

FELICIANO V. AGBANLOG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.

G.R. No. 105907. May 24, 1993

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 and Section 7 of P.D. No. 1606 as amended, of the decision of the Sandiganbayan (First Division) promulgated on June 23, 1992, which found petitioner guilty beyond reasonable doubt of Malversation of Public Funds, penalized under paragraph 4, Article 217, of the Revised Penal Code, and sentencing him to suffer, in the absence of mitigating and aggravating circumstances "the indeterminate penalty of, from ELEVEN (11) years and one (1) DAY of Prision Mayor, as minimum to SIXTEEN (16) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of Reclusion Temporal, as maximum, with the accessory penalties of the law; to pay a fine in the amount of P21,940.70; to suffer the penalty of perpetual special disqualification and to pay the costs."

The Sandiganbayan made the following findings of facts:

"Feliciano Agbanlog y Vinluan was the Officer-in-Charge of the Office of the Municipal Treasurer of Aglipay, Quirino, for the period: March 24, 1986 to May 31, 1986. When audited by COA Auditing Examiner Marcelina P. Reyes, of the Provincial Auditor's Office of Cobarroguis, Quirino, on August 4, 1986 for the aforesaid period of his incumbency as Acting Municipal Treasurer, Feliciano Agbanlog was found short in his cash and accounts in the sum of P21,940.70.

The shortage was broken down in the following manner:

a. Disallowed cash item of Mr. Feliciano V. Agbanlog

May 31, 1986 worded as cash advance to defray

various expenses which was not approved by the Municipal Mayor ... P12,504.49

b. Disallowed Voucher No. 101-86-04-71 dated April 18, 1986

due to under delivery of printed forms 2,900.00

c. Disallowed Voucher No. 101-86-05-144 dated

May 31, 1986 due to under delivery of printed forms 3,260.00

d. Unaccounted collection 3,276.21

Total P21,940.70

A written demand to explain the shortage and to pay the amount thereof was neither answered nor acted upon by the said accountable officer. Consequently, a Report was made by Examining Auditors Marcelina P. Reyes, Asuncion G. Tamondong and Margarita B. Eugenio to the Provincial Auditor of Quirino, manifesting their

findings and recommending the institution of administrative and/or criminal charges against Acting Municipal Treasurer Feliciano Agbanlog.

At the outset, the Auditors found the accused Agbanlog short in the amount of P32,950.34, broken down in this manner:

Accountability:

Balance shown by your cash book on May 31, 1986

certified correct by you and verified by us. P85,186.40

Credits to Accountability:

Cash and valid cash items produced

by you and counted by us. 52,236.06

Shortage P32,950.34

Upon the finding that P11,009.64 of this amount was chargeable to the account of former Municipal Treasurer Carlos Pastor, predecessor of Municipal Treasurer Ruperto Pallaya, the said amount of P11,009.64 was deducted from the accountability of Feliciano Agbanlog. The Acting Municipal Treasurer was nevertheless made accountable for the shortage of P21,940.70, the amount for which he is now charged.

As regards the disbursement voucher billed as a cash advance for various expenses in the amount of P12,504.49, Exhibit "E", this voucher was disallowed by the auditors because there was no appropriation for this disbursement. It is indicated in the voucher that the giving out of this money was in the nature of a cash advance. The purpose for which the cash advance was given out was, however, not clearly indicated. The particulars of payment merely states "to cash advance to defray various expenditures". Only the signature of the accused Feliciano Agbanlog may be found in the voucher. This indicates that the amount of P12,504.49 was given out to and received by the accused, Feliciano V. Agbanlog, from Roberto B. Pallaya. Vouchers of this nature, in order to be valid, must bear the signature of the incumbent Municipal Mayor of Aglipay, Quirino. The signature of the then Mayor, the Hon. Deogracias L. Prego, Sr., does not appear in the voucher. No invoice or receipt was presented to support the disbursement.

Thus, considering the fact that the accused, Feliciano V. Agbanlog received the proceeds of the voucher, this disbursement has, indeed, become the accountability of the accused, whose duty it was to liquidate the same. The accused did not so liquidate. Accused's allegation that the amount of money involved was given by him to the Municipal Mayor has not been backed up by sufficient evidence. If this amount of money were for the Mayor's account, the Mayor should have been made to sign the voucher, or else, there should have been accomplished some sort of document evidencing payment to the Mayor.

Disbursement Voucher No. 101-8604-71, dated April 18, 1986, Exhibit "F", in the amount of P3,500.00, was partially disallowed because printed forms for which the voucher was made out were not actually delivered but yet paid for. The accused was able to present proof of delivery only of accounting forms valued at P600.00. Consequently, the accused was credited with the amount of P600.00. The remaining balance of P2,900.00 was nevertheless disallowed.

Disbursement Voucher No. 101-8605-144, dated May 31, 1986, Exhibit "G" in the amount of P4,110.00 was likewise partially disallowed. The accused was able to show proof of a legitimate disbursement in the amount of P850.00. Consequently, the accused was credited with this amount and only the sum of P3,260.00 was disallowed.

As regards the shortage in the amount of P3,276.21, representing the accused unaccounted collections, per

Collectors' Daily Statement of Collections for the period: April to May, 1986, Exhibits "H" to "M", We find evidence showing that this amount, while turned over to the accused Feliciano Agbanlog in his capacity as Acting Municipal Treasurer by Collectors Jane G. Domingo, Marilyn Villarta, Danilo de Guzman, Guadalupe M. Quimpayag and Rolando Domingo, has not been accounted for, the accused claiming that cash collections of the aforesaid collectors were never remitted to him. There is ample proof, therefore, of the fact that the accused received these cash collections. His signatures on various documents, Exhibits "H" to "M", "H-1", "I-1", "J-1", "K-1", "L-1" and "M-1", virtually indicate that the accused had actually received the amounts indicated in these exhibits. We cannot believe that the accused would sign these documents if he did not receive the amounts of money corresponding thereto. The accused's allegation, made as an afterthought, that the collectors who were supposed to turnover their collections to him did not actually turnover their collections cannot be believed. The contention that the collectors had instead made out vales or cash advances covering the amount of their collections, is not supported by proof. The vale slips or cash advance papers allegedly given to the accused in lieu of cash could not be produced by the accused. The accused was supposed to return these vale slips to the collectors only after they made good the borrowed amount. This lapse in evidence does not speak well of the defense herein put up by the accused. (Rollo, pp. 30-34)

Petitioner admits the shortage of the accountable funds charged by the prosecution but claims that the prosecution failed to show that the shortage accrued during his short stint as acting treasurer. According to him, the audit of his funds should have been made immediately upon his assumption as Officer-in-charge of the Office of the Treasurer in the last week of March, 1986, instead of in August, 1986. He further claims that while there was a turn-over of the funds on June 2, 1986 when Municipal Treasurer Ruperto Pallaya reported back for work, there was no turn-over of the funds when he temporarily took charge of the Office of the Treasurer. (Rollo, pp. 5-6)

Re: Shortage of P12,504.49

Petitioner admits that he was the one who prepared the voucher, (Exh. "E"), and who received the amount of P12,504.49 mentioned therein. He does not deny the authenticity of his signatures appearing thereon. No other person, other than petitioner, was involved in the preparation of the said voucher and the receipt of the amount of P12,504.49. He only claims that the money was given to the Municipal Mayor, who allegedly refused to sign the voucher.

Petitioner, having worked as a bookkeeper in the Treasurer's Office of Cobarroguis, Quirino, since 1979 and as Assistant Municipal Treasurer since 1982, should know that vouchers must be signed by the claimants. If he acknowledged receipt of the money knowing that the claimant was the Municipal Mayor, he became a party to the fraud and assumed responsibility for the consequences of his acts. The defense did not call the Municipal Mayor to testify that he was the real claimant and that he received the money from the petitioner.

Re: Shortage of P2,900.00

Petitioner admits that he was the one who prepared the voucher dated April 18, 1986 for the payment of various forms in the amount of P3,500.00 (Exh. "F"). He was the one who acknowledged receipt of the supplies mentioned in the voucher and who received the amount of P3,500.00 in payment thereof. He even certified to the necessity and legality of the expense.

When audited, petitioner was able to show the delivery of forms valued at only P600.00. The burden was on petitioner to explain satisfactorily the discrepancy between the voucher and the receipt of the delivery.

Re: Shortage of P3,260.00

Out of the amount of P4,100.00 disbursed under the voucher marked as Exhibit "G", petitioner admits having been able to support payment of only P850.00; hence the amount of P3,260.00 was disallowed.

Re: Shortage of P3,276.21

As to the shortage in the amount of P3,276.21 representing the unaccounted collections of petitioner for the month of April and May 1986, petitioner claims that the said amount was never turned over to him. If this were true, he should not have signed the documents marked Exhibits "H" to "M", "A-1", "Y-7", "5-1", "K-1", "L-1" and "M-1", all acknowledging receipt of the cash collections of the various collectors.

In all the foregoing cases of shortages, petitioner admits having prepared and collected the amounts stated in the vouchers (Exhs. "E", "F", "G") and having signed the collectors' daily statements of collection, which evidence his receipt of the amounts stated therein (Exhs. "H" to "M"). With such admissions, how can petitioner now attribute the shortage of his accountable funds to his predecessor?

It is also difficult to comprehend how an earlier audit of petitioner's accountability or an audit made upon assumption of office of the Municipal Treasurer could possibly explain the shortages unearthed by the government auditor and assist him in his defense.

The elements of malversation of public funds or property punishable under Article 217 of the Revised Penal Code are:

- a) That the offender be a public officer;
- b) That he had the custody or control of funds or property by reason of the duties of his office;
- c) That those funds or property were public funds or property for which he was accountable;
- d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence permitted another person to take them. (II Reyes, The Revised Penal Code, p. 391 [1981 ed.])

The prosecution has established (a) that appellant received in his possession public funds; (b) that he could not account for them and did not have them in his possession when audited; and (c) that he could not give a satisfactory explanation or reasonable excuse for the disappearance of said funds. (Cabello v. Sandiganbayan, 197 SCRA 94 [1991]) The prosecution is not required to present direct evidence of the misappropriation, which may be impossible to do. (Villanueva v. Sandiganbayan, 200 SCRA 722 [1991])

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, is a prima facie evidence that he has put such funds or property to personal use. (Art. 217, last paragraph, Revised Penal Code as amended by R.A. 1060)

Petitioner questions as oppressive and unconstitutional the penalty imposed on him - that of eleven years and one day of prision mayor, as minimum, to sixteen years, five months and eleven days of reclusion temporal, as maximum.

He argues that considering the value of the peso in 1932 when the Revised Penal Code was enacted and the value of the peso today, the penalty for malversation of P21,000.00 should only be an imprisonment of one or two years. (Rollo, pp. 10-11)

Assuming arguendo that inflation has in effect made more severe the penalty for malversing P21,000.00, the remedy cannot come from this Court but from Congress. The Court can intervene and strike down a penalty as cruel, degrading or inhuman only when it has become so flagrantly oppressive and so wholly disproportionate to the nature of the offense as to shock the moral senses. (People v. Dionisio, 22 SCRA 1299 [1968]; People v. Estoista, 93 Phil. 647 [1953]; U.S. v. Borromeo, 23 Phil. 279 [1912]) Considering that malversation of public funds by a public officer is a betrayal of the public trust, We are not prepared to say that the penalty imposed on

petitioner is so disproportionate to the crime committed as to shock the moral sense.

WHEREFORE, the petition for review is DISMISSED and the decision appealed from is AFFIRMED in toto, with costs against petitioner.

SO ORDERED.

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

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