

**ALFONSO BACSARPA, VENANCIO LAUSA AND FERNANDO MACAS,
PETITIONERS, VS. COURT OF APPEALS, RESPONDENT.***G.R. No. L-8147. May 18, 1956*

Ponente: ENDENCIA, J.

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Alfonso Bacsarpa, Venancio Lausa and Fernando Macas were found guilty by the Court of First Instance, of Agusan of the crime of malversation of public funds punishable under paragraph 4 of Article 217 of the Revised Penal Code and sentenced to an indeterminate penalty of not less than six (6) years and one (1) day of prison mayor nor more than twelve (12) years and one (1) day of reclusion temporal, to indemnify the government in the sum of P6,123.88, to suffer perpetual special disqualification from holding office of public trust, to pay a fine of P3,000 each, and the corresponding proportionate share of the costs. On appeal, the Court of Appeals likewise found them guilty of the aforementioned crime but modified the decision and imposed upon the appellants an indeterminate penalty of not less than eight (8) years and one (1) day of prison mayor nor more than thirteen (13) years, nine (9) months and eleven (11) days of reclusion temporal and imposed a fine of P8,997.47 and confirmed the decision appealed from all other respects.

By way of certiorari and only to dispute the propriety of the penalty imposed by the Court of Appeals, petitioners elevated the case to this Court on the ground that the Court of Appeals erred in taking into consideration the aggregate amount of P17,994.94 in the imposition of penalty on all of them, instead of the true amount each has malversed.

The pertinent portion of the finding of facts in the decision appealed from is as follows:

"It is not denied that on or about the month of July, 1950, Alfonso Bacsarpa was a 'collecting clerk' Venancio Lausa a 'clerk messenger and market collector' and Fernando Macas a 'collector' in the office of Alfonso Esparagosa, municipal treasurer of Nasipit, Agusan. Before the latter went to Butuan on July 10, 1950, he left Bacsarpa in charge of his office, Lausa in charge of the post office and Macas in charge of the market collections, and he instructed the first to notify him in Butuan should their collections be in excess of their P500 bond so that he could return to Nasipit to take possession of the amounts collected.

"The evidence discloses conclusively that as of July 19 Lausa had made a total collection of P71.06, Macas a total collection of P193.20 and Bacsarpa a little less than P 18,000. Of the latter's collection of P 17,418.29 came from the Nasipit Lumber Co. and was received at about 11:00 o'clock in the morning of July 19. It consisted of P10,300 in Philippine National Bank checks, P1,500 in postal money orders and P5,460 in cash.

"The evidence further shows that in the afternoon of the same day Bacsarpa and Macas sought the advice of the municipal mayor regarding the safest way to keep said amounts which, according to them, were deposited in a cabinet now in the record as Exhibit A. Bacsarpa claimed that the cabinet could not be kept inside the municipal treasurer's safe because he did not know the combination of the latter. It would seem that, as a result of this conference, they decided to place the cabinet aforementioned under a table in the room occupied by the post office and after that had been done the municipal mayor left with instructions to the sergeant of police to

have his policemen guard the premises. The three appellants also left after Lausa had supposedly locked the doors of the post office and of the treasurer's office,

"At about 6:30 in the morning of the following day Lausa went to the building housing the offices mentioned heretofore and told policeman Panfilo Granada, then on duty, that he wanted to enter the treasurer's office. Upon approaching the door thereof Lausa complained to said policeman that its padlock had been destroyed. Upon approaching the door of the post office he again complained to the policeman that said door could be opened by merely pushing it. When the municipal mayor came later he found that the padlock Exhibit B, supposedly used by Lausa to lock the main door of the treasurer's office, had been destroyed with the lower end of the hook showing signs of fresh breakage and also found the padlock Exhibit G, supposedly used by Lausa to lock the door of the post office, hanging on a wall. Later on the municipal treasurer, Alfonso Esparagosa, and Antonio Mordeno of the office of the provincial auditor arrived and after conducting an investigation of the case they found that Bacsarpa, Lausa and Macas were each short of P17,730.68, P193.20 and P71.06, respectively. Subsequently, however, the value of the PNB checks amounting to P10,300 and of the postal money orders amounting to P1,500 were recovered from the said institutions, while the sum of P71.06 was reimbursed by Lausa. .

"It not being denied that on July 20, 1950 the municipal treasurer of Nasipit and Antonio Mordeno of the office of the provincial auditor of Agusan actually found appellants short in their respective accounts, as stated heretofore, it is obvious that, pursuant to the provisions of the last paragraph of Article 217 of the Revised Penal Code, there is enough prima facie evidence that they had put such missing funds to their personal uses. Consequently, it was their burden to destroy the prima facie case thus made against them by sufficient evidence (U.S. vs. Aeebedo, 18 Phil., 428."

Appellant Lausa contends that he should be declared guilty of malversation only for the sum of P71.06 and punished under paragraph 1 of Article 217, it appearing that he only malversed P71.06 and not the entire amount of P17,994.94. A similar contention was raised by Macas whose collection not accounted for was only P193.20. As to the petitioner Bacsarpa, it is argued that the penalty imposed upon him should be based on the amount of P6,930.68, instead of the aggregate amount mentioned above, in view of the fact that the value of the Philippine National Bank checks in the amount of P10,300 and the Postal Money Orders in the amount of P1,500 were recovered.

It clearly appears from the decision appealed from that appellants herein were found guilty of the malversation charged against them because they failed to account for their respective collections when they were required so to do by the municipal treasurer of Nasipit and one representative of the Auditor's Office who investigated the respective accounts of the appellants.

The Court of Appeals made no finding on the conspiracy of the appellants to commit the crime at bar, if any; neither on the actual misappropriation in equal shares of the malversed amount mentioned in the information. The only evidence on record against them is the prima facie evidence arising from their failure to account for their respective collections which they allegedly put in a box in all certainty in different envelopes or containers for said collections came from different sources. Consequently, under the finding of facts by the Court of Appeals, it can hardly be held that each of the appellants has malversed the aggregate sum of P17,994.94, for each of them has the obligation to account only for his individual collections and not for the collections of the others, and therefore their respective responsibility should be narrowed to their individual collections which each of them failed to account for.

As to the contention of appellant Bacsarpa to the effect that he should be sentenced under paragraph 3 because out of the P17,730.68, the sum of P11,800 was recovered, we find it completely untenable, for the recovery of the amount malversed after the malversation was consummated does not give way to the reduction of the penalty

provided for by law for the full amount embezzled. It is undisputed that the collections—which this appellant failed to account for—amounted to P17,730.68; hence he was correctly convicted and sentenced under paragraph 4 of the aforementioned Article 217 of the Revised Penal Code.

In view of the foregoing, the decision of the Court of Appeals should be modified with regard to appellants Lausa and Macas, who are hereby sentenced to an indeterminate penalty of from four (4) months and one (1) day of arresto mayor to three (3) years, six (6) months and twenty-one (21) days of prision correccional, to pay a fine of one-half (1/2) of the amount embezzled and to indemnify the government in the amount of P71.06 and P193.20, respectively.

With regard to appellant Bacsarpa, the decision appealed from is hereby affirmed with respect to the principal penalty and modified with respect to the indemnity and fine, for this appellant should be, as he is hereby, sentenced to indemnify the government the amount of P6,930.68 and to pay a fine equivalent to one-half (1/2) of P17,730.68.

Wherefore, with the modifications above stated, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

RESOLUTION

June 22, 1956

"In case L-8147 (Alfonso Bacsarpa, et al. vs. Court of Appeals), due to an oversight, the herein appellant Venancio Lausa has been incorrectly sentenced to indemnify the government the amount of P71.06 in the decision promulgated by this Court on May 18, 1956, he having already reimbursed it. Consequently, his motion for reconsideration, dated June 6, 1956, is well taken and therefore said decision is hereby amended eliminating therefrom that portion sentencing him to pay said indemnity. With regard to appellant Alfonso Bacsarpa's petition to the effect that he should be sentenced on the basis of the unrecovered amount and not on the total amount malversed by him, the same is hereby denied, it being untenable for the reason stated in the decision sought to be reconsidered."

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