

EMILIA M. MENESES, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 100625. May 20, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse and set aside the decision of the Sandiganbayan (Second Division) in Criminal Case No. 14254, finding petitioner guilty of Malversation of Public Funds.

We deny the petition.

I

The Amended Information filed against petitioner reads as follows:

"That during the period from May to June, 1988 in Legaspi City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, having (sic) duly appointed and qualified as Cashier of the Treasurer's Office of the Province of Albay and as such is accountable and responsible for public funds entrusted to her by reason of her position, with grave abuse of confidence and taking advantage of her position as such, did then and there willfully and unlawfully misappropriate, embezzle and take away from said public funds the total amount of TWO MILLION FIVE HUNDRED TWO THOUSAND ONE PESO and THIRTY THREE CENTAVOS (P2,502,001.33), Philippine Currency, which she misappropriated and converted to her personal use, to the damage and prejudice of the government in the aforesated amount" (Rollo, p. 25).

Upon arraignment, petitioner entered a plea of not guilty.

On June 17, 1991, the Sandiganbayan rendered decision, finding petitioner guilty of the offense charged. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered finding accused Emilia Meneses y Molod GUILTY beyond reasonable doubt as principal in the offense of Malversation of Public Funds, as defined and penalized under Article 217, paragraph 4, of the Revised Penal Code and favorably appreciating the mitigating circumstance of voluntary surrender, without any aggravating circumstance in offset and after applying the Indeterminate Sentence Law, she is hereby sentenced to suffer the indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor as the minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF reclusion temporal as the maximum; to further suffer perpetual special disqualification, to pay a fine of P2,502,001.33 equal to the amount malversed; to indemnify the Government of the Republic of the Philippines in the amount of P2,442,809.33 representing the amount malversed and unrestituted and to pay the costs of this action" (Rollo, pp. 47-48).

Hence this petition.

II

Petitioner does not dispute, as a matter of fact, she adopted, (Rollo, p. 95) the findings of facts of the Sandiganbayan, which are reproduced as follows:

"There being no dispute as to the accused's public position, said fact having been established by her appointment as Cashier VI of the Provincial Treasurer's Office of Albay, then all that remain (sic) to be resolved is whether the shortage of P2,502,001.33 in her accountabilities found after the audit examination conducted by State Auditor Ernesto Ala had been duly proven by the prosecution's evidence and, contrariwise, whether the accused's explanation thereon is satisfactory enough to absolve her from any criminal liability therefor.

From the prosecution's evidence, the Court finds the following facts to have been clearly and indubitably established:

1. Under Office Orders dated June 7, 1988 and August 5, 1988, issued by Provincial Auditor Virgilio T. Verdadero, an audit team, composed of Auditor Ernesto Ala, Norman Devora, Alex Amoranto and Adenda Buan, was directed to conduct the audit examination of the cash and accounts of the accused.
2. Audit examination revealed that, as of June 22, 1988, the accused had a shortage of P2,517,250.60, as determined from her cash book. However, said shortage was increased by P5,411.33 which was found to be due to a double entry of disbursement (Voucher NM. 211-8805-190), dated May 31, 1988, hence, total shortage reached P2,522,661.93.
3. During the audit examination, no cash and valid cash items were produced by the accused to effect the shortage found in her accountabilities.
4. On June 28, 1988, Auditor Ala sent a letter of demand to the accused, which the latter received on July 4, 1988, per certification of Asst. Provincial Treasurer Astrid G. Natividad.
5. In her reply, dated October 14, 1988, accused made the following explanation:

'This refers to your letter of June 28, 1988 as reiterated by the Officer-in-Charge, Provincial Treasurer's Office, in his letter of September 27, 1988.

The amount demanded consists of various chits of several employees of the province. However, the process of recovering from them the amount involve needs patience, time, humanitarian consideration. I have approached each of them and they were willing to pay their accounts in installments and by doing so, I was not able to submit my explanation as required due to the time consumed. As a matter of fact, the amount of P12,860.00 was remitted this month and it is hoped we will be able to recuperate (sic) a substantial amount in the days ahead. This will show our sincere intention and desire to settle the account. It is hoped we will be given time and a responsive chord of consideration and understanding in your heart to help and save us from this predicament.

It is also informed that undersigned has no intention to refuse and disobey reasonable office regulations. It is only by force of circumstances that she could not comply with them immediately.'

6. On November 28, 1988, the audit team submitted their Memorandum to the COA Regional Director, containing a narration of the steps taken in the course of their audit examination and the results thereof, with the recommendation to institute criminal and administrative charges against the accused for failure to account for the shortage of P2,502,006.33.
7. Pursuant to said recommendations, the corresponding complaint for Malversation of Public Funds was filed by Provincial Auditor Verdadero with the Tanodbayan on January 26, 1989, supported by the Joint Affidavit of Auditors Ala, Devora, Amoranto and Buan, with annexes.

8. On separate occasions, commencing from June 6, 1988 up to November 28, 1988, the accused made partial restitutions amounting to P20,660.60" (Rollo, pp. 38-41).

Petitioners defense, relying on *Quizo v. Sandiganbayan*, 149 SCRA 108 (1987) is that she had not benefitted a single centavo from the missing funds; rather, said funds were disbursed as cash advances to her co-employees in good faith and in continuance of a practice tolerated in her office.

Petitioner's theory need not detain us. The practice of disbursing public funds, under the "vale" system as a defense in malversation cases, was advanced, briefed and argued in *Cabello v. Sandiganbayan*, 197 SCRA 94 (1971), and found not meritorious.

In *Cabello*, we held that the giving of "vales" by public officers out of their accountable funds is prohibited by P.D. No 1145, otherwise known as the Government Auditing Code of the Philippines and Memorandum Circular No. 570, dated June 24, 1968 of the General Auditing Office.

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 public funds or property, wholly or partially, shall be guilty of the misappropriation or malversation of such funds or property (Underlining supplied).

Section 105 of the Government Auditing Code of the Philippines provides:

"(1) Every officer accountable for government property shall be liable for its money value in cases of improper or unauthorized use or misappropriation thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property whether or not it be at the time in his actual custody.

(2) Such Officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use or application thereof and for all losses attributable to negligence in the keeping of the funds" (Underlining supplied).

The grant of loans through the "vale" system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by the law. To tolerate a such practice is to give a license to every disbursing officer to conduct a lending operation with the use of public funds.

There is no law or regulation allowing accountable officers to extend loans to anyone against "vales" or chits given in exchange by the borrowers. On the other hand, the General Auditing Office (now the Commission on Audit) time and again, through repeated office memoranda and rulings had warned against the acceptance of "vales" or chits by any disbursing officer because such transactions are really forms of loans (Memorandum Circular No. 570, June 24, 1968, General Auditing Office).

To put an end to the unauthorized practice of the "vale" system, the General Auditing Office laid down the following rules for the observance of all concerned:

"1. A vale, IOU, chit or other form of promissory note, is not acceptable credit to the cash account of any accountable officer, and is at once excluded during the cash examination from among the cash items.

2. The yellow reimbursement receipt properly used only as receipt or proof of petty expenses in the field, should not be used to replace the general voucher for drawing amounts which need the approval of several officials before payment, and require adequate description of the goods or services being paid for.

3. Cash advance asked by any auditing personnel requires the prior approval of the Auditor General, Deputy

Auditor General, or the proper department manager" (Memorandum Circular No. 570, June 24, 1968; General Auditing Officer).

Assuming that we accept petitioner's claim of good faith in giving loans to her co-employees, the amount of said loans totalled only P1,099,073.34 by her own admission and this amount already included the loans allegedly covered by "vales" or chits that had been lost during the flood brought about by the typhoon that visited Legaspi City. Petitioner claims that she was able to trace the loans and the amounts given as advances by referring to her notebook with her handwritten entries (Exhs. "4" to "4-K"; Rollo, pp. 15-16). According to the audit report of petitioner's cash accountability, the cash shortage as of June 22, 1988 totalled P2,522,661.93, consisting of the General Fund, Infrastructure Fund, Special Education Fund and Trust Fund (Exh. "C").

So even if petitioner would be credited with the amount of P1,099,073.34 disbursed in exchange of the "vales," she still has to account for the amount of P1,423,588.59.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur.
Narvasa, C.J. and Cruz, J., on leave.

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