Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BERNARDO U. MESINA,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 162489

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*,

Promulgated:

JUN 17 2015

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D E C I S I O N

BERSAMIN, *J.*:

Under review is the decision promulgated on July 24, 2003,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment rendered by the Regional Trial Court (RTC), Branch 120, in Caloocan City convicting the petitioner of malversation as defined and penalized under Article 217, paragraph 4 of the *Revised Penal Code*.[2]

Antecedents

On July 9, 1998, an information was filed in the RTC charging the petitioner with qualified theft. Upon his motion, he was granted a reinvestigation. On September 17, 1998, after the reinvestigation, an amended information was filed charging him instead with malversation of public funds, the amended information alleging thusly:

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[1] *Rollo*, pp. 48-59; penned by Associate Justice Mercedes Gozo-Dadole (retired) with the concurrence of Associate Justice Conrado M. Vasquez Jr. (later Presiding Justice, now deceased) and Associate Justice Rosmari D. Carandang.

[2] CA *rollo*, pp. 23-29; penned by Judge Victorino Sal Alvaro.

That on or about the 6th day of July 1998, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the said above-named accused, being then an employee of [the] City Treasurer's Office, Caloocan City, and acting as Cashier of said office, and as such was accountable for the public funds collected and received by him (sic) reason of his position, did then and there willfully, unlawfully and feloniously misappropriated, misapplied and embezzled and convert to his own personal use and benefit said funds in the sum of ₱167,876.90, to the damage and prejudice of the City Government of Caloocan in the aforementioned amount of ₱167,876.90.

CONTRARY TO LAW.[3]

The CA adopted the RTC's summary of the facts, as follows:

x x x that in the afternoon of July 6, 1998 between 1:00 and 2:00 o'clock, herein accused Bernardo Mesina then Local Treasurer Officer I of the Local Government of Caloocan City went to the so called Mini City Hall located at Camarin Road, District I, Caloocan City for purposes of collection. While thereat, Ms. Rosalinda Baclit, Officer-In-Charge of collection at said office, turned over/remitted to Mesina the weeks' collection for the period covering the month of June 1998 representing, among others, the Market Fees' collection, Miscellaneous fees, real property taxes, Community Tax Receipts (cedula) and the 'Patubig' (local water system) collection all amounting to P468,394.46 (Exhs. 'K' and 'K-2', 'L' – 'L-2', 'M', 'M-2', 'N' – 'N-2', 'O' – 'O-2', 'P' – 'P-2', 'Q' – 'Q-2', 'R', 'R-2', 'S' – 'S-2', 'T' – 'TO-2', 'U' – 'U-2', 'V' – 'V-2', 'W', 'W-2', 'X' – 'X-2', and 'Y' – 'Y-2'). After counting the cash money, the (sic) were bundled and placed inside separate envelopes together with their respective liquidation statements numbering about thirteen (13) pieces signed by both Ms. Irene Manalang, OIC of the Cash Receipt Division, and herein accused Mesina acknowledging receipt and collection thereof (Exhs, 'K-1', 'M-3', 'N-3', 'P-3', 'Q-3', 'R-3', T-3', 'U-3', 'V-3', 'W-3', 'X-3', and 'Y-3'). Thereafter, Bernardo Mesina together with his driver left the Mini City Hall and proceeded to City Hall Main.

Later that same afternoon, Ms. Baclit received several phone calls coming from the Main City Hall. At around 3:00 o'clock, Mrs. Josie Sanilla, secretary of City Treasurer Carolo V. Santos, called up the Mini City Hall confirming the collection of the 'Patubig' by Mr. Bernardo Mesina. Thirty (30) minutes thereafter, Mrs. Elvira Coleto, Local Treasurer Operation Officer II of the Main City Hall called up to inform Ms. Baclit that the supposed 'Patubig' collection amounting to ₱167,870.90 (Exh. 'K-2') was not remitted. Also, Bernardo Mesina phoned Ms. Baclit telling the latter that he did not receive the 'Patubig' collection. Alarmed by these telephone calls she just received, Ms. Baclit then immediately consulted the documents/liquidation statements supposedly signed by Mesina acknowledging receipt and collection thereof, however, all efforts to locate and retrieved (sic) these records proved futile at that moment.

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3 *Rollo*, p. 49.

Meanwhile, City Treasurer Carolo V. Santos, after having been informed by Mrs. Irene Manalang of the discrepancy in the collection, summoned both Ms. Baclit and Bernardo Mesina to his office at the Main City Hall for an inquiry relative to the missing ₱167,870.90 'Patubig' collection. And as the two (2), Baclit and Mesina, insisted on their respective versions during said confrontation, City Treasurer Santos, in the presence of the Chief of the Cash Disbursement Division, Administrative Officers and Local Treasurer's Operation Officer II Mrs. Coleto, then ordered Mesina's vault sealed pending further investigation.

The following morning July 7, 1998, Caloocan City Mayor Reynaldo O. Malonzo called for an immediate probe of the matter. Present during the investigation at the Mayor's Office were Ms. Baclit, accused Bernardo Mesina, City Auditor Chito Ramirez, City Treasurer Santos as well as the representative from the different offices concerned. Again, when asked by Mayor Malonzo as to whether or not [t]he 'Patubig' collection was collected and/or remitted, Mesina stood fast in his denial of having received the same; Ms. Baclit on the other hand positively asserted the remittance and collection thereof by Bernardo Mesina.

Thereafter, they all proceeded to the cashier's room where Mesina had his safe and thereat, in the presence of COA State Auditor III Panchito Fadera, Cashier IV-CTO Fe. F. Sanchez, Administrative Officer IV Lourdes Jose, LTOO II Elvira M. Coleto, accused Bernardo Mesina and LTOO II Rosalinda Baclit, Mesina's vault was opened and a cash count and/or physical count of the contents thereof was conducted. Found inside were the following, to wit: 1) coins amounting to ₱107.15; 2) coins amounting to ₱50.47; 3) coins amounting to ₱127.00; 4) coins amounting to ₱64.10; 5) cash with tape amounting to ₱770.00; 6) spoiled bills amounting to ₱440.00; 7) bundled bills amounting to ₱20,500.00. Also found inside were the Report of Collection by the Liquidating Officer (RCLO) in the amount of ₱123,885.55 as well as the original and duplicate copies of the daily sum of collections of accountable form under the name of one Racquel Ona dated March 31, 1998 amounting to ₱123,885.55 (six (6) copies of vales/chits) Exhs. 'Z', 'Z-1' and 'Z-2'). In addition thereto, the cash amount of ₱67,900.00 then withheld by the City Cashier pending this investigation, was turned over to the said auditing team, thus, the total cash money audited against accused Mesina amounted to ₱89,965.72 (sic) (Exhs. 'BB' and 'BB-1').

In the afternoon of July 7, 1998, at about 5:00 o'clock, Mses. Rosalinda Baclit and Maria Luisa Canas all went to the SID Caloocan City Police Station to have their separate sworn statements taken (Exhs. 'E', 'E-1', 'D', 'D-1', 'F', and 'F-1'). Mmes. Lorna Palomo-Cabal, Divina Dimacali-Sarile and Victoria Salita Vda. De Puyat likewise executed a joint sworn affidavit (Exhs. 'G', 'G-1', 'G-2', and 'G-3') in preparation for the filing of appropriate criminal charge against Bernardo Mesina.

The following day, July 8, 1998, Mamerto M. Manahan, Panchito Fadera and Carolo V. Santos also executed their respective affidavits in relation to the incidents at bar (Exhs. 'A', 'A-1', 'A-2'; Exhs. 'B', and 'B-1'; Exhs. 'C', and 'C-1'). Meanwhile, the statement of collection supposedly signed by accused Mesina was finally recovered at Rosalinda Baclit's desk hidden under a pile of other documents. (Rollo, pp. 74-75)[4]

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[4] Id. at 50-52.

The Defense presented the oral testimony of the petitioner and documentary evidence.[5] He admitted collecting the total amount of ₱468,394.46 from Baclit, including the subject *patubig* collection totaling to ₱167,976.90, but adamantly denied misappropriating, misapplying, and embezzling the *patubig* collection, maintaining that the *patubig* collection was found complete in his vault during the inspection. He explained that he deliberately kept the collection in his vault upon learning that his wife had suffered a heart attack and had been rushed to the hospital for immediate medical treatment. He believed that he did not yet need to remit the amount to the OIC of the Cash Receipt Division because it was still to be re-counted. He claimed that when he returned to the Main City Hall that same day his vault was already sealed.[6] He said that the accusation was politically motivated. In support of his claim of innocence, he cited his numerous awards and citations for honesty and dedicated public service.[7]

On November 8, 2001, the RTC found the petitioner guilty beyond reasonable doubt of the crime of malversation, disposing:

> WHEREFORE, premises considered, this Court finds the accused BERNARDO MESINA Y UMALI guilty beyond reasonable doubt of the crime of Malversation as defined and penalized under Article 217 paragraph 4 of the Revised Penal Code and hereby sentences him to suffer an indeterminate penalty of twelve (12) years and one (1) day of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum.
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> The Court further imposes a penalty of perpetual disqualification to hold public office and a fine of ₱167,876.90 upon the accused.
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> SO ORDERED.[8]

On July 24, 2003, the CA affirmed the RTC's decision, with modification as to the amount of fine imposed,[9] decreeing:

> **WHEREFORE**, foregoing premises considered, the Decision dated November 8, 2001 of the Regional Trial Court, Branch 120, Caloocan City in Criminal Case No. C-54217 is **affirmed with modification** in the sense that the fine is reduced from ₱167,876.98 to ₱37,876.98. Costs against accused-appellant.
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> **SO ORDERED**.

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5 Id. at 52.
6 Id. at 53.
7 Id.
8 Supra note 2, at 29.
9 Supra note 1.

Issues

In his appeal, the petitioner submits for consideration the following:

I. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING WITH MODIFICATION THE CONVICTION OF PETITIONER ACCUSED-APPELLANT OF THE CRIME OF MALVERSATION NOTWITHSTANDING THAT:

a. it had admitted in evidence the testimony of prosecution witness ELVIRA COLITO that she saw, when accused-appellant's vault was opened, to have seen (sic) the bundles of the missing Patubig collections of more than Ps130,000.00 (sic), and thus, in effect, there was no misappropriation, as one of the elements of the crime of malversation;

b. that it erred and completely misapprehended and failed to appreciate the true meaning of the testimony of the said witness of seeing inside the vault more than Ps130,000.00 in bundles by treating/and/or (sic) appreciating the same as exactly Ps130,000.00 flat without appreciating the words more than, thus guilty of erroneous inference surmises and conjectures;

c. that it overlooked and completely disregarded that inside the vault was the sum of Ps20,500.00 in bundles also [Exh. "BB and B-1"] regarding contents of the vault or the total sum of Ps22,065.72 testified to by Panchito Madera (sic), Head of the Audit Team;

d. the Court of Appeals gravely erred to surmise and at least look on the lack from the lists of inventories of the vault the more than Ps130,000.00 in bundles and why it was not listed among the moneys found inside the accused-appellant's vault;

e. doubts and inconsistencies existing threrefrom shall remained (sic) favorable to the accused-appellant pursuant to applicable jurisprudence;

II. THAT THE COURT OF APPEALS ERRED ON A (SIC) QUESTIONS OF LAW, THAT THE INVESTIGATION CONDUCTED BY THE GROUP OF MAYOR MALONZO, THE TREASURER, THE ADMINISTRATOR, THE CITY AUDITOR, CHIEF OF DIVISIONS AND THE AUDIT PROCEEDINGS ARE NULL AND VOID DUE:

A. Accused-appellant was not informed of his constitutional right to assistance of counsel as mandated by the Constitution;

B. The audit proceedings did not comply strictly with the Manual of Instructions to Treasurers and Auditors and other Guidelines, thus null and void;

C. Thus, the presumption of juris tantum in Art. 127 of the Revised Penal Code is overcome firmly supported by the discovery of the missing money and further the conclusions

of the Court of Appeals was against established jurisprudence enunciated in the case of TINGA vs. PEOPLE OF THE PHILIPPINES, No. L-57650, [160 SCRA 483];

III. WHETHER THE COURT OF APPEALS WAS FATALLY WRONG IN NOT APPLYING EVIDENCE OF GOOD MORAL CHARACTER TO ACQUIT AND EXONERATE PETITIONER ACCUSED-APPELLANT IN VIOLATION OF RULE 130, SEC. 46, OF THE RULES OF COURT.

A. Notwithstanding, not only are the evidence weak, but its findings or discovery of "more than Ps130,000.00 inside the vault is subject to double interpretations, and/or double alternative or probabilities, thus the presumption of innocence will be adopted.[10]

Ruling of the Court

The appeal has no merit.

The crime of malversation of public funds charged herein is defined and penalized under Article 217 of the *Revised Penal Code*, as amended, as follows:

> 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, 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:
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> x x x x
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> 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*.**
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> 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.

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[10] *Rollo*, pp. 21-23.

> 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 use. (*As amended by R.A. No. 1060*)

The crime of malversation of public funds has the following elements, to wit: (*a*) that the offender is 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 the funds or property were public funds or property for which he was accountable; and (*d*) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[11]

The elements of the crime charged were duly established against the petitioner.

The Prosecution proved, firstly, that the petitioner was a public officer with the position of Local Treasurer Officer I of Caloocan City; secondly, that by reason of his position, he was tasked to collect fees and taxes regularly levied by the Mini City Hall, including market fees, miscellaneous fees, real property taxes, and the subject *patubig* collection; and, thirdly, that all of the fees and taxes collected were unquestionably public funds for which he was accountable.

As to the fourth element of misappropriation, the petitioner did not rebut the presumption that he had misappropriated the *patubig* collection to his personal use. He had earlier feigned ignorance of having received the *patubig* collection when he phoned Ms. Baclit to tell her that he did not receive the collection. He still insisted that he had not received the sum from Ms. Baclit when the City Treasurer summoned them both. His denial continued until the next day when City Mayor Malonzo himself asked them both about the matter. Only after the petitioner's vault was finally opened did he declare that the collection was intact inside his vault. Even then, the actual amount found therein was short by ₱37,876.98. Conformably with Article 217 of the *Revised Penal Code*, *supra*, the failure of the petitioner to have the patubig collection duly forthcoming upon demand by the duly authorized officer was *prima facie* evidence that he had put such missing fund to personal use. Although the showing was merely *prima facie*, and, therefore, rebuttable, he did not rebut it, considering that he not only did not account for the collection upon demand but even steadfastly denied having received it up to the time of the inspection of the sealed vault. Under the circumstances, he was guilty of the misappropriation of the collection.

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[11] *Ocampo III v. People*, G.R. Nos. 156547-51 & 156384-85, February 4, 2008, 543 SCRA 487, 505-506.

Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is still committed; hence, a conviction is proper.[12] All that is necessary for a conviction is sufficient proof that the accused accountable officer had received public funds or property, and did not have them in his possession when demand therefor was made without any satisfactory explanation of his failure to have them upon demand. For this purpose, direct evidence of the personal misappropriation by the accused is unnecessary as long as he cannot satisfactorily explain the inability to produce or any shortage in his accounts.[13] Accordingly, with the evidence adduced by the State being entirely incompatible with the petitioner's claim of innocence, we uphold the CA's affirmance of the conviction, for, indeed, the proof of his guilt was beyond reasonable doubt.

The petitioner bewails the deprivation of his constitutionally guaranteed rights during the investigation. He posits that a custodial investigation was what really transpired, and insists that the failure to inform him of his Miranda rights rendered the whole investigation null and void.

We disagree with the petitioner's position.

According to *People v. Marra*,[14] custodial investigation involves any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. The safeguards during custodial investigation begin to operate as soon as the investigation ceases to be a general inquiry into a still unsolved crime, and the interrogation is then focused on a particular suspect who has been taken into custody and to whom the police would then direct interrogatory questions that tend to elicit incriminating statements. The situation contemplated is more precisely described as one where –

> After a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in a strange and unfamiliar surrounding, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study has taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights.

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[12] *Cabello v. Sandiganbayan*, G.R. No. 93885, May 14, 1991, 197 SCRA 94, 103, cited in *Cantos v. People*, G.R. No. 184908, July 3, 2013, 700 SCRA 535, 545.

[13] *Davalos, Sr. v. People*, G.R. No. 145229, April 24, 2006, 488 SCRA 84, 92.

[14] G.R. No. 108494, September 20, 1994, 236 SCRA 565, 573.

> And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence x x x.[15]

Contrary to the petitioner's claim, the fact that he was one of those being investigated did not by itself define the nature of the investigation as custodial. For him, the investigation was still a general inquiry to ascertain the whereabouts of the missing *patubig* collection. By its nature, the inquiry had to involve persons who had direct supervision over the issue, including the City Treasurer, the City Auditor, the representative from different concerned offices, and even the City Mayor. What was conducted was not an investigation that already focused on the petitioner as the culprit but an administrative inquiry into the missing city funds. Besides, he was not as of then in the custody of the police or other law enforcement office.

Even as we affirm the CA, we have to clarify the penalty imposed in terms of the *Indeterminate Sentence Law*.

Section 1 of the *Indeterminate Sentence Law* states that an indeterminate sentence is imposed on the offender consisting of a maximum term and a minimum term.[16] The maximum term is the penalty properly imposed under the *Revised Penal Code* 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.

Conformably with the instructions on the proper application of the *Indeterminate Sentence Law* in malversation reiterated in *Zafra v. People*:[17] (*a*) the penalties provided under Article 217 of the *Revised Penal Code* constitute *degrees*; and (*b*) considering that the penalties provided under Article 217 of the *Revised Penal Code* are not composed of three periods, the time included in the prescribed penalty should be divided into three equal portions, each portion forming a period, pursuant to Article 65 of the *Revised Penal Code*.[18] With the amount of ₱37,876.98 ultimately found and declared by the CA to have been misappropriated exceeding the ₱22,000.00

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[15] *People v. Uy, Jr.*, G.R. No. 157399, November 17, 2005, 475 SCRA 248, 261-262, citing *Morales, Jr. v. Enrile*, No. L-61016, April 26, 1983, 121 SCRA 538, 560-561.

[16] 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.

[17] G.R. No. 176317, July 23, 2014, 730 SCRA 438, 454.

[18] 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.

threshold, the imposable penalty is *reclusion temporal* in its maximum period to *reclusion perpetua* (that is, 17 years, four months and one day to *reclusion perpetua*), the minimum period of which is 17 years, four months and one to 18 years and eight months, the medium period of which is 18 years, eight months and one day to 20 years, and the maximum period is *reclusion perpetua*.

Accordingly, the maximum of the indeterminate sentence of the petitioner is the medium period in view of the absence of any aggravating or mitigating circumstances, while the minimum of the indeterminate sentence shall be taken from the penalty next lower, which is *reclusion temporal* in its minimum and medium periods (*i.e.*, from 12 years and one day to 17 years and four months). Hence, the indeterminate sentence for the petitioner is modified to 12 years and one day of *reclusion temporal*, as minimum, to 18 years, eight months and one day of *reclusion temporal*, as maximum.

In addition, the Court notes that both lower courts did not require the petitioner to pay the amount of ₱37,876.98 subject of the malversation. That omission was plain error that we should now likewise correct as a matter of course, for there is no denying that pursuant to Article 100 of the *Revised Penal Code*, every person criminally liable for a felony is also civilly liable. The omission, if unchecked and unrevised, would permanently deprive the City of Caloocan of the misappropriated amount. Such prejudice to the public coffers should be avoided.

The Court has justifiably bewailed the omissions by the lower courts in this respect, and has seen fit to point out in *Zafra v. People*:

> 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*, 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:
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> > 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.
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> 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.[19]

Under the law, the civil liability of the petitioner may involve restitution, reparation of the damage caused, and indemnification for consequential damages.[20] Given that his obligation requires the payment of the amount misappropriated to the City of Caloocan, the indemnification for damages is through legal interest of 6% *per annum* on the amount malversed, reckoned from the finality of this decision until full payment.[21]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on July 24, 2003 finding petitioner **BERNARDO U. MESINA** guilty beyond reasonable doubt of malversation of public funds subject to the **MODIFICATIONS** that: (*a*) he shall suffer the indeterminate penalty of 12 years and one day of *reclusion temporal*, as minimum, to 18 years, eight months and one day of *reclusion temporal*, as maximum, and pay a fine of ₱37,876.98; and (*b*) he shall further pay to the City of Caloocan the amount

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19 The bold underscoring is part of the original text.
20 Article 104, *Revised Penal Code*.
21 Article 2209, *Civil Code*.

of ₱37,876.98, plus interest thereon at the rate of 6% *per annum*, reckoned from the finality of this decision until the amount is fully paid.

The petitioner shall pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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