

MAXIMO FELICILDA, PETITIONER, VS. HON. NATHANAEL M. GROSPE, ROMEO M. ESCAREAL, JOSE S. BALAJADIA, IN THEIR CAPA-CITY AS ASSOCIATE JUSTICES PRESIDING THE SECOND DIVISION OF THE S...

G.R. No. 102494. July 03, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review on certiorari of the decision dated October 11, 1991 of the Sandiganbayan in Criminal Case No. 15232 entitled, "People of the Philippines vs. Maximo Felicilda," convicting the petitioner of the crime of having malversed or embezzled public property, consisting of the service firearms issued to him as a member of the Integrated National Police of the Municipality of Tomas Oppus, province of Southern Leyte, namely:

"one (1) .38 cal.

revolver Squire

Bingham with Serial

No. 954741 with

49 rounds of

ammunitions - P2,000 more

or less (1984)

purchase value

"one (1) M16 Arma?

lite Rifle with

Serial No. 114431

with 140 rounds of

ammunitions - P3,000 more

or less (1984)

purchase value

Total P5,000 more

or less"

(p. 3, Rollo)

After trial, judgment was promulgated on November 8, 1991 by the Sandiganbayan, the dispositive portion which reads:

"WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the offense of malversation of public property as charged herein, and crediting him with the mitigating circumstance of restitution, and after applying the provisions of the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWO (2) YEARS and SIX (6) MONTHS of prision correccional, as minimum, to SIX (6) YEARS and one (1) DAY of prision mayor, as maximum, to pay a fine of P5,000.00 equal to the total value of the property malversed although restituted, and to suffer the penalty of perpetual special disqualification.

"Costs against the accused." (p. 26, Rollo.)

The antecedent facts are summarized in the Solicitor General's comments on the petition, as follows:

"2. On April 5, 1988, Capt. Tomas E. Tijano, Commanding Officer of the 353rd PC Company, made a surprise inspection in the Police Station of Tomas Oppus including a 'showdown' inspection of all firearms issued. Petitioner, who reported for work that morning, failed to show up during the inspection. He disappeared from the station and failed to report back for work for the next succeeding days.

"3. Capt. Tijano and P/Sgt. Jose V. Autido, Station Commander, went to petitioner's house right after the inspection to verify the whereabouts of the firearms issued to petitioner. Petitioner's wife informed them that petitioner reported for work that morning.

"4. An investigation was immediately conducted. In a report dated April 27, 1988, Sgt. Autida recommended that petitioner be dismissed from the service for unjustified absence without leave (AWOL) and for taking with him the firearms and ammunitions issued to him.

"5. On September 24, 1990, more than two (2) years after he disappeared, petitioner surrendered to the police station the Armalite rifle (M16) and revolver Caliber .38 which had been issued to him.

"6. In the meantime, Criminal Case No. 15232 for Malversation of Government Property was filed against petitioner before the Sandiganbayan. On November 16, 1990, petitioner was arraigned wherein he entered a plea of 'not guilty.'

"7. During the trial, petitioner put up the defense that the firearms were stolen from him and he recovered them only on September 21, 1990 under the following circumstances: he first noticed that his firearms were missing on February 26, 1988 and he suspected that they were stolen by his friend, Ramon Gonzales, because the latter had been visiting him at his house and he immediately looked for Gonzales but because he could not find him, he did not appear during the inspection on April 5, 1988, and that, it was only on September 19, 1990 that he received information about the firearms when Anabel Capote, common-law wife of Gonzales, came to their house in Looc, Tomas Oppus and informed him that his firearms were with Gonzales at their house in Liloan, Southern Leyte and the following day he recovered the firearms and surrendered the same at the police station on September 24, 1990.

"8. On November 8, 1991 the Sandiganbayan, Second Division promulgated its Decision convicting petitioner of the crime charged." (pp. 43-44, Rollo.)

The main thrust of appellant's petition for review is his contention that the Sandiganbayan erred in finding him guilty of conversion of the Armalite rifle and .38 caliber revolver, with their respective accessories and ammunition, despite: (1) the joint certification of prosecution witnesses, Pfc. Henry G. Novan and P/Sgt. Jose B. Autido, that he "has no money and Property Accountability in this Station" (Exh. 3); (2) the certification of prosecution witness P/Sgt. Autida that the "issued firearms of ex-patrolman Maximo Felicilda had not been used

in committing crime" (Exh. 5); (3) absence of prosecution evidence that he ever attempted to dispose of the said firearms; and (4) the certification of P/Sgt. Autida that he (Ex-Patrolman Maximo Felicilda) "personally turned over his issued firearms Armalite Rifle (MI6) with Serial No. 114431, make colt and Revolver Caliber .38 with Serial No. 954741, Squire Bingham." (p. 11, Rollo.)

The principal issue in this case is whether the petitioner was properly convicted of malversation of public property.

The elements of malversation under Art. 217 of the Revised Penal Code are as follows:

1. That the offender be a public officer;
2. That he had the custody or control of funds or property by reason of the duties of his office;
3. That those funds or property were public funds or property for which he was accountable; and
4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Petitioner argued that he is not liable for malversation as the armalite rifle and revolver were not appropriated by him for his own use and that his delay in accounting for the armalite rifle and revolver did not constitute conversion of the same.

The petition is devoid of merit.

To establish the elements of malversation and justify conviction, the prosecution has only to prove that the accused received public funds or property; and that he could not account for them, did not have them in his possession, and could not give a reasonable excuse for the disappearance of the same. (*De Guzman vs. People*, 119 SCRA 337.) In the present case, when the petitioner deliberately absented himself from the surprise inspection and "showdown" of firearms, and went AWOL for two (2) years without surrendering his firearms or explaining his failure to produce them, he became liable for malversation.

His allegation that the firearms were stolen from him was evidently rejected by the Sandiganbayan as unworthy of belief in view of his failure to report to his superiors the alleged theft upon its alleged occurrence on February 26, 1988, nor even during the "showdown inspection" on April 5, 1988. That omission and his subsequent disappearance lead to no other conclusion than that he appropriated the firearms for his own benefit and advantage, or allowed another or others to use or misappropriate them. Malversation consists not only in misappropriating or converting public funds or property to one's personal use but also in knowingly allowing another or others to make use of or misappropriate the funds or property (*Labatagos vs. Sandiganbayan*, 183 SCRA 415).

Petitioner's assertion that his delay in accounting for the firearms did not amount to malversation, is without merit.

"In malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability." (*People vs. Miranda*, 2 SCRA 262.)

WHEREFORE, the petition is DISMISSED and the appealed decision of the Sandiganbayan is AFFIRMED with costs against the petitioner.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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