Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALOYSIUS DAIT LUMAUIG, *Petitioner,*	**G.R. No. 166680**
	Present:
- versus -	CARPIO, *Chairperson,* BRION, DEL CASTILLO, PEREZ, *and* PERLAS-BERNABE, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: JUL 07 2014

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DECISION

DEL CASTILLO, *J.:*

A prior notice or demand for liquidation of cash advances is not a condition *sine qua non* before an accountable public officer may be held liable under Article 218[1] of the Revised Penal Code.

Before us is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court of the September 10, 2004 Decision[2] of the *Sandiganbayan* in Criminal Case No. 26528 and its January 11, 2005 Resolution[3] denying reconsideration thereof.

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1 ARTICLE 218. *Failure of Accountable Officer to Render Accounts.* — Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by *prisión correccional* in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both.

2 *Sandiganbayan* records, pp. 202-219; penned by Associate Justice Ma. Cristina G. Cortez-Estrada and concurred in by Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos.

3 Id. at 278-281; penned by Associate Justice Ma. Cristina G. Cortez-Estrada and concurred in by Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos..

The Information[4] dated January 25, 2001 under which petitioner Aloysius Dait Lumauig (petitioner) was tried and convicted has this accusatory portion:

> That in or about August 1994 or immediately prior or subsequent thereto, in Alfonso Lista, Ifugao and within the jurisdiction of this Honorable Court, the above-named accused then Municipal Mayor of Alfonso Lista, Ifugao, and as such accountable public officer, and responsible for the amount of ₱101,736.00 which the accused received by way of cash advance for payment of the insurance coverage of the twelve (12) motorcycle[s] purchased by the Municipality, and, hence with the corresponding duty under the law to account for the same, did then and there, willfully and feloniously fail to liquidate and account for the same to the damage and prejudice of the Government.[5]

The facts are matters of record or otherwise undisputed.

Sometime in January 1998, Commission on Audit (COA) Auditor Florence L. Paguirigan examined the year-end reports involving the municipal officials of Alfonso Lista, Ifugao. During the course of her examination of the records and related documents of the municipality, she came across a disbursement voucher[6] for ₱101,736.00 prepared for petitioner, a former mayor of the municipality, as cash advance for the payment of freight and other cargo charges for 12 units of motorcycles supposed to be donated to the municipality. The amount was covered by Land Bank Check No. 11894200[7] dated August 29, 1994 wherein the payee is petitioner. Her further investigation of the accounting records revealed that no payment intended for the charge was made to Royal Cargo Agencies for the month of August 1994. Thus, she issued a certification[8] to this effect on November 29, 2001. She likewise claimed that she prepared two letters to inform the petitioner of his unliquidated cash advance but the same were not sent to him because she could not get his exact address despite efforts exerted. She averred that on June 4, 2001, petitioner paid the subject cash advance before the treasurer of the municipality, for which reason, incumbent Mayor Glenn D. Prudenciano executed an Affidavit of Desistance.[9]

Petitioner admitted having obtained the cash advance of ₱101,736.00 during his incumbency as municipal mayor of Alfonso Lista, Ifugao.[10] This amount was intended for the payment of freight and insurance coverage of 12 units of motorcycles to be donated to the municipality by the City of Manila. However, instead of motorcycles, he was able to secure two buses and five patrol cars. He claimed that it never came to his mind to settle or liquidate the amount advanced since the vehicles were already turned over to the municipality. He

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4 Id. at 3-4.
5 Id. at 3.
6 Exhibit "A," id. at 171.
7 Exhibit "D," id. at 174.
8 Exhibit "B," id. at 172.
9 Id. at 65.
10 See Joint Stipulation of Facts, id. at 115-A.

alleged that he was neither informed nor did he receive any demand from COA to liquidate his cash advances. It was only in 2001 while he was claiming for separation pay when he came to know that he still has an unliquidated cash advance. And so as not to prolong the issue, he paid the amount of ₱101,736.00 to the municipal treasurer on June 4, 2001.

From the same facts stemmed an Information for violation of Section 3 of Republic Act (RA) No. 3019[11] docketed as Criminal Case No. 26527 against petitioner for having allegedly utilized the cash advance for a purpose other than for which it was obtained.

On September 10, 2004, after a joint trial, the *Sandiganbayan* rendered a consolidated Decision[12] disposing thusly:

> WHEREFORE, premises considered the Court rules as follows:
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> 1. In Criminal Case No. 26527, accused ALOYSIUS DAIT LUMAUIG is hereby ACQUITTED. No civil liability shall be imposed there being no basis for its award. The cash bond posted for his provisional liberty is ordered returned to him, subject to the usual accounting and auditing procedure; and
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> 2. In Criminal Case No. 26528, accused ALOYSIUS DAIT LUMAUIG is hereby CONVICTED of the felony of Failure of Accountable Officer to Render Accounts under Article 218 of the Revised Penal Code. He is hereby sentenced to a straight penalty of six months and one (1) day and a fine of Php1,000.00.
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> SO ORDERED.[13]

On January 11, 2005, the *Sandiganbayan* promulgated its Resolution[14] denying petitioner's Urgent Motion for Reconsideration.[15]

Hence, this Petition.

After a thorough review of the records of the case and a judicious consideration of the arguments of the petitioner, the Court does not find sufficient basis to reverse the judgment of conviction. From the prevailing facts, we entertain no doubt on the guilt of petitioner.

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11 Anti-Graft and Corrupt Practices Act.
12 *Sandigabayan* records, pp. 202-219.
13 Id. at 218-219.
14 Id. at 278-281.
15 Id. at 225-231.

The acquittal of petitioner in the anti-graft case is not a bar to his conviction for failure to render an account in the present case.

Petitioner stakes the present Petition on the assertion that since the cases for which he was indicted involve the same subject cash advance in the amount of ₱101,736.00, his exoneration in the anti-graft case should likewise exculpate him from further liability in the present case.

We are not persuaded.

It is undisputed that the two charges stemmed from the same incident. "However, [we have] consistently held that the same act may give rise to two or more separate and distinct charges."[16] Further, because there is a variance between the elements of the two offenses charged, petitioner cannot safely assume that his innocence in one case will extend to the other case even if both cases hinge on the same set of evidence.

To hold a person criminally liable under Section 3(e) of RA 3019, the following elements must be present:

(1) That the accused is a public officer or a private person charged in conspiracy with the former;

(2) That said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;

(3) That he or she causes undue injury to any party, whether the government or a private party;

(4) That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

(5) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence. [17]

On the other hand, the elements of the felony punishable under Article 218 of the Revised Penal Code are:

(1) That the offender is a public officer whether in the service or separated therefrom;

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16 *Suero v. People*, 490 Phil. 760, 771 (2005).

17 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 585 Phil. 1, 14-15 (2008).

(2) That he must be an accountable officer for public funds or property;

(3) That he is required by law or regulation to render accounts to the COA or to a provincial auditor; and,

(4) That he fails to do so for a period of two months after such account should be rendered.[18]

The glaring differences between the elements of these two offenses necessarily imply that the requisite evidence to establish the guilt or innocence of the accused would certainly differ in each case. Hence, petitioner's acquittal in the anti-graft case provides no refuge for him in the present case given the differences between the elements of the two offenses.

Prior demand to liquidate is not a requisite for conviction under Article 218 of the Revised Penal Code.

The central aspect of petitioner's next argument is that he was not reminded of his unliquidated cash advances. The Office of the Special Prosecutor countered that Article 218 does not require the COA or the provincial auditor to first make a demand before the public officer should render an account. It is sufficient that there is a law or regulation requiring him to render an account.

The question has been settled in *Manlangit v. Sandiganbayan*[19] where we ruled that prior demand to liquidate is not necessary to hold an accountable officer liable for violation of Article 218 of the Revised Penal Code:

> x x x [W]e are asked to resolve whether demand is necessary for a conviction of a violation of Article 218 of the Revised Penal Code.
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> Citing *United States v. Saberon*, petitioner contends that Article 218 punishes the refusal of a public employee to render an account of funds in his charge when duly required by a competent officer. He argues that he cannot be convicted of the crime unless the prosecution has proven that there was a demand for him to render an account. Petitioner asserts that COA Circular No. 90-331 provides that the public officer shall be criminally liable for failure to settle his accounts after demand had been made. Moreover, petitioner asserts that the case had become moot and academic since he already submitted his liquidation report.
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> For the People, the Office of the Special Prosecutor (OSP) counters that demand is not an element of the offense and that it is sufficient that there is a law or regulation requiring the public officer to render an account. The OSP insists

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18 *Manlangit v. Sandiganbayan*, 558 Phil. 166, 174 (2007).
19 Id.

that Executive Order No. 292, Presidential Decree No. 1445, the COA Laws and Regulations, and even the Constitution mandate that public officers render an account of funds in their charge. It maintains that the instant case differs from *Saberon* which involved a violation of Act No. 1740 where prior demand was required. In this case involving a violation of Article 218, prior demand is not required. Moreover, the OSP points out that petitioner even admitted his failure to liquidate the funds within the prescribed period, hence, he should be convicted of the crime.

We shall now resolve the issue at hand.

Article 218 consists of the following elements:

1. that the offender is a public officer, whether in the service or separated therefrom;

2. that he must be an accountable officer for public funds or property;

3. that he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and

4. that he fails to do so for a period of two months after such accounts should be rendered.

Nowhere in the provision does it require that there first be a demand before an accountable officer is held liable for a violation of the crime. The law is very clear. Where none is provided, the court may not introduce exceptions or conditions, neither may it engraft into the law qualifications not contemplated. Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. There is no room for interpretation, but only application.

Petitioner's reliance on *Saberon* is misplaced. As correctly pointed out by the OSP, *Saberon* involved a violation of Act No. 1740 whereas the present case involves a violation of Article 218 of the Revised Penal Code. Article 218 merely provides that the public officer be required by law and regulation to render account. Statutory construction tells us that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statute or code provides otherwise.[20]

Petitioner is liable for violation of Article 218 of the Revised Penal Code.

Section 5 of COA Circular No. 90-331, the circular in force at the time petitioner availed of the subject cash advance, pertinently provides:

5. LIQUIDATION OF CASH ADVANCES

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[20] Id. at 173-175.

> 5.1 The AO (Accountable Officer) shall liquidate his cash advance as follows:
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> x x x x
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> 5.1.2 Petty Operating Expenses and Field Operating Expenses - within 20 days after the end of the year; subject to replenishment during the year.

Since petitioner received the subject cash advance sometime in 1994, he was, thus, required to liquidate the same on or before January 20, 1995. Further, to avoid liability under Article 218, he should have liquidated the cash advance within two months from the time it was due, or on or before March 20, 1995. In the case at bar, petitioner liquidated the subject cash advance only on June 4, 2001. Hence, as correctly found by the *Sandiganbayan*, petitioner was liable for violation of Article 218 because it took him over six years before settling his accounts.

The penalty imposed on petitioner should be modified.

Petitioner argues that assuming that he is liable for violation of Article 218, he should be meted a lesser penalty considering that (1) he subsequently liquidated the subject cash advance when he later discovered and was confronted with his delinquency, and (2) the COA did not immediately inform him of his unliquidated cash advance.

On this point, we partially agree with petitioner.

In sentencing petitioner to a straight penalty of six months and one day of *prisión correccional* and a fine of ₱1,000.00, the *Sandiganbayan* correctly considered the mitigating circumstance of voluntary surrender, as borne by the records,[21] in favor of petitioner. However, it failed to consider the mitigating circumstance of return or full restitution of the funds that were previously unliquidated.

In malversation of public funds, the payment, indemnification, or reimbursement of the funds misappropriated may be considered a mitigating circumstance being analogous to voluntary surrender.[22] Although this case does not involve malversation of public funds under Article 217 of the Revised Penal Code but rather failure to render an account under Article 218 (*i.e.*, the succeeding Article found in the same Chapter), the same reasoning may be applied to the

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[21] On June 1, 2001, petitioner voluntarily surrendered and posted his cash bail bond. (*Sandiganbayan* records, p. 26)

[22] *Kimpo v. Court of Appeals*, G.R. No. 95604, April 29, 1994, 232 SCRA 53, 62.

return or full restitution of the funds that were previously unliquidated in considering the same as a mitigating circumstance in favor of petitioner.

The prescribed penalty for violation of Article 218 is *prisión correccional* in its minimum period or six months and one day to two years and four months, or by a fine ranging from 200 to 6,000 pesos, or both. Considering that there are two mitigating circumstances and there are no aggravating circumstances, under Article 64 (5)[23] of the Revised Penal Code, the imposable penalty is the penalty next lower to the prescribed penalty which, in this case, is *arresto mayor* in its maximum period or four months and one day to six months.

The Indeterminate Sentence Law, under Section 2,[24] is not applicable to, among others, cases where the maximum term of imprisonment does not exceed one year. In determining "whether an indeterminate sentence and not a straight penalty is proper, what is considered is the penalty actually imposed by the trial court, after considering the attendant circumstances, and not the imposable penalty."[25] In the case at bar, since the maximum of the imposable penalty is six months, then the possible maximum term that can be actually imposed is surely less than one year. Hence, the Indeterminate Sentence Law is not applicable to the present case. As a result, and in view of the attendant circumstances in this case, we deem it proper to impose a straight penalty of four months and one day of *arresto mayor* and delete the imposition of fine.

WHEREFORE, the Petition is **GRANTED IN PART.** The Decision of the *Sandiganbayan* in Criminal Case No. 26528 dated September 10, 2004 convicting petitioner of the felony of Failure of Accountable Officer to Render Accounts under Article 218 of the Revised Penal Code is **AFFIRMED** with the following **MODIFICATIONS:**

1. Petitioner is sentenced to a straight penalty of four months and one day of *arresto mayor*, and

2. The imposition of fine in the amount of ₱1,000.00 is deleted.

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[23] ARTICLE 64. *Rules for the Application of Penalties Which Contain Three Periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:
x x x x
5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

[24] Section 2 of the Indeterminate Sentence Law provides in part:
Sec. 2. This Act shall not apply x x x to those whose maximum term of imprisonment does not exceed one year. x x x

[25] *Ladino v. Garcia*, 333 Phil. 254, 259 (1996); *People v. Dimalanta*, 92 Phil. 239, 242 (1952).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice