



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MANOLITO GIL Z. ZAFRA,
Petitioner,

G.R. No. 176317

Present:

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JUL 23 2014

x-----x

DECISION

BERSAMIN, J.:

In convicting an accused of the complex crime of malversation of public funds: through falsification of a public document, the courts shall impose the penalty for the graver felony in the maximum period pursuant to Article 48 of the *Revised Penal Code*, plus fine in the amount of the funds malversed or the total value of the property embezzled. In addition, the courts shall order the accused to return to the Government the funds malversed, or the value of the property embezzled.

The Case

This appeal by petition for review on *certiorari* is taken from the judgment promulgated on August 16, 2006,¹ whereby the Court of Appeals affirmed the consolidated decision rendered on February 17, 2004 by the Regional Trial Court (RTC) in San Fernando, La Union in Criminal Cases Nos. 4634 to Nos. 4651, inclusive,² finding Manolito Gil Z. Zafra, a Revenue Collection Agent of the Bureau of Internal Revenue (BIR) assigned

¹ *Rollo*, pp. 38-56, penned by Associate Justice Rebecca De Guia-Salvador, and concurred in by Presiding Justice Ruben T. Reyes (later a Member of this Court, but since retired) and Associate Justice Vicente Q. Roxas.

² *Id.* at 76-122 (penned by Judge Robert T. Cawed).

in Revenue District 3 in San Fernando, La Union guilty of 18 counts of malversation of public funds through falsification of public documents.³

Antecedents

The CA summarized the factual antecedents as follows:

Appellant was the only Revenue Collection Agent of the Bureau of Internal Revenue (BIR), Revenue District 3, in San Fernando, La Union from 1993-1995. Among his duties was to receive tax payments for which *BIR Form 25.24* or the revenue official receipts (ROR) were issued. The original of the ROR was then given to the taxpayer while a copy thereof was retained by the collection officer.

Every month, appellant submitted *BIR Form 12.31* of the Monthly Report of Collections (MRC) indicating the numbers of the issued RORs, date of collection, name of taxpayer, the amount collected and the kind of tax paid. The original copy of the MRC with the attached triplicate copy of the issued RORs was submitted to the Regional Office of the Commission on Audit (COA).

The Assessment Division of the BIR Regional Office, likewise, kept a copy of the duplicate original of the Certificate Authorizing Registration (CAR) relating to the real property transactions, which contained, among other data, the number of the issued ROR, its date, name of payor, and the amount the capital gains tax and documentary stamp tax paid.

On 06 July 1995, an audit team composed of Revenue Officers Helen D. Rosario, Maria Lourdes G. Morada, Marina B. Magluyan and Norma Duran, all from the central office of the BIR, was tasked to audit the cash and non-cash accountabilities of the appellant.

Among the documents reviewed by the audit team were the CARs furnished by the Assessment Division of the BIR; triplicate copies of the RORs attached to the MRCs submitted by appellant to COA; and appellant's MRCs provided by the Finance Division of the BIR. The audit team likewise requested and was given copies of the RORs issued to the San Fernando, La Union branch of the Philippine National Bank (PNB). A comparison of the entries in said documents revealed that the data pertaining to 18 RORs with the same serial number, *i.e.*, (a) 1513716, (b) 1513717, (c) 1513718, (d) 1513719, (e) 1529758, (f) 2016733, (g) 2018017, (h) 2018310, (i) 2023438, (j) 2023837, (k) 2617653, (l) 2617821, (m) 2627973, (n) 3095194, (o) 3096955, (p) 3097386, (q) 3503336, (r) 4534412, vary with respect to the name of the taxpayer, the kind of tax paid, the amount of tax and the date of payment. Of particular concern to the audit team were the lesser amounts of taxes reported in appellant's MRCs and the attached RORs compared to the amount reflected in the CARs and PNB's RORs.

The CARs showed that documentary stamp tax and capital gains tax for ROR Nos. 1513716, 1513717, 1513718, 1513719, 2018017, and

³ Id. at 119-122.

2023438 totalled Php114,887.78, while the MRCs and COA's copies of the RORs submitted by appellant, the sum of the taxes collected was only Php227.00, or a difference of **Php114,660.78**. ROR Nos. 2018017 and 2023438, mentioned in CAR as duly issued to taxpayers and for which taxes were paid, were reported in the MRC as cancelled receipts.

Likewise, PNB's RORs bearing Serial Nos. 1529758, 2016733, 2018310, 2023837, 2617653, 2617821, 2627973, 3095194, 3096955, 3097386, 3503336, and 4534412, show that it paid the total sum of Php500,606.15, as documentary stamp tax. Yet, appellant's MRCs yielded only the total sum of Php1,115.00, for the same RORs, or a difference of **Php499,491.15**.

The subject 18 RORs were the accountability of appellant as shown in his Monthly Reports of Accountability (MRA) or *BIR Form 16 (A)*. The MRA contains, among others, the serial numbers of blank RORs received by the collection agent from the BOR as well as those issued by him for a certain month.

In sum, although the RORs bear the same serial numbers, the total amount reflected in the CARs and PNB's 12 copies of RORs is Php615,493.93, while only Php1,342.00 was reported as tax collections in the RORs' triplicate copies submitted by appellant to COA and in his MRCs, or a discrepancy of Php614,151.93. Thus, the audit team sent to appellant a demand letter requiring him to reconstitute the total amount of **Php614,151.93**. Appellant ignored the letter, thus, prompting the institution of the 18 cases for malversation of public funds through falsification of public document against him."⁴

On his part, the petitioner tendered the following version, to wit:

Appellant denied that he committed the crimes charged. He averred that as Revenue Collection Officer of San Fernando, La Union, he never accepted payments from taxpayers nor issued the corresponding RORs. It was his subordinates, Andrew Aberin and Rebecca Supsupin, who collected the taxes and issued the corresponding RORs. To substantiate his claim, he presented Manuel Meris, who testified that when he paid capital gains tax, at the district office of BIR in San Fernando, La Union, it was a female BIR employee who received the payment and issued Receipt No. 2023438. Likewise, Arturo Suyat, messenger of PNB from 1979 to 1994, testified that when he made the payments to the same BIR office, it was not appellant who received the payments nor issued the corresponding receipts but another unidentified BIR employee."⁵

Decision of the RTC

On February 17, 2004, the RTC rendered its consolidated decision convicting the petitioner of 18 counts of malversation of public funds through falsification of public documents,⁶ decreeing as follows:

⁴ Id. at 39-42.

⁵ Id. at 43.

⁶ Id. at 76-122.

WHEREFORE, the Court finds the accused GUILTY of the crime with which he is charged in:

1) **Criminal Case No. 4634** and sentences him to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum up to 14 years, 8 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱19,775.00;

2) **Criminal Case No. 4635** and sentences him to suffer the indeterminate penalty of 2 years, 4 months and 1 day of *prision correccional* as minimum up to 6 years and 1 day of *prision mayor* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱4,869.00;

3) **Criminal Case No. 4636** and sentences him to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum up to 14 years, 8 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱13,260.90;

4) **Criminal Case No. 4637** and sentences him to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum up to 14 years, 8 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱17,419.00;

5) **Criminal Case No. 4638** and sentences him to suffer the indeterminate penalty of 6 years and 1 day of *prision mayor* as minimum up to 10 years and 1 day of *prision mayor* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱11,309.20;

6) **Criminal Case No. 4639** and sentences him to suffer the indeterminate penalty of 6 years and 1 day of *prision mayor* as minimum up to 10 years and 1 day of *prision mayor* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱9,736.86;

7) **Criminal Case No. 4640** and sentences him to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱39,050.00;

8) **Criminal Case No. 4641** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱38,878.55;

9) **Criminal Case No. 4642** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱20,286.88;

10) **Criminal Case No. 4643** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as

maximum; to suffer perpetual special disqualification; and to pay a fine of ₱42,573.97;

11) **Criminal Case No. 4644** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱40,598.40;

12) **Criminal Case No. 4645** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱42,140.45;

13) **Criminal Case No. 4646** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱47,902.60;

14) **Criminal Case No. 4647** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱52,740.66;

15) **Criminal Case No. 4648** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱75,489.76;

16) **Criminal Case No. 4649** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱54,948.47;

17) **Criminal Case No. 4650** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay fine of ₱45,330.18;

18) **Criminal Case No. 4651** and sentences him to suffer the indeterminate penalty of 10 years and one 1 day of *prision mayor* as minimum up to 17 years, 4 months and 1 day of *reclusion temporal* as maximum; to suffer perpetual special disqualification; and to pay a fine of ₱37,842.05;

And to pay costs.

SO ORDERED.

Judgment of the CA

On appeal, the petitioner asserted that the RTC had erred as follows:

- I. x x x IN FINDING THE ACCUSED GUILTY OF MALVERSATION OF PUBLIC FUNDS THRU FALSIFICATION OF PUBLIC DOCUMENTS BASED ON THE PRESUMPTION THAT HE WAS NEGLIGENT IN THE PERFORMANCE OF HIS OFFICIAL DUTIES.
- II. x x x IN TAKING IT AGAINST THE ACCUSED THE FAILURE TO FILE AND PROSECUTE PERSONS WHO COULD HAVE POSSIBLY COMMITTED THE CRIMES CHARGED.
- III. x x x IN FINDING THAT ALL THE ESSENTIAL ELEMENTS OF THE CRIMES CHARGED ARE PRESENTED IN THIS CASE.
- IV. x x x WHEN IT DID NOT DECIDE TO ACQUIT THE ACCUSED BASED ON REASONABLE DOUBT.⁷

On August 16, 2006, the CA promulgated its assailed judgment affirming the conviction of the petitioner and the penalties imposed by the RTC,⁸ observing that he had committed falsification through his submission of copies of falsified MRCs and had tampered revenue receipts to the BIR and COA;⁹ that he was presumed to be the forger by virtue of his being in the possession of such public documents;¹⁰ and that he had certified to the MRAs and had actually issued the tampered receipts.¹¹

Anent the malversation, the CA opined:

All the elements of malversation obtain in the present case. Appellant was the Revenue Collection Agent of the BIR. As such, through designated collection clerks, he collected taxes and issued the corresponding receipts for tax payments made by taxpayers. He was accountable for the proper and authorized use and application of the blank RORs issued by the BIR District Office, not the least for the tax payments received in the performance of his duties. The unexplained shortage in his remittances of the taxes collected as reflected in the CARs and PNB's receipts, even in the absence of direct proof of misappropriation, made him liable for malversation. The audit team's demand letter to appellant, which he failed to rebut, raised a *prima facie* presumption that he put to his personal use the missing funds.¹²

The CA explained that even if it were to subscribe to the petitioner's insistence that it had been his assistants, not him, who had collected the

⁷ Id. at 156.

⁸ Supra note 1.

⁹ Id. at 49.

¹⁰ Id.

¹¹ Id. at 50.

¹² Id. at 52.

taxes and issued the RORs, he was nonetheless liable,¹³ because his duty as an accountable officer had been to strictly supervise his assistants;¹⁴ and that by failing to strictly supervise them he was responsible for the shortage resulting from the non-remittance of the actual amounts collected.¹⁵

After the CA denied his motion for reconsideration by its resolution¹⁶ promulgated on January 11, 2007, the petitioner appeals via petition for review on *certiorari*.

Issues

The petitioner claims that the CA erred:

- I. x x x IN FINDING THAT THE PETITIONER WAS NEGLIGENT YET HE WAS CONVICTED OF THE CRIME OF MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION OF PUBLIC [DOCUMENTS].
- II. x x x IN APPLYING THE RULE OF COMMAND RESPONSIBILITY IN A COMPLEX CRIME OF MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION OF PUBLIC DOCUMENTS.
- III. x x x IN FINDING THAT PETITIONER IS GUILTY OF NEGLIGENCE.¹⁷

The petitioner contends that the RTC and the CA erroneously convicted him of several counts of malversation of public funds through falsification of public documents on the basis of the finding that he had been negligent in the performance of his duties as Revenue District Officer;¹⁸ that the acts imputed to him did not constitute negligence; and that he could not be convicted of intentional malversation and malversation through negligence at the same time.¹⁹

Ruling

We **DENY** the petition for review for its lack of merit.

The RTC stated in its decision convicting the petitioner, *viz*:

¹³ Id. at 53.

¹⁴ Id. at 54.

¹⁵ Id. at 54-55.

¹⁶ Id. at 57.

¹⁷ Id. at 23.

¹⁸ Id. at 26.

¹⁹ Id. at 32.

The particular pages of the Monthly Reports from which witness Magluyan based her examination to determine the discrepancies in the Official Receipts listed by the accused therein, bore only the typewritten name of the accused without any signature. However, prosecution witness Rebecca Rillorta showed that those individual pages were part of a number of pages of a report submitted for a particular month, and she showed that the last pages of the related reports were duly signed by the accused. Witness Rillorta brought to the Court the original pages of the questioned monthly reports and demonstrated to the Court the sequence of the pagination and the last pages of the monthly reports bearing the signature of accused Zafra x x x. **By these the prosecution demonstrated that the individual pages of the Monthly Collection Report which listed receipts for lesser amounts were part of official reports regularly submitted by the accused in his capacity as Collection Agent of the BIR in San Fernando City, La Union.** While counsel for accused called attention to the absence of accused (sic) signatures on Exhibit “A”, accused did not deny the monthly report[s] and the exhibits as he chose to remain silent.

In addition, Maria Domagas, State Auditor of the BIR showed Monthly Report of Accountabilities (Exhibit “D”) which the accused, as Collection Officer submits on the first week of the following month for a particular month. The testimony of Maria Domagas establishes that the questionable receipts were within the series of receipts accountability of accused for a particular month. x x x. **The testimony of State Auditor Domagas established the link of accused accountable receipts, with the receipts numbers reported in his Monthly Collection Report as well as to the receipts issued to the taxpayers. Thereby prosecution showed that while the receipts issued to the taxpayer were not signed by the accused, these receipts were his accountable forms.** Such that the use thereof is presumed to be sourced from him. Even the defense witness admitted that the receipts emanated from the office of the accused.

Notably, there is a big disparity between the amount covered by BIR Form No. 25.24 issued to the taxpayer, and the amount for the same receipt number appearing in the Monthly Collection Reports indicating the falsification resorted to by the accused in the official reports he filed, thereby remitting less than what was collected from taxpayers concerned, resulting to the loss of revenue for the government as unearthed by the auditors.”²⁰ (Emphasis and underscoring supplied)

The findings of fact of the RTC were affirmed by the CA. Hence, the petitioner was correctly convicted of the crimes charged because such findings of fact by the trial court, being affirmed by the CA as the intermediate reviewing tribunal, are now binding and conclusive on the Court. Accordingly, we conclude that the Prosecution sufficiently established that the petitioner had been the forger of the falsified and tampered public documents, and that the falsifications of the public documents had been necessary to commit the malversations of the collected taxes.

²⁰ Id. at 112-115.

Anent the petitioner's defense that it was his subordinates who had dealt with the taxpayers and who had issued the falsified and tampered receipts, the RTC fittingly ruminated:

x x x If this Court *were to believe* that the criminal act imputed to the accused were done by the employees blamed by the accused, the *presumption of negligence* by the accused with respect to his duties as such would attach; and under this presumption, accused would still not avoid liability for the government loss.²¹ (Italics supplied)

The petitioner relies on this passage of the RTC's ruling to buttress his contention that he should be found guilty of malversation through negligence. His reliance is grossly misplaced, however, because the RTC did not thereby pronounce that he had been merely negligent. The passage was nothing but a brief forensic discourse on the legal consequence if his defense were favorably considered, and was not the basis for finding him guilty. To attach any undue significance to such discourse is to divert attention away from the firmness of the finding of guilt. It cannot be denied, indeed, that the RTC did not give any weight to his position.

Initially, the CA's disquisition regarding malversation through negligence had the same tenor as that of the RTC's,²² and later on even went to the extent of opining that the petitioner ought to be held guilty of malversation through negligence.²³ But such opinion on the part of the CA would not overturn his several convictions for the intentional felonies of malversation of public funds through falsification of public documents. As can be seen, both lower courts unanimously concluded that the State's evidence established his guilt beyond reasonable doubt for malversation of public funds through falsification of public documents. Their unanimity rested on findings of fact that are now binding on the Court after he did not bring to our attention any fact or circumstance that either lower court had not properly appreciated and considered and which, if so considered, could alter the outcome in his favor. At any rate, even if it were assumed that the findings by the CA warranted his being guilty only of malversation through negligence, the Court would not be barred from holding him liable for the intentional crime of malversation of public funds through falsification of public documents because his appealing the convictions kept the door ajar for an increase in his liability. It is axiomatic that by appealing he waived the constitutional protection against double jeopardy, leaving him open to being convicted of whatever crimes the Court would ultimately conclude from the records to have been actually committed by him within the terms of the allegations in the informations under which he had been arraigned.

²¹ Id. at 117.

²² Id. at 53.

²³ Id. at 54-55.

Yet, we see an obvious need to correct the penalties imposed on the petitioner. He was duly convicted of 18 counts of malversation of public funds through falsification of public documents, all complex crimes. Pursuant to Article 48 of the *Revised Penal Code*,²⁴ the penalty for each count is that prescribed on the more serious offense, to be imposed in its maximum period.

Falsification of a public document by a public officer is penalized with *prision mayor* and a fine not to exceed ₱5,000.00.²⁵ *Prision mayor* has a duration of six years and one day to 12 years of imprisonment.²⁶ In contrast, the penalty for malversation ranges from *prision correccional* in its medium and maximum periods to *reclusion temporal* in its maximum period to *reclusion perpetua* depending on the amount misappropriated, and a fine equal to the amount of the funds malversed or to the total value of the property embezzled, to wit:

Article 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, 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:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand 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. x x x x

²⁴ Article 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.

²⁵ Article 171, *Revised Penal Code*.

²⁶ Article 27, *Revised Penal Code*.

To determine the maximum periods of the penalties to be imposed on the petitioner, therefore, we must be guided by the following rules, namely: (1) the penalties provided under Article 217 of the *Revised Penal Code* constitute *degrees*; and (2) considering that the penalties provided under Article 217 of the *Revised Penal Code* are not composed of three periods, the time included in the penalty prescribed should be divided into three equal portions, which each portion forming one period, pursuant to Article 65 of the *Revised Penal Code*.²⁷

Accordingly, the penalties prescribed under Article 217 of the *Revised Penal Code* should be divided into three periods, with the maximum period being the penalty properly imposable on each count, except in any instance where the penalty for falsification would be greater than such penalties for malversation. The tabulation of the periods of the penalties prescribed under Article 217 of the *Revised Penal Code* follows, to wit:

TABLE 1

Amount misappropriated	Penalty prescribed	Duration	Minimum	Periods Medium	Maximum
Not exceeding ₱200.00	<i>Prision correccional</i> in its medium and maximum periods	2 years, 4 months and 1 day to 6 years	2 years, 4 months and 1 day to 3 years, 6 months and 20 days	3 years, 6 months and 21 days to 4 years, 9 months and 10 days	4 years, 9 months and 11 days to 6 years.
More than ₱200 pesos but not exceeding ₱6,000.00	<i>Prision mayor</i> in its minimum and medium periods	6 years and 1 day to 10 years	6 years and 1 day to 7 years and 4 months	7 years, 4 months and 1 day to 8 years and 8 months	8 years, 8 months and 1 day to 10 years
More than ₱6,000.00 but less than ₱12,000.00	<i>Prision mayor</i> in its maximum period to <i>reclusion temporal</i> in its minimum period	10 years and 1 day to 14 years and 8 months	10 years and 1 day to 11 years, 6 months and 20 days	11 years, 6 months and 21 days to 13 years, 1 month and 10 days	13 years, 1 month and 11 days to 14 years and 8 months
More than ₱12,000.00	<i>Reclusion temporal</i> in	14 years, 8 months	14 years, 8 months	16 years, 5 months	18 years, 2 months

²⁷ Article 65. *Rule in cases in which the penalty is not composed of three periods.* — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

but less than ₱22,000.00	its medium and maximum periods.	and 1 day to 20 years	and 1 day to 16 years, 5 months and 10 days	and 11 days to 18 years, 2 months and 20 days	and 21 days to 20 years
More than ₱22,000.00	<i>Reclusion temporal</i> in its maximum period to <i>reclusion perpetua</i>	17 years, 4 months and 1 day to <i>reclusion perpetua</i>	17 years, 4 months and 1 day to 18 years and 8 months	18 years, 8 months and 1 day to 20 years	<i>Reclusion perpetua</i>

Under Section 1 of the *Indeterminate Sentence Law*, an indeterminate sentence is imposed on the offender consisting of a maximum term and a minimum term.²⁸ The maximum term is the penalty under the *Revised Penal Code* properly imposed after considering any attending circumstance; while the minimum term is within the range of the penalty next lower than that prescribed by the *Revised Penal Code* for the offense committed.

The *Indeterminate Sentence Law* was applicable here, save for the counts for which the imposable penalty was *reclusion perpetua*. Considering that each count was a complex crime without any modifying circumstances, the maximum term of the penalty for each count is the maximum period as shown in Table 1, *supra*, except for the count dealt with in Criminal Case No. 4635 involving the misappropriated amount of ₱4,869.00, for which the corresponding penalty for malversation as stated in Table 1 was *prision mayor* in its minimum and medium periods. However, because such penalty for malversation was lower than the penalty of *prision mayor* imposable on falsification of a public document under Article 171 of the *Revised Penal Code*, it is the penalty of *prision mayor* in its maximum period that was applicable.

On other hand, the minimum of the indeterminate sentence for each count should come from the penalty next lower than that prescribed under Article 217 of the *Revised Penal Code*, except in Criminal Case No. 4635 where the penalty next lower is *prision correccional* in its full range, to wit:

²⁸ Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

TABLE 2

Penalty prescribed under Art. 217	Penalty next lower in degree	Range of minimum term
<i>Prision correccional</i> in its medium and maximum periods	<i>Arresto mayor</i> in its maximum period to <i>prision correccional</i> in its minimum period	4 months and 1 day to 2 years and 4 months
<i>Prision mayor</i> in its minimum and medium periods	<i>Prision correccional</i> in its medium and maximum periods	2 years, 4 months and 1 day to 6 years
<i>Prision mayor</i> in its maximum period to <i>reclusion temporal</i> in its minimum period	<i>Prision mayor</i> in its minimum and medium periods	6 years and 1 day to 10 years
<i>Reclusion temporal</i> in its medium and maximum periods.	<i>Prision mayor</i> in its maximum period to <i>reclusion temporal</i> in its minimum period	10 years and 1 day to 14 years and 8 months
<i>Reclusion temporal</i> in its maximum period to <i>reclusion perpetua</i>	Not applicable in the present case since the proper imposable penalty to be imposed upon the accused in already <i>reclusion perpetua</i> .	
Penalty prescribed under Art. 171	Penalty next lower in degree	Range of minimum term
<i>Prision mayor</i>	<i>Prision correccional</i>	6 months and 1 day to 6 years

To illustrate, the count involving the largest amount misappropriated by the accused totaling ₱75,489.76 merited the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua*, and a fine of ₱75,489.76. Obviously, the penalty is that prescribed for malversation of public funds, the more serious offense.

In its consolidated decision of February 17, 2004, the RTC erred in pegging the maximum terms within the minimum periods of the penalties prescribed under Article 217 of the *Revised Penal Code*. It committed another error by fixing indeterminate sentences on some counts despite the maximum of the imposable penalties being *reclusion perpetua*. There is even one completely incorrect indeterminate sentence. And, as earlier noted, the penalty for falsification under Article 171 of the *Revised Penal Code* was

applicable in Criminal Case No. 4635 involving ₱4,869.00 due to its being the higher penalty.

The Court now tabulates the corrected indeterminate sentences, to wit:

TABLE 3

Amount misappropriated	Indeterminate sentence	
	Minimum term	Maximum term
₱19,775.00	10 years and 1 day of <i>prision mayor</i>	18 years, 2 months and 21 days of <i>reclusion temporal</i>
₱4,869.00	2 years of <i>prision correccional</i>	10 years and 1 day to 12 years of <i>prision mayor</i> ²⁹
₱13,260.90	10 years and 1 day <i>prision mayor</i>	18 years, 2 months and 21 days of <i>reclusion temporal</i>
₱17,419.00	10 years and 1 day <i>prision mayor</i>	18 years, 2 months and 21 days of <i>reclusion temporal</i>
₱11,390.00	6 years and 1 day of <i>prision mayor</i>	13 years, 1 month and 11 days of <i>prision mayor</i>
₱9,736.86	6 years and 1 day of <i>prision mayor</i>	13 years, 1 month and 11 days of <i>prision mayor</i>
₱39,050.00	-	<i>Reclusion perpetua</i>
₱38,878.55	-	<i>Reclusion perpetua</i>
₱20,286.88	10 years and 1 day <i>prision mayor</i>	18 years, 2 months and 21 days of <i>reclusion temporal</i>
₱42,573.97	-	<i>Reclusion perpetua</i>
₱40,598.40	-	<i>Reclusion perpetua</i>
₱42,140.45	-	<i>Reclusion perpetua</i>
₱47,902.60	-	<i>Reclusion perpetua</i>
₱52,740.66	-	<i>Reclusion perpetua</i>
₱75,489.76	-	<i>Reclusion perpetua</i>
₱54,984.47	-	<i>Reclusion perpetua</i>
₱45,330.18	-	<i>Reclusion perpetua</i>
₱37,842.05	-	<i>Reclusion perpetua</i>

²⁹ The penalty is *prision mayor* in its maximum period because the more serious felony was falsification of a public document under Article 171 of the *Revised Penal Code*.

One more omission by the CA and the RTC concerned a matter of law. This refers to their failure to decree in favor of the Government the return of the amounts criminally misappropriated by the accused. That he was already sentenced to pay the fine in each count was an element of the penalties imposed under the *Revised Penal Code*, and was not the same thing as finding him civilly liable for restitution, which the RTC and the CA should have included in the judgment. Indeed, as the Court emphasized in *Bacolod v. People*,³⁰ it was “imperative that the courts prescribe the proper penalties when convicting the accused, and determine the civil liability to be imposed on the accused, unless there has been a reservation of the action to recover civil liability or a waiver of its recovery,” explaining the reason for doing so in the following manner:

It is not amiss to stress that both the RTC and the CA disregarded their express mandate under Section 2, Rule 120 of the *Rules of Court* to have the judgment, if it was of conviction, state: “(1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) **the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.**” Their disregard compels us to act as we now do lest the Court be unreasonably seen as tolerant of their omission. That the Spouses Cogtas did not themselves seek the correction of the omission by an appeal is no hindrance to this action because the Court, as the final reviewing tribunal, has not only the authority but also the duty to correct at any time a matter of law and justice.

We also pointedly remind all trial and appellate courts to avoid omitting reliefs that the parties are properly entitled to by law or in equity under the established facts. Their judgments will not be worthy of the name unless they thereby fully determine the rights and obligations of the litigants. It cannot be otherwise, for only by a full determination of such rights and obligations would they be true to the judicial office of administering justice and equity for all. Courts should then be alert and cautious in their rendition of judgments of conviction in criminal cases. They should prescribe the legal penalties, which is what the Constitution and the law require and expect them to do. Their prescription of the wrong penalties will be invalid and ineffectual for being done without jurisdiction or in manifest grave abuse of discretion amounting to lack of jurisdiction. They should also determine and set the civil liability *ex delicto* of the accused, in order to do justice to the complaining victims who are always entitled to them. The *Rules of Court* mandates them to do so unless the enforcement of the civil liability by separate actions has been reserved or waived.³¹

³⁰ G.R. No. 206236, July 15, 2013, 701 SCRA 229 (the bold underscoring is part of the original text).

³¹ Id. at 239-240.

In addition, the amounts to be returned to the Government as civil liability of the accused in each count shall earn interest of 6% *per annum* reckoned from the finality of this decision until full payment by the accused.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 16, 2006 by the Court of Appeals subject to the modification of the penalties imposed as stated in this decision.

ACCORDINGLY, the dispositive portion of the consolidated decision rendered on February 17, 2004 by the Regional Trial Court is hereby **AMENDED** to read as follows:

WHEREFORE, the Court finds the accused **GUILTY** of the crime with which he is charged in:

1) **Criminal Case No. 4634** and sentences him to suffer the indeterminate penalty **from 10 years and one day of *prision mayor*, as minimum, to 18 years, two months and 21 days of *reclusion temporal*, as maximum; and to pay a fine of ₱19,775.00;**

2) **Criminal Case No. 4635** and sentences him to suffer the indeterminate penalty **from two years of *prision correccional*, as minimum, to 10 years and one day of *prision mayor*, as maximum; and to pay a fine of ₱5,000.00;**

3) **Criminal Case No. 4636** and sentences him to suffer the indeterminate penalty **from 10 years and one day of *prision mayor*, as minimum, to 18 years, two months and 21 days of *reclusion temporal*, as maximum; and to pay a fine of ₱13,260.90;**

4) **Criminal Case No. 4637** and sentences him to suffer the indeterminate penalty **from 10 years and one day of *prision mayor*, as minimum, to 18 years, two months and 21 days of *reclusion temporal*, as maximum; and to pay a fine of ₱17,419.00;**

5) **Criminal Case No. 4638** and sentences him to suffer the indeterminate penalty **from 10 years and one day of *prision mayor*, as minimum, to 13 years, one month and 11 days of *reclusion temporal*, as maximum; and to pay a fine of ₱11,309.20;**

6) **Criminal Case No. 4639** and sentences him to suffer the indeterminate penalty **from 10 years and one day of *prision mayor*, as minimum, to 13 years, one month and 11 days of *reclusion temporal*, as maximum; and to pay a fine of ₱9,736.86;**

7) **Criminal Case No. 4640** and sentences him **to suffer *reclusion perpetua*; and to pay a fine of ₱39,050.00;**

8) **Criminal Case No. 4641** and sentences him **to suffer *reclusion perpetua*; and to pay a fine of ₱38,878.55;**

9) **Criminal Case No. 4642** and sentences him to suffer the indeterminate penalty **from 10 years and one day of *prision mayor*, as**

minimum, to 18 years, two months and 21 days of *reclusion temporal*, as maximum; and to pay a fine of ₱20,286.88;

10) Criminal Case No. 4643 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱42,573.97;

11) Criminal Case No. 4644 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱40,598.40;

12) Criminal Case No. 4645 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱42,140.45;

13) Criminal Case No. 4646 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱47,902.60;

14) Criminal Case No. 4647 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱52,740.66;

15) Criminal Case No. 4648 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱75,489.76;

16) Criminal Case No. 4649 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱54,948.47;

17) Criminal Case No. 4650 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱45,330.18;

18) Criminal Case No. 4651 and sentences him to suffer *reclusion perpetua*; and to pay a fine of ₱37,842.05;

In addition, the accused shall pay to the Government the total amount of ₱614,268.73, plus interest of 6% *per annum* reckoned from the finality of this decision until full payment, by way of his civil liability.


The accused shall further pay the costs of suit.

SO ORDERED.

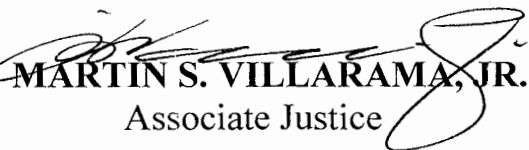
SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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