

RAMON ALBORES, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-36513. October 23, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a petition for review of the Decision of the then Court of Appeals affirming that of the former Court of First Instance of Cotabato City, convicting Ramon Albores (ACCUSED), petitioner herein, of Malversation of Public Property under Article 217 (4) of the Revised Penal Code, and sentencing him to an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prison mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as maximum; to suffer perpetual special disqualification; to pay a fine of P75,656.94; to indemnify the Rice and Corn Administration in the sum of P75,656.94; and to pay the costs.[1]

On May 25, 1966, an Information for Malversation of Public Property was filed against the ACCUSED, alleging:

"That in or about the period from March 14, 1964 to May 4, 1965, or sometime prior thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the warehouseman (bodeguero) of the Warehouse No. 8 operated in the City the Cotabato by the Rice and Corn Administration, a Philippine Government instrumentality, and as such, is responsible for all the stocks of corn, belonging to the Philippine Government, stored in the said warehouse by reason of his said position, did then and there willfully, unlawfully and feloniously, with grave abuse of confidence, misappropriate, embezzle and take a ay from the said warehouse 4,658 cavans and 38 kilos of corn valued at the sum of P75,656.94, Philippine Currency, which he appropriated and converted to his own personal use and benefit, to the damage and prejudice of the Philippine Government in the said sum of P75,656.94."[2]

Upon arraignment, the ACCUSED pleaded not guilty.[3]

The ACCUSED was employed by the Rice and Corn Administration (RCA), Northern Cotabato Branch, in 1962 as weigher-classifier. On March 1, 1963, he was appointed shipping clerk, and upon recommendation of Branch Manager Vicente Caballero, he was promoted to warehouseman effective April 1, 1964[4] , of RCA warehouse No. 8 located in Cotabato City, rented by the RCA from Lam Sam Trading.

As a warehouseman, the ACCUSED was authorized to purchase corn grain from farmers and deposit the same in the warehouse (Purchases); to receive on deposit from other RCA warehouses transfers of stock (Transfers-in); and to ship out stock in his custody upon orders of his supervisor (Transfers-out).[5] All transactions were evidenced by tally sheets and/or receipts (Exhibits "B-1" to "B-49", "C-1" to "C-50"; "D-1" to "D-50"; "E-1" to "E-50"; "F-1" to "F-6"; "G-1" to "G-50"). Assisting the ACCUSED as warehouseman were a weigher-classifier, two security guards and laborers on a piece work basis.[6]

For the months of March to August 1964, the Tally Sheets signed by the ACCUSED, or by the weigher-classifier, showed that the ACCUSED had in his custody 113, 736 cavans and 25 kilos of corn grain. Shipped out in the

months of April to November 1964 were 109,077 cavans and 43 kilos from the said stock (Exhibits "A", "A-1", "A-4" & "OO"), or, a difference of 4,658 cavans and 38 kilos. By the end of November, 1964, or a period roughly of eight (8) months, he no longer had any stock on hand.[7]

In May, 1965, an audit of the ACCUSED's transactions was made based on the records furnished by him, namely, the weigher's tally sheets, purchase invoices, trucking receipts, bills of lading and monthly stock report.[8] A liquidation report showed that the ACCUSED had incurred a shortage of 4,658 cavans and 38 kilos valued at P75,656.94 at the pre-vailing market price of P16.24 per cavan (Exhibits "MM"; "OO"). On May 31, 1965, the ACCUSED was sent a letter demanding the restitution or payment of the shortage.[9] Having failed to make good the shortage, the ACCUSED was dismissed for cause on June 8, 1965 (Exhibit "LL").

In a letter, dated August 26, 1965, addressed to the RCA Chairman-General Manager, the ACCUSED acknowledged the shortage of 4,658 cavans but requested a reliquidation, with allowances for shrinkage and predators (Exhibit "1"), which, however, RCA did not answer. Instead, the present Information was filed against him.

In convicting the ACCUSED, the Trial Court, as affirmed by the then Court of Appeals, found that "the huge shortage could not have been possibly caused by the alleged shrinkage and predators" for the reason that:

"Indeed, the claim for tolerable allowance asserted by the accused in this particular case is rather vague and speculative. The accused failed to establish in evidence the quantity and amount of losses incurred in each of the various purchases and transferring of corn grains stored in Warehouse No. 8 until they were shipped out. x x x

"x x x x Formal demand upon the accused was made to reconstitute, pay or otherwise explain the shortage in a letter dated May 27, 1965 sent by Field Auditor Jose O. Yuse to the accused to make good the demand. The failure of the accused to make good the demand created a prima facie evidence that the accused misappropriated the shortage." [10]

Article 217 of the Revised Penal Code does provide that it shall be prima facie evidence of malversation when a public officer fails to have duly forthcoming any public funds or property for which he is chargeable on demand by any duly authorized officer. That presumption of guilt is founded on human experience and is valid. However, the accused can present evidence to rebut it.[11] In the instant case, the ACCUSED has presented evidence which engenders reasonable doubt in our minds as to his culpability.

The ACCUSED was the one who requested that his accountability be liquidated because he wanted to transfer to another office.[12] Mr. Arsenio Guerra, then the RCA Agency Manager and his immediate supervisor, testified that there was no report of any anomaly having been committed by the ACCUSED.[13] The ACCUSED himself voluntarily submitted the records by which the auditors established the shortage.[14] When informed of the shortage by the auditors, the ACCUSED consulted the Branch Manager, Vicente Caballero, the Chief of the Accounting Department, and the Agency Manager, Arsenio Guerra, who informed him that he was found short because he was not given any shrinkage allowance.[15] This conduct of the ACCUSED in consulting his superiors we find consistent with good faith. Guerra's testimony on his advice to the ACCUSED follows:

"ATTY. CAMELLO:

"Q You said Ramon Albores asked you why he was found short, did you make any comment on that statement made by Ramon Albores to you expressing his surprise why he should be found short?

"A Yes, sir.

"Q What was your comment?

"A Well, I told him: You were found short in the liquidation made by the auditors because you were not given any shrinkage allowance.

"Q Why do you say that 'you were not given shrinkage allowance?' What prompted you to tell that to him?

"A Based on the liquidation report, I found it myself and I saw when he brought it. Say, for example corn weighing one hundred kilos, I know that the liquidation is also one hundred kilos. So, there was no shrinkage allowance given to you.

xxx xxx xxx

"ATTY. CAMELLO:

"Q You mentioned of a shrinkage allowance. What do you mean by shrinkage allowance?

"A Well, I mentioned about shrinkage allowance because during my experience as RCA employee since the NARIC time, and of course, being an agency in-charge, I used to make a survey of private rice mills here in the City of Cotabato and tried to ask them: 'Do you think that the corn being stored in your bodega, say, for a period of one month, two months or three months, will depreciate or will have any loss in weight?'

"Q And what was the result of that survey that you made?

"A They told me: 'Yes, of course, it will depreciate or there will be shrinkage or loss in weight after storage of one, two or three months.'[16]

Thus it was that Agency Manager Guerra advised the ACCUSED to write the Head Office in Manila to ask for a re-audit.[17] The ACCUSED did so in a letter, dated August 26, 1965, addressed to the Chairman-General Manager of RCA, wherein he requested for shrinkage allowance and allowance for pre-dators (Exhibit "1"), but the same remained unheeded.

It was because the ACCUSED was taking time asking for advice from his superiors that he did not answer the demand letter, dated May 27, 1965, from the Field Auditor, besides the fact that he was asking for copies of his reports so he could verify the alleged shortage, but these reports were no longer made available to him. It was also because of his inability to verify from his own records that the ACCUSED refused to sign the Statement of Daily Purchases of Corn Grains (Exhibit "A"), the Statement of Transfers-In from Midsayap (Exhibit "A-1"), the Statement of Transfers-Out to Cebu Branch (Exhibit "A-4") and the Summary of Accountability (Exhibit "OO") [18], as required by the examining auditors, and not out of a feeling of guilt as intimated by the prosecution.

Crucial to the determination of the culpability of the ACCUSED is the question of whether he is entitled to the allowance for "shrinkage" and "predators" that he had officially requested but was denied him.

Presented in evidence by the defense was a Memorandum to the RCA Board of Directors from Mr. Mateo B. de Dios, Assistant to the Chairman & Manager for Operations, sometime in 1966, the pertinent portions of which read:

"Records of studies of the defunct NARIC and the present management shows that, ordinarily, when corn is procured say a few days or weeks after harvest the kernels contain high moisture ranging from 20 to 30 percent. To be safe for storage, moisture content should be about 14% or slightly lower. This shows that from the time the corn is harvested to the time that the grain is safe for storage a great deal moisture is lost.

xxx xxx xxx

"A warehouseman, therefore, who purchases a cavan of corn grains with a moisture content of 15% should

receive the cereal at a buying weight of 59 kilos but should pay the purchase price only for the weight of 56 kilos. Upon liquidation of his stock the warehouseman should be made accountable only for the weight of 56 kilos per cavan and not the original buying weight of 59 kilos per cavan. In other words, his recorded receipt of 59 cavans purchased should be considered only as 56 kilos upon liquidation of this stock accountability.

"Aside from the above allowance for the loss of mois-ture content of stored cereal the defunct NARIC management has provided tolerable allowances based on intensive studies and experiment made for losses due to depredation caused by insects, rodents, birds and other pests. Such studies provides an allowance not exceeding 2% of stocks stored for one (1) year. The allowable rates are proportionately graduated according to the length of storage and quantity of stored cereal stock handled."[19]

Asked by this Court to comment on said Memorandum, the Acting Director, Grains Economics, National Grains Authority, in a communication dated July 26, 1973, stated:

"x x x x x

"Per quoted excerpts from the memorandum of Mr. Mateo B. de Dios, Assistant to the Chairman and Manager for Operations of the Rice and Corn Administration, as specified in Supreme Court Resolution dated June 4, 1973, an RCA warehouseman may accept for storage corn grains with moisture content of 15% and a weight of 59 kilos per cavan and would only be accountable for 56 kilos per cavan on liquidation. This simply indicates that RCA warehouseman are given allowances for shrinkage due to the moisture contents, stocks depredation, spillage, etc. of stocks on storage.

"Evaluation of tolerable allowances given to RCA warehouseman is based on a case to case basis and to clearly assess the tolerable allowances given to a specific warehouseman, the need for a liquidation report is imperative."[20]

Also presented in evidence by the defense was a standard form of an Agreement for Purchase and Sale of Corn between the RCA and Contractors, who are bonded warehouseman, providing for, among others:

"(e) Allowance for shrinkage, depredation and spillage of stocks while store(d) in his (their) warehouse." (Exhibit "4-A").

While the agreement is with a contractor, it serves to confirm that it is normal in the business of storage of corn to provide for allowance for shrinkage.

Additionally, the General Manager of Lam Sam Trading, Robert Lu, who had been engaged in the business of rice and corn since 1953, testified that it is customary in the business that, a loss of 2 kilos per 1 cavan if storage is 1 month, 2.5 kilos per 1 cavan if storage is 2 months, and 3 kilos per cavan if storage is 3 months, is allowable on the accumulated stock of corn grain. Following is his testimony:

"Q And in your experience as businessman in this parti-cular line of business, have you been buying corn using that accepted commercial practice?

"A Yes, sir, we do.

"Q Now, what can you say about the percentage of shrink-age of corn that you buy? How much was the percentage of shrinkage of the corn, if any, that you buy from the time you buy them up to the time you dispose of them?

"A Well, basing on my experience in the business that we have in storing corn grains inside, I would say the moisture contents of 17 percent is due to shrinkage of corn, for the period of one month the shrinkage will be more or less two kilos per cavan.

xxx xxx xxx

"Q So, based on your testimony, therefore, if a cavan of corn is 56 kilos and you store that in one month's time, it becomes 54 kilos, is that correct?

"A More or less.

"Q And if it is stored for two months?

"A It should be more than two kilos.

"Q How many kilos would be the shrinkage if the storage is for two months?

"A The very very conservative shrinkage should be more than two and a half kilos.

"Q If the corn grains is stored in the bodega for three months, how much shrinkage would a cavan of corn would have suffered?

"A The minimum shrinkage should be more than three kilos every three months.

xxx xxx xxx"[21]

Aside from shrinkage due to loss of moisture content, the evidence likewise discloses that the stock of corn under the custody of the ACCUSED was attacked by weevils sometime in August and September 1964, prompting Agency Manager Guerra, to write the Branch Manager of RCA in Cotabato City, Vicente F. Caballero, to have the warehouse chemically treated and sprayed, upon request of the ACCUSED (Exhibit "2"). This attack by weevils would account for further shrinkage.

Notwithstanding the foregoing considerations, however, the tolerable allowances given to RCA warehousemen were not accorded the ACCUSED for some unexplained reason except for the statement that such allowances are given on a "case by case basis".

The Information alleges that the ACCUSED is liable for malversation of 4,658 cavans and 38 kilos of corn, which is the deficiency between 113,736 cavans and 25 kilos of the total stocks received by ACCUSED and 109,077 cavans and 43 kilos of stocks shipped out by the ACCUSED (Exhibit "OO"). The latter figure of 109,077 cavans and 43 kilos is actually an erroneous computation, since the total grain shipped out was 6,162,113 kilos (Exhibit "A-4"). Converting this into cavans by dividing the same by 56 kilos (1 cavan is equivalent to 56 kilos) the quotient should be 110,037 cavans and 41 kilos and not 109,077 cavans and 43 kilos as it appears in Exhibit "OO". The correct deficiency would, therefore, be only 3,698 cavans and 40 kilos, the difference after deducting 110,037 cavans and 41 kilos from 113,736 cavans and 25 kilos.[22] Considering that an allowance of 2.5 kilos per cavan can be attributed to shrinkage, spillage and predators, we multiply 113,736 cavans by 2.5 kilos and the result would be 284,340 kilos. Converting 284,340 kilos into cavans by dividing it by 56 kilos, the quotient would be 5,077 cavans - representing the tolerable allowance for shrinkage, spillage and predators. The deficiency of 3,698 cavans and 40 kilos or even if we consider the computation of the RCA auditors of 4,658 cavans and 38 kilos, would be well within the allowable shortage.

The prosecution did not present evidence contrary to the defense of the ACCUSED. It promised to present as rebuttal witness, the Chief of Warehousing and Billing Department of the RCA to testify on shrinkage, but it closed its evidence without said testimony.[23]

The prosecution submits that the shortage is too great to be attributable to shrinkage. Even if so, that consideration is neither sufficient to convict. The evidence on record fails to convince us that the shortage herein was due to misappropriation or embezzlement or conversion by the ACCUSED, an inexperienced warehouseman, of the corn stock in his custody for his own personal use.

WHEREFORE, upon reasonable doubt, the accused Ramon Albores is hereby acquitted of the crime of Malversation of Public Property. Costs de officio.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, and De la Fuente, JJ., concur.

Gutierrez, Jr., J., no part.

[1] Original Record, pp. 645 & 646.

[2] Ibid., p. 1.

[3] Ibid., p. 35.

[4] T.s.n., December 17, 1968, pp. 4 & 5; t.s.n., October 8, 1969, pp. 46-48.

[5] T.s.n., September 23, 1968, pp. 38 & 39; t.s.n., October 8, 1969, p. 50.

[6] T.s.n., September 23, 1968, pp. 41 & 42; t.s.n., October 8, 1969, p. 54.

[7] T.s.n., October 9, 1969, 91.

[8] T.s.n., December 17, 1968, pp. 37 & 38; t.s.n., December 18, 1968, pp. 63-65.

[9] Exhibit "NN"; t.s.n., October 8, 1969, p. 84.

[10] Original Record, pp. 639 & 645.

[11] People vs. Mingao, 92 Phil. 856 (1953); People vs. Livara, 94 Phil. 771 (1954).

[12] T.s.n., December 18, 1968, p. 65; t.s.n., October 8, 1969, p. 62.

[13] T.s.n., December 18, 1968, p.63; t.s.n., October 9, 1969, p.18.

[14] T.s.n., December 18, 1968, pp. 53 & 54; 64-66.

[15] T.s.n., October 9 & 10, 1969, pp. 19; 92.

[16] Ibid., pp. 19-21.

[17] Ibid., p. 22.

[18] T.s.n., October 8, 1969, p. 56.

[19] Pp. 1-2, Exhibit "6".

[20] Rollo, p. 58.

[21] T.s.n., October 8, 1969, pp. 6 & 8.

[22] Rollo, p. 3.

[23] T.s.n., October 10, 1969, p. 113; t.s.n., March 18, 1970, p. 19.

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