



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
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FIRST DIVISION

ANGELICA ANZIA FAJARDO,
 Petitioner,

G.R. No. 239823

Present:

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

BERSAMIN, C.J.,*
PERLAS-BERNABE,
 Acting Chairperson,**
JARDELEZA,
GESMUNDO,*** and
CARANDANG, JJ.

Promulgated:

SEP 25 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition¹ for review on *certiorari* are the Decision² dated March 5, 2018 and the Resolution³ dated April 18, 2018 of the Sandiganbayan (SB) in SB-17-A/R-0032, which affirmed with modification the Decision⁴ 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 217⁵ of the Revised Penal Code (RPC), as amended, and sentencing

* On official business.

** Per Special Order No. 2704 dated September 10, 2019.

*** On official business.

¹ *Rollo*, pp. 11-48.

² Id. at 64-89. Penned by Associate Justice Rafael R. Lagos, with Associate Justices Maria Theresa V. Mendoza-Arcega and Maryann E. Corpus-Mañalac, concurring.

³ Id. at 91-94.

⁴ Id. at 50-62. Penned by Presiding Judge Tita Marilyn Payoyo-Villordon.

⁵ 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:

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.

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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 ₱1,877,450.00 representing the amount misappropriated.

The Facts

On June 21, 2011, Fajardo was charged with Malversation of Public Funds in an Information⁶ 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-

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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.

The failure of a public officer to have duty 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 Republic Act No. 1060)

⁶ See *rollo*, p. 65.

up and/or actual count of paid winning tickets, and requisitioned cash from the Assistant Department Manager for distribution to paying tellers.⁷

By virtue of her position, Fajardo was likewise authorized to draw a cash advance in the amount of ₱3,000,000.00 (₱3M), from which ₱2,000,000.00 (₱2M) was intended as payment of sweepstakes and lotto low-tier prizes, while ₱1,000,000.00 (₱1M) was devoted for the PCSO-Pacific Online Systems Corporation (POSC) Scratch IT Project.⁸

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 ₱218,461.00⁹ from the total accountability of ₱3M. 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.¹⁰

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.¹¹

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 ₱1,877,450.00.¹² Moreover, the audit team found that the ₱1,621,476.00 worth of cash and ₱37,513.00 worth of checks presented during the first audit on November 13, 2008¹³ were all missing. Thereafter, Fajardo turned over the remaining cash in the amount of

⁷ Id. at 66.

⁸ Id.

⁹ See Cash Examination Count Sheet dated November 13, 2008; id. at 176.

¹⁰ See id. at 67-68.

¹¹ See id. at 68.

¹² See Cash Examination Count Sheet dated January 8, 2009; id. at 181.

¹³ See id. at 176.

₱20,000.00 inside her vault. The IAD then furnished Paruginog a copy of the Certified Cash Count Sheet indicating the increased shortage of ₱1,877,450.00.¹⁴ Thereafter, the findings were referred to the PCSO Legal Department.¹⁵

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.¹⁶

On January 15, 2009, Fajardo wrote a reply¹⁷ 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 letter¹⁸ 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 Resolution¹⁹ 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,²⁰ without prejudice to the filing of the present charge against her for Malversation of Public Funds.²¹

In defense,²² 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

¹⁴ See *id.* at 181.

¹⁵ See *id.* at 68-69.

¹⁶ See *id.* at 69.

¹⁷ The letter-request states:

Without prejudice to my rights, and before responding substantially to your letter of demand, may I request for ample time to respond on the alleged missing funds. I am more than willing to cooperate in having this matter settled accordingly in the best interest of PCSO. I have no intentions of evading the issue and would exert all efforts for its settlement. (*Id.* at 185.)

¹⁸ The explanation letter reads:

This refers to your Memorandum 13 and 21 January 2009 on the purported missing funds or shortage in the amount of ₱1,877,450.00 under my accountability.

With all humility and sincerity, I am now imploring your kind understanding for all the actions that I have taken. It was a mistake which I continue to regret until now. As a separated mother, I did such actions to support the education and other needs of my five children. I know that what I did was wrong and prejudicial to the office but with all humility I sincerely pray for your kind understanding.

As a preliminary settlement of my accountability, I am waiving receipt in favor of PCSO all my rights to all bonuses and monetary benefits that I was supposed to receive during the last quarter of 2008. Also, we have prepared the amount of ₱300,000.00 as cash settlement partially of my accountability. (*Id.* at 70.)

¹⁹ *Id.* at 182-191.

²⁰ In *Fajardo v. Corral* (813 Phil. 149 [2017]), the Court found Fajardo guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and accordingly, meted upon her the supreme penalty of dismissal from the service, with all its accessory penalties.

²¹ See *rollo*, pp. 69-70.

²² See *id.* at 71-75.

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 Sheets²³ indicating two (2) different figures, one stating a shortage in the amount of ₱734,421.00²⁴ and the other indicating the amount of ₱218,461.00.²⁵ 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 Lector²⁶ (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.²⁷

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.²⁸

The RTC Ruling

In a Decision²⁹ 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 ₱1,877,450.00 representing the amount misappropriated.³⁰

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

²³ See *id.* at 175-176.

²⁴ *Id.* at 175.

²⁵ *Id.* at 176.

²⁶ "Oscar Lector" in some parts of the records.

²⁷ See *rollo*, pp. 72-73.

²⁸ See *id.* at 73-74.

²⁹ *Id.* at 50-62.

³⁰ See *id.* at 62.

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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 ₱3M 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.³¹

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.³²

Aggrieved, Fajardo appealed³³ to the SB.

The SB Ruling

In a Decision³⁴ 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) 10951,³⁵ particularly Section 40³⁶ thereof, and taking into

³¹ See *id.* at 58-60.

³² See *id.* at 60-61.

³³ See Notice of Appeal dated March 1, 2017; *id.* at 95-96.

³⁴ *Id.* at 64-89.

³⁵ Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED," approved on August 29, 2017.

³⁶ Section 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read 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, 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 Forty thousand pesos (P40,000).

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account the presence of the mitigating circumstance of voluntary surrender.³⁷ 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.³⁸

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.³⁹ 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.*, ₱734,421.00 and ₱218,461.00. Ma. Theresa Chua, an auditor of the IAD, clarified that the second Cash Examination Count Sheet⁴⁰ dated November 13, 2008 was issued after Fajardo recalled that she issued cash to her tellers in the amount of ₱515,960.00, which amount was then deducted from ₱734,421.00. Hence, the reduced amount of ₱218,461.00.⁴¹

Finally, the SB rejected Fajardo's contention that the loss of the amounts of ₱1,621,476.00 in cash and ₱37,513.00 worth of checks was due

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *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.

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 uses."

³⁷ See *rollo*, p. 88.

³⁸ See *id.* at 81-84.

³⁹ See *id.* at 84-85.

⁴⁰ *Id.* at 176.

⁴¹ See *id.* at 82.

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.⁴²

Fajardo's motion for reconsideration⁴³ was denied in a Resolution⁴⁴ 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.⁴⁵ After a judicious perusal of the case, the Court finds the confluence of the foregoing elements to uphold Fajardo's conviction.

⁴² See *id.*

⁴³ Dated March 19, 2018. *Id.* at 156-174.

⁴⁴ *Id.* at 91-94.

⁴⁵ *Magnanao v. People*, 538 Phil. 252, 256 (2006).

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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,⁴⁶ as in fact, at the time material to this case, Fajardo was authorized to draw a cash advance in the amount of ₱3M intended as payments for sweepstakes and lotto low-tier prizes and the PCSO – POSC Scratch IT Project. By reason thereof, Fajardo had in her custody public funds in the total amount of ₱3M for which she was clearly accountable.

Unfortunately, part of the said funds went missing while in her custody. After the conduct of two (2) spot audits on her account, a total deficit in the amount of ₱1,877,450.00 was discovered, which she failed to explain or produce upon demand. Her failure to account for the said moneys thereby gave rise to the presumption that she had converted the funds to her personal use, which presumption she failed to rebut with competent evidence.⁴⁷ Accordingly, her conviction for the crime charged stands.

Fajardo insists that the SB should not have taken into consideration her letters dated January 15 and 27, 2009, having been used in violation of her rights to counsel and against self-incrimination. Further, she claimed that not only were the letters involuntarily written, but she had also retracted the same in the proceedings before the Office of the Ombudsman (Ombudsman); hence, the same should not have been used against her.

The Court is not persuaded.

The right to counsel *vis-à-vis* administrative inquiries or investigations has already been succinctly explained in *Carbonel v. Civil Service Commission*,⁴⁸ where the Court declared that “a party in an administrative inquiry may or may not be assisted by counsel”:

However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of

⁴⁶ Her duties included exercising direct supervision and control over tellers and other employees in the division, overseeing actual payments of prizes, conducting periodic check-ups or actual counting of paid winning tickets, and requisitioning cash from the Assistant Department Manager for distribution to paying tellers.

⁴⁷ See *Magnanao v. People*, supra note 45, at 257.

⁴⁸ 644 Phil. 470 (2010).

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petitioner's capacity to represent herself, and no duty rests on such body to furnish the person being investigated with counsel. The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.⁴⁹ (Emphases and underscoring supplied)

Meanwhile, a person's right against self-incrimination is enshrined in Section 17,⁵⁰ Article III of the Constitution. "The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime."⁵¹ The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act.⁵²

"However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a *subpoena*, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a *subpoena* must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty."⁵³

With the foregoing constitutional precepts in mind, the Court finds that Fajardo's contentions that (a) she was denied her right to counsel during the investigation conducted by the PCSO Legal Department and (b) her letters dated January 15 and 27, 2009 were made in violation of her right against self-incrimination are grossly misplaced. To stress, the right to counsel is not imperative in an administrative investigation. Further, and as the SB aptly pointed out, there was no compulsion coming from the PCSO nor any question propounded to Fajardo during the investigation that was incriminatory in character or has a tendency to incriminate her for the crime charged; neither has it been shown that she was in any manner compelled or forced to write the letters dated January 15 and 17, 2009. On the contrary, the letters appear to have been voluntarily and spontaneously written.

⁴⁹ Id. at 477.

⁵⁰ Section 17. No person shall be compelled to be a witness against himself.

⁵¹ *Rosete v. Lim*, 523 Phil. 498, 511 (2006).

⁵² *Dela Cruz v. People*, 739 Phil. 578, 589 (2014); citations omitted.

⁵³ *Rosete v. Lim*, supra note 51.

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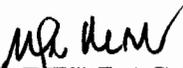
That petitioner subsequently retracted the said letters in her counter-affidavit before the Ombudsman will not exculpate her. Courts look upon retractions with considerable disfavor because they are generally unreliable,⁵⁴ as there is always the probability that it will later be repudiated.⁵⁵ At most the retraction is an afterthought which should not be given probative value.⁵⁶ Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld,⁵⁷ which does not obtain in this case.

Viewed in this light, any objections or reservations with regard to the conduct of the spot audits conducted on Fajardo's account should have been reflected on the said letters. As it is, Fajardo did not challenge the conduct of the audit nor did she point out any irregularity therein. Instead, she requested for more time to respond to the allegations and later, acknowledged her infractions and offered ways to retribute the missing amount. Further, and as aptly pointed out⁵⁸ by the respondent People of the Philippines through the Ombudsman, the fact that the spot audits were conducted pursuant to the IAD's authority to do so raises the presumption of regularity in the performance of official duty. Besides, this issue does not detract from or diminish the fact that Fajardo failed to produce the missing funds upon demand.

Finally, Fajardo's argument that it is the prosecution, not her, who had the burden of proving the loss of the money in the amount of ₱1,621,476.00 and checks worth ₱37,513.00 at the time of the second spot audit on January 8, 2009 deserves little weight. Having established that the total amount of ₱3M was in her custody by reason of her public position, it was incumbent upon her to produce the same upon demand or explain its whereabouts; failing in which, the presumption of misappropriation arises as there is no competent evidence to rebut the same, the presumption stands and her conviction consequently upheld.

WHEREFORE, the petition is **DENIED**. The Decision dated March 5, 2018 and the Resolution dated April 18, 2018 of the Sandiganbayan in SB-17-A/R-0032 are hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁵⁴ *People v. Zafra*, 712 Phil. 559, 575 (2013).

⁵⁵ See *People v. Lamsen*, 721 Phil. 256, 259 (2013).

⁵⁶ *People v. Zafra*, supra note 54, at 276; citation omitted.

⁵⁷ *People v. Lamsen*, supra note 55.

⁵⁸ See *rollo*, p. 248.

WE CONCUR:

On Official Business
LUCAS P. BERSAMIN
Chief Justice
Chairperson

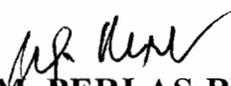

FRANCIS H. JARDELEZA
Associate Justice

On Official Business
ALEXANDER G. GESMUNDO
Associate Justice


ROSMARIE B. CARANDANG
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.


ESTELA M. PERLAS-BERNABE
Associate Justice
Acting Chairperson, First Division

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.


ANTONIO T. CARPIO
Acting Chief Justice*

* Per Special Order No. 2703 dated September 10, 2019.