

FELIX NIZURTADO, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 107838. December 07, 1994

Ponente: VITUG, J.

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VITUG, J.:

An information, accusing Felix Nizurtado of having committed the complex crime of malversation of public funds through falsification of public document, reads:

"That on or about August 25, 1983, and for sometime prior or subsequent thereto, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, a public officer, being then the Barangay Captain of Panghulo, Malabon, Metro Manila, did then and there, wilfully, unlawfully and feloniously falsify and attest Resolution No. 17 Series of 1983 by making it appear that on August 25, 1983 the Barangay council of Panghulo met and identified T-shirt manufacturing as its livelihood project, when in truth and in fact, as the accused fully well knew, no such meeting was held, where T-shirt manufacturing was identified and approved by the Barangay Council as its livelihood project, and thereafter, accused submitted the falsified resolution to the MHS-MMC-KKK Secretariat which endorsed the same to the Land Bank of the Philippines, which on the basis of said endorsement and the falsified resolution, encashed LBP check No. 184792 in the amount of TEN THOUSAND PESOS (P10,000.00), which check was earlier received by him as Barangay Captain of Panghulo in trust for the Barangay for its livelihood project and for which fund accused became accountable, and upon receipt thereof herein accused, with deliberate intent and grave abuse of confidence did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the amount of TEN THOUSAND PESOS (P10,000.00) out of the funds for which he was accountable, to the damage and prejudice of the government in the said amount.

"CONTRARY TO LAW."[1]

When arraigned by the Sandiganbayan, Nizurtado pleaded "not guilty" to the charge. During the pre-trial, held on 17 July 1989, the prosecution and the defense stipulated thusly:

"1. That sometime in 1983 and 1984, accused Felix Nizurtado was the Barangay Captain of Barangay Panghulo of Malabon, Metro Manila and discharged his functions as such;

"2. That sometime in 1983, the Ministry of Human Settlements, the Metro Manila Commission and Kilusang Kabuhayan at Kaunlaran (KKK) undertook a Livelihood Program for Barangays in Metro Manila consisting of loans in the amount of P10,000.00 per barangay.

"3. That as Barangay Captain of Barangay Panghulo, accused received a check in the amount of P10,000.00 for said barangay's livelihood program;

"4. That the check, to be encashed, had to be supported by a project proposal to be approved by the KKK;

"5. That the accused encashed the check received by him in the amount of P10,000.00 with the Land Bank of the Philippines; and

"6. That the accused distributed the amount of P10,000.00 in the form of loans of P1,000.00 each to members of the barangay council."[2]

After evaluating the evidence adduced, the Sandiganbayan came out with its factual findings and conclusions, hereunder detailed:

"It appears from the evidence, testimonial and documentary, as well as from the stipulations of the parties that accused Felix V. Nizurtado was the Barangay Captain of Barangay Panghulo, Malabon, Metro Manila from 1983 to 1988.

"In April or May 1983, Nizurtado and Manuel P. Romero, Barangay Treasurer of Panghulo, attended a seminar at the University of Life, Pasig, Metro Manila. The seminar was about the Barangay Livelihood Program of the Ministry of Human Settlements (MHS), the Metro Manila Commission (MMC), and the Kilusang Kabuhayan at Kaunlaran (KKK). Under the program, the barangays in Metro Manila could avail of loans of P10,000.00 per barangay to finance viable livelihood projects which the Barangay Councils would identify from the modules developed by the KKK Secretariat or which, in the absence of such modules, the Councils would choose subject to the evaluation/validation of the Secretariat.

"After the seminar, Nizurtado received a check for P10,000.00 intended for Barangay Panghulo and issued in his name. The check, however, could be encashed only upon submission to the Secretariat of a resolution approved by the Barangay Council identifying the livelihood project in which the loan would be invested. He entrusted the check to Romero for safekeeping.

"In one of its regular sessions, which was on the second Saturday of each month, the Barangay Council of Panghulo discussed the project in which to invest the P10,000.00. Among the proposals was that of Romero that a barangay service center be established. But the meeting ended without the Councilmen agreeing on any livelihood project.

"A few days after the meeting, Nizurtado got back the check from Romero, saying that he would return it because, as admitted by Nizurtado during the trial, the Councilmen could not agree on any livelihood project. Nizurtado signed a receipt dated August 4, 1983, for the check 'to be returned to the Metro Manila Commission.'

"After a few more days, Nizurtado asked Romero to sign an unaccomplished resolution in mimeograph form. All the blank spaces in the form were unfilled-up, except those at the bottom which were intended for the names of the Barangay Councilmen, Secretary, and Captain, which were already filled-up and signed by Councilmen Marcelo Sandel, Jose Bautista, Alfredo Aguilar, Alfredo Dalmacio, F. A. Manalang (the alleged Barangay Secretary), and Nizurtado. In asking Romero to sign, Nizurtado said that the MMC was hurrying up the matter and that the livelihood project to be stated in the resolution was that proposed by Romero -- barangay service center. Trusting Nizurtado, Romero affixed his signature above his typewritten name. When he did so, the blank resolution did not yet bear the signatures of Councilmen Santos Gomez and Ceferino Roldan.

"The blank resolution having already been signed by Romero, Nizurtado asked him to talk with Gomez and secure the latter's signature. Romero obliged and upon his pleading that his proposed barangay service center would be the one written in the blank resolution, Gomez signed. But before he returned the resolution, he had it machine copied. The machine copy is now marked Exhibit J.

"Unknown to Romero and Gomez, the blank but signed resolution was later on accomplished by writing in the blank space below the paragraph reading:

"WHEREAS, the Barangay Council now in this session had already identified one livelihood project with the following title and description:

"the following:

"Title : T-shirt Manufacturing

"Description : Manufacture of round neck T-shirts of various sizes and colors.

"The other blank spaces in the resolution were also filled-up. Thus 'Panghulo,' 'Brgy. Hall,' and 'August 25, 1983' were typewritten in the spaces for the name of the Barangay, the place where and the date when the council meeting took place, respectively. In the blank spaces for the names of the members of the Council who attended the meeting were typewritten the names of

"Felix Nizurtado

Barangay Captain

"Marcelo Sandel

Barangay Councilman

"Alfredo Aguilar

Barangay Councilman

"Santos Gomez

Barangay Councilman

"Jose Bautista

Barangay Councilman

"Alfredo Dalmacio

Barangay Councilman

"Ceferino Roldan

Barangay Councilman

"The word 'none' was inserted in the space intended for the names of the Councilmen who did not attend. The resolution was given the number '17' series of '1983.' Finally, the last line before the names and signatures of the Councilmen was completed by typewriting the date so that it now reads:

"UNANIMOUSLY APPROVED this 25th day of August, 1983.

"The resolution as fully accomplished is now marked Exhibit D.

"Other supporting documents for the encashment of the check of P10,000.00 were also prepared, signed, and filed by Nizurtado. They were: Project Identification (Exhibit B), Project Application in which the borrower was stated to be Samahang Kabuhayan ng Panghulo (Exhibit C and C-1), Project Location Map (Exhibit E), and Promissory Note (Exhibit F).

"The application for loan having been approved, the Promissory Note (Exhibit F) was re-dated from August to October 18, 1983, placed in the name of the Samahang Kabuhayan ng Panghulo represented by Nizurtado, and made payable in two equal yearly amortizations of P5,000.00 each from its date. The purpose of the loan was stated to be T-Shirt Manufacturing of round neck shirts of various sizes and colors.

"Nizurtado encashed the check on the same day, October 18, 1983, and re-lent the cash proceeds to himself,

Sandel, Aguilar, Bautista, Dalmacio, and Roldan at P1,000.00, and to Manalang and Oro Soledad, Barangay Court Secretary and Barangay Secretary, respectively, at P500.00 each.

"On April 25, 1984, Nizurtado who was then on leave wrote Sandel, then acting Barangay Captain, informing him that per record, he, Romero, and Gomez had not made any remittance for the account of their P1,000.00 loans from the barangay livelihood fund of P10,000.00 and advising him to collect, through the Secretary or Treasurer.

"Since Romero and Gomez had not borrowed any amount from the said fund, they told Sandel to ask Nizurtado if he had any proof their alleged loans. So Sandel wrote Nizurtado on May 2, 1984, but the latter did not answer.

"This attempt to collect from Romero and Gomez prompted them to make inquiries. They learned that the check for P10,000.00 was indeed encashed by Nizurtado and that the blank resolution which they had signed was filled-up to make it appear that in a Council meeting where all councilmen were present on August 25, 1983, T-shirt manufacturing was adopted as the livelihood project of Panghulo. But no such meeting occurred on that day or on any other day. Neither was Nizurtado authorized by the Council to submit T-shirt Manufacturing as the livelihood project of Panghulo.

"On August 9, 1984, Romero and Gomez lodged their complaint against Nizurtado with the Office of the Tanodbayan. After due preliminary investigation, this case was filed.

"As of September 7, 1984, the members of the Council who had received P1,000.00 each, as well as Bacani (also referred to as Manalang) and Soledad who had received P500.00 each had paid their respective loans to Nizurtado who, in turn, remitted the payments to the MMC on these dates:

"April 16, 1984

P1,450.00

"August 14, 1984

3,550.00

"September 7, 1984

3,000.00

"T o t a l

P8,000.00

"In June 1987, after demands for payment, Dalmacio remitted the balance of P2,000.00 from his pocket because, as acting Barangay Captain, he did not want to leave the Barangay with an indebtedness.[3]

On the basis of its above findings, the Sandiganbayan convicted the accused of the offense charged. The dispositive portions of its decision, promulgated on 18 September 1992, read:

"WHEREFORE, the Court finds Felix Nizurtado y Victa guilty beyond reasonable doubt of the complex crime of malversation of public funds committed through falsification of public document and, appreciating in his favor x x x two mitigating circumstances and applying the Indeterminate Sentence Law, imposes upon him the penalties of imprisonment ranging from FOUR (4) YEARS, NINE (9) MONTHS, and ELEVEN (11) DAYS of prison correccional as minimum to EIGHT (8) YEARS, EIGHT (8) MONTHS, and ONE (1) DAY of prison mayor as maximum; perpetual special disqualification; and a fine of P10,000.00.

"No pronouncement is made as to civil liability, there having been complete restitution of the amount malversed.

"With costs.

"SO ORDERED.[4]

His motion for reconsideration having been denied, Nizurtado has filed the instant petition for review on certiorari. Petitioner faults the Sandiganbayan in that -

"1. It has committed grave abuse of discretion in finding that Resolution No. 17, dated August 25, 1983, of the Barangay Council of Panghulo, Malabon, Metro Manila (Exh. 'D') is a falsified document and that the petitioner is the forger thereof; and

"2. It has committed serious error of law and gravely abused its discretion in finding petitioner guilty of malversation of the amount of P10,000.00 which he had received as a loan from the then Metro Manila Commission in his capacity as representative of the Samahang Kabuhayan, Barangay Panghulo, Malabon, Metro Manila."[5]

The Solicitor General agrees in all respects with the Sandiganbayan in its findings and judgment except insofar as it has found petitioner to have likewise committed the crime of falsification of a public document.

Article 217 of the Revised Penal Code provides:

"ART. 217. Malversation of public funds or property. -- Presumption of malversation. -- 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, or shall otherwise be guilty the misappropriation or malversation of such funds or property, shall suffer:

"1. The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

"2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

"3. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

"4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

"In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

"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, shall be prima facie evidence that he has put such missing funds or property to personal use."

The elements of malversation, essential for the conviction of an accused, under the above penal provisions are that -

(a) the offender is a public officer;

(b) he has the custody or control of funds or property by reason of the duties of his office;

- (c) the funds or property involved are public funds or property for which he is accountable; and
- (d) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of, such funds or property.

Nizurtado was a public officer, having been the Barangay Captain of Panghulo, Malabon, Metro Manila, from 1983 to 1988; in that capacity, he received and later encashed a check for P10,000.00, specifically intended by way of a loan to the barangay for its livelihood program; and the funds had come from the Ministry of Human Settlements, the Metro Manila Commission and "Kilusang Kabuhayan at Kaunlaran."

The only point of controversy is whether or not Nizurtado has indeed misappropriated the funds.

Petitioner was able to encash the check on 18 October 1988 on the basis of a resolution of the Barangay Council, submitted to the KKK Secretariat, to the effect that a livelihood project, i.e., "T-shirt manufacturing," had already been identified by the council. The money, however, instead of its being used for the project, was later lent to, along with petitioner, the members of the Barangay Council. Undoubtedly, the act constituted "misappropriation" within the meaning of the law.[6]

Accused-appellant sought to justify the questioned act in that it was only when the members of the Barangay Council had realized that P10,000.00 was not enough to support the T-shirt manufacturing project, that they decided to distribute the money in the form of loans to themselves. He submitted, in support thereof, a belated[7] certification issued by Rodolfo B. Banquicio, Chief of District IV of the Support Staff and Malabon Sub-District Officer of KKK, to the effect that Barangay Captains were given discretionary authority to invest the money in any viable project not falling within the list of project modules provided by the MHS-NCR Management. Lending the unutilized funds to the members of the Barangay council could have hardly been meant to be the viable project contemplated under that certification. Furthermore, it would appear that only Regional Action Officer Ismael Mathay, Jr., and Deputy Regional Action Officer Lilia S. Ledesma were the officials duly authorized to approve such projects upon the recommendation of the KKK Secretariat.[8] We could see no flaw in the ratiocination of the Sandiganbayan, when, in rejecting this defense, it said:

"The defense evidence that the Barangay Council changed the T-shirt Manufacturing to whatever business ventures each members of the Council would select for investment of his P1,000.00 has, as already stated, little, if any, probative value.

"But assuming there was such a change, the same is of no avail. The Resolution marked Exhibit D expressly stated that the P10,000.00 'shall only be appropriated for the purpose/s as provided in the issued policies and guidelines of the program.' The guidelines, in turn, prescribed that the livelihood project shall be identified from the modules developed by the KKK Secretariat or, as stipulated in the Resolution itself, in the absence of such modules, shall be chosen by the Samahang Kabuhayan 'subject to the evaluation/validation of the KKK Secretariat.' There is absolutely no showing that the alleged substitute projects which each lendee of P1,000.00 would select were among those of the developed modules or were submitted to the KKK Secretariat for evaluation/validation." [9]

Accused-appellant criticizes the Sandiganbayan for its having failed to consider the fact that no valid demand has been made, or could have been made, for the repayment of the loaned sum. Demand merely raises a prima facie presumption that missing funds have been put to personal use. The demand itself, however, is not an element of, and not indispensable to constitute, malversation. Even without a demand, malversation can still be committed when enough facts, such as here, are extant to prove it.[10]

Accused-appellant was charged with having committed the crime through the falsification of a public document punishable under paragraph 2 of Article 171 of the Revised Penal Code.

The pertinent provisions read:

"ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

"x x x x x x x x

"2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;"

In falsification under the above-quoted paragraph, the document need not be an authentic official paper since its simulation, in fact, is the essence of falsification. So, also, the signatures appearing thereon need not necessarily be forged.[11]

In concluding that the Barangay Council resolution, Exhibit "D,"[12] was a falsified document for which petitioner should be held responsible, the Sandiganbayan gave credence to the testimonies of Barangay Councilman Santos A. Gomez and Barangay Treasurer Manuel P. Romero. The two testified that no meeting had actually taken place on 25 August 1983, the date when "T-shirt manufacturing" was allegedly decided to be the barangay livelihood project. The Sandiganbayan concluded that Nizurtado had induced Romero and Gomez to sign the blank resolution, Exhibit "J"[13] on the representation that Romero's proposal to build a barangay service center would so later be indicated in that resolution as the barangay livelihood project.

The established rule is that unless the findings of fact of the Sandiganbayan are bereft of substantial evidence to support it, those findings are binding on this court.

The Sandiganbayan has considered the mitigating circumstances of voluntary surrender and restitution in favor of Nizurtado. Deputy Clerk of Court Luisabel Alfonso Cortez, on 17 January 1989, has certified to the voluntary surrender of the accused thusly:

"C E R T I F I C A T I O N

"THIS CERTIFIES that accused FELIX NIZURTADO in criminal Case No: 13304 voluntarily surrendered before this court on JANUARY 17, 1989 and posted his bail bond in said case.

"Manila, Philippines, JANUARY 17, 1989

(sgd.)

"LUISABEL ALFONSO CORTEZ

Deputy Clerk of Court"[14]

Voluntary surrender (Art. 13, par. 7, Revised Penal Code), therefore, may thus be treated as a modifying circumstance independent and apart from restitution of the questioned funds by petitioner (Art. 13, par. 10, Revised Penal Code). We are convinced, furthermore, that petitioner had no intention to commit so grave a wrong as that committed. (Art. 13, par. 3, Revised Penal Code), entitling him to three distinct mitigating circumstances.

Under Article 48 of the Revised Penal Code, when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same (the penalty) to be applied in the maximum period. The penalty prescribed for the offense of malversation of public funds, when the amount involved exceeds six thousand pesos but does not exceed twelve thousand pesos, is prision mayor in its maximum period to reclusion temporal in its minimum

period; in addition, the offender shall be sentenced to suffer perpetual special disqualification and to pay a fine equal to the amount malversed (Art. 217[3], Revised Penal Code). The penalty of prision mayor and a fine of five thousand pesos is prescribed for the crime of falsification under Article 171 of the Revised Penal Code. The former (that imposed for the malversation), being more severe than the latter (that imposed for the falsification), is then the applicable prescribed penalty to be imposed in its maximum period. The actual attendance of two separate mitigating circumstances of voluntary surrender and restitution, also found by the Sandiganbayan and uncontested by the Solicitor General, entitles the accused to the penalty next lower in degree. For purposes of determining that next lower degree, the full range of the penalty prescribed by law for the offense, not merely the impossible penalty because of its complex nature, should, a priori, be considered. It is our considered view that the ruling in *People vs. Gonzales*, 73 Phil. 549, as opposed to that of *People vs. Fulgencio*, 92 Phil. 1069, is the correct rule and it is thus here reiterated. In fine, the one degree lower than prision mayor maximum to reclusion temporal minimum is prision mayor minimum to prision mayor medium (being the next two periods in the scale of penalties [see Art. 64, par. 5, in relation to Art. 61, par. 5, Revised Penal Code]) the full range of which is six years and one day to ten years. This one degree lower penalty should, conformably with Article 48 of the Code (the penalty for complex crimes), be imposed in its maximum period or from eight years, eight months and one day to ten years. The presence of the third mitigating circumstance of *praeter intentionem* (lack of intention to commit so grave a wrong as that committed) would result in imposing a period the court may deem applicable.[15] Considering, however, that the penalty has to be imposed in the maximum period, the only effect of this additional mitigating circumstance is to impose only the minimum portion of that maximum period,[16] that is, from eight years, eight months and one day to nine years, six months and ten days, from which range the maximum of the indeterminate sentence shall be taken.

Under the Indeterminate Sentence Law (which can apply since the maximum term of imprisonment would exceed one year), the court is to impose an indeterminate sentence, the minimum of which shall be anywhere within the range of the penalty next lower in degree (i.e., prision correccional in its medium period to prision correccional in its maximum period or anywhere from two years, four months and one day to six years) and the maximum of which is that which the law prescribes after considering the attendant modifying circumstances. In view of the mitigating circumstances present in this case, the fine of P10,000.00 may also be reduced (Art. 66, Revised Penal Code) and, since the principal penalty is higher than prision correccional, subsidiary imprisonment would not be warranted (Art. 39, par. 3, Revised Penal Code).

The law and the evidence no doubt sustains Nizurtado's conviction. Given all the attendant circumstances, it is, nevertheless, the personal and humble opinion of the assigned writer of this ponencia that appellant deserves an executive commutation of the statutory minimum sentence pronounced by this Court.

WHEREFORE, the decision of the Sandiganbayan convicting Nizurtado for malversation of public funds through falsification of public document is **AFFIRMED** but the sentence, given the circumstances here obtaining, is **MODIFIED** by imposing on petitioner a reduced indeterminate sentence of from two years, four months and one day to eight years, eight months and one day, perpetual special disqualification and a fine of P2,000.00.

SO ORDERED.

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

[1]Rollo, pp. 23-24.

[2] Rollo, pp. 25-26.

[3] Rollo, pp. 55-61.

[4] Rollo, p. 84.

[5] Rollo, p. 9.

[6] See *Felicilda vs. Grospe*, 211 SCRA 285; *Labatogos vs. Sandiganbayan*, 183 SCRA 415.

[7] The certification, dated 10 April 1985, was secured only after the complaint was filed against Nizurtado.

[8] Rollo, pp. 82-83.

[9] Rollo, p. 82.

[10] *El Pueblo de Filipinas vs. Tolentino*, 69 Phil. 715.

[11] *Castillo vs. Sandiganbayan* 151 SCRA 425, citing *U.S. vs. Corral*, 15 Phil. 383.

[12] Photocopy of a filled-up resolution purportedly accomplished by accused-appellant.

[13] Photocopy of a blank resolution which contained the signatures of Gomez, Romero, Nizurtado and the other councilmen.

[14] Records, p. 7.

[15] *People vs. Orazo*, 83 Phil. 633.

[16] *People vs. Cesar*, 131 Phil. 121.

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