

SECOND DIVISION

[G.R. No. 166967, January 28, 2013]

**EDNA J. JACA, PETITIONER , VS. PEOPLE OF THE PHILIPPINES
AND THE SANDIGANBAYAN, RESPONDENTS.**

[G.R. NO. 166974]

**ALAN C. GAVIOLA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. NO. 167167]

**EUSTAQUIO B. CESA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

BRION, J.:

Before the Court are the petitions for review on *certiorari*^[1] assailing the December 16, 2004 decision^[2] and the February 1, 2005 resolution^[3] of the Sandiganbayan in Criminal Case No. 24699, finding Alan C. Gaviola, Edna J. Jaca, Eustaquio B. Cesa (collectively, *petitioners*) and Benilda N. Bacasmas guilty of violating Section 3(e) of Republic Act (RA) No. 3019.^[4]

ANTECEDENT FACTS

The petitioners occupied appointive positions in the different divisions of the Cebu City government at the time material to the controversy: Gaviola was the City Administrator;^[5] Cesa was the City Treasurer;^[6] Bacasmas was the Chief Cashier of the Cash Division, which is under the Office of the City Treasurer, and Jaca was the City Accountant.^[7]

The steps followed in the grant of cash advances to a paymaster in the Cebu City government are as follows:

1. Processing of payment:

a. **Paymasters request for cash advance** and prepare cash advance disbursement vouchers (voucher) to be submitted to the Chief Cashier, as head of Cash Division;

b. Chief Cashier

1. affixes her initials on Box A of the voucher; and

2. forwards the voucher to the City Treasurer if he sees that the vouchers and its supporting documents are in order.

c. City Treasurer affixes his signature on box A. Description of Box A is as follows:

1. "BOX A" – Certified – Expense, cash advances **necessary,**
lawful and incurred under my direct supervision.

d. The voucher is then forwarded to the City Accountant for processing (recording) and pre-audit procedure. The City Accountant signs BOX B described as follows:

1. "BOX B" – Certified, Adequate available funds/budgetary allotment in the amount of P , expenditures properly certified, **supported by documents marked (x) per checklist on back hereof**, account under checklist on back hereof, account codes proper, **previous cash advance liquidated/accounted for.**

e. City Accountant prepares and attaches an accountant's advice to the voucher.

f. The voucher and the accountant's advice are returned to Chief Cashier for preparation of check.

g. Chief Cashier prepares the check and initials/countersigns the check

h. City Treasurer signs the check ?

i. The voucher is forwarded to City Administrator for approval on Box C.

1. City Administrator's Internal Control Office (ICO) reviews the supporting documents, and if in order, will recommend its approval.

2. City Administrator approves BOX C of the voucher and countersigns the check.

j. The voucher, check and the accountant's advice are returned to Cash Division.

k. Paymaster signs the receipt portion of the voucher and the warrant/check register to acknowledge receipt of the check for encashment later at a bank.

2. Payment

a. The paymaster and the Cash Division prepare a report of disbursement of payrolls paid and supporting papers and record it

in the official cashbook;

b. COA auditors go to Cash Division to examine, check and verify the reports of disbursements, payrolls, cashbook and other supporting documents;

c. Cashier forwards report and supporting papers to City Accountant for recording and posting.

On March 4, 1998, City Auditor Rodolfo Ariesga created a team of auditors, with the task of conducting a surprise audit^[8] of the cash and other accounts handled by all accountable officers assigned at the Cash Division, Office of the City Treasurer. Among these disbursing officers was Rosalina G. Badana, who was the paymaster in charge of paying the salaries of the employees in eight (8) different departments or offices in the Cebu City government.^[9]

While Badana reported for work in the early morning of March 5, 1998, she immediately left upon learning of the planned surprise audit to be conducted that day; she has not reported for work since.^[10]

The audit team's cash examination covered the period from September 20, 1995 to March 5, 1998. Cecilia Chan and Cecilia Tantengco, the audit team leader and assistant team leader, respectively, conducted an examination of the cash and other accounts in Badana's custody.^[11] The audit team reported that Badana incurred a cash shortage of P18,527,137.19. Based on the procedure in the processing of cash advances, the audit team found out that the failure of the petitioners to observe the provisions of Presidential Decree (PD) No. 1445,^[12] RA No. 7160^[13] and the rules and regulations governing the grant, utilization and liquidation of cash advances under Commission on Audit (COA) Circular Nos. 90-331, 92-382 and 97-002 "facilitated, promoted, if not encouraged, the commission of malversation of public funds[.]"^[14]

On March 13, 1998, Cebu City Mayor Alvin Garcia filed with the Office of the Ombudsman-Visayas (Ombudsman)^[15] a complaint against Badana for malversation of public funds and for violation of RA Nos. 3019 and 6713.^[16] The complaint resulted in administrative and criminal investigations.^[17]

On April 3, 1998, the Ombudsman *motu proprio* required the petitioners and Bacasmas to submit their respective counter-affidavits and countervailing evidence.^[18] On July 1, 1998, the Ombudsman charged the petitioners and Bacasmas with violation of Section 3(e) of RA No. 3019^[19] before the Sandiganbayan under the following Information:^[20]

That on or about the 5th day of March 1998, and for [sometime] prior thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, having been duly appointed to such public positions above-mentioned, in such capacity and committing the offense in relation to Office, conniving and confederating

together and mutually helping xxx each other, with deliberate intent, with manifest partiality, evident bad faith and with gross inexcusable negligence, did then and there allow Rosalina G. Badana, Cashier I of the Cebu City Government to obtain cash advances despite the fact that she has previous unliquidated cash advances, thus allowing Rosalina G. Badana to accumulate Cash Advances amounting to P18,522,361.96, Philippine Currency, which remains unliquidated, thus accused in the performance of their official functions, had given unwarranted benefits to Rosalina G. Badana and themselves, to the damage and prejudice of the government, particularly the Cebu City Government.

On July 2, 1998, the COA Regional Office No. VII (COA Regional Office) submitted a Narrative Report on the Results of the Examination of the Cash Accounts (COA Report) of Badana.^[21] Pertinent portions of the COA Report read:

"A.1. During the period [between] September 20, 1995 to March 5, 1998, records show that additional cash advances were granted, even if the previous cash advances were not yet liquidated. For example in the Trust Fund, a cash advance of Php800,000 was granted on December 8, 1997 even if Ms. Badana has an unliquidated cash advance balance of Php4,940,065.50 as of November 20, 1997 (Annex 19). The situation was true in granting all other cash advances from September 20, 1995 to March 5, 1998.

Another example in the General fund, cash advance of Php1,000,000.00 was granted on December 1, 1997 even if the unliquidated balance of Ms. Badana as of November 28, 1997 was Php8,469,054.19 (Annex 20). The situation is likewise true in granting all other cash advances during the same period mentioned in the preceding paragraph. This practice resulted in excessive granting of cash advances which created the opportunity to misappropriate public funds since idle funds were placed in the hands of the paymasters under their control and custody.

The practice is in violation of Section 89, PD 1445; Section 339, RA 7160 and paragraph 4.1.2 of COA Circular No. 97-002 resulting [in the] accumulation of excess cash in the custody of the accountable officer.

A.2 The following practices also facilitated the incurrence of the shortage:

- a. The amount of cash advance for salary payments was not equal to the net amount of the payroll for a pay period in violation of par. 4.2.1, COA Cir. No. 90-331, Section 48(g), COA Cir. No. 92-382 and par. 4.2.2, COA Cir. No. 97-002.

All disbursement vouchers covering the cash advances were not supported by payrolls or list of payees to determine the amount of the cash advance to be granted in violation of par. 4.2.2, COA Cir. No. 90-331. Ms. Rosalina G. Badana, who was assigned as paymaster to eight different offices/departments with a total monthly payroll of P5,747,569.96 (Annex 21) was granted an

average monthly cash advance of P7,600,000.00 (Annex 22) or an excess of P1,900,000.00 monthly. As a result, idle funds were again placed in the hands and the total control of the Paymaster.

- b. The face of the disbursement voucher (sample voucher marked as annex 23) did not indicate the specific legal purpose for which the cash advance was granted in violation of par. 4.1.5 COA Cir. No. 90-331, Section 48(e) COA Cir. 92-382 and par. 4.1.7 COA Cir. No. 97-002. It is so because all disbursement vouchers covering the granting of cash advances to the paymaster did not show the office/department, the number of payees and the payroll period covered by the cash advance. The city officials signed, certified and approved these vouchers despite the aforementioned deficiencies. It makes difficult to identify which liquidating report pertains to what particular cash advance, thus contributing to the opportunity to misappropriate the funds.
- c. The provisions of par. 5.1.1 COA Cir. 90-331 and 97-002 and Section 48.k of COA Cir. No. 92-382 on the liquidation of cash advances within 5 days after the end of the month pay period was not followed due to the existing practice/procedure in the granting of cash advances... Likewise, unliquidated cash advance balance (audited) at the end of December 31, 1997 amounted to P15,553,475.61 consisting of P11,690,639.44 and P3,862,836.17 for General and Trust Fund respectively, in violation of par. 5.8 COA Cir. Nos. 90-331 and 97-002 and Section 48 (o) COA Cir. No. 92-382, resulting in the accumulation of unliquidated cash advances.

In January 1998, the paymaster was granted cash advances before the foregoing unliquidated balance (audited) was settled. Detail as follows:

Date	Check No.	Amount of Cash Advance Granted	Amount of Cash Returns
1/05/98	852367	P2,000,000.00	
1/08/98	25983919	P1,000,000.00	
1/09/98			P2,000,000.00
1/09/98			P18,846.00
1/12/98	852430	P1,000,000.00	
1/12/98			P2,000,000.00
	Total	P4,000,000.00	P4,018,846.00

It appears that the new cash advance of Php4,000,000.00 was used to liquidate partially the previous year's unliquidated balance of P15,553,475.61 in violation of par. 4.1.5 COA Cir. 90-331, Section 48.e of COA Cir. 92-382 and par. 4.1.7 of COA Cir. 97-002.

- d. As discussed in letter "C" above, accounting records show that these cash advances were granted and taken up in January, 1998 while the cash returns made after granting these cash advances