your stay as acting municipal engineer in Castillejos, Zambales, what documents did you prepare?

ENGR. RAMOS

A:

I prepared three (3) programs of works, namely: the two (2) were up-grading of barangay roads and the third one was the construction of the market stall.

Q:

Now, Mr. Witness, you mentioned of three (3) programs of works, now, showing to you program of work dated January 5, 1998, is this the one you were referring to?

A:

Yes, ma'am.

x x x

Q:

Can you please state before this Honorable Court what is the purpose of this program of work?

A:

I was instructed to make that program of work but I never implemented those projects anymore.

x x x

Q:

Now, showing to you another program of work, Mr. Witness, dated January 14, 1998, is this also a part of this program of work which you mentioned earlier?

A:

Yes, ma'am.

x x x

Q:

Can you state before this Honorable Court if this project was implemented?

A:

Likewise, ma'am, I never did implement such project.

x x x

Q:

Now, showing to you another program of work, Mr. Witness, dated January 5, 1998, is this the part and parcel of what you have mentioned earlier?

A:

Yes, ma'am.

x x x

Q:

And can you state before this Honorable Court if the project was implemented in 1998 Mr. witness?

A:

No, ma'am.

x x x

Q:

Going back to the sites of the projects Mr. Witness, did you actually see the sites of the intended projects?

A:

Yes, ma'am.

Q:

What did you see?

A:

They were already existing at that time.

Q:

What do you mean by that Mr. Witness?

A:

The municipal engineer did implement those projects before.

Q:

When were these projects actually implemented Mr. Witness? Before?

A:

Yes, ma'am.

Q:

When?

A:

As I've said, they were already existing before I made those programs of work.

ASSOCIATE JUSTICE NARCISO S. NARIO (Chairman)

Q:

What were these projects that according to you were already existing? What are these projects?

ENGR. RAMOS

A:

The upgrading of the barangay roads, Your Honor.

Q:

Upgrading of the barangay roads? What barangays are these?

A:

Barangay Looc proper, Barangay Magsaysay and Barangay San Pablo.

Q:

What else?

A:

And the construction of the market stalls located in the public market.

Q:

These projects were already existing?

A:

Yes, Your Honor.

PROSECUTOR CORTEL

Q:

Meaning to say, Mr. Witness, that before they applied, before the preparation of the programs of works and disbursement of the amount as indicated thereon, the projects you have mentioned are already existing?

ENGR. RAMOS

A:

Yes, ma'am.

Q:

And that there is no need for the preparation of this program of work and disbursement of another money for that project?

A:

Yes, ma'am.

x x x

ASSOCIATE JUSTICE NARIO

Q:

Now, it's on the basis of this program of work that the disbursements, issue voucher, the check and other relevant documents were paid because of this program of work that you prepared?

A:

Yes, Your Honor.[56] [Emphasis ours]

Aurelio, a Sangguniang Bayan member, likewise testified that no construction work was undertaken on various barangay roads and in the public market of Castillejos in 1998:

PROSECUTOR CORTEL

Q:

But do you know if there is a construction of the market stall, public market done in 1998, Mr. Witness?

AURELIO FASTIDIO

A:

None, ma'am.

Q:

In 1999?

A:

None, ma'am.

Q:

Going to Voucher No. 101-9803-328 Mr. Witness for the upgrading, excavation, back filling of barangay

roads, Mr. Witness, do you know if there is upgrading, excavation and back filling of certain barangay roads in your area?

A:

None, ma'am.

Q:

How many barangay roads do you have in that area, Mr. Witness?

A:

We have many barangay roads, ma'am.

Q:

And do you know if in 1998 there is the upgrading, excavation and back filling of many barangay roads?

A:

None, ma'am.

Q:

Not even one, Mr. Witness.

A:

Yes, ma'am[.57]][Emphasis ours]

Alberto, the Barangay Captain of Looc, also declared on the witness stand during his September 7, 2000 testimony that no project was undertaken in his barangay during the tenure of Pantaleon. Resty, a municipal councilor, likewise testified on September 12, 2000 that there was no upgrading, compacting and leveling of roads in Barangay San Pablo in 1998.

Despite the non-existence of the projects covered by the three (3) disbursement vouchers, and despite the fact that these vouchers never went through the accounting office and the office of the local budget officer for pre-audit and certification, the appellants still signed them. We quote Pantaleon's admission in his January 31, 2001 testimony:

ATTY. RODOLFO REYNOSO

Q:

Okay. An issue of pre-audit was brought when the accountant testified earlier that allegedly you did not require them or you just signed the voucher without requiring the budget officer or the accountant to affix their signatures, what can you say about that?

TEOFILO PANTALEON, JR.

A:

I asked. When the treasurer came into my office, he asked me about the non-signatures of the accountant and the budget officer, sir. So I called up their attention and they were adamant, they were hesitant to sign. I called up again the treasurer why it is [sic] because they were asking for a commission as per the treasurer said to me, Your Honor.

x x x

Q:

In other words, Mr. Witness, after informing the accountant and the budget officer that they have not signed the voucher, you already signed it even without their signature, did I get you right?

A:

Yes, sir.

Q:

And you allowed the treasurer to pay?

A:

Yes, sir.

x x x

ASSOCIATE JUSTICE NARIO

Q:

So despite the absence of the signatures of the accountant and the budget officer, you went through signing these vouchers? (sic)

TEOFILO PANTALEON, JR.

A:

Yes, Your Honor.

x x x[58] [Emphasis ours]

Vallejos, in his testimony of October 18, 2000, likewise admitted signing the disbursement vouchers:

ASSOCIATE JUSTICE RODOLFO G. PALATTAO

Q: In other words, since you considered the refusal of the accountant to sign the vouchers as accompanied by bad faith, you decided to ignore the requirement of her signature and you allowed payment?

JAIME VALLEJOS

A: Yes, your Honor, because the sub-contractor threatened me for not paying the vouchers, besides, that will cause injury to him.

x x x

Q: Mr. Witness, do you recall where were the funds coming from in paying the projects?

A: Yes, sir, there were two sources of fund, under the Engineering Office maintenance and other operating expenses, roads and bridges maintenance, and 20% development funds.

x x x

ASSOCIATE JUSTICE NICODEMO T. FERRER:

Q: A while ago, you said that this alleged sub-contractor encashed the checks issued to him, can you show the encashment made by the contractor?

A: It was in the bank, ma'am.

Q: Where is it now?

A: It was in the Land Bank, ma'am.

x x x

Q: You said that in the signing of the vouchers, you are the last signatory?

A: Yes, ma'am.

Q: Meaning to say, all the signatories precedent to you must sign first before you sign?

A: Yes, ma'am.

Q: Now, in these particular cases, the accountant and the budget officer did not affix their signatures?

A: Yes, ma'am.

Q: And despite that fact, you signed the disbursement vouchers?

A: Yes, ma'am.

x x x[59] [Emphasis ours]

Significantly, the appellants did not deny that they allowed the release of the public funds, but maintained that the money went to Baquilat as representative and/or subcontractor of La Paz Construction. This was confirmed by Baquilat himself when he admitted, in his February 8, 2001 testimony, receipt of P400,00.00, more or less, from the Municipality of Castillejos for the three (3) construction projects he allegedly did in 1998. However, Ken Swan Tiu, the owner of La Paz Construction, vehemently denied that he contracted with the Municipality of Castillejos:

PROSECUTOR CORTEL

Q:

Mr. Witness, in connection with these cases, do you remember having received payments from the municipality of Castillejos, Zambales?

KEN SWAN TIU

A:

No, I did not receive any single centavo from the government of Castillejos.

x x x

Q:

Now, Mr. Witness, I would like to show to you vouchers which would indicate that the claimant or the payee is La Paz Construction of San Marcelino, Zambales. Now, Mr. Witness in Exhibit "A", Disbursement Voucher No. 101803-328, do you remember having received the amount of One Hundred Sixty Six Thousand Two Hundred Forty-Two Pesos and Seventy-Two Centavos (P166,242.72)?

(WITNESS GOING OVER THE VOUCHER SHOWN TO HIM BY THE PUBLIC PROSECUTOR)

A:

No, ma'am. I did not receive any.

Q:

In Disbursement Voucher No. 1019803-349 wherein the payee is La Paz Construction also of San Marcelino, Zambales, do you remember having received the amount of One Hundred Fifty-Four Thousand Six Hundred Thirty-Four Pesos and Twenty-Seven Centavos (P154,634.27)?

A:

No, ma'am.

x x x

Q:

Now, Exhibit "A" Mr. Witness I would like to point to you a portion wherein the recipient appears to be La Paz Construction, San Marcelino, Zambales in the amount of Two Hundred Forty-Two Pesos [sic]. Do you know whose signature that is appearing on top of the typewritten name of La Paz Construction?

A:

No, ma'am. I don't recognize this signature and I don't have any agent to collect this amount.

x x x

Q:

Now, what about in Exhibit "B" wherein the recipient appears to be La Paz Construction, whose signature appears on top of the typewritten name of La Paz Construction?

A:

Yes, ma'am. The same, I don't recognize the signature and I don't have any transaction with the municipality of Castillejos.

Q:

Now, in connection with Exhibit "C", there also appears a signature who was a recipient of the amount of Ninety Thousand Four Hundred Sixty- Five and Twenty-One Centavos (P90,465.21), whose signature is that?

A:

Yes, ma'am. The same, the signature I don't recognize and I don't have any agent or collecting agent or any transaction with the officials of the municipality of Castillejos.

x x x

ATTY. REYNOSO

Q:

So in other words, in all transactions from the very beginning that you have transacted with the municipality, you are the only one who transacted with the municipality?

A:

I don't have any transaction with the Municipality of Castillejos.

Q:

Even before this alleged incident took place?

A:

I said I don't have any, sir.

x x x

Q:

You said that you have not made any contract with the municipality, did I get you right?

A:

Yes, sir.

Q:

You are a witness charging the accused here of an alleged contract entered into between the accused and your

company and you deny did I get you right?

A:

Yes, sir.

Q:

So insofar as you are concerned, there was no contract between you and the municipality?

A:

Precisely.[60][Emphasis ours]

Ken Swan Tiu likewise testified that Baquilat was not in any way connected with the La Paz Construction. We quote his June 7, 2001 testimony:

PROSECUTOR CORTEL

Q: Mr. Witness, in his (Baquilat's) testimony in open court, he declared that you let him borrow, you lent him your license as a Contractor, is that true, Mr. Witness?

KEN SWAN TIU

A: No, ma'am. We don't have any agreement with that, and I am not lending my own company, my license to them because they have their own company.

Q: Okay. Mr. Witness, he also declared in open court that you sub-contracted him in connection with the projects undertaken by then Mayor Pantaleon in the Municipality of Castillejos, what can you say to that?

A: No, Ma'am, I don't have any construction with the government of the Municipality of Castillejos, and sub-contracting, I don't have this idea on my mind because I don't enter in this construction, Ma'am. (sic)

x x x

ATTY. MARK M. AVERILLA

Q: Is your testimony, Mr. Witness, therefore that you have not entered into a sub-construction agreement with Mr. John Baquilat pertaining to that project in Castillejos, Zambales?

A: Yes, sir.

Q: Is it therefore your testimony that Mr. Witness that Mr. John Baquilat, who testified earlier declaring in open court that you authorized him to use La Paz Construction as the entity to enter into contract with the Municipality of Castillejos, that he was lying [sic]?

A: Of course we don't have any agreement on that, and I don't have any contract...

(interruption)

Q: Yes, Sir, so you are saying that he was lying? Is that your testimony?

A: I don't know, Sir, because I just encountered that there is a sub-contractor who came out. Actually, in myself, I don't have any construction here with the government of Castillejos. How come there exists a sub-Contractor? [sic].

x x x[61] [Emphasis ours]

These testimonies lead to no other conclusion than that the appellants had deliberately consented to or permitted the taking of public funds by Baquilat despite the fact that (1) La Paz Construction never entered into a contract with the Municipality of Castillejos; (2) Baquilat was not an agent, representative or subcontractor of La Paz Construction; (3) the projects covered by the disbursement vouchers in question never existed; and (4) the disbursement vouchers lacked the requisite signatures of the municipal accountant and the local budget officer. In short, they resorted to machinations and simulation of projects to draw funds out of the municipal coffers.

The circumstances established during trial and outlined below likewise show the anomalous circumstances that attended the disbursement of the public funds.

Pantaleon himself admitted that he was not authorized by the Sanggunian to enter into a contract with La Paz Construction; however, he and Vallejos requested Engr. Ramos to prepare three (3) antedated programs of work that later served as basis for the issuance of the disbursement vouchers. Aurelio also declared that the projects covered by the subject disbursement vouchers were charged from the development fund of the municipality, although these projects were not among those included in the approved projects for the years 1996 to 1998. Nida's testimony on the irregularities that attended the documents supporting the vouchers were never rebutted by the defense. These irregularities were aptly summarized by the Sandiganbayan as follows:

- All of the three disbursement vouchers were not signed by her;
- As to the Disbursement Voucher No. 1019802-328, the box in which she did not sign as municipal accountant, now bears the signature of Martin Pagaduan without her authority, after the voucher was disallowed and returned by the Commission on Audit; Pagaduan was not yet the Municipal Accountant as he was appointed only on January 1, 1999;

- Required documents - authority to enter into negotiated contract, plans and specifications, abstract of bids, notarized contracts - were not attached to the voucher;
- Voucher number and accounting entries were written by accused Treasurer Vallejos, not the then municipal accountant (Nida Naman);
- Also signed by Martin Pagaduan without her authority as municipal treasurer are the three purported Certificate of Canvass attached to the Disbursement Voucher No. 101-9803-328;
- Official Receipt No. 000989 that appears to have been signed by John Baquilat to acknowledge receipt of the amount covered by check no. 108952 indicated in Disbursement Voucher No. 101-9803-349 is not filled up.[62]

Through the appellant's explicit admissions, the witnesses' testimonies, and the documentary evidence submitted, the prosecution duly established the fourth element of the crime of malversation. It is settled that a public officer is liable for malversation even if he does not use public property or funds under his custody for his personal benefit, if he allows another to take the funds, or through abandonment or negligence, allow such taking.[63] The felony may be committed, not only through the misappropriation or the conversion of public funds or property to one's personal use, but also by knowingly allowing others to make use of or misappropriate the funds. The felony may thus be committed by dolo or by culpa. The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence.[64]

Falsification was a necessary means
to commit the crime of malversation

Article 171, paragraphs (2) and (5) of the Revised Penal Code, provides:

ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

x x x

- Altering true dates;

x x x

Falsification under paragraph 2 is committed when (a) the offender causes it to appear in a document that a person or persons participated in an act or a proceeding; and (b) that such person or persons did not in fact so participate in the act or proceeding. In the present case, both testimonial and documentary evidence showed that Vallejos filled up the spaces for the voucher number and the accounting entry of Disbursement Voucher Nos. 101-9803-328, 101-9803-349 and 10-9804-415. These items were required to be filled up by Nida as the municipal accountant. Thus, Vallejos made it appear that the municipal accountant participated in signing the disbursement vouchers.

The appellants were likewise guilty of falsification under paragraph 5 of Article 171. Engr. Ramos testified that Pantaleon and Vallejos instructed him to place the dates January 5, 1998 on the first and third programs of work, and January 14, 1998 on the second program of work, although he prepared the programs only in March 1998. Thereafter, the appellants affixed their signatures on these programs of work. The projects covered by these

programs of work served as basis for the issuance of the disbursement vouchers.

The presence of conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy does not need to be proven by direct evidence and may be inferred from the conduct - before, during, and after the commission of the crime - indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, as shown by an overt act leading to the crime committed. It may be deduced from the mode and manner of the commission of the crime.[65]

The burden of proving the allegation of conspiracy rests on the prosecution, but settled jurisprudence holds that conspiracy may be proven other than by direct evidence.[66] In *People v. Pagalasan*,[67] the Court expounded on why direct proof of prior agreement is not necessary:

After all, secrecy and concealment are essential features of a successful conspiracy. Conspiracies are clandestine in nature. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[68]

The prosecution's evidence glaringly shows how the appellants acted in concert to facilitate the illegal release of public funds. First, the appellants ordered the preparation of the programs of work, with specific instructions to antedate the submitted programs. Second, they affixed their signatures on the antedated programs of work. Third, the appellants signed the disbursement vouchers covering the simulated projects despite knowledge of the absence of the signatures of the local budget officer and the local accountant. Vallejos even filled up entries in the vouchers that were for the municipal treasurer to fill up. Finally, the appellants affixed their signatures in the following documents attached to the three (3) disbursement vouchers:

Supporting documents attached to Disbursement Voucher Nos. 101-9803-328

- Purchase Request (Exh. "A-3");
- Three Certificates of Canvass (Exh. "A-4 to A-6");
- Purchase Order showing La Paz Construction as the winning bidder/contractor (Exh. "A-7");
- Certificate of Acceptance with regard to the services rendered by La Paz Construction (Exh. "A-8"); and
- Request for Obligation Allotment with La Paz Construction as payee (Exh. "A-9").

Supporting documents attached to Disbursement Voucher Nos. 101-9803-349

- Purchase Request (Exh. "B-6");
- Purchase Order showing La Paz Construction as the contractor (Exh. "B-7");
- Request for Obligation Allotment with La Paz Construction as payee (Exh. "B-9"); and
- Certificate of Acceptance with regard to the services rendered by La Paz Construction (Exh. "B-8").

Supporting documents attached to Disbursement Voucher Nos. 101-9804-415

- Request for Obligation Allotment with La Paz Construction as payee (Exh. "C-8");
- Three Certificates of Canvass (Exh. "C-4 to C-5");
- Purchase Order showing La Paz Construction as the contractor (Exh. "C-6");
- Purchase Request (Exh. "C-2"); and
- Certificate of Acceptance with regard to the services rendered by La Paz Construction (Exh. "C-7").

The appellants' combined acts therefore indubitably point to their joint purpose and design. Their concerted actions clearly showed that conspiracy existed in their illegal release of public funds.

The appellant's defenses

Vallejos' contention that the Sandiganbayan has no jurisdiction over him because he only occupies a Salary Grade (SG) 24 position cannot shield him from the Sandiganbayan's reach. The critical factor in determining the Sandiganbayan's jurisdiction is the position of his co-accused, the municipal mayor, who occupies an SG 27 position. Under Section 4 of Republic Act No. 8249,[69] if the position of one or more of the accused is classified as SG 27, the Sandiganbayan has original and exclusive jurisdiction over the offense.

Our ruling in *Esquivel v. Ombudsman*[70] on this point is particularly instructive:

In *Rodrigo, Jr. vs. Sandiganbayan*, *Binay vs. Sandiganbayan*, and *Layus vs. Sandiganbayan*, we already held that municipal mayors fall under the original and exclusive jurisdiction of the Sandiganbayan. Nor can Barangay Captain Mark Anthony Esquivel claim that since he is not a municipal mayor, he is outside the Sandiganbayan's jurisdiction. R.A. 7975, as amended by R.A. No. 8249 provides that it is only in cases where "none of the accused are occupying positions corresponding to salary grade `27' or higher" that "exclusive original jurisdiction shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended." Note that under the 1991 Local Government Code, Mayor Esquivel has a salary grade of 27. Since Barangay Captain Esquivel is the co-accused in Criminal Case No. 24777 of Mayor Esquivel, whose position falls under salary grade 27, the Sandiganbayan committed no grave abuse of discretion in assuming jurisdiction over said criminal case, as well as over Criminal Case No. 24778, involving both of them.[71] [*Underscoring and italics in the original*]

Vallejos' claim that it was his ministerial function to sign the disbursement vouchers also lacks merit. Article 344 R.A. No. 7160 reads:

Sec. 344. Certification and Approval of Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

x x x x

Thus, as a safeguard against unwarranted disbursements, certifications are required from: (a) the local budget officer as to the existence and validity of the appropriation; (b) the local accountant as to the legal obligation

incurred by the appropriation; (c) the local treasurer as to the availability of funds; and (d) the local department head as to the validity, propriety and legality of the claim against the appropriation.[72] Therefore, Vallejos, as municipal treasurer, could not authorize the release of the funds without the requisite signatures of the municipal budget officer and the municipal accountant.

Vallejos also harps on the fact that the Provincial Auditor of Zambales did not issue a notice to restitute the funds. We find this contention misleading. Pantaleon testified that the Provincial Auditor issued a notice stating that the disbursement of the public funds was irregular. Thereafter, the three (3) disbursement vouchers were suspended by the COA for deficiency in their supporting papers. Under Section 15.2 of the Manual on Certificate of Settlement and Balances, "a suspension which is not settled within 90 days from receipt of the Notice of Suspension, or within such extended period as may be authorized by the auditor concerned, shall become a disallowance."

According to Pantaleon, he instructed Vallejos to rectify the deficiencies in the vouchers and its supporting documents; however, he admitted not knowing whether Vallejos complied with this instruction. Vallejos, for his part, did not testify on whether or not he corrected and completed the supporting documents. No proof exists in the record showing that the deficiencies were ever rectified.

At any rate, demand under Article 217 of the Revised Penal Code merely raises a prima facie presumption that missing funds have been put to personal use. The demand itself, however, is not an element of the crime of malversation. Even without a demand, malversation can still be committed when, as in the present case, sufficient facts exist proving the crime.[73]

The Proper Penalty

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 P22,000.00. This Article also imposes 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. Falsification by a public officer or employee under Article 171, on the other hand, is punished by prision mayor and a fine not to exceed P5,000.00.

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. This provision states:

ART. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The Sandiganbayan, therefore, correctly imposed on the appellants the penalties of reclusion perpetua and perpetual special disqualification for each count of malversation of public funds through falsification of public documents, and the payment of fines of P166,242.72, P154,634.27, and P90,464.21, respectively, representing the amounts malversed. The Indeterminate Sentence Law finds no application since reclusion perpetua is an indivisible penalty to which the Indeterminate Sentence Law does not apply.

WHEREFORE, in light of the foregoing, we AFFIRM the February 4, 2003 Decision of the Sandiganbayan in Criminal Case Nos. 25861-63, insofar as it found appellant Jaime F. Vallejos guilty beyond reasonable doubt of three (3) counts of the complex crime of malversation of public funds through falsification of public documents, as defined and penalized under Article 217 in relation with Articles 48 and 171 of the Revised Penal Code.

We make no pronouncement with respect to appellant Teofilo Pantaleon, Jr. whose withdrawal of appeal has been previously granted by this Court.

Costs against appellant Vallejos.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., concur.

[1] Penned by Sandiganbayan Associate Justice Rodolfo G. Palattao, and concurred in by Associate Justice Gregory S. Ong and Associate Justice Ma. Cristina G. Cortez-Estrada; CA rollo, pp. 29-58.

[2] Joint Resolution of February 22, 1999; records, Vol. II, pp. 393-395.

[3] Review Action dated January 12, 2000; records, Vol. I, pp. 8-12.

[4] Memorandum of February 8, 2000; records, Vol. I, pp. 5-7.

[5] CA rollo, pp. 7-8.

[6] Id., pp. 9-11.

[7] Id., pp. 12-14.

[8] Records, Vol. I, pp. 104-106.

[9] Resolution dated August 16, 2000; id., pp. 139-144.

[10] Id., pp. 152-156.

[11] Resolution of September 12, 2000.

[12] Resolution of December 11, 2000; id., pp. 340-346.

[13] TSN, August 22, 2000, pp. 5-17.

[14] Id., pp. 18-39.

[15] Id., pp. 40-42.

[16] Id., pp. 43-53.

[17] Id., pp. 54-61.

[18] TSN, August 29, 2000, pp. 3-43.

[19] TSN, September 7, 2000, pp. 4- 26.

[20] Id., pp. 27-33.

[21] Id., pp. 34-53.

[22] TSN, September 12, 2000, pp. 9-22.

[23] Id., pp. 24-35.

[24] TSN, October 18, 2000, pp. 4-22.

[25] Id., pp. 26-30.

[26] TSN, October 19, 2000, pp. 4-22.

- [27] TSN, January 31, 2001, pp. 3-22.
- [28] Id., pp. 23-37.
- [29] Id., pp. 38-53.
- [30] TSN, February 5, 2001, pp. 3-9.
- [31] TSN, February 8, 2001, pp. 3-12.
- [32] Id., pp. 13-23.
- [33] TSN, June 5, 2001, pp. 3-14.
- [34] Id., pp. 16-20.
- [35] Id., pp. 21-27.
- [36] TSN, June 7, 2001, pp. 3-7.
- [37] Id., pp. 8-27.
- [38] Dated July 26, 2002 and August 1, 2002, respectively,
- [39] Resolution dated December 14, 2002; records, Vol. II, pp. 182-193.
- [40] Resolution of January 20, 2003.
- [41] CA rollo, p. 56.
- [42] Records, Vol. II, pp. 319-323.
- [43] Id., pp. 354-366.
- [44] Resolution of May 20, 2003; CA rollo, pp. 59-65.
- [45] Rollo, pp. 1-2.
- [46] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [47] CA rollo, p. 359.
- [48] Id., pp. 354-358.
- [49] Id., pp. 338-339.
- [50] Letter by CA Associate Justice Arcangelita M. Romilla-Lontok; CA rollo, pp. 349-350.
- [51] CA rollo, p. 353.
- [52] Id., pp. 354-358.
- [53] Id., p. 363.
- [54] Id., pp. 371.
- [55] REVISED PENAL CODE, Article 203.
- [56] TSN, August 22, 2000, pp. 7-23.
- [57] Id., pp. 48-49.

[58] TSN, January 31, 2001, pp. 29-48.

[59] TSN, October 18, 2000, pp. 16-27.

[60] TSN, September 12, 2000, pp. 11-22.

[61] TSN, June 7, 2001, pp. 6-13.

[62] CA rollo, pp. 45-46.

[63] *Pondevida v. Sandiganbayan*, G.R. Nos. 160929-31, August 16, 2005, 467 SCRA 219.

[64] *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533.

[65] *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008.

[66] *Fernan, Jr., v. People*, G.R. No. 145927, August 24, 2007, 531 SCRA 1.

[67] G.R. Nos. 131926 & 138991, June 18, 2003, 404 SCRA 275, 291.

[68] *Id.*

[69] Entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, As Amended, Providing Funds therefor, and for Other Purposes."

[70] G.R. No. 137237, September 17, 2002, 389 SCRA 143.

[71] *Id.*, p. 152 (citations omitted).

[72] *Lucman v. Malawi*, G.R. Nos. 159794, December 19, 2006, 511 SCRA 268.

[73] *Nizurtado v. Sandiganbayan*, G.R. No. 107383, December 7, 1994; see also *Pondevida v. Sandiganbayan*, *supra* note 63.

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