

CALINICO B. ILOGON, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 102356. February 09, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for review on certiorari of the Decision[*] of the Sandiganbayan in Criminal Case No. 9776 entitled “People of the Philippines vs. Calinico B. Ilogon”, dated May 14, 1991 finding petitioner guilty of the crime of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code and sentencing him to the indeterminate penalty of from ten (10) years of prision mayor, as minimum, to fourteen (14) years of reclusion temporal, as maximum, with the accessory penalties of the law; to suffer the penalty of perpetual special disqualification; and to pay a fine in the sum of P118,003.10, an amount equal to the amount malversed, with costs.

Petitioner Calinico B. Ilogon was the acting Postmaster of the Bureau of Posts in Cagayan de Oro City from July, 1978 to January, 1986. He likewise performed the task of accepting payments, making collections and effecting disbursement as there was no cashier employed during the period of his incumbency. He was adept at this work because, before his designation as Acting Postmaster he was, as a matter of fact, a duly-appointed cashier.

On September 19, 1983, Commission on Audit Auditors Robin S. Aban and Alfonso A. Gala conducted an examination of the cash and accounts of petitioner covering the period from September 8, 1983 to September 13, 1988. The examination showed that the petitioner incurred a shortage in his accounts amounting to P118,871.29 itemized in the following manner:

Accountability:

Balance shown by your cash
book on September 12, 1983
certified correct by you
and verified by us P 171,999.42

Credits to Accountability:

Deduct:
Cash, checks and treasury
warrants P 40,116.13
cash items
allowed 13,012.00 P 53,128.13

Shortage P 118,871.29[1]

The amount of shortage was later reduced to P118,003.10. This shortage represents the following:

1. Vales ----- P 8,846.00

2. Cash shortage (paid vouchers)
already reimbursed and/or paid
and received by you ----- P 48,028.58

3. Cash items disallowed
(paid vouchers) already
reimbursed and/or paid
and received by individual
creditors ----- P 5,787.97

4. Cash items disallowed
(paid vouchers) amount
disallowed by the
Regional Office ----- P 31,036.85

5. Cash items disallowed
(paid vouchers) amount
still payable non-budgetary
expenses as certified by
the accountant ----- P 19,555.84

6. Actual shortage ----- P 4,747.86

P 118,003.10[2]

On November 27, 1984, petitioner was charged with the crime of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code in an Information[3] which reads as follows:

"That on or about September 13, 1983 or prior and subsequent thereto, in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Tribunal, the said accused, a public officer, being the Acting Postmaster of the Bureau of Posts of the said City, and as such accountable for the public funds collected and received by reason of his position, did then and there, wilfully, unlawfully and feloniously, and with grave abuse of confidence misappropriate, misapply and embezzle for his own personal use and benefit from the said funds, the total sum of ONE HUNDRED EIGHTEEN THOUSAND AND THREE PESOS AND TEN CENTAVOS (P118,003.10) Philippine Currency, to the damage and prejudice of the government.

CONTRARY TO LAW."

Before the Sandiganbayan, herein petitioner put up the following defense:

"1. In respect to the shortage of P8,846.00, Item 1 in the auditor's letter of demand, the amount represents vales (cash advances) granted to postal employees of Cagayan de Oro City in payment of salaries or wages which the accused paid out to them, even before the period for which they were supposed to be paid. He received reimbursement checks on the 20th or 25th of September, 1983 in payment thereof, but he remitted these payments to the Land Bank of the Philippines only on October 17, 1983, per Official Receipt Number 312164.
x x x

2. As regards that category of shortage amounting to P48,028.58, the accused claims that this amount represents the aggregate of the cash advances to salaries of the Regional Director, Postal Inspectors, and postal employees of Davao, Iloilo and other places who were assigned in Cagayan de Oro City. The accused did not have these amounts on hand when his cash and account were audited on September 13, 1983, because the reimbursements for the said cash advances were not yet in his possession. If they were, the amounts given were less than the amounts stated in the voucher, consisting, therefore, of partial liquidations. In case of a partial

liquidation, he would simply annotate the partial payment in the voucher. He would not enter partial payments in the cash book.

3. Respecting that category of shortage amounting to P5,787.97, the accused explained that this shortage constituted cash advances to postal employees. While reimbursement checks had already been paid to the employees involved by the Regional Office of the Bureau of Posts, these employees had negotiated or encashed their reimbursement checks without turning over the proceeds thereof to the accused Acting Postmaster.

The accused claims that the shortage had later been paid through a remittance he made in the sum of P20,438.60, Exhibit "14", and in the amount of P65,000.00, Exhibit "10". x x x

x x x x x x x x

Finally, as regards the cash shortage of P4,747.86, the accused admitted the fact that he did not actually have this amount of cash when, during the audit, he was told to present all his cash on hand. It is his claim that all the while, this amount had in fact been in the possession of his teller. While he forgot to tell the auditors that the cash was actually with the teller, he remitted this amount to the Land Bank on September 19, 1983, as evidenced by Official Receipt No. 31176, Exhibit "11".[4]

After trial, the respondent Sandiganbayan found petitioner guilty beyond reasonable doubt of the crime charged. Hence, this appeal.

Petitioner would try to evade the application of Article 217 of the Revised Penal Code by arguing that he never misappropriated the amount of P118,003.10 for his own personal use as the bulk of it was given as cash advances to his co-employees. He pleads:

"x x the act of petitioner in giving out vales and/or cash advances should not be condemned or be considered as a criminal act but should instead be lauded not only because the same was done purely for humanitarian reasons and that is to alleviate the plight of his co-employees during those hard times when the salaries of lowly government employees were very much below the ordinary level of subsistence and his desire to see to it that the public interest will not be jeopardized, x x x, but also because this has been the undisturbed practice in their office since time immemorial, even before the accused's incumbency x x x."[5]

Petitioner's argument fails to persuade Us.

In the crime of malversation, all that is necessary for conviction is proof that the accountable officer had received public funds and that he did not have them in his possession when demand therefor was made. There is even no need of direct evidence of personal misappropriation as long as there is a shortage in his account and petitioner cannot satisfactorily explain the same.[6]

In this case, petitioner was the official custodian of the missing funds. He himself admitted the shortage of P118,003.10 in his cash and accounts as Acting Postmaster but could not give a satisfactory explanation for the same. He would invoke what he calls "humanitarian reasons" as the justification for the said shortage. But, like the accused in *Cabello v. Sandiganbayan*,^[7] petitioner herein knows that his granting of "chits" and "vales" which constituted the bulk of the shortage was a violation of the postal rules and regulations. Such practice, it was held in *Cabello*, is also prohibited by Memorandum Circular No. 570, dated June 29, 1968, of the General Auditing Office. This Court went further to state that "giving "vales" is proscribed under Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, specifically Section 69 thereof, which provides that postmasters are only allowed to use their collections to pay money orders, telegraphic transfers and withdrawals from the proper depository bank whenever their cash advances for the purpose are exhausted".^[8]

The fact that petitioner did not personally use the missing funds is not a valid defense and will not exculpate him from his criminal liability. And as aptly found by respondent Sandiganbayan, "the fact that (the) immediate superiors of the accused (petitioner herein) have acquiesced to the practice of giving out cash advances for convenience did not legalize the disbursements".

The fact also that petitioner fully settled the amount of P118,003.10 later is of no moment. The return of funds malversed is not a defense. It is neither an exempting circumstance nor a ground for extinguishing the accused's criminal liability. At best, it is a mitigating circumstance.[9]

In the light of the above finding and under the plain language of the applicable laws, We hold that the evidence was sufficient to sustain the verdict finding the petitioner guilty of the crime charged. The judgment of the Sandiganbayan is hereby AFFIRMED and the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Melo, JJ., concur.

Gutierrez, Jr., J., on leave.

Quiason, J., no part.

[*] Penned by Regina Hermosisima, Jr., Associate Justice; concurred in by Francis E. Garchitorena, Presiding Justice, and Augusto M. Amores, Associate Justice.

[1] Rollo, p. 27.

[2] Rollo, p. 28.

[3] Rollo, p. 20.

[4] Rollo, pp. 55-58.

[5] Rollo, p. 11.

[6] Oscar Valle y Carreon vs. Sandiganbayan and the People of the Philippines, G.R. No. 97651, October 13, 1992, citing Estepa vs. Sandiganbayan, 182 SCRA 269 (1990).

[7] 197 SCRA 94 (1991).

[8] Ibid., p. 101.

[9] Cimafranca, Jr. vs. Sandiganbayan, 194 SCRA 107 (1991).

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