

MAYOR SUBO TANGGOTE, PETITIONER, VS. HONORABLE SANDIGANBAYAN, SECOND DIVISION, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 103584. September 02, 1994

Ponente: VITUG, J.

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VITUG, J.:

The instant petition for review on certiorari seeks the reversal of the Sandiganbayan's decision of 27 November 1991, in Criminal Case No. 14976, convicting petitioner Subo Tanggote of the crime of malversation of public funds, defined in Article 217(4) of the Revised Penal Code, as well as its resolution, dated 22 January 1992, denying petitioner's motion for reconsideration.

On 23 and 28 February 1982, petitioner, then Municipal Mayor of Poonapiagapo, Lanao del Norte, received from Hadji Abad Sangbaan, the Municipal Treasurer, cash advances in the amounts of P17,424.00 and P15,000.00, respectively, for the repair of the town's municipal building and public market and the construction of a municipal stage. Petitioner was accused of having later misappropriated the sum. Specifically, the information filed with respondent court, which charged petitioner with Malversation of Public Funds under paragraph 4, Article 217, of the Revised Penal Code, read:

"That on or about the period from February 23 to 28, 1982, or for sometime immediately prior and subsequent thereto in Poonapiagapo, Province of Lanao del Norte, and within the jurisdiction of this Honorable Court, said accused, a public officer, being the Mayor of the said municipality, and as such accountable for the public funds collected and received by him, with grave abuse of confidence, did then and there wilfully, and unlawfully misapply and embezzle for his own personal use and benefit from said funds the sum of THIRTY TWO THOUSAND FOUR HUNDRED TWENTY FOUR PESOS (P32,424.00) to the damage and prejudice of the government in the aforementioned amount." [1]

When arraigned, on 07 August 1990, the accused pleaded not guilty to the charge. After trial, the Sandiganbayan rendered its judgment, promulgated on 27 November 1991, convicting the accused, thusly:

"WHEREFORE, the Court finds the accused Datu Subo Tanggote y Polange guilty beyond reasonable doubt as principal of the crime of malversation of public funds defined in Article 217(4), Revised Penal Code, and there being no modifying circumstances, imposes upon him the indeterminate sentence ranging from TWELVE (12) YEARS, FIVE (5) MONTHS, and ELEVEN (11) DAYS reclusion temporal as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS, and ONE (1) DAY also of reclusion temporal as maximum, the penalty of perpetual special disqualification, and a fine of THIRTY-TWO THOUSAND FOUR HUNDRED TWENTY-FOUR PESOS (P32,424.00).

"He is further ordered to indemnify the government in the same amount of P32,424.00.

"Let copy of this Decision be furnished the Department of Local Government for whatever action it may take on the alleged abandonment of the Municipal Building of Poonapiagapo, Lanao del Norte and the holding of

offices by the municipal officials in Iligan City.

"SO ORDERED.[2]

The Sandiganbayan, in its resolution of 22 January 1992, denied petitioner's motion for reconsideration.

In this petition, the judgment of conviction is assailed allegedly for being contrary to the evidence adduced by the parties and for being based on mere inferences and speculations.

The petition cannot be granted.

The crime of malversation of public funds, defined under the Revised Penal Code, is committed by "(a)ny 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, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, x x x." The failure of the public officer to have duly forthcoming such public funds or property, upon demand by a duly authorized officer, "shall be prima facie evidence that he has put such missing funds or property to personal use." [3]

The fact of receipt by petitioner from the municipal treasurer of the amounts of P17,242.00 and P15,000.00, or a total of P32,243.00, for the repair of the town's municipal building and public market, as well as the construction of a municipal stage, is not disputed. The only real and remaining issue before us, which itself is basically factual in nature, relates to how the money has been spent.

At the trial, contradictory testimonies were given. Prosecution witnesses testified that there were neither repairs nor constructions undertaken; the defense witnesses, upon the other hand, simply made the opposite assertion. Petitioner himself decried the charge against him as having been politically or improperly motivated as could be attested, he said, by the delay in the filing of the complaint. The Sandiganbayan, evaluating the conflicting evidence, both testimonial and documentary, reached these findings:

"To answer the issues entails an examination and appreciation of the evidence, testimonial and documentary. Ultimately, therefore, these questions boil down to one of credibility.

"Three witnesses for the prosecution, including Sangba-an, testified that Tanggote never had the municipal building and public market of Poonapiagapo repaired nor the municipal stage constructed. On the other hand, three witnesses for the defense, among whom was Tanggote, declared under oath the exact opposite. After an analysis of the evidence, the Court is inclined to give credence to the prosecution evidence.

"(a) As depicted in the pictures, the municipal building of Poonapiagapo constructed in 1981 is semi-concrete; the first or ground floor is cemented; the second floor, wooden; the roof is of G.I. Sheets. The wall of the public market also built in 1981 is made of wood.

"According to three defense witnesses, the double wallings, ceiling, and floor of the municipal building were repaired, and while two of them testified that the repair of public market consisted of cementing its floor, Tanggote added that the walls and posts of the market were likewise repaired. If these were so, plywood, lumber and/or nails were used in the repair of the municipal building and public market. But significantly, none of these materials was specified in the voucher, Exhibit A, to be purchased nor allegedly purchased as listed in the cash invoice or receipt, Exhibit E-5. Per those voucher and cash invoice or receipt, only the following were to be purchased and allegedly purchased:

"186 Bags Cement ----- P 6,510.00

12 CU.M. Sand ----- 660.00

24 CU.M. Gravel ----- 440.00
135 Pcs. Iron Bar 3/8 x 20 ----- 2,438.00
152 Pcs. “ “ 6/8 x 20 ----- 6,384.00
P17,424.00’

"These supposed purchases exhausted the total amount appropriated for the repair of the municipal building and public market.

"(b) Defense witnesses also swore that the municipal stage built by Tanggote was adjoining the municipal building and is now depicted in the picture marked Exhibit D-1 or 5.

"That picture, however, shows a veranda or balcony rather than a stage. The structure projects from the outer wall of the municipal building (background in the picture) and opposite that wall is a balustrade (foreground). The roof of the structure is the eaves of the roof of the building. Since the structure is on the same level as the second floor of the municipal building, it is too high for a stage, and people sitting on chairs in the structure will be partly hidden from people on the ground and in front of the structure by the balustrade. Of course, the structure can be used as an improvised stage, but it actually is not intended as a stage.

"The veranda or balcony appears to be entirely made of concrete. But one of the receipts or cash invoices listing the materials allegedly bought by Tanggote for the construction of the municipal stage included '50 pcs. plywood' and '10 kls. G.I. nails.'

"(c) Tanggote has two different versions as to how the cash invoices or receipts, Exhibits E-1 to E-8, purportedly issued in February 1982, came into existence. In his counter-affidavit, Exhibit E, executed on December 13, 1988, he swore that immediately after he had purchased the materials to be used in the projects, he turned over the original cash invoices or receipts to Sangba-an for the latter to liquidate the cash advances totalling P32,424.00 and that he secured 'xerox copies of the duplicate copies of all the receipts covering all the purchased materials' which he submitted to the investigating officer as annexes to his counter-affidavit.

"The Investigating Officer, however, found that those cash invoices or receipts were printed in 1983 but antedated 1982, a finding based on the words 'Printed by BONAFIDE Prtg. Press, Iligan city, BIR AP No. 78-165986-83' appearing at the bottom of the invoices or receipts. This prompted Tanggote to revise his story.

"Thus, he testified in court that the originals of the cash invoices or receipts which he gave to Sangba-an in 1982 were lost. So in 1983, he asked the seller to give him copies of the documents. But since the duplicates could not be located, the seller issued another set of cash invoices or receipts printed in 1983 but antedated to 1982. These second set or original receipts or cash invoices were again misplaced. So in 1988 Tanggote again got xerox copies of the duplicates of the second set of receipts or cash invoices, which are now Exhibits E-1 to E-8.

"No one corroborated Tanggote, not even a witness from Maria Cristina Enterprises, the alleged seller."[4]

More than once, this Court has ruled that passing upon the credibility of witnesses is a matter that primarily should be addressed by the trial court. In the recent case of *People vs. Miranda*, G.R. No. 92369, 10 August 1994, we have said:

"x x x (T)he issue on credibility of witnesses is almost invariably within the exclusive province of a trial court to determine. It is before that court that testimonies are first hand given, received, assessed and evaluated. The well established rule is that an appellate tribunal must defer, and accord the highest degree of respect, to the findings of a trial court. Repeatedly said is that a trial court, which itself hears the witnesses and observes their deportment and manner of testifying, would be in the best position to weigh conflicting testimonies presented to it."

We see no reason to depart from the rule, particularly, such as in this case at bench, where the records cannot be said to be bereft of substantial evidence to support the trial court's conclusions.

Petitioner argues that since the municipal treasurer did not incur any shortage of funds, the latter having been able to fully liquidate the amount of P32,424.00 (representing petitioner's cash advances), petitioner must then be deemed have likewise accounted in full that same amount. Obviously, it does not necessarily follow. The municipal treasurer liquidated his withdrawals totaling P32,424.00, by merely reflecting, such as could be expected, his proper disbursements to the petitioner (Municipal Vouchers [Exhibits A and B]), which the latter has duly receipted for. It has thus behooved petitioner, in turn, to liquidate his own cash advances and to prove his lawful usage thereof.

Neither is there merit in petitioner's assertion that he is not an accountable public officer. An accountable officer under Art. 217 of the Revised Penal Code is a public officer who, in the discharge of his office, receives money or property of the government which he is bound to later account for. It is the nature of the duties of, not the nomenclature used for, or the relative significance of the title to, the position which controls in that determination (see *U.S. vs. Velasquez*, 32 Phil. 157).

In the crime of malversation, all that is essential for conviction is proof that the accountable officer has received public funds but that, when demand therefor is made, he is unable to satisfactorily account for the same (*Valle vs. Sandiganbayan*, 214 SCRA 532; *Felicilda vs. Grospe*, 211 SCRA 285; *Sambrano vs. Sandiganbayan*, 208 SCRA 44).

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

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.

Cruz and Bidin, JJ., on leave.

[1] Rollo, p. 27.

[2] Rollo, pp. 50-51.

[3] Art. 217, Revised Penal Code.

[4] Rollo, pp. 41-45.

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