

# FIRST DIVISION

[ G.R. No. 239823, September 25, 2019 ]

**ANGELICA ANZIA FAJARDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

## DECISION

**PERLAS-BERNABE, J.:[\*]**

Assailed in this petition<sup>[1]</sup> for review on *certiorari* are the Decision<sup>[2]</sup> dated March 5, 2018 and the Resolution<sup>[3]</sup> dated April 18, 2018 of the Sandiganbayan (SB) in SB-17-A/R-0032, which affirmed with modification the Decision<sup>[4]</sup> dated February 17, 2017 of the Regional Trial Court of Quezon City, Branch 224 (RTC) in Crim. Case No. Q-11-170801, finding petitioner Angelica Anzia Fajardo (Fajardo) guilty beyond reasonable doubt of the crime of Malversation of Public Funds, defined and penalized under Article 217<sup>[5]</sup> of the Revised Penal Code (RPC), as amended, and sentencing her to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, and to pay a fine of P1,877,450.00 representing the amount misappropriated.

### The Facts

On June 21, 2011, Fajardo was charged with Malversation of Public Funds in an Information<sup>[6]</sup> which reads:

That on or about November 13, 2008, and sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Cashier V and designated OIC, Division Chief III, Prize Payment (Teller) Division, Treasury Department of the Philippines (sic) Charity Sweepstakes Office while in the performance of her official duties, committing the offense in relation thereto and taking advantage of her official position, as an accountable officer of PCSO's funds, did then and there willfully, unlawfully and feloniously appropriate, take and/or misappropriate public funds in the following manner, to wit: accused received Php3,000,000.00 as cash advance for the payment of sweepstakes and lotto low-tier prizes and for the prize seed fund of the Pacific Online System Corporation Scratch IT Project, but upon two spot audits conducted by the Internal Audit Department of the PCSO on November 13, 2008 and on January 8, 2009, the total amount of Php 1,877,450.00 were missing, and when given several opportunities to explain the missing funds, she cannot explain nor give proof as to the whereabouts of the funds she is accountable for, to the damage and prejudice of public interest.

## CONTRARY TO LAW.

At the time material to this case, Fajardo was the Cashier V and designated Officer-in-Charge (OIC), Division Chief III, Prize Payment (Teller) Division, Treasury Department of the Philippine Charity Sweepstakes Office (PCSO). As such, she exercised direct supervision and control over paying tellers and other employees assigned in the division, instituted procedures in actual payment of prizes, conducted periodic check-up and/or actual count of paid winning tickets, and requisitioned cash from the Assistant Department Manager for distribution to paying tellers.<sup>[7]</sup>

By virtue of her position, Fajardo was likewise authorized to draw a cash advance in the amount of P3,000,000.00 (P3M), from which P2,000,000.00 (P2M) was intended as payment of sweepstakes and lotto low-tier prizes, while P1,000,000.00 (P1M) was devoted for the PCSO-Pacific Online Systems Corporation (POSC) Scratch IT Project.<sup>[8]</sup>

On the basis of two (2) letter-complaints from Crispina Doria, Division Chief of the Sales Department and Gina V. Abo-Hamda of the POSC protesting the inability of the Prize Payment Division of the Treasury Department to pay the winning Scratch IT tickets on time, as well as the delay in the replenishment of the Teller and Provincial District Office's prize fund, a spot cash audit on the account of Fajardo was ordered by Betsy B. Paruginog (Paruginog), Assistant General Manager for Finance of PCSO. Thus, on November 13, 2008, the Internal Audit Department (IAD) of the PCSO conducted a cash examination of Fajardo's account and, after a reconciliation of all the documents, checks, winning tickets, issuances, and vouchers against Fajardo's cash on hand, discovered that there was a shortage of P218,461.00<sup>[9]</sup> from the total accountability of P3M. Fajardo was furnished a copy of the certified cash count sheet reflecting the said shortage. The result of the spot audit was then forwarded to the Legal Department of the PCSO for a fact-finding investigation.<sup>[10]</sup>

The following day, or on November 14, 2008, Fajardo did not report for work. Thereafter, or on November 17, 2008, after discovering that someone went to the Treasury Department on November 16, 2008, a Sunday, and occupied Fajardo's workstation with the lights out, Paruginog directed the audit team to seal Fajardo's vault.<sup>[11]</sup>

Fajardo reported back to work on January 8, 2009. Mr. Mario Coral, head of the Treasury Department, informed her that the audit team will open her vault to conduct a spot cash count in her presence and in the presence of Paruginog, as well as representatives from the Commission on Audit (COA) and the Treasury and Legal Departments of the PCSO. The audit revealed a much bigger shortage in the amount of P1,877,450.00.<sup>[12]</sup> Moreover, the audit team found that the P1,621,476.00 worth of cash and P37,513.00 worth of checks presented during the first audit on November 13, 2008<sup>[13]</sup> were all missing. Thereafter, Fajardo turned over the remaining cash in the amount of P20,000.00 inside her vault. The IAD then furnished Paruginog a copy of the Certified Cash Count Sheet indicating the increased shortage of P1,877,450.00.<sup>[14]</sup> Thereafter, the findings were referred to the PCSO Legal Department.<sup>[15]</sup>

On January 13, 2009, the audit team issued a demand letter to Fajardo requiring her to return the missing funds and to explain within seventy-two (72) hours from

receipt thereof the reasons why the shortage occurred.<sup>[16]</sup>

On January 15, 2009, Fajardo wrote a reply<sup>[17]</sup> requesting for more time to explain and expressing her willingness to settle the matter as she had no intentions of evading the same. On January 27, 2009, Fajardo wrote another letter<sup>[18]</sup> to the PCSO Legal Department *acknowledging her mistake and admitting her liability* for the missing funds and offering to settle her accountability by waiving her monetary benefits. Eventually, the PCSO Legal Department issued a Resolution<sup>[19]</sup> dated February 17, 2009 finding a *prima facie* case against Fajardo and recommending that she be formally charged with Serious Dishonesty, Grave Misconduct, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service,<sup>[20]</sup> without prejudice to the filing of the present charge against her for Malversation of Public Funds.<sup>[21]</sup>

In defense,<sup>[22]</sup> Fajardo claimed that on November 13, 2008, the audit team proceeded to her workstation and announced that they will conduct a spot cash examination. They counted the cash in her possession without giving her the opportunity to balance her accounts and when all the cash items were produced, they did not include the same in the audit. Thereafter, she was forced to sign two (2) Cash Examination Count Sheets<sup>[23]</sup> indicating two (2) different figures, one stating a shortage in the amount of P734,421.00<sup>[24]</sup> and the other indicating the amount of P218,461.00.<sup>[25]</sup> She did not report for work the following day and extended her leave of absence until January 7, 2009 due to health problems. However, she learned that during her absence, her safe and vault were sealed by the auditors on November 17, 2008 or on the same day that a certain Ms. Josefina Sarabia assumed her duties. Further, she contended that it was one Carlos Lector<sup>[26]</sup> (Lector), a co-employee, who was seen in her workstation opening the vault with the lights off and was consequently administratively charged. She claimed that the sealing of her vault was directed in order to pass the blame on her despite the shortage having occurred as a result of pilferage, robbery or theft.<sup>[27]</sup>

As regards her letters dated January 15 and 27, 2009, she claimed that she was merely tricked into writing them, as she was then confused, helpless, and vulnerable after being confronted with the audit results. Finally, she insisted that the spot cash audits were attended with serious irregularities and that the sealing of her vault four (4) days after the first audit did not conform with prescribed COA guidelines. She maintained that the audit was incomplete as the auditors did not include the *vale* sheets, unreplenished winning tickets and other cash items, and she was likewise not given the opportunity to balance and close her books before the cash examination.<sup>[28]</sup>

### **The RTC Ruling**

In a Decision<sup>[29]</sup> dated February 17, 2017, the RTC found Fajardo guilty beyond reasonable doubt of the crime of Malversation of Public Funds, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of thirteen (13) years and four (4) months, as minimum, to nineteen (19) years and four (4) months, as maximum, of *reclusion temporal*, with perpetual special disqualification and to pay a fine in the sum of P1,877,450.00 representing the amount misappropriated.<sup>[30]</sup>

The RTC found that all the elements of the crime charged have been established, to wit: (a) that the offender is a public officer; (b) that she had custody or control of the funds or property by reason of the duties of her office; (c) that those funds or property were public funds or property for which she was accountable; and, (d) that she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. Fajardo was a public officer, being the Cashier V and OIC, Division Chief III, Prize Payment (Teller) Division, Treasury Department of the PCSO, and she had custody of the cash advances in the total amount of P3M by reason of her position. The cash advances were clearly public funds, and when a deficiency in the said amount was discovered during the audit, which Fajardo failed to explain or account for, the RTC concluded that she misappropriated the said funds.<sup>[31]</sup>

The RTC also found that the letter dated January 27, 2009 where Fajardo admitted to having taken the missing funds was voluntarily written. As regards the alleged irregularities which attended the conduct of the audit, the RTC posited that it was not the proper forum to resolve the issue; instead, Fajardo should have brought the matter before the appropriate government agency after the conduct of the audit. There being no direct proof that the audit conducted was illegal, the RTC therefore deemed the same valid, proper, and in accordance with proper audit procedure.<sup>[32]</sup>

Aggrieved, Fajardo appealed<sup>[33]</sup> to the SB.

### **The SB Ruling**

In a Decision<sup>[34]</sup> dated March 5, 2018, the SB affirmed Fajardo's conviction, with the modification that the penalty of imprisonment to be imposed should be for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, in accordance with the provisions of Republic Act No. (RA) 10951,<sup>[35]</sup> particularly Section 40<sup>[36]</sup> thereof, and taking into account the presence of the mitigating circumstance of voluntary surrender.<sup>[37]</sup> Affirming the RTC, the SB found that the elements of the crime charged were established and that Fajardo's failure to adequately explain the whereabouts of the missing funds in order to rebut the presumption that she had misappropriated the same was conclusive of her guilt of the crime charged.<sup>[38]</sup>

Likewise, the SB rejected Fajardo's contention that her letter dated January 27, 2009 was involuntarily given and in violation of her rights against self-incrimination and to counsel, as she *voluntarily* submitted the letter during the fact-finding investigation of the PCSO Legal Department; therefore, the said rights do not come into play. With respect to the alleged irregularities in the cash count and/or audit conducted by the IAD, the SB found that Fajardo neither challenged nor questioned the manner through which the audit was conducted; in fact, she appeared to have acknowledged the amount of the missing funds through her letters dated January 15 and 27, 2009, which contained no objection or reservation with respect to the regularity of the spot audits.<sup>[39]</sup> In any case, the SB found that the IAD was able to sufficiently explain the two (2) different figures appearing on the two (2) Cash Count Examination Sheets both dated November 13, 2008, *i.e.*, P734,421.00 and P218,461.00. Ma. Theresa Chua, an auditor of the IAD, clarified that the second Cash Examination Count Sheet<sup>[40]</sup> dated November 13, 2008 was issued after Fajardo recalled that she issued cash to her tellers in the amount of P515,960.00,

which amount was then deducted from P734,421.00. Hence, the reduced amount of P218,461.00.<sup>[41]</sup>

Finally, the SB rejected Fajardo's contention that the loss of the amounts of P1,621,476.00 in cash and P37,513.00 worth of checks was due to pilferage or theft committed by Lector, a co-employee who was found occupying Fajardo's workstation on November 16, 2008, a Sunday. The SB held that there was no evidence showing that Lector committed the same; besides, Fajardo does not appear to have filed a complaint against him.<sup>[42]</sup>

Fajardo's motion for reconsideration<sup>[43]</sup> was denied in a Resolution<sup>[44]</sup> dated April 18, 2018; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly upheld Fajardo's conviction for the crime charged.

### **The Court's Ruling**

The petition is bereft of merit.

Malversation of Public Funds is defined and penalized under Article 217 of the RPC, as amended, as follows:

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

x x x x

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 funds or property to personal uses. (Emphasis supplied)

The elements of the crime are as follows: (a) the offender is a public officer; (b) he has custody or control of funds or property by reason of the duties of his office; (c) the funds or property are public funds or public property for which he was accountable; and (d) he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.<sup>[45]</sup> After a judicious perusal of the case, the Court finds the confluence of the foregoing elements to uphold Fajardo's conviction.

As the records show, Fajardo was a public officer, being the Cashier V and OIC, Division Chief III, Prize Payment (Teller) Division of the Treasury Department of PCSO. Her duties as such required her to handle cash,<sup>[46]</sup> as in fact, at the time material to this case, Fajardo was authorized to draw a cash advance in the amount of P3M intended as payments for sweepstakes and lotto low-tier prizes and the