

FIRST DIVISION

[G.R. No. 198119, September 27, 2017]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS.
SANDIGANBAYAN AND JUAN^[1] ROBERTO L. ABLING,
RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This Petition for *Certiorari* under Rule 65 of the Rules of Court,^[2] as amended, assails the Decision^[3] dated June 16, 2011 of public respondent Sandiganbayan in Criminal Case No. 22987, entitled "*People of the Philippines v. Juan Roberto Abling y Loyola*," acquitting herein private respondent Juan Roberto L. Abling (Abling) of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code.

In an Information dated August 4, 1995, private respondent Abling was charged as follows:

That for the period from January 22, 1986 to February 4, 1986 or sometime prior or subsequent thereto, in Pasig, Metro-Manila, Philippines, and within the jurisdiction of this Honorable Court, J. Roberto L. Abling, a public officer, being then the Executive Director of the Economic Support Fund Secretariat, Office of the President of the Philippines and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, did then and there, willfully, unlawfully and feloniously take, misappropriate and convert to his personal use and benefit the amount of P22,000,000.00 from such public funds received by him by reason of his office to the damage of the government in the amount aforestated.^[4]

The facts leading to the filing of the Information are:

Pursuant to Letter of Instruction (LOI) No. 1030 dated May 27, 1980, entitled "*Establishing the Implementing Machinery and Mechanism for the Utilization of Economic Assistance Proceeds from the Military Bases Agreement*," then President Ferdinand E. Marcos (President Marcos) directed the following:

1. The proceeds of the Economic Support Fund (ESF) made available to the Philippine Government under the Military Bases Agreement, as amended, shall be allocated and utilized for priority development programs and projects of the government particularly the Bagong Lipunan Sites and Services Program, subject to the approval of the President pursuant to Section 14, General Provisions of the General

Appropriations Act of 1980.

2. The ESF proceeds shall be treated as a Special Account on the Treasury of the Philippines provided that pertinent provisions of P.D. No. 1177 (Sections 40, 50 and 51) and LOI 981 shall not apply.

3. There is hereby created a Management Advisory Committee (MAC) with the Minister of Human Settlements, as Chairperson, and with the Minister of Defense, Minister of Industry, Minister of Budget, Minister of Public Works, Minister of Education and Culture, Minister of Economic Planning and Minister of Agriculture as members, to advise the President on the allocation and utilization of the ESF. For this purpose the MHS shall serve as the Secretariat to the MAC.

4. The Management Advisory Committee shall

(a) determine the eligible development programs and projects of the Government that may avail of the ESF;

(b) program the allocation of the ESF among the priority programs and projects;

(c) represent the Philippine Government in dealing with USAID or any instrumentalities of the USA dutifully authorized to handle ESF issues;

(d) submit to the President of the Philippines for final approval the utilization plan of the ESF;

(e) prepare and submit to the Minister of the Budget the Philippine Government counterpart requirements to implement the programs/projects for approval by the President; and

(f) submit regular accomplishment reports to the President of the Philippines.

Subsequent thereto, through LOI No. 1434 dated October 26, 1984 entitled *"Amending Letter of Instructions No. 1030 and Providing for the Reconstitution of the Management Advisory Committee,"* President Marcos reorganized^[5] and renamed the Management Advisory Committee into the "Economic Support Fund (ESF) Council" and placed the same directly under his office. Further, the ESF Secretariat (ESFS) was constituted, to be headed by an Executive Director. Under LOI No. 1434, the Executive Director had the following powers and responsibilities, viz.:

a) Upon clearance with the President and the Council, issue rules and regulations as may be necessary to implement the provisions of this LOI.

b) Reorganize the Secretariat directly under the ESF Council as a critical technical support staff of the Council and establish such working relationships with the National Economic and Development Authority and

the Office of the Philippine Ambassador to the United States for purposes of coordinating and integrating U.S. foreign assistance program.

c) Approved the organizational and staffing structure and appoint the personnel of the Secretariat subject to confirmation of the Council.

d) Submit for the review and approval of the ESF Council program plans for the utilization of ESF allocations.

e) Undertake and conduct economic and financial studies for the effective and expanded utilization of the ESF to support priority basic needs programs and projects of the government.

f) Report directly to the Chairman of the Council and/or the President on all ESF matters requiring immediate action.

In 1983, President Marcos appointed private respondent Abling as Executive Director of the ESFS.^[6]

On November 21, 1985, President Marcos signed LOI No. 1484, Series of 1985, establishing the policies and guidelines for the disbursements of ESF proceeds, to wit:

a) Joint Circular No. 1-85 dated September 19, 1985 of the Commission on Audit and the ESF Secretariat, prescribing procedures on the release and utilization of the funds as administered by the ESF Council and the ESF Secretariat, including the accounting treatment thereof, pursuant to Letter of Instructions No. 1379 dated February 5, 1984, including subsequent amendments or issuances related thereto, shall be strictly complied with.

b) The interest earnings of ESF proceeds in a Special Account of the Bureau of Treasury shall be utilized as follows: (1) Sixty (60%) percent of the total interest earnings to additionally fund the implementation of ESF projects, including newly identified projects, variation orders and price escalations, in accordance with such criteria as may be approved by the ESF Council, provided that such projects shall be approved by the President prior to their implementation; (2) Forty (40%) percent to support the operations of the ESF Secretariat, including personnel maintenance and operating expenditures insurance premiums and other contingency requirements of completed ESF projects.

c) The National Treasurer of the Philippines shall submit to the President, through the ESF Secretariat, a periodic report on all ESF remittances, including the total amount representing the actual interest earnings of ESF proceeds.

In Joint Circular No. 1-85,^[7] the Commission on Audit (COA) and ESFS established the guidelines and procedures on the release and utilization of amounts from the Fund, *e.g.*, all disbursements must be covered by duly approved vouchers in accordance with existing auditing and accounting regulations and supported by the required documents.^[8] In turn, COA Circular No. 76-17^[9] required all

disbursements of national security, intelligence, and confidential funds to be supported by duly accomplished disbursement vouchers and receipts, bills, or commercial invoices of creditors.

In January 1986, ESFS issued five disbursement vouchers claimed to be "for the payment of miscellaneous expenses as per instruction of President Marcos."^[10] As a result, five checks amounting to P35 million were issued to private respondent Ablang as payee and drawn against ESFS's current account with the Land Bank of the Philippines (Land Bank), Makati Branch.

In February 1986, the EDSA People Power Revolution took place, which resulted in the ouster of former President Ferdinand E. Marcos and the assumption to power of former President Corazon C. Aquino.^[11]

Subsequently, pursuant to Audit Assignment Order No. 86-207, then COA Chairman Teofisto Guingona authorized the audit of the confidential funds held by 12 government agencies, including the ESFS. Thus, in March 1986, the COA, through Resident Auditor Fe Ramirez-Muñoz (Resident Auditor Muñoz), conducted a special audit of ESFS's confidential funds. Based on the special audit, it appeared that the ESFS made several cash advances amounting to P35 million to private respondent Ablang from January to February 1986, the Executive Director of ESFS at the time. Of the P35 million, however, only P13 million was refunded to the ESFS.^[12] Thus, the COA required private respondent Ablang to liquidate the balance of P22 million, and to submit all supporting documents pertinent to said liquidation as required by COA Circular No. 76-17.^[13]

In compliance to the aforementioned,^[14] private respondent Ablang referred to his letter dated February 11, 1986 addressed to COA Chairman Francisco S. Tantuico (Chairman Tantuico), through which he submitted the following documents: (a) **disbursement vouchers**; (b) **copy of Certificate of Interest Earnings of ESF Accounts**; (c) **Summary of Disbursements/Expenses**; and (d) **Certificates of Disbursement and Delivery** duly certified by himself.

However, the COA considered the said documents as insufficient compliance with COA Circular No. 76-17.^[15] In her affidavit,^[16] Resident Auditor Muñoz insisted on the submission of the following documents: (a) a **certified list of projects undertaken by the ESF and its corresponding receipts**; and (b) **copies of receipts, indicating the identity and names of the recipients of the funds disbursed**.

Chairman Guingona also demanded that private respondent Ablang liquidate the P22 million, and to submit the required documents.^[17]

Private respondent Ablang, however, failed to comply with the foregoing demand; thus, the COA filed a complaint for malversation against him before the Office of the Ombudsman (Ombudsman).^[18]

The Ombudsman found probable cause to indict private respondent Ablang for the crime of malversation before the Sandiganbayan.

Proceedings before the Sandiganbayan

During trial, the prosecution presented several pieces of documentary evidence, *i.e.*, (a) ESFS disbursement vouchers in favor of private respondent Abling amounting to P35 million, which he approved himself; (b) corresponding Land Bank checks also issued in the name of private respondent Abling and amounting to P35 million; (c) private respondent Abling's certification that he received the aforementioned amount, P13 million of which he had refunded, leaving a balance of P22 million; (d) copy of COA Circular No. 76-17; and (e) copy of Joint Circular No. 1-85.^[19]

For his defense, private respondent Abling testified that he was instructed by President Marcos to withdraw P35 million from the Fund for the "payment of miscellaneous expenses." He admitted that upon withdrawing the P35 million, he personally delivered P22 million from said amount to President Marcos; and the balance of P13 million was redeposited to ESF's Land Bank account.^[20]

As proof of said delivery to President Marcos, private respondent Abling presented three undated ESFS memoranda,^[21] and testified on direct examination that:

ATTY. MAURICIO:

Q Mr. Witness, the last time you testified in this Honorable Court, specifically on July 8, 2004, you said that you delivered to then President Ferdinand Marcos the amount of twenty-two million pesos (P22,000,000.00) pesos.

WITNESS:

A Yes, Sir.

ATTY. MAURICIO:

Q My question is: Do you have any proof that you delivered such amount to then President Ferdinand Marcos?

WITNESS:

A Yes, Sir.

ATTY. MAURICIO:

Q What proof do you have?

WITNESS:

A The... the amounts we delivered in separate... in three separate occasions, Your Honor, are total twenty million. And (each] time I delivered, I draft a memorandum showing that or for the President accepting the payment. This draft memorandum [was] left [on] the President's table. And after the... after I have delivered to him the twenty million, I was wondering why the memorandum is not... is not... signed. In other words, it's not been signed.