

**ZACARIA A. CANDAO, ABAS A. CANDAO AND ISRAEL B. HARON,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND
SANDIGANBAYAN, RESPONDENTS.**

G.R. Nos. 186659-710, February 01, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Acting on the motion for reconsideration of our Decision dated October 19, 2011 filed by the petitioners, the Court finds no compelling reason to warrant reversal of the said decision which affirmed with modifications the conviction of petitioners for malversation of public funds.

However, the suggestion of our esteemed colleague, Justice Lucas P. Bersamin to correct the maximum of the indeterminate sentence, which our decision erroneously fixed at 17 years and 4 months of reclusion temporal medium, is well-taken. Justice Bersamin explained the matter as follows:

The penalty of imprisonment prescribed for malversation when the amount involved exceeds P22,000.00 is reclusion temporal in its maximum period to reclusion perpetua. Such penalty is not composed of three periods. Pursuant to Article 65 of the Revised Penal Code, when the penalty prescribed by law is not composed of three periods, the court shall apply the rules contained in the articles of the Revised Penal Code preceding Article 65, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions. Accordingly, reclusion perpetua being indivisible, is at once the maximum period, while reclusion temporal in its maximum period is divided into two to determine the medium and minimum periods of the penalty.

Conformably with Article 65, therefore, the periods of reclusion temporal in its maximum period to reclusion perpetua are the following:

- Minimum period - 17 years, 4 months, and 1 day to
18 years, 8 months;
- Medium period - 18 years, 8 months, and 1 day to
20 years;
- Maximum period - Reclusion perpetua

With the Court having found no modifying circumstances -- whether aggravating or modifying - to be present, the maximum of the indeterminate sentence should be taken from the medium period of the penalty, i.e., from 18 years, 8 months, and 1 day to 20 years.

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WHEREFORE, the motion for reconsideration filed by the petitioners is DENIED.

The brief discussion on penalty and the dispositive portion of our October 19, 2011 Decision, are hereby amended to read as follows:

Under Article 217, paragraph 4 of the Revised Penal Code, as amended, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed if the amount involved exceeds P22,000.00, in addition to fine equal to the funds malversed. Considering that neither aggravating nor mitigating circumstance attended the crime charged, the maximum imposable penalty shall be within the range of the medium period of reclusion temporal maximum to reclusion perpetua, or eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower from the maximum imposable penalty, shall be within the range of prision mayor maximum to reclusion temporal medium, or ten (10) years and one (1) day to seventeen (17) years and four (4) months. The penalty imposed by the Sandiganbayan was therefore proper and correct.

WHEREFORE, the petition for review on certiorari is DENIED for lack of merit. The Decision dated October 29, 2008 in Criminal Case Nos. 24569 to 24574, 24575, 24576 to 24584, 24585 to 24592, 24593, 24594, 24595 to 24620 finding petitioners guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217, paragraph 4 of the Revised Penal Code, as amended, and the Resolution dated February 20, 2009 of the Sandiganbayan (First Division), denying petitioners' motion for reconsideration are AFFIRMED with MODIFICATION in that in addition to the payment of the fine ordered by the Sandiganbayan, and by way of restitution, the petitioners are likewise ordered to pay, jointly and severally, the Republic of the Philippines through the ARMM-Regional Treasurer, the total amount of P21,045,570.64 malversed funds as finally determined by the COA.

In the service of their respective sentences, the petitioners shall be entitled to the benefit of the three-fold rule as provided in Article 70 of the Revised Penal Code, as amended.

With costs against the petitioners.

SO ORDERED.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Sereno,[*] JJ., concur.

[*] Designated additional member per Raffle dated October 17, 2011 vice Associate Justice Teresita J. Leonardo-De Castro who recused herself from the case due to prior action in the Sandiganbayan.

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