

JUSTO M. ONGKIKO, PETITIONER, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-48777. September 24, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner Justo Ongkiko was charged with the crime of malversation of public funds or property in an Information filed with the Court of Instance of Manila. The Information reads as follows:

"That in or about and during the period comprised between May 29, 1967 to June 13, 1967, inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud the Government of the Republic of the Philippines in the following manner, to wit: the said accused being then a public officer by virtue of his appointment as Sales Supervisor of the Philippine Charity Sweepstakes Office and duly qualified as such and by reason of the duties of his office is accountable for public funds or property, and as such received from the Philippine Charity Sweepstakes Office the following sweepstakes tickets: 410 booklets for May 29, 1967 draw, 187 booklets for June 4, 1967 draw, and 186 booklets for June 13, 1967 draw or in the aggregate amount of P30,537.99, belonging to the government of the Republic of the Philippines, on consignment and to be sold on cash basis, under the express obligation on the part of the said accused to account for and turn over the proceeds of the sale thereof, if sold, or to return the said tickets if not sold to the Philippine Charity Sweepstakes Office not later than five days before each draw, but said accused, far from complying with the aforesaid obligation, despite repeated demands made upon him to do so, accounted for the sum of P4,163.26 only, and with intend to defraud, did then and there wilfully, unlawfully and feloniously misapply, misappropriate, and convert the balance of the said tickets or the value thereof in the sum of P26,374.73 to his own personal use and benefit, to the damage and prejudice of the government of the Republic of the Philippines in the aforesaid sum of P26,374.73, Philippine Currency." (p. 1, Original Records)

Upon arraignment the accused pleaded "Not Guilty." Trial on the merits followed.

The factual findings of the trial court are not disputed. They are:

"On May 22, 1961, accused Justo Ongkiko was initially appointed as 'Sweepstakes Salesman' (Also known as 'Sweepstakes Sales Supervisor I' and classified as a Fieldman) of complainant Philippine Charity Sweepstakes (Exhibits A and D), and took his oath of office as such on May 25, 1961 (Exhibit C). Later, on November 21, 1965, he was extended a promotional appointment to the position of 'Sales Supervisor 8' (exhibit B). In his capacities aforesaid, upon proper application, he was duly bonded in accordance with the provisions of the Administrative Code to insure his fidelity in the discharge of his duties (Exhibits F, G, H, I and J).

"As sales supervisor aforesaid, accused Ongkiko was entitled to obtain sweepstakes tickets from complainant on consignment basis to be disposed to authorized sellers within his assigned territory and accounted for in accordance with duly promulgated Rules and Regulations of complainant governing its Field Force (Exhibit T), amongst the pertinent provisions of which are the following:

"Sec. 4. Sales of Tickets. - Tickets shall be sold on cash, except in cases where surety bonds duly approved by

Central Office are offered as security for credit purchases. Under no circumstance shall a credit arrangement be made between fieldmen and authorized sellers. Booklets of tickets shall be sold at the Official price of P31.20 per booklet.' (Exhibit T-1).

X X X X X X X X

""Sec. 15. Accounting of Proceeds of Sales of Tickets. - Fieldmen shall turn over the proceeds of their sale of tickets to the Treasurer or Cashier and render an accounting thereof not later than five (5) days after the corresponding draw. If they fail to do so they shall not be issued tickets anymore regardless of whether they have credit margins or not, unless they pay their unliquidated accounts.

""Should a fieldman be unable to pay his defaulted accounts for two consecutive draws he shall nevertheless be entitled to salary, per diems and transportation expenses for a period of one month counted from the day after the 5-day deadline for the second draw.' (Exhibit T-2 or 13-A).

Later, Section 15 above-quoted was amended per Resolution No. 485 of complainant's Board of Directors, passed on October 7, 1963, to read as follows:

""Sec. 15. Payment of Ticket Accounts. - Fieldmen shall settle their ticket accounts in full five (5) days after the corresponding draw or prior thereto and upon failure to do so shall not be issued tickets anymore regardless of whether they have a credit margin or not, unless they pay the said defaulted account. For tickets not duly accounted for within the said period of five (5) days fieldmen concerned shall be considered in default and shall be dealt with in accordance with these rules.' (Exhibit 1).

The 5-day period above-referred to was, thereafter, also admittedly extended to 10 days.

"During his incumbency, accused Ongkiko had been the recipient of periodic memoranda detailing his sales performance during each period and constantly urging him to intensify his campaign efforts to improve his sales and to expand his sales outlets thru the recruitment of more agents (Exhibits 2, 2-A to 2-F, 3, 3-A to 3-K, 4, 4-A to 4-O, 6, 9, 9-A to 9-C). Said accused admits that, by way of improving his sales performance, he resorted to the practice of turning over tickets to authorized agents in his sales force on consignment or credit - instead of for cash as required by the Rules and Regulations above-referred to.

"Admittedly, accused Ongkiko received from complainant on consignment in his capacity as Sales Supervisor the following tickets, to wit: 410 booklets for the May 29, 1967 draw (Exhibits L, L-1 to L-3, M, M-1 to M-3, N, N-1 to N-3); 187 booklets for the June 4, 1967 draw (Exhibits O, O-1 to O-3, P, P-1 to P-3, Q, Q-1 to Q-3); and 106 booklets for the June 13, 1967 draw (Exhibits R, R-1 to R-3, S, S-1 to S-3), with an aggregate value of P36,537.99. All these were duly reported by accused Ongkiko as sold for cash, as evidenced by the corresponding cash sales invoices issued by him therefor (Exhibits X, X-1 to X-9, Y, Y-1 to Y-16, Z, Z-1 to Z-II), as well as by the Abstracts of Collections and Cash Sales he submitted thereon (Exhibits X-10, X-10-A, X-10-B, Y-17, Y-17-A, Y-17-B, Z-12, Z-12-A and Z-12-B). This and the lapse of the deadline period for accounting and remittance of the proceeds of said sales, notwithstanding, accused Ongkiko was able to remit only the amount of P4,163.26 thereon, thereby leaving a balance of P26,374.73 outstanding and unpaid (Exhibits U and W). Cash-examined by Delfin Silangerus, Senior Auditing Examiner of the General Auditing Office detailed with complainant, on October 4, 1967, accused Ongkiko's above-stated accountability was duly confirmed and, upon demand for the production of all cash, money and paid vouchers and examination of his safe vault and other cash receptacles, was found to be short in the amount of P26,374.73 - a fact which said accused duly certified to be in accord with his records and documents (Exhibits V, V-1 to V-3). Inasmuch as the amount aforesaid was not forthcoming upon the demand aforesaid, nor was the same duly liquidated thereafter, the corresponding administrative charge was lodged against accused Ongkiko and, in due course, per Resolution No. 673 of complainant's Board of Directors, dated November 27, 1968, he was ordered separated from the service for cause effective as of July 1, 1967, without prejudice to whatever action

complainant would take for the recovery of the amount involved (Exhibit K)." (Rollo, pp. 66-70)

The accused was found guilty as charged. The dispositive portion of the trial court's decision reads as follows:

"WHEREFORE, judgment is hereby rendered finding accused Justo Ongkiko guilty beyond reasonable doubt of malversation, as defined and penalized in Article 217, paragraph 4, Revised Penal Code, and, in default of any modifying circumstance in attendance, sentencing him to an indeterminate penalty ranging from Twelve (12) Years, Five (5) Months and Eleven (11) Days, as minimum, to Eighteen (18) Years, Eight (8) Months and One (1) day, as maximum, both of reclusion temporal, and to suffer perpetual special disqualification, with the accessories provided by law; to pay a fine of Twenty Six Thousand Three Hundred Seventy Four and 73/100 Pesos (P26,374.73), without subsidiary imprisonment in case of insolvency in view of the nature of the principal penalty imposed; to indemnify the offended party, Philippine Charity Sweepstakes, in the same amount of Twenty Six Thousand Three Hundred Seventy Four and 73/100 Pesos (P26,374.73); and to pay the costs." (Rollo, pp. 88-89)

The decision was affirmed by the Court of Appeals. Hence, this petition.

The petitioner assigns the following errors allegedly committed by the appellate court.

"FIRST ASSIGNED ERROR

"THE COURT OF APPEALS ERRED IN HOLDING THAT APPELLANT WAS CRIMINALLY LIABLE FOR THE VALUE OF THE SWEEPSTAKES TICKETS WHICH HE RECEIVES AS FIELD SUPERVISOR IN CASE OF FAILURE TO ACCOUNT FOR THE VALUE THEREOF.

"SECOND ASSIGNED ERROR

"ASSUMING ARGUENDO THAT FAILURE TO ACCOUNT FOR THE SWEEPSTAKES TICKETS RESULTS IN A CRIMINAL LIABILITY, THE COURT OF APPEALS ERRED IN FINDING THE APPELLANT GUILTY OF MALVERSATION OF PUBLIC FUNDS EVEN FOR THE VALUE OF THE SWEEPSTAKES TICKETS WHICH APPELLANT ADMITTEDLY DELIVERED ON CONSIGNMENT TO HIS OWN AGENTS IN ACCORDANCE WITH PRACTICE, AND FOR THE VALUE OF THE SWEEPSTAKES TICKETS WHICH WERE LOST IN A VEHICULAR ACCIDENT." (Appellant's Brief, pp. 1-2)

Article 217 of the Revised Penal Code provides that "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 funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property" is guilty of malversation of public funds or property.

The petitioner admits that he is a public officer. Nevertheless, he denies that by reason of his public office he is accountable for sweepstakes funds. He states that, if at all, his liability is only civil in nature.

The petitioner argues that as regards the sweepstakes funds, his relationship with the Philippine Charity Sweepstakes Office (PCSO) is one of a debtor with a creditor. He cites the provision of his consignment invoices that: "he is held liable if any of the above booklets are lost under any circumstances". (Exhibits O, P, Q, R, S) in relation to Section 15 of the Rules and Regulations Governing the Field Force (PCSO) as amended which states that:

"Sec. 15. Accounting of Proceeds of Sales of Tickets: -

"Fieldmen shall turn over the proceeds of their sale of tickets to the Treasurer or Cashier and render an

accounting thereof not later than five (5) days after the corresponding draw. If they fail to do so they shall not be issued tickets anymore regardless of whether they have credit margins or not, unless they pay their unliquidated accounts.

"Should a fieldman be unable to pay his defaulted accounts for two executive draws he shall nevertheless be entitled to salary, per diems and transportation expenses for a period of one month from the day after the 5-day deadline for the second draw." (Original Exhibits - Documentary Exhibits, p. 45)

The petitioner capitalizes on the use of the word liable instead of accountable in the invoices and the term turn over under the above rule to prove his point that he is only civilly liable for his shortages in the proceeds of the sweepstakes tickets received from the PCSO.

The name and contents of the consignment invoices by which the petitioner received the tickets from the PCSO show that he received said tickets on a consignment basis. Consignment in its common meaning is an arrangement whereby the goods are sent by one to another to be sold and disposed by the latter for and on account of the former. (Bouvier's Law Dictionary, 3rd Ed., Vol. 1). The petitioner does not buy tickets for his own account. As consignee, he merely acts as an agent who has an obligation to remit the proceeds of the sales or return anything left unsold. (Webster's Third New International Dictionary of the English Language, Unabridged).

Under Section 15 of the Rules and Regulations of the PCSO, the petition is obligated to turn over the proceeds of his sale of tickets to the PCSO and render an accounting not later than five (5) days (later amended to ten (10) days) after the corresponding draw. This requirement proves that the petitioner is a consignee of the sweepstakes funds and, therefore, an accountable officer. He turns in his collections and renders an accounting.

The PCSO rules and regulations must be related to the consignment invoices issued to the petitioner because the consignment invoices by which the petitioner received the tickets from the PCSO state that he received the tickets under the following terms: "It is understood that I shall be held liable if any of the above booklets are lost under any circumstances. I likewise bind myself to comply strictly with existing rules and regulations and turn over to the PHILIPPINE CHARITY SWEEPSTAKES OFFICE, the proceeds of the sale of these tickets."

Moreover, Section 5 of the rules and regulations of the PCSO states:

"Sec. 5. Fidelity & Surety Bonds. - All accountable officials and employees shall be bonded in accordance with the provision of Section 314 of the Revised Administrative Code. The amount of the bonds shall be determined and fixed by the Management in accordance with the accountability of the officials and employees concerned.

"All bonds (Fidelity & Surety) shall be processed, approved, and kept by the Central Office, the Branch Office to be duly advised thereof and the date of their expiration. Bonds used in the Central Office can not be used in the Branch Office and vice-versa.

"The Cashier shall not issue tickets in excess of the bond or credit margin (as defined in Section 12) of each fieldman or authorized seller as certified by the bookkeeper otherwise, he shall be held liable for any consequence arising therefrom."

The petitioner admits that he was bonded. The bond and what it stands for are additional proof that Lim is an accountable officer of the PCSO.

As for the term "turn over", the petitioner states that this signifies he was only civilly liable for the value of the sweepstakes tickets.

This argument is not in the least bit convincing. Section 15 of the Rules and Regulations must be read in the context of the consignment invoice. The fact that under this regulation, as amended, the petitioner has to settle his

ticket "account in full" shows that he is obligated to turn over whatever amounts he realizes from the sale of the said tickets. Sweepstakes funds are considered public funds within the purview of Article 217 of the Revised Penal Code. (See *People v. Angco*, 103 Phil. 33) His failure to turn over the proceeds of the sale of tickets makes him criminally liable and not civilly liable as he suggests.

The petitioner's contention that he was extended a running account so that all his transactions constitute a series of continuing entries which must be closed as a condition precedent to establish any criminal liability deserves scant consideration. We agree with the lower court's findings, adopted by the appellate court, that:

"Neither is it correct to say that accused Ongkiko's account was running or open in such a way that no liability is due from him except that which would appear after the account or the dealings between the parties are closed. All reasonable intendments deducible from the nature of accused Ongkiko's position as sales supervisor, from the provisions of the Rules and Regulations governing complainant's Field Force, from the documents covering said accused's ticket transactions with complainant, and from the manner in which the accounts of said accused are kept, tend to the unavoidable conclusion that the accounts were strictly on a draw-by-draw basis. And, the mere fact that instances there may have been when remittances were applied partly to one draw and partly to another, or that payments have at times been receipted for as 'For account only' or that the accused may have time and again been allowed to apply to his account his per diems or traveling allowance or even his agent's share in prizes won, does not detract from the firm fact that his liability for account and remittance of proceeds of the sales of tickets accrues for each individual draw. In other words, same such practices may have been asserted to, if at all, merely for accounting convenience and expediency but do not in any way change the nature of the accused's accountability for each and every draw separately." (pp. 43-44, Rollo).

With regard to the petitioner's argument that his liability has not been determined due to the fact that the action for accounting which he filed in another court is still pending, suffice it to say that the petitioner has not given substantial reasons why we should disturb the findings of the lower courts attesting to his shortage in the amount of P26,374.73. The record shows that the discrepancies alleged by the petitioner have been satisfactorily explained by Rosario R. Yniguez, the Chief of the Credit Accounts Division both in her affidavit (Exhibit B) and in her testimony. She brought to the court the original subsidiary ledger covering the petitioner's accounts (Exhibits CC, CC-1, to CC-130).

Another argument posed by the petitioner is the alleged lack of evidence to show that he misappropriated the sweepstakes tickets, or applied the proceeds thereof to his personal benefit and gain. According to him, he simply had uncollected amounts due from his agents.

This is far from what appears in the records.

The petitioner unconditionally reported the sales of tickets as made on a cash basis. Thus, he specifically issued corresponding "Cash Sales Invoices", copies of which were submitted to the PCSO (Exhibits X, X-1 to X-9, Y, Y-1 to Y-16, Z, Z-1 to Z-11) and for the amounts representing their value, he submitted to the Office "Abstract of Collections and Cash Sales" (Exhibits X-10, Y-17 and Z-12). Later, his account was examined by the auditor and he was found to be short in the amount of P26,374.13. A demand was then made for him to produce this amount but he failed to do so. Consequently, under Art. 217 of the Revised Penal Code, he is deemed to have misappropriated the proceeds from the sales of the tickets. And since the petitioner represented to the PCSO that he sold the tickets in cash, he is now estopped to claim that his sales were merely on credit or consignment basis.

The petitioner's claim that the sale of tickets on credit or on consignment basis is not prohibited by the rules and regulations of the PCSO is belied by the very rule he cites. Section 4 of the Rules specifically provides that "x x x Under no circumstances shall a credit arrangement be made between fieldmen and authorized sellers.

(Underscoring supplied).

The fact that it is a common practice of the field supervisors to deliver their tickets to their agents on consignment basis is no justification. We agree with the following findings of the lower court, to wit:

x x x x x x x x

"x x x The mere fact that other sales supervisors may have indeed resorted to the practice cannot legalize the same and neither can accused Ongkiko invoke said unauthorized practice to ward off liability for his clear violation of his own trust and express undertaking. True, the constant urgings of complainants administrators for the sales supervisors to exert more effort in their sales campaigns and to expand as such as possible their respective sales forces came thick and fast throughout accused Ongkiko's incumbency as sales supervisor Yet, nowhere in any of the memoranda dispatched for this purpose was it as much as intimated that the administration sanctioned the sale of tickets to authorized sellers on credit. On the contrary, every now and then, reminders like the following -

"In passing, however, we wish to remind you to follow, always and strictly, office rules and regulations particularly punctual settlement of ticket accounts, prompt submission of sales reports, confinement of sales to agents within our assigned territory (Exhibit 3-I).'

are given (See also: Exhibit 4C, 4-O). So much so that, if to boost his own sales output and thus maintain a good standing in complainant's supervisory sales force, accused Ongkiko resorted to the practice of disposing tickets on credit or consignment basis, that was his own look-out and he cannot now use his own violation of the Rules and Regulations to shield himself from liability if, as it turned out, the practice backfired on him." (pp. 84-85, Rollo)

As regards the petitioner's alleged loss of tickets due to a vehicular accident, we quote with approval the trial court's findings that:

x x x x x x x x

"Neither is the alleged loss consequent to the accident he figured in of any exonerative effect. For, not only is accused Ongkiko expressly liable for loss 'under any circumstances' but also, such loss, although supposedly reported to the Police (Exhibits 14 and 14-A), was never seasonably brought to the attention of complainant and much less did said accused ever attempt to ask for relief from responsibility therefor. His move at this time to invoke this in further abatement of his liability is apparently only an eleventh-hour afterthought. (pp. 85-86, Rollo)

In the light of the evidence against the petitioner, we see no reversible error in the conclusions of the two courts below that the petitioner is guilty of the crime of malversation. All the elements of the said crime: 1) that the offender is a public officer; 2) that he has custody or control of funds or property by reason of the duties of his office; 3) that those funds or property are public funds or property for which he is accountable; and 4) that he misappropriated, took or consented or through abandonment or negligence, permitted another to take them (See Reyes, The Revised Penal Code, Book II, 1981 Rev. Ed., p. 391 and Padilla, Criminal Law, Vol II, 10th Ed., p. 538) are present.

WHEREFORE, the instant petition is hereby DISMISSED. The questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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